No. 15-4019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ROBERT F McDONNELL,
Defendant-Appellant,

On Appeal from the United States District Court for the Eastern District of Virginia, Richmond Division, James R. Spencer, District Judge

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APPEAL,CLOSED,PROTO

U.S. District Court
Eastern District of Virginia - (Richmond)
CRIMINAL DOCKET FOR CASE #: 3:14-cr-00012-JRS All Defendants

Case title: USA v. McDonnell et al	Date Filed: 01/21/2014 Date Terminated: 02/20/2015

Assigned to: District Judge James R. Spencer

Appeals court case number: 15-4019 USCA

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Pending Counts	**Disposition**
18:1349; 18:981(A)(1)(c); 28:2461(c); 18:982(a)(2)CONSPIRACY TO DEFRAUD THE CITIZENS OF VIRGINIA OF THEIR RIGHT TO HONEST SERVICES BY USE OF INTERSTATE WIRES; FORFEITURE ALLEGATION (1)	24 MONTHS IMPRISONMENT TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, 2 YEARS SUPERVISED RELEASE TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, $100 S/A
18:1343; 18:2; 18:981(a)(1)(C); 28:2461(c); 18:982(a)(2); USE OF INTERESTATE WIRE COMMUNICATIONS TO FURTHER SCHEME TO DEFRAUD THE CITIZENS OF VIRGINIA OF THEIR RIGHT TO HONEST SERVICES; AIDING AND ABETTING; FORFEITURE ALLEGATION (2-4)	24 MONTHS IMPRISONMENT TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, 2 YEARS SUPERVISED RELEASE TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, $100 S/A
18:1951, 18:981(a)(1)(C); 28:2461(c); 18:982(a)(2); CONSPIRACY TO OBTAIN PROPERTY UNDER COLOR OF OFFICIAL RIGHT; FORFEITURE ALLEGATION (5)	24 MONTHS IMPRISONMENT TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, 2 YEARS SUPERVISED RELEASE TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, $100 S/A
18:1951, 18:2; 18:981(a)(1)(C); 28:2461(c), 18:982(a)(2); OBTAINING PROPERTY UNDER COLOR OF OFFICIAL RIGHT; AIDING AND ABETTING; FORFEITURE ALLEGATION (6-11)	24 MONTHS IMPRISONMENT TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, 2 YEARS SUPERVISED RELEASE TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, $100 S/A

Highest Offense Level (Opening)

Felony

Terminated Counts	**Disposition**
18:1014; 18:2; FALSE STATEMENT; AIDING AND ABETTING (12-13)	NOT GUILTY BY JURY

Highest Offense Level (Terminated)

Felony

Complaints	**Disposition**
None	

Assigned to: District Judge James R. Spencer

Defendant (2)

Maureen G. McDonnell
TERMINATED: 02/20/2015

represented by

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Pending Counts **Disposition**

18:1349; 18:981(A)(1)(c); 28:2461(c); 18:982(a)(2)CONSPIRACY TO DEFRAUD THE CITIZENS OF VIRGINIA OF THEIR RIGHT TO HONEST SERVICES BY USE OF INTERSTATE WIRES; FORFEITURE ALLEGATION (1)	12 MONTHS AND 1 DAY TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, 2 YEARS SUPERVISED RELEASE TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, $100 S/A ON EACH COUNT
18:1343; 18:2; 18:981(a)(1)(C); 28:2461(c); 18:982(a)(2); USE OF INTERESTATE WIRE COMMUNICATIONS TO FURTHER SCHEME TO DEFRAUD THE CITIZENS OF VIRGINIA OF THEIR RIGHT TO HONEST SERVICES; AIDING AND ABETTING; FORFEITURE ALLEGATION (2-3)	12 MONTHS AND 1 DAY TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, 2 YEARS SUPERVISED RELEASE TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, $100 S/A ON EACH COUNT
18:1951; 18:981(a)(1)(C); 28:2461(c); 18:982(a)(2); CONSPIRACY TO OBTAIN PROPERTY UNDER COLOR OF OFFICIAL RIGHT; FORFEITURE ALLEGATION (5)	12 MONTHS AND 1 DAY TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, 2 YEARS SUPERVISED RELEASE TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, $100 S/A ON EACH COUNT
18:1951, 18:2; 18:981(a)(1)(C); 28:2461(c); 18:982(a)(2); OBTAINING PROPERTY UNDER COLOR OF OFFICIAL RIGHT; AIDING AND ABETTING; FORFEITURE ALLEGATION (6-8)	12 MONTHS AND 1 DAY TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, 2 YEARS SUPERVISED RELEASE TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, $100 S/A ON EACH COUNT
18:1951; 18:2; 18:981(a)(1)(C); 28:2461(c); 18:982(a)(2); OBTAINING PROPERTY UNDER COLOR OF OFFICIAL RIGHT; AIDING AND ABETTING; FORFEITURE ALLEGATION (10)	12 MONTHS AND 1 DAY TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, 2 YEARS SUPERVISED RELEASE TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, $100 S/A ON EACH COUNT

Highest Offense Level (Opening)

Felony

Terminated Counts	**Disposition**
18:1343; 18:2; 18:981(a)(1)(C); 28:2461(c); 18:982(a)(2); USE OF INTERESTATE WIRE	

COMMUNICATIONS TO FURTHER SCHEME TO DEFRAUD THE CITIZENS OF VIRGINIA OF THEIR RIGHT TO HONEST SERVICES; AIDING AND ABETTING; FORFEITURE ALLEGATION (4)	NOT GUILTY PURSUANT TO JURY VERDICT
18:1951, 18:2; 18:981(a)(1)(C); 28:2461(c); 18:982(a)(2); OBTAINING PROPERTY UNDER COLOR OF OFFICIAL RIGHT, AIDING AND ABETTING; FORFEITURE ALLEGATION (9)	NOT GUILTY PURSUANT TO JURY VERDICT
18:1951, 18:2; 18:981(a)(1)(C); 28:2461(c); 18:982(a)(2); OBTAINING PROPERTY UNDER COLOR OF OFFICIAL RIGHT, AIDING AND ABETTING; FORFEITURE ALLEGATION (11)	NOT GUILTY PURSUANT TO JURY VERDICT
18:1014; 18:2; FALSE STATEMENT; AIDING AND ABETTING (13)	NOT GUILTY PURSUANT TO JURY VERDICT
18:1512(c)(2); 18:2 OBSTRUCTION OF AN OFFICIAL PROCEEDING; AIDING AND ABETTING (14)	DISMISSED PURSUANT TO ORDER ENTERED 12/1/2014 (DKT #570)

Highest Offense Level (Terminated)

Felony

Complaints	**Disposition**
None	

Movant

Abigail Farris Rogers
TERMINATED: 02/20/2015

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LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Movant

National Association of Criminal Defense Lawyers
TERMINATED: 04/01/2014

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PRO HAC VICE

Movant

Andrew P. Miller
TERMINATED: 04/07/2014

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Movant

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Movant

Mary Sue Terry *TERMINATED: 04/07/2014*	represented by	**Stephen Charles Piepgrass** (See above for address) *LEAD ATTORNEY* *Designation: Retained* **William Henry Hurd** (See above for address) *Designation: Retained*

Movant

Stephen D. Rosenthal *TERMINATED: 04/07/2014*	represented by	**Stephen Charles Piepgrass** (See above for address) *LEAD ATTORNEY* *Designation: Retained* **William Henry Hurd** (See above for address) *Designation: Retained*

Movant

Mark L. Earley *TERMINATED: 04/07/2014*	represented by	**Stephen Charles Piepgrass** (See above for address) *LEAD ATTORNEY* *Designation: Retained* **William Henry Hurd** (See above for address) *Designation: Retained*

Movant

Johnny R. Huff *TERMINATED: 04/22/2014*	represented by	**Johnny R. Huff** 58222 / 1029720 Riverside Regional Jail P.O. Box 1041 N. Prince George, VA 23860 PRO SE

Movant

Jerri Fulkerson *TERMINATED: 07/30/2014*	represented by	**Dallas Jacob Egging Kaplan** Morgan, Lewis & Bockius LLP (DC) 1111 Pennsylvania Ave, NW Washington, DC 20004 202-739-5407 Fax: 202-739-3001 Email: dkaplan@morganlewis.com *LEAD ATTORNEY* **George J. Terwilliger , III** Morgan Lewis & Bockius LLP 1111 Pennsylvania Ave NW Washington, DC 20004 NA (202) 739-5988 Fax: (202) 739-3001 Email: gterwilliger@morganlewis.com *PRO HAC VICE*

Movant

Christopher Young	represented by	**Edward Joseph Fuhr** Hunton & Williams LLP 951 E Byrd St Riverfront Plaza Richmond, VA 23219 (804) 788-8200 Email: efuhr@hunton.com *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Movant

Cailin M. Young *TERMINATED: 02/20/2015*	represented by	**Edward Joseph Fuhr** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Movant

Steven Davis *Consultant* *TERMINATED: 09/15/2014*	represented by	**Steven Davis** 5389 Painted Mirage Road Las Vegas, NV 89149 702-655-0273 PRO SE

Intervenor

WP Company LLC *TERMINATED: 02/20/2015* *doing business as* The Washington Post *TERMINATED: 02/20/2015* *doing business as* The Washington Post	represented by	**Craig Thomas Merritt** Christian & Barton LLP 909 E Main St Suite 1200 Richmond, VA 23219-3095 804-697-4128 Fax: 804-697-6128 Email: cmerritt@cblaw.com *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* *Designation: Retained* **David Brendan Lacy** Christian & Barton LLP 909 E Main St Suite 1200 Richmond, VA 23219 (804) 697-4121 Fax: (804) 697-6121 Email: dlacy@cblaw.com *ATTORNEY TO BE NOTICED* *Designation: Retained*

Intervenor

BH Media Group Holdings, Inc. *Publisher of the Richmond Times-Dispatch* *TERMINATED: 02/20/2015*	represented by	**Craig Thomas Merritt** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* *Designation: Retained* **David Brendan Lacy** (See above for address) *ATTORNEY TO BE NOTICED* *Designation: Retained*

Intervenor

Associated Press *The* *TERMINATED: 02/20/2015*	represented by	**David Brendan Lacy** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* *Designation: Retained* **Craig Thomas Merritt** (See above for address) *ATTORNEY TO BE NOTICED* *Designation: Retained*

Plaintiff

USA	represented by	**Michael Steven Dry** US Attorney's Office 600 E Main St 18th Fl Richmond, VA 23219 (804) 819-5400 Email: michael.s.dry@usdoj.gov *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* *Designation: US Attorney* **David V. Harbach , II** United States Attorney Office (Richmond-NA) 600 E Main St Suite 1800 Richmond, VA 23219 NA (804) 819-7412 Email: david.harbach@usdoj.gov *ATTORNEY TO BE NOTICED* *Designation: US Attorney* **Jessica Diane Aber** US Attorney Office (Richmond) 600 E Main St 18th Fl Richmond, VA 23219 804-819-5400 Fax: 804-771-2316 Email: Jessica.D.Aber@usdoj.gov *ATTORNEY TO BE NOTICED* *Designation: US Attorney* **Richard D. Cooke**

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ATTORNEY TO BE NOTICED
Designation: US Attorney

Date Filed	#	Docket Text
01/21/2014	1	INDICTMENT as to Robert F McDonnell (1) count(s) 1-13, Maureen G. McDonnell (2) count(s) 1-11, and 13-14. (jtho,) (Entered: 01/21/2014)
01/21/2014	3	Summons Issued in case as to Robert F McDonnell Arraignment set for 1/24/2014 at 11:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. Initial Appearance/Bond Hearing set for 1/24/2014 at 10:00 AM in Richmond Courtroom 5400 before Magistrate Judge David J. Novak. (cgar) (Entered: 01/21/2014)
01/21/2014	4	Summons Issued in case as to Maureen G. McDonnell Arraignment set for 1/24/2014 at 11:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. Initial Appearance/Bond set for 1/24/2014 at 10:00 AM in Richmond Courtroom 5400 before Magistrate Judge David J. Novak. (cgar) (Entered: 01/21/2014)
01/21/2014	6	NOTICE OF ATTORNEY APPEARANCE: William Frederick Gould appearing for Robert F McDonnell *John L. Brownlee notice of appearance* (Gould, William) (Entered: 01/21/2014)
01/21/2014	7	Motion to appear Pro Hac Vice by Henry W Asbill and Certification of Local Counsel John L. Brownlee (Filing fee $ 75 receipt number 0422-3822075.) by Robert F McDonnell. (Gould, William) (Entered: 01/21/2014)
01/21/2014	8	MOTION and Memorandum in Support for Discovery of Selected Recordings of Communications Between Prosecutors and Members of the Grand Jury by Robert F McDonnell. (Gould, William) Modified text on 1/24/2014 (tdai,). (Entered: 01/21/2014)
01/21/2014	9	MOTION and Memorandum in Support for Release of Brady Materials by Robert F McDonnell. (Exhibits A-C Attached) (Gould, William) (Entered: 01/21/2014)

01/21/2014	10	Motion to appear Pro Hac Vice by James M. Burnham and Certification of Local Counsel John L. Brownlee (Filing fee $ 75 receipt number 0422-3822117.) by Robert F McDonnell. (Gould, William) (Entered: 01/21/2014)
01/22/2014	11	MOTION for Extension *Unopposed Motion to Reschedule Arraignment and Initial Appearance* by Robert F McDonnell. (Gould, William) (Entered: 01/22/2014)
01/22/2014		Minute Entry for proceedings held before Magistrate Judge David J. Novak: Conference Call as to Robert F McDonnell and Maureen G. McDonnell held on 1/22/2014. (cgar) (Entered: 01/22/2014)
01/22/2014	12	ORDER denying 11 Motion for Extension of Time as to Robert F McDonnell (1). Defendants' initial appearance and arraignment will move forward as originally scheduled on January 24, 2014. Signed by Magistrate Judge David J. Novak on 1/22/2014. (cgar) (Entered: 01/22/2014)
01/22/2014	13	NOTICE OF ATTORNEY APPEARANCE: Heather Hansen Martin appearing for Maureen G. McDonnell (Martin, Heather) (Entered: 01/22/2014)
01/22/2014	14	Motion to appear Pro Hac Vice by William A. Burck and Certification of Local Counsel Heather H. Martin (Filing fee $ 75 receipt number 0422-3823842.) by Maureen G. McDonnell. (Martin, Heather) (Entered: 01/22/2014)
01/22/2014	15	Motion to appear Pro Hac Vice by Stephen M. Hauss and Certification of Local Counsel Heather H. Martin (Filing fee $ 75 receipt number 0422-3823843.) by Maureen G. McDonnell. (Martin, Heather) (Entered: 01/22/2014)
01/23/2014	16	ORDER granting 7 Motion for Pro hac vice. Appointed Henry Winchester Asbill as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 1/23/14. (tdai,) (Entered: 01/23/2014)
01/23/2014	17	ORDER granting 10 Motion for Pro hac vice. Appointed James Mahoney Burnham as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 1/23/14. (tdai,) (Entered: 01/23/2014)
01/23/2014	18	ORDER granting 14 Motion for Pro hac vice. Appointed William Anthony Burck as to Maureen G. McDonnell (2). Signed by District Judge James R. Spencer on 1/23/14. (tdai,) (Entered: 01/23/2014)
01/23/2014	19	ORDER granting 15 Motion for Pro hac vice. Appointed Stephen Michael Hauss as to Maureen G. McDonnell (2). Signed by District Judge James R. Spencer on 1/23/14. (tdai,) (Entered: 01/23/2014)
01/23/2014	20	Motion to appear Pro Hac Vice by Charles Michael Carberry and Certification of Local Counsel John Leslie Brownlee (Filing fee $ 75 receipt number 0422-3825789.) by Robert F McDonnell. (Brownlee, John) Modified text on 1/24/2014 (tdai,). (Entered: 01/23/2014)
01/24/2014	21	Minute Entry for proceedings held before Magistrate Judge David J. Novak:Initial Appearance/Bond as to Robert F McDonnell and Maureen G. McDonnell held on 1/24/2014. Matter came on for initial appearances. Defts advised of charges/penalties and rights. Defts ordered released pursuant to Govt request on PR bond and agrees to appear as instructed. Defts instructed not to leave U.S. or

		have contact with any witnesses or representatives of the government. Court confirmed passports submitted as previously ordered. Court reviewed Local Rule 57 Lead counsel (Dry, Brownlee and Burck) confirm understanding and intent to comply as instructed to Local Rule 57 (Court Reporter Jeffrey Kull, OCR.)(cgar) (Entered: 01/24/2014)
01/24/2014	22	Minute Entry for proceedings held before District Judge James R. Spencer:Arraignment as to Robert F McDonnell (1) Count 1,2-4,5,6-11,12-13 and Maureen G. McDonnell (2) Count 1,2-4,5,6-11,13,14 held on 1/24/2014. Robert F McDonnell entered a plea of not guilty and requested a trial by jury. Maureen G. McDonnell entered a plea of not guilty and requested a trial by jury. Robert F McDonnell's Motion for Continuance of Trial Beyond the Speedy Trial Act Cut-Off Date - GRANTED. Maureen G. McDonnell's Motion for Continuance of Trial Beyond the Speedy Trial Act Cut-Off Date -- GRANTED. Parties to submit draft scheduling order. Jury Trial scheduled to begin July 28, 2014 at 10:00 a.m. Defendants remain on bond. (Court Reporter Jeff Kull, OCR.)(khan,) (Entered: 01/24/2014)
01/24/2014	23	MOTION for Continuance of Trial Beyond the Speedy Trial Act Cut-Off Date by Robert F McDonnell. (khan,) (Entered: 01/24/2014)
01/24/2014		ORAL ORDER as to Robert F McDonnell GRANTING 23 MOTION for Continuance of Trial Beyond the Speedy Trial Act Cut-Off Date filed by Robert F McDonnell by District Judge James R. Spencer on 1/24/14. (khan,) (Entered: 01/24/2014)
01/24/2014	24	MOTION for Continuance of Trial Beyond the Speedy Trial Act Cut-Off Date by Maureen G. McDonnell. (khan,) (Entered: 01/24/2014)
01/24/2014		ORAL ORDER as to Maureen G. McDonnell GRANTING 24 MOTION for Continuance of Trial Beyond the Speedy Trial Act Cut-Off Date filed by Maureen G. McDonnell by District Judge James R. Spencer on 1/24/14. (khan,) (Entered: 01/24/2014)
01/24/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 7/28/2014 at 10:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 01/24/2014)
01/27/2014	25	MOTION for Discovery *of Selected Communications Between Prosecutors and Members of the Grand Jury* by Maureen G. McDonnell. (Martin, Heather) (Entered: 01/27/2014)
01/27/2014	26	MOTION for Release of Brady Materials by Maureen G. McDonnell. (Martin, Heather) (Entered: 01/27/2014)
01/27/2014		NOTICE OF CORRECTION as to ECF 9 MOTION and Memorandum in Support for Release of Brady Materials; per counsel's request, Clerk has corrected exhibits A and B which have been redacted to remove personal information; notified filing attorney of proper procedures for future filings. (cgar) Modified on 1/27/2014 (jtho,). (Entered: 01/27/2014)
01/27/2014	27	TRANSCRIPT of Proceedings held on January 24, 2014, Initial Appearance before Judge David J. Novak. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The**

		parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 2/26/2014. Redacted Transcript Deadline set for 3/31/2014. Release of Transcript Restriction set for 4/28/2014.(kull, jeff) (Entered: 01/27/2014)
01/27/2014	28	TRANSCRIPT of Proceedings held on January 24, 2014, Arraignment before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 2/26/2014. Redacted Transcript Deadline set for 3/31/2014. Release of Transcript Restriction set for 4/28/2014.(kull, jeff) (Entered: 01/27/2014)**
01/27/2014	30	ORDER granting 20 Motion for Pro hac vice. Appointed Charles Michael Carberry as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 1/27/14. (tdai,) (Entered: 01/28/2014)
01/28/2014	29	NOTICE OF ATTORNEY APPEARANCE: Timothy James Taylor appearing for Robert F McDonnell (Taylor, Timothy) (Entered: 01/28/2014)
01/28/2014	31	MOTION to Modify Conditions of Release *or, Rather, to Clarify Conditions of Release* by Robert F McDonnell. (Attachments: # 1 Memorandum in Support, # 2 Proposed Order)(Taylor, Timothy) (Entered: 01/28/2014)
01/28/2014		Notice of Correction re 31 MOTION to Modify Conditions of Release *or, Rather, to Clarify Conditions of Release*; notified filing attorney to file the Memorandum in Support as a separate document with the filing attorney's correct signature. (jtho,) (Entered: 01/28/2014)
01/28/2014	32	Memorandum in Support by Robert F McDonnell re 31 MOTION to Modify Conditions of Release *or, Rather, to Clarify Conditions of Release* (Taylor, Timothy) (Entered: 01/28/2014)
01/28/2014	33	MOTION to Modify Conditions of Release *or, Rather, to Clarify Conditions of Release* by Maureen G. McDonnell. (Martin, Heather) (Entered: 01/28/2014)
01/28/2014	34	RESPONSE to Motion by USA as to Robert F McDonnell, Maureen G. McDonnell re 31 MOTION to Modify Conditions of Release *or, Rather, to Clarify Conditions of Release*, 33 MOTION to Modify Conditions of Release *or, Rather, to Clarify Conditions of Release* (Aber, Jessica) (Entered: 01/28/2014)
01/29/2014	35	Reply by Robert F McDonnell re 31 MOTION to Modify Conditions of Release

		or, Rather, to Clarify Conditions of Release (Taylor, Timothy) (Entered: 01/29/2014)
01/30/2014	36	ORDER by request of the parties, the Court will hold a hearing on the motions 31 , 33 on Monday, February 3, 2014 at 10:00 a.m. as to Robert F McDonnell and Maureen G. McDonnell. Signed by Magistrate Judge David J. Novak on 1/30/2014. (cgar) (Entered: 01/30/2014)
01/30/2014		Set Hearing re: Motion as to Robert F McDonnell and Maureen G. McDonnell 31 33 MOTION to Modify Conditions of Release *or, Rather, to Clarify Conditions of Release*. Motions Hearing set for 2/3/2014 at 10:00 AM in Richmond Courtroom 5400 before Magistrate Judge David J. Novak. (cgar) (Entered: 01/30/2014)
01/31/2014	37	Summons Returned Executed on 1/21/14 as to Robert F McDonnell. (tdai,) (Entered: 01/31/2014)
01/31/2014	38	Summons Returned Executed on 1/21/14 as to Maureen G. McDonnell. (tdai,) (Entered: 01/31/2014)
02/03/2014	39	Minute Entry for proceedings held before Magistrate Judge David J. Novak:Motion Hearing as to Robert F McDonnell and Maureen G. McDonnell held on 2/3/2014 re 31 , 33 MOTION to Modify Conditions of Release *or, Rather, to Clarify Conditions of Release. Matter came on for motion hearing. Arguments heard. Findings stated from bench. Defts confirm understanding of conditions. Order to issue. Defts continued on PR as detailed by Court. (Tape #FTR.)(cgar) (Entered: 02/03/2014)*
02/03/2014	40	ORDER granting in part Defts' motions and modifying conditions of release as to 31 , 33 Motions to Modify Conditions of Release as to Robert F McDonnell (1)and Maureen G. McDonnell (2). SEE ORDER FOR ALL DETAILS. Signed by Magistrate Judge David J. Novak on 2/3/2014. (cgar) (Entered: 02/03/2014)
02/03/2014	41	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 8 MOTION for Discovery of Selected Recordings of Communications Between Prosecutors and Members of the Grand Jury , 25 MOTION for Discovery *of Selected Communications Between Prosecutors and Members of the Grand Jury* (Faulconer, Ryan) (Entered: 02/03/2014)
02/03/2014	42	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 26 MOTION for Release of Brady Materials , 9 MOTION for Release of Brady Materials (Faulconer, Ryan) (Entered: 02/03/2014)
02/04/2014	43	TRANSCRIPT of Proceedings held on February 3, 2014, Motion to Modify Order before Judge David J. Novak. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 3/6/2014. Redacted Transcript Deadline set for 4/7/2014. Release of Transcript Restriction set for**

		5/5/2014.(kull, jeff) (Entered: 02/04/2014)
02/04/2014	44	Consent MOTION for Protective Order by USA as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Proposed Order Proposed Protective Order)(Faulconer, Ryan) (Entered: 02/04/2014)
02/04/2014		Notice of Correction re 44 Consent MOTION for Protective Order. Notified filing attorney to refile a corrected consent motion and proposed order identifying the correct case number. (tdai,) (Entered: 02/04/2014)
02/04/2014	45	Consent MOTION for Protective Order *CORRECTED* by USA as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Proposed Order Corrected Proposed Order)(Faulconer, Ryan) (Entered: 02/04/2014)
02/06/2014	46	PROTECTIVE ORDER as to Robert F McDonnell, Maureen G. McDonnell re 45 Consent MOTION for Protective Order *CORRECTED* filed by USA. It is so ORDERED. Signed by District Judge James R. Spencer on 2/6/14. (tdai,) (Entered: 02/06/2014)
02/06/2014	47	***SEE CORRECTED 48 REPLY TO RESPONSE*** Reply by Robert F McDonnell re 9 MOTION for Release of Brady Materials (Brownlee, John) Modified text on 2/7/2014 (tdai,). (Entered: 02/06/2014)
02/06/2014	48	REPLY TO RESPONSE to by Robert F McDonnell re 9 MOTION for Release of Brady Materials *(corrected)* (Attachments: # 1 Exhibit A)(Brownlee, John) (Entered: 02/06/2014)
02/06/2014	49	REPLY TO RESPONSE to by Robert F McDonnell re 8 MOTION for Discovery of Selected Recordings of Communications Between Prosecutors and Members of the Grand Jury (Brownlee, John) (Entered: 02/06/2014)
02/13/2014	50	Consent MOTION for Entry of Scheduling Order by USA as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Proposed Order Scheduling Order)(Faulconer, Ryan) (Entered: 02/13/2014)
02/13/2014	51	MOTION FOR THE PRODUCTION OF EVIDENCE AND OTHER RELIEF TO REMEDY THE GOVERNMENT'S INTERFERENCE IN THE DEFENSE'S INVESTIGATION by Robert F McDonnell. (Attachments: # 1 Proposed Order) (Brownlee, John) (Entered: 02/13/2014)
02/13/2014	52	Memorandum in Support by Robert F McDonnell re 51 MOTION FOR THE PRODUCTION OF EVIDENCE AND OTHER RELIEF TO REMEDY THE GOVERNMENT'S INTERFERENCE IN THE DEFENSE'S INVESTIGATION (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Brownlee, John) (Entered: 02/13/2014)
02/15/2014	53	MOTION for Issuance of Subpoenas Duces Tecum by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Brownlee, John) Modified to correct text on 2/21/2014 (tdai,). (Entered: 02/15/2014)
02/15/2014	54	Memorandum in Support by Robert F McDonnell re 53 MOTION for Issuance of Subpoenas (Brownlee, John) (Entered: 02/15/2014)
02/18/2014	55	ORDER re 50 Consent Motion for Entry of Scheduling Order by USA as to Robert F McDonnell (1) and to Maureen G. McDonnell (2). See Order for

		complete details and deadlines. It is so ORDERED. Signed by District Judge James R. Spencer on 2/18/14. (tdai,) (Entered: 02/18/2014)
02/18/2014	56	Notice of Hearing Date set for 3/18/2014 re 51 MOTION FOR THE PRODUCTION OF EVIDENCE AND OTHER RELIEF TO REMEDY THE GOVERNMENT'S INTERFERENCE IN THE DEFENSE'S INVESTIGATION , 8 MOTION for Discovery of Selected Recordings of Communications Between Prosecutors and Members of the Grand Jury , 9 MOTION for Release of Brady Materials (Brownlee, John) (Entered: 02/18/2014)
02/19/2014	57	Motion to appear Pro Hac Vice by Owen T. Conroy and Certification of Local Counsel Timothy J. Taylor (Filing fee $ 75 receipt number 0422-3856441.) by Robert F McDonnell. (Taylor, Timothy) (Entered: 02/19/2014)
02/19/2014	58	MOTION to Compel *Rule 16 Document Production and for Additional Relief* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Brownlee, John) (Entered: 02/19/2014)
02/19/2014	59	Memorandum in Support by Robert F McDonnell re 58 MOTION to Compel *Rule 16 Document Production and for Additional Relief* (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13)(Brownlee, John) (Entered: 02/19/2014)
02/19/2014		Motion Hearing set in case as to Robert F McDonnell, Maureen G. McDonnell for 3/18/2014 at 10:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 02/19/2014)
02/19/2014		Motion Hearing as to Robert F McDonnell, Maureen G. McDonnell set for 5/19/2014 at 10:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 02/19/2014)
02/19/2014		Motion Hearing set as to Robert F McDonnell, Maureen G. McDonnell for 7/15/2014 at 10:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 02/19/2014)
02/19/2014	60	RESPONSE to Motion by USA as to Robert F McDonnell, Maureen G. McDonnell re 53 MOTION for Issuance of Subpoenas (Harbach, David) (Entered: 02/19/2014)
02/20/2014	61	ORDER this matter is before the Court on Defendant Robert F McDonnell's Urgent Motion to Compel Rule 16 Document Production and for Additional Relief ("Motion") (ECF No. 58). The Court DIRECTS Counsel for the United States to respond to the Motion on or before Monday, February 24, 2014. The Court notes that McDonnell has requested a telephonic or in-person hearing on the Motion. However, this Court does not hold telephonic hearings and, in accordance with Federal Rule of Civil Procedure 78, may rule upon motions without an oral hearing. E.D. Va. Loc. Civ. R. 7(J); see Fed. R. Civ. P 78. It is so ORDERED. Signed by District Judge James R. Spencer on 2/20/14. (tdai,) (Entered: 02/20/2014)
02/20/2014	62	SO-ORDER granting 57 Motion for Owen Thomas Conroy to appear as Pro Hac Vice Attorney as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 2/20/14. (jtho,) (Entered: 02/20/2014)

02/20/2014	63	Consent MOTION for Entry of Amended Scheduling Order re 55 Order, by USA as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Proposed Order Amended Scheduling Order)(Faulconer, Ryan) Modified text on 2/21/2014 (tdai,). (Entered: 02/20/2014)
02/20/2014		Set Motion as to Robert F McDonnell, Maureen G. McDonnell 9 MOTION for Release of Brady Materials, 51 MOTION FOR THE PRODUCTION OF EVIDENCE AND OTHER RELIEF TO REMEDY THE GOVERNMENT'S INTERFERENCE IN THE DEFENSE'S INVESTIGATION, 26 MOTION for Release of Brady Materials. Motion Hearing set for 3/18/2014 at 10:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 02/20/2014)
02/20/2014		Set Motion as to Robert F McDonnell, Maureen G. McDonnell 8 MOTION for Discovery of Selected Recordings of Communications Between Prosecutors and Members of the Grand Jury, 25 MOTION for Discovery of Selected Communications Between Prosecutors and Members of the Grand Jury Motion Hearing set for 5/19/2014 at 10:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 02/20/2014)
02/21/2014	64	AMENDED ORDER re 63 Consent Motion for Entry of Amended Scheduling Order as to Robert F McDonnell (1), Maureen G. McDonnell (2). See Order for complete details and deadlines. It is so ORDERED. Signed by District Judge James R. Spencer on 2/21/14. (tdai,) (Entered: 02/21/2014)
02/21/2014	65	NOTICE of Appearance by Laurin H. Mills for Abigail Farris Rogers as to Robert F McDonnell. (tdai,) (Entered: 02/21/2014)
02/21/2014	66	Objection to 53 MOTION for Issuance of Subpoena Duces Tecum by Abigail Farris Rogers as to Robert F McDonnell. (tdai,) (Entered: 02/21/2014)
02/21/2014	67	REPLY TO RESPONSE to by Robert F McDonnell re 53 MOTION for Issuance of Subpoenas (Brownlee, John) (Entered: 02/21/2014)
02/21/2014	68	NOTICE OF ATTORNEY APPEARANCE Richard D. Cooke appearing for USA. (Cooke, Richard) (Entered: 02/21/2014)
02/21/2014	69	RESPONSE in Opposition by USA as to Robert F McDonnell re 51 MOTION FOR THE PRODUCTION OF EVIDENCE AND OTHER RELIEF TO REMEDY THE GOVERNMENT'S INTERFERENCE IN THE DEFENSE'S INVESTIGATION (Cooke, Richard) (Entered: 02/21/2014)
02/21/2014	70	MOTION FOR THE PRODUCTION OF EVIDENCE AND OTHER RELIEF TO REMEDY THE GOVERNMENT'S INTERFERENCE IN THE DEFENSE'S INVESTIGATION by Maureen G. McDonnell. (Martin, Heather) (Entered: 02/21/2014)
02/21/2014	71	MOTION for Issuance of Subpoenas by Maureen G. McDonnell. (Martin, Heather) (Entered: 02/21/2014)
02/21/2014	72	Consent MOTION for Disclosure *(Limited) of Tax Return Information and for a Protective Order and Memorandum in Support* by USA as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Aber,

		Jessica) (Entered: 02/21/2014)
02/24/2014	73	ORDER granting 53 Motion for Issuance of Rule 17(c) Subpoena Duces Tecum as to Robert F McDonnell (1); granting 71 Motion for Issuance of Rule 17(c) Subpoena Duces Tecum as to Maureen G. McDonnell (2); the Clerk is DIRECTED to issue a subpoena duces tecum requiring Abigail Farris Rogers to produce a computer server currently in possession of Ms. Rogers's IT provider within five (5) days of the date of this Order; defendants are DIRECTED to make the requested server available to the United States for inspection and imaging within seven (7) days of defendants' receipt of the server; the Clerk is DIRECTED to notify John L. Brownlee and Henry w. Asbill, counsel for Defendant Robert F McDonnell, when the subpoena has been prepared. (SEE ORDER FOR DETAILS). Signed by District Judge James R. Spencer on 2/24/14. (jtho,) (Entered: 02/24/2014)
02/24/2014	74	Subpoena Duces Tecum issued to Abigail Farris Rogers, c/o Laurin Mills, Esquire, LeClair Ryan, 2318 Mill Road, Suite 1100, Alexandria, VA 22314 per Order entered on 2/24/14. (Called attorney to arrange for service of subpoena). (jtho,) (Entered: 02/24/2014)
02/24/2014	75	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 58 MOTION to Compel *Rule 16 Document Production and for Additional Relief* (Attachments: # 1 Exhibit A)(Harbach, David) (Entered: 02/24/2014)
02/24/2014	76	REPLY TO RESPONSE to by Robert F McDonnell re 51 MOTION FOR THE PRODUCTION OF EVIDENCE AND OTHER RELIEF TO REMEDY THE GOVERNMENT'S INTERFERENCE IN THE DEFENSE'S INVESTIGATION (Brownlee, John) (Entered: 02/24/2014)
02/25/2014	77	REPLY TO RESPONSE to by Robert F McDonnell re 58 MOTION to Compel *Rule 16 Document Production and for Additional Relief* (Brownlee, John) (Entered: 02/25/2014)
02/27/2014	78	ORDER granting 72 Consent Motion for Limited Disclosure of Tax information and for a Protective Order as to Robert F McDonnell (1), Maureen G. McDonnell (2). See Order for details. It is so ORDERED. Signed by District Judge James R. Spencer on 2/27/14. (tdai,) (Entered: 02/27/2014)
02/27/2014	79	MOTION for Bill of Particulars by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Brownlee, John) (Entered: 02/27/2014)
02/27/2014	80	Memorandum in Support by Robert F McDonnell re 79 MOTION for Bill of Particulars (Brownlee, John) (Entered: 02/27/2014)
03/04/2014	81	Notice of Hearing Date set for 3/18/2014 re 79 MOTION for Bill of Particulars (Brownlee, John) (Entered: 03/04/2014)
03/05/2014	82	MOTION for Bill of Particulars by Maureen G. McDonnell. (Martin, Heather) (Entered: 03/05/2014)
03/06/2014	83	Motion to appear Pro Hac Vice by Ryan D. Newman and Certification of Local Counsel Timothy J. Taylor (Filing fee $ 75 receipt number 0422-3876688.) by Robert F McDonnell. (Taylor, Timothy) (Entered: 03/06/2014)

03/10/2014	84	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 82 MOTION for Bill of Particulars , 79 MOTION for Bill of Particulars (Attachments: # 1 Exhibit A)(Aber, Jessica) (Entered: 03/10/2014)
03/11/2014	85	ORDER granting 83 Motion for Pro hac vice. Appointed Ryan Dean Newman as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 3/11/14. (tdai,) (Entered: 03/11/2014)
03/13/2014	86	REPLY TO RESPONSE to by Robert F McDonnell re 79 MOTION for Bill of Particulars (Brownlee, John) (Entered: 03/13/2014)
03/13/2014	87	Notice of Hearing Date set for 3/18/2014 re 58 MOTION to Compel *Rule 16 Document Production and for Additional Relief* (Brownlee, John) (Entered: 03/13/2014)
03/13/2014	88	MOTION for Issuance of Subpoenas *to the Food and Drug Administration and to the Securities and Exchange Commission* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Brownlee, John) (Entered: 03/13/2014)
03/13/2014	89	Memorandum in Support by Robert F McDonnell re 88 MOTION for Issuance of Subpoenas *to the Food and Drug Administration and to the Securities and Exchange Commission* (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5)(Brownlee, John) (Entered: 03/13/2014)
03/14/2014	90	ORDER denying 9 Motion for Release of Brady Materials as to Robert F McDonnell (1); denying 26 Motion for Release of Brady Materials as to Maureen G. McDonnell (2); denying 58 Motion to Compel Rule 16 Document Production and for Additional Relief as to Robert F McDonnell (1). It is so ORDERED. Signed by District Judge James R. Spencer on 3/14/14. (tdai,) (Entered: 03/14/2014)
03/14/2014	91	MOTION for Issuance of Subpoenas *to the Food and Drug Administration and to the Securities and Exchange Commission* by Maureen G. McDonnell. (Martin, Heather) (Entered: 03/14/2014)
03/17/2014	92	NOTICE OF ATTORNEY APPEARANCE: Kaiyeu Kevin Chu appearing for Maureen G. McDonnell (Chu, Kaiyeu) (Entered: 03/17/2014)
03/17/2014	93	MEMORANDUM ORDER that the Court hereby DENIES 79 Motion for Bill of Particulars as to Robert F McDonnell (1) and 82 Motion for Bill of Particulars as to Maureen G. McDonnell (2). (SEE ORDER FOR DETAILS). Signed by District Judge James R. Spencer on 3/17/14. (jtho,) (Entered: 03/17/2014)
03/18/2014	94	ORDER granting in part and denying in part 88 Motion for Issuance of Rule 17(c) Subpoenas Duces Tecum as to Robert F McDonnell (1); granting in part and denying in part 91 Motion for Issuance of Rule 17(c) Subpoenas Duces Tecum as to Maureen G. McDonnell (2). These records are to be returnable to the office of Holland & Knight LLP, 31 West 52nd Street, New York, NY 10019, c/o Scott Mathers, on or before April 1, 2014, at 12:00 PM. The Clerk shall notify defense counsel John L. Brownlee and Henry W Asbill, when the subpoenas are ready. See Order for details. Signed by District Judge James R. Spencer on 3/17/14. (tdai) (Entered: 03/18/2014)
03/18/2014	95	Subpoenas Duces Tecum issued to Food and Drug Administration - Division of

		Dockets Management, 5630 Fishers Lane, Room 1061, Mail Stop HPA-305, Rockville, MD 20852 and to Securities and Exchange Commission, 100 F Street NE, Mail Stop 2736, Washington, DC 20549 per 94 Order entered March 18, 2014 (Called attorney to arrange for service of subpoenas). (tdai,) (Entered: 03/18/2014)
03/18/2014	96	TRANSCRIPT of Proceedings held on March 18, 2014, Motions Hearing before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 4/17/2014. Redacted Transcript Deadline set for 5/19/2014. Release of Transcript Restriction set for 6/16/2014.(kull, jeff) (Entered: 03/18/2014)**
03/18/2014	97	Minute Entry for proceedings held before District Judge James R. Spencer:Motion Hearing as to Robert F McDonnell, Maureen G. McDonnell held on 3/18/2014 re 51 MOTION FOR THE PRODUCTION OF EVIDENCE AND OTHER RELIEF TO REMEDY THE GOVERNMENT'S INTERFERENCE IN THE DEFENSE'S INVESTIGATION filed by Robert F McDonnell, 70 MOTION FOR THE PRODUCTION OF EVIDENCE AND OTHER RELIEF TO REMEDY THE GOVERNMENT'S INTERFERENCE IN THE DEFENSE'S INVESTIGATION filed by Maureen G. McDonnell. DENIED. (Court Reporter Jeff Kull, OCR.) (khan,) (Entered: 03/19/2014)
03/19/2014	98	MEMORANDUM ORDER denying 51 Motion for the Production of Evidence and Other Relief to Remedy the Governments Interference in the Defenses Investigation ("Motion to Remedy Interference") as to Robert F McDonnell (1); denying 70 Motion for the Production of Evidence and Other Relief to Remedy the Governments Interference in the Defenses Investigation ("Motion to Remedy Interference") as to Maureen G. McDonnell (2). It is so ORDERED. Signed by District Judge James R. Spencer on 3/19/14. (tdai,) (Entered: 03/19/2014)
03/19/2014	99	Consent MOTION For Entry of Discovery Order by USA as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Aber, Jessica) (Entered: 03/19/2014)
03/20/2014	100	SO ORDERED re 99 Consent MOTION For Entry of Discovery Order, filed by USA. Signed by District Judge James R. Spencer on 3/20/14. (tdai,) (Entered: 03/20/2014)
03/24/2014	101	NOTICE OF ATTORNEY APPEARANCE: Jonathan Andrew Berry appearing for Robert F McDonnell (Berry, Jonathan) (Entered: 03/24/2014)
03/24/2014	102	Motion to appear Pro Hac Vice by Mary Ellen Powers and Certification of Local Counsel Jonathan A. Berry (Filing fee $ 75 receipt number 0422-3898128.) by Robert F McDonnell. (Berry, Jonathan) (Entered: 03/24/2014)

03/24/2014	103	Motion to appear Pro Hac Vice by Noel J. Francisco and Certification of Local Counsel Jonathan A. Berry (Filing fee $ 75 receipt number 0422-3898134.) by Robert F McDonnell. (Berry, Jonathan) (Entered: 03/24/2014)
03/25/2014	104	Motion to appear Pro Hac Vice by Hilary K. Perkins and Certification of Local Counsel Jonathan A. Berry (Filing fee $ 75 receipt number 0422-3899397.) by Robert F McDonnell. (Berry, Jonathan) (Entered: 03/25/2014)
03/25/2014	105	MOTION to Dismiss *Counts 1-11 of the Indictment* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 03/25/2014)
03/25/2014	106	Memorandum in Support by Robert F McDonnell re 105 MOTION to Dismiss *Counts 1-11 of the Indictment* (Berry, Jonathan) (Entered: 03/25/2014)
03/25/2014	107	MOTION to Strike *Prejudicial Surplusage* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 03/25/2014)
03/25/2014	108	Memorandum in Support by Robert F McDonnell re 107 MOTION to Strike *Prejudicial Surplusage* (Berry, Jonathan) (Entered: 03/25/2014)
03/25/2014	109	MOTION for Omnibus Voir Dire Relief by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 03/25/2014)
03/25/2014	110	Memorandum in Support by Robert F McDonnell re 109 MOTION for Omnibus Voir Dire Relief (Berry, Jonathan) (Entered: 03/25/2014)
03/25/2014	111	MOTION to Dismiss *Counts 1-11 of the Indictment* by Maureen G. McDonnell. (Martin, Heather) (Entered: 03/25/2014)
03/25/2014	112	MOTION to Strike *Prejudicial Surplusage* by Maureen G. McDonnell. (Martin, Heather) (Entered: 03/25/2014)
03/25/2014	113	MOTION for Omnibus Voir Dire Relief by Maureen G. McDonnell. (Martin, Heather) (Entered: 03/25/2014)
03/25/2014	114	MOTION to Sever Defendant by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 03/25/2014)
03/25/2014	115	Memorandum in Support by Robert F McDonnell re 114 MOTION to Sever Defendant (Berry, Jonathan) (Entered: 03/25/2014)
03/25/2014	116	MOTION for Leave to File Supporting Declarations Under Seal and for Ex Parte In Camera Review re 114 MOTION to Sever Defendant by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 03/25/2014)
03/25/2014	117	Memorandum in Support by Robert F McDonnell re 116 MOTION for Leave to File Supporting Declarations Under Seal and for Ex Parte In Camera Review re 114 MOTION to Sever Defendant (Berry, Jonathan) (Entered: 03/25/2014)
03/25/2014	118	MOTION to Dismiss by Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Martin, Heather) (Entered: 03/25/2014)
03/25/2014	119	Memorandum in Support by Maureen G. McDonnell re 118 MOTION to Dismiss (Martin, Heather) (Entered: 03/25/2014)
03/25/2014	120	MOTION to Sever Defendant by Maureen G. McDonnell. (Martin, Heather) (Entered: 03/25/2014)

03/26/2014	121	ORDER granting 102 Motion for Pro hac vice. Appointed Mary Ellen Powers as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 3/26/14. (tdai,) (Entered: 03/26/2014)
03/26/2014	122	ORDER granting 103 Motion for Pro hac vice. Appointed Noel John Francisco as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 3/26/14. (tdai,) (Entered: 03/26/2014)
03/27/2014	123	ORDER granting 104 Motion for Pro hac vice. Appointed Hilary Keith Perkins as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 3/27/14. (tdai,) (Entered: 03/27/2014)
03/28/2014	124	NOTICE of Appearance for Amicus as to Robert F McDonnell, Maureen G. McDonnell filed by National Association of Criminal Defense Lawyers (O'Toole, Timothy) Modified on 3/28/2014 to correct filers and docket text(kyou,). (Entered: 03/28/2014)
03/28/2014	125	Motion to appear Pro Hac Vice by John D. Cline and Certification of Local Counsel Timothy P O'Toole (Filing fee $ 75 receipt number 0422-3903736.) *for Amicus Curiae National Ass'n of Criminal Defense Lawyers* (O'Toole, Timothy) (Entered: 03/28/2014)
03/28/2014	126	MOTION for Leave to File Amicus Brief by National Association for Criminal Defense Lawyers as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Proposed Amicus Brief # 2 Proposed Order)(O'Toole, Timothy) Modified on 3/28/2014 to correct filers and docket text(kyou,). (Entered: 03/28/2014)
03/28/2014		Notice of Correction to 125 Motion to appear Pro Hac Vice by John D. Cline and Timothy P O'Toole for Amicus Curiae National Ass'n of Criminal Defense Lawyers, 124 Notice of Attorney Appearance, and 126 MOTION for Leave to File Amicus Brief by National Association for Criminal Defense Lawyers; notified filing attorney that docket has been corrected to reflect proper parties and procedures for future filings. (jtho,) (Entered: 03/28/2014)
04/01/2014	127	ORDER granting 125 Motion for Pro hac vice; Appointed John DeWitt Cline for National Association of Criminal Defense Lawyers. Signed by District Judge James R. Spencer on 4/1/14. (jtho,) (Entered: 04/01/2014)
04/01/2014	128	ORDER denying 126 Motion for Leave to File Amicus Brief by National Association for Criminal Defense Lawyers as to Robert F McDonnell (1), Maureen G. McDonnell (2). It is so ORDERED. Signed by District Judge James R. Spencer on 4/1/14. (tdai,) (Entered: 04/01/2014)
04/01/2014	129	Motion to appear Pro Hac Vice by Dan I. Small and Certification of Local Counsel Timothy J. Taylor (Filing fee $ 75 receipt number 0422-3908911.) by Robert F McDonnell. (Taylor, Timothy) (Entered: 04/01/2014)
04/01/2014	130	Motion to appear Pro Hac Vice by Christopher M. Iaquinto and Certification of Local Counsel Timothy J. Taylor (Filing fee $ 75 receipt number 0422-3908915.) by Robert F McDonnell. (Taylor, Timothy) (Entered: 04/01/2014)
04/02/2014	131	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G.

		McDonnell re 116 MOTION for Leave to File Supporting Declarations Under Seal and for Ex Parte In Camera Review re 114 MOTION to Sever Defendant (Aber, Jessica) (Entered: 04/02/2014)
04/02/2014	132	MOTION for Leave to File Memorandum Amicus Curiae in Support of Defendant's Motion to Dismiss Counts 1-11 of the Indictment by Mark L. Earley, Stephen D. Rosenthal, Mary Sue Terry, J. Marshall Coleman, Andrew P Miller as to Robert F McDonnell. (Attachments: # 1 Exhibit, # 2 Proposed Order)(khan,) (Additional attachment(s) added on 4/3/2014: # 3 Exhibit to memorandum in support) (khan,). (Entered: 04/03/2014)
04/07/2014	133	ORDER granting 129 Motion for Pro hac vice. Appointment of Daniel Ira Small as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 4/7/14. (tdai,) (Entered: 04/07/2014)
04/07/2014	134	ORDER granting 130 Motion for Pro hac vice. Appointment of Christopher Michael Iaquinto as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 4/7/14. (tdai,) (Entered: 04/07/2014)
04/07/2014	135	ORDER denying 132 Motion for Leave to File Memorandum Amicus Curiae in Support of Defendant's Motion to Dismiss Counts 1-11 of the Indictment as to Robert F McDonnell (1). It is so ORDERED. Signed by District Judge James R. Spencer on 4/7/14. (tdai,) (Entered: 04/07/2014)
04/07/2014	136	REPLY TO RESPONSE to by Robert F McDonnell re 116 MOTION for Leave to File Supporting Declarations Under Seal and for Ex Parte In Camera Review re 114 MOTION to Sever Defendant (Berry, Jonathan) (Entered: 04/07/2014)
04/17/2014	137	MEMORANDUM ORDER on 116 Motion for Leave to File Declarations Under Seal and for Ex Parte In Camera Review as to Robert F McDonnell (1); for the reasons set forth in the Order, the motion is GRANTED IN PART as to the extent that it requests leave to file the declarations under seal, and DENIED IN PART as to the extent that it requests in camera review of the Declarations... Accordingly, McDonnell may file the Declarations under seal within three (3) days of the date of this Memorandum Order, if he so chooses. Additionally, McDonnell may file the Declarations ex parte under seal only for purposes of preserving the record on appeal; the Court will not review the Declarations if filed ex parte under seal. (SEE ORDER FOR DETAILS). Signed by District Judge James R. Spencer on 4/17/14. (jtho,) (Entered: 04/17/2014)
04/17/2014	138	Notice of Hearing Date set for May 19, 2014 re 114 MOTION to Sever Defendant , 107 MOTION to Strike *Prejudicial Surplusage*, 109 MOTION for Omnibus Voir Dire Relief , 105 MOTION to Dismiss *Counts 1-11 of the Indictment* by Robert F McDonnell (Berry, Jonathan) Modified text on 4/18/2014 (tdai,). (Entered: 04/17/2014)
04/17/2014	139	Notice of Hearing Date set for May 19, 2014 re 118 MOTION to Dismiss by Maureen G. McDonnell (Martin, Heather) (Entered: 04/17/2014)
04/21/2014		Set Deadlines re Motions in case as to Robert F McDonnell, Maureen G. McDonnell 105 MOTION to Dismiss Counts 1-11 of the Indictment, 107 MOTION to Strike Prejudicial Surplusage, 109 MOTION for Omnibus Voir Dire Relief, 114 MOTION to Sever Defendant, 8 MOTION for Discovery of Selected

		Recordings of Communications Between Prosecutors and Members of the Grand Jury, 112 MOTION to Strike Prejudicial Surplusage, 111 MOTION to Dismiss Counts 1-11 of the Indictment, 118 MOTION to Dismiss, 113 MOTION for Omnibus Voir Dire Relief, 120 MOTION to Sever Defendant, 25 MOTION for Discovery of Selected Communications Between Prosecutors and Members of the Grand Jury. Motion Hearing set for 5/19/2014 at 10:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 04/21/2014)
04/21/2014	140	NOTICE *of Non-Filing of Declarations* by Robert F McDonnell re 137 Order, (Berry, Jonathan) Modified text on 4/22/2014 (tdai,). (Entered: 04/21/2014)
04/22/2014	141	ORDER This matter is before the Court on a Letter Motion filed by Johnny R. Huff and styled "Friend of the Court Brief." Because Mr. Huff is not a party to this action, the Court CONSTRUES the Letter Motion as a Motion for Leave to File as Amicus Curiae. The Clerk is DIRECTED to file the Letter Motion; however, Huff has cited no authority authorizing the filing, or mandating this Court's consideration, of amicus curiae briefs in a criminal matter. Accordingly, the Motion is DENIED. It is SO ORDERED. Signed by District Judge James R. Spencer on 4/22/14. Copy sent: Yes as directed. (tdai,) (Entered: 04/22/2014)
04/22/2014	142	Letter Motion for Leave to File as Amicus Curiae by Johnny R. Huff as to Robert F McDonnell, Maureen G. McDonnell. (tdai,) (Entered: 04/22/2014)
04/24/2014	143	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 114 MOTION to Sever Defendant , 120 MOTION to Sever Defendant (Aber, Jessica) (Entered: 04/24/2014)
04/24/2014	144	RESPONSE by USA as to Robert F McDonnell, Maureen G. McDonnell re 109 MOTION for Omnibus Voir Dire Relief , 113 MOTION for Omnibus Voir Dire Relief (Aber, Jessica) (Entered: 04/24/2014)
04/24/2014	145	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 107 MOTION to Strike *Prejudicial Surplusage*, 112 MOTION to Strike *Prejudicial Surplusage* (Aber, Jessica) (Entered: 04/24/2014)
04/24/2014	146	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 111 MOTION to Dismiss *Counts 1-11 of the Indictment*, 105 MOTION to Dismiss *Counts 1-11 of the Indictment* (Faulconer, Ryan) (Entered: 04/24/2014)
04/24/2014	147	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 118 MOTION to Dismiss (Faulconer, Ryan) (Entered: 04/24/2014)
05/05/2014	148	REPLY TO RESPONSE to by Robert F McDonnell re 105 MOTION to Dismiss *Counts 1-11 of the Indictment* (Berry, Jonathan) (Entered: 05/05/2014)
05/05/2014	149	REPLY TO RESPONSE to by Robert F McDonnell re 107 MOTION to Strike *Prejudicial Surplusage* (Berry, Jonathan) (Entered: 05/05/2014)
05/05/2014	150	REPLY TO RESPONSE to by Maureen G. McDonnell re 118 MOTION to Dismiss (Martin, Heather) (Entered: 05/05/2014)
05/05/2014	151	REPLY TO RESPONSE to by Robert F McDonnell re 109 MOTION for Omnibus Voir Dire Relief (Berry, Jonathan) (Entered: 05/05/2014)

05/05/2014	152	REPLY TO RESPONSE to by Robert F McDonnell re 114 MOTION to Sever Defendant (Attachments: # 1 Exhibit A)(Berry, Jonathan) (Entered: 05/05/2014)
05/06/2014	153	MOTION for Issuance of Subpoenas *to Pentagon Federal Credit Union* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Brownlee, John) (Entered: 05/06/2014)
05/06/2014	154	Memorandum in Support by Robert F McDonnell re 153 MOTION for Issuance of Subpoenas *to Pentagon Federal Credit Union* (Brownlee, John) (Entered: 05/06/2014)
05/07/2014	155	MOTION for Issuance of Subpoenas *to Jonnie Williams, Sr., Paul Perito, and Star Scientific, Inc.,* by Robert F McDonnell. (Attachments: # 1 Proposed Order, # 2 Exhibit A - Proposed Subpoena to Jonnie Williams, Sr., # 3 Exhibit B - Proposed Subpoena to Paul Perito, # 4 Exhibit C - Proposed Subpoena to Star Scientific, Inc.)(Brownlee, John) (Entered: 05/07/2014)
05/07/2014	156	Memorandum in Support by Robert F McDonnell re 155 MOTION for Issuance of Subpoenas *to Jonnie Williams, Sr., Paul Perito, and Star Scientific, Inc.,* (Brownlee, John) (Entered: 05/07/2014)
05/08/2014	157	ORDER this matter is before the Court on its own initiative. Defendants' Motion to Sever Joint Trial (ECF Nos. 114 , 120) is currently pending before the Court and a hearing is scheduled for May 19, 2014. In the course of briefing the Motion to Sever, Defendants have requested that the Court delay resolution of the Motion to Sever until fourteen (14) days before trial. That request is DENIED. The Motion to Sever will be resolved in due course, and should either Defendant wish to submit additional materials in support of the Motion to Sever, he or she may do so under seal. It is so ORDERED. Signed by District Judge James R. Spencer on 5/8/14. (tdai,) (Entered: 05/08/2014)
05/08/2014	158	Opposition by USA as to Robert F McDonnell re 155 MOTION for Issuance of Subpoenas *to Jonnie Williams, Sr., Paul Perito, and Star Scientific, Inc.,* (Aber, Jessica) (Entered: 05/08/2014)
05/09/2014	159	ORDER granting 153 Motion for Issuance of Rule 17(c) Subpoenas Duces Tecum as to Robert F McDonnell (1). The Clerk is DIRECTED issue a subpoena duces tecum to Pentagon Federal Credit Union, Custodian of Records, 13220 Fort Street, Omaha, NE 68164. These records are to be returnable to the office of Holland & Knight LLP, c/o Timothy J. Taylor, 1600 Tysons Boulevard, Suite 700, Tyson's Corner, VA 22012, on or before May 23, 2014, at 12:00 PM. Let the Clerk send a copy of this Order to all counsel of record and notify defense counsel, John L. Brownlee and Henry W Asbill, when the subpoena is ready. It is so ORDERED. Signed by District Judge James R. Spencer on 5/9/14. (tdai,) (Entered: 05/09/2014)
05/09/2014	160	Subpoena Duces Tecum issued to Pentagon Federal Credit Union, Custodian of Records, 13220 Fort Street, Omaha, NE 68164 per 159 Order entered May 9, 2014 (Called attorney to arrange for service of subpoena). (tdai,) (Entered: 05/09/2014)
05/12/2014	161	REPLY TO RESPONSE to by Robert F McDonnell re 155 MOTION for Issuance of Subpoenas *to Jonnie Williams, Sr., Paul Perito, and Star Scientific, Inc.,* (Berry, Jonathan) (Entered: 05/12/2014)

05/14/2014	162	NOTICE of Declarations by Robert F McDonnell (Taylor, Timothy) Pursuant to Order dated 4/17/14 (ECF No. 137), documents received and placed in Clerk's Office UNDER SEAL EX PARTE only for purposes of preserving the record on appeal. The Court will not review the Declarations. Modified text on 5/15/2014 (tdai,). (Entered: 05/14/2014)
05/14/2014	163	MOTION for Issuance of Subpoenas *to Virginia State Police* by Robert F McDonnell. (Attachments: # 1 Proposed Order, # 2 Exhibit Proposed subpoena to Virginia State Police)(Brownlee, John) (Attachment 2 replaced on 5/15/2014) (tdai,). (Entered: 05/14/2014)
05/14/2014	164	MOTION to Seal *Memorandum and Exhibit in Support of Robert F McDonnell's Motion for Issuance of Subpoenas to Virginia State Police*, by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Brownlee, John) (Entered: 05/14/2014)
05/14/2014	165	Non-Confidential Memorandum in Support by Robert F McDonnell re 164 MOTION to Seal *Memorandum and Exhibit in Support of Robert F McDonnell's Motion for Issuance of Subpoenas to Virginia State Police*, (Brownlee, John) Modified text on 5/15/2014 (tdai,). (Entered: 05/14/2014)
05/15/2014		Notice of Correction re 163 MOTION for Issuance of Subpoenas *to Virginia State Police*. The filing user is notified that document 163 Exhibit 2 was incorrectly uploaded as a PDF fillable form and has been removed. The exhibit has been replaced by the Clerk's Office. No further action is required at this time. (tdai,) (Entered: 05/15/2014)
05/15/2014	166	ORDER granting in part and denying in part 155 Motion for Issuance of Subpoenas to Jonnie Williams, Sr., Paul Perito, and Star Scientific, Inc., by Robert F McDonnell (1). The Clerk is DIRECTED to issue subpoenas duces tecum to #1) Star Scientific, Inc., c/o Abbe Lowell, Chadbourne & Parke, 1200 New Hampshire Avenue, NW, Washington, DC 20036; #2) Jonnie Williams, Sr., c/o Richard Cullen, McGuire Woods LLP, One James Center, 901 East Cary Street, Richmond, VA 23219-4030; #3) Paul Perito, c/o Abbe Lowell, Chadbourne & Parke, 1200 New Hampshire Avenue, NW, Washington, DC 20036. These records are to be returnable to Spottswood W Robinson III and Robert Merhige, Jr., Federal Courthouse, ATTN: Clerk's Office, 701 East Broad Street, Third Floor, Richmond, Virginia 23219 on or before May 27, 2014, at 12:00 PM. Let the Clerk send a copy of this Order to all counsel of record and notify defense counsel, John L. Brownlee and Henry W Asbill, when the subpoenas are ready. It is so ORDERED. Signed by District Judge James R. Spencer on 5/15/14. (tdai,) (Entered: 05/15/2014)
05/15/2014	167	Subpoenas Duces Tecum issued to #1) Star Scientific, Inc., c/o Abbe Lowell, Chadbourne & Parke, 1200 New Hampshire Avenue, NW, Washington, DC 20036; #2) Jonnie Williams, Sr., c/o Richard Cullen, McGuire Woods LLP, One James Center, 901 East Cary Street, Richmond, VA 23219-4030; #3) Paul Perito, c/o Abbe Lowell, Chadbourne & Parke, 1200 New Hampshire Avenue, NW, Washington, DC 20036. Issued per 166 Order entered May 15, 2014 (Called attorney to arrange for service of subpoenas).(tdai,) (Entered: 05/15/2014)
05/19/2014	168	MOTION to Seal by Robert F McDonnell. (Attachments: # 1 Proposed Order)

		(Brownlee, John) (Entered: 05/19/2014)
05/19/2014	169	Non-Confidential Memorandum in Support by Robert F McDonnell re 168 MOTION to Seal (Brownlee, John) Modified text on 5/19/2014 (tdai,). (Entered: 05/19/2014)
05/19/2014	170	Subpoenas issued as to Robert F McDonnell (1). Subpoenas received by counsel for Defendant in Clerk's Office. (Attachments: # 1 Cover Letter)(tdai,) (Entered: 05/19/2014)
05/19/2014	171	Minute Entry for proceedings held before District Judge James R. Spencer:Motion Hearing as to Robert F McDonnell, Maureen G. McDonnell held on 5/19/2014 re 114 MOTION to Sever Defendant filed by Robert F McDonnell, 120 MOTION to Sever Defendant filed by Maureen G. McDonnell, 111 MOTION to Dismiss Counts 1-11 of the Indictment filed by Maureen G. McDonnell, 105 MOTION to Dismiss Counts 1-11 of the Indictment filed by Robert F McDonnell. Arguments heard. Matters taken under advisement. (Court Reporter Jeff Kull, OCR.)(khan,) (Entered: 05/19/2014)
05/19/2014	172	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 163 MOTION for Issuance of Subpoenas *to Virginia State Police* (Aber, Jessica) (Entered: 05/19/2014)
05/20/2014	173	Subpoenas issued as to Robert F McDonnell (1). Subpoenas to be picked up in Clerk's Office. (Attachments: # 1 Cover Letter)(tdai,) (Entered: 05/20/2014)
05/20/2014	174	ORDER denying 118 Motion to Dismiss as to Maureen G. McDonnell (2). For reasons that will be set out more fully in a forthcoming memorandum opinion. See Order for details. Signed by District Judge James R. Spencer on 5/20/14. (tdai,) (Entered: 05/20/2014)
05/20/2014	175	ORDER denying 105 Motion to Dismiss Counts 1-11 of the Indictment as to Robert F McDonnell (1); denying 8 Motion for Discovery of Selected Recordings of Communications Between Prosecutors and Members of the Grand Jury as to Robert F McDonnell (1); denying 25 Motion for Discovery of Selected Communications Between Prosecutors and Members of the Grand Jury as to Maureen G. McDonnell (2); denying 111 Motion to Dismiss Counts 1-11 of the Indictment as to Maureen G. McDonnell (2). See Order for details. Signed by District Judge James R. Spencer on 5/20/14. (tdai,) (Entered: 05/20/2014)
05/20/2014	176	ORDER denying 114 Motion to Sever Joint Trial as to Robert F McDonnell (1); denying 120 Motion to Sever Joint Trial as to Maureen G. McDonnell (2). For reasons that will be set out more fully in a forthcoming memorandum opinion. See Order for details. Signed by District Judge James R. Spencer on 5/20/14. (tdai,) (Entered: 05/20/2014)
05/20/2014	177	ORDER denying 107 Motion to Strike Prejudicial Surplusage as to Robert F McDonnell (1); denying 112 Motion to Strike Prejudicial Surplusage as to Maureen G. McDonnell (2). For reasons that will be set out more fully in a forthcoming memorandum opinion. See Order for details. Signed by District Judge James R. Spencer on 5/20/14. (tdai,) (Entered: 05/20/2014)
05/20/2014	178	MOTION to Seal by Robert F McDonnell. (Attachments: # 1 Proposed Order)

		(Berry, Jonathan) (Entered: 05/20/2014)
05/20/2014	179	Non-Confidential Memorandum in Support by Robert F McDonnell re 178 MOTION to Seal (Berry, Jonathan) Modified text on 5/20/2014 (tdai,). (Entered: 05/20/2014)
05/20/2014	180	ORDER granting in part and denying in part 109 Motion for Omnibus Voir Dire Relief as to Robert F McDonnell (1); granting in part and denying in part 113 Motion for Omnibus Voir Dire Relief as to Maureen G. McDonnell (2). See Order for details. Signed by District Judge James R. Spencer on 5/20/14. (tdai,) (Entered: 05/20/2014)
05/21/2014	181	TRANSCRIPT of Proceedings held on May 19, 2014, Motions Hearing before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 6/20/2014. Redacted Transcript Deadline set for 7/21/2014. Release of Transcript Restriction set for 8/19/2014.(kull, jeff) (Entered: 05/21/2014)**
05/21/2014	182	MOTION for Issuance of Subpoenas *to the Virginia State Police* by Maureen G. McDonnell. (Martin, Heather) (Entered: 05/21/2014)
05/22/2014	183	MOTION to Seal by Robert F McDonnell. (Attachments: # 1 Proposed Order) (Berry, Jonathan) (Entered: 05/22/2014)
05/22/2014	184	Non-Confidential Memorandum in Support by Robert F McDonnell re 183 MOTION to Seal (Berry, Jonathan) Modified text on 5/26/2014 (tdai,). (Entered: 05/22/2014)
05/23/2014	185	MOTION to Seal by Maureen G. McDonnell. (Attachments: # 1 Proposed Order) (Martin, Heather) (Entered: 05/23/2014)
05/23/2014	186	Non-Confidential Memorandum in Support by Maureen G. McDonnell re 185 MOTION to Seal (Martin, Heather) Modified text on 5/26/2014 (tdai,). (Entered: 05/23/2014)
05/23/2014	187	MOTION to Seal by Maureen G. McDonnell. (Attachments: # 1 Proposed Order) (Martin, Heather) (Entered: 05/23/2014)
05/23/2014	188	Non-Confidential Memorandum in Support by Maureen G. McDonnell re 187 MOTION to Seal (Martin, Heather) Modified text on 5/26/2014 (tdai,). (Entered: 05/23/2014)
05/23/2014		Set Motion hearing in case as to Robert F McDonnell, Maureen G. McDonnell Motion Hearing set for 7/15/2014 at 09:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 05/23/2014)
05/27/2014		Subpoena Duces Tecum Documents RECEIVED on CD from Johnnie Williams.

		Sr. as to Robert F McDonnell (1) re 155 Motion for Issuance of Subpoenas, 166 Order. CD placed in brown expandable. (tdai,) (Entered: 05/27/2014)
05/27/2014	189	RESPONSE by USA as to Robert F McDonnell, Maureen G. McDonnell re 164 MOTION to Seal *Memorandum and Exhibit in Support of Robert F McDonnell's Motion for Issuance of Subpoenas to Virginia State Police.*, 183 MOTION to Seal (Faulconer, Ryan) (Entered: 05/27/2014)
05/28/2014		Subpoenas Duces Tecum Documents RECEIVED from Star Scientific, Inc. and Paul Perito as to Robert F McDonnell (1) re 155 Motion for Issuance of Subpoenas, 166 Order. Documents placed in brown expandable. (tdai,) (Entered: 05/28/2014)
05/28/2014	190	ORDER that this matter is before the Court on its own initiative. Timothy James Taylor of Holland & Knight, LLP is authorized to bring a laptop computer and external compact disc drive to the Clerk's Office in order to view and copy electronic records responsive to a subpoena duces tecum, which was issued to Johnnie Williams, Sr. on May 15, 2014.. Signed by District Judge James R. Spencer on 5/28/14. (khan,) Modified on 5/28/2014 (khan,). (Entered: 05/28/2014)
05/29/2014	191	RESPONSE in Support by USA as to Robert F McDonnell, Maureen G. McDonnell re 185 MOTION to Seal , 168 MOTION to Seal (Aber, Jessica) (Entered: 05/29/2014)
05/29/2014	192	RESPONSE to Motion by USA as to Robert F McDonnell re 178 MOTION to Seal (Aber, Jessica) (Entered: 05/29/2014)
05/29/2014	193	RESPONSE in Opposition by USA as to Maureen G. McDonnell re 187 MOTION to Seal (Aber, Jessica) (Entered: 05/29/2014)
05/29/2014	194	MEMORANDUM OPINION as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 5/29/14. (tdai,) (Entered: 05/29/2014)
05/29/2014	195	ORDER denying 164 Motion to Seal as to Robert F McDonnell (1); denying 183 Motion to Seal as to Robert F McDonnell (1). See Order for details. Signed by District Judge James R. Spencer on 5/29/14. (tdai,) (Entered: 05/29/2014)
05/29/2014	196	REPLY TO RESPONSE to by Robert F McDonnell re 168 MOTION to Seal (Berry, Jonathan) (Entered: 05/29/2014)
05/30/2014	197	Memorandum in Support by Robert F McDonnell re 163 MOTION for Issuance of Subpoenas *to Virginia State Police* (Attachments: # 1 Exhibit)(Berry, Jonathan) (Entered: 05/30/2014)
05/30/2014	198	REPLY TO RESPONSE to by Robert F McDonnell re 163 MOTION for Issuance of Subpoenas *to Virginia State Police* (Attachments: # 1 Exhibit)(Berry, Jonathan) (Entered: 05/30/2014)
06/02/2014	199	MOTION for Issuance of Subpoenas *in Blank* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 06/02/2014)
06/03/2014	200	ORDER granting in part and denying in part 163 Motion for Issuance of Subpoena Duces Tecum as to Robert F McDonnell (1). The Clerk is DIRECTED to issue a subpoena duces tecum to the Virginia State Police, c/o Linda L. Bryant, Deputy Attorney General, Public Safety and Enforcement, Office of the Attorney

		General, 900 East Main Street, Richmond, VA 23219. The requested information should be produced at the office of Holland & Knight c/o Timothy J. Taylor, 1600 Tysons Boulevard, Suite 700, Tysons Corner, VA 22102, on or before Monday, June 16, 2014, at 12:00 p.m. See Order for complete details. Signed by District Judge James R. Spencer on 6/3/14. (tdai,) (Entered: 06/03/2014)
06/04/2014	201	Subpoena Duces Tecum issued to the Virginia State Police, c/o Linda L. Bryant, Deputy Attorney General, Public Safety and Enforcement, Office of the Attorney General, 900 East Main Street, Richmond, VA 23219. Issued pursuant to 200 Order entered June 3, 2014 (Called attorney to arrange for service of subpoena). (tdai,) (Entered: 06/04/2014)
06/04/2014	202	ORDER granting 168 Motion to Seal as to Robert F McDonnell (1); granting 185 Motion to Seal as to Maureen G. McDonnell (2). The Clerk is DIRECTED to file under seal Defendants' respective motions for clarification. See Order for complete details. Signed by District Judge James R. Spencer on 6/4/14. (tdai,) (Entered: 06/04/2014)
06/04/2014	203	MOTION for Clarification by Maureen G. McDonnell (2). (tdai,) Modified on 1/12/2015 - Unsealed per 620 Memorandum Order (tdai,). (Entered: 06/04/2014)
06/04/2014	204	MOTION for Clarification by Robert F McDonnell (1). (tdai,) Modified on 1/12/2015 - Unsealed per 620 Memorandum Order (tdai,). (Entered: 06/04/2014)
06/04/2014	205	Memorandum in Support by Robert F McDonnell (1) re 204 Motion for Clarification. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(tdai,) Modified on 1/12/2015 - Unsealed per 620 Memorandum Order (tdai,). (Entered: 06/04/2014)
06/04/2014	206	ORDER re 203 Motion for Clarification as to Maureen G. McDonnell (2); 204 Motion for Clarification as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 6/4/14. Copy mailed: Yes (tdai,) Modified on 1/12/2015 - Unsealed per 620 Memorandum Order (tdai,). (Entered: 06/04/2014)
06/04/2014	207	ORDER granting in part and denying in part 178 Motion to Seal as to Robert F McDonnell (1); granting in part and denying in part 187 Motion to Seal as to Maureen G. McDonnell (2). See Order for complete details. Signed by District Judge James R. Spencer on 6/4/14. (tdai,) (Entered: 06/04/2014)
06/04/2014	208	ORDER granting 199 Motion for Issuance of Subpoenas in Blank as to Robert F McDonnell (1). The Clerk is DIRECTED to issue ten (10) blank subpoenas for trial witness appearances before this Court, to testify on behalf of Robert F McDonnell, on August 18, 2014 and through the end of the trial in this matter or until released. Signed by District Judge James R. Spencer on 6/4/14. (tdai,) (Entered: 06/04/2014)
06/04/2014	209	Subpoenas issued in Blank (10 Subpoenas). Issued pursuant to 208 Order entered June 4, 2014 (Subpoenas mailed by UPS to counsel for service). (tdai,) (Entered: 06/04/2014)
06/04/2014	210	MOTION for Issuance of Subpoenas *to Jonnie Williams, Sr., Mary-Shea Sutherland, and Verizon Wireless* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 06/04/2014)

06/04/2014	211	Memorandum in Support by Robert F McDonnell re 210 MOTION for Issuance of Subpoenas *to Jonnie Williams, Sr., Mary-Shea Sutherland, and Verizon Wireless* (Attachments: # 1 Exhibit)(Berry, Jonathan) (Entered: 06/04/2014)
06/04/2014	212	MOTION for Issuance of Subpoenas *to Jonnie Williams, Sr., Mary-Shea Sutherland, and Verizon Wireless* by Maureen G. McDonnell. (Martin, Heather) (Entered: 06/04/2014)
06/05/2014	213	ORDER denying as moot 182 Motion for Issuance of Subpoenas to the Virginia State Police as to Maureen G. McDonnell (2). See Orders for details. Signed by District Judge James R. Spencer on 6/5/14. (tdai,) (Entered: 06/05/2014)
06/06/2014	217	ORDER granting in part and denying in part 210 Motion for Issuance of Subpoenas Duces Tecum as to Robert F McDonnell (1); granting in part and denying in part 212 Motion for Issuance of Subpoenas Duces Tecum as to Maureen G. McDonnell (2). See Order for complete details. Signed by District Judge James R. Spencer on 6/4/14. (tdai,) (Entered: 06/06/2014)
06/06/2014	219	Subpoenas Duces Tecum issued to #1) Jonnie Williams, Sr., c/o Richard Cullen, McGuire Woods LLP, One James Center, 901 East Cary Street, Richmond, VA 23219-4030. #2) Mary-Shea Sutherland, c/o Theodore D. Bruns, Blackburn, Conte, Schilling & Click P.C., 300 W Main St., Richmond, VA 23220. #3) Verizon Wireless, c/o Verizon Subpoena, 180 Washington Valley Rd., Bedminster, NJ 07921. Issued pursuant to 217 Order entered June 6, 2014 (Called attorney to arrange for service of subpoena). (tdai,) (Entered: 06/06/2014)
06/12/2014	220	Witness Subpoenas issued for Luz "Juliana" Gomez De Pitts and Paul Perito for 08/18/2014 at 9:00 a.m. (Attachment: # 1 Letter from Counsel for Defendant Robert F McDonnell). (walk,) (Entered: 06/12/2014)
06/16/2014	221	MOTION to Exclude *Expert Testimony* by USA as to Robert F McDonnell, Maureen G. McDonnell. (Faulconer, Ryan) (Entered: 06/16/2014)
06/16/2014	222	Memorandum in Support by USA as to Robert F McDonnell, Maureen G. McDonnell re 221 MOTION to Exclude *Expert Testimony* (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Faulconer, Ryan) (Entered: 06/16/2014)
06/16/2014	223	ORDER that this matter is before the Court on the Government's 221 MOTION to Exclude Expert Testimony; upon due consideration, the Court GRANTS the Government's request for expedited briefing of the Motion; defendants may file a response on or before June 20, 2014. Signed by District Judge James R. Spencer on 6/16/14. (jtho,) (Entered: 06/16/2014)
06/20/2014	224	Witness Subpoenas issued for Jerri Fulkerson and Celeste Williams for 08/18/2014 at 9:00 a.m. (Attachment: # 1 Letter)(jtho,) (Entered: 06/20/2014)
06/20/2014	225	MOTION to Seal *Motion in Limine* by USA as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Aber, Jessica) (Entered: 06/20/2014)
06/20/2014	226	Memorandum in Support by USA as to Robert F McDonnell, Maureen G. McDonnell re 225 MOTION to Seal *Motion in Limine* (Aber, Jessica) (Entered: 06/20/2014)
06/20/2014	227	MOTION in Limine *to Exclude Co-Conspirator Acts and Statements Pending*

		Prima Facie Showing of Conspiracy Involving Mr. McDonnell by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 06/20/2014)
06/20/2014	228	Memorandum in Support by Robert F McDonnell re 227 MOTION in Limine *to Exclude Co-Conspirator Acts and Statements Pending Prima Facie Showing of Conspiracy Involving Mr. McDonnell* (Berry, Jonathan) (Entered: 06/20/2014)
06/20/2014	229	MOTION to Exclude *Irrelevant and Misleading Evidence of Materiality of False Statements Charged in Counts 12 & 13* by USA as to Robert F McDonnell, Maureen G. McDonnell. (Faulconer, Ryan) (Entered: 06/20/2014)
06/20/2014	230	Memorandum in Support by USA as to Robert F McDonnell, Maureen G. McDonnell re 229 MOTION to Exclude *Irrelevant and Misleading Evidence of Materiality of False Statements Charged in Counts 12 & 13* (Attachments: # 1 Exhibit A)(Faulconer, Ryan) (Entered: 06/20/2014)
06/20/2014	231	MOTION in Limine *to Limit the Number of Character Witnesses* by USA as to Robert F McDonnell, Maureen G. McDonnell. (Aber, Jessica) (Entered: 06/20/2014)
06/20/2014	232	Memorandum in Support by USA as to Robert F McDonnell, Maureen G. McDonnell re 231 MOTION in Limine *to Limit the Number of Character Witnesses* (Aber, Jessica) (Entered: 06/20/2014)
06/20/2014	233	MOTION in Limine *to Permit Leading Questions by the United States of Witnesses Identified with Defendants* by USA as to Robert F McDonnell, Maureen G. McDonnell. (Aber, Jessica) (Entered: 06/20/2014)
06/20/2014	234	Memorandum in Support by USA as to Robert F McDonnell, Maureen G. McDonnell re 233 MOTION in Limine *to Permit Leading Questions by the United States of Witnesses Identified with Defendants* (Aber, Jessica) (Entered: 06/20/2014)
06/20/2014	235	MOTION in Limine *to Exclude Evidence Relating to Star Scientific Stock Ownership* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 06/20/2014)
06/20/2014	236	Memorandum in Support by Robert F McDonnell re 235 MOTION in Limine *to Exclude Evidence Relating to Star Scientific Stock Ownership* (Berry, Jonathan) (Entered: 06/20/2014)
06/20/2014	237	MOTION in Limine *to Exclude Evidence Relating to Statements of Economic Interest* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 06/20/2014)
06/20/2014	238	Memorandum in Support by Robert F McDonnell re 237 MOTION in Limine *to Exclude Evidence Relating to Statements of Economic Interest* (Berry, Jonathan) (Entered: 06/20/2014)
06/20/2014	239	MOTION in Limine *to Exclude Mrs. McDonnell's Testimonial Statements* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 06/20/2014)
06/20/2014	240	Memorandum in Support by Robert F McDonnell re 239 MOTION in Limine *to*

		Exclude Mrs. McDonnell's Testimonial Statements (Berry, Jonathan) (Entered: 06/20/2014)
06/20/2014	241	RESPONSE in Opposition by Robert F McDonnell re 221 MOTION to Exclude *Expert Testimony* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H)(Berry, Jonathan) (Attachment 8 replaced on 6/23/2014) (jtho,). (Entered: 06/20/2014)
06/20/2014	242	MOTION in Limine *to Exclude Evidence Relating to Star Scientific Stock Ownership* by Maureen G. McDonnell. (Martin, Heather) (Entered: 06/20/2014)
06/20/2014	243	MOTION in Limine *to Exclude Evidence Relating to Statements of Economic Interest* by Maureen G. McDonnell. (Martin, Heather) (Entered: 06/20/2014)
06/23/2014		Notice of Correction to 241 Response in Opposition, Exhibit H; Clerk replaced document with redacted Exhibit H to remove personal information. (jtho,) (Entered: 06/23/2014)
06/24/2014	244	REPLY TO RESPONSE to by USA as to Robert F McDonnell, Maureen G. McDonnell re 222 Memorandum in Support of Motion, 221 MOTION to Exclude *Expert Testimony* (Attachments: # 1 Exhibit A)(Faulconer, Ryan) (Entered: 06/24/2014)
06/26/2014	245	Subpoenas issued as to Robert F McDonnell (1). Subpoenas mailed to counsel of record by UPS. (Attachments: # 1 Cover Letter)(tdai,) (Entered: 06/26/2014)
06/26/2014	246	MEMORANDUM OPINION as to Robert F McDonnell, Maureen G. McDonnell. Signed by District Judge James R. Spencer on 6/26/14. (jtho,) (Entered: 06/26/2014)
06/26/2014	247	ORDER granting in part and denying in part 221 Motion to Exclude Expert Testimony as to Robert F McDonnell (1), Maureen G. McDonnell (2) for the reasons set forth in the Memorandum Opinion. The Court finds that a Daubert hearing is required to determine admissibility of all expert testimony not excluded by this Order; the Parties are DIRECTED to contact the Court within five (5) days of this Order to schedule such hearing. (See Order for Details). Signed by District Judge James R. Spencer on 6/26/14. (jtho,) (Entered: 06/26/2014)
07/01/2014		Set Hearings as to Robert F McDonnell and Maureen G. McDonnell: Daubert Hearing set for 7/15/2014 at 9:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer, in re: expert witness Peter H. White (rpiz) (Entered: 07/01/2014)
07/01/2014		Set Hearings as to Robert F McDonnell and Maureen G. McDonnell: Daubert Hearing set for 7/10/2014 at 2:30 PM in Richmond Courtroom 7000 before District Judge James R. Spencer, in re: expert witness J. Allen Kosowsky (rpiz) (Entered: 07/01/2014)
07/01/2014		Set Hearings (amended) as to Robert F McDonnell and Maureen G. McDonnell - Daubert Hearing set for 7/10/2014 at 2:30 PM in Richmond Courtroom 7000 before District Judge James R. Spencer in re: expert witness Peter H. White. Daubert Hearing also set for 7/15/2014 at 9:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer in re: expert witness J. Allen Kosowsky (rpiz) (Entered: 07/01/2014)

07/01/2014	248	MOTION to Seal *Memorandum in Opposition to the Government's Motion in Limine* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 07/01/2014)
07/01/2014	249	MOTION to Seal *Memorandum in Opposition to the Government's Motion in Limine* by Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Martin, Heather) (Entered: 07/01/2014)
07/01/2014	250	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 239 MOTION in Limine *to Exclude Mrs. McDonnell's Testimonial Statements* (Faulconer, Ryan) (Entered: 07/01/2014)
07/01/2014	251	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 227 MOTION in Limine *to Exclude Co-Conspirator Acts and Statements Pending Prima Facie Showing of Conspiracy Involving Mr. McDonnell* (Faulconer, Ryan) (Entered: 07/01/2014)
07/01/2014	252	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 243 MOTION in Limine *to Exclude Evidence Relating to Statements of Economic Interest*, 237 MOTION in Limine *to Exclude Evidence Relating to Statements of Economic Interest* (Aber, Jessica) (Entered: 07/01/2014)
07/01/2014	253	RESPONSE in Opposition by Robert F McDonnell re 229 MOTION to Exclude *Irrelevant and Misleading Evidence of Materiality of False Statements Charged in Counts 12 & 13* (Berry, Jonathan) (Entered: 07/01/2014)
07/01/2014	254	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 242 MOTION in Limine *to Exclude Evidence Relating to Star Scientific Stock Ownership*, 235 MOTION in Limine *to Exclude Evidence Relating to Star Scientific Stock Ownership* (Aber, Jessica) (Entered: 07/01/2014)
07/01/2014	255	RESPONSE in Opposition by Robert F McDonnell re 231 MOTION in Limine *to Limit the Number of Character Witnesses* (Berry, Jonathan) (Entered: 07/01/2014)
07/01/2014	256	RESPONSE in Opposition by Maureen G. McDonnell re 229 MOTION to Exclude *Irrelevant and Misleading Evidence of Materiality of False Statements Charged in Counts 12 & 13* (Martin, Heather) (Entered: 07/01/2014)
07/01/2014	257	RESPONSE in Opposition by Maureen G. McDonnell re 231 MOTION in Limine *to Limit the Number of Character Witnesses* (Martin, Heather) (Entered: 07/01/2014)
07/01/2014	258	RESPONSE in Opposition by Robert F McDonnell re 233 MOTION in Limine *to Permit Leading Questions by the United States of Witnesses Identified with Defendants* (Berry, Jonathan) (Entered: 07/01/2014)
07/01/2014	259	RESPONSE in Opposition by Maureen G. McDonnell re 233 MOTION in Limine *to Permit Leading Questions by the United States of Witnesses Identified with Defendants* (Martin, Heather) (Entered: 07/01/2014)
07/02/2014	260	Witness Subpoena issued for Patrick Cox as to Robert F McDonnell for 8/18/14 at 9:00 a.m. Subpoena mailed by UPS to counsel for service. (Attachments: # 1 Cover Letter)(tdai,) (Entered: 07/02/2014)
07/03/2014	261	Witness Subpoenas issued for Terry Kilgore, Marty Kilgore, Jerry Kilgore,

		Patrizio Caturegli, John McKeon as to Robert F McDonnell for 8/18/14 at 9:00 a.m. Subpoena mailed by UPS to counsel for service. (Attachments: # 1 Cover Letter)(tdai,) (Entered: 07/03/2014)
07/07/2014	262	ORDER granting 225 Motion to Seal Motion in Limine by USA as to Robert F McDonnell (1), Maureen G. McDonnell (2). See Order for complete details. Signed by District Judge James R. Spencer on 7/7/14. (tdai,) (Entered: 07/07/2014)
07/07/2014	263	Sealed Motion in Limine by USA as to Robert F McDonnell, Maureen G. McDonnell. Document sealed pursuant to 262 Order. (tdai,) Modified text on 7/14/2014 (tdai,). (Entered: 07/07/2014)
07/07/2014	264	Sealed Memorandum in Support 263 Sealed Motion filed by USA. Document sealed pursuant to 262 Order. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(tdai,) (Entered: 07/07/2014)
07/07/2014	265	MOTION to Seal *Reply to Motion in Limine* by USA as to Robert F McDonnell, Maureen G. McDonnell. (Aber, Jessica) (Entered: 07/07/2014)
07/07/2014	266	Memorandum in Support by USA as to Robert F McDonnell, Maureen G. McDonnell re 265 MOTION to Seal *Reply to Motion in Limine* (Attachments: # 1 Proposed Order)(Aber, Jessica) (Entered: 07/07/2014)
07/07/2014	267	REPLY TO RESPONSE to by Robert F McDonnell re 239 MOTION in Limine *to Exclude Mrs. McDonnell's Testimonial Statements* (Berry, Jonathan) (Entered: 07/07/2014)
07/07/2014	268	REPLY TO RESPONSE to by Robert F McDonnell re 227 MOTION in Limine *to Exclude Co-Conspirator Acts and Statements Pending Prima Facie Showing of Conspiracy Involving Mr McDonnell* (Berry, Jonathan) (Entered: 07/07/2014)
07/07/2014	269	REPLY TO RESPONSE to by Robert F McDonnell re 237 MOTION in Limine *to Exclude Evidence Relating to Statements of Economic Interest* (Berry, Jonathan) (Entered: 07/07/2014)
07/07/2014	270	REPLY TO RESPONSE to by Robert F McDonnell re 235 MOTION in Limine *to Exclude Evidence Relating to Star Scientific Stock Ownership* (Berry, Jonathan) (Entered: 07/07/2014)
07/07/2014	271	REPLY TO RESPONSE to by USA as to Robert F McDonnell, Maureen G. McDonnell re 229 MOTION to Exclude *Irrelevant and Misleading Evidence of Materiality of False Statements Charged in Counts 12 & 13* (Faulconer, Ryan) (Entered: 07/07/2014)
07/07/2014	272	Reply by USA as to Robert F McDonnell, Maureen G. McDonnell re 233 MOTION in Limine *to Permit Leading Questions by the United States of Witnesses Identified with Defendants* (Aber, Jessica) (Entered: 07/07/2014)
07/07/2014	273	Reply by USA as to Robert F McDonnell, Maureen G. McDonnell re 231 MOTION in Limine *to Limit the Number of Character Witnesses* (Aber, Jessica) (Entered: 07/07/2014)
07/09/2014	274	Witness Subpoenas issued for Robert Lockridge, Jr., Robert Merhige, III, W Mark Crowell, Sarah Collie, Stewart Craig, John Lazo, Steven Dekosky, Phillip

		Parrish, James M. Burke, Jeffrey Blank, Marc Stuart Wiley, Amy E. Bridge, Satyanarin Rangarajan, Dorrie K. Fontaine, R. Edward Howell, Sharon A. Krueger, Ronald B. Turner, Thomas C. Skalak, Margaret A. Shupnik as to Robert F McDonnell for 8/18/14 at 9:00 a.m. Subpoenas mailed by UPS to counsel for service. (Attachments: # 1 Cover Letter)(tdai,) (Entered: 07/09/2014)
07/09/2014	275	MOTION for Issuance of Subpoenas *in Blank* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 07/09/2014)
07/10/2014	276	NOTICE OF ATTORNEY APPEARANCE: Jaime Brett Wisegarver appearing for Maureen G. McDonnell (khan,) (Entered: 07/10/2014)
07/10/2014	277	Minute Entry for proceedings held before District Judge James R. Spencer:Daubert Hearing as to Robert F McDonnell, Maureen G. McDonnell held on 7/10/2014. Arguments heard. Matter taken under advisement. (Court Reporter Jeff Kull, OCR.)(khan,) (Entered: 07/10/2014)
07/11/2014	278	TRANSCRIPT of Proceedings held on July 10, 2014, Daubert Hearing Re: Peter H. White before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 8/11/2014. Redacted Transcript Deadline set for 9/10/2014. Release of Transcript Restriction set for 10/9/2014.(kull, jeff) (Entered: 07/11/2014)**
07/11/2014	279	MOTION for the use of courtroom technology by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 07/11/2014)
07/14/2014	280	ORDER granting 248 Motion to Seal Memorandum in Opposition to the Government's Motion in Limine as to Robert F McDonnell (1); granting 249 Motion to Seal Memorandum in Opposition to the Government's Motion in Limine as to Maureen G. McDonnell (2); granting 265 Motion to Seal Reply to Motion in Limine by USA as to Robert F McDonnell (1), Maureen G. McDonnell (2). It is so ORDERED. Signed by District Judge James R. Spencer on 7/14/14. (tdai,) (Entered: 07/14/2014)
07/14/2014	281	Sealed Memorandum in Opposition by Robert F McDonnell (1) to 263 Sealed Motion in Limine, filed by USA. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(tdai,) (Entered: 07/14/2014)
07/14/2014	282	Sealed Memorandum in Opposition by Maureen G. McDonnell (2) to 263 Sealed Motion in Limine, filed by USA. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H)(tdai,) (Entered: 07/14/2014)
07/14/2014	283	Sealed Reply in Support by USA to 263 Sealed Motion in Limine, filed by USA.

		(tdai,) (Entered: 07/14/2014)
07/14/2014	284	ORDER granting 275 Motion for Issuance of Subpoenas in Blank as to Robert F McDonnell (1). The Clerk is DIRECTED to issue twenty (20) blank subpoenas for trial witness appearances before this Court, to testify on behalf of Robert F McDonnell, on August 18, 2014 and through the end of the trial in this matter or until released. It is so ORDERED. Signed by District Judge James R. Spencer on 7/14/14. (tdai,) (Entered: 07/14/2014)
07/14/2014	285	ORDER granting in part and denying in part 279 Motion for use of courtroom technology as to Robert F McDonnell (1). See Order for details. It is so ORDERED. Signed by District Judge James R. Spencer on 7/14/14. (tdai,) (Entered: 07/14/2014)
07/14/2014	287	Proposed Jury Instructions by Robert F McDonnell (Berry, Jonathan) (Entered: 07/14/2014)
07/14/2014	288	Proposed Jury Instructions by Maureen G. McDonnell (Martin, Heather) (Entered: 07/14/2014)
07/14/2014	289	Proposed Jury Instructions by USA as to Robert F McDonnell, Maureen G. McDonnell (Faulconer, Ryan) (Entered: 07/14/2014)
07/15/2014	290	Witness Subpoenas issued in Blank (20 Witness Subpoenas) as to Robert F McDonnell for 8/18/14 at 9:00 a.m. Issued pursuant to 284 Order entered July 14, 2014. Subpoenas picked up in Clerk's Office for service. (tdai,) (Entered: 07/15/2014)
07/15/2014	292	Minute Entry for proceedings held before District Judge James R. Spencer:Motion Hearing as to Robert F McDonnell, Maureen G. McDonnell held on 7/15/2014 re 239 MOTION in Limine *to Exclude Mrs. McDonnell's Testimonial Statements* filed by Robert F McDonnell, 235 MOTION in Limine *to Exclude Evidence Relating to Star Scientific Stock Ownership* filed by Robert F McDonnell, 233 MOTION in Limine *to Permit Leading Questions by the United States of Witnesses Identified with Defendants* filed by USA, 227 MOTION in Limine *to Exclude Co-Conspirator Acts and Statements Pending Prima Facie Showing of Conspiracy Involving Mr McDonnell* filed by Robert F McDonnell, 229 MOTION to Exclude *Irrelevant and Misleading Evidence of Materiality of False Statements Charged in Counts 12 & 13* filed by USA, 231 MOTION in Limine *to Limit the Number of Character Witnesses* filed by USA, 237 MOTION in Limine *to Exclude Evidence Relating to Statements of Economic Interest* filed by Robert F McDonnell. Daubert hearing re J. Allen Kosowsky, CPA. Arguments heard on motions and Daubert hearing. All matters taken under advisement. (Court Reporter Jeff Kull, OCR.)(khan,) (Entered: 07/16/2014)
07/16/2014	291	Motion to appear Pro Hac Vice by Elizabeth N. Jochum and Certification of Local Counsel Timothy J. Taylor (Filing fee $ 75 receipt number 0422-4039557.) by Robert F McDonnell. (Taylor, Timothy) (Entered: 07/16/2014)
07/16/2014	293	TRANSCRIPT of Proceedings held on July 15, 2014, Motions and Daubert Hearing - Kosowsky before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the**

		Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 8/15/2014. Redacted Transcript Deadline set for 9/15/2014. Release of Transcript Restriction set for 10/14/2014.(kull, jeff) (Entered: 07/16/2014)
07/16/2014	294	Sealed Order as to Robert F McDonnell, Maureen G. McDonnell re 263 Sealed Motion in Limine. Signed by District Judge James R. Spencer on 7/16/14. (tdai,) (Entered: 07/16/2014)
07/16/2014	295	MEMORANDUM OPINION as to Robert F McDonnell, Maureen G. McDonnell. Signed by District Judge James R. Spencer on 7/16/14. (tdai,) (Entered: 07/16/2014)
07/16/2014	296	ORDER denying 227 Motion in Limine to Exclude Co-Conspirator Acts and Statements Pending Prima Facie Showing of Conspiracy Involving Mr. McDonnell as to Robert F McDonnell (1); granting 229 Motion to Exclude Irrelevant and Misleading Evidence of Materiality of False Statements Charged in Counts 12 & 13 as to Robert F McDonnell (1), Maureen G. McDonnell (2); denying 231 Motion in Limine to Limit the Number of Character Witnesses as to Robert F McDonnell (1), Maureen G. McDonnell (2); denying 233 Motion in Limine to Permit Leading Questions by the United States of Witnesses Identified with Defendants as to Robert F McDonnell (1), Maureen G. McDonnell (2); denying 235 Motion in Limine to Exclude Evidence Relating to Star Scientific Stock Ownership as to Robert F McDonnell (1); denying 237 Motion in Limine to Exclude Evidence Relating to Statements of Economic Interest as to Robert F McDonnell (1); denying 239 Motion in Limine to Exclude Mrs. McDonnell's Testimonial Statement as to Robert F McDonnell (1); denying 242 Motion in Limine to Exclude Evidence Relating to Star Scientific Stock Ownership as to Maureen G. McDonnell (2); denying 243 Motion in Limine to Exclude Evidence Relating to Statements of Economic Interest as to Maureen G. McDonnell (2). Signed by District Judge James R. Spencer on 7/16/14. (tdai,) (Entered: 07/16/2014)
07/16/2014	297	MEMORANDUM ORDER that this matter is before the Court on the Government's Motion to Exclude Expert Testimony 221 ; upon further consideration and after holding Daubert hearings, the Court will exclude the testimony of Peter H. White, Esquire in its entirety and will exclude the testimony of J. Allen Kosowsky, CPA, in part. (See Order for Details). Signed by District Judge James R. Spencer on 7/16/14. (jtho,) (Entered: 07/16/2014)
07/17/2014	298	ORDER granting 291 Motion for Pro hac vice Appointed Elizabeth Newell Jochum for Robert F McDonnell as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 07/16/2014. (tjoh,) (Entered: 07/17/2014)
07/18/2014		Additional Subpoena Duces Tecum Documents RECEIVED on CD from Johnnie Williams, Sr. as to Robert F McDonnell (1) re 155 Motion for Issuance of Subpoenas, 166 Order. (CD placed in brown expandable in Clerk's Office.) (jtho,)

		(Entered: 07/18/2014)
07/18/2014	299	MOTION to Seal *Motion for Issuance of Trial Subpoena to Public Official* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 07/18/2014)
07/18/2014	300	Memorandum in Support by Robert F McDonnell re 299 MOTION to Seal *Motion for Issuance of Trial Subpoena to Public Official* (Berry, Jonathan) (Entered: 07/18/2014)
07/21/2014	301	STIPULATION by USA and Robert F McDonnell, Maureen G. McDonnell *Stipulation 1* (Faulconer, Ryan) (Entered: 07/21/2014)
07/21/2014	302	STIPULATION by USA and Robert F McDonnell, Maureen G. McDonnell *Stipulation 2* (Faulconer, Ryan) (Entered: 07/21/2014)
07/22/2014	303	Joint Sealed Motion by USA, Robert F McDonnell, Maureen G. McDonnell as to Robert F McDonnell (1), Maureen G. McDonnell (2). (tdai,) (Entered: 07/22/2014)
07/24/2014	304	Sealed Order as to Robert F McDonnell, Maureen G. McDonnell re 303 Joint Sealed Motion. Signed by District Judge James R. Spencer on 7/24/14. (tdai,) (Entered: 07/24/2014)
07/24/2014	305	MOTION to Compel *Testimony* by USA as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Exhibit A (DOJ Authorization), # 2 Proposed Order)(Aber, Jessica) (Entered: 07/24/2014)
07/25/2014	306	Proposed Voir Dire by Robert F McDonnell (Berry, Jonathan) (Entered: 07/25/2014)
07/25/2014	307	MOTION for Issuance of Subpoenas *Duces Tecum* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 07/25/2014)
07/25/2014	308	Memorandum in Support by Robert F McDonnell re 307 MOTION for Issuance of Subpoenas *Duces Tecum* (Berry, Jonathan) (Entered: 07/25/2014)
07/26/2014	309	MOTION for Issuance of Subpoenas *Duces Tecum* by Maureen G. McDonnell. (Martin, Heather) (Entered: 07/26/2014)
07/28/2014	310	WITNESS LIST by USA as to Robert F McDonnell, Maureen G. McDonnell (Aber, Jessica) (Entered: 07/28/2014)
07/28/2014	311	EXHIBIT LIST by USA as to Robert F McDonnell, Maureen G. McDonnell (Aber, Jessica) (Entered: 07/28/2014)
07/28/2014	312	*Amended* EXHIBIT LIST by USA as to Robert F McDonnell, Maureen G. McDonnell (Aber, Jessica) (Entered: 07/28/2014)
07/28/2014	313	NOTICE OF ATTORNEY APPEARANCE by Dallas J. Kaplan, Esquire appearing for Non-Party Jerri Fulkerson in the case as to Robert F McDonnell, Maureen G. McDonnell. (tdai,) (Entered: 07/28/2014)
07/28/2014	314	MOTION to Intervene for the Purpose of Opposing, or in the Alternative to Move to Quash Defendants' Requests for Rule 17(C) Subpoenas by Jerri Fulkerson as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Proposed

		Opposition of Non-Party Jerri Fulkerson to Defendant Robert F McDonnell's and Defendant Maureen G. McDonnell's Motions for Issuance of Rule 17(C) Subpoena)(tdai,) (Entered: 07/28/2014)
07/28/2014	315	ORDER re 305 Motion to Compel Testimony by USA as to Robert F McDonnell (1), Maureen G. McDonnell (2). Upon the approval of the aforesaid application by the Department of Justice, by the Assistant Attorney General, pursuant to the authority vested in her by 18 U.S.C. § 6003(b) and 28 C.F.R. § 0.175(a); it is hereby ORDERED that, pursuant to 18 U.S.C. §§ 6002 and 6003, JERRI FULKERSON give testimony and provide other information as to all matters about which she may be questioned at trial in United States v. Robert F McDonnell and Maureen G. McDonnell; and IT IS FURTHER ORDERED that, pursuant to 18 U.S.C. §§ 6002 and 6003, no testimony or other information compelled under this Order, or any information directly or indirectly derived from such testimony or other information, may be used against FULKERSON in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order. Signed by District Judge James R. Spencer on 7/28/14. (tdai,) (Entered: 07/28/2014)
07/28/2014	316	First Motion to appear Pro Hac Vice by George J. Terwilliger III and Certification of Local Counsel Dallas J. Kaplan (Filing fee $ 75 receipt number 0422-4054342.) by Jerri Fulkerson as to Robert F McDonnell, Maureen G. McDonnell. (Kaplan, Dallas) (Entered: 07/28/2014)
07/28/2014	317	SEALING ORDER granting 299 Motion to Seal Motion for Issuance of Trial Subpoena to Public Official as to Robert F McDonnell (1).. Signed by District Judge James R. Spencer on 7/28/14. (tdai,) (Entered: 07/28/2014)
07/28/2014	318	Sealed Unopposed Motion for Issuance of Subpoena, by Robert F McDonnell (1). (tdai,) (Entered: 07/28/2014)
07/28/2014	319	MOTION to Withdraw as Counsel by Jaime Wisegarver. by Maureen G. McDonnell. (khan,) (Entered: 07/28/2014)
07/28/2014	320	*Combined Defense* WITNESS LIST by Robert F McDonnell as to Robert F McDonnell, Maureen G. McDonnell (Berry, Jonathan) (Entered: 07/28/2014)
07/28/2014	321	*Combined Defense* EXHIBIT LIST by Robert F McDonnell as to Robert F McDonnell, Maureen G. McDonnell (Berry, Jonathan) (Entered: 07/28/2014)
07/28/2014	322	ORDER granting 319 Motion to Withdraw as Attorney. Jaime Brett Wisegarver withdrawn from case as to Maureen G. McDonnell (2). Signed by District Judge James R. Spencer on 7/28/14. (tdai,) (Entered: 07/28/2014)
07/28/2014	323	SEALED ORDER as to Robert F McDonnell (1) re 318 Sealed Unopposed Motion for Issuance of Subpoena. Signed by District Judge James R. Spencer on 7/28/14. (tdai,) (Entered: 07/28/2014)
07/28/2014	324	ORDER granting 316 Motion for Pro hac vice. Appointed George J. Terwilliger, III for Jerri Fulkerson as to Robert F McDonnell (1), Maureen G. McDonnell (2). Signed by District Judge James R. Spencer on 7/28/14. (tdai,) (Entered: 07/28/2014)
07/28/2014	325	MOTION to Exclude *Testimony of Robert Skunda and Amy Bridge* by Robert F

		McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 07/28/2014)
07/28/2014	326	Memorandum in Support by Robert F McDonnell re 325 MOTION to Exclude *Testimony of Robert Skunda and Amy Bridge* (Attachments: # 1 Exhibit A)(Berry, Jonathan) (Entered: 07/28/2014)
07/28/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 7/29/2014 at 10:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 07/28/2014)
07/28/2014		Minute Entry for proceedings held before District Judge James R. Spencer:Voir Dire held on 7/28/2014 as to Robert F McDonnell, Maureen G. McDonnell (khan,). (Entered: 07/29/2014)
07/28/2014	331	Minute Entry for proceedings held before District Judge James R. Spencer:Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 7/28/2014. Jury sworn & examined on voir dire. Jury empaneled and sworn to try issue. Case continued to July 29, 2014 at 10:00 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 07/29/2014)
07/29/2014	327	NOTICE OF ATTORNEY APPEARANCE by Edward J. Fuhr, Esquire appearing for Non-Parties Christopher Young and Cailin M. Young as to Robert F McDonnell, Maureen G. McDonnell. (tdai,) (Entered: 07/29/2014)
07/29/2014	328	ORDER that this matter is before the Court sua sponte. Upon due consideration and pursuant to In re U.S. for an Order Pursuant to 18 U.S.C. Section 2703(D), 707 F.3d 283, 290 (4th Cir. 2013) and in re Associated Press, 172 F App'x. 1,3-5 (4th Cir. 2006), the Parties are DIRECTED to provide to the Clerk's Office of the United States District Court for the Eastern District of Virginia, Richmond Division in electronic format all documentary exhibits that have both been admitted into the public record and have been fully published to the jury. The Parties must make these documentary exhibits available to the Clerk's Office by 10:00 a.m. on the day after the exhibits have been fully published to the jury. The Clerk's Office will then make said exhibits accessible to the media. Signed by District Judge James R. Spencer on 7/29/14. (tdai,) (Entered: 07/29/2014)
07/29/2014	329	Sealed Document as to Robert F McDonnell (1) re 323 Sealed Order. (tdai,) (Entered: 07/29/2014)
07/29/2014	330	TRANSCRIPT of Proceedings held on July 28, 2014,Jury Trial Volume I before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 8/28/2014. Redacted Transcript Deadline set for 9/29/2014. Release of Transcript Restriction set for 10/27/2014.(kull, jeff) (Entered: 07/29/2014)**

07/29/2014	332	ORDER that for good cause appearing to the Court, it is ORDERED that the jurors in the above entitled case be kept together in the custody of the United States Marshal, who shall furnish them LUNCH, on Monday, July 28, 2014, submitting to bill to the Clerk of this Court for payment. Signed by District Judge James R. Spencer on 7/29/14. (khan,) (Entered: 07/29/2014)
07/29/2014	333	Minute Entry for proceedings held before District Judge James R. Spencer:Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 7/29/2014. Jury Instructed. Opening Statements made. Govt. adduced evidence. Case continued until 7/30/14 at 9:30 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Main Document 333 replaced on 9/10/2014) (khan,). (Main Document 333 replaced on 9/10/2014) (khan,). (Entered: 07/29/2014)
07/29/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 7/30/2014 at 09:30 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 07/29/2014)
07/30/2014	334	ORDER denying as moot 314 Motion to Intervene for the Purpose of Opposing, or in the Alternative to Move to Quash Defendants' Requests for Rule 17(C) Subpoenas as to Robert F McDonnell (1), Maureen G. McDonnell (2). On July 29, 2014, Defendants reported that their Motions for Issuance of Rule 17(c) Subpoenas (ECF Nos. 307 , 309) are now moot as to Jerri Fulkerson pursuant to an agreement. As such, Jerri Fulkerson currently has no interest in this matter. Accordingly, the Motion will be DENIED AS MOOT. It is so ORDERED. Signed by District Judge James R. Spencer on 7/29/14. (tdai,) (Entered: 07/30/2014)
07/30/2014	335	ORDER re 307 MOTION for Issuance of Subpoenas *Duces Tecum* filed by Robert F McDonnell (1 309 MOTION for Issuance of Subpoenas *Duces Tecum* filed by Maureen G. McDonnell (2). As to Star Scientific, Incorporated, the requests are DENIED as too broad and overly burdensome. It is so ORDERED. Signed by District Judge James R. Spencer on 7/30/14. (tdai,) (Entered: 07/30/2014)
07/30/2014	336	Exhibits by USA Admitted into Evidence at Trial on 7/29/14. (tdai,) (Entered: 07/30/2014)
07/30/2014	337	TRANSCRIPT of Proceedings held on July 29, 2014, Jury Trial Volume II before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 8/29/2014. Redacted Transcript Deadline set for 9/29/2014. Release of Transcript Restriction set for 10/28/2014.(kull, jeff) (Entered: 07/30/2014)**
07/30/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 7/31/2014 at 09:30 AM in Richmond Courtroom 7000 before District

		Judge James R. Spencer. (khan,) (Entered: 07/30/2014)
07/30/2014	340	Minute Entry for proceedings held before District Judge James R. Spencer. Day 3 Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 7/30/2014. Govt adduced evidence. Matter continued to July 31, 2014 at 9:30 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 07/31/2014)
07/31/2014	338	Exhibits by USA Admitted into Evidence at Trial on 7/30/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2, # 3 Exhibits Part 3) (tdai,) (Entered: 07/31/2014)
07/31/2014	341	ORDER that this matter is before the Court sua sponte. The Court has received requests from the media for the release of questionnaires completed by potential jurors prior to trial in the above referenced matter. The Court has denied said requests. The questionnaires contain private, personal, and confidential information regarding each potential juror. The potential jurors were compelled to provide this information by the Court in its quest to obtain a jury pool from which a fair and impartial jury could be selected. Pursuant to the Court's supervisory power over its own records and files, see Virginia Dep't of State Police v. Washington Post, 386 F.3d 567, 575 (4th Cir. 2004), the Court will protect this information from public dissemination. Access to these questionnaires will be DENIED. Signed by District Judge James R. Spencer on 7/31/14. (tdai,) (Entered: 07/31/2014)
07/31/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/1/2014 at 09:30 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 07/31/2014)
07/31/2014	344	Minute Entry for proceedings held before District Judge James R. Spencer:Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 7/31/2014. Govt. adduced evidence. Jury Trial continued to 8/1/14 at 9:30 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 08/01/2014)
08/01/2014	342	Exhibits by USA Admitted into Evidence at Trial on 7/31/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2) (tdai,) (Entered: 08/01/2014)
08/01/2014	343	Video Exhibits by USA Admitted into Evidence at Trial on 7/31/14. (CD placed in brown expandable file located in Clerk's Office) (Limited CDs are available in Clerk's Office for check out). (tdai,) (Entered: 08/01/2014)
08/01/2014	345	TRANSCRIPT of Proceedings held on July 30, 2014,Jury Trial Volume III before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/2/2014. Redacted**

		Transcript Deadline set for 10/1/2014. Release of Transcript Restriction set for 10/30/2014.(kull, jeff) (Entered: 08/01/2014)
08/01/2014	346	TRANSCRIPT of Proceedings held on July 31, 2014, Jury Trial Volume IV before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/2/2014. Redacted Transcript Deadline set for 10/1/2014. Release of Transcript Restriction set for 10/30/2014.(kull, jeff) (Entered: 08/01/2014)**
08/01/2014	347	Minute Entry for proceedings held before District Judge James R. Spencer:Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/1/2014. Govt. adduced evidence. Jury Trial continued to August 4, 2014 at 9:30 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 08/01/2014)
08/01/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/4/2014 at 09:30 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/01/2014)
08/04/2014	348	Exhibits by Maureen G. McDonnell (2) Admitted into Evidence at Trial on 8/1/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2, # 3 Exhibits Part 3, # 4 Exhibits Part 4, # 5 Exhibits Part 5, # 6 Exhibits Part 6, # 7 Exhibits Part 7, # 8 Exhibits Part 8, # 9 Exhibits Part 9, # 10 Exhibits Part 10, # 11 Exhibits Part 11) (tdai,) (Entered: 08/04/2014)
08/04/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/5/2014 at 09:30 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/04/2014)
08/04/2014	349	NOTICE OF ATTORNEY APPEARANCE by Craig T Merritt, Esquire appearing for Non-Party WP Company, LLC in the case as to Robert F McDonnell, Maureen G. McDonnell. (tdai,) (Entered: 08/05/2014)
08/04/2014	350	NOTICE OF ATTORNEY APPEARANCE by David B. Lacy, Esquire appearing for Non-Party WP Company, LLC in the case as to Robert F McDonnell, Maureen G. McDonnell. (tdai,) (Entered: 08/05/2014)
08/04/2014	351	MOTION for Leave to Intervene and to Vacate Sealing Order by WP Company LLC as to Robert F McDonnell, Maureen G. McDonnell. (tdai,) (Entered: 08/05/2014)
08/04/2014	352	Memorandum in Support re 351 MOTION for Leave to Intervene and to Vacate Sealing Order by WP Company LLC as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Exhibit 1)(tdai,) (Entered: 08/05/2014)

08/04/2014	354	ORDER that for good cause appearing to the Court, it is ORDERED that the jurors in the above entitled case be kept together in the custody of the United States Marshal, who shall furnish them LUNCH on August 1, 2014, submitting the bill to the Clerk of this Court for payment.. Signed by District Judge James R. Spencer on 8/4/14. (khan,) (Entered: 08/05/2014)
08/04/2014	356	Minute Entry for proceedings held before District Judge James R. Spencer: Day 6 Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/4/2014 Govt adduced evidence. Jury Trial scheduled to resume 8/5/14 at 9:30 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) Modified on 8/5/2014 (khan,). (Entered: 08/05/2014)
08/05/2014	353	Exhibits by USA Admitted into Evidence at Trial on 8/4/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/05/2014)
08/05/2014	355	Exhibits by Robert F McDonnell (1) Admitted into Evidence at Trial on 8/4/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/05/2014)
08/05/2014	357	TRANSCRIPT of Proceedings held on August 1, 2014, Jury Trial Volume V before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/4/2014. Redacted Transcript Deadline set for 10/6/2014. Release of Transcript Restriction set for 11/3/2014.(kull, jeff) (Entered: 08/05/2014)**
08/05/2014	358	TRANSCRIPT of Proceedings held on August 4, 2014,Jury Trial Volume VI before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/4/2014. Redacted Transcript Deadline set for 10/6/2014. Release of Transcript Restriction set for 11/3/2014.(kull, jeff) (Entered: 08/05/2014)**
08/05/2014	363	Minute Entry for proceedings held before District Judge James R. Spencer:Day 7 Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/5/2014. Govt adduced evidence. Jury Trial continued to 8/6/14 at 9:30 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 08/06/2014)
08/06/2014	359	TRANSCRIPT of Proceedings held on August 5, 2014, Jury Trial Volume VII

		before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/5/2014. Redacted Transcript Deadline set for 10/6/2014. Release of Transcript Restriction set for 11/4/2014.(kull, jeff) (Entered: 08/06/2014)**
08/06/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/6/2014 at 09:30 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/06/2014)
08/06/2014	360	ORDER re 351 MOTION for Leave to Intervene filed by WP Company LLC. Upon due consideration, the Motion is GRANTED insofar as it requests leave to intervene in this matter. See Co. Doe v. Pub. Citizen, 749 F.3d 246, 262-63 (4th Cir. 2014). A hearing will be held on Friday, August 15, 2014, at 12:15 p.m., in Courtroom 6100, to hear argument on the merits of Intervenor's Motion. It is so ORDERED. Signed by District Judge James R. Spencer on 8/6/14. (tdai,) (Entered: 08/06/2014)
08/06/2014	361	Exhibits by Maureen G. McDonnell (2) Admitted into Evidence at Trial on 8/5/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/06/2014)
08/06/2014		Set Motion in case as to Robert F McDonnell, Maureen G. McDonnell 351 MOTION for Leave to Intervene Motion Hearing set for 8/15/2014 at 12:15 PM in Richmond Courtroom 6100 before District Judge James R. Spencer. (khan,) Modified text to correct time on 8/6/2014 (jtho,). (Entered: 08/06/2014)
08/06/2014	362	Exhibits by USA Admitted into Evidence at Trial on 8/5/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/06/2014)
08/06/2014	364	Exhibits by Robert F McDonnell (1) Admitted into Evidence at Trial on 8/5/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2, # 3 Exhibits Part 3) (tdai,) (Entered: 08/06/2014)
08/06/2014	365	Exhibits by Robert F McDonnell (1) Admitted into Evidence at Trial on 8/5/14. (Attachments: # 1 Exhibits Part 4, # 2 Exhibits Part 5, # 3 Exhibits Part 6) (tdai,) (Entered: 08/06/2014)
08/06/2014	366	Exhibits by Robert F McDonnell (1) Admitted into Evidence at Trial on 8/5/14. (Attachments: # 1 Exhibits Part 7, # 2 Exhibits Part 8) (tdai,) (Entered: 08/06/2014)
08/06/2014	367	NOTICE OF HEARING as to Robert F McDonnell and Maureen G. McDonnell that a hearing will be held on Friday, August 15, 2014 at 12:15 p.m. in Courtroom 6100, to hear oral argument on a Motion to Vacate Sealing Order 351 filed by third-party Intervenor WP Company, LLC. (SEE NOTICE FOR DETAILS). (jtho,) (Entered: 08/06/2014)

08/06/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/7/2014 at 09:45 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/06/2014)
08/06/2014	369	Minute Entry for proceedings held before District Judge James R. Spencer:Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/6/2014. Gove adduced evidence. Jury Trial continued to 8/7/14 at 9:45 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 08/06/2014)
08/06/2014	370	Motion to appear Pro Hac Vice by Daniel Rickert Koffmann and Certification of Local Counsel Heather H. Martin (Filing fee $ 75 receipt number 0422-4068085.) by Maureen G. McDonnell. (Martin, Heather) (Entered: 08/06/2014)
08/07/2014	371	Exhibits by Robert F McDonnell (1) Admitted into Evidence at Trial on 8/6/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/07/2014)
08/07/2014	372	Exhibits by Maureen G. McDonnell (2) Admitted into Evidence at Trial on 8/6/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2, # 3 Exhibits Part 3, # 4 Exhibits Part 4, # 5 Exhibits Part 5) (tdai,) (Entered: 08/07/2014)
08/07/2014	373	Exhibits by USA Admitted into Evidence at Trial on 8/6/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2, # 3 Exhibits Part 3) (tdai,) (Entered: 08/07/2014)
08/07/2014	374	Exhibits by USA Admitted into Evidence at Trial on 8/6/14. (Attachments: # 1 Exhibits Part 4, # 2 Exhibits Part 5) (tdai,) (Entered: 08/07/2014)
08/07/2014	375	ORDER granting 370 Motion for Pro hac vice. Appointed Daniel Rickert Koffmann as to Maureen G. McDonnell (2). Signed by District Judge James R. Spencer on 8/7/14. (tdai,) (Entered: 08/07/2014)
08/07/2014	376	TRANSCRIPT of Proceedings held on August 6, 2014,Jury Trial Volume VIII before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/8/2014. Redacted Transcript Deadline set for 10/7/2014. Release of Transcript Restriction set for 11/5/2014.(kull, jeff) (Entered: 08/07/2014)**
08/07/2014		Set/Reset Hearings as to Robert F McDonnell and Maureen G. McDonnell: Jury Trial (Day 10) set for 8/8/2014 at 9:45 AM in Richmond Courtroom 7000 before District Judge James R. Spencer (rpiz) (Entered: 08/07/2014)
08/07/2014	378	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 325 MOTION to Exclude *Testimony of Robert Skunda and Amy Bridge* (Cooke, Richard) (Entered: 08/07/2014)
08/07/2014	382	Minute Entry for proceedings held before District Judge James R. Spencer:Day 9

		Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/7/2014. Govt. adduced evidence. Jury Trial continued to 8/8/14 at 9:45 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 08/08/2014)
08/08/2014	379	TRANSCRIPT of Proceedings held on August 7, 2014,Jury Trial Volume IX before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/8/2014. Redacted Transcript Deadline set for 10/8/2014. Release of Transcript Restriction set for 11/6/2014.(kull, jeff) (Entered: 08/08/2014)**
08/08/2014	380	Exhibits by Robert F McDonnell (1) Admitted into Evidence at Trial on 8/7/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/08/2014)
08/08/2014	381	Exhibits by USA Admitted into Evidence at Trial on 8/7/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/08/2014)
08/08/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/11/2014 at 09:45 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/08/2014)
08/08/2014	383	Minute Entry for proceedings held before District Judge James R. Spencer:Day 10 Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/8/2014. Govt adduced evidence. Jury Trial continued to 8/11/14 at 9:45 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 08/08/2014)
08/11/2014	384	TRANSCRIPT of Proceedings held on August 8, 2014,Jury Trial Volume X before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/10/2014. Redacted Transcript Deadline set for 10/14/2014. Release of Transcript Restriction set for 11/10/2014.(kull, jeff) (Entered: 08/11/2014)**
08/11/2014	385	Exhibits by Maureen G. McDonnell (2) Admitted into Evidence at Trial on 8/8/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2, # 3 Exhibits Part 3) (tdai,) (Entered: 08/11/2014)
08/11/2014	386	REPLY TO RESPONSE to by Robert F McDonnell re 325 MOTION to Exclude

		Testimony of Robert Skunda and Amy Bridge (Berry, Jonathan) (Entered: 08/11/2014)
08/11/2014	387	Exhibits by USA Admitted into Evidence at Trial on 8/8/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/11/2014)
08/11/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/12/2014 at 09:45 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/11/2014)
08/11/2014	392	Minute Entry for proceedings held before District Judge James R. Spencer: Day 11 Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/11/2014. Govt adduced evidence. Jury Trial continued 8/12/14 at 9:45 a.m. Dfts continued on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 08/12/2014)
08/11/2014	393	Minute Entry for proceedings held before District Judge James R. Spencer:Motion Hearing as to Robert F McDonnell held on 8/11/2014 re 325 MOTION to Exclude Testimony of Robert Skunda and Amy Bridge filed by Robert F McDonnell. The motion as to Skunda is GRANTED and the motion as to Bridges is DENIED. (Court Reporter Jeff Kull, OCR.)(khan,) (Entered: 08/12/2014)
08/12/2014	388	TRANSCRIPT of Proceedings held on August 11, 2014, Jury Trial Volume XI before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/11/2014. Redacted Transcript Deadline set for 10/14/2014. Release of Transcript Restriction set for 11/10/2014.(kull, jeff) (Entered: 08/12/2014)**
08/12/2014	389	ORDER that the jurors in the above entitled case be kept together in the custody of the U.S. Marshal, who shall furnish them LUNCH, Friday, August 8, 2014, submitting the bill to the Clerk of this Court for payment. Signed by District Judge James R. Spencer on 8/12/14. (khan,) (Entered: 08/12/2014)
08/12/2014	390	Exhibits by Maureen G. McDonnell (2) Admitted into Evidence at Trial on 8/11/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2) (tdai,) (Entered: 08/12/2014)
08/12/2014	391	Exhibits by USA Admitted into Evidence at Trial on 8/11/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/12/2014)
08/12/2014	394	Exhibits by Robert F McDonnell (1) Admitted into Evidence at Trial on 8/11/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/12/2014)
08/12/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/13/2014 at 09:45 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/12/2014)

08/12/2014	395	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 351 MOTION for Leave to Intervene and to Vacate Sealing Order (Cooke, Richard) Modified text on 8/13/2014 (tdai,). (Entered: 08/12/2014)
08/12/2014	396	MOTION to Seal *Documents Relating to Under-Seal Proceeding* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 08/12/2014)
08/12/2014	397	Memorandum in Support by Robert F McDonnell re 396 MOTION to Seal *Documents Relating to Under-Seal Proceeding* (Berry, Jonathan) (Entered: 08/12/2014)
08/12/2014	407	Minute Entry for proceedings held before District Judge James R. Spencer:Day 12 Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/12/2014. Govt adduced evidence. Jury Trial continued to 8/13/14 at 9:45 a.m.Dfts continued on bond. (Court Reporter Jeff Jull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 08/14/2014)
08/13/2014	398	TRANSCRIPT of Proceedings held on August 12, 2014, Jury Trial Volume XII before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/12/2014. Redacted Transcript Deadline set for 10/14/2014. Release of Transcript Restriction set for 11/12/2014.(kull, jeff) (Entered: 08/13/2014)**
08/13/2014	399	Exhibits by Robert F McDonnell (1) Admitted into Evidence at Trial on 8/12/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/13/2014)
08/13/2014	400	Exhibits by Maureen G. McDonnell (2) Admitted into Evidence at Trial on 8/12/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2) (tdai,) (Entered: 08/13/2014)
08/13/2014	401	Exhibits by USA Admitted into Evidence at Trial on 8/12/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/13/2014)
08/13/2014	402	ORDER granting in part and denying in part 325 Motion to Exclude Testimony of Robert Skunda and Amy Bridge as to Robert F McDonnell (1). For the reasons stated from the bench, the Motion is GRANTED IN PART, with respect to the testimony of Robert Skunda, and DENIED IN PART, with respect to the testimony of Amy Bridge. Signed by District Judge James R. Spencer on 8/12/14. (tdai,) (Entered: 08/13/2014)
08/13/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/14/2014 at 09:45 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/13/2014)
08/13/2014	420	Minute Entry for proceedings held before District Judge James R. Spencer:Day 13

		Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/13/2014. Govt. adduced evidence. Jury Trial continued to 8/14/14 at 9:45 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 08/15/2014)
08/14/2014	403	MOTION to Seal *Documents Relating to Under-Seal Proceeding* by Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Martin, Heather) (Entered: 08/14/2014)
08/14/2014	404	Memorandum in Support by Maureen G. McDonnell re 403 MOTION to Seal *Documents Relating to Under-Seal Proceeding* (Martin, Heather) (Entered: 08/14/2014)
08/14/2014	405	TRANSCRIPT of Proceedings held on August 13, 2014,Jury Trial Volume XIII before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/15/2014. Redacted Transcript Deadline set for 10/14/2014. Release of Transcript Restriction set for 11/12/2014.(kull, jeff) (Entered: 08/14/2014)**
08/14/2014	406	Exhibits by USA Admitted into Evidence at Trial on 8/13/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2) (tdai,) (Entered: 08/14/2014)
08/14/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/15/2014 at 10:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/14/2014)
08/14/2014	408	First MOTION for Acquittal by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 08/14/2014)
08/14/2014	409	Memorandum in Support by Robert F McDonnell re 408 First MOTION for Acquittal (Berry, Jonathan) (Entered: 08/14/2014)
08/14/2014	421	Minute Entry for proceedings held before District Judge James R. Spencer:Day 14 Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/14/2014. Govt adduced evidence. Govt. rested. Jury Trial continued to 8/15/14 at 10:00 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR.)(khan,) (Entered: 08/15/2014)
08/14/2014	424	ORDER that the jurors in the above case be kept together in the custody of the U.S. Marshal, who shall furnish them Lunch on 8/14/14, submitting the bill to the Clerk of this Court for the payment.. Signed by District Judge James R. Spencer on 8/14/14. (khan,) (Entered: 08/18/2014)
08/15/2014	410	First MOTION for Acquittal by Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Martin, Heather) (Entered: 08/15/2014)
08/15/2014	411	MOTION to Seal *Response and Memorandum in Support* by USA as to Robert F

		McDonnell, Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Aber, Jessica) (Entered: 08/15/2014)
08/15/2014	412	TRANSCRIPT of Proceedings held on August 14, 2014,Jury Trial Volume XIV before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/15/2014. Redacted Transcript Deadline set for 10/15/2014. Release of Transcript Restriction set for 11/13/2014.(kull, jeff) (Entered: 08/15/2014)**
08/15/2014	413	Memorandum in Support by Maureen G. McDonnell re 410 First MOTION for Acquittal (Martin, Heather) (Entered: 08/15/2014)
08/15/2014	414	MOTION for Leave to Intervene by BH Media Group Holdings, Inc. as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Cover Letter)(tdai,) (Entered: 08/15/2014)
08/15/2014	415	MOTION to Vacate Sealing Order by BH Media Group Holdings, Inc. as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Cover Letter) (tdai,) (Entered: 08/15/2014)
08/15/2014	416	Exhibits by Robert F McDonnell (1) Admitted into Evidence at Trial on 8/13/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2, # 3 Exhibits Part 3) (tdai,) (Attachments 1, 2, and 3 replaced on 8/21/2014 - CORRECTED REDACTION) (tdai,). (Entered: 08/15/2014)
08/15/2014	417	Exhibits by Maureen G. McDonnell (2) Admitted into Evidence at Trial on 8/14/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2, # 3 Exhibits Part 3) (tdai,) (Entered: 08/15/2014)
08/15/2014	418	Exhibits by USA Admitted into Evidence at Trial on 8/14/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2) (tdai,) (Entered: 08/15/2014)
08/15/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/18/2014 at 09:45 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/15/2014)
08/15/2014	422	Minute Entry for proceedings held before District Judge James R. Spencer:Day 15 Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/15/2014. Defendants' Rule 29 Motions - DENIED. Jury Trial continued to 8/18/14 at 9:45 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 08/15/2014)
08/15/2014	446	Minute Entry for proceedings held before District Judge James R. Spencer:Motion Hearing as to Robert F McDonnell, Maureen G. McDonnell held on 8/15/2014 re 351 MOTION for Leave to File filed by WP Company LLC, 415 MOTION to Vacate Sealing Order filed by BH Media Group Holdings, Inc. Times Dispatch's

		Motion for Leave to Intervene GRANTED. Motion to Vacate -- Taken under advisement. (Court Reporter Jeff Kull, OCR.)(khan,) (Entered: 08/22/2014)
08/18/2014	425	TRANSCRIPT of Proceedings held on August 15, 2014, Jury Trial Volume XV before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/17/2014. Redacted Transcript Deadline set for 10/20/2014. Release of Transcript Restriction set for 11/17/2014.(kull, jeff) (Entered: 08/18/2014)**
08/18/2014	426	ORDER granting 414 Motion to Intervene by third-party movant BH Media Holdings Inc. as to Robert F McDonnell (1) and Maureen G. McDonnell (2). Signed by District Judge James R. Spencer on 8/18/14. (jtho,) (Entered: 08/18/2014)
08/18/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/19/2014 at 09:45 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/18/2014)
08/18/2014	434	Minute Entry for proceedings held before District Judge James R. Spencer: Day 16Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/18/2014. Dft adduced evidence. Jury Trial continued to 8/19/14 at 9:45 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 08/20/2014)
08/19/2014	427	ORDER denying 408 First Motion for Acquittal as to Robert F McDonnell (1); denying 410 First Motion for Acquittal as to Maureen G. McDonnell (2). Upon due consideration and for reasons that will be set out more fully in a forthcoming memorandum opinion, the Motions are DENIED. Signed by District Judge James R. Spencer on 8/18/14. (tdai,) (Entered: 08/19/2014)
08/19/2014	428	TRANSCRIPT of Proceedings held on August 18, 2014,Jury Trial Volume XVI before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/18/2014. Redacted Transcript Deadline set for 10/20/2014. Release of Transcript Restriction set for 11/17/2014.(kull, jeff) (Entered: 08/19/2014)**
08/19/2014	429	Exhibits by Robert F McDonnell (1) Admitted into Evidence at Trial on 8/18/14.

		(Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/19/2014)
08/19/2014	430	Exhibits by USA Admitted into Evidence at Trial on 8/18/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/19/2014)
08/19/2014	435	Minute Entry for proceedings held before District Judge James R. Spencer: Day 17Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/19/2014 Dft adduced evidence. Jury Trial continued to 8/20/14 at 9:45 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 08/20/2014)
08/20/2014	431	TRANSCRIPT of Proceedings held on August 19, 2014, Jury Trial Volume XVII before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/19/2014. Redacted Transcript Deadline set for 10/20/2014. Release of Transcript Restriction set for 11/18/2014.(kull, jeff) (Entered: 08/20/2014)**
08/20/2014	432	Exhibits by Robert F McDonnell (1) Admitted into Evidence at Trial on 8/19/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2) (tdai,) (Entered: 08/20/2014)
08/20/2014	433	Exhibits by USA Admitted into Evidence at Trial on 8/19/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/20/2014)
08/20/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/21/2014 at 09:45 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/20/2014)
08/20/2014	447	Minute Entry for proceedings held before District Judge James R. Spencer: Day 18Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/20/2014. Dft adduced evidence. Jury Trial continued to 8/21/14 at 9:45 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 08/22/2014)
08/21/2014	436	TRANSCRIPT of Proceedings held on August 20, 2014, Jury Trial Volume XVIII before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/22/2014. Redacted**

		Transcript Deadline set for 10/21/2014. Release of Transcript Restriction set for 11/19/2014.(kull, jeff) (Entered: 08/21/2014)
08/21/2014	437	Exhibits by Robert F McDonnell (1) Admitted into Evidence at Trial on 8/20/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2, # 3 Exhibits Part 3, # 4 Exhibits Part 4) (tdai,) (Entered: 08/21/2014)
08/21/2014	438	Exhibits by Maureen G. McDonnell (2) Admitted into Evidence at Trial on 8/20/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/21/2014)
08/21/2014	439	Exhibits by USA Admitted into Evidence at Trial on 8/20/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2) (tdai,) (Entered: 08/21/2014)
08/21/2014	440	Video Exhibits by Robert F McDonnell (1) Admitted into Evidence at Trial on 8/20/14. (CD placed in brown expandable file located in Clerk's Office). (Limited CDs are available in Clerk's Office for check out). (tdai,) (tdai,). (Entered: 08/21/2014)
08/21/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/22/2014 at 09:45 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/21/2014)
08/21/2014	448	Minute Entry for proceedings held before District Judge James R. Spencer: Day 19Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/21/2014. Dft adduced evidence. Jury Trial continued 8/22/14 at 9:45 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 08/22/2014)
08/22/2014	441	MOTION to Exclude *Certain Defense Exhibits pursuant to Prior Court Order Excluding Irrelevant and Misleading Evidence of Materiality of False Statements Charged in Counts 12 & 13* by USA as to Robert F McDonnell, Maureen G. McDonnell. (Faulconer, Ryan) (Entered: 08/22/2014)
08/22/2014	442	Memorandum by USA as to Robert F McDonnell, Maureen G. McDonnell re 441 MOTION to Exclude *Certain Defense Exhibits pursuant to Prior Court Order Excluding Irrelevant and Misleading Evidence of Materiality of False Statements Charged in Counts 12 & 13* (Faulconer, Ryan) (Entered: 08/22/2014)
08/22/2014	443	TRANSCRIPT of Proceedings held on August 21, 2014, Jury Trial Volume XIX before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/22/2014. Redacted Transcript Deadline set for 10/22/2014. Release of Transcript Restriction set for 11/20/2014.(kull, jeff) (Entered: 08/22/2014)**
08/22/2014	444	RESPONSE in Opposition by Robert F McDonnell re 441 MOTION to Exclude

		Certain Defense Exhibits pursuant to Prior Court Order Excluding Irrelevant and Misleading Evidence of Materiality of False Statements Charged in Counts 12 & 13 (Berry, Jonathan) (Entered: 08/22/2014)
08/22/2014	445	Exhibits by Robert F McDonnell (1) Admitted into Evidence at Trial on 8/21/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2, # 3 Exhibits Part 3, # 4 Exhibits Part 4, # 5 Exhibits Part 5, # 6 Exhibits Part 6, # 7 Exhibits Part 7, # 8 Exhibits Part 8, # 9 Exhibits Part 9) (tdai,) (Entered: 08/22/2014)
08/22/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/25/2014 at 09:45 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/22/2014)
08/22/2014	454	Minute Entry for proceedings held before District Judge James R. Spencer: Day 20Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/22/2014. Dfts adduced evidence. Jury Trial continued to 8/25/14 at 9:45 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 08/26/2014)
08/24/2014	449	MOTION to Exclude *Evidence of Gift Non-Disclosure as Irrelevant and Prejudicial* by Robert F McDonnell. (Berry, Jonathan) (Entered: 08/24/2014)
08/24/2014	450	Memorandum in Support by Robert F McDonnell re 449 MOTION to Exclude *Evidence of Gift Non-Disclosure as Irrelevant and Prejudicial* (Berry, Jonathan) (Entered: 08/24/2014)
08/25/2014	451	TRANSCRIPT of Proceedings held on August 22, 2014, Jury Trial Volume XX before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/24/2014. Redacted Transcript Deadline set for 10/27/2014. Release of Transcript Restriction set for 11/24/2014.(kull, jeff) (Entered: 08/25/2014)**
08/25/2014	452	Exhibits by Robert F McDonnell (1) Admitted into Evidence at Trial on 8/22/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/25/2014)
08/25/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/26/2014 at 09:45 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/25/2014)
08/25/2014	471	Minute Entry for proceedings held before District Judge James R. Spencer: Day 21Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/25/2014. Dfts adduced evidence. Jury Trial continued to 8/26/14 at 9:45 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR.)(khan,) (Entered: 08/28/2014)
08/26/2014	453	ORDER that for good cause appearing to the Court, it is ORDERED that the

		jurors in the above entitled case be kept together in the custody of the U.S. Marshal, who shall furnish them LUNCH on 8/22/14, submitting the bill to the Clerk of this Court for payment.. Signed by District Judge James R. Spencer on 8/26/14. (khan,) (Entered: 08/26/2014)
08/26/2014	455	Exhibits by USA Admitted into Evidence at Trial on 8/25/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2) (tdai,) (Entered: 08/26/2014)
08/26/2014	456	Exhibits by Maureen G. McDonnell (2) Admitted into Evidence at Trial on 8/25/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2, # 3 Exhibits Part 3, # 4 Exhibits Part 4, # 5 Exhibits Part 5, # 6 Exhibits Part 6, # 7 Exhibits Part 7, # 8 Exhibits Part 8, # 9 Exhibits Part 9) (tdai,) (Entered: 08/26/2014)
08/26/2014	457	TRANSCRIPT of Proceedings held on August 25, 2014, Jury Trial Volume XXI before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/25/2014. Redacted Transcript Deadline set for 10/27/2014. Release of Transcript Restriction set for 11/24/2014.(kull, jeff) (Entered: 08/26/2014)**
08/26/2014	458	ORDER denying 307 Motion for Issuance of Subpoenas as to Robert F McDonnell (1); denying 309 Motion for Issuance of Subpoenas as to Maureen G. McDonnell (2). As to Jonnie Williams, Sr., the Motions are DENIED as overbroad, overly burdensome, and moot. It is so ORDERED. Signed by District Judge James R. Spencer on 8/26/14. (tdai,) (Entered: 08/26/2014)
08/26/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/27/2014 at 09:45 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/26/2014)
08/26/2014	472	Minute Entry for proceedings held before District Judge James R. Spencer: Day 22Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/26/2014. Dfts adduced evidence. Jury Trial continued to 8/27/14 at 9:45 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR.)(khan) (Entered: 08/28/2014)
08/27/2014	459	MOTION to Exclude *Government Summary Witness in Rebuttal* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Taylor, Timothy) (Entered: 08/27/2014)
08/27/2014	460	Memorandum in Support by Robert F McDonnell re 459 MOTION to Exclude *Government Summary Witness in Rebuttal* (Taylor, Timothy) (Entered: 08/27/2014)
08/27/2014	461	TRANSCRIPT of Proceedings held on August 26, 2014, Jury Trial Volume XXII before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The**

		parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/26/2014. Redacted Transcript Deadline set for 10/27/2014. Release of Transcript Restriction set for 11/25/2014.(kull, jeff) (Entered: 08/27/2014)
08/27/2014	462	Exhibits by Robert F McDonnell (1) Admitted into Evidence at Trial on 8/26/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2, # 3 Exhibits Part 3, # 4 Exhibits Part 4, # 5 Exhibits Part 5, # 6 Exhibits Part 6, # 7 Exhibits Part 7, # 8 Exhibits Part 8, # 9 Exhibits Part 9, # 10 Exhibits Part 10, # 11 Exhibits Part 11, # 12 Exhibits Part 12) (tdai,) (Entered: 08/27/2014)
08/27/2014	463	Exhibits by USA Admitted into Evidence at Trial on 8/26/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/27/2014)
08/27/2014	464	Video Exhibits by USA Admitted into Evidence at Trial on 8/26/14. (CD placed in brown expandable file located in Clerk's Office). (Limited CDs are available in Clerk's Office for check out). (tdai,) (Entered: 08/27/2014)
08/27/2014	465	ORDER granting 441 Motion to Exclude Certain Defense Exhibits pursuant to Prior Court Order Excluding Irrelevant and Misleading Evidence of Materiality of False Statements Charged in Counts 12 & 13 by USA as to Robert F McDonnell (1), Maureen G. McDonnell (2). Signed by District Judge James R. Spencer on 8/27/14. (tdai,) (Entered: 08/27/2014)
08/27/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 8/28/2014 at 09:45 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/27/2014)
08/27/2014	479	Minute Entry for proceedings held before District Judge James R. Spencer: Day 23Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/27/2014. M. McDonnell adduced evidence. Dfts rested. Rebuttal evidence adduced. Jury Trial continued 8/28/14 at 9:45 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (khan,). (Entered: 09/02/2014)
08/28/2014	466	TRANSCRIPT of Proceedings held on August 27, 2014, Jury Trial Volume XXIII before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/29/2014. Redacted**

		Transcript Deadline set for 10/28/2014. Release of Transcript Restriction set for 11/26/2014.(kull, jeff) (Entered: 08/28/2014)
08/28/2014	467	NOTICE *of Offer of Proof Regarding Excluded Defense Exhibits* by Robert F McDonnell (Attachments: # 1 Appendix)(Berry, Jonathan) Modified text on 8/29/2014 (tdai,). (Entered: 08/28/2014)
08/28/2014	468	NOTICE *of Offer of Proof Regarding Expert Tesiimony* by Robert F McDonnell (Berry, Jonathan) Modified text on 8/29/2014 (tdai,). (Entered: 08/28/2014)
08/28/2014	469	Exhibits by USA Admitted into Evidence at Trial on 8/27/14. (Attachments: # 1 Exhibits Part 1, # 2 Exhibits Part 2) (tdai,) (Entered: 08/28/2014)
08/28/2014	470	Exhibits by Maureen G. McDonnell (2) Admitted into Evidence at Trial on 8/27/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/28/2014)
08/28/2014	473	Proposed Supplemental Jury Instructions by Robert F McDonnell (Berry, Jonathan) Modified to text on 8/29/2014 (tdai,). (Entered: 08/28/2014)
08/28/2014	480	Minute Entry for proceedings held before District Judge James R. Spencer: Day 24Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 8/28/2014. Rebuttal evidence continued. Govt. rested. Jury released to return 8/29/14 at 9:30 a.m. R. McDonnell's Motion for Judgment of Acquittal and all motions renewed and DENIED. M. McDonnell's motions renewed and DENIED. Jury instructions given to the parties for review -- parties to return at 3:00 p.m. for jury instruction conference. Jury trial continued to 8/29/14 at 9:30 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 09/02/2014)
08/29/2014	474	Exhibits by USA Admitted into Evidence at Trial on 8/28/14. (Attachments: # 1 Exhibits Part 1) (tdai,) (Entered: 08/29/2014)
08/29/2014	475	TRANSCRIPT of Proceedings held on August 28, 2014, Jury Trial Volume XXIV before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 9/29/2014. Redacted Transcript Deadline set for 10/29/2014. Release of Transcript Restriction set for 11/28/2014.(kull, jeff) (Entered: 08/29/2014)**
08/29/2014	476	MOTION to Withdraw as Attorney *for Robert F McDonnell* by Timothy J. Taylor. by Robert F McDonnell. (Taylor, Timothy) (Entered: 08/29/2014)
08/29/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 9/2/2014 at 09:30 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 08/29/2014)
08/29/2014	481	Minute Entry for proceedings held before District Judge James R. Spencer: Day 25 Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on

		8/29/2014. Arguments of counsel heard. Jury Trial continued to 9/2/14 at 9:30 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 09/02/2014)
09/02/2014	477	MOTION FOR SUPPLEMENTAL JURY INSTRUCTION REGARDING COUNT 14 by Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Martin, Heather) (Entered: 09/02/2014)
09/02/2014	478	TRANSCRIPT of Proceedings held on August 29, 2014, Jury Trial Volume XXV before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 10/2/2014. Redacted Transcript Deadline set for 11/3/2014. Release of Transcript Restriction set for 12/1/2014.(kull, jeff) (Entered: 09/02/2014)**
09/02/2014	482	ORDER as to Robert F McDonnell DENYING Defendant's 459 Motion for Exclusion of Government Summary Witness (please see Order for additional information). It is so ORDERED. Signed by District Judge James R. Spencer on 09/02/2014. (walk,) (Entered: 09/02/2014)
09/02/2014	483	MEMORANDUM ORDER as to Robert F McDonnell GRANTING 476 Motion by Timothy J. Taylor, Esquire to Withdraw as Counsel. It is so ORDERED. Signed by District Judge James R. Spencer on 09/02/2014. (walk,) (Entered: 09/02/2014)
09/02/2014	484	ORDER as to Robert F McDonnell DENYING Defendant's 449 Motion to Exclude Evidence of Gift Non-Disclosure as Irrelevant and Prejudicial (please see Order for additional information). It is so ORDERED. Signed by District Judge James R. Spencer on 09/02/2014. (walk,) (Entered: 09/02/2014)
09/02/2014	485	MEMORANDUM ORDER as to Robert F McDonnell and Maureen G. McDonnell GRANTING IN PART 351 and 415 Motions filed by Intervenors WP Company LLC and BH Media Holdings Inc., respectively, to Vacate Sealed Order (please see Memorandum Order for additional information). For the foregoing reasons, the Court finds that the completed questionnaires have been appropriately sealed during the pendency of this prosecution to protect Defendants' Sixth Amendment right to a fair trial. A blank copy of the questionnaire provided to jurors will be made publicly available after they have been appropriately redacted to protect jurors' private, personal, and confidential information. It is so ORDERED. Signed by District Judge James R. Spencer on 09/02/2014. (walk,) (Entered: 09/02/2014)
09/02/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 9/3/2014 at 09:45 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 09/02/2014)
09/02/2014	486	Position on *Jury Determination of Asset Forfeiture Issues* by USA as to Robert F

		McDonnell, Maureen G. McDonnell *Jury Determination of Asset Forfeiture Issues* (Aber, Jessica) (Entered: 09/02/2014)
09/02/2014	488	Minute Entry for proceedings held before District Judge James R. Spencer: Day 26Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 9/2/2014. Jury charged by the Court. Dft objections noted. Jury Retired. Jury Trial continued 9/3/14 at 9:45 a.m. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 09/03/2014)
09/03/2014	487	TRANSCRIPT of Proceedings held on September 2, 2014, Jury Trial Volume XXVI before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 10/3/2014. Redacted Transcript Deadline set for 11/3/2014. Release of Transcript Restriction set for 12/2/2014.(kull, jeff) (Entered: 09/03/2014)**
09/03/2014	489	ORDER that it is ORDERED that the jurors in the above entitled case be kept together in the custody of the US Marshal, who shall furnish them lunch on Friday, August 29, 2014, submitting the bill to the Clerk of this Court for payment.. Signed by District Judge James R. Spencer on 9/3/14. (khan,) (Entered: 09/03/2014)
09/03/2014	490	ORDER that it is ORDERED that the jurors in the above entitled case be kept together in the custody of the US Marshal, who shall furnish them lunch on Tuesday, September 2, 2014, submitting the bill to the Clerk of this Court for payment. Signed by District Judge James R. Spencer on 9/3/14. (khan,) (Entered: 09/03/2014)
09/03/2014	491	ORDER that it is ORDERED that the jurors in the above entitled case be kept together in the custody of the US Marshal, who shall furnish them lunch on Wednesday, September 3, 2014, submitting the bill to the Clerk of this Court for payment. Signed by District Judge James R. Spencer on 9/3/14. (khan,) (Entered: 09/03/2014)
09/03/2014		Set/Reset Hearings as to Robert F McDonnell, Maureen G. McDonnell: Jury Trial set for 9/4/2014 at 09:45 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 09/03/2014)
09/03/2014	493	Minute Entry for proceedings held before District Judge James R. Spencer Day 27Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 9/3/2014. Jury deliberations continued. Jury Trial continued to 9/4/14 at 9:45 a.m. Dft remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 09/04/2014)
09/04/2014	492	TRANSCRIPT of Proceedings held on September 3, 2014, Jury Trial Volume

		XXVII before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 10/6/2014. Redacted Transcript Deadline set for 11/4/2014. Release of Transcript Restriction set for 12/3/2014.(kull, jeff) (Entered: 09/04/2014)**
09/04/2014	494	Minute Entry for proceedings held before District Judge James R. Spencer Day 28Jury Trial as to Robert F McDonnell, Maureen G. McDonnell held on 9/4/2014. Jury deliberations concluded. The Jury returned a verdict of guilty as charged for R. McDonnell as to Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and not guilty as charged for R. McDonnell as to Counts 12 and 13. The Jury returned a verdict of guilty as charged for M. McDonnell as to Counts 1, 2, 3, 5, 6, 7, 8, 10, 14 and not guilty as charged for M. McDonnell as to Counts 4, 9, 11, 13. PSR ordered. Sentencing scheduled January 6, 2015 at 10:00 a.m. Exhibits returned to counsel. Dfts remain on bond. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 09/04/2014)
09/04/2014	495	JURY VERDICT as to Robert F McDonnell (1) Guilty on Count 1,2-4,5,6-11 and Maureen G. McDonnell (2) Guilty on Count 1,2-3,5,6-8,10,14 Robert F McDonnell (1) Not Guilty on Count 12-13 and Maureen G. McDonnell (2) Not Guilty on Count 4,9,11,13. (khan,) (Entered: 09/04/2014)
09/04/2014	496	Sentencing Guideline Order as to Robert F McDonnell. Signed by District Judge James R. Spencer on 9/4/14. (khan,) (Entered: 09/04/2014)
09/04/2014	497	Sentencing Guideline Order as to Maureen G. McDonnell. Signed by District Judge James R. Spencer on 9/4/14. (khan,) (Entered: 09/04/2014)
09/04/2014		Set/Reset Hearings as to Robert F McDonnell: Sentencing set for 1/6/2015 at 10:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 09/04/2014)
09/04/2014		Set/Reset Hearings as to Maureen G. McDonnell: Sentencing set for 1/6/2015 at 10:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 09/04/2014)
09/04/2014	498	TRANSCRIPT of Proceedings held on September 4, 2014, Jury Trial Volume XXVIII before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed**

		at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 10/6/2014. Redacted Transcript Deadline set for 11/4/2014. Release of Transcript Restriction set for 12/3/2014.(kull, jeff) (Entered: 09/04/2014)
09/09/2014	501	ORDER that it is ORDERED that the jurors in the above entitled case be kept together in the custody of the US Marshal, who shall furnish lunch on 9/4/14, submitting the bill to the Clerk of this Court for payment.. Signed by District Judge James R. Spencer on 9/9/14. (khan,) (Entered: 09/09/2014)
09/09/2014	504	MOTION for Leave to File as Amicus Curiae by Steven Davis as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Exhibit A, # 2 Exhibit A2, # 3 Exhibit B)(tdai,) (Entered: 09/11/2014)
09/10/2014	502	NOTICE *of Consent to Intervenors' Motion to Vacate Sealing Order* by Robert F McDonnell re 351 MOTION for Leave to Intervene and to Vacate Sealing Order, 415 MOTION to Vacate Sealing Order (Berry, Jonathan) Modified text on 9/10/2014 (tdai,). (Entered: 09/10/2014)
09/10/2014	503	NOTICE *of Consent to Intervenors' Motion to Vacate Sealing Order* by Maureen G. McDonnell re 415 MOTION to Vacate Sealing Order, 351 MOTION for Leave to Intervene and to Vacate Sealing Order (Martin, Heather) Modified text on 9/10/2014 (tdai,). (Entered: 09/10/2014)
09/12/2014	547	TRANSCRIPT of Chambers Conference Proceedings held on August 12, 2014, before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov** **Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 10/14/2014. Redacted Transcript Deadline set for 11/12/2014. Release of Transcript Restriction set for 12/11/2014. TRANSCRIPT UNSEALED PER ORDER ENTERED 10/30/14 (ECF NO. 546).(tdai,) (Entered: 10/30/2014)**
09/15/2014	507	ORDER that for good cause appearing to the Court, it is hereby ORDERED that parking shall be provided for the jurors in the above entitled case beginning July 29, 2014 and continuing through September 4, 2014. The Clerk of this Court shall pay the invoice submitted by the vendor providing parking accommodations.. Signed by District Judge James R. Spencer on 9/15/14. (khan,) (Entered: 09/15/2014)
09/15/2014	508	ORDER denying 504 Motion for Leave to File as Amicus Curiae by Steven Davis as to Robert F McDonnell (1), Maureen G. McDonnell (2). It is so ORDERED.

		Signed by District Judge James R. Spencer on 9/15/14. Copy sent: Yes to Steve Davis and by NEF to counsel of record. (tdai,) (Entered: 09/15/2014)
09/18/2014	509	Third MOTION for Acquittal by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 09/18/2014)
09/18/2014	510	Memorandum in Support by Robert F McDonnell re 509 Third MOTION for Acquittal (Berry, Jonathan) (Entered: 09/18/2014)
09/18/2014	511	MOTION for New Trial by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 09/18/2014)
09/18/2014	512	MOTION to Seal *Portion of Memorandum in Support of Motion for New Trial* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 09/18/2014)
09/18/2014	513	Memorandum in Support by Robert F McDonnell re 512 MOTION to Seal *Portion of Memorandum in Support of Motion for New Trial* (Berry, Jonathan) (Entered: 09/18/2014)
09/18/2014	514	MOTION for Acquittal by Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Martin, Heather) (Entered: 09/18/2014)
09/18/2014	515	Memorandum in Support by Maureen G. McDonnell re 514 MOTION for Acquittal (Martin, Heather) (Entered: 09/18/2014)
09/18/2014	516	MOTION for New Trial by Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Martin, Heather) (Entered: 09/18/2014)
09/18/2014	517	Memorandum in Support by Maureen G. McDonnell re 516 MOTION for New Trial (Martin, Heather) (Entered: 09/18/2014)
09/18/2014	518	Memorandum in Support by Robert F McDonnell re 511 MOTION for New Trial (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Berry, Jonathan) (Entered: 09/18/2014)
09/20/2014	519	Consent MOTION for Extension of Time to File Response/Reply *to Post-Trial Motions (and Memorandum in Support)* by USA as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Aber, Jessica) (Entered: 09/20/2014)
09/22/2014	520	ORDER granting 519 Government's Consent Motion for Extension of Time to Respond to Defendants Robert F McDonnell's and Maureen G. McDonnell's post-trial motions (ECF Nos. 509 , 511 , 512 , 514 , and 516) no later than October 14, 2014. Signed by District Judge James R. Spencer on 9/22/14. (jtho,) (Entered: 09/22/2014)
09/22/2014	521	Letter dated September 20, 2014 addressed to the Honorable James R. Spencer received via facsimile from Steve Davis. (Original of (duplicate) letter received by mail on 9/25/14). (jtho,) Modified to update docket text as original letter received on 9/25/2014 (jtho,). (Entered: 09/23/2014)
09/25/2014	522	RESPONSE in Opposition by WP Company LLC as to Robert F McDonnell re 512 MOTION to Seal *Portion of Memorandum in Support of Motion for New Trial* (Merritt, Craig) (Entered: 09/25/2014)

09/26/2014	523	REPLY TO RESPONSE to by Robert F McDonnell re 512 MOTION to Seal *Portion of Memorandum in Support of Motion for New Trial* (Brownlee, John) (Entered: 09/26/2014)
10/08/2014	524	Consent MOTION for Extension of Time to File Response/Reply *in Support of Post-Trial Motions* by Robert F McDonnell. (Attachments: # 1 Proposed Order) (Berry, Jonathan) (Entered: 10/08/2014)
10/08/2014	525	Consent MOTION for Extension of Time to File Response/Reply *in Support of Post-Trial Motions* by Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Martin, Heather) (Entered: 10/08/2014)
10/10/2014	526	ORDER granting 524 Motion for Extension of Time to File Response/Reply as to Robert F McDonnell (1); granting 525 Motion for Extension of Time to File Response/Reply as to Maureen G. McDonnell (2). Defendants' replies in support of their post-trial motions (ECF Nos. 509 , 511 , 512 , 514 , and 516) must be filed no later than October 24, 2014. It is so ORDERED. Signed by District Judge James R. Spencer on 10/10/14. (tdai,) (Entered: 10/10/2014)
10/10/2014	527	MOTION to Continue *Sentencing* and Memorandum in Support by Maureen G. McDonnell. (Attachments: # 1 Proposed Order, # 2 Exhibit A)(Martin, Heather) Modified text on 10/15/2014 (tdai,). (Entered: 10/10/2014)
10/14/2014	528	MOTION to Seal by USA as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Aber, Jessica) (Entered: 10/14/2014)
10/14/2014	529	Memorandum in Support by USA as to Robert F McDonnell, Maureen G. McDonnell re 528 MOTION to Seal (Aber, Jessica) (Entered: 10/14/2014)
10/14/2014	530	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 511 MOTION for New Trial *(REDACTED)* (Aber, Jessica) Main document replaced on 10/15/2014 (tdai,). (Entered: 10/14/2014)
10/14/2014	531	RESPONSE by USA as to Robert F McDonnell, Maureen G. McDonnell re 512 MOTION to Seal *Portion of Memorandum in Support of Motion for New Trial* (Faulconer, Ryan) (Entered: 10/14/2014)
10/14/2014	532	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 509 Third MOTION for Acquittal (Faulconer, Ryan) (Entered: 10/14/2014)
10/14/2014	533	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 514 MOTION for Acquittal (Faulconer, Ryan) (Entered: 10/14/2014)
10/14/2014	534	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 516 MOTION for New Trial (Faulconer, Ryan) (Entered: 10/14/2014)
10/16/2014	535	ORDER granting 527 Motion to Continue as to Maureen G. McDonnell (2). Defendant's sentencing hearing is currently scheduled for January 6, 2015, at 10:00 AM. Defendant requests that sentencing be continued to a date after February 16, 2015. The Government does not take a position on the Motion. Upon due consideration, the Motion is hereby GRANTED. Counsel are DIRECTED to

		contact the Court within seven (7) days of the date this Order is entered to schedule a new sentencing date convenient to the parties and the Court. It is so ORDERED. Signed by District Judge James R. Spencer on 10/16/14. (tdai,) (Entered: 10/16/2014)
10/16/2014		Sentencing 1/6/15 CONTINUED as to Maureen G. McDonnell. (khan,) (Entered: 10/16/2014)
10/18/2014	536	NOTICE by USA as to Robert F McDonnell re 530 Response in Opposition (Dry, Michael) (Entered: 10/18/2014)
10/23/2014		Set/Reset Hearings as to Maureen G. McDonnell: Sentencing set for 2/20/2015 at 09:00 AM in Richmond Courtroom 7000 before District Judge James R. Spencer. (khan,) (Entered: 10/23/2014)
10/23/2014	537	MOTION to Seal *Appendices to Motion #44 and to Seal Motion #45 in Full* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 10/23/2014)
10/23/2014	538	Memorandum in Support by Robert F McDonnell re 537 MOTION to Seal *Appendices to Motion #44 and to Seal Motion #45 in Full* (Berry, Jonathan) (Entered: 10/23/2014)
10/23/2014	539	MOTION to Supplement the Record on Appeal by Robert F McDonnell. (Attachments: # 1 Proposed Order, # 2 Appendix 1, # 3 Appendix 2, # 4 Appendix 3)(Berry, Jonathan) (Entered: 10/23/2014)
10/24/2014	540	REPLY TO RESPONSE to by Robert F McDonnell re 509 Third MOTION for Acquittal (Berry, Jonathan) (Entered: 10/24/2014)
10/24/2014	541	REPLY TO RESPONSE to by Robert F McDonnell re 511 MOTION for New Trial (Berry, Jonathan) (Entered: 10/24/2014)
10/24/2014	542	MOTION to Seal *Portion of Reply in Support of Motion for New Trial* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 10/24/2014)
10/24/2014	543	Memorandum in Support by Robert F McDonnell re 542 MOTION to Seal *Portion of Reply in Support of Motion for New Trial* (Berry, Jonathan) (Entered: 10/24/2014)
10/24/2014	544	REPLY TO RESPONSE to by Maureen G. McDonnell re 514 MOTION for Acquittal (Martin, Heather) (Entered: 10/24/2014)
10/24/2014	545	REPLY TO RESPONSE to by Maureen G. McDonnell re 516 MOTION for New Trial (Martin, Heather) (Entered: 10/24/2014)
10/30/2014	546	ORDER denying 512 Motion to Seal Portion of Memorandum in Support of Motion for New Trial as to Robert F McDonnell (1); granting in part and denying in part 528 Motion to Seal as to Robert F McDonnell (1), Maureen G. McDonnell (2); denying 542 Motion to Seal Portion of Reply in Support of Motion for New Trial as to Robert F McDonnell (1). The parties are hereby directed to file the unredacted versions of their respective documents. Furthermore, the Clerk is DIRECTED to UNSEAL the transcript from the chambers conference held on August 12, 2014 (ECF No. 506). See Order for complete details. It is so

		ORDERED. Signed by District Judge James R. Spencer on 10/29/14. SEE UNSEALED TRANSCRIPT (ECF NO. 547). (tdai,) (Entered: 10/30/2014)
10/30/2014	548	Memorandum in Support by Robert F McDonnell re 511 MOTION for New Trial *(Unredacted)* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Berry, Jonathan) (Entered: 10/30/2014)
10/30/2014	549	REPLY TO RESPONSE to by Robert F McDonnell re 511 MOTION for New Trial *(Unredacted)* (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Berry, Jonathan) (Entered: 10/30/2014)
10/30/2014	550	MOTION to Seal *Motion # 29* by Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Martin, Heather) Modified text on 1/8/2015 (tdai,). (Entered: 10/30/2014)
10/30/2014	551	Memorandum in Support by Maureen G. McDonnell re 550 MOTION to Seal *Motion # 29* (Martin, Heather) Modified text on 1/8/2015 (tdai,). (Entered: 10/30/2014)
10/30/2014	552	MOTION to Supplement the Record on Appeal by Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Martin, Heather) (Entered: 10/30/2014)
10/30/2014	553	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 511 MOTION for New Trial *(Partially Unredacted)* (Faulconer, Ryan) (Entered: 10/30/2014)
11/03/2014	554	Motion to Unseal for Limited Purpose with Memorandum in Support by USA as to Robert F McDonnell (1), Maureen G. McDonnell(2). (Attachments: # 1 Proposed Order)(tdai,) Modified text on 11/3/2014 (tdai,). Modified on 1/12/2015 - Unsealed per 620 Memorandum Order (tdai,). (Entered: 11/03/2014)
11/03/2014	555	MOTION to Seal *Response to Defendants' Motions to Supplement the Record (Doc. Nos. 539, 552) and Memorandum in Support* by USA as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Aber, Jessica) Modified text on 11/4/2014 (tdai,). (Entered: 11/03/2014)
11/04/2014	556	MOTION to Seal *Response Brief to Defendants' Motions to Unseal Portions of the Record (see related Doc. Nos. 537 and 550)* by USA as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Aber, Jessica) (Entered: 11/04/2014)
11/06/2014	557	MOTION to Seal *Reply in Support of Motion to Supplement the Record* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 11/06/2014)
11/06/2014	558	Memorandum in Support by Robert F McDonnell re 557 MOTION to Seal *Reply in Support of Motion to Supplement the Record* (Berry, Jonathan) (Entered: 11/06/2014)
11/07/2014	559	MOTION to Seal *Reply in Support of Motion to Unseal* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 11/07/2014)
11/07/2014	560	Memorandum in Support by Robert F McDonnell re 559 MOTION to Seal *Reply in Support of Motion to Unseal* (Berry, Jonathan) (Entered: 11/07/2014)

11/10/2014	561	ORDER as to Robert F McDonnell (1), Maureen G. McDonnell (2) re 554 Motion to Unseal for Limited Purpose with Memorandum in Support. It is so ORDERED. Signed by District Judge James R. Spencer on 11/10/14. (tdai,) Modified on 1/12/2015 - Unsealed per 620 Memorandum Order (tdai,). (Entered: 11/10/2014)
11/18/2014	562	MOTION to Seal *Statement Relevant to Motion to Unseal* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 11/18/2014)
11/18/2014	563	Memorandum in Support by Robert F McDonnell re 562 MOTION to Seal *Statement Relevant to Motion to Unseal* (Berry, Jonathan) (Entered: 11/18/2014)
11/26/2014	564	MOTION to Withdraw as Attorney by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 11/26/2014)
12/01/2014	565	MEMORANDUM OPINION as to Maureen G. McDonnell (2). Signed by District Judge James R. Spencer on 12/1/14. (tdai,) (Entered: 12/01/2014)
12/01/2014	566	ORDER denying 516 Motion for New Trial as to Maureen G. McDonnell (2). Signed by District Judge James R. Spencer on 12/1/14. (tdai,) (Entered: 12/01/2014)
12/01/2014	567	MEMORANDUM OPINION as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 12/1/14. (tdai,) (Entered: 12/01/2014)
12/01/2014	568	ORDER denying 511 Motion for New Trial as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 12/1/14. (tdai,) (Entered: 12/01/2014)
12/01/2014	569	MEMORANDUM OPINION as to Maureen G. McDonnell (2). Signed by District Judge James R. Spencer on 12/1/14. (tdai,) (Entered: 12/01/2014)
12/01/2014	570	ORDER granting in part and denying in part 514 Motion for Acquittal as to Maureen G. McDonnell (2). Signed by District Judge James R. Spencer on 12/1/14. (tdai,) (Entered: 12/01/2014)
12/01/2014	571	MEMORANDUM OPINION as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 12/1/14. (tdai,) (Entered: 12/01/2014)
12/01/2014	572	ORDER denying 509 Third Motion for Acquittal as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 12/1/14. (tdai,) (Entered: 12/01/2014)
12/01/2014	573	ORDER granting 564 Motion to Withdraw as Attorney. Ryan Dean Newman withdrawn from case as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 12/1/14. (tdai,) (Entered: 12/01/2014)
12/02/2014	574	PRESENTENCE INVESTIGATION REPORT (Disclosed Presentence Investigation Report) (SEALED - government and defense counsel) as to Robert F McDonnell. Objections to PSI due 12/16/14. (drumheller, dorothy) (Entered: 12/02/2014)
12/08/2014	575	Letter from William A. Burck to Honorable James R. Spencer as to Maureen G. McDonnell (2). (Martin, Heather) Modified to correct docket on 12/8/2014 (tdai,). (Entered: 12/08/2014)

12/08/2014	576	MOTION for Leave to File Excess Pages *for Sentencing Memorandum* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 12/08/2014)
12/08/2014	577	RESPONSE in Opposition by USA as to Robert F McDonnell re 576 MOTION for Leave to File Excess Pages *for Sentencing Memorandum* (Aber, Jessica) (Entered: 12/08/2014)
12/09/2014	578	NOTICE OF ATTORNEY APPEARANCE: Thomas Brady Shuttleworth, II appearing for Robert F McDonnell.(Shuttleworth, Thomas) Modified to correct text on 12/9/2014 (tdai,). (Entered: 12/09/2014)
12/09/2014	579	REPLY TO RESPONSE to by Robert F McDonnell re 576 MOTION for Leave to File Excess Pages *for Sentencing Memorandum* (Berry, Jonathan) (Entered: 12/09/2014)
12/10/2014	580	ORDER granting 576 Motion for Leave to File Excess Pages for Sentencing Memorandum as to Robert F McDonnell (1). Signed by District Judge James R. Spencer on 12/10/14. (tdai,) Modified text on 12/10/2014 (tdai,). (Entered: 12/10/2014)
12/23/2014	581	PRESENTENCE INVESTIGATION REPORT (Sentencing Presentence Investigation Report) (SEALED - government and defense counsel) *INCLUDES ADDENDUM* as to Robert F McDonnell. (drumheller, dorothy) (Entered: 12/23/2014)
12/23/2014	582	Position on Sentencing by Robert F McDonnell (Berry, Jonathan) (Entered: 12/23/2014)
12/23/2014	584	NOTICE *of Submission of Appendix 1 of 7* by Robert F McDonnell re 582 Position on Sentencing (Attachments: # 1 Appendix 1-A, # 2 Appendix 1-B, # 3 Appendix 1-C)(Berry, Jonathan) (Entered: 12/23/2014)
12/23/2014	585	NOTICE *of Submission of Appendix 2 of 7* by Robert F McDonnell re 582 Position on Sentencing (Attachments: # 1 Appendix 2-A, # 2 Appendix 2-B, # 3 Appendix 2-C)(Berry, Jonathan) (Entered: 12/23/2014)
12/23/2014	586	NOTICE *of Submission of Appendix 3 of 7* by Robert F McDonnell re 582 Position on Sentencing (Attachments: # 1 Appendix 3-A, # 2 Appendix 3-B, # 3 Appendix 3-C)(Berry, Jonathan) (Entered: 12/23/2014)
12/23/2014	587	NOTICE *of Submission of Appendix 4 of 7* by Robert F McDonnell re 582 Position on Sentencing (Attachments: # 1 Appendix 4)(Berry, Jonathan) (Entered: 12/23/2014)
12/23/2014	588	NOTICE *of Submission of Appendix 5 of 7* by Robert F McDonnell re 582 Position on Sentencing (Attachments: # 1 Appendix 5)(Berry, Jonathan) (Entered: 12/23/2014)
12/23/2014	589	NOTICE *of Submission of Appendix 6 of 7* by Robert F McDonnell re 582 Position on Sentencing (Attachments: # 1 Appendix 6-A, # 2 Appendix 6-B) (Berry, Jonathan) (Entered: 12/23/2014)
12/23/2014	590	NOTICE *of Submission of Appendix 7 of 7* by Robert F McDonnell re 582 Position on Sentencing (Attachments: # 1 Appendix 7)(Berry, Jonathan) (Entered:

		12/23/2014)
12/23/2014	591	Position on Sentencing by USA as to Robert F McDonnell (Faulconer, Ryan) (Entered: 12/23/2014)
12/23/2014	592	OBJECTION TO PRESENTENCE INVESTIGATION REPORT by Robert F McDonnell as to Robert F McDonnell (Berry, Jonathan) (Entered: 12/23/2014)
12/30/2014	593	MOTION to Unseal Document *(omnibus motion concerning outstanding sealing issues)* by WP Company LLC as to Robert F McDonnell, Maureen G. McDonnell. (Merritt, Craig) (Entered: 12/30/2014)
12/30/2014	594	Memorandum in Support by WP Company LLC as to Robert F McDonnell, Maureen G. McDonnell re 593 MOTION to Unseal Document *(omnibus motion concerning outstanding sealing issues)* (Merritt, Craig) (Entered: 12/30/2014)
12/30/2014	595	Opposition by Robert F McDonnell re 591 Position on Sentencing (Berry, Jonathan) (Entered: 12/30/2014)
12/30/2014	596	RESPONSE by USA as to Robert F McDonnell re 582 Position on Sentencing (Faulconer, Ryan) (Entered: 12/30/2014)
12/30/2014	597	RESPONSE by USA as to Robert F McDonnell re 592 Objection to Presentence Investigation Report (Attachments: # 1 Exhibit Attachment 1)(Faulconer, Ryan) (Entered: 12/30/2014)
12/31/2014	598	MOTION for Leave to Intervene and to Join Omnibus Motion Concerning Outstanding Sealing Issues by Associated Press as to Robert F McDonnell, Maureen G. McDonnell. (Attachments: # 1 Cover Letter)(tdai,) (Entered: 12/31/2014)
01/02/2015	599	Reply by Robert F McDonnell re 582 Position on Sentencing (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Berry, Jonathan) (Entered: 01/02/2015)
01/02/2015	600	REPLY TO RESPONSE to by USA as to Robert F McDonnell re 595 Opposition (Faulconer, Ryan) (Entered: 01/02/2015)
01/05/2015	601	MOTION for Bond *Pending Appeal* by Robert F McDonnell. (Attachments: # 1 Proposed Order)(Berry, Jonathan) (Entered: 01/05/2015)
01/05/2015	602	Memorandum in Support by Robert F McDonnell re 601 MOTION for Bond *Pending Appeal* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Berry, Jonathan) (Entered: 01/05/2015)
01/05/2015	603	NOTICE *of Filing Supplemental Appendix* by Robert F McDonnell re 582 Position on Sentencing (Attachments: # 1 Appendix)(Berry, Jonathan) (Entered: 01/05/2015)
01/06/2015	605	Minute Entry for proceedings held before District Judge James R. Spencer:Sentencing held on 1/6/2015 for Robert F McDonnell (1), Count(s) 1, 2-4, 5, 6-11, 24 MONTHS IMPRISONMENT EACH COUNT TO BE SERVED CONCURRENTLY WITH ALL OTHER COUNTS, 2 YEARS SUPERVISED RELEASE EACH COUNT TO BE SERVED CONCURRENTLY WITH ALL OTHER COUNTS, $100 S/A, Count(s) 12-13, NOT GUILTY BY JURY Dft remains on bond. Dft to self-report 2/9/15 by 10:00 a.m. (Court Reporter Jeff Kull, OCR, Tracy Stroh, Chandler & Halasz.)(khan,) (Entered: 01/07/2015)

01/06/2015	624	JUDGMENT as to Robert F McDonnell (1), Count(s) 1, 2-4, 5, 6-11, 24 MONTHS IMPRISONMENT TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, 2 YEARS SUPERVISED RELEASE TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, $100 S/A, Count(s) 12-13, NOT GUILTY BY JURY Signed by District Judge James R. Spencer on 1/6/14. (khan,) (Entered: 01/13/2015)
01/06/2015	625	Sealed Statement of Reasons as to Robert F McDonnell. Signed by District Judge James R. Spencer on 1/6/15. (khan,) (Entered: 01/13/2015)
01/07/2015	604	TRANSCRIPT of Proceedings held on January 6, 2015, Sentencing Proceedings before Judge James R. Spencer. Court reporter/transcriber Jeff Kull, Telephone number 804-916-2258. re: 629 **NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov** **Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 2/6/2015. Redacted Transcript Deadline set for 3/9/2015. Release of Transcript Restriction set for 4/7/2015.(kull, jeff) Modified on 2/6/2015 (tjoh,). (Entered: 01/07/2015)**
01/08/2015	606	ORDER granting 598 Motion for Leave to Intervene and to Join Omnibus Motion Concerning Outstanding Sealing Issues as to Robert F McDonnell (1), Maureen G. McDonnell (2). Signed by District Judge James R. Spencer on 1/8/15. (tdai,) (Entered: 01/08/2015)
01/08/2015	607	MEMORANDUM ORDER granting in part and denying in part 537 Motion to Seal Appendices to Motion #44 and to Seal Motion #45 in Full as to Robert F McDonnell (1); denying 557 Motion to Seal to Seal Reply in Support of Motion to Supplement the Record as to Robert F McDonnell (1); granting in part and denying in part 559 Motion to Seal Reply in Support of Motion to Unseal as to Robert F McDonnell (1); granting in part and denying in part 562 Motion to Seal Statement Relevant to Motion to Unseal as to Robert F McDonnell (1); granting in part and denying in part 550 Motion to Seal to Seal Motion # 29 as to Maureen G. McDonnell (2); denying 555 Motion to Seal Response to Defendants' Motions to Supplement the Record (Doc. Nos. 539, 552) and Memorandum in Support as to Robert F McDonnell (1), Maureen G. McDonnell (2); granting in part and denying in part 556 Motion to Seal Response Brief to Defendants' Motions to Unseal Portions of the Record (see related Doc. Nos. 537 and 550) as to Robert F McDonnell (1), Maureen G. McDonnell (2). Further, the parties are DIRECTED to publicly file their respective pleadings related to any of the aforementioned Motions to Seal. SEE ORDER FOR COMPLETE DETAILS. Signed by District Judge James R. Spencer on 1/8/15. (tdai,) (Entered: 01/08/2015)
01/08/2015	608	ORDER denying 539 Motion to Supplement the Record on Appeal as to Robert F McDonnell (1); denying 552 Motion to Supplement the Record on Appeal as to Maureen G. McDonnell (2). Signed by District Judge James R. Spencer on 1/8/15.

		(tdai,) (Entered: 01/08/2015)
01/09/2015	609	PRESENTENCE INVESTIGATION REPORT (Final Presentence Investigation Report) (SEALED - government and defense counsel) *CORRECTED AND FINAL VERSION* as to Robert F McDonnell. (smith, lisa) (Entered: 01/09/2015)
01/09/2015	610	RESPONSE in Opposition by USA as to Robert F McDonnell re 601 MOTION for Bond *Pending Appeal* (Aber, Jessica) (Entered: 01/09/2015)
01/09/2015	611	MOTION to Unseal Certain Sealed Portions of the Record (Redacted) by Robert F McDonnell. (Attachments: # 1 Proposed Order, # 2 Exhibits A-F)(Berry, Jonathan) Modified text on 1/12/2015 (tdai,). (Entered: 01/09/2015)
01/09/2015	612	Memorandum in Support (Redacted) by Robert F McDonnell re 611 MOTION to Unseal Certain Sealed Portions of the Record (Redacted) (Berry, Jonathan) Modified text on 1/12/2015 (tdai,). (Entered: 01/09/2015)
01/09/2015	613	REPLY TO RESPONSE (Redacted) by Robert F McDonnell to re 611 MOTION to Unseal Certain Sealed Portions of the Record (Redacted) (Berry, Jonathan) Modified text on 1/12/2015 (tdai,). (Entered: 01/09/2015)
01/09/2015	614	NOTICE *of Mr McDonnell's Statement Respecting "Opposition to Unsealing"* by Robert F McDonnell re 611 MOTION to Unseal Certain Sealed Portions of the Record (Redacted) (Berry, Jonathan) Modified text on 1/12/2015 (tdai,). (Entered: 01/09/2015)
01/09/2015	615	NOTICE *of Filing Appendices to Motion # 44 to Supplement the Record on Appeal* by Robert F McDonnell re 539 MOTION to Supplement the Record on Appeal (Attachments: # 1 Appendices 4-12, # 2 Appendices 13-29, # 3 Appendices 30-35)(Berry, Jonathan) (Entered: 01/09/2015)
01/09/2015	616	REPLY TO RESPONSE to by Robert F McDonnell re 539 MOTION to Supplement the Record on Appeal (Attachments: # 1 Exhibit A)(Berry, Jonathan) (Entered: 01/09/2015)
01/09/2015	617	RESPONSE in Opposition (Redacted) by USA as to Robert F McDonnell re 611 MOTION to Unseal Certain Sealed Portions of the Record (Redacted) (Aber, Jessica) Modified text on 1/12/2015 (tdai,). (Entered: 01/09/2015)
01/09/2015	618	RESPONSE in Opposition by USA as to Robert F McDonnell, Maureen G. McDonnell re 552 MOTION to Supplement the Record on Appeal , 539 MOTION to Supplement the Record on Appeal (Aber, Jessica) (Entered: 01/09/2015)
01/09/2015	619	MOTION to Unseal Certain Sealed Portions of the Record (Redacted) by Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Martin, Heather) Modified text on 1/12/2015 (tdai,). (Entered: 01/09/2015)
01/12/2015	620	MEMORANDUM ORDER granting in part and denying in part 611 Motion to Unseal Document as to Robert F McDonnell (1); granting in part and denying in part 619 Motion to Unseal Document as to Maureen G. McDonnell (2). SEE ORDER FOR COMPLETE DETAILS. The Clerk is DIRECTED to UNSEAL the miscellaneous civil case, In re Grand Jury Subpoenas, 3:14-ms-67, as well as all pleadings and corresponding exhibits, opinions and orders filed in criminal case no. 3:14-CR-12, which are related to this matter. (ECF Nos. 203 , 204 , 205 , 206 ,

		554 , and 561). Signed by District Judge James R. Spencer on 1/12/15. (tdai,) (Entered: 01/12/2015)
01/12/2015	621	ORDER denying as moot 593 Motion to Unseal Document (omnibus motion concerning outstanding sealing issues) as to Robert F McDonnell (1), Maureen G. McDonnell (2). SEE ORDER FOR COMPLETE DETAILS. Signed by District Judge James R. Spencer on 1/12/15. (tdai,) (Entered: 01/12/2015)
01/12/2015	622	REPLY TO RESPONSE to by Robert F McDonnell re 601 MOTION for Bond *Pending Appeal* (Attachments: # 1 Exhibit A)(Berry, Jonathan) (Entered: 01/12/2015)
01/13/2015	623	MEMORANDUM ORDER denying 601 Motion for Release Pending Appeal as to Robert F McDonnell (1). SEE ORDER FOR COMPLETE DETAILS. Signed by District Judge James R. Spencer on 1/13/15. (tdai,) (Entered: 01/13/2015)
01/13/2015	626	NOTICE *of Filing Unsealed Exhibits to Motion # 45 to Unseal* by Robert F McDonnell re 611 MOTION to Unseal Certain Sealed Portions of the Record (Redacted) (Attachments: # 1 Exhibits A & B)(Berry, Jonathan) (Entered: 01/13/2015)
01/13/2015	627	AMENDED JUDGMENT (ONLY CHANGE: corrected offense end date on Count 10) as to Robert F McDonnell (1), Count(s) 1, 2-4, 5, 6-11, 24 MONTHS IMPRISONMENT TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, 2 YEARS SUPERVISED RELEASE TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, $100 S/A; Count(s) 12-13, NOT GUILTY BY JURY Signed by District Judge James R. Spencer on 1/13/2015. (khan,) (Entered: 01/13/2015)
01/13/2015	628	AMENDED Sealed Statement of Reasons as to Robert F McDonnell. Signed by District Judge James R. Spencer on 1/13/2015. (khan,) (Entered: 01/13/2015)
01/13/2015	629	NOTICE OF APPEAL by Robert F McDonnell Filing fee $505, receipt number 0422-4268456. (Berry, Jonathan) (Entered: 01/13/2015)
01/13/2015	630	Transmission of Notice of Appeal to 4CCA as to Robert F McDonnell to US Court of Appeals re 629 Notice of Appeal - Final Judgment (All case opening forms, plus the transcript guidelines, may be obtained from the Fourth Circuit's website at www.ca4.uscourts.gov) (lbre,) (Entered: 01/13/2015)
01/13/2015		USCA Case Number 15-4019, Case Manager C.Poulsen, for 629 Notice of Appeal - Final Judgment filed by Robert F McDonnell. (lbre,) (Entered: 01/14/2015)
01/16/2015	631	PRESENTENCE INVESTIGATION REPORT (Disclosed Presentence Investigation Report) (SEALED - government and defense counsel) *INCLUDES 2 ATTACHMENTS* as to Maureen G. McDonnell. Objections to PSI due 01/30/15. (Attachments: # 1 Letter Events, # 2 Letter Letters)(drumheller, dorothy) (Entered: 01/16/2015)
01/20/2015	632	ORDER that this matter is before the court sua sponte. The questionnaires as completed by the jury venire in the above-styled case have been properly readacted pursuant to this Court's Order on September 2, 2014 (ECF No. 485). Any person interested in obtaining a copy of such questionnaires may contact Lantagne Legal Printing at 804-644-0477 or 1-800-847-0477. The cost for a paper

		copy is $400 and the cost for a CD-Rom is $200. Additional shipping charges will also apply. Signed by District Judge James R. Spencer on 1/20/15. (khan,) (Entered: 01/20/2015)
01/26/2015	633	ORDER of USCA as to Robert F McDonnell re 629 Notice of Appeal - Final Judgment Upon consideration of the submissions relative to appellant's motion for release pending appeal pursuant to 18 U.S.C. § 3143(b), the court grants appellant's motion and releases appellant on his own recognizance pending appeal, subject to the same conditions imposed by the district court for release pending trial. (See Order for details.) (lbre,) (Entered: 01/26/2015)
01/30/2015	634	NOTICE OF ATTORNEY APPEARANCE: Randy Darrell Singer appearing for Maureen G. McDonnell (Singer, Randy) (Entered: 01/30/2015)
02/06/2015	635	PRESENTENCE INVESTIGATION REPORT (Sentencing Presentence Investigation Report) (SEALED - government and defense counsel) as to Maureen G. McDonnell. (Attachments: # 1 Supplement LETTERS OF SUPPORT, # 2 Supplement LETTERS OF SUPPORT, # 3 Supplement SUPPORTING DOCUMENTS)(smith, lisa) (Entered: 02/06/2015)
02/06/2015	637	SENTENCING MEMORANDUM by Maureen G. McDonnell (Martin, Heather) (Entered: 02/06/2015)
02/06/2015	638	MOTION for Bond *Pending Appeal* by Maureen G. McDonnell. (Attachments: # 1 Proposed Order)(Martin, Heather) (Entered: 02/06/2015)
02/06/2015	639	Position on Sentencing by USA as to Maureen G. McDonnell (Faulconer, Ryan) (Entered: 02/06/2015)
02/13/2015	640	NOTICE *Regarding Additional Sentencing Pleadings* by USA as to Maureen G. McDonnell (Aber, Jessica) (Entered: 02/13/2015)
02/20/2015	641	Minute Entry for proceedings held before District Judge James R. Spencer:Sentencing held on 2/20/2015 for Maureen G. McDonnell (2), Count(s) 1, 10, 2-3, 5, 6-8, 12 MONTHS AND 1 DAY TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, 2 YEARS SUPERVISED RELEASE TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, $100 S/A ON EACH COUNT; Count(s) 11, 13, 4, 9, NOT GUILTY PURSUANT TO JURY VERDICT; Count(s) 14, DISMISSED PURSUANT TO ORDER ENTERED 12/1/2014 (DKT #570). Dft remains on bond pending appeal. (Court Reporter Jeff Kull, OCR.)(khan,) (Entered: 02/23/2015)
02/20/2015	645	JUDGMENT as to Maureen G. McDonnell (2), Count(s) 1, 10, 2-3, 5, 6-8, 12 MONTHS AND 1 DAY TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, 2 YEARS SUPERVISED RELEASE TO BE SERVED CONCURRENT WITH ALL OTHER COUNTS, $100 S/A ON EACH COUNT, Count(s) 11, 13, 4, 9, NOT GUILTY PURSUANT TO JURY VERDICT; Count(s) 14, DISMISSED PURSUANT TO ORDER ENTERED 12/1/2014 (DKT #570). Dft remains on bond pending appeal. Signed by District Judge James R. Spencer on 2/20/15. (khan,) (Entered: 02/25/2015)
02/20/2015	646	Sealed Statement of Reasons as to Maureen G. McDonnell. Signed by District Judge James R. Spencer on 2/20/15. (khan,) (Entered: 02/25/2015)

02/24/2015	642	Letters addressed to District Judge James R. Spencer re: Robert F McDonnell. (jtho,) (Entered: 02/24/2015)
02/24/2015	643	Letters (Part 1) addressed to District Judge James R. Spencer re: Maureen McDonnell. (jtho,) (Entered: 02/24/2015)
02/24/2015	644	Letters (Part 2) addressed to District Judge James R. Spencer re: Maureen McDonnell. (jtho,) (Entered: 02/24/2015)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA

v.

ROBERT F. MCDONNELL
(Counts 1–13)

and

MAUREEN G. MCDONNELL,
(Counts 1–11, 13–14)

Defendants.

No. 3:14cr 12

Count 1: 18 U.S.C. § 1349
(Conspiracy to Commit Honest-Services Wire Fraud)

Counts 2–4: 18 U.S.C. § 1343
(Honest-Services Wire Fraud)

Count 5: 18 U.S.C. § 1951
(Conspiracy to Obtain Property under Color of Official Right)

Counts 6–11: 18 U.S.C. § 1951
(Obtaining Property under Color of Official Right)

Counts 12–13: 18 U.S.C. § 1014
(False Statements)

Count 14: 18 U.S.C. § 1512(c)(2)
(Obstruction of Official Proceeding)

Forfeiture Notice

January 2014 Term - at Richmond, Virginia

INDICTMENT

THE GRAND JURY CHARGES THAT:

At all times relevant to this Indictment, unless otherwise stated:

GENERAL ALLEGATIONS

A. The Defendants

1. Defendant ROBERT F MCDONNELL was the Governor of the Commonwealth of Virginia. He previously served as a member of the Virginia House of Delegates and as the

Attorney General of Virginia. ROBERT MCDONNELL was sworn in as the 71st Governor of Virginia in January 2010.

2. Defendant MAUREEN G. MCDONNELL was the wife of ROBERT MCDONNELL and served as the First Lady of Virginia.

B. Relevant Individuals and Entities

3. MoBo Real Estate Partners, LLC ("MoBo") was a Virginia limited liability company engaged in the business of owning and renting vacation homes in Virginia Beach, Virginia. ROBERT MCDONNELL was one of two members of, and had a 50% personal financial interest in, MoBo.

4. Star Scientific, Inc. ("Star Scientific") was a Delaware corporation with its principal executive offices located in Glen Allen, Virginia. Star Scientific was a publicly traded company on the NASDAQ Global Market under the ticker symbol "STSI." Star Scientific was involved in and its activities affected interstate commerce.

5. JW was the Chief Executive Officer of Star Scientific.

C. The Governor and the Governor's Office

6. The Governor and the Office of the Governor of the Commonwealth of Virginia ("OGV") performed a wide range of official actions. Those actions included, among other things, appointing directors and key administrators of state departments, agencies, and boards; authorizing expenditures of certain grant funds; proposing a budget and overseeing the expenditure of state funds; conducting meetings and hosting events for the purposes of fostering Virginia business and economic development; directing other government officials to conduct such meetings and events; speaking at events in and outside Virginia about Virginia businesses and economic development; coordinating with state boards, commissions, and institutions,

including universities, about uses of state labor and funding resources; and otherwise setting priorities and direction for the Commonwealth of Virginia.

7. Throughout his campaign for Governor, ROBERT MCDONNELL made it clear that one of his highest priorities as Governor would be acting to promote the matter and cause of economic development for businesses and industries in Virginia, *e.g.* his campaign slogan was "Bob's for Jobs." Throughout his tenure as Governor, ROBERT MCDONNELL customarily performed official actions to promote the matter and cause of economic development of Virginia businesses and industries, and he touted his efforts and activities in support of the same.

D. Background of Star Scientific's Dietary Supplement Products

8. Star Scientific described itself as a "technology-oriented company with a mission to promote maintenance of a healthy metabolism and lifestyle." Beginning in or about 2007, the company focused on utilizing certain alkaloids in the tobacco plant, namely anatabine, to address issues related to the desire to smoke. Star Scientific subsequently began evaluating anatabine's potential for treating chronic inflammation that the company believed might be associated with disorders such as thyroiditis, diabetes, arthritis, Alzheimer's disease, and multiple sclerosis.

9. Star Scientific, through a wholly owned subsidiary, engaged in the development, manufacture, marketing, and sale of two anatabine-based dietary supplements: CigRx®, a tobacco alternative; and Anatabloc®, for anti-inflammatory support.

10. The types of claims that Star Scientific could make under applicable federal law regarding its dietary supplements CigRx® and Anatabloc® differed substantially from those allowed for drug manufacturers. While drug manufacturers could claim that their products would diagnose, cure, mitigate, treat, or prevent a disease, dietary supplement manufacturers such as Star Scientific were legally prohibited from making such claims. These legal limitations

made it more challenging for Star Scientific to gain widespread consumer acceptance of the potential health benefits for its dietary supplement products.

11. To overcome the difficulties in gaining consumer acceptance for its products, Star Scientific sought to legitimize the potential health benefits of its dietary supplements by encouraging scientific studies of anatabine, which was an active ingredient in CigRx® and Anatabloc®. Star Scientific would then present the results of those studies to physicians in the hope that the physicians would recommend Star Scientific's dietary supplements to their patients.

12. Another of Star Scientific's goals was to have scientific studies of human use of anatabine, including in clinical trials, that would allow the company to develop drugs for the treatment of diseases such as thyroiditis, diabetes, arthritis, Alzheimer's disease, and multiple sclerosis.

E. Background of the Defendants' Relationship with JW

13. In or about March 2009, as a result of requests from ROBERT MCDONNELL's staff to JW, ROBERT MCDONNELL began using a jet aircraft owned by JW during his campaign for Governor of Virginia. Prior to this time, ROBERT MCDONNELL and JW had never met, and they had no personal or professional relationship.

14. On or about November 3, 2009, ROBERT MCDONNELL was elected Governor of Virginia. While ROBERT MCDONNELL and JW had met briefly during the campaign as a result of ROBERT MCDONNELL's use of JW's aircraft, they had no personal relationship and were merely professional acquaintances at the time that ROBERT MCDONNELL became Governor-Elect.

15. In or about December 2009, ROBERT MCDONNELL attended a political event at the Four Seasons Hotel in New York City. As a result of a request by JW to one of ROBERT MCDONNELL's staff, JW met with ROBERT MCDONNELL and MAUREEN MCDONNELL at the Four Seasons Hotel. During the meeting, MAUREEN MCDONNELL asked for assistance in finding a designer dress for her husband's upcoming inauguration as Governor, and JW agreed to help. MAUREEN MCDONNELL subsequently informed JE, one of ROBERT MCDONNELL's senior staff members, that JW had agreed to purchase a designer dress by Oscar de la Renta for MAUREEN MCDONNELL for the inauguration. JE expressed concerns regarding the prospect of JW purchasing MAUREEN MCDONNELL's inaugural dress and ultimately informed her that JW's purchase of a designer dress for the inauguration would be inappropriate and should not be done. As a result, MAUREEN MCDONNELL became upset with JE.

16. On or about December 21, 2009, MAUREEN MCDONNELL sent an email to JE, stating:

> I need to talk to you about Inaugural clothing budget. I need answers and Bob is screaming about the thousands I'm charging up in credit card debt. We are broke, have an unconscionable amount in credit card debt already, and this Inaugural is killing us!! I need answers and I need help, and I need to get this done.

MAUREEN MCDONNELL subsequently told JW that she could not accept the dress at that time but that she would take a "rain check" from him.

17. On or about October 3, 2010, JW agreed to let ROBERT MCDONNELL use JW's aircraft to fly from Richmond, Virginia, to Sacramento, California, for a political event. JW met ROBERT MCDONNNELL in Sacramento, California, and accompanied him on the return flights to Richmond. JW used the trip as an opportunity to discuss Star Scientific's products directly with ROBERT MCDONNELL. During the return flights, JW informed

ROBERT MCDONNELL of the significant potential health benefits of anatabine and the need for scientific studies of these potential health benefits. JW told ROBERT MCDONNELL that Star Scientific needed the assistance of the Virginia government, and ROBERT MCDONNELL told JW that he would put JW in contact with the Virginia Secretary of Health and Human Resources (the "Virginia Secretary of Health").

18. On or about October 12, 2010, an OGV staff member emailed the Virginia Secretary of Health and attached a copy of a press release that had been forwarded by JW's assistant. The press release announced the beginning of clinical trials of anatabine (also referred to as "RCP-006," a compound whose active ingredient is anatabine) for the treatment of Alzheimer's disease. In the email, the OGV staff member stated, "[T]he Governor would like you to review the attached. I am sending the original note up to you today."

19. On or about November 4, 2010, JW met with the Virginia Secretary of Health to discuss Star Scientific's products. The meeting had been previously arranged by an OGV staff member. During the meeting, JW discussed the potential health benefits of Star Scientific's products. The Virginia Secretary of Health was skeptical regarding JW's claims because Star Scientific's products had not been scientifically proven to be effective. JW requested that the Virginia Secretary of Health visit the Roskamp Institute, a Florida-based research group that had financial ties to Star Scientific and had begun scientific studies of anatabine. The Virginia Secretary of Health ultimately rejected JW's invitation to visit the Roskamp Institute.

20. On or about February 3, 2011, Star Scientific invited doctors and health professionals to a seminar dinner at the Jefferson Hotel in Richmond, Virginia, for its CigRx® product. The dinner was part of Star Scientific's marketing strategy of gaining consumer acceptance by convincing doctors and health professionals to recommend CigRx® to their

patients. On the day of the dinner, JW contacted one of the OGV staff members and requested that ROBERT MCDONNELL come to the CigRx® event and address the attendees. That evening, both ROBERT MCDONNELL and MAUREEN MCDONNELL came to the event at the Jefferson Hotel. ROBERT MCDONNELL made brief remarks in support of Star Scientific to the doctors and health professionals in attendance. Star Scientific subsequently received the OGV's approval to put pictures of ROBERT MCDONNELL speaking at the CigRx® event on the company's Facebook and Twitter social media sites.

21. As of in or about 2009 and continuing through 2012, MoBo's two Virginia Beach properties required capital infusions of up to $60,000 annually to meet mortgage payments and other expenses. MoBo relied on loans, including those from family and friends, to make up the difference. MoBo explored the possibility of selling the two properties without success as their values were declining. MoBo also began to explore refinancing the heavily leveraged properties.

F. The Scheme

22. As set forth in greater detail below, from in or about April 2011 through in or about March 2013, the defendants participated in a scheme to use ROBERT MCDONNELL's official position as the Governor of Virginia to enrich the defendants and their family members by soliciting and obtaining payments, loans, gifts, and other things of value from JW and Star Scientific in exchange for ROBERT MCDONNELL and the OGV performing official actions on an as-needed basis, as opportunities arose, to legitimize, promote, and obtain research studies for Star Scientific's products, including Anatabloc®. And as also detailed below, the defendants took steps throughout that time to conceal the scheme.

23. On or about April 11, 2011, MAUREEN MCDONNELL contacted JW and requested that he take her shopping in New York City for the designer dress by Oscar de la Renta. MAUREEN MCDONNELL explained that she and ROBERT MCDONNELL were attending a political event at the Union League Club in New York City on April 13, 2011, and that she would ensure that JW was seated next to ROBERT MCDONNELL at the event. JW agreed to pay for the shopping trip.

24. On or about April 13, 2011, JW accompanied MAUREEN MCDONNELL to several luxury stores in New York City, including Oscar de la Renta, Louis Vuitton, and Bergdorf Goodman. MAUREEN MCDONNELL informed JW that she needed dresses and accessories for her daughter's upcoming wedding and for her and ROBERT MCDONNELL's upcoming anniversary party. JW paid for the entire luxury shopping trip for MAUREEN MCDONNELL and spent approximately $10,999 at Oscar de la Renta, approximately $5,685 at Louis Vuitton, and approximately $2,604 at Bergdorf Goodman. As promised by MAUREEN MCDONNELL, JW was seated next to ROBERT MCDONNELL at the Union League Club event later that evening.

25. On or about April 29, 2011, JW and his wife attended a private dinner at the Governor's Mansion with ROBERT MCDONNELL and MAUREEN MCDONNELL. During the dinner, JW and his wife discussed Star Scientific's products with the defendants. During the dinner, JW and his wife met CM, one of the defendants' daughters. JW and his wife had not previously met CM, who they learned was getting married in June 2011.

26. On or about May 2, 2011, JW had a private meeting with MAUREEN MCDONNELL at the Governor's Mansion. During the meeting, MAUREEN MCDONNELL informed JW that she and ROBERT MCDONNELL were having severe financial difficulties.

MAUREEN MCDONNELL asked JW for a $50,000 loan. MAUREEN MCDONNELL also told JW that she could help Star Scientific but that she needed JW's financial assistance.

27. MAUREEN MCDONNELL also informed JW that she and ROBERT MCDONNELL did not know how they were going to pay for their daughter's upcoming wedding expenses, and she asked for JW's assistance. JW asked how much money was needed, and MAUREEN MCDONNELL responded that $15,000 was needed to pay the remaining catering costs.

28. Before agreeing to provide the requested financial assistance to the defendants, JW spoke directly with ROBERT MCDONNELL about the $50,000 loan. In that conversation, ROBERT MCDONNELL explained the defendants' financial difficulties. ROBERT MCDONNELL informed JW that the rental income from the defendants' rental properties in Virginia Beach was not covering the bills from those properties. JW agreed to provide the $50,000 loan with a two-year term at 5% interest. JW also informed ROBERT MCDONNELL that loan paperwork was not necessary.

29. On or about May 9, 2011, an OGV staff member sent an email to the Virginia Secretary of Health stating:

> **The Governor said that he sent you some material on the RosKamp Institute (http://www.rfdn.org/) and that you were going to get back to him regarding your thoughts on the organization. Have you had a chance to look at that yet? If so, could you let me know your thoughts? We are currently evaluating having the Governor go down to Florida to speak to this group and wanted to get your feedback prior to moving forward on this.**

The Virginia Secretary of Health sent a response email stating "[h]e mentioned this to me on Thursday so I have not gotten to it yet. How soon do you need to make a decision?" The OGV staff member responded via email that "[t]he person inviting the Governor is a good friend so I would like to be as responsive as possible."

30. On or about May 9, 2011, an OGV staff member sent an email to JW's assistant stating:

> I spoke with the Governor regarding flying down to speak to the RosKamp institute on June 1st. Unfortunately, after checking with his daughter (she is getting married that Saturday) he doesn't believe he will be able to attend due to some Dad commitments that day. I'm so sorry this won't work out! What else can we do to fix this?

31. On or about May 17, 2011, MAUREEN MCDONNELL entered a calendar event on her electronic calendar for her attendance at the June 1, 2011, Star Scientific event at the Roskamp Institute in Florida.

32. On or about May 23, 2011, JW instructed his assistant to write two checks: (a) a $50,000 check (No. 1001) made payable to MAUREEN MCDONNELL; and (b) a $15,000 check (No. 1002) made payable in blank with a memo annotation of "wedding gift." On or about May 23, 2011, JW also visited MAUREEN MCDONNELL at the Governor's Mansion and gave her the two checks.

33. On or about May 25, 2011, MAUREEN MCDONNELL deposited the $50,000 check (No. 1001) into her personal bank account (No. xxxx4417) at Wells Fargo Bank (d/b/a Wachovia Bank). Prior to that deposit, MAUREEN MCDONNELL's personal bank account had an available balance of approximately $4,798.

34. Between on or about May 25, 2011, and on or about May 31, 2011, MAUREEN MCDONNELL made the following payments from her Wells Fargo Bank (d/b/a Wachovia Bank) account (No. xxxx4417): (a) a $10,638.83 payment to Pentagon Federal Credit Union ("PenFed") for a credit card held solely in the name of ROBERT MCDONNELL; (b) a $9,900 payment to Bank of America for a credit card held jointly in both defendants' names; and (c) a $1,500 payment to MoBo.

35. On or about May 26, 2011, the catering company for CM's wedding cashed the $15,000 check referenced above (No. 1002). On or about December 29, 2010, ROBERT MCDONNELL had signed the contract with the catering company for CM's wedding and had made two payments totaling $7,948.50 in December 2010 and January 2011 as deposits on that contract. On or about June 13, 2011, after CM's wedding, the catering company refunded $5,266.50 via check to MAUREEN MCDONNELL. MAUREEN MCDONNELL caused the refund check to be deposited into her Wells Fargo Bank (d/b/a Wachovia Bank) account (No. xxxx4417) on or about June 21, 2011.

36. On or about May 28, 2011, ROBERT MCDONNELL sent an email to JW stating "Thanks so much for all your help with my family. Your very generous gift to [CM] was most appreciated as well as the golf round tomorrow for the boys. Maureen is excited about the trip to fla to learn more about the products and to see [JW's wife]. Have a restful weekend with your family. Thanks."

37. On or about May 29, 2011, ROBERT MCDONNELL, his two sons, and his future son-in-law played golf at Kinloch Golf Club ("Kinloch"), an exclusive private golf course in Manakin-Sabot, Virginia. JW was a member at Kinloch and had agreed to pay for ROBERT MCDONNELL and his family's golf outing there even though JW would not be playing with them. During the round of golf, ROBERT MCDONNELL and his family charged approximately $2,380 to JW's Kinloch member account, including approximately $1,200 in greens fees, $500 in caddie fees, $410 in merchandise at the pro shop, and $270 in food and beverages.

38. On or about June 1, 2011, MAUREEN MCDONNELL opened a brokerage account at Brokerage Firm A.

39. On or about June 1, 2011, MAUREEN MCDONNELL purchased 6,000 shares of Star Scientific stock in her newly opened Brokerage Firm A account. To pay for the purchase, MAUREEN MCDONNELL wrote a check from her Wells Fargo Bank (d/b/a Wachovia Bank) account (No. xxxx4417) for approximately $31,079.

40. On or about June 1, 2011, MAUREEN MCDONNELL and her Chief of Staff, a Virginia government employee, traveled on JW's private aircraft to Star Scientific's event at the Roskamp Institute in Sarasota, Florida. MAUREEN MCDONNELL spoke at the event, which was heavily attended by Star Scientific's investors, and announced that she was offering the Governor's Mansion for the location of Star Scientific's official product launch of Anatabloc®

41. On or about June 16, 2011, JW's assistant emailed an attached letter dated that same day to MAUREEN MCDONNELL's Chief of Staff. The letter was from JW, addressed to ROBERT MCDONNELL, and stated, in part:

> The particular intent of this letter is to provide the Commonwealth of Virginia with a technology platform to lower healthcare costs.
>
> ...
>
> I am suggesting that you use the attached protocol to initiate the 'Virginia Study' of Anatabloc at the Medical College of Virginia and the University of Virginia School of Medicine, with an emphasis on endocrinology, cardiology, osteoarthritis and gastroenterology.
>
> ...
>
> This landmark study will provide the data for an evaluation of the economic impact of Anatabloc in healthcare, and if we are right then I believe that the results of the Virginia study will have a major impact on reducing healthcare costs for Virginia.

MAUREEN MCDONNELL's Chief of Staff subsequently forwarded the letter by email to MAUREEN MCDONNELL.

42. In or about early July 2011, Star Scientific began exploring possible funding sources for scientific studies at Virginia research universities of Anatabloc's® potential health benefits. In particular, Star Scientific was interested in obtaining grant funding from the Virginia

Tobacco Indemnification and Community Revitalization Commission ("Tobacco Commission"), which provides grants for the promotion of economic growth and development in tobacco-dependent communities using proceeds of the national tobacco settlement. It was important to Star Scientific that these studies not be funded by the company for two primary reasons: (a) the studies would be very expensive and would strain Star Scientific's finances, and (b) having third-party funding would enhance the perceived legitimacy of the results of the studies in the scientific community.

43. The Tobacco Commission would not provide grants to for-profit entities. Therefore, Star Scientific developed a plan to encourage Virginia state research universities (*e.g.* the University of Virginia ("UVa") and Virginia Commonwealth University ("VCU," formerly Medical College of Virginia ("MCV"))) to apply to the Tobacco Commission for grants to perform scientific research of anatabine, the main active ingredient in the company's products.

44. In or about early July 2011, to effectuate its plan, Star Scientific began reaching out to scientific researchers at Virginia state universities. In addition to informing these researchers about the preliminary scientific results that indicated that anatabine might have health benefits for the treatment of various medical conditions, Star Scientific informed the Virginia state researchers that ROBERT MCDONNELL and MAUREEN MCDONNELL supported the research of the company's products and that the Tobacco Commission was a potential source of grant funding for the research.

45. On or about July 23, 2011, Star Scientific held a symposium at Gibson Island, Maryland, to discuss potential scientific studies of anatabine. The company invited researchers from UVa and VCU to attend the symposium to learn more about these studies and potential research funding from the Tobacco Commission. In addition, MAUREEN MCDONNELL's

Chief of Staff was invited to attend. The state researchers and MAUREEN MCDONNELL's Chief of Staff traveled together to and from the all-day symposium on JW's private aircraft.

46. From on or about July 28, 2011, through on or about July 31, 2011, ROBERT MCDONNELL, MAUREEN MCDONNELL, and their family members enjoyed a private vacation at JW's multimillion-dollar vacation home on Smith Mountain Lake in Virginia. MAUREEN MCDONNELL had previously called JW to ask whether JW's Ferrari would be at the house for ROBERT MCDONNELL's use. JW arranged to have a Star Scientific employee transport the Ferrari from Richmond to his Smith Mountain Lake house so that the defendants could use the Ferrari during their vacation. In addition, JW rented a boat specifically for the defendants' use during the vacation.

47. On or about July 31, 2011, at approximately 7:47 p.m., MAUREEN MCDONNELL sent an email to JW that contained no text but had an attached picture of ROBERT MCDONNELL driving JW's Ferrari.

48. On or about July 31, 2011, at approximately 11:29 p.m., ROBERT MCDONNELL sent an email to the Virginia Secretary of Health stating that ROBERT MCDONNELL "would like to have [one of the Secretary of Health's Deputies] attend a short briefing at the mansion about 10am with first lady on the Star Scientific anatablock [sic] trials planned in va at vcu and uva."

49. On or about August 1, 2011, as a result of ROBERT MCDONNELL's email to the Virginia Secretary of Health the night before, MAUREEN MCDONNELL, JW, and a senior policy advisor to the Virginia Secretary of Health met at the Governor's Mansion. JW informed the policy advisor that research scientists at UVa and MCV were interested in doing clinical trials of the potential health benefits of Anatabloc® for autoimmune diseases. JW explained that

the research scientists at the Virginia universities would get small planning grants to develop test protocols so that large grant proposals could be submitted to the Tobacco Commission. In MAUREEN MCDONNELL's presence, JW told the policy advisor that he anticipated Tobacco Commission funding for these studies and that he had discussed this with ROBERT MCDONNELL. In addition, JW discussed the idea of having Virginia government employees use Anatabloc® as a control group for research studies.

50. On or about August 1, 2011, MAUREEN MCDONNELL also met privately with JW. During the meeting, MAUREEN MCDONNELL noticed JW's watch and asked what brand it was. JW informed her that it was a Rolex. She informed JW that she would like to get one for ROBERT MCDONNELL because he would like a Rolex. JW expressed concern regarding whether ROBERT MCDONNELL would actually wear such a luxury watch given his role as a senior government official. MAUREEN MCDONNELL told JW that she wanted JW to buy a Rolex for ROBERT MCDONNELL. JW subsequently bought a Rolex for ROBERT MCDONNELL. When JW contacted MAUREEN MCDONNELL to ask her what she wanted engraved on the watch, MAUREEN MCDONNELL instructed JW to have "71st Governor of Virginia" engraved on the back of the Rolex.

51. On or about August 1, 2011, MAUREEN MCDONNELL entered a calendar event on her electronic calendar for her attendance on August 30, 2011, for a "Lunch w/ VA researchers."

52. On or about August 1, 2011, the senior policy advisor from the Virginia Secretary of Health's office who had met with JW and MAUREEN MCDONNELL earlier that day sent an email to JW. In the email, the policy advisor stated that "it is necessary for us to make policy recommendations and decisions off of sound data" and that she was "grateful that [JW was]

making strides to validate the incredible anecdotes and stories that result from your work." The policy advisor concluded the email by stating that she would "continue to work alongside of the First Lady as we identify how best to move forward."

53. On or about August 2, 2011, MAUREEN MCDONNELL ordered Brokerage Firm A to purchase an additional 522 shares of Star Scientific stock for her account.

54. On or about August 4, 2011, MAUREEN MCDONNELL sent an email to ROBERT MCDONNELL, forwarding a quote from a stock market analyst who covered Star Scientific's stock. In the forwarded quote, the stock market analyst stated that "[a]s an economist, however, I am utterly certain that Anatabloc is going to shake our political system to its very roots. This is because even tiny changes to the actuarial tables will have enormous budgetary impacts." MAUREEN MCDONNELL annotated the importance of the email as "high."

55. On or about August 5, 2011, MAUREEN MCDONNELL sent an email to the above-referenced stock market analyst. In her email – which was in response to the analyst forwarding a favorable article about Star Scientific's Anatabloc® – MAUREEN MCDONNELL asked, "Would it be possible for you to send this as an attachment like you did in the first email so I would be able to print out a clean copy for my husband?"

56. On or about August 5, 2011, one of the defendants' sons and his friend played golf at Kinloch. Even though JW was not playing with them, they played as JW's guests and charged approximately $618 to JW's Kinloch member account, including approximately $300 in greens fees, $100 in caddie fees, and $214 in merchandise at the pro shop.

57. On or about August 11, 2011, the defendants' two sons and a friend played golf at Kinloch. Even though JW was not playing with them, they played as JW's guests and charged

approximately $1,309 to JW's Kinloch member account, including approximately $900 in greens fees, $300 in caddie fees, and $109 in food and beverages.

58. On or about August 12, 2011, MAUREEN MCDONNELL's Chief of Staff asked an OGV staff member to put a lunch that MAUREEN MCDONNELL was hosting for a number of researchers and doctors on August 30, 2011, on ROBERT MCDONNELL's schedule for that day.

59. On or about August 13, 2011, ROBERT MCDONNELL and one of his sons played golf at Kinloch. Even though JW was not playing with them, they played as JW's guests and charged approximately $869 to JW's Kinloch member account, including approximately $600 in greens fees, $200 in caddie fees, $53 in merchandise at the pro shop, and $16 in food and beverages.

60. On or about August 30, 2011, the defendants hosted an event for the launch of Star Scientific's Anatabloc® product at the Governor's Mansion. JW had previously coordinated the list of invitees for the event with MAUREEN MCDONNELL and her staff. The invitees included some of the same UVa and VCU research scientists whom Star Scientific was attempting to convince to perform clinical trials of Anatabloc®. Prior to the event, MAUREEN MCDONNELL and JW placed samples of Anatabloc® at each table setting. On the day of the event, Star Scientific issued a press release stating, in pertinent part:

> **Star Scientific, Inc. (NASDAQ: CIGX) has announced that the company is pleased to initiate the launch today of Anatabloc™, a dietary supplement that is designed to support the immune system in maintaining healthy levels of inflammation.**
>
> **...**
>
> **A group of Richmond area physicians and healthcare providers are gathering at the Virginia Governor's mansion today to learn more about the state of the research of Anatabloc™. The lead researchers who have overseen pre-clinical studies will discuss the results of testing with this group. They will be joined by researchers from the University of Virginia Medical School and the VCU Medical**

> Center who also are interested in studying further potentials for Anatabloc™. [Star Scientific's affiliate] has solicited research proposals from these institutions, and expects to issue planning grants for the preparation of full research proposals.

ROBERT MCDONNELL attended the Star Scientific event at the Governor's Mansion and spoke favorably to the attendees regarding further study of anatabine. During the event, JW presented $25,000 checks to UVa and VCU research scientists as planning grants to encourage UVa and VCU to prepare full research proposals for scientific studies of anatabine.

61. On or about September 9, 2011, a broker at Brokerage Firm A wrote a letter to MAUREEN MCDONNELL outlining a prior conversation between the two. In that conversation, MAUREEN MCDONNELL had requested information from the broker regarding ways to avoid the Star Scientific shares held in her Brokerage Firm A account remaining in her name. She had informed the broker that she wanted the shares out of her name by the end of the year in order to avoid certain annual reporting requirements. Among the options that MAUREEN MCDONNELL had mentioned were gifting the shares to her children or setting up a blind trust. The broker wrote the September 9, 2011, letter to MAUREEN MCDONNELL because he was uncomfortable with MAUREEN MCDONNELL's request that he assist her in financial transactions designed to avoid annual reporting requirements. In the letter, the broker stated:

> The 6,522 shares you purchased of Star Scientific, Inc. are currently titled in your name alone. My understanding is that you would like to gift a portion of these shares to each of the children, either now or at some point in the future, and possibly end up with zero shares in your name.
>
> ...
>
> I don't have the answers about how to avoid shares remaining in your name, without transferring them to another entity. You had mentioned the use of a blind trust. If you have an attorney draft the trust, we can open and operate this type of account. However, the blind trust is a discretionary account that we would manage, and you essentially would have no direction in the purchase or sale of securities. As such, rather than owning shares of Star Scientific, you most likely would end up with a portfolio of well-known large dividend paying companies

> and bonds. I think this would defeat the purpose, at least for your intent of this Star Scientific investment.

62. On or about October 18, 2011, Star Scientific held a dinner at the Westin Hotel in Richmond, Virginia, for local area doctors and health care professionals to learn more about Anatabloc®. MAUREEN MCDONNELL was the featured guest of the dinner and spoke favorably regarding Star Scientific and its products.

63. On or about October 22, 2011, Star Scientific held a dinner at the Warwick Hills Golf & Country Club in Grand Blanc, Michigan, for local area doctors and health care professionals to learn more about Anatabloc® MAUREEN MCDONNELL was the featured guest of the dinner and spoke favorably regarding Star Scientific and its products. MAUREEN MCDONNELL flew to and from the event on JW's private jet. During the flights, MAUREEN MCDONNELL, JW, and a research scientist who consulted for Star Scientific discussed the potential health benefits of Anatabloc® and the need for clinical studies. The next day, the research scientist sent MAUREEN MCDONNELL an email summarizing the discussions on board JW's aircraft. In the email, the research scientist wrote about the lack of data regarding the number of people who suffer from autoimmune and chronic inflammatory conditions. He stated that "it would be of value to perform a study of Virginia government employees . to determine the prevalences [sic] of autoimmune and inflammatory conditions." The research scientist further stated, "Next, to tie in [JW's] anti-inflammatory product, one could add a follow-up data assessment . . . to assess whether the inflammatory markers screened for at the initial visit have been decreased in employees who have taken anatabine."

64. On or about October 24, 2011, MAUREEN MCDONNELL sent a response email to the research scientist stating "[t]hanks for your email and I printed your [sic] it out and shared

it with my husband. He said he'd like to talk to some people to look into it and discern what the best approach for Virginia would be."

65. During the fall of 2011, Star Scientific was trying to effectuate its plans for the studies at UVa and VCU by encouraging those state research universities to make grant funding applications to the Tobacco Commission for the scientific study of anatabine. As part of that effort, on or about November 29, 2011, executives at Star Scientific had a conference call with senior UVa administrators, who were Virginia government employees. The Star Scientific executives requested that UVa take the lead role among the Virginia research universities in making the grant applications to the Tobacco Commission and overseeing the use of any grant funding. The UVa administrators expressed interest but did not agree to Star Scientific's requests during the call.

66. Under Virginia law, certain state officials and employees – including the Governor and members of his staff – are required to annually file a standardized disclosure statement of their personal economic interests on or before January 15 each year. The disclosure statement is commonly referred to as the Statement of Economic Interest ("SOEI"), and it is legally required to be filed and maintained as a public record for five years. The SOEI requires a state official to: (a) disclose personal liabilities held by the state official or that official's immediate family members of more than $10,000 to any one creditor, and to state the principal business or occupation for each of those creditors; (b) disclose securities held by the state official or that official's immediate family members valued in excess of $10,000 in a company, and to list the name of the company and the type of security; and (c) disclose gifts or entertainment valued in excess of $50 received by the state official from any business or individual (other than a relative or close personal friend), and to list the name of the business or individual and the

approximate value of the gift or entertainment. Pursuant to Virginia law, the state official must swear or affirm that the information provided on the SOEI is full, true, and correct to the best of that official's knowledge.

67. On or about December 20, 2011, MAUREEN MCDONNELL sold 6,522 shares of Star Scientific stock held in her Brokerage Firm A account, leaving her with no shares held in her name at year-end. MAUREEN MCDONNELL made it clear to the Brokerage Firm A broker overseeing the account that the sale of the Star Scientific stock had to occur before year-end in order to avoid annual reporting requirements.

68. On or about December 25, 2011, MAUREEN MCDONNELL gave ROBERT MCDONNELL the Rolex watch – inscribed on the back with "71st Governor of Virginia" – that JW had purchased pursuant to MAUREEN MCDONNELL's instructions.

69. On or about January 7, 2012, ROBERT MCDONNELL and his two sons played golf at Kinloch. Even though JW was not playing with them, they played as JW's guests and charged approximately $1,424 to JW's Kinloch member account, including approximately $990 in greens fees, $200 in caddie fees, $53 in merchandise at the pro shop, and $181 in food and beverages.

70. On or about January 15, 2012, ROBERT MCDONNELL filed his SOEI. On the SOEI, ROBERT MCDONNELL stated that neither he nor any member of his immediate family owned securities valued in excess of $10,000 invested in any one business. On the personal liability section of the SOEI, ROBERT MCDONNELL stated that the personal liabilities of his immediate family members to individual creditors were in an amount between $10,001 and $50,000 and that the principal business or occupation of the creditor was "Medical Services." On the gift section of the SOEI, the only gift from JW that ROBERT MCDONNELL disclosed

was listed as "Lodging and entertainment" in the amount of $2,268, which was the amount JW paid for the boat rental for the defendants' use during their private family vacation at JW's multimillion-dollar home on Smith Mountain Lake in July 2011.

71. On or about January 20, 2012, MAUREEN MCDONNELL used all of the sale proceeds in her Brokerage Firm A brokerage account from the December 20, 2011, sale of Star Scientific stock to purchase 6,672 shares of Star Scientific stock.

72. On or about January 25, 2012, ROBERT MCDONNELL received an email from MU, who was ROBERT MCDONNELL's brother-in-law and was assisting in the day-to-day operations of MoBo's beach rental properties. In the email, MU stated, "For MoBo, I talked with [MAUREEN MCDONNELL] last week and she had me talk to the guy who is helping us. He said he was going to call me the next day to get an address so he could send the first check. I did not hear from him and I left [MAUREEN MCDONNELL] a message yesterday. We'll need to get that in the next week so we can keep up-to-date."

73. On or about January 27, 2012, ROBERT MCDONNELL sent an email to MAUREEN MCDONNELL that forwarded MU's email and stated, "Maureen who are we talking about that is helping us and talking to [MU]?? [JW]?" That same day, MAUREEN MCDONNELL sent a response email to ROBERT MCDONNELL stating "Just got home. I'll talk w u upstairs."

74. In or about January 2012, the Virginia Secretary of Health and his staff were planning a reception for healthcare leaders that would occur at the Governor's Mansion on February 29, 2012. The Secretary of Health and his staff put together an invitation list of those individuals whom the Secretary wanted to recognize as leaders in healthcare policy in Virginia. The list did not include JW, Star Scientific executives, or researchers affiliated with Star

Scientific. MAUREEN MCDONNELL informed JW about the reception and allowed JW to invite dozens of individuals, including Star Scientific executives, researchers affiliated with Star Scientific, and doctors whom Star Scientific was trying to convince to recommend Anatabloc® to their patients. For example, on or about February 4, 2012, MAUREEN MCDONNELL emailed JW and a marketing representative for a Star Scientific affiliate and wrote:

> **We appreciate the list of Docs that you sent, but wanted you to know that you didn't have to limit them to this area; It's a reception for Healthcare Leaders from all over the state of Virginia, so please expand on your list. I checked our number of invites, and if [JW] has any more than these 39 docs, send them along because we have room to invite more.**

75. Because the healthcare leaders reception was to occur at the Governor's Mansion, the Secretary of Health's staff coordinated the invitation list with an OGV staff member who oversaw Mansion events. On or about February 8, 2012, the OGV staff member sent an email to a Secretary of Health staff member informing her that the defendants had reviewed the invitation list and that ROBERT MCDONNELL wanted to make sure that the "Head officers at VCU/MCV, UVA, EVMS, [and the] Massey Cancer Center" were included on the list.

76. On or about February 9, 2012, MAUREEN MCDONNELL sent an email to ROBERT MCDONNELL, with a courtesy copy to the personal email account of JE, who served on ROBERT MCDONNELL's staff as Counselor and Senior Policy Advisor to the Governor. The subject line of the email was "FW: Anatabine clinical studies – UVA, VCU, JHU." In the email, MAUREEN MCDONNELL stated, "Here's the info from JW. He has calls in to VCU & UVA & no one will return his calls." The email forwarded an earlier email from a Star Scientific employee to JW, which described the November 29, 2011, call between senior Star Scientific executives and senior UVa officials regarding UVa's role in submitting a grant application to the Tobacco Commission for research funding of Anatabloc®. MAUREEN MCDONNELL's email

to ROBERT MCDONNELL also forwarded two attachments. One of the attachments was an internal Star Scientific memorandum that set forth Star Scientific's talking points for its November 29, 2011, call with senior UVa officials, including a talking point that ROBERT MCDONNELL had expressed his support for a grant application to the Tobacco Commission for Anatabloc® research.

77. On or about February 9, 2012, JE sent a response email to MAUREEN MCDONNELL's email from earlier that day. JE stated, "Thanks, sorry for the delayed response, it has been very busy with session. Lets [sic] talk next week when you return."

78. On or about February 10, 2012, MAUREEN MCDONNELL sent a response email to JE's email, stating:

> Pls call [JW] today get him to fill u in on where this is at. Gov wants to know why nothing has developed w studies after [JW] gave $200,000. I'm just trying to talk w [JW.] Gov wants to get this going w VCU MCV. Pls let us know what u find out after we return. [JW's] cell is 804-[xxx-xxxx]. Thanks, -mm

79. On or about February 16, 2012, at 11:56 p.m., ROBERT MCDONNELL sent an email to JW, stating "[JW]. Know u have been slammed. Do u want me to call your lawyer on the certificates and the documents. Thanks for all your help. Gov." This email was in reference to a plan to have JW transfer shares of Star Scientific stock that JW owned to a Brokerage Firm A account for the defendants' use to fund MoBo.

80. On or about February 17, 2012, at 12:02 a.m., ROBERT MCDONNELL sent an email to JE stating "Pls see me about anatabloc issues at VCU and UVA. Thx." Within minutes, JE sent a response email to ROBERT MCDONNELL stating "will do. We need to be careful with this issue."

81. On or about February 22, 2012, MAUREEN MCDONNELL sent a text message to ROBERT MCDONNELL, stating "[JW] txted me 2say he needs our brokers name and phone number to transfer shares this week."

82. On or about February 23, 2012, ROBERT MCDONNELL and MAUREEN MCDONNELL had a conference call with a Brokerage Firm A broker. During the call, the defendants informed the broker that they owned Star Scientific shares that were being held by Star Scientific and that the defendants wanted to transfer the shares into a Brokerage Firm A account. The defendants further stated that they planned on using the shares as collateral for a margin loan that would ultimately be utilized for MoBo. The defendants gave the broker JW's contact information and asked the broker to call JW in order to coordinate the transfer of the Star Scientific stock to the Brokerage Firm A account.

83. On or about February 29, 2012, ROBERT MCDONNELL had a private meeting with JW to discuss potential ways that JW could transfer 50,000 shares of Star Scientific stock that JW owned to a brokerage account controlled by the defendants. ROBERT MCDONNELL and JW discussed whether such a transfer would be reportable by either ROBERT MCDONNELL or JW and their mutual interest in making sure that it was not.

84. On or about February 29, 2012, the defendants attended the reception at the Governor's Mansion for healthcare leaders in Virginia. Senior Star Scientific executives (including JW), researchers affiliated with Star Scientific, and medical professionals whom Star Scientific was attempting to impress (including from Virginia research universities) also attended the reception.

85. On or about February 29, 2012, immediately following the healthcare leaders reception at the Governor's Mansion, the defendants, JW, and a scientific researcher affiliated

with Star Scientific attended a small dinner at the La Grotta restaurant in Richmond, Virginia. JW paid for the dinner, which cost approximately $1,423.

86. Because of concerns about disclosures that would be necessary if JW transferred 50,000 shares of Star Scientific stock to the defendants, JW and ROBERT MCDONNELL agreed that JW would simply transfer $50,000 to MoBo as a loan to the defendants. The loan was not documented and included a 2% interest rate and a three-year term. On or about March 6, 2012, JW instructed his assistant to write a check for $50,000 made payable to MoBo. To make it more difficult for anyone to discern that JW was transferring money to the defendants, JW instructed his assistant that the check should not reference the defendants. When JW's assistant mistakenly put MAUREEN MCDONNELL's name in the memo line of the $50,000 check, JW instructed his assistant to void that check and write a new check without MAUREEN MCDONNELL's name, which the assistant did.

87. On or about March 12, 2012, ROBERT MCDONNELL sent a text message to JW stating "Do you have time tomorrow to talk with me on business matters. Governor. What time are you available."

88. On or about March 21, 2012, ROBERT MCDONNELL met with the Virginia Secretary of Administration to discuss the Virginia state employee health plan and ways to reduce healthcare costs in Virginia. During the meeting, ROBERT MCDONNELL pulled some Anatabloc® out of his pocket and told the Secretary of Administration and one of her staff members that Anatabloc® had beneficial health effects, that he personally took Anatabloc®, and that it was working well for him. ROBERT MCDONNELL asked the Secretary of Administration and her staff member to reach out to the "Anatabloc people" and meet with them to discuss Anatabloc®.

89. On or about May 18, 2012, ROBERT MCDONNELL sent a text message to JW stating "Per voicemail would like to see if you could extend another 20K loan for this year. Call if possible and I'll ask [MU] to send instructions." JW sent a response text message to ROBERT MCDONNELL stating "Done, tell me who to make it out to and address. Will FedEx."

90. On or about Tuesday, May 22, 2012, per JW's instructions, JW's assistant wire-transferred $20,000 to MoBo's bank account.

91. On or about May 25, 2012, JW sent a text message to ROBERT MCDONNELL stating "MoBo was done Tuesday. Golf game improving. Hope to play w you and Phil homestead. Star doing great." ROBERT MCDONNELL sent a response text message to JW stating "Thanks so much for the help. See you in a few weeks."

92. On or about June 13, 2012, ROBERT MCDONNELL sent an email to JW stating "Stock looking good. Well done. Gov."

93. On or about July 3, 2012, ROBERT MCDONNELL sent a text message to JW stating "Good announcements lately. Stock looks good. Hope all is well. You and [JW's wife] enjoy the 4th of July. Gov."

94. From on or about August 31, 2012, through on or about September 3, 2012, ROBERT MCDONNELL and MAUREEN MCDONNELL vacationed as JW's guests at the Chatham Bars Inn, a luxury resort and spa in Cape Cod, Massachusetts. JW, a research scientist affiliated with Star Scientific, one of ROBERT MCDONNELL's political advisors, and their wives accompanied the defendants o vacation. JW paid for the vast majority of the costs of the trip, including flying the defendan o Cape Cod aboard JW's jet, private cottages at the resort, golf at the resort course, expensive dinners, and the charter of a sailing yacht.

95. From in or about November 2012 through in or about March 2013, the defendants obtained yard work and other miscellaneous home repairs at their personal residence from one of JW's brothers. Those services included the installation of a hot tub cover that JW purchased for the defendants and work to re-stain the defendants' deck at their personal residence.

96. On or about December 21, 2012, MAUREEN MCDONNELL called a Brokerage Firm A broker to discuss the 6,672 shares of Star Scientific stock held in her brokerage account. MAUREEN MCDONNELL informed the broker that she wanted individual brokerage accounts opened for each of the defendants' five children and that she wanted to transfer shares of Star Scientific stock into the children's accounts. MAUREEN MCDONNELL further informed the broker that these transfers had to occur before year-end in order to avoid reporting requirements related to the ownership of Star Scientific stock.

97. On or about December 26, 2012, MAUREEN MCDONNELL sent a letter to the Brokerage Firm A broker instructing him to transfer 1,000 shares of Star Scientific stock from her brokerage account to each of the defendants' five children's newly opened brokerage accounts. The Brokerage Firm A broker followed MAUREEN MCDONNELL's instructions and transferred a total of 5,000 Star Scientific shares from her account to the children's accounts. Although the transfers occurred on January 2, 2013, the transfers were made effective as of December 31, 2012, which resulted in MAUREEN MCDONNELL holding 1,672 shares of Star Scientific stock – valued at approximately $4,480 – as of year-end.

98. On or about January 15, 2013, ROBERT MCDONNELL filed his SOEI. On the standardized disclosure form, ROBERT MCDONNELL stated that neither he nor any member of his immediate family owned securities valued in excess of $10,000 invested in any one business. On the personal liability section of the SOEI, ROBERT MCDONNELL stated that the personal

liabilities of his immediate family members to individual creditors were in an amount between $10,001 and $50,000 and that the principal business or occupation of the creditor was "Health Care." On the gift section of the SOEI, the only gifts associated with JW that ROBERT MCDONNELL disclosed were expenses related to the defendants' luxury vacation at Chatham Bars Inn.

99. On or about January 21, 2013, MAUREEN MCDONNELL called JW's assistant to request that JW provide roundtrip airline tickets for two of the defendants' daughters to travel to a bachelorette party for one of the daughters in Savannah, Georgia. After getting JW's approval, JW's assistant made the travel arrangements for the defendants' daughters and obtained the tickets.

100. On or about January 24, 2013, MAUREEN MCDONNELL sent a text message to JW, stating:

> [JW]! Would you like to stay at our Beach house in Sandbridge for some of the time you're in Virginia? Pick the best days and take the time with your family on the Ocean. Or You can have a Star Scientific retreat there and have your team come down and join you for a meeting. If one of the weekends works out with his legislative schedule, I'll bring Bob down and then you'd have some private time to talk somewhere he's comfortable. Let me know what you think. Mm

101. On or about February 10, 2013, ROBERT MCDONNELL sent an email to the defendants' five children and courtesy-copied MAUREEN MCDONNELL. In the email, ROBERT MCDONNELL stated in relevant part, "Kids. Asking for help. need to rent the beach houses at Sandbridge more. Willing to give your friends a discount for the times it's tougher to rent." The next day, MAUREEN MCDONNELL forwarded ROBERT MCDONNELL's email to JW

G. The Defendants' Efforts to Conceal the Scheme

102. On or about October 3, 2012, as part of required paperwork for a loan on one of the MoBo Virginia Beach properties through TowneBank, ROBERT MCDONNELL caused TowneBank to receive a personal financial statement that listed total liabilities of $2,075,000 and listed no other loans payable. The financial statement did not list any of the loans from JW

103. On or about February 1, 2013, ROBERT MCDONNELL and MAUREEN MCDONNELL caused a signed Uniform Residential Loan Application to be transmitted to PenFed as part of an effort to refinance four loans, including loans on the two MoBo Virginia Beach properties. The Uniform Residential Loan Application listed total liabilities of $2,837,226 and listed no loans from or liabilities to JW. It also did not list any Star Scientific securities held by the defendants as assets.

104. On or about February 15, 2013, MAUREEN MCDONNELL was interviewed by law enforcement officers regarding the $50,000 and $15,000 checks from JW in May 2011. Although MAUREEN MCDONNELL stated that the $50,000 check was a personal loan from JW and that she had asked JW for the loan to help with the defendants' expenses and cash flow, she falsely claimed that there was a loan agreement that she had signed and that she was making periodic payments on the $50,000 loan. MAUREEN MCDONNELL described JW throughout the interview as a friend and falsely claimed that ROBERT MCDONNELL had met JW "many years ago." She further falsely claimed that ROBERT MCDONNELL first met JW when they both worked together at American Hospital Supply following ROBERT MCDONNELL's discharge from the United States Army.

105. On or about February 18, 2013 – three days after MAUREEN MCDONNELL was interviewed by law enforcement – ROBERT MCDONNELL sent a five-page fax to a loan

officer at PenFed. On the first-page coversheet, ROBERT MCDONNELL wrote, "I reviewed the general loan application again this weekend and made some updates concerning information that was incomplete." The remaining four pages of the fax included handwritten changes by ROBERT MCDONNELL to the Uniform Residential Loan Application that had been originally signed by both defendants and sent to PenFed on or about February 1, 2013. The original loan application submitted by the defendants to PenFed did not include any reference to liabilities resulting from the $120,000 in loans from JW. ROBERT MCDONNELL's handwritten changes on or about February 18, 2013 listed $50,000 of liabilities to JW and $70,000 of liabilities to Starwood Trust, which was the entity through which JW had funded the loans to the defendants. ROBERT MCDONNELL further stated in his handwritten changes that payments due on the loans were zero and that the loans were unsecured. ROBERT MCDONNELL's handwritten changes on February 18, 2013, also listed 1,672 shares of Star Scientific stock with a value of $3,143 in the assets portion of the loan application.

106. In or about March 2013, MAUREEN MCDONNELL met with JW's brother at the defendants' residence and told JW's brother that she had been interviewed by law enforcement. At that meeting, MAUREEN MCDONNELL – for the first time – asked JW's brother to send her a bill for the work JW's brother had performed for the defendants since approximately November 2012. Thereafter, on or about March 4, 2013, JW's brother sent an email to MAUREEN MCDONNELL stating "Find attached a list of expenditures for your residence."

107. In or about March 2013, after telling JW's brother that she had been interviewed by law enforcement, MAUREEN MCDONNELL also gave JW's brother a box and letter. MAUREEN MCDONNELL asked JW's brother to give it to JW for her, and JW's brother caused it to be delivered to JW's house. The box included some of the clothing JW had purchased for MAUREEN MCDONNELL in April 2011, and it included a handwritten note from MAUREEN MCDONNELL to JW and his wife stating:

> I can't begin to thank you how special you made me feel on [CM's] wedding day and on our 35th Wedding Anniversary Day all dressed up in the beautiful outfits you adorned me in on both momentous occasions. I'm so happy we've been able to share so many significant milestones in our lives with you both! I truly hope your daughter will now be able to enjoy these lovely outfits and show them off on many grand occasions. If not, I'm sure there are many exemplary charitable organizations like we talked about who would welcome the opportunity to auction them for a wonderful cause having been worn only once by the First Lady of Virginia to her daughter's Wedding at the Executive Mansion and celebrating her 35th Wedding Anniversary with the Governor. Actually, if that happens I think I'll be there to bid on them myself! Please know that we cherish our friendship with you and look forward to many more wonderful memories together ahead! XOXO! Maureen McDonnell

COUNT ONE

(Conspiracy to Defraud the Citizens of Virginia of Their Right to Honest Services by Use of Interstate Wires)

108. The allegations set forth in paragraphs 1 through 107 are repeated and realleged as if set forth fully herein.

109. From in or about April 2011 through in or about March 2013, in the Eastern District of Virginia and elsewhere, defendants

ROBERT F. MCDONNELL and
MAUREEN G. MCDONNELL

did knowingly and intentionally conspire with each other and with others, both known and unknown to the grand jury, to commit wire fraud, that is: having devised and intending to devise a scheme and artifice to defraud the citizens of Virginia of their right to the honest services of the Governor of Virginia through bribery, to transmit and cause to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

PURPOSE

110. A purpose of the conspiracy was for the defendants to secretly use ROBERT MCDONNELL's official position as Governor of Virginia to enrich the defendants and their family members by soliciting and accepting payments, loans, gifts, and other things of value from JW and Star Scientific in exchange for ROBERT F. MCDONNELL and the OGV performing official actions on an as-needed basis, as opportunities arose, to legitimize, promote, and obtain research studies for Star Scientific's products.

MANNER AND MEANS

111. The manner and means by which the defendants would and did carry out the conspiracy included, but were not limited to, the following:

a. the defendants soliciting and obtaining, both directly and indirectly, for themselves and their family members financial payments, loans, gifts, and other things of value from JW and Star Scientific;

b. the defendants taking steps to conceal from the citizens of Virginia the things of value received from JW and Star Scientific in order to hide the nature and scope of their dealings with JW, including by routing things of value through family members and corporate entities controlled by the Governor in an effort to avoid annual disclosure requirements on the Governor's SOEIs;

c. ROBERT MCDONNELL and the OGV providing favorable official action on behalf of JW and Star Scientific as opportunities arose, including the official actions set forth below in (i)–(v);

    i. arranging meetings for JW with Virginia government officials, who were subordinates of the Governor, to discuss and promote Anatabloc®;

    ii. hosting, and the defendants attending, events at the Governor's Mansion designed to encourage Virginia university researchers to initiate studies of anatabine and to promote Star Scientific's products to doctors for referral to their patients;

iii. contacting other government officials in the OGV as part of an effort to encourage Virginia state research universities to initiate studies of anatabine;

iv. promoting Star Scientific's products and facilitating its relationships with Virginia government officials by allowing JW to invite individuals important to Star Scientific's business to exclusive events at the Governor's Mansion; and

v. recommending that senior government officials in the OGV meet with Star Scientific executives to discuss ways that the company's products could lower healthcare costs.

(All in violation of Title 18, United States Code, Section 1349)

COUNTS TWO THROUGH FOUR

(Use of Interstate Wire Communications to Further Scheme to Defraud the Citizens of Virginia of Their Right to Honest Services)

112. The allegations set forth in paragraphs 1 through 107 and 110 through 111 are repeated and realleged as if set forth fully herein.

113. On or about the respective dates shown below, each such date constituting a separate count of this Indictment, within the Eastern District of Virginia and elsewhere, defendants

ROBERT F. MCDONNELL and
MAUREEN G. MCDONNELL

and others known and unknown to the grand jury, knowingly and intentionally, having devised and intending to devise a scheme and artifice to defraud the citizens of Virginia of their right to the honest services of the Governor of Virginia through bribery, for the purposes of executing such scheme and artifice, transmitted and caused to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures, and sounds, that is the following:

Count	Date	Description
2	5/26/2011	Wire communication from BB&T Bank in the Eastern District of Virginia to a location outside the Commonwealth of Virginia to cause the transfer of funds from $15,000 check from JW via Starwood Trust to wedding catering company account with BB&T Bank
3	3/12/2012	Wire communication from TowneBank in the Eastern District of Virginia to a location outside the Commonwealth of Virginia to cause transfer of funds from $50,000 check from JW via Starwood Trust to MoBo account with TowneBank
4	5/22/2012	Wire communication from the Eastern District of Virginia to a BB&T Bank location outside the Commonwealth of Virginia to cause the transfer of $20,000 from JW via Starwood Trust to MoBo account with TowneBank

(All in violation of Title 18, United States Code, Sections 1343 and 2.)

COUNT FIVE

(Conspiracy to Obtain Property under Color of Official Right)

114. The allegations set forth in paragraphs 1 through 107 and 110 through 111 are repeated and realleged as if set forth fully herein.

115. From in or about April 2011 through in or about March 2013, in the Eastern District of Virginia and elsewhere, defendants

ROBERT F. MCDONNELL and
MAUREEN G. MCDONNELL

did knowingly and intentionally conspire with each other and with others, both known and unknown to the grand jury, to obstruct, delay, and affect in any way and degree commerce, and the movement of articles and commodities in commerce, by extortion, as those terms are defined in Title 18, United States Code, Section 1951, that is to obtain property, not due ROBERT MCDONNELL or his office and to which ROBERT MCDONNELL was not entitled, from JW and Star Scientific, with their consent, under color of official right.

(All in violation of Title 18, United States Code, Section 1951.)

COUNTS SIX THROUGH ELEVEN

(Obtaining Property under Color of Official Right)

116. The allegations set forth in paragraphs 1 through 107 and 110 through 111 are repeated and realleged as if set forth fully herein.

117. On or about the respective dates shown below, each such date constituting a separate count of this Indictment, within the Eastern District of Virginia and elsewhere, defendants

ROBERT F. MCDONNELL and
MAUREEN G. MCDONNELL

and others known and unknown to the grand jury, knowingly and intentionally attempted to, did, and caused each other and others to obstruct, delay, and affect in any way and degree commerce, and the movement of articles and commodities in commerce, by extortion, as those terms are defined in Title 18, United States Code, Section 1951, that is the defendants attempted to obtain, did obtain, and caused each other and others to obtain the property listed below, not due ROBERT MCDONNELL or his office and to which ROBERT MCDONNELL was not entitled, from JW and Star Scientific, with their consent, under color of official right:

Count	Date	Description
6	5/23/2011	$50,000 check from Starwood Trust
7	5/23/2011	$15,000 check from Starwood Trust
8	5/29/2011	$2,380 in greens fees, caddie fees, merchandise, and dining expenses at Kinloch Golf Club
9	1/7/2012	$1,424 in greens fees, caddie fees, merchandise, and dining expenses at Kinloch Golf Club
10	3/6/2012	$50,000 check from Starwood Trust
11	5/22/2012	$20,000 wire transfer from Starwood Trust

(All in violation of Title 18, United States Code, Sections 1951 and 2.)

COUNT TWELVE

(False Statement)

118. The allegations set forth in paragraphs 1 through 107 are repeated and realleged as if set forth fully herein.

119. On or about October 3, 2012, within the Eastern District of Virginia and elsewhere, defendant

ROBERT F. MCDONNELL

knowingly made a false statement and report for the purpose of influencing the action of TowneBank, the accounts of which were insured by the Federal Deposit Insurance Corporation, upon an application, commitment, and loan, and any change and extension of any of the same, by renewal, deferment of action, and otherwise, in that on ROBERT MCDONNELL's personal financial statement submitted to TowneBank, he stated that his liabilities totaled $2,075,000, when in truth and in fact, as the defendant well knew, ROBERT MCDONNELL owed at least $50,000 to JW that was not reflected on his personal financial statement and was not included in the total liabilities listed.

(All in violation of Title 18, United States Code, Sections 1014 and 2.)

COUNT THIRTEEN

(False Statement)

120. The allegations set forth in paragraphs 1 through 107 are repeated and realleged as if set forth fully herein.

121. On or about February 1, 2013, within the Eastern District of Virginia and elsewhere, defendants

ROBERT F. MCDONNELL and
MAUREEN G. MCDONNELL

knowingly made a false statement and report for the purpose of influencing the action of PenFed, a federal credit union, upon an application, commitment, and loan, and any change and extension of any of the same, by renewal, deferment of action, and otherwise, in that on the joint Uniform Residential Loan Application submitted to PenFed, the defendants listed total liabilities of $2,837,226 and listed no loans from or liabilities to JW, when in truth and in fact, as the defendants well knew, the defendants had received at least $120,000 in loans from JW that were not reflected on their joint Uniform Residential Loan Application and were not included in the total liabilities listed.

(All in violation of Title 18, United States Code, Sections 1014 and 2.)

COUNT FOURTEEN

(Obstruction of an Official Proceeding)

122. The allegations set forth in paragraphs 1 through 107 are repeated and realleged as if set forth fully herein.

123. In or about March 2013, within the Eastern District of Virginia and elsewhere, defendant

MAUREEN G. MCDONNELL

attempted to and did corruptly obstruct, influence, and impede an official proceeding of the Grand Jury, that is, MAUREEN MCDONNELL wrote and caused to be delivered a handwritten note to JW in which she falsely attempted to make it appear that she and JW had previously discussed and agreed that the defendant would return certain designer luxury goods rather than keep them permanently.

(All in violation of Title 18, United States Code, Sections 1512(c)(2) and 2.)

FORFEITURE NOTICE

Pursuant to Federal Rule of Criminal Procedure 32.2(a), the defendants are notified that upon conviction of the offenses alleged in Counts 1–11 of this Indictment, they shall forfeit any property, real or personal, which they obtained directly or indirectly and which constitutes or is derived from proceeds traceable to the offenses of conviction. Property subject to forfeiture includes but is not limited to the following:

The sum of not less than $140,805.46;
Black Rebecca Minkoff shoes;
Black Louis Vuitton shoes;
White Louis Vuitton shoes;
Cream Louis Vuitton purse;
Cream Louis Vuitton wallet;
Silver Rolex Watch engraved with "71st Governor of Virginia";
Yellow Peter Som dress;
Blue Armani jacket and two matching dresses;
Two Gold Oscar de la Renta dresses;
Black Louis Vuitton rain coat;
Gold Oscar de le Renta sweater;
One pair of Amelia Rose earrings;
One Gear sweatshirt;
Two pairs of Foot Joy golf shoes;
One button-down Ralph Lauren shirt;
One white Peter Millar golf shirt;
One baby blue striped Peter Millar golf shirt;
One royal blue Peter Millar golf shirt;
One aqua Fairway Greene Tech golf shirt;
One white striped Ralph Lauren golf shirt;
One Ping University of Virginia golf bag;
One Ping Kinloch golf bag;
One Sun Mountain Notre Dame golf bag;
Two sets of golf clubs;
One Heather Mackenzie water color and frame;
Two iPhones; and
30 boxes of Anatabloc®.

If property subject to forfeiture is not available, the United States will seek an order forfeiting substitute assets in accordance with Title 21, United States Code, Section 853(p).

(In accordance with Title 18, United States Code, Section 981(a)(1)(C); Title 28, United States Code, Section 2461(c); and Title 18, United States Code, Section 982(a)(2).)

A TRUE BILL

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
V	)	CRIMINAL NO. 3:14-CR-00012
	)	
ROBERT F. MCDONNELL	)	JUDGE JAMES R. SPENCER
MAUREEN G. MCDONNELL	)	

MEMORANDUM IN SUPPORT OF DEFENDANT ROBERT F. MCDONNELL'S MOTION # 5 – MOTION FOR THE PRODUCTION OF EVIDENCE AND OTHER RELIEF TO REMEDY THE GOVERNMENT'S INTERFERENCE IN THE DEFENSE'S INVESTIGATION

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INTRODUCTION

"A criminal trial, like its civil counterpart, is a quest for truth." *Gregory v. United States*, 369 F.2d 185, 188 (D.C. Cir. 1966). In that search for truth, the guilt or innocence of a criminally accused is supposed to be assessed on the basis of all admissible and relevant evidence. The purpose of a trial is to supply that evidence to neutral and independent fact-finders, who then weigh it and decide whether or not the Government has proved its case beyond a reasonable doubt.

Federal prosecutors have a strong systemic interest in both sides having possession of all relevant evidence before trial. As the Supreme Court has long explained, the "United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 88 (1935). Justice is not done—but rather is thwarted—when prosecutors hinder the potential discovery of evidence relevant to pending criminal charges. After all, "the criminal trial, as distinct from the prosecutor's private deliberations," is "the chosen forum for ascertaining the truth about criminal accusations." *Kyles v. Whitley*, 514 U.S. 419, 440 (1995).

Here, the Government has taken affirmative steps to impede the defense's ability to gather evidence from third parties and investigate the Government's allegations. On January 28, 2014—without notifying defense counsel or (as far as we know) this Court—the prosecutors in this proceeding intervened in a civil suit filed by private Star Scientific shareholders (who have no connection to the accused) against the Government's star witness (Jonnie Williams) and Star Scientific. The Government then requested a stay of discovery in that civil dispute pending resolution of this criminal case.[1] *See In re Star Scientific, Inc. Sec. Litig.*, No. 3:13-cv-183, Dkt. 79 (E.D. VA. Jan. 28, 2014) ("Stay Motion") (Ex. A). That civil suit alleges that Mr. Williams and his company committed securities fraud by, among other things, making "materially false and misleading statements regarding the Company's business, operational and compliance policies." *Id.* at Dkt. 1 (E.D. Va. Mar. 25, 2013). As the Government's stay request itself illustrates, discovery in that suit is (1) likely to unearth evidence that impeaches Mr. Williams's credibility as a witness; (2) may uncover additional misdeeds by Mr. Williams and his colleagues; and (3) may even reveal evidence that directly contradicts statements by Mr. Williams to the Government in the course of this proceeding. Both the Government and the defense should therefore want the discovery in that litigation to run its course, with the potential ancillary benefit of uncovering evidence that sheds light on whether the Government's allegations against the McDonnells are true. But instead, the Government's attorneys have intervened in that dispute for the *express purpose* of preventing relevant information from being revealed.

The Government's intervention in third-party civil litigation in order to prevent the disclosure of potentially-exculpatory evidence violated—and continues to violate—Mr. McDonnell's Fifth Amendment right to due process and his Sixth Amendment right to present a defense. Tellingly, none of the many cases cited by the Government in support of its stay request involved prosecutorial interference in third-party litigation; and none therefore endorsed the Government's supposed interest in suppressing a "means by which the defense could obtain evidence." *Gregory*, 369 F.2d at 189. Particularly in a case like this one—where the Government conducted a wide-ranging investigation and holds most of the evidentiary cards—the Constitution forbids the prosecutors from attempting to foreclose any potential "means" through which Mr. McDonnell might be able to obtain exculpatory evidence.

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[1] The day after the Government filed its Motion—which it portrayed as unopposed and routine—that District Court granted its request by entering the Government's proposed Order. *In re Star Scientific, Inc. Sec. Litig.*, No. 3:13-cv-183, Dkt. 81 (E.D. Va. Jan. 28, 2014). Given the innocuous manner in which the Government presented its filing, and the Government's failure to provide advance notice to the defense, that court could not have known about the extraordinary nature of the Government's request. The District Judge's decision to enter the Government's proposed Order in *that* proceeding was therefore entirely understandable and does not need to be disturbed in order to grant Mr. McDonnell's request for relief in *this* proceeding.

To remedy this constitutional violation, the defense submits that the following relief is appropriate. The Court should: (1) order the Government to provide immediate discovery of everything in the Government's possession, custody, or control related to Jonnie Williams and his past and present misconduct, including all agency investigations into Star Scientific and Mr. Williams; (2) order the Government to cease interfering in third-party litigation and to withdraw its request for a stay in *In re Star Scientific, Inc. Securities Litigation*, No. 3:13-cv-183; and (3) award any other relief the Court deems proper.

ARGUMENT

I. The Government's Intervention In An Unrelated Civil Suit For The Sole Purpose Of Suppressing Favorable Evidence Violates The Fifth And Sixth Amendments.

"[S]ince the Government which prosecutes an accused also has the duty to see that justice is done, it is unconscionable to allow it to undertake prosecution and then invoke its governmental privileges to deprive the accused of anything which might be material to his defense." *Jencks v. United States*, 353 U.S. 657, 671 (1957) (quotation omitted). This principle is as old as the Republic. *See, e.g.*, *United States v. Burr*, 25 F Cas. 187, 192 (C.C.D. Va. 1807) (No. 14,694) ("[I]t is a very serious thing, if such letter should contain any information material to the defence, to withhold from the accused the power of making use of it.").

The Government's recent intervention in a civil suit against Jonnie Williams and Star Scientific violates Mr. McDonnell's basic constitutional right to defend himself; a right that includes the right to investigate and repudiate the Government's allegations. The only interest the Government has articulated in blocking discovery in that unrelated civil suit is its supposed interest in preventing the revelation of "information about key witnesses and documents to which the criminal defendants are not entitled." Stay Motion at 3. But that interest—the "interest" in artificially constraining the evidence available at trial—is not legitimate. Nor is it sufficient to justify the Government's attempt "to interfere with the preparation of the defense" by suppressing a "means by which the defense could obtain evidence." *Gregory*, 369 F.2d at 188-89.

Concluding otherwise would substantially expand the Government's power to unilaterally decide what evidence the defense, the judge, and the jury get to hear. That would be a dangerous expansion, not least because any rule that enables prosecutors to constrain a defendant's ability to investigate would undermine the defendant's ability to determine whether the prosecution is complying with its discovery obligations under *Brady*, *Giglio*, *Kyles*, and the like. Given that "[d]ue to the nature of a *Brady* violation, it's highly unlikely wrongdoing will ever come to light in the first place," *United States v. Olsen*, 737 F.3d 625, 630 (9th Cir. 2013) (Kozinski, C.J., dissenting from the denial of rehearing en banc), such a rule would set a dangerous precedent. It would, moreover, fly in the face of the many cases holding that the accused are constitutionally entitled to gather evidence and defend themselves.

In short, the Government's affirmative efforts to limit the flow of information to Mr. McDonnell violate his fundamental constitutional rights.

A. The Fifth And Sixth Amendments Guarantee The Accused Basic Access To Evidence.

As the Supreme Court has explained, "[t]he right to the production of all evidence at a criminal trial has constitutional dimensions." *United States v. Nixon*, 418 U.S. 683, 711 (1974). The Sixth Amendment guarantees the right to confront witnesses and the right to compulsory process, and the Fifth Amendment guarantees due process of law. "It is the manifest duty of the courts to vindicate those guarantees, and to accomplish that it is essential that all relevant and admissible evidence be produced." *Id.* One familiar aspect of the accused's right to obtain evidence is the requirement of *Brady v. Maryland* that the prosecution turn over evidence favorable to the accused upon request. 373 U.S. 83, 87 (1963). The right goes much further, however. The Supreme Court has noted, for instance, that the government may be sanctioned for depriving the accused of material, favorable evidence even where it does so in the course of discharging its obligation to enforce the immigration laws, *United States v. Valenzuela-Bernal*, 458 U.S. 858, 872-75 (1982), or asserting an otherwise valid privilege to conceal the identity of confidential informants, *Roviaro v. United States*, 353 U.S. 53, 60-61 (1957).

The Fourth Circuit has even held that an accused's "'constitutionally guaranteed access to evidence,'" *United States v. Moussaoui*, 382 F.3d 453, 474 (4th Cir. 2004) (quoting *Arizona v. Youngblood*, 488 U.S. 51, 55 (1988)), is powerful enough to counter the Government's assertion of a national security privilege in the context of prosecuting a member of the 9/11 conspiracy There, in the face of the Government's claim that being compelled to produce enemy combatant witnesses for pretrial deposition would compromise the United States' counterterrorism efforts, the court held that the government could properly be sanctioned for withholding material evidence from the accused. *Id.* at 476. The *Moussaoui* court explained that "[t]he need to develop all relevant facts in the adversary system is both fundamental and comprehensive" and that "[t]he ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts." *Id.* at 471. Therefore, the court held, "[t]he very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence." *Id.*

To be sure, as the Fourth Circuit noted in *Moussaoui*, some constraints on an accused's use of information—such as the rules of evidence—do not necessarily run afoul of an accused's Fifth and Sixth Amendment rights to gather evidence and present a defense. But even those basic limitations have to be sufficiently justified to overcome the core constitutional values at stake. *See, e.g.*, *Chambers v. Mississippi*, 410 U.S. 284, 294-303 (1973) (finding a constitutional violation where state court's application of common law "voucher" rule in combination with hearsay rule prevented the accused from presenting key exculpatory evidence); *Washington v. Texas*, 388 U.S. 14, 19-23 (1967) (holding that a State's evidentiary rule disqualifying accomplice testimony on behalf of the accused violates the Sixth Amendment).

B. The Fifth And Sixth Amendments Forbid Prosecutors From Impeding A Criminal Defendant's Independent Investigation.

At a minimum, therefore, the Constitution forbids prosecutors from interfering with a criminal defendant's ability to gather evidence for no reason other than preventing such evidence from coming to light. That is why courts have held in numerous contexts that prosecutors run afoul of the Constitution when they interfere in the accused's investigation or otherwise frustrate efforts to adequately prepare and present a defense. The Supreme Court has explained, for instance, that "the Federal Government might transgress constitutional limitations if it delayed an indictment for so long that the defendant's ability to mount an effective defense was impaired." *California v. Trombetta*, 467 U.S. 479, 486 (1984). Courts will also compel prosecutors to grant immunity to witnesses upon a showing that prosecutors are selectively withholding immunity from those witnesses who seek to provide testimony favorable to a criminal defendant. *See, e.g.*, *United States v. Abbas*, 74 F.3d 506, 512 (4th Cir. 1996).

Perhaps the clearest application of this principle is the well-established constitutional prohibition of prosecutorial efforts to impede defense access to witnesses. As the D.C. Circuit long-ago explained, "we know of nothing in the law which gives the prosecutor the right to interfere with the preparation of the defense by effectively denying defense counsel access to the witnesses except in his presence." *Gregory*, 369 F.2d at 188. Twentieth-century criminal law has tended "in the direction of discovery of the facts before trial and elimination of surprise at trial," particularly in imposing "the requirement that the prosecution not frustrate the defense in the preparation of its case." *Id.* In *Gregory*, therefore, the prosecutors' discouragement of witnesses from talking with the defense "was unquestionably a suppression of the means by which the defense could obtain evidence" and was tantamount to affirmatively suppressing evidence. *Id.* at 189. The prosecutors' conduct had therefore "denied appellant a fair trial." *Id.*

In the years since *Gregory*, "[t]he equal right of the prosecution and the defense in criminal proceedings to interview witnesses before trial" has been "clearly recognized by the courts." *Kines v. Butterworth*, 669 F.2d 6, 9 (1st Cir. 1981). Numerous cases extol this bedrock rule. *See, e.g.*, *United States v. Gonzales*, 164 F.3d 1285, 1292 (10th Cir. 1999) ("Although the defense had no right to interview the witness under [Fed. R. Crim. P.] Rule 16 it had a right to be free from prosecution interference with a witness' freedom of choice about whether to talk to the defense."); *United States v. Cook*, 608 F.2d 1175, 1180 (9th Cir. 1979) (en banc) ("As a general rule, a witness belongs neither to the government nor to the defense. Both sides have the right to interview witnesses before trial."); *United States v. Goldfarb*, No. CR-07-260-PHX-DGC, 2008 WL 4531694, at *2 (D. Ariz. Oct. 9, 2008) ("The prosecutor may not discourage[] cooperating defendants from candidly discussing the litigation with co-defendants or their counsel."). As one court summed it up, "prosecutors may not refuse to disclose the location of a witness"; "instruct a witness not to speak to defense counsel"; "or take other actions that would effectively deny the defendant in a criminal proceeding access to a witness." *United States v. Slough*, 669 F Supp. 2d 51, 56 (D.D.C. 2009) (citations omitted). Indeed, as Magistrate Judge Novak recently put it: "[W]itnesses have the right to either be interviewed or not be interviewed by either side There is no restriction[] whatsoever." *United States v. McDonnell*, No. 3:14-cr-12, Dkt. 43 at 22:23-23:2 (E.D. Va. Feb. 3, 2014). The accused have the right to properly prepare for their defense, which "demands that an attorney interview and prepare witnesses before they testify." *United States v. Rhynes*, 218 F.3d 310, 319 (4th Cir. 2000) (en banc).

The basic constitutional principle is thus clear: The Fifth Amendment right to due process and the Sixth Amendment right to present a defense together forbid prosecutors from thwarting a criminally accused's efforts to gather facts that tend to demonstrate his innocence. Here, the Government's effort to prevent third-party civil discovery for the sole purpose of denying the McDonnells access to exculpatory evidence violates this fundamental rule.

C. The Government's Interference In Independent And Unrelated Civil Litigation Is Unconstitutional.

1. The Constitution forbids prosecutors from impeding a criminal defendant's investigation.

The constitutional prohibition against prosecutors suppressing "means by which the defense could obtain evidence," *Gregory*, 369 F.2d at 189, forbids the Government's conduct here. Just as prosecutors are not permitted to discourage witnesses from talking to defense counsel, they are not permitted to take different steps geared toward the same objective—*i.e.*, ones that impede a defense investigation by cutting off a "means by which the defense could obtain evidence." *Id.* Even though defendants cannot force witnesses to share information with them prior to trial, the Constitution recognizes that it is unfair and improper for prosecutors to affirmatively discourage those witnesses from cooperating with defense counsel. The Constitution thus does not permit prosecutors to scare witnesses into silence, unfairly manipulate prosecutorial power to grant immunity, engage in improper strategic timing of indictments, or, like here, interfere in third-party civil suits for the purpose of protecting the Government's key witness and his Star colleagues by restricting the development and release of exculpatory evidence.

The practical effect of the Government's conduct highlights the constitutional problem. By declining to further investigate Mr. Williams and Star Scientific, the Government has avoided coming into possession, custody, or control of additional exculpatory evidence that resides in the files of Star Scientific and Mr. Williams (which would trigger Rule 16 and *Brady*), and by intervening in *In re Star Scientific* and blocking discovery it has also prevented the potential disclosure of that evidence to neutral third parties (civil plaintiffs) who might have been willing to share it with the defense. The effect of this maneuvering has been to confine a great deal of exculpatory evidence to the files or minds of entities and individuals the Government does not control but whom the Government can confidently expect will refuse to share that information with defense counsel (since Star Scientific does not expect to be prosecuted itself).[2] The Government has thus attempted to ensure that this evidence will remain hidden during this proceeding. That is no different than if prosecutors refused to interview key exculpatory witnesses (avoiding *Brady*) while threatening to charge those witnesses with obstruction if they cooperate with defense counsel (preventing the defense from interviewing them). Both actions contravene the Constitution because both "unquestionably" constitute "a suppression of the means by which the defense could obtain evidence." *Gregory*, 369 F.2d at 189.

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[2] *See, e.g.*, Rosalind S. Helderman, *Star Scientific Tells Investors It Does Not Expect To Face Criminal Prosecution*, Wash. Post (Aug. 9, 2013), *available at* http://tinyurl.com/mapno3y.

2. The Government's arguments in requesting a stay further illustrate the constitutional problem.

In requesting a stay in *In re Star Scientific*, the Government made a number of supporting arguments which either confirm the unconstitutionality of its conduct or are inapposite. The Government's chief contention in its Stay Motion was that the "civil discovery process, if allowed to continue, will reveal *information* about key witnesses and documents to which the criminal defendants are not entitled," and that "[d]isclosure of *such information* would compromise the public's right to a fair trial in the criminal action." Stay Motion at 3 (emphases added). That argument betrays a fundamental misunderstanding of what a "fair trial" requires. Nothing in the Constitution, federal statutes, the Federal Rules, or the United States Attorney's Manual suggest that ensuring a "fair trial" requires (or allows) prosecutors to thwart defense efforts to gather exculpatory evidence. That is because there is no "information" to which "criminal defendants are not entitled"; there are only certain tools of discovery that the Criminal Rules decline to provide. *Mechanisms* for obtaining evidence are obviously not the same thing as *evidence itself*. The law imposes no limitations on the non-privileged evidence that the criminally accused are entitled to possess and (if it is admissible) use at trial. The Government's apparent belief that the criminally accused are entitled to only whatever evidence their prosecutors decide to give them vividly illustrates the Government's improper understanding of the prosecutor's role.

The Government's second argument supporting its stay request was that the independent shareholder suit would, if permitted to proceed, "enable the criminal defendants to use the civil discovery to circumvent the limitations on criminal discovery and thus prejudice the government's criminal prosecution." *Id.* But that argument makes no sense where, as here, the criminally accused are not parties to or affiliated with the civil action. Neither Mr. McDonnell nor Mrs. McDonnell could "use" the tools of civil discovery because neither of them is involved in the civil suit. Mr. McDonnell's defense counsel could simply ask the civil plaintiffs' counsel to voluntarily share information they obtain in discovery that impeaches or undermines Mr. Williams, just as Mr. McDonnell's defense counsel could contact Mr. Williams's old business partners to ask questions about his past. In either circumstance, the McDonnells are merely utilizing different "means by which the defense could obtain evidence," *Gregory*, 369 F.2d at 189, and in either circumstance, the Government has no right to interfere. The possibility that a third-party civil suit might incidentally lead to exculpatory evidence being transferred from a hostile third party (Star Scientific) to a neutral one (civil plaintiffs and their counsel) could not possibly unfairly "circumvent the limitations on criminal discovery and thus prejudice the government's criminal prosecution." Stay Motion at 3. Indeed, if such evidence exists, the Government should favor—not resist—its disclosure.

3. The Government's authorities are inapposite.

Perhaps unsurprisingly, given the novelty of the Government's actions, none of the cases it cited in requesting a stay actually endorse what the Government requested—a suspension of discovery in third-party civil litigation because that discovery might reveal evidence which would exonerate a criminally accused in an unconnected criminal proceeding. The

Government's Stay Motion glosses over the distinctions, but its authorities fall into three camps, all of which are fundamentally different from this case: (1) decisions granting stays *at the request of a criminal defendant* who is also a civil litigant on the ground that the civil discovery will interfere with the accused's right against self-incrimination in his criminal proceeding; (2) decisions granting stays in order to preserve the secrecy of an ongoing grand jury investigation that involves people who are parties to the civil suit; and (3) decisions granting stays in order to prevent a criminal defendant who is also a civil litigant from personally using the tools of civil discovery to build his criminal case. None of those decisions endorse or support the Government's conduct here.

(a) Decisions granting defense requests for a stay to preserve the accused's Fifth Amendment rights are inapposite here.

Many of the Government's authorities arose in the facially distinguishable context of criminal defendants seeking to stay civil discovery against themselves on the ground that it could interfere with their Fifth Amendment right against self-incrimination: "Courts often grant motions to stay on the grounds that the Fifth Amendment privileges of certain parties are implicated." *Bridgeport Harbour Place I, LLC v. Ganim*, 269 F. Supp. 2d 6, 9 (D. Conn. 2002); *see also, e.g.*, *Creative Consumer Concepts, Inc. v. Kreisler*, 563 F.3d 1070, 1081 (10th Cir. 2009) (defendant claimed that the denial of a civil stay pending the criminal proceeding "prevented her from testifying in the civil case"); *SEC v. Dresser Indus., Inc.*, 628 F.2d 1368, 1375-76 (D.C. Cir. 1980) ("Other than where there is specific evidence of agency bad faith or malicious governmental tactics, the strongest case for deferring civil proceedings until after completion of criminal proceedings is where *a party under indictment* for a serious offense is required to defend a civil or administrative action involving the same matter." (emphasis added)); *Bridgeport Harbour Place I*, 269 F Supp. 2d at 9 ("If the defendants assert that privilege in the civil proceeding, they could possibly be defaulted in the case and become subject to civil liability."); *Brock v. Tolkow*, 109 F.R.D. 116, 120 (E.D.N.Y 1985) ("If the defendants are served with interrogatories in the civil case, they must decide whether to respond or to assert their rights under the fifth amendment."); *Twenty First Century Corp. v. LaBianca*, 801 F Supp. 1007, 1009 (E.D.N.Y 1992) ("Since he has not yet been sentenced, Redzinski intends to assert his fifth amendment right against self-incrimination with respect to the averments against him in this case.").

These cases are obviously inapposite. The Constitution does not constrain a criminal defendant's ability to postpone civil discovery (or any other defense-side investigation). Nor does this case involve issues concerning the right against self-incrimination. The McDonnells are not parties to the civil suit and are not the ones seeking to stay civil discovery

(b) Decisions granting a stay to preserve the secrecy of ongoing grand jury proceedings are inapposite here.

Many of the Government's other cases arose in the much-different context of ongoing criminal and grand jury investigations. *See, e.g.*, *Grand Jury Proceedings (Williams) v. United States*, 995 F.2d 1013, 1018 n.11 (11th Cir. 1993) (explaining in dicta that the stay "procedure prevents civil litigants from engaging in strategic litigation to delay *criminal investigations* by blocking relevant evidence" (emphasis added)); *SEC v. Chestman*, 861 F.2d 49, 49 (2d Cir. 1988) (explaining that the Government sought "a stay of discovery in that case pending completion of *a criminal investigation* concerning the same underlying facts" (emphasis added)); *SEC v. Downe*, No. 92 Civ. 4092, 1993 WL 22126, at *12 (S.D.N.Y Jan. 26, 1993) ("[T]he United States Attorney contends that the Grand Jury investigation would be irreparably harmed if such testimony and document production with respect to defendant Downe were permitted to proceed at this time.").[3]

In the context of an ongoing grand jury investigation, secrecy and confidentiality are important government interests. Such investigations often involve confidential informants who must be protected, the Government's need to play defendants and witnesses off each other to aid its investigation, and other forms of appropriate law-enforcement conduct, as well as the interest in grand jury secrecy. Because the "proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings," *Douglas Oil Co. v. Petrol Stops Nw.*, 441 U.S. 211, 218 (1979), it makes sense that courts have recognized a governmental interest in staying civil discovery pending an ongoing grand jury investigation.

That interest vanishes, however, once the grand jury investigation has concluded (as it has here) and the time comes for a public trial. The purpose of trial is to present *all* available, non-privileged, relevant evidence to a jury so it can determine whether a crime was committed. The Government should not, and the public certainly does not, have an interest in suppressing relevant evidence during that process or in convicting a criminal defendant on the basis of an incomplete factual record. *See also, e.g.*, *United States v. Gieger Transfer Serv., Inc.*, 174 F.R.D. 382, 385 (S.D. Miss. 1997) (analyzing many of the authorities cited here and explaining that stays are particularly unwarranted once a "criminal case is well past the investigative stage and is being prepared for trial").

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[3] *See also, e.g., Raphael v. Aetna Cas. & Sur. Co.*, 744 F Supp. 71, 74 (S.D.N.Y 1990) ("The Government argues that enforcement of the subpoenas would compromise an ongoing criminal investigation of a major interstate automobile theft ring operating out of New York."); *Bd. of Governors of Fed. Reserve Sys. v. Pharaon*, 140 F.R.D. 634, 636 (S.D.N.Y 1991) ("The District Attorney has stressed that a major goal of the stay is the preservation of the confidentiality of the Grand Jury proceedings concerning Pharaon and BCCI."); *R.J.F Fabrics, Inc. v. United States*, 651 F Supp. 1437, 1438-39 (Ct. Int'l Trade 1986) ("Defendant fears that the criminal prosecution against this plaintiff as well as the larger investigation into the problem of transshipment will be compromised [absent a stay]."); *Souza v. Schiltgen*, No. C-95-3997 MHP, 1996 WL 241824, at *1 (N.D. Cal. May 6, 1996) ("Defendant seeks a stay of these civil proceedings pending resolution of the criminal investigation."). Some of these decisions from the grand jury context included language extending beyond grand jury investigations and are thus addressed in the next section too.

(c) Decisions granting a stay to prevent criminal defendants from personally utilizing the tools of civil discovery are both inapposite and mistaken.

The Government's other authorities involved criminal defendants who were themselves parties in the civil action and who *themselves* sought to use the tools of civil discovery to supplement the tools of criminal discovery. *See Chestman*, 861 F.2d at 49 (refusing to reverse a stay in a mandamus posture where the criminal defendant might use the tools of civil discovery "to circumvent the more limited scope of discovery in the criminal matter"); *United States v. Mellon Bank, N.A.*, 545 F.2d 869, 873 (3d Cir. 1976) (noting, in a mandamus posture, "the possibility that [the criminal defendant] might improperly exploit civil discovery"); *Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962) ("litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit as a dodge to avoid the restrictions on criminal discovery").[4] Moreover, several of these cases (including *Campbell*, the leading case) involved criminal defendants who had filed suit against the Government concerning the same facts that underlay their criminal cases. *Mellon Bank*, 545 F.2d at 870 ("In September of 1974, [the criminal defendant] initiated a suit in the Tax Court to contest the jeopardy assessment."); *Campbell*, 307 F.2d at 483 ("It is a fair inference from the record that the filing of the suit for a refund, or at least the filing of the motion for discovery, was a tactical maneuver to enable the taxpayer to gain advance information on the criminal case."). This final group of decisions is both irrelevant and unpersuasive in the context of this case.

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[4] *See also Bridgeport Harbour Place I*, 269 F. Supp. 2d at 10 ("If the stay is not granted, Ganim would be able to depose "); *Twenty First Century*, 801 F. Supp. at 1010 (noting the civil discovery could permit the use of tools, such as depositions, that the criminal rules withhold); *Downe*, 1993 WL 22126, at *12 ("[T]he defendants in this case will be able to obtain testimony and documents through civil discovery, which could not be obtained at this time in a criminal proceeding."); *Raphael*, 744 F. Supp. at 75 ("[C]ourts will not permit the defendant to circumvent the restrictions placed upon criminal discovery by attempting to compel disclosure in the civil case."); *R.J.F. Fabrics*, 651 F. Supp. at 1440 (discussing the interest in confining criminal litigants to the criminal rules).

In at least one of its citations, the Government utilized a quotation that represented the parties' views as though they were the views of the Court. *Compare United States v. One 1964*

Foremost, these decisions are irrelevant because none turned on or discussed the constitutional constraints on a prosecutor's conduct. In each of these cases—particularly those involving criminal defendants who filed civil suits contesting the facts underlying their criminal prosecutions—the issue was what legal tools of discovery a criminal defendant is entitled to use. Some courts decided (incorrectly, as explained below) that criminal defendants are confined to the tools available in the criminal rules. As the leading such decision explained, "[j]udicial discretion and procedural flexibility should be utilized to harmonize the conflicting rules and to prevent the rules and policies applicable to one suit from doing violence to those pertaining to the other." *Campbell*, 307 F.2d at 487. The point of these decisions was thus not that criminal

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(continued...)

Cadillac Coupe DeVille, 41 F.R.D. 352, 353 (S.D.N.Y 1966) ("*The parties apparently agree that* where both civil and criminal proceedings arise out of the same or related transactions the government is ordinarily entitled to a stay of all discovery in the civil action until disposition of the criminal matter." (emphasis added)), *with* Stay Motion at 5 ("*United States v. One 1964 Cadillac Coupe DeVille*, 41 F.R.D. 352, 353 (S.D.N.Y 1966) ('where both civil and criminal proceedings arise out of the same or related transactions the government is ordinarily entitled to a stay of all discovery in the civil case until disposition of the criminal matter')."). In any event, that Court likewise relied on the interest in preventing criminal litigants from personally using "the liberal civil discovery procedures" available in civil litigation. *1964 Cadillac*, 41 F.R.D. at 354.

defendants have no right to *discovery* (*i.e.*, information); the point was that they have no right to themselves use the *tools* of civil discovery (*i.e.*, the right to depose government officials, propound interrogatories, etc.).

Here, by contrast, the Government is not seeking to limit the defense to the legal toolbox contained in the criminal rules. The Government is, rather, seeking to limit the defense's ability to use one of the tools that the criminal rules permit—asking third parties for voluntary assistance—by interfering in unrelated civil litigation to prevent the disclosure of exculpatory evidence. And *that* conduct falls squarely within the constitutional prohibition against prosecutors suppressing a "means by which the defense could obtain evidence." *Gregory*, 369 F.2d at 189. None of the Government's authorities contradict this rule. Just as the Constitution would forbid the prosecutors from ordering the plaintiffs in the civil suit to ignore calls from the defense, or would forbid the prosecutors from telling witnesses to not talk to the defense, it forbids the Government from interfering in unrelated civil litigation for the sole purpose of making it more difficult for the defense to gather exculpatory evidence.

Finally, and perhaps more importantly, to the extent that these cases *are* marginally relevant—despite the fact that the McDonnells have no connection to the civil action—they are not persuasive where, as here, the Government's *sole interest* in staying civil discovery is its desire to secure a litigation advantage by limiting the evidence available for Mr. McDonnell's criminal trial. As Judge Richard Sullivan on the Southern District of New York recently explained: "The Court reiterates that it is unaware of any legal requirement entitling the government to preserve its cooperators from examination before trial. What the government deems to be a right is, in fact, a litigator's preference to avoid cross-examination and related impeachment of prized witnesses." *SEC v. Chakrapani*, Nos. 09 Civ. 325 (RJS), 09 Civ. 1043

(RJS), 2010 WL 2605819, at *11 (S.D.N.Y June 29, 2010) (Ex. B). As Judge Sullivan recognized, "one would expect his testimony to be the same whether first given at a criminal trial or at a civil one," such that "there is little to justify the government's jealous protection of its cooperating witness." *Id.* Other decisions are in accord. *See, e.g.*, *SEC v. Jenkins*, No. CV-09-1510, 2011 WL 221696, at *1 (D. Ariz. Jan. 21, 2011) ("[T]here is no cognizable harm to the government in providing such discovery beyond its desire to maintain a tactical advantage." (citing a prior decision)); *SEC v. Saad*, 229 F.R.D. 90, 92 (S.D.N.Y 2005) ("[The Government's] argument thus reduces to the near-frivolous position that, in some wholly speculative way, it would be prejudiced by having the SEC give these notes to the defendants a month or two sooner than they would otherwise receive them."); *SEC v. Oakford Corp.*, 181 F.R.D. 269, 273 (S.D.N.Y 1998) ("[T]here is no cognizable harm to the government in providing such discovery beyond its desire to maintain a tactical advantage."); *see also, e.g.*, *United States v. Fin. Indus. Regulatory Auth. ("FINRA")*, 607 F Supp. 2d 391, 394 (E.D.N.Y 2009) (explaining that the possibility of "criminal defendants having more information than they would otherwise be entitled to at this stage under the Federal Rules of Criminal Procedure" is an "insufficient" basis to justify staying an arbitration).

Secrecy disserves the search for truth and thwarts Mr. McDonnell's constitutional right to defend himself. The Government's "jealous protection of its cooperating witness," *Chakrapani*, 2010 WL 2605819, at *11, is thus unconstitutional. It should be remedied by this Court.

II. There Are At Least Two Different Forms Of Relief This Court Can Grant To Remedy The Government's Unconstitutional Conduct.

Because the Government's constitutional violation is a novel one, there is no established remedy to cure it. Had the McDonnells been parties to the civil suit, they could have opposed the stay in that context and had their rights protected in that proceeding. But because the Government filed their request to stay discovery without notifying the accused or (it appears) this Court—and because the Government represented their unusual request as being unopposed, unremarkable, and routine—the accused have had no prior opportunity to assert their Fifth and Sixth Amendment rights. Given the circumstances, there are at least two forms of relief that this Court has the power to provide. We ask the Court to: (1) order the Government to provide discovery of everything in the Government's possession, custody, or control related to Jonnie Williams and his past and present misconduct, including all materials gathered by other federal agencies in the course of investigating Mr. Williams and Star Scientific; and (2) order the Government to withdraw all stay requests it has lodged and enjoin the Government from taking additional steps to impede the defendants' ability to investigate the charges. Both of these forms of relief are justified by the extraordinary measures the Government has undertaken to prevent the disclosure of relevant, exculpatory evidence in this proceeding.

A. The Court Should Order The Government To Disclose Forthwith Everything In Its Possession, Custody, Or Control Related To Jonnie Williams, Other Star Scientific Witnesses, And The Company Itself.

"[T]he courts have long recognized that trial judges must be able to control their own proceedings to ensure the fair administration of justice within the confines of the law." *United States v. Carrigan*, 804 F.2d 599, 603 (10th Cir. 1986). "The courts have wielded this authority substantively, that is, to provide a remedy for the violation of a recognized right of a criminal defendant." *United States v. HSBC Bank USA*, No. 12-CR-763., 2013 WL 3306161, at *4 (E.D.N.Y July 1, 2013). In *Carrigan*, for example, the Tenth Circuit held that ordering witnesses to submit to depositions by defense counsel was an appropriate remedy for governmental efforts to discourage those witnesses from speaking with defense counsel. *See* 804

F.2d at 604 ("[W]e cannot find the order entered here as a sanction for the government's interference with a defendant's access to potential prosecution witnesses to be wholly beyond the district court's jurisdiction.").[5] In short, as the Ninth Circuit has explained, "nothing in Rule 16 expressly prohibits the district court from ordering additional pretrial discovery or disclosures that will also further the objectives set forth in Rule 2." *United States v. Grace*, 526 F.3d 499, 511 (9th Cir. 2008) (en banc).

Here, the Government has taken affirmative steps to prevent the disclosure of exculpatory evidence concerning Mr. Williams and to limit Mr. McDonnell's ability to investigate the evidentiary basis of the Government's allegations. That conduct is improper and unconstitutional. The most appropriate way to remedy it—a remedy which falls well within this Court's supervisory power over the administration of justice—would be for the Court to order that the Government promptly produce all evidence in its possession, custody, or control that relates to Jonnie Williams and his past, including all materials gathered by other federal agencies (the SEC and FDA, in particular) in the course of investigating Mr. Williams and Star Scientific. Other courts facing discovery violations by the Government have ordered similarly broad discovery as a remedial cure. For example, in *United States v. Monteiro*, No. 03-10329-PBS, 2005 U.S. Dist. LEXIS 39121 (D. Mass. Oct. 31, 2005), the Government failed to comply with various court orders and discovery obligations. The court explained that "a sanction is necessary and appropriate for a violation of the local rules and orders of the magistrate judge" and therefore ordered the Government to "disclose all materials in its files related to the Fernandes shooting." *Id.* at *16; *see also, e.g.*, *Carrigan*, 804 F.2d at 604-05 (approving of witness depositions as a remedy for prosecutors discouraging witnesses from cooperating with defense counsel). This Court should issue a similar Order here. Doing so would at least ameliorate the Government's unconstitutional "frustrat[ion of] the defense in the preparation of its case," *Gregory*, 369 F.2d at 188, and would therefore constitute an appropriate remedy.

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[5] *See also, e.g. United States v. Hasting*, 461 U.S. 499, 505 (1983) (recognizing the "implement[ation of] a remedy for violation of recognized rights" as one of the proper uses of the supervisory power); *United States v. Payner*, 447 U.S. 727, 741 n.7 (1980) ("The supervisory power permits federal courts to supervise 'the administration of criminal justice' among the parties before the bar."); *McNabb v. United States*, 318 U.S. 332, 340 (1943) (endorsing the use of this authority to fashion "civilized standards of procedure and evidence" applicable to federal criminal proceedings); *Bank of Nova Scotia v. United States*, 487 U.S. 250, 264 (1988) (Scalia, J., concurring) ("[E]very United States court has an inherent supervisory authority over the proceedings conducted before it "); *Gonzales*, 164 F.3d at 1293 (endorsing a variety of possible discovery orders to sanction prosecutors' interference with defense access to a witness); *In re United States*, 878 F.2d 153, 157 (5th Cir. 1989) ("[I]n certain limited instances the district court in a criminal case may order discovery not provided for by statute of the Federal Rules of Criminal Procedure.") (citation omitted).

B. The Court Should Enjoin The Government From Blocking The Development And Revelation Of Potentially Exculpatory Evidence.

In addition, the Court should exercise its supervisory authority over the administration of justice and order the Government's attorneys to withdraw all stay requests they have lodged in other civil proceedings, recant all requests for stays (including in *In re Star Scientific*), and enjoin the Government's attorneys from any further efforts to suppress exculpatory evidence. While this Court lacks jurisdiction to issue orders concerning discovery in third-party civil cases, it does have jurisdiction over the conduct of the Government's attorneys in this case. Given the circumstances, it would be appropriate for this Court to order the Government to withdraw its request and cease from making such a request again in any other forum.

CONCLUSION

For the foregoing reasons, the accused asks this Court to remedy the Government's unconstitutional interference in Mr. McDonnell's right to prepare and present a defense. Two possible remedies are (1) ordering the Government to provide immediate discovery of everything in the Government's possession, custody, or control related to Jonnie Williams and his past and present misconduct, including all agency investigations into Star Scientific and Mr. Williams; and (2) ordering the Government to cease interfering in third-party litigation and to withdraw all requests for a stay that it has made. The Court likewise should award any other relief it deems proper.

The defense respectfully requests a hearing on this Motion.

Dated: February 13, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February, 2014, I electronically filed the foregoing motion and the accompanying memorandum with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
V.	)	CRIMINAL NO. 3:14-CR-00012
	)	
ROBERT F. MCDONNELL	)	JUDGE JAMES R. SPENCER
MAUREEN G. MCDONNELL	)	

DEFENDANT ROBERT F. MCDONNELL'S MOTION # 8 – MOTION FOR BILL OF PARTICULARS

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INTRODUCTION

While the Indictment in this proceeding is unnecessarily detailed in some respects, it fails to provide the information necessary for Mr. McDonnell to prepare his defense and avoid unfair surprise on two key issues. "The purpose of a bill of particulars 'is to fairly apprise the defendant of the charges against him so that he may adequately prepare a defense and avoid surprise at trial.'" *United States v. Sampson*, 448 F. Supp. 2d 692, 696 (E.D. Va. 2006) (Spencer, J.) (quoting *United States v. Automated Med. Labs., Inc.*, 770 F.2d 399, 405 (4th Cir. 1985)). Here, the Indictment fails to articulate with precision what "official actions" Mr. McDonnell supposedly performed or promised to perform on behalf of Mr. Williams and also declines to specify at all who (other than the accused) was allegedly involved in the charged conspiracy. These fundamental deficiencies are particularly acute here, given the Government's failure to provide prompt and complete discovery or to direct the defense to those documents in its five-million page production that it believes substantiate the elements of the charged offenses. A bill of particulars is therefore necessary.[1]

ARGUMENT

The defense requests particulars on two very important points. *First*, the indictment fails to articulate with any specificity the substance and extent of the official acts that Mr. McDonnell allegedly performed or promised to perform for the benefit of Mr. Williams or Star. This information goes to the heart of Mr. McDonnell's defense. If the Government is unable to allege—or prove—that Mr. McDonnell performed or promised to perform any action which qualifies as an "official action," then its corruption charges fail as a matter of law. The

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[1] On February 21, 2014, the defense sent a letter to counsel for the Government requesting that it provide the particulars underlying some of its allegations. On February 25, 2014, the Government declined to provide the requested details, thus necessitating this filing.

Government's vagueness on this critical issue—especially when considered in conjunction with its extreme detail on others—is a transparent attempt to circumvent the legal question at the heart of this case and thus prevent this Court from decisively ruling on the merits of that question before trial. Hence, the Indictment contains boilerplate and vague allegations that fail to explain anything about what the Government thinks happened; for example, that Mr. McDonnell performed or promised to perform "on an as-needed basis, as opportunities arose,"[2] unspecified official actions "to legitimize, promote, and obtain research studies for Star Scientific's products, including Anatabloc®," (Indictment ¶ 22, *see also id.* ¶ 110), or that he vaguely "spoke favorably to the attendees [at a Mansion event] regarding further study of anatabine" (*id.* ¶ 60).

The Indictment also alludes to the existence of other official acts that are not alleged in the Indictment. Specifically, the Indictment states that the means by which the McDonnells carried out the alleged conspiracy "included, *but were not limited to*, providing favorable official action on behalf of JW and Star Scientific as opportunities arose, including" such actions as (1) "arranging meetings," (2) "hosting, and the defendants attending, events at the Governor's Mansion," (3) "contacting other government officials" in the Governor's office, (4) "promoting Star Scientific's products and facilitating its relationships with Virginia government officials," and (5) "recommending that senior government officials" meet with Star representatives. (*Id.* ¶ 111(c) (emphasis added).) The Court should require the Government to specify any other official acts that Mr. McDonnell allegedly performed or promised to perform.

Second, the Indictment alleges that the McDonnells "conspire[d] with each other and with others, both known and unknown to the grand jury" to commit honest services fraud and extortion under color of official right, yet the Indictment does not identify who the other co-conspirators are. (*Id.* ¶¶ 109, 115.) The identities of these individuals are critical to Mr. McDonnell's ability to prepare his defense and avoid unfair surprise, and should be provided to the defense under seal.[3] Without knowing who he is alleged to have conspired with, it is impossible for Mr. McDonnell to understand the conspiracy allegations—particularly the conspiracy's supposed objectives, aims, and acts in furtherance—in order to defend against the Government's charges. Nor can Mr. McDonnell properly disprove a conspiratorial agreement—or determine what acts or statements might have furthered this supposed conspiracy—when he does not even know the identities of his supposed co-conspirators.

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[2] This boilerplate "allegation" is lifted nearly verbatim from the district court's statement of law in *United States v. Jefferson*. *See* 674 F.3d 332, 358 (4th Cir. 2012) ("performing official acts on an as-needed basis, so that [when]ever the opportunity presented itself, he would take specific action on the payor's behalf").

Knowing who these people are is especially important in this case because many critical witnesses—including almost everyone who worked for the McDonnells while Mr. McDonnell was the Governor of Virginia—are represented by counsel and have been reluctant to speak with the defense, possibly because they are afraid of likewise facing federal charges. Requiring the Government to clarify which people it actually believes were involved in the alleged conspiracy would dissipate that cloud of concern. And that would, in turn, ensure that witnesses do not refuse to cooperate with the defense out of unfounded concern that such cooperation could result in the Government investigating them too.

I. A Bill Of Particulars Is Required When The Indictment Fails To Allege Information Necessary To Prepare A Defense And Avoid Unfair Surprise.

This Court has broad discretion under Federal Rule of Criminal Procedure 7(f) to order the Government to provide a bill of particulars. *See* Fed. R. Crim. P 7(f). A bill of particulars "serves to supply the evidentiary details needed to prepare a defense." *United States v. Am.*

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[3] To protect the identities of these individuals, the defense requests that their names not be disclosed publicly.

Waste Fibers Co., 809 F.2d 1044, 1047 (4th Cir. 1987); *see also United States v. Anderson*, 481 F.2d 685, 690 (4th Cir. 1973) (stating that the function of a bill of particulars is "to supply 'any essential detail which may have been omitted from the indictment'" (quoting *Dillen v. Wainwright*, 449 F.2d 331, 332 (5th Cir. 1971)). "Although an indictment should allege facts sufficient to put the defendant on notice of the charges against him so that he may prepare his defense, a bill of particulars or discovery often may be used if sufficient facts are not alleged." *United States v. Previti*, 644 F.2d 318, 319 (4th Cir. 1981). A bill of particulars thus "amplifies the indictment by providing missing or additional information so that the defendant can effectively prepare for trial." *United States v. Fletcher*, 74 F.3d 49, 53 (4th Cir. 1996). Its purpose "is to fairly apprise the defendant of the charges against him so that he may adequately prepare a defense and avoid surprise at trial." *United States v. Automated Med. Labs., Inc.*, 770 F.2d 399, 405 (4th Cir. 1985).

Since the 1966 amendments to Rule 7(f) eliminated "the requirement of a showing of cause," the rule has evolved "to encourage a more liberal attitude by the courts toward bills of particulars." Fed. R. Crim. P. 7 advisory committee's notes (1966 amend.). This liberalization has led to a "desirable decline in the 'sporting theory' of criminal justice," whereby the prosecution endeavors to gain tactical advantage by withholding as much information as possible until trial. *United States v. Addonizio*, 451 F.2d 49, 64 (3d Cir. 1971) (quoting *United States v. Jaskiewicz*, 278 F. Supp. 525, 529 (E.D. Pa. 1968)). Given the more relaxed standard for granting a bill of particulars, defendants should "be given the benefit of the doubt in gray areas." *United States v. Thevis*, 474 F. Supp. 117, 124 (N.D. Ga. 1979), *aff'd*, 665 F.2d 616 (5th Cir. 1982). Where there is doubt, it "must be resolved in favor of disclosure and the conflicting concerns must yield to paramount public interest in affording the accused a reasonable foundation for mounting a defense." *United States v. Manetti*, 323 F Supp. 683, 696 (D. Del. 1971).

It is no "'answer to a motion for a bill of particulars for the government to say: The defendant knows what he did, and, therefore, has all the information necessary.'" *United States v. Anderson*, 254 F Supp. 177, 181 (W.D. Ark. 1966) (quoting *United States v. Smith*, 16 F.R.D. 372, 375 (W.D. Mo. 1954)). Such an "argument could be valid only if the defendant [were] presumed to be guilty" since "only if he is presumed guilty could he know the facts and details of the crime." *Id.* In our justice system, however, the accused "is presumed to be innocent," which means "it must be assumed 'that he is ignorant of the facts on which the pleader founds his charges.'" *Id.* (quoting *Fontana v. United States*, 262 F 283, 286 (8th Cir. 1919)); *see generally* 1 Charles Alan Wright et al., *Federal Practice and Procedure* § 130 (4th ed. 2013) (same).

The dangers of denying a defendant sufficient information to prepare a defense and avoid unfair surprise are particularly serious in this case, given the Government's discovery difficulties and refusal to provide other immediate discovery. Just as the Government's willingness to provide early and comprehensive discovery could weigh *against* the need for a bill of particulars, the Government's failure to produce timely document production—and its resistance to providing any other prompt discovery—should weigh in *favor* of a bill of particulars where the indictment is vague. *See United States v. Taylor*, No. 3:04-CR-227, 2005 BL 34430, at *4 (E.D. Va. Sept. 21, 2005) (Spencer, J.) (noting that the "Court may determine whether the information requested has been provided by other means" such as "pretrial discovery" or "voluntary disclosure"); *United States v. Allen*, 289 F Supp. 2d 230, 237 (N.D.N.Y 2003) ("In determining whether a bill of particulars is warranted, the court should consider the complexity of the offense, the clarity of the indictment, and the degree of discovery otherwise available to the defendants.").

II. Mr. McDonnell Is Entitled To A Bill Of Particulars Because The Indictment Omits Critical Information Necessary To Prepare His Defense And Avoid Unfair Surprise.

A. The Indictment Fails To Specify The Substance And Extent Of The Official Acts Alleged By The Government.

The Indictment's chief allegation is that the McDonnells participated in a scheme to obtain gifts and loans from Mr. Williams and Star in exchange for Mr. McDonnell performing "official actions" for their benefit. (Indictment ¶ 22.) But instead of identifying with any sort of precision and clarity the official acts that Mr. McDonnell allegedly performed or promised to perform, the Government employed vague language that obscures what the Government claims Mr. McDonnell actually did. For instance, the Indictment alleges that Mr. McDonnell performed or promised to perform "on an as-needed basis, as opportunities arose," official actions to "legitimize" and "promote" Star products. (*Id.*; *see also id.* ¶ 111(c)(i) (arranged meetings "to discuss and promote Anatabloc®"); *id.* ¶ 111(c)(ii) (attended and hosted events "designed to encourage" research studies and "to promote" Star products); *id.* ¶ 111(c)(iii) (contacted other officials "as part of an effort to encourage" research studies); *id.* ¶ 111(c)(iv) ("promot[ed]" Star's products and "facilitat[ed] its relationships with Virginia government officials").) This boilerplate is entirely uninformative on its face. Yet even when the Government tries to give it factual content, the best it can do is vaguely assert that Mr. McDonnell "spoke favorably to the attendees [at a Governor's Mansion event] regarding further study of anatabine." (*Id.* ¶ 60; *see also id.* ¶ 20 (alleging "brief remarks in support of Star Scientific").) The Government almost certainly deployed such loose language in order to plead around the stubborn reality that Mr. McDonnell neither promised nor performed any legally cognizable official act at any time. As the defense will explain in its forthcoming motion to dismiss, an action is not "official" unless it is undertaken to carry out or influence a governmental decision or action. Merely speaking "favorably" about a donor (whatever that means) does not suffice. The Government's use of vague language to obscure what conduct it actually alleges was criminal is thus preventing Mr. McDonnell from mounting an effective defense.

Not only are the Government's allegations concerning official acts hopelessly unclear, the Indictment also suggests that its allegations of official acts are non-comprehensive, *i.e.*, the Government has apparently declined to allege all of the official acts that Mr. McDonnell performed or promised to perform. In particular, the Indictment states that the alleged official acts "included, *but were not limited to*," such actions as (1) "arranging meetings with JW and Virginia government officials"; (2) "hosting, and the defendants attending, events at the Governor's Mansion"; (3) "contacting other government officials in the OGV"; (4) "promoting Star Scientific's products and facilitating its relationships with Virginia government officials"; and (5) "recommending that senior government officials in the OGV meet with Star Scientific executives." (Indictment ¶ 111(c) (emphasis added).) To the extent that there are other alleged official acts that the Government intends to prove but has omitted from the Indictment, it should specify those acts in a bill of particulars.

As one court explained, "the basis of the government's allegations that the defendant solicited and received things of value" in exchange for "*official acts*" is "necessary to avoid unfair surprise at trial and is needed for the defendant to prepare a defense." *United States v. Espy*, 989 F Supp. 17, 34 (D.D.C. 1997). It is no surprise, therefore, that the *Espy* court "grant[ed] the defendant's motion for a bill of particulars [that sought] from the government the conduct, date, place and substance of each official act referred in the indictment." *Id.* This

Court should likewise demand that the Government provide the conduct, date, place, and substance of all the official acts it intends to prove at trial.

B. The Indictment Fails To Identify Mr. McDonnell's Alleged Co-Conspirators.

The Indictment charges two conspiracy counts, and in both the Government alleges that the McDonnells conspired "with each other and with others, both known and unknown to the grand jury." (Indictment ¶¶ 109, 115.) Mr. McDonnell cannot effectively prepare his defense and avoid unfair surprise at trial if he does not know who the Government believes his co-conspirators were. The Court should therefore order the Government to provide that information.

Withholding this information will frustrate Mr. McDonnell's ability to prepare for trial by leaving him in the dark regarding the true nature and scope of the Government's conspiracy allegations. If Mr. McDonnell does not know who his alleged co-conspirators are, then it is impossible for him to know precisely what conduct the Government is alleging was criminal. Given the inherent legal vagueness in the charged crimes—and, as outlined above, the Government's intentional factual vagueness about what, precisely, Mr. McDonnell did to consummate those supposed crimes—it is critical that Mr. McDonnell know who else the Government thinks was involved. That is, no doubt, why courts routinely order the Government to disclose the identities of unindicted co-conspirators. *See, e.g.*, *Allen*, 289 F Supp. 2d at 238 (directing the Government to "disclose the identities of all persons the government claims to have been co-conspirators during the course of the alleged conspiracy, regardless of whether they have been indicted"); *United States v. Lonzo*, 793 F Supp. 57, 60 (N.D.N.Y 1992) (granting "the request that the Government disclose the names of unindicted co-conspirators"); *United States v. Williams*, 113 F.R.D. 177, 178 (M.D. Fla. 1986) (noting that "it appears to be the common practice among courts in this circuit to grant [motions for a bill of particulars] insofar as they request a list of unindicted co-conspirators, at least when that information is not otherwise known to the defendant(s)"); *United States v. Holman*, 490 F Supp. 755, 762 (E.D. Pa. 1980) (directing the Government to disclose "the names of all co-conspirators or participants in the alleged offenses known to the Government"); *United States v. Barrentine*, 591 F.2d 1069, 1077 (5th Cir. 1979) (explaining that "[i]t is not uncommon for the trial judge to require the government to disclose [the] names [of unindicted co-conspirators] when information is necessary in a defendant's preparation for trial").

Several unique aspects of this case further favor confidential disclosure of the identities of every person the Government believes was involved in the alleged conspiracy. Foremost, the Government's factual allegations in this case involve conduct by every member of the McDonnells' immediate family and many of their former staff members. That factual breadth has caused many of the people who witnessed the events underlying the Indictment—most of whom are represented by counsel—to be concerned that the Government might investigate *them* for federal crimes too, particularly if they meet or talk with defense counsel. Requiring the Government to identify everyone whom it actually believes was involved in the alleged conspiracy (and thus, by implication, to identify those *not* involved in the alleged conspiracy) would eliminate these witnesses' unfounded concern and would therefore assist Mr. McDonnell in investigating the Government's allegations. That is particularly true where, as here, the Indictment is vague about the scope and nature of the conspiracy itself and (as addressed further below) the Government's document production is massive: "[I]f the discovery has been voluminous, identification of known unindicted co-conspirators will help a defendant focus his investigation and prepare for trial." *United States v. Nachamie*, 91 F Supp. 2d 565, 573 (S.D.N.Y 2000).

Finally, and perhaps most importantly, disclosing the identities of alleged co-conspirators would not prejudice the Government or (so long as disclosure is confidential) the alleged co-conspirators themselves. Unlike in many criminal cases, the confidential disclosure of alleged co-conspirators will not put anyone in danger or otherwise subvert legitimate law enforcement interests. As one court recently explained, "there is a common thread running through cases where courts have granted disclosure: the identities of unindicted co-conspirators have been disclosed primarily in cases in which violence was not alleged." *United States v. Barrera*, 950 F Supp. 2d 461, 477 (E.D.N.Y 2013) (citation omitted). So too here.

In short, Mr. McDonnell has a right to know whom the Government believes he conspired with and his counsel need to know the scope of the alleged conspiracy in order to properly defend against the Government's allegations. The Court should therefore order the Government to provide this information.

III. The Sheer Size Of The Government's Document Production Further Warrants A Bill Of Particulars.

"Perhaps the most frequent case in which particulars are warranted is where discovery is overwhelmingly extensive and the government fails to designate which documents it intends to introduce and which documents are merely relevant to the defense." *United States v. Mahaffy*, 446 F Supp. 2d 115, 119 (E.D.N.Y 2006) (emphasis omitted). That makes sense, of course, since the criminally accused should not have to spend months (or years) combing through millions of documents in order to understand the charges against them. As many courts have explained, the Government does "not fulfill its obligation merely by providing mountains of documents to defense counsel who were left unguided " *United States v. Bortnovsky*, 820 F.2d 572, 575 (2d Cir. 1987); *see also, e.g.*, *United States v. Ramirez*, 609 F.3d 495, 503 (2d Cir. 2010) (noting that the "district court made clear that it ordered a bill of particulars because so much discovery was produced to the defendants, not too little"); *United States v. Aispuro*, No. CR 08-2936 JB, 2010 BL 59827, at *7 (D.N.M. Mar. 16, 2010) ("The Court also finds persuasive the Defendants' argument that, in a complex case with voluminous unorganized discovery, a bill of particulars is particularly necessary to avoid surprise at trial."); *Mahaffy*, 446 F Supp. 2d at 120 ("[A] large volume of discovery warrants a bill of particulars if it obfuscates the allegedly unlawful conduct and unfairly inhibits the defendant's preparation for trial."); *United States v. Bin Laden*, 92 F Supp. 2d 225, 234 (S.D.N.Y 2000) ("[S]ometimes, the large volume of material disclosed is precisely what necessitates a bill of particulars.").

In the alternative, of course, the Court could simply order the Government to cure the vagueness in its Indictment by identifying those documents within the five million pages it has produced that it believes actually substantiate the elements of the charged offenses. Only a small subset of this massive production is likely to be relevant at trial—a subset that the Government has surely already identified—and it would be easy for the Government to direct the defense to those key documents now. The Government is not entitled, however, to *both* refuse a bill of particulars *and* decline to do anything more than simply produce five million documents to the defense. After all, "[i]t is no solution to rely solely on the quantity of information disclosed by the government; sometimes, the large volume of material disclosed is precisely what necessitates a bill of particulars." *Bin Laden*, 92 F Supp. 2d at 234 (citing cases); *see also, e.g.*, *Nachamie*, 91 F Supp. 2d at 572 ("Because the Government has declined to identify which of the documents provided to the defense pursuant to Rule 16(a)(1)(C) it intends to use in its case-in-chief at trial, it must, instead, respond to an appropriate bill of particulars."). For that reason too, a bill of particulars concerning the two critical issues addressed above is warranted.

CONCLUSION

"A defendant faced with [criminal] charges should not have to waste precious pre-trial preparation time guessing [about what conduct] he has to defend against when the government knows precisely the [conduct] on which it intends to rely and can easily provide the information." *United States v. Trie*, 21 F Supp. 2d 7, 21 (D.D.C. 1998). Here, there is no conceivable prejudice to the Government from disclosing the requested information. The only reason the Government could possibly have for stonewalling on the true nature of its allegations is concern about its ability to prove its case, such that it is seeking to—yet again—undermine Mr. McDonnell's ability to properly prepare his defense. But maximizing the tactical advantage that comes with unfairly surprising a litigation opponent is not a legitimate prosecutorial interest; indeed, it is precisely what bills of particulars exist to *prevent*. Accordingly, the Court should grant Mr. McDonnell's motion for a bill of particulars and order the disclosure of the information requested therein.

The defense requests a hearing on this Motion.

Dated: February 27, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John L. Brownlee, am a member of the Bar of this Court. I hereby certify that on this 27th day of February, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: February 27, 2014

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA)
)
v.)
) No. 3:14cr12-JRS
ROBERT F MCDONNELL and)
MAUREEN G. MCDONNELL,)
)
Defendants.)

RESPONSE OF THE UNITED STATES IN OPPOSITION TO DEFENDANTS' MOTIONS FOR BILL OF PARTICULARS

The United States of America, by undersigned counsel, hereby responds in opposition to defendant Robert F McDonnell's and defendant Maureen G. McDonnell's Motions for Bill of Particulars. *See* Doc. Nos. 79, 82.[1] The Court should deny both motions because the detailed Indictment in this case, standing alone, fairly apprises the defendants of the charges, allows them to prepare their defenses fully, and enables them to avoid undue surprise at trial. A bill of particulars is further unnecessary given the extensive and easily searchable discovery already provided to the defendants. Rather, the defendants' motions, as confirmed by the proposed "alternative" relief essentially seeking production of the Government's exhibit list, Def. Mem. at 11, are a thinly veiled "attempt to compel [the] prosecution to disclose all of its evidence and perhaps its legal theory of the case in advance of trial," *United States v. Taylor*, No. 3:04cr227, 2005 WL 2298170, at *4 (E.D. Va. Sept. 21, 2005) (Spencer, J.). But such disclosure "is not required by Fed. R. Crim. P. 7(f)," *id.*, and the defendants' motions should be denied.

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[1] Mrs. McDonnell's motion, Doc No. 82, adopts Mr. McDonnell's motion, Doc. No. 79, and memorandum in support, Doc No. 80 ("Def. Mem."), and requests additional relief addressed below. *See* Doc. No. 82, at 1–2.

I. Applicable Law

Under Federal Rule of Criminal Procedure 7(f), a court "may direct the government to file a bill of particulars." But a defendant "has no unconditional right to such a bill." *United States v. Bales*, 813 F.2d 1289, 1294 (4th Cir. 1987). Further, "controlling authority makes clear that the decision to grant or deny a motion for a bill of particulars is within the sound discretion of the trial court." *United States v. Cuong Gia Le*, 310 F Supp. 2d 763, 781 (E.D. Va. 2004) (citing *Wong Tai v. United States*, 273 U.S. 77, 82 (1927); *United States v. Anderson*, 481 F.2d 685, 690 (4th Cir. 1973)). Moreover, a district court's denial of a defendant's motion for a bill of particulars is reviewed on appeal under an abuse-of-discretion standard. *United States v. MacDougall*, 790 F.2d 1135, 1153 (4th Cir. 1986). And "[w]hen each count of an indictment contains the official citation of the statute under which the defendant is charged the denial of a motion for a bill of particulars is not an abuse of discretion." *Taylor*, 2005 WL 2298170, at *3.

In addition, "it is well-settled that a bill of particulars is intended 'to fairly apprise the defendant of the charges against him so that he may adequately prepare a defense and avoid surprise at trial' and must 'not be used to provide a detailed disclosure of the government's evidence in advance of trial.'" *Cuong Gia Le*, 310 F Supp. 2d at 781 (quoting *United States v. Automated Medical Labs., Inc.* 770 F.2d 399, 405 (4th Cir. 1985)). In other words, as this Court has previously held, "[a]cquisition of evidentiary detail is not the function of a bill of particulars." *Taylor*, 2005 WL 2298170, at 3. Rather, "[i]f the defendant has been given adequate notice of the charges against him and can fully prepare for trial with reasonably diligent efforts, the Government cannot be required [through a bill of particulars] to disclose additional details about its case." *Id.* (citation omitted).

II. Discussion

The defendants' motions for a bill of particulars should be denied because the detailed Indictment, as well as the extensive and readily searchable discovery produced in this case, more than adequately provides detailed notice of the charges against them, allows them to prepare for trial, and makes any risk of surprise at trial almost non-existent.

A. The Indictment, Standing Alone, Makes a Bill of Particulars Unnecessary

The 43-page Indictment in this case sets forth in detail the defendants' scheme to use Mr. McDonnell's former official position as the Governor of Virginia to enrich the defendants and their family members by soliciting and obtaining payments, loans, gifts, and other things of value from JW and Star Scientific in exchange for Mr. McDonnell and his former office performing official actions on an as-needed basis, as opportunities arose, to legitimize, promote, and obtain research studies for Star Scientific's products, including Anatabloc® *See* Indictment ¶¶ 22–101. To further define the official actions taken to "legitimize, promote, and obtain research for Star Scientific's products," the Indictment explicitly sets forth the scope and five specific examples of the types of official actions to be provided and provided during the scheme, including:

> **(i) arranging meetings for JW with Virginia government officials, who were subordinates of the Governor, to discuss and promote Anatabloc®; (ii) hosting, and the defendants attending, events at the Governor's Mansion designed to encourage Virginia university researchers to initiate studies of anatabine and to promote Star Scientific's products to doctors for referral to their patients; (iii) contacting other government officials in the OGV [the Office of the Governor of Virginia] as part of an effort to encourage Virginia state research universities to initiate studies of anatabine; (iv) promoting Star Scientific's products and facilitating its relationships with Virginia government officials by allowing JW to invite individuals important to Star Scientific's business to exclusive events at the Governor's Mansion; and (v) recommending that senior government officials in the OGV meet with Star Scientific executives to discuss ways that the company's products could lower healthcare costs.**

Indictment ¶111(c). Nothing more is required to allow the defendants to adequately prepare their defense and avoid surprise at trial, and the defendants' characterization of paragraph 111 of the Indictment as mere "boilerplate [that] is entirely uninformative on its face," Def. Mem. at 6, is wrong.

Although the Indictment's description of official acts is sufficient in and of itself to allow the defendants to prepare for trial and avoid surprise, the Indictment also provides significant evidentiary detail regarding certain of the official actions requested, contemplated, and performed. *See, e.g.*, Indictment ¶¶ 29–30, 41, 48–49, 51, 60, 63–65, 74–80, 84, 88. This evidentiary detail will undoubtedly assist the defendants in preparing for trial, and the defendants are not entitled to more.

The defendants' demand for the "conduct, date, place, and substance of all the official act[ion]s [the Government] intends to prove at trial," Def. Mem. at 8, is analogous to a request in a bill of particulars for all overt acts in a charged conspiracy. But as one court explained,

> The defendants also request the 'whens[,]' 'wheres[,]' and 'with whoms' of acts and participation in the charged conspiracy. Pretrial motions for such information are routinely denied. Furthermore, disclosure of all the overt acts in furtherance of the conspiracy is not properly the function of a bill of particulars. Defendants' requests for particulars in these categories must be denied.

United States v. Jimenez, 824 F Supp. 351, 363 (S.D.N.Y 1993) (collecting cases) (internal citations omitted). Thus, courts have long recognized that such requests are nothing more than discovery fishing expeditions that should be summarily rejected. *United States v. Giese*, 597 F.2d 1170, 1181 (9th Cir. 1979) ("Appellant's request for the 'when, where, and how' of every act in furtherance of the conspiracy was equivalent to a request for complete discovery of the government's evidence, which is not a purpose of the bill of particulars."). Indeed, this Court has previously taken the same view. *Taylor*, 2005 WL 2298170, at *4 (denying bill of particulars motion for all overt acts because it "would force the Government to disclose the manner in which it will prove the charges or preview its evidence or legal theory" and because "there is no requirement that the Government allege the particulars regarding [a] [d]efendant's involvement with the conspiracy, including the 'whens,' 'wheres,' and 'with whoms' of acts and participation in the charged conspiracy" (internal quotations omitted)).

The defendants cite to only one case, *United States v. Espy*, 989 F. Supp. 17, 34 (D.D.C. 1997), for the proposition that they are entitled to a bill of particulars detailing the official actions performed or to be performed in this case. Def. Mem. at 7. But *Espy* is readily distinguishable. In *Espy*, the former Secretary of Agriculture of the United States was charged, in relevant part, with gratuities crimes based on his receipt of things of value from certain companies and individuals. 989 F. Supp. at 21. Espy complained that the indictment was insufficient to permit him to prepare his defense and requested that the Government be ordered to particularly identify the official acts that he performed on behalf of the companies and individuals who had provided the things of value. *Id.* at 34. The court agreed and ordered the Government to provide the requested bill of particulars. *Id.* But even a cursory review of the indictment in *Espy* clearly distinguishes that case from this one. *See Espy*, No. 1:97cr335 (D.D.C. Aug. 27, 1997), Doc. No. 1 (Indictment) (copy attached as Exh. A).[2] While the *Espy* indictment detailed the payors and the things of value that the defendant received, it was completely silent regarding even the *type* or *category* of contemplated official acts. Instead, the *Espy* indictment merely recited the statutory charging language "for or because of official acts performed and to be performed by defendant ESPY." *Id.* at ¶ 20. Nowhere did it describe in even generic terms, much less with the specificity detailed in the present Indictment, *any* types of actions that the defendant performed or that were even contemplated. In fact, the indictment failed even to provide information regarding the relationship between the payors and the defendant's public office other than the naked allegation that the payors were seeking "official action" and the companies were regulated by the USDA. *Id.* at ¶ 8. Simply put, the Indictment in this case is a far cry from the one in *Espy*, and that opinion has no application here.

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[2] Also *available at* <http://govinfo.library.unt.edu/oic/SMALTZ/indict/espym.htm> (last accessed Mar. 6, 2014).

Moreover, the defendants are not entitled to a detailed description of the "conduct, date, place, and substance of all the official act[ion]s [the Government] intends to prove at trial" because the Government is not required to prove that *any* official acts were actually performed. *See United States v. Joseph*, 510 F Supp. 1001, 1005 (E.D. Pa. 1981). Although the Indictment alleges, and at trial the Government will prove, that Mr. McDonnell used his office and took official actions in fulfillment of the corrupt bargain, we need not even do so since "fulfillment of the *quid pro quo* is not an element of the offense." *Evans*, 504 U.S. 255, 268 (1992); *see also United States v. Brewster*, 408 U.S. 501, 526 (1972) ("There is no need [in order to satisfy *quid pro quo* requirement in 18 U.S.C. § 201] for the Government to show that [defendant public official] fulfilled the alleged illegal bargain; acceptance of the bribe is the violation of the statute, not performance of the illegal promise."). In *Joseph*, the defendant was a county court clerk who was charged with soliciting and accepting cash from a bail bondsman in consideration for favorable recommendations and exercise of discretion in his official decisions. 510 F Supp. at 1002. The defendant moved for a bill of particulars for specification of the official decisions tainted by his illicit relationship with the bail bondsman. *Id.* at 1005. The indictment did "not allege the manner in which the bribes influenced [the] defendant's official conduct" or the location where the official acts occurred. *Id.* The court denied the defendant's bill of particulars motion because "the government need not allege the official acts and decisions which the receipt of the money actually influenced, for the gravamen of the offense is the solicitation or acceptance of the bribe, not the delivery of its *quid pro quo*." *Id.* (internal quotation omitted). Since the Government has no obligation to prove any official action at trial, and, in any event, has more than sufficiently described the *quid pro quo* agreement here, this Court should similarly reject these defendants' demand for an exhaustive and detailed list of every official action performed or contemplated.[3]

B. The Defendants Do Not Need the Government to Identify Their Co-conspirators to Enable Them to Prepare for Trial

The defendants are also not entitled to a bill of particulars disclosing the identities of their co-conspirators. Whether the Government must furnish the names of co-conspirators to a defendant lies within a trial court's discretion. *United States v. Jackson*, 757 F.2d 1486, 1491 (4th Cir. 1985); *see also United States v. Crayton*, 357 F.3d 560, 568 (6th Cir. 2004); *United States v. Torres*, 901 F.2d 205, 233–34 (2d Cir. 1990). While the defendants correctly note that some courts have ordered such disclosures, Def. Mem. at 8–9, such disclosures are far from "routine[]," as they contend, *id.* at 8. *See, e.g. United States v. Coffey*, 361 F Supp. 2d 102, 122 (E.D.N.Y 2005) ("Courts have been *highly reluctant* to require a bill of particulars when defendants have asked for specific identities of co-conspirators or others allegedly involved." (emphasis added)). First, he cites only cases outside of the Fourth Circuit for this proposition. Moreover, for every court that requires disclosure of co-conspirators, there are numerous others that reject disclosure. *See, e.g.*, *United States v. Foggo*, No. 1:08cr79, 2008 WL 2777009, at *11 (E.D. Va. July 14, 2008) ("'[T]he Government is not required to furnish the name[s] of all other co-conspirators in a bill of particulars.'" (quoting *Crayton*, 357 F.3d at 568)); *United States v. Frye*, No. 5:01cr30058, 2002 WL 385574, at *1 (W.D. Va. Feb. 20, 2002) ("[T]he government is not required to reveal the names of unindicted co-conspirators or to disclose the identities of other persons present when the offenses took place.").

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[3] Similarly, Mrs. McDonnell is not entitled to her additional request that the Government "specify any official acts that [she] allegedly performed or promised to perform in exchange for gifts or loans." Doc. No. 82, at 2. In this respect, as set forth above, the Indictment provides more than sufficient detail regarding the nature and type of official actions promised and performed as part of the alleged *quid pro quo* in this case, as well as examples of those specific official actions, regardless of whether those official actions were performed or promised directly by Mr. McDonnell or by any other individual acting on behalf of the OGV

Where, as here, an indictment "is valid, contains the elements of the offense, and gives notice to the defendant of the charges against him, it is not essential that a conspirator know all other conspirators." *United States v. Rey*, 923 F.2d 1217, 1222 (6th Cir. 1991). This is due, in no small part, to the fact that the Government "would not necessarily need to present this information to the jury in order to secure [a d]efendant's conviction[.]" *United States v. Hooks*, No. 1:07cr213, 2008 WL 907445, at *3 (W.D. Mich. Apr. 1, 2008). A defendant may be indicted and convicted despite the names of his or her co-conspirators remaining unknown, as long as the Government presents evidence to establish an agreement between two or more persons. *Rey*, 923 F.2d at 1222.

Somewhat curiously, the defendants argue that they are entitled to a bill of particulars regarding the identities of their co-conspirators because potential witnesses may be reluctant to talk to their counsel for fear that they may be investigated by the Government should they choose to do so. Def. Mem. at 9. The defendant understandably fails to cite any legal authority for the proposition that a bill of particulars is the appropriate mechanism to encourage potential witnesses to speak with defense counsel—that is because no such legal authority exists. To the extent that the defendants suspect that potential witnesses are concerned they will be investigated by the Government simply because they choose to meet with defense counsel, the Government confirms that any such concern is incorrect. This public confirmation should assist the defendant in disabusing any potential witness of his or her mistaken belief to the contrary.

C. The Discovery Provided by the Government Further Obviates Any Need for a Bill of Particulars.

Given the discovery to date and the ongoing discovery that will be provided by the Government in advance of trial, the defendants' argument that a bill of particulars for further details regarding the official actions and the identities of co-conspirators is necessary to avoid surprise at trial must fail. Again, as this Court has observed, "[i]n determining whether to grant a bill of particulars, this Court may determine whether the information requested has been provided by other means, such as pretrial discovery, voluntary disclosure by the government, or the indictment itself." *Taylor,* 2005 WL 2298170, at *4. In determining the risk of unfair surprise, the court may consider not only the discovery provided thus far, but also the discovery that will be provided by the Government prior to trial. *See United States v. Tsoa*, No. 1.13cr137, 2013 WL 3242700, at *4 (E.D. Va. June 25, 2013) ("To begin, the Government represents in its opposition that [the] [d]efendant is receiving additional information about the alleged offenses, through ongoing formal discovery, and indeed there has been voluminous discovery produced thus far."); *see also Cuong Gia Le*, 310 F Supp. 2d at 781–82 (denying bill of particulars due, in part, to government's representations regarding ongoing discovery). And "[a] defendant is not entitled 'to an unnecessary bill of particulars, where the underlying objectives of a Fed. R. Crim. P 7 motion are fully satisfied by informal and formal discovery.'" *Tsoa*, 2013 WL 3242700, at *4 (quoting *Taylor* 2005 WL 2298170, at *4).

The Government has already produced virtually all of the documentary evidence currently in its possession that is related to this case. Specifically, the Government has produced, at considerable expense, nearly all information produced by third parties in this case, and in related investigations, in an electronically searchable format compatible with the database of the defendants' choosing. This allows the defendants to search (by custodian, date, date range, keywords, Boolean terms, etc.), review, and tag documents. To further assist the defense's review of the produced records, the Government provided a log sorted by the custodian that produced the records and a separate log sorted by the "FBI Tracking #." These logs further described the database folder that identified data as belonging to one of seven general custodian categories. This discovery contains all of the documentary evidence that the Government anticipates, at this time, introducing into evidence at trial, including: all of the documents referenced in the Indictment; written communications (including emails, text messages, and correspondence) between and among the defendants, JW, Virginia government employees, Star Scientific employees, and others discernible from the face of the Indictment; videotapes and pictures of the defendants at Star Scientific events; videotapes and pictures depicting the things of value received by the defendants; Governor's Mansion logs; relevant toll records; etc.[4] The fact that the Government has produced the discovery in this case in a searchable database strongly supports its position that a bill of particulars is unnecessary. *See, e.g.*, *United States v. Watts*, No. 04-20223B, 2007 WL 1231669, at *3 (W.D. Tenn. Apr. 25, 2007) (rejecting defendant's motion for a bill of particulars and declining "to order the Government to provide [the] [d]efendants with a roadmap through all of the documents it has produced especially in light of the fact that the Government has been cooperative in discovery and produced the documents in a searchable format").

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[4] The Government provided its production of these materials in electronically searchable format on February 24, 2014—one month from arraignment and more than five months before trial. A summary and further description of that production is provided in greater detail in the Government's Response in Opposition to Mr. McDonnell's pending Motion to Compel. *See* Doc. No 75, at 6–7. Thus, as of that date, the defendants had all of these materials in a format that allowed them to search electronically, review, and tag in the database of their choosing. On March 10, 2014, the Government sent an "image overlay" production to the defendants, which complemented the February 24 production by providing bates-stamped images for those documents that were not previously bates-stamped by the producing third parties. Although this image overlay was not necessary for the defendants' review of the materials, it does ensure the parties' ability to use common bates-stamp numbering for exhibits at trial. Insofar as Mr. McDonnell's separate motion to compel seeks judicial enforcement of the Government's projected timeline for productions, those deadlines have been met.

The Government has also produced to the defendants copies of all of the subpoenas issued by the Government during its investigation with the subpoena attachments, as well as a letter providing a good-faith summary of all telephonic and written correspondence with third-parties' counsel regarding narrowing of subpoenas and use of search terms. This information can be used in conjunction with the logs identifying the custodians to determine what categories of evidence custodians produced--and to a large extent, the information that was of greatest importance and interest to the Government. In addition, the Government has already provided defense counsel with a list of all of the potential witnesses in the Government's case-in-chief that the Government has currently identified, which should significantly assist the defendants' review of the database given its searchability.[5] And the Government has informed defense counsel that it will produce all of the memoranda of interviews (*e.g.* FBI-302s) and grand jury testimony "well before trial." Doc. No. 75, Gov. Resp. to Def. Robert F McDonnell's Mot. to Compel, at 11 n.6. Consequently, the defendants will have all of the documentary evidence, all of the memoranda of interviews, and all of the grand jury testimony well before trial. There is thus almost no chance of unfair surprise at trial. As such, the defendants have no need for a bill of particulars as to the official actions alleged or the identities of co-conspirators, and their demand for that information is merely a demand for early discovery of the Government's evidence and theory of the case.

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[5] Tellingly, the actions of defense counsel have made clear from the outset of this case that they have more than a sufficient understanding of the evidence and allegations to equip them to prepare their defense. For example, on January 30, 2014—before a protective order was entered to govern discovery and thus before the Government had produced documentary evidence to the defendants—counsel for Mr. McDonnell sent the Government a letter identifying *121* individuals that he believed to have information relevant to the case. *See* Doc. No. 59, Exh. 1, at 1–20. Although the Government does not agree with Mr. McDonnell's asserted relevancy of all of those individuals, it is notable that his list included approximately *70* individuals that the Government would not specifically identify on a prospective witness list until *a week later*.

The defendants also claim a bill of particulars is warranted because of the "sheer size" of the Government's production. Def. Mem. at 10. But a review of the cases they cite (Def. Mem. at 10–11) exposes how misplaced that argument is here, where such a detailed Indictment has been returned. In *United States v. Bortnovsky*, the court unsurprisingly held that a bill of particulars was necessary when the indictment was silent on essential details of the offense; the Government provided "mountains of documents" (apparently in paper as opposed to in a searchable database), and "in [an] attempt to proceed furtively" refused to identify which of the burglaries or false statements formed the basis of the charges; and one of the defendant's attorneys had only four days to prepare for trial. 820 F.2d 572, 574–75 (2d Cir. 1987). The defendants cite *United States v. Ramirez*, 609 F.3d 495 (2d Cir. 2010), but the indictment in the case underlying *Ramirez* charged over twenty defendants with participation in a narcotics conspiracy spanning seven years using the bare statutory language, with no elaboration at all. *See* Superseding Indictment, *United States v. Luna, et al.*, No. 3:05CR58 (SRU), Doc. No. 419 (available on PACER); *United States v. Luna*, 2006 WL 1688028, at *1 (D. Conn. May 9, 2006). In *United States v. Aispuro*, the Government had produced "voluminous unorganized" (and apparently not electronically searchable) discovery, but there, the apparently one-sentence indictment—which charged eight defendants in a wide-ranging drug conspiracy—merely tracked the statutory charging language, did not contain any facts whatsoever, and contained no manner and means section describing the conspiracy. No. 08cr2936, 2010 WL 1404196, at *1, 4–6

(D.N.M. Mar. 16, 2010). The court in *United States v. Mahaffy*, in fact, rejected the argument that a bill of particulars was appropriate due to the "volume of documents" produced, in part because the court found that "the [i]ndictment fairly specifie[d] the allegedly unlawful conduct, and the Government ha[d] not dissembled by means of its discovery." 446 F Supp. 2d 115, 119–120 (E.D.N.Y 2006). As for defendants' citation of the court's observation in *United States v. Bin Laden*, 92 F Supp. 2d 225, 234 (S.D.N.Y 2000), that "sometimes, the large volume of material disclosed is precisely what necessitates a bill of particulars," the circumstances and holding of that case make it plain that this case is not one of those times. *See id.* at 227, 232–244 (granting in part but denying in large part motions for bill of particulars where defendants were subject to restrictive pretrial confinement and where indictment charged 15 named defendants with 267 discrete criminal offenses, charged certain defendants with 229 counts of murder, alleged overt acts in 12 different countries, and charged crimes covering a period of nearly ten years).

In short, this is not a case where the Government has put forth a bare-bones Indictment and sought refuge in the volume of discovery it has produced to avoid providing a bill of particulars. As discussed above, the Indictment here is more than adequate to enable the McDonnells to prepare their defense, and their argument based on the "sheer size" of discovery is but a misguided segue to their "alternative" relief.

This request for "alternative" relief, Def. Mem. at 11, confirms that the defendants' motions for a bill of particulars are, in fact, merely a demand "to provide a detailed disclosure of the government's evidence in advance of trial," *Cuong Gia Le*, 310 F Supp. 2d at 781 (internal quotation omitted). Specifically, the defendants ask this Court to order the Government to identify the documents it believes are "likely to be relevant at trial," Def. Mem., at 11, which is the functional equivalent of a demand for the Government's exhibit list—almost five months before trial.[6] The defendants are not entitled to the immediate production of the Government's exhibit list pursuant to Rule 16, nor are they entitled to it based on the volume of discovery in this case. Indeed, the defense demanded on the one hand that the Government produce "every shred of evidence in its possession," Doc No. 9, Def. Mem. in Supp. Def. Robert F McDonnell's Mot. Seeking Immediate Discovery, at 2, and now complains on the other hand about the Government's production of voluminous discovery as a basis for the defendant's request that this Court order the Government to produce the functional equivalent of its exhibit list almost five months before trial. The Court should reject the defendants' requested "alternative" relief.

III. Conclusion

The 43-page Indictment in this case is more than sufficient, in and of itself, to fairly apprise the defendants of the charges, allow them to prepare their defense fully, and enable them to avoid undue surprise at trial. The extensive and easily searchable discovery already provided to the defendants, as well as the fact that the defendants will receive all of the Government's memoranda of witness interviews well in advance of trial, also obviates the need for a bill of particulars. The "alternative" relief that the defendants seek confirms that their motions for a bill of particulars are actually discovery demands seeking the evidentiary detail of the Government's case. Such is not the purpose of Federal Rule of Criminal Procedure 7(f). The defendants' motions for a bill of particulars should be denied.

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[6] This is of a piece with Mr. McDonnell's repeated demands to the Government for immediate turnover of our exhibit list. On January 30, 2014, nine days after the Indictment was returned, defense counsel sent a 20-page discovery demand letter requesting that the Government "produce any index or working exhibit list of items you intend to use at trial" pursuant to Fed. R. Crim. P 16(a)(1)(E)(i) and (ii). Doc. No. 59, Exh. 1, at 3. The Government sent a response letter on February 4, 2014, stating that the defendant's request for an exhibit list was beyond the scope of Rule 16 and quoted *United States v. Prince*, 618 F.3d 551, 562 (6th Cir. 2010), for the unremarkable proposition that "Rule 16 does not entitle a defendant to pretrial disclosure of the government's exhibit list." Doc No. 59, Exh. 3, at 2. Apparently in disagreement, defense counsel sent another letter on February 24, 2014, "reassert[ing] [their] request that the Government produce any index or exhibit list of items it intends to use at trial" pursuant to Rule 16. Ltr. from Henry W Asbill, at 4 (copy will be provided upon request). The defendants are not entitled to the immediate production of the Government's exhibit list pursuant to Rule 16, nor are they entitled to it based on the volume of discovery in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2014, a true and correct copy of the foregoing was delivered to all counsel of record via the Court's Electronic Filing System.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**CRIMINAL NO. 3:14-CR-00012**
	)	
ROBERT F. MCDONNELL **MAUREEN G. MCDONNELL**	)	**JUDGE JAMES R. SPENCER**
	)	

REPLY OF DEFENDANT ROBERT F. MCDONNELL TO THE GOVERNMENT'S OPPOSITION TO MOTION # 8 – MOTION FOR BILL OF PARTICULARS

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INTRODUCTION

There is no question that this case features a "detailed Indictment." (Gov't Br. at 1.) The problem, however, is that while the Indictment is detailed in certain respects, it grows noticeably more vague when it comes to an allegation essential to stating a complete public corruption offense—that Mr. McDonnell promised to perform or did perform an "official act" on behalf of Mr. Williams or Star Scientific, Inc. ("Star"). The Indictment's detail on all other fronts—far from exonerating this deficiency—simply underscores the appropriateness of additional specificity on this critical point and highlights the Government's apparent inability to provide that necessary detail without exposing the lack of a legal basis for its charges. The Government's artfully vague pleading does not "fairly apprise" Mr. McDonnell of the charges against him. It is therefore deficient. The narrow set of particulars the defense has requested is necessary to cure that deficiency

The same is true for the Government's refusal to tell Mr. McDonnell who it thinks participated in the alleged conspiracy. The Government opposes the production of this critical information, but never explains the reason for its opposition. Unlike many criminal cases, this one lacks any plausible concerns about the safety or security of unindicted co-conspirators. And moreover, the alleged conspiracy in this case is far different from the conspiracies that federal prosecutions typically feature—*i.e.*, conspiracies in which the underlying criminal statute is clear (*e.g.*, drug distribution) and the number of co-conspirators is many (*e.g.*, an international drug cartel), such that identifying those co-conspirators would shed little light on the underlying criminal charges. Here, by contrast, the underlying criminal corruption statutes the Government has invoked are unquestionably vague and the defense does not know what specifically about Mr. McDonnell's conduct the Government actually believes was criminal. Knowing who else the Government believes was participating in the McDonnells' supposed scheme is therefore essential to "fairly apprise" Mr. McDonnell of the charges against him because that knowledge would provide critical insight into the nature, scope, and aims of the conspiracy. *United States v. Sampson*, 448 F Supp. 2d 692, 696 (E.D. Va. 2006) (citation omitted).

The defense asks only that the Government (1) explain what promised or actual conduct it believes was "official" (and thus illegal), and (2) identify the individual members of the alleged conspiracy. These modest requests are hardly the "demand to provide a detailed disclosure of the government's evidence in advance of trial" that the Government dramatically claims. (Gov't Br. at 13 (citation omitted).) And despite opposing disclosure, the Government never provides any reason for withholding these basic details other than its reflexive protestation that revealing *any* information—no matter how limited—will somehow unveil its entire legal strategy. The Government's inability to articulate any compelling prejudice confirms, of course, that no good reason exists.

Mr. McDonnell needs this information to prepare his defense and avoid unfair surprise. The Government has no legitimate basis for withholding it. The Court should thus grant Mr. McDonnell's motion for a bill of particulars.

ARGUMENT

I. Mr. McDonnell's Limited Request For Particulars Is Necessary To Prepare His Defense And Avoid Unfair Surprise.

A. The Government Should Specify The Substance Of Each Official Act That Mr. McDonnell Allegedly Performed Or Promised To Perform.

1. To "fairly apprise" Mr. McDonnell of the charges against him, *see United States v. Sampson*, 448 F Supp. 2d 692, 696 (E.D. Va. 2006) (citation omitted), the Government must identify each official act that Mr. McDonnell allegedly performed or promised to perform as well as the *substance* of those acts—*i.e.*, the features of the acts that make them "official" for

purposes of criminal liability under the federal bribery laws. Not every action a public official takes is an official act. The Supreme Court has made clear that actions equivalent to "receiving sports teams at the White House, visiting [a] high school, and speaking to farmers about USDA policy"—which "are assuredly 'official acts' in some sense"—are not official acts under the federal bribery laws. *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 407 (1999). The same is true when a public official merely arranges a meeting for a constituent with another official. *See United States v. Loftus*, 992 F.2d 793, 796 (8th Cir. 1993) (no Hobbs Act liability where an official "promised only to introduce the [constituent] to influential persons" but "did not promise to use his official position to influence those persons"). An action is not "official" unless it is undertaken to exercise governmental power or to influence others in exercising such power.

If the Government does not disclose the essential details of the official acts it alleges, then neither the defendant nor the court can determine whether the Government has alleged an actual federal crime. Not only would this prevent the accused from understanding the charges against him, it would make it impossible for Mr. McDonnell to prepare an effective defense and avoid unfair surprise. It would also—if left unremedied—free the Government to always allege facts at a high level generality, plead around a critical element of the charged offense, and then leave the defendant to guess blindly at the countless possible permutations of what the Government believes will satisfy that critical element of the crime. The need to avoid that obvious unfairness is, of course, precisely why the *Espy* court directed the Government to specify "the conduct, date, place *and substance* of *each* official act referred in the indictment." *United States v. Espy*, 989 F Supp. 17, 34 (D.D.C. 1997) (emphasis added).

2. The Government attempts to distinguish *Espy*, but that effort fails. First of all, the Government's claim that the *Espy* indictment "was completely silent regarding even the *type* or *category* of contemplated official acts" is false. (Gov't Br. at 5.) The *Espy* indictment alleged, for instance, that then-Secretary of Agriculture Mike Espy accepted gratuities "from corporations and individuals seeking official action by, doing or seeking to do business with, and conducting activities regulated by the USDA." (Indictment ¶ 7, *United States v. Espy*, No. 97-0335 (D.D.C. Aug. 27, 1997) (Gov't Br. Ex. A).) That allegation thus conveyed that these corporations and individuals sought favorable treatment at least with respect to contract awards—a straightforward "official" act under federal law. Here, by contrast, the Government never articulates—not once in 43 pages of an otherwise "detailed Indictment" (Gov't Br. at 1)—precisely what governmental action or actions it thinks Mr. McDonnell was trying to achieve or influence in the course of his supposed scheme.

The Indictment does make vague accusations that Mr. McDonnell promised or performed official acts to "legitimize, promote, and obtain research studies" for Star products. (*See* Indictment ¶ 22.) In its general description of the alleged official acts, for example, the Indictment alleges that Mr. McDonnell arranged meetings "to discuss and promote Anatabloc®," attended and hosted events at the Mansion "designed to encourage" research studies and "to promote" Star products, contacted other officials "as part of an effort to encourage" research studies, and "facilitat[ed] [Star's] relationships with Virginia government officials." (*See id.* ¶ 111(c).) The Government claims that the Indictment provides "significant evidentiary detail" to support these allegations (*see* Gov't Br. at 4), but that supposed "detail" sheds no more light on why the Government believes that Mr. McDonnell's alleged conduct constituted "official" action than the Indictment's broad characterizations of that conduct. For instance, the Indictment alleges that Mr. McDonnell "sent an email to the Virginia Secretary of Health" stating that he "'would like to have [one of the Secretary of Health's Deputies] attend a short briefing at the mansion about 10am with first lady on the Star Scientific anatablock [sic] trials planned in va at vcu and uva.'" (Indictment ¶ 48.) This allegation says nothing about how this interaction involved Mr. McDonnell "promoting" or "legitimizing" Star's products, nor does it describe how, if at all, Mr. McDonnell sought to influence the Secretary (his direct subordinate) to take any particular governmental action on behalf of Mr. Williams or Star.

Similarly, the Indictment alleges that Mr. McDonnell "hosted" an event at the Governor's Mansion "for the launch of Star Scientific's Anatabloc® product" and that he "spoke favorably to the attendees regarding further study of anatabine." (*Id.* ¶ 60.) But again, these allegations do not explain, much less describe, how Mr. McDonnell influenced or attempted to influence any particular governmental action. The same is true for the Government's allegations that Mr. McDonnell sent a ten-word email to his Chief Counsel saying "'Pls see me about anatabloc issues at VCU and UVA'" (*id.* ¶ 80), that he attended a health care leaders reception at which Star representatives and Virginia university researchers were present (*id.* ¶ 84), and that he asked a member of his cabinet to "reach out to the 'Anatabloc people' and meet with them to discuss Anatabloc®'" (*id.* ¶ 88). Not one of these allegations (or any other allegation in the Indictment) supplies any factual basis for concluding that Mr. McDonnell attempted to exercise the sovereign power of Virginia's government on behalf of Mr. Williams or Star, nor do they supply any factual basis to conclude that Mr. McDonnell asked or pressured anyone else to do so.

In any event, whether the Government's indictment against Mr. McDonnell is more or less detailed than the *Espy* indictment is irrelevant. What is most significant about the *Espy* decision is the relief that it ordered. The court did not order the Government to simply identify the general type or category of official acts. Rather, the court ordered the Government to specify the "conduct, date, place and substance of *each* official act referred in the indictment." *Espy*, 989 F Supp. at 34 (emphasis added). We request that this Court do the same.

3. The Government also seeks to evade *Espy* by claiming that the relief granted there—which is all that Mr. McDonnell seeks here—is akin to requesting particulars enumerating every overt act taken in furtherance of a conspiracy. (*See* Gov't Br. at 4-5.) But that is the wrong analogy. Overt acts in furtherance of conspiracies are nothing like the "official" act that supplies an essential element to any bribery charge. The "overt act" concept is well-established, has a clear legal meaning, and is easily comprehended from simple allegations or discovery. An "official" act, by contrast, is a legal concept that turns on fine-grained distinctions not easily discernible from vague allegations like those that the Government has offered here. Since it is difficult to ascertain the Government's legal understanding of "official" act, it is critical that the Government explain the "conduct, date, place and substance of *each* official act referred in the indictment," *Espy*, 989 F Supp. at 34 (emphasis added), and that it intends to prove at trial. Otherwise, the Government could unfairly surprise the defense at trial by suddenly claiming that innocuous conduct that the Government did not initially allege as an "official act" is "official" after all. *See, e.g.*, *United States v. Stern*, No. 03 CR. 81 (MBM), 2003 WL 22743897, at *4 (S.D.N.Y Nov. 20, 2003) ("[The accused] should not be forced to speculate that the government may have some other wrongful act in mind that it intends to spring upon him at trial, and possibly to make him the victim of unfair surprise.").

4. The far better analogy, moreover, is to requests for particulars in cases alleging fraud. Just like bribery, liability for fraud often turns on nuanced legal and factual distinctions. If the Government does not apprise the accused of the exact nature of its alleged fraud, then the accused cannot understand the charges against him and thus cannot adequately prepare a defense. That is why "[i]n the case of fraud and perjury, it is critical that the government identify in the indictment the dates of the fraudulent conduct, the specific fraudulent documents, and the fraudulent statements within the documents," *Sampson*, 448 F Supp. at 696; in other words, the fraud-charges equivalent to the "conduct, date, place and substance of each official act." *Espy*, 989 F Supp. at 34. As this Court explained in *Sampson*, particulars are necessary in a fraud case "to inform the Defendant of the specific allegations" whenever the indictment "fail[s] to state which specific documents were fraudulent, and what was allegedly fraudulent about the documents at issue." 448 F Supp. at 696. So too here. To adequately apprise the accused of its bribery charges, the Government must specify the alleged official acts and articulate what made those acts official. *See also, e.g., United States v. Trie*, 21 F Supp. 2d 7, 21-22 (D.D.C. 1998) (explaining in the false statements context that "[t]he government must provide information as to exactly what the false statements are, what about them is false, who made them, and how Mr. Trie caused them to be made" (citing cases)).

5. Finally, the Government ultimately retreats into the extreme position that it does not have to apprise Mr. McDonnell of any official acts *at all*. (*See* Gov't Br. at 6-7.) Citing *United States v. Joseph*, 510 F Supp. 1001 (E.D. Pa. 1981)—a three-decades-old decision that is irreconcilable with *Espy*—the Government contends that it need not plead the substance of any official acts because it "is not required to prove that *any* official acts were actually performed." (Gov't Br. at 6.) This argument is mistaken. To be sure, an official act need not be *performed* to constitute an offense, *see Evans v. United States*, 504 U.S. 255, 268 (1992), but an official act still has to be *promised*. Otherwise, the Government could bring bribery charges on the basis of no more than accepting a lawful gift or a permissible campaign contribution. And because an official act—whether promised or performed—is an essential element of a federal corruption charge, the Government must allege that fact with the same level of specificity as any other essential element of a charged crime. *See, e.g., id.* (holding that "the offense is completed at the time when the public official receives a payment in return for his agreement to perform *specific* official acts" (emphasis added)).

The Government's view—that it can charge public officials with corruption without even bothering to tell them what official acts it believes those officials took or promised—would enable the Government to file bribery charges that specify no more than "Official X corruptly promised to take official actions on Citizen Y's behalf in exchange for a $250 campaign donation." That would certainly make it easier for the Government to indict public officials, but it would fly in the face of the accused's established right to be "fairly apprise[d] of the charges against him so that he may adequately prepare a defense and avoid surprise at trial." *Sampson*, 448 F Supp. 2d at 696 (citation omitted).

* * *

The Court should therefore order the Government to disclose the substance of each promised or performed official act that the Government intends to prove, as requested in Mr. McDonnell's motion for a bill of particulars.

B. The Government Should Disclose The Identities Of Unindicted Co-Conspirators.

The Court should also order the Government to confidentially disclose the identities of the unindicted co-conspirators referenced in the Indictment. It is telling that the Government does not contend that disclosure would prejudice it (or anyone else). That is significant because disclosure of unindicted co-conspirators is typically ordered in cases where—like this one—there is no threat of danger to those alleged co-conspirators. *See United States v. Barrera*, 950 F

Supp. 2d 461, 477 (E.D.N.Y 2013).

The Government resists that commonsense practice, but its only rationale is its claim that "'it is not essential that a conspirator know all other conspirators.'" (Gov't Br. at 8 (quoting *United States v. Rey*, 923 F.2d 1217, 1222 (6th Cir. 1991)).) That is because, the Government reasons, the "defendant may be indicted and convicted despite the names of his or her co-conspirators remaining unknown." (*Id.*) But that ignores the reality that disclosure of unindicted co-conspirators—just like disclosure of other allegations that are not strictly essential to a conviction—is frequently ordered when it is necessary for the defendant to adequately prepare a defense and avoid unfair surprise. (*See* R. McDonnell Br. at 8-9 (citing cases).)[1]

Disclosure might be unnecessary in a case where the underlying crime is clear, or where the conspiracy is massive, such that identifying individual conspirators sheds no light on the Government's factual allegations. But the conspiracy alleged here is small and intimate—indeed, its only unnamed member may be Mr. Williams—and turns upon underlying criminal statutes that are indisputably broad. Knowing who the Government believes participated in the alleged conspiracy is therefore critical to understanding the Government's conspiracy charge (in particular its scope, manner, and aims) and the Government's corruption charges generally.

At bottom, it is a bedrock principle of criminal justice that the accused "is presumed to be innocent" and is thus "*ignorant of the facts* on which the [Government] founds his charges." *United States v. Anderson*, 254 F Supp. 177, 181 (W.D. Ark. 1966) (emphasis added) (citation omitted). Because Mr. McDonnell is presumed innocent and thus ignorant of the facts, he does not know what the Government believes he did or who the Government believes he did it with.

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[1] Perhaps because it cannot overcome their reasoning, the Government dismisses these cases on the ground that they come from "outside of the Fourth Circuit." (Gov't Br. at 7) That is no answer to their persuasiveness, of course. It is also an ill-placed criticism given that the Government relies on non-Fourth Circuit cases throughout its Opposition.

Given that presumed ignorance—and the absence of any countervailing governmental interests—the Court should order the Government to confidentially identify the alleged unindicted co-conspirators.[2]

II. The Inadequacy Of The Indictment Cannot Be Cured By Overwhelming Mr. McDonnell With Millions Of Documents.

The Government cannot overcome the deficiencies in its Indictment by flooding Mr. McDonnell with five million pages of (late-produced) documents, however "easily searchable" the Government believes that avalanche of information to be. (Gov't Br. at 1.) Mr. McDonnell is not asking the Government to divulge every nook and cranny of its case. He is simply asking the Government to articulate the substance of each official act that it believes he promised or performed with a level of detail similar to its other allegations and to confidentially disclose the identities of his alleged co-conspirators. Inundating Mr. McDonnell with documents will not aid his understanding of the Government's official act allegations or make clear who the Government believes his co-conspirators were in the alleged ill-defined crime. For example, no amount of discovery will reveal what precisely the Government means when it alleges that Mr. McDonnell "legitimized" and "promoted" Star's products. These terms potentially encompass a broad range of innocuous actions that Mr. McDonnell and his staff took. Without further factual explanation of the Government's allegations, Mr. McDonnell will be left guessing about which actions fall within the Government's vague description of official acts and which do not. The production of millions of raw documents will not cure that fundamental defect in the Indictment.

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[2] The Government brushes aside the defense's argument that withholding the identities of the alleged co-conspirators will impede Mr. McDonnell's ability to prepare an adequate defense because the Government's broad accusations may have caused potential witnesses to avoid speaking with defense counsel out of concern that the Government thinks *they* are unindicted co-conspirators. (*See* Gov't Br. at 8-9.) The Government claims to remove this problem by assuring potential witnesses that they will not be investigated "simply because they choose to meet with defense counsel." (*Id.* at 8.) But that plainly misses the point. The concern is not that witnesses will be investigated simply for meeting with defense counsel; rather, the concern is that they will be investigated *at all*. So long as witnesses fear that they are potential unindicted co-conspirators and thus subject to possible criminal liability, those witnesses have every incentive not to speak about the matter at all with defense counsel. Disclosing the identities of the unindicted co-conspirators would eliminate that potential concern—at least for those not in the line of fire.

Regardless, Mr. McDonnell should not have to spend months flipping through millions of documents or crafting elaborate Boolean searches to unearth the relevant documents. While discovery can certainly obviate the need for a bill of particulars in some cases, it does not do so where, as here, that discovery would fill a warehouse in its physical form. "[W]here discovery is overwhelmingly extensive and the government fails to designate which documents it intends to introduce and which documents are merely relevant to the defense," the Government has an obligation to provide the particulars necessary to understand the inadequate allegations in the Indictment. *United States v. Mahaffy*, 446 F Supp. 2d 115, 119 (E.D.N.Y 2006) (emphasis omitted); *see also, e.g., United States v. Vasquez-Ruiz*, 136 F Supp. 2d 941, 943 (N.D. Ill. 2001) ("The defense should not be left to its own devices and a sifting of the voluminous materials that have been provided in order to divine the particulars of these critical allegations, which have not yet been disclosed."); R. McDonnell Br. at 10-11 (citing cases).

The Government attempts to distinguish the many cases noting that voluminous discovery cannot cure the need for particulars by claiming that those cases involved (1) indictments that were insufficiently detailed or (2) litigation that was more complex and wide-ranging than Mr. McDonnell's case. (*See* Gov't Br. at 12-13.) The first point is no response at all, of course, because the Indictment here is likewise insufficiently detailed. As for the second point, it is simply untrue that those cases were materially more extensive in terms of their complexity and the volume of discovery. *See, e.g., United States v. Nachamie*, 91 F Supp. 2d 565, 573 (S.D.N.Y 2000) (case involved eight defendants, an unknown number of unindicted co-conspirators, a three-year conspiracy, and more than 200,000 pages); *United States v. Bortnovsky*, 820 F.2d 572, 573, 575 (2d Cir. 1987) (case involved three defendants, a 12-count indictment, and "mountains of documents"); *United States v. Aispuro*, No. CR 08-2936 JP, 2010 BL 59827, at *1, *7 (D.N.M. Mar. 16, 2010) (case involved eight defendants, a six-month drug conspiracy, and approximately 16,000 pages of documents, albeit "unorganized"). This case involves two defendants, an unknown number of unindicted co-conspirators, a 14-count indictment alleging complex and ill-defined corruption charges, and approximately five million pages of documents. It is clearly analogous to the many cases in which courts have granted a bill of particulars notwithstanding the extensive discovery the Government produced.[3]

CONCLUSION

For the foregoing reasons, the Court should grant Mr. McDonnell's motion for a limited bill of particulars and order the disclosure of the information requested therein, or in the alternative, order the Government to identify the relevant documents within its five-million-page production that will provide sufficient detail both to understand the Government's official act allegations and to identify all unindicted co-conspirators.

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[3] The Government claims that the defense has "more than a sufficient understanding of the evidence and allegations" in this case, and cites as proof of that assertion that defense counsel identified 121 individuals with information relevant to the case and that 70 of those individuals were later identified by the Government as prospective witnesses. (*See* Gov't Br. at 11 n.5.) But this only shows that the defense knows who worked in the Governor's Office, cabinet positions, and the like—all of whom are potential witnesses—and has some idea of who the Government summoned to the grand jury. It does not somehow prove that the defense understands the Government's vague allegations, nor does it show that the defense knows who the alleged unindicted co-conspirators are. Indeed, if the defense fully understood the Government's allegations, its potential witness list would have been much smaller. The existence of well over 100 potential witnesses *does*, however, confirm the need for particulars that will enable the defense to focus on the evidence that actually matters as it prepares for the looming trial.

Dated: March 13, 2014

Respectfully submitted,

/s/ John L. Brownlee

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CERTIFICATE OF SERVICE

I, John L. Brownlee, am a member of the Bar of this Court. I hereby certify that on this 13th day of March, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: March 13, 2014

Respectfully submitted,

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Counsel for Governor Robert F McDonnell

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

MEMORANDUM ORDER

THIS MATTER is before the Court on a Motion for Bill of Particulars ("Motion") (ECF Nos. 79, 82) filed by Defendants. After examining the record and memoranda filed by the parties, the Court finds that the facts and law are abundantly clear from the pleadings and sufficient to allow the Court to exercise its discretion. As such, oral argument would not aid in the decisional process and is unnecessary.

Pursuant to Federal Rule of Criminal Procedure 7(f), a court may direct the Government to file a bill of particulars. Fed. R. Crim. P. 7(f). However, defendants have "no unconditional right to such a bill." *United States v. Dulin*, 410 F.2d 363, 364 (4th Cir. 1969) (citing *United States v. Seeger*, 303 F.2d 478 (2d Cir. 1962). The decision to grant or deny a motion for a bill of particulars is within the sound discretion of the trial court. *United States v. Anderson*, 481 F.2d 685, 690 (4th Cir. 1973).

When the indictment fails to provide the defendant adequate information, a bill of particulars may be used to "enable a defendant to obtain sufficient information on the nature of the charge against him so that he may prepare for trial, minimize the danger of surprise at trial, and plead his acquittal or conviction in bar of another prosecution for the same offense."

United States v. Schembari, 484 F.2d 931, 934-935 (4th Cir. 1973) (citing *Dulin*, 410 F.2d at 364). However, a bill of particulars "is not to be used to provide detailed disclosure of the government's evidence in advance of trial." *United States v. Automated Med. Labs., Inc.*, 770 F.2d 399, 405 (4th Cir. 1985) (citing *Anderson*, 481 F.2d at 690).

Defendants request a bill of particulars that would require the Government to provide a detailed disclosure of every "official action" Defendants are accused of having performed or promised, including the time, place, and manner of each action, the individuals to whom such actions were directed, and even content of various communications at issue, among other things. (Def.'s Mot. Bill Particulars 1-2.) Defendants additionally request that the Government reveal the identity of any alleged, but unindicted, co-conspirators under seal. In support of their Motion, Defendants assert that the Indictment is insufficiently detailed to allow them to prepare a defense and avoid unfair surprise at trial. The Government opposes the Motion.

The Court finds that the Indictment is sufficiently detailed to provide Defendants with notice of the charges against them, as well as to enable Defendants to effectively prepare their defense and avoid unfair surprise at trial. Further, a bill of particulars is unwarranted in light of Defendants' broad discovery demand for disclosure of "every shred of evidence" in the Government's possession, (Def.'s Mem. Supp. Brady Mot. 2.), which the Government represents it has or will soon provide in a searchable format. *See United States v. Esquivel*, 755 F. Supp. 434, 436 (D.D.C. 1990) (citation omitted) ("[If] the information requested is otherwise available, then no bill of particulars is required.").

Accordingly, the Court hereby DENIES the Motion. Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
United States District Judge

ENTERED this 17th day of March 2014.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

MEMORANDUM ORDER

THIS MATTER is before the Court on a Motion for the Production of Evidence and Other Relief to Remedy the Government's Interference in the Defense's Investigation ("Motion to Remedy Interference") (ECF Nos. 51, 70) filed by Defendants. Shortly after Defendants were indicted, the Government intervened in at least two related civil lawsuits pending in the Eastern District of Virginia and requested that discovery in those lawsuits be stayed until the conclusion of this prosecution. *See In re Star Scientific, Inc. Securities Litig.*, No. 3:13-cv-183-JAG-DJN (E.D. Va. 2013), ECF Nos. 76, 78; *In re Star Scientific, Inc. Derivative Litig.*, No. 1:13-cv-550-AJT-JFA (E.D. Va. 2013), ECF Nos. 32, 35. The Government's requests were granted.

Defendants concede that their constitutional rights are not implicated by the fact that courts of competent jurisdiction considered and ultimately granted the Government's requests to stay discovery in related civil cases. Rather, Defendants argue that the Government's submission of such requests violated their constitutional right of access to evidence, as protected by the Fifth and Sixth Amendments. But Defendants have cited to no authority that recognizes a constitutional violation for the Government's request to stay discovery in a related civil case.

Defendants argue unpersuasively that the Government's requests for civil stays are analogous to requests for witnesses to refuse cooperation with the defense. Witness interference has long been recognized as potentially resulting in constitutionally unfair criminal trials. *See Kines v. Butterworth*, 669 F.2d 6, 9 (1st Cir. 1981) (collecting cases). However, Defendants have not shown that the Government has interfered with any witness's decision to cooperate with the defense or to provide Defendants with information or evidence. The civil stays simply do not address, much less prohibit, any witness from independently deciding whether to cooperate with the defense.

For the foregoing reasons and those stated from the bench, the Court DENIES the Motion to Remedy Interference. Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
United States District Judge

ENTERED this 19th day of March 2014.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-cr-12

ORDER

Upon the motion of the Government, by and through its counsel, and with the consent of the defendants, Robert F McDonnell and Maureen G. McDonnell, by and through counsel, it is hereby,

I. Discovery and Inspection

ORDERED pursuant to Fed. R. Crim. P. 16(a), that:

1. The Government shall disclose to the defendants and make available for inspection, copying, or photographing: any relevant written or recorded statements made by the defendants, or copies thereof, within the possession, custody, or control of the Government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Government; that portion of any written record containing the substance of any relevant oral statement made by the defendants whether before or after arrest in response to interrogation by any person then known to the defendants to be a Government agent; recorded testimony of the defendants before a grand jury which relates to the offense charged; and the substance of any other relevant oral statement made by the defendants whether before or after arrest in response to interrogation by any person then known by the defendants to be a Government agent if the Government intends to use that statement at trial.

2. The Government shall furnish to the defendants such copy of their prior criminal records, if any, as are within the possession, custody, or control of the Government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Government.

3. The Government shall permit the defendants to inspect and copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the Government, and which are material to the preparation of their defense or are intended for use by the Government as evidence in chief at the trial, or were obtained from or belong to the defendants.

4. The Government shall permit the defendants to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the Government, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the Government, and which are material to the preparation of the defense or are intended for use by the Government as evidence in chief at the trial.

It is further ORDERED pursuant to Fed. R. Crim. P. 16(b), that upon Government compliance with the foregoing,

5. The defendants shall permit the Government to inspect and copy or photograph books, papers, documents, data, photographs, tangible objects, or copies or portions thereof, which the defendants intend to use in their cases-in-chief at trial.

6. The defendants shall permit the Government to inspect and copy or photograph any results or reports of physical or mental examination and of scientific test or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendants, which the defendants intend use in their cases-in-chief at trial or which were prepared by a witness whom the defendants intend to call at the trial when the results or reports relate to their testimony.

It is further ORDERED that the Government and the defendants shall simultaneously disclose to each other a written summary of testimony that each party intends to use under Rules 702, 703, or 705, Federal Rules of Evidence, during its case-in-chief at trial. This summary shall describe the witnesses' opinions, the bases and reasons therefor, and the witnesses' qualifications. This summary shall be disclosed no later than 60 calendar days before trial. In the event, however, that the Government or defendants identify an expert to counter the anticipated testimony of an expert identified by the other party, such summary shall be disclosed no later than 30 days before trial. In an appropriate case, and for good cause shown, either party may move the Court for an Order requesting earlier or later disclosure of expert witness notice and summaries.

II. Federal Rule of Evidence 404(b)

It is further ORDERED that, no later than 60 calendar days before trial, the Government shall provide notice to the defendants, in accordance with Fed. R. Evid. 404(b), of the general nature of any evidence of other crimes, wrongs, or acts of defendants which it intends to introduce at trial, except that, upon motion of the Government and for good cause shown, the court may excuse such pretrial notice.

III. *Brady* Material

It is further ORDERED that the Government shall comply with its obligations to produce exculpatory material as required by *Brady v. Maryland*, 373 U.S. 83 (1963) and *United States v. Agurs*, 427 U.S. 97 (1976).

IV. Jencks/*Giglio* Materials

It is further ORDERED that, no later than 45 calendar days before trial, the Government shall produce to the defendants the Jencks Act and *Giglio v. United States*, 405 U.S. 150 (1972), materials for the witnesses who will testify in the Government's case-in-chief.

V. Interview Reports and Grand Jury Transcripts

It is further **ORDERED** that, no later than 45 calendar days before trial, the Government shall produce to the defendants all witness interview reports and grand jury witness transcripts in the Government's possession, custody, and control as of that date. Production of those witness interview reports and grand jury witness transcripts no later than 45 calendar days before trial shall satisfy the Government's obligations with respect to the timing of disclosure of such reports and transcripts to the extent any such reports and transcripts are discoverable pursuant to the Government's obligations under *Brady*, *Giglio*, the Jencks Act, and Rule 16.

Counsel for the defendants may disclose the contents of said interview reports and grand jury transcripts to their clients, but may not provide their clients with said documents or reproductions thereof.

At the request of the Government and consistent with the ethical responsibilities of defense counsel, all such interview reports and grand jury transcripts, as well as reproductions thereof, shall be returned to the United States Attorney's Office forthwith at the conclusion of the litigation of the case.

It is further **ORDERED** pursuant to Fed. R. Crim. P. 26.2, that no later than 30 calendar days prior to trial, the defendants, by and through their counsel, shall produce to the Government the statements of any witness, other than the defendants, who will testify on behalf of the defendants during their cases-in-chief.

VI. Subsequent Disclosures

It is further **ORDERED** that if, prior to or during trial, a party discovers additional evidence or material which is subject to discovery or inspection under this Order, that party shall promptly notify the other party or that party's attorney or the Court of the existence of the additional evidence or material.

VII. Notice of Alibi

It is further **ORDERED** pursuant to Fed. R. Crim. P. 12.1 that, no later than 20 calendar days before trial, the defendants, by and through counsel, shall comply with Rule 12.1(a) if the defendants intends to offer a defense of alibi, and further that the defendants and the Government shall comply with Rules 12.1(b) and (c) within the time period set out in those rules, except upon motion of the parties and for good cause shown.

VIII. Stipulations

It is further **ORDERED** that the parties shall file proposed stipulations with the Court no later than 5 business days before trial. Additional stipulations may be submitted thereafter by the parties upon approval by the Court.

IX. Certificates pursuant to Federal Rule of Evidence 902

It is further **ORDERED** that the parties shall produce to each other any certifications created pursuant to Fed. R. Evid. 902(11) and (12) no later than 21 calendar days before trial.

Let the Clerk send a copy of this Order to all counsel of record.

IT IS SO ORDERED.

SO ORDERED

/s/
James R. Spencer
United States District Judge

ENTERED this 20th day of March 2014.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**CRIMINAL NO. 3:14-CR-00012**
	)	
ROBERT F. MCDONNELL	)	**JUDGE JAMES R. SPENCER**
MAUREEN G. MCDONNELL	)	

MEMORANDUM IN SUPPORT OF DEFENDANT ROBERT F. MCDONNELL'S MOTION # 10 — MOTION TO DISMISS COUNTS 1-11 OF THE INDICTMENT

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INTRODUCTION

Federal law does not prohibit state officials from accepting gifts from political patrons or friends. To the contrary, a state official violates federal law only if he accepts something of value in exchange for performing or promising to perform an "official act." Here, the Government's Indictment alleges five "official acts" in support of its claim that Mr. McDonnell corrupted the office of Governor of Virginia. *See* Indictment ¶ 111(c). But even if the Government's allegations were true (which they are not), none of these actions—which involve arranging or suggesting meetings with government officials or attending or hosting events—are "official acts." The Indictment does not allege that Mr. McDonnell ever exercised governmental power on Star's behalf, that he promised or sought to influence any other government official to exercise such power, or that Star was the beneficiary of any official action taken by his Administration. This Court should decline the Government's invitation to make new law by substantially expanding the well-worn Hobbs Act and wire fraud statute and should instead dismiss the corruption charges in the Indictment.

The Supreme Court has long recognized the fundamental difference between public officials (1) exercising their official powers differently to favor donors, *i.e.*, making different official decisions on government policy, and (2) providing access that facilitates donor input to government officials but does not, without more, alter any official decisions on government policy. Because "[i]ngratiation and access   are not corruption," *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 360 (2010), only the former sorts of actions are "official" and thus illegal when offered in exchange for benefits. Actions such as "receiving [] sports teams at the White House, visiting [a] high school, and speaking to [] farmers about USDA policy" are not "official acts" under the bribery laws because they do not involve the exercise of governmental power. *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 407 (1999).

Or as the Fourth Circuit recently explained, "the bribery statute does not encompass every action taken in one's official capacity"; rather, those actions "must yet adhere to the definition confining an official act to a pending 'question, matter, cause, suit, proceeding or controversy,'" *i.e.*, they must be actions that exercise governmental power (or push another official to), such as awarding state contracts or voting for legislation. *United States v. Jefferson*, 674 F.3d 332, 356 (4th Cir. 2012) (citation omitted); *see also Evans v. United States*, 504 U.S. 255, 268 n.20 (1992) (adopting the "common-law" distinction "between payments for private services and payments for public services").

The criminal bribery provisions the Government invokes are limited to "the most blatant and specific attempts of those with money to influence governmental action." *Buckley v. Valeo*, 424 U.S. 1, 28 (1976). Because giving benefactors "influence over or access to elected officials does not mean that these officials are corrupt," *Citizens United*, 558 U.S. at 3597, the bribery laws do not criminalize merely providing access or meetings. Regulating *that* conduct—*i.e.*, conduct that does not abuse the sovereign power of government, even if it may appear unseemly or undermine the public trust—is the province of campaign finance laws, ethics regulations, and gift laws. *See, e.g.*, *id.* at 357 (explaining that "restrictions on direct contributions are preventative"). Here, since Mr. McDonnell was a state official, he was governed by the ethics laws of the Commonwealth of Virginia, which allow state officials to accept unlimited private gifts, subject to limited disclosure requirements (which the Indictment does not allege Mr. McDonnell violated). Virginia has, moreover, made it express in the state code that public officials "shall not be subject to criminal law penalties" even when an official accepts "a gift from a person who has interests that may be substantially affected by the performance of the officer's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's impartiality in the matter affecting the donor." Va. Code. § 2.2-3103(8). The federal government may feel that Virginia's gift laws are too lax, but that does not entitle it to convert the federal bribery prohibitions into a comprehensive code of ethics for state officials.

The distinction between providing access and exercising government power is not, moreover, some artificial or legalistic line that would shield corrupt conduct which falls within the spirit, if not the letter, of the bribery laws. To the contrary, the criminal bribery statutes—and the stiff penalties they impose—seek to prevent actual misuse of official power: "It is the corruption of official positions through misuse of influence in *governmental decision-making* which the bribery statutes make criminal." *United States v. Carson*, 464 F.2d 424, 434 (2d Cir. 1972) (emphasis added). That purpose does not extend to criminalizing actions that are "assuredly 'official acts' in some sense," *Sun-Diamond*, 526 U.S. at 407, but which do not misuse the sovereign power of government. That is why the Supreme Court has admonished that in "an area where precisely targeted prohibitions"—in the form of finely tuned campaign finance laws and ethics regulations—"are commonplace," a bribery statute "that can linguistically be interpreted to be either a meat axe or a scalpel should reasonably be taken to be the latter." *Sun-Diamond*, 526 U.S. at 412. The courts "ought not expand [the bribery] piece of the regulatory puzzle so dramatically as to make many other pieces misfits." *Id.*

If the bribery statutes are not restricted to actual corruption, then federal prosecutors will wield enormous, unwarranted power over the political process. Because a bribery "quid" can be either a campaign donation or, as alleged here, a personal benefit,[1] an over-broad construction of the bribery "quo"—*i.e.*, what federal law prohibits politicians from doing in exchange for those donations—risks criminalizing routine political practices. If arranging or suggesting meetings with public officials, inviting a benefactor to an event at the Mansion (or allowing a benefactor to invite others to an event), or making favorable statements about a benefactor constitute criminal bribery, then virtually every political fundraiser would be a federal felony.[2] Indeed, highlighting the breadth of the Government's construction, it would seem to criminalize the current fundraising solicitation of Mr. McDonnell's successor, Governor Terry McAuliffe: "For $100,000, you can have a private dinner with Virginia Gov. Terry McAuliffe and the first lady, participate in a roundtable discussion with the governor and sit down every month with 'policy experts.'"[3] This program provides donors with "special access to McAuliffe and the governor's policy advisers,"[4] which is indistinguishable from most of what is alleged here. Neither that solicitation nor Mr. McDonnell's alleged conduct violate federal criminal law.

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[1] The law merely requires that a quid pro quo be established. *See, e.g.*, *United States v. Hairston*, 46 F.3d 361, 372 (4th Cir. 1995) (explaining that the same "rationale[s]" apply "to campaign contributions [as] to other prosecutions for violation of § 1951"). Indeed, many

In short, despite alleging that virtually everything Mr. McDonnell did vis-à-vis Star was an "official act," *see* Indictment ¶ 111(c), the Government's allegations never cross the line between "[i]ngratiation and access"—*i.e.*, "not corruption," *Citizens United*, 558 U.S. at 360—and the "misuse of influence in governmental decision-making which the bribery statutes make

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political corruption prosecutions—such as that of former Illinois Governor Rod Blagojevich—arise from the solicitation or acceptance of otherwise-legal campaign donations.

[2] *See, e.g.*, Ashley Alman & Ryan Grim, *Obama Fundraiser in Philadelphia Sets Million-Dollar Goal*, Huffington Post (Nov. 14, 2013, 10:34 AM) ("Attendees of Thursday's event who contribute $32,400 are entitled to a VIP Chair's reception, photo opportunity, dinner Q&A session with the president, and guest."), *available at* http://tinyurl.com/memqogw.

[3] Laura Vozzella, *In Va., $100,000 Will Get You a Sit-Down with 'Policy Experts,' Governor s New PAC Says*, Wash. Post, *available at* http://tinyurl.com/lyctot8.

[4] Norman Leahy & Paul Goldman, *McAuliffe Just Gave the McDonnell Defense a Hand*, Wash. Post (Mar. 18, 2014), *available at* http://tinyurl.com/qgc6rjz.

criminal." *Carson*, 464 F.2d at 434. The defense is aware of no instance of the Government successfully prosecuting a public official on the basis of access-oriented acts like those alleged here. The Court should therefore dismiss Counts 1-11.

ARGUMENT

Under Federal Rule of Criminal Procedure 7(c)(1), the Indictment must contain a "statement of the essential facts constituting the offense charged." It does not suffice to "simply parrot[] the language of the statute in the indictment." *United States v. Brandon*, 298 F.3d 307, 310 (4th Cir. 2002). "When the words of a statute are used to describe the offense generally, they must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offence, coming under the general description, with which he is charged." *Id.* (citation omitted)). And if the alleged facts are insufficient to charge an offense as a matter of law, then the indictment must be dismissed. *See, e.g.*, *United States v. Engle*, 676 F.3d 405, 415 (4th Cir. 2012) ("A district court may dismiss an indictment under Rule 12 where there is an infirmity of law in the prosecution ") (citation omitted).

Here, the Government's allegations against Governor McDonnell fail to establish that he committed honest services fraud or extortion or, by extension, conspiracy to commit the same. This is clear for three reasons. *First*, and most importantly, the Indictment fails to allege that Mr. McDonnell promised to perform, or did perform, any "official act." The Government never claims that Mr. McDonnell or anyone on his staff exercised official governmental power on behalf of Star or Williams. Nor does it contend that he improperly influenced any other official to exercise governmental power on behalf of Star or Williams. The Government instead alleges that Mr. McDonnell, his wife, and Jonnie Williams agreed to a scheme in which Mr. McDonnell would take steps to "legitimize" and "promote" Star and its products. Indictment ¶ 22. But neither of these broad terms suggests any specific action or promise to exercise the power of the

Virginia Government—*i.e.*, to take *official* acts as opposed to *any* acts an official takes—and thus neither crosses the line between mere "[i]ingratiation and access," *Citizens United*, 558 U.S. at 360, and actual misuse of government power.

Second, if the statutes the Government invokes apply as broadly as the Indictment suggests, then they are unconstitutionally vague. A law is unconstitutionally vague if it fails to "define the criminal offense [1] with sufficient definiteness that ordinary people can understand what conduct is prohibited and [2] in a manner that does not encourage arbitrary and discriminatory enforcement." *Skilling v. United States*, 130 S. Ct. 2896, 2927-28 (2010) (citation omitted). The Government's interpretation of "official act" produces both of these constitutional evils. It fails to provide fair warning by expanding "official acts" beyond actions that exercise government power into the wholly indefinite category of actions that are merely "'official acts' in some sense." *Sun-Diamond*, 526 U.S. at 407. Moreover, by expanding the legal definition of "official act" to include virtually everything a public official does vis-à-vis a benefactor, the Government's theory would make all elected officials potential prosecutorial targets. Arbitrary enforcement would be inevitable. If these statutes mean what the Government says they mean, then they are unconstitutional. *See Skilling*, 130 S. Ct. at 2927-28.

Third, the Government's prosecution of Mr. McDonnell violates basic principles of federalism. "[H]aving the power to make decisions and to set policy is what gives the State its sovereign nature." *FERC v. Mississippi*, 456 U.S. 742, 761 (1982). The Constitution forbids the federal government from interfering in a state official's political activity when that activity neither implicates federal interests nor constitutes "corruption." *Citizens United*, 558 U.S. at 360. "It is obviously essential to the independence of the States, and to their peace and tranquility, that their power to prescribe the qualifications of their own officers should be exclusive, and free from external interference, except so far as plainly provided by the Constitution of the United States." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (citation omitted). The Government's unprecedented and far-reaching construction of the federal bribery laws violates these basic constitutional principles and for that reason is unconstitutional.

I. The Indictment Fails To State A Claim For Honest Services Fraud, Extortion Under Color Of Official Right, Or Conspiracy.

To state a claim for honest services fraud or Hobbs Act extortion, the Government must allege facts establishing that Governor McDonnell accepted gifts or loans in exchange for promising to perform an "official act." But the Government never alleges that Mr. McDonnell exercised, promised to exercise, or improperly sought to influence another official to exercise governmental power on behalf of Williams or Star. The Government has therefore failed to state a claim under these provisions. And because the Government's allegations cannot support those charges, its derivative conspiracy charges fail too.

A. The Government Must Allege That Gifts Or Loans Were Accepted In Exchange For An "Official Act."

The Government does not dispute that obtaining bribery convictions will require it to demonstrate that—at a minimum—Mr. McDonnell promised or performed an "official act" in exchange for personal benefits. *See, e.g.*, Gov't's Opp'n to Deft's Mot. for Discovery of Selected Recordings of Grand Jury Commen's (Feb. 3, 2014), Dkt. 41, at 8 (acknowledging that "the actions" must "be 'official'" (citing 18 U.S.C. § 201(a)(3)). Nor could it. As the Fourth Circuit has explained, even though the Hobbs Act does not itself use the term "official act,"[5] the Government must prove that the targeted official "obtained a payment to which he was not entitled, knowing that the payment was made in return for *official acts*." *Evans*, 504 U.S. at 268 (emphasis added).[6] Likewise, the Supreme Court held in *Skilling* that to obtain a conviction for honest services fraud, the Government must prove that the official engaged in a "bribery [or] kickback scheme[]," 130 S. Ct. at 2907, 2933-34 (citing § 201 and § 666), the "gravamen" of which "is a payment made to *corruptly* influence or reward an official act (or omission)," *United States v. Jennings*, 160 F.3d 1006, 1020 (4th Cir. 1998).[7] The Government's case fails because it cannot allege (or prove) that Mr. McDonnell took or promised to take official acts on behalf of Williams or Star.

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[5] The Hobbs Act defines "extortion" as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. § 1951(a)(2).

1. An "Official Act" Is An Act That Exercises Governmental Power.

Not everything a public official does is an "official" act. If it were, then public officials could not have substantive interactions with their political benefactors. For example, all public officials who accept political donations in exchange for a photograph or some of their time would be federal felons. That is not the law.

The Supreme Court has made this plain by carefully distinguishing between actions that "are assuredly 'official acts' in some sense"—such as "receiving [ ] sports teams at the White House, visiting [a] high school, and speaking to [ ] farmers about USDA policy"—and the narrower category of "official acts" that fall within the bribery laws. *Sun-Diamond*, 526 U.S. at 407. To be "official," an act must cross the line from merely providing "access," *Citizens United*, 558 U.S. at 360, into actually altering the actions of the government itself—that is, the allegedly unlawful action must involve the exercise of governmental power. This limitation makes sense, since "[i]t is the corruption of official positions through misuse of influence in governmental decision-making which the bribery statutes make criminal." *Carson*, 464 F.2d at 434. Or as the Fourth Circuit has explained: "[T]he 'fraud' involved in the bribery of a public official lies in the fact that the public official is not exercising his independent judgment in *passing* on *official* matters." *United States v. Mandel*, 591 F.2d 1347, 1362 (4th Cir. 1979) (emphases added). The federal bribery prohibitions are thus not intended to police interactions between state officials and supporters when those interactions do not involve "governmental decision-making," *Carson*, 464 F.2d at 434, or exercising "official" government power, *Mandel*, 591 F.2d at 1362, but are rather mere issues of "access." *Citizens United*, 558 U.S. at 360.

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[6] The Department of Justice's Manual recognizes that the Hobbs Act requires a showing of an "official act." *See Criminal Resource Manual* § 2404 ("[T]he courts will probably not extend the 'color of official right' clause of the Hobbs Act beyond the parameters of crimes of bribery and gratuities in relation to federal officials that are described in 18 U.S.C. § 201.")

[7] The wire fraud statute, 18 U.S.C. § 1346 reaches "a scheme or artifice to deprive another of the intangible right of honest services," which the Supreme Court has construed as criminalizing "*only* the bribe-and-kickback core of the pre-*McNally* case law" *Skilling*, 130 S. Ct. at 2931.

Courts have faithfully followed this straightforward distinction, consistently vacating convictions of public officials when those officials did not improperly exercise governmental power. For example, in *United States v. Urciuoli*, 513 F.3d 290, 295-96 (1st Cir. 2008), the First Circuit vacated a state senator's honest services fraud conviction when the senator was being paid to contact "mayors and other local officials urging them to comply with Rhode Island law governing patient entitlement to be taken by ambulance to the hospital of the patient's choice." *Id.* at 294. The Government argued that "a legislator's informal duties commonly extend to representing constituents with local officials and engaging in oversight functions and so to this extent should be regarded as official." *Id.* at 295-96. The First Circuit rejected that position, holding that "there is no indication that [the senator] invoked any purported oversight authority or threatened *to use official powers in support of his advocacy*." *Id.* at 296 (emphasis added). Because the senator's advocacy did not "bias[] his judgment in making an official decision on a matter before him," *id.* at 295, he never improperly exercised his governmental powers. The court rejected the notion that "trad[ing] on the reputation, network and influence that comes with political office" or using the "access and attention" that comes with a government title, or even the "(possibly improper) use of senate letterhead" were sufficient—standing alone—to transform that conduct into an improper exercise of official government power. *Id.* at 296.

Similarly, in *Valdes v. United States*, a policeman took payments in exchange for performing searches (for license plates, outstanding warrants, and the like) on the police department database. 475 F.3d 1319, 1321-22 (D.C. Cir. 2007) (en banc). The Government argued "that the bribery statute should be construed broadly, to encompass essentially any action which implicates the duties and powers of a public official." *Id.* at 1322. The en banc D.C. Circuit rejected the Government's broad construction, noting that the Supreme Court's opinion in *Sun Diamond*, "like the rule of lenity, [ ] works to protect a citizen from punishment under a statute that gives at best dubious notice that it has criminalized his conduct." *Id.* at 1323. The court held that the "official act" concept does not subsume "officials' moonlighting, or their misuse of government resources, or the two in combination"; rather, the Government must allege and prove that the defendant exerted "inappropriate influence on decisions that the government actually makes." *Id.* at 1324-25. Or as one of the cases cited in Defense Motion #1 explained in vacating a Hobbs Act conviction, that statute does not apply to an official who "promised only to introduce the [bribe-payer] to influential persons" and "did not promise to use his official position to influence those persons." Def.'s Mem. in Supp. of Mot. #1 (Jan. 21, 2014), Dkt. 8, at 7-8 (discussing the Eighth Circuit's decision in *United States v. Rabbitt*, 583 F.2d 1014 (8th Cir. 1978), *abrogated on other grounds by* 483 U.S. 350 (1987), *superseded by* 18 U.S.C. § 1346).

The Fourth Circuit recently reiterated the principle that not all acts falling within the range of official duty are "official acts." In *Jefferson*, a congressman was convicted of using his office to obtain government financing and regulatory approval for various business ventures of numerous bribe-paying companies. *See generally* 674 F.3d at 341-51. Congressman Jefferson argued that *Sun-Diamond* limited official acts solely to his formal legislative duties, *id.* at 355, such as voting on bills or introducing legislation. The Fourth Circuit rejected that argument, making clear that public officials take "official acts" only when they exercise governmental power or lobby other officials to do so. In so holding, the court carefully explained that "the bribery statute does not encompass every action taken in one's official capacity." *Id.* at 356. The court held that the "inquiry does not end" with the question of whether the official's conduct was "within the range of official duty"; rather, such an "act must yet adhere to the definition confining an official act to a pending 'question, matter, cause, suit, proceeding or controversy,'" such that juries cannot "rely exclusively on [ ] settled practices." *Id.* at 356-57.

Countless cases confirm that acts are "official" only when they involve the exercise of governmental power. For example, the Supreme Court long ago explained in *United States v. Birdsall*, 233 U.S. 223 (1914), that officials engaged in "official acts" when they accepted bribes "to influence their reports and recommendations" to an ultimate government decision-maker. *Id.* at 235. Those acts were "official" because they sought to improperly influence another official's exercise of governmental power. *Id.* at 235-36. Or in a more recent example, *United States v. Ring*, 706 F.3d 460 (D.C. Cir. 2013), the D.C. Circuit held that a government attorney who "himself lacked independent authority to expedite visa applications" performed an official action when he "acted in his official capacity to *influence* the visa application process." *Id.* at 470. The court distinguished between interfering with specific visa applications (an official act because it sought to improperly influence a governmental decision) and "making a purely informational inquiry" (an official act in some sense but not one that sought to influence governmental action).

Id. Likewise, in *United States v. Biaggi*, 853 F.2d 89, 96-99 (2d Cir. 1988), the Second Circuit upheld the conviction of a congressman for using his office to secure Navy contracts for a ship repair firm—conduct that was "clearly covered by the [bribery] statute because [the conduct] concern[ed] inappropriate influence on *decisions that the government actually makes*," *Valdes*, 475 F.3d at 1325 (emphasis added) (explaining the holding in *Biaggi*). And in *Carson*, 464 F.2d at 434, the court affirmed the conviction of a Senator's administrative assistant for accepting a bribe in exchange for using his influence "to alleviate, if not altogether quash, pending Justice Department action or bring about lenient post-conviction treatment."

The legal rule that unifies these decisions is the limitation of "official" acts to those actions relating to the exercise of actual government power. As the defense explained in its Memorandum in Support of Discovering the Grand Jury Instructions, that basic limitation likewise underlies every published Fourth Circuit decision upholding a bribery conviction. *See* Def.'s Mem. in Supp. of Mot. #1 (Jan. 21, 2014), Dkt. 8, at 8-9. The Fourth Circuit's decisions invariably involved public officials who sought to exercise governmental power by doing things like awarding government funding, selling a formal legislative act, or actively lobbying other public officials to take specific governmental action on an official matter.

In sum, the line is clear: Public officials perform "official acts" only when they exercise actual governmental power or improperly lobby other officials to exercise such power. The bribery statutes are not concerned with whom officials meet, how often officials have meetings, or why officials have meetings. *See, e.g.*, *Citizens United*, 558 U.S. at 360. Rather, they criminalize only efforts by those officials to control the *outcomes* of those meetings and thereby produce tangible action by *the government itself*. Returning a supporter's phone call, asking a subordinate to meet with a supporter, attending a supporter's event, inviting a supporter to a reception, or saying nice things about a supporter are not "official acts"—even if they enhance that supporter's actual or perceived stature—because none of those actions deploy the sovereign power of government. Because the Government has not alleged that Mr. McDonnell improperly influenced an actual governmental decision or action or that he promised to do so, its federal bribery charges fail as a matter of law.

2. The Term "Official Act" Should Be Construed Narrowly.

The Government concedes that—at a minimum—it must satisfy the definition of "official act" in 18 U.S.C. § 201(a)(3) in order to convict the defendants of its honest services fraud and Hobbs Act charges. *See* Gov't's Opp'n to Def.'s Mot. for Discovery of Selected Recordings of Grand Jury Commc'ns (Feb. 3, 2014), Dkt. 41, at 8. That provision defines the term "official act" as: "any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity." 18 U.S.C. § 201(a)(3). The statutory text and well-established canons of construction confirm what the cases uniformly hold: that the Government must allege and prove that Mr. McDonnell exercised (or promised to exercise) actual governmental power in order to sustain its criminal charges.

First, the text expressly limits "official acts" to conduct that involves exercising actual governmental power. "[T]he six-term series" of words in the statute "refers to a class of questions or matters whose answer or disposition is determined by *the government*." *Valdes*, 475 F.3d at 1324 (emphasis added). This text does not reach "'the misuse of public office and contacts gained through that office to promote private ends.'" *Id.* (citation omitted). The text is, rather, limited to "'the corruption of official decisions through the misuse of influence in *governmental* decision-making.'" *Id.* (citation omitted) (emphasis added).

This textual limitation is consistent with the reality that the federal bribery statutes do not establish a comprehensive code of ethics for state officials. The bribery laws exist, rather, to prevent a precise problem: "'the corruption of official decisions through the misuse of influence in governmental decision-making.'" *Id.* (citation omitted). The Supreme Court was clear about this in *Sun Diamond*, explaining that "a narrow, rather than a sweeping, prohibition is more compatible with the fact that [the bribery and gratuity laws are] merely one strand of an intricate web of regulations, both administrative and criminal, governing the acceptance of gifts and other self-enriching actions by public officials." 526 U.S. at 409. Here, Mr. McDonnell was a state official subject to the regulatory framework of Virginia ethics law, which included rules governing what gifts he or his family could receive, how (if at all) those gifts needed to be reported, and what penalties (civil or criminal) attach for failing to comply with those rules. The federal government may dislike Virginia's ethics laws, but it cannot selectively expand the federal bribery laws to fill perceived gaps in the Virginia code of ethics. To the contrary: "Absent a text that clearly requires it, we ought not expand this one piece of the regulatory puzzle so dramatically as to make many other pieces misfits." *Id.* at 412. "[N]ot only does the text here not require that result; its more natural reading forbids," *id.*, extending it to capture conduct that is "not corruption." *Citizens United*, 558 U.S. at 360.

Second, it is a cardinal legal principle under the Rule of Lenity that any ambiguity in a criminal statute must be resolved in favor of the accused. *See, e.g.*, *Staples v. United States*, 511 U.S. 600, 619 n.17 (1994) ("an ambiguous criminal statute is to be construed in favor of the accused"). This principle reflects the importance our legal system places on fair warning and ensuring that individuals are not criminally convicted on the basis of a novel construction of criminal law. Any residual ambiguity concerning the breadth of "official act" must therefore be resolved in favor of Mr. McDonnell and against the Government.

Third, the Hobbs Act and honest services fraud provisions—which apply to state officials—should be construed especially narrowly given the critical federalism issues at stake. Nothing in the Constitution or common sense charges the federal government with policing the ethical codes in all fifty states via vague federal criminal laws. *See, e.g.*, *Citizens United*, 558 U.S. at 357 (explaining that "26 States do not restrict independent expenditures by for-profit corporations" and that "[t]he Government does not claim that these expenditures have corrupted the political process"). It is Virginia's prerogative to set its own ethical standards and, if it chooses, to allow unlimited campaign contributions or gifts to its officials. During the relevant period, Virginia permitted state officials to accept gifts in any amount and—critically here—*explicitly rejected criminal penalties* for accepting too many gifts. Virginia law explains that officials should refrain from accepting "gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain" while simultaneously mandating that "[v]iolations of this subdivision *shall not be subject to criminal law penalties*." Va. Code § 2.2-3103(9) (emphasis added); *see also id.* § 2.2-3103(8) (no criminal sanctions for the acceptance of gifts "where the timing and nature of the gift would cause a reasonable person to question the officer's or employee's impartiality in the matter affecting the donor"). The federal government tramples Virginia's exclusive right to regulate its officials when it uses vague laws to criminalize non-corrupt conduct that Virginia has affirmatively chosen not to criminalize.

The Supreme Court has repeatedly cautioned against giving an expansive interpretation to a federal criminal statute when doing so would "alter sensitive federal-state relationships," *Rewis v. United States*, 401 U.S. 808, 812 (1971). It has accordingly rejected sweeping interpretations of the Travel Act, *id.*, the precursor to the current federal felon-in-possession statute, *United States v. Bass*, 404 U.S. 336, 348-350 (1971), the federal arson statute, *Jones v.*

United States, 529 U.S. 848, 858 (2000), the mail fraud statute, *Cleveland v. United States*, 531 U.S. 12, 24-25 (2000), and the Hobbs Act, *United States v. Enmons*, 410 U.S. 396, 411-12 (1973). As the Court has explained, "unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance." *Bass*, 404 U.S. at 349. For that reason too, this Court should reject "the Government's less constrained construction," *Skilling*, 130 S. Ct. at 2933, of the "official act" requirement in the Hobbs Act and honest services fraud provision, given that Congress has not come close to clearly endorsing it.

3. The Government's Apparent Belief That Everything A Public Official Does In His Official Capacity Constitutes An "Official Act" Is Wrong.

The Government's construction, by contrast, would convert almost everything an official does into an "official act," and would make criminal liability dependent upon each particular official's political priorities and public commitments. The Government alleges that Mr. McDonnell engaged in "official acts" "on an as-needed basis, as opportunities arose, to legitimize, promote, and obtain research studies for Star Scientific's products, including Anatabloc®." Indictment ¶ 22. The Government suggests that these activities were "official" acts, not because they exercised government power (which they plainly did not), but rather because Mr. McDonnell's campaign slogan was "Bob's for Jobs" and because he made economic development in Virginia a top priority during his time as Governor. Indictment ¶ 7. In the Government's myopic view, those public priorities apparently transformed anything Mr. McDonnell did that "legitimized" or "promoted" a Virginia businesses into an "official act."

There is no legal support for this novel theory, and simply considering its converse demonstrates that it cannot be correct. If "Bob's for Jobs" converted all business-promotion activities into "official acts," it would mean that any public official who did *not* campaign on economic development does not take an "official act" when he does the exact same things alleged here to "promote" or "legitimize" home-state businesses. But the bribery laws plainly do not metamorphose with every election and have a different meaning for every official depending on his campaign slogans or political priorities.

Consequently, it is no surprise that there appears to be no case holding that public officials commit the crime of bribery when they do things that "legitimize or promote" a constituent or his home-state company. Whether or not promoting economic development is a "settled practice" of Virginia Governors, the Fourth Circuit has made clear that not all "settled practices" are "official acts." Rather, "[s]ettled practices" are "official acts" *only* if they involve deploying official government power. *Jefferson*, 674 F.3d at 356 ("[T]he bribery statute does not encompass every action taken in one's official capacity such an act must yet adhere to the definition confining an official act to a pending 'question, matter, cause, suit, proceeding or controversy.'"). The Government's construction thus contravenes *Jefferson*.

4. The Government's Interpretation Of "Official Act" Would Criminalize The Routine Activities Of All Public Officials.

If the Government were correct that every meeting referral for a donor, statement to third parties supporting a benefactor, or party invitation for a supporter and a supporter's associates constitutes federal bribery, then countless current and routine political practices are now felonies. That includes conduct that has never been considered criminal, such as exchanging access to officials for campaign contributions. The Government's theory would, for example, criminalize President Obama's practice of providing campaign donors with access to administration officials during his 2012 campaign.[8] Nobody has ever suggested, though, that the bribery laws prohibited cabinet secretaries from trading time and access in exchange for contributions to the President's re-election campaign.[9]

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[8] "The Obama campaign's 'Speaker Series' program turns Cabinet secretaries and top White House advisors into fundraising surrogates. For $5,000, a donor can get a kind of season pass to see [Cabinet Secretaries and White House advisors] when they come to town." Peter Nicholas, *Administration Officials Double As Obama Campaign Speakers*, L.A. Times (Nov. 16,

For better or for worse, elected officials routinely promote the private or corporate interests of their constituents and political backers in ways that do not exercise actual governmental power. It was not long ago, for example, that the President appeared in a promotional spot for George Lopez's late-night talk show, which featured the President endorsing Mr. Lopez's show as "the kind of change I can believe in."[10] Mr. Lopez had played a major role in "the effort to get out the Latino vote for Barack Obama" a few months earlier.[11] There is thus little question that the President endorsed Mr. Lopez's show to repay Mr. Lopez for his financial and political support.

Under the Government's theory, the only thing standing between these officials and a criminal conviction is prosecutorial discretion. Individuals paid money; they received access; some had a public official saying "favorable" things about them or their business (in some instances even directly promoting their business); and these individuals were able to leverage that access or those favorable comments into increased credibility, a better shot at achieving private and public goals, or whatever else they wanted. Criminalizing that conduct has never

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2011), *available at* http://tinyurl.com/odqo7q4.

[9] Which is precisely what the Obama campaign was (lawfully) doing. As has been reported, the Administration's Cabinet Secretaries routinely engaged with donors on substantive matters of official policy. *See, e.g.*, *id.*; *see also* Def.'s Mem. in Supp. of Mot. #1 (Jan. 21, 2014), Dkt. 8, at 11-14.

[10] Maria Elena Fernandez, *President Obama Shills for Comedian George Lopez*, L.A. Times (June 19, 2009), *available at* http://tinyurl.com/knve3f.

[11] Associated Press, *George Lopez Seeks Latino Vote for Obama in Nevada*, N.Y Daily News (Aug. 4, 2008), *available at* http://tinyurl.com/p624yyl; *see also id.* (noting that "[i]t took a personal call from Obama to get Lopez on board with the Democratic presidential candidate's campaign").

been—and is not suddenly now—the consequence of the long-unchanged Hobbs Act and wire fraud statute. Just as President Obama did not take an "official act" when he promoted a supporter's talk show or exchanged private meetings with his cabinet officials for high-dollar donations, Mr. McDonnell did not take an "official act" when he allegedly asked subordinates to meet with Williams or said favorable things about Star, a Virginia-based public company.

B. The Government Has Not Alleged That Mr. McDonnell Performed Or Promised To Perform Any "Official Act."

Once the Government's allegations are measured against the underlying legal standards, its corruption charges fail as a matter of law. The Government does not allege Mr. McDonnell promised or performed any "official acts," as that term has long been defined. It does not and cannot allege that either Star or Williams was promised or received any government funds, contracts, appointments, legislation, regulatory action or any other governmental benefit. The Government's honest services fraud and extortion charges should be dismissed.[12]

1. The Indictment Does Not Allege That Mr. McDonnell Promised Any Specific Future "Official Acts."

The Government has suggested in filings that, even if Mr. McDonnell performed no "official" acts, he is criminally liable because Williams believed he would someday perform such acts. In order to convict Mr. McDonnell without proving a completed official act, however, the Government would need to allege and prove that he "receive[d] a payment in return for his agreement to perform specific official acts." *Evans*, 504 U.S. at 268. The Indictment never alleges any such agreement or even any identifiable types of future official acts.

The Government comes closest in asserting that *Mrs.* McDonnell—who is not a public official and thus cannot violate the bribery laws on her own—"told JW that *she* could help Star

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[12] To the extent the Court determines that any of the Government's alleged official acts are legally sufficient, it should strike the acts which are not from the Indictment.

Scientific but that she needed JW's financial assistance." Indictment ¶ 26 (emphasis added). But tellingly, the Indictment does not allege that Mrs. McDonnell told Williams that *the Governor* would do anything, that Mr. McDonnell knew about his wife's alleged statement, or that Mrs. McDonnell promised to somehow deploy official government power on Star's behalf. The Indictment's vague assertions do not satisfy the threshold requirement of an "agreement to perform *specific* official acts." *Evans*, 504 U.S. at 268 (emphasis added).

2. None Of The Specific Actions Alleged By The Government Constitutes An "Official Act."

The conduct that the Government alleges constituted "official acts" falls within three broad categories: (1) arranging or recommending meetings with government officials about Anatabloc®, (2) hosting and attending events at the Mansion involving Star Scientific, including allowing Williams to suggest invitees to events, and (3) "contacting other government officials in the OGV as part of an effort to encourage Virginia state research universities to initiate studies of anatabloc." *See* Indictment ¶ 111(c). None of these allegations suffice to sustain the Government's charges under the Hobbs Act or honest services fraud statute.

(a) Arranging Or Recommending Meetings With Other Government Officials

The Indictment broadly asserts that Mr. McDonnell took "official acts" by arranging meetings for Williams with Virginia government officials "to discuss and promote Anatabloc®," and by recommending "that senior government officials in the OGV meet with Star Scientific executives to discuss ways that the company's products could lower health care costs." Indictment ¶ 111(c)(i), (v). The Indictment's factual allegations, in turn, describe only two incidents that involve such conduct. Neither qualifies as an "official act."

First, in the evening of July 31, 2011, Mr. McDonnell allegedly emailed the Virginia Secretary of Health to say that he "'would like to have [one of the Secretary of Health's

Deputies] attend a short briefing at the mansion about 10am with first lady on the Star Scientific anatablock [sic] trials planned in va at vcu and uva.'" Indictment ¶ 48. The next morning, Williams met with Mrs. McDonnell and a senior policy advisor from the Department of Health. *Id.* ¶ 49. Williams allegedly stated at the meeting that "research scientists at UVa and MCV were interested in doing clinical trials," and that those researchers "would get small planning grants to develop test protocols so that large grant proposals could be submitted to the Tobacco Commission." *Id.* Williams allegedly stated that he "anticipated Tobacco Commission funding for these studies and that he had discussed this" with Mr. McDonnell. *Id.* Williams also allegedly discussed the possibility of using Virginia government employees as the control group for these studies. *Id.* The policy advisor subsequently sent Williams a polite note explaining that "'it is necessary for us to make policy recommendations and decisions off of sound data'" and that she was "'grateful that [Williams] [was] making strides to validate the incredible anecdotes and stories that result from your work.'" *Id.* ¶ 52. The Government does not claim that the policy advisor promised or took any official action benefiting Star (or that she even had jurisdiction over the meeting's topic). Nor does it allege that she spoke to Mr. McDonnell about the meeting. Nor is there any allegation that Mr. McDonnell attempted to influence the outcome of this meeting or that the meeting actually yielded anything. Simply put, nothing happened.

Second, on March 21, 2012, Mr. McDonnell allegedly met with the Virginia Secretary of Administration "to discuss the Virginia state employee health plan and ways to reduce healthcare costs in Virginia." Indictment ¶ 88. The Government contends that Mr. McDonnell pulled some Antabloc® from his pocket during this meeting and told the Secretary that he used it personally and that it "was working well for him." *Id.* Mr. McDonnell then allegedly asked her "to reach out to the 'Anatabloc people' and meet with them" to discuss "ways that the company's products could lower healthcare costs." *Id.* ¶¶ 88, 111(c)(v). The Government does not allege that the Secretary of Administration ever followed up on Mr. McDonnell's alleged suggestion. Nor does it claim that Mr. McDonnell ever asked the Secretary to take governmental action to assist Star, or that she ever did so. Once again, nothing happened.

Arranging meetings without attempting to control their outcomes does nothing more than provide "access" and is therefore "not corruption." *Citizens United*, 558 U.S. at 360. Public officials routinely refer supporters and other constituents for meetings with other government officials. But as the Eighth Circuit has explained, introducing a benefactor "to influential persons" is not an official act if the official providing the introduction does "not promise to use his official position to *influence* those persons." *United States v. Loftus*, 992 F.2d 793, 796 (8th Cir. 1993) (emphasis added). So too here.[13]

(b) Hosting And Attending Events At The Mansion

The Indictment alleges the Mr. McDonnell took "official acts" by "hosting, and attending, events at the Governor's Mansion designed to encourage Virginia university researchers to initiate studies of anatabine and to promote Star Scientific's products to doctors for referral to their patients." Indictment 111 ¶ (c)(ii). It further alleges that Mr. McDonnell "promot[ed] Star Scientific's products and facilitat[ed] its relationships with Virginia government officials by allowing [Williams] to invite individuals important to Star Scientific's business to exclusive events at the Governor's Mansion." *Id.* ¶ 111(c)(iv). These allegations appear to relate to two events: (1) a lunch at the Mansion on August 30, 2011, and (2) a

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[13] Although not alleged to be part of the conspiracy, the Government also claims that in 2010 Mr. McDonnell "put [Mr. Williams] in contact with the Virginia Secretary of Health and Human Resources," Indictment ¶ 17, and that he appeared at a Star event in February 2011 where he "made brief remarks in support of Star Scientific to the doctors and health professionals in attendance," *id.* ¶ 20. For the same reasons detailed above, these alleged actions would not qualify as official acts.

Healthcare Leaders Reception at the Mansion on February 29, 2012. Neither event qualifies as an "official act."

On August 30, 2011, Mr. and Mrs. McDonnell allegedly "hosted an event for the launch of Star Scientific's Anatabloc® product at the Governor's mansion."[14] Indictment ¶ 60. The Government alleges that the "invitees included some of the same UVa and VCU research scientists whom Star Scientific was attempting to convince to perform clinical trials of Anatabloc®." *Id.* Williams presented several $25,000 planning grants to UVa and VCU researchers to fund the preparation and submission of research proposals for the study of anatabine. *Id.* According to the Indictment, Mr. McDonnell attended the event and "spoke favorably to the attendees regarding further study of anatabine." *Id.*

As discussed above, however, a public official does not perform an "official act" simply by attending or hosting a luncheon and making supportive remarks. The Government does not claim that anything that happened at this lunch influenced any public official to perform any "official act."[15] Just like the legislator in *Urciuoli*—whose conviction the First Circuit vacated—

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[14] Notably, the Indictment does not allege that Commonwealth funds paid for this lunch (to the contrary, Mr. McDonnell's PAC footed the bill), that this lunch was a public event, or that media were present. The only difference between the Government's allegations and the private events Governor McAuliffe is offering to six-figure donors, therefore, is the *absence* of any allegation here that there was an explicit quid pro quo arrangement between Williams and the accused.

[15] Even if it had occurred, encouraging Star to donate money to state universities could not possibly constitute corrupt official action. But in any event, the Indictment itself refutes the claim that the lunch had any impact on the decision of UVA and VCU researchers to study anatabine. According to the Indictment, UVA and VCU representatives attended a Star symposium at Gibson Island on July 23, 2011 to discuss research on anatabine. Indictment ¶ 45. The Indictment does not allege that Mr. or Mrs. McDonnell knew about—much less played a role in— that event. The Indictment alleges that one week later, on August 1, Mr. Williams reported that "research scientists at UVa and MCV were interested in doing clinical trials of the potential health benefits of Anatabloc®." *Id.* ¶ 49. Again, the Indictment does not allege that Mr. McDonnell had any contact—or authorized anyone else to have contact—with any university researcher regarding anatabine research prior to the August 30 lunch, at which Star

"there is no indication that [Mr. McDonnell] invoked any purported oversight authority or threatened to use official powers in support of [any] advocacy." 513 F.3d at 296.

The same is true of the Healthcare Leaders reception at the Mansion on February 29, 2012. Indictment ¶ 84. The Indictment alleges that Mrs. McDonnell "allowed [Williams] to invite dozens of individuals, including doctors whom Star Scientific was trying to convince to recommend Anatabloc® to their patients." Indictment ¶ 74. The Government does not allege that Mr. McDonnell did anything at the event to influence any official action on Star's behalf or that Star received any official benefit through being invited to the event. While the Government alleges that Mr. McDonnell "wanted to make sure that the 'Head officers at VCU/MCV, UVA, EVMS, [and the] Massey Cancer Center' were included on the [invitation] list," there is no allegation that any of these healthcare leaders were invited to benefit Star or that any of them even spoke with Star representatives at the event. *Id.* ¶ 75. Nothing relating to the Healthcare Leaders Reception thus comes close to meeting the requirements of an "official act."

(c) "Contacting Other Government Officials In OGV"

The Indictment also vaguely alleges that Mr. McDonnell took "official acts" when he "contact[ed] other government officials in the OGV as part of an effort to encourage Virginia state research universities to initiate studies of anatabine." Indictment 111 ¶ (c)(iii). The Indictment does not identify who those officials were or how this alleged "contact" related to encouraging research at Virginia state universities. Certainly, the Indictment does not allege that Mr. McDonnell ever contacted VCU or UVA to request that they conduct research on

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awarded research grants based on previously submitted applications. And finally, the Government does not allege that any attendee was in fact influenced to do anything as a consequence of the lunch.

anatabine or that they apply for Tobacco Commission funding. Nor does it allege that Mr. McDonnell asked anyone else to make such contacts on his behalf.

Indeed, other than the events described above, the Government's only apparent basis for this allegation is a cryptic email that Mr. McDonnell sent to his Chief Counsel, Mr. Eige, in February 2012. On February 9, 2012, Mrs. McDonnell allegedly emailed Mr. McDonnell, with a courtesy copy to Mr. Eige, stating that VCU and UVA were not returning calls from Williams regarding potential anatabine studies. Indictment ¶ 76. The Government alleges that on February 17, Mr. McDonnell emailed Mr. Eige stating "'Pls see me about anatabloc issues at VCU and UVA.'" *Id.* ¶ 80. Mr. Eige responded "will do. We need to be careful with this issue." *Id.* The Government does not allege that Mr. McDonnell instructed Mr. Eige to take, or that Mr. Eige did take, any action to assist Star as a consequence of this exchange. Indeed, there is no allegation that Mr. McDonnell ever actually followed up with Mr. Eige or sought to get UVA and VCU to return Williams' phone calls (which, even if it had occurred, still would not have constituted an "official act, *see also Ring*, 706 F.3d at 470 ("purely informational inquiry" not an official act)). Thus, yet again, absolutely nothing happened.

The Government is mistaken that a public official can commit the federal felony of bribery by merely asking his lawyer to "see" him. The role of in-house attorneys is to help public officials comply with the law. Mr. McDonnell's solicitation of advice from his attorney cannot possibly constitute an "official"—and therefore criminal—act.

3. The Government's Broad Characterizations Of Mr. McDonnell's Conduct Do Not Cure This Deficiency.

Finally, the Government's amorphous characterization of the alleged "scheme" does not cure its failure to allege any official acts. According to the Government, Williams and Star paid bribes to the [illegible] Donnells in order to obtain three things: (1) a research study using Virginia state employees as subjects; (2) Tobacco Commission funding for research studies to be performed by Johns Hopkins University, UVA, and VCU; and (3) encouragement of physicians to prescribe anatabine to their patients. *See* Indictment ¶¶ 41-45, 60, 63, 65, 74, 76. Notably, with respect to the first two alleged objectives, the Government never actually claims that Mr. McDonnell did anything (or promised to do anything) to assist Star with these supposed goals, neither of which Star achieved. The Indictment does not allege that any research study of Virginia employees was ever promised, authorized, or conducted. Nor does the Indictment claim that Mr. McDonnell ever promised—much less provided—any assistance with Star's plan to seek funding from the Tobacco Commission.[16] Indeed, the Indictment does not even claim that Mr. McDonnell had any discussions with Williams about these supposed objectives,[17] much less that Mr. McDonnell promised to do anything for Williams in exchange for gifts or loans.

As for the third alleged objective, encouraging physicians to prescribe Anatabloc to their patients is not an "official act." What private physicians prescribe to their private patients has nothing to do with "decisions that the government actually makes." *Valdes*, 475 F.3d at 1325. Whether or not the presence of Star executives at a reception at the Governor's Mansion somehow imbued Star with additional credibility or legitimacy in the eyes of those physicians, extending party invitations is not an official act because it does not cross the line between "[i]ngratiation and access," *Citizens United*, 558 U.S. at 360, and exercising government power. It is not materially different from the 2013 presidential inauguration package: "Corporations and other organizations that donate in the highest bracket—$1 million—will have access to a 'benefactors reception,' and four tickets to the official inaugural ball, among other perks."[18]

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[16] The Indictment does not even claim that an application for funding was actually filed with the Tobacco Commission or that such funding was ever provided. Neither event happened.

[17] While the Government alleges that *Star employees* represented to various people that Mr. Williams had discussed the plan to seek Tobacco Commission funding with the Governor, Indictment ¶ 49, and that Mr. McDonnell had "expressed his support," *id.* ¶ 76, it does not allege that *Mr. McDonnell himself*—or anyone on his staff—ever made such a statement to *anybody*. Certainly, if the Government had any evidence that Mr. McDonnell ever made such a statement, it would have alleged as much in the Indictment.

The D.C. Circuit's decision in *United States v. Muntain* illustrates the point. There, the Government convicted a HUD official for allegedly accepting illegal gratuities after selling group automobile insurance policies to labor unions that he met as part of his official duties. The official "frequently combine[d] the promotion of the automobile insurance with trips taken at government expense for the purpose of conferring with labor officials across the United States concerning official business." 610 F.2d 964, 966-67 (D.C. Cir. 1979). The official argued that selling insurance policies was not an "official act" because it did not "involve[] any question, matter, cause, suit, proceeding or controversy which by law might have been brought before [him]." *Id.* at 967 The Government, by contrast, contended that "any acts within the range of an official's public duties" are "official acts," including any meetings "to discuss matters of interest to the unions." *Id.* The D.C. Circuit rejected the Government's construction and vacated the conviction, explaining that the Government's interpretation went "beyond permissible bounds." *Id.* "To the extent that [the defendant's] use of his official position to promote a purely private venture created an appearance of impropriety, his conduct is reprehensible, *but it is not criminal*." *Id.* at 967-68 (emphasis added).[19]

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[18] Matthew Larotunda, *Obama Inauguration's Big Donor Packages Previewed*, ABC News (Dec. 8, 2012, 4:14 PM), *available at* http://goo.gl/97XaY1.

[19] The Government may argue that the Fourth Circuit's decision in *Jefferson* departed from *Muntain* and adopted a definition of "official act" that subsumes hosting an event for private doctors, but that would be mistaken. There was no question that Mr. Jefferson was accepting kickbacks in exchange for promoting bribe-payers' interests to *government* officials or *government* entities who were making decisions on government contracts. Mr. Jefferson was "promoting and facilitating lucrative deals between iGate *and the Army*, or between iGate, Mody, or Arkel and various African *governments*," *Jefferson*, 674 F.3d at 359 (emphases added), and was thus plainly using his office to influence "decisions the government actually makes."

In sum, all the Government alleges is that Mr. McDonnell provided a personal benefactor with access to himself and his staff. Whatever the appearance of such conduct, it is "not corruption," *Citizens United*, 558 U.S. at 360, because providing access does not, without more, exert "inappropriate influence on decisions that the government actually makes." *Valdes*, 475 F.3d at 1325. The Government's corruption charges—and its derivative conspiracy charge, *Ventimiglia v. United States*, 242 F.2d 620, 622 (4th Cir. 1957)—should therefore be dismissed.

II. If "Official Act" Means What The Government Claims, Then The Honest Services Statute And Hobbs Act Are Unconstitutionally Vague.

If the Government's construction of the statutes it invokes is correct, then those statutes are unconstitutionally vague and the Indictment should be dismissed for that reason. "To satisfy due process, a penal statute [must] define the criminal offense [1] with sufficient definiteness that ordinary people can understand what conduct is prohibited and [2] in a manner that does not encourage arbitrary and discriminatory enforcement." *Skilling*, 130 S. Ct. at 2927-28 (citation omitted). The Government's construction of the wire fraud statute and the Hobbs Act fails both tests. For that reason too, the Government's corruption charges should be dismissed.

First, interpreting "official act" to dispense with proof that the official sought to exercise governmental power will leave officials guessing about the legality of standard courtesies extended by politicians to supporters, benefactors, and the general public. The Government's interpretation of official act would potentially criminalize any interaction with a benefactor, such as facilitating a meeting, hosting or appearing at an event, or speaking favorably about that benefactor. It would even raise questions about the legality of offering photo opportunities at fundraisers, or organizing private events wherein donors obtain special access to officials in exchange for specified contributions. All such acts potentially "promote" or "legitimize" or lend "credibility." Such an amorphous and uncertain standard fails to provide fair notice in accordance with *Skilling*. It would also create a chilling effect on the rights of individual citizens to donate to their favored political candidates and participate in electoral politics.

Second, such a broad construction of "official act" would lead to arbitrary prosecutions. If providing "access" is criminal, then prosecutorial discretion is the only thing standing between most public officials and federal indictment. The danger of arbitrary prosecution is particularly clear here, given that Mr. McDonnell's gubernatorial predecessors and his current successor (all of whom are Democrats) engaged in similar conduct without even prompting an investigation. *See* Def.'s Mem. in Supp. of Mot. #1 (Jan. 21, 2014), Dkt. 8, at 16-17.

In short, the Government asks this Court to expand the "official act" concept beyond its settled scope. Should the Hobbs Act and honest services fraud provision be revised as the Government requests, then those statutes will be rendered unconstitutionally vague. The Court should "resist the Government's less constrained construction absent Congress' clear instruction otherwise." *Skilling*, 130 S. Ct. at 2933.

III. The Constitution Forbids Federal Prosecution Of State Officials For Non-Corrupt Conduct That Is Legal Under State Law.

Finally, the Government's broad legal theory criminalizes political activity of state public officials that has no impact on federal funds and is "not corruption." *Citizens United*, 558 U.S. at 360. Extending the federal criminal law into that core province of state self-governance violates the Tenth Amendment and the principles of federalism it embodies. "[H]aving the power to make decisions and to set policy is what gives the State its sovereign nature." *FERC v. Mississippi*, 456 U.S. at 761. State officials have constitutionally protected latitude to perform their duties free from undue federal interference. *See id.* at 769 (improper for the federal government to "set a mandatory agenda to be considered in all events by state legislative or administrative decisionmakers"). The federal government is permitted to interfere with State self-governance in only limited circumstances, such as when federal funds are at stake, *see* 18 U.S.C. § 666—which the Government does not allege here—or when federal intervention is necessary to discharge the Government's obligation to "guarantee a Republican Form of Government," U.S. Const. art. IV, § 4. The States are otherwise entitled to set their own rules governing the political activity of their officials. That is why the Supreme Court has warned against adopting over-broad constructions of the federal bribery laws that would improperly "involve[ ] the Federal Government in setting standards of disclosure and good government for local and state officials." *McNally v. United States*, 483 U.S. 350, 360 (1987). That is precisely what the Government is attempting to do here.

This prosecution is ultimately no different from the federal government setting fixed limits on campaign donations to state officials because, in the judgment of the federal government, unlimited campaign donations corrupt state governance. But such an intrusive prohibition would, of course, "upset[] the federal balance to a degree that renders it unconstitutional." *United States v. Lopez*, 514 U.S. 549, 580 (1995) (Kennedy, J., concurring).

CONCLUSION

The political corruption charges leveled against former Governor McDonnell are based on an unprecedented interpretation of federal law that would, if adopted by this Court, criminalize many basic practices of democratic politics. That would, in turn, convert federal prosecutors into the ultimate arbiters of public ethics for state officials. But the wire fraud statute and Hobbs Act do not accord federal prosecutors such broad-ranging power. The Government's attempt to charge Mr. McDonnell under those provisions without alleging that he abused the official power of Virginia's government therefore fails, and its corruption charges (Counts 1-11) should be dismissed.

Dated: March 25, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 25th day of March, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: March 25, 2014

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	CRIMINAL NO. 3:14-CR-00012
	)	
ROBERT F. MCDONNELL MAUREEN G. MCDONNELL	)	JUDGE JAMES R. SPENCER
	)	

DEFENDANT ROBERT F. MCDONNELL'S MOTION #14 – MOTION FOR OMNIBUS VOIR DIRE RELIEF

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INTRODUCTION

For nearly a year, the media has engaged in near-constant speculation about the Government's investigation of, and false allegations against, Bob and Maureen McDonnell. From March 2013 forward, the Richmond-area press has reported on details related to the investigation in salacious terms, sometimes citing anonymous "law enforcement" personnel as the source of the information. This constant negative coverage placed a cloud over the final year of Mr. McDonnell's term as Governor and affected the campaign for his successor. The media's coverage intensified further following the indictment, spurred by the unique circumstance of criminal charges being filed against a well-regarded former governor and his spouse. While this case has garnered attention nationwide, the coverage in the Richmond press has been particularly extensive and prejudicial to the accused, stoking public antipathy toward the McDonnells before they have had the opportunity to respond to the charges at trial. That coverage undoubtedly will continue in the months leading up to the trial and will intensify during trial.

In cases that—like this one—involve heightened pre-trial publicity, great care must be taken to safeguard the accused's Sixth Amendment right to an impartial jury. Here, the duration, volume, and tenor of the media coverage, as well as the potential that strongly held political views could influence jurors, necessitates a thorough voir dire process that will ensure an unbiased jury—willing and able to follow the Court's instructions without hesitation—is impaneled. Mr. McDonnell therefore requests that the voir dire process include the following elements:

1. Use of an extensive written joint jury questionnaire to be completed by potential jurors at the courthouse at least two weeks in advance of trial that includes questions submitted by both the defense and prosecution;

2. Individual follow-up voir dire conducted by both the Court and the attorneys to address any issues raised by questionnaire responses, new developments, or by juror conduct observed during the process;
3. The exercise of 10 peremptory challenges for each defendant if they are tried jointly, with 6 peremptory challenges to be exercised by the prosecution;
4. Use of the "struck system" to exercise peremptory challenges;
5. Provision to potential jurors of a neutral summary of the allegations in the case (rather than the indictment) submitted with the jury questionnaire;
6. Permission for jurors to take notes during trial;
7. Notification to alternate jurors of their status and dismissal immediately before the jury retires to deliberate.

These steps will help minimize the likelihood that a change of venue or juror sequestration will be necessary to secure Mr. McDonnell's Sixth Amendment rights.

ARGUMENT

I. PRE-TRIAL PUBLICITY HAS BEEN OVERWHELMING AND PREJUDICIAL TO THE ACCUSED.

At trial, Mr. McDonnell will show that there was no quid pro quo with Jonnie Williams; that neither Williams nor Star Scientific received any benefit, contract, or favor from the Commonwealth of Virginia; and that Mr. McDonnell was unaware in real time of many of the gifts and loans received by Mrs. McDonnell from Williams. A consumer of Richmond-area media for the last year would have a very different (and mistaken) impression of the facts due to the barrage of prejudicial news coverage about this case. Local news sources have engaged in nonstop speculation about the allegations for the last twelve months, fueled in part by unnamed law enforcement sources.

A. The volume of coverage of this case in the Richmond-area media has been overwhelming.

Since this case involves criminal charges against Virginia's last governor and his wife, it is not surprising that it has been the frequent subject of Richmond-area news reports. A short review of those reports shows just how saturated the media market has been with stories about the accused. A Lexis search for reports appearing in U.S. media sources between March 1, 2013 and March 25, 2014 (including newspapers, television transcripts, and a selection of Internet sources) containing Mr. McDonnell's name and any of the terms "Jonnie Williams," "Star Scientific," "investigation," "scandal," or "Gift-gate" in the headline or lead paragraph returns 2,296 results.[1] The vast majority of these results (2,159 of the reports) appeared in Virginia and Washington, D.C. media sources.[2] In short, consumers of Richmond-area media sources have been exposed to an average of over five media reports *per day* about the investigation from March 2013 to the present. And this total does not include the many other sources of potentially prejudicial information about the McDonnells likely to reach potential jurors that are more difficult to quantify, such as blog posts not captured by Lexis, Facebook updates, Tweets, and anonymous comments on online news stories.

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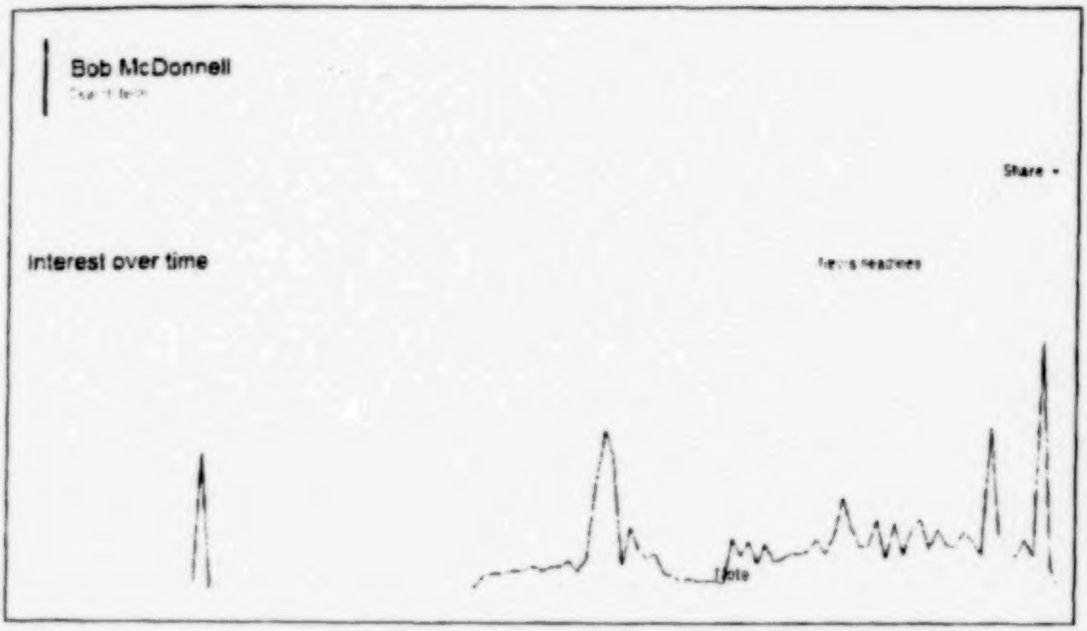
[1] Source: Lexis Advance search of all news sources for: (Robert or Bob or Governor or Gov. /3 McDonnell) and hlead ("Jonnie Williams" or "Star Scientific" or "investigation" or "scandal" or "gift-gate" or "gift gate" or "giftgate"), from March 1, 2013 through March 25, 2014. [The 'hlead' search function searches for terms within the article headline or lead paragraph.]

[2] Lexis Advance defines the following sources as reaching the Virginia and Washington, D.C. media markets: Washington Post, Richmond Times-Dispatch, Newsbank, State Capital Newsfeed, McClatchy-Tribute Business News, Newstex, Virginian-Pilot, Associated Press, Daily News Leader, Daily Progress, Bulletin's Frontrunner, Roanoke Time, Politico, ASAPII Database, CNN, and MSNBC.

Not only is the media frequently writing and speaking about this case; Virginians are also actively following the news about this matter. Data available from Google.com regarding searches conducted by Internet users in Virginia shows a surge of interest in Mr. McDonnell and Star Scientific just as the media coverage of the investigation increased in intensity. According to Google Trends, which tracks the relative number of times Google users search for various terms over time, Virginians searched Google for Mr. McDonnell's name more around the time of the indictment than at any previous time, including the 2009 campaign for governor and subsequent inauguration. *See* Figure A. This wave of interest was surely the result of the media's overwhelming coverage of the investigation and indictment.

Figure A. Relative frequency of Google.com searches for Bob McDonnell from Virginia computers:[3]



Similarly, searches of Google.com for Star Scientific from Virginia computers surged during 2013 as the media's attention to the investigation increased, and spiked even higher around the time of the indictment. *See* Figure B. This level of interest far surpassed any previous attention paid to Star Scientific, despite the fact that the company has been in the public eye since the 1990s and has been promoted by various celebrities and media campaigns over that period. *See, e.g.*, BusinessWire, *PGA Tour Professional Fred Couples Named Brand Ambassador For Anatabloc*, Feb. 15, 2012.

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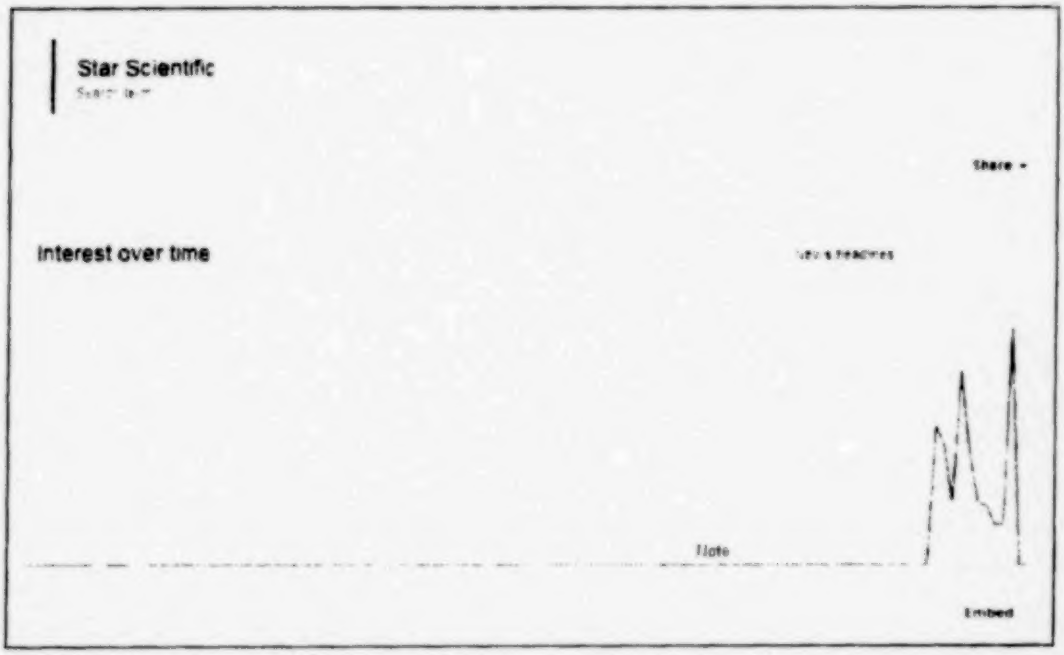
[3] Source: Google Trends search for Bob McDonnell, http://www.google.com/trends (conducted March 18, 2014).

Figure B: Relative frequency of Google.com searches for Star Scientific from Virginia computers:[4]



In short, potential jurors are indisputably reading and listening to the extensive media coverage of this case, and are interested enough in the allegations to search the Internet for further information.

B. The content of media coverage has been largely prejudicial to the McDonnells.

The saturation of news coverage about this case is particularly alarming because the vast majority of it has been misleading and negative. To assess the extent of prejudicial news coverage likely to reach potential jurors, the defense conducted a detailed review of 141 articles about this case appearing in the Richmond Times-Dispatch, Washington Post, and Virginian-Pilot (three of the newspapers with the largest circulation in the geographic region from which jurors will be selected) between December 1, 2013 and March 12, 2014. This review found that approximately ***two-thirds*** of the articles contained substantially more negative statements about the McDonnells than positive or neutral statements.[5]

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[4] Source: Google Trends search for Star Scientific, http://www.google.com/trends (conducted March 18, 2014).

A full listing of the prejudicial coverage is not feasible in this space, given the large volume of coverage noted above, but a sampling of the reporting indicates just how unfair it has been to the accused in its nearly wholesale embrace of the prosecution's narrative.

- Starting from the very beginning of the investigation, the Richmond-area media jumped to condemn the McDonnells, frequently using highly disparaging language about the accused in both news reports and opinion pieces. For example, on May 12, 2013, a writer for the Richmond Times-Dispatch website posted a blog post stating that Mr. McDonnell was "[h]iding behind legal technicalities" and "making a mockery" of "personal responsibility" and "family values." A. Barton Hinkle, *Hinkle: McDonnell Family Values*, Richmond Times-Dispatch, May 12, 2013. On July 12, 2013, the Washington Post ran an editorial entitled "Unfit for His Office", in which the author claimed that "mountainous evidence" suggests that Mr. McDonnell "has no business continuing in office." Ruth Marcus, *Editorial: Unfit For His Office*, Washington Post, July 12, 2013. There are many more examples of similar language among the 2,296 media reports published since March 2013.

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[5] For each of these 141 articles, the defense analyzed the number of neutral statements (simply reporting known facts), positive statements (such as those noting flaws in the Government's case), and negative statements (such as those adopting the Government's unproven allegations as true). This analysis showed that 64% of the articles contained at least 25% more negative statements than positive statements.

- Many media sources presented news of the investigation from a pro-prosecution standpoint, sometimes attributing information to anonymous "law enforcement sources." *See, e.g.*, Julian Walker, *Va. Legislator Calls on Gov. Bob McDonnell to Resign*, Virginian-Pilot, July 2, 2013 ("The McDonnell family's connections to Williams and Star are the subject of an active federal inquiry, according to law enforcement sources."). Other articles suggested that the investigation had uncovered information favorable to the prosecution's arguments. *See, e.g.*, Michael Martz & Jim Nolan, *Star CEO Says He Told McDonnell Of Loan To First Lady*, Richmond Times-Dispatch, Oct. 20, 2013 (the "investigation has found ample evidence that Williams sought the help of the governor, first lady, and other state officials in securing research grants and a place in the state employee health plan" for his dietary supplement, Anatabloc).
- The press also published one-sided, pro-prosecution news stories about sealed grand jury proceedings between the federal prosecutors and Mr. McDonnell. In September 2013, the Washington Post reported that federal prosecutors had "obtained new documents through a closed courtroom battle with McDonnell's legal team, and those papers prompted new leads." Rosalind S. Helderman & Carol D. Leonnig, *Federal Prosecutors Unlikely To Act In McDonnell Case Before Election*, Washington Post, Sept. 28, 2013. In November 2013, the Richmond Times-Dispatch also published inflammatory statements regarding the litigation over the Governor's office emails, prejudicing readers against the Governor by claiming that he could be viewed "[a]s having something to hide and going to great lengths – even turning to the courts – to hide it." Jeff Schapiro,

Schapiro: McDonnell Legal Hit You Where It Hurts – The Wallet, Richmond Times-Dispatch, Nov. 20, 2013.

- Similarly, the press reported on leaked details from highly sensitive, confidential meetings between the Government and attorneys for the McDonnells. Nearly all of these articles provided one-sided, pro-prosecution accounts of the investigation that fueled the continuing negative publicity about the McDonnells. *See, e.g.*, Rosalind S. Helderman & Carol D. Leonnig, *Ex-Va. McDonnell Rejected Plea Offer to Face One Felony, Spare Wife Any Charges, Avoid Trial*, Washington Post, Jan. 23, 2014 (claiming knowledge of confidential pre-indictment negotiations between the parties).
- Even though the Government's indictment does not claim that the loans from Williams to Mrs. McDonnell and MoBo Real Estate Partners, LLC were cash gifts, many media reports insist on describing them as "payments" that Mr. McDonnell "considers" or "characterizes" as loans. *See Timeline: The McDonnells and Jonnie Williams*, Richmond Times-Dispatch, Jan. 21, 2014 ("The governor considers the payments loans."); Laura Vozzella, *Herring Dismisses Lawyers For McDonnell*, Washington Post, Jan. 17, 2014 ("$165,000 in gifts and money characterized as loans").
- The media also unfairly created an incorrect perception that taxpayers have been footing the bill for Mr. McDonnell's private legal defense by undersigned counsel. On November 15, 2013, the Washington Post reported that "two private firms representing McDonnell and his staff racked up more than $331,000 in fees in July, August and September," stating that the Commonwealth of Virginia

would pay those fees. Rosalind S. Helderman, *New Invoices Bring Taxpayer-Paid Legal Bills For McDonnell Gifts Scandal To $575,000*, Washington Post, Nov. 15, 2013. Only later in the article does this report clarify that Mr. McDonnell was paying for his personal legal defense, with outside counsel being hired by the Virginia Attorney General to represent the Governor's office only because the then-Attorney General had a potential conflict of interest.

- Some press reports have recognized that the investigation, and resulting negative coverage of Mr. McDonnell, was so pervasive as to influence the November 2013 election for Mr. McDonnell's successor. *See, e.g.*, Greg Giroux, *McDonnell Probe Taints Cuccinelli Virginia Governor Bid*, Bloomberg.com, June 14, 2013.
- The media's coverage has even gone so far as to criticize Mrs. McDonnell for allegedly receiving free dental work, Laura Vozella & Rosalind S. Helderman, *Did Maureen McDonnell Get Free Dental Work?*, Washington Post, July 19, 2013, and criticize the McDonnell family for their choice of breakfast, Laura Vozella, *Mansion Bills May Break the Rules*, Washington Post, June 17, 2013.

Following the indictment, the prejudicial coverage markedly intensified, as many Virginia publications unquestioningly accepted the unproven allegations in the indictment as true. On January 22, 2014, the Washington Post published an article titled "Indictment Shows McDonnell as a Man in Denial," speculating that Mr. McDonnell was "brought down" by "a toxic mix of personal money worries, an assertive wife, a taste for luxury, and a culture of coziness between politicians and rich supporters." Robert McCartney, *Indictment Shows McDonnell As A Man In Denial*, Washington Post, Jan. 22, 2014. On the same date, the Richmond Times-Dispatch published a column that accepted virtually all of the allegations in the indictment as true, further editorializing that the McDonnells engaged in "unseemly" conduct and conjuring an image of a "governor in irons." Jeff E. Schapiro, *Va.'s Image Now Like That Of Maryland, Illinois*, Richmond Times-Dispatch, Jan. 22, 2014. After spending 18 paragraphs repeating content from the indictment (amplified with judgmental additions such as "ill-gotten," "lavish," and "garish"), this article finally briefly referenced Mr. McDonnell's defense in the penultimate paragraph. *Id.*

Meanwhile, very few of these articles reported on the key facts that are beneficial to Mr. McDonnell—namely, that a thorough review by outside counsel hired by the Virginia Attorney General's office concluded that (1) Star "received no funds, grants, or contracts" during the McDonnell administration; (2) no Star officer, including Williams, "was appointed to a Commonwealth board or commission during the McDonnell administration"; and (3) neither Star nor Williams "received any direct monetary benefit" from any meeting with cabinet members or their representatives. *See Is The First-Family Gift Saga Reshaping Virginia's Image?*, Virginia Business, July 26, 2013. Nor do many articles report that Star publicly confirmed that it "neither sought nor received any special benefits from any public official." Olympia Meola, *McDonnell: No Special Treatment for Donor*, Richmond Times-Dispatch, May 1, 2013.

The chance that this widespread, one-sided, and highly prejudicial coverage has infected potential jurors is high. Given the coverage to date, there is a substantial likelihood that this coverage will continue to be largely negative toward the accused. Given that reality, thorough voir dire—including a well constructed juror questionnaire—is essential to empanelling a fair and impartial jury able to follow the Court's instructions about avoiding media coverage and other outside influences.

C. Mr. McDonnell's political positions are also likely to affect potential jurors.

In addition to the media coverage focusing on the allegations in this case, Mr. McDonnell has been in the public eye for many years as a member of the Virginia House of Delegates, Attorney General, and then Governor. In those roles he has taken positions on a number of controversial issues about which potential members of the jury may have strong opinions. *See, e.g.*, Laura Vozella, *As McDonnell Leaves Office, His Hefty Record And Political Future Are Clouded By Scandal*, Washington Post, Jan. 9, 2014 (noting that Mr. McDonnell's 2012 support of an abortion bill was criticized by opponents as "state-sponsored rape" and lampooned on Saturday Night Live); Amy Gardner, *Va. Candidate McDonnell Says Views Changed Since He Wrote Thesis*, Washington Post, Aug. 30, 2009 (reporting on controversy during 2009 gubernatorial campaign regarding Mr. McDonnell's 25 year old master's thesis). Mr. McDonnell's record on even seemingly mundane issues such as transportation policy has engendered strong and divisive opinions. *See Editorial: A Cavalier Fiasco*, Wall Street Journal, Feb. 26, 2013 (calling Mr. McDonnell's 2013 transportation bill a "fiasco [that] will haunt Republicans"). Nor is there a predictable partisan division to the strong feelings about Mr. McDonnell's record, as he has at times clashed with conservatives as well. *See, e.g.*, James Hohmann, *McDonnell Admonishes GOP Over Shutdown*, Politico, Sept. 30, 2013. The voir dire process should examine potential jurors' perspectives on these issues, as well as their ability to put aside any political or religious biases when hearing the evidence at trial.

II. THOROUGH VOIR DIRE IS NEEDED TO ENSURE THAT AN IMPARTIAL JURY IS IMPANELED.

As a result of the extensive and prejudicial media coverage focused on this case, in addition to a number of other factors that will be addressed in the joint questionnaire submissions, a particularly thorough voir dire process is needed to protect the McDonnells' right to an unbiased jury. Voir dire "plays an essential role in guaranteeing a criminal defendant's Sixth Amendment right to an impartial jury," in that "it enables the court to select an impartial jury and assists counsel in exercising peremptory challenges." *United States v. Lancaster*, 96 F.3d 734, 738 (4th Cir. 1996) (internal quotation marks and alterations omitted). The voir dire process must be more searching in cases in which extensive media coverage has likely prejudiced potential jurors against the defendant, and in cases involving highly charged public issues. As noted by Justice Sotomayor: "Under [the Supreme Court's] relevant precedents, the more intense the public's antipathy toward a defendant, the more careful a court must be to prevent that sentiment from tainting the jury." *Skilling v. United States*, 130 S. Ct. 2896, 2942 (2010) (Sotomayor, J., concurring and dissenting in part). The Fourth Circuit has directed district courts as follows: "In an era of rapid and widespread communications, trial courts must be vigilant to ensure that jurors are not biased and trials are not compromised by media attention surrounding a case. The proper way to impanel such jurors is through a careful voir dire ." *United States v. Bakker*, 925 F.2d 728, 734 (4th Cir. 1991). *See also United States v. Blitch*, 622 F.3d 658, 656 (7th Cir. 2010) ("The appropriate procedure when potential juror bias presents itself is a function of the probability of bias; the greater the probability, the more searching the inquiry needed to make reasonably sure that an unbiased jury is impaneled.").

The district court has broad discretion to conduct voir dire in a manner best suited to the needs of the case. *United States v. Jeffery*, 631 F.3d 669, 673 (4th Cir. 2011) ("Appellate courts accord great deference to the district court's decisions about the conduct of voir dire."). Here, Mr. McDonnell requests specific voir dire procedures that will help ensure that defense counsel can make informed use of both peremptory and cause challenges and offer the best chance of empanelling an impartial jury that will strictly adhere to the Court's instructions about avoiding external influences. Given the extensive negative media coverage about Mr. McDonnell that will only intensify as trial approaches, anything less than extensive voir dire would necessitate either of two unpalatable options: (1) sequestering jurors for the duration of the expected five-week trial, without access to the Internet or smart phones; or (2) changing venue to a district in which media coverage has not been so extensive. Mr. McDonnell's requested voir dire measures are intended to avoid those far-more-burdensome outcomes.

A. A thorough written jury questionnaire is the best, fairest, and most efficient way of screening potential jurors in this case.

All parties request the use of a pre-voir dire written questionnaire, including questions submitted by both the defense and Government. Scheduling Order, ECF No. 55 (Feb. 18, 2014). This questionnaire should be designed to elicit honest responses from potential jurors about a broad range of background information and sensitive topics such as pre-trial publicity, political and religious views, and opinions about the defendants and their counsel. The questionnaire will also solicit responses about prospective jurors' willingness to abide by the Court's instructions regarding external influences, health problems, and ability to sit for five weeks in late summer.

The use of comprehensive pre-voir dire written questionnaires is a "common practice" in the Fourth Circuit. *United States v. Rolle*, 204 F.3d 133, 135 (4th Cir. 2000). *See also United States v. Benyo,* No. 1:05-cr-12 (E.D. Va. 2006) (ECF No. 457) (178-question juror questionnaire approved by the Court); *Skilling*, 130 S. Ct. at 2909 (use of a "77-question, 14-page" questionnaire); *In re South Carolina Press Ass'n.*, 946 F.2d 1037, 1041 (4th Cir. 1991) (use of an "18 page questionnaire containing 66 sections"). Juror questionnaires are also commonly used in cases involving charges of political corruption, as those cases are likely to attract a substantial amount of pre-trial publicity.[6] The Court has already approved a Scheduling Order that requires the parties to submit joint and disputed questions for the proposed jury questionnaire on or before May 30, 2014. Scheduling Order, ECF No. 55 (Feb. 18, 2014).

A thorough jury questionnaire is needed in this case because of the extreme amount of one-sided media coverage and potential that strongly held personal views could influence jurors. Mr. McDonnell's proposed jury questionnaire, which will be submitted on or before May 30, 2014, pursuant to the scheduling order, will ask questions on the following topics:

- Jurors' personal background information;
- Potential hardship of jury service;
- Organizational and religious affiliations, and regular spare time activities;
- Internet and social networking usage;
- Media preferences and exposure;
- Contact and experiences with crime, courts, and the legal system;
- General opinions and beliefs about the criminal justice system;
- Knowledge and opinion of political corruption;
- Knowledge and opinion of media coverage of this case;
- Knowledge and opinion of Mr. McDonnell's political positions;
- Ability to fairly assess allegations;

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[6] *See, e.g.*, *United States v. Jefferson*, No. 1:07-cr-209 (E.D. Va. 2009) (ECF No. 421) (approval of 16-page, 40-part questionnaire); *United States v. Edwards*, No. 1:11-00161 (M.D.N.C. 2012) (ECF No. 262) (approval of 18-page, 84-part questionnaire); *United States v. Ford*, Cr. No. 3:06-00235 (M.D. Tenn. 2008) (ECF No. 151).

- Ability to obey court instructions;
- Knowledge of defendants, counsel, and potential witnesses.

This thorough review of potential sources of bias is essential in this case for two reasons. First, many potential jurors will have strongly held opinions about Mr. McDonnell's political positions, politicians, and allegations of political corruption generally. This is particularly true since allegations of political corruption by Virginia officials, if they were true, affect all Virginia citizens. The parties must be able to assess these views in order to make informed use of cause and peremptory challenges. Second, thorough questioning is needed to ensure that the selected jurors strictly adhere to the Court's instructions to avoid external influences. Those instructions will be particularly challenging here, given the high profile nature of the case and likelihood that family, friends, and colleagues of potential jurors will want to share their opinions about the allegations and defendants. Only with appropriate questioning can the Court and parties be confident that the selected jurors will be able to resist the temptation to discuss the case, thereby avoiding the potential for an incident that could lead to a mistrial or juror being held in contempt.

To ensure the effectiveness and integrity of the juror questionnaires, Mr. McDonnell requests that prospective jurors complete their answers at the courthouse at least two weeks in advance of trial, rather than at home. This, too, is an accepted practice in this Circuit, particularly in high-profile cases involving public officials, which pose a unique risk that a prospective juror's answers will be influenced by family members, friends, and colleagues. *See, e.g.*, *United States v. Jefferson*, No. 1:07-cr-209 (E.D. Va. 2009) (ECF No. 421) (ordering prospective jurors to complete 16-page, 40-part questionnaire at courthouse); *United States v. Edwards*, No. 1:11-cr-00161 (M.D.N.C. 2012) (ECF No. 214) (ordering prospective jurors to complete 18-page, 84-part questionnaire at courthouse). As Judge Sullivan of the District Court for the District of Columbia explained in ordering in-court completion of a 21-page, 66-part juror questionnaire in *United States v. Stevens*, No. 1:08-cr-00231 (D.D.C. 2008) (ECF No. 7), this procedure provides "certainty about who is providing answers to the questions. There's always that mystique about mailing questionnaires to jurors, who's actually filling out the answers? Is it the summoned juror or is it the summoned juror's sibling or spouse or is it a group project or are people Googling to give answers, to provide answers to questions." *Id.* at 18. Requiring in-court completion "remove[s] that mystique" and ensures that the Court and parties "know the jurors summoned to court are, indeed, the people who are providing the answers." *Id.*

Moreover, requiring responses to be filled out at the courthouse will enhance the beneficial effects of the use of a jury questionnaire, including encouraging honest responses through enhanced privacy, reducing the potential influence of others on the answers provided, and reducing "evaluation anxiety," which is known to cause potential jurors to temper their answers when they feel they are being evaluated by others watching. *See, e.g.*, Neil Vidmar, "Case Studies of Pre- and Midtrial Prejudice in Criminal and Civil Litigation," 26 *Law and Human Behavior*, No. 1 (Feb. 2002).

While it obviously is more convenient for prospective jurors to fill out questionnaires at home and to return them by mail, that process risks contamination of the answers and leaks to the press about trial issues. And if prospective jurors are not willing to come to court to fill out the questionnaire, they are not likely to be willing or able to sit for a trial estimated to last five weeks. Once the questionnaires have been completed, the parties can analyze the responses and recommend cause challenges to the Court. If the Court agrees with the challenges, those potential jurors can be excused without further appearance. Potential jurors who are not struck based on their written answers can then be directed to return to court in appropriately sized groups at designated times starting on July 28, 2014.

B. Individual follow-up questions should be permitted.

After prospective jurors have completed the questionnaire and the parties have had time to review the answers, Mr. McDonnell requests that the Court conduct individual follow-up voir dire to address any issues raised by answers to the questionnaire, new developments, or in-court conduct observed by the parties. Both the Court and attorneys should be permitted to ask follow-up questions during these sessions, and cause challenges should be exercised immediately after the interview.

A brief round of individual questioning for each potential juror, limited to a maximum of five minutes per party, is an efficient, fair, and confidential method by which to address any concerns about a potential juror's impartiality. This is particularly true where one juror's answers about exposure to pre-trial publicity might infect others in the jury pool. *See United States v. Hankish*, 502 F.2d 71, 77 (4th Cir. 1974) (if the court determines that any juror has been exposed to prejudicial pretrial publicity, that juror "must be examined, individually and outside the presence of the other jurors to determine the effect of the publicity") (quoting *Margoles v. United States*, 407 F.2d 727, 735 (7th Cir. 1969)); *Goins v. Angelone*, 52 F. Supp. 2d 638, 669 (E.D. Va. 1999) ("it is generally preferable to question prospective jurors individually where there is any concern that a prospective juror might be significantly influenced by the response of another or where the disabling knowledge of one, gained through pretrial publicity for instance, may infect or disable another"). Moreover, individual follow-up questioning "promotes candor by eliminating pressure to conform and minimizing the possibility of public embarrassment." JURYWORK, § 2.05 (E. Krauss and B. Bonora, eds.). *See also Irvin v. Dowd*, 366 U.S. 717, 728 (1961) ("No doubt each juror was sincere when he said that he would be fair and impartial to petitioner, but the psychological impact requiring such a declaration before one's fellows is often its father.").

The follow-up question process will be most effective if the attorneys—in addition to the Court—are able to direct questions to potential jurors. *See* Federal Rule of Criminal Procedure 24(a) ("The court may examine prospective jurors or may permit the attorneys for the parties to do so."). Courts in the Fourth Circuit have endorsed attorney involvement in this process. *See, e.g.*, *Rolle*, 204 F.3d at 135-36 (following use of questionnaire with individualized voir dire at which the "court and the attorneys closely questioned the jurors to assess their impartiality"); *Satcher v. Netherland*, 944 F Supp. 1222, 1274 (E.D. Va. 1996) (the "voir dire examination was then turned over to counsel who asked further questions depending upon answers given to the more general, standard inquiries").

Attorney-directed questioning is essential because it is the "the parties, rather than the court, who have a full grasp of the nuances and the strength and weaknesses of the case." *United States v. Ible*, 630 F.2d 389, 395 (5th Cir. 1980). Permitting counsel a brief opportunity to ask follow-up questions ensures that peremptory challenges are well-informed. *See id.* ("Peremptory challenges are worthless if trial counsel is not afforded an opportunity to gain the necessary information upon which to base such strikes.") (internal citations omitted). The Fifth Circuit has gone so far as to state that voir dire examination "has little meaning if it is not conducted by counsel for the parties." *United States v. Ledee*, 549 F.2d 990, 993 (5th Cir. 1977). Studies have even shown that jurors are likely to be more candid in their responses to questions from an attorney than to questions from a judge, given the reduced perception of social distance between juror and attorney. *See* JURYWORK, § 2.05.

C. The defendants should receive 10 peremptory challenges each, with 6 for the Government.

Because of the exceptional level of negative pretrial publicity and divergent defense strategies involved in this case, Mr. McDonnell requests that each defendant be granted 10 peremptory challenges to be exercised independently, with 6 challenges for the Government.

The Federal Rules set the default in cases in which a defendant is charged with a crime punishable by imprisonment of more than one year as 6 peremptory challenges for the Government and 10 jointly for defendants. Fed. R. Crim. P 24. However, E.D. Va. Local Rule 24 permits additional peremptory challenges in criminal cases involving more than one defendant. *See also United States v. Hasan*, 747 F Supp. 2d 642, 699 (E.D. Va. 2010) ("While providing additional peremptory challenges may protract jury selection to some degree, it is unlikely to be unduly burdensome In any event, the Court finds it to be an appropriate safeguard to ensure that Defendants are afforded a fair trial."); *United States v. Bodkins*, 4:04-CR-70083, 2005 BL 24826, at *2 (W.D. Va. Aug. 1, 2005) ("the trial court does have the discretion to grant additional peremptory challenges to multiple defendants and to permit the exercise of these additional challenges either separately or jointly").

Mr. McDonnell has requested, in a Motion to Sever filed today, that he and Mrs. McDonnell be tried separately. It is no secret that the McDonnells' marriage and family—in addition to their individual conduct—will be center-stage at trial. Should the Court deny that motion, the McDonnells may well have divergent goals during jury selection and different strategies at trial, for all of the reasons explained in the memorandum accompanying the Motion to Sever. Accordingly, 10 peremptory challenges shared jointly will not be adequate to ensure fair voir dire. Moreover, fairness dictates that the accused, and not the Government, receive additional strikes. The vast majority of the pre-trial media coverage has been negative toward the McDonnells, a situation that has been fueled in part by leaks from "law enforcement" sources. The Government also made the decision to allege a conspiracy between the McDonnells, despite having no direct evidence that one existed. It was thus the Government's choice that put the McDonnells' marriage at the center of this trial and that might lead to divergent trial strategies for the defendants. Additional peremptory strikes for each defendant are therefore needed to ensure that the accused receive a fair trial.

D. The "struck system" should be used for peremptory challenges.

Mr. McDonnell requests that the Court adopt the struck system for exercising peremptory challenges. Through this system, potential jurors will be questioned and qualified until there are 42 total potential jurors qualified to sit on the jury. That total is equal to the number of actual jurors needed (12), alternate jurors (4), and peremptory challenges to be exercised by all parties (26). After 42 potential jurors have been qualified, a court recess would be declared, during which the parties would decide which qualified jurors they wish to challenge. Following the recess, a list of the qualified jurors' names would be passed back and forth between the parties. Each party (or all three parties, if the trial is not severed) would exercise challenges, one at a time, by crossing out the name of the challenged juror, until the number of people needed for the jury remains on the list or until all parties pass. If all parties pass before using any of their remaining challenges, the jurors remaining on the bottom of the list would be excused.

This system is the most efficient means of empanelling a jury while ensuring that all parties may intelligently exercise their peremptory challenges. *See* JURYWORK, § 2.09[1] (endorsing the struck system); G. Bermant, Jury Selection Procedures in the United States District Courts (Federal Judicial Center 1982) (same).

E. Potential jurors should be provided with a neutral summary of the case.

To ensure that no further prejudice infects the pool of potential jurors, Mr. McDonnell requests that the indictment not be provided to potential jurors. Rather, the parties should attempt to agree on a neutral summary of the case, to be included as part of the jury questionnaire that will be submitted to the Court on or before May 30, 2014.

F. Jurors should be permitted to take notes during trial.

Mr. McDonnell requests that jurors be permitted to take notes during trial. To that end, Mr. McDonnell's proposed juror questionnaire will ask about potential jurors' note-taking skill. Note taking by jurors is permitted within the Fourth Circuit, and is left to the discretion of the trial court. *United States v. Polowichak*, 783 F.2d 410, 413 (4th Cir. 1986). If juror note taking is permitted, jurors "should be instructed that their notes are not evidence and should not take precedence over the jurors' independent recollections of the proceedings." *Id. See also United States v. Wild*, 47 F.3d 669, 672 (4th Cir. 1995); 1-1 Modern Federal Jury Instructions-Criminal P 1.02 (Instruction 1-3) (Suggesting the jury instruction to "be sure that your note-taking does not interfere with your listening to and considering all of the evidence."). In this case, because of the length of trial and many witnesses likely to appear, the ability to take notes will be a beneficial resource for the jury.

G. Alternate jurors should not be informed until deliberation.

Mr. McDonnell requests that alternate jurors not be informed that they are alternates until immediately before the jury retires to deliberate. This will maximize the attention that every potential juror devotes to following the proceedings at trial. *See* Trial Conduct Order, *Edwards*, No. 1:11-cr-00161 (M.D.N.C. 2012) (ECF No. 214).

CONCLUSION

In order to avoid the possibility of a mistrial, sequestering jurors for the duration of the trial, or need to change venue, voir dire in this case should be particularly thorough. The best way to accomplish this goal is by means of the following procedures:

1. Use of a written jury questionnaire to be completed by potential jurors at the courthouse at least two weeks in advance of voir dire that includes questions submitted by both the defense and prosecution;
2. Individual follow-up voir dire conducted by both the Court and the attorneys to address any issues raised by the questionnaire responses, new developments, or conduct in court;
3. The exercise of 10 peremptory challenges for each defendant if they are tried jointly, with 6 peremptory challenges to be exercised by the prosecution;
4. Use of the struck system to exercise peremptory challenges;
5. The provision to potential jurors of a neutral summary of the allegations in the case to be submitted along with the proposed jury questionnaire, rather than providing the indictment to potential jurors;
6. Permission for jurors to take notes during trial;
7. Notification to alternate jurors of their status immediately before the jury retires to deliberate.

Mr. McDonnell asks the Court to order these voir dire procedures and requests a hearing on this motion.

Dated: March 25, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 25th day of March, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: March 25, 2014

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**CRIMINAL NO. 3:14-CR-00012**
	)	
ROBERT F. MCDONNELL	)	**JUDGE JAMES R. SPENCER**
MAUREEN G. MCDONNELL	)	

MEMORANDUM IN SUPPORT OF DEFENDANT ROBERT F. MCDONNELL'S MOTION #11 – MOTION TO SEVER JOINT TRIAL

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INTRODUCTION

Ensuring that criminal trials uncover the truth on the basis of all admissible evidence is fundamental to our legal system and constitutional order. That bedrock commitment to truth and justice underlies the established legal rule that, "if a 'substantial degree of prejudice' springs from a joint trial, a severance is mandated." *United States v. Shuford*, 454 F.2d 772, 776 (4th Cir. 1971) (citation omitted). Here, the Government has charged Mr. McDonnell and his wife with supposedly acting in concert to take advantage of Mr. McDonnell's public office—for the benefit of themselves and their five adult children and other family members—which Mr. McDonnell vehemently denies. In essence, the Government has chosen to put a 38-year marriage and the entire McDonnell family, in addition to the conduct of the accused, on trial. Permitting the Government to prosecute this married couple together—as it currently seeks to do—will severely constrain Mr. McDonnell's ability to introduce relevant, admissible, and exculpatory evidence at trial. That is so because Mrs. McDonnell does not intend to testify in her own defense and will assert her Fifth Amendment privilege if her husband calls her as a witness. She will also invoke her marital communications privilege in a joint trial if Mr. McDonnell takes the stand in his own defense and attempts to testify about confidential conversations he had with Mrs. McDonnell. Because this will cause Mr. McDonnell severe prejudice and will directly undermine the truth-seeking function of his trial, severance is warranted.

First, trying the McDonnells together will deprive Mr. McDonnell of the ability to call his wife as a witness and to introduce highly relevant and exculpatory testimony that only she can provide. The Government's central allegation is that the McDonnells conspired to obtain things of value from Jonnie Williams in exchange for performing "official acts" for the benefit of

Williams and his company Star Scientific, Inc. ("Star"). Given that many of the incriminating allegations in the Indictment concerning both the alleged quid and quo are directed at Mrs. McDonnell, she is obviously the essential link in the Government's case against Mr. McDonnell. If she is not on trial, however, she will testify that her relationship with Mr. McDonnell was strained for a number of reasons, including Mr. McDonnell's demanding work and travel schedule, and that, far from acting in concert, they had no such agreement and he had no timely knowledge of many of her interactions with Williams. Declaration #1 of William A. Burck ("Burck Decl.") at ¶¶ 5-6 (*see* Mr. McDonnell's Motion for Leave to File Supporting Declarations under Seal and for *Ex Parte In Camera* Review). Mrs. McDonnell is the only person who can provide this critical information, but because she is charged with the same corruption offenses as Mr. McDonnell, in addition to obstruction of justice, she has made clear that she presently does not intend to take the stand in a proceeding where she is also on trial. *See id.* ¶¶ 3, 27 If Mr. McDonnell is tried alone, by contrast, then his wife would be willing to testify in his defense. *See id.* at ¶ 4.

Mr. McDonnell is entitled to have the option of calling his wife as a witness in his defense, and the Government should not be able to take that option away by insisting on a joint trial. As the Fourth Circuit has long held, "a severance is obligatory where one defendant's case rests heavily on the exculpatory testimony of his co-defendant, willing to give such testimony but for the fear that by taking the stand in the joint trial he would jeopardize his own defense." *Shuford*, 454 F.2d at 776. This is that case.

Second, trying the McDonnells together will also limit Mr. McDonnell's ability to address compelling exculpatory evidence that is subject to the marital communications privilege. At trial, Mr. McDonnell expects to offer exculpatory evidence that stems from privileged marital communications between him and his wife. Mr. McDonnell should be able to offer this evidence without concern that Mrs. McDonnell will seek to preclude portions of it on grounds of privilege, which she presently intends to do. *See* Burck Decl. ¶ 3. Trying the McDonnells separately avoids this problem, since there would be no prejudice to Mrs. McDonnell from allowing Mr. McDonnell to reveal the privileged communications in a severed trial to which she is not a party. Because any invocation of the marital communications privilege in a joint trial would prevent Mr. McDonnell from presenting exculpatory evidence in his defense, severance is imperative on this basis too. *See United States v. Ammar*, 714 F.2d 238, 257 (3d Cir. 1983) (explaining that "[t]estimony essential to a spouse's criminal defense must be permitted even if it discloses privileged communications" and that "[a] severance may be granted for a co-defendant spouse, if necessary to protect his or her rights"); *United States v. Carona*, No. SA-CR-06-224-AG, 2008 WL 1970221, at *4 (C.D. Cal. May 2, 2008) (granting severance "on the basis of the marital communications privilege").

For both of these reasons, Mr. McDonnell cannot receive a fair trial—and the jury cannot hear a complete presentation of highly material evidence—if the Government prosecutes the McDonnells together. In these circumstances, the perceived need for efficiency must yield to fairness and the paramount, systemic interest in a complete presentation of admissible and relevant evidence. The Court should therefore sever the McDonnells for separate trials.

Moreover, the defense requests that the Court sever the accused now, not mid-trial. Waiting until then to do what the law permits the Court to do now would only exacerbate the prejudice to Mr. McDonnell of a joint trial. He should not have to face the possibility of changing his entire trial strategy midstream. As one court put it, "the wait and see alternative offers little consolation to a party while he is attempting to prepare his defense." *United States v.*

Thoresen, 281 F Supp. 598, 602 (N.D. Cal. 1967). If a severance is not granted now, the defense must prepare as if the McDonnells will be tried together. This has enormous implications in terms of the themes the defense decides to emphasize, the voir dire strategy, the *in limine* and in trial evidentiary arguments the defense makes to the Court, opening statements and closing argument, the manner and scope of cross-examination of the Government's witnesses, and the choice of defense witnesses and topics of direct examination. If the Court defers ruling on severance, the defense will be put to the unfair choice of sticking with its joint trial strategy or changing its trial strategy on the fly, which is unduly burdensome and puts the defense at risk of appearing inconsistent to the jury.

Not only would a wait-and-see approach prejudice Mr. McDonnell, it would be less efficient and would make management of the trial more difficult in a variety of ways. A mid-trial severance and resulting mistrial of Mrs. McDonnell would raise potential double jeopardy issues, and depending on the evidence presented, it may even require a mistrial finding for Mr. McDonnell. If Mrs. McDonnell is severed during the trial, moreover, the jurors will surely notice, and this could have a profound effect on their thinking and deliberations about the case, regardless of whatever instructions pertaining to the severance the Court might give them. The uncertain effect of a mid-trial severance and the chance that it could adversely impact the outcome of the trial counsel in favor of severing the joint trial before it begins. To "avoid the trial difficulties and prejudices" that a joint trial in this case will engender, *see id.*, the Court should grant a severance now rather than later.

The defense respectfully requests a hearing on this motion. In addition, the defense requests that the Court grant Mr. McDonnell's accompanying motion for *ex parte in camera* review of the supporting Declarations (which are cited throughout) so that the defense can avoid needlessly disclosing confidential trial strategy to the Government. *See Carona*, 2008 WL 1970221, at *1 (explaining that the moving defendant "is not required to disclose [the supporting] declarations to the Government, as disclosure would unduly risk prejudicing Defendants by revealing elements of their trial strategy").

ARGUMENT

It is generally true that "[j]oint trials are favored in those cases in which defendants have been indicted together for the sake of judicial economy." *United States v. Reavis*, 48 F.3d 763, 767 (4th Cir. 1995). But mere efficiency, even if it were certain, is an "inappropriate" basis for trying defendants together if doing so would "sacrifice[] a defendant's right to a fundamentally fair trial." *Shuford*, 454 F.2d at 776. Severance is required whenever a defendant can "establish that actual prejudice would result from a joint trial." *Reavis*, 48 F.3d at 767; *see also Shuford*, 454 F.2d at 776 ("[I]f a 'substantial degree of prejudice' springs from a joint trial, a severance is mandated."). The Federal Rules expressly codify this principle, authorizing courts to "sever the defendants' trials" if a joint trial "appears to prejudice a defendant." FED. R. CRIM. P. 14(a). As the Supreme Court has explained, Rule 14 requires severance when "there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Zafiro v. United States*, 506 U.S. 534, 539 (1993).

Here, there is no serious question that Mrs. McDonnell's actions, and the communications (or lack thereof) she had with her husband about those actions, go to the heart of the Government's allegations. The vast majority of the allegations set forth in the Indictment involve Mrs. McDonnell's supposed conduct, her purported communications with Jonnie Williams, and her husband's supposed knowledge of her alleged agreements with Williams. *See* *infra* at 11-12. For many of the allegations concerning her interactions with Williams, which are either false or misleading, she is the only defense witness who could possibly give competent evidence. Mrs. McDonnell's testimony is thus central in refuting the Government's core false claim—that the McDonnells conspired to solicit gifts and loans from Williams in exchange for Mr. McDonnell performing official acts for the benefit of Williams and Star. Absent severance, Mr. McDonnell will be unable to elicit this critical, exculpatory evidence at a joint trial. For that reason, a severance is essential to protect Mr. McDonnell's right to a fair trial and the jury's right to hear *all* competent, available evidence before rendering a verdict.

I. A Severance Is Warranted Because Trying The McDonnells Together Will Deprive Mr. McDonnell Of His Wife's Highly Exculpatory Testimony Because She Will Not Take The Stand In A Joint Trial.

A. The Government Cannot Prosecute Defendants In A Joint Trial When It Would Deprive One Defendant Of His Co-Defendant's Exculpatory Testimony.

The Fourth Circuit and the Supreme Court have consistently recognized that "a defendant may be prejudiced"—such that severance may be warranted—"if he could not avail himself of exculpatory evidence in a joint trial that would be available were he tried alone." *United States v. Allen*, 491 F.3d 178, 189 (4th Cir. 2007); *see also Zafiro*, 506 U.S. at 539 ("[A] defendant might suffer prejudice if essential exculpatory evidence that would be available to a defendant tried alone were unavailable in a joint trial."). It is well established that "a severance is obligatory where one defendant's case rests heavily on the exculpatory testimony of his co-defendant, willing to give such testimony but for the fear that by taking the stand in the joint trial he would jeopardize his own defense." *Shuford*, 454 F.2d at 776; *see also United States v. Vigil*, 561 F.2d 1316, 1318 (9th Cir. 1977) (holding that the district court "abused its discretion in refusing to sever the trials upon the reliable representation that [the co-defendant] would testify for [the defendant] if the trials were severed"); *United States v. Martinez*, 486 F.2d 15, 23 (5th

Cir. 1973) (holding that failure to grant severance was prejudicial because the co-defendant "was the only individual other than [the defendant] himself in a position directly to rebut the government's circumstantial evidence of [the defendant's] knowledge of these facts").

Obtaining a severance based "on the asserted need for a co-defendant's testimony," *United States v. Parodi*, 703 F.2d 768, 779 (4th Cir. 1983), requires that the moving defendant demonstrate: (1) "a bona fide need for the testimony of his co-defendant," (2) "the likelihood that the co-defendant would testify at a second trial and waive his Fifth Amendment privilege," (3) "the substance of his co-defendant's testimony," and (4) "the exculpatory nature and effect of such testimony." *United States v. Medford*, 661 F.3d 746, 753 (4th Cir. 2011) (citing *Parodi*, 703 F.2d at 779). Once an accused satisfies these threshold requirements, the Court then considers (1) "the significance of the testimony in relation to the defendant's theory of defense," (2) "the extent of prejudice caused by the absence of the testimony," (3) "judicial administration and economy," (4) "the timeliness of the motion," and (5) "the likelihood that the co-defendant's testimony could be impeached." *Parodi*, 703 F.2d at 779. Mr. McDonnell satisfies this test. He is therefore entitled to a severance.

B. Mrs. McDonnell Could Provide Testimony That Exculpates Mr. McDonnell.

It is clear from the allegations in the Indictment that most of the Government's case is based on Mrs. McDonnell's alleged conduct. Indeed, very few of the Government's accusations are actually directed at Mr. McDonnell. The Government cannot hope to prove its weak case against Mr. McDonnell unless it can attribute the actions and knowledge of Mrs. McDonnell to her husband. To overcome this problem, the Government alleges in conclusory terms the existence of a conspiracy between the McDonnells. *See* Indictment ¶¶ 22, 110. But it provides no specific allegation of an agreement between them. Instead, the Government appears to be inferring a conspiracy solely by virtue of their marriage. Given the nature of the Government's allegations, the trial will require examining the McDonnells' 38-year marriage, which cannot be done in a full and complete way without Mrs. McDonnell's testimony. By alleging this amorphous conspiracy—rather than simply charging Mr. McDonnell alone—the Government seeks to unfairly attribute the actions of Mrs. McDonnell, a private citizen, to Mr. McDonnell, a public official. *See infra* at 11-12. Since Mrs. McDonnell is the key figure in the Government's narrative, and since she frequently met with or communicated with Williams alone, she is uniquely equipped to repudiate the Government's false account by refuting, allegation by allegation, the Government's heavily circumstantial and inferential case. Her testimony would, in turn, clearly exonerate her husband.

As set forth in substantial detail in her attorney's Declaration, Mrs. McDonnell's testimony would exculpate Mr. McDonnell in at least four ways. *First*, her testimony would disprove the Government's primary claim that the McDonnells acted in concert through a criminal conspiracy to corruptly accept gifts and loans in exchange for Mr. McDonnell using his office to benefit Williams and his company. *See* Burck Decl. ¶¶ 5-6, 7, 8, 9, 11-14, 15, 17, 19, 21, 22, 23, 24. *Second*, her testimony would refute the Government's allegation that Mr. McDonnell agreed or promised to use his office to improperly "promote" Star's products or to "obtain research studies for Star Scientific's products," Indictment ¶¶ 22, 110. *See* Burck Decl. ¶¶ 16, 18, 19, 20, 24. *Third*, Mrs. McDonnell would refute the Government's allegation that she solicited certain gifts and loans identified in the Indictment. *See id.* ¶¶ 9, 22, 25-26. *Finally*, Mrs. McDonnell would refute the Government's allegation that the McDonnells "took steps to conceal" their supposed scheme, Indictment ¶ 22. *See* Burck Decl. ¶¶ 10-14.

C. Mr. McDonnell's Need For His Wife's Exculpatory Testimony Justifies Severance.

Because Mrs. McDonnell possesses clearly exculpatory evidence, Mr. McDonnell should have the option of calling her to testify on his behalf.

1. Mr. McDonnell easily satisfies the four threshold requirements for severance based on "the asserted need for a co-defendant's testimony." *Parodi*, 703 F.2d at 779. *First*, "the exculpatory nature and effect of [Mrs. McDonnell's] testimony" is clear. *See id.* Mrs. McDonnell's testimony would refute the Government's central claim that the McDonnells conspired together to take gifts and loans from Williams in exchange for Mr. McDonnell performing official action on behalf of Williams and Star. Her testimony, as described in substantial detail in her attorney's Declaration, is far "more than a 'vague and conclusory' statement of facts 'of purely cumulative or negligible weight or probative value.'" *Id.* at 780 (citation omitted). Given the centrality of Mrs. McDonnell's role in the Government's case as set forth in the Indictment, her testimony has clear importance and substantial exculpatory significance. If Mr. McDonnell is denied the ability to introduce this exculpatory testimony—the direct effect of a joint trial—that plainly would make him "unable to obtain a fair trial." *Id.* (quotation marks and citation omitted).

Second, the accompanying proffer from Mrs. McDonnell's counsel amply illustrates "the substance of [Mrs. McDonnell's] testimony." *See id.* at 779; *see also United States v. Becker*, 585 F.2d 703, 706 (4th Cir. 1978) ("Ordinarily a codefendant need not proffer his testimony under oath to establish a basis for granting a motion for severance."); *United States v. Morrow*, 537 F.2d 120, 135 n.9 (5th Cir. 1976) (explaining that the "movant must make a clear showing of what his co-defendant would testify to in the later trial, though it is not required that movant present an affidavit under oath from his co-defendant"). It is "sufficiently definite" to demonstrate the exculpatory nature and effect of that testimony. *See Parodi*, 703 F.2d at 779-80.

Third, Mr. McDonnell has a "bona fide need" for Mrs. McDonnell's testimony because she is the only person who can offer the exculpatory evidence detailed in her attorney's Declaration. *See id.* at 779. Other than Williams himself, an immunized witness whose credibility will be called into question, only Mrs. McDonnell knows what was said in their private conversations. And only she can directly corroborate Mr. McDonnell's likely testimony about private conversations and interactions between husband and wife. She is therefore uniquely capable of disproving the Government's assertion that there was some sort of conspiracy involving, *inter alia*, her, her husband, and Williams.[1]

Finally, Mrs. McDonnell is unwilling to testify in a joint trial, but it is "like[ly] that [she] would testify at [Mr. McDonnell's] trial and waive [her] Fifth Amendment privilege" if he is tried alone, thus satisfying the fourth *Parodi* factor. *See id.* Mrs. McDonnell's agreement to waive her Fifth Amendment rights and testify at a severed trial need not be established to "an absolute certainty." *Shuford*, 454 F.2d at 778. Rather, it is enough to show a "reasonable probability that the proffered testimony would, in fact, materialize." *Id.*; *see also Morrow*, 537 F.2d at 135 n.9 ("Movant also need only demonstrate a 'likelihood' of future testimony by his co-defendant, and movant's attorney need not testify under oath or by affidavit that he will call the co-defendant as a witness in a separate trial."). And here, Mrs. McDonnell, through counsel, *see* Burck Decl. ¶¶ 3-4, 28, has clearly "indicated" to the Court that she would likely testify in a severed trial but not in a joint trial. *Id.*; *see also Parodi*, 703 F.2d at 779 n.8.

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[1] The Court denied Mr. McDonnell's motion for disclosure of the identities of known unindicted co-conspirators, and discovery provided by the Government to date has not enabled the defense to determine the identities of such persons.

Moreover, Mrs. McDonnell has indicated her likely willingness to testify in a severed trial *regardless* of the order in which the severed defendants are tried. *See* Burck Decl. ¶ 28. *Cf. Parodi*, 703 F.2d at 779 ("[T]he requirement of a showing of willingness to testify if there is a severance is not met when that offer to testify is further conditioned on the co-defendant's case being tried first.").

2. Because Mr. McDonnell has established the threshold requirements for severance, this Court must weigh the remaining considerations specified in *Parodi*. *See Parodi*, 703 F.2d at 779. These additional factors, too, weigh decisively for trying the McDonnells separately.

To begin with, it is undeniable that Mrs. McDonnell's testimony would be significant "in relation to the defendant's theory of defense." *Id.* Mr. McDonnell contends he never agreed to accept gifts or loans from Williams with the understanding or promise that he would use his office to perform official actions for Williams or Star. Mrs. McDonnell's testimony would fully corroborate that. *See* Burck Decl. ¶¶ 16, 18, 19, 20, 24. Mr. McDonnell's defense would further make clear that he and his wife did not conspire to commit any crime and that he was unaware about many of his wife's interactions with Williams. Mrs. McDonnell's testimony would support this defense as well. *See id.* ¶¶ 5-6, 7, 8, 9, 11-14, 15, 17, 19, 21, 22, 23, 24. Accordingly, Mrs. McDonnell's testimony is significant "in relation to [Mr. McDonnell's] theory of defense." *Parodi*, 703 F.2d at 779.

Secondly, there is no question that depriving Mr. McDonnell of his wife's testimony will cause him substantial "prejudice." *Id.* As discussed, Mrs. McDonnell is key to the Government's allegations against Mr. McDonnell concerning both the alleged quid and the alleged, albeit legally insufficient, quo. The Indictment casts her as the central character in its narrative. The Government alleges, for instance, that Mrs. McDonnell asked Williams to take her shopping in New York, *see* Indictment ¶ 23; promised to seat Williams next to Mr. McDonnell at an event, *see id.* ¶ 24; asked Williams for a $50,000 personal loan and for $15,000 to pay for catering for her daughter's wedding, *see id.* ¶¶ 26-27; told Williams that "she could help Star Scientific but that she needed [his] financial assistance," *see id.* ¶ 26; bought, sold, and repurchased Star stock, *see id.* ¶¶ 39, 53, 61, 67, 71, 96-97; attended and spoke at several Star events, *see id.* ¶¶ 40, 62-63; was a conduit for correspondence from Williams and for information about Star, *see id.* ¶¶ 41, 54, 64; asked Williams for the Rolex watch she gave to Mr. McDonnell at Christmas, *see id.* ¶¶ 50, 68; offered and then hosted a lunch at the Mansion for university researchers, *see id* ¶¶ 40, 51, 58, 60; coordinated with Williams on invitation lists for Mansion events, *see id.* ¶¶ 60, 74; asked an OGV staff member to follow up with Williams about "why nothing has developed w [sic] studies after [Williams] gave $200,000" to UVA and VCU, *see id.* ¶¶ 76-78; asked Williams to pay for roundtrip airline tickets for two of her daughters, *see id.* ¶ 99; and invited Williams to stay at the McDonnells' beach house, *see id.* ¶ 100. Given her omnipresence throughout the Indictment, Mrs. McDonnell's testimony is obviously essential to refuting the Government's factual theory and corroborating Mr. McDonnell's defense.

Not only would a joint trial prejudice Mr. McDonnell by depriving him of his wife's highly relevant and exculpatory testimony, it would also allow the Government to take unfair advantage of evidentiary rules to introduce statements by Mrs. McDonnell that could incriminate Mr. McDonnell without giving him an opportunity to examine her on those statements. The most obvious example is Mrs. McDonnell's alleged email to Mr. McDonnell's counsel that the "Gov wants to know why nothing has developed w studies after [Williams] gave $200,000" and that the "Gov wants to get this going w VCU MCV." Indictment ¶ 78. In a joint trial, these hearsay statements could be used against Mrs. McDonnell, but not against Mr. McDonnell unless the Government can establish by a preponderance of the evidence that there was a conspiracy involving the McDonnells and that "the statements at issue were made during the course of and in furtherance of that conspiracy." *See United States v. Neal*, 78 F.3d 901, 905 (4th Cir. 1996) (setting forth the standard for admissibility of co-conspirator statements under Federal Rule of Evidence 801(d)(2)(E)). Moreover, "a trial court [could] conditionally admit [these] co-conspirators' statements subject to the *subsequent* satisfaction of the requirements for their admission." *United States v. Blevins*, 960 F.2d 1252, 1256 (4th Cir. 1992) (emphasis added). If the Government subsequently failed to make its showing (a likely possibility[2]) or elected only to use the statements against Mrs. McDonnell, the jury (assuming no mistrial) will have been exposed nevertheless to evidence that it could use against Mr. McDonnell without affording him an opportunity to test the truth of the statements.

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[2] The Government will have great difficulty establishing by a preponderance of the evidence that the McDonnells were engaged in the alleged conspiracy. The Government does not allege any direct evidence of a conspiratorial agreement, so the best it can do is infer a conspiracy from the McDonnells' marital relationship or ambiguous conduct. But their conduct, as alleged by the Government, is not obviously criminal, and conspiracy cannot be inferred from ambiguous conduct that is consistent with both lawful and unlawful action. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 553-54 (2007) (holding that proof of a conspiracy "must include evidence tending to exclude the possibility of [innocent] action"); *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (holding that inferences of illegal intent may not be drawn from ambiguous conduct that is consistent with both lawful and unlawful intent and, therefore, that suggests only the "mere possibility of misconduct"). Mrs. McDonnell, for one, is a private individual, not a public official, and cannot be held criminally liable in her own right for public corruption unless she "masquerad[es] as a public official," which is not alleged here, or "act[s] in coordination with public officers." *See United States v. McClain*, 934 F.2d 822, 830 (7th Cir. 1991). Given the Government's allegations, the only way it can prove that Mrs. McDonnell is guilty of a corruption-related offense is if it can show that she coordinated with Mr. McDonnell, who in turn performed illegal acts. But the Indictment does not allege that Mr. McDonnell personally promised, performed, or sought to influence any legally cognizable "official act." *See* Def.'s Mem. in Supp. of Mot. #10—Mot. to Dismiss Counts 1-11 of the Indictment (March 25, 2014). Given these facts, the Government cannot then simply infer that the McDonnells nevertheless conspired to corrupt Mr. McDonnell's office.

Limiting instructions would not unring this prejudicial bell. As the Supreme Court has warned, a jury cannot be expected to follow limiting instructions—and "the consequences of failure [are] so vital to the defendant"—"where the powerfully incriminating extrajudicial statements of a codefendant, who stands accused side-by-side with the defendant, are deliberately spread before the jury in a joint trial." *Bruton v. United States*, 391 U.S. 123, 135-36 (1968). The only way to cure this prejudice is to sever the trial and to allow Mrs. McDonnell to testify in Mr. McDonnell's trial at his option. The Government should not be permitted to deprive Mr. McDonnell of his wife's exculpatory testimony while at the same time introducing statements by his wife that incriminate him without giving him an opportunity to examine her.

Further, because Mr. McDonnell would suffer extreme prejudice if he is unable to obtain Mrs. McDonnell's exculpatory testimony, less weight should be given to considerations of "judicial administration and economy." *See Parodi*, 703 F.2d at 780 (stating that the weight that should be given to judicial economy "varies with the strength of the moving defendant's presentation and the type of case"). Moreover, a court should consider judicial economy as a "'possible counter-weight[] to the benefits accruing to the moving defendant from severance in the particular circumstances'" only where "'severance would necessitate a great number of otherwise unnecessary trials or the duplication of an unusually complex trial.'" *Id.* (quoting *Shuford*, 454 F.2d at 777 n.5). Here, however, there are only two defendants, such that severance means only a maximum of two trials rather than one. Indeed, aside from the vagueness of the allegations and the unprecedented expansion of federal law that is the focus of the defense's motion to dismiss, the complexity of the trial of this case is in large measure a function of the complexity of the McDonnells' marital relationship. And, each case—even if both are tried sequentially—will be much less complex if the McDonnells are separated.

Therefore, whatever duplication of effort may result from a severance cannot outweigh the substantial prejudice to Mr. McDonnell's defense (and the ability of his trial to uncover the truth) if Mr. McDonnell is unable to secure the exculpatory testimony of Mrs. McDonnell.

Additionally, this motion is timely. *See id.* at 779. The defense is asking to sever this trial four months before the trial date and just two months after the Indictment. There will be little disruption to the proceedings if the Court is able promptly to address this request. Both the Government and the Court should also have sufficient time to accommodate the severed trials since the separate trials are likely to take less combined time to resolve than the joined one.

Finally, "the likelihood that the co-defendant's testimony could be impeached" also favors severance. *See id.* To the extent that Mrs. McDonnell's testimony relates to private conversations she had with Williams, her testimony is no more susceptible to impeachment than his as both have substantial interests in the outcome. At bottom, some of the facts in this case will turn on witness credibility. Here, the Government appears to have leveraged threats of prosecution for bribery, securities fraud, and tax fraud against Williams to convince him to admit to having committed crimes for which he now has immunity. The credibility of his assertions will therefore be at the heart of the trial. "In a situation where the elusive quality of credibility is of such importance, the jury should have the benefit of all relevant testimony likely to shed light on the situation." *Shuford*, 454 F.2d at 777. For this reason, too, the trial should be severed so that the jury can have the benefit of Mrs. McDonnell's testimony.

This case is, indeed, much like *Shuford*, where the Fourth Circuit reversed a district court's denial of a motion to sever. *Id.* at 779. In simplest form, that case involved a credibility dispute between the defendant and an unindicted co-conspirator. If the jury credited the unindicted co-conspirator, then it could find the defendant guilty. *See id.* at 777. But if the jury believed the defendant, then it should find him innocent. *Id.* "Plainly, the guilt or innocence of [the defendant] hinged, in large measure, on the outcome of this credibility dispute." *Id.* There was only one other witness with direct knowledge of the factual dispute, but that witness—a co-defendant—would not testify absent a severance. *Id.* The district court nonetheless denied the severance. On appeal, however, the Fourth Circuit reversed, holding "that the denial of the severance, resulting in withholding this witness' testimony on such a critical point, so tipped the scales against [the defendant] that he failed to receive a fair trial." *Id.* The court of appeals concluded that a "verdict based so heavily on less than the full available testimony, where the missing testimony could, with relative ease, have been procured, should not stand." *Id.*

Here, as in *Shuford*, denying Mr. McDonnell's motion to sever would deprive him of the ability to introduce critical, exculpatory testimony that could markedly help the jury resolve a credibility dispute between Mr. McDonnell and Williams. As explained above, all of the relevant factors weigh in favor of severance. Because Mrs. McDonnell's testimony will take on "unusual importance" for Mr. McDonnell's defense and her testimony can "become available only by severance," the severance should be granted. *See id.* at 779.

II. A Severance Is Warranted Because Trying The McDonnells Together Would Deprive Mr. McDonnell Of Exculpatory Evidence That Is Subject To The Marital Communications Privilege.

A. Severance Is Required When A Joint Trial Would Deprive One Defendant Of Exculpatory Testimony Due To A Co-Defendant's Privilege.

Severance is required anytime "there is a serious risk that a joint trial would compromise a specific trial right of one of the defend " *Zafiro*, 506 U.S. at 539. Two fundamental rights are at stake here—the right to the production of evidence and the right of criminal defendants to testify in their own defense. The Supreme Court has made clear that "[t]he right to the production of all evidence at a criminal trial has constitutional dimensions." *United States v.*

Nixon, 418 U.S. 683, 711 (1974). To ensure the fulfillment of the Fifth Amendment right to due process and the Sixth Amendment right to a fair trial, "it is essential that all relevant and admissible evidence be produced." *Id.* The right to testify on one's own behalf also has constitutional dimensions. The Supreme Court has held that it is "'essential to due process of law in a fair adversary process'" for the accused to take the stand in his own defense if he so chooses. *Rock v. Arkansas*, 483 U.S. 44, 51 (1987) (quoting *Faretta v. California*, 422 U.S. 806, 819 n.15 (1975)). Given these two well-established rights, if severance is warranted when a joint trial prevents a defendant from obtaining exculpatory testimony from a co-defendant, it surely follows that severance should also be granted when a co-defendant's privilege prevents the defendant from presenting exculpatory testimony in his own defense.

Here, the marital communications privilege—which Mrs. McDonnell intends to invoke in a joint trial, *see* Burck Decl. ¶ 3—would prevent Mr. McDonnell from testifying about highly exculpatory conversations he had with his wife. *See* Joint Declaration #1 of John L. Brownlee and Henry W. Asbill ("Brownlee/Asbill Decl.") (*see* Mr. McDonnell's Motion for Leave to File Supporting Declarations under Seal and for *Ex Parte In Camera* Review). This privilege protects against the disclosure of confidential communications between spouses that occur during their marriage. *See United States v. Parker*, 834 F.2d 408, 411 (4th Cir. 1987) ("Information that is privately disclosed between husband and wife in the confidence of the marital relationship is privileged."). Both spouses hold the privilege. *United States v. Hall*, 989 F.2d 711, 716 n.8 (4th Cir. 1993). Thus, if one spouse invokes it, the other spouse is barred from disclosing the privileged communications.

Severance is required where—as here—one spouse seeks to disclose exculpatory marital communications, but the other invokes the privilege. As one court has explained, "[t]estimony essential to a spouse's criminal defense must be permitted even if it discloses privileged communications." *Ammar*, 714 F.2d at 257. Therefore, to protect the rights of both spouses—*i.e.*, the right of one accused spouse to present exculpatory testimony and the right of the other accused spouse to invoke the privilege—severance should be granted. *Id.*; *see also Carona*, 2008 WL 1970221, at *2, *4 (granting severance where one spouse wanted to offer exculpatory testimony in her own defense but the other spouse invoked the marital communications privilege); *Peek v. United States*, 321 F.2d 934, 942 (9th Cir. 1963) (suggesting that severance would be necessary where the Government sought to introduce prejudicial statements against a spouse in violation of the marital communications privilege); *Thoresen*, 281 F. Supp. at 601 ("In a joint trial the probability of a conflict between the right of a defendant to testify in his own behalf and the right of the respective spouses to exercise their marital privileges is likely and real, and should be avoided, if possible.").

B. A Joint Trial Would Deprive Mr. McDonnell Of Exculpatory Testimony That Is Protected By The Marital Communications Privilege.

Mr. McDonnell is likely to waive his Fifth Amendment rights, take the stand in his own defense, and offer highly exculpatory testimony at trial that is protected by the marital communications privilege. *See* Brownlee/Asbill Decl. ¶ 4. If the McDonnells are tried together, however, Mrs. McDonnell intends to assert her privilege against the disclosure of those communications, as the Declaration of her counsel confirms. *See* Burck Decl. ¶ 3. This, of course, will prevent Mr. McDonnell from presenting crucial, exculpatory evidence to the jury. To ensure that Mr. McDonnell can testify fully in his defense while at the same time protecting Mrs. McDonnell's marital communications privilege, the Court should grant a severance.

1. The Relevant Marital Communications Are Exculpatory.

Mr. McDonnell intends to introduce testimony about several marital communications that are clearly exculpatory. The communications are described in detail in the Declaration of Mr. McDonnell's counsel, which the defense requests be filed under seal and reviewed *ex parte in camera*. *See generally* Brownlee/Asbill Decl.

a. The Conspiratorial Agreement. The Indictment alleges that the McDonnells "conspire[d] with each other and with others" to use Mr. McDonnell's office to obtain gifts and loans "in exchange for [Mr. McDonnell and his staff] performing official actions on an as-needed basis, as opportunities arose, to legitimize, promote, and obtain research studies for Star Scientific's products." Indictment ¶¶ 109, 110, 115. But there is no specific factual allegation of a conspiratorial agreement. The Indictment simply infers that the McDonnells acted in concert because of their marital relationship. Mr. McDonnell intends to disclose confidential marital communications that will disprove that inference. *See* Brownlee/Asbill Decl. ¶ 5.

b. The New York Shopping Trip. The Indictment alleges that Mrs. McDonnell asked Williams to take her shopping in New York City and that she promised to have Williams seated next to Mr. McDonnell at a political event later that evening. Indictment ¶¶ 23-24. According to the Indictment, Williams purchased thousands of dollars in luxury goods for Mrs. McDonnell. *Id.* ¶ 24. This allegation is relevant to the Government's claim that the McDonnells conspired to solicit gifts from Williams and that Mr. McDonnell concealed the relationship by failing to disclose the gifts in his Statement of Economic Interest. Mr. McDonnell intends to rely on confidential marital communications that will refute the Government's inference of an illicit conspiracy. *See* Brownlee/Asbill Decl. ¶ 6.

c. The $50,000 Personal Loan to Mrs. McDonnell. The Indictment alleges that Mrs. McDonnell asked Williams for a $50,000 personal loan in May 2011 but that Williams did not agree to provide it until after speaking with Mr. McDonnell. Indictment ¶¶ 26, 28. Mr. McDonnell intends to disclose confidential marital communications that will refute this allegation. *See* Brownlee/Asbill Decl. ¶ 7.

d. The Wedding Gift to Cailin McDonnell. The Indictment alleges that Williams' assistant wrote a $15,000 check as a wedding gift on May 23, 2011, which was subsequently cashed by the catering company handling the wedding reception for Cailin McDonnell, the McDonnells' daughter. *See* Indictment ¶¶ 32, 35; *see also id.* ¶ 113. The Indictment further alleges that on June 13, 2011, the catering company issued a $5,266.50 refund check to Mrs. McDonnell, which she deposited in her bank account. *Id.* ¶ 35. Mr. McDonnell intends to rely on marital communications to demonstrate his lack of knowledge of his wife's actions and to disprove the Government's allegation that Williams' $15,000 gift was to Mr. McDonnell rather than to his daughter. *See* Brownlee/Asbill Decl. ¶¶ 15-16.

e. The Rolex Watch. The Indictment alleges that Mrs. McDonnell received a Rolex watch from Williams and then gave it to Mr. McDonnell as a Christmas present in December 2011. Indictment ¶¶ 50, 68. This allegation is relevant to the Government's claim that the McDonnells conspired to solicit gifts from Williams and that Mr. McDonnell concealed the relationship by failing to disclose the gift in his Statement of Economic Interest. Mr. McDonnell intends to disclose confidential marital communications that will refute any such inference. *See* Brownlee/Asbill Decl. ¶ 8.

f. The Star Stock. The Indictment alleges that Mrs. McDonnell purchased Star stock in June and August 2011, sold it in December 2011, purchased stock again in January 2012, and then transferred most of it to her children in December 2012. Indictment ¶¶ 39, 53, 67, 71, 97 The Indictment alleges that Mrs. McDonnell informed her broker that she wanted to make these year-end sales and transfers in order to avoid certain annual reporting requirements. *Id.* ¶¶ 61, 96. Although the stock is not alleged to have been a gift or bribe, the Government seeks to establish that the McDonnells conspired to conceal their relationship with Star by avoiding state reporting requirements. But Mr. McDonnell will rely on confidential marital communications to establish his lack of knowledge of certain stock transactions and to disprove the Government's allegation that he and his wife were acting in concert to conceal her stock ownership or their relationship with Williams. *See* Brownlee/Asbill Decl. ¶¶ 9-14.

g. Mrs. McDonnell's Appearances at Star Events. The Indictment alleges that Mrs. McDonnell appeared at a Star event in Sarasota, Florida, in June 2011 where she "offer[ed] the Governor's Mansion for the location of Star Scientific's official product launch of Anatabloc®." Indictment ¶ 40. The Indictment also alleges that Mrs. McDonnell appeared at Star-sponsored events in Richmond, Virginia and Grand Blanc, Michigan, where in both cases she "was the featured guest of the dinner and spoke favorably regarding Star Scientific and its products." *Id.* ¶¶ 62, 63. It is not clear to the defense whether the Government claims that these perfectly legal acts of a private citizen are somehow "official acts" or otherwise part of an illicit scheme, but to the extent it does so, Mr. McDonnell will rely on confidential marital communications to establish his general lack of knowledge about Mrs. McDonnell's activities at these events and to further disprove the Government's allegation of a conspiracy. *See* Brownlee/Asbill Decl. ¶¶ 17-18.

2. Mrs. McDonnell Will Likely Invoke Her Privilege To Prevent Mr. McDonnell From Disclosing Confidential Marital Communications In His Defense.

As the Declaration of Mrs. McDonnell's attorney makes clear, Mrs. McDonnell plans to invoke her marital communications privilege, which will bar the disclosure of all confidential marital communications between her and her husband. *See* Burck Decl. ¶ 3. She has strong legal grounds for doing so. Confidential communications between husband and wife are privileged, *Parker*, 834 F.2d at 411, and cannot be waived unless both spouses consent, *see Hall*, 989 F.2d at 716 n.8.

The relevant marital communications easily satisfy the elements for establishing the privilege because (1) they were intended to be communicative, (2) they were made during the McDonnells' marriage, and (3) they were intended to be—and were in fact—confidential. *See* Brownlee/Asbill Decl. ¶ 19. And because the communications tend to exculpate Mr. McDonnell, it is clear that they could not have been made in furtherance of any allegedly illicit conspiracy—even if the Government could make a showing that such a conspiracy existed. Therefore, the joint-crime exception to the marital communications privilege does not apply. *See Carona*, 2008 WL 1970221, at *3 ("The case law makes clear that application of the joint-crime exception requires that the purported communications not only relate to present or future crimes, but that the communications were made 'in furtherance' of the crimes."); *see also Parker*, 834 F.2d at 413 ("[T]he joint participation exception to the confidential communication privilege extends to statements made in the course of successfully formulating and commencing joint participation in criminal activity.").

* * *

Mr. McDonnell has a constitutional right to testify in his own defense. But his testimony would include highly exculpatory conversations with his wife over which she intends to invoke her marital communications privilege. To ensure that Mr. McDonnell can fully exercise his constitutional rights—and thereby give the jury complete access to all relevant evidence—while at the same time preserving Mrs. McDonnell's privilege against the disclosure of confidential marital communications, the Court should grant a severance.

CONCLUSION

Given the facts of this case, a joint trial would "sacrifice[] [Mr. McDonnell's] right to a fundamentally fair trial" by "prejudicially den[ying] [him] the opportunity to present testimony highly relevant in the resolution of the issue of guilt or innocence." *Shuford*, 454 F.2d at 776. Severance should therefore be granted, and it should be granted now to avoid the prejudice, disruption, and inefficiency that would surely ensue if severance were granted after a joint trial had already begun.

Dated: March 25, 2014

Respectfully submitted,

/s/ Jonathan A. Berry

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CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 25th day of March, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: March 25, 2014

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	CRIMINAL NO. 3:14-CR-00012
v.	)	
	)	JUDGE JAMES R. SPENCER
ROBERT F. MCDONNELL	)	
MAUREEN G. MCDONNELL	)	

DEFENDANT ROBERT F. MCDONNELL'S MOTION #12 — MOTION FOR LEAVE TO FILE SUPPORTING DECLARATIONS UNDER SEAL AND FOR *EX PARTE IN CAMERA* REVIEW

NON-CONFIDENTIAL MEMORANDUM IN SUPPORT

Defendant Robert F McDonnell, by and through undersigned counsel and pursuant to Local Rule 49(E) of the Local Criminal Rules for the United States District Court for the Eastern District of Virginia, hereby moves for leave to file Declarations under seal and for *ex parte in camera* review. These Declarations support Mr. McDonnell's pending motion to sever his joint trial with his wife. The Declarations contain privileged or otherwise confidential information that would reveal elements of the defense's trial strategy and would thus give an unfair advantage to the Government if it gained access to them. Accordingly, Mr. McDonnell requests that the Court (1) grant leave to file the Declarations under seal, (2) review the Declarations *ex parte* and *in camera*, and (3) deny the Government access to the Declarations for at least the remainder of the criminal proceedings.[1]

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[1] Because sealed filings submitted for *ex parte in camera* review must be hand delivered, if the Court prefers to review the Declarations prior to ruling on this Motion, counsel will hand deliver the Declarations to Chambers or the clerk's office at the Court's direction.

I. Items To Be Sealed And Reviewed *Ex Parte* And *In Camera* (Local Rule 49(D)(1))

In support of his motion to sever, Mr. McDonnell seeks to file two highly confidential Declarations—one by Mrs. McDonnell's counsel, William A. Burck, and the other by Mr. McDonnell's counsel, John L. Brownlee and Henry W. Asbill. These Declarations describe in substantial detail selected testimony that the McDonnells expect to offer if the trial is severed. Some of the testimony is subject to the confidential marital communications privilege. All of the testimony, if disclosed, would give the Government unfair access to information that would reveal elements of Mr. McDonnell's defense.

Mr. McDonnell asks the Court to seal the Declarations and to review them *ex parte* and *in camera*. Mr. McDonnell further requests that the Court deny the Government access to these Declarations.

II. Sealing And *Ex Parte In Camera* Review Is Necessary And Appropriate (Local Rule 49(D)(2))

The supporting Declarations help establish Mr. McDonnell's entitlement to a severance of his joint trial with his wife. Filing these Declarations under seal for *ex parte in camera* review is necessary, however, because they contain confidential communications protected by the marital privilege and because disclosing these Declarations to the Government would prejudice Mr. McDonnell by revealing elements of his trial strategy that would give the Government an unfair advantage. The Government, by contrast, will not be prejudiced because Mr. McDonnell's memorandum in support of his motion for severance is sufficiently detailed for the Government adequately to respond. Mr. McDonnell has considered procedures other than filing under seal for *ex parte in camera* review, and none will suffice to protect the information from disclosure.

Finally, sealing and *ex parte in camera* review are appropriate because any First Amendment public right of access is outweighed by Mr. McDonnell's competing interests in not disclosing his trial strategy or privileged marital communications. *See, e.g., United States v. Beckford*, 964 F Supp. 1010, 1029-30 (E.D. Va. 1997) (finding sealing and *ex parte* procedures appropriate where public's right of access outweighed by interest in not divulging trial strategy or attorney work-product).

III. References To Governing Case Law (Local Rule 49(D)(3))

There is ample legal authority for granting Mr. McDonnell's request here. *First*, the Court has the inherent power to seal materials submitted to it. *See In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984) ("The trial court has supervisory power over its own records and may, in its discretion, seal documents if the public's right of access is outweighed by competing interests."); *see also Am. Civil Liberties Union v. Holder*, 673 F.3d 245, 255–56 (4th Cir. 2011); *United States v. Hubbard*, 650 F.2d 293, 315 n.81 (D.C. Cir. 1980); *In re Sealed Affidavit(s) to Search Warrants Executed on February 14, 1979*, 600 F.2d 1256, 1257 (9th Cir. 1979).

Second, and more importantly, the Court has the inherent power to review *ex parte* and *in camera* documents that contain privileged information or would reveal a party's trial strategy. *See, e.g., Arieff v. U.S. Dep't of Navy*, 712 F.2d 1462, 1469 (D.C. Cir. 1983) (noting the power of courts to review affidavits *in camera*); *Thomas v. Cumberland Cnty. Schools, et al.*, No. 5:09-cv-359-FL, 2011 WL 779805, at *1-2 (E.D.N.C. Feb. 28, 2011) (permitting filing of declaration under seal and *in camera* where content governed by attorney-client privilege and denying access to defendants); *United States v. Carona*, No. SA-CR-06-224-AG, 2008 WL 1970221, at *1 (C.D. Cal. May 2, 2008) (granting severance based, in part, on its *in camera* review of supporting declarations); *Tilden v. Tenet*, 140 F Supp. 2d 623, 625-26 (E.D. Va. 2000) (granting motion for *in camera* review of classified declaration and denying plaintiff's request to participate); *Beckford*, 964 F Supp. at 1029-30 (permitting *ex parte* procedures where defendant would be required to disclose trial strategy, witnesses, or attorney work product to the Government).

One case in particular is directly on point. In *United States v. Carona*, the district court granted a defendant's motion for severance, basing its ruling, in part, on its *ex parte in camera* review of the defendant's supporting declarations. *Carona*, 2008 WL 1970221, at *1. In its order granting severance, the court referenced its previous ruling that the moving defendant was not required to disclose her declarations to the Government where, as here, "disclosure would unduly risk prejudicing Defendants by revealing elements of their trial strategy." *Id.* In her declaration, the moving defendant "describ[ed] the nature of the testimony which she would seek to present in her defense, but which may be precluded by operation of evidentiary privilege." *Id.* She also submitted a declaration of her husband, "asserting his intention to invoke the evidentiary privilege at trial to prevent her from testifying about their confidential marital communications." *Id.*

The Declarations here are no different. The Declaration of Mr. McDonnell's counsel describes the nature of the testimony Mr. McDonnell would seek to present in his defense, including confidential marital communications. Likewise, the Declaration of Mrs. McDonnell's counsel reveals Mrs. McDonnell's potential testimony and reasons for invoking the marital communications privilege at trial. In short, disclosure of these Declarations to the Government would unduly prejudice Mr. McDonnell (and Mrs. McDonnell) by revealing elements of their defense. Confidential *ex parte* review of the Declarations should be permitted here, just as it was in *Carona*.

IV. Period Of Time Mr. McDonnell Seeks To Have Matter Remain Under Seal (Local Rule 49(D)(4))

Mr. McDonnell requests that the Court hold the Declarations under seal, without disclosure to the Government, for at least the remainder of the criminal proceedings.

* * *

For these reasons, Mr. McDonnell requests that the Court (1) grant leave to file the Declarations under seal, (2) review the Declarations *ex parte* and *in camera*, and (3) deny the Government access to the Declarations for at least the remainder of the criminal proceedings.

Dated: March 25, 2014

Respectfully submitted,

/s/ Jonathan A. Berry
Henry W Asbill (*pro hac vice*)
Mary Ellen Powers (*pro hac vice* pending)
Noel J. Francisco (*pro hac vice* pending)
Ryan D. Newman (*pro hac vice*)
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Counsel for Robert F McDonnell

CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 25th day of March, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: March 25, 2014

Respectfully submitted,

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Counsel for Robert F McDonnell

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

ORDER

THIS MATTER is before the Court on a Motion of the National Association of Criminal Defense Lawyers for Leave to File a Memorandum of Law as *Amici Curiae* ("Motion") (ECF No. 126). The NACDL has cited no authority authorizing the filing of, or mandating this Court's consideration of, *amicus curiae* briefs in a criminal matter. Accordingly, the Motion is DENIED.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 1st day of April 2014.

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	No. 3:14cr12-JRS
ROBERT F MCDONNELL and	)	
MAUREEN G. MCDONNELL,	)	
	)	
Defendants.	)	

RESPONSE OF THE UNITED STATES IN OPPOSITION TO DEFENDANT ROBERT F. MCDONNELL'S MOTION FOR LEAVE TO FILE SUPPORTING DECLARATIONS UNDER SEAL AND FOR *EX PARTE IN CAMERA* REVIEW

The United States of America, by undersigned counsel, hereby responds in opposition to defendant Robert F McDonnell's Motion for Leave to File Supporting Declarations Under Seal and for *Ex Parte In Camera* Review. *See* Doc. Nos. 116, 117 The United States respectfully opposes Mr. McDonnell's motion because precluding Government review of the declarations would prevent the Government from providing the Court with an informed response to the defendants' accompanying Motions to Sever, which trigger a fact-intensive and circumstance-dependent inquiry. *See* Doc. Nos. 114, 115, 120. In seeking a severance, defense counsel claim that Mrs. McDonnell is willing to testify on Mr. McDonnell's behalf, but only if this Court grants the defendants separate trials. Likewise, defense counsel claim that unless this Court grants separate trials, Mrs. McDonnell would invoke the confidential marital communications privilege to try to block Mr. McDonnell from testifying about what she told him in confidence.

But defense counsel's claims about Mrs. McDonnell's assertions of her Fifth Amendment and marital privileges are difficult to understand or assess without the declarations, and their pleadings' conclusory descriptions of those declarations do not clarify the confusion. Notably, the evidence that Mrs. McDonnell claims that she would block from being presented at a joint trial apparently purports to be exculpatory for *both* defendants. The defendants therefore seem to be claiming that, unless they receive the separate trials that they want, Mrs. McDonnell will refuse to provide exculpatory testimony that helps both defendants and also will prevent Mr. McDonnell from providing exculpatory testimony himself. Why a severance is necessary for Mrs. McDonnell to be willing to provide (or allow) testimony that purports to exculpate herself as well as her husband is difficult to understand in any event, but it is impossible to understand without access to exactly what Mrs. McDonnell's (or Mr. McDonnell's) anticipated testimony would be.

Equally important, the McDonnells want a severance without demonstrating that separate trials are necessary—even taking the McDonnells' claims at face value. Mr. McDonnell's motion repeatedly says merely that he wants the "option" of calling Mrs. McDonnell. Mem. in Supp. Mot. Sever at 2, 9, 14. He offers no commitment to actually calling Mrs. McDonnell—even though Mrs. McDonnell appears to have said through her attorneys that she would testify if her husband called her as a witness. The Court should not permit the McDonnells to demand a severance on such equivocal terms while simultaneously hiding from the Government what Mrs. McDonnell would in fact say, in effect handicapping the Government's ability to assist the Court in evaluating their actual reasons for seeking separate trials.

Moreover, "[i]t is settled beyond peradventure that, in our system of justice, *ex parte* judicial proceedings are greatly disfavored." *RZS Holdings AVV v. PDVSA Petroleo S.A.*, 506 F.3d 350, 356 (4th Cir. 2007). And as explained below, given that both the standards governing severance and the defendants' arguments are necessarily highly fact-intensive, this Court would particularly benefit from the Government's evaluation of the details about the evidence in this case in the context of the pending severance motion. If *ex parte* declarations are permitted, by contrast, the Government will not have a fair opportunity to respond fully to the defendants' arguments.

In addition, the high hurdle that the law imposes to severances like the one requested here underscores why the defendants should not be able to clear that hurdle with secret filings. In this regard, it is well-established that "[j]oint trials 'play a vital role in the criminal justice system.'" *Zafiro v. United States*, 506 U.S. 534, 537 (1993) (quoting *Richardson v. Marsh*, 481 U.S. 200, 209 (1987)). As a result, "severance pursuant to [Fed. R. Crim. P.] 14 is rarely granted." *United States v. Dinkins*, 691 F.3d 358, 368 (4th Cir. 2012). And the presumption against severance is especially strong in conspiracy cases, such as in the present case. *Dinkins*, 691 F.3d at 368 ("Joinder is highly favored in conspiracy cases, over and above the general disposition supporting joinder for reasons of efficiency and judicial economy."). Indeed, under these standards, as the Supreme Court has explained, "it is well settled that defendants are not entitled to severance merely because they may have a better chance of acquittal in separate trials." *Zafiro*, 506 U.S. at 540.

In short, given the highly fact-intensive nature of the defendants' claims, the stringent standards they must meet as movants, and the facial implausibility of their claims, there is no basis for this Court to recognize an exception in this case to the rule that "*ex parte* communications 'should be avoided whenever possible.'" *RZS Holdings AVV*, 506 F.3d at 357 (quoting *United States v. Napue*, 834 F.2d 1311, 1318 (7th Cir. 1987)).

Argument

I. Without the declarations, the Government is unable to respond to the severance framework set forth by the Fourth Circuit in *Parodi.*

Both the Supreme Court and the Fourth Circuit apply fact-intensive standards in evaluating motions for severance, while granting district judges broad deference in ruling on severance motions in light of the circumstances. To obtain severance, the Fourth Circuit requires the defendants to establish four threshold elements: (1) a bona fide need for the testimony of Mrs. McDonnell; (2) the likelihood that Mrs. McDonnell would testify at her husband's trial and waive her Fifth Amendment privilege; (3) the substance of Mrs. McDonnell's testimony: and (4) the exculpatory nature and effect of her testimony. *United States v. Parodi*, 703 F.2d 768, 779 (4th Cir. 1983). Once the defendants meet these requirements, then the defendants must convince the Court that the following factors weigh in their favor: (1) the significance of Mrs. McDonnell's testimony in relation to the defendants' theory of defense; (2) the extent of the prejudice caused by the absence of her testimony; (3) judicial administration and economy; (4) the timeliness of the motion; and (5) the likelihood that Mrs. McDonnell's testimony could be impeached. *Id.* The fact-intensive inquiry described above focuses primarily on the substance of Mrs. McDonnell's purported testimony. Though the defendants summarily characterize the two declarations throughout their Motions to Sever and Memoranda in Support, *see* Doc. Nos. 114, 115, 120, their conclusory statements do not provide adequate specificity about Mrs. McDonnell's testimony. Simply put, as illustrated below, if the declarations are submitted to the Court *ex parte*, the Government cannot adequately assist the Court in addressing the requisite *Parodi* framework. *See United States v. Fastow*, 269 F Supp. 2d 905, 910 (S.D. Tex. 2003) (noting that a defendant's *ex parte* affidavit in support of severance motion "deprive[s the

Government] of the opportunity to meaningfully address the factors related to the testimony itself").

A. The necessity of Mrs. McDonnells testimony.

As to the first factor—bona fide need—the defendants surely know of numerous witnesses who may provide the same testimony that Mrs. McDonnell would. For example, virtually all of Mr. McDonnell's staff would agree that he had a "demanding work and travel schedule" during his tenure as Governor. Mem. in Supp. Mot. Sever at 2. And beyond such noncontroversial facts, the defendants offer no details of Mrs. McDonnell's testimony beyond denying the charges, something that a defendant can accomplish without even taking the witness stand and being exposed to cross-examination. Indeed, so nonexistent are the details about Mrs. McDonnell's denials that it is incredible to think that she actually would risk cross-examination to make the flat denials of the charges conveyed in the McDonnells' severance motion. Mr. McDonnell's bona fide need for his wife's testimony remains completely opaque, particularly in the absence of any detail about what she would say.

B. The likelihood of Mrs. McDonnell's testimony.

As to the second factor, although Mrs. McDonnell's attorney *may* have said unequivocally in his affidavit that she would testify *if* called, Mr. McDonnell's motion is wholly noncommittal about whether he will ever call her as a witness. Mr. McDonnell's motion offers the Court no assurance at all that he intends to use Mrs. McDonnell as a witness. According to his memorandum supporting his motion, Mr. McDonnell simply would like the "option" to call her. *See id.* at 2, 9, 14. The proposed *ex parte* declarations may provide greater certainty about the probability that Mr. McDonnell will call her as a witness, but the Government should be allowed to respond to them based on their substance, not on counsel's conclusory pronouncements about their content.

It is also unclear whether Mrs. McDonnell really would waive her Fifth Amendment rights at a separate trial of Mr. McDonnell given her refusal to do so at a joint trial. *Id.* at 10. As noted by the Eastern District of North Carolina, "[i]f [the defendant] intends to invoke his Fifth Amendment privilege at a joint trial, then the court can think of no reason why [s]he would waive the privilege by testifying at [co-defendant's] trial in the event [co-defendant] was tried first." *United States v. Dawson*, No. 5:12cr284-F2, 2013 WL 3381380, at *2 (E.D.N.C. July 8, 2013). To meet the second *Parodi* element, Mr. McDonnell must demonstrate that Mrs. McDonnell has "an unequivocal willingness" to waive her Fifth Amendment rights and testify at a severed trial regardless of which trial began first. *United States v. Medford*, 661 F.3d 746, 753 (4th Cir. 2011); *see also United States v. Silverio*, No. 12-4629, 2013 WL 870638, at *1 (4th Cir. Mar. 11, 2013) (unpublished) (affirming district court's denial of severance motion when counsel was "equivocal" about likelihood of co-defendant testifying). The *ex parte* declaration may provide additional clarification about Mrs. McDonnell's equivocation—or lack thereof—but again, the Government should be permitted to challenge the basis for such a claim.

C. The substance of Mrs. McDonnell's testimony.

Turning to the third threshold factor, the defendants claim that Mrs. McDonnell's testimony would exculpate Mr. McDonnell "in at least four ways." Mem. in Supp. Mot. Sever at 8. This recitation of "four ways" that Mrs. McDonnell would aid Mr. McDonnell's defense offers no details beyond a blanket denial of the Indictment's allegations, and equally importantly, it rests on the implausible premise that these denials will be forthcoming only if this Court grants separate trials. Indeed, nowhere in any of their pleadings do the defendants offer details about

Mrs. McDonnell's testimony beyond saying that she is involved in the charged conduct and would deny what is alleged in the Indictment—something every coconspirator in every case would say. And nothing in the defendants' briefs suggests that Mrs. McDonnell will inculpate herself.[1]

Without further explanation (which may or may not be contained in the declarations), Mrs. McDonnell's position makes little sense. If her testimony indeed incriminates her, it remains unclear why Mrs. McDonnell would invoke her Fifth Amendment right at a joint trial and refuse to testify, but would willingly waive this right at separate trials "regardless of the order in which the severed defendants are tried." Mem. in Supp. Mot. Sever at 11 (emphasis omitted). This means that if Mr. McDonnell were tried first, Mrs. McDonnell would waive her rights against self-incrimination and testify on his behalf—knowing full well that her own trial would occur next and her statements would be used against her. The rationale for her refusal to waive her Fifth Amendment rights at a joint trial—namely that her statements would be used against her—applies equally to this scenario. Meanwhile, if Mrs. McDonnell's testimony is entirely exculpatory, then why would she need to invoke the Fifth Amendment when testifying at a joint trial?

Nor does the Government understand why Mrs. McDonnell would invoke the marital communications privilege at a joint trial, *id.* at 17, when she is willing to waive this privilege at separate trials. Indeed, it appears that Mr. McDonnell's purported testimony—which Mrs. McDonnell would supposedly block at a joint trial with the marital communications privilege—would exculpate them both. *Id.* at 19 (noting that Mr. McDonnell will disclose confidential marital communications to show that no conspiratorial agreement existed between them). To the extent that Mr. McDonnell's testimony revealing marital privileged communications would inculpate Mrs. McDonnell and Mr. McDonnell's trial occurs first, she would likely be cross-examined extensively about these communications when she testified at Mr. McDonnell's trial, and that testimony could be used against her at her subsequent trial. Indeed, Mrs. McDonnell's waiver of the marital communications privilege at Mr. McDonnell's trial would waive that privilege for her trial, too.

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[1] If true, this would weigh heavily against severance. In the context of a severance motion, "[a] codefendant's proposed testimony lacks credibility when it does not contravene his own penal interests." *United States v. Tencer*, 107 F.3d 1120, 1133 (5th Cir. 1997); *accord United States v. Beale*, 921 F.2d 1412, 1428 (11th Cir. 1991).

D. Exculpatory nature and effect of Mrs. McDonnell's testimony.

Turning to the fourth *Parodi* factor—the exculpatory nature and effect of the testimony—at present, the Government has no more than a "'vague and conclusory statement of counsel of facts 'of purely cumulative or negligible weight or probative value,'" which is insufficient under Fourth Circuit law. *Parodi*, 703 F.3d at 780 (quoting *United States v. Butler*, 611 F.2d 1066, 1071 (5th Cir. 1980)). Without knowing the contents of the declarations, the Government cannot assess the defendants' claims to have satisfied the test in *Parodi* and understand why Mrs. McDonnell would "deprive" Mr. McDonnell of his own purportedly exculpatory testimony at a joint trial. Mem. in Supp. Mot. Sever at 16.

E. The remaining five *Parodi* considerations.

Without the declarations, the Government is unable to assist the Court in evaluating the remaining considerations under *Parodi* based on the information the defendants have provided. 703 F.2d at 779. The extent of the prejudice caused by the absence of Mrs. McDonnell's testimony remains unclear. Other witnesses or documents may be able to provide the same information that Mr. McDonnell seeks. Given that, it also seems highly unlikely that the McDonnells would risk cross-examination of Mrs. McDonnell to make points that could be presented in much less risky ways. In addition, the Government cannot help the Court assess the likelihood that Mrs. McDonnell's broad denial of criminal activity could be impeached without access to her declaration. For example, should the declaration from Mrs. McDonnell's counsel indicate that she was lying to Mr. McDonnell during the conspiracy—but is *now* telling the truth—this is significant impeachment fodder. Mrs. McDonnell also is charged with obstruction of justice and would be testifying for her husband, which does not weigh in favor of her credibility. Further, without the declarations the Government cannot assess the likelihood that her specific testimony could be impeached by emails, text messages, and other witnesses' testimony—all information that the Government is in a uniquely qualified position to provide to the Court.

II. *Ex parte* procedures are "greatly disfavored" under Fourth Circuit law and should not be used here.

Courts do not welcome *ex parte* pleadings, and that should be particularly true where, as here, the moving party is the one requesting the use of *ex parte* pleadings and the standard that the moving party seeks to satisfy is stringent and fact-intensive. The Seventh Circuit has aptly observed, "An *ex parte* proceeding 'places a substantial burden upon the trial judge to perform what is naturally and properly the function of an advocate.'" *Napue*, 834 F.2d at 1319 (citation omitted). And "*ex parte* communications 'should be avoided wherever possible.'" *RZS Holdings AVV*, 506 F.3d at 357 (quoting *Napue*, 834 F.2d at 1318). *Ex parte* proceedings are, in sum, "greatly disfavored." *Id.*

In this case, the defendants ask the Court to accept the "substantial burden" of evaluating the *Parodi* factors without the benefit of an informed response by the Government. If allowed, the Court will face the daunting challenge of trying to determine on its own whether the testimony is actually necessary, the testimony's exculpatory nature and effect, and whether the testimony would be easily impeached—all without the aid of the Government being able to effectively supplement the record with additional facts that would likely be highly relevant to the Court's determination. This would result not only in the Government's inability to effectively respond to the motion, but also in the Court being asked to sever the trials without all of the facts necessary for judicial determination.

In evaluating severance motions, courts "have often looked hard at the substance of the affidavits proffered by the co-defendant who purportedly would testify in a separate trial." *United States v. Novation*, 271 F.3d 968, 989 (11th Cir. 2001). That close evaluation of the affidavits is not possible without allowing the Government to respond to the affidavits, as illustrated by *Novation*, which affirmed denial of severance based on affidavits that the moving defendants filed publicly.

The McDonnells cite just one case that permitted a defendant to submit an *ex parte* affidavit in support of a severance motion. *United States v. Carona*, No. SA-CR-06-224-AG, 2008 WL 1970221 (C.D. Cal. May 2, 2008). This unpublished district court opinion offered almost no analysis for its decision to permit *ex parte* affidavits, did so where the sole basis for granting severance was the need for specific and marital privileged communications that incriminated one spouse defendant and exculpated the other spouse defendant, and acknowledged "the Government's difficult task of opposing" the motion where the facts supporting the motion were submitted *ex parte*. *Id.* at *4. And the defendants' parenthetical reliance on *United States v. Beckford*, 964 F. Supp. 1010 (E.D. Va. 1997), is equally misplaced. *Beckford* pertained to the issuance of Rule 17(c) subpoenas, and the Court noted that proponents of sealing those subpoena applications "will have to meet a heavy burden." *Id.* at 1030. Significantly, the Court in *Beckford* based its approval of *ex parte* procedures for 17(c) subpoenas, in part, on its recognition that "a court needs no assistance from an opposing party" in applying the legal standard for issuance of Rule 17(c) subpoenas. *Id.* at 1028. Given the highly fact-intensive inquiry in severance motion determinations, such is not the case here.

The defendants have not sought to tailor their *ex parte* filings in the way that ordinary privilege litigation would require. Neither the Government nor apparently this Court has been provided with anything close to sufficient information to evaluate the validity of any assertion by Mrs. McDonnell against Mr. McDonnell of the marital privilege and whether Mr. McDonnell could readily make the same points without the purportedly privileged information. Moreover, an ongoing conspiracy is charged during the time (presumably) of the communications in question, and spouses have no marital privilege over communications during their joint participation in a crime. *See, e.g.*, *United States v. Parker*, 834 F.2d 408, 411 (4th Cir. 1987) ("[W]here marital communications have to do with the commission of a crime in which both spouses are participants, the conversation does not fall within the marital privilege." (citation omitted)). To the extent the McDonnells' request for *ex parte* submission and severance are based on the marital privilege, their request should be denied until the statements and validity of the privilege can be better evaluated and placed in context. *Zafiro*, 506 U.S. at 538–39 ("Rule 14 does not require severance even if prejudice is shown; rather, it leaves the tailoring of the relief to be granted, if any, to the district court's sound discretion.").

Many other cases have analyzed severance motions where the defendants were required to present evidence and testimony to support a motion to sever without the benefit of *ex parte* submissions. *See, e.g.*, *United States v. Medford*, 661 F.3d 746, 753 (4th Cir. 2011) (affirming severance denial based on publicly filed pleadings of factual positions by counsel); *Novation*, 271 F.3d at 989 (affirming severance denial where publicly filed affidavits used); *United States* *v. Freedman*, 317 F. App'x. 22 (2d Cir. 2008) (affirming severance denial based on publicly filed affidavit from co-defendant about purported testimony); *United States v. Sherifi*, No. 7:12cr00020-BR, 2012 WL 4191935, *1–2 (E.D.N.C. Sept. 19, 2012) (publicly filed declaration from co-defendant's lawyer and testimony at hearing from co-defendant); *United States v. Pingaro*, 784 F. Supp. 2d 77, 78 (D. Mass. 2011) (publicly filed affidavit from co-defendant about purported testimony).

A recent unpublished Fourth Circuit opinion illustrated this practice, in a case from the Alexandria Division of this District where no *ex parte* procedures were used in ruling on a severance motion. The Fourth Circuit's opinion observed, "During the colloquy on Silverio's motion, counsel was equivocal as to whether Benavente would testify on Silverio's behalf if the motion were granted." *Silverio*, 2013 WL 870638 at *1. This practice is consistent with the Fourth Circuit's observation elsewhere of the general rule that "*ex parte* communications by an adversary party to a decision-maker in an adjudicatory proceeding are prohibited as fundamentally at variance with our conceptions of due process." *RZS Holdings AVV*, 506 F.3d at 356 (citations and internal quotation marks omitted).

The McDonnells' claims are extremely broad in the sweep of evidence they address—covering a conspiracy that ran many months and encompassed many incidents—and are simultaneously vague and conclusory. Eliminating full adversary procedures in this setting, where the defendants are both the moving parties and the ones insisting on blocking adversarial presentation of their evidence, is unjustifiable. As the Supreme Court has stressed that as the evidentiary issues become more complex, avoiding adversary procedures becomes less justifiable.

> Adversary proceedings are a major aspect of our system of criminal justice. Their superiority as a means for attaining justice in a given case is nowhere more

> evident than in those cases, such as the ones at bar, where an issue must be decided on the basis of a large volume of factual materials, and after consideration of the many and subtle interrelationships which may exist among the facts reflected by these records. As the need for adversary inquiry is increased by the complexity of the issues presented for adjudication, and by the consequent inadequacy of *ex parte* procedures as a means for their accurate resolution, the displacement of well-informed advocacy necessarily becomes less justifiable.

Alderman v. United States, 394 U.S. 165, 184 (1969).

Conclusion

The Government should be permitted full access to the declarations the defendants' lawyers have prepared, so that it may properly brief this fact-intensive legal analysis. For the foregoing reasons, the Government respectfully requests that the Court deny Mr. McDonnell's motion, Doc. No. 116.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2014, a true and correct copy of the foregoing was delivered to all counsel of record via the Court's Electronic Filing System.

By: /s/
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

Defendant.

Action No. 3:14-CR-12-1

ORDER

THIS MATTER is before the Court on a Motion for Leave to File Memorandum *Amicus Curiae* in Support of Defendants' Motion to Dismiss ("Motion") (ECF No. 132) filed by five former Attorneys General of Virginia. The Court declines to exercise its discretion to allow *amicus curiae* briefs to be filed in this criminal matter. Accordingly, the Motion is DENIED.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 7th day of April 2014.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**CRIMINAL NO. 3:14-CR-00012**
	)	
ROBERT F. MCDONNELL **MAUREEN G. MCDONNELL**	)	**JUDGE JAMES R. SPENCER**
	)	

REPLY OF DEFENDANT ROBERT F. MCDONNELL TO THE GOVERNMENT'S OPPOSITION TO MOTION # 12 – MOTION FOR LEAVE TO FILE SUPPORTING DECLARATIONS UNDER SEAL AND FOR *EX PARTE IN CAMERA REVIEW*

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INTRODUCTION

In order to enable the Court to evaluate the merits of his motion to sever, Mr. McDonnell has moved for permission to make a sealed, *ex parte* filing of two declarations from the defendants' counsel (the "Declarations"). These Declarations contain defense counsel's detailed accounts of the substance of the testimony that the McDonnells would give if their trials are severed. As such, the Declarations detail privileged marital communications; and they constitute attorney work product that summarizes much of the defendants' trial strategy. The request to file these sensitive materials *ex parte* for *in camera* review is not extraordinary In many contexts in criminal cases, courts routinely allow defendants to make such *ex parte* filings in order to protect privileged information and to preserve the defendant's Sixth Amendment right to maintain the confidentiality of his trial strategy.

The Government strenuously opposes Mr. McDonnell's motion, claiming that it is contrary to Fourth Circuit and other precedent and is inordinately burdensome. None of the authorities the Government cites, however, is relevant to this case, where a criminal defendant seeks *ex parte in camera* review of sensitive, privileged materials that the defendant believes will reveal important aspects of his trial strategy. On the contrary, courts have consistently recognized that requiring a defendant to make disclosures to the Government through which "defense planning and strategy would necessarily be revealed" compromises a "defendant['s] Sixth Amendment right to effective assistance of counsel." *United States v. Beckford*, 962 F Supp. 748, 764 n.16 (E.D. Va. 1997).

Its inapposite generalizations notwithstanding, the essence of the Government's argument is that its interest in making additional arguments to the Court based on the Declarations is compelling enough to overcome the marital communications privilege, the attorney work product protection, *and* Mr. McDonnell's Sixth Amendment right not to reveal his trial strategy to the prosecution. This contention cannot withstand scrutiny. As the Court can confirm simply by reading the Declarations themselves, whatever attenuated interest (if any) the Government has in disclosure is far outweighed by the vital interests the McDonnells have in maintaining confidentiality. This Court should therefore grant Mr. McDonnell's motion to file the Declarations under seal for *ex parte in camera* review.

ARGUMENT

I. *Ex Parte* Proceedings Are Commonly Used In Criminal Matters To Protect The Defendant's Sixth Amendment Right To Maintain The Confidentiality Of His Trial Strategy.

Inherent in this Court's supervisory power is its discretionary authority to accept filings under seal. *See In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984). In criminal cases, it is not unusual for courts to accept *ex parte*, sealed filings from defendants in order to make necessary rulings while preserving the confidentiality of the defendants' trial strategy. Indeed, courts have done so in this specific situation: when a defendant, in support of a motion concerning trial sequencing, wishes to proffer evidence outlining the testimony he or she would give at an alleged co-conspirator's trial. In *United States v. Carona*, in circumstances precisely analogous to those presented here, the court granted husband and wife co-defendants permission to file *ex parte* declarations in support of the wife's motion to sever. *United States v. Carona*, No. SA CR-06-224-AG, 2008 WL 1970221, at *1 (C.D. Cal. May 2, 2008). The *Carona* court noted that it had allowed the filing "[o]ver the Government's objection, as disclosure would unduly risk prejudicing Defendants by revealing elements of their trial strategy." *Id.* Similarly, in *United States v. Fastow*, the court allowed the defendant to submit an *ex parte*, sealed affidavit from her husband, a defendant in a related case, in support of her motion to be tried after his trial was complete (the court applied the test for severance to the defendant's motion). 269 F Supp. 2d 905, 906-07 (S.D. Tex. 2003).

There are, moreover, numerous other contexts in which courts have found it not only appropriate but necessary to receive materials and conduct proceedings *ex parte* in order to preserve the confidentiality of the defendant's trial strategy. In *United States v. Beckford*, 964 F Supp. 1010, 1019 (E.D. Va. 1997), a court in this district held that, in light of a defendant's Sixth Amendment right to maintain the secrecy of his trial strategy, Rule 17(c) must be read to authorize *ex parte* process for the acquisition of a trial subpoena *duces tecum* by indigent defendants. *See also, e.g., United States v. Tomison*, 969 F Supp. 587, 595 (E.D. Cal. 1997) ("Rule [17(c)] should be interpreted to provide for ex parte applications in situations, such as the matter at bar, where the defendant seeks to serve a subpoena duces tecum for the pre-trial production of documents on a third party, and cannot make the required showing without revealing trial strategy."); *United States v. Florack*, 838 F Supp. 77, 78 (W.D.N.Y 1993) (noting that prior version of Rule 17(b) presented "an indigent with Hobson's choice: either make no defense or disclose his whole case to the Government before his trial"); *United States v. Weissman*, No. 01-cr-529, 2002 WL 1467845, at *1 (S.D.N.Y July 8, 2002) (permitting ex parte applications in Rule 17(c) subpoena context where "a party can demonstrate that it would be required to prematurely disclose its trial strategy, witness list, or other privileged information in its application"). Similarly, in *United States v. Lindh*, 198 F Supp. 2d 739, 743-44 (E.D. Va. 2002), a court in this district specified that the defendant should make *ex parte*, sealed submissions when he sought to share national security-related discovery materials protected by a Rule 16(d)(1) order with potential witnesses. The court designed the procedures to "minimize any burdens on [the] defendant's Sixth Amendment right to prepare and present a full defense at trial." *Id.* at 744.[1] *See also United States v. Carriles*, 654 F Supp. 2d 557, 570 (W.D. Tex.

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[1] The court left open the possibility that the government would be notified and allowed to

2009) (adopting procedures for granting the defendant access to materials filed under a Rule 16(d)(1) protective order and stating that "[i]f necessary to avoid disclosing trial strategy, Defendant may make such submission ex parte"). The Criminal Justice Act itself explicitly provides for *ex parte* proceedings to address defendants' requests for investigative, expert, and other services, *see* 18 U.S.C. § 3006A(e)(1), a measure courts have uniformly recognized as necessary to safeguard the confidentiality of defense trial strategy, *see, e.g., United States v. Gonzales*, 150 F.3d 1246, 1258 (10th Cir. 1998) ("Maintaining the secrecy of the application prevents the possibility that an open hearing may cause a defendant to reveal his or her defense." (quoting Administrative Office of the U.S. Courts Guide, chap. III, part A, § 3.03)). The courts use *ex parte* proceedings in these contexts even though the Government could certainly otherwise assist in evaluating the legitimacy and scope of Rule 17(c) subpoena filings and other sorts of defense requests.

Nor is the trial court's discretionary authority to receive filings under seal and *ex parte* limited to these well-established examples. Trial courts may adopt such procedures whenever revealing materials to the Government would compromise the confidentiality of a defendant's trial strategy. *See, e.g., United States v. Stepney*, 246 F Supp. 2d 1069, 1078 (N.D. Cal. 2003) (noting that the court had "conducted its inquiry into joint defense agreements *in camera* in order to avoid offering the prosecution any hint of defense strategies"); *United States v. Smith*, No. 13–

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litigate if the defendant proposed to share sensitive intelligence with potential witnesses who were themselves detainees suspected of terrorism. 198 F Supp. 2d at 743. In other words, the *Lindh* court recognized that *ex parte* submission is an appropriate way to safeguard a defendant's Sixth Amendment right to maintain the secrecy of the defense strategy, except where there are governmental interests as compelling as keeping sensitive information out of the hands of suspected terrorists.

CR-297, 2013 WL 6576791, at *8 (S.D.N.Y Dec. 4, 2013) (denying that the public has the right to compel disclosure of criminal discovery materials, in part because "unfettered public access could jeopardize a defendant's trial strategy").

The wealth of authority supporting Mr. McDonnell's motion repudiates the Government's repeated assertion that *ex parte* proceedings are uniformly disfavored. Unsurprisingly, the limited support the Government provides for this broad claim comes either from civil cases, *see* Gov't Opp'n to Def. Robert F McDonnell's Mot. for Leave to File Supp. Decls. Under Seal and for *Ex Parte In Camera* Review ("Opp'n"), Dkt. 131, at 2, 3, 9, 12 (citing *RZS Holdings AVV v. PDVSA Petroleo S.A.*, 506 F.3d 350, 356, 357 (4th Cir. 2007)), or from criminal cases in which the court was concerned with possible prejudice to *the defendant*, *see* Opp'n at 3, 9 (citing *United States v. Napue*, 834 F.2d 1311, 1318, 1319 (7th Cir. 1987)); Opp'n at 13 (citing *Alderman v. United States*, 394 U.S. 165, 184 (1968)). The statements in those cases disapproving *ex parte* proceedings primarily reflect a concern with the due process rights of individuals—*not* the Government. *See RZS Holdings AVV*, 506 F.3d at 356 ("The conduct of such proceedings present substantial due process concerns."); *Napue*, 834 F.2d at 1318-19 ("*Ex parte* communications between the government and the court deprive *the defendant* of notice of the precise content of the communications and an opportunity to respond." (emphasis added)); *Alderman*, 394 U.S. at 184 (disapproving use of *in camera* review process from which *defendant* is excluded to determine whether evidence tainted by Fourth Amendment violation is relevant to criminal conviction). No such issue is present here because the Government does not have any independent constitutional right to due process.

The Government does not cite a single case in which a court has expressed broad disapproval of the use of *ex parte* proceedings from which *the Government* is excluded—let alone any case in which a court found that a defendant's right to preserve the confidentiality of his trial strategy was outweighed by the Government's interest in disclosure.[2] The Government relies on a handful of cases in which severance motions were decided by courts on the basis of public filings. *See* Opp'n at 11-12 (citing *United States v. Medford*, 661 F.3d 746, 753 (4th Cir. 2011); *United States v. Novaton*, 271 F.3d 968, 989 (11th Cir. 2001); *United States v. Freedman*, 317 F. App'x 22 (2d Cir. 2008); *United States v. Sherifi*, No. 7:12-cr-00020-BR, 2012 WL 4191935, at *1-2 (E.D.N.C. Sept. 19, 2012); *United States v. Pingaro*, 784 F. Supp. 2d 77, 78 (D. Mass. 2011)). But in none of those cases did a defendant seeking severance actually request an *ex parte* review of his evidentiary proffer on the ground that disclosure to the government would reveal elements of his trial strategy. Moreover, there is no indication in any of those cases that the defendant's basis for seeking severance involved privileged material. *Of course* courts routinely decide severance motions on the basis of public filings where the defendant does not rely on privileged material and has not even requested *ex parte* review. But that says nothing about the proper approach where a defendant's arguments for severance require the court's consideration of privileged documents that contain indications of the defendant's trial strategy. In such circumstances, *ex parte* review is necessary and appropriate to protect defendants' Sixth Amendment rights.

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[2] The Government does not allude to any First Amendment concerns. This silence is appropriate. The Declarations unquestionably contain privileged marital communications, and courts have consistently held that a litigant's interest in safeguarding such privileges "is capable of overriding the general preference for public access to judicial records." *Siedle v. Putnam Invs., Inc.*, 147 F.3d 7, 11 (1st Cir. 1998).

II. The Government Has Only Limited Interests At Stake In This Motion, While Mr. McDonnell's Interests Are Substantial.

Not only does the Government fail to adduce any precedent supporting its contention that *ex parte* proceedings are improper in this context, it also fails to identify any compelling governmental interest at stake in this motion. As an initial matter, the Government's interests in the underlying severance motion are markedly less substantial than Mr. McDonnell's. From the Government's perspective, all that is gained by a denial of severance are the potential benefits of efficiency and the avoidance of multiple trials. *See Zafiro v. United States*, 506 U.S. 534, 540 (1993) (explaining that the joint-trial rules are designed to promote judicial economy). And even on that score, as explained in Mr. McDonnell's memorandum in support of his motion to sever, it is far from clear—as the defense will explain further when the Government responds to the merits of its severance request—that a joint trial would be more efficient. *See* Memo. in Support of Def. Robert F McDonnell's Mot. to Sever Joint Trial ("Motion to Sever"), Dkt. 115, at 14-15. But even if efficiencies could be achieved by a joint trial, those efficiencies would be slight since there are only two defendants. *See id.* at 14. For Mr. McDonnell, by contrast, severance is crucial to both preserving his rights at trial and allowing him to fully contest the ultimate issue of guilt or innocence. *See Zafiro*, 506 U.S. at 539 (discussing the "risk that a joint trial [could] compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence"). As Mr. McDonnell explained in his severance memorandum (and as the supporting Declarations will show), critical exculpatory evidence exists that will be introduced at trial only if severance is granted. *See* Motion to Sever at 7-11.

Moreover, as explained above, the Government—unlike an individual—has no due process right that could potentially be compromised by allowing the requested *ex parte* filing. Accordingly, the sole interest the Government can legitimately assert in resisting Mr.

McDonnell's motion is a generalized interest in the benefits of adversarial advocacy. To be sure, courts recognize—and Mr. McDonnell does not question—the advantages of the adversary system as a means for resolving legal and factual questions. *See, e.g.*, *Alderman*, 394 U.S. at 184. But as outlined above, the courts have nevertheless consistently held that when adversarial proceedings would expose privileged materials or a defendant's trial strategy to the prosecution, some of the advantages of such proceedings must be sacrificed in favor of proceeding *ex parte*.

III. The Court Can Adequately Evaluate The Motion To Sever By Examining The Declarations *Ex Parte* And *In Camera*.

Finally, the Government overstates the actual burden that would be imposed by allowing the Declarations to be filed *ex parte*. Ultimately, the Government's argument boils down to the assertion that it will be unable to fully assist the Court with its evaluation of the merits of Mr. McDonnell's severance motion if it is not granted access to these highly sensitive declarations. The Government claims that, unless it is granted access to the Declarations, the Court will face the "daunting challenge" of resolving the "fact-intensive" severance motion without the Government's aid. Opp'n at 9, 13. But the Government exaggerates the difficulty that the Court will face in assessing the significance of the *ex parte* Declarations and deciding the severance motion on the basis of their content in light of well-settled law. In doing so, the Government makes a variety of arguments that go to the merits of the severance motion. Mr. McDonnell will not address those arguments here—though the defense has strong responses to each—but rather will await the Government's opposition to his actual severance motion.[3] Those portions of the Government's Opposition that actually purport to identify issues the Court will be unable to resolve without the benefit of full adversarial review of the Declarations, however, are not convincing.

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[3] Among other things, the defense disputes the Government's claim that Mr. McDonnell "offers no assurance at all that he intends to use Mrs. McDonnell as a witness." Opp'n at 5. Mr. McDonnell's present intention is to call Mrs. McDonnell to testify if their trials are severed.

For example, the Government claims that without further detail about the testimony Mrs. McDonnell would give, it cannot evaluate whether there is a bona fide need for her testimony or whether it would be duplicative of that provided by such individuals as Mr. McDonnell's staff members. Opp'n at 5. But the Court can readily determine by reviewing the Declarations that no one besides Mr. and Mrs. McDonnell had access to much of the information to which she would testify or could provide testimony that would be similar in content or impact to hers. The Government's aid is not necessary to understand this point.

Similarly, the Government protests that it has insufficient information about the substance of the proposed testimony. In so doing, it poses a series of questions regarding Mrs. McDonnell's reasons for making certain choices about the waiver of her Fifth Amendment rights and marital communications privilege. Opp'n at 6-8. These questions, unsurprisingly, go to the heart of the defendants' trial strategy. As much as the Government might prefer to have full access to the defense's trial strategy for the purposes of the severance motion and beyond, the McDonnells' interest in maintaining its confidentiality are precisely why an *ex parte* filing is warranted.[4] As for whether the Declarations provide enough information about the substance of the proffered testimony to satisfy the test laid out in *United States v. Parodi*, 703 F.2d 768, 779 (4th Cir. 1983), again the Court can readily answer that question through its own review

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[4] The Government recognizes the importance of protecting trial strategy, of course, and has thus vigorously defended *its* right to conceal *its* trial strategy. *See, e.g.*, Gov't Opp. Mot. Particulars, Dkt. 84, at 1 (attacking the defense's request for particulars as a "thinly veiled 'attempt to compel [the] [defense] to disclose all of its evidence and perhaps its legal theory of the case . . . in advance of trial'" (quoting *United States v. Taylor*, No. 3:04-cr-227, 2005 WL 2298170, at *4 (E.D. Va. Sept. 21, 2005)). The defense should not be required to disclose "its legal theory of the case," *id.*, as a precondition to requesting a severance from the Court.

The Government further asserts that without access to the Declarations, it cannot assess whether the testimony Mrs. McDonnell would provide is truly exculpatory in nature and effect. It complains that, at present, it has only a "vague and conclusory statement of counsel" describing the testimony. Opp'n at 8 (quoting *Parodi*, 703 F.2d at 780). But of course the Government has only an unadorned summary of the evidence Mr. McDonnell will present if severance is granted; describing it in any more detail would reveal privileged information and disclose core elements of his trial strategy. The Court, however, can review the fuller account provided in the Declarations, compare those Declarations to the Government's detailed Indictment, and then assess whether the testimony is sufficiently exculpatory to satisfy this aspect of the *Parodi* test.[5]

Although the Court, if it grants this motion, will be required to decide the severance motion without the benefit of the Government's detailed analysis of the content of the Declarations, the Court will face no insurmountable difficulties in executing that task. Courts have decided such motions on the basis of *ex parte* filings in the past when defendants' rights have required it. *See, e.g.*, *Fastow*, 269 F. Supp. 2d at 910 (deciding defendant's motion regarding consecutive trial scheduling while "acknowledg[ing] that the Government is deprived of the opportunity to meaningfully address the factors related to the [proffered] testimony itself"). This Court will be fully capable of doing the same.

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[5] The Government suggests that the marital communications privilege invoked by Mrs. McDonnell is invalid because "an ongoing conspiracy is charged during the time of the communications in question," Opp'n at 11, and the marital privilege does not cover "communications [that] have to do with the commission of a crime in which both spouses are participants," *United States v. Parker*, 834 F.2d 408, 411 (4th Cir. 1987). The Government further asks that the Court deny the request for *ex parte* submission of the Declarations until "the statements and validity of the privilege can be better evaluated and placed in context." Opp'n at 11. It is readily apparent from the Declarations, however, that the communications are exculpatory for Mr. McDonnell and that, as a result, he could not have been a joint participant in any crime with his wife. The Court can therefore quickly determine, by reading the Declarations, that the communications do not fall within the joint-crime exception to the marital communications privilege.

CONCLUSION

The Government's arguments in opposition to Mr. McDonnell's Motion are unsupported by relevant authority, exaggerate the harm to its interests, and overstate the burden that will be placed on the Court by *ex parte in camera* review. *Ex parte* filing of these privileged and sensitive documents is warranted in order to preserve the confidentiality of the defendants' trial strategy. Mr. McDonnell therefore respectfully requests that this Court grant his motion to file the supporting Declarations *ex parte* and under seal.

The defense stands ready to present further argument at a hearing on this Motion if the Court desires.

Dated: April 7, 2014

Respectfully submitted,

/s/ Jonathan A. Berry

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CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 7th day of April, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: April 7, 2014

Respectfully submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

Defendant.

Action No. 3:14-CR-12-1

MEMORANDUM ORDER

THIS MATTER is before the Court on Defendant Robert F. McDonnell's Motion for Leave to File Supporting Declarations Under Seal and for *Ex Parte In Camera* Review ("Motion") (ECF No. 116). McDonnell seeks to file two declarations in support of Defendants' Motion to Sever Trial (ECF Nos. 114, 120); the first declaration is by William A. Burck, counsel for Maureen G. McDonnell, and the second declaration is by John L. Brownlee and Henry W. Asbill, counsel for Mr. McDonnell (collectively, "Declarations"). For the reasons that follow, the Motion is hereby GRANTED IN PART, to the extent that it requests leave to file the Declarations under seal, and DENIED IN PART, to the extent that it requests *in camera* review of the Declarations.

The Declarations purportedly describe in detail testimony that Defendants expect to offer if the trial is severed. McDonnell asserts that the Declarations reveal testimony subject to the marital communications privilege and that allowing the Government to access the Declarations would impermissibly expose Defendants' trial strategy. The Government asserts that without access to the Declarations, it cannot respond to Defendants' Motion to Sever and the Court will be deprived of an adversarial proceeding in resolving the issue of severance.

The Supreme Court has recognized that "[a]s the need for adversary inquiry is increased by the complexity of the issues presented for adjudication, and by the consequent inadequacy of ex parte procedures as a means for their accurate resolution, the displacement of well-informed advocacy necessarily becomes less justifiable." *Alderman v. United States*, 394 U.S. 165, 184 (1969); *compare United States v. Apple*, 915 F.2d 899, 910 (4th Cir. 1990) (reversing a district court's judgment—which was made after *in camera* review of evidence and without an adversarial proceeding—that evidence was not tainted by a Fourth Amendment violation), *with United States v. Beckford*, 964 F. Supp. 1010, 1028 (E.D. Va. 1997) (finding that an adversarial proceeding was not necessary to apply the legal standard for issuance of a Rule 17 subpoena). Unlike determinations of whether Rule 17 subpoenas should issue, a motion to sever requires a fact-intensive, multi-factored analysis for which there is a heightened need for well-informed advocacy. In this respect, Defendants' Motion to Sever is more akin to the Fourth Amendment analysis considered by the *Alderman* Court than the less complex issues presented in the cases cited by McDonnell. *See United States v. Carriles*, 654 F. Supp. 2d 557, 570 (W.D. Tex. 2009) (allowing memoranda of understanding to be filed ex parte with the court in order to preserve the confidentiality of defense witnesses, while also ensuring that sensitive government information would be handled in compliance with a protective order); *United States v. Lindh*, 198 F. Supp. 2d 739 (E.D. Va. 2002) (same).[1]

Courts "should rarely if ever resort to *in camera, ex parte* examination of evidence or conduct such proceedings." *United States v. Barnette*, 644 F.3d 192, 209 (4th Cir. 2011). The Supreme Court has expressed concern about the accuracy of ex parte determinations and has implied that the burden of justifying such proceedings in complex determinations is high. *See Alderman*, 394 U.S. at 184. Reviewing the Declarations *in camera* and, thereby, allowing Defendants to support their Motion to Sever with argument and evidence not available to the Government would effectively deprive the Court of an adversarial proceeding in a complex determination. McDonnell has not met the high burden to justify such a deprivation.

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[1] Although McDonnell has pointed to two district courts which allowed ex parte submission of documents in support of motions to sever, the facts and reasoning leading to those courts' opinions are not sufficiently clear to make them persuasive.

Accordingly, the Motion is DENIED IN PART to the extent that it seeks ex parte, *in camera* review of the Declarations.[2]

Nevertheless, McDonnell has otherwise met the requirements of Local Criminal Rule 49, and therefore, the Motion is GRANTED IN PART to the extent that it seeks leave to file the Declarations under seal. E.D. Va. Loc. Crim. R. 49(D). The Court finds that it has inherent authority to seal the Declarations, *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984), that McDonnell's interest in maintaining the confidentiality of the Declarations outweighs the public's right of access, and that no member of the public has objected to this Motion. Accordingly, McDonnell may file the Declarations under seal within three (3) days of the date of this Memorandum Order, if he so chooses. Additionally, McDonnell may file the Declarations ex parte under seal only for the purposes of preserving the record on appeal; the Court will not review the Declarations if filed ex parte under seal.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 17th day of April 2014.

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[2] Although McDonnell cites concerns about revealing trial strategy or privileged communications, the Court notes that Defendants' Motion to Sever affirmatively places the facts related to their potential testimony in issue. *See United States v. Parodi*, 703 F.2d 769, 779 (4th Cir. 1983) (delineating the test for severance). Not only would reviewing the Declarations *in camera* inequitably allow Defendants to employ the marital communications privilege as both a sword and a shield, *see Baltimore Scrap Corp. v. David J. Joseph Co.*, No. L-96-827, 1996 U.S. Dist. LEXIS 19617, at *77 (D. Md. Sept. 16, 1996), McDonnell has failed to demonstrate either that the Declarations are privileged or that they necessarily reveal trial strategy.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**CRIMINAL NO. 3:14-CR-00012**
	)	
ROBERT F. MCDONNELL	)	**JUDGE JAMES R. SPENCER**
MAUREEN G. MCDONNELL	)	

DEFENDANT ROBERT F. MCDONNELL'S NOTICE OF NON-FILING OF DECLARATIONS PURSUANT TO THE COURT'S APRIL 17, 2014 ORDER

On April 17, 2014, the Court issued an Order concerning Defendant Robert F McDonnell's Motion #12 – Motion for Leave to File Supporting Declarations Under Seal and for Ex Parte in Camera Review. Though that Order authorized the defense to file declarations under seal, it denied the defense's request to file two declarations *ex parte* in order to preserve the marital communications privilege and avoid "prejudicing Defendants by revealing elements of their trial strategy." *United States v. Carona*, No. SA CR-06-224-AG, 2008 WL 1970221, at *1 (C.D. Cal. May 2, 2008). The defense now formally notifies the Court and the Government that it cannot file any declarations in support of the Motion to Sever at this time.

As outlined below, the defense cannot file declarations containing privileged information and core components of the defense's trial strategy three months before trial without irreparably prejudicing the defendants. Filing the declarations now would jeopardize the marital communications privilege, would undermine the defendants' Fifth Amendment rights, and would give the Government an unfair ability to prepare for trial with advance knowledge of the defense case. The defense therefore requests that the Court consider its Motion to Sever on the briefs as-filed (and to-be-filed), hear oral argument on that motion, and consider that motion on the current record. Should the Court be inclined to deny severance on this record, the defense respectfully requests that it take the Motion to Sever under advisement until the defendants are able to support their request with detailed information without irreparably prejudicing their trial rights. The defense intends to provide such information closer to the time of trial in the event that the Court declines to grant severance now.

I. The Brownlee-Asbill Declaration.

The Brownlee-Asbill declaration contains information that is protected by the marital communications privilege, which Mr. McDonnell seeks to introduce at trial but which Mrs. McDonnell presently intends to stop him from introducing, on grounds of privilege. As the

Declaration's contents make clear, the information therein is privileged. "Information that is privately disclosed between husband and wife in the confidence of the marital relationship is privileged." *United States v. Parker*, 834 F.2d 408, 411 (4th Cir. 1987); *see also id.* ("Marital communications are presumptively confidential."). That declaration is an attorney-prepared summary of private conversations the McDonnells had and private emails between the McDonnells (on their private email accounts) that were confidential between the spouses and which are therefore privileged.

The Government has suggested that the privilege may not apply to these communications due to the joint-crime exception. That is not correct. To fall within the joint crime exception, statements must be "made in the course of the spouses' joint planning or participation in [a] crime." *United States v. Parker*, 834 F.2d 408, 412 n.7 (4th Cir. 1987) (Powell, J.). None of the statements in the Brownlee-Asbill Declaration fall within this exception because none pertain to "planning or participation in" any crime. To the contrary, all of the communications at issue repudiate the notion that the McDonnells were jointly participating in a crime because all negate any inference that the McDonnells were together planning or perpetrating any sort of crime.

Under the Court's Order, Mr. McDonnell cannot file the Brownlee-Asbill Declaration in a manner that the Government can access without violating Mrs. McDonnell's marital-communications privilege, which she is presently invoking. And because Mr. McDonnell cannot share that Declaration with the Government without violating his wife's privilege, the effect of the Court's decision is that the McDonnells must either waive or violate the marital communications privilege in order to present evidence in support of severance on the basis of the marital communications privilege. For that reason—as well as because the Brownlee-Asbill

Declaration contains critical details of the defense's trial strategy—the defense cannot file the Brownlee-Asbill Declaration at this time.

II. The Burck Declaration.

The Burck Declaration contains an attorney-prepared summary outlining the testimony that Mrs. McDonnell will offer at Mr. McDonnell's trial should the Court sever the defendants. That information is extremely sensitive, such that disclosing it to the Government will severely prejudice Mr. and Mrs. McDonnell by revealing core elements of their trial strategy to the Government over three months before trial. The defense cannot file that declaration with service on the Government at this time without irreparably damaging the defendants' trial rights and thus will not file the Burck Declaration now.

* * *

In sum, the defense formally notifies the Court and the Government that it will not file any declarations at this time. As the defense will further explain in its Reply on the Motion to Sever, the defense requests—unless the Court is inclined to grant severance on the current record once briefing is complete—that the Court hold the defense's Motion to Sever under advisement pending trial. The defense intends to provide the Court with information supporting severance at a time when the defense is able to provide that information without giving a substantial and unfair advantage to the Government and thus irreparably prejudicing the McDonnells.

Dated: April 21, 2014

Respectfully submitted,

/s/ Jonathan A. Berry
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CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 21st day of Aprii, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: April 21, 2014

Respectfully submitted,

/s/ Jonathan A. Berry

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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	No. 3:14cr12-JRS
ROBERT F MCDONNELL and	)	
MAUREEN G. MCDONNELL,	)	
Defendants.	)	

RESPONSE OF THE UNITED STATES IN OPPOSITION TO DEFENDANTS' MOTION TO SEVER JOINT TRIAL

The United States of America, by undersigned counsel, hereby responds to defendant Robert F McDonnell's and defendant Maureen G. McDonnell's joint Motion to Sever Joint Trial. *See* Doc. Nos. 114, 115, 120.[1] The Supreme Court and the Fourth Circuit apply a strong presumption in favor of trying defendants together who have been indicted together, especially defendants charged in a conspiracy. The defendants have presented only vague statements disclaiming all culpability and conclusory assertions that they want separate trials, all of which fall far short of the requisite factual showing in order to justify severance. The defendants simply have not demonstrated that they "will be unable to obtain a fair trial without severance." *United States v. Parodi*, 703 F.2d 768, 780 (4th Cir. 1983). As such, the Court should deny their severance motions. Further, the Court should reject the defendants' most recent proposal to defer litigation of severance until the eve of trial. Permitting the defendant to do so—using facts that the defendants possess now—would improperly evade this Court's orders, and as the defendants stated in originally demanding that this Court make its severance determination now,

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[1] Mrs. McDonnell's motion, Doc No. 120, adopts Mr. McDonnell's motion, Doc. No. 114, and memorandum in support, Doc No. 115 ("Def. Mem.").

"a wait-and-see approach would be less efficient and would make management of the trial more difficult in a variety of ways." Def. Mem. at 3.

Argument

I. Defendants who are indicted together should be tried together.

"There is a preference in the federal system for joint trials of defendants who are indicted together. Joint trials 'play a vital role in the criminal justice system.'" *Zafiro v. United States*, 506 U.S. 534, 537 (1993) (quoting *Richardson v. Marsh*, 481 U.S. 200, 209 (1987)); *see also United States v. Medford*, 661 F.3d 746, 754 (4th Cir. 2011) ("[T]here is a presumption in favor of joint trials in cases in which defendants have been indicted together."); *United States v. Lighty*, 616 F.3d 321, 350 (4th Cir. 2010) ("The Supreme Court has recognized a strong preference for trying defendants who are indicted together in joint trials."); *United States v. Strickland*, 245 F.3d 368, 384 (4th Cir. 2001) ("Generally individuals indicted together should be tried together." (internal quotations omitted)). As a result, "severance pursuant to [Fed. R. Crim. P.] 14 is rarely granted." *United States v. Dinkins*, 691 F.3d 358, 368 (4th Cir. 2012). "A defendant's attempt to have her trial severed from that of a co-defendant is far less likely to succeed when the request is based on the asserted need for a co-defendant's testimony." *United States v. Reavis*, 48 F.3d 763, 767 (4th Cir. 1995).

On appeal, the "appellant must show that he was prejudiced by the denial of a severance motion in order to establish that the trial court abused its broad discretion in that regard." *United States v. Singh*, 518 F.3d 236, 255 (4th Cir. 2008). And no abuse of discretion will have occurred unless the denial of severance resulted in a miscarriage of justice. *Reavis*, 48 F.3d at 767 ("We will only find an abuse of discretion 'where the trial court's decision to deny a severance deprives the defendant of a fair trial and results in a miscarriage of justice.'").

II. The defendants fail to establish that severance is warranted to obtain Mrs. McDonnell's testimony on Mr. McDonnell's behalf.

To overcome the strong presumption in favor of joint trials in conspiracy cases and obtain severance on the basis of a need for a co-defendant's testimony, the Fourth Circuit requires the defendants to establish four threshold elements: (1) a bona fide need for the testimony of Mrs. McDonnell; (2) the likelihood that Mrs. McDonnell would testify at her husband's trial and waive her Fifth Amendment privilege; (3) the substance of Mrs. McDonnell's testimony; and (4) the exculpatory nature and effect of her testimony. *Parodi*, 703 F.2d at 779. "A defendant seeking to sever his trial from a codefendant's trial based on the asserted need for a codefendant's testimony must satisfy all four requirements articulated in *Parodi*." *Medford*, 661 F.3d at 754 (affirming denial of severance and stating that the "district court, upon concluding that the second *Parodi* factor had not been satisfied was not required to examine the remaining factors in conducting its *Parodi* analysis"). If the defendants meet the four *Parodi* threshold requirements, they then must convince the Court that the following factors weigh in their favor: (1) the significance of Mrs. McDonnell's testimony in relation to the defendants' theory of defense; (2) the extent of the prejudice caused by the absence of her testimony; (3) judicial administration and economy; (4) the timeliness of the motion; and (5) the likelihood that Mrs. McDonnell's testimony could be impeached. *Id.*

A. The defendants' vague and conclusory assertions cannot satisfy the threshold *Parodi* factors.

The defendants fail to meet even the threshold requirements under *Parodi*. When attempting to convince this Court to allow filing of declarations *ex parte*, the defendants conceded that their legal pleadings merely provided an "***unadorned*** summary of the evidence." Def. R. McDonnell's Reply to Mot. for Leave to File Supp. Decl. for Ex Parte at 10 (Doc. No.

136) (emphasis added). Despite apparently recognizing that their bare pleadings were insufficient to meet the test for severance under *Parodi*, as evidenced by their attempt to have the Court consider the declarations, the defendants have now made the strategic decision that their concerns over revealing their trial strategy outweigh the necessity of a severance—or at least a severance right now. While a defendant seeking severance is not required to make a factual showing under oath,[2] the defendants' "vague and conclusory" statements through counsels' pleadings are obviously insufficient. *Parodi*, 703 F.2d at 780. The defendants must establish all four *Parodi* factors to obtain severance. *Medford*, 661 F.3d at 754. They have failed to meet this burden.

1. The bona fide need for, the substance of, and the exculpatory nature of Mrs. McDonnell's testimony.

The defendants' attempt to meet the first, third, and fourth *Parodi* factors essentially boils down to the summary claim that Mrs. McDonnell's testimony would exculpate Mr. McDonnell in "at least four ways": (1) her testimony "would disprove the Government's primary claim" as to the existence of a criminal conspiracy; (2) her testimony "would refute the Government's allegation" that Mr. McDonnell used his office to "promote" products; (3) her testimony "would refute the Government's allegation" that she solicited gifts and loans; and (4) her testimony "would refute the Government's allegation[s]" of concealment of the crimes. Def. Mem. at 8. Without any further specifics, blanket assertions that Mrs. McDonnell "would refute" or "would disprove" fall short of the necessary factual showing. "It only amounts to general assertions of [Mr. McDonnell's] innocence." *United States v. Sherifi*, No. 7:12cr20, 2012 WL 4191935, at *2 (E.D.N.C. Sept. 19, 2012). And general allegations that "merely contradict[] part of the Government's proof" do not support severance. *Parodi*, 703 F.2d at 780 (internal alterations, quotations, and citations omitted); *see also Pursley*, 577 F.3d at 1217 ("Under our precedent, this conclusory assertion of innocence lacks the requisite exculpatory value to require severance."); *United States v. DeSimone*, 660 F.2d 532, 540 (5th Cir. 1981) (affirming denial of severance because the "affidavit contains no clear indication of specific and exonerative facts to which he would testify if severed. Rather, it amounts to little more than a bare, conclusory assertion that he did not conspire with his co-defendants, nor they with him.").

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[2] In *Parodi*, the Fourth Circuit noted that "in a proper case" the district court may require a statement under oath. 703 F.2d at 781. Other courts, however, have denied motions for severance based simply on the failure to submit affidavits or declarations. *See, e.g.*, *United States v. Pursley*, 577 F.3d 1204, 1216 (10th Cir. 2009) (affirming denial of severance motion based on "the *absence*, at the time the motions were filed, of affidavits from [co-defendants] validating [movant defendant's] assertions"); *United States v. Struminikovski*, No. 87cr669-1, 1998 WL 74378, at *3 (N.D. Ill. July 12, 1988) ("To justify severance, a defendant *must provide some support, such as an affidavit or the existence of recorded testimony*, that his codefendant would testify in a manner that would exculpate him").

If Mrs. McDonnell plans to summarily deny the allegations in the indictment, this weighs against the exculpatory value of her testimony. "A codefendant's proposed testimony lacks credibility when it does not contravene his own penal interests." *United States v. Tencer*, 107 F.3d 1120, 1133 (5th Cir. 1997); *accord United States v. Beale*, 921 F.2d 1412, 1428 (11th Cir. 1991); *United States v. Calhoun*, 3:08cr77, 2010 WL 235026, at *3 (S.D. Miss. Jan. 15, 2010). Her testimony would be entirely self-serving. *See DeSimone*, 660 F.2d at 540 ("[B]ecause the purportedly exonerating testimony proffered by [co-defendant] did not contravene his own penal interests, but instead was extremely self-serving, it lacked a certain amount of credibility."). So nonexistent are the details about Mrs. McDonnell's denials that it is incredible to think that she actually would risk cross-examination to make the flat denials of the charges conveyed in the defendants' severance motions. And without such details it is impossible for the defendants to meet their burden of showing a bona fide need for Mrs. McDonnell's testimony.

2. The likelihood that Mrs. McDonnell would testify at her husband's trial and waive her Fifth Amendment privilege.

To meet the final remaining threshold *Parodi* factor, the defendants must demonstrate a likelihood that Mrs. McDonnell would waive her Fifth Amendment rights and testify at a severed trial regardless of which trial began first. *Medford*, 661 F.3d at 753; *see also United States v. Silverio*, No. 12-4629, 2013 WL 870638, at *1 (4th Cir. Mar. 11, 2013) (unpublished) (affirming district court's denial of severance motion when counsel was "equivocal" about likelihood of co-defendant testifying). The likelihood of Mrs. McDonnell's actual testimony at trial has two components: her willingness to testify in Mr. McDonnell's defense and his intent to actually call her. The defendants' pleadings are noncommittal on both components. Mrs. McDonnell's attorney merely states that it is "***like[ly]*** that [she] would testify at [Mr. McDonnell's] trial and waive [her] Fifth Amendment privilege" ***if*** called. Def. Mem. at 10 (emphasis added).

But, it is far from clear that Mrs. McDonnell actually would waive her Fifth Amendment rights at Mr. McDonnell's separate trial given her refusal to do so at a joint trial. *Id.* at 10. If Mr. McDonnell were tried first, Mrs. McDonnell would purportedly waive her rights against self-incrimination and testify on his behalf—knowing full well that her own trial would occur next and her statements would be used against her. As noted by the Eastern District of North Carolina, "[i]f [the defendant] intends to invoke his Fifth Amendment privilege at a joint trial, then the court can think of no reason why [s]he would waive the privilege by testifying at [co-defendant's] trial in the event [co-defendant] was tried first." *United States v. Dawson*, No. 5:12cr284-F2, 2013 WL 3381380, at *2 (E.D.N.C. July 8, 2013). The Court should reject the defendants' inexplicable claim that Mrs. McDonnell is likely to testify at a severed trial, even though her testimony could be used against her.

Mr. McDonnell is even more noncommittal regarding whether he would call his wife to testify at his trial, stating repeatedly that he simply would like the "option" to call her. Def. Mem. at 2, 9, 14. Indeed, the heading on page 7 reads "Mrs. McDonnell ***Could*** Provide Testimony That Exculpates Mr. McDonnell." Def. Mem. at 7 (emphasis added). Even after the Government pointed out the equivocal nature of Mr. McDonnell's intent to use Mrs. McDonnell as a witness, *see* Gov. Resp. in Opp'n to Mot. for Leave to File Supp. Decl. for Ex Parte Review at 5 (Doc. No. 131), Mr. McDonnell responded by merely stating that he has the "***present*** intention" of calling Mrs. McDonnell. Def. R. McDonnell's Reply to Mot. for Leave to File Supp. Decl. for Ex Parte Review at 10 (Doc. No. 136) (emphasis added). A "present intention" to call Mrs. McDonnell is incongruous with Mr. McDonnell's basic argument that he will be unable to obtain a fair trial without her testimony.

B. The defendants also fail to meet the remaining five *Parodi* considerations.

Even assuming that the defendants had established all four *Parodi* threshold requirements—which they plainly have not—they have not shown that the remaining five *Parodi* considerations weigh in their favor. First, as to the significance of Mrs. McDonnell's testimony in relation to the defendants' theory of defense, the defendants' "vague and conclusory allegations," *Parodi*, 703 F.2d at 780, provide no insight. They broadly contend that Mrs. McDonnell would "fully corroborate" the absence of a conspiratorial agreement. Def. Mem. at 11. But based on the record before this Court, they fail to offer any specific examples of how Mrs. McDonnell's testimony will do so.

As for the second consideration, the extent of the prejudice caused by the absence of her testimony, the defendants contend that her "omnipresence throughout the indictment" requires her testimony. Def. Mem. at 12. But other witnesses or documents may be able to provide the same information that Mr. McDonnell seeks (which the Court cannot determine absent more factual specifics from the defendants). Speculative allegations of prejudice, without specific examples, are insufficient. When considering prejudicial joinder on appeal, the Fourth Circuit has held: "Speculative allegations as to possible prejudice do not meet the burden of showing an abuse of discretion in denying a motion for severance." *United States v. Becker*, 585 F.2d 703, 707 (4th Cir. 1978).

As to the third consideration, judicial administration and economy weigh in favor of trying the defendants together. *United States v. Ford*, 88 F.3d 1350, 1361 (4th Cir. 1996). The Fourth Circuit has made clear that this is an important consideration directing trial courts to "***pay close attention*** to judicial administration and economy" when making their severance determinations. *Parodi*, 703 F.2d at 779 (emphasis added). "Joint trials play a vital role in the criminal justice system and serve important interests: they reduce the risk of inconsistent verdicts and the unfairness inherent in serial trials, lighten the burden on victims and witnesses, increase efficiency, and conserve scarce judicial resources." *United States v. Lopez*, 649 F.3d 1222, 1233 (11th Cir. 2011). "It would impair both the efficiency and the fairness of the criminal justice system to require that prosecutors bring separate proceedings, presenting the same evidence again and again, requiring victims and witnesses to repeat the inconvenience (and sometimes trauma) of testifying, and randomly favoring the last-tried defendants who have the advantage of knowing the prosecution's case beforehand." *Richardson v. Marsh*, 481 U.S. 200, 210 (1987).

Furthermore, the defendants obviously receive great benefits from separate trials. The defendant going second receives a precise, highly detailed transcript of the Government's case, and codefendants can offer directly conflicting defenses, shifting the blame onto each other, without having a single jury sort out the conflicts. In this case, the second defendant will inevitably receive *Jencks*, *Giglio*, and other discovery materials at the time of disclosure to the first defendant. *See United States v. Thomas*, 48 F.3d 763, 767 (4th Cir. 1995) ("We will not grant a severance when doing so would allow co-defendants to obtain benefits that they would not have but for their joint indictment." (internal quotation and citations omitted)). But as the Supreme Court has observed, "it is well settled that defendants are not entitled to severance merely because they may have a better chance of acquittal in separate trials." *Zafiro*, 506 U.S. at 540.

In response, the defendants claim without explanation that severed trials "will be much less complex." Def. Mem. at 14. The defendants further claim, without explanation, that "separate trials are likely to take less combined time to resolve than the joined one." *Id.* at 15. But the joint trial is currently scheduled for five to six weeks. Given that the evidence is largely overlapping as to both defendants' involvement in the conspiracy, at a severed trial the Government would present basically the same case twice. It is difficult to imagine how separate trials could take less combined time to resolve than a joint trial.

As for the fourth consideration, the timeliness of the motion, the defendants' motion for severance is timely filed. But, as explained more fully below, their refusal to provide more than vague and conclusory assertions and attempt to utilize the filing of their severance motion as a placeholder for judicial determination at some later, unspecified date (if and when they should choose to supplement the record) may very well turn what would otherwise be a timely motion into an untimely one.

The final consideration, the likelihood that Mrs. McDonnell's testimony could be impeached, weighs heavily against severance. While it is unclear on the current record to what she would purportedly testify, the defendants' trial strategy boils down to their argument that—

since she was not an elected or paid government official—Mrs. McDonnell cannot be guilty unless Mr. McDonnell is guilty. *See* Def. M. McDonnell's Mem. in Supp. Mot. to Dismiss at 9 (Doc. No. 119) ("Without a viable corruption case against Governor McDonnell, the Government's corruption case against Mrs. McDonnell must necessarily collapse as well.") As a result, Mrs. McDonnell has a strong incentive to attempt to exonerate Mr. McDonnell at trial, which would serve as significant impeachment fodder on cross-examination. In addition, the Government has compelling evidence that Mrs. McDonnell attempted to obstruct justice by lying to law enforcement officers and falsifying records to cover up the scheme. *See* Ind. ¶¶ 104, 106–107. This would further undercut the credibility and usefulness of her testimony before the jury. Factual detail regarding the specifics of Mrs. McDonnell's anticipated testimony would allow the Government to explain how that testimony could be impeached by emails, text messages, and other witnesses' testimony, but the defendants have refused to provide such specifics. In any event, even the vague and conclusory assertions of Mrs. McDonnell's testimony appear to be eminently impeachable, and this factor weighs against severance.

C. Defendants' reliance on *Shuford* for their claim that severance is obligatory here is erroneous.

Throughout their brief, the defendants rely heavily on *United States v. Shuford*, 454 F.2d 772 (4th Cir. 1971), a 2-1 Fourth Circuit case from 40 years ago that is factually distinguishable and fails to take into account much intervening law. Def. Mem. at 1, 2, 5, 6, 14, 15, 16, and 23. The defendants claim that "a severance is ***obligatory*** where one defendant's case rests heavily on the exculpatory testimony of his codefendant, willing to give such testimony but for the fear that by taking the stand in the joint trial he would jeopardize his own defense." *Shuford*, 454 F.2d at 776 (emphasis added), *quoted in* Def. Mem. at 6. Presumably, on the defendants' view, under *Shuford*'s statement of an obligatory right to a severance, all that they need to do is assert that

Mrs. McDonnell will not testify in a joint trial because it would jeopardize her own defense, and that is essentially the end of the matter.

In 1993, in keeping with a long tradition of law in analyzing severances, the Supreme Court addressed a circuit split on a defendant's right to a severance when codefendants had conflicting defenses. A number of lower-court cases had suggested a rather categorical approach to joint trials where the codefendants had antagonistic defenses. As the Supreme Court noted, "a vast number of [lower] court cases say that a defendant is entitled to a severance when the defendants present mutually antagonistic defenses in the sense that the acceptance of one party's defense precludes the acquittal of the other defendant." *Zafiro*, 506 U.S. at 537 (internal quotation marks omitted). The Supreme Court continued that "petitioners urge us to adopt a bright-line rule, mandating severance whenever codefendants have conflicting defenses." *Id.* at 538. But the Supreme Court responded, "We decline to do so." *Id.* The Court rejected that mutually antagonistic defenses are "prejudicial per se" and explained that Fed. R. Crim. P 14 "does not require severance even if prejudice is shown; rather it leaves the tailoring of relief to be granted, if any, to the district court's sound discretion." *Id.* at 538-539.

Citing *Shuford*, the defendants seem to argue that when defendants assert ***compatible*** defenses that involve denying all the charges, the defendants have a greater right (indeed an absolute one) to a severance than the Supreme Court held in *Zafiro* that defendants asserting antagonistic defenses have. But such an argument cannot be supported under the Supreme Court's long line of authority illustrated most recently by *Zafiro* or the Fourth Circuit's cases like *Parodi*, *Dinkins*, and *Medford*. Thus, *Shuford* offers no path for the defendants to rely on vague and conclusory assertions in their pleadings.

Moreover, in *Parodi*, this Court limited *Shuford* in part due to the simplicity of the trial in *Shuford* and the extremely narrow focus of the codefendant's testimony that prompted the separate trials. After noting that the conspiracy charged in *Parodi* occurred, unlike the one in *Shuford*, "over a substantial period of time at various locations" involving multiple participants, *Parodi* distinguished *Shuford* as follows:

> In *Shuford* the issue centered on one simple fact, *i.e.*, the instructions given by the defendant to his employee for the billing of a single charge made against one single individual on one day. The Government's witness gave one version of the instruction; the defendant a contradictory one. If the defendant's version were the true one, he was innocent; if the witness' version were accurate, the jury could find him guilty. The co-defendant was expected to testify, if severance was granted, that the defendant's version was correct.

Parodi, 703 F.2d at 781. As the Fourth Circuit aptly observed in language that applies equally here, "That is not this case." *Id*; *see also, e.g.*, *United States v. Santoni*, 585 F.2d 667, 674 (4th Cir. 1978) (noting the "unique factual setting" of *Shuford* in declining to extend it).[3] In sum, *Shuford* does not support the defendants' motion to sever in this case.

III. The defendants fail to establish that Mr. McDonnell's testimony at a joint trial will be impeded by the marital privilege so as to result in substantial prejudice.

The defendants next argue that Mr. McDonnell wants to testify about exculpatory marital communications but that Mrs. McDonnell will invoke the marital privilege to prevent this—but only at a joint trial. As a threshold matter, the defendants' litigation strategy and common sense seriously undermine their claim that Mrs. McDonnell would invoke the marital communications privilege at a joint trial. Mrs. McDonnell has made plain her belief that the Government's ability to successfully prosecute her is contingent on its successful prosecution of Mr. McDonnell. Def.

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[3] The Supreme Court has rejected *Shuford* on a separate ground relating to aiding-and-abetting liability. *See Standefer v. United States*, 447 U.S. 10, 14 & n.7 (1980).

M. McDonnell's Mem. in Supp. Mot. to Dismiss at 9 (Doc. No. 119). Mr. McDonnell, in turn, claims that Mrs. McDonnell "intends to invoke [the marital communications privilege] at a joint trial" to prevent him "from testifying about highly exculpatory conversations he had with his wife." Def. Mem. at 17 Left unexplained, and apparently inexplicable, is why Mrs. McDonnell would prevent evidence from being presented to the jury at a joint trial that she apparently believes would inure to her benefit by exculpating her husband.

Mrs. McDonnell's proclaimed willingness to waive the marital communications privilege at separate trials, regardless of the order of the trials, further undercuts the defendants' claims that Mrs. McDonnell actually would invoke the privilege at a joint trial. If Mr. McDonnell's trial occurred first and he disclosed marital communications, through testimony or the introduction of documentary evidence, those communications would no longer be privileged. *United States v. Hamilton*, 701 F.3d 404, 407 (4th Cir. 2012) ("But, of course, to be covered by the privilege, a communication between spouses must be confidential; 'voluntary disclosure' of a communication waives the privilege."). Further, if Mrs. McDonnell followed through on her purported offer to testify on Mr. McDonnell's behalf, even if he were tried first, then she could be cross-examined by the Government regarding those communications. The Government would then be able to use the marital communications revealed at Mr. McDonnell's trial (*e.g.*, the documentary evidence or Mrs. McDonnell's testimony) against her at her subsequent trial. As such, the defendants' claim that Mrs. McDonnell would invoke the marital communications privilege at a joint trial, but waive it at a separate trial, is perplexing to say the least.

The defendants' most recent litigation tactic suggests that Mrs. McDonnell would not actually invoke the marital communications privilege at either a joint or severed trial, because it is not in her strategic interest to do so. In Mr. McDonnell's notice to the Court of his refusal to file the two declarations, Mr. McDonnell asks the Court, if it is inclined to deny the severance motion, to delay ruling "until the defendants are able to support their request with detailed information." Def. R. McDonnell Notice of Non-Filing of Decl. at 1 (Doc. No. 140) ("RFM Notice"). He then claims that the "defense intends to provide such information closer to the time of trial in the event that the Court declines to grant severance now." *Id.* Apparently, Mrs. McDonnell is willing to allow the disclosure of the marital communications at issue in advance of trial, thereby waiving any privilege—but is unwilling to waive the privilege at this time. This tactical decision suggests little more than a desire to choose the time and place of the waiver so as to maintain a perceived strategic advantage.

Even assuming that Mrs. McDonnell would, in fact, invoke privileged marital communications at a joint trial to prevent Mr. McDonnell from testifying about their conversations, the defendants have failed to meet their burden of showing that they "will be unable to obtain a fair trial without severance." *Parodi*, 703 F.2d at 780 (internal quotations omitted). In their brief in support of their severance motion, the defendants make conclusory assertions that Mr. McDonnell's testimony about "several marital communications [] are clearly exculpatory." Def. Mem. at 19. The defendants then lists seven topic areas that they claim that Mr. McDonnell will testify to that relate to exculpatory marital communications.[4] *Id.* The defendants fail to provide any specifics regarding when the marital communications occurred or the circumstances of the communications. While the Government can only guess at what Mr. McDonnell would specifically testify to, it appears that he intends to disavow knowledge of each of the topic areas. *Id.* But even if Mrs. McDonnell successfully invoked the marital communications privilege, Mr. McDonnell still would be able to take the stand and disavow knowledge of each of the listed topic areas. For example, he would be free to testify that he didn't know that Mr. Williams paid for the New York shopping trip or the Rolex watch. Mr. McDonnell would similarly be able to testify that Mrs. McDonnell did not tell him about those things, as the ***absence*** of communications could not be considered privileged under the marital communications privilege. Given Mr. McDonnell's unfettered ability to testify about his lack of knowledge and the lack of communications with Mrs. McDonnell regarding the seven listed topic areas, and in the absence of any detail whatsoever about Mrs. McDonnell's testimony, the defendants have failed to demonstrate severance is necessary in order for them to receive a fair trial.

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[4] A close examination of his brief reveals that of these seven topic areas, he only claims that he "intends to disclose" marital communications for three of them. Def. Mem. at 19-21 (*e.g.*, "the Conspiratorial Agreement," "the $50,000 Personal Loan to Mrs. McDonnell," and "the Rolex Watch"). For the remaining four topic areas, Mr. McDonnell merely claims that he "intends to rely" on marital communications. *Id.* The Government is unable to discern if there is a purposeful distinction between "intends to disclose" and "intends to rely." To the extent that "intends to rely" means something less than the disclosure of privileged communications, Mrs. McDonnell would be unable to invoke the marital privilege to prevent Mr. McDonnell from testifying on these topic areas.

Mr. McDonnell's reliance on the Third Circuit's decision in *United States v. Ammar*, 714 F.2d 238 (3d Cir. 1983), is misplaced.[5] Def. Mem. at 18. In his memorandum, Mr. McDonnell cites *Ammar* in support of his argument that "severance is ***required*** where one spouse seeks to disclose exculpatory marital communications, but the other invokes the privilege." *Id.* at 17–

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[5] The other cases cited by Mr. McDonnell in support of his argument that severance should be granted where one spouse may attempt to invoke the marital privilege are similarly unavailing. *See United States v. Carona*, No. 8:06cr224, 2008 WL 1970221 (C.D. Cal. May 2, 2008) (granting severance, with almost no analysis, in case where wife wanted to testify in her defense and ***inculpate*** her spouse based on court's determination that wife had met burden of establishing the basic exculpatory nature of the communications); *Peek v. United States*, 321 F.2d 934, 942 (9th Cir. 1963) (affirming district court's denial of pre-trial severance motion because "granting of such motion is within the discretion of the district court"); *United States v. Thoresen*, 281 F. Supp. 598, 600–01 (N.D. Cal. 1967) (granting severance based on potential invocation by both defendants, who had antagonistic defenses, of adverse spousal privilege where law at the time barred the testimony of one spouse against the other unless both consented).

18 (emphasis added). But the court in *Ammar* merely stated that a "severance ***may*** be granted for a co-defendant spouse, if necessary to protect his or her rights." 714 F.2d at 257 (emphasis added). The court did not suggest that severance was mandatory. In fact, the court in *Ammar* upheld the trial court's denial of severance because the marital communications at issue pertained to ongoing or future criminal activity and severance is "a decision discretionary with the trial court." *Id.* at 258. Here, Mr. McDonnell has failed to provide any specifics about how his purported testimony about maritally privileged communications would be exculpatory. Nor has he been able to explain any legitimate reason why Mrs. McDonnell would invoke the privilege in a joint trial, but not in a separate trial. As such, *Ammar* dictates that this Court has the discretion to deny severance, and the Court should exercise that discretion to deny the motion here.

IV This Court should reject the defendants' proposal to relitigate severance on the eve of trial, using information that the defendants possess now.

In response to this Court's Order of April 17, 2014, Doc. No. 137 ("April 17 Order"), Mr. McDonnell informed the Court that the defendants declined to pursue either of the two options that the Court provided for them to submit factual support for their severance motion. *See* RFM Notice at 2. The defendants declined to file their attorneys' declarations under seal, but not *ex parte*, so that this Court and the Government could review them in evaluating their severance motion, and they also declined to file both *ex parte* and under seal their already drafted declarations to preserve the record on appeal. *Compare* April 17 Order at 3 *with* RFM Notice at 3. Instead, Mr. McDonnell filed a notice expressing his intent to follow a third option that this Court's order of April 17 did not offer, that Fed. R. Crim. P 12 does not permit, and that this Court's agreed-upon scheduling order of February 21, 2014, does not authorize. Mr. McDonnell asserts that, if this Court denies his severance motion, the "defense intends" to "support their request with detailed information" and will do so "closer to the time of trial." RFM Notice at 2. The Court should reject this third option.

Under Fed. R. Crim. P 12(c), a "court may, at the arraignment or as soon afterward as practicable, set a deadline for the parties to make pretrial motions and may also schedule a motions hearing." In keeping with this provision, this Court entered an agreed-upon scheduling order on February 21, 2014. Doc. No. 64. That order provides that the defendants "shall file all dispositive and other motions pursuant to Fed. R. Crim. P 12 no later than March 25, 2014, unless for good cause shown." *Id.* at 1. This provision covers a severance motion because Rule 12 expressly identifies severance motions and says that "a Rule 14 motion to sever charges or defendants" is among the motions that "must be raised before trial." Fed. R. Crim. P 12(b)(3)(D). Although this provision refers merely to "before trial," the 1974 Advisory Committee Notes for Rule 12 explain that a court's scheduling order sets the specific pretrial deadline. The Advisory Committee notes say that, while an old version of the rule was "unclear as to whether the waiver results only from a failure to raise the issue prior to trial or from the failure to do so at the time fixed by the judge for a hearing," the current version of Rule 12 "makes clear that the defendant and, where appropriate, the government have an obligation to raise the issue at the motion date set by the judge pursuant to subdivision (c)." The plain language of Rule 12(e) confirms what the Advisory Committee notes say: "A party waives any Rule 12(b)(3) defense, objection, or request not raised ***by the deadline the court sets under Rule 12(c)*** or by any extension the court provides. For good cause, the court may grant relief from the waiver." Fed. R. Crim. P 12(e) (emphasis added).

The Fourth Circuit has rigorously enforced the deadlines for motions that must be made before trial under Rule 12. *See, e.g., United States v. Cabrera-Beltran*, 660 F.3d 742, 753-54

(4th Cir. 2011) (claim of indictment error waived by failure to file timely pretrial motion); *United States v. King*, 628 F.3d 693, 699 (4th Cir. 2011) (same); *United States v. Ruhe*, 191 F.3d 376, 385–87 (4th Cir. 1999) (suppression ruling); *United States v. Ricco*, 52 F.3d 58, 62 (4th Cir. 1995) (same). More specifically, the Fourth Circuit has applied this precedent to severance motions. "We conclude that Jacobs waived his objection to a joint trial because he failed to file a motion to sever prior to trial, *see* Fed. R. Crim. P. 12(b)(3)(D), and does not claim on appeal that he had insufficient information to make a severance motion prior to trial." *United States v. Jacobs*, 70 F. App'x 689, 691 (4th Cir. 2003) (citing Fed. R. Crim. P. 12(e); *United States v. Ferguson*, 778 F.2d 1017, 1019-20 (4th Cir. 1985)); *see also United States v. Akins*, __ F.3d __, No. 12-40515, 2014 WL 1225098, at *12 (5th Cir. Mar. 25, 2014) ("[W]here an appellant failed to move to sever before trial as Federal Rule of Criminal Procedure 12(b) requires, he waive[s] his severance argument on appeal." (internal quotation omitted)). These cases are in keeping with longstanding Supreme Court precedent. *Davis v. United States*, 411 U.S. 233 (1973) (constitutional challenge to selection of grand jurors waived when no pretrial motion was made; good cause could not be established because facts supporting challenge were available before trial).

In essence, the defendants seek to file an unsupported placeholder motion by the motions deadline and then, if they lose that unsupported motion, relitigate the issue on the eve of trial, at a time of their choosing, and force this Court and the Government to evaluate whatever factual detail they choose to provide then. But in announcing their intention to follow this procedure, the defendants cannot claim that they "had insufficient information" to provide the factual support for their motion by the deadline in the agreed-upon scheduling order. *Jacobs*, 70 F. App'x at 691; *see also Ferguson*, 778 F.2d at 1020 ("The record shows that sufficient information was available to defendants before trial to allow them to frame motions for severance based on a theory of irreconcilable defenses; consequently, there was not good cause, under Fed. R. Crim. P 12(f), to excuse their waiver."). Moreover, this Court has already rejected what the defendants would have to invoke as "good cause"; this Court found that "McDonnell has failed to demonstrate either that the Declarations are privileged or that they necessarily reveal trial strategy." April 17 Order at 3 n. 2. But even if their declarations were privileged or did reveal trial strategy, that would not constitute good cause because this Court correctly determined that *ex parte* affidavits are unjustifiable here.

In seeking unilaterally to move the agreed-upon deadline for a severance motion and force this Court to adjudicate severance twice, the defendants rely on their disagreement with this Court's ruling declining to accept *ex parte* filings. But in declining to accept the defendants *ex parte* filings on the severance motion, this Court made two points that the defendants' proposal would effectively undercut.

First, this Court concluded that "allowing Defendants to support their Motion to Sever with argument and evidence not available to the Government would effectively deprive the Court of an adversarial proceeding in a complex determination. McDonnell has not met the high burden to justify such a deprivation." April 17 Order at 2. But by forcing the United States and the Court to evaluate their severance motion on the eve of trial, the defendants again seek to "effectively deprive the Court of an adversarial proceeding in a complex determination" by forcing the litigation to occur when the Court and the parties are deeply involved in trial preparations immediately before trial. The need for orderly pretrial procedure is exactly why Rule 12 and this Court's February 21 order set a deadline for severance motions well in advance of trial, and apparently why the defendants—at least at first—insisted on prompt resolution of their motion.[6] *Cf. Davis*, 411 U.S. at 242 ("a claim once waived pursuant to [Rule 12] may not later be resurrected, either in the criminal proceedings or in federal habeas, in the absence of the showing of 'cause' which that Rule requires.").

Second, this Court observed that allowing the defendants to use *ex parte* filings when they are the movants—seeking relief that cuts against the usual rule that coconspirators are tried together—would "inequitably allow Defendants to employ the marital communications privilege as both a sword and a shield." April 17 Order at 3 n. 2. The defendants' proposal to relitigate a severance motion at a time of their choosing, right before trial, aggravates the problem of their seeking to use secret pleadings as both sword and shield, using information that they have possessed all along.

In short, there is no justification for revisiting this Court's severance ruling on the eve of trial, after the agreed-upon deadline for a severance motion, because the defendants do not want to reveal until then information that they possess now.

Conclusion

For the foregoing reasons, the Government respectfully requests that the Court deny the defendants' Motion to Sever Joint Trial (Doc. Nos. 114 and120).

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[6] In moving for a severance, the defendants stated that "the defense requests that the Court sever the accused now, not midtrial" because they "should not have to face the possibility of changing his entire trial strategy midstream." Def. Mem. at 3. "If a severance is not granted now, the defense must prepare as if the McDonnells will be tried together." *Id.* at 4. "Not only would a wait-and-see approach prejudice Mr. McDonnell, it would be less efficient and would make management of the trial more difficult in a variety of ways." *Id.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2014, a true and correct copy of the foregoing was delivered to all counsel of record via the Court's Electronic Filing System.

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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	No. 3:14cr12-JRS
ROBERT F MCDONNELL and MAUREEN G. MCDONNELL,	)	
	)	
Defendants.	)	

RESPONSE OF THE UNITED STATES TO DEFENDANTS' MOTIONS FOR OMNIBUS VOIR DIRE RELIEF

The United States of America, by undersigned counsel, hereby responds to defendant Robert F McDonnell's and defendant Maureen G. McDonnell's Joint Motion for Omnibus Voir Dire Relief. *See* Doc. Nos. 109, 110, 113.[1] As a general matter, the Government considers Mr. and Mrs. McDonnell to be equal to other defendants who appear before this Court; their treatment should be no better and no worse. Public interest in the case, however, warrants some of the additional voir dire measures proposed by the defendants—not just to ensure that the defendants receive a fair trial, but to ensure that the public and the Government do, as well.[2] As to the specific measures requested in the defendants' motion, the Government supports them in part, opposes them in part, and defers to the Court in part, as described below.

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[1] Mrs. McDonnell's motion, Doc No. 113, adopts Mr. McDonnell's motion, Doc. No. 109, and memorandum in support, Doc No. 110 ("Def. Mem.").

[2] The Government strongly disagrees with the defendants' implicit accusations that it is the source of the "unnamed law enforcement sources" that provided information to the press. Def. Mem. at 3. It should be noted that Mr. McDonnell, his legal defense fund, and supporters have made numerous public statements that captured media attention. *See, e.g.*, Laura Vozzella, *McDonnell Says He'll Return All of Businessman's Gifts*, Washington Post, July 31, 2013; Laura Vozzella, *McDonnell's Backers Create Defense Fund*, Washington Post, July 20, 2013; Olympia Meola, *McDonnell's Lawyer: Star Scientific Got No Public Money*, Richmond Times-Dispatch, July 19, 2013. And Mr. McDonnell's legal defense fund has sent blast emails to large groups of individuals, including potential witnesses in this case, which include self-serving characterizations of the prosecution, such as: (1) "Justice Goes After the GOP" (Feb. 1, 2014); (2) "Indictment A Lot of Smoke But No Fire" (Jan. 23, 2014); and (3) "Governor Bob McDonnell's legal team filed their first public motions in response to the government's wrongful indictment built upon a witness with no credibility" (Jan. 22, 2014). Nevertheless, the

I. Applicable Law

Federal Rule of Criminal Procedure 24 provides the procedure for empaneling a jury in a federal criminal trial:

> (1) In General. The court may examine prospective jurors or may permit the attorneys for the parties to do so.
>
> (2) Court Examination. If the court examines the jurors, it must permit the attorneys for the parties to:
>
> (A) ask further questions that the court considers proper; or
> (B) submit further questions that the court may ask if it considers them proper.

Fed. R. Crim. P 24(a).

Under this rule, district courts have broad discretion relating to voir dire, so long as the questions presented by the trial court ensure that the defendants have "a fair trial by a panel of impartial, 'indifferent' jurors." *Irvin v. Dowd*, 366 U.S. 717, 722 (1960); *see also United States v. Lancaster*, 96 F.3d 734, 738 (4th Cir. 1996) (en banc) ("The conduct of voir dire necessarily is committed to the sound discretion of the trial court because the determination of impartiality, in which demeanor plays such an important part, is particularly within the province of the trial judge."). In order to determine jury impartiality, "the Constitution lays down no particular tests and procedure is not chained to any ancient or artificial formula." *Skilling v. United States*, __U.S. __, 130 S.Ct. 2896, 2917 (2010) (internal quotation omitted).

Government agrees that the volume of pretrial publicity—regardless of perceived tone—warrants some of the measures proposed by the defendants.

II. Proposed Measures

1. Jury Questionnaire

The parties previously agreed to submit proposed jury questionnaires to the Court. *See* Order ¶ 3 (Doc. No. 64). The Government will reserve comment on the broad topic areas foreshadowed by the defendants, Def. Mem. at 15, until it sees their actual questionnaires. The Government defers to the Court, however, on balancing judicial economy concerns in evaluating whether the Court should mail the questionnaires to the prospective jurors or require prospective jurors to come to the Courthouse.

2. Attorney Questioning of Prospective Jurors

The Government opposes direct attorney questioning of individual prospective jurors. It is well-settled that a trial judge may conduct voir dire without allowing counsel to pose questions directly to the potential jurors. Fed. R. Crim. P 24(a). And "a trial judge may question prospective jurors collectively rather than individually." *United States v. Bakker*, 925 F.2d 728, 734 (4th Cir. 1991). A defendant does not always have the right "to have questions posed during voir dire specifically directed to matters that conceivably might prejudice veniremen against him." *Ristaino v. Ross*, 424 U.S. 589, 594 (1976). It is only necessary that the "voir dire as a whole is reasonably sufficient to uncover bias or partiality in the venire." *Lancaster*, 96 F.3d 734, 739-40 (4th Cir. 1996).

Because the Court does not customarily permit attorney questioning, and because the Court can ably conduct voir dire from the bench, the Court should not make a special exception in this case.

3. Additional Peremptory Challenges for the Defendants

The Government opposes additional peremptory challenges for the defendants—particularly, as the defendants request, without commensurate additional challenges for the Government. In general, in a non-capital felony case involving multiple defendants, the government has 6 peremptory challenges, and the defendants jointly have 10 challenges. Fed. R. Crim. P 24(b)(2). However, a district court "may allow additional peremptory challenges to multiple defendants, and may allow the defendants to exercise those challenges separately or jointly." Fed. R. Crim. P 24(b); *see* E.D. Va. Local R. 24(B) ("In a criminal case where there is more than one defendant, the Court may allow each or both sides more than the usual number of peremptory challenges permitted by law").

Moreover, "[t]he requirement to treat the parties defendant as a single party for the purpose of peremptory challenges has long been a part of the federal system " *Stilson v. United States*, 250 U.S. 583, 586 (1919). Although Rule 24 permits the court to grant additional challenges in multi-defendant cases, it remains within the court's discretion whether to do so. *Id.* at 586; *see also United States v. Meredith*, 824 F.2d 1418, 1423 (4th Cir. 1987) (affirming denial of additional challenges in seven-defendant case, where court offered defense counsel the opportunity to explain why additional challenges were necessary, and allowed one additional challenge to strike prospective juror with hearing impairment).

Additional peremptory challenges also protract jury selection. *See* Fed. R. Crim. P 2 (rules should be interpreted to eliminate unjustifiable delay). Indeed, "[t]he whole point of setting a limit on the number of peremptory challenges is to require counsel to make strategic decisions and to conserve judicial resources that might be wasted by allowing each counsel to challenge every juror." *United States v. Farmer*, 924 F.2d 647, 653 (7th Cir. 1991).

While the defendants summarily characterize their trial goals as "divergent,"[3] they fail to explain with any specificity how this differs from most joint trials in which co-conspirators have various defenses. The defendants also claim that the purportedly negative publicity about the case somehow warrants additional strikes (and fewer for the Government), but provide no authority for this proposition. In sum, the defendants have failed to demonstrate that, in addition to the usual voir dire procedures, additional peremptory challenges are necessary to ensure that the jurors in this case are impartial. *See Stilson*, 250 U.S. at 586 ("[T]here is nothing in the Constitution of the United States which requires the Congress to grant peremptory challenges to defendants in criminal cases; trial by an impartial jury is all that is secured.").

Accordingly, the Government opposes the defendants' request for additional peremptory challenges, but in the event the Court increases the defendants' number of peremptory challenges, the Government requests a commensurate increase in its peremptory challenges.

4. The "Struck System" of Peremptory Challenges

The defendants propose the use of the "struck system" for exercising peremptory challenges. Because the Court does not customarily use this method, the Government opposes this request. We note that no other Court in this division uses this method, and the Government is unaware of any reason why this case should be treated differently. The Court should conduct jury selection using its typical procedures.

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[3] This factual assertion is somewhat inconsistent with the defendants' motions to sever, in which they claim that both Mr. McDonnell and Mrs. McDonnell will provide exculpatory testimony as to themselves and each other. *See, e.g.*, Mem. in Supp. Mot. Sever (Doc. No. 115), at 8 (noting that Mrs. McDonnell's testimony would exculpate Mr. McDonnell "in at least four ways"), 19 (noting that Mr. McDonnell will disclose confidential marital communications to show that no conspiratorial agreement existed between them).

5. A Neutral Summary of the Case

The Government takes no position on this request, but notes that it can provide the Court with a paragraph summary of the pending Indictment for use in jury selection. This will not be "neutral" as the allegations in the Indictment are not neutral.

6. Juror Note-Taking During Trial

The Government does not oppose the defendants' request that jurors be permitted to take notes during trial and note that this is the Court's customary practice..

7. Disclosure of Alternate Jurors

The Government defers to the Court on the defendant's request that alternate jurors not be informed of their status until deliberation.

III. Conclusion

For the foregoing reasons, the Government supports in part, opposes in part, and takes no position in part on the defendants' Joint Motion for Omnibus Voir Dire Relief (Doc. Nos. 109, and 113).

Respectfully submitted,

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I hereby certify that on April 24, 2014, a true and correct copy of the foregoing was delivered to all counsel of record via the Court's Electronic Filing System.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	No. 3:14cr12
ROBERT F MCDONNELL and	)	
MAUREEN G. MCDONNELL,	)	
Defendants.	)	

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANTS' JOINT MOTION TO DISMISS COUNTS 1–11 OF THE INDICTMENT

The United States of America, by undersigned counsel, respectfully files this response in opposition to defendant Robert F McDonnell's and defendant Maureen G. McDonnell's joint Motion to Dismiss Counts 1–11 of the Indictment. *See* Doc. Nos. 105, 111.[1] Counts 1–11 charge both defendants with (i) conspiracy to commit honest-services wire fraud, in violation of 18 U.S.C. § 1349 (Count 1); (ii) honest-services wire fraud, in violation of 18 U.S.C. § 1343 (Counts 2–4); (iii) conspiracy to obtain property under color of official right, in violation of 18 U.S.C. § 1951 (Count 5); and (iv) obtaining and attempting to obtain property under color of official right, in violation of 18 U.S.C. § 1951 (Counts 6–11). The defendants move to dismiss those counts pursuant to Federal Rule of Criminal Procedure 12(b)(3)(B), claiming that the Indictment's allegations are legally insufficient.[2] For the reasons discussed below, the defendants' motion prematurely raises factual issues that should be reserved for trial, is meritless in any event, and should be denied.

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[1] Mrs. McDonnell's motion, Doc. No. 111, adopts Mr. McDonnell's motion, Doc. No. 105, and memorandum in support, Doc No. 106 ("Def. Mem."). In addition, Mrs. McDonnell has filed a separate motion to dismiss, which sets forth additional arguments with respect to Counts 1–11 and also moves to dismiss Count 14. *See* Doc. No. 118. The Government will respond in a separate filing to that motion.

[2] *See* Def. Mem. at 5 (citing Rule 12); Doc. No. 111 at 1 (citing Rule 12(b)(3)(B)).

I. Overview of Facts Alleged in the Indictment[3]

A businessman has a new product. It is a dietary supplement that he believes has various positive health benefits. To convince potential customers to buy the product, he wants independent research studies demonstrating that those health benefits are real, and he wants word of mouth to spread about the health benefits to those who use the product. As with any new product, however, he knows that physicians and researchers may be skeptical, and he knows that finding enough new customers to spread the word will not be easy. *See* Ind. ¶¶ 4–5, 8–12.

The businessman decides to ask his state's governor for help in the matter. The businessman and the governor are not friends, and they had not met before the campaign. But the governor had been elected on a platform of taking action to foster economic development for businesses across the state. On a cross-country flight after the governor takes office, the businessman describes the health benefits of his new product to the governor and explains that the businessman needs the state government's help to further the cause. Six months later, at a dinner at the governor's mansion with the governor and his wife, the businessman again discusses his new product with the governor. *See* Ind. ¶¶ 6–7, 13–14, 17, 25.

Within days of the dinner, the governor's wife requests $65,000 from the businessman—a $50,000 loan and $15,000 to defray the cost of the governor's daughter's upcoming wedding. The businessman discusses the loan with the governor, agreeing that no paperwork is necessary and that no payments need be made for two years. Less than a week after the businessman pays the $65,000, the governor and his family spend more than $2,300 on a day of golf and meals at the businessman's private golf club. The businessman does not join them, but he foots the bill.

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[3] Because the defendants move to dismiss Counts 1–11 of the Indictment as legally insufficient, they are required "to demonstrate that the allegations therein, even if true, would not state an offense." *United States v. Thomas*, 367 F.3d 194, 197 (4th Cir. 2004). The facts set forth here are taken from the Indictment's allegations.

Three days later, the governor's wife offers the governor's mansion for the businessman's upcoming official launch of his new product. Just over two weeks after that, the businessman sends a letter to the governor, reiterating the businessman's desire for help from the state government in obtaining research studies at state universities. *See* Ind. ¶¶ 26–28, 32, 37, 40–41.

Over the year or so that follows, the governor and his wife solicit additional things of value from the businessman, including $70,000 in additional undocumented personal loans negotiated by the governor, thousands of dollars of golf for the governor and his family, a weekend vacation at the businessman's multimillion-dollar lake house (including use of the businessman's Ferrari), and a Rolex. In exchange, the governor agrees to (and does) arrange meetings for the businessman, host events for the businessman, attend events for the benefit of the businessman, and advocate for the businessman's product with other state officials—all in his official capacity and to advance the businessman's effort to obtain research studies and other assistance from state government. The governor intentionally structures his financial dealings with the businessman to avoid disclosure. *See* Ind. ¶¶ 22, 42–101, 110–11.

As described in greater detail below, the conduct set forth above—and alleged in the Indictment here—is a *quid pro quo* bribe scheme that satisfies any reasonable definition of corruption. The defendants' motion to dismiss should therefore be denied.

II. Argument

The defendants have moved pursuant to Federal Rule of Criminal Procedure 12(b)(3)(B) to dismiss Counts 1–11 of the Indictment because, they erroneously claim, (i) the Indictment fails to allege a corruption offense because it does not properly allege the necessary "official action" required to prove a *quid pro quo*, Def. Mem. at 7–28; (ii) the statutes criminalizing the charged conduct are unconstitutionally vague as applied to them, *id.* at 28–29; and (iii) the

United States Constitution forbids federal prosecution of Mr. McDonnell for "non-corrupt conduct that is legal under state law," *id.* at 29–30. For the reasons set forth below, their arguments have no merit, and their motion should be denied.

A. The Indictment adequately charges the necessary elements of the corruption offenses at issue and is sufficient on its face.

To meet the guarantees of the Fifth and Sixth Amendments to the Constitution, an indictment is sufficient if it (i) contains the elements of the offense charged and fairly informs a defendant of the charge; and (ii) enables a defendant to plead double jeopardy as a bar to future prosecutions for the same offense. *See Hamling v. United States*, 418 U.S. 87, 117 (1974). An indictment that tracks the statutory language is normally sufficient if it contains all the elements and is accompanied by a statement of facts that adequately apprises the defendant of the charges against him. *See id*; *see also, e.g.*, *United States v. Lockhart*, 382 F.3d 447. 449 (4th Cir. 2004); *United States v. Bolden*, 325 F.3d 471, 490 (4th Cir. 2003). Counts 1–11 all set forth the elements of the offenses charged, track the statutory language, and inform the defendants with specificity of the charges against them. Accordingly, the Indictment should not be dismissed.

1. Elements of the Corruption Charges[4]

Counts 1–4 of the Indictment are the honest-services wire fraud charges. In pertinent part, the governing statute reads:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. § 1343. In turn, "the term 'scheme or artifice to defraud' includes a scheme or artifice

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[4] The Government omits from this discussion the familiar elements of conspiracy and restricts its focus to the underlying and substantive corruption charges.

to deprive another of the intangible right of honest services." 18 U.S.C. § 1346. And to properly allege honest-services fraud, the Indictment must allege the following elements, which it does in the paragraphs indicated:

> (i) the defendant knowingly devised or participated in a scheme to defraud the public of its right to the honest services of a public official through bribery (¶¶ 109–11, 113);
>
> (ii) the defendant did so knowingly and with an intent to defraud (¶¶ 109, 113);
>
> (iii) the scheme or artifice to defraud involved a material misrepresentation, false statement, false pretense, or concealment of fact (¶¶ 110, 111(b), 112); and
>
> (iv) in advancing, or furthering, or carrying out the scheme to defraud, the defendant transmitted, or caused to be transmitted, any writing, sign, signal, picture, or sound by means of a wire communication in interstate commerce (¶¶ 109, 113).

See Skilling v. United States, __ U.S. __, 130 S. Ct. 2896, 2933–34 (2010); *United States v. Harvey*, 532 F.3d 326, 333 (4th Cir. 2008).

Counts 5–11 charge violations of the Hobbs Act, set forth at 18 U.S.C. § 1951. In pertinent part, that statute reads:

> (a) Whoever in any way or degree obstructs, delays, or affects [interstate] commerce or the movement of any article or commodity in [interstate] commerce, by extortion or attempts or conspires so to do, shall be fined under this title or imprisoned not more than twenty years, or both.
>
> (b) As used in this section the term "extortion" means the obtaining of property from another, with his consent under color of official right.

In turn, to properly allege extortion under color of official right, the Indictment must allege the following elements, which it does in the paragraphs indicated:

(i) proof of the underlying extortion or attempted extortion—that is, the obtaining of or attempt to obtain property under color of official right (¶¶ 115, 117); and

(ii) an effect on interstate commerce (¶¶ 115, 117).

See United States v. Williams, 342 F.3d 350, 353 (4th Cir. 2003). And to prove the obtaining of or attempt to obtain property under color of official right, the Government must prove that "a public official has obtained [or attempted to obtain] a payment to which he was not entitled, knowing that the payment was made in return for official acts." *Evans v. United States*, 504 U.S. 255, 268 (1992). The Indictment also includes that allegation. *See* Ind. ¶¶ 22, 110–11, 114, 116.

2. Applicable Law Governing the Elements

As the Court is well aware, the honest-services fraud and Hobbs Act charges in the Indictment will require proof of a conspiracy or scheme to engage in, or the entering into of, a *quid pro quo* agreement. *See Skilling*, 130 S. Ct. at 2933–34 (citing *United States v. Ganim*, 510 F.3d 134, 147–149) (2d Cir.) (requiring *quid pro quo* for honest-services bribery prosecution) (Sotomayor, J.), *cert. denied* 552 U.S. 1313 (2008)); *United States v. Jefferson*, 674 F.3d 332, 360 (4th Cir.) (requiring *quid pro quo* for honest-services wire fraud counts), *cert. denied* 133 S. Ct. 648 (2012); *Evans* 504 U.S. at 268 (requiring *quid pro quo* under § 1951).[5] Proof of a *quid pro quo*, in turn, requires proof of soliciting, accepting, or obtaining "things of value in exchange for performing official acts on an as-needed basis, so that [when]ever the opportunity presented itself, [the defendant] would take specific action on the payor's behalf." *Jefferson*, 674 F.3d at

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[5] The Indictment need not use that exact phrase, of course. *See, e.g.*, *United States v. Jennings*, 160 F.3d 1006, 1013 (4th Cir. 1998) (characterizing *quid pro quo* requirement as illumination of the statutory term "corruptly" in 18 U.S.C. § 201, the bribery statute applicable to federal public officials); *United States v. Baumann*, 684 F. Supp. 2d 1146, 1150–51 (D.S.D. 2010) (phrase "quid pro quo" is not additional element but is subsumed within statutory term "corruptly" in 18 U.S.C. § 666, the federal program bribery statute).

358 (first alteration in original and internal quotation omitted). Again, the Indictment includes this allegation. *See* Ind. ¶¶ 22, 110, 111(c)(i)–(v), 112, 114, 116. It is therefore legally sufficient.

Importantly, however, the Government need neither prove nor even allege that a public official actually followed through on the corrupt bargain and took or caused official action because "fulfillment of the *quid pro quo* is not an element of the offense." *Evans*, 504 U.S. at 268; *see also United States v. Brewster*, 408 U.S. 501, 526 (1972) ("There is no need [under § 201] for the Government to show that [defendant public official] fulfilled the alleged illegal bargain; acceptance of the bribe is the violation of the statute, not performance of the illegal promise."); *United States v. Hairston*, 46 F.3d 361, 365 (4th Cir. 1995) (Hobbs Act *quid pro quo* requirement is "not onerous" and "[t]he official need not actually fulfill the quid pro quo").

Furthermore, it is beyond dispute that no specific official action need be identified at the time the corrupt agreement is formed or at the time any given bribe payment is made. Rather, "[i]f the public official knows that he or she is expected as a result of the payment to exercise particular kinds of influence or decision making to the benefit of the payor, and, at the time the payment is accepted, intended to do so as specific opportunities arose, that is bribery." *Ganim*, 510 F.3d at 149 (internal quotation omitted). Indeed, in *Skilling* the Supreme Court cited *Ganim* as a paradigmatic honest-services bribery case when rejecting a vagueness challenge to § 1346. 130 S. Ct. at 2934. The Fourth Circuit has similarly adopted *Ganim*'s reasoning. *See Jefferson*, 674 F.3d at 359 ("We agree with [the Second Circuit's] explanation [in *Ganim*] that, 'in order to establish the quid pro quo essential to proving bribery, the government need not show that the defendant intended for his payments to be tied to specific official acts (or omissions).'" (quoting *Ganim*, 510 F.3d at 148)). Thus, in *Jefferson*, the Fourth Circuit approved a jury instruction stating:

> [T]he quid pro quo requirement is satisfied if you find that the government has established beyond a reasonable doubt that the defendant agreed to accept things of value in exchange for performing official acts on an as-needed basis, so that [when]ever the opportunity presented itself, he would take specific action on the payor's behalf.

674 F.3d at 358 (second alteration in original). This instruction had its roots in *Jennings*, which held that "the intended exchange in bribery can be 'this for these' or 'these for these,' not just 'this for that.'" 160 F.3d at 1014. In other words, "all that must be shown is that payments were made with the intent of securing a specific *type* of official action or favor in return. For example, payments may be made with the intent to retain the official's services on an 'as needed' basis, so that whenever the opportunity presents itself the official will take specific action on the payor's behalf." *Id.*[6] As a result, the Indictment need not specify any particular official actions contemplated either at the time of the corrupt agreement or at the time of the payments.

It is equally black-letter law that the agreement between bribe payor and public official need not be explicit.[7] *See Evans*, 504 U.S. at 274 ("The official and the payor need not state the *quid pro quo* [required by the Hobbs Act] in express terms, for otherwise the law's effect could be frustrated by knowing winks and nods. [A] *quid pro quo* with the attendant corrupt motive can be inferred from an ongoing course of conduct." (Kennedy, J., concurring)); *United States v. Hamilton*, 701 F.3d 404, 409 (4th Cir. 2012) (holding, in case involving bribery under § 666 and Hobbs Act extortion, that corrupt intent can be implied and need not be expressly stated); *Jennings*, 160 F.3d at 1014 ("To prove bribery under § 201, the government is not required to prove an expressed intention (or agreement) to engage in a quid pro quo."); *Kemp*, 500 F.3d at 284 ("[E]vidence of a *quid pro quo* [required for honest-services fraud] can be implicit, that is, a conviction can occur if the Government shows that [the defendant] accepted payments or other consideration with the implied understanding that he would perform or not perform an act in his official capacity." (internal quotation omitted) (third alteration in original)).

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[6] *See also, e.g.*, *United States v. McDonough*, 727 F.3d 143, 154 (1st Cir.) (citing *Jennings*), *cert. denied*, 134 S. Ct. 1041 (2014); *United States v. Kemp*, 500 F.3d 257, 282 (3d Cir. 2007) (citing *Jennings*), *cited in Skilling*, 130 S. Ct. at 2934; *United States v. Whitfield*, 590 F.3d 325, 350 (5th Cir. 2009) (citing *Jennings*), *cited in Skilling*, 130 S. Ct. at 2934; *United States v. Terry*, 707 F.3d 607, 612 (6th Cir.) (citing *Jefferson* and *Ganim*), *cert. denied*, 134 S. Ct. 1490 (2014); *United States v. Redzic*, 627 F.3d 683, 692 (8th Cir.) (citing *Jennings*), *cert. denied*, 131 S. Ct. 2126 (2011); *United States v. Kincaid-Chauncey*, 556 F.3d 923, 943 (9th Cir.) (citing *Jennings*), *cert. denied*, 558 U.S. 1077 (2009), *abrogated on other grounds by Skilling*, 130 S. Ct. at 2933; *United States v. McCarter*, 219 F. App'x 921, 928 (11th Cir.) (citing *Jennings*), *cert. denied*, 552 U.S. 867 (2007).

[7] There is an exception to this rule for cases involving campaign contributions. *See McCormick v. United States*, 500 U.S. 257, 273 (1991) (requiring, in cases involving campaign contributions, "explicit promise or undertaking by the official to perform or not to perform an official act"). As will be discussed below, however, the present case does not involve campaign contributions, and *McCormick* is thus inapplicable here.

The Indictment tracks the statutory language, properly alleges every essential element of all of the crimes charged (including a *quid pro quo* exchange), and provides more than sufficient specificity to avoid a double jeopardy concern.[8] Accordingly, the Indictment satisfies the requirements of the Constitution and should not be dismissed.

The defendants' sole argument to the contrary is that the Indictment's allegations are insufficient as to the "official action" in question. But the defendants do not claim—nor could they—that the charging language in the Indictment ***fails to allege*** an "official action" as part of the alleged *quid pro quo*. Instead, the defendants' argument, at bottom, is that the ***facts*** alleged in the Indictment in support of the "official action" allegation do not adequately support that aspect of the ***charges***, and so the Indictment must be dismissed. That distinction is dispositive here because "[a] district court may dismiss an indictment under Rule 12 where there is an infirmity ***of law*** in the prosecution; a court may ***not*** dismiss an indictment, however, on a determination of

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[8] Indeed, in denying the defendants' motion for a bill of particulars, this Court has already found that the Indictment adequately apprises the defendants of the charges against them. *See* Mem. Order, Doc. No. 93, at 2.

facts that should have been developed at trial." *United States v. Engle*, 676 F.3d 405, 415 (4th Cir. 2012) (emphasis added) (internal quotation omitted).[9] The defendants' motion asks for the latter and is thus no more than a motion for summary judgment masquerading as a motion to dismiss. Unfortunately for the defendants, "[t]here is no federal criminal procedural mechanism that resembles a motion for summary judgment in the civil context." *United States v. Yakou*, 428 F.3d 241, 246 (D.C. Cir. 2005).[10]

The simple truth is that whether the facts alleged in the Indictment, together with the evidence adduced at trial, establish the necessary *quo* in the *quid pro quo* is a question for a properly instructed jury. Because the Indictment is sufficient on its face, "the government is entitled to present its evidence at trial and have its sufficiency tested by a motion for acquittal pursuant to Federal Rule of Criminal Procedure 29." *United States v. Salman*, 378 F.3d 1266, 1268 (11th Cir. 2004). As the Sixth Circuit aptly explained in *Terry*:

> As most bribery agreements will be oral and informal, the question is one of inferences taken from what the participants say, mean and do, all matters that juries are fully equipped to assess. "[M]otives and consequences, not formalities," are the keys for determining whether a public official entered an agreement to accept a bribe, and the trier of fact is "quite capable of deciding the intent with which words were spoken or actions taken as well as the

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[9] The defendants selectively quote the first half of this sentence from *Engle* but substitute an ellipsis for the second half—the half that guts their argument. *See* Def. Mem. at 5.

[10] The Government has located one Fourth Circuit case discussing when pretrial disposition of a motion like the defendants' might be appropriate, but the circumstances present there are not present here. *See United States v. Weaver*, 659 F.3d 353, 355 n. * (4th Cir. 2011) ("Although there is no provision for summary judgment in the Federal Rules of Criminal Procedure, a district court may consider a pretrial motion to dismiss an indictment where the government does not dispute the ability of the court to reach the motion and proffers, stipulates, or otherwise does not dispute the pertinent facts." (citations omitted)). Here, the Government does dispute the Court's ability to reach the motion, and the parties clearly do dispute the pertinent facts.

> reasonable construction given to them by the official and the payor."

707 F.3d at 613 (quoting *Evans*, 504 U.S. at 274 (Kennedy, J., concurring)). The Indictment here properly alleges all the elements of the crimes charged, including a *quid pro quo*, and it gives the defendants ample notice of the charges against them. The defendants' motion should be denied.

B. The Official Action Requirement

Even assuming, *arguendo*, that the question of whether the alleged "official actions" referenced in the Indictment are indeed "official" were a proper inquiry in the context of a motion to dismiss—which, for the reasons stated above, it is not—the Indictment alleges official actions that fall well within the applicable definition of that term for the reasons set forth below.

1. The Applicable Definition

In light of the defendants' persistent mischaracterizations of the Government's position, and their repeated claim that the sky will fall on Virginia electoral politics unless the Indictment is dismissed, it is worth stating clearly what the Government's position actually is. The Government's position is that an official action is any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before a public official in his or her official capacity, or in his or her place of trust or profit. That definition includes those activities that have been clearly established by settled practice as part of the public official's position, even if not taken pursuant to responsibilities explicitly assigned by law. The Government does not define the term in this way in an attempt to arbitrarily broaden the scope of the corruption laws, or to needlessly "criminalize[] political activity of state public officials," Def. Mem. at 29. The Government defines the term in this way because a federal statute and the United States Court of Appeals for the Fourth Circuit do.

In *Jefferson*, the Fourth Circuit approved jury instructions for both § 201 and honest-services bribery that defined "official act" using the broad statutory definition found at § 201(a)(3) ("any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit"), coupled with the following elaboration based on the Supreme Court's decision in *United States v. Birdsall*, 233 U.S. 223, 230–31 (1914): "An act may be official even if it was not taken pursuant to responsibilities explicitly assigned by law. Rather, official acts include those activities that have been clearly established by settled practice as part [of] a public official's position." *Jefferson*, 674 F.3d at 353, 357–58 (alteration in original).[11]

Importantly, this definition does not require that the official acts or pattern of official action alleged result in—or even contemplate—a financial benefit or disbursement of government funding to the bribe payor. Similarly, it does not require that the action or course of actions to be taken by the public official be particularly substantial, and an action is no less official because it is one in a series of steps towards a longer-term goal. In other words, it is the official nature of the action, not its substantiality, that makes it sufficient to be the basis for corruption charges, so long as it is part of a prohibited *quid pro quo* exchange.

Consistent with this approach, courts have routinely found interim steps in furtherance of longer-term goals to be official actions and courses of action—particularly in the case of the implicit these-for-those, as-needed, stream-of-benefits exchanges approved in *Jefferson*,

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[11] The Second Circuit in *Ganim* similarly defined the official action for Hobbs Act *quid pro quo* to include "act[s] taken under color of official authority." *Ganim*, 510 F.3d at 142 n. 4, *quoted in United States v. Rosen*, 716 F.3d 691, 700 (2d Cir. 2013) (same for honest-services bribery). Of course, the appropriate jury instruction is a matter for the Court to decide not in the context of a motion to dismiss, but after hearing the evidence adduced at trial. *See United States v. Jefferson*, 634 F. Supp. 2d 595, 600 n. 9 (E.D. Va. 2009) (Ellis, J.).

Jennings, *Ganim*, and the other cases cited above. For example, as the Fourth Circuit put it in *Jefferson*, "it would be impossible—and it is unnecessary—to link every dollar paid to one of the Jefferson family companies to a specific ***meeting, letter, trip, or other action*** by [former Congressman] Jefferson to fulfill his end of a corrupt bargain." 674 F.3d at 359 (emphasis added). In other words, the "ultimate" benefit sought by Jefferson's bribe payors may have been the success of private business ventures, or alternatively the procurement of government resources for those ventures. But the fact that some of Jefferson's official actions in furtherance of those goals may have been interim, smaller steps—"meeting[s], letter[s], trip[s], or other action[s]," *id.*—did not somehow render his conduct outside the ambit of legally cognizable *quo*.

In *United States v. Ring*, 706 F.3d 460, 468–70 (D.C. Cir. 2013), the D.C. Circuit interpreted § 201(a)(3)'s definition of "official act" similarly broadly in the context of § 201(c)'s gratuity provision. There, the D.C. Circuit found sufficient evidence of an "official act" where the public official in question was a U.S. Department of Justice ("DoJ") Office of Intergovernmental Affairs attorney who made a phone call and sent an email seeking to expedite review of a visa application by the U.S. Immigration and Naturalization Service ("INS"). The attorney's email was then passed along by a secretary to five different INS officials, who then expedited the application. *Id.* at 469. The D.C. Circuit found the email and phone call to provide sufficient evidence of official acts, in part based on testimony that the DoJ attorneys in question "reach[] across agency boundaries to get things done" and that the secretary who received the email "felt unable to ignore the attorney's request because of the office he held." *Id.* at 470. In other words, even an act as insubstantial as an email or a phone call can, in context, be *quo*.

Likewise, in *United States v. Dimora*, 879 F. Supp. 2d 718, 730 (N.D. Ohio 2012), a district court found sufficient evidence of official action to support Hobbs Act and honest-services fraud charges based in part on testimony that one cooperator "was experiencing difficulty in getting his foot in the door with various government entities" and gave things of value in exchange for the defendant public official "help[ing] with 'opening doors, getting access to, you know, places that I had a chance to do some business.'" The cooperator went on to explain that "he *expected* 'an open line of communication. So if I needed help, I could ask.'" *Id.* The cooperator further testified that he "took advantage of this arrangement," and the defendant public official's official actions included "arrang[ing] for meetings with [a] [m]ayor." *Id.* at 730 n. 8.[12] Again, arranging a meeting was sufficient, in context, to be *quo* in a *quid pro quo*.[13]

The Fourth Circuit's analysis of § 201(a)(3)'s text in *Jefferson* is also instructive. There, the court acknowledged that § 201(a)(3)'s official act definition "does not encompass every action taken in one's official capacity," but only those that relate to a pending "question, matter, cause, suit, proceeding or controversy" before the public official in question. *Id.* at 356. However, the court rejected Jefferson's attempts to use that statutory language to restrict the definition of "official act" to traditional legislative acts like voting or earmarking funds. Rather, the Fourth Circuit found sufficient evidence for the jury to conclude "first of all, that performing constituent services was a settled official practice of Jefferson's congressional office and, second, that ***African trade issues*** were 'matters' or 'causes' that were pending before him." *Id.* at 357 (emphasis added). With "African trade issues" as the broadly defined "matters" or "causes" pending before former Congressman Jefferson, the Fourth Circuit found myriad actions by Jefferson to promote constituents' interests in African trade issues (and thus "on" that "matter" or "cause") to be official acts. Those included Jefferson (i) "[g]ranting requests for assistance to business ventures by corresponding and visiting with foreign officials"; (ii) "[s]cheduling and conducting meetings with Army officials and representatives, at which [Jefferson] promoted [a bribe-paying business]"; (iii) "[t]raveling to Nigeria and Ghana, and meeting with representatives of the [Export-Import] Bank [of the United States] to endorse, assist, and promote [a bribe-paying business's] scheme"; and (iv) "[v]ouching for [a bribe-paying business] in Nigeria and seeking to secure construction contracts for [its] entities." *Id.* at 356.

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[12] The *Dimora* defendants have appealed their convictions, and that appeal includes a challenge to an as-needed *quid pro quo* jury instruction that was based on *Jennings*. *See* Brief of the United States at 58–71, *United States v. Dimora*, No. 12-4004 (6th Cir. June 3, 2013), 2013 WL 2470340.

[13] *See also, e.g.*, *Rosen*, 716 F.3d at 695 (state legislator, among other things, "wrote a letter on State Assembly letterhead stationery" and "set up a meeting between Rosen and the Governor's chief of staff"); *United S[illegible]s v. Moore*, 525 F.3d 1033, 1041 (11th Cir. 2008) (rejecting argument that "the 'low le[illegible]tions alleged in this case'" were not official acts and finding actions such as prison offic[illegible]tching unit assignments, allowing telephone calls, making telephone calls, permitting meetings, and giving a key to help facilitate meetings all sufficient to "fall within the broad definition of 'official act' set forth in *Birdsall*"); *United States v. Hullender*, No. 90cr60, 1990 WL 124068, at *4 (N.D.N.Y Aug. 24, 1990) (rejecting argument that "ministerial tasks are not 'official act[s]' contained within the ambit of § 201" because § 201(a)(3) includes no "distinction between ministerial and non-ministerial duties" (alteration in original)).

2. The allegations in the Indictment satisfy the definition.

As discussed above, whether the evidence adduced at trial in support of the Indictment's allegations satisfies the definition of official action is among the questions the jury will have to answer. Nevertheless, should the Court desire to entertain the substantive question pretrial, the Indictment's allegations easily suffice.

To begin with, the allegations here are not materially different from those in *Jefferson*. In *Jefferson*, African trade issues and the business ventures sought to be furthered by his constituents were matters or causes pending before Jefferson as a congressman, and he took action on those matters or causes by arranging meetings and the like. Here, Virginia business development issues and Jonnie Williams's desired promotion of his product using Virginia state government were matters or causes pending before Mr. McDonnell and his former office, and the defendants took and caused official actions on those matters and causes by arranging meetings and the like.[14] In this regard, as the district court ruled in *Jefferson*, "the government need not show that the 'question, matter,' *etc.* at issue was or could have been pending before defendant pursuant to any responsibilities explicitly assigned by law, nor is the government required to prove that the defendant had the authority to resolve the question, matter, cause, [*etc.*] at issue." 634 F Supp. 2d at 603. To the contrary, "it is sufficient for the government to adduce proof that it was customary, as a matter of clearly established settled practice, for [the type of public official in question] to exert influence—by advice, recommendation, or otherwise—on the issues in question." *Id.* The Government will adduce such proof at trial here.

Here, the Indictment alleges specific examples of the types of official actions provided and to be provided during the scheme, including:

> (i) arranging meetings for JW with Virginia government officials, who were subordinates of the Governor, to discuss and promote Anatabloc®;
>
> (ii) hosting, and the defendants attending, events at the Governor's Mansion designed to encourage Virginia university researchers to initiate studies of anatabine and to promote Star Scientific's products to doctors for referral to their patients;
>
> (iii) contacting other government officials in the OGV [the Office of the Governor of Virginia] as part of an effort to encourage Virginia state research universities to initiate studies of anatabine;

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[14] The defendants attack the Indictment's reference to Mr. McDonnell's campaign slogan—"Bob's for Jobs," Ind. ¶ 7—as evincing a "myopic view," Def. Mem. at 16, that the slogan itself transformed his actions to promote a Virginia business into an official act. The Indictment, of course, neither says nor suggests anything of the sort. Rather, this factual allegation merely refers to the defendants' public acknowledgement of, and is thus evidence of, the official nature of Mr. McDonnell's actions in this arena. *See Jefferson*, 634 F Supp. 2d at 603 (proof that an act is "official" can include a "defendant's admissions and conduct").

(iv) promoting Star Scientific's products and facilitating its relationships with Virginia government officials by allowing JW to invite individuals important to Star Scientific's business to exclusive events at the Governor's Mansion; and

(v) recommending that senior government officials in the OGV meet with Star Scientific executives to discuss ways that the company's products could lower healthcare costs.

Ind. ¶111(c). Although these alone are more than sufficient allegations of "official action," the Indictment goes further, providing significant detail regarding the official actions promised and performed. *See, e.g.*, Ind. ¶¶ 29–30, 41, 48–49, 51, 60, 63–65, 74–80, 84, 88. These allegations amply suffice to withstand a motion to dismiss in light of *Jefferson* and the other cases above.

In sum, where, as here, a chief state executive directs a subordinate to attend a meeting about a businessman's efforts to secure state government assistance in promoting a product, the chief state executive plainly has taken "action" (directing the subordinate) that is "on" (relates to or furthers) a "question, matter, [or] cause" (defined broadly as state business development or more narrowly as the particular question, matter, or cause of securing state government assistance to promote the product) that is pending before the executive by virtue of his position. Similarly, where, as here, a chief state executive hosts and speaks at an event at a state facility designed to encourage state university researchers to conduct studies of a businessman's product, the chief state executive has taken "action" (hosting and attending the event) that is "on" (relates to or furthers) a "question, matter, [or] cause" (state business development or the particular question, matter, or cause of securing state government assistance through research studies) that is pending before the executive by virtue of his position.

C. The defendants' attempts to redefine "official action" misstate the law, defy logic, or contest allegations not actually made in the Indictment.

In an attempt to escape the precedent of *Jefferson*, *Jennings*, *Ganim*, and the other cases discussed above, the defendants attempt to transmute the term "official action" into something far narrower: "promise[] or recei[pt] [of] government funds, contracts, appointments, legislation, regulatory action or any other governmental benefit." Def. Mem. at 19. As discussed above, however, the phrase "official action" is not so limited, nor should it be.[15] And even the defendants' narrowly circumscribed definition fails to exclude the conduct here, because a meeting with a cabinet official's deputy, an event at a state facility to promote a product, favorable comments to subordinate state officials about the prospect of conducting research studies, and directions at cabinet meetings to meet with a particular business ***are in fact*** a "governmental benefit." That is, after all, why Mr. Williams was willing to pay for these things and why the defendants were able to extract payment in exchange, as the Indictment alleges.[16]

Moreover, the cases on which the defendants rely in defining (and redefining) "official action" and arguing that the term does not cover the alleged actions at issue are inapposite.[17] The defendants begin, as so many bribery defendants do, by invoking *dicta* in *United States v. Sun-Diamond Growers*, 526 U.S. 398 (1999), in an attempt to engraft a substantiality-of-*quo* requirement into Hobbs Act and honest-services fraud cases. *See* Def. Mem. at 8–9. In *Sun-Diamond*, the Supreme Court mentioned the hypothetical examples of "[the President] receiving sports teams at the White House, [a Secretary of Education] visiting [a] high school, and [a Secretary of Agriculture] speaking to farmers about policy" and stated that "those actions—while they are assuredly 'official acts' in some sense—are not 'official acts' within the meaning of the [gratuity] statute [set forth at § 201(c)]." 526 U.S. at 407 However, in *Jefferson* the Fourth Circuit strongly expressed a limited view of *Sun-Diamond*'s force in bribery cases:

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[15] As the Second Circuit has observed, "[t]he need for flexibility is especially important in the context of criminal laws aimed at public corruption." *Rosen*, 716 F.3d at 699.

[16] Alternatively, the defendants argue throughout their brief that to conduct an "official action," a public official must "exercise governmental power." *See, e.g.*, Def. Mem. at 2, 5, 7, 9, 11, 12. Of course, that formulation only begs the question of what it means to "exercise governmental power"—something a chief executive can unilaterally do in myriad ways. Indeed, although not in the context of a bribery case, the D.C. Circuit has opined that a U.S. Senator's arranging for his wife's business to make use of Senate rooms was "an exercise of his official powers" such that a letter the Senator wrote responding to an Ethics Committee inquiry about this practice was protected under the Speech or Debate Clause. *See Ray v. Proxmire*, 581 F.2d 998, 1000 (D.C. Cir. 1978). Mr. McDonnell's hosting an event at the Governor's Mansion to benefit Star was no less an exercise of his official governmental powers.

[17] Before addressing the cases, it is important to remember that because of the procedural posture of the defendants' motion, they are asking this Court to rule that the types of and specific official actions alleged here could ***never*** constitute official action, no matter the price of the bribe extracted in exchange. That argument is as dangerous as it is meritless.

> The only analysis by *Sun-Diamond* of the definition of an official act comes as a rebuttal to the hypothetical impact of the Court's narrow reading of the illegal gratuity statute.
>
> Without a more explicit directive, we are unwilling to translate *Sun-Diamond*'s brief discussion of the 'official act' definition into an unqualified exclusion of all settled practices by a public official from the bribery statute's definition of an official act.

Jefferson, 674 F.3d at 355–56.[18] Based on this reading of *Sun-Diamond*, the Fourth Circuit rejected Jefferson's attempt to use its *dicta* to his advantage. Rather, because "[t]he trial evidence showed that Jefferson, as a congressman, had long-standing relationships with businesspersons and investors, and it was his practice to request and receive favors, gifts, and beneficial business deals in exchange for his actions in promoting such businesses, and in ensuring the success of specific business ventures," the Fourth Circuit found the "official act" proof sufficient. *Id.* at 356. Here, the Indictment alleges receipt of things of value in exchange for official actions by Mr.

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[18] *See also Ganim*, 510 F.3d at 146–47 (observing that "[u]ndergirding the Court's decision in *Sun-Diamond* was a need to distinguish legal gratuities (given to curry favor because of an official's position) from illegal gratuities (given because of a specific act)" but emphasizing that "[t]he same limiting principle is not needed in the extortion or bribery contexts, however, because it is the requirement of [a] quid pro quo that distinguishes those crimes").

McDonnell and his former office to promote Mr. Williams's business venture. Accordingly, *Sun-Diamond* is no obstacle to this prosecution.[19]

The defendants also cite to a series of gratuity and bribery cases from other circuits in support of their motion, but a close inspection of those cases shows that they do not bear the weight the defendants attempt to place on them. For example, the defendants cite to *Valdes v. United States*, 475 F.3d 1319 (D.C. Cir. 2007). *See* Def. Mem. at 10, 12–13, 26, 28. In *Valdes*, the D.C. Circuit reversed a gratuity conviction under § 201(c) because the trial court refused to instruct the jury on § 201(a)(3)'s "official act" definition "or anything comparable." 475 F.3d at 1325. The D.C. Circuit explained that the § 201(a)(3) definition was important, as it limited its scope to "those questions, matters, causes, suits, proceedings, and controversies that are decided by the government." *Id.* In *Valdes*, the alleged official act was a police officer's search of a law enforcement database for information that the government did not allege was related to any pending investigation, but rather was "linked only by pure supposition to an imaginary future matter" that could not "in any meaningful sense, be 'pending' before an official, now or at 'any time' in the future." *Id.* at 1329. Here, not only is it anticipated that the Court will instruct the jury with an appropriate definition of "official act," which the district court failed to do in *Valdes*, but Mr. Williams's sought-after research studies at state universities are but one example of a question, matter, cause, *etc.* that was much more than imaginary; rather, based on initial planning already underway at the state universities, it was far more than the "at least nascent" matter that *Valdes* suggested would be sufficient. *Id.* at 1328.[20]

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[19] Indeed, *Sun-Diamond*'s observation that "receiving sports teams at the White House, visiting [a] high school, and speaking to farmers about policy," 526 U.S. at 407—without more—are not "official acts" within the scope of § 201(a)(3) does ***not*** mean that hosting an event for a business at the White House or directing other government officials to meet with a business can ***never*** constitute an "official act." Rather, it simply means, as it meant in *Jefferson*, that the "action" at issue (the hosting, visiting, speaking, or directing of a meeting) must be "on" (relate to or further) a particular "question, matter, cause," *etc.* (such as African trade issues, Virginia business development, or obtaining research studies for a businessman's product).

The defendants' reliance on *United States v. Muntain*, 610 F.2d 964 (D.C. Cir. 1979), a gratuities case, fares no better. *Muntain* involved analysis of a public official's efforts to promote a "purely private venture" that the D.C. Circuit concluded the Government did not allege or prove to be action "on" an identified question, matter, cause, *etc.*, that was actually pending before the public official. *Id.* at 966–68. Here, by contrast, the Government has alleged and will prove just that. As *Ring*, *Jefferson*, and *Ganim* make clear, *Muntain* did not hold that a public official's promotion of a private business venture can ***never*** constitute official action; rather, it merely held that the government must prove that the action in question is official in each particular case. *See Muntain*, 610 F.2d at 966 (noting that the Government did "not contend and produced no evidence at trial to suggest that [the private venture] fell within [the public official's agency's] jurisdiction").

Nor is the defendants' citation of *United States v. Urciuoli*, 513 F.3d 290 (1st Cir. 2008), persuasive. In *Urciuoli*, the First Circuit rejected an honest-services instruction (before *Skilling*) that official action included what a public official does "under the cloak of his office." *Id.* at 295 n. 2. The First Circuit did so because it found that the instruction could have permitted conviction of a state legislator for lobbying a mayor and other local officials to follow state laws about ambulance runs—something that the jury would not necessarily have found to be "on a matter before him." *Id.* at 295. Importantly, however, the First Circuit also found that a separate scheme ***could*** have violated the statute and could serve as the proper basis for a conviction at a new trial; in that scheme, the legislator "played a role in summoning to meetings officials" of insurance companies that were "at odds with" the company paying the legislator and "urg[ed] them to come to terms." *Id.* at 294. The First Circuit found the actions could be official because, in essence, the jury could have found that they were on matters pending before the official—in other words, because the legislator "had become chair of a senate committee with considerable power over health care legislation, and both [insurance companies] were regularly concerned with matters affected by the committee." *Id.* at 296. *Urciuoli* thus turned on questions of jury instructions and evidentiary sufficiency—neither of which is at issue at this stage here.[21]

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[20] In *Jefferson*, the Fourth Circuit found *Valdes* to be no barrier to prosecution. 674 F.3d at 354, 357–58. Similarly, in *Ring*, the D.C. Circuit rejected the defendant's attempt to use *Valdes*, describing *Valdes* as standing for the proposition that "whether an action constitutes an 'official act' [is] one of 'sufficiency of the evidence.'" 706 F.3d at 469 (quoting *Valdes*, 475 F.3d at 1322). In the end, the D.C. Circuit in *Ring* noted that "the attorney's swift success in procuring expedited review spoke for itself." *Id.* Here, Mr. McDonnell's swift success in, for example, securing the presence of a subordinate government official at a meeting on less than 12 hours of notice will similarly speak for itself. *See* Ind. ¶¶ 48–49.

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[21] The defendants' citations to two Eighth Circuit cases addressing post-verdict sufficiency of the evidence are similarly misplaced. For example, the defendants cite to *United States v. Loftus*, 992 F.2d 793 (8th Cir. 1993), and *United States v. Rabbitt*, 583 F.2d 1014 (8th Cir. 1978), claiming that they stand for the proposition that "introducing a benefactor 'to influential persons' is not an official act if the official providing the introduction does 'not promise to use his official position to *influence* those persons.'" Def. Mem. at 22 (quoting *Loftus*, 992 F.2d at 796), 10 (citing *Rabbitt* for same proposition). But what *Loftus* ***actually*** held was that the government presented sufficient evidence under the Hobbs Act where it showed that the defendant "promised to use his official position as county commissioner to serve the bribe-giver's interests." 992 F.2d at 796. Moreover, the court found that "[a]ctual authority over the end result is not controlling if Loftus, through his official position, had influence and authority over a ***means to that end***." *Id.* (emphasis added). In other words, *Loftus* supports that interim steps by a public official towards a larger goal can be official actions where they are a "means to that end," *id.*—something that the Indictment's alleged official actions in this case were vis-à-vis Mr. Williams's goals. Indeed, the language from *Loftus* that the defendants quote was actually from the Eighth Circuit's explanation for why *Rabbitt* did ***not*** support a reversal in *Loftus*. As the court explained, *Rabbitt* reversed a conviction for evidentiary insufficiency based on facts that showed "the official promised ***only*** to introduce the [paying] firm to influential persons; he did not promise to use his official position to influence those persons." *Loftus*, 992 F.2d at 796 (citing *Rabbitt*, 583 F.2d at 1028) (emphasis added). Thus, *Loftus* and *Rabbitt* make clear that the question of whether a particular type of action is an official action is a factual one that, at least in the Eighth Circuit, requires proof that it was a "means to [an] end," *id.* Moreover, insofar as *Rabbitt*'s conclusion rested on there being no "tangible loss to the citizens or state" or that the defendant "did not, in his official capacity, control the awarding of state contracts," 583 F.2d at 1026, it contradicts the well-settled bribery law principles explained above that such

Moreover, the defendants' attempts to engage the facts alleged in the Indictment prove the weakness of their argument. They argue, among other things, that (i) Mr. McDonnell's ordering a subordinate state official to attend a meeting cannot be an official act because "[t]he Government does not claim that the policy advisor [who attended the meeting] promised or took any official action benefiting Star (or that she even had jurisdiction over the meeting's topic)," Def. Mem. at 21, (ii) Mr. McDonnell's direction at a cabinet meeting that his subordinates meet with Star Scientific officials cannot be an official act because "[t]he Government does not allege that the [cabinet official] ever followed up on Mr. McDonnell's alleged suggestion," *id.* at 22; and (iii) their decision to host an event at a state facility to promote Mr. Williams's product cannot be an official act because "[t]he Government does not claim that anything that happened at this lunch influenced any public official to perform any 'official act,'" *id.* at 23.

The flawed premise of each of these arguments is clear. In each of them, the defendants condition whether ***they*** took or caused official action on whether ***other*** public officials—officials who assuredly had not personally received more than $140,000 in things of value from Mr. Williams—took official action. The fact is, ***Mr. McDonnell*** took official action when he ordered a subordinate to take a meeting, attended an event at a state facility, and directed a cabinet official to arrange a meeting, and all of those actions were on the questions, matters, or causes of (i) Virginia business development, (ii) the use of state government to promote and obtain research studies for Anatabloc®, or even simply (iii) whether to have or attend the meeting or event in question. The fact that Mr. McDonnell's subordinate state officials, whether in his

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proof is not required for an official act. Perhaps for this reason, *Urciuoli* recognized that *Rabbitt*'s reasoning was "criticized by Judge Posner and . . . is in tension with another Seventh Circuit case in which an aide to the mayor recommended awarding a contract to a company in which he held a concealed interest." 513 F.3d at 296 n. 4 (citing *United States v. Holzer*, 816 F.2d 304, 309 (7th Cir. 1987) (Posner, J.); *United States v. Bush*, 522 F.2d 641, 647–48 (7th Cir. 1975)).

former office or at the state universities, may have chosen not to take ***additional*** official action (whether for independent reasons or because they, unlike him, were not on retainer) is beside the point.[22] And the fact that Mr. McDonnell had the unilateral power as the chief state executive to promise and take the actions he did—or promise and make the decisions that he did—is precisely the point. That unilateral power to "arrang[e] meetings," "host[] and attend[] events at the Governor's Mansion," "contact[] other government officials," "promot[e] Star Scientific's products and facilitat[e] its relationships with Virginia government officials," and "recommend[] that senior government officials meet with Star Scientific executives," Ind. ¶ 111(c), is exactly what was worth more than $140,000 to the businessman who decided to pay. All of those alleged decisions and actions did in fact involve "'decisions that the government actually makes,'" *Jefferson*, 674 F.3d at 357 (quoting *Valdes* 475 F.3d at 1325).[23]

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[22] Indeed, directing a subordinate to take a meeting is a quintessential part of an executive's job, and no reasonable definition of "official action" should exclude such conduct. Moreover, 18 U.S.C. § 2(b), which provides that [w]hoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal," precludes any argument that Mr. McDonnell can escape liability for causing others in his former office to engage in official actions. *See, e.g.*, *United States v. Margiotta*, 688 F.2d 108, 131 (2d Cir. 1982); *United States v. Mitchell*, 993 F.2d 229, 1993 WL 136996, at *5 (4th Cir. 1993) (unpublished) (upholding gratuity conviction where public official caused another public official to commit official acts because "[a] conviction under § 2(b) is proper even when the defendant acted through innocent agents").

[23] Unsurprisingly, the broad power of a member of Congress—or the even arguably broader power of a governor, one of fifty-one chief executives of sovereign governments—means a broader range of questions, matters, or causes will be pending before him or her than before a lower-level government official. Similarly, the broader power of the office of a chief state executive means a broader range of official actions that the official can perform unilaterally and thus put on the menu for prospective bribe payors. *Birdsall*'s explanation of § 201(a)(3)'s definition provides the statutory flexibility to accommodate such variation. *See, e.g.*, *United States v. Carson*, 464 F.2d 424, 434 (2d Cir. 1972) (finding exertion of the influence inherent in an administrative assistant's official position as a congressional staffer to be § 201(a)(3) "official act" and observing that "[a]pparently [the assistant], and those bribing him, thought he had access to the Justice Department through his position that would enable him to alleviate, if not altogether quash, pending Justice Department action or bring about lenient post-conviction treatment"); *United States v. Biaggi*, 853 F.2d 89, 98 (2d Cir 1988) ("A congressman's own

D. The defendants' reliance on *Citizens United* is misplaced.

The defendants have also spilled much ink trying to paint what is alleged in the Indictment as properly governed by political speech cases instead of corruption law. But neither their repeated citation to *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), nor their numerous attempts to bait the Government into commenting on alleged practices by other politicians with respect to campaign contributions changes one irreducible truth: not one penny of the $120,000 in loans, the $15,000 check to subsidize the defendants' daughter's wedding, the free vacations, or any of the other graft charged here was a campaign contribution. More to the point for present purposes, the Indictment does not allege that they were campaign contributions; it alleges they were bribes. Ind. ¶¶ 22, 110, 117 Accordingly, whatever understandable allure *Citizens United* may have to the defendants, for this simple reason and the reasons discussed in more detail below, it is simply irrelevant to the defendants' motion.

The defendants' fixation on campaign-finance law shows—on the very first page of their brief—a fundamental misconception about the basic corruption law that controls this case. They claim that the Supreme Court has "recognized the fundamental difference" between public officials "exercising their official powers differently to favor donors" and "providing access that does not, without more, alter any official decisions on government policy," and that "only the former sorts of actions are 'official' and thus illegal when offered in exchange for benefits." Def.

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invocation of his position and of congressional interest in his intercession with others on behalf of a constituent can hardly be considered less of an official act [than the acts in *Carson*]."). And in any event, as the Third Circuit recognized just yesterday, a Hobbs Act violation can obtain whether or not a public official has *de jure* authority to carry out a promised official act, so long as the bribe payor reasonably believed the public official had the power to do so (or even merely influence in the process). *See United States v. Bencivengo*, __ F 3d __, 2014 WL 1613315, at *6, (3d Cir. Apr. 23, 2014); *see also, e.g.*, *United States v. Hamilton*, 263 F.3d 645, 653–54 (6th Cir. 2001); *United States v. Mazzei*, 521 F.2d 639, 643 (3d Cir. 1975) (en banc) (citing *United States v. Price*, 507 F.2d 1349 (4th Cir. 1974)); *Dimora*, 879 F Supp. 2d at 735.

Mem. at 1. For this proposition they have cited the following sentence from *Citizens United*: "Ingratiation and access are not corruption." 558 U.S. at 360. Not only does the defendants' argument attempt to wring far more out of that phrase than it will bear, it also illustrates the problem with their attempt to rely on campaign-finance case law in what is charged as a corruption case. It is black-letter corruption law that a public official need not exercise his or her power "differently" or "alter any official decisions" in order to be guilty of a corruption offense. For example, in *United States v. Quinn*, 359 F.3d 666, 675 (4th Cir. 2004), a § 201 bribery and honest-services fraud case, the Fourth Circuit stated:

> It is not necessary for conviction under § 201(b) that the official act offered in exchange for the bribe be harmful to the government or inconsistent with the official's legal obligations. The critical question is whether the government official solicited something of value with a corrupt intent, *i.e.*, in exchange for an official act. By the same reasoning, it does not matter whether the government official would have to change his or her conduct to satisfy the payor's expectations.

(citations omitted).[24] Accordingly, the defendants are flat wrong in their opening assertion that only an exercise of official power that is "different" is illegal when offered in exchange for benefits, and they are further wrong in suggesting that *Citizens United* said anything close to otherwise.

What the Supreme Court actually held in *Citizens United* was that "[a]n outright ban on corporate political speech during the critical preelection period is not a permissible remedy" to address Government anticorruption concerns about corporate spending on independent electioneering communications that are by definition not coordinated with any public official. 558 U.S. at 361. The Court observed that "independent expenditures do not lead to, or create the appearance of, *quid pro quo* corruption. In fact, there is only scant evidence that independent expenditures even ingratiate." *Id.* at 360. It was at this point that the Court stated that "[i]ngratiation and access, in any event, are not corruption." *Id.* In other words, the Supreme Court observed that the mere ***fact*** of ingratiation or access did not ***necessarily*** equal corruption—particularly where, as there, the activity in question is money spent on political speech protected by the First Amendment and not coordinated with any public official. But to suggest, as the defendants here argue, that in *Citizens United* the Supreme Court held that "ingratiation" or "access" can never be present as part of a corrupt exchange of personal payments in return for official action is a bridge too far.

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[24] *See also United States v. Derrick*, 163 F.3d 799, 819 (4th Cir. 1998) ("The receipt of money, even for official action that would have been taken anyway, violates the Hobbs Act " (citation omitted)).

Indeed, the defendants' cherrypicking of this single sentence from *Citizens United* to suggest that whatever might be subsumed under the rubric of "ingratiation" or "access" can never form a basis for a corruption charge is undermined by what the Supreme Court made sure to emphasize first: "'The hallmark of corruption is the financial *quid pro quo*: dollars for political favors.'" 558 U.S. at 359 (quoting *Fed. Election Comm'n v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 497 (1985)). The defendants' argument is no less absurd than would be a Government argument that as a result of that sentence, "political favors" supplants the definition of official action. The defendants' reliance on *Citizens United* is misplaced.[25]

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[25] The Supreme Court recently reiterated the same concepts in another campaign-finance opinion, *McCutcheon v. Federal Election Comm'n*, __ U.S. __, 134 S. Ct. 1434, 1441–42 (Apr. 2, 2014). In *McCutcheon*, the Supreme Court quoted *Citizens United*'s statement about "[i]ngratiation and access" to illustrate that a mere ***correlation*** of political speech in the form of spending (in *McCutcheon*, contributions to other candidates and entities in excess of aggregate contribution limits) does not necessarily amount to corruption. *Id.* at 1441. But immediately after that quotation, *McCutcheon* reasserted that "[t]he hallmark of corruption is the financial *quid pro quo*: dollars for political favors." *Id.* (internal quotation omitted). *McCutcheon* is no more help to the defendants than *Citizens United*.

E. The defendants' vagueness challenge fails.

The contours of the defendants' vagueness challenge are not entirely clear from the four paragraphs they devote to it. *See* Def. Mem. at 28–29. They do not appear to mount a facial challenge to either the honest-services fraud statute or the Hobbs Act, and nor could they after *Skilling* (honest services) and *Evans* (Hobbs Act). Instead, the defendants appear to contend that the statutes are unconstitutionally vague as applied to them in the Indictment because they allegedly lacked notice that their conduct was criminal. The Court should reject this argument.

First, although in general a law must clearly prohibit the conduct in question in order for a finding of criminal intent to be possible, the specific intent requirements for honest-services fraud and Hobbs Act extortion eliminate the problem here. As the Fourth Circuit has observed, "The Supreme Court 'has long recognized that the constitutionality of a vague statutory standard is closely related to whether that standard incorporates a requirement of *mens rea*.'" *United States v. Jaensch*, 665 F.3d 83, 90 (4th Cir.) (quoting *Colautti v. Franklin*, 439 U.S. 379, 395 (1979)), *cert. denied*, 132 S. Ct. 2118 (2012). The Supreme Court's holding in *Colautti* dates back to *Screws v. United States*, 325 U.S. 91, 101–02 (1945), where the Court stated:

> The Court, indeed, has recognized that the requirement of a specific intent to do a prohibited act may avoid those consequences to the accused which may otherwise render a vague or indefinite statute invalid. The constitutional vice in such a statute is the essential injustice to the accused of placing him on trial for an offense, the nature of which the statute does not define and hence of which it gives no warning. But where the punishment imposed is only for an act knowingly done with the purpose of doing that which the statute prohibits, the accused cannot be said to suffer from lack of warning or knowledge that the act which he does is a violation of law.

(internal citation omitted).

Both corruption laws charged here have a specific intent requirement. Honest-services fraud requires proof of "intent to defraud." *See Harvey*, 532 F.3d at 333; *Skilling*, 130 S. Ct. at 2933 ("As to fair notice, it has always been as plain as a pikestaff that bribes constitute honest-services fraud, and the statute's *mens rea* requirement further blunts any notice concern." (internal citations and quotations omitted)). As for the Hobbs Act, the Government will have to prove that the defendants attempted to or did obtain "a payment to which [Mr. McDonnell] was not entitled, ***knowing that the payment was made in return for official acts***." *Evans*, 504 U.S. at 268 (emphasis added). These specific intent requirements defeat any complaint of "lack of warning or knowledge that the act [alleged] is a violation of law," *Screws*, 325 U.S. at 102.[26]

F. The defendants' attempt to invoke federalism principles is baseless.

The defendants' brief closes with an argument that the federal corruption laws as applied here violate the Tenth Amendment. Def. Mem. at 29–30. Although it is surely true that "having the power to make decisions and to set policy is what gives the State its sovereign nature," *FERC v. Mississippi*, 456 U.S. 742, 761 (1982), *quoted in* Def. Mem. at 29, that case involved a challenge to a federal statutory scheme regarding public utilities, and moreover, the opinion ***upheld*** the federal regulations at issue there against the challenge that they impermissibly infringed on state sovereignty. In doing so, the Supreme Court pointed out that as Tenth Amendment law has developed, the Court has "upheld federal statutory structures that in effect directed state decisionmakers to take or refrain from taking certain actions." *Id.* at 762. The Court rejected what it called "the 19th-century view, expressed in a well-known slavery case, that Congress 'has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it.'" *Id.* at 761 (quoting *Kentucky v. Dennison*, 65 U.S. 66, 107 (1860)).

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[26] Because the defendants' as-applied challenge fails, the parade of horribles they claim will follow from the Indictment have no place. *See, e.g.*, *United States v. Masciandaro*, 638 F.3d 458, 474 (4th Cir. 2011) ("[A] person … to whom a statute was constitutionally applied[] 'will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court.'" (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 610 (1973))); *United States v. Welch*, 327 F.3d 1081, 1097 (10th Cir. 2003) ("Speculation about the vagueness of [a statute] in hypothetical situations is inadequate to sustain an attack on a Utah statute which surely applies to the conduct alleged in the indictment.").

But this Court need not resort to parsing the niceties of Tenth Amendment jurisprudence to resolve the question before it, because the Indictment does not charge "state officials for non-corrupt conduct that is legal under state law," Def. Mem. at 29 To the contrary, the Indictment charges core corruption offenses. The defendants' argument that "the Government's broad legal theory criminalizes political activity [that] is 'not corruption,'" Def. Mem. at 29 (quoting *Citizens United*, 558 U.S. at 360), and therefore violates principles of federalism is just another conclusory jury argument. As the defendants concede, the statutes at issue apply to state officials. Def. Mem. at 15. Because Virginia law criminalizes bribery, neither the federal statutes at issue nor the Indictment charging violations of them is any more out of step with state law than the federal robbery statute is with state laws criminalizing the same.[27] And in any event, the province of the federal government to enforce the honest-services statute against state officials was unequivocally established in *Skilling*.[28] The defendants' federalism argument is meritless.

III. Conclusion

For all of these reasons, the defendants' motion to dismiss Counts 1–11 should be denied.

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[27] Indeed, the Virginia bribery statute appears to contemplate an arguably broader definition of official act than § 201(a)(3). It reads, in relevant part, "A person shall be guilty of bribery [i]f he accepts or agrees to accept from another any pecuniary benefit offered, conferred or agreed to be conferred as consideration for or to obtain or influence the recipient's decision, ***opinion***, recommendation, vote ***or other exercise of discretion*** as a public servant or party official." Va. Code Ann. § 18.2-447 (emphasis added).

[28] The bribe-payor defendant in *Rosen* made similar federalism arguments on appeal, but the Second Circuit rejected them. 716 F.3d at 700–01 (nonviolation of state law no defense to federal corruption charge); *see also Urciuoli*, 513 F.3d at 299 (same).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2014, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing ("NEF") to all counsel of record.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**CRIMINAL NO. 3:14-CR-00012**
	)	
ROBERT F. MCDONNELL	)	**JUDGE JAMES R. SPENCER**
MAUREEN G. MCDONNELL	)	

REPLY OF DEFENDANT ROBERT F. MCDONNELL TO THE GOVERNMENT'S OPPOSITION TO MOTION # 10 – MOTION TO DISMISS COUNTS 1-11 OF THE INDICTMENT

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INTRODUCTION

In its Opposition to Mr. McDonnell's Motion to Dismiss, the Government asks this Court to hold that merely appearing at an event, meeting with a supporter, deciding whether to meet with a supporter, or asking a subordinate to meet with a supporter are all "official acts" that can support a federal bribery indictment. The Government claims that such actions are "official" regardless of whether the public official promises to influence or attempts to influence the outcome of the meeting or any governmental decision. As the Government puts it: "*Mr. McDonnell* took official action when he ordered a subordinate to take a meeting, attended an event at a state facility, and directed a cabinet official to arrange a meeting" because *those* steps—even absent any thumb on the governmental scale—were *each* "actions on the questions, matters, or causes of (i) Virginia business development, (ii) the use of state government to promote and obtain research studies for Anatabloc®, or even simply (iii) whether to have or attend the meeting or event in question." Opp'n at p. 23, Dkt. 146. Under this theory, every public official who facilitates political access is subject to a bribery indictment. Indeed, the Government does not even dispute that this is the necessary consequence of its position.

If adopted, this interpretation would mark an extraordinary expansion of federal bribery law. The Hobbs Act, for example, has prohibited obtaining property from another "with his consent under color of official right" since 1946. *See, e.g., Evans v. United States*, 504 U.S. 255, 262 (1992) (explaining as much). No court in the seventy years since that provision's enactment, however, has even *suggested*—much less endorsed—the Government's broad construction of those words. To the contrary, the courts have consistently held that to be an "official" act—as opposed to any act an official takes—an action must cause (or attempt to influence someone else to cause) the government itself (*i.e.*, the government as an entity) to do something (spend public funds, enter a contract, hire an employee, etc.). In other words, the act must involve "inappropriate influence on decisions that the government actually makes." *United States v. Jefferson*, 674 F.3d 332 (4th Cir. 2012) (quoting *Valdes v. United States*, 475 F.3d 1319, 1325 (D.C. Cir. 2007) (en banc)). Arranging a meeting with a subordinate does not cross that line unless the meeting-arranger *also* exerts "inappropriate influence" over whatever decision the subordinate will ultimately make (or be asked to make) on behalf of "the government." *Id.*

Here, the Indictment does not allege that Mr. McDonnell ever exercised "inappropriate influence" over any decision "that the government actually makes," *id.*, which is why the Government is now asking this Court to endorse a wholly unprecedented construction of the bribery statutes. Careful review of the cases cited by *both* sides, however, makes clear that the courts have consistently rejected prosecutorial theories which seek to dispense with the requirement that "official" acts must involve either (1) making decisions on the government's behalf or (2) inappropriately influencing someone else to make decisions on the government's behalf. Every single decision cited by the parties dutifully reiterates this precise point. Even the Supreme Court has explained as much, most recently last month: "[G]overnment regulation may not target the general gratitude a candidate may feel toward those who support him or his allies, *or the political access such support may afford.*" *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1441 (2014) (emphasis added).

This Court should not be the first to deviate from these well-settled principles. Counts 1-11 should therefore be dismissed.

ARGUMENT

I. The Indictment Must Be Dismissed If The Allegations Therein, Taken As True, Do Not State A Criminal Offense.

The Government does not dispute that the Indictment must be dismissed if "the allegations therein, even if true, would not state an offense." Gov't. Opp'n. at 2 n.3 (quoting

United States v. Thomas, 367 F.3d 194, 197 (4th Cir. 2004)). Nor could it, as it is well settled that "a court may always ask whether the allegations in the indictment, if true, are sufficient to establish a violation of the charged offence' and dismiss the indictment if its allegations fail that standard." *United States v. Pope*, 613 F.3d 1255, 1260 (10th Cir. 2010). That is particularly true where, as here, the validity of the Indictment turns on a "clear-cut question of statutory construction." *United States v. Boettcher*, 780 F.2d 435, 436 (4th Cir. 1985). When "the conduct of the defendant set forth in the indictment" does not violate a federal statute, the courts should be "obedient to that Congressional purpose" and dismiss the indictment. *Id.* at 437 (affirming dismissal of an indictment). That is why courts routinely dismiss indictments when those indictments are legally deficient.[1] And that includes indictments which, like this one, "contravene[] the constitutional fair notice requirement, [such that] the rule of lenity demands [] dismissal." *United States v. Bodmer*, 342 F. Supp. 2d 176, 189 (S.D.N.Y. 2004).

The defense is not claiming, as the prosecution suggests, that the Government has failed to supply sufficient *evidence* in support of its Indictment. (Such a claim would be impossible at this juncture, even if procedurally proper, since the defense has not yet received the Government's most important evidence.) The defense is arguing solely that the Government has not made *factual allegations* that—even if entirely true—constitute a federal offense. The defense's motion thus presents a "clear-cut question of statutory construction," *Boettcher*, 780 F.2d at 436, which the cases, statutory text, and applicable canons of construction resolve decisively against the Government. None of the decisions the Government cites endorse its suggestion that prosecutors can replace concrete allegations with transcriptions of statutory text, proclaim that the Indictment recites a statute's elements, and then take their case before a jury. To the contrary, the Government must allege *facts* that, if true, would satisfy each element of each charged crime before it may plunge the Court, the parties, twelve citizens, and hundreds of witnesses (per the Government's witness list) into a trial. As the Fourth Circuit sitting en banc has explained: "[I]n testing the sufficiency of an indictment, 'it is *the statement of facts in the pleading, rather than the statutory citation* that is controlling . . . .'" *United States v. Hooker*, 841 F.2d 1225, 1227 (4th Cir. 1988) (en banc) (emphasis added). "It is elementary that every ingredient of [the] crime must be charged in the bill, a general reference to the provisions of the statute being insufficient." *Id.* at 1228 (quoting 89 F.2d 578, 579 (4th Cir. 1937)).

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[1] *See, e.g.*, *United States v. Baer*, 92 Fed. Appx. 942, 945 (4th Cir. 2004) (affirming dismissal of an indictment for failure to state an offense); *United States v. Walters*, 359 F.3d 340, 347 (4th Cir. 2004) (same); *United States v. Good*, 326 F.3d 589, 592 (4th Cir. 2003) (same); *United States v. Berlin*, 707 F. Supp. 832, 836, 838 (E.D. Va. 1989) (dismissing charges in an indictment due to insufficient factual allegations); *see also, e.g.*, *United States v. Yakou*, 393 F.3d 231, 233 (D.C. Cir. 2005) (affirming dismissal of an indictment for failure to state an offense); *United States v. Lamont*, 330 F.3d 1249, 1250 (9th Cir. 2003) ("[W]e reverse the judgment of the district court with instructions to vacate the plea and dismiss the indictment."); *United States v. Gatewood*, 173 F.3d 983, 986-88 (6th Cir. 1999) (vacating a conviction and remanding "with instructions for the district court to dismiss the indictment" for failure to state a criminal offense); *United States v. Cassese*, 273 F. Supp. 2d 481, 484-88 (S.D.N.Y. 2003) (dismissing an indictment due to insufficient factual allegations).

Here, the Government has failed to allege that Mr. McDonnell performed (or promised he would perform) a specific "official act." Opp'n at pp. 5-6 (acknowledging that this is an element). What attributes make an act "official"—and thus illegal if undertaken in exchange for benefits—is a question of law that the Court must resolve. And at this stage in the proceedings, the Court must determine whether the Indictment alleges facts which—if proven—would constitute an "official act" under the proper definition. Because the Government's Indictment does not do that, it does "not state an offense," Opp'n. at 2 n.3, and must be dismissed.[2]

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[2] The Government's block quote from *United States v. Terry*, 707 F.3d 607 (6th Cir. 2013), is irrelevant. That passage discusses the standard for alleging an "agreement" (or a

II. Merely Providing Access Is Not An "Official Act."

A. Every Judicial Decision Cited By Either Side Repudiates The Government's Broad Construction.

1. The Supreme Court Has Repeatedly Rejected The Government's Broad Construction.

The Supreme Court has repeatedly rejected the Government's notion that providing preferential access in exchange for benefits constitutes corruption. That is true in both the political corruption and campaign finance contexts. That authority is controlling here.

(a) *Sun-Diamond* held that speeches and meetings without more are not official acts.

The Supreme Court's decision in *United States v. Sun-Diamond Growers*, 526 U.S. 398 (1999), directly refutes the Government's broad construction of the term "official act." There, the Government argued that the Secretary of Agriculture would be taking an "official act" if he made a "speech to [] farmers concerning various matters of USDA policy—so long as the Secretary had before him, or had in prospect, matters affecting the farmers." *Id.* at 407. The Supreme Court flatly rejected that contention, holding that this sort of action, while "assuredly" an "'official act[]' in some sense," is not an "'official act[]' within the meaning of the statute." *Id.* As the Court explained, corruption statutes "that can linguistically be interpreted to be either a meat axe or a scalpel should reasonably be taken to be the latter." *Id.* at 412.

Rather than grapple with *Sun-Diamond*'s straightforward explanation, the Government simply repeats the same argument it made there, re-characterizing the Supreme Court's decision as being "that the 'action' at issue (the hosting, visiting, speaking, or directing of a meeting)

"pro"), *see id.* at 613—a straightforward term where the legal term (agreement) is literally synonymous with the required factual showing (an agreement). With "official act," in contrast, the term itself does not constitute a complete factual allegation.

must be 'on' (relate to or further) a particular 'question, matter, cause,' etc. (such as African trade issues, Virginia business development, or obtaining research studies for a businessman's product)." Opp'n at 20 n.19. But that is the argument the Court *rejected*, holding that mere speeches or public appearances are *never* official acts, *even though* "the Secretary of Agriculture *always* has before him or in prospect matters that affect farmers, just as the President always has before him or in prospect matters that affect college and professional sports, and the Secretary of Education matters that affect high schools." 526 U.S. at 407. Indeed, this portion of the Court's holding could not be clearer: "[T]hose actions … are not 'official acts' within the meaning of the statute." *Id.* The Government's construction is therefore foreclosed.

The Government also attempts to escape *Sun-Diamond* by arguing that *Jefferson* gives it "limited" force in bribery cases. Opp'n at 19. But nothing in *Jefferson* suggested that lower courts should ignore *Sun-Diamond*'s construction of the same statutory text the Government is asking this Court to apply. To the contrary, *Jefferson* explained that "we agree with *Sun-Diamond* and *Valdes* that the bribery statute does not encompass every action taken in one's official capacity." 674 F.3d at 356. The discussion the Government latches onto relates to an entirely different argument—that to be "official," an act must be taken pursuant to duties that are formally codified in statute or regulation (such as voting on funding as opposed to lobbying other officials about funding). *See id.* at 355-56. The Fourth Circuit never suggested that it was rejecting *Sun-Diamond*'s core determination that speeches or receptions are never official acts. Instead, *Jefferson* reaffirmed that to be "official," an act must exert "inappropriate influence on decisions that the government actually makes." *Id.* at 357 (quotation omitted).

(b) "Ingratiation and access are not corruption."

The Government's position is further undermined by the Supreme Court's repeated explanations in campaign finance cases of what constitutes "corruption" under federal law. The

Government criticizes the defense for "cherrypicking" a "single sentence" from *Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010). Opp'n at 27. Just last month, however, the Supreme Court provided an even more detailed explanation of what conduct is "corrupt" (and thus criminal) and what conduct is not. In *McCutcheon*, the Court explained that "government regulation may not target the general gratitude a candidate may feel toward those who support him or his allies, or *the political access such support may afford*." *McCutcheon*, 134 S. Ct. at 1441 (emphasis added). That is because "[i]ngratiation and access are not corruption." *Id.* (quoting 558 U.S. at 360). "Any regulation"—the Court emphasized—"must *instead* target '*quid pro quo*' corruption or its appearance," which the Court defined as "a direct exchange of an official act for money." *Id.* By directly contrasting "the *political access* such support may afford," with "a direct exchange of an *official act* for money," the Court made crystal clear that exchanging *only* "political access" for "support" is not *itself* an "official act."

The Government asserts that these decisions hold only that "a mere ***correlation*** of political speech in the form of spending does not necessarily amount to corruption." Opp'n at 27 n.25. But that, of course, is not what the Court said; its opinions never discuss a "correlation" between spending and access. Rather, the Court held that "[i]ngratiation and access are not corruption," *Citizens United*, 558 U.S. at 360, and that the law cannot penalize "the political access such [financial] support may afford." *McCutcheon*, 134 S. Ct. at 1441. Those are definitive holdings about what *cannot* be exchanged for money (official acts) and what *can* be exchanged for money ("ingratiation and access" or "political access").

2. Every Court Of Appeals To Consider A Construction Of "Official Act" Similar To The Government's Has Rejected It.

In light of these common sense principles, it is not surprising that every court of appeals to have addressed the issue has rejected the Government's efforts to expand the concept of an "official act" beyond actions that exert "inappropriate influence on decisions that the government actually makes." *Jefferson*, 674 F.3d at 357 (quotation omitted). The Government's attempt to distinguish these cases merely demonstrates how wrong it is.

For example, the Government attempts to distinguish the D.C. Circuit's en banc decision in *Valdes*, but promptly defeats itself when it quotes the court's holding that official acts are limited to "questions, matters, causes, suits, proceedings, and controversies that are decided by *the government*." Opp'n at 20 (emphasis added). An official's decision about whether to meet with a supporter is not—and could not possibly be—a decision by "the government" on a "question[], matter[], cause[], suit[], proceeding[], and controvers[y]." It is as simple as the difference between a judge ruling on a motion (exercising the government's power) and a judge speaking at a law school (a settled practice of judges, to be sure, but one that does not exercise governmental power even if the judge's talk is "on" general legal "issues" that are "pending" before him). Consequently, a judge does not violate federal bribery laws when he agrees to speak at the law school of a dean who has hosted the judge at his summer vacation home. If the law were otherwise, then, as explained below, longstanding and routine political practices would suddenly be the bases for criminal prosecutions. *See infra* at II.B.

The Government likewise has no response to *United States v. Muntain*, which rejected the same argument the Government offers here: "The Government urges this Court to construe the scope of 'official acts' to encompass any acts within the range of an official's public duties, broadly defined, including, in the instant case, any meeting between the Assistant to the Secretary for Labor Relations at HUD and labor union officials to discuss matters of interest to the unions." 610 F.2d 964, 967 (D.C. Cir. 1979). Like here, "the Government would have this Court construe 18 U.S.C. § 201(g) as a statutory prohibition against the misuse of public office and contacts gained through that office to promote private ends." *Id.* The Court, however, held that such a construction would "extend its language beyond permissible bounds." *Id.*[3]

The Government is similarly stymied by *United States v. Urciuoli*, which rejected the Government's argument that "a legislator's informal duties commonly extend to representing constituents with local officials and engaging in oversight functions and so to this extent should be regarded as official." 513 F.3d 290, 295-96 (1st Cir. 2008). The Government notes that *Urciuoli*—like every appellate decision in which the Indictment was not dismissed—is in the context of "jury instructions and evidentiary sufficiency." Opp'n at 22. But that is *always* the case for defense-side criminal appeals. That procedural inevitability does not support the Government's attempt to try the McDonnells using an invented, uniformly-rejected legal theory.

Finally, the Government relegates its effort to distinguish *United States v. Rabbitt*, 583 F.2d 1014 (8th Cir. 1978), to a footnote wherein it fails to offer any actual distinction. To the contrary, the Government readily acknowledges that, under *Rabbitt*, an official does not take an official act if he "promised *only* to introduce the [paying] firm to influential persons; [but does] not promise to use his official position to influence those persons." Opp'n at 22 n.21 (quoting *United States v. Loftus*, 992 F.2d 793, 796 (8th Cir. 1993)) (second alteration added). Here, of course, all that the Government alleges is that Mr. McDonnell introduced Williams to "influential persons." Under *Rabbitt* and all of the other cases described above, however, that is simply *not* an "official act" under the federal bribery laws.

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[3] The Government's only attempt to distinguish *Muntain* is to note that it was "a gratuities case." Opp'n at 21. That, of course, is irrelevant, since the gratuities statute uses the same definition of "official act" the Government is urging upon the Court here. *See, e.g.*, *Muntain*, 610 F.2d at 967 (quoting the definition).

3. The Decisions The Government Cites Do Not Support (Or Even Suggest) Its Broad Construction Of "Official Act."

Nor do any of the six decisions cited by the Government support its legal theory. The Government relies chiefly on the Fourth Circuit's decision in *Jefferson.* Opp'n 12-13. But in *Jefferson*, the Fourth Circuit explicitly "agree[d] with *Sun-Diamond* and *Valdes* that the bribery statute does not encompass every action taken in one's official capacity"; rather, to be "official," an act "must yet adhere to the definition confining an official act to a pending 'question, matter, cause, suit, proceeding or controversy.'" 674 F.3d at 356. *Jefferson*, moreover, unquestionably involved "inappropriate influence on decisions that the government actually makes." *Id.* (quotation omitted). Indeed, far from merely facilitating access, Congressman Jefferson participated in *five separate bribery schemes*, each of which involved "the congressman [] soliciting ongoing bribe payments in exchange for promoting and facilitating lucrative deals between, for example, iGate and the Army, or between iGate, Mody, or Arkel and various African governments. *Id.* at 359. The interpretation the Government presses here, by contrast, would reach "every action taken in one's official capacity"—directly contravening *Jefferson.*

The D.C. Circuit's decision in *United States v. Ring*, 706 F.3d 460 (D.C. Cir. 2013), is even less helpful to the Government. There, the court held that pressuring an immigration official to expedite a visa application is an "official act." *Id.* at 469. That was correct because expediting a visa application (just like granting a visa) is an "official act" of the government. As the court explained, "the attorney acted in his official capacity to *influence* the visa application process, conduct better analogized to 'a congressman's use of his office to secure Navy contracts for a ship repair firm.'" *Id.* at 470 (citation omitted). The Government's observation that "even an act as insubstantial as an email or a phone call can, in context, be *quo*," Opp'n at 13, is thus irrelevant. The key question is whether the email or phone call exerts "inappropriate influence" over a governmental decision. That was true in *Ring*, but is not alleged here.

Nor does *United States v. Dimora*, 879 F Supp. 2d 718, 730 (N.D. Ohio 2012), support the Government's position. Like the other cases cited by the Government, that case clearly involved "official acts," which included, as the Sixth Circuit noted in its recent affirmance, Dimora providing various bribe-payers with, among other things, "county patronage," "government jobs," and "public construction contracts." *United States v. Dimora*, No. 12-4004/4051, 2014 WL 1687766 (6th Cir. Apr. 30, 2014), at *1. Thus, in the portion of the opinion discussing the "official act" requirement, *Dimora* explained that the Fourth Circuit's decision in *Jefferson* turned upon "efforts to obtain business assistance for certain business ventures by 'exerting his influence as a Member of Congress,'" 879 F Supp. 2d at 736, further emphasizing that, under the court's jury instruction, "'official action' includes the exercise of both formal *official influence* (such as a public official's votes) and informal *official influence* (such as a public official's influence on other public officials)." *Id.* at 734-36 (emphases added). *Dimora*, therefore, plainly limited "official" acts to those which exert "inappropriate influence on decisions that the government actually makes." *Jefferson*, 674 F.3d at 357 (quotation omitted). The portions of the opinion cited by the Government, in contrast, are not even from the opinion's discussion of the "official act" requirement. *See Dimora*, 879 F Supp. 2d at 730.

Finally, the Government cites a number of other cases in footnote 13. None support it:

- In quoting *United States v. Rosen*, 716 F.3d 691 (2d Cir. 2013), the Government omits a critical fact: "Seminerio wrote a letter on State Assembly letterhead stationery to the New York State Senate Majority Leader *asking him to restore millions of dollars in funding*." *Id.* at 695. That case, therefore, involved clear-cut "official acts"—which is likely why the defendant did not even argue otherwise.

- *United States v. Moore*, 525 F.3d 1033 (11th Cir. 2008), involved five "official acts" committed by prison guards, all of which involved exercising the power of the prison itself to afford preferential treatment to prisoners: (1) switching a prisoner's unit; (2) permitting a prisoner to make phone calls to request contraband; (3) lobbying another guard on behalf of an inmate; (4) permitting an inmate to leave her unit; (5) supplying a key to another guard to permit trysts on prison property. *Id.* at 1041.

- Finally, *United States v. Hullender*, No. 90-cr-60, 1990 WL 124068, at *4 (N.D.N.Y Aug. 24, 1990), a Northern District of New York decision resolving a discovery dispute, never even discusses what conduct was at issue or what the term "official act" means. As for the "ministerial exception" that *Hullender* cursorily rejects, that decision has no bearing where, as here, the problem is not that the allegations are "ministerial" but rather that they do not allege that Mr. McDonnell made or influenced any "decisions that the government actually makes." *Jefferson*, 674 F.3d at 357 (quotation omitted).

In short, the Government's own cases only underscore the reality that *no* court has *ever* endorsed the Government's expansive construction of the term "official act."

B. The Government's Broad Construction Would Criminalize Basic Political Practices, Which Is Likely Why Every Court To Consider It Has Rejected It.

It is not surprising that the cases uniformly reject the Government's position. For if, as the Government claims, providing preferential access in exchange for benefits constitutes federal bribery, then there is little question that virtually every elected official is vulnerable to federal indictment. The Government does not even dispute that this is the necessary consequence of its position. Instead, it simply refuses to "comment." Opp'n at 25. The courts, however, have no such luxury, since they must consider how the legal rules they adopt will apply to future cases.

Any doubt about the grave consequences of the Government's position is dispelled by considering the countless relationships between public officials and major donors it would criminalize. Just looking at the top of our political system, there are numerous wealthy donors who have well-documented symbiotic relationships with the current President—just as there have been with every past President—wherein massive donations yield increased "political access" (but not "inappropriate influence over decisions the government actually makes"). To take just one example, consider the President's relationship with Jeffrey Katzenberg, the wealthy Hollywood businessman who helms Dreamworks Animation.

Mr. Katzenberg donated $30,800 to the President's first campaign, while also bundling $500,000 in donations.[4] During and after that campaign, the President and his associates regularly solicited benefits from Mr. Katzenberg. He complied, giving hundreds of thousands of dollars "to congressional candidates" and "more than $1 million to party committees." *Id.* In return, Mr. Katzenberg received extraordinary access, visiting "the White House for a state dinner and high level diplomatic receptions" and having multiple "private meetings with key advisors."[5] His company's outside lobbyist (a former Dreamworks executive) received similarly privileged access, visiting the President and his staff "38 times, including two meetings when [the businessman] was also present."[6] Oftentimes, the President arranged important meetings for Mr. Katzenberg immediately after Mr. Katzenberg did things for him. For instance, shortly after Mr. Katzenberg announced that he would host an extravagant fundraiser, the President invited him to attend an official lunch with the future Premier of China. *Id.* The President even rewarded Mr. Katzenberg with an official speech (traveling at government expense) at Dreamworks—a speech in which the President lavished praise on Mr. Katzenberg and his company, unquestionably enhancing Mr. Katzenberg's credibility with the government and the public.[7] All the while, Mr. Katzenberg and his lobbyist never registered as lobbyists, *id.*, enabling them to conceal many of their interactions with the President and his staff.[8] The

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[4] Bill Allison, *Stealthy Wealthy: Did Katzenberg's Support for Obama Fast-Track Movie Deal with China?*, Sunlight Foundation (April 18, 2012), available at http://tinyurl.com/ml5slfz.

[5] Jackie Calmes, *A Hollywood Welcome for Obama at Clooney Fund-Raiser*, The New York Times (May 11, 2012), available at http://tinyurl.com/n5t6az7

[6] Allison, *supra.*

[7] Richard Verrier and Kate Linthicum, *Obama Visits DreamWorks, Calls Hollywood A 'Bright Spot' of Economy*, L.A. Times (Nov. 27, 2013), available at http://tinyurl.com/kclrosu.

[8] Public Citizen, *Lobbying Disclosure Act: A Brief Synopsis of Key Components*, at pp. 1-2, available at http://tinyurl.com/mjndzs7.

President, too, appears to have worked to conceal these meetings.[9]

Under the Government's broad theory, everyone involved in these events is at risk of federal indictment. The prosecution's only response to that startling conclusion is the *ipse dixit* that none of this matters because "not one penny" of the benefits it alleges "were campaign contributions." Opp'n at 25. But campaign contributions—no less than personal gifts—can constitute the *quid* in a *quid pro quo* bribery scheme. The Government's own authorities make this clear. For example, in *Terry* the Sixth Circuit explained that "a bribe doubl[ing] as a campaign contribution does not by itself insulate it from scrutiny." 707 F.3d at 613 (cited in Opp'n at pp. 8, 10). "[I]f a donor makes a contribution so that an elected official will 'do what I asked him to do,' and the official accepts the payment with the same understanding, the donor and the official have formed a corrupt bargain"; it is that "agreement[, which] marks the difference between a run-of-the-mine contribution and a bribe." *Id.* Or as the Fourth Circuit has held, "campaign contributions may be the subject of a Hobbs Act violation, no less than any other payments." *United States v. Derrick*, 163 F.3d 799, 816-17 (4th Cir. 1998).[10]

In short, if facilitating meetings constitutes an "official act," then facilitating access in exchange for campaign contributions is just as illegal as facilitating access in exchange for gifts and loans.[11] And under *that* theory, routine political practices, including those of the President, Virginia's current Governor, and others, *see, e.g.*, Mem. Supp. Mot. Dismiss, Dkt. 106, at pp. 4, 17-18, 23, are subject to criminal prosecution. That is not—and has never been—the law.

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[9] Bill Dedman, *Obama Blocks List of Visitors to White House*, NBC News.com (June 16, 2009), available at http://tinyurl.com/kzn2eun.

[10] Some courts have suggested that cases involving campaign contributions require an explicit—rather than implicit—*quid pro quo*. *See, e.g.*, *United States v. Ganim*, 510 F.3d 134, 142-43 (2d Cir. 2007). The Fourth Circuit, however, has held that the Hobbs Act requires the same showing of intent in cases involving campaign contributions as in cases involving gifts. *See United States v. Hairston*, 46 F.3d 361, 372 (4th Cir. 1995) (requiring "proof of a quid pro quo in all cases charging extortion under color of official right"). But this issue is irrelevant here, where the issue is not the explicitness of any agreement, but whether the Government has alleged an "official act." And there is no basis—nor precedent—for the proposition that the *same conduct* is "official" in some cases (gifts) and "non-official" in others (contributions).

C. The Statutory Text Also Forecloses The Government's Broad Construction.

The prosecution is further mistaken in claiming that the statutory text supports its expansive construction. Opp'n at 14, 20 n.19. To the contrary, the text makes clear that acts are "official" only when they exercise (or seek to influence the exercise of) the power of the government itself. But if there is any doubt about that, a phalanx of interpretive canons make clear that all ambiguities in the text must be resolved against the Government—further foreclosing its attempt to twist the bribery laws into criminalizing political access.

1. The Statutory Text Clearly Forecloses The Government's Position.

The statutory definition the Government seeks to borrow, 18 U.S.C. § 201(a)(3), defines an "official act" as "any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity." "[T]he six-term series" of words "refers to a class of questions or matters whose answer or disposition is determined by the government." *Valdes*, 475 F.3d at 1324. In other words, the act must represent a disposition or determination "by the government," or an effort to inappropriately influence the same. Merely giving a private person political access so that *he* can try to influence the government is not enough.

The Government's only response is to assert that the word "on" actually means "relates to or furthers." Opp'n at 17. It thus claims that taking action "*on*" an issue means the same thing as taking action that "*relates to or furthers*" an issue. *Id.* (emphases added). But that is plainly wrong, since the phrase "relates to or furthers" is substantially broader than the word "on." For example, making a decision "on" whether to hire someone is different than making a decision that "relates to or furthers" whether to hire someone. The former means making an actual decision about whether to make the hire, while the latter would include decisions about all sorts of neutral and prefatory steps, such as whether to interview someone, read a resume, or even return a phone call. Here, the word "on" does the critical textual work of limiting the statute to "decisions or actions" that inappropriately influence or directly cause the government to do something (or not do something), while "relates to or furthers" would expand the statute to include merely providing people with access to the government so that *those* people can plead their case for governmental action. The text does not adopt that latter, broader construction.

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[11] Not even the intent requirement could keep the Government at bay, since the *quid pro quo* in fundraising is typically explicit.

2. To The Extent The Text Is Ambiguous, Multiple Canons Of Construction Dispel That Ambiguity.

To the extent the statutory text is unclear, multiple canons foreclose the Government's sweeping construction. As the Supreme Court admonished in *Sun-Diamond*, "a statute in this field that can linguistically be interpreted to be either a meat axe or a scalpel should reasonably be taken to be the latter." 526 U.S. at 412. These canons reinforce that directive here.

(a) Under the Rule of Lenity, the "tie must go to the defendant."

The Rule of Lenity requires the Court to construe any ambiguity in the statutory definition of "official act" against the Government. "[W]hen there are two rational readings of a criminal statute, one harsher than the other, [the Court is] to choose the harsher only when Congress has spoken in clear and definite language." *McNally v. United States*, 483 U.S. 350, 359-60 (1987); *see also Skilling v. United States*, 130 S. Ct. 2896, 2932-33 (2010) (applying rule of lenity to honest services statute); *Scheidler v. NOW*, 537 U.S. 393, 409 (2003) (applying rule of lenity to Hobbs Act). "This venerable rule not only vindicates the fundamental principle that no citizen should be held accountable for a violation of a statute whose commands are uncertain, or subjected to punishment that is not clearly prescribed," but "also places the weight of inertia upon the party that can best induce Congress to speak more clearly and keeps courts from making criminal law in Congress's stead." *United States v. Santos*, 553 U.S. 507, 514 (2008) (plurality opinion). Here, the statutes clearly foreclose the Government's construction. But at a minimum they are ambiguous and so the "tie must go to the defendant." *Id.*

(b) Statutes should be interpreted to avoid "serious constitutional concerns."

It is likewise a bedrock principle of statutory construction that legislation should be interpreted to avoid "serious constitutional concerns." *Bartlett v. Strickland*, 556 U.S. 1, 4 (2009). This canon is "a tool for choosing between competing plausible interpretations of a statutory text" that rests "on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts." *Clark v. Martinez*, 543 U.S. 371, 381-382 (2005). Here, the Government's construction would render the provisions it invokes unconstitutionally vague and would transgress core First Amendment freedoms. The Court should interpret those provisions to avoid these serious constitutional issues.

First, according to the Government: "*Mr. McDonnell* took official action when he ordered a subordinate to take a meeting, attended an event at a state facility, and directed a cabinet official to arrange a meeting, and all of those actions were on the questions, matters, or causes of (i) Virginia business development, (ii) the use of state government to promote and obtain research studies for Anatabloc®, or even simply (iii) whether to have or attend the meeting or event in question." Opp'n at 23. The Government thus believes that the term "official act" potentially includes every decision an official makes that relates to anything that official ever addresses in his official capacity. The Government even suggests that this construction could criminalize *any* decision *about* "whether to have [a] meeting" with anyone who has conferred a benefit. If that is what the statute means, then it is unclear how officials could ever avoid violating it. After all, whenever a supporter requests a meeting, the official will have to decide "whether to have the meeting"—*even if* the decision is no. This problem is avoided, however, by construing "official act" as the courts have uniformly construed it until now—as limited to acts that exert inappropriate influence over an actual *governmental* decision.

Second, the Supreme Court has consistently held that when laws "interfere[] with the right of free speech or of association, a more stringent vagueness test should apply." *Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982). The Government's broad construction would directly infringe core First Amendment freedoms. As the Supreme Court just held, "government regulation *may not target* the general gratitude a candidate may feel toward those who support him or his allies, or *the political access such support may afford*." *McCutcheon*, 134 S. Ct. at 1441 (emphases added). Criminal laws are plainly "government regulation." It therefore flows directly from *McCutcheon* that those laws "may not target" the "political access" that financial "support may afford." The Government's construction runs headlong into that basic principle. The correct construction does not.

(c) Statutes must be "clear and manifest" before they can be construed to invade state self-governance.

Finally, Federalism supplies yet another reason to reject the Government's sweeping construction of the phrase "official act." The Supreme Court has repeatedly held that, "[i]f Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute." *Gregory v. Ashcroft*, 501 U.S. 452, 461 (1991). Federal intrusion into a state's code of ethics "pre-empt[s a] historic power[] of the States" and should thus be rejected unless Congress has made "its intention 'clear and manifest.'" *Id.* at 461. Here, Virginia law explicitly decriminalizes accepting "a gift from a person who has interests that may be substantially affected by the performance of the officer's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's impartiality in the matter affecting the donor." Va. Code. § 2.2-3103(8). The Govenrment's broad construction would fully override this state law, along with the rest of Virginia's code of ethics. Congress's intent to preempt that wide swath of Virginia's (and every other state's) ethics code for state officials is hardly "clear and manifest" in the provisions the Government invokes.[12]

III. Under The Long-Settled Definition Of "Official Act," The Indictment Should Be Dismissed.

Once the Court applies the proper definition of "official act," it is clear that the Indictment fails to allege a complete corruption offense.[13] As Mr. McDonnell demonstrated in the Memorandum supporting his Motion to Dismiss, the Government does not allege that he attempted to inappropriately influence any governmental decision (or promised he would do so). *See* Mem. Supp. Mot. Dismiss, Dkt. 106, at pp. 23-27 The Government alleges only—at the most—that Mr. McDonnell gave Williams access to some of Mr. McDonnell's subordinates so that *Williams* could attempt to influence those individuals to help his company. Merely affording access to those subordinates without attempting to exert any "inappropriate influence" over what they decided to do (or not do) is simply not an "official act," as *Jefferson*, 674 F.3d at 357, and countless other decisions make clear. *See supra* at II.A.

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[12] The Government's principal response to this point is that "Virginia law criminalizes bribery." Opp'n at 30. Tellingly, however, the Government cites no example of Virginia prosecuting a state official for providing gift-givers with preferential access.

[13] Toward the end of its Opposition, the Government seizes upon a few lines of the defense's Memorandum to mischaracterize the defense's argument as something the defense has never suggested—that officials must take *different* official action in order to consummate bribery. Opp'n. at 25-26. This obfuscation fails. Mr. McDonnell has never argued that an act is not "official" if the official can show he would have done the same thing absent the bribe. If a governor took gifts in exchange for signing legislation, he would obviously be guilty of bribery regardless of whether he would have signed the bill anyway.

Nor can the Government save its Indictment by suggesting that Mr. McDonnell took "official acts" by exerting inappropriate influence over the Tobacco Commission's decision whether to fund Star research, or over state university researchers' decisions whether to conduct studies. *See, e.g.*, Opp'n at 12 (referring to allegations as a "series of steps towards a longer-term goal"); *id.* at 20-21 ("sought-after research studies at state universities"). The Indictment does not allege that Mr. McDonnell attempted to influence the decisions of the Tobacco Commission or university researchers (or promised he would). It does not even allege that Star Scientific *requested* research funding.[14] Un-alleged facts plainly cannot sustain an Indictment.

CONCLUSION

The jury arguments laced throughout the Government's Opposition highlight the importance of the Court acting as gatekeeper in this case. The Government barely pretends to have pled an "official act" under the long-settled definition of that requirement. It has instead broadcast its intention to convict Mr. McDonnell using eye-catching details about his supposed excess, while ignoring fundamentals like the actual elements of the charged crimes. That is not how criminal law works. The Indictment should be dismissed.

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[14] The Government briefly mentions one other possibility: "Mr. McDonnell's hosting an event at the Governor's Mansion to benefit Star was [ ] an exercise of his official governmental powers." Opp'n at 18 n.16. That, too, is wrong. Mr. McDonnell hosting a privately funded lunch event in his then-home does not exercise the sovereign power of Virginia. The fact that the Government's only "authority" for claiming otherwise is a forty-year-old, out-of-circuit decision construing the Speech and Debate Clause confirms it. Otherwise, the quadrennial practice of selling access to presidential inaugural events would constitute bribery, as would hosting an event in a government building to which the guests bring gifts.

Dated: May 5, 2014

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**CRIMINAL NO. 3:14-CR-00012**
	)	
ROBERT F. MCDONNELL	)	**JUDGE JAMES R. SPENCER**
MAUREEN G. MCDONNELL	)	

REPLY OF DEFENDANT ROBERT F. MCDONNELL TO THE GOVERNMENT'S RESPONSE TO MOTION # 14 – MOTION FOR OMNIBUS VOIR DIRE RELIEF

INTRODUCTION

The Government concedes—as it must—that this case has garnered an unusual "volume of pretrial publicity warrant[ing]" at least some voir dire measures proposed by Mr. McDonnell. Opp'n at 2 n.2. Its brief, however, reveals that concession as hollow, by affirmatively agreeing to only the one requested procedure—juror note-taking—that is already customary in this Court. At every other turn, the Government urges the Court to retain the "standard procedure" even though it admits that this is not a standard case.

The Government defends its position via misdirection—insisting the accused is equal to other criminal defendants. That misses the point entirely. Of course Mr. McDonnell has no more basic rights under the law than any other defendant. But selecting a fair and impartial jury is not a one-size-fits-all concept. The difference is in the nature of the charges, the unique job the former Governor held over the last four years, and the likely exposure of potential jurors to information about the case and the accused. The Government cannot contest that this case is far from the average criminal prosecution. It is already one of the most high-profile prosecutions in Virginia history, as demonstrated by the massive press coverage at the arraignment and the thousands of news articles over the past nine months. Further, this case has a defendant whose policy decisions, as Governor, affected millions of Virginians personally. Mr. McDonnell has thus requested voir dire relief to mitigate the obvious risk of prejudice.

ARGUMENT

I. The Government Concedes That Pre-Trial Publicity Has Been Overwhelming And Overwhelmingly Prejudicial to the Accused in This Proceeding.

The Government does not dispute that—unlike the typical criminal defendant—Mr. McDonnell has been subject to a constant deluge of prejudicial publicity saturating the district's jury pool. The media reflects this reality every time anything is filed in this proceeding—no matter how innocuous—by making detailed reports on the filing. (The Government tries to lay this publicity at the defense's doorstep, but it is illogical to suggest that Mr. McDonnell has been feeding this toxic publicity.)[1] Nor does the Government contest that Mr. McDonnell's political and policy positions are likely to influence potential jurors. In short, the Government admits that this case presents highly unusual circumstances, which in turn pose unique challenges in selecting an impartial jury. Mr. McDonnell is not, as the Government implies, seeking "special treatment." To the contrary, he seeks only fair treatment commensurate with the unique circumstances surrounding this prosecution.

II. Thorough Voir Dire Is the Only Way to Protect the Accused's Sixth Amendment Rights in This Proceeding.

Despite readily acknowledging—as it must—that there is an extraordinarily atypical risk of a prejudiced jury pool in this case, the Government proceeds to demand typical treatment of the accused, according to what it describes as standard practice. While its response claims to endorse "some" additional voir dire measures, the only request it actually approves is the request to permit jurors to take written notes, which is already the custom in this Court. In light of the Government's agreement that (1) Mr. McDonnell has faced overwhelming, prejudicial publicity before trial and (2) that publicity justifies additional safeguards, it is clear that more than already-permitted note taking is required.

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[1] Mr. McDonnell was the Commonwealth's Governor during a grand jury investigation riddled with leaks, many explicitly attributed to unnamed law enforcement sources by the reporters who printed them. As Governor, Mr. McDonnell was fully entitled to make limited public statements in response to those leaks and, indeed, had an obligation to do so. The Government complains about emails sent from a legal defense fund—a private organization properly exercising its First Amendment rights. To be clear, no member of the defense team controls the fund or is responsible for its statements.

The Government supports its opposition with little analysis, instead offering repeated references to this Court's discretion over voir dire, making virtually no arguments about how the Court should exercise that discretion.

The Government takes no position on Mr. McDonnell's fifth and seventh requests and does not oppose his sixth request, so he stands on his original brief for those, asking the Court to use its sound discretion to grant that unopposed relief. As discussed below, the remaining requests should also be granted, given voir dire's "essential role in guaranteeing a criminal defendant's Sixth Amendment right to an impartial jury." *United States v. Lancaster*, 96 F.3d 734, 738 (4th Cir. 1996) (en banc); *Mu'Min v. Virginia*, 500 U.S. 415, 431 (1991) ("Voir dire examination serves the dual purposes of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges.").

A. Administering juror questionnaires at the courthouse protects the integrity of the voir dire process.

The Government invokes "judicial economy" in opposing Mr. McDonnell's request that potential jurors fill out their questionnaires on-site. But given the amount of governmental and judicial resources this prosecution will consume if permitted to proceed to trial, it is hard to see how administering a jury questionnaire at the courthouse—substantially increasing the reliability of each prospective juror's answers—would be disproportionately burdensome. Indeed, other than the few minutes required for introductory remarks, the Court itself would not have to be present for the remainder of the exercise. Having prospective jurors complete the questionnaire on-site will ensure the questionnaire's integrity and help guard against overzealous and biased jurors (for either side) making it onto the jury—a risk that is unquestionably more acute in a highly publicized prosecution like this one, which features such a polarizing criminal defendant. And by guarding against this possibility, on-site administration of the questionnaire will minimize the risk of a mistrial and additional litigation, which would, of course, impose a far greater drain on the Court's resources.

B. Individual questioning by the Court and the parties will help them to root out bias caused by the concededly negative and overwhelming publicity of the last year.

The Government's recitation of the Court's broad discretion over in-person juror questioning makes no specific argument against Mr. McDonnell's request, beyond another unadorned appeal to custom. But the defense has already demonstrated—without opposition from the Government—that this case is not typical, as the jury pool in a typical case has not been inundated with publicity castigating the defendant for over a year, nor is the typical defendant a former Governor who has taken controversial policy positions.

That extraordinary and atypical prejudicial publicity, coupled with the defendant's polarizing political reputation, is best mitigated by careful screening of potential jurors through a written questionnaire followed by a brief period of individual follow-up questioning from the Court and the parties. Adding these safeguards merely reflects the commonsense observation that "[t]he appropriate procedure when potential juror bias presents itself is a function of the probability of bias; the greater that probability, the more searching the inquiry needed to make reasonably sure that an unbiased jury is impaneled." *United States v. Blitch*, 622 F.3d 658, 665 (7th Cir. 2010) (citation and internal quotation marks omitted). Specifically, Mr. McDonnell's request that potential jurors be questioned individually comports with the Fourth Circuit's instruction that, if the court "determines that a member of the venire has been exposed to prejudicial pretrial publicity, that juror must then be examined, individually and outside the presence of the other jurors, to determine the effect of the publicity." *Coins v. Angelone*, 226 F.3d 312, 325 (4th Cir. 2000) (citation and internal quotation marks omitted).

That same undisputed risk of prejudice justifies the added safeguard of having the "court *and* the attorneys closely question[] the jurors to assess their impartiality." *United States v. Rolle*, 204 F.3d 133, 136 (4th Cir. 2000) (emphasis added). This safeguard is especially appropriate given the sheer volume of documents (over 5 million) and potential witnesses (over 200) with which counsel have had to become familiar. Counsel will have much greater facility with the facts (and potential bases for bias) during voir dire and will therefore—if given just five minutes apiece—be able to aid the Court and expedite the jury-selection process by quickly evaluating anomalous questionnaire answers and juror conduct that the parties observe in court. *See also* JEFFREY T. FREDERICK, MASTERING VOIR DIRE & JURY SELECTION: GAIN AN EDGE IN QUESTIONING & SELECTING YOUR JURY 5 (3d ed. 2011) ("Jurors simply are more reluctant to reveal personal, sensitive, or socially unacceptable information or opinions to judges than to lawyers, whom they perceive as closer in social status.").[2]

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[2] That same trial expert has collected research documenting the difficulties of rooting out bias created by pretrial publicity:

> [J]urors often do not recognize or admit bias produced by pretrial publicity. One study found that only 26 percent of jurors exposed to damaging pretrial publicity recognized their biases, while the remaining, supposedly "neutral" jurors who were exposed to damaging pretrial publicity still convicted the defendant at a 2-to-1 rate as compared to jurors not exposed to such publicity. Later studies have supported this finding. Similar results concerning the "hollowness" of assertions by respondents that they can be "fair and impartial" have been found in surveys and public opinion polling. To complicate matters even further, jurors tend to downplay their exposure to pretrial publicity, what has been termed the "minimization effect," making it difficult for lawyers to unravel the scope and impact of exposure of pretrial publicity.

Id. (footnotes omitted).

C. The defendants should receive 10 peremptory challenges each, with 6 total for the Government.

The Government does not dispute that the balance of pretrial publicity has tipped heavily against the accused, fueled in part by leaks attributed to "law enforcement" sources. For that reason, Mr. McDonnell requests pursuant to Loc. Crim. R. 24(b) that the defendants receive 10 peremptory challenges each, as "an appropriate safeguard to ensure that Defendants are afforded a fair trial." *United States v. Hasan*, 747 F Supp. 2d 642, 699 (E.D. Va. 2010) (granting additional challenges after defendant showed heightened media coverage of his prosecution), *aff'd sub nom. United States v. Dire*, 680 F.3d 446 (4th Cir. 2012), *cert. denied*, 133 S. Ct. 982 (2013). While "additional peremptory challenges may protract jury selection to some degree," another court in this district has noted that "it is unlikely to be unduly burdensome." *Id.* And the Government has advanced no reason here to believe it would be unusually hard or take unusually long to exercise the additional challenges.

If the Court does not ultimately sever the defendants, Mr. McDonnell requests that each defendant be permitted to exercise his or her peremptory challenges separately. The defendants had very different relationships with Jonnie Williams, as the Government well knows. The Government's decision nonetheless to indict the defendants together—and thus put the McDonnells' marriage at center stage—created a situation with divergent trial strategies and thus the need for separately exercised peremptory challenges.

Here too, the Government's default argument touting judicial economy undercuts itself. Exercising additional peremptory challenges will take minutes—a modest cost to help insure a five-week-long trial against mistrial. This is precisely the sort of case—a highly publicized prosecution of a well-known political figure, coupled with the highly publicized prosecution of a co-defendant with much different circumstances and trial interests—in which the Court should use its discretion to grant additional challenges.

D. The "struck system" helps ensure a fair and impartial jury in the face of overwhelming and negative pretrial publicity.

Mr. McDonnell proposes the struck system to help the parties combat the bias and polarization threatened by pretrial publicity and by his political reputation. As one trial expert has found, under the default selection method, "[w]hen polarization of opinions occurs, the risk [increases] that replacement jurors will hold opinions adverse to a party, e.g., belief in the guilt or innocence or liability of a defendant, yet unknown to the parties." JEFFREY T FREDERICK, MASTERING VOIR DIRE & JURY SELECTION: GAIN AN EDGE IN QUESTIONING & SELECTING YOUR JURY 9–10 (3d ed. 2011). But under the struck system, "there is no such risk," because the parties are allowed to consider the entire jury pool when deciding how to allocate their peremptory challenges. *Id.* at 10. Under the circumstances, the struck system "is the superior method because it reduces the uncertainty that lawyers face and removes the information deficits inherent in the sequential method." *Id.*[3]

Unlike the typical case, moreover, the Government has apparently retained a jury consultant, as has the defense. The involvement of those consultants will enable the parties to evaluate the juror questionnaires more effectively, leaving them better equipped to use the struck system to root out hidden juror bias.

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[3] If the Court will not assent to the struck system, as a fallback Mr. McDonnell respectfully requests that (1) the parties be given an ordered list of which replacement jurors will be seated after jurors are struck and (2) the parties be permitted to "back-strike" potential jurors in rounds after they have already been seated. These measures would reduce the risk of prejudice from pretrial publicity, albeit not as much as the struck system.

The parties thus have much greater need to consider the entire jury pool—and will have much more information at hand—than in the typical criminal case. And of course, once again, the Government offers no argument beyond its appeal to the norm. Opp'n at 5 ("Because the Court does not customarily use this method, the Government opposes this request."). Accordingly, Mr. McDonnell requests the Court approve the struck system for this case, to allow the parties to make the best use of their information about potential jurors and thus minimize the risk of biased jurors making the final cut, jeopardizing whatever verdict the jury ultimately reaches—or fails to reach.

CONCLUSION

For the reasons given above, Mr. McDonnell requests the Court grant his motion for voir dire relief, and requests a hearing on the motion.

Dated: May 5, 2014

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	CRIMINAL NO. 3:14-CR-00012
	)	
ROBERT F. MCDONNELL MAUREEN G. MCDONNELL	)	JUDGE JAMES R. SPENCER
	)	

REPLY OF DEFENDANT ROBERT F. MCDONNELL TO THE GOVERNMENT'S OPPOSITION TO MOTION # 11 – MOTION TO SEVER JOINT TRIAL

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Fed. R. Crim. P. 12(c) 2, 5, 6

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OTHER AUTHORITIES

Sand, Modern Federal Jury Instruction—Criminal, Instruction 7-9(2013) 17

INTRODUCTION

The Government faults Mr. McDonnell for supporting his severance motion with "only vague statements and conclusory assertions." Resp. of the United States in Opp'n to Defs.' Mot. to Sever Joint Trial ("Opp'n"), Dkt. 143, at 1. At the same time, the Government strenuously opposes Mr. McDonnell's request that his severance motion be held in abeyance until a time when he will, consistent with his right to maintain the confidentiality of his trial strategy, be able to share key supporting materials with the Government.[1] The prosecution cannot have it both ways.

Mr. McDonnell has asked the Court, in light of its order denying permission to file supporting declarations *ex parte* for *in camera* review, to defer decision on his severance motion until a later date closer to trial. *See* Def. Robert F McDonnell's Notice of Non-Filing of Decls. Pursuant to the Court's Apr. 17, 2014 Order ("Notice of Non-Filing"), Dkt. 140. Mr. McDonnell now proposes 14 days before trial as an appropriate date. At that time, Mr. McDonnell will publicly file his supporting declarations with service on the Government, in keeping with the Court's order. *See* Mem. Order ("April 17th Order"), Dkt. 137. Mr. McDonnell submits that holding his severance motion in abeyance will safeguard his Sixth Amendment rights and give adequate time for the Court to receive further argument from the parties and decide the motion.

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[1] To be clear, in light of the Court's order precluding *ex parte* submissions, Mr. McDonnell does not intend to file at any time any material containing confidential marital communications. Mrs. McDonnell has asserted her marital communications privilege. Any defense filing disclosing to the Government confidential communications between Mr. and Mrs. McDonnell would be inconsistent with the defense's ethical obligations relating to privileged materials. Accordingly, Mr. McDonnell will be unable to provide further factual support for his arguments that are based on the marital communications privilege. Should the Court reconsider this aspect of its ruling, however, Mr. McDonnell would welcome the opportunity to make an *ex parte* filing of such materials at the time that the Court considers his severance motion. *See infra* note 6.

The Government offers no valid reason for resisting this proposed deferral. Its claims of Rule 12 waiver are patent misreadings of the rule, and its various arguments that the equities do not favor abeyance are all either illogical or unfounded. As for the Government's merits arguments on the severance motion, if this Court grants Mr. McDonnell's request for abeyance, he will address those in full with the benefit of supporting declarations. But even at this stage, the Government's arguments fail, and severance is therefore warranted.

ARGUMENT

I. Mr. McDonnell Has Not Waived His Request For Severance.

The Government argues that Mr. McDonnell has waived his request for severance. Opp'n at 16-18. But it provides no authority whatsoever indicating that, where a defendant files a severance motion four months before trial in accordance with the court's scheduling order and then, in light of evolving circumstances, asks the court to defer ruling on that motion until a later date—also before trial—the defendant has waived that motion. The Government's contention not only contravenes Rule 12, it is also incompatible with any plausible definition of waiver.

Rule 12 establishes a clear framework for the filing and deciding of pretrial motions in federal criminal cases, and both Mr. McDonnell's severance motion and his request that his motion be held in abeyance comply fully with the rule's requirements. Rule 12(b)(3) provides that certain motions, including a Rule 14 motion to sever, "must be raised before trial." Under Rule 12(c), district courts have the authority to set a deadline for the parties to file pretrial motions. *See* Fed. R. Crim. P 12(c).

In keeping with these provisions, this Court entered an order requiring the parties to "file all dispositive and other motions pursuant to Fed. R. Crim. P 12 no later than March 25, 2014, unless for good cause shown." Order ("Scheduling Order"), Dkt. 55, at 1. Mr. McDonnell complied. He filed his motion to sever and supporting memorandum on that date, laying out at length his legal arguments for severance. Def. Robert F McDonnell's Mot. to Sever Joint Trial, Dkt. 114; Mem in Supp. of Def. Robert F McDonnell's Mot. to Sever Joint Trial ("McDonnell Br."), Dkt. 115. At the same time, he asked the Court to accept an *ex parte*, sealed filing of two declarations from counsel for the defendants providing crucial factual support for his severance motion. Def. Robert F McDonnell's Mot. for Leave to File Supporting Decls. Under Seal and for *Ex Parte In Camera* Review, Dkt. 116; Non-Confidential Mem. in Supp. of Def. Robert F McDonnell's Mot. for Leave to File Supporting Decls. Under Seal and for *Ex Parte In Camera* Review. Dkt. 117. This Court subsequently denied Mr. McDonnell's request to file the supporting declarations *ex parte* for *in camera* review, and it directed Mr. McDonnell to file them under seal within three days "if he so chooses." April 17th Order, at 3. In response, Mr. McDonnell timely notified the Court that, in light of the privileged information contained in the declarations and the defense's need to safeguard the confidentiality of its trial strategy, he would not file the declarations. Notice of Non-Filing. Instead, he asked the Court to consider delaying its ruling on his severance motion until a time closer to trial when he could disclose the content of the declarations without irreparably prejudicing his trial rights. Nothing about this course of conduct waived the accused's right to seek severance.

Rule 12(e), of course, makes clear that where a party fails to "raise[ ]" a Rule 12(b)(3) request by the deadline established by the district court "or by any extension the court provides," he waives that issue unless he can establish good cause for his failure. Mr. McDonnell does not dispute that the Fourth Circuit follows the Federal Rules of Criminal Procedure by holding that issues are waived for purposes of appellate review where defendants entirely fail to make any pertinent 12(b)(3) filings in the district court. *See* Opp'n 17-18 (citing Fourth Circuit cases so holding). The rule requires a defendant only to "raise" the issue in question, however; it does not require him, in order to avoid waiver, to foresee the district court's rulings on all ancillary issues and take anticipatory action to address them.

Similarly, this Court's Scheduling Order directed the parties to "*file* all dispositive and other [pretrial] motions" by March 25, 2014. Scheduling Order at 1. Mr. McDonnell did so. When the Court denied his motion to file the supporting declarations *ex parte* for *in camera* review, Mr. McDonnell requested—in his very next filing and within the three-day window established by the Court—that the Court delay ruling on his severance motion until a later date. In sum, Mr. McDonnell has complied in good faith with all deadlines set by this Court. The Government is therefore wrong when it asserts he did not comply with the Scheduling Order in a manner that triggers a Rule 12(e) waiver.

The Government, unsurprisingly, cites no case in which a defendant who made a timely 12(b)(3) filing was subsequently found to have waived the issue in question. Indeed, it would be patently absurd to read Rule 12 as indicating that a party waives a given request when he files a motion *making* that request within the deadline established by the court. A waiver is, in the Supreme Court's well-known formulation, "the intentional relinquishment or abandonment of a known right." *United States v. Olano*, 507 U.S. 725, 733 (1993) (citation omitted). Mr. McDonnell's actions with regard to his severance motion constitute the opposite of waiver: he has consistently and explicitly *asserted* his right to seek severance.

Accordingly, the Government cannot mean what it says when it uses the word "waiver." Instead, the prosecution's real argument is that this Court should deny Mr. McDonnell's request that the Court hold his motion in abeyance. But as explained below, the Government's arguments on this front are deeply flawed. As an initial matter, the prosecution misunderstands Rule 12. Its substantive arguments, moreover, are largely unfounded and illogical. What little coherent argument the Government does offer disregards the vital interests at stake for Mr. McDonnell while at the same time overstating the prejudice that any delay would cause.

II. The Government Misreads Rule 12 And Misstates The Applicable Standard.

The prosecution incorrectly suggests that this Court lacks discretion under Rule 12 to hold Mr. McDonnell's severance motion in abeyance and then decide it at a later date before trial. It also misstates the standard applicable to Mr. McDonnell's request.

The Government first claims that "Fed R. Crim. P 12 does not permit" the course Mr. McDonnell has requested. Opp'n at 16. Rule 12, however, does not place such narrow restrictions on a district court's discretion to hear and rule on pretrial motions in a manner tailored to the particular circumstances of each case. Rule 12 establishes two basic timing requirements for pretrial motions: First, parties must "raise[]" certain issues before trial and in keeping with any deadline set by the district court.[2] *See* Fed. R. Crim. P 12(b)(3), (c), (e). Second, the district court must decide such motions before trial unless there is "good cause to defer a ruling" (and in any event in a manner that will not "adversely affect a party's right to appeal"). Fed. R. Crim. P 12(d). The rule makes clear, however, that so long as these boundaries are observed the district court retains discretion to revise the deadlines it sets, grant exceptions, and otherwise conduct pretrial proceedings in the manner it deems appropriate. The plain terms of Rule 12(e), for example, contemplate that the court may choose to provide extensions to the deadlines it sets in its 12(c) scheduling order. *See* Fed. R. Crim. P 12(e) (providing that "[a] party waives any 12(b)(3) defense, objection, or request not raised by the deadline the court sets under Rule 12(c) *or by any extension the court provides*" (emphasis added)). The rule does not require any specific showing before such an extension can be granted.[3] *See id.* And there is no general requirement that a 12(b) motion be raised or argued at a specified interval before trial, so long as the motion is filed and decided by the time trial begins.[4]

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[2] Rule 12(c) does not obligate district courts to set deadlines for filing pretrial motions; it states only that the district court "may" do so. The advisory committee note to Rule 12 suggests that setting early deadlines will "promote judicial economy," but at the same time the note acknowledges that Rule 12(c) "encourage[s]," rather than requires, district courts to set such deadlines. Fed. R. Crim. P 12 advisory committee's note.

There is therefore no basis for reading into Rule 12 any arbitrary and unnecessary strictures on "the power inherent in every court to control the disposition of the causes on its docket." *Maryland v. Universal Elections, Inc.*, 729 F.3d 370, 379 (4th Cir. 2013); *see also United States v. Grace*, 526 F.3d 499, 512-13 (9th Cir. 2008) (discussing the district court's "inherent authority" to manage criminal pretrial proceedings). The two basic requirements of Rule 12 are satisfied here: Mr. McDonnell raised his request for severance in accordance with Rule 12 and the Court's scheduling order, and he seeks a ruling on his motion prior to trial. Within those boundaries, this Court plainly has discretion to grant Mr. McDonnell's request that his motion be held in abeyance.

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[3] Courts have required parties to show "good cause" when they ask for an "extension" after missing the initial deadline set by the court, because under those circumstances Rule 12(e) is triggered. *See, e.g., United States v. Salgado-Campos*, 442 F.3d 684, 686 (8th Cir. 2006); *United States v. Williams*, No. 2:06-cr-100, 2006 U.S. Dist. LEXIS 65996, at *6-10 & n.3 (E.D. Va. Sept. 15, 2006), aff'd, 254 Fed Appx. 945 (4th Cir. 2007). But if a party seeks an extension before the deadline has passed, the text of Rule 12 does not require any specific showing before the court can alter its deadline.

[4] The advisory committee's note states that courts have "discretion in setting a date for motion hearings." Fed. R. Crim. P 12 advisory committee's note. Local Criminal Rule 12(A) establishes a default deadline for pretrial motions of 11 days from the date of arraignment while granting the court discretion to alter this deadline to "such other time as may be fixed by the Court." *See also, e.g., United States v. Johnston*, 685 F.2d 934, 938 (5th Cir. 1982) (finding no error where "pretrial motions were not heard until the day of the trial and actually were heard immediately prior to the trial").

Next, the Government asserts that Mr. McDonnell must establish "good cause" before this Court can decide to hold his severance motion in abeyance. Opp'n at 19. Mr. McDonnell could readily meet the "good cause" standard if it were applicable. *See infra* Part III. But it is not. Rule 12(e) provides that if a party "waives" a 12(b)(3) issue by failing to "raise[]" it by the applicable deadline, the district court may "grant relief from the waiver" if it finds "good cause" to do so. But Mr. McDonnell's severance request has been timely "raise[d]." Where a party has met the court's deadline, Rule 12(e) is not triggered. Accordingly, all that the Court need find to postpone decision on Mr. McDonnell's severance motion is that it is appropriate to do so. There is ample reason to postpone a final decision.

III. It Is Equitable And Appropriate To Hold Mr. McDonnell's Severance Motion In Abeyance.

The argument for holding Mr. McDonnell's severance motion in abeyance is simple: maintaining the confidentiality of a defendant's trial strategy is a crucial aspect of the Sixth Amendment right to present a defense. *See, e.g.*, *United States v. Danielson*, 325 F.3d 1054, 1066-67 (9th Cir. 2003). And it is appropriate for the district court to shape pretrial proceedings in a way that "minimize[s] any burdens on [the] defendant's Sixth Amendment right to prepare and present a full defense at trial," including the burden entailed in premature disclosure of that trial strategy.[5] *United States v. Lindh*, 198 F Supp. 2d 739, 744 (E.D. Va. 2002). Filing supporting declarations two weeks before trial would cause considerably less prejudice to the defense than filing them now, when the Government has months to develop its counterattack. Indeed, such an approach is eminently reasonable where, as here, the Government has refused to disclose *Brady* material included in witness interview reports and grand jury transcripts, as well as Jencks Act and *Giglio* materials, until 45 days before trial. It would be patently unfair to require Mr. McDonnell to increase the Government's advantage by compelling an early disclosure here. At the same time, if the Court grants Mr. McDonnell's request, it will obtain the benefit of adversary proceedings on his severance motion, in keeping with its April 17th Order. It is simply not necessary to sacrifice Mr. McDonnell's constitutionally protected interest in the confidentiality of his defense strategy in order to ensure an adversarial process. Both values can be well served. It is therefore both equitable and appropriate to hold Mr. McDonnell's severance motion in abeyance.

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[5] To the extent that the Court is not currently satisfied that the supporting declarations contain elements of the defense's trial strategy, *see* April 17th Order at 3 n.2, Mr. McDonnell renews his offer to submit them under seal for *ex parte* review for the limited purpose of making this determination. *See United States v. Abu Ali*, 528 F.3d 210, 245 (4th Cir. 2008) (stating, in the criminal pretrial context, that "the validity of [evidentiary] privileges may be tested by in camera and ex parte proceedings before the court for the limited purpose of determining whether the asserted privilege is genuinely applicable" (internal quotation marks omitted)). The declarations describe exculpatory testimony Mr. and Mrs. McDonnell would give at severed trials that rebuts certain of the Government's key allegations. If the Government were to have premature access to the declarations, it would be able to tailor its trial preparations in anticipation

Even if Mr. McDonnell were required to show "good cause" for deferring a decision on his motion, he could certainly meet that standard. "Good cause is a flexible standard heavily dependent on the facts of the particular case as found and weighed by the district court in its equitable discretion." *United States v. Walden*, 625 F.3d 961, 965 (6th Cir. 2010). Courts applying the standard generally require, as an initial matter, a "legitimate explanation" from the party seeking to alter the court's deadline. *Id.* Mr. McDonnell's need to safeguard his Sixth Amendment rights certainly provides that. Courts will also consider whether the motion can be heard at a reasonable interval before trial; whether "counsel's tardiness was due to

of this testimony and thereby gain an unfair strategic advantage over the defense. Mr. McDonnell is unable to make any further showing regarding the content of the declarations in his public filings without making disclosures that would jeopardize its confidentiality.

negligence, oversight, or laziness"; and whether there is any prejudice to the government. *United States v. Chavez*, 902 F.2d 259, 263-64 (4th Cir. 1990). All of these factors favor granting Mr. McDonnell's request for abeyance.

The two week interval before trial that Mr. McDonnell has requested gives more than adequate time to hear and decide his motion. *See id.* (finding 11 days sufficient). His motion is not tardy, and in light of Mr. McDonnell's timely filings and repeated assertion of his right to seek severance, the request for abeyance does not in any way reflect "negligence, oversight, or laziness" on the part of the defense. Finally, because 14 days before trial will give ample time for argument and disposition of the motion, the Government cannot claim prejudice to its ability to address the severance issue. The Government suggests that the parties will be so busy "on the eve of trial" that they will be effectively unable to provide meaningful argument, Opp'n at 19, an assertion that cannot be credited. The Government is already on notice of the substance of Mr. McDonnell's arguments for severance, and it has already set forth, in two separate filings, its initial counter arguments. *See* Resp. of the United States in Opp'n to Def. Robert F McDonnell's Mot. for Leave to File Supporting Decls. Under Seal and for *Ex Parte In Camera* Review, Dkt. 131; Resp. of the United States in Opp'n to Defs.' Mot. to Sever Joint Trial, Dkt. 143. There is no reason why it cannot efficiently review Mr. McDonnell's filings and adequately respond two full weeks prior to trial. Indeed, at that point both the parties and the Court will have the benefit of a fuller understanding of the factual issues that will be aired at trial, and that will enhance the efficiency of the proceedings.

To the extent the Government suggests that its trial preparations will be disrupted if severance is granted closer to trial, *see* Opp'n at 19, any such inconvenience is outweighed by Mr. McDonnell's interest in having his severance motion considered in a manner that does not irreparably damage his ability to present a defense. The Government strenuously opposed Mr. McDonnell's proposal that the Court allow *ex parte* filings in order to facilitate determination of the severance motion now. It cannot then turn around and argue that his severance motion must be considered now or never because of the alleged prejudice deferral would cause.

Beyond the Government's suggestion that it will be too busy to address severance at a later date, it does not meaningfully address the merits of Mr. McDonnell's request for abeyance. It simply asserts that there is "no justification" for deferring consideration of Mr. McDonnell's severance motion. Opp'n at 20. But nowhere does it explain why the defense's need to maintain the confidentiality of its trial strategy is not an important interest justifying abeyance.

The rest of the Government's argument amounts to a series of bewildering *non sequiturs*. For instance, the prosecution contends that deciding Mr. McDonnell's severance motion on a deferred schedule would amount to no adversarial process at all. Opp'n at 19. But it is simply nonsensical to equate full argument by both sides with the benefit of access to supporting materials with the *absence* of adversarial proceedings.

The Government faults Mr. McDonnell for suggesting, in his Notice of Non-Filing, that the Court grant severance now if it perceives prejudice to the defendants from a joint trial. In the Government's view, Mr. McDonnell is "seeking unilaterally to force this Court to adjudicate severance twice." Opp'n at 19. Mr. McDonnell does not, and could not, seek to "force" this Court to do anything. Rather, he asks the Court to hold his severance motion in abeyance until closer to trial. At the same time, the Supreme Court has stated that "the trial judge has a continuing duty at all stages of the trial to grant a severance if prejudice does appear." *Schaffer v. United States*, 362 U.S. 511, 516 (1960). Mr. McDonnell has set forth his legal arguments for severance, and if the Court were to determine, at this juncture, that a joint trial would prejudice the defendants, it would follow that the Court should order severance now. Absent such a finding, however, holding the motion in abeyance is appropriate so that the Court can make its ruling on a more complete record.

The Government also resorts to bald mischaracterizations. The Government charges that Mr. McDonnell's initial severance filing was "an unsupported placeholder motion" that only superficially conformed with the Scheduling Order but was in reality a manipulative attempt to circumvent the deadline established by this Court. Opp'n at 18. Given that Mr. McDonnell vociferously sought permission to submit supporting materials with the Court at the time he filed his severance motion, this allegation makes no sense at all. In light of the Court's ruling that Mr. McDonnell may not file those materials *ex parte*, Mr. McDonnell now asks the Court to hold his motion in abeyance until he may file declarations without suffering undue prejudice; but he has never asked the Court to decide his severance motion without the benefit of supporting materials.

The Government further claims that holding this motion in abeyance will inequitably enable Mr. McDonnell "to use secret pleadings as both sword and shield." Opp'n at 20. While Mr. McDonnell is cognizant of the Court's concern that *in camera* review of the Declarations would "allow Defendants to employ the marital communications privilege as both a sword and a shield," April 17th Order at 3 n.2, that concern is simply not implicated by holding the severance motion in abeyance. As things now stand, purportedly "secret pleadings" will not be used when the Court ultimately decides the motion; rather, all supporting material that Mr. McDonnell files will be shared with the Government.[6]

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[6] To be sure, Mr. McDonnell asks the Court to revisit its decision to deny permission to make an *ex parte* filing of material containing privileged marital communications. *See supra* note 1. That does not make the Government's argument that *abeyance alone* will lead to the use of "secret pleadings" any less illogical. With regard to the Court's concern about using the

In sum, none of the Government's arguments against holding Mr. McDonnell's severance motion in abeyance are valid. At the same time, there are substantial reasons to defer decision on this motion.

IV. Mr. McDonnell's Substantive Arguments For Severance Are Meritorious.

For the reasons set forth above, if the Court does not believe it can grant severance without the benefit of the declarations, Mr. McDonnell asks to address the merits of the severance issue closer to trial. Many of the Government's present arguments against severance

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privilege as both sword and shield, Mr. McDonnell submits that in the context of his severance motion, it has less force than it might elsewhere possess. Mr. McDonnell has been accused by the Government of committing crimes in conspiracy with his wife and others known to the grand jury but unknown to the accused. He believes that he will be prejudiced by a joint trial, in part because Mrs. McDonnell intends to assert the marital communications privilege if the defendants are tried together, and this will prevent him from presenting key exculpatory evidence. He has therefore moved for severance—in the Court's terms, using the privilege as a "sword"—but it is not he who invokes the privilege as a "shield." As a criminally accused attempting to defend against the Government's charges, Mr. McDonnell should not be precluded from making valid arguments because his interests with regard to the marital communications privilege happen to diverge from his wife's. Other courts have allowed *ex parte* filings in support of severance in precisely analogous circumstances. *See* In Chambers Order, *United States v. Carona*, No. SACR-06-224(A)-AG (C.D. Cal. Apr. 8, 2008)) (Ex. A.).

Mr. McDonnell also reiterates that unless he is permitted to make an *ex parte* filing of privileged marital communications, he will effectively be barred from making any argument for severance based on the marital communications privilege. If he discloses privileged marital communications to the Government in order to obtain a severance based on those communications, he would waive the privilege and thus paradoxically defeat the basis for severance. Moreover, the Government acknowledges that severance may be granted where one spouse invokes the marital communications privilege to prevent the other spouse from disclosing confidential marital communications in the latter's defense. *See* Opp'n 15-16 (confirming that, according to *United States v. Ammar*, 714 F.2d 238, 257 (3rd Cir. 1983), severance "may" be granted to protect the marital communications privilege).

Again, if the Court is not at this time satisfied that the Brownlee-Asbill Declaration contains privileged marital communications, Mr. McDonnell is willing to submit it for *ex parte* review for the sole purpose of making this assessment. *See supra* note 5. But he reiterates that he is unable to make any further showing regarding the content of the Brownlee-Asbill Declaration in his public filings without improperly disclosing information as to which Mrs. McDonnell asserts the marital communications privilege.

are based on Mr. McDonnell's current inability to disclose his supporting declarations. Although Mr. McDonnell cannot disclose (now or in the future) any confidential communications with his wife without violating the marital communications privilege,[7] Mr. McDonnell will be able to disclose a summary of Mrs. McDonnell's exculpatory testimony two weeks before trial, when doing so will be less prejudicial to him. There will be no question at that point that severance is necessary. Even now, however, several major flaws in the Government's reasoning are evident such that granting Mr. McDonnell's motion for severance now would be entirely warranted.

1. The importance of Mrs. McDonnell's testimony cannot be overstated. Only three people have direct knowledge of the alleged quid pro quo between Jonnie Williams and the McDonnells. The Government has given Mr. Williams immunity in exchange for his testimony supporting the prosecution. That leaves Mrs. McDonnell as the only defense witness who can corroborate Mr. McDonnell's position that he never conspired to accept gifts or loans from Mr. Williams in exchange for Mr. McDonnell's promise to perform official action on behalf of Mr. Williams or his company. Mrs. McDonnell is also the only person who can corroborate Mr. McDonnell's position concerning what things he and his wife did *not* discuss.[8] She too is the only person who can dispute Mr. Williams' testimony about his private conversations with her. And she is the only person who can speak to her own actions. This is significant because most of the Government's narrative revolves around Mrs. McDonnell's activities. *See* McDonnell Br. at

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[7] Mrs. McDonnell has given no indication that she will waive the privilege on the eve of a joint trial. The Government is thus wrong to suggest that "Mrs. McDonnell is willing to allow the disclosure of the marital communications at issue in advance of trial." Opp'n at 13-14.

[8] As the Government points out, testimony about what a husband and wife do *not* discuss is not privileged because it does not reveal actual communications. *See* Opp'n at 15. But the Government is wrong to suggest that such testimony is an adequate substitute for actual marital communications that would detail, corroborate, and explain what specifically was known and unknown (and when).

11-12. Therefore, the Government's suggestion that "other witnesses or documents may be able to provide the same information that Mr. McDonnell seeks" from his wife is obviously wrong or is premised on *Brady* evidence that the Government has not yet disclosed. *See* Opp'n at 7-8. By trying the McDonnells together, the Government has sought for itself the strategic advantage of depriving Mr. McDonnell of the only other witness with direct knowledge of the alleged scheme who can challenge the testimony of the Government's immunized witness.

This case is not meaningfully different from *United States v. Shuford*, 454 F.2d 772 (4th Cir. 1971), which also involved a credibility dispute between the Government's witness and the defendant. *See* McDonnell Br. at 15-16. Resolving the dispute required, as it does here, the testimony of the co-defendant, who was the only other witness with direct knowledge of the disputed fact but who refused to testify unless the joint trial was severed. *Id.* The court held that denying a severance "so tipped the scales against [the defendant] that he failed to receive a fair trial" and that a "verdict based so heavily on less than the full available testimony, where the missing testimony could, with relative ease, have been procured, should not stand." *Shuford*, 454 F.2d at 777 The same rationale applies here.

The Government's only response is to say that *Shuford* is old, was decided by a 2-1 vote, preceded cases that did not overrule it, and is distinguishable from *Parodi* "in part due to the simplicity of the trial in *Shuford* and the extremely narrow focus of the codefendant's testimony that prompted the separate trials." *See* Opp'n at 10-12. But each of these reasons is irrelevant. That *Shuford* is distinguishable from *Parodi* in no way means that *Shuford* is distinguishable from this case or is somehow no longer enforceable precedent.[9] *Parodi* involved a narcotics conspiracy "built out of a large number of circumstances occurring over a substantial period of time at various locations" and with as many as ten defendants. *United States v. Parodi*, 703 F.2d 768, 781 (4th Cir. 1983). The scheme alleged here, by contrast, involves a bribery transaction between Mr. McDonnell and Mr. Williams, aided and abetted by Mrs. McDonnell. This scenario fits easily within the description of *Shuford* as set forth in *Parodi*:

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[9] The Government characterizes Mr. McDonnell as contending that the right to a severance is obligatory so long as he "assert[s] that Mrs. McDonnell will not testify in a joint

> The Government's witness [Mr. Williams] [will give] one version of the [scheme]; [Mr. McDonnell] a contradictory one. If [Mr. McDonnell's] version [is] the true one, he is innocent; if the witness' version [is] accurate, the jury could find [Mr. McDonnell] guilty. The co-defendant [Mrs. McDonnell] [is] expected to testify, if severance [is] granted, that [Mr. McDonnell's] version [is] correct.

Id. "Plainly, the guilt or innocence of [Mr. McDonnell] hinge[s], in large measure, on the outcome of this credibility dispute." *Shuford*, 454 F.2d at 777 And because Mrs. McDonnell's testimony is necessary to help resolve that dispute, her trial must be severed so that Mr. McDonnell can call her to testify.

The Government attacks the exculpatory value of Mrs. McDonnell's testimony on two fronts. First, it speculates that her testimony will lack credibility because it will be "entirely self-serving" and will not contravene her own penal interest. Opp'n at 5. But this assertion makes no sense given that the Government charged Mrs. McDonnell with obstruction of justice. Mrs. McDonnell could reasonably believe that the testimony she will give to exonerate Mr. McDonnell on his corruption charges could be used to incriminate her on her obstruction

trial because it would jeopardize her own defense." Opp'n at 10-11. Nothing could be further from the truth. The defense thoroughly analyzed the *Parodi* factors in its severance motion (and it intends to file a supporting declaration at the appropriate time) precisely because it acknowledges that the law requires more than a mere assertion that Mrs. McDonnell will not testify.

charge.[10] Far from self-serving, Mrs. McDonnell's testimony could cast her in a very negative light with the jury and thereby jeopardize her own chance of acquittal.[11]

Second, the Government contends that Mrs. McDonnell's testimony could be impeached because she has an incentive to exculpate Mr. McDonnell and because she allegedly attempted "to obstruct justice by lying to law enforcement officers and falsifying records to cover up the scheme." Opp'n at 9-10. The Government grossly overstates the strength of its impeachment evidence. But in any event, because Mrs. McDonnell has been charged with obstruction of justice and because her testimony in a severed trial could potentially be used against her in her own trial, she actually has a much greater incentive to remain quiet and not testify at all. That she is nevertheless willing to expose herself to potential liability by testifying suggests that the testimony she desires to give will be credible.

The same, of course, cannot be said for the Government's primary witness Mr. Williams, who is testifying for the Government in exchange for immunity. Mr. Williams has every incentive to give testimony that the Government wants to hear. *See, e.g., Horton v. Mayle*, 408

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[10] Relatedly, the Government questions why Mrs. McDonnell would invoke her marital communications privilege to "prevent evidence from being presented to the jury at a joint trial that she apparently believes would inure to her benefit by exculpating her husband." Opp'n at 13. The reason is the same as above: the relevant marital communications—like Mrs. McDonnell's testimony generally—contain information that will exculpate Mr. McDonnell but also negatively impact her credibility in the eyes of the jury and implicate her obstruction charge. For this reason, *United States v. Carona*, No. SA CR 06-224-AG, 2008 WL 1970221 (C.D. Cal. May 2, 2008), is not distinguishable, as the Government suggests. *See* Opp'n at 15 n.5.

[11] The premise of the Government's argument is mistaken in any event. Although it might be true that a statement made against Mrs. McDonnell's penal interest might make her testimony *more* credible, it does not necessarily follow that a statement consistent with her penal interest is *not* credible. Mrs. McDonnell will be bound by oath to tell the truth (whether it is against her penal interest or not), and the truth is that the McDonnells did not conspire to accept gifts from Mr. Williams in exchange for official action. The presumption that Mrs. McDonnell must be lying because she is a defendant is at odds with the fundamental principle of criminal justice that the accused is innocent until proven guilty.

F.3d 570, 580 (9th Cir. 2005) ("Evidence that the prosecution promised immunity to induce [someone] to testify as its star witness is a wholly different kind of impeachment evidence, from which the jury reasonably could have inferred that [the witness] had an interest in fabricating his testimony.").[12] And while the Government will surely claim that Mr. Williams will only have immunity so long as he testifies truthfully, that is a hollow and meaningless threat because the Government has no way to verify whether Mr. Williams is telling the truth about the facts that matter most. Whether there was an illicit agreement or understanding between Mr. Williams and the McDonnells largely depends on what was said in their private conversations. The Government has no direct knowledge of those conversations, and so it has no way to know whether Mr. Williams' characterizations are accurate. To make matters worse, because the prosecution has prematurely decided that the McDonnells are guilty, it will think that Mr. Williams is untruthful if he ultimately testifies that there was no actual agreement or understanding between him and the McDonnells (which happens to be true). The Government has incentivized Mr. Williams to make the McDonnells look as guilty as he can.

It is precisely in situations like this, "where the elusive quality of credibility is of such importance," that severance is necessary so that "the jury [can] have the benefit of all relevant testimony likely to shed light on the situation." *Shuford*, 454 F.2d at 777. By charging Mrs. McDonnell with obstruction and then joining her trial with Mr. McDonnell's, the Government is depriving the jury of all the relevant testimony necessary to resolve what is, at bottom (assuming the prosecution has even stated a valid corruption claim), a contest of credibility between Mr. McDonnell and Mr. Williams. Because a joint trial would "prevent the jury from making a reliable judgment about guilt or innocence," *Zafiro v. United States*, 506 U.S. 534, 539 (1993), a severance is necessary.

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[12] *See also* Sand, Modern Federal Jury Instructions—Criminal, Instruction 7-9 (2013). ("[T]he testimony of a witness who has been promised that he will not be prosecuted should be examined by you with greater care than the testimony of an ordinary witness. You should scrutinize it closely to determine whether or not it is colored in such a way as to place guilt upon the defendant in order to further the witness' own interests; for, such a witness, confronted with the realization that he can win his own freedom by helping to convict another, has a motive to falsify his testimony.")

2. Not only does the Government challenge the exculpatory value of Mrs. McDonnell's testimony, it also questions the likelihood that Mr. McDonnell will call her and that she will actually testify at a severed trial. *See* Opp'n at 6-7. The Government finds it "inexplicable" that "Mrs. McDonnell is likely to testify at a severed trial," but not at a joint trial, when her testimony from a severed trial could potentially be used against her in her own trial. *Id.* at 6. One possible explanation is that it is preferable for Mrs. McDonnell to testify on behalf of Mr. McDonnell in the presence of his jury, rather than before the jury that will adjudicate her guilt. Although it is possible that Mrs. McDonnell's testimony from the severed trial could potentially be used against her in some way, she can still invoke her Fifth Amendment right not to testify in her own trial, even if she had waived it in the severed trial. *See, e.g.*, *United States v. Cain*, 544 F.2d 1113, 1117 (1st Cir. 1976) ("It is hornbook law that the waiver is limited to the particular proceeding in which the witness appears."). As a result, Mrs. McDonnell cannot be subjected to hostile cross-examination before her own jury. The Government's suggestion that there is no reason to testify in a severed trial but not in a joint trial is even more perplexing because, if accepted, it would eliminate the rationale for granting a severance based on a defendant's need for a co-defendant's testimony, which is predicated on the co-defendant's willingness to testify in a severed trial but not in a joint trial.[13] As the Fourth Circuit has made clear, however, a severance is appropriate "where one defendant's case rests heavily on the exculpatory testimony of his co-defendant, willing to give such testimony but for the fear that by taking the stand in the joint trial he would jeopardize his own defense." *Shuford*, 454 F.2d at 776.[14]

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[13] The Government's reliance on *United States v. Dawson*, No. 5:12-cr-284-F2, 2013 WL 3381380, at *2 (E.D.N.C. July 8, 2013), is misleading. The court did not hold that a severance

The Government also accuses Mrs. McDonnell of being noncommittal about testifying, and it accuses Mr. McDonnell of being noncommittal about calling her. *See* Opp'n at 6-7 But it is well-established in this circuit that Mrs. McDonnell's agreement to testify in a severed trial need not be established to "an absolute certainty." *Shuford*, 454 F.2d at 778. Rather, Mr. McDonnell need only show a "*reasonable probability* that the proffered testimony would, in fact, materialize." *Id.* (emphasis added). Mr. McDonnell has easily made that showing. *See* McDonnell Br. at 10-11. Mr. McDonnell fully intends to call Mrs. McDonnell, but it would be unfair to require Mr. McDonnell to *guarantee* that he will call her no matter what the circumstances might be at the time of trial. As things stand now, however, the defense intends to call Mrs. McDonnell, whose testimony is needed to establish Mr. McDonnell's innocence.

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based on the asserted need for a co-defendant's testimony is improper because there is no reason why a co-defendant would testify in a severed trial but not in a joint trial. Rather, the court denied severance because the defendant had failed to make a showing that the co-defendant would not condition his offer to testify on being tried first. *See id.* Here, Mrs. McDonnell has indicated that she would testify in a severed trial regardless of the order in which her case is tried. *See* McDonnell Br. at 11.

[14] Similarly, the Government claims to be "perplex[ed]" that "Mrs. McDonnell would invoke the marital communications privilege at a joint trial, but waive it at a separate trial." Opp'n at 13. Mrs. McDonnell presumably intends to invoke the marital communications privilege in a joint trial because the relevant communications contain potentially harmful evidence concerning her obstruction charge, and since she intends to invoke her Fifth Amendment right not to testify in her own trial, she would not be able to clarify or otherwise explain those communications from her point of view. But in Mr. McDonnell's severed trial, where she intends to offer exculpatory testimony on his behalf, she would be able to address those communications. Therefore, it is perfectly sensible for Mrs. McDonnell to invoke the marital communications privilege in a joint trial, where she will not testify, but to waive the privilege in a severed trial, where she will testify.

3. Although the Government parrots judicial language generally explaining the value of joint trials, *see* Opp'n at 8-9, it offers no support for why a joint trial is so important in this case that it should overcome Mr. McDonnell's right to obtain the exculpatory testimony of his wife. There is good reason for that—judicial economy is a relevant consideration only where "severance would necessitate a great number of otherwise unnecessary trials or the duplication of an unusually complex trial." *Parodi*, 703 F.2d at 780 (internal quotation marks omitted). And here, if severance is granted, there would be at most two trials, and there very well could be only one since it is not uncommon for the defendant in the second trial to plead depending on what happens in the first or for the Government to dismiss against the trailing defendant when it learns how mistaken its read of the evidence has been. Hence, severance in this case would not require "a great number of otherwise unnecessary trials." *Id.* Nor would it require the "duplication of an unusually complex trial." *Id.* As this Court has observed, the case has a "level of complexity," but "[i]t is not particularly complex." March 18, 2014 Hr'g Tr. at 19:14-16. And there is no certainty that a second trial would invariably "duplicate" the first as hope springs eternal that the parties would learn from the first and be more efficient in the second.

CONCLUSION

Mr. McDonnell would welcome the opportunity to further develop his merits arguments in favor of severance at a later date. The Government has offered no valid reason why the Court should deny Mr. McDonnell's request to defer consideration of the severance motion. Doing so will afford the Court the benefit of full adversarial process without burdening Mr. McDonnell's right to present a defense. Accordingly, if the Court does not believe severance can be granted on the present record, Mr. McDonnell respectfully requests that it hold the severance motion in abeyance until 14 days before trial.

Dated: May 5, 2014

Respectfully submitted,

/s/ Jonathan A. Berry
Henry W. Asbill (*pro hac vice*)
Mary Ellen Powers (*pro hac vice*)
Noel J. Francisco (*pro hac vice*)
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Counsel for Robert F. McDonnell

CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 5th day of May, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: May 5, 2014

Respectfully submitted,

/s/ Jonathan A. Berry

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Counsel for Robert F McDonnell

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

ORDER

THIS MATTER is before the Court on its own initiative. Defendants' Motion to Sever Joint Trial (ECF Nos. 114, 120) is currently pending before the Court and a hearing is scheduled for May 19, 2014. In the course of briefing the Motion to Sever, Defendants have requested that the Court delay resolution of the Motion to Sever until fourteen (14) days before trial. That request is DENIED. The Motion to Sever will be resolved in due course, and should either Defendant wish to submit additional materials in support of the Motion to Sever, he or she may do so under seal.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 8th day of May 2014.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	CRIMINAL NO. 3:14-CR-00012
	)	
ROBERT F. MCDONNELL	)	JUDGE JAMES R. SPENCER
MAUREEN G. MCDONNELL	)	

DEFENDANT ROBERT F. MCDONNELL'S NOTICE OF FILING OF DECLARATIONS PURSUANT TO THE COURT'S ORDERS

Per the Court's April 17, 2014 Order, Mr. McDonnell will today file two declarations in support of severance "ex parte under seal only for the purposes of preserving the record on appeal." April 17, 2014 Order at 3, Doc. 137.

Dated: May 14, 2014

Respectfully submitted,

/s/ Timothy J. Taylor

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Counsel for Robert F McDonnell

CERTIFICATE OF SERVICE

I, Timothy J. Taylor, am a member of the Bar of this Court. I hereby certify that on this 14th day of May, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: May 14, 2014

Respectfully submitted,

/s/ Timothy J. Taylor

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

ORDER

THIS MATTER is before the Court on two Motions to Dismiss Counts 1-11 of the Indictment ("Motions to Dismiss") (ECF Nos. 105, 111) and two Motions for Discovery of Selected Grand Jury Communications ("Grand Jury Motions") (ECF Nos. 8, 25) filed by Defendants Robert McDonnell and Maureen McDonnell.

The Indictment sufficiently alleges each element of the charged offenses, fairly apprising Defendants of the charges against which they must defend and allowing Defendants to plead double jeopardy in the event of a future prosecution for the same offenses. *See Hamling v. United States*, 418 U.S. 87, 117 (1974); *United States v. Kingrea*, 573 F.3d 186, 191 (4th Cir. 2009) (quoting *United States v. Darby*, 37 F.3d 1059, 1062 (4th Cir. 1994)). It is well settled that the validity of an indictment is tested by its allegations, not by whether the government can prove its case. *See Costello v. United States*, 350 U.S. 359, 363 (1956). Defendants take issue with the Indictment primarily on the ground that it fails to allege Robert McDonnell performed or promised to perform any "official act" within the meaning of the federal bribery statutes. However, the Fourth Circuit has held that conduct analogous to that alleged in paragraphs 22 and 111(c) of the Indictment can, as a matter of law, "fall under the umbrella of [] 'official acts.'"

United States v. Jefferson, 674 F.3d 332, 358 (4th Cir. 2012) (enumerating among the defendant's official acts, "[a]ttempting to facilitate and promote ventures between foreign governments and the businesses who were paying"), *cert. denied*, 133 S. Ct. 648. Whether Defendants' conduct in fact constituted "the corruption of official positions through misuse of influence in governmental decision-making" is a question for the jury based on the evidence adduced at trial. *United States v. Carson*, 464 F.2d 424, 434 (2d Cir. 1972). Accordingly, the Motions to Dismiss are DENIED.

Federal Rule of Criminal Procedure 6(e) provides that a court may authorize disclosure of a grand-jury matter "at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury." Fed. R. Crim. P 6(e)(3)(E)(ii). Having determined that the Indictment is facially valid and alleges conduct that may be found by a jury to constitute "official action" within the meaning of federal bribery statutes, no "particularized need" for the requested materials exists. *Douglas Oil Co. v. Petrol Stops Nw.*, 441 U.S. 211, 222 (1979). Review of facially valid indictments either for insufficient evidentiary support or for the sufficiency of the prosecutor's presentation "would run counter to the whole history of the grand jury institution." *United States v. Williams*, 504 U.S. 36, 54-55 (1992) (quoting *Costello*, 350 U.S. at 364). Accordingly, the Grand Jury Motions are DENIED.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 20th day of May 2014.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

ORDER

THIS MATTER is before the Court on two Motions to Sever Joint Trial ("Motions to Sever") (ECF Nos. 114, 120) filed by Defendants Robert McDonnell and Maureen McDonnell. For reasons that will be set out more fully in a forthcoming memorandum opinion, the Motions are DENIED.

Generally, defendants who are indicted together should be tried together, *United States v. Clark*, 928 F.2d 639, 644 (4th Cir. 1991), unless a joint trial "would be so unfairly prejudicial that a miscarriage of justice would result," *United States v. Williams*, 10 F.3d 1070, 1080 (4th Cir. 1993) (citing *United States v. Brugman*, 655 F.2d 540, 542 (4th Cir. 1981)). When a motion to sever is based on an asserted need for a co-defendant's testimony, the moving defendant bears the burden of demonstrating that severance is appropriate under a test established by the Fourth Circuit in *United States v. Parodi*, 703 F.2d 768, 779 (4th Cir. 1983). Analysis under the *Parodi* test is intrinsically fact-intensive, requiring a showing of the co-defendant's testimony that is sufficiently definite for the court to determine its exculpatory nature and effect. *Parodi*, 703 F.2d at 780.

Defendants have failed to meet their burden to show that a joint trial will result in a miscarriage of justice or prevent Robert McDonnell from receiving a fair trial. Defendants have limited their showing of Maureen McDonnell's potential testimony largely to vague and conclusory statements that "merely contradict[] part of the Government's proof." *Id.* (quoting *United States v. West*, 670 F.2d 675, 680 (7th Cir. 1982)). In light of the preference for joint trials of alleged co-conspirators, *see United States v. Medford*, 661 F.3d 746, 753 (4th Cir. 2011), and the importance of judicial economy, *see Parodi*, 703 F.2d at 780 (noting judicial economy as a "dominant judicial concern"), Defendants' showing is insufficient under the *Parodi* test. Accordingly, the Court declines to exercise its discretion to sever Defendants' joint trial. *See United States v. Frazier*, 394 F.2d 258, 260 (4th Cir. 1968).

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 20th day of May 2014.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

ORDER

THIS MATTER is before the Court on two Motions for Omnibus Voir Dire Relief ("Motions") (ECF Nos. 109, 113) filed by Defendants Robert McDonnell and Maureen McDonnell. Upon due consideration and for the reasons that follow, the Court GRANTS IN PART and DENIES IN PART the Motions.

To the extent that Defendants request potential jurors to complete a joint written jury questionnaire at the courthouse, the Motions are DENIED. To the extent that Defendants request potential jurors to complete a written jury questionnaire, the Motions are GRANTED. Consistent with the Court's Order of February 18, 2014, the Parties shall submit to the Court both joint and disputed questions proposed for inclusion in a jury questionnaire. Objections to disputed questions shall be submitted to the Court on or before June 2, 2014. The Court will then draft a written jury questionnaire and will make copies available to the Parties. The Court's jury questionnaire will be mailed to potential jurors. Any proposed questions not included in the Court's jury questionnaire will be deemed rejected.

To the extent that Defendants request that the attorneys be allowed to conduct individual follow-up voir dire, the Motions are DENIED. The Parties are directed to contact the

Courtroom Deputy to familiarize themselves with the Court's procedures for voir dire and jury selection. The Court will pose some questions to jurors individually and others will be asked of the full panel. During the course of the voir dire process, the Parties are permitted to request additional questions be posed to the jury venire or individual jurors.

To the extent that Defendants request additional peremptory challenges, the Motions are GRANTED IN PART and DENIED IN PART. Defendants together will be allowed sixteen (16) peremptory challenges. The Government will be allowed ten (10) peremptory challenges in total.

To the extent that Defendants request use of the "struck system" or other alternatives to the Court's customary procedures for exercising peremptory challenges, the Motions are DENIED.

To the extent that Defendants request provision of a neutral summary of the allegations to potential jurors with the written jury questionnaire, the Motions are DENIED as moot. The Court will not provide potential jurors either with a neutral summary of the allegations or with the Indictment itself.

To the extent that Defendants requests that jurors be permitted to take notes during trial, the Motions are GRANTED. This procedure is consistent with the Court's usual practice.

To the extent that Defendants request that alternate jurors be notified of their status immediately before the jury retires to deliberate, the Motions are DENIED.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 20th day of May 2014.

JURY QUESTIONNAIRE

This questionnaire is designed to obtain information from you for the purpose of assisting the parties in selecting a fair and impartial jury in the case of *United States of America v. Robert F McDonnell and Maureen G. McDonnell.* Its use will substantially shorten the jury selection process.

The purpose of these questions is to encourage your full expression and candor so that all parties have a meaningful opportunity to select a fair and impartial jury to try the issues of this case. Your full written answers will save the parties, the Court, and yourself, a great deal of time. Do not discuss with anyone any question or answer you give on this questionnaire. You are expected to sign this questionnaire. Your answers will be considered statements under oath, and will only be used by the Court and counsel in selecting a jury in this case. As you know, juries are critical to our American system of justice and the Court is confident that you appreciate your duty as a citizen to serve as a juror if you are eligible. Your cooperation in completing and returning this questionnaire is a part of that duty

Please write your assigned juror number at the top of each page. Answer every question carefully, candidly, truthfully and completely and do not leave any questions blank. Your responses should reflect your own personal knowledge, beliefs, or opinions. Please keep in mind that there are no right or wrong answers. The judge and the lawyers know that every person has beliefs and biases concerning many things. You should answer with your true feelings, whatever they may be. Do not assume that any of your answers will qualify or disqualify you from serving on this or any other jury

If you do not understand a question, please write "Do not understand" and the question will be explained to you during the later questioning process. If a question is not relevant to you, please write "N/A" to indicate that it is not applicable to you in the space provided. If you cannot answer a question because you do not know the answer, write "Do not know" in the space after the question. If your answers or explanations to any question will not fit completely in the space provided, please complete your answer on the pages provided at the end of the questionnaire. Be sure to include the question number that corresponds to your answer on the explanation sheets. **Do not write on the back of any page.**

If you want your answer to a particular question kept private, please indicate that and then answer the question. If a question asks about your friends or family, you do not need to list the name if you do not want to; you can identify the person by relationship (spouse, son, neighbor, friend, etc.).

During another step in the jury selection process, the Judge will have an opportunity to follow up on these questions in court. At that time, you will be given an opportunity to explain or expand on any of your answers.

In addition, now that you are a prospective juror, you MUST follow the instructions listed below until you have been excused from further service in this case.

Juror Number: _______

DO NOT discuss this questionnaire or your answers with anyone, including family members, friends, co-workers, or other prospective members.

DO NOT read or listen to any media coverage of this case whether in the newspaper, on the television, on the Internet, on a blog, or on the radio.

DO NOT seek any related information on this case on the Internet or through search engines such as Google or Yahoo!

DO NOT discuss this case with anyone, including friends, family members, or other members of this jury panel, or allow anyone to discuss this case in your presence.

DO NOT let anyone, including friends, family members, court personnel, parties in this case, or persons involved in the case, talk to you about your views or any aspect of this case except officially in the courtroom.

The answers to these questions will be used by the court and the attorneys solely for the selection of the panel members in this case and for no other reason. The information contained within the questionnaire will become part of the court record.

I appreciate your time and attention to this important matter.

James R. Spencer
United States District Judge

Juror Number: ______

Preliminary Matters

1. **The trial in this case will start July 28, 2014. The trial may last 5–6 weeks and could last longer or conclude sooner. Do you have any very serious personal, professional, or financial issues that would prevent you from being present in Court for the duration of the trial? In answering this question, you should know that it is unlawful for an employer to discharge, intimidate, or coerce any employee because of the employee's jury service.**
[ ] Yes [ ] No

(a) If yes, please explain: ______________________________

____

____

____

2. Are you able to read, write, and understand the English language?
[ ] Yes [ ] With difficulty [ ] No

3. Is English your native language?
[ ] Yes [ ] No

(a) If no, what is your first language? ______________________

4. Do you feel that you are able to complete this questionnaire without another's assistance?
[ ] Yes [ ] No

If no, please complete the certification on the last page of the questionnaire without answering any additional questions and return your questionnaire to the Court.

5. Do you have any significant problems with your hearing or eyesight?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________________

____

6. Do you suffer from any physical or mental condition(s) that would make it unusually difficult for you to serve as a juror or pay close and careful attention to the evidence presented for extended periods of time?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ______________________

____

____

7 Do you take any prescription medication that affects your thinking, attention, concentration, or might otherwise affect your service as a juror?
[ ] Yes [ ] No

(a) If yes, please state the name of the medication(s) and explain: ______________________________

8. Are you currently a student?
[ ] Yes, full-time [ ] Yes, part-time [ ] No

(a) If yes, where do you attend school? ______________________________

(b) If yes, will your class schedule in August interfere with your ability to serve as a juror in this trial?
[ ] Yes [ ] No

(c) If yes to #8(b) above, please explain: ______________________________

9. Are you the sole or primary caretaker of a minor child, or an elderly or disabled family member or dependent whose care would interfere with your ability to serve as a juror in this trial?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________________

10. Prior to receiving this questionnaire, have you asked to be excused from this jury panel?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________________

11. Do you have any personal, religious, philosophical or other beliefs that would make it difficult for you to sit in judgment of another person as a juror in a criminal case?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ______________________________

12. Is there any other reason [illegible]u could not be present in court and give your full attention every day for this trial?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________________

Juror Number: _______

13. This case will receive media attention. It is important that this case be decided solely on the evidence presented in the courtroom and not on the basis of information obtained outside the courtroom. As a result, the jury will be instructed not to read, watch, view, or listen to any news accounts of this trial whatsoever, not to conduct any internet searches related to this case, and not to talk to or to communicate with anyone about the case, including through the use of the internet or social media such as Twitter, Facebook, Skype, YouTube, or other modes of electronic communication, until the case is over. Would you find it difficult to obey such an instruction for any reason?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ____________________________________
____
____

Personal Background

14. Full name: Last ________________ First ________________ Middle _______

15. Gender: [ ] Male [ ] Female

16. Age: ________ Date of birth: ____________________________

17. What is your current marital status?
[ ] Single and never married
[ ] Single, but living with non-marital partner for ____ years
[ ] Married, and have been for _____ years
[ ] Divorced, but married in the past for ____ years
[ ] Separated, but married in the past for ____ years
[ ] Widowed, but married in the past for ____ years
____ Number of marriages, if more than one
____ Number of divorces, if any

18. How long have you lived in the Commonwealth of Virginia (total years)? __________

19. If you have children or stepchildren, please list them:

Sex	Age	Live with you?	Educational level	Occupation
(a)				
(b)				
(c)				
(d)				
(e)				

20. Are you (check any and all that apply):
    - [ ] Self-employed
    - [ ] Employed full-time
    - [ ] Working part-time
    - [ ] A student
    - [ ] Disabled and unable to work
    - [ ] Unemployed, looking for work
    - [ ] Unemployed, not looking for work
    - [ ] Retired
    - [ ] Homemaker

21. If you are currently employed in any capacity, either full-time, or part-time, please state:

    (a) Occupation: ______________________________

    (b) Employer: ______________________________

    (c) Type of work: ______________________________

    (d) Location where you work (city/neighborhood): ______________________________

    (e) Years employed in present job: ______________________________

    (f) Explain your duties or responsibilities, including any supervisory responsibilities: ______________________________
    ____

    (g) Do you supervise others?
    [ ] Yes [ ] No

    (a) If yes, how many? _______

    (h) Do you have any responsibility for hiring or firing?
    [ ] Yes [ ] No

22. If you are not currently employed, please state:

    (a) Your last employer: ______________________________

    (b) For how long: ______________________________

    (c) Number of months since last employed: ______________________________

    (d) Your occupation: ______________________________

    (e) Your job responsibilities: ______________________________
    ____

    (f) Did you supervise others?

[ ] Yes [ ] No

If yes, how many? ________________________________

(g) Did you have any responsibilities for hiring or firing?
[ ] Yes [ ] No

(h) Reason(s) for leaving: ________________________________

23. If you are married or currently share a household with someone who is employed in any capacity, either full-time, or part-time, please state the following:

(a) Occupation: ________________________________

(b) Employer: ________________________________

(c) Type of work: ________________________________

(d) Location where s/he works (city/neighborhood): ________________________________

(e) Years employed in present job: ________________________________

(f) Explain his/her duties or responsibilities, including any supervisory responsibilities: ________________________________
____

(g) Does s/he supervise others?
[ ] Yes [ ] No

(a) If yes, how many? ________________________________

(h) Does s/he have any responsibility for hiring or firing?
[ ] Yes [ ] No

24. Do you now, or have you ever owned your own business?
[ ] Yes [ ] No

(a) If yes, what type of business? ________________________________
____

25. Have you or any member of your immediate family or any close personal friend ever served as a corporate officer or member of the Board of Directors in any business or corporation?
[ ] Yes [ ] No

(a) If yes, please explain: ________________________________

____

26. If you or your spouse or non-marital partner currently hold an additional job or have held any other job in the last ten years not addressed above, please describe that employment using the categories in the questions above: ________________________

____

____

____

____

27 Who makes the major financial decisions in your household? ________________

28. Check the highest level of education for you and your spouse/partner:

		You	Spouse / Partner
(a)	Grade school or less	☐	☐
(b)	Some high school	☐	☐
(c)	High school graduate / GED	☐	☐
(d)	Technical or vocational school	☐	☐
(e)	Some college	☐	☐
(f)	2-year college degree	☐	☐
(g)	4-year college degree	☐	☐
(h)	Some graduate work or study	☐	☐
(i)	Master's degree	☐	☐
(j)	Doctoral degree (or equivalent)	☐	☐
(k)	Other	☐	☐

If other, please explain: ________________________________

29. If you or your spouse/partner had any educational training beyond high school, please list all degrees you and/or your spouse/partner have received and the area of study.

Self

(a) Degree(s): ________________________________

(b) Field(s) of study: ________________________________

(c) Name of school(s): ________________________________

Spouse/Partner:

(d) Degree(s): ________________________________

(e) Field(s) of study: ________________________________

(f) Name of school(s): ________________________________

30. Have you or any of your family members (e.g., parents, siblings, a spouse, or children) served in any branch of the Armed Forces?

☐ Yes ☐ No

Juror Number: ______

(a) If yes, please list their relationship to you, dates of service, branch, and highest rank:

Relationship	Dates	Branch	Highest Rank	Type of Discharge

31. Do you or your family members have any education, training or employment experience in any of the following fields:

		You	Family
(a)	Accounting, auditing, or bookkeeping	☐	☐
(b)	Banking	☐	☐
(c)	Loans/mortgage / refinance agreements	☐	☐
(d)	Business / business planning	☐	☐
(e)	Finance / financial planning	☐	☐
(f)	Psychology, psychiatry, or counseling	☐	☐
(g)	Medicine, nursing, healthcare, medical research, or pharmaceuticals	☐	☐
(h)	Nutrition or physical fitness	☐	☐
(i)	Law or paralegal training	☐	☐
(j)	Law enforcement / private investigations	☐	☐
(k)	Corrections (work in prisons/jails) or security guard / private security	☐	☐
(l)	Criminal justice or criminology	☐	☐
(m)	Social work	☐	☐
(n)	Political science or government	☐	☐
(o)	Political fundraising / campaign finance rules	☐	☐
(p)	Politics / elections / political consulting / lobbying	☐	☐
(q)	Ethics, philosophy, sociology, or English	☐	☐
(r)	Engineering	☐	☐
(s)	Computer programming / networking	☐	☐
(t)	Corporate or other compliance with federal, state, or local government regulations	☐	☐
(u)	Compliance with federal, state, or local election laws/regulations	☐	☐
(v)	Journalism / media communications / public relations	☐	☐
(w)	Grant applications / grant writing	☐	☐
(x)	Human resources	☐	☐
(y)	Forensic sciences	☐	☐
(z)	Religion, ministry, or pastoral care	☐	☐

If yes, please explain who and the nature and extent of the education, training or employment experience:______________________________

____

____

32. Do you have any special certifications or licenses?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________________

____

33. Do you have any special skills, training, or experience in note-taking?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________________

____

34. If you are not an attorney, have you taken any law courses?
[ ] Yes [ ] No

If so, indicate the following:

	School	Date	Length of Course	Topic
(a)				
(b)				
(c)				

35. Please list the organizations to which you or your spouse/partner belong or in which either of you participate, either now or in the recent past. (Include any civic, social, religious, charitable, volunteer, political, sporting, professional, business, union, fraternal and recreational groups, such as, but not limited to, Kiwanis, Rotary Club, Knights of Columbus, Veterans of Foreign Wars, American Legion, American Civil Liberties Union, National Rifle Association, League of Women Voters, the Innocence Project, the Virginia Public Access Project, Virginia Coalition for Open Government, or the Center for Public Integrity):

(a) Self: ______________________________

____

(b) Spouse/Partner: ______________________________

____

36. Have you ever held any office, title, or other leadership position in the organizations listed in the previous question?
[ ] Yes [ ] No

(a) If yes, briefly describe your office or title, and dates held: ________________

____

____

37. To what groups or organizations, if any, did you donate money, goods, or volunteered time to during the last five years? ________________________________

____

____

38. Have you taken (or do you take) dietary or nutritional supplements (excluding vitamins)? (Check all that apply)
[ ] Yes, currently do so [ ] Yes, in the past [ ] No

If either "yes" to current use or "yes" to past use, what was the kind(s) of products involved:

Current / past General product description

(a) ____
(b) ____
(c) ____

39 Have you or a family member or a close friend ever sold dietary or nutritional supplements?

Who When General product description

(a) ____
(b) ____
(c) ____

40. Have you or any member of your family ever been employed by the state government of Virginia or any Virginia state government agency, whether as an employee, contractor, or otherwise?
[ ] Yes [ ] No

(a) If yes, please explain who, when, what the job was, and your reason for leaving:

____

____

____

41. Have you or any member of your immediate family ever been employed by or had any business relationship with the University of Virginia, Virginia Commonwealth University, VCU Massey Cancer Center, UVa Medical Center, Eastern Virginia School Medical School, the Virginia Department of Health, the Virginia Department of Human Resource Management, or the Virginia Tobacco Indemnification and Community Revitalization Commission (the "Tobacco Commission")?
[ ] Yes [ ] No

(a) If yes, please explain: ____________________

____

____

42. Have you ever sought or been appointed to any non-elective local or State Board in Virginia?
☐ Yes ☐ No

(a) If yes, please explain when and what Board: ____________________

____

43. As a result of any job or position held, have you ever had to fill out or file a disclosure form listing any gifts or benefits received or any potential conflicts of interest?
☐ Yes ☐ No

(a) If yes, please explain when and what type of disclosure was required: __________

____

____

44. Have you ever received any training addressing local, State, and/or Federal rules concerning conflicts of interest (COI)?
☐ Yes ☐ No

(a) If yes, please explain when and what type of training: ____________________

____

____

45. Have you ever completed an application for a home mortgage or refinance of a home mortgage or signed as a co-applicant?
☐ Yes ☐ No

Legal System

46. Have you ever served as a juror before?
☐ Yes ☐ No

If yes, indicate for each:

Year	Civil/ Criminal	Federal/ State	Type of Case	Reach a verdict (yes/no)	If not, why?

Juror Number: ______

(a) Have you ever served as a juror on a grand jury?
[ ] Yes [ ] No

If yes, when and where: ______________________________

(b) Have you ever served as a jury or grand jury foreperson?
[ ] Yes [ ] No

(c) Was there anything about your experience as a juror or grand juror that left you disappointed or dissatisfied with our criminal justice system?
[ ] Yes [ ] No

Please explain: ______________________________
____
____

(d) Would anything about your jury or grand jury service make you want to or not want to serve again?
[ ] Yes [ ] No

If yes, please explain: ______________________________
____

47 Have you, or has any member of your family or close friend or relative, ever been the victim of, or witness to a crime, whether or not that crime was reported to law enforcement authorities?
[ ] Yes [ ] No

(a) If no, go to the next numbered question. If yes, please provide the following information for each person and incident:

Relationship (Self, sister, etc.)	Type of Crime	Victim or Witness	Reported to Police?	Was anyone Caught?	Outcome of the Case

(b) In what ways, if any, did any of these incidents that you, or a person close to you, experienced affect your attitudes about crime, in general, or certain crimes in particular? ______________________________
____
____

Juror Number: _______

(c) How do you feel about how the police or law enforcement authorities handled the above situation(s)? ______________________________

____

____

____

48. Have you, or, to your knowledge, any family members, or any close friends ever been:

(a) Any of the following:

- (1) Accused of a crime? [ ] Yes [ ] No
- (2) Questioned by police or law enforcement personnel, including military law enforcement? [ ] Yes [ ] No
- (3) Arrested or charged with a crime? [ ] Yes [ ] No
- (4) Convicted of a crime? [ ] Yes [ ] No

(b) If yes for any of the above, please provide the following:

Relationship of person charged (Self, Sister, etc.)	Crime(s) charged/investigated	Case outcome

(c) If yes to any of "a" above, please provide a brief description of the alleged crime(s) and the events leading up to the accusation, arrest or charge: __________

____

____

____

(e) What was your opinion of how fairly the individual(s) mentioned above was treated? ______________________________

____

____

____

(e) How, if at all, would this experience affect you if you served as a juror in this case? ______________________________

____

____

____

49. Other than what you have already explained, have you, a family member or a close friend ever been interviewed or asked to make a statement by the FBI, IRS or any other law enforcement agency?
[ ] Yes [ ] No

(a) If yes, please explain: ____
____

(b) If yes, how, if at all, would this affect you if you served as a juror in this case?
____
____

50. Other than what you have already explained, have you, any member of your immediate family, or any close personal friend ever been investigated for violating ethical rules by an employer, ethics committee, governmental agency, or other organization?
[ ] Yes [ ] No

(a) If yes, please explain: ____
____

(b) If yes, how, if at all, would this affect you if you served as a juror in this case?
____
____
____

51. Do you know of anyone who felt that he/she was falsely accused of a crime?
[ ] Yes [ ] No

(a) If yes, please explain: ____
____

(b) If yes, how, if at all, would this affect you if you served as a juror in this case?
____
____
____

52. Do you know anyone personally who is or has been in prison or jail?
[ ] Yes [ ] No

(a) If yes, please give the following details:

Relation to You	Charge

(b) If yes, how, if at all, would this affect you if you served as a juror in this case?

____

____

53. Other than what you have already explained, have you ever been involved in any legal proceeding, in any capacity, for example as a plaintiff, defendant, victim, lawyer, witness (whether in court or by deposition outside of court), or expert?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________________

____

(b) Did the legal process in that instance operate fairly in your opinion? __________

____

(c) How, if at all, would that experience affect your jury service in this case? _____

____

54. Other than what you have already explained, has any family member or person with whom you have a close personal relationship ever testified in a grand jury or in court?
[ ] Yes [ ] No

(a) If yes, please provide the following details:

Type of Case	Relationship (if any)	Reason for Testifying

55. Have you, or any members of your family, ever been employed by any law enforcement agency, such as: a police department, sheriff's department, the Virginia State Police (VSP), the State Bureau of Investigation (SBI), the Federal Bureau of Investigation (FBI), the Internal Revenue Service (IRS), the Drug Enforcement Administration (DEA), the Bureau of Alcohol Tobacco and Firearms (ATF), the United States Citizenship and Immigration Services (USCIS), the U.S. Marshal's Service, the U.S. Park Police, a United States Attorney's Office, the United States Department of Justice, a District/Commonwealth or State's Attorney's Office, a probation or parole office, the Bureau of Prisons, the state department of corrections, the court system, or any other local, state or federal law enforcement agency or private security force?
[ ] Yes [ ] No

(a) If yes, for each person (yourself or family member), please indicate the law enforcement office or agency, the period of time employed, if known, and a general description of the job duties: ______________________________

____

____

____

Juror Number: ______

56. Other than what you have already explained, have you, or has any close friend or relative, ever worked or been a volunteer in the legal profession either as a lawyer, paralegal, or in a law office, including a prosecutor's, criminal defense attorney's office, Legal Aid, public defender's office, or legal department for any private business or government agency?
[ ] Yes [ ] No

(a) If yes, please list their names, type of work they do, where they work, and their relationship to you: ______

57 Describe your general feelings about the following:

(a) Federal and state law enforcement officers: ______

(b) Federal prosecutors: ______

(c) Criminal defense lawyers: ______

(d) Judges: ______

58. Have you ever had a favorable or unfavorable experience with an attorney or a judge?
[ ] Yes [ ] No

(a) If yes, please explain: ______

(b) If yes, how, if at all, would this affect you if you served as a juror in this case?

______

59. **Have you or a member of your family, either personally or in connection with a business, been involved in any claim, legal action or dispute with any local, state, or federal, governmental agency?**
[ ] Yes [ ] No

(a) If yes, please describe: ____
____
____

Media and Activities

60. Do you watch NATIONAL news on any of the following television networks? **(CHECK ALL THAT APPLY)**

(a)	ABC	[ ]
(b)	CBS	[ ]
(c)	CNN	[ ]
(d)	FOX News channel (National)	[ ]
(e)	MSNBC	[ ]
(f)	NBC	[ ]
(g)	CNN	[ ]
(h)	Public Television	[ ]
(i)	Other	[ ]

If other, please list: ____

61. Do you watch any television talk shows or listen to radio talk shows or podcasts hosted by the following individuals? **(CHECK ALL THAT APPLY)**

(a)	Glenn Beck	[ ]
(b)	Wolf Blitzer	[ ]
(c)	Neal Boortz	[ ]
(d)	Lou Dobbs	[ ]
(e)	Ira Glass	[ ]
(f)	Nancy Grace	[ ]
(g)	Terry Gross	[ ]
(h)	Sean Hannity	[ ]
(i)	Steve Harvey	[ ]
(j)	Chris Hayes	[ ]
(k)	Rush Limbaugh	[ ]
(l)	Rachel Maddow	[ ]
(m)	Chris Matthews	[ ]
(n)	Ruth Marcus	[ ]
(o)	Lawrence O'Donnell	[ ]
(p)	Diane Rehm	[ ]
(q)	Bill O'Reilly	[ ]

(r) Rev. Al Sharpton ☐
(s) Other ☐

If other, please list: ______________________________

62. Please list any Internet web sites that you visit regularly, or any email lists or message services you subscribe to, for news/current events: ______________________________

63. How often do you watch investigative news programs (such as 60 Minutes, ABC 20/20, or Frontline), or television shows that deal with lawyers, the legal system, police work, prisons, politicians, or political life?
☐ Very often ☐ Often ☐ Not very often ☐ Not at all

(a) If very often or often, what are the names of the shows? ______________________________

64. Do you have (or have you ever had) a bumper sticker(s) or personalized license plate(s) on your vehicle(s)?
☐ Yes ☐ No

(a) If yes, please describe what it/they say: ______________________________

65. Do you regularly wear any hats, t-shirts, or carry bags that express views on any subject?
☐ Yes ☐ No

(a) If yes, please describe what it/they say: ______________________________

66. Do you or your spouse/partner maintain a blog or online journal?
☐ Yes ☐ No

(a) If yes, please describe: ______________________________

67. Have you ever written, posted comments, or been quoted in any paper, article, newsletter, news media report, book, or other published work, including online, print and other media sources?
☐ Yes ☐ No

(a) If yes, please describe the content and the source of publication: ______________

68. Have you ever written to any newspaper or magazine; or called in to any television or radio program; or posted a comment or a "like" on any website or to an online media story to express your opinion concerning the issue of corruption in politics?
[ ] Yes [ ] No

(a) If yes, please describe the view you expressed and in what manner: _________

69. Do you use any social networking web sites, such as Facebook, Google+, MySpace, LinkedIn, or Twitter?
[ ] Yes [ ] No

70. Do you currently "follow" or does anyone "follow" you on Twitter, blogs, or other social media platforms?
[ ] Yes [ ] No

(a) Please list any entities or accounts that you follow that are in any way related to politics, political figures / parties, political reporting, or current events: ________

Political Involvement

71. In politics today, do you consider yourself a: **(CHECK ONLY ONE ANSWER)**
[ ] Democrat
[ ] Independent-who leans more to the Democrat Party
[ ] Independent-who does not lean more toward either major party
[ ] Independent-who leans more to the Republican Party
[ ] Republican
[ ] Libertarian
[ ] do not vote
[ ] other (PLEASE SPECIFY) ______________________________

72. In terms of your views on social issues, do you consider yourself to be:
[ ] Very conservative
[ ] Somewhat conservative
[ ] Moderate
[ ] Somewhat liberal
[ ] Very liberal

73. In terms of your views on economic issues, do you consider yourself to be:
[ ] Very conservative
[ ] Somewhat conservative
[ ] Moderate
[ ] Somewhat liberal
[ ] Very liberal

74. How often do you vote in federal elections?
[ ] Always [ ] Often [ ] Seldom [ ] Never

75. How often do you vote in state/local elections?
[ ] Always [ ] Often [ ] Seldom [ ] Never

76. How closely do you follow politics in Virginia?
[ ] Very closely
[ ] Somewhat closely
[ ] Not closely at all

77. Have you, your significant other, a family member, or a close friend ever run for, sought, or held a political office in the local, state, or federal government?
[ ] Yes [ ] No

(a) If yes, please provide their names, relationship to you and political office: ______
____
____

78. Have you, your significant other, a family member, or a close friend ever worked for, volunteered, or been on the staff of any elected public official or worked for a committee or subcommittee in Congress or a State legislature?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________________________
____
____

79. Have you, your spouse/significant other, any family members or any close friends ever sought assistance from any elected public official?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________________________
____
____

80. Do you or any member of your family or any close personal friend have any experience in lobbying any branch of the state, federal, or local government?
☐ Yes ☐ No

(a) If yes, please explain: ____
____
____

81. Do you or any member of your family or close personal friend have any experience being lobbied while you or they served in a position with any state, federal, or local government?
☐ Yes ☐ No

(a) If yes, please explain: ____
____
____

82. Overall, what is your general opinion of the elected public officials of the Commonwealth of Virginia?

____
____
____
____

83. With respect to any candidates for public office, political organizations, political committees, or political action committees (PACs) have you, your spouse/significant other, any family members or any close friends ever done any of the following: (Check all that apply)

		Self	Spouse/ sig. other	Family member	Close friend
(a)	Been paid to work for	☐	☐	☐	☐
(b)	Volunteer work	☐	☐	☐	☐
(c)	Canvassed neighborhoods	☐	☐	☐	☐
(d)	Attended meetings	☐	☐	☐	☐
(e)	Contributed money	☐	☐	☐	☐
(f)	Attended rallies	☐	☐	☐	☐
(g)	Attended events, e.g., cocktail parties and/or dinners	☐	☐	☐	☐
(h)	Displayed yard signs and/or bumper stickers	☐	☐	☐	☐
(i)	"Liked" any websites or Facebook pages associated with a party or political candidates	☐	☐	☐	☐
(j)	Other campaign activities	☐	☐	☐	☐

For any checked above, please explain: ______________________________

____

____

____

____

84. How often do you or your spouse/partner make financial contributions to any political campaigns or political action committees?
[ ] Often [ ] Sometimes [ ] Seldom [ ] Never

85. Do you have any knowledge, training or experience in the area of government ethics on a local, state, or federal level?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________________

____

____

____

(b) If yes, how, if at all, would this affect you if you served as a juror in this case?

____

____

____

86. Do you have any knowledge, training or experience in the area of laws relating to the accepting and/or reporting of gifts and/or financial transactions involving government officials?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________________

____

____

____

(b) If yes, how, if at all, would this affect you if you served as a juror in this case?

____

____

____

Juror Number: _______

General Opinions and Beliefs about the Criminal Justice System

87. The indictment in this case is merely an accusation and not evidence of guilt. Would you have any difficulty treating the indictment as an accusation and not evidence of guilt?
[ ] Yes [ ] No

(a) If yes, please explain: ____
____
____

88. A defendant in a criminal trial has no obligation to testify. Jurors cannot draw any conclusion from the fact that a defendant chooses not to testify. The fact that a defendant may choose not to testify cannot be a factor in reaching your verdict. Would you have any difficulty following these rules?
[ ] Yes [ ] No

(a) If yes, please explain: ____
____
____

89. A defendant is presumed innocent and cannot be convicted unless the jury, based on all the evidence, unanimously decides that his or her guilt has been proved beyond a reasonable doubt. The burden of proving guilt rests entirely on the government. A defendant has no obligation to prove his or her innocence. Would you have any difficulty following these rules?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ______________________________________
____
____

90. There are two defendants in this case. Each defendant and each charge must be considered separately. You cannot find a defendant guilty on any count unless the government proves his or her guilt beyond a reasonable doubt. Are you able to consider each defendant and each charge separately?
[ ] Yes [ ] No [ ] Unsure

(a) If no or unsure, please explain: ______________________________________
____
____

Juror Number: _______

91. The defendants in this case are well-known public figures. Would that affect your ability to follow the instructions given by the Court and reach a decision in this case?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ______________________________

92. Sometimes witnesses who testify are given immunity from prosecution or otherwise lenient treatment by the Government. As to such a witness, would that fact alone prevent you from believing that person, even before you have heard any of his or her testimony?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ______________________________

93. Have you followed any criminal cases involving alleged political corruption over the past 10 years?
[ ] Yes [ ] No

(a) If yes, please describe which case(s), your interest in each case, the outcome, and your reaction to the outcome: ______________________________

94. Have you followed any other criminal cases over the past 10 years?
[ ] Yes [ ] No

(a) If yes, please describe which case(s), your interest in each case, the outcome, and your reaction to the outcome: ______________________________

Connection to the Defendants

95. Have you ever been to an event or activity that Robert F McDonnell attended?
☐ Yes ☐ No

If yes,

(a) What event(s) or activity? ____________________________________

(b) When: ____________________________________

(c) Did you personally meet Mr. McDonnell?
☐ Yes ☐ No

96. Have you ever been to an event or activity that Maureen G. McDonnell attended?
☐ Yes ☐ No

If yes,

(a) What event(s) or activity? ____________________________________

(b) When: ____________________________________

(c) Did you personally meet Mrs. McDonnell?
☐ Yes ☐ No

97. Have you or someone you know ever had any connection to any of the following activities by the former First Lady of Virginia Maureen G. McDonnell: (Check all that apply)
☐ The "FLITE" (First Lady's Initiatives Team Effort) Program
☐ Virginia Wine Association or marketing efforts to promote Virginia wines
☐ The McGlothlin Foundation
☐ Other activities, please explain: ____________________________________

98. Do you, a family member, or any close friend know or have any connection (personal, political, and/or business) to Robert F McDonnell, Maureen G. McDonnell, any member of their extended families, or any other person who has a close personal connection to the McDonnells (including but not limited to social interaction, Facebook friend status, and the like)?

(Check all that apply)	Self	Family member	Close friend
Know Mr. McDonnell	☐	☐	☐
Know Mrs. McDonnell	☐	☐	☐
Know McDonnells' families	☐	☐	☐
Know McDonnells' close personal connections	☐	☐	☐

Juror Number: ______

(a) If yes, please explain: ____________________

99 Do you or does anyone close to you know anyone who was has been a member of any staff or worked for Robert F McDonnell in any capacity during any of his positions in elected office?
[ ] Yes [ ] No

(a) If yes, please explain: ____________________

100. Do you or does anyone close to you know anyone who was has been appointed to any position, including State positions or jobs and Board or Commission appointments, by Robert F McDonnell?
[ ] Yes [ ] No

(a) If yes, please explain: ____________________

101. Do you or does anyone close to you know anyone who was has been a member of any staff or worked with in any other capacity (both paid or volunteer) former First Lady of Virginia Maureen G. McDonnell?
[ ] Yes [ ] No

(a) If yes, please explain: ____________________

102. Do you feel that there have been any actions by Robert F McDonnell or Maureen G. McDonnell while they were Governor and First Lady of Virginia, respectively, that have affected you in a personal way?
[ ] Yes [ ] No

(a) If yes, please explain: ____________________

Juror Number: ______

103. With respect to Robert F McDonnell's various political campaigns/political offices sought (i.e., House of Delegates, Virginia Attorney General, and Governor) have you, your spouse/significant other, any family members or any close friends ever done any of the following in support of or in opposition to any of Mr. McDonnell's campaigns: (Check all that apply)

		Self	Spouse/ sig. other	Family member	Close friend
(a)	Been paid to work for	☐	☐	☐	☐
(b)	Volunteer work	☐	☐	☐	☐
(c)	Canvassed neighborhoods	☐	☐	☐	☐
(d)	Attended meetings	☐	☐	☐	☐
(e)	Contributed money	☐	☐	☐	☐
(f)	Attended rallies	☐	☐	☐	☐
(g)	Attended events, e.g., cocktail parties and/or dinners	☐	☐	☐	☐
(h)	Displayed yard signs and/or bumper stickers	☐	☐	☐	☐
(i)	"Liked," "friended," or "followed" any websites, twitter feeds, or Facebook pages associated with Mr. McDonnell or his campaign opponents	☐	☐	☐	☐
(j)	Other campaign activities	☐	☐	☐	☐

For any checked above, please explain: ______________________________

____

____

____

____

104. Have you, your spouse/significant other, any family members or any close friends ever done any of the following in support of defense efforts concerning allegations of criminal wrongdoing by the defendants? (Check all that apply)

		Self	Spouse/ sig. other	Family member	Close friend
(a)	Wrote a letter to the editor	☐	☐	☐	☐
(b)	Signed a petition	☐	☐	☐	☐
(c)	Posted a comment online				
(d)	Received an email or other communication seeking financial or other support	☐	☐	☐	☐
(e)	Visited a website (e.g., The Restoration Fund) seeking donations for the defense	☐	☐	☐	☐

(f)	Donated money to the defense, including funds solicited by The Restoration Fund website	☐	☐	☐	☐

For any checked above, please explain: ______________________________

105. Have you, your spouse/significant other, any family members or any close friends ever done any of the following in support of government efforts to investigate allegations of criminal wrongdoing by the defendants? (Check all that apply)

		Self	Spouse/ sig. other	Family member	Close friend
(a)	Wrote a letter to the editor	☐	☐	☐	☐
(b)	Signed a petition	☐	☐	☐	☐
(c)	Posted a comment online				

For any checked above, please explain: ______________________________

106. Robert F McDonnell is currently on the faculty at Liberty University. Have you or a family member or a close friend ever had any contact or connection to Liberty University, including attending classes, employment, teaching courses, providing any financial support or donations, or being on any Liberty University mailing or email lists?
☐ Yes ☐ No

(a) If yes, please list who, the kind of contact or connection, and their relationship to you: ______________________________

107. In what way, if any, would the fact that Robert F McDonnell is employed by Liberty University affect how you would view his credibility or any of the charges against the defendants? ______________________________

Juror Number: _______

108. Other than what you have already explained, have you or any family member ever been employed, including as a contractor, by any U.S. federal government agency?
[ ] Yes [ ] No

(a) If yes, please list the person, job title, agency, and dates of employment: ______

____

____

____

Case Questions

109. The defendants, Robert F McDonnell and Maureen G. McDonnell, are charged with bribery, extortion, wire fraud, and making false statements, among other charges, and Maureen G. McDonnell is also charged with obstruction of justice. Have you seen, heard or read anything about this case?
[ ] Yes [ ] No

110. How closely have you followed the news about this case?
[ ] Very closely
[ ] Somewhat closely
[ ] Not very closely
[ ] Not at all

111. Please indicate from what source(s) you heard about the case. (Check all that apply.)

(a) [ ] Television
[ ] Newspapers
[ ] Magazines
[ ] Radio
[ ] Internet
[ ] Blog/chatroom
[ ] Personal knowledge of defendants or their family, friends or acquaintances
[ ] Personal knowledge of potential witnesses in this case
[ ] Personal conversations with others in the community
[ ] Overheard others discussing the case
[ ] Other sources of information (list):

____

(b) Please describe the sources for any of the options checked above: ____________

____

____

____

____

____

Juror Number: _______

112. Based on what you have read, heard, seen, and/or overheard in conversations, please tell us what opinions, if any, you have formed about the guilt or innocence of Robert F McDonnell: ____

113. Based on what you have read, heard, seen, and/or overheard in conversations, please tell us what opinions, if any, you have formed about the guilt or innocence of Maureen G. McDonnell: ____

114. Have you expressed an opinion about this case or about those involved to anyone, either through conversations or through writing to any newspaper, magazine, or publication; calling in to any television or radio program; or posting comments or likes on the Internet?
[ ] Yes [ ] No

(a) If yes, what were the circumstances and what opinion did you express? ________

115. Have you, a member of your family or a close friend participated in any legal research studies such as focus groups, mock trials, or surveys that addressed the case of *United States of America v. Robert F McDonnell and Maureen G. McDonnell*?
[ ] Yes [ ] No

116. Over the past two years, have you, a member of your family or a close friend participated in any legal research studies such as focus groups, mock trials, or surveys that addressed any other real or hypothetical criminal case?
[ ] Yes [ ] No

117 Do you or any member of your immediate family or close personal friend know anyone who has covered this case or investigation for any media outlet?
[ ] Yes [ ] No

(a) If yes, please explain: ____

Juror Number: ______

118. If, after hearing all of the evidence in this case, you concluded that the Government had proved beyond a reasonable doubt that Robert F McDonnell is guilty, would you have any reservations in voting guilty?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ____________________________________

119. If, after hearing all of the evidence in this case, you concluded that the Government had proved beyond a reasonable doubt that Maureen G. McDonnell is guilty, would you have any reservations in voting guilty?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ____________________________________

120. If, after hearing all of the evidence in this case, you concluded that the Government had not proved beyond a reasonable doubt that Robert F McDonnell is guilty, would you have any reservations in voting not guilty?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ____________________________________

121. If, after hearing all of the evidence in this case, you concluded that the Government had not proved beyond a reasonable doubt that Maureen G. McDonnell is guilty, would you have any reservations in voting not guilty?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ____________________________________

122. Two of the products that will be discussed in this case are Anatabloc, which is a dietary supplement produced by Star Scientific, and CigRx, a smoking cessation product produced by Star Scientific. Have you or a family member or a close friend ever used Anatabloc or CigRx?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please describe who used the product and when: ____________

____

____

____

123. Do you or any family member or close friend now own or ever owned any stock in Star Scientific?
[ ] Yes [ ] No [ ] Unsure

124. The judge presiding over this case is U.S. District Judge James R. Spencer. Do you, anyone in your family, or any close personal friend know Judge Spencer or anyone else who works in this courthouse?
[ ] Yes [ ] No

(a) If yes, please explain who you know and how: ____________________

____

____

125. The prosecutors in this case are Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer.

(a) Do you know, or have you had any contact, either social or professional, with any individuals listed above, or any other member of the United States Attorney's Office or Department of Justice?
[ ] Yes [ ] No [ ] Unsure

(b) If yes or unsure, please explain: ____________________________

____

____

126. The attorneys representing the defendants in this case and their respective law firms are listed below.

Robert F. McDonnell
John Brownlee, Christopher Iaquinto, Daniel Small, Timothy Taylor, William Gould
(Holland & Knight LLP)

Henry Asbill, Jonathan Berry, Charles Carberry, Hilary Perkins, James Burnham, Mary Ellen Powers, Noel Francisco, Owen Conroy, Ryan Newman
(Jones Day)

Maureen G. McDonnell
William Burck, Kaiyeu Chu, Heather Martin, Stephen Hauss
(Quinn Emanuel Urquhart & Sullivan LLP)

(a) Do you know, or have you had any contact, either social or professional, with any individuals listed above, or any other member of any of the law firms listed above?
[ ] Yes [ ] No [ ] Unsure

(b) If yes or unsure, please explain: ______

127. Please review the list attached to this questionnaire that provides the names of persons who may appear as witnesses during the trial. Do you, your spouse/partner, any members of your immediate family, or any of your close personal friends know or have any connection with, or have you ever seen, heard, or read anything about any of the individuals listed?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please list the names of each person and explain the connection or information you have seen, heard, or read: ______

128. Based on what you have read, heard, seen, and/or overheard in conversations, please tell us what opinions, if any, you have formed about the credibility of any potential witnesses in the case: ______

129. Other than what you have already explained, do you or any member of your immediate family or close personal friend know anyone who may be associate [illegible] any capacity with this case, its investigation, or its preparation for either the Government or the defendants?
[ ] Yes [ ] No

(a) If yes, please explain: ______

Juror Number: ______

Conclusion

130. Do you believe that if the law as given to you by the judge goes against your personal views of what the decision should be, you would tend to base your verdict on your personal views of the case?
[ ] Yes [ ] No

131. As a result of filling out this questionnaire, have you now formed any opinion about this case?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________

132. Is there any reason that you believe you should not sit as a juror in this case?
[ ] Yes [ ] No

(a) If yes, please explain:

133. Other than civic duty, is there any reason that you would want to serve as a juror (or as foreperson of the jury) in this case?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________

134. Is there any reason you have not already explained that you would not want to serve as a juror in this case?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________

135. After being notified that you may serve as a juror in this case, did you discuss your possible service on this case with anyone, including family, friends, and co-workers, etc.?
[ ] Yes [ ] No

(a) If yes, please explain who and what you discussed: ______________________

Juror Number: _______

136. After receiving this questionnaire and thus being notified that you may serve as a juror in this case, did you follow or access any media coverage or view or search out any information on the Internet concerning this case?
[ ] Yes [ ] No

(a) If yes, please explain: ____
____
____
____

137. Is there anything else that you think the Court should know that might influence your ability to fairly and impartially judge the evidence in this case and to apply the law as instructed by the Court?
[ ] Yes [ ] No

(a) If yes, please explain: ____
____
____

138. Is there any matter you would prefer to discuss privately with the judge?
[ ] Yes [ ] No

(a) If yes, please explain: ____
____
____
____

139. Is there anything that was not asked that you believe is important to know about you?
____
____
____

Juror Number: _______

SIGNATURE

I, ____, hereby declare under
(Print Your Name)
penalty of perjury that the foregoing answers set forth in this Jury Questionnaire are true and correct to the best of my knowledge and belief. I have not discussed my answers with others, or received assistance in completing the questionnaire. I have answered all of the above questions in this Jury Questionnaire myself.

I FURTHER UNDERSTAND THAT I AM NOT TO DISCUSS THIS CASE WITH ANYONE OR SEEK OUT, LISTEN TO, OR READ ANY MATERIAL ABOUT THIS CASE IN THE MEDIA, ON THE INTERNET OR ELSEWHERE UNTIL THE JUDGE IN THIS CASE HAS INSTRUCTED ME OTHERWISE.

Executed in the Eastern District of Virginia, on this _____ day of __________, 2014.

____
(Your Signature)

Juror Number: _______

EXPLANATION SHEET

Juror Number: ______

EXPLANATION SHEET, continued.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**CRIMINAL NO. 3:14-CR-00012**
	)	
ROBERT F. MCDONNELL	)	**JUDGE JAMES R. SPENCER**
MAUREEN G. MCDONNELL	)	

DEFENDANT ROBERT F. MCDONNELL'S
ADDITIONAL PROPOSED JUROR QUESTIONNAIRE ITEMS

Robert F McDonnell, by his attorneys, hereby requests that the following questions be included in the juror questionnaire to be sent to potential jurors. These are questions proposed by the defense, to which the Government has indicated it would object.

Personal Background

D1. Where were you born? ____

D2. What is your race/ethnicity? Do you consider yourself: (check one)

____Caucasian/White
____African-American/Black
____Hispanic/Latino
____Native American /American Indian
____Bi-racial
____Other (please specify) ____________________
____Prefer not to answer

D3. What is your religion preference, if any? (check one)

_____ Baptist _____ Non-denominational _____ Other Protestant _____Catholic

_____ Jewish _____ Muslim _____ Buddhist _____Other _____None

D4. How often do you attend church or other religious services?

a. _____ Never _____Rarely _____Several times a year _____Once a month

b. _____Several times a month _____Once a week _____Several times a week

D5. What is your approximate total annual household income? (optional)

____

Justification: **Questions D1 through D5 are designed to ensure that a fair cross-section of the population is included in the jury pool and that there has been no systematic (albeit unintentional) exclusion of any distinctive group. *See Duren v. Missouri*, 439 U.S. 357 (1979) (confirming that a defendant has the right to a trial by a jury selected from a fair cross-section of the community). Moreover, there have been several "hot button" political issues involving race and religion that have divided Virginia citizens during Mr. McDonnell's tenure as Governor.**

D6. Do you own your residence, rent your residence, or live with friends or relatives?

______ Own ______ Rent ______ Live with friends or relatives

a. How many people including yourself live in your household/residence? ______

Justification: Question D6 is an expansion on Joint Questionnaire # 19, intended to identify relevant additional housing and residential circumstances beyond individuals who live with family members.

D7 Have you or your employer ever done business, or sought to do commercial business, with any Virginia state, county, city, or other local government agency?

_____Yes ______ No

a. If yes, please explain when and for what purpose:

____

____

b. Was this experience (check one):

______Mainly Positive ______ Mainly Negative ______ Mixed

c. Were you and/or your employer treated fairly by the state agency?

______Yes ______ No

Please explain:

____

____

Justification: Question D7 is an important corollary to Joint Questionnaire # 40. The Government alleges that its primary witness, Jonnie Williams, attempted to improperly influence state personnel on behalf of Star Scientific, Inc. It is important to know whether a juror has similar experience dealing with the Commonwealth and its political subdivisions, and if so, whether the juror has strong feelings about state government.

D8. The Federal Government is the complainant in this case bringing charges against former Governor Robert F McDonnell and his wife former First Lady Maureen G. McDonnell. Would the fact that you or a family member currently work or have worked for the Federal Government cause you to favor the Government's side in this case regardless of any other evidence or testimony that might develop at trial? ______ Yes ______ No

If yes, please explain:

____

____

Justification: Question D8 would help identify individuals who may be impermissibly biased in favor of the Government because they worked for, or were close to someone who worked for, the Federal Government. It should follow Joint Questionnaire # 108.

D9. Please describe your hobbies, spare time activities, or special interests:

____

____

Justification: Question D9 is an important expansion on Joint Questionnaire # 35 because it prompts potential jurors to disclose activities and interests that are important to them beyond employment or formal membership in a defined organization. For many individuals, especially those who are retired or currently out of work, hobbies and interests take up a much larger portion of their time than does work.

D10. How would you describe yourself and your view of life in ten words or less?

D11. Which, if any, of the following words describe you? (Please check all that apply):

☐ Aggressive
☐ Analytical
☐ Articulate
☐ Assertive
☐ Business-minded
☐ Cautious
☐ Compulsive
☐ Creative
☐ Decisive
☐ Dedicated
☐ Detailed
☐ Emotional
☐ Entrepreneur
☐ Impulsive
☐ Independent
☐ Innovative
☐ Intelligent
☐ Judgmental
☐ Laid-back
☐ Law & Order
☐ Leader
☐ Logical
☐ Loyal
☐ Naïve
☐ Opinionated
☐ Outspoken
☐ Perceptive
☐ Practical
☐ Private
☐ Problem solver
☐ Pro-business
☐ Pro-Government
☐ Pro-worker
☐ Religious
☐ Skeptical
☐ Snap-decisions
☐ Strict
☐ Stubborn
☐ Technical
☐ Thoughtful
☐ Trusting
☐ Visual
☐ Other:______

Justification: Questions D10 and D11 are designed to elicit important information about each jurors' perception of their own character traits and to ensure that the jury includes persons with a variety of perspectives who will be assessing the evidence and determining the facts of the case.

Media Consumption

D12. Where do you get your news and information about current events? (Check all that apply):

a. _____ Newspaper _____TV/cable news _____ Radio _____ Magazines

b. _____ On-line/internet/social media _____Word of mouth, conversations

c. _____ Nowhere, I do not pay attention to current events.

D13. Check to indicate whether you regularly receive news and information from the following sources (including on-line):

The Richmond Times-Dispatch _____ Yes ____No If yes, how often? __________________
The Virginia-Pilot _____ Yes ____No If yes, how often? __________________
Other Virginia newspaper _____ Yes ____No If yes, how often? __________________
Specify: _________________________
The Washington Post _____ Yes ____No If yes, how often? __________________
The Washington Times ____ Yes ____No If yes, how often? __________________
The New York Times _____ Yes ____No If yes, how often? __________________
USA Today _____ Yes ____No If yes, how often? __________________
The Wall Street Journal _____ Yes ____No If yes, how often? __________________
Other National newspaper _____ Yes ____No If yes, how often? __________________
Specify: _______________
ABC News _____ Yes ____No If yes, how often? __________________
CBS News _____ Yes ____No If yes, how often? __________________
NBC News _____ Yes ____No If yes, how often? __________________

FOX News ____ Yes ____No If yes, how often? ________________
PBS /NPR News ____ Yes ____No If yes, how often? ________________
CNN ____ Yes ____No If yes, how often? ________________
MSNBC ____ Yes ____No If yes, how often? ________________
Other television/cable station ____ Yes ____No If yes, how often? ________________
Specify: ________________
On-line blogs, podcasts ____ Yes ____No If yes, how often? ________________
Specify: ________________
Social media ____ Yes ____No If yes, how often? ________________
Specify: ________________
News magazines ____ Yes ____No If yes, how often? ________________
Specify: ________________

D14. Which of the following categories best describes your opinion of the accuracy of the news media in general? (Check one):

_____Always accurate _____Generally accurate _____Sometimes accurate

_____Sometimes inaccurate _____Generally inaccurate _____Never accurate

Justification: Questions D12 through D14 are particularly important in this case because of the constant, voluminous, and highly prejudicial media coverage. While Joint Questionnaire # 60 through # 63 address some media coverage issues, the parties could not reach an agreement on whether the questionnaire should specifically list newspapers read by each juror, ask how frequently each juror views each media source, and inquire into the juror's perspective on the accuracy of the media. Understanding the types of media, the specific sources (particularly media sources in this jurisdiction) that a juror accesses, the frequency of that access, and juror attitudes toward the media will ensure a more accurate and comprehensive assessment of a potential juror's exposure to biased media accounts and the effect of that exposure on the juror.

D15. Check to indicate about how many media reports (from television, cable, newspaper, on-line, social media, radio or magazine) have you seen or heard about this case (check one):

___ None ___ less than 10 ___ 10 - 25 ___ 25 - 50 ___ 50 100 ___ More than 100

Justification: Question D15 is needed, in addition to Joint Questionnaire # 110, because it provides an objective basis for assessing the extent of each person's media exposure to this case, beyond vague and subjective assessments such as "very closely" or "somewhat closely."

D16. What television shows do you watch on a regular basis? Specifically, what are your favorite television programs?

____

____

D17. How many hours a day do you spend watching television?______________________

Justification: Questions D16 and D17 allow a potential juror to provide more expansive information on the types of media he or she accesses and the intensity of the exposure to that media. Knowing which television shows a potential juror prefers provides insight into how that person may approach the evidence in this case.

Case Questions

D18. What is your personal opinion of former Governor Robert F "Bob" McDonnell? (choose one):

_____Very favorable _____Favorable ____Mixed Opinion

_____Unfavorable _____ Very unfavorable _____ No opinion

a. Briefly explain: ____

____

b. Would your personal opinion of former Governor Robert F "Bob" McDonnell have any impact on your ability to fairly judge the evidence and testimony in this case?
_____ Yes _____ No _____ Maybe/unsure

D19. What is your personal opinion of former First Lady Maureen G. McDonnell? (choose one):

_____Very favorable _____Favorable ____Mixed Opinion

_____Unfavorable _____ Very unfavorable _____ No opinion

a. Briefly explain: ____

____

b. Would your personal opinion of former First Lady Maureen G. McDonnell have any impact on your ability to fairly judge the evidence and testimony in this case?
_____ Yes _____ No _____ Maybe/unsure

D20. Do you approve or disapprove of the way former Governor Robert F "Bob" McDonnell handled his job as Governor of the Commonwealth of Virginia?

_____Mainly approve _____ Mainly disapprove _____Neither _____ Both

D21. Are there any positions on social or political issues attributed to former Governor Robert F "Bob" McDonnell with which you strongly disagree? ______Yes ______ No

a. If yes, please explain:

____

____

Justification: Questions D18 through D21 directly address whether a person has a potentially impermissible pre-existing bias against Robert F. McDonnell or Maureen G. McDonnell. This is obviously important in a case involving the former Governor and First Lady of Virginia, about whom nearly every juror will have some knowledge and opinions. This is especially true because the jury pool will be selected from among Virginia voters, who are particularly likely to have pre-existing opinions about the State's elected officials. Moreover, Mr. McDonnell took high profile positions on a variety of hotly contested political issues during his term as Governor, and any of those positions could have influenced potential jurors' views of Mr. and Mrs. McDonnell.

D22. Do you or any member of your immediate family or close personal friend know, or have you or they ever had any connection with any of the following individuals or entities:

Star Scientific, Inc	______ Yes	______No
Rock Creek Pharmaceuticals, Inc.	______ Yes	______No
Star Scientific CEO Jonnie R Williams	______ Yes	______No
Roskamp Institute	______ Yes	______No
Seasonings Fine Catering & Event Planning	______ Yes	______No
Chef Todd Schneider	______ Yes	______No

a. If yes, please explain your knowledge or connection with each:

____

____

____

Justification: Question D22 solicits information about prior connections to entities that play a significant role in this case. If a juror has a connection with any of the above entities, particularly given the substantial local media coverage of them, that is a potential source of impermissible bias.

D23. Have you or any member of your family or household expressed any opinion about Virginia laws regarding the issue of limits and reporting requirements for gifts given to elected state officials ("gift law")? ______ Yes ______ No

a. If Yes, please describe:

____

____

____

____

D24. Have you ever formed or expressed any opinion about the gift laws of the Commonwealth of Virginia? ______Yes ______No _____ Don't know

a. If yes, please explain:

____

____

D25. At the time of the events in this case, any elected politician in the Commonwealth of Virginia was permitted by law to accept gifts of any amount so long as he or she reported the gifts on the annual Statement of Economic Interest (SOEI) form in accordance with the instructions on the form. Do you have any strong reaction or opinion about that law? _____Yes _____No

a. If so, what is it?

____

____

D26. At any time, have you ever formed or expressed any opinion about this case, or any of the people involved? ______Yes ______No

a. If yes, what was that opinion or opinions?

____

____

D27. Have you formed any opinion about the truth or falsity of the charges filed against former Governor Robert F "Bob" McDonnell? ______Yes ____No _____ Maybe

D28. Based on what you have read, seen or heard expressed about the case, the charges, or the individuals involved, indicate which of the following best describes your current belief about whether former Governor Robert F "Bob" McDonnell is guilty or not guilty of these charges (check one):

_____ Definitely guilty _____ Probably guilty _____ Not sure

_____Probably not guilty _____ Definitely not guilty _____ No opinion

D29. Will you be able to presume the defendant former Governor Robert F "Bob" McDonnell is innocent of these charges and to require the Government to prove his guilt beyond a reasonable doubt, OR would you require Mr. McDonnell to present evidence or proof of his innocence in order to convince you that he is not guilty of these charges? (check one):

_____ I would presume the defendant is innocent and would require the Government to prove his guilt beyond a reasonable doubt.

_____ I would require the defense to present evidence or proof of the defendant's innocence.

_____ Not sure

D30. Have you formed any opinion about the truth or falsity of the charges filed against former First Lady Maureen G. McDonnell? ______Yes ____No _____ Maybe

D31. Based on what you have read, seen or heard expressed about the case, the charges, or the individuals involved, indicate which of the following best describes your current belief about whether former First Lady Maureen G. McDonnell is guilty or not guilty of these charges (check one):

_____ Definitely guilty _____ Probably guilty _____ Not sure

_____Probably not guilty _____ Definitely not guilty _____ No opinion

D32. Will you be able to presume former first Lady Maureen G. McDonnell is innocent of these charges and to require the Government to prove her guilt beyond a reasonable doubt, OR would you require the defense to present evidence or proof of her innocence in order to convince you that she is not guilty of these charges? (check one):

_____ I would presume the defendant is innocent and would require the Government to prove her guilt beyond a reasonable doubt.

_____ I would require the defense to present evidence or proof of the defendant's innocence.

_____ Not sure

__Justification__: Questions D23 through D32 comprehensively address whether a potential juror has any pre-existing and potentially impermissible biases, opinions, or conclusions about either Mr. or Mrs. McDonnell, the issues, and the facts in the case. These questions are particularly important given that most jurors are likely to have had some exposure through the widespread negative media coverage. It is essential that the parties and the Court know whether each juror has made up his or her mind about Mr. or Mrs. McDonnell as a result of the media coverage. These questions also address important burden-of-proof issues.

D33. Which of the following best describes how active you are politically? (check one):

_____ Very active _____ Active _____Occasionally involved _____ Rarely/never involved

__Justification__: Question D33 elicits information about the intensity of a person's political involvement. It is a necessary corollary to Joint Questionnaire # 83, which simply identifies the type of political activities a potential juror may have participated in. This is important information because a juror who is more intensely involved in political activities is more likely to have pre-existing opinions about Mr. and Mrs. McDonnell.

D34. How concerned are you about the honesty and ethics of politicians?

____

____

D35. How would you rate the honesty and ethics of most public officials?

_____ Very high _____High _____Average _____ Low _____ Very low

D36. How would you rate the honesty and ethics of most public officials for the Commonwealth of Virginia?

_____ Very high _____High _____Average _____ Low _____ Very low _____Not sure

D37. Are you especially concerned with corruption in American politics, or in the Commonwealth of Virginia? ______Yes ____No

a. If yes, please explain:

____

____

Justification: Questions D34 through D37 are important because many citizens have very negative opinions about politicians generally and may have broadly formed views about the ethical standards of public officials that could bias them in this case. It is important to determine whether a potential juror has a pre-existing bias against Robert F. McDonnell simply because he is a politician.

D38. How would you rate the honesty and ethical standards of former Governor Robert F "Bob" McDonnell?

_____ Very high _____High _____Average _____ Low _____ Very low _____ Not sure

Justification: Question D38 addresses whether a potential juror has a pre-existing and potentially impermissible bias, opinion, or conclusion about Mr. McDonnell's character and standards as a result of his public position and media coverage of this case.

D39. Do you believe that elected public officials should be held to a higher standard of personal and moral conduct than the average citizen? _____Yes _____No

a. If yes, please explain:

____

____

D40. Should a defendant who is a lawyer or had legal training be held to a different legal or ethical standard than any other defendant? Yes _____ No _____ Unsure _____

a. Please explain:

____

____

Justification: Questions D39 and D40 address whether a juror may impermissibly hold Robert F. McDonnell to a different standard than another similarly situated defendant, simply due to his prior role as a public official or the fact that he is an attorney.

D41. In choosing between two courses of action, do you believe it is more important for a public official to follow the letter of the law, or to follow the spirit of the law?

_____ Follow the letter of the law _____ Follow the spirit of the law _____ Not sure

a. Please explain:

____

____

Justification: Question D41 is intended to elicit important information about how a potential juror might apply the Court's instructions to the evidence presented at trial.

D42. If you have served on a grand jury, did you ever vote against returning an indictment?

______Yes ______No

D43. If you served on a jury and the jury reached a verdict, what was the verdict?

____

Justification: Questions D42 and D43 should be included as subparts to Joint Questionnaire # 46 in order to fully capture a person's prior experience as a juror, including whether that juror has a tendency to agree with the Government's position. Further, with respect to jurors in federal cases, the Government has unilateral access to records about indictments and verdicts.

D44. What opinions do you hold about juries and the jury system?

____

____

Justification: Question D44 should be included because it is important to know whether potential jurors hold strong opinions about the jury system or would be likely to disregard the Court's instructions.

D45. Do you have any plans to go to law school or to study law?

______Yes ______No

a. If yes, please explain:

____

____

D46. Do you have any plans to go into law enforcement or to study police science or criminal justice? _____Yes _____No

a. If yes, please explain:

____

____

Justification: Questions D45 and D46 elicit information not gained in Joint Questionnaire # 31, which only covers past experiences.

D47. Compared to other witnesses, do you believe that the testimony of a police officer or law enforcement officer is (check one):

_____ Always believable _____ More believable _____ Equally believable

_____ Less believable _____ Not believable at all _____ No opinion

D48. Do you have any opinions about the government's use of witnesses who claim they participated with the defendants in some of the crimes charged here and who have received immunity from prosecution from the government in exchange for their cooperation?

______Yes ______No _______Unsure

a Please explain:

____

____

Justification: Questions D47 and D48 elicit whether a potential juror may have an impermissible pre-existing bias or opinion regarding the testimony of a witness based solely on the witness's background.

D49. You must not find one defendant guilty simply by reason of your finding another defendant guilty. Would you have any difficulty following this rule? _____Yes _____ No

a. If yes, please explain:

____

____

Justification: Mr. and Mrs. McDonnell are being tried jointly over their objection. It is essential to know whether a juror would have any difficulty assessing the evidence against each defendant individually.

D50. If you are selected to serve as a juror on this case, would you be concerned about reactions to the verdict by:

Friends	______Yes	______No
Relatives	______Yes	______No
Co-workers	______Yes	______No
Neighbors	______Yes	______No
The media	______Yes	______No
People in this community	______Yes	______No

a. If yes, what kind of concern(s) do you have? Please explain:

____

____

Justification: Question D50 is important because of the high-profile nature of this case and possible juror perception that they are under substantial public pressure to reach a certain verdict.

Dated: May 30, 2014

Respectfully submitted,

/s/ Jonathan A. Berry

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Counsel for Robert F McDonnell

Government's Proposed Additions to Jury Questionnaire

United States v. Robert F McDonnell and Maureen G. McDonnell, No 3:14cr12

G-A. Would you be able to put to one side everything you have seen, read, or heard about this case, not consider that information at all as a juror, and decide the case fairly and impartially based solely on the evidence presented and the Court's instructions on the law?

[ ] Yes [ ] No

(a) If no, please explain: ______________________________

____

____

____

Rationale: This is a standard question that the Government believes the Court should ask of all prospective jurors in order to ensure that the individual does not feel that other information on the questionnaire hinders his or her ability to render a fair and impartial verdict. Indeed, the Government proposed this question nearly verbatim from the same question asked in *United States v. Jefferson*. See No. 1:07cr209, Docket No. 421-1 (E.D. Va. June 3, 2009). To the extent the parties or the Court have questions or concerns about a juror's affirmative response to this question, the Court can follow up if necessary at the time of jury selection.

Placement: The Government requests that this question be inserted after Question 129 in the joint questionnaire.

G-B. Although a jury must find proof beyond a reasonable doubt to convict a defendant, it need not find proof beyond all possible doubt. That means that the government must remove from your mind any "reasonable" doubt that a defendant committed the alleged crime. However, the government is not required to remove all possible doubt or prove its case to an absolute certainty before you can convict the defendant. Would you have any difficulty following this rule?

[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ______________________________

____

____

G-C. The law makes no distinction between direct and circumstantial evidence. That means that the government may rely on circumstantial evidence and argue inferences based on that circumstantial evidence about the meaning of particular facts, such as what a person's intent may have been. For example, to prove an agreement between two or more people, the government need not show a document or present a recording; it may rely on inferences from a course of conduct over time. Would you have any difficulty following this rule?

[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ______________________________

____

____

Rationale: The Government requests inclusion of these two questions, which are similar in nature to Questions 87 through 92 in the joint questionnaire, in order to determine whether prospective jurors would impose a higher standard of proof or more stringent rules of proof than the law imposes on the Government. The Government agreed with the defendants' similar request to include Questions 88 (about Fifth Amendment privileges) or 90 (about joint defendants), and the Government requests these questions for the same reason.

Placement: The Government requests that these questions be inserted after Question 89 in the joint questionnaire.

G-D. What newspaper(s), including tabloids, do you most often read? (Both print and online)

____

____

____

Rationale: The Government requests inclusion of this question as a corollary to Questions 60 and 61 in the joint questionnaire. The Government's understanding of the defendants' objection to this question is that the defendants prefer a question that lists out selected newspapers rather than asking jurors to list those that they most often read. The Government requests inclusion of this question both because it shortens the questionnaire and because current trends in people's consumption of newspaper media necessarily renders any list of specific newspapers underinclusive and unhelpful.

Placement: The Government requests that this question be inserted after Question 61 in the combined questionnaire.

G-E. How much have you heard about this case?
[ ] A lot [ ] Some [ ] Very little

Rationale: The Government requests inclusion of this question as a corollary to Question 110, which asks about how closely prospective jurors have followed news about this case. The Government's understanding of the defendants' objection to this question is that the defendants prefer a question that asks prospective jurors to attempt to quantify the number of news articles to which they have been exposed. Because any categorization by number of stories is inherently arbitrary and is not an accurate gauge of any potential partiality, the Government instead requests this question.

Placement: The Government requests that this question be inserted after Question 109 in the joint questionnaire.

G-F Based on what you have read, heard, seen, and/or overheard in conversations, do you feel that the alleged activities in this case are similar to what other Virginia politicians have done in the past and, therefore, the defendants should not be charged with any crimes?

[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ____

____

____

____

Rationale: The Government requests inclusion of this question as a corollary to Questions 112 and 113 in the joint questionnaire. Those questions ask about prospective jurors' opinions about the defendants' respective guilt or innocence based on their media consumption, which the Government believes is an appropriate gauge of whether a prospective juror's media consumption may be a pathway to a strike for cause. Similarly, given the defendants' attempts in publicly filed pleadings to compare the allegations in this case to the conduct of other, uncharged politicians—conduct that will not be relevant at trial—the Government requests inclusion of this question to determine whether any prospective juror may decide the case based on information not presented at trial.

Placement: The Government requests that this question be inserted after Question 113 in the joint questionnaire.

G-G. Do you believe that the Department of Justice sometimes brings charges against high ranking elected officials that are politically motivated and not warranted by the nature of the facts of the case?

[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please give examples of politically motivated cases: _________

____

____

Rationale: The Government requests inclusion of this question as a follow-up to Question 93 in the joint questionnaire. Given the defendants' allegations in publicly filed pleadings that this prosecution is politically motivated—an allegation that the Government disputes but that is nonetheless wholly irrelevant at trial—the Government requests inclusion of this question to determine whether any prospective juror may decide the case based on information not presented at trial.

Placement: The Government requests that this question be inserted after Question 93 in the joint questionnaire.

G-H. How important do you feel it is to be truthful in the financial information provided on bank loan applications?

[ ] Very important [ ] Somewhat important [ ] Not at all important

Rationale: The Government requests inclusion of this question as a follow-up to Question 45 in the joint questionnaire, which asks whether prospective jurors have completed applications for home mortgage or refinancing. Given that the defendants are charged with false statements in such documents in Counts 12 and 13, this question will help determine whether any juror is likely to nullify the Court's legal instructions.

Placement: The Government requests that this question be inserted after Question 45 in the joint questionnaire.

General Opinions and Beliefs about the Criminal Justice System – after Q86

G-I. How important do you feel it is for elected officials to accurately disclose money and gifts they receive while in office?
[ ] Very important [ ] Somewhat important [ ] Not at all important

G-J. Do you believe that the current Federal laws concerning elected officials accepting gifts and/or money in exchange for political favors?
[ ] Do not go far enough [ ] Are about right [ ] Go too far

Rationale: The Government requests inclusion of these questions as follow-ups to Questions 71 through 86 in the joint questionnaire, which ask about prospective jurors' political involvement generally. Questions 85 and 86 ask about prospective jurors' potential knowledge, training, or experience about government ethics and reporting obligations, and these modest, narrow follow-up questions inquire about prospective jurors who may be likely to nullify the Court's legal instructions.

Placement: The Government requests that these questions be inserted after Question 86 in the joint questionnaire.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,)
)
v.) **CRIMINAL NO. 3:14-CR-00012**
)
ROBERT F. MCDONNELL) **JUDGE JAMES R. SPENCER**
MAUREEN G. MCDONNELL)

DEFENDANT ROBERT F. MCDONNELL'S OBJECTIONS TO GOVERNMENT'S PROPOSED ADDITIONS TO JUROR QUESTIONNAIRE

Pursuant to the Court's May 20, 2014 Order (ECF No. 180), Robert F McDonnell, through his attorneys, hereby objects to the following jury questionnaire additions proposed by the Government.

Question G-A: Would you be able to put to one side everything you have seen, read, or heard about this case, not consider that information at all as a juror, and decide the case fairly and impartially based solely on the evidence presented and the Court's instructions on the law?

[ ] Yes [ ] No

(a) If no, please explain: ____________________

Objection: This question is inappropriate for inclusion in a written questionnaire. It should be asked orally after full exploration of all the jurors' written and verbal answers about exposure to prejudicial publicity. Asking this question in court will allow the Court, counsel, and parties to see and hear the jurors' responses and assess demeanor as well as content.

Question G-B: Although a jury must find proof beyond a reasonable doubt to convict a defendant, it need not find proof beyond all possible doubt. That means that the government must remove from your mind any "reasonable" doubt that a defendant committed the alleged crime. However, the government is not required to remove all possible doubt or prove its case to an absolute certainty before you can convict the defendant. Would you have any difficulty following this rule?

[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ______________________

Question G-C: **The law makes no distinction between direct and circumstantial evidence. That means that the government may rely on circumstantial evidence and argue inferences based on that circumstantial evidence about the meaning of particular facts, such as what a person's intent may have been. For example, to prove an agreement between two or more people, the government need not show a document or present a recording; it may rely on inferences from a course of conduct over time. Would you have any difficulty following this rule?**

[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: _____

Objection: Both questions G-B and G-C are one-sided, incomplete, and are designed factually to promote the Government's closing arguments in a context that prematurely predicts what the Court's actual jury instructions may be. Question G-B defines what reasonable doubt *is not*, without explaining what reasonable doubt *is*. Question G-C contains the Government's theory of the case about what constitutes an official act – i.e., a "course of conduct over time." It too prematurely predicts the Court's jury instructions and gives a one-sided example in an attempt to indoctrinate the jury.

Question G-D: What newspaper(s), including tabloids, do you most often read? (Both print and online)

Objection: Question D13 from the Defense's additional proposed questions should be used instead of Question G-D because D13 lists the specific newspapers that have carried particularly negative stories about the defendants on a frequent basis. A very modest shortening of the questionnaire is not a basis for failing to elicit the detail that would necessarily have to be explored orally during voir dire. By failing to elicit that detail, the answer to this question will provide no useful information. Further, the Government cites no empirical support for its statement about "current trends in people's consumption of newspaper media," much less that supposed "trends" render the list in D13 "unhelpful." It is also essential to know how often the potential jurors have been exposed to the newspapers that have most heavily covered this case, and D13 asks that follow-up question. Moreover, Question D13 includes space for a juror to list "other" Virginia and national newspapers he or she reads, which addresses the Government's concerns.

Question G-E: How much have you heard about this case?

[ ] A lot [ ] Some [ ] Very little

Objection: Question D15 from the Defense's additional proposed questions should be used instead of Question G-E, which is ambiguous and subjective. There is nothing arbitrary about asking jurors for a numerical estimate of the number of media reports they have heard or read about this case. That is a much more accurate gauge of interest and potential bias than the vague terms the government proposes. Moreover, Question G-E would necessitate further detailed exploration that will quantify the amount of each juror's exposure. Finally, quantifying the exposure to certain publications is in itself telling about whether jurors could put aside any pre-existing bias.

Question G-F: Based on what you have read, heard, seen, and/or overheard in conversations, do you feel that the alleged activities in this case are similar to what other Virginia politicians have done in the past and, therefore, the defendants should not be charged with any crimes?

[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: _______

Objection: This question is too complicated and misstates the facts of the case and the defense theories. It is also a compound question, which makes it unlikely that the parties will obtain any useful responses. If a juror answers "yes," it is not clear if that means that he or she thinks the alleged activities are similar to what other Virginia politicians have done, or that the defendants should not be charged, or both. This question also confusingly treats the defendants as one entity who collectively "should" or "should not" have been charged, when jurors must evaluate the charges against each defendant separately.

Question G-G: Do you believe that the Department of Justice sometimes brings charges against high ranking elected officials that are politically motivated and not warranted by the nature of the facts of the case?

[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please give examples of politically motivated cases: ______

Objection: This question is ambiguous. We do not know what "the nature of the facts of the case" means. Moreover, asking jurors to provide "examples of [other] politically motivated cases" provides no useful information about a juror's potential bias in this case.

Question G-H: How important do you feel it is to be truthful in the financial information provided on bank loan applications?

[ ] Very important [ ] Somewhat important [ ] Not at all important

Objection: This question is highly prejudicial to the defense. It will not provide any useful information, because all potential jurors will almost certainly affirm that it is important to be truthful on bank loan applications. The only people who will answer this question "somewhat" or "not at all" will be individuals who want to avoid serving on the jury. As a result, this question serves only to bias jurors against the defendants and will unfairly preview the Government's case for the jurors.

Question G-I: How important do you feel it is for elected officials to accurately disclose money and gifts they receive while in office?

[ ] Very important [ ] Somewhat important [ ] Not at all important

Objection: This question is highly prejudicial to the defense. It will not provide any useful information, because all potential jurors will almost certainly affirm that it is important for elected officials to accurately disclose money and gifts. Rather, this question serves only to bias jurors against the defendants and will unfairly preview the Government's case for the jurors.

Question G-J: Do you believe that the current Federal laws concerning elected officials accepting gifts and/or money in exchange for political favors?

[ ] Do not go far enough [ ] Are about right [ ] Go too far

Objection: This question applies to a range of circumstances not relevant here. It is also ambiguous and confusing because it fails to distinguish between Federal and state ethics laws and Federal and state criminal laws. The question is also potentially misleading. Most jurors are unlikely to know much about Federal laws concerning gifts and money, and those jurors have no option but to pick one of the Government's set choices. It therefore provides little, if any, useful additional information, and given the limited available responses, the question could potentially distort what the prospective jurors actually think on the subject of Federal policy. For example, a prospective juror who believes that Federal anti-corruption laws go too far in some respects but not far enough in others has no way to accurately reflect that view based on the available responses.

Dated: June 2, 2014

Respectfully submitted,

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Counsel for Robert F. McDonnell

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA)
)
v.)
) No. 3:14cr12-JRS
ROBERT F MCDONNELL and)
MAUREEN G. MCDONNELL,)
Defendants.)

GOVERNMENT'S OBJECTIONS TO DEFENDANTS' PROPOSED ADDITIONS TO JURY QUESTIONNAIRE

The United States of America, by undersigned counsel, respectfully submits its objections to the defendants' proposed additions to the joint jury questionnaire. As a threshold matter, the Government objects to the defendants' proposed additions as generally invasive and unnecessary for selecting a fair and impartial jury The parties' negotiations produced a joint questionnaire that spanned 36 pages and 139 questions. The Government proposed 10 additional questions. Those include four that require no follow-up explanation (G-E, G-H, G-I, and G-J), two that are narrower versions of questions the defendants have proposed (G-D and G-E), two that address prospective jurors' ability to follow standard legal principles (G-B and G-C), one that will significantly reduce the amount of in-court voir dire that is necessary (G-A), and two questions that seek to identify jurors who may have been exposed to public defense filings that are immaterial to the guilt or innocence phase in this case (G-G and G-H).

The defendants, by contrast, have submitted ***50 additional questions***, including many that are redundant and others that further invade the privacy of prospective jurors for reasons that the defendants do not even attempt to argue could lead to a strike for cause. Accordingly, the Court should reject the defendants' proposed additional questions. A question-by-question explanation of the Government's objections follows.

Government's Specific Objection Rationales for Proposed Defense Additions

D1 The birthplace of a prospective juror is wholly irrelevant to that individual's ability to serve fairly and impartially, and there is no constitutional right to a cross-section of birthplaces in a jury venire.

D2. A prospective juror's race and ethnicity is legally irrelevant on an individual level. To the extent the Court's standard inquiry of prospective jurors asks jurors a similar question to ensure a fair cross-section of the community is represented in the venire with respect to those areas, the Government defers to the Court on the appropriate manner in which to do so. The defendants' proposed question, however, is underinclusive, and their inclusion of the "[p]refer not to answer" option defeats the claimed rationale of ensuring that the venire represents a fair cross-section of the population. Moreover, the defendants' alternative argument in support of this question that "there have been several 'hot button' political issues involving race that have divided Virginia citizens during Mr. McDonnell's tenure as Governor" raises serious questions about the potential use of impermissibly race-based peremptory challenges.

D3. A prospective juror's religious preference is irrelevant to that person's ability to serve fairly and impartially. To the extent aspects of a person's religious beliefs may even arguably affect that person's ability to serve as a juror in this case, any such potential bias is more than adequately addressed by the narrower questions in the proposed joint questionnaire.

D4. The frequency of a prospective juror's religious worship is not relevant to that person's ability to serve fairly and impartially, and there is no constitutional right to a cross-section of frequency of religious worship in a jury venire.

D5. A prospective juror's income is irrelevant to that person's ability to serve fairly and impartially. In addition, the optional nature of the defendants' proposed question defeats their claimed rationale of asking this question to ensure a fair cross-section of the population. In any event, there is no constitutional right to a cross-section of incomes in a jury venire.

D6. This question is irrelevant, and the defendants' claimed rationale—essentially, that it provides information about a prospective juror's housing situation (for no apparent purpose)—is insufficient to warrant its additional invasion of prospective jurors' privacy.

D7. This question is unnecessarily overbroad. It would in theory require any juror who has had any interaction with any state agency at any time to disclose that interaction (presumably including any request for a permit, or arguably, for a driver's license). Questions 40 through 44 already ask a number of questions about more specific aspects of a prospective juror's interactions with state government—including, importantly, Question 41's specific focus on the entities that are most at issue in this case. Moreover, the defendants' proposed rationale ignores Question 59, which asks about any legal actions or disputes with state agencies; Questions 79–81, which ask about seeking assistance from or lobbying state government; and Question 108, which asks about any employment with the federal government, including as a contractor, by a prospective juror or family member.

D8. This question is one-sided and argumentative in that it focuses solely on a prospective juror's relationship to the federal government as a basis for asking whether a juror would favor the *Government*. The more appropriate question to address any such concern is the Government's proposed G-A, which asks more generally about whether a juror could put to one side any prior experience and decide the case solely on the basis of the facts and the Court's instructions. Moreover, the Government objects to the characterization of it as "the complainant" in a criminal case as misleading because it was the grand jury that charged the defendants.

D9 It is difficult to imagine how a prospective juror's "hobbies, spare time activities, or special interests"—particularly those not otherwise reflected in the existing 139-question joint questionnaire—could possibly be relevant to an ability to serve fairly and impartially Such areas are already adequately addressed by Question 35's inquiry into organizational membership and Questions 71–86's inquiries into political involvement.

D10. A citizen should not be required to describe herself or himself in ten words or less as a precondition to jury service.

D11. See objection to D10 above. The defendants' proposed list of adjectives is facially irrelevant to prospective jurors' ability to serve fairly and impartially, and many of the defendants' proposed adjectives (including "naïve," "judgmental," "impulsive," "religious," "pro-government," and "compulsive") are invasive, otherwise addressed elsewhere in the joint questionnaire, or highly unlikely to lead to accurate self-reporting. There is no constitutional right to a "variety of perspectives," to the extent D10 even aids such an effort, in a jury venire.

D12. This question is unnecessary, and prospective jurors' media consumption habits are adequately addressed by Questions 60–70 in the joint questionnaire.

D13. The defendants' proposed list of sources is duplicative of many sources already listed in the joint questionnaire (*e.g.*, Questions 60–62), and the defendants' proposed list is underinclusive. The Government's proposed addition of G-D more narrowly and accurately seeks this same information.

D14. The joint questionnaire already asks whether a prospective juror has formed an opinion as to either defendant's guilt or innocence based on prior media consumption. *See* Questions 112–13. This additional question about general views of the news media is unnecessary.

D15. The defendants' proposal to ask jurors to attempt to quantify the number of media reports they have seen or heard unlikely to lead to meaningful information because it conflates the number of stories to which a person has been exposed with whether that person has closely followed media reports or is otherwise likely to have formed an opinion about the defendants' guilt or innocence. The Government instead proposes that the Court include G-E for the reasons stated in the Government's rationale for that question.

D16. This question is unduly invasive. A prospective juror should not be required to disclose her or his favorite television shows as a precondition to jury service. The joint questionnaire (Question 63) already asks about particular types of programs that might arguably bear some relevance on the issues in this case, and whether a prospective juror prefers one sitcom over another is irrelevant.

D17 The number of hours a day a prospective juror watches television is irrelevant to potential jury service.

D18. This question is overbroad, and to the extent it bears any arguable relevance to prospective jurors' impartiality, it is duplicative of Questions 95–104, 106–07, and 112–13, which collectively and adequately address jurors' prior exposure to the defendants and any effect of that exposure on potential jury service. The mere fact that a prospective juror may have an opinion about his or her former governor should not affect that juror's ability to serve if it does not rise to the level of requiring an answer to one of the other questions on the joint questionnaire. The parties should not attempt to or be able to handpick jurors on the basis of the answer to this question. The more appropriate inquiry is whether a juror can set aside any preexisting opinions about this case and decide it based solely on the evidence and the Court's legal instructions. As such, the Government's proposed G-A should be asked instead.

D19. See objection to D18 above.

D20. See objection to D18 above. A prospective juror's general opinion of Mr. McDonnell's job performance is irrelevant to jury service if that opinion does not otherwise trigger an answer to one of the myriad other questions in the joint questionnaire. The Government understands and acknowledges that the jury will inevitably have a mix of jurors who will set aside such opinions and decide the case based on the evidence presented at trial. Proposed Government Question G-A is the appropriate and more focused inquiry

D21. See objections to D18 and D20 above. A prospective juror's disagreement (or agreement) with one of Mr. McDonnell's policy positions on issues irrelevant to this case should not be a pathway for either party to strike a juror for cause. The joint questionnaire already asks about political involvement that could be sufficiently extensive to lead to concerns about partiality, but the juror questionnaire should not endorse the view that mere agreement or disagreement with particular policy positions is a necessary inquiry for voir dire.

D22. This question is already adequately addressed by Question 128, which asks about potential witnesses, and Questions 122–23, which ask about Star Scientific. Any further inquiry is unnecessary.

D23. This question is overbroad insofar as it asks for ***any*** opinion that a prospective juror (or even a household or family member of a prospective juror) has ***ever*** expressed about

Virginia gift laws that are irrelevant to the federal laws that apply to this case. To the extent such prior knowledge is an appropriate area of inquiry, it is already adequately addressed by Questions 43–44, 50, and 85–86 in the joint questionnaire.

D24. See objection to D23 above.

D25. This question is misleading and legally inaccurate. The Government disagrees that at the time of the events in this case, any elected Virginia politician "was permitted by law to accept gifts of any amount so long as he or she reported the gifts on the annual Statement of Economic Interest (SOEI) form in accordance with the instructions on the form." While such conduct may have avoided a violation of state reporting requirements, acceptance of a thing of value in exchange for official actions is a bribe whether that thing of value doubles as a gift or not, and Virginia law does not provide a loophole in federal bribery laws that apply to state officials.

D26. This question is overbroad and otherwise adequately addressed by Questions 112–113 (which ask about preexisting opinions on the defendants' guilt or innocence), 114 (which asks about jurors who have strong enough opinions about this case to have expressed them to others), and 128 (which asks about preexisting opinions about witnesses' credibility) in the joint questionnaire.

D27 This question is duplicative of Question 112 in the joint questionnaire and is unfair to prospective jurors in its failure to ask jurors to explain.

D28. See objection to D27 above.

D29 This question is duplicative Questions 89 and 118–121 in the joint questionnaire and is unfair to prospective jurors in its failure to ask jurors to explain.

D30. See objection to D27 above.

D31. See objection to D27 above.

D32. See objection to D29 above.

D33. This question is unnecessary in light of Questions 71–86 in the joint questionnaire, which already adequately inquire about the frequency and intensity of prospective jurors' political involvement.

D34. This question is overbroad and is otherwise adequately addressed by Question 82 in the joint questionnaire, which asks about prospective jurors' opinions about elected public officials in the Commonwealth of Virginia.

D35. See objection to D34 above.

D36. See objection to D34 above.

D37. See objection to D34 above.

D38. See objection to D18 above. Forcing prospective jurors to take a position on Mr. McDonnell's honesty and ethical standards before hearing the evidence in this trial is unnecessary. The appropriate inquiry, into preexisting opinions of guilt or innocence, is set forth in Questions 112–13 in the joint questionnaire.

D39. This question is overbroad and otherwise addressed by Questions 112–13 in the joint questionnaire. In addition, it is misleading insofar as the law ***does*** treat public officials to whom bribery laws apply differently from private citizens to whom those laws do not necessarily apply.

D40. This question is unnecessary, will be addressed by the Court's jury instructions, and is misleading insofar as it suggests that a defendant's prior knowledge might be irrelevant to understanding that defendant's conduct (or, should a defendant choose to testify, that defendant's credibility). The question also conflates "legal" and "ethical" standards, and the only standard the jury will have to apply in this case is the legal one as explained by the Court.

D41 This question is unnecessary, and it is improper insofar as it suggests that following "the spirit of the law" is a defense where conduct violates the letter of the law.

D42. Whether a grand juror previously voted against returning an indictment is protected by Fed. R. Crim. P 6(e)'s secrecy provisions. Contrary to the defendants' assertions, the Government does not have access to records that reflect individual grand jurors votes or deliberations.

D43. The verdict reached by a juror in a prior case is not relevant to that individual's ability to serve fairly and impartially in a subsequent case.

D44. This question is unnecessary and otherwise adequately addressed by Questions 46(c)–(d) in the joint questionnaire, which already ask about whether prior jury service left a prospective juror disappointed, dissatisfied, or particularly wanting or not wanting to serve as a juror again. To the extent this question asks for opinions of prospective jurors who have not previously served on a trial or grand jury, it is unnecessary

D45. This question is unnecessarily overbroad. Future training or knowledge that a prospective juror does not yet have is not relevant.

D46. See objection to D45 above.

D47. This question is confusing insofar as it does not provide a point of comparison—in other words, it asks whether testimony of a police officer is "more believable" or "less believable" without providing explaining ***as compared to whom***. The question is otherwise adequately addressed by Question 128 in the joint questionnaire, which asks about preexisting opinions of witness credibility, and the Government's proposed G-A, which asks about a prospective juror's ability to decide the case solely based on the evidence and the Court's instructions. Moreover, a specific question on law enforcement credibility is unnecessary when other questions already adequately explore prospective jurors connections to and thoughts about law enforcement. *See United States v.*

Lancaster, 96 F.3d 734, 742 (4th Cir. 1996). Here, Questions 31(j), 47(c), 49, 55–56, and 57(a) adequately explore such areas in the joint questionnaire.

D48. This question is duplicative of Question 92 in the joint questionnaire. To the extent it is different at all, it is argumentative and overbroad in asking for jurors' general opinions (as opposed to Question 92's focus on effect on a prospective juror's service in this case).

D49. This question is entirely duplicative of Question 90 in the joint questionnaire.

D50. This question is irrelevant and is otherwise adequately addressed by Questions 118–21 and 130–139 in the joint questionnaire. Specifically, Questions 118–21 specifically ask about reservations prospective jurors may have about voting based on the evidence presented, and Questions 137–39 ask for any other potential sources of concern in at least three different ways.

Respectfully submitted,

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JURY QUESTIONNAIRE

This questionnaire is designed to obtain information from you for the purpose of assisting the Court in selecting a fair and impartial jury in the case of *United States of America v. Robert F McDonnell and Maureen G. McDonnell*. Its use will substantially shorten the jury selection process.

The purpose of these questions is to encourage your full expression and candor so that a fair and impartial jury may be selected to try the issues of this case. Your full written answers will save the parties, the Court, and yourself, a great deal of time. Do not discuss with anyone any question or answer you give on this questionnaire. You are expected to sign this questionnaire. Your answers will be considered statements under oath, and will only be used by the Court and counsel in selecting a jury in this case. As you know, juries are critical to our American system of justice and the Court is confident that you appreciate your duty as a citizen to serve as a juror if you are eligible. Your cooperation in completing and returning this questionnaire is a part of that duty.

Please write your assigned juror number at the top of each page. Answer every question carefully, truthfully and completely and do not leave any questions blank. Your responses should reflect your own personal knowledge, beliefs, or opinions. Please keep in mind that there are no right or wrong answers. You should answer with your true feelings, whatever they may be. Do not assume that any of your answers will qualify or disqualify you from serving on this or any other jury.

If you do not understand a question, please write "Do not understand" and the question will be explained to you during the later questioning process. If a question is not relevant to you, please write "N/A" to indicate that it is not applicable to you in the space provided. If you cannot answer a question because you do not know the answer, write "Do not know" in the space after the question. If your answers or explanations to any question will not fit completely in the space provided, please complete your answer on the pages provided at the end of the questionnaire. Be sure to include the question number that corresponds to your answer on the explanation sheets. **Do not write on the back of any page.**

If a question asks about your friends or family, you do not need to list the name if you do not want to; you can identify the person by relationship (spouse, son, neighbor, friend, etc.).

During another step in the jury selection process, the Judge will have an opportunity to follow up on these questions in court. At that time, you will be given an opportunity to explain or expand on any of your answers.

In addition, now that you are a prospective juror, you MUST follow the instructions listed below until you have been excused from further service in this case.

> DO NOT discuss this questionnaire or your answers with anyone, including family members, friends, co-workers, or other prospective members.

Juror Number: ___________

DO NOT read or listen to any media coverage of this case whether in the newspaper, on the television, on the Internet, on a blog, or on the radio.

DO NOT seek any related information on this case on the Internet or through search engines such as Google or Yahoo!

DO NOT discuss this case with anyone, including friends, family members, or other members of this jury panel, or allow anyone to discuss this case in your presence.

DO NOT let anyone, including friends, family members, court personnel, parties in this case, or persons involved in the case, talk to you about your views or any aspect of this case except officially in the courtroom.

The answers to these questions will be used by the court and the attorneys solely for the selection of the panel members in this case and for no other reason.

Please return the completed Questionnaire in the provided, postage-paid envelope within seven (7) days of receipt and no later than Friday, June 13, 2014.

I appreciate your time and attention to this important matter.

/s/
James R. Spencer
Senior U. S. District Judge

Eastern District of Virginia
Richmond Division

Juror Number: ____________

Preliminary Matters

1. The trial in this case will start July 28, 2014. The trial may last 5–6 weeks and could last longer or conclude sooner. Do you have any very serious personal, professional, or financial issues that would prevent you from being present in Court for the duration of the trial? In answering this question, you should know that it is unlawful for an employer to discharge, intimidate, or coerce any employee because of the employee's jury service.
[ ] Yes [ ] No

(a) If yes, please explain: ____
____
____
____

2. Are you able to read, write, and understand the English language?
[ ] Yes [ ] With difficulty [ ] No

3. Is English your native language?
[ ] Yes [ ] No

(a) If no, what is your first language? ____________________________

4. Do you have any significant problems with your hearing or eyesight?
[ ] Yes [ ] No

(a) If yes, please explain: ____
____

5. Do you suffer from any physical or mental condition(s) that would make it difficult for you to serve as a juror or pay close and careful attention to the evidence presented for extended periods of time?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ______________________________
____
____

6. Do you take any prescription medication that affects your thinking, attention, concentration, or might otherwise affect your service as a juror?
[ ] Yes [ ] No

(a) If yes, please state the name of the medication(s) and explain: ______________
____
____

Juror Number ____________

7 Are you currently a student?
[ ] Yes, full-time [ ] Yes, part-time [ ] No

(a) If yes, where do you attend school? ____________________

(b) If yes, will your class schedule in August interfere with your ability to serve as a juror in this trial?
[ ] Yes [ ] No

(c) If yes to #7(b) above, please explain: ____________________

8. Are you the sole or primary caretaker of a minor child, or an elderly or disabled family member or dependent whose care would interfere with your ability to serve as a juror in this trial?
[ ] Yes [ ] No

(a) If yes, please explain: ____________________

9 Do you have any personal, religious, philosophical or other beliefs that would make it difficult for you to sit in judgment of another person as a juror in a criminal case?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ____________________

10. Is there any other reason why you could not be present in court and give your full attention every day for this trial?
[ ] Yes [ ] No

(a) If yes, please explain: ____________________

11 This case will receive media attention. It is important that this case be decided solely on the evidence presented in the courtroom and not on the basis of information obtained outside the courtroom. As a result, the jury will be instructed not to read, watch, view, or listen to any news accounts of this trial whatsoever, not to conduct any internet searches related to this case, and not to talk to or to communicate with anyone about the case, including through the use of the internet or social media such as Twitter, Facebook, Skype, YouTube, or other modes of electronic communication, until the case is over. Would you find it difficult to obey such an instruction for any reason?

☐ Yes ☐ No ☐ Unsure

(a) If yes or unsure, please explain: ______________________________
____
____

Personal Background

12. Gender: ☐ Male ☐ Female

13. Age: ________

14. What is your current marital status?
   - ☐ Single
   - ☐ Married
   - ☐ Divorced
   - ☐ Separated
   - ☐ Widowed

15. How long have you lived in the Commonwealth of Virginia (total years)? __________

16. Do you have children?

☐ Yes ☐ No

17 Are you (check any and all that apply):
   - ☐ Self-employed
   - ☐ Employed full-time
   - ☐ Working part-time
   - ☐ A student
   - ☐ Unemployed
   - ☐ Retired
   - ☐ Homemaker
   - ☐ Disabled and unable to work

18. If you are currently employed in any capacity, either full-time, or part-time, please state:

(a) Occupation: ______________________________

(b) Employer: ______________________________

(c) Type of work: ______________________________

(d) Do you supervise others?
[ ] Yes [ ] No

(a) If yes, how many?_______

(e) Do you have any responsibility for hiring or firing?
[ ] Yes [ ] No

19. If you are not currently employed, please state:

(a) Your last employer: ____________________

(b) Your occupation: ____________________

(c) Your job responsibilities: ____________________
____

(d) Did you supervise others?
[ ] Yes [ ] No

If yes, how many? ____________________

(e) Did you have any responsibilities for hiring or firing?
[ ] Yes [ ] No

20. If you are married or currently share a household with someone who is employed in any capacity, either full-time, or part-time, please state the following:

(a) Occupation:____________________

(b) Employer:____________________

(c) Type of work:____________________

21. Do you now, or have you ever owned your own business?
[ ] Yes [ ] No

(a) If yes, what type of business? ____________________
____

Juror Number: ____________

22. Have you or any member of your immediate family or any close personal friend ever served as a corporate officer or member of the Board of Directors in any business or corporation?
☐ Yes ☐ No

(a) If yes, please explain: ____
____

23. Who makes the major financial decisions in your household? ________________

24. Check the highest level of education you completed:

(a)	Grade school or less	☐
(b)	Some high school	☐
(c)	High school graduate / GED	☐
(d)	Technical or vocational school	☐
(e)	Some college	☐
(f)	2-year college degree	☐
(g)	4-year college degree	☐
(h)	Some graduate work or study	☐
(i)	Master's degree	☐
(j)	Doctoral degree (or equivalent)	☐
(k)	Other	☐

If other, please explain: ____

25. If you had any educational training beyond high school, please list all degrees you have received and the area of study.

(a) Degree(s): ____
(b) Field(s) of study: ____
(c) Name of school(s): _______________________________________

26. Have you or any of your family members (e.g., parents, siblings, a spouse, or children) served in any branch of the Armed Forces?
☐ Yes ☐ No

(a) If yes, please list their relationship to you, branch, and highest rank:

Relationship	Branch	Highest Rank

27 Do you or your family members have any education, training or employment experience in any of the following fields:

		You	Family
(a)	Accounting, auditing, or bookkeeping	☐	☐
(b)	Banking	☐	☐
(c)	Loans/mortgage / refinance agreements	☐	☐
(d)	Business / business planning	☐	☐
(e)	Finance / financial planning	☐	☐
(f)	Psychology, psychiatry, or counseling	☐	☐
(g)	Medicine, nursing, healthcare, medical research, or pharmaceuticals	☐	☐
(h)	Nutrition or physical fitness	☐	☐
(i)	Law or paralegal training	☐	☐
(j)	Law enforcement / private investigations	☐	☐
(k)	Corrections (work in prisons/jails) or security guard / private security	☐	☐
(l)	Criminal justice or criminology	☐	☐
(m)	Social work	☐	☐
(n)	Political science or government	☐	☐
(o)	Political fundraising / campaign finance rules	☐	☐
(p)	Politics / elections / political consulting / lobbying	☐	☐
(q)	Ethics, philosophy, sociology, or English	☐	☐
(r)	Engineering	☐	☐
(s)	Computer programming / networking	☐	☐
(t)	Corporate or other compliance with federal, state, or local government regulations	☐	☐
(u)	Compliance with federal, state, or local election laws/regulations	☐	☐
(v)	Journalism / media communications / public relations	☐	☐
(w)	Grant applications / grant writing	☐	☐
(x)	Human resources	☐	☐
(y)	Forensic sciences	☐	☐
(z)	Religion, ministry, or pastoral care	☐	☐

28. Do you have any special certifications or licenses?

☐ Yes ☐ No

(a) If yes, please explain: ____

____

Juror Number: __________

29. If you are not an attorney, have you taken any law courses?
☐ Yes ☐ No

If so, indicate the following:

School	Date	Topic
(a)		
(b)		
(c)		

30. Please list the organizations to which you or your spouse/partner belong or in which either of you participate, either now or in the recent past. (Include any civic, social, religious, charitable, volunteer, political, sporting, professional, business, union, fraternal and recreational groups, such as, but not limited to, Kiwanis, Rotary Club, Knights of Columbus, Veterans of Foreign Wars, American Legion, American Civil Liberties Union, National Rifle Association, League of Women Voters, the Innocence Project, the Virginia Public Access Project, Virginia Coalition for Open Government, or the Center for Public Integrity):

(a) Self: ____

(b) Spouse/Partner: ____

31. Have you ever held any office, title, or other leadership position in the organizations listed in the previous question?
☐ Yes ☐ No

(a) If yes, briefly describe your office or title, and dates held: ____________________

32. Have you taken (or do you take) dietary or nutritional supplements (excluding vitamins)? (Check all that apply)
☐ Yes, currently do so ☐ Yes, in the past ☐ No

If either "yes" to current use or "yes" to past use, what was the kind(s) of products involved:

Current / past	General product description
(a)	
(b)	
(c)	

33. Have you or a family member or a close friend ever sold dietary or nutritional supplements?

	Who	When	General product description
(a)			
(b)			
(c)			

34. Have you or any member of your family ever been employed by the state government of Virginia or any Virginia state government agency, whether as an employee, contractor, or otherwise?
[ ] Yes [ ] No

(a) If yes, please explain who, when, what the job was, and your reason for leaving:
____
____
____

35. Have you or any member of your immediate family ever been employed by or had any business relationship with the University of Virginia, Virginia Commonwealth University, VCU Massey Cancer Center, UVa Medical Center, Eastern Virginia School Medical School, the Virginia Department of Health, the Virginia Department of Human Resource Management, or the Virginia Tobacco Indemnification and Community Revitalization Commission (the "Tobacco Commission")?
[ ] Yes [ ] No

(a) If yes, please explain: ____
____
____

36. Have you ever sought or been appointed to any non-elective local or State Board in Virginia?
[ ] Yes [ ] No

(a) If yes, please explain when and what Board: ____________________
____

37. As a result of any job or position held, have you ever had to fill out or file a disclosure form listing any gifts or benefits received or any potential conflicts of interest?
[ ] Yes [ ] No

(a) If yes, please explain when and what type of disclosure was required: ________
____
____

Juror Number: __________

38. Have you ever received any training addressing local. State, and/or Federal rules concerning conflicts of interest (COI)?
[ ] Yes [ ] No

(a) If yes. please explain when and what type of training: ____________________
____
____

39. Have you ever completed an application for a home mortgage or refinance of a home mortgage or signed as a co-applicant?
[ ] Yes [ ] No

Legal System

40. Have you ever served as a juror before?
[ ] Yes [ ] No

If yes, indicate for each:

Year	Civil/ Criminal	Federal/ State	Type of Case

(a) Have you ever served as a juror on a grand jury?
[ ] Yes [ ] No

If yes, when and where: ____________________

(b) Have you ever served as a jury or grand jury foreperson?
[ ] Yes [ ] No

(c) Was there anything about your experience as a juror or grand juror that left you disappointed or dissatisfied with our criminal justice system?
[ ] Yes [ ] No

Please explain: ____________________
____
____

41. Have you, or, to your knowledge, any family members, or any close friends ever been:
    (a) Convicted of a crime? [ ] Yes [ ] No

    (b) If yes, please provide the following:

Relationship of person convicted (Self, Sister, etc.)	Crime(s) involved

42. Have you, any member of your immediate family, or any close personal friend ever been investigated for violating ethical rules by an employer, ethics committee, governmental agency, or other organization?
    [ ] Yes [ ] No

    (a) If yes, please explain: ____
    ____

43. Has any family member or person with whom you have a close personal relationship ever testified in a grand jury or in court?
    [ ] Yes [ ] No

    (a) If yes, please provide the following details:

    Type of Case   Relationship (if any)
    ____
    ____

Juror Number __________

44. Have you, or any members of your family, ever been employed by any law enforcement agency, such as: a police department, sheriff's department, the Virginia State Police (VSP), the State Bureau of Investigation (SBI), the Federal Bureau of Investigation (FBI), the Internal Revenue Service (IRS), the Drug Enforcement Administration (DEA), the Bureau of Alcohol Tobacco and Firearms (ATF), the United States Citizenship and Immigration Services (USCIS), the U.S. Marshal's Service, the U.S. Park Police, a United States Attorney s Office, the United States Department of Justice, a District/Commonwealth or State's Attorney's Office, a probation or parole office, the Bureau of Prisons, the state department of corrections, the court system, or any other local, state or federal law enforcement agency or private security force?
[ ] Yes [ ] No

(a) If yes, for each person (yourself or family member), please indicate the law enforcement office or agency: ______________________________

____

____

____

45. Other than what you have already explained, have you, or has any close friend or relative, ever worked or been a volunteer in the legal profession either as a lawyer, paralegal, or in a law office, including a prosecutor's, criminal defense attorney's office, Legal Aid, public defender s office, or legal department for any private business or government agency?
[ ] Yes [ ] No

(a) If yes, please list their names, type of work they do, where they work, and their relationship to you: ______________________________

____

____

____

46. Have you or a member of your family, either personally or in connection with a business, been involved in any claim, legal action or dispute with any local, state, or federal, governmental agency?
[ ] Yes [ ] No

(a) If yes, please describe: ______________________________

____

Media and Activities

47 Do you watch NATIONAL news on any of the following television networks? **(CHECK ALL THAT APPLY)**

(a) ABC ☐
(b) CBS ☐
(c) CNN ☐
(d) FOX News channel (National) ☐
(e) MSNBC ☐
(f) NBC ☐
(g) CNN ☐
(h) Public Television ☐
(i) Other ☐

If other, please list: ______________________________

48. What newspapers(s), including tabloids, do you most often read? (Both print and online)

____

____

____

49. Please list any Internet web sites that you visit regularly, or any email lists or message services you subscribe to, for news/current events: ______________________________

____

____

____

50. How often do you watch investigative news programs (such as 60 Minutes, ABC 20/20, or Frontline), or television shows that deal with lawyers, the legal system, police work, prisons, politicians, or political life?
☐ Very often ☐ Often ☐ Not very often ☐ Not at all

(a) If very often or often, what are the names of the shows? ______________________________

____

____

51 Do you or your spouse/partner maintain a blog or online journal?
☐ Yes ☐ No

(a) If yes, please describe: ______________________________

____

52. Have you ever written, posted comments, or been quoted in any paper, article, newsletter, news media report, book, or other published work, including online, print and other media sources?
[ ] Yes [ ] No

(a) If yes, please describe the content and the source of publication: __________

____

____

____

53. Have you ever written to any newspaper or magazine; or called in to any television or radio program; or posted a comment or a "like" on any website or to an online media story to express your opinion concerning the issue of corruption in politics?
[ ] Yes [ ] No

(a) If yes, please describe the view you expressed and in what manner: __________

____

____

____

54. Do you use any social networking web sites, such as Facebook, Google+, MySpace, LinkedIn, or Twitter?
[ ] Yes [ ] No

55. Do you currently "follow" or does anyone "follow" you on Twitter, blogs, or other social media platforms?
[ ] Yes [ ] No

(a) Please list any entities or accounts that you follow that are in any way related to politics, political figures / parties, political reporting, or current events: __________

____

____

Political Involvement

56. In politics today, do you consider yourself a: **(CHECK ONLY ONE ANSWER)**
[ ] Democrat
[ ] Independent
[ ] Republican
[ ] Libertarian
[ ] other (PLEASE SPECIFY) ____________________

57 How often do you vote in federal elections?
[ ] Always [ ] Often [ ] Seldom [ ] Never

Juror Number: ___________

58. How often do you vote in state/local elections?
[ ] Always [ ] Often [ ] Seldom [ ] Never

59. How closely do you follow politics in Virginia?
[ ] Very closely
[ ] Somewhat closely
[ ] Not closely at all

60. Have you, your significant other, a family member, or a close friend ever run for, sought, or held a political office in the local, state, or federal government?
[ ] Yes [ ] No

(a) If yes, please provide their names, relationship to you and political office: _____
____
____

61 Have you, your significant other, a family member, or a close friend ever worked for, volunteered, or been on the staff of any elected public official or worked for a committee or subcommittee in Congress or a State legislature?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________________
____
____

62. Have you, your spouse/significant other, any family members or any close friends ever sought assistance from any elected public official?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________________
____
____

63. Do you or any member of your family or any close personal friend have any experience in lobbying any branch of the state, federal, or local government?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________________
____
____

64. Do you or any member of your family or close personal friend have any experience being lobbied while you or they served in a position with any state, federal, or local government?
☐ Yes ☐ No

(a) If yes, please explain: ______________________________
____
____

65. With respect to any candidates for public office, political organizations, political committees, or political action committees (PACs) have you, your spouse/significant other, any family members or any close friends ever done any of the following: (Check all that apply)

		Self	Spouse/ sig. other	Family member	Close friend
(a)	Been paid to work for	☐	☐	☐	☐
(b)	Volunteer work	☐	☐	☐	☐
(c)	Canvassed neighborhoods	☐	☐	☐	☐
(d)	Attended meetings	☐	☐	☐	☐
(e)	Contributed money	☐	☐	☐	☐
(f)	Attended rallies	☐	☐	☐	☐
(g)	Attended events, e.g., cocktail parties and/or dinners	☐	☐	☐	☐
(h)	Displayed yard signs and/or bumper stickers	☐	☐	☐	☐
(i)	"Liked" any websites or Facebook pages associated with a party or political candidates	☐	☐	☐	☐
(j)	Other campaign activities	☐	☐	☐	☐

66. How often do you or your spouse/partner make financial contributions to any political campaigns or political action committees?
☐ Often ☐ Sometimes ☐ Seldom ☐ Never

67. Do you have any knowledge, training or experience in the area of laws relating to the accepting and/or reporting of gifts and/or financial transactions involving government officials?
☐ Yes ☐ No

(a) If yes, please explain: ______________________________
____
____
____

General Opinions and Beliefs about the Criminal Justice System

68. The indictment in this case is merely an accusation and not evidence of guilt. Would you have any difficulty treating the indictment as an accusation and not evidence of guilt?
[ ] Yes [ ] No

(a) If yes, please explain: ______________________________
____
____

69. The defendants in this case are well-known public figures. Would that affect your ability to follow the instructions given by the Court and reach a decision in this case?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please explain: ______________________________
____
____

Connection to the Defendants

70. Have you ever been to an event or activity that Robert F McDonnell attended?
[ ] Yes [ ] No

If yes,

(a) What event(s) or activity? ______________________________
____

(b) When: ______________________________

(c) Did you personally meet Mr. McDonnell?
[ ] Yes [ ] No

71. Have you ever been to an event or activity that Maureen G. McDonnell attended?
[ ] Yes [ ] No

If yes,

(a) What event(s) or activity? ______________________________
____

(b) When: ______________________________

(c) Did you personally meet Mrs. McDonnell?
[ ] Yes [ ] No

Juror Number: __________

72. Have you or someone you know ever had any connection to any of the following activities by the former First Lady of Virginia Maureen G. McDonnell: (Check all that apply)

☐ The "FLITE" (First Lady's Initiatives Team Effort) Program
☐ Virginia Wine Association or marketing efforts to promote Virginia wines
☐ The McGlothlin Foundation
☐ Other activities, please explain: ______________________________

73. Do you, a family member, or any close friend know or have any connection (personal, political, and/or business) to Robert F McDonnell, Maureen G. McDonnell, any member of their extended families, or any other person who has a close personal connection to the McDonnells (including but not limited to social interaction, Facebook friend status, and the like)?

(Check all that apply)	Self	Family member	Close friend
Know Mr. McDonnell	☐	☐	☐
Know Mrs. McDonnell	☐	☐	☐
Know McDonnells' families	☐	☐	☐

(a) If yes, please explain: ______________________________
____
____

74. Do you or does anyone close to you know anyone who was has been a member of any staff or worked for Robert F McDonnell in any capacity during any of his positions in elected office?

☐ Yes ☐ No

(a) If yes, please explain: ______________________________
____
____

75. Do you or does anyone close to you know anyone who was has been appointed to any position, including State positions or jobs and Board or Commission appointments, by Robert F McDonnell?

☐ Yes ☐ No

(a) If yes, please explain: ______________________________
____
____

76. Do you or does anyone close to you know anyone who was has been a member of any staff or worked with in any other capacity (both paid or volunteer) former First Lady of Virginia Maureen G. McDonnell?
☐ Yes ☐ No

(a) If yes, please explain: ______________________________

____

____

77 Do you feel that there have been any actions by Robert F McDonnell or Maureen G. McDonnell while they were Governor and First Lady of Virginia, respectively, that have affected you in a personal way?
☐ Yes ☐ No

(a) If yes, please explain: ______________________________

____

____

78. With respect to Robert F McDonnell's various political campaigns/political offices sought (i.e., House of Delegates, Virginia Attorney General, and Governor) have you, your spouse/significant other, any family members or any close friends ever done any of the following in support of or in opposition to any of Mr. McDonnell's campaigns: (Check all that apply)

		Self	Spouse/ sig. other	Family member	Close friend
(a)	Been paid to work for	☐	☐	☐	☐
(b)	Volunteer work	☐	☐	☐	☐
(c)	Canvassed neighborhoods	☐	☐	☐	☐
(d)	Attended meetings	☐	☐	☐	☐
(e)	Contributed money	☐	☐	☐	☐
(f)	Attended rallies	☐	☐	☐	☐
(g)	Attended events, e.g., cocktail parties and/or dinners	☐	☐	☐	☐
(h)	Displayed yard signs and/or bumper stickers	☐	☐	☐	☐
(i)	"Liked," "friended," or "followed" any websites, twitter feeds, or Facebook pages associated with Mr. McDonnell or his campaign opponents	☐	☐	☐	☐
(j)	Other campaign activities	☐	☐	☐	☐

For any checked above, please explain: ______________________________

____

____

79. Have you, your spouse/significant other, or any family members ever done any of the following in support of defense efforts concerning allegations of criminal wrongdoing by the defendants, Robert F McDonnell and Maureen G. McDonnell? (Check all that apply)

		Self	Spouse/ sig. other	Family member
(a)	Wrote a letter to the editor	☐	☐	☐
(b)	Signed a petition	☐	☐	☐
(c)	Posted a comment online			
(d)	Received an email or other communication seeking financial or other support	☐	☐	☐
(e)	Visited a website (e.g., The Restoration Fund) seeking donations for the defense	☐	☐	☐
(f)	Donated money to the defense, including funds solicited by The Restoration Fund website	☐	☐	☐

For any checked above, please explain: ____

____

____

____

80. Have you, your spouse/significant other, any family members or any close friends ever done any of the following in support of government efforts to investigate allegations of criminal wrongdoing by the defendants, Robert F McDonnell and Maureen G. McDonnell? (Check all that apply)

		Self	Spouse/ sig. other	Family member	Close friend
(a)	Wrote a letter to the editor	☐	☐	☐	☐
(b)	Signed a petition	☐	☐	☐	☐
(c)	Posted a comment online				

For any checked above, please explain: ____

____

____

____

81 Robert F McDonnell is currently on the faculty at Liberty University. Have you or a family member or a close friend ever had any contact or connection to Liberty University, including attending classes, employment, teaching courses, providing any financial support or donations, or being on any Liberty University mailing or email lists?
[ ] Yes [ ] No

(a) If yes, please list who, the kind of contact or connection, and their relationship to you: ____

____

____

____

82. Other than what you have already explained, have you or any family member ever been employed, including as a contractor, by any U.S. federal government agency?
[ ] Yes [ ] No

(a) If yes, please list the person, job title, agency, and dates of employment: ______

____

____

____

Case Questions

83. The defendants, Robert F McDonnell and Maureen G. McDonnell, are charged with bribery, extortion, wire fraud, and making false statements, among other charges, and Maureen G. McDonnell is also charged with obstruction of justice. Have you seen, heard or read anything about this case?
[ ] Yes [ ] No

84. How closely have you followed the news about this case?
[ ] Very closely
[ ] Somewhat closely
[ ] Not very closely
[ ] Not at all

85. Please indicate from what source(s) you heard about the case. (Check all that apply.)

[ ] Television
[ ] Newspapers
[ ] Magazines
[ ] Radio
[ ] Internet
[ ] Blog/chatroom
[ ] Personal knowledge of defendants or their family, friends or acquaintances
[ ] Personal knowledge of potential witnesses in this case
[ ] Personal conversations with others in the community
[ ] Overheard others discussing the case
[ ] Other sources of information (list):

____

86. Have you expressed an opinion about this case or about those involved to anyone, either through conversations or through writing to any newspaper, magazine, or publication; calling in to any television or radio program; or posting comments or likes on the Internet?

[ ] Yes [ ] No

(a) If yes, what were the circumstances and what opinion did you express? ________

____

____

____

87. Have you, a member of your family or a close friend participated in any legal research studies such as focus groups, mock trials, or surveys that addressed the case of *United States of America v. Robert F. McDonnell and Maureen G. McDonnell*?

[ ] Yes [ ] No

88. Over the past two years, have you, a member of your family or a close friend participated in any legal research studies such as focus groups, mock trials, or surveys that addressed any other real or hypothetical criminal case?

[ ] Yes [ ] No

89. Do you or any member of your immediate family or close personal friend know anyone who has covered this case or investigation for any media outlet?

[ ] Yes [ ] No

(a) If yes, please explain: ______________________________________

____

____

90. Two of the products that will be discussed in this case are Anatabloc, which is a dietary supplement produced by Star Scientific, and CigRx, a smoking cessation product produced by Star Scientific. Have you or a family member or a close friend ever used Anatabloc or CigRx?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please describe who used the product and when: ____________

91. Do you or any family member or close friend now own or ever owned any stock in Star Scientific?
[ ] Yes [ ] No [ ] Unsure

92. The judge presiding over this case is U.S. District Judge James R. Spencer. Do you, anyone in your family, or any close personal friend know Judge Spencer or anyone else who works in this courthouse?
[ ] Yes [ ] No

(a) If yes, please explain who you know and how: ____________

93. The prosecutors in this case are Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer.

(a) Do you know, or have you had any contact, either social or professional, with any individuals listed above, or any other member of the United States Attorney's Office or Department of Justice?
[ ] Yes [ ] No [ ] Unsure

(b) If yes or unsure, please explain: ____________

94. The attorneys representing the defendants in this case and their respective law firms are listed below

Robert F McDonnell
John Brownlee, Christopher Iaquinto, Daniel Small, Timothy Taylor, William Gould
(Holland & Knight LLP)

Henry Asbill, Jonathan Berry, Charles Carberry, Hilary Perkins, James Burnham,
Mary Ellen Powers, Noel Francisco, Owen Conroy, Ryan Newman
(Jones Day)

Maureen G. McDonnell
William Burck, Kaiyeu Chu, Heather Martin, Stephen Hauss
(Quinn Emanuel Urquhart & Sullivan LLP)

(a) Do you know, or have you had any contact, either social or professional, with any individuals listed above, or any other member of any of the law firms listed above?
[ ] Yes [ ] No [ ] Unsure

(b) If yes or unsure, please explain: ____________________
____
____

95. Please review the list attached to this questionnaire that provides the names of persons who may appear as witnesses during the trial. Do you, your spouse/partner, any members of your immediate family, or any of your close personal friends know or have any connection with the individuals listed?
[ ] Yes [ ] No [ ] Unsure

(a) If yes or unsure, please list the names of each person and explain the connection:
____
____
____

96. Other than what you have already explained, do you or any member of your immediate family or close personal friend know anyone who may be associated in any capacity with this case, its investigation, or its preparation for either the Government or the defendants?
[ ] Yes [ ] No

(a) If yes, please explain: ____________________
____
____
____

Conclusion

97 Is there any reason that you believe you should not sit as a juror in this case?
[ ] Yes [ ] No

(a) If yes, please explain:
____
____

Juror Number: ___________

98. Is there anything else that you think the Court should know that might influence your ability to fairly and impartially judge the evidence in this case and to apply the law as instructed by the Court?

[ ] Yes [ ] No

(a) If yes, please explain: ____

____

____

99. Is there any matter you would prefer to discuss privately with the judge?

[ ] Yes [ ] No

Juror Number ___________

SIGNATURE

I, ____, hereby declare under
(Print Your Name)
penalty of perjury that the foregoing answers set forth in this Jury Questionnaire are true and correct to the best of my knowledge and belief. I have not discussed my answers with others, or received assistance in completing the questionnaire. I have answered all of the above questions in this Jury Questionnaire myself.

I FURTHER UNDERSTAND THAT I AM NOT TO DISCUSS THIS CASE WITH ANYONE OR SEEK OUT, LISTEN TO, OR READ ANY MATERIAL ABOUT THIS CASE IN THE MEDIA, ON THE INTERNET OR ELSEWHERE UNTIL THE JUDGE IN THIS CASE HAS INSTRUCTED ME OTHERWISE.

Executed in the Eastern District of Virginia, on this _____ day of __________, 2014.

____
(Your Signature)

Juror Number: ___________

EXPLANATION SHEET

Juror Number ____________

EXPLANATION SHEET, continued.

United States v. Robert F. McDonnell and Maureen G. McDonnell

Potential Witnesses

Abbate, Antonio
Abbe, Colman
Abel, James
Allen, Dave
Anderson, Jamie
Anderson, Steve
Auer, Barbara
Barker, David
Barrett, Robert
Bedrosian, Patty
Benedetti, Thomas
Benjamin, Mike
Birgmann, Caroline
Blake, Lawrence
Blank, Jeffrey
Block, Monica
Bolt, Nanette
Bolyard Jr., Larry
Burn, Celine
Caldwell, Jeff
Cantrell, Carrie (Roth)
Caturegli, Patrizio
Chamberlain, Brenda Jo
Christin, Charlotte
Claiborne, Todd
Clark, Chris
Clark, Kon
Clemente, Juliann
Ciore, John
Cobb, Matt
Cole, Sarita
Collie, Sarah
Conrad, Matthew
Coody, Gary
Cook, Daniel
Cox, Patrick
Cox, Phil
Craig, Stewart
Crantz, Frank
Crawford, Fiona
Creekmore, Jeffrey
Cromwell, Payton
Crowder, Maryann
Crowell, Wriston Mark
Csoke, Steve
Cuccinelli II, Ken

Cullen, Richard
Damico, Joe
Dean, David
de Graaf, Brandon
Dean, David
DeKosky, Steven
DePriest, Jeffrey
DiChrisoni, Chad Anthony
Dunlap, Joel
Earley, Mark L.
Eige, Jacob Jasen
Faessel, John
Farrance, Robert
Frank, William
Fleming, Dan
Fletcher, Terry
Floyd, George
Fontaine, Dorrie
Forbes, Shirley
Fulghum, Joy
Fulkerson, Jerri
Gagne, Scott
Galanti, Paul
Ginder, Gordon
Gomez De Pitts, Luz ("Juliana")
Goodwin Jr., William
Greer, Ryan
Haas, Leslie
Hagan, Charles
Hahn, Paige
Hancock, Christopher
Hare, Keith
Harris, Katherine
Haymore, Todd
Hazel, William
Helderman, Rosalind
Helton, Nancy
Hicks-Thomas, Lisa
Howell, Ed
Huff, Timothy
Huffstetler, Molly
Hulser, David
Hunter, Matthew
Johnson, Dennis
Jones, Robert
Kaine, Timothy M.

Kao, Peter
Kaplan, Kristen Paynter
Keller, Heather
Kelly, Janet (Polarek)
Kennedy, Tyler
Kent, Martin
Kilby, Ken
Kilgore, Jerry
Kosowsky, J. Allen
Kroenig, Bradley
Krueger, Sharon
Ladenson, Paul
Lamar, Andrew
Lanier, Ryan
Lazo, John
LeFevre, William ("Brian")
Leonnig, Carol
Lewis, Bob
Lockridge, Robert
Lowell, Abbe
Lubumba, Eric
Lyons, James
Machir, Sara
Macrina, Francis
Mancano, Elizabeth
Martin, Tucker
Mayfield, Patrick
McDonnell, Bobby
McDonnell, Maureen (Uncapher)
McDonnell, Rachel
McDonnell, Sean
McGlothlin, Fran
McGlothlin, James
McKeon, John
McNulty, Steven
Meola, Olympia
Merhige, Robert
Mirabelli, Mario
Mitchell, Caresse
Morris, Abby (Claud)
Mullan, Michael
Naisawald, Nancy
Naylor, Deborah Ames
Noble, David
Nolen, Christopher
Noyes, Neal

Oken, Marc
O'Neill, William
Palmore, Jeffrey
Parrish, Phillip
Perito, Paul
Perkinson, William
Perry, Alanda
Pfeifer, Elizabeth
Pfohl, Tim
Pike, Steven
Pillow, Richard
Piper, Chris
Piscitelli, John
Pokusa, Robert
Pollack, Frank
Poole, Albert
Pugh, Kenneth
Putnam, Mary Ellen
Rabbitt, Emily
Raines, Brannon
Ramadan, David
Rangarajan, Satya
Ravensbergen, Ron
Reinaman, Eileen
Remley Karen
Retchin, Sheldon
Richardson, David
Robinson, Latasha
Rogers, Abigail Farris
Romero, Cynthia
Rubin, Mark
Sadler, John ("Tim")
Sanford, Kelly
Saul, Jeff
Savage, Sherri
Scarbrough, Alaina
Scarbrough, Sarah
Schatz, Rob
Schiele, Jeffrey
Schneider, Todd
Schramm, Elaina
Schwarz, Joseph
Scott, Kathleen
Scully, Tim
Sessoms Jr., William
Shoolroy, Christopher
Shupnik, Margaret
Skalak, Thomas
Stanley, Alexandra
Sterling, Richard
Strauss, Jerome
Sutherland, Mary Shea
Talbert, William
Thomas, Norman A.
Thompson, Bruce L.
Thompson, Elaine
Tierney, Barbara
Tonkin, Leo
Townes, Martin ("Tutti")
Trussell, Audrey
Tuck, Talhia
Turner, Ronald
Uncapher, Michael
Vetrovec, George
Vick Jr., Howard C.
Vozella, Laura
Walden, Alfred J.
Walker, Julian
Ware, Keith
Warner, Mark R.
Watkins, Ronald
Watts, Pamelia
Weber, Kathryn
Weingarten, Reid
White, Peter H.
Whitt, Debbie
Wiley, Marc
Williams Jr., Jonnie
Williams Sr., Jonnie
Williams, Caroline
Williams, Celeste
Williams, Donnie
Williams, Rachel
Wilson, Sara
Wortham, Jane
Wright, Curtis
Xu, James
Xu, Ting
Young, Cailin McDonnell
Young, Christopher
Zubowsky, Adam
Zubowsky, Jeanine McDonnell

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	CRIMINAL NO. 3:14-CR-00012
v.	)	
	)	JUDGE JAMES R. SPENCER
ROBERT F. MCDONNELL	)	
MAUREEN G. MCDONNELL	)	FILED UNDER SEAL

DEFENDANT ROBERT F. MCDONNELL'S SEALED MOTION FOR CLARIFICATION

MEMORANDUM IN SUPPORT

RECEIVED
MAY 19 2014
CLERK, U.S. DISTRICT COURT
RICHMOND, VA

INTRODUCTION AND BACKGROUND

Defendant Robert F. McDonnell seeks clarification from the Court and guidance about a discovery dispute. Over the weekend, counsel for Jonnie Williams asserted that an Order this Court issued in March—in a proceeding that transpired under seal and *ex parte* from both defendants—requires the defendants to surrender an image of Mr. Williams' iPhone in their possession that Mr. Williams voluntarily produced to the Government and that the Government voluntarily produced to the defendants. The Order does not, however, direct either defendant to comply with any order and neither defendant was party to the proceeding which preceded it or had an opportunity to object to Mr. Williams' request. The Order appears, rather, to instruct only *the Government* to take certain steps on Mr. Williams' behalf (indeed, it is not clear whether the Government even *opposed* Mr. Williams' request, such that the underlying proceeding was adversarial). *See* Order at 1, Ex. A. By its terms, however, the Order does not direct any third party to do anything. Given that the Order does not bind the defendants, the defense has repeatedly asked Mr. Williams' counsel to explain their legal basis for the surrender of this evidence or for some explanation of what happened in March that leads Mr. Williams' counsel to believe that the Court has adjudicated this vital evidentiary issue as to all concerned parties. Those attorneys refused. Because counsel to Mr. Williams has declined to explain their legal and factual justification for demanding the surrender of this relevant, potentially highly exculpatory, non-privileged evidence produced pursuant to Rule 16, the defense can only guess at their arguments, but none appear to have merit. The defense takes its obligation to follow this Court's Orders extremely seriously and thus respectfully asks that the Court clarify whether we must surrender this crucial evidence or whether we are permitted to use it in investigating and defending against the many serious allegations at issue or, at a minimum, be provided an opportunity to be heard on this issue.[1]

There is substantial basis to believe that Mr. Williams' iPhone contains a great deal of highly exculpatory information. Through a Rule 17(c) subpoena, the defense recently uncovered the attached draft letter from Mary-Shea Sutherland, the former Chief of Staff to Mrs. McDonnell. Ms. Sutherland's draft letter provides a detailed account of an agreement between her and Mr. Williams. Ms. Sutherland wrote to Mr. Williams approximately 110 days after she left her position with the McDonnells:

> In June, following the trip to Florida where I accompanied the First Lady; you called me to say that I was the type of person you wanted working for you and that you would pay me outside of my job with the state to help you. I remember the day clearly, I was in a dressing room with my niece when you called. We arranged to meet for breakfast, the first of several.
>
> At breakfast we had a very honest conversation. You zeroed in on my unhappiness, to paraphrase, you said "you can't fool an old southern boy." I explained that I was looking to leave but in order to do so needed an anchor client to take back to Benedetti and Farris in order to cover my salary. At that time you were not interested in that plan but suggested that we should talk to Jerry Kilgore about having McGuire Woods put me on staff and he would just charge you extra. Again, you reiterated that I was the type of person you wanted working for you, not just on Anatabloc but for you personally. You specifically mentioned that you didn't have time to organize your own life and with the work going on at your home in Richmond and all of your travel you saw me as the person to manage all of that for you.

January 20, 2012 Sutherland Draft Letter to Williams at 1, Ex. B. The two apparently planned for Ms. Sutherland to leave the First Lady's office and return to private consulting, with Mr. Williams as the anchor client for her at a consulting firm. Mr. Williams was, however, apparently "insistent that [Ms. Sutherland] not tell the Governor's Office [she] was leaving until after the luncheon at the Mansion for the doctors." *Id.* at 2. Ms. Sutherland's letter recounts many of her interactions with Mr. Williams and his lobbyist (Mr. Kilgore)—*e.g.*: "We met again with Jerry Kilgore over lunch at the Berkley. It was decided at that time that it would not work to have McGuire Woods hire me and that it made more sense for me to return to Benedetti and Farris and you would be the anchor client," *id.* at 1—and then she wrote the following: "***Every communication you and I had was via text, I do have copies of all of them but did not keep them at the office. If I had kept those copies in my desk [Mrs. McDonnell] would have had quite an eyeful.***" *Id.* at 2 (emphasis added); *see also id.* at 3 ("At no time did I ever reveal any of our meetings, conversation[s] or your sentiments on the First Lady. I never told anyone about your calls to me asking me to get you out of the trip to Maine, I never told anyone about you guiding me in my resignation process – I kept every confidence you ever shared with me.").

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[1] No person affiliated with the defense has accessed the image or attempted to access it, nor will any person affiliated with the defense attempt to access this information until the issue is fully resolved by the Court.

The defense has scoured the Government's document production and has been unable to find a single one of the text messages that Ms. Sutherland describes keeping "copies" of. Those messages may, however, be on the iPhone image that Mr. Williams' counsel has demanded the defense (and Government) surrender without reviewing it. In addition, Ms. Sutherland's letter demonstrates that Mr. Williams had a practice of engaging in secret communications via text message, which means that the information on his iPhone is potentially the most important exculpatory evidence in the entire case other than the defendant's personal denials or wrongdoing. Ms. Sutherland's letter outlines a detailed campaign by Mr. Williams to deceive the McDonnells, to manipulate one of their senior staff members into secretly serving his interests, and to hide his conduct and future plans from Mr. and Mrs. McDonnell—facts that directly rebut the Government's allegation that Mr. McDonnell knowingly entered a corrupt bargain with Mr. Williams. It is therefore possible that the information on Mr. Williams' iPhone will *directly exonerate Mr. McDonnell.*[2]

Based on the facts as the defense currently understands them, there is no legal basis for requiring the defense to surrender this critical evidence. As we understand the facts, Mr. Williams willingly provided an image of his entire iPhone to the Government with a production letter that did *not* purport to limit the Government's access to that iPhone's contents, *see* June 24, 2013 Bentley McCray Letter to Dry at 1, Ex. C, and waited three full months to do anything that might safeguard the materials therein, *see* September 24, 2013 Vick Letter to Dry at 1, Ex. D, thus setting in motion the course of events that led to the Government producing copies of the iPhone to each defendant as part of its Rule 16 production. Nobody even alerted the defense to any possible privilege issues until weeks after the iPhone had been produced; only technological problems and sheer coincidence prevented the defense from reviewing the iPhone's contents before we knew about any potential claw-back or privilege issues. Further, if Mr. Williams used his iPhone consistent with Ms. Sutherland's description, most of the communications on it will likely not be privileged at all, such that privilege law would provide no basis for clawing them back. (We know for sure from Ms. Sutherland's letter that Mr. Williams had many non-privileged communications with people like Ms. Sutherland on his iPhone.) Here, such communications potentially include text messages *with* Ms. Sutherland before or after she left the Commonwealth's employ, communications *about* Ms. Sutherland or the McDonnells with people who are not Mrs. Williams or one of Mr. Williams' attorneys, communications with Mr. Williams' lobbyist, Mr. Kilgore, about non-legal, lobbying-related topics (such as hiring Ms. Sutherland to work at his law firm), and so on. And as for the limited universe of information that might have been privileged before Mr. Williams produced his iPhone, our understanding of the facts establishes a straightforward waiver. Mr. Williams produced his iPhone to the Government *in toto* without any safeguards to protect the privileged information thereon. Whatever informal understanding Mr. Williams and the Government might have had, the Government apparently possessed this information for many months before Mr. Williams did anything to get the information back. Privilege is waived where, as here, "the party claiming the privilege has made any disclosure of a confidential communication to any individual who is not embraced by the privilege." *Hawkins v. Stables*, 148 F.3d 379, 384 (4th Cir. 1998). That rule seems to be dispositive here.

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[2] There are multiple categories of potentially exonerating documents that are likely to exist on the iPhone but that the Government did not subpoena, such that Mr. McDonnell will not receive them as part of the Government's Rule 16 and *Brady* productions. For example, the Government did not subpoena from Mr. Williams communications *about* elected officials and employees of the Commonwealth (as opposed to *to* or *from* them)—such as about the McDonnells or Ms. Sutherland—nor did it subpoena communications between Ms. Sutherland and Mr. Williams after Ms. Sutherland left the Commonwealth's employ. (The Government thus would not have received the attached letter from Ms. Sutherland, for example, which was produced in response to the defense Rule 17(c) subpoena to Benedetti and Farris, and which is obviously a highly exculpatory document.)

The defense thus respectfully requests that the Court make clear that neither its March Order nor any other principle of law bars the defense from reviewing the evidence on Mr. Williams' iPhone that the Government produced pursuant to Rule 16, following Mr. Williams' production of that evidence to the Government.[3]

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[3] As an alternative, the defense requests permission to submit the forensic image to an internal "taint team" that will review the information and segregate the materials possibly protected by the attorney-client, work-product, or marital privileges. That team would then prepare a privilege log and submit it to Mr. Williams' attorneys for their review. This will allow counsel for defendants to begin its review of the non-privileged information and would provide an opportunity for Mr. Williams' counsel to object to our current conclusion that all privileges have been waived.

ARGUMENT

I. The Court's Order Does Not Appear To Bind Either Defendant.

On its face, the Court's Order does not bind either defendant or direct either defendant to do anything: "[T]he Government is hereby DIRECTED to return to Williams any copies of the forensic image of Williams's iPhone in its possession. The Government is further DIRECTED to seek the return of said forensic image from any third parties to which it may have been provided or disclosed." Order at 1, Ex. A. The Court's Order makes sense, since the defendants were not parties to the litigation that yielded this Order and the law generally "presume[es] that nonparties are not bound by a judgment"; a principle that "has been stated in many cases" and that "draws from the due process right to be heard, and in criminal proceedings draws support from the right of confrontation as well." 18A Charles Alan Wright et al., Fed. Prac. & Proc. Juris. § 4449 (2d ed. 2014) (footnotes omitted). Numerous cases reiterate as much, holding that "[i]t is a violation of due process for a judgment to be binding on a litigant who was not a party or a privy and therefore has never had an opportunity to be heard." *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 327 n.7 (1979); *see also, e.g., Taylor v. Sturgell*, 553 U.S. 880, 884 (2008) ("It is a principle of general application in Anglo–American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process." (quoting *Hansberry v. Lee*, 311 U.S. 32, 40 (1940)).

Because counsel to Mr. Williams has refused to explain what happened in March before this Court, the defense has only the Order to rely upon. And that Order does not bind the defendants, perhaps because the Court did not intend to issue directives against non-parties without providing those parties an opportunity to be heard. Were the Court's intentions otherwise—such that it *did* intend to bind Mr. McDonnell—the defense respectfully requests that the Court clarify as much, as well as provide us with an opportunity to be heard on these issues.

II. There Is No Legal Basis For Confiscating Non-Privileged, Potentially Exculpatory Evidence From The Defense.

Assuming that the Court has not already resolved this issue as to the defendants, the Court should not extend its Order to Mr. McDonnell. For one thing, counsel for Mr. Williams voluntarily produced the contents of Mr. Williams' iPhone to the Government, and the Government, in turn, voluntarily produced those contents to the defense. Because Mr. McDonnell is the innocent recipient of this potentially exculpatory evidence, there is no legal basis—and it would be unfair—to compel him to relinquish possession and control of that lawfully obtained evidence.

It would also violate Mr. McDonnell's right to discovery under Rule 16 to command him to return the evidence. The Government has an obligation to permit defendants to inspect and copy evidence that is "material to preparing [a] defense" and that "is within the government's possession, custody, or control." Fed. R. Crim. P. 16(a)(1)(E). As explained above, the contents of Mr. Williams' iPhone are potentially extremely relevant to Mr. McDonnell's defense and were in the Government's possession, which is why the Government produced them in its Rule 16 production. The Government had an obligation to produce that evidence, which it fulfilled. Ordering Mr. McDonnell to return the evidence now would defeat his legal rights under Rule 16.

The same logic applies to the Government's *Brady* obligations. Under *Brady*, a prosecutor must disclose material "in the Government's possession that is favorable to an accused." *Monroe v. Angelone*, 323 F.3d 286, 293 n.5 (4th Cir. 2003). In light of Ms. Sutherland's letter to Mr. Williams, *see supra* at 2-3, there is little question that Mr. Williams' iPhone is likely to contain evidence that is exculpatory for Mr. McDonnell, which the

Government is obligated to disclose (and did disclose). Requiring Mr. McDonnell to return that evidence would violate his *Brady* rights. The Government cannot claim, of course, that *Brady* does not apply to evidence that it possessed but did not review, since the Government's "willfulness or inadvertence" in failing to disclose *Brady* material "is inconsequential to [the] *Brady* analysis." ***Wolfe* v. *Clarke***, 691 F.3d 410, 423 (4th Cir. 2012).

Finally, counsel for Mr. Williams has offered no legal basis for its position other than to passingly suggest that Mr. McDonnell is not entitled to review this evidence because he could not independently obtain a complete image of Mr. Williams' iPhone via Rule 17(c) subpoena. But even if that were true, Rule 17 is merely a device for the criminally accused to *compel* evidence from a witness. *See* Fed. R. Crim. P. 17(c)(1) (providing that a "subpoena may *order* the witness to produce" various listed items (emphasis added)). It is not a substantive constraint on the universe of evidence the accused are permitted to possess. And it certainly does not apply here, where the relevant witness voluntarily disclosed the evidence. A witness can always voluntarily produce more evidence than Rule 17(c) might require, and that is precisely what has happened here. The fact that Mr. Williams now wants this evidence back should not alter the analysis.

III. The Intentional Production Of The iPhone To The Government Waived Whatever Privileges Once Existed Over Any Of The Communications Therein.

Based on the facts as we presently understand them, Mr. Williams waived all privileges over the iPhone image when he turned it over to the Government on June 24, 2013. *See* Ex. C. In particular, he appears to have disclosed the image voluntarily, not inadvertently, which conclusively waives any otherwise-applicable privileges. But even if the disclosures can be characterized as inadvertent, simple inadvertence would suffice to defeat any privilege claim.

A. Attorney-Client Privilege: Waived by Disclosure to the Government

Mr. Williams waived any attorney-client privilege over documents in the iPhone image when he willingly handed the image over to the Government on June 24, 2013. He cannot carry his burden to show "the absence of any waiver." *United States v. Bolander*, 722 F.3d 199, 222 (4th Cir.), *cert. denied*, 134 S. Ct. 549 (2013).

Voluntary disclosure of a privileged document to a third party waives privilege over that document. *See Hawkins v. Stables*, 148 F.3d 379, 384 (4th Cir. 1998) (citations omitted) ("As a general rule, implied waiver occurs when the party claiming the privilege has made any disclosure of a confidential communication to any individual who is not embraced by the privilege.") Any claim that Mr. Williams did not knowingly disclose the specific documents within the image would fail because "if a client wishes to preserve the privilege under such circumstances, he must take some affirmative action to preserve confidentiality. . . Taking or failing to take precautions may be considered as bearing on intent." *FDIC v. Marine Midland Realty Credit Corp.*, 138 F.R.D. 479, 482 (E.D. Va. 1991) (quoting *In re Grand Jury Proceedings*, 727 F.2d 1352, 1356 (4th Cir. 1984)). Mr. Williams's apparent failure to review the image before turning it over betokens "such extreme or gross negligence as to warrant deeming the act of disclosure [of all documents within the image] to be intentional." *Id.*; *see also United States v. Lentz*, 419 F. Supp. 2d 820, 827 (E.D. Va. 2005) ("Waiver need not be explicit; the client waives the privilege by conduct which implies a waiver of the privilege or a consent to disclosure.") (internal quotation marks omitted).

Even if Mr. Williams could somehow characterize the disclosure as inadvertent, however, the privilege is still gone. Under Federal Rule of Evidence 502(b), inadvertent disclosures will waive privilege unless "the holder of the privilege or protection took reasonable steps to prevent disclosure" and "promptly took reasonable steps to rectify the error." *See also Maxtena, Inc. v. Marks*, 289 F.R.D. 427, 444 (D. Md. 2012) (magistrate judge) ("The party seeking the protection of Rule 502(b) bears the burden of proving that each of its elements have been met."). Mr. Williams cannot argue that turning over an iPhone image with no apparent review or safeguards constituted "reasonable steps to prevent disclosure," particularly given that he apparently waited months before trying to get any supposedly privileged information back.

B. Work-Product Protection: Waived by Disclosure that Substantially Increased Chances of Disclosure to Adversary

Mr. Williams also waived the work-product protection over any documents in the image because their disclosure to the Government substantially increased the risk that the documents would fall into the hands of an adversary (if indeed the Government itself did not constitute an adversary as of June 24, 2013).

The Fourth Circuit holds work-product protection waived when its invoker "substantially and freely increased the possibility of disclosure to, and use by, anyone the [recipient] desired." *In re Doe*, 662 F.2d 1073, 1082 (4th Cir. 1981); *Green v. Sauder Mouldings, Inc.*, 223 F.R.D. 304, 307 (E.D. Va. 2004) ("Waiver of the privilege occurs when materials that are otherwise protected work-product are disclosed to someone with interests adverse to the party asserting the privilege.") (citing *Doe*, 662 F.2d at 1081). Given the facts as understood here, it would be hard to argue that disclosure to the Government did not substantially increase the chances of the image falling into an adversary's hands. And again, characterizing the disclosure as inadvertent will not negate waiver.

C. Marital Communications Privilege: Waived by Disclosure to the Government

Mr. Williams's voluntary disclosure of the image waived the marital communications privilege as well: "[T]o be covered by the privilege, a communication between spouses must be confidential; 'voluntary disclosure' of a communication waives the privilege." *United States v. Hamilton*, 701 F.3d 404, 407 (4th Cir. 2012) (quoting *Wolfle v. United States*, 291 U.S. 7, 14–15 (1934)), *cert. denied*, 133 S. Ct. 1838 (2013). Once again, characterizing the disclosure as inadvertent would not negate waiver.

CONCLUSION

The defense is fully committed to complying with this Court's directives, to respecting any valid privileges, and to mounting a zealous defense. The defense thus respectfully requests an order clarifying that the Court's March Order does not require the defense to forfeit all evidence contained in the image of Mr. Williams' iPhone and confirming that the defense is entitled to make use of those materials to the same extent the defense is entitled to make use of all other materials it lawfully obtains through the discovery process or other legitimate mechanisms.

Given the importance of this issue, the defense respectfully requests a hearing at the Court's convenience.

Dated: May 19, 2014

Respectfully submitted,

/s/ John L. Brownlee

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Counsel for Robert F. McDonnell

CERTIFICATE OF SERVICE

I certify that on May 19, 2014, I caused to be served a true copy of the foregoing via electronic email on the following individuals:

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Counsel for Robert F McDonnell

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

SEALED ORDER

THIS MATTER is before the Court on two sealed Motions for Clarification (ECF Nos. 203, 204) filed by Mr. McDonnell and by Mrs. McDonnell, who adopts the arguments made by Mr. McDonnell. To the extent that this Sealed Order does so, the Motions for Clarification are GRANTED. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and oral argument would not aid in the decisional process. E.D. Va. Loc. Crim. R. 47(J).

The Order that Defendants seek to clarify ("Order of March 13") speaks for itself. The Order of March 13 was filed under seal in a separate case, *In re Grand Jury Subpoenas*, No. 3:14-ms-67, (E.D. Va. 2014). Defendants are not a party to the case in which the Order of March 13 was filed, and the Order of March 13 does not purport to direct Defendants in any way.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 4th day of June 2014.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

ORDER

THIS MATTER is before the Court on two Motions for Issuance of Rule 17(c) Subpoenas Duces Tecum ("Motions") (ECF Nos. 210, 212) filed by Defendants. Upon due consideration, the Motions are GRANTED IN PART and DENIED IN PART.

Defendants move the Court to issue three subpoenas duces tecum pursuant to Federal Rule of Criminal Procedure 17(c) addressed to Jonnie Williams, Sr., Mary-Shea Sutherland, and Verizon Wireless. Defendants bear the burden to demonstrate that their requests meet each of three requirements: specificity, relevancy, and admissibility. *United States v. Nixon*, 418 U.S. 683, 700 (1974). Based on the inferences that may reasonably be drawn from the draft letter underlying the Motions, the Court finds that the *Nixon* requirements have only been satisfied as to those records described below.

Accordingly, pursuant to Federal Rule of Criminal Procedure 17(c), the Clerk is DIRECTED to issue three subpoenas duces tecum to the entities and persons listed as follows:

1. To Jonnie Williams, Sr., c/o Richard Cullen, McGuire Woods LLP, One James Center, 901 East Cary Street, Richmond, VA 23219-4030:
    a. Any text messages, emails, or other documents exchanged with Mary-Shea Sutherland between June 1, 2011 and the present; and
    b. Any draft communications to Mary-Shea Sutherland that were never sent;

  c. Any documents, or drafts of documents, related to Ms. Sutherland;
  d. Any text messages, emails, or other documents (or drafts of the same) exchanged with Jerry Kilgore concerning Mary-Shea Sutherland.

2. To Mary-Shea Sutherland, c/o Theodore D. Bruns, Blackburn, Conte, Schilling & Click P.C., 300 W. Main St., Richmond, VA 23220:
   a. Any text messages, emails, or other documents exchanged with Jonnie Williams between June 1, 2011 and the present; and
   b. Any draft communications to Jonnie Williams that were never sent;
   c. Any documents, or drafts of documents, related to Mr. Williams; and
   d. Any text messages, emails, or other documents (or drafts of the same) exchanged with Jerry Kilgore concerning Jonnie Williams.
3. To Verizon Wireless, c/o Verizon Subpoena, 180 Washington Valley Rd., Bedminster, NJ 07921: all text messages and records related to text messages and phone calls for the time period June 1, 2011 through January 1, 2013 for the following numbers:
   a. [REDACTED] (relevant phone number as previously requested by Defendants); and
   b. [REDACTED] (relevant phone number as previously requested by Defendants).

The requested information should be produced at the office of Holland & Knight c/o Timothy J. Taylor, 1600 Tysons Boulevard, Suite 700, Tysons Corner, VA 22102, on or before Wednesday, June 18, 2014, at 12:00 p.m.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 6th day of June 2014.

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA	)	
	)	
v	)	
	)	No. 3:14cr12-JRS
ROBERT F MCDONNELL and	)	
MAUREEN G. MCDONNELL,	)	
Defendants.	)	

GOVERNMENT'S MEMORANDUM IN SUPPORT OF MOTION TO EXCLUDE EXPERT TESTIMONY

The United States respectfully moves to exclude purported expert testimony from five sources that defendant Robert F McDonnell has identified in his expert disclosure. According to that disclosure, Mr. McDonnell intends to call three attorneys, a forensic accountant, and an unidentified expert on medical or Food and Drug Administration ("FDA") practices. Mr. McDonnell claims that those individuals will give various expert opinions on, among other things, witness credibility, Mr. McDonnell's mental state, the legality of Mr. McDonnell's conduct, and the legal advice they would have given Mr. McDonnell had he asked for it.

As explained in greater detail below, the testimony of each of Mr. McDonnell's purported experts is inadmissible under the Federal Rules of Evidence for several reasons. First, expert testimony from criminal defense attorneys about the financial value of Jonnie Williams's immunity agreement and other factors that they claim affect Williams's credibility is precluded by settled Fourth Circuit precedent and common sense. Second, any proposed expert testimony about Mr. McDonnell's various mental states is inadmissible under Fed. R. Evid. 704(b). Third, the legal opinions of Mr. McDonnell's proposed experts do no more than tell the jury what verdict to reach, and the proffered legal opinions do not satisfy the requirements of Fed. R. Evid. 702. Fourth, testimony about what lawyers would have told Mr. McDonnell to do had he asked is irrelevant when Mr. McDonnell concedes he did not seek those lawyers' advice before engaging in the conduct at issue. And finally, each of Mr. McDonnell's disclosures is facially insufficient under Fed. R. Crim. P 16(b)(1)(C). For these and the other reasons set forth below, the proposed expert testimony should be excluded.

Because the deadline for the United States to notice any expert testimony in anticipation of or in response to Mr. McDonnell's expert disclosures is June 28, 2014, the United States respectfully requests expedited briefing and ruling from the Court on this matter before that deadline.

I. The Legal Standards for Expert Testimony

Under Rule 702, to be admissible expert testimony must be (a) helpful, (b) based on sufficient facts, and (c) the product of reliable principles and methods that were (d) reliably applied to the facts of the case.[1] These requirements "impose[] a special obligation upon a trial judge to ensure than any and all scientific testimony is not only relevant, but reliable." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999), *quoted in United States v. Hassan*, 742 F.3d 104, 130 (4th Cir. 2014). And in the Fourth Circuit, it is well-settled that "expert opinions that constitute evaluations of witness credibility, even when such evaluations are rooted in scientific or other technical expertise, are inadmissible under Rule 702." *Nimely v. City of New York*, 414 F.3d 381, 398 (2d Cir. 2005), *quoted in United States v. Allen*, 716 F.3d 98, 106 (4th Cir. 2013). Moreover, "when a witness gives an opinion about the meaning of a specialized legal term, the witness is giving a legal conclusion that is better handled by the judge and, coming from the witness, will be of little assistance to the jury." *United States v. Offill*, 666 F.3d 168, 175 (4th Cir. 2011). Thus, expert testimony proffering legal conclusions is inadmissible under Rule 702 because "it does not help the jury for an expert to give testimony that states a legal conclusion or draws a legal conclusion by applying law to the facts." *Id.* (internal citations and quotations omitted).

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[1] Rule 702 reads as follows:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods;

(d) the expert has reliably applied the principles and methods to the facts of the case.

In addition, even when proposed expert testimony meets Rule 702's threshold requirements, Rule 704(b) further restricts its use. That rule provides, "In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or a defense. Those matters are for the trier of fact alone." And as with all evidence, proposed expert testimony must not violate Fed. R. Evid. 608(b)'s preclusion of "extrinsic evidence to prove specific instances of a witness's conduct in order to attack the witness's character for truthfulness" or Fed. R. Evid. 403's bar against evidence that "confus[es] the issues" or "mislead[s] the jury."

Finally under Rule 16(b)(1)(C), a defendant seeking to introduce expert testimony must provide pretrial notice that explains his experts' "opinions, the bases and reasons for those opinions, and the witness's qualifications." At the request of the parties, the Court set the deadline for such disclosures 60 days before trial, or May 29, 2014. *See* Docket No. 100, at 3. The agreed discovery order further permits any party to notice an expert responsive to any expert noticed by the other party no later than June 28, 2014. *Id.*

II. Mr. McDonnell's Expert Disclosures

On May 29, 2014, Mr. McDonnell provided the United States with a seven-page notice of his intent to call five purported experts in his case-in-chief at trial. That notice is attached as Exhibit A. On June 12, 2014, Mr. McDonnell provided a two-page supplemental notice, which is attached as Exhibit B.

First, Mr. McDonnell proposes to have Mark L. Earley, Esq., a former Virginia Attorney General whose amicus brief on legal issues was previously rejected by this Court, *see* Doc. No. 135, provide expert testimony. According to Mr. McDonnell's notice, Earley will (1) testify that the official actions charged in the Indictment "have never been understood by Virginia officials to be '***official acts***,'" and that "government officials only engage in ***official action*** when they attempt to influence specific decisions that such agencies or officials actually make," Exh. A at 2 (emphasis added); (2) "opine that the conduct alleged here is consistent with Mr. McDonnell not having a corrupt intent to defraud the people of Virginia of his honest services," *id.* at 3; (3) "testify that if he [as Attorney General] had been presented with a request by a Governor to act in accordance with the allegations set forth in paragraph 111(c) of the Indictment, he would have concluded that" such conduct was legal, *id.*, and (4) testify "that neither the Governor nor the [Virginia] Department of Health had jurisdiction or control over decisions to be conducted by [state university] researchers" and that an attempt to exert influence over such researchers would thus be "undermine the integrity of the results and be counterproductive," *id.*

Second, Mr. McDonnell proposes to have a criminal defense attorney, Peter H. White, Esq., testify about Jonnie Williams's immunity agreement and other factors that White will contend affect Williams's credibility.

Third, Mr. McDonnell seeks to introduce testimony from an accountant, J. Allen Kosowsky. Mr. McDonnell states that Kosowsky, like White, will address the purported "financial benefits that the Government has conferred on Mr. Williams, including the financial value of immunity for the company in which he is the primary shareholder, as well as the value of the Government's assistance in litigation against him and his company." *Id.* at 5–6. Mr. McDonnell also seeks to have Kosowsky testify "about various questionable transactions involving Mr. Williams or Star Scientific" to show the alleged "financial benefits conferred on Mr. Williams and Star Scientific" by the United States. Exh. B at 2. Moreover, Kosowsky, an accountant, also purports to offer an opinion on whether Mr. McDonnell's omissions on loan applications were "were intentional, fraudulent, or even material." Exh. A at 5.

Fourth, Mr. McDonnell proposes to offer testimony from Norman A. Thomas, Esq., a lawyer and former judge on the Fourth Judicial Circuit of Virginia, who will testify that the Statement of Economic Interests ("SOEI") form that Mr. McDonnell filled out is "vague" and "that reasonable public officials could vary in their interpretation of [the form's] instructions." *Id.* at 6. Mr. McDonnell also proposes to have Thomas testify that "the forms submitted by Mr. McDonnell reflect a reasonable understanding of the SOEI's vague requirements governing the disclosure of loans, securities, and gifts, including those loans, securities, and gifts related to Mr. Williams and Star Scientific." *Id.*

Finally, Mr. McDonnell proposes to offer a presently unidentified expert who will either testify about the FDA's investigation of Star Scientific, Inc. or contend that Williams has made medically unsupported claims about Star Scientific's products. Exh. A at 1–2.

III. Argument

The reasons for excluding the expert testimony described above are explained more fully below.

I. The proposed testimony of former Virginia Attorney General Mark L. Earley is inadmissible on multiple grounds.

As an overall matter, it appears that Earley's proposed testimony is little more than an attempt to rehash purely legal arguments advanced in the amicus brief he attempted to file—namely, his views about how the Hobbs Act applies to campaign contributions, his arguments about how the First Amendment applies to *quid pro quo* payments that a governor receives, his arguments based on the rule of lenity, his position that federalism should limit the scope of "official acts," and his arguments on statutory interpretation. But as explained below, these are all "legal conclusion[s] that [are] better handled by the judge and, coming from the witness, will be of little assistance to the jury." *Offill*, 666 F.3d at 175. And to the extent Earley's proposed testimony attempts to circumvent the bar on naked legal conclusions, it does so in ways that otherwise violate Rules 704(b) and 403.

A. Earley's proposed testimony constitutes an inadmissible legal conclusion.

First, Mr. McDonnell proposes to have Earley offer an opinion on whether the conduct charged in the Indictment (and the evidence introduced at trial) satisfies the definition of an "official act," the exact statutory term used in 18 U.S.C. § 201(a)(3) and an element of the charged public corruption offenses. According to Mr. McDonnell's expert notice, Earley will testify that the official acts charged in the Indictment "have never been understood by Virginia officials to be '***official acts***.'" Exh. A at 2 (emphasis added). He will also testify that "government officials only engage in ***official action*** when they attempt to influence specific decisions that such agencies or officials actually make." *Id.* (emphasis added). This testimony is inadmissible because it simply tells the jury what verdict to reach, using the specific statutory language at issue. It is therefore unhelpful under Rule 702 and should be excluded.

Under Fed. R. Evid. 704(a), an expert's opinion is not automatically inadmissible because it addresses an ultimate issue in the case (other than a defendant's intent, which is addressed in Rule 704(b)). Rule 704(a) provides, "An opinion is not objectionable just because it embraces an ultimate issue." But the Advisory Committee Notes to Rule 704 explain that Rule 704(a) "does not lower the bars so as to admit all opinions," for "opinions must be helpful to the trier of fact," which is an express requirement of Rule 702. *United States v. Barile*, 286 F.3d 749, 759 (4th Cir. 2002) (quoting 1972 Advisory Committee Notes). The helpfulness requirement bars admission of "opinions which would merely tell the jury what result to reach, somewhat in the manner of the oath-helpers of an earlier day." *Id.* at 759–60. Thus, "opinion testimony that states a legal standard or draws a legal conclusion by applying law to the facts is generally inadmissible." *United States v. McIver*, 470 F.3d 550, 562 (4th Cir. 2006) (citing *Barile*, 286 F.3d at 760); *see also Offill*, 666 F.3d at 175 (same).

The Fourth Circuit has noted that one important way of determining whether an expert is giving an unhelpful opinion that simply states a legal conclusion is whether the expert testifies using legal terms of art that have a specified meaning. *Barile*, 286 F.3d at 756, 761. Thus, in a case where a key issue was whether an officer used excessive force, and the legal standard was whether the officer's use of force was "objectively unreasonable," the Fourth Circuit explained that "Rule 704 justifies differentiating between the officers' testimony that they saw no 'law enforcement' or 'legitimate' reason for Perkins's kicks and testimony that Perkins's actions were 'objectively unreasonable.'" *United States v. Perkins*, 470 F.3d 150, 160 (4th Cir. 2006).

Here, Earley's proposed testimony that actions alleged as *quo* in this case "have never been understood by Virginia officials to be '***official acts***,'" Exh. A at 2 (emphasis added), clearly falls within the latter, impermissible category of a purely legal conclusion using legal terms of art. For example, in addition to using the legal term of art "official act," Earley will purportedly testify that the acts in question "are not actions or decisions on matters brought before Governors in their official capacity." *Id.* This phrase is nearly identical to § 201(a)(3)'s statutory text, which defines an official act as "any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity." Moreover, Earley's proposed testimony that the alleged official acts "are not understood by Virginia officials and their legal advisors as exerting influence on government decisions," Exh. A at 2, is nearly verbatim what Mr. McDonnell's counsel stated repeatedly in their ***legal*** arguments in support of his motion to dismiss. *See, e.g.*, Doc. No. 148, at 18 (arguing that "official acts" are "limited to acts that exert inappropriate influence over an actual *governmental* decision"). Setting aside the fact that state government officials' understanding (or misunderstanding) of federal bribery laws is no defense (assuming Earley's opinion even accurately reflects those officials' understandings), Earley's testimony about what is or is not an official act is an inadmissible legal conclusion.[2]

Once the legal conclusion that no official acts are charged in this case is stripped away from Earley's opinion, the remaining content of his testimony directly undercuts the bottom line of his opinion and actually ***supports*** the Indictment's allegations. Specifically, Mr. McDonnell's expert notice for Earley states that he acknowledges that "arranging meetings with other government officials for constituents," "hosting events at the Governor's Mansion," "promoting Virginia businesses," and "other similar activities" are "a routine part of any Governor's activities." Exh. A at 2. This testimony, however, appears to be little more than common-sense fact testimony that governors customarily ***do*** engage in the types of conduct alleged to be official acts here. Indeed, if the bottom line of Earley's opinion were not phrased in terms of what constitutes an "official act"—and instead were put in terms of what are "settled practices" of a Virginia governor—his opinion is that actions that are "a routine part of any Governor's activities" are not "settled practices" of a governor—an internal inconsistency that the expert notice never explains and provide no basis for explaining.

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[2] Indeed, the inadmissibly legal nature of Earley's opinions is easy to understand by considering how an effective cross-examination of those opinions might unfold. For example, it would undercut Earley's opinion to point out his failure to consider the Fourth Circuit's holding in *United States v. Jefferson*, 674 F.3d 332, 357 (4th Cir. 2012), in which it found sufficient evidence at trial "that African trade issues were 'matters' or 'causes' that were pending" before former Congressman Jefferson. Similarly, it would undercut Earley's opinion to bring to his attention ***this Court's*** invocation of *Jefferson* in denying Mr. McDonnell's motion to dismiss. *See* Doc. No. 175, at 2 (citing *Jefferson* as "enumerating among the defendant's official acts, '[a]ttemping to facilitate and promote ventures between foreign governments and the businesses who were paying'"). But as this Court has already ruled, whether the alleged official acts "in fact constituted 'the corruption of official positions through misuse of influence in governmental decision-making' is a question for the jury based on the evidence adduced at trial." *Id.* (quoting *United States v. Carson*, 464 F.2d 424, 434 (2d Cir. 1972)).

Mr. McDonnell's brief expert notice for Earley fails to show how he is applying any expertise beyond stating a legal conclusion—based on factual admissions that directly undermine those conclusions. Because his opinion is bereft of any identifiable, or permissible, methodology, his testimony should be excluded. *See, e.g., United States v. Johnson*, 617 F.3d 286, 294 (4th Cir. 2010) ("Although Agent Smith repeatedly indicated that he had the expertise to testify regarding drug jargon and the drug trade generally, he provided virtually no methodology or guiding principles that would enable him to decode the wiretapped phone calls in this case.").

In seeking to admit Earley's testimony, Mr. McDonnell's counsel have told the United States[3] that they are relying on the ruling admitting testimony by former Congressman McHugh in the trial of William Jefferson. *See United States v. Jefferson*, 623 F Supp. 2d 683 (E.D. Va. 2009). But that case is distinguishable on two important grounds.

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[3] During a conference call with counsel for the defendants on June 5, 2014, the United States raised its concerns regarding the admissibility of the defense experts' proposed

First, the opinion in *Jefferson* never endorsed having an expert tell the jury whether something was or was not an "official act." The district court concluded that "it is clear that Mr. McHugh's proposed testimony that certain activities are 'routinely performed' by congressmen neither tracks the language of the applicable statute, nor arguably states a legal conclusion." *Jefferson*, 623 F Supp. 2d at 687. Earley's proposed testimony, in contrast, is phrased using the specific statutory language of an "official act" and tells the jury what conclusion to reach on offense elements.

Second, and relatedly, McHugh was informing the jury about what members of Congress routinely do and the types of issues and matters that they routinely address. His testimony had a straightforward factual content that was not expressed by simply telling the jury what is or is not an official act under § 201(a)(3). Because of the straightforward factual content of McHugh's testimony, grounded in his experience as a member of Congress, his testimony did not run afoul of the requirement that an expert have a discernable methodology. But the identifiable factual content of Earley's testimony is directly at odds with his opinion, and his opinion rests on legal conclusions stated directly in the language of the statute and that rely on legal arguments not properly addressed in testimony to the jury.

On Mr. McDonnell's view, a public official in a corruption case may take the stand as an expert and simply define certain regularly performed activities as falling outside the definition of an "official act" because officials in that position claim that the actions fall outside the scope of the bribery laws. Such an approach cannot be squared with the law, and it is perhaps especially

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testimony in an attempt to resolve the issues raised in this memorandum without resorting to court intervention. That attempt was unsuccessful.

easy to see that this is an incorrect approach when it is applied to a lower-level government official.

For example, under the Hobbs Act, a prosecutor could not receive a secret payment for the prosecutor's own financial enrichment, do so with corrupt intent, and take the funds in exchange for arranging a meeting with a supervisor overseeing a prosecution. In a trial of that prosecutor under § 201, another prosecutor could not take the stand as an expert and simply tell the jury that such meetings are not official acts or that prosecutors generally regard such meetings as not being covered by the bribery laws, clearing the way for prosecutors corruptly to take payments for the meetings. Even if no formal job description for the prosecutor listed such meetings as being necessarily part of the job, even if there was no statute, regulation, or even employee handbook that required such a meeting, and even if the meeting was not itself a direct exercise of state power, a jury could find that the meeting was an official act after receiving evidence that such meetings were, to use Mr. Earley's words, "a routine part of any [prosecutor's] activities." A jury could conclude that the meeting was an official act simply through the fact that the meetings were routinely held and that the subject matter of the meeting involved "a pending question, matter, or cause that was before him." *Jefferson*, 674 F.3d at 357 ("Inasmuch as the trial court gave its 'settled practice' instruction in tandem with the statutory definition of 'official act,' the jury was not authorized to ignore the directive that Jefferson's official acts must pertain to a pending question, matter, or cause that was before him. In other words, the jury could not rely exclusively on Jefferson's settled practices.").

Essentially, Mr. McDonnell adopts a view of both federal corruption laws and the law on the admissibility of expert testimony that allows public officials to take the witness stand and define for themselves what constitutes prohibited corruption. But such an approach cannot be squared with the Fourth Circuit's approach in *Jefferson* and invites self-dealing by public officials. Mr. McDonnell's approach to expert testimony about what is an "official act" also violates the Fourth Circuit's law on experts generally. *See, e.g., Barile*, 286 F.3d at 761 (testimony by former director of Food and Drug Administration's Office of Device that defendant's submissions to FDA did not contain "materially misleading statements" properly excluded); *United States v. Wilson*, 133 F.3d 251, 265 (4th Cir. 1997) (testimony of two former state Assistant Attorneys General about scope of Clean Water Act properly excluded).

B. Earley's proposed testimony also violates Rule 704(b).

Next, Earley's proposed testimony also violates Rules 704 and 702 by giving an improper opinion on a defendant's mental state. According to Mr. McDonnell's expert notice, Earley will "opine that the conduct alleged here is consistent with Mr. McDonnell not having a corrupt intent to defraud the people of Virginia of his honest services or to otherwise engage in official action." Exh. A at 3. As noted above, Rule 704(b) prohibits expert testimony on a defendant's mental state. *See, e.g., United States v. Fowler*, 932 F.2d 306, 315 (4th Cir. 1991) (The jury "need[ed] no expert witnesses to speculate about a defendant's state of mind. The expert could not testify that Fowler was confused, not culpable."). Similarly, the Fourth Circuit has agreed with courts that "have held inadmissible testimony that a defendant's actions constituted 'extortion.'" *McIver*, 470 F.3d at 562 (citing *DiBella v. Hopkins*, 403 F.3d 102, 121 (2d Cir. 2005)). *See also United States v. Valverde*, 846 F.2d 513, 517 (8th Cir. 1998) ("Valverde essentially wanted to ask the expert to tell the jury whether his conversations with the guards were in fact bribery attempts. This was precisely the issue before the jury. We thus hold that the district court's restriction of the proffered testimony was within its discretion."). Moreover, even if it were possible to present expert testimony on whether Mr. McDonnell had the requisite corrupt intent, Earley has no expertise, beyond that possessed by every person including jurors, in evaluating other people's mental states.

C. Earley's proposed testimony attempts to inject an inadmissible advice-of-counsel defense.

Mr. McDonnell's expert notice also attempts impermissibly to inject an advice-of-counsel defense into the case. The notice states, "Mr. Earley will testify that if he had been presented with a request by a Governor to act in accordance with the allegations set forth in paragraph 111(c) of the Indictment, he would have concluded that such activities are not actions or decisions on matters before the Governor in his official capacity, which would corroborate the evidence showing that Mr. McDonnell did not act with the requisite specific intent." Exh. A at 3. An advice-of-counsel defense requires "'(a) full disclosure of all pertinent facts to an expert and (b) good faith reliance on the expert's advice.'" *United States v. Butler*, 211 F.3d 826, 833 (4th Cir. 2000) (quoting *United States v. Miller*, 658 F.2d 235, 237 (4th Cir. 1981)). Earley did not provide advice to Mr. McDonnell before he acted, making both requirements impossible to satisfy.

D. Earley's proposed testimony about the Tobacco Commission and state universities is unreliable under Rule 702 and inadmissible under Rule 403.

Finally, Mr. McDonnell also claims that Earley will provide testimony that "will demonstrate that Mr. McDonnell did not have any meaningful influence over the Tobacco Commission" and that his administration lacked "jurisdiction or control over decisions on research to be conducted by researchers" at state medical schools. Exh. A at 3. Earley's testimony on these points fails to satisfy Rule 702, and it is likely to confuse and mislead the jury in any event.

First, a governor has multiple ways to influence decisions by the Tobacco Commission and state universities, and Earley's opinions to the contrary fail to satisfy Rule 702's reliability requirements. For example, under Va. Code § 3.2-3102(A), the Tobacco Commission has 31 members. The statute provides that, of those 31 members, a governor or his cabinet members ultimately selects 21 of the members. *Id.* Of the remaining 10, the statute specifies that 6 will be members of the House of Delegates and 4 are members of the Senate. *Id.* Earley offers no reliable method for explaining how, under this statutory scheme, a governor cannot influence the Tobacco Commission's decisions. Similarly, under Va. Code §§ 23-50.6 and 23-70, the governor appoints all 16 members of the Board of Visitors that governs Virginia Commonwealth University and all 17 members of the Board of Visitors that governs the University of Virginia. Indeed, it is common sense that ***any*** actions by a governor towards a commission or university whose leaders that governor appoints is capable of having influence. And presumably, that is why Mr. McDonnell previously has attempted to use that influence in other contexts. *See, e.g.*, June 22, 2012, Ltr. from Robert F. McDonnell to Board Members of the University of Virginia ("But let me be absolutely clear: I want final action by the Board on Tuesday. If you fail to do so, I will ask for the resignation of the entire Board on Wednesday.").[4]

What is more, Earley's proposed testimony about a governor's lack of total control over the Tobacco Commission or state universities is beside the point, as it is well-settled that to support a bribery charge "the government . . . need not show that the 'question, matter,' *etc.* at issue was or could have been pending before defendant pursuant to any responsibilities explicitly assigned by law, nor is the government required to prove that the defendant had the authority to resolve the question, matter, cause, [*etc.*] . . . at issue." *United States v. Jefferson*, 634 F. Supp.

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[4] *Available at* http://www.scribd.com/doc/97968146/Gov-Bob-McDonnell-Letter-to-U-Va-Board (last accessed June 15, 2014).

2d 595, 603 (E.D. Va. 2009). As a result, it would be misleading and confusing for an expert to testify that conduct is not an official act because a public official does not have *de jure* authority to carry out that act, as the law only requires that the bribe payor reasonably believe the public official had the power to do so or even merely influence in the process. *See, e.g.*, *United States v. Bencivengo*, __ F 3d __, 2014 WL 1613315, at *6, (3d Cir. Apr. 23, 2014); *United States v. Mazzei*, 521 F.2d 639, 643 (3d Cir. 1975) (en banc) (citing *United States v. Price*, 507 F.2d 1349 (4th Cir. 1974)). And in any event, the United States need not prove that Mr. McDonnell actually influenced the Tobacco Commission or the state universities to establish an improper *quid pro quo*, as "fulfillment of the *quid pro quo* is not an element" of a bribery offense. *Evans v. United States*, 504 U.S. 255, 268 (1992). Thus, Earley's proposed expert opinion that a governor's influence over the Tobacco Commission or a state university would not be "meaningful" or would be "counterproductive" should be excluded.

2. The proposed testimony from Peter H. White is inadmissible on multiple grounds.

Mr. McDonnell also proposes to offer expert testimony from White, a criminal defense attorney, about (1) an immunity agreement between Mr. Williams and the United States, (2) the purported value to Williams of the government's stay of civil litigation involving Star Scientific and Williams, and (3) purported government failures to investigate Williams and Star Scientific for violations of 21 U.S.C. § 331(a). This testimony is flatly inadmissible for multiple reasons.

A. The Fourth Circuit flatly prohibits expert testimony on witnesses' credibility.

First, countless cases have concluded that "expert opinions that constitute evaluations of witness credibility, even when such evaluations are rooted in scientific or technical expertise, are inadmissible under Rule 702." *Nimely*, 414 F.3d at 398, *quoted in Allen*, 716 F.3d at 106. This rule bars not only expert testimony by, for example, a psychologist who purports to be able to tell which witnesses are telling the truth, *see, e.g.*, *United States v. Cecil*, 836 F.2d 1431, 1441–43 (4th Cir. 1988), but also an expert witness who seeks to establish bias in other witnesses and testifies about agreements with prosecutors. For example in *Allen*, the expert whose testimony was excluded intended to discuss "§ 5K1.1 letters, § 3553(e) motions, and 21 U.S.C. § 851 notices—all of which entail the government asking for a lesser sentence in light of a defendant's substantial cooperation." *Allen*, 716 F.3d at 105. But the Fourth Circuit held that testimony inadmissible. *See also United States v. Davis*, 63 F App'x 76, 80 (4th Cir. 2003) (affirming exclusion of testimony by "an experienced criminal defense attorney who would have testified that granting sentence reductions for cooperating witnesses affected their truthfulness").

To take another example, the Fourth Circuit has affirmed the exclusion of an expert who would have testified about sleep deprivation's effect on a defendant when he made an earlier statement to law enforcement. Such expert testimony, the Fourth Circuit explained, would improperly intrude on the jury's role in deciding credibility. *United States v. Lespier*, 725 F.3d 437, 449 (4th Cir. 2013) ("Simply put, the trial court did not abuse its discretion in excluding Lespier's expert on the basis that his testimony would 'intrude[] on the jury's role regarding the assessment of the credibility of witnesses."). Similarly, the Fourth Circuit upheld the exclusion of expert testimony from forensic anthropologists who were not commenting directly on witness credibility but were comparing bank surveillance photographs to the defendant's appearance. As the Fourth Circuit explained, "the evaluation of a witness's credibility is a determination usually within the jury's exclusive purview." *United States v. Dorsey*, 45 F.3d 809, 815 (4th Cir. 1995) ("Because in this case, the expert testimony was introduced largely to cast doubt on the positive identifications of Dorsey by both bank tellers involved in the robberies, the evidence was properly excluded.").

Other circuits agree. As the Eighth Circuit held in one case, "[a] jury d[oes] not need expert testimony explaining the details of sentencing procedures to understand that the government's witnesses might have an incentive to incriminate [the defendant]. 'Expert testimony is appropriate when it relates to issues that are beyond the ken of people of ordinary intelligence. Where the subject matter is within the knowledge and experience of laymen, expert testimony is superfluous.'" *United States v. Davis*, 457 F.3d 817, 824 (8th Cir. 2006) (quoting *United States v. French*, 12 F.3d 114, 116 (8th Cir. 1993)). Similarly, in recently reversing a defendant's convictions under the plain error standard after the government introduced expert testimony on witness credibility, the Tenth Circuit noted three reasons for the prohibition. "Such testimony: (1) usurps a critical function of the jury; (2) is not helpful to the jury, which can make its own determination of credibility; and (3) when provided by impressively qualified experts on the credibility of other witnesses is prejudicial and unduly influences the jury." *United States v. Hill*, __ F.3d __, 2014 WL 1663084, at *8 (10th Cir. Apr. 28, 2014) (internal quotation marks and citation omitted). In collecting authority from a total of eight circuits, the Tenth Circuit concluded that it "appears our sibling circuits that have considered this issue have uniformly agreed" that expert testimony on witness credibility is improper. *Id.* at *10.

The rule against expert testimony on witness credibility reflects in part a fundamental feature of American criminal law. "Our legal system," the Supreme Court has explained, "is built on the premise that it is the province of the jury to weigh the credibility of competing witnesses." *Perry v. New Hampshire*, 132 S. Ct. 716, 723 (2012) (quoting *Kansas v. Ventris*, 556 U.S. 586, 594 n* (2009)).

Of course, the defendants will be permitted to ask Williams himself about his immunity agreement during his examination, and indeed, Williams's understanding of the agreement is what matters, not a third party's view of the agreement. The defendants may also argue to the jury in closing argument about factors affecting Mr. Williams's credibility—provided that argument does not devolve into calling witnesses liars. *See, e.g.*, *United States v. Woods*, 710 F.3d 195, 202–03 (4th Cir. 2013) (noting restriction on prosecutors calling witnesses liars in closing argument); *United States v. Ollivierre*, 378 F.3d 412, 423 (4th Cir. 2004) ("Because the prosecutor's rebuttal argument was permissibly responsive to [defense counsel's] accusations that Caldwell had lied, the invited reply rule is implicated."), *remanded on other grounds*, 543 U.S. 1112 (2005). *See also United States v. Young*, 470 U.S. 1, 8–9 (1985) ("Defense counsel, like the prosecutor, must refrain from interjecting personal beliefs into the presentation of his case."). The defendants may also request a jury instruction on witness credibility. But parties may not "introduce expert testimony solely for the purpose of undermining the credibility of" witnesses because that "is not the function of an expert." *Allen*, 716 F.3d at 105–06.

B. White's testimony is also unreliable and violates Fed. R. Evid. 702.

Although the United States does not dispute White's ability to explain an immunity agreement, his opinion goes beyond that and fails to satisfy Fed. R. Evid. 702, even apart from the rule prohibiting expert testimony about witness credibility. White's opinion fails to satisfy Rule 702 when he opines on the purported value to Williams of the government's stay of civil litigation involving Star Scientific and Williams, and the purported government failures to investigate Williams and Star Scientific for violations of 21 U.S.C. § 331(a).

Nothing in White's resume or Mr. McDonnell's expert disclosure reveals that he has expertise in assigning a value to short stays in two civil lawsuits—particularly in cases where neither the plaintiffs nor defendants opposed the stays. The strategic reasoning of the parties in those cases is shielded by privileges, and it is easy to see ways in which both sides in the civil litigation could benefit from the brief stays. Rational civil plaintiffs in those lawsuits would benefit, for example, from reviewing the trial transcripts of witnesses in the criminal case before conducting further civil discovery; the relatively brief delay at issue here might matter little to the plaintiffs; and the plaintiffs might conclude that a jury's finding in this criminal case that the defendants committed crimes in receiving payments from Williams could strengthen the civil plaintiffs' hands. These points underscore the more fundamental point that White lacks a factual basis (and describes no reliable method or even any method at all) for drawing conclusions about the value of the civil litigation generally and hence how the brief stays might affect that litigation.

As stated previously, under Rule 702 expert testimony must be (a) helpful, (b) based on sufficient facts, and (c) the product of reliable principles and methods that were (d) reliably applied to the facts of the case. And in evaluating the reliability of expert testimony, the Supreme Court identified five factors in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Those factors are "(1) whether the particular scientific theory can be (and has been) tested; (2) whether the theory has been subjected to peer review and publication; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique's operation; and (5) whether the technique has achieved 'general acceptance' in the relevant scientific or expert community." *Hassan*, 742 F.3d at 130 (internal quotation marks and citations omitted). This test is flexible when applied to nonscientific experts. *See, e.g., United States v. Bynum*, 604 F.3d 161, 167 (4th Cir. 2010) ("[A]though experiential expert testimony does not rely on anything like a scientific method, such testimony is admissible under Rule 702 so long as an experiential witness explains how his experience leads to the conclusion reached, why his experience is a sufficient basis for the opinion, and how his experience is reliably applied to the facts." (internal brackets and quotation marks omitted)).

White's opinion that the civil stays or the immunity has some benefit to Williams that cause him to be biased is not "helpful" under Rule 702 because the jury can make its own assessment of credibility, and the defendants can ask Williams on cross-examination about his sources of bias.

But White's opinion is also unreliable. The valuation of litigation is complex. To take a more ordinary example than is presented here, determining reasonable settlement values of a civil lawsuit depends on a very wide range of factors – the applicable legal principles, the strength of available evidence including witness testimony, the resources available on each side to litigate the case, the strength of the evidence showing damages if there is liability, the ability of the defendants to pay damages if damages are ordered, and so on. Here, White proposes to opine on the value of a short stay or brief delay in civil litigation. But White's opinion is not "based on sufficient facts" under Rule 702(b) because it is apparent that he lacks the necessary information to determine the value of the stay to the respective parties. His opinion likewise cannot be "the product of reliable principles and methods" under Rule 702(c). He identifies no body of recognized, reliable expertise that assigns value to a stay like this, and regardless it would be impossible to say given the facts presented here that the stay will ultimately benefit Williams and Star Scientific more than the plaintiffs. Finally, given that White has identified no set of reliable principles that he is using, he could not have reliably applied those principles to the relevant facts, which again he does not possess. Thus, his opinion also fails Rule 702(d). *Cf. Johnson*, 617 F.3d at 294. In sum, the failure of White's opinion to satisfy any of the criteria in *Daubert* weighs against the reliability of his opinion. "A witness who invokes 'my expertise' rather than analytical strategies widely used by specialists is not an expert as Rule 702 defines that term. As we so often reiterate: An expert who supplies nothing but a bottom line supplies nothing of value to the judicial process." *Zenith Electronics Corp. v. WH-TV Broadcasting Corp.*, 395 F.3d 416, 419 (7th Cir. 2005) (quotation omitted).

The Supreme Court has observed that "nothing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert. A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered." *General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997). In this case, White has offered neither data nor reliable method. Indeed, his opinion is worse than the *ipse dixit* of an expert because even the bottom line of the opinion that he will give remains opaque.

Moreover, White lacks the requisite facts for drawing conclusion about either whether Williams and Star Scientific violated § 331(a) or the government's evaluation of Williams's and Star Scientific's conduct. But even if White had detailed knowledge of an FDA offense, it also would be improper for White to tell the jury that, in his opinion, Williams is guilty of an offense under § 331(a), a topic addressed next.

C. Portions of White's testimony violate Fed. R. Evid. 608(b).

Under Fed. R. Evid. 608(b), "extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness." White's opinion positing that Williams and Star Scientific are guilty of violations of § 331(a) both violates Rule 608(b) and illustrates perfectly why the restriction in Rule 608(b) exists. Rule 608(b) exists so that trials are not bogged down on collateral issues by incorporating mini trials about whether or not a witness committed some crime not charged in the current trial.

See, e.g., United States v. Day, 700 F.3d 713, 728 (4th Cir. 2012) (district court properly excluded report under Rule 608(b) that described how lead investigator mishandled evidence in case; report was extrinsic evidence that is inadmissible under Rule 608(b)); *United States v. Myers*, 589 F.3d 117, 124 (4th Cir. 2009) (trial court did not abuse its discretion in excluding evidence about whether witness committed criminal conduct that could affect his truthfulness). White's opinion illustrates why this rule exists; this trial would be greatly lengthened if a trial about public corruption could suddenly be sidetracked into a debate about whether the person from whom the defendants corruptly took payments separately committed FDA offenses.

D. White's testimony should be excluded under Fed. R. Evid. 403.

Even if White's testimony were admissible under Rule 702 and not prohibited by Rule 608(b), or some part of it were, it still should be excluded. Under Rule 403, a court "may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Every one of the reasons listed in Rule 403 for excluding testimony applies in this case. White's speculation about the value of brief stays in civil litigation, his speculation about possible charges under § 331(a), and his discussion of immunity agreements on points that can be covered in cross-examination of Williams are a waste of time, would delay what is likely to be an already lengthy trial, could confuse the jury about the issues before them, and would cause unfair prejudice. And because White's testimony is simultaneously speculative and cumulative of cross-examination, it follows that the probative value of White's testimony is not great. In short, his testimony should be excluded under Rule 403—even setting aside the flat inadmissibility of expert testimony on credibility and the prohibition in Rule 608(b).

E. Mr. McDonnell's expert disclosures for White's testimony violate Fed. R. Crim. P. 16(b)(1)(C).

If this Court does not exclude all of White's testimony outright, Mr. McDonnell should be ordered to supplement his expert disclosure. More specifically, Mr. McDonnell's expert notice is deficient because it fails to state what White believes the value actually is of the stay of the civil litigation and the immunity agreement, and the notice provides no bases or reasons supporting his unexplained conclusions. Thus, rather than comply with Rule 16(b)(1)(C)'s notice requirements, Mr. McDonnell's notice improperly provides at best an insufficient "list of topics," *United States v. Rettenberger*, 344 F.3d 702, 706 (7th Cir. 2003), and not the "bases and reasons for [the experts'] opinions" as the plain language of Rule 16(b)(1)(C) requires. Before filing this motion, the United States requested greater disclosure from Mr. McDonnell, but he declined to provide any further details.

3. The proposed testimony of J. Allen Kosowsky is inadmissible on multiple grounds.

Mr. McDonnell's third proposed expert is Kosowsky, an accountant. As explained below, Kosowsky's proposed testimony, like White's, attempts to proffer impermissible opinions on credibility and otherwise violates Rule 608(b). In addition, Kosowksy's proposed testimony also violates Rule 704(b) and Rule 403, and it is inadequately noticed under Rule 16(b)(1)(C).

A. Kosowksy's proposed testimony impermissibly opines on witness credibility. does not satisfy Rule 702, and otherwise violates Rule 608(b)

First, Mr. McDonnell reports that J. Allen Kosowsky will "outline, explain, and quantify the various financial benefits that the Government has conferred on Mr. Williams, including the financial value of immunity for the company in which he is the primary shareholder, as well as the value of the Government's assistance in litigation against him and his company. These issues go directly to the credibility of Mr. Williams and other witnesses affiliated with him." Exh. A at 5–6. Again, expert testimony on "the credibility of Mr. Williams and other witnesses affiliated with him" is not permitted. *Cf. United States v. Williams*, 133 F.3d 1048, 1053 (7th Cir. 1998) ("Williams denied that he participated in the robbery, yet Special Agent Johnson purports to be a human lie detector in observing Williams' demeanor. These observations are improper characterizations of the defendant and useless in the determination of innocence or guilt, and in fact, they tend to prejudice the jury.").

Moreover, Mr. Kosowsky's resume fails to demonstrate that he is able to satisfy Rule 702's requirements for evaluating federal criminal immunity agreements. He has even less of a basis than White for evaluating immunity agreements and stays in civil litigation. *Cf. Dura Automotive Systems of Indiana, Inc. v. CTS Corp.*, 285 F.3d 609, 614 (7th Cir. 2002) ("The *Daubert* test must be applied with due regard for the specialization of modern science. A scientist, however well credentialed he may be, is not permitted to be a mouthpiece of a scientist in a different specialty."). Moreover, contrary to what Mr. McDonnell's expert notice says, the United States has not conferred "immunity for the company in which [Mr. Williams] is the primary shareholder" and has not provided "assistance in litigation against him and his company" beyond requesting a brief stay. Thus, Kosowsky's opinion is based on false premises.

In a supplemental expert disclosure, Mr. McDonnell states that Kosowsky "will also testify about various questionable transactions involving Mr. Williams or Star Scientific" and lists four categories of transactions. Exh. B at 2. Mr. McDonnell explains that this testimony is being offered to "assist the jury in evaluating the credibility of Mr. Williams and other witnesses affiliated with" Williams's businesses. *Id.* Again, this testimony constitutes improper expert testimony on credibility and violates Rule 608(b) by offering extrinsic evidence on a witness's character for truthfulness. The testimony also appears to exceed Kosowsky's expertise, relies on unexplained methods, and possibly involves unhelpful opinions on the legality of conduct.

B. Kosowsky's proposed testimony about Mr. McDonnell's mental state and the loan applications at issue violates Rules 704(b), 702, and 403.

Next, Mr. McDonnell's attempt to offer Kosowsky, an accountant, as an expert on Mr. McDonnell's intent violates the rules of evidence on multiple grounds. As stated above, under Fed. R. Evid. 704(b), "[i]n a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact." In keeping with this rule, the Fourth Circuit has upheld the exclusion of two experts who would have testified in a prosecution for conversion of federal property under 18 U.S.C. § 641 that the relevant "regulations were confusing, vague, and uncertain" and that a defendant's "interpretation of them was 'at least arguably correct.'" *Fowler*, 932 F.2d at 315. As the Fourth Circuit noted, "The expert's proffered testimony differed little from the closing arguments of Fowler's counsel," and under Rule 704(b), the jury "need[ed] no expert witnesses to speculate about a defendant's state of mind. The expert could not testify that Fowler was confused, not culpable." *Id.*

Here, Mr. McDonnell's expert notice states that Kosowsky will "explain the mechanics of applying for bank loans and a bank's consideration of loan documents, thereby rebutting the Government's allegations that any omissions from preliminary loan documents were intentional, fraudulent, or even material." Exh. A at 5. This testimony violates Rule 704(b) and cannot be squared with *Fowler*. Indeed, not only is the proposed testimony on Mr. McDonnell's state of mind improper, but also the testimony on materiality is improper. As a threshold matter, proof of materiality is not required to prove a violation of 18 U.S.C. § 1014, the statute charged here. In this regard, the Supreme Court "has concluded that, under § 1014, a false statement need not be material to a financial institution's decision to advance or loan funds." *Elliott v. United States*, 332 F.3d 753, 759, 764 (4th Cir. 2003) (citing *United States v. Wells*, 519 U.S. 482, 490

(1997) ("Nowhere does [§ 1014] say that a material fact must be the subject of the false statement or so much as mention materiality.")). Rather, § 1014 only requires proof with respect to a false statement to a covered institution that "the *speaker* knows the falsity of what he says and intends it to influence the institution." *Wells*, 519 U.S. at 499 (emphasis added). And proof of the intent to influence does not require proof of an intent to deceive, defraud, or cheat the financial institution. *See United States v. Sparks*, 67 F.3d 1145, 1151–52 (4th Cir. 1995) ("[T]he presence or absence of an intent to deceive is simply irrelevant to the defendant's guilt; the only specific intent that matters for purposes of § 1014 is the intent to influence the bank's actions.").

And even if evidence of materiality in the abstract were relevant—which, as stated above, it is not—as the Fourth Circuit said in *Barile*, "Sheridan's conclusion that the 510(k) submissions did not contain 'materially misleading statements' arguably constitutes a legal conclusion because materiality has a specialized legal meaning, and it is therefore within the district court's discretion to exclude such testimony." 286 F.3d at 761. The same applies to the use of the term "fraudulent." *See, e.g.*, *Perkins*, 470 F.3d at 158 ("[C]onclusory testimony that an investment house engaged in a 'fraudulent and manipulative scheme' involves the use of terms with considerable legal baggage; such testimony nearly always invades the province of the jury.").

Moreover, even if Rule 704(b) did not prohibit expert testimony on a defendant's state of mind in filling out bank loan applications, an accountant whose resume reveals no particular expertise in bank loan applications—much less expertise in a defendant's motivations for omitting facts from an application—could not satisfy the standards for expert testimony under Fed. R. Evid. 702. Compounding these flaws, Kosowsky's testimony about what the bank application requested calls for fact—not expert—testimony, and Mr. McDonnell should not be permitted to bolster garden-variety fact testimony by presenting it through a witness labeled as an expert. *See, e.g., United States v. Garcia*, __ F.3d __, 2014 WL 1924857 (4th Cir. May 15, 2014). It is also far from clear that Kosowsky has the requisite personal knowledge to testify under Fed. R. Evid. 701 as a fact witness about the loan applications at issue here.

C. Kosowksy's proposed testimony about the defendnats' finances is inadequately noticed under Rule 16(b)(1)(C).

Although Kosowsky appears at first glance qualified to testify about the defendants' finances, Mr. McDonnell's expert notice fails to provide any meaningful way to evaluate his conclusions about the defendants' finances. Again, Rule 16(b)(1)(C) requires the defendants to provide the "opinions, the bases and reasons for those opinions, and the witness's qualifications." As the 1993 Advisory Committee Notes for Rule 16 explain, the expert disclosures required by the rule are "intended to minimize surprise that often results from unexpected expert testimony, reduce the need for continuances, and to provide the opponent with a fair opportunity to test the merit of the expert's testimony through focused cross-examination." It is impossible for the United States to evaluate Kosowsky's conclusions about the defendants' finances from an expert disclosure that says a little as Mr. McDonnell's has said here.

If the deficiencies in the expert notice are not remedied and cause prejudice to the United States, Kosowsky's testimony on the defendants' finances should be excluded. *See, e.g., Barile*, 286 F.3d at 758 ("Because the summary of Sheridan's testimony in the letter did not describe Sheridan's opinions beyond stating the conclusions he had reached and did not give the reasons for those opinions as required under Rule 16(b)(1)(C), we concluded, as the district court did, that the letter did not satisfy the rule."). When a district court finds a violation of Rule 16(b)(1)(C), the court has discretion under Fed. R. Crim. P 16(d)(2) in choosing a remedy. *Barile*, 286 F.3d at 758.

Disclosure is particularly important because there is little reason to have confidence in the admissibility of his testimony; other parts of Kosowsky's opinion are on their face improper. He cannot serve as a credibility expert, and nothing in his resume reflects genuine expertise in evaluating criminal immunity provisions or a several-month long, uncontested stay in two civil lawsuits. And just as an accountant cannot serve as an expert on witness credibility, an accountant likewise cannot testify about a defendant's intent in filling out bank applications, which, according to Mr. McDonnell's expert notice, Kosowsky will seek to do.

4. The proposed testimony of Norman Thomas violates the Federal Rules of Evidence.

According to Mr. McDonnell's expert notice, Norman Thomas "will testify that the SOEI [Statement of Economic Interests] contains many vague instructions and that reasonable public officials could vary in their interpretation of those instructions." Exh. A at 6. Mr. McDonnell's expert notice continues that Thomas will address specifically the forms that Mr. McDonnell submitted. "Mr. Thomas will explain that the forms submitted by Mr. McDonnell reflect a reasonable understanding of the SOEI's vague requirements governing the disclosure of loans, securities, and gifts, including those loans, securities and gifts related to Mr. Williams and Star Scientific." *Id.*

This proposed testimony is objectionable for reasons already discussed above. The opinion violates Rule 704(b) and draws conclusions that are unhelpful to the jury. For example, as noted above, the Fourth Circuit has upheld the exclusion of two experts who would have testified in a prosecution for conversion of federal property under 18 U.S.C. § 641 that the relevant "regulations were confusing, vague, and uncertain" and that the defendant's "interpretation of them was 'at least arguably correct.'" *Fowler*, 932 F.2d at 315. As the Fourth Circuit noted, "The expert's proffered testimony differed little from the closing arguments of

Fowler's counsel," and under Rule 704(b), the jury "need[ed] no expert witnesses to speculate about a defendant's state of mind. The expert could not testify that Fowler was confused, not culpable." *Id.* The SOEI that Mr. McDonnell filled out in this case is written in plain English, and the jury can read them (and counsel argue about their meaning) without expert testimony. Moreover, Mr. McDonnell should not be able to present an expert who will testify effectively as if giving an advice-of-counsel defense when Mr. McDonnell never received the advice and considered it before acting. Such testimony would violate Rule 403.

5. All of the proposed testimony from an expert on FDA enforcement practices and from a medical expert are inadmissible for essentially the same reasons that White's and Kosowsky's testimony about Williams's credibility is inadmissible.

In Mr. McDonnell's expert disclosure, he mentions two possible experts that he has not identified but may seek to call at trial. Although the disclosures for these experts are insufficient, the small amount of information that Mr. McDonnell has provided is sufficient to demonstrate the inadmissibility of the proposed testimony.

All that the notice says about these two experts is the following: "In addition, Mr. McDonnell intends to call either an expert on Food and Drug Administration ('FDA') enforcement practices who can testify about the FDA's investigation of Star Scientific, Inc. ('Star Scientific') for introducing adulterated and misbranded products into interstate commerce or, alternatively, a medical expert who can testify that Mr. Williams' claims about Star Scientific's products are not supported by medical science." Exh. A at 1. To explain the deficient expert notice, Mr. McDonnell states, "At this time, the defense does not have sufficient information to identify the expert and summarize the potential testimony, but will provide notice of the expert's identity and expected testimony no later than 15 days after the defendant has received all relevant information from Mr. McDonnell's outstanding and potentially forthcoming Rule 17(c) subpoenas and other discovery." *Id.* at 1–2.

Although Mr. McDonnell has not disclosed much about either of these proposed experts' opinions, the limited disclosures that he has made already demonstrate that the testimony should be excluded. As discussed above, neither medical testimony about Star Scientific's products nor testimony about possible FDA violations are admissible in a trial about the defendants' offenses. The proposed testimony violates Rule 608(b), should be excluded under Rule 403, and appears once again to be improper expert testimony about Williams's credibility.

IV. Conclusion

For the reasons stated above, the testimony of each of Mr. McDonnell's proposed experts should be excluded.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2014, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing ("NEF") to all counsel of record.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**CRIMINAL NO. 3:14-CR-00012**
	)	
ROBERT F. MCDONNELL **MAUREEN G. MCDONNELL**	))	**JUDGE JAMES R. SPENCER**

MEMORANDUM IN SUPPORT OF DEFENDANT ROBERT F. MCDONNELL'S MOTION # 27 – MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO STATEMENTS OF ECONOMIC INTEREST

INTRODUCTION

Defendant and former Virginia Governor Robert F McDonnell stands accused of violating federal anti-bribery laws—not of violating Virginia ethics laws. The Government, however, proposes to introduce into evidence financial disclosure forms—known as Statements of Economic Interest ("SOEIs"), *see* Va. Code § 2.2-3117—that Mr. McDonnell filed while in office, in keeping with his obligations as a Virginia public official. The Government's apparent strategy with regard to the SOEIs is to point to every thing of value that Mr. McDonnell received from Mr. Williams or a third party and did not report on his annual disclosure form, and then spin the omission into evidence of corrupt intent. *See* Indictment ¶ 111(b); Ex. A, Letter from Dana J. Boente to Henry W Asbill et al. dated May 29, 2014 ("Expert Notice and 404(b) Disclosure"), at 3. This approach is impermissible under Rule 403. First, evidence that Mr. McDonnell did not report gifts and loans that he was not obligated to report is simply not sufficiently probative of any alleged corrupt intent to outweigh the potential prejudice and jury confusion such evidence would cause. Second, to the extent that the Government intends to argue that Mr. McDonnell improperly failed to report certain gifts or loans, it has not noticed an expert who could assist the jury in evaluating this truth or falsity of this claim by explaining the complex legal framework surrounding the SOEIs. In the absence of expert testimony showing that Mr. McDonnell failed to comply with his SOEI obligations, it is not clear how his treatment of the SOEI will even be relevant. There is no question, though, that innuendo about Mr. McDonnell omitting information from his SOEI will confuse the jury and unduly prejudice Mr. McDonnell. Evidence pertaining to Mr. McDonnell's reporting of gifts received from third parties is also excludable because it is extrinsic character evidence that is inadmissible under Rule 404(b). Furthermore, the Government's vague notice of its plan to introduce nondisclosures of "things of value from individuals other than Mr. Williams" is inadequate under Rule 404(b). Accordingly, Mr. McDonnell moves to exclude from evidence at trial all of his SOEIs and draft SOEIs as well as any other evidence pertaining to the preparation or submission of these forms.

ARGUMENT

I. Admission of Mr. McDonnell's SOEIs To Show His Alleged Attempt To Conceal Gifts and Loans from Mr. Williams Will Be Confusing To the Jury And More Prejudicial Than Probative.

According to the Government, Mr. McDonnell "[took] steps to conceal from the citizens of Virginia the things of value received from [Mr. Williams] and Star Scientific in order to hide the nature and scope of [his] dealings with [Mr. Williams]." Indictment ¶ 111(b). The Government does not directly allege, however, that Mr. McDonnell violated Virginia's reporting requirements for public officials. (This is not surprising, because Mr. McDonnell's SOEIs are compliant with Virginia law.) Instead, the Government's theory with regard to most of the gifts and loans from Mr. Williams appears to be that Mr. McDonnell deliberately received them in forms that he did not have to report, and that the jury can infer corrupt intent from that fact. *See, e.g.*, Indictment ¶¶ 86, 111(b). Introducing the SOEIs for the purpose of supporting this inference, however, contravenes Rule 403. The mere fact that gifts and loans from Mr. Williams took forms that Mr. McDonnell was not required to report is not probative of an intent to deceive the citizens of Virginia. The Supreme Court flatly rejected this proposition in *Ratzlaf v. United States*, where the government argued that "[s]tructuring [of monetary transactions] is not the kind of activity that an ordinary person would engage in innocently." 510 U.S. 135, 144 (1994). "[A] person who structures a currency transaction [is not] invariably motivated by a desire to keep the Government in the dark," the Court explained. *Id.* at 145. Even if this evidence did have some slight probative value, this value is clearly outweighed by the prejudice its admission would cause to Mr. McDonnell and the risk it would pose of confusing the jury. A jury presented with evidence of a gift or loan on the one hand, and an SOEI that does not report the gift or loan on the other, may leap to the conclusion that there was wrongdoing without understanding the valid reasons that disclosure was not required.

This problem is exacerbated by the fact that the Government has not noticed an expert witness who could offer an opinion regarding the actual requirements of Virginia public officials' reporting obligations.[1] Where a set of regulations is complex, admitting them into evidence "without any expert testimony [will] be misleading and confusing to the jury[,] outweighing their probative value." *Levinson v. Westport Nat'l Bank*, No.3:09-cv-1955(VLB), 2013 U.S. Dist. LEXIS 71208, at *29 (D. Conn. May 20, 2013). *See also, e.g., In re Gadolinium-Based Contrast Agents Prods. Liab. Litig.*, 956 F. Supp. 2d 809, 818 (N.D. Ohio 2013) (holding that evidence was properly excluded because "admitting the medical bills unaccompanied by expert testimony would have risked confusing and misleading the jury"). The reporting requirements for SOEIs are intricate and full of legal jargon. The form itself includes twelve separate schedules and calls upon the filer to make determinations of such ambiguous issues as when "hospitality" has "monetary value," Ex. B, SOEI Form, Definitions and Explanatory Material (definition of "Gift"); when the filer "shares significant financial involvement with [another] individual," SOEI Form, Definitions and Explanatory Material (definition of "Close financial association"); and what a friend's reasons may have been for giving the filer a particular gift, *see* SOEI Form, Sched. E (stating, "Do not list gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position"). The Government, however, eschews any intention to lay a proper foundation for the admission of the SOEIs; it asserts that the "jury can read [the SOEIs]" itself and assess the significance of Mr. McDonnell's disclosures on this lengthy and complicated form without expert assistance. Govt's Mem. in Supp. of Mot. to Exclude Expert Test., Dkt. 222, at 29. This contention is implausible.

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[1] In anticipation of the Government's attempt to introduce the SOEIs into evidence, Mr. McDonnell noticed an expert witness, Norman Thomas, who can provide competent testimony about the complex and ambiguous requirements of Virginia disclosure law. *See* Deft. Robert F. McDonnell's Notice of Intent to Use Expert Test. at Trial, Ex. A to Govt's Mem. in Supp. of Mot. to Exclude Expert Test., Dkt. 222. The Government has challenged the admissibility of Mr. Thomas's testimony under Rule 704(b). *See* Govt's Mem. in Supp. of Mot. to Exclude Expert Test., Dkt. 222, at 28-29. In a separate filing, Mr. McDonnell addresses the Government's 704(b) arguments with regard to Mr. Thomas. *See* Deft. Robert F. McDonnell's Memorandum in Opposition to the Govt's Mot. to Exclude Expert Test. Should the Court grant Mr. McDonnell's motion in limine to exclude all references to the SOEIs, of course, Mr. McDonnell will not seek to introduce Mr. Thomas's testimony.

To take but one example, the Indictment focuses on the fact that Mr. McDonnell, after a family vacation at Mr. Williams' lake house, disclosed on his SOEI a gift of $2,268 for "Lodging and entertainment," which represented "the amount [Mr. Williams] paid for the boat rental for the defendants' use during their private family vacation at [Mr. Williams'] multimillion-dollar home." Indictment ¶ 70. The Indictment does not spell out the significance of this fact, but if the Government means to suggest that Mr. McDonnell underreported or misreported the value of the family's vacation at Mr. Williams' "multimillion-dollar home," then its insinuation begs a host of technical questions of Virginia ethics law.[2] These questions include whether Mr. McDonnell was obligated to estimate and report the use value of a house that Mr. Williams owns and pays to keep up regardless of who stays in it; if so, what metric should Mr. McDonnell have used (the market value for a rental? some prorated share of the annual upkeep costs for Mr.

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[2] If the Government does not contend that Mr. McDonnell improperly reported the value of the vacation, then its purpose in submitting this fact must be simply to smear Mr. McDonnell as a man who receives lavish gifts. Such use of the SOEIs is obviously more prejudicial than probative; it also violates Rule 404's restrictions on the admission of character evidence as explained *infra* at Part II.

Williams?); whether any provision of law or policy suggests or mandates such a metric; and whether the boat rental should have been described otherwise than as "Lodging and entertainment." Without expert testimony, the jury will be ill-equipped to answer such questions. The SOEI evidence will inevitably produce confusion. *See Aldridge v. Baltimore & O. R. Co.*, 789 F.2d 1061, 1068 (4th Cir. 1986), *vacated on other grounds by Chesapeake & O. R. Co. v. Aldridge*, 108 S. Ct. 2812 (1988) ("We think it would have been extremely confusing to the jury to ask it to make these economic adjustments without an explanation by experts as to how such calculations could be made."); *United States v. Naegele*, 471 F Supp. 2d 152, 162 (D.D.C. 2007) (holding that where the jury was required to determine "whether the defendant knowingly made false statements on his [b]ankruptcy [s]chedules, the jury might well be confused without the aid of experts").

Moreover, if the Government is allowed to introduce Mr. McDonnell's SOEIs in support of an argument that he deliberately evaded Virginia ethics laws, the focus of the trial will shift away from the federal-law questions that should be at its heart to an ancillary dispute over the obligations imposed on public officials by Virginia ethics law. Courts have repeatedly held that evidence of a party's compliance or non-compliance with ethical or professional standards that are unrelated to the alleged crime at issue is irrelevant, likely to confuse the jury, and therefore excludable. *See, e.g., United States v. Terry*, No. 1.10-CR-390, 2011 WL 2149361, at *4 (N.D. Ohio May 31, 2011) (excluding evidence of bribery defendant's judicial code violations, including failure to make required disclosures, as likely to confuse jury, "run[ning] the risk that the defendant would be convicted for violating ethical rules, instead of engaging in a bribery scheme"); *United States ex rel. El-Amin v. George Washington Univ.*, 533 F Supp. 2d 12, 23-24 (D.D.C. 2008) (holding that evidence of standard of care for doctors was irrelevant and likely to confuse the jury where the issue at trial was whether the defendants had made false statements under a separate federal regulatory scheme); *In re Welding Fume Prods. Liab. Litig.*, No. 1:03-CV-17000, 2010 U.S. Dist. LEXIS 146067, at *141 n.123 (N.D. Ohio June 4, 2010) (excluding from the plaintiffs' case-in-chief expert testimony that corporations should, as an ethical matter, "do more than comply with applicable laws and regulations" because it was likely to confuse the jury). The question at issue for the jury is whether Mr. McDonnell violated federal anti-corruption law; the Government should not be allowed to mislead the jury with prejudicial evidence purporting to show that Mr. McDonnell violated or sidestepped distinct state legal requirements.

II. Admission Of Mr. McDonnell's SOEIs To Show His Alleged Attempt To Conceal Gifts And Loans From Individuals Other Than Mr. Williams Is Also Improper.

The Government has also noticed its intention to introduce at trial "evidence regarding the defendants' concealment of things of value received from individuals other than Mr. Williams" by omitting them from Mr. McDonnell's SOEIs. Ex. A, Expert Notice and 404(b) Disclosure at 3. The Government states that it believes this alleged "concealment" represents intrinsic evidence of the crimes with which Mr. McDonnell has been charged; in the alternative, the Government states, the SOEIs are admissible under Fed. R. Evid. 404(b). *Id.* It is wrong on both counts.

Evidence purporting to show that Mr. McDonnell concealed things of value from third parties cannot be intrinsic evidence of his alleged conspiracy with Mr. Williams. "Other acts are intrinsic when they are inextricably intertwined or both acts are part of a single criminal episode or the other acts were necessary preliminaries to the crime charged." *United States v. Lipford*, 203 F.3d 259, 268 (4th Cir. 2000) (internal quotation marks omitted). Even if it were true that Mr. McDonnell improperly failed to report gifts or loans from third parties, such evidence would not be "inextricably intertwined with," "part of," or a "necessary preliminary to" any supposed corrupt agreement with Mr. Williams, for two important reasons. First, Mr. McDonnell is charged with violating federal anti-bribery law by agreeing to a quid pro quo with *Mr. Williams*—not with any other individual. It is simply illogical to contend that any alleged avoidance of reporting requirements with respect to gifts from *third parties* was part of a scheme "to conceal from the citizens of Virginia the things of value received from *[Mr. Williams] and Star Scientific* in order to hide the nature and scope of [his] dealings with *Mr. Williams*." Indictment ¶ 111(b) (emphasis added). Second, the federal crimes charged do not consist of accepting things of value; they consist of accepting bribes in exchange for some benefit that the government official can confer by virtue of his public office. There is no allegation that Mr. McDonnell offered to trade favors for any of the third-party gifts or loans that the Government claims he improperly failed to report. This third-party evidence therefore cannot be part of the same criminal episode as his alleged corrupt agreement with Mr. Williams; it remains extrinsic evidence of unrelated, alleged bad acts.

Because evidence relating to Mr. McDonnell's nondisclosure of third party gifts on his SOEIs is extrinsic evidence of alleged bad acts, it is only admissible if it is "(1) relevant to an issue other than the general character of the defendant; (2) necessary to prove an element of the charged offense; and (3) reliable." *United States v. Hodge*, 354 F.3d 305, 312 (4th Cir. 2004) (citation omitted). It also must pass muster under Rule 403. *Id.* The third-party SOEI evidence fails on the first prong: relevance to an issue other than character.

The Government will likely contend that the evidence shows Mr. McDonnell's alleged corrupt intent, an essential element of the bribery charges against him. But that is incorrect. "[B]ecause of the complex and difficult distinction between evidence of character and evidence of intent," courts must use extra care when considering the admission of evidence of intent under Rule 404(b). *United States v. Queen*, 132 F.3d 991, 995 (4th Cir. 1997). It is important to distinguish "between the kinds of evidence that are introduced to show a particular intent and those that are introduced only to show a much more generalized intent (and therefore propensity to commit crime in general)." *Id.* at 996 (citation omitted). Here, what the Government must prove is that when Mr. McDonnell accepted gifts and loans from Mr. Williams, he intended to trade official acts for these payments. *See United States v. Bailey*, 990 F.2d 119, 124 (4th Cir. 1993) (stating, in a public corruption case, that "the government was required to prove beyond a reasonable doubt that [the defendant] *intended to accept the money as a bribe or in payment for his legislative services* in order to secure a conviction" (emphasis added)). The Government's proposed use of the SOEIs (assuming the Government could establish any actual impropriety related to them) would tend to prove a different intent—that Mr. McDonnell intended not to comply fully with the requirements of Virginia ethics law in general. In this regard, this case is analogous to *United States v. Wright*, 665 F.3d 560, 576 (3d Cir. 2012) where the Third Circuit explained that evidence pertaining to motive in a trial for honest services fraud would be inadmissible under Rules 403 and 404 at a trial for "traditional" wire fraud. Not only would such evidence likely amount to inadmissible character evidence, the Third Circuit explained, but "[a]lso, insofar as the evidence portrays [the defendants] as corrupt, any probative value on motive could be outweighed by its danger of unfair prejudice." *Id.* The same is true here. A jury that believed Mr. McDonnell concealed gifts or loans from unrelated parties might conclude that he is generally corrupt and improperly convict him on that basis.

Nor is evidence pertaining to Mr. McDonnell's treatment of third-party gifts or loans on his SOEIs admissible "to show knowledge, common scheme or plan." *United States v. Rawle*, 845 F.2d 1244, 1247 (4th Cir. 1988). Because there is no allegation that Mr. McDonnell accepted a bribe from any party other than Mr. Williams, there is no sense in which his SOEI filings pertaining to other parties could be evidence of a scheme or plan similar to that he is charged with in this case. And even if this evidence were arguably relevant on the ground that it goes to Mr. McDonnell's supposed familiarity with the means of concealment he allegedly used to cover up his arrangement with Mr. Williams, for the reasons stated above the risk of prejudice far outweighs this minimal probative value.

Moreover, the Government's proposed use of the SOEIs to show "concealment" of third-party gifts suffers from additional Rule 403 problems similar to those detailed in Part I. If the Government attempts to show that Mr. McDonnell violated the requirements of Virginia ethics law without introducing any expert testimony on the requirements of Virginia ethics law, its use of the SOEIs will surely cause prejudice and jury confusion. And if the Government attempts to show that Mr. McDonnell deliberately structured any given transaction to avoid state-law reporting requirements, such evidence would be even less probative of his alleged corrupt intent than the supposed structuring evidence pertaining to gifts and loans from Mr. Williams. Not only is structuring itself not probative of intent to evade the law, but structuring of transactions with third parties cannot be relevant to any alleged attempt to conceal benefits obtained from Mr. Williams. These shortcomings provide an independent basis for exclusion of this evidence. *See United States v. Basham*, 561 F.3d 302, 326 (4th Cir. 2009) (noting that "[e]vidence sought to be admitted under Rule 404(b) must also satisfy Rule 403's requirement").

III. The Government's Letter Fails To Give Reasonable Notice Under Rule 404(b).

In addition to the problems outlined *supra*, the Government's May 29 letter violates Rule 404(b) by failing to give "reasonable notice of the general nature of any [404(b)] evidence that the prosecutor intends to offer at trial." Fed. R. Evid. 404(b)(2)(A). It states merely that the

McDonnells "received things of value from individuals other than Mr. Williams and failed to report them on Mr. McDonnell's Statement of Economic Interest." Ex. A, Expert Notice and 404(b) Disclosure at 3. But the SOEI did not require Mr. McDonnell to disclose "gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position." SOEI Form, Sched. E. To the extent this ancillary issue is relevant, then, to defend himself Mr. McDonnell must know who gave what; knowing that "individuals other than Mr. Williams" gave "things of value" gives Mr. McDonnell no way to prepare for trial on this issue. This failure is highlighted by the one example the Government supplies, a vacation paid for by William Goodwin. That example gives the "who" and the "what" Mr. McDonnell needs to prepare his defense, and does not violate the reasonable-notice requirement. But the Government has not given reasonable notice of any other 404(b) evidence.[3]

CONCLUSION

For the foregoing reasons, the Court should exclude from evidence at trial all of Mr. McDonnell's SOEIs and draft SOEIs as well as any other evidence pertaining to the preparation or submission of these forms.

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[3] On a meet and confer call, counsel for the Government represented to Mr. McDonnell's counsel that the Goodwin vacation was the only evidence it sought to include under Rule 404(b). The Expert Notice and 404(b) Disclosure, however, only cites the Goodwin vacation as an example. *See* Ex. A at 3. If the Government confirms its representation in writing, however, Mr. McDonnell will withdraw his argument on reasonable notice.

Dated: June 20, 2014

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CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 20th day of June, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: June 20, 2014

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	**CRIMINAL NO. 3:14-CR-00012**
v.	)	
	)	**JUDGE JAMES R. SPENCER**
ROBERT F. MCDONNELL	)	
MAUREEN G. MCDONNELL	)	

ROBERT F. MCDONNELL'S MEMORANDUM IN OPPOSITION TO THE GOVERNMENT'S MOTION TO EXCLUDE EXPERT TESTIMONY

INTRODUCTION

The Government has charged Mr. McDonnell with bribery on the basis of what is, by any objective measure, a novel understanding of the federal bribery laws. Mr. McDonnell has a right to defend himself against those charges. The Government may, of course, vigorously cross-examine Mr. McDonnell's witnesses and present its own evidence. It will then be up to the jury to decide the outcome. But the Government should not be able to bring such charges and *also* stop Mr. McDonnell from presenting relevant, admissible evidence in his defense.

The Government offers a wide range of reasons for precluding Mr. McDonnell from presenting expert testimony in his defense. Those various attacks fail. The expert testimony that Mr. McDonnell seeks to introduce is indistinguishable from expert testimony that the Government itself regularly presents and that the courts of this district and others routinely admit. Each of Mr. McDonnell's proposed experts will be helpful to the jury because each will provide testimony that elucidates factual issues beyond the ken of the average person. Few laypeople are well-versed in, for example, the nuances of Virginia's disclosure laws, the settled-practices of elected officials for dealing with the crush of donors and benefactors that all but self-funded politicians must cultivate, or the value to a large civil defendant in obtaining a lengthy stay of civil discovery despite having been sued in a "rocket docket" jurisdiction.

It is the Government—not Mr. McDonnell—that seeks to confuse the jury by throwing a pile of wide-ranging evidence in the jury's lap without any guidance on that evidence's broader context. As this Court explained in denying the Motion to Dismiss, "[w]hether Defendants' conduct in fact constituted 'the corruption of official positions through misuse of influence in governmental decision-making' is a question for the jury based on the evidence adduced at trial." Order on Mot. to Dismiss, Dkt. 175, at 2 (quoting *United States v. Carson*, 464 F.2d 424, 434 (2d

Cir. 1972)). The expert witnesses that Mr. McDonnell has noticed are a critical component of answering that question. The Government's Motion should therefore be denied.[1]

ARGUMENT

Federal Rule of Evidence 702 allows opinion testimony by a qualified expert if (a) "the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue"; (b) "the testimony is based on sufficient facts or data"; (c) "the testimony is the product of reliable principles and methods"; and (d) "the expert has reliably applied the principles and methods to the facts of the case." This rule "embodies a liberal standard of admissibility for expert opinions." *Nimely v. City of New York*, 414 F.3d 381, 395 (2d Cir. 2005). Nevertheless, the Government challenges each of the experts that Mr. McDonnell has noticed in whole or in part. Those challenges should be rejected.

I. The Government's Complaints About The Sufficiency Of The Disclosure Are Meritless.

The Government repeatedly criticizes the sufficiency of Mr. McDonnell's expert notice, but those criticisms are meritless. The defense's expert disclosure—supported by detailed CVs summarizing each expert's qualifications—amply satisfies Rule 16's requirement that the notice "must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications." Fed. R. Crim. P 16(a)(1)(G). Mr. McDonnell's disclosure explains each expert witness's opinion, provides the bases for that opinion, and the attached CVs make each expert's qualifications clear. That disclosure, particularly considered alongside the defense's supplemental disclosures and this brief, amply satisfies Rule 16(a)(1)(G).

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[1] As Mr. McDonnell's Notice explains, he does not yet have sufficient information to determine whether he will be calling an FDA expert and, if so, what precisely that expert would say. Mr. McDonnell therefore respectfully requests that the Court delay consideration of the proposed FDA expert until such time that the defense has adequate information to make a final determination, makes that final determination, and provides proper notice to the Government of his intentions and the scope of the proposed testimony.

Indeed, the sufficiency of these disclosures is confirmed by simply comparing them to the disclosures the Government provides when calling experts. For example, in its prosecution of former Congressman William Jefferson, the Government noticed three expert witnesses, including "Abner J. Mikva," a former congressman who would "testify as an expert concerning a general description of the activities of a Member of the U.S. House of Representatives and its various Caucuses and Committees," and would provide:

> his opinion that constituent services are routinely performed by Members and that settled practice dictates that constituent services are matters and decisions routinely brought before Members in their official capacity. Judge Mikva is also expected to testify about his opinion that the types of official acts alleged to have been performed by Defendant Jefferson in the Indictment, including paragraphs 49 and 149 of the Indictment, are among the constituent services that are routinely performed by Members and that settled practice dictates are matters and decisions routinely brought before Members in their official capacity.

Gov't Notice, *United States v. Jefferson*, Case No. 1:07-cr-00209, pp. 1-2, Dkt. 100 (E.D.Va. November 16, 2007) (Ex. A). The Government's notice when it replaced Mr. Mikva with a different former Congressman is materially identical. *See id.* at Dkt. 299 (E.D.Va. February 12, 2009) (Ex. B). The notices that the Government customarily provides in other cases are similarly succinct. *See, e.g.*, *United States v. Yu*, Case No. 1:08-cr-00196, Dkt. 16 (E.D.Va. January 16, 2009) (Ex. C); *United States v. Waddell*, Case No. 1:09-cr-00435, Dkt. 27 (E.D. Va. November 19, 2009) (Ex. D). Review of these standard expert notices makes clear that Mr. McDonnell's are more than sufficient to satisfy his obligations under Rule 16(b)(1)(C).

Finally, to the extent that the Government has specific requests for additional information—information beyond what this Memorandum and the defense's supplemental disclosures provide—the defense will work diligently to provide answers. Prior to filing its Motion to Exclude, the Government had requested additional specifics about Mr. Kosowsky, which the defense promptly provided on June 12. *See* Mem. at Exhibit B. The defense has today further supplemented its disclosure regarding each expert to address the issues the Government raises in its Motion. *See* Def. Robert F McDonnell's Second Supp. Expert Notice (June 20, 2014) (Ex. E). That is in addition, of course, to the detail this filing provides.[2]

II. The Government's Various Objections To Mr. McDonnell's Expert Testimony Are Meritless.

The Government makes wide-ranging arguments for excluding most of Mr. McDonnell's expert testimony, but its objections focus almost entirely on testimony nobody has proposed. Once the straw men are brushed away, the Government's objections collapse. Mr. McDonnell's expert testimony is standard fare that he is fully entitled to present.

A. Former Attorney General Mark Earley Will Assist The Jury In Understanding The Practices Of Virginia Governors.

Mr. Earley's testimony in Mr. McDonnell's defense—indistinguishable in many respects from expert testimony the Government presented when it prosecuted William Jefferson—will help the jury understand the broader context for the Government's allegations. Mr. Earley served as the top legal official in the Commonwealth of Virginia. He is experienced in advising Virginia's Governor and other Commonwealth officials on their legal obligations. Mr. Earley is thus qualified to opine on the settled practices and general conduct of Virginia officials. The Government does not seem to dispute Mr. Earley's qualifications, instead training its fire on excluding that qualified testimony. Those arguments fail.

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[2] The Government claims that "Before filing this motion, the United States requested greater disclosure from Mr. McDonnell, but he declined to provide any further details." Mem. at 23. It is not clear what "request" the Government is referencing, as the only expert witness about whom the Government specifically requested additional information about prior to its Monday filing was Mr. Kosowsky.

1. Mr. Earley's Proposed Testimony Does Not Offer A Legal Conclusion.

The Government is wrong to claim that Mr. Earley proposes to testify about what constitutes an "official act" under federal law. Mem. at 6. Nothing in Mr. Earley's expert notice says that he intends to opine on what constitutes an "official act" and the defense specifically disavows any intention of eliciting such testimony. (And to the extent that any of Mr. Earley's answers *would* testify as to a legal conclusion—which they will not—the Government can object to that testimony in real time at trial.) In reality, Mr. Earley will simply explain the factual context of Mr. McDonnell's allegedly criminal conduct. That context will enable the jury to assess the plausibility of the alleged scheme and the many inferences the Government will ask the jury to draw. The Fourth Circuit—and the Government itself—have routinely recognized the propriety of such testimony provided it is phrased appropriately.

(a) Courts routinely permit expert testimony about common practices in a specialized field.

Mr. Earley will first testify about the common practices of elected officials in Virginia when they are interacting with the donors and benefactors every politician must cultivate. He will explain that politicians rely on a variety of mechanisms to interact with their beseechers without running afoul of legal and ethical obligations. These tactics involve many of the practices the Government has objected to here, including directing a subordinate to take a meeting with a supporter from which both the politician and the subordinate know nothing will result. They also involve declining to make specific commitments on behalf of the government to one's supporters; instead opting to route any requests for governmental assistance through the subordinate most qualified to assess the legitimacy of those requests and make an independent decision that is based entirely on the merits. Mr. Earley will further explain that politicians frequently deploy these practices as defensive mechanisms—relying on their staff to turn back requests from a supporter. The average person has not been a high-level politician, of course, and thus will not be familiar with the dance that politicians must perform daily to avoid offending the thousands of donors and benefactors that electoral politics requires cultivating.

The need for the jury to understand these issues is especially acute in this case, because Virginia has decided to permit its elected officials to take unlimited gifts from their benefactors. The Government's central argument will be that the jury should infer criminality from evidence showing that Mr. Williams provided gifts and loans to Mr. McDonnell. As the Government itself has argued, that inference is completely dependent on the context in which Mr. McDonnell acted: "[W]hat matters here is the context in which a particular meeting or particular event or any particular action by a government official, the context in which that occurs." May 19, 2014 Hr'g Tr. at 26; *see also, e.g., id.* at 29 (conduct depends on "the particular context"); *id.* at 30 (courts say "it depends on the context"); *id.* at 31 ("they can be in context"); *id.* (you have to "put it in context"); *id.* ("the question is the context in which that meeting occurs"). If this case will turn on context, then the jury must hear sufficient evidence to understand the *entire* context. The Government cannot argue context and then confine the jury to some warped, piecemeal version of that context. Mr. Earley—and any counter-expert the Government chooses to designate—will be essential in supplying that general context.

The Government routinely uses precisely this type of expert witness, as it did, for example, in *United States v. Jefferson*, where the court found "that Mr. McHugh's proposed testimony, which will be based on his specialized knowledge as a former congressman, will assist the jury to understand the evidence and determine the facts in issue in this case without merely telling the jury what result to reach." 623 F Supp. 2d 683, 687 (E.D. Va. 2009). At trial, Congressman McHugh testified in the same way as Mr. Earley is expected to testify here. For example, Congressman McHugh opined that requests for assistance are "matters routinely brought before members of Congress in their official capacity," that it is a "customary and settled practice" for "members of Congress to intercede with governmental agencies on behalf of the individuals and businesses that request their assistance," and that requests for assistance from individuals or businesses outside of a member's district "are matters properly pending before the member in his official capacity." Hr'g Tr. at 177:20-178:4, 178:18-179:2, 185:9-18, *United States v. Jefferson*, Case No. 1:07-cr-00209 (E.D.Va. July 16, 2009) (Ex. F). The Court also relied on the fact that the Government "does not intend to ask Mr. McHugh to give an expert opinion regarding whether any of defendant's alleged acts constituted 'official acts.'" 623 F Supp. 2d at 686. The defense provides a similar pledge here, as noted above. There, like here, "Mr. McHugh's proposed testimony that certain activities are 'routinely performed' by congressmen neither tracks the language of the applicable statute, nor arguably states a legal conclusion." *Id.* Mr. McHugh's testimony was thus properly admissible, as is Mr. Earley's.

Courts in other contexts have made similar points. For example, the district court in *Jefferson* analogized to the use of expert witnesses in prosecuting doctors who allegedly unlawfully distribute medications. *See* 623 F Supp. 2d at 688. In *United States v. McIver*, the Fourth Circuit held that the district court had properly admitted the expert testimony of an anesthesiologist who testified that the defendant's treatments were "illegitimate," "inappropriate," and "outside the course of legitimate medical practice." 470 F.3d 550, 556, 562 (4th Cir. 2006); *see also id.* at 562 n.15 (citing *United States v. Alerre*, 430 F.3d 681, 686 (4th Cir. 2005) and *United States v. Tran Trong Cuong*, 18 F.3d 1132, 1135 (4th Cir. 1994), both of which allowed similar testimony). The court explained that although the doctor "used terms similar to that which this court has employed to express the underlying issue, none is sufficiently specialized to render his testimony inadmissible"; to the contrary, "the language [ ] employed falls within the limited vernacular that is available to express whether a doctor acted outside the bounds of his professional practice." *McIver*, 470 F.3d at 562. The Government's own authorities confirm this commonsense distinction. *See* Mem. at 7 ("Rule 704 justifies differentiating between the officers' testimony that they saw no 'law enforcement' or 'legitimate' reason for [ ] kicks and testimony that [those kicks] were 'objectively unreasonable.'" (quoting *United States v. Perkins*, 470 F.3d 150, 160 (4th Cir. 2006)).

The Government claims that Mr. Earley's testimony is different from Mr. McHugh's in *Jefferson* because Mr. Earley's testimony does not consist of "straightforward factual content." Mem. at 10. That, however, is plainly wrong. Mr. Earley's testimony about how politicians interact with their supporters and what strategies politicians use to avoid offending benefactors is *entirely* factual. It is indistinguishable in this respect from Mr. McHugh testifying that "Jefferson's obligations as a congressman included constituent services, which 'involves people who live in your own congressional district coming to you or to your staff, asking for assistance on matters which relate to the Federal Government.'" *United States v. Jefferson*, 674 F.3d 332, 357 (4th Cir. 2012). There is nothing "legal" about testimony concerning the transactional nature of politics or the ways that Virginia politicians interact with persistent benefactors.

In short, Mr. Earley will not be opining on whether Mr. McDonnell undertook an "official act" or on how that term ought to be defined. Mr. Earley will, rather, testify about the overall context of the Government's allegations—precisely "what matters here." Transcript of May 19, 2014 Hearing at p. 26 (Government). That testimony does not present an inadmissible legal conclusion and should therefore be admitted.[3]

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[3] Should the Court have doubts, the Government's Opposition to excluding Mr. McHugh

(b) Courts routinely permit expert testimony about the common practices of criminals.

Mr. Earley will next opine on what sorts of practices would be consistent with the absence of fraudulent intent. Mr. Earley has no knowledge of Mr. McDonnell's actual beliefs or intentions—a point the defense will make clear—but he is amply qualified to opine about the common practices of Virginia politicians. Such testimony will plainly be helpful and factual.

As the Government recognizes, the corruption charges it has leveled against Mr. McDonnell are "specific intent" crimes. Gov't Opp. to Mot. to Dismiss, Dkt. 146, at 29 (April 24, 2014). That means the Government must prove either a specific "intent to defraud" or the receipt of benefits "***knowing that the payment was made in return for official acts.***" *Id.* (emphasis in original). If Mr. McDonnell was operating in good faith, then he did not possess the requisite specific intent and is innocent of the charges. At trial, the Government will seek to prove Mr. McDonnell's criminal intent (and lack of good faith) by asking the jury to draw inferences from Mr. McDonnell's objective conduct. Because the Government has no direct evidence of intent—*e.g.*, a confession, wiretap evidence, or other direct admissions—inferences from Mr. McDonnell's conduct will be central to the Government's case.

Where the jury will have to make inferences about a defendant's subjective intent from that defendant's objective conduct, it is proper for expert witnesses to opine about the general significance (or lack of significance) of similar conduct. For example, if the Government is going to argue to the jury—as it surely will—that Mr. McDonnell arranging a meeting for Mr. Williams supports an inference of Mr. McDonnell's subjective "intent to defraud," then Mr.

(continued...)

in *Jefferson*—which makes similar arguments for admissibility of such testimony—should dispel them. *See* Opp'n to Mot. to Exclude, *United States v. Jefferson*, Case No. 1:07-cr-00209, Dkt. 334 (E.D. Va. March 6, 2009) (Ex. G).

McDonnell is entitled to present evidence rebutting that inference via expert testimony about the general significance to politicians of arranging meetings for benefactors. For example, Mr. Earley will testify that arranging meetings is a common way that politicians *avoid* performing favors for benefactors—by referring them to officials who will reject the benefactors' request, or, at a minimum, ensuring that if a benefactor receives a benefit, it is only through the independent decision of the government official charged with that area of responsibility. It will be for the jury to decide, however, whether the evidence concerning Mr. McDonnell supports an inference of criminal intent (as the Government will argue) or innocent intent (as the defense will contend). Since the average juror will be unfamiliar with how politicians and supporters interact, expert testimony on this topic will clearly help it "to understand the evidence." Fed. R. Evid. 702(a).

Such testimony does not offer legal conclusions. The Fourth Circuit has explained that the legal conclusions analysis depends on (1) "whether the question tracks the language of the legal principle at issue or of the applicable statute," and (2) "whether any terms employed have specialized legal meaning." *United States v. Barile*, 286 F.3d 749, 760 (4th Cir. 2002). Mr. Earley will take care to avoid using "the language of the legal principle at issue." As the Government itself recognizes, an expert could permissibly testify that a police officer's use of force was not "legitimate," so long as the expert did not use the phrase "excessive force." Mem. at 7 Mr. Earley can likewise testify that referring a benefactor for a meeting shortly after receiving a gift is consistent with a politician who believes he is acting appropriately, so long as he does use the phrases "intent to defraud" or "official act." *Compare, e.g.*, *Barile*, 286 F.3d at 761 ("An example of a question that *should* be excluded is: 'Did T have capacity to make a will?'" (emphasis added)), *with id.* ("[Q]uestions that *need not* be excluded are: 'Did T have sufficient mental capacity to know the nature and extent of his property?' or 'Did T have sufficient mental capacity to know the natural objects of his bounty?'" (emphasis added)).[4]

The Government offers two other arguments, neither of which have anything to do with whether Mr. Earley's opinions state legal conclusions. *First*, the Government attacks Mr. Earley's opinions as being "undercut" by the Fourth Circuit's opinion in *Jefferson*, Mem. at 8 n.2, and argues that his opinion actually "***supports***" the Government's allegations, *id.* at 9. But those are just jury arguments about the correctness of Mr. Earley's opinions. They have nothing to do with whether those opinions state "legal" conclusions. *Second*, the Government argues that "misunderstanding" the "federal bribery laws is no defense." *Id.* at 8. That, however, is irrelevant. Even assuming that the conduct Mr. McDonnell allegedly engaged in constitutes "official action," the Government *still* must prove that he acted with the specific intent to defraud. If Mr. McDonnell acted in good faith, then he is innocent. Mr. Earley's testimony will relate solely to whether certain practices are consistent with innocent intentions.

(c) Testimony about the settled practices of Virginia Governors is exactly what the Government provided expert testimony about in *Jefferson*.

Finally, Mr. Earley will also testify that several of the actions the Government has alleged Mr. McDonnell undertook in exchange for benefits are not "settled practices" of Virginia Governors. Specifically, he will opine that it is not a settled practice of Virginia Governors to lobby university professors to conduct specific clinical research. He will further opine that it is not a settled practice of Virginia Governors to try to persuade the Tobacco Commission—an independent agency—to fund particular research projects. This is precisely the sort of testimony the Government presented in *Jefferson*, which the Fourth Circuit cited approvingly. 674 F.3d at 357 ("[T]he government presented expert testimony on the nature of congressional duties.").

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[4] The Government disagrees, offering a hypothetical about a prosecutor arranging a meeting with his supervisor in exchange for a bribe. *See* Mem. at 11. But that hypothetical proves Mr. McDonnell's point. The Government's hypothetical prosecutor must have acted with "corrupt intent," which means the prosecutor was innocent if he had innocent intent. Such a prosecutor *could* call an expert to testify that prosecutors often set up meetings with supervisors in exchange for gifts as part of the routine discharge of their duties. (That testimony might be implausible, of course, but plausibility is not part of the "legal conclusions" analysis.) Such testimony does not "clear[] the way for prosecutors corruptly to take payments for meetings," *id.*, any more than a criminal defendant's testimony that he acted in good faith "clear[s] the way" for the same. That is because the jury is *always* free to reject a witness's testimony.

The Government does not appear to object to this testimony on Rule 704(a) grounds, confining its argument to the claim that Mr. Earley's notice is internally inconsistent. *See* Mem. at 9-10. The Government is wrong. While Mr. Earley correctly notes that Governors routinely arrange meetings, the expert notice never suggests that it is a settled practice for Governors to attempt to influence the research decisions of university professors or decisions by the Tobacco Commission to fund medical research. And that testimony is directly relevant and admissible. After all, the Government's theory is that Mr. Williams and Mr. McDonnell schemed together "to advance [Mr. Williams'] effort to obtain research studies and other assistance from state government." Opp'n to Mot. Dismiss, Dkt. 146, at 3. Mr. Earley's testimony that the critical steps in this supposed plan fall outside the "settled practices" of a Virginia Governor is a permissible component of Mr. McDonnell's defense.

2. Mr. Earley's Testimony Does Not Violate Rule 704(b) Because He Will Not Testify About Mr. McDonnell's Mental State.

The Government next argues that Mr. Earley's testimony about whether certain conduct is consistent with innocent intent would violate Rule 704(b). The Government is mistaken. Such testimony is commonplace in the context of specific intent crimes. It complies with Rule 704(b) because it does not opine on *the defendant's* state of mind during the alleged incident (as would psychiatric evidence, the Rule's real focus), but is, rather, confined to assisting the jury in assessing the significance of certain conduct. Mr. Earley has not examined Mr. McDonnell, does not purport to know whether Mr. McDonnell acted with innocent intent, and will not speculate about what Mr. McDonnell personally believed. What Mr. Earley *does* know, however, having advised a wide range of Virginia elected officials over his years as Attorney General, is what sort of conduct by a Virginia politician would be consistent with innocent intentions.

Courts routinely admit this sort of expert testimony when specific intent crimes are at issue. For example, in cases charging possession of drugs with the intent to distribute, courts have consistently permitted expert witnesses to opine on whether "the circumstances indicated that this crack probably would be distributed rather than used by [the defendant]." *United States v. Brown*, 7 F.3d 648, 653 (7th Cir. 1993). As *Brown* explained, such testimony "merely explained [the expert's] analysis of the facts supporting the *inference of an intention to distribute*, without directly addressing the issue of [the defendant's] actual mental state." *Id.* (emphasis added). Or as the Fourth Circuit has held, "the officer's testimony here did not offer an opinion as to [ ] intent" because he "testified only that the evidence presented was inconsistent with personal use." *United States v. Alexander*, 87 F App'x 889, 890 (4th Cir. 2004) (unpublished). The Fourth Circuit has likewise approved of this sort of testimony via hypothetical questions, such as whether conduct constitutes "a scheme to evade the registration requirements" of securities law. *United States v. Offill*, 666 F.3d 168, 176-77 (4th Cir. 2011). The only restriction is that the expert not opine on the defendant's subjective intent. *Id.* at 177

The Government's contrary authorities are easily distinguished. *First*, the quotation the Government lifts from *McIver* relates solely to whether the word "extortion" states a "legal conclusion"; that case had nothing to do with Rule 704(b). 470 F.3d at 562. The court's opinion did not even *mention* Rule 704(b). *Second*, the proposed experts in *United States v. Fowler* would have testified about what that defendant *personally* believed. 932 F.2d 306, 315 (4th Cir. 1991) ("The witnesses would have testified that [the defendant's] interpretation was 'at least arguably correct.'")). The Court's ruling was thus limited to precluding experts from opining that the defendant personally "did not have the mental state constituting an element of the crime." *Id.* It said nothing about general testimony concerning whether certain conduct is consistent with innocent intentions. *Finally*, the Eighth Circuit's decision in *United States v. Valverde* involved an expert who would "tell the jury whether [the defendant's] conversations with the guards were in fact bribery attempts," 846 F.2d 513, 517 (8th Cir. 1988)—thus *directly* opining about that defendant's subjective intent and, indeed, the ultimate issue in the case.

3. Mr. McDonnell Is Not Calling Mr. Earley To Support An "Advice Of Counsel" Defense.

The Government also objects to the portion of Mr. Earley's testimony concerning intent and common practices (addressed in Section I.A.1.b) on the ground that it "attempts to inject an inadmissible advice-of-counsel defense." Mem. at 13. Mr. McDonnell, however, is not asserting an "advice of counsel" defense. He is, rather, merely seeking to show the jury that he is innocent because he acted in good faith. Admissible expert testimony—which Mr. Earley's is—does not become inadmissible because it fails to satisfy the requirements of an affirmative defense that the defendant *has never invoked*.

4. Mr. Earley's Testimony About The Tobacco Commission And State Universities Is Reliable And Admissible.

Mr. Earley was the top legal official in the Commonwealth of Virginia. He is intimately familiar with the inner-workings of the Commonwealth's government and is an expert on how the legal entities that comprise Virginia interact with each other. He is likewise an expert on the legal authority that each of Virginia's elected officials possess (or do not possess) over each other and over Virginia's institutions. His testimony on these issues is thus supported by sufficient specialized knowledge and will be helpful for lay jurors attempting to understand the intricacies of Virginia state government.

The Government's chief counter-argument has nothing to do with this opinion's "reliability" (as the Government claims) and is, rather, couched entirely in the Government's contrary factual opinion. The Government has apparently reviewed the Virginia code and concluded that Mr. Earley is wrong when he says that Virginia's Governor lacks "meaningful influence" over the Tobacco Commission or "control" over what research professors at UVA and VCU decide to undertake. That is an argument the Government is free to make to the jury. Should the Government wish to designate a counter-expert who will opine that Virginia's Governor *does* have "meaningful influence" over the Tobacco Commission and *does* exercise "control" over each UVA professor's research agenda, it is welcome to do that. Disagreement with an expert's opinion does not make that opinion unreliable and the Government cites no cases suggesting it does. The Government should not be permitted to argue that Mr. McDonnell exerted influence over the Commission and researchers while excluding contrary evidence.

The Government also argues that the Court should forbid Mr. Earley from testifying about the Virginia Governor's ability to influence the Tobacco Commission or UVA and VCU on Rule 403 grounds. But Rule 403 warrants excluding testimony only if that testimony's "probative value is *substantially outweighed* by a danger of confusing the issues" or "misleading the jury." Fed. R. Evid. 403 (emphasis added). That is not the case here. Mr. McDonnell's ability to obtain the research studies and tobacco commission funding is *central* to the plausibility of the Government's alleged scheme. If Mr. McDonnell had no ability to obtain these things for Mr. Williams, then it makes no sense that Mr. Williams was bribing Mr. McDonnell to get them. Just imagine that the Government claimed Mr. Williams bribed Mr. McDonnell for assistance with obtaining tenure at Harvard. The fact that Mr. McDonnell has no influence over tenure decisions at Harvard would obviously be relevant to the jury's decision about whether such a scheme existed, since it would make no sense to bribe Mr. McDonnell in order to influence those decisions. Mr. Earley's testimony about the Virginia Governor's lack of "meaningful influence" over the Tobacco Commission and inability to "control" the decisions of university professors is no different. Such evidence will not "confuse" or "mislead" the jury; rather, it will enable the jury to evaluate the Government's evidence in "context," which is, after all, "what matters." May 19, 2014 Hr'g Tr. at 26.

The Government's other arguments should be rejected out of hand. *First,* the Government's objection that Mr. Earley's testimony cannot inform what constitutes an "official act" misrepresents Mr. Earley's proposed testimony. His testimony has nothing to do with whether Mr. McDonnell's actions were "official"; it has to do with whether the alleged scheme is plausible. This testimony "will rebut the Government's allegation that Mr. McDonnell schemed with Mr. Williams to obtain grants from the Commission." Mem. Ex. A at 3. *Second,* the fact that Mr. Williams' understanding—and Mr. McDonnell's understanding of what Williams believed—is what matters, Mem. at 15, makes no difference. Mr. Williams was a sophisticated person drawing on the assistance of a team of lobbyists at McGuireWoods, including former Attorney General Jerry Kilgore, whose brother (Terry Kilgore) serves as Chairman of the Tobacco Commission. Testimony about whether Mr. McDonnell had the ability to actually help Mr. Williams achieve his supposed objectives is *essential* to evaluating the evidence. The same is true for the Government's oft-repeated statement that it need not prove fulfillment of the *quid pro quo. Id.* True enough, but if the supposed scheme's objective was utterly implausible—as, in Mr. McDonnell's view, this so-called scheme was—then that severely undermines the conclusion that such a scheme existed, *regardless* of whether its alleged objective was realized.

B. Peter White's Testimony Will Assist The Jury In Evaluating The Benefits The Government Has Provided To Mr. Williams.

In return for Mr. Williams' testimony against Mr. McDonnell, the Government has entered into a transactional immunity agreement with Mr. Williams. Unbeknownst to the defense until recently, the Government and Mr. Williams superseded their original July 1, 2013 agreement with an even more extraordinary agreement, dated May 30, 2014, that extends transactional immunity to Mr. Williams not only for his allegedly unlawful dealings with the McDonnells, but also for completely unrelated conduct involving loans that Mr. Williams received from 2009 to 2012 in exchange for his pledge of Star Scientific stock, and gifts of Star Scientific stock that he made to certain trusts from 2009 to 2012. In addition to this unusual immunity deal, the Government has obtained stays of discovery in multiple civil suits against Star Scientific and Mr. Williams in which neither the Government nor Mr. McDonnell are parties, and has also apparently declined to investigate FDA warnings that Mr. Williams' company introduced misbranded drugs into interstate commerce in violation of 21 U.S.C. § 331(a). *See* Dec. 20, 2013 FDA Warning Letter to J. Williams Re: Case # 410094, *available at* http://tinyurl.com/kfuun9d.

The Government's decisions to not prosecute Mr. Williams for conduct that is both related and unrelated to this case, to stay unrelated civil litigation against Star Scientific and Mr. Williams, and to not investigate FDA findings of misconduct by Mr. Williams' company each conferred benefits on Mr. Williams and Star Scientific that the average juror will have difficulty evaluating without the assistance of an expert. Given Mr. White's extensive experience as a federal prosecutor in the E.D.Va. and as an attorney in private practice, his testimony will aid the jury in understanding the intricacies of complex litigation and the full scope of the benefits that the Government has conferred on Mr. Williams and the company in which he is a major shareholder.

1. Mr. White Will Not Opine On Witness Credibility.

The Government's chief objection to Mr. White's testimony is that it will "'constitute [an] evaluation[] of witness credibility.'" Mem. at 15 (quoting *Nimely v. City of New York*, 414 F.3d 381, 398 (2d Cir. 2005)). This is false. Mr. White will not be opining about Mr. Williams or his credibility, as was the case in *Nimely*. *See* 414 F.3d at 398 (explaining that the expert's "direct testimony stated that he 'rejected' the possibility that [witnesses] had lied" and that the expert "reiterated his conclusion that the police officers were 'telling the truth as they perceived it'"); *see also United States v. Hill*, No. 12-5154, 2014 BL 118278, at *14 (10th Cir. Apr. 28, 2014) (rejecting testimony where the expert "testified flatly and repeatedly that, in his expert opinion, [the defendant] was dishonest during his interview"). His testimony will, rather, be limited to explaining the nature and scope of the benefits Mr. Williams received. The jury will then be able to consider that evidence in deciding for itself whether Mr. Williams is credible.

Mr. White will not be testifying—as the Government seems to believe—about what *effect* these benefits had on Mr. Williams or his testimony. That is a matter to be explored on cross-examination of Mr. Williams. Nothing in Rule 702 prohibits experts from elucidating facts merely *relevant* to a witness's credibility, so long as those facts are beyond "the ken of people of ordinary intelligence." *United States v. French*, 12 F.3d 114, 116 (8th Cir. 1993); *see also, e.g.*, *United States v. Davis*, 269 F. Supp. 2d 1077, 1083 (S.D. Iowa 2003) ("[I]t is not so likely that an average juror, with little or no exposure to the criminal court system, could adequately visualize the fervor surrounding criminal proceedings in Polk County.").

The Government disagrees, but its authorities all involve expert testimony about facts that jurors could easily understand on their own. These included a garden-variety plea agreement, *United States v. Allen*, 716 F.3d 98, 105-06 (4th Cir. 2013), straightforward sentence reductions, *United States v. Davis*, 63 Fed. App'x 76, 80 (4th Cir. 2003) (unpublished); *United States v. Davis*, 457 F.3d 817, 824 (8th Cir. 2006), the impact that sleep deprivation (an all-too-common problem for average Americans) could have on reliability, *Lespier*, 725 F.3d at 449, and a comparison among various photographs, *Dorsey*, 45 F.3d at 815. Each of these topics are ones that the average person can easily comprehend. It is not difficult for a regular person to assess, for example, the difference between 10 years in prison and 5 years in prison (or the hope for such a reduction). That is a far cry, however, from asking an average person to assess (1) the significance of transactional immunity (as opposed to use immunity) for related and unrelated offenses, (2) the significance of an indefinite stay of civil discovery in a "rocket docket" jurisdiction, and (3) the value of one's company getting to avoid a costly FDA investigation.

The Government also claims that an expert is unnecessary because the defense can simply cross-examine Mr. Williams about the various benefits he has received. *See* Mem. at 17-18. But that response has at least two problems. *First*, Mr. McDonnell should not be required to rely solely on the very witness whose credibility is at issue to testify honestly about the benefits he has received. Mr. Williams will undoubtedly downplay those benefits and the jury will not be able to fairly asses that minimization unless it understands the benefits being discussed. *Second*, much of Mr. Williams' understanding of his complex arrangement with the Government may be shielded by attorney-client privilege. The defense will not be able to elicit what Mr. Williams' lawyers told him about these exotic benefits, making cross-examination inadequate.

2. Mr. White's Expert Testimony Is Reliable.

Even though Mr. White has yet to present his testimony, the Government challenges its reliability.[5] *First*, the Government claims that nothing in Mr. White's resume or in the defense's expert disclosure "reveals that he has expertise in assigning a value to short stays in two civil lawsuits." Mem. at 18. While this objection would be more appropriate when the defense attempts to qualify Mr. White, it is clear from Mr. White's resume that he has years of experience in litigating civil cases and he will testify that he also has experience seeking and opposing stays of civil litigation, including in situations analogous to this one. The Government also errs in claiming that Mr. White will opine about the "value" of stays, as if to suggest that Mr. White will attempt to assign a precise monetary value to stays of indefinite length in two lawsuits. *See id.* at 18-20. To the contrary, Mr. White will explain why civil defendants like Star Scientific and Mr. Williams benefit from a stay, especially where, as here, the litigation might be affected by a parallel case. Such testimony does not require a particular dollar amount. And contrary to the Government's insinuation that it is relevant whether the civil defendants benefited more than the civil plaintiffs, *see id.* at 20, Mr. White will explain that Star Scientific and Mr. Williams benefit *regardless* of what the plaintiffs prefer. The fundamental point, which the Government has effectively conceded, *see id.* at 18-19, and which Mr. White will explain, is that both Star Scientific and Mr. Williams benefited from the Government's intervention.

Second, the Government complains that Mr. White lacks a factual basis for his opinion because the "strategic reasoning of the parties is shielded by privileges." *Id.* at 18. But that only underscores the need for expert testimony. The average juror will have no idea why a defendant would want a stay, and Mr. McDonnell has no right to compel the civil defendants to disclose their reasons for wanting a stay. An expert therefore needs to explain the issue.

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[5] The Government's complaint about Mr. White's notice is also wrong. *See* Mem. at 23. The summary provided was more than just a list of topics, but even if it were such a list, it would be sufficient since Mr. White will in large part be testifying generally. *See United States v. Verges*, No. 1:13cr222 (JCC), 2014 BL 37955, at *5 (E.D. Va. Feb. 12, 2014) (confirming that a "disclosure need only contain general information" when the expert "plans to testify about several topics generally").

Finally, the Government contends that Mr. White has identified "no body or recognized, reliable expertise that assigns value to a stay" and "no set of reliable principles" that he will apply to the "facts." *Id.* at 20. Again, the Government mischaracterizes Mr. White's testimony, which is experiential in nature and "does not rely on anything like a scientific method." *United States v. Wilson*, 484 F.3d 267, 274 (4th Cir. 2007). To the contrary, courts regularly admit the experiential testimony of attorneys. *See, e.g.*, *Kitchen v. Ballard*, No. 2:10-cv-01264, 2011 U.S. Dist. LEXIS 116364, at *28-29 (S.D. W Va. Sept. 2, 2011); *McShane v. Cate*, No. ED CV 09-01243-CAS (VBK), 2011 U.S. Dist. LEXIS 153978, at *72-77 (C.D. Cal. Dec. 22, 2011).

To establish the reliability of his testimony, Mr. White must "explain how his experience leads to the conclusion reached, why his experience is a sufficient basis for the opinion, and how his experience is reliably applied to the facts." *Wilson*, 484 F.3d at 274. Mr. White will easily make this showing. He has litigated complex cases for over 20 years. Drawing on this experience and assessing the available information about the lawsuits against Star Scientific and Mr. Williams, Mr. White will explain that the Government's efforts to obtain stays in those lawsuits benefited Star Scientific and Mr. Williams by, among other things, deferring the heavy costs of discovery until later and delaying litigation of the dispute until the conclusion of Mr. McDonnell's criminal case, at which point Star Scientific and Mr. Williams will have more information with which to litigate their civil cases. Therefore, Mr. White's testimony is not speculative but is based on his extensive experience reliably applied to the facts, and for that reason, it is admissible under Rule 702 and not unduly prejudicial or confusing under Rule 403.[6]

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[6] The Government also argues that Mr. White has insufficient information about whether Star Scientific and Mr. Williams were guilty of misbranding their products in violation of 21 U.S.C. § 331(a) and that any testimony attempting to establish their guilt would violate Federal

C. J. Allen Kosowsky's Testimony Will Assist The Jury In Understanding The McDonnells' Finances, The Mechanics Of Processing A Bank Loan, And The Benefits That Mr. Williams Has Received.

Mr. Kosowsky's testimony will address three critical areas. First, Mr. Kosowski will testify that the McDonnells' finances were fundamentally sound at the time of the alleged conspiracy. The Government does not object to the substance of this testimony, but rather contends only that the defense's notice was insufficient because it did not set forth the bases and reasons for Mr. Kosowski's conclusion. Second, Mr. Kosowsky will testify that, given the complexity of the loan application process, applicants often innocently omit information, as well as that the McDonnells' omissions were not objectively material to their qualifications. The Government contends that this testimony is an improper attempt to opine on Mr. McDonnell's mental state. Finally, Mr. Kosowsky will testify about the financial benefits that Mr. Williams and Star Scientific have received by virtue of both the Government's immunity agreement with Mr. Williams and the Government's assistance in staying two civil lawsuits against Star Scientific and Mr. Williams. The Government contends that this testimony is an improper attempt to opine on witness credibility. Each of the Government's objections is unfounded.

1. Mr. Kosowsky's Testimony About The McDonnells' Finances Is Adequately Noticed.

The Government does not dispute that Mr. Kosowsky's testimony about the McDonnells' finances is admissible under Rule 702. It instead claims that the defense provided inadequate notice of his testimony because it did not include the bases and reasons for his opinion that their

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(continued...)

Rule of Evidence 608(b) and would be unduly prejudicial under Rule 403. *See* Mem. at 21-22. This argument misses the point. Mr. White does not intend to prove that Star Scientific and Mr. Williams misbranded their products. Mr. White only seeks to testify about the benefits to Star Scientific and Mr. Williams of not being investigated for those alleged violations.

finances were sound. *See* Mem. at 27. But the notice *did* identify the bases for Mr. Kosowsky's opinion. Specifically, it noted that Mr. Kosowsky's opinions are based on "analyses of Mr. McDonnell's bank applications , balance sheets for rental projects, summaries of taxable income, [and] cash flow analyses." Def. Robert F McDonnell Expert Notice (May 29, 2014) at 5, Mem. at Ex. A. It also noted that his opinions are based on "a comprehensive examination of the McDonnells' financial records, including bank accounts, credit cards, investments, loans, and other financial data." *Id.* at 6. This is plainly adequate notice. In the case cited by the Government, *see* Mem. at 27, the notice was found to be inadequate because it "did not describe [the expert's] opinions beyond stating the conclusion." *Barile*, 286 F.3d at 758. The notice there, unlike here, did not identify *any* support for the expert's conclusion.

To eliminate any doubt about notice, the defense has provided two supplemental disclosures concerning Mr. Kosowsky's testimony and will provide early next week a copy of every document Mr. Kosowsky has considered in forming his opinions. Among other things, the defense provides the following bases for Mr. Kosowsky's opinion:

(1) The completed financial statements that the McDonnells submitted to the Pentagon Federal Credit Union ("PenFed") show that they had a positive net worth. That PenFed approved their loan application indicates in and of itself that the McDonnells' financial condition was sound.

(2) Mr. McDonnell had access to considerable liquid assets such that he could meet his financial obligations as they became due.

(3) Mr. McDonnell had access to a portion of the proceeds of his father's estate, which was considerable. He also had the right to significant executor's fees.

(4) Taken together, Mr. McDonnell and his sister, as the two partners in MoBo, had sufficient assets and cash flow to meet the obligations of the partnership.

(5) Mr. McDonnell actively took steps to minimize his credit card debt by obtaining the lowest credit card interest rates.

(6) Mr. McDonnell's future earning power was substantial as demonstrated by the

multi-million-dollar salaries commanded by retired high-level public officials.

Particularly with this supplementary information, the notice for Mr. Kosowsky is more than sufficient. *See, e.g.*, *United States v. Verges*, No. 1.13cr222 (JCC), 2014 BL 37955, at *5-*6 (E.D. Va. Feb. 12, 2014); *United States v. King*, 703 F Supp. 2d 1063, 1077 (D. Haw. 2010).

2. Mr. Kosowsky's Testimony Does Not Violate Rule 704(b) Because He Will Not Testify About Mr. McDonnell's Mental State.

Mr. Kosowsky will also testify that bank loan applicants often innocently omit information due to the complexity of the application process and that the McDonnells' omissions were not, by any objective standard, material to their qualifications for a loan. The Government contends that this testimony amounts to an improper opinion on Mr. McDonnell's mental state. *See* Mem. at 25-26.[7] Rule 704(b) forbids expert witnesses from testifying "about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense." This rule does not forbid experts from testifying about facts otherwise incomprehensible to the average juror from which *the jury* could draw an inference about the defendant's mental state. "It is only as to the *last step* in the inferential process—a conclusion as to the defendant's actual mental state—that Rule 704(b) commands the expert to be silent." *United States v. Dunn*, 846 F.2d 761, 762 (D.C. Cir. 1988) (emphasis added); *see also United States v. Morales*, 108 F.3d 1031, 1037 (9th Cir. 1997) (Rule 704(b) does not bar expert testimony "from which the factfinder might infer a defendant's mental state"). So long as the expert does not opine on the defendant's actual mental state, the expert's testimony will not run afoul of Rule 704(b). *See, e.g.*, *United States v. Owens*, 301 F.3d 521, 527 (7th Cir. 2002)

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[7] The Government also asserts that Mr. Kosowsky's "resume reveals no particular expertise in bank loan applications." Mem. at 26. But this is clearly wrong. Mr. Kosowsky's resume shows that he has served on the board of two banking institutions and is currently on the board of a publicly traded bank.

(expert witness permitted to testify that appraisal reports defendant prepared were "misleading and fraudulent" since he never directly commented on defendant's state of mind); *United States v. Speer*, 30 F.3d 605, 610 (5th Cir. 1994) ("Rule 704(b) is not strictly construed and prohibits only a direct statement of the defendant's intent."); *United States v. Chin*, 981 F.2d 1275, 1279 (D.C. Cir. 1992) (policeman's testimony about why drug traffickers enlist juveniles permissible because those "observations never purported to describe [the defendant's] own mental state").

Mr. Kosowsky will not be discussing or opining about Mr. McDonnell's mental state. Instead, Mr. Kosowsky will explain how the loan application process generally works and explain that applicants often make innocent mistakes on early drafts of their loan papers. This testimony stops well short of "the last step in the inferential process." *Dunn*, 846 F.2d at 762. In the Government's principal contrary authority, by contrast, the experts proposed to take that last leap by actually opining that *the defendant's* "interpretation" of the regulations he was charged with violating "was 'at least arguably correct.'" *Fowler*, 932 F.2d at 315. Because those experts proposed to testify about what the defendant personally understood, the court was rightly concerned about their testifying that the defendant himself "was confused, not culpable." *See id.* The court therefore refused to admit the proffered expert testimony. No similar concern exists here, because Mr. Kosowsky's testimony will not opine about Mr. McDonnell's mental state.

The same is true for Mr. Kosowsky's testimony that the McDonnells' initial omissions on their loan applications were not, by any objective standard, material to their qualifications for a loan. The Government responds that the materiality of the omissions is not relevant because materiality is not an element of 18 U.S.C. § 1014, the charged crime. *See* Mem. at 25-26. But while it is true that the Government need only prove that Mr. McDonnell intended to influence the bank, *see United States v. Wells*, 519 U.S. 482, 499 (1997), the materiality of a particular omission is plainly *relevant* to the jury's determination of Mr. McDonnell's intent. After all, had Mr. McDonnell omitted the $10 he borrowed from a friend to buy lunch from his loan application, the obvious immateriality of that omission would negate any inference of corrupt intent. That is because materiality is powerful circumstantial evidence of intent. Mr. McDonnell is therefore plainly entitled to present evidence of materiality in defending these charges.

The Government is also wrong to argue that Mr. Kosowsky's opinion on materiality states a legal conclusion. *See* Mem. at 26. As the Government itself acknowledges, materiality is not an element of the relevant crime, so Mr. Kosowsky's opinion will not usurp the Court's duty to instruct the jury on the law. In any event, Mr. Kosowsky does not use the word "materiality" in its legal sense. Rather, Mr. Kosowsky simply means that the McDonnells' omissions would not have influenced a typical bank to withhold a loan from them.

3. Mr. Kosowsky Will Not Opine On Witness Credibility.

The Government also challenges Mr. Kosowsky's testimony about the financial benefits Mr. Williams and Star Scientific have received by virtue of the Government's decisions to (1) not prosecute Mr. Williams for the alleged crimes in this case, (2) stay two civil lawsuits against Mr. Williams and Star Scientific, and (3) not investigate allegations that Mr. Williams engaged in self-dealing as Star Scientific's Chief Executive Officer and that he exercised improper control and access over a family trust. The Government contends that this is improper expert testimony on credibility. *See* Mem. at 23-24. But for the same reasons that apply to Mr. White's testimony, this testimony is proper. Mr. Kosowsky will not be opining on the credibility of Mr. Williams or any other witness. Nor will he opine about the effect any financial benefits had on any witness's credibility. Rather, his testimony will be limited to quantifying the value of the financial benefits the Government has conferred on Mr. Williams and Star Scientific. It will then be for the jury alone to decide how those benefits might impact credibility.

Finally, the Government attacks Mr. Kosowsky's qualifications by claiming that his resume "fails to demonstrate" that he has expertise in "evaluating federal criminal immunity agreements." Mem. at 24. But the purpose of Mr. Kosowsky's testimony is not to "evaluate" Mr. Williams' immunity agreement; rather it is to value his exposure *absent* the agreement. Avoiding investigations and legal proceedings have an economic value, and as a Certified Valuation Analyst and Accredited Business Valuator, Mr. Kosowsky is more than qualified to opine on the financial benefits that flow from immunization, a stay of discovery in civil proceedings, and forgoing investigations of other potential misconduct.

D. Norman Thomas Will Assist The Jury In Understanding Mr. McDonnell's Statements of Economic Interest ("SOEIs").

Mr. Thomas will provide critical testimony about the state legal regime in which Mr. McDonnell's official disclosures occurred. While this issue is collateral to the actual charges, the Government has made clear that it intends to use Mr. McDonnell's treatment of his SOEI as evidence of his supposed intent to defraud or conceal his relationship with Mr. Williams. Mr. McDonnell objects to the injection of this side issue into this case, as one of his Motions in Limine makes clear. Should the Court deny that Motion in Limine, however, then Mr. McDonnell must be permitted to introduce expert testimony explaining Virginia's disclosure laws to the jury. By making Mr. McDonnell's compliance with those laws an issue in this case, the Government invites the jury to make legal determinations without the benefit of any jury instructions, since this Court will not, of course, be instructing the jury on Virginia's disclosure law. In the absence of definitive legal guidance, expert testimony is essential.

The Government alleges in the Indictment that Mr. McDonnell took steps "to hide the nature and scope of [his] dealings with [Mr. Williams] by routing things of value through family members and corporate entities controlled by [Mr. McDonnell] in an effort to avoid annual disclosure requirements on [Mr. McDonnell's] SOEIs." Indictment ¶ 111(b). The Government recently doubled down on this theory in notifying the defense that it may introduce Rule 404(b) evidence that Mr. McDonnell received things of value from individuals other than Mr. Williams and failed to report them on his SOEI. *See* May 29, 2014 Letter from D. Boente to H. Asbill et al. ("Expert Notice and 404(b) Disclosure"), at 3 (Ex. H). The Government apparently believes Mr. McDonnell evinced corrupt intent whenever he failed to record a gift on his SOEI. But if Mr. McDonnell was not required to disclose a particular gift, then the fact that he failed to do so is substantially less probative of criminal intent. The Government's theory makes sense only if the Government can prove that Mr. McDonnell *knowingly* violated those reporting requirements. But the Government has failed to notice an expert who could explain that, which is why Mr. McDonnell has moved to exclude this evidence. Without an expert, SOEI evidence will only confuse the jury and prejudice Mr. McDonnell.

Notwithstanding the clear need for expert testimony on this issue, the Government opposes Mr. Thomas' testimony on the ground that it would Rule 704(b)'s prohibition against expert testimony on "whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged." Mem. at 28. But nothing in Mr. Thomas' proposed testimony speaks to Mr. McDonnell's mental state with respect to *the crimes charged*. His testimony is limited, rather to his analysis of relevant SOEI requirements and his opinion that Mr. McDonnell's SOEI submissions reasonably applied those requirements. Mr. Thomas will not opine on whether Mr. McDonnell's mental state satisfied the elements of the charges at issue.

The Government also relies on *Fowler*, which excluded expert testimony "that the regulations were confusing, vague, and uncertain, [and] that Fowler's interpretation of them was 'at least arguably correct.'" *See* 932 F.2d at 315. But *Fowler* concerned expert testimony that the defendant's interpretation of regulations intrinsic to the charged crimes established that the defendant lacked criminal intent. Here, Virginia's disclosure laws are not intrinsic to the federal bribery laws and it is the Government—not Mr. McDonnell—that seeks to make affirmative use of Virginia law in its case at trial. *Fowler* is therefore irrelevant. Because Mr. Thomas' testimony focuses solely on rebutting the Government's suggestion that Mr. McDonnell violated Virginia's disclosure laws, there is no risk, as there was in *Fowler*, that Mr. Thomas will render an opinion on Mr. McDonnell's mental state with respect to his criminal charges. Mr. Thomas' testimony is, rather, just like the testimony of an accounting expert who testifies about compliance (or non-compliance) with accounting principles that are not directly at issue. *See, e.g.*, *Malone v. Microdyne Corp.*, 26 F.3d 471, 477-78 (4th Cir. 1994) (expert testimony establishing that the defendant company repeatedly violated a financial accounting standard "provided a legally sufficient evidentiary basis" for violation of the Securities Exchange Act).

III. Should The Court Have Doubts About The Admissibility Of Any Expert Witnesses, It Should Conduct An Evidentiary Hearing Or Resolve These Issues At Trial.

For all these reasons, Mr. McDonnell is entitled to present the expert testimony he has noticed. To the extent doubt remains, however, Mr. McDonnell requests that the Court hold a *Daubert* hearing—in accord with its typical practice[8]—or, in the alternative, simply defer qualification and admissibility of defense experts until trial. This Court will be more capable of assessing the admissibility of defense experts at trial, since it could then make those assessments in light of the evidence the Government presents during its case-in-chief.

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[8] *See, e.g.*, *United States v. Baylor*, 3:11-CR-64, 2011 WL 5910061 (E.D. Va. Nov. 28, 2011) (held *Daubert* hearing); *United States v. Council*, 777 F. Supp. 2d 1006, 1007 (E.D. Va. 2011) (same); *Sanders v. UDR, Inc.*, 3:10-CV-459, 2011 WL 864336 (E.D. Va. Mar. 10, 2011) (same); *PBM Products, LLC v. Mead Johnson Nutrition Co.*, 3:09-CV-269, 2010 WL 56072 (E.D. Va. Jan. 4, 2010) (same); *United States v. Willard*, 3:10-CR-154, 2010 WL 3784944 (E.D. Va. Sept. 20, 2010) (same); *DNT, LLC v. Sprint Spectrum, LP*, CIV.A. 3:09CV21, 2010 WL 582164 (E.D. Va. Feb. 12, 2010) (same).

Moreover, many of the Government's objections go to reliability—a factually intensive issue that is best resolved via live examination of the experts rather than through lawyers' argument in legal briefs. Those sorts of objections would be most easily adjudicated at trial since "the key question is not the expert's general qualifications in some field, but whether the precise question on which he will be asked to opine is within his field of expertise or meets some other test." *Berry v. City of Detroit*, 25 F.3d 1342, 1351 (6th Cir. 1994); *see also* 29 CHARLES A. WRIGHT ET AL., FED. PRAC. & PROC. EVID. § 6265 (1st ed. 1997) ("[U]ntil specific questions are posed to the witness, the court cannot know if the witness is qualified as an expert in the area of inquiry."). Voir dire of Mr. McDonnell's experts either at trial or at a pre-trial *Daubert* hearing would be the most effective way to dispel any lingering doubts the Court harbors about the reliability and soundness of those experts' testimony.[9] And to the extent the Government has objections to specific questions or specific answers Mr. McDonnell's experts might give, it should "object during trial." *Offill*, 666 F.3d at 174. This Court can then resolve objections in the context of actual questions rather than speculation about what certain questions might elicit.

CONCLUSION

For the foregoing reasons, the Government's Motion to Exclude Mr. McDonnell's Expert Witnesses should be denied.

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[9] *See, e.g.*, *United States v. Alatorre*, 222 F.3d 1098, 1104 (9th Cir. 2000) (commending as "practical" the district court's having "allowed [the defendant] to explore [the prosecution witness's] qualifications and the basis for his testimony at trial via voir dire and then, following voir dire, rejected his renewed objections to the testimony"); *United States v. Conn*, 297 F.3d 548, 557 (7th Cir. 2002) ("Had the defense had concerns about the quality of [the prosecution witness's] training, the quantity of his experience, or the methodology that he employed in reaching his assessment , it could have raised those questions during voir dire."); *El Aguila Food Prods., Inc. v. Gruma Corp.*, 131 F. App'x 450, 452 (5th Cir. 2005) ("After plaintiffs presented their fact witnesses, they offered their damages expert [Defendant] renewed its *Daubert* objection, and after a complete proffer and extended voir dire examination, the court sustained the objection and excluded [the expert] from testifying.").

Dated: June 20, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 20th day of June, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: June 20, 2014

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	No. 3:14cr12-JRS
ROBERT F MCDONNELL and	)	
MAUREEN G. MCDONNELL,	)	
Defendants.	)	

GOVERNMENT'S REPLY IN SUPPORT OF MOTION TO EXCLUDE EXPERT TESTIMONY

The United States of America, by undersigned counsel, respectfully files this reply in support of its Motion to Exclude Expert Testimony, Doc. No. 221. In his response in opposition, Doc. No. 241 ("Def. Mem."), and an accompanying second supplemental expert notice, Doc. No. 241-5 ("2nd Supp. Notice"), defendant Robert F McDonnell attempts to recast his proffered expert testimony as "indistinguishable from expert testimony that the Government itself regularly presents and that the courts of this district and others routinely admit." Def. Mem. at 1. Nothing in Mr. McDonnell's response or his supplemental notice, however, remedies the fundamental flaws in his effort to have three criminal attorneys, a forensic accountant, and an unidentified individual testify to witness credibility, criminal intent, and the legality of Mr. McDonnell's conduct.

To be sure, Mr. McDonnell points out certain, limited factual (and perhaps expert) testimony that may be admissible at trial from individuals with appropriate knowledge and with sufficient foundation, such as testimony about the McDonnells' finances or testimony about whether governors routinely arrange [illegible]gs, host events, and interact with other state government officials. But Mr. McDonnell's proposed expert testimony goes much further. Indeed, his supplemental notice confirms that he seeks to have, for example, a criminal attorney claim that other politicians engage in conduct like Mr. McDonnell's "without running afoul of legal and ethical obligations" and "consistent with the absence of fraudulent intent." 2nd Supp. Notice at 1, 2. Similarly, Mr. McDonnell has confirmed that he intends to have another criminal attorney "explain the type and value of the benefits" that the defense claims Jonnie R. Williams, Sr. received in this case, as well as a forensic accountant to "opine on the financial value" of the same. *Id.* at 2, 3. And Mr. McDonnell seeks to have a third criminal attorney "offer his opinion that the [state disclosure] forms filed by Mr. McDonnell from 2010 to 2013 evidence a reasonable understanding of which items were required to be disclosed." *Id.* at 7.

In short, Mr. McDonnell's response and supplemental expert notices only confirm his intent to solicit various inadmissible opinions from his proposed experts, and this Court should preclude him from doing so. Thus, as explained in greater detail below, this Court should exclude three of Mr. McDonnell's proposed experts in their entirety, exclude the vast majority of the remaining two experts' testimony, and strictly police Mr. McDonnell's remaining proposed factual and expert testimony to prevent him from calling a series of lawyers to testify that the jury should not convict him.

I. Argument

A. Former Virginia Attorney General Earley should not be permitted to testify that conduct like Mr. McDonnell's did not violate his legal obligations or was inconsistent with fraudulent intent.

Mr. McDonnell's first proposed expert, former Attorney General Mark L. Earley, has repackaged his opinion three times in this case, but his opinion has remained the same each time he has related it. His opinion has always boiled down to a legal conclusion about Mr. McDonnell's guilt. But the Fourth Circuit has held that expert testimony is unhelpful and inadmissible when an expert offers "to give testimony that 'states a legal conclusion or draws a legal conclusion by applying law to the facts.'" *United States v. Offill*, 666 F.3d 168, 175 (4th Cir. 2011) (quoting *United States v. McIver*, 470 F.3d 550, 562 (4th Cir. 2006)). As explained below, small portions of Earley's testimony may be admissible, but overwhelmingly his testimony remains unchanged and must be excluded.

1. Earley's proposed testimony still includes inadmissible legal opinions.

After first attempting to offer through an amicus brief a legal opinion that this Court should dismiss the corruption charges out of hand, as a matter of law—a legal conclusion contrary to this Court's ruling—the first notice of Earley's testimony again offered legal conclusions rather than address factual questions that require expertise. That notice unambiguously used the language that defines the offense and asserted that Mr. McDonnell's conduct charged in the Indictment did not involve "official acts," the specific term defined in 18 U.S.C. § 201(a)(3). Specifically, the first notice asserted that the activities charged in the Indictment, "while a routine part of any Governor's activities, are not actions or decisions on matters brought before Governors in their *official capacity* and thus have never been understood by Virginia officials to be '*official acts*.'" Doc. No. 222-1 ("Notice"), at 2 (emphasis added). This word choice does not appear to be an accident. Rather, the essence of Earley's opinion is a legal position about the scope of federal bribery law. That Earley's opinion rests on his view of the law is obvious from its factual incoherence. If Earley were making a mere factual claim about what governors do, his opinion ought to survive being rephrased in terms of "settled practices." But if the phrase "official acts" that appears in Mr. McDonnell's first expert notice were replaced with "settled practices," Earley would have asserted that acts that governors routinely perform in office are not settled practices. This opinion makes no sense, and Earley did not offer—and still has not offered—any defensible method for explaining why that assertion makes sense. All that he is offering is a bald legal conclusion.

In Mr. McDonnell's second supplemental expert notice for Earley, Mr. McDonnell claims that he has solved the problems that made the opinions described in the first notice inadmissible, but he is wrong. The supplemental notice still asserts impermissible legal conclusions and shows, again, that Earley is applying no method at all. First, the latest expert notice asserts that Earley "does not plan to testify about what constitutes an 'official act' under federal law." 2nd Supp. Notice at 1. But then, on the same page, the notice quickly shifts away from fact testimony about what governors typically do and instead says that Earley will tell the jurors what governors may do "*without running afoul of legal and ethical obligations*." *Id.* (emphasis added). Again, Earley's opinion does not help the jury to decide a contested factual question. What Earley offers is an opinion that Mr. McDonnell's conduct alleged in the indictment does not "run[] afoul" of his "legal obligations."

By shifting from using the term of art "official act" to an opinion that Mr. McDonnell's actions satisfied his "legal and ethical obligations," Earley has not made his testimony admissible. If anything, his opinion has become even more clearly inadmissible. Now, he is simply stating a legal conclusion in the most expansive sense possible—that particular conduct is legal, full stop. Obviously, the United States could not present testimony from a former Attorney General—of Virginia or the United States—to opine that conduct like Mr. McDonnell's ran "afoul of [Mr. McDonnell's] legal and ethical obligations," because such testimony would do no more than tell the jury what verdict to reach. *See United States v. Barile*, 286 F.3d 749, 759–60 (4th Cir. 2002). The testimony that Mr. McDonnell seeks to offer through Earley—in either notice—is no different and should be excluded.

Mr. McDonnell argues that Earley's testimony simply mirrors the testimony of former Congressman McHugh in *United States v. Jefferson*. But McHugh's testimony addressed questions of fact about what members of Congress routinely do. Crucially, McHugh did not draw conclusions about what was legal for Jefferson to do; he did not attempt to imbue terms like "settled practice" with a *legal* meaning that only he knew and understood as an expert politician (much less a former Attorney General); and he did not offer an opinion about the scope of federal bribery law. The United States' opposition to the motion to exclude McHugh's testimony makes clear that the difference between McHugh's testimony and Earley's is substantial and dispositive for admissibility:

> Here, the expected expert testimony of Congressman McHugh embraces common terms with common meanings such as "decisions" and "matters" that are "routinely performed" or "routinely brought before Members." The average layman would understand these words and would ascribe to them the same meaning as that suggested by the law. Congressman McHugh is not going to be asked whether he believes the assistance provided by Defendant Jefferson to constituents amounted to "official acts" as defined by the statute. Clearly, that would call for an improper legal conclusion from the expert.

Doc. No. 241-7, at 7

The jury is fully capable of applying this Court's jury instructions in evaluating the facts of what governors routinely do when the jury decides what action by a governor constitutes an official act. But the jury does not need an expert to tell them that Mr. McDonnell's actions (or some thinly disguised hypothetical that represents Mr. McDonnell's actions) are legal and ethical. The bribery laws do not have a built-in mechanism for public officials to define for themselves through expert testimony which acts they may be secretly paid to perform.

Fact witnesses and qualified experts may, with proper foundation, testify about what a given type of public official routinely does. Do they regularly promote businesses within the state by arranging for meetings with public officials and holding events promoting businesses? The jury can then easily apply this Court's jury instructions and determine for itself whether arranging a given meeting or hosting a given event was action on a question, matter, cause, suit, proceeding, or controversy. As this Court has previously explained, at bottom, the question of what constitutes an "official act" is not that complicated, and a jury can decide it without being told by an former Attorney General what is "legal and ethical" and what is not.[1]

Moreover, to the extent that Mr. McDonnell is claiming that Earley's testimony is admissible because Earley is vague about the legal standards that he is using to say that Mr. McDonnell's conduct is "legal and ethical" (or, again, that some hypothetical set of facts identical to Mr. McDonnell's conduct is legal), the testimony lacks any method. "An expert who supplies nothing but a bottom line supplies nothing of value to the judicial process," *Zenith Electronics Corp. v. WH-TV Broadcasting Corp.*, 395 F.3d 416, 419 (7th Cir. 2005) (quotation omitted), and courts may exclude testimony that rests on "the *ipse dixit* of the expert," *General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997). And at bottom, that is all Earley's proposed testimony is. For example, Mr. McDonnell's brief states that Earley's testimony should be admissible because "[t]he average person has not been a high-level politician and thus will not be familiar with the dance that politicians *must* perform daily to avoid offending the thousands of donors and benefactors that electoral politics requires cultivating." Def. Mem. at 6 (emphasis added). But no governor "must" drive Ferraris, accept free golf at an exclusive club, take $15,000 for his child's wedding, or accept $120,000 in balloon loans that require no interim payments. And no matter how many times Mr. McDonnell tries to change the facts of this case, not one penny of the graft charged here was a campaign contribution. Thus, whatever "electoral politics requires" is irrelevant, and Earley's testimony that is premised on equating the *quid* charged here to a campaign contribution should be excluded.

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[1] In defending the admissibility of Earley's testimony, Mr. McDonnell also ignores what his own supplemental expert notice says. For example, Mr. McDonnell's opposition to the motion to exclude insists that Earley's testimony is actually just factual: "The Government claims that Mr. Earley's testimony is different from Mr. McHugh's in *Jefferson* because Mr. Earley's testimony does not consist of 'straightforward factual content.' That is plainly wrong." Def. Mem. at 8. But again, the supplemental notice filed with that brief says that Earley will tell the jurors what governors may do "*without running afoul of legal and ethical obligations*." 2nd Supp. Notice at 1 (emphasis added). Opinions about what one former gubernatorial candidate thinks governors may legally and ethically do in secretly accepting personal financial benefits in exchange for promoting a Virginia business is not straightforward factual testimony, much less admissible expert testimony.

2. Earley's proposed testimony about fraudulent intent is unqualified and unhelpful to a jury.

Earley also improperly seeks to give his opinion that the United States cannot show that Mr. McDonnell acted with corrupt intent. The first expert notice said that Mr. Earley's opinion is that "the conduct alleged here is consistent with Mr. McDonnell not having a corrupt intent to defraud the people of Virginia of his honest services or to otherwise engage in official action." Notice at 3. Implicitly acknowledging the impropriety of this opinion, Mr. McDonnell's supplemental notice describes Earley's proposed testimony in slightly more veiled terms: "Mr. Earley will also opine about whether certain conduct by Virginia politicians is consistent with the absence of fraudulent intent." 2nd Supp. Notice at 2. This testimony should be excluded. A former state attorney general has no expertise beyond a juror's on when others intend to deceive and defraud. *Cf. United States v. Williams*, 133 F.3d 1048, 1053 (7th Cir. 1998) (holding inadmissible testimony from an agent who "purports to be a human lie detector").

Criminal trials for corruption and fraud do not—and should not—feature lawyers with no personal knowledge of the events giving opinions about whether the defendant acted with a fraudulent intent or even acted "consistent" with an absence of fraudulent intent. The problem here is essentially the same as courts have identified for expert testimony on credibility. First, juries can make those determinations themselves, making expert testimony unhelpful, and second, no one genuinely has expertise on fraudulent intent.

Again, if the United States offered an expert who claimed expertise in knowing when people intend to defraud or deceive others and planned to testify that "the conduct alleged here is consistent with Mr. McDonnell corruptly intending to defraud the people of Virginia," that would be obviously improper. That inadmissible evidence does not become admissible because the defendant is offering it. Likewise, the United States could not present an expert to say that "certain conduct by Virginia politicians" that matches Mr. McDonnell's "is consistent with having a fraudulent intent." In other words, Mr. McDonnell's slight circumlocution to the "consistent with" language in his supplemental expert notice does not help him. The distinctions governing expert testimony may sometimes be fine, but they turn on substance, not camouflage.

In defending his proposed expert testimony on fraudulent intent, Mr. McDonnell invokes *Offill*. But the expert in *Offill* did not offer any opinion about whether the defendant had a particular intent or even whether certain conduct was "consistent" with a particular intent. Rather, the expert was asked to explain the effect under certain securities law of a hypothetical where an investor intended to pass on a promissory note when the investor transfers related stock. The expert also addressed the effect under the securities law of a hypothetical where the investor did not intend to pass on a promissory note when transferring related stock. 666 F.3d at 176–77. This testimony bears no resemblance to an expert telling the jury what a defendant's intent is or how to determine whether the defendant had a particular intent.[2] It should be excluded.

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[2] Mr. McDonnell also cites drug trafficking cases in which experts testify that baggies, scales, razor blades, and digital scales are used to distribute drugs and that people who simply consume drugs do not need these items. Testimony of that sort bears no resemblance to expert

3. Earley's testimony about what actions governors routinely perform may be admissible provided that Mr. McDonnell provides sufficient foundation before offering it.

Finally, Earley—like many other potential witnesses in this case—could likely offer, with proper foundation, factual testimony about what governors in Virginia routinely do, as a factual matter, without commenting on the legality of that conduct. To track Mr. McDonnell's first expert notice, Earley could testify, assuming appropriate foundation were laid, "that arranging meetings with other government officials for constituents, attending receptions and ribbon-cutting events, hosting events at the Governor's Mansion, inviting constituents to receptions, taking pictures with constituents, promoting Virginia businesses, and other similar activities" are "a routine part of any Governor's activities." Notice at 2. Whether that factual testimony may permissibly extend to an expert opinion, of course, depends on whether Mr. McDonnell lays adequate foundation that Earley's testimony meets Fed. R. Evid. 702's requirements.

And there is reason to doubt that it will. For example, Earley's sole proffered qualification for proffering an expert opinion on what constitutes "a routine part of any Governor's activities" appears to be his legal training. *See* Def. Mem. at 4 ("Mr. Earley served as the top legal official in the Commonwealth of Virginia. He is experienced in advising Virginia's Governor and other Commonwealth officials on their legal obligations."). This expertise, which appears to be limited to the experience of a law enforcement official who by definition is somewhat removed from politics (and indeed is elected independently and directly,

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testimony on fraudulent intent. Mr. McDonnell cites no case that has said that the drug trafficking cases authorize lawyers to testify as experts in fraud cases about what is consistent with an intent to defraud because no such case exists. Drug distribution, like securities regulations, may in some cases be subject areas beyond the understanding of an average juror. But fraudulent intent—or put differently, lying—is not.

unlike other Virginia cabinet officials) contrasts starkly with former *Congressman* McHugh's testimony in *Jefferson* about what members of *Congress* routinely do.

In any event, assuming Earley can avoid offering what amounts to a legal opinion as a former Attorney General, he may be able to offer, with adequate foundation, fact (and possibly expert) testimony about whether governors routinely arrange meetings, host events, and promote businesses. And he may also be able to testify, assuming adequate foundation is laid, that in his experience, he has no knowledge of those meetings, events, and business promotion involving state universities or the Virginia Tobacco Indemnification and Revitalization Commission. Whether he is able to provide a sufficient foundation for this testimony (and whether it should be considered factual or expert based on that foundation) could be determined by the Court at trial before Earley takes the stand and testifies before the jury. Regardless, this Court should rule now that Earley may not (i) give the legal opinions described in Mr. McDonnell's expert notices thus far about "official acts," what runs "afoul of legal and ethical obligations," and what politicians "must" do or what "electoral politics requires"; (ii) opine about fraudulent intent, whether for Mr. McDonnell or for anyone else; or (iii) testify using any other legal terminology that will be in the Court's jury instructions. In sum, Earley's opinions about legality, ethics, and fraudulent intent have no place in this trial, and they should be excluded now.

B. White's testimony is inadmissible because juries do not need expert testimony about immunity agreements or brief stays in civil litigation to evaluate credibility.

Next, Mr. McDonnell's proposed expert testimony from criminal defense attorney Peter White is foreclosed by *United States v. Allen*, 716 F.3d 98 (4th Cir. 2013). In *Allen*, the defendant "wanted to use an expert criminal defense attorney *to explain the legal significance* of § 5K1.1 letters, § 3553(e) motions, and 21 U.S.C. § 851 notices—all of which entail the government asking for a lesser sentence in light of a defendant's substantial cooperation—in order to show that the codefendants called to testify against him may be biased." 716 F.3d at 105 (emphasis added). The Fourth Circuit held that "[e]xpert testimony of this nature is not permitted under the Federal Rules of Evidence." *Id.* at 106. Mr. McDonnell claims that White's testimony is admissible, notwithstanding *Allen*, because White "will not be opining about Mr. Williams or his credibility." Def. Mem. at 18. According to Mr. McDonnell, White's testimony is admissible because it "will be limited to explaining the nature and scope of the benefits Mr. Williams received. The jury will then be able to consider that evidence in deciding for itself whether Mr. Williams is credible." *Id.*

Mr. McDonnell's argument elevates form over substance. Although the cases make clear that it is especially objectionable for an expert to express an opinion on whether a witness is credible, the law's prohibition on expert testimony on witness credibility is broader than that. *Allen* itself made this clear. In *Allen*, the expert would have "explain[ed] the legal significance" of cooperation agreements and the statutory mechanisms governing reductions below mandatory minimums for substantial assistance, just as White proposes to explain immunity agreements. But just as the expert's testimony in *Allen* was inadmissible, White's testimony is too. "A juror can connect the dots," the Fourth Circuit explained, "and understand the implications that a plea agreement might have on a codefendant's testimony." *Allen*, 716 F.3d at 106. Similarly, the Fourth Circuit has upheld the exclusion of expert testimony even where the analysis did not turn on whether the expert was directly stating an opinion about a witness's credibility. *United States v. Lespier*, 725 F.3d 437, 449 (4th Cir. 2013) (expert testimony on effects of sleep deprivation); *United States v. Dorsey*, 45 F.3d 809, 815 (4th Cir. 1995) (expert testimony by forensic anthropologists used to cast doubt on eyewitness identifications).

Mr. McDonnell argues that cases like *Allen, Lespier*, and *Dorsey* "all involve expert testimony about facts that jurors could easily understand on their own." Def. Mem. at 18. But the same is true of the topics that White seeks to address. The concept of immunity—agreeing not to prosecute someone—can be understood by the jurors and does not require expert testimony. The same is true of an unopposed pause in civil litigation. And what matters in any event is Williams's understanding, not some expert's, for it is Williams's understanding that is relevant to what could affect his behavior. The McDonnells' lawyers can thus ask Williams about his understanding of the immunity agreement or the unopposed stay, and expert testimony is unnecessary.[3]

C. Mr. McDonnell's proposed expert testimony from a forensic accountant should be limited to testimony about the McDonnells' financial condition, and Mr. McDonnell should be required to provide supplemental expert notice for that testimony.

Next, Mr. McDonnell intends to call J. Allen Kosowsky, a forensic accountant, to testify essentially to four different opinions. First, Mr. McDonnell intends to have Kosowsky "opine on the financial value of the broad transactional immunity the Government has conferred on Mr. Williams." 2nd Supp. Notice at 3. Second, Mr. McDonnell intends to have Kosowsky "testify about various questionable transactions involving Mr. Williams or Star Scientific." Doc. No. 222-2 ("Supp. Notice"), at 2. Third, Mr. McDonnell intends to have Kosowsky opine that the allegedly false statements charged in Counts 12 and 13 "were not, by any objective standard, material to their qualifications for a loan." Def. Mem. at 24. And finally, Mr. McDonnell intends to have Kosowsky opine about the McDonnells' financial condition generally. *See* 2nd Supp. Notice at 4. For the reasons below, this Court should exclude the first three opinions in their entirety and require Mr. McDonnell to provide additional information regarding the fourth.

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[3] Moreover, White's opinion about the value of the stay is unreliable and a waste of time under Fed. R. Evid. 403. The jury does not need to hear from an expert who can say no more than that an unopposed stay, supervised and approved by a court, both hurts and helps Williams. White's opinion about possible violations of 21 U.S.C. § 331(a) is likewise speculative and unreliable under Rule 702, a waste of time under Rule 403, and improper under Fed. R. Evid. 608(b).

1. Kosowsky's proposed testimony about the financial value of immunity agreements and stays in civil litigation impermissibly comments on matters of witness credibility that the jury is equipped to evaluate without expert testimony.

First, Mr. McDonnell argues that Kosowsky's proposed expert testimony "about the financial benefits Mr. Williams and Star Scientific have received" is admissible "for the same reasons that apply to Mr. White's testimony." Def. Mem. at 26. But as explained above, the Fourth Circuit's opinion in *Allen* forecloses White's proposed testimony, and Kosowsky's proposed opinion is no different.

Moreover, although Mr. McDonnell protests that Kosowsky's testimony "will be limited to quantifying the value of the financial benefits the Government has conferred on Mr. Williams," *id.* at 26, Mr. McDonnell has nonetheless still refused to disclose ***what value*** Kosowsky places on those alleged financial benefits. Thus, whether Koswosky is a "Certified Valuation Analyst and Accredited Business Valuator," *id.* at 27, is beside the point if whatever valuation method he purports to apply results in no quantifiable value at all. Indeed, it is apparent from the McDonnells' inability to actually provide Kosowsky's opinion in this regard that his opinion amounts to little more than an attempt to have an accountant tell the jury that Mr. Williams should not be believed. This Court should exclude that opinion.

2. Kosowsky's proposed testimony about Mr. Williams's financial transactions is inadmissible testimony regarding witness credibility and is otherwise precluded by Rule 608(b).

Kosowsky should also not be permitted to testify about what the defense claims are "various questionable transactions involving Mr. Williams or Star Scientific." Supp. Notice at 2.

In its opening memorandum, the United States explained that this proposed testimony, which Mr. McDonnell provided in his first supplemental notice, both impermissibly opines on witness credibility and otherwise violates Rule 608(b)'s bar on extrinsic evidence regarding a witness's character for truthfulness. *See* Doc. No. 222, Gov't Mem., at 24. In his response, Mr. McDonnell does not appear to respond to this argument; indeed, his only mention of Rule 608 is relegated to a footnote about White, not Kosowsky. *See* Def. Mem. at 22 n.6. Thus, this Court should exclude the proposed testimony from Kosowsky outlined in Mr. McDonnell's first supplemental notice for the reasons already stated.

3. Kosowsky's proposed testimony about the objective materiality of the false statements charged in Counts 12 and 13 is irrelevant, unhelpful to the jury, and confuses the issues.

Mr. McDonnell also intends to have Kosowsky opine that the false statements alleged in Counts 12 and 13 "were not, by any objective standard, material to their qualifications for a loan." *Id.* at 24. But as the defense concedes, "materiality is not an element of 18 U.S.C. § 1014, the charged crime." *Id.* at 25. Mr. McDonnell nonetheless asserts that "the materiality of a particular omission is plainly *relevant* to the jury's determination of Mr. McDonnell's intent." *Id.* at 25–26. But this Court has already disagreed with that blanket statement. *See, e.g., United States v. Elliott*, No. 3:01cr227-JRS, Doc. No. 22, Memorandum Opinion at 14 (E.D. Va. Mar. 12, 2002) (attached as Exh. A to Doc. No. 230). Indeed, the only materiality evidence that is even arguably relevant in a § 1014 prosecution is evidence of materiality "relating to the state of mind of [charged] defendants at the time the loan documents were submitted." *United States v. Henderson*, 676 F. Supp. 176, 178 (S.D. Ill. 1987); *see also United States v. Lane*, 323 F.3d 568, 582–84 (7th Cir. 2003) (excluding objective materiality evidence and evidence of post-statement conversations with bank officials). Thus, as explained in the United States' recently filed motion to exclude such evidence generally, *see* Doc. No. 230, Kosowsky's proposed expert testimony about "the obvious immateriality," Def. Mem. at 26, of the false statements charged in Counts 12 and 13 should be excluded.

4. Kosowsky's proposed testimony about the McDonnells' finances may be admissible but requires supplemental notice.

Finally, the defense claims that Kosowsky will give various opinions about the McDonnells' finances. *See* Def. Mem. at 23–24; 2nd Supp. Notice at 4. Mr. McDonnell further represents that in an effort to satisfy his notice obligations, he "will provide early next week [of June 23] a copy of every document Mr. Kosowsky has considered in forming his opinions." Def. Mem. at 23. Setting aside Mr. McDonnell's failure to provide any such underlying bases for Kosowsky's opinion in compliance with the original disclosure deadline, it is not sufficient for Mr. McDonnell merely to provide the United States with the documents Kosowsky has reviewed. Similarly, it is not sufficient for Mr. McDonnell to provide the United States with generalized statements about Kosowsky's opinions, such as his opinion that "the McDonnells' financial condition was sound," that "they had a positive net worth," that they "had access to considerable liquid assets," or that the Mr. McDonnell and his sister "had sufficient assets and cash flow to meet the obligations of the[ir] partnership." Def. Mem. at 23. Rather, Mr. McDonnell should be required to explain ***what*** Kosowsky concluded to be the McDonnells' net worth, ***what*** Kosowsky considers to be a "sound" financial condition, ***what*** "considerable liquid assets" Mr. McDonnell could access, and ***what*** constituted "sufficient assets and cash flow" for Mr. McDonnell's real estate partnership with his sister. It is only after receiving additional disclosure in that regard from Mr. McDonnell that the United States can adequately address the admissibility of Kosowsky's proposed testimony, particularly in light of the other, inadmissible opinions that Mr. McDonnell seeks to have Kosowsky offer.[4]

D. Mr. McDonnell should be precluded from calling a criminal defense lawyer to opine that Mr. McDonnell complied with state law disclosure requirements.

Next, Mr. McDonnell seeks to have a criminal defense attorney, Norman A. Thomas, testify about the Statement of Economic Interests ("SOEI") disclosure form that Mr. McDonnell filled out on an annual basis during the time period of the alleged crimes. According to Mr. McDonnell's second supplemental notice, Thomas "will explain that, to his knowledge, only two elected Virginia officials have ever been prosecuted for violating the requirements of the SOEI" but that "[n]either was convicted." 2nd Supp. Notice at 5. In addition, Mr. McDonnell seeks to have Thomas "opine, on the basis of his experience as Assistant Attorney General and as Opinions Counsel in the Office of the Attorney General [of Virginia], that various public officials approach the SOEI very differently." *Id.* at 6. And based on that experience, Mr. McDonnell seeks to have Thomas opine to the jury that the SOEI "is complex and vague." *Id.* at 7. Moreover, Mr. McDonnell seeks to have Thomas "offer his opinion that the SOEI forms filed by Mr. McDonnell from 2010 to 2013 evidence a reasonable understanding of which items were required to be disclosed." *Id.* Thus, Thomas will allegedly opine that "each item related to Jonnie Williams or Star Scientific, Inc., as well as items related to other persons and companies, had an appropriate basis for disclosure or non-disclosure." *Id.*

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[4] It is also worth noting that to date, Mr. McDonnell has refused to provide ***any*** reciprocal discovery pursuant to Fed. R. Crim. P 16(b)(1)(A) or (B), claiming that because the United States is producing additional materials as they are received and processed, the United States will never have complied with its obligations under Fed. R. Crim. P 16(a)(1)(E) and (F) until discovery essentially ceases. The Federal Rules of Criminal Procedure should not be read to treat the Government's honoring its continuing duty to disclose as a forfeiture of its right to reciprocal discovery.

None of Thomas's proposed expert opinions are admissible. First, it is difficult to imagine testimony more violative of Rule 403 and less helpful to the jury under Rule 702 than testimony about how many Virginia officials have been prosecuted for SOEI violations—much less the results of those prosecutions. Such testimony is no more admissible to suggest Mr. McDonnell's innocence than testimony about other public officials taking bribes or concealing bribes from disclosure forms would be for suggesting his guilt. Similarly, expert testimony is not necessary to explain a disclosure form that is written in plain English and that requires disclosure of "gifts" from "a business, government, or individual other than a relative or personal friend." Exh. A at 4 (blank SOEI). Jurors are well-equipped to evaluate what constitutes a "gift" and whether an individual can plausibly be considered a public official's "friend." Though the average juror may not typically receive thousands of dollars in golf for free or serve in a public office that causes mere acquaintances or even strangers to lavish gifts on him or her, the average juror does not require expert testimony to understand what a "gift" or a "friend" is (and is not).[5]

To be sure, Mr. McDonnell may offer evidence, either through other witnesses who had conversations with him or by choosing to take the stand himself, as to why ***he*** thought Mr. Williams was a friend for purposes of some gifts but not a friend for purposes of other gifts, and Mr. McDonnell may offer similar evidence that ***he***, despite being a former Attorney General, found terms such as "gift" and "friend" to be "complex and vague," 2nd Supp. Notice at 7 But what matters is not what ***other*** public officials believed or what Thomas would have advised Mr. McDonnell; what matters is what Mr. McDonnell's SOEIs say about ***his*** state of mind. Such is not an appropriate area for expert testimony, and Thomas's opinions should thus be excluded under Rules 403, 702, and 704(b). *See United States v. Fowler*, 932 F.2d 306, 315 (4th Cir. 1991) (The jury "need[ed] no expert witnesses to speculate about a defendant's state of mind. The expert witnesses could not testify that Fowler was confused, not culpable.").

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[5] In this regard, Mr. McDonnell's attempts to analogize the plain language of the SOEI to "accounting principles," Def. Mem. at 29, fails. At its core, evaluating whether Mr. McDonnell lied on his SOEI or structured financial transactions to avoid having to report them on his SOEI requires little more than a credibility determination of the implicit statements on that SOEI that Mr. Williams was Mr. McDonnell's friend or that unreported things of value were not given to Mr. McDonnell.

E. Mr. McDonnell has shown no good cause for his failure to provide adequate notice for an FDA or medical expert, and any such testimony should be excluded at trial.

Finally, this Court should reject Mr. McDonnell's request to "delay consideration" of his proposed expert on Food and Drug Administration ("FDA") practices "until such time that the defense has adequate information to make a final determination, makes that final determination, and provides proper notice to the Government of his intentions and the scope of the proposed testimony." Def. Mem. at 2 n.1. Mr. McDonnell protests that he needs more time, yet on the day the grand jury returned the Indictment, he asserted the relevance to this case of an alleged FDA investigation into claims by Star Scientific. *See* Doc. No. 9, at 7–8. Mr. McDonnell has had more than five months since then to "make a final determination," but he has not done so. For that reason alone, this Court should exclude any proposed FDA "expert."

Moreover, Mr. McDonnell did not even attempt in his response to explain why such an FDA "expert" would not be barred by Rule 608(b), and for the reasons already discussed with respect to White and Kosowsky, such testimony would be impermissible commentary on Mr. Williams's credibility that is inadmissible under Rules 403 and 702.

II. Conclusion

For the reasons stated above, this Court should exclude (i) all of Earley's proposed testimony other than factual (or adequately foundationed opinion) testimony about whether arranging meetings, hosting events, and interacting with government officials is routine for a governor; (ii) all of Kosowsky's proposed testimony other than factual (or adequately foundationed opinion) testimony about the McDonnells' financial condition; and (iii) all of White's, Thomas's, and the unidentified FDA or medical expert's proposed testimony. With respect to the potentially admissible expert testimony from Earley and Kosowsky, the Court should require Mr. McDonnell to provide a more fulsome summary of those witnesses' actual opinions and the reasons and bases for those opinions, and if necessary, this Court should hold a hearing (either before trial or at trial before those witnesses testify) to determine whether Mr. McDonnell can lay sufficient foundation for those opinions to be admissible.[6]

Respectfully submitted,

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[6] The current deadline for the United States to notice any expert testimony in anticipation of or in response to Mr. McDonnell's expert disclosures is thirty days before trial, or June 28, 2014, unless "for good cause shown." Doc. No. 100. Depending on the Court's ruling and any supplemental disclosures provided by Mr. McDonnell at the Court's direction, the United States may ask for such a good-cause extension of the June 28 deadline.

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2014, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing ("NEF") to all counsel of record.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

MEMORANDUM OPINION

THIS MATTER is before the Court on the Government's Motion to Exclude Expert Testimony ("Motion") (ECF No. 221). Upon due consideration, the Court will GRANT IN PART and DENY IN PART the Motion. With regard to each of the five expert witnesses proposed by Defendant Robert F. McDonnell ("McDonnell"), testimony will be excluded as follows:

1. Mark L. Early

McDonnell intends to call Mr. Early to give expert testimony on four topics. This testimony will be excluded in its entirety.

First, Mr. Early proposes to testify that certain conduct has never been understood to constitute official acts, to exert influence on governmental decisions, or to run afoul of the law. Mr. Early's opinion that McDonnell did not violate the law invades and usurps the function of the Court. *United States v. Offill*, 666 F.3d 168, 174-75 (4th Cir. 2011). It "does not help the jury" and, therefore, is not admissible as expert testimony. *See id.* at 175; Fed. R. Evid. 702.

Second, Mr. Early proposes to testify that the conduct alleged in the indictment—whether performed by McDonnell or other Virginia politicians—is consistent with innocent intent. Mr. Early proposes to answer hypothetical questions that mirror McDonnell's conduct and to suggest special knowledge of mental state. Such testimony is not admissible as expert testimony. *See* Fed. R. Evid. 704(b); *Offill*, 666 F.3d at 177 (citing *United States v. Watson*, 171 F.3d 695, 703 (D.C. Cir. 1999); *United States v. Bilzerian*, 926 F.2d 1285, 1294 (2d Cir. 1991)). Further, Mr. Early is no more qualified as an expert in assessing fraudulent intent than lay persons, making his proposed testimony unhelpful and inadmissible. *See* Fed. R. Evid. 702.

Third, Mr. Early proposes to testify as to the hypothetical legal advice he would have offered if McDonnell had sought advice from him. Such hypothetical advice constitutes no more than unreliable speculation and "supplies the jury with no information other than [Mr. Early's] view of how the verdict should read." *Offill*, 666 F.3d at 175. This testimony is inadmissible as expert testimony under Rule 702.

Fourth, Mr. Early proposes to testify that the Governor of Virginia lacks legal authority over the Virginia Tobacco Indemnification and Community Revitalization Commission and over certain decisions of Virginia's universities. Such testimony is neither helpful nor rational because legal authority does not equate to influence and is not an element of the charged crimes. *See United States v. Jefferson*, 634 F. Supp. 2d 595, 603 (E.D. Va. 2009). For the same reasons, Mr. Early's proposed testimony is highly likely to confuse the issues and mislead the jury, rendering it unhelpful. This testimony is inadmissible as expert testimony under Rule 702.

2. Peter H. White, Esq.

McDonnell intends to call Mr. White to give expert testimony on three topics. First, Mr. White proposes to testify generally as to the value of the transactional immunity offered to Jonnie Williams, Sr. ("Williams") in exchange for his testimony. Expert testimony intended solely to explain the implications of a plea agreement on a witness's testimony "is not the function of an expert." *United States v. Allen*, 716 F.3d 98, 105 (4th Cir. 2013) (citing *Nimely v. City of New York*, 414 F.3d 381, 398 (2d Cir. 2005)) (holding that the legal significance of substantial assistance agreements need not be explained by an expert for a jury to understand its potential to create bias). This testimony is inadmissible as expert testimony because it is an impermissible credibility evaluation and would not be helpful to the jury. *See id.*; Fed. R. Evid. 702.

Second, Mr. White proposes to testify generally about the costs and obligations that Williams and Star Scientific, Incorporated ("Star") would have incurred in the event of an investigation by the Food and Drug Administration into potential violations of 21 U.S.C. § 331(a). This testimony is inadmissible both because it is irrelevant in the absence of any evidence of any immunity agreement between the Government and Star, and because extrinsic evidence is not admissible to impeach a witness's credibility. *See* Fed. R. Evid. 104(b); Fed. R. Evid. 608(b).

Third, Mr. White proposes to testify as to the value that accrued to Williams upon the Government's intervention in various civil suits. McDonnell has failed to disclose the methodology Mr. White used in arriving at his opinion, precluding the Court from properly evaluating the reliability of this testimony. *See* Fed. R. Evid. 702. Accordingly, the Court finds that a *Daubert* hearing is necessary to determine whether this portion of Mr. White's testimony is admissible.

3. J. Allen Kosowsky, CPA

McDonnell intends to call Mr. Kosowsky to give expert testimony on four topics. First, Mr. Kosowsky proposes to opine as to the financial value of the benefits conferred on Williams in exchange for his testimony. For the reasons animating the Court's decisions with respect to Mr. White's testimony, Mr. Kosowsky's testimony will be excluded except to the extent that it relates to the financial value of the Government's intervention in various civil suits. The Court finds that a *Daubert* hearing is necessary to determine whether this portion of Mr. Kosowsky's testimony is admissible.

Second, Mr. Kosowsky proposes to testify as to various securities and trust transactions by Williams and Star. This testimony is inadmissible, extrinsic impeachment evidence. *See* Fed. R. Civ. P. 608(b).

Third, Mr. Kosowsky proposes to testify as to the mechanics of bank loan applications in order to rebut the Government's allegations that McDonnell's omissions from loan documents were intentional, fraudulent, or material. This testimony is inadmissible because it constitutes an impermissible opinion on McDonnell's state of mind and draws legal conclusions. *See* Fed. R. Evid. 702; Fed. R. Evid. 704(b). Alternatively, because an omission's materiality is irrelevant to a defendant's culpability under 18 U.S.C. § 1014, Mr. Kosowsky's proposed testimony is highly likely to confuse the issues and mislead the jury, rendering is unhelpful. This testimony is inadmissible as expert testimony under Rule 702.

Fourth, Mr. Kosowsky proposes to testify as to the state of the McDonnells' finances. McDonnell has failed to disclose the methodology Mr. Kosowsky used in arriving at his opinion, precluding the Court from properly evaluating the reliability of this testimony. *See* Fed. R. Evid. 702. Accordingly, the Court finds that a *Daubert* hearing is necessary to determine whether this portion of Mr. Kosowsky's testimony is admissible.

4. Norman A. Thomas, Esq.

McDonnell intends to call Mr. Thomas to give expert testimony on three topics. This testimony will be excluded in its entirety.

First, Mr. Thomas proposes to offer an explanation of Virginia's standardized Statement of Economic Interests form ("SOEI"). He will opine that the instructions regarding this form are complex and vague. This testimony is not admissible because it would not be helpful to the jury, who will be capable of reading and assessing the complexity of the SOEI for themselves. *See* Fed. R. Evid. 702.

Second, Mr. Thomas proposes to opine that McDonnell's SOEIs submitted between 2010 and 2013 evidence a reasonable understanding of Virginia's disclosure requirements. This testimony is also inadmissible because it would be unhelpful to the jury who, after capably assessing the complexity of the SOEI, will similarly be capable of assessing the reasonableness of McDonnell's disclosures. *See* Fed. R. Evid. 702.

5. Undisclosed, Unidentified Expert

McDonnell has attempted to disclose the testimony of an expert witness that he has not yet identified. He has not provided a sufficient justification for his failure to identify this expert prior to the deadline for disclosure. The Court, therefore, will exclude this hypothetical expert testimony. Furthermore, even the slim disclosure McDonnell does provide clearly demonstrates the inadmissibility of the hypothetical testimony as extrinsic impeachment evidence. *See* Fed. R. Evid. 608(b).

Let the Clerk send a copy of this Memorandum Opinion to all counsel of record.

An appropriate Order shall issue.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 26th day of June 2014.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

ORDER

THIS MATTER is before the Court on the Government's Motion to Exclude Expert Testimony ("Motion") (ECF No. 221). For the reasons more fully set forth in the accompanying Memorandum Opinion, the Motion is GRANTED IN PART and DENIED IN PART.

The proposed testimony of Mark L. Early, Norman A. Thomas, and an Unidentified, Undisclosed expert will be excluded in its entirety. The proposed testimony of Peter H. White will be excluded, with the exception of White's opinion as to the value that accrued to Jonnie Williams, Sr. upon the Government's intervention in various civil suits. The proposed testimony of J. Allen Kosowsky will be excluded, with the exception of: (1) Kosowsky's opinion as to the financial value that accrued to Williams upon the Government's intervention in various civil suits and (2) the McDonnells' financial condition.

The Court finds that a *Daubert* hearing is required to determine the admissibility of all expert testimony not excluded by this Order. The Parties are DIRECTED to contact the Court within five (5) days of this Order to schedule such a hearing.

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Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 26th day of June 2014.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	No. 3:14cr12
ROBERT F MCDONNELL and	)	
MAUREEN G. MCDONNELL,	)	
Defendants.	)	

RESPONSE OF THE UNITED STATES IN OPPOSITION TO DEFENDANTS' MOTION *IN LIMINE* TO EXCLUDE EVIDENCE RELATING TO STATEMENTS OF ECONOMIC INTERESTS

The United States of America, by and through the undersigned attorneys, respectfully files this response in opposition to defendants Robert F McDonnell and Maureen G. McDonnell's joint motion *in limine* seeking to exclude evidence relating to Mr. McDonnell's Statements of Economic Interests ("SOEI"), Doc. Nos. 237, 243.[1] For the reasons discussed below, the motion is both misguided and meritless, and it should be denied.

I. The Basis for Offering the Evidence

In light of the defendants' persistent mischaracterizations of the Government's theory in offering evidence concerning Mr. McDonnell's SOEIs, it is worth starting there. At trial the Government will offer evidence relating to Mr. McDonnell's SOEIs as concealment evidence that undeniably informs the defendants' corrupt intent and consciousness of guilt. The SOEIs are relevant as concealment evidence in at least four separate ways: first, because of Mr. McDonnell's deliberate omission of his golf-related gifts paid by Jonnie Williams,Ind. ¶¶ 37, 59, 69; second, because of Mr. McDonnell's deliberate omission of the $15,000 check from Mr. Williams to pay the remainder of the catering bill the McDonnells owed for their daughter's wedding, Ind. ¶¶ 27, 32, 35, 36; third, as the reason why Mrs. McDonnell sold and repurchased all Star stock held in her account on dates flanking the due date for Mr. McDonnell's 2011 SOEI, Ind. ¶¶ 66, 67, 70, and why the next year, she similarly unloaded Star stock to the defendants' children on December 26, 2012, such that less than $10,000 worth of Star stock remained in her account at year-end, Ind. ¶¶ 96, 97, 98; and fourth, as the reason why Mr. McDonnell had Mr. Williams direct $70,000 in loan proceeds to MoBo Realty LLC, Ind. ¶¶ 86, 89, 90.[2]

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[1] Mrs. McDonnell's motion, Doc. No. 243, adopts Mr. McDonnell's motion, Doc. No. 237 ("Def. Mot."), and memorandum in support, Doc. No. 238 ("Def. Mem.").

The Government is ***not*** offering evidence about Mr. McDonnell's SOEIs to argue, much less establish, any violation of Virginia law. Indeed, the reason that "[t]he Government does not directly allege that Mr. McDonnell violated Virginia's reporting requirements for public officials," Def. Mem. at 2, is precisely because that allegation is not the point of the evidence. Accordingly, the defendants' concerns directed at supposed Government arguments that Mr. McDonnell "deliberately evaded Virginia ethics laws," Def. Mem. at 5, or "violated or sidestepped distinct state legal requirements," Def. Mem. at 6, miss the mark entirely, and to the extent the defendants' prejudice argument is premised on such concerns, it is baseless.

II. The Evidence is Highly Relevant to Intent and Not Unfairly Prejudicial

As the Government has argued elsewhere, *see* Doc. No. 145 at 4–5, it is black-letter law that evidence of concealment is probative of intent and consciousness of guilt. *See, e.g.*, *United States v. Zayyad*, 741 F.3d 452, 463 (4th Cir. 2014) (attempt to conceal counterfeit pills indicates awareness that the pills were unlawful); *United States v. Beverly*, 284 F. App'x. 36, 40 (4th Cir. 2008) (noting that "intent can be inferred from efforts to conceal the unlawful activity" (internal quotation omitted)); *United States v. Rosen*, 716 F.3d 691, 702 (2d Cir. 2013) (bribe payor's concealment of otherwise legal consulting contracts probative of consciousness of guilt that contracts were sham covers for bribes); *United States v. Hart*, 273 F.3d 363, 373–74 (3d Cir. 2001) (defendant's efforts to conceal scheme, including directing a subordinate to lie, probative of consciousness of guilt); *United States v. Davis*, 490 F.3d 541, 549 (6th Cir. 2007) (criminal intent can be inferred from efforts to conceal unlawful activity); *United States v. Zichettello*, 208 F.3d 72, 105 (2d Cir. 2000) (defendant's indication to another of his intention to conceal corrupt scheme evidences consciousness of guilt).

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[2] The Government addresses the proferred Fed. R. Evid. 404(b) purposes of SOEI evidence separately, in Part IV below.

As we have also discussed elsewhere, *see* Doc. No. 145 at 6, the charges here will require the Government to prove the defendants had an intent to defraud, which "may be inferred from the totality of the circumstances and need not be proven by direct evidence." *United States v. Ham*, 998 F.2d 1247, 1254 (4th Cir. 1993). Fraud includes "acts taken to conceal, create a false impression, mislead, or otherwise deceive in order to prevent the other [party] from acquiring material information." *United States v. Colton*, 231 F.3d 890, 898 (4th Cir. 2000). The evidence of (a) Mr. McDonnell's failure to disclose the golf gifts he received from Mr. Williams; (b) Mr. McDonnell's failure to disclose the $15,000 check from Mr. Williams; (c) Mrs. McDonnell's efforts (twice) to avoid having Star stock in her account at year-end; and (d) Mr. McDonnell's direction to Mr. Williams to send the loan proceeds to MoBo all are paradigmatic circumstantial evidence of intent to defraud.

The defendants cite *Ratzlaf v. United States*, 510 U.S. 135 (1994), for the proposition that "[t]he mere fact that gifts and loans from Mr. Williams took forms that Mr. McDonnell was not required to report is not probative of intent to deceive," Def. Mem. at 2, but their citation to that opinion is misguided. The issue in *Ratzlaf* was the meaning of "willfully" in the federal statute criminalizing violations of the antistructuring statute. *See* 31 U.S.C. §§ 5322(a), 5324(3). The Supreme Court held that in that context, "willfully" requires the Government to prove that a defendant acted with knowledge that his conduct was unlawful, not just with the intent to evade a bank's reporting requirements. *Ratzlaf*, 510 U.S. at 147. Part of the Court's rationale was that structuring a transaction to avoid a bank's reporting requirements is not conduct that is itself "***inevitably*** nefarious" or "***invariably*** motivated by a desire to keep the Government in the dark." *Id.* at 144–45 (emphasis added). But contrary to the McDonnells' suggestion, the Court's opinion did not remotely pertain to the relevance or probative value of evidence of how a transaction is arranged. It is one thing to say, as the Supreme Court did in *Ratzlaf*, that arranging a transaction in a certain way is not, standing alone, ***inevitably*** nefarious. It does not at all follow, as the defendants here argue, that evidence of that transaction's arrangement is ***irrelevant*** (or "not probative," in the defendants' terms) to assessing a defendant's state of mind, particularly where the charges require proof of a scheme to defraud. And even the defendants' contorted and incorrect reading of *Ratzlaf* has nothing whatsoever to say about Mr. McDonnell's deliberate nondisclosure of gifts or loans he received from Mr. Williams.

As this Court has already explained in discussing Mrs. McDonnell's stock transactions, "[a]ttempts to conceal an interest in Star—especially a personal financial interest—may be probative of intent/animus to defraud and consciousness of guilt." Doc. No. 177, at 1. So much moreso are attempts to conceal the receipt of gifts and loans from Jonnie Williams—the very graft that the Indictment alleges were bribes.

The defendants nevertheless invoke Fed. R. Evid. 403 throughout their brief to argue that the SOEI evidence should be excluded because it is "more prejudicial than probative." Def. Mem. at 2. But Rule 403 does not bar evidence that is merely "more prejudicial than probative." Rather, as the Court is well aware, under Rule 403 the Court has discretion to exclude relevant evidence "if its probative value is substantially outweighed" by any combination of the concerns enumerated in the Rule. When it comes to assessing prejudice, as the Fourth Circuit has explained, "[t]he mere fact that the evidence will damage the defendant's case is not enough—the evidence must be *unfairly* prejudicial, and the unfair prejudice must *substantially* outweigh the probative value of the evidence." *United States v. Williams*, 445 F.3d 724, 730 (4th Cir. 2006) (citation omitted). And "[u]nfair prejudice exists when there is a genuine risk that the emotions of a jury will be excited to irrational behavior, and this risk is disproportionate to the probative value of the offered evidence." *United States v. Williams*, 740 F.3d 308, 314 (4th Cir. 2014) (internal quotation marks and citations omitted).

The degree of unfair prejudice required is illuminated by cases where courts have admitted, over Rule 403 objections, evidence far more inflammatory than at issue here. *See, e.g.*, *United States v. Smith*, 441 F.3d 254, 262 (4th Cir. 2006) (testimony that defendant's son assisted him in his drug operation at as early as age six); *United States v. Rivera*, 412 F.3d 562, 571 (4th Cir. 2005) (evidence that defendant compared cutting victim's throat, after victim pleaded for his life, to "cutting up chicken"); *United States v. Aramony*, 88 F.3d 1369, 1377–79 (4th Cir. 1996) (evidence of defendant's sexual advances toward company employees in mail and wire fraud prosecution). In light of these examples, and notwithstanding the defendants' protestations, it is difficult to imagine a jury becoming emotionally "excited to irrational behavior" as a result of hearing the SOEI evidence in this case. This is especially so where, as noted above, the Government does not plan to elicit, mention, or argue that Mr. McDonnell violated Virginia ethics laws.[3] The point of the evidence is not to establish any violation of

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[3] This fact distinguishes this case from the cases the defendants cite at pages 5 and 6 of their brief. In *United States v. Terry*, No. 1:10cr390, 2011 WL 2149361, at *3 (N.D. Ohio May 31, 2011), a case of a judge charged with accepting bribes, the Government sought to admit evidence of provisions of the Ohio Code of Judicial Conduct, together with testimony that certain conduct violated the Code and the disciplinary consequences of such violations. *United*

Virginia law; rather, it is to explain the defendants' concealment of their corrupt activities in violation of federal law.[4]

III. No Experts Are Necessary to Make the SOEIs Relevant

In another variation on their argument that the Virginia SOEI form is an impenetrable thicket of legalese that is impossible for ordinary humans to navigate, the defendants here argue that expert testimony is necessary to make the SOEI even ***relevant***. Def. Mem. at 2. Even a cursory review of the form's instructions, *see* Doc. No. 244-1, at 1–3, reveals how exaggerated the defendants' characterizations are. The instructions are in plain English, and the jury is more than capable of applying the SOEI form's single-paragraph definitions of "gift" and "immediate family," *id.* at 2, and to assess what it means to receive a gift from a "personal friend for reasons clearly unrelated to your public position," *id.* at 10. These questions require no specialized knowledge or skill and are well within the ken of the average juror. This Court already found as much when it excluded the defendants' proffered SOEI expert testimony because: (1) "it would not be helpful to the jury, who will be capable of reading and assessing the complexity of the SOEI for themselves"; and (2) the jury "will similarly be capable of assessing the reasonableness of McDonnell's disclosures." Doc. 246, at 4.

A review of the cases the defendants cite in which courts acknowledged the necessity of experts confirms that expert SOEI testimony is unnecessary in this case. *Levinson v. Westport*

States ex rel. El-Amin v. George Wash. Univ., 533 F Supp. 2d 12, 23–24 (D.D.C 2008), involving evidence concerning the standard of care for anesthesiologists, and *In Re Welding Fume Prods. Liab. Litig.*, No. 1:03cv17000, 2010 WL 7699456, at *24 & n.123 (N.D. Ohio June 4, 2010), involving express testimony that corporate defendants violated ethical obligations such as "a corporation should act with honesty and integrity at all times," are even farther afield.

[4] Should the defendants want it, the Government would not object in principle to the Court giving a limiting instruction on the purpose for which the Government is offering the SOEI evidence (*i.e.*, not to establish any violation of Virginia law, because that is not an issue in the case).

Nat'l Bank, No. 3:09cv269, 2013 WL 2181042, at *8 (D. Conn. May 20, 2013), involved regulations of the Office of the Comptroller of the Currency regarding collective investment funds that "contain technical language with cross-references to portions of the Internal Revenue Code," including 12 C.F.R. § 9.18. *In re Gadolinium-Based Contrast Agents Prods. Liab. Litig.*, 956 F. Supp. 2d 809, 818 (N.D. Ohio 2013), involved a plaintiff's medical bills that required a jury to try to assess whether and to what extent any of the charges on the bill related to the plaintiff's nephrogenic systemic fibrosis. *Aldridge v. Baltimore & Ohio R. Co.*, 789 F.2d 1061, 1068 (4th Cir. 1986), involved a jury's being tasked with calculating the time value of money and adjusting for inflation. Finally, *United States v. Naegele*, 471 F. Supp. 2d 152, 161–62 (D.D.C. 2007), involved an esoteric question of bankruptcy law, namely whether a lawyer-debtor's contingency fee arrangement with a client is properly reportable as a "contingent claim" on his bankruptcy schedules. All of these cases are plainly distinguishable from this case, where this Court has already recognized that expert SOEI testimony would "not be helpful to the jury, who will be capable of reading and assessing" the SOEI evidence themselves. Doc. 246, at 4.

IV. The Other Acts Evidence is Admissible under Rule 404(b)

The Government may offer evidence at trial that Mr. McDonnell deliberately omitted from his SOEI for calendar year 2012 a 10-day vacation for him and his family at Kiawah Island Golf Resort, costing some $23,000 and paid for by Mr. William H. Goodwin, Jr. In particular, the Government may present evidence that although the vacation appeared on a draft of Mr. McDonnell's 2012 SOEI, he crossed it out and added the handwritten margin annotation "personal" to indicate that the entry was a gift from a personal friend, when in fact it was not.[5]

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[5] As Mr. McDonnell correctly notes, the Government has already orally represented to the defendants that Mr. McDonnell's omission of the Goodwin vacation from his SOEI is the only evidence it currently seeks to offer under Rule 404(b).

Federal Rule of Evidence 404(b) provides:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

The Fourth Circuit has consistently recognized that "[b]ecause [Rule 404(b)] recognizes the admissibility of prior crimes, wrongs, or acts, with only the one stated exception, it is understood to be a rule of inclusion, authorizing evidence of prior acts for purposes other than character, such as 'motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.'" *United States v. Queen*, 132 F.3d 991, 994 (4th Cir. 1997) (quoting Fed. R. Evid. 404(b)) (internal citations omitted). The principal reason for the "one stated exception" is to ensure that "defendants not be convicted simply for possessing bad character." *Id.* at 995 (citing *Michelson v. United States*, 335 U.S. 469, 475-76 (1948)). On the other hand, Rule 404(b)'s nonexhaustive list identifying admissible uses "recognizes that 'extrinsic acts evidence may be critical to the establishment of the truth as to a disputed issue, especially when that issue involves the actor's state of mind and the only means of ascertaining that mental state is by drawing inferences from conduct.'" *Id.* at 996 (quoting *Huddleston v. United States*, 485 U.S. 681, 685 (1988)). In *Queen* the Fourth Circuit set out a four-part test to identify when "other acts" evidence is admissible under Rule 404(b):

> (1) The evidence must be relevant to an issue, such as an element of an offense, and must not be offered to establish the general character of the defendant. In this regard, the more similar the prior act is (in terms of physical similarity or mental state) to the act being proved, the more relevant it becomes. (2) The act must be

> necessary in the sense that it is probative of an essential claim or an essential element of the offense. (3) The evidence must be reliable. And (4) the evidence's probative value must not be substantially outweighed by confusion or unfair prejudice in the sense that it tends to subordinate reason to emotion in the factfinding process.

Id. at 997. Here, the evidence regarding Mr. McDonnell's deliberate omission from his SOEI of the Kiawah vacation courtesy of Mr. Goodwin satisfies all four prongs of the *Queen* test. The "issue" or "element of the offense" to which this evidence is relevant is Mr. McDonnell's intent. As discussed above, the Government will be required to prove at trial that Mr. McDonnell participated in a scheme to defraud the public of its right to his honest services through bribery and that he did so with the intent to defraud. Mr. McDonnell's efforts to conceal the gifts from Mr. Williams are highly relevant to that intent, as discussed above. And Mr. McDonnell's inaccurate invocation of the personal friend exemption for the Kiawah Island trip is plainly probative of Mr. McDonnell's intent in failing to disclose the gifts from Jonnie Williams. First, it is intrinsic to the scheme to defraud because it is part of the very same form on which Mr. McDonnell failed to disclose gifts and loans from Mr. Williams. Second, if nothing else, it is obvious evidence of Mr. McDonnell's knowledge of the form and in particular the existence of the "personal friend" exception. Third, it is competent evidence of absence of mistake or lack of accident when it comes to assessing Mr. McDonnell's intent in failing to disclose the gifts and loans from Mr. Williams. *See* Fed R. Evid. 404(b) (authorizing admission of other acts evidence to prove, among other things, intent, knowledge, absence of mistake, or lack of accident).

In short, the Government intends to prove at trial that Mr. McDonnell knew about the gifts and loans from Jonnie Williams, that he knew full well he should have reported them (*i.e.*, he knew that the gifts and loans were not from a "personal friend for reasons clearly unrelated to [his] public position," Doc. No. 244-1, at 10, and that his failure to do so was deliberate.

Evidence that Mr. McDonnell had the same knowledge with respect to the Kiawah Island trip from Mr. Goodwin and engaged in the ***identical*** calculus to avoid reporting it is, in the framework of the first two *Queen* factors, acutely relevant and probative of the essential element of intent.

With respect to *Queen*'s third factor, the reliability of the evidence of Mr. McDonnell's conduct cannot seriously be in question. The Government intends to offer the draft SOEI on which Mr. McDonnell scratched through the Kiawah Island trip and wrote "personal" in the margin, as well as a gifts chart prepared by a staffer for use in completing the SOEI, on which Mr. McDonnell crossed out the Kiawah Island trip and wrote "Bill Goodwin pers friend" and "check to see if personal or reportable." This documentary evidence, together with what we anticipate to be uncontroversial testimony identifying his handwriting from staff who are very familiar with it, confirms the reliability of the evidence of Mr. McDonnell's conduct.

The final *Queen* factor clarifies that evidence offered under Rule 404(b) must also satisfy Rule 403, in that it must not "subordinate reason to emotion in the factfinding process." *Queen*, 132 F.3d at 997 As with the SOEI evidence generally, cases in which the Fourth Circuit has admitted evidence under Rule 404(b) far more inflammatory than the evidence offered here make it clear that this evidence poses little to no risk of the jurors becoming so emotionally incensed as to surrender their rational faculties. *See, e.g., United States v. Gray*, 405 F.3d 227, 238–40 (4th Cir. 2005) (evidence of defendant's prior murder of first husband); *United States v. Ruhbayan*, 406 F.3d 292, 299–300 (4th Cir. 2005) (evidence of defendant's physical abuse of former girlfriends); *United States v. Powers*, 59 F.3d 1460, 1464–68 (4th Cir. 1995) (evidence that defendant routinely beat his family members, forced his children to eat hot peppers to discipline them, and threatened to burn down his home with his family inside). Again, it is difficult to imagine how the evidence offered here could be more prone to inflame the emotions of a jury than was the evidence in those cases. The defendants' argument that the evidence should be excluded as unfairly prejudicial is meritless.

V. Conclusion

For all of these reasons, the defendants' motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2014, a true and correct copy of the foregoing was delivered to all counsel of record via the Court's Electronic Filing System.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	CRIMINAL NO. 3:14-CR-00012
	)	
ROBERT F. MCDONNELL MAUREEN G. MCDONNELL	))	JUDGE JAMES R. SPENCER

REPLY OF DEFENDANT ROBERT F. MCDONNELL TO THE GOVERNMENT'S OPPOSITION TO MOTION # 27 – MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATING TO STATEMENTS OF ECONOMIC INTEREST

INTRODUCTION

The Government's Opposition to Mr. McDonnell's motion to exclude evidence relating to his Statement of Economic Interest (SOEIs) is fraught with contradictions. The Government states that it will not attempt to argue that Mr. McDonnell violated Virginia law; and then it insists that it will prove the elements of a Virginia ethics law violation. It disputes that introducing the SOEIs will lead to a distracting mini-trial on state law issues; and then it argues that it should be allowed to prove a separate violation of state ethics laws that does not involve Jonnie R. Williams, Sr. or any allegation of bribery. The perplexing nature of the Government's position is itself an indication that allowing it to introduce evidence pertaining to Mr. McDonnell's SOEIs will result in juror confusion. If the Government cannot articulate what it will argue about the SOEIs, it is unlikely that the jurors will be able to grasp why this evidence is in front of them. But whatever theory the Government ultimately settles upon, the evidence should be excluded. If the Government does not attempt to establish a violation or evasion of state disclosure requirements, the SOEI evidence is irrelevant. If the Government does attempt to do so, the evidence will be confusing to the jury and unfairly prejudicial to Mr. McDonnell. Either way, this evidence should not be admitted.

At the same time, the Government has moved the Court to preclude Mr. McDonnell from introducing evidence that negates criminal intent with respect to Counts 12 and 13 of the Indictment, as well as evidence that proves his general good character. Those motions cannot be squared with the Government's position here. The Government wishes to prove Mr. McDonnell's criminal intent by introducing evidence of nondisclosure under a regulatory scheme that is not integral to the crime charged. It then turns around and opposes his efforts to prove his *lack* of criminal intent by introducing evidence that nondisclosures on a loan application were immaterial to the lenders, on the ground that materiality is not integral to the crime charged. Similarly, the Government, after seeking considerable latitude in its efforts to prove Mr. McDonnell's corrupt intent, then argues that his efforts to prove his good character must be closely circumscribed. The Government cannot have it both ways. Evidence pertaining to the SOEIs should not be admitted; but if it is, Mr. McDonnell must be given the opportunity to show his lack of criminal intent by (1) introducing evidence that an alleged omission on his loan applications was immaterial, and (2) calling ten character witnesses to provide non-duplicative testimony about Mr. McDonnell's good character.

ARGUMENT

I. The Government's Arguments In Favor Of Introducing the SOEIs Are Self-Contradictory, And Introduction of the SOEIs Will Confuse the Jury and Prejudice Mr. McDonnell Regardless.

The Government's Opposition is incoherent. On the one hand, the Government explicitly asserts that it does not intend to argue that Mr. McDonnell violated Virginia ethics law. On the other hand, the Government forcefully asserts that it intends to prove that Mr. McDonnell violated Virginia ethics law. Both statements cannot be true, but either way, the evidence should be excluded.

A. If the Government Does Not Attempt to Prove That Mr. McDonnell Violated Or Evaded Virginia Law, the SOEI Evidence is Irrelevant.

At several points in its brief, the Government states explicitly that it intends to introduce the SOEIs without arguing that Mr. McDonnell's disclosures ran afoul of Virginia ethics law. The Government first asserts that it does not intend to "argue, much less establish, any violation of Virginia law," Opp'n at 2; then, going even further, it asserts that it "does not plan to elicit, *mention*, or argue that Mr. McDonnell violated Virginia ethics laws," Opp'n at 5 (emphasis added). The Government also complains that Mr. McDonnell "mischaracteriz[ed]" its theory of the case when he argued that its proposed use of the SOEIs will necessarily raise questions of

Virginia law. Opp'n at 1. These statements are puzzling because if the Government does *not* argue that Mr. McDonnell's disclosures on his SOEIs violated or improperly evaded Virginia ethics laws, then the SOEIs are not even *relevant*, much less admissible.

The Government's theory of the relevance of the SOEIs is that they are "evidence of concealment" and thus "probative of intent and consciousness of guilt." Opp'n at 2. But the concept of "concealment" is meaningless unless the Government establishes a requirement to disclose. This is true even where relations between two alleged co-conspirators are at issue. Suppose, for example, that Mr. Williams had invited Mr. McDonnell to take a long walk around the grounds of Mr. Williams' gated neighborhood, and during that walk he had given Mr. McDonnell extensive advice on how to start and operate a small business following his governorship. Mr. McDonnell might have enjoyed the walk, and he might have benefited from the business advice. Indeed, Mr. Williams might have proposed the outing as part of an overall scheme to ingratiate himself to Mr. McDonnell and obtain beneficial treatment from the Virginia government; and Mr. McDonnell might have understood that he was invited on the walk and given the benefit of Mr. Williams' business advice with the clear expectation that he would then take official action to benefit Mr. Williams. But in the likely event that Mr. McDonnell did not disclose the walk or advice on his SOEI at the end of the year, it would be nonsensical to say that he "concealed" or "failed to disclose" either of these benefits, because Virginia law obviously does not require the disclosure of pleasant walks or generic business tips.

The same is true of any favor, service, or thing of value that Mr. McDonnell or his immediate family receive in any given year. If Virginia law does not *require* that something be disclosed, there can be no *failure* to disclose or "concealment." Indeed, the very word "concealment" entails breaching an obligation to reveal. And absent "concealment," there is no sense in which an SOEI omitting the item in question is relevant evidence of intent or consciousness of guilt. It would be as if the Government introduced Mr. McDonnell's passport application—which does not mention Mr. Williams—to argue that Mr. McDonnell "concealed" Mr. Williams' alleged gifts to McDonnell family members from the State Department. That argument would be coherent *only* if the Government *first* demonstrated that the application form required the disclosure of miscellaneous gifts to one's family, which it obviously does not. Similarly here, before the Government can argue "concealment" to the jury, it will have to first establish that disclosure was required, or at a minimum that Mr. McDonnell intentionally evaded specific disclosure requirements. The Government's assertion that it "does not plan to elicit, mention, or argue that Mr. McDonnell violated Virginia ethics laws," Opp'n at 5, is therefore baffling. If it is true, then the SOEIs should be excluded as irrelevant.

B. If the Government Does Attempt to Prove That Mr. McDonnell Violated Or Evaded Virginia Law, the SOEI Evidence Will Cause Juror Confusion and Unfairly Prejudice Mr. McDonnell.

More likely, the Government does not mean what it says when it disavows any intention to place Virginia law at issue. Indeed, the Government states—several pages later in the same brief—that it "intends to prove at trial that Mr. McDonnell knew about the gifts and loans from Jonnie Williams, that he knew full well he should have reported them (*i.e.*, he knew that the gifts and loans were not from a 'personal friend for reasons clearly unrelated to [his] public position['),] and that his failure to do so was deliberate." Opp'n at 9 (citation omitted). It is hard to imagine what the Government means by this series of assertions if not that it intends to prove Mr. McDonnell violated Virginia ethics law.

Indeed, the Government's statement closely tracks the explicit terms of Virginia's ethics law. Section 2.2-3114 of the Virginia Code requires the Governor of the Commonwealth to file an SOEI. Section 2.2-3117 sets forth the form of the SOEI and thereby establishes what must be disclosed; among other things, the form instructs filers, "Do not list gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position." Finally, Section 2.2-3120 establishes that knowing violations of Virginia disclosure requirements constitute a misdemeanor and provides, "A knowing violation under this section is one in which the person engages in conduct, performs an act or refuses to perform an act when he knows that the conduct is prohibited or required by this chapter." The Government's declared intention, therefore—at least in this part of its Opposition—is to establish each of the elements of a violation of this statutory scheme: that Mr. McDonnell knew that under the terms of the law, he should disclose the gifts and loans from Mr. Williams, and that he deliberately declined to do so.

If the Government does set out to establish a violation or deliberate evasion of Virginia ethics law—as it must if it proposes to make the SOEIs relevant at all—then this case is precisely analogous to the numerous cases cited in Mr. McDonnell's Memorandum in which courts have excluded evidence of a defendant's non-compliance with legal or ethical requirements that are distinct from the crime charged. *See* Mem. at 2-6. The Government attempts to distinguish these cases on the ground that it "does not plan to elicit, mention, or argue that Mr. McDonnell violated Virginia ethics laws." Opp'n at 5 and n.3. But in light of the Government's own contrary assertion—as well as the dictates of simple logic—this claim is implausible.

Indeed, this case is virtually indistinguishable from *United States v. Terry*, No. 1:10-CR-390, 2011 WL 2149361 (N.D. Ohio May 31, 2011), where a judge was charged with honest services wire fraud and the Government sought to introduce evidence that the judge had violated certain provisions of the Ohio Code of Judicial Conduct. While the district court recognized that violations of the judicial Code might arguably be probative of intent to deceive, it excluded the evidence under Rule 403. The *Terry* court found that "there is tremendous concern that the introduction of evidence regarding judicial code violations would cause the jury to view the defendant as an unethical judge who might be more inclined than others to engage in a bribery scheme." *Terry*, 2001 WL 2149361, at *4. And it further explained that "the evidence might also tend to confuse the jury by suggesting that the federal government, who has no authority to prosecute potential ethical violations of judges and attorneys, is attempting to do just that." *Terry*, 2001 WL 2149361, at *4. These findings regarding prejudice and juror confusion are entirely apposite here.[1]

Moreover, if the Government is permitted to introduce the SOEIs, the inevitable result will be a distracting mini-trial in which the jury will be asked to construe a complex set of state regulatory requirements that are entirely distinct from the federal law violations at issue.[2] This set of issues will be all the more prejudicial and confusing because the Government plans to argue that in some instances, the McDonnells did *not even violate* Virginia law but instead *merely structured* transactions to avoid reporting requirements *while complying with the law*. *See* Indictment ¶111(b); Opp'n at 2. But as the Supreme Court noted in *Ratzlaf v. United States*,

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[1] The Government cites a series of cases in which the Fourth Circuit has found that the admission of various types of "inflammatory" evidence did not violate Rule 403. Opp'n at 5. But "[a]pplying Rule 403 to determine if evidence is prejudicial requires a fact-intensive, context-specific inquiry." *Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 388 (2008). Rule 403 rulings in cases bearing no factual resemblance to this one say nothing at all about the admissibility of the SOEI evidence in this case. It is therefore irrelevant whether, for example, a district court presiding over a murder trial properly admitted evidence of callous statements made by the defendant. *See* Opp'n at 5 (discussing *United States v. Rivera*, 412 F.3d 562 (4th Cir. 2005)).

[2] Mr. McDonnell recognizes that, in excluding the testimony of his proposed expert on Virginia ethics law, this Court found that the jury will be "capable of assessing the reasonableness of [Mr.] McDonnell's disclosures." Mem. Op. (June 26, 2014), Dkt. 246, at 4. Even if expert testimony is not necessary, however, that does not cure the Rule 403 problem. The fact remains that allowing the Government to argue that Mr. McDonnell violated Virginia ethics laws will conduce to protracted and involved proceedings regarding the propriety or impropriety of his disclosures. Such proceedings will inevitably distract the jury and cloud the issue of whether the McDonnells violated federal law, as opposed to Virginia law.

510 U.S. 135 (1994), there are many innocent reasons for nondisclosure.[3] The jury will therefore be required not only to distinguish proper from improper nondisclosures but also to distinguish technically proper nondisclosures that are "actually" improper from technically proper nondisclosures that are "actually" innocent. This task will be, to say the least, daunting and confusing.

The risk of unfair prejudice and juror confusion is particularly troubling in the context of this case, because the Government faces significant problems of proof when it comes to showing what exactly Mr. Williams allegedly received in exchange for the gifts and loans he provided to the McDonnells. *See generally* Mem. in Support of Def. Robert F McDonnell's Motion #10 – Motion to Dismiss Counts 1-11 of the Indictment (March 25, 2014), Dkt. 106. The Government must not be allowed to circumvent the requirement that it prove a *quo* in this alleged bribery scheme by putting Mr. McDonnell on trial for failing to disclose a *quid* on a state disclosure form.

II. Evidence Pertaining to Mr. McDonnell's Alleged Failure to Report a Gift from a Third Party Is Inadmissible Under Rule 404(b).

The Government displays a similar confusion about what it plans to prove when it argues that it should be allowed to introduce evidence that Mr. McDonnell did not report a stay at Kiawah Island as the guest of William H. Goodwin, Jr. All of the reasons it gives for the admissibility of this evidence under Rule 404(b) might conceivably be valid *if* Mr. McDonnell were charged with a violation of Virginia ethics law. But he is not, and the Government's arguments therefore fail.

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[3] The Government argues at length that *Ratzlaf* is inapposite because it addressed a statutory willfulness requirement rather than relevancy. Opp'n at 3-4. This argument misses the basic point that, as the Supreme Court explained in that case, structuring can be, and often is, perfectly innocent. *See* 510 U.S. at 144-45. Even if alleged structuring might theoretically be probative of an intent to deceive in some cases, Rule 403 prohibits the introduction of such evidence because it creates a substantial risk of confusion and unfair prejudice. *See* Mem. at 2-3.

As an initial matter, the Government appears to have abandoned any argument that Mr. McDonnell's SOEI disclosures pertaining to the Kiawah vacation are intrinsic evidence of the crimes charged. Instead, it focuses only on the test for admissibility of extrinsic evidence of other bad acts under Rule 404(b). *See* Opp'n at 8-9. That is appropriate, because the nondisclosure of a vacation paid for by a third party who is *not* accused of bribing or attempting to bribe Mr. McDonnell cannot be "inextricably intertwined" with, "part of," or a "necessary preliminary to" the corruption scheme alleged here. *See United States v. Lipford*, 203 F.3d 259, 268 (4th Cir. 2000).

The Government's discussion of the Fourth Circuit's test for admissibility of extrinsic evidence of bad acts under Rule 404(b) ignores the fact that Mr. McDonnell is charged with federal bribery crimes rather than violations of state ethics law. The Government argues that Mr. McDonnell's nondisclosure of the Kiawah vacation is probative of his "intent in failing to disclose the gifts from Jonnie Williams." Opp'n at 9. But Mr. McDonnell is not charged with failing to disclose gifts from Mr. Williams; he is charged with trading official acts for gifts. Similarly, the Government claims that the nondisclosure of the Kiawah vacation is relevant to Mr. McDonnell's fraud because it involved "the very same form on which Mr. McDonnell failed to disclose gifts and loans from Mr. Williams." Opp'n at 9. But that form is the state form requiring disclosures of state public officials; again, Mr. McDonnell is not charged with a violation of state ethics laws. The Government makes the same error yet again when it argues that the SOEI evidence pertaining to the Kiawah trip shows "absence of mistake when it comes to assessing Mr. McDonnell's intent in failing to disclose the gifts and loans from Mr.

Williams." Opp'n at 9. Once more: Mr. McDonnell is not charged with failing to disclose gifts and loans from Mr. Williams. The intent that the Government must prove is not that Mr. McDonnell intentionally avoided disclosure under state law, but "that [he] intended to accept money as a bribe or in payment for his legislative services," *United States v. Bailey*, 990 F.2d 119, 124 (4th Cir. 1993), in violation of federal law.

As Mr. McDonnell argued in his Memorandum, a central purpose of Rule 404(b) is to preclude the introduction of evidence to show a "generalized intent (and propensity to commit crime in general)." *United States v. Queen*, 132 F.3d 991, 996 (4th Cir. 1997). When 404(b) evidence is offered to show intent, therefore, courts must be particularly careful. *See id.* at 995. If the Government is allowed to introduce other acts evidence that is allegedly probative of one type of criminal intent (intent not to disclose) to show a distinct type of alleged criminal intent (intent to accept bribes), it will essentially be able to argue to the jury that Mr. McDonnell must be guilty because he has a criminal disposition. Rule 404(b) forbids precisely that.

The Government's inability to distinguish between an intent to avoid Virginia disclosure requirements and an intent to accept a bribe from Mr. Williams also demonstrates, once again, just how much potential for prejudice and confusion there is in its proposed use of this extraneous SOEI evidence. If the Government believes that failure to disclose a gift is essentially equivalent to engaging in *quid pro quo* bribery, it is not farfetched to suppose that a jury might come to the same improper conclusion—thereby convicting Mr. McDonnell of federal bribery felonies on the basis of a (never-instructed-by-any-judge) possible state misdemeanor disclosure violation. Introduction of SOEI evidence pertaining to the Kiawah trip is therefore independently barred under Rule 403.

III. The Government's Various Evidentiary Arguments Cannot All Be Credited.

Finally, the Government's position with regard to the SOEIs is also in stark tension with its position regarding two other evidentiary issues that go to the heart of Mr. McDonnell's lack of criminal intent. Specifically, the Government's arguments for the admissibility of the SOEI evidence cannot be squared with its arguments against admitting evidence of the immateriality of the false statements alleged in Counts 12 and 13 of the Indictment and against admitting more than three character witnesses. The Court should grant Mr. McDonnell's Motion to exclude evidence pertaining to the SOEIs; but if it denies this Motion in whole or in part, fairness dictates that it must allow Mr. McDonnell to present evidence of immateriality as well as ten character witnesses.

A. If Evidence of Immateriality Is Inadmissible Under Rule 403, Evidence Relating to the SOEIs Is Certainly Inadmissible Under the Same Rule.

Mr. McDonnell has also been charged with making false statements on loan applications in violation of 18 U.S.C. § 1014. The Government has separately moved to exclude evidence that Mr. McDonnell's alleged omission of loans from Mr. Williams from the loan applications was immaterial to the lenders in question. *See* United States' Mem. in Support of Mot. to Exclude Irrelevant and Misleading Evidence of Materiality of False Statements Charged in Counts 12 & 13 (June 20, 2014) ("Materiality Motion"), Dkt. 230. The reasons that the Government gives in support of this Motion are directly contradictory to its arguments for introducing the SOEIs.

As Mr. McDonnell explains in his Opposition to the Government's Materiality Motion, evidence that the loans from Mr. Williams would not have been material to his lenders is relevant because it makes it less probable that Mr. McDonnell intended to influence the bank. Robert F McDonnell's Mem. in Opp'n to the Govt.'s Mot. in Limine to Exclude Irrelevant and

Misleading Evidence of Materiality of False Statements Charged in Counts 12 & 13 (July 1, 2014) ("Materiality Opp'n"), Dkt. 253. The Government argues, however, that this evidence of Mr. McDonnell's lack of intent should be excluded because materiality is not an element of the crime charged. Materiality Motion at 5-6. Even if relevant, the Government claims, this evidence "is likely to mislead and confuse the jury." Materiality Motion at 6.

These arguments are directly contradictory to the Government's arguments regarding the SOEIs. Just as materiality is not an element of a violation of § 1014, the failure to disclose gifts or loans on a state disclosure form is not an element of either honest services wire fraud or Hobbs Act extortion. If evidence tending to show that Mr. McDonnell *lacked* the requisite intent to violate federal law will confuse the jury by asking it to assess an issue—materiality—that is not integral to the crime charged, then surely evidence tending to show that Mr. McDonnell *possessed* the requisite intent to violate federal law will confuse the jury by asking it to assess an issue—compliance with state disclosure requirements—that is not integral to the crime charged. The Government provides no explanation for why SOEI evidence should be admitted, while materiality evidence should be excluded.

In fact, the SOEI evidence poses a far greater risk of juror confusion than evidence of immateriality does. Much of the Government's argument pertaining to the SOEIs involves allegedly improper "structuring" of transactions to avoid disclosure requirements. To explain to a jury why nondisclosure is probative of corrupt intent, the Government will have to show at a minimum (1) that Mr. McDonnell had a choice of means through which to receive the gift or loan, (2) that the transaction, in another form, would have been reportable, (3) that Mr. McDonnell deliberately chose a non-reportable form for the transaction, and (4) that this choice was made with a guilty conscience in order to conceal the transaction rather than for some innocent reason. Arguing that omissions from loan applications were immaterial to lenders, in contrast, requires showing only that the additional liabilities were not material. Moreover, there is no risk of unfair prejudice to the Government if Mr. McDonnell is allowed to demonstrate the immateriality of the alleged omissions. While that evidence shows Mr. McDonnell's innocent intent, it does not cast the Government in an unflattering light. In contrast, the SOEI evidence presents a substantial risk of unfair prejudice because the jury, rather than working through the complex requirements of Virginia ethics law and considering the many innocent reasons that exist for nondisclosure, may (with the Government's strong encouragement) leap to the conclusion that Mr. McDonnell did something criminal.

Because the SOEIs pose far greater problems under Rule 403 than evidence that Mr. McDonnell's alleged omissions from his loan applications were immaterial, the Court should bar evidence of the SOEIs while admitting evidence of immateriality. But it would not be proper to do the reverse. If the risk of juror confusion is sufficient to exclude evidence of lack of materiality from Mr. McDonnell's defense to Counts 12 and 13, it is *certainly* sufficient to bar the Government from introducing evidence of the SOEIs.

B. This All Underscores The Need For Mr. McDonnell To Call At Least Ten Character Witnesses.

The Government has also filed a Motion in Limine seeking to limit the number of character witnesses that Mr. McDonnell may introduce. *See* Mem. in Support of the Govt.'s Mot. in Limine to Limit the Number of Character Witnesses (June 20, 2014), Dkt. 232. In the Government's view, testimony from more than three character witnesses is "cumulative and unnecessary." *Id.* at 1. But the Government cannot be permitted to impugn Mr. McDonnell's intentions at every turn, using evidence outside the elements of its charged crimes, and then claim that Mr. McDonnell cannot defend himself by calling witnesses who will testify to his several relevant character traits.

CONCLUSION

For the foregoing reasons, Mr. McDonnell respectfully requests that the Court grant his Motion in Limine to exclude evidence relating to his Statements of Economic Interest.

Dated: July 7, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 7th day of July, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: July 7, 2014

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	**CRIMINAL NO. 3:14-CR-00012**
v.	)	
	)	**JUDGE JAMES R. SPENCER**
ROBERT F. MCDONNELL	)	
MAUREEN G. MCDONNELL	)	

ROBERT F. MCDONNELL'S PROPOSED JURY INSTRUCTIONS

Proposed Jury Instruction No. 37

"Corruptly" Defined

The term "corruptly," as used in these instructions, means to have an improper motive or purpose. An act is done "corruptly" if it is performed voluntarily and deliberately and performed with the purpose of either accomplishing an unlawful end or unlawful result or of accomplishing some otherwise lawful end or lawful result by any unlawful method or means. The defendant must have demanded, sought, or received a thing of value with the deliberate purpose of being influenced in the performance of his official duties. This involves conscious wrongdoing or, as it is sometimes expressed, a bad or evil state of mind. An official has corrupt intent only if he demands, seeks, or receives a payment with the deliberate intent to engage in some specific quid pro quo, which is Latin for "something for something." In other words, the official must have received the payment in exchange for performing or promising to perform some specific official act. A gift or payment given with the generalized hope of some unspecified future benefit is not a bribe. You may convict the defendant only if you find that he received something of value in exchange for performing or promising to perform some specific official act.

Authority:

Adapted from O'Malley et al., Federal Jury Practice and Instructions § 27.09; *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 404 (1999) ("Bribery requires an intent 'to influence' an official act or 'to be influenced' in an official act. In other words, for bribery, there must be a *quid pro quo*—a specific intent to give or receive something of value *in exchange for* an official act."); *id.* ("The insistence upon an 'official act,' carefully defined, seems pregnant with the requirement that some particular official act be identified and proved."); *United States v. Quinn*, 359 F.3d 666, 674 (4th Cir. 2006) ("Corrupt intent means simply having an improper motive or purpose. The defendant must have demanded, sought or received a thing of value with the deliberate purpose of being influence in the performance of his or her official duties. This involves conscious wrongdoing or, as it is sometimes expressed, a bad or evil state of mind."); *United States v. Jennings*, 160 F.3d 1006, 1013 (4th Cir. 1998) ("A bribe requires that the payment be made 'corruptly,' that is, with 'corrupt intent.' Under § 201, 'corrupt intent' is the intent to receive a specific benefit in return for the payment. In other words, the payor of a bribe must intend to engage in 'some more or less specific quid pro quo' with the official who receives the payment." (citation omitted)); *id.* at 1013 (explaining that "a good will gift to an official to foster a favorable business climate, given simply with the 'generalized hope or expectation of ultimate benefit on the part of the donor,' does not constitute a bribe"); *id.* at 1018-19 ("[A] trial court must explain that a payment is made with 'corrupt intent' only if it was made or promised with the intent to corrupt the particular official. Not every payment made to influence or reward an official is intended to corrupt him. [The trial court] simply may explain that the defendant must have intended for the official to engage in some specific act (or omission) or course of action (or inaction) in return for the charged payment." (citation omitted)); *United States v. Alfisi*, 308 F.3d 144, 149 (2d Cir. 2002) (stating that "bribery involves the giving of value to procure a specific official action from a public official").

Proposed Jury Instruction No. 58

Honest Services Wire Fraud—"Official Act" Defined

An "official act" means any decision or action on any question, matter, cause, suit, proceeding, or controversy which may at any time be pending or which may, by law, be brought before any public official in his or her official capacity or in his or her place of trust. The six terms—question, matter, cause, suit, proceeding, or controversy—refer to a class of questions or matters whose answer or disposition is determined by the government.

An act may be official even if it was not taken pursuant to responsibilities explicitly assigned by law to the official. Rather, a government official can perform an "official act" when it is a settled practice as part of the official's position for him to exercise influence over a government decision even if he does not have authority to make the final decision himself.

But the fact that an activity is a routine activity, or a "settled practice," of an office-holder does not alone make it an "official act." Many settled practices of government officials are not official acts within the meaning of the statute. For example, merely arranging a meeting, attending an event, hosting a reception, or making a speech are not, standing alone, "official acts," even if they are settled practices of the official. A government official's decisions on who to invite to lunch, whether to attend an event, or whether to attend a meeting or respond to a phone call are not decisions on matters pending before the government. That is because mere ingratiation and access are not corruption. Nor is an official's use of his official position to promote a purely private venture. The questions you must decide are both whether the charged conduct constitutes a "settled practice" *and* whether that conduct was intended to or did in fact influence a specific official decision the government actually makes—such as awarding a contract, hiring a government employee, issuing a license, passing a law, or implementing a regulation.

Authority:

See 18 U.S.C. § 201(a)(3); *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 407 (1999) (distinguishing between actions that "are assuredly 'official acts' in some sense"—such as "receiving [] sports teams at the White House, visiting [a] high school, and speaking to [] farmers about USDA policy"—and the narrower category of "official acts" that fall within the bribery laws); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 360 (2010) ("Ingratiation and access are not corruption."); *United States v. Carson*, 464 F.2d 424, 434 (2d Cir. 1972) ("It is the corruption of official positions through the misuse of influence in governmental decision-making which the bribery statutes make criminal."); *United States v. Mandel*, 591 F.2d 1347. 1362 (4th Cir. 1979) ("[T]he 'fraud' involved in the bribery of a public official lies in the fact that the public official is not exercising his independent judgment in passing on official matters."); *United States v. Urciuoli*, 513 F.3d 290, 296 (1st Cir. 2008) (rejecting the argument that "trad[ing] on the reputation, network and influence that comes with political office" or using the "access and attention" that comes with a government title, or even the "(possibly improper) use of senate letterhead" were sufficient—standing alone—to transform that conduct into an improper official action); *Valdes v. United States*, 475 F.3d 1319, 1324-25 (D.C. Cir. 2007) (en banc) (holding that the Government must prove that the defendant exerted "inappropriate influence on decisions that the government actually makes"); *United States v. Rabbitt*, 583 F.2d 1014, 1028 (8th Cir. 1978), *abrogated on other grounds by McNally v. United States*, 483 U.S. 350 (1987), *superseded by statute*, 18 U.S.C. § 1346 (reversing conviction where the most that the official did "was recommend [the alleged bribe payer] to state contractors as qualified architects and thereby gain them a friendly ear"); *United States v. Loftus*, 992 F.2d 793, 796 (8th Cir. 1993) (explaining that the conviction in *Rabbitt* was reversed because the official "promised only to introduce the firm to influential persons" and "did not promise to use his official position to influence those persons"); *United States v. Jefferson*, 674 F.3d 332, 356-57 (4th Cir. 2012) (holding that "the bribery statute does not encompass every action taken in one's official capacity" and that an "act must yet adhere to the definition confining an official act to a pending 'question, matter, cause, suit, proceeding or controversy,'" such that juries cannot "rely exclusively on [] settled practices"); *United States v. Ring*, 706 F.3d 460, 470 (D.C. Cir. 2013) (holding that a government attorney performed an official action when he "acted in his official capacity to influence the visa application process" and distinguishing between interfering with specific visa applications (an official act because it sought to improperly influence a governmental decision) and "making a purely informational inquiry" (an official act in some sense but not one that sought to influence governmental action)); *United States v. Muntain*, 610 F.2d 964, 966-67 (D.C. Cir. 1979) (holding that an official's "use of his official position to promote a purely private venture created an appearance of impropriety , but it is not criminal").

Proposed Jury Instruction No. 59

Honest Services Wire Fraud—"Corruptly" Defined

"Corrupt intent" means having an improper motive or purpose. An act is done "corruptly" if it is performed voluntarily and deliberately and performed with the purpose of either accomplishing an unlawful end or unlawful result or of accomplishing some otherwise lawful end or lawful result by any unlawful method or means. The defendant must have demanded, sought, or received a thing of value with the deliberate purpose of being influenced in the performance of his official duties. This involves conscious wrongdoing or, as it is sometimes expressed, a bad or evil state of mind. An official has corrupt intent only if he demands, seeks, or receives a payment with the deliberate intent to engage in some specific quid pro quo, which is Latin for "something for something." In other words, the official must have received the payment in exchange for performing or promising to perform some specific official act. A gift or payment given with the generalized hope of some unspecified future benefit is not a bribe. You may convict the defendant only if you find that he received something of value in exchange for performing or promising to perform some specific official act.

Authority:

Adapted from O'Malley et al., Federal Jury Practice and Instructions § 27.09; *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 404 (1999) ("Bribery requires an intent 'to influence' an official act or 'to be influenced' in an official act. In other words, for bribery, there must be a *quid pro quo*—a specific intent to give or receive something of value *in exchange for* an official act."); *id.* ("The insistence upon an 'official act,' carefully defined, seems pregnant with the requirement that some particular official act be identified and proved."); *United States v. Quinn*, 359 F.3d 666, 674 (4th Cir. 2006) ("Corrupt intent means simply having an improper motive or purpose. The defendant must have demanded, sought or received a thing of value with the deliberate purpose of being influence in the performance of his or her official duties. This involves conscious wrongdoing or, as it is sometimes expressed, a bad or evil state of mind."); *United States v. Jennings*, 160 F.3d 1006, 1013 (4th Cir. 1998) ("A bribe requires that the payment be made 'corruptly,' that is, with 'corrupt intent.' Under § 201, 'corrupt intent' is the intent to receive a specific benefit in return for the payment. In other words, the payor of a bribe must intend to engage in 'some more or less specific quid pro quo' with the official who receives the payment." (citation omitted)); *id.* at 1013 (explaining that "a good will gift to an official to foster a favorable business climate, given simply with the 'generalized hope or expectation of ultimate benefit on the part of the donor,' does not constitute a bribe"); *id.* at 1018-19 ("[A] trial court must explain that a payment is made with 'corrupt intent' only if it was made or promised with the intent to corrupt the particular official. Not every payment made to influence or reward an official is intended to corrupt him. [The trial court] simply may explain that the defendant must have intended for the official to engage in some specific act (or omission) or course of action (or inaction) in return for the charged payment." (citation omitted)); *United States v. Alfisi*, 308 F.3d 144, 149 (2d Cir. 2002) (stating that "bribery involves the giving of value to procure a specific official action from a public official").

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

MEMORANDUM OPINION

THIS MATTER is before the Court on seven motions *in limine* filed by the parties. Each of these motions has been fully briefed by the parties and a hearing was held on July 15, 2014.

The Government's Motion to Exclude Irrelevant and Misleading Evidence of Materiality of False Statements Charged in Counts 12 & 13 (ECF No. 229) seeks to exclude evidence regarding the materiality of the false statements charged in Counts 12 and 13 of the Indictment, which allege violations of 18 U.S.C. § 1014. Section 1014 "criminalizes the making of a false statement to a financial institution 'for the purpose of influencing in any way the action of' the institution with regard to, for example, an advance or a loan." *Elliott v. United States*, 332 F.3d 753, 764 (4th Cir. 2003) (quoting 18 U.S.C. § 1014). Neither objective materiality of the false statement nor reliance by the financial institution is relevant to a defendant's criminal culpability under section 1014. *United States v. Lane*, 323 F.3d 568, 582-83 (7th Cir. 2003); *see United States v. Wells*, 519 U.S. 482, 489-90 (1997) (finding that materiality is not an element of section 1014). What is relevant is the defendant's specific intent to influence the financial institution's decision.

There is no evidence in the record that Defendants had any inkling of the materiality of their allegedly false statements at the time they were made. This fact distinguishes the present situation from that considered by the Seventh Circuit in *United States v. Phillips*, 731 F.3d 649 (7th Cir. 2013). Accordingly, this motion will be GRANTED. Post-offense statements of Defendants, the financial institutions, or the financial institutions' officers are irrelevant and, additionally, may mislead the jury. *See* Fed. R. Evid. 402, 403. Defendants will be precluded from testifying as to their opinion of the allegedly false statements' materiality because their opinions as to materiality are irrelevant. *See* Fed. R. Evid. 402. They may, however, testify that they did not intend to influence the financial institutions.

The Government's Motion to Limit the Number of Character Witnesses (ECF No. 231) seeks to limit each Defendant to the use of three character witnesses at trial. Although it is highly unlikely that the Court will allow more than five (5) character witnesses per Defendant, this motion will be DENIED at this time as premature. The cumulative or permissible nature of character witnesses presented by Defendants will be assessed in context at trial

The Government's Motion to Permit Leading Questions by the United States of Witnesses Identified with Defendants (ECF No. 233) seeks: (1) to permit the Government to use leading questions on direct examination of eight potential witnesses who are family members of Defendants; and (2) to prohibit Defendants from using leading questions in cross-examination of those same witnesses. Federal Rule of Evidence 611 vests the Court with discretion to grant or deny the requested relief when witnesses are "identified with an adverse party." Fed. R. Evid. 611(c)(2). Because the record does not demonstrate that these eight witnesses have shown hostility or an uncooperative spirit, the Court finds no reason to alter the ordinary mode of examining witnesses. Accordingly, this motion will be DENIED. However, if these witnesses show themselves to be hostile or uncooperative, the Court will reconsider this issue at trial.

Mr. McDonnell's Motion to Exclude Co-Conspirator Acts and Statements Pending Prima Facie Showing of Conspiracy Involving Mr. McDonnell (ECF No. 227) seeks a pretrial *James* hearing. *See United States v. James*, 590 F.2d 575 (5th Cir. 1979). The preferred method in this Court for admissibility determinations pursuant to Federal Rule of Evidence 801(d)(2) is to conditionally admit the disputed evidence subject to later proof of conspiracy. *Accord United States v. Berlin*, 707 F. Supp. 832, 840 (E.D. Va. 1989). The Court finds that a *James* hearing would be duplicative and a waste of time. Accordingly, this motion will be DENIED.

Defendants' Motions to Exclude Evidence Relating to Star Scientific Stock Ownership (ECF Nos. 235, 242) seek to exclude evidence of Mrs. McDonnell's stock ownership and transfers pursuant to Federal Rule of Evidence 403. The disputed evidence goes to concealment, which may be probative of intent to defraud—an element of the charged crimes. *See United States v. Zayyad*, 741 F.3d 452, 463 (4th Cir. 2014). Further, this evidence does not unfairly prejudice Defendants because it was not sought, and will not be used, to prove a violation of Virginia's ethics laws or reporting requirements. Because the probative value of this evidence is not outweighed by competing considerations, *see* Fed. R. Evid. 403, this motion will be DENIED.

Defendants' Motions to Exclude Evidence Relating to Statements of Economic Interest (ECF Nos. 237, 243) seek to exclude Mr. McDonnell's Statements of Economic Interest ("SOEIs"), draft SOEIs and any other evidence pertaining to their preparation or submission. The disputed evidence goes to concealment and may be probative of intent to defraud—an element of the charged crimes. *See Zayyad*, 741 F.3d 463. As with evidence of Mrs. McDonnell's stock ownership and transfers, admission of the SOEIs will not unfairly prejudice Defendants because there is no suggestion, and there will be none at trial, that Mr. McDonnell violated Virginia's ethics laws or reporting requirements. Accordingly, the SOEIs will not be excluded pursuant to Federal Rule of Evidence 403.

Additionally, the draft SOEI referencing a gift from William H. Goodwin, Jr., is admissible pursuant to Federal Rule of Evidence 404(b) as evidence of Mr. McDonnell's knowledge of the personal friend exception to Virginia's SOEI reporting requirements and as evidence of an absence of mistake. The prior act sought to be proved, therefore, is Mr. McDonnell's omission of Mr. Goodwin's gift pursuant to the personal friend exception. Evidence of Mr. McDonnell's knowledge and of the absence of mistake is relevant to, and probative of, his alleged intent to defraud—an element of the charged crimes; the prior act alleged is similar to the act the Government seeks to prove—omission of gifts from Williams pursuant to the personal friend exception; and there is nothing in the record to suggest that the evidence will be unreliable or unfairly prejudicial to Defendants. *See United States v. Queen*, 132 F.3d 991, 997 (4th Cir. 1997). Accordingly, this motion will be DENIED.

Mr. McDonnell's Motion to Exclude Mrs. McDonnell's Testimonial Statements (ECF No. 239) seeks to exclude statements Mrs. McDonnell made to law enforcement officers in an interview held on February 15, 2013. The Confrontation Clause of the Sixth Amendment generally bars the admission of testimonial hearsay statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant has had a prior opportunity for cross-examination. *See Crawford v. Washington*, 541 U.S. 36, 53-54 (2004). However, "[t]he [Confrontation Clause] does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted." *Crawford*, 541 U.S. at 59 n.9 (citing *Tennessee v. Street*, 471 U.S. 409, 414 (1985)). The Government intends to offer Mrs. McDonnell's statements as relevant, non-hearsay evidence against Mr. McDonnell. Accordingly, this motion will be DENIED. The Court will consider at trial whether an instruction limiting the relevance of Mrs. McDonnell's statements to her state of mind will be necessary.

Let the Clerk send a copy of this Memorandum Opinion to all counsel of record.

An appropriate Order shall issue.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 16th day of July 2014.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

ORDER

THIS MATTER is before the Court on seven motions *in limine* filed by the parties. For the reasons set forth in the accompanying Memorandum Opinion, the Court rules as follows:

- The Government's Motion to Exclude Irrelevant and Misleading Evidence of Materiality of False Statements Charged in Counts 12 & 13 (ECF No. 229) is GRANTED;
- The Government's Motion to Limit the Number of Character Witnesses (ECF No. 231) is DENIED as premature;
- The Government's Motion to Permit Leading Questions by the United States of Witnesses Identified with Defendants (ECF No. 233) is DENIED;
- Mr. McDonnell's Motion to Exclude Co-Conspirator Acts and Statements Pending Prima Facie Showing of Conspiracy Involving Mr. McDonnell (ECF No. 227) is DENIED;
- Defendants' Motions to Exclude Evidence Relating to Star Scientific Stock Ownership (ECF Nos. 235, 242) are DENIED;
- Defendants' Motions to Exclude Evidence Relating to Statements of Economic Interest (ECF Nos. 237, 243) are DENIED; and
- Mr. McDonnell's Motion to Exclude Mrs. McDonnell's Testimonial Statements (ECF No. 239) is DENIED.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 16th day of July 2014.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

MEMORANDUM ORDER

THIS MATTER is before the Court on the Government's Motion to Exclude Expert Testimony ("Motion") (ECF No. 221). By Memorandum Opinion and Order dated June 26, 2014, the Court deferred its determination of the admissibility of certain expert testimony. Upon further consideration and after holding *Daubert* hearings, the Court will exclude the testimony of Peter H. White, esq., in its entirety and will exclude the testimony of J. Allen Kosowsky, CPA, in part.

Federal Rule of Evidence 702 permits a qualified expert to opine on any technical matter that will help the jury understand evidence or determine a fact in issue. *See* Fed. R. Evid. 702. When a party offers expert testimony in evidence, the Supreme Court charges the trial court with deciding whether the expert's testimony is relevant and reliable. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993); *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 152 (1999). To satisfy the *Daubert* standard, a court must conclude the expert witness "employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Kumho Tire*, 526 U.S. at 152. However, the Court must limit its consideration "solely [to] principles and methodology," and should not consider "the conclusions they generate." *Daubert*, 509 U.S. at 594-95.

As to Mr. White, the Court has no doubt that Mr. White has sufficient training and experience to opine as to the cost of securities litigation. However, he seeks to offer an expert opinion on the benefit that accrued to Jonnie Williams, Sr., as a result of the Government's request for a stay of discovery in two civil suits unrelated to this criminal prosecution. Mr. White's methodology is flawed because it fails to assess several variables—some of which may not be presently knowable— that necessarily affect the benefit that has accrued or will accrue to Mr. Williams. Examples of such variables include the ultimate length of the stays, the availability of insurance, and offsets by the possible negative effects of the stays, including the diminution of stock value for a longer period of time than if the suits had proceeded, the drag of unresolved legal issues on the business, and the possibility of prevailing on the suit and/or settling the suit earlier than if the stays had not been entered. Failure to consider such variables makes Mr. White's resulting opinion unreliable.

Alternatively, the Court finds that Mr. White's proposed testimony would not be helpful to the jury. *See* Fed. R. Evid. 702. In explaining that precisely quantifying the benefit to Williams would be inherently speculative, Mr. White testified that valuating this benefit "is more of a common sense analysis." Hrg. Tr. 53:19, July 11, 2014. The Court agrees. The jury can apply its own collective common sense to understand the benefits that may have accrued to Williams as a result of the civil stays, making expert testimony unnecessary. Defendants may inquire about these benefits in cross examination of Williams, and the jury will be equipped to assess that testimony without the aid of an expert.

As to Mr. Kosowsky, the Court finds that the proposed testimony regarding the financial benefit of the civil stays is beyond his expertise because it relies upon the legal assessment of others. Mr. Kosowsky's methodology is flawed because the ultimate opinion necessarily relies on information that he does not presently have. For example, Mr. Kosowsky indicated that he did not know or did not consider information such as the effect of pre-judgment interest sought in the civil complaints, the cost of civil discovery, the effect of additional civil lawsuits against Star Scientific, Inc., that were not stayed, the viability of the stayed civil actions, and the likelihood that Williams could sell his Star Scientific stock. Because Mr. Kosowsky's methodology is flawed, his opinion as to the benefit of the civil stays is unreliable and will be excluded.

However, the Court will not exclude Mr. Kosowsky's proposed testimony regarding the soundness of Defendants' finances at this time. There is potential for Mr. Kosowsky's expertise to validly aid the jury on this point. However, at the hearing held on July 15, 2014, Mr. Kosowsky indicated that his opinion was based, in part, on speculative information (potential future earnings), information gleaned from one or more interviews with Mr. McDonnell, and documents that could be assessed by a jury without the aid of an expert. Mr. Kosowsky's opinions will not be admitted unless the factual bases for those opinions are first established by admissible testimony and/or exhibits. *See* Fed. R. Evid. 705.

Let the Clerk send a copy of this Memorandum Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 16th day of July 2014.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**CRIMINAL NO. 3:14-CR-00012**
	)	
ROBERT F. MCDONNELL **MAUREEN G. MCDONNELL**	)	**JUDGE JAMES R. SPENCER**
	)	

DEFENDANT ROBERT F. MCDONNELL'S OFFER OF PROOF REGARDING EXPERT TESTIMONY

Pursuant to Federal Rule of Evidence 103(a)(2), Defendant Robert F McDonnell respectfully submits this offer of proof with respect to the proposed expert testimony of Mark L. Earley, Peter H. White, J. Allen Kosowsky, and Norman A. Thomas. On June 26, 2014, the Court excluded:

1. Mr. Earley's proposed testimony in full;
2. Mr. White's proposed testimony regarding the value of the transactional immunity offered to Jonnie Williams, Sr. in exchange for his testimony;
3. Mr. Kosowsky's proposed testimony regarding the financial value of the benefits conferred on Mr. Williams (except the value of the Government's intervention in various civil suits), securities and trust transactions by Mr. Williams and Star Scientific, Inc., and the mechanics of bank loan applications;
4. Mr. Thomas's proposed testimony in full.

June 26, 2014 Order at 1, Dkt. No. 247 Each proposed expert's excluded testimony was discussed in (1) Defendant's Notice of Intent to Use Expert Testimony at Trial, dated May 29, 2014, which was filed with the Court on June 16, 2014, as Exhibit A to the Government's Memorandum in Support of Motion to Exclude Expert Testimony, Dkt. No. 222; (2) Defendant's

Supplementary Notice of Intent to Use Expert Testimony at Trial, dated June 12, 2014, attached as Exhibit B to the same Government brief; and (3) Defendant's Second Supplementary Notice of Intent to Use Expert Testimony at Trial, dated June 20, 2014, attached as Exhibit E to Mr. McDonnell's Response in Opposition to the same Government brief, Dkt. No. 241. This offer of proof is intended to provide additional information about the proposed testimony that was excluded for the purpose of preserving Mr. McDonnell's claim on appeal.

I. MARK L. EARLEY

As discussed in Mr. McDonnell's Notices, former Virginia Attorney General Mark L. Earley would testify concerning the common activities of governors of the Commonwealth of Virginia. Mr. Earley would not testify about what constitutes an "official act" under federal law. Rather, he would explain the general factual context of Mr. McDonnell's allegedly criminal conduct.

Mr. Earley would testify about the common practices of elected officials in Virginia when they are interacting with the donors and benefactors every politician must cultivate. He would explain that politicians rely on a variety of mechanisms to interact with their beseechers to avoid running afoul of legal and ethical obligations. These practices include referring a supporter for a meeting with a subordinate from which both the politician and the subordinate know nothing will result. They also involve declining to make specific commitments on behalf of the government to one's supporters, instead opting to route any requests for governmental assistance through the subordinate most qualified to assess the legitimacy of those requests and make an independent decision on the request that is based entirely on the merits. Mr. Earley would further explain that politicians frequently deploy these practices as defensive mechanisms—relying on their staff to turn back requests from a supporter.

Mr. Earley would also opine about whether certain conduct by Virginia politicians is consistent with the absence of fraudulent intent. Mr. Earley has no knowledge of Mr. McDonnell's actual beliefs or intentions and would not attempt to opine about what Mr. McDonnell personally believed at the time of the alleged conduct. He would, however, testify about the common practices of politicians trying to do their jobs honestly and appropriately.

Mr. Earley would also testify that several of the actions the Government has alleged Mr. McDonnell undertook in exchange for benefits are not "settled practices" of Virginia governors. Specifically, he would opine that it is not a settled practice of Virginia governors to lobby university professors to conduct specific clinical research.

II. PETER H. WHITE

As discussed in Mr. McDonnell's Notices, Mr. White would offer testimony about the benefits Star Scientific and Mr. Williams received from prosecutors in exchange for Mr. Williams' testimony. Specifically, Mr. White would explain the unusual transactional immunity agreement entered into by Mr. Williams and the Government because the nuances of different immunity arrangements is beyond the ken of the average juror. In particular, Mr. White would explain that over his 24 years as a federal prosecutor in the EDVA and a private attorney, the only transactional immunity agreement he has ever seen or heard about was the one entered between Monica Lewinsky and the Independent Counsel in 1998. He would further explain that over his career as an attorney in this District, he has never heard of any United States Attorney's Office ever providing a cooperating witness with transactional immunity for federal felonies that have no connection to the testimony the witness is providing—here, Mr. Williams' potential criminal securities fraud charges and the separate tax fraud Mr. Williams allegedly committed using a trust for his children.

In addition, Mr. White would explain the differences between a typical plea agreement or use immunity agreement and the transactional immunity agreements Mr. Williams received here. Mr. White would explain that use immunity, which is statutorily authorized, is commonly offered to witnesses to prevent their statements from being used against them. A witness who receives use immunity can be, and not infrequently is, ultimately prosecuted for the underlying criminal offenses. A witness who receives transactional immunity, on the other hand, is completely protected from future prosecution for any matter related to his immunized testimony. Mr. White's testimony is particularly important because the transactional immunity agreements offered to Mr. Williams include vague terms and avoid specificity about what he received in exchange for his testimony. That is different from a plea agreement, of course, which would include a factual basis for the plea that the jury would be able to assess in considering the witness's reliability.

Mr. White would also testify regarding the potential penalties Mr. Williams would have faced if he had not been given transactional immunity. Once again, this is important and admissible testimony because the transactional agreement itself omits any discussion of Mr. Williams' potential exposure absent the immunity agreement. Without Mr. White's testimony, the jury will have difficulty understanding the nature of the benefit that Mr. Williams and his company have received. Mr. White's opinions are based on his many years of experience as a criminal defense attorney and federal prosecutor, serving as lead counsel in over 80 federal and local jury trials. Because of his experience, Mr. White is competent to testify about transactional immunity agreements, how they compare to typical plea deals and more traditional sorts of immunity agreements, and thus elucidate how the transactional immunity agreements here benefitted Mr. Williams and his company.

III. J. ALLEN KOSOWSKY

As discussed in Mr. McDonnell's Notices, Mr. Kosowsky would offer testimony as an expert and summary witness. Mr. Kosowsky would opine on the financial value of the broad transactional immunity the Government has conferred on Mr. Williams. Mr. Kosowky is fully qualified to offer such an opinion. Mr. Kosowsky is a valuation expert and has two certifications in valuation (Certified Valuation Analyst and Accredited Business Valuator). His valuation would not value the immunity agreement per se, but rather would focus on the value (or cost) of the legal exposure Mr. Williams would have absent his broad immunity agreement.

On that same point, Mr. Kosowsky would also testify about various questionable transactions involving Mr. Williams or Star Scientific:

1. Star Scientific's "securities [transactions] including certain private placements and related party transactions," including those that were previously the subject of an investigation conducted by the United States Attorney's Office for the Eastern District of Virginia, as set forth in Star Scientific's March 18, 2013 Form 10-K filing with the Securities and Exchange Commission;
2. Mr. Williams' improper self-dealing regarding Star Scientific and other entities;
3. Mr. Williams' transactions involving an irrevocable trust or trusts, including his receipt and movement of assets through that trust or trusts, over which he improperly exercised control and access; and
4. Any other improper financial transactions or other questionable activity involving trusts or other entities that Mr. Williams established or over which he exercised control or access.

This testimony would relate to the financial benefits conferred on Mr. Williams and Star Scientific by virtue of the Government's immunity deal with Mr. Williams and would assist the jury in evaluating the credibility of Mr. Williams and other witnesses affiliated with him or with Star Scientific and other entities that Mr. Williams in whole or in part established, owned, controlled, or received benefits from. Mr. Kosowsky's opinions on these matters would be based on an examination of financial, tax, and trust-related records produced by the Government in discovery relating to Mr. Williams and others, as well as Star Scientific's publicly available financial information.

Mr. Kosowsky would also provide the jury with a general overview and explanation of how mortgage applications are processed and handled by banking institutions. He would help the jury understand the broader context of these interactions so that it could better evaluate the evidence concerning the Government's mortgage fraud charges. Mr. Kosowsky is fully qualified to offer an explanation and opinion about this process because he has extensive experience with loan applications, in his institutional role with various banking institutions, as a CPA who assists clients with loan application preparation, and as a Personal Financial Specialist.

IV. NORMAN A. THOMAS

As discussed in Mr. McDonnell's Notices, Mr. Thomas would testify about the Statement of Economic Interests ("SOEI"), a standardized form that Virginia public officials, employees, and certain political candidates must file annually. He would provide context and background for that form, and explain that the statute requiring that the SOEI be completed forbids a knowing violation of its terms, that is, "one in which the person engages in conduct, performs an act or refuses to perform an act when he knows that the conduct is prohibited or required by this chapter."[1] Such a violation can result in, at most, a Class 1 misdemeanor, which is a lesser crime than a felony. Thus, an official who prepares his SOEI using an unconventional or even arguably unreasonable interpretation of its instructions or terms does not violate the Act, unless he specifically knows that his actions contradict the instructions or terms. Mr. Thomas would explain that, to his knowledge, only two elected Virginia officials have ever been prosecuted for violating the requirements of the SOEI. Neither was convicted.[2] In any other instances, elected officials' potential or actual errors in relation to their SOEIs did not result in a known reported prosecution.

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[1] Va. Code Section 2.2-3120.

Mr. Thomas would explain that the SOEI contains numerous sections and schedules, which officials need only fill out if their situation so requires. Those sections and schedules are as follows. Mr. Thomas would focus his testimony on Schedules B, C, and E of the SOEI. The General Assembly has amended the SOEI on numerous occasions.[3] However, from January 2011 to January 2014—the span during which Mr. McDonnell filed his SOEIs as Governor for years 2010 to 2013—the wording of Schedules B, C, D, and E, and the legislatively defined terms applicable to them, remained the same.[4]

SOEI Contents	
Section	**Description**
Personal information	Requests the official's name, office held or sought, address, immediate family members' names.
Definitions and Explanatory Material	Defines terms used in the SOEI and gives reporting instructions.

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[2] *See* RICHMOND TIMES-DISPATCH ("RTD"), *Councilwoman Found not Guilty of Perjury Count; Hampton Trial Lasts Less than an Hour*, July 22, 1997 (charges thrown out against Richmond city councilwoman charged with felony perjury for failure to report loans to husband on SOEI); RTD, *Procedural Problem Ends McDaniel Case*, July 13, 1990 (charges against Richmond city councilwoman, including count of failure to disclose loan on SOEI, dismissed on statute-of-limitations grounds).

[3] *See* 1988 Va. Acts ch. 849; 1994 Va. Acts chs. 724, 733, 777, 793; 1995 Va. Acts ch. 763; 1996 Va. Acts ch. 77; 1997 Va. Acts chs. 577, 844; 1998 Va. Acts ch. 732; 2001 Va. Acts ch. 844; 2006 Va. Acts chs. 310, 779, 787, 892; 2008 Va. Acts ch. 239; 2010 Va. Acts ch. 670; 2012 Va. Acts ch. 429; 2014 Va. Acts Ch. 792.

[4] *See* 2010 Va. Acts ch. 670; 2012 Va. Acts ch. 429. Accordingly, for the Schedules discussed below, the wording of the SOEI as it appears in 2012 Va. Acts ch. 429 is used.

Questionnaire of items 1 through 10	Asks the official a series of questions, each of which, if answered affirmatively, requires a particular Schedule to be completed.
Schedule A	Offices and directorships.
Schedule B	Personal liabilities.
Schedule C	Securities.
Schedule D	Payments for talks, meetings, and publications.
Schedule E	Gifts.
Schedule F	Business interests.
Schedule G-1	Payments for representation by you.
Schedule G-2	Payments for representation by associates.
Schedule G-3	Payments for services generally.
Schedule H-1	Real estate—state officers and employees.
Schedule H-2	Real estate—local officers and employees.
Schedule I	Real estate contracts with governmental agencies.

Mr. Thomas would opine, on the basis of his experience as Assistant Attorney General and as Opinions Counsel in the Office of the Attorney General, that various public officials approach the SOEI very differently. He would explain that he fielded a significant number of calls from public officials requesting verbal legal advice as to the proper preparing of their SOEI forms. He also had occasion to review portions of the draft SOEI forms of various public officials, which deviated tremendously from one another in their level of detail and their choices of what gifts and business interests to disclose or not disclose. On the basis of this deep experience, his knowledge of the legislative history of the SOEI, and his own experience with the SOEI form, Mr. Thomas would explain that the form is complex and vague, given the lack of clarity in the law and the different interpretations given to the SOEI by public officials.

Finally, Mr. Thomas would act as both a summary and expert witness concerning the SOEIs Mr. McDonnell filed during his time as Governor. He would examine Mr. McDonnell's SOEIs as filed, his SOEI drafts, the gift logs and other documentation relevant to the preparation of the SOEIs, and various other documentation related to gifts and loans received by Mr. McDonnell and his family. He would summarize this information to the jury, providing the factual context for items that the Government will suggest were improperly omitted (or structured to avoid reporting). Mr. Thomas would also offer his opinion that the SOEI forms filed by Mr. McDonnell from 2010 to 2013 evidence a reasonable understanding of which items were required to be disclosed. He would opine that each item related to Jonnie Williams or Star Scientific, Inc., as well as items related to other persons and companies, had an appropriate basis for disclosure or non-disclosure.

Dated: August 28, 2014

Respectfully submitted,

/s/ Jonathan A. Berry
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Counsel for Robert F. McDonnell

CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 28th day of August, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: August 28, 2014

Respectfully submitted,

/s/ Jonathan A. Berry

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Counsel for Robert F McDonnell

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**CRIMINAL NO. 3:14-CR-00012**
	)	
ROBERT F. MCDONNELL	)	**JUDGE JAMES R. SPENCER**
MAUREEN G. MCDONNELL	)	

MEMORANDUM IN SUPPORT OF DEFENDANT ROBERT F. MCDONNELL'S MOTION # 39 – RENEWED MOTION FOR JUDGMENT OF ACQUITTAL PURSUANT TO RULE 29(C) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

INTRODUCTION

Despite testimony from close to 70 witnesses, including Robert McDonnell himself and key members of the former Governor's cabinet and his closest staff, as well as many dozens of exhibits, the Government failed to show that Mr. McDonnell performed or promised to perform any "official act" for Jonnie Williams, as required to prove Counts 1-11. No reasonable juror could conclude from this record that the accused promised to exercise (or influence others to exercise) any governmental power to benefit Mr. Williams. The most the Government established, granting it the benefit of all reasonable inferences, is that Mr. McDonnell facilitated Mr. Williams' *access* to certain government decision-makers so that Mr. Williams could attempt to persuade them to his cause. But as the Supreme Court has made clear, "[i]ngratiation and access are not corruption." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 360 (2010). The Government likewise failed to produce any evidence that Mr. McDonnell promised to engage in *specific* official acts or a *specific* course of official acts in exchange for payments. Instead, at best, it showed that Mr. Williams believed he had secured a promise to engage in unspecified future acts in exchange for gifts and loans. Under *United States v. Jennings*, 160 F.3d 1006 (4th Cir. 1998), however, that is insufficient to support a conviction. For these reasons, Mr. McDonnell is entitled to a judgment of acquittal on Counts 1-11 of the Indictment. In the alternative, the Court should grant Mr. McDonnell a new trial on the ground that the evidence "weighs heavily against the verdict." *United States v. Campbell*, 977 F.2d 854, 860 (4th Cir. 1992).[1]

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[1] Mr. McDonnell's companion motion for a new trial, identifying various legal errors that deprived Mr. McDonnell of a fair trial, is being filed contemporaneously with this Rule 29(c) motion.

The Government also failed to prove federal jurisdiction for Counts 5-11, which allege that Mr. McDonnell conspired to commit, and did commit, extortion in violation of the Hobbs Act, 18 U.S.C. § 1951. The Hobbs Act criminalizes extortion that "obstructs, delays, or affects commerce or the movement of any article or commodity in commerce." 18 U.S.C. § 1951(a). "The charge that interstate commerce is affected is critical since the federal government's jurisdiction of this crime rests only on that interference." *United States v. Bengali*, 11 F.3d 1207, 1211 (4th Cir. 1993). Although jurisdiction may be shown by establishing a "realistic probability" of an effect on commerce from the "extortionate transaction" rather than demonstrating an actual effect, *United States v. Spagnolo*, 546 F.2d 1117, 1119 & n.6 (4th Cir. 1976), the Government must still make its proof of probability. It cannot merely rely on the intent of the conspirators, *see United States v. Staszcuk*, 517 F.2d 53, 60 (7th Cir. 1975), nor can it leave the jury to "resort[] to excessively strained inferences or guesswork," *United States v. Peterson*, 236 F.3d 848, 855 (7th Cir. 2001). Here, the Government has introduced only the most speculative evidence that any of the acts Mr. McDonnell allegedly agreed to perform would have had an effect on interstate commerce. For this additional reason, Mr. McDonnell is entitled to a judgment of acquittal on Counts 5-11; or, in the alternative, a new trial.

ARGUMENT

The standard governing a Rule 29 motion for a judgment of acquittal is "whether there is substantial evidence (direct or circumstantial) which, taken in the light most favorable to the prosecution, would warrant a jury finding that defendant was guilty beyond a reasonable doubt." *United States v. Jaensch*, 678 F Supp. 2d 421, 426 (E.D. Va. 2010), *aff'd*, 665 F.3d 83 (4th Cir. 2011). "Substantial evidence" does not mean "any evidence." Rather, it means "evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt *beyond a reasonable doubt*." *United States v. Burgos*, 94 F.3d 849, 862 (4th Cir. 1996) (emphasis added) (internal quotation marks omitted). *See also, e.g., United States v. Grubbs*, 506 F.3d 434, 439 (6th Cir. 2007) (defining "substantial evidence" as "more than a scintilla. It means such relevant evidence as a reasonable mind might accept to support a conclusion. It is evidence affording a substantial basis of fact from which the fact in issue can be reasonably inferred." (internal quotation marks omitted)).

If the Court finds that the evidence is sufficient to withstand a Rule 29 challenge, Mr. McDonnell asks in the alternative for a new trial. When a defendant attacks the weight of the evidence in a motion for a new trial, the court's authority is broader than when it is deciding a motion for acquittal. *See Campbell*, 977 F.2d at 860. The district court need not view the evidence in the light most favorable to the prosecution, and it may evaluate the credibility of witnesses. *See id.* "When the evidence weighs so heavily against the verdict that it would be unjust to enter judgment, the court should grant a new trial." *Id.* (quoting *United States v. Arrington*, 757 F.2d 1484, 1485 (4th Cir. 1985)).

Here, the evidence was not sufficient to allow a reasonable jury to conclude beyond a reasonable doubt that Mr. McDonnell committed any of the crimes of which he was convicted. At a minimum, the evidence weighs so heavily against the verdict that it would be unjust to enter judgment against Mr. McDonnell.

I. MR. MCDONNELL IS ENTITLED TO A JUDGMENT OF ACQUITTAL ON COUNTS 1-11 BECAUSE HE DID NOT PERFORM OR PROMISE TO PERFORM ANY SPECIFIC "OFFICIAL ACTS" TO BENEFIT MR. WILLIAMS.

A. Granting Access To Government Officials Is Not An "Official Act."

In order to prove both the honest services fraud charges (Counts 1-4) and the Hobbs Act charges (Counts 5-11), including the corresponding conspiracy charges, the Government must establish that Mr. McDonnell agreed (or conspired) to perform "official acts" in exchange for receiving things of value from Mr. Williams. *See* Mem. in Support of Def. Robert F McDonnell's Mot. to Dismiss Counts 1-11 of the Indictment, Dkt. 106 ("Motion to Dismiss"), at 7-13. Not everything a public official does, however, is an "official act" that can constitute a *quo* in an illegal *quid pro quo* bribery scheme. As the Supreme Court taught in *United States v. Sun-Diamond Growers*, 526 U.S. 398, 407 (1999), some "actions [taken by government officials]—while they are assuredly 'official acts' in some sense—are not 'official acts' within the meaning of" federal anti-bribery laws. Thus, while "receiving [] sports teams at the White House, visiting [a] high school, and speaking to [] farmers about USDA policy" are actions that may be undertaken by a public official in the course of his duties, they are not "official acts." *Id.* Instead, the Government must prove that Mr. McDonnell promised to himself exercise, or pressure another government official to exercise, the regulatory powers of the Commonwealth.

Indeed, this Court acknowledged as much in holding that the question for the jury is whether Mr. McDonnell's "conduct in fact constituted 'the corruption of official positions through misuse of influence in governmental decision-making.'" May 5, 2014 Order, Dkt. No. 175, at 2 (quoting *United States v. Carson*, 464 F.2d 424, 434 (2d Cir. 1972)). Numerous other authorities, cited by Mr. McDonnell at length throughout these proceedings, likewise establish that an "official act" constitutes the exercise of, or promise to exercise, actual governmental power—that is, a "decision or action on [a] matter pending before any public official, in such official's official capacity." 18 U.S.C. § 201(a)(3). *See, e.g.*, Motion to Dismiss at 7-19; Mem. in Support of Def. Robert F McDonnell's Mot. for J. of Acquittal, Dkt. 409 ("First Rule 29 Motion"); *United States v. Urciuoli*, 513 F.3d 290, 295-96 (1st Cir. 2008); *Valdes v. United States*, 475 F.3d 1319, 1324-25 (D.C. Cir. 2007) (en banc); *United States v. Rabbitt*, 583 F.2d 1014, 1028 (8th Cir. 1978); *United States v. Muntain*, 610 F.2d 964, 967-68 (D.C. Cir. 1979).

B. The Government Has Not Proved That Mr. McDonnell Performed Or Promised To Perform Any Specific "Official Act" Or Course Of Action To Benefit Mr. Williams.

Here, there is no evidence in the record that Mr. McDonnell did or promised to exercise actual governmental power in exchange for payments. Mr. McDonnell never asked or directed any other official to give Mr. Williams any governmental action he may have desired. Rather, even drawing every inference in favor of the Government, the most the Government has shown is that Mr. McDonnell facilitated Mr. Williams' access to certain Virginia officials by arranging or encouraging meetings or by inviting Mr. Williams and his colleagues to a luncheon and reception. But as the Supreme Court has held, "[i]ngratiation and access are not corruption." *Citizens United*, 558 U.S. at 360.

1. Mr. McDonnell Never Promised To Undertake A Specific "Official Act" Or A Specific Course Of "Official Acts" In Exchange For Payments.

Tellingly, Mr. Williams himself never even alleged a promise on Mr. McDonnell's part to perform a specific "official act." For example, Mr. Williams testified that, on May 2, 2011, when he met with Mrs. McDonnell at the Mansion, she allegedly told Mr. Williams that, given her "background in nutritional supplements," she could be "helpful to you with this project, with your company" and that the Governor said it was "okay for me to help you." Trial Tr. Vol. III, at 680:13-16. Mr. Williams clarified that Mrs. McDonnell did not promise that *the Governor* was going to help and that she never told him at this meeting that the Governor would "do X, Y or Z if you give us the money." *Id.* at 680:25-681:6. Mr. Williams next testified about a June 16, 2011 letter to Mr. McDonnell that he routed through Mrs. McDonnell's chief of staff, Mary Shea Sutherland. *See* GX-161. According to Mr. Williams, the purpose of the letter was to suggest that Mr. McDonnell initiate a "Virginia Study" of Anatabloc at Virginia public medical schools, which Mr. Williams had previously discussed with Mr. McDonnell on a flight to California in

October 2010. Tr. Vol. IV, at 703:17-705:11. Although Mr. Williams asked Mr. McDonnell in the letter to have a staff member contact him, Mr. Williams testified that he never got any response. *Id.* at 705:12-18. And Mr. Williams never followed up on the letter with Mr. McDonnell. Mr. Williams also related a conversation with Mr. McDonnell about obtaining a research grant from the Tobacco Commission and stated that Mr. McDonnell thought it was a "good idea." *Id.* at 709:21-24. But, again, Mr. Williams confirmed that Mr. McDonnell never said that he would "get that done." *Id.* at 709:25-710:3. The closest Mr. Williams came to alleging a promise is when Mr. McDonnell allegedly told Mr. Williams in February 2012—almost a year into the supposed conspiracy—that he was "following up with the situation over at UVA." Tr. Vol. IV, at 775:5-6.

But even if Mr. McDonnell had promised Mr. Williams that he would help obtain studies for Star Scientific, that does not prove that Mr. McDonnell promised to perform *specific* official acts or a *specific* course of official action in exchange for things of value. As the Fourth Circuit explained in *Jennings*, it is legal error to allow a bribery conviction on the theory that money was paid to a government official merely "to influence [that official] 'in connection with' or 'in reference to' [government] business." 160 F.3d at 1022. Rather, *quid pro quo* corruption must involve "money in exchange for some specific official act or course of action." *Id.* at 1022. Here, however, there is no evidence—not from Mr. Williams or anyone else—that Mr. McDonnell ever promised to perform any specific official act or specific course of official actions for the benefit of Mr. Williams or his company. Indeed, on direct examination, Mr. Williams repeatedly refused to identify *any* specific official act or course of action that Mr. McDonnell allegedly promised to perform in exchange for payments. Instead, he repeatedly testified only to his vague belief that Mr. McDonnell would provide unspecified "help" at some indeterminate point in time. *See, e.g.*, Tr. Vol. III, at 683:8-10 ("Q: Okay. Why did you agree to loan $50,000 and give $15,000 to the Governor? A: I needed—I needed his help."); Tr. Vol. IV, at 743:10-11 ("I thought I had an understanding she was helping me, they were helping me with my company. "); *id.* at 770:23-771:6 ("Q: Well, why are you loaning the money? A. I'm loaning him money to help me. Q: Help you do what, sir? Let's stop beating around the bush. Why are you not wanting people to know that you're loaning the Governor money? A. It may be wrong. I think it's wrong. It could be wrong, and it could be—it could be violating laws. I don't know that, but it could be."). As *Jennings* makes clear, that kind of vague promise does not establish the *quid pro quo* required by the federal anticorruption laws.

In short, the Government's case failed at the starting gate: It put forth no evidence that Mr. McDonnell promised to engage in any specific "official act" or course of action in exchange for payments.

2. None Of The Conduct Alleged By The Government Constitutes An "Official Act."

Nor did the Government overcome this evidentiary void by pointing to specific actions that Mr. McDonnell did undertake and then asking the jury to infer from those acts that an illicit *quid pro quo* agreement existed. The Government argued that the August 1, 2011 meeting between Mr. Williams and Molly Huffstetler, the August 30, 2011 Mansion event, the February 17, 2012 email to Jason Eige, the February 29, 2012 Healthcare Leaders Reception, and Mr. McDonnell's March 21, 2012 meeting with Lisa Hicks-Thomas and Sarah Wilson, were all "official acts." *See* Tr. Vol. XXV at 5869:16-5870:17; 6039:25-6042:14. Even if the Government could prove that Mr. McDonnell promised to take these actions in exchange for payments—and as discussed above, it did not do so—none of these actions constituted an "official act" under the federal bribery laws. Instead, at best, the Government showed only that

Mr. Williams was granted *access* to Virginia officials on certain occasions so that *Mr. Williams* could make his case to other government officials. In none of the instances cited by the Government as "official acts" did Mr. McDonnell influence, or attempt to influence, any decision on a pending governmental matter.[2]

a. Meeting With Molly Huffstetler

On August 1, 2011, Mr. Williams met at the Mansion with Mrs. McDonnell and Molly Huffstetler, an official from the Health and Human Resources Department. Tr. Vol. IV, at 719:4-25. Mr. McDonnell was not present, *id.* at 720:1-2, and did not initiate the meeting between his wife and Mr. Williams. But he did ask Secretary Hazel to have a member of his staff at the meeting, Tr. Vol. VII, at 1491.16-24. According to Ms. Huffstetler, she understood that Mr. McDonnell asked "nothing more" than that she attend the meeting. *Id.* at 1492:14-1493:8; *see also id.* at 1522:2-8. During the meeting, Mr. Williams explained the testing that had been done on Anatabloc to date and discussed his hope to test Anatabloc on volunteer state employees. Tr. Vol. IV, at 720:3-23; Tr. Vol. VII, at 1495:16-22. Mr. Williams also claimed he had talked with the Governor about obtaining research funding from the Tobacco Commission. Tr. Vol. IV, at 720:24-721:3. According to Ms. Huffstetler, Mr. Williams said nothing that she construed to be an "ask." Tr. Vol. VII, at 1524:6-9. After the meeting, Ms. Huffstetler, responded with a polite "blow-off" email. *Id.* at 1507:8-22; *id.* at 1517:22-1518:2 (characterizing the email as saying "'No' with a smile"). Ms. Huffstetler testified that, at the time she wrote this email, she understood that nothing further was required of her and that she received no further direction from Mr. McDonnell, Mrs. McDonnell, or Secretary Hazel. *Id.* at 1507:16-1508:4. And in fact, she took no further action in response to the meeting—a decision that she was empowered to make, and did make, on her own. *Id.* at 1517:1-21; *id.* at 1520:1-8. Importantly, Ms. Huffstetler related that she did not perceive any pressure on her from Mr. McDonnell (or from Mrs. McDonnell) to do anything other than attend the meeting. *Id.* at 1524:10-14. Consequently, Mr. McDonnell did nothing with respect to this meeting that constituted an "official act." *See United States v. Loftus*, 992 F.2d 793, 796 (8th Cir. 1993) (explaining the result in *Rabbitt* where the Eighth Circuit reversed a Hobbs Act conviction because the official "promised only to introduce the [gift-paying] firm to influential persons" and "did not promise to use his official position to influence those persons").

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[2] Mr. Williams' November 4, 2010 meeting with Secretary Hazel and Mr. McDonnell's brief February 3, 2011 appearance at a CigRx event pre-date the charged conduct, which began in April 2011. But neither event is a legally cognizable official act, regardless. *See* Tr. Vol. IX, at 2188:20-2189:1 (testimony of Secretary Hazel that "I missed the punch line of the meeting because I never got the ask at that point"); Tr. Vol. V, at 1088:13-15 (testimony of Jonnie Williams affirming that Mr. McDonnell's attendance at CigRx event consisted of "canned remarks that are supportive of Virginia business, et cetera, spend[ing] a few minutes and mak[ing] some nice comments about [the witness's] company").

b. Mansion Event

On August 30, 2011, the same day Star Scientific launched Anatabloc, a luncheon was held at the Mansion for doctors from Johns Hopkins University, the University of Virginia ("UVA"), Virginia Commonwealth University ("VCU"), the Roskamp Institute, and Richmond generally. Tr. Vol. IV, at 727:18-728:21. The Governor (belatedly) and Mrs. McDonnell also attended. *Id.* Mr. Williams wanted the Governor present "[b]ecause it sends a signal to those medical schools that this is important." *Id.* at 729:13-18. He thought it would give his product "credibility." *Id.*; *id.* at 734:6-19; *see also* Tr. Vol. X, at 2374:2-6 (Perito explaining "halo" effect). During the luncheon, Mr. Williams presented a portion of $200,000 in grants to university researchers as seed money to prepare research proposals for submission to the Tobacco Commission. Tr. Vol. IV, at 733:3-734:5. Mr. McDonnell arrived toward the end of the lunch and asked a series of questions about what it would take to show the efficacy of Anatabloc. *Id.* at 732:2-20; *see also* Tr. Vol. VIII, at 1793:11-1795:9 (Dr. Lazo testifying that

Mr. McDonnell asked whether "there was some scientific validity" to the pre-clinical studies, whether "there was any reason to explore this further," and whether this could be "something good for the Commonwealth" and that "the Governor's position was more of an interrogative type ... of questioning"). Although Mr. Williams characterized Mr. McDonnell's remarks as "generally supportive," Tr. Vol. IV, at 732:24-733:2, he did not testify that Mr. McDonnell asked or directed the UVA and VCU doctors in attendance to submit any application on behalf of Star Scientific to the Tobacco Commission for funding to research Anatabloc.

In fact, Paul Perito, Star Scientific's president who also attended the Mansion event, testified that, in response to Mr. Williams' comment that he hoped the Governor would support an application to the Tobacco Commission, Mr. McDonnell made clear to the attendees that he had "limited decision-making power" with respect to the Tobacco Commission. Tr. Vol. X, at 2376:5-22. There was no testimony that Mr. McDonnell publicly announced his support of an application to the Tobacco Commission for funding of Anatabloc research. Nor was there any testimony that Mr. McDonnell pressured the UVA and VCU doctors to study Anatabloc. *See* Tr. Vol. VIII, at 1810:3-12 (Dr. Lazo affirming that Mr. McDonnell did not "come up to you and grab your arm, pull you to the corner, and say, 'Listen, I really want you to go research this stuff'"). The Mansion event, therefore, was not an "official act" under the bribery laws. *See Loftus*, 992 F.2d at 796; *Urciuoli*, 513 F.3d at 295-96 (rejecting the Government's position that "trad[ing] ... on the reputation, network and influence that comes with political office" or using the "access and attention" that comes with a government title, or even the "(possibly improper) use of senate letterhead" were—standing alone—improper); *Muntain*, 610 F.2d at 967-68 (rejecting the Government's position that "any acts within the range of an official's public duties" are "official acts," including labor-relations official's meetings "to discuss matters of interest to the unions," and concluding that the defendant's "use of his official position to promote a purely private venture created an appearance of impropriety, but it is not criminal").

c. Email To Jasen Eige

On February 17, 2012, days after receiving an email from Mrs. McDonnell about UVA and VCU not returning calls from Mr. Williams, *see* Tr. Vol. VII, at 1661:1-25, Jasen Eige, the Governor's counsel and policy advisor, received an email from Mr. McDonnell that said, "Please see me about Anatabloc issues at VCU and UVA," *id.* at 1665:25-1666:10. Mr. Eige responded, "Will do. We need to be careful with this issue." *Id.* at 1666:11-12. Mr. Eige testified that Mr. McDonnell's inquiry did not change his view that the Governor should not participate in resolving a dispute between Mr. Williams and officials at UVA and VCU. *Id.* at 1666:13-1667:16. At around the same time, Mr. Eige called Jerry Kilgore, Mr. Williams' lobbyist, to "change the expectations of his client" so as to "shut [Mr. Williams'] request down." *Id.* at 1664:23-1665:4; *id.* at 1668:3-6; *see also* Tr. Vol. XI, at 2825:3-5 (Kilgore testifying that he "certainly passed it back to [Star and Mr. Williams] that Jasen isn't confident that the Governor should weigh in here"). And Mr. Eige related that Mr. McDonnell "never followed back up with me or never pushed back or never directed me to actually go forward and try to make something happen with the universities." Tr. Vol. VII, at 1668:13-16. Again, therefore, there was no "official action" on the part of Mr. McDonnell. *See United States v. Ring*, 706 F.3d 460, 470 (D.C. Cir. 2013) (distinguishing between "act[ing] in [an] official capacity to *influence* the visa application process" (an official act because it sought to improperly influence a governmental decision) and "making a purely informational inquiry" (an official act in some sense but not one that sought to influence governmental action)).

d. Healthcare Leaders Reception

On February 29, 2012, Mr. Williams attended an annual healthcare leaders reception at the Mansion. Tr. Vol. IV, at 761:5-8, 783:3-5. Mr. Williams testified that Mrs. McDonnell asked him to identify healthcare leaders that he wanted to invite to the event. *Id.* at 761:10-12; *see also id.* at 783:6-784:10. Mr. Williams did so, naming Virginia physicians, doctors from Johns Hopkins, and Star Scientific employees. *Id.* at 761.13-20. He viewed the event as an opportunity to mingle with doctors and introduce them to Anatabloc in the hope that they would eventually recommend it to their patients. *Id.* at 761:22-762:10; *see also id.* at 763:15-18 (Mr. Williams explaining the "credibility" that comes with "presenting your product to someone" "in front of the showcase of the Governor's Mansion"). During the reception, Mr. Williams asked Mrs. McDonnell if she would have Mr. McDonnell publicly recognize Dr. Paul Ladenson, the head of endocrinology at Johns Hopkins who was also a paid consultant to Star Scientific. *Id.* at 785:13-23. Mr. McDonnell did so. *Id.* at 785:13-15; *see also id.* at 787:2-10 (Mr. Williams testifying that Mr. McDonnell's announcement of Dr. Ladenson drew attention to Dr. Ladenson as a representative of Star Scientific). But there is no testimony that Mr. McDonnell even mentioned Star Scientific or Anatabloc, much less that he influenced or pressured any of the doctors in attendance to study or use Anatabloc. *See* Tr. Vol. IX, at 2121:11-16 (Ms. Scarbrough testifying that, in introducing Dr. Ladenson, Mr. McDonnell did not tell the attendees to speak to him about Anatabloc or identify him as an associate of Mr. Williams); *id.* at 2165:1-4 (Dr. Crantz testifying that Mr. McDonnell introduced Dr. Ladenson as a healthcare leader from Johns Hopkins University). Mr. McDonnell, therefore, never performed or promised to perform an "official act." *See Loftus*, 992 F.2d at 796; *Urciuoli*, 513 F.3d at 295-96; *Muntain*, 610 F.2d at 967-68.

e. Meeting With Lisa Hicks-Thomas And Sarah Wilson

On March 21, 2012, Mr. McDonnell had a meeting on healthcare policy with Lisa Hicks-Thomas, Sara Wilson, and Martin Kent. Tr. Vol. XI, at 2654:17-2655:18; *id.* at 2675:17-2676:3. Ms. Wilson said that, at the end of the meeting, Mr. McDonnell pulled out a bottle of Anatabloc and "talked about how much it had helped him and his wife." *Id.* at 2657:2-10; *see also id.* at 2676:13-20. Ms. Hicks-Thomas recalled that Mr. McDonnell said that Anatabloc was "working well for him, and that he thought it would be good for state employees, and then he asked us if we would meet with them"—that is, with representatives of Anatabloc. *Id.* at 2676:15-20. These two staffers disagreed about whether Mr. McDonnell in fact suggested they meet with Star, and neither Ms. Hicks-Thomas nor Ms. Wilson followed up on Mr. McDonnell's request. Moreover, Mr. McDonnell never contacted either staffer about the issue after they left his office. *Id.* at 2679:23-2680:3; *id.* at 2668:17-2669:17. At most, the evidence shows that Mr. McDonnell asked Ms. Hicks-Thomas and Ms. Wilson to meet with Star Scientific representatives. There is no evidence that he directed them to take any particular action or make any particular decision on any pending matter. Once again, therefore, there is no evidence that Mr. McDonnell promised to undertake an "official action." *See Loftus*, 992 F.2d at 796; *Urciuoli*, 513 F.3d at 295-96; *Muntain*, 610 F.2d at 967-68.

3. The Government's Arguments For Why The Foregoing Conduct Constitutes "Official Acts" Under The Bribery Laws Are Wrong.

The Government nevertheless has advanced two arguments for why, in its view, Mr. McDonnell engaged in "official action" under the federal bribery laws. Both are wrong.

First, the Government contended that Mr. McDonnell promised to help Mr. Williams obtain research studies from the University of Virginia ("UVA") and Virginia Commonwealth University ("VCU") and funding from the Virginia Tobacco Commission. *See, e.g.*, Tr. Vol.

XXV, at 5824:19-21, 5849:18-21. There is, of course, no evidence of any such promise, as discussed above. But regardless, such a promise to "help" would not, itself, rise to the level of an "official act." Instead, the Government must prove that the "help" that Mr. McDonnell offered itself constituted an "official act."

The record testimony regarding former Attorney General Kenneth Cuccinelli is illustrative. In particular, the evidence shows that Mr. Cuccinelli received gifts from Mr. Williams and also introduced him to influential lobbyist Jerry Kilgore, whose brother is the chairman of the Tobacco Commission. Tr. Vol. XII, at 2848:3-8, 2835:18-2836:9. Arguably, then, Mr. Cuccinelli agreed to "help" Mr. Williams in obtaining Tobacco Commission funding in exchange for gifts. But no one would claim that this was a crime, because introducing someone to a lobbyist does not constitute "official action." Consequently, any promise by Mr. Cuccinelli to "help" Mr. Williams get Tobacco Commission funding would not be an "official act," because the form that the help took did not, itself, constitute an "official act."

The same is true here. Even if Mr. McDonnell had promised to help Mr. Williams get studies from Virginia universities or funding from the Tobacco Commission—and he did not—such a vague promise would not constitute a promise to engage in specific "official action" because none of the "help" that Mr. McDonnell allegedly offered constituted an exercise of actual governmental power. Rather, at most, Mr. McDonnell gave Mr. Williams access to other government officials so that *Mr. Williams* could plead his case. That kind of access, however, has never been understood to constitute "official action" under the federal bribery laws.

Second, the Government also argued that Mr. McDonnell somehow performed "official acts" merely by providing Mr. Williams and Star Scientific with "credibility." *See, e.g.*, Tr. Vol. XXV, at 5843:25-5844:13. An official's conduct, however, does not become a legally cognizable official act simply because it might confer credibility or reputational benefits on others. Credibility is irrelevant to the "official act" inquiry, which turns on whether the official made a decision or took action on a matter pending before him. Providing credibility is not an official act, any more than is letting influential people have photo ops with a public official, even though it provides those individuals with credibility when they put the photos on their office walls. *See Urciuoli*, 513 F.3d at 295-96; *Jennings*, 160 F.3d at 1013 ("a goodwill gift" made "with the generalized hope or expectation of ultimate benefit on the part of the donor" is not bribery).

* * *

In short, there is no evidence that Mr. McDonnell promised to engage in *specific* official acts or a *specific* course of official action in exchange for payment. Nor do any of the actions alleged by the Government constitute "official acts" because they were not decisions or actions on matters pending before Mr. McDonnell or any other official. Arranging a meeting with a staffer, speaking at an event, making an informational inquiry with a staffer, attending a healthcare reception, and asking a staffer to meet with a constituent—without more—are not actions or decisions on a matter because they do not purport to exercise—or influence the exercise of—any of the regulatory powers of the state. Here, at most, Mr. McDonnell provided Mr. Williams with access to other government officials. But "[i]ngratiation and access are not corruption." *Citizens United*, 558 U.S. at 360. Regulating *that* conduct is the province of campaign finance laws, ethics regulations, and gift laws—none of which Mr. McDonnell has been charged with violating here. *See, e.g.*, *id.* at 357 (explaining that "restrictions on direct contributions are preventative"). Accordingly, this Court should grant an acquittal on Counts 1-11. In the alternative, the Court should grant Mr. McDonnell a new trial.

C. The Honest Services Fraud Statute And Hobbs Act Are Unconstitutionally Vague.

"To satisfy due process, a penal statute [must] define the criminal offense [1] with sufficient definiteness that ordinary people can understand what conduct is prohibited and [2] in a manner that does not encourage arbitrary and discriminatory enforcement." *Skilling v. United States*, 561 U.S. 358, 364 (2010) (citation omitted). Here, the honest services fraud statute and Hobbs Act are unconstitutionally vague on their face; but regardless, they are unconstitutionally vague under the Government's definition of "official act."

First, these statutes are facially unconstitutional. As to the honest services fraud statute, the prohibition of "'a scheme or artifice to deprive another of the intangible right of honest services[]' is vague, and therefore violates the Due Process Clause," because it provides no definition of the right of honest services whose deprivation it prohibits. *See Skilling*, 561 U.S. at 415-20 (Scalia, J., dissenting). And a "statute that is unconstitutionally vague cannot be saved by judicial construction that writes in specific criteria that its text does not contain." *Id.* at 415-16. The Hobbs Act is similarly unconstitutionally vague in that it provides no definition for what it means to obtain property "under color of official right." *See* 18 U.S.C. § 1951(b)(2).

Second, even if the honest services fraud statute and Hobbs Act were facially constitutional, they are unconstitutionally vague under the Government's capacious view of the meaning of "official acts." Interpreting "official act" to dispense with proof that the official sought to exercise governmental power will leave officials guessing about the legality of standard courtesies extended by politicians to supporters, benefactors, and the general public. The Government's definition of official act would potentially criminalize any interaction with a benefactor, such as facilitating a meeting, hosting or appearing at an event, or speaking favorably about that benefactor. It would even raise questions about the legality of offering photo opportunities at fundraisers, or organizing private events wherein donors obtain special access to officials in exchange for specified contributions. All such acts potentially "promote" or "legitimize" or lend "credibility." Such an amorphous and uncertain standard fails to provide fair notice in accordance with *Skilling*. In addition, such a broad construction would lead to arbitrary prosecutions. If providing "access" is criminal, then prosecutorial discretion is the only thing standing between most public officials and federal indictment. The danger of arbitrary prosecution is particularly clear here, given that Mr. McDonnell's gubernatorial predecessors and his current successor engaged in similar conduct without even prompting any investigation at all. *See* Def.'s Mem. in Supp. of Mot. #1 (Jan. 21, 2014), Dkt. 8, at 16-17.

For these reasons as well, Mr. McDonnell is entitled to acquittal on Counts 1-11.

D. The Constitution Forbids Federal Prosecution Of State Officials For Non-Corrupt Conduct That Is Legal Under State Law.

Finally, the Government's broad legal theory criminalizes political activity of state public officials that has no impact on federal funds and is "not corruption." *Citizens United*, 558 U.S. at 360. Extending the federal criminal law into that core province of state self-governance violates the Tenth Amendment and the principles of federalism it embodies. The federal government is permitted to interfere with State self-governance in only limited circumstances, such as when federal funds are at stake, *see* 18 U.S.C. § 666—which the Government does not allege here—or when federal intervention is necessary to discharge the Government's obligation to "guarantee a Republican Fo[illegible] Government," U.S. Const. art. IV, § 4. The States are otherwise entitled to set their own rules governing the political activity of their officials. That is why the Supreme Court has warned against adopting over-broad constructions of the federal bribery laws that would improperly "involve[] the Federal Government in setting standards of disclosure and good government for local and state officials." *McNally v. United States*, 483 U.S. 350, 360 (1987). That is precisely what the Government is attempting to do here.

This prosecution is ultimately no different from the federal government setting fixed limits on campaign donations to state officials because, in the judgment of the federal government, unlimited campaign donations corrupt state governance. But such an intrusive prohibition would, of course, "upset[] the federal balance to a degree that renders it ... unconstitutional." *United States v. Lopez*, 514 U.S. 549, 580 (1995) (Kennedy, J., concurring). Accordingly, this Court should enter a judgment of acquittal on Counts 1-11.

II. MR. MCDONNELL IS ENTITLED TO A JUDGMENT OF ACQUITTAL ON COUNTS 5-11 BECAUSE THE GOVERNMENT FAILED TO ESTABLISH THE JURISDICTIONAL BASIS FOR HOBBS ACT EXTORTION.

In addition to the absence of any official act, *see supra* Part I, the Government's proof on the Hobbs Act counts is further deficient because there is no evidence that the alleged bribery scheme had an actual or realistically probable effect on interstate commerce. This deficiency provides a second, independent reason to enter a judgment of acquittal on Counts 5-11; or, in the alternative, to grant Mr. McDonnell a new trial.

The Hobbs Act criminalizes robbery and extortion that "obstructs, delays, or affects commerce or the movement of any article or commodity in commerce." 18 U.S.C. § 1951(a). Interference with interstate commerce is a jurisdictional element of the crime that must be proved beyond a reasonable doubt by the Government. *See United States v. Tillery*, 702 F.3d 170, 174 (4th Cir. 2012). Although the Act sweeps broadly, *see Stirone v. United States*, 361 U.S. 212, 215 (1960), courts have nevertheless established meaningful requirements of proof for the jurisdictional predicate of the Hobbs Act. In the words of the Second Circuit, a showing of an impact on commerce "is essential given that the Hobbs Act confers only limited jurisdiction on the federal courts for prosecutions of robberies or extortions," which are otherwise "quintessential state crimes." *United States v. Perrotta*, 313 F.3d 33, 36 (2d Cir. 2002).

Indeed, in recent years, the Supreme Court has been particularly vigilant in enforcing the constitutional limitations on Commerce Clause jurisdiction. For example, in *Jones v. United States*, 529 U.S. 848 (2000), the Supreme Court held that 18 U.S.C. § 844(i), which criminalizes arson of any "property used in interstate or foreign commerce," could not be used to prosecute arson of an owner-occupied residence. *Id.* at 850. The Court found that in light of *United States v. Lopez*, 514 U.S. 549 (1995), "a constitutional question would arise were we to read § 844(i) to render the traditionally local criminal conduct in which [the defendant] engaged as a matter for federal enforcement." *Jones*, 529 U.S. at 858 (internal quotation marks omitted). The Courts of Appeals have recognized that the rationale of *Jones* precludes a jurisdictional standard for the Hobbs Act "that would expand the reach of the Act to include nearly every robbery or extortion committed," *Perrotta*, 313 F.3d at 37 *See also United States v. Marrero*, 299 F.3d 653, 655 (7th Cir. 2002) (noting that "[b]efore *Lopez*, courts were not fussy about the jurisdictional requirement of the Hobbs Act," but stating that in light of "the Supreme Court's evident concern not to allow the concept of 'commerce' (interstate or foreign) to expand to the point at which every transaction in the American economy would be within Congress's reach we are in a new era") (citations omitted).

The Government's theory of Hobbs Act jurisdiction in this case was that if the conspiracy between Mr. Williams and the McDonnells had been more successful, Star Scientific's business would have benefited and this would have constituted an effect on interstate commerce. *See* Tr. Vol. XXV, at 5891:12-21 (arguing to the jury that "had the scheme actually worked out a little better than it did for Star, then the effects on their business would have been positive and would have affected interstate commerce"). The Government, by relying solely on this theory, conceded that none of the actions that the McDonnells performed had an actual effect (direct or indirect) on interstate commerce. Under Fourth Circuit law, the Government was therefore required to prove that there was a "realistic probability" of an effect on commerce from the "extortionate transaction" in order to establish Hobbs Act jurisdiction. *Spagnolo*, 546 F.2d at 1119 & n.6 (citing *Staszcuk*, 517 F.2d at 59-60). This standard, although more lenient than that applied in other circuits,[3] still requires the Government to introduce competent evidence showing what the likely, specific effect on commerce would have been.

For example, in *United States v. Staszcuk*—the Seventh Circuit case that first established the "realistic probability" theory of Hobbs Act jurisdiction that the Fourth Circuit subsequently adopted, *see Spagnolo*, 546 F.2d at 1119 & n.6—a city alderman accepted a bribe to advocate for a zoning variance so that an animal hospital could be built on a specific piece of property. The variance was granted, but the hospital was never built. The court held that the lack of an actual effect on commerce was not fatal to jurisdiction; but in doing so it relied explicitly on testimony of one of three contractors who bid on the contract that the construction project would have required the use of materials manufactured out-of-state. 517 F.2d at 60. The court further held that an "intent" to affect commerce is not enough; the probability of an effect must be shown. *Id.*

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[3] The Courts of Appeals are divided on whether a "potential" effect on commerce is sufficient to support jurisdiction for a substantive Hobbs Act charge. *Compare, e.g.*, *United States v. Rivera Rangel*, 396 F.3d 476, 482-83 (1st Cir. 2005) ("The Hobbs Act ... has ... been held to reach even those effects which are merely potential or subtle."), *and United States v. Brantley*, 777 F.2d 159, 162 (4th Cir. 1985) (holding that the "jurisdictional predicate [of the Hobbs Act] ... may be shown by proof of probabilities without evidence that any particular commercial movements were affected."), *with United States v. Williams*, 308 F.3d 833, 838 (8th Cir. 2002) ("the [Hobbs Act's] plain language requires an actual effect on interstate commerce, not just a probable or potential impact."), *and United States v. Carcione*, 272 F.3d 1297, 1301 n.5 (11th Cir. 2001) ("A substantive violation of the Hobbs Act requires an actual, de minimis affect on commerce.") (citation omitted).

Similarly, in *United States v. Taylor*, 966 F.2d 830 (4th Cir. 1992), and *United States v. Bailey*, 990 F.2d 119 (4th Cir. 1993), South Carolina legislators had accepted bribes to vote for a bill—which did not pass—that would have legalized pari-mutuel betting on horse and dog racing. The Fourth Circuit found that the Government had adequately proved Hobbs Act jurisdiction on a "realistic probability" theory only because it had introduced detailed expert testimony indicating that if the bill had passed, interstate commerce would have been affected because out-of-state tourists would have traveled to South Carolina. *See Taylor*, 966 F.2d at 835-36; *Bailey*, 990 F.2d at 126.

In other words, while it is true that in the Fourth Circuit, the "jurisdictional predicate [of the Hobbs Act] ... may be shown by proof of probabilities," *United States v. Brantley*, 777 F.2d 159, 162 (4th Cir. 1985), the Government must actually make its proof that there was a "realistic probability" of an effect on commerce. It is not enough "to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States." *Lopez*, 514 U.S. at 567. Here, the Government introduced no competent evidence establishing a "realistic probability" of an effect on commerce.

To be sure, the Government elicited testimony indicating that Star Scientific has offices in several different states. Tr. Vol. X, at 2341:23-2342:15. But the mere fact that Star Scientific may have an interstate presence does not relieve the Government of its obligation to prove that there was a reasonable probability that the alleged conspiracy would have had an effect on interstate commerce. The Government introduced no evidence indicating how any action that Mr. McDonnell performed or allegedly promised to perform would have specifically impacted

Star's business operations in a way that affected interstate commerce or caused any goods or funds to move in interstate commerce.

All that the record reflects is that Star Scientific officials had a vague belief that others would view Star Scientific and its products in a positive light through their association with Mr. McDonnell and his office. For example, Paul Perito, the former president of Star Scientific, testified that he believed that, from Mr. Williams' relationship with the McDonnells, "there could be a halo, I describe it as a halo effect, if the Chief Executive of the Commonwealth of the state, which is the home state of the product, embraces the worthiness of the product. It gives it a type of credibility." Tr. Vol. X, at 2347:21-25. *See also id.* at 2374:4-6; *id.* at 2354:13-21. But Mr. Perito's general expectation that Star Scientific's reputation would be enhanced through its association with the McDonnells is not equivalent to the type of concrete, particularized effect on interstate commerce that courts have looked to for Hobbs Act jurisdiction. The Government presented no testimony of the type relied on in *Staszcuk*, *Taylor*, and *Bailey*, for example, that specific goods would have moved in interstate commerce or that people would have traveled to engage in commerce if the alleged scheme had succeeded. Nor was there any testimony setting forth with specificity a probable causal chain between an action the McDonnells took (or supposedly agreed to take) and a financial benefit to Star.

Indeed, to the extent Star officials and advocates did testify to specific effects they anticipated the McDonnells' endorsement might have, those effects were *intra*state. Mr. Perito focused on the positive impact that an association with the McDonnells could have on the views and actions of Virginia officials, testifying that he hoped their support "might resonate with [other] state officials," as well as scientists at Virginia universities. *Id.* at 2379:7-14. Similarly, Jerry Kilgore believed that it was important to have studies done inside the state of Virginia because he thought that that would increase the likelihood of gaining funding from the Virginia Tobacco Commission, explaining, "I'm convinced the Commission likes to spend money on Virginia projects, not see Marylanders getting the money." Tr. Vol. XI, at 2801:24-2802:1. Mr. Kilgore testified that he eventually convinced Mr. Williams and other Star officials that "we should be focusing on UVA and VCU" rather than Johns Hopkins. *Id.* at 2802:6-9. As for Mr. Williams, he repeatedly confirmed that his goal was to persuade Virginia researchers to perform studies and, more generally, that the anticipated benefits of Mr. McDonnell's assistance would be *intra*state and local in nature. *See* Tr. Vol. IV, at 720:6-7 (testifying that he hoped Anatabloc would "lower the healthcare costs in Virginia"); *id.* at 729:13-19 (testifying that he wanted studies done at UVA and VCU and thought that the "credibility" gained by the Governor's support would help achieve this goal); *id.* at 734:10-19 ("I'm trying to have this tested in Virginia. [S]ince it was going to be done in Virginia, to have the crown of it or the 'Virginia Study' or, you know, 'This is what happened in Virginia.'"); *id.* at 771:15-17 ("I thought the ends justified the means for what I was trying to accomplish here in Virginia."); *id.* at 784:7-10 ("Q: [T]here were several doctors that you were trying to get to sell—or convince that Anatabloc was good for the *local* area, right? A: Yes.") (emphasis added); *id.* at 804:3-4 ("I expected that he would continue to help me move this product forward in Virginia"); Tr. Vol. V, at 1028:20-23 ("This was something that was important to our company and important to me to—to bring the credibility of Virginia to this discovery and this product and to have the testing done in the State of Virginia"); *id.* at 1085:6-10 ("I thought that because I thought I had the capability in Virginia, I was very proud of this, I thought this was an important discovery with our company and I actually thought it would lower the healthcare costs in Virginia. And I still do."); *id.* at 1112:25 ("Well, we wanted the studies done in Virginia. "); *id.* at 1123:25-1124:2

("'We propose to use Health Diagnostic Laboratory, Incorporated, a Virginia company, for some of the blood analysis to be carried out in these studies.'"); *id.* at 1147:9-11 ("I think we were—we were leading the way towards trying to lower the healthcare costs in Virginia."). A Virginia company's efforts to obtain studies and funding from Virginia state entities or to lower health care costs within the state do not constitute *inter*state commerce.

Rather than meet its burden of proving beyond a reasonable doubt that there was a "reasonable probability" of an effect on interstate commerce, the Government simply left it to the jury to infer such an effect. But Hobbs Act jurisdiction cannot be established through "strained inferences." *Peterson*, 236 F.3d at 855. "To render a guilty verdict, the jury must hear sufficient evidence [of a federal jurisdictional nexus] to avoid resorting to guesswork." *Id.* *See also, e.g.*, *United States v. Elders*, 569 F.2d 1020, 1025 (7th Cir. 1978) ("Although the [Hobbs] Act requires only a de minimis effect on commerce, the effect still must be more than a speculative, attenuated 'one step removed' kind of effect."). The Government's proof of jurisdiction for the Hobbs Act charges was inadequate, and for this additional and independent reason, Mr. McDonnell is entitled to a judgment of acquittal or, in the alternative, a new trial on Counts 5-11.

CONCLUSION

The Court should grant Mr. McDonnell a judgment of acquittal on Counts 1-11. In the alternative, it should grant Mr. McDonnell a new trial.

Dated: September 18, 2014

Respectfully submitted,

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I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 18th day of September, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

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No. 15-4019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ROBERT F McDONNELL,
Defendant-Appellant,

On Appeal from the United States District Court for the Eastern District of Virginia, Richmond Division, James R. Spencer, District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA)
)
v.)
) No. 3:14cr12
ROBERT F. MCDONNELL and)
MAUREEN G. MCDONNELL,)
Defendants.)

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT ROBERT F. MCDONNELL'S RENEWED MOTION FOR JUDGMENT OF ACQUITTAL

The United States of America, by undersigned counsel, respectfully files this response in opposition to defendant Robert F. McDonnell's renewed motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29(c). *See* Doc. No. 509. In that motion and accompanying memorandum in support, Doc. No. 510 ("Def. Mem."), Mr. McDonnell asks this Court to set aside the jury's unanimous verdict finding him guilty on all eleven corruption charges in this case and enter a judgment of acquittal as a matter of law—or alternatively, to exercise its discretion to order a new trial. In support of that request, Mr. McDonnell essentially offers two arguments this Court has already rejected, namely that the United States did not adduce sufficient evidence of (i) the "official action" component of the *quid pro quo* required for the corruption charges in this case; and (ii) an actual or potential effect on interstate commerce as required by Counts 5–11, which charged violations of conspiracy to commit and substantive extortion under color of official right under the Hobbs Act. But for the reasons discussed below, the jury was properly and thoroughly instructed on both of these issues, and there was ample evidence to support the jury's conclusion that the defendants engaged in a *quid pro quo* with

Jonnie Williams and that their scheme had an actual or potential effect on interstate commerce. As such, Mr. McDonnell's motion is meritless and should be denied.

I. Applicable Legal Standard

Where, as here, a defendant moves pursuant to Rule 29(c) for a court to set aside a unanimous verdict and enter a judgment of acquittal as a matter of law based on an alleged insufficiency of the evidence, a defendant "faces a heavy burden." *United States v. Foster*, 507 F.3d 233, 245 (4th Cir. 2007). More specifically, in ruling on such a motion, a court must "view the evidence in the light most favorable to the prosecution[] and inquire whether a rational trier of fact could have found the essential elements of the charged offense beyond a reasonable doubt." *United States v. Singh*, 518 F.3d 236, 246 (4th Cir. 2008). In conducting this inquiry, a court must "consider both circumstantial and direct evidence," and a court must also "allow the government all reasonable inferences that could be drawn in its favor." *United States v. Harvey*, 532 F.3d 326, 333 (4th Cir. 2008). In other words, courts "must bear in mind that 'the jury, not the reviewing court, weighs the credibility of the evidence and resolves any conflicts in the evidence presented.'" *United States v. Beidler*, 110 F.3d 1064, 1067 (4th Cir. 1997) (quoting *United States v. Murphy*, 35 F.3d 143, 148 (4th Cir. 1994)).

Similarly, when a defendant asks a court to order a new trial based on an alleged insufficiency of the evidence, Fed. R. Crim. P 33 provides that a "court may vacate any judgment and grant a new trial if the interest of justice so requires." But as this Court has previously noted, "[w]hether a defendant gets a new trial is left to the trial court's discretion." *United States v. Chinasa*, 789 F Supp. 2d 691, 694 (E.D. Va. 2011) (Spencer, J.) (citing *United States v. Smith*, 451 F.3d 209, 216–17 (4th Cir. 2006)). And in the context of a sufficiency challenge, "[a] court should use its discretion to grant a new trial sparingly and only do so if 'the evidence weighs so heavily against the verdict ***that it would be unjust to enter judgment***.'" *Id.* (quoting *United States v. Arrington*, 757 F.2d 1484, 1485 (4th Cir. 1985)) (emphasis added).

II. Argument

A. The jury's unanimous finding that the United States proved the *quid pro quo* required by the corruption charges in this case was supported by sufficient evidence.

Mr. McDonnell's first argument is that this Court should set aside the jury's unanimous guilty verdicts on the corruption charges in this case because, he claims, the United States "failed to show that Mr. McDonnell performed or promised to perform any 'official act' for Jonnie Williams, as required to prove Counts 1–11." Def. Mem. at 1. But his claims about the definition and proof of "official actions" depend on legal arguments that this Court has correctly rejected throughout this case, invoke factual claims that are contradicted by the record, and are unsupportable under the standard for reviewing a jury's verdict in any event.

1. The *Quid Pro Quo* Requirement[1]

Under settled law, the United States was not required to prove that Mr. McDonnell actually followed through on the corrupt bargain and took or caused official action because "fulfillment of the *quid pro quo* is not an element of the offense." *Evans v. United States*, 504 U.S. 255, 268 (1992); *see also United States v. Brewster*, 408 U.S. 501, 526 (1972) ("There is no need [under 18 U.S.C. § 201] for the Government to show that [defendant public official] fulfilled the alleged illegal bargain; acceptance of the bribe is the violation of the statute, not performance of the illegal promise."); *United States v. Hairston*, 46 F.3d 361, 365 (4th Cir. 1995) (Hobbs Act *quid pro quo* requirement is "not onerous" and "[t]he official need not actually fulfill the quid pro quo"). In other words, as the Court instructed the jury with respect to honest-services fraud, it could find the required *quid pro quo* "whether or not the payor actually provides the thing of value and whether or not the public official ultimately performs the requested action or intends to so," and "it is not necessary that the scheme actually succeeded or that any official action was taken by the public official in the course of the scheme." Tr. 6100–01.

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[1] The black-letter bribery principles set forth here are taken from the Court's jury instructions. To the extent that Mr. McDonnell challenges those jury instructions in his separate motion seeking a new trial, *see* Doc. No. 511, the United States responds to those arguments in its response to that motion. *See* Doc. No. 530, at 2–14.

To prove a *quid pro quo*, the United States was also not required to link any particular payment to any specific alleged official action. More specifically, as the Court instructed the jury with respect to extortion under color of official right, "a given thing of value need not be correlated with a specific official action, and a thing or things of value may be given with the intent to retain a public official's services on an as-needed basis, so that as opportunities arise the public official would take specific official action on the payor's behalf." Tr. 6113–14; *see also United States v. Jefferson*, 674 F.3d 332, 360 (4th Cir. 2012) ("We agree with [the Second Circuit] that, 'in order to establish the quid pro quo essential to proving bribery, the government need not show that the defendant intended for his payments to be tied to specific official acts (or omissions).'" (quoting *Ganim v. United States*, 510 F.3d 134, 148 (2d Cir. 2007) (internal quotation omitted)); *United States v. Jennings*, 160 F.3d 1006, 1014 (4th Cir. 1998) ("The quid pro quo requirement is satisfied so long as the evidence shows a course of conduct of favors and gifts flowing to a public official in exchange for a pattern of official actions favorable to the donor.").

Moreover, as the Court instructed the jury, "[t]he public official and the payor need not state the quid pro quo in express terms. Otherwise, the law's effect could be frustrated by knowing winks and nods." Tr. 6101. And "the intent to exchange may be established by circumstantial evidence, based on the defendant's words, conduct, acts, and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them." Tr. 6101, *see also* Tr. 6113 (same); *Evans*, 504 U.S. at 274 ("The official and the payor need not state the *quid pro quo* [required by the Hobbs Act] in express terms, for otherwise the law's effect could be frustrated by knowing winks and nods. [A] *quid pro quo* with the attendant corrupt motive can be inferred from an ongoing course of conduct." (Kennedy, J., concurring)); *United States v. Hamilton*, 701 F.3d 404, 409 (4th Cir. 2012) (holding, in case involving Hobbs Act extortion, that corrupt intent can be inferred and need not be expressly stated).

Finally, as the Court instructed the jury, the "official action" that constitutes the *quo* in the required *quid pro quo* exchange "means any decision or action on any question, matter, cause, suit, proceeding, or controversy, which may at any time be pending, or which may by law be brought before any public official, in such public official's official capacity." Tr. 6102; *see also* Tr. 6114. And within the parameters of that definition, "official action" also

> includes those actions that have been clearly established by settled practice as part of a public official's position, even if the action was not taken pursuant to responsibilities explicitly assigned by law In other words, official actions may include acts that a public official customarily performs, even if those actions are not described in any law, rule, or job description. And a public official need not have actual or final authority over the end result sought by a bribe payor so long as the alleged bribe payor reasonably believes that the public official had influence, power or authority over a means to the end sought by the bribe payor. In addition, official action can include actions taken in furtherance of longer-term goals, and an official action is no less official because it is one in a series of steps to exercise influence or achieve an end.

Tr. 6102–03.

2. The Evidence of a *Quid Pro Quo* Here

In the context of the well-settled principles set forth above and otherwise included in the Court's instructions to the jury regarding the *quid pro quo* requirement, the United States adduced ample evidence from which a jury could have found proof beyond a reasonable doubt of the *quid pro quo* component of the corruption charges. Put simply, the United States adduced evidence to support every allegation in the Indictment in this case—allegations that the Court already ruled were collectively sufficient to meet the legal standards set forth above. Those include the specific allegation—incorporated by the Court in its jury instructions—that the alleged *quid pro quo* was an "exchange for Robert McDonnell and the Office of the Governor of Virginia performing official actions on an as-needed basis, as opportunities arose, to legitimize, promote, and obtain research studies for Star Scientific's products." Tr. 6089. It also includes the allegations specifying the types of "favorable official action" alleged as part of the corrupt agreement, namely meetings with Mr. McDonnell's "subordinates to discuss and promote Anatabloc," events "designed to encourage Virginia university researchers to initiate studies of anatabine," contact with subordinate government officials "as part of an effort to encourage Virginia state research universities to initiate studies of anatabine," allowing Williams "to invite individuals important to Star Scientific's business to exclusive events at the Governor's Mansion," and "recommending that senior [subordinate] government officials meet with Star Scientific to discuss ways that the company's products could lower healthcare costs." Tr. 6090–91. The United States adduced evidence from which a reasonable juror could have found beyond a reasonable doubt that each of those allegations were true—and thus, that the required *quid pro quo* had been proven.

First, there was overwhelming evidence at trial that Mr. McDonnell knew that Mr. Williams wanted Mr. McDonnell and his former office to engage in official action on the question, matter, and cause of obtaining research studies for Star Scientific's Anatabloc product, both at state universities and through access to state government employees. For example, Jonnie Williams testified at length about an October 2010 flight from California to Virginia during which he explained to Mr. McDonnell that he wanted "independent testing in Virginia" of Anatabloc, something that Mr. McDonnell agreed "was a good idea." Tr. 660. During that same flight, Williams asked Mr. McDonnell to "connect [him] with the person in Virginia in [McDonnell's] administration so that [Williams] c[ould] move this forward." Tr. 660. Later, at a private dinner on April 29, 2011, Williams testified that he again brought up the studies that he wanted performed on Anatabloc in Virginia. Tr. 677. And Williams testified that when he provided $65,000 in payments to the McDonnells on or about May 23, 2011, he did so because of the action that he knew Mr. McDonnell could take with respect to the medical schools in Virginia on whether those schools would study Anatabloc. Tr. 683.

Moreover, in June 2011, Williams sent a letter to Mr. McDonnell that specifically described the context within which Williams sought official action from Mr. McDonnell. Tr. 700–05. That letter, which was admitted as an attachment to two different emails as Gov Exhs. 161 and 162, was addressed to Mr. McDonnell on Star Scientific letterhead, and Mr. McDonnell admitted on cross-examination that he personally received it. *See* Gov. Exhs. 161, 162; *see also* Tr. 5036–37 Williams testified that he sent it at Mr. McDonnell's request and based on conversations he had previously had with Mr. McDonnell, including the conversations during the October 2010 flight from California to Virginia. Tr. 702. The letter stated that its purpose was "to provide the Commonwealth of Virginia with a technology platform to lower healthcare costs," which Williams testified he had previously discussed with Mr. McDonnell. Tr. 702. The letter continued, "I am suggesting that you use the attached protocol to initiate the 'Virginia Study' of Anatabloc at the Medical College of Virginia and the University of Virginia School of Medicine," which Mr. Williams explained was a reference to his sought-after animal and human studies at medical colleges in Virginia—and which, again, he testified he had previously discussed with Mr. McDonnell. Tr. 703–05. For his part, Mr. McDonnell conceded that he read the portion of the letter referring to studies of Anatabloc at the University of Virginia ("UVa") and at Virginia Commonwealth University ("VCU"), also known as the Medical College of Virginia ("MCV"). Tr. 5037. Moreover, Mr. McDonnell conceded that although the letter was "the first time I saw the thing in writing," he thought Williams "might have talked to me about that at the dinner at the Mansion" on April 29, 2011. Tr. 5037; *see also* Tr. 5070 (Mr. McDonnell stating "I know what the letter said" and "I knew what the letter said" in reference to the June 2011 letter).

The evidence about Mr. McDonnell's actions that followed in the ensuing months also made clear that he knew that Williams sought official action on the question, matter, or cause of obtaining research studies for Anatabloc at UVa, VCU, and elsewhere in Virginia state government. For example, on August 1, 2011—less than six weeks after receiving the June 2011 letter—Mr. McDonnell wrote an email ordering Dr. Bill Hazel, Mr. McDonnell's Secretary of Health and Human Resources, to send a subordinate to a meeting with Mr. Williams and Mrs. McDonnell on less than 12 hours of notice. Tr. 2196–97, 2200–01. And in that email, Mr. McDonnell wrote that the purpose of the meeting was "***on*** the Star Scientific anatablock [sic] trials planned in va at vcu and uva." Gov. Exh. 189 (emphasis added). In other words, Mr.

McDonnell knew that the official action Williams sought from him was "on" the studies that Williams sought at state universities.

Similarly, the evidence at trial showed that Mr. McDonnell knew that the purpose of the August 30, 2011, Anatabloc launch[2] at the Governor's Mansion was to further Williams's goal of obtaining Anatabloc studies at UVa and VCU. Indeed, on the event briefing form that Mr. McDonnell received describing that event and listing its attendees, Mr. McDonnell wrote in asterisks next to the names of the UVa and VCU researchers who were attending the event. *See* Tr. 2572–73 (describing Gov. Exh. 231), 5080–81 (Mr. McDonnell agreeing he starred names of UVa and VCU researchers). In other words, as the United States argued to the jury in its summation, the launch "wasn't some ceremonial event without context or some event with no purpose," but rather an event to "send[] a signal to those medical schools that this is important." Tr. 5843–44.

The evidence about Mr. McDonnell's conduct in January through March 2012 provided further support that he knew that Williams sought official action in return for the things of value that Williams was providing to the McDonnells. For example, Williams testified that in early 2012, he had conversations with both of the McDonnells about his frustrations that UVa was not moving forward at the same time he discussed providing them with additional payments. Tr. 757–58, 775. And Williams's testimony was supported by the McDonnells' own written words. On February 9, 2012, Mrs. McDonnell wrote an email to Mr. McDonnell stating that Williams had "calls in to VCU & UVA & no one will return his calls." Gov. Exh. 312. The attachment to the email referred to Mr. McDonnell's support for UVa and VCU performing Anatabloc studies with Tobacco Commission funding. And on February 10, 2012, Mrs. McDonnell emailed Mr. McDonnell's senior policy advisor, asked him to call Williams, and stated, "Gov wants to know why nothing has developed w studies after Jonnie gave $200,000. I'm just trying to talk w Jonnie. Gov wants to get this going w VCU MCV " Gov. Exh. 314. To be sure, Mr. McDonnell claimed at trial that he did not read the attachment to the February 9 email and that his wife was not honestly conveying a conversation between the two of them in the February 10 email. *See* Tr. 5169–75. But the jury was free to reject that testimony from Mr. McDonnell and instead credit the plain language of the documents. Indeed, doing so would have been sensible given the testimony at trial that Mr. McDonnell was sitting next to his wife in a vehicle at the precise moment she sent the February 10 email purporting to convey his wishes. *See* Tr. 2252–55, 3362–63, 5166–67. It would also have been sensible for the jury to reject Mr. McDonnell's testimony based on Mr. McDonnell's own words in a February 17, 2012, email to the same senior policy advisor whom Mrs. McDonnell emailed only a week before. In that email, Mr. McDonnell asked his senior policy advisor to "see me about anatabloc issues at VCU and UVA." Gov. Exh. 320.

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[2] Although the parties repeatedly debated—at times humorously—whether the August 30, 2011, event at the Governor's Mansion was a "launch" or "just" a "lunch," the time for that debate has now passed. There was ample evidence in the record from which the jury could have rejected Mr. McDonnell's attempts to minimize the event and instead accepted the testimony of the witnesses who described the event as a product launch—or more importantly, an event designed to have an impact on the UVa and VCU researchers who Williams wanted to study his product. *See, e.g.*, Tr. 2057 (Mansion Director describing Mrs. McDonnell's description of the event as a "launch"), 2062 (Mansion Director's impression of event as a product launch), 1564 (VCU researcher agreeing that event seemed "designed to make a big splash"), 1785 (email to UVa researcher describing event as a "lunch related to Star Scientific slash Tobacco Commission studies with anatabine"), 1790 (UVa researcher describing Anatabloc at each place setting). In other words, as the Court said, "You say lunch. He says launch. We all know what we're talking about. So the jury will decide." Tr. 2128.

The testimony about the invitations to the Healthcare Leaders Reception at the Governor's Mansion on February 29, 2012, provides further support for the jury finding that Mr. McDonnell knew he was engaged in a *quid pro quo* relationship. For example, the Mansion Director testified about a list of potential invitees that included state university researchers

Williams wanted to study Anatabloc and that had obvious references to other individuals affiliated with Star Scientific. Tr. 2073–75 (referring to Gov Exh. 629). On one of the pages, Mr. McDonnell's handwriting appeared immediately between lines of Mrs. McDonnell's handwriting, and Mrs. McDonnell's handwriting referred to VCU and UVa. Tr. 2075. After receiving that list, the Mansion Director wrote an email based on a conversation with one of the McDonnells stating that the McDonnells "were going over the list last night for the healthcare industry event. The Governor wants to make sure the people below are included in the list." Tr. 2076 (referring to Gov. Exh. 306). The email then referred to the McDonnells' desire to ensure that individuals from VCU and UVa were present. Tr. 2076. At the event that later took place on February 29, 2012, both Star Scientific employees and individuals Star Scientific wanted to study its product attended, and state funds paid for those individuals' attendance at the event. *See* Tr. 2088–90, 2154–71, 2881–97

Finally, the testimony about Mr. McDonnell's statements to subordinate officials at a cabinet meeting on March 21, 2012, supported the jury's finding that Mr. McDonnell knew he was engaged in a *quid pro quo* with Williams. In that meeting, Mr. McDonnell was discussing the state employee healthcare plan with his Secretary of Administration, Lisa Hicks-Thomas, and Sara Wilson, who reported to Hicks-Thomas and served as the Director of the Department of Human Resource Management for Virginia. *See* Tr. 2655–56, 2675–76, 5239. In the context of that discussion about ways to lower healthcare costs for Virginia government employees, Mr. McDonnell pulled Anatabloc out of his pocket and referred to its positive health benefits for him and his wife. *See* Tr. 2657, 2676, 5239. Hicks-Thomas testified that she recalled Mr. McDonnell stating that he thought Anatabloc "would be good for state employees" and then instructing her to meet with Star Scientific. Tr. 2676. And although Wilson and Hicks-Thomas did not have the same recollection of the precise details of the meeting, both agreed that after Mr. McDonnell mentioned Anatabloc to them, they followed up and looked into Star Scientific together in Hicks-Thomas's office. *See* Tr. 2658, 2677. Although the context of the March 21, 2012, cabinet meeting was about state government employees in general rather than UVa and VCU specifically, it was consistent with the testimony at trial that one of Williams's and Star Scientific's alternative goals was to perform research studies on state government employees who used the product. *See* Tr. 720, 2653–54,

The United States also overwhelmingly demonstrated that the official actions sought and agreed as part of the alleged *quid pro quo* were within the range of actions on questions, matters, or causes pending before Mr. McDonnell as Governor as matter of custom and settled practice. For example, the former Mansion Director testified that "the matter of Virginia business and economic development" was "one of the most important priorities" of Mr. McDonnell's administration. Tr. 2037. Similarly, Mr. McDonnell's Communications Director testified that Virginia business and economic development issues were "why we got elected" and was "the priority" of the administration. Tr. 2234–35. And when asked "where on the Administration's list of priorities the matter of Virginia business and economic development was," Mr. McDonnell's former Chief of Staff responded, "It was at the top of the list. I would say it was probably only second to public safety." Tr. 2541.

Moreover, several former McDonnell staffers also testified about the myriad ways that Mr. McDonnell and his staff would take action on questions, matters, and causes of Virginia business and economic development. For example, Mr. McDonnell's former Chief of Staff was asked, "How common was it for the Governor's Mansion to host events to promote Virginia business and economic development?" He responded, "It was very common. I think staff, long time staff members at the Mansion had commented to me that we probably had more events at the Mansion than any other administration they could recall." Tr. 2542. Mr. McDonnell's former Communications Director agreed that it "seemed very common" for "Mansion events to relate to promoting Virginia business and economic development." Tr. 2235. And the former Chief of Staff elaborated that one of the Mansion Director's "main functions" and "primary jobs" was to coordinate such events. Tr. 2542. For her part, Mr. McDonnell's former Mansion Director testified that it was "[v]ery common" to have such events at the Governor's Mansion, and she agreed that "hosting and attending events [was] a customary part of the Governor's position" based on her experience. Tr. 2038. She explained that "[a]ll of the events that we hosted at the Mansion actually had to be approved by the Governor and the Governor's Chief of Staff," and she explained that the planning associated with such an event would take course over time and be done on official time as a government employee. Tr. 2040–41. And the jury heard from the Mansion Director who worked in the prior two gubernatorial administrations, who testified that events designed to promote Virginia business and economic development were also common during those administrations. Tr. 2918–20.

Similarly, Mr. McDonnell's former Chief of Staff testified that it was "[v]ery common" for Mr. McDonnell to have meetings on his schedule. Tr. 2545. And when asked how common it was "for those meetings to relate to promoting Virginia business and economic development," he responded, "Very common." Tr. 2545. The former Chief of Staff explained that those included cabinet meetings at which Mr. McDonnell would instruct subordinate staff members to meet with outside third parties. Tr. 2546. And Mr. McDonnell's former Communications Director testified that he recalled "[l]ots of" meetings that "related to promoting Virginia business and economic development." Tr. 2236.

Mr. McDonnell's former Chief of Staff also explained that Mr. McDonnell appointed all of the members of the boards that oversaw UVa and VCU, as well as a majority of the individuals who served on the Tobacco Commission. Tr. 2548, 2551. The former Chief of Staff also discussed several examples of scenarios in which Mr. McDonnell would take action on issues pending before him that related to other parts of state government like UVa or the Tobacco Commission even though a governor might not have a formal role in those particular questions, matters, or causes. *See, e.g.*, Tr. 2549–50, 2552–53. Likewise, a lobbyist and former Virginia Attorney General testified about the impact that gubernatorial support could have on an application by a university for something like Tobacco Commission funding. Tr. 2823.

In the end, the United States adduced overwhelming evidence that Mr. McDonnell routinely and customarily took official action on questions, matters, and causes to promote Virginia business and economic development, and the United States also adduced overwhelming evidence that those actions routinely and customarily included arranging meetings and hosting events as a matter of settled practice. Likewise, the jury heard evidence from which it could have easily found beyond a reasonable doubt that the McDonnells and Williams had an implicit, these-for-those *quid pro quo* agreement to exchange things of value for such official actions to benefit Star Scientific by taking official action on the research studies that Williams sought at state universities and using state employees. Similarly, Mr. McDonnell was free to argue—as he did—that the McDonnells did not actually agree to exchange such official actions for things of value or that any actions Mr. McDonnell did agree to take or cause were not "on" questions, matters, or causes that were pending before him. But both whether an agreement existed and whether that agreement included actions "on" questions, matters, or causes pending before Mr. McDonnell were factual questions that a reasonable jury could have—and this jury did—resolve against Mr. McDonnell.

The Fourth Circuit's analysis in *Jefferson* is particularly instructive in this regard. In that case, the Fourth Circuit found sufficient evidence for the jury to conclude "first of all, that performing constituent services was a settled official practice of Jefferson's congressional office and, second, that ***African trade issues*** were 'matters' or 'causes' that were pending before him." *Jefferson*, 674 F.3d at 357 (emphasis added). And "[t]he jury was then entitled to conclude that Jefferson's actions in connection with both constituent requests and the promotion of trade in Africa fell under the umbrella of his 'official acts.'" *Id.* at 357–58. In other words, with "African trade issues" as the broadly defined class of "matters" or "causes" pending before former Congressman Jefferson, the Fourth Circuit found myriad actions by Jefferson to promote constituents' interests in African trade issues (and thus "on" those "matters" or "causes") to be official acts. Those included "meeting[s], letter[s], trip[s], and other action[s] by Jefferson," including (i) "[g]ranting requests for assistance to business ventures by corresponding and visiting with foreign officials"; (ii) "[s]cheduling and conducting meetings with Army officials and representatives, at which [Jefferson] promoted [a bribe-paying business]"; (iii) "[t]raveling to Nigeria and Ghana, and meeting with representatives of the [Export-Import] Bank [of the United States] to endorse, assist, and promote [a bribe-paying business's] scheme"; and (iv) "[v]ouching for [a bribe-paying business] in Nigeria and seeking to secure construction contracts for [its] entities." *Id.* at 357, 356. Or put more simply, the "action" in an "official action" could be something as simple as a "meeting, letter, trip, or other action"; the question for the jury is whether the action is "to fulfill [the public official's] end of a corrupt bargain"—in other words, whether the action is "on" a question, matter, cause, etc., as required by the definition of official action.

Here, Virginia business and economic development issues such as Williams's desired promotion of his product using Virginia state government were questions, matters, or causes pending before Mr. McDonnell and his former office, and the McDonnells promised, took, and caused official actions on those questions, matters, and causes by hosting events, arranging meetings, and the like. Thus, as in *Jefferson*, the jury was entitled here to find "first of all, that performing constituent services [for businesses like Star Scientific] was a settled official practice of [Mr. McDonnell's gubernatorial] office and, second, that [Virginia business and economic development] issues were 'matters' or 'causes' that were pending before him." *Jefferson*, 674 F.3d at 357. And "[t]he jury was then entitled to conclude that [Mr. McDonnell's] actions in connection with both constituent requests and the promotion of [Virginia business and economic development] fell under the umbrella of his 'official acts.'" *Id.* at 357–58. As such, the jury was entitled to find that the United States satisfied the *quid pro quo* requirement of the corruption charges in this case.

3. Mr. McDonnell's arguments that he did not promise or perform "official actions" attempt to redefine bribery law, seek to relitigate factual issues, are logically incongruous, and raise irrelevant issues not properly brought in a Rule 29(c) motion.

Mr. McDonnell's first attack on the sufficiency of the evidence has nothing to do with the sufficiency of the evidence at all. Instead, as he has done throughout this case, Mr. McDonnell first seeks to redefine bribery law by setting up a false dichotomy between "[i]ngratiation and access" on the one hand, which he asserts is a category of conduct categorically excluded from the definition of "official action," and "actual governmental power" on the other hand, which he claims is necessary to prove "official action" and which he defines essentially as the "exercise [of] the regulatory powers of the Commonwealth." Def. Mem. at 4–5. He then slaps the "access" label on the actions he promised to and did perform for Williams, conclusorily asserts the same actions involved no "actual governmental power," and asks this Court to set aside the jury's verdict.

Mr. McDonnell's reliance on two phrases that appear nowhere within any definition of "official action" is as flawed at this stage as it has been when this Court has previously rejected it. First, Mr. McDonnell claims that any conduct that can be characterized as "[i]ngratiation and access" falls outside the definition of "official action." In support of that proposition, he cites yet again to the following sentence from *Citizens United v. Federal Election Commission*, 558 U.S. 310, 360 (2010): "Ingratiation and access are not corruption." *See* Def. Mem. at 5. But the sentence Mr. McDonnell cites from *Citizens United* is wholly irrelevant to the definition of "official action." Notably, the Supreme Court did not state that "ingratiation and access are not official actions," nor would it be grammatically correct, as Mr. McDonnell asks this Court to do, to read what the Supreme Court did say as equivalent to that statement. Indeed, neither "ingratiation" nor "access"—or for that matter, "corruption"—describe types of "actions" at all, whether official or not. In other words, just as the sentence "official actions are corruption" would make no sense, so does the sentence "ingratiation and access are not official actions."

What the Supreme Court actually held in *Citizens United* was that "[a]n outright ban on corporate political speech during the critical preelection period is not a permissible remedy" to address Government anticorruption concerns about corporate spending on independent electioneering communications that are by definition not coordinated with any public official. 558 U.S. at 361. The Court observed that "independent expenditures do not lead to, or create the appearance of, *quid pro quo* corruption. In fact, there is only scant evidence that independent expenditures even ingratiate." *Id.* at 360. It was at this point that the Court stated that "[i]ngratiation and access, in any event, are not corruption." *Id.* Put differently, the Supreme

Court observed that the mere ***fact*** of ingratiation or access did not ***necessarily*** equal corruption—particularly where, as there (and unlike here), the activity in question is money spent on political speech protected by the First Amendment and not coordinated with any public official. Rather, what is required for corruption is what this Court required the jury to find here: a *quid pro quo* exchange of things of value for official actions.

But to suggest, as Mr. McDonnell has, that in *Citizens United* the Supreme Court held that "ingratiation" or "access" can never be present as part of a corrupt exchange of personal payments in return for official action is a bridge too far. Indeed, it is difficult to imagine a bribery scheme that does ***not*** involve "ingratiation" and "access," and Mr. McDonnell's cherrypicking of a single sentence from *Citizens United* to suggest that whatever might be subsumed under the rubric of "ingratiation" or "access" can never form a basis for a corruption charge is undermined by what the Supreme Court made sure to emphasize first: "'The hallmark of corruption is the financial *quid pro quo*: dollars for political favors.'" 558 U.S. at 359 (quoting *Fed. Election Comm'n v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 497 (1985)). Unlike the sentence that Mr. McDonnell cites, that sentence from *Citizens United* at least reads in a way that could grammatically equate "official action" to "political favors." But Mr. McDonnell would assuredly have fought any attempt by the United States to define official action as any "political favor." And in the end, *Citizens United* is simply a case that says nothing about what constitutes official action at all.[3]

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[3] Moreover, to the extent *Citizens United* discussed corruption at all, it was in the context of discussing whether there was an appearance of corruption when third parties other than a public official received campaign contributions. *Citizens United* has nothing to say about secret loans, wedding payments, and golf outings given directly to a public official and his family.

Next, Mr. McDonnell's attempt to characterize the alleged official actions promised and performed in this case as not involving "actual governmental power" is at best an effort to get this Court involved in a series of factual disputes that were properly left by this Court for the jury to resolve. As a threshold matter, Mr. McDonnell's invocation of the phrase "actual governmental power" does little more than beg the question of what "governmental power" is and what makes it "actual." But his attempt to equate "actual governmental power" with the "regulatory powers of the Commonwealth," Def. Mem. at 4, is wrong. Courts have consistently rejected arguments by public officials that "official action" is restricted to formalized acts written in laws, such as voting, signing legislation, disbursing government funds, or the like.[4] Indeed, the Supreme Court rejected the argument a century ago that official actions must be "prescribed by a written rule or regulation," instead finding that "[i]n numerous instances, duties not completely defined by written rules are clearly established by settled practice, and action taken in furtherance of their performance must be regarded as within the provisions of the above-mentioned statutes against bribery." *United States v. Birdsall*, 233 U.S. 223 (1914). Mr. McDonnell's attempts to restrict official action to action invoking "regulatory powers"—or powers rooted in regulations—are no different and should be rejected.

Even assuming, however, that the phrase "actual governmental power" has any relevance to the "official action" inquiry, it is clear that a reasonable jury could have found that Mr. McDonnell agreed to and did exercise "actual governmental power" for Williams as part of the alleged *quid pro quo*. For example, the jury could have reasonably found that Mr. McDonnell's order for a subordinate state employee to take a meeting on a particular issue exercised the governmental power inherent in a chief executive's relationship with those whom he can hire and fire at will. Similarly, the jury could have reasonably found that Mr. McDonnell's approval of an event at the Governor's Mansion designed to aid a particular business in its efforts to convince others in state government to help that business exercised governmental power with respect to both the Mansion staff who then had to spend government time arranging that event and the subordinate state university employees who attended the event. The jury could also reasonably have found that Mr. McDonnell's involvement in inviting Williams and individuals Williams wanted to convince to study his product to a reception paid for by taxpayers exercised Mr. McDonnell's actual governmental powers. And finally, a reasonable juror could have found that Mr. McDonnell's instructions to subordinate officials at a cabinet meeting—even if he chose not to yell or scream—exercised his actual governmental power. The entire purpose of *Birdsall* and its progeny is to ensure that public officials do not escape criminal liability by lining their pockets in exchange for their official actions merely because those actions are not rooted in some written rule or regulation, and Mr. McDonnell should not be able to do so here simply because he engaged in less aggressive official action than he might have done for a higher price.

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[4] *See, e.g.*, *Jefferson*, 674 F.3d at 357 (approving instruction based on *Birdsall* that an "act may be official even if it was not taken pursuant to responsibilities explicitly assigned by law. Rather official acts include those activities that have been clearly established by settled practice as part [of] a public official's position"; explaining that the instruction "simply explained to the jury that an official act need not be prescribed by statute, but rather may include acts that a congressman customarily performs, even if the act falls outside the formal legislative process").

Mr. McDonnell also argues that the evidence adduced at trial did not show a sufficiently "specific" *quid pro quo* agreement. *See* Def. Mem. at 5–7. But after conclusorily asserting a lack of specificity, Mr. McDonnell defeats his own argument by then describing it with more than sufficient specificity from which the jury could have found the required *quid pro quo*. For example, Mr. McDonnell refers to the June 2011 letter and Williams's testimony that "the purpose of the letter was to suggest that Mr. McDonnell initiate a 'Virginia study' of Anatabloc at Virginia public medical schools, which Mr. Williams had previously discussed with Mr. McDonnell on a flight to California in October 2010." Def. Mem. at 5–6. And after referencing several other conversations that Williams relayed between him and Mr. McDonnell about the Tobacco Commission and studies at UVa, Mr. McDonnell then asserts that "even if Mr. McDonnell had promised Mr. Williams that he would help obtain studies for Star Scientific, that does not prove that Mr. McDonnell promised to perform *specific* official acts or a *specific* course of official action in exchange for things of value." *Id.* at 6.[5] But agreeing to take action on the question, matter, or cause of obtaining research studies from state universities by arranging meetings and hosting events is the specific *quid pro quo* alleged in this case, and it does not become insufficiently specific merely because Mr. McDonnell labels it as such. Indeed, requiring the level of specificity that Mr. McDonnell seems to think is required would read the "course of action" theory out of bribery law entirely and prevent stream of benefits cases such as this one from being prosecuted.[6]

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[5] Later on, Mr. McDonnell asserts that "[e]ven if Mr. McDonnell had promised to help Mr. Williams get studies from Virginia universities or funding from the Tobacco Commission—and he did not—such a vague promise would not constitute a promise to engage in specific 'official action' because none of the 'help' that Mr. McDonnell allegedly offered constituted an exercise of actual governmental power." Def. Mem. at 14. There is nothing vague about a governor promising to wield his power over subordinate state officials to obtain studies at state universities for a businessman, and any suggestion to the contrary is as dangerous as it is meritless.

[6] Mr. McDonnell cites to *Jennings* for his specificity requirement, but he misreads what the Fourth Circuit actually held in *Jennings*. In that case, the Fourth Circuit noted that "the payor of a bribe must intend to engage in 'some ***more or less specific*** quid pro quo' with the official who receives the payment." 160 F.3d at 1013 (quoting *United States v. Arthur*, 544 F.2d 730, 734 (4th Cir. 1976)) (emphasis added). But the Fourth Circuit cautioned that a "more or less" specific *quid pro quo* need only be "fairly specific." *Id.* at 1019. Thus, it does not require "that the defendant intended for his payments to be tied to specific official acts (or omissions). Rather, it is sufficient to show that the payor intended for each payment to induce the official to adopt a specific course of action." *Id.* at 1014. As a result, "[t]he quid pro quo requirement is satisfied so long as the evidence shows a 'course of conduct of favors and gifts flowing to a public official *in exchange for* a pattern of official actions favorable to'" the bribe payor. *Id.*

Mr. McDonnell also attacks the specificity of the *quid pro quo* proven at trial by pointing to a series of excerpts from Williams's testimony and claiming that "Williams himself never even alleged a promise on Mr. McDonnell's part to perform a specific 'official act.'" Def. Mem. at 5. But in addition to once again attempting to read the black-letter "course of action" theory of bribery out of the law, Mr. McDonnell's argument conflates whether Williams testified to an explicit or express *quid pro quo* with whether the testimony of Williams, along with that of other witnesses, the documentary evidence, and common sense provided sufficient evidence of an implicit *quid pro quo* agreement. In other words, as the United States argued to the jury:

> But more importantly, folks, common sense tells you it was clear Jonnie Williams wanted something. Dr. Hazel knew it. And he said about that treatment that Jonnie Williams got, that he had never seen anything quite like it. Dr. Vetrovec knew it after spending 20 minutes with the man. Mr. Cox knew it, and he said it to Mr. McDonnell's face. Do you know who else knew it? Jasen Eige. He knew it. That's why he told the Governor that they needed to be careful.

(quoting *Arthur*, 544 F.2d at 734). And bribe "payments may be made with the intent to retain the official's services on an 'as needed' basis, so that whenever the opportunity presents itself the official will take specific action on the payor's behalf." *Id.* Thus, the Fourth Circuit ***rejected*** Jennings's sufficiency challenge, finding that "[e]ven if the evidence did not necessarily link each of Jennings's payments to a specific official act by [the public official], a reasonable juror could still conclude that Jennings paid bribes" because "a reasonable juror could have concluded that there was a course of conduct involving payments flowing from Jennings to [the public official] in exchange for a pattern of official actions favorable to Jennings's companies, and that was sufficient to convict Jennings of bribery." *Id.* at 1018. The same sentences would be true about this case, and the Court adequately conveyed these principles in its jury instructions. Indeed, in *Jennings* the Fourth Circuit emphasized that "a court need not resort to Latin to make this point," *id.* at 1019—something that this Court repeatedly did anyway. In *Jennings*, the Fourth Circuit did find that the district court's instructions did not adequately convey the required *quid pro quo* for a bribery charge because they only required the jury to find payments were made to influence the public official "in connection with" or "in reference to" the business of the public official's agency in the abstract. *Id.* at 1022. But had "any of the court's four explanations of 'corrupt intent' required the jury to find a relatively specific quid pro quo, the jury instruction would have been saved " *Id.* Here, the Court's instructions plainly required a "relatively specific" *quid pro quo* for the reasons set forth in the United States' separate response to Mr. McDonnell's motion for a new trial based on alleged errors in those instructions. *See* Doc. No. 530, at 9–14.

> And here's the kicker. None of the people I just mentioned, not one, knew about the loans, the check for Cailin's wedding, the golf. None of these people, not one, had received the June 16th letter from Jonnie Williams. None of these people were on the six-hour plane ride back from California. None of these people were at the private April 29th dinner at the Mansion. The only one who did all of those things is sitting right there, and he's the only one who claims to have no idea that Jonnie Williams ever wanted anything from him. Bob McDonnell knew exactly why Jonnie Williams was showering him and his family with gifts, and so do you.
>
> The better question is why doesn't he want to admit it? And the answer tells you all you need to know Now, of course, there's no explicit agreement. Of course not. We don't have to prove one. It doesn't have to be expressed. People's conduct, acts, and all the surrounding circumstances, can establish that there was an agreement. That's the law, and it makes sense.
>
> Remember, we are in the real world now. We're not on TV This is a real Governor who is very smart and wields tremendous power. This is a real businessman who is very smart and pursues his agenda as aggressively as anyone anywhere. These guys aren't long-time friends, and when the gifts start rolling in, they have barely known each other. Why do you think a smart, savvy bribe payer and a smart, powerful politician would not make an explicit agreement? In the real world, these things aren't explicit, but they are agreements just the same. They are deals just the same. And some of the very best evidence in this case that there was a corrupt deal is the lengths that both sides went to hide it.

Tr. 5872–73. Mr. McDonnell's efforts to reargue that evidence should be rejected.

Finally, Mr. McDonnell identifies several of the alleged official actions in this case, describes them in the light most favorable to him, characterizes them as "access," and then asserts that no jury could ever reasonably find that they were "official actions." *See* Def. Mem. at 7–13. For example, Mr. McDonnell asserts that ordering a subordinate to attend a meeting that Mr. McDonnell knew was, in his words, "on the Star Scientific anatablock [sic] trials planned in va at vcu and uva," Gov. Exh. 189, was not action on any question, matter, or cause because the subordinate state official who attended that meeting "did not perceive any pressure on her from

Mr. McDonnell to do anything other than attend the meeting." Def. Mem. at 9. Similarly, Mr. McDonnell argues that the Anatabloc launch event at the Governor's Mansion was not action on any question, matter, or cause because, he claims, there was no "testimony that Mr. McDonnell pressured the UVA and VCU doctors to study Anatabloc." Def. Mem. at 10. Likewise, Mr. McDonnell claims that the expenditure of taxpayer funds to permit Williams to invite doctors to an event at the Governor's Mansion as part of an effort to convince them to do studies on Anatabloc was not action on any question, matter, or cause because Mr. McDonnell did not explicitly "influence[] or pressure[] any of the doctors in attendance to study or use Anatabloc." Def. Mem. at 12. And Mr. McDonnell dismisses the March 21, 2012, cabinet meeting because he "never contacted either staffer about ***the issue*** after they left his office." Def. Mem. at 13 (emphasis added).

The flawed premise of each of these arguments is clear. In each of them, Mr. McDonnell conditions whether ***he*** promised, took, or caused official action on whether ***other*** public officials—officials who assuredly had not personally received more than $177,000 in things of value from Mr. Williams—took official action. The fact is, ***Mr. McDonnell*** took official action when he ordered a subordinate to take a meeting, approved and attended an event at a state facility, and directed a cabinet official to arrange a meeting, and all of those actions were on the question, matter, or cause of the use of state government to promote and obtain research studies for Anatabloc. The fact that Mr. McDonnell's subordinate state officials, whether in his former office or at the state universities, may have chosen not to take additional official action (whether for independent reasons or because they, unlike him, were not on retainer) was beside the point.[7]

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[7] Indeed, the evidence at trial showed that directing a subordinate to take a meeting on a particular issue and hosting events at the Governor's Mansion on particular causes are quintessential parts of a governor's job, and no reasonable definition of "official action" should

And the fact that Mr. McDonnell had the unilateral power as the chief state executive to promise and take the actions he did—or promise and make the decisions that he did—is precisely the point. That unilateral power to arrange meetings, host events, and take other action on questions, matters, and causes of Virginia business and economic development is exactly what was worth more than $177,000 to Jonnie Williams, and exchanging those actions for more than $177,000 in payments and things of value satisfied any reasonable definition of *quid pro quo* bribery.[8]

B. The jury's unanimous finding that the United States satisfied the interstate commerce element required by Counts 5–11 was supported by sufficient evidence.

Next, Mr. McDonnell complains that the United States failed to present evidence to satisfy the interstate commerce element for the Hobbs Act conspiracy and extortion under color of official right charges in Counts 5–11. More specifically, he claims that he is entitled to judgment of acquittal as a matter of law on those counts because there was insufficient evidence for the jury to find that his bribery scheme "had an actual or realistically probable effect on interstate commerce." Def. Mem. at 18. He does not, however, challenge the instructions on this

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exclude such conduct. Nor should Mr. McDonnell be able to escape criminal culpability merely because he engaged in action that he characterizes as not involving "pressure." The mere fact that he may not have been explicit or twisted arms does not cause his conduct to fall outside the definition of "official action." That is why, after all, multiple state government employees testified about the impact that Mr. McDonnell's conduct had on them. *See, e.g.*, Tr. 2770 (UVa official describing pro/con list about whether to conduct Anatabloc studies; listed first "Pro" as "Perception to Governor" and listed first "Con" as "Political pressure from Governor and impact on future UVA requests from the Governor"). In other words, "pressure" and "influence" come in varied forms, and the question is not how forceful the actions were that Mr. McDonnell took or promised to take on a question, matter, or cause to help Mr. Williams—it is whether he took or promised ***any*** such action. The jury could have reasonably found that he did.

[8] Mr. McDonnell also repackages constitutional vagueness and 10th Amendment states-rights claims that he already raised—and this Court rejected—in his motion to dismiss the Indictment. *See* Def. Mem. at 16–18. For the reasons stated in the United States' response in opposition to Mr. McDonnell's motion to dismiss, *see* Doc. No. 146, at 29–30, those arguments are meritless and should be rejected. In any event, they do not warrant discussion here because they are not an appropriate basis for an evidentiary sufficiency challenge under Rule 29.

element. And the Court properly defined the pertinent element as requiring that in obtaining or attempting to obtain property in violation of the other elements, "the defendant did or attempted in any way or degree to delay, obstruct, or affect interstate commerce, or an item moving in interstate commerce." Tr. 6112. The Court then continued to explain that "[t]o find the interstate commerce element satisfied, it is not necessary to find that a defendant actually intended to obstruct, delay, or affect commerce. Rather, the government need not [sic] only prove that the defendant you are considering deliberately performed or attempted to perform an act, the ordinary and natural consequences of which would be to obstruct, delay or affect commerce." Tr. 6114. The Court further instructed that "[t]he effect on interstate commerce need only be slight, and it need not be adverse. Proof that the extortion under color of official right would have affected interstate commerce, even if minimally and even if positively, is sufficient." Tr. 6114–15. In light of these instructions, the United States presented ample evidence for a jury to find the interstate commerce element satisfied.

As a preliminary matter, the jury heard evidence the bribery scheme ***actually*** affected interstate commerce. For example, out-of-state invitees traveled to Virginia to attend both the August 30, 2011, Anatabloc Launch and the February 29, 2012, Healthcare Leaders Reception at the Mansion. The United States introduced Exhibit 234, the calendar entry for the Anatabloc Launch at the Mansion. The entry contained a list of attendees at the event, which included two doctors from the Roskamp Institute in Florida. *See* Gov. Exh. 234, Tr. 1891. Dr. Paul Ladenson from Maryland also attended the event, which was the "national launch" of the product. *See* Gov. Exh. 234, Tr. 721, 1133. Similarly, the Healthcare Leaders Reception in February 2012 was attended by out-of-state guests. Dr. Ladenson attended, as did Dr. Frank Crantz from Potomac, Maryland. Tr. 2120, 2152, 2162. In addition, in June 2011, Mrs. McDonnell flew from

Richmond to Sarasota, Florida, to attend the Roskamp event at Mr. Williams's request. Tr. 1856. And Mr. McDonnell knew this. Tr. 5027 Later, Mrs. McDonnell traveled to California and Michigan and attended conferences discussing studies of Anatabloc. Tr. 2137–44. And with respect to Count 8—expenses charged at Kinloch Golf Club in May 2011—the jury heard evidence that Star Scientific paid the cost of the bribe. *See* Tr. 429–31 (describing Gov. Exh. 182), 580–82 (describing Gov. Exh. 135). All of these were more than the "minimal" effect on interstate commerce that the Court's jury instructions required, and all were sufficient for the jury to find that the *quid pro quo* agreement in this case had an actual effect on interstate commerce.

But the United States also presented evidence that Mr. McDonnell's bribery scheme would have had a realistically probable effect on interstate commerce. The aims of the conspiracy were not simply to have Anatabloc viewed in a "positive light," Def. Mem. at 22, with Mr. McDonnell's association. Rather, it was to arrange meetings, host events at the Mansion and invite guests to exclusive events at the Mansion, contact government officials to encourage research universities to initiate anatabine studies, and recommend that senior government officials meet with Star executives to discuss ways the company's products could lower healthcare costs. *See* Ind. ¶ 111(c)(i)–(v).

If Mr. Williams obtained funding for research studies at Virginia research universities, that would have had an immediate impact on the Commonwealth. But the "Virginia study" would have resulted in effects felt far beyond Virginia. Star Scientific has offices in Massachusetts and Washington, D.C., and its manufacturing facilities are in New Jersey. Tr. 2341–42. Mr. McDonnell knew that anatabine was synthesized out of state. Tr. 4734. Mr. Williams's goal, after all, was for Anatabloc to become more scientifically validated so that it would receive further regulatory approval and consumer acceptance—and increase revenues in his interstate company. Indeed, the jury heard evidence that Mr. Williams traveled with Mrs. McDonnell to at least three separate states—Florida, Michigan, and California—to tout studies on Anatabloc, and the jury could have reasonably inferred that had he obtained the studies at UVa and VCU, Star Scientific would have promoted those studies on a nationwide basis for the purpose of causing increased sales nationwide. *See, e.g.*, Gov. Ex. 253 (excerpted video of Michigan event); Tr. 750. That provided sufficient evidence for the jury to infer that the bribery scheme also would have had a realistically probable effect on interstate commerce.

Mr. McDonnell's arguments to the contrary are little more than another attempt to reargue factual disputes that were properly left to the jury to decide. For example, Mr. McDonnell's asserts that the United States "introduced no evidence indicating how any action that Mr. McDonnell performed or allegedly promised to perform would have specifically impacted Star's business operations in a way that affected interstate commerce or caused any goods or funds to move in commerce." Def. Mem. at 21–22. But the jury could have reasonably inferred that the August 2011 Launch, the February 2012 Healthcare Leaders Reception, and the UVa and VCU studies either did or would have had a realistically probable effect on Star's activities in interstate commerce as a company that sold and promoted its products nationwide. Similarly, Mr. McDonnell's description of the interstate commerce evidence as a "vague belief," Def. Mem. at 22, by Star is little more than a jury argument, and his statement that the evidence at trial "is not equivalent to the type of concrete, particularized effect on interstate commerce that courts have looked to," *id.*, simply overstates the applicable standard as set forth in the jury instructions. For these and the other reasons already discussed, this Court should reject Mr. McDonnell's motion for judgment of acquittal on Counts 5–11.

III. Conclusion

For all of these reasons, Mr. McDonnell's motion for judgment of acquittal (or in the alternative, for a new trial) (Doc. No. 509) should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2014, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing ("NEF") to all counsel of record.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	**CRIMINAL NO. 3:14-CR-00012**
v.	)	
	)	**JUDGE JAMES R. SPENCER**
ROBERT F. MCDONNELL	)	
MAUREEN G. MCDONNELL	)	

DEFENDANT ROBERT F. MCDONNELL'S MOTION # 44 – MOTION TO SUPPLEMENT THE RECORD ON APPEAL

Defendant Robert McDonnell, by and through undersigned counsel, moves the Court for an order to supplement the record on appeal. Some of this material may already be slated for inclusion in the record, but Mr. McDonnell makes this request out of an abundance of caution. In particular, Mr. McDonnell requests that the following documents be added to the record on appeal:

- All trial transcripts (Vols. I–XXVIII), from the July 28, 2014 voir dire through the September 4, 2014 announcement of the verdict, including all transcripts of statements or arguments of counsel before, during, or after trial;
- All other hearing transcripts, including for the proceedings held on January 24 (Dkt. No. 27), February 3 (Dkt. No. 43), March 18 (Dkt. No. 96), May 19 (Dkt. No. 181), July 10 (Dkt. No. 278), and July 15 (Dkt. No. 293);
- All questions proposed for the mailed juror questionnaire (attached to this Motion as Appendices 1 and 2) and the final version mailed by the Court (attached as Appendix 3);
- All completed juror questionnaires (as redacted by the Court);

- All additional questions proposed during the July 28 voir dire; and
- Documents relating to proceedings previously sealed by the Court, attached hereto as sealed Appendices 4 to 35. Mr. McDonnell sets forth the basis for including Appendices 4 to 33 in the record in this case in his Memorandum in Support of his Motion #45 to Unseal Certain Sealed Portions of the Record, at 1-2 n.2.

A proposed Order is submitted herewith for the convenience of the Court.

Dated: October 23, 2014

Respectfully submitted,

/s/ Jonathan A. Berry

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CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 23rd day of October, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: October 23, 2014

Respectfully submitted,

/s/ Jonathan A. Berry

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	CRIMINAL NO. 3:14-CR-00012
	)	
ROBERT F. MCDONNELL	)	JUDGE JAMES R. SPENCER
MAUREEN G. MCDONNELL	)	

DEFENDANT ROBERT F. MCDONNELL'S REPLY IN SUPPORT OF MOTION # 39 – RENEWED MOTION FOR JUDGMENT OF ACQUITTAL PURSUANT TO RULE 29(C) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

INTRODUCTION

There is no evidence that Mr. McDonnell ever directed, requested, or recommended that any official or employee of the Commonwealth of Virginia initiate state-sponsored studies of anatabine. That fact has forced the Government to concoct an unprecedented factual and legal theory of bribery that is not supported by any of the cases it has cited and that flatly contradicts various pronouncements of the Supreme Court. As a result, if left standing, Mr. McDonnell's conviction will be the only one in which a public official has ever been found guilty of bribery not for promising to himself influence the exercise of governmental power, but for merely facilitating access so that a third party could attempt to do so. An individual should not be imprisoned for engaging in conduct that, until this case, no court had ever before found to be a crime. The absence of governmental action benefiting Mr. Williams and his company likewise explains why the Government has also had to manufacture a theory of jurisdiction based on irrelevant facts and sheer speculation that is also without precedent. Accordingly, Mr. McDonnell is entitled to a judgment of acquittal or, in the alternative, a new trial.

ARGUMENT

I. THE GOVERNMENT FAILED TO PROVE THAT MR. MCDONNELL ENGAGED IN A QUID PRO QUO.

The Government has failed to prove that Mr. McDonnell engaged in an illicit quid pro quo because none of the actions that he allegedly performed in exchange for Mr. Williams' gifts and loans are "official acts" under the bribery laws. This is significant because, having conceded that there is no evidence of an express quid pro quo agreement, the Government could prove a quid pro quo on the facts in this case only by showing that Mr. McDonnell actually performed official acts so that the jury could infer—based on the timing of official acts and things of value—that the actions were undertaken in exchange for the gifts and loans Mr. Williams provided. Accordingly, the Government has presented evidence of five actions taken by Mr. McDonnell that the Government contends are official acts. But because none of those actions—viewed in the light most favorable to the Government—satisfy the definition of "official act" as a matter of law, the Government has failed to prove beyond a reasonable doubt that Mr. McDonnell accepted the gifts and loans from Mr. Williams in exchange for performing or promising to perform specific official acts for the benefit of Mr. Williams' company.

A. The Government Cannot Prove A Quid Pro Quo In This Case Without First Proving That Mr. McDonnell Performed "Official Acts" For Mr. Williams.

To prove an unlawful quid pro quo, the Government must show beyond a reasonable doubt that an official accepted things of value in exchange "for some specific official act or course of action." *United States v. Jennings*, 160 F.3d 1006, 1019 (4th Cir. 1998). The Government cannot satisfy this burden merely by showing that things of value were given "with a vague expectation of some future benefit." *Id.* at 1022 (quotation marks and alteration omitted). On some level, "[a]ll payments to elected officials are intended to influence their official conduct." *United States v. Taylor*, 993 F.2d 382, 385 (4th Cir. 1993). For that reason, the Government must prove that the official promised to "engage[] in some specific act (or omission) or course of action (or inaction)." *Jennings*, 160 F.3d at 1019.

In this case, the Government has no evidence that Mr. McDonnell ever promised Mr. Williams that he would undertake any specific official act or course of action in exchange for any of the gifts and loans that Mr. Williams provided. To be sure, Mr. McDonnell was aware that Mr. Williams wanted UVA and VCU to study anatabine. *See* Gov't Br. at 7-8 (citing testimony from the trial). But none of the transcript pages cited by the Government show that Mr. Williams asked Mr. McDonnell to undertake any specific official act or course of action to help Mr. Williams obtain the desired studies.[1] Nor do any of the transcript pages show that Mr. McDonnell promised to undertake any specific official act or course of action. Given this lack of evidence, the Government had no choice but to concede in closing arguments that "[t]here is no express agreement in this case." Tr. Vol. XXV, at 6045:10-11; *see also id.* at 5873:1-2 (same).

Because there was no evidence of an explicit agreement, the Government had to prove the agreement circumstantially. To do this, the Government presented evidence of five actions taken by Mr. McDonnell that it argued were official acts. The Government then argued that the jury could infer, based on the timing of gifts and alleged official acts, that Mr. McDonnell had entered into a corrupt quid pro quo arrangement with Mr. Williams. *See* Tr. Vol. XXV, at 6046:16-18. To prove a quid pro quo, therefore, the Government had to prove that Mr. McDonnell performed official acts for Mr. Williams.

B. None Of Mr. McDonnell's Actions For Mr. Williams Are Legally Cognizable "Official Acts."

The Government offered evidence of five actions that Mr. McDonnell undertook for the benefit of Mr. Williams and his company: (1) Mr. McDonnell "order[ed]" his Secretary of Health and Human Resources "to send a subordinate to a meeting with Mr. Williams and Mrs. McDonnell" on the subject of "the Star Scientific anatablock [sic] trials planned in va at vcu and uva," Gov't Br. at 8; (2) Mr. McDonnell approved an "Anatabloc launch" at the Governor's Mansion to "send[] a signal" to UVA and VCU that Anatabloc was "important," *id.* at 9; (3) Mr. McDonnell "asked his senior policy advisor to 'see me about anatabloc issues at VCU and UVA,'" *id.* at 10; (4) Mr. McDonnell approved an invitation list for a healthcare leaders reception at the Mansion that included Star Scientific employees and researchers from UVA and VCU, *id.* at 10-11, and (5) Mr. McDonnell, in a meeting with his Secretary of Administration and the Director of the Department of Human Resource Management, "pulled Anatabloc out of his pocket," said that he thought it "would be good for state employees," and instructed them to meet with Star Scientific, *id.* at 11-12. None of these actions satisfy the definition of "official act" as it has been applied in countless cases. Indeed, the Government has yet to identify a single case in which a court has found that merely arranging a meeting or attending an event is an official act, without also finding that the official asked, recommended, or directed that specific action be taken on the pending matter. The Government has thus failed to prove that Mr. McDonnell traded official acts for gifts and loans from Mr. Williams.

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[1] At most, Mr. Williams asked Mr. McDonnell in a June 2011 letter to have a staff member contact Mr. Williams. Tr. Vol. IV, at 705:12-18. But merely providing access to a staff member is not an "official act," and in any event, Mr. Williams testified that he never got any response to this letter. *See id.*

1. The Government's Position In This Case Is Unprecedented.

An "official act" is any "decision" or "action" "on" a "matter pending before any public official[] in such official's official capacity." 18 U.S.C. § 201(a)(3). When an official arranges a meeting, attends an event, or otherwise facilitates access to himself or other decision-makers, he has not made any "decision" or taken any "action" on a "matter." Holding a meeting about job creation, for instance, is not taking action on job creation, which would entail actually implementing or advocating the implementation of policies that would create jobs. Arranging meetings and the like are merely prefatory and are not themselves decisions or actions *on* any particular matter pending before the official.

That is why the Government has been unable to identify a single case—not one—that sustained a bribery conviction solely because an official provided access to himself or other officials. Indeed, the only case remotely on point is *United States v. Rabbitt*, 583 F.2d 1014 (8th Cir. 1978), *abrogated on other grounds by McNally v. United States*, 483 U.S. 350 (1987), *superseded by statute*, 18 U.S.C. § 1346, in which the Eighth Circuit *reversed* the Hobbs Act conviction of a state legislator who "offered, for a fee , to introduce [an architectural] firm to people who might be able to secure architectural contracts for it." *Id.* at 1020. As the Eighth Circuit has explained, the conviction in *Rabbitt* was reversed because the official "promised only to introduce the firm to influential persons" and "did not promise to use his official position to influence those persons." *United States v. Loftus*, 992 F.2d 793, 796 (8th Cir. 1993); *see also United States v. Urciuoli*, 513 F.3d 290, 296 (1st Cir. 2008) (rejecting the notion that "trad[ing] … on the reputation, network and influence that comes with political office" or using the "access and attention" that comes with a government title are improper).

In the absence of any supporting case law, the Government attempts to embrace the Fourth Circuit's decision in *Jefferson*. *See* Gov't Br. at 15-16. But *Jefferson* addressed a completely different question—namely, the defendant's argument that the meaning of "official act" had been limited by *Sun-Diamond* to an official's formal duties, thus categorically "foreclos[ing] the use of a 'settled practice' instruction." *United States v. Jefferson*, 674 F.3d 332, 353 (4th Cir. 2012). The Fourth Circuit disagreed, holding that an official act could still include the informal, settled practices of an official, so long as all the elements of the official act definition were satisfied. *Id.* at 356. Here, by contrast, Mr. McDonnell does not dispute that an official act *can* include a settled practice of an official not otherwise provided for by law or regulation. Mr. McDonnell instead contends that certain settled practices, such as facilitating meetings or attending events, are not "actions" or "decisions" on "matters" without evidence that the official sought to influence "decisions that the government actually makes." *Id.* at 357. The Fourth Circuit in *Jefferson* did not address this precise argument for good reason—there was no dispute that Congressman Jefferson was actively influencing "decisions that the government actually makes," *id.*, by, among many other things, obtaining a letter of endorsement from another congressman to help secure a contract with the Army for a bribe-paying company, *id.* at 342; personally participating in meetings where he encouraged Ex-Im Bank officials to fund the venture of a bribe-paying company, *id.* at 343; personally meeting with foreign government officials to promote the venture, *id.* at 344; and obtaining travel visas for representatives of a bribe-paying company, *id.* at 347 Congressman Jefferson thus did far more than merely facilitate access to governmental decision-makers.

To prove an official act, therefore, the Government must show—as it did in *Jefferson*—that the official either himself took formal action on a matter pending before the government or, if lacking authority to take such action, asked another official to do so. Thus, in *Rabbitt*, because the state legislator could not himself award state contracts, the Government had to show—which it failed to do—that the legislator exerted influence on the relevant decision-makers to encourage them to award the contracts. Simply making the introduction was not enough. Likewise, here, because Mr. McDonnell could not himself conduct research on anatabine, the Government had to show, at a minimum, that Mr. McDonnell asked or directed UVA or VCU officials to conduct such research. Merely providing Mr. Williams with access to UVA and VCU officials so that *Mr. Williams* could persuade them to his cause was not enough. In other words, providing access to officials on a matter is *not* the same as taking action or making a decision on the matter.

If it were otherwise, then virtually every elected official should be under federal investigation, if not already indicted. It would strain credulity to suggest that donors are not routinely afforded access to public officials and their staffs to discuss matters pending before the official.[2] The Government has steadfastly refused to offer any rebuttal to the commonsense point that its broad interpretation of "official act" would ensnare countless officials who take calls from donors, meet with donors, arrange meetings for donors, or attend events for donors. The Government's inability to do so confirms that its interpretation is unsound.

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[2] *See, e.g.*, *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 130, 150-51 (2003) (detailing the types of actions elected officials routinely take on behalf of donors, including, *e.g.*, "mak[ing] time available in their schedules to meet with representatives of business and unions

2. Mr. McDonnell Did Not Perform An "Official Act."

None of the actions identified by the Government are "official acts" under the appropriately limited construction that Mr. McDonnell advocates. To prove that Mr. McDonnell performed an official act in furtherance of Mr. Williams' goal of obtaining research studies of anatabine, the Government must show, at a minimum, that Mr. McDonnell told UVA and VCU researchers (or other state employees) that he wanted them to conduct the research.[3] The Government claims that the defense simply "slaps the 'access' label on the actions [Mr. McDonnell] promised to and did perform for Williams," Gov't Br. at 16, but that is precisely because access is all Mr. McDonnell provided. The Government's own descriptions of Mr. McDonnell's actions make this clear. For instance, the Government claims that Mr. McDonnell "order[ed] a subordinate state employee to take a meeting" with Mr. Williams on the subject of Anatabloc trials. *Id.* at 20. It likewise asserts that Mr. McDonnell approved "an event at the Governor's Mansion designed to aid a particular business in its efforts to convince others in state

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and wealthy individuals who gave large sums to their parties" wherein they "are pressed by their benefactors to introduce legislation, to amend legislation, to block legislation, and to vote on legislation in a certain way"; "furnish[ing] their own menus of opportunities for access to would-be soft-money donors, with increased prices reflecting an increased level of access"; and "provid[ing] special access to candidates and senior Government officials in exchange for large soft-money contributions").

[3] This, moreover, assumes that influencing individual researchers at public universities constitutes official action. That, however, cannot possibly be correct. Otherwise, every private entity that funded research by a public university professor would be violating the federal bribery law by paying money (bribes) to professors (public officials) in exchange for them performing specific research (official acts).

government to help that business," *id.*, that he was "involve[d] in inviting Williams and individuals Williams wanted to convince to study his product to a reception," *id.*; and that, in a cabinet meeting, he told his subordinates that "he thought Anatabloc 'would be good for state employees' and then instruct[ed] [them] to meet with Star Scientific," *id.* at 11. Missing is any evidence that Mr. McDonnell asked any UVA or VCU official to make an application to the Tobacco Commission in order to conduct the studies that Mr. Williams wanted. Indeed, there is no evidence that Mr. McDonnell ever asked or directed *any* state employee to initiate studies of anatabine. To the contrary, all the evidence is the opposite, as witness after witness testified that they were *never* pressured to make *any* decision on behalf of Mr. Williams or his company.[4] Thus, at most, the evidence here shows that Mr. McDonnell (or his wife) provided opportunities for Mr. Williams to have access to UVA or VCU officials (or other state employees) so that Mr. Williams could advocate for state-funded studies. Doing those things were not official acts.

The Government suggests that Mr. McDonnell implicitly signaled his desire for the state to conduct studies of anatabine. According to prosecutors, for example, Mr. McDonnell "didn't have to say a single thing" at the August 30, 2011 Mansion event because his mere presence conferred "credibility" or had a "halo effect" on Star Scientific that would have tended to influence the UVA and VCU doctors in attendance.[5] Likewise, the Government insinuates that

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[4] *See, e.g.*, Tr. Vol. VII, at 1524:10-14 (Molly Huffstetler testifying that she did not perceive any pressure on her from Mr. McDonnell (or from Mrs. McDonnell) to do anything other than attend the meeting); Tr. Vol. VIII, at 1810:3-12 (Dr. Lazo affirming that Mr. McDonnell did not "come up to you and grab your arm, pull you to the corner, and say, 'Listen, I really want you to go research this stuff"); Tr. Vol. VII, at 1668:13-16 (Jasen Eige testifying that Mr. McDonnell "never pushed back or never directed me to actually go forward and try to make something happen with the universities").

[5] Tr. Vol. XXV, at 5843:25-5844:9, 5845:10-15; *see also id.* at 5849:24-5850:3 (explaining "how the Governor's attendance added gravitas to their effort and could influence officials from UVA and VCU"); Gov't Br. at 9 & n.2 (explaining that the event was designed to "send[] a signal to those medical schools that this is important" and "to have an impact on the

Mr. McDonnell pulling out a bottle of Anatabloc during a meeting, telling his subordinates that it worked for him and could be good for state employees, and then asking them to meet with Star Scientific are tantamount to a directive that the state "perform research studies on state government employees who used the product." Gov't Br. at 11-12.

Even assuming that Mr. McDonnell's conduct could be perceived as sending implicit signals, merely attending an event for a donor or praising the efficacy of a donor's product while facilitating a meeting are plainly not enough to establish that "action" on a matter has been taken. After all, every campaign donor who displays in his office or advertisements photos of himself with influential politicians does so in order to confer "credibility" on his company. That does not convert the campaign donations that provided those photo-ops into "bribes." That is precisely why in *Rabbitt*, the state legislator "recommended" a specific architecture firm "as competent architects to persons authorized to employ architects for state projects," 583 F.2d at 1020, and yet the Eighth Circuit still found no improper official action because the legislator "did not promise to use his official position to influence those persons," *Loftus*, 992 F.2d at 796. The Government's position, in contrast, would vest federal prosecutors with the broad power to transform virtually any event that a public official attends or any meeting that a public official facilitates into an official act on the nebulous theory that it conferred "credibility" on other attendees at the event. That cannot possibly be the law. Rather, to find that action on a matter has been taken requires more than vague allegations of a "halo effect"; it requires a clear articulation by the official of what action he desires to be taken on the matter. Here, because Mr.

UVa and VCU researchers who Williams wanted to study his product"); *id.* at 25 n.7 (arguing that "'pressure' and 'influence' come in varied forms, and the question is not how forceful the actions were that Mr. McDonnell took or promised to take on a question, matter, or cause to help Mr. Williams—it is whether he took or promised any such action").

McDonnell never asked, recommended, or instructed any state employee to conduct studies of anatabine – nor promised to do so – he performed no legally cognizable official act.

The Government also argues that Mr. McDonnell took official action by asking his senior policy advisor to "see me about anatabloc issues at VCU and UVA." Gov't Br. at 10; GX-320. The Government omits that Mr. McDonnell's inquiry resulted in the *rejection* of assistance to Mr. Williams and his company.[6] Mr. McDonnell's request to meet with his staffer, therefore, cannot possibly constitute official action under the federal bribery laws. Instead, it was, at worst, nothing more than a "purely informational inquiry," which the D.C. Circuit has squarely held is not an "official act." *United States v. Ring*, 706 F.3d 460, 470 (D.C. Cir. 2013) (citing *Valdes v. United States*, 475 F.3d 1319, 1324-25 (D.C. Cir. 2007) (en banc)). Indeed, if merely inquiring about a matter is itself an official act, then virtually every public official is a potential criminal since officials routinely make inquiries into matters of concern to their donors. The Government's interpretation of "official act" would criminalize this innocuous courtesy.

In sum, not one of the actions undertaken by Mr. McDonnell for Mr. Williams qualifies as an "official act" under any reasonable interpretation of that term.

C. The Government's Counterarguments Are Wrong.

The Government challenges Mr. McDonnell's interpretation of official act in two respects, both of which are flawed. First, the Government contends that the official act definition says nothing about ingratiation and access and that Mr. McDonnell's reliance on *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), is misplaced because that case does not purport to address the meaning of "official act" under the bribery laws. *See* Gov't Br. at 17-18. Second, the Government contends that the definition of official act says nothing about exercising government power, which in any event, it believes, could include the actions taken by Mr. McDonnell. *See* Gov't Br. at 19-20. Both arguments are wrong.

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[6] The advisor had already called Mr. Williams' lobbyist to "change the expectations of his client" so as to "shut [Mr. Williams'] request down." Tr. Vol. VII, at 1664:23-1665:4; *id.* at 1668:3-6. Nothing further was pursued, and the advisor testified that Mr. McDonnell "never followed back up," "never pushed back," and "never directed me to actually go forward and try to make something happen with the universities." *Id.* at 1668:13-16.

1. *Citizens United* Supports Mr. McDonnell's Interpretation Of "Official Act."

As a threshold matter, the Government's argument that the statutory definition of official act does not mention "access" or "governmental power" is entirely beside the point.[7] The definition also does not mention "settled practice," and yet courts have long construed official act to include the settled practices of public officials. The question, then, is what does the definition—"action" or "decision" "on" a "matter"—mean. The Government contends that an official act is anything an official does in his official capacity, as determined by law or settled practice, so long as the action pertains to any "matter" of interest to an official. But, as Mr. McDonnell has explained elsewhere, this definition is so broad that it would sweep in countless innocuous activities of public officials, including activities—*e.g.*, the Secretary of Agriculture giving a speech on USDA policy to farmers—that the Supreme Court has explicitly said are *not* official acts under the statutory definition. *See United States v. Sun-Diamond Growers of Calif.*, 526 U.S. 398, 407 (1999). The Government has yet to offer any response to this point.

Since the Government's broad interpretation is unworkable and conflicts with Supreme Court precedent, a more limited interpretation is required. And on that question, *Citizens United* and *McCutcheon v. Federal Election Commission*, 134 S. Ct. 1434 (2014), provide directly relevant guidance. As the Government points out, *see* Gov't Br. at 17, the Supreme Court explained in *Citizens United* that independent expenditures in support of a public official—assuredly a "thing of value"—do not even raise the *appearance* of quid pro quo corruption because "there is only scant evidence that independent expenditures even ingratiate." *Citizens United*, 558 U.S. at 360. But the Court went further, explaining that even if independent expenditures did result in "ingratiation and access," that still would not constitute quid pro quo corruption. *Id.* Remarkably, the Government's interpretation of official act would permit overzealous prosecutors to criminalize conduct—access for things of value—that the Supreme Court has stated is *not* even corruption. The Government's inability to articulate an interpretation of official act that does not run roughshod over Supreme Court pronouncements—not to mention routine political practices—proves that its interpretation is fatally flawed.

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[7] The relevant statutes do not reference "official act" at all. That requirement, rather, applies only by analogy to other statutes. *See, e.g.*, *Skilling v. United States*, 561 U.S. 358, 412 (2010) (explaining that the honest-services fraud statute draws content "from federal statutes proscribing—and defining—similar crimes").

At bottom, merely providing access is not an official act that could support charges of quid pro quo corruption because it is not "action" "on" a "matter." By declaring that "[i]ngratiation and access . . . are not corruption," *id.*, *Citizens United* supports this point.[8]

2. An "Official Act" Must Have As Its Object The Exercise Of Governmental Power.

An action or decision is not "on" a "matter" unless it exercises or influences the exercise of governmental power. Although the Government contests this proposition, *see* Gov't Br. at 19, it is well established that "[i]t is the corruption of official positions through the misuse of influence in *governmental decision-making* which the bribery statutes make criminal." *United States v. Carson*, 464 F.2d 424, 434 (2d Cir. 1972) (emphasis added); *see also Valdes*, 475 F.3d at 1324 (explaining that "the six-term series" of words in the official act definition "refers to a class of questions or matters whose answer or disposition is determined by *the government*" (emphasis added)). Numerous cases illustrate this basic principle.

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[8] The Government also completely misses the point when it characterizes Mr. McDonnell as arguing that "'ingratiation' or 'access' can never be present" in a bribery scheme. Gov't Br. at 18. Of course, ingratiation and access will often be present in a bribery scheme, but it is not "ingratiation" or "access" that makes it bribery.

In *Valdes*, for instance, a policeman took payments in exchange for performing searches for license plates, outstanding warrants, and the like using an official police database. 475 F.3d at 1321-22. The Government argued "that the bribery statute should be construed broadly, to encompass essentially any action which implicates the duties and powers of a public official." *Id.* at 1322. The D.C. Circuit rejected this construction, holding that the "official act" concept does not subsume "officials' moonlighting, or their misuse of government resources, or the two in combination"; rather, the Government must prove that the defendant exerted "inappropriate influence on decisions that the government actually makes." *Id.* at 1324-25. Yet under the Government's theory here, the policeman in *Valdes* plainly exercised "official action"—and the Government, which does not even cite *Valdes* in its briefs, does not contend otherwise.

Similarly, in *United States v. Muntain*, 610 F.2d 964, 966-67 (D.C. Cir. 1979), a HUD official was convicted for allegedly accepting illegal gratuities after selling group automobile insurance policies to labor unions that he met as part of his official duties. The official "frequently combine[d] the promotion of the automobile insurance with trips taken at government expense for the purpose of conferring with labor officials across the United States concerning official business." *Id.* at 966-67. The official argued that selling insurance policies was not an "official act" because it did not "involve[] any question, matter, cause, suit, proceeding or controversy which by law might have been brought before [him]." *Id.* at 967. The Government, by contrast, contended that "any acts within the range of an official's public duties" are "official acts," including any meetings "to discuss matters of interest to the unions." *Id.* The

D.C. Circuit rejected the Government's construction and vacated the conviction: "To the extent that [the defendant's] use of his official position to promote a purely private venture created an appearance of impropriety, his conduct is reprehensible, but it is not criminal." *Id.* at 967-68.

These cases make clear that it is not the mere use of government personnel or resources that constitutes official action; it is the use of an official's office to *influence* government decisions—or, in other words, to influence the exercise of governmental power—that constitutes official action. The Government therefore errs in arguing that merely ordering a subordinate to take a meeting, approving an event at the Governor's Mansion, and inviting constituents to a taxpayer-funded reception are—without more—official acts. *See* Gov't Br. at 19-20. Although these actions certainly involve the use of government personnel or resources, they do not constitute official acts under the statutory definition without evidence that the official sought to influence a government decision or action on a pending matter.

To be sure, to perform an official act, an official need not himself exercise the powers of the government through some "formalized act[] written in laws." *See* Gov't Br. at 19. An official act can be as simple as sending a letter to an official who has formal authority requesting that certain action be taken on a pending matter. *See, e.g.*, *United States v. Biaggi*, 853 F.2d 89, 98 (2d Cir. 1988) (writing letters using congressional stationery to secure a Navy contract for the bribe-paying company). But it is not the mere sending of the letter that constitutes the official act; it is the attempt to influence the recipient in the exercise of a governmental decision or action on the matter, so long as it is the settled practice of the official to do so. This was, after all, the point of *United States v. Birdsall*, 233 U.S. 223 (1914), in which two "special officers" appointed by the Commissioner of Indian Affairs were convicted of accepting bribes in exchange for recommending to the Commissioner that certain individuals convicted of illegal liquor trafficking be given lenient sentences. *Id.* at 229-30. The officials' authority to make sentencing recommendations was not established by statute or regulation, but was established by settled practice. *Id.* at 230-36. And even though the officials did not have final decision-making authority, they nonetheless performed an official act by recommending leniency, thereby using their power to influence a governmental decision on the matter of sentencing.

Here, by contrast, there is no evidence that Mr. McDonnell directed, asked, or even recommended that any state government official or employee exercise the powers of a state government agency—here, UVA or VCU—by making an application to the Tobacco Commission or otherwise pursuing a program to conduct research on anatabine. Without this evidence, the most that any reasonable juror could have found is that Mr. McDonnell arranged access for Mr. Williams. But merely providing access is not—and cannot be—an official act.

3. The Government's Position Contravenes Numerous Settled Principles Of Statutory Construction.

Finally, the Government's position is foreclosed by numerous canons of construction that require all ambiguities here to be interpreted in favor of Mr. McDonnell. *See* Mem. in Support of Mot. to Dismiss, Dkt. 106, at 14-16. In this country, the Government may not deprive individuals of their liberty unless the laws at issue are clear and unambiguous. Here, the Government has not possibly met its burden, since it has yet to identify a single case in which a public official was found to have violated the honest-services fraud statute or Hobbs Act for conduct that is even remotely analogous to that at issue here, and every case that even touches the issue has *rejected* the Government's position. This alone is reason enough to reject the unbounded theory upon which the Government secured a criminal conviction in this case.

II. THE GOVERNMENT'S AFTER-THE-FACT ATTEMPT TO MANUFACTURE HOBBS ACT JURISDICTION FAILS.

In response to Mr. McDonnell's argument that it failed to adduce adequate proof of the Hobbs Act's jurisdictional predicate, the Government engages in an *ex post* scramble to cobble together its evidence of this key element of Counts 5-11. Apparently having lost confidence in the theory of Hobbs Act jurisdiction that it actually argued to the jury—that the scheme to obtain university studies of Anatabloc, if successful, would have had a positive impact on Star Scientific's business, *see* Tr. Vol. XXV, at 5891:12-21—the Government now points to every mention of interstate commerce that it can dredge up from the record and argues that this collection of miscellaneous facts is adequate to carry its burden. This last-minute gambit fails. Indeed, the Government does not cite a *single case* holding that Hobbs Act jurisdiction existed on analogous facts; and all of the relevant cases support Mr. McDonnell's position.

As an initial matter, the Government cannot be allowed to hide behind the jury's guilty verdict. The Government effectively argues that the verdict cannot be second-guessed if there is any evidence of interstate commercial activity in the record; it dismissively refers to Mr. McDonnell's attack on the jurisdictional basis of his Hobbs Act convictions as "little more than a jury argument." Gov't Opp'n at 28. But "[t]he question of whether a defendant's conduct satisfies the jurisdictional predicate of the Hobbs Act is one of law." *United States v. Bengali*, 11 F.3d 1207, 1211 (4th Cir. 1993). This Court need not defer to the jury's verdict of guilty where the conduct in question does not establish an adequate jurisdictional basis for Mr. McDonnell's Hobbs Act convictions. *See, e.g.*, *United States v. Buffey*, 899 F.2d 1402, 1407 (4th Cir. 1990) (reversing defendants' Hobbs Act convictions for lack of jurisdiction after jury returned a guilty verdict "because, even believing all of the underlying facts presented by the government, we cannot say that it is reasonably probable that the extortion [the defendants] conspired to commit would have had an impact on interstate commerce"). Similarly, where the prosecution asks the jury to find a probability of an effect on commerce, it cannot leave it to the jury to draw "strained inferences" from the record. *United States v. Peterson*, 236 F.3d 848, 855 (7th Cir. 2001). "To render a guilty verdict, the jury must hear sufficient evidence [of a federal jurisdictional nexus] to avoid resorting to guesswork." *Id.* Reversal of a conviction on the basis of insufficient evidence is appropriate where the prosecution fails to fulfill its duty. *See id.* (reversing Hobbs Act conviction where "the inferences offered [by the Government's expert witness] were too attenuated to establish that [the robbery victim] ran an interstate business").

Moreover, the Supreme Court's decision in *Jones v. United States*, 529 U.S. 848 (2000), makes clear that the mere fact that the Government may adduce some connection with interstate commercial activity in a given case does not mean that the jurisdictional predicate is satisfied. Rather, a statute's jurisdictional nexus must be given limiting effect. There, the Court considered whether the federal arson statute, 18 U.S.C. 844(i), which criminalizes arson of a "building used in interstate commerce," applies to arson of a residence. The Government argued that the residence was "used in interstate commerce" because it was used as security on a home loan with an out-of-state lender, was insured by an out-of-state insurer, and received deliveries of natural gas from out of state. *Jones*, 529 U.S. at 855. But the Supreme Court rejected this argument, finding that the Government's strained construction of the statute was not only at odds with common sense, it also raised serious constitutional doubts because it would make every act of arson a federal crime. *Id.* at 856-59. Instead, the Court held, "the provision covers only property currently used in commerce or in an activity affecting commerce." *Id.* at 859.

The same principles of statutory interpretation and federalism set forth in *Jones* apply to the Hobbs Act. The requirement that the relevant act of extortion or robbery "obstruct[], delay[], or affect[] commerce," 18 U.S.C. § 1951(a), must be given effect. It is not enough to show some tangential relationship between the facts of a given case and interstate commerce. Consistent with these principles, where the Government alleges that a defendant "affect[ed] commerce by extortion," courts generally look to two possible jurisdictional predicates. In some cases, the payment of the extortionate demands supplies the jurisdictional nexus; to take a common example, the assets of a business engaged in interstate commerce may be depleted by making such payments. *See, e.g., Bengali*, 11 F.3d at 1212. In other cases, the accomplishment of the extortionate scheme affects commerce. Where extortion under color of official right is alleged, courts have looked to the impact that the corruptly traded official act had, or would have had, on commerce. *See, e.g., United States v. Bailey*, 990 F.2d 119 (4th Cir. 1993) (finding Hobbs Act jurisdiction where legislator sold his vote for a bill that, if passed, would have caused an increase in interstate travel to South Carolina); *United States v. Taylor*, 966 F.2d 830 (4th Cir. 1992) (same). Here, the Government has not introduced proof of either type of effect.

The Government relies principally on two types of evidence.[9] First, it points to evidence that third parties traveled interstate to attend the Anatabloc "launch" at the executive mansion and the healthcare leaders reception and that Mrs. McDonnell traveled to several out-of-state events to support Anatabloc. Tellingly, the Government cites no case from any jurisdiction to support its newly minted theory that interstate travel by third parties incident to an extortion or robbery scheme establishes the requisite effect on interstate commerce. The caselaw, in fact, stands for the opposite proposition: even where *participants* in an extortion or robbery travel interstate, more evidence of an effect on commerce must be present before Hobbs Act jurisdiction exists. For example, in *United States v. Marrero*, the victims of the extortion traveled across state lines to buy drugs from the defendants, who robbed them instead. The Seventh Circuit found that the interstate travel of the victims was relevant only because it helped establish that they were engaged in an interstate business the assets of which were depleted by the robbery; the travel did not, in itself, provide Hobbs Act jurisdiction. *See* 299 F.3d 653, 656 (7th Cir. 2002). Even where co-conspirators travel interstate during the course of a conspiracy, courts of appeals have been unwilling to find that Hobbs Act jurisdiction exists without an additional showing of an effect on commerce. *See United States v. Bencivengo*, 749 F.3d 205, 215 n.8 (3d Cir. 2014) ("[C]ourts have typically been careful to note that interstate travel does not, *by itself*, suffice to establish jurisdiction under the Hobbs Act."); *see also, e.g., United States v. Le*, 256 F.3d 1229, 1236 n.7 (11th Cir. 2001) (noting that "the fact that some of the co-conspirators traveled interstate is not the sole basis for jurisdiction under the Hobbs Act in this case, but rather, it is only one element which, in conjunction with other circumstances, provides that jurisdiction"). Without more, the interstate travel upon which the Government belatedly relies cannot rescue its case.

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[9] In addition to the two categories discussed at length here, the Government also cites record evidence that the Kinloch Golf Club charges that constitute the basis of Count 8 were expensed to Star Scientific. It is too late in the day to litigate the case on this theory. The Government did not argue this depletion of assets theory to the jury, and the jury received no instruction on this theory of jurisdiction. The prosecution cannot defeat a sufficiency of the evidence challenge by raising a theory that was never presented to the jury. *See United States v. Labat*, 905 F.2d 18, 23 (2d Cir. 1990) (holding, on a sufficiency of the evidence challenge, that "[w]e may not permissibly infer either that the jury found [the defendant] guilty on a theory as to which it was not instructed, or that, had the jury been properly instructed on that theory, it would have found him guilty on that basis" (citations omitted)).

The Government's second category of supposed evidence of an effect on interstate commerce is, as Mr. McDonnell has already argued, purely conjectural. Relying on evidence that Star Scientific had offices in several states and that Mr. Williams traveled from state to state promoting his product, the Government argues in general terms that if the conspiracy had been more successful—that is, if the Anatabloc studies had gone forward—Star would have benefited. But the Government's argument on this point is devoid not only of citations to any relevant authorities but also of meaningful citations to the record. For example, the Government simply states, without support, that "the 'Virginia Study' would have resulted in effects felt far beyond Virginia." Gov't Opp'n at 27. This postulation is unsupported by evidence in the record. Similarly, the Government states, without record support, that Mr. Williams' "goal" was "for Anatabloc to become more scientifically validated so that it would receive further regulatory approval and consumer acceptance—and increase revenues in his interstate company." *Id.* at 27-28. Such assertions are not evidence. But even if this unsupported statement were true, the intent of a co-conspirator is not sufficient to establish the requisite effect on commerce; proof of probabilities must be made. *United States v. Staszcuk*, 517 F.2d 53, 60 (7th Cir. 1975).

The only concrete record evidence that the Government points to in support of its argument that obtaining the Anatabloc studies would have affected commerce is the evidence that Mrs. McDonnell traveled interstate with Mr. Williams in the past. The jury could reasonably have inferred, the Government argues, that more such travel would have taken place if Star's business had been boosted by the studies. Gov't Opp'n at 28. But such interstate travel is precisely the type of evidence that courts of appeals have found to be insufficient, standing alone, to establish Hobbs Act jurisdiction. By using this evidence to show both an actual effect on commerce and a probable effect on commerce, the Government is simply bootstrapping.

CONCLUSION

The Court should grant Mr. McDonnell a judgment of acquittal on Counts 1-11. In the alternative, it should grant Mr. McDonnell a new trial.

Dated: October 24, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 24th day of October, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: October 24, 2014

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**CRIMINAL NO. 3:14-CR-00012**
	)	
ROBERT F. MCDONNELL	)	**JUDGE JAMES R. SPENCER**
MAUREEN G. MCDONNELL	)	

MEMORANDUM IN SUPPORT OF DEFENDANT ROBERT F. MCDONNELL'S MOTION # 40 – MOTION FOR NEW TRIAL PURSUANT TO RULE 33 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

INTRODUCTION

On September 4, 2014, a jury convicted Mr. McDonnell on eleven counts for committing, and conspiring to commit, honest services wire fraud and extortion under color of official right. Not only is the verdict based on legally insufficient evidence, *see* Mem. in Support of Def. Robert F McDonnell's Renewed Mot. for J. of Acquittal, but it is also predicated on numerous legal errors that deprived Mr. McDonnell of a fair trial and allowed the jury to convict him on legally erroneous grounds that would ensnare virtually any public official. Without waiving any other arguments that he has preserved, Mr. McDonnell requests that the Court vacate the jury's flawed verdict and grant a new trial for the following four reasons.

- *First*, the Court's jury instructions were legally erroneous because they (1) allowed the jury to convict Mr. McDonnell on an erroneous understanding of "official act" and (2) allowed a conviction on the theory that Mr. McDonnell accepted things of value that were given for future unspecified action.

- *Second*, Mr. McDonnell was deprived of his right to an impartial jury due to an inadequate inquiry into each prospective juror's exposure to the near constant, overwhelmingly prejudicial publicity before the trial.

- *Third*, the Court failed to voir dire the jurors in light of evidence that they had prematurely begun deliberations in violation of the Court's instructions.

- *Finally*, the Court erroneously admitted highly prejudicial Rule 404(b) evidence that Mr. McDonnell received things of value from William Goodwin and that Mr. McDonnell's staff had organized free golf for him.

ARGUMENT

Under Rule of Criminal Procedure 33(a), "the court may vacate any judgment and grant a new trial if the interest of justice so requires." Mr. McDonnell's trial contained numerous legal errors that deprived him of a fair trial and allowed the jury to convict him on a legally erroneous basis. Therefore, the Court should vacate the jury's verdict and grant a new trial.

I. MR. MCDONNELL IS ENTITLED TO A NEW TRIAL BECAUSE THE COURT'S INSTRUCTIONS WERE LEGALLY ERRONEOUS.

It is not a crime under the federal corruption laws for an official to accept a thing of value knowing that it was "given simply with the generalized hope or expectation of ultimate benefit on the part of the donor." *United States v. Jennings*, 160 F.3d 1006, 1013 (4th Cir. 1998) (internal quotation marks omitted). "Vague expectations of some future benefit" are not "sufficient to make a payment a bribe." *Id.* (quoting *United States v. Allen*, 10 F.3d 405, 411 (7th Cir. 1993)). Instead, the Government must prove that an official accepted things of value that he knew were made in return "for some specific official act or course of action." *Id.* at 1019. The Court's jury instructions turn these principles on their head (1) by allowing the jury to convict Mr. McDonnell on an erroneous understanding of "official act" and (2) by allowing a conviction on the theory that things of value were given and accepted for unspecified future help. Under these instructions, prosecutors may pursue virtually any elected public official in America who does anything in his or her official capacity for anyone who gives them something of value—including, it bears emphasizing, campaign contributions. If accepted, this would revolutionize the relationship between politics and the criminal law, criminalizing routine political courtesies. This is not the law. Rather, as the Supreme Court has repeatedly emphasized, "[i]ngratiation and access . . . are not corruption." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 360 (2010).

A. The Court's Instructions Were Improper Because They Invited The Jury To Convict Mr. McDonnell On An Erroneous Understanding Of "Official Act."

The Government argued to the jury that anything Mr. McDonnell did in his official capacity as Governor involving Virginia business development was an official act. This is contrary not only to the statutory definition of "official act," but to all of the relevant precedents as well. Because the Court's "official act" instruction permitted the jury to convict Mr. McDonnell on a legally erroneous understanding of official act, the instruction was improper.

1. In their summation, the prosecutors identified five actions Mr. McDonnell took that they told the jurors were official acts.

- *First*, the prosecutors argued that "directing Dr. Hazel to send somebody" to a meeting between Mrs. McDonnell and Mr. Williams was an official act. Tr. Vol. XXV, at 5869:17-18. According to the prosecutors, "Jonnie Williams wanted to meet with somebody from the Health and Human Resources [department], and he got that meeting." *Id.* at 6040:11-13.

- *Second*, the prosecutors argued to the jury that the Mansion event was an official act because it was "ultimately approved by the Governor." *Id.* at 5843:13. According to the prosecutors, Mr. McDonnell "didn't have to say a single thing" at the event because his mere presence conferred "credibility" or had a "halo effect" on Star Scientific with respect to the UVA and VCU doctors in attendance, whom Mr. Williams hoped to impress. *Id.* at 5843:25-5844:9, 5845:10-15; *see also* 5849:24-5850:3 (explaining "how the Governor's attendance added gravitas to their effort and could influence officials from UVA and VCU").

- *Third*, the prosecutors argued that Mr. McDonnell "e-mailing his policy director" to ask the director to see him about Anatabloc studies at UVA and VCU was an official act. *Id.* at 6040:24-6041:8. The sum total of the prosecutors' explanation for why that qualifies is that Mr. McDonnell was "emailing"—that is, "[h]e's doing something." *Id.* at 6041:8.

- *Fourth*, the prosecutors argued that "the Virginia Healthcare Leaders event" was an official act. *Id.* at 5869:19-20. Apparently, Mr. McDonnell performed an official act because he knew when he attended the event that "Ms. McDonnell had basically blessed Mr. Williams inviting who he wanted" to attend. *Id.* at 6041:9-14. The prosecutors also argued to the jury that Mr. McDonnell had singled out Dr. Paul Ladenson, a Star consultant, when giving remarks at the event, thus implying that even that innocuous courtesy was an official act. *See id.* at 6041:19-6042:2.

- *Fifth*, the prosecutors argued that "Mr. McDonnell meeting with Lisa Hicks-Thomas and Sara Wilson, asking them to reach out to the Star people, or strongly suggesting as much," was an official act. *Id.* at 5869:20-23. According to the prosecutors, "[t]he Governor of Virginia pulling out a product and talking to his senior advisors in a meeting about lowering healthcare costs in Virginia" is the equivalent of saying, "You should meet with them." *Id.* at 6042:7-11.

In explaining why these acts were official, the prosecutors argued that "Mr. McDonnell's involvement with every single one of these things was in his official capacity as Governor, whether it was approving the Mansion event or directing conduct by a subordinate," *id.* at 5870:2-6, and that each of the actions was on the matter of "Virginia business development," *id.* at 5869:23-24. The Government thus invited the jury to find that Mr. McDonnell had performed official acts merely by acting in his official capacity, so long as there was some connection to "Virginia business development." On the Government's view, therefore, merely arranging a meeting, emailing a subordinate, and hosting an event—without anything more—are official acts, provided that they have some relation to a "matter," however broadly defined.

2. The Government's overbroad interpretation of "official act" is directly at odds with Supreme Court and Fourth Circuit precedent. The Fourth Circuit has made clear that "the bribery statute does not encompass every action taken in one's official capacity"; rather, those actions "must yet adhere to the definition confining an official act to a pending 'question, matter, cause, suit, proceeding or controversy.'" *United States v. Jefferson*, 674 F.3d 332, 356 (4th Cir. 2010) (citation omitted). And it is no crime for a public official to accept gifts that were given merely "because of his office." *United States v. Taylor*, 993 F.2d 382, 385-86 (4th Cir. 1993). "This would cover almost all payments to officeholders." *Id.* at 386. The Supreme Court has similarly explained that "receiving [] sports teams at the White House, visiting [a] high school, and speaking to [] farmers about USDA policy"—while "assuredly 'official acts' in some sense"—"are not 'official acts' within the meaning" of the federal bribery laws. *United States v. Sun-Diamond Growers of Calif.*, 526 U.S. 398, 407 (1999). But on the Government's view, the Secretary of Agriculture "speaking to [] farmers about USDA policy" would qualify as an official act since "speaking to [] farmers" is an action within the Secretary's official capacity—in

other words, a settled practice of the Secretary—and "USDA policy" is a matter pending before the Secretary. Because the Government's logic cannot be squared with *Sun-Diamond*, *Jefferson*, and other cases, it must be rejected.

An "official act," therefore, is not just any action related to a broadly defined matter that is taken in an official's official capacity. Rather, it is an action or decision *on* a matter, and that requires the official to himself exercise the regulatory power of the government or, if the official does not have actual or final authority over the matter, at the very least, to ask the relevant decision-maker to exercise the powers of the government on the matter. This explains why merely giving a speech about a matter is not—in and of itself—an official act, unless the official calls upon other officials to exercise governmental power. Thus, for instance, the Secretary of Agriculture's speech to farmers about USDA policy is not an official act, but a speech directing his Assistant Secretary to award a contract or to promulgate a specific regulation would be an official act. Similarly, attending a meeting or event or directing a subordinate to attend a meeting or event are not—in and of themselves—official acts, unless the official also asks or directs that specific governmental action be taken. Merely providing access—in other words—is not an action or decision on a matter and thus not an official act. *See generally* Mem. in Support of Def. Robert F. McDonnell's Mot. to Dismiss Counts 1-11 of the Indictment, Dkt. 106 ("Motion to Dismiss"), at 7-19; Mem. in Support of Def. Robert F. McDonnell's Mot. for J. of Acquittal, Dkt. 409 ("First Rule 29 Motion"). This is why, to date, the Government has failed to identify a *single case* that adopts its unbounded theory of "official act."[1]

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[1] At best, the statutes here are ambiguous and therefore must be construed narrowly in favor of Mr. McDonnell. *See Staples v. United States*, 511 U.S. 600, 619 n.17 (1994) ("[A]n ambiguous criminal statute is to be construed in favor of the accused . . . ."); *Penn. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 208-09 (1998) ("[A]bsent an unmistakably clear expression of intent to alter the usual constitutional balance between the States and the Federal Government,

3. The Court's "official act" instruction is erroneous because it invited the jurors to find that official acts can be nothing more than arranging meetings, attending events, or emailing subordinates. Although the Court stated the statutory definition of "official act" as "any decision or action on any question, matter, cause, suit, proceeding, or controversy, which may at any time be pending, or which may by law be brought before any public official, in such public official's official capacity," it then continued in a way that plainly invited the jury to embrace the Government's unbounded and unprecedented theory of "official act":

> Official action as I just defined it includes those actions that have been clearly established by settled practice as part of a public official's position, even if the action was not taken pursuant to responsibilities explicitly assigned by law. In other words, official actions may include acts that a public official customarily performs, even if those actions are not described in any law, rule, or job description. And a public official need not have actual or final authority over the end result sought by a bribe payor so long as the alleged bribe payor reasonably believes that the public official had influence, power or authority over a means to the end sought by the bribe payor. In addition, official action can include actions taken in furtherance of longer-term goals, and an official action is no less official because it is one in a series of steps to exercise influence or achieve an end.

Tr. Vol. XXVI, at 6102:18-6103:14.

Although an official act *may* include actions that have been established by settled practice, the bare fact that an action is a settled practice does not make it an official act. The Government must still show that the action or decision involved the exercise of actual governmental power—the actual regulatory power of the state. Yet the Court's instructions provide no guidance about what makes a settled practice an action or decision on a matter.

(continued...)

we will interpret a statute to preserve rather than destroy the States' substantial sovereign powers." (internal quotation marks omitted)); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009) ("The so-called canon of constitutional avoidance is an interpretive tool, counseling that ambiguous statutory language be construed to avoid serious constitutional doubts.").

While instructing the jury about settled practices, the Court failed to explain the rest of the definition. Given the definition's unwieldy language, the Court's instruction would inevitably mislead the typical juror to erroneously conclude that an official act is any settled practice of an official. And, of course, the prosecutors took full advantage of the Court's misleading instruction, repeatedly telling the jurors that an official act includes *any* settled practice, including simply arranging a meeting, attending an event, or emailing a subordinate. *See* Tr. Vol. XXV, at 5869:12-15, 6039:6-11. The Court's instructions thus elide the critical distinction between settled practices that are official acts and those that are not. Instead, the instructions focus exclusively on the principle—irrelevant and undisputed in this case—that an official act *can* include settled practices, without further explaining when a settled practice does or does not constitute official action.

The Court's misleading—and thus legally erroneous—emphasis on settled practices is compounded by the erroneous instruction that "official action can include actions taken in furtherance of longer-term goals, and an official action is no less official because it is one in a series of steps to exercise influence or achieve an end." Tr. Vol. XXVI, at 6103:10-14. This language was not part of the "official act" instruction in *Jefferson*. Indeed, the Government, in proposing this instruction, cited no on-point legal authority whatsoever—an absence that is telling. That an act may be "taken in furtherance of longer-term goals" or is "one in a series of steps to exercise influence or achieve an end" bears no relation to the actual definition of "official act." The Court's instruction invited the jury to conclude that any action taken in service of a long-term goal of exercising influence is *itself* an official act. But that is not the law—actions that are otherwise not a decision or action on a matter do not somehow become, in and of themselves, official acts simply because they may be taken with some longer-term goal in mind. An official act is a decision or action on a matter, regardless of whether it was taken in furtherance of a longer-term goal. And the defense has never argued that an act otherwise satisfying the definition of "official act" is somehow less official because it is one in a series of steps to achieve some end. The Government obviously proposed this instruction to fit its erroneous legal theory that an official act is anything done in an official's official capacity, even if it is not—in any real sense—an action or decision *on* a matter. The Court erred by including the instruction, and this error allowed the jury to conclude that actions that clearly do not satisfy the statutory definition of "official act"—such as emailing a staffer—somehow *become* official acts because they were (allegedly) taken in service of some goal.

In sum, taken as a whole, the Court's "official act" instruction improperly allowed—if not affirmatively invited—the jury to accept the Government's legally erroneous theory that Mr. McDonnell performed an official act merely because he took an action in his official capacity.

B. The Court's Instructions Were Improper Because They Invited The Jury To Convict Mr. McDonnell Based On A Promise Of Unspecified Future Action.

Despite identifying acts performed by Mr. McDonnell that they believed were official, the prosecutors nonetheless argued repeatedly that the Government was not even required to prove that an official act had actually been performed, so long as there was a corrupt agreement. *See* Tr. Vol. XXV, at 5869:8-10 (prosecutor arguing that "we don't even have to prove that he did any official acts so long as we prove the corrupt agreement"); *id.* at 6039:21-23 (prosecutor arguing that "the government doesn't have to prove there was any quo, we just have to prove the corrupt agreement"); *id.* at 6042:15 (prosecutor arguing that "we don't have to prove any one of those" official acts). The Court confirmed this in its instructions. *See* Tr. Vol. XXVI, at 6100:18-6101:1 (court instructing the jury that "it is not necessary that any official action was taken by the public official in the course of the scheme"). But if a corrupt agreement is all that the Government must prove, then the jury must also be instructed that, to find such an agreement, it must find that the things of value were given in exchange for "some specific official act or course of action." *Jennings*, 160 F.3d at 1019.

It is not enough for the Government to prove that things of value were given "with a vague expectation of some future benefit." *Id.* at 1022 (quotation marks and alterations omitted). That is because, on some level, "[a]ll payments to elected officials are intended to influence their official conduct." *United States v. Taylor*, 993 F.2d 382, 385 (4th Cir. 1993); *see also Jennings*, 160 F.3d at 1018 ("Not every payment made to influence or reward an official is intended to corrupt him."). For this reason, the Fourth Circuit has made clear that "a good will gift to an official to foster a favorable business climate, given simply with the generalized hope or expectation of ultimate benefit on the part of the donor, does not constitute a bribe." *Jennings*, 160 F.3d at 1013 (internal quotation marks omitted). To constitute an unlawful quid pro quo, the official must know that things of value were given in exchange for the official promising to "engage[] in some specific act (or omission) or course of action (or inaction)." *Id.* at 1019.

Indeed, in *Jennings*, the Fourth Circuit held that it was plain error for the district court to charge the jury that "it was sufficient if Jennings [the bribe-payor] paid Morris [the official] to influence him (Morris) 'in connection with' or 'in reference to' [government] business." *Id.* at 1022. According to the circuit court, the district court's jury instructions "could have described a situation in which Jennings paid Morris with a vague expectation of some future benefit." *Id.* (internal quotation marks and alterations omitted). Consequently, the instructions failed to explain that quid pro quo corruption involves the "intent to induce a *specific* act." *Id.* at 1021 (emphasis added).

The Court's instructions in this case fail for the same reason. They allowed the jury to convict Mr. McDonnell based solely on a finding that he accepted things of value that were given with a generalized hope or expectation that he would perform some unspecified future action in furtherance of a larger goal. In defining bribery, the Court told the jury that it must find "that a public official demanded, sought or received something of value as described in the indictment and that the public official demanded, sought or received the item of value corruptly in return for being influenced in the performance of any official act." Tr. Vol. XXVI, at 6100:13-18. The Court further instructed the jury that bribery "includes a public official's solicitation or agreement to accept a thing of value in exchange for official action whether or not the public official ultimately perform[s] the requested official action or intends to do so." *Id.* at 6100:18-23; *see also* 6113:4-15 (same). And it explained that an "official action can include actions taken in furtherance of longer-term goals" and can be just "one in a series of steps to exercise influence or achieve an end." *Id.* at 6103:10-14.

As in *Jennings*, none of the instructions "stated that [Mr. Williams] must have given money to [Mr. McDonnell] in exchange for some *specific* official act or course of action." *Jennings*, 160 F.3d at 1022 (emphasis added); *see also id.* at 1014 (explaining that the Government must show "that payments were made with the intent of securing a specific *type* of official action or favor in return"). Therefore, the Court committed legal error in rejecting Mr. McDonnell's request, based on *Jennings*, to include the following language in the Court's instructions: "To convict the defendant, the official must have received the payment in exchange for performing or promising to perform some specific official act. A gift or payment given with the generalized hope of some unspecified future benefit is not a bribe. You may convict the defendant only if you find that he received something of value in exchange for performing or promising to perform some specific official act." Tr. Vol. XXIV, at 5771:19-5772:1.

The Court's bribery instructions are also improper in light of the Government's failure to produce any evidence of an explicit quid pro quo agreement. The prosecutors told the jury that there was no such evidence, Tr. Vol. XXV, at 5873:1-2, 6045:10-11, and the Court instructed the jury that the parties to a bribe "need not state the quid pro quo in express terms" lest "the law's ... effect could be frustrated by knowing winks and nods," Tr. Vol. XXVI, at 6101:9-12. But instructing the jury that the Government need not prove that an official act had been performed, where the Government itself concedes there is no evidence of an express quid pro quo agreement, effectively eliminates the quid pro quo element of the offense. If there is evidence of an explicit quid pro quo, then of course there is no need to prove that official acts had actually been performed. But if there is no express quid pro quo agreement, as is the case here, then the only way the Government can prove that a quid pro quo existed is by proving that things of value were given and official acts were performed. The prosecutors confirmed as much in arguing to the jury that the timing of gifts and official acts "establishe[d] the pro in the quid pro quo agreement." Tr. Vol. XXV, at 6046:16-18. Since there is no evidence of an express quid pro quo, the Court erred in instructing the jury that the Government was not required to prove any official acts. The Court's instructions improperly invited the jury to convict Mr. McDonnell merely because he accepted things of value given with the generalized hope of unspecified future assistance.

II. MR. MCDONNELL IS ENTITLED TO A NEW TRIAL BECAUSE THE COURT'S VOIR DIRE ON PRETRIAL PUBLICITY WAS INADEQUATE.

During voir dire, the Court acknowledged that there had been heavy pretrial publicity in this case and that it expected nearly every prospective juror to have heard of the allegations against Mr. McDonnell. Nevertheless, the Court declined Mr. McDonnell's request that the Court conduct an independent inquiry of each prospective juror to determine what effect the avalanche of prejudicial pretrial publicity had on the juror's impartiality. Instead, the Court simply asked the prospective jurors en masse whether they could be impartial and decide the case based on the evidence at trial. All of them indicated that they could by sitting down, and the Court declined to allow any further questions to be asked. The perfunctory nature of this voir dire is contrary to Supreme Court and Fourth Circuit precedent as well as precedents from other circuits overturning convictions for similarly inadequate voir dire. Accordingly, the Court should grant a new trial.

A. Voir Dire Must Provide "Reasonable Assurance" That Bias Or Partiality Would Be Discovered.

Voir dire "plays an essential role in guaranteeing a criminal defendant's Sixth Amendment right to an impartial jury." *United States v. Lancaster*, 96 F.3d 734, 738 (4th Cir. 1996). Although the voir dire process generally "is committed to the sound discretion of the trial court," a trial court nevertheless abuses its discretion "if the voir dire does not provide a reasonable assurance that prejudice would be discovered if present." *Id.* at 740. In particular, where there is possibility that pretrial publicity might have prejudiced the jury, a more searching voir dire is necessary to provide that "reasonable assurance." "In an era of rapid and widespread communications, trial courts must be vigilant to ensure that jurors are not biased and trials are not compromised by media attention surrounding a case." *United States v. Bakker*, 925 F.2d 728, 734 (4th Cir. 1991). Consequently, the proper way to impanel jurors who have been inundated with pretrial publicity "is through a careful *voir dire*." *Id.*; *see also United States v. Blitch*, 622 F.3d 658, 656 (7th Cir. 2010) ("[T]he greater that probability [of bias], the more searching the inquiry needed to make reasonably sure that an unbiased jury is impaneled.").

The Fourth Circuit has therefore expressed a preference for the following procedure where prejudicial publicity is brought to a trial court's attention: "'[T]he court *must ascertain* if any jurors who had been exposed to such publicity had read or heard the same. Such jurors who respond affirmatively must then be examined, individually and outside the presence of the other jurors, to determine the effect of the publicity.'" *United States v. Hankish*, 502 F.2d 71, 77 (4th Cir. 1974) (quoting *Margoles v. United States*, 407 F.2d 727, 735 (7th Cir. 1969)). It is not enough to accept at face value a prospective juror's assurances of impartiality. "[W]hen a juror is exposed to potentially prejudicial pretrial publicity," a court must determine "whether the juror can lay aside any impression or opinion due to the exposure" since the "juror is poorly placed to make a determination as to his own impartiality." *United States v. Davis*, 583 F.2d 190, 197 (5th Cir. 1978). It is, in short, the court's job "to determine the effect of the publicity" on each prospective juror. *Hankish*, 502 F.2d at 77 (quotation marks omitted).

This is precisely the level of inquiry that the Supreme Court recently approved in *Skilling*—a case involving the high-profile criminal trial of Jeffrey Skilling, the former president of Enron Corporation. In rejecting Skilling's challenge to the sufficiency of voir dire on pretrial publicity, the Court found that the trial court (1) "initially screened venire members by eliciting their responses to a comprehensive questionnaire," *Skilling v. United States*, 561 U.S. 358, 388 (2010); (2) "examined each prospective juror individually, thus preventing the spread of any prejudicial information to other venire members," *id.* at 389; (3) "repeatedly admonished that there were 'no right and wrong answers to th[e] questions,'" *id.*; and (4) accorded the parties "an opportunity to ask follow-up questions of every prospective juror brought to the bench for colloquy," *id.* Based on this assessment, the Supreme Court concluded that the trial court "did not simply take venire members who proclaimed their impartiality at their word" but "followed up with each individually to uncover concealed bias." *Id.* at 394-95. According to the Court, "[t]his face-to-face opportunity to gauge demeanor and credibility, coupled with information from the questionnaires regarding jurors' backgrounds, opinions, and sources of news, gave the [trial] court a sturdy foundation to assess fitness for jury service." *Id.* at 395. Based on these findings, the Supreme Court concluded that Skilling had "failed to show that his *voir dire* fell short of constitutional requirements." *Id.*

The Fourth Circuit similarly requires a voir dire "directed at disclosing the impact that both past and future media attention would have upon potential jurors." *Bakker*, 925 F.2d at 733. Thus, in *Bakker*, the trial court "questioned potential jurors about exposure to pre-trial publicity including specific media reports, about exposure to the opinions of others, about the juror's personal opinions about the case, and about whether media attention during the trial would influence a juror's decisions." *Id.* The circuit court held that this "careful" voir dire was the "proper way" to impanel jurors in high-publicity cases and thus guaranteed to the defendant his Sixth Amendment right to an impartial jury. *Id.* at 734.

Consistent with *Skilling*, as well as the Fourth Circuit's analysis in *Bakker*, numerous courts have set aside convictions where the trial court relied "solely on a juror's assertion of impartiality," rather than conducting "a sufficiently probing inquiry to permit the court to reach its own conclusion." *United States v. Pratt*, 728 F.3d 463, 470 (5th Cir. 2013). In *United States v. Davis*, for example, the Fifth Circuit held that it was inadequate merely to ask prospective jurors to raise their hands "if [they] felt the publicity impaired [their] ability to render an impartial decision" and to otherwise refuse "to examine each panel member individually regarding the opinions held because of the publicity." 583 F.2d 190, 196 (5th Cir. 1978). Because "the nature of the publicity as a whole raised a significant possibility of prejudice," the

Fifth Circuit concluded that "the cursory questioning by the court was not enough." *Id.* While acknowledging that the "separate examination of jurors … is not necessarily required," the circuit court nevertheless held that the trial court "should have determined what in particular each juror had heard or read and how it affected his attitude toward the trial, and should have determined for itself whether any juror's impartiality had been destroyed." *Id.* at 196-97

Courts in other cases have similarly set aside convictions based on the trial court's failure to conduct an independent inquiry into the effect of pretrial publicity on each prospective juror's impartiality. *See, e.g.*, *United States v. Beckner*, 69 F.3d 1290, 1293-94 (5th Cir. 1995) (reversing conviction because the trial court failed "to make an *independent* determination of the impartiality of each juror" by asking them "what information they had read, heard, or otherwise received as a result of [pretrial] publicity" and "how any such information had affected their attitudes or perceptions of the case"); *United States v. Hawkins*, 658 F.2d 279, 282-85 (5th Cir. Unit A 1981) (reversing conviction based on *Davis* because the trial court failed to conduct any further inquiry beyond asking prospective jurors to raise their hands if they had formed an opinion about the case that would affect them if selected as jurors); *Silverthorne v. United States*, 400 F.2d 627, 638 (9th Cir. 1968) (reversing conviction because the "trial court made no effort to ascertain *what* information the jurors had accumulated" but instead merely obtained "jurors' assurances of impartiality" and thus "had no way of objectively assessing the impact caused by this pretrial [publicity] on the juror's impartiality").

B. The Court's Voir Dire On Pretrial Publicity Did Not Provide "Reasonable Assurance" That Bias Or Partiality Would Be Discovered.

To demonstrate inadequate voir dire on pretrial publicity, "a defendant must show (1) that pretrial publicity about the case raised a significant possibility of prejudice, and (2) that the district court's voir dire procedure failed to provide a reasonable assurance that prejudice would be discovered if present." *Pratt*, 728 F.3d at 470. Both requirements are satisfied here.

1. Heavy Pretrial Publicity Raised A Significant Possibility Of Prejudice.

There is no question that the barrage of negative pretrial publicity about this case severely prejudiced Mr. McDonnell. In Mr. McDonnell's memorandum in support of his motion for omnibus voir dire relief, the defense detailed the heavy media attention surrounding this case, which the Government never disputed. *See* Mem. in Support of Def. Robert F McDonnell's Mot. for Omnibus Voir Dire Relief ("Voir Dire Mot."), Dkt. No. 110, at 3-6. A Lexis search for reports appearing in U.S. media sources between March 1, 2013 and July 27, 2014 (including newspapers, television transcripts, and a selection of Internet sources) containing Mr. McDonnell's name and any of the terms "Jonnie Williams," "Star Scientific," "investigation," "scandal," or "Gift-gate" in the headline or lead paragraph returned 2,356 results.[2] As media coverage intensified, so too did the interest of Virginians. Data available from Google.com regarding searches conducted by Internet users in Virginia shows a surge of interest in Mr. McDonnell and Star Scientific just as the media coverage of the investigation increased in intensity. *See* Voir Dire Mot. at 4-6.

Not only was Mr. McDonnell's case highly publicized, the coverage was overwhelmingly prejudicial. *See id.* at 6-11. Even before Mr. McDonnell was indicted, opinion-makers in the media had already convicted him. For example, on May 12, 2013, a writer for the Richmond Times-Dispatch website posted a blog [illegible]t stating that Mr. McDonnell was "[h]iding behind legal technicalities" and "making a n.. [illegible]y" of "personal responsibility" and "family values."

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[2] Source: Lexis Advance search of all news sources for: (Robert or Bob or Governor or Gov. /3 McDonnell) and hlead ("Jonnie Williams" or "Star Scientific" or "investigation" or "scandal" or "gift-gate" or "gift gate" or "giftgate"), from March 1, 2013 through July 27, 2014. [The 'hlead' search function searches for terms within the article headline or lead paragraph.]

A. Barton Hinkle, *McDonnell Family Values*, Richmond Times-Dispatch, May 12, 2013. On July 12, 2013, the Washington Post ran an editorial entitled "Unfit for His Office," claiming that "mountainous evidence" suggests that Mr. McDonnell "has no business continuing in office." Ruth Marcus, *Unfit For His Office*, Washington Post, July 12, 2013.

Following the indictment, the prejudicial coverage intensified, as many articles unquestioningly accepted the unproven allegations in the indictment as true. On January 22, 2014, the day after the indictment, the Washington Post published an article titled "Indictment Shows McDonnell as a Man in Denial," speculating that Mr. McDonnell was "brought down" by "a toxic mix of personal money worries, an assertive wife, a taste for luxury, and a culture of coziness between politicians and rich supporters." Robert McCartney, *Indictment Shows McDonnell As A Man In Denial*, Washington Post, Jan. 22, 2014. On the same date, the Richmond Times-Dispatch published a column that accepted virtually all of the allegations in the indictment as true, further editorializing that the McDonnells engaged in "unseemly" conduct and conjuring an image of a "governor in irons." Jeff E. Schapiro, *Va.'s Image Now Like That Of Maryland, Illinois*, Richmond Times-Dispatch, Jan. 22, 2014. And on the eve of arraignment, the press also reported on leaked details from highly sensitive, confidential meetings between the Government and attorneys for the McDonnells. *See, e.g.*, Rosalind S. Helderman & Carol D. Leonnig, *Ex-Va. McDonnell Rejected Plea Offer to Face One Felony, Spare Wife Any Charges, Avoid Trial*, Washington Post, Jan. 23, 2014 (claiming knowledge of confidential pre-indictment negotiations between the parties). And the press mischaracterized critical facts in ways that were highly prejudicial to the defense. For example, even though the Government has never claimed that the loans from Mr. Williams to Mrs. McDonnell and MoBo were cash gifts, many media reports insisted on describing them as "payments" that Mr. McDonnell "considers" or "characterizes" as loans. *See Timeline: The McDonnells and Jonnie Williams*, Richmond Times-Dispatch, Jan. 21, 2014 ("The governor considers the payments loans."); Laura Vozzella, *Herring Dismisses Lawyers For McDonnell*, Washington Post, Jan. 17, 2014 ("$165,000 in gifts and money characterized as loans"). This negative publicity never ceased, continuing right up until the trial began and thereafter until the verdict. *See, e.g.*, Exh. A.

2. The Court's Voir Dire On Pretrial Publicity Failed To Provide A "Reasonable Assurance" That Prejudice Would Be Uncovered.

In light of this massive and highly prejudicial pretrial publicity, the Court was obligated to provide "reasonable assurance" that any prejudice would be discovered if present among the prospective jurors. But the Court failed to provide that assurance by declining to make an independent assessment, based on an individualized voir dire of each prospective juror who admitted to knowledge of the case, as to whether the pretrial publicity affected the juror's impartiality. Instead, the Court limited its in-court voir dire on the issue of pretrial publicity to two questions. After acknowledging that the "case has generated a lot of media interest and there have been quite a few newspaper articles, radio and television media items relating to this case and the parties involved" and that "most of you have read in the newspaper or seen on television or heard on the radio, at least once, some of these media items or news stories," the Court first asked approximately 150 prospective jurors to stand up "if you have read, heard or seen something in the media." Tr. Vol. I, at 140:17-25. Almost all stood. Then, the Court asked, "[b]ased on what you have heard or read or seen relating to this case, if you are, in your mind, able to put aside whatever it is that you've heard, listen to the evidence in this case and be fair to both sides, then I want you to sit down." *Id.* at 141:2-9. No one remained standing. *See id.* at 141:20-21. Based on this, the Court informed the parties that it was "satisfied with the responses." *Id.* at 141:14-15. The Court denied Mr. McDonnell's request to individually voir dire the prospective jurors who acknowledged having been exposed to pretrial publicity, as well as Mr. McDonnell's request to ask proposed follow-up questions. *See id.* at 137:8-139:20.

The perfunctory nature of this voir dire on pretrial publicity did not provide a "reasonable assurance" that bias would be uncovered in this high-profile case. In fact, it proved highly unreliable as some of the jurors who had answered on their questionnaires that they could *not* "listen to the evidence in this case and be fair to both sides" actually sat down when asked if they could do just that. *See* Tr. Vol. I, at 150:17-19; 153:11-12. The Court did not question the "potential jurors about exposure to pre-trial publicity including specific media reports, about exposure to the opinions of others, [or] about the juror's personal opinions about the case," as the trial court in *Bakker* had done. 925 F.2d at 733. Nor did the Court "follow[] up with each [prospective juror] individually to uncover concealed bias," as the trial court in *Skilling* had done. 561 U.S. at 395; *see also id.* at 389 ("[A]ware of the greater-than-normal need, due to pretrial publicity, to ensure against jury bias , the court examined each prospective juror individually "). There was, in short, no "face-to-face opportunity to gauge demeanor and credibility," as was the case in *Skilling*. *Id.* at 395. To the contrary, this Court "simply [took] venire members who proclaimed their impartiality at their word." *Id.* at 394. But, as the case law makes clear, *see* Part I.A, it is erroneous in a high-publicity case to "rely solely on a juror's assertion of impartiality" without "conduct[ing] a sufficiently probing inquiry to permit the court to reach its own conclusion." *Pratt*, 728 F.3d at 470.

To be sure, in addition to the in-court voir dire, the Court also required the prospective jurors to answer a questionnaire. But in *Skilling*, which also involved a questionnaire, those written responses still did not obviate individualized questioning so that the court and the parties could gauge the prospective jurors' demeanor through more tailored inquiry. Indeed, the questionnaire in *Skilling* even asked broader and more open-ended questions.[3] Here, by contrast, the questionnaire did not allow questioning on what exactly the prospective jurors had been exposed to, whether they found the reporting to be credible, what opinions they had formed as a result of such coverage, and what specifically they remembered from the media reports. This, however, is precisely the type of searching inquiry required by the cases described above.

The limited questionnaire approved by the Court in this case was as incomplete on the subject of pretrial publicity as was the in-court voir dire. It asked the prospective jurors whether they had "seen, heard or read anything about this case" and about "[h]ow closely [they have] followed the news about this case"—"[v]ery closely," "[s]omewhat closely," "[n]ot very closely," or "[n]ot at all." Exh. B at 22. The questionnaire also asked the prospective jurors to "indicate from what source[s] [they] heard about the case"—"[t]elevision," "[n]ewspapers," "[m]agazines," "[r]adio," "Internet," etc.—without asking the prospective jurors to "describe the sources for any of the options checked." (The parties requested that the prospective jurors be asked to "describe the sources," which would have revealed the nature of the media coverage each prospective juror had been exposed to, but the Court rejected the request.) *Compare* Exh. B at 23, *with* Exh. C at 30. Finally, the questionnaire asked whether the prospective juror had "expressed an opinion about this case or about those involved to anyone." Exh. B at 23. But, significantly, it did *not* ask whether the prospective juror had *formed* an opinion (as opposed to publicly stating one), nor did it ask any other question "directed at disclosing the impact that both past and future media attention would have" upon the prospective juror. *Bakker*, 925 F.2d at 733. Indeed, the Court did not include in the questionnaire the most salient questions (requested by the defense or both parties) that were designed to determine the effect of the media coverage on the prospective juror's impartiality. For example, the Court did not ask, "Based on what you have read, heard, seen, and/or overheard in conversations, please tell us what opinions, if any, you have formed about the guilt or innocence of Robert F McDonnell." Exh. C at 31. Nor did the Court ask, "Based on what you have read, seen or heard expressed about the case, the charges, or the individuals involved, indicate which of the following best describes your current belief about whether former Governor Robert F. "Bob" McDonnell is guilty or not guilty of these charges"—"[d]efinitely guilty," "[p]robably guilty," [p]robably not guilty," [d]efinitely not guilty," [n]ot sure," or "[n]o opinion." Exh. D at 9. These questions were critical as they were designed to determine the effect of pretrial publicity on the prospective juror's impartiality. Yet because the Court did not include them—and did not ask them during voir dire—it failed to provide "reasonable assurance" that the pretrial publicity did not prejudice the prospective jurors.

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[3] The following is just a sample: "Do you have an opinion about the cause of the collapse of Enron? If YES, what is your opinion? On what do you base your opinion?"; "Have you heard or read about any of the Enron cases? If YES, please tell us the name of all sources from which you have heard or read about the Enron cases."; "Do you have an opinion about Jeffrey Skilling [?] If YES, what is your opinion? On what do you base your opinion?"; "Based on anything you have heard, read, or been told[,] do you have any opinion about the guilt or innocence of Jeffrey Skilling[?] If YES ., please explain." 561 U.S. at 371 n.4.

In sum, "[t]he court should have determined what in particular each juror had heard or read and how it affected his attitude toward the trial, and should have determined for itself whether any juror's impartiality had been destroyed." *Davis*, 583 F.2d at 196. Its failure to do so deprived Mr. McDonnell of his right to an impartial jury and thus warrants a new trial.

III. MR. MCDONNELL IS ENTITLED TO A NEW TRIAL BECAUSE THE COURT FAILED TO VOIR DIRE THE JURORS BASED ON EVIDENCE OF JUROR MISCONDUCT.

During the trial, the Court was informed that a juror, Louis DeNitto, contacted a lawyer about the case. In his conversation with the lawyer, Mr. DeNitto apparently implied strongly that the jurors had been discussing the case in violation of the Court's instructions. Specifically, he reportedly said that he had been elected foreman and that the jurors were "all over the place."

The Court decided to strike Mr. DeNitto from the jury on the ground that he had violated the Court's order against discussing the case with anyone. Mr. McDonnell's counsel objected to Mr. DeNitto's removal and, in the alternative, requested (1) that the entire panel be interviewed *in camera* given the evidence that they have been actively discussing the case, contrary to the Court's order that "[u]ntil you retire to the jury room at the end of the case to deliberate on your verdict, you simply are not to talk about this case," Tr. Vol. II, at 193:2–4; (2) that the Court declare a mistrial in light of the same; and (3) that the first alternate juror be struck in view of the fact—acknowledged by the Court—that he had been sleeping through much of the trial, including the cross-examination of the Government's key witness Mr. Williams. Because the Court's refusal to voir dire the jury about their alleged premature deliberations was an abuse of discretion, the Court should grant a new trial.

A. There Is Credible Evidence That The Jury Began Deliberating Prematurely In Violation Of The Court's Instructions.[4]

On August 12, 2014, the Government reported to the Court that it had received a telephone voicemail message the night before from an attorney named James Watson, who stated that he had been contacted by a juror in this case, Louis DeNitto, whom Mr. Watson had represented in civil matters. In his message, Mr. Watson stated that Mr. DeNitto had contacted him; the attorney added that he believed the contact was "inconsequential." After the Government retrieved Mr. Watson's message, the prosecution team interviewed Mr. Watson by telephone without notification to defense counsel. The prosecutors then provided a summary report of the interview, as well as Mr. Watson's voice message, to the defense late on the evening of August 11.

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[4] The defense is awaiting a copy of the in-chambers transcript from the Court. The following reflects the best recollection of defense counsel.

The next morning, the Court conducted in-camera interviews of Mr. Watson and Mr. DeNitto. Mr. Watson essentially reiterated that Mr. DeNitto had informed him that he was the foreman of the jury—which would mean that the jury has discussed the case and has even voted on a foreman—and that the twelve jurors are "all over the place," a phrase that would suggest they are not only discussing the case but are forming views on guilt or innocence. When Mr. DeNitto was questioned, he explained that he had called Mr. Watson on other business and, in the course of that conversation, mentioned that he was sitting on a jury and asked in the abstract how juries functioned. In particular, he denied stating that he was the foreman and said that he had only asked how the process works. As to juror deliberations, Mr. DeNitto related that the jury he was on had been confused about the opening jury instructions—further demonstrating that they were engaging in premature deliberations. At that point, Mr. Watson asked Mr. DeNitto if he was serving as a juror on this case, in response to which Mr. DeNitto replied in the affirmative. Mr. Watson then ended the conversation and contacted the lead prosecutor.[5]

B. The Court Erred By Refusing To Voir Dire The Jury Despite Evidence That They Had Begun Deliberations Prematurely.

In the face of credible evidence that jury deliberations had begun prematurely, the Court's refusal to voir dire the jurors as to the existence, extent, and effect of those deliberations is prejudicial error. It is established that "'when jury misconduct (including improper intra-jury influences) has been alleged, the district court should: ascertain whether the misconduct actually occurred; if it did, determine whether it was prejudicial; and if there are no grounds for a new trial, specify the reasons it decided misconduct did not occur, or occurred but was non-prejudicial.'" *United States v. Resko*, 3 F.3d 684, 691 (3d Cir. 1993) (citing *United States v. Richman*, 600 F.2d 286, 295 (1st Cir. 1979)). This procedure is necessary to ensure that the district court properly exercises its discretion and to create a record for appellate review. *Cf. United States v. Hanno*, 21 F.3d 42, 47 (4th Cir. 1994) (reversing district court and ordering new trial because "[t]he fact that no record was made of the proceeding in excusing those jurors required the court to assume prejudice"); *United States v. Gay*, 522 F.2d 429, 435 (6th Cir. 1975) (reversing district court and ordering new trial because "[e]ven though the appellant has not been able to demonstrate prejudice in the present case, the total absence of a record of the proceedings in which the changes in the makeup of the jury occurred requires us to assume prejudice").

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[5] Mr. DeNitto's juror service in this case was already public. *See* Exh. E. Further, it is unclear on the current record whether Mr. Watson violated his ethical obligations by reporting Mr. DeNitto's communications to the prosecution. *See* Virginia Rules of Professional Conduct R. 1.6 (pertaining to confidentiality of client information).

In *Resko*, there were allegations that the jurors had begun deliberating during the course of the trial. The district court submitted a questionnaire to the jury asking (1) whether they were engaging in premature deliberations, and (2) if so, whether they had formed an opinion as to guilt or innocence. The jurors unanimously answered "yes" to (1), and "no" to (2). Thereafter, the district court refused the defendants' requests for individualized voir dire of the jurors. The Third Circuit held that this was reversible error for two reasons: First, "the district court's ability to evaluate the situation was necessarily diminished by the dearth of information about the jury's misconduct." *Id.* at 691. Second, the appellate court's "own ability to review the district court's determination that there was no prejudice to the defendants is hampered by this absence of information in the record." *Id.* Accordingly, the Third Circuit vacated the convictions and remanded for a new trial.

This case is no different than *Resko*, except that, here, the Court did not even ask the jurors whether they had engaged in premature deliberations and whether they had formed an opinion on Mr. McDonnell's guilt or innocence. Given the credible evidence of premature jury deliberation, the Court should have investigated further. Therefore, just as in *Resko*, Mr. McDonnell's conviction should be set aside and a new trial granted. Alternatively, the defense requests an evidentiary hearing on whether there were premature deliberations.

IV. MR. MCDONNELL IS ENTITLED TO A NEW TRIAL BECAUSE THE COURT ERRONEOUSLY ADMITTED PREJUDICIAL RULE 404(b) EVIDENCE.

It is well-established in the Fourth Circuit that in order for evidence of a defendant's prior bad acts to be admissible under Federal Rule of Evidence 404(b), it must, as a threshold matter, "be relevant to an issue other than character." *United States v. Queen*, 132 F.3d 991, 995 (4th Cir. 1997). Permissible purposes for admitting prior act evidence include showing intent, plan, knowledge, and absence of mistake. Fed. R. Evid. 404(b)(2). But "Rule 404(b) prohibits proof of a defendant's character to show conduct in conformity therewith," primarily to ensure "that defendants not be convicted simply for possessing bad character." *Queen*, 132 F.3d at 996, 995. The Rule is also a crucial safeguard "against juries becoming confused by the purpose of the admitted acts and using the acts improperly in arriving at a verdict." *Id.* at 996. Here, the Government was allowed to impugn Mr. McDonnell's character in violation of Rule 404(b) on at least two significant occasions, thereby causing substantial prejudice to the defense.

A. Contrary To Rule 404(b), The Court Admitted Evidence That Mr. McDonnell Received Things Of Value From William Goodwin.

First, the Government introduced evidence that William Goodwin provided a vacation on Kiawah Island to the McDonnell family and that Mr. McDonnell did not disclose this gift on his annual Statement of Economic Interest ("SOEI") (collectively, the "Goodwin evidence"). But the Government never established that this evidence was "relevant to an issue other than character," as Rule 404(b) requires, *Queen*, 132 F.3d at 995. Indeed, the Government entirely failed to establish the central predicate of its theory of the admissibility of the Goodwin evidence: that Mr. Goodwin was not a personal friend and so Mr. McDonnell's omission of the Kiawah vacation from his SOEI was improper.

The Government has consistently maintained that the Goodwin evidence is relevant to intent because it purportedly shows that Mr. McDonnell, on other occasions, improperly manipulated the "personal friend" exception to Virginia's gift disclosure requirements. *See* Govt's Opp'n to Defs.' Mot. in Limine to Exclude Evidence Relating to Statements of Economic Interests at 10, Dkt. 252 ("Evidence that Mr. McDonnell had the same knowledge with respect to the Kiawah Island trip from Mr. Goodwin and engaged in *identical* calculus to avoid reporting it is acutely relevant and probative of the essential element of intent."); Tr. Vol. XXIII, at 5416:22-25 ("The fact that from the Government's view Mr. Goodwin was not a personal friend and he failed to put down a $23,000 vacation to Kiawah Island is probative, is admissible. "). In keeping with the Government's arguments, this Court ruled that the Goodwin evidence was admissible under 404(b) because it showed lack of mistake in omitting gifts from Mr. Williams from his SOEIs and so was relevant to Mr. McDonnell's alleged "intent to defraud." July 17, 2014 Mem. Op. at 4, Dkt. 295; *see also* Tr. Vol. XXIII, at 5417:1-2.

The Government, therefore, was permitted to cross-examine Mr. McDonnell extensively concerning the vacation on Kiawah Island. Tr. Vol. XXI, at 5051:3-5055:20. The Government also elicited testimony that Mr. McDonnell had not disclosed the Kiawah vacation on his SOEI, Tr. Vol. XXII, at 5295:5-8, and that the trip was listed on a draft SOEI and then crossed out with the notation "Personal," *id.* at 5296:5-23. *See also* Tr. Vol. VII, at 1737:16-1738:24, 1740:2-7 (testimony of Pamelia Watts). But the Government never called Mr. Goodwin to the stand or otherwise offered any evidence purporting to show that Mr. Goodwin was *not* Mr. McDonnell's personal friend. Indeed, Mr. McDonnell testified consistently that he considered Mr. Goodwin a personal friend, Tr. Vol. XXI, at 5055:16-20, Tr. Vol. XXII, at 5341:3-5, and that therefore, in keeping with the SOEI instructions, he did not disclose gifts from Mr. Goodwin that he believed were given to him for reasons unrelated to his public office, *id.* at 5335:3-14. The Government therefore failed to establish the most basic element of its theory of why the Goodwin evidence was admissible: improper manipulation of the "personal friend" exception.

Because the Government did not prove any manipulation or impropriety, the Goodwin evidence could not be relevant to Mr. McDonnell's intent or lack of mistake. Under these circumstances, all that the Goodwin evidence could possibly show was that Mr. McDonnell had accepted a valuable gift from a third party whom he considered to be a personal friend. In other words, the Goodwin evidence, as presented by the Government, did no more than suggest to the jury that Mr. McDonnell had a propensity to accept expensive gifts from donors—an alleged character trait that, if believed by the jury, was obviously prejudicial. Again, extrinsic evidence of prior acts is only admissible if it is "relevant to an issue other than the general character of the defendant," such as intent. *United States v. Hodge*, 354 F.3d 305, 312 (4th Cir. 2004) (citation omitted). The Goodwin evidence, as presented by the Government, does not satisfy that test.

B. Contrary To Rule 404(b), The Court Admitted Evidence Indicating That Mr. McDonnell's Staff Organized Free Golf For Him.

Similarly, the Court allowed the Government to introduce into evidence, also over defense objection, an email from Adam Zubowsky to Emily Rabbitt (neither of whom testified) describing actions Mr. Zubowsky had supposedly taken in the past, at Mr. McDonnell's request, to organize rounds of golf for Mr. McDonnell and his family at no cost. *See* GX-627; Tr. Vol. XXI, at 5138:10-5139:1. As an initial matter, this email was inadmissible hearsay, and it should have been excluded on that basis. Indeed, there is no conceivable exception to the hearsay rule into which this email could possibly fit. Given its highly prejudicial nature, admission of this hearsay evidence requires a new trial. *See, e.g., United States v. McCall*, 740 F.2d 1331(4th Cir. 1984) (reversing defendant's conviction and remanding for a new trial where prejudicial hearsay evidence was admitted and no exception to the hearsay rule applied); *United States v. Bercier*, 506 F.3d 625 (8th Cir. 2007) (same).

Moreover, the admission of this evidence violated Rule 404(b) and this Court's pre-trial Order requiring notice of the same. *See* Mar. 20, 2014 Order, Dkt. 100, at 3. Nothing about these rounds of golf or the manner in which they were organized related to Mr. Williams or the bribery allegations that are the subject of this case. There was no evidence pertaining to their disclosure or non-disclosure on Mr. McDonnell's SOEIs, so the Zubowsky email could not have been relevant to intent or lack of mistake when it came to Mr. McDonnell's disclosures of his dealings with Mr. Williams. The Government did not even try to argue that the evidence was offered for one of the other approved purposes listed in Rule 404(b)(2). *See* Tr. Vol. XXI, at 5137:10-12. The only purpose for which the Government offered this evidence was to try to prove that Mr. McDonnell had a habit of soliciting free golf—in other words, to show his character in an unflattering light and to intimate that he had his hand out in the past and that he therefore likely had his hand out to Mr. Williams during the course of the supposed conspiracy. But Rule 404(b) forbids such use of propensity evidence.

* * *

Neither of the foregoing violations of Rule 404(b) can be considered harmless. In this high-profile case, the improper prior act evidence was particularly dangerous. The roughly $23,000 vacation paid for by Mr. Goodwin was far more expensive than Mr. McDonnell's share of the Chatham vacation paid for by Mr. Williams. *Compare* Tr. Vol. XXII, at 5296:5-7, *with* Tr. Vol. XIV, at 3539:6-9 (confirming that $7,383.14 was reported for the Chatham trip on Mr.

McDonnell's SOEI). And given that the rounds of golf bought by Mr. Williams played such a central role in the Government's case, the prejudicial effect of the Zubowsky email is unquestionable. At bottom, the jury's determination of guilt or innocence turned on whether it found that a corrupt agreement existed between Mr. Williams and Mr. McDonnell; and the Government offered only the vague testimony of its cooperating witness and circumstantial evidence of an agreement that it conceded was never made explicit. The jury's verdict therefore turned on its assessment of Mr. McDonnell's credibility weighed against Mr. Williams' word and the inferences the prosecution asked it to draw about Mr. McDonnell's state of mind. Under these circumstances, improper, inflammatory character evidence could easily tip the scales toward a guilty verdict. *See, e.g.*, *United States v. Lee*, 724 F.3d 968, 983 (7th Cir. 2013) (reversing on the basis of Rule 404(b) error where the defendant claimed he had no connection to cocaine discovered in a car he was driving and the Government's case "otherwise rested on [an immunized co-conspirator] witness whose credibility was less than sterling"); *United States v. Lail*, 846 F.2d 1299, 1301-02 (11th Cir. 1988) (reversing on the basis of Rule 404(b) error where the case depended on "a clear credibility choice" between witnesses). The Court should order a new trial untainted by this prejudicial propensity evidence.

CONCLUSION

For all of the foregoing reasons, the Court should set aside the jury's verdict and grant Mr. McDonnell a new trial.

Dated: September 18, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 18th day of September, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: September 18, 2014

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	CRIMINAL NO. 3:14-CR-00012
	)	
ROBERT F. MCDONNELL	)	JUDGE JAMES R. SPENCER
MAUREEN G. MCDONNELL	)	

DEFENDANT ROBERT F. MCDONNELL'S REPLY IN SUPPORT OF MOTION # 40 – MOTION FOR NEW TRIAL PURSUANT TO RULE 33 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

INTRODUCTION

In his motion for a new trial, Mr. McDonnell raised four claims: (1) the Court's bribery instructions were legally erroneous because they permitted the jury to convict Mr. McDonnell for conduct that is not a crime; (2) the Court's inadequate panel voir dire on pretrial publicity deprived Mr. McDonnell of an impartial jury; (3) the Court erred in failing to individually voir dire the sitting jurors after learning of potential premature deliberations; and (4) the Court erroneously admitted highly prejudicial Rule 404(b) evidence. None of the Government's counterarguments withstand scrutiny.

ARGUMENT

I. THE COURT'S INSTRUCTIONS PERMITTED THE JURY TO CONVICT MR. MCDONNELL ON LEGALLY ERRONEOUS GROUNDS.

The Court's jury instructions were defective in two critical respects. *First*, the "official act" instruction erroneously permitted the jury to convict Mr. McDonnell merely for acting in his official capacity without any evidence that he actually sought to influence a matter pending before the government. *Second*, the "quid pro quo" instructions erroneously permitted the jury to convict Mr. McDonnell based on nothing more than a promise of unspecified future assistance.

A. Mr. McDonnell Cannot Be Convicted Merely For Acting In His Official Capacity.

A public official does not perform an official act merely by taking some action in his official capacity. *United States v. Jefferson*, 674 F.3d 332, 356 (4th Cir. 2012). Rather, the official must take or promise "action" or make a "decision" "on" a pending "matter." 18 U.S.C. § 201(a)(3). This means that the official must take or promise some action to induce or influence the government to act on whatever matter is pending—in other words, the official must seek to influence the exercise of governmental power. As Mr. McDonnell has explained in his reply in support of his renewed motion for judgment of acquittal, merely arranging a meeting or attending an event about a particular matter (in other words, facilitating access)—without attempting to influence the resolution of the matter—is not an "action" "on" the "matter."

The Court's objected-to "official act" instruction erroneously permitted the jury to conclude that arranging a meeting, attending an event, or emailing a subordinate—standing alone—are indeed official acts, so long as they pertain to a pending "matter," however broadly defined. Because the Court gave no fuller explanation of what constitutes an "action" or "decision" "on" a "matter"—other than to say that it can include the settled practices of an official and virtually anything else a public official does—the jury could easily have found that Mr. McDonnell performed an official act merely by facilitating meetings and authorizing events ("actions") about business development (a "matter")—in other words, merely by acting in his official capacity. And that is precisely what the prosecutors asked the jury to find when, in their closing argument, they argued that "Mr. McDonnell's involvement with every single one of [the alleged official acts] was in his official capacity as Governor," and that each of the actions was on the topic of "Virginia business development." *See* Tr. Vol. XXV, at 5870:2-6, 5869:23-24. Neither the Court nor the prosecutors required the jury to determine, as the defense had requested, whether Mr. McDonnell's "conduct was intended to or did in fact influence a specific official decision the government actually makes." Proposed Jury Instruction No. 58, Dkt. 287. Because of this omission, the Court's "official act" instruction was flawed.[1]

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[1] Nothing demonstrates the overbreadth of the instruction more clearly than simply applying it to conduct that the Supreme Court has already said is not an official act. In *United States v. Sun-Diamond Growers of California*, 526 U.S. 398 (1999), the Supreme Court made clear that the Secretary of Agriculture "speaking [] to farmers about USDA policy" was "not [an] 'official act[]' within the meaning" of the federal bribery laws. *Id.* at 407. And yet this conduct plainly satisfies the meaning of "official act" under this Court's instruction. In its response, the Government does not even attempt to reconcile this obvious incongruence.

The Government defends the Court's "official act" instruction by claiming that it is "materially indistinguishable" from the instruction approved in *Jefferson*. Gov't Br. at 3-4. This is not true—as discussed below, the instructions differ in material ways. But regardless, this argument makes sense only if the legal issue in this case is materially indistinguishable from the issue in *Jefferson*. It is not. In *Jefferson*, the defendant took the extreme position that *Sun-Diamond* categorically "foreclose[d] the use of a 'settled practice' instruction," 674 F.3d at 353, such that settled practices without any basis in a formal legislative or governmental process could *never* constitute official acts, *id.* at 338. Here, by contrast, Mr. McDonnell does not dispute that a settled practice *can* be an official act; instead, he argues that merely arranging meetings, attending events, or emailing subordinates—although settled practices of governors—are not official acts because absent proof that the official sought to influence "decisions that the government actually makes," *id.* at 357, they are not "actions" "on" a pending "matter." Because the defendant in *Jefferson* did not raise this argument (presumably because, unlike here, the facts in that case did not support it), the *Jefferson* court did not address it.

In any event, even if the *Jefferson* "official act" instruction were somehow applicable here, the Government is wrong to suggest that this Court's instruction is "materially indistinguishable." The Government altered the *Jefferson* instruction in multiple ways.[2] But the most egregious change was adding a line with no analog in the *Jefferson* instruction: "official action can include actions taken in furtherance of longer-term goals, and an official action is no less official because it is one in a series of steps to exercise influence or achieve an end." Tr. Vol. XXVI, at 6103:10-14. The Government claims that this line is "a logical consequence" of the principle that the official need not have actual authority over the end sought by the bribe-payor. Gov't Br. at 5. This, however, is manifestly wrong.

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[2] For example, this Court adopted the Government's proposal adding that "official actions may include acts that a public official customarily performs, even if those actions are not described in any law, rule, or job description." Tr. Vol. XXVI, at 6103:3-5. Additionally, in making the basic point that the official "need not have actual or final authority over the end result," the Court added the following, which was not included in the *Jefferson* instruction: "so long as the alleged bribe payor reasonably believes that the public official had influence, power or authority over a means to the end sought by the bribe payor." *Id.* at 6103:5-10.

That an official need not have authority over the bribe-payor's goal in order to perform an official act does not mean that any action taken in the service of that goal is *itself* an official act. Whether an action is a means to an end is irrelevant to the official act inquiry. All that matters is whether the alleged official act is an "action" or "decision" "on" a pending "matter." Prefatory actions by an official that do not themselves exert influence on a pending governmental decision are not official acts even though they may otherwise serve the alleged bribe-payor's goals. Thus, Attorney General Cuccinelli did not engage in "official action" when he introduced Mr. Williams to influential lobbyist Jerry Kilgore. Although that introduction was plainly a step toward Mr. Williams' goal of obtaining funding for anatabine research, it did not involve any exercise of actual governmental power on a pending governmental decision. So too here. Interim steps in which the official merely provides access or advice but avoids attempting to influence a pending governmental decision are *not* official acts. This is what separates the cases cited by the Government, *see* Gov't Br. at 6 n.2, from this case. The Court's failure to instruct the jury on this critical distinction and its decision to invite the jury to find—without more—that interim steps toward a larger goal are themselves official acts were clearly erroneous.

B. Mr. McDonnell Cannot Be Convicted Based Merely On A Promise Of Unspecified Future Action.

In giving its quid pro quo instructions, the Court likewise failed to make clear, as required by *United States v. Jennings*, 160 F.3d 1006 (4th Cir. 1998), that in order to convict Mr. McDonnell, the jury must find that Mr. Williams gave things of value "in exchange for some *specific* official act or course of action." *Id.* at 1022 (emphasis added). Read as a whole, the instructions do not foreclose the possibility that the jury could have convicted Mr. McDonnell based solely on a finding that he accepted things of value that were given with a generalized hope that Mr. McDonnell would provide unspecified help in "legitimiz[ing], promot[ing], and obtain[ing] research studies for Star Scientific products." Tr. Vol. XXVI, at 6089:21-22.

The Government asserts that the instructions identified specific actions that Mr. McDonnell was alleged to have performed. *See* Gov't Br. at 11-12. But it ignores that the instructions then go on to inform the jury *both* that (1) it could find a quid pro quo "whether or not the public official ultimately performs the requested official action or intends to do so," *id.* at 6100:21-23, *and* (2) the parties "need not state the quid pro quo in express terms," *id.* at 6101:9-12. As Mr. McDonnell explained, *see* McDonnell Br. at 11, instructing the jury that it need not find an express understanding that the things of value were given in exchange for specific official action, while at the same time instructing the jury that it also need not find that the official actually performed any official action, effectively eliminates *Jennings*'s requirement that the jury find that things of value were given in exchange for "some specific official act or course of action." *Jennings*, 160 F.3d at 1019. In its response brief, the Government had no answer to this point. Compounding the error was the Court's refusal to give Mr. McDonnell's proposed clarifying instruction, which would have informed the jury that it could convict Mr. McDonnell "only if [it] [found] that he received something of value in exchange for performing or promising to perform some specific official act" and that a "gift or payment given with the generalized hope of some unspecified future benefit is not a bribe." Tr. Vol. XXIV, at 5771:19-5772:1. These fundamental defects are not overcome (1) by the Court's generic quid pro quo instruction, which did not mention the specificity requirement, *see id.* at 6100:9-18; (2) by its definition of "corruptly," which did not articulate how specific the corrupt bargain must be, *see id.* at 6101:6-8; (3) by its instruction that a quid pro quo can be proven by an "intent to retain a public official's services on an as-needed basis, so that as opportunities arise the public official would take specific official action on the payor's behalf," which is buried deep in the discussion of the Hobbs Act counts and does not even apply to the honest-services fraud counts, *see id.* at 6113:23-6114:1; or (4) by the good faith instruction, which has nothing to do with defining the elements of the corruption offenses, *see id.* at 6123:3-15. *See generally* Gov't Br. at 12-13.

Finally, the Government contends that requiring the jury to find that Mr. McDonnell "received something of value in exchange for performing or promising to perform some specific official act," Tr. Vol. XXIV, at 5771.19-5772:1, would have improperly required the jury to link each specific official act with a specific thing of value, *see* Gov't Br. at 9-10. That is manifestly false. The requirement of "specificity" does not transform the instruction into one requiring linkage. Mr. McDonnell did not ask for a linkage instruction, and nothing in Mr. McDonnell's proposed instruction would have precluded the Government from proving that things of value were given in exchange for specific official action by showing "a course of conduct of favors and gifts flowing to a public official in exchange for a pattern of official actions favorable to the donor."[3] *Jennings*, 160 F.3d at 1014. This is just another way of proving a corrupt exchange of payments and specific official acts without actually producing evidence of an express agreement. The Court nevertheless had a duty to instruct the jury that it had to find that Mr. McDonnell knew he was accepting things of value in exchange for *specific* official action, not in exchange for vague and unspecified future official action. Taken as a whole, the Court's instructions failed to make this requirement clear and instead erroneously invited the jury to convict Mr. McDonnell for accepting things of value in exchange for unspecified future assistance.

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[3] Indeed, nothing prevented the Government from making this very argument, *see* Tr. Vol. XXV, at 6046:16-18, even though the Court declined giving the Government's proposed "course of conduct" instruction.

II. THE COURT'S VOIR DIRE ON PRETRIAL PUBLICITY WAS INADEQUATE.

A trial court abuses its discretion in conducting voir dire on pretrial publicity if (1) the "pretrial publicity about the case raised a significant possibility of prejudice" and (2) "the district court's voir dire procedure failed to provide a reasonable assurance that prejudice would be discovered if present." *United States v. Pratt*, 728 F.3d 463, 470 (5th Cir. 2013); *see also United States v. Lancaster*, 96 F.3d 734, 740 (4th Cir. 1996). Mr. McDonnell has established both requirements. *First*, Mr. McDonnell offered overwhelming evidence of the barrage of negative publicity that preceded his trial. *See* McDonnell Br. at 16-18. *Second*, the Court's inadequate voir dire failed to provide reasonable assurance that prejudice would be discovered because the Court did not conduct an independent, individualized assessment of each prospective juror who admitted media-based knowledge of the case to ascertain whether the pretrial publicity affected the juror's impartiality. *See* McDonnell Br. at 18-21. Instead, the Court limited its in-court voir dire to two questions, which essentially asked the prospective jurors to self-report their bias publicly. In so doing, the Court improperly relied "solely on [the jurors'] assertion[s] of impartiality," rather than conducting "a sufficiently probing inquiry to permit the court to reach its own conclusion." *Pratt*, 728 F.3d at 470. In response, the Government raises a hodgepodge of mostly irrelevant criticisms, none of which remotely undermine Mr. McDonnell's showing.

A. The Pretrial Publicity Was Prejudicial.

The Government does not—and cannot—dispute that there was substantial, objectively negative pretrial publicity. Instead, the Government tepidly suggests that the avalanche of publicity was not prejudicial because (1) Mr. McDonnell did not seek a change of venue, and (2) unlike in *Skilling v. United States*, 561 U.S. 358 (2010), there was no "widespread community impact," nor was there any well-publicized pretrial guilty plea by a codefendant. *See* Gov't Br. at 16. Neither argument undermines Mr. McDonnell's showing that pretrial publicity "raised a significant possibility of prejudice." *Pratt*, 728 F.3d at 470.

First, Mr. McDonnell did not seek a change of venue because that request would have been premature. He expected that, with an adequate voir dire, he could have received a fair trial before an impartial jury in Richmond. Indeed, *Skilling* stands for the principle that a change of venue is warranted only in the extraordinary situation where a searching and comprehensive voir dire cannot secure an impartial jury.[4] But Mr. McDonnell's decision not to seek a change of venue does not mean that the pretrial publicity was not prejudicial, and it certainly does not mean that he somehow forfeited his right to an adequate voir dire on the subject of pretrial publicity.

Second, the community impact of Mr. McDonnell's alleged crimes was considerably broader than the impact of the defendant's crimes in *Skilling*. To be sure, a certain class of individuals lost their jobs or investments because of Mr. Skilling, but not everyone in the jury pool was affected. Here, Mr. McDonnell was accused of having defrauded "the citizens of Virginia of their right to the honest services" of their Governor. Indictment ¶ 113. Thus, *every* citizen of Virginia was potentially an indirect victim of Mr. McDonnell's alleged crimes. That demanded an even more probing voir dire. In addition, although it was widely publicized before Mr. Skilling's trial that his co-defendant had pled guilty, here it was widely and prominently publicized before trial—the first time on the day of arraignment when the pretrial publicity was especially great—that Mr. McDonnell had engaged in plea negotiations with the Government, which is arguably even more prejudicial. *See, e.g.*, Rosalind S. Helderman & Carol D. Leonnig, *McDonnell Rejected Plea Offer to Face One Felony, Spare Wife Any Charges, Avoid Trial*, Washington Post, Jan. 23, 2014.

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[4] The Government speculates that Mr. McDonnell elected not to move for a change of venue in order to "take advantage of [his] favorable [approval] rating." Gov't Br. at 16. But the Government's own evidence for this claim shows that Mr. McDonnell's approval rating actually plummeted ten points—from 59% to 49%—in the two days immediately following his indictment. If anything, therefore, the Government's evidence shows that the news of Mr. McDonnell's indictment had an immediate prejudicial effect.

B. The Court's Voir Dire Failed To Provide A "Reasonable Assurance" That Prejudice Would Be Uncovered.

The Government's remaining arguments, which address Mr. McDonnell's claim that the Court's voir dire was inadequate, are equally wrong. *First*, relying on *United States v. Bailey*, 112 F.3d 758 (4th Cir. 1997), the Government contends that the Court was *not* required to question prospective jurors individually. Gov't Br. at 17. *Bailey*, however, is a pre-*Skilling* case that conflicts with the Supreme Court's admonition that trial courts "not simply take venire members who proclaimed their impartiality at their word." *Skilling*, 561 U.S. at 394-95. But even if *Bailey* remains good law, it is plainly distinguishable. Unlike here, where each prospective juror was a potential victim of Mr. McDonnell's alleged corruption, none of the prospective jurors in *Bailey* were victims of the publicized kidnapping and domestic violence crimes that the defendant was accused of committing. *See* 112 F.3d at 761. More importantly, the record in *Bailey* showed that the district court "asked all or substantially all of the questions given to it in advance by the defendant." *Id.* at 769-70. Here, by contrast, the Court rejected numerous, specific questions about pretrial publicity that Mr. McDonnell proposed for the jury questionnaire. *See* McDonnell Br. at 20-21 & Exh. C. And the Court also declined to ask *any* of Mr. McDonnell's proposed follow-up questions for prospective jurors who admitted to having heard or read about the case. *See* Exh. A; Tr. Vol. I, at 137:8-139:20.

In any event, even if a trial court has discretion to "question prospective jurors collectively rather than individually," *Bailey*, 112 F.3d at 770, that does not absolve the court of conducting a voir dire "directed at disclosing the impact that both past and future media attention would have upon potential jurors." *United States v. Bakker*, 925 F.2d 728, 733 (4th Cir. 1991). This necessarily entails questioning "potential jurors about exposure to pre-trial publicity including specific media reports, about exposure to the opinions of others, about the juror's personal opinions about the case, and about whether media attention during the trial would influence a juror's decisions." *Id.*, *see also United States v. Davis*, 583 F.2d 190, 196-97 (5th Cir. 1978) (acknowledging that the "separate examination of jurors is not necessarily required" but holding that the trial court "should have determined what in particular each juror had heard or read and how it affected his attitude toward the trial, and should have determined for itself whether any juror's impartiality had been destroyed"). Such detailed inquiry into the nature of the jurors' exposure to pretrial publicity is critical because a single highly prejudicial article—such as the article about plea negotiations—can have a disproportionate impact on a juror's ability to remain impartial. The nature of the exposure matters just as much as the quantity of exposure. To be sure, examining each prospective juror individually is more prudent because it "prevent[s] the spread of any prejudicial information to other venire members." *Skilling*, 561 U.S. at 389. But regardless, both general and specific questions about the nature, extent, and impact of pretrial publicity must still be asked—whether collectively or individually—and that did not happen in this case.

Second, the Government makes several arguments aimed at showing that the Court's voir dire was adequate. For example, it points out that the voir dire in *Skilling*—which was approved by the Supreme Court—was "about 28% *shorter* than the seven-hour-and-fifteen-minute voir dire conducted in this case." Gov't Br. at 16. This argument is spurious. That the *total* voir dire in *Skilling* was shorter than the *total* vire dire in this case proves nothing about whether the voir dire *on pretrial publicity* in *Skilling* was less comprehensive than the voir dire *on pretrial* *publicity* here. And, indeed, we know for certain that it was *more* comprehensive in *Skilling* because the district court, unlike here, actually conducted an individual voir dire of each relevant prospective juror on the subject of pretrial publicity. 561 U.S. at 394-95.

The Government also argues that, after posing two collective questions on pretrial publicity, the Court gave the defense a "full opportunity" to examine jurors who gave them concern. Gov't Br. at 18. This is simply false. The Court refused the defense's request to ask a series of follow-up questions for *each* prospective juror who acknowledged having heard or read about the case. *See* Tr. Vol. I, at 137:8-139:20. Mr. McDonnell thus was unable to make an informed judgment about which prospective jurors to identify for further individualized questioning. *See id.* at 141.20-23 (defense counsel objecting that "I can't trust the credibility of [the prospective jurors' responses to the two collective questions] without a further inquiry and I can't make any judgments or arguments to you [about for-cause strikes] without any further inquiry"). As a consequence, only those prospective jurors who gave questionable answers on their jury questionnaires were individually questioned. But the jury questionnaire approved by this Court was far less thorough on the subject of pretrial publicity than the questionnaire in *Skilling*—a flaw that was compounded by the Court rejecting many of the questions on pretrial publicity proposed by the defense. *See* McDonnell Br. at 19-21.

In an attempt to bolster the questionnaire's deficiency on pretrial publicity, the Government points to numerous questions that are not even designed to determine the nature or extent of a prospective juror's exposure to specific pretrial publicity.[5] Only Questions 83, 84,

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[5] *See, e.g.*, Question 47 (asking prospective jurors to identify the networks on which they follow national news); Question 48 (asking prospective jurors what newspapers, including tabloids, they most often read); Question 49 (asking prospective jurors to list the Internet web sites that they visit for news and current events); Question 50 (asking how often prospective jurors watch investigative news programs or television shows "that deal with lawyers, the legal

85, and 86 actually involve pretrial publicity, and even they are woefully deficient in helping Mr. McDonnell ferret out prospective jurors who are biased on account of the pretrial publicity in this case. *See* McDonnell Br. at 20-21. Furthermore, not only were many relevant questions not even asked, neither the Court nor the parties could assess the demeanor of the prospective jurors as they answered the jury questionnaire. The questionnaire, in short, cannot compensate for the Court's inadequate voir dire.

Finally, the Government argues that the jurors who were ultimately selected showed no signs of bias. As evidence of this, the Government points to the jury's verdict in which it acquitted Mr. McDonnell on counts 12 and 13 and acquitted Mrs. McDonnell on counts 4, 9, 11, and 13. *See* Gov't Br. at 15. But counts 12 and 13 were the false statement charges, which unlike the corruption charges were not a focus of the coverage.[6] If anything, therefore, this shows that greater exposure to prejudicial publicity made it *more* likely that the jury would convict. And although Mrs. McDonnell was acquitted on the corruption charges in counts 4, 9, and 11, this does not prove that the jury was uninfluenced by pretrial publicity; it only proves

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(continued…)

system, police work, prisons, politicians, or political life"); Question 69 (asking prospective jurors if knowing that the defendants are "well-known public figures" would affect their ability to follow the Court's instructions); Question 77 (asking prospective jurors whether the McDonnells had done anything while in office that "affected you in a personal way"); Question 97 (asking prospective jurors if there is "any reason that you believe you should not sit as a juror in this case"); Question 98 (asking prospective jurors if there is "anything else that you think the Court should know that might influence your ability to fairly and impartially judge the evidence in this case and to apply the law as instructed by the Court").

[6] A search of media headlines in Lexis Advance from January 21, 2014 through July 28, 2014 covering Virginia and the District of Columbia yielded 341 results. Of those results, there were no headlines referring specifically to the false statement charges, while there were 59 articles with headlines mentioning "corruption" or "gifts." Source: Lexis Advance search of all news sources for Virginia and the District of Columbia: "hlead (((Gov. or Bob or Robert) w/3 McDonnell) and (indict* or charg* or alleg* or accus*))." [The 'hlead' search function searches for terms within the article headline or lead paragraph.]

that even a jury influenced by pretrial publicity cannot overlook undisputed facts. Because there was no evidence connecting Mrs. McDonnell to the golf outings or to the $20,000 loan to MoBo, which were the subjects of those counts, the jury had no choice but to acquit her.

The Government also asserts that the selected jurors had minimal exposure to pretrial publicity. *See* Gov't Br. at 20-21. That is not true. Fourteen of the 16 individuals seated as jurors or alternates indicated, per Question 83, that they had heard about the case. And yet the voir dire never investigated *what* they had heard about the case and how prejudicial that publicity might have been. For example, four persons selected (0248, 0012, 0487, and 0431) got their news from the *Richmond Times-Dispatch*, which featured a barrage of negative coverage. Another juror (0401) relied on *The Washington Post* (which was similarly negative) not only for news, but specifically for information about how gift-disclosure laws are supposed to operate. *See* Juror 0401, Question 67 She also admitted to personal conversations with others about Mr. McDonnell's case, *id.* at Question 85, but denied ever having expressed an opinion about it, *id.* at Question 86. These responses indicate that nearly all of the persons selected had had direct or indirect media exposure sufficient to raise a reasonable suspicion about their ability to be impartial—which should have been addressed at voir dire.

III. THE COURT FAILED TO VOIR DIRE THE JURY BASED ON EVIDENCE OF JUROR MISCONDUCT.

The Government has identified no Fourth Circuit case that repudiates the holding in *United States v. Resko*, 3 F.3d 684 (3d Cir. 1993), where the Third Circuit reversed a conviction because the trial court refused to individually voir dire the jurors despite allegations during the trial that the jury had begun deliberations prematurely. *Id.* at 691. This case is no different, and the Government does not even try to distinguish it. During the trial, the Court received information from a source that the Government concedes is credible. The source was Mr.

DeNitto's lawyer who reported that Mr. DeNitto had called and said that he was the foreman in a trial and that the jurors were "all over the place." Aug. 12, 2014 Chambers Conf. Tr., at 7:17-20. This is strong evidence that the jurors had already begun deliberating in violation of the Court's instructions. Given this information, the Court should have conducted an individual voir dire of the jurors, as *Resko* requires. The Court's failure to do so warrants a new trial.

Although devoting much of its response to arguing that the Court properly excluded Mr. DeNitto from the jury—an issue that Mr. McDonnell did not even raise in his new trial motion—the Government nonetheless contends that voir dire was unnecessary because (1) the evidence of premature deliberations was not credible, and (2) even if it were, there were sufficiently good reasons not to voir dire the jury. Both arguments fly in the face of *Resko* and should be rejected.

A. There Was Credible Evidence That The Jury Had Begun Deliberations Prematurely.

The Court removed Mr. DeNitto from the jury after being informed by the Government that Mr. DeNitto had called his lawyer, Mr. Watson, and mentioned his role in the case.[7] Although the Court had only instructed the jurors that they may not "discuss" the case with anyone, Tr. Vol. I, at 176:25-177:1, the Court nevertheless found that Mr. DeNitto had violated that order "simply by making the phone call and identifying himself as being on this jury," Aug. 12, 2014 Chambers Conference Tr., at 10:17-19.[8] In so doing, the Court presumably found credible the account given by Mr. Watson who reported that Mr. DeNitto called him and said, "I'm calling you because I'm the Foreman, and there are 12 people, and they are kind of all over the place and I don't know what to do."[9] *Id.* at 7:17-20. Mr. DeNitto also said that he was "put up in a hotel here in the McDonnell case." *Id.* at 8:9-10. Based on this information, Mr. Watson stopped the conversation and told Mr. DeNitto, "when you are on the jury, I can't talk to you and you shouldn't be talking with me." *Id.* at 8:20-22. When asked whether there were any "substantive discussions or any discussions of the evidence in the case in any way, shape, or form," Mr. Watson replied, "Absolutely none, not even close." *Id.* at 9:8-11. In light of this information, the Court concluded that "Mr. Denitto is gone." *Id.* at 10:17

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[7] The Government did not inform defense counsel of these facts until after it had already interviewed Mr. Watson, who had reported the contact, not to the Court, but to prosecutors. Although the Government eventually provided the voicemail message that Mr. Watson left with prosecutors, which contained his phone number, Mr. Watson did not return defense counsel's call requesting an interview until several days after Mr. DeNitto was removed from the jury when Mr. Watson left defense counsel a voice message. Thus, Mr. McDonnell was not afforded a meaningful opportunity to investigate this matter.

[8] Although the Court struck Mr. DeNitto because he disclosed that he was on the jury, that fact was already public knowledge, *see* McDonnell Br., Exh. E, and in any event, the Court never instructed the jurors not to tell anyone they were sitting on this case.

Only after removing Mr. DeNitto did the Court hear from him. Mr. DeNitto acknowledged that he had called Mr. Watson and mentioned being on a jury, but he said that the call was for other business. *Id.* at 13:4-20. Mr. DeNitto denied telling Mr. Watson that he was the foreman. *Id.* at 13:14-15. He also said that the call ended when he confirmed that he was referring to the McDonnell trial. *Id.* at 13:16-19. When asked about his comment that there were "12 people all over the place," Mr. DeNitto confirmed that he "did say that." *Id.* at 13:21-25. Then, in response to the Court's question whether he had talked to other jurors, Mr. DeNitto said that his comment "wasn't intended" to convey that. *Id.* at 14:10-12. Mr. DeNitto told the Court, "I didn't talk to anyone about it, about the specifics of the case or anything." *Id.* at 14:13-14. The Court then concluded, over objection, "All right, obviously he is still out." *Id.* at 14:25.

The Government accuses Mr. McDonnell of being "internally inconsistent," *see* Gov't Br. at 24, but it is actually the Government's position that is inconsistent. In defending Mr.

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[9] At the time, Mr. DeNitto could reasonably have thought that he was the foreman. In his questionnaire, *see* Juror 0356, Question 40, Mr. DeNitto reported that he had previously sat on juries in state trials where seat one—his assigned seat—is typically the foreman's.

DeNitto's removal from the jury, the Government credits Mr. Watson's account, but then—despite attacking Mr. DeNitto's credibility, *see id.* at 24-25—the Government turns around and credits Mr. DeNitto's claim that he "didn't talk to anyone about the specifics of the case," Aug. 12, 2014 Chambers Conf. Tr., at 14:13-14, as evidence that the jurors had not been deliberating. The Government cannot have it both ways.

Mr. DeNitto's suggestion that *he* had not talked to the other jurors about the case is not necessarily inconsistent with his observation that the jurors were "all over the place." But even if there were reason not to credit the account Mr. DeNitto gave the Court, there is no question that Mr. Watson's account is credible because he had no apparent interest in the matter and was merely reporting on what Mr. DeNitto had told him at a time when Mr. DeNitto had no reason to shade the truth. Therefore, based solely on what Mr. Watson reported, there is credible evidence that the jurors had been discussing the case among themselves, otherwise Mr. DeNitto would not have told him that "there are 12 people, and they are kind of all over the place." *Id.* at 7:17-20. At the very least, however, this record plainly demonstrates that there was a strong likelihood of premature deliberations that warranted further examination.

B. The Court Erred In Refusing To Voir Dire The Jury.

In light of the credible evidence of premature deliberations, the Court should have followed *Resko* and conducted an individual voir dire of the jurors to determine whether the improper deliberations had in fact occurred and, if so, to assess the extent of the prejudice and to take appropriate remedial measures. Under *Resko*, it is reversible error for the Court to close its eyes to credible evidence of juror misconduct by not conducting a voir dire. *See* 3 F.3d at 691.

Nevertheless, despite the absence of any contrary Fourth Circuit authority, the Government simply ignores *Resko*, thus essentially claiming that the Court was free to do whatever it wanted. *See* Gov't Br. at 25-26. The Government provides little justification for the

Court's ruling other than to suggest that the Court's "curative" instruction, which reminded jurors not to talk about the case among themselves or with others, *see* Tr. Vol. XII, at 3076:20-23, was sufficient to sustain "the policy of preserving jury secrecy and independence." Gov't Br. at 25. But the instruction, which essentially reiterated the points that the Court made each day, was not "curative" at all. Indeed, if the jurors *had* been prematurely deliberating, the instruction could *not* have cured that problem. More importantly, the Court had no knowledge of the nature and extent of the misconduct—or whether any misconduct had even occurred—precisely because it declined to voir dire the jury. The Court obviously could not have cured a problem it avoided learning anything about. That is precisely why the Third Circuit held in *Resko* that "the district court's ability to evaluate the situation was necessarily diminished by the dearth of information about the jury's misconduct." 3 F.3d at 691.

IV THE COURT ERRONEOUSLY ADMITTED PREJUDICIAL RULE 404(b) EVIDENCE.

The Government offers little of substance in its attempt to rebut Mr. McDonnell's argument that the Court erroneously admitted prejudicial Rule 404(b) evidence. Both the Goodwin evidence and the Zubowski email constituted inadmissible propensity evidence. Moreover, the Zubowski email was inadmissible hearsay. All of this evidence was highly inflammatory, and the prejudice caused by its admission entitles Mr. McDonnell to a new trial.

A. The Court Improperly Admitted Evidence That Mr. McDonnell Received Things Of Value From William Goodwin.

As Mr. McDonnell has explained, the Government argued that the Goodwin evidence was admissible because it purportedly showed Mr. McDonnell's improper manipulation of the "personal friend" exception. Yet Mr. McDonnell testified consistently that he considered Mr. Goodwin a personal friend, Tr. Vol. XXI, at 5055:16-20, Tr. Vol. XXII, at 5341:3-5, and that he did not disclose gifts from Mr. Goodwin that he believed were given to him for reasons unrelated to his public office, *id.* at 5335:3-14. The Government never called Mr. Goodwin to testify, nor did it introduce any other evidence purporting to establish that Mr. McDonnell's treatment of Mr. Goodwin s gifts on his SOEI was improper. The Government attempts to patch over its glaring failure to establish the factual predicate on which the Goodwin evidence was offered by making conclusory assertions about the inferences to be drawn from Mr. McDonnell's testimony. It was the Government's burden, however, to establish the admissibility of the 404(b) evidence by showing that Mr. McDonnell misclassified the vacation he received from Mr. Goodwin. *See United States v. Stein*, 521 F Supp. 2d 266, 270 (S.D.N.Y 2007). Scraps of testimony concerning whether Mr. McDonnell recalled certain details about Mr. Goodwin's family or when he possessed Mr. Goodwin's cell phone number are not sufficient to carry this burden.

The Government's handling of the Goodwin evidence was an inexcusable bait and switch. It won this Court's permission to admit the evidence by promising to show that Mr. McDonnell had, on a separate occasion, improperly invoked the "personal friend" exception on his SOEIs. It introduced the damaging evidence. But it never followed through on its obligation to establish the factual predicate that would arguably have allowed the jury to consider the evidence for a permissible purpose.[10] Instead, the evidence only tended to show Mr. McDonnell's putative propensity to accept expensive gifts. This was prejudicial error.

B. The Court Improperly Admitted Evidence Indicating That Mr. McDonnell's Staff Organized Free Golf For Him.

The admission of the January 4, 2013 email from Adam Zubowsky to Emily Rabbitt was erroneous in two separate ways. *First*, the email was inadmissible hearsay. Trying to excuse this error, the Government claims that the email falls under Rule 801(d)(2)(A) or 801(d)(2)(D). Both provisions are inapplicable.

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[10] As for the Government's suggestion that Mr. McDonnell's acceptance of a gift from Mr. Goodwin was intrinsic evidence of his alleged conspiracy with Mr. Williams, it is plainly contrary to applicable Fourth Circuit precedent. *See generally* Mem. in Support of Deft. Robert F McDonnell's Mot. to Exclude Evidence Relating to SOEI, Dkt. 238, at 6-7.

Rule 801(d)(2)(A) excludes from the definition of hearsay a statement offered against an opposing party and "made by the party in an individual or representative capacity." The Government contends that this exclusion applies because the Zubowsky email "was simply conveying information provided to him by Mr. McDonnell." Gov't Opp'n at 30. This characterization of the email is inaccurate; in it, Mr. Zubowsky describes his own practices in his former capacity as an aide to Mr. McDonnell and does not purport to relate any statement made by Mr. McDonnell. *See* Gov't Ex. 627. But in any event, the hearsay problem arises because the email is an out-of-court statement by *Mr. Zubowsky* offered to show the truth of the matter asserted. Even if the email did quote statements from Mr. McDonnell, the supposed admissibility of those hearsay-within-hearsay statements under Rule 801(d)(2)(A) would not make Mr. Zubowsky's out-of-court statement admissible.

Rule 801(d)(2)(D) is an even less plausible basis for circumventing the hearsay rule. This provision excludes from the definition of hearsay a statement offered against an opposing party and "made by the party's agent or employee on a matter within the scope of that relationship *and while it existed*" (emphasis added). Mr. Zubowsky had left Mr. McDonnell's employment over a month earlier. *See* Ex. B. So this rule does not apply.

Second, the email also constituted improper propensity evidence and was separately inadmissible under Rule 404(b). The Government now contends that it introduced the email in order to contradict Mr. McDonnell's testimony that he had not asked his staff to arrange for free or discounted golf for him and his family. *See* Gov't Opp'n at 29 (discussing Tr. 5135-36). Rule 608(b), of course, prohibits the introduction of extrinsic evidence of specific instances of conduct solely for the purpose of impeachment. *See, e.g., United States v. Moore*, 27 F.3d 969, 975 (4th Cir. 1994). So the Government makes a broader claim: that it introduced the email to rebut the "notion," supposedly implicit throughout Mr. McDonnell's direct testimony, "that he accepted gifts from Mr. Williams and others simply to spend time with his family and that the luxuriousness of the gifts had no bearing." Gov't Opp'n at 29. This putative justification of the introduction of the Zubowsky email simply proves Mr. McDonnell's point: that the Government proffered the evidence in order to show that Mr. McDonnell had a propensity to seek out free expensive gifts. Rule 404(b) does not permit such use of evidence of other acts.

C. Both Errors Were Prejudicial And Warrant A New Trial.

Finally, the Government overall fails to address Mr. McDonnell's point that in a case such as this—where the question of guilt or innocence turned entirely on what the jury believed about Mr. McDonnell's state of mind, and the Government's proof depended to a large degree on the testimony of a cooperating, co-conspirator witness whose credibility was highly questionable—the improper admission of inflammatory Rule 404(b) evidence was highly likely to have an impact on the jury's verdict. *See United States v. Lee*, 724 F.3d 968, 983 (7th Cir. 2013); *United States v. Lail*, 846 F.2d 1299, 1301-02 (11th Cir. 1988). The Government unconvincingly attempts to distinguish these precedents by listing irrelevant factual differences. Gov't Opp'n at 28. But the holdings of *Lee* and *Lail* turned not on whether the crime at issue was a drug crime or a bank robbery, or on whether the 404(b) evidence at issue was of prior criminal conduct or other types of acts. Rather, those cases recognized the heightened risk of prejudice where a 404(b) error is made and the case turns on the defendant's state of mind and a credibility choice between witnesses. The same risk was present here.

CONCLUSION

The Court should set aside the jury's verdict and grant Mr. McDonnell a new trial.

Dated: October 24, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 24th day of October, 2014, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: October 24, 2014

Respectfully submitted,

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EXHIBIT A

c/5-4

INDIVIDUAL FOLLOW UP QUESTIONS FOR JURORS WITH ANY PRE-TRIAL EXPOSURE:

You have indicated on your juror questionnaire that you have read, seen or heard something about this case or the people involved. There is nothing wrong with having read, heard or overheard something about the case, but now we need to know a little bit more about what you have heard, the circumstance of how you received that information and any impressions you have formed.

1. First when do you first recall that you read or heard something about the case, or any of the people involved?
2. Please describe or summarize what you have heard or read.
3. Did you talk about what you read or heard with your spouse or any of your family members, friends or co-workers? What was the nature of those conversations—what was said?
4. Have any of your family members, friends or co-workers or anyone else close to you expressed any opinion or view about the case or the people involved? If so, what did they say? Is this an opinion or point of view that you share?
5. Have you formed or expressed any views, opinions or conclusions about the case based on anything you may have read or heard or overheard discussed? If so, what are those views or conclusion?
6. Have you shared or discussed your opinions about the case or the people involved with anyone at all?
7. Have you ever heard anyone say anything favorable or unfavorable in the past about either of the defendants in the case—former Governor Bob McDonnell or former First Lady Maureen McDonnell? If so, what things have you heard others say about either or both of the defendants?
8. Have you formed any favorable or unfavorable personal impressions about either defendant, former Governor Bob McDonnell or former First Lady Maureen McDonnell from anything you have heard about either defendant in the past, or as a result of these

Dft's App Ex. 1

charges? (If so, what were those impressions? Were these strong impressions? How strong?)

9. Have you heard anyone say what he or she thought the verdict should be in this case? (If so, what is your relationship with the person or persons who expressed opinions? What was your reaction to hearing these opinions expressed? Did you agree or disagree?)

10. At any time have you ever formed or expressed any opinion about this case, or any of the people involved?

11. If you are selected to sit as a juror in this case will you be concerned about anything you have already read, seen or heard someone say about this case? If so, please tell us about your concerns.

12. Do you have any concerns about what the reactions of any other people—such as family members, friends, co-workers or anyone else in the community or the media—may be to any verdict you might reach in the event you were selected to be a member of the jury in this case? If so, tell us something about your concerns.

13. Has what you have read, seen or heard discussed or thought about regarding these charges and the defendants caused you to lean in the direction of finding one or both of the defendants guilty, or not guilty? If so, please tell us about how you are leaning

14. Are these leanings, impressions or opinions going to be in the back of your mind if you are selected to sit as a juror in this case? Why or why not?

15. Would you need or require to hear from the defendant or his attorney, or expect the defendant or his attorney to present any evidence to change your mind about what you have previously heard or concluded in order to find Mr. McDonnell not guilty (regardless of the judge's instructions to the contrary)? If so, tell us why you would expect or require the defense to present evidence in order to reach a verdict of not guilty.

16. Will you be able to follow the Court's instructions to presume former Governor Robert F. McDonnell is innocent of these charges and to require the government to prove his guilt beyond a reasonable doubt, OR would it be difficult or impossible for you to find him not guilty unless the defense presented evidence or proof of his innocence? Please explain.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	No. 3:14cr12
ROBERT F MCDONNELL and	)	
MAUREEN G. MCDONNELL,	)	
Defendants.	)	

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT ROBERT F. MCDONNELL'S MOTION FOR A NEW TRIAL

The United States respectfully opposes defendant Robert F McDonnell's motion for a new trial under Fed. R. Crim. P 33. *See* Doc. Nos. 511 and 518 (hereinafter "Def. Mem."). For the reasons discussed below, each of Mr. McDonnell's contentions is without merit.

Under Rule 33, a court "should exercise its discretion to grant a new trial sparingly.'" *United States v. Perry*, 335 F.3d 316, 320 (4th Cir. 2003) (quoting *United States v. Wilson*, 118 F.3d 228, 237 (4th Cir. 1997)). That is because "[a] new trial is a drastic remedy intended for the rare case." *United States v. Chin*, 181 F.3d 92, 1999 WL 333137, at *1 (4th Cir. 1999) (unpublished). And a new trial should be granted "only when the evidence weighs heavily against the verdict," *Wilson*, 118 F.3d at 237, or "when substantial prejudice has occurred," *United States v. Jones*, 542 F.2d 186, 211 (4th Cir. 1976) (quotation omitted).

Mr. McDonnell seeks a new trial on four grounds. First, he alleges that the Court improperly defined "official action" for the corruption offenses charged in Counts 1-11. Second, he claims the Court's inquiries via written questionnaire, in-court voir dire of the jury panel, and individualized voir dire of specific jurors at Mr. McDonnell's request was insufficient to address his concerns regarding pretrial publicity. Third, he claims that the Court should have inquired of the entire jury regarding alleged premature deliberations even after Mr. McDonnell's counsel declined the opportunity to examine the juror who he claims was the source of the need to conduct that inquiry.[1] And fourth, he claims the Court erred in admitting under Fed. R. Evid. 404(b) evidence of free golf and vacations accepted and solicited by Mr. McDonnell from sources other than Jonnie Williams, Sr. None of these claims warrant a new trial.

I. The Court's jury instructions, taken as a whole, fairly and accurately stated the *quid pro quo* required by the charged corruption offenses.

Mr. McDonnell's arguments on "official action" are effectively a restatement of his earlier arguments that this Court has rejected numerous times. In short, Mr. McDonnell claims that the Court's instructions (i) "allow[ed] the jury to convict Mr. McDonnell on an erroneous understanding of 'official act,'" and (ii) "allow[ed] a conviction on the theory that things of value were given and accepted for unspecified future help." Def. Mem. at 2. He claims that this Court's instructions therefore "revolutionize the relationship between politics and the criminal law, criminalizing routine political courtesies." *Id.*

Not so. Importantly, a court reviewing jury instructions after trial must not "view a single instruction in isolation"; rather, the question is "whether taken as a whole and in the context of the entire charge, the instructions accurately and fairly state the controlling law." *United States v. Rahman*, 83 F.3d 89, 92 (4th Cir. 1996). This is so because "[a] trial court has considerable discretion in choosing the specific instructions, and [the Fourth Circuit] will not reverse unless an instructional error is determined to have been prejudicial, based on review of the record as a whole." *United States v. Whitfield*, 695 F.3d 288, 305 (4th Cir. 2012) (quotations omitted).

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[1] The United States previously filed a redacted version of this response because Mr. McDonnell's third alleged error referred to materials that were under seal at that time. Those materials have been unsealed by the Court, *see* Doc. No. 546, and the United States files this amended response that unredacts the portions no longer unseal but complies with the Court's directive that other portions of this pleading that refer to matters still under seal remain redacted.

Here, the Court's instructions on the definition of "official action" specifically and the *quid pro quo* requirement of the corruption charges more generally accurately stated the controlling law. Indeed, as described in greater detail below, the Court's instructions were materially indistinguishable from the instructions that the Fourth Circuit approved in *Jefferson*. They therefore provide no basis to grant Mr. McDonnell a new trial.

A. The Court's "official action" instruction was correct and materially indistinguishable from the *Jefferson* "official action" instructions.

First, the Court defined "official action" the same way that the court did in *Jefferson*: using the statutory definition found in 18 U.S.C. § 201(a)(3). Specifically, the Court instructed the jury, "The term official action ***means*** any decision or action on any question, matter, cause, suit, proceeding, or controversy, which may at any time be pending, or which may by law be brought before any public official, in such public official's official capacity." Tr. 6102 (emphasis added). In other words, the Court instructed the jury that not all decisions or actions by a public official are "official actions"; rather, the Court's instructions limited the decisions or actions that may constitute "official actions" as a matter of bribery law to those that are "on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such public official's official capacity." *Id.*

After so limiting the class of decisions or actions that could constitute official actions, the Court then instructed the jury about a few basic principles of bribery law:

> Official action ***as I just defined it*** includes those actions that have been clearly established by settled practice as part of a public official's position, even if the action was not taken pursuant to responsibilities explicitly assigned by law. In other words, official actions ***may include*** acts that a public official customarily performs, even if those actions are not described in any law, rule, or job description. And a public official need not have actual or final authority over the end result sought by a bribe payor so long as the alleged bribe payor reasonably believes that the public official had influence, power or authority over a means to the end sought by the bribe payor. In addition, official action ***can include*** actions

> taken in furtherance of longer-term goals, and an official action is no less official because it is one in a series of steps to exercise influence or achieve an end.

Tr. 6102–03 (emphases added). Importantly, the four sentences above are materially indistinguishable from the district court's instructions in *Jefferson*, and all four sentences convey well-settled principles of bribery law. In *Jefferson*, after also defining "official act" using § 201(a)(3)'s statutory definition, the district court continued as follows:

> **An act may be official even if it was not taken pursuant to responsibilities explicitly assigned by law. Rather, official acts include those activities that have been clearly established by settled practice as part of a public official's position. Moreover, an act on a particular question or matter may still be official even if the public official did not have authority to make a final decision or take binding action on the issue.**

United States v. Jefferson, No. 1:07cr209, Doc. No. 684, at 58 (E.D. Va. June 22, 2010).

Notably, the first two sentences of the quoted passage above from *Jefferson* are nearly identical to the first sentence of the preceding passage from this case. Moreover, the next sentence from this Court's instruction—that "[i]n other words, official actions may include acts that a public official customarily performs, even if those actions are not described in any law, rule, or job description"—is simply a rephrasing of the same principle using the Fourth Circuit's language from its opinion in *Jefferson*. In that opinion, the Fourth Circuit approved the instruction above because "it simply explained to the jury that an official act need not be prescribed by statute, but rather may include acts that a congressman customarily performs, even if the act falls outside of the formal legislative process." *United States v. Jefferson*, 674 F.3d 332, 357 (4th Cir. 2012). The only meaningful difference between that language from the Fourth Circuit's *Jefferson* opinion and the Court's instruction in this case is that this Court adjusted the language so as to remove the particular references to a congressman and the legislative process—an appropriate adjustment given that the defendant here was an executive rather than a legislator.

Next, the last two sentences of this Court's "official action" instruction were simply a commonsense elucidation of the same black-letter bribery law principles included in the *Jefferson* jury instructions and undergirding the Fourth Circuit's reasoning in *Jefferson*. For example, this Court's instruction that "a public official need not have actual or final authority over the end result sought by a bribe payor so long as the alleged bribe payor reasonably believes that the public official had influence, power or authority over a means to the end sought by the bribe payor" is no different from the *Jefferson* instruction that "an act on a particular question or matter may still be official even if the public official did not have authority to make a final decision or take binding action on the issue." And this Court's instruction in this case that "official action can include actions taken in furtherance of longer-term goals, and an official action is no less official because it is one in a series of steps to exercise influence or achieve an end" is both a logical consequence of the sentences before it and a well-settled principle of bribery law reflected in the Fourth Circuit's *Jefferson* opinion. More specifically, because official actions can include ***both*** decisions ***and*** actions, and because a public official need not have the authority to make a final decision or take binding action on a question, matter, or cause to take action on it, it follows that some actions "on" a question, matter, or cause may be earlier steps than others in a process to exercise influence or achieve an ultimate end. Likewise, the requirement that a decision or action must be "on" a question, matter, or cause does not mean that a decision or action is only official if it achieves the end sought by the bribe payor with respect to the question, matter, or cause at issue. That is why the Fourth Circuit found myriad actions by Jefferson—including "meeting[s], letter[s], trip[s], or other action[s]"—to be official acts. *Id.* at 359. The fact that actions may vary in number, importance, and impact over time—or that some may have been something like a meeting or event early in the process of exercising influence to achieve a longer-term goal—does not mean that public officials are free to sell those actions to the highest bidder as a means to line their pockets.[2]

In the end, this Court's "official action" instructions—like the "official act" instructions in *Jefferson*—were an appropriate explanation of black-letter bribery law and the principles set forth in the century-old Supreme Court decision in *United States v. Birdsall*, 233 U.S. 223 (1914). *See Jefferson*, 674 F.3d at 357 (noting "settled practice" instruction "was entirely consistent with the *Birdsall* principle, which has never been overruled or called into question by the Supreme Court"). In *Birdsall*, the Supreme Court described those principles this way:

> [I]t was not necessary that it should be prescribed by statute; it was sufficient that it was governed by a lawful requirement of the department under whose authority the office was acting. Nor was it necessary that the requirement should be prescribed by a written rule or regulation. It might also be found in an established usage which constituted the common law of the department and fixed the duties of those engaged in its activities. In numerous instances, duties not completely defined by written rules are clearly established by settled practice, and action taken in furtherance of their performance must be regarded as within the provisions of the above-mentioned statutes against bribery.

Birdsall, 233 U.S. at 230–31 (citations omitted), *quoted in Jefferson*, 674 F.3d at 351–52. To be sure, neither the jury instructions in *Jefferson* nor the Court's instructions in this case were simply a verbatim recitation of the century-old language in *Birdsall*. But the inquiry is one of substance, not form, and the question at this stage is "whether taken as a whole and in the context of the entire charge, the instructions accurately and fairly state the controlling law." *Rahman*, 83 F.3d at 92. The fact that the Supreme Court used the phrase "established usage" in 1914 and this

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[2] That is why courts have routinely found such interim steps to exercise influence or achieve an end to be official acts. *See, e.g.*, *United States v. Dimora*, 750 F.3d 619, 626–27 (6th Cir. 2014) ("Actual authority over the end result is not controlling if Dimora, through his official position, had ***influence and authority over a means to that end***." (emphasis added) (internal quotations and citations omitted)); *United States v. Loftus*, 992 F.2d 793, 796 (8th Cir. 1993) (same); *United States v. Ring*, 706 F.3d 460, 468–70 (D.C. Cir. 2013) (phone call and email); *United States v. Rosen*, 716 F.3d 691, 695 (2d Cir. 2013) (letter and setting up meeting); *United States v. Moore*, 525 F.3d 1033, 1041 (11th Cir. 2008) (phone calls and meetings).

Court used the phrase "customarily performs" in 2014 is immaterial, as is the distinction between "action taken in furtherance" in 1914 versus "one in a series of steps to exercise influence or achieve an end" in 2014.

Mr. McDonnell concedes—as he must—that it was proper for the Court to define "official action" using the § 201(a)(3) statutory language. Indeed, even Mr. McDonnell's requested jury instructions ***began*** with that language. *See* Doc. No. 287, at 80. But Mr. McDonnell claims that the remainder of the Court's "official action" instruction "improperly allowed—if not affirmatively invited—the jury to accept the legally erroneous theory that Mr. McDonnell performed an official act merely because he took an action in his official capacity." Def. Mem. at 8. Put slightly differently, Mr. McDonnell argues that the "unwieldy language" that results from reading the § 201(a)(3) definition of official action in tandem with the "settled practice" instruction "would inevitably mislead the typical juror to erroneously conclude that an official act is any settled practice of an official." *Id.* at 7.

Unfortunately for Mr. McDonnell, the Fourth Circuit squarely rejected this very argument in *Jefferson*. There, the Fourth Circuit held that the "settled practice" instruction "did not in any way supplant the statutory definition of what constitutes an official act" and that "[i]nasmuch as the trial court gave its 'settled practice' instruction in tandem with the statutory definition of 'official act,' the jury was not authorized to ignore the directive that Jefferson's official acts must pertain to a pending question, matter, or cause that was before him." 674 F.3d at 357. Here, the jury was no more authorized than the jury was in *Jefferson* to ignore the Court's definition of official action as being restricted to "action on any question, matter, cause, suit, proceeding, or controversy." Tr. 6102. And based on the evidence adduced at trial, this jury was entitled to conclude, first of all, that performing constituent services for Virginia companies like

Star Scientific was a settled practice of the Office of the Governor of Virginia and, second, that Virginia business development issues like obtaining research studies at state universities and using state employees to study Anatabloc were matters or causes that were pending before Mr. McDonnell. Thus, the jury was entitled to conclude that Mr. McDonnell's actions in connection with both Star Scientific's requests and the promotion of business in Virginia through meetings and events to help obtain those studies fell under the umbrella of his official actions. *See Jefferson*, 674 F.3d at 357 (describing equivalent findings for jury in that case).

According to Mr. McDonnell, to be an "official action," an action must "involve[] the exercise of actual governmental power—the actual regulatory power of the state." Def. Mem. at 6. In his proposed jury instructions, Mr. McDonnell explained this category of actions to include those "such as awarding a contract, hiring a government employee, issuing a license, passing a law, or implementing a regulation." Doc. No. 287, at 80–81. But as the United States argued in response to Mr. McDonnell's motion to dismiss, saying that an official action must involve "actual governmental power" only begs the question of what constitutes "governmental power" and what makes it "actual." And no case has ever restricted "official action"—or for that matter, "governmental power"—to action involving government contracts, hiring decisions, or written laws and regulations. Nor would it be sensible to do so. Indeed, for a public official such as the chief executive of a state, the exercise of "actual governmental power" comes in varied forms, and the entire purpose of *Birdsall* and its progeny is to ensure that public officials do not escape criminal liability by lining their pockets in exchange for their official actions merely because those actions are not written in a job description or taught in a high school civics class.

Put simply, Mr. McDonnell exercised "governmental power" when he took action on the question, matter, or cause of whether Star Scientific would get state assistance for its research studies, and he was not free to trade his actions for cash merely because he got the process to first base by arranging a meeting or to second base by hosting an event designed to persuade other state employees. And whether those state employees took action in response to his actions is beside the point; Mr. McDonnell's actions were no less "on" the question, matter, or cause of whether Star Scientific would get the state assistance it wanted merely because they were actions early in the process or because Mr. McDonnell concluded that he was more likely to get caught if he did something more noticeable. A public official who drives a hard bargain with his bribe payor by agreeing to perform limited official action is just as guilty as a public official who promises to perform every official action imaginable. The jury instructions in this case merely acknowledged that principle, and they provide no basis to vacate the jury's verdict.

B. The jury instructions did not invite the jury to convict Mr. McDonnell based on a vague expectation of unspecified future assistance.

Mr. McDonnell also argues that the jury instructions "improperly invited the jury to convict Mr. McDonnell merely because he accepted things of value given with the generalized hope of unspecified future assistance." Def. Mem. at 11. He claims that the instructions did so because the Court did not give his proposed instruction that, among other things, "[y]ou may convict the defendant only if you find that he received something of value in exchange for performing or promising to perform some specific official act." Def. Mem. at 10–11. But the Court was entirely correct in rejecting Mr. McDonnell's proposed instruction because such an instruction would have been legally inaccurate in this case. In *Jefferson*, the Fourth Circuit explicitly rejected the argument that each payment need be linked to a "specific" official act, finding that "it would be impossible—and it is unnecessary—to link every dollar paid to one of the Jefferson family companies to a specific meeting, letter, trip, or other action by Jefferson to fulfill his end of a corrupt bargain." 674 F.3d at 359. Instead, "it is sufficient to show that the payor intended for each payment to induce the official to adopt a specific course of action," and "[t]he quid pro quo requirement is satisfied so long as the evidence shows a course of conduct of favors and gifts flowing to a public official in exchange for a pattern of official actions favorable to the donor." *United States v. Jennings*, 160 F.3d 1006, 1014 (4th Cir. 1998), *quoted in Jefferson*, 674 F.3d at 359. In other words, "all that must be shown is that payments were made with the intent of securing a specific *type* of official action or favor in return. For example, payments may be made with the intent to retain the official's services on an 'as needed' basis, so that whenever the opportunity presents itself the official will take specific action on the payor's behalf." *Id.*

Mr. McDonnell's proposed instruction was erroneous because it wholly excluded the "course of action" and "pattern of official actions" theories of *quid pro quo* corruption. Mr. McDonnell implicitly acknowledges that when he – for the first time—claims that the jury should have been instructed that "it must find that the things of value were given in exchange 'for some specific official act ***or course of action***.'" Def. Mem. at 9 (quoting *Jennings*, 160 F.3d at 1019) (emphasis added). To be sure, Mr. McDonnell had previously requested that the jury be instructed that the things of value were given in exchange for a "specific official act." But until now, he consistently fought the notion of an exchange for a "course of action" as sufficient to prove a *quid pro quo*. Indeed, Mr. McDonnell specifically (and successfully) ***objected*** to the United States' proposed "course of conduct" instruction based on *Jennings* at the charge conference in this case. *See* Tr. 5793–94. The Court declined to give the United States' full "course of conduct" instruction but nonetheless addressed the "course of action" theory when it instructed the jury with respect to the Hobbs Act counts that "a given thing of value need not be correlated with a specific official action, and a thing or things of value may be given with the intent to retain a public official's services on an as-needed basis, so that as opportunities arise the public official would take ***specific official action*** on the payor's behalf." Tr. 6113–14 (emphasis added). That instruction is no different from the following instruction approved by the Fourth Circuit in *Jefferson*: "[T]he quid pro quo requirement is satisfied if the defendant agreed to accept things of value in exchange for performing official acts on an as-needed basis, so that [when]ever the opportunity presented itself, he would take specific action on the payor's behalf." 674 F.3d at 358.

The Court also gave numerous other instructions emphasizing that the jury must find a *quid pro quo* exchange consistent with the Fourth Circuit's opinions in *Jennings* and *Jefferson*. First, in describing the nature of the honest-services conspiracy charged in Count One, the Court specified the alleged *quid pro quo* as an "exchange for Robert McDonnell and the Office of the Governor of Virginia performing official actions on an as-needed basis, as opportunities arose, to legitimize, promote, and obtain research studies for Star Scientific's products." Tr. 6089. In other words, the alleged exchange was not simply things of value in return for official action in the abstract; it was for official action "to legitimize, promote, and obtain research studies for Star Scientific products." *Id.* Similarly, the Court specified the types of "favorable official action" alleged as part of the corrupt agreement by describing that the meetings, events, and other official actions alleged were not mere meetings or events without context or purpose. Rather, the alleged course of official action exchanged for things of value included meetings with Mr. McDonnell's "subordinates to discuss and promote Anatabloc," events "designed to encourage Virginia university researchers to initiate studies of anatabine," contact with subordinate government officials "as part of an effort to encourage Virginia state research universities to initiate studies of anatabine," allowing Williams "to invite individuals important to Star Scientific's business to exclusive events at the Governor's Mansion," and "recommending that senior [subordinate] government officials meet with Star Scientific to discuss ways that the company's products could lower healthcare costs." Tr. 6090–91.[3]

Moreover, the Court specifically instructed the jury that bribery "involves the exchange of a thing or things of value for official action by a public official. In other words, a quid pro quo. You've heard that phrase, the Latin phrase, meaning 'this for that' or 'these for those.'" Tr. 6100. With this instruction, the Court told the jury that it must find a "that" or a "those" for which the things of value were exchanged. The Court continued by specifying that "[b]ribery means that a public official demanded, sought or received something of value ***as described in the indictment*** and that the public official demanded, sought or received the item of value ***corruptly in return for being influenced in the performance of any official act***." Tr. 6100 (emphasis added). The Court further explained that the word "corruptly" required the jury to find not just the exchange alleged in the indictment, but also that the defendants had "an improper motive or purpose" and that "[a]n act is done corruptly if it is performed knowingly and dishonestly for a wrongful purpose." Tr. 6101. And that was not all. When it moved to the Hobbs Act counts, the Court reiterated that the jury must find a *quid pro quo*, instructing the jury that Mr. McDonnell "must have known that the thing of value was given in exchange for official action." Tr. 6113. The Court also emphasized that even a these-for-those exchange requires an "intent to retain a public official's services on an as-needed basis, so that as opportunities arise the public official would take ***specific official action*** on the payor's behalf." Tr. 6113–14 (emphasis added).

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[3] The Court's description of the charged *quid pro quo*, which was incorporated by reference into the other corruption counts in the redacted indictment the Court gave to the jury, was also entirely consistent with the argument the United States consistently made to the jury: that the meetings, events, and other official actions promised and performed were on the question, matter, or cause of using state universities and other state resources to study Anatabloc. *See, e.g.*, Tr. 5837 (describing August 1, 2011, meeting as "on the Star Scientific Anatabloc trials planned in Virginia at VCU and UVA"), 5843–44 (arguing August 30, 2011, mansion event "wasn't some ceremonial event without context or some event with no purpose," but rather an event to "send[] a signal to those medical schools that this is important"), 5849 (arguing that "there was a plan to try to get Mr. and Mrs. McDonnell to assist Star in promoting the product and in obtaining studies at UVA and VCU"), 5850 (describing purpose of August 30 mansion event as to "influence officials from UVA and VCU"), 5859 (describing February 2012 actions as part of "plan to kick start studies at UVA for Jonnie Williams' benefit"), 5868 (describing March 2012 cabinet meeting as part of "discussion about the [state] employee health plan" and how Anatabloc "would be good for State employees"), 5869 (arguing that alleged official actions were "on the issue of Virginia business development"), 5871 (referring to June 2011 letter from Williams to Mr. McDonnell about getting studies at state universities), 6040–41 (same), 6044 ("What did Mr. Williams always want? He wanted the studies at UVA and VCU.").

Finally, the Court emphasized the heightened mental state that the jury was required to find by giving a "good faith" instruction that was nearly identical to the general good-faith instruction requested by Mr. McDonnell. *See* Doc. No. 287, at 50. And the Court emphasized that "[t]he burden of establishing lack of good faith and criminal intent rests upon the prosecution. A defendant is under no burden to prove his or her good faith. Rather, the prosecution must prove knowledge of falsity or bad faith beyond a reasonable doubt." Tr. 6123.

In sum, the Court's *quid pro quo* instructions, taken as a whole, fairly and accurately stated the controlling law with respect to the corruption charges in this case by requiring the appropriate amount of specificity for the *quid pro quo* exchange while also permitting for the as-needed, opportunities-arise nature of the charged *quid pro quo* in this case.

Mr. McDonnell points to various quotations from *Jennings* that were not included verbatim in the jury instructions, but as with his "official action" arguments, he is elevating form over substance when he does so. For example, Mr. McDonnell complains that the jury should have been instructed that it must find an "exchange for 'some specific official act or course of action,'" Def. Mem. at 9 (quoting *Jennings*, 160 F.3d at 1019), but he does not explain how instructing the jury that it must find an "intent to retain a public official's services on an as-needed basis, so that as opportunities arise the public official would take specific official action on the payor's behalf," Tr. 6113–14, is meaningfully different. Similarly, Mr. McDonnell accurately quotes *Jennings* when he says that "the Fourth Circuit has made clear that 'a good will gift to an official to foster a favorable business climate, given simply with the generalized hope or expectation of ultimate benefit on the part of the donor, does not constitute a bribe.'" Def. Mem. at 9 (quoting *Jennings*, 160 F.3d at 1013 (quotation omitted)).[4] But the Court accurately conveyed that principle when it instructed the jury that it must find a this-for-that or these-for-those *quid pro quo* as charged, that the alleged agreement was the specific one described in the indictment, and that the defendants must have been acting corruptly and in bad faith.

II. This Court did not abuse its discretion in conducting voir dire on pretrial publicity.

This Court's voir dire on pretrial publicity complied with Supreme Court and Fourth Circuit precedent and was not an abuse of discretion, as is illustrated by the Supreme Court's most recent opinion on this subject, *Skilling v. United States*, 561 U.S. 358 (2010).

In *Skilling*, the defendant, the former CEO of Enron, moved for a change of venue outside of the Houston area, citing the widespread negative press about Enron's collapse and the economic fallout in the Houston area from Enron's downfall. When the transfer request was denied, the defendant also challenged the adequacy of the district court's voir dire on pretrial publicity. In support of his arguments, the defendant "submitted hundreds of news reports detailing Enron's downfall" and "presented affidavits from the experts he engaged portraying community attitudes in Houston in comparison to other potential venues." *Id.* at 369–70. The defendant also contended that the district court's "truncated voir dire did almost nothing to weed out prejudices." *Id.* at 377. The Supreme Court rejected these challenges.

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[4] Notably, Mr. McDonnell did not actually request an instruction that stated this full quote from *Jennings*; instead, as he did with deleting "course of action" from his *Jennings* quotations in the manner previously described above, he deleted "a good will gift to an official to foster a favorable business climate" from the description of what was insufficient in *Jennings* to show a *quid pro quo*. *See* Doc. No. 287, at 49. In essence, Mr. McDonnell changed (and indeed, restricted) the meaning of *Jennings* in the instructions he requested, and he now flees back to the precise (but broader) language of *Jennings* as a justification for why the Court erred in rejecting his requested instructions. But the Court was within its discretion in choosing the language that it did to convey the principles set forth in *Jennings*.

In rejecting that any presumption of prejudice applied from the pretrial publicity, the Supreme Court explained that "our decisions 'cannot be made to stand for the proposition that juror exposure to news accounts of the crime alone presumptively deprives the defendant of due process.'" *Id.* at 380 (quoting *Murphy v. Florida*, 421 U.S. 794, 798-99 (1975)). The Supreme Court noted, "Jurors are not required to be 'totally ignorant of the facts and issues involved'" and that "scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case." *Id.* at 381 (quoting *Irvin v. Dowd*, 366 U.S. 717, 722 (1961)). The *Skilling* Court concluded, "A presumption of prejudice, our decisions indicate, attends only the extreme case." 561 U.S. at 381 (citing *Reynolds v. United States*, 98 U.S. 145, 155–56 (1879) ("[E]very case of public interest is almost, as a matter of necessity, brought to the attention of all the intelligent people in the vicinity, and scarcely any one can be found among those best fitted for jurors who has not read or heard of it, and who has not some impression or some opinion in respect to its merits.").

In evaluating prejudice from pretrial publicity, the Court also explained that "of prime significance, Skilling's jury acquitted him of nine insider-trading counts. It would be odd for an appellate court to presume prejudice in a case in which jurors' actions run counter to that presumption." *Skilling*, 561 U.S. at 383. The same is true here. The jury acquitted Mr. McDonnell on counts 12 and 13 and acquitted Mrs. McDonnell on counts 4, 9, 11, and 13. "[P]retrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial." *Id.* at 384 (quoting *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 554 (1976)).

In this case, the McDonnells never sought a change of venue, waiving any such claim under Fed. R. Crim. P 21(d), and have never contended that a presumption of prejudice applies. Indeed, Mr. McDonnell remained popular even after he was indicted on January 21, 2014.[5] The McDonnells evidently wanted to take advantage of that favorable rating—a more favorable rating than an indicted defendant typically enjoys and a more favorable rating than the McDonnells would enjoy where they were unknown. In short, because the McDonnells never pursued transfer, their claim of prejudice starts off being less persuasive than in *Skilling*.

Moreover, in *Skilling*, the collapse of Enron caused "widespread community impact" from the destruction of people's jobs and investments. *Id.* at 384. Also, a codefendant in *Skilling* made a "well-publicized decision to plead guilty shortly before trial." *Id.* at 384-85.When the Supreme Court concluded that the five-hour voir dire in *Skilling* sufficed—a voir dire that was about 28% ***shorter*** than the seven-hour-and-fifteen-minute voir dire conducted in this case—the Supreme Court stressed the breadth of discretion that district courts possess in conducting voir dire. "No hard-and-fast formula dictates the necessary depth or breadth of *voir dire*." *Id.* at 386. The Court continued, "Jury selection, we have repeatedly emphasized, is 'particularly within the province of the trial judge.'" *Id.* at 386 (quoting *Ristaino v. Ross*, 424 U.S. 589, 594–95 (1976)). This rule applies with special force to pretrial publicity. *See id.* at 386.

In evaluating voir dire, the Supreme Court also noted that "other measures . . . were used to mitigate the adverse effects of publicity." *Id.* at 388 n.21 (quoting *Nebraska Press Ass'n.*, 427

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[5] One poll reported in the Washington Post on January 23, 2014, found that Mr. McDonnell "has a job approval rating of 57 percent." Exhibit A. The article continued, "In the first six days the poll was in the field, that score stood at 59 percent. In the last two days of surveying, following the news of McDonnell's indictment, his rating dropped to 49 percent approval, 38 percent disapproval." *Id.* Another poll "gave McDonnell a 45 percent job approval rating, with 24 percent disapproving and a higher percentage of voters who were unsure than the CNU poll." *Id.*

U.S. at 565). These other steps—taken in this case also—include "the prophylactic effect of 'emphatic and clear instructions on the sworn duty of each juror to decide the issues only on evidence presented in open court.'" *Id.* The district court in *Skilling* also "exercised its discretion to grant the defendants two extra peremptories," *id.*, while in this case this Court granted the defendants together 16 peremptory challenges instead of the 10 provided jointly to codefendants under Fed. R. Crim. P 24(b)(2). The district court in *Skilling* also sent jurors a 77-item questionnaire, while in this case prospective jurors received a 99-item questionnaire that "helped to identify prospective jurors excusable for cause and served as a springboard for further questions to put to the remaining members of the array." *Skilling*, 561 U.S. at 388 & n.22. And the district court in *Skilling* "gave Skilling's counsel relatively free rein to ask venire members about their responses on the questionnaire." *Id.*

This last point highlights a critical error in the defendants motion for a new trial. The core claim that the McDonnells make is that this Court was *required* to conduct individual voir dire of each prospective juror about pretrial publicity and that the McDonnells did not receive a sufficient opportunity to test the views of individuals jurors. Both points are false. In evaluating voir dire on pretrial publicity in particular, the Fourth Circuit has held that it is "well established that a trial judge may question prospective jurors collectively rather than individually." *United States v. Bailey*, 112 F.3d 758, 770 (4th Cir. 1997) (quoting *United States v. Bakker*, 925 F.2d 728, 734 (4th Cir. 1991)). And while the district judge in *Skilling* chose to conduct individual voir dire on pretrial publicity (during voir dire that was overall shorter than in this case), the Supreme Court stressed, "No hard-and-fast formula dictates the necessary depth or breadth of *voir dire*." *Skilling*, 561 U.S. at 386.

In claiming a legal entitlement to individual questioning, the McDonnells invoke *United States v. Hankish*, 502 F.2d 71 (4th Cir. 1974), a case about jurors' exposure to publicity ***during*** trial after the jurors were empaneled and where the time devoted to questioning 12 jurors and a few alternates is substantially less than questioning an entire venire. But whatever the current legal force of *Hankish* for jurors' exposure to news during trial, as *Bailey* and *Bakker* held, when a district court is questioning the entire venire about pretrial publicity, the court possesses discretion to pose questions to the venire collectively.

In seeking to make the collective questions seem inadequate, the McDonnells ignore the context of the voir dire. Before this Court exercised its discretion to "question prospective jurors collectively rather than individually" about pretrial publicity, *Bailey*, 112 F.3d at 770, this Court had already posed 29 questions to the entire venire collectively, and in response to those collective questions, individual prospective jurors had stood up *274 times* by the Government's count to volunteer answers to those 29 questions. Thus, when this Court asked questions to the entire venire, the prospective jurors showed no hesitation in answering where appropriate. This Court had also shown the jurors that it would receive confidentially the answers to question that were sensitive and did conduct individual questioning on prospective jurors' criminal records and disabilities.

Moreover, and significantly, after posing the collective questions on pretrial publicity, this Court gave the McDonnells a full opportunity—which they employed—to examine individual jurors who gave them concern. This Court asked defense counsel that "if you got specific folks who we need to look at specific responses let me know." Tr. 141. Defense counsel then requested and received individual questioning about specific jurors, leading to the successful exclusion of prospective jurors. *See, e.g.*, Tr. 150, 153. And this Court explained that it also "went through [the questionnaires] with a fine-tooth comb" and had prepared its own list of potentially problematic jurors. Tr. 142.

After this individual questioning, this Court asked defense counsel, "Anybody else?" Tr. 155. Defense counsel responded, "Not on publicity." *Id.* This failure to pursue further questioning directly undermines the McDonnells' claims. The 99-item questionnaire armed the McDonnells with a host of information for inquiring at voir dire in greater detail about prospective jurors who concerned them. Indeed, the whole point of the questionnaires was to facilitate voir dire and make it more accurate and efficient. This is a point that the Supreme Court made in *Skilling*. 561 U.S. at 388 n.22. In this case, questions 47, 48, 49, and 50 of the questionnaire—which the McDonnells helped create—required each prospective juror to disclose which national news media outlets they watched, which newspapers they most often read, the internet websites that they visit regularly for news and current events, and how often they watch investigative news programs. If there were stories in the media that particularly concerned the McDonnells, the prospective jurors' answers to these questions enabled the McDonnells to home in on the jurors who might concern them the most. More broadly, question 69 noted that the defendants "are well-known public figures" and asked if that would affect the jurors' ability to follow the Court's instructions. Question 77 asked, "Do you feel that there have been any actions by Robert F. McDonnell or Maureen G. McDonnell while they were Governor and First Lady of Virginia, respectively, that have affected you in a personal way?" The question also asked, "If yes, please explain." More targeted questions specifically asked about sources of information that jurors have received about this case. *See, e.g.*, Questions 83, 84, 85, 86, 97, and 98. Likewise, the questionnaire warned jurors in question 11 that the case will receive media attention, informed them that they must decide the case "solely on the evidence presented in the courtroom," and asked if the jurors would "find it difficult to obey such an instruction for any reason?"

As in *Bailey*, this Court "did question individually those jurors who initial responses were less than satisfactory," 112 F.3d at 770, and any failure to follow up on answers in the questionnaires falls on the McDonnells. This Court specifically invited particular additional questions of identifiable jurors, and the McDonnells declined to pursue anything further.

Moreover, as in *Skilling*, the jurors who were actually selected demonstrated that the combined effect of, among other things, the questionnaires, the questioning in voir dire, the additional peremptory challenges, and the cautionary instructions did in fact work. In *Skilling*, the Supreme Court noted that 14 jurors and alternates "specifically stated that they had paid scant attention to Enron-related news" and that the remaining two jurors stated that they were not influenced by the news. *Id.* at 390. Similarly, in this case, [redacted]

In *Skilling*, the Supreme Court specifically rejected the dissenters' reliance on prospective jurors who were not selected. As the majority explained, "Statements by non-jurors do not themselves call into question the adequacy of the jury-selection process; elimination of these venire members is indeed one indicator that the process fulfilled its function." 561 U.S. at 390 n.24. And again, the jury's verdict acquitting on some counts supports that "the court's assessments were accurate." *Id.* at 395. The McDonnells identify no juror who actually voted in this case that they assert was biased. *Id.* at 395–96. And the McDonnells do not contend that any challenge for cause based on a juror's bias was wrongly denied. *Id.*

In sum, the McDonnells did not believe a change of venue was needed, received a wealth of information about prospective jurors through the questionnaires, were given an opportunity to question individual jurors that they viewed as problematic at voir dire, succeeded in striking some for cause, and declined the opportunity to question further. And the jurors selected showed no sign of having been tainted by media coverage and, by voting to acquit on some counts, demonstrated an independent view of the evidence. That there naturally was public interest in a prosecution of a former governor for corruption is not a basis for relief.

III. This Court did not abuse its discretion in declining to question the sitting jurors about whether they had in fact begun premature deliberations.

The McDonnells fail to show that there is credible evidence of premature deliberations and that, even if there were, this Court abused its discretion in declining to question the sitting jurors on that issue.

The record overwhelmingly establishes one background point that is highly relevant to whether there is credible evidence of premature deliberations: namely, both Juror No. 0356's own testimony and the testimony of the lawyer that he contacted show that Juror No. 0356 violated this Court's repeated instructions to the jury not to talk to anyone about this case. Even before trial began, [redacted] At the end of the questionnaire and [redacted] was a statement in boldface and all capital print: "I further understand that I am not to discuss this case with anyone or seek out, listen to, or read any material about this case in the media, on the internet or elsewhere until the judge in this case has instructed me otherwise." Then, at the very beginning of trial, this Court instructed the jury "not to discuss this case with anyone." Tr. 176–77 This Court repeated that instruction every day of trial, resulting in a total of at least nine more times this Court gave that instruction before August 11. *See, e.g.*, Tr. 192–93, 422, 691, 1151, 1448, 1756, 2027, 2296, 2531. And then on August 11, this Court repeated for a tenth time in open court the instruction less than an hour before Juror No. 0356 decided to call a lawyer and bring up, on Juror No. 0356's initiative, his jury service. Tr. 2826. After receiving Juror No. 0356's call, the lawyer reported it to the prosecutors, and the United States promptly provided defense counsel with the voicemail recording—which included the lawyer's phone number—and a law enforcement agent's notes summarizing the Government's conversation with the lawyer. At the Government's request, the lawyer appeared for examination by the Court and the parties the next morning before trial.

The lawyer testified credibly before this Court that, at about 6:15 pm on August 11, 2014, Juror No. 0356 called and asked how the lawyer was doing. Sealed Chambers Conference, August 12, 2014, at 6. Juror No. 0356 noted that he hadn't heard from the lawyer in a while. *Id.* Juror No. 0356 knew that the lawyer was in the process of transitioning out of his active practice of litigation, *id.*, and as publicly available information shows, the lawyer has in fact been a member of the bar for over 40 years, a fact corroborated by what was apparent to those present at the hearing. After Juror No. 0356 discussed some personal matters, Juror No. 0356 told the lawyer that "I am calling you because I am a Foreman on a jury." *Id.* at 7 Juror No. 0356 continued that "there are 12 people, and they are kind of all over the place and I don't know what to do." *Id.* The lawyer said that Juror No. 0356 seemed "stressed." *Id.* Juror No. 0356 added, "I'm put up in a hotel here in the McDonnell case." *Id.* at 8. The lawyer responded, "Whoa," and said "I know you think you have the right to an attorney, and I can understand that because I've been your attorney. But when you are in the jury, on the jury, I can't talk to you and you shouldn't be talking with me." *Id.* The lawyer confirmed that the two had no substantive discussion of the McDonnell case—"[a]bsolutely none, not even close." *Id.* at 9.

After receiving this testimony, this Court correctly found that Juror No. 0356 "violated the Court's instruction, simply by making the phone call and identifying himself as being on this jury." *Id.* at 10. This Court then decided to hear from Juror No. 0356. After Juror No. 0356 confirmed that he had called the lawyer the previous evening, this Court asked whether Juror No. 0356 had identified himself as a juror on the McDonnell case.

Juror No. 0356 first said that he had called the lawyer "on some other business" and then acknowledged that he "had mentioned that." *Id.* at 13. Juror No. 0356 continued, "I was asking him if in the jury room, when it is all over, what is the normal procedure, I mean, how does that work. I had never been to that point on a criminal trial like this." *Id.*

When this Court asked Juror No. 0356 whether he had told the lawyer that he was the foreman, Juror No. 0356 denied making that statement and sought to minimize his contact:

> No, no, no. I said, "Is it possible to be open with me as well as anyone else?" He said, "Are you talking about the McDonnell trial?" I said, "Yes." He said, "Well, we can't talk about it any further." And that was it. But the call, the phone call originated about some other legal stuff that we were dealing with.

Id. Probing further, this Court asked Juror No. 0356 whether he had said that he had 12 people all over the place:

> Court: Did you tell him you've got 12 people all over the place?
>
> Juror: Twelve people all over the place?
>
> Court: Right.

> Juror: What I meant, I did say that. What I meant by that was we didn't know, I didn't know where the charges referred to in what we were, the lawyers and so forth were talking about in the trial. And that's why this morning I asked if we could get a copy of the charges on each individual. That's what that was, you know—that's what I meant by "it is all over the place." I don't know based on what you told us when we started, and writing it down, I didn't get it all. You were talking fast. And I wanted a copy of the 12 charges.
>
> Court: You say "12 people all over the place," that indicates that you have talked to 12—
>
> Juror: No, no, no. It wasn't intended like that at all. Not at all. No. I didn't talk to anyone about it, about the specifics of the case or anything, you know. Different comments are made when you walk back in there, like, "Wow glad that's over with," or that sort of thing, whatever. I didn't call [the lawyer] about this case, by no means. It was about something else.

Id. at 13–14. This Court then asked if the parties "have any questions for him?" *Id.* at 14. And defense counsel responded, "No questions." *Id.* This Court concluded, "All right, obviously he is still out." *Id.*

The McDonnells' position on Juror No. 0536 is internally inconsistent. They have simultaneously argued that (a) Juror No. 0356 should not be dismissed even though he himself admitted that he called the lawyer, identified that he was a juror on the McDonnell case, and asked for advice because the "jurors are all over the place," and at the same time, the McDonnells are implicitly arguing that (b) Juror No. 0356 should not be believed when he sought to explain away the statement that the "jurors are all over the place" and denied that he said he was the "foreman."

What the record shows is that Juror No. 0356 unmistakably violated an order that this Court gave him about a dozen times over two weeks, and in violating the Court's repeated order, he inflated his role by incorrectly stating that he was the foreman[6] (an assertion that he later denied making) and, in keeping with his overstatement, claimed that he needed to address "12 people all over the place." Moreover, in response to this Court's questions, Juror No. 0356 contended that his statement about 12 people really related to 12 counts (when there are in fact 14 counts in the indictment). This is not credible evidence that other jurors were prematurely deliberating.

Juror No. 0356 was promptly dismissed from the jury before the trial resumed after his improper contact with the lawyer. Under the Fourth Circuit's law, "Although external jury influences necessitate a thorough judicial inquiry, no such obligation is imposed with regard to an internal jury influence." *Wolfe v. Johnson*, 565 F.3d 140, 161 (4th Cir. 2009). And a "district court has broad discretion in choosing how to handle a claim of juror bias or misconduct." *United States v. Basham*, 561 F.3d 302, 321 n.9 (4th Cir. 2009) (quoting *United States v. Barnette*, 390 F.3d 775, 808 (4th Cir. 2004) (citations omitted), *vacated on other grounds*, 546 U.S. 803 (2005)). "The Fourth Circuit follows the view that the trial court may deal with [claims of juror misconduct] as it feels the particular circumstances require and [will] only reverse for abuse of discretion." *Id.* (quoting *United States v. Gravely*, 840 F.2d 1156, 1159 (4th Cir. 1988)). This discretion follows in part because "the circumstances in which juror misconduct can occur are probably as varied as all of human experience." *Barnette*, 390 F.3d at 808.

Given the circumstances here—where there is no credible evidence that the jury has been prematurely deliberating and this Court issued detailed curative jury instructions, *see, e.g.*, Tr. 3076–77—the policy of preserving jury secrecy and independence, as well as the need to avoid the risk of influencing the jury through the investigation itself, weighs against an inquiry. This

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[6] In the jury box, Juror No. 0356 was seated in the front-row seat closest to the Court clerk, where a foreman customarily sits at the conclusion of a case.

Court's unmistakable instructions, coming on the heels of dismissing a juror, impressed on jurors the importance of following the Court's instructions.

As the Eleventh Circuit has aptly observed, in deciding how best to approach juror conduct that does not involve external information being passed to a jury, "There are often no obviously right or wrong answers to the questions that arise." *United States v. Dominguez*, 226 F.3d 1235, 1246 (11th Cir. 2000). Thus, "when a jury problem involves the possibility of internal misconduct, the trial judge's 'discretion extends even to the initial decision of whether to interrogate the jurors.'" *Id.* Because of the competing considerations at play, and the need to rely on the district court's on-the-ground assessment, "The most salient aspect of the law in this area is the breadth of discretion given to judges who are called upon to deal with the possibility of juror misconduct." *Id.* And again, the jury instructions that this Court provided obviated any colorable claim of error. *Cf. United States v. Lemus*, 542 F.2d 222, 223–24 (4th Cir. 1976) (per curiam).[7]

IV The Court did not erroneously admit Rule 404(b) evidence.

Mr. McDonnell further complains that two pieces of evidence were admitted contrary to Rule 404(b): (1) evidence that William Goodwin provided a vacation to the McDonnell family that was not reported on Mr. McDonnell's SOEI, and (2) evidence that Mr. McDonnell's staff arranged for free golf vacations.

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[7] In footnote 5 of his motion for a new trial, Mr. McDonnell asserts that "it is unclear on the current record" whether the lawyer "violated his ethical obligations." Any argument on this point should be deemed waived. First, at the August 12 hearing, Mr. McDonnell never raised any ethical issue and did not act as if he believed the inquiry into Juror No. 0356's communications with the lawyer implicated a violation of the ethics rules. Second, Mr. McDonnell offers no authority supporting his claim that the ethics rules encourage sitting jurors to reach out to lawyers, rather than the Court, by protecting the confidentiality of the jurors' communications made in violation of court orders. Third, in any event, the McDonnells lack standing to assert any purported breach of a duty of confidentiality between Juror No. 0356 and the lawyer.

A. The Goodwin Evidence.

As an initial matter, the United States presented sufficient evidence to prove that Mr. McDonnell and Mr. Goodwin were not "personal friends." Although Mr. McDonnell answered affirmatively that Mr. Goodwin was a personal friend, Tr. 5051, he further testified that he socialized with Mr. Goodwin only a "[c]ouple of times," Tr. 5051–52, and that he and Mr. Goodwin spoke on the telephone "[m]aybe twice" without discussing business, Tr. 5052–53. Mr. McDonnell testified that he had known Mr. Goodwin for "about ten years." Tr. 5051. But Mr. McDonnell was uncertain how many children Mr. Goodwin had and their names. Tr. 5053. Mr. McDonnell testified that he exchanged "[m]aybe just one or two" text messages with Mr. Goodwin and did not have his cell phone until "[m]aybe '12." Tr. 5053. Mr. McDonnell could not recall whether Mr. Goodwin was invited to either of his daughters' weddings. Tr. 5054. When asked to define a "personal friend," Mr. McDonnell testified that he included people with whom he felt "an affinity with, that you have mutual respect for," including individuals with whom he merely felt a "common bond, because of our children, because of our love for this state." Tr. 5054–55. And although Mr. McDonnell did not disclose the Kiawah Island vacation from Mr. Goodwin on his 2012 SOEI because it was "personal," he did disclose Mr. Goodwin's gift of the use of Keswick that same year. Tr. 5296–97 Given the facts that Mr. McDonnell admitted, a jury was not required to accept his conclusory claim that he was a personal friend of Mr. Goodwin's. *Cf United States v. Nevils*, 598 F.3d 1158, 1165 n.2 (9th Cir. 2010) (en banc). Thus, even without direct testimony from Mr. Goodwin, Mr. McDonnell's assertion that he was a personal friend does not withstand common sense.

Moreover, the Goodwin evidence was intrinsic to Mr. McDonnell's scheme to defraud. Evidence that is "intrinsic to the alleged crime do[es] not fall under Rule 404(b)'s limitations." *United States v. Otuya*, 720 F.3d 183, 188 (4th Cir. 2013). The SOEI on which Mr. McDonnell decided not to report the Goodwin gift is the same form on which Mr. McDonnell failed to disclose gifts and loans from Mr. Williams. And even if the evidence were not intrinsic but, rather, 404(b) evidence, it showed Mr. McDonnell's knowledge of the SOEI and the existence of the "personal friend" exception. It also was evidence of Mr. McDonnell's lack of mistake or accident in failing to disclose the gifts and loans from Mr. Williams. The Fourth Circuit has characterized Rule 404(b) "as an inclusive rule, admitting all evidence of other crimes or acts except that which tends to prove *only* criminal disposition." *United States v. Powers*, 59 F.3d 1460, 1464 (4th Cir. 1995) (internal quotation omitted) (emphasis added).

And even if this evidence were somehow improperly admitted, Mr. McDonnell has suffered no prejudice. The cases on which he relies for the proposition that 404(b) evidence "could easily tip the scales toward a guilty verdict" are inapposite to the present facts. *See, e.g.*, *United States v. Lee*, 724 F.3d 968 (7th Cir. 2013) (district court erred in admitting defendant's prior conviction for possessing cocaine in defendant's trial for new crack cocaine offense); *United States v. Lail*, 846 F.2d 1299 (11th Cir. 1988) (district court erred in admitting during bank-robbery trial evidence of defendant's past uncharged bank robbery where defendant abducted bank manager). Evidence that Mr. McDonnell used the "personal friend" exception to avoid reporting Mr. Goodwin's gift is a far cry from evidence of a prior conviction or uncharged criminal conduct at issue in those cases.

B. The Free Golf Vacation Email

The United States properly introduced Government Exhibit 627, pertaining to free golf vacations sought by Mr. McDonnell, to rebut assertions he made during his direct testimony. Exhibit 627 was a January 2013 email exchange between Emily Rabbitt (then the current travel aide) and Adam Zubowsky (former travel aide), explaining that Mr. McDonnell wanted vacation information about golf courses where he could "play for free, or at a reduced cost," and sought similarly-priced lodging. The United States attempted to introduce the email during the testimony of Emily Rabbitt, but the Court sustained Mr. McDonnell's objection and excluded it. Tr. 2868-69.[8]

Later, during his direct examination, Mr. McDonnell told the jury that the "most important gift" he received as governor was "having some time with his family." Tr. 4853. Implicit in this statement, and undergirding his entire direct testimony, was the notion that he accepted gifts from Mr. Williams and others simply to spend time with his family and that the luxuriousnessness of the gifts had no bearing. Government Exhibit 627 contradicts this assertion. On cross examination, the United States first asked Mr. McDonnell about the information contained in the email, without mentioning the email. *See* Tr. 5135-36. Mr. McDonnell denied everything in the exhibit. *See id.* The Government then introduced the exhibit and again inquired about the statements therein. Again, Mr. McDonnell's account contradicted the exhibit. The free golf vacation email was not Rule 404(b) evidence; it was offered to rebut Mr. McDonnell's assertion that he didn't seek gifts and he simply accepted gifts to spend time with his family. *See, e.g.*, 1 McCormick on Evidence § 45 (7th ed. 2013); *cf. United States v. Leavis*, 853 F.2d 215,

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[8] Mr. McDonnell mistakenly argues that Ms. Rabbitt did not testify when, in fact, she did on August 12, 2014. In addition, Mr. Zubowsky had been subpoenaed to testify and was equally available to all parties, but neither defendant chose to call him to testify in their defense.

220 (4th Cir. 1988) (affirming introduction of prior conviction "to contradict specific statements by Leavis on direct examination").

Moreover, the email did not contain inadmissible hearsay. Ms. Rabbitt was writing in her capacity as an agent or employee of Mr. McDonnell, and her statements were being used by the Government against Mr. McDonnell. *See* Fed. R. Evid. 801(d)(2)(D). Mr. Zubowsky was simply conveying information provided to him by Mr. McDonnell. *See* Fed. R. Evid. 801(d)(2)(A).

Finally, even if the email were improperly admitted, which it plainly was not, any error in the admission of one email that merely described Mr. McDonnell's desire to play golf at a reduced cost could hardly have had any bearing on the jury's verdict. The Court explicitly instructed the jury that the "defendants are not on trial for any act or conduct or offense not alleged in the indictment." Tr. at 6126. And "jurors are presumed to follow instructions from the court." *United States v. Alexander*, 2014 WL 2434593 *6 (E.D.Va. May 29, 2014).

V Conclusion

For all of these reasons, Mr. McDonnell's motion (Doc. No. 511) should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2014, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing ("NEF") to all counsel of record.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Robert F. McDonnell's Motion #40 ("Motion") (ECF No. 511). The Government filed an Opposition Memorandum ("Opp'n Mem.") (ECF No. 530) on October 14, 2014. McDonnell subsequently filed a reply on October 24, 2014 ("Reply Mem.") (ECF No. 541). The parties have not requested a hearing on this matter, and the Court finds that oral argument is unnecessary. E.D. Va. Loc. Crim. R. 47(J). For the reasons set forth below, the Motion is hereby DENIED.

I. BACKGROUND

Defendant Robert F. McDonnell ("McDonnell") served as the 71st Governor of the Commonwealth of Virginia from January 2010 to January 2014. His wife, Maureen G. McDonnell ("Mrs. McDonnell"), served as the First Lady of Virginia.

During his campaign for Governor, McDonnell met Jonnie Williams ("Williams"). Williams was the Chief Executive Officer of Star Scientific, Inc. ("Star Scientific"). Beginning in or about 2007, Star Scientific focused on utilizing certain alkaloids in the tobacco plant, namely anatabine, to address issues related to the desire to smoke. The company engaged in the development, manufacture, and marketing of two anatabine-based dietary supplements: CigRx and Anatabloc. To gain customer and physician approval of its products, Star Scientific sought scientific studies of anatabine.

On January 21, 2014, McDonnell, along with his wife, was charged in a 14-count indictment, with Counts 1-11 alleging that he committed and conspired to commit honest-services wire fraud and extortion under color of official right. Specifically, the indictment alleged that "the defendants participated in a scheme to use ROBERT MCDONNELL's official position as the Governor of Virginia to enrich the defendants and their family members by soliciting and obtaining payments, loans, gifts, and other things of value from [Williams] in exchange for ROBERT MCDONNELL performing official actions on an as-needed basis, as opportunities arose, to legitimize, promote, and obtain research studies for Star Scientific's products, including Anatabloc." Indictment ¶ 22. On September 4, 2014, a jury convicted McDonnell on Counts 1-11.

On September 18, 2014, McDonnell filed the instant Motion, asking the Court to vacate the jury's "flawed" verdict and grant a new trial based on the following four reasons: (1) the Court's jury instructions were legally erroneous because they (i) allowed the jury to convict McDonnell on an erroneous understanding of "official act," and (ii) allowed a conviction on the theory that McDonnell accepted things of value that were given for future unspecified action; (2) McDonnell was deprived of his right to an impartial jury due to an inadequate inquiry into each prospective juror's exposure to the "near constant, overwhelmingly prejudicial publicity" before the trial; (3) the Court's failure to voir dire the jurors based on evidence of juror misconduct; and (4) the Court erroneously admitted highly prejudicial Rule 404(b) evidence that McDonnell received things of value from William Goodwin and that McDonnell's staff organized free golf for him.

II. LEGAL STANDARD

Under Federal Rule of Criminal Procedure 33, "the [district] court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P 33(a). A motion for a new trial brought on the basis of any ground besides newly discovered evidence "must be filed within 14 days after the verdict or finding of guilty." Fed. R. Crim. P 33(b)(1)–(2).

Whether to award a new trial is within the district court's broad discretion. *See United States v. Smith*, 451 F.3d 209, 216–17 (4th Cir. 2006). The discretion to award a new trial, however, should be used sparingly, and "only when the evidence weighs heavily against the verdict." *United States v. Perry*, 335 F.3d 316, 320 (4th Cir. 2003) (citations and internal quotation marks omitted).

III. DISCUSSION

A. *Claim 1: The Court's Jury Instructions Were Legally Erroneous*

Based on *United States v. Jennings*, 160 F.3d 1006 (4th Cir. 1998), McDonnell harps on the argument that "vague expectations of some future benefit" are not "sufficient to make a payment a bribe." He claims that upholding his conviction based on the Government's overbroad interpretation of "official act" would set a precedent of criminalizing routine political courtesies. McDonnell's contentions, however, miss the mark.

(1) Erroneous Understanding of "Official Act"

McDonnell first argues that the Court's jury instructions turned established legal principles "on their head" by allowing the jury to convict McDonnell on an erroneous understanding of "official act."

The Hobbs Act, 18 U.S.C. § 1951, criminalizes extortion, or the obtaining of property from another, with the official's consent, under color of official right. 18 U.S.C. § 1951(b)(2). At common law a public official committed extortion when he took "by color of his office" money that was not due to him for the performance of his official duties. *Evans v. United States*, 504 U.S. 255, 260 (1992). The portion of the present-day Hobbs Act that refers to official misconduct continues to mirror this common-law definition. *Id.* at 264. Thus, to prosecute a violation of the Hobbs Act, "the Government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for *official acts*." *Id.* at

268 (emphasis added).

Similarly,"[t]he intangible right of honest services refers to the public's right to a government official's honest, faithful, and disinterested services." *United States v. Harvey*, 532 F.3d 326, 333 (4th Cir. 2008) (quoting *United States v. Mandel*, 591 F.2d 1347, 1362 (4th Cir. 1979)) (internal quotation marks omitted). As such, acceptance of a bribe, or the exchange of a thing or things of value for *official action* by a public official[1], constitutes a violation of this public right. *Id.*

This case hinges on the interpretation of an "official act" and whether McDonnell's actions constitute such. At its most basic definition, an "'official act' means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit." 18 U.S.C. § 201(a)(3). More specifically, official action is conduct that is taken "as part of a public official's position"—whether pursuant to an explicit duty or as a matter of "clearly established settled practice." *United States v. Jefferson*, 674 F.3d 332, 353 (4th Cir. 2012). Obviously, however, McDonnell challenges the finer aspects of this elementary definition.

Clearly the bribery statute does not encompass every action taken in one's official capacity, *see id.* at 356, or else absurd outcomes would assuredly result. But, on the other hand, "[e]very action that is within the range of official duty comes within the purview of [this statute]." *United States v. Birdsall*, 233 U.S. 223 (1914). Thus, to distinguish between the apparent fine line of routine official duties and public corruption, the Court must look to whether a quid pro quo agreement existed.

A quid pro quo agreement evinces a sort of "I'll scratch your back if you scratch mine" arrangement. *Jennings*, 160 F.3d at 1014. In other words, "[b]ribery requires the intent to effect an exchange of money (or gifts) for specific action (or inaction), but each payment need not be correlated with a specific official act." *Id.* "The quid pro quo requirement is satisfied so long as the evidence shows a course of conduct of favors and gifts flowing to a public official *in exchange for* a pattern of official actions favorable to the donor.' Thus, all that must be shown is that payments were made with the intent of securing a specific *type* of official action or favor in return." *Id.* (citation and internal quotation marks omitted).

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[1] Tr. Vol. XXVI 6100:9–11.

Admittedly, mere "[i]ngratiation and access" may not alone create a quid pro quo agreement within the meaning of the bribery statutes. *See Citizens United*, 558 U.S. 310, 360 (2010). As Judge Merritt recently observed,

> Subjective intent is the keystone of bribery. The influence of money in politics is growing by leaps and bounds, and the subjective intent of the public official receiving the money is perhaps the last and only distinguishable feature between criminal "*quid pro quo* bribery" and permissible "ingratiation." The exchange of money for a vote is a crime that threatens the foundation of democracy. *Buckley v. Valeo*, 424 U.S. 1, 26–27, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). The exchange of money for "ingratiation and access is not corruption" at all; indeed, the exchange is so essential to the foundation of democracy that it is protected by the First Amendment. *McCutcheon v. FEC*, —U.S. —, 134 S.Ct. 1434, 1441,188 L.Ed.2d 478 (2014) (internal edits omitted). We are left to distinguish the two as best we can by looking into the subjective intent of the public official. And by we, I mean the jury.

United States v. Dimora, 750 F.3d 619, 632 (6th Cir. 2014) (Merritt, J., dissenting). Thus, to distinguish between mere access and federal corruption, the Court should look to McDonnell's subjective intent in receiving the money.

The Government provided substantial evidence for the jury to conclude that McDonnell knew what Williams was seeking, specifically, research studies for Star Scientific's Anatabloc product. Through Williams' direct examination, the Government elicited testimony that in October of 2010, McDonnell flew back from California to Virginia on Williams' private jet. Tr. Vol. III 658:18–20. On that flight Williams explained to McDonnell that he "needed testing and [he] wanted to have this done in Virginia." *Id.* at 660:7–8. Williams testified that he asked McDonnell if McDonnell "[w]ould connect [him] with the person in Virginia in [McDonnell's] administration so that [he could] move this forward." *Id.* at 660:9–11. Moreover, and most tellingly, in June 2011, Williams sent a letter to McDonnell that specifically described the context within which Williams sought official action from McDonnell. Tr. Vol. IV 701–705; Gov't Ex. 162. And McDonnell admitted on cross-examination that he received the letter, Tr. Vol. XXI 5036:10, and at least read the portion of the letter suggesting that McDonnell initiate a "Virginia study" of Anatabloc at UVA and the Medical College of Virginia ("MCV"), *id.* at 5037:3–11. Thus, based on the evidence presented, the jury could have properly determined that in accepting Williams' gifts and loans, McDonnell understood the implicit quid pro quo.

The next logical question the Court must now address is whether the Government provided sufficient evidence of the "quo," that is the "official action," in this case. McDonnell argues that the Government invited the jury to find that he had performed official acts merely by acting in his official capacity, so long as there was some connection to "Virginia business development." (Mem. in Supp. of Mot. at 4.) But contrary to McDonnell's argument, the Government did not rely on vague, broadly defined actions or matters. The Government instead pointed to five specific actions taken by McDonnell "to legitimize, promote, and obtain research studies for Star Scientific products."

One such example is the meeting between McDonnell, Lisa Hicks-Thomas ("Hicks-Thomas"), McDonnell's Secretary of Administration, and Sarah Wilson ("Wilson"), the Virginia Department of Human Resource Management Director. In that meeting, McDonnell pulled out a bottle of Anatabloc and said that he had been taking the pills and "they were working well for him, and [] he thought it would be good for [] state employees." Tr. Vol. XI 2676:15-19. Hicks-Thomas testified that *McDonnell then asked if she and Wilson would "meet with the people." Id.* at 2676:19–20 (emphasis added). After the meeting, both women then went down to Hicks-Thomas' office and looked up Anatabloc on the computer. *Id.* at 2677:1–5. Or, for another example, the email to Jason Eige ("Eige"), the Governor's counsel and policy advisor, in which McDonnell said, "Please see me about Anatabloc issues at VCU and UVA." Tr. Vol. VII 1666:9–10. Eige subsequently responded, "Will do. We need to be careful with this issue." *Id.* at 1666:12.

In each example, McDonnell attempted to use his gubernatorial position to influence governmental decisions, specifically attempting to obtain research studies for Star Scientific. McDonnell clearly had influential power over Hicks-Thomas, for example, as she testified that she reported to the Governor and he had the power to fire her. Tr. Vol. XI 2673:14–15, 19–20; *see United States v. Carson*, 464 F.2d 424, 433 (2d Cir. 1972) ("There is no doubt that federal bribery statutes have been construed to cover any situation in which the advice or recommendation of a Government employee would be influential ").

These actions were within the range of actions on questions, matters, or causes pending before McDonnell as Governor as multiple witnesses testified that Virginia business and economic development was a top priority in McDonnell's administration. Tr. Vol. IX 2037:17–23; 2234:22–25. His campaign slogan was "Bob's for Jobs." *Id.* at 2232:17–19. And several former McDonnell staffers testified about the various ways that McDonnell would customarily take action on questions, matters and causes of Virginia business and economic development, including hosting events and having meetings. *See id.* at 2235:14–16; Tr. Vol. XI 2545:14–16.

The alleged exchange in this case was not simply receiving things of value in return for official action in the abstract; McDonnell fails to account for the permissible inferences the jury may have drawn with regards to the timing of Williams' gifts and McDonnell's official actions. Moreover, the Court's instructions explicitly required the jury to find a quid pro quo agreement. Tr. XXVI 6100:9–13 ("Bribery involves the exchange of a thing or things of value for official action by a public official. In other words, a quid pro quo. You've heard that phrase, the Latin phrase, meaning 'this for that' or 'these for those.'") The Court specified that the indictment alleged that the McDonnells accepted things of value from Williams "in exchange for Robert McDonnell and the Office of the Governor of Virginia performing official actions on an as-needed basis as opportunities arose to legitimize, promote, and obtain research studies for Star Scientific products." *Id.* at 6089:18–22. These instructions cemented the view that an "official act" is not simply any action related to a broadly defined matter that was taken in McDonnell's official capacity–rather, it was an action taken specifically with respect to Star Scientific.

McDonnell attempts to analogize his case with *United States v. Sun-Diamond Growers of Calif.*, 526 U.S. 398 (1999). In that case, the Supreme Court discussed the illegal gratuity statute, 18 U.S.C. § 201, and differentiated between an illegal gratuity and a bribe, with the latter requiring proof of a quid pro quo. In its opinion, the Supreme Court noted that to give effect to the statute's language "some particular official act [must] be identified and proved." *Id.* at 406. If an alternative reading was allowed, the Supreme Court noted that actions such as a high school principal's gift of a school baseball cap to the Secretary of Education on the occasion of the latter's visit to the school, or a group of farmers' complimentary lunch for the Secretary of Agriculture in conjunction with his speech to the farmers would be criminalized. *Id.* at 407. The Court admitted that while these actions are assuredly "official acts" in some sense, they are not "official acts" within the meaning of the statute. *Id.* The Supreme Court refused to read the illegal gratuity statute as a "prohibition of gifts by reason of the donee's office." *Id.* at 408. The Court ultimately held that the Government needed to "prove a link between a thing of value conferred upon a public official and a specific 'official act' for or because of which it was given." *Id.* at 414.

As an initial matter, the Supreme Court in *Sun-Diamond* did not rule on what constitutes an official act; the Court instead "simply embraced a narrow reading of the illegal gratuity statute." *Jefferson*, 674 F.3d at 355. However, that being said, here the evidence presented by the Government did not simply show that Williams gave gifts and loans to McDonnell by reason of McDonnell's gubernatorial position. Rather, the jury permissibly reasoned that Williams' gifts were tied to the five identified "official acts" and thus fulfilled the requisite quid pro quo agreement.

McDonnell next challenges two specific lines of the Court's jury instructions, but as explained below, both of McDonnell's arguments are equally unavailing.

(i) *Settled Practice Instruction*

In its instructions to the jury, this Court first defined the definition of "official act" as spelled out under 18 U.S.C. § 201(a)(3). The Court then continued:

> Official action as I just defined it includes those actions that have been clearly established by settled practice as part of a public official's position, even if the action was not taken pursuant to responsibilities explicitly assigned by law. In other words, official actions may include acts that a public official customarily performs, even if those actions are not described in any law, rule, or job description.

Tr. Vol. XXVI at 6102:23–6103:5. McDonnell objects to this instruction, arguing that although an official act may include actions established by settled practice, "the bare fact that an action is a settled practice does not make it an official act." (Mem. in Supp. of Mot. at 6.) McDonnell contends that this "unwieldy language" would inevitably lead the jury to erroneously conclude that an official act is any settled practice of an official.

However, McDonnell fails to align his argument with controlling Fourth Circuit precedent. In *Jefferson*, the district court had delivered a nearly identical instruction. 674 F.3d 332. In explaining § 201(a)(3)'s statutory definition of an "official act," the Court charged the jury that "[a]n act may be official even if it was not taken pursuant to responsibilities explicitly assigned by law. Rather, official acts include those activities that have been clearly established by settled practice as part [of] a public official's position." *Id.* at 353. Jefferson appealed his conviction, arguing, *inter alia*, that the district court's "official act" bribery instruction was fatally erroneous. *Id.* The Fourth Circuit rejected Jefferson's challenge to the district court's instructions. The Court refused to exclude from the bribery statute's definition of an official act settled practices by a public official. *Id.* at 356.

In comparing this Court's instruction with that presented in *Jefferson*, the given instruction was appropriate. McDonnell argues, without citation, that the instruction elides the critical distinction between settled practices that are official acts and those that are not. However, McDonnell fails to consider the entirety of the instruction given. *See United States v.*

Rahman, 83 F.3d 89, 92 (4th Cir. 1996). The jury was not authorized to ignore the directive that an "official action" must still pertain to a pending question, matter or cause that was before McDonnell. "In other words, the jury could not rely exclusively on [McDonnell's] settled practices." *Jefferson*, 674 F.3d at 357. Viewed in this context, this Court, like the Fourth Circuit in *Jefferson*, holds that "the 'settled practice' instruction did not impermissibly expand the term 'official act.'" *Id.* at 358.

(ii) *Series of Steps Instruction*

The Court's charge to the jury also included the following instruction: "[O]fficial action can include actions taken in furtherance of longer-term goals, and an official action is no less official because it is one in a series of steps to exercise influence or achieve an end." Tr. Vol. XXVI 6103:10–14. McDonnell argues that this charge "bears no relation to the actual definition of 'official act.'" (Mem. in Supp. of Mot. at 7). However, again, McDonnell's argument is unsupported by Fourth Circuit precedent.

In *Jefferson*, the district court instructed the jury that "the quid pro quo requirement is satisfied if you find that the government has established beyond a reasonable doubt that the defendant agreed to accept things of value in exchange for performing official acts on an as-needed basis ...." 674 F.3d at 358. The Court highlighted the fact that it is unnecessary "to link every dollar paid to one of the Jefferson family companies to a specific meeting, letter, trip, or other action by Jefferson to fulfill his end of a corrupt bargain." *Id.* at 359. Rather, it is enough that the "payor intended for each payment to induce the official to adopt a specific *course of action*." *Id.* (quoting *United States v. Quinn*, 359 F.3d 666, 673 (4th Cir. 2004)) (internal quotations omitted) (emphasis added). In other words, so long as the government's "evidence shows a course of conduct of favors and gifts flowing to a public official *in exchange for* a pattern of official actions favorable to the donor," then the quid pro quo requirement is satisfied. *Id.* Here, the Court's instruction merely rephrased *Jefferson*'s teachings that bribery can be accomplished through an ongoing course of conduct. *Id.* (quoting *United States v. Ganim*, 510

F.3d 134, 149 (2d Cir. 2007)).

(2) Promise of Unspecified Future Action

The Court additionally included an instruction that read:

> Bribery also includes a public official's solicitation or agreement to accept a thing of value in exchange for official action whether or not the payor actually provides the thing of value and whether or not the public official ultimately performs the requested official action or intends to do so. Thus, it is not necessary that the scheme actually succeeded or that any official action was taken by the public official in the course of the scheme. What the government must prove is that the defendant you are considering knowingly devised and participated in a scheme or artifice to defraud the public and the government of their right to a public official's honest services through bribery.

Tr. Vol. XXVI 6100:18–6101:5. McDonnell challenges this instruction as well, arguing that the Court's instructions improperly invited the jury to convict him based on a promise of unspecified future action. He argues that if a corrupt agreement is all that the Government must prove, the jury must also be instructed that, to find such an agreement, it must find that the things of value were given in exchange for some specific official act or course of conduct. In other words, he contends that "the instructions failed to explain that quid pro quo corruption involves the 'intent to induce a *specific* act.'" (Mem. in Supp. of Mot. at 9.)

McDonnell's argument with respect to this issue revolves around the Fourth Circuit's opinion in *Jennings*. In that case, the Fourth Circuit held that the district court's instruction on the "corrupt intent" element of bribery left out the requirement of intent to engage in a quid pro quo. *Jennings*, 160 F.3d at 1020. "The definition fail[ed] to explain that 'corrupt intent' is the intent to induce a specific act." *Id.* at 1021. In other words, none of the court's instructions "stated that Jennings [the bribe-payor] must have given money to Morris [the bribe-payee] in exchange for some specific official act or course of action . . . ." *Id.* at 1022. Rather, the district court only "charged that it was sufficient if Jennings paid Morris to influence him (Morris) 'in connection with' or 'in reference to' [government business]." *Id.* This instruction, the Fourth Circuit held, could have described a situation that only involved a "vague expectation of some future benefit." *Id.*

First, to address a subsidiary argument, the Supreme Court has stated that "fulfillment of the *quid pro quo* is not an element of [bribery]." *Evans*, 504 U.S. at 268. Rather, "the offense is completed at the time when the public official receives a payment in return for his *agreement* to perform specific official acts." *Id.* (emphasis added). Furthermore, this agreement need not be express but instead may be established by circumstantial evidence. *Jennings*, 160 F.3d at 1014.

Secondly, and most importantly, quite unlike the jury instruction given in *Jennings* that "left out the quid pro quo requirement," *id.* at 1021, this Court explicitly stated that bribery requires a quid pro quo, meaning "this for that" or "these for these." Tr. Vol. XXVI 6100:11–13. The given instructions were not "too general," *Jennings*, 160 F.3d at 1022, because they explained that an item of value must be given in exchange for official action. Specifically, that official action was intended to "legitimize, promote, and obtain research studies for Star Scientific's products." Tr. Vol. XXVI at 6089:21–22. Taken as a whole, *see Rahman*, 83 F.3d at 92, the Court's instructions did not advise the jury to convict McDonnell on a promise of unspecified future action. *See Jennings*, 160 F.3d at 1022 ("If any of the court's four explanations of 'corrupt intent' required the jury to find a relatively specific quid pro quo, the jury instruction would have been saved.").

(2) Claim 2: Court's Voir Dire on Pretrial Publicity was Inadequate

McDonnell argues that the voir dire process failed to provide reasonable assurances that bias would be discovered. He contends that the Court's failure to conduct an independent inquiry of each prospective juror to determine what affect the "avalanche" of prejudicial pretrial publicity had on the juror's impartiality necessitates the grant of a new trial. However, in the province of voir dire, the district court holds the reigns.

Jury voir dire is an essential element in guaranteeing a criminal defendant's Sixth Amendment right to an impartial jury. *United States v. Lancaster*, 96 F.3d 734, 738 (4th Cir. 1996). Federal Rule of Criminal Procedure 24 provides the basic procedure for empaneling a jury in a federal criminal trial:

> (1) In General. The court may examine prospective jurors or may permit the attorneys for the parties to do so.
> (2) Court Examination. If the court examines the jurors, it must permit the attorneys for the parties to:
> (A) ask further questions that the court considers proper; or
> (B) submit further questions that the court may ask if it considers them proper.

Fed. R. Crim. P 24(a).

Beyond this rule, the voir dire process is essentially committed to the sound discretion of the district court "because the determination of impartiality, in which demeanor plays such an important part, is particularly within the province of the trial judge." *Lancaster*, 96 F.3d at 738 (citations and internal quotation marks omitted); *see also Skilling v. United States*, 561 U.S. 358, 386 (2010) ("When pretrial publicity is at issue, primary reliance on the judgment of the trial court makes [especially] good sense "). The Supreme Court has refrained from dictating the subject matter of voir dire questions in all but the most limited circumstances, including capital cases and cases in which racial issues are inextricably bound up with the conduct of the trial. *Lancaster*, 96 F.3d at 739; *see also Skilling*, 561 U.S. at 386 ("No hard-and-fast formula dictates the necessary depth or breadth of *voir dire*."). However, one limitation restrains the district court's discretion–that being the voir dire process must "provide a reasonable assurance that prejudice would be discovered if present." *Lancaster*, 96 F.3d at 740 (citations and internal quotation marks omitted).

"In an era of rapid and widespread communications," the effect of pretrial publicity on a defendant's right to an impartial jury is a question that will become increasingly prominent. *See United States v. Bakker*, 925 F.2d 728, 734 (4th Cir. 1991). However, courts must be reluctant to instantly equate publicity with prejudice. As the Supreme Court noted, "Prominence does not necessarily produce prejudice, and juror *impartiality* does not require *ignorance*." *Skilling*, 561 U.S. at 381 (citing *Irvin v. Dowd*, 366 U.S. 717, 722 (1961)). Thus, we do not require jurors to enter the courtroom totally oblivious to the facts and issues involved in the case, "and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case." *Irvin*, 366 U.S. at 722. "To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard." *Id.* at 723. Rather, all that is required is that a juror can lay aside his initial impression or opinion and render a verdict based on the evidence presented in the courtroom. *Id.* Only in extreme circumstances will prejudice be presumed from the existence of pretrial publicity itself. *Wells v. Murray*, 831 F.2d 468, 472 (4th Cir. 1987).

In order to empanel such an impartial jury, the court should undertake a careful voir dire. *Bakker*, 925 F.2d at 734. This inquiry "typically entails an evaluation of the pre-trial publicity complained of and its impact, if any, on the jury " *Wells*, 831 F.2d at 472 (citation and internal quotation marks omitted).

McDonnell contends that the Court's error lay in its failure in relying on the juror's own assertion of impartiality, rather than conducting a probing inquiry to permit the court to reach its own conclusion. But McDonnell fails to credit the procedures employed by the Court to protect McDonnell's Sixth Amendment right.

First, the Court issued a 99-item questionnaire to 650 prospective jurors that "helped to identify prospective jurors excusable for cause and served as a springboard for further questions put to the remaining members of the array." *Skilling*, 561 U.S. at 388. Second, during in-court voir dire the Court acknowledged the publicity generated by the case and posed two questions to the panel: (1) "[I]f you have read, heard or seen something in the media, I want you to stand up for me;" and (2) "Based on what you have heard or read or seen relating to this case, if you are, in your mind, able to put aside whatever it is that you've heard, listen to the evidence in this case and be fair to both sides, then I want you to sit down." Tr. Vol. I 140:24–25; 141:5–9. After the entire panel answered in the affirmative to both questions, the Court summoned counsel to the bench. The Court stated it was satisfied with the panel's answers. *Id.* at 141:14. However, McDonnell's counsel noted his concerns about the credibility of the jurors and requested further inquiry. *Id.* at 141:21–23. The Court subsequently brought to the bench each juror that McDonnell's counsel identified as cause for concern and questioned each about his or her opinion of the case and ability to remain impartial. *See id.* at 145:2–155:12. At the end of this questioning the Court asked McDonnell's counsel if there is "anybody else" he would like to question, and McDonnell's counsel responded "not on publicity." *Id.* at 155:18–19. Thus, the record demonstrates that after its collective questioning, the Court allowed McDonnell to follow-up with individual jurors whom he believed provided less than satisfactory answers. *See Bakker*, 925 F.2d at 734. Therefore, based on the adequacy of the procedures employed, and the Court's overall discretion in managing voir dire, McDonnell's instant claim is unfounded.

(3) *Claim 3: Court's Failure to Voir Dire the Jurors Based on Evidence of Juror Misconduct*

McDonnell's third claim focuses on the juror, Louis DeNitto ("DeNitto"), who was stricken from the jury on August 12, 2014 on the ground that he had violated the Court's order against discussing the case with anyone. DeNitto had contacted James Watson ("Watson"), an attorney who had previously represented DeNitto in civil matters. DeNitto reportedly told Watson that he was the foreman of the jury and the jurors were "all over the place." After the issue came to light, the Court held an in-chambers conference on August 12, 2014 where both DeNitto and Watson were questioned. When interviewed by the Court, DeNitto denied saying that he was the foreman. Chambers Conf. Tr., August 12, 2014, 13:14–15. With regards to his statement that the jury was "all over the place," DeNitto stated, "What I meant by that was we didn't know, I didn't know where the charges referred to in what we were, the lawyers and so forth were talking about in the trial [sic]." *Id.* at 13:25–14:3. DeNitto denied that he talked to any of the jurors about the case. *Id.* at 14:12–14. Rather, all DeNitto admitted was that "[d]ifferent comments are made when [the jury] walks back [into the jury room], like 'Wow, glad that's over with,' or that sort of thing " *Id.* at 14:15–16. McDonnell then requested that (1) the entire panel be interviewed *in camera* given the evidence that they have been actively discussing the case, contrary to the Court's order that "[u]ntil you retire to the jury room at the end of the case to deliberate on your verdict, you simply are not to talk about this case," Tr. Vol. II, at 193:2–4; (2) the Court declare a mistrial in light of the same; and (3) the first alternate juror be struck in view of the fact that he had been sleeping through much of the trial, including the cross-examination of Williams. However, the Court denied each of McDonnell's requests.

McDonnell now contends that based on the Court's interviews of Watson and DeNitto, credible evidence existed that the jury had begun deliberating prematurely. He argues that the Court's failure to voir dire the remaining jurors despite this evidence constitutes grounds for a new trial. However, again, the Court possesses generous discretion in handling a claim of juror misconduct.

It is a well-established principal of trial administration that jurors must not engage in discussions of a case prior to the time they retire and begin formal deliberations. *United States v. Resko*, 3 F.3d 684, 688 (3d Cir. 1993). Accordingly, trial judges routinely admonish juries at the outset of trial not to discuss the case with anyone before the conclusion of trial. *Id.* at 689. In the present case, the Court gave such an instruction: "First, I instruct you that during the trial, you are not to discuss the case with anyone or permit anyone to discuss it with you. Until you retire to the jury room at the end of the case to deliberate on your verdict, you simply are not to talk about this case." Tr. Vol. II 192:25–193:4. However, it is unrealistic to believe that jurors will never comment to each other on any matter related to a trial, especially in a trial spanning a total of more than five weeks. Thus, the Court must address the issue when, such as here, jurors allegedly fail to follow the Court's explicit order.

Courts have distinguished between external jury influences and "intra-jury" communications. *Wolfe v. Johnson*, 565 F.3d 140, 161 (4th Cir. 2009). External influences, such as the media and pre-trial publicity, pose a far more serious threat to the defendant's Sixth Amendment right to an impartial jury "because the extraneous information completely evades the safeguards of the judicial process." *Resko*, 3 F.3d at 690. In contrast, when there are intra-jury communications, such as premature jury deliberations, "the proper *process* for jury decisionmaking has been violated, but there is no reason to doubt that the jury based its ultimate decision only on evidence formally presented at trial." *Id.* Thus, "[a]lthough external jury influences necessitate a thorough judicial inquiry, no such obligation is imposed with regard to an internal jury influence." *Wolfe*, 565 at 161.

Ultimately, like the voir dire process described above, the Court is given ample discretion in dealing with situations of jury misconduct. *Resko*, 3 F.3d at 690; *see also United States v. Diaz*, 597 F.3d 56, 62 (1st Cir. 2010) (citations omitted) ("Indeed, we have held that the court's discretion is 'at its broadest' when it responds to an allegation of premature jury deliberations."). The trial court is in a superior position to observe the jury's demeanor and the impact of any alleged premature deliberations. *Resko*, 3 F.3d at 690. Obviously, however, the Court must exercise caution and careful consideration when allegations of jury misconduct are brought to the Court's attention. *See United States v. Gianakos*, 415 F.3d 912, 921 (8th Cir. 2005).

The First Circuit has developed a multi-step framework for assessing juror misconduct, including premature deliberations: (1) ascertain whether the allegation is colorable; (2) if it is, investigate the extent of any prejudice caused and consider prophylactic measures to alleviate that prejudice; and (3) if no curative measures are adequate, the court may grant a mistrial. *Diaz*, 597 F.3d at 62–63. Following the First Circuit's structure, our analysis need not go any further than the first step.

Based on the Court's face-to-face examination of both DeNitto and Watson, the Court was entitled to exercise its discretion and assess the situation presented. DeNitto's alleged statement that the jurors were "all over the place" did not provide sufficient indicia of premature deliberations. "Conversations between jurors concerning the case they are hearing do not always amount to premature deliberations." *Id.* at 63; *see also United States v. Peterson*, 385 F.3d 127, 135 (2d Cir. 2004) ("Not every comment a juror may make to another juror about the case is a discussion about a defendant's guilt or innocence that comes within a common sense definition of deliberation."). The Court, however, still struck DeNitto for violating the Court's Order. After dismissing him, the Court again admonished the entire jury not to talk about the case, not "between yourselves as well as outsiders." Tr. Vol. XII 3076:18–25. There was no further evidence that the remaining jurors failed to abide by the Court's admonition.

McDonnell relies on the Third Circuit's rationale in *Resko* to support his argument regarding his third claim. In *Resko*, on the seventh day of a nine-day trial, a juror approached a court officer and told him that the members of the jury had been discussing the case during their recesses and while waiting in the jury room, in disregard of the court's admonition. 3 F.3d at 687. The court responded by distributing a two-part questionnaire, which asked: (1) whether the jurors had discussed the case with other jurors, and (2) if so, whether those discussions had led them to form an opinion as the guilt or innocence of the defendants. *Id.* at 688. Each of the twelve jurors answered "yes" to the first question and "no" to the latter. *Id.* Based on this questionnaire, the district court denied defendants' requests for individualized voir dire and denied their motions for a mistrial. *Id.* The Third Circuit ultimately held that the district court erred by refusing to conduct a "more searching inquiry into the potential prejudice." *Id.* at 686.

While McDonnell correctly alleges all of the above-stated facts from *Resko*, McDonnell fails to ascertain the relevant argument that distinguishes that case from the present one. In *Resko*, the Third Circuit concentrated on the "dearth of information" provided by the questionnaires and the consequent inability of the district court to assess the nature and extent of the jurors' premature discussions. *See id.* at 690–91. In other words, "the questionnaire raised more questions than it answered." *Id.* at 690. "[T]he very crux of the problem [] is that neither we [the Third Circuit] nor the district court know anything about the nature of the jurors' discussions." *Id.* at 691.

Unlike the situation in *Resko*, in the present case the Court "had enough information [based on the interviews of both Watson and DeNitto] to make a reasoned determination that [McDonnell] would suffer no prejudice due to the jury misconduct." *Id. Resko* explicitly admits that in situations where the jury engaged in premature deliberations and the court refused counsel's request for individualized voir dire, but the court had knowledge of the substance of the premature communications, other federal courts of appeals have upheld criminal convictions. *Id.* at 693. This is the exact situation in the present case. Therefore, McDonnell's argument must be rejected.

(4)Claim 4: The Court Erroneously Admitted Prejudicial Rule 404(b) Evidence

Finally, McDonnell argues that the Government was allowed to impugn his character in violation of Rule 404(b) on at least two significant occasions, thereby causing substantial prejudice to the defense. However, this final argument suffers the same fate as the rest.

Although "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith," such evidence "may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. " Fed. R. Evid. 404(b). "Because the rule recognizes the admissibility of prior crimes, wrongs, or acts, with only the one stated exception, it is understood to be a rule of inclusion " *United States v. Queen*, 132 F.3d 991, 994 (4th Cir. 1997) (citations omitted).

The principal danger Rule 404(b) seeks to avoid is the fear that defendants will be convicted simply for possessing bad character. *Id.* at 995. However, the Rule "also recognizes that '[e]xtrinsic acts evidence may be critical to the establishment of the truth as to a disputed issue, especially when that issue involves the actor's state of mind and the only means of ascertaining that mental state is by drawing inferences from conduct.'" *Id.* at 996 (quoting *Huddleston v. United States*, 485 U.S. 681, 685 (1988)).

In *Queen*, the Fourth Circuit spelled out specific findings the Court should make in order to determine that evidence should be admitted under 404(b):

> (1) The evidence must be relevant to an issue, such as an element of an offense, and must not be offered to establish the general character of the defendant. In

> this regard, the more similar the prior act is (in terms of physical similarity or mental state) to the act being proved, the more relevant it becomes. (2) The act must be necessary in the sense that it is probative of an essential claim or an element of the offense.[2] (3) The evidence must be reliable. And (4) the evidence's probative value must not be substantially outweighed by confusion or unfair prejudice in the sense that it tends to subordinate reason to emotion in the factfinding process.[3]

132 F.3d at 997.

(1) Goodwin Evidence

First, McDonnell contends that the Court erroneously admitted evidence that he received things of value from William Goodwin ("Goodwin"). Specifically, the Government introduced evidence that McDonnell's draft 2012 Statement of Economic Interest ("SOEI") listed a Kiawah Island trip from Goodwin with a value of $23,312.55. *See* Tr. Vol. XXII 5295:9–5296:7. However, McDonnell subsequently crossed out the trip and wrote "personal," *Id.* at 5296:10–13, and thus McDonnell's final SOEI contained no reference to the Kiawah Island trip, *id.* at 5296:20–24. However, the SOEI still contained other gifts from Goodwin, including a Keswick Cabinet Retreat valued at $920. *Id.* at 5296:17–19. McDonnell argues that the Government never established that this evidence was relevant to an issue other than character. In essence, he argues, all the evidence did was to suggest that he had a propensity to accept expensive gifts from donors. (Mem. in Supp. of Mot. at 27.)

Under Virginia law, certain state officials, including the Governor, are required to annually file a standardized disclosure of their personal economic interests, commonly referred to as the SOEI. The SOEI requires a state official to disclose, *inter alia*, gifts or entertainment valued in excess of fifty dollars received by the state official from any business or individual other than a relative or *close personal friend*. The Government introduced the Goodwin evidence at trial in order to prove McDonnell's prior improper manipulation of this "personal friend" exception because although McDonnell testified that Goodwin was supposedly his personal friend, *id.* at 5051:21–22, the Government produced sufficient evidence for a reasonable jury to reject that testimony. *See id.* at 5051:23–5055:20.

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[2] The Court defines evidence as "necessary where, considered in the light of other evidence available to the government, it is an essential part of the crimes on trial, or where it furnishes part of the context of the crime." *Queen*, 132 F.3d at 998 (internal citations and quotation marks omitted).

[3] The court also points to "(1) a limiting jury instruction, when requested by a party, explaining the purpose for admitting evidence of prior acts, and (2) the requirement in a criminal case of advance notice, when so requested, of the intent to introduce prior act evidence" as protections against potential "pit falls" under this Rule. *Queen*, 132 F.3d at 997.

Contrary to McDonnell's argument that this evidence did no more than suggest to the jury that McDonnell had a propensity to accept expensive gifts from donors, the Goodwin evidence was clearly relevant to issues other than McDonnell's general character. First, the evidence showed McDonnell's knowledge of the SOEI and the existence of the "personal friend" exception. Second, McDonnell testified that, like Goodwin, he viewed Williams as a personal friend in 2012, *see* Tr. Vol. XXI 5109:9–14, but despite this opinion of their relationship, he still chose to disclose gifts from Williams on his 2012 SOEI. Thus, this evidence indicated an absence of mistake or accident in omitting the gifts and loans from Williams and thus was relevant to McDonnell's intent to defraud.

Applying the factors defined in *Queen*, evidence of McDonnell's knowledge and of the absence of mistake is relevant to, and probative of, his alleged intent to defraud—an element of the charged crimes; the prior act alleged is similar to the act the Government sought to prove—omission of gifts from Williams pursuant to the personal friend exception; and there is nothing in the record to suggest that the evidence was unreliable or unfairly prejudicial to McDonnell. *See Queen*, 132 F.3d at 997. Therefore, the Goodwin evidence was properly admitted.

(2) Zubowsky Email

Secondly, McDonnell argues that the Court erroneously admitted evidence indicating that his staff organized free golf for him. This piece of evidence revolved around a January 2013 email exchange between Emily Rabbit ("Rabbit"), McDonnell's scheduler at the time, and Adam Zubowsky ("Zubowsky"). Gov't Ex. 627. Rabbit asked Zubowsky whether he had any background in planning a golf trip for the Governor and his sons. Tr. Vol. XXI 5137:23–5138:3. Zubowsky responded that Rabbit should find a golf course that will host McDonnell and his family for free.

Id. at 5138:14–16. Zubowsky then directed Rabbit to put all the information in a briefing book for McDonnell's review. *Id.* at 5138:21–5139:1.

McDonnell now objects to the introduction of this email, arguing that it is both inadmissible hearsay and Rule 404(b) evidence. As an initial matter, when the Government first attempted to introduce this email through its direct examination of Rabbit, McDonnell's counsel objected on the basis that the evidence is not relevant and "extraordinarily prejudicial." Tr. Vol. XII 2869:1–2. When the Government subsequently attempted to introduce the email during the cross-examination of McDonnell, his counsel again objected solely based on relevancy. Tr. Vol. XXI 5137:7–9. Thus, during trial McDonnell's counsel never objected based on hearsay or Rule 404(b). Based on Federal Rule of Evidence 103, a party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and if the party both timely objected at trial and *stated the specific grounds for the objection*. Fed. R. Evid. 103(a)(1). Because McDonnell's counsel objected solely on the basis of relevance, this Court properly admitted the email at trial. Despite McDonnell's apparent mistake, the Court may still consider McDonnell's present objections if the introduction of this email constituted plain error, meaning it affected McDonnell's substantial rights. Fed. R. Crim. P. 52(b); Fed. R. Evid. 103(e).

To proceed with the merits, McDonnell first argues that this email was inadmissible hearsay, and should have been excluded as such. Hearsay is an out-of-court statement that is offered in court to prove the truth of the matter asserted, Fed. R. Evid. 801(c), and is inadmissible at trial unless an exception applies, Fed. R. Evid. 802. A statement that is offered against an opposing party and was made by either the party in his individual capacity or representative capacity, or made by the party's agent or employee on a matter within the scope of that relationship and while it existed, is deemed non-hearsay. Fed. R. Evid. 801(d)(2)(A), (D).

First, the portion of the email from Rabbit is not hearsay. *See* Fed. R. Evid. 801(d)(2)(D). Rabbit was McDonnell's scheduler at the time and thus an employee. The statement she made in the email was within the scope of her employment relationship, as McDonnell requested that they meet to discuss golf trips in Myrtle Beach or Florida. The statement was then offered against McDonnell at trial.

Second, with respect to Zubowsky's statements in the email, McDonnell's counsel is correct that the email is hearsay that does not fall within any exception. Zubowsky was no longer employed by McDonnell at the time he sent the email and he does not purport to relate any statement made by McDonnell. However, the admission of this evidence was harmless error as it did not affect any substantial right of McDonnell and thus McDonnell's argument must be disregarded. *See* Fed. R. Crim. P 52(a). "Where non-constitutional error is involved, the proper test of harmlessness is whether, on appellate review, this Court can say 'with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by error.'" *United States v. Hartgrove*, No. 90-5331, 919 F.2d 139, at *2 (4th Cir. Nov. 29, 1990) (quoting *United States v. Urbanik*, 801 F.2d 692, 698 (4th Cir. 1986)). Based on the considerable amount of evidence introduced over a five-week period during this trial, the Court can assuredly state that the jury's verdict was not swayed by one portion of one e-mail.

McDonnell next contends that this evidence also violated Rule 404(b) as the Government's only purpose in introducing it was to show McDonnell's character in an unflattering light–that he had a propensity to seek out free expensive gifts. On the other hand, the Government contends that this email "was not Rule 404(b) evidence; [rather] it was offered to rebut Mr. McDonnell's assertion that he didn't seek gifts and he simply accepted gifts to spend time with his family." (Opp'n Mem. at 29.) As support, the Government cites a section of "McCormick on Evidence," which describes impeachment by "specific contradiction." 1 McCormick on Evid. § 45 (7th ed. 2013).

"Impeachment by contradiction is a means of policing the defendant's obligation to speak the truth in response to proper questions." *United States v. Gilmore*, 553 F.3d 266, 271 (3d Cir. 2009) (internal quotation marks and citations omitted). Specifically, "this doctrine provides that when a witness puts certain facts at issue in his testimony, the government may seek to rebut those facts, including by resorting to extrinsic evidence if necessary." *United States v. Ramirez*, 609 F.3d 495, 499 (2d Cir. 2010). In sum, this form of impeachment is intended to prevent the defendant from invoking "the Federal Rules of Evidence in order to shield his perjury from contradiction." *Id.* Impeachment by contradiction is authorized by Federal Rule of Evidence 607 and its application is governed by Rule 403. *Gilmore*, 553 F.3d at 271; *see also United States v. Perez-Perez*, 72 F.3d 224, 227 (1st Cir. 1995) (finding that impeachment by contradiction is not governed by Rule 608(b), but by common-law principles). Most importantly, this form of impeachment is used to contradict a *specific fact* the defendant testified to on *direct*. *See Ramirez*, 609 F.3d at 499; *Gilmore*, 553 F.3d at 271; *United States v. Scott*, 693 F.3d 715, 722 (6th Cir. 2012).

The Government attempts to argue that the introduction of the Zubowsky email was intended to rebut McDonnell's testimony on *direct* that the "most important gift" he received as governor was "having some time with his family." Tr. Vol. XX 4853:22–25. However, it was not until *cross-examination* when the Government specifically questioned McDonnell regarding his solicitation of free golf outings. Thus, the Government cannot rest its argument of impeachment by contradiction on the general "notion" implicit in McDonnell's direct testimony.

If the Government's argument is rejected, then the Court must analyze the Zubowsky email pursuant to Rule 404(b). According to the factors defined in *Queen*, this evidence was relevant to McDonnell's motive for entering a corrupt agreement with Williams; the prior act alleged is similar to the act the Government sought to prove—acceptance of free gifts from Williams; and there is nothing in the record to suggest that the evidence was unreliable or unfairly prejudicial to McDonnell. *See Queen*, 132 F.3d at 997. Therefore, the Zubowsky email was also properly admitted.

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IV. CONCLUSION

For the foregoing reasons, McDonnell's Motion is DENIED.

Let the Clerk send a copy of this Memorandum Opinion to all counsel of record.

An appropriate Order will issue.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 1st day of December 2014.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

ORDER

THIS MATTER is before the Court on Defendant Robert F McDonnell's Motion #40–Motion for New Trial ("Motion") (ECF No. 511). For the reasons set forth in the accompanying Memorandum Opinion, the Motion is DENIED.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 1st day of December 2014.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Robert F. McDonnell's Motion #39–Renewed Motion for Judgment of Acquittal Pursuant to Rule 29 of the Federal Rules of Criminal Procedure ("Motion") (ECF No. 509). The Government filed an Opposition Memorandum ("Opp'n Mem.") (ECF No. 532) on October 14, 2014. McDonnell subsequently filed a reply on October 24, 2014 ("Reply Mem.") (ECF No. 540). The parties have not requested a hearing on this matter, and the Court finds that oral argument is unnecessary. E.D. Va. Loc. Crim. R. 47(J). For the reasons set forth below, the Motion is hereby DENIED.

I. BACKGROUND

Defendant Robert F. McDonnell ("McDonnell") served as the 71st Governor of the Commonwealth of Virginia from January 2010 to January 2014. His wife, Maureen G. McDonnell ("Mrs. McDonnell"), served as the First Lady of Virginia.

During his campaign for Governor, McDonnell met Jonnie Williams ("Williams"). Williams was the Chief Executive Officer of Star Scientific, Inc. ("Star Scientific"). Beginning in or about 2007, Star Scientific focused on utilizing certain alkaloids in the tobacco plant, namely anatabine, to address issues related to the desire to smoke. The company engaged in the development, manufacture, and marketing of two anatabine-based dietary supplements: CigRx and Anatabloc. To gain customer and physician approval of its products, Star Scientific sought scientific studies of anatabine.

On January 21, 2014, McDonnell, along with his wife, was charged in a 14-count indictment, with Counts 1-11 alleging that he committed and conspired to commit honest-services wire fraud and extortion under color of official right. Specifically, the indictment alleged that "the defendants participated in a scheme to use ROBERT MCDONNELL's official position as the Governor of Virginia to enrich the defendants and their family members by soliciting and obtaining payments, loans, gifts, and other things of value from [Williams] in exchange for ROBERT MCDONNELL performing official actions on an as-needed basis, as opportunities arose, to legitimize, promote, and obtain research studies for Star Scientific's products, including Anatabloc." Indictment ¶ 22. On September 4, 2014, a jury convicted McDonnell on Counts 1-11. On September 18, 2014, McDonnell filed the instant Motion, asking for a judgment of acquittal on those eleven Counts. Specifically, McDonnell contends that the Government has failed to prove that he performed or promised to perform any "official act" for Williams, and also failed to establish federal jurisdiction for Counts 5-11.

II. LEGAL STANDARD

"A defendant may move for a judgment of acquittal, or renew such a motion, within 14 days after a guilty verdict or after the court discharges the jury, whichever is later." Fed. R. Crim. P 29(c)(1). If the jury returned a guilty verdict, the court can "set aside the verdict and enter an acquittal." Fed. R. Crim. P 29(c)(2).

The test for determining if a court should grant a Rule 29(c) motion is "whether there is substantial evidence (direct or circumstantial) which, taken in the light most favorable to the prosecution, would warrant a jury finding that the defendant was guilty beyond a reasonable doubt." *United States v. MacCloskey*, 682 F.2d 468, 473 (4th Cir. 1982). Substantial evidence is defined as "evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *United States v. Burgos*, 94 F.3d 849, 862 (4th Cir. 1996). If "any rational trier of fact could have found the elements of the offense beyond a reasonable doubt," the jury's verdict must stand. *United States v. United Med. & Surgical Supply Corp.*, 989 F.2d 1390, 1402 (4th Cir. 1993).

III. DISCUSSION

A. Claim 1: McDonnell Did Not Perform or Promise to Perform Any Specific "Official Acts" to Benefit Williams

(1) Failure to Prove "Official Act"

The critical issue that predominates in this case is what constitutes an "official act" under the federal anticorruption laws. At its most basic definition, an "'official act' means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit." 18 U.S.C. § 201(a)(3). More specifically, official action is conduct that is taken "as part of a public official's position"—whether pursuant to an explicit duty or as a matter of "clearly established settled practice." *See United States v. Jefferson*, 674 F.3d 332, 353 (4th Cir. 2012).

Clearly the bribery statute does not encompass every action taken in one's official capacity, *see id.* at 356, or else absurd outcomes would assuredly result. But, on the other hand, "[e]very action that is within the range of official duty comes within the purview of [this statute]." *United States v. Birdsall*, 233 U.S. 223, 230 (1914). Thus, to distinguish between the apparent fine line of routine official duties and public corruption, the Court must look to whether a quid pro quo agreement existed.

A quid pro quo agreement evinces a sort of "I'll scratch your back if you scratch mine" arrangement. *United States v. Jennings*, 160 F.3d 1006, 1014 (4th Cir. 1998). In other words, "[b]ribery requires the intent to effect an exchange of money (or gifts) for specific action (or inaction), but each payment need not be correlated with a specific official act." *Id.* "The quid pro quo requirement is satisfied so long as the evidence shows a course of conduct of favors and gifts flowing to a public official *in exchange for* a pattern of official actions favorable to the donor.' Thus, all that must be shown is that payments were made with the intent of securing a specific *type* of official action or favor in return." *Id.* (citation and internal quotation marks omitted).

McDonnell first contends that no evidence was introduced to prove that he ever promised to perform any specific official act for the benefit of Williams or his company. McDonnell contends that at worst he provided a vague promise to Williams to help Williams obtain studies for Star Scientific, which he argues fails to establish federal corruption. *See id.* at 1022. However, both of McDonnell's initial contentions especially when viewed in light most favorable to the Government fail to persuade this Court.

A quid pro quo agreement need not be expressly stated "for otherwise the law's effect could be frustrated by knowing winks and nods." *Evans v. United States*, 504 U.S. 255, 274 (1992) (Kennedy, J., concurring). Rather, "[t]he inducement from the official is criminal if it is express or if it is implied from his words and actions, so long as he intends it to be so and the payor so interprets it." *Id.* Thus, the Government was entitled to establish an implicit agreement through circumstantial evidence, which it did by using permissible temporal and contextual inferences. Moreover, quite unlike McDonnell's argument that at worst he only provided only a vague promise to Williams, substantial evidence supports the jury's finding that McDonnell actually performed official acts in exchange for gifts and loans from Williams.

Naturally, then, the Court must analyze the alleged five "official acts" presented by the Government to determine whether they were in fact "official." The five alleged "official acts" include: (1) the August 1, 2011 meeting between Williams and Molly Huffstetler, an official from the Health and Human Resources Department; (2) the August 30, 2011 Mansion event; (3) the February 17, 2012 email to Jason Eige; (4) the February 29, 2012 Healthcare Leaders Reception; and (5) McDonnell's March 21, 2012 meeting with Lisa-Hicks Thomas and Sarah Wilson. *See* Tr. Vol. XXV 5869:16–5870:1; 6039:25–6042:14. McDonnell argues that none of these identified actions purported to exercise, or influence the exercise of, any of the regulatory powers of the state. In other words, McDonnell argues that because he never asked or directed University of Virginia ("UVA") or Virginia Commonwealth University ("VCU") officials to conduct research on anatabine he did not take any "official action." Rather, McDonnell argues that at worst he only provided mere access to Williams. Thus, in his reply brief, McDonnell asserts that if his conviction is left standing, it "will be the only one in which a public official has ever been found guilty of bribery not for promising to himself influence the exercise of governmental power, but for merely facilitating access so that a third party could attempt to do so." (Reply Mem. at 1.)

Admittedly, mere "[i]ngratiation and access" may not alone create a quid pro quo agreement within the meaning of the bribery statutes. *See Citizens United*, 558 U.S. at 360. As Judge Merritt recently observed,

> Subjective intent is the keystone of bribery. The influence of money in politics is growing by leaps and bounds, and the subjective intent of the public official receiving the money is perhaps the last and only distinguishable feature between criminal "*quid pro quo* bribery" and permissible "ingratiation." The exchange of money for a vote is a crime that threatens the foundation of democracy. *Buckley v. Valeo*, 424 U.S. 1, 26–27, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). The exchange of money for "ingratiation and access is not corruption" at all; indeed, the exchange is so essential to the foundation of democracy that it is protected by the First Amendment. *McCutcheon v. FEC*, ––U.S. ––, 134 S.Ct. 1434, 1441,188 L.Ed.2d 478 (2014) (internal edits omitted). We are left to distinguish the two as best we can by looking into the subjective intent of the public official. And by we, I mean the jury.

United States v. Dimora, 750 F.3d 619, 632 (6th Cir. 2014) (Merritt, J., dissenting). Thus, to distinguish between mere access and federal corruption, the Court must analyze McDonnell's subjective intent in receiving the money.

The Government provided substantial evidence for the jury to conclude that McDonnell knew what Williams was seeking, specifically, research studies for Star Scientific's Anatabloc product. Through Williams' direct examination, the Government elicited testimony that in October of 2010, McDonnell flew back from California to Virginia on Williams' private jet. Tr. Vol. III 658:18–20. On that flight Williams explained to McDonnell that he "needed testing and

[he] wanted to have this done in Virginia." *Id.* at 660:7–8. Williams testified that he asked McDonnell if McDonnell "[w]ould connect [him] with the person in Virginia in [McDonnell's] administration so that [he could] move this forward." *Id.* at 660:9–11. Moreover, and most tellingly, in June 2011, Williams sent a letter to McDonnell that specifically described the context within which Williams sought official action from McDonnell. Tr. Vol. IV 701–705; Gov't Ex. 162. And McDonnell admitted on cross-examination that he received the letter, Tr. Vol. XXI 5036:10, and at least read the portion of the letter suggesting that McDonnell initiate a "Virginia study" of Anatabloc at UVA and the Medical College of Virginia ("MCV"), *id.* at 5037:3–11. Thus, based on the evidence presented, the jury could have properly determined that in accepting Williams' gifts and loans, McDonnell understood the implicit quid pro quo.

Secondly, McDonnell's argument is misguided as he assuredly did more for Williams than merely provide "access." The Government adduced substantial evidence of the "quo," that is the "official action," in this case. As stated above, "'official act' means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity . . . ." 18 U.S.C. § 201(a)(3). The alleged official actions in this case were within the range of actions on questions, matters, or causes pending before McDonnell as Governor as multiple witnesses testified that Virginia business and economic development was a top priority in McDonnell's administration. Tr. Vol. IX 2037:17–23; 2234:22–25. His campaign slogan was "Bob's for Jobs." *Id.* at 2232:17–19. And several former McDonnell staffers testified about the various ways McDonnell would customarily take action on questions, matters and causes of Virginia business and economic development, including hosting events and having meetings. *See id.* at 2235:14–16; Tr. Vol. XI 2545:14–16.

Yet, McDonnell argues that because he never asked or directed any official to give Williams the governmental action he desired he did not perform any official action. However, the Court need not look any further than the March 21, 2012 meeting between McDonnell, Lisa

Hicks-Thomas ("Hicks-Thomas"), McDonnell's Secretary of Administration, and Sarah Wilson ("Wilson"), the Virginia Department of Human Resource Management Director, to discredit McDonnell's argument. During that meeting McDonnell pulled out a bottle of Anatabloc and said that he had been taking the pills and "they were working well for him, and [] he thought it would be good for [] state employees." Tr. Vol. XI 2676:15-19. Hicks-Thomas testified that *McDonnell then asked if she and Wilson would "meet with the people." Id.* at 2676:19–20 (emphasis added). After the meeting, both women then went down to Hicks-Thomas' office and looked up Anatabloc on the computer. *Id.* at 2677:1–5. Or, for another example, the email to Jason Eige ("Eige"), the Governor's counsel and policy advisor, in which McDonnell said, "Please see me about Anatabloc issues at VCU and UVA." Tr. Vol. VII 1666:9–10. Eige subsequently responded, "Will do. We need to be careful with this issue." *Id.* at 1666:12.

In each of the aforementioned examples, McDonnell attempted to use his gubernatorial office to influence governmental decisions, (*see* Reply Mem. at 14), specifically attempting to obtain research studies for Star Scientific. McDonnell clearly had influential power over Hicks-Thomas, for example, as she testified that she reported to the Governor and he had the power to fire her. Tr. Vol. XI 2673:14–15, 19–20. *See United States v. Carson*, 464 F.2d 424, 433 (2d Cir. 1972) ("There is no doubt that federal bribery statutes have been construed to cover any situation in which the advice or recommendation of a Government employee would be influential   "). McDonnell's argument that he never followed back up with these individuals or pressured them any further is essentially irrelevant as such standard is not defined in any supporting case law.

Furthermore, McDonnell fails to account for the fact that "official action can include actions taken in furtherance of longer-term goals, and an official action is no less official because it is one in a series of steps to exercise influence or achieve an end." Tr. Vol. XXVI 6103:10–14. Thus, it is unnecessary "to link every dollar paid to [McDonnell] to a specific meeting, letter, trip, or other action by [McDonnell] to fulfill his end of a corrupt bargain." *Jefferson*, 674 F.3d at 359. Rather, it is enough that the "[Williams] intended for each payment to induce [McDonnell] to adopt a specific *course of action*." *Id.* (quoting *United States v. Quinn*, 359 F.3d 666, 673 (4th Cir. 2004)) (internal quotations omitted) (emphasis added). Therefore, just because there is no evidence that McDonnell directly asked UVA or VCU researchers to conduct studies of Anatabloc does not discount the fact that McDonnell took official actions in pursuit of achieving that ultimate goal.

In its charge to the jury, the Court defined bribery as "the exchange of a thing or things of value for official action by a public official. In other words, a quid pro quo." Tr. Vol. XXVI 6100:9–11. Substantial evidence supports the jury's finding of a quid and fairly specific, related quo. *See Jennings*, 160 F.3d at 1019. McDonnell did more than just provide access to Williams; he directed his employees to take action on research studies for Anatabloc. And he did so corruptly.

(2) Unconstitutionally Vague Statutes & Legal Conduct Pursuant to State Law

McDonnell next argues that the honest services fraud statute and Hobbs Act are unconstitutionally vague. He further alleges that extending the federal criminal law into state self-governance violates the Tenth Amendment and the principles of federalism.

As an initial matter, McDonnell's arguments are not an appropriate basis for an evidentiary sufficiency challenge under Rule 29. Fed. R. Crim. P 29(a) ("[T]he court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction."). However, regardless, both arguments are without merit.

McDonnell's assertion that the charging statutes are unconstitutionally vague fails. The void-for-vagueness doctrine addresses concerns about (1) fair notice and (2) arbitrary and discriminatory prosecutions. *Skilling v. United States*, 561 U.S. 358, 412 (2010). The Supreme Court has held unequivocally that "[i]nterpreted to encompass only bribery and kickback schemes, § 1346 is not unconstitutionally vague." *Id.* The Court reached this conclusion by observing that bribery has long constituted honest services fraud and has been defined and prohibited under related federal statutes. *Id.* at 412–13. Moreover, the honest services fraud statute requires proof that Defendants acted with a criminal state of mind, which "further blunts any notice concern." *Id.* at 412.

Secondly, McDonnell's invocation of the principles of federalism is equally unpersuasive, particularly because Virginia law does not necessarily "decriminalize" the conduct for which McDonnell was convicted. Virginia Code section 2.2-3103 prohibits any officer or employee of a state or local government from "solicit[ing] or accept[ing] money or other thing of value for services performed within the scope of his official duties." Va. Code § 2.2-3103(1); *see also id.* § 2.2-3103(8) (prohibiting the acceptance of gifts "from a person who has interests that may be substantially affected by the performance of the officer's or employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's or employee's impartiality in the matter affecting the donor"). McDonnell's conduct thus falls within the province of these Virginia statutes and therefore the present argument is unavailing.

B. *Claim 2: The Government Failed to Establish the Jurisdictional Basis for Hobbs Act Extortion*

The Hobbs Act requires that a defendant's extortion "obstruct[], delay[], or affect[] commerce or the movement of any article or commodity in commerce." 18 U.S.C. § 1951(a). In order to satisfy this jurisdictional element, the prosecution bears the burden of proving a "reasonably probable effect on commerce, however, minimal, as a result of the extortion." *United States v. Spagnolo*, 546 F.2d 1117, 1119 (4th Cir. 1976). In other words, "'the connection with or effect on interstate commerce must have been at least a realistic probability at the time of the extortion.'" *United States v. Buffey*, 899 F.2d 1402, 1404 (4th Cir. 1990) (quoting *United States v. Elders*, 569 F.2d 1020, 1023–24 (7th Cir. 1978)). Thus, the Fourth Circuit has held that no particular commercial movements need actually be affected. *United States v. Brantley*, 777 F.2d 159, 162 (4th Cir. 1985). Instead, it is sufficient if commerce would have been affected had the extortionate project been carried through to the contemplated conclusion. *Id.* The Court's jury instructions mirrored this precedent:

> To find the interstate commerce element satisfied, it is not necessary to find that a defendant actually intended to obstruct, delay, or affect commerce. Rather, the government need not [sic] only prove that the defendant you are considering deliberately performed or attempted to perform an act, the ordinary and natural consequences of which would be to obstruct, delay, or affect commerce. The effect on interstate commerce need only be slight, and it need not be adverse.

Tr. Vol. XXVI 6114:15–23.

In the present case, McDonnell argues that the Government failed to prove the requisite federal jurisdiction. He argues that there is no evidence that the alleged bribery scheme had an actual or realistically probable effect on interstate commerce. Rather than meet its burden of proof, McDonnell argues that the Government simply left it to the jury to infer a "reasonable probability" of an effect on interstate commerce. However, contrary to McDonnell's position, the Court finds that the Government presented evidence that had it been successful, the bribery scheme would have affected interstate commerce.

The Government introduced evidence that Star Scientific marketed and distributed CigRx and Anatabloc *nationwide*. Tr. Vol. X 2341:15–18. Testimony was also elicited that Star Scientific had a scientific office in Gloucester, Massachusetts, an executive and regulatory and legal office in Washington, D.C., and a manufacturing facility in New Jersey. *Id.* at 2341:25–2342:15. In its closing argument, the Government stated, "[O]bviously, had the scheme actually worked out a little better than it did for Star, then the effects on their business would have been positive and would have affected interstate commerce." Tr. Vol. XXV 5891:16–19. Viewing the evidence in light most favorable to the Government, the Court finds that the Government has fulfilled its burden. A reasonable finder of fact could accept the aforementioned evidence as adequate and sufficient in establishing a realistic probability of an effect on interstate commerce.

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IV. CONCLUSION

For the foregoing reasons, McDonnell's Motion is DENIED.

Let the Clerk send a copy of this Memorandum Opinion to all counsel of record.

An appropriate Order will issue.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 1st day of December 2014.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

ORDER

THIS MATTER is before the Court on Defendant Robert F. McDonnell's Motion #39-Renewed Motion for Judgment of Acquittal Pursuant to Rule 29 of the Federal Rules of Criminal Procedure ("Motion") (ECF No. 509). For the reasons set forth in the accompanying Memorandum Opinion, the Motion is DENIED.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this __1st__ day of December 2014.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,)
)
v.) **CRIMINAL NO. 3:14-CR-00012**
)
ROBERT F. MCDONNELL) **JUDGE JAMES R. SPENCER**
MAUREEN G. MCDONNELL)

MEMORANDUM IN SUPPORT OF DEFENDANT ROBERT F. MCDONNELL'S MOTION # 45 – MOTION TO UNSEAL CERTAIN SEALED PORTIONS OF THE RECORD

In order to facilitate the orderly and efficient litigation of the appeal in this case, and in keeping with the constitutionally founded principle of openness of criminal proceedings, Defendant Robert F. McDonnell moves to unseal certain sealed portions of the record. Specifically, Mr. McDonnell moves to unseal (1) REDACTED and (2) all pleadings, opinions, and orders filed in the course of the pretrial proceedings concerning a forensic image of Mr. Williams' iPhone, including both those filed in the miscellaneous civil proceeding in which Mr. Williams sought return of the image and those filed in Mr. McDonnell's criminal case.[2]

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[2] Mr. McDonnell is concurrently filing a Motion to Supplement the Record on Appeal ("Motion to Supplement") in which he seeks to include the record of the miscellaneous civil proceeding in the record on appeal in this case. This consolidation is necessary in light of the

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Fourth Circuit's previous holding that it lacked jurisdiction to review this Court's decision in the separate miscellaneous proceeding. The Fourth Circuit held that the iPhone proceeding was, "[a]t its essence, a discovery dispute inextricably intertwined with the criminal prosecution" and that Mr. McDonnell's appeal from this Court's order compelling him to relinquish the iPhone image was therefore interlocutory. Order of Dismissal, *In re Grand Jury Subpoenas*, No. 14-4495 (4th Cir.), Dkt. 43, at 2. The Fourth Circuit further held that Mr. McDonnell could obtain review of the decision in the miscellaneous action after judgment was entered in his criminal case. *See id.* at 3-4. Consolidation of the record will enable the review contemplated by the Fourth Circuit to go forward.

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II. THERE IS NO BASIS FOR THE CONTINUED SEALING OF THE IPHONE PROCEEDINGS.

Mr. McDonnell also requests the unsealing of all filings and orders made in connection with Mr. Williams' motion to obtain the return of an imaged copy of his iPhone that was produced to Mr. McDonnell by the Government pursuant to Federal Rule of Criminal Procedure 16. These record items include (1) all filings and orders made in the miscellaneous civil proceeding that Mr. Williams initiated, putatively in connection with the then-terminated grand jury investigation of Mr. McDonnell and his wife, seeking return of the iPhone image, *see* App'xs 4 to 33 to Motion to Supplement; and (2) Mr. McDonnell's Motion for Clarification filed in this criminal action, related documents, and this Court's order disposing of it, *see* Exs. C to F.

The proceedings pertaining to Mr. Williams' iPhone were not appropriately sealed in the first instance because the iPhone was never subpoenaed by, or produced to, the grand jury. Even assuming, however, that the proceedings were properly sealed at the time they took place, secrecy is no longer warranted. There is no risk of the "unauthorized disclosure of a matter

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occurring before a grand jury," Fed. R. Crim. P 6(e)(6), because all of the salient facts have long been exposed to the public gaze.

A. The Sealing of the iPhone Proceedings in the First Instance Was Improper.

At the time that he initiated the miscellaneous civil proceeding seeking return of the imaged copy of his iPhone, Mr. Williams moved to seal indefinitely the case and all documents filed in it. In support of his sealing motion, Mr. Williams stated that the miscellaneous proceeding "involves the protection of information disclosed pursuant to grand jury subpoenas in the Eastern District of Virginia." Mem. in Support of Movant's Mot. to Seal Case and Documents, App'x 5 to Motion to Supplement, at 3. On the basis of this assertion, Mr. Williams invoked the secrecy provisions of Federal Rule of Criminal Procedure Rule 6(e), which states that specified persons, including government attorneys, "must not disclose a matter before the grand jury." Mr. Williams' statement, however, was inaccurate, and his invocation of Rule 6(e) was improper.

The iPhone image was not produced pursuant to a grand jury subpoena. Rather, Mr. Williams provided it voluntarily to the Government in response to an independent request from government investigators. *See* App'x 6 to Motion to Supplement, at Ex. 1. Specifically, after reviewing certain photographs that *were* subpoenaed by the grand jury, the Government—in the context of negotiating an immunity deal with Mr. Williams—asked for the iPhone image so that it could extract metadata associated with the photographs. *See id.* There is no indication that any information from the iPhone image was ever presented to the grand jury. Indeed, on appeal from this Court's order compelling Mr. McDonnell to relinquish the iPhone image, after Mr. McDonnell pointed out that the iPhone image had never been subpoenaed by or presented to the grand jury, neither Mr. Williams nor the Government attempted to make a contrary showing. *See* Principal Br. of Appellants, *In re Grand Jury Subpoenas*, No. 14-4495 (4th Cir.), Dkt. 22, at

31-36 (stating that the iPhone image was neither subpoenaed by nor presented to the grand jury and so did not fall under Rule 6(e)); Response Br. of Appellee Jonnie R. Williams, *In re Grand Jury Subpoenas*, No. 14-4495 (4th Cir.), Dkt. 27 (making no argument that Rule 6(e) was validly invoked); Response Br. of the Gov't, *In re Grand Jury Subpoenas*, No. 14-4495 (4th Cir.), Dkt. 30, at 35-36 (acknowledging that the grand jury never subpoenaed the contents of the iPhone image).

To be sure, the Government asked for the iPhone image after seeing certain grand jury materials, but this tenuous connection with the grand jury investigation was insufficient to justify the invocation of Rule 6(e)'s secrecy provisions. Courts have made clear that not all documents that have some connection to a grand jury proceeding constitute "matter[s] occurring before the grand jury" qualifying for the protection of the Rule. As the D.C. Circuit has stated, Rule 6(e) "does not require that a veil of secrecy be drawn over all matters occurring in the world that happen to be investigated by a grand jury." *SEC v. Dresser Indus., Inc.*, 628 F.2d 1368, 1382 (D.C. Cir. 1980). Rather, "Rule 6(e)(2) protects from disclosure only the essence of what takes place in the grand jury room, in order to preserve the freedom and integrity of the deliberative process." *In re Grand Jury Subpoena*, 920 F.2d 235, 241 (4th Cir. 1990) (internal quotation marks and citation omitted). In determining whether Rule 6(e) applies, courts will consider whether disclosure of grand jury matters would reveal "the identities of witnesses or jurors, the substance of testimony, the strategy or direction of the investigation, the deliberations or questions of the jurors, [or] the like." *Dresser Indus., Inc.*, 628 F.2d at 1382. Disclosure of the fact that the Government requested, and Mr. Williams produced, the iPhone would reveal no such information because the exchange was wholly independent of the grand jury investigation.

This independence of the grand jury from government investigators is matter of constitutional law. "Recognizing [the] tradition of [grand jury] independence, [the Supreme Court has] said that the Fifth Amendment's 'constitutional guarantee presupposes an investigative body 'acting *independently* of either prosecuting attorney or judge.'" *United States v. Williams*, 504 U.S. 36, 49 (1992) (quoting *United States v. Dionisio*, 410 U.S. 1, 16 (1973) (emphasis added)). The grand jury is *not*, the *Williams* Court emphasized, "a constituent element of a 'criminal prosecution.'" 504 U.S. 36, 49 (1992) (quoting U.S. Const. amend. VI). The Government's request for the iPhone image and Mr. Williams' production of it therefore could not reveal, even indirectly, anything about the substance or scope of the grand jury's deliberations.

In sum, the iPhone image is simply not akin to documents "naming or identifying grand jury witnesses; quoting or summarizing grand jury testimony; evaluating testimony; discussing the scope, focus and direction of the grand jury investigations; [or] identifying documents considered by the grand jury and conclusions reached as a result of the grand jury investigations," all of which are properly protected under Rule 6(e). *Fund for Constitutional Government v. National Archives & Records Service*, 656 F.2d 856, 869 (D.C. Cir. 1981). It was not produced at the grand jury's behest, it was not presented to the grand jury, and it was never otherwise made part of the record of the grand jury proceedings. The miscellaneous civil proceeding should never have been sealed under Rule 6(e) and should be unsealed now. By the same token, Mr. McDonnell's Motion for Clarification and related filings from this criminal action, which were filed under seal in order to preserve the confidentiality of the miscellaneous matter, should also be unsealed.

B. Even Assuming There Was A Valid Basis for Sealing the iPhone Proceedings in the First Instance, Sealing Is No Longer Appropriate Now That the Material Facts About the Grand Jury Proceeding Are Public.

Even if the iPhone proceedings bore a close enough relationship to the grand jury investigation to warrant sealing at the time they were initiated, there is no basis for keeping them sealed now. Because neither the iPhone image nor the Government's request for it qualifies as a "matter occurring before the grand jury," the record of the proceedings pertaining to the iPhone might constitute, at best, a "record relating to [a] grand jury proceeding" within the meaning of Federal Rule of Criminal Procedure 6(e)(6).[4] Rule 6(e)(6) provides that such records "must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury." The phrase "as long as necessary" indicates that Rule 6(e)(6) does not authorize the indefinite sealing of records that once had some relation to ongoing grand jury proceedings. Rather, courts have held that Rule 6(e)(6) may no longer be invoked to justify the sealing of records and proceedings once the salient facts about the grand jury investigation have been made public. *See, e.g.*, *In re: Fed. Grand Jury Proceedings 03-01*, 337 F. Supp. 2d 1218, 1220-21 (D. Or. 2004) ("The Government's assertion of grand jury secrecy under Rule 6(e)(6) is moot on the open record in this matter. Specifically, any need to keep the records sealed to protect the disclosure of Mayfield's identity is moot because Mayfield's identity as a material witness has been known publically since the time of his arrest." (citation omitted)). *Cf. In re Charlotte Observer*, 921 F.2d 47, 50 (4th Cir. 1990) (refusing to enjoin the publication of previously disclosed grand jury material because "[o]nce announced to the world, the information lost its secret characteristic").

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[4] Mr. McDonnell does not concede that the iPhone proceedings fall into this category. As the advisory committee note indicates, Rule 6(e)(6) was intended to preserve the secrecy of records bearing a direct relationship to grand jury investigations such as grand jury subpoenas and immunity orders. *See* Fed. R. Crim. P. 6 advisory committee's note (1983). Mr. Williams' request for the return of information he produced to the Government independently of the grand jury investigation is not analogous to such documents.

Here, the only facts about the now-terminated grand jury investigation that would be revealed by the unsealing of the iPhone proceedings are (1) that the McDonnells were the subject of the investigation, (2) that the grand jury subpoenaed certain other materials from Mr. Williams, and (3) that Mr. Williams was an important witness in the case against the McDonnells. All of these facts are now very well known to the public. The McDonnells have now been not only indicted but tried; Mr. Williams has testified; and the Government has presented all of its evidence in the criminal case. Any valid confidentiality concern that may arguably have once justified the sealing of the iPhone proceedings is now moot. Mr. McDonnell therefore requests that these proceedings be unsealed.

CONCLUSION

For the foregoing reasons, Mr. McDonnell requests that the Court unseal

REDACTED and all of the records pertaining to the dispute over Mr. Williams' iPhone. Unsealing is not only consistent with the First and Sixth Amendment principle of openness of criminal trials, it will also enable Mr. McDonnell to litigate the appeal in his case in an orderly and efficient manner.

Dated: October 23, 2014

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	**CRIMINAL NO. 3:14-CR-00012**
v.	)	
	)	**JUDGE JAMES R. SPENCER**
ROBERT F. MCDONNELL	)	
MAUREEN G. MCDONNELL	)	**UNDER SEAL**

REPLY OF DEFENDANT ROBERT F. MCDONNELL TO THE GOVERNMENT'S RESPONSE TO MOTION # 45 – MOTION TO UNSEAL CERTAIN SEALED PORTIONS OF THE RECORD

The First Amendment and the Sixth Amendment establish a presumption of openness of criminal proceedings. *See Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 505, 508 (1984) ("*Press-Enterprise I*"); *Waller v. Georgia*, 467 U.S. 39, 45-46 (1984). The Government has not shown that this presumption is overcome with respect to any of the materials Mr. McDonnell seeks to unseal.

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II. THE IPHONE PROCEEDINGS

The Government does not oppose unsealing of the iPhone proceedings. *See* Response at 5, 9 (stating that the Government defers to the Court on this point). Notwithstanding its position, the Government offers a lengthy discussion that (1) faults Mr. McDonnell for failing to serve sealed papers on a non-party to this case, Response at 4, (2) rebuts an argument that Mr. McDonnell did not make about this Court's supervisory authority over grand jury proceedings, Response at 7, and (3) argues that the contents of the iPhone itself should remain sealed, Response at 9, even though the iPhone itself is not part of the record in this case and Mr. McDonnell accordingly has not moved for its unsealing. This irrelevant discussion provides no basis for the continued sealing of the litigation over the iPhone.

As for the serving of papers on Mr. Williams, he is—by his own design—not a party to this case. It was Mr. Williams' choice to litigate his interest in the iPhone in a sealed proceeding *ex parte* from the McDonnells rather than intervene in the ongoing criminal case, and the Government, at the time, raised no objection. Indeed, Mr. Williams' position on appeal from the miscellaneous civil action pertaining to the iPhone was that it would not be necessary for him to intervene in this criminal case because he presumed the Government would adequately represent his interests in any future proceedings. *See* Response Br. of Appellee Jonnie R. Williams, *In re Grand Jury Subpoenas*, No. 14-4495 (4th Cir.), Dkt. 27, at 16 (stating that Mr. Williams is not a necessary party to future proceedings because "[a]fter winning a conviction, presumably the Government will defend the district court's pre-trial orders"). In any event, Mr. McDonnell does not intend to oppose the Government's request that his Motion to Unseal be unsealed for the limited purpose of sharing it, in relevant part, with Mr. Williams.

The Government's other arguments about the scope of Rule 6(e)'s grand jury secrecy provisions and the scope of this Court's supervisory authority are entirely irrelevant in light of the fact that the iPhone was never subpoenaed by or presented to the grand jury and therefore cannot be considered a "matter occurring before a grand jury" within the scope of the Rule. *See* Motion to Unseal at 5-8. The Government does not argue that the iPhone was presented to the grand jury; its only response is to suggest that "it is fair to consider the production of the iPhone by Mr. Williams to the government as occurring incident to grand jury proceedings, even though the grand jury never subpoenaed the entire contents of the iPhone." Response at 6. But the Government does not cite any authority supporting the proposition that the extraordinary secrecy protections afforded to grand jury proceedings can be extended to matters "incident to grand jury proceedings," whatever that capacious phrase means. Moreover, the Government's proposed rule that the district court's grand jury power extends to materials requested by government investigators as part of their independent follow-up in the wake of a grand jury subpoena contravenes the constitutional principle of grand jury independence expounded by the Supreme Court. The grand jury is not "a constituent element of a 'criminal prosecution.'" *United States v. Williams*, 504 U.S. 36, 49 (1992) (quoting U.S. Const. amend. VI). "[T]he whole theory of [the grand jury's] function is that it belongs to no branch of the institutional Government, serving as a kind of buffer or referee between the Government and the people." *Id.* at 48. Finally, the Government's suggestion that Mr. McDonnell somehow recognized that the civil iPhone proceeding was legitimately associated with the grand jury investigation because he intervened in it, Response at 6, is utterly implausible given the fact that, at the time this Court directed Mr. McDonnell to intervene in that proceeding in order to avoid forfeiting any objection to relinquishing the iPhone, Mr. McDonnell did not have access to the sealed record and had no way of assessing whether Rule 6(e)'s secrecy provisions had been validly invoked by Mr. Williams and the Government.

In any event, at the end of the day the Government appears only to argue that the contents of the iPhone itself should remain sealed, which is not at issue here. Because the Government does not oppose unsealing the proceedings pertaining to the iPhone, this Court should do so.

Dated: November 7, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I certify that on November 7, 2014, I caused to be served a true copy of the foregoing via electronic email on the following individuals:

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	CRIMINAL NO. 3:14-CR-00012
v.	)	
	)	JUDGE JAMES R. SPENCER
ROBERT F. MCDONNELL	)	
MAUREEN G. MCDONNELL	)	UNDER SEAL

STATEMENT OF DEFENDANT ROBERT F. MCDONNELL RESPECTING THE "OPPOSITION TO UNSEALING" FILED BY JONNIE R. WILLIAMS, SR. IN THE CLOSED CASE *IN RE GRAND JURY SUBPOENAS*, No. 3: 14-ms-67

On November 17, 2014, counsel for Jonnie R. Williams, Sr. served Mr. McDonnell with a document captioned "Jonnie R. Williams Sr.'s Opposition to Unsealing" that was putatively filed in the closed civil case *In re Grand Jury Subpoenas*, No. 3: 14-ms-67 ("Williams Opp'n"). Mr. Williams' filing in the closed civil case is improper. *See Ziadeh v. United States*, 2014 U.S. Dist. LEXIS 2645, at *8 (E.D. Va. Jan. 9, 2014) ("A litigant may not simply file a motion in a closed case."). Moreover, by choosing not to intervene in Mr. McDonnell's criminal case and not to file an opposition to Mr. McDonnell's Motion to Unseal in this criminal case, Mr. Williams has effectively waived any opposition to Mr. McDonnell's motion. In the event, however, that the Clerk's Office accepts Mr. Williams' improper filing and this Court chooses to consider it, Mr. McDonnell submits this Statement Respecting Mr. Williams' "Opposition to Unsealing."

Mr. Williams erroneously contends that the constitutional presumption of openness that applies to criminal proceedings is not applicable to the proceedings in which he sought the return of an imaged copy of his iPhone because those proceedings "arose directly from a grand jury subpoena," were "incident to [a] grand jury subpoena[]," or were "ancillary to" a grand jury investigation. Williams Opp'n 3, 4, 6. This attempt to shift the burden of justifying continued sealing to Mr. McDonnell is factually and legally flawed; Rule 6(e)'s secrecy provisions were not validly invoked by Mr. Williams in the first instance.

As a factual matter, Mr. Williams never testified before the grand jury and was not, as he claims, a "grand jury witness," Williams Opp'n at 1, 2.[1] Nor, contrary to Mr. Williams' contention, was the search for metadata associated with photographs that were produced pursuant to a grand jury subpoena itself part of the grand jury's investigation. Mr. Williams' *ex post* characterization of the facts, *see* Williams Opp'n at 3-4, is contradicted by the Government's own account of events, provided at the time it first notified Mr. McDonnell that the iPhone image it had disclosed to him pursuant to Fed. R. Crim. P. 16 might contain privileged information. There, the Government stated, "[*w*]*e subsequently requested* that McGuireWoods produce a forensic image of Mr. Williams's iPhone to us to allow *the Government* to attempt to obtain metadata and other electronic information about certain specific pictures on Mr. Williams's iPhone." March 10, 2014 Letter from Dana J. Boente & Jack Smith to Henry W. Asbill et al., filed under seal as Exhibit 1 to Appendix 6 to Mr. McDonnell's Mot. #44 to Supplement the Record on Appeal, dkt. no. 539 (emphasis added). As Mr. McDonnell explained in his Memorandum, and as neither Mr. Williams nor the Government disputed on appeal from this Court's order in *In re Grand Jury Subpoenas*, there is no indication that either metadata from the subpoenaed photographs or any other information from the iPhone image was ever presented to the grand jury. *See* Mem. at 6-7; Principal Br. of Appellants, *In re Grand Jury*

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[1] Although the grand jury proceedings themselves remain sealed, Mr. McDonnell understands that Mr. Williams did not testify before the grand jury because the Government, in its Jencks Act production in his criminal case, did not provide Mr. McDonnell with any transcripts of grand jury testimony by Mr. Williams, who was the Government's star witness in its criminal case against Mr. McDonnell.

Subpoenas, No. 14-4495 (4th Cir.), Dkt. 22, at 31-36 & n.6 (stating that the iPhone image was neither subpoenaed by nor presented to the grand jury and that the record did not indicate that the metadata had been presented to the grand jury); Response Br. of Appellee Jonnie R. Williams, *In re Grand Jury Subpoenas*, No. 14-4495 (4th Cir.), Dkt. 27 (making no counter-argument); Response Br. of the Gov't, *In re Grand Jury Subpoenas*, No. 14-4495 (4th Cir.), Dkt. 30, at 35-36 (acknowledging that the grand jury never subpoenaed the contents of the iPhone image).

It is therefore irrelevant whether certain metadata on the iPhone image might arguably have been responsive to the subpoena that the grand jury actually issued. The Fourth Circuit has expressly held that where there are ongoing parallel grand jury and government investigations, and the government, using its own investigative means, obtains material that also happens to be responsive to a grand jury subpoena, that material is *not* protected by Rule 6(e). *In re Grand Jury Subpoena (Under Seal)*, 920 F.2d 235, 241-43 (4th Cir. 1990) (finding no violation of Rule 6(e) where the government had shared with other investigators materials it obtained by search warrant and "grand jury subpoenas were effected for the same records and materials that were obtained by the search warrants"). It does not matter that the government's own investigation and the grand jury's investigation were happening simultaneously or that the two investigations were focused on the same underlying events. The salient point is that neither the iPhone image nor any metadata on it was produced pursuant to a grand jury subpoena, and neither was ever presented to the grand jury. Thus, neither ever constituted a "matter occurring before a grand jury" within the meaning of Rule 6(e). There is a fundamental constitutional distinction between the prosecutors and the grand jury that Mr. Williams simply ignores. *See United States v. Williams*, 504 U.S. 36, 49 (1992).[2]

Nor is there any legal foundation for Mr. Williams argument that the iPhone proceedings were properly sealed because they were "ancillary to" a grand jury investigation or because the image was supposedly produced "incident to [a] grand jury subpoena[]." Williams Opp'n at 6-7, 4. Proceedings "ancillary to" grand jury proceedings include matters where judicial intervention is required to ensure witnesses' compliance with a actual grand jury subpoena. As the D.C. Circuit explained in a case relied on by Mr. Williams, in such "ancillary" proceedings "[t]he judge may be called upon to decide a witness's motion to postpone the date of testimony or to quash the subpoena," or to make a ruling when a witness asserts a testimonial privilege and "the grand jury may seek a court order compelling the witness to answer," or to issue an order granting use immunity where a subpoenaed witness invokes the Fifth Amendment right against self-incrimination. *In re Motions of Dow Jones & Co.*, 142 F.3d 496, 498 (D.C. Cir. 1998). *See also In re Grand Jury Subpoenas, Judith Miller*, 493 F.3d 152, 154 (D.C. Cir. 2007) (refusing to unseal a matter "ancillary to" a grand jury proceeding where the court had addressed a subpoenaed witness s refusal to testify on the ground of reporter's privilege). The proceeding in which Mr. Williams sought the return of property he had voluntarily provided to the Government pursuant to its own independent investigation and *not* pursuant to a grand jury subpoena was not "ancillary to" the grand jury investigation of Mr. and Mrs. McDonnell in any such way.

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[2] While the letter Mr. Williams' counsel provided accompanying the production of the iPhone image stated that the image was "submitted in connection with the grand jury investigation and are subject to Federal Rule of Criminal Procedure 6(e)," June 24, 2013 Letter from Anne Bentley McCray to Michael S. Dry, filed under seal as Exhibit 2 to Appendix 6 to Mr. McDonnell's Mot. #44 to Supplement the Record on Appeal, dkt. no. 539, a party cannot expand the scope of Rule 6(e)'s protection by simply stating that a particular document comes within its purview.

As for the theory that Rule 6(e) covers materials produced "incident to" grand jury subpoenas, neither Mr. Williams nor the Government has ever produced any legal authority supporting this non-textual expansion of the Rule. Rule 6(e) provides for the confidentiality of "a matter occurring before a grand jury." Courts have debated the extent to which the Rule covers documents produced pursuant to grand jury subpoenas, as distinct from grand jury deliberations, transcripts of testimony, and other proceedings that actually take place in the grand jury room. *See, e.g., In re Grand Jury Subpoena*, 920 F.2d 235, 241 (4th Cir. 1990); *SEC v. Dresser Indus., Inc.*, 628 F.2d 1368, 1382 (D.C. Cir. 1980). But neither Mr. Williams nor the Government cites any authority indicating that materials that were neither subpoenaed nor reviewed by the grand jury become protected by Rule 6(e) because they were produced to government investigators in circumstances bearing some factual connection to a grand jury proceeding. Indeed, the Fourth Circuit's decision in *In re Grand Jury Subpoena (Under Seal)*, 920 F.2d 235, forecloses this argument.

Finally, Mr. Williams' invocation of his supposed privacy interests falls wide of the mark. Mr. McDonnell has not sought unsealing of the iPhone *image itself*; rather, he seeks only unsealing of the *litigation* pertaining to the iPhone image—litigation that the Fourth Circuit held was essentially part of Mr. McDonnell's criminal case. *See* Order of Dismissal, *In re Grand Jury Subpoenas*, No. 14-4495 (4th Cir.), Dkt. 43, at 2 (stating that the iPhone proceeding was, "[a]t its essence, . . . a discovery dispute inextricably intertwined with the criminal prosecution"). To the extent certain of the filings contain descriptions of independently sealed material—such as the content of grand jury subpoenas, *see* Williams Opp'n 5—that is properly protected by Rule 6(e), Mr. McDonnell does not object to the redaction of such descriptions. But to continue to keep all of the proceedings pertaining to the iPhone image under seal in deference to Mr.

Williams' desire to shield from public view the existence of a "discovery dispute inextricably intertwined with the criminal prosecution" contravenes the First and Sixth Amendments and the presumption of openness of criminal proceedings that they establish.[3] This Court should therefore grant Mr. McDonnell's Motion to Unseal.

Dated: November 18, 2014

Respectfully submitted,

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Counsel for Robert F McDonnell

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[3] Mr. McDonnell notes, in this regard, that the Fourth Circuit denied sealing of the appellate proceedings pertaining to the iPhone. Order, *In re Grand Jury Subpoenas*, No. 14-4495 (4th Cir.), Dkt. 45.

CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I certify that on November 18, 2014, I caused to be served a true copy of the foregoing via electronic email on the following individuals:

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Dated: November 18, 2014

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	CRIMINAL NO. 3:14-CR-00012
v.	)	
	)	JUDGE JAMES R. SPENCER
ROBERT F. MCDONNELL	)	
MAUREEN G. MCDONNELL	)	UNDER SEAL

REPLY OF DEFENDANT ROBERT F. MCDONNELL TO THE GOVERNMENT'S RESPONSE TO MOTION # 44 – MOTION TO SUPPLEMENT THE RECORD ON APPEAL

The Government does not oppose Mr. McDonnell's motion to supplement the record on appeal in any material respect. This Court should therefore grant Mr. McDonnell's motion in its entirety. The Government, however, makes an improper request to include in the record on appeal materials that were never submitted to or considered by this Court. Mr. McDonnell requests that this Court deny the Government's improper request and exclude from the record the letters the Government has attached to its Response as Exhibit D.

The Government also engages in substantial discussion of supposed waiver issues. Mr. McDonnell has never suggested that by consenting to the inclusion of materials in the record the Government is conceding any merits points for the purposes of appeal. In any event, all arguments concerning waiver may be properly presented to the Fourth Circuit in due course, and there is no need for this Court to address the Government's irrelevant discussion at this time.

I. DEFENSE REQUESTS #1-2

The Government characterizes Mr. McDonnell's request that this Court include the trial and hearing transcripts listed in his original Motion as unnecessary, but does not oppose it. Mr. McDonnell made the request out of an abundance of caution and in recognition that under Local

Criminal Rule 57.3(D), "[u]nless otherwise directed by the Court, the record on appeal in criminal cases shall not include arguments of counsel, including arguments of counsel on motions." His unopposed request should be granted.

II. DEFENSE REQUESTS #3-5

The Government does not oppose Mr. McDonnell's request to include the parties' proposed questions for the juror questionnaire, redacted juror questionnaires, and other additional questions proposed during the July 28 voir dire. Mr. McDonnell's unopposed request should therefore be granted.

Mr. McDonnell has no objection to including in the record on appeal the materials attached to the Government's Response as Exhibits A-C, as these papers were submitted to the Court in connection with the voir dire process. *See* Fed. R. App. P. 10(a)(1).

The Government suggests that Mr. McDonnell has waived any argument regarding the Court's pre-screening of juror questionnaires before providing them to the parties. This argument is based on sheer speculation about what Mr. McDonnell may argue on appeal and is premature. This Court need not address it.

III. DEFENSE REQUEST #6

The Government does not oppose Mr. McDonnell's request to include in the record in this criminal case the record of the proceedings pertaining to an imaged copy of Mr. Williams' iPhone in *In re Grand Jury Subpoenas*, No. 3:14-ms-67. It states, however, that if Mr. McDonnell's motion to include these materials in the record on appeal is granted, this Court should include in the record "pertinent letters" that it attaches to its Response as Exhibit D. This request is entirely improper and should be denied.

As far as Mr. McDonnell is aware, the letters that the Government proposes to include in the record were never submitted to the district court in any filing, and they were never considered by the district court in its disposition of any matter during the proceedings in this case.[1] "[Federal Rule of Appellate Procedure] 10(e) is not designed to allow a district court 'to add to the record on appeal matters that did not occur there in the course of proceedings leading to the judgment under review.'" *Allen v. Minnstar, Inc.*, 8 F.3d 1470, 1474 (10th Cir. 1993) (quoting *Jones v. Jackson Nat'l Life Ins. Co.*, 819 F. Supp. 1385, 1387 (W.D. Mich. 1993)). *See also United States v. Ameline*, 409 F.3d 1073, 1112 (9th Cir. 2005) ("Normally, documents or exhibits that were not filed with the district court, admitted into evidence, nor considered by the district court cannot be filed as part of the record."); *Fassett v. Delta Kappa Epsilon*, 807 F.2d 1150, 1165 (3d Cir. 1986) (same). The Government has requested that the Court include these letters in the record without either acknowledging that they were never submitted to the Court or offering any argument for why Rule 10(e) allows the inclusion of this material. It merely states that the letters are "pertinent," which is not a proper basis for supplementing the record on appeal with non-record materials. *See* Fed. R. App. P. 10(e). The Government's improper request should be denied, and this Court should exclude from the record Exhibit D to the Government's Response.

The Government's extensive review of the history of the iPhone litigation and suggestion that Mr. McDonnell somehow waived any claim of error in regard to those proceedings is, again, irrelevant. Any arguments regarding waiver should be raised before the Fourth Circuit on appeal, and this Court need not address them here. Mr. McDonnell does note, however, that as the Government acknowledges, he received the iPhone image as part of the Government's Rule 16 discovery; he affirmatively intervened in a separate proceeding to argue that he should not be required to relinquish the iPhone; and after he was subsequently ordered to turn over the iPhone, he pursued an expedited appeal before the Fourth Circuit, which then determined that Mr. McDonnell could obtain review of his claims on appeal from the judgment in his criminal case. The Government suggests that after this extensive litigation, Mr. McDonnell was required, in order to preserve the issue, to "use the discovery tools available to [him] under Rule 16" in some unspecified manner and ask this Court to order the return to him of material it had already ordered him to relinquish. This suggestion is nonsensical.

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[1] By email on November 5, 2014, counsel for Mr. McDonnell requested that the Government identify when, if at all, these letters were filed in the district court. *See* Exhibit A. As of the time of filing this Reply, the Government has not responded to the defense's request.

Dated: November 6, 2014

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA)
)
v.)
) No. 3:14cr12
ROBERT F. MCDONNELL and)
MAUREEN G. MCDONNELL,) **UNDER SEAL**
Defendants.)

GOVERNMENT'S RESPONSE TO DEFENDANTS' MOTIONS TO UNSEAL

The United States of America, by and through the undersigned attorneys, hereby responds to the defendants' motions to unseal portions of the record. *See* Doc. Nos. 537, 550 (motions to seal the defendants' underlying motions to unseal). In those motions, both defendants request that two portions of the record be unsealed. [redacted] The second is the litigation over the contents of Williams's iPhone in *In re Grand Jury Subpoenas*, No. 3:14ms67, as well as certain related pleadings filed in this case that are attached to Mr. McDonnell's motion to unseal as Exhibits C through F. The United States addresses each request below. Mr. McDonnell also requests that the transcript of the in-chambers conference on August 12, 2014, be unsealed, but the United States does not address that issue here given that this Court has already unsealed that transcript.[1]

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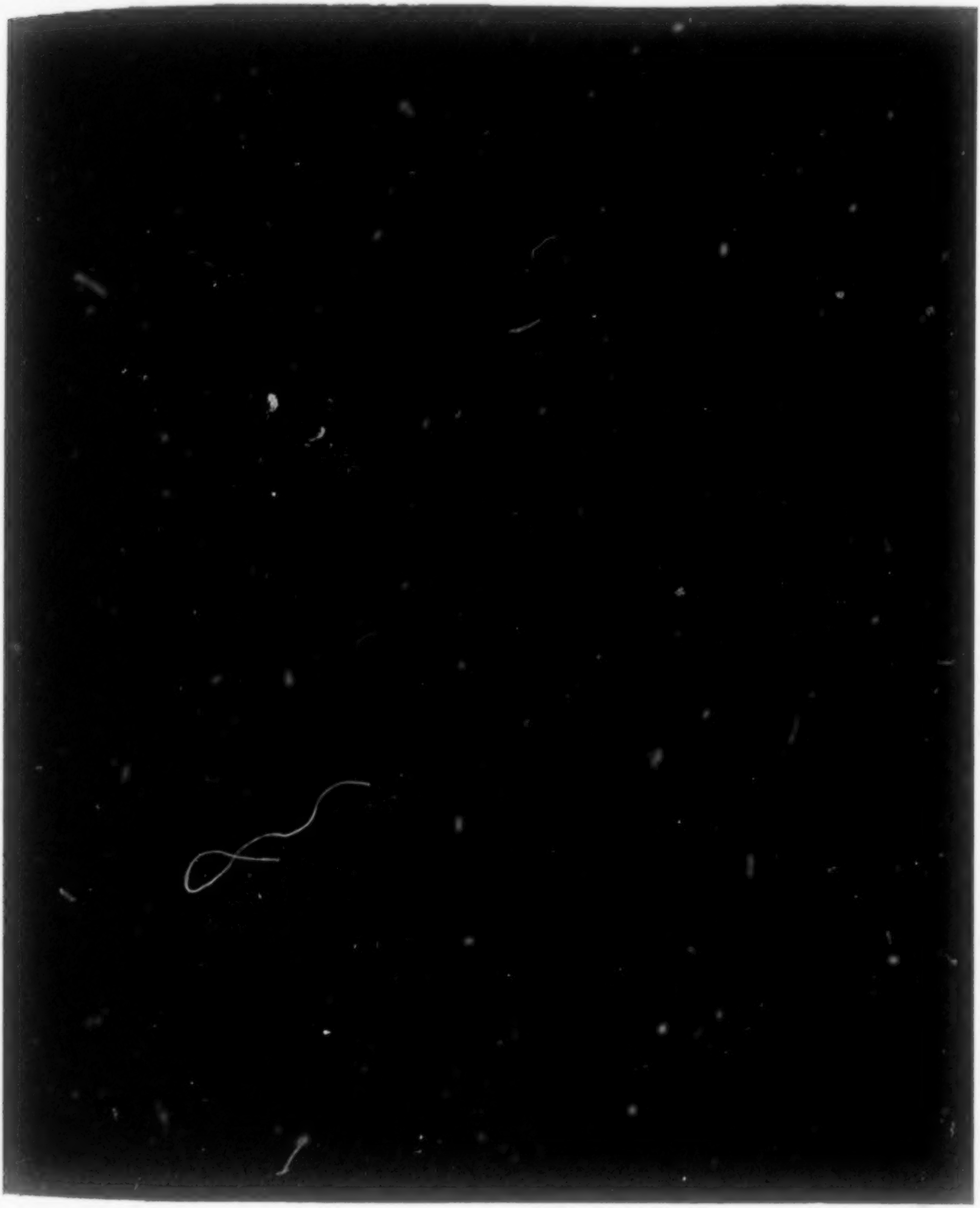
[1] The United States does not oppose unsealing of the voicemail transcript and the agent notes that were submitted at the August 12 hearing, which are attached to Mr. McDonnell's motion to unseal as Exhibits A and B. The United States notes, however, that the defendants should redact the phone numbers contained on the last two lines of Exhibit A before it is unsealed. The voicemail transcript and notes disclose nothing of importance beyond what has been disclosed with the unsealing of the August 12 transcript.



[redacted]

II. The iPhone Litigation in *In re Grand Jury Subpoenas*, No. 3:14ms67

This Court has already determined that the iPhone litigation should be sealed, and the Fourth Circuit ordered some unsealing of the defendants' dismissed interlocutory appeal, while leaving undisturbed the sealing that this Court imposed. The defendants argue nevertheless that all filings and orders in the litigation over the iPhone should now be unsealed, both in No. 3:14ms67 and in the pleadings attached as Exhibits C through F to Mr. McDonnell's motion to unseal. In making that request, however, the defendants made no effort to serve the lawyers for the party most affected by their request, Jonnie Williams, Sr., and who was an active participant in both the litigation in this Court and the Fourth Circuit over the iPhone. Because the defendants' request to unseal the iPhone litigation is itself currently under seal, the United States has been unable to provide the filing to Williams's counsel and have sought leave from this Court for limited unsealing of the defendants' motion to effectuate that. Extensive litigation over the sealing of pleadings at this juncture is premature until Williams's position is known. The

United States thus defers to the Court pending resolution of the United States' motion for limited unsealing and the receipt of any pleadings from Williams, the party that initially sought sealing in No. 3:14ms67

But the United States does oppose the defendants' unduly restrictive view of a district court's authority in grand jury investigations. This argument is of course relevant to both whether the iPhone itself should be kept under seal and whether the litigation about the iPhone should be sealed.

The defendants argue that the iPhone litigation was not properly sealed in the first instance. But the defendants ignore a district court's supervisory powers over grand jury matters. "Although the grand jury operates with great independence, 'the powers of the grand jury are not unlimited and are subject to the supervision of a judge.'" *In re Grand Jury, John Doe No. G.J.2005-2*, 478 F.3d 581, 584–85 (4th Cir. 2007) (quoting *Branzburg v. Hayes*, 408 U.S. 665, 688 (1972)). *See also In re United States of America*, 441 F.3d 44, 57–58 (1st Cir. 2006) ("The inherent supervisory authority over grand juries is well recognized."); Federal Practice and Procedure § 101 n.18 (collecting cases). Such supervisory authority includes compelling the production of evidence to the grand jury. *See United States v. Williams*, 504 U.S. 36, 48 (1992).

This supervisory power also permits district judges to protect privileges and claw back materials improperly produced in a grand jury investigation. *See, e.g.*, *In re Grand Jury Investigation*, 59 F.3d 17, 19 (2d Cir. 1995) (holding that a party may "invoke[] the court's supervisory powers over the grand jury and its use of compulsory process" to obtain an order to access grand jury materials to which it had a "contractual interest"); *In re GJ Investigation*, 142 F.R.D. 276, 283 (M.D.N.C. 1992) (ordering government to return privileged documents that were inadvertently produced in response to a grand jury subpoena).

In this case, the grand jury issued subpoenas that triggered the production of documents from Williams's iPhone. Williams produced 137 documents from his iPhone to the government, including two identical pictures of defendant Robert McDonnell posing with a Rolex watch, but Williams did not produce any metadata associated with the pictures. As a result, the government requested that Williams provide an image of his iPhone for the limited purpose of allowing the government to search for metadata associated with these two pictures.

Under such circumstances, it is fair to consider the production of the iPhone by Williams to the government as occurring incident to grand jury subpoenas, even though the grand jury never subpoenaed the entire contents of the iPhone. Williams understood the context as such when he noted, in the June 24, 2013 letter that accompanied the production, that "[t]hese documents are submitted in connection with the grand jury investigation being conducted in Richmond, Virginia." And defendants appear to have understood it as such when they intervened in the grand jury litigation and opposed Williams's motion for a return of property on the merits, rather than by contesting the legitimacy of the grand jury proceedings.

As part of its supervisory function over production of evidence to the grand jury, this Court had the power to strip the government of the iPhone image. Moreover, once the defendants received notice and an opportunity to be heard in the grand jury litigation, this Court was entitled to order them to surrender the iPhone images in their possession.

Were this Court limited to clawing back materials from the government (and not from defendants), the Court's authority to order the return of materials produced incident to grand jury subpoenas would be badly compromised. For instance, a district court plainly has the authority to rectify unintentional and inadvertent waivers of privilege when appropriate, including by clawing back privileged materials produced to the grand jury. *See* Fed. R. Evid. 502; *In re GJ*

Investigation, 142 F.R.D. at 283. Yet such authority would be pointless if the party seeking return of documents could not also recover them from defendants in the criminal action resulting from the grand jury investigation. *See Hawkins v. Stables*, 148 F.3d 379, 384 n.4 (4th Cir. 1998) (explaining when disclosure waives privilege).

Indeed, under the rule the defendants propose, a district court's supervisory authority over grand jury proceedings would appear to permit document clawbacks prior to indictment and criminal discovery—because defendants would not have any possession, lawful or otherwise, of such materials—but not post-indictment and criminal discovery. Therefore, the defense rule would force grand jury witnesses to litigate all potential disclosure issues at the subpoena stage, resulting in premature and speculative litigation. That is not the law, as the Third Circuit has explained:

> If we were to hold that a witness furnishing documents to a grand jury could not be heard to object to their production under Rule 16, the inevitable effect would be to move the litigation over preservation of confidentiality back to the investigation stage, thus multiplying the instances in which subpoenaed witnesses would resist.

United States v. RMI, 599 F.2d 1183, 1190 (3d Cir. 1979); *see also United States v. Hubbard*, 650 F.2d 293, 305 (D.C. Cir. 1980) ("Minimizing the initial intrusiveness of necessary governmental activity is one means of serving fundamental privacy interests, but controlling broadside disclosure of materials or information obtained by intrusive means is another.").

Similarly, the principle of grand jury secrecy is well-established. The Supreme Court has identified a number of reasons underlying the policy of grand jury secrecy, including "to encourage free and untrammeled disclosures by persons who have information with respect to the commission of crimes." *United States v. Procter & Gamble Co.*, 356 U.S. 677, 681–82 n.6 (1958).

While the principle of grand jury secrecy is at its apex in the investigation stage, the encouragement and protection of grand jury witnesses persist after an indictment is returned. "For in considering the effects of disclosure on grand jury proceedings, the courts must consider not only the immediate effects upon a particular grand jury, but also the possible effect upon the functioning of future grand juries." *Douglas Oil Co. of Cal. v. Petrol Stops Nw.*, 441 U.S. 211, 222 (1979). "The primary reason for secrecy after the investigation is over is the need to encourage future grand jury witnesses to come forward and provide information about crimes." Federal Practice and Procedure § 106. "[C]ourts have correctly recognized that encouraging future witnesses is 'a reason for secrecy which can be ignored by no court. It is a reason of paramount importance.'" *Id.* (quoting *United States v. Scott Paper Co.*, 254 F Supp. 759, 761 (W.D. Mich. 1966); *see also State of Illinois v. Sarbaugh*, 552 F.2d 768, 774-75 (7th Cir. 1977) (recognizing that witness protection and encouragement survive as bases for grand jury secrecy following the return of an indictment).

The defendants argue that the iPhone litigation cannot count as "a matter occurring before the grand jury" under Fed. R. Crim. P 6(e), and case law on the scope of "a matter occurring before the grand jury" is unsettled. Some decisions of the Fourth Circuit imply a broad scope. *See, e.g.*, *In re GJ Subpoenas, April, 1978,* 581 F.2d 1103, 1108-09 (4th Cir. 1978) ("Rule 6(e)… provides generally that materials secured by the grand jury in the course of its investigation shall not be disclosed except as authorized as authorized in subsection (2)"). Others indicate a more narrow definition. *See In re Grand Jury Subpoena*, 920 F.2d 235, 241 (4th Cir. 1990) ("Rule 6(e)(2) protects from disclosure only the essence of what takes place in the grand jury room, in order to preserve the freedom and integrity of the deliberative process") (internal quotation marks omitted). The state of the law outside this Circuit is equally unsettled.

See In re John Doe GJ Proceedings, 537 F Supp. 1038, 1043 (D. R.I. 1992) (collecting cases); Federal Practice and Procedure § 106 n. 32 (same).

However, this Court need not determine whether the iPhone qualifies for protection under Rule 6(e) in order to affirm the district court's reliance on grand jury secrecy. As the Third Circuit recognized in *RMI*, "Plainly, the policies behind Rule 6(e) secrecy are implicated by the pre-trial production of grand jury documents." 599 F.2d at 1188. The court in *RMI* observed, "To be sure, the documents were sought by the defendants under Rule 16(a)(1)(C), and not under Rule 6(e), because they are to be used in a criminal, not civil, proceeding." But the court held, "Since the policies of secrecy apply both to criminal trials under Rule 16 and to civil actions under Rule 6, the analysis of the Douglas Oil and Sarbaugh Courts seems eminently applicable." *Id.* at 1189.

But ultimately, even if the iPhone litigation were not deemed to be properly covered by grand jury secrecy, the contents of the iPhone itself were properly kept under seal pursuant to the protective order and Fed. R. Crim. P 16(d). The defendants' request for the contents of the iPhone was a fishing expedition, as this Court previously held. The defendants could have identified relevant evidence, but failed to do so, that could have been subpoenaed under Fed. R. Crim. P. 17. That leaves the question whether the *litigation* about the iPhone, as distinct from the contents of the iPhone itself, should be kept under seal. The United States defers to the Court on whether to keep the litigation, as distinct from the contents of the iPhone, under seal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2014, I will electronically mail a copy of this pleading to counsel for defendants Robert F McDonnell and Maureen G. McDonnell.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	No. 3:14cr12
ROBERT F. MCDONNELL and	)	
MAUREEN G. MCDONNELL,	)	**UNDER SEAL**
Defendants.	)	

GOVERNMENT'S RESPONSE TO DEFENDANTS' MOTIONS TO SUPPLEMENT THE RECORD

The United States of America, by and through the undersigned attorneys, hereby responds to the defendants' motions to supplement the record. *See* Doc. Nos. 539, 552. In those motions, both defendants make six requests to supplement the record with various materials, including certain materials currently filed under seal. The United States addresses each request below.

I. Defense Requests #1–2

The defendants' first two requests are that this Court make various trial and hearing transcripts part of the record for an appeal. Those requests are unnecessary. Under Fed. R. App. P. 10(a), the record on appeal includes all hearing and trial transcripts. As Rule 10(a) states, the "following items constitute the record on appeal: (1) the original papers and exhibits filed in the district court; (2) the transcript of proceedings, if any; and (3) a certified copy of the docket entries prepared by the district clerk."

II. Defense Requests #3–5

The defendants' third, fourth, and fifth requests relate to the parties' proposed questions for the juror questionnaire, the final version of the questionnaire that this Court mailed to the jurors, redacted copies of the responses that prospective jurors mailed back to the Court, and additional questions proposed by Mr. McDonnell during voir dire. To the extent those materials are not deemed "papers . . . filed in the district court" under Fed. R. App. P. 10(a)(1), the United States does not object to deeming those documents to be part of the record. *See* Fed. R. App. P. 10(e) (providing mechanism for supplementing record). But all of the unredacted juror questionnaires should be deemed part of the record—while being kept under seal.

But if the defendants intend to litigate issues implicating the juror questionnaires, the full questionnaires should be available to the United States Court of Appeals for the Fourth Circuit, even if the unredacted questionnaires are not publicly available. The United States does not object to deeming the redacted questionnaires to be part of the record as well, and if those redacted questionnaires provide sufficient information to address any argument that is raised on appeal, then so much the better. That will decrease the amount of sealed briefing necessary on appeal, if any.

Similarly, the defendants have not included in their proposed supplements to the record certain materials related to the juror questionnaires that the parties submitted to the Court but that were not filed in the public record. The United States has attached those materials to this pleading as **Exhibits A** through **C** in the interest of completeness, and in the event the Court grants the defendants' motion with respect to the juror questionnaire issues, the United States asks that the Court include **Exhibits A** through **C** as well.

The United States notes, however, that by agreeing that the various materials related to the juror questionnaires should be deemed part of the record, the United States is not agreeing that the defendants have in fact preserved any particular argument related to the juror questionnaires. Objections must be timely raised "when the court ruling or order is made or sought." Fed. R. Crim. P 51(b). In this regard, the United States notes for the record that the defendants never objected before or during voir dire to the Court's pre-screening of juror questionnaires before providing them to the parties, despite being aware of the Court having done so.

III. Defense Request #6

The defendants also ask to add to the record in their criminal cases the entire record in *In re Grand Jury Subpoenas*, No. 3:14ms67, related to Jonnie Williams's iPhone. Although the United States does not oppose that request, it first notes that the defendants have not included a pertinent letters that should be made part of that record if the defendants' motion is granted. This are attached as **Exhibit D**.

Moreover, it is again important to distinguish between adding materials to the record and making a properly preserved, timely objection. The defendants up until this point treated the ultimate resolution of the iPhone litigation as part of a separate matter and indeed invoked that point in claiming that there was jurisdiction for an interlocutory appeal. But after they returned their copy of the iPhone in No. 3:13ms67, and after the Fourth Circuit rejected their argument that there was jurisdiction for an interlocutory grand jury appeal, the defendants did not argue to this Court that the Fourth Circuit's ruling undermined this Court's prior ruling requiring them to return the iPhone, and did not seek any further relief in the criminal case. Had they done so, this Court could have addressed the iPhone matter under the rubric of Fed. R. Crim. P. 16(d)(1), using a materially indistinguishable analysis from what the Court did in the grand jury litigation. The information contained on the iPhone is subject to this Court's protective order entered pursuant to Fed. R. Crim. P 16(d)(1), and by its terms, Rule 16(d)(1) allows a court to claw back information for good cause.

To assist the Court, the United States briefly reviews the history of the iPhone litigation and why the defendants have not actually invoked the Court's authority under Rule 16 to resist returning the iPhone. At bottom, the defendants contend that their rights were violated because they could not access information on the iPhone that the government has never reviewed at any point, that the government returned to Williams before trial, and that the defendants could have subpoenaed under Fed. R. Crim. P 17(c) if they could articulate any conceivable grounds on which it could be deemed relevant.

On May 22, 2013, Jonnie Williams, Sr. produced 137 documents from his iPhone that were responsive to grand jury subpoenas. That production included two pictures showing Mr. McDonnell posing with a Rolex watch. Anticipating that in a trial, Mr. McDonnell would dispute whether he had sent Williams the photos, the United States sought to perform a single search of metadata associated with the photos. On June 24, 2013, Williams's counsel provided a DVD containing an image of the iPhone to the government so that the United States could perform that limited metadata search for the two images of Mr. McDonnell posing with the Rolex. In an accompanying letter, Williams's counsel noted that "[t]hese documents are submitted in connection with the grand jury investigation being conducted in Richmond, Virginia," and stated that the documents "are subject to Federal Rule of Criminal Procedure 6(e) and any other applicable policies."

The prosecutors performed the limited metadata search in the presence of Williams's counsel, were unable to glean any useful information, returned the original forensic image to Williams's counsel, and believed that the government had not retained any copies of that image. Williams's counsel had requested that the government return or destroy any copies of the iPhone, and no government actor ever inspected the contents of the iPhone image, except for performing the limited metadata search on the Rolex photos. As it turned out, however, the forensic image of the phone was not deleted; rather, computer technicians simply stored the data in a way that the prosecutors could no longer access. Meanwhile, although the government's discovery obligations do not require the government to produce to defendants *all* materials obtained from third parties, the government sought to produce all materials from third parties to the defendants in an abundance of caution in light of the defendants' repeated requests for "every shred of evidence in [the government's] possession." As a result, when the government made document productions to the defendants, the image of the iPhone was inadvertently produced to the defendants.

On February 24, 2014, when the prosecutors learned of the inadvertently retained copies of the iPhone that was also produced to the defendants, the government notified Williams's counsel, who stated that they would seek an order from the Court requiring the return of the iPhone. On March 10, 2014, the government transmitted a letter to defense counsel, with copies to Williams's counsel, describing the relevant facts and chronology about the iPhone and referring to the protective order that this Court entered that allowed third parties to assert "any privilege or protection."

In response, Williams filed a motion for return of the iPhone information on March 12, 2014, and styled the motion as "In re: Grand Jury Subpoenas." And on March 13, 2014, this Court ordered the government to return any copies of the forensic iPhone image and seek the return of any copies produced to third parties. The next day, the government moved to unseal this Court's order so that it could be provided to the McDonnells, and as soon as that motion was granted, the government provided the order to the McDonnells.

Meanwhile, the defendants waited more than two months to formulate a position on the return of the iPhone, and on May 17, 2014, the McDonnells asserted in an email their position that they were entitled to all the data on the iPhone. The next day, Williams filed a motion asking the Court to return the iPhone image, and the McDonnells filed pleading in their criminal case asking the Court to clarify its order of March 13, 2014.

On June 4, 2014, this Court denied Williams's motion, explaining that the McDonnells are "not parties to this action." And on the same day, the McDonnells filed a motion for a subpoena *duces tecum* under Fed. R. Crim. P 17(c) to obtain information from the iPhone, and this Court granted that motion in part on June 6, 2014. Also on June 6, this Court granted a request by Williams for limited unsealing to allow Williams to disclose the March 13 order to the McDonnells but deferred judgment on the merits of Williams's request "until the McDonnells have been given notice and an opportunity to respond." Williams disclosed the order to the McDonnells on June 6 as well, and on June 9, 2014, this Court issued an order inviting the defendant, "[s]hould [they] wish to be heard on the Motion," to "submit a response in this action on or before Wednesday, June 11, 2014." The Court also warned that "[f]ailure to respond to the Motion may be deemed a waiver of any objection to the motion."

On June 11, 2014, the defendants filed motions to intervene in the grand jury litigation and opposed Williams's request for return of private information, and on June 18, 2014, this Court ordered the McDonnells to return the data from the iPhone. The McDonnells did so and then brought an interlocutory appeal, citing authority dealing with grand jury appeals as the basis for jurisdiction.

When the Fourth Circuit dismissed the defendants' appeal, the Fourth Circuit concluded that jurisdiction was lacking because the defendants were raising a discovery dispute and could appeal after conviction. Among other points, the Fourth Circuit noted that "[a]t its essence, the district court's order here was not a final order in a separate action, but rather, resolution of a discovery dispute inextricably intertwined with the criminal prosecution." No. 14-4495, dkt no. 43 at 2. The Fourth Circuit noted that discovery disputes may not be appealed before final judgment. "This case is no exception, notwithstanding the fact that the district court's order was entered under a separate case number." *Id.* at 3. The Fourth Circuit added that the defendants "will have ample opportunity to seek review of the district court's order if they are convicted." *Id.* at 4.

The Fourth Circuit's conclusion that the defendants could seek review after conviction did not address what the defendants must do to preserve a challenge and raise a discovery claim. A protective order was entered in this case, and after intervening in the grand jury litigation, appealing and having that appeal dismissed, the defendants have never sought relief under the discovery tools available to them under Rule 16. Although the grand jury litigation can be made part of the record in their criminal case, doing so is not a substitute for properly raising and litigating their claim in their criminal case.

Respectfully submitted,

DANA J. BOENTE
United States Attorney

JACK SMITH
Chief, Public Integrity Section
Criminal Division
U.S. Department of Justice

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CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2014, I will electronically mail a copy of this pleading to counsel for defendants Robert F. McDonnell and Maureen G. McDonnell.

By: Jessica D. Aber

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

MEMORANDUM ORDER

THIS MATTER is before the Court on Defendant Robert F. McDonnell's Motion #45 – Motion to Unseal Certain Sealed Portions of the Record ("Mr. McDonnell's Motion") (ECF No. 611), and Defendant Maureen G. McDonnell's Motion #30 – Motion to Unseal Certain Sealed Portions of the Record ("Mrs. McDonnell's Motion") (ECF No. 619) [collectively referred to as the "Motions"]. The Government filed a response in opposition (ECF No. 617), and Mr. McDonnell subsequently filed a reply (ECF No. 613). Additionally, Jonnie R. Williams ("Williams") filed an Opposition to Unsealing in the miscellaneous civil case styled *In re Grand Jury Subpoenas*, No. 3:14-ms-67 The parties have not requested a hearing on this matter, and the Court finds that oral argument is unnecessary. *See* E.D. Va. Loc. Crim. R. 47(J).

Both Mr. and Mrs. McDonnell's Motions request identical relief to unseal (1) the August 12, 2014 transcript of the in-chambers conference; (2) a previously sealed proceeding; and (3) all pleadings, opinions, and orders filed in pretrial proceedings concerning the forensic image of Williams' iPhone, including both those filed in the miscellaneous civil action in which Williams sought return of the image, *In re Grand Jury Subpoenas*, No. 3:14-ms-67 ("iPhone litigation"), and those filed in the McDonnells' criminal case (*see* Mr. McDonnell's Mot. Exs. C to F).

I. August 12, 2014 Transcript of In-Chambers Conference

As to the August 12, 2014 transcript, Mr. McDonnell's Motion is DENIED as MOOT as this transcript was previously unsealed by the Court. *See* O., October 29, 2014, ECF No. 546. However, the defendants additionally request to unseal the transcript of a voicemail message left for the Government by Jim Watson, Mr. Louis DeNitto's lawyer, and notes of the interview the Government subsequently conducted with Mr. Watson. (*See* Mr. McDonnell's Mot. Exs. A, B.) Because the Court previously granted the defense's request to include these documents in the record, and because the transcript and notes disclose nothing of importance beyond what has already been disclosed with the unsealing of the August 12 transcript, the Motions are GRANTED to the extent they request such relief. However, Mr. McDonnell is DIRECTED to first redact the telephone numbers contained on the last two lines of his Exhibit A before unsealing.

II. Previously Sealed Proceeding

Pursuant to this Court's Memorandum Order on January 8, 2015 (ECF No. 607), which granted the Motions to Seal to the extent they referred to a previously sealed proceeding, the present Motions are hereby DENIED as MOOT to the extent they also refer to that same sealed proceeding.

III. iPhone Litigation[1]

In this case, the grand jury issued subpoenas that triggered the production of documents from Williams' iPhone. Williams produced 137 documents from his iPhone to the government, including two identical pictures of Robert McDonnell posing with a Rolex watch. However, Williams did not produce any metadata associated with the pictures. As a result, on June 24, 2013, pursuant to an agreement with the Government, Williams produced a forensic image of his iPhone for the limited purpose of allowing the Government to perform a single search of the iPhone's metadata associated with these two pictures.

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[1] It is important to note that in his reply, Mr. McDonnell expressly states that Williams' iPhone itself is not part of the record in this case and accordingly has not moved for its unsealing. (Reply Mem. at 4.) Therefore, the contents of the iPhone will *not* be unsealed.

The iPhone image was then erroneously turned over to the McDonnells, who refused to return the contents to Williams. This litigation was heard in a miscellaneous civil case, *In re Grand Jury Subpoenas*, No. 3:14-ms-67. On June 18, 2014, this Court issued a Sealed Order directing the McDonnells to return to Williams' counsel all copies of the forensic image of Williams' iPhone. The Court found Williams' privacy interests would be "irreparably harmed" if the McDonnells were allowed access to the full contents of the iPhone image.

Rule 6(e) forbids certain persons from disclosing "a matter occurring before the grand jury," Fed. R. Crim. P. 6(e)(2), and thus requires that "[r]ecords, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent disclosure of a matter occurring before a grand jury," Fed. R. Crim. P 6(e)(6). Grand jury proceedings are conducted under a veil of "secrecy to encourage witnesses to testify 'fully and frankly,' to prevent those about to be indicted from fleeing, and to ensure that 'persons who are accused but exonerated by the grand jury will not be held up to public ridicule.'" *In re Grand Jury Subpoena, Judith Miller*, 493 F.3d 152, 154 (D.C. Cir. 2007) (quoting *Douglas Oil Co. v. Petrol Stops Nw.*, 441 U.S. 211, 219 (1979)). Accordingly, "there is no First Amendment right of access to grand jury proceedings, nor do First Amendment protections extend to ancillary materials dealing with grand jury matters " *Id.* (internal quotation marks and citation omitted).

However, the secrecy associated with grand jury proceedings is not absolute. "Matters occurring before a grand jury" could essentially be "anything that may reveal what has transpired before the grand jury." *United States v. Rosen*, 471 F. Supp. 2d 651, 654 (E.D. Va. 2007) (quoting *In re Grand Jury Subpoena*, 920 F.2d 235, 241 (4th Cir. 1990)) (internal quotation marks omitted). But, importantly, "Rule 6(e) protects from disclosure 'only the essence of what takes place in the grand jury room, in order to preserve the freedom and integrity of the deliberative process.'" *In re Grand Jury Subpoena*, 920 F.2d at 241. "In other words, a disclosure of 'matters before the grand jury' must reveal some 'secret aspect of the inner workings of the grand jury.'" *Rosen*, 471 F. Supp. 2d at 654 (quoting *United States v. Dynavac*, 6 F.3d 1407, 1413 (9th Cir. 1993)). Additionally, "even evidence closely related to a grand jury investigation is not a 'matter occurring before the grand jury' unless it was actually presented before the grand jury." *Id.* at 655.

Furthermore, when grand jury investigations have terminated, the reasons for continued secrecy are few. *In re Grand Jury Proceedings GJ-76-5 & GJ-75-3*, 800 F.2d 1293, 1300–01 (4th Cir. 1986). And "[i]f the grand jury investigation not only has terminated, but, in addition, the resulting criminal proceedings themselves have been concluded without any threat of other prosecutions, the reasons for secrecy are weakened even further." *Id.* at 1301 (citation omitted). Finally, if the grand jury materials have already been disclosed, then this disclosure "has breached the secrecy theretofore attaching to such materials." *Id.*

In the present case, Williams contends that both the photographs and metadata were produced pursuant to the grand jury subpoenas, while the McDonnells argue that the grand jury only subpoenaed the photographs and the Government separately requested the metadata. The Government defers to the judgment of the Court on this matter.

On March 10, 2014 the Government wrote a letter to McDonnells' counsel regarding the "inadvertent possible production of a forensic image of an iPhone." (App'x 25 to Robert F. McDonnell's Motion to Supplement the Record on Appeal, ECF No. 615). That letter states,

> Before June 24, 2013, McGuire Woods had produced to us all material from Mr. Williams's iPhone that McGuire Woods determined was responsive to the grand jury subpoena served on Mr. Williams We subsequently requested that McGuire Woods produce a forensic image of Mr. Williams's iPhone to us to allow the Government to attempt to obtain metadata and other electronic information about certain specific pictures on Mr. Williams's iPhone of Mr. McDonnell posing with a Rolex watch.

The quoted language from the letter indicates that the metadata was requested *by the Government* after Williams produced 137 iPhone files[2] pursuant to the grand jury subpoena, and thus the request for the metadata does not reveal some "secret aspect" of the inner workings of the grand jury. *See Rosen*, 471 F. Supp. 2d at 654. Additionally, there is no indication that any metadata from the subpoenaed photographs was ever presented to the grand jury. *See id.* at 655. Furthermore, the grand jury investigation has long been terminated, the McDonnells' criminal case has concluded, and the public knows that Williams was an essential government witness, thereby curbing the need for secrecy of these proceedings. *See In re Grand Jury Proceedings GJ-76-5 & GJ-75-3*, 800 F.2d at 1301. Because unsealing the miscellaneous case would not jeopardize grand jury secrecy, the Motions are hereby GRANTED with respect to the iPhone litigation. Accordingly, the Clerk is DIRECTED to UNSEAL the miscellaneous civil case, *In re Grand Jury Subpoenas*, 3:14-ms-67, as well as all pleadings and corresponding exhibits, opinions and orders filed in criminal case no. 3:14-CR-12, which are related to this matter. (ECF Nos. 203, 204, 205, 206, 554, and 561).

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[2] *See* App'x 6 to Robert F. McDonnell's McDonnell's Motion to Supplement the Record on Appeal, ECF No. 615.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 12th day of January 2015.

AO 245B (Rev. 12/03)(VAED rev. 2) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Richmond Division

UNITED STATES OF AMERICA
v.

ROBERT F McDONNELL
Defendant.

Case Number: 3:14cr00012-001

USM Number: 83758-083

Defendant's Attorney:
JOHN BROWNLEE, ESQ.,
HENRY ASBILL, ESQ.

AMENDED JUDGMENT IN A CRIMINAL CASE
(ONLY CHANGE: Corrected Offense End date on Count 10)

The defendant was found guilty on Count(s) after a plea of not guilty to Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the Indictment.

The defendant is adjudicated guilty of these offenses.

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
18 U.S.C. 1349	CONSPIRACY TO COMMIT HONEST-SERVICES WIRE FRAUD	Felony	3/2013	1
18 U.S.C. 1343	HONEST-SERVICES WIRE FRAUD	Felony	5/26/2011	2
18 U.S.C. 1343	HONEST-SERVICES WIRE FRAUD	Felony	3/12/2012	3
18 U.S.C. 1343	HONEST-SERVICES WIRE FRAUD	Felony	5/22/2012	4
18 U.S.C. 1951	CONSPIRACY TO OBTAIN PROPERTY UNDER COLOR OF OFFICIAL RIGHT	Felony	3/2013	5
18 U.S.C. 1951 AND 2	OBTAINING PROPERTY UNDER COLOR OF OFFICIAL RIGHT	Felony	5/23/2011	6 & 7
18 U.S.C. 1951 AND 2	OBTAINING PROPERTY UNDER COLOR OF OFFICIAL RIGHT	Felony	5/29/2011	8
18 U.S.C. 1951 AND 2	OBTAINING PROPERTY UNDER COLOR OF OFFICIAL RIGHT	Felony	1/7/2012	9
18 U.S.C. 1951 AND 2	OBTAINING PROPERTY UNDER COLOR OF OFFICIAL RIGHT	Felony	3/6/2012	10
18 U.S.C. 1951 AND 2	OBTAINING PROPERTY UNDER COLOR OF OFFICIAL RIGHT	Felony	5/22/2012	11

The defendant has been found not guilty on Count(s) 12 and 13 of the Indictment.

The defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

01/06/2015
Date of Imposition of Judgment

/s/
James R. Spencer
Senior U. S. District Judge

01/06/2015

Case Number: 3:14cr00012-001
Defendant's Name: ROBERT F. McDONNELL

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: TWENTY FOUR (24) MONTHS IMPRISONMENT ON COUNTS 1-11, ALL TO BE SERVED CONCURRENTLY

The Court makes the following recommendations to the Bureau of Prisons:

THAT THE DEFENDANT BE DESIGNATED TO A FACILITY NEAR HIS HOME IN THE RICHMOND METROPOLITAN AREA.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons: before 2 p.m. on 02/09/2015. If no designation has been made, the defendant is to report to the U.S. Marshal in Richmond, Virginia.

RETURN

I have executed this judgment as follows:

Defendant delivered on ______________________________ to ______________________________

at ______________________________, with a certified copy of this Judgment.

____
UNITED STATES MARSHAL

By ______________________________
DEPUTY UNITED STATES MARSHAL

Case Number: 3:14cr00012-001
Defendant's Name: ROBERT F. McDONNELL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of TW0 (2) YEARS ON COUNTS 1-11, ALL TO BE SERVED CONCURRENTLY

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions supervised release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and periodic drug tests thereafter, as determined by the court.

The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the officer;
4) the defendant shall support his or her dependants and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make notifications and to confirm the defendant's compliance with such notification requirement.

Case Number: 3:14cr00012-001
Defendant's Name: ROBERT F. McDONNELL

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release, pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

1) The defendant shall not incur new credit card charges or open additional lines of credit without the approval of the probation officer.

2) The defendant shall provide the probation officer with access to requested financial information.

3) As reflected in the presentence report, the defendant presents a low risk of future substance abuse and therefore, the Court hereby suspends the mandatory condition for substance abuse testing as defined by 18 U.S.C. 3563 (a)(5). However, this does not preclude the United States Probation Office from administering drug tests as they deem appropriate.

4) The defendant shall pay the balance owed on any court-ordered financial obligations in monthly installments of not less than $100, starting 60 days after supervision begins until paid in full.

Case Number: 3:14cr00012-001
Defendant's Name: ROBERT F. McDONNELL

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 7.

Count	Assessment	Fine	Restitution
1	$100.00	$0.00	$0.00
2	$100.00	$0.00	$0.00
3	$100.00	$0.00	$0.00
4	$100.00	$0.00	$0.00
5	$100.00	$0.00	$0.00
6	$100.00	$0.00	$0.00
7	$100.00	$0.00	$0.00
8	$100.00	$0.00	$0.00
9	$100.00	$0.00	$0.00
10	$100.00	$0.00	$0.00
11	$100.00	$0.00	$0.00
TOTALS:	$1,100.00	$0.00	$0.00

No fines have been imposed in this case.

Defendant's Name:	ROBERT F. McDONNELL
Case Number:	3:14cr00012-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

Payment to begin immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

Nothing in the court's order shall prohibit the collection of any judgment, fine, or special assessment by the United States.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	**CRIMINAL NO. 3:14-CR-00012**
v.	)	
	)	**JUDGE JAMES R. SPENCER**
ROBERT F. MCDONNELL	)	
MAUREEN G. MCDONNELL	)	

DEFENDANT ROBERT F. MCDONNELL'S NOTICE OF APPEAL

Notice is hereby given that Defendant Robert F McDonnell in the above named case hereby appeals to the United States Court of Appeals for the Fourth Circuit from the final judgment entered in this action on the 13th day of January, 2015.

Dated: January 13, 2015

Respectfully submitted,

/s/ Jonathan A. Berry
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Noel J. Francisco (*pro hac vice*)
James M. Burnham (*pro hac vice*)
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Counsel for Robert F McDonnell

CERTIFICATE OF SERVICE

I, Jonathan A. Berry, am a member of the Bar of this Court. I hereby certify that on this 13th day of January, 2015, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, causing it to be served on all registered users.

Dated: January 13, 2015

Respectfully submitted,

/s/ Jonathan A. Berry
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Counsel for Robert F McDonnell

ORAL ARGUMENT REQUESTED

No. 15-4019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

v

ROBERT F MCDONNELL,
Defendant-Appellant.

On Appeal from the United States District Court for the Eastern District of Virginia, Richmond Division, James R. Spencer, District Judge

DEFENDANT-APPELLANT'S MOTION FOR RELEASE PENDING APPEAL

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Counsel for Defendant-Appellant
Robert F McDonnell

Defendant-Appellant Robert F McDonnell moves for release pending appeal pursuant to 18 U.S.C. § 3143(b). He has been ordered to report to the Bureau of Prisons by February 9, 2015 and therefore requests expedited briefing and disposition of this matter prior to that date. Should the Court desire additional time to consider the issue, he respectfully requests a brief administrative stay of his reporting date pending this Court's disposition of this motion.[1]

This case presents the substantial issue of whether this Court is prepared to become the first court in history (besides the district court) to hold that actions not attempting to exercise any governmental power nonetheless constitute "official actions" so long as they are things that officials customarily do—a decision that would create a conflict with decisions of the Supreme Court, the D.C., First, and Eighth Circuits, as well as this Court's prior decisions, and that would revolutionize politics by dramatically expanding the general federal corruption laws to make every political fundraiser that exchanges "access" or "credibility" for campaign contributions into a federal felony. That risk is particularly acute where, as here, the district court instructed that "[t]here has been no suggestion in this case that Mr. McDonnell violated Virginia law." Tr. Vol. XXVI, at 6125. To date, the Government has not cited any in any jurisdiction with facts remotely resembling the facts here. Nor has the district court ever cited—let alone distinguished—any of the well-reasoned out-of-circuit decisions Mr. McDonnell has repeatedly invoked that show that the facts proved were not a crime and, regardless, that the jury instructions were prejudicially overbroad. Indeed, the district court *agreed with Mr. McDonnell* about several legal limits on "official action," yet never explained why it declined to tell the jury about *any* of those limits in its instructions—an omission that invited the jury to convict Mr. McDonnell for conduct that is lawful under the district court's own post-trial opinions.

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[1] Mr. McDonnell notes for the Court's convenience that he believes one or more *amici curiae* may seek to file briefs in support of this motion for bond pending appeal.

The district court has, however, recognized that the Government's case against Mr. McDonnell falls well outside the heartland of public corruption cases. As the district court put it at sentencing: "Imagine if these Guidelines were mandatory and the Court had no choice but to sentence Governor McDonnell to seven or eight years in prison. That would be unfair. *It would be ridiculous under these facts.*" Sent. Tr. at 175, Ex. C (emphasis added). While the district court declined to grant bond, its recognition that this case is atypical underscores the fact that Mr. McDonnell's appeal, at a minimum, presents "a 'close' question or one that very well could be decided the other way," *United States v. Steinhorn*, 927 F.2d 195, 196 (4th Cir. 1991) (granting bond pending appeal), which is all Mr. McDonnell need show here. Should this Court agree that Mr. McDonnell has made that low showing, "the statute establishes a right to liberty that is not simply discretionary but mandatory." *United States v. Abuhamra*, 389 F.3d 309, 319 (2d Cir. 2004). Mr. McDonnell's appeal will raise several questions that easily satisfy this standard.[2]

First, to convict Mr. McDonnell, a properly instructed jury had to find that he performed or promised to perform "official acts" in exchange for gifts and loans. There are substantial questions whether (1) the Government proved this critical element, and (2) the district court properly instructed the jury on it. The Government's theory was not that Mr. McDonnell exercised (or pressured others to exercise) actual governmental power. Instead, it alleged that Mr. McDonnell's "official acts" consisted of sending an email asking his in-house counsel to "see me" about an issue, attending two events, arranging one meeting, and suggesting one other meeting. No federal or state judicial decision has ever upheld a bribery conviction on such facts or approved instructions permitting a conviction for such customary actions that do not make (or pressure someone else to make) actual governmental decisions. To the contrary, opinions from the Supreme Court and the First, Eighth, and D.C. Circuits all make clear that providing a referral, sending an informational inquiry, or appearing in public are not—without more—"official acts." This issue thus obviously presents a substantial question.

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[2] Mr. McDonnell's appeal will raise additional substantial issues and he in no way concedes here that his other appellate issues are any less substantial.

Second, there is also a substantial question whether the district court conducted sufficient voir dire of the jurors on pretrial publicity—an issue of first impression in this Court post-*Skilling*. During the months leading up to Mr. McDonnell's trial, there was massive negative and inaccurate publicity surrounding the case. The district court, however, rejected Mr. McDonnell's request for individualized voir dire of potential jurors who had been exposed to such publicity, despite longstanding precedent holding that jurors in high-publicity cases should be "examined, individually and outside the presence of the other jurors, to determine the effect of [pretrial] publicity," *United States v. Hankish*, 502 F.2d 71, 77 (4th Cir. 1974).

Finally, bond pending appeal is particularly appropriate given that the district court imposed a twenty-four month sentence. The appellate process takes time, particularly in a complex case following a five-week jury trial. In such circumstances, requiring Mr. McDonnell "to serve most or all of his sentence before his appeal has been decided" and "[i]ncarcerating [him] 'immediately upon conviction'" would "substantially diminish the benefit he would ordinarily receive from an appeal." *United States v. Garcia*, 340 F.3d 1013, 1019 (9th Cir. 2003).[3] The possibility of this grave injustice provides another compelling reason to grant bond.

FACTUAL BACKGROUND

The Government's case below focused on Mr. McDonnell's interactions with Jonnie R.

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[3] *See also, e.g.*, *United States v. Jackson*, 32 F.3d 1101, 1104 (7th Cir. 1994) ("[W]e would encourage defendants facing relatively short sentences to seek release pending appeal or move for an expedited appeal because it is often difficult to file an appeal, docket it, set a briefing schedule, hear oral argument, and draft an opinion before a very short sentence has been served."); *United States v. McManus*, 651 F. Supp. 382, 383-84 (D. Md. 1987) ("There seems little point to an appeal if the defendant will serve his time before a decision is rendered.").

Williams, Sr., the CEO of a Virginia public company, while Mr. McDonnell was Governor of Virginia. The Indictment charged that, in exchange for golf and loans, Mr. McDonnell took "official action" to assist Mr. Williams and his company, Star Scientific ("Star").

1. The Government's case hinged on "five specific actions taken by McDonnell " New Trial Op. at 6, Dkt. 567; *see also* Tr. Vol. XXV at 6040-42. They were:

(1) Mr. McDonnell sent an email to his chief counsel asking the counsel to "see me" about an issue related to Mr. Williams. (The counsel never actually saw him.) *See* Tr. Vol. VII, at 1665-68.

(2) Mr. McDonnell's wife invited Mr. Williams, some of Mr. Williams' associates, and private doctors recommended by Mr. Williams to a reception for "Healthcare Leaders." (Nothing else happened.) *See* Tr. Vol. IV, at 761-63, 783-85; Tr. Vol. IX, at 2121, 2165.

(3) Mr. McDonnell possibly suggested to two subordinates that they meet with Star. (The subordinates disagreed about whether Mr. McDonnell made the request, they never met with anyone, and they never heard about it again from Mr. McDonnell or anyone else.) *See* Tr. Vol. XI, at 2654-55, 2675-76; 2679-80, 2668-69.

(4) Mr. McDonnell asked a subordinate to send a staffer to a meeting with Mr. Williams, immediately after which the staffer sent Mr. Williams a "blow-off email." (Nothing else happened.) *See* Tr. Vol. VII, at 1492-93, 1507-08, 1517-18 (the email was "'No' with a smile"), 1522, 1507:8-22; *id.* at 1517:22-1518:2.

(5) Mr. McDonnell appeared at a luncheon held at the Executive Mansion and paid for by his PAC, featuring Mr. Williams and researchers from the University of Virginia ("UVA") and Virginia Commonwealth University ("VCU"), at which Mr. Williams presented a portion of $200,000 from Star to those researchers as planning grants to prepare Tobacco Commission research proposals. (No proposals were ever submitted, nobody from the McDonnell Administration ever mentioned them again, nor did anyone ever contact the Commission.) *See* Tr. Vol. IV, at 727-28, 733-34; Tr. Vol. VIII, at 1793-95, 1810-12.

Mr. McDonnell repeatedly argued that none of these actions qualify as "official acts" because in none of them did he make, nor pressure someone else to make, any actual decision or take any other action on any pending governmental matter.[4] He requested numerous instructions reflecting that legal principle, including ones specifying that "merely arranging a meeting, attending an event, hosting a reception, or making a speech are not, standing alone, 'official acts,' even if they are settled practices of the official," Robert F McDonnell's Prop. Jury Instructions, Dkt. 287, at 79; that "[t]he questions you must decide are both whether the charged conduct constitutes a 'settled practice' *and* whether that conduct was intended to or did in fact influence a specific official decision the government actually makes," *id.* at 79-80; and that "mere ingratiation and access are not corruption," *id.* at 79.

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[4] In addition to moving to dismiss the indictment on this basis, *see* Mem. Def. Mot. to Dismiss Counts 1-11 of the Indictment, Dkt. 106, at 7-19, he moved for a new trial on this

The district court refused these requests and declined to provide a definition of "official act" that limited it in any relevant way, even though this legal issue went to the heart of Mr. McDonnell's defense. Instead, after quoting the statutory definition of "official action" from 18 U.S.C. § 201(a)(3),[5] the district court stated (Tr. Vol. XXVI, at 6102:23-6103:14):

> Official action as I just defined it includes those actions that have been clearly established by settled practice as part of a public official's position, even if the action was not taken pursuant to responsibilities explicitly assigned by law. In other words, official actions may include acts that a public official customarily performs, even if those actions are not described in any law, rule, or job description. And a public official need not have actual or final authority over the end result sought by a bribe payor so long as the alleged bribe payor reasonably believes that the public official had influence, power or authority over a means to the end sought by the bribe payor. In addition, official action can include actions taken in furtherance of longer-term goals, and an official action is no less official because it is one in a series of steps to exercise influence or achieve an end.

2. Seizing on the unqualified statement that the statutory definition of "official action" "*includes those actions* that have been clearly established by settled practice as part of a public

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(continued...)

ground, *see* Mem. Def. Mot. for New Trial, Dkt. 548, at 2-11, and three times moved for an acquittal on it, *see* Dkt. 409, at 12-17; Trial Tr. Vol. XXIV, at 5731-33; Dkt. 510, at 3-15.

[5] The statute prohibiting bribery for federal officials defines "official act" as follows: "[A]ny decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity " 18 U.S.C. § 201(a)(3).

official's position"—and the expansion of it—the Government opened its rebuttal argument by telling the jury: "Mr. Asbill talked about defining quo. But what he failed to mention is that official action includes those actions that have been clearly established by settled practice as part of a public official's position In other words, official actions may include acts that a public official customarily performs, even if those actions are not described in any law, rule or job description." *Id.* at 6039. Given that the status of Mr. McDonnell's actions as settled practices was not disputed—since governors unthinkingly make dozens of meeting referrals and send thousands of emails every week—the *only purpose* of that argument was encouraging the jury to convict Mr. McDonnell *solely* for engaging in settled practices. The jury obliged, convicting Mr. McDonnell on eleven counts for committing, and conspiring to commit, honest services wire fraud and Hobbs Act extortion, while acquitting him of the non-corruption charges.

3. The district court denied Mr. McDonnell's post-trial motions for a judgment of acquittal and a new trial. It conceded that "mere '[i]ngratiation and access' may not alone create a quid pro quo agreement within the meaning of the bribery statutes," New Trial Op., Dkt. 567, at 5 (quoting *Citizens United*, 558 U.S. 310, 360 (2010)), but nonetheless upheld Mr. McDonnell's convictions, invoking an (inapposite) Sixth Circuit dissent to hold that "to distinguish between mere access and federal corruption, the Court should look to McDonnell's subjective intent in receiving the money." *Id.* (citing *United States v. Dimora*, 750 F.3d 619, 632 (6th Cir. 2014) (Merritt, J., dissenting)). On this basis, the district court ruled that such actions as emailing his chief counsel, or suggesting a meeting with Star representatives, qualify as "official acts" because Mr. McDonnell supposedly had the overarching intent of doing things "to legitimize, promote, and obtain research studies for Star Scientific products," *id.* at 5-7—an alleged overarching intent that the district court's instructions *did not require the jury to find.*

On January 13, 2015, the district court denied bond pending appeal. *See* Ex. A.

ARGUMENT

The standard for granting bond pending appeal—where, as here, there is no risk of flight, no danger to the community, and the appeal is not taken solely for purposes of delay—is merely whether the appeal presents "a substantial question of law or fact" that, if successful, is "likely to result in reversal or an order for a new trial of all counts on which imprisonment has been imposed." *United States v. Miller*, 753 F.2d 19, 24 (3d Cir. 1985). Mr. McDonnell need not show he is likely to succeed on the merits; rather, he need show *only* that his appeal presents "a 'close' question or one that very well *could be* decided the other way." *Steinhorn*, 927 F.2d at 196 (emphasis added). Appellate courts thus routinely grant defendants like Mr. McDonnell bond pending appeal in light of the substantial questions that arise when the vague federal corruption laws are applied to novel facts[6]—even where, as in *Jefferson* and other complex cases, they ultimately affirm the convictions.[7] Indeed, just last Friday, the First Circuit granted bond in a similar pending public corruption case. *See* Order, *United States v. O'Brien*, Case No. 14-2312, Ex. D. It is thus no surprise this Court regularly grants bond pending appeal where, as here, the defendant satisfies § 3143(b). Mr. McDonnell's appeal likewise clears this low hurdle.

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[6] *See, e.g.*, Order, *United States v. Jefferson*, No. 07-CR-209 (E.D. Va. Nov 18, 2009), Dkt. 619 (granting bond pending appeal on question whether certain actions constituted "official" actions under federal law); Order, *United States v. Ring*, No. 08-CR-274 (D.D.C. Oct. 26, 2011), Dkt. 297, at 3 ("challenging and novel questions of law regarding" the application of the federal bribery laws in the lobbying context); Order, *United States v. Siegelman*, No. 07-13163-BB (11th Cir. Mar. 27, 2008), Ex. D to Mem. in Support of Def. Robert F McDonnell's Mot. for Release Pending Appeal, Dkt. 602 (adequacy of the jury instructions governing Hobbs Act conviction of former Alabama governor); Order, *United States v. Ryan*, No. 06-3528 (7th Cir. Nov. 28, 2006) (former Illinois governor).

[7] *See United States v. Gupta*, 747 F.3d 111, 122, 140 (2d Cir. 2014); *United States v. Siegelman*, 640 F.3d 1159, 1190 (11th Cir. 2011); *United States v. Nacchio*, 555 F.3d 1234, 1259 (10th Cir. 2009); *United States v. Warner*, 498 F.3d 666, 704-05 (7th Cir. 2007); *see also, e.g.*, *United States v. Taft*, No. 04-05130 (Feb. 28, 2005), Dkt. 31; *United States v. Elliot*, No. 02-04836 (Nov. 1, 2002), Dkt. 14; *United States v. Parker*, No. 01-04109 (Feb. 21, 2001), Dkt. 10; *United States v. Robinson*, No. 95-07620 (April 17, 1996), Dkt. 17.

I. There Is A Substantial Question Whether Mr. McDonnell Performed Or Promised To Perform An "Official Act."

Mr. McDonnell's appeal presents the substantial question whether a public official takes "official action" when he asks an aide a question, encourages a staffer to attend a meeting, or appears at a private, closed-press event, without taking the additional step of asking anyone to take any particular action on the government's behalf. This case is the first in history to find that these sorts of actions are "official" ones under federal law. Decisions of the Supreme Court, the Eighth, First, and D.C. Circuits, and this Court all support Mr. McDonnell's position that his actions were not "official" ones. Those decisions make this a paradigmatic substantial question.

A. The Supreme Court Has Held That "Official Action" Does Not Include Everything A Public Official Does In His Official Capacity.

The Supreme Court has long been hostile to expansive constructions of the federal corruption laws. In "an area where precisely targeted prohibitions"—like ethics regulations—"are commonplace," a corruption statute "that can linguistically be interpreted to be either a meat axe or a scalpel should reasonably be taken to be the latter." *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 412 (1999). Courts "ought not expand [the bribery] piece of the regulatory puzzle so dramatically as to make many other pieces misfits." *Id.* Or in rejecting the old honest-services theory: "Rather than construe the statute in a manner that leaves its outer boundaries ambiguous and involves the Federal Government in setting standards of disclosure and good government for local and state officials, we read § 1341 as limited in scope to the protection of property rights." *McNally v. United States*, 483 U.S. 350, 359 (1987).

The Court's most recent review of these statutes in *Skilling v. United States*, 561 U.S. 358 (2010), unanimously rejected the Government's attempt to exploit the vagaries of honest services fraud, holding it "criminalizes only the bribe-and-kickback core of the pre-*McNally* case law." *Id.* at 409. Notably, the debate was not about whether the Government's theory was correct—all agreed it was not. It was, instead, between justices who believed the statute could be construed narrowly, *id.*, and those who thought it unconstitutionally vague, *id.* at 425 (Scalia, Thomas, Kennedy, JJ., concurring in the judgment). Either approach supports Mr. McDonnell here.

The Supreme Court's decision in *Sun-Diamond* further supports Mr. McDonnell's position. There, the Government argued that the gratuities statute "requires only a showing that a 'gift was motivated, at least in part, by the recipient's capacity to exercise governmental power or influence in the donor's favor' without necessarily showing that it was connected to a particular official act." 526 U.S. at 405-06. The Court rejected that broad construction, explaining that when interpreting corruption provisions which are "merely one strand of an intricate web of regulations, both administrative and criminal, governing the acceptance of gifts and other self-enriching actions by public officials," courts should give those provisions "a narrow, rather than a sweeping," interpretation. *Id.* at 409. Consistent with that guidance, the Court explained that under the statutory definition of "official act," many of a public official's actions—such as "receiving [] sports teams at the White House, visiting [a] high school, and speaking to [] farmers about USDA policy"—"while they are assuredly 'official acts' in some sense—are not 'official acts' within the meaning of the statute." *Id.* at 407.

Here, the Government's legal theory and the district court's jury instructions ignore the basic teaching of these decisions. Rather than restrain itself to prosecuting conduct in "the bribe-and-kickback core of the pre-*McNally* case law," *id.* at 409, the Government has taken the position that bribery captures routine political conduct that virtually every public official undertakes on a regular basis. "[C]ampaign contributions ... no less than any other payments," can be the *quid* in a *quid pro quo* bribery scheme. *United States v. Derrick*, 163 F.3d 799, 816-17 (4th Cir. 1998). That means that if providing referrals to other government officials or conferring credibility constitute "official acts," then virtually every political fundraiser violates the federal bribery laws, freeing prosecutors to choose targets at will.[8] That theory is incorrect, particularly in light of the Supreme Court's recognition that the First Amendment protects this sphere of political activity, such that "government regulation may not target the general gratitude a candidate may feel toward those who support him or his allies, or the political access such support may afford." *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1441 (2014). At the very least, the correctness of that theory presents a substantial question under § 3143(b).

B. Mr. McDonnell's Position Is Supported By Decisions From Three Other Courts of Appeals And Is Distinguishable From *Jefferson*.

Numerous federal appellate court decisions support Mr. McDonnell's position. The district court's opinions do not even cite—much less attempt to distinguish—these rulings. And *Jefferson*, the case that the district court and the Government do rely on, is not on point. These decisions establish a paradigmatic "substantial question" under § 3143(b).

1. **Eighth Circuit.** *United States v. Rabbitt*, 583 F.2d 1014 (8th Cir. 1978), *abrogated on other grounds by* 483 U.S. 350 (1987), *superseded by statute*, 18 U.S.C. § 1346, an honest services fraud and Hobbs Act case, directly supports Mr. McDonnell's position. There, the Eighth Circuit reversed the Hobbs Act conviction of Missouri's Speaker of the House who "offered, for a fee , to introduce [an architectural] firm to [state officials] who might be able to secure architectural contracts for it." *Id.* at 1020. The court held that was not enough to

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[8] Government officials routinely confer increased access and credibility on their supporters. *See, e.g.*, Jim Kuhnhenn, *Barack Obama Goes to DreamWorks, Talks Banjo with Steve Martin*, Huffington Post (Nov. 26, 2013) ("[President] Obama toured the DreamWorks Animation studio of one of his top political benefactors, Jeffrey Katzenberg 'Can't wait to see your next movie,' Obama added with a grin."), http://tinyurl.com/oov9z73. That includes officials who accept personal benefits like free travel—the gravamen of most convictions here. *See, e.g.*, Maddy Sauer, *Crackdown Proposed on Judges' Free Trips, Lavish Gifts*, ABC News (Feb. 4, 2008) ("[C]ritics say many of these trips are little more than judicial junkets which often cause serious conflicts of interest."), available at http://goo.gl/7cHydk.

support a conviction: "[W]hile Rabbitt's influence obviously helped these architects obtain state jobs, no testimony established that any state contracting officer awarded any contract to Berger-Field because of Rabbitt's influence or that Berger-Field believed Rabbitt's introduction was enough to secure the work." *Id.* at 1028. As the Eighth Circuit has subsequently explained, it reversed Mr. Rabbitt's conviction because he "promised only to introduce the firm to influential persons" and "did not promise to use his official position to influence those persons." *United States v. Loftus*, 992 F.2d 793, 796 (8th Cir. 1993).

Rabbitt supports Mr McDonnell's argument that taking an official act requires more than arranging meetings so that the benefactor can discuss a matter he is concerned about. The Eighth Circuit held that it was not enough for Mr. Rabbitt to recommend bribe payors "to state contractors as qualified architects and thereby gain them a friendly ear" in pursuit of their goal of "obtain[ing] state jobs." 583 F.2d at 1028. To take "official" action, the official had take the *next* step of "us[ing] his official position to influence those persons." *Loftus*, 992 F.2d at 796.

2. **First Circuit.** The First Circuit's decision in *United States v. Urciuoli*, 513 F.3d 290, 295-96 (1st Cir. 2008), an honest-services fraud case, also strongly supports Mr. McDonnell's position. There, the court reversed the conviction of a state senator who took payments in exchange for contacting "mayors and other local officials urging them to comply with Rhode Island law" in a way that benefited the alleged bribe-payor's hospital. *Id.* at 294. Judge Boudin s opinion for the court held that there was "no indication that [the senator] invoked any purported oversight authority or threatened to use official powers in support of his advocacy." *Id.* at 296. It specifically rejected the notion that "trad[ing] on the reputation, network and influence that comes with political office" or using the "access and attention" that comes with a government title, or even the "(possibly improper) use of senate letterhead" were

sufficient—standing alone—to qualify as improper official action. *Id.* at 296.

That decision conflicts with the Government's position. Here, too, there is no evidence (or jury instruction requiring a finding) that Mr. McDonnell ever "invoked any purported oversight authority or threatened to use official powers." *Id.* Moreover, the evidence in *Urciuoli* made clear that the defendant made payments to the public official specifically in exchange for obtaining access as part of a broader plan to convince mayors to increase ambulance service to the defendant's hospital. *See id.* at 292, 295. Despite a clear *quid pro quo* and larger plan, it was not honest services fraud because the Government had not shown "by context or threat that [the official] sought deliberately to exploit" the "leverage" of his public office. *Id.* at 296.

3. **D.C. Circuit.** The leading D.C. Circuit decision on this issue is its *en banc* opinion in *Valdes*. There, a policeman was convicted of taking payments in exchange for using an official police database to perform searches for license plates, "ostensibly to get contact information on individuals who owed [the bribe-payor] money." *Valdes v. United States*, 475 F.3d 1319, 1321-22 (D.C. Cir. 2007) (en banc). The D.C. Circuit held that conducting these searches for the alleged bribe-payor was not "official action." In so holding, the court rejected the Government's argument "that the bribery and gratuity statute should be construed broadly, to encompass essentially any action which implicates the duties and powers of a public official." *Id.* at 1322. The meaning of "official act" did not subsume "officials' moonlighting, or their misuse of government resources, or the two in combination"; rather, the Government must prove that the defendant exerted "inappropriate influence on decisions that the government actually makes." *Id.* at 1324-25; *see also, e.g., United States v. Muntain*, 610 F.2d 964, 967-68 (D.C. Cir. 1979) (vacating convictions and explaining "[t]o the extent that [defendant's] use of his official position to promote a purely private venture created an appearance of impropriety, his conduct is

reprehensible, but it is not criminal."); *United States v. Ring*, 706 F.3d 460, 470 (D.C. Cir. 2013) (explaining the crucial difference between "making a purely informational inquiry" and acting in one's "official capacity to influence" a governmental decision).

The contrast between the D.C. Circuit's rule and the rule applied below is vividly illustrated by comparing the jury instructions here to the instructions Judge Ellen Huvelle gave in *Ring*. There, Judge Huvelle instructed: "Standing alone, providing gifts of meals and tickets to public officials are not crimes, even if they are provided by someone seeking to curry favor or influence with those officials." Trial Tr. Day 12, *United States v. Ring*, No. CR 08-274 (D.D.C. Nov. 3, 2010), Dkt. 270, at 36:8-39:21, Ex. E. She also instructed that "[t]he fact that gifts or hospitality might make a public official willing to take a lobbyist's phone call or might provide the lobbyist greater access to the official's appointment schedule is not enough by itself to demonstrate the lobbyist's intent to deprive the public of the government official's honest services," *id.*, and that the "six terms, question, matter, cause, suit, proceeding, or controversy, refer to a class of questions or matters whose answer or disposition is determined by the Government." *Id.* And most importantly: "Mere favoritism, as evidenced by a public official's willingness to take a lobbyist's telephone call or to meet with a lobbyist is not an official act." *Id.* Here, the district court refused to instruct on these limits, even though they were central to the defense, and even though the district court's post-trial opinions themselves endorsed and relied on many of them.

4. ***United States v. Jefferson.*** The district court has never addressed the foregoing decisions. Instead, it relied on *United States v. Jefferson*, 674 F.3d 332 (4th Cir. 2012). *See* New Trial Op., Dkt. 567, at 9-11. *Jefferson*, however, is both factually and legally distinguishable.[9]

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[9] If it were not, *Jefferson* would conflict with *Rabbitt*, *Urciuoli*, and the other cases

On the facts, Congressman Jefferson engaged in "official acts" even under Mr. McDonnell's definition. Congressman Jefferson plainly used his status as a Congressman with "oversight authority" over domestic government agencies and foreign aid as a tool "in support of his advocacy" to, among other things, (1) pressure Export-Import Bank officials to award financing to the bribe-payor; (2) persuade the U.S. Army to award military contracts to the bribe-payor; and (3) pressure Nigerian government officials to award government contracts to the bribe-payor. Take, for example, his efforts on "African trade issues." Among other things, "[i]n return [for payments], Jefferson sent letters on official letterhead, conducted official travel to Ghana, and met Ghanaian government officials to promote the interests of" the bribe-payor, 674 F.3d at 342; he attended meetings in which he "urged Nigeria's support for [the bribe-payor's] venture, *id.* at 343; and he "assured [the bribe-payor] that he could secure the necessary cooperation of the Nigerian government," *id.* at 344. This list goes on. *See, e.g.*, *id.* at 341-51. *Jefferson* thus was a textbook case of a legislator "invok[ing his] purported oversight authority [and] threaten[ing] to use official powers in support of his advocacy." *Urciuoli*, 513 F.3d at 296.

And on the law, these factual differences underscore how *Jefferson* resolved an entirely different legal issue than the ones Mr. McDonnell will raise. As this Court explained there, Mr. Jefferson was making the "broad assertion that *Sun-Diamond* supersedes *Birdsall*" and, therefore, that "official acts" were limited only to formal legislative duties. *Jefferson*, 674 F.3d at 356. Here, by contrast, Mr. McDonnell has never questioned the vitality of *Birdsall* or, more specifically, that settled practices *can be* "official acts" if they otherwise involve "invok[ing] … purported oversight authority or threaten[ing] to use official powers in support of … advocacy,"

(continued…)

discussed above—a traditional ground for en banc and Supreme Court review, *see* Fed. R. App. P. 35(b)(1)(B); Sup. Ct. R. 10(a), that would itself raise a substantial question.

Urciuoli, 513 F.3d at 296. Instead, Mr. McDonnell challenges only whether his actions satisfy the statutory definition of "official action"—*i.e.*, whether they are "decisions" or "actions" on any pending "matter." *That* issue finds support in the out-of-circuit cases Mr. McDonnell has cited, was not addressed in *Jefferson*, and will thus present a substantial question of law

C. It Is, In Turn, A "Substantial Question" Whether The Verdict Was Sound.

Decisions of the Supreme Court, three other circuits (which the district court never addressed), and this Court thus all support Mr. McDonnell's understanding of the law. And if that understanding is correct, an acquittal or new trial is necessary. The Government did not prove, and the jury instructions did not require finding, that in the "five specific actions taken by McDonnell," D. Ct. New Trial Op. at 6, he "invoked any purported oversight authority or threatened to use official powers in support" of Mr. Williams. *Urciuoli*, 513 F.3d at 296. At the very least, both of these issues present substantial questions under § 3143(b).

1. There Is A Substantial Question Whether The Jury's Verdict Was Supported By The Evidence Under The Proper Legal Standard.

The Government called no witness who testified that Mr. McDonnell tried to influence him or her to make any decision on the Commonwealth's behalf, much less that he "threatened to use official powers in support of his advocacy," *Urciuoli*, 513 F.3d at 296. In fact, every relevant witness testified to the contrary:

- Mr. Eige, the recipient of the email, testified that Mr. McDonnell "never followed back up with me or never pushed back or never directed me to actually go forward and try to make something happen with the universities." Tr. Vol. VII, at 1668.
- No witness testified that Mr. McDonnell did anything at the Healthcare Leaders Reception to encourage anyone—public official or private physician—to do anything whatsoever with respect to Star or Anatabloc, or that he even mentioned Star.
- The staffer who thought Mr. McDonnell asked her to meet with Star testified that she did not think he wanted her to do anything besides meet with Mr. Williams and make her own decision about what (if anything) to do. *See* Tr. Vol. XI, at 2680 (Ms. Hicks-Thomas) ("Q: Governor McDonnell never came back to you and said 'Did you meet

with them? Did you take care of that?' A. Never.").

- The staffer who actually did meet with Mr. Williams sent him a "blow off" email within hours of the meeting and had "no doubt" that she was free to do precisely that. Tr. Vol. VII, at 1517:10-25 (Ms. Huffstetler); *id.* at 1524:10-14.
- The university researchers who attended the mansion lunch testified they did not think Mr. McDonnell wanted them to do anything in particular. *See* Tr. Vol. VIII, at 1795 (Dr. Lazo) ("I think the Governor's position was more of an interrogative type of a sort of questioning rather than 'Isn't this great?' or 'Isn't it this awful?'"); Tr. Vol. VII, at 1582 (Dr. Clore) ("[T]he gist of the conversation was the Governor spoke at a high level about health and wellness in Virginia and the compound, I suppose.").

The evidence thus showed only that Mr. McDonnell wanted people to make independent judgments about what to do. As Molly Huffstetler, the only staffer to actually meet with Mr. Williams during the alleged conspiracy, testified: She was "empowered to make [her] own decision about what to do going forward if at all here with Mr. Williams." Tr. Vol. VII, at 1517

2. There Is Also A "Substantial Question" Whether The Jury Instructions Were Prejudicially Overbroad.

Separate and apart from whether a jury *could have* found sufficient evidence to convict Mr. McDonnell under the correct legal standard, the district court failed to require *this* jury to make any such finding. The instructions declined to inform the jury of its obligation to find that Mr. McDonnell crossed the line drawn in *Urciuoli*, *Rabbitt*, *Valdes*, etc. The district court declined to inform the jury about such limitations even though *it relied directly on them* in its post-trial opinions, agreeing with Mr. McDonnell that "mere '[i]ngratiation and access' may not alone create a quid pro quo agreement within the meaning of the bribery statutes." New Trial Op., Dkt. 567, at 5. Though the district court repeatedly endorsed this principle *post*-trial, it has never explained why it *rejected* Mr. McDonnell's proposed instruction making the same point *during* the trial. *See* McDonnell Prop. Instr. No. 58 ("[M]ere ingratiation and access are not corruption."), Dkt. 287. Same for the district court's post-trial recognition that the Government needed to prove that Mr. McDonnell "attempted to use his gubernatorial position to influence governmental decisions," Trial Op., Dkt. 567, at 7; the court rejected an instruction conveying that precise rule. *See* McDonnell Prop. Instr. No. 58 ("The questions you must decide are both whether the charged conduct constitutes a 'settled practice' and whether that conduct was intended to or did in fact influence a specific official decision the government actually makes."). The district court even declined to tell the jury that "the fact that an activity is a routine activity, or a 'settled practice,' of an office-holder does not alone make it an 'official act,'" *id.*—an omission the Government aggressively exploited, *see supra* 5-6—that conflicts with *Jefferson*'s holding that "the jury could not rely exclusively on [ ] settled practices." 674 F.3d at 357.[10]

This instructional error went to the heart of Mr. McDonnell's defense. Mr. McDonnell never disputed that his actions were settled practices, since referring people for meetings, asking aides questions, and attending events are things governors reflexively do hundreds of times a week. His central argument, rather, was that his actions were not "official" because none sought to inappropriately influence any governmental decision. The Government capitalized fully on the instructional error to circumvent this defense—arguing to the jury that it need *not* find any effort to influence any governmental decision. *See* Tr. Vol. XXV, at 6042 ("[Y]ou look for the word pressure. It doesn't appear anywhere."). It argued that Mr. McDonnell "didn't have to say a single thing" at the Mansion event because his mere presence conferred "credibility" on Star. *Id.* at 5843-44, 5845. Similarly, the Government argued it was irrelevant that no request for action followed from Mr. McDonnell's suggested meeting. "[Defense counsel] said that nothing came out of it. But, ladies and gentlemen, that's not the point. The Governor of Virginia is saying, 'You should meet with them.'" *Id.* at 6042:6-11. The Government argued it was enough that "Mr. McDonnell's involvement with every single one of these things was in his official capacity as Governor." *Id.* at 5870:2-3. It argued that even the email to Mr. Eige counted as an "official act" because: "He's emailing. He's doing something." *Id.* at 6041:8.

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[10] The district court reiterated its agreement with these legal principles in its recent Order denying bond. That Order repeats that "Mr. McDonnell attempted to use his gubernatorial office to influence governmental decisions in favor of Star Scientific" and asserts that "Mr. McDonnell assuredly did more than provide mere access to Williams." Ex. A at 2. Mr. McDonnell disagrees with these conclusions, of course, but once again the district court did not even attempt to explain why it declined to communicate these critical limitations on "official action" to the jury in its jury instructions.

Not only that, but the district court gave an unwieldy instruction that no other court has given, which improperly expanded and modified the "settled practice" instruction. The court instructed that "official actions may include acts that a public official customarily performs, even if those actions are not described in any law, rule, or job description," that "a public official need not have actual or final authority over the end result sought by a bribe payor so long as the alleged bribe payor reasonably believes that the public official had influence, power or authority over a means to the end," and "official action can include actions taken in furtherance of longer-term goals, and an official action is no less official because it is one in a series of steps to exercise influence or achieve an end." Tr. Vol. XXVI, at 6103. These instructions thus invited the jury to conclude that any customary action, any act "in a series of steps to exercise influence *or* achieve an end," or even any act that Mr. Williams claimed he "reasonably believe[d]" was a "means" to some unspecified "end" (whatever that means) was automatically an "official act."

At the very least, however, whether the broad "official act" instruction—unaccompanied by *any* limitations remotely akin to *Ring* or the principles in *Urciuoli*, *Rabbitt*, and *Valdes*—was error is plainly a substantial question of law.[11] The instructions thus present a second substantial legal question which, if decided in Mr. McDonnell's favor, warrants a new trial on all counts.

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[11] The Government has argued [illegible] the instruction here is the same as in *Jefferson*. False: *Jefferson* never approved anything like these expansions. *See* 674 F.3d at 357 (quoting the pertinent instruction). But regardless, it is black letter law that "[j]ury instructions should be drawn with reference to the particular facts of the case on trial," *United States v. Holley*, 502 F.2d 273, 276 (4th Cir. 1974), because "[a]bstract propositions of law stated to the jury without regard to the factual circumstances are potentially confusing." *Duke v. Uniroyal, Inc.*, 928 F.2d 1413, 1421 (4th Cir. 1991). Appellate courts thus routinely reverse trial courts for relying on instructions that the court of appeals has previously approved in cases with different facts. *See,*

II. There Is A "Substantial Question" Whether This Court's Voir Dire Of The Jury On Pretrial Publicity Was Adequate.

Trial courts abuse their discretion in conducting voir dire on pretrial publicity if (1) the "pretrial publicity about the case raised a significant possibility of prejudice" and (2) "the district court's voir dire procedure failed to provide a reasonable assurance that prejudice would be discovered if present." *United States v. Pratt*, 728 F.3d 463, 470 (5th Cir. 2013). Here, it is undisputed that there was a great deal of negative publicity during the run-up to Mr. McDonnell's trial. *See* Mem. in Supp. Mot. Voir Dire Relief, at pp. 2-12, Dkt. 110 (gathering examples). Both sides thus suggested individualized voir dire for jurors who admitted exposure to publicity, to ensure discovery of prejudice.[12] The district court declined. Tr. Vol. I, at 139

Instead, the district court limited its voir dire on pretrial publicity to two questions. After acknowledging that the "case has generated a lot of media interest" the court asked the room full of prospective jurors to stand up "if you have read, heard or seen something in the media." *Id.* at 140. Almost everyone stood. The district court then said: "Based on what you have heard or read or seen relating to this case, if you are, in your mind, able to put aside whatever it is that you ve heard, listen to the evidence in this case and be fair to both sides, then I want you to sit down." *Id.* at 141. Everyone sat. *See id.* The court then stated that it was "satisfied with the responses," *id.* at 141, and rejected repeated requests for individualized inquiry, *see id.* at 139

(continued . . .)

e.g., *United States v. Regan*, 937 F.2d 823, 828 (2d Cir. 1991) ("[A] charge that is adequate and proper in one case may not play the same role in another case involving a different set of facts."); *United States v. Lung Fong Chen*, 393 F.3d 139 (2d Cir. 2004) (instructions regarding intent in bank funds case not appropriate for cases involving more complex transactions). And this case presents starkly different facts *and* legal arguments than *Jefferson*.

[12] *See* Tr. Vol I, at 137 ("[I]t might be advisable for us to do some limited inquiry or bring them up or something ") (Government); *id.* at 138-39 (same) (defense).

("[I]f somebody is exposed to pretrial publicity, they have to be individually voir dired.").[13]

It is a substantial question whether that was enough. This Court has endorsed the following procedure: "'[T]he court must ascertain if any jurors who had been exposed to such publicity had read or heard the same. Such jurors who respond affirmatively must then be examined, individually and outside the presence of the other jurors, to determine the effect of the publicity.'" *United States v. Hankish*, 502 F.2d 71, 77 (4th Cir. 1974). That is why, in *United States v. Bakker*, 925 F.2d 728, 733-34 (4th Cir. 1991), the trial court "questioned potential jurors about exposure to pre-trial publicity including specific media reports, about exposure to the opinions of others, about the juror's personal opinions about the case, and about whether media attention during the trial would influence a juror's decisions" and this Court held that such "careful" voir dire was "proper." Courts have thus set aside convictions where trial judges relied "solely on a juror's assertion of impartiality." *Pratt*, 728 F.3d at 470. Should this Court agree with Mr. McDonnell, he will be entitled to a new trial. *See, e.g.*, *United States v. Beckner*, 69 F.3d 1209, 1293-94 (5th Cir. 1995); *Skilling*, 561 U.S. at 438 (Sotomayor, J., dissenting) ("The majority [ ] envisions a fixed point at which public passions become so intense that prejudice to a defendant's fair-trial rights must be presumed."). This issue thus provides another basis for bond.

CONCLUSION

Mr. McDonnell respectfully requests that the Court grant him bond pending appeal.

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[13] The final jury questionnaire, from which the court excluded many of the requested questions, did not cure this problem because the court declined to ask prospective jurors whether their exposure to pretrial publicity had caused them to form an opinion about guilt or innocence. *See, e.g.*, Ex. C to New Trial Mem., Dkt. 548, at 31. Instead, it simply asked whether they had "expressed" an opinion to a third party. Ex. B to New Trial Mem., Dkt. 548, at 23. The questionnaire thus did not identify those prospective jurors who kept their opinions to themselves. Defense counsel accordingly objected that the court had no basis for determining which jurors were biased by pre-trial publicity save those who had expressed their bias to third parties. *See* Tr. Vol. I, at 139, 141 ("I can't make any judgments or arguments to you without any further inquiry."). Thus, nobody ever asked about "the impact" that "both past and future media attention would have upon potential jurors." *Bakker*, 925 F.2d at 733.

Dated: January 14, 2015

Respectfully submitted,

/s/ Noel J. Francisco

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Counsel for Robert F McDonnell

STATEMENT REGARDING ORAL ARGUMENT

Mr. McDonnell respectfully requests oral argument. Allowing counsel to present oral argument would permit the Court to inquire about whatever issues in this case's voluminous record it may deem critical to deciding this motion. Given the vital importance of this issue to protecting Mr. McDonnell's legal right to an effective appeal, in light of his twenty-four-month sentence, he respectfully submits that oral argument would be appropriate.

Mr. McDonnell and his counsel note that the Court has an upcoming argument calendar on January 27-29. Mr. McDonnell's counsel can be available to present argument on any day at any time during that calendar, at the Court's convenience.

CERTIFICATE OF SERVICE

I certify that on January 14, 2015, the foregoing Motion for Release Pending Appeal was served on counsel of record for all parties through the CM/ECF system

Dated: January 14, 2015

/s/ Noel J. Francisco
Noel J. Francisco
Counsel for Robert F. McDonnell

EXHIBIT E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----------------------------X
UNITED STATES OF AMERICA, Docket No CR 08-274
Plaintiff,

v Washington, D C
November 3, 2010
2:00 p.m

KEVIN A. RING, **AFTERNOON SESSION**
Defendant
-----------------------------X

JURY TRIAL - DAY 12
BEFORE THE HONORABLE ELLEN SEGAL HUVELLE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript produced by computer officials

Now, as I just instructed, the legality of any campaign contributions in this case is not an issue before you   But you are not to infer from this instruction that the meals, tickets and other gifts described in this trial were necessarily illegal or criminal   These things may also be perfectly proper and legal as well

Standing alone, providing gifts of meals and tickets to public officials are not crimes, even if they are provided by someone seeking to curry favor or influence with those officials   It is not illegal to give a thing of value to a public official merely to build a reservoir of good will that might ultimately affect one or more unspecified acts now or in the future   Offering hospitality to a public official through payments for entertainment, sports events and the like would not constitute violations of the illegal gratuities or honest services wire fraud statutes if the intent of the Defendant was simply to cultivate a personal, professional, business or political -- I'm sorry -- cultivate a personal, business, or political friendship

A lobbyist is a person who, for compensation on behalf of a client, engages in direct communication with public officials for the purpose of influencing legislative or administrative actions   Lobbyists often use hospitality to cultivate personal and political relationships with public officials As I said, there is nothing illegal about this practice The fact that gifts or hospitality might make a public official willing to take a lobbyist's phone call or might provide the lobbyist greater access to the official's appointment schedule is not enough by itself to demonstrate the lobbyist's intent to provide illegal gratuities or to deprive the public of the government official's honest services Therefore, you cannot find that the Defendant has provided illegal gratuities or committed honest services wire fraud if you find that his intent was limited only to the cultivation of business or political friendship

Such gifts become criminal only if you find beyond a reasonable doubt that they were given in violation of either the illegal gratuities or honest services wire fraud statutes, as will be described below If you find beyond a reasonable doubt that gifts were given in violation of these statutes, it makes no difference that the giver also had a lawful reason or motivation for giving the gift

Now, we talked a lot about thing of value I will be instructing you in a moment about the offenses charged in the indictment For purposes of these charges, a quote, thing of value, end of quote, includes things possessing intrinsic value, whether tangible or intangible, that the person giving or offering, or the person soliciting or receiving considers to be worth something

This would include a sum of money, tickets, meals, drinks, golf outings, trips and jobs or the offer of jobs, but it does not, as I previously instructed you, include campaign contributions It also includes things of value given not to the public official but to a family member or third party for the benefit of the public official and at the public -- and at the public official's knowing direction

A public official is defined as an officer or employee or person acting for or on the behalf of the United States or any department, agency or branch of government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency or branch of government It is undisputed here that members of Congress, their employees, and employees of the executive branch are public employees

Official act In general, an official act, and that's in quote, means any decision or action on any question, matter, cause, suit, proceeding or controversy which may at any time be pending or which may, by law, be brought before any public official in such official's official capacity or in such official's place of trust or proffer The six terms, question, matter, cause, suit, proceeding, or controversy, refer to a class of questions or matters whose answer or disposition is determined by the Government

An act may be official even if it was not taken pursuant to responsibilities explicitly assigned by law Rather, official acts include those activities that have been clearly established by settled practice as part of an official -- public official's position Therefore, official act includes the exercise of both formal official influence such as a legislator's vote on legislation and informal official influence such as the legislator's behind-the-scenes influence on other public officials in the legislative or executive branches

Official act also includes a public official altering his or her official acts, changing a position which he or she would have otherwise taken, or taking actions in his or her official capacity that he or she would not have taken but for the scheme or artifice to deprive the United States and its citizens of their intangible right to the honest services of certain government officials

Mere favoritism, as evidenced by a public official's willingness to take a lobbyist's telephone call or to meet with a lobbyist is not an official act In addition, sharing information with the lobbyist or helping to develop a lobbying strategy does not constitute an official act

Kevin Ring denies all of the charges against him and maintains his innocence His position is that the evidence shows that he only used the legitimate tools at his disposal, including his past experience on Capitol Hill, policy

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Appellee,	)	
	)	
v	)	No. 15-4019
	)	
ROBERT F MCDONNELL,	)	
	)	
Defendant-Appellant.	)	
	)	

United States' Response to Motion for Bail Pending Appeal

The United States respectfully opposes defendant Robert F McDonnell's motion for bail pending appeal under 18 U.S.C. § 3143(b) and Fed. R. App. P 9(b). After a six-week trial, the jury rejected defendant's lead argument for bail—his claim that he never agreed to perform official acts in exchange for roughly $177,000 in money, luxury goods, and other benefits. And as the district court explained, the jury made this finding after receiving an official-action instruction "nearly identical" to the one that this Court affirmed in *United States v. Jefferson*, 674 F.3d 332 (4th Cir.), *cert. denied*, 133 S. Ct. 648 (2012). Attach. A at 9. As the district court determined after sitting through the trial, neither defendant's sufficiency-of-the-evidence challenge nor his jury-instruction challenge poses "a 'close' question or one that could very well be decided the other way," a prerequisite for bail pending appeal. *United States v. Steinhorn*, 927 F.2d 195, 196 (4th Cir. 1991) (per curiam).

Defendant also contends that there is a "close" question on whether the district court abused its discretion in conducting voir dire on pretrial publicity and says this is a question of first impression for this Court after *Skilling v. United States*, 561 U.S. 358 (2010). But his legal argument on pretrial publicity relies on the dissent in *Skilling*. Def. Mem. at 20. In defendant's case, the district court "issued a 99-item questionnaire to 650 prospective jurors," inquired about pretrial publicity in court, and permitted individual voir dire of every prospective juror that defendant identified as a potential concern using the questionnaire and in-court questioning. Attach. A at 14-15. This Court's precedent and *Skilling* fully support that the over seven-hour voir dire here fell well within the district court's discretion, just as the five-hour voir dire affirmed in *Skilling* did.

Defendant invokes his 24-month sentence as a reason for granting bail, but as the plain language of § 3143(b) and this Court's precedent establish, a defendant must establish a "close" question to obtain bail. Section 3143(b) states that a court "shall order" that a defendant be detained during an appeal "unless" the appeal "raises a substantial question of law or fact likely to result in," as relevant here, a reversal or new trial. A defendant who challenges his convictions on appeal must raise a "close" question "important enough to warrant reversal or a new trial on all counts." *Steinhorn*, 927 F.2d at 196. The length of a defendant's sentence never removes that statutory requirement.

And under the 1984 Bail Reform Act, the law governing release during a defendant's appeal "shifted from a presumption of release to a presumption of valid conviction." *United States v. Perholz*, 836 F.2d 554, 556 (D.C. Cir. 1987) (per curiam) (citing S.Rep. No. 225, 98th Cong., 1st Sess. 27 (1983)). "[T]he conviction is presumed correct and the burden is on the convicted defendant to overcome that presumption." *United States v. Giancola*, 754 F.2d 898, 901 (11th Cir. 1985) (per curiam). This shift in the law was "a significant change from the 1966 Act," under which "any question that was fairly debatable was considered substantial," justifying bail. 3B Fed. Prac. & Proc. Crim. § 770 (4th ed. 2013).

I. Background

Defendant's bribery scheme with his wife and Jonnie Williams, Sr., a Virginia businessman, unfolded over more than two years while defendant was governor of Virginia. During that time, Williams paid defendant to assist Williams's company, Star Scientific, in securing research studies of Star's product, the dietary supplement Anatabloc, at state medical schools in Virginia. The bribery scheme arose from the central policy initiative of defendant's administration. When defendant was campaigning to be governor, job loss from the recession was a major concern, and he "embraced that as really the chief challenge" of his administration. Tr. 4355. Promoting Virginia businesses to help create jobs in Virginia was an objective that voters elected him to accomplish and a longstanding goal of governors before him, a point that was uncontested at trial and conclusively established. *See, e.g.*, Tr. 2037, 2234-35, 2541-42, 2918-20. In defendant's administration, "Bob's for Jobs," his campaign slogan, was regnant. Tr. 1307, 4333-35.

In this case, as part of the bribery scheme, defendant received money and luxury goods for himself and his family, payoffs that have long been at the core of public corruption. And as the jury found, he received those payments with corrupt intent and without good faith, and the payments were, by agreement, in exchange for helping Williams on his goal of obtaining studies at state medical schools. Defendant hid the payoffs when he could from both his staff and the public, and kept secret his understanding with Williams. And defendant assisted Williams through activities central to a Virginia governor's duties—arranging meetings with cabinet-level officials and carrying out events in defendant's capacity as governor to promote Virginia businesses. Tr. 2038, 2040-41, 2235-36, 2542, 2545-46, 2918-20. Those events and meetings targeted, moreover, the very state employees that Williams hoped to convince—both defendant's cabinet officials and the state-employed medical professionals who might sponsor research at the University of Virginia (UVA) and Virginia Commonwealth University (VCU).

As governor, defendant did regularly promote businesses, as other governors before him have, even without directing cabinet-level officials and conducting events targeted at state employees who might act on a business's behalf. "I've been in front of signs and with products in my hand hundreds and hundreds of times as Governor. Yes, sir," defendant testified. Tr. 5182. But when asked, "How many other times had anybody affiliated with those products or proposals given your wife a $50,000 check," defendant replied, "None." Tr. 5182.

A. ***January 2010 to March 2011.*** *With his family's debts mounting, defendant learned that Williams wanted him to assist Star Scientific.*

At the time of defendant's inauguration on January 16, 2010, the McDonnells owed nearly $75,000 in credit-card debt, an "unconscionable amount," the first lady acknowledged, that soon grew to $90,000. Exhs. 54, 568, 572. Not long into defendant's administration, in October 2010, he learned what Williams wanted during a six-hour flight on Williams's Learjet. Tr. 4468. As defendant acknowledged in his testimony at trial, Williams talked "[e]xtensively" with defendant during the flight, even "had a PowerPoint," and "was kind of marching through his exhibits." Tr. 4468-71. Williams agreed in his testimony. He flew out to California and then flew back with defendant because Williams "figured that would give me five or six hours with the Governor to explain to him what I had discovered here in Virginia and to explain to him that I needed his help and—in moving this forward." Tr. 659. As the district court concluded, the trial record includes "substantial evidence" that "McDonnell knew what Williams was seeking, specifically, research studies for Star Scientific's Anatabloc product." Attach. B at 5.

Meanwhile, the McDonnells' joint venture that owned two beach houses, MoBo, was placing significant demands on the McDonnells' finances. After the McDonnells were rejected by every bank from which they sought refinancing for the houses—Bank of America, Wachovia, Monarch, and Sun Trust—the members of MoBo owed $11,557.23 per month on loan payments alone. Tr. 4961-62; Exh. 709. In an email, defendant's sister proposed a short sale of the beach houses. "I understand short sales will not hurt our credit, unlike bankruptcy." Exh. 51. At trial, defendant maintained that his sister was "exaggerating" in this email about the finances for the beach houses, and that his wife was "exaggerating" when she described the problems posed by their then-$70,000 and growing credit-card debt. Tr. 4938-39. Defendant repeatedly invoked at trial his $200,000 credit limit on his credit cards to explain why he was in good health financially, *see, e.g.*, Tr. 5008, 5011, but the jury was entitled to conclude that he was under financial duress. "[I]t is the responsibility of the jury—not the court—to decide what conclusions should be drawn from the evidence admitted at trial." *Coleman v. Johnson*, 132 S. Ct. 2060, 2062 (2012) (per curiam).

B. ***April to July 2011.*** *The McDonnells began secretly receiving large financial benefits from Williams and understood that in return they would help him.*

On April 13, 2011, Williams bought nearly $20,000 in luxury clothing for the first lady, and in exchange, Williams was seated next to defendant at an event that evening. Tr. 674, 963, 4486. Five days after the shopping spree, the McDonnells invited the Williamses to the governor's mansion, and at the private dinner on April 29, Williams discussed Anatabloc, an upcoming fundraiser for Anatabloc at the Roskamp Institute, and scientific studies of Anatabloc. Tr. 4499-4500, 4991 Defendant acknowledged in his testimony that "I had heard a lot of this before when I was on the plane with him in October," and testified that "if they want to do clinical trials in Virginia, I thought that would be a good thing." Tr. 4500, 4502. Williams confirmed that he brought up the studies again. Tr. 677

On May 2, 2011, a few days after the mansion dinner, Williams met the first lady at the mansion, and she said, "The Governor says it's okay for me to help you and—but I need you to help me. I need you to help me with this financial situation." Tr. 680. That month, Williams gave the McDonnells a $50,000 loan that required no payments until the loan was due several years later and also gave the McDonnells $15,000 to cover the catering costs that defendant had contracted to pay for his daughter's wedding. Tr. 680-82, 799.

At trial, defendant claimed the $15,000 was really a gift to his daughter. During the April 29 dinner, defendant's daughter, Cailin, had stopped by and mentioned her upcoming wedding, which was about five weeks away. Tr. 4497 Defendant agreed that this was the first time that Cailin had met Williams and that the Williamses and McDonnells were not friends at this point. Tr. 4505, 4989, 5002. Cailin testified that she spoke with Williams "about ten, fifteen minutes," and that, remarkably, after the conversation, "possibly a couple days, maybe a week" later, her mother "told me that Mr. Williams was so impressed by me and really enjoyed meeting me, and as a wedding gift he wanted to pay for our reception." Tr. 321-22. When Williams gave the McDonnells the $15,000, he was not on the wedding guest list and did not attend. Tr. 4990. The jury was entitled to conclude that the $15,000 was not a gift to Cailin.

And as Williams testified, the McDonnells were not his personal friends. Tr. 683. "This was a business relationship." Tr. 684. On his publicly filed statement of economic interests (SOEI), defendant never disclosed the $15,000 gift, had his press secretary report that "the family was paying" for the wedding, described the $50,000 loan as "medical services," and did not disclose more than $2,380 in golf at an exclusive country club that Williams paid for defendant and his sons to enjoy. Tr. 2239, 4772-73, 5098-99.

On May 28, 2011, defendant wrote to Williams, "Johnnie [sic]. Thanks so much for all your help with my family Your generous gift to Cailin was most appreciated as well as the golf round tomorrow for the boys. Maureen is excited about the trip to fla [for a fundraiser for Williams at the Roskamp Institute] to learn more about [Anatabloc] and to see Celeste." Exh. 134.

On June 16, 2011, Williams outlined for defendant his plan to have studies of Anatabloc performed at Virginia medical schools. In a cover letter that began, "Dear Governor McDonnell," Williams briefly described studies already underway of Anatabloc and quickly moved to his goal. "I am suggesting that you use the attached protocol to initiate the 'Virginia study' of Anatabloc at the Medical College of Virginia and the University of Virginia School of Medicine, with an emphasis on endocrinology, cardiology, osteoarthritis and gastroenterology " Exh. 162. At trial, defendant admitted that he had a "good sense" of this letter but claimed that "I was surprised to get the letter. It kind of came out of the blue." Tr. 5036-37 The $50,000 loan, as well as golf clubs and equipment that Williams later gave defendant and his sons in June, also came "out of the blue." Tr. 5043. The jury was entitled, however, to disbelieve defendant's assertions that the letter, gifts, and money "came out of the blue." "[A] statement by a defendant, if disbelieved by the jury, may be considered as *substantive evidence* of the defendant's guilt," and "when a defendant chooses to testify, he runs the risk that if disbelieved the jury might conclude the opposite of his testimony is true." *United States v. Godwin*, 765 F.3d 1306, 1322 (11th Cir. 2014) (citations omitted). *See also Wright v. West*, 505 U.S. 277, 295-96 (1992) (same); *United States v. Burgos*, 94 F.3d 849, 867-68 (4th Cir. 1996) (en banc) (same).

After receiving the June 16 letter, defendant forwarded it to William Hazel, his Secretary of Health and Human Resources, a cabinet-level position. Tr. 4552. And on July 28-31, 2011, Williams gave the McDonnells free use of his Smith Mountain Lake vacation home and arranged for a boat and a Ferrari to be there for their use. Tr. 5063-64.

C. ***August 2011 to May 2012.*** *After being showered with gifts and money, the McDonnells advanced Williams's goals.*

At the end of the Smith Mountain Lake vacation, defendant drove Williams's Ferrari on the three-hour trip home, Tr. 5064-66, and then, shortly after arriving home at 11:29 pm, emailed Secretary Hazel. Defendant directed, "Bill, would like to have [one of your deputies] attend a short briefing at the mansion about 10 am with first lady on the Star Scientific anatablock [sic] trials planned in va at vcu and uva." Exh. 189. At 6:28 am the next morning, the cabinet official replied, "Will do," and complied, sending a deputy to the meeting with Williams and the first lady. Later that month, defendant and his sons again played golf on Williams's tab, which defendant again omitted from his SOEI. Tr. 4773.

On August 30, 2011, defendant hosted a product launch for Anatabloc at the mansion, an event whose invitees included the state government employees from UVA and VCU that Williams wanted to persuade to conduct research on Anatabloc. Tr. 727-29. And defendant knew the purpose of the event was not ceremonial, but was rather to help Williams obtain the studies. On the briefing form that described the event and listed its attendees, defendant handwrote asterisks next to the names of the UVA and VCU researchers who attended the event. Exh. 231, Tr. 2572-73, 5080-81. At the event, defendant spoke favorably of Williams's product, and Williams handed out $200,000 in seed grant money. Tr. 732-33. Two cabinet-level officials attended the event with defendant. Tr. 4729. All of this, defendant testified, "was really part of the job creation focus." Tr. 4729

And defendant made time to attend the event even though Virginia had in the preceding week been afflicted by a series of natural disasters. As defendant's chief of staff testified, "within a one-week span, we had an earthquake, a sizeable earthquake in Louisa County; we had a major hurricane, one of the most devastating hurricanes that Virginia has had come up its east coast; and there were fires in the Great Dismal Swamp and the Chesapeake area which were affecting traffic up and down the interstate in Virginia as far west as the Richmond area." Tr. 2569. Defendant denied knowing that almost a quarter million people in

Richmond were without power at the time of the Anatabloc event, but said that he "met with Secretary Napolitano an hour later" to discuss the aftermath of the hurricane. Tr. 5085.

Both before and after the August 30 Anatabloc event at the mansion, defendant's support of Williams's product was clear to university officials, who were defendant's subordinate government employees. For example, before the event, VCU's Dr. John Clore wrote to his medical school colleagues, "Mr. Williams is a very good friend with the Governor and the Governor would like to sponsor these trials as evidence of Virginia's commitment to research and entrepreneurship." Tr. 1546; Exh. 167 Dr. Clore was later invited to the mansion event and received a $25,000 check from Williams as seed grant funds. Tr. 1552.

Similarly, after the event UVA's Dr. John Lazo reported on the event to at least four other UVA officials and referenced defendant's attendance, including on his drive back to Charlottesville. Tr. 1797-1800. One of those officials later wrote a pro/con list about UVA's potential involvement with the studies. The first "pro" was "[p]erception to Governor," and the first "con" was "[p]olitical pressure from Governor and impact on future UVA requests from the Governor." Exh. 267, Tr. 2770.

On December 20, 2011, defendant's wife sold all of her shares of Star stock at a loss of $17,812.56, and then repurchased them on January 20, 2012, allowing defendant to file an SOEI in January that truthfully did not report the stock ownership. Tr. 4597 At Christmas, defendant received a Rolex watch that Williams bought him and had engraved "71st Governor of Virginia" at defendant's wife's request, and on January 7 spent $1,424 playing golf on Williams's tab. Defendant reported neither gift on his SOEI. Tr. 725, 4598, 4600, 5105.

On January 19, 2012, while Williams was at the mansion, the first lady handed Williams the phone so that Williams could discuss MoBo's troubled finances with Michael Uncapher, the husband of defendant's sister and then-manager of MoBo. Tr. 2740-41, 3353-56. Defendant maintained that an email exchange on January 27, 2012, between him and his wife was the first he learned that Williams was going to loan them (or MoBo, as he insisted at trial) what turned out to be another $50,000. Tr. 5147; Exh. 295. Defendant claimed that his wife "told me that she had reached a tentative agreement and Mr. Williams was willing to lend $50,000 to MoBo for the choice that we had made for a loan." Tr. 5147 A loan from Williams was important because, as defendant acknowledged, "traditional credit might not be available that year." Tr. 4642.

Defendant testified that he first spoke to Williams about the loan in a phone call on February 3, 2012, and that Williams proposed loaning stock to the McDonnells and "suggested I could get a margin loan from a brokerage." Tr. 4652. In notes defendant took during the call, he wrote "reportability" but testified that dealt solely with Williams "explaining to me his reportability requirements." Tr. 4657; Exh. 822. "I didn't have any problem with reporting anything I had to do with Mr. Williams," defendant claimed. Tr. 4659, 5159. Of course, after defendant ultimately received another $50,000 loan and a later $20,000 loan, neither of which required payments while defendant was in office, defendant did not report either loan on his SOEI, claiming they were loans to MoBo, not to him or his wife. Tr. 5290-91.

After talking to Williams on February 3 about borrowing more money, defendant reviewed a list of attendees for the upcoming healthcare leaders event at the governor's mansion. Tr. 5163; Exh. 629. In an email that defendant's scheduler sent on February 8, she noted that the "Governor wants to make sure" that "[h]ead officers at VCU/MCV, UVA" were among those invited. Tr. 5164; Exh. 306.

Also on February 8, 2012, Williams forwarded to the first lady names and contact information of UVA officials with whom Star had spoken on November 29, 2011, about "UVA's role in submitting an application to the VA Tobacco Commission to fund" the studies that Williams wanted. Exh. 312.

On February 9, the first lady forwarded the information to defendant and Jasen Eige, whom defendant had elevated to a cabinet-level position. Tr. 4748. The subject line of the email read, "Anatabine clinical studies—UVA, VCU, JHU," and the first lady wrote, "Here's the info from Jonnie. He has calls in to VCU & UVA & no one will return his calls." Tr. 5165-66; Exh. 312. Eige responded late the same day and said, "Lets talk next week when you return." Ex. 314. In email that she sent the next morning, while seated next to defendant, Tr. 5175-76, the first lady shot back: "Pls call Jonnie today get him to fill u in on where this is at. Gov wants to know why nothing has developed w studies after Jonnie gave $200,000. I'm just trying to talk w Jonnie Gov wants to get this going w VCU MCV Pls let us know what u find out after we return. Jonnie's cell is [redacted]. Thanks, ~mm." Exh. 314.

Defendant testified that he did not see this email until "after the investigation started" and denied that he ever had a conversation with his wife in which he expressed that he wanted "to get this going" with the state medical schools. Tr. 4737; 5173-74. Again, when a defendant testifies, the jury may "conclude the opposite of his testimony is true." *Godwin*, 765 F.3d at 1322. When asked, "So your testimony is that your wife was misleading one of your most trusted advisors and assuming that the two of you would not discuss this so that he could find out what you really wanted. That's your testimony?" Tr. 5174-75. Defendant answered, "There was a lot of parts to that question. Mr. Eige was her lawyer as well." Tr. 5175.

At 11:56 pm on February 16, 2102, defendant wrote to Williams, "Johnnie [sic]. Know u have been slammed. Do u want me to call your lawyer on the certificates and the documents. Thanks for all your help. Gov " Exh. 318. Defendant testified that his reference to the "certificates" related to what he and Williams had discussed on their February 3 call as an alternative to a cash loan, and said that when he sent his email, "I figured we needed to have money for MoBo operations probably by no later than early March." Tr. 4743, 5179; Exh. 318.

Six minutes after defendant emailed Williams about the prospective loan, defendant emailed his chief policy deputy and cabinet member, Eige, at 12:02 am and wrote, "Pls see me about anatabloc issues at VCU and UVA. Thx." Exh. 319; Tr. 4748. Within four minutes, Eige responded to defendant, "will do. We need to be careful with this issue." Exh. 320.

On cross-examination, defendant was asked, "at this point, you know that Mr. Williams wants your assistance in getting UVA and VCU to agree to help with the studies, right?" Tr. 5181. Defendant replied, incredibly, "No." Tr. 5181

Defendant claimed that he wanted to get legal advice from Eige, but emphatically rejected any suggestion that he had informed, or was going to inform, Eige that defendant was presently negotiating a loan from Williams or had accepted the luxury goods and other gifts from Williams. "No, sir, I don't talk about my personal finances with my subordinates. No, sir." Tr. 5184-85. Defendant confirmed that Eige did not know about the $15,000 wedding gift. "That's right. Because we don't make decisions based on money. No, sir." Tr. 5185.

On February 29, 2012, defendant and Williams met at 1.30 pm in the governor's private conference room to discuss ways that Williams could provide money to defendant by transferring stock, and defendant took notes on various proposals for how Williams could help financially. Tr. 4665, 5198-99; Exh. 823.

That evening, the healthcare leaders reception featured doctors that Williams invited and wanted to study his product, to the dismay of Secretary Hazel. Tr 761-63, 2081, 2075-77, 2084-85, 2159, 2205. The reception costs for Williams's guests were covered with taxpayer dollars. Tr. 2087-90, Exh. 364. But Secretary Hazel said that the people affiliated with Williams at the event did not "contribute in any way to the policies, public policy and healthcare in Virginia" or "even to the economics of healthcare in Virginia." Tr. 2209.

Secretary Hazel was asked if he could "recall any other group other than Mr. Williams" that had "the level of support from the McDonnells?" Tr. 2215. Hazel replied, "I can't recall that there was ever a situation quite like this one." Tr. 2215. He continued that "looking from sitting here now four years into this, there was never anything quite like this that I saw. I don't think I was ever looking at a product like this. I don't think that there was the involvement that we had in terms of just the repeated contacts. The Mansion event was unique. That was the only time that happened. Not that Mansion events were unique, but the whole arrangement of the thing that we just went through." Tr. 2216.

At the mansion event, defendant had heard Dr. Ladenson speak on Anatabloc's behalf and knew that Ladenson was affiliated with Williams. Tr. 5207-08. Defendant publicly recognized Ladenson at the Virginia healthcare leaders event, even though Ladenson is from a Maryland university. Tr. 5208, 5359. And by making all of the Star participants invitees to the healthcare leaders event, defendant honored them too.

On March 6, 2012, when Williams's assistant issued the $50,000 check, she first added the words "Maureen McDonnell" in the memo line, which caused her to void the check. Tr. 5232; Exh. 350. She repeated the error on a second check, voiding it as well. Tr. 5232; Exh. 351. A third and final check was made out to "MoBo Realty," with Maureen Uncapher listed below that and "Beach House" in the memo line. Tr. 5233; Exh. 352.

Defendant did not report the $50,000 loan on his SOEI for 2012 because, he claimed, the loan was to MoBo, although he acknowledged that the McDonnells were the ones obliged to repay it. Tr. 4944, 5290-92. Defendant denied that he was trying "to hide any gifts or loans from Mr. Williams" on the SOEI. Tr. 4775.

But he admitted, "The reason there's public disclosure is to be able to let people know what kind of gifts that an officeholder has received to determine whether there is any influence associated with a person or entity. So there's a lot of scrutiny." Tr. 4778.

In March 2012, defendant attended a meeting with another cabinet official, his Secretary of Administration, about state employee health plans. Defendant's chief of staff was also scheduled to attend the meeting because it was a "pretty big deal." Tr. 4764. In the meeting, defendant pulled Anatabloc out of his pocket and told the cabinet secretary that he had been taking the pills, that "they were working well for him, and that he thought it would be good for [] state employees." Tr. 2676. Defendant then "asked us if we would meet with" the Anatabloc people. Tr. 2676.

Defendant admitted that Williams "had told me on several occasions that if we needed to borrow more after that $50,000, that he would do that." Tr. 4682. In a text message defendant sent on May 18, 2012, he wrote, "Johnnie [sic]. Per voicemail would like to see if you could extend another 20k loan for this year. Call if possible and I'll ask mike to send instructions. Thx bob." Exh. 379R. Defendant acknowledged that his wife played no role in this $20,000 loan. Tr. 4886.

On July 3, 2012, Williams sent a message to defendant inviting the McDonnells on a vacation at a resort—an invitation they accepted. Williams wrote, "Johns Hopkins clinical trials report on August 8th. If you need cash let me know Let's go golfing and sailing Chatham Bars Inn Chatham Mass Labor Day weekend if you can. Business about to break out strong. Jonnie." Tr. 4889.

D. ***December 2012 to March 2013.*** *Final concealment before indictment.*

After claiming that his wife had "procrastinated, essentially, for a year and a half," defendant claimed that his wife transferred Star stock to defendant's children as a gift, right before the end of the year. Tr. 4706. "I was pretty upset with her," defendant testified, but he promptly filed an SOEI that did not report the stock after his wife transferred enough stock to the children to get below the reporting threshold. Although defendant claimed he was "pretty upset" with his wife, he also testified that whether the stock was transferred or not "was not a big deal." Tr. 4701, 4707

Immediately before law enforcement interviewed the first lady, on what defendant believed would be a discussion of the mansion chef's stealing food, defendant chose to review documents from Cailin's wedding and claimed that he learned for the first time that his wife had kept a refund from the catering company. Tr. 4826-28. A refund was due because defendant had made two payments totaling roughly $8,000 before Williams offered to write the $15,000 check, exceeding the balance due. Tr. 295-96, 317 Defendant testified that, after discovering that catering refund had come back to his wife, "I took prompt action" and claimed that his wife's receipt of the refund "was absolutely improper. It was Cailin's money. And I told Maureen, 'Write the check now.'" Tr. 4829 Thus, even though Cailin testified that she wanted to pay for her wedding, she ended up making a $5,266.50 profit from the catering. Tr. 295-96, 326.

Defendant and his wife were indicted on 14 counts on January 21, 2014. Attach. C. The jury found him guilty of counts 1-11—including conspiracy to commit honest-services wire fraud, 18 U.S.C. § 1349; honest-services wire fraud, 18 U.S.C. § 1343; conspiracy to obtain property under color of official right, 18 U.S.C. § 1951, and obtaining property under color of official right, 18 U.S.C. § 1951

II. Sufficient evidence easily demonstrated that defendant agreed to and did perform official actions, and the district court did not err in giving instructions nearly identical to ones affirmed by this Court. Neither issue is close.

Defendant argued to the jury that he never did anything for Williams. Defense counsel asked defendant, "Did you ever do anything for Williams or Star in exchange for any gifts, any loans, any money?" Tr. 4852. Defendant replied, "No. Absolutely not." Tr. 4852. Likewise, defense counsel argued in closing that defendant never agreed to do anything that constituted official action. "The judge will instruct you that the term 'official action' means any decision or action on any question, matter, cause, suit, proceeding, or controversy which may at any time be pending or which may, by law, be brought before any public official in that official's official capacity." Tr. 5974 (citing 18 U.S.C. § 201(a)(3)). Defense counsel continued that "even if you believe Jonnie had a real plan" to obtain funds from the Tobacco Commission "so he could fund studies at the universities, you still can't convict my client without finding" that he "promised to take official actions that satisfy Judge Spencer's instruction." Tr. 5974-75.

Defense counsel then marched through each alleged official action. The August 1 meeting after the Smith Mountain Lake vacation? "It didn't have anything to do with helping Jonnie Williams." Tr. 5975. Defendant "sent someone to a meeting at the First Lady's office to ensure that no improper decisions or commitments were made." Tr. 5976. The mansion event on August 30? "[I]t wasn't a launch" and "was closed to any more than 29 total people." Tr. 5976. "Bob rarely knows the details about his next event until he reads the briefing sheet right before." Tr. 5977 The healthcare leaders event? "They have not shown that Bob had anything to do with inviting anyone from Star." Tr. 5979. Similar arguments were offered about defendant's communications with his cabinet-level officials, Eige and Hicks-Thomas, on Williams's behalf. Summing up, defense counsel argued, "[T]he prosecution's evidence does not prove that Bob made any decisions or took any action on any issues that were pending before him in his official capacity. To the contrary, Bob didn't make any decisions at all." Tr. 5980.

After weighing the evidence in this six-week trial, the jury could have accepted defendant's arguments, but they did not—a decision soundly within their province. The jury was correctly instructed using instructions nearly identical to ones this Court has affirmed. Tr. 6102-03, 6114; Attach. A at 9. The validity of that verdict is not a close call.

Quoting the language of § 201(a)(3), the instructions stated that "official action means any decision or action on any question, matter, cause, suit, proceeding, or controversy, which may at any time be pending, or which may by law be brought before any public official, in such public official's official capacity." Tr. 6102.

In defining what constitutes official action, the Supreme Court has long held that "[i]n numerous instances, duties not completely defined by written rules are clearly established by settled practice, and action taken in the course of their performance must be regarded as within" the federal bribery laws. *Jefferson*, 674 F.3d at 351-52 (quoting *United States v. Birdsall*, 233 U.S. 223, 230-31 (1914)). As *Jefferson* and the district court here explained, official action encompasses "conduct that is taken 'as part of a public official's position'—whether pursuant to an explicit duty or as a matter of 'clearly established settled practice.'" Attach. B at 3 (quoting *Jefferson*, 674 F.3d at 353). The jury instructions captured this point when they explained that the definition of official action

> includes those actions that have been clearly established by settled practice as part of a public official's position, even if the action was not taken pursuant to responsibilities explicitly assigned by law In other words, official actions may include acts that a public official customarily performs, even if those actions are not described in any law, rule, or job description. And a public official need not have actual or final authority over the end result sought by a bribe payor so long as the alleged bribe payor reasonably believes that the public official had influence, power or authority over a means to the end sought by the bribe payor. In addition, official action can include actions taken in furtherance of longer term goals, and an official action is no less official because it is one in a series of steps to exercise influence or achieve an end.

Tr. 6102-03.

The first two sentences follow directly from the settled-practice standard in *Birdsall* and *Jefferson*. The third sentence is equally well-established because "fulfillment of the *quid pro quo* is not an element of the offense." *Evans v. United States*, 504 U.S. 255, 268 (1992). *See also United States v. Brewster*, 408 U.S. 501, 526 (1972); *United States v. Hairston*, 46 F.3d 361, 365 (4th Cir. 1995). And the fourth sentence is well-supported by *Jefferson*, as the district court explained: "[I]t is unnecessary 'to link every dollar paid to one of the Jefferson family companies to a specific meeting, letter, trip, or other action by Jefferson to fulfill his end of a corrupt bargain.' Rather, it is enough that the 'payor intended for each payment to induce the official to adopt a specific *course of action*.'" Attach. A at 10 (quoting *Jefferson*, 674 F.3d at 359; *United States v. Quinn*, 359 F.3d 666, 673

(4th Cir. 2004)). "[B]ribery can be accomplished through an ongoing course of conduct." *Jefferson*, 674 F.3d at 359 (quoting *United States v. Ganim*, 510 F.3d 134, 149 (2d Cir. 2007) (Sotomayor, J.)).

Jefferson illustrates how these standards apply. *Jefferson* held "first" that "performing constituent services was a settled practice of Jefferson's congressional office and, second, that *African trade issues* were 'matters' or 'causes' that were pending before him." 674 F.3d at 357 (emphasis added). Similarly, here the major policy initiative of defendant's administration was promoting Virginia businesses, and arranging meetings with cabinet-level staff and holding events at the mansion to promote those businesses were both settled practices and actions on those matters and causes pending before defendant.

The acts that qualified as official acts in *Jefferson* included "meeting[s], letter[s], trip[s], and other action[s] by Jefferson," including (i) "[g]ranting requests for assistance to business ventures by corresponding and visiting with foreign officials"; (ii) "[s]cheduling and conducting meetings with Army officials and representatives, at which [Jefferson] promoted [a bribe-paying business]"; (iii) "[t]raveling to Nigeria and Ghana, and meeting with representatives of the [Export-Import] Bank [of the United States] to endorse, assist, and promote [a bribe-paying business's] scheme"; and (iv) "[v]ouching for [a bribe-paying business] in Nigeria and seeking to secure construction contracts for [its] entities." *Id.* at 359, 356.

Defendant's official actions here are materially indistinguishable from these actions—he agreed to help Williams obtain state research studies and advanced that goal by ordering meetings with cabinet-level officials and conducting official events with state employees Williams wanted to act on his behalf. Courts have routinely found official actions far less substantial than defendant's to be official action. *See, e.g.*, *United States v. Ring*, 706 F.3d 460, 468-70 (D.C. Cir. 2013) (email and phone call to further visa application); *United States v. Rosen*, 716 F.3d 691, 695 (2d Cir. 2013) (state legislator, among other things, "wrote a letter on State Assembly letterhead stationery" and "set up a meeting between Rosen and the Governor's chief of staff"); *United States v. Moore*, 525 F.3d 1033, 1041 (11th Cir. 2008) (rejecting that "the 'low level actions alleged in this case'" were not official acts; actions such as prison officers switching unit assignments, allowing telephone calls, making telephone calls, permitting meetings, and giving a key to help facilitate meetings all sufficient to "fall within the broad definition of 'official act' set forth in *Birdsall*").

Defendant insists that the principles above create limitless liability. But any official action must be "on" a "question, matter, cause," etc., pending before the public official. The *quo* also had to be part of an agreed-upon exchange, a *quid pro quo*, as the jury instructions required. Tr. 6100, 6113. And the jury was required to find that defendant acted corruptly, Tr. 6100, 6101, with intent to defraud, Tr. 6098, 6103, and without good faith, Tr.6123.

Defendant's refrain is that no official action occurs unless a defendant "attempt[s] to exercise governmental power," Def. Mot. at 1, but that is not a standard found in § 201(a)(3), not required by *Jefferson*, and not defined by defendant in any meaningful or manageable way. And to the extent the standard makes sense, it was met. Defendant understood that Williams wanted state medical schools to perform studies of Anatabloc, and defendant hosted official events and ordered cabinet-level officials to meetings to help Williams accomplish that goal—a goal that fell squarely within the major policy initiative of his administration. Those circumstances should be deemed an attempt to exercise government power, even if such a requirement exists.

And by requiring the jury to find that the official action satisfied the definition in § 201(a)(3), the court addressed whatever requirement of "government power" exists. "A trial court has 'considerable discretion in choosing the specific wording of [its] instructions.'" *United States v. Whitfield*, 695 F.3d 288, 305 (4th Cir. 2012) (citation omitted).

Likewise, as the district court found, defendant's actions rose above "mere 'ingratiation and access.'" Attach. B at 5. Defendant did not merely provide "access" to Williams so that he could "ingratiate" himself. Rather, defendant took specific steps using his powers of office to further Williams's business interests, in exchange for accepting the payoffs from Williams. "The hallmark of corruption is the financial *quid pro quo*: dollars for political favors." *Citizen United v. Fed. Election Comm'n*, 558 U.S. 310, 359 (2010). That is what the jury instructions required and the facts showed here.

Defendant also relies heavily on a mix of *dicta* and outlier, out-of-circuit cases that do not aid him. First, defendant invokes *dicta* in *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999), a gratuities case. But *Jefferson* already rejected the argument that *Sun-Diamond* somehow restricted the definition of "official action" where, as here, the instructions limit that term to § 201(a)(3)'s definition. 674 F.3d at 355-56.

The same is true of defendant's reliance *United States v. Valdes*, 475 F.3d 1319 (D.C. Cir. 2007) (en banc). There, the district court "refused to include" § 201(a)(3)'s language "or anything comparable," *id.* at 1325, which did not happen here. Thus, as *Jefferson* explained, *Valdes* poses no restriction to official action encompassing a public official promoting "specific business ventures." 674 F.3d at 356.

Defendant's reliance on *United States v. Rabbitt*, 583 F.2d 1014 (8th Cir. 1978), and *United States v. Urciuoli*, 513 F.3d 290 (1st Cir. 2008), fares no better. First, *Rabbitt* has been superseded by numerous legal developments. In seeking to impose limits on corruption laws, *Rabbitt* emphasized harm to the government and control over the ultimate outcome—standards contradicted by settled bribery law. *See, e.g.*, *United States v. Dimora*, 750 F.3d 619, 626-27 (6th Cir. 2014). *See also United States v. Holzer*, 816 F.3d 304, 309 (7th Cir. 1987) ("very much doubt[ing] the soundness of this reasoning" in *Rabbitt*). Indeed, *Rabbitt* is essentially dead letter in its own circuit: "Actual authority over the end result" sought "is not controlling if [defendant], through his official position, had influence and authority over a means to that end." *United States v. Loftus*, 992 F.2d 793, 796 (8th Cir. 1993). This quotation from *Loftus* is nearly verbatim what the district court instructed the jury here.

As for *Urciuoli*, the First Circuit found fault with instructions that were much broader and more nebulous than those given here and defined official action as encompassing all actions taken "in an official capacity" or "under the cloak of his office." *Id.* at 295. The instructions never tied back to § 201(a)(3)'s language and failed to account for the settled-practice standard from *Birdsall*. And *Urciuoli*'s distinction between ambulance-run lobbying (an official act) and insurance-company meetings (not official acts) reflects the requirement that there be a "question, matter, cause," etc. pending before the public official that the official action be "on." *See id.* at 295-96. The court satisfied that requirement here by requiring the jury to make that finding.

In the end, defendant's claim is that a governor may secretly accept, with corrupt intent and without good faith, unlimited cash payments, and the governor may do so in exchange for ordering cabinet-level officials to attend meetings and hosting events—even when those meetings and events further a particular business's efforts to obtain state government assistance and fall within the central policy initiative of that governor's administration. Such a claim does not withstand scrutiny and does not present a close question here.

III. The district court acted well within its discretion in addressing pretrial publicity.

In *Skilling*, the Supreme Court held that jury selection is "particularly within the province of the trial judge." 561 U.S. at 386. "No hard-and-fast formula dictates the necessary depth or breadth of voir dire." *Id.* And in evaluating voir dire, courts must consider a wide range of measures that can "mitigate the adverse effects of publicity." *Id.* at 388 n.21.

For example, just as the district court in *Skilling* sent jurors a 77-item questionnaire, so too here prospective jurors received a 99-item questionnaire that "helped to identify prospective jurors excusable for cause and served as a springboard for further questions to put to the remaining members of the array." *Skilling*, 561 U.S. at 388 & n.22.

Likewise, here prospective jurors were asked to identify themselves if they have "read, heard, or seen something in the media" about the case, and asked if they could "put aside whatever it is that you've heard, listen to the evidence in this case and be fair to both sides." Attach. A at 14. The court then "brought to the bench each juror that McDonnell's counsel identified as cause for concern and questioned each about his or her opinion of the case and ability to be impartial." Attach. A at 15. "At the end of this questioning the Court asked McDonnell's counsel if there is 'anybody else' he would like to question, and McDonnell's counsel responded 'not on publicity.'" *Id.*

Defendant objects that the district court began in-court questioning on publicity by putting questions to the panel collectively, but it is "well established that a trial judge may question prospective jurors collectively rather than individually." *United States v. Bailey*, 112 F.3d 758, 770 (4th Cir. 1997) (quoting *United States v. Bakker*, 925 F.2d 728, 734 (4th Cir. 1991)). The district court had already posed 29 questions to the entire venire collectively, and individual jurors had stood up 274 times to volunteer answers, demonstrating the effectiveness of collective questioning. Defendant counters with *United States v. Hankish*, 502 F.2d 71, 77 (4th Cir. 1974). But *Hankish* addressed a sitting jury's exposure to media coverage during trial—a claim defendant has never raised. In *Bailey* and *Bakker* this Court rejected a mandate of individual voir dire on pretrial publicity for each of hundreds of prospective jurors.

Significantly, defendant also fails to show, just like in *Skilling*, that the selected jurors were biased. 561 U.S. at 390. And the jurors' decision to acquit defendant of all bank-fraud counts also supports that "the court's assessments [of no bias] were accurate." *Id.* at 395.

IV. Conclusion

For all of these reasons, this Court should affirm the district court's order denying bail pending appeal.

Respectfully submitted,

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Certificate of Compliance

I certify that this response brief contains no more than 7,500 words, specifically 7,499 words, as counted by Microsoft Word 2010 and uses 14-point Times New Roman font.

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Certificate of Service

I certify that on January 21, 2015, I filed electronically the foregoing response with the Clerk of the Court using the CM/ECF system, which will send notice of the filing to all attorneys of record in this case.

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ORAL ARGUMENT REQUESTED

No. 15-4019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

v.

ROBERT F MCDONNELL,
Defendant-Appellant.

On Appeal from the United States District Court for the Eastern District of Virginia, Richmond Division, James R. Spencer, District Judge

DEFENDANT-APPELLANT'S REPLY ON MOTION FOR RELEASE PENDING APPEAL

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The Government's Opposition largely ignores the legal issue before this Court and instead offers a lengthy, distorted recitation of "facts." The Government's tendentious account demonstrates the degree to which the parties contest the record. But one thing the parties *do not* disagree about is the nature of the alleged "official acts." The Government all-but-concedes that Mr. McDonnell *never* promised Williams anything and *never* did anything that suggested he wanted Virginia's government to do *anything* for Williams. No court has ever upheld a corruption conviction absent such evidence, while numerous courts have overturned them. Whether the evidence satisfied the legal definition of "official action" presents a substantial question.

The Government sought at trial (as it does here) to mask this deficiency with harsh condemnation and misleading spin. But that prosecutorial strategy only underscores the importance of carefully instructing the jury on the scope and limitations of "official action." Instead, the district court gave the jury a Rorschach-inkblot that meant whatever they wanted it to mean. It created that instruction by importing *different* elements of the crime into "official action," and by rejecting even the most modest limitations, *e.g.*: "[M]ere ingratiation and access are not corruption" and "the fact that an activity is a routine activity, or a 'settled practice,' of an office-holder does not alone make it an 'official act.'" RFM Prop. Jury Instructions, Dkt.287, at 79. The instructions present a second substantial question.

Voir dire on pretrial publicity presents a third. The district court *never asked* potential jurors whether their exposure to negative publicity had caused them to form opinions about guilt. The parties thus did not know and could not know which jurors formed opinions prior to trial. The Government does not dispute that this is a question of first impression post-*Skilling*, instead seeking to avoid it by fabricating a defense waiver of more probing questions. The record confirms, though, that this issue is likewise substantial. (Given these disputes, attached are the transcript pages concerning pretrial publicity, Exhibit A, and other pages cited herein, Exhibit B.)

ARGUMENT

The Government's Opposition essentially ignores whether Mr. McDonnell's appeal "presents a close question that could be decided either way," *United States v. Steinhorn*, 927 F.2d 195, 196 (4th Cir. 1991)—a much lower standard than "likelihood of success." The Government emphasizes that Mr. McDonnell was convicted by a jury and lost in district court. But that is *always* true for defendants seeking bond. It says nothing about whether this appeal raises substantial questions of law or fact, which this Court reviews de novo. *See, e.g.*, *United States v. Pollard*, 778 F.2d 1177, 1182 (6th Cir. 1985); *United States v. Suado Mohamed Ali*, 735 F.3d 176, 188 (4th Cir. 2013). Courts thus routinely grant bond pending appeal in cases like this, including in *Jefferson.* Mr. McDonnell easily satisfies this standard.

I. The Government's Tendentious Factual Recitation Cannot Mask The Substantial Question Whether Mr. McDonnell Took "Official Action."

A. Mr. McDonnell cannot, in this short reply, rebut every Government distortion. Five examples show why this Court should be highly skeptical of the Government's drive-by recap of this nearly-six-week trial:

First, the Government claims "the jury found" Mr. McDonnell "received those payments ... in exchange for helping Williams on his goal of obtaining studies at state medical schools." Opp.4. That is false. The jury made no such finding. The jury instructions never mention studies in explaining the elements of the offenses, instead inviting the jury to convict Mr. McDonnell for sending *any* email, appearing at *any* event, or arranging *any* meeting—regardless of their purpose. And that is precisely how the Government argued its case, telling the jury it was welcome to convict Mr. McDonnell for anything he did "on the issue of Virginia business development" that was "in his official capacity as Governor" because "[w]hatever it was, it's all official action." Tr.5869-70. That is because the essence of the Government's case was not studies; it was that Mr. McDonnell was supposedly "lending the prestige of the governor's office" to Williams (per *The Washington Post*'s stock language). Matt Zapotsky, *Ex-Attorneys General Ask* *to Support McDonnell Request for Bond Pending Appeal*, WASH. POST, Jan. 14, 2015.

Second, the Government blatantly mischaracterizes the following statement Williams claimed Mrs. McDonnell made: "The Governor says it's okay for me to help you and—but I need you to help me. I need you to help me with this financial situation." Opp.7 (quoting Tr.680). The Government changes its meaning by omitting the critical exchange immediately after:

> Q: Well, to be clear, she's saying that she's going to help you, but she's *not promising you that the Governor is going to help you*, right?
>
> A. No.
>
> Q: And she never tells you at this meeting, "I'll get *Bob* to do X, Y or Z if you give us the money"?
>
> A. No.

Tr.680-81 (emphases added).

Third, the Government implies that Mr. McDonnell and Williams had an agreement. But the Government conceded below that "[t]here [was] no express agreement in this case." Tr.6045. All the jury needed to find was that Mr. McDonnell—based on supposed "winks and nods," Tr.6101—"solicited or received a thing of value *at least in part* in exchange for the performance of official action," Tr.6101-02 (emphasis added). Those loose requirements reinforce the importance of defining "official action" correctly.

Fourth, the Government claims Mr. McDonnell's "support of Williams's product was clear to university officials." Opp.12. Again false. The only time Mr. McDonnell interacted with *anyone* at UVA or VCU in connection with Star was at the mansion event. The two university officials who attended that event testified Mr. McDonnell *never* "spoke favorably" about Star. Rather, UVA's Dr. Lazo testified that Mr. McDonnell asked whether "there was some scientific validity" to the studies, whether "there was any reason to explore this further," and whether this could be "good for the Commonwealth." Tr.1793-95; *see also* Bond Mot. 16. And VCU's Dr. Clore testified that "the Governor spoke at a high level about health and wellness in Virginia and the compound." Tr.1582. As for Dr. Clore's "good friend [of the Governor]" email, Opp.12, the Government omits that Dr. Clore's understanding was based *solely* on what *Williams' consultant* represented to him, *not* anything Mr. McDonnell said or did. Tr.1572.[1] That is, no doubt, why nobody ever applied for grants, no grants were made, and nothing happened for Star at UVA or VCU.

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[1] The Government's invocation of the pro/con list is particularly egregious because the person who created it never interacted with anyone from the McDonnell Administration. Tr.2772. She based her inference of "political pressure from Governor" on a Google search revealing a photograph of Mr. McDonnell, Tr.2777—taken months before the supposed conspiracy—that Star posted to Facebook after the McDonnell Administration forbade it from suggesting that Mr. McDonnell was endorsing Star, Tr.1422-24.

Fifth, the Government criticizes Mr. McDonnell for supposed deficits in his state disclosure forms. But it never mentions the undisputed fact that "[t]here has been no suggestion in this case that Mr. McDonnell violated Virginia law." Tr.6125 Virginia law did *not* require Mr. McDonnell to (1) list gifts to family members, (2) identify by name someone who provides a loan, or (3) list loans to LLCs, even jointly owned ones.[2] (Throughout the so-called "scheme," Mr. McDonnell publicly disclosed numerous things from Williams. Tr.4593-94, 4782-83.) Mr. McDonnell obviously did not break federal law by failing to *over*-disclose under state law.[3]

B. But ultimately none of this matters. Not even the Government claims Mr. McDonnell asked anyone to do anything besides hear Williams out and do whatever they believed was in Virginia's best interests. Mr. McDonnell arranged only one meeting involving Williams during the "conspiracy"—which he did not attend—and the testimony of the staffer (Molly Huffstetler) who attended that meeting proves Mr. McDonnell was not trying to influence anyone:

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[2] Nor must officials list gifts from spouses. The Government misleadingly refers to the "Rolex watch that Williams bought him," Opp.13, but the evidence showed that Mrs. McDonnell gave the watch as a Christmas gift *from her* Mr. McDonnell did not discover its true source, or about the "shopping spree"—neither of which support any conviction—until the investigation became public a-year-and-a-half later.

[3] Recognizing the weakness of the record, the Government contends that Mr. McDonnell's denials are affirmative evidence of the opposite. But the jury made no special findings and the trial court *rejected* the Government's request to find that Mr. McDonnell lied. *See* Sent.Tr.28, Ex. C. And the cases the Government cites do not support its assertion, which, if true, "would mean that in cases in which defendants testify, the evidence invariably would be sufficient to sustain the conviction." *United States v. Zeigler*, 994 F.2d 845, 849 (D.C. Cir. 1993).

> "Q: What did you understand the desires of the Governor and the First Lady to be specific to this issue?
>
> "A. At the time of the note, nothing more than attending the meeting." Tr.1493.
>
> "Q: When you wrote this [blow-off] email, what did you understand your job to be going forward. ?
>
> "A. Nothing at the time of the written email." Tr.1507
>
> "Q: So after this meeting .. you still had no idea what [Mrs. McDonnell's] desires, if any, were with respect to Mr. Williams or Star. Is that fair?
>
> "A. Shy of attending the meeting, no." Tr.1529.

Indeed, Ms. Huffstetler agreed that Mr. McDonnell *never* "interfere[d] with that decision-making process by [her and her] colleagues in [her] office." Tr.1520.

C. The Government has not cited a single case affirming a conviction on similar facts.[4] By contrast, numerous cases Mr. McDonnell cites are directly contrary. Bond Mot. 8-13. The *existence* of those decisions demonstrates that reasonable jurists could disagree about the Government's theory, which, again, is all Mr. McDonnell need show The Government's half-hearted attempt to distinguish these decisions confirms the close question.

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[4] The three cases it does cite simply prove that its theory is unprecedented:

- *United States v. Ring* supports Mr. McDonnell by emphasizing that "a purely informational inquiry" is not an official act. 706 F.3d 460, 468-70 (D.C. Cir. 2013). That is all Mr. McDonnell did when he emailed a question to his in-house counsel.
- *United States v. Rosen* considered a different issue, but made clear that official actions are things like "voting in a certain manner or supporting grants to certain businesses." 716 F.3d 691, 701 (2d Cir. 2013).

First, the Government dismisses the language in the Supreme Court's unanimous decision in *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999), as "dicta." Even if true, that would *still* create a substantial question, since "inconvenient Supreme Court statements may not be so easily wished away." *United States v. Chappell*, 691 F.3d 388, 394 (4th Cir. 2012). And the Government's claim that *United States v. Jefferson*, 674 F.3d 332 (4th Cir. 2012), dismissed *Sun-Diamond* as "dicta" is wrong. What this Court *actually* held was that *Sun-Diamond* did not "supersede[]" *Birdsall*, *id.* at 356—a point Mr. McDonnell does not contest. This Court *never* rejected *Sun-Diamond*'s clear statement that customary actions *just like Mr McDonnell's* are not "official" ones.

Second, the Government does not even attempt to distinguish *United States v. Rabbitt*, 583 F.2d 1014 (8th Cir. 1978), effectively conceding that decision forecloses its position. It instead claims that *Rabbitt* is bad law Opp.28. But the

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(continued...)

- In *United States v. Moore*, the alleged official acts involved altering specific government policies. 525 F.3d 1033, 1041 (11th Cir. 2008).

federal courts have cited *Rabitt* over 100 times and the Eighth Circuit reaffirmed *Rabbitt*'s vitality in *United States v. Loftus*, explaining that Mr. Rabbitt's conviction was properly vacated since he never "promise[d] to use his official position to influence" any officials. *United States v. Loftus*, 992 F.2d 793, 796 (8th Cir. 1993). Indeed, *United States v. Urciuoli* relied directly on *Rabbitt*. *See* 513 F.3d 290, 296 (1st Cir. 2008).

Finally, as to *Urciuoli*, the Government notes that the First Circuit found some conduct *was* "official action." But the court's distinction proves Mr. McDonnell's point. It held that a legislator urging local officials to route ambulances to the bribe-payor's hospital was not criminal because there was "no indication that [the legislator] invoked any purported oversight authority or threatened to use official powers in support of his advocacy." *Id.* at 296. It drew a sharp line between "trad[ing] .. on the reputation, network and influence that comes with political office," *id.* at 296, and "us[ing] his legislative powers as a threat to extract favorable treatment for [the bribe-payor]," thereby "misusing his official power over legislation," *id.* at 297 *Urciuoli* rested on the critical difference between acts that use (or threaten to use) "official power[s]," *id.* at 295-97, and acts that do not, *id.* at 296. The latter acts are not "official."

The Government has cited no evidence that Mr. McDonnell used his official powers to do anything for Williams, who never received a penny from the Virginia government over a supposedly-two-years-long conspiracy that, if real, was the least successful bribery scheme in history. Whether the Government proved Mr. McDonnell took "official action" under federal law presents a substantial question.

II. The District Court's Unprecedented Jury Instructions Present A Substantial Question.

The foregoing shows that the jury instructions likewise present a substantial question. The Government disagrees, claiming the trial court delivered an instruction "nearly identical" to *Jefferson*. Opp. 1, 21, 23. That is irrelevant and wrong. It is irrelevant because jury instructions must be adapted to each case. Mr. McDonnell argued that his actions were not "official," yet the jury was not instructed on *any* of that term's basic limits. It is wrong because the district court's instruction was not identical—or even "nearly identical"—to *Jefferson*. Instead, at the Government's urging, the district court altered and expanded the *Jefferson* instruction in critical ways.

A. Even if the instructions were identical to *Jefferson*, it would be irrelevant. As Mr. McDonnell has explained, *see* Bond Motion at 18 n.11, countless courts have held "[j]ury instructions should be drawn with reference to the particular facts of the case on trial." *United States v. Holley*, 502 F.2d 273, 276 (4th Cir. 1974); *see also, e.g., Taita Chem. v. Westlake Styrene*, 351 F.3d 663, 670 (5th Cir. 2003).

The Government ignores this rule, but this case exemplifies its rationale. Mr. McDonnell's central defense was that, while he obviously did things governors customarily do hundreds of times a week, he never took "official" action on behalf of Williams. There is a fundamental difference between actions like a Governor asking his counsel to "see me" (this case) and actions like a Congressman pressuring the Export-Import Bank to give a bribe-payor specific "financial assistance" (*Jefferson*, 674 F.3d at 342). Those differences made it essential that *this* district court—like Judge Huvelle in *Ring*—instruct the jury about the distinction between miscellaneous customary actions and ones that "use official powers in support of [] advocacy." *Urciuoli*, 513 F.3d at 296. Yet this district court refused to include *any* limits in its instruction. For that reason alone, it is plainly debatable whether these limitless instructions were correct.

B. In any event, the district court's instructions differed from *Jefferson* in multiple ways. The only similarity is that the district court quoted the definition from § 201(a)(3), and stated it "includes those actions that have been clearly established by settled practice as part of a public official's position, even if the action was not taken pursuant to responsibilities explicitly assigned by law." Tr.6102:23-6103:2. The district court then added two entirely-new instructions:

McDonnell	***Jefferson***
"And a public official need not have actual or final authority over the end result sought by a bribe payor so long as the alleged bribe payor reasonably believes that the public official had influence, power or authority over a means to the end sought by the bribe payor." Tr.6103:5-10.	"Moreover, an act on a particular question or matter may still be official even if the public official did not have authority to make a final decision or take binding action on the issue." *Jefferson* Tr.58:8-11, Ex. D.
"In addition, official action can include actions taken in furtherance of longer-term goals, and an official action is no less official because it is one in a series of steps to exercise influence or achieve an end." Tr.6103:10-14.	*None.*

First, the court made "official action" turn on what the bribe-payor "reasonably believes." No authority suggests that whether an action is official—an *objective* element—depends on the bribe-payor's *subjective* beliefs. The court also instructed that actions are "official" if the bribe-payor believes they exert "influence" over a "means" to an "end." That collides directly with the instructions in *Ring,* which explained "sharing information with the lobbyist or helping to develop a lobbying strategy does not constitute an official act," Bond Mot. Ex. E at 39—even though such practices plainly exert "influence" over a "means" to an "end."

The Government claims this instruction flows from cases holding that "fulfillment of the quid pro quo is not an element of the offense." Opp.24. Wrong again. That entirely-separate principle has nothing to do with defining "official action." This instruction actually appears to have been lifted from instructions defining "under color of official right" for the Hobbs Act, *see, e.g.*, *United States v. Bencivengo*, 749 F.3d 205, 212-13 (3d Cir. 2014), an element that goes to the bribe-payor's motivations but has nothing to do with whether actions are "official," *see, e.g.*, *United States v. Mazzei*, 521 F.2d 639, 643 (3d Cir. 1975). The notion that non-official actions *become* "official" based on the secret beliefs of a witness the Government transactionally immunized for multiple unrelated felonies is absurd.

Second, the district court gave the novel instruction that "official action can include actions taken in furtherance of longer-term goals." Virtually anything could be in "furtherance" of some goal. Photo-ops, public appearances, recommending a lobbyist—all are commonplace actions that "further[]" a donor's "longer-term goals." But they are not official acts.

Finally, the court charged that "an official action is no less official because it is one in a series of steps to exercise influence *or* achieve an end." Tr.6103:12-14 (emphasis added). This unprecedented instruction presents a "close" question for at least four reasons. (1) It defines "official action" circularly, presupposing that the action is "official." (2) It instructs that actions *become* "official" if they are "steps" toward an *actual* "official act," regardless of whether the actions *themselves* constitute "official acts." (3) It instructs that actions are official even if they *do not* attempt to "influence" an end, but are merely "steps" to "achieve an end," which includes virtually everything. (4) It instructs that actions are "official" if the jury decides they were "steps to exercise influence." But practically everything an official does—attending a donor's birthday party, smiling for the cameras, wearing a power tie—are "steps to exercise influence." It would be ridiculous to claim those are official acts, yet all are under this instruction.

The Government argues these latter two instructions flow from *Jefferson*'s holding that the Government need not link every payment with every official act. Opp.24 (citing 674 F.3d at 359). But even if these elastic instructions accurately paraphrased *Jefferson*—which they do not—the passage the Government cites discusses a *completely different element*: the quid pro quo requirement. *See Jefferson*, 674 F.3d at 358 ("The instruction at the center of this challenge relates to the 'quid pro quo' element."). Defending the district court's definition of *official action* by invoking this Court's explanation of a *different element* is like saying the "official act" instruction was sound because it was based on the well-established definition of corrupt intent.

The district court's instructions—which Mr. McDonnell repeatedly challenged—were unprecedented. If adopted, virtually every elected official in

America would be at perpetual risk of prosecution for engaging in routine political conduct. The instructions thus present, at a minimum, a substantial question about which reasonable jurists could disagree.

III. Pretrial Publicity Presents A Third Close Question.

There is also a "close" question whether the district court conducted sufficient voir dire on pretrial publicity. This is an issue of first impression in this Circuit post-*Skilling v. United States*, 561 U.S. 358 (2010), which held that its district court's voir dire sufficed because it (1) asked in a questionnaire whether jurors "have any opinion about the guilt or innocence of [the defendant]" and whether "any opinion you may have formed ... [would] prevent you from impartially considering the evidence," *id.* at 371 n.4; and (2) *individually* examined *all* prospective jurors in-court about exposure to pretrial publicity, allowing both sides to ask follow-up questions, *id.* at 373-74, 389. (Despite that, there was *still* a vigorous dissent. *Id.* at 426 (Sotomayor, J. dissenting).) Here, the district court refused to do these things, despite specific requests by Mr. McDonnell. It instead (1) asked in a questionnaire only whether jurors had *expressed* an opinion to someone else, rather than if they had formed one, *see* Mot. at 20 n.13; and (2) in court, *twice* denied requests from both sides for individual voir dire of jurors who admitted reading or hearing about the case, *see* Tr.138:7-9 ("I'm not going to do what you suggest."); Tr.139:19-20 ("I'm not asking these questions.").

The Government's assertion that the defense had the opportunity to ask follow-up questions based solely on exposure to pretrial publicity, *see* Gov't Resp. at 30-31, is patently false. The defense made clear that its "position is that if somebody is exposed to pretrial publicity, they have to be individually voir dired, and I have a list of questions I'd like to give to the Court that I think they should be asked." Tr.139:7-11. The trial court refused to pose individual questions, instead asking potential jurors standing 100+ feet from the bench *en masse* to sit if they could be impartial. Tr.139-41. That was it. The defense again explained that without "further inquiry," it could not identify jurors for further questioning based solely on exposure to pretrial publicity. Tr.141:20-25.

The district court thus consistently rejected requests for individual voir dire. The significant differences between voir dire here and *Skilling* pose a third substantial question.

CONCLUSION

The Government's interest in denial of bond is minimal. If Mr. McDonnell's convictions are upheld, he will serve his two-year sentence. His interest in remaining free until the appellate courts resolve these issues, however, is impossible to overstate. Mr. McDonnell vigorously maintains his innocence and is entitled to know whether he actually broke the law before he serves his entire sentence. He respectfully requests bond pending appeal.

Dated: January 25, 2015 Respectfully submitted,

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Counsel for Robert F McDonnell

CERTIFICATE OF COMPLIANCE

I certify that this reply brief contains no more than 3,750 words, specifically 3,750 words, as counted by Microsoft Word 2010, and uses 14-point Times New Roman font.

/s/ Noel J. Francisco
Noel J. Francisco
Counsel for Robert F McDonnell

CERTIFICATE OF SERVICE

I certify that on January 25, 2015, the foregoing Reply in Support of Mr. McDonnell's Motion for Release Pending Appeal was served on counsel of record for all parties through the CM/ECF system.

Dated: January 25, 2015

/s/ Noel J. Francisco
Noel J. Francisco
Counsel for Robert F McDonnell

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v) CRIMINAL ACTION
)
WILLIAM J JEFFERSON,) 1:07 CR 209
)
Defendant)

REPORTER'S TRANSCRIPT

JURY TRIAL

Thursday, July 30, 2009

BEFORE: THE HONORABLE T.S ELLIS, III
Presiding

APPEARANCES: OFFICE OF THE UNITED STATES ATTORNEY
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REBECCA BELLOWS, AUSA
CHARLES DUROSS, SAUSA

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Official Court Reporter
USDC, Eastern District of Virginia
Alexandria, Virginia

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(Court recessed)

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acts charged in the indictment, then you may consider evidence of similar acts allegedly undertaken on other occasions to determine whether Defendant Jefferson had the state of mind or intent necessary to commit the crimes charged in the indictment; whether defendant acted according to a plan or in preparation for commission of a crime; whether defendant committed the acts for which the defendant is on trial by accident or mistake

In other words -- let me make that clearer If you find beyond a reasonable doubt from other evidence in the case that the defendant did commit the acts charged in the indictment, and in doing that you must not consider the evidence of ePrime

But if you find from other evidence that he did commit the acts charged in the indictment, then you may consider evidence of similar acts, ePrime, allegedly undertaken, if you find those have been proven beyond a reasonable doubt, to determine whether he had the state of mind or intent necessary to commit the crimes charged in the indictment, or whether he acted according to a plan or in preparation or commission of the crime, or whether he committed the crimes by accident or mistake.

Now, as I have told you, the conspiracy counts just discussed, Counts 1 and 2, charge that one of the objects of those conspiracies was to violate Section

201(b)(2)(A) of Title 18, which makes it a crime for a public official to solicit or receive anything of value in return for being influenced in the performance of an official act.

Counts 3 and 4 charged substantive violations of Counts -- I beg your pardon -- of that code section. In other words, Counts 1 and 2 charge a conspiracy to do that, and I have instructed you on that. Now Counts 3 and 4 charge substantive violations of the Bribery Statute.

Count 3 of the indictment charges that: Beginning in or about January 2001, through in or about August 2005, within the Eastern District of Virginia and elsewhere, the defendant, then a public official, corruptly demanded, sought or received things of value from Vernon Jackson and iGate for ANJ, a Jefferson family-controlled company, in return for being influenced in the performance of official acts, to advance iGate's business ventures.

Count 4 of the indictment charges that: Beginning in or about June 2004 through in or about August 2005, within the Eastern District of Virginia and elsewhere, the defendant, then a public official, corruptly demanded, sought or received things of value from Lori Mody and Lori Mody's companies, W2-IBBS and IBBS, in return for being influenced in the performance of official acts to advance Lori Mody's business ventures.

Now, Section 201 of Title 18 provides, in pertinent part, that: Whoever, being a public official, directly are indirectly, corruptly demands, seeks, receives, accepts or agrees, to receive or accept anything of value personally or for any other person or entity, in return for being influenced in the performance of any official act, shall be guilty of an offense against the United States

So in other words to sustain its burden of proof for the crimes of demanding, seeking or receiving a bribe by a public official as charged in Counts 3 and 4, the government must prove the following three essential elements beyond a reasonable doubt:

First, that the defendant directly or indirectly demanded, sought, received or accepted, or agreed to receive or accept, anything of value, personally or for another person or entity;

Two, that defendant was at that time a public official of the United States; and

Three, that the defendant demanded, sought, received, accepted or agreed to receive or accept the item of value corruptly in return for being influenced in the performance of any official act

If the government fails to prove any of these essential elements beyond a reasonable doubt for either Count 3 or Count 4, or both, then you must find the defendant not guilty of that count or counts

Now, with respect to the first essential element, the phrase "anything of value" means any item, whether tangible or intangible, that a person -- that the person giving or offering or the person demanding or receiving considers to be worth something

The phrase "anything of value" includes a sum of money, shares of shock, percentage of revenue, commissions, favorable treatment, a job, or special consideration

Now, with regard to the second essential element, the term "public official" includes a member of Congress

With respect to the third element, the term "official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy which may at any time be pending or which may by law be brought before any public official in such official's official capacity or such official's place of trust or profit

In order to violate to Bribery Statute, the defendant must have corruptly sought, received or agreed to receive a thing of value in return for being influenced in his own performance of an official act; that is, a decision or action on any question, matter, cause, suit, proceeding or controversy that may at any time be pending or which may by law be brought before the defendant in his official capacity

An act may be official even if it was not taken pursuant to responsibilities explicitly assigned by law Rather, official acts include those activities that have been clearly established by settled practice as part a public official's position.

Moreover, an act on a particular question or matter may still be official even if the public official did not have authority to make a final decision or take binding action on the issue

It is not a defense that the offer or promise or demand or receipt of anything of value concerned an official act that was actually lawful, desirable, or even beneficial to the public.

The third essential element also requires that the government prove beyond a reasonable doubt that the defendant corruptly sought, received, or agreed to receive an item of value in return for being influenced in the performance of an official act

And as I had have previously instructed you, to act corruptly means to act knowingly and dishonestly for a wrongful purpose.

The offense -- the offense of bribery requires the intent to be influenced in the performance of an official act. In other words, for bribery there must be a quid pro quo, a specific intent to receive something of value in exchange for being influenced in the performance of an official act

Yet each individual payment need not be correlated with a specific official act. Rather, it is sufficient to show that the defendant intended for each payment to induce him to adopt a specific course of official action. In other words, the intended exchange in bribery can be this for these, or these for these; not just this for that

Further, it is necessary for the government to prove that the defendant intended to perform a set number of official -- I'm sorry

Further, it is not necessary for the government to prove that the defendant intended to perform a set number of official acts in return for payments The quid pro quo requirement is satisfied if you find the evidence shows a course of conduct of things of value flowing to the defendant in exchange for a pattern of official actions favorable to the donor

What must be shown is that the defendant sought, received or agreed to receive payments with the intention of providing a specific type of official action in return.

For example, the quid pro quo requirement is satisfied if you find that the government has established beyond a reasonable doubt that the defendant agreed to accept things of value in exchange for performing official acts on an as-needed basis, so that whatever the opportunity presented itself, he would take specific action on the payor's behalf

Thus, you may convict defendant only if you find that the govern- -- that he solicited or accepted something of value in exchange for some specific official act or course of action.

The government is not required to prove an express intention or agreement to engage in a quid pro quo; rather, such an intent may be established by circumstantial evidence

Now, in order for you to return a verdict of guilty on the bribery charges in Counts 3 and 4, the government must prove -- must convince you that the offense, or any part of it, took place in the Eastern District of Virginia

Unlike all of the other elements I have described, this is a fact the government only has to prove by a preponderance of the evidence That means the government only has to prove that it is more likely than not that the crime or some part of the offense conduct took

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE GRAND JURY SUBPOENAS,)
)
13-1 / 12-3032 / 13-16,) Case No. ________
)
13-1 / 12-3032 / 13-190,)
) **FILED UNDER SEAL**
13-1 / 13-1785 / 13-633.)
)

MOTION TO SEAL CASE AND DOCUMENTS

Pursuant to Local Criminal Rule 49, Movant, by counsel, hereby moves the Court for a protective order sealing the instant case, in general, and all filed documents in it, in particular. Movant respectfully requests that the case and all filed documents be sealed indefinitely A memorandum in support of this motion is filed concurrently herewith.

Date: March 12, 2014

Respectfully submitted,

MOVANT

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of March 2014, I hand delivered the foregoing to the Clerk of Court and the following parties:

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Dated: March 12, 2014

Respectfully submitted,

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Counsel for Movant

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE GRAND JURY SUBPOENAS,

13-1 / 12-3032 / 13-16,

13-1 / 12-3032 / 13-190,

13-1 / 13-1785 / 13-633.

Case No. __________

FILED UNDER SEAL

[PROPOSED] ORDER GRANTING MOVANT'S MOTION TO SEAL CASE AND DOCUMENTS

This matter came before the Court on the motion of Movant requesting the sealing of the instant case and all documents filed in the instant case. Upon consideration, and the Court finding that the applicable rules and Fourth Circuit precedent are satisfied, it is hereby

ORDERED that the instant case and all of its documents be filed and maintained UNDER SEAL indefinitely and in accordance with Local Criminal Rule 49.

IT IS SO ORDERED

Entered this ___ day of March 2014.

____
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE GRAND JURY SUBPOENAS,)
)
13-1 / 12-3032 / 13-16,) Case No. __________
)
13-1 / 12-3032 / 13-190,)
) **FILED UNDER SEAL**
13-1 / 13-1785 / 13-633.)
__________________________________)

MEMORANDUM IN SUPPORT OF MOVANT'S MOTION TO SEAL CASE AND DOCUMENTS

In support of his Motion to Seal Case and Documents, Movant, by counsel, submits the following memorandum.

BACKGROUND

Concurrently with this motion to seal, Movant is filing a Motion to Order Return of Private Information requesting this court to specifically enforce an agreement between the Government and Movant. Under that agreement, the Government agreed to return to Movant or destroy all copies of particular evidence provided to the Government pursuant to grand jury subpoenas and in connection with a grand jury investigation in the Eastern District of Virginia. Because this matter involves the Movant's response to grand jury subpoenas, Movant requests that the instant case and all documents filed in the instant case be sealed indefinitely.

ARGUMENT

Both the First Amendment and the common law provide for the public access to judicial documents and the courts, but the Fourth Circuit is clear that any public right of access is not without limits. *Va Dep't of State Police v. Wash. Post*, 386 F.3d 567, 575 (4th Cir. 2004). In fact, "[t]he trial court has supervisory power over its own records and may, in its discretion, seal documents if the public's right of access is outweighed by competing interests." *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984); *see also Rushford v. The New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988) (requiring that any denial of public access "serves an important government interest and that there is no less restrictive way to serve that governmental interest").

Before sealing court documents, the Fourth Circuit requires the district court to: "(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object; (2) consider less drastic alternatives to sealing the documents; and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives." *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000) (citing *Knight Pub. Co.*, 743 F.2d at 235-36). These three requirements can be easily met here.

The instant case involves the protection of information disclosed pursuant to grand jury subpoenas in the Eastern District of Virginia. Rule 6(e) of the Federal Rules of Criminal Procedure protects federal grand juries and "confirms the long-established policy of maintaining the secrecy of grand jury proceedings." *United States v. Penrod*, 609 F.2d 1092, 1096 (4th Cir. 1979). Specifically, Rule 6(e) prohibits the disclosure of "matters occurring before the grand jury" except under particular exceptions outlined in the rule itself. Fed. R. Crim. P 6(e)(2).

Documents produced to a grand jury pursuant to a subpoena clearly fall under Rule 6(e)'s secrecy protections provided to "matters occurring before the grand jury." *See Smith v. United States*, 423 U.S. 1303 (1975) (presupposing the applicability of Rule 6(e) to the "files and records of the grand jury"); *In re Grand Jury Subpoenas, April, 1978*, 581 F.2d 1103, 1008-09 (4th Cir. 1978), *cert. denied*, 440 U.S. 971 (1979) (finding "that materials secured by the grand jury in the course of its investigation shall not be disclosed except as authorized in" Rule 6(e)); *In re Grand Jury Disclosure*, 550 F Supp. 1171, 1175 (E.D. Va. 1982) (holding that Rule 6(e) applies to subpoenaed documents).

In recognition of the secrecy associated with grand jury proceedings, Local Criminal Rule 49(b) notes that "no separate motion to seal is necessary in investigative proceedings made confidential by law." As such, this Motion to Seal, the instant case, and all documents filed in it should remain under seal to protect the interest in keeping grand jury proceedings out of public view.[1]

Additionally, alternative methods of restricting access to the instant case and all filed documents in the instant case do not exist. Redaction could serve as a possible alternative in some cases. *May v. Medtronic*, 05-794, 2006 U.S. Dist. LEXIS 31245, 2006 WL 1328765, at *1 (D.S.C. 2006). But redaction will not properly restrict access to the information in cases, such as the instant case, when it renders court filings meaningless. *Id.* Here, redaction of all sensitive information will strip the filings of all substance. Names of the Movant and third parties, information related to grand jury subpoenas, and details concerning evidence submitted to the Government pursuant to grand jury subpoenas will have to be redacted, leaving available only meaningless information for the public.

In the instant case, Movant's rights and interests in protecting the secrecy of the information disclosed pursuant to grand jury subpoenas, including sealing the instant case and documents, far outweighs any competing public interest. Indeed, if Movant's Motion to Order Return of Private Information is not sealed, the Court is opening the door to an otherwise secret institution and inviting public scrutiny of information in connection with grand jury proceedings. Moreover, the public does not need access to Movant's Motion to Order Return of Private Information, as the underlying dispute concerns personal and private information that is unknown to and not accessible by the public. Importantly, the grand jury subpoenas themselves ask the recipient to not disclose the existence of the subpoenas and to otherwise maintain their secrecy.

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[1] Even if the Court disagrees and views the instant case outside of a grand jury context, the Court's obligation to provide public notice of the instant case is limited to simply docketing the motion to seal and nothing more. *See Bronitsky v. Bladen Healthcare, LLC*, 2013 U.S. Dist. LEXIS 129914 (E.D.N.C. 2013) (finding that the first *Ashcraft* requirement "is satisfied through electronic docketing of the motion to seal"); *East West, LLC v. Rahman*, 2012 U.S. Dist. LEXIS 126259 (E.D. Va. 2012) (finding that a docketed motion to seal that resulted in no objection from the public was enough to meet the first *Ashcraft* requirement); Local Criminal Rule 49(e) ("The Clerk shall provide public notice by docketing the motion in a way that discloses its nature as a motion to seal, with its hearing date (if any).").

CONCLUSION

For the foregoing reasons, Movant, by counsel, requests that the instant case and all documents filed in the instant case be kept under seal indefinitely in accordance with Local Criminal Rule 49.

Dated: March 12, 2014

Respectfully submitted,

MOVANT

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IN THE UNITED STATES DISTRICT COURT
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______________________________	)	

MOTION TO ORDER RETURN OF PRIVATE INFORMATION

Acting on an agreement under grand jury subpoenas, eight months ago Jonnie Williams Sr. allowed the Government temporary access to the contents of his iPhone, in an illegible electronic format. That content included more than 6,200 irrelevant, personal, and potentially privileged files in addition to the 137 iPhone files he had already produced under several grand jury subpoenas.[1] Williams allowed the Government to access the iPhone contents under the mutual understanding that it would use the iPhone contents solely to search for metadata surrounding a single responsive photograph. Williams' understanding from the beginning was that after this single search, the Government would promptly delete or return all of the iPhone files, and indeed, on his later request, the U.S. Attorney's Office specifically agreed to do so. To ensure that the Government kept its promise, Williams' counsel observed an FBI technician running the sole allowable search and then deleting the files from the Government computer.

But contrary to the U.S. attorney's instructions, the FBI not only mistakenly retained a copy of the entire iPhone in the FBI's encrypted BIDMAS system, but also mistakenly released that encrypted copy to counsel for defendants Robert and Maureen McDonnell, all in the violation of the Government's promises. While the U.S. Attorney's Office has been honest about the Government's errors and would like to undo the potential harm to witness privacy, it has suggested that Williams' only recourse is with this Court.

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[1] The roughly 6,200 personal iPhone files include text messages, photos of Williams' family and friends, calendar entries, private communications with his wife and children, call histories, notes, business communications, contact information for Williams' entire address book, browser data, cookies, and a user dictionary.

Indeed, unless this Court intervenes, the Government plans to release the iPhone files to the McDonnells in a legible format, minus only what Williams can identify as privileged. Having erred twice and breached its agreement with Williams, the Government has now indicated that unless ordered otherwise by this Court, it will hand over more than 6,200 of Williams' personal, irrelevant files to the defense without even determining what the files contain. The Government has ignored its normal policies of review before production and refused Williams' attempts to persuade the U.S. Attorney's Office to review the content of the files to establish that they are irrelevant, personal, and should not be disclosed. *Cf.* U.S. Attorney Manual Title 9. § 5.001 (stating that information "is not subject to disclosure" when it "goes only to" the "consideration of information which is irrelevant or not significantly probative of the issues before the court" or "involve[s] spurious issues or arguments that serve to divert the trial process from examining the genuine issues").

The only equitable way to avoid injury to Williams' privilege and privacy, as well as that of his friends and family, is for this Court to order both the Government and the McDonnells to return or destroy *all* copies of the iPhone content. None of the parties to *United States v. McDonnell* has any right to troll through Williams' personal files, including familial text messages, personal and family photos, call histories, contacts, unrelated business messages, jokes (some of which are offensive) and banter sent by friends, browser data, and cookies—not by agreement and not by criminal discovery rules.[2] Release of those files would infringe not only on Williams' privacy, but on the privacy of numerous family members, friends, and business associates, who play no role whatsoever in the grand jury investigation or criminal case. This data, in the hands of the Government and McDonnells, would allow an uninvited dive into Williams' personal, private, and business life, including photos of his grandchildren, conversations with family members and friends, contact information for everyone in his address book, interactions related to his work and business affairs, and even his passwords. None of this data is relevant or admissible. But because the files remain encrypted, this Court has an opportunity to solve the problem by ordering their prompt destruction or return.

I. **The Government received Williams' iPhone files under an agreement not to examine them, to use them only for one specific search, and then to return or destroy them.**

On January 11, 2013, Williams received grand jury subpoena number 13-1/12-3032/13-16, requesting documents related to Williams' assets, to Star Scientific stock and marketing, and emails to or from a dozen other people. On February 13, 2013, Starwood Aviation received grand jury subpoena number 13-1/12-3032/13-190, requesting documents under its custody. On May 8, 2013, Williams received grand jury subpoena 13-1/13-1785/13-633, requesting Williams' communications with Virginia's employees, elected officials, and their families.

As part of his rolling productions to the grand jury, on May 22, 2013, Williams produced 137 documents from his iPhone that were responsive to these subpoenas. A photograph of Governor McDonnell displaying a Rolex watch was among those documents.

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[2] The McDonnells' team and supporters have previously taken every opportunity to make personal attacks against Williams—through various newspapers and electronic mailings distributed by the Restoration Fund (http://therestorationfund.com/)—all in an effort to bolster their defense and discredit Williams.

After the Government examined the photograph, the U.S. Attorney's Office expressed an interest in gathering "metadata" related to it—that is, in learning who had sent the photograph to Williams and exactly when. Accordingly, the U.S. Attorney's Office requested the original "image" of the *entire* iPhone, so that FBI technical staff could recover any metadata linked to the Rolex photograph. Government Letter to Counsel, March 10, 2014, attached as Ex. 1, at 1. All parties recognized at the time that the iPhone contained large amounts of extraneous information beyond the 137 responsive documents—including thousands of irrelevant, personal, and possibly privileged files.

Thus, on June 21, 2013, Williams' counsel agreed to turn over the entire iPhone image, on the condition that the Government would never examine it. None of the content of the iPhone was to be converted into a readable format; an FBI technician would simply search for metadata around a single file—nothing more. Only with this understanding did Williams' counsel agree to turn over the entire iPhone image. Ex. 1, at 2. Consistent with this agreement, Williams and the Government agreed that once the metadata search was finished, the Government would not review or even keep the iPhone image.

On June 24, 2013, Williams' counsel delivered a DVD containing the image of Williams' iPhone to the Government. Ex. 1, at 2. The accompanying cover letter confirmed that the submission was made "in connection with the grand jury investigation," and that the production was "not intended to waive, and do[es] not constitute a waiver of any privileges or rights, including, but not limited to, the attorney-client or work product privilege." June 24, 2013 Production Letter, attached as Ex. 2.

Concerned by the passage of time, in September 2013, in accord with Williams' understanding of the arrangement and the fact that the iPhone image included privileged as well as irrelevant materials, Williams' counsel officially requested that the DVD and any copies be returned or destroyed. Ex. 1, at 2. The U.S. Attorney's Office agreed, but noted that the purpose of the deal—to allow the Government to look for metadata around the Rolex photograph—had not yet been fulfilled. The U.S. Attorney's Office reported that, consistent with the original deal, the image had been loaded into the Government's system in an unreviewable format, and that no one had looked at it. Therefore, the U.S. Attorney's Office requested that counsel for Williams visit the Richmond FBI office to observe the FBI's attempt to recover metadata surrounding the Rolex photograph. Ex. 1, at 2.

On September 30, 2013, Williams' counsel met an Assistant U.S. Attorney and FBI agents at the Richmond FBI office. The FBI then worked to recover metadata for the Rolex photograph. After the search, and in accord with the agreement between the Government and Williams, the Assistant U.S. Attorney and Williams' counsel observed the FBI technician delete the iPhone image from the Government computer. At that time, the deal appeared complete. The Government got what it wanted (to search for metadata on the Rolex photograph), and Williams received his due (the Government had not viewed the iPhone contents, and all counsel believed the Government had deleted its only copy of the material).

II. The Government breached that agreement.

On February 24, 2014, the Government alerted Williams' counsel that it had failed to uphold its part of the bargain. Specifically, the Government reported that unbeknownst to all counsel, the FBI had in fact copied the entire iPhone into the FBI's encrypted BIDMAS system. Moreover, the FBI had also released that encrypted image of Williams' iPhone to McDonnells' counsel, which the U.S. Attorney's Office has admitted was a further error. We understand that McDonnells' counsel has now asked the Government to provide an unencrypted version for their review. Unless this Court intervenes, the Government has stated that it plans to release the iPhone contents in legible format to the McDonnells, minus only what Williams identifies as privileged material. Ex. 1, at 4.

III. Specific performance is the only remedy.

Williams thus respectfully asks this Court to order the Government to perform its half of their bargain (to do what the U.S. Attorney's Office said it would do in September). Williams requests that this Court order the return or destruction of all copies of the iPhone contents, including the encrypted copy sent to McDonnells' counsel. The Government does not object to this equitable solution, which is effectively specific performance of their agreement, but it has stated that it will not perform absent a Court order to do so.

Equitable principles justify specific performance here. "Specific performance may be granted or refused under established equitable principles and the facts of a particular case with a view to the substantial justice of the case." *Vienna Metro LLC v. Pulte Home Corp.*, 786 F. Supp. 2d 1090, 1102 (E.D. Va. 2011) (Lee, J.); *id.* at 1101 (noting that "courts routinely grant specific performance"). Specific performance is particularly appropriate when there is no remedy at law, and also when the parties to the agreement agree that it is fair. *Vienna Metro*, 786 F.Supp.2d at 1102. Further, "where a contracting party can feasibly be given what he or she bargained for, specific performance is the preferred remedy." 71 Am. Jur. 2d Specific Performance § 9.

Courts commonly order specific performance in an analogous situation—when the Government has breached a plea-bargain deal. *United States v. Martin*, 25 F.3d 211, 217 (4th Cir. 1994) ("Accordingly, Martin is entitled to specific performance of the government's promise to reward him for his *presentence* substantial assistance."); *United States v. Dixon*, 998 F.2d 228, 231 (4th Cir. 1993) ("Dixon is entitled to specific performance of the government's promise to move for a substantial assistance departure"); *United States v. Peglera*, 33 F.3d 412, 415 (4th Cir. 1994) ("Because of the government's breach of the plea agreement, we grant appellant the requested specific performance [A]t the new sentencing, the government is required to satisfy its obligations under the agreement.").

As in a plea deal, here, Williams as a witness took action to his detriment in reliance on a deal with the Government. He provided the entire contents of his iPhone—including thousands of non-responsive and personal files not otherwise discoverable—to the Government, for the purpose of a sole search related to a specific single file. The deal was that the Government would not peruse the non-responsive files and indeed, consistent with Williams' original understanding, the Government later agreed to destroy the files, and attempted to do so. Because the Government failed to keep its part of the bargain, both the Government and the McDonnells now possess thousands of Williams' personal files and those of people he corresponded with over several years. For several reasons, the equitable solution is for this Court to order their return.

First, clearly, there is no legal remedy. Williams has no interest in recovering money from the Government for this breach of his deal and his privacy. Nor is it clear, even hypothetically, how damages could redress the potential injury here or be computed or recovered.

Second, it is not too late to roll back the Government's breach. The iPhone files are formatted in a way that makes them difficult, time-consuming, and expensive to access. Our understanding is that neither the Government attorneys nor the McDonnells have actually yet examined the files in a comprehensible format. Thus, speedy return of all copies of those files would solve the Government's breach and preserve Williams' privacy.

Third, the Government does not object to this solution. *See, e.g., Vienna Metro LLC*, 786 F.Supp.2d at 1102 (finding "specific performance is particularly appropriate" when the defendant "has conceded in pleadings and at trial that specific performance is an appropriate remedy").

IV **The McDonnells are not entitled to retain and review the contents of the iPhone image.**

Ordering the return of all copies of the iPhone image would also be proper because the McDonnells have no right to the information either.

First, the McDonnells already have, or presumably will, acquire fully comprehensible access to the 137 iPhone files that *were* relevant to the grand jury investigation and responsive to the Government subpoenas. Williams released those files to the Government for its review in May 2013, under the January 11 subpoena and others. No one disputes the McDonnells' access to those files, which are the only iPhone files the Government has reviewed—the only ones it lawfully possesses.

Second, to the extent the McDonnells wish to seek other personal files, the proper path is a subpoena under Federal Rule of Criminal Procedure 17. Under Rule 17, a criminal defendant who seeks to subpoena a witness's files must demonstrate, among other requirements, that "the documents are evidentiary and relevent [sic]" and that "the application is made in good faith and is not intended as a general 'fishing expedition.'" *United States v. Caro*, 597 F.3d 608, 620 (4th Cir. 2010) (quoting *United States v. Nixon*, 418 U.S. 683, 699-700 (1974)). In *Caro*, for instance, the Fourth Circuit held that the district court had properly refused to allow Rule 17 subpoenas when the defendant "could only speculate as to what the requested information would have shown," and when the "subpoenas cast a wide net that betokens a 'general fishing expedition.'" *Id.* at 620; *see also In re Martin Marietta Corp.*, 856 F.2d 619, 621 (4th Cir. 1988) ("A party seeking pretrial production of documents must demonstrate (1) relevancy, (2) admissibility, and (3) *specificity with respect to the documents.*") (emphasis added). Here, the McDonnells lack any specific knowledge of what information might be on the iPhone, and could have no reason other than a "general fishing expedition" to troll through thousands of Williams' personal files.

In any event, litigating the proper scope of a Rule 17(c) subpoena is the correct way to handle any disagreement over what contents of Williams' iPhone should be available to the McDonnells. Put differently, information about Williams that the McDonnells could not secure by directly asking for it should not become theirs because a third party breached its agreement with him (through no fault of Williams). A Government error does not justify the defendant invading the privacy of a witness by sifting through files that the Government itself never examined and should not possess. Neither party has any right to Williams' personal files, and because of their format, this Court has the opportunity to correct the situation before anyone is able to review them.

Third, the agreement struck between Williams and the Government did not waive any privacy or privilege. Williams provided the iPhone image to the Government in an illegible electronic format and with the understanding that the Government would never convert the contents into viewable format. Instead, the image would remain electronic gibberish, useful and available only as a backdrop for the Government's hunt for metadata surrounding a single file. That electronic gibberish then would be deleted or returned to Williams when the brief hunt was over—a premise of the agreement that the U.S. Attorney's Office later specifically accepted and attempted to carry out.

Under waiver rules, therefore Williams never even "disclosed" the iPhone contents to the Government. Inadvertent Disclosure, 23 Fed. Prac. & Proc. Evid. § 5445 (1st ed.) ("To constitute a "disclosure", the party must reveal the *content* of the privileged communication") (emphasis added); *The Navajo Nation v. Peabody Holding Co., Inc.*, 255 F.R.D. 37, 48 (D.D.C. 2009) ("A document will be considered disclosed by a plaintiff when the 'defendant has learned the 'gist' of the documents's [sic] contents.'") (citing *Chubb Integrated Sys. Ltd. v. Nat'l Bank of Washington*, 103 F.R.D. 52, 63 (D.D.C. 1984)); *Scott v. Glickman*, 199 F.R.D. 174, 180 (E.D.N.C. 2001) (distinguishing between "glancing at a document in an open file drawer when the party does not learn the 'gist' of the document's contents" and turning a document over "to be copied, digested, and analyzed," and finding disclosure where the party had "surrendered the entire box of uncounted documents to opposing counsel to inspect and copy outside the presence of plaintiff's attorneys"). Here, the Government never had permission to "digest" or "analyze" Williams' personal iPhone files, never learned the "gist" of any of those files, and only retained a copy at all by inadvertently breaching its agreement with Williams. Indeed, the fact that the Government has not reviewed the contents of the iPhone because the U.S. Attorney's Office feels it has no right to do so proves the non-disclosure. Government Letter, March 10, Ex. 1, at 2, 4.

Along the same line, because of the agreement and the format of the files, when Williams provided the iPhone image to the Government he had no expectation that any human could ever, or would ever, view that content. For that reason also, provision of the iPhone image did not waive Williams' privacy as to its contents (or attorney-client privilege as to any privileged materials). The cover letter sent to the Government with the iPhone image confirms this Ex. 2 ("This letter and our production of the enclosed DVD are not intended to waive, and do not constitute a waiver of any privileges or rights

Nor did the Government's inadvertent provision of the iPhone image, in encrypted format, to the defense waive any of Williams' rights. *See United States v. McDonnell*, No 3:14-cr-12, Doc. 46 (Protective Order), at ¶ 2 (E.D. Va. Feb. 6, 2014) ("The disclosure or provision of documents or materials by the parties to each other shall not operate as a waiver of any privilege or protection that could or may be asserted by any third-party holder of any such privilege or protection.").

Fourth, the equity of this situation strongly favors returning the iPhone image. On one hand, the McDonnells already have, or will receive from the Government, each of the 137 *relevant* files from Williams' iPhone. And as recognized by Rule 17, criminal defendants are not entitled to more—they are not permitted to fish through witnesses' personal files and communications. *See, e.g., Caro*, 597 F.3d at 620; *United States v. Sobral*, 149 F.3d 1172 (4th Cir. 1998) (unpublished) (denying a criminal defendant's "sweeping" subpoena request for financial documents, and noting that the defendant had already received relevant victim information from the Government). Thus, the McDonnells already have or will receive their due. Williams, on the other hand, who is simply a *witness* in this case, stands to have all the communications, records, and files on his iPhone exposed. That exposure would occur not through Williams' own judgment or error, but based on the Government's failure to keep its bargain with him. And because the files remain in an encrypted format, action by this Court to order their return can prevent that injustice.

V Conclusion

For these reasons, Williams respectfully asks the Court to order the destruction or return of all copies of the iPhone image, from the Government and from the McDonnells. In the alternative, and for the same reasons stated above, Williams asks that if this Court is unwilling to order the return or destruction of the iPhone files without reviewing them first, it should undertake an *in camera* review of the files to satisfy itself that the defense has no right to them.

Date: March 12, 2014

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EXHIBIT 1

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March 10, 2014

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Re: **Inadvertent Possible Production of a Forensic Image of an iPhone
Belonging to Jonnie Williams, Sr., and Containing Privileged Materials
United States v. Robert and Maureen McDonnell, No. 3:14cr12 (E.D. Va.)**

Dear Counsel,

We write to provide notice and a factual chronology related to the inadvertent possible production of a copy of a forensic image of an iPhone belonging to Jonnie Williams, Sr., that included privileged materials. We are providing this information to you pursuant to the Protective Order entered by the Court on February 6, 2014, and we consider the information included herein to be governed by the terms of that Protective Order.

Before June 24, 201[illegible] GuireWoods had produced to us all material from Mr. Williams's iPhone that Mc[illegible] Woods determined was responsive to the grand jury subpoena served on Mr. Williams and [illegible] rivileged or otherwise being produced by another third party (*e.g.*, Star Scientific). We subsequently requested that McGuireWoods produce a forensic image of Mr. Williams's iPhone to us to allow the Government to attempt to obtain metadata and other electronic information about certain specific pictures on Mr. Williams's iPhone of Mr. McDonnell posing with a Rolex watch, which pictures had already been produced to us. *See*

JWS0060000134, JWS0060000135 (previously produced to you and associated with FBI Tracking #1A167). Pursuant to that request, on or about June 24, 2013, we received a DVD from counsel for Jonnie Williams, Sr., that contained a forensic image of Mr. Williams's iPhone. *See* Exh. 1 (Ltr. From A. McCray to M. Dry-(June 24, 2013)).

Thereafter, on or about September 24, 2013, McGuireWoods sent us the attached letter requesting the return of the forensic image previously provided. McGuireWoods explained that the forensic image included communications and information protected by the attorney-client privilege or attorney work product doctrine, as well as that all information within the forensic image that was responsive to the grand jury subpoena had been disclosed to us in other productions. *See* Exh. 2 (Ltr. From T. Vick to M. Dry (Sept. 24, 2013)) (previously produced to you and associated with FBI Tracking #1A381).

Upon receipt of the September 24 letter from McGuireWoods, we determined that *no Government personnel had reviewed, processed, or analyzed the information* from the forensic image, either for the reason it was requested (*i.e.*, to attempt to retrieve metadata or other electronic information related to certain images from Mr. Williams's iPhone that had previously been produced to us) or otherwise. We then instructed the FBI personnel in possession of the original DVD not to access the forensic image and to set it aside for return to McGuireWoods. We also instructed the FBI to remove any part of that forensic image that may have been present in the FBI's BIDMAS database.

McGuireWoods agreed to allow the Government access to the forensic image of the iPhone, but such access was limited to the specific images of the Governor posing with the Rolex, for the limited purpose of attempting to extract any additional metadata or other electronic information as originally contemplated. On or about September 30, 2013, in order to ensure that the Government did not view any potentially privileged material on the forensic image and that the access was limited as agreed, a McGuireWoods attorney personally observed the FBI tech personnel's extraction and copying of the specific images. The information that FBI tech personnel extracted and a copy of the September 24 letter from McGuireWoods were placed in the FBI file and have previously been produced to you, both in raw form and in Relativity-compatible format, through FBI Tracking #1A381. After extracting that information, we returned the original DVD with the forensic image to McGuireWoods.

As we prepared to reprocess the materials produced to us by third parties in a Relativity-compatible format, we learned on or about February 24, 2014, that after FBI-BIDMAS personnel were instructed to remove any part of the iPhone forensic image from BIDMAS, they did so by administratively blocking access to the FBI Tracking # associated with the original forensic image. Accordingly, we learned that on February 17, 2014, when FBI-BIDMAS personnel provided you in Production #3 with servers that contained a copy of the BIDMAS database and the administrative privileges necessary to use it, we may have inadvertently given you servers through which access to the entire forensic image containing privileged information might be possible.

In addition, on or about February 24, 2014, we learned that the FBI's Computer Analysis Response Team ("CART") had inadvertently retained a copy of the forensic image after the original DVD was returned to McGuireWoods. We have confirmed, however, that no one on CART, nor any other Government personnel, have reviewed, processed, or analyzed any information from that forensic image, other than the information already produced in FBI Tracking #1A381.

That same day, we contacted McGuireWoods to alert them of the Government's inadvertent retention of the forensic image, and requested that they provide us with a privilege log for the materials within the forensic image that they believe to be protected by the attorney-client privilege. McGuireWoods reiterated that all of the information that they determined was responsive to the Government's subpoenas had been produced and informed us that the forensic image of Mr. Williams's iPhone contained attorney-client privileged materials, as well as a significant amount of irrelevant, personal materials that are not discoverable but implicated Mr. Williams's privacy interest.

In subsequent discussions, we explained to McGuireWoods that we could not make any determination regarding the discoverability of the materials since we had not reviewed the forensic image. We further explained that regardless of whether the non-privileged materials contained on the forensic image were legally discoverable, in an abundance of caution and to be consistent in how we have treated evidence obtained from other third parties in this case, we intended to disclose to you all non-privileged materials obtained from third parties during our investigation. Accordingly, we again requested that McGuireWoods provide us with a privilege log for the materials within the forensic image that they believe to be privileged. We also requested a clean copy of the image with all privileged materials removed, so that we could produce it to you and begin our own review of the image.

McGuireWoods stated that they would consider our request, but on March 7 informed us that they disagreed with our intention to disclose the entire, non-privileged image to you. Their primary concern is that the iPhone image apparently contains a significant amount of irrelevant, personal materials that are not discoverable, as well as materials that are protected by the marital privilege. McGuireWoods has refused to provide us with a privilege log or clean copy of the image and informed us that they intend to file a motion with the Court early this week (of March 10) asking the Court to order the Government to return any copies of the forensic image of the iPhone. McGuireWoods has further informed us that they will be prepared to comply promptly with any final order from the Court regarding production of any materials included within the forensic image.

In light of the possible inadvertent production of privileged materials, and McGuireWoods's intention to seek legal relief, we ask that you not review the copy of the complete iPhone forensic image that we believe to be included on the BIDMAS servers provided to you until this matter is resolved. McGuireWoods also has requested that you return the BIDMAS servers to the Government. Should you return the BIDMAS servers to us, we will instruct FBI-BIDMAS personnel to delete any information contained on them without accessing it. We note that the protective order entered in this case provides that "[t]he disclosure or provision of documents or materials by the parties to each other shall not operate as a waiver of any privilege or protection that could or may be asserted by any third-party holder of any such privilege or protection." Doc. No. 46 ¶ 2.

In closing, we summarize the situation as follows: (1) no Government personnel have reviewed, processed, or analyzed any information from the forensic image of Mr. Williams's iPhone, other than the information already produced in FBI Tracking #1A381, (2) we anticipate that McGuireWoods will seek relief from the Court this week; (3) should McGuireWoods fail to seek relief from the Court this week, the Government will institute taint team procedures in order to identify and segregate privileged materials (attorney-client and marital) from the forensic image; (4) unless the Court orders otherwise, the Government intends to produce to you all of the non-privileged materials, regardless of Mr. Williams's privacy interests or the materials' lack of relevancy to this case.

Sincerely,

Dana J. Boente
Acting United States Attorney

Jack Smith
Chief, Public Integrity Section
Criminal Division, U.S. Department of Justice

By: /s/
Michael S. Dry
Jessica D. Aber
Ryan S. Faulconer
David V. Harbach, II
Counsel for the United States

Enclosures

cc: Richard Cullen, Counsel for Jonnie Williams, Sr.
Reid Weingarten, Counsel for Jonnie Williams, Sr.

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A Bentley McCray
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McGUIREWOODS

smccray@mcguirewoods.com
Direct Fax: 804.698.2087

SENT BY HAND DELIVERY

June 24, 2013

Michael S. Dry
Deputy Chief of the Criminal Division
United States Attorney's Office
Eastern District of Virginia
600 East Main Street, Suite 1800
Richmond, VA 23219

Grand Jury Subpoena – Jonnie Williams, Sr. and Starwood Aviation

Dear ~~Mr. Dry~~: Mike

Enclosed is one DVD containing production of documents in response to the Grand Jury Subpoena issued on January 11, 2013 to Jonnie Williams, Sr. and February 13, 2013, to Starwood Aviation (JWS009 Production), Bates numbered JWS0090000001. The DVD contains an image of Jonnie Williams' iPhone.

This letter and our production of the enclosed DVD are not intended to waive, and do not constitute a waiver of any privileges or rights, including, but not limited to, the attorney-client or work product privileges.

These documents are submitted in connection with the grand jury investigation being conducted in Richmond, Virginia, and are subject to Federal Rule of Criminal Procedure 6(e) and any other applicable policies. The parties request that pursuant to the Freedom of Information Act, 5 U.S.C. §552(b)(4) ("FOIA") and the U.S. Department of Justice stated policy (see 28 CFR §16.8), all copies of the enclosed documents labeled "Confidential Treatment Requested" be treated as confidential and exempt from disclosure to third parties. The parties further request that confidential treatment be accorded to this letter and any notes, memoranda, or other records created by or at the direction of the U.S. Department of Justice or its officers or staff members, that reflect, refer or relate to these documents.

Please promptly inform me, at the address and phone number listed above, of any FOIA request seeking access to the documents, or any of the above-mentioned records, including this letter, to enable us to substantiate the grounds for confidential treatment, unless the Department of Justice intends to deny such request for access on other grounds.

Sincerely,

Anne

Anne Bentley McCray

cc: Erik L. Kitchen, Esquire
Richard F Cullen
Anne M. Whittemore

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September 24, 2013

VIA E-MAIL

Michael S. Dry
Deputy Chief of the Criminal Division
United States Attorney's Office
Eastern District of Virginia
600 East Main Street, Suite 1800
Richmond, Virginia 23219

RE: Jonnie R. Williams Sr. – JWS009 Production

Dear Mr. Dry:

On behalf of my client, Jonnie R. Williams Sr., I request the immediate return of the cover letter and DVD entitled "JWS009 Production" and bates-numbered JWS0090000001 that were produced to your office on June 24, 2013, in connection with the grand jury investigation pending in the United States District Court for the Eastern District of Virginia (the "production"). I also request that you either return to me or destroy any copies of the production that may have been created while the production was in your possession.

The production contains communications and information protected by the attorney-client privilege or attorney work product doctrine. This letter serves to rectify the disclosure error. Information contained within the production that is responsive to the grand jury subpoenas but not privileged, or otherwise protected, has been disclosed to you in other productions.

Please contact me at (804) 775-4340 to arrange for the return of the production.

Sincerely,

Howard C. Vick Jr.

EXHIBIT 2

FILED UNDER SEAL

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SENT BY HAND DELIVERY

June 24, 2013

Michael S. Dry
Deputy Chief of the Criminal Division
United States Attorney's Office
Eastern District of Virginia
600 East Main Street, Suite 1800
Richmond, VA 23219

Grand Jury Subpoena – Jonnie Williams, Sr. and Starwood Aviation

Dear ~~Mr. Dry~~: Mike

Enclosed is one DVD containing production of documents in response to the Grand Jury Subpoena issued on January 11, 2013 to Jonnie Williams, Sr. and February 13, 2013, to Starwood Aviation (JWS009 Production), Bates numbered JWS0090000001. The DVD contains an image of Jonnie Williams' iPhone.

This letter and our production of the enclosed DVD are not intended to waive, and do not constitute a waiver of any privileges or rights, including, but not limited to, the attorney-client or work product privileges.

These documents are submitted in connection with the grand jury investigation being conducted in Richmond, Virginia, and are subject to Federal Rule of Criminal Procedure 6(e) and any other applicable policies. The parties request that pursuant to the Freedom of Information Act, 5 U.S.C. §552(b)(4) ("FOIA") and the U.S. Department of Justice stated policy (see 28 CFR §16.8), all copies of the enclosed documents labeled "Confidential Treatment Requested" be treated as confidential and exempt from disclosure to third parties. The parties further request that confidential treatment be accorded to this letter and any notes, memoranda, or other records created by or at the direction of the U.S. Department of Justice or its officers or staff members, that reflect, refer or relate to these documents.

Please promptly inform me, at the address and phone number listed above, of any FOIA request seeking access to the documents, or any of the above-mentioned records, including this letter, to enable us to substantiate the grounds for confidential treatment, unless the Department of Justice intends to deny such request for access on other grounds.

Sincerely,

Anne

Anne Bentley McCray

cc: Erik L. Kitchen, Esquire
Richard F Cullen
Anne M. Whittemore

FILED
[illegible] 12 2014
CLERK, U.S. DISTRICT COURT
RICHMOND, VA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE GRAND JURY SUBPOENAS,

13-1 / 12-3032 / 13-16,

13-1 / 12-3032 / 13-190

13-1 / 13-1785 / 13-633.

Action No. 3:14 MS67

FILED UNDER SEAL

ORDER

THIS MATTER is before the Court on the motion of Movant requesting the sealing of the instant case and all documents filed in the instant case. Upon due consideration, and the Court finding that the applicable rules and Fourth Circuit precedent are satisfied, it is hereby ORDERED that the instant case and all of its documents be filed and maintained UNDER SEAL indefinitely and in accordance with Local Criminal Rule 49. E.D. Va. Loc. Crim. R. 49.

The Government is hereby DIRECTED to file its response, if any, to the Movant's Motion to Order Return of Private Information by 5:00 p.m. on Thursday, March 13, 2014.

Let the Clerk send a copy of this Order to all counsel of record.

IT IS SO ORDERED.

/s/
James R. Spencer
United States District Judge

ENTERED this 12th day of March 2014.

5

FILED

2014 MAR 13 P 3:39

ISTRICT COURT
OND. VIRGINIA

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE GRAND JURY SUBPOENAS,
13-1 / 12-3032 / 13-16
13-1 / 12-3032 / 13-190
13-1 / 13-1785 / 13-633

No. 3:14ms67

FILED UNDER SEAL

RESPONSE OF THE UNITED STATES TO JONNIE R. WILLIAMS, SR.'S MOTION TO ORDER RETURN OF PRIVATE INFORMATION

The United States of America, by undersigned counsel, hereby responds to Jonnie R. Williams, Sr.'s Motion to Order Return of Private Information. In that Motion, Williams seeks an order from this Court directing the return or destruction of any copies of a forensic image of Williams's iPhone that are in the possession of the Government or defendants Robert F McDonnell and Maureen G. McDonnell in *United States v. Robert and Maureen McDonnell*, No. 3:14cr12. As set forth in greater detail below, the Government agrees with Williams that the Government's only intent in originally obtaining the forensic image was to obtain specific picture metadata, not to conduct a general search of the iPhone's contents. The Government also agrees with Williams that the Government inadvertently retained copies of the forensic image and may have inadvertently produced copies to the McDonnells in discovery. However, the Government has represented to defense counsel its intention to produce in discovery *all* nonprivileged materials the Government obtained from third parties via grand jury subpoena without making independent relevance or responsiveness determinations. Accordingly, although the Government has never reviewed the full forensic image, the Government has informed Williams and the McDonnells that absent an order from this Court directing otherwise, the

Government intends to produce all nonprivileged materials from that forensic image to the McDonnells irrespective of those materials' relevance or responsiveness.

The Government set forth the factual background relevant to this motion in a letter to the McDonnells' counsel on March 10, 2014, and Williams has attached that letter to his motion. *See* Mot., Exh. 1. That background can be summarized simply:

- Before June 24, 2013, Williams's counsel represented that they had produced all material from his iPhone that was responsive to the grand jury subpoenas served on Williams and not privileged or otherwise being produced by a third party. Among that information were two pictures of Mr. McDonnell posing with a Rolex, which Williams originally produced without any electronic metadata.

- In an effort to obtain any metadata relating to those pictures—specifically, information about how Williams received these pictures and when they were taken—the Government requested, and Williams's counsel agreed to produce, a forensic image of his iPhone. Williams produced that forensic image to the FBI on or about June 24, 2013.

- On September 24, 2013, Williams's counsel requested that the Government immediately return the forensic image and destroy any copies, in part because it contained attorney-client privileged materials. After verifying that no Government personnel had reviewed or processed the contents of that forensic image, the Government agreed to comply with Williams's request after satisfying the purpose of obtaining the forensic image by extracting the specific pictures' metadata.

- On September 30, 2013, the Government and Williams's counsel met at the Richmond FBI field office, and after extracting the two pictures' metadata, the Government returned the original forensic image to Williams's counsel. At that time, Government counsel believed that the Government had retained no usable copies of that forensic image.

- On February 17, 2014, the Government produced to the McDonnells servers that contained the FBI's "BIDMAS" database—the database the Government had been using to review materials produced by third parties.

- On or about February 24, 2014, the Government learned that the FBI had inadvertently retained two usable copies of the forensic image of Williams's iPhone—one at the Richmond FBI field office and one with FBI-BIDMAS personnel. Although neither copy had been processed or reviewed by any Government personnel, and although FBI-BIDMAS personnel had administratively blocked Government counsel and agents from accessing that forensic image in BIDMAS, FBI-BIDMAS personnel indicated that the McDonnells *may* have access to the forensic image via the administrative privileges given to them to set up the BIDMAS servers.

- On or about February 24, 2014, the Government contacted Williams's counsel and indicated the Government's intent to produce all nonprivileged materials from the inadvertently retained forensic image to the McDonnells, irrespective of those materials' relevance or responsiveness. Accordingly, the Government requested that Williams's counsel provide a privilege log and a "clean," nonprivileged copy of the forensic image (or the materials within that image) for production to the McDonnells. The Government did not initiate an independent taint-team review because of its understanding that Williams's counsel were undertaking this task.

- On March 7, 2014, Williams's counsel informed the Government that they did not intend to produce a privilege log and nonprivileged copy of the forensic image. Rather, they indicated their intent to seek relief from this Court because they had determined the forensic image included only materials that were (a) responsive to the grand jury subpoenas but had already been produced; (b) protected by the attorney-client or marital privileges; or (c) otherwise nonresponsive, nondiscoverable materials that implicated Williams's privacy interests. The Government informed Williams's counsel that because no Government personnel had reviewed the information, the Government could not agree or disagree with their assessment, but the Government would promptly disclose the situation to the McDonnells.

- On March 10, 2014, the Government informed the McDonnells in writing of the facts set forth above, including Williams's intent to seek relief from this Court, and that, in the event Williams failed to seek relief this week, the Government intended to initiate taint-team procedures to review the forensic image and produce all nonprivileged[1] materials to the McDonnells, absent a contrary order from this Court. *See* Mot., Exh. 1. The Government further requested that the McDonnells not review the forensic image that may be in their possession and instead return the BIDMAS servers to the Government.

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[1] For the remainder of this response, "nonprivileged" in reference to the forensic image means materials that implicate neither the attorney-client nor the marital privilege.

The Government's position with respect to production, return, or destruction of the copies of the forensic image in the Government's possession is the same position it has taken since learning of those copies on February 24, 2014, and that it conveyed to the McDonnells on March 10, 2014.[2] Specifically, because the Government has not reviewed the forensic image, the Government cannot take a position with respect to the specific responsiveness, relevance, or discoverability of the materials contained within that forensic image.[3] In addition, because the Government has informed the McDonnells that it intends to produce all nonprivileged materials obtained from third parties via grand jury subpoena, the Government's intention—absent an order to the contrary—is to produce all nonprivileged materials from the forensic image of Willams's iPhone. The Government is aware that its discovery obligations do not necessarily require production of *all* materials obtained from third parties, but the Government has attempted to do so in an abundance of caution in this case in light of the McDonnells' repeated requests for "every shred of evidence in its possession," *United States v. Robert and Maureen McDonnell*, No. 3:14cr12, Doc. No. 9, at 2.[4]

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[2] The Government notes that although it notified the McDonnells of Williams's intent to seek relief from the Court, the Government has not informed them that Williams's motion has been filed because the matter was sealed by the Court.

[3] Although Williams has represented that the forensic image is "encrypted," Mot. at 3, 11, the Government does not know whether Williams means to say that the image is password-protected (and thus impossible to process without additional information) or merely in a format that requires particular software to be used (and thus possible to process without additional information).

[4] Thus, although Williams represents that the Government "does not object," Mot. at 6, to the relief he seeks, the Government clarifies that it cannot take an informed position with respect to that requested relief because the Government has not reviewed the forensic image and therefore cannot make its own independent assessment as to the discoverability of any nonprivileged materials. The Government agrees with Williams, however, that the McDonnells should be directed to return the BIDMAS servers to the Government because those servers may contain privileged materials within the copies of the forensic image.

In sum, the Government acknowledges that it originally obtained the forensic image of Williams's iPhone in order to obtain electronic metadata associated with two particular pictures and that the Government never intended to review—and indeed, has not reviewed—the forensic image for any other purpose.[5] The Government also acknowledges that it inadvertently retained copies of that forensic image and may have inadvertently produced copies of it to the McDonnells in an effort to produce discovery rapidly and in a usable format. However, the Government must fulfill its discovery obligations to the McDonnells, and in an abundance of caution and an effort to be consistent in doing so, the Government intends to produce to the McDonnells all nonprivileged materials obtained from third parties. As such, the Government intends to initiate taint-team procedures and produce all nonprivileged materials contained within the forensic image of Williams's iPhone unless the Court grants Williams's requested relief or directs otherwise.

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[5] Williams refers to the pictures in question as a "single responsive photograph," Mot. at 1, but there are actually two separate, mirror-image versions of what appears to be the same original picture, and the Government has thus referred to them in the plural in its correspondence and in this pleading.

Respectfully submitted,

DANA J. BOENTE
Acting United States Attorney

JACK SMITH
Chief, Public Integrity Section
Criminal Division
U.S. Department of Justice

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By:
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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2014, a true and correct copy of the foregoing was sent via electronic mail to:

Richard Cullen
Howard C. Vick, Jr.
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Matthew A. Fitzgerald
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Counsel for Jonnie R. Williams, Sr.

By: ____________________
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FILED
MAR 13 2014
CLERK, U.S. DISTRICT COURT
RICHMOND, VA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE GRAND JURY SUBPOENAS,

13-1 / 12-3032 / 13-16,

13-1 / 12-3032 / 13-190

13-1 / 13-1785 / 13-633.

Action No. 3:14-ms-67

FILED UNDER SEAL

ORDER

THIS MATTER is before the Court on a Motion to Order Return of Private Information filed by Jonnie R. Williams, Sr. Upon due consideration, the Government is hereby DIRECTED to return to Williams any copies of the forensic image of Williams's iPhone in its possession. The Government is further DIRECTED to seek the return of said forensic image from any third parties to which it may have been provided or disclosed.

Let the Clerk send a copy of this Order to all counsel of record.

IT IS SO ORDERED.

/s/
James R. Spencer
United States District Judge

ENTERED this 13th day of March 2014.

7

FILED

2014 MAR 14 A 11: 29

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE GRAND JURY SUBPOENAS,)
)
13-1 / 12-3032 / 13-16) No. 3:14ms67
)
13-1 / 12-3032 / 13-190) **FILED UNDER SEAL**
)
13-1 / 13-1785 / 13-633)

REQUEST TO UNSEAL FOR LIMITED PURPOSE

The United States of America, by undersigned counsel, respectfully requests that the Court issue an order unsealing its March 13, 2014, Order in this matter for the limited purpose of permitting the Government to disclose that Order to counsel for the defendants in *United States v. Robert and Maureen McDonnell*, No. 3:14cr12. The Government makes this request in order to comply with the Court's directive in the March 13, 2014, Order that the Government "seek the return of [any copy of the forensic image of Mr. Williams's iPhone] from any third parties to which it may have been provided or disclosed."

The Government has attached a proposed order authorizing disclosure of the March 13, 2014, Order, as well as the proposed order should it be entered, for this limited purpose.

Respectfully submitted,

DANA J. BOENTE
Acting United States Attorney

By:
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Jessica D. Aber
Ryan S. Faulconer
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JACK SMITH
Chief, Public Integrity Section
Criminal Division
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CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2014, a true and correct copy of the foregoing was sent via electronic mail to:

Richard Cullen
Howard C. Vick, Jr.
Ryan E. Bonistalli
Matthew A. Fitzgerald
McGuireWoods LLP
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Counsel for Jonnie R. Williams, Sr.

By:

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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE GRAND JURY SUBPOENAS,)
)
13-1 / 12-3032 / 13-16) No. 3:14ms67
)
13-1 / 12-3032 / 13-190) **FILED UNDER SEAL**
)
13-1 / 13-1785 / 13-633)

ORDER

THIS MATTER is before the Court on a Request to Unseal for Limited Purpose filed by the Government, seeking authorization to disclose the Court's March 13, 2014, Order in this matter to counsel for the defendants in *United States v. Robert and Maureen McDonnell*, No. 3:14cr12. Upon due consideration, the Government's request is GRANTED, and it is hereby ORDERED that the Court's March 13, 2014, Order in this matter, and this Order, be unsealed for the limited purpose of allowing the Government to provide a copy of the two Orders to counsel for the defendants in *United States v. Robert and Maureen McDonnell*, No. 3:14cr12. Both the March 13, 2014, Order and this Order shall otherwise remain sealed.

IT IS SO ORDERED.

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE GRAND JURY SUBPOENAS	)	
	)	
13-1 / 12-3032 / 13-16	)	No. 3:14ms67
	)	
13-1 / 12-3032 / 13-190	)	**FILED UNDER SEAL**
	)	
13-1 / 13-1785 / 13-633	)	

ORDER

THIS MATTER is before the Court on a Request to Unseal for Limited Purpose filed by the Government, seeking authorization to disclose the Court's March 13, 2014, Order in this matter to counsel for the defendants in *United States v. Robert and Maureen McDonnell*, No. 3:14cr12. Upon due consideration, the Government's request is GRANTED, and it is hereby ORDERED that the Court's March 13, 2014, Order in this matter, and this Order, be unsealed for the limited purpose of allowing the Government to provide a copy of the two Orders to counsel for the defendants in *United States v. Robert and Maureen McDonnell*, No. 3:14cr12. Both the March 13, 2014, Order and this Order shall otherwise remain sealed.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
United States District Judge

ENTERED this 14th day of March 2014.

9

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE GRAND JURY SUBPOENAS,)
)
13-1 / 12-3032 / 13-16,) Case No. 3:14-ms-67
)
13-1 / 12-3032 / 13-190,)
) **FILED UNDER SEAL**
13-1 / 13-1785 / 13-633.)
)

MOTION TO ORDER RETURN OF PRIVATE INFORMATION

Two months ago, this Court ordered the Government to return the forensic image of Jonnie R. Williams, Sr.'s iPhone and to "seek the return" of all copies provided to counsel for the McDonnells in *United States v. Robert and Maureen McDonnell*, No. 3:14-cr-12. March 13 Order (Exhibit A). This Court then unsealed that Order expressly so it could be shown to the McDonnells' counsel. March 14 Order (Exhibit B). After several requests from the Government and Williams' counsel, having taken two months to "assess" this "complex issue," counsel for the McDonnells now refuse to return their copy of the iPhone image. As has been clear to everyone all along, if the McDonnells may keep and eventually review the iPhone image, that would nullify this Court's March 13 Order. For that reason, in order to secure the privacy interest this Court already recognized, Williams is forced to return to this Court and ask it to order the McDonnells *specifically* to return or destroy the iPhone image.

The Original iPhone Issue

Acting on an agreement under grand jury subpoenas, eleven months ago Jonnie Williams Sr. allowed the Government temporary access to the contents of his iPhone, in an illegible electronic format. That content included more than 6,200 irrelevant, personal, and potentially privileged files in addition to the 137 iPhone files he had already produced under several grand jury subpoenas[1] Williams allowed the Government to access the iPhone contents under the mutual understanding that it would use the iPhone contents solely to search for metadata surrounding a single responsive photograph. To ensure that the Government kept its promise, Williams' counsel observed an FBI technician running the sole allowable search and then deleting the files from the Government computer. But contrary to the U.S. attorney's instructions, the FBI not only mistakenly retained a copy of the entire iPhone in the FBI's encrypted BIDMAS system, but also mistakenly released that encrypted copy to counsel for defendants Robert and Maureen McDonnell, all in the violation of the Government's promises.

Previous Briefing and This Court's Orders

Thus, in March 2014 Williams filed in this Court a Motion to Order Return of Private Information. Williams explained that "[t]he only equitable way to avoid injury to Williams' privilege and privacy, as well as that of his friends and family, is for this Court to order both the Government and the McDonnells to return or destroy *all* copies of the iPhone content." (first emphasis added). Williams' Motion added:

> None of the parties to *United States v. McDonnell* has any right to troll through Williams' personal files, including familial text messages, personal and family photos, call histories, contacts, unrelated business messages, jokes (some of which are offensive) and banter sent by friends, browser data, and cookies—not by agreement and not by criminal discovery rules. Release of those files would infringe not only on Williams' privacy, but on the privacy of numerous family members, friends, and business associates, who play no role whatsoever in the grand jury investigation or criminal case. None of this data is relevant or admissible.

At the same time, Williams briefed this Court about why the McDonnells, in particular, had no right to retain the iPhone image. In short, the McDonnells already had acquired full access to the 137 iPhone files that were relevant to the case and grand jury investigation. Any additional documents the McDonnells want could and should be sought through the proper channel—a Rule 17 subpoena, which does not permit "general fishing expeditions." *United States v. Caro*, 597 F.3d 608, 620 (4th Cir. 2010) (holding that the district court correctly refused to allow Rule 17 subpoenas when the defendant "could only speculate as to what the requested information would have shown," and when the "subpoenas cast a wide net that betokens a general fishing expedition.""). Nor did Williams waive any protection by sharing the iPhone image in an illegible electronic format, for the sole agreed purpose of allowing the Government to run a metadata search around a single photograph, after which the Government agreed to, and attempted to, delete the image without reviewing it. *See, e.g.*, *The Navajo Nation v. Peabody Holding Co., Inc.*, 255 F.R.D. 37, 48 (D.D.C. 2009); *Scott v. Glickman*, 199 F.R.D. 174, 180 (E.D.N.C. 2001).

---

[1] The roughly 6,200 personal iPhone files include text messages, photos of Williams' family and friends, calendar entries, private communications with his wife and children, call histories, notes, business communications, contact information for Williams' entire address book, browser data, cookies, and a user dictionary.

After receiving that briefing, this Court agreed and ordered the Government to "return to Williams any copies of the forensic image of Williams iPhone in its possession," and also to "seek the return of said forensic image from any third parties to which it may have been provided or disclosed." March 13 Order, Ex. A. The Government requested that the Order be unsealed so that it could be shown to counsel for the McDonnells, and this Court agreed. March 14 Order, Ex. B (specifically "allowing the Government to provide a copy of the two Orders to counsel for the defendants in *United States v. Robert and Maureen McDonnell*").

The McDonnells' Refusal to Return the Image

The same day this Court granted permission to share its March 13 Order with counsel for the McDonnells, the Government did so. In response, counsel stated that the "issue" was "complex" and they were "assessing" it. Two months later—this Saturday morning, May 17—

counsel for McDonnell stated to us that he "believe[s]" he is "rightfully in possession of the contents of Mr. Williams' iPhone," and proposed to "have a taint team begin the review of the contents of the iPhone." Email from Brownlee to Cullen, attached as Exhibit C. Other counsel for the defense has also commented that this Court's March 13 Order "by its terms does not purport to instruct us."

Nullification of this Court's March 13 and 14 Orders

From the beginning, Williams' concern was that the McDonnells, if allowed to review the iPhone image, would make hay of his contacts, pictures, family texts, and jokes. The McDonnells have no right to troll through Williams' irrelevant personal files but every incentive to do so. For that reason, Williams originally asked this Court to order the return or destruction of *all* copies of the image.[2]

This Court recognized that request by ordering the Government to "seek the return" of any copies of the image it had provided to any third party, and then by unsealing that order specifically so it could be shared with counsel for the McDonnells. In sum, this Court has already evaluated the arrangement under which Williams shared the iPhone image with the Government, and has ruled that Williams has a right to have the image back. If the McDonnells—who only received their copy through the Government—can simply refuse to give it back, that entire exchange was a waste of this Court's time and consideration.

Conclusion

Therefore, Williams respectfully asks the Court to vindicate its earlier Orders by ordering the destruction or return of all still-outstanding copies of the iPhone image.

---

[2] Williams' understanding is that the Government obeyed this Court's March 13 Order and has destroyed or returned its only cop(ies) of the iPhone image.

Date: May 19, 2014

Respectfully submitted,

JONNIE R. WILLIAMS SR.

By ________________________
Richard Cullen (VSB No. 16765)
Howard C. Vick, Jr. (VSB No. 18872)
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Counsel for Jonnie R. Williams Sr.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May 2014, I hand delivered the foregoing to the Clerk of Court and the following parties:

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Jessica D. Aber
Ryan Faulconer
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michael.s.dry@usdoj.gov

Dated: May 19, 2014

Respectfully submitted,

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Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

FILED
MAR 13 2014
CLERK, U.S. DISTRICT COURT
RICHMOND, VA

IN RE GRAND JURY SUBPOENA~~S~~:

13-1 / 12-3032 / 13-16,

13-1 / 12-3032 / 13-190

13-1 / 13-1785 / 13-633

Action No 3:14-ms-67

FILED UNDER SEAL

ORDER

THIS MATTER is before the Court on a Motion to Order Return of Private Information filed by Jonnie R. Williams, Sr. Upon due consideration, the Government is hereby **DIRECTED** to return to Williams any copies of the forensic image of Williams's iPhone in its possession. The Government is further **DIRECTED** to seek the return of said forensic image from any third parties to which it may have been provided or disclosed.

Let the Clerk send a copy of this Order to all counsel of record.

IT IS SO ORDERED.

/s/
James R. Spencer
United States District Judge

ENTERED this 13th day of March 2014.

Exhibit B

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Richmond Division

MAR 14 2014

IN RE GRAND JURY SUBPOENAS,)
)
13-1 / 12-3032 / 13-16) No. 3:14ms67
)
13-1 / 12-3032 / 13-190) **FILED UNDER SEAL**
)
13-1 / 13-1785 / 13-633)

ORDER

THIS MATTER is before the Court on a Request to Unseal for Limited Purpose filed by the Government, seeking authorization to disclose the Court's March 13, 2014, Order in this matter to counsel for the defendants in *United States v. Robert and Maureen McDonnell*, No. 3:14cr12. Upon due consideration, the Government's request is GRANTED, and it is hereby ORDERED that the Court's March 13, 2014, Order in this matter, and this Order, be unsealed for the limited purpose of allowing the Government to provide a copy of the two Orders to counsel for the defendants in *United States v. Robert and Maureen McDonnell*, No. 3:14cr12. Both the March 13, 2014, Order and this Order shall otherwise remain sealed.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED

/s/
James R. Spencer
United States District Judge

ENTERED this 14th day of March 2014.

Exhibit C

Fitzgerald, Matthew A.

From: john.brownlee@hklaw.com [mailto:john.brownlee@hklaw.com]
Sent: Saturday, May 17, 2014 08:52 AM
To: Cullen, Richard; Vick, Howard C. Jr.
Cc: hasbill@jonesday.com <hasbill@jonesday.com>; Timothy.Taylor@hklaw.com <Timothy.Taylor@hklaw.com>; jmburnham@jonesday.com <jmburnham@jonesday.com>; otconroy@JonesDay.com <otconroy@JonesDay.com>
Subject: Mr. Williams' iPhone

Richard and Toby -

Good morning. We wanted to get back to you regarding the information contained on Mr. Williams' iPhone that was produced to us as part of the Government's Rule 16 production. I know there have been several inquiries about the information, and I apologize for my delay in responding. I am in the final week of a five week jury trial and have been tied up during most days.

After careful review, and based on the facts as we currently understand them, we believe we are rightfully in possession of the contents of Mr. Williams' iPhone. We also believe that Mr. Williams waived all purported privileges over the iPhone image when he turned it over to DOJ on June 24, 2013. In particular, we believe Mr. Williams disclosed the image voluntarily, not inadvertently, which conclusively waives any privileges that might have formerly applied to any of the phone's contents. And, even if Mr. Williams is able to characterize the disclosures as inadvertent, simple inadvertence would suffice to defeat any privilege claim. We thus do not believe that Mr. Williams can carry his burden of showing "the absence of any waiver." *United States v. Bolander*, 722 F.3d 199, 222 (4th Cir.), *cert. denied*, 134 S. Ct. 549 (2013). As for the non-privileged information on the iPhone, that information has never been privileged and we believe we can review it. If you disagree, however, and believe that we are not entitled to review the non-privileged information on the iPhone, or believe that some of the information on the iPhone remains privileged, please promptly let us know the basis for your position.

Given that the Government has requested the return of its two BIDMAS servers that contained the image of the iPhone, we propose that an IT person at Holland & Knight make a copy of the iPhone data without reviewing its contents. We will then retain that information without reviewing it until any privilege issues are resolved, returning the BIDMAS servers to the Government in the meantime. Please let us know immediately if this interim step -- which would simply preserve the status quo in all meaningful respects -- is acceptable.

As for the information itself, we offer the following proposal in light of the limited time before the trial begins. We are prepared to have a lawyer at Holland & Knight, who has not worked on the case and will be formally walled off from the case, review the contents of the iPhone for any privileged materials. That lawyer will then segregate those materials and prepare a privilege log. We will then share the privilege log with McGuireWoods. We reserve the right at that time to take the position that any privilege which formerly existed over this information has been waived. Hopefully, the parties will be able to resolve any issues related to the assertion of privilege without seeking relief from the Court. If this proposal is agreeable to you, we will have a taint team begin the review of the contents of the iPhone as described above.

Please let us know if this is acceptable to you all. We can be available for a conference call in the evening—typically after 8:00 pm.

Thanks so much. John

John Brownlee | Holland & Knight
Chair, National White Collar Defense and Investigations Practice
800 17th Street N.W., Suite 1100 | Washington DC 20006
1600 Tysons Blvd., Suite 700 | McLean, Virginia 22102
Phone 202 828 1854 | Mobile 202 309 0722
john.brownlee@hklaw.com | www.hklaw.com

******IRS CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, WE INFORM YOU THAT ANY TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN BY HOLLAND & KNIGHT LLP TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (I) AVOIDING TAX-RELATED PENALTIES UNDER THE INTERNAL REVENUE CODE, OR (II) PROMOTING, MARKETING, OR RECOMMENDING TO ANOTHER PARTY ANY TAX-RELATED MATTER HEREIN.******

NOTE: This e-mail is from a law firm, Holland & Knight LLP ("H&K"), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. If you are not an existing client of H&K, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to H&K in reply that you expect it to hold in confidence. If you properly received this e-mail as a client, co-counsel or retained expert of H&K, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality

FILED
JUN - 4 2014
CLERK, U.S. DISTRICT COURT
RICHMOND, VA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE GRAND JURY SUBPOENAS,

13-1 / 12-3032 / 13-16,

13-1 / 12-3032 / 13-190

13-1 / 13-1785 / 13-633.

Action No. 3:14-ms-67

FILED UNDER SEAL

COPY

ORDER

THIS MATTER is before the Court on a Motion to Order Return of Private Information ("Motion") filed by Jonnie R. Williams, Sr., which requests that the Court order Robert F McDonnell and Maureen G. McDonnell to return or destroy a forensic image of an iPhone inadvertently provided to them by the Government as part of its discovery obligations in *United States v. Robert and Maureen McDonnell*, No. 3:14-cr-12. The Court previously ordered the Government to return any copy it possessed to Williams and to seek the return of any copies it provided to third parties. The Court's previous order did not purport to command Robert and Maureen McDonnell, who are not parties to this action and who had no notice of its pendency. Williams has not identified any legal authority justifying court-mandated return of the iPhone image, and the Court declines to intercede in a private dispute between Williams and the McDonnells regarding possession of Williams's private information. How the Court will deal with any attempt to use wrongfully obtained and/or illegally retained information/evidence is an issue for another day and forum. Accordingly, the Motion is hereby DENIED.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 4th day of June 2014.

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FILE
JUN - 5 2014
CLERK, U.S. DISTRICT COUR
RICHMOND, VA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE GRAND JURY SUBPOENAS,)
)
13-1 / 12-3032 / 13-16,) Case No. 3:14-ms-67
)
13-1 / 12-3032 / 13-190,)
) **FILED UNDER SEAL**
13-1 / 13-1785 / 13-633.)
)

MOTION FOR LIMITED UNSEALING & RETURN OF PRIVATE INFORMATION

I.

Jonnie Williams, Sr. respectfully requests that the Court issue an order unsealing its June 4, 2014 Order in this matter and this present Motion for the limited purpose of permitting Williams to disclose them to counsel for the defendants in *United States v. Robert and Maureen McDonnell*, No. 3:14-cr-12. Williams requests this limited unsealing for the purpose of settling the iPhone issue in a forum that remains sealed yet is accessible to the three relevant parties—Williams, the Government, and the McDonnells.

It has become apparent in the good-faith negotiation of the "private dispute between Williams and the McDonnells regarding possession of Williams' private information," June 4 Order, that Williams and the McDonnells are not both privy to all of the orders from this Court on this topic. Accordingly, to assist the parties and avoid the redundancy caused by Orders that naturally do not command non-parties who "had no notice," June 4 Order , of the pending motions, Williams requests this limited unsealing.

Specifically, this Court has previously: (1) recognized Williams' privacy interest in the iPhone contents by ordering the Government to return its copy and "seek return" of the copy improperly provided to the McDonnells (March 13, 2014 Order) (unsealed for purposes of being shown to the McDonnells, March 14, 2014); (2) stated that Williams has "not identified any legal authority justifying court-mandated return of the iPhone" and refused to order its return against the McDonnells, who had "no notice" of the relevant motion (June 4 Order); and (3) specifically noted it was not sanctioning "any attempt to use wrongfully obtained and/or illegally retained information/evidence," calling it "an issue for another day and forum." (June 4 Order). In light of these holdings, Williams respectfully asks this Court to order a limited unsealing so that the McDonnells *will* receive notice of *this* Motion, in an effort to resolve this issue among all relevant parties.

II.

On the merits of the issue, legal authority *does* justify a court-mandated return of the iPhone, as an equitable solution to a breach of Williams' privacy that was not his fault. Thus, Williams asks this Court, after the McDonnells have received this Motion and made any response they see fit, to order the McDonnells to return the iPhone image. Williams promises a rapid response to any Rule 17(c) subpoena that the McDonnells may issue for whatever contents of the iPhone are relevant to this case and not privileged.[1]

Equitable relief is proper here because if the McDonnells access the contents of Williams' iPhone, he will have no adequate remedy at law and will suffer irreparable harm. *Gilliam v. Foster*, 75 F.3d 881, 903 (4th Cir. 1996). There is no remedy at law, nor obvious means to repair, a man's privacy and that of his family and friends. Because the McDonnells have no right to the information, because they came to possess it through no fault or error by Williams, equitable relief is proper here.

---

[1] For example, Williams would readily agree to produce data related to conversations or communications with either or both defendants, Mary Shea Sutherland or any other relevant party.

As an initial matter, none of the parties to *United States v. McDonnell* has any right to troll through some 6,200 of Williams' personal files, including familial text messages, personal and family photos, call histories, contacts, unrelated business messages, jokes (some of which are offensive) and banter sent by friends, browser data, and cookies—not by agreement and not by criminal discovery rules. Release of those files would infringe not only on Williams' privacy, but on the privacy of numerous family members, friends, and business associates, who play no role whatsoever in the grand jury investigation or criminal case. This data, in the hands of the McDonnells, would allow an uninvited dive into Williams' personal, private, and business life, including photos of his grandchildren, conversations with family members and friends, contact information for everyone in his address book, interactions related to his work and business affairs, and even his passwords.[2] None of this data is relevant or admissible, and it is greatly injurious to Williams' privacy.

The equity of this situation strongly favors returning the iPhone image. On one hand, the McDonnells already have, or will receive from the Government, each of the 137 *relevant* files from Williams' iPhone. And as recognized by Rule 17, criminal defendants are not entitled to more—they are not permitted to fish through witnesses' personal files and communications. *See, e.g.*, *Caro*, 597 F.3d at 620; *United States v. Sobral*, 149 F.3d 1172 (4th Cir. 1998) (unpublished) (denying a criminal defendant's "sweeping" subpoena request for financial documents, and noting that the defendant had already received relevant victim information from the

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[2] The roughly 6,200 personal iPhone files include text messages, photos of Williams' family and frie[illegible], calendar entries, private communications with his wife and children, call histories, notes, business communications, contact information for Williams' entire address book, browser data, cookies, and a user dictionary.

Government). Thus, the McDonnells already have or will receive their due. Williams, on the other hand, who is simply a *witness* in this case, stands to have all the communications, records, and files on his iPhone exposed. That exposure would occur not through Williams' own judgment or error. And because the files remain in an encrypted format, action by this Court to order their return can prevent that injustice.

First, the McDonnells already have fully comprehensible access to the 137 iPhone files that *were* relevant to the grand jury investigation and responsive to the Government subpoenas. Williams released those files to the Government for its review in May 2013, under the January 11 subpoena and others. No one disputes the McDonnells' access to those files, which are the only iPhone files the Government has reviewed—the only ones it lawfully possessed.

Second, to the extent the McDonnells wish to seek other personal files, the proper path is a subpoena under Federal Rule of Criminal Procedure 17. Under Rule 17, a criminal defendant who seeks to subpoena a witness's files must demonstrate, among other requirements, that "the documents are evidentiary and relevent [sic]" and that "the application is made in good faith and is not intended as a general 'fishing expedition.'" *United States v. Caro*, 597 F.3d 608, 620 (4th Cir. 2010) (quoting *United States v. Nixon*, 418 U.S. 683, 699-700 (1974)). In *Caro*, for instance, the Fourth Circuit held that the district court had properly refused to allow Rule 17 subpoenas when the defendant "could only speculate as to what the requested information would have shown," and when the "subpoenas cast a wide net that betokens a 'general fishing expedition.'" *Id.* at 620; *see also In re Martin Marietta Corp.*, 856 F.2d 619, 621 (4th Cir. 1988) ("A party seeking pretrial production of documents must demonstrate (1) relevancy, (2) admissibility, and (3) *specificity with respect to the documents*.") (emphasis added). Here, the McDonnells lack any specific knowledge of what information might be on the iPhone, and could have no reason other than a "general fishing expedition" to troll through thousands of Williams' personal files.

In any event, litigating the proper scope of a Rule 17(c) subpoena is the correct way to handle any disagreement over what contents of Williams' iPhone should be available to the McDonnells. Put differently, information about Williams that the McDonnells could not secure by directly asking for it should not become theirs because a third party breached its agreement with him (through no fault of Williams). A Government error does not justify the defendant invading the privacy of a witness by sifting through files that the Government itself never examined and should not possess. Neither party has any right to Williams' personal files, and because of their format, this Court has the opportunity to correct the situation before anyone is able to review them.

Third, Williams' provision of the iPhone image to the Government did not waive any privacy or privilege. Williams provided the iPhone image to the Government in an illegible electronic format and with the understanding that the Government would never convert the contents into viewable format. Instead, the image would remain electronic gibberish, useful and available only as a backdrop for the Government's hunt for metadata surrounding a single file. That electronic gibberish then would be deleted or returned to Williams when the brief hunt was over—a premise of the agreement that the U.S. Attorney's Office later specifically accepted and attempted to carry out.

Under waiver rules, therefore Williams never even "disclosed" the iPhone contents to the Government. Inadvertent Disclosure, 23 Fed. Prac. & Proc. Evid. § 5445 (1st ed.) ("To constitute a "disclosure", the party must reveal the *content* of the privileged communication") (emphasis added); *The Navajo Nation v. Peabody Holding Co., Inc.*, 255 F.R.D. 37, 48 (D.D.C.

2009) ("A document will be considered disclosed by a plaintiff when the 'defendant has learned the 'gist' of the documents's [sic] contents.'") (citing *Chubb Integrated Sys. Ltd. v. Nat'l Bank of Washington*, 103 F.R.D. 52, 63 (D.D.C. 1984)); *Scott v. Glickman*, 199 F.R.D. 174, 180 (E.D.N.C. 2001) (distinguishing between "glancing at a document in an open file drawer when the party does not learn the 'gist' of the document's contents" and turning a document over "to be copied, digested, and analyzed," and finding disclosure where the party had "surrendered the entire box of uncounted documents to opposing counsel to inspect and copy outside the presence of plaintiff's attorneys"). Here, the Government never had permission to "digest" or "analyze" Williams' personal iPhone files, never learned the "gist" of any of those files, and only retained a copy at all by inadvertently breaching its agreement with Williams. Indeed, the fact that the Government never reviewed the contents of the iPhone because the U.S. Attorney's Office felt it has no right to do so proves the non-disclosure.

Along the same line, because of the agreement and the format of the files, when Williams provided the iPhone image to the Government he had no expectation that any human could ever, or would ever, view that content. For that reason also, provision of the iPhone image did not waive Williams' privacy as to its contents (or attorney-client privilege as to any privileged materials). The cover letter sent to the Government with the iPhone image confirms this; it stated: "This letter and our production of the enclosed DVD are not intended to waive, and do not constitute a waiver of any privileges or rights "

Nor did the Government's inadvertent provision of the iPhone image, in encrypted format, to the defense waive any of Williams' rights. *See United States v. McDonnell*, No. 3:14-cr-12, Doc. 46 (Protective Order), at ¶ 2 (E.D. Va. Feb. 6, 2014) ("The disclosure or provision of documents or materials by the parties to each other shall not operate as a waiver of any privilege or protection that could or may be asserted by any third-party holder of any such privilege or protection.").

III.

For these reasons, Williams respectfully asks the Court to: (1) unseal its June 4 Order and this Motion for the limited and express purpose of providing notice to the McDonnells and an opportunity to object; and (2) once that is done, order the return or destruction of all copies of the iPhone image in the possession of the McDonnells. Williams has attached a proposed order satisfying the first portion of this request.

Date: June 5, 2014

Respectfully submitted,

JONNIE R. WILLIAMS SR.

By:
Richard Cullen (VSB No. 16765)
Howard C. Vick, Jr. (VSB No. 18872)
Ryan E. Bonistalli (VSB No. 76517)
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Counsel for Jonnie R. Williams Sr.

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June 2014, I hand delivered the foregoing to the Clerk of Court and the following parties:

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Jessica D. Aber
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Dated: June 5, 2014

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE GRAND JURY SUBPOENAS,	)	
	)	
13-1 / 12-3032 / 13-16,	)	Case No. 3:14-ms-67
	)	
13-1 / 12-3032 / 13-190,	)	
	)	**FILED UNDER SEAL**
13-1 / 13-1785 / 13-633.	)	
	)	

ORDER

THIS MATTER is before the Court on a Request to Unseal for Limited Purpose filed by Jonnie Williams, Sr., seeking authorization to disclose the Court's June 4, 2014 Order in this matter, as well as Williams' motion filed June 5, 2014, to counsel for the defendants in *United States v. Robert and Maureen McDonnell*, No. 3:14-cr-12. Upon due consideration, the request is GRANTED, and it is hereby ORDERED that the Court's June 4, 2014 Order and Williams' June 5 Motion be unsealed for the limited purpose of allowing them to be shared with counsel for the defendants in *United States v. Robert and Maureen McDonnell*, No. 3:14-cr-12, so as to provide notice and an opportunity to participate in this proceeding. Both the June 4, 2014 Order and Williams' June 5 Motion shall otherwise remain sealed.

IT IS SO ORDERED.

United States District Judge

JUN - 6 2014

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE GRAND JURY SUBPOENAS,

13-1 / 12-3032 / 13-16,

13-1 / 12-3032 / 13-190

13-1 / 13-1785 / 13-633.

Action No. 3:14-ms-67

FILED UNDER SEAL

SEALED ORDER

THIS MATTER is before the Court on a Motion for Limited Unsealing & Return of Private Information ("Motion") filed by Jonnie R. Williams, Sr. ("Williams").

The Motion requests that it be unsealed, and that the Court's prior Order of June 4, 2014 in this matter be unsealed, for the limited purpose of permitting Williams to disclose said previously sealed pleadings to Robert F. McDonnell and Maureen G. McDonnell. To the extent that it requests limited unsealing as described, the Motion is GRANTED.

The Motion further requests that the Court Order the McDonnells to return a forensic copy of Williams's iPhone provided to them by the Government. The Court will defer disposition of the Motion as it relates to this request until the McDonnells have been given notice and an opportunity to respond. Williams is DIRECTED to inform the Court of the time and date when Robert F. McDonnell and Maureen G. McDonnell are provided notice of the Motion. The Court will thereafter order a response from the McDonnells.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 6th day of June 2014.

JUN - 9 2014

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE GRAND JURY SUBPOENAS:

13-1 / 12-3032 / 13-16,

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13-1 / 13-1785 / 13-633.

Action No. 3:14-ms-67

FILED UNDER SEAL

SEALED ORDER

THIS MATTER is before the Court on a Motion for Limited Unsealing & Return of Private Information ("Motion") filed by Jonnie R. Williams, Sr. ("Williams").

Having received a Notice of Compliance with the Court's June 6 Order from Williams, the Court finds that Robert F. McDonnell and Maureen G. McDonnell have received notice of the request Williams seeks from the Court. Should either Robert F. McDonnell or Maureen G. McDonnell wish to be heard on the Motion, he or she may submit a response in this action on or before Wednesday, June 11, 2014. Failure to respond to the Motion may be deemed a waiver of any objection to the Motion.

Let the Clerk send a copy of this Order to Robert F. McDonnell, Maureen G. McDonnell, and all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 9th day of June 2014.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE GRAND JURY SUBPOENAS,	)	
	)	
13-1 / 12-3032 / 13-16,	)	**CASE NO. 3:14-MS-67**
	)	
13-1 / 12-3032 / 13-190,	)	**JUDGE JAMES R. SPENCER**
	)	
13-1 / 13-1785 / 13-633.	)	**FILED UNDER SEAL**

MOTION OF ROBERT F. MCDONNELL TO INTERVENE

Robert F McDonnell, by and through undersigned counsel, moves to intervene in the above-captioned case for the limited purpose of opposing the request of Jonnie R. Williams, Sr., that this Court order Mr. McDonnell to return or destroy all copies in his possession of an image of Mr. Williams iPhone. "[A] district court must permit intervention as a matter of right if the movant can demonstrate (1) an interest in the subject matter of the action; (2) that the protection of this interest would be impaired because of the action; and (3) that the applicant's interest is not adequately represented by existing parties to the litigation." *Stuart v. Huff*, 706 F.3d 345, 349 (4th Cir. 2013) (citation omitted). These requirements are clearly met in this instance. Mr. McDonnell has a possessory interest in the imaged copy of the iPhone; this interest will be not only impaired but extinguished if he is ordered to return or destroy the copy; and neither the Government nor Mr. Williams can adequately represent Mr. McDonnell's interest.

Mr. McDonnell respectfully informs the Court that both Mr. Williams and the Government consent to his intervention for the limited purpose of opposing Mr. Williams' motion.

A proposed Order is submitted herewith for the convenience of the Court.

Dated: June 11, 2014

Respectfully submitted,

/s/ Jonathan A. Berry

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CERTIFICATE OF SERVICE

I certify that on June 11, 2014, I caused to be served a true copy of the foregoing via electronic email on the following individuals:

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Dated: June 11, 2014

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
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ROBERT F. MCDONNELL'S SEALED MEMORANDUM IN OPPOSITION TO JONNIE WILLIAMS' MOTION FOR RETURN OF PRIVATE INFORMATION

INTRODUCTION

Jonnie Williams is the Government's chief witness—and unquestionably an unindicted co-conspirator under the Government's theory of the law—in its public corruption case against Robert F. McDonnell and his wife. In response to one of the Government's grand jury subpoenas, Mr. Williams, by counsel, produced to the Government a DVD containing a forensic image of his entire iPhone, which likely includes evidence and information that will greatly aid Mr. McDonnell's defense. Nothing in Mr. Williams' production letter accompanying the DVD purported to limit the Government's access to his iPhone's contents in any way. *See* June 24, 2013 Letter from A. McCray to M. Dry, Ex. A. And Mr. Williams did not seek "to rectify the disclosure error" until a full three months later, when he asked the Government to return the DVD and destroy any copies. *See* Sept. 24, 2013 Letter from H. Vick to M. Dry, Ex. B.

On February 17, 2014, the Government produced a copy of the iPhone image to Mr. McDonnell in accordance with its discovery obligations under Federal Rule of Criminal Procedure 16, and Mr. McDonnell was not alerted about any alleged privilege or claw-back issues until weeks later. Only technological problems and sheer coincidence prevented Mr. McDonnell from viewing the iPhone's contents—which would have been both legal and appropriate.[1]

The Court should not order Mr. McDonnell to return the copy of Mr. Williams' iPhone image that Mr. McDonnell is in legal and rightful possession of and received in good faith as part of the Government's Rule 16 production. *First,* Mr. Williams has no legally enforceable right to any non-privileged information in the copy of Mr. Williams' iPhone that his lawyers voluntarily disclosed to the Government and that the Government then produced to Mr. McDonnell. Mr.

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[1] To maintain the status quo pending judicial resolution of this dispute, Mr. McDonnell and his legal team have refrained from viewing any information from the iPhone image.

McDonnell is now in lawful possession of that information, and Mr. Williams has not—and cannot—cite a single legal principle that authorizes this Court to order Mr. McDonnell to return or destroy it. *Second*, with respect to potentially privileged information, Mr. Williams no longer retains any legally cognizable privileges in that information because they were extinguished when Mr. Williams' counsel voluntarily disclosed the iPhone image to the Government. *Third*, the equities decisively favor Mr. McDonnell. Mr. Williams tendered the image as part of his successful quest for transactional immunity from prosecution for the same conspiracy and underlying crimes that the Government has accused Mr. McDonnell of committing. Mr. McDonnell obtained it lawfully. Mr. Williams cannot now be allowed to wrest the image out of Mr. McDonnell's hands on the basis of an ill-defined equitable privacy interest when the information it contains is highly likely to aid Mr. McDonnell's investigation and presentation of his criminal defense.

The Court should deny Mr. Williams' motion seeking the return of the iPhone information now lawfully held by Mr. McDonnell.

ARGUMENT

I. Mr. Williams Has No Legally Enforceable Right To The Non-Privileged Information In Mr. McDonnell's Lawful Possession.

Because Mr. McDonnell has lawful possession of the information, he has a right to that information unless Mr. Williams can establish a right or interest in the information that overcomes Mr. McDonnell's possessory interest. Mr. Williams cannot meet that burden. He has failed to identify a single statutory or common law right or interest that any court has enforced by ordering the return or destruction of information in another's lawful possession. Instead, he asserts a general privacy interest, but there is no enforceable privacy interest in information beyond legally recognized privileges. And in any event, even if Mr. Williams had an enforceable privacy interest in non-privileged information lawfully held by Mr. McDonnell, it would not apply here since Mr. Williams abandoned that interest when he, through his lawyers, voluntarily disclosed an image of his iPhone to the Government as part of a criminal investigation.

1. Mr. Williams does not—and cannot—claim that Mr. McDonnell unlawfully obtained the image of Mr. Williams' iPhone. Mr. Williams' counsel voluntarily produced to the Government a DVD with a digital copy of the iPhone's contents. The letter accompanying the production placed no limits on what information the Government could access from the iPhone. The Government, in turn, loaded a copy of the DVD onto a server, which the Government voluntarily produced to Mr. McDonnell as part of its Rule 16 production in Mr. McDonnell's criminal case. Mr. McDonnell is thus an innocent and rightful recipient of a copy of the iPhone image that Mr. Williams' counsel provided to the Government.

2. Mr. Williams' *ipse dixit* assertion that Mr. McDonnell has no right to the non-privileged information in his possession is not only wrong, it is an improper attempt to shift the burden of persuasion away from Mr. Williams—the party who is seeking affirmative judicial relief—onto Mr. McDonnell. Mr. McDonnell has a right to the non-privileged information by virtue of his lawful possession of it. Mr. Williams can defeat that right only if he can show that he has a legally cognizable right or interest in the information that somehow divests Mr. McDonnell of his possessory interest.

Mr. Williams's argument that Mr. McDonnell is entitled to review the information in his possession only if he could have independently obtained that information via a Rule 17(c) subpoena is therefore entirely misguided. *See* Williams Mem. at 4–5. Rule 17 is a procedural device that allows the criminally accused to *compel* evidence from a witness. *See* Fed. R. Crim.

P 17(c)(1) (providing that a "subpoena may *order* the witness to produce" various listed items (emphasis added)). It is not a substantive constraint on the universe of evidence that the accused is permitted to possess. And it certainly does not apply here, where Mr. McDonnell already lawfully possesses the information. A witness can always voluntarily produce more evidence than Rule 17(c) might require, and that is precisely what has happened here. The fact that Mr. Williams now wants the evidence back does not alter the analysis.

3. At bottom, Mr. Williams has failed to identify any right or interest in the disclosed non-privileged information that could overcome Mr. McDonnell's right to information that he already possesses. First of all, the only tangible property that Mr. Williams could possibly lay claim to is the DVD that his lawyers provided to the Government. But Mr. McDonnell does not have the DVD; he only has a copy of the information that was on the DVD. And with respect to the non-privileged information copied from the DVD, Mr. Williams has not identified any applicable statutory or common law right or interest entitling him to a court order that information in the lawful possession of a third party must be returned or destroyed. He does not claim, for instance, that he has a copyright in the information or that the information contains trade secrets. Instead, he only asserts a general "privacy" interest in the information. *See* Williams Mem. at 2–3. But Mr. Williams cites no authority for the proposition that a mere privacy interest can justify the return or destruction of information lawfully held by a third party. Privacy interests are enforceable in this way only to the extent that they are protected by a cognizable privilege, but the issue here is Mr. Williams' privacy interest in *non-privileged* information. Because Mr. Williams has no property right or privilege in the non-privileged information in Mr. McDonnell's lawful possession, he has no right to demand the return of that information from Mr. McDonnell.

4. Even if there were such a thing as a legally enforceable privacy interest in non-privileged information that trumps another's lawfully acquired possessory interest in that information, Mr. Williams privacy interest evaporated the moment his lawyers voluntarily delivered his iPhone image to the Government. As with any privilege, *see infra* at 9–13, voluntary disclosure of confidential information defeats whatever expectation of privacy once existed. *See, e.g.*, *Johnson v. Stewart*, 854 So. 2d 544, 549-50 (Ala. 2002) (holding that there was no invasion of privacy where Social Security numbers were voluntarily furnished and that a "wrongful-intrusion claim cannot be based upon information voluntarily given to the defendant by the plaintiffs or upon the defendant's receipt of information already known to others"); *United States v. Monghur*, 588 F.3d 975, 980 (9th Cir. 2009) ("When made to a law enforcement officer, an unequivocal, contemporaneous, and voluntary disclosure that a package or container contains contraband waives any reasonable expectation of privacy in the contents."); *United States v. Metro. St. Louis Sewer Dist.*, 952 F.2d 1040, 1045 (8th Cir. 1992) (holding that the Government's disclosure of draft consent decrees were no longer protected by the Freedom of Information Act's exemption for predecisional draft documents because "[v]oluntary disclosure indicates a diminished expectation of privacy" and thereby acts as a waiver to the exemption (alteration and citation omitted)).

The absence of any reasonable expectation of privacy is all the more evident when, as here, the information is voluntarily disclosed to the Government in a criminal investigation. Under Rule 16, the Government must permit defendants to inspect and copy evidence that is "material to preparing [a] defense" and that "is within the government's *possession*, custody, or control." Fed. R. Crim. P. 16(a)(1)(E) (emphasis added). Similarly, under *Brady*, a prosecutor must disclose material "in the Government's *possession* that is favorable to an accused."

Monroe v. Angelone, 323 F.3d 286, 293 n.5 (4th Cir. 2003) (emphasis added).[2] Given the Government's disclosure obligations, anyone providing information to the Government in a criminal investigation cannot possibly have any reasonable expectation of privacy in that information. And that is true even if the information is provided under the terms of a confidentiality agreement with the Government. The Government cannot contract around its discovery obligations. It must provide criminal defendants with any relevant evidence and any exculpatory information in its *possession*. Therefore, it should have come as no surprise to Mr. Williams that a copy of the iPhone image that his lawyers produced to the Government was, in turn, produced to Mr. McDonnell in discovery. The Government was obligated to do so and it properly discharged that discovery obligation.

5. Mr. Williams suggests that the Government's supposed "breach" of its agreement with him should somehow make a difference in the Court's analysis. *See* Williams Mem. at 4, 5, 6. He contends that Mr. McDonnell should not be entitled to private information just because the Government "breached its agreement with him (through no fault of Williams)" and that a "Government error does not justify" Mr. McDonnell invading Mr. Williams' privacy. *Id.* at 5. As an initial matter, Mr. Williams has not produced a single document substantiating any such agreement. The only relevant document known to Mr. McDonnell is the production letter that accompanied the DVD containing the iPhone image, and that letter does not purport to restrict the Government's use of the DVD in any way. *See* Ex. A. But even if the Government did breach some unwritten agreement with Mr. Williams, it does not follow that Mr. McDonnell

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[2] The Government could not claim, of course, that *Brady* does not apply to evidence that it possessed but did not review, since the Government's "willfulness or inadvertence" in failing to disclose *Brady* material "is inconsequential to [the] *Brady* analysis." *Wolfe v. Clarke*, 691 F.3d 410, 423 (4th Cir. 2012).

should suffer the consequences.[3] Mr. McDonnell legally obtained a copy of the iPhone image in good faith via the Government's Rule 16 production. If anyone should bear the risk of loss from the Government's alleged breach of an agreement with Mr. Williams, it is Mr. Williams himself. After all, it was Mr. Williams, through his lawyers, who voluntarily disclosed his private information to the Government without implementing any safeguards to protect that information.

6. Mr. Williams claims that he did not waive his privacy interest in the contents of his iPhone because he did not actually "disclose" those contents. *See* Williams Mem. at 5–6. According to Mr. Williams, his counsel provided the information in an "illegible electronic format" that was nothing more than "electronic gibberish." *Id.* at 5. But Mr. Williams' argument makes no sense. If the information were truly illegible, then the Government could not have used it, which would have defeated the purpose of the production. The information was obviously produced so that it could be accessed. Indeed, if the information is inaccessible, then Mr. McDonnell will be unable to use it as well—an obvious point that Mr. Williams would have raised if it were true.[4]

Instead, Mr. Williams argues that the information was provided "with the understanding that the Government would never convert the contents into viewable format." *Id.* But this "understanding" is nowhere reflected in the letter accompanying the production of the DVD. *See*

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[3] It is not clear from Mr. Williams' account whether the Government's supposed "breach" is related to his overall cooperation agreement with the Government. But regardless, whatever agreement Mr. Williams struck was with the Government, such that he must seek relief from the Government in the context of their ongoing relationship. Mr. McDonnell is not, of course, a party to any such agreements or transactions.

[4] Mr. Williams mentions in passing that the iPhone files were provided in an "encrypted format," *see* Williams Mem. at 4, 6, but he does not explain what is meant by that ambiguous phrase, nor does the production letter say anything about encryption. To the contrary, all prior representations by the Government and Mr. Williams' counsel have suggested that this data can be accessed in the same way as any electronic file.

Ex. A. And even if the Government inexplicably agreed not to view the contents of the iPhone image and actually followed through on that agreement, that *still* would not establish that Mr. Williams counsel had not "disclosed" the contents. Counsel admitted as much in a letter to the Government requesting the immediate return of the DVD, writing that "[t]his letter serves to rectify the *disclosure* error." *See* Ex. B (emphasis added).

Now, Mr. Williams argues that there never was a "disclosure error." His apparent change of heart is based on his view that a confidence is not "disclosed" unless the recipient learns the "gist" of the information. *See* Williams Mem. at 5–6 (citing cases). But none of the cases that Mr. Williams relies upon actually hold that the recipient *must* learn the gist of the disclosed information. They only hold that a disclosure occurs *when* the recipient learns the information. *See Navajo Nation v. Peabody Holding Co.*, 255 F.R.D. 37, 48 (D.D.C. 2009) (noting that a "document will be considered disclosed by a plaintiff when the 'defendant has learned the "gist" of the documents'[] contents'"); *Chubb Integrated Sys. Ltd. v. Nat'l Bank of Wash.*, 103 F.R.D. 52, 63 (D.D.C. 1984) ("We will deem a document 'disclosed' where defendant has learned the 'gist' of the document's contents."). In other words, learning the "gist" of the information is a sufficient but not necessary condition for "disclosure." Otherwise, the cases cited by Mr. Williams could not be squared with the many decisions holding that a confidence can be breached whether or not the recipient views or relies upon the disclosed information. *See, e.g.*, *Sidari v. Orleans Cnty.*, No. 95-CV-7250, 2000 WL 33407343, at *8 (W.D.N.Y Oct. 3, 2000) ("[T]he Court finds that any attorney-client privilege was waived when plaintiffs' counsel turned the tape [privileged communications] over to the F.B.I., even if no one at the F.B.I. actually reviewed the tape."); *United States ex rel. Mayman v. Martin Marietta Corp.*, 886 F Supp. 1243, 1250 (D. Md. 1995) ("The case law indicates that a disclosure occurs when a party voluntarily breaches the confidentiality of its communication with counsel. That confidentiality is breached whether or not the recipient relies upon the disclosed information.").

Here, the disclosure occurred, whether or not the Government actually viewed the contents of the iPhone image because Mr. Williams' lawyers gave the Government possession, custody, and control of the image without any safeguards to prevent the Government from viewing it and without promptly seeking its return. Therefore, this situation is nothing like a "limited disclosure resulting from glancing at a document in an open file drawer during a discovery inspection." *Scott v. Glickman*, 199 F.R.D. 174, 180 (E.D.N.C. 2001). To the contrary, the magnitude of the disclosure is confirmed by the fact that the Government had exclusive possession of the iPhone image and was able to copy and produce it to Mr. McDonnell without Mr. Williams' knowledge. *See id.* (finding that "disclosure was complete" when "counsel surrendered the entire box of uncounted documents to opposing counsel to inspect and copy *outside the presence of plaintiff's attorneys*," and as a result, "defendants were *placed in the position of being able* to copy the document as many times as desired [and to] digest and analyze it[s] contents," among other things (emphasis added)). Given this string of events, Mr. Williams cannot seriously claim that the image of his iPhone was not actually "disclosed" in the first place.

Because Mr. Williams has no recognized statutory or common law right to the non-privileged information that his counsel voluntarily disclosed and that Mr. McDonnell now lawfully possesses, Mr. Williams' motion must fail insofar as it seeks the return of that information from Mr. McDonnell.

II. Mr. Williams Has Waived Whatever Privileges Once Existed Over Any Of The Information In Mr. McDonnell's Lawful Possession.

The only conceivable interests that Mr. Williams could have retained in the information lawfully possessed by Mr. McDonnell are his attorney-client privilege, attorney work product privilege, and marital communications privilege. But Mr. Williams waived each of these privileges (and any others) the moment his lawyers voluntarily turned over the image of his iPhone to the Government. Importantly, he does not actually contest the fact that he produced the image *voluntarily*—i.e., not inadvertently. That alone should conclusively establish that he waived any otherwise-applicable privileges since, as explained *supra* at 7–9, his voluntary production of the iPhone image to the Government was a complete "disclosure" that breached whatever privileges then existed. But even if the disclosure can be characterized as inadvertent, simple inadvertence would defeat any privilege claim here.

1. Mr. Williams waived any attorney-client privilege over communications in the iPhone image when, through his lawyers, he willingly handed the image over to the Government in response to a subpoena. He cannot carry his burden to show "the absence of any waiver," *United States v. Bolander*, 722 F.3d 199, 222 (4th Cir.), *cert. denied*, 134 S. Ct. 549 (2013), particularly given that the privilege "is to be strictly confined within the narrowest possible limits consistent with the logic of its principle." *In re Grand Jury Proceedings*, 727 F.2d 1352, 1355 (4th Cir. 1984) (citation omitted).

Voluntary disclosure of a privileged communication to a third party waives privilege over that communication. *See Hawkins v. Stables*, 148 F.3d 379, 384 n.4 (4th Cir. 1998) ("As a general rule, implied waiver occurs when the party claiming the privilege has made any disclosure of a confidential communication to any individual who is not embraced by the privilege."). Mr. Williams does not dispute that he handed over the image voluntarily. *See* 2

Paul R. Rice, *Attorney-Client Privilege in the United States* § 9:71 (2d ed. 2010) ("Certainly, if a party discloses a privileged communication intentionally, hoping to reap benefits from the disclosure, his disclosure will not be considered inadvertent."). Instead, he contends that his production of the image was somehow not a "disclosure" that breached any of his privileges. As explained above, however, *see supra* at 7–9, Mr. Williams disclosed the image when he put it in the Government's possession, custody, and control, regardless of what the Government subsequently did with it. *See id.* § 9:28 ("How the recipient used the disclosed communication and information is irrelevant to whether a waiver has occurred.").

Mr. Williams' alleged agreement with the Government—even if actually substantiated—cannot preserve any privileges because a waiver "occurs even if the third party agrees to keep the documents confidential, and even if the third party is a government body." *Hoffman v. Balt. Police Dep't*, 379 F. Supp. 2d 778, 785 (D. Md. 2005); *LaBelle v. Philip Morris Inc.*, No. 2-98-3235-23, 2000 WL 33957169, at *4 (D.S.C. Oct. 23, 2000) (reading Fourth Circuit case law as consistent with the principle that confidentiality agreements will not prevent waiver); *Westinghouse Elec. Corp. v. Rep. of Phil.*, 951 F.2d 1414, 1427 (3d Cir. 1991) ("[U]nder traditional waiver doctrine a voluntary disclosure to a third party waives the attorney-client privilege even if the third party agrees not to disclose the communications to anyone else.") (footnote omitted). For the same reason, Mr. Williams' unilateral reservation of privilege in his production letter has no effect: a "statement purporting to reserve a claim of privilege cannot be given effect when it is followed by statements or conduct which, in fact and in law, constitute a waiver of such privilege." *Malco Mfg. Co. v. Elco Corp.*, 307 F. Supp. 1177, 1179 (E.D. Pa. 1969).

Finally, even if Mr. Williams could somehow characterize his voluntary disclosure as inadvertent, the privilege is still gone. Under Federal Rule of Evidence 502(b), inadvertent disclosures will waive privilege unless "the holder of the privilege or protection took reasonable steps to prevent disclosure" and "promptly took reasonable steps to rectify the error." *See also Maxtena, Inc. v. Marks*, 289 F.R.D. 427, 444 (D. Md. 2012) ("The party seeking the protection of Rule 502(b) bears the burden of proving that each of its elements have been met."). In this case, putting the entire image in the Government's possession, custody, and control is not a "reasonable step"—particularly not when the Government has independent obligations under Rule 16 and *Brady* that it may not waive by agreement with Mr. Williams.

2. Mr. Williams also waived the work-product protection over any documents in his iPhone image because their disclosure to the Government substantially increased the risk that the documents would fall into the hands of an adversary (if somehow the Government itself did not constitute an "adversary" at the time of disclosure).

The Fourth Circuit holds that the work-product protection is waived when its invoker "substantially and freely increased the possibility of disclosure to, and use by, anyone the [recipient] desired." *In re Doe*, 662 F.2d 1073, 1082 (4th Cir. 1981); *Green v. Sauder Mouldings, Inc.*, 223 F.R.D. 304, 307 (E.D. Va. 2004) ("Waiver of the privilege occurs when materials that are otherwise protected work-product are disclosed to someone with interests adverse to the party asserting the privilege.") (citing *Doe*, 662 F.2d at 1081). Given the course of events here, it would be hard to argue that disclosure to the Government did not substantially increase the chances of the image falling into an adversary's hands. *See Westinghouse Elec. Corp.*, 951 F.2d at 1429 ("When a party discloses protected materials to a government agency investigating allegations against it, it uses those materials to forestall prosecution (if the charges are unfounded) or to obtain lenient treatment (in the case of well-founded allegations). These objectives, however rational, are foreign to the objectives underlying the work-product doctrine.").

And again, characterizing the disclosure as inadvertent does not negate waiver. The Fourth Circuit has held that "inadvertent disclosures of privileged documents or information to a third party" waives work-product protection when "disclosed to someone with interests adverse to the party asserting the privilege." *Green*, 223 F.R.D. at 307 (citing *Doe*, 662 F.2d at 1081, and *In re Grand Jury Proceedings*, 727 F.2d 1352, 1356 (4th Cir. 1984)).

3. Mr. Williams' voluntary disclosure of the image waived the marital communications privilege as well: "[T]o be covered by the privilege, a communication between spouses must be confidential; 'voluntary disclosure' of a communication waives the privilege." *United States v. Hamilton*, 701 F.3d 404, 407 (4th Cir. 2012) (quoting *Wolfle v. United States*, 291 U.S. 7, 14–15 (1934)), *cert. denied*, 133 S. Ct. 1838 (2013).

Once again, characterizing the disclosure as inadvertent would not negate waiver. The marital communications privilege is waived whenever the underlying confidentiality is destroyed, meaning that even an inadvertent disclosure will waive the privilege. *See, e.g.*, *Zimmerman v. State*, 750 S.W.2d 194, 201 (Tex. Crim. App. 1988) (invoking "the almost universally accepted rule that statements of one spouse to another are admissible when overheard by a third person even without the knowledge or consent of the spouses"); *Anderson v. State*, 992 P.2d 409, 417 (Okla. Crim. App. 1999) (same); *State v. Szemple*, 640 A.2d 817, 824 (N.J. 1994) (same); *State v. Myers*, 640 P.2d 1245, 1248 (Kan. 1982) (same).

III. The Equities Weigh In Favor Of Mr. McDonnell.

Unable to identify any legal right to the information in Mr. McDonnell's rightful possession, Mr. Williams resorts to freefloating appeals to equity. But he can give no reason why equity demands that this Court strip Mr. McDonnell of lawfully obtained information that is likely to aid in his defense.

Despite his claim that he "is simply a *witness* in this case," Williams Mem. at 4, Mr. Williams is far from a hapless bystander who innocently chanced upon a crime. The Government's indictment of Mr. McDonnell alleges that Mr. Williams was *the central player* in a conspiracy to corrupt the machinery of Virginia's government for his personal gain. He is not an ordinary witness but, rather, is an unindicted *co-conspirator*. Mr. Williams has obtained immunity in exchange for delivering testimony and evidence against Mr. McDonnell—including, presumably, the delivery of the iPhone contents to the Government. Equity does not favor Mr. Williams' belated scramble to get that information back from his alleged co-conspirator now that he has his deal. Nor is there any reason in equity that Mr. McDonnell should be barred from examining information that was tendered as part of his own prosecution. And as explained, Mr. McDonnell is now in lawful possession of that information, which he innocently obtained.

Even if Mr. McDonnell did not already possess the image, he would be entitled to possession under Rule 16, *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972), because Mr. Williams put the iPhone image in the Government's possession. There is no question that Mr. Williams' iPhone will contain extensive information that would be vital in guiding and performing the defense's investigation—text messages with the defendants and others, communications with other government officials, communications between Mr. Williams and numerous other trial witnesses in this case, communications that give insight into other potential misconduct by Williams (including potential tax and securities fraud), evidence that would enable the defense to investigate additional as-yet-unknown conspiracies involving Mr. Williams (akin to his conspiracy with Ms. Sutherland) and as-yet-unknown co-conspirators, etc. The list of relevant evidence likely on the phone is extensive, and whatever the limits on the defense's ability to compel the production of evidence under Rule 17, that Rule imposes no constraints on the defense's ability to investigate the charges using evidence that it lawfully possesses and that it is entitled to receive from the Government. That simply reinforces the inequity of ordering Mr. McDonnell to destroy this property despite his obtaining it through entirely proper and lawful means.

CONCLUSION

For the foregoing reasons, Mr. Williams has not carried his burden of showing why Mr. McDonnell should be ordered to return or destroy the imaged copy of the iPhone that he lawfully possesses. Mr. McDonnell respectfully requests that the Court deny Mr. Williams motion. Mr. McDonnell also requests a hearing if necessary to assist the Court.

Dated: June 11, 2014

Respectfully submitted,

/s/ Jonathan A. Berry

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Counsel for Robert F McDonnell

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SENT BY HAND DELIVERY

June 24, 2013

Michael S. Dry
Deputy Chief of the Criminal Division
United States Attorney's Office
Eastern District of Virginia
600 East Main Street, Suite 1800
Richmond, VA 23219

Grand Jury Subpoena – Jonnie Williams, Sr. and Starwood Aviation

Dear ~~Mr. Dry~~: Mike

Enclosed is one DVD containing production of documents in response to the Grand Jury Subpoena issued on January 11, 2013 to Jonnie Williams, Sr. and February 13, 2013, to Starwood Aviation (JWS009 Production), Bates numbered JWS0090000001. The DVD contains an image of Jonnie Williams' iPhone.

This letter and our production of the enclosed DVD are not intended to waive, and do not constitute a waiver of any privileges or rights, including, but not limited to, the attorney-client or work product privileges.

These documents are submitted in connection with the grand jury investigation being conducted in Richmond, Virginia, and are subject to Federal Rule of Criminal Procedure 6(e) and any other applicable policies. The parties request that pursuant to the Freedom of Information Act, 5 U.S.C. §552(b)(4) ("FOIA") and the U.S. Department of Justice stated policy (see 28 CFR §16.8), all copies of the enclosed documents labeled "Confidential Treatment Requested" be treated as confidential and exempt from disclosure to third parties. The parties further request that confidential treatment be accorded to this letter and any notes, memoranda, or other records created by or at the direction of the U.S. Department of Justice or its officers or staff members, that reflect, refer or relate to these documents.

Please promptly inform me, at the address and phone number listed above, of any FOIA request seeking access to the documents, or any of the above-mentioned records, including this letter, to enable us to substantiate the grounds for confidential treatment, unless the Department of Justice intends to deny such request for access on other grounds.

Sincerely,

Anne

Anne Bentley McCray

cc: Erik L. Kitchen, Esquire
Richard F Cullen
Anne M. Whittemore

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Exhibit B

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September 24, 2013

VIA E-MAIL

Michael S. Dry
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United States Attorney's Office
Eastern District of Virginia
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Richmond, Virginia 23219

RE: Jonnie R. Williams Sr. – JWS009 Production

Dear Mr. Dry:

On behalf of my client, Jonnie R. Williams Sr., I request the immediate return of the cover letter and DVD entitled "JWS009 Production" and bates-numbered JWS009000001 that were produced to your office on June 24, 2013, in connection with the grand jury investigation pending in the United States District Court for the Eastern District of Virginia (the "production"). I also request that you either return to me or destroy any copies of the production that may have been created while the production was in your possession.

The production contains communications and information protected by the attorney-client privilege or attorney work product doctrine. This letter serves to rectify the disclosure error. Information contained within the production that is responsive to the grand jury subpoenas but not privileged, or otherwise protected, has been disclosed to you in other productions.

Please contact me at (804) 775-4340 to arrange for the return of the production.

Sincerely,

Howard C. Vick Jr.

Atlanta | Austin | Baltimore | Brussels | Charlotte | Charlottesville | Chicago | Houston | Jacksonville | London
Los Angeles | New York | Norfolk | Pittsburgh | Raleigh | Richmond | Tysons Corner | Washington, D.C. | Wilmington

FILED
JUN 12 2014
CLERK, U.S. DISTRICT COURT
RICHMOND, VA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE GRAND JURY SUBPOENAS,
13-1 / 12-3032 / 13-16,
13-1 / 12-3032 / 13-190,
13-1 / 13-1785 / 13-633.

Case No. 3:14-ms-67

FILED UNDER SEAL

REPLY IN SUPPORT OF RETURNING PRIVATE INFORMATION

The iPhone files are Jonnie Williams' property. This Court has previously ruled that the Government has no right to them. The McDonnells received the files only by errant transfer from the Government (which did not realize at the time they still existed on its servers). Williams has no interest in preventing the McDonnells from any degree of criminal discovery to which the law entitles them, including the 137 *relevant* files they have long possessed. Williams *does* have an equitable interest in preventing the McDonnells from rooting through 6,200 files of his personal contacts, passwords, photographs of his family and friends, and text messages with his children in order to dig for irrelevant but potentially embarrassing tidbits.

The McDonnells' opposition to Williams' motion first asserts legal ownership over Williams' private files based solely on possession (ignoring that the Government, from whom they received the files, has already been stripped of them by this Court). It then ignores Williams' agreement with the Government, which never authorized any Government officer to review the content of the iPhone files. Finally, the McDonnells claim the equities favor them because Williams may be an "unindicted co-conspirator" and because rank speculation suggests some defense-useful information may possibly be buried somewhere in the 6,200 irrelevant files.

1. Simple possession of Williams' iPhone files is not ownership of them.

The McDonnells first contend that because they received the iPhone files "lawfully"—that is, apparently without committing any crime—they have a right to *keep* those files, period. Opp. 2. Incredibly, their position is that Williams "has no legally enforceable right" to his own pictures of his wife and grandchildren, text-message exchanges with his daughter, lists of contacts he compiled, and his computer passwords. *Id.* That theory cannot stand.

Simple "lawful" receipt of items does not equal legal ownership. If it did, far fewer people would use coat checks, valets, and safety deposit boxes at banks. For one apt example, when a man takes a photograph of his wife and orders it printed and mailed to him, if the printing service misdelivers that photograph, it does not become the property of the accidental recipient who "lawfully" receives it. Nor would it be well received if the accidental recipient said, "I'll just keep a *copy*." *Compare* Opp. 4 *with* March 13 Order (ordering the return of "any copies" of the iPhone in the Government's possession). Similarly, a person who innocently receives a stolen document may have acted "lawfully," but when the original owner appears and demands its return, his obligation is to return the document. Refusing to return a file that is not yours is improper—and contrary to the McDonnells' assertions, a file does not become "yours" just because you are holding it. It particularly does not become "yours" when the person who gave it to you—like the Government here—had no right to possess it at that time anyway.

Nor can the McDonnells hide behind the fact that the only "tangible property" involved is the original DVD sent to the Government, which the McDonnells do not possess. Opp. 4. Personal property includes electronic files and documents, no different from paper ones. *E.g.*, *Thyroff v. Nationwide Mut. Ins. Co.*, 864 N.E.2d 1272, 1278 (N.Y. 2007) (holding that "electronic records that were stored on a computer" were property subject to conversion because "a document stored on a computer hard drive has the same value as a paper document kept in a file cabinet"); Va. Code § 18.2-152.8 (adding "computer data" including "intangible" or "readable by humans or by a computer" to categories of "personal property" that can be stolen).

2. The McDonnells ignore that the agreement did not permit the Government to review the iPhone files, and it never did.

Next, the McDonnells' arguments about waiver refuse to accept the basic facts here. The cornerstone of the McDonnells' argument is their incorrect idea that Williams simply handed over his iPhone image for normal copying and review by the Government, without restriction. Opp. 3 ("the letter accompanying the production placed no limits on what information the Government could access"); Opp. 7 ("The information was obviously produced so that it could be accessed."); Opp. 7 (claiming that Williams "voluntarily disclosed his private information to the Government without implementing any safeguards to protect that information"). Under that theory, the files properly belonged to the Government, which in turn properly provided them to the McDonnells. That is the foundation of the McDonnells' urging that Williams surrendered any ongoing right to the files.

But the undisputed agreement between Williams and the Government crumbles that foundation. In the Government's own words, Williams "agreed to allow the Government to access the forensic image of the iPhone, but such access was limited to the specific images of the Governor posing with the Rolex, for the limited purpose of attempting to extract any additional metadata." U.S.A.O. March 10 Letter to Asbill, Brownlee, and Burck, at 2 (also attached to Williams' Mar. 12 filing as Ex. 1). Consistent with that agreement, the U.S. Attorney's Office never reviewed the iPhone files, ordered the FBI not to do so either, and instructed the FBI to delete any copy that it may have made before it understood the deal. *Id.* Moreover, in addition to trusting the Government, Williams *did* "implemen[t] safeguards" to protect the iPhone files, including adding password protection and sending his counsel to personally supervise the *sole* occasion on which the Government was authorized to open the image for the agreed metadata search.[1]

Thus, the McDonnells' arguments about waiver all fall apart. Williams never granted any Government officer the right to view the contents of his iPhone beyond the metadata around a single photograph (two images of the same picture)—and his counsel supervised even that examination. No one in the Government knows the contents of the iPhone *or ever had any right to*, which was always Williams' express understanding. That makes this case distinguishable from the sole unpublished case the McDonnells cite that finds waiver even when no one saw the released information: *Sidari v. Orleans Cnty.*, 2000 WL 33407343 (W.D.N.Y. Oct. 3, 2000). Opp. 8. *But see Chubb Integrated Systems Ltd v. Nat'l Bank of Wash.*, 103 F.R.D. 52, 63 (D.D.C. 1984) ("[T]he mere fact that defendants had an opportunity to open a file drawer cannot constitute a 'disclosure' of privileged information."). Williams did not surrender any privacy or protection by sharing the iPhone image in an illegible electronic format, for the sole agreed purpose of allowing the Government to run a metadata search around a single photograph, after which the Government agreed to, and attempted to, delete the image without reviewing it.

3. Equities strongly favor Williams.

Finally, the equities strongly favor Williams and his family and friends. First, this Court seemed to recognize Williams' position merited equitable relief by ordering it against the Government. March 13, 2014 Order (directing the Government "to return to Williams any copies of the forensic image of Williams's iPhone in its possession" and "to seek the return of said forensic image from any third parties"). The fact that the Government has already been ordered to yield the files cuts against the McDonnells—who received them only through the Government—being able to keep them.

---

[1] Williams is uncertain of the exact current condition or "encryption" of the iPhone files because they were wrongly added to the FBI's BIDMAS server and only from there sent to the McDonnells. When Williams provided the files to the Government, they were password protected and in a format that was unreviewable without a certain program or tool.

Second, tellingly the McDonnells cannot come up with any explanation of how the iPhone contents "will greatly aid" their defense. Opp. 1. They list "text messages with the defendants"—which they already have been given. Opp. 14. They add possible "communications with other government officials and numerous other trial witnesses"—which it appears they could easily obtain under Rule 17(c) and which they have in fact already requested, at least in part. Opp. 14. Beyond that, the McDonnells have nothing but rank speculation about "other potential misconduct by Williams," "additional as-yet-unknown conspiracies," and "as-yet-unknown co-conspirators." Opp. 14-15. Essentially the McDonnells guess the iPhone might be a fertile fishing ground. *Cf. United States v. Caro*, 597 F.3d 608, 620 (4th Cir. 2010) (refusing to allow a criminal defendant discovery when the defendant "could only speculate as to what the requested information would have shown"). But as the McDonnells themselves admitted last week, a criminal defendant needs to identify information "with specificity" in order to win a right to take it from a witness. Mem. in Support of Rule 17(c) Subpoenas, 3:14-cr-12, Doc. 211, at 4. Williams is a witness and this is a fishing expedition. *Caro*, 597 F.3d at 620 (refusing to allow a defendant to "cas[t] a wide net that betokens a fishing expedition").

Third, the McDonnells' argument about *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972) holds no water. The Government has represented to this Court and to the McDonnells that "no Government personnel" reviewed "any information from the forensic image of Mr. Williams' iPhone." U.S.A.O. March 10 Letter to Asbill, Brownlee, and Burck, at 4. Nor does the Government now possess that information. The McDonnells have no authority suggesting that information known to *no one* in the Government is *Brady* or *Giglio* material.

Finally, this Court has said that it will "deal" later "with any attempt to use wrongfully obtained and/or illegally retained information/evidence." June 4 Order. But that inequitable and unlawful "use" will begin as soon as the defense begins calling every person on Williams' contact list, scrutinizing every family photograph, delving into the lives of his family members, and so on. For himself and the sake of his family and friends who have nothing to do with this criminal matter, Williams respectfully asks this Court to order the return of his iPhone image.

Date: June 12, 2014

Respectfully submitted,

JONNIE R. WILLIAMS SR.

By:

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I hereby certify that on this 12th day of June 2014, I hand delivered the foregoing to the Clerk of Court and served the following parties:

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Dated: June 12, 2014

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FILED

2014 [illegible] 05

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE GRAND JURY SUBPOENAS,)
)
13-1 / 12-3032 / 13-16,) **CASE NO. 3:14-MS-67**
)
13-1 / 12-3032 / 13-190,) **JUDGE JAMES R. SPENCER**
)
13-1 / 13-1785 / 13-633.) **FILED UNDER SEAL**

MOTION FOR PARTIAL UNSEALING OF THE RECORD

Robert F McDonnell respectfully requests that this Court unseal, with respect to him, the record of all prior sealed proceedings pertaining to Jonnie R. Williams, Sr.'s iPhone to which Mr. McDonnell has not been a party, including but not limited to: any and all orders entered by this Court that have not previously been unsealed, any and all filings made by Mr. Williams and the Government pertaining to this matter, the transcripts of any hearings before this Court, and the relevant docket entries.

Mr. McDonnell intends to file an appeal of this Court's order directing him to return or destroy all copies in his possession of an image of Mr. Williams' iPhone. *See* Motion to Stay Order Granting Motion for Return of Private Information (filed today). Access to a complete record of the prior proceedings relating to the iPhone is essential to Mr. McDonnell's ability to fully and fairly litigate his appeal. Without access to the record, for example, Mr. McDonnell will remain unable to evaluate the accuracy of, and effectively contest as appropriate, the representations Mr. Williams has made about his alleged agreement with the Government.[1]

---

[1] Mr. Williams maintains that he had an "express understanding" with the Government before he produced the iPhone image that the Government would limit its review and use of the information it contained. Reply in Support of Returning Private Information at 4. This claim, however, is not referred to in either the letter accompanying the production of the image to the Government on June 24, 2013, *see* Robert F McDonnell's Sealed Mem. in Opp'n to Jonnie

Questions such as this are crucial to the merits of Mr. Williams' motion. Mr. McDonnell should not have to rely on Mr. Williams' account of the relevant factual and procedural history as he pursues his appeal.

The public interest in accurate and fair resolution of litigation will be served if both Mr. McDonnell and the Court of Appeals for the Fourth Circuit have unfettered access to the relevant portions of the record of proceedings in this Court. *See United States v. Nixon*, 418 U.S. 683, 709 (1974) ("The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts."). Mr. McDonnell therefore respectfully requests that this Court unseal, with respect to him, the relevant portions of the record of this proceeding.

(continued...)

Williams' Mot. for Return of Private Information ("Opp'n"), Ex. A, or the September 24, 2013 letter Mr. Williams' counsel sent to the Government requesting return of the iPhone image, *see* Opp'n, Ex. B. The Government's account of the relevant events does not reference the existence of any explicit agreement to place restrictions on its review of the iPhone until September 2013—*after* Mr. Williams' counsel had sent its letter requesting return of the image—when the Government states that counsel for Mr. Williams "agreed to allow the Government access to the forensic image of the iPhone, but such access was limited to [certain] specific images." Mar. 10, 2014 Letter from USAO to H. Asbill, J. Brownlee, and W. Burck at 2, attached hereto as Ex. A.

Dated: June 18, 2014

Respectfully submitted,

/s/ John L. Brownlee
Henry W Asbill (*pro hac vice*)
Mary Ellen Powers (*pro hac vice*)
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Dated: June 18, 2014

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE GRAND JURY SUBPOENAS,)
)
13-1 / 12-3032 / 13-16,) CASE NO. 3:14-MS-67
)
13-1 / 12-3032 / 13-190,) JUDGE JAMES R. SPENCER
)
13-1 / 13-1785 / 13-633.) FILED UNDER SEAL

MOTION TO STAY ORDER GRANTING MOTION FOR RETURN OF PRIVATE INFORMATION

Robert F McDonnell respectfully requests that this Court stay its order directing him to return or destroy all copies in his possession of an image of an iPhone belonging to Jonnie R. Williams, Sr. Mr. McDonnell will be filing an immediate appeal of this Court's Order. The Fourth Circuit has jurisdiction to hear that appeal, and in the situation presented here, a stay pending appeal is justified on the merits.

I. The Fourth Circuit Has Jurisdiction To Hear Mr. McDonnell's Appeal

Courts of appeals have jurisdiction over "appeals from all final decisions of the district courts of the United States," 28 U.S.C. § 1291, and this Court's order is the final resolution of the proceeding in which Mr. Williams has sought the return of information he disclosed to the Government during the grand jury investigation. While situations analogous to this one are rare, courts have exercised jurisdiction over appeals from orders disposing of a witness's motion for access to or return of evidence provided to a grand jury. In *In re Grand Jury*, 490 F.3d 978 (D.C. Cir. 2007), for example, the D.C. Circuit found that it had jurisdiction under § 1291 to consider a witness's appeal from a district court order denying her access to the transcript of her prior grand jury testimony. The court noted that although the grand jury proceedings were ongoing, "the district court's order terminates a separate proceeding pending before the grand jury court," and review was therefore appropriate. *Id.* at 981 (quoting *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 233 (1979) (Rehnquist, J., concurring). And in *United States v. Calandra*, both the Sixth Circuit, 465 F.2d 1218 (6th Cir. 1972), and the Supreme Court, 414 U.S. 338 (1974), reviewed on the merits the government's appeal from a district court order directing it to return improperly seized property to a grand jury witness. Moreover, courts have consistently held that orders resolving ancillary disputes over the disclosure of grand jury documents to third parties are final and appealable under 28 U.S.C. § 1291. *See, e.g., Illinois v. Abbott & Assocs.*, 460 U.S. 557, 654 n.9 (1983); *Douglas Oil Co.*, 441 U.S. at 233 (Rehnquist, J., concurring); *In re Grand Jury Proceedings*, 800 F.2d 1293, 1298 n.4 (4th Cir. 1986); *In re Sells*, 719 F.2d 985, 988 (9th Cir. 1983).

Here, the grand jury proceedings have concluded, so there is no risk of interference with the investigation. *See In re Grand Jury*, 490 F.3d at 981. This Court's order "conclusively resolved the only issue in [the] independent judicial proceeding" addressing Mr. Williams' motion for return or destruction of his iPhone. *In re Sells*, 719 F.2d at 988. And there is no other forum in which adequate appellate review can be had. *See In re Grand Jury Proceedings*, 649 F.2d 387, 388 (6th Cir. 1981) ("The decision whether or not an order is final for purposes of appeal depends on whether or not another method of obtaining review exists."); *United States v. Sobotka*, 623 F.2d 764, 766 (2d Cir. 1980) (finding jurisdiction proper under § 1291 where no other court could determine whether the district court abused its discretion in releasing grand jury minutes to third party). Mr. Williams is not a party to the criminal case against Mr. McDonnell and would not be a party to any eventual appeal from a judgment in that case. Mr. McDonnell will therefore have no other opportunity to seek review of this Court's order adjudicating a dispute between Mr. Williams and Mr. McDonnell and to obtain a final determination of his rights regarding the information in the iPhone image that binds all parties to the dispute.

II. Mr. McDonnell Is Entitled To A Stay Pending Appeal Of This Court's Order

Four interrelated factors determine whether a stay pending appeal is appropriate:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Project Vote/Voting for Am., Inc. v. Long, 275 F.R.D. 473, 474 (E.D. Va. 2011) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). Mr. McDonnell satisfies these requirements.

First, Mr. McDonnell has made a sufficiently strong showing on the merits to justify granting a stay. Where an issue is one of first impression—as this one is—"[b]ecause the Fourth Circuit may resolve the issue differently," a losing party will often nevertheless have "demonstrated a 'substantial case on the merits.'" *Miller v. Brown*, 465 F. Supp. 2d 584, 596 (E.D. Va. 2007) (quoting *Hilton*, 481 U.S. at 778). "A stay may therefore be appropriate if the other factors weigh in [the party's] favor." *Id.*

In this unusual situation, Mr. Williams has relied on untested arguments that have no direct support in existing statutory or common law. *See, e.g.*, *Falwell v. Penthouse International, Ltd.*, 521 F. Supp. 1204, 1206 (W.D. Va. 1981) ("Virginia recognizes *no right of privacy* other than" a single statutory cause of action applicable where a person's name or image has been misappropriated for commercial use (emphasis added)); *WJLA-TV v. Levin*, 264 Va. 140, 160 n.5 (2002) (same (citing *Falwell*, 521 F. Supp. 1204)). This Court's decision in his favor therefore establishes a novel rule that touches on at least two areas of substantial importance: privacy rights and a criminal defendant's Sixth Amendment right to develop and present a defense. Mr. McDonnell therefore has a "substantial case on the merits" justifying a stay provided that the other factors weigh in his favor, as they decisively do.

Second, Mr. McDonnell will suffer irreparable harm in the absence of a stay. Mr. McDonnell's criminal trial is scheduled to begin at the end of July. His trial preparations are ongoing. Notwithstanding Mr. Williams' unfounded assertions to the contrary, *see* Reply at 5, there is a strong likelihood that the iPhone image will provide information that assists Mr. McDonnell in investigating and otherwise preparing his defense. Mr. Williams is the Government's star witness and an unindicted co-conspirator, and the Government's case turns upon his credibility. Review of the contents of the iPhone is highly likely to either yield or lead Mr. McDonnell to the discovery of relevant and admissible impeachment evidence. If a stay is not granted, however, Mr. McDonnell will be deprived of this information and will lose his opportunity to present a full defense, as the Sixth Amendment contemplates. This harm cannot be rectified by a favorable decision on appeal on the eve of trial or after it has begun, when the time for investigation will have passed.[1]

Third, issuance of a stay will not substantially injure the other parties interested in this proceeding. Mr. McDonnell and the defense team have not reviewed the contents of the iPhone image and will not do so while appeal is pending. Mr. Williams is not deprived of the use of any of the information in the iPhone, all of which he independently possesses. His only interest is in preventing Mr. McDonnell from accessing the contents of the iPhone image, and this interest will be fully protected if a stay is granted. The Government has taken no position in this matter and has already returned the copy of the iPhone in its possession. Its interests will thus not be affected if Mr. McDonnell retains a sequestered copy of the iPhone pending appeal.

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[1] Mr. McDonnell plans to seek expedited review in the Fourth Circuit. A stay will simply preserve the status quo while that appeal is pending.

Finally, the public interest favors a stay. There is a strong public interest in the integrity of criminal proceedings. *See, e.g.*, *United States v. Nixon*, 418 U.S. 683, 709 (1974) ("The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts."); *United States v. Davis*, 767 F.2d 1025, 1037 (2d Cir. 1985) ("[T]he United States ha[s] a strong national interest in safeguarding the integrity of its criminal process.") To deprive a criminal defendant of the opportunity to develop and present a defense harms this interest. And no public interest will be harmed by a stay; as explained above, Mr. McDonnell will not review or disclose the contents of the iPhone while appeal is pending, so from the perspective of other parties and the public at large there is no appreciable difference between granting a stay and compelling the return of the iPhone image now.

III. Conclusion

In sum, the *Hilton* factors unanimously favor the granting of a stay while Governor McDonnell pursues an immediate appeal. For the foregoing reasons, Governor McDonnell respectfully requests that this Court grant a stay.

Dated: June 18, 2014

Respectfully submitted,

/s/ John L. Brownlee
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CERTIFICATE OF SERVICE

I certify that on June 18, 2014, I caused to be served a true copy of the foregoing via electronic email on the following individuals:

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Exhibit A

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Via Electronic Mail

March 10, 2014

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Re: Inadvertent Possible Production of a Forensic Image of an iPhone
Belonging to Jonnie Williams, Sr., and Containing Privileged Materials
United States v. Robert and Maureen McDonnell, No. 3:14cr12 (E.D. Va.)

Dear Counsel,

We write to provide notice and a factual chronology related to the inadvertent possible production of a copy of a forensic image of an iPhone belonging to Jonnie Williams, Sr., that included privileged materials. We are providing this information to you pursuant to the Protective Order entered by the Court on February 6, 2014, and we consider the information included herein to be governed by the terms of that Protective Order.

Before June 24, 2013, McGuireWoods had produced to us all material from Mr. Williams's iPhone that McGuireWoods determined was responsive to the grand jury subpoena served on Mr. Williams and not privileged or otherwise being produced by another third party (*e.g.*, Star Scientific). We subsequently requested that McGuireWoods produce a forensic image of Mr. Williams's iPhone to us to allow the Government to attempt to obtain metadata and other electronic information about certain specific pictures on Mr. Williams's iPhone of Mr. McDonnell posing with a Rolex watch, which pictures had already been produced to us. *See*

JWS0060000134, JWS0060000135 (previously produced to you and associated with FBI Tracking #1A167). Pursuant to that request, on or about June 24, 2013, we received a DVD from counsel for Jonnie Williams, Sr., that contained a forensic image of Mr. Williams's iPhone. *See* Exh. 1 (Ltr. From A. McCray to M. Dry (June 24, 2013)).

Thereafter, on or about September 24, 2013, McGuireWoods sent us the attached letter requesting the return of the forensic image previously provided. McGuireWoods explained that the forensic image included communications and information protected by the attorney-client privilege or attorney work product doctrine, as well as that all information within the forensic image that was responsive to the grand jury subpoena had been disclosed to us in other productions. *See* Exh. 2 (Ltr. From T. Vick to M. Dry (Sept. 24, 2013)) (previously produced to you and associated with FBI Tracking #1A381).

Upon receipt of the September 24 letter from McGuireWoods, we determined that *no Government personnel had reviewed, processed, or analyzed the information* from the forensic image, either for the reason it was requested (*i.e.*, to attempt to retrieve metadata or other electronic information related to certain images from Mr. Williams's iPhone that had previously been produced to us) or otherwise. We then instructed the FBI personnel in possession of the original DVD not to access the forensic image and to set it aside for return to McGuireWoods. We also instructed the FBI to remove any part of that forensic image that may have been present in the FBI's BIDMAS database.

McGuireWoods agreed to allow the Government access to the forensic image of the iPhone, but such access was limited to the specific images of the Governor posing with the Rolex, for the limited purpose of attempting to extract any additional metadata or other electronic information as originally contemplated. On or about September 30, 2013, in order to ensure that the Government did not view any potentially privileged material on the forensic image and that the access was limited as agreed, a McGuireWoods attorney personally observed the FBI tech personnel's extraction and copying of the specific images. The information that FBI tech personnel extracted and a copy of the September 24 letter from McGuireWoods were placed in the FBI file and have previously been produced to you, both in raw form and in Relativity-compatible format, through FBI Tracking #1A381. After extracting that information, we returned the original DVD with the forensic image to McGuireWoods.

As we prepared to reprocess the materials produced to us by third parties in a Relativity-compatible format, we learned on or about February 24, 2014, that after FBI-BIDMAS personnel were instructed to remove any part of the iPhone forensic image from BIDMAS, they did so by administratively blocking access to the FBI Tracking # associated with the original forensic image. Accordingly, we learned that on February 17, 2014, when FBI-BIDMAS personnel provided you in Production #3 with servers that contained a copy of the BIDMAS database and the administrative privileges necessary to use it, we may have inadvertently given you servers through which access to the entire forensic image containing privileged information might be possible.

In addition, on or about February 24, 2014, we learned that the FBI's Computer Analysis Response Team ("CART") had inadvertently retained a copy of the forensic image after the original DVD was returned to McGuireWoods. We have confirmed, however, that no one on CART, nor any other Government personnel, have reviewed, processed, or analyzed any information from that forensic image, other than the information already produced in FBI Tracking #1A381.

That same day, we contacted McGuireWoods to alert them of the Government's inadvertent retention of the forensic image, and requested that they provide us with a privilege log for the materials within the forensic image that they believe to be protected by the attorney-client privilege. McGuireWoods reiterated that all of the information that they determined was responsive to the Government's subpoenas had been produced and informed us that the forensic image of Mr. Williams's iPhone contained attorney-client privileged materials, as well as a significant amount of irrelevant, personal materials that are not discoverable but implicated Mr. Williams's privacy interest.

In subsequent discussions, we explained to McGuireWoods that we could not make any determination regarding the discoverability of the materials since we had not reviewed the forensic image. We further explained that regardless of whether the non-privileged materials contained on the forensic image were legally discoverable, in an abundance of caution and to be consistent in how we have treated evidence obtained from other third parties in this case, we intended to disclose to you all non-privileged materials obtained from third parties during our investigation. Accordingly, we again requested that McGuireWoods provide us with a privilege log for the materials within the forensic image that they believe to be privileged. We also requested a clean copy of the image with all privileged materials removed, so that we could produce it to you and begin our own review of the image.

McGuireWoods stated that they would consider our request, but on March 7 informed us that they disagreed with our intention to disclose the entire, non-privileged image to you. Their primary concern is that the iPhone image apparently contains a significant amount of irrelevant, personal materials that are not discoverable, as well as materials that are protected by the marital privilege. McGuireWoods has refused to provide us with a privilege log or clean copy of the image and informed us that they intend to file a motion with the Court early this week (of March 10) asking the Court to order the Government to return any copies of the forensic image of the iPhone. McGuireWoods has further informed us that they will be prepared to comply promptly with any final order from the Court regarding production of any materials included within the forensic image.

In light of the possible inadvertent production of privileged materials, and McGuireWoods's intention to seek legal relief, we ask that you not review the copy of the complete iPhone forensic image that we believe to be included on the BIDMAS servers provided to you until this matter is resolved. McGuireWoods also has requested that you return the BIDMAS servers to the Government. Should you return the BIDMAS servers to us, we will instruct FBI-BIDMAS personnel to delete any information contained on them without accessing it. We note that the protective order entered in this case provides that "[t]he disclosure or provision of documents or materials by the parties to each other shall not operate as a waiver of any privilege or protection that could or may be asserted by any third-party holder of any such privilege or protection." Doc. No. 46 ¶ 2.

In closing, we summarize the situation as follows: (1) no Government personnel have reviewed, processed, or analyzed any information from the forensic image of Mr. Williams's iPhone, other than the information already produced in FBI Tracking #1A381; (2) we anticipate that McGuireWoods will seek relief from the Court this week; (3) should McGuireWoods fail to seek relief from the Court this week, the Government will institute taint team procedures in order to identify and segregate privileged materials (attorney-client and marital) from the forensic image; (4) unless the Court orders otherwise, the Government intends to produce to you all of the non-privileged materials, regardless of Mr. Williams's privacy interests or the materials' lack of relevancy to this case.

Sincerely,

Dana J. Boente
Acting United States Attorney

Jack Smith
Chief, Public Integrity Section
Criminal Division, U.S. Department of Justice

By: /s/
Michael S. Dry
Jessica D. Aber
Ryan S. Faulconer
David V. Harbach, II
Counsel for the United States

Enclosures

cc: Richard Cullen, Counsel for Jonnie Williams, Sr.
Reid Weingarten, Counsel for Jonnie Williams, Sr.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

FILED
JUN 18 2014

IN RE GRAND JURY SUBPOENAS,

13-1 / 12-3032 / 13-16,

13-1 / 12-3032 / 13-190

13-1 / 13-1785 / 13-633.

Action No. 3:14-ms-67

FILED UNDER SEAL

SEALED ORDER

THIS MATTER is before the Court on a Motion for Limited Unsealing & Return of Private Information ("Motion") filed by Jonnie R. Williams, Sr. ("Williams").

On June 24, 2013, pursuant to an agreement with the Government, Williams produced a forensic image of his iPhone for the limited purpose of allowing the Government to perform a single search of the iPhone's metadata. The Government acknowledges the existence of this agreement, and the iPhone image was accompanied by a letter expressly reserving "any privileges or rights" in the confidentiality of the iPhone image. The iPhone image was produced to the Government in a format that was not human-readable, but would allow search and copying of metadata associated with the iPhone's files.

These facts make plain that Williams produced the iPhone image with a reasonable expectation that the privacy and confidentiality of all information accessible from the forensic image—with the exception of the results of the intended metadata search—would be maintained by the Government.[1] The Governr[illegible]vas not authorized to, and in fact did not, access the iPhone image for any other purpose. [illegible]vertheless, the Government subsequently provided the iPhone image in its entirety to Robert F. McDonnell and Maureen G. McDonnell. The parties have not made clear in what format the iPhone image was provided to the McDonnells; however, if it is accessible in, or converted to, human-readable format, the McDonnells will obtain access to more than six thousand private and confidential files. These files include family photos, personal contact information, and private conversations that were never disclosed to the Government.

---

[1] Consistent with this expectation, the materials produced to the Government on June 24, 2013 were labeled "Confidential Treatment Requested," and the accompanying letter requested confidential treatment of the production, and any subsequently-created notes or memoranda referring to the production, pursuant to Federal Rule of Criminal Procedure 6(e).

Williams has moved the Court to exercise its inherent equitable power to prevent the McDonnells from gaining access to these private and confidential files, and the McDonnells have offered no persuasive counterargument. Although the McDonnells received the iPhone image passively, they cannot have any greater right or interest in the iPhone image than inured to the Government; and as already explained, the Government's right and interest in the iPhone image was limited to the results of a single metadata search. The Court finds that Williams's privacy interests will be irreparably harmed and no adequate remedy at law will exist if this Motion is denied and the McDonnells access the full contents of the iPhone image. *Cf. Gilliam v. Foster*, 75 F.3d 881, 903-04 (4th Cir. 1996). Further, to the extent that the iPhone image was produced in conjunction with the grand jury's investigation, the Court notes that it has inherent supervisory power over grand jury proceedings, including the authority to remedy any violations of the secrecy of the grand jury. *Finn v. Schiller*, 72 F.3d 1182, 1190-91 (4th Cir. 1996). Under this precedent, the Court finds that the requested equitable relief is warranted.

For the foregoing reasons, the Motion is GRANTED. Robert F. McDonnell, Maureen G. McDonnell, and their counsel are hereby ORDERED to return to Williams's counsel, all copies of the forensic image of Williams's iPhone, in their possession or produced to any third party, within twenty-four hours of receipt of this Sealed Order. Robert F McDonnell, Maureen G. McDonnell, and their counsel are further ORDERED to abstain from accessing the iPhone image.

//

Let the Clerk send a copy of this Order to Robert F. McDonnell, Maureen G. McDonnell, and all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 18th day of June 2014.

JUN 18 2014

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE GRAND JURY SUBPOENAS,

13-1 / 12-3032 / 13-16,

13-1 / 12-3032 / 13-190

13-1 / 13-1785 / 13-633.

Action No. 3:14-ms-67

FILED UNDER SEAL

SEALED ORDER

THIS MATTER is before the Court on a Motion to Intervene filed by Robert F McDonnell and a Motion to Intervene filed by Maureen G. McDonnell (collectively, "Motions"). The Court previously granted Robert F. McDonnell and Maureen G. McDonnell leave to file a response to a motion filed by Jonnie Williams, Sr. seeking the return of private information. Upon due consideration and pursuant to Federal Rule of Civil Procedure 24, the Motions are GRANTED.

Let the Clerk send a copy of this Order to Robert F. McDonnell, Maureen G. McDonnell, and all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 18th day of June 2014.

FILED

2014 JUN 19 A 9:35

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE GRAND JURY SUBPOENAS,

13-1 / 12-3032 / 13-16,

13-1 / 12-3032 / 13-190,

13-1 / 13-1785 / 13-633.

Case No. 3:14-ms-67

FILED UNDER SEAL

JONNIE R. WILLIAMS SR.'S RESPONSE CONSENTING TO PARTIAL UNSEALING AND OPPOSING A STAY

I.

Jonnie R. Williams, Sr. consents to partial unsealing, limited to the records of this proceeding relevant to this iPhone issue and limited to Robert F McDonnell (and Maureen, if she so requests). Mr. Williams notes that any material unsealed for this limited purpose remains sealed by this Court for purposes of Fourth Circuit rules. Relevant docket entries begin with Mr. Williams' Motion to Order Return of Private Information, filed March 12, 2014.

II.

Mr. Williams opposes a stay. Mr. McDonnell cannot satisfy the *Hilton* factors and cannot justify holding onto Mr. Williams' private information while chasing Fourth Circuit review. In particular, Mr. McDonnell is not "likely to succeed on the merits." Nor will he be "irreparably injured absent a stay," and cannot show "public interest" in a stay either. *Project Vote/Voting for Am., Inc. v. Long*, 275 F.R.D. 473, 474 (E.D. Va. 2011) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). If this Court denies a stay and allows its June 18 Order to take effect, Mr. Williams' counsel will retain and preserve the iPhone image pending the conclusion of appeals in this case.

First, Mr. McDonnell has not made "a sufficiently strong showing on the merits to justify a stay." June 18 Motion for Stay, at 3. Doubts about whether appellate jurisdiction *exists at all* here pose a threshold stumbling block that occupies one-third of Mr. McDonnell's motion. Under Mr. McDonnell's theory this Court's June 18 order jeopardizes his constitutional rights as a criminal defendant, such as "the opportunity to present a full defense, as the Sixth Amendment contemplates." Motion at 4. That means Mr. McDonnell can raise this issue in a post-trial appeal by which time the Government would naturally be positioned to defend this Court's June 18 order. Nor do the cases Mr. McDonnell relies upon appear to have been brought by criminal defendants with upcoming trials and thus a built-in appellate opportunity.

Even beyond appellate jurisdiction, Mr. McDonnell does not have a strong merits argument. This case asked this Court to decide whether a person who comes to possess someone else's private, personal property through a Government error must return it, or instead whether he has the right to re-format and rifle through it for his own purposes. Efforts to recast this sealed opinion as a groundbreaking constitutional case are off base. Criminal defendants have no constitutional right to dig through irrelevant personal files of witnesses, and vague references to the Sixth Amendment do not change that. The Government had no right to, and never did, review the iPhone's contents. Mr. McDonnell has no right to do so either.

This Court's equitable solution—that just as the Government returned the image, so too must the McDonnells—was on-target and well within its discretion. *Solis v. Malkani*, 638 F.3d 269, 274 (4th Cir. 2011) ("We review a district court's award of equitable relief for abuse of discretion."). Findings of fact about Mr. Williams' agreement with the Government, his expectations, and what the Government meant to do, and did, with the iPhone image also support this Court's exercise of equitable powers. *Id.* (fact findings reviewed only for clear error).

Second, there is no irreparable harm in allowing this Court's June 18 Order to take effect. Mr. McDonnell has promised not to review the contents of the image while appeal is pending. Motion at 4, 5. Given that Mr. McDonnell has already agreed not to examine the iPhone image, there is no reason for him to keep it pending appeal. Mr. Williams, on the other hand, is the rightful owner of his iPhone contents, and twice this Court has ordered their return. March 13 Order (return from the Government, completed March 14), June 18 Order (return from the McDonnells). Mr. Williams' counsel will hold and preserve the iPhone image until appeals end.

For the same reasons, the third and fourth *Hilton* factors do not favor a stay either. Mr. Williams respectfully asks this Court to deny the stay.

Date: June 19, 2014

Respectfully submitted,

JONNIE R. WILLIAMS SR.

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I hereby certify that on this 19th day of June 2014, I hand delivered the foregoing to the Clerk of Court and served the following parties:

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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE GRAND JURY SUBPOENAS,	)	
	)	
13-1 / 12-3032 / 13-16	)	No. 3:14ms67
	)	
13-1 / 12-3032 / 13-190	)	**FILED UNDER SEAL**
	)	
13-1 / 13-1785 / 13-633	)	

RESPONSE OF THE UNITED STATES TO MR. MCDONNELL'S MOTION TO STAY ORDER GRANTING MOTION FOR RETURN OF PRIVATE INFORMATION

The United States of America, by undersigned counsel, hereby responds to Mr. McDonnell's Motion to Stay Order Granting Motion for Return of Private Information. In his motion, Mr. McDonnell asks this Court to "stay its order directing him to return or destroy all copies in his possession of an image of an iPhone belonging to Jonnie R. Williams, Sr." Mot. at 1. The United States takes no position on this Motion.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE GRAND JURY SUBPOENAS,	)	
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13-1 / 12-3032 / 13-16	)	No. 3:14ms67
	)	
13-1 / 12-3032 / 13-190	)	**FILED UNDER SEAL**
	)	
13-1 / 13-1785 / 13-633	)	

RESPONSE OF THE UNITED STATES TO MR. MCDONNELL'S MOTION FOR PARTIAL UNSEALING OF THE RECORD

The United States of America, by undersigned counsel, hereby responds to Mr. McDonnell's Motion for Partial Unsealing of the Record. In his motion, Mr. McDonnell asks this Court to "unseal, with respect to him, the record of all prior sealed proceedings pertaining to Jonnie R. Williams, Sr.'s iPhone to which Mr. McDonnell has not been a party." Mot. at 1. The United States does not oppose partial unsealing to the extent that it is limited to unsealing of the record as to Mr. and Mrs. McDonnell.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE GRAND JURY SUBPOENAS,	)	
	)	
13-1 / 12-3032 / 13-16,	)	**CASE NO. 3:14-MS-67**
	)	
13-1 / 12-3032 / 13-190,	)	**JUDGE JAMES R. SPENCER**
	)	
13-1 / 13-1785 / 13-633.	)	**FILED UNDER SEAL**

REPLY OF INTERVENOR ROBERT F. MCDONNELL TO THE OPPOSITION OF JONNIE R. WILLIAMS, SR. TO HIS MOTION TO STAY ORDER GRANTING MOTION FOR RETURN OF PRIVATE INFORMATION

The Government has taken no position on Mr. McDonnell's application for a stay Jonnie R. Williams, Sr. opposes the stay on the grounds that the Fourth Circuit lacks jurisdiction to hear this appeal and that the *Hilton* factors do not favor a stay. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). These contentions are without merit.

Mr.Williams' contends that the Fourth Circuit lacks jurisdiction because Mr. McDonnell has a "built-in opportunity" to have his appeal heard after judgment is entered in his criminal case. Jonnie R. Williams Sr. s Response Consenting to Partial Unsealing and Opposing a Stay ("JW Opp'n") at 2. That is wrong. As Mr. McDonnell has explained, because Mr. Williams is not a party to the criminal case, he would not be bound by any resolution of the instant dispute that an appellate court reviewing final judgment might offer. Mr. McDonnell's criminal appeal (assuming he takes one) is therefore not an adequate forum to obtain a final determination of the parties' rights. That Mr. McDonnell—who is not the original movant here—also happens to be the defendant in the criminal prosecution that was underway when Mr. Williams and the Government initiated this separate miscellaneous action is, for the purpose of the Fourth

Circuit's jurisdiction, irrelevant.[1] This case is in all salient respects the same as *In re Grand Jury*, 490 F.3d 978 (D.C. Cir. 2007), in which a witness sought access to grand jury materials pertaining to her.

Nor are Mr. Williams' arguments concerning the standard for obtaining a stay convincing. Despite the fact that Mr. Williams still has not identified a single case, statute, or other authority indicating that there are any limitations whatsoever on the ability of a lawful possessor of non-privileged information to review it, he denies that this Court's order decided a novel legal question. In such a situation, "[b]ecause the Fourth Circuit may resolve the issue differently," a losing party will often nevertheless have "demonstrated a 'substantial case on the merits.'" *Miller v. Brown*, 465 F Supp. 2d 584, 596 (E.D. Va. 2007) (quoting *Hilton*, 481 U.S. at 778).

Mr. Williams' arguments on the question of irreparable harm are also unavailing. He states that there is "no reason" for Mr. McDonnell to retain possession of information pending appeal, while Mr. Williams is the "rightful owner of his iPhone contents." JW Opp'n at 3. But this Court's order did not find that Mr. McDonnell's possession of the iPhone was unlawful; rather, it ordered equitable relief to prevent Mr. McDonnell from accessing the iPhone's files to the detriment of Mr. Williams' asserted privacy interest. Mr. McDonnell has a possessory interest in the contents of the iPhone; so does Mr. Williams. At present, both parties retain copies. Denial of a stay will lead to Mr. McDonnell's being deprived of his possessory interest, while granting a stay simply preserves the status quo in all respects and protects Mr. Williams insofar as Mr. McDonnell will not access the files on the image. After all, the *only* interest Mr. Williams has asserted is an "equitable privacy interest" in preventing Mr. McDonnell and his counsel from reviewing information they lawfully possess—an interest that is fully protected by their commitment not to review the data until the appeal is resolved. There is thus no reason to disturb the status quo pending appellate review of this novel legal question.

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[1] Mr. McDonnell's rights as a criminal defendant are, however, relevant for understanding the full weight of Mr. McDonnell's interest the information he lawfully possesses—an interest that it is Mr. Williams' burden to overcome.

For the foregoing reasons and those stated in his original Motion, Governor McDonnell respectfully requests that this Court grant a stay.

Dated: June 19, 2014

Respectfully submitted,

/s/ John L. Brownlee

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Mary Ellen Powers (*pro hac vice*)
Noel J. Francisco (*pro hac vice*)
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE GRAND JURY SUBPOENAS,

13-1 / 12-3032 / 13-16,

13-1 / 12-3032 / 13-190

13-1 / 13-1785 / 13-633.

Action No. 3:14-ms-67

FILED UNDER SEAL

SEALED ORDER

THIS MATTER is before the Court on two Motions for Partial Unsealing of the Record and two Motions to Stay filed by Robert F. McDonnell on June 18, 2014, and by Maureen G. McDonnell on June 19, 2014, as an intervenors in this matter.

On June 24, 2013, Jonnie Williams, Sr. ("Williams") provided a forensic copy of his iPhone to the United States Attorney. The United States Attorney, in error, turned this information over to counsel for Robert F. McDonnell and Maureen G. McDonnell (collectively, "McDonnells"). Upon learning of this error, Williams moved the Court order the return or destruction of the iPhone information. The Court granted this request on March 13, 2014, and ordered the United States Attorney to seek the return of the iPhone information from the McDonnells. The United States Attorney sought the return of the iPhone information; however, counsel for the McDonnells refused to return the iPhone information.

As a result of the McDonnell's refusal, Williams moved the Court on May 19, 2014 to direct the McDonnells' legal team to return the iPhone information. Simultaneously, in their pending criminal action, the McDonnells sought clarification of the Court's Order of March 13, 2014. The Court denied Williams's request because the McDonnells had not received notice of Williams's May 19 motion and had no opportunity to respond.

On June 4, 2014, Williams again moved the Court to direct the McDonnells' legal team to return the iPhone information and requested partial unsealing of the record as to the McDonnells. The Court granted the request for partial unsealing, and the McDonnells responded to Williams's substantive argument for the return of the iPhone information. After Williams's June 4, 2014 motion was fully briefed, the Court granted Williams's request on June 18, 2014. The Order of June 18, 2014 directed the McDonnells and their counsel to return the iPhone information to Williams and to refrain from accessing said information.

The McDonnells now move the Court for partial unsealing of the record in preparation for an expedited appeal to the Fourth Circuit. They also request a stay of the Court's Order of June 18, 2014 pending appeal.

Because they are unopposed, the Motions for Partial Unsealing of the Record are GRANTED as to the records of this proceeding relevant to the issue of Williams's iPhone information. Unsealing shall apply only to Robert F. McDonnell, Maureen G. McDonnell, and their counsel. All of the material unsealed as limited above will remain sealed for the purposes of Fourth Circuit rules. For the reasons that follow, the Motions to Stay are DENIED.

In determining whether a stay pending appeal is appropriate, courts look to four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v. Braunskill*, 482 U.S. 770, 776 (1987) (citations omitted). These factors "contemplate individualized judgments in each case." *Id.* at 777.

The first *Hilton* factor looks to whether the stay applicants have made a strong showing that they are likely to succeed on the merits. The McDonnells have not. When given the opportunity to explain why they have a right to keep the private property and information of a potential government witness, the best the McDonnells can provide is some nebulous right to investigate the witness, which they in turn suggest implicates a Sixth Amendment right. The

McDonnells make no claim that there is relevant or material information in the iPhone. Of course, they cannot because they are not in a position to make such a claim.

What the McDonnells do claim is an absolute right to access all of the information in Williams's iPhone and to thereafter decide what information might be helpful or beneficial to their interests. This is a classic fishing expedition for which the Court finds no support whatsoever. Apparently, in the McDonnells' world, it does not matter that the iPhone information likely includes information that is not relevant, material, or otherwise discoverable. Privileged information, irrelevant personal and confidential information, credit information, and medical information are just a few of the obvious types of information that may be stored in a smart phone. Would the McDonnells have any chance of success if they came to the Court requesting the right to all of the information contained in every government witness's smart phone? Obviously, no lawyer would make such a request. The fact that a witness is an important or even critical witness does not change the analysis. Similarly, the fortuitous event—fortuitous for the McDonnells—of the United States Attorney's erroneous provision of the iPhone information to the McDonnells does not change the fundamental fact that the McDonnells are not entitled to fish through the entirety of Williams's iPhone hoping to find something helpful to their cause.

The McDonnells have failed to make a strong showing that they are likely to succeed on the merits. In fact, the Court finds it unlikely that they will prevail on appeal. Accordingly, the first *Hilton* factor weighs in favor of denying the Motions to Stay.

The second and third *Hilton* factors assess the balance of hardship between the interested parties in granting or denying a stay. The McDonnells will not be irreparably injured absent a stay. If the McDounellls are convinced that their rights as criminal defendants have been violated by the Court's Order of June 18, 2014, they can raise the issue on direct appeal post trial. As long as the McDonnells and their counsel do not access the iPhone information, issuance of a stay would not substantially injure Williams. Accordingly, the second *Hilton* factor weighs in favor of denying the Motions to Stay.

The fourth *Hilton* factor looks to where the public interest lies. There is no public interest in granting criminal defendants an unfettered right to rummage through the smart phone information of potential government witnesses. Accordingly, the fourth *Hilton* factor weighs in favor of denying the Motions to Stay.

On balance, the McDonnells have failed to demonstrate that a stay is warranted under the *Hilton* factors. Accordingly, the Motions to Stay are DENIED. Nevertheless, the Court will AMEND its Order of June 18, 2014 as follows: Robert F. McDonnell, Maureen G. McDonnell, and their counsel are ORDERED to return to the Court, all copies of the forensic image of Williams's iPhone, in their possession or produced to any third party, by 5:00 p.m. on Friday, June 20, 2014. The Court will retain the iPhone information until the case of United States v. Robert F. McDonnell, *et al.*, is resolved via trial or appellate exhaustion. In all other respects, the Order of June 18, 2014 remains in effect.

Let the Clerk send a copy of this Order to Robert F. McDonnell, Maureen G. McDonnell, and all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 19th day of June 2014.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE GRAND JURY SUBPOENAS,	)
	)
13-1 / 12-3032 / 13-16,	) **CASE NO. 3:14-MS-67**
	)
13-1 / 12-3032 / 13-190,	) **JUDGE JAMES R. SPENCER**
	)
13-1 / 13-1785 / 13-633.	) **FILED UNDER SEAL**

Notice of Appeal

Notice is hereby given that Intervenors Robert F McDonnell and Maureen G. McDonnell hereby appeal to the United States Court of Appeals for the Fourth Circuit from this Court's ruling, made on the 18th day of June, 2014, granting the Motion for Limited Unsealing & Return of Private Information filed by Jonnie R. Williams, Sr.

Dated: June 19, 2014

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G McDONNELL,

Defendants

March 18, 2014
Richmond, Virginia
10:25 a.m.

MOTIONS HEARING

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ
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JEFFREY B. KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G McDonnell. The United States is represented by Michael Dry, Richard Cooke, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Timothy Taylor, Henry Asbill, and James Burnham. Maureen G McDonnell is represented by William Burck and Kevin Chu Are counsel ready to proceed?

MR DRY: The United States is ready to proceed

MR ASBILL: Mr McDonnell is ready to proceed

MR BURCK: Ms McDonnell is ready to proceed

THE COURT: All right I think the only thing that we have left to discuss is this what's titled as a Motion to Remedy the Government's Interference And frankly, the reason why I left this on hearing is, it is novel I couldn't find any case anywhere that came anywhere near it or supports what the defendants are requesting So I thought I would give you an opportunity to make your case So let me hear from you.

MR. ASBILL: Your Honor, my colleague, Mr Burnham, will argue the motion for the defense

THE COURT: All right Mr Burnham?

MR. BURNHAM: Thank you very much, Judge Spencer, for having us in today to talk to you about our motion. It is novel. And we think the reason that it is novel is because the facts are novel.

So as the Court knows, the government filed a motion to intervene and to stay discovery in a civil case a few doors down from this courtroom just one week after indicting my client. The government did that to stay discovery. When the government filed that motion, I'd like to share with the Court what they said. The first thing they said was that "The civil discovery process, if allowed to continue, will reveal information about key witnesses and documents to which the criminal defendants are not entitled."

Now, I would submit that that gets it exactly wrong. There is no information to which the criminal defendants are not entitled other than privileged information or things that are non-discoverable. There are certain tools that the criminal law gives to criminal defendants to use the legal process to obtain information. But there are no limits on what information we are allowed to get provided other people are willing to voluntarily share it with us.

Second, the government said that "This would enable the criminal defendants to use the civil discovery to circumvent the limitations on criminal discovery and thus prejudice the government's criminal prosecution."

Now, I would submit that that is making the same mistake as the prior sentence It makes a second mistake, though, which is the assumption that we are somehow going to be able or we would otherwise be able to use the civil case as some sort of affirmative discovery weapon against the government or anyone else My client and his wife are not parties to the civil case The government is not a party to the civil case Neither side of this proceeding is a party to the civil case So nobody in this proceeding would be able to use the tools of civil procedure to do anything The plaintiffs in the civil case are not people that are working for us They are not associates of ours They are not our stalking horse They are independent third parties in the world.

Then the last thing the government said is that "Disclosure of such information would compromise the public's right to a fair trial in this criminal action " Now, I think that is the most extraordinary of the statements the government made Because it is hard for me to understand how having more evidence about the facts and circumstances of the government's allegations available to the parties could possibly prejudice the public's right to a fair trial The Supreme Court has long held, and in fact in the UNITED STATES v NIXON it did hold that criminal proceedings are not supposed to be based on speculative or partial presentations of the facts So I do not understand how the public's right could be impaired by that

Now, turning to the actual legal claim we bring, the Court is absolutely right that it is a novel claim. We have not found any cases addressing it one way or the other I also note that the government has professed some difficulty in understanding our claim, so I'd like to make clear what we are saying There is a long-standing rule that is very well established that the government is not permitted to gratuitously interfere with the defense's investigation of its allegations The most familiar and well-known application of this rule is the longstanding prohibition against prosecutors discouraging witnesses from talking to defense counsel Nobody disputes, I don't think, that that rule exists and that that rule applies Indeed, Judge Novak reiterated that rule a month and a half ago at the hearing to reconsider some of the conditions of bond release for my client and his wife So that rule is very well established

I think that rule is the rule to look at in thinking about this problem. Because in this case, you have a very similar thing You have the prosecution going out into the world and attempting to stop third parties from obtaining exculpatory evidence or sharing exculpatory evidence with us or doing other things that it can do to make it more difficult for us to go investigate this case on our own outside the courtroom.

And I think that leads to a second critical point. The government has sought to cast this as some sort of objection on our part to the actions of Judge Gibney or Judge Anderson or the civil plaintiffs or the civil defendants or all of these people other than the prosecution And that's not right Judge Gibney absolutely has discretion over how to manage his civil docket, and he is welcome to stay discovery within that discretion whenever he would like and we would never have any basis to complain Similarly, civil litigants are welcome to abandon their lawsuit, press their lawsuit, seek to depose Mr Williams, not depose Mr Williams, do whatever they choose, and we have no basis to complain. But what we are entitled to is not having the prosecution out there trying to stand in the way and convince people not to engage in discovery, not to talk to us And I think what kind of confirms the point is there would be no question that the government had violated my client's rights if they had gone to the plaintiff's lawyers and said, "Hey, don't share this discovery with the McDonnell defense team. Please don't give them anything We think it would be bad It might help them defend the charges, it might undermine our witness" or whatever That would unquestionably be a violation of his constitutional rights I would submit that is the same thing

Just to make the point completely clear, the violation was complete the moment they intervened and filed the stay motion What happened after that might go to remedy and it might be relevant to what this Court does to deal with the problem. But that's when the violation was complete, just like the violation is complete when the prosecution tells a witness not to talk to us, regardless of what the witness subsequently does

So I think the rule is simple. I think the rule is clear And I think it is fully applicable here

THE COURT: Well, the base rule is simple and clear Obviously, the government can't say to a witness, "Don't talk to the defendant " But what we have here is a completely different thing Nobody is telling any witness that they can't talk to you Nobody is saying that there are documents that some witness has that they can't give to you if they wanted to give them to you. What they are saying is that a civil proceeding will not proceed, there won't be depositions, there won't be a creation of evidence that might, and I emphasize might, that might be of some value to the defense

What you are trying to stop is a far cry from the prosecutor who in the one case that you all cited says, "Don't talk to the defendants " Well, obviously, that's different ,That's very easy to deal with But this, when the government goes to a court of competent jurisdiction, a judge who has the authority, listens to the merits, listens to what they have to say, and then makes a decision, "I am going to stay this case," what do you want me to do about that? What kind of remedy can I bring to that situation?

MR BURNHAM: Certainly, Your Honor So I think the first thing is that there is nothing, certainly there is nothing this Court can do to effect, nothing this Court should do to change how Judge Gibney manages his civil docket We are not challenging that decision and not asking this Court to do anything that relates to that decision.

THE COURT: But what would have come out, and again, we have done a lot of this prospective presumption, you know, things that might happen, that may happen It's difficult to deal with that But as I read your papers, what I am getting is that, "Okay, we want these things because it would have come out if there had not been this stay " And that, to me, is just dancing through fantasyland.

MR. BURNHAM: Certainly, Judge Spencer So let me try to maybe make the point a different way We don't know what many witnesses are going to say about what happened in the government's allegations There might be people who have very tangential knowledge of those allegations, that have nothing useful to say at all But we have the right to go ask those people what they know Certainly, we have no idea what civil discovery could have uncovered in that case --

THE COURT: So the fact that there is a civil case doesn't stop you from asking them what they know

MR. BURNHAM: Absolutely right, Judge Spencer But there is no question that when the government intervenes in the civil case and says that continuing discovery will undermine the public's interest in a fair trial, that that is a way of the government telling the plaintiff's lawyers and the defense lawyers and everybody else that they don't want people sharing information with us

THE COURT: Now I have to read their minds I have to understand that they would understand it in a way that says, "That means I can't talk to the defendants "

MR. BURNHAM: I have two points, Your Honor That is the fair reading of what they have done But second, the same principle that keeps the government from telling witnesses not to talk to us, what that principle means is that the government is not permitted to go out into the world and do things to gratuitously block our investigation, and, going into civil cases all over the place There's two in the Eastern District of Virginia There may be others And shutting down discovery solely so that discovery does not uncover evidence that might be useful to us, I mean, you are right that we are assuming that there could be information that's useful to us that could come out, but the government assumed the same thing That's the reason the government wanted to stay discovery It says at the very first sentence I read, that the discovery, quote, "will reveal information about key witnesses and documents to which the criminal defendants are not entitled "

So no one knows what will happen And it could be that had the government not intervened, nothing would have come out, although I would note that discovery in that case was due to be complete by July 9th until the government got involved. And the plaintiffs probably would have deposed Mr Williams, probably would have sent requests for interrogatories and all sorts of other things that it has been a big benefit to Star Scientific and Mr Williams to not have to respond to

But I guess I would just say the point is, the principle that we are relying on is the principle that the prosecution shouldn't be out doing things that make it more difficult for us to obtain evidence Maybe there is no evidence Maybe the witness we want to talk to doesn't know anything But that doesn't mean the government is entitled to interfere with that witness or our access to that witness or interfere with a separate proceeding that might reveal --

THE COURT: Again, I don't see where there is any interference with your access to the witness

MR. BURNHAM: Again, no, certainly, Judge Spencer, it is not a direct violation of the rule So we are just analogizing to that principle, because I think the principle that animates the rule providing access to witnesses is that the defense is free or entitled to be free from government obstruction of the defense's investigation But yes, I mean, to be candid, we have found no case in which a court has ruled on this issue But that I think is just further evidence of how extraordinary the government's conduct is The government cited a lot of cases in their stay motion. I think there were about 20 Not a single case involved a situation where the criminal defendants were not parties to the civil action Not one The government, for example, in its stay motion, the government calls these parallel proceedings But these are not parallel proceedings The civil suit was filed a year ago The civil suit is against the government's witness that the government might want to call in this case and his former company, and seeks to bring claims where the plaintiffs say the company and that witness committed securities fraud by misrepresenting the degree to which Johns Hopkins was endorsing research studies

THE COURT: It sounds like it would have been a very fine argument before Judge Gibney, if somebody was opposed to the stay and Judge Gibney wanted to listen to that But I don't see how it impacts this case I just don't see it

MR BURNHAM: If I may, just one more point in response to your last comment I think, I completely understand the Court's intuition about that, and where the Court is coming from. But I would submit that the rights that we are seeking to vindicate here are Mr McDonnell's rights as a criminal defendant in this proceeding in front of this Court against these prosecutors They are not -- his rights are not -- he doesn't have any legal rights in the civil case All he has is a right in this criminal case to not have these criminal prosecutors doing things that make it harder for him to build a defense And all we are asking this Court to do is order the prosecution in this case to stop interfering with our investigation in this case We are not asking this Court to enter orders in any other case or somehow sit as an appellate tribunal over other judges That's why we couldn't and shouldn't have had to go to Judge Gibney and try to make arguments there, because we are not involved in that suit That's the whole reason why we submit this violates our constitutional rights Unless the Court has any other questions, I'll shut up Thank you, Judge Spencer

THE COURT: Thank you. Government?

MR COOKE: Thank you, Your Honor I have three main points that I wanted to make in response The first is that neither the government's stay motion nor the orders issued by Judge Gibney or Judge Anderson placed any limitation on what the McDonnells might do in gathering information. So cases about the Sixth Amendment's compulsory process right, like VALENZUELA-BERNAL, where the government was deporting witnesses, or MOUSSAOUI, where the government was holding enemy combatants beyond the government's reach, really aren't applicable here because in this criminal case the McDonnells have the full right to compulsory process and subpoenaing any witness they want for the trial

The second point is that the McDonnells are not challenging the merits of Judge Gibney's or Judge

Anderson's stay rulings, and instead saying that the constitutional violation is that the government requested a stay In the government's view, that really turns due process on its head. Because what they are saying is that the violation is that the government asked a court for relief They could have intervened. They could have opposed the government's arguments But their point seems to be that the fact of the government asking a court for relief, this is not like, say, some type of discovery practice that would take place outside the court's review and then it would later be reviewed by a court This was where the court, a court itself, in the exercise of its discretion, looked at the issues, understanding fully that the government was seeking a stay because of this criminal case, and made a ruling

The third point I wanted to touch on is that, as I understand one of the core points of the McDonnells's here is that, a statement they make toward the end of the reply brief but the government doesn't explain it, because how could it, why staying third party civil actions to thwart the emergence of potentially exculpatory evidence promotes the just enforcement of the laws Building on that, they've got an analogy here to situations where the government instructs witnesses not to talk to the defendant To be clear, we have not instructed witnesses not to talk to the defendants And the civil litigation is not analogous to that situation, because a civil deposition is compulsory process

The shoe here could easily be on the other foot You could easily have a defendant in the McDonnells's position who is saying, you know, "I've been noticed for a deposition," and it is actually not that far-fetched to imagine it happening in this case, "because of the allegations in the civil litigation " And the defendant in that situation would want a stay And where the civil litigants were saying, you know, "It is a brief delay, it is seven months, we don't object," I would be hard pressed to see why the government would have a complaint in that situation about having that stay of the civil litigation because the defendant didn't want to have a deposition of him or a key witness And the key here is that those depositions and that civil process is compulsory in a way that the criminal rules don't provide pretrial

And we have said that, you know, as Judge Novak ruled in this case, the witnesses are free to talk to the parties if they want to or if they don't And in the government's motion for the stay, we said specifically, this is at Page 7 of our motion to Judge Gibney, which the McDonnells have attached to their pleading, it says, we said, "Federal criminal practice allows a witness the full choice over whether to speak with any of the parties or their representatives prior to testifying in a criminal case That basic protection is unavailable to the same witness in a civil case Discovery in criminal cases is narrowly circumscribed for important reasons entirely independent of any generalized policy of restricting the flow of information to defendants "

So essentially, the government's position here is, look, the witnesses in this case are entitled to the same kinds of benefits that the McDonnells themselves would have in resisting a compulsory deposition or other compulsory civil process in advance of the criminal trial, which is moving expeditiously And as courts have recognized over and over again, the priority is given to the public interest in the criminal proceeding

THE COURT: All right Thank you. Any rebuttal?

MR. BURNHAM: Very briefly Just a few very quick points, Judge Spencer First, I think it is important to note that the witnesses or the potential witnesses who are involved in the civil case aren't the ones who sought the stay There is no question that if Mr Williams had sought to stay discovery and had made an argument about how this criminal case could impact his civil rights, then that would be something that we would have no cause to complain about But it wasn't Mr Williams, it wasn't Star, and it wasn't the plaintiffs It was the government

And that, I think, leads to my next point, which is that certainly if Mr McDonnell was going to be deposed, he would have the ability to seek to stop the deposition or not depending on what he wanted to do I have no idea what we would do in that situation But that doesn't mean that the government has the ability to go and interfere with civil discovery itself, because the government does not have a Fifth and Sixth Amendment right to a fair trial And the government does not have a Fifth and Sixth Amendment right to unfettered access to witnesses The government has many, many powers and many, many rights and many things it can do in a criminal case Unlike a criminal defendant, it does not have the right to not have anyone interfering with this investigation at any time

So I think those are critical points The other point that I think distinguishes much of what the government has said in support of its actions is simply that Mr McDonnell is not a party to the civil case He is not utilizing the Rules of Civil Procedure or seeking to do anything; to give compulsory process, to depose Mr Williams, or anything else And so the fact that civil plaintiffs might, and if they do that evidence might benefit us, does not somehow mean that the government has an interest in protecting the Rules of Criminal Procedure that justifies its interference in the civil case

So I would just close by saying, you know, this is an important case It is a complicated case There's a lot of evidence in this case And we need to be able to develop that evidence in order to defend our client And we have, I believe, a settled constitutional right to develop that evidence free from interference from the government Thank you again, Judge Spencer, for hearing us on this motion

THE COURT: All right The motion to remedy the government's interference will be denied I see no support in the law for what the defendant is asking for And I learned a long time ago, I'm not in the business of creating new law I'm not the Fourth Circuit or the Supreme Court So I'm not about to do that

While I have you all here, just for the sanctity of the trees, all the paper that you guys are submitting, we need to stop this You all need to get together and negotiate on this GIGLIO and JENCKS, when is an appropriate time to get that done I expect the government to be reasonable, and that that will get done in good time But defendants have been essentially operating on the assumption and urging on the Court to operate on the assumption that the government is going to do wrong

I regret the STEVENS case because every white-collar case I've gotten since that, that's all they talk about "Look what they did, the horrible things they did in the STEVENS case; and therefore, the Justice Department is going to send these people in who are going to ruin their lives and careers by doing stupid things, too " I don't make that assumption. Those kind of vituperative recriminations are not going to help anybody What you need to do is get going, start negotiating and get going with this case I know this case is important Every case is important It is not particularly complex I disagree with that It has a level of complexity, but we certainly have seen more complex cases come this way All right, get to it Thank you all very much.

(Proceedings adjourned at 10:51 a.m.)

CERTIFICATE OF REPORTER

I, Jeffrey B Kull, Official Reporter, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter

__________/s/_________________

Jeffrey B Kull,
Official Federal Reporter

__________/s/________________

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G McDONNELL,
Defendants

May 19, 2014
Richmond, Virginia
10:00 a.m.

MOTIONS HEARING

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ
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JEFFREY B. KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G McDonnell The United States is represented by Michael Dry, Jessica Aber, David Harbach, Ryan Faulconer, and Richard Cooke Robert F McDonnell is represented by Henry Asbill, James Burnham, Noel Francisco, Ryan Newman, and Tim Taylor Maureen G McDonnell is represented by William Burck and Kevin Chu Are counsel ready to proceed

MR. DRY: The United States is ready to proceed.

MR. ASBILL: Mr McDonnell is ready to proceed.

MR. BURCK: Your Honor, Ms McDonnell is ready to proceed

THE COURT: All right We are here on defendants' motions to sever and motion to dismiss We will proceed in any manner that you deem appropriate

MR FRANCISCO: Your Honor, Noel Francisco for Robert McDonnell If it pleases the Court, we would like to begin with the motion to dismiss and the related motion for disclosure of certain grand jury materials

THE COURT: All right

MR. FRANCISCO: Judge Spencer, may it please the Court: Even if every allegation in the indictment is true, Mr McDonnell did not violate the federal bribery laws The indictment does not allege that Mr McDonnell exercised any government power in favor of Mr Williams or his company Nor does it allege that Mr McDonnell asked any other government official to exercise government power in favor of Mr Williams or his company Instead, even assuming that the allegations are true, the most that the indictment alleges is that Mr McDonnell provided Mr Williams with access to other government officials so that Mr Williams could attempt to persuade them to his cause But providing access unaccompanied by an actual exercise or promise to exercise actual government power is not an official act under the federal bribery laws Because if it were, virtually every elected official in America would be subject to a criminal bribery prosecution when they explicitly trade campaign contributions for preferred access That is not and has never been the law

Now, the government disagrees with our position It asserts that a public official takes, and here I'm quoting from Page 23 of their brief, "official action when he orders a subordinate to take a meeting, attends an event at a state facility, and directs a cabinet member to arrange a meeting " It emphasizes, and again I'm quoting from its brief, this time at Page 24, that "Directing a subordinate to take a meeting is a quintessential part of an executive's job and no reasonable definition of official action should exclude such conduct "

Under that understanding of the law, if an elected official says to his campaign donors, "In exchange for a $10,000 campaign contribution you can have a private dinner with me and participate in roundtable discussions with me and my staff," that elected official when engaging in that kind of commonplace practice has committed a crime

This position, Your Honor, cannot be correct, and no Court has ever adopted it To the contrary, every Court that has even remotely addressed this issue has rejected the government's position Your Honor, one of the key cases that the government relies on is the RING case out of Washington, D C involving Kevin Ring, who was an aid to Jack Abramoff I have the jury instructions or an excerpt from the jury instructions from that case May I hand Your Honor a copy? We also have copies for the government

(Documents proffered to Court and counsel)

Your Honor, this is the excerpt of the jury instructions relating to the definition of official act And if you turn to the final page, which is labeled Page 39 at the top, and the highlighting, of course, is ours And in Line 17 through 21 of that final page labeled 39 at the top, it reads, quote, and this is Judge Huvelle instructing the jury on the meaning of official act "Mere favoritism, as evidenced by a public official's willingness to take a lobbyist's telephone call or to meet with a lobbyist, is not an official act In addition, sharing information with the lobbyist or helping to develop a lobbying strategy does not constitute an official act "

This is precisely the opposite of the position that the government advocates here. And it reflects the fact that a meeting alone, just like providing lobbying advice alone, just like providing access alone, unaccompanied by actual governmental power, is not and has never been understood to be an official act under the bribery laws

Here, there is no allegation that Mr McDonnell asked any government official to do anything other than to take a meeting or attend a reception. Those, however, are not official acts, and therefore, the indictment fails to allege that critical element of a federal bribery prosecution. And that's in a nutshell why we believe Counts One through Eleven of the indictment should be dismissed.

Your Honor, I'd like to talk a little bit more in detail about the meaning of official act, then turn to a little bit more detail on why the allegations in the indictment, even if true, don't allege an official act And finally, I'd like to address some of the government's key counter arguments I am of course happy to take those in any order that the Court prefers or answer any questions the Court may have

THE COURT: You can go ahead in any order you prefer

MR. FRANCISCO: Thank you, Your Honor Beginning with the meaning of the phrase "official act" as that term is used in the federal bribery laws I'd like to begin by clarifying what our motion to dismiss is about and what it is not about, because I think the government's briefing in this creates a little bit of confusion on that score

First of all, our motion is not about whether settled practices can constitute official acts The Fourth Circuit in JEFFERSON held that settled practices can constitute official acts, but only if those settled practices otherwise meet the definition of official act So what we are focusing on here is the meaning of official act, and what alleged conduct has to do to qualify as an official act regardless of whether it does or does not reflect a settled practice

The other thing that our motion is not about is whether the government must show that a specific payment correlates to a specific official act The Fourth Circuit held in JENNINGS that the government doesn't need to engage in that one-to-one type of correlation But what the Fourth Circuit in JENNINGS also made clear was that it is incumbent upon the government to allege and ultimately prove that the defendant committed what would constitute a, quote/unquote, official act And on this score, I think it is important to read a short excerpt from the JENNINGS opinion where the Court made this quite clear This is at Page 1014 of the JENNINGS opinion, where it said, quote: Bribery requires the intent to effect an exchange of money or gifts for specific official action or inaction But each payment need not be correlated with a specific official act Rather, it is sufficient to show that the payer intended each payment to induce the official to adopt a specific course of action

So JENNINGS couldn't be more clear that even though the government need not allege a one-to-one correlation between a payment and an act, it does have to allege conduct that, if true, qualifies as an official act under the federal bribery laws Which leads me to what this motion is about It focuses is on a discrete yet critically important legal question: The meaning of the phrase "official act" as used in the federal bribery laws and whether the allegations in the indictment, even assuming that those allegations are true, set forth conduct that would qualify as an official act And Your Honor, the indictment does not set forth factual allegations that, even if true, would qualify as an official act

As we explain in great detail in our briefs, every Court that has addressed this issue, directly or indirectly, has rejected the government's position, including in the SUN-DIAMOND case, the VALDES case out of the D C Circuit, and the RABBITT case out of the Eighth Circuit I'm not going to launch into a detailed discussion of those cases That's fully set forth in our briefs But I would like to focus on three critical points that emerge from that case law

The first is that the Supreme Court in SUN-DIAMOND said that merely giving a speech, including a speech on official government policy -- the example that the Supreme Court used was the President's speech to farmers on U S agricultural policy -- merely giving a speech on official government policy is not an official act under the federal bribery laws And the reason it is not an official act under the federal bribery laws is because a speech standing alone does not constitute an exercise of actual government power, the regulatory power of the state to create or bind the rights of its citizens

It is just a speech

Second point: The Eighth Circuit's decision in RABBITT stands for the proposition, as the Eighth Circuit has made crystal clear and as no other Court has ever disputed, being that "An official's promise," here I'm quoting from the Eighth Circuit's decision, LOFTUS, describing RABBITT, "An official's promise only to introduce someone to influential persons," and then it continues, "and not to use his official position to influence those persons," the Eighth Circuit held, "is not an official act " In other words, merely introducing someone to influential persons, merely facilitating access, unaccompanied by an actual exercise of government power, is not an official act

And the third point that emerges from this case law, Your Honor, is that no case, none, has ever held that a public official commits an official act under the federal bribery laws when he merely facilitates access to decision makers unaccompanied by any actual exercise of government power And this last point is critical, Your Honor Because none of the government's cases support its position. All rather involve government officials who either themselves exercised government power in favor of the bribe payer or asked another government official to exercise government power in favor of the bribe payer

None of them involve what we have here, which is at best simply arranging access for a third party to himself attempt to convince government decision makers to act in his favor

The RING case is a very good example, the one we started with. That's a case where the defendant paid a Department of Justice attorney to seek expedited review of a visa application, clearly seeking an exercise of official government power: the review and processing of a Visa application. The JEFFERSON case is another good example, one that the government heavily relies on in its brief In the JEFFERSON case, Congressman Jefferson himself urged Export-Import Bank officials to provide financing to the alleged bribe payer, federal financing

In the JEFFERSON case, Congressman Jefferson himself secured a letter of endorsement from another Congressman to the Department of the Army asking that a government military contract be awarded to the bribe payer And in the JEFFERSON case, Congressman Jefferson himself urged Nigerian government officials to award government contracts to the bribe payer in exchange for the payments In all of these examples, Congressman Jefferson himself used his position to urge other government officials to exercise actual government power in favor of the bribe payer in exchange for payment We have nothing like that here The government's other cases are all of a piece, I'll just tick through them quickly, because it illustrates in our view the very weakness of the government's position

The JENNINGS decision out of the Fourth Circuit, the public official in question steered government contracts to the bribe payer in exchange for money The GANIM case out of the Second Circuit, the Mayor of Bridgeport awarded government contracts to the bribe payer in exchange for money In the DIMORA case out of the Sixth Circuit, the defendant, a county legislator, cast legislative votes, steered public contracts, and awarded government jobs to the bribe payer in exchange for money And the ROSEN case out of the Second Circuit involved a legislator who sought legislation, quote, to restore millions of dollars in funding, end quote, which funding would have been benefited the bribe payer

Every one of these cases involved public officials who either themselves exercised actual government power, the regulatory power of the state in favor of the bribe payer in exchange for money None of them involved simply providing a third party with access to decision makers so that that third party could attempt to persuade the decision makers to his cause But that is all that we have here, Your Honor And these, these cases that I have just ticked through, are the government's very best cases in support of its position, the cases upon which its position,almost exclusively relies

So what we have is, every case that either directly or indirectly addresses the issue, including SUN-DIAMOND, VALDES, RABBITT, all of those cases, RING, reject the government's position The cases that they cite in their favor are completely inapposite because all of them involved actual exercises of government power, unlike this case

So now, Your Honor, I'd like to turn to a review of the allegations in this case and explain why they are completely different from any other case in the Federal Reports and the cases that the government relies on and why those allegations, assuming that they are true, do not set forth a violation of the federal bribery laws

Here again, there is no allegation that Mr McDonnell asked anyone to do anything other than to attend meetings and receptions He never himself exercised government power for Mr Williams, nor did he ask someone else to, nor did he promise to do the same

The alleged acts here basically fall into three buckets The first bucket involved allegations that Mr McDonnell arranged meetings between Virginia government officials and Mr Williams and his company It alleges two such meetings: one where Mr McDonnell asked the Secretary of Health to send a staff member to attend a meeting with Ms McDonnell and Mr Williams, and one where Mr McDonnell asked the Secretary of Administration to reach out to Star Scientific to discuss Anatabloc Completely missing from those allegations, Your Honor, is any allegation that Mr McDonnell asked the Secretary of Health, the Secretary of Health staff member, or the Secretary of Administration to do anything other than to meet with Mr. Williams and Star Scientific company officials There is no allegation that he asked them to exercise any government power in favor of Mr Williams and his company He simply asked them to take a meeting

But as the Court said in RING, Judge Huvelle said in RING in her jury instructions, "Merely taking a meeting does not constitute an official act under the federal bribery laws " And the reason is that a meeting alone, like a speech alone, like attending a reception alone, does not involve an exercise or a promise to exercise government power, the regulatory power of the state

The second bucket of allegations involve receptions that were hosted at the Governor's Mansion. And there are basically two there: the Mansion reception, the Mansion lunch at which, according to the indictment, Star Scientific's new product was quote/unquote launched; and a healthcare leaders' reception held at the Mansion that as far as we can tell did not directly relate to Star Scientific or Anatabloc at all. But regardless, again, what is completely missing from the allegations in the indictment is any assertion that Mr. McDonnell asked any attendee of that reception or anyone else to exercise any government power in favor of Mr Williams or his company At most, he invited Mr Williams to a reception at which other influential persons would be present so Mr Williams could himself plead his cause to those decision makers. But again, providing that kind of access unaccompanied by an actual exercise of government power does not constitute an official act under the federal bribery laws

The final bucket of allegations involve alleged contacts between Mr McDonnell and other office of government officials And as far as we can tell from the indictment, this basically involves one e-mail that Mr McDonnell sent to his in-house lawyer, Jasen Eige, asking Mr Eige to, quote/unquote, see me about Anatabloc Again, Your Honor, completely missing from that allegation or any other allegation in the indictment is that Mr McDonnell asked Mr Eige to do anything other than to, quote/unquote, see him about Anatabloc It does not allege that Mr McDonnell asked Mr Eige to exercise power in favor of Mr Williams It doesn't allege that Mr McDonnell asked Mr Eige to ask anyone else to exercise power in favor of Mr Williams It simply asks a staff member to see him about an issue That is not an official act under the federal bribery laws

The bottom line, Your Honor, is here that the government does not allege any conduct on the part of Mr McDonnell that, even if true, would rise to the level of an official act because it does not allege that Mr McDonnell himself promised to exercise power or asked anyone else to exercise power in favor of Mr Williams And therefore, that critical element of a federal bribery prosecution and indictment is completely missing from this case

I would now like to just address a few of the government's key counter arguments

Its principal argument is that even if we are right on the law, that is no basis for a motion to dismiss That's their argument, that under the motion to dismiss standard, even if we are right on the legal standard, you should not dismiss this case With all due respect, that's plainly wrong As the Fourth Circuit said in the THOMAS case and the Tenth Circuit said in the POPE case, the Tenth Circuit's decision actually well illustrates the principle that the Fourth Circuit and other courts also follow Quote: A court may always ask whether the allegations in the indictment, if true, are sufficient to establish a violation of the charged offense, and to dismiss the indictment if its allegations fail that standard End quote

Here, Your Honor, the Fourth Circuit has routinely dismissed or affirmed the dismissal of indictments where, accepting the factual allegations in the indictment as true, they do not state an offense, a violation of federal law And the cases are cited in our briefs But I would direct the Court to the decisions in UNITED STATES v GOOD, 326 F 3d 589; UNITED STATES v BOETTCHER, 780 F 2d 435; and UNITED STATES v WALTERS, 359 F 3d 340 All of these cases reflect the proposition that if, assuming that the facts in the indictment as alleged are true, they do not rise to the level of a federal crime, it is appropriate to dismiss the indictment

Here, Your Honor, we are not contesting the allegations set forth in the indictment at this time If and when we ever have to do that we most certainly will vigorously contest those allegations But for purposes of this motion, we are not contesting those factual allegations Nor are we contesting whether the government has sufficient evidence to prove those allegations Again, if and when we have to, we will vigorously contest the government's evidence But for purposes of this motion, we are assuming that the government has evidence to prove the factual allegations set forth in the indictment

Rather, what we are asserting is that, even assuming that those factual allegations are true, and even assuming that the government has sufficient evidence to prove those factual allegations, those allegations do not set forth conduct on the part of Mr McDonnell that rises to the level of an official act under the federal bribery laws And if we are right, then under the Fourth Circuit's decision in THOMAS, the Tenth Circuit's decision in POPE, and the other cases we have discussed, this Court should dismiss Counts One through Eleven of the indictment

The government's second principal argument is to rely on the Fourth Circuit's decision in the JEFFERSON case, asserting that JEFFERSON is essentially factually analogous to this case Nothing could be further from the truth As we discussed, Congressman Jefferson promised to exercise or ask others to exercise actual government power in favor of the bribe payer in exchange for payments He himself asked Export-Import Bank officials to award federal government financing to the bribe payer He himself through another Congressman asked the United

States military to award an Army contract to the alleged bribe payer in exchange for payments And he himself asked Nigerian government officials to award Nigerian government contracts to the bribe payer in exchange for payments All involved Mr Jefferson himself either exercising government power or asking others to exercise government power on behalf of the federal bribe payer No such allegation here

The third principal line of argument by the government is that Mr Williams' goal in this overall scheme was to have the Tobacco Commission provide funding for research studies provided by the University of Virginia and the Virginia Commonwealth University With all due respect, Your Honor, even assuming that that does accurately reflect Mr Williams' goal in this overall scheme, it is irrelevant Because the government still is required to allege that Mr McDonnell himself promised to commit an official act in furtherance of that scheme But there is no allegation that Mr McDonnell promised to commit an official act in furtherance of that scheme, because the government does not allege any conduct that could rise to the level of an official act

Go back, for example, to Judge Huvelle's jury instruction in the RING case, where she says that sharing information with a lobbyist or helping to develop lobbying strategy does not constitute an official act A government official may well coordinate with somebody to create a lobbying strategy saying, you know, "I know those officials; if you really want to convince them, you ought to do X, Y, and Z " That would not be an official act That's why the government can't simply say that Mr Williams' goal was to get this funding or get these studies and rest its case there It has to allege that Mr McDonnell promised to engage in conduct that would qualify as an official act in furtherance of that scheme So it has to allege that Mr McDonnell promised to either himself exercise government power in favor or in pursuance of that scheme, or ask someone else to exercise government power in pursuance of that scheme But again, here, even accepting the allegations in the indictment as true, the most that they allege is that Mr McDonnell agreed to set up meetings and receptions that would give Mr Williams access to other government officials so that Mr Williams could plead his cause Completely missing is any allegation that Mr McDonnell himself promised to exercise the official power of the state or ask any other official to exercise the official power of the state in favor of Mr Williams or his company

And my final point on this score, Your Honor, and I actually believe this is a very important one, is that at best, at best, the meaning of the phrase "official act" as used in the federal bribery laws is unclear I don't believe that it can plausibly be maintained that under the Hobbs Act and the Honest Services Fraud statute the conduct that the indictment alleges clearly and unambiguously qualifies as an official act under the federal bribery laws, given that every case that has even touched upon this issue directly or indirectly undercuts the government's position, including the RING case, and given that every case that the government cites in its favor involves a completely separate set of facts that in fact did involve the actual exercise of government power

And given that at best, the statutes here are ambiguous, under well-established canons of construction like the Rule of Lenity and the other rules we discuss in our briefs, constitutional avoidance, the federalism canons, under all of these canons, that ambiguity has to be construed in favor of the criminal defendant Under that narrow construction there is simply no way that this indictment alleges facts that, even assuming them to be true, would rise to the level of an official act under the federal bribery laws

Judge Spencer, the bottom line here is that the government is required to allege and prove that Mr McDonnell committed an official act Here it has not done so, because there is no allegation that Mr McDonnell himself exercised or promised to exercise actual government power in favor of Mr Williams, the regulatory power of the state, nor is there any allegation that he asked any other government official to do so Instead, at most, this indictment alleges that Mr McDonnell arranged meetings and receptions at which Mr Williams would have access to other government officials so Mr Williams could plead his cause

But access, unaccompanied by an actual exercise or promise to exercise actual government power, cannot possibly constitute an official act under the federal bribery laws Access is not corruption, as the Supreme Court has reminded us in its recent campaign finance cases Because if it were, every government elected official who exchanges campaign contributions for access would be guilty of a crime And in the campaign contribution sphere, let there be no question, the quid pro quo is explicit Elected officials say to their donors, and you can often see it on the donation card, "In exchange for X number of dollars you can attend the reception. If you give more, you can have a private meeting with the Governor If you give more, perhaps you can have a private meeting with the Governor and his staff and participate in roundtable discussions " Explicit quid pro quos of campaign contributions for access

If the government's theory is correct, then every one of these elected officials is subject to a federal bribery prosecution save only for prosecutorial discretion That can't possibly be the law, and the government's claim that this case does not involve campaign contributions does not possibly remove the dramatic implications that adopting its position, which no Court has ever done, would cause to the law of federal bribery and the power it would imbue on federal prosecutors throughout the country

So the bottom line here is that because this indictment does not allege facts that, if true, rise the level of an official act under the federal bribery laws, Counts One through Eleven of the indictment should be dismissed

At a minimum we believe the Court should allow review of the grand jury transcripts to determine whether the government erroneously instructed the grand jury on this critical element of federal bribery law, because if it in fact did misinstruct the grand jury, and there is good reason to believe it did given the explicit position that the government has adopted in its briefs here, that would be a separate and independent basis for dismissing the indictment as the District Court held in the UNITED

STATES v STEVENS case cited in our briefs

Your Honor, may I consult with my colleagues?

THE COURT: Sure

MR. FRANCISCO: Your Honor, unless the Court has questions, I have nothing further at this time, but would appreciate the opportunity to respond to the government's argument

THE COURT: Thank you very much Counsel for Ms McDonnell?

MR BURCK: Thank you, Your Honor Your Honor, may it please the Court, I can be very brief on this point Ms McDonnell's position is that if the charges, the corruption charges as to Mr McDonnell are dismissed pursuant to the arguments made by counsel, that the charges should also be dismissed and must be dismissed as to Ms McDonnell We don't believe there is really a dispute on that point with the government based on our read of the brief that they submitted in opposition Because they have acknowledged they are not charging Ms McDonnell in her personal or individual capacity, they are not alleging she has an honest services duty to the State of Virginia, and that she has a public office So given that concession, as we read it, we don't believe we need to take it any further, beyond what the counsel for the Governor has said on this point

THE COURT: All right

MR. BURCK: Thank you, Your Honor

THE COURT: Thank you Government?

MR COOKE: Good morning, Your Honor Ryan Faulconer for the United States Your Honor, the defense has said in this case that upholding the indictment here would criminalize politics as we know it But to be clear, the only thing that this indictment says is a crime is a Governor and his wife lining their pockets with more than $150,000 in exchange for official actions to help a businessman sell his product, while concealing all of it from the voters and the citizens of Virginia And the reason to start there, Your Honor, is because the standard that you have to apply here is no different than the standard that you have applied in countless other cases

Whether or not the indictment is deficient here raises three questions for Your Honor First, does the indictment contain the elements of the charges that are alleged Second, does it fairly apprise the defendants of the charges against them. And third, does it enable them to plead double jeopardy in a subsequent prosecution The defense hasn't even raised an argument as to the third, and Your Honor already ruled on the second when you rejected their motion for a Bill of Particulars So all we are talking about here today is whether or not the indictment contains the elements of the charges that are alleged. And the only element that we are talking about here today is whether or not the indictment alleges as part of the quid pro quo agreement that there was an exchange of things of value in exchange for an official action. And the indictment does allege that there is an agreement to exchange things of value for official actions It does it at Paragraph 22 and it does it at Paragraph 111(c) Those allegations alleging that the defendants agreed to exchange official actions for things of value are sufficient That's game over on this motion, Your Honor

So what exactly are the defendants arguing here? When you look at their actual arguments, what they are arguing to Your Honor is essentially one of two different types of arguments Either a jury argument about whether or not the acts here, whether or not the evidence here is sufficient to be an official action, or a legal argument about whether or not the jury instructions should be one particular phrase or another particular phrase And how do you know that that's what they are doing, Your Honor? Well, when you look at the standard, they have acknowledged and they pay lip service to, well, we have to accept that all the allegations in the indictment are true But then when they describe the indictment's allegations or when they describe the evidence in this case, they only go halfway So for example, if you look at Paragraph 111 (c)(i), well, the defense says again and again, well, this is a case about arranging meetings, merely arranging meetings But the allegation in Paragraph 111(c)(i) is not simply arranging meetings The indictment is arranging meetings for JW and Virginia government officials who are subordinates of the Governor, quote, to discuss and promote Anatabloc. The next paragraph, 111(c)(ii), is not merely hosting events The allegation continues on in the second half, the half that the defense tries to ignore, says hosting and attending events, quote, to encourage Virginia university researchers to initiate studies of Anatabine and to promote Star Scientific's products to doctors for referral to their patients

Even when you go back to the general allegation at Paragraph 22 of the indictment, again, it is not just performing actions in the abstract, Your Honor It is performing actions, quote, on an as-needed basis as opportunities arose to legitimize, promote, and obtain research studies for Anatabloc So what matters here is is the context in which a particular meeting or particular event or any particular action by a government official, the context in which that occurs

Then when you go to the way the defense describes the facts here, that brings it up yet again, that they are simply having a factual argument in front of Your Honor now when really the time to do that is in front of the jury So for example, they say it is not a governmental benefit They said it is not an exercise of governmental power But Your Honor, that's not the way that the government reads the indictment's allegations here A superior public official directing a subordinate whether or not to take a meeting or not, that is an exercise of governmental power Hosting an event on public property for the purpose of helping a particular business or another particular business, that is an exercise of governmental power And certainly, whether or not it was a governmental benefit, whether or not the actions that were taken were a benefit using the government to the individual that wanted that benefit is a factual one Whether or not Star Scientific and Mr Williams thought that those things were of benefit to them is a factual question to be decided by the jury, not a question on a motion to dismiss

So when you look at some of the ways that they characterize some of the officials acts that are alleged here, and again we don't even have to prove that an official act actually occurred, only that one was promised, but when you look at the ones that are alleged here and the way they describe them, for example, the defense says, "Mr ,McDonnell hosting a privately funded lunch event in his then home does not exercise the sovereign power of Virginia " That may be their argument but that's a factual argument, not a legal one Whether or not hosting an event on public property to benefit a particular business constitutes official action or not, that's a jury argument, not a legal one

Your Honor, they characterize the e-mail that set up the meeting that then deputy of the Secretary of Health and Human Services then showed up at a meeting the next morning on less than 12 hours' notice, they describe that factual scenario and then say nothing happened, "This really wasn't that big of a deal," is essentially what they are saying But the question of what the meaning or importance was or whether or not there was a benefit or exercise of governmental power, that's a factual question for the jury to decide

So when you look at the cases we have cited, of course the facts are different in the cases we have cited than the facts in any particular case That's frankly the point, Your Honor Because when you look at JEFFERSON and when you look at RING, what they are saying is that a meeting or a phone call or a letter or a trip can be official action in a particular set of circumstances So for example, in JEFFERSON, you had meetings and you had letters being written And it wasn't that a meeting or a letter is and is not official action categorically, it is whether or not they were in the particular context Similarly in RING, what you had is you had an e-mail being sent and a follow up with a phone call That's the action that we are actually talking about And yes, the context was the context of a visa application But the context here of Mr Williams wanting to have state university researchers conduct studies on his product or the context of wanting to use the state government to help further his product, that's the context in which a meeting or a speech or an event can be official action; not that it necessarily always is, but that it can be depending on the context

And so when they bring up the jury instructions in RING, Your Honor, again, I think it sort of proves our point in the sense that they are trying to say, Your Honor, "This is what the jury instruction should be " We can have that argument at the charge conference But whether or not one jury instruction or another jury instruction should be given given isn't a question for a motion to dismiss But even looking at the jury instructions they handed you, they said the jury instructions also say "official act" includes the exercise of both formal official influence such as a legislator's vote on legislation, an informal official influence such as a legislator's behind-the-scenes influence on other public officials in the legislative or executive branches

Your Honor, that is pretty much similar instruction to what was given in JEFFERSON But the point there is that courts time and time again have rejected arguments by defendants like these ones to categorically exclude a range of conduct from official actions

So time and time again, you see public officials come in and say, "Well, it should only be voting" or "it should only be something that's limited in duty" or "it has to be providing a contract to somebody " That's the only thing that can be an official act The courts say no, it depends on the context

I think, what's important on this, Your Honor, is that the defense in their reply brief essentially acknowledges that they are seeking a categorical exception for all meetings and all speeches by public officials They say that SUN-DIAMOND held that mere speeches or public appearances are never official acts Your Honor, the fact that they introduced the word "mere" before saying "mere speeches or public appearances" simply begs the question what's the difference between a mere speech and a speech that's more? And the difference is the context in which the speech happens So they go on to mischaracterize our argument, is that merely appearing at an event, meeting with a supporter, deciding whether to meet with a supporter, or asking a subordinate to meet with a supporter are all official acts that can support a federal bribery indictment Our argument isn't that they always are It is that they can be in context

So for example, a particular speech or particular meeting may not be an official act But when you put it in context it most certainly is For example, no one would argue that the President giving the State of the Union address is not an official act or that hosting the G-8 Summit is not an official act The question about whether or not a meeting or an event constitutes an official act depends upon on the circumstances surrounding that particular conduct Just as similarly, if a prosecutor were to sell the decision of whether to meet with a supervisor about whether or not to charge a case to a defense counsel, that would surely be an official act But the question is the context in which that meeting occurs And the context in which the meetings and the events and the other acts alleged occurred in this case is a context that would satisfy the definition of official act

And Your Honor, the defense points to a series of cases where courts have decided what are called pure questions of statutory construction and say, "Well, in some cases there is a pure question question of law, and the parties say, 'We all agree on the facts, and so you can go ahead and dismiss the case here because everybody agrees on the pertinent facts '" But that's a different question than whether or not the indictment charges the elements of the offense The cases that they point to are cases and circumstances such as the kidnapping statute categorically does not apply to parents of a child, and everybody agrees that this person is the parent of the child. So Your Honor, if that is the law that we are agreeing on, that it doesn't apply to parents, you can decide this right now Or another example is whether or not a particular statute applies to a U S person, whether they are a citizen or legal permanent resident That's a clear-cut question of statutory construction where the parties agree on the underlying facts

But here, Your Honor, we don't agree on the underlying facts We do not agree on whether or not it was a governmental benefit to host an event designed to help Mr Williams' business We do not agree on whether or not it was an exercise of governmental power to direct a subordinate to take a meeting to benefit Mr Williams

And we do not agree about whether or not it was an exercise of governmental power to allow Mr Williams to invite 25 people to an event at the Governor's Mansion that other people weren't necessarily getting to invite people to Whether or not those actions are governmental benefit or whether or not they exercise governmental power depends on the circumstances alleged

And Your Honor, the defense has said time and time again that this case would criminalize politics as we know it But when you look at UNITED STATES v RING, I think there is one particular helpful quote there that the Court should keep in mind Campaign contribution cases implicate First Amendment concerns And in RING, the D C Circuit said that "The First Amendment interest in giving hockey tickets to public officials is, at least compared to the interests in contributing to political campaigns, de minimis " Certainly, Your Honor, the interest in a politician lining their pockets with hundreds of thousands of dollars, vacations, Rolex, Ferrari, everything else that we have here, that certainly does not implicate First Amendment interests

Your Honor, unless you have additional questions, our pleading on the grand jury communications motion, we think, speaks for itself The defense didn't meet the standard, the high threshold that they have of satisfying the heavy burden to overcome the presumption of grand jury secrecy But unless Your Honor has additional questions --

THE COURT: I had one question I would ask you to comment on, the classification of these transactions, possibly, as donations A part of your brief indicated that there is a substantial difference between what we are talking about here and what was discussed in those campaign finance cases There was some mention briefly by your opponent before he sat down setting up that disagreement And I want you to comment on it because I'm sure he will when he gets back up.

MR. FAULCONER: Certainly, Your Honor None of the alleged quid in this case, none of the things of value, were campaign contributions or even purported campaign contributions It was the classic sort of non-campaign contribution graft that you have in bribery cases It was cash, loans, gifts, payments Nothing that was ever disclosed, nothing that was ever alleged to even be a campaign contribution And so, Your Honor, in those cases, I think what's important to remember is that what the Supreme Court, the context in which they made the statements that they did about ingratiation and access followed a discussion of the type of case they were talking about, right

So you have the Supreme Court saying, "Well, in some contexts you have an independent expenditure being spent on behalf of somebody but no coordination whatsoever; the politician doesn't even know the person, it is not even a campaign contribution, it is less than that " Or you have a context in which there is aggregate campaign contributions being contributed to other people, so again not even a direct campaign contribution And then the government raises the point in those cases, "Well, there is a potential appearance of corruption in those cases, there is a concern that there might be corruption, because there is a correlation between the access that's there, the ingratiation that might be present, and then the independent expenditures "

But then the Supreme Court says, "Ingratiation and access in any event are not corruption " They don't mean ingratiation and access are never present when there is corruption Of course, Your Honor, when there is corruption there's going to be ingratiation and access that comes along with it It is the difference between the necessity of that and the sufficiency of it Because in those cases, it is not a matter of whether or not access or ingratiation can never be present when there is corruption. The question is whether or not in those particular circumstances ingratiation and access might be present in the same context

But in those cases, Your Honor, it also goes on, the Supreme Court saying, "Classic quid pro quo corruption amounts to dollars for political favors." So each side can take a quote out of that case and say, "This is our case " Certainly everybody would agree that at a minimum the actions here were political favors We are not saying, Your Honor, that quid pro quo corruption jury instructions should simply say dollars for political favors and end there The question is whether or not it is a decision or action on a question matter and cause in controversy, which is whether or not the action or decision is furthering those particular matters or causes When you have situations where JEFFERSON says the matter and cause can be as broad as African trade issues, certainly the matter or cause of promoting Jonnie Williams' business or the matter or cause of helping him use the state government to help sell his product can be a sufficient matter or cause in context to constitute an official act

THE COURT: All right Thank you very much

MR FAULCONER: Thank you, Your Honor

THE COURT: All right Rebuttal on this issue?

MR. FRANCISCO: Thank you, Your Honor Let me address the issue that Your Honor just raised about the campaign contribution context The Supreme Court's recent First Amendment jurisprudence explicitly contrasts access and ingratiation on the one hand to dollars for favors on the other What it makes quite clear is that access and ingratiation does not constitute dollars for favors And that's why the government cannot cite a single case where, a single successful bribery prosecution where trading campaign contributions or money or anything else in exchange for access constitutes a violation of the federal bribery laws And in fact, the Eighth Circuit has squarely rejected that position in the RABBITT case when it said that merely introducing someone to influential persons without attempting to convince those influential persons to exercise power and favor of the alleged bribe maker does not qualify as an official act

In terms of the law as it distinguishes between bribery in the campaign context and bribery in the non-campaign context, in the Fourth Circuit, at least, there is no such distinction. In the HAIRSTON case, 46 F 3d 361, the Fourth Circuit made clear that the same quid pro quo standard applies in both contexts That being said, there is a debate out there as to whether in the campaign context there has to be more of an explicit quid pro quo It has to be more explicit than I'm giving this money in exchange for that access or that governmental power as we would argue But the problem is that in the campaign context it is often extraordinarily explicit We saw a recent example where the current Governor explicitly offered in exchange for $100,000 in campaign contributions "a private sit-down dinner with me and my family," "a private roundtable discussion with me and my staff " There is no question that it is an explicit quid pro quo of campaign donations in exchange for access

Again, if you look at most cards, as Your Honor probably has the benefit of not receiving these anymore because of your position, but others of us do, and what those cards say is, "If you donate $1,000 you get this amount of access If you donate $10,000, you get more access " And it proceeds up the chain. So the issue on which there is division amongst the courts is utterly irrelevant here because in most campaign contexts, the quid pro quo is express and explicit Campaign cash in exchange for access So if you accept the government's position, those offers are in fact violations of the federal bribery laws And the only thing that stands between those elected officials and the dock is prosecutorial discretion

There is a reason why they can't cite a single case that even comes close to standing for that proposition. Because it is truly breathtaking, and no

Court has ever even suggested that that would be the law

Your Honor, I would also like to address the government's argument that context matters Well, I agree that context matters And the way that context matters is that in exchange for donations or cash or whatever, the meeting or the reception has to involve an exercise of actual government power It can't simply be related to official government business Take, for example, SUN-DIAMOND The example that SUN-DIAMOND uses as not an official governmental action is a speech by the President on U S agricultural policy delivered to farmers That is what the Supreme Court says is not official action

In the VALDES case, the D.C Circuit decision, the D C Circuit en banc held that a police officer conducting searches of a police database in exchange for money was not official action under the federal bribery laws Well, what makes searching a police database and giving a speech on official policy to farmers not official action? The only thing that makes it not official action is because neither of those examples involve an exercise of the regulatory power of the state It is not whether Mr Williams perceived he did or did not get a benefit from attending a reception or having access to a meeting I can guarantee you that every political donor believes they are getting a benefit from the preferred access that comes with campaign contributions What matters is whether what the donor or gift giver is getting is an exercise of official government power, the regulatory power of the state, as set forth in every single one of the cases that the government cites Where access and ingratiation, unaccompanied by an actual exercise of government power in favor of the bribe giver, the regulatory power of the state, if they are not coupled together, then a meeting or a speech or giving lobbying advice or providing access does not rise to the level of official government act

I think the State of the Union Address was an interesting example The reason why the President's State of the Union Address can constitute official government action is because if you actually listen to the President's speech, what he is often doing is directing his cabinet officials to exercise power In the recent State of the Union Address, President Obama made clear that he was directing various agencies and departments to issue executive orders that would bind the rights or create rights in government contractors with respect to the minimum wage So yes, when the President gives a speech or when the President holds a meeting, or when the Governor gives a speech or the Governor holds a meeting or facilitates a meeting at which he is directing other governmental officials to engage in actual government power, then those meetings and those speeches can constitute official government action

But we don't have anything like that in the indictment All that we have are meetings and receptions unaccompanied by any promise to exercise government power or any promise to ask anyone else to exercise government power And that, Your Honor, is what we mean when we say "mere meetings" and "mere speeches," meetings and speeches unaccompanied by either any exercise of government power or request that another official exercise government power It doesn't matter whether or not Mr Williams thought he benefitted from these meetings What matters is whether Mr McDonnell directed any official within the government to do something, to exercise an official decision, an official regulatory decision, the regulatory power of the state to the benefit of Mr Williams and his company And there is absolutely no allegation of that anywhere here in this indictment That's why the government cannot cite a single case in support of its broad theory and why every case that even tangentially touches upon the issue, whether it is SUN-DIAMOND, whether it's RING, whether it's VALDES, or whether it's the RABBITT decision out of the Eighth Circuit, either directly contradicts or severely undercuts the government's position

I'd like to also address their argument about the standard for granting a motion to dismiss. They quite simply have misstated the standard. What the courts have made clear is that assuming that the facts alleged in the indictment are true, you need to look at the essential statement of facts and ask whether the essential statement of facts alleges a crime under the federal criminal laws So the three cases we cite, one of them involved kidnapping by a parent And what the Court did was it looked at the indictment The indictment alleged all of the elements of the crime It apprised the defendant of what was being charged And it made it abundantly clear what was needed or not needed to prevent double jeopardy from attaching

But what the Court said was that "If I look at the face of this indictment and I look at the law, I can tell that the things that are alleged in this indictment do not set forth a criminal offense " It is insufficient for the government simply to say, "We allege an official act " That's no different than simply parroting the statute, the statutory element And the Supreme Court, for example, in the HOOKER case, has made clear that simply parroting the statute, simply reciting the elements, is not enough You need to set forth sufficient facts, the sufficient factual allegations, to meet, assuming that they are accurate, each element of the indictment And one critical element of federal bribery law is that the defendant have agreed to perform or asked someone else to perform an official act

Here, if you accept all of the allegations in the indictment as true, the government never asserts that Mr McDonnell himself did anything, or asked anyone else to do anything that involved an exercise of actual government power The government says that he agreed to generally promote Anatabloc Well, that kind of vague allegation does not say what he agreed to do to promote Anatabloc Again, I would go back to the RING jury instructions where Judge Huvelle accurately set forth the law "Providing lobbying advice," as Judge Huvelle instructed, "even on a matter of official government policy," I'm not sure why there would be lobbying advice on anything else, "providing lobbying advice does not constitute an official act " Why? Because it doesn't exercise the actual regulatory power of the state So generically promoting, asserting at a high level of generality that promoting a product can't save the government from having to allege that Mr McDonnell agreed to engage in conduct to promote the product that would itself qualify as an official act

If, for example, Mr McDonnell simply agreed to promote it by saying, "Hey, you know, you ought to go talk to this lawyer in town who happens to be very good in dealing with the Tobacco Commission and that guy could give you great advice on how to deal with the Tobacco Commission," that would arguably be promoting Anatabloc But there is no way that that is an official act And the reason why is because it is not accompanied by an exercise or a promise to exercise the regulatory power of the state And every single decision that they cite, every single one they cite in their favor, involved a bribe receiver who promised to either himself exercise the regulatory power of the state or asked someone else to exercise the regulatory power of the state There is no allegation in this indictment that is even remotely comparable to that

The government truly would be treading new ground here with this broad prosecution There is no difference between the quo when it comes to campaign contributions and the quo otherwise, and if it is a quo to facilitate access in exchange for gifts, it is a prohibited quo to facilitate access in exchange for campaign contributions That truly would enormously empower the federal prosecutors to prosecute virtually any elected official in this country They would be saved only by exercises of prosecutorial discretion

We would respectfully urge that the Court reject that broad understanding of the law and dismiss Counts One through Eleven of the indictment Your Honor, if I may consult with my colleagues?

THE COURT: Sure

MR. FRANCISCO: Thank you, Your Honor

THE COURT: All right Thank you Do you all want to be heard on this severance issue?

MR. ASBILL: Yes, Your Honor Thank you, Your Honor Henry Asbill on behalf of Mr McDonnell Just to recap the state of the current record: Obviously, the Court has rejected our application to file ex parte affidavits from myself and from counsel for Ms McDonnell setting forth in more explicit detail what the testimony from each of them would be, particularly if there were a separate trial And the Court has refused to hold off a decision in this matter in terms of severance until closer to the trial, approximately fourteen days in advance of the trial And we we have asked for that relief as well so that we could more safely, without revealing trial strategy prematurely, give the Court more detail than exists in the affidavits that we have now filed under seal for appellate purposes

But that said, even with those applications or even with those Declarations, excuse me, not being in the record at this particular point in terms of the arguments we have today, I still think that we are entitled to severance based on the existing record I know the Court and the government have expressed concern about this sword versus shield argument, and suggested that Mr McDonnell bases his argument for severance in part on the marital communications privilege, asserting essentially that since he cannot disclose those privileges without his wife's consent, that he is using that as a sword. And we are also being accused of using her reluctance to disclose those communications as a shield But obviously, we do not control her decision to refuse to disclose marital privilege or to block any effort by the Governor to assert marital privilege So we are not using the sword and the shield We are using the sword, Ms McDonnell is using the shield And again, we do not control that

But we cannot file those affidavits without compromising and waiving marital privilege If we disclose it to anyone except for the Court, we waive marital privilege And we cannot disclose Mr McDonnell's affidavit -- Ms McDonnell's affidavit because that would prematurely give the government access to confidential trial strategy that is protected by the Sixth Amendment So that's where we are at this particular point Let's go to the existing record in terms of what is before the Court

We have alleged that Ms McDonnell has highly exculpatory and material information that she could provide in the defense of her husband And she has indicated that she will not take the stand in her own defense in a joint trial, and that she will block her husband from disclosing privileged marital communications in a joint trial; whereas, if she were separated, she would testify on his behalf and she would not attempt to block any marital communications We have not asked, the parties have not asked that Mr McDonnell's trial go first or Mr McDonnell's trial go second. We leave that up to the government We are not making any such request in terms of prioritizing the two trials if they were to be separated. But if the trials are jointly held, my client will be deprived of very material exculpatory information that there is no other source from which he can produce that

Now, I understand what the PARODI case, there are two key cases that the Court I'm sure has looked at, PARODI and SHUFORD We think this situation is much more analogous to the SHUFORD case than it is to the facts of the PARODI case But in any event, the PARODI case sets forth a number of tests that appear in the Fourth Circuit to govern these types of situations in terms of the analysis of the severance argument And we think that we can meet all of the PARODI tests even without accessing the Declarations that have now been filed ex parte under seal

The first is whether or not there is a bona fide need in Mr McDonnell's case for his wife's testimony I think if you look at the indictment itself, and certainly if you look at that in connection with any of the Rule 16 materials that have been produced thus far, it is absolutely clear that Ms McDonnell had, number one, much greater contact with Jonnie Williams than her husband did; and number two, that a lot of that contact was between her and Mr Williams alone, without Mr McDonnell or to our knowledge any other witnesses being present So she has information about the relationship and what happened, what was said, what was done, et cetera, that only she on behalf of the defense can testify to

Now, the government, as you well know, has given Mr Williams immunity in exchange for his testimony He is adverse to us obviously in this case The defense is not going to call him as a witness to try to prove Mr McDonnell's defense So that leaves Ms McDonnell as the only percipient defense witness who can corroborate Mr McDonnell's defense, which essentially is that he was never a participant or a member of any conspiracy to commit any criminal acts, much less political corruption acts, and that at all times, he operated in good faith in all of his conduct

Now, the only person again that can dispute what Mr Williams might say about his private conversations with Ms McDonnell is Ms McDonnell And we do not have access to her

Now, this case is going to turn down, it is going to turn into a credibility dispute at bottom, I'm sure, between Mr Williams and Mr McDonnell And we need to corroborate, we want to corroborate, we have a right to corroborate my client with respect to who is the more credible person, who is the only credible person in that debate over credibility If Mr Williams says something that we believe is untrue, I've got two ways of dealing with that One is putting my client on the stand, but I also could deal with it by putting other witnesses on the stand to contradict what Mr Williams has said And the only person I have available to do that is Ms McDonnell

Now, I think the SHUFORD case in the Fourth Circuit at 454 F 2d 772 makes clear that in a case where the guilt or innocence of the defendant hinges in large measure on the outcome of a credibility dispute, severance ought to be granted to ensure that that information can be put before the jury in the case And in SHUFORD, the denial of a severance was reversed by the Fourth Circuit because the denying the severance so tipped the scales against the defendant that he failed to receive a fair trial And the Fourth Circuit also said that a verdict based so heavily on less than the fully-available testimony where the missing testimony could with relative ease have been procured should not stand Obviously, the simple answer here in terms of procurement is to give us separate trials

Now, the substance in detail of Ms McDonnell's testimony is something that I can't go into without violating marital privilege or unsealing these affidavits But in any event, we know that it would or we are alleging that it would rebut many of the government's allegations that my client and his wife were acting in concert with Mr Williams and conspiring together to do so And her testimony would directly rebut the government's allegations that my client agreed or promised to use his office to improperly promote Star products, and it would rebut the government's allegations that she solicited certain items from Mr Williams, and it would rebut the government's allegations that her husband took steps to conceal the alleged scheme

Next question for the Court: Is there a

reasonable probability that Ms McDonnell will testify for her husband if she has a separate trial? We make that representation. Her counsel makes that representation We intend to call her She intends to testify if she is separated. That's what the state of the record is at this point The SHUFORD case requires that there be a reasonable probability, not a guarantee, A, that we will call her, or B, that if we do, she will come forward and testify There only has to be a reasonable probability, not a guarantee And we can't guarantee that There is no way that we can guarantee what's going to happen two months from now in someone's life, that someone will be available; even if they are physically available, is somebody emotionally available, for example, or medically available? I don't know the answer to that question. And I can't guarantee anything except to tell you what my present intention is and to tell you what according to Mr Burck his client's present intention is

The government then questions this Why would Ms McDonnell be willing to testify in a severed trial but not in a joint trial? There is a very easy and simple answer to that question. It is because Ms McDonnell is additionally alone charged with obstruction. And for that reason, she has different strategic interests in a joint trial or a trial of this matter than her husband does, who is not charged with those obstruction offenses And to the extent she were to testify in a joint trial, and if she did do that and admit that, for example, she had communications with Mr Williams, irrelevant in this case, which she did not share with her husband, omitted to share with her husband, or alternatively she had communications or discussions with Mr Williams that she misled her husband about, then the very fact of that kind of testimony being presented in a trial in which she is also a defendant charged with obstruction would be detrimental to her defense

So there is a very logical reason why in a joint trial she does not want to testify and wants to block marital privilege, whereas in a severed trial, where she doesn't take the stand, she is not as concerned about those particular problems and she is willing to help vindicate the truth about what occurred in this matter if she is given a separate trial

What about the remaining PARODI factors and do they weigh in favor of severance? One of the factors is whether or not the government has impeachment evidence against Ms McDonnell that were she to testify by virtue of a severed trial, and come in and testify for her husband, they can impeach her credibility They have never laid out the evidence of what that impeachment would be Presumably, Jonnie Williams is the source of contrary information But we don't know the details of that But in any event, whatever impeachment they have, I don't think, is going to be necessarily outcome-determinative or that significant in terms of the way this shapes up for the Governor's argument, because obviously, we are contending that there are omissions and possible things that are misleading that occurred between this couple with respect to Jonnie Williams to begin with

The next factor the government focuses on is judicial economy It is not clear to me, I've been in many trials where people have been severed, and often, the government's claim of judicial economy is overstated and overblown Trailing defendants often have the charges against them dismissed. Trailing defendants often plead if cases are severed. So it is by no means clear that a severance itself will necessarily result in a replication of a five or six-week trial that would occur for a single defendant

But regardless, let's assume that's true, let's assume that's true and that judicial economy would be adversely impacted by separate trials Well, the bottom line is that judicial economy does not trump my client's Sixth Amendment right to present a defense and to have a fair trial If a fair trial requires severance, even at the expense of judicial economy, so be it

Now, what specifically can I share with you without getting into the details of the affidavit about again the exculpatory nature of the testimony were it to be available to us in a severed trial? And we have suggested looking at the allegations in the indictment, which Ms McDonnell would help us contest A, was there a conspiratorial agreement involving her husband? That, we say, she would help us defend against The details of the shopping trip to New York that is outlined in the indictment That she would help us defends against The personal loan of $50,000 to Ms McDonnell, can she help explain that in an exculpatory way for her husband? We suggest that she will The wedding gift to the daughter, Caitlin McDonnell, same The Rolex watch that was given to the Governor by her, the same And Ms McDonnell's transactions in the Star Scientific stock, again, the same She can testify about those transactions, those discussions with Mr Williams, put those into context in a way that is beneficial to my client and it may very well be beneficial to her, too, but that's not the point The point is that she has a right not to take the stand in her own defense if she thinks it is detrimental to her regardless of what she might say, regardless of the content of her testimony There is also a demeanor component to her testimony if she does not wish to take the stand in her trial, period.

To protect against my client's Sixth Amendment rights and to preserve the marital communications privilege, again, we say this case should be severed We have cited the CARONA case, which we think is directly on point. I understand the Court thinks it is not an explicit-enough opinion to give you as much guidance or helpful guidance as you would like But in any event, I think that the parallels in terms of the interests are very clear there And in that case, the Court, in order to assure itself that there was a factual information that supported severance, chose to accept the ex parte Declarations In any event, these are the principal arguments and the principal cases upon which we rely

In closing, I just want to say that every case for severance, this case and every single other one I've ever come across, is fact-specific And when it relates to credibility and the elusive quality of credibility, and that really is the debate in the case, and the distinctions in terms of credibility between Jonnie Williams and Bob M[illegible]nell are juxtaposed, the jury, in my view, and I hope in the Court's, should have access to all of the relevant and material evidence bearing on that issue of my client's credibility versus Mr Williams' credibility And if the jury is deprived of that information, in my view, Mr McDonnell will not get a fair trial Thank you very much, Your Honor

THE COURT: All right

MR. BURCK: Your Honor, I can be brief on this as well We stand by counsel for Mr McDonnell's statements today and also in the brief which we joined. Ms McDonnell, as is set forth in my Declaration on her behalf, which is currently under seal and submitted ex parte, does have the current intention to testify on behalf of her husband if the trials were severed And she does have the current intention to waive the marital privilege if the trials are severed Her fundamental concern, as counsel to Mr McDonnell has put very well, is that there are other charges in this case against Ms McDonnell, specifically, obstruction of justice charges, which we believe she would be very much prejudiced with respect to if she were to testify in a joint trial about the matters that she has information with respect to concerning discussions between herself and her husband as well as between herself and Mr Jonnie Williams

So Your Honor, we again have the current intention, we can't, again, promise in two or three months' time there won't be a change in circumstance, but we foresee no reason why there would be a change in circumstance at this point that she would not be available and be willing to testify at a severed trial Thank you

THE COURT: All right Thank you Government?

MR DRY: Thank you, Your Honor Good morning In order to avoid the strong presumption in favor of joint trials, the defendants must show that the denial of the severance would result in a miscarriage of justice They failed to make the showing in this case.

The defendants have filed 84 pages of briefing related to their severance motion and provided the Court with nothing more than vague and conclusory assertions regarding the necessity of severance In their reply brief to the government's opposition to the ex parte filings, which is Docket 136, even they admitted that their legal pleadings merely provide, quote, an unadorned summary of the evidence But they now ask this Court to sever the trials based solely on that unadorned summary

Perhaps the strongest evidence that severance is not necessary in this case for them to get a fair trial is the fact that Mr McDonnell has refused to file the Declaration setting forth what Ms McDonnell would testify to Those Declarations do not contain marital-privileged communications But they still refused to file those with this Court

And that's a strategic decision in which they have basically told the Court, "Look, we really think Ms McDonnell is necessary for our defense We cannot get a fair trial without her coming up and hitting that witness stand in a separate trial But, you know, even though all we've got is vague and conclusory assertions, and there is a high likelihood we are going to lose this severance motion, our trial strategy is so important that we would rather risk that than actually saying what Ms McDonnell would hit the stand and say "

The defendants fail under this record to meet all four of the factors in PARODI As for the factors of bona fide need, substance of the testimony, exculpatory nature, we have no idea, Your Honor Basically, all they have done is put, by my count, about 11 sentences of very vague assertions and say, "This justifies severance " Mr Asbill, when he was up here, he was talking about the seven areas that Ms McDonnell would testify about That's from Page 19 in their brief But those aren't the seven areas Ms McDonnell would testify about Those are the seven areas that Mr McDonnell supposedly would testify about Because those are contained in the Asbill Declaration, which Mr Asbill was free to file without any fear of marital privilege, but decided not to

But even those show that the testimony isn't necessary First of all, they are basically blanket denials of the conspiracy Blanket denials are akin to a not guilty plea That doesn't get to the heart of the matter That doesn't show the Court, "Hey, that is really specific exculpatory evidence "

As far as what the denials Mr Asbill talked about, the conspiratorial agreement, vague, New York shopping trip, that's only part of the quid that's alleged in this case, Your Honor The $50,000 loan to Ms McDonnell, our understanding is that they only dispute the timing of that The wedding gift to the defendants' daughter, there is a witness that sits there -- I'm sorry, there is an e-mail in which Mr McDonnell himself is thanking Mr Williams for that The Star stock? The indictment sets forth lots of allegations about the Star stock and Mr McDonnell himself thanking Mr Williams -- congratulating Mr Williams on the stock price So we have no idea under this record exactly what they are talking about or how it would be exculpatory

As for the factor that there is a reasonable probability that Ms McDonnell would actually testify, Ms McDonnell's counsel has basically said it is likely that she would testify, that that's her present intention But still, Your Honor, it is inexplicable on this record on why she would do this Now, the latest supposition that came out in the reply brief, and now through Mr Burck here is, "Well, she is really worried about the obstruction charges." But their defense, Ms McDonnell's defense, is that "I can't be guilty because my husband can't be guilty " Those are the most serious charges in the indictment And now they are saying, "Well, this stuff would make us -- make Ms McDonnell look bad on the obstruction " But that's kind of incongruous, right? Because if you are a jury sitting there, aren't you going to be less likely to convict Ms McDonnell for obstructing something that's not even a crime? I mean, what sense does that make?

They also say, "Well, she doesn't want to be cross-examined in her own trial " But let's be clear about this If this Court severs the trial and Mr McDonnell is tried first, Ms McDonnell is going to be cross-examined regarding the same scope of cross-examination as she would be as if she testified in a joint trial And all of that testimony could be used against her We'll just put an agent on the stand and have them read the transcript, question and answer, question and answer So is the concern really well, just the theater of it, it is going to be less impactful? If that's the concern, that's not really a motivating factor for invoking your Fifth Amendment rights and risking your husband's conviction, which by the way would also risk your conviction It doesn't make any sense

Mr McDonnell's counsel started out by saying in their opening brief that they wanted the option of calling Ms McDonnell When the government pointed out, "Hey, that doesn't sound like it cuts it here," then it changed to, "Well, we have the present intention of calling her " And then most recently, as things stand now, "We intend on calling her " But if Ms McDonnell's testimony were truly critical to the defense, you would think that they wouldn't qualify it so heavily They would say things like "It is impossible for us to get a fair trial without Ms McDonnell, and we can think of very few or almost no situations in which we wouldn't call her, but if these things happen, then maybe we wouldn't " But as it stands now, "Our present intention is to call her," doesn't give the government and it shouldn't give this Court any assurance that her testimony is actually probable

Even assuming that the defendants in this case met each of the four PARODI factors, which they have not, the other considerations weigh in favor of the government as well First of all, the significance of the testimony Again, we have no idea really what they are claiming she would testify to The extent of the prejudice? We have no idea There's speculative allegations of prejudice, but at the end of the day, we are in the same position we were, Your Honor, when they filed their first brief and the government came to you and said, "Your Honor, we need to know more, we can't even respond to that " Nothing has changed That's exactly where we are today.

Judicial economy: In their opening brief, they are like, "Well, it could actually result in less trial days " I think they have come off of that But at the end of the day, the government agrees that if judicial economy was the only thing, and they had proven that Mr McDonnell could not get a fair trial but for severance, and it would be a miscarriage of justice to deny the severance, of course judicial economy would give way But they have made no such showing And in PARODI, PARODI made it clear that the consideration of judicial economy goes up in importance as the defendants' showing regarding the necessity of severance goes down

Now, the likelihood of impeachment: I was somewhat befuddled when Mr Asbill said that we failed to lay out how we would impeach Ms McDonnell's testimony Well, there is a very simple answer for that How could we? We have no idea what she would testify to under this record. But just under the facts as you have them, Ms McDonnell's testimony would be highly susceptible to impeachment First of all, she would be testifying for her husband Second of all, she would be testifying for her husband and she would have every incentive to exculpate him because that would inure to her benefit Third of all, she has been alleged to have obstructed justice, and as put forth in the indictment, she did it by writing after-the-fact notes to make it look like the deal was something different than it was Even their argument is, "Well, if she testified, she would look bad," which seems to suggest that she is impeachable

Now, they make a lot about SHUFORD, which predated PARODI by quite a bit And SHUFORD is distinguishable As an initial matter, in SHUFORD, both the moving defendant and the co-defendant according to the Fourth Circuit's opinion at 454 F 2d 778, quote, indicated quite clearly to the trial judge end quote that the co-defendant, quote, would testify if granted severance

Here, we simply don't have that level of assurance, Your Honor I don't know what, I can't understand the rationale for why they are saying, "Well, she will testify here but not here Yes, she has incentives on this point but not on this point "

But more to the point on SHUFORD, and PARODI actually, PARODI analyzed SHUFORD and it was equally applicable here It said in SHUFORD the issue centered on one simple fact, the instruction issue centered on one simple fact: The instructions given by the defendant to his employee for the bill of a single charge made against one individual on a single day That's not what this case is about This case is a multi-year conspiracy with multiple bribes being paid in exchange for an agreement to perform multiple acts If this was about a single meeting, and basically it was Mr McDonnell, Ms McDonnell, and Jonnie Williams at a single meeting, and Mr McDonnell's -- Mr Williams hit the stand and said, "This is what Mr McDonnell said to me," Mr McDonnell hit the stand and said, "This is what I said to Mr Williams," and the only other person that could say, "Yeah, at that single meeting, Mr McDonnell is right," well, maybe you would have an argument But that's not what is happening here Mr McDonnell had several meetings -- had several interactions with Mr McDonnell (sic) alone There were e-mails between just the two of them, multiple phone calls just between the two of them. There is no way that Ms McDonnell could hit the stand and exculpate Mr McDonnell on all of that So it is not like her testimony is absolutely essential for Mr McDonnell to get a fair trial

Your Honor, at the end of the day, the defense cannot argue that Ms McDonnell's testimony is absolutely necessary for a fair trial And at the same time say, "Our trial strategy is so important, we are willing to risk not having separate trials by not filing her Declaration." It doesn't make sense For those reasons, the Court should deny the motion to sever

THE COURT: All right Mr Asbill, brief rebuttal?

MR. ASBILL: Thank you, Your Honor I'll try to keep it brief To begin with, Ms McDonnell doesn't have to exculpate Mr McDonnell on every single thing that Mr Williams says in order for her testimony to be critical to his defense She just has to help exculpate him on enough things for the jury to conclude that there is a reasonable doubt in this case

Mr Dry further suggests that these Declarations don't say anything about marital privileges, and I'm making a representation to the Court that my Declaration contains marital-privileged information, which I cannot disclose to the Court without Ms McDonnell's and her attorney's consent

Her Declaration, that Mr Burck, actually, Mr Burck's Declaration for her, talks about trial strategy materials that we also cannot disclose unless there is consent here from both parties Mr Dry suggests that he would like to know more I understand he would like to know more And if it is necessary, I'm willing to tell him more But not three months in advance of the trial It is a very interesting juxtaposition Via the negotiation between the parties and now ordered by the Court, most of the relevant discovery information in this case, the critical discovery information, is not going to come to the defense until the middle of June But yet, they want our trial strategy information now That's not fair

I understand he thinks he is operating in the dark, and I'm doing the best I can here in terms of trying to preserve trial strategy, trying to preserve marital privilege, and trying to offer affidavits for the Court's review that will solidify and put in more context and be more explicit about trying to buttress our argument But I am hamstrung here in terms of trying to protect Sixth Amendment rights and trying to protect marital privilege, et cetera, and trying to do it in a fashion that doesn't adversely impact either defendant in an untimely way

With respect to the commitment to calling Ms McDonnell: I can't be more explicit than what I have said We intend to call her, she intends to step forward if she is called. Whether or not that situation ever changes, I can't predict the future I'm giving you straight-up the best I can at this particular moment in time in the life of this case about what the parties' intentions are, and those are genuine intentions And I'm representing that to the Court as an Officer of the Court And I think with that, I'll conclude, Your Honor

THE COURT: All right Anything else?

MR. BURCK: No, Your Honor

THE COURT: Thank you

All right, let me explain to you what I'm going to do I'm going to resolve these issues, starting with severance and the motion to dismiss, swiftly And when I say swiftly, I mean tomorrow And get these larger issues off the board And just so you will know, I'm going to do this in a memorandum or order that will be close to bottom line And the reason for that is, obviously, I have to make certain assessments in order to come to conclusions on this motion to dismiss and motion to sever, and I don't want to do that in a more effusive way because it may prejudice the parties So what I will do is have kind of a bottom line, short form memo to give you the answer so you will know And then, of course, later on I'll do a complete memorandum of explanation

And we are going to have a flurry of activity, because on some of these other outstanding motions, I just held off on those until we dealt with this So those will be coming down swiftly as well The information about voir dire, all of those things, I'm going to make clear right away because now if in fact we are going forward, we have to get in serious preparation mode So just so you will know and be on the watch, these things will be coming down very, very swiftly Mr Asbill, you had something else?

MR. ASBILL: Yes, Your Honor I understand what you said I didn't know whether you wanted to hear argument of any kind on the voir dire requests that we have made

THE COURT: I think you all briefed it well I understand what it is that you want And I think I can resolve that without really any additional information But if you have something you just want to say

MR. ASBILL: Well, if you have any questions about the things we have suggested or why even if they are unusual that they might be appropriate in this case --

THE COURT: I understand I have had similar requests before But I think I'm able to resolve it

MR. ASBILL: I just want to emphasize, we are not looking for special treatment; we are looking for fair treatment under the unique facts and circumstances of this case That's what we are saying I just want to report to the Court that Mr Dry and I have been talking about a questionnaire, trying to get together on a joint questionnaire to the maximum extent possible, and we have exchanged drafts And tomorrow we are going to be discussing our respective drafts and trying to cooperate as much as we possibly can on that And obviously, your ultimate decisions on how the voir dire is going to go forward may impact the language in some of the instructions on our questionnaire

THE COURT: That's why I'm going to do it swiftly I will give you all a deadline on when to file your proposed questions for the questionnaire I intend to send out a questionnaire, obviously

MR. ASBILL: We will have that to you by the 29th I think that was on the schedule and that's what we anticipated doing

THE COURT: Right And then if you all get together and if it is a joint request, the better But if not, then I would have you all respond to each other's proposed questionnaire questions And then what happens is, I will draft the questionnaire, share it with you If what you have requested has not been a part of the questionnaire, then I've rejected it You have a record. Or if I fashion it differently, you will be able to see it and so your objections are clear But we need to get those out so we can get a deadline for the folks to get them in. All right?

MR ASBILL: Will those be mailed or are you going to do it in Court?

THE COURT: You want me to give you the whole thing now

MR ASBILL: Just part, Your Honor

THE COURT: I can tell you, they are going to be mailed. Our folks live in Mecklenburg and Stafford County and Emporia I'm not bringing them here to sit down and do this questionnaire I know you made that request, but it is not happening

MR ASBILL: We will adjust the questionnaire accordingly knowing that fact

THE COURT: All right Thank you all very much

(Proceedings adjourned at 11:44 a.m.)

CERTIFICATE OF REPORTER

I, Jeffrey B Kull, Official Reporter, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter

__________/s/________________

Jeffrey B Kull,
Official Federal Reporter

__________/s/________________

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

July 10, 2014
Richmond, Virginia
2:30 p.m.

DAUBERT HEARING RE: PETER H. WHITE

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ
DAVID V HARBACH, II, ESQ
JESSICA D. ABER, ESQ
RYAN S FAULCONER, ESQ.
Counsel for Government;

JOHN L. BROWNLEE, ESQ.
HENRY W ASBILL, ESQ
JAIME B. WISEGARVER, ESQ.
Counsel for Robert F McDonnell;

STEPHEN M. HAUSS, ESQ
JAIME B WISEGARVER, ESQ
Counsel for Maureen G. McDonnell

JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee and Henry Asbill Maureen G McDonnell is represented by Stephen Hauss and Jaime Wisegarver Are counsel ready to proceed?

MR. DRY: The United States is ready

MR. BROWNLEE: Mr McDonnell is ready to proceed.

MR. HAUSS: Ms McDonnell is ready to proceed

THE COURT: All right The way we will do this, the proponent of the witness, put the witness on and we will explore the witness's expertise and try to understand what he wants to say and his basis for it The government will have an opportunity to voir dire

MR BROWNLEE: Thank you, Your Honor May it please the Court, my name is John Brownlee I represent Bob McDonnell I think this is the first time I have had an opportunity to directly appear in front of Your Honor I want to tell you I greatly appreciate your time today, and it is a privilege to be here

If I can, Your Honor, I'd like to start with just a little bit of context and then call the witness to the stand, just so the Court has the context for this witness and what we understand to be part of some of the benefits that have flowed from the United States to the government's principal witness

THE COURT: That's not very helpful to me What I need to do is hear from the witness I understand. I read your papers I understand what you are about here and I just need to assess this witness

MR BROWNLEE: Very well, Your Honor Thank you We are prepared to proceed Mr White?

PETER H WHITE,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR BROWNLEE:

Q Good afternoon, sir

A Good afternoon

Q Would you please state your name for the Court and spell your first and last name for the court reporter?

A Peter H White Common spelling, P-E-T-E-R, White, W-H-I-T-E

Q Mr White, have you been retained by Bob McDonnell to serve as an expert witness in this matter?

A Yes

Q All right And where are you currently employed, sir?

A I'm a partner at the law firm Schulte Roth & Zabel LLP in Washington, D C

Q How long have you been a licensed attorney?

A I've been a licensed attorney since 1992

Q Where were you admitted to practice law?

A In Virginia Since then I've been admitted in the District of Columbia and to a number of other District Courts, including this one, and Circuit Courts

THE COURT: Did you say '92 or '82?

THE WITNESS: 1992

THE COURT: All right

BY MR. BROWNLEE:

Q Talk a little bit about your educational background. Where did you go to undergrad?

A I graduated from the University of Notre Dame with honors in 1985

Q And did you then attend law school?

A I did I attended the University of Virginia, graduated there in 1989

Q While at the University of Virginia Law School, did you receive any honors, sir?

A Yes I was selected to be on the Editorial Board of the Law Review for my second year My third year I was selected to be on the Managing Board of the Law Review, and graduated Order of the Coif

Q Thank you At your law firm in Washington, what type of law -- describe your practice for the Court

A My practice consists of a mix of white-collar matters and related civil matters, some of which are purely civil, some of which are regulatory matters brought by civil enforcement agencies So I do a lot of SEC enforcement matters and other federal regulatory enforcement defense But it is all defense-side litigation I also have a portion of my practice that focuses on purely civil litigation, usually class action litigation

Q How long have you worked at the law firm?

A Five years

Q And before you went to Schulte Roth, did you practice at other law firms?

A Yes I was at Hunton & Williams as a partner from 1999 through 2004, and then spent a year at Crowell & Moring in D.C , and then after that, my practice group moved to Mayer Brown in D.C.

Q What are the total number of years you have been in private practice?

A Fifteen.

Q Okay Now, before you did that, did you work in the government?

A Yes I should say fifteen years since I left the government I was, in private practice for a few years before that here in Richmond

Q Okay Tell the Court a little bit about your government experience

A Sure In 1992 -- I'm sorry, Your Honor, I was mistaken It was 1991 when I became a member of the Bar It was early 1991 In 1992 I went to the U S Attorney's Office in the District of Columbia I was there from April of 1992 to October of 1997 And then I went to the Eastern District of Virginia in the Alexandria Division from 1997 until late 1999

Q Can you give the Court an estimate of how many jury trials you have been either lead counsel or co-counsel on?

A I've been lead counsel in over 80, mostly in the D.C. U S Attorney's Office, but several in private practice and several in this district

Q Okay And if you through in the bench trials, how many would it be?

A Well, in D C there are a lot of bench trials, especially in misdemeanor court So it would be in the hundreds of bench trials But significant bench trials as well, probably 20

Q Now, prior to your going to the United States

Attorney's Office, what did you do professionally?

A I was -- so I graduated law school in 1989, came to clerk in this Court for Judge Williams, Richard L. Williams, 1989 to 1990, and then joined Hunton & Williams as an associate and was there until 1992, when I went to the U S Attorney's Office in D C.

Q While you were an Assistant U S Attorney, did you receive any awards?

A I did I received a Director's Award. I also received Sustained Superior Performance Awards and that sort of thing

Q Is it fair to say that you have been recognized as a leading litigator as a private practice attorney?

A Well, the lists that come out say so I'll leave that to other people to decide

Q Fair enough With regard to securities enforcement, with regard to class action securities and your practice in private practice, have you given speeches or did you routinely speak on subjects involving your practice as described to the Court?

A I routinely speak on panels at Bar Associations and client presentations and that sort of thing several times a year, almost always on securities enforcement, securities litigation, or white-collar criminal matters

Q It is fair to say you have also published articles in this same general area?

A I publish articles, I usually publish a couple a year on various white-collar or securities enforcement class action litigation topics

Q Let me turn your attention to your personal experience in handling securities class action lawsuits Can you inform the Court about how many you have personally handled or worked on personally in private practice?

A I haven't thought to add them all up, but it is very frequent that white-collar cases have securities class actions that go with them if there are publicly traded companies involved. It would be easily over a dozen I've been involved in either representing the publicly traded company or executives who have been sued or involved in the lawsuit

Q Okay Your law firm, as the group that you are in within your firm, they handle these similar types of cases, other partners in your firm; is that correct?

A Right My firm has a litigation group with 19 partners, and we probably do more securities class action litigation than just about anything else, fraud-related, civil litigation more than anything else

Q Is it fair so to say that very routinely, I think you said bi-weekly, you said you have partners meetings where you discuss their cases and your cases as well and you consult on various matters?

A That's been the case At Schulte Roth, twice a month we will have a partners meeting and talk about the cases that are going on. Interesting developments, tough challenges in those cases and that sort of thing It is very much a team effort

Q Very well I'd now like to shift to your experience with the type of stay motions that have been filed by the United States in two civil lawsuits in the Eastern District of Virginia that are the subject of your proposed testimony Can you let the Court know how many times or the instances in which while in private practice you have had direct involvement with these similar types of stays?

A Direct involvement, probably about a half dozen times People in my group as a whole have been involved in it a number of times It is not a frequent occurrence, but it is not uncommon And actually, because I was one of the first ones to be involved in one, I've gotten involved with other partners to help them deal with motions for stays when they have come up in their cases

Q Okay Let's turn to the proposed opinion for this matter for the Court Can you just give -- maybe the best way to start, if I can, is give the Court kind of a summary of what, subject to his order, you propose opining on with regard to the government's stay requests in these two civil cases

A As I understand it, what's allowed by your order, Your Honor, is potentially testimony about the benefit that may have flowed to the defendant from the government intervention in getting stays of civil litigation. So what I would propose to testify about that would be looking at it from a defense perspective, both for the individual and for the company, of which he is a significant stockholder, what are the benefits that accrue to that defendant and to that company from the fact of a stay And I can go through those if you like

Q When you say "the defendant," I want to make sure it is clear, you are talking about the defendant in the two civil cases, specifically, a gentleman by the name of Mr Jonnie Williams; is that correct?

A As I understand it, Mr Williams is going to be a witness here and he has an immunity deal with the United States And also, so that the benefits I will be talking about will be to the civil defendants, not to the criminal defendant here, because I understand there is no overlap between the criminal defendants here and the civil defendants there

Q Okay Now, let me, since we have kind of laid that out, let me touch base on a couple things for the process of forming your opinions One of the questions that the Court had in its order was methodology I'd like you to give the Court a sense of your methodology that will form the basis of your opinion, and then I want to talk about that a little bit So what is the methodology you would use or you have used to form the basis of your opinion with regard to the potential benefits that have flowed from the government's motion to stay the two civil cases to its witness, Mr Williams?

A What I did, Your Honor, was I approached it as I would approach it if I were being retained by the defense in those cases So the first thing I did was look at all the pleadings that have been filed in those civil cases, with particular focus on the complaints, because that's where the allegations are, and thought through, based on my experience, if I were representing individual or company or both, would I want a stay of that litigation for the benefit of my client, and then what benefits would flow from that So that was -- the methodology was very similar to what I would do in assessing a case as if I were hired by them, which I have been, to do that sort of case

Q Okay So with regard to the materials that you reviewed as part of this process, I think you mentioned the complaint; is that correct?

A Yes I only reviewed the -- I think there were final amended complaints in both cases I didn't review all the prior iterations, but the pending complaint at the time

Q Okay Did you have an opportunity to review the motions for stay and the orders from the government and the orders that were actually entered?

A Yes I reviewed the government's motions for intervention and their motion for a stay and the memoranda in support of both of those And the Court's orders, of course, on the motions for stay and motions for intervention.

Q Okay Now, let us walk through a little bit, if I can, the actual, your implementation of this methodology for these two civil cases First, I guess I answered my first question. How many cases were there that you looked at?

A There are two that I looked at, that I am aware of One is a securities class action that was filed here in the Richmond Division of the Eastern District of Virginia The other is a derivative action that was filed in the Alexandria Division.

Q All right And based on that review, what did you learn about the shareholder and securities litigation from your review of those documents?

A Well, they are in some ways very typical securities class action and derivative litigation for the sort of thing that I do, in that they involve allegations of fraudulent conduct by insiders at the company Those are the types of securities class actions and derivative cases that I have been involved in So what I did was review the type of allegations that were there, think about how one would defend that, think about what would be required to defend that, think about what sort of pleadings would be coming, what sort of discovery would be coming, what sort of process would occur in the time period leading up to potential disposition points, at motion to dismiss and summary judgment and ultimately trial

Q Okay And based on your review, is at least one of the defendants in each of the cases Mr Jonnie Williams?

A From the complaints I saw, Mr Williams is a named defendant in both cases

Q And his company, former company, Star Scientific?

A Star Scientific is the named defendant in both cases In the derivative case it is a nominal defendant because the lawsuit is filed on behalf of the company, so it is a nominal defendant only in that case

Q Now, you testified that you had a chance to review the stays that were requested; is that correct?

A I reviewed the papers in support of the motions for stay, yes

Q Okay And who requested those stays; do you know?

A The stays were requested by the United States, by the prosecutors who are handling this criminal case

Q Okay. And can you give the Court just briefly your understanding of the purpose for the stays as articulated by the United States?

A From those pleadings, they asked for stays so that the civil discovery process would not overtake the criminal discovery process, which, as the Court is well aware, is much more limited than civil discovery So as I understand their position in those pleadings, they didn't want civil discovery to go forward, which would allow access to more information than what was available in the criminal case

Q Okay Now, let us shift now to the effects of the stay And you have discussed your methodology, and now I want to kind of get what flowed from that methodology So is it fair to say that based upon your experience and knowledge and training that the filing of the stay, the request for the stay and the granting of the stay, did in fact benefit the defendants in those civil cases?

A Yes, definitely

Q Can you explain to the Court your understanding of what those benefits were and the extent of those benefits?

A There are two primary benefits One of them is the stays, as I understand it, are in effect at least through the end of this trial, and perhaps longer Whenever you are a civil defendant, it is all about money You are being sued for money If you have to pay money, later is always better than earlier There is that benefit There is an immediate cost that comes with defending these lawsuits They are extremely expensive to litigate because they tend to be very wide-ranging Factual discovery is very extensive inside your own camp, and then you have the actual discovery with your opponent as well Those type of expenses can be crippling sometimes for a company depending on their situation The other large benefit -- that's one category of benefits, not having to pay now and potentially not having to pay at all later depending on what happens in the interim.

The second category of benefits is one of the things that I find that boards of directors and clients in this space really worry the most about is uncertainty And litigating a case like that with a related criminal proceeding going on, where a defendant is going to be a critical witness, as I understand it, in that criminal proceeding, would add a layer of uncertainty that would be very difficult to manage if you are actively in civil discovery So I, if I were the lawyer for the defendants in that case, would be very much in favor of a stay because that uncertainty will be eliminated by the time it comes time for active litigation of that case and depositions and so on.

Q Let me talk a little bit about the legal fees or, as you talked about, defending one of these lawsuits Have you had an opportunity in your own experience to try to get a sense of -- let's talk about between the initiation of the lawsuit and through summary judgment, about how much that potentially could cost the defendants in defending just one of those cases?

A I have I have defended those and I've been co-counsel with other firms who have defended those

Q Okay And what is that, your best guess as to what that cost would be up through summary judgment?

A The cost to get through motions to dismiss, class certification, fact discovery, and summary judgment, is easily in the seven figures, even with the trimmest staffing you could give, to get through that point in the case And it very frequently is in the mid-seven figures So if I were to budget, say, the securities class action, which had a discovery schedule that ran through about now and a trial scheduled for September, my budget for discovery would be somewhere, probably three to five million dollars

Q Okay And is it fair to say that the derivative suit, you said there were two, but the derivative tends to trail, so the focus is on the --

A In my experience, a derivative suit tends to trail the securities class action because it in another way is derivative of that action The two would not require probably vigorous parallel track defenses, so my advice to the company or to anybody in this situation would be your main focus has to be the securities class action, because if we prevail in that you are going to be fine in the derivative case

Q Let me talk about Mr Williams It is your understanding that Mr Williams is the largest shareholder of the company; is that correct?

A That's what I understand

Q And as the largest shareholder of the company, when these benefits as you describe flow to the company from not having to defend these lawsuits, at least for a period of time, does that impact, is there a benefit that flows to the shareholder as well?

A Certainly, whenever the company doesn't have to spend a certain amount of money or have its people distracted by a lawsuit that requires their time and attention, it is a benefit to that company, and therefore, a benefit to its shareholders They are the equity holders So whatever benefits the company would benefit them.

There is an additional benefit to Mr Williams directly, as he is a defendant in both of those cases, in that he is not going to be subject to a civil deposition, which typically a much broader range of topics are available, and rules He won't be subject to that prior to his criminal testimony So there is a significant benefit to him there as well in that the criminal testimony will come first, and that baseline will be known at the time the defense of his deposition, say, in the civil case occurs

Q Now, are you aware, Mr White, that in one of the cases there was a Scheduling Order entered that would have had discovery cutoff of July 7th of this year? So earlier this week?

A I saw that, yes

Q Okay And if that had been followed, which it traditionally is in this -- in the Eastern District of Virginia, fair to say that Mr Williams would have been subjected to a civil deposition; is that correct?

A Certainly

Q Okay You touched on it a little bit, but why wouldn't Mr Williams want to face that civil deposition in light of the fact that he is also a witness for the government in a criminal case; what would be the benefit to him by being able to avoid that?

A As his civil lawyer, I would advise him the fewer times you have to testify about anything, the better off you are The criminal case, it appears, is going to occur no matter what As his civil lawyer, I would want to have that testimony as a baseline before he testified in the civil case Because whenever someone is testifying multiple times, you run a risk that they will say something inconsistent, and that can cause problems for you in litigating the case So I would want that baseline set, if I was his lawyer, before I had to defend his deposition and actively defend the civil case

Q If you were the company's lawyer, would you want that deposition stayed as well?

A Definitely so

Q Okay Now, at the time the motion was filed and the stay was granted, is it your understanding that Mr Williams was the subject of a securities violation investigation by the U S Attorney's Office?

A At the time it was filed, it is my understanding that he was

Q Okay And as part of some of the documents you reviewed for your testimony here today, you now understand that he has received full transactional immunity for all of that security violation investigation; is that correct?

A I did see a letter signed by the U S Attorney's

Office and the Public Integrity Section that gave him transactional immunity for, it appears, for any securities violations, yes

Q Okay Now, let me talk a little bit about some of your experience, because I want to make sure the Court understands that your testimony would be in the context of your experience in other matters With regard to the harm that could have inured to Mr Williams in having to -- in being subjected to a civil deposition prior to testifying for the United States, have you seen that in other cases before, where individuals have been kind of damaged in a civil deposition prior to testifying?

A It has happened Certainly, I've seen, I haven't personally been involved in a case where -- I take that back I have been involved in a case where someone was deposed civilly prior to being part of a criminal trial And it certainly makes it more difficult for whoever is putting that person on in the criminal trial, be it the prosecution or defense I have also seen cases where witnesses have avoided civil deposition at the request of the United States, as they did here, where I felt that that definitely inured to the benefit of the United States and of that defendant

Q Okay And just to wrap this part of this up, and I appreciate the Court's time today, with regard to the company, is it your experience that many times with these civil types of securities cases, class action cases, that members of the board and some of the executives, they, too, must retain counsel?

A It is frequently the case when there are allegations of misconduct by individuals that their company and those individuals will need separate counsel. That, of course, from the company's perspective, ratchets up the legal fees, because you've got potentially multiple law firms in a case like this that would have to be involved representing the different stakeholders

Q And so that is another benefit by stay that would go to the company by allowing it to delay the case indefinitely

A Benefit to the company, not to Mr Williams, but a benefit to the company not having to potentially pay for other law firms in addition to the one it hires

Q As the largest single shareholder of Star, when benefits flow to the company, what's your opinion as to how those benefits would flow to him as well?

A Anything that benefits the company certainly benefits its shareholders

Q Let me just touch on a couple last points with regard to the permanency of this You understand that this is a temporary stay pending resolution of the pending criminal case before Judge Spencer And I believe in the government's papers, they noted that they anticipated that this would be a delay of about eight months What has been your experience in handling these securities litigations of that delay and how that can in fact affect a case, perhaps permanently?

A Well, a couple of things First off, it is difficult to tell when these things are going to end I think every one that I have ever been involved in has lasted longer than anyone expected it to I'm not saying that's going to happen here or that I don't take the government at its word, but it always tends somehow to be longer than expected. And there's a lot of benefits that can occur in the interim. I've been in cases where the law has had a favorable turn or witnesses' recollections have failed. This is a relatively short delay So that, it seems to me, is unlikely here if it stays at eight months But I have had cases that were delayed several years, and that becomes a real challenge

Q In your previous testimony you talked about these risk factors and the fact that there is a delay, whether it is eight months or longer, those benefits that flow to your client as you did your methodology are permanent; is that correct?

A Yes I mean, not having to face defending the civil lawsuits with a criminal proceeding out there, that is a huge piece of uncertainty in the middle of your civil lawsuit, that's resolved, whether it is eight months or eight years before you start litigating it And that, to me, as I view these things, is a huge benefit to anyone defending that sort of lawsuit, taking out that level of uncertainty

Q Okay, thank you

MR. BROWNLEE: Your Honor, at this time we would ultimately ask that he be permitted, be classified as an expert in these fields and be permitted to testify We recognize the government may have some questions. We appreciate your time

THE COURT: Thank you very much Government?

CROSS-EXAMINATION

BY MR DRY:

Q Good afternoon, Mr White

A Good afternoon, Mr Dry

Q Mr White, I just want to confirm exactly what opinion you are testifying to And it sounded to me like your testimony is going to be limited to two primary benefits; is that accurate?

A Well, my testimony is going to be whatever Judge Spencer allows me to testify to So --

Q Let's do it this way Your proposed testimony

A As I understand what's at issue here today, yes

Q The first one is that whenever civil defendants, when there is ever a lawsuit, as a civil defendant you want delay because discovery can be very expensive, correct?

A No, I wouldn't say that. There are many times when civil defendants want an active trial schedule and want it resolved. This would not be one of those cases, in my opinion

Q In your opinion

A So with this type of case, yes, there is a benefit to delay.

Q And what kind of cases would someone want to go ahead and go through the discovery process?

A Oh, in a case, for example, where there are intellectual property rights at risk and there are potential corporate life and death type issues, many times the defendant will want to have that go forward as quickly as possible

Q Okay And on that point, I think you said that it was -- it could be very expensive. You said it could be very expensive, the discovery itself, correct?

A That could have been what I said It wouldn't surprise me if I said that But let me tell you, it would be very expensive

Q It would be.

A The discovery process in this case would be very expensive, yes

Q You put some figures out there I think you said three to five million dollars

A Yes That's my -- that's what I would budget the legal fees and expenses to be through summary judgment for defending these cases

Q Does that depend on jurisdiction?

A It can, sure In this jurisdiction, it moves quickly, so it tends to be a little bit less in that regard But it also tends to be very stacked. If it is moving quickly, you've got a lot of things going at once because you have class certification, you have experts you need for that, experts for trial, you have your fact witnesses, and all of that is going to be happening at the same time So it does matter based on jurisdiction, and a shorter schedule does make it less expensive, but the steps in the litigation are exactly the same almost no matter where it is filed.

Q When you are talking about this jurisdiction, you are basing that on your experience in litigating these kinds of matters in this jurisdiction?

A I've not litigated a securities class action in the Eastern District of Virginia I've litigated a lot of matters in the Eastern District of Virginia, so it is based on that experience and the experience of others who I've been partners with who have done securities class action cases in the Eastern District of Virginia

Q We will get to the methodology in a second, but let's go to the second primary benefit Walk me through this uncertainty opinion you want to give Just briefly tell me exactly what you mean

A It is the exact flipside of what you wanted in getting a stay What you wanted in getting a stay was not to have a deposition before he testifies, because that adds a level of uncertainty to your process I understand exactly why you would want that as a lawyer On the flipside, the civil defendant doesn't want to -- it wants to have certainty before that case goes forward So it is the same; it is the flipside of the same reason. What you want, and what I've found that boards of directors and executives want, is they want to eliminate as much of the uncertainty around litigation as they can, because it is a foreign thing for them. And if you can eliminate the uncertainty of what will ultimately happen in the criminal case, what will happen in the testimony that's given in that case by a critical defendant in the other case, if that happens before, it is much easier to manage what the process is

Q So you are saying that there is no instance that you can think of in which a company would want the criminal case to go after the civil case because they wouldn't have to have their CEO under oath in a federal criminal matter before the civil case was litigated?

A I'm not sure I'm following you there

Q It sounds to me like what you are saying is, look, they don't want certainty, right?

A They don't want uncertainty

Q They don't want uncertainty Sorry In this case, they would want the criminal matter to go first so that they don't have the uncertainty of what their CEO is going to say before he is civilly deposed

A I think I'm following you. If I am following you correctly, yes

Q Okay You can think of no other situations in which they would want the civil matter to be litigated before the criminal one

A I can't imagine a circumstance in which someone would want this civil matter to be litigated before this criminal matter

Q I'm asking generally, sir

A If I think about cases other than this, is there ever a circumstance in which you would want the civil case to go first? Certainly there would be If you have a different situation Let's say I am representing, and this has happened to me several times, I am representing an executive with a publicly traded company, and that person is under a criminal investigation, and there is a criminal indictment going on at the same time there is a civil securities class action going on, I as the criminal defendant would want the civil discovery to go forward not because I want my client deposed, because I don't want my client deposed What I want is all the other depositions and all the other discovery, that you rightly point out in your motion is broader than what you get in a criminal case. So yes, the answer to your question is yes, there are circumstances

But here, you don't have identity between the defendant in the criminal case and the defendant in the civil case The only time I can think that it would be an advantage is when you had identity between the criminal defendant and the civil defendant

Q Let me -- how many times have you been qualified to testify as an expert?

A Never

Q Okay From your experience as an attorney, are you aware of any attorney in a criminal case that has testified as an expert about the values of civil stays?

A Am I aware of any attorney in a criminal case -- I know I heard of someone being retained for that before, but I don't believe they testified So I don't know that that's happened.

Q Okay And you are not basing any of your opinions on any kind of scientific method, right?

A Well, I don't know, if you consider the practice of law scientific, then yes If you consider it not, then no

Q Are you basing your opinions on a scientific method, in other words, a real scientific method in which you collect data and then you analyze the data, it is subject to peer review studies, that kind of scientific method?

A It depends on what you consider the practice of law I've been doing it for 25 years The practice of law, there has been a lot of data collected over the last 25 years That all informs my opinion. Does that make it scientific? Maybe not in the sense you are talking about where there's columns of numbers But are there columns of numbers in what I consider the expense of it would be? Absolutely

Q Let's do it this way How many peer-reviewed articles have you written in which you have opined about the value of civil stay discoveries in criminal matters?

A I don't think there are peer-reviewed articles in our line of work, Mr Dry

Q Okay Now, so let's talk about your methodology a little bit You reviewed, I believe you said that you reviewed the civil complaints?

A Yes, sir

Q In those two cases

A Right

Q And can you tell me which two cases those are, what the names are?

A Well, I think they have consolidated case names which aren't terribly meaningful I would have to look at the captions to see But the one was filed, the securities class action was the one filed here in the Richmond Division, that I believe is assigned to Judge Gibney, and the other is the derivative action filed in the Alexandria Division assigned to Judge Trenga

Q Do you know any plaintiff's name after reviewing all this stuff?

A I don't remember the lead plaintiff's name Frankly, they are not the most relevant party to the lawsuit

Q You reviewed the government's motions to intervene and stay the discovery?

A I did.

Q You reviewed the courts's orders that stayed the discovery?

A Yes

Q And just because the government moves to intervene doesn't mean that the Court has to grant the intervention motion, right?

A Absolutely not, although they typically win. You have a lot better chance of winning if you are a defendant, a stay, if the government intervenes in my experience by far

Q Is your opinion about the value of the government's intervention or the value of the actual stay itself?

A I suppose it would be both If you want a stay, and as I said, I believe anyone would defending these cases, there would be value to the government helping you to get the stay that some people may not understand, but that is definitely the case in my experience by far That's a huge game changer for getting the stay And there is also value from having the stay for a period of time, whoever moves for it

Q Okay You were a prosecutor for seven years?

A Seven-and-a-half, yes

Q I believe in the pleadings, part of the basis for your opinion is experience as a prosecutor; is that right?

A Not particularly on this point, but on the other aspects of what I was going to be testifying to which have already been eliminated by the Court Yes

Q You were in the D.C U S Attorney's Office from 1992 through 1999?

A 1997

Q I'm sorry 1997 You weren't involved in any of these kinds of securities fraud, derivative actions, anything like that while you were a prosecutor in D C , right?

A Probably 80 percent of my time in Superior Court doing drugs and guns and that kind of cases, homicides

Q Fair enough. And in fact, you didn't do any white-collar prosecutions while you were in D C , right?

A Not a single one

Q Okay You were a prosecutor in EDVA from 1997 through 1999?

A Yes, sir

Q During that time, you prosecuted drug and gun cases almost exclusively, right?

A No, I did, I initially was in the Narcotics Section, and I certainly did, obviously, mostly drugs and guns and murders and RICO cases when I was there But at the end, I'm not sure for how long, six months or a year maybe, I was in the Major Crimes Section, which involved white-collar cases as well

Q Okay Exactly which white-collar cases?

A Well, some of them, most of them were grand jury matters that never became public, so I'm not actually at liberty to say

Q Okay So were any of those involving securities fraud?

A Yes, one of them did. It did not ultimately get charged.

Q It never got charged?

A No I never tried a white-collar case while I was with the government, if that's your question, Mr Dry I investigated some I never indicted one Some were indicted subsequently after I left

Q How much of your current work is criminal versus civil?

A It varies, obviously I would say at least 75 percent is criminal and related criminal matters, probably 80 percent -- related civil matters So most of the civil work I do is related to criminal investigations, so similar to this situation in some ways, but usually it is the case where the criminal defendant and civil defendant are the same entity or person

Q And when you say -- I apologize, I should have distinguished this When I say civil, I'm not talking SEC I'm talking pure civil

A Okay

Q So what percentage of your representation is pure civil, not regulatory, not SEC, pure civil?

A Sure I would say that runs between 25 and 4 percent depending on the time

Q Okay And in those matters, do you normally represent individuals or companies?

A Both. It is a mix

Q What percentage of your practice is representing individual versus companies?

A Half and half, I'd say

Q Okay

A By the way, on the pure civil stuff, it is almost all companies So the percentage that is purely civil not related to any criminal matter, that's not all companies But in the civil cases that are civil classes, for example, that are related to criminal investigations, many times that's individuals Is that helpful?

Q Okay When you are hired to represent individuals, how do those -- how are you typically hired? Does somebody call you in the phone book?

A That doesn't happen very often, but it happens some It typically isn't the best clients, but that's okay It does happen some

Q How do you typically get these retained?

A I actually wonder about that a fair amount It kind of keeps coming, usually from other people that you know who have been satisfied with your work, or from people who have seen you speak. I've been hired that way many times

People who have read things you have written.

Q Are you ever referred to by other attorneys?

A Definitely Other attorneys are a big part of my referral network, Both for institutions and for individuals

Q In fact, with individuals it is typical for one attorney or one law firm to represent the company, right?

A Sure

Q And then refer to other attorneys the individual executive clients

A Because of potential conflicts of interest, certainly that does happen I've gotten a number of cases that way, yes

Q And have you ever -- I'm sorry, I think you said you were retained in this matter Are you being paid for your testimony?

A Yes

Q And what is the hourly rate that you are charging?

A I would have to look back at the retainer I think it is $940 an hour, my standard hourly rate

Q And how much time have you put into this matter?

A I would have to look back and see, Mr Dry I'd hate to give you a figure that's wrong

Q Ballpark.

A Before today, six hours, seven hours maybe

Q Six or seven hours And that was comprised of reviewing the pleadings we have talked about earlier?

A And a few other pleadings, and obviously the indictment here and the pleadings regarding the potential expert testimony here

Q So when you say "a few other pleadings," any other pleadings related to what we are talking about today?

A The only ones that are potentially related is there was some PSLRA stay pleadings filed in the derivative action, which is a different kind of stay, of course, but there were some orders dealing with that in connection with the stay that you requested. So I reviewed those as well I also reviewed whatever answers were filed by the company and by Mr Williams, I believe

Q Did you review all the other complaints? There's five other lawsuits out there Did you review those?

A I did not I only reviewed the two consolidated, I believe they were characterized as consolidated complaints If there are other lawsuits out there, Mr Dry, I don't know anything about those

Q If there were other lawsuits and discovery was going forward on those, that would change the benefit analysis, right?

A It certainly could, yes

Q Because if there is discovery going on in other lawsuits, basically, the financial benefit of responding in discovery in this lawsuit diminishes, right?

A I don't know that it would diminish, because you would still have the same -- once this lawsuit gets going it is going to have its own required life If some of those other lawsuits resolved issues that are at issue in this lawsuit, that could make a difference

Q Let's talk about documentary discovery You said that's a huge expense, right? I think you testified to that

A Sure In a lawsuit like this, it can be very, very expensive

Q So if there is another lawsuit and they are producing documents in that lawsuit, it is going to be less expensive for the second lawsuit, right?

A You would certainly try to capitalize on that But again, it would depend on what the issues are in that lawsuit and whether you get the same scope of discovery, which is almost never the case But certainly that could minimize the second lawsuit

Q Have you ever been referred clients by the law firm Jones Day?

A By Jones Day? One I can think of

Q How about Holland & Knight?

A I compete with both of those firms very frequently

I think this is the first thing I've ever been referred by Holland & Knight, which really isn't a representation

Q How about Quinn Emanuel?

A I've never been referred anything by Quinn Emanuel

Q Let's talk a little bit about your representation of publicly traded companies When you are retained to represent publicly traded companies, who normally pays your bills?

A The company Always

Q The company always pays your bills

A In my experience, yes

Q And when you are hired to represent individuals, individual executives at publicly traded companies, who typically pays your bills?

A Typically, the company, although that can vary Sometimes, as a matter of fact, I've been involved with litigation with companies about whether they were required to advance legal fees in cases similar to this

Q But typically it is the company, right?

A Typically it is the company Not always

Q Well, what percentage?

A Of my cases where I represent an individual, is it paid for by the company?

Q Yes

MR. BROWNLEE: I object I think we are way outside the direct examination

THE COURT: Overruled.

THE WITNESS: Probably I've never thought about it, Mr Dry, so it is a bit of a guess, but I would say 75, 80 percent

BY MR. DRY:

Q Okay And when you are representing -- you have represented individuals that were executives of publicly traded companies in civil securities litigation; is that true or false?

A That's true, yes

Q Okay. And when you are representing those individuals, how much of the discovery cost do those individuals typically bear?

A You mean compared to the company itself?

Q Yes

A The company itself has the lion's share of that But it is not inexpensive to represent individuals as well, because if I can explain, the company has control typically of most of the documents if not all of them, so the company bears the lion's share of that But if you are representing an individual, you have to have access to all of the -- and you have to know all the documents that that individual is involved with that are relevant to the claims against that individual So it is not cheap to represent an individual, even if you are not the one producing the documents

Q I'm sorry, I asked the question poorly Okay, in a civil lawsuit, when you are producing discovery to the other side, that's expensive, right?

A Sure Yes

Q And if you are a publicly traded company, you are typically going to bear that cost, correct?

A Yes

Q The individual executives typically are not going to bear that cost

A That's right

Q Not directly

Q I'm sorry, not directly?

A If they are a large shareholder, indirectly, anything that affects the company affects them. But they are not directly taking that cost of most document discovery, I agree

Q Of most document discovery So when you are saying it is really expensive to represent an individual, you are not talking about the cost of discovery, right?

A Well, discovery includes depositions Yes, I am. By the way, you not only have to be at your client's deposition; you have to be at all of the depositions of people relevant to your client It can be very expensive to represent an individual, yes

Q But the individuals aren't paying your bills, right?

A Typically, no

Q Okay

A Typically, the company is

Q Let's talk about that a little bit Don't many companies have D&O policies, director and officer liability policies?

A Many do, yes Most do, as a matter of fact

Q In fact, 98 percent of all publicly traded companies have D&O policies, right?

A It should be a hundred I don't know what the other two percent is doing

Q Absolutely, I agree with you A D&O policy, I'm not an expert on this, so maybe you can educate me, a D&O policy basically provides that insurance so that litigation expenses are actually paid for by an insurance company rather than the company itself for the executives of the company; is that right?

A Well, in my experience, that varies That's the concept But typically, what we are talking about is fraud cases, and many times in fraud cases, if fraud allegations are proven, there is a clawback provision, even if they are advanced, that the insurance company can get those back. So there's substantial expense risk even if it is covered up front by the insurance company when you've got fraud allegations Moreover, in many of these cases, the potential liability far exceeds the director and officer liability limits

Q Understood But as a general matter, D&O policies provide coverage to companies for the payment of legal fees, including discovery, correct?

A As a general matter, that's one of the things they can cover I know in my experience, corporate executives and boards of directors, even in places where they feel they have sufficient D&O insurance, are very concerned about the expenses of these cases It is not anything close to a zero sum game Because they've got continuing relationships with their carriers and their loss experience is relevant to dealing with those people on a going forward basis

Q What's a typical D&O policy limit for a publicly traded company?

A Oh, that varies widely Mr Dry, I have to say, I'm not an expert on that

Q Are we talking a hundred thousand dollars?

A I would guess it is higher than that, but I'm not an expert in that I don't do insurance work.

Q You're not an expert in how D&O policies could have affected the payment of discovery costs in this case?

A I mean, I know how that works, but without knowing what the limits of the policy are, I really wouldn't be able to tell you much about it I know that even in -- I've represented publicly traded companies that have policies, that have liability policies in the hundreds of millions of dollars And I know even in those cases, they are very concerned about the expenses that are incurred in dealing with securities class actions like this I don't pretend to be an expert on D&O policies, but I do know in my experience that whether or not someone has a D&O policy, the cost of defending a lawsuit like this would be a very significant matter for an executive team and a Board of Directors.

Q Have you reviewed any publicly available documents that could have informed your judgment about whether Star Scientific was picking up the tab for these litigation costs?

A Have I reviewed their public filings or anything like that? No I only reviewed the complaint, obviously, which names them.

Q I'm handing the witness Government Exhibit 3 Do you recognize what this is, sir?

A Form 10-Q for Star Scientific. That's an SEC, Securities and Exchange Commission-filed quarterly document, the 10-Q.

Q I want to show you this because it goes to the point that you made a second ago that companies, you know, have insurance but they still remain concerned, right?

A Okay

Q Page 22 of the document, sir

A Sure Okay, I'm there

Q Second paragraph. Could you read, starting with, in the middle of it, about the fifth line, "We also expect to continue to incur legal expenses "

A Okay Do you want me to read that out loud?

Q I would

A "We also expect to continue to incur legal expenses and related cash demands in connection with the civil actions and other matters discussed under Part II-Legal Proceedings of this report, and such expenses and cash demands relating to those matters may be material "

Q Then the next line, sir After that one you can stop.

A "We expect that much of the cost related to the ongoing securities class action and derivative actions discussed in Part II of this report will be covered by insurance but cannot provide any assurances with respect to the outcome of the pending actions or action yet to arise, including that such claims will not exceed the limits of our insurance policies "

Q Doesn't that sound like Star Scientific is actually insured for the litigation discovery expenses at least; they are just saying outcome-wise, we can't say, we might lose a lot of money but we are not going to incur litigation costs?

A It sounds like something they are really very worried about; it is material to the company or they wouldn't put it in the 10-Q. As far as insurance, they say explicitly, I believe, that they believe that the ongoing costs will be covered by insurance Of course, the ongoing costs will be less during this time period because they are not actually defending them.

Q I'm glad you brought that up. Did you look at the docket in these two matters?

A I did

Q Okay In your opinion, I think you said that it was a stay of litigation Is it actually a stay of litigation or is it a stay of discovery?

A I would have to look at the actual language Because in one of the two, Mr Dry, there was, the one that had the PSLRA stay, there was a motion to dismiss that was already filed. That was litigated and even argued And then ultimately, the last order I saw was an order holding that in abeyance after argument, which I believe was in late February

Q So there's still things going on in the cases, correct?

A I don't think,there are right now It has been a while since I looked at the docket sheet But certainly not the level of activity that there would have been without the stay Nothing close

Q And the government didn't ask to stay the cases; it asked to stay the discovery, correct?

A Yes I think that's right

MR DRY: Just a moment, Your Honor, please.

THE COURT: Sure

(Counsel conferring with co-counsel)

BY MR. DRY:

Q I think you testified about the benefit to Mr Williams of delaying his deposition. That's a benefit to him, correct?

A I think it definitely is, yes

Q But you acknowledge that Mr Williams is going to testify in open court, right, in the criminal case?

A I guess that's your decision, Mr Dry But that's my understanding of what will happen, yes

Q Okay And so isn't it true that the plaintiffs themselves are going to be able to get the transcript of that and use that against Mr Williams at a subsequent deposition?

A Definitely

Q And so you are saying that despite all of that, in your expert opinion; that Mr Williams is benefitting from the deposition being delayed until after he testifies in this federal criminal case

A Definitely

Q And you can think of no situations in which Mr Williams would rather be deposed first and then testify later?

A I can't get inside his head I can't think of a reason, as a lawyer for people who face situations like he does now, that I would advise that course of action

Q Why?

A Because I think there is a much greater benefit to having a criminal case out of the way first

Q Why?

A Because you have the authority to prosecute him for perjury or for false statement if there are contradictions between the two, and if he goes to the civil discovery first, he runs the risk of upsetting the United States Attorney And upsetting the United States Attorney is a problem for someone who is a defendant

Q But he would risk being prosecuted for perjury if he lied at a subsequent deposition, right?

A He would. It has almost never happened, though

Q Okay So as a benefit, this is all about the timing of the deposition, right? Can you put a value on that?

A It is partly about the timing Let me explain that a little bit further In this situation, and this is a situation I deal with all the time, where you've got civil and criminal exposure, it is always the case that the thing you are most concerned about as a lawyer for either the company or the individual is the criminal exposure That's the primary thing you are concerned about So having that resolved first is always to the benefit, in my mind, of the defendant

Q But hasn't it already been resolved in the immunity agreement with the exception of the perjury?

A My understanding is that the immunity agreement for securities fraud did not occur until recently

Q Really? Would that have changed your opinion?

A If he was immune from securities fraud earlier?

Q Yes

A It would be a relevant factor My understanding was at the time the stay was in place, I saw a transactional immunity agreement, but it dealt only with Hobbs Act public corruption-type charges and that would not have covered other securities fraud allegations that are covered in the securities class action

Q I got you So does the stay have a continuing benefit to him other than the potential perjury thing? In other words, is the benefit only from the time of, you know, the stay to, when he was immunized for the securities fraud?

A Try that again I'm not sure I followed you.

Q It sounds to me like you are saying, "Hey, look, time is important here and there is this theoretical perjury thing, but if my client was really facing securities fraud investigation, I would want him to delay his deposition," right? That's basically what you said

A That's all true, yes

Q Okay And it sounds like you said that the timing of when he was immunized would matter

A It would matter potentially I mean, what I would want if I was representing a defendant in that situation is exactly what Mr Williams got, which is transactional immunity for securities fraud.

Q But my question is, now that he has had transactional immunity, does that mean that the benefits that you are talking about in this hypothetical, that those have been extinguished?

A Now I understand what you are saying I'm sorry I don't think so, although they are less

Q How much less?

A Well, they are less -- here is the extent to which they are less I still think in this circumstance that his primary focus should be on, I as his lawyer would be advising him, his primary focus is to keep you guys happy That's just the fact That's the primary driver in any case like this

Q When you were a prosecutor, what did that mean, sir?

A What did that mean when I was a prosecutor?

Q When you were a prosecutor, what did it mean for a witness to keep you happy?

A I didn't do these kind of cases But in any case, I think it means for that person to tell the truth, be available to them, be primarily focused on that and not distracted by other cases

Q But the number one thing is for them to tell the truth. That's how to keep prosecutors happy?

A That's how they kept me happy I can't talk for anybody else I don't suspect anyone has any different opinion I'm not casting aspersions at all, Mr Dry You have a stellar reputation. All I can talk about is my own perspective

Q Let's go on You talk about that Williams is -- you think he is the largest shareholder?

A That's what I have been told. Although my source of knowledge about that is the allegation in the civil complaint, and those are known to be incorrect at times

Q So let me just get this right Basically, your first opinion is that Mr Williams benefited from the government's intervention and request for the stay of discovery, right?

A Yes

Q And that part of that benefit was delaying discovery, correct?

A Yes

Q And that the reason that that's valuable is because discovery is very expensive

A Part of the reason, yes

Q But you have acknowledged that individuals don't typically pay the cost of the company's discovery obligation, right?

A The company typically does, yes

THE COURT: It is not helpful for you to summarize, Mr Dry I heard it all

MR. DRY: Very good, sir One moment, Your Honor

(Counsel conferring with co-counsel)

Two more minutes

THE COURT: Go ahead

BY MR. DRY:

Q You talked about the fraud allegations can vitiate a director and officer liability policy, correct?

A They can Obviously, it depends on the particular terms, but yes

Q That typically happens --

A By the way, it is not an allegation, it is a finding by a competent tribunal of fraud

Q Absolutely. So if there are parallel proceedings going on until somebody has been found either criminally guilty or been found to have committed fraud in a courtroom, the D&O policy is still on the hook, right?

A Typically, yes And that finding can be by agreement, Plea Agreement, or even the settlement agreement, but typically it is by an ultimate finding by a tribunal after a trial or something like that

MR DRY: Thank you very much

THE COURT: Go ahead. I had a couple questions so let me do those so you will have them.

BY THE COURT:

Q Now, what I am interested in, obviously, is your methodology getting toward quantification of benefit And so you gave this figure, three to five million. And I think I was with you, I'm understanding you, that based on your experience and how you approach these kinds of cases, understand, I've tried dozens of security litigations, so we can talk the same language, but what I am getting now is, this is what it would cost, right? You understand there is a difference between the cost and the benefit

A Yes

Q So I'm trying to understand your benefit analysis Because if we just look at, well, who is paying, maybe the company is paying, maybe the individual pays some, maybe the insurance pays some, all of that has some impact on benefit And similarly, you say whatever affects the company affects the stockholder That's obvious But, of course, the extent of your ownership or equity ownership indicates the extent of the benefit And here are, there's some question about that as well So I want to understand how these things are playing out in your mind as you come to this figure Because the benefit of sequence of testimony, that's a different thing But this business with quantifying a value of a benefit to Mr Williams, I think, is possible I just want to understand how these things are playing out in your head.

A I think, Your Honor, that it is possible to quantify it, but frankly, it is more of a common sense analysis Let me explain what I mean by that You could quantify it by the following methodology If you took that it was going to be three to five million to get through summary judgment and another three to five million to get through trial, and that those costs are delayed, you can do a very simple time value of money analysis on that $10 million or

$6 million being expended nine months later or ten months later as opposed to ten months earlier There is a time value to money That would be a simple mathematical way to give a quantitative benefit to the company

In my experience, though, companies don't look at this issue exactly that way They are certainly a aware of the time value of money, but the value of the stay is far greater than that time value of money

Q But you understand that now we get into something that is very difficult to reduce to expert testimony The companies feel a way about something and each company has a different view of it, I would imagine So I understand what you are saying, but you make it tougher

A Well, I could tell you that there is some mathematical formula you can apply to this to get the right answer and number, but I frankly think that that would be -- that would do some violence to the way I think people actually think about this

Q But what you are saying, and I accept this, is it has value, and I accept this, there is value, significant value, you can't say how much.

A Right I wouldn't put it a dollar figure on it But that's not uncommon, at least in my experience in experts who have testified in cases where it is not, even whether they are talking about value where it is not a dollar figure necessarily that's attributed to it If you think about doctors who testify, you know, there are doctors testify as experts all the time And their opinion is based on their experience, and it is not a quantifiable analysis, necessarily It is there is some aspects which are purely scientific, some aspects which have some art involved, and that happens with some frequency

So I'd like to tell the Court this is worth worth $572,342 46 But that's kind of ridiculous and that's really not the way people think about it There are certain things that have value They may have value in ways that an ordinary jury person wouldn't understand I think I could help explain that, whether you find it helpful or not I'm not really a stakeholder here, frankly, so I don't have a real interest one way or the other about whether the testimony is allowed. But that's what I think could be helpful, is explaining the value of those things, even though I don't think you can put a dollar figure on what it was worth the day that the government decided to intervene Because part of that analysis as well, Your Honor, is how much more likely does it make it that the case will be stayed if the government intervenes In my experience, a great deal more likely But as you know, assessing the value of a potential judgment by a judge on a motion that's going to be filed is a fool's errand to try to get that down to a number But it certainly has value

THE COURT: All right Go ahead.

MR. BROWNLEE: We have nothing further

THE COURT: All right

MR. BROWNLEE: Thank you, Your Honor

THE COURT: Thank you, sir You may stand down

(Witness stood aside)

Okay, I'll hear brief argument

MR BROWNLEE: Very briefly, Your Honor We believe that Mr White should be permitted to testify on this narrow point that the Court has addressed in its order Mr White is clearly an expert in this field going back to his academic record, professional record, both in government and out

With regard to the colloquy here today between the Court and the witness and others, I think it is clear that this was a benefit to this witness who will testify for the government It is a benefit that's not apparent on any document on its face, that he got a benefit It is a significant benefit I believe that is the evidence and the testimony here today And that really goes to the weight, but not in our view to its admissibility I think government counsel in their examination today, cross-examination today, brought out points, but those points in our view only go to the weight, to the significance of the value, but we believe it is important, Your Honor, particularly in a case like this, where the benefits to this witness are not so clear There is no Plea Agreement, there is no substantial assistance motion, none of the things that this Court sees every day here None of that is going to be here So we believe on this one particular issue, that this expert is important to be able to let the jury and inform the jury and help guide them as to the benefits that this witness has received from the government's action, and they can make a judgment from there as to his credibility Thank you very much, Your Honor

THE COURT: All right, thank you Government?

MR. DRY: Your Honor, this testimony should not be admitted. First of all, the inferential links that Mr White is reaching to in order to justify some finding that in his opinion Mr Williams got a benefit is a long, long strand that can be broken in four different places from what I can tell But that does affect the reliability of his opinion, sir And the mere fact that he can get up there and say, "Well, in my opinion, my method is, I thought about this, and I think if I was advising Mr Williams, I think that would be a good thing for him," that doesn't make this testimony admissible

They can cross-examine Mr Williams about it If the Court does admit this testimony, what's going to happen is we are going to be involved in a sideshow where the government is going to have to put on evidence about the insurance that the company has, then we are going to have to talk about D&O policies At the end of the day, it is going to be a lot about nothing So for those reasons, the government asks the Court to exclude it

THE COURT: All right Thank you all very much I will briefly take this under advisement I'll try to let you know something very, very quickly Thank you again.

(Proceedings adjourned at 3:46 p.m.)

CERTIFICATE OF REPORTER

I, Jeffrey B Kull, Official Reporter, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter

__________/s/________________

Jeffrey B. Kull,
Official Federal Reporter

__________/s/________________

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

July 15, 2014
Richmond, Virginia
9:00 a m.

MOTIONS and DAUBERT HEARING - KOSOWSKY

BEFORE: HONORABLE JAMES R SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
DAVID V HARBACH, II, ESQ.
JESSICA D. ABER, ESQ
RYAN S FAULCONER, ESQ
Counsel for Government;

JOHN L. BROWNLEE, ESQ
HENRY W ASBILL, ESQ
DANIEL I SMALL, ESQ.

Counsel for Robert F McDonnell;

WILLIAM A. BURCK, ESQ
JAIME WISEGARVER, ESQ

Counsel for Maureen G McDonnell

JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Henry Asbill, and Daniel Small Maureen G McDonnell is represented by William Burck and Jaime Wisegarver Are counsel ready to proceed?

MR DRY: The United States is ready

MR ASBILL: Defense is ready

MR BURCK: Defense is ready

THE COURT: All right Let's hear from the government first on this government's motion to exclude irrelevant and misleading evidence of materiality of false statements as charged in Counts Twelve and Thirteen

MR. FAULCONER: Thank you, Your Honor Ryan Faulconer for the United States Your Honor, this evidence should be excluded at trial for the same reason that Your Honor already excluded the evidence, the expert opinion testimony that was proposed from Allen Kosowsky on this same subject Testimony from lenders about the materiality of the false statements that are alleged in this case is no more relevant and no less misleading than the evidence from an expert opining that those false statements were not material would have been

The purpose of 1014 is to focus on the defendants' intent, on whether or not the defendant had the intent of influencing the bank Your Honor, the exception that the defense proposes to this Court's prior rulings that materiality evidence is irrelevant would swallow the rule

Essentially, what would happen if you have the defense's rule here, Your Honor, is that evidence of materiality would be allowed in any case If a single lender's opinion as to materiality is circumstantial evidence of what a defendant thinks, regardless of whether or not a defendant has ever had a conversation with that lender, regardless of whether or not a defendant was ever made aware of that opinion before making the false statement, then in every single 1014 case that a court has, that evidence from a lender that "I don't think this is material, I don't think this would have made a difference," that would come in in every single case And what's important is that that's not just a rule that would help the government in this case, it is a rule that would most often hurt defendants because it would mean in a 1014 case, what you would have is the government being able to say, "Look at all the losses that were caused, look how material this was," on a statement where that's not relevant, where that's not one of the elements So some of the cases out there talk about it is not relevant for the government to put that evidence in , And it is no more relevant for the defense to put it in, unless there is a tie to the defendants' state of mind

Your Honor, there has been a little bit of discussion in the briefing about PHILLIPS, the Seventh Circuit case One thing to point out there is that PHILLIPS says it can be relevant in the circumstances of that case But ELLIOTT, this Court's own opinion in ELLIOTT, said that materiality is not relevant So you have one case out there saying it is relevant, another case out there saying it is not relevant Neither one means, ELLIOTT didn't mean, Your Honor, that it is never relevant And PHILLIPS doesn't mean that it is always relevant But the way you bring those two cases together and bring all the cases together here is to focus on the defendants' state of mind and whether or not the evidence of materiality was known to the defendant at the time that the alleged false statement was made And at the end of the day, that's really where 403 comes in That's where this motion ultimately stops, even if there is some argument that a lender's abstract opinion as to materiality somehow bears on the defendants' state of mind Because at the point at which you start being able to call witness after witness after witness saying, "Yes, even though the defendant was told that they had to be truthful, even though the defendant was told that this would influence us, we didn't really mean it, and even though we didn't say anything like that, we are going to opine now after the fact that it really was all okay at the time " That's classic 403 evidence, and just as misleading from a lender as it would have been from Mr Kosowsky Thank you, Your Honor

THE COURT: Thank you Defendant?

MR. ASBILL: Good morning, Your Honor Henry Asbill for the defense Briefly, Your Honor, I think just one simple point I want to make about this motion Objective materiality is inferential proof of my client's subjective intent I think that's very obvious here Why would my client knowingly submit something on a financial application that he thought -- I mean, if he thought that the particular item is immaterial both to himself and the bank, then it inferentially proves his lack of intent with respect to trying to deceive the bank. The government argues, "Well, it is not an element of the offense " Of course it is not an element of the offense We don't intend to argue that materiality is an element of the offense Motive is not an element of the offense in a murder case That doesn't make motive irrelevant to the defense or offense of the case That's the point here

I know that the government thinks that this is going to confuse the jury With all due respect to the folks in this courtroom, in my experience, the jury collectively if not individually is the smartest guy in the room. And I don't think they are going to be confused at all, particularly given the instructions that you are going to give them on this issue Nor do we intend to call numerous witnesses about this issue And I appreciate Mr Faulconer's concern for future defendants whose defense lawyers, I'm sure, will do their job and represent their clients as they see fit without his help But this is a very simple proposition here: that the materiality or lack thereof of the items that they are arguing are false on the applications, in context, help defend our case And that's why we want to get this evidence in. Thank you, sir

THE COURT: All right Let's move on to the defense motion to exclude evidence relating to the statements of economic interest

MR. BROWNLEE: Good morning, Your Honor May it please the Court, John Brownlee on behalf of Mr McDonnell

Your Honor, in the papers the government has indicated that it plans to use how Mr McDonnell and members of his staff prepared and submitted his Virginia Statement of Economic Interest form to show that he was somehow deceptive or he was attempting to conceal his relationship with Mr Williams In those same papers, they also claim that they do not intend to show or even mention that he violated Virginia law with regard to those same very disclosures We believe that the two positions cannot live at once in the same case We believe they are inconsistent, they cannot be reconciled, and we ask that any references or evidence with regard to the Statement of Economic Interest be excluded.

Our primary reason, Your Honor, is that we don't believe it is relevant; and if it is permitted, we believe it would not become a mini-trial, it would become the trial in this case As the Court will soon learn, the government's evidence with regard to an agreement of the corruption that's the true allegation in the government's case between Mr McDonnell and Mr Williams simply does not exist There is no e-mail, letter, recording, anything So what we have, and we anticipate the evidence will be, is Mr Williams himself will take to the stand and testify there was some agreement

The problem with that, as the Court well knows, he has received two immunity agreements and his believability will be severely challenged So I think what the government is now trying to do is to come in and say, "Well, if it wasn't a corrupt relationship, then why was he trying to hide it?" The way they intend to prove that he was trying to hide it was that he didn't fill out and he and his staff didn't fill out this Statement of Economic Interest form properly So for instance, they will allege that gifts that his wife received were not disclosed Well, the form makes clear that family members, you don't have to disclose those I will note that there was some confusion within the Governor's Office about whether or not Ms McDonnell had to disclose that There were training sessions, there were back and forths So it is not something that is very clear; and in fact, the whole staff found it to be confusing

There are also allegations of golf games that were not disclosed. They are going to claim that he didn't disclose some golf matches because he was trying to hide the relationship, despite the fact that he was publicly playing, his name was on receipts The fact of the form where you don't have to disclose gifts from personal friends, as they say, for reasons clearly unrelated to public position, that is not defined anywhere And since the government hasn't noticed an expert, I just don't know where that evidence is going to come to show that he had an obligation to disclose, which they must show in order to try to prove their concealment case

The same with loans to companies Again, Mr Williams loaned it to a company that former Governor McDonnell owned with his younger sister In order to make that relevant, they are going to have to establish that he had an obligation to report it It went to a company, the monies were used by the company And again, we are going to have to now, with a little bit of burden shifting, the burden will be now on the defendant to show that he did in fact comply with these Virginia rules

Lastly, with regard to the stock, this is a form, I don't know how familiar the Court is with the Statement of Economic Interest, it is a form that was created by politicians for politicians And in this form, if you buy a stock in January and sell it before the end of the year, you don't have to disclose it Now, the federal form that I am familiar with, the Court is and most of the people in the room here are, there is a section for transactions But in the Virginia form you don't have to. So the government is going to try to prove concealment with legally following the rules of this particular form

So there is also a culture around this form, that if this were to be injected in the trial, we think we are entitled to show and how it was formed The former Governor was one, and he had to fill out a form. But he had an entire staff that assisted him. And how things got on the form, why they got on the form, why they may not have gotten on the form, will become relevant if in fact they are trying to use this form to show concealment

Then finally, Your Honor, is enforcement This is a Virginia law This is a Virginia form. And there is one person who is actually charged with enforcing that statute, and that's the Commonwealth's Attorney here for the City of Richmond. And the manner in which he views the form and the law, we think, could potentially become relevant as to how the jury could evaluate concealment What I mean by that is, recently, the former Attorney General of Virginia was investigated by the Commonwealth's Attorney because he did not put gifts and stock from Mr Williams' company on his form. So Mr Cuccinelli took gifts from Mr Williams, he also owned Mr Williams' stock, and he didn't put it on his form. So he was investigated by the Commonwealth's Attorney And I want to quote from the Commonwealth's Attorney's opinion just very briefly, Your Honor, because he said this He said: "Although one cannot help but question whether repeated omissions of gifts from Williams are coincidence or a pattern reflecting intent to conceal, the disclosure of several other gifts and benefits from Williams in his original statements suggest that the Attorney General was not attempting to conceal the relationship " End quote

So Mr McDonnell put many things on his forms and disclosures from Mr Williams and his companies So under that standard of review for concealment by the state official who actually enforces it, we believe that could potentially be relevant for the jury to try to assess whether or not Mr McDonnell was concealing it.

With all those factors, Your Honor, we just believe that would become a sideshow to a federal corruption If they want to try to prove he tried to conceal the relationship, they can do that with evidence. They can talk with called witnesses But we believe getting into this form would be inappropriate. Thank you so much, Your Honor

THE COURT: Thank you Government?

MR HARBACH: Thank you, Your Honor Good morning, Your Honor David Harbach for the government Judge, I think I'd like to start with the relevance question. And I'm not going to belabor this too much, because I think the government's theory of admissibility of this evidence is quite clear from our papers: the consciousness of guilt evidence that appears, and the necessity of the government's having to prove a scheme to defraud in connection with the honest services charges

I will as a brief aside say that to the extent that Mr Brownlee suggested otherwise, the government's briefing is crystal clear on the four specific reasons why we think the SOEI evidence is relevant here And among them is not that Ms McDonnell accepted gifts that didn't show up on the form. Among the reasons we articulated for the Court, the only one that involves Ms McDonnell is her deliberate unloading of Star stock on dates flanking the dates that the SOEIs were due And the reason that that's important is because the SOEI is quite clear that to the extent that immediate family members own securities valued at in excess of $10,000, they must be reported

So as we explained in our brief, this evidence is being offered to show consciousness of guilt Mr Brownlee talked about concealment evidence like it was some far-flung theory that was really unusual Well, it is not What is unusual is the corruption case where there is a recording between the briber and the bribe recipient articulating the quid pro quo That's a rare corruption case It is not unusual at all for the government to be in the position of using concealment evidence to prove either a public official or a bribe payer's state of mind. That's true in a corruption case, that's true in any criminal case where intent matters

And so that's the first reason that it is relevant

The second reason it is relevant, and perhaps even more importantly it is elemental here: The government has to prove a scheme to defraud in connection with the honest services charges Connected with that is, among the elements we are going to have to prove is there was an intent to defraud. So the defendants' state of mind is plainly in issue as an element of the case

Now, in their reply, the defense has attacked the government several times for saying, "Well, the defendants are accused of quid pro quo bribery, exchanging official acts for things of value. They haven't been accused of failing to disclose things on their SOEI " And that's true, but only as far as it goes That argument falls apart when you remember what I just said a moment ago: that honest services fraud requires proof of a scheme to defraud More precisely, not only does it require the government to prove an intent to defraud; it also requires the government to prove a material misrepresentation as part of the scheme And so the misrepresentations that are involved on the form here are plainly relevant for that purpose, and indeed, the indictment alleges all of the conduct that's at issue on this motion as part of the scheme to defraud

The Court has already ruled that, in the context of the motion to strike surplusage, that Ms McDonnell's stock swaps are probative of concealment and potentially intent to defraud As we point out in our papers, so much more so are the things that Mr McDonnell received and failed to disclose, namely, the golf and the gift for the daughter's wedding So that's all I'm going to say about our theory of relevance unless Your Honor has any questions about that

Okay, so what's left is the 403 analysis And again, here, we have seen it in the briefs and also we heard it this morning from Mr Brownlee They have hammered us for being allegedly inconsistent They attack us for saying on the one hand that we don't intend to argue that Mr McDonnell violated Virginia ethics laws; but on the other hand, that we are saying we intend to prove that he deliberately omitted stuff from the form. It is true, of course, that the government will have to show that Mr McDonnell had a duty to disclose But in our view, the form is self-contained for that In other words, the form plus testimony from a staffer or two of the naked fact that he was required to file it annually is all that will be necessary to establish those legal requirements There will be no discussion -- Mr Dry will yank my chain if I misstate this -- but I don't think there's going to be any discussion from any witness explicitly about Virginia ethics laws The government doesn't intend to introduce any ethical code or offer any expert testimony about the punishment that follows under state law for violating such an ethical code And all those things were present in the TERRY case they rely on so much None of that is present here This is not TERRY, not even close

In their opening brief, Mr McDonnell expressed concern about the government, quoting from Page 5, the government's argument that he deliberately violated Virginia ethics laws Well, in our response we made it quite clear that we have no intention of doing that In their brief and from Mr Brownlee this morning is basically, "Well, of course they do How can they not argue that?" The answer is simple We are in 403 land here And assessing whether evidence is unfairly prejudicial in the first instance, or whether the unfair prejudice if any associated with that evidence, how that balances with respect to probative value, in that calculus, how something is presented to the jury matters There is a big difference between arguing on the one hand that something should have been disclosed or that a transaction was done in a certain way to avoid having to report it -- with, by the way, maybe a limiting instruction explaining the reason why the government is offering the evidence, and if they wanted it, the reasons that the jury should be prohibited from considering that evidence -- there is a big difference between that on the one hand and on the other hand a government lawyer trumpeting to the jury that the Governor of Virginia violated the state's ethics laws We are nowhere near Box 2 We don't intend to do that. The question again is whether the evidence offered here is unfairly prejudicial such that the jurors are at risk of behaving irrationally or based on emotion instead of the facts and the instructions from Your Honor This just isn't the type of evidence that poses that risk, especially in light of what we just said.

So when the risk of that unfair prejudice is so minimal and so slight in light of how the government intends to present this evidence, when it is compared to the probative value of what really is as close to paradigmatic evidence of consciousness of guilt as you can get, not to mention what I said earlier, that it is an elemental requirement, the balancing here isn't even close The 403 probative value, unfair prejudice balance, easily tips in favor of admission

One last mention of 403, which was mentioned in the papers and here this morning, is this jury confusion argument The government would respectfully submit, Your

Honor, that this argument is just meritless As Your Honor has already recognized, this form is not complicated, and does not require an expert to decipher The assessment of whether the instructions on the form required Mr McDonnell to disclose a $15,000 check from Mr Williams, or the golf from Mr Williams, are not hard. As I said earlier, it is also not hard to see that the form says that "If a member of your immediate family holds stock with a value in excess of ten grand, you should put it down." Nor is it difficult to understand the reason that the government is offering the evidence; that he is not disclosing his dealings with Mr Williams is evidence of his intent to defraud or consciousness of guilt It is not complicated It is not confusing And that element of 403 provides no basis for its exclusion

We didn't hear a lot about it this morning in argument, but if it is all right with Your Honor I'd like to briefly mention the 404(b) evidence because it is part of the same papers Is that all right?

THE COURT: All right

MR HARBACH: This evidence is mainline 404(b) evidence And when faced with that, when faced with the fact that this evidence is classic evidence of intent and absence of mistake, Mr McDonnell makes a big deal in his reply that he is not charged with failure to disclose

True But like Mr Asbill said not ten minutes ago, the fact that it is not an element doesn't mean that it is not relevant For the reasons that have already been discussed, it doesn't make it any less relevant or less meaningful to the theory As the Fourth Circuit made clear in QUEEN, it need not be elemental They said it must be relevant to an issue, such as an element of the offense But in any event, here again the government is going to be required to prove a material misrepresentation in connection with the honest services fraud scheme And so intent to defraud is squarely in issue And therefore, absence of mistake, intent, and lack of accident, in the words of the rule, in Mr McDonnell's omitting gifts from Jonnie Williams is just as squarely in issue

And so what makes the evidence about the Kiawah Island trip especially so compelling, I think, would be denominated the reliability factor in QUEEN Here, as we laid out in our papers, the evidence will show that Mr McDonnell's own handwriting on these documents makes it crystal clear what his intent was in striking the Goodwin trip to Kiawah. There is no ambiguity about it He struck it as a gift from a personal friend when the evidence in the government's view will plainly show that it wasn't And as pointed out in our brief, that's exactly what happened with Jonnie Williams In QUEEN, the

Fourth Circuit said, quote, "The more similar a prior act is to the act being proved, the more relevant it becomes " It is the identical,calculus: Do I need to report? Can I get away with not reporting this because X is a personal friend? It was true with the Goodwin trip, it could be very well true with respect to the Jonnie Williams gifts So it illustrates how powerfully relevant the evidence is here

Finally on the 404(b) side, unfair prejudice, again, this is not the type of evidence that risks of jury becoming emotionally inflamed. True, it is an expensive trip. True, it is a luxury trip. As I don't need to remind the Court, there's going to be plenty of evidence of expensive trips and vacations from Mr Williams that will surely be a part of the record. So the notion that because the vacation from Mr Goodwin was expensive or extravagant is unfairly prejudicial somehow should not carry a lot of weight in context

Finally, of course, that's not the import of how the government intends to argue it The argument is not, "Folks, doesn't this show you how greedy Mr McDonnell was?" Not at all Rather, it is, "Doesn't this show you how Mr McDonnell knew exactly what he was doing when he omitted Mr Williams' gifts?" That's why we are offering it and that's why it is admissible It is classic 404(b)

That's all I have, Your Honor, unless you have any questions

THE COURT: Thank you very much Rebuttal?

MR. BROWNLEE: Thank you, Your Honor Just very briefly I think Mr Harbach's description here explains exactly why our concerns are that they are now going to take this federal corruption trial and turn it into a trial about whether or not Mr McDonnell filled out his statements right It is not concealment, it is not concealment if he had no obligation to report it So the government wants to come up here and say, "This is concealment and that's concealment and this should have been on the form." Well, again, it is not concealment if it didn't need to be on the form. And our view is, if that's their position, we necessarily have to get all into the form and try to decide what's appropriate, what should have been on there and what should not have been on there

On the 404(b), this is, by the government's own acknowledgement, a non-quid pro quo arrangement It was a gift that was legal to accept in Virginia The former Governor made a judgment about whether it should be on his form. In order for them to be able to tie that, we now have to get into should it have been on the form. And the question is, was this gentleman a personal friend. Under Virginia law, as I understand it, again, there is no definition of this, Your Honor It is in the eye of the beholder The way that the politicians in the General Assembly wrote this, it is literally in their discretion. And there has been no enforcement of this statute on this point ever And so now the federal government is going to come in here and try to convince the jury about who people's personal friends are We just think those issues are completely collateral and irrelevant to whether or not this former Governor corrupted his office in exchange for gifts and loans from Mr Williams

At the end of the day, Your Honor, we just believe that to bring this in would require us to -- and Mr Harbach talked about a couple of staffers can talk about it Well, we don't know if these people are experts We have no idea what their opinion is They have noticed no expert to come in here and say, "Here is the law and here is how it is done " We are really on our own to try to establish what are the standards and why in fact the former Governor followed them. With that we ask it be excluded. Thank you very much

THE COURT: All right, thank you Let's move now to the DAUBERT hearing

MR. SMALL: Good morning, Your Honor Dan Small for the defense With the Court's permission, we would call Allen Kosowsky to the stand.

ALLEN KOSOWSKY,

called as a witness by and on behalf of the defendants having been first duly sworn by the Clerk, was examined and testified as follows:

MR. SMALL: Your Honor, with the Court's indulgence, may I place before the witness three documents, two of which are in the record and the other I can provide to counsel The two that are in the record are the two complaints that were stayed. If I could place those in front of the witness

THE COURT: Sure.

MR. SMALL: The other is the Star Scientific Form 10-Q publicly filed for the period ending March 31st, 2014 I can provide the government's counsel with a copy as well And we will come back to these

And Your Honor, there are two DAUBERT issues for this witness I'm going to try to take them briefly one at a time, if that's all right with the Court

THE COURT: That's fine

DIRECT EXAMINATION

BY MR SMALL:

Q Sir, would you give us a little bit of your background? What's your educational background?

A I have a Bachelor of Science in Business Administration, granted in June of 1969, from American

International College in Springfield, Massachusetts, with a major in accounting and a minor in finance I have taken some courses at the University of Connecticut toward an MBA, which I did not complete I was admitted into the Wharton Fellows Program, part of the University of Pennsylvania Wharton School of Business, and I completed the Wharton Fellows Program in Executive Education some years ago I am a licensed Certified Public Accountant in Connecticut and have been continuously since July of 1971

MR. SMALL: Your Honor, Mr Kosowsky's resume has been filed with the Court I do have an extra courtesy copy if the Court would like one, if that would be convenient I'll provide one to counsel as well

(Documents proffered to Court and counsel)

BY MR SMALL:

Q Sir, how are you employed?

A I presently own my own CPA firm, J Allen Kosowsky CPA, PC

Q What do you do in that capacity?

A My firm, for the last number of years, has focused on forensic accounting, tax matters, valuation matters, and commercial and other litigation as an expert witness

Q Just briefly, when you say forensic accounting, what do you mean by that?

A Forensic accounting as it has come to be known over the years is basically becoming an investigatory accountant In my particular case, most of my work has been in assisting counsel generally in what is known as a Kovel relationship, K-O-V-E-L for the court reporter, where I would be retained by counsel to assist them when they are defending someone who might be accused of a financial crime

Q I'm going to come back to some of your other board experience when we get to the second issue. But in your resume on Page 3, there are a number of accreditations and certifications and licenses I'm not going to ask you about all of them. But if I could just touch on two First of all, there is a reference here to Personal Financial Specialist with the AICPA. First of all, what is the AICPA?

A AICPA is the acronym for the American Institute of Certified Public Accountants, the national organization that CPAs belong to.

Q And what is a Personal Financial Specialist?

A Personal Financial Specialist is a credential offered by the AICPA to those of us who pursue that particular practice segment

Q And what is the purpose of that or the nature of that credential?

A The nature of that credential is to give to the public hopefully the confidence that the individual assisting them in a consulting capacity has gone through a requisite credentialing process with the governing organization of the AICPA, and that pays attention to the current developments by way of continuing education Is otherwise offering services of a specialist nature

Q What does a Personal Financial Specialist focus on?

A In general terms in my experience over the years, it has been to assist an individual or a couple in evaluating their financial circumstances, or narrowly in connection with estate planning That's usually one of the first areas that folks look at But more importantly in this day and age, to also look at things like retirement planning, planning for disability in the case of perhaps a spouse or a child that might have a special need, and to take the totality of the individual's or couple's financial affairs and put them together in a plan

Q Okay And as part of that, do you look at issues of soundness?

A Of course

Q What do we mean when we say, in your world, when you say soundness?

A Soundness is the equivalent of looking at the net worth of an individual or a couple It is a financial net worth, hopefully positive

Q How do you look at that? Just briefly, what is the methodology for examining that?

A The methodology for that is very specific It is look at each and every aspect of their assets, checking accounts, savings accounts, CD's, securities owned, retirement assets, however they may be owned or vested, real estate owned and its appraised value, other personal property that might be something that would need to be appraised at fair market value The idea being to go through each and every asset category of a material nature to determine what the total assets might be at a fair market value. And then on the other side of the balance sheet, look at the liabilities and determine the difference, what is the difference between the assets and liabilities, resulting in hopefully a net worth

Q I'm going to skip over a number of these other certifications, but just ask you briefly about one other It says Certified Valuation Analyst What is a Certified Valuation Analyst?

A A Certified Valuation Analyst, the acronym, Certified Valuation Analyst, CVA, is a credential that's offered by the National Association of Certified Valuation Analysts

Q And what is the point of that? First of all, how do you achieve that certification? What's that process?

A The process for achieving that certification is to go through a training process At the time that I did it, it was an in-person 40-hour one-week seminar, intensive, and thereafter completing an examination offering references and experience in the area of business valuation

Q What sort of work does a Certified Valuation Analyst do?

A Well, as it has come to develop over the years, the Certified Valuation Analyst can be called upon in a variety of settings Ordinarily, once again, called upon to, for example, value a privately-held corporation and interest in it for, usually for estate and gift tax purposes or other financial planning purposes But as it has developed, it is also to value intangible property, patents, know-how, a variety of other trademarks, for example, that might be on the balance sheet of a company with very little value in a historical cost setting, but otherwise something that might be worth a lot more money So it would be valuing those sorts of intangible assets In addition, a CVA, in this capacity that I have served in, would be to value, for example, the good will that is on the balance sheet of a publicly traded company The accounting rules require that good will be evaluated each and every year to see if it is impaired. And that requires the valuation of that particular business unit to determine whether the stated book value, good will amount, should be left on the books or written off

Q Let me, Mr Kosowsky, skip ahead a little more and ask you, have you been qualified to testify as an expert in state or federal court before?

A Yes, I have

Q Can you give us a just rough estimate of how many times that had occurred?

A Oh, goodness, Attorney Small, I've been doing this a very long time I struggle with that It is more than 25 times, I'm sure.

Q All right And just so we are clear, you understand that I work for the law firm of Holland & Knight Have you ever been retained by the Holland & Knight law firm before?

A No

Q Mr Asbill and others work for the law firm of Jones Day Have you ever been retained by the law firm of Jones Day before?

A No, I have not

Q And I guess it came up in the last DAUBERT hearing, so would you tell us your billable rate for this case, sir?

A My general billable rate is $575 an hour I have offered a courtesy to Governor McDonnell and I believe it is approximately $400 an hour and a discount of 20 percent on any of my staff

Q Why did you render that discount?

A Well, when I looked at Governor McDonnell's long public service, I felt that, you know, as a professional matter, it was something that I could offer.

Q Okay Now, in addition to the certifications and CPA and other training, are there other accepted standards or basic documents for valuating a business or an individual?

A Yes, sir

Q And are you familiar with IRS Revenue Ruling 59-60?

A Yes, I am.

Q What is 59-60?

A Revenue Ruling 59-60, Your Honor, is the bedrock ruling offered by the Internal Revenue Service in 1959 putting forth methodology for valuing business interests That's the beginning of the valuation standard, if you will It has been adopted in many, many tribunals in cases, including Tax Court, as you might expect And has served as the gold standard, if you will, for how to go about approaching a valuation of a business or a business interest It has been extended, you know, just as the economy has changed, to include things like intangible assets and the like over time

Q And although 59-60 is specifically focused on businesses, are those same methodologies used in valuing an individual?

A Yes And you would find, I believe, that if you looked at the NACVA and probably the American Institute standards, they embody the many categories that are listed in Revenue Ruling 59-60 as things that one as an evaluator would look at in arriving at a valuation conclusion

Q And by NACVA standards, are you referring to the professional standards of the National Association of Certified Valuators and Analysts?

A Yes

Q And is there also an IRS procedural manual that goes along or actually follows up on 59-60 on business valuation?

A Yes

MR. SMALL: Your Honor, the Internal Revenue Manual, which is what the agents would use, offers its own cookbook, if you will, of the methodologies to be employed in valuing business interests, which if you compare that to Revenue Ruling 59-60, you would see that they are quite similar

BY MR. SMALL:

Q As a general matter, have you followed those methodologies in your work in this case?

A Yes I've been guided by them, yes

Q And again, just very briefly, am I correct that there are essentially three different approaches to viewing soundness?

A Well, speaking of soundness, I think you are talking about valuation?

Q Yes.

A Well, there are three general approaches to valuing a business There is the asset approach, which, Your Honor, would be the simple subtraction of the fair market value of someone's assets, subtracting the liabilities from that to arrive at a net value There is the income approach, which is to take and look at the income earning capacity of an enterprise or an individual, or the income earning capacity attributed to an intangible asset: a patent, a royalty stream, something like that, an author with book royalties or so forth. And then there is the market approach And the market approach would be to seek out comparable transactions that would have taken place in a way that could be compared to the subject being valued Simple example is, when you are looking at valuing a company that's publicly traded, you would look at its competitors and see what its market metrics might be, or its price to earnings ratio as compared to your subject company, what might be its price to sales, what might be its price to book value or price to a term called EBITDA, E-B-I-T-D-A. Earnings before interest, taxes, depreciation and amortization.

So you would take those three approaches, Your Honor, evaluate them individually, determine what the values might be for each of the three approaches, and then in the judgment of the analyst, perhaps, choose one over the other or weight them on some particular basis

Q And in this case, in looking at the financial soundness of former Governor McDonnell and of MoBo, the real estate venture, which of those three approaches have you used?

A My principle evidence for purposes of the case at hand has been to look very specifically at the asset approach, Your Honor, looking at the assets and liabilities of Mr and Ms McDonnell, as well as the MoBo, M-O-B-O, as the company is known to be, the partnership between the Governor and his sister Maureen, as well as some other business interests that he had in other partnerships

Q What documents did you review in pursuit of this methodology?

A At the present time, Your Honor, I have reviewed bank statements for the Governor and his wife I can't recall the exact periods of time, but a significant number of them, many, many pages The credit card records of the Governor, because that's an important aspect of this particular case The tax returns of the Governor The tax returns of MoBo, and these would be going back over several years The bank loan applications that were -- that were tendered in connection with the refinancing of properties of MoBo as well as the Governor's personal residence. A series of, extensive series of e-mails between the Governor and a representative of Pentagon Federal Credit Union Documents pertaining to the Governor's serving as the executor of his father's estate and the ultimate settlement of the estate with the distribution to the heirs I'm sure I'm forgetting something

Well, in addition, I have also looked at public documents pertaining to Star Scientific, Rock Creek Pharmaceutical Those would include a review of the 10-Ks that have recently been filed, the 10-Q most recently for the March 31st, 2014 quarter ended I've looked at 8-K files for Rock Creek. I have looked at the, as many of the so-called Forms 13-D, which would indicate Mr Jonnie Williams' interest as a more than five percent shareholder of Rock Creek A number of Forms 4 that had been filed with respect to Mr Williams and his share ownership in Star Scientific, now known as Rock Creek Mr Williams' tax returns, gift tax returns for a number of years

Q Some of those matters relating to Mr Williams relate primarily to the second issue, the stay issue But as to both issues, is there anything that you have requested or felt you needed that you have not been provided?

A No, not at all

Q And let me, if I may provide the witness, Your Honor, I have a copy for the Court and counsel as well, the second supplemental notice of intent And going to the third page -- fourth page, rather, there is a listing there of bases for this methodology of six items Do you have that in front of you?

A I do

Q And do those provide an overview of the bases for your analysis in this case?

A Yes, sir

Q And going through them just briefly, first one relates to the completed financial statements that show a positive net worth If you can just summarize your findings based on your review of those documents

A Yes When you get to what is the, what appeared to be the most accurate financial statement, there is a positive net worth for Mr and Ms McDonnell, the Governor and Ms McDonnell

Q And I'm not going to do all of these, sir You have already testified that these provide the basis But Number 3, Mr McDonnell had access to a portion of the proceeds of his father's estate, which was considerable He also had the right to significant executor's fees What do you mean by that, sir?

A Well, in my interview of Governor McDonnell, Your Honor, I asked about the estate of his late father, and the Governor had told me, as would be customary, that he would have been entitled to a an executor's fee for prosecuting that particular estate to its finality He waived that and just divvied up the assets with his siblings as a result

Q And then just briefly, Number 4, it refers to Mr McDonnell and his sister taken together What did you mean by that, sir?

A Well, we were referring here to MoBo, the partnership, the real estate partnership And the real estate partnership had various loans that were taken over a series of years And the loans were made based upon the credit standing of both the Governor and his sister, Maureen McDonnell Their joint individual -- their individual cash flows aggregated jointly, their assets, personal assets that would support a second line of a recovery for a bank in the event of a default, as well as the underlying appraisals on the property and the loans that were ultimately taken.

Q And so these six items accurately describe in part your methodology for viewing and analyzing the soundness of both Governor McDonnell and MoBo; is that correct?

A Yes In general, right

Q Let me ask about a couple, just briefly, a couple of issues that are not on that list You are aware that on one of the MoBo accounts with TowneBank, there were a number of late fees; is that correct?

A That's right

Q During a period of 2009 to 2012, correct?

A Yes

Q Did you investigate those late fees on that account?

A I did.

Q What did you find, sir?

A I found that they were nominal They were, you know, $25 or $30 here or there

Q Even if there are more, did that have an impact on your analysis of soundness?

A Well, it did in the sense, Attorney Small, that if there is a late fee, you want to understand why In my interview once again with Governor McDonnell, and also other information that came to my attention, it appeared that there were these winter temporary cash flow issues which a rental of real estate property might have, and then I also understood that his sister, Maureen McDonnell's, husband, Michael Uncapher, was charged with managing the property and didn't do such a good job, so that some of these late fees were assessed because there just wasn't enough money available at the time But money ultimately was put in to satisfy the debts

Q I'm sorry, let me break that down just a little bit Did you determine how many days TowneBank waits before they assess a late fee?

A I went back and looked and I think it was about eight or nine days

Q Is that, on the scale of banks, is that short, long?

A Well, I'm usually accustomed to, you know, 15 or more days, but it just seemed to be aggressive

Q Regardless of the eight or nine days, did MoBo, and based upon your review, ever miss a payment?

A To my knowledge, MoBo was never delinquent

Q And by delinquent, you mean more than 30 days

A That's right

Q So somewhere between the eight or nine and 30, every payment was made, correct?

A Yes

Q And so did that have an impact on your view of the soundness, the financial soundness of MoBo?

A Sure

Q What was that?

A Well, they were able to ultimately meet their debts as they were coming due In that compressed time frame of the winter, that was an an issue

Q One other issue I want to touch on, are you aware that MoBo received loans from various individuals?

A Yes

Q And did you investigate those loans and their impact on financial soundness?

A Yes

Q What did you determine?

A I determined that over the history of MoBo, MoBo had borrowed money from a Mr McDonald to fund some of its cash shortfall issues on a temporary basis It had borrowed from a Dr Davies, I think it is Davies or Davis And similarly, those loans were ultimately repaid with interest and the like And in addition, had borrowed money from Mr Jonnie Williams

Q Okay And so what impact if any did that have on your view of the financial soundness?

A Well, it demonstrated that the partnership had at least external access to credit, private as it may be, and the partners made a choice they didn't want to put their own money in it, which is sort of typical of small businesses, you know; return on other people's money is kind of the, what most people try to achieve

Q Okay All right And I understand that there is more work to be done before trial, but did you come to a preliminary opinion as to the soundness of the Governor's financial state?

A As I previously stated, I did

Q What is that?

A I found that I thought that his financial condition was sound He had a positive net worth. He had cash flow from his position as Governor and prior as Attorney General, among other sources of funds

MR SMALL: That's all I have on soundness Does the Court wish me to stop and allow the government to cross-examine on this issue or go forward to the second issue?

THE COURT: Go ahead with the second issue

MR. SMALL: Thank you

BY MR SMALL:

Q Let me go back to your -- you understand there is a second issue here relating to the stays that the government sought and received on two civil cases against Mr Williams

A Yes

Q All right And in that light, let me go back to your resume for a moment, if I might Because it discusses your experience starting on Page 2, your board leadership experience I take it you have been involved on the boards of various commercial ventures

A Yes, I have

Q What companies, have you been involved with?

A Well, there are five public companies that I have been on the board of, publicly traded companies that I have been on the boards of directors of, starting with Shelton Bancorp, Webster Bank in Waterbury, Connecticut, On2 Technologies, Thor Industries, and Naugatuck Valley Corporation I presently serve on the boards of Thor Industries and Naugatuck Valley Corporation.

Q In addition to your service on boards, are you also specifically on the audit committees of some of those entities?

A Yes

Q Which ones, sir?

A I'm presently on the audit committee of Thor Industries and Naugatuck Valley Corporation.

Q Just briefly, what is Thor Industries?

A Thor Industries is the largest domestic manufacturer of recreational vehicles in the United States based in Elkhart, Indiana

Q And so when you say largest, give us a number for the size of the company

A Reaching back to publicly available information, in excess of $33 billion a year in sales

Q Okay And what is your role on the audit committee there?

A I'm the independent financial expert as designated in the SEC filings

Q All right And Naugatuck Valley Corporation, what is that, sir?

A Naugatuck Valley Corporation is the holding company for a community bank, Naugatuck Valley Savings & Loan It is an approximately $500 million institution in the area that I live in.

Q And what is your role on the audit committee of the bank?

A Once again, I'm serving as the independent financial expert And you know, in the context of today's regulatory environment, the work on the audit committee is extensive

Q And in those positions, are you involved in assessing risk and the impact of litigation?

A Yes

Q And are you involved in determining the company's value and going concern value?

A Oh, sure

Q And going concern is a term of art Tell us what that means

A Well, going concern, which happily does not apply to either Thor or Naugatuck Valley, is an accounting and auditing issue When a company reaches a point where it has had a history of continued losses or current large losses, the accountants, and in my experience we would do this, we would look at the ability of the entity to continue as a so-called going concern And under the accounting rules, the test for saying that a company could continue as a going concern is that it should be able to get through one more operating cycle, which is defined generally as one fiscal or calendar year It is a very -- when a company reaches that point, you are on the watch list for sure

Q And when you analyze risk or analyze litigation impact, are you always able to put an exact dollar figure on it?

A No As a matter of fact, the requirements today for putting reserves on balance sheets are very judgmental, and require a judgment as to the amount of reserve that should be put on based upon the facts as they are known at that moment in time. And they are usually adjusted from time to time as facts change

Q With regards to this issue, the stay issue, have you reviewed the two civil complaints?

A Yes, I've read them.

Q Earlier, you started to list, and forgive me if I interrupted you, you started to list a number of other documents that you have read with regards to this portion of your analysis

A That's right

Q What are the most important documents that you have read in those regards?

A Well, I was looking very critically at the March 31st, 2014 10-Q of Rock Creek Pharmaceuticals as it was filed, as well as looking at its 10-K that had been filed for the year ended December 31st, 2013

Q Am I correct that the March 31st, 2014 10-Q covers the period during which this stay was requested and entered?

A That's my understanding, yes

Q And just briefly, the two cases, because I may refer to them, the two cases that are in front of you, the first is, am I correct, a shareholder derivative complaint The lead defendant, to give us some ease in referring to the case, is a fellow named Skillman, so that's the Skillman case

A That's right

Q And Mr Williams is an individual defendant named in that case, correct?

A Yes

Q And that case was, consolidated amended complaint was filed on January 13th of this year; am I correct?

A I just would have to look

Q Look on the next-to-last page of the complaint

A That's where I'm going January 13th, 2014

Q And the stay was requested and entered just 16 days later, on January 29th, 2014

A I think that's approximately correct

Q And the other, the second suit is a federal securities lawsuit The lead plaintiff, just so we can refer to the case, is a woman named Nancy Lopes, I hope I'm pronouncing that correctly, L-O-P-E-S for the court reporter Am I correct?

A L-O-P-E-S, right

Q Mr Williams is an individual named defendant in that case, correct?

A That's my recollection, yes

Q That case was actually filed last year and the motion to dismiss the case, according to the 10-Q, was denied on January 7th of this year, correct?

A I believe that's the case, yes I would have to go back.

Q Again, the stay was requested just two or three weeks after the motion to dismiss was denied, correct?

A That's right

Q Now, I'm not going to go into the civil cases at great length, but what's your understanding of the essence of those two complaints?

A Well, I'm summarizing based upon my reading, so this is just my impression There are a number of securities fraud violations that are brought forth, including misuse of related party transactions in connection with certain warrant and other capital infusions that took place There are misleading statements that were made in connection with the promotion of the underlying substance that Star Scientific, Rock Creek, was developing, Anatabloc, if I'm speaking correctly

Q Anatabloc

A Anatabloc I'm sorry

Q And what is the stated goal, what does the case say was the goal of those false and misleading statements?

A Well, once again, this is my impression of it after reading it, so you can take that as such, it is that the statements were done in a way to promote the stock valuation so that the stock valuation would appear to be higher from time to time

Q And also to keep the company going, essentially, correct?

A Well, that's right, because the company has lost a considerable amount of money over the years It has been in a situation of raising capital from time to time So obviously, the higher the stock price, the lower the amount of dilution that a shareholder existing would suffer

Q And by keeping the company going, the complaint alleges that Mr Williams and others received a variety, we will get into specifics, but a number of different benefits as a result of that, correct?

A That's right

Q And the complaint specifically asks for restitution presumably of those specific benefits, correct?

A I believe that's right

Q And one count, for example, in the Skillman case, Count One is a breach of fiduciary duty, specifically for unnecessary expenses Is that correct? At Paragraph 70 of the first case?

A Just one moment, please Yes

Q All right In addition to restitution, we will come back to those issues in a moment, the defense of these two cases, based upon your experience with the various companies you have been on the board of and on the audit committee of, what impact would the defense of these two cases have had just generally on any company?

A Well, the obvious, I mean, the cost of defense, whether it is covered by directors and officers liability insurance or some other insurance, is clearly a cost

There is a management cost of the time that has to be devoted to the discovery process, the deposition process, among other things That takes away from the ability to run the business and go forward with the business plan

Q Is it fair to say, based on your experience in these two cases, based on the timing of the stay as we referenced, these cases were just beginning that discovery and deposition process?

A That seemed to be the case from my experience

Q The real expenses were in the immediate future, not in the immediate past

A Presumably, there would be an order of discovery and, you know, off they would go

Q Despite that, does the 10-Q and other documents reference the extraordinary legal expenses that Star Scientific was paying?

A Yes, it did

Q And do you recall the numbers that the 10-Q was using?

A I think that the 10-Q referenced a figure of something in excess of $6 million.

Q $6 9 million?

A Sounds right, yes

Q And that, of course, is for not only these two cases, but also the investigation, the securities investigation that the government had been undertaking of Star, correct?

A I believe that's the totality of all of their litigation and investigation exposure

Q Keeping that and going forward, based on your experience, would Star incur expenses along that same magnitude going forward, in the millions of dollars?

A I don't know I couldn't hazard a specific figure But my own experience as an expert in litigation and seeing what my bills are, never mind what the other bills are, it is very expensive for sure

Q So let's then focus specifically on Star Scientific Your understanding is that Star Scientific changed its name to Rock Creek; is that correct?

A Yes

Q So if I use, if I use the term Star Scientific, you will understand that it is interchangeable with Rock Creek?

A Right

Q And so the 10-Q for, you said you examined the 10-Q for Rock Creek for the period during which this stay was granted; is that correct?

A Yes, sir

Q Let me walk through that with you just briefly Going to Page 4 of the 10-Q, that's a balance sheet, correct?

A Yes, Page 4, it is titled "The Condensed Consolidated Balance Sheets as of March 31st, 2014, Unaudited "

MR. SMALL: I've forgotten who I've given what Did I give the Court a copy of the 10-Q?

THE COURT: No

(Document proffered to Court)

BY MR SMALL:

Q Page 4 is the balance sheet, correct?

A Yes, sir

Q Towards the bottom of page four, it gives the figure for the total net equity of the company as of that date; is that correct?

A Yes

Q And that's essentially $9 9 million.

A Yes $9,975,000 is the stockholders equity as of March 31st, 2014, Your Honor

Q And the next page, Page 5, is the Statement of Operations, correct?

A Yes

Q And that gives the total again or loss just for that quarter, correct?

A That's correct

Q And the net loss for that quarter is how much?

A $9,830,000

Q Am I correct that you have a company with a net worth of $9 9 million, and just in that one quarter they lost $9 8 million?

A That's what it says

Q If that pattern continues, in your experience, what happens?

A Well, it is rather evident You know, if you look at the composition of the balance sheet, they had $8,379,000 in cash at the end of March, you know If their burn rate was such that it was continuing at that nine million or so dollar rate, they would be out of cash and have to find other resources

Q If accountants preparing a 10-Q are concerned about the legitimacy of the going concern, what do they do in your experience?

A Well, what they do is they recognize the fragile nature by adding language in the 10-Q to speak what I spoke about earlier, that the judgment is that the company has enough resources to get through one more operating cycle, one calendar period, one fiscal year

Q If you turn to Page 8 of the 10-Q, do you find that language at Page 8? I believe at the bottom?

A Yes I'm sorry, I was just on the wrong -- the pagination isn't apparent That's where it says, "The company believes it has sufficient funds to operate through the first quarter of 2015 Depending on market conditions and the price of its common stock, the company may decide to seek additional funds before that time There can be no assurance that the company will be successful in obtaining such funding at commercially-reasonable terms "

Q Based upon your experience and expertise, that statement made in March of this year, what's the significance of that statement? Or made as of March of this year, I should say.

A It is putting the reader on notice, the investor on notice that this is a fragile financial situation, that additional funds are likely to be needed, assuming the burn rates existent at that time

Q And given the fragile and precarious situation of the company, given what you have talked about about the likely expense of litigation, and based upon your expertise and experience, what was the commercial effect of the stay?

A Well, if you didn't have to spend the money at that point in time and it was delayed, it is, to use a term, it is giving the company a chance to live another day; as it says, go out to seek additional financing given its circumstances

Q And if the stay allows the company to live another day, I take it the stay also allows people who are receiving things of value as a result of that to continue to benefit

A Well, sure To the extent that the company has resources and can continue to meet its obligations, then of course, you know, that stream of cash would continue to flow

Q And let me just briefly go through a few of those issues with you, sir Both complaints allege that one of the motives for the false and misleading actions was to either inflate or at least maintain the value of shares of Star Scientific, correct?

A That's my recollection

Q And in that Mr Williams and others benefited by the value of the shares being maintained, correct?

A One would expect

Q And to the extent the stay allows this to remain a going concern, that would have the same impact It would continue to maintain the value of those shares

A It preserves the status quo

Q What impact does that have on Mr Williams?

A I think it has significant impact

Q How is that?

A Mr Williams owned 9 3 percent of the company based upon a proxy that was filed for the year ended December of 2013

THE COURT: Let me ask you a question You said it preserves the status quo Why wouldn't the stock go down? You've got a 10-Q that describes a very shaky company Why wouldn't it go down?

THE WITNESS: It did It was trading at $ 59 a share last Friday.

THE COURT: So --

THE WITNESS: So there you go.

THE COURT: Go ahead.

BY MR SMALL:

Q But if the company had to incur millions of dollars of additional expense, what might have happened?

A It could conceivably go lower or zero

Q And the second issue that the complaint raises in terms of Mr Williams and others benefitting by continuing the company as a going concern related to payments to Mr Williams, correct?

A That's my recollection, yes

Q And the first category involved direct compensation to Mr Williams; is that correct?

A Right

Q In the year 2011, based upon your review of the documents, had the company been operating at a profit or a loss?

A Loss

Q For how many years?

A Oh, I think since its inception, was what the 10-K said

Q For at least ten years the company had been operating at a loss, correct?

A I believe that's right

Q And specifically, in 2011, did the company operate at a loss?

A I believe it did, yes

Q How much, do you remember?

A 37 million

Q And despite operating at a $37 million loss, what was Mr Williams' compensation in 2011?

A The allegation in the complaint was that it was something in excess of nine million

Q Now, by 2014, Mr Williams was no longer -- I'm sorry, the complaint alleges that the false and misleading statements allowed him to maintain those high levels of compensation, correct?

A Yes

Q And the complaint is seeking restitution, as I said before, I think.

A That's what it says

Q Now, by the time of the stay, am I correct, Mr Williams was no longer receiving a fixed salary; is that correct?

A That's right

Q But he was receiving other very direct benefits, correct?

A Yes

Q What kinds of benefits did you find?

A In reading the proxy, Your Honor, he was entitled to, what I could find immediately, was at least four categories of benefits, three of which would be considered perquisites One was the payment of an automobile allowance of some $65,000 a year The second was payment of insurance premiums of something in excess of $50,000 per year

Q Can I just interrupt, that's life insurance?

A Life insurance, yes

Q The company is paying Mr Williams over $55,000 in premiums just on life insurance?

A That's what it means

Q All right

A And last of all, approximately $28,000 for club benefits So the aggregate, Your Honor, is about $148,000 of cash payments for his benefit The fourth category was to continued use of his jet that he was chartering

Q When you say that, in other words, Mr Williams owns a company that owns a jet, correct?

A That's my understanding, right

Q And Mr Williams' company that owns the jet charters that jet to Star Scientific?

A I've seen that, yes

Q Which he is also the primary shareholder of, correct?

A A large shareholder of, yes

Q And so those four benefits continued, were allowed to continue to the extent that the company remains a going concern, correct?

A Right

Q And in addition to that, the company remains a going concern, and there is a stay on the litigation Are there any other benefits that Mr Williams, in your expertise, received?

A Well, I think that there potentially is the benefit that Mr Williams might be able to sell some of his stock even at these depressed prices

Q Is there a specific rule that covers that?

A I think that goes into Rule 144, and that would require a legal analysis But there are some very complicated, formulaic percentages of amount of stock that an individual in his capacity would be allowed to sell

Q It would allow him to get additional money out of Star Scientific or out of his investment, correct?

A It wouldn't be out of Star Scientific It would be out of selling the stock.

Q If there were not a stay, based on your experience and expertise, would he be able still to sell under Rule 144?

A That would call for a legal conclusion. But in my business experience, if the stay weren't there, at least in my direct experience in public companies, counsel, General Counsel would say, "Nobody is buying or selling a single share while we have these kinds of things going on " Locked out is something that has happened to me from time to time

Q So in each of these ways, were you able to conclude or analyze this matter in terms of benefits Mr Williams received or would likely have received based upon the stay?

A That's what I have seen so far

MR. SMALL: Nothing further, Your Honor Thank you.

THE COURT: Government?

CROSS-EXAMINATION

BY MR. HARBACH:

Q Good morning, Mr Kosowsky

A Good morning

Q My name is David Harbach I'm one of the lawyers representing the government I'd like to start my examination of you, please, with just confirming the materials that you reviewed and relied on, in particular for your opinions that you rendered in the second half of your testimony about the value of the government's intervention and stay in these civil suits Okay?

A Sure

Q So I believe you said that, I was trying to take notes on the catalog that counsel asked you about, but if I could ask you to please focus your attention on the materials that you reviewed in connection with your opinion on this subject alone You mentioned the 10-Q and you mentioned some other financial forms that the company is required to file You mentioned Form 4's Can you tell me what else you looked at? The complaints, right?

A Yes, Attorney Just to kind of go back through memory and try to recite it again, I mean clearly the March 31st 10-Q, the 10-K for the year ended 2013, the 10-K amendment that was filed I looked at a number of 8-K items, and I have a subscription to EDGAR Online, EDGAR Pro, so I didn't print all of them out, but there were quite a number of 8-K filings that I looked at There were Forms 4 that had been furnished to me before by counsel, it is my recollection for Mr Williams

Q What about on the litigation side, apart from the complaints? What terms did you review in connection with any of the lawsuits, in particular, the two that the stays?

A No, I did not

Q You mentioned,a moment ago, I should say a little while ago, that your hourly rate was $575; is that right?

A Yes

Q And you mentioned the courtesy that you extended to Mr McDonnell My question for you is, what percentage of your clients in your business actually end up paying the full $575 an hour full freight?

A Well, it is very hard to put a percentage on that, Attorney, because ultimately when I judge the billing it is myself and everyone else in my practice, and I customarily make reductions for efficiency and other things So it is hard to say I don't really -- there is rarely a case that is just me alone

Q Understood.

A It is very hard to say that the full realization is there

Q When you said a moment ago that customarily you do reductions, does that mean that more often than not you might give a discount or reduce your rate?

A Well, it is not so much a matter of giving a discount or reducing my rate It is me judging the fairness of the bill, given the efficiency, the time expended. I look at it from a commercial point of view

A I couldn't break that down

Q You couldn't?

A No To me, it is a combined task. It is all the knowledge that I have accumulated to date I couldn't break it out

Q Do you think that half and half is even approximately right, or could you even say that?

A I don't think I could even say that

Q Could you say which task you spent more time on?

A Well, initially, the first task was judging and doing a forensic analysis of the McDonnells' financial affairs, so that's where it originally started, sure

Q My question was whether you can tell me which task you spent more time on as between assessing the value of the government's stay or the value -- excuse me, the condition of the McDonnells' finances

MR SMALL: This may be interesting cross-examination, but I'm not sure it has to do with methodology

THE COURT: Sustained.

BY MR HARBACH:

Q How many times have you been retained by a criminal defendant, sir?

A Oh, once again, I'm looking back over a long period of time, but I would say it is at least a hundred.

Q Incidentally, on this subject, you also mentioned among the materials that you reviewed, you mentioned an interview with Mr ,McDonnell

A Yes

Q When was that?

A A couple of months ago

Q How many times did you interview with him?

A I've interviewed Mr McDonnell at least twice, once extensively

Q At least twice You think it may have been more than that?

A I think it might have been, yes

Q Were these meetings in person or over the phone?

A They were over the phone Video.

Q Video conference?

A Video conference in one case

Q Did you take any notes of your interviews with Mr McDonnell?

A I'm sure I did.

Q And did you rely on those notes in formulating your opinions?

A I would have to go back and look at them, Attorney, but you know, everything that comes to my attention I consider I would have to go back and look and see if there was something he said back then that I made note of to really answer your question with specificity But you know, in the context of what I do, I try to take it all into account somehow

Q Understood. All I'm asking you is to confirm for me, if you recall, whether you took into account the information that Mr McDonnell provided you in those interviews in formulating your opinions

A I would have done that, yes

Q Did you?

A I did, sure

Q You mentioned that you read the complaints in the two civil suits in which the government has moved to intervene and stay discovery I'm right about that, correct?

A Yes, you are

Q And let me ask you: In connection with your board service and also your experience serving in various capacities for corporations, do you know what pre-judgment interest is?

A Yes

Q And you are aware, are you not, that both of the complaints at issue here seek interest as part of the damages in that litigation?

A I don't recall that specifically, but it wouldn't surprise me that they would be looking for that remedy

Q All right And to the extent that there are any gains or benefits to the company, say, associated with their litigation costs, you testified about that, right?

A Yes

Q Would you not agree with me that to the extent that there are any gains associated with deferring litigation costs, that those might be offset by at least, to some degree, by pre-judgment interest in the event of a recovery at the end of the civil litigation?

A That's a possibility Way into the future Sure

Q Now, you have read, have you not, the notices that the defense has provided to the government concerning the bases of your testimony?

A Yes, sir

Q You reviewed them before they were provided to the government, correct?

A I reviewed them with them as they were completing them. I don't remember if I saw a final copy before they were filed

Q And did you also review the brief that the defendants wrote, at least the portion of the brief that discusses your opinions and the basis for them?

A Yes, I did.

Q Now, I recall that when you were discussing your experience with counsel, you mentioned that you had some experience in assessing risk and the impact of litigation.

Do you recall that testimony?

A Yes, I do

Q You would agree with me, would you not, that you are not holding yourself out to be an expert on litigation risk, are you?

A No

Q And indeed, you are not an expert on litigation risk

A As --

MR SMALL: Objection, Your Honor I'm not sure what we are talking about between the litigation risk

THE COURT: Overruled. He can ask him.

THE WITNESS: Maybe you could just refine that a little bit

BY MR HARBACH:

Q I understood you to say on direct examination that you had some experience with, quoting as best I could write it down, assessing risk and impact of litigation Does that sound like something you said on direct?

A Yes

Q That's what I am talking about

A Yes, sitting as a corporate board member, sitting as a consultant, sitting as a participant in a lot of litigation, I have had many, many deliberations with clients, directly with other colleagues, to try to assess the risk of litigation and try to assess what a reasonable and fair settlement might be

Q And in doing so, you consult with lawyers in that task, do you not?

A Absolutely

Q Because you are not a lawyer

A That's right

Q But here, you didn't do any consulting with Mr White; you just read his testimony, right?

A That's right

Q I believe you also testified in connection with your experience in assessing risk and impact of litigation that you could not put an exact dollar figure on the value of the government's intervention and stay in this case; am I right about that?

A I think that's -- yeah, that's fair

Q I believe you also said, in explaining yourself, that it requires judgment based on a given set of facts

A That's right

Q And I would like to talk a little bit about the 10-Q now that you have testified some about When did you review this document? And for the record, I'm talking about the 10-Q that was filed on May 12th of 2014 Is that the document you have in front of you, sir?

A Yes

Q When did you review that?

A I looked at this within the last few weeks I just don't specifically remember when I -- I have been incredibly busy over the last month-and-a-half or so, so I just don't specifically remember But sometime in the last month More intensively over the last week

Q How intensively have you reviewed this since Mr White testified?

A Well, I've read it a couple times since he has testified, sure

Q I believe you were asked by counsel about a figure of some $6 9 million that you testified the 10-Q reported as legal fees Do you recall that testimony?

A I think I do, yes

Q You would agree with me, would you not, that the figure encompasses costs and expenses of the company beyond the two lawsuits that the government -- in which the government moved to intervene and stay Right?

A Yes That's right To be fair, there were a number of investigations on other matters So there's a lot of expense that they are burdened with for a variety of matters

Q In addition to the investigation, there was an internal investigation that Star was working on that comprised a portion of that expense, did it not?

A I believe that's right, yes

Q And in addition to that, besides the two lawsuits for which you have reviewed the complaints, there are other lawsuits out there, right?

A That's what the disclosures in the Q and the K say, yes

Q You are aware, are you not, that the government, the federal government, has not moved to intervene and stay the discovery in any suits other than the two, the complaints which we have been talking about today

A That's my understanding

Q If memory serves in connection with this testimony surrounding the 10-Q, I wrote down that you said something about not being able to hazard a specific figure, but it is very expensive Do you recall that testimony? I think it was as pertains to discovery and litigation costs

A Oh, okay Yes

Q All right Am I right that your testimony as you sit here today is that you could not hazard a specific figure as to the amount of money -- excuse me, as to the amount of the benefit that accrued to Mr Williams as a result of the government's having moved to intervene and stay in the civil suits?

A In terms of a specific amount, there is insufficient data to tease that out, of that $6 9 million number, for example

Q There is insufficient data or you have just reviewed insufficient data?

A I think both'

Q Okay You are aware, are you not, that having read the brief that counsel filed concerning your testimony as an expert, that counsel have represented that your testimony, quote, will be limited to quantifying the value of the financial benefits the government has conferred on Mr Williams and Star Scientific, end quote You are aware of that, aren't you?

A Yes, I am.

Q You would agree with me that you have told me twice now that you could not provide an exact figure, and indeed, you could not hazard a specific figure to affix to that benefit; isn't that true?

A Well, that's partly true There are, as I testified earlier, there are certain specific elements that we have identified But to go beyond that, sir, with an estimate of the cost of discovery and other expert costs in connection with those two cases that were stayed, I don't know -- I don't have data with respect to the D&O policy and when that limit is hit and how that might work

Q Excuse me for interrupting, but if I could talk about D&O for one second. That would surely impact your analysis, wouldn't it?

A Well, it certainly would

Q How so?

A Well, given just my own experience with D&O policies, I don't know what their limit would be, but it would seem to me that with the number of cases they have, the amount of money they are spending, it is certainly possible that they could hit their limits given the complexity of the matters before them.

Q Indeed, and to the extent there is D&O coverage for the directors and officers liability coverage, that would surely impact any effort to quantify the amount of benefit that accrued to Mr Williams as a result of the government's intervening and staying these lawsuits; isn't that true?

A That is true, as well with the proviso that if a finding of fraud, at least in my experience, if fraud is found, sometimes the D&O carriers say, "Fine, we advanced the money, but we have a finding of fraud. We want all of our money back It is your nickel " That could happen

Q Understood. I understood your testimony further to be that you haven't taken that issue, meaning D&O insurance, into account in formulating your opinions

A I've recognized it as an issue, but I don't have specific data to be able to, you know, to put the pencil to it

Q You also talked during your direct testimony about, at a section when counsel was asking you about the commercial effect of the stay You testified, I believe, that it was giving the company the chance to live another day Do you recall testifying to that effect?

A I do.

Q That's your opinion about the commercial effect of the stay, that it gave the company a chance to live another day?

A I think that's a fair inference to be drawn from it, that --

Q Well, excuse me for interrupting, I'm not asking for an inference, sir I'm asking you to state your opinion And I understood you to say on direct examination that your opinion about the commercial effect of the stay was that it was giving the company a chance to live another day I'm confirming that that's where you are

A That's exactly where I am.

Q Very good. Do you mean by saying that, now I am in inference land, okay, do you mean to say by that that if the government had not intervened and moved to stay, that Star would have ceased as a going concern; is that your opinion?

A It is not my opinion that it would have ceased at that moment in time. But it is my view, based upon what I have read, that the continued hemorrhaging of cash would require them, and the footnote, if they include it, puts the reader on notice that sometime within that one-year period they would have to be raising more capital or finding more resources or else their ability to continue as a going concern was in doubt

Q Absolutely But you understand that the issue before the Court now is the degree to which the government's having moved to intervene and stay these two civil lawsuits was a benefit to Mr Williams And on that score, you would agree with me, would you not, that number one, there were other lawsuits that the government didn't move to stay We have already established that, right?

A Yes, we have

Q Star remains a going concern despite that, does it not?

A With the proviso of the footnote It is costing them money to defend those lawsuits that's eroding its ability to continue

Q Of course You recall also Judge Spencer's question to you about the fact that you testified that Star's value continued to decline, and once I believe you said $ 59; isn't that right?

A I think that's what it was last Friday, yes

Q That's despite the government having having moved to intervene and stay these two civil lawsuits; isn't that true?

A That's a fact That's the number

Q You testified to some degree about Star, the company, operating at a loss I believe you said since 2011 Have I got that right?

A At least since 2011

Q At least since 2011 I believe you said in response to one of counsel's questions that in 2011, correct me if I am wrong about this on the date, that Mr Williams' compensation was in excess of $9 million; do you recall that testimony?

A I believe that's what is alleged in the complaint, yes

Q Which is my next question. Did you do any further investigation to confirm what Mr Williams' compensation was other than looking at the allegation in the complaint?

A I read a couple of the prior proxies that I believe recited some of those numbers, yes

Q And was the result of your investigation a confirmation that the allegation in the complaint is correct or incorrect?

A I wasn't looking to verify its accuracy or not I was just looking at what his compensation had been.

Q And I guess all I'm asking you is whether you remember that where you came out from that other analysis was in the ballpark of $9 million or not, or if you remember

A I just don't recall specifically as I sit here

Q Couple other points on this subject I believe you testified also that there might have been other benefits that accrued to Mr Williams as a result of the stay In particular, you mentioned that Mr Williams might have been able to sell certain Star stock. Do you recall that testimony?

A Right

Q And I believe you said that that would require a separate legal analysis, correct?

A Yes

Q And not being a lawyer, you don't really know whether Mr Williams would have been able to take advantage of that benefit or not, do you?

A I don't know It is a question I would have asked, whether he could or couldn't

Q Fair enough And my question to you, sir, is whether you are able to make that determination on your own

A Oh, no I can't make that on my own.

Q Similarly, there was another benefit that you mentioned of -- I can't read my own handwriting, I'm afraid. I'm going to have to move on I apologize

I think this is the last subject on the valuation of the stay Am I correct that you have not assessed the litigation advantages or risks specific to the allegations in the complaint as compared to the allegations in the indictment, have you?

A No, I haven't made that comparison, no

Q Have you read the indictment, sir?

A Oh, yes

Q You haven't thought about, for example, what it might mean for certain allegations in the civil suits for Mr Williams to testify in a certain way in the federal criminal trial You have not considered that, have you?

A Beyond the scope of my assignment

Q It is not part of your opinion, is it?

A No

MR. HARBACH: Can I have one second, please?

(Counsel conferring with co-counsel)

Thank you, Your Honor

BY MR HARBACH:

Q Mr Kosowsky, you have testified at least a couple times this morning in answer to my questions about information that you lacked or that you didn't have Having insufficient data, I think you called it, in order to render an opinion. My question for you is, let's pretend that you did have everything you needed in order to attempt to quantify the amount of benefit that there would be to Mr Williams for the government's having moved to intervene and stay these two lawsuits Can you tell me what your methodology would be?

A Sure This would be, to me, a process of valuing the company with and without the effects of the stay, having had the benefit of all that information It is somewhat analogous to calculating the value of a covenant not to compete, where you make a judgment as to whether someone leaves and what would be the cost to the company of that or the harm, which is usually something that's used to determine a claim that might be made against someone, you know, who left and competed So to me, it is that sort of methodology and valuation that one could apply

Q Anything else you want to tell the Court about the methodology for that?

A Just that it is very standard, Your Honor

BY THE COURT:

Q Let me ask you a question: To somehow value a stay, isn't time an important variable, how long the stay is? Three months versus three years?

A Yes, Your Honor, the length of the stay is very important I think it can have an effect on momentum, obviously

Q And we are not talking about termination of litigation We are talking about cessation of litigation. That means that these expenses, for instance, the reserves, those will tend to stay on the books until this was resolved; is that right?

A Well, not necessarily If you haven't reached a point in the litigation where you can accurately determine what the cost might be to the company of the bad conduct, you wouldn't book that reserve until you knew that from an accounting point of view You might have some internal estimates and you might have some guidelines, but the moment that you would book it is when you said, "Yeah, there is a liability and the liability is going to be in the range of X to Y " That's when you would put it on the books, if I'm answering your question

THE COURT: All right Anything else?

MR HARBACH: I was going to turn to the other topic if it is all right with the Court

THE COURT: All right Let's take a break The court reporter needs a break 15 minutes

(Recess taken from 11:04 a.m. to 11:22 a m.)

THE COURT: All right

BY MR. HARBACH:

Q Hello again, Mr Kosowsky

A Hi

Q We are going to change subjects now to the first area you testified about this morning, which was the condition of the McDonnells' finances; okay?

A Yes, sir

Q I'd like to start by trying to quickly recap the materials that you reviewed to make sure I haven't missed anything, okay?

A Okay

Q I won't ask you to do it from memory I'll give you as best I can from my notes I have that you reviewed bank statements, credit card statements, tax returns of Mr McDonnell, tax returns of MoBo, bank loan applications, an extensive series of e-mails with personnel from Pentagon Federal Credit Union, and then you also mentioned the interview you did, the interviews you did of Mr McDonnell Is there anything else for this topic that you reviewed that I have forgotten?

A I'm just trying to think based upon my recollection. Well, their connection with the tax return preparation of the McDonnells, personal returns as well as MoBo returns, there was a lot of information that I reviewed, detail information

Q Backup information for the tax returns?

A Backup for the individual tax returns as well as the MoBo tax returns, or communications with their tax preparer, and I'm sure I'm forgetting something There has been a lot of information, sir

Q Okay And then I want to confirm something I think I heard you say on direct: that at least as far as this task is concerned, you had everything you needed

A Yes, I think that's fair.

Q Okay Now, I'd like to do something similar to what counsel did with you earlier this morning, which is to refer to the second supplemental notice that the defense provided And do you still have a copy of it, sir? Page four is what I am interested in

A Yes, I have it, sir

Q Okay This is the same list of six reasons for your conclusion that counsel went through with you earlier today, okay?

A Yes

Q Am I right that as far as they pertain to your opinions, this list of reasons is, as best as you can tell, correct and complete?

A Yes That's to the best of my recollection and knowledge, yes

Q All right So let's walk through them now The first one is the one that talks about the completed financial statements that the McDonnells submitted to the Pentagon Federal Credit Union show that they have a positive net worth I'd like to focus on that one just for a second, okay?

MR. HARBACH: And Your Honor, I provided to counsel one exhibit May I please tender it to the Court?

THE COURT: Sure

(Document proffered to Court)

MR HARBACH: I was going to give one to the witness, Judge

THE COURT: All right

(Document proffered to witness)

BY MR. HARBACH:

Q Have you seen this document before, Mr Kosowsky?

A I may have I've seen a number that look like this I would have to go back and confirm it, but I'll take your representation

Q You would agree with me that this is a uniform residential loan application And if you would turn to the third page of the exhibit, it is signed apparently by the McDonnells on February 1st of 2013 Do you see that there, sir?

A Yes

Q And my question is, is this not the financial statement that the McDonnells submitted to PenFed that you relied on?

MR. SMALL: Objection, Your Honor We specifically asked to go into the various loan applications with this expert, and that's one that the government opposed it and the Court denied it Now this is an earlier draft The government is well aware of that And if we want to go into it as an expert, I'll start all over and put him on as an expert. But the government, to have opposed talking about this document and the other documents, and the Court granted the government's motion to oppose it, now he wants to talk about this early draft? I don't see what that has to do with methodology of the opinions he has given here

MR. HARBACH: I was just going to say, I can assure the Court, I think I understand counsel's concern and my point with this is quite limited.

THE COURT: Well, limited or not, this is not something that you relied on?

THE WITNESS: It may very well have been one of many in the process, Your Honor I can't tell from --

MR. HARBACH: It was among the documents produced by the defense as a document he relied on.

THE COURT: The objection is sustained

MR. HARBACH: Very good, Your Honor

BY MR HARBACH:

Q You would agree with me would you not, sir, that with respect to the first reason that's listed there, discerning that the completed financial statements, whatever they are, show that the McDonnells had a positive net worth, that's just a matter of looking at a block on the financial statement for assets, looking at a block on the financial statement for liabilities, and summing the two?

A Well, that's the ultimate end result, just like any balance sheet Sure

Q That's right.

A But I don't know what your point is

Q My point is that if I understand it correctly, one of the reasons for your opinion is just what the financial statements that the McDonnells filled out show Isn't that true?

A Well, it is partly true, but it is also true that I looked at the underlying documentation to support the entries on the financial statement to assess its reliability So, you know, I tried to pick it apart to, you know, not just rely on a single set of statistics

Q Okay Let's look at the second sentence of the first reason in the second supplemental notice It says, "That PenFed approved their loan application indicates in and of itself that the McDonnells' financial condition was sound " Do you see that there?

A I do

Q You would agree with me that, at most, that means that Pentagon Federal Credit Union thought that the McDonnells' finances were sound enough to extend them a loan

A Right And in the safety and soundness of any financial institution in this day and age, of which I'm intimately aware, you have to take that into whole context You can't just rely singly on one item, you know, where there might be other effects on the individual's financial affairs that could come to bear. You could have the risk, like Mr Williams with all of these lawsuits, that you would have to try to judge as to whether you want to lend money to somebody that has that kind of risk

Q Of course My point here is that this reason that's listed in the second supplemental notice is really just you adopting Pentagon Federal Credit Union's conclusion, isn't it?

A Well, I'm agreeing with their conclusion in that respect Adopting, agreeing I mean, it is, to me, they went through the process, the loan was approved. That's my view

Q That's right And the fact that the loan was approved is what this reason really means You are relying on PenFed's approval of the loan to inform your judgment about whether their finances were sound; isn't that right?

A Yes

Q The next reason: "That Mr McDonnell had access to considerable liquid assets such that he could meet his financial obligations as they became due " Tell me what "considerable" means

A Well, taken in the context of meeting his financial obligations, which at that time were generally his personal intentions, his credit card payments as they came due, and whatever cash calls he might have for supporting his investments I mean, considerable, there was enough.

Q There was enough That's what it means

A Sure

Q Did you perform an analysis over a span of time of Mr McDonnell's assets on a given day versus his liabilities on a given day or month?

A Yes On an annual basis at least

Q On an annual basis?

A Right

Q In other words, did you perform an analysis on a month-to-month basis about whether Mr McDonnell had adequate assets to meet his financial obligations?

A No, I saw no need to get to that level of granularity

Q It was sufficient for your opinion to proceed at the annual level

A Generally speaking, yes

Q You would agree with me that part of the analysis of whether Mr McDonnell had access to considerable liquid assets implicates the concept of additional loans, right?

A Not necessarily

Q Okay Well then, what other asset access is encompassed by that phrase?

A Well, he had his retirement plans that he could take payments from if he wished.

Q Anything else?

A My recollection is that there were distributions that were made from time to time from one of the real estate ventures that came with some level of regularity. As well as his own, the regular ebb and flow of his own cash flow

Q In the assessment that you did earlier that you testified about a couple moments ago that you said was on an annual basis from which you concluded that he had considerable assets such that Mr McDonnell could meet his financial obligations, do you mean to say that part of that analysis included some hypothesis about him liquidating retirement assets?

A It is not actually a hypothesis He actually did take a distribution in one year

Q Do you recall how much that was?

A Something in excess of $10,000

Q And do you recall the purpose for the liquidation of that piece of assets?

A Not to my recollection, no

Q Any other occasions besides that ten grand that you recall where that occurred?

A Not that I remember

Q Back to my initial question about loans Do I understand you to say that in this reason number two here, namely, Mr McDonnell's access to considerable liquid assets, do I understand you to say that you are not taking into account his ability to obtain loans at least for this reason?

A No, I am taking that into account as yet another reason, because as history showed in connection with MoBo, there were individual, and I previously testified, there were other loans that were taken from individuals, his father, Dr Davies, and ultimately Mr Williams, from time to time to meet the obligations and needs of MoBo

Q Earlier when you testified that you performed an analysis on an annualized basis of Mr McDonnell's ability to meet his financial obligations and his liquid assets in comparison to that, did you prepare any reports reflecting your findings?

A No --

THE COURT: Wait a minute Before you go on, let me make sure I understand your answer to this last question about whether or not you are considering the ability to get loans in coming to your number two . rationale Or is it someplace else in here?

THE WITNESS: No, it is included in that, Your Honor, to the extent that he had the sources, he actually had the following sources: He had his retirement plan, he had his own cash accounts, he had distributions from partnerships He had, if he needed, in analyzing his credit cards, he had available credit that he could take from his credit cards to meet his financial needs, as well as the, you know, from time to time the borrowings on the real estate ventures from other than financial institutions Those would just be a summary of what I would look at to say does he have resources "Considerable liquid resources" would encompass those sorts of things.

THE COURT: Normally you don't think of creating liabilities as being liquid assets

THE WITNESS: Agreed. Agreed But it is a resource in that respect

THE COURT: All right Go ahead

BY MR HARBACH:

Q Let's move on to the third reason You state that

"Mr McDonnell had access to a portion of the proceeds of his father's estate, which was considerable He also had a right to significant executor's fees " You would agree with me that you don't need to be an expert to understand that, do you, sir?

A That's just a matter of he had access to money or he didn't, isn't it?

MR. SMALL: Objection.

THE COURT: Overruled. That's a valid question.

THE WITNESS: To answer your question, I think that this goes to the idea that he had other resources coming to him.

BY MR HARBACH:

Q I understand All I'm asking is, the fact that he had access to some proceeds from his dad's estate or that he had the right to significant executor's fees, my question is, would you not agree with me that you don't need to be an expert to understand that? That's just some money that was available to him or it wasn't

A I suppose not in that context

Q Look at the fourth reason, please It says: "Taken together, Mr McDonnell and his sister as the two partners in MoBo had sufficient assets and cash flow to meet the obligations of the partnership."

Now, you testified, did you not, that part of your methodology for valuing business interests was, I believe what you mentioned was IRS 59-60?

A Yes, Revenue Ruling 59-60, right

Q You describe that as the gold standard for doing business valuation; is that right?

A Yes, that's right

Q Your lawyer -- excuse me, not your lawyer, counsel for Mr McDonnell inquired of you on direct whether you followed IRS 59-60 in doing your analysis, and your answer was that you were guided by it Do you recall that testimony?

A That's right

Q Do you mean to say that you didn't follow IRS 59-60?

A I wasn't engaged to do a valuation to follow it in its entirety But I think that it is a good illustration of methodology that one would use as a valuator or as a forensic accountant to analyze the situation such as this I offered it as an aid to the Court

Q I understand I want to make sure I understand what you just said a moment ago. Did you say that it was not part of your task to value the assets of MoBo as a business?

A That's right

Q Okay Looking at Number 4, can you explain to me how you could analyze whether Mr. McDonnell and his sister had sufficient assets to meet the obligations of the business if you did not conduct an analysis of the assets of the business?

A Well, but I did conduct an analysis of the assets of MoBo I just didn't appraise the real estate because I'm not a real estate appraiser. But I did look at all of MoBo's financial records over several years, including its tax returns, QuickBooks records, the notes and the like from the tax preparer as to a variety of the detailed things that he did. I looked at Maureen McDonnell's, his sister's, tax returns, W-2's, a variety of financial statements that she had provided in connection with the MoBo financings, to look at the totality of the Governor's and his sister's financial affairs

Q This Reason Number 4 says: "Sufficient assets and cash flow to meet the obligations of the partnership " Can you help me understand whether that's indexed to time at all? In other words, was that true 100 percent of the time, at certain key dates? What was the timing of your analysis to know on that?

A I went back and looked, to the best of my recollection, I was looking at records that go back, searching my memory, but I think at least as far back as 2006 or 2007 So this process went through the financial crisis And I just want to be sure that everyone understands that financing a vacation property after the financial crisis is not exactly an easy thing to do So I was looking at this in the context of how they were running the partnership, how they were meeting its obligations, and doing their refinancing from time to time I mean, it spanned several years' worth of review I wasn't really isolating on any particular moment in time I was formulating it based on the total time period.

Q I understand. And that really gets to the question of what "sufficient" means That's what I am trying to understand Were there occasions during the time period when they did not have sufficient assets and cash flow to meet the partnership's obligations?

A There were moments in time, for example, when they had late fees, when they had to go and have a cash call on the partners to put in cash to meet its obligations So that's a bit of a chicken and an egg problem. You might say, "Gee, we don't have enough money in the bank account to make the mortgage payment; send me $5,000 so we can make it " If you tested it at that specific moment and looked at the bank account, the answer would probably be no But if you knew the partners were coming up with the money to do it, then the answer would be yes

Q I understand exactly what you mean with the chicken or egg I want to make sure I understand your opinion When you say "sufficient," what you mean to say is that they could have gone out and gotten additional money at any particular point in time sufficient to cover the partnership's obligations Is that what you are saying?

A What I'm saying is they had a variety of ways of getting the resources that they need to pay the bills of the partnership, make the improvements and do whatever needed to be done by way of their own resources, loans, or otherwise

Q I thank the Court for its patience This is the last question on this one Is there any time during the time period that you analyzed where you would say that Mr McDonnell and his sister did not have sufficient assets and cash flow to meet the obligations of the partnership, at any time?

A I don't recall seeing that, but I don't recall looking at it from that specific point of view

Q Looking at Number 5, this one says, "Mr McDonnell actively took steps to minimize his credit card debt by obtaining the lowest credit card interest rates " My first question is, would you not agree with me that on balance, it is much more important to minimize the credit card debt itself than the interest rate?

A Oh, sure If you can get away with no debt, that's better

Q In other words, I'm going to be clear, I'm not talking about Mr or Ms McDonnell here But hypothetically, if somebody had eight credit cards, five of which were maxed out, it is not going to be much comfort to you that those cards have low interest rates, is it?

A Well, it would if they were maxed out because you wouldn't be increasing the balance or the cash flow needs If you want to maintain the balance, the lower interest rate is a good thing The dollars go farther

Q Indeed, and you would agree with me, also, that you don't need any particular expertise to understand that lower interest rates mean lower monthly payments, right?

A I would say no

Q You don't need a CPA to understand that, do you, sir?

A Probably not

Q Okay The last one, Number 6 This one says: "Mr McDonnell's future earning power was substantial as demonstrated by the multi-million-dollar salaries commanded by retired high-level public officials " You are not an expert on the market for the speaking circuit for retired politicians, are you, sir?

A No, I'm not

Q You have no specialized experience in how salaries or fees or honoraria for such speaking engagements are set, do you?

A No, I don't

Q You just assumed that since other politicians have made a bunch of money, so might Mr McDonnell

A And in my interview with him.

Q And leaving aside for the moment whether that's even right, there is no expertise required to draw that conclusion, is there, sir?

A Probably not

Q All you have to do is dig up examples of big speaking fees for other prominent politicians and say because it worked for them, it might work for Mr McDonnell

A Possibility

MR. HARBACH: Can I have a second, please, Judge?

THE COURT: Sure

(Counsel conferring with co-counsel)

MR. HARBACH: Thank you, Your Honor

BY MR HARBACH:

Q Just a couple more questions for you, Mr Kosowsky My colleague reminds me that your lawyer testified or elicited on direct examination your view that you still have some work to do related to the McDonnells' finances; do you recall that testimony?

A Yes

Q What work is it that remains to do, sir?

A Well, as is usual and customary in my practice, I will in preparation for my ultimate testimony, if I am allowed to testify, will be to probably go back over everything just to see if my conclusions would remain the same and see if any other information potentially might be needed, that I would inquire and ask for

Q And so going over it to revisit everything, you are not suggesting that you would come up with additional opinions

A I don't think so No

MR. HARBACH: Thank you, Your Honor

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. SMALL:

Q Mr Kosowsky, counsel is talking about sufficient assets in MoBo MoBo is an equal partnership, correct?

A 50/50, yes

Q And counsel didn't ask you about the other partner Just quickly, do you have an understanding about the sister, Maureen's, assets?

A Yes

Q She is a successful professional in her own right, correct?

A From what I saw, yes

Q From what you saw, she has an income of approximately what annually?

A Her W-2 for the year 2013, I think, was in excess of a half-million dollars, Your Honor

Q All right So making a $5,000 contribution to, in case they got a late fee, would not have been a problem for her, right?

A I didn't see it as such.

Q In fact, she also has liquid assets Forget about the retirement fund. The sister also has very substantial liquid stock assets, correct?

A That's my recollection.

Q And just very roughly, what was the approximate value of those liquid assets?

A Best of my recollection, Your Honor, I think it might have been approached a million dollars

Q So the notion that between the two of them they couldn't come up with a couple thousand dollars for a mortgage payment would be silly, wouldn't it?

A Well, characterized -- the money was there

Q Okay You were asked about D&O insurance Now, as a major stockholder of Star Scientific, Jonnie Williams would have access to the D&O policy, right?

A Well, he was chairman and CEO. He would have certainly known about it At least at that point in time

Q And so if the government interviewed Jonnie Williams for the seventh or eighth time two weeks ago, they presumably could have asked him, "Gee, can you give us a D&O policy?"

A I mean, that's beyond me I assume so.

Q And you were asked about point number three, where the Governor had the right to significant executor's fees but did not take them. Explain what happened there, if you know

A Well, Your Honor, in discussions with the Governor, he told me that he was entitled to an executor's fee of something in excess of $30,000 for the father's estate, which as I said to you earlier in my testimony, he had waived and just let things go amongst the siblings however they were supposed to go, reconciliations of things that occurred during the lifetime of his father that were reckoned with in the final divvying up of the estate

Q So he was entitled to a significant fee and chose not to take it, correct?

A I would say

Q Did that have an impact on your view of his soundness financially?

A Well, it just said to me that it seemed generous But that's a personal decision that he made Beyond the fact that the statistic is the statistic and he decided not to take the money

Q Lastly, you were asked about whether Star Scientific had taken a reserve for these two cases Do you recall those questions?

A Yes And His Honor had questions about that as well

Q And have you had an opportunity to take a look at the 10-Q, the most recent 10-Q?

A Yes And if you look at it --

Q I direct you to Page 11

A Page 11, the last sentences, Your Honor, in each of the two summaries of the class action lawsuits and shareholder derivative suits, if you read the last sentences, it says, quote: However, at this time it cannot predict the probable outcome of these claims Accordingly, no amounts have been accrued in the consolidated financial statements Which is consistent with what I told you earlier When you get to the point you know what your liability is, you have to book it

Q Once a company, in your experience and expertise, once the company does have to put in a substantial reserve for this kind of litigation, does that have an impact on the stock?

A Well, you know, sure In this particular case, given roughly $10 million of equity left, I mean, if you are talking about a million dollars' potential reserve, that's certainly material, significant, a lot, any way you want to characterize it

Q Both of these cases are here in the Eastern District of Virginia, correct?

A I believe that's right

Q Are you aware that once a case like that, once the motion to dismiss is denied, as it was there, discovery in this district moves very quickly; this is not some far future or would not have been some far future event, correct?

THE COURT: He is a CPA.

THE WITNESS: I don't know.

THE COURT: Don't answer that Anything else?

MR SMALL: No Thank you, Your Honor

THE COURT: Thank you You may stand down, sir

(Witness stood aside)

All right, I'll hear very brief argument if somebody wants to have something to say on this

MR SMALL: Judge, very briefly, Your Honor I think you have heard the evidence, you have seen the pleadings As to the soundness issue, time and again in grand jury testimony we have seen the government ask witnesses about whether the McDonnells were, quote, desperate, close quote, in their finances Clearly, with the intent that that be the motive for the McDonnells going to Jonnie Williams or having to go to Jonnie Williams to get a loan. And that's why the jury needs, if that is the government's position, and it is, the jury needs the assistance of an expert As the Court saw, it will not be long and complicated, very straightforward, to do what experts do, which is to pull together the evidence in a way that is helpful to the jury in assessing whether that is correct Because clearly, it is not And we, on the defense, have a need and a right to be able to demonstrate that to the jury in that fashion So I think that the methodology issues as to soundness are rock solid.

If anything, we had a problem because there is such an enormous amount of standard materials As the witness went through, this is rock solid, bedrock valuation work, well established and well maintained and well executed here So on the soundness issue, I think that's extraordinarily clear

On the stay issue, it is exactly the fact that you can't very simply put a dollar value to it that makes clear the need for expert testimony There are a number of points here, a number of factors that come into play when the government takes an action like they did, in a situation where you are not talking about staying a case involving GM, you are talking about staying a case involving a company that has lost money for ten years in a row, that lost $37 million in 2011, even though it paid Mr Williams over nine million, and a company that is teetering on the verge of going out of existence, and that event would have a number of negative impacts not just on the company, but very directly and specifically on Mr Williams And the notion that in the time period, the quarter during which the government moved to stay these two cases, this company had $9 million in assets and $9 million in losses, tells a story about as dramatically as you can

And again, it is precisely because of the complexity, because there are Rule 144 issues in terms of the sale, because much of Mr Williams' ownership is in the form of options and other complex transactions that a jury will need assistance in understanding, that is exactly why it is not simply a matter of a jury sitting there thinking, "Oh, well, they stayed a case, I guess that must mean something " No lay juror is going to have a clear notion of what an impact that would have on such an unusual situation, of a small company in a precarious situation with a major investor having all kinds of other related party and other transactions that are impacted

And again, we are not talking about lengthy testimony We accomplished it here very efficiently, and we will accomplish it in trial very efficiently But it is absolutely necessary for the jury to evaluate If the government said in a disclosure, "We have given Jonnie Williams money, but we won't tell you how much," no court would abide by that, because the jury has a right to value, to understand what that means Because if the government gave Jonnie Williams $10 for parking, that's different than if they gave him, you know, $100,000 as a witness fee or something I'm just hypothesizing, obviously

The jury has the right and we have the need to show them what is it that Jonnie Williams got And the government's decision to step into those two cases right at the beginning of discovery, right when there would be discovery, there would be depositions, there would be a number of activities, they bear the responsibility for that decision. And we have the need and the right to help the jury understand the implications of that decision and how that decision did in fact benefit Jonnie Williams in ways in which no lay juror is ever going to understand

So we would ask the Court to allow this expert, who is clearly qualified, I think in both of these areas, extraordinarily well qualified in both these areas, to give straight and forward testimony in these areas I thank the Court for its indulgence this morning

THE COURT: Thank you very much. Government?

MR HARBACH: Thank you, Your Honor Judge, I'll too try and be brief Just like with the examination, I'll take the two issues in reverse order, starting with the stay

The issue before the Court, forgive me for stating the obvious, is whether this expert can testify to the opinion that he espouses on this subject and whether the methodology that he used is sound and the information that he relied on is sound such that the Court should sanction him as an expert And the answer on both scores, but limited to the first one for now, is undeniably that he is not

I'll remind the Court the same thing I reminded the witness The defense purported to limit until today, purported to limit Mr Kosowsky's testimony on this subject to, quoting again, "quantifying the value of the financial benefits the government has conferred on Mr Williams and Star Scientific " Now, the flaws in his methodology were exposed today on cross-examination. The fact that it was oversimplified, the fact that he didn't take into account directors and officers insurance, the fact that he read nothing in connection with the civil suits other than the complaints, the fact that he didn't take into account the potential substantive disadvantages to Mr Williams, or conversely, advantages to the plaintiffs of Mr Williams testifying first He said at least twice that he had insufficient facts or data in order to render or quantify the amount of the benefit at issue here That's the question before the Court He said he couldn't do it And on the data point, I will note, I think something that -- I will note that the defense not only did not provide to the government the fact that Mr Kosowsky interviewed former Governor McDonnell, they also did not provide the notes that he plainly said that he relied on in forming his opinion. That was all news to us today

Furthermore, there has been no disclosure of Mr Kosowsky's lengthy testimony about the viability and health of Star as a company, its legitimacy as a going concern, its health, the fact whether it was teetering on the edge of bankruptcy None of that stuff was disclosed. If memory serves, Your Honor has already ruled that the witness is not permitted to comment on the benefits to Star flowing from the government's stay and -- motion to intervene and stay, excuse me Bottom line, the defendant shouldn't be allowed to get in the back door what they are not allowed to get in through the front door

..ore generally, the defendants should not be permitted to on the one hand say that they are limiting the expert testimony to quantifying the value of this benefit, that was what they touted as the big advantage to the jury, quantifying it, and then disavow that essentially because both of their witnesses say they can't do it That's not the way this is supposed to work. And Mr Kosowsky, frankly, for the reasons, all the reasons I've explained, at a minimum would not be helpful to the jury in that regard And it is certainly not the type of subject that the Court should deem him to be an expert on for all the reasons we have talked about

On the McDonnells' finances, I think it is probably helpful to return to first principles about what experts are for Rule 702(a) says that the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or determine a fact in issue In the government's view, Mr Kosowsky's proposed testimony about the McDonnells' finances violates that because it is not helpful to the jury in the meaning that the rule intends We are not saying, of course not, that accounting expertise could not be helpful to a hypothetical jury We are not saying that a CPA like Mr Kosowsky is could never be competent to testify as an expert What we are saying is that the opinion that he is providing here, and the reasons for that opinion, the six of them, are in the main not informed by any accounting expertise Their conclusions are based on things that require no expertise that we went through with him today We are not talking about arcane business ledgers or accounting books and records that a lay jury would need assistance in understanding Mr Kosowsky's reasons for concluding that the McDonnells were in sound financial shape or whatever adjective he chooses to use, at one point it was no more than looking at a loan application to see whether it indicates they have net worth The loan applications are going to come into evidence in all their incarnations in this case, presumably Telling the jury to look at a box and see whether there is a positive number in that box to see whether they had net worth, that doesn't require an expert

The jury, again based on the specific reasons that have been proffered here, could just as well assess them without a separate witness rendering an opinion about it Whether that's, you know, he got money from his dad's estate, he got money as an executor And I don't think I need to say anything about the opinion from the witness today that Mr McDonnell was generous I'll just move on past that

Bottom line, Mr Kosowsky's testimony isn't helpful to the jury; therefore, it violates 702(a) It also violates 702(c), which requires that the testimony be the product of reliable principles and methods Again, based on the reasons that have been proffered here, the government would submit that there is no methodology here other than Mr Kosowsky's naked opinion. And in the words of the Supreme Court in DAUBERT, the knowledge in Rule 702 that is of assistance to a trier of fact is, quoting, connotes more than subjective belief or unsupported speculation And there were several junctures at which the reasons for Mr Kosowsky's opinion did that very thing, whether it is him making assumptions about the type of salary that Mr McDonnell could command on the speaking circuit, or, well, it was a good thing that he made an effort to reduce his interest rates on his credit cards These are just opinions that a jury is amply armed to -- they are assessments that the jury is amply armed to make on their own.

I think that's all I'll say about it, except that I would respectfully ask the Court for a quick ruling on this issue so that the government can take action.

THE COURT: It will be quick. I'll give you the last word.

MR. SMALL: Very briefly, Your Honor Two things One, on the stay, the government can't have it both ways They can't say that because we can't quantify everything, therefore it is not helpful to the jury It doesn't make any sense They are right, there are some things we can quantify We can quantify $55,000 for life insurance policies and all those things that Mr Kosowsky enumerated But it is precisely because, as he said right at the outset, when you are valuing businesses and people and events, you can't always put a precise dollar amount to it But that doesn't change the importance of going through the process and of coming to some conclusions that there is substantial value And so it is exactly that that requires an expert witness, because the jury is not going to be able to wade through by itself without assistance those kinds of considerations

So I think that the government is saying, "Well, because you can only quantify some of it, therefore it is not helpful to the jury " It is helpful to the jury to be able to quantify some of it, but it is even more helpful for the jury for the jury to understand some of those more difficult issues, where of course you can't quantify it You go through any company's 10-Q and there will be lots of things they can't quantify That's the nature of this world that we live in. But that's exactly why we have experts, to help a jury to understand on something that is this important and this central to the case.

As to soundness, I'm somewhat at a loss, I have to say "Because an average juror knows that uranium can be used in a nuclear bomb, therefore, you don't need a nuclear expert " It seems kind of silly Of course you can pick out bits and pieces of a financial analysis that everyone knows or someone could look at It is, with any expert, exactly the process of pulling that together, of making an assessment, that leads to the helpfulness And that's what DAUBERT says Are the facts, is the process one that's accepted? Yes, it is It absolutely is The government puts experts, financial experts, on all the time And they are using financial statements and other things that if you pick it apart and hold it up in isolation, and say, "Oh, you don't need an expert for this," well, of course you don't The expert's function is to pull that together That's exactly the expert's function And to say that it is not expertise because we can pick out a Factor 2 that you don't need an expert for is denying the whole concept that DAUBERT clearly supports And what I did not hear in the government's argument is that they are backing down from this desperation theory and this, you know, the late fee theory "Oh, the late fees showed, you know, that they were in financial trouble " They asked that of the bank people So if they are not backing down from that theory, which is clearly false, we have the right and the need to call a witness to help the jury understand why it is false and why it is without any basis Thank you, Your Honor

THE COURT: All right, this is what I am going to do We are going to make a concerted effort to resolve all of these issues by tomorrow, as quickly as I can, because everybody needs to know what we are doing going forward So that's how I'll spend my afternoon I'll leave it there Thank you all very much. I appreciate it.

(Proceedings adjourned at 12:09 p.m.)

CERTIFICATE OF REPORTER

I, Jeffrey B Kull, Official Reporter, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter

__________/s/_________________

Jeffrey B. Kull,
Official Federal Reporter

__________/s/_________________

Date

No. 15-4019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ROBERT F McDONNELL,
Defendant-Appellant,

On Appeal from the United States District Court for the Eastern District of Virginia, Richmond Division, James R. Spencer, District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G McDONNELL,

Defendants

July 28, 2014
Richmond, Virginia
10:00 a m.

JURY TRIAL - VOLUME I

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
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Counsel for Robert F McDonnell;

WILLIAM A. BURCK, ESQ.
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STEPHEN M. HAUSS, ESQ.
Counsel for Maureen G. McDonnell

JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer. Robert F McDonnell is represented by John Brownlee, Henry Asbill, James Burnham, Daniel Small, and Christopher Iaquinto Maureen G. McDonnell is represented by Heather Martin, William Burck, and Stephen Hauss Are counsel ready to proceed?

MR. DRY: The United States is ready

MR. BROWNLEE: Mr McDonnell is ready to proceed.

MR. BURCK: Ms McDonnell is ready to proceed.

THE COURT: All right All right, Madam Clerk, would you call the roll, please?

THE CLERK: Jurors, as I call your name, please stand, answer present, and then be seated.

Juror Number 0392, ***

Present

Juror Number 0066, ***

Present

Juror Number 0455, ***

Present

Juror Number 0129, ***

Present

Juror Number 0205, ***

Present.

Juror Number 0272, ***

Present

Juror Number 0072, ***

Present

Juror Number 0485, ***

Present

Juror Number 0117, ***

Present

Juror Number 0362, ***

Present

Juror Number 0209, ***

Present

Juror Number 0008, ***

Present

Juror Number 0382, ***

Present

Juror Number 0279, ***

Present

Juror Number 0364, ***

Present

Juror Number 0108, ***

Present

Juror Number 0367, ***

Present

Juror Number 0388, ***

Present

Juror Number 0088, ***

Present

Juror Number 0327, ***

Present

Juror Number 0243, ***

Present

Juror Number 0161, ***

Present

Juror Number 0401, ***

Present

Juror Number 0218, ***

Present

Juror Number 0016, ***

Present

Juror Number 0099, ***

Present

Juror Number 0340, ***

Present

Juror Number 0431, ***

Present

Juror Number 0317, ***

Present

Juror Number 0044, ***

Present

Juror Number 0101, ***

Present

Juror Number 0373, ***

Present

Juror Number 0073 ***

Present

Juror Number 0141, ***

Present

Juror Number 0284, ***

Present

Juror Number 0450, ***

Present

Juror Number 0160, ***

Present

Juror Number 0336, ***

Present

Juror Number 0114, ***

Present

Juror Number 0356, ***

Present

Juror Number 0203, ***

Present

Juror Number 0368, ***

Present

Juror Number 0496, ***

Present

Juror Number 0381, ***

Present

Juror Number 0250, ***

Present

Juror Number 0186, ***

Present

Juror Number 0349, ***

Present

Juror Number 0115, ***

Present

Juror Number 0333, ***

Present

Juror Number 0432, ***

Present

Juror Number 0109, ***

Present

Juror Number 0290, ***

Present

Juror Number 0181, ***

Present

Juror Number 0399, ***

Present

Juror Number 0107, ***

Present.

Juror Number 0010, ***

Present

Juror Number 0256, ***

Present

Jury number 0184, ***

Present

Juror Number 0026, ***

Present

Juror Number 0187, ***

Present

Juror Number 0348, ***

Present

Juror Number 0386, ***

Present

Juror Number 0273, ***

Present

Juror Number 0478, ***

Present

Juror Number 0150, ***

Present

Juror Number 0248, ***

Present

Juror Number 0406, ***

Present

Juror Number 0227, ***

Present

Juror Number 0337, ***

Present

Juror Number 0410, ***

Present

Juror Number 0407, ***

Present

Juror Number 0303, ***

Present

Juror Number 0358, ***

Present

Juror Number 0398, ***

Present

Juror Number 0151, ***

Present

Juror Number 0034, ***

Present

Juror Number 0355, ***

Present

Juror Number 0326, ***

Present

Juror Number 0112, ***

Present

Juror Number 0065, ***

Present

Juror Number 0173, ***

Present

Juror Number 0012, ***

Present

Juror Number 0379, ***

Present

Juror Number 0269, ***

Present

Juror Number 0068, ***

Present

Juror Number 0500, ***

Present

Juror Number 0212, ***

Present

Juror Number 0156, ***

Present

Juror Number 0421, ***

Present

Juror Number 0338, ***

Present

Juror Number 0059, ***

Present

Juror Number 0111, ***

Present

Juror Number 0464, ***

Present

Juror Number 0050, ***

Present

Juror Number 0204, ***

Present

Juror Number 0162, ***

Present

Juror Number 0217, ***

Present

Juror Number 0385 ***

Present

Juror Number 0501, ***

Present

Juror Number 0005, ***

Present

Juror Number 0238, ***

Present

Juror Number 0200, ***

Present

Juror Number 0220, ***

Present

Juror Number 0341, ***

Present

Juror Number 0466, ***

Present

Juror Number 0332, ***

Present

Juror Number 0095, ***

Present

Juror Number 0124, ***

Present

Juror Number 0210, ***

Present

Juror Number 0487, ***

Present

Juror Number 0433, ***

Present

Juror Number 0179, ***

Present

Juror Number 0445, ***

Present

Juror Number 0003, ***

Present

Juror Number 0453, ***

Present

Juror Number 0390, ***

Present

Juror Number 0281, ***

Present

Juror Number 0185, ***

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Juror Number 0452, ***

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Juror Number 0363, ***

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Juror Number 0308, ***

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Juror Number 0039, ***

Present

Juror Number 0049, ***

Present

Juror Number 0229, ***

Present

Juror Number 0361, ***

Present

Juror Number 0048, ***

Present

Juror Number 0414, ***

Present

Juror Number 0411, ***

Present

Juror Number 0232, ***

Present

Juror Number 0278, ***

Present.

Juror Number 0067, ***

Present

Juror Number 0154, ***

Present

Juror Number 0324, ***

Present

Juror Number 0196, ***

Present

Juror Number 0102, ***

Present

Juror Number 0268, ***

Present

Juror Number 0462, ***

Present

Juror Number 0277, ***

Present

Juror Number 0494, ***

Present

Juror Number 0447, ***

Present

Juror Number 0190, ***

Present

Juror Number 0389, ***

Present

Are there any jurors present in the courtroom whose name I did not call?

Would the jurors please stand, raise your right hand, and respond to the oath by saying, "I will " Will the defendants please stand.

(Venire Sworn.)

THE COURT: Ladies and gentlemen, you are present this morning to be involved in the resolution of a criminal case brought by the United States against the defendants, Robert F McDonnell and Maureen G. McDonnell

Let me preface my preview of the case by stating what should be obvious, but what is many times not fully understood by citizens such as yourselves The jury is a vital and indispensable institution to the administration of justice here in America Indeed, the founders of this country thought that the right of a person accused of a crime to be tried by a jury representing average folk from the community that appears was so important that they provided for it in the Constitution. And in a very real sense, your presence here today and your participation in this jury selection process is part of a long and honored tradition involving hundreds of thousands of Americans over the years

Now, we who have made our careers and crafted our livelihoods and dedicated ourselves to service in the courtrooms of this nation have long since come to realize that along with the benefits of citizenship and liberty come burdens and responsibilities I say this at the outset because we want you to know we understand that jury selection can sometimes be tedious and that jury service can disrupt your daily lives This case in all likelihood will last for several weeks I certainly will do my best to see that the case moves expeditiously and efficiently towards a final resolution.

With the exception of service in the Armed Forces and voting, there is no other duty of citizenship more important than jury service. And that's why when we need you, we insist on your involvement.

Now, as I told you earlier, this is a criminal case A grand jury has indicted Mr McDonnell charging him with one count of conspiracy to commit honest services fraud, three counts of use of interstate wires to further a scheme of honest services fraud, one count of conspiracy to obtain property under color of official right, six counts of obtaining property under color of official right, and two counts of making a false statement to a financial institution.

A grand jury has indicted Ms McDonnell charging her with one count of conspiracy to commit honest services fraud, three counts of use of interstate wires to further a scheme of honest,services fraud, one count of conspiracy to obtain property under color of official right, six counts of obtaining property under color of official right, one count of making a false statement to a financial institution, and one count of obstruction of an official proceeding, to wit: a grand jury investigation.

Mr McDonnell and Ms McDonnell have pled not guilty to each of these charges In every criminal case, it is the government, the United States, that has the burden of proving the defendant's guilt beyond a reasonable doubt And this burden applies to each and every charge brought against the defendants.

Indeed, the defendants are presumed innocent of the charges This presumption remains with them unless and until the government proves his or her guilt beyond a reasonable doubt This is a standard that I will explain to you in greater detail later

Mr McDonnell is represented by Mr Henry Asbill and his associates of the Washington, D.C. office of the law firm of Jones Day Also representing Mr McDonnell is Mr John L. Brownlee of the Washington, D.C office of the law firm of Holland & Knight

Mr Asbill, would you please stand and introduce yourself to the jury venire and introduce the other folk from your firm?

MR. ASBILL: Thank you, Your Honor My name is Henry Asbill With me today are my colleagues, James Burnham, Victoria Taraktchian. I think that's it for today

THE COURT: All right Mr Brownlee, would you do the same, introduce yourself and associates from your firm, as well as your client?

MR. BROWNLEE: Thank you, Your Honor Good morning, ladies and gentlemen. My name is John Brownlee It is an honor for me to be here today to represent Bob McDonnell With me today, my law partner Dan Small, associates Chris Iaquinto and Elizabeth Jochum. Thank you very much. Thank you, Your Honor

THE COURT: Just have your clients stand up Introduce your client as well

MR. BROWNLEE: This is Robert McDonnell

THE COURT: All right

MR. BROWNLEE: Thank you, Judge.

THE COURT: And Ms. McDonnell is represented by Mr William Burck of the law firm of Quinn Emanuel Urquhart & Sullivan. Mr Burck, would you stand and introduce yourself as well as the other folk at your table and your client?

MR. BURCK: Yes, Your Honor, thank you very much. Good morning My name is Bill Burck. I'm with Quinn Emanuel I represent Ms McDonnell With me is my law partner, Stephen Hauss, and associate, Heather Martin. Thank you, Your Honor

THE COURT: All right, thank you. Mr Dry, would you please stand and introduce yourself to the jury, providing your name and organizational affiliation and then introduce the other folk at your table?

MR. DRY: Good morning, ladies and gentlemen. My name is Mike Dry I'm with the U.S Attorney's Office in Richmond. With me is Dave Harbach, one of my fellow prosecutors, Jessica Aber, U S. Attorney's Office in Richmond, Ryan Faulconer with the U S Attorney's Office, Agent Tyler Kennedy, paralegals Laura Taylor and Bennett Starnes.

THE COURT: All right, thank you. I'm about to ask the assembled jury panel a series of questions Although each question is propounded to you as a group, you are each to consider the question as it relates to you individually and respond accordingly

Now, I'm going to frame these questions so that normally, ordinarily, the response that we would expect is no. And if your response is no, you don't have to do anything You remain seated and remain silent and your lack of movement and lack of noise will indicate the response no. If, however, your answer is anything other than no: yes, maybe, it is possible, it might be, any answer that comes to mind other than no, we want you to stand up, and then give us your name And after that, give us your response to the question.

Now, we don't want you to hesitate, we don't want you to be shy or intimidated by the occasion or the setting It is important that you answer these questions openly and honestly This is the only way that we can be certain that at the end of the process, we will have a jury that can be fair and impartial as it relates to all of the parties in this case

Now, some of these questions will duplicate questions you answered on the questionnaire that you received earlier And the reason for that is, we need a current answer to some of those questions And secondly, we may need to question you more closely regarding responses to those questions.

Now, the first question I have: Are any of you related by blood or marriage or know in any way Mr McDonnell's counsel, and I hope I have this right, Mr Henry Asbill, Mr James Burnham, and Ms Hilary Perkins; am I missing anybody?

MR. ASBILL: She is not in court today, Judge

THE COURT: All right So I called everybody who is here

MR. ASBILL: Yes, sir

THE COURT: All right Then Mr John Brownlee, Daniel Small, and Christopher Iaquinto. All right, anybody related to them, know them in any way?

Are any of you related by blood or marriage or know in any way Ms McDonnell's lawyers, William Burck, Stephen Hauss, and I think I'm missing one --

MR. BURCK: Heather Martin, Your Honor

THE COURT: Heather Martin. Any of you know or are you related to any of these individuals?

As far as you know, have you or any member of your family ever been represented by either of these law firms, Jones Day out of D C and Holland & Knight, this is their D.C office Any of you or any business owned by you, any interest that you had represented by either of these law firms?

Have you or any member of your family ever been represented by any of these individual lawyers for Mr McDonnell or Ms McDonnell?

Are any of you related by blood or marriage to, first of all, Mr Robert F McDonnell?

Are any of you related by blood or marriage to Ms Maureen G. McDonnell?

Do you or any member of your family know personally, and I'm not talking about by reputation or media representation, any of you or any member of your family know personally first of all Robert F McDonnell?

And then Ms Maureen McDonnell Oh, we have a hand. Sir, would you just come to the aisle and come up here? Counsel approach.

(At Bench.)

THE JUROR: *** (Juror Number 0303)

THE COURT: *** All right, Mr ***, how is it that you know him?

THE JUROR: I do not know Mr McDonnell personally, but I have met him on a number of occasions as outlined in my questionnaire, at political functions In addition, some additional information, I did have a chance to encounter him about a month-and-a-half ago at an event in which a friend of mine asked to have a picture taken with him. And I obliged and took the picture and there were some greeting words and a handshake at that time Those were the only events It has all been political events that I have ever met Mr McDonnell

THE COURT: Is there anything about the previous events, and this last event, that would prevent you from being fair to both sides in this matter?

THE JUROR: No, sir But I just thought since that happened since my questionnaire, I wanted to be sure that that was out

THE COURT: All right Thank you very much. Thank you. You can have a seat

(In Open Court)

Are any of you related by blood or marriage to any of the prosecutors: Michael Dry, Ryan Faulconer, Jessica Aber, and David Harbach?

As far as you know, have you or any member of your family ever been represented by any of the prosecutors, the government lawyers?

It is possible that some or all of the following individuals may be called as witnesses in this case I'm going to go through the list, and as you might expect, it is a lengthy list But I want you to listen to see if there are any names that you recognize, people that you know, because that's the question that I will have for you after I've gone through the list of potential witnesses

Monica Block, Nanette Bolt, Amy Bridge, Patrizio Caturegli, Brenda Chamberlain, Todd Claiborne, John Clore, Matt Conrad, Dan Cook, Phil Cox, Frank Crantz, Jeffrey Creekmore, Jasen Eige, John Faessel, George Floyd, Jerri Fulkerson, Luz Juliana Mery Gomez De Pitts, William Goodwin, Ryan Greer, Special Agent Charles Hagan, Dr William Hazel, Lisa Hicks-Thomas, Timothy Huff, Molly

Huffstetler, Special Agent David Hulser, Kristen Kaplan, Janet Kelly, Martin Kent, Jerry Kilgore, Sharon Krueger, John Lazo, William Long, James Doc Lyons, Mark Sykes, Tucker Martin, Maureen McDonnell, Rachel McDonnell, Robert Bobby McDonnell, Sean McDonnell, Phil Owenby, Paul Perito, John Piscitelli, Frank Pollack, Emily Rabbitt, Sarah Scarborough, William Sessoms, Robert Skunda, Mary Shea Sutherland, Barbara Tierney, Michael Uncapher, George Vetrovec, Alfred Walden, Pamelia Watts, Celeste Williams, Donnie Williams, Jonnie Williams, Sr , Sara Wilson, Caitlin McDonnell Young, Christopher Young, Adam Zubowsky, Jeanine McDonnell Zubowsky

Counsel for the McDonnells, you gave me, I take it, a new and different combined defense witness list this morning Can you tell me what's different from the previous list if that's available? I don't want to have to repeat names

MR. BROWNLEE: Just one second, Your Honor I believe these names are in an e-mail I forwarded to your law clerk this morning

THE COURT: I just want to make sure I have a combined defense witness list that I got earlier I went through that and combined all the names in common You gave me a new one this morning I just want to make sure

MR. BROWNLEE: Thank you, Your Honor If I can, the names are Anthony Troy, William O'Neill, Payton Cromwell, and Laura Fornash.

THE COURT: All right, thank you. All right James Abel, Carolyn Birgmann, Lawrence Blake, Martin Briley, Harvey Bryant, James Burke, James Cheng, Ken Cuccinelli, Joseph Damico, David Dean -- yes?

A JUROR: I know Joe Damico

THE COURT: All right, fine Thank you very much We will wait until I get through the list and then I'll come back and ask the question.

David Dean, Brandon DeGraff, Jeffrey DePriest, Stephen Eisenberg, Robert Farrance, Emmett Flood, Cameron friction, Scott Gagne, Paul Galanti, Paige Hahn, Katherine Harris, Dianne Hayes, Todd Haymore, Ed Howell, William Howell, Dennis Johnson, Tyler Kennedy, Bobbie Kilberg, Marty Kilgore, Terry Kilgore, Allen Kosowsky, Brad Kroenig, Paul Ladenson, Andrew Lamar, Simon Latcovich; William LeFevre, Robert F McDonnell, James McGlothlin, John McKeon, Robert Merhige, Caresse Mitchell, Deborah Naylor, Christopher Nolen, Neal Noyes, Linda Pierce, Robert Pokusa, Bert Poole, Cynthia Romero, Elaina Schramm, Kathleen Scott, Keith Scott, Timothy Scully, Margaret Shupnick, James Starkey, Ken Stolle, Terrie Suit, Leo Tonkin, Martin Townes, Audrey Trussell, Thalia Tuck, Trish West, Doug Wilder, Marc Wiley, Carolyn Williams, Jonnie

Williams, Jr , Jane Wortham, Anthony Troy, William O'Neill, Payton Cromwell, and Laura Fornash.

Now, does any member of the jury venire know any of these witnesses, and if so, we will hear from you now And --

THE JUROR: Your Honor, one of the people in that list I have met in similar fashion as we discussed previously

THE COURT: Okay This is *** (Juror Number 0303)?

THE JUROR: Yes, sir

THE COURT: Everybody got that? All right, thank you, you can have a seat, Mr *** All right, we will start up here in the front and go back. Yes, ma'am? Who is it that you recognize?

THE JUROR: Kathleen Scott

THE COURT: Give us your name

THE JUROR: My name is *** (Juror Number 0401)

THE COURT: All right Ms ***, you indicated it was Ms Scott that you know, and just tell us generally how is it that you know her

THE JUROR: She lives in my cul-de-sac

THE COURT: Would you say you have a close contact with her, are personal friends?

THE JUROR: No Occasional

THE COURT: All right Thank you. You may have a seat Yes, ma'am, your name?

THE JUROR: *** (Juror Number 0388)

THE COURT: Ms *** All right, Ms ***, who is it that you know?

THE JUROR: Tucker Martin.

THE COURT: And how is it that you know Mr Martin?

THE JUROR: I don't know him personally, but we went to Randolph-Macon at the same time

THE COURT: All right Thank you very much. Yes, sir?

THE JUROR: I just want to get clarification on that Troy Is that first name Anthony?

THE COURT: Yes, first name Anthony, last name Troy

THE JUROR: No problem. I know somebody the exact reverse

THE COURT: Sir, your name?

THE JUROR: *** (Juror Number 0003)

THE COURT: Thank you, Mr ***

THE JUROR: *** (Juror Number 0217) I know Joe Damico We play on the same soccer team.

THE COURT: Okay, just a second. What was the name again?

THE JUROR: My name?

THE JUROR: No, the name of the witness

THE JUROR: Joe Damico

THE COURT: And is there anything about your relationship or knowledge of Mr Joe Damico that would prevent you from balancing any testimony he might give?

THE JUROR: Not that I can think of

THE COURT: He has never fouled you, has he?

THE JUROR: No. He has always been on the same team.

THE COURT: Thank you. Yes, ma'am?

THE JUROR: As I blurted earlier, *** (Juror Number 0229)

THE COURT: You said you know Joe Damico?

THE JUROR: Yes, I write documents that he signs sometimes

THE COURT: Why don't you come on up here, Ms *** I think this is better Your full name?

THE JUROR: ***

THE COURT: All right

THE JUROR: I'm in the Attorney General's Office and he is in the Department of Real Estate Services and I write documents he signs

THE COURT: And other than the business relationship, anything social?

THE JUROR: No.

MR. ASBILL: This Joseph Damico is from Chicago I think both folks,who have said they know him are thinking about a different Joe Damico.

THE COURT: The odds of having two Joe Damicos?

THE JUROR: Is Katherine Scott the lawyer in Richmond?

MR. ASBILL: Kathleen Scott No, sir

THE COURT: All right Thank you very much.

(In Open Court)

Yes, sir your your name?

THE JUROR: *** (Juror Number 0406) I have worked with the City of Richmond for 14 years, so I've met Douglas Wilder

THE COURT: All right Let me get your name again.

THE JUROR: ***

THE COURT: Thank you. Yes, ma'am?

THE JUROR: *** (Juror Number 0220) I don't know if it is the same person or not, but I went to high school with a George Vetrovec

THE COURT: All right Thank you.

Has any member of the jury panel ever served as a juror before, criminal case, civil case, grand jury, military courts marshal, state, local, federal court? Any prior jury service, we would like to know about it All right, we will start right here Yes, ma'am, your name?

THE JUROR: *** (Juror Number 0227)

THE COURT: All right, Ms *** Just a second. When and where did you serve?

THE JUROR: It was about two years ago in the City of Richmond. Traffic.

THE COURT: What kind of case?

THE JUROR: It was traffic An accident

THE COURT: Traffic accident, civil case Okay, fine Thank you so much.

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THE COURT: Yes, ma'am

THE JUROR: Ms *** (Juror Number 0399) Henrico County

THE COURT: Ms *** (Juror Number 0399) Just a second Okay And when and where did you serve and what kind of case?

THE JUROR: Henrico County about maybe two years ago, and criminal

THE COURT: We're having problems hearing you

THE JUROR: I'm sorry

THE COURT: Just a little louder

THE JUROR: Henrico County, about two years ago, and criminal

THE COURT: All right Yes All right Thank you You can have a seat

Yes, sir

THE JUROR: *** (Juror Number 0185)

THE COURT: All right, Mr *** (Juror Number 0185) When and where did you serve?

THE JUROR: Chesterfield criminal court about six years ago

THE COURT: All right Thank you

*** (Juror Number 0003)

THE JUROR: Yes Richmond Circuit Court on two occasions The first one was approximately about six years ago That was a criminal case And the second one was approximately a year and a half ago That was also a criminal case in Circuit Court City of Richmond, Virginia

THE COURT: ' All right Thank you, *** (Juror Number 0003)

Yes, sir

THE JUROR: *** (Juror Number 0048)

THE COURT: All right, Mr *** (Juror Number 0048) When and where did you serve?

THE JUROR: I'm retired from the Marine Corps I was in 26 years from 1965 to 1991 I served as a summary court officer on a couple of occasions, and I served -- I was on the jury for at least three special court marshals throughout my career and probably one general court martial

THE COURT: All right Thank you, sir

Yes, ma'am We'll start here

THE JUROR: *** (Juror Number 0150)

THE COURT: All right

THE JUROR: I served in Southampton County, grand jury It's been about 25 years

THE COURT: Thank you

Yes, sir

THE JUROR: *** (Juror Number 0243)

THE COURT: All right Mr *** (Juror Number

0243)

THE JUROR: I served on a 12-month federal grand jury in 2002 or '3

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0068) About five years ago in Annapolis, Maryland

THE COURT: All right And again I didn't get the last part When and where did you serve?

THE JUROR: About five years ago in Annapolis, Maryland

THE COURT: Annapolis And what kind of case was it?

THE JUROR: Civil

THE COURT: Civil case All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0349) Chesterfield County about two years ago It was criminal

THE COURT: All right Mr *** (Juror Number 0349) Thank you

Yes, sir

THE JUROR: *** (Juror Number 0414)

THE COURT: All right, Mr *** (Juror Number 0414)

THE JUROR: It was Hanover It was a criminal case, back in the early '80s And Henrico on a civil case That was probably in the '90s

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0356)

THE COURT: Last name again?

THE JUROR: *** (Juror Number 0356)

THE COURT: Okay

THE JUROR: Two criminal cases, Nottoway County One about 14 years ago One a couple years ago

THE COURT: All right Thank you, sir

All right Yes, sir Yes

THE JUROR: *** (Juror Number 0210)

THE COURT: All right, Mr *** (Juror Number 0210)

THE JUROR: I served in Henrico County Grand Jury in the mid-'90s

THE COURT: All right Thank you, *** (Juror Number 0210)

Yes, sir

THE JUROR: *** (Juror Number 0466) P

THE COURT: All right Go ahead

THE JUROR: About 30 years ago, criminal case in Pittsburgh

THE COURT: Criminal or civil?

THE JUROR: Criminal

THE COURT: Criminal Thank you

Yes, sir

THE JUROR: *** (Juror Number 0187)

THE COURT: I didn't hear the name

THE JUROR: *** (Juror Number 0187)

THE COURT: *** (Juror Number 0187) All right

THE JUROR: District court in the mid-'80s, criminal case

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0065)

THE COURT: All right, Ms *** (Juror Number 0065)

THE JUROR: Criminal case, 2010, City of Richmond

THE COURT: Thank you

All right Let's start, yes, sir, right here Blue suit

THE JUROR: Okay *** (Juror Number 0124)

THE COURT: All right Mr *** (Juror Number 0124)

THE JUROR: Criminal case about six years ago in the city of Hopewell

THE COURT: I didn't hear the last part

THE JUROR: Criminal case in the city of Hopewell

THE COURT: Hopewell

THE JUROR Yes, sir About six years ago

THE COURT: All right Thank you

THE JUROR: You're welcome

THE COURT: Yes, sir Right -- I'll hear --

THE JUROR: *** (Juror Number 0141)

THE COURT: All right, Mr *** (Juror Number 0141)

THE JUROR: Henrico criminal about 15 years ago

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0406) Three civil cases in Norfolk 30 years ago plus, and then two civil cases in Henrico in the last five years

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0109) Civil, about ten years ago

THE COURT: And where was that?

THE JUROR: In Richmond

THE COURT: In Richmond Thank you, Ms *** (Juror Number 0109)

THE JUROR: Okay

THE COURT: Yes, ma'am

THE JUROR: *** (Juror Number 0162)

THE COURT: All right Ms *** (Juror Number 0162)

THE JUROR: Criminal case, City of Richmond, and it's been at least 30 years, Your Honor

THE COURT: All right Thank you, Ms *** (Juror Number 0162)

Yes, sir, right here

THE JUROR: *** (Juror Number 0088)

THE COURT: All right

THE JUROR: Hanover County, civil

THE COURT: And how long ago was it?

THE JUROR: About 13 years

THE COURT: All right

Yes, sir Right here

THE JUROR: *** (Juror Number 0333)

THE COURT: All right

THE JUROR: Criminal case, City of Richmond about three or four years ago

THE COURT: All right Thank you, sir

Yes, sir

THE JUROR: *** (Juror Number 0099) Excuse me *** (Juror Number 0099)

THE COURT: Okay

THE JUROR: 1990 Albuquerque, New Mexico, criminal case

THE COURT: All right Thank you, sir

All right Yes, ma'am

THE JUROR: *** (Juror Number 0382)

THE COURT: Okay

THE JUROR: King George County, it was a civil case, about five or six years ago

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0238) In the mid-1980s, City of Richmond, criminal

THE COURT: All right, Ms *** (Juror Number 0238) Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0272)

THE COURT: All right

THE JUROR: Grand jury I believe it was 2008 and 2011, Charlottesville

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0256) City of Richmond, about ten years ago It was criminal

THE COURT: All right Ms *** (Juror Number 0256) Thank you

Yes, sir

THE JUROR: *** (Juror Number 0336) With a C New Kent County Circuit Court, 2010, criminal case

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0181)

THE COURT: All right Mr *** (Juror Number 0181)

THE JUROR: Henrico County, civil court, over 30 years ago

THE COURT: All right Thank you, sir

Have you or any member of your family ever been employed by a law enforcement agency? And when I say "law enforcement agency," I mean the local police, sheriff's department, FBI, state police, military police, corrections, any kind of law enforcement agency, you or any member of your family?

Start back up here in the front Your name again, ma'am

THE JUROR: *** (Juror Number 0227)

THE COURT: All right All right, Ms *** (Juror Number 0227) And your answer?

THE JUROR: My brother is a retired FBI agent

THE COURT: And do you have an approximate time frame your brother retired?

THE JUROR: Two years ago

THE COURT: Two years ago All right Thank you, ma'am

Yes, ma'am

THE JUROR: *** (Juror Number 0039) My father was a policeman, City of Richmond, years ago, way back in like the '50s

THE COURT: All right

THE JUROR: And I had an uncle that was also a Richmond police officer back at that time

THE COURT: Okay All right Thank you, ma'am

Yes, sir

THE JUROR: *** (Juror Number 0108)

THE COURT: Last name again? I missed it

THE JUROR: *** (Juror Number 0108)

THE COURT: All right Go ahead

THE JUROR: My uncle, Walter Richard Brett, is a state trooper and also justice of the peace in Ashland, Virginia

THE COURT: All right Thank you

*** (Juror Number 0003)

THE JUROR: Yes My first cousin, he was -- what do you call them guys in the military, M --

THE JUROR: Ps?

THE JUROR: MPs, yeah He was head of military police at the Norfolk Air Base

THE COURT: Okay

THE JUROR: And he's currently retired

THE COURT: All right Thank you, Mr *** (Juror Number 0003)

Yes, ma'am

THE JUROR: My name is *** (Juror Number 0095) And my father was a physician at the Southampton Correctional Center He's deceased, but he retired about 20 years ago as well

THE COURT: All right, Ms *** (Juror Number 0095)

We'll start over to the right Yes, ma'am

THE JUROR: *** (Juror Number 0501) My father served as chief of police in Augsburg, Germany, and was in the military for over 50 years and is now deceased

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0433) My brother, Terrance Sanders, sheriff for Henrico County, two and a half years

THE COURT: All right, Ms *** (Juror Number 0433)

Yes, sir

THE JUROR: My name is *** (Juror Number 0115)

My father was part of the Washington, D C , Metropolitan Police Department I want to say early '80s to at least late '90s

THE COURT: I missed your last name

THE JUROR: *** (Juror Number 0115)

THE COURT: *** (Juror Number 0115) All right Thank you Mr *** (Juror Number 0115)

Yes, sir

THE JUROR: *** (Juror Number 0048)

THE COURT: All right, Mr *** (Juror Number 0048)

THE JUROR: I worked for 17 years at the Rappahannock Regional Criminal Justice Academy in Fredericksburg I was instructor coordinator, and the last six years I was assistant director I retired about three years ago

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0016) C-A-S

THE COURT: Okay, Mr *** (Juror Number 0278)

THE JUROR: My father, he was employed by the Department of Corrections, Deep Meadow

THE COURT: Is this in the past or current?

THE JUROR: In the past I think it was five to seven years ago

THE COURT: All right, thank you That's 0278, Mr *** (Juror Number 0278)

THE JUROR: Oh, no, it's not That's not me It's *** (Juror Number 0016) C-A-S

THE COURT: Oh, I misunderstood you *** (Juror Number 0016)

THE JUROR: Yes

THE COURT: 0016

THE JUROR: Yes

THE COURT: Thank you, sir

All right Yes, ma'am

THE JUROR: *** (Juror Number 0150)

THE COURT: All right, Ms *** (Juror Number 0150)

THE JUROR: My husband retired from Portsmouth police service, 1995

THE COURT: All right Thank you very much

Yes, ma'am

THE JUROR: *** (Juror Number 0112) My daughter work for the Richmond City Jail

THE COURT: Say that again I didn't hear the --

THE JUROR: My daughter work for the Richmond City Department

THE COURT: Daughter All right Thank you

very much

Yes, ma'am

THE JUROR: *** (Juror Number 0212) My husband is a police officer at Virginia State University

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0204)

THE COURT: *** (Juror Number 0204)

THE JUROR: *** (Juror Number 0204) Yes, sir

THE COURT: All right

THE JUROR: My father was retired from the Federal Bureau of Prisons

THE COURT: All right, Mr *** (Juror Number 0204) Thank you

Yes, sir

THE JUROR: *** (Juror Number 0151) My wife worked at the Department of Corrections for about 20 years in Pennsylvania

THE COURT: All right Thank you, Mr *** (Juror Number 0151)

Yes, ma'am

THE JUROR: *** (Juror Number 0209) My step-father was a justice of the peace Does that count?

THE COURT: All right Thank you

All right We'll start over here

THE JUROR: *** (Juror Number 0398) My father told me that he was an MP for a short time during Vietnam He is now deceased

THE COURT: Thank you All right Thank you, Mr *** (Juror Number 0398)

Yes, sir

THE JUROR: *** (Juror Number 0389) My wife, security forces up until four years ago

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0308)

THE COURT: Okay

THE JUROR: Uncle, Woodrow P , a police for Plainfield, New Jersey, retired six years ago And also I have a -- currently a lease and that is doing an internship for Suffolk County Sheriff Department in Long Island, New York

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0229) Husband was Louisiana state trooper, and cousin was a Virginia state trooper

THE COURT: All right Thank you

Yes, ma'am We'll just --

THE JUROR: My son-in-law currently works for the Hanover County Sheriff's Department My name is *** (Juror Number 0186)

THE COURT: And give me your answer again

THE JUROR: My son-in-law currently works for the Hanover Sheriff's Department

THE COURT: All right Thank you very much

Yes, sir

THE JUROR: *** (Juror Number 0478)

THE COURT: Last name again

THE JUROR: *** (Juror Number 0478)

THE COURT: All right, Mr *** (Juror Number 0478)

THE JUROR: My father is a former state police officer and currently serving on the -- I think he's listed as special agent for the state of Virginia

THE COURT: All right

THE JUROR: And my uncle is a county officer for Prince George County, and my other uncle is a retired state police officer from state of Virginia

THE COURT: All right Thank you, sir

Yes, sir

THE JUROR: *** (Juror Number 0348) Formerly employed by Prince George Police Department for 30 years

THE COURT: All right Thank you, Mr *** (Juror Number 0348)

All right Yes, ma'am, in the white

THE JUROR: *** (Juror Number 0452) And my husband was a former Henrico police officer, left in 1990

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0469) I worked as a corrections officer at Coffeewood about eight years ago

THE COURT: Thank you

Yes, ma'am Right here Yes

THE JUROR: *** (Juror Number 0453) I have a son --

THE COURT: I missed the last name

THE JUROR: *** (Juror Number 0453)

THE COURT: *** (Juror Number 0453) Okay

THE JUROR: I have a son that's currently in the United States Army at Fort Wainwright in Alaska, and he's an MP

THE COURT: All right Thank you, Ms *** (Juror Number 0453)

Yes, sir

THE JUROR: *** (Juror Number 0248)

THE COURT: All right

THE JUROR: Ex-son-in-law with Chesterfield County, deceased, about five years ago

THE COURT: Thank you

THE JUROR: Thank you

THE COURT: Yes, ma'am

THE JUROR: *** (Juror Number 0154) My brother is a retired Baltimore police officer and fraud investigator for a missioner's company, and my husband's cousin is currently with the Virginia Department of Corrections

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: My name is *** (Juror Number 0494) My husband and I currently hold the contract with the Bureau of Prisons We teach at the federal correctional facility at Petersburg

THE COURT: Okay Thank you very much

Yes

THE JUROR: *** (Juror Number 0431) And my son is a lieutenant with the Department of Corrections in Lawrenceville, Virginia

THE COURT: Thank you

Okay Start in this line over here Yes

THE JUROR: *** (Juror Number 0363)

THE COURT: I can't hear you

THE JUROR: Last name is *** (Juror Number 0363)

THE COURT: All right

THE JUROR: And my husband is a U S Navy, retired in 2009 While he was in the Navy, he served as a Navy police and government police

THE COURT: All right Thank you

Yes

THE JUROR: My name is *** (Juror Number 0250) I have a cousin who currently works for Richmond City She's a police officer

THE COURT: *** (Juror Number 0250) I got the first name What was the last name?

THE JUROR: *** (Juror Number 0250)

THE COURT: All right Okay Go ahead

THE JUROR: I have a cousin who's currently a police officer for the City of Richmond

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0272) My father-in-law served as a corrections officer about 25 years ago, Southampton County

THE COURT: All right Thank you

Yes, sir

THE JUROR: My name is *** (Juror Number 0341) It's with a P And my brother-in-law was a Chesterfield County officer for about seven years before resigning about four years ago

THE COURT: All right Thank you, sir

All right Let's start over here

THE JUROR My name is *** (Juror Number 0277) I'm a former employee for the Powhatan Corrections in Powhatan, Virginia And I have a brother that works out at Buckingham Corrections, and he's currently still serving as an officer

THE COURT: All right Thank you, *** (Juror Number 0277)

THE COURT: Yes, ma'am

THE JUROR: *** (Juror Number 0256) My father is a former federal correctional officer, and my brother is currently a correctional officer at Bon Air Juvenile Detention Center

THE COURT: Thank you

Yes

THE JUROR: Yes My -- my brother-in-law, he's a police officer for the -- retired police officer for the City of Richmond

THE COURT: What's your name, ma'am?

THE JUROR: *** (Juror Number 0407)

THE COURT: All right Ms *** (Juror Number 0407)

All right Yes, ma'am

THE JUROR: My name is *** (Juror Number 0445) My uncle was retired from Henrico County Police Department about 20 years ago When I was in the Navy, I served two years military police in 1980

THE COURT: All right Thank you, Ms *** (Juror Number 0445)

Yes, sir

THE JUROR: My name is *** (Juror Number 0273) And my father-in-law served as a military policeman while serving in Vietnam in about 1970

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: My name is *** (Juror Number 0386) And I have a cousin that's a probation officer in Nottoway County I have a cousin that's a sheriff in Farmville, Virginia, and I have two sons that work at Lawrenceville Correctional Center

THE COURT: Thank you

All right Yes, sir

THE JUROR: My name is *** (Juror Number 0464)

THE COURT: Say again

THE JUROR: Last name is *** (Juror Number 0464)

THE COURT: *** (Juror Number 0464) All right, sir

THE JUROR: My father is retired Upper Dublin Township, Pennsylvania, and was a narcotics officer with Montgomery County, Pennsylvania And then my first cousin is a detective out in Las Vegas and I think in the vice department

THE COURT: All right Thank you, sir

Yes, sir

THE JUROR: *** (Juror Number 0432)

THE COURT: All right, Mr *** (Juror Number 0432)

THE JUROR: Department of Corrections Retired 2012

THE COURT: Thank you

Yes, sir

THE JUROR: *** (Juror Number 0107)

THE COURT: All right

THE JUROR: My grandfather was a Cleveland police officer, and my cousin was a Nashville police officer Both deceased

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0220) My son-in-law currently serves with Henrico County Police

THE COURT: All right Thank you

Does any member of the jury panel or close family member have any training, education, expertise or experience in the field of accounting? Accounting? All right

Let's start over here Yes, ma'am, your name again

THE JUROR: *** (Juror Number 0388)

THE COURT: All right, Ms *** (Juror Number 0388) And your answer

THE JUROR: My major was accounting, and I work in the accounting department

THE COURT: All right Thank you, Ms *** (Juror Number 0388)

Yes, ma'am

THE JUROR: *** (Juror Number 0039) I worked in an accounting office for 40 years

THE COURT: All right, Ms *** (Juror Number 0039) Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0501) And I served as an accountant at the Medical College of Virginia over 20 years ago in several departments in internal medicine at MCV

THE COURT: All right Thank you, Ms *** (Juror Number 0501)

Yes, sir

THE JUROR: *** (Juror Number 0196) My father did budgeting and accounting for an NFC department

THE COURT: Thank you

All right. Yes, ma'am

THE JUROR: *** (Juror Number 0392)

THE COURT: Ms *** (Juror Number 0392)

THE JUROR: I work in accounts receivable at the company I work for

THE COURT: Thank you

Yes, sir

THE JUROR: *** (Juror Number 0368) My mother actually works for All Citizens in the mortgage department and has past experience, as well, with SunTrust Mortgage

THE COURT: All right Thank you, Mr *** (Juror Number 0368)

Yes, sir

THE JUROR: My name is *** (Juror Number 0210)

THE COURT: All right, Mr *** (Juror Number 0210)

THE JUROR: I served on the board of accountants for the state of Virginia for approximately ten years, ending sometime in early 2000

THE COURT: And was that a gubernatorial appointment?

THE JUROR: Yes, sir I was first appointed to that board by Governor Allen and reappointed

THE COURT: All right Thank you, Mr *** (Juror Number 0210)

All right Yes, sir Blue shirt

THE JUROR: My name is *** (Juror Number 0398)

THE COURT: Okay, Mr *** (Juror Number 0398)

THE JUROR: I believe you had mentioned education Part of my bachelor's degree was an accounting class

THE COURT: Okay Thank you

Yes, sir

THE JUROR: *** (Juror Number 0308)

THE COURT: Last name?

THE JUROR: *** (Juror Number 0308) Performed cash accounting for a mortgage company

THE COURT: Yes, ma'am

THE JUROR: *** (Juror Number 0186) I used to work for the Capital Region Airport Commission

THE COURT: Yes, sir

THE JUROR: *** (Juror Number 0303) I was with Federal Deposit Insurance Corporation as a bank examiner for about ten years until about 1980

THE COURT: All right

Yes, ma'am

THE JUROR: Hi I'm *** (Juror Number 0218)

I've been in the accounting department in Lake Caroline for 20 years in charge of the accounting department

THE COURT: All right Thank you

All right Yes, ma'am

THE JUROR: My name is *** (Juror Number 0362) I worked in -- for the Department of the Navy for accounting for 27 years

THE COURT: All right

Yes, ma'am

THE JUROR: I'm -- my name is *** (Juror Number 0421) My father worked for BDO Seidman, accounting

THE COURT: All right Thank you, ma'am

All right Yes, sir

THE JUROR: *** (Juror Number 0059)

THE COURT: All right

THE JUROR: I completed an accounting course for my bachelor's degree

THE COURT: Okay Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0200)

THE COURT: All right, Ms *** (Juror Number 0200)

THE JUROR: My mother has 30 years' experience in accounting and bookkeeping, and I have worked in accounting and bookkeeping

THE COURT: Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0447)

THE COURT: Last name again?

THE JUROR: *** (Juror Number 0447) Y-E-N

THE COURT: Okay

THE JUROR: My brother is a CPA in Northern Virginia

THE COURT: Thank you

Yes, ma'am

THE JUROR: My name is *** (Juror Number 0154) I took accounting courses in college, and my brother is a CPA in Pennsylvania

THE COURT: All right

Yes, ma'am We'll start over here

THE JUROR: *** (Juror Number 0250) I have a relative who works in the accounting field in Richmond

THE COURT: I didn't hear one word

THE JUROR: I'm sorry *** (Juror Number 0250) I have a relative who works in the accounting field here in Richmond

THE COURT: Okay

Yes, ma'am

THE JUROR: *** (Juror Number 0160) I worked as an accounting clerk for Charles City Social Services for seven years

THE COURT: All right Thank you, Ms *** (Juror Number 0160)

Yes, sir

THE JUROR: *** (Juror Number 0341) And for about three and a half years I was the manager of a DuPont -- DuPont contractor, responsible for payroll and expense reconciliations

THE COURT: All right Thank you

All right, yes, ma'am

THE JUROR: *** (Juror Number 0382) Accounting courses in college My cousin was an accountant and assistant superintendent of schools in Hickory, North Carolina, and I worked briefly as a bookkeeper about 28 years ago for one year

THE COURT: All right Thank you

All right We'll start over here Yes, ma'am

THE JUROR: *** (Juror Number 0272) I supervise the budget for the Charlottesville City Schools

THE COURT: All right Thank you, Ms *** (Juror Number 0272)

All right Yes, sir

THE JUROR: *** (Juror Number 0156)

THE COURT: All right, Mr *** (Juror Number 0156)

THE JUROR: My wife is retired now Accounting manager with the Department of Education for the Commonwealth of Virginia

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0066) And I'm with the Commonwealth of Virginia and I do accounts receivables and account payables

THE COURT: All right Thank you

Yes, sir?

THE JUROR: My name is *** (Juror Number 0273) I was a teller and a financial services representative for a bank in the North Shore of Boston in the mid-1990s I also took three accounting courses as part of a business program for college, and I have received supplemental bookkeeping training with my organization, Hewlett Packard, as part of my job as a software delivery program manager

THE COURT: All right Thank you, Mr *** (Juror Number 0273)

Yes, sir

THE JUROR: *** (Juror Number 0269) That's spelled with a K I have a son-in-law who's a CPA

THE COURT: All right

Yes, ma'am

THE JUROR: *** (Juror Number 0455) And I'm currently employed as accounts receivable in the City of Richmond

THE COURT: ·Yes, ma'am

THE JUROR: *** (Juror Number 0034) I have a sister that's a CPA in Houston, Texas, for Dockwise

THE COURT: Ms *** (Juror Number 0034) Thank you

Yes, sir

THE JUROR: *** (Juror Number 0450) Took two accounting courses at VCU back in the early '70s, and I also have a niece, by marriage, who was a former CPA and her husband is currently a CPA

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0016) I took a couple accounting classes for my bachelor's degree, and I served as the treasurer for a year for a nonprofit organization

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0367) Couple accounting classes in college, and I've got a -- my aunt's husband is a retired CPA in South Carolina

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0227)

THE COURT: Okay

THE JUROR: My brother is an accountant, and I work in financial management at VCU

THE COURT: All right Thank you, Ms *** (Juror Number 0227)

Mr *** (Juror Number 0003)

THE JUROR: Yes I don't know if this would have any bearing, but say if you were hired for a particular job, you wasn't any good at it So rather than for them to fire me, they transferred me to another department But I applied for it and got the accounting job, but I just couldn't cut it But they didn't let me go They transferred me So --

THE COURT: That's all we need to know, Mr *** (Juror Number 0003)

Yes, ma'am

THE JUROR: *** (Juror Number 0209) My sister is an accountant, and I took some classes in college

THE COURT: Okay, Ms *** (Juror Number 0209)

Yes, sir

THE JUROR: *** (Juror Number 0281) And I took several accounting courses for my information system degree

THE COURT: All right Thank you, Mr *** (Juror Number 0281)

Does any member of the jury panel have any experience, training expertise and/or education in the field of banking? Banking?

All right We'll start with Ms *** (Juror Number 0227)

THE JUROR: I was a bank examiner for the Federal Reserve

THE COURT: And how long did you do that?

THE JUROR: I did that in the early '80s So for four years

THE COURT: Four years Okay All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0108) My sister, Nancy Richards, is the vice president for SunTrust in charge of corporate loans

THE COURT: Mr *** (Juror Number 0108) Okay Thank you

All right Yes, ma'am

THE JUROR: *** (Juror Number 0039) My daughter works for a bank

THE COURT: All right And do you have any sense of her duties, what is it that she does, teller, loans?

THE JUROR: She's an RB, they call it Relations -- public relations she does

THE COURT: Oh, I got it Okay Thank you

Yes, ma'am

THE JUROR: My name is *** (Juror Number 0095) And I have a career -- my career was in IT, budgeting and planning applications and profitability systems and financial services for 25 years

THE COURT: Okay And I want to make sure I got your name right

THE JUROR: *** (Juror Number 0095)

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0501) My sister was a head teller over 25 years ago in the South Carolina area And then she ended up being the president's secretary of one of the major bank firms here in Richmond, but they have changed hands over three times now But she is now retired

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0068) With a K Twenty-five years residential mortgage lender as a loan officer

THE COURT: Okay

And just so we don't get any more duplications, I am going to have a specific question about expertise in mortgage brokerage and loans So that's coming

Okay All right, Mr *** (Juror Number 0303)

THE JUROR: Yes, sir I worked at a bank when I was in college and with the Federal Deposit Insurance Corporation for ten years up until 1980, and my brother is a loan officer at Bank of Maryland

THE COURT: Okay All right

Yes, sir

THE JUROR: *** (Juror Number 0487) My wife is a project manager for the Federal Reserve Bank

THE COURT: Okay Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0229) My family started a small bank in Southwestern Virginia I represented lenders, commercial real estate lenders for loans in the early '80s I currently serve -- I'm the director of an advisory board of a bank in Richmond

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0485) I used to work for Citizens Fidelity for 15 years and I went to the Federal Reserve I now work at Capital One in ACH

THE COURT: All right

Yes, ma'am

THE JUROR: Hi *** (Juror Number 0218)

THE COURT: All right

THE JUROR: I worked at -- when it was Crestar for eight years in the bank card division

THE COURT: Okay Thank you

Yes, ma'am

THE JUROR: My name is *** (Juror Number 0358) And I worked in the trust department at Bank of Virginia 29 years ago

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0281) I'm with the Federal Reserve for over 30 years, programming and systems administration for the bank and for some U S Treasury applications

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0421) My grandfather was a vice president of a bank, and I have an uncle that was a president of a bank

THE COURT: Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0447)

THE COURT: All right

THE JUROR: My husband works for the Federal Reserve Bank

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0099) And I currently work for Capital One in the credit card department

THE COURT: Let's see *** (Juror Number 0099) Thank you

THE JUROR: You're welcome

THE COURT: Yes, sir

THE JUROR: *** (Juror Number 0333) I've worked as a teller and financial planner

THE COURT: All right Thank you, Mr *** (Juror Number 0333)

Yes, sir

THE JUROR: *** (Juror Number 0088) Information technology with SunTrust

THE COURT: All right

Yes, ma'am

THE JUROR: *** (Juror Number 0382) Cousin-in-law president of a bank in Mississippi and recently transferred to be president of a bank I believe in Alabama, but I don't know what bank

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0160) My daughter is currently employed by Baylands Federal Credit Union as a teller, and my stepdaughter is employed by Virginia Credit Union as a teller

THE COURT: All right Thank you

Whoever has the cough over there, would you like some water?

THE JUROR: Yes

THE COURT: Yes, sir

THE JUROR: *** (Juror Number 0341) For six years I worked for Signet Bank in the mortgage loan conversions But for the last 16 I've been at Capital One doing financial analytics and data analytics

THE COURT: Thank you, Mr *** (Juror Number 0341)

Yes, sir

THE JUROR: My name is *** (Juror Number 0273) I mentioned before I was a teller and a financial services representative for Eastern Bank in the North Shore of Boston I also worked, from 1999 to 2008, for First Tennessee Bank in on-line banking and IT And I've also done, as part of my job at HP, I worked for several projects -- managed several projects at Capital

One

THE COURT: All right   Thank you, sir

Yes, ma'am

THE JUROR: *** (Juror Number 0277)   I'm with Capital One legal, subpoenas

THE COURT: All right   Thank you

Does any member of the jury panel have any training, education, experience, expertise in mortgage banking or mortgage underwriting standards, that kind of thing?

All right   We'll start up here   Yes, ma'am

THE JUROR: *** (Juror Number 0150)

THE COURT: All right, Ms *** (Juror Number 0150)

THE JUROR: I've been a mortgage loan officer for the past 30 years   Currently vice president of mortgage services for Bank of McKenney for 15 years

THE COURT: All right   Thank you

Over here   Yes, sir

THE JUROR: *** (Juror Number 0068) Residential mortgage lending, 25 years   Loan officer, branch manager

THE COURT: All right   Thank you

Yes, sir

THE JUROR: My name is *** (Juror Number 0324)

Seven years financial service advisor at my current institution I also did some data entry on mortgage loans

THE COURT: All right Thank you, Mr *** (Juror Number 0324)

Yes, sir Oh, excuse me Got one more over here I'm sorry, sir

THE JUROR: *** (Juror Number 0308)

THE COURT: All right, *** (Juror Number 0308)

THE JUROR: Six years with SunTrust, foreclosures and accounting, and currently at COO Mortgage doing accounting for mortgages and loans

THE COURT: All right, Mr *** (Juror Number 0308) Thank you

Yes, sir

THE JUROR: *** (Juror Number 0049) I'm currently a mortgage broker, self-employed I've been in the field approximately 20 years

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0450) And I have an uncle who was a retired senior vice president for Savings and Loan up in Baltimore in specialized commercial loans

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0431) I was a mortgage loan officer for Savings and Loan in Richmond

THE COURT: All right, Ms *** (Juror Number 0431) Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0160) I was previously employed with Bank of America Mortgage from 1994 to 2000

THE COURT: Thank you

Yes, sir

THE JUROR: *** (Juror Number 0010) From 1999 to 2009, we would do 20 -- 30 to 40 real estate closings every month

THE COURT: Okay

All right

Yes, sir, Mr *** (Juror Number 0341)

THE JUROR: Yeah *** (Juror Number 0341) Six years Signet Bank, mortgage loan conversions

THE COURT: All right Thank you

Are there any members of the jury panel or your family members who are current or former employees of the Commonwealth of Virginia? Current or former employees of the Commonwealth of Virginia, you or family members?

All right Let's get started with Ms ***

(Juror Number 0227)

THE JUROR: *** (Juror Number 0227) I currently work at Virginia Commonwealth University

THE COURT: All right In what capacity?

THE JUROR: I do financial management work in the provost's office

THE COURT: All right And, Ms *** (Juror Number 0227), how long have you been doing that?

THE JUROR: About 25 years

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0039) I'm retired from the Virginia Department of Agriculture and Civil Services, and I worked in the finance office for about 40 years

THE COURT: All right Thank you, Ms *** (Juror Number 0039)

Yes, sir

THE JUROR: *** (Juror Number 0108) I'm currently employed at Virginia Commonwealth Health Systems, and my father, Lou Brett, retired from the Department of Highways a few years ago, served 30-some plus years with them

THE COURT: All right Thank you, Mr *** (Juror Number 0108)

Yes, sir

THE JUROR: *** (Juror Number 0185)

THE COURT: All right

THE JUROR: And my wife is an RN at the VCU Health Systems

THE COURT: All right Thank you, Mr *** (Juror Number 0185)

Yes, ma'am

THE JUROR: *** (Juror Number 0399) I'm a pharmacist for Hiram Davis Medical Center

THE COURT: All right Thank you, Ms *** (Juror Number 0399)

Yes, ma'am

THE JUROR: *** (Juror Number 0355) I'm an educator I've worked at Northern Virginia Community College, University of Mary Washington and currently at J Sargeant Reynolds Community College

THE COURT: All right Thank you, Ms *** (Juror Number 0355)

Yes, ma'am

THE JUROR: *** (Juror Number 0327) My mother worked as a social worker 20, 30 years ago

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0462)

THE COURT: All right, Ms *** (Juror Number 0462)

THE JUROR: I worked for VCU for about ten years My mother is also retired from the Department of Agriculture Commission of Secretary

THE COURT: All right Thank you

Yes, ma'am Right here

THE JUROR: *** (Juror Number 0095) And I worked for one year for what was the Department of Youth and Family Services as a data analyst in 1990

THE COURT: All right Thank you, Ms *** (Juror Number 0095)

All right Mr *** (Juror Number 0003)

THE JUROR: Yes My sister, she was with the Department of Social Services She was field supervisor for the child protective division of that

THE COURT: Thank you

Yes, sir

THE JUROR: *** I'm (Juror Number 0005) My daughter is currently a nurse at VCU Health Systems

THE COURT: Thank you

Yes, sir

THE JUROR: *** (Juror Number 0016) My mother is a retired nurse from VCU Health Systems

THE COURT: All right

Yes, ma'am

THE JUROR: *** (Juror Number 0388) I worked at VCU parking and transportation in the accounting department, and my sister worked at Virginia State Health Department

THE COURT: All right Thank you

Yes, sir

THE JUROR: My name is *** (Juror Number 0317) I taught at Southside Virginia Community College for 38 years, and I also taught at Virginia State University while working on my degree

THE COURT: All right Thank you, sir

Yes, ma'am

THE JUROR: *** (Juror Number 0150)

THE COURT: All right

THE JUROR: My brother is superintendent of VDOT office He's been there about 35 years

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0392) My uncle was a programmer for VCU

THE COURT: I didn't hear the last part

THE JUROR: My uncle was a programmer for VCU

THE COURT: VCU All right

Yes, ma'am

THE JUROR: *** (Juror Number 0102) I was an adjunct instructor for VCU for over 20 years

THE COURT: All right

Yes, sir

THE JUROR: *** (Juror Number 0210) My wife is an employee of Virginia Premier, employed at VCU Health System

THE COURT: All right Thank you, Mr *** (Juror Number 0210)

Yes, ma'am

THE JUROR: *** (Juror Number 0209) My stepfather was a magistrate

THE COURT: All right Thank you And, Ms *** (Juror Number 0209), do you know what jurisdiction he worked in?

THE JUROR: He was in Fredericksburg It begins with a C

THE COURT: Thank you All right

Yes, sir

THE JUROR: *** (Juror Number 0398) My aunt retried from VITA

THE COURT: Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0229) My mother was a circuit court judge's secretary And I'm in the

Office of Attorney General, and I'm an adjunct professor at VCU

THE COURT: All right Thank you And, Ms *** (Juror Number 0229), how long have you been in the AG's Office?

THE JUROR: Since December 1st

THE COURT: You just -- oh, you just got started

THE JUROR: I just started

THE COURT: Thank you

Yes, sir

THE JUROR: *** (Juror Number 0478)

THE COURT: All right, *** (Juror Number 0478)

THE JUROR: As previously mentioned, my father and uncle worked for Virginia State Police, and I worked as a technician for the Department of Game and Inland Fisheries for three years

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0184) And my uncle worked at Community College System

THE COURT: Okay That's Ms *** (Juror Number 0184)

Yes, ma'am

THE JUROR: *** (Juror Number 0218) My

sister-in-law worked as an aid with former Governor John Wilder -- Warner -- John Warner

THE COURT: Make sure I'm hearing You said your sister?

THE JUROR: Sister-in-law

THE COURT: Sister-in-law And she worked for -- is it Mark Warner or John Warner?

THE JUROR: John Warner He's retired

THE COURT: All right Thank you very much

Yes, sir

THE JUROR: *** (Juror Number 0218) My wife currently works at the VCU dental school as a patient coordinator And my mother used to work for the state in the IT department She's retired

THE COURT: All right Thank you, Mr *** (Juror Number 0218)

Yes, ma'am

THE JUROR: My name is *** (Juror Number 0205) My husband work with the health department at MCV/VCU

THE COURT: Give me your last name again

THE JUROR: *** (Juror Number 0205)

THE COURT: And you said your husband worked for what agency?

THE JUROR: At MCV/VCU

THE COURT: VC?

THE JUROR: He was in the health department of Virginia

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0447) And I did occasional contract work for the Department of Professional Licensing Board of Opticians

THE COURT: And I missed your name again

THE JUROR: *** (Juror Number 0447) Y-E-N

THE COURT: Right I gotcha

Yes, ma'am No Right here in the gray sweater Yes

THE JUROR: *** (Juror Number 0453) I'm a nurse with VCU Health System, MCV Physicians

THE COURT: All right Thank you

All right Yes, sir

THE JUROR: *** (Juror Number 0450) My daughter worked for VCU in the accounting lab as a tutor for two years, and I have a sister-in-law who's retired from the Virginia Employment Commission

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0496) I worked for the Virginia Department of Corrections about eight years ago

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0141) I work for the Department of Health and VASAP

THE COURT: All right Thank you

All right We'll start over here

THE JUROR: *** (Juror Number 0363) My mother-in-law works for Department of State, and my brother-in-law works for VCU State Police -- VCU Police

THE COURT: All right Thank you

THE JUROR: My name is *** (Juror Number 0250) And I have a grandmother who works at Virginia State University, and my uncle works at Virginia State University as well I work for John Marshall Court in Richmond, Virginia

THE COURT: All right Start across here

Yes, ma'am Right here

THE JUROR: *** (Juror Number 0277) I have a sister who works for the Virginia Institute for the Blind and another sister who works for the Department of Taxation State Collections

THE COURT: Thank you, Ms *** (Juror Number 0277)

Yes, ma'am

THE JUROR: *** (Juror Number 0256) I'm a former nurse for VCU Health System My mother is a retired teacher, City of Petersburg My brother worked for the Department of Juvenile Justice

THE COURT: All right Thank you, Ms *** (Juror Number 0256)

All right Mr *** (Juror Number 0341)

THE JUROR: *** (Juror Number 0341) I have two brothers-in-law that work for the Commonwealth One is a research lawyer and I don't know what department, and the other is an IT administrator

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0238) I worked for the Virginia Employment Commission in the '80s in the IT department, and my husband currently works for the Virginia Supreme Court in the IT department

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: Yes *** (Juror Number 0500) I am now married to The Honorable Robert D Laney, Chesterfield General District Court, retired 25 years He still substitutes So -- for the state of Virginia, for the Commonwealth

THE COURT: And what jurisdiction was Judge Laney in?

THE JUROR: Chesterfield General District Court

THE COURT: Chesterfield General District All right Thank you very much

All right Yes, ma'am

THE JUROR: I'm *** (Juror Number 0382) Primary elementary school teacher from '94 to '04

THE COURT: All right Thank you

All right Yes, ma'am

THE JUROR: *** (Juror Number 0272) Superintendent of schools, Charlottesville City

THE COURT: All right Thank you

All right Yes, sir

THE JUROR: *** (Juror Number 0156) Previously employed, for approximately ten years, with the Virginia Employment Commission, and my wife is involved in the Department of Education currently

THE COURT: All right Thank you, Mr *** (Juror Number 0156)

Yes, ma'am

THE JUROR: I'm *** (Juror Number 0066) And I have been with the Commonwealth of Virginia for 25 years, and my agency is currently the Department of Environmental Quality

THE COURT: All right Thank you

Yes, sir

THE JUROR: My name is *** (Juror Number 0273) I have a sister-in-law who's a nurse at VCU Medical, and my mother-in-law served as a teacher in the Williamsburg area up until 2008 when she retired

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0269) My wife has had three separate jobs with the state Late '70s, she was with the State Department of Welfare Mid-'90s Christopher Newport University Currently employed by the Community College System

THE COURT: All right Thank you, sir

Yes, sir

THE JUROR: *** (Juror Number 0432)

THE COURT: All right

THE JUROR: Former correctional sergeant, 30 years service, Department of Corrections

THE COURT: All right Thank you, Mr *** (Juror Number 0432)

Yes, sir

THE JUROR: *** (Juror Number 0367) Wife was a speech pathologist for the Hampton school system '77, '78 time frame, somewhere in that area

THE COURT: All right

Stand up Yes, sir

THE JUROR: My name is *** (Juror Number 0333) I was wondering, do you include educators who are employed by the county as part of those employed by the state?

THE COURT: No

THE JUROR: Thank you

THE COURT: Does any member of the jury panel or a close family member have any training, education, expertise or experience in the area of real estate sales, rentals or brokerage? Real estate sales, rentals or brokerage?

Let's start over here Yes, ma'am

THE JUROR: My name is *** (Juror Number 0381) And my mother is a real estate agent

THE COURT: Okay, Ms *** (Juror Number 0381) All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0095) I have and my family has owned rental property for 50 years

THE COURT: Okay, Ms *** (Juror Number 0095) And, Ms *** (Juror Number 0095), let me inquire a little further You said for how many years?

THE JUROR: I just said 50 My parents had rental homes in Southampton County, and I had some in Charlottesville for 20 years

THE COURT: All right And what type of

properties are we talking, residential?

THE JUROR: Residential, yes, sir

THE COURT: All right Thank you, ma'am

Yes, sir

THE JUROR: I'm *** (Juror Number 0005) My wife works for an attorney and does real estate closings

THE COURT: Thank you

All right Ms *** (Juror Number 0227)

THE JUROR: I own some rental property

THE COURT: All right Thank you And what -- just what kind or --

THE JUROR: Residential

THE COURT: Residential All right

Yes, sir Over here

THE JUROR: *** (Juror Number 0161) My wife is a realtor

THE COURT: *** (Juror Number 0161) Thank you

Yes, sir

THE JUROR: *** (Juror Number 0068) I got my real estate license 20-plus years ago Parents managed 50 rental properties before they retired My mother currently holds a brokerage license in real estate My wife currently works for a property management company, commercial real estate, 90-plus properties, family owned

THE COURT: All right Thank you

All right Yes, sir, Mr *** (Juror Number 0303)

THE JUROR: *** (Juror Number 0303) I've been in the real estate and sales business and brokerage for 30 years, and I own a number of single-family rentals and one commercial

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0337)

THE COURT: Okay

THE JUROR: My son-in-law used to rent several residential properties I think his mother is a real estate agent And I bought a house and rent it to my daughter

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0414)

THE COURT: All right, *** (Juror Number 0414)

THE JUROR: I had real estate license for over 30 years My wife shared one for 35 She's a broker in Richmond, and we self-manage some of our residential properties

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0101) And my grandmother owns and is a broker for Courthouse Properties, Incorporated in Chesterfield and she owns several rental properties And my aunt also has her real estate license

THE COURT: All right Thank you

Yes, sir

THE JUROR: My name is *** (Juror Number 0466) And I have two brothers-in-law who are both involved in the commercial mortgage brokerage business And then we had a couple of vacation homes that we rented

THE COURT: All right, *** (Juror Number 0466) Thank you Mr *** (Juror Number 0466), let me ask you this Your vacation properties, where were they located?

THE JUROR: One was in Corolla, North Carolina, and one was in Snowshoe

THE COURT: The last?

THE JUROR: Snowshoe, West Virginia

THE COURT: Snowshoe Okay All right

Yes, ma'am

THE JUROR: *** (Juror Number 0102) I have a cousin who is a real estate agent

THE COURT: All right Thank you, Ms *** (Juror Number 0102)

All right Yes, ma'am Ms *** (Juror Number 0229)

THE JUROR: *** (Juror Number 0229) I consider myself a commercial real estate agent

THE COURT: All right

Yes, sir

THE JUROR: *** (Juror Number 0389) My father-in-a law is a realtor He does have some rental properties

THE COURT: Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0363) I was employed with a real estate company in the rentals department for about six months in 2005

THE COURT: All right Thank you

Yes, sir

THE JUROR: *** (Juror Number 0336) My older brother has a real estate license He and I own several commercial and residential properties together

THE COURT: All right Thank you, Mr *** (Juror Number 0336)

Yes, ma'am

THE JUROR: *** (Juror Number 0447) My brother has a real estate license, and my father worked for a real estate company many years ago and had rental property

THE COURT: Thank you

Yes, sir Mr *** (Juror Number 0156)

THE JUROR: Yes, sir Managed personal residential real estate, rental

THE COURT: Is that currently or in the past?

THE JUROR: In the past

THE COURT: In the past All right Thank you, *** (Juror Number 0156)

Yes, ma'am

THE JUROR: *** (Juror Number 0382) My sister is a licensed real estate agent but is not currently actively employed in the field

THE COURT: Thank you

Yes, sir

THE JUROR: *** (Juror Number 0269) My wife and I are joint owners of one piece, one parcel of residential real estate property, and we're currently involved in some intra-family loans and mortgages, all of which are duly registered

THE COURT: All right Thank you

Yes, ma'am

THE JUROR: *** (Juror Number 0220) My son has a real estate license and manages properties in Missoula, Montana, and my father-in-law, who's deceased, also had a real estate license

THE COURT: All right Thank you

All right It's -- it's 1:00 and we're not even close to being finished with this So what I've done, we got lunch for all of you down on the second floor primarily because we want to keep you together until this process is completed So I'm going to have you all -- we'll be down for lunch for one hour So we'll be back in here at -- at 2:00 You all follow the marshals

(The jury panel exited the courtroom)

THE COURT: All right All of the jurors are out of the courtroom I had a -- just a couple things I've got a letter here from one of the jurors, she's 0421, and she was making a late request to be excused And it basically relates to her duties as a caregiver to her extremely ill father And she outlined what the deal was and gave me a letter documenting the illness So I would certainly be open to releasing her

Anybody got any particular objections?

MR ASBILL: No

MR DRY: None from the United States, Your Honor

MR BURCK: No, Your Honor

THE COURT: And I've got a few more that I don't want to discuss right now, but I just want to alert you There were -- as I went through this over the weekend yesterday, there were like three names that popped out I thought maybe we could scrub One is *** (Juror Number

0184) She's 0184 She indicated that she had formed an opinion, a negative one, which -- and doubted her ability to be fair So you all take a look at that one We'll talk about it more

Then there was *** (Juror Number 0196) I think it is And he indicated he had formed an opinion, albeit a general one, about all politicians, but he did indicate the formation of an opinion

And then -- *** (Juror Number 0196) was 0196

And then this *** (Juror Number 0160) She indicated she had formed an opinion and then at another place, she indicated she thought she might not be able to be fair, but she never articulated her opinion So I think we need to talk to her I just want to alert you to these And I just -- I don't know how I missed that, but I went through everything yesterday and just found these in the questionnaires

MR ASBILL: Judge, with respect to the first two, we would ask that they be excused for cause

THE COURT: All right Any problem with that?

MR DRY: Judge, we'd like all three excused for cause, if we're going to excuse the first two

THE COURT: Okay

MR ASBILL: We don't object to all three being excused

MR BURCK: No, Your Honor

THE COURT: I think that's the safest way to go All right

MR DRY: Judge, there was one additional one, Juror 218, *** (Juror Number 0218), who I believe on question number 97 said that she shouldn't serve either

THE COURT: All right I'll take a look in a second Give me that name again, Mr Dry

MR DRY: This is Juror Number 218

THE COURT: *** (Juror Number 0218)

All right Yeah, I flagged her, Number 97 She says she has -- when asked "is there any reason that you believe you should not sit as a juror in this case," she said yes, and then she relates some connection that her sister-in-law has to a politician I think we -- I think we need to inquire more about that one

MR ASBILL: We agree, Your Honor

THE COURT: All right So we'll do that I'll make a note

MR DRY: Your Honor, one housekeeping matter

THE COURT: Sure

MR DRY: We may have been overly ambitious, but we have a couple witnesses that are ready to go And it doesn't look like they'll be joining us today so we'd like to release them I just want to make sure that there's no chance we're getting to them

THE COURT: You must have been hallucinating

MR DRY: Very well Just didn't want to be unprepared, Your Honor

THE COURT: I appreciate that

But we'll be back at 2 We've got some -- you know, quite a ways to go to get to the jury My hope was that we would get at least to opening statements, but that's looking even more shaky as we go But witnesses, I have serious doubt

MR BURCK: Your Honor, just one other housekeeping point And we may have missed it, but I'm not sure that the Court inquired of the jury as to whether or not Quinn Emanuel, have they had any interaction with Quinn Emanuel as attorneys So I was just -- I know Jones Day and Holland & Knight were mentioned, but I just thought as a --

THE COURT: Right

MR BURCK: It's a small point

THE COURT: Yeah Quinn Emanuel, I'll ask them about that

MR BURCK: Thank you, Your Honor

THE COURT: All right We'll see you all at 2:00

///

(Luncheon recess taken from 1:09 p.m. to 2:10 p.m.)

THE COURT: Does any member of the jury panel or a close family friend have any training, education, expertise, or experience in stock brokerage, buying, selling, investment advice? Any stockbrokers?

All right, let's start up here. Yes, ma'am?

THE JUROR: My name is *** (Juror Number 0290) My mom is a stockbroker

THE COURT: All right What was the relationship?

THE JUROR: My mother

THE COURT: Mother Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0111) My brother-in-law is president of a financial planning firm and in the past he has bought and sold stocks and bonds

THE COURT: Okay, Mr *** Thank you. Yes, ma'am?

THE JUROR: *** (Juror Number 0501) My brother is a stockbroker in the Richmond area.

THE COURT: Okay Ms ***, do you know what firm he is with?

THE JUROR: It is a major firm, and I'm sorry, I don't know the name

THE COURT: Okay Thank you. Yes, ma'am?

THE JUROR: *** (Juror Number 0229) I

represent a financial advisor out of Houston. I was general counsel for a couple real estate investment firms

THE COURT: All right Yes, sir?

THE JUROR: *** (Juror Number 0308) Past employee of Wachovia Securities for 14 years I was in charge of stocks and bonds and pricing M.O 's

THE COURT: All right, thank you. Yes, sir?

THE JUROR: *** (Juror Number 0333) My father is a professional financial advisor and my brothers own a financial advisory firm and my brother-in-law works as a trader for a firm in Boston.

THE COURT: All right Thank you Yes, sir?

THE JUROR: *** (Juror Number 0049) My father is a retired investment counselor

THE COURT: All right, thank you. Yes, sir?

THE JUROR: *** (Juror Number 0269) I have a son-in-law who is the in-house financial planner for a small firm in Charlottesville

THE COURT: Thank you.

Has any member of the jury panel or a close family member ever run for or held an elected office? All right, we will start on this side this time Yes, sir?

THE JUROR: *** (Juror Number 0099) My brother ran for a City Council seat up in Kingston, New York last year

THE COURT: Yes, ma'am?

THE JUROR: *** (Juror Number 0445) My stepmother is in the House of Representatives for the State of North Carolina. She is retired now

THE COURT: Thank you. Yes, ma'am?

THE JUROR: My brother served on the council of a small town up in Maryland. *** (Juror Number 0401) And my sister has run unsuccessfully several times in Howard County, Maryland.

THE COURT: All right, thank you. Yes, sir?

THE JUROR: *** (Juror Number 0217) My father was the mayor of Kiawah Island, South Carolina for a term.

THE COURT: All right Mr Nelson, how far does that go back?

THE JUROR: 10, 12 years ago.

THE COURT: When was his term, approximately?

THE JUROR: I want to guess it was 1996 to 1998, something like that It is when the Ryder Cup was played down there if that helps

THE COURT: All right

Has any member of the jury panel ever worked in a job where you were required to file annually or periodically a Statement of Economic Interest? All right, we will start with you, Ms ***

THE JUROR: *** (Juror Number 0227) As a

Commonwealth of Virginia employee working in financial management, I'm required to file annually

THE COURT: All right Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0203) I'm a manager for the federal government Annually, we have to submit documentation to show we don't have any interest in companies that we deal with.

THE COURT: All right Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0179) We have to file -- I work for the Federal Reserve Bank of Richmond. We have to file an annual report

THE COURT: All right, thank you. Yes, ma'am?

THE JUROR: As Superintendent of schools, *** (Juror Number 0272), I have to file an annual statement

THE COURT: Thank you, ma'am. Yes, sir?

THE JUROR: *** (Juror Number 0281), Federal Reserve, annual statement

THE COURT: All right Thank you, Mr *** Yes, ma'am?

THE JUROR: *** (Juror Number 0500) My husband has to file an annual asset statement

THE COURT: With whom do you file?

THE JUROR: (Inaudible.)

THE COURT: I didn't hear

THE JUROR: He has to file an annual asset statement for the courts

THE COURT: Oh, I got you.

Is there any member of the jury panel who has had a claim against or a dispute with the Commonwealth of Virginia?

Do any of you now or have you in the past acted as a supplier, contractor, or subcontractor for the Commonwealth of Virginia?

THE JUROR: Is that federal government as well?

THE COURT: Well, this particular question was relating to the Commonwealth.

THE JUROR: Sorry

THE COURT: We need your name for the record.

THE JUROR: *** (Juror Number 0356)

THE COURT: Is there any member of the jury panel who does not speak, read, or write fluently the English language?

Has any member of the jury panel ever studied law or taken any law-related courses? Any lawyers or those who have taken law-related courses? All right Let's start right here

THE JURC *** (Juror Number 0363) As a part of my Masters progra.. I just studied healthcare law

THE COURT: Healthcare law, part of your Masters program. Yes, sir?

THE JUROR: *** (Juror Number 0450) I took a business law course in 1977

THE COURT: Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0059) I studied aviation law as part of my undergraduate program.

THE COURT: All right, Mr *** Yes, ma'am?

THE JUROR: *** (Juror Number 0382) School law as part of my Masters in Administration.

THE COURT: All right Yes, ma'am?

THE JUROR: *** (Juror Number 0160) I also studied school law for my Masters in Administration

THE COURT: Thank you very much.

THE JUROR: *** (Juror Number 0010) I got a juris doctor degree in 1977, practiced law in the Richmond area for 32 years

THE COURT: Thank you, Mr *** Yes, ma'am?

THE JUROR: *** (Juror Number 272), school law, graduate work and workshops annually

THE COURT: All right Yes, ma'am?

THE JUROR: *** (Juror Number 0388) Business law as part of my undergraduate

THE COURT: All right, thank you. Yes, sir?

THE JUROR: *** (Juror Number 0273), two business law courses as part of my undergraduate at University of Memphis

THE COURT: Yes, ma'am?

THE JUROR: *** (Juror Number 0455) I studied law as part of my Associates and Master's degree

THE COURT: All right, thank you. Yes, sir?

THE JUROR: *** (Juror Number 0016) I have studied business law and Internet law as part of my undergraduate degree

THE COURT: All right Thank you. Yes, ma'am?

THE JUROR: *** (Juror Number 0229) I am currently a practicing Virginia lawyer

THE COURT: All right, thank you. Yes, ma'am?

THE JUROR: *** (Juror Number 0186) I had several different legal classes for legal/secretarial college in Minneapolis

THE COURT: All right, thank you.

THE COURT: Thank you.

Has any member of there jury panel or a family member ever been either a witness to a crime or a victim of a crime? Witness to a crime or a victim of a crime

THE JUROR: *** (Juror Number 0003) Your Honor, victim of a crime, would that include like breaking and entering? I've been robbed a couple times

THE COURT: All right Let's start with you, Mr *** First of all, when was the last time? You are describing a burglary of your home?

THE JUROR: Yes The last time was approximately two-and-a-half years ago. I went out of town to North Carolina and came back and they had got me The time before that was approximately about five years before that

THE COURT: All right Thank you, Mr *** Yes, sir?

THE JUROR: *** (Juror Number 0005) Our house was broken into back in 1995, I believe it was

THE COURT: Thank you. Yes, ma'am?

THE JUROR: May I approach the bench?

THE COURT: Certainly Come on up

(At Bench.)

THE JUROR: *** (Juror Number 0501) again. It was over 30 years ago, and I lived in the Henrico area This was my son's father, he worked third shift, and so it was my son and myself in the house at night, and a neighbor that -- we were in a home residence A neighbor in an apartment, I'm trying to remember, it is in Henrico, I can't remember the name of the street, broke into the back of the house, the door, took the handles out of the door, and I had a dog that was getting ready to deliver She was growling I had my son in bed with me at the time She was growling and woke me up. I was walking down the hallway and this guy that had broken in was in the first bedroom and he came out, put his hand over my mouth. There was no rape involved, but the hand. I did identify him and he is in prison for life.

THE COURT: Okay Now, how long ago was this?

THE JUROR: Over 30-some years ago. My son was an infant and now he is in his late 30's

THE COURT: All right

THE JUROR: Thank you.

(In Open Court)

All right, Mr *** (Juror Number 0341)?

THE JUROR: Yes, sir, about ten years ago in Baltimore, the rear window of our van was smashed in, and about a thousand dollars worth of stuff taken out of it

THE COURT: All right, thank you. Yes, ma'am?

THE JUROR: May I approach?

THE COURT: Absolutely Come on up.

(At Bench.)

THE JUROR: *** (Juror Number 0421) I gave you the letter

THE COURT: I was about to discuss that

THE JUROR: I didn't know when to stand up about that

THE COURT: Actually, we have discussed that letter after you all left for lunch and we decided to let you go. So you may be excused. And I certainly hope and pray that everything turns out all right And you are free to go.

THE JUROR: Right now?

THE COURT: Absolutely

(In Open Court)

Yes, ma'am?

THE JUROR: *** (Juror Number 0452) I was robbed in 2008

THE COURT: All right, thank you. Yes, sir?

THE JUROR: *** (Juror Number 0099) My apartment was broken into in the early 1990's and my car was broken into in the early 1990's and also the early 2000's.

THE COURT: Thank you. Yes, ma'am?

THE JUROR: *** (Juror Number 0494) My house in San Antonio was broken into and robbed in 1985

THE COURT: All right Thank you. Yes, sir, Mr *** (Juror Number 0273)?

THE JUROR: My car was broken into in 1993

THE COURT: Thank you. Yes, ma'am?

THE JUROR: *** (Juror Number 0445) Hit-and-run victim, 2008

THE COURT: All right Yes, sir?

THE JUROR: *** (Juror Number 0336) My car was broken into in 1985

THE COURT: All right, Mr *** Ms. *** (Juror Number 0227)?

THE JUROR: Attempted break-ins, my residence.

THE COURT: Your residence? How long ago was that?

THE JUROR: Two years ago.

THE COURT: All right Mr *** (Juror Number 0281)?

THE JUROR: 1982, motorcycle stolen; about 1985, car broken into; and late 1980's, shed broken into, about $2,000 worth of tools stolen.

THE COURT: Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0333) Passport was stolen in 1992

THE COURT: All right Thank you. Yes, ma'am?

THE JUROR: *** (Juror Number 0358) I was victim of a hit-and-run about ten years ago and a house break-in about 30 years ago

THE COURT: All right Thank you.

Now, the responses to this next question, we will take all of the responses at the bench. So what I would like for you to do, if you have a positive response to this, line up in the aisle and we will take you one at a time

Has any member of the jury panel or a family member been charged with a crime or convicted of a crime other than a minor traffic offense? You or any member of your family ever been charged with a crime or convicted of a crime other than a minor traffic offense? Again, as I say, if you have an answer to that, just line up in the aisle and counsel approach.

THE JUROR: *** (Juror Number 0003) That's charged and convicted?

THE COURT: Either/or If you were charged, that's a positive answer, or if you were convicted. Yes, ma'am?

THE JUROR: *** (Juror Number 0327) My father was convicted like twelve years ago of a distribution charge

THE COURT: And do you know what jurisdiction, where that happened?

THE JUROR: I think it was Richmond.

THE COURT: In Richmond. Did you go to court or participate in anything?

THE JUROR: No.

THE COURT: All right Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0196) My step-brother, Robert Lindell, he was charged and convicted, theft from employers, tools, construction equipment

THE COURT: What's your name?

THE JUROR: *** (Juror Number 0196) I believe he served twelve months in the Stafford County Regional Jail

THE COURT: Mr ***, I'm going to go ahead and excuse you. You had some opinions in the questionnaire that probably would be tough to get beyond, so we are going to go ahead and excuse you. You are free to go. I thank you for coming down.

(Juror left Bench.)

THE COURT: That's 0196 Yes, sir?

THE JUROR: *** (Juror Number 0088) I don't know whether this counts or not My daughter married the gentleman that is convicted of second degree homicide in my son's death.

THE COURT: And the relationship to you is your --

THE JUROR: Son-in-law, I guess I've been separated from my wife for 14 years So I have really no relationship with them other tha . support

THE COURT: The son-in-law was charged with --

THE JUROR: Murder of my son. Ruled accidental homicide. Shot through the neck.

THE COURT: And what was the charge, some kind of involuntary manslaughter?

THE JUROR: Involuntary manslaughter, yes, sir

THE COURT: How long ago was this?

THE JUROR: Nine, ten years ago, I guess

THE COURT: And what jurisdiction?

THE JUROR: Hanover

THE COURT: All right Thank you, Mr *** Yes, ma'am?

THE JUROR: *** (Juror Number 0218) My nephew was charged, I think it was Indiana, for breaking and entering, and he got 30 years So I don't know whether drugs was involved or not It was very hush-hush with my sister

THE COURT: Ms ***, while I have you up here, I wanted to ask you about something in your questionnaire You indicated that you have a sister-in-law named Loomis?

THE JUROR: Yes, Ann Loomis

THE COURT: In one question you thought that might be some problem with your sitting in this case. What was that about?

THE JUROR: Well, I don't know who she knows I mean, she might know, you know people up there that I don't know she knows

THE COURT: So there is no particular person, you just thought she might know some of the parties

THE JUROR: I don't know if she knows them or not, so I was kind of in the dark

THE COURT: Thank you. That's all I need to know Yes, sir?

THE JUROR: *** (Juror Number 0232) My brother, ***, back in 2001, convicted of street racing and also went along with reckless endangerment He spent two weeks in the county My other brother, ***, in Mississippi, I think this was back last year or year before, I think two years back, he was convicted with marijuana charges

THE COURT: All right Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0279) I got a drunk in public and disorderly conduct about 2010

THE COURT: Where did this happen?

THE JUROR: Richmond City

THE COURT: Thank you. Yes, ma'am?

THE JUROR: *** (Juror Number 0109) Son, ***, assault

THE COURT: How long ago was that?

THE JUROR: 2001

THE COURT: Where did it happen?

THE JUROR: It was in Henrico, I think. He spent a year at Riverside

THE COURT: Okay, thank you. Yes, ma'am?

THE JUROR: *** (Juror Number 0399) Brother, criminal, but I can't really tell you what the charges are because I don't know

THE COURT: But you know it was some kind of criminal offense Do you know where it was, what jurisdiction?

THE JUROR: Richmond.

THE COURT: And how long ago was it?

THE JUROR: Five years

THE COURT: Okay Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0367) I was charged with breach of the peace in traffic court in Newport News, I think around 1977 And I had a younger brother that was charged with brandishing a firearm, I believe in 1978

THE COURT: Thank you. Yes, ma'am?

THE JUROR: *** (Juror Number 0200) I have two separate cases My uncle, ***, was just convicted of, I think, three different counts of molesting I'm pretty sure he just got sentenced to ten years This was just five, six months ago.

THE COURT: Do you know where it was, what court, what jurisdiction?

THE JUROR: I think it is Chesterfield County

THE COURT: And the other case?

THE JUROR: Is against me. I was caught

stealing money from my employer

THE COURT: How long ago was that?

THE JUROR: That was six, seven years now

THE COURT: What were you charged with?

THE JUROR: It ended up being nolle prossed. The Judge had me go into Chesterfield County Jail for eight days, and then I don't know the wording, but I just know it was nolle prossed.

THE COURT: All right And you said this was from an employer?

THE JUROR: Yes, Kroger

THE COURT: All right Thank you very much. Yes, sir?

THE JUROR: *** (Juror Number 0406) My son was convicted of possession of controlled substance

THE COURT: How long ago was that?

THE JUROR: Oh, that was, been close to ten years now He was convicted, he got fined, he didn't pay his fine, the state took his driver's license for three years Me and his mother paid it for him.

THE COURT: All right Bless you for being a good parent Yes, ma'am?

THE JUROR: *** (Juror Number 0162) I have a younger brother who has been charged with and convicted of two different crimes and served time in Richmond in the city

THE COURT: Do you know the crimes?

THE JUROR: Breaking and entering, and I guess what is it called when he stole something from a store and the store was open and like shoplifting I'll give it to him, he has served his time and he is home now

THE COURT: How long ago was that?

THE JUROR: He has been home for almost five years now

THE COURT: Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0248) I was charged with selling an alcoholic energy drink to a minor, 2008 And my son has a strong arm robbery charge due to drug addiction

THE COURT: Okay How long ago was your son's problem?

THE JUROR: He was in prison for five years, so it has been 2008, 2009

THE COURT: What jurisdiction did he get convicted in?

THE JUROR: He went to Riverside I guess it was Chesterfield.

THE COURT: Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0179) My wife's half-brother broke in, he was on drugs and he broke in and got shot during a burglary Not much. And then he went to prison and got paroled and later died of Hepatitis C sustained from the gunshot wound he received.

THE COURT: Okay How long ago was that?

THE JUROR: Over 25 years

THE COURT: All right Thank you. Yes, ma'am?

THE JUROR: *** (Juror Number 0212) My mother, my sister, four aunts, and two uncles for felony drug possession and felony shoplifting and my sister for prostitution.

THE COURT: All right How long ago was the most recent drug involvement?

THE JUROR: My sister served a year and got out last July

THE COURT: All right Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0203) My step-daughter had two charges from the same incident taking some pills, I think it was petit larceny, and possession of a controlled substance Both of those charges have been dismissed.

THE COURT: Where did this take place

THE JUROR: King George County

THE COURT: All right, thank you.

THE JUROR: My father-in-law, he has two charges right now, they are both in the courts One is trespassing and one was for taking his girlfriend's vehicle, so I think it is considered grand larceny

THE COURT: And this is father-in-law?

THE JUROR: Father-in-law, Westmoreland County, the town of Colonial Beach

THE COURT: Okay Thank you. Yes, ma'am?

THE JUROR: My brother is in prison in the State of Nevada.

THE COURT: Your name?

THE JUROR: *** (Juror Number 0494) My brother is in prison in the State of Nevada for the sexual exploitation and assault on a child.

THE COURT: All right And he is in jail serving a sentence or pending trial?

THE JUROR: No, he is serving a sentence. Essentially, it is life I think they said he could get out in 2035, and he is 62

THE COURT: Okay Yes, sir?

THE JUROR: *** (Juror Number 0099) My brother-in-law has been convicted of various drug offenses, evading, felon with a firearm, and murder in the second degree.

THE COURT: Okay Where did these things happen?

THE JUROR: The majority of the drug offenses were in Arizona, and Alabama was drug and evading, and then the felon with a firearm and the murder two were back in Arizona.

THE COURT: How long ago was the murder?

THE JUROR: It just got adjudicated this April

THE COURT: Okay Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0365) Just a trespassing charge, like 1978

THE COURT: That's all right Yes, sir?

THE JUROR: *** (Juror Number 0410)

THE COURT: All right

THE JUROR: I was convicted of DUI in September of 2010

THE COURT: What jurisdiction? Where did that happen?

THE JUROR: It happened on 29th Street, Church Hill

THE COURT: So you went down to John Marshall Courthouse?

THE JUROR: Yes, John Marshall

THE COURT: Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0010) My son was charged with possession of a controlled substance in the City of Richmond. He went to a diversion program. It has since been expunged from his record.

THE COURT: Yes, ma'am?

THE JUROR: *** (Juror Number 0160)

THE COURT: Your answer?

THE JUROR: I had a brother that was charged with drug possession, and a stepfather as well

THE COURT: All right, Ms. ***, while I have you up here, you put in your questionnaire that you had formed an opinion, but you didn't tell us what the opinion was

THE JUROR: Just because I knew about it from the media I've been reading a lot in the media about the case That's all

THE COURT: But what opinion did that bring to you?

THE JUROR: It brought that I was on the side of the prosecutor

THE COURT: Okay That's what I thought What that means is, we are going to have to release you. But I appreciate your coming Absolutely And thank you for coming down. You are free to leave. Yes, sir?

THE JUROR: *** (Juror Number 0156)

THE COURT: Your answer?

THE JUROR: A niece convicted of robbery and murder with a firearm.

THE COURT: Where did this happen?

THE JUROR: Philadelphia.

THE COURT: How long ago?

THE JUROR: Two or three years ago. And another niece, driving under the influence of alcohol, murder

THE COURT: And murder?

THE JUROR: Yes

THE COURT: And how long ago was that?

THE JUROR: Four years, three or four years, North Carolina

THE COURT: Okay Did you go to court with them at any time?

THE JUROR: No

THE COURT: All right Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0072) I had a girl, she was sending me a threatening text in 2011 Put her on a six-month Protective Order for it

THE COURT: Anything else?

THE JUROR: Well, yeah, she came back to me and we broke it so she took me back to Court and I had to go on a two-year Protective Order I'm done. I see her, I run.

THE COURT: Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0333) 0333

THE COURT: Your answer?

THE JUROR: Charged with possession of marijuana, 1986, Washington, D.C.

THE COURT: Okay Thank you. Yes, sir?
Mr *** (Juror Number 0273)?

THE JUROR: In about 1991 or 1992, I was charged with DUI The case was pled down to reckless driving This was in Medford, New Jersey There was another one in 1998, I believe thereabouts, I was charged with. It was a destruction of private property It was dismissed. After reviewing cameras, I was nowhere near That was in St Louis, Missouri And July of last year, I was speeding in excess of 20 miles an hour over the speed limit so the charge was, the officer told me, into the lower level of a felony The charge was dismissed. This was in Chesterfield County

THE COURT: Okay Thank you. Yes, ma'am?

THE JUROR: *** (Juror Number 0066) I was charged for disobeying a traffic light I was on my way going to work. The police officer said that I ran the red light, which I don't believe, so I had to plead my case and the judge sent me to school to get my certificate because I have an excellent driving record.

THE COURT: Okay Yes, sir?

THE JUROR: *** (Juror Number 0012) I have three cousins who got charged with drug charges and one of them got charged with having a weapon.

THE COURT: Where was this?

THE JUROR: Chicago. This is before I moved here

THE COURT: Do you know what happened to him, was he convicted?

THE JUROR: He was convicted. He did 10 years

THE COURT: So what Court was that, federal court?

THE JUROR: I don't remember I was young I know in Chicago it is illegal to have a handgun, period. So it is automatic, plus with the drugs So --

THE COURT: Thank you very much. Yes, sir?

THE JUROR: *** (Juror Number 0268)

THE COURT: Your last name?

THE JUROR: ***

THE COURT: Your answer?

THE JUROR: Soliciting prostitution, failure to appear

THE COURT: Where was this?

THE JUROR: Petersburg, Virginia

THE COURT: How long ago was that?

THE JUROR: That was 1996 Obstruction of justice

THE COURT: And when and where was that?

THE JUROR: That was Petersburg, Virginia Okay, and assault and battery of a family member

THE COURT: Also Petersburg?

THE JUROR: Petersburg DUI's, two DUI's

THE COURT: Okay When was the last problem that you had, charge?

THE JUROR: DUI

THE COURT: How far does the obstruction of justice go back?

THE JUROR: 2001, I believe

THE COURT: Okay Thank you. Yes, ma'am?

THE JUROR: *** (Juror Number 0455)

THE COURT: All right Your answer?

THE JUROR: I have an uncle that was incarcerated with the City of Richmond. A cousin also, City of Richmond, I think that was federal time, though.

THE COURT: Do you know what your uncle was charged with?

THE JUROR: I know one of the charges was a felony Another one was panhandling It was quite a few things I'm not sure of them all I know he did some time

THE COURT: Who was the other relative, a cousin?

THE JUROR: Yes, sir

THE COURT: What was the cousin charged with?

THE JUROR: I know that had to do with drugs.

but that was also federal time. And my son. That was juvenile in Colonial Heights and Chesterfield County

THE COURT: What was he charged with?

THE JUROR: Theft, and I think that was it, theft

THE COURT: Okay Do you know what happened with your uncle and cousin? Did you go to court or anything like that?

THE JUROR: I did not

THE COURT: All right Fine Thank you. Yes, ma'am?

THE JUROR: *** (Juror Number 0407) Son and three grandsons

THE COURT: Let's start with your son. Do you know what he was charged with?

THE JUROR: Assault

THE COURT: And where was that and how long ago was it?

THE JUROR: It has been about maybe five years ago.

THE COURT: Now your grandsons?

THE JUROR: Okay One, that was in North Carolina That was assault The other grandson, drugs

THE COURT: Where was that?

THE JUROR: Here

THE COURT: Richmond. Is that it?

THE JUROR: Grandson, guns He is still locked up

THE COURT: That was here?

THE JUROR: Uh-huh. And a husband. There is more, but that's enough.

THE COURT: But your husband, what charge was that?

THE JUROR: Robbery

THE COURT: How far does that go back?

THE JUROR: As far as I know, he is still in there

THE COURT: Still incarcerated?

THE JUROR: Uh-huh, as far as I know

THE COURT: Okay Yes, sir?

THE JUROR: *** (Juror Number 0050) My partner and I were wrongly arrested in New Orleans in 2008, charged with resisting arrest, disorderly conduct, and I had an additional flight charge. His charges were dropped. I pled no contest.

THE COURT: All right You said you pled no contest?

THE JUROR: Yes, sir

THE COURT: And what was your sentence?

THE JUROR: No sentence. Everything could have been expunged if I had paid the state more money

THE COURT: All right, fine Thank you very much. Yes, sir?

THE JUROR: *** (Juror Number 0003)

THE COURT: This is Mr Scott What's your answer?

THE JUROR: Oh, it was, what they call it, being on public property with an open container?

THE COURT: Okay

THE JUROR: The judge threw it out because the cop, he said he didn't see me set it down. And then the judge asked him, "Well, did you check the temperature of the contents of the can to see approximately how long it had been there?" Because it was in the summertime, about 94 degrees. He told him no, he did none of that So the judge told him he had to throw it out

THE COURT: Anything else?

THE JUROR: No, that's it

THE COURT: Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0390)

THE COURT: Okay Your answer?

THE JUROR: My wife and my daughter were charged with marijuana possession.

THE COURT: How long ago was this?

THE JUROR: My wife, about almost 20 years.

THE COURT: Okay

THE JUROR: My daughter, about four years

THE COURT: And what jurisdictions?

THE JUROR: New Kent County

THE COURT: All right Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0161) My daughter was charged with public intoxication in 2011

THE COURT: Where was this?

THE JUROR: Radford.

THE COURT: Okay

THE JUROR: My son was charged with possession of marijuana, 2012 The charges were dropped.

THE COURT: Okay, thank you. Yes, sir?

THE JUROR: *** (Juror Number 0368), Your Honor

THE COURT: All right Your answer?

THE JUROR: In the fall of 2009 I was charged with a possession of marijuana charge, and it was later dropped because I agreed to the terms of my probation which I followed then, so it was later on dropped, but I just wasn't sure because you said charged.

THE COURT: I appreciate your candor

THE JUROR: Sure, no problem. Yes, sir?

THE JUROR: *** (Juror Number 0124) I had a nephew about eight years ago, he got stopped up in Harrisonburg or Fredericksburg, somewhere up there, concealed weapon without a permit

THE COURT: Carrying a concealed weapon?

THE JUROR: Yes, sir

THE COURT: Do you know what happened with it?

THE JUROR: I think they put him on probation and I think they suspended his license a couple of months

THE COURT: Okay Yes, sir?

THE JUROR: *** (Juror Number 0111) And my son was brought up on DUI charges about 18 years ago when he was a senior in high school

THE COURT: Okay Yes, sir?

THE JUROR: My name is *** (Juror Number 0398) I was charged or convicted of misdemeanor assault more than 15 years ago.

THE COURT: Is that it?

THE JUROR: Yes, sir

THE COURT: Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0337)

THE COURT: Your answer?

THE JUROR: DUI

THE COURT: Where did it happen and how long ago?

THE JUROR: Chesterfield County, and the conviction was September 23rd, 2011

THE COURT: Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0185) I have a juvenile misdemeanor that I noted on the questionnaire, it was Stafford County I think technically it was called using a projectile too close to a highway or something to that effect Basically a bunch of friends with BB guns getting in trouble.

THE COURT: Things happen. All right Yes, sir?

THE JUROR: *** (Juror Number 0151) My son, he served a year for vehicular manslaughter He is currently serving a 20-year sentence for rape

THE COURT: Okay Where did the manslaughter happen?

THE JUROR: Here in Richmond.

THE COURT: How long ago was that?

THE JUROR: About seven years ago. Six, seven years ago.

THE COURT: And then the rape?

THE JUROR: Six years ago.

THE COURT: That was here in Richmond as well?

THE JUROR: Yes Yes, sir?

THE JUROR: *** (Juror Number 0281) I have a brother-in-law that was charged with, charged and convicted of assault and served maybe five days in jail And back when I was young and stupid, I had a possession of marijuana charge in 1977, I guess it was

THE COURT: Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0450) I don't know if this is about me or a family member, but my brother was the victim of a drive-by shooting It was 2003 in Washington, D C They never convicted anybody of the crime

THE COURT: All right, thank you. Yes, sir?

THE JUROR: *** (Juror Number 0187)

THE COURT: Your answer?

THE JUROR: My nephew, drug activity, and my grandson That's it

THE COURT: Grandson, drugs?

THE JUROR: Drug activity

THE COURT: And where did they have these problems, in Richmond or somewhere else?

THE JUROR: In Richmond.

THE COURT: And when was the --

THE JUROR: I can't tell you the time I can't tell you the month or nothing

THE COURT: All right Thank you.

I guess that's it Thank you.

(In Open Court)

Does any member of the jury panel have any special physical disability that would make it difficult or impossible for you to serve as a juror in this case? Come on up.

(At Bench.)

THE COURT: Yes, ma'am?

THE JUROR: *** (Juror Number 0184) 0184

MR. ASBILL: I think we have already --

THE COURT: What was it?

THE JUROR: They told me to tell you, I had a fall on July 2nd, and I have had a problem with my knee, and I've been in a brace until last Friday And then the doctor said I needed physical therapy, and he said for me to tell you all that I needed physical therapy

THE COURT: I'm going to go ahead and excuse you. You are free to leave

THE JUROR: Thank you.

THE COURT: Yes, sir?

THE JUROR: I was just recently treated for an acoustic neuroma brain tumor

THE COURT: Give me your name again.

THE JUROR: *** (Juror Number 0151)

THE COURT: Your say recently treated for a brain tumor?

THE JUROR: Brain tumor, radiation treatment Pretty much lost most of the hearing in my left ear My balance is real bad, too.

THE COURT: Okay And do you have any treatment going forward?

THE JUROR: No, just the one-time radiation treatment for that tumor

THE COURT: And --

THE JUROR: What happens is, after the tumor starts swelling, you start losing more of your hearing That's it right now

THE COURT: It is progressing?

THE JUROR: The last three weeks it has been getting progressively worse, the hearing loss and the balance

THE COURT: All right

(Juror left Bench.)

I'm going to let Mr *** (Juror Number 0151) go Any problem with that?

MR. ASBILL: No objection.

MR. DRY: No, sir

THE COURT: You can be excused.

THE JUROR: Thank you.

THE COURT: Yes, ma'am?

THE JUROR: *** (Juror Number 0209) I have a bad back and restless legs If you don't make me sit still too long, it's okay, but it will be up to you

THE COURT: This is what we do. I never go past two hours It is usually one-and-a-half hours Because you understand, I'm on Medicare.

THE JUROR: I understand. I just want you to know I get jumpy every now and then.

THE COURT: All right, we will check it

THE JUROR: Thank you.

THE COURT: Yes, sir?

THE JUROR: *** (Juror Number 0410) I have diabetes, take a thousand milligrams twice a day

THE COURT: You are taking?

THE JUROR: Thousand milligrams of Metformin twice a day

THE COURT: You are on the pill form?

THE JUROR: Yes High blood pressure and a few other little things

THE COURT: All right Are you on the high blood pressure medicine as well?

THE JUROR: Yes, three pills

THE COURT: If you know, which pills are you taking?

THE JUROR: Lotrel --

THE COURT: Norpine?

THE JUROR: Norpine, yes. I'm trying to remember the other one. One for the low number and two for my high number I can't think of them right now

THE COURT: How long have you been on them?

THE JUROR: Since 2000

THE COURT: Okay And how often do you take it? Do you take some blood pressure medicines in the morning?

THE JUROR: In the morning, yes, once in the morning And the diabetes medicine, I take one in the morning and nighttime before I go to bed.

THE COURT: How are you with sitting in one place for long periods of time?

THE JUROR: Oh, I stretch from time to time, you know I done had two setbacks, you know, diabetic seizures

THE COURT: You have had seizures?

THE JUROR: Yes The first time I wound up in the hospital Couple of times, I skipped some meals, I had another setback. One time I was driving my brother, he grabbed the wheel from me

THE COURT: Okay Why don't you have a seat We will let you know something in a minute

THE JUROR: Thank you.

(Juror left Bench.)

I don't really think we ought to take a chance on him. With his medications, he is probably okay, but any little slip, he is off the ledge So --

MR. DRY: Government doesn't have any objection,

Judge

MR. ASBILL: No objection

MR. BURCK: No objection.

THE COURT: All right

THE COURT: Mr *** (Juror Number 0410), would you come back up for a second? Mr ***, we have decided to go ahead and excuse you, let you go. You've got some physical problems and you need to take care of them. You may leave now

THE JUROR: Thank you.

THE COURT: Yes, ma'am?

THE JUROR: My name is *** (Juror Number 0358) I fell on my knee about a week-and-a-half ago. I have an appointment with Dr Shaia tomorrow afternoon, late in the afternoon. I can still walk, but it is still bothering me

THE COURT: You fell and hurt your knee?

THE JUROR: Yes So I have an appointment tomorrow afternoon to see if I need a brace, I don't even know what

THE COURT: What time is your appointment tomorrow?

THE JUROR: 4:20 When I called last week they said just call them back and they will try to work with me if I had to be in tomorrow But I didn't want to wait any longer

THE COURT: I think we can work with you tomorrow if in fact you get on the jury

THE JUROR: Can I ask you one more question? Are you going to call us up for any other reasons?

THE COURT: Yes, that's a possibility

THE JUROR: I have a daughter getting married in October and I just didn't want to miss it

THE COURT: Well, I tell you, the deal with that is, I can't even imagine we would be in this case in October And if we are, I will be insane by then So I don't think that's going to happen.

THE JUROR: I just wanted to make sure

THE COURT: You know, if by some -- if something horrible happened and we ended up clashing with that wedding in October, we have an alternate We are not going to let that happen. Yes, sir?

THE JUROR: *** (Juror Number 368) I just want to let you know, I do actually have some difficulties, like a few learning disabilities that keep me from remembering certain aspects And sometimes I have a hard time focusing

THE COURT: Are you on any medications or have you been on?

THE JUROR: I have been on stuff like Adderall and stuff in the past, Ritalin stuff But now I'm actually just on antidepressants for OCD. But I just wanted to let you know

THE COURT: I appreciate it I have a few more questions for you. How often do you take your medication?

THE JUROR: Once a day

THE COURT: Morning or night?

THE JUROR: Night

THE COURT: Any lethargy on one hand, or fidgety kind of behavior?

THE JUROR: More so fidgety, I would say I definitely tend to get fidgety at times

THE COURT: Well, this is going to require a lot of sitting around and focusing And you know yourself better than anybody else. This will be for weeks Do you think you will be able to do that?

THE JUROR: To be honest, Your Honor, I couldn't tell you. It is definitely not a guarantee I probably would find myself, you know, pretty fidgety

THE COURT: Well, I'm leaning toward excusing you. Anybody with any problem?

(All counsel indicated in the negative.)

THE COURT: Mr Douglas, you may be excused.

THE JUROR: Thank you. I appreciate it

THE COURT: All right, that's it for now We will be back in a minute

(In Open Court)

Does any member of the panel harbor any bias or prejudice which would prevent you from sitting as a fair and impartial juror in this case?

Are you aware of any reason why you could not sit on this jury and render a fair verdict based on the evidence presented and in the context of the Court's instructions on the law?

Does any member of the jury panel own any stock in this company, Star Scientific, Inc.?

Now, I notice that a number of you work for Capital One, Verizon, Dominion Resources That's not unusual They are big employers But the question I have, when you came in this morning, do you know any other members of the jury panel? As you came in, do you work with somebody else, do you know somebody else on the jury panel? Okay Let's get these. Yes, ma'am, your name?

THE JUROR: *** (Juror Number 0117)

THE COURT: Who is it that you know?

THE JUROR: *** (Juror Number 0453)

THE COURT: How do you know her?

THE JUROR: We work together

THE COURT: All right Ms *** (Juror Number 0453), you are standing up someplace? Okay And you work with Ms *** (Juror Number 0117) Any others that you know on the jury panel?

THE JUROR: Not that I know of, no.

THE COURT: You two can be seated. Yes, ma'am?

THE JUROR: I know *** (Juror Number 0005)

THE COURT: Ms *** (Juror Number 0039)?

THE JUROR: Yes, sir

THE COURT: You know Mr *** (Juror Number 0005) Do you know anybody else in the jury panel, the two of you?

THE JUROR: No

THE COURT: Thank you. You all can have a seat You all know each other from work, Ms *** (Juror Number 0039); is that right?

THE JUROR: We are like neighbors

THE COURT: Okay Yes, sir?

THE JUROR: *** (Juror Number 0108) I know Mr *** (Juror Number 0487) back here

THE COURT: How do you know Mr *** (Juror Number 0487)?

THE JUROR: I've known him for quite a few years when we were all involved in Cub Scouts and Boy Scouts together

THE COURT: Okay Mr *** (Juror Number 0487), where are you? Do you know anyone else besides this gentleman?

THE JUROR: My wife knows Mr *** (Juror Number 0281)

THE COURT: Your wife knows Mr *** (Juror Number 0281) Thank you. Yes, sir?

THE JUROR: *** (Juror Number 0185) I am a co-worker of *** (Juror Number 0338)

THE COURT: All right You two can have a seat Yes, sir?

THE JUROR: My name is *** (Juror Number 0278) I know *** (Juror Number 0234) Our two companies used to be in the same location and we worked together

THE COURT: Mr *** (Juror Number 0278) and Mr *** (Juror Number 023 All right, thank you. You all can have a seat Mr *** (Juror Number 0281)?

THE JUROR: I knew Mr *** (Juror Number 0179) from working at the Fed. I've since retired.

THE COURT: Okay All right, yes, sir?

THE JUROR: *** (Juror Number 0185) I work with Mr *** (Juror Number 0398) Also, Mr *** (Juror Number 0450) is my uncle

THE COURT: Okay This will take a while You work with Mr *** (Juror Number 0398), and who is your uncle?

THE JUROR: *** (Juror Number 0450)

THE COURT: All right Thank you. You all can have a seat Yes, ma'am?

THE JUROR: My name is *** (Juror Number 0101) And I babysit/house sit and taught his daughters to swim for *** (Juror Number 0273)

THE COURT: Okay Ms *** (Juror Number 0101) babysits for Mr Healey You all have a seat Yes, ma'am?

THE JUROR: *** (Juror Number 0362) I am a really close friend of *** (Juror Number 0382) She is my son's teacher

THE COURT: Okay This is *** (Juror Number 0362)

THE JUROR: Yes

THE COURT: And Ms *** (Juror Number 0382) All right Thank you. You all can have a seat Yes, sir?

THE JUROR: *** (Juror Number 0333) And *** (Juror Number 0336) and I have a mutual acquaintance, not necessarily a working relationship

THE JUROR: *** (Juror Number 0336) Our wives went to high school together We know each other socially

THE COURT: All right

///

THE COURT: All right, *** (Juror Number 0432)

THE JUROR: Yes, sir I've known Ms Hawkes for over 20 years We attended high school

THE COURT: Okay What's your name?

THE JUROR: *** (Juror Number 0386)

THE COURT: *** (Juror Number 0386)

THE JUROR: Yes, sir

THE COURT: All right, *** (Juror Number 0432) All right Thank you You all can have a seat

All right I think Mr *** (Juror Number 0210) has already answered this question, but let me ask this again Has any member of the jury panel ever been appointed to a board, a commission or a job by a governor of the Commonwealth of Virginia?

Two of the products that may be discussed in this case are Anatabloc, which is a dietary supplement produced by Star Scientific, and CigRx, a smoking cessation product produced by Star Scientific as well Have you or a family member or close friend ever used Anatabloc or CigRx?

All right Does counsel for either side have any additional voir dire questions? I'll hear you at the bench

Okay *** (Juror Number 0364)

THE JUROR: Right here

THE COURT: Okay We just have a message for you

All right Just give her that note

All right Let's hear from you all

(At Bench)

MR ASBILL: Judge, I've given them a copy Here are the general questions that I thought about

MR DRY: Judge, can we be heard on this? Mr Asbill has raised the issue of pretrial publicity in this case and he's at least expressed to me his opinion that if the Court does not ask each and every person that ever heard about this

The government doesn't believe that that is the case However, in an abundance of caution, at least for those individuals that have said that they have very closely or somewhat closely followed the case, it might be advisable for us to do some limited inquiry or bring them up or something so that there's no issue on the record, unless Mr Asbill has changed his position on this

THE COURT: Well, I mean, I appreciate his position, but that's not the Court's position Look, they answered the questionnaire closely, and then they went on to answer questions that without giving us some pause or not If it didn't, then what I would do with these questions is try to determine if anything has happened since the questionnaires I mean, I will ask the question so that we can see if there are -- anybody responds to, you know, having discussions or anything that happened

MR DRY: Let me be clear That's satisfactory to the government Mr Asbill --

THE COURT: Mr Asbill can speak for himself But if that's his position, that's fine But in terms of what I'm going to do here, I'm not going to do what you suggest I'm just not going to do it

MR ASBILL: Well, Judge, the reason I'm asking for much more inquiry with respect to pretrial publicity is this For example, one of the jurors said that she hadn't followed the case at all, and so -- she said barely at all, and then we checked after that, all the resources that she said had said things about the case So there's some confusion It's very subjective, number one

Number two, if anybody sees a news article or watches one program that really makes an impact, the fact that they haven't watched it multiple times or seen a lot of publicity about it, that can't make an indifference if they have an indelible impression from one source That is a problem A lot of these people have expressed -- have not come forward when you asked the general question about is there any reason why you could not be fair We have a list of folks that we think should be stricken for cause, some of which -- for example, classic example is, 0154 followed the case very closely, expressed an opinion there are no honest politicians and governor should have known And that person did not answer the question about do you have any bias or problems that would impact your ability to be fair

So -- and my position is that if somebody is exposed to pretrial publicity, they have to be individually voir dired, and I have a list of questions I'd like to give to the Court that I think they should be asked

THE COURT: Okay Well, you can provide the questions It's the other way around to strike for cause those people without asking questions If we think they are -- well, what you're -- I mean, what is -- this is what you're going to have to do You re going to have to identify specifically the people that you think should be struck for cause, and the Court will make an assessment of that based on information that we have I'm not asking these questions I'm not going to do it

As I say, I'll do something in my invention All right Anything else?

MR DRY: No, Your Honor

THE COURT: All right Thank you You all can have a seat

MR HARBACH: Just a reminder about the Quinn Emanuel question

THE COURT: I'm sorry About the Quinn Emanuel question Sure

(In Open Court)

THE COURT: I asked you all earlier about any connections to the law firms representing Mr McDonnell and I did not ask you about the law firm representing Ms McDonnell, Quinn Emanuel

So let me ask you those same questions As far as you know, have you or any member of your family ever been represented by the law firm of Quinn Emanuel in Washington, D C ?

And as far as you know, have you or any member of your family ever been represented by any of these lawyers individually who are representing Ms McDonnell?

All right Obviously, this case has generated a lot of media interest and there have been quite a few newspaper articles, radio and television media items relating to this case and the parties involved And I'm sure that most of you have read in the newspaper or seen on television or heard on the radio, at least once, some of these media items or news stories So the first thing I want you to do is if you have read, heard or seen something in the media, I want you to stand up for me,

please

All right I've got a couple questions for -- obviously, this is going to take a while Now, let me ask you this general question I may have some questions for you at the bench Based on what you have heard or read or seen relating to this case, if you are, in your mind, able to put aside whatever it is that you've heard, listen to the evidence in this case and be fair to both sides, then I want you to sit down All right

All right Mr Asbill, would you please -- would you all come here?

(At Bench)

THE COURT: All right If you've got a list of specific folks, because I'm satisfied with these -- the responses, but if you got specific folks who we need to look at specific responses, let me know

MR ASBILL: Can I just make a record on this question, this particular question?

THE COURT: Sure

MR ASBILL: I understood that everybody said they could be put aside I can't trust the credibility of that without a further inquiry and I can't make any judgments or arguments to you without any further inquiry Specifically people who have expressed opinion about the case, 455, *** (Juror Number 0455)

THE COURT: Okay Wait a minute Let me get my list out here You said 455?

MR ASBILL: 455, *** (Juror Number 0455) Indicated on question 86 she has expressed an opinion about the case

THE COURT: Question 86 Okay

MR ASBILL: 187, *** (Juror Number 0187) Indicates in question 84 that he has followed the case very closely from multiple news sources

THE COURT: Just give me the number again

MR ASBILL: 086 -- excuse me I'm sorry 0187

THE COURT: 0187

MR ASBILL: Right, and then question 84 and question 86, followed the case very closely, multiple news sources and has formed an opinion of guilt

THE COURT: Well, I'll take a look, but I went through these things with a fine-tooth comb and he didn't even register on my list, but okay I'll take a look *** (Juror Number 0187)

MR ASBILL: All right 0200, *** (Juror Number 0200)

THE COURT: 0200? Okay And what was the number on Ms *** (Juror Number 0455) again?

MR ASBILL: 0455

THE COURT: 0455

Okay Now, 0200 What's her name?

MR ASBILL: *** (Juror Number 0200)

THE COURT: Okay She discussed it with her husband

MR ASBILL: Well, has received news from multiple sources and then has expressed, in question 86, extreme negative opinions or conclusions about the defendants

THE COURT: Okay All right Next

MR ASBILL: 220, 0220, *** (Juror Number 0220) Questions 85 and 86 Multiple news sources Formed opinion Reached conclusion about guilt They both should know gift limits

THE COURT: Okay I will do that Next

MR ASBILL: 452 is *** (Juror Number 0452) Question 85, multiple news sources And 86, formed an opinion, morally and ethically wrong

THE COURT: 0452 Okay I have that one too I actually have that one too All right

MR ASBILL: 0229, Ms *** (Juror Number 0229), who is at the AG's Office I'm not sure what the opinion is, but what I want to raise with you about the publicity is that she apparently has discussed the indictment with her students and they have conducted some sort of a mock trial about the case

THE COURT: Okay VCU class Discussed the indictment

MR ASBILL: I thought it said something about mock

154, *** (Juror Number 0154) That's the one following the case That's the one I talked about before has followed the case before, expressed the opinion there are no honest politicians The governor should have known

THE COURT: The governor should know the limit on gifts Okay

MR ASBILL: 0190, *** (Juror Number 0154) I'm sure he can follow your instructions He followed the case very closely Multiple news sources Had discussions about the case and people have expressed and formed opinions in his discussions He's also an active democratic campaign person

MR DRY: Are we talking about pretrial publicity or --

MR ASBILL: Well, I want to go for further --

THE COURT: I'll just limit it right now to pretrial publicity

MR DRY: Okay

THE COURT: Those are the ones that were most problematic

All right We'll bring them up here

(In Open Court)

THE COURT: *** (Juror Number 0455) If you would come up to the bench for us, please

(At Bench)

THE COURT: Just come up Just one second

THE JUROR: Okay

MR DRY: Judge, we have the questionnaire right here On 86 it was no

THE COURT: Mr Asbill?

MR ASBILL: I'm just going to take a look for a second Sorry

THE COURT: Okay I didn't see anything

I'm sorry, ma'am We thought there was something on your questionnaire So you can have a seat

THE JUROR: Thank you

(In Open Court)

THE COURT: Okay *** (Juror Number 0187) Number 84

(At Bench)

MR DRY: Here's the full question there, sir 84 is the last page or right there

THE COURT: Okay Mr *** (Juror Number 0187) Let me ask you, you indicated that you followed the case very closely and we just want to explore that a little bit

THE JUROR: Explain it to you? Oh, well, I followed it ever since'it hit the paper because, I mean, I stay up on news and stuff that goes on, the news

THE COURT: Okay

THE JUROR: And I may -- I read whatever -- the paper all the time

THE COURT: Okay Have you formed any opinion about the guilt or innocence of these folks?

THE JUROR: Well, it's kind of hard to point an opinion now and tell you how the trial has been bearing on because it's been known that some things in the paper can't be true I give you my opinion It's an opinion You can't believe everything people say You have to sit around and judge for your own self because the news can influence you to go do different things So what I do, I have my own opinions on it That's why I told them I didn't know if he was guilty or not until I hear all the evidence

THE COURT: That's good enough for me You can have a seat

THE JUROR: All right

(In Open Court)

THE COURT: *** (Juror Number 0200)

(At Bench)

MR DRY: Thank you, sir Would you like this one?

THE COURT: ·Makes it easy for me

THE JUROR: Yes, sir

THE COURT: Okay, Ms *** (Juror Number 0200) Let's see Okay, Ms *** (Juror Number 0200) You indicated that you had a discussion about what you had heard about the case with your husband

THE JUROR: Uh-huh

THE COURT: Obviously, that's natural There's nothing wrong with that

THE JUROR: Right

THE COURT: We just wanted to explore the nature of that conversation Did you all -- did you or your husband have some opinion about the guilt or innocence of the people charged?

THE JUROR: No, not exactly He usually brings it up before I do because he's really into watching CNN and everything So he like brought up the situation But I don't remember ever saying one way or the another whether they were guilty or not guilty

THE COURT: Based on everything you've heard, even the discussions with your husband, you still feel that you would be able to be fair to both sides in this case?

THE JUROR: Yes, sir

THE COURT: Okay Thank you

All right Thank you

THE JUROR: Uh-huh

(In Open Court)

THE COURT: *** (Juror Number 0220)

(At Bench)

THE COURT: Come on up here

MR DRY: It's fine, ma'am Come up there There you go

THE COURT: We just wanted to explore with you a little closer something you put in the questionnaire And I'll just read it here It says "I" -- I can't read the second word -- "thought that they should know the limits of the law related to gifts "

Now --

THE JUROR: That was just my thought I don't know if it's -- if it's evidence or, you know, there's evidence to that effect

THE COURT: Okay And you expressed this to your husband; is that --

THE JUROR: No

THE COURT: It's just your thought?

THE JUROR: No It's just my thought

THE COURT: And is that a thought based on what you heard on the news?

THE JUROR: On the news And I have not watched any news or read anything since

THE COURT: Since this?

THE JUROR: Since receiving the summons, right

THE COURT: Okay Now, I want you to search your heart and your mind As you stand here now, do you feel that you can be fair and impartial to both sides, put aside anything that you --

THE JUROR: Yes, because the evidence has to be given here

THE COURT: Okay All right Thank you

THE JUROR: Uh-huh

(In Open Court)

THE COURT: *** (Juror Number 0452)

(At Bench)

THE JUROR: Yes, sir

THE COURT: Yes, ma'am We just wanted to explore with you a little closer something you said in your questionnaire

THE JUROR: Okay

THE COURT: You indicated that you had conversations with friends and co-workers and your opinion, maybe not technically something in the law, but ethically wrong But that's what you heard in the newspaper and discussions with friends

THE JUROR: Basically that I don't know whether -- the rule of law I don't know whether laws were broken That's what this is about I do feel like they knew that they were doing something that wasn't quite right, and that was my opinion

THE COURT: Okay And that's your opinion today?

THE JUROR: I'm willing to give them -- I mean, I'm willing to listen to everything Like I said, I know that the rule of law -- I don't know what it is, and that is what this case is based on

THE COURT: Okay All right You can have a seat

THE JUROR: Thank you

THE COURT: Ms *** (Juror Number 0452) is out I'm taking her out Okay *** (Juror Number 0452) is out for cause

MR DRY: Mr Asbill, you don't object?

(In Open Court)

THE COURT: *** (Juror Number 0229)

(At Bench)

MR DRY: Judge, this is 87 Discussed it in the classroom at VCU

THE COURT: Come on up, Ms *** (Juror Number 0229) How are you doing?

THE JUROR: Fine

THE COURT: We wanted to just explore with you a little bit more something that you put in the questionnaire, and you talked about your class at VCU having a discussion Describe that for me What went on?

THE JUROR: I showed them the indictment, and we were talking about the difference between state and federal jurisdiction and the difference between civil and criminal It was used as an example for them

THE COURT: And was there any exploring with the students for their opinions as to guilt or innocence?

THE JUROR: No No It was just what the indictment said They were undergraduates So I was just illustrating jurisdictions, state versus federal

THE COURT: State versus federal

THE JUROR: Criminal versus -- just criminal

THE COURT: Is there anything about what happened there at VCU and any other media items you might have reviewed that would prevent you from being fair to both sides in this case?

THE JUROR: I don't think so

THE COURT: Okay

THE JUROR: I haven't been listening since I got the summons So --

THE COURT: So you followed the direction of the Court?

THE JUROR: Yes I just covered my ears like that

THE COURT: All right Thank you very much

THE JUROR: Uh-huh

(In Open Court)

THE COURT: *** (Juror Number 0154)

(At Bench)

THE COURT: All right Let me see what we have here Okay Ms *** (Juror Number 0154), we just wanted to explore with you something that you had in your questionnaire just to see what it was about Question number 86, you had conversation with friends and then you said that -- that you weren't sure -- something -- such a thing as an honest politician and then you -- it sounds like a lament to me, "The governor will not be remembered for whatever good he's done but for what he's accused of " Now, we just want to understand what you were talking about

THE JUROR: Okay What I was talking about was no matter whether he wins, lose or draw, the scandal will be attached to his name and to his term Politicians -- I made a statement about a politician because I think to get to the office, if they have got a smile in one direction to make you believe them, they'll do it They'll smile another direction, they are going to do it In other words, they want your vote so, you know, they are going to cater to you a little bit

THE COURT: Okay

THE JUROR: If they want the women's vote, they'll cater to the women That's what I meant by that

THE COURT: Okay All right Thank you You can have a seat

I'm going to take her out Generalized a view that's pretty solid

MR DRY: No objection, Your Honor

MR ASBILL: No objection

(In Open Court)

THE COURT: *** (Juror Number 0190)

(At Bench)

Mr *** (Juror Number 0190), we just wanted to question you a little closer about something that you put in your questionnaire This is question number 86 And you put down, "I thought it was wrong if this is true," and you discussed it with family members and co-workers, right?

THE JUROR: (Nodding head)

THE COURT: So just tell us, what did you mean by that?

THE JUROR: Say the question again

THE COURT: It's number 86 And you put, "I thought it was wrong if this is true Talked with family and co-workers about the case "

THE JUROR: I think when I filled it out, I was thinking like actually before I was just selected, like before I heard it on the media So I didn't want to say I was talking to anybody So I think that's why I put that But not as in like if I was selected to, I wouldn't talk to anybody about it

THE COURT: Okay Yeah, yeah You were explaining that you talked with your co-workers and friends before you got the questionnaire?

THE JUROR: Before the questionnaire, yeah

THE COURT: And now I'm trying to explore this other comment, you thought it was wrong if this is true what do you mean by that? If the evidence supports the accusations made, you think it's wrong?

THE JUROR: If the evidence -- can I see the question?

THE COURT: Huh?

THE JUROR: Can I see the question? I'm just trying to -- oh, so what I was saying was that if I thought he would be in the wrong, if the evidence backed up the fact that he did do something wrong So -- that I thought it was wrong if it was true So if I determined that the evidence was true, then I thought that what he did was wrong or what she did

THE COURT: Okay Now, what I need to know from you, sir, is -- and I'm -- you know, as serious as you can be and as honest as you can be, based on what you've heard, based on that previous thoughts in your head, can you be fair to both sides in this case?

THE JUROR: Yes

THE COURT: All right Thank you You can have a seat

Okay I think that's it

MR DRY: Judge, can we have that questionnaire back?

THE COURT: Yeah

MR DRY: Thank you, Judge

THE COURT: Okay Anybody else?

MR ASBILL: Not on publicity

MR DRY: Judge, the only additional question that we would like to do generally to the voir dire is apparently we've heard that there have been several focus groups and mock trials We omitted a question about that on our questionnaire because we were under the impression that nobody was doing any of that If the Court can merely inquire, have you participated in any mock trials, focus groups, surveys, anything like that related to this case, I think that would be appropriate

MR ASBILL: The mock trial question is in the questionnaire

MR DRY: But not the focus group and surveys

MR ASBILL: Focus group is not, absolutely not

THE COURT: All right And it's been a while since the question I'll go ahead and ask that question All right

(In Open Court)

THE COURT: Is there any member on the jury panel who did not fill out their questionnaires themself?

And are the answers that you gave on the questionnaire -- it's been a few weeks -- as far as you know, still correct as you as you placed them on the questionnaire?

Yes, ma'am Just come on up Everybody who's got something that needs to be changed that was incorrect, I'll hear you now

(At Bench)

THE COURT: Come on up Yes, ma'am

THE JUROR: *** (Juror Number 0200) again

THE COURT: All right, Ms *** (Juror Number 0200), go ahead

THE JUROR: This Friday my dad is going in for open heart surgery So now I am basically taking over the primary care of my grandmother, taking her to all of her doctors and doing all of her medicines and stuff And dad is going to be out for six to eight weeks and he's not allowed to even drive

THE COURT: Okay Okay Thank you We'll get back to you

THE JUROR: Okay Thank you

THE COURT: Let me see what other hardships we have out there before I make the strike I figured they'd get on a hardship train here I always know

Yes, ma'am Your name again?

THE JUROR: *** (Juror Number 0218)

THE COURT: Okay Okay, Ms *** (Juror Number 0218)

THE JUROR: Well, since I filled out the application, I found a job after four years and I don't want to put that in jeopardy

THE COURT: Okay Have you started already?

THE JUROR: Yeah, I started on the 14th, and I'm still in training And it's like part-time so I don't know whether it would be considered -- I know on the questionnaire you said something about permanent employee So I don't know whether this is permanent

THE COURT: No This is something we need to know And you can just have a seat We're going to get back to you in a minute

I've just --'unfortunately, sometimes in this services I have to weigh hardships, and folks have hardships and some of them are kind of tougher than others, but we're going to get back to you in a minute

THE JUROR: Okay Thank you

THE JUROR: *** (Juror Number 0363)

THE COURT: *** (Juror Number 0363) Okay

THE JUROR: The only thing change I got married two weeks ago So I was single Now I'm married That's the only thing And the section -- the section above the husband I didn't fill out I think it's something on the application about husband That's all

THE COURT: Okay Thank you for letting us know

MR DRY: That's a heck of a honeymoon

THE COURT: Yeah Well, they can wait

THE JUROR: Your Honor, my name is *** (Juror Number 0173) And I'm a small business owner, and at the time that I filled out the questionnaire, I thought that I could handle this But I have taken on a considerable amount of business in the last four to six weeks, and I think it would be detrimental to my family if I was picked for the jury

THE COURT: Okay Why don't you have a seat We'll get back to you in a minute And I'll tell you what's happening These -- this kind of question, people stand up with hardships Everybody in that line is going to have some kind of hardship, what we're doing now I'll just kind of balance it as best I can and we'll get to you We'll get back to you

THE JUROR: Okay Thank you, sir Thank you, Your Honor

THE COURT: Yes, ma'am

THE JUROR: I'm *** (Juror Number 0102)

THE COURT: All right Okay

THE JUROR: I forgot to answer the -- in the question about being a state employee, I forgot to mention that I was an adjunct instructor at VCU I used to be

THE COURT: Okay

THE JUROR: I also didn't think to mention about a cousin of mine that's a real estate agent

THE COURT: A real estate agent Okay

THE JUROR: And there's one other thing I just realized that I forgot to mention, that I had a cousin who was a police officer who's now deceased

THE COURT: Okay

THE JUROR: Yeah

THE COURT: Thank you

THE JUROR: Thank you

THE COURT: Yes, ma'am

THE JUROR: *** (Juror Number 0501) Unfortunately, the only change on the application questionnaire was I was one of 8 people that I was laid off on my job after 17 years of employment But I'm on two-month sabbatical right now so I'm free as a bird

THE COURT: Okay, Ms *** (Juror Number 0501) We certainly hope that door of opportunity opens

THE JUROR: One door closes, another one opens

THE COURT: Absolutely

Okay Yes, sir

THE JUROR: Back again, Your Honor *** (Juror Number 0012)

THE COURT: Okay

THE JUROR: It's a question I remember on there when it asked you about political parties

THE COURT: Uh-huh

THE JUROR: I wanted to put democratic socialist

THE COURT: Okay Democratic socialist?

THE JUROR: Uh-huh

THE COURT: All right We'll make that notation

THE JUROR: All right Thank you

THE COURT: All right

Yes, ma'am, Ms *** (Juror Number 0382)

THE JUROR: I don't know if that's a good thing or a bad thing that you know my name by now But I don't recall and I didn't think of it until it came up earlier about being a victim of a crime Two purse thefts One was 50 years ago for my mom One was 33 years ago for me So I don't know how much bearing that has, but full disclosure

THE COURT: Thank you

THE JUROR: Thank you

THE COURT: Okay Yes, sir

THE JUROR: *** (Juror Number 0203)

THE COURT: Okay

THE JUROR: On the questionnaire I said I met and knew William Hazel But I think it's a different Hazel The one I met was Hazel Holmes You mentioned it's a Dr Hazel

THE COURT: Okay Different person

THE JUROR: Yeah

THE COURT: Yes, sir

THE JUROR: *** (Juror Number 0333) Your Honor, something is weighing -- something that's weighing heavy on my mind is the later half of August -- I teach middle school and something that's really weighing heavily on me is -- is the kids, that first week of school The prep time that goes involved with that, I'm worried that I'm not going to be giving my full attention to the trial and be thinking halfway between the trial and what's happening to my classroom when I'm not there

THE COURT: Okay So is it public school teaching?

THE JUROR: Yes, sir Chesterfield County

THE COURT: And you start the later part of August, mid-August?

THE JUROR: Later part of August There's a workweek, the week before Labor Day, and the kids come September 2nd, the day after Labor Day

THE COURT: Okay All right Thank you You can have a seat I'll let you know something in a minute

THE JUROR: Thank you, sir I'm not sure if this question was on the questionnaire or not It was about the --

THE COURT: Give me your name first

THE JUROR: I'm sorry *** (Juror Number 0367)

THE COURT: *** (Juror Number 0367)

THE JUROR: Yes

THE COURT: Okay All right

THE JUROR: I'm not sure if there was a question about a criminal offense or not like you asked today If there was, I don't know what I put on there I rushed through that thing I was -- I filled out the thing late I was out of town I got it back and it was after -- when I filled it out, it was going --

THE COURT: That's why we go over the questions again Don't worry about it

THE JUROR: The other thing I just realized, I did have a crime, somebody knocked a window out of my car one time I just -- I was sitting over there thinking about it and realized that I didn't stand up at the time because I didn't think about it at the time Okay?

THE COURT: Okay Thank you

THE JUROR: Hi, my name is *** (Juror Number 0338) I believe on my form I put that my fiance is an accountant She's actually a data entry clerk for an accounting group I don't know if it makes a difference or not, but I figured I'd get it out here and mention it now So that's it

THE COURT: Thank you

Okay I think I have this right It was *** (Juror Number 0200) See if I remember this

MR ASBILL: That open heart surgery

THE COURT: 0200, her hardship was elder care

And then we had *** (Juror Number 0218) Hers is employment hardship, financial Just got a job after four years Get her number

MR DRY: 218, Judge

THE COURT: And then we had Mr *** (Juror Number 0173), who was a self-employed businessman That would be a hardship on his business, financial hardship Somebody have his number handy?

MR HARBACH: I can look it up Number 12, Judge Correction, Your Honor There were two Jones who came up There was *** (Juror Number 0173) It was Mr *** (Juror Number 0173) who had the small business and was worried about his family

THE COURT: Right Okay

MR HARBACH: And he is number 173

THE COURT: And then Mr *** (Juror Number 0333) is a public school teacher that starts in August All right And -- all right That's one, two, three, and four I'm going to excuse all of these folks Okay? Anybody got any problem?

MR DRY: No objection from the United States

MR ASBILL: No

THE COURT: All right Anything else we need to --

MR ASBILL: Any strikes for cause for other reasons, is that --

THE COURT: Yeah, we can go ahead and let's do that now Let me send these people

(In Open Court)

THE COURT: *** (Juror Number 0200), you may be excused

THE JUROR: Thank you

THE COURT: *** (Juror Number 0218), you may be excused

Mr *** (Juror Number 0173), you may be excused

THE JUROR: Thank you

THE COURT: And, Mr *** (Juror Number 0333), you may be excused

THE JUROR: Thank you, Your Honor

THE COURT: All right Mr Asbill?

MR ASBILL: Sixty-seven, 0067

THE COURT: Okay Come on up

(At Bench)

MR ASBILL: *** (Juror Number 0067) I think there's a problem with question 68 Trying to accept a legal principle that the indictment is only an accusation

THE COURT: Anything else on her?

MR ASBILL: No, sir

THE COURT: That -- that request for cause, strike for cause will be denied

Next

MR ASBILL: 0278, question 61, worked on both Creigh Deeds campaigns against Mr McDonnell

THE COURT: All right Just a second Give me his number again

MR ASBILL: 0278

THE COURT: 0278 That request will be denied as well

Okay

MR ASBILL: *** (Juror Number 0414)

THE COURT: 0414

MR ASBILL: I'm not sure -- it's question 8 He said he was a primary day-timer to an 86-year old father

THE COURT: 0414?

MR ASBILL: Yes, sir

THE COURT: What's the name on that?

MR ASBILL: *** (Juror Number 0414) I believe he also on question --

MR DRY: I believe that there would be no hardship to his service

MR ASBILL: Yeah, I think there would be a -- I think on 1 he definitely said okay, and then on 8 said what he reported

THE COURT: Yeah, I wrote that down We'll just ask him

(In Open Court)

THE COURT: *** (Juror Number 0414), just come on up for a second

(At Bench)

MR DRY: Judge, do you want it? Questions 1 and 8

THE JUROR: Hi

THE COURT: Hi *** (Juror Number 0414), I just wanted to check with you You put down that you were caregiver for your 86-year-old father during the day Is it -- I mean, that would be, of course, being a conflict sitting here Do you still have that issue?

THE JUROR: My brother gets him up and then I get there and I get his food, but, I mean, he's there all day by himself

THE COURT: So you're all right to sit?

THE JUROR: Yeah, I'm all right

THE COURT: That's all I need Thank you

Okay That one will be denied

Next

MR ASBILL: 0050 *** (Juror Number 0050)

THE COURT: Okay I got him as a bar manager

MR ASBILL: I'm not moving that as a strike for cause He says -- in terms of political persuasions, he says he's an anarcho-communist

THE COURT: Okay Let me see

MR DRY: He does say it

THE COURT: Well --

MR ASBILL: We just don't know that

MR DRY: The government doesn't know if political affiliation can be a cause for strike, although we would not object

THE COURT: I don't know how in the hell I missed it Whatever it means, I'm not comfortable with it So let's -- this is 05 -- give me his number again

MR ASBILL: 0050

THE COURT: Okay That -- that request will be granted

MR ASBILL: The next is 0355 I'm not sure it's still a problem *** (Juror Number 0355) said that she was unemployed with a new contract starting in August

MR DRY: Judge, I thought we already went through the hardships I don't understand why we need to bring additional people up She didn't identify it

THE COURT: No She's -- she hasn't done anything to indicate to me that that's still a problem So that request will be denied

Next

MR ASBILL: Those are all the ones I had right now, Judge

THE COURT: Okay All right

MR DRY: Nothing from the United States

THE COURT: Forever hold your peace Okay

(In Open Court)

THE COURT: Let me have counsel back just for a second I want to double-check something

(At Bench)

THE COURT: I just want to double-check on the ones that I ruled out for cause When we were going through, I got *** (Juror Number 0050) There was one more

MR ASBILL: *** (Juror Number 0050) *** (Juror Number 0154)

THE COURT: I got her, right

MR ASBILL: *** (Juror Number 0452)

THE COURT: *** (Juror Number 0452) is out

THE CLERK: So take her out?

THE COURT: **** (Juror Number 0154) and *** (Juror Number 0452) are both out

MR DRY: That's what we have, Your Honor

THE COURT: So we --

MR DRY: And then these were the hardships *** (Juror Number 0200), *** (Juror Number 0218), *** (Juror Number 173), and *** (Juror Number 0333) is what we have

THE COURT: Yeah, we got -- I got those

MR DRY: Okay

THE COURT: We're good

All right We have got a couple of jurors who need to take some child care phone calls, and we are going to have them do that quickly and then we'll get back in and try to finish out this process

(Two jurors exited the courtroom and then reentered)

THE COURT: All right Madam clerk, would you place 12 jurors in the box, please

THE CLERK: As I call the names of the following jurors, please come forward and have a seat in the jury box Juror Number 0432, Juror Number 0186

THE COURT: Mr Marshal, have this guy move because I want one to be on this end Put him down here and fill in from that end Just have him move

THE CLERK: Juror Number 0338, Juror Number 0386, Juror Number 0101, Juror Number 0281, Juror Number 0407, Juror Number 0399, Juror Number 0190, Juror Number 0411, Juror Number 0337, Juror Number 0114

THE COURT: Let me explain the process that we are about, since a lot of you haven't served before The lawyers have certain limited information about you Obviously, they reviewed the questionnaires that you sent in, they've heard your responses to my questions today, and they have, you know, some very, I would consider, limited information about you And now armed with that very limited universe of information, they will now decide whether or not they want you to sit as a juror in this particular case If they do not want you to sit, they have the opportunity to exercise what we refer to as a peremptory challenge This is a challenge to strike a juror for almost any reason and without explanation to anyone, including me Obviously, they have a limited number of these strikes or challenges

Now, I'm telling you all this because those of you who are in the box, if you are struck, indeed removed from the panel, don't take it personally I mean, they don't know enough about you for it to be a personal decision And then secondly, so that those of you who are seated comfortably in the gallery will understand, it's way too early to be comfortable because you may be up here in a second

THE CLERK: As I call the names of the following jurors, please return to your seat in the courtroom Juror Number 0281, Juror Number 0411, Juror Number 0101, Juror Number 0338, Juror Number 0190, Juror Number 0114, Juror Number 0407, Juror Number 0186

THE COURT: Okay

THE CLERK: As I call the names of the following jurors, please come forward and have a seat in the jury box Juror Number 0355, Juror Number 0485, Juror Number 0487, Juror Number 0273 Juror Number 0124, Juror Number 0346, Juror Number 0373, Juror Number 0414

As I call the names of the following jurors, please return to your seat in the courtroom Juror Number 0273, Juror Number 0373, Juror Number 0124, Juror Number 0485, Juror Number 0355, Juror Number 0414

As I call the names of the following jurors, please come forward and have a seat in the jury box Juror Number 0398, Juror Number 0348, Juror Number 0044, Juror Number 0389, Juror Number 0112, Juror Number 0227

THE COURT: Mr Marshal, make sure we have everybody back in from the restroom before she calls any names

All right

THE CLERK: As I call the names of the following jurors, please return to your seat in the courtroom Juror Number 0227, Juror Number 0112, Juror Number 0348

As I call the names of the following jurors, please come forward and have a seat in the jury box Juror Number 0401, Juror Number 0385, Juror Number 0269

As I call the names of the following jurors, please return to your seat in the courtroom Juror Number

0269 and Juror Number 0385

As I call the names of the following jurors, please come forward and have a seat in the jury box Juror Number 0379, Juror Number 0115

As I call the names of the following jurors, please return to your seat in the courtroom Juror Number 0115 and Juror Number 0379

As I call the names of the following jurors, please come forward and have a seat in the juror box Juror Number 0303, Juror Number 0162

As I call the names of the following jurors, please return to your seat in the courtroom Juror Number 0162 and Juror Number 0303

As I call the names of the following jurors, please come forward and have a seat in the jury box Juror Number 0278 and Juror Number 0324

Will the following juror please return to their seat in the courtroom Juror Number 0278

Will the following juror please come forward and have a seat in the jury box Juror Number 0067

This is the jury

THE COURT: All right We will seat for alternates

THE CLERK: As I call the names of the following jurors, please stand in the courtroom where you are

Juror Number 0445, Juror Number 0003, Juror Number 0248

THE COURT: And the way this works, each side will get one strike The juror remaining standing is the alternate Government gets one Defense gets one

We are going to do it four times All these puzzled looks

Come on up

(At Bench)

MR ASBILL: Do we have to exercise a strike, though, on these rounds or can we --

THE COURT: No You have to exercise it It's got to be one person

MR ASBILL: Okay So you have to exercise one

(In Open Court)

THE COURT: There were some jurors who were concerned about parking and had to be back at 6 or -- I think we've worked that out My jury commissioner indicated she's got it together So hopefully we are all right

THE CLERK: Will the following juror please come forward and have a seat in the jury box Juror Number 0248 And Juror Number 0445 can have a seat, and Juror Number 0003 can have a seat

As I call the names of the following jurors, please stand in the courtroom Juror Number 0012, Juror

Number 0358, Juror Number 0358, Juror Number 0099

Will the following juror please come forward and have a seat in the juror box Juror Number 0012

The following jurors can have a seat Juror Number 0358 and Juror Number 0099

Will the following jurors please stand in the courtroom Juror Number 0117, Juror Number 0232, Juror Number 0478

Will the following juror please come forward and have a seat in the juror box Juror Number 0117

And will the following jurors please have a seat Juror 0232 and Juror Number 0478

Will the following jurors please stand in the courtroom Juror Number 0340, Juror Number 0390, and Juror Number 0431

As I call the name of the following juror, please come forward and have a seat in the jury box Juror Number 0431

And will the following jurors please have a seat Juror Number 0390 and Juror Number 0340

THE COURT: All right Let me quickly thank those of you who remain unchosen As I always say, we're not so naive around here that most of you are celebrating the fact that you are not chosen I understand that But I want you to know that we could not engage in this process and successfully conclude with the jury without everyone's participation It's been a long, tiring day and you all have put in the time and effort with good cheer and I want you to know we appreciate it We obviously realize that we could never do what we do without citizen participation So we thank you very, very much for this day that you've put in And pray for the rest of us We need it

All right You all may be excused And, again, thank you so very, very much

(The jury voir dire panel exited the courtroom)

THE COURT: Okay We just have one more thing to do I'm going to have you sworn in for your participation in this trial If you all will stand, raise your right hand and respond to the clerk's oath by saying "I will "

THE CLERK: Will the defendants please stand

THE COURT: All right

(The jury was sworn)

THE CLERK: Thank you Please be seated

THE COURT: All right Just let me explain to you what normally I would do now is give you preliminary instructions, but obviously, I'm not going to do that at this late hour So what I will do is release you with this caveat You obviously are not to discuss this case with anyone or allow anyone to discuss it with you and please, please do not review any media items Don't read the newspaper or the television or radio or anything about this This, as you'll find from my instructions tomorrow, that we make every effort to see that this case is decided by the evidence presented here in open court and not anything that you hear or see outside of the courthouse or the courtroom

And I'm releasing you now I want you to follow the marshal to the jury room so you get a chance to see your home for the next couple weeks, but also the jury commissioner needs just a minute before you all leave to talk to you

So Mr Marshal, if you would take the jury back this way And you all be blessed We will see you tomorrow Take care of yourself We will back at 10:00 tomorrow Normally we would start at 9 or 9:30 I got some other things to do 10:00 tomorrow

THE JUROR: I have a small business that nobody runs but me

THE COURT: Come on around

THE JUROR: I have a small business that nobody runs but me, and if I'm not there --

THE COURT: So all you had to do is say that All right?

Counsel, come approach

(At Bench)

THE JUROR: *** (Juror Number 0386)

THE COURT: Okay And, Ms *** (Juror Number 0386) is coming to us now and she's got a small business and she's upset and it's going to cause her hardship, which, of course, is something that we understand

What I don't understand is why you waited until now

THE JUROR: Because I thought you just said disabilities I didn't know that that was a, you know, was considered as a disability

THE COURT: Well, all right It is what it is *** (Juror Number 0386) is going to be excused, and alternate number 1, *** (Juror Number 0248), will move up and take her place

THE JUROR: Thank you so much

THE COURT: You're excused

THE JUROR: Thank you all

THE COURT: God help us all

MR DRY: Judge, are we sitting five days a week?

THE COURT: No It's set for all -- August 15th will be a half day, but all other days are full days

I need to see counsel on a peripheral matter just in chambers, but if you all come back

MR ASBILL: Sure, Your Honor

THE CLERK: So alternate number 1 will be the new juror?

THE COURT: It's *** (Juror Number 0248)

All right We will be in adjournment until tomorrow at 10:00 in this case

(Proceedings adjourned at 6:25 p m)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

July 29, 2014
Richmond, Virginia
10:00 a.m.

JURY TRIAL - VOLUME II

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ
DAVID V HARBACH, II, ESQ
JESSICA D. ABER, ESQ
RYAN S FAULCONER, ESQ.
Counsel for Government;

JOHN L BROWNLEE, ESQ
HENRY W ASBILL, ESQ.
JAMES M BURNHAM, ESQ.
DANIEL I SMALL, ESQ
CHRISTOPHER M. IAQUINTO, ESQ.
Counsel for Robert F McDonnell;

WILLIAM A. BURCK, ESQ
HEATHER H. MARTIN, ESQ.
STEPHEN M. HAUSS, ESQ
Counsel for Maureen G. McDonnell

JEFFREY B. KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day two, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Daniel Small, Henry Asbill, James Burnham, and Christopher Iaquinto Maureen G McDonnell is represented by Heather Martin, William Burck, and Stephen Hauss Are counsel ready to proceed?

MR. DRY: The United States is ready

MR BROWNLEE: Mr McDonnell is ready

MR. BURCK: Ms McDonnell is ready

THE COURT: All right I understand we had some issues before the jury

MR BURNHAM: James Burnham on behalf of Mr McDonnell We just wanted to notify the Court we are withdrawing our 17(c) request as to Ms Fulkerson because we have negotiated something with her counsel Also, I will inform the Court that our understanding is that Ms Fulkerson may testify today, so that request has become somewhat more urgent Also, I had some correspondence from counsel for Star Scientific that he asked that we share with the Court May I offer it?

THE COURT: Sure

MR. BURNHAM: Of course, we are happy to address the merits if you would like, but I'm sure you don't Thank you, Your Honor Mr Asbill has one thing as well

MR ASBILL: Thank you, Your Honor I just wanted to tie up a loose end from yesterday's voir dire and ask that the questions that I asked you to ask about pretrial publicity be made part of the record in this case

THE COURT: Sure

MR. ASBILL: Thank you, sir

THE COURT: All right Let's bring in the jury, please

MR. DRY: I'm not sure about this, but defense counsel has just raised that they believe one of the witnesses might be in the courtroom right now

THE COURT: There is no rule on witnesses until the testimony starts If they want to be in here, that's fine

MR. BURNHAM: Thank you.

(The jury entered the courtroom.)

Mr *** (Juror Number 0248), just raise your hand. Okay You should be down with the twelve You were the first alternate I'm trying to see who is in the wrong seat here We need Mr *** (Juror Number 0012), Ms *** (Juror Number 117), and Ms *** (Juror Number

0431) should be on the back row Okay

And before I start with these preliminary instructions: Obviously, we lost a juror yesterday at the eleventh hour That's why Mr *** (Juror Number 0248) has to move down to the panel And throughout the course of these proceedings, the alternates -- the jury, you all can sit anywhere you want down here among the twelve, but the alternates will have to be on the back row

Ladies and gentlemen, now that you all have been sworn, it becomes my task to give you some preliminary instructions to guide your participation in this trial

It will be your duty to find from the evidence what the facts are And you and you alone are the judges of the facts You will then have to apply to those facts the law as the Court will give it to you. You must follow that law whether you agree with it or not

Nothing the Court may say or do during the course of the trial is intended to indicate nor should it be taken by you as indicating what your verdict should be That is a matter entirely up to you

The evidence from which you will find the facts will consist of the testimony of witnesses, who will be sworn and have a seat in this witness box over here and testify before you Evidence will also include documents and other things received into the record as exhibits, and any facts the lawyers agree or stipulate to or that the Court might instruct you to find.

Certain things are not evidence, and must not be considered by you I will list them for you now Statements, arguments, and questions by lawyers are not evidence And I want to make that abundantly clear If the lawyer is at the podium and propounds a question to the witness, the question is not evidence It is the answer that the witness gives that is evidence in the case

Objections to questions are not evidence Now, the lawyers have an obligation to their client to make an objection when they believe evidence being offered is improper under the Rules of Evidence You should not be influenced by the objection or by the Court's ruling on it If the objection is sustained, you ignore the question. If it is overruled, then you treat the answer like any other

If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction. Testimony that the Court has excluded or told you to disregard is not evidence and must not be considered

Anything you may have seen or heard outside of the courtroom is not evidence and must be disregarded.

You are to decide the case solely on the evidence presented here in open court

Now, there are two kinds of evidence: direct and circumstantial Direct evidence is direct proof of a fact, such as the testimony of an eyewitness Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist Now, I will give you further instructions on these as well as other matters at the end of the case But have in mind that you may consider both kinds of evidence

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject. I will give you some guidelines for determining the credibility of witnesses at the end of the case

Now, as I told you earlier, and you certainly know by now, this is a criminal case. There are three basic rules about a criminal case that you have to keep in mind throughout these proceedings First, the defendants, Mr McDonnell and Ms McDonnell, they are presumed innocent until proven guilty The indictment against the defendants brought by the government is only an accusation, nothing more It is not proof of guilt or anything else The defendants, therefore, start out with a clean slate

Second: The burden of proof is on the government until the very end of the case The defendants have no burden to prove their innocence or to present any evidence or to testify And since the defendants have the right to remain silent, the law prohibits you in arriving at your verdict from considering that a defendant may not have testified.

Third: The government must prove the defendants' guilt beyond a reasonable doubt Now, I will give you further instructions on this point later But bear in mind that in this respect, a criminal case is different from a civil case

Now, in this case, the defendants are charged with a number of counts, a multiple-count indictment The offenses alleged in this indictment are as follows: Conspiracy to commit honest services wire fraud, and then honest services wire fraud. That is, conspiracy to commit an offense, and then the commission of that offense The third charge is conspiracy to obtain property under color of official right And then there are several instances alleged in fact of obtaining property under color of official right False statement to a financial institution and obstruction of an official proceeding, to wit: a grand jury

Now, what I am going to do now is give you the statute which undergirds these charges, and the elements that the government must prove beyond a reasonable doubt Now, obviously, at the end of the case you will get far deeper and far more of these instructions There will be definitions that I'll explain to you in greater detail But I want you to have some general understanding as we go forward.

Now, first, there is conspiracy to commit honest services fraud. Now, Title 18 U S Code Section 1349 provides in pertinent part: Any person who conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the conspiracy And then Title 18 U S Code Chapter 63 Section 1343 provides in pertinent part: Whoever, having devised or intending to devise any scheme or artifice to defraud, transmits or causes to be transmitted by means of wire communication in interstate commerce any writing, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice shall be guilty of an offense against the United States For purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services That's the statute And believe me, I will explain it to you in much greater detail later

Now, the elements, that's what the government has to prove to make out this offense: To prove a conspiracy as charged in Count One, the government must prove three essential elements beyond a reasonable doubt First, that the conspiracy or agreement or understanding to commit honest services fraud as charged in the indictment was formed, reached, or entered into by two or more persons Second, that at some time during the existence or life of the conspiracy, agreement, or understanding, the defendant you are considering knew the purpose of the agreement And third, that with knowledge of the purpose of the conspiracy, agreement, or understanding, the defendant you are considering then deliberately joined the conspiracy, agreement, or understanding

Honest services fraud I basically explained to you just now under the conspiracy statute So the statute, the part "Whoever having devised or intended to devise any scheme or artifice transmits or causes to be transmitted by means of wire communication in interstate commerce any writing, signs, signals, pictures or sounds for the purpose of executing such scheme or artifice shall be guilty of an offense against the United States," that's the statute Let me give you the elements This is the elements of honest services fraud.

First, the government must show first that the defendant you are considering knowingly devised or participated in a scheme to defraud the public of its right to the honest services of a public official through bribery as charged in each count Second, that the defendant you are considering did knowingly and with an intent to defraud -- did so knowingly and with an intent to defraud Third, that the scheme or artifice to defraud involved a material misrepresentation, false statement, false pretense, or concealment of material fact And fourth, that in advancing or furthering or carrying out the scheme to defraud, the defendants transmitted or caused to be transmitted the writing, signs, signals, pictures, or sounds alleged by means of a wire communication in interstate commerce as charged in each count

The next charge is conspiracy to obtain property under color of official right. Title 18 U S Code Section 1951(a) provides in pertinent part that whoever conspires to in any way or degree obstruct, delay, or affect commerce or the movement of any article or commodity in commerce by extortion is guilty of an offense against the United States Title 18 U S Code Section 1951 (b)(2) provides in pertinent part: The term "extortion" means the obtaining of property from another with his consent under color of official right In addition, Title 18 U S Code Section 1951(b)(3) provides in pertinent part: The term "commerce" means all commerce between any point in any state, territory, possession, or the District of Columbia, and any point outside thereof; all commerce between points within the same state, through any place outside such state, and all other commerce over which the United States has jurisdiction. The elements of this conspiracy to obtain property under color of official right are as follows: The government must prove first that the conspiracy, agreement, or understanding to obtain property under color of official right as charged in the indictment was formed, reached, and entered into by two or more persons; second, that sometime during the existence or life of the conspiracy, agreement, or understanding, the defendants or defendant you are considering knew the purpose of the agreement; and third, that with knowledge of the purpose of the conspiracy, agreement, or understanding, the defendant you are considering then deliberately joined the conspiracy, agreement, or understanding

There are a number of counts, I believe it is Six through Eleven, that charge substantive counts of obtaining property under color of official right There are two counts that charge making a false statement to a financial institution. Mr McDonnell is charged in both of those counts Ms McDonnell is charged in one The statute, Title 18 U S Code Section 1014 provides in pertinent part: Whoever knowingly makes any false statement or report for the purpose of influencing in any way the action of a Federal Credit Union or any banking institution, the accounts of which are insured by the Federal Deposit Insurance Corporation, upon application, commitment, loan, or a guarantee any change or extension of any of the same by renewal, deferment, or action or otherwise, is guilty of an offense against the United States

The elements, that is, what the government must prove, are as follows: That the charged defendant or defendants made a false statement or report; that the charged defendant or defendants did so for the purpose of influencing in any way the action of a Federal Credit Union or any bank whose deposits are insured by FDIC as charged in Counts Twelve and Thirteen, upon any application, commitment, loan, or guarantee, or any change or extension of any of the same, by renewal, deferment of action, or otherwise; and third, that the charged defendant or defendants did so knowingly

Now, the final charge has to do with obstruction of an official proceeding Title 18 U S Code Section

1512(c) provides in pertinent part: Whoever corruptly obstructs, influences, or impedes any official proceeding, or attempts to do so, is guilty of an offense against the United States And Title 18 U S Code Section 1515(a)(1) defines an official proceeding for purposes of 1512 to include a proceeding before a federal grand jury

The elements, what the government must prove to make out this count, are as follows: First, that the defendant obstructed, influenced, or impeded an official proceeding or attempted to do so; and second, that the defendant did so or attempted to do so corruptly That is, voluntarily, deliberately, and for the purpose of improperly obstructing, influencing, or impeding an official proceeding, all while either knowing about an official proceeding, or that the natural and probable effect of the conduct would interfere with an official proceeding

Now, as I said, I will give you detailed instructions on the law at the end of the case And those instructions will control your deliberations and decision And I gave you this preliminary look at the charges and the statute just to help you follow the evidence as it comes in as we go forward.

Now, a few words about your conduct as jurors First, I instruct you that during the trial, you are not to discuss the case with anyone or permit anyone to discuss it with you Until you retire to the jury room at the end of the case to deliberate on your verdict, you simply are not to talk about this case

Now, there has been substantial publicity about this case prior to the beginning of this trial The statements contained in some of the accounts may, of course, not be accurate and may have come from individuals who will not be present in court and who therefore cannot be seen and evaluated by the jury like all of the other witnesses, and will not be examined or cross-examined by either of the parties under oath. Press accounts may also contain opinions instead of facts, and those opinions may not be based on the evidence to be presented here in court You, of course, must lay aside and completely disregard anything you may have read or heard about the case outside of the courtroom, because your verdict must be based solely and exclusively on the evidence presented here in court in accordance with my instructions to you at the close of the case about the law you must apply to the evidence To rely upon anything you see or hear outside of the courtroom in reaching your verdict is a violation of your oath as a juror

Now, going forward, please do not read or listen to anything touching on this case in any way If anyone should try to talk to you about it, bring it to the Court's attention promptly Third, do not try to do any research or make any investigation about this case on your own. And this covers the spectrum. No Internet, no newspaper, no radio, no television, no reaching out into cyberspace to try to get information to aid you. That is a complete no-no, and please don't do it

Finally, do not form any opinion until all of the evidence is in Keep an open mind until you start your deliberations at the end of the case

Now, obviously, we are going to make it possible for you to take notes This is going to be a lengthy case We will give you pads for that purpose as well as pens with this caveat: The notes you are making are for yourself to help you with your recollection of what the evidence was as it came in. These notes are not to be shared with other members of the jury

Now, in a few minutes the trial will begin First, the government will make an opening statement, which is simply an outline to help you understand the evidence as it comes in. Next, the defendants' lawyers may, but does not have but I expect that they will, make an opening statement Opening statement is neither evidence nor arguments The government will then present its witnesses, and counsel for the defendants may cross-examine them. Never forget that there are two defendants in this case: Mr McDonnell and Ms McDonnell And they are to be given separate consideration As you will see, their lawyers will have separate opportunities to examine and to cross-examine Always remember that you are considering two separate defendants

Now, once the government has presented all of its witnesses and has rested, the defendants may, if they wish, present witnesses whom the government may cross-examine After all of the evidence is in, the attorneys will present their closing arguments to summarize and interpret the evidence for you And then finally, the Court will instruct you on the law, the law applicable to this particular case After that, you will retire to begin your deliberations on your verdict

Now, a few words about the logistics of the Court, how we run things around here. Normally, at the end of the Court's day, trial day, which is normally 5:30, I will let you know what time we will convene the following morning It depends Sometimes I have short matters set at 9 or 9:30, and it depends on what I have set on my calendar Also, just by a show of hands, do we have any folks from distance, Spotsylvania, Fredericksburg, Mecklenburg, anybody from distance? Okay, we've got two, three I'll keep that in mind. So we probably won't start any earlier than 9:30 on most days All right?

Now, what we do is we normally take a break of about 15 minutes' duration sometime in the morning, somewhere around 11:30 or thereabouts We normally stop for lunch somewhere around 1 o'clock. And the luncheon recess is of one hour's duration I say somewhere around 1 o'clock because it depends on what we are doing If we had a witness I thought we could finish, we might go to 1:10 or 1:15 If we had a lengthy witness that was about to take the stand at 12:50, we might stop at 12:50 But somewhere around 1 o'clock we will stop for lunch

Then in the afternoon we take another break of 15 minutes' duration And this is somewhere around between 4 and 4:30, somewhere in there, we will take a break and then push on until 5:30

Now, having said that, I don't want anybody to feel captive in the box If you need a break, you just let me know and we will take one It is that simple

All right, government, are you ready to proceed?

MS ABER: Yes, Your Honor

THE COURT: All right Let's turn the lectern around

MS ABER: For more than 30 years, the defendant, Robert F McDonnell, has been a public servant

He served in the military, he served as a Delegate, and he served as an Attorney General of Virginia And for the last four years of that service, he was the Governor, the most powerful public official in this state And for every day of those four years, Mr McDonnell was paid by the citizens of Virginia to do a job He got paid a six-figure salary He got a mansion to live in He got a chef, a butler, a security detail, all at taxpayer expense And in return for all of that, he took a duty, a duty to the citizens of this state, this Commonwealth, to provide his honest services, a duty not to sell the power and the influence of his office to the highest bidder And that means, ladies and gentlemen, that he could not accept secret gifts in exchange for official actions that should have just been his job

But in this trial, we will prove that is exactly what he did. During this trial, we will prove to you that Mr and Ms McDonnell conspired to violate this duty of honest services by secretly accepting more than $150,000 of cash, loans, vacations, golf, and luxury goods in exchange for doing what should have just been his job.

You will learn that the defendants accepted those things of value from a man they didn't even know before Mr McDonnell ran for Governor; a man named Jonnie Williams, a vitamin salesman And though the McDonnells didn't know him before, we will prove to you that they learned what Mr Williams wanted pretty fast They learned that Mr Williams wanted the Governor and his office to take official action to help Mr Williams sell his product And we will prove that Mr Williams got just that

You will learn that Mr Williams got to invite state university researchers that he wanted to study his product to an event at the Governor's Mansion designed to encourage those state researchers to do those studies You will learn that Mr McDonnell personally directed one of his subordinates, a high-ranking state health official, to have one of his deputies meet with Mr Williams on less than 12 hours' notice

You will learn that Mr Williams got to invite doctors that he wanted to study his product to an official event at the Governor's Mansion for Virginia healthcare industry leaders, invitations that Mr McDonnell's own cabinet secretary refused to pay for And while Mr McDonnell did each of these things and more, and while his wife helped him, we will prove that virtually nobody knew about the more than $150,000 in cash and loans and vacations and golf and luxury goods that the McDonnells were putting into their own pockets in exchange Mr McDonnell's subordinates, those researchers, the citizens of Virginia, no one knew what was really going on.

Now, members of the jury, as Judge Spencer noted, you are going to hear a lot of evidence over the next few weeks But this is really fundamentally a very simple case And it won't be a short one, but I promise you we are all going to do our very best to respect your time and your summer and streamline this case as much as possible You are going to hear from a lot of witnesses and you are going to see a lot of documents on these screens But because the McDonnells went to great lengths to keep the extent of their relationship with Mr Williams secret, even from people very close to them, there is no single witness who is going to be able to tell you this entire story from soup to nuts

But once you have heard everything and put it all together, the United States will come back and ask you to find the defendants, Robert and Maureen McDonnell, former Governor and First Lady of Virginia, guilty of all counts

Now, part of my job here today, as the Judge said, is to provide you with an overview of the evidence you are going to hear, to provide you with a snapshot of what things will look like at the end It is also part of my job, I promise you, to keep this overview very short and sweet And I'm not going to tell you every piece of evidence that's going to come in I'm just going to sort of hit the highlights, or we would be here for hours And that is not my intention, Judge So I'm going to break this up into three parts First, I'd like to give you a very brief overview of the charges against Mr and Ms McDonnell Second, I'm going to give you an overview of the government's evidence. And third, I will tell you what this case is not about

Now, first, Judge Spencer has given you a brief overview of the charges But in summary, Counts One through Four pertain to honest services wire fraud and Counts Five through Eleven pertain to obtaining money under color of official right Those are corruption charges And you are going to hear, as we said, lots more legalese about what that actually means in plain English. But it really does boil down to one simple question: Did Mr and Ms McDonnell accept things of value from that vitamin salesman, Mr Williams, in exchange for Mr McDonnell using his position as Governor to help Mr Williams' company

Now, I'm going to tell you right up front, let it be known, the government does not have to show an explicit agreement You are not going to hear, definitely not going to hear a recording, see a video of any sort of shady back alley deal in which Mr Williams and Mr McDonnell meet and exchange a paper bag full of cash in exchange for a state contract You are not going to hear it, the law doesn't require it, and it is not a movie Candidly, the defendants, you will hear, are way too sophisticated for that And you are not going to hear that Mr McDonnell helped Mr Williams get legislation or a state job Mr Williams does not, you will hear, under the law, have to get a dime of state money You will learn that those things are not necessary for the defendants to be guilty The law simply requires that Mr McDonnell agreed to take official action on Mr Williams' behalf

Now, the next two counts, Twelve and Thirteen, pertain to bank loans that Mr and Ms McDonnell sought Count Twelve specifically alleges that Mr McDonnell lied on a personal financial statement to TowneBank by stating that his liabilities had a number that did not include the loans that Mr Williams had given to him. And Count Thirteen alleges that both Mr and Ms McDonnell did the same thing on bank applications to Pentagon Federal Credit Union Finally, Count Fourteen alleges that Ms McDonnell obstructed the grand jury investigation of her by trying to claim that those gifts from Mr Williams of designer clothes were really just loans to her

So that takes us to part two, the facts and evidence that you are going to hear in a little more detail Now, this story starts back in 2009 when Mr McDonnell was elected Governor of Virginia He was not a wealthy man. And he was under a lot of financial pressure, because like a lot of people, he bought rental properties in 2007 at the height of the market and they had gone down in value a lot And although Mr McDonnell was the Governor of Virginia, he was feeling the financial strain like a lot of Americans have But, unlike a lot of Americans, as Governor, Mr McDonnell had a lot of wealthy people that wanted to get to know him better And one of those people was a man named Jonnie Williams

Now, Jonnie Williams, who you will hear from, is a wealthy businessman He is the former CEO of a publicly-traded company called Star Scientific, or I'll call it Star Star was headquartered here in Glen Allen, Virginia, and Star manufactured health supplements that come from a compound in the tobacco plant that's called anatabine. Mr Williams had a product, which is basically a vitamin, that he wanted to sell, and he wanted the Governor's help to do so

Now, to be clear, members of the jury, you are going to hear evidence that Mr McDonnell and Mr Williams were not friends, and they met for the first time during

Mr McDonnell's campaign for Governor But even before Mr McDonnell took office, one of the very first times they met, Mr Williams agreed to buy a designer gown for Ms McDonnell to wear to the inauguration, the gubernatorial inauguration. Mr McDonnell's staff put a stop to that, but Ms McDonnell was very upset and told Mr Williams that she would take a rain check. So from the outset, Mr. McDonnell knew that Mr Williams was willing to spend a lot of money on him and his family

Now, why was Mr Williams willing to do that? Well, because he wanted to market Star Scientific's product, which you will hear was called either CigRX or Anatabloc, as a vitamin, and eventually have it become a pharmaceutical or a prescription drug But Mr Williams had two basic problems The first being he had to get the public to accept the vitamin. Think about what like fish oil has become And number two, he needed scientific studies to pave the way for the vitamin to be approved as a drug

Now, Mr Williams, you will hear, thought that the Governor could help him solve those problems by legitimizing, promoting, and obtaining research studies for those products You see, as Governor, you will hear that Mr McDonnell was the most powerful public official in Virginia He had a lot of authority, you will hear, and a lot of influence over the very government officials that Mr Williams needed to get to sign off on his plans

And you will hear that Mr Williams told Mr McDonnell all of this You will learn that in October of 2010, Mr McDonnell flew on Mr Williams' jet back from California to Richmond So they had a couple hours together And you will hear that on that night, Mr Williams explained what he needed. He told Mr McDonnell all about his product, Anatabloc, that he needed scientific testing of Anatabloc Mr McDonnell, you will hear, told Mr Williams that he would set him up with the Secretary of Health, Dr Bill Hazel You will hear from Dr Bill Hazel, too. He, like all cabinet members, worked directly for Mr McDonnell as the Governor So Mr Williams, after this plane ride, got his meeting with Dr Hazel But it did not go well Dr Hazel was skeptical about Mr Williams' claims of the benefits of Anatabloc because they weren't scientifically validated. In other words, "Go get those studies, Mr Williams "

Now, you may remember, as I just said a few moments ago, that Ms McDonnell had told Mr Williams that she would take a rain check on her designer gown And in April of 2011, Ms McDonnell called Mr Williams You will learn that was the very first call between their two cell phones And Ms McDonnell told him that now he could take her shopping in New York City to buy those designer clothes for her daughter, Cailin's, upcoming wedding And then she would make sure that he was seated next to Mr McDonnell at a political event in New York. And when Mr Williams went to New York City and met Ms McDonnell there, he bought her approximately $20,000 of designer clothes And as promised, Mr Williams got to sit at the head table at the event that night next to Mr McDonnell Mr Williams, you will hear, began to understand that buying things for the McDonnells had its benefits

Now, at first blush you might be asking yourselves, designer clothes for another man's wife? And later on you are going to hear evidence that Mr Williams and Ms McDonnell talked on the phone a lot and they exchanged a lot of text messages But make no mistake about it, ladies and gentlemen: You will hear that this was always just a business relationship and nothing more

Now, a few weeks later, the McDonnells invited Mr Williams and his wife, Celeste, over for dinner at the Governor's Mansion. This gave Mr Williams the chance to talk to the Governor about his product and his plans for the future At the dinner, Mr Williams briefly met the McDonnells' daughter, Cailin, who happened to be coming through for the first time Cailin McDonnell's wedding was approximately five weeks away at the first weekend in June of 2011, and the balance on the catering contract for her reception was coming due

Now, who signed that catering contract? Mr McDonnell Who owed the balance and had already made the first two deposits on the catering contract? Mr McDonnell A couple of days after that dinner, Ms McDonnell asked to meet Mr Williams at the Governor's Mansion, and Ms McDonnell told Mr Williams that she and Mr McDonnell needed money She asked for a loan of $50,000 And she told Mr Williams that she would help him with his product if he would help the McDonnells She also told Mr Williams, you will hear, that the McDonnells needed $15,000 to pay the balance of that catering contract for their daughter Cailin's reception

You will hear that Mr Williams agreed to help, but he wanted to speak with the Governor first And you will hear that he did. In that conversation, Mr McDonnell, you will hear, told Mr Williams about their money problems the same way And Mr Williams agreed to provide the $50,000 loan and that no written loan agreement was necessary Mr Williams made good on his promise and on May 23rd, 2011, went to the Mansion and hand-delivered a $50,000 check to Maureen McDonnell and a $15,000 check made out in blank for the wedding catering reception charges And Mr McDonnell knew about it

I'd like to show you an exhibit Now, this is one of many exhibits that you are going to see in trial And this is not the only time you will see this, so don't panic, this will be coming back at you This is an e-mail from Mr McDonnell to Mr Williams dated Saturday, May 28th, 2011 "Thanks so much for all your help with my family Your very generous gift to Cailin was most appreciated as well as the golf round tomorrow for the boys Maureen is excited about the trip to Florida to learn more about the products and to see Celeste Have a restful weekend with your family Thanks "

Let's take this line by line, ladies and gentlemen "Jonnie, thanks so much for all your help with my family " "Your very generous gift to Cailin " The evidence will show, ladies and gentlemen, that Mr Williams was not giving a gift to Cailin. That $15,000 was a gift to Mr McDonnell, who was on the hook by contract to pay for the rest of his daughter's reception. "Golf round tomorrow for the boys " You will hear that the very next day, Mr McDonnell and his sons spent the day at Mr Williams' gated private club, Kinloch Golf Club, which is out in Goochland County Mr Williams wasn't present for that particular golf outing, but the McDonnell family charged $2,380 on his tab.

"Trip to Florida" refers to Mr Williams' company having an event at a research institute in Florida The event was for researchers, Star Scientific investors, and stock analysts Mr Williams had asked if Mr McDonnell could attend the event, but Ms McDonnell went in his place And only a few days after this e-mail, you will hear that Ms McDonnell flew down on Mr Williams' jet and made brief remarks at the event in Florida You will learn that those remarks included offering Star the use of the Governor's Mansion for the official product launch of Anatabloc

On the same day that Ms McDonnell went to Florida, she used $30,000 of Mr Williams' $50,000 loan to buy Star Scientific stock. And the evidence will show also that Mr McDonnell knew about that The McDonnells also used approximately $20,000 to pay down credit card debt

Now, after this Florida event, Mr Williams started to try to get things moving with the scientific studies of Anatabloc at UVA and VCU, University of Virginia, and Virginia Commonwealth University His plans included not only having state universities conduct the research, but also having something called the Virginia Tobacco Commission fund the studies Now, the Tobacco Commission, you will hear, is a state commission that provides economic grants using money from the National Tobacco Settlement The majority of the commissioners on the Tobacco Commission are appointed by the Governor Now, Mr Williams also wanted to use Virginia state employees to voluntarily participate as subjects in clinical studies Based on their conversations and the money and the gifts that Mr Williams had given to the McDonnells, you will hear that Mr Williams believed that Mr McDonnell as Governor would help carry out his plans So he spared no expense Mr Williams invited Mr McDonnell to vacation at his waterfront estate on Smith Mountain Lake, about three hours west of here From July 28th through July 31st, 2011, the McDonnell family, including all their children, spent four days at Mr Williams' estate Neither Mr Williams nor his family were at the estate The McDonnells had it all to themselves Mr McDonnell enjoyed Mr Williams' Ferrari during the vacation and used it for the three-hour drive back to Richmond, back to the Governor's Mansion, on Sunday, July 31st, 2011

This is an e-mail from Maureen McDonnell to Jonnie Williams on July 31st, 2011. It appends an attachment

Now, Mr Williams had wanted to meet with someone from Dr Bill Hazel's office the very next day, Monday, August 1st, to effectuate his plans for Anatabloc While the McDonnells were vacationing at Mr Williams' estate, Mr Williams called Ms McDonnell to confirm that the meeting would take place When Mr McDonnell got back to the Governor's Mansion at the end of the vacation, he e-mailed Dr Hazel at 11:29 p.m. and directed him to have a staff member come to the Mansion the very next Monday morning You can see the e-mail there from Governor@bobmcdonnell com at 11:29 p.m. "Bill, would like to have Keith or Matt attend a short briefing at the Mansion about 10 a.m. with the First Lady on the Star Scientific Anatabloc trials planned, UVA and VCU this weekend " At 6:28 a.m., Dr Hazel responded, "Will do "

The next morning, that Monday, August 1st, Mr Williams showed up at the Governor's Mansion and he got what he wanted. He had a meeting with Ms McDonnell and one of Dr Hazel's deputies You will learn that neither Dr Hazel nor his deputy knew anything about that $65,000 in loans and gifts to date, the golf, the vacation, or that Ferrari ride

Later that same morning, August 1st, you will hear that Mr Williams got something else he wanted Ms McDonnell scheduled on the Mansion calendar, the official Mansion calendar, a lunch with Virginia researchers, a product launch for his Anatabloc at the

Governor's Mansion on August 30th, 2011 Mr Williams saw the event at the Mansion as an opportunity to prove to those researchers at UVA and VCU that he had the Governor's support for scientific studies of Anatabloc. Mr Williams was allowed to hand pick the list of invitees of people that he believed would help Star Scientific And on August 30th, 2011, Mr and Ms McDonnell together hosted Mr Williams' event in the dining room of the Governor's Mansion Mr Williams brought over samples of Anatabloc, and he and Ms McDonnell put the samples at each place setting Mr Williams got what he paid for He got an event for Anatabloc at the Governor's Mansion with the Governor attending, and joined by the very researchers that Star was attempting to convince to perform scientific studies Star Scientific even issued a press release announcing this event at the Governor's Mansion. But again, you will learn that none of those state researchers, people who are state employees at universities whose boards the Governor had appointed, knew about the $65,000, the golf, the vacation, and that Ferrari ride

Now, in January of 2012, Mr McDonnell and his sons again played golf at Kinloch, that golf club out in Goochland County, this time racking up almost $1,400 on Mr Williams' tab But in early 2012, the McDonnells also needed more money to keep their vacation properties afloat And who did they turn to? Jonnie Williams And at the same time that Ms McDonnell is asking for more money from Mr Williams, she asked him, "How are things going on those studies at UVA and VCU regarding Anatabloc?" You will hear that Mr Williams told Ms McDonnell they weren't going so well, and the state universities still had not agreed to conduct the studies he wanted So you will hear that Ms McDonnell told Ms Williams that she would talk to the Governor about it And later, Mr Williams, she told Mr Williams that the Governor was upset and wanted the names of those state university officials that he had been dealing with Mr Williams told her that he would forward the names, and he did.

This is the first page of an e-mail from Ms McDonnell to the Governor at the top there, and she cc'd Jasen Eige, the Governor's policy director Looking at the bottom of what's being forwarded here, this is an e-mail to Jonnie Williams, Jr That, not surprisingly, is the son of Jonnie Williams, Sr , who we have been talking about This lower e-mail here contains of names of officials at UVA that Mr Williams needed to convince to do the studies That information was forwarded by Mr Williams, Jr , to Ms McDonnell, and Ms McDonnell, in turn, forwarded that to two of Mr McDonnell's e-mail addresses and copying that policy director, Jasen Eige

Ms McDonnell informed Mr Williams that she had forwarded this information to the Governor, and he believed that the Governor might get something done

Now, Ms McDonnell may have been the one who initially asked for more money from Mr Williams, but to be clear, by mid-February of 2012, the Governor himself was asking for money from Mr Williams Government Exhibit 318, from Mr McDonnell to Jonnie Williams, February 16th, 2012 "Jonnie: Know you have been slammed Do you want me to call your lawyer on the certificates and the documents? Thanks for all your help. Gov "

Now, their original plan, the certificates, was for Mr Williams to give Star Scientific stock certificates to the McDonnells for deposit in their brokerage account, and then the McDonnells could take a loan against the stock certificates Now, six minutes later, after that e-mail we just looked at, you will see that Mr McDonnell e-mailed Mr Eige, "Please see me about Anatabloc issues at VCU and UVA." at 12:02 a m. on February 17th, 2012

Now, think about that, ladies and gentlemen. If you want to know whether Mr Williams was providing money and gifts in exchange for assistance from the Governor to his company, just think about whether Mr McDonnell sending an e-mail to his policy director about Anatabloc issues at UVA and VCU six minutes after he is e-mailing Jonnie Williams to ask for more money

Now, a week after this e-mail, Mr and Ms McDonnell had a conference call with their stockbroker, a man named John Piscitelli The McDonnells informed Mr Piscitelli, you will hear, that they actually had Star Scientific shares that were being held by Star Scientific You will learn during trial that that was not true And what they didn't tell their broker was that these shares were really going to be a loan from Mr Williams

Now, at the same time that the McDonnells are negotiating additional money from Mr Williams, and offering to help with his studies at UVA and VCU, Mr Williams was given the opportunity to have Star be recognized as a healthcare leader in Virginia, a healthcare leader, at an exclusive reception at the Governor's Mansion. Just like the Anatabloc launch event I talked about earlier, Mr Williams got to decide who he wanted to invite to the Governor's Mansion to be identified as healthcare leaders of Virginia, including those researchers affiliated with Star Scientific and doctors that Star was trying to convince to recommend

Anatabloc to their patients

On February 29th, 2012, the same day as the night reception at which Star Scientific invitees are being recognized as healthcare leaders of Virginia, the Governor and Mr Williams, you will hear, had a private meeting in the afternoon in the Governor's Office to discuss ways in which Mr Williams could secretly provide the McDonnells with more money And through it all, that event that night, that reception, no one attending the event knew, other than the defendants and Mr Williams, about the earlier payments of the loan -- excuse me, the earlier payments or the loan that Mr McDonnell was negotiating with Mr Williams In the end, during the week of March, 2012, the first week of March, 2012, Mr Williams simply wrote another $50,000 check And like the other loan, there were no written loan documents

Now, you will hear that Mr Williams wrote that check so the Governor would continue to assist Star Scientific. And it worked Because on March 21st, 2012, Mr McDonnell met with his cabinet secretary who was in charge of the state healthcare plan for Virginia state employees The meeting was about how to reduce healthcare costs in Virginia for those state employees During the meeting, Mr McDonnell pulled out a bottle of Anatabloc from his pocket and said he was taking the product and it helped him. Mr McDonnell, you will hear, then told the cabinet secretary she should meet with those Star Scientific folks t6 discuss Anatabloc.

Now, into the following months past that March, 2012 meeting, the McDonnells continued to need additional money for their beach rental properties And again, who do they turn to for help? Jonnie Williams But this time, Mr McDonnell initiated the loan This is a text message in Government Exhibit 379 from Mr McDonnell to Mr Williams "Jonnie: Per voicemail would like to see if you could extend another 20k loan for this year "

And only 12 minutes after the Governor sent this text message, Mr Williams responded by simply saying, "Done," and asking who to make the check out to Four days later Mr Williams wire transferred another $20,000 to the McDonnells To Mr Williams, this was a business transaction He was paying for the Governor's assistance

Now, I've mentioned throughout this story that the McDonnells did not tell Mr McDonnell's staff or those university researchers what was really going on But we will also prove during this trial, ladies and gentlemen, that the concealment went much deeper than that You will see, you are going to hear about something called a Statement of Economic Interests It is a long name, but it is pretty straightforward. And each year, Mr McDonnell as a state officer had to fill out a financial disclosure form. This form asks a lot of questions, but some of them include personal liabilities, stock ownership more than $10,000, and gifts of more than $50 from people other than personal friends

Now, you may remember that the same day she attended that event in Florida back in 2011, Ms McDonnell bought $30,000 worth of Star Scientific stock If she had still owned that stock by the end of December of 2011, by the end of the year, Mr McDonnell, you will hear, would have had to disclose it on his Statement of Economic Interests

In order to avoid having her husband have to report the stock ownership, you will hear that Ms McDonnell spoke to their broker, John Piscitelli, the man I mentioned earlier, and Mr Piscitelli is going to tell you that Ms McDonnell told him that she wanted to get the stock out of her name by the end of the year to avoid reporting requirements Ms McDonnell sold all of her shares of Star Scientific in the nick of time on December 20th, 2011 But she was anxious to re-purchase them, and on January 20th, 2012, approximately four days after Mr McDonnell filed that Statement of Economic Interests, Ms McDonnell repurchased another 6,600 shares of Star Scientific stock And you will learn that throughout 2012, after they repurchased that stock, Mr McDonnell sent text messages and e-mails to Mr Williams time and time again that Mr McDonnell was following the stock. "Stock looking good," he wrote to Mr Williams But as the year drew to a close, the McDonnells did as they did before They got rid of the stock so they wouldn't have to report it. On December 20th, 2012, you will hear that Ms McDonnell asked her family broker, Mr Piscitelli, to transfer 1,000 shares to each of her five children. She was left with approximately $4,500 of Star Scientific stock, below the $10,000 reporting threshold at the end of the year

But it wasn't just the stock, ladies and gentlemen You will learn that none of the golf from Mr Williams showed up on Mr McDonnell's disclosure forms, the $15,000 from Mr Williams to pay for the wedding catering contract was nowhere to be found, and none of the loans were disclosed in a way that anyone ever could have tied back to Mr Williams You will learn that the only time Mr Williams or his company showed up anywhere on that form was when staffers knew about expenses from two vacations that Mr McDonnell couldn't have hidden if he tried.

So the evidence will show that the disclosure forms were not the only way in which the defendants tried to conceal their relationship with Mr Williams or the only way that they concealed their true financial condition. Now, the McDonnells had bank lines of credit and mortgages on their various properties In October of 2012, Mr McDonnell submitted his personal financial statement as part of required paperwork for a loan on one of his beach house rentals down in Virginia Beach On that personal financial statement, Mr McDonnell understated his liabilities You will see that he did not include any of his loans from Mr Williams So as the calendar turned into 2013, law enforcement were investigating allegations that the chef at the Governor's Mansion was stealing food from the kitchen And as part of that investigation, the Virginia State Police learned about a $15,000 check that Mr Williams had written to the Mansion chef's catering company, because you will hear that the Mansion chef also owned a catering company and that's who was catering Cailin McDonnell's wedding On February 15th, 2013, the Virginia State Police voluntarily interviewed Ms McDonnell in her office During that interview, Ms McDonnell told the investigators that her husband had known Mr Williams for many years and had worked with him at a hospital supply company, when they had not She also said that she had written loan documents from the first $50,000 loan from Mr Williams back in May of 2011, and that she had been making periodic payments on the loan, when she had not

The Virginia State Police agents also asked her questions about the wedding catering and the Anatabloc launch at the Governor's Mansion Now, think about that, ladies and gentlemen: Why would Ms McDonnell say these things to the police if they weren't true? You will hear that after the agents left and Mr McDonnell learned about the interview, he was angry Now, February 15th, the day of that interview, was the Friday before a three-day weekend. Monday was Presidents' Day So February 15th, you will hear, is the day the McDonnells learned that the government is investigating their relationship with Jonnie Williams At this time, this February period, the McDonnells were in the midst of trying to refinance their rental properties Two weeks before the interview, the defendants had submitted a loan application to Pentagon Federal Credit Union This was for, as I said, a refinance of rental property Again, just as before, you will hear that they understated their liabilities, failing to disclose any of the loans from Mr Williams, even though they had received almost, at least $120,000 from Mr Williams to date

And so Monday, February 18th, Presidents' Day, when the banks and the Governor's Office are closed, the

Monday after Ms McDonnell was interviewed by the Virginia State Police and asked about those loans from Mr Williams, then and only then did Mr McDonnell go to his Governor's Office, closed, and fax a revised loan application to Pentagon Federal Credit Union on which he had handwritten in the loans from Mr Williams for the very first time

Think about that Before Mr McDonnell thought anyone would know about the loans from Mr Williams, they are nowhere to be found on his loan applications But when he finds out that law enforcement is asking questions about loans from Mr Williams, all of a sudden corrected loan applications are sent in And not too long after, Ms McDonnell also took her own steps to make things look different than they really were She put all of those designer New York City shopping clothes into a box, she drove them over to Mr Williams' house, and you will hear that they left them there with a note thanking Mr Williams for the loan of those clothes and claiming that they had previously discussed auctioning them off for charity She tried to make it look like Mr Williams had merely loaned her the clothes and that she always intended to return them. You will hear that neither was true

Seven months after learning about this investigation, you will hear that the McDonnells returned all of the money and gifts to Jonnie Williams Mr Williams gave them to the FBI, and you will see them all during this trial

Now, the investigation into that Mansion chef led law enforcement also to begin investigating Mr Jonnie Williams for certain transactions involving Star Scientific stock -- excuse me, involving Star Scientific stock, that's issue one; issue two is an investigation regarding the financial relationship between Mr Williams and the McDonnells You will hear that Mr Williams was questioned by law enforcement about why he loaned all this money to the McDonnells and paid for their daughter's wedding reception Mr Williams at first lied to the investigators and claimed that he was personal friends with the McDonnells and that he never expected anything in return. Mr Williams is going to tell you that he lied.

Now, to be clear, Mr Williams is not going to be here testifying out of the goodness of his own heart He has received immunity from prosecution in exchange for his truthful testimony Mr Williams is going to tell you that what he and the McDonnells were doing was wrong, and that's why they tried to hide it He will tell you that he believed in his product and he thought that making these payments and providing these gifts would help his business He viewed his relationships, you will hear, with the McDonnells as a business deal And at the end of the trial, you will see that it is not just Jonnie Williams' testimony is the evidence Far from it You are going to see e-mails, you are going to see business records, you will hear from other witnesses, you are going to see the timing of these events, and you are going to have your common sense

So those are the basic facts of the case Like I said, it is not everything, but it is plenty for now

So that takes us to the third thing I'd like to tell you this morning while I have your attention, and that is, briefly, what this case is not about This case is not about Mr McDonnell's performance as Governor This is not a case about anyone's personal feelings about Mr McDonnell as Governor, or his policies, or politicians in general, about Congress, about Washington If you hate politicians, it is not about that It doesn't matter if you are an R, a D, or a Z This case is about the actions of Mr and Ms McDonnell that you will hear about in this courtroom.

This case is not about whether a Governor can promote Virginia business Let us be clear: There is nothing wrong with a Governor promoting Virginia businesses or assisting a company in business development You will hear many times I'm sure that Mr McDonnell's campaign slogan was Bob's For Jobs It is what he was supposed to do But just not in exchange for money

And this case is not about politics as usual You will learn that not one penny of those bribes that the McDonnells took was a campaign contribution. This case is not about what Mr Williams may have lawfully donated to campaigns This case is about the McDonnells lining their pockets with secret gifts and cash given to them.

So by the end of this case, ladies and gentlemen, we will prove three things to you beyond a reasonable doubt First, Robert and Maureen McDonnell accepted more than $150,000 in cash, loans, vacations, golf, and luxury goods from Mr Williams Number two: Mr and Ms McDonnell knew what Mr Williams wanted, and they gave it to him. And number three: Mr and Ms McDonnell went to great lengths to hide what they were doing because they were breaking the law

And once the evidence is finished, we will come back to you and ask that you find the defendants, Robert and Maureen McDonnell, guilty of all counts Thank you

THE COURT: All right Defendants in the order you prefer

MR. BURCK: Thank you, Your Honor Your Honor, ladies and gentlemen of the jury: Like you, I was listening very closely to Ms Aber as she explained how the government is going to try to prove beyond a reasonable doubt that my client, Maureen McDonnell, is guilty of accepting bribes in exchange for official acts But she forgot to mention a simple but very important fact about Maureen McDonnell As First Lady of Virginia, she had no power to perform official acts herself and no power to order others to do them for her That's because, as First Lady, she was not a public official of the Commonwealth of Virginia She was not elected to office, she was not an employee of the Commonwealth of Virginia, and she did not receive a salary She had no official duties, no state responsibilities Of course, like any other First Lady of any other state in the Union, like the First Lady of the United States of America herself, Maureen McDonnell was expected to volunteer some of her time to promote Virginia Her businesses, her initiatives, her people. That is all she was, a volunteer Maureen McDonnell is sitting before you today accused of corruption only because of who she is married to This case at bottom is about whether or not Bob McDonnell did anything to corrupt his office

As you heard from Ms Aber, the government wants you to believe that Maureen McDonnell's actions as Bob's wife and as a volunteer are proof that Bob McDonnell corrupted his office, is a corrupt public official Bob

McDonnell is the government's ultimate target in this case You heard a lot about Bob McDonnell, and you heard something about Maureen McDonnell from Ms Aber But he is the ultimate target Maureen McDonnell is sitting here today as the collateral damage

Now, ladies and gentlemen of the jury, my name is Bill Burck, and with me at counsel table are Heather Martin and Steve Hauss And we have the great privilege to represent Maureen McDonnell in this case

The government has told you what they expect the evidence will show in this case Their indictment alleges that the McDonnells accepted money and gifts from Jonnie Williams with full knowledge that those gifts were in exchange for official acts from the Governor It alleges a quid pro quo, which is just Latin for "I scratch your back, you scratch mine " So the government must have some unbeatable dead-bang proof of that mutual back scratching, right? Some proof that will leave no real doubt on that score Well, you heard yourself from Ms Aber that you won't see a videotape, you won't hear an audiotape, you won't hear an audio recording You won't read an e-mail, a text, some thing that proves there was a corrupt arrangement between my client and Jonnie Williams

So why does the government believe the McDonnells are corrupt? Well, as you will learn, that's because they believe Jonnie Williams And they want you to believe Jonnie Williams Because without him, there is no evidence in this case against Maureen McDonnell

But the real question is, which Jonnie Williams are you supposed to believe? Because there have been many different versions of Jonnie Williams You know how there are different versions of a cell phone, like the iPhone, and you have Version 4, Version 5, and just when you are getting used to that version they spring another one on you and you have to get rid of that one and they tell you, "Get rid of the old one, buy the knew one, it fixes the bugs " That's what Jonnie Williams' stories are like

You are going to hear that the government didn't think much of the original version of Jonnie Williams Jonnie Williams Version 1 0 The evidence will show that the government and Jonnie fixed the bugs over time, came up with several new versions, each one better and better for the government So what was the original Jonnie Williams, Version 1 0, the one the government doesn't like

The very first time Jonnie Williams spoke to investigators he was essentially cold-called He was at home He was not expecting a visit from law enforcement He didn't know why they were there. He was interviewed all by himself When the investigators asked him about the McDonnells, he had said he made a personal loan to Maureen McDonnell And you will hear that he told the investigators he did not get anything in return for the loan He told them that he never paid her for anything He said the McDonnells were his friends and that Maureen was into wellness and supported his product Before the interview wrapped up, Jonnie Williams went out of his way to emphasize that he did not get anything in return for the loans to the McDonnells He emphasized again that he did not ask for anything and he did not want anything

The original Jonnie Williams, Version 1 0, was a year-and-a-half ago in January of 2013 Then, about six months later, in July of 2013, Jonnie's story changed Let's call it Jonnie Williams Version 2 0 At this second meeting with law enforcement, Jonnie brings not one, not two, but six lawyers with him to meet with investigators Together, Jonnie Williams and his fleet of lawyers all meet up with the same prosecuting team you see here today Now, Jonnie Williams tells the government for the very first time he did have an arrangement with the McDonnells Well, a kinda/sorta arrangement

You see, the evidence will show Jonnie Williams does not say at this meeting that he had an explicit agreement with Maureen or Bob McDonnell Instead, what he tells the government is that he was looking for ways to help Star Scientific, and he believed helping the McDonnells would help the company And he basically believed the McDonnells understood the arrangement That's what he tells them. Ever since that second meeting, 2 0, the bugs in Jonnie Williams' stories have been ironed out Version 3 0 came out in September of last year After that, the McDonnells were indicted in January of this year Version 4 0 came out at the end of May of 2014, of this year, two months ago Version 5 0 a week later Version 6 0, two weeks after that 7 0, a couple weeks after that And less than two weeks ago, right before this trial, comes versions 8 and 9 That's nine different versions in about a year-and-a-half And each and every time it just keeps getting better and better for the government

Just to give you a taste of this, just last month, in Version 5 or Version 6, I can't remember which one it was, but Jonnie tells the government for the very first time, and you heard this from Ms Aber and apparently this will be what Mr Williams testifies to, this is the very first time, last month, he says to the government that Maureen McDonnell actually said the words that she would help him in return for him helping her family out financially The very first time he has ever said that she said those words Before it was a wink and a nod, it was an arrangement, that he understood they understood. But a week or so after he said that about Maureen McDonnell just last month, a week or so later, Jonnie tells the government that actually, Maureen said to him that she and Bob would help him out in exchange for his financial help But this version, of course, is a whole lot better for the government than the sorta/kinda arrangement the government got a year ago in Version 2 0 when Jonnie Williams showed up with his six lawyers Is there an e-mail or a text or a recording to corroborate this? No. It is just Jonnie Williams' word

So what happened? Why did Jonnie's story keep changing? Well, to understand that, you need to go back to that original Jonnie Williams Version 1 0 This is the one where he told the investigators that he never asked for anything from the McDonnells and he never offered -- they never offered anything in return This is back in January of 2013 Back then, the investigators didn't spend a whole lot of time asking Jonnie Williams about the McDonnells No, back then, the investigators were more interested in Jonnie Williams himself They were interested in a bunch of things about Jonnie But in particular, they wanted to know about a secret transaction in which Jonnie Williams gave a friend stock in his company, Star Scientific, and that friend gave him in return $10 million

Now, why was law enforcement interested in that secret transaction? Well, you see, Jonnie Williams, as you heard, was the CEO of Star Scientific And there are federal laws, federal criminal laws, that restrict what a CEO can do with the stock he owns in his own company without telling his investors We have all heard of some of these laws: insider trading, securities fraud. You see, if Jonnie Williams secretly sold stock to a friend without properly disclosing it, that could be a federal crime, which could mean possible jail time and losing $10 million.

So put yourself in Jonnie's shoes back in January of last year Law enforcement had just caught him by surprise in his own home and they were asking a lot of uncomfortable questions about stock transactions that could land him in prison and also deprive him of $10 million. Jonnie Williams had a problem. And yet, the investigators had also asked him about the McDonnells, not as much, but a little bit And it didn't take a rocket scientist to figure out from their questions that they were interested in whether or not Jonnie had given anything to the McDonnells in exchange for the McDonnells helping his company

The evidence will show that that's when Jonnie

Williams came up with the plan that he has executed. You will see, you will hear that he always thought of himself as a big fish. But he knew that Governor Bob McDonnell was a bigger fish, especially to the government. The evidence will show that Jonnie needed a way out of a $10 million problem, and he found his way out through the McDonnells. So again, going back to July 1st, 2013, this is Version 2.0, about six months after he was visited by investigators all by himself, Jonnie shows up with his army of lawyers to meet with the government. He and his lawyers sat down at a table across from the prosecutors. The prosecutors pushed across the table an agreement to Jonnie Williams and his lawyers. The agreement promised that the government would not use anything he told them at that meeting against him in a prosecution. But he could still be prosecuted. But they couldn't use anything he said against him at that meeting.

But that meeting was only about the McDonnells. It wasn't about the stock transaction. The government wasn't interested in asking Jonnie about the $10 million worth of stock fraud or anything else for that matter. They wanted to hear only what Jonnie had to say about the McDonnells. So Jonnie Williams had read the situation right. Now the evidence will show Jonnie tells the government that he did have an arrangement with the

McDonnells This is Version 2 0, the kinda/sorta arrangement

This is what the government wanted to hear Because right after he was done talking with them, that very same day, they gave him something called a full immunity, a transactional immunity agreement So right before the meeting, Jonnie got a promise in writing that they wouldn't use his statements against him if he were prosecuted, but he could still face prosecution. Right after the meeting, the same day, they gave him a much better deal "Don't worry about it, we won't prosecute you so long as you provide information and testimony against the McDonnells " This was a good start for Jonnie Williams But the immunity deal Jonnie got last year did not cover the $10 million stock fraud You will learn that Jonnie Williams couldn't get that deal out of the government just yet But Jonnie Williams, you will see, is patient And Jonnie Williams, you will see, is very smart Jonnie meets with the government again in September of last year, that's Version 3 0 Some of the bugs are then worked out from 2 0, and Jonnie waits The government then indicts Bob and Maureen McDonnell in January of this year, and Jonnie waits He waits until just two months before this trial, and then the evidence will show that Jonnie Williams demanded from the government full immunity for the $10 million problem and all his other financial problems which had been his main concern all along

So who cares what Jonnie wants at this point? He already had his deal What leverage has he got on the government?

As I mentioned earlier, Jonnie could throw in new details to embellish He could say Maureen McDonnell, which she didn't say, "Quid pro quo, Mr Williams " Quid pro quo That's what he is now saying Before it was understanding, arrangement It was then "No, she said this, not just about herself, but also Bob McDonnell " He was able to offer that in exchange But the evidence will show that Jonnie Williams had a bigger ace in the hole than any of that You see, Jonnie Williams knew that the government had already indicted the McDonnells, a point of no return for them. He knew that a trial date was just around the corner, only two months away And he knew the government needed his testimony So Jonnie Williams held out for a better deal than he had gotten a year before when the government had all the leverage

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The evidence will show that Jonnie Williams knew that his testimony was more valuable right before trial than it was a year ago So he renegotiated his deal And he got full immunity for the ten million dollars for his other financial issues for his participation in this case So why did Jonnie Williams' story change so much from the original Version 1 0? Because he got an out-of-jail free card worth ten million dollars

Now, Jonnie Williams is not the only person who got immunity from the government in this case A woman named Jerri Fulkerson got one too She got hers just last week Who is she? Well, she was Jonnie Williams' personal assistant You'll hear her name a lot in this case In fact, you may even see her on the witness stand later today And you'll see her on the stand as a government witness As the judge said, the government starts first They put on their case It's their burden

You'll hear the government gave her immunity because she would sometimes sign Jonnie's name to documents and then swear under oath that the signature was his, not hers You may be thinking that sounds like Ms Fulkerson forged Jonnie Williams' signature Well, the twist is that we expect Ms Fulkerson will testify that she forged his signatures on these documents at Jonnie Williams' instruction, at his request

So you'll hear that the government decided to seek immunity from Ms Fulkerson in a bit of a hurry before they even knew what documents she may have forged for Jonnie Williams So is Jonnie Williams now in trouble with the government because of the forgery? It's a mystery I guess we'll all find out when Jonnie Williams takes the stand for the government

Let's pause for just a moment on Jerri Fulkerson She worked for Jonnie Williams for years, and she was dedicated and loyal soldier for Jonnie She believed that Jonnie valued her and the work she did for him But the evidence will show that what Jonnie Williams really cared about was using her to get what he wanted even if it got her in trouble I mention this because it provides an important insight into what the evidence will show about who Jonnie Williams is and how he operates

He uses people He manipulates them to promote his own agenda There's no question that Jonnie Williams had an agenda in 2011 and 2012 His agenda was to get access to the Governor of Virginia to promote his company So how did he try to do that? The evidence will show that he found a woman who was close to the Governor He found a woman who was not particularly happy or satisfied in her role and was looking for something new The evidence will show that Jonnie identified a woman who he could manipulate and he duped her into helping him with his agenda

The indictment alleges that the conspiracy in this case began in April of 2011 That month Jonnie takes this woman on a shopping trip in New York and buys her expensive clothing Two months later, Jonnie flies this woman on a private jet to Florida for a special event to learn about Star Scientific's most promising product, Anatabloc

In Florida, Jonnie makes the woman a true believer in the product She is convinced it has genuine health benefits So she goes out and she buys stock in Star Scientific Over the following weeks and months, Jonnie has secret meetings with the woman one-on-one and makes her promises worth tens of thousands of dollars Jonnie flies her on his private jet to various events, all of them to promote his company

And ultimately, Jonnie gets the woman to help him plan a launch event for Anatabloc at the Executive Mansion, all the while, the evidence will show, Jonnie Williams is not telling this woman, "Hey, can you help me out, give me access to the Governor so I can put my product with his good name " No Instead, he's telling her how much he values her, how much he admires and believes in her, how important she is to Star Scientific and crucially to him And she believes him because Jonnie Williams, you will hear, can be a very convincing salesman Unfortunately, for this woman, Jonnie's real motives for all the time and attention he has lavished on her are revealed only too late to help that woman understand what's really going on

Now, you may be thinking I'm talking about my client, Maureen McDonnell, but I'm not I'm talking about a woman named Mary-Shea Sutherland Ms Aber didn't mention Mary-Shea Sutherland in her opening, which is curious, because they interviewed her many times Mary-Shea Sutherland was the First Lady's Chief of Staff We expect she will also be a witness for the government in this case

The evidence will show Jonnie Williams duped Maureen McDonnell in much the same way he duped Mary-Shea Sutherland You see, he lavished time and attention on them both and, yes, gave them things to make them think he was interested in them, but all the while the evidence will show he was really interested only in what he thought they could do for him

Jonnie took both of them shopping in New York and bought both of them expensive clothing Jonnie flew them both to Florida on his private jet to learn about Anatabloc He got Maureen McDonnell and Mary-Shea

Sutherland excited about his company and his product Both immediately bought stock in the company Both became sort of cheerleaders for Anatabloc and started using the product themselves Both flew Jonnie's jet to various Star Scientific events in support of the company and the product Both did things to try to promote Anatabloc

The evidence will show that Maureen McDonnell and Mary-Shea Sutherland were both Jonnie's dupes He used them both in pursuit of his ultimate goal, access to the Governor, and he did it with exploiting their vulnerabilities and without ever letting them in on his true agenda So then why is Mary-Shea Sutherland, we expect a government witness, who has not been accused of any crime, while Maureen McDonnell sits before you accused of public corruption?

Recall something very important Maureen McDonnell was not a public official She was a volunteer You're going to hear that there's exactly one reference to the First Lady of Virginia in the tens of thousands of pages of laws in this Commonwealth She is the honorary chairperson of the Citizens' Advisory Council on Furnishing and Interpreting the Mansion That's it

Maureen McDonnell was a private citizen She was free to take a private job for private sector pay, just like anyone else who doesn't work for the state or federal governments In fact, you will hear evidence that while she was First Lady, Maureen McDonnell was being paid for work she did for a different nutraceutical company Ms Aber refers to nutraceuticals as vitamins They are also known as nutraceuticals And she was being paid for sitting on the board of another company And there is no allegation, none whatsoever, that those private jobs were illegal You will hear evidence that even the government's own investigators concluded very early on that money to Maureen McDonnell was not illegal

Now, the same cannot be said of Mary-Shea Sutherland Yes, she was Chief of Staff for the First Lady, but she was actually hired by and worked for the office of the Governor Mary-Shea Sutherland was a public official of the Commonwealth of Virginia She did receive a government salary As you will hear, she was not free to accept payment for services rendered to Jonnie Williams or anyone else

But the evidence will show that Mary-Shea Sutherland, the government's own witness, was secretly negotiating with Jonnie Williams for a job at the same time she was employed by the Commonwealth as Maureen McDonnell's Chief of Staff, at the time she was a public official The evidence will show that Mary-Shea Sutherland even had a handshake deal with Jonnie for a job, all the while she was working for the Commonwealth In fact, you will hear that Mary-Shea Sutherland was negotiating a written contract with Jonnie Williams and his lawyers to hire her as an event planner for Star Scientific And this was the same time that Mary-Shea Sutherland, you will hear, was the principal person planning the event for Anatabloc at the Executive Mansion in August 2011 This is the same event that the government wants to say Maureen McDonnell corruptly hosted

And you'll learn that all of these negotiations between Mary-Shea Sutherland and Jonnie Williams and his lawyers were concealed from Maureen McDonnell and the Governor You will hear in Mary-Shea Sutherland's own words that Jonnie Williams was insistent that Mary-Shea not tell the governor's office that she was leaving until after the luncheon at the mansion

So Mary-Shea Sutherland was secretly negotiating for a job as an event planner, receiving gifts and being flown around in Jonnie's private jet, all the while receiving a salary from the Commonwealth and planning an event for Jonnie Williams at the Executive Mansion

So why does Maureen McDonnell, a private citizen, stand accused and Mary-Shea Sutherland, a public official, does not? Did the government give Mary-Shea

Sutherland immunity like they did Jonnie Williams and Jerry Fulkerson just last week? Nope Have they cut some kind of secret deal with Mary-Shea Sutherland? Not that we know of Has the government accused her of any wrongdoing whatsoever? No, they have not

To the government, one thing makes all the difference between Maureen McDonnell and Mary-Shea Sutherland Only one is married to Bob McDonnell And you will hear evidence that from very early on, long before Jonnie Williams' Version 1 0 or the various immunity deals, long before Maureen McDonnell was interviewed by law enforcement, which you heard about from Ms Aber, the investigators in this case decided long ago to go after the McDonnells

But we believe the government made a fatal error in charging this case It is the same mistake Jonnie Williams made They thought they could use Maureen McDonnell to get to the Governor Why did the government make that mistake? Well, they knew three things First, they knew Maureen went around the Commonwealth and a few other states talking about the benefits of Anatabloc No surprise there really because Maureen McDonnell, you will hear, talked about a lot of Virginia companies and that was part of her job Second, they knew that Maureen took a loan and certain gifts from Jonnie Williams, and finally, they knew, of course, that Maureen was married to Bob McDonnell

However, the evidence will show that Maureen McDonnell was herself free to take gifts and loans and promote Anatabloc to her heart's content She could even have a job, a salary from Jonnie Williams She was a volunteer She wasn't a public official But not so fast, the government will say She had a bad motive for doing these things She was doing them in cahoots with her husband to sell his office to Jonnie Williams

But here's the reality of what the evidence will show in this case Maureen has a passion, a deeply seeded passion, for nutraceuticals -- again, what Ms Aber describes as vitamins -- that long predates her friendship with Jonnie Williams by decades This passion arose from serious health problems she had when she was a young adult She had a breast cancer scare when she was a teenager, and after that, she changed the way she lived her life and started taking nutraceuticals And she developed, as she saw friends and loved ones, benefit from these vitamins, these nutraceuticals She even had her children take nutraceuticals, including Anatabloc And for 30-plus years Maureen McDonnell has marketed and sold nutraceuticals to supplement her family's income You will hear she was fortunate enough to work in a field in which she actually believed in the product

You will hear from multiple witnesses that Maureen truly believed in the health benefits of nutraceuticals and the promise of Anatabloc You will hear evidence that Maureen bought Star Scientific stock at the very beginning of the supposed conspiracy and she still owns it today, despite everything, despite the fact the stock collapsed

The evidence will show Maureen was not promoting Anatabloc as part of a quid pro quo No You will hear from the government's own witnesses that she was a true believer who, quote, drank the Kool-Aid What Maureen did for Jonnie Williams she did because she believed in his product and his company and him, not as part of some scheme she cooked up with her husband

But there's another problem with the government's story, and this one goes right to the heart of the alleged conspiracy between my client and her husband Now, this entire case has been a source of great embarrassment and anxiety for my client, as you can, no doubt, imagine, but sadly, we have no choice but to push even further to the private lives and private difficulties of my client and her husband because the government has charged the couple as co-conspirators

The government's version of events rests on an important assumption; that Bob McDonnell and Maureen McDonnell must have agreed to sell his office because, well, they are married But at the time of the supposed conspiracy, the McDonnells' marriage had broken down and they were barely on speaking terms They put on a brave face for the public After all, Bob McDonnell was the Governor, and no one wants to make their own marital problems the subject of gossip

But the sad reality is the marriage was not working It hadn't been for some time, and the pressure of life in the Executive Mansion made things worse You're going to see e-mails to those effect You won't have to take my word for it

You will hear evidence that Maureen McDonnell had a difficult time transitioning to her role as First Lady It was never something that she wanted She had never managed a staff before She had lived all of her life out of the spotlight, raising her five kids and managing all of it Now she was in this Executive Mansion and she felt overwhelmed by the expectations of others and she did not think she was up to the task of being the wife of the Governor of Virginia She was deeply uncomfortable and stressed in this new role and she became frustrated and often angry Maureen oftentimes lost her temper with her staff and with her husband

All this was made worse by the extraordinary demands on Bob's time and attention that this job required He regularly worked 15, 16, 17 hours a day and traveled all the time, usually leaving her back at home She felt alone The few times they had any private time together, they spent almost none of it really communicating the way a husband and wife should And it was these feelings of isolation, anger and anxiety that made it so easy for Jonnie Williams to swoop in and fill the void in Maureen's life

Maureen immediately gravitated toward Jonnie He showered her with attention she craved He gave her personal gifts He helped her out financially He listened to her He spent time with her He even shared with her a genuine passion for nutraceuticals, or vitamins as Ms Aber refers to them She admired Jonnie Williams and had affection for him You'll even hear evidence that she had a crush on Jonnie Williams

Jonnie Williams was larger than life to Maureen McDonnell, but unlike the other man in her life, Jonnie paid attention to her He seemed to respect her views on things He seemed to respect her views on things that were very important to both of them

Maureen McDonnell came to genuinely care about Jonnie Williams, and she believed Jonnie Williams genuinely cared about her To Maureen, they were very close friends and Maureen was proud of her friendship with Jonnie Williams

The government said that they hid this relationship Well, Maureen traveled with Jonnie Williams to public events It's part of their evidence of a supposed quid pro quo She went on vacation with Jonnie and their respective spouses Everyone on the staff, you will hear, knew how much Maureen loved hanging out with Jonnie Williams You will hear evidence that Maureen was very protective, some might even say jealous of her relationship with Jonnie Williams She would get prickly when she thought others were encroaching on that friendship or failing to appreciate that Jonnie Williams was her friend first and foremost

You'll hear from witnesses that Jonnie was a frequent visitor to the mansion, that many of these visits were spontaneous, that Maureen and Jonnie usually met privately either upstairs in the mansion or in Maureen's basement office, and we expect you'll hear one government witness describe Jonnie Williams as Maureen's, quote, favorite playmate

To give you an idea of the extent of the relationship, between April 2011 and February 2013, that's the scope of the conspiracy alleged by the government, the evidence will be that Bob McDonnell and Jonnie Williams spoke by phone or text message about 60 times By contrast, during that same period, Maureen and Jonnie shared over 1,200 phone calls and texts, during the same period That averages out to 2 or so calls or texts every day, 7 days a week, 365 days a year And you'll hear that Maureen hid much of what Jonnie Williams gave her from her husband She didn't tell her husband about the clothing that Jonnie bought her in New York She didn't tell Bob about the 50,000-dollar loan from Jonnie until after she started spending the money And three times, three times she hid from her husband her purchase of Star Scientific stock

Maureen McDonnell accepted gifts from Jonnie Williams, who you'll hear from witness after witness, loved to flaunt his wealth because she liked Jonnie Williams quite a bit and she thought he liked her too The evidence will show that Maureen McDonnell and Jonnie Williams had a relationship that some would consider inappropriate for two people who are not married to each other

Maureen McDonnell helped promote Star Scientific and Anatabloc because she believed in them, and as a private citizen, there is nothing illegal about any of that, and as a private citizen, she was free to live her life in whatever way she liked so long as she did not conspire with her husband to corrupt his office

The government will not be able to prove a conspiracy between Maureen and Bob McDonnell because there is no credible evidence that a conspiracy existed because you will hear the very foundation of their marriage was broken long before Jonnie Williams appeared on the scene

Now, before I wrap up, I want to touch briefly on the other charges against my client First, the government claims the McDonnells made a false statement to a bank when they submitted a joint application and did not list the loans from Jonnie Williams The evidence will show that Maureen McDonnell barely had anything whatsoever to do with preparing this loan application, nor will there be any evidence that Maureen actually reviewed the application The evidence will be that Maureen signed a piece of paper that was put in front of her by her husband That's it

The government also alleges that Maureen attempted to obstruct the grand jury investigation when she returned clothing to Jonnie Williams Now, I want to be clear about this You heard from Ms Aber that there was an interview conducted by the Virginia State Police of my client in February of 2013, and they allege that she made some false statements in that interview They do not charge that in this case This case is not about whether or not she told the truth in that interview

You will actually hear, with respect to that interview, that the claims that the police make about what she said in a typed up document about having a written contract, periodic payments are totally contradicted by the handwritten notes that were taken contemporaneously when she was being interviewed by the police and that she never said written contract and she never said periodic payments, that that was false What the police wrote in the typed up notes that Ms Aber referred to was false That's important for me to point out now You'll see it and you'll hear it for yourselves

But that's not what they charge here They are charging something unrelated to that interview They are talking about a handwritten note that Maureen McDonnell sent to Jonnie Williams after this investigation became known to them

As part -- with that handwritten note, she returned some dresses that Jonnie Williams had bought, some of the dresses, for example, that he bought in New York But Maureen McDonnell could not have intended to obstruct the grand jury The evidence will show that when Maureen returned the dresses, she had no idea a grand jury had even started In fact, the evidence will show she was told there was no grand jury or federal investigation at all

How could she intend to obstruct a grand jury investigation that she was told didn't even exist? And you will learn that there was no grand jury investigation at the time she sent this note But even if she had known about it and the grand jury had existed, there's nothing wrong with what Maureen McDonnell did, as you'll see in a moment She returned the dresses that Jonnie Williams had bought, and the government doesn't charge the return of the dresses themselves as being the obstruction No The government says again that it's the handwritten note that Maureen wrote to thank Jonnie Williams for the dresses, which falsely suggests that Jonnie and Maureen had agreed all along that she would return them But it is plain as day that the letter says no such thing The government mentioned this letter, but they didn't show it to you So I'm going to show it to you This is their evidence

So this is the note And we'll blow up the -- you'll get to see this You won't have to take my word for it You'll get to read it to your heart's content The letter does not say that Maureen McDonnell and Jonnie Williams had talked about returning the dresses The only thing it says they had talked about was charitable organizations

Can you blow it up?

It's a little hard to read because it's handwritten, but please go ahead "If not, I'm sure there are many exemplary charitable organizations like we talked about who would welcome the opportunity to auction them for a wonderful cause "

Their case on obstruction comes down to the words "like we talked about " Now, I'm not a grammatician I'm not an English professor But if you read that -- those lines and you read what it says, she says, "many exemplary charitable organizations like we talked about " She doesn't say anything about having agreed with him before to return dresses to charitable organizations She's talking about charitable organizations they talked about The evidence will show that Maureen and Jonnie had not only talked about charitable organizations, they had actually attended events for charitable organizations together

Can you take that down?

The government wants you to believe this case is about a husband and wife who were partners in crime, Bonnie and Clyde, trading the governor's office for money and gifts, but once the evidence is in, you will see that the government's theory of the case cannot be reconciled with the facts No The government's case begins and ends with the word of Jonnie Williams Ms Aber went out of her way to say it's not about Jonnie Williams, it's about all this other stuff But you'll see, it's about Jonnie Williams, a man with everything to gain and nothing to lose by claiming that Maureen McDonnell's heart and mind were infected by the same corruption that he now says motivated him

The government trusts Jonnie Williams, but that doesn't mean you have to Jonnie Williams is very good at using people to get what he wants Jonnie Williams duped Jerri Fulkerson That's the woman who forged his signature at his request, his personal assistant for many years He duped Mary-Shea Sutherland, who we talked about He duped Maureen McDonnell, and the evidence is going to show that he even duped the Department of Justice

We are confident that after you have heard and seen all the evidence in this case, Jonnie Williams will not doop you and you will find that Maureen McDonnell is not guilty on all of these charges Thank you

THE COURT: All right We're going to take a 15-minute break before the next opening statement

Mr Marshal, if you would take the jury

(The jury left the courtroom)

(Recess taken from 12:00 p m to 12:22 p m)

THE COURT: Bring in the jury, please

MR DRY: Judge, just one point I've been admonished before not to stand when the jury comes into the courtroom in this courthouse, and I just wanted to make sure that we knew what the rules of engagement were I think defense counsel were standing up We have no problem with standing up when the jury comes in We just want to know what the rules of engagement are

THE COURT: I don't have any rule If you want to stand up when they come in, fine If not

MR DRY: Thank you, Your Honor

(The jury entered the courtroom)

THE COURT: All right Counsel for Mr McDonnell

MR BROWNLEE: Good afternoon Bob McDonnell is an innocent man The evidence at this trial will make it clear that Bob McDonnell never entered into an illegal agreement with Jonnie Williams, nor did he ever promise to provide him any official benefits

The evidence will show that the federal government's case depends almost entirely on the testimony of a dishonest man who they cut a deal with so that he would change his story, and Mr Williams now has been fully immunized for multi-million-dollar securities and tax crimes that have absolutely nothing to do with Bob

McDonnell At the end of the day, there will be no evidence that Bob McDonnell, our former Governor, did anything to corrupt his office or betray his oath to our citizens Bob McDonnell is someone who has lived a life of public service and governed with integrity and purpose

After Bob graduated from Notre Dame, he joined the Army He served 21 years in the United States Army and Army Reserves, and his oldest daughter, Jeanine, served in the Iraq war He was a state prosecutor, making his community and our state safer and better He served as Attorney General and Governor, earning the reputation of being one of Virginia's most successful modern day governors

Bob helped pass important legislation Helped grow the economy He and his team helped put nearly 80,000 unemployed Virginians back to work and he made restoration of voting rights and prisoner re-entry a cornerstone of his administration Bob worked 14 to 16 hours a day, practically every day, in order to do that, and he did it all while living under the spotlight and glare without a hint of scandal or impropriety

These prosecutors are now asking you to ignore all of it and simply assume because they cannot prove that Bob McDonnell threw it all away so he could get part of a catering bill paid for his daughter's wedding Ladies and gentlemen, that did not happen

Now, Ms Aber told you this morning that their investigation began in 2013 As you will learn, that simply isn't true Their investigation began in early 2012 In fact, let me take you back to May 23rd, 2012 From today's date, that's a little over two years ago

On that date, the government's lead investigator, Agent Charles Hagan, had a meeting with his superiors and members of their team to discuss the progress of an investigation into a man named Todd Schneider, who had been the chef at the Governor's Mansion Mr Schneider had been accused of stealing some food

During the meeting, Agent Hagan reviewed some of the evidence against Chef Todd and discussed his possible defenses He also told his team that they had learned that Ms McDonnell had developed a very close relationship with and had been taking gifts from a local wealthy businessman named Jonnie Williams Agent Hagan's notes show that the meeting ended with the agents making some important conclusions about Bob and Maureen McDonnell's conduct and raised questions on how their investigation would proceed

First, the lead investigator confirmed the McDonnells' innocence in writing when he wrote that money and gifts to Maureen McDonnell were not illegal, that there was a loophole and that the Governor was not required to list on his disclosure form gifts to his wife

Next, the investigators had real concerns about Jonnie Williams, questioning whether there were possible securities violations committed by Mr Williams and that he may have committed fraud in obtaining financing for his company Lastly, the investigator's notes show that they focused their attention on how they could use Williams to go after the McDonnells Before you is an excerpt from his notes

Now, ladies and gentlemen, May 23rd, 2012, was nearly eight months before federal investigators ever talked with Jonnie Williams and it was nine months before these agents interviewed Ms McDonnell and it was long before Bob McDonnell ever considered submitting a loan application to these banks

Now, the government's thinking, over two years ago, about going after the McDonnells and to do so by using Jonnie Williams, a man they had never even met, raises serious doubts about their case Importantly, the evidence will show that what was contemplated by the government over two years ago became a reality when they charged Bob McDonnell with crimes that he did not commit

The evidence will show that during the past two years the federal government has read nearly every single e-mail Bob McDonnell either wrote or received during his time in office They read scores of his text messages They studied his personal papers and his bank records They forced his five children, both his son-in-laws, and his youngest sister into the federal grand jury for hours They interviewed his entire staff and cabinet on multiple occasions, one as many as 15 times They subpoenaed his accountant and had the IRS thoroughly review his tax returns, searching for any possible problem

They interviewed his neighbors, his closest advisors They even traveled to California and interviewed former Presidential Candidate Mitt Romney and his wife Ann, hoping to find someone to say something bad about Bob McDonnell And you know what? They came up empty They couldn't find a thing

And to show their desperation in trying to find something bad, anything bad about Bob, the prosecutor in this case used the Governor's security detail, the people whose job it was to protect Bob McDonnell and who were with him every day of his governorship, they had him eavesdrop on his private conversations and then report to federal investigators what they saw and heard And do you know how many crimes they reported about Bob McDonnell? None Zero Nothing

Ladies and gentlemen of the jury, my name is John Brownlee and it is a distinct privilege and honor for me, as well as my co-counsel, Hank Asbill, to appear before you today on behalf of Bob McDonnell It is also an honor for me to be in the courtroom of the United States Judge -- United States District Judge James Spencer And, Your Honor, thank you

The federal government wants you to believe that Bob McDonnell corrupted his office, betrayed his oath by selling the governorship of Virginia to Jonnie Williams in exchange for a wedding gift to his daughter, a couple of golf matches with his sons, a few dinners, and a loan to a business he owns with his youngest sister And they want to try to do all of this while acknowledging, as they did this morning, that Jonnie Williams got nothing from the taxpayers of Virginia

The evidence in this case is uncontested that Jonnie Williams didn't get a state grant He didn't get a state contract He didn't get a state loan He didn't get a state board position He didn't get a special piece of legislation He didn't get anything in the state budget He didn't get any funds from this Tobacco Commission In fact, the evidence will be, he never even applied for any

As taxpayers here in Virginia, you can all rest assured that neither Jonnie Williams, nor any of his companies, got one dollar from taxpayer money from the administration of Bob McDonnell And the evidence will show that not only did he not get anything from the administration, he never really even asked for anything And yet despite the clear evidence that Mr Williams didn't get anything from the taxpayers of Virginia, the federal government is going to try to convince you that he got something

So what have they come up with? Setting up a couple of meetings, attending an event at the Governor's Mansion in which -- which is important -- the company gave money to the state of Virginia and that Bob McDonnell said nice things about Mr Williams' company and his products And the supposed promise to do more that the government talked about today for which there is no credible evidence is simply not enough for a federal criminal corruption case

So first, the meetings The evidence will show that referring constituents for meetings is what politicians do It's why the politicians are there, to help citizens get access to their government and a chance to make their pitch Criminalizing this bedrock principal of arranging meetings for constituents, for donors and non-donors alike, would make felons virtually of every person who has ever held a public office That is not the law, and the evidence in this case will not support it

In four years in office, Bob McDonnell asked members of his staff and cabinet to meet with Mr Williams on just two occasions, once in 2010 and again in the summer of 2011 The request in 2010 occurred before Mr Williams gave the McDonnells any gifts or loans, proving that Bob McDonnell didn't need a gift from Jonnie Williams for him to be a supporter of his company Also, the evidence will show that all Mr McDonnell did was ask that the meetings be held He didn't tell anyone to help Mr Williams, nor did he even follow up on the meetings What Bob McDonnell did, in asking his staff and cabinet to meet with Williams, was routine, appropriate, and perfectly legal

Second, this mansion event Here, Mr Williams requested an opportunity to come to the Governor's Mansion and give two state research universities, UVA and VCU, each $25,000 in research grants Mr McDonnell stopped by the event for about 45 minutes, made some casual remarks supporting medical research in Virginia, asked a few hard questions and left before the event was over Again, the evidence will show that Mr McDonnell did not pressure anyone to help Mr Williams, nor did he follow up on the event

Lastly, the evidence will show that on a few occasions Bob said nice things about Star Scientific, a Virginia public company for which Jonnie Williams was CEO

Ladies and gentlemen, saying positive things about a Virginia business is what Bob McDonnell always did That's who he was as Governor He was Bob's for jobs, creating jobs, promoting Virginia businesses, getting Virginians back to work That's what he was all about, and Bob traveled all over the state, around the country and to many foreign countries with that same message It was come to Virginia We are the most business-friendly state in America

Now, the evidence will show that no one had to pay Bob McDonnell to get him to use a Virginia product or say nice things about a Virginia company Bob McDonnell eats Virginia ham, he drinks Virginia wine, and my guess is if the man smoked, he would smoke Virginia cigarettes His whole purpose of Governor was supporting and promoting every Virginia business he could I'd like you to watch just two short video clips to demonstrate that

(Video Played)

(Video Ended)

MR BROWNLEE: Ladies and gentlemen, these two examples of many show what Bob's job was as Governor It was his mission It was his passion, and it helped

Virginia dig out of one of the biggest economic recessions in 80 years The easiest thing for a Virginia business to get was a kind word about its product from Governor Bob McDonnell And the government's attempt to build a corruption case based on Bob McDonnell's promotion of a Virginia business is deeply flawed and cannot be sustained

Now, Ms Aber talked about concealment The government's case alleges that Bob McDonnell concealed his relationship with Jonnie Williams Ladies and gentlemen, Bob McDonnell never hid anything from anyone In fact, he's the only major player in this entire drama who has been completely open about everything

You aren't going to see Jonnie Williams' text messages You're not going to see Mary-Shea Sutherland's either You're going to see his, and you'll see the thousands of documents, personal notes, schedules, logs that he had He turned over everything they asked for, and the evidence at trial will make it completely clear that Bob isn't hiding anything

Now, you won't have to take my word for it because Bob McDonnell is going to tell you that himself You see, Bob McDonnell is going to take that chair right there and he is going to tell you what happened, what he did and why he did it Bob is going to take the stand and swear on everything that is holy and dear to him and tell you the truth about these false accusations He will answer every single question that Judge Spencer deems appropriate He was not hiding anything before, and he will not hide anything now

Now, remember, he has no obligation to take that stand He has no obligation to say anything in response to these allegations It is the prosecutor's burden to show that he is guilty It is not his burden to show that he is innocent, but he is going to take that stand anyway because that's who he is He will not hide from their false accusations That's because Bob McDonnell is a man of integrity And his integrity, his character, and his testimony will convince you that he is an innocent man

In this trial you are going to hear from impressive people who grew up with Bob McDonnell People who have known Bob his entire life People who have worked alongside Bob in the trenches of political campaigns in the governing of our Commonwealth People who have seen Bob when he was physically and emotionally exhausted and at the times of maximum stress, when even the most disciplined person's true character is exposed These people will be your X-ray machine into Bob's soul, and they will tell you that Bob McDonnell is truthful, law-abiding, decent, and totally dedicated to public service Bob McDonnell is not a perfect person, but they will tell you he is an honest man and the most -- least cynical person they know

Now, the prosecutors have to convince every single one of you beyond a reasonable doubt that Bob McDonnell is guilty of the crimes that they have accused him That is the highest standard in American law But I submit, we will prove to you that the prosecutors are wrong about who Bob is and that they have made a grievous mistake in accusing this man of these crimes

The evidence will show that Bob McDonnell doesn't care about material possessions He's not greedy He was not financially desperate and Mr Williams was not his only option for a loan Witness after witness will tell you that He is a humble man of great faith who is thankful every day for the incredible opportunity he had had to serve the people of Virginia He is a trusting man who gives the benefit of the doubt to every person he meets and you will see that that trait, that very trait, that honorable trait is a major reason now that he faces the biggest challenge of his life

The government's case is remarkable for what it lacks because there will be no credible evidence offered in this case that Bob McDonnell promised Jonnie Williams anything There is not a document, an e-mail, a text message, a recording, a photo, a video or anything that shows any agreement or promise between Jonnie Williams and Bob McDonnell There's nothing Even Jonnie Williams, in an unguarded moment of candor, denied emphatically that any such agreement or corrupt relationship existed between himself and Bob McDonnell

Now, as Mr Burck told you, on January 23rd, 2013, federal agents traveled to one of Mr Williams' homes in Florida to interview him At that time he had no lawyer Mr Williams made it clear that Bob promised him nothing Williams told the investigators that he never asked for anything from Bob and never expected anything from him And in May 2013, just a few months later, Star Scientific put out a public statement reaffirming Mr Williams' admission to the FBI that Bob McDonnell had done nothing wrong or illegal

But that's not all The evidence will also show that Bob never asked a single person in Virginia government to do anything for Jonnie Williams except hear him out Bob never twisted arms He never banged on doors He didn't put the screws to anyone He didn't do anything besides let Jonnie Williams make his pitch to the experts on his staff who Bob knew would make an independent and professional judgment about what to do with Jonnie Williams and his products Bob hired these people for their integrity and independence, and that is exactly what they gave him in return, and the evidence in this case will make that crystal clear

The evidence will also show that the reason Jonnie got nothing and the reason Bob never tried to make anyone give Jonnie anything is because there was simply no conspiracy There was no plan There was no agreement There was no under-the-table deal There were no secret conspiratorial meetings or phone calls and there was no scheme to defraud That, ladies and gentlemen, is what the evidence will show

The evidence will also show that Jonnie was nice to Bob and generous to his family and that that generosity was perfectly legal under Virginia law Now we know that Williams' generosity was all a sham and he was actually a false friend The evidence will show that Jonnie is lying if he claims that Bob ever promised him everything or gave him anything in exchange for that generosity Plain and simple, ladies and gentlemen, Jonnie deceived Bob Jonnie deceived and manipulated Maureen Jonnie deceived and manipulated Mary-Shea Sutherland, and Jonnie did it again to his long-time personal aid, Jerri Fulkerson Jonnie deceived his companies and its lawyers Jonnie misled the thousands of investors who entrusted his company with their hard-earned money And the evidence will show that

Jonnie Williams, the master manipulator, deceived these prosecutors and agents who brought this case and convinced them to think the worst about Bob McDonnell

And he did it to save himself from losing millions of dollars and potentially going to prison for securities and tax crimes that have nothing to do with Bob McDonnell and for which now the federal government has provided him total and full immunity, the value of which is immense to Jonnie Williams

Now, Bob McDonnell was a good Governor because he was one of the hardest working people in Virginia He was always working, always at events, always traveling, always on the go And over his four years as Governor, according to his staff, he held over 3,600 meetings, spent 4,600 hours away from home I think that's about half of the entire four-year term He gave hundreds of speeches, attended even more events, worked 14 to 16 hours a day all through the year Bob McDonnell hired an extraordinarily hardworking and talented staff and cabinet and empowered everyone on that talented staff to do their very best too, all following his example

But, ladies and gentlemen, his hard work and his dedication, and particularly his time away, it took a toll It took a toll on his family, and it took a terrible toll on his wife Bob McDonnell, by all accounts, was a good Governor He was good at raising or helping to raise his five children and he loves them immensely, but the evidence will show he was not nearly as successful as a husband. In his life, something had to give and it was his marriage The only thing that the government now offers to prove that he was conspiring with his wife

Bob did try to keep private, while he was Governor, the most personal and difficult aspects of his marriage Bob tried to shield the dysfunction of his marriage from his youngest children and from the public But now you will hear evidence about what happened behind closed doors with Maureen You will hear that no matter how hard it got or how hard he struggled, he did his level best to help his wife Bob never criticized his wife in public He never humiliated her He never scorned her, and he never did anything to diminish her He did everything he could to help Maureen to give her confidence and self-esteem He did everything he could to give her initiatives she could promote and tried to help her be the best First Lady she could be

He hired a team of professionals, including someone he thought was highly competent, Mary-Shea Sutherland, as Maureen's Chief of Staff He thought Mary-Shea would help Maureen, would guide her and protect her in this new role He trusted Mary-Shea to steer Maureen wisely and responsibly and to help Maureen cope with the demands of a public life that had caused her tremendous stress and anxiety That's why Bob asked Mary-Shea not to leave

But no matter what he did to hold everything together, it was never enough As Mr Burck alluded to, Bob and Maureen's communications broke down almost entirely and Ms McDonnell's resentment and anger and sadness grew as their marriage fell apart Bob reached out to try to bridge this gap and he wondered why, why this happened

She said she hated him She was angry for not having what she thought was enough money She was angry at him for not spending enough time at home with her, and she hated him for not being around, for serving the public night and day, and having nothing left for her And this broke their marriage apart And it created a rift so wide that an outsider, in this case another man, could invade and poison the marriage

I want to let you know how difficult this is for Bob McDonnell Although he has been in public life for many years, you will hear he is and remains a very private man As you can imagine, to be forced to discuss his troubled marriage in public with total strangers goes against every fiber of his being as a man and as a husband and as a father But Bob has agreed to open up his marriage and his life to you so you can properly assess for yourself his character and their charges

Bob McDonnell will invite all of you to evaluate his life, both successes and sorrows, all so that you can see for yourselves that the government's allegation that he was conspiring with his wife, and later with Mr Williams, is simply not true

Back in September of 2011, Bob sent Maureen a long e-mail after a weekend in which she was extremely angry at him The e-mail shows him begging her to help save the marriage You are going to read this e-mail, an e-mail, quite frankly, that no one besides a husband and wife should ever read It will show you just how broken things were in their marriage An e-mail he sent right in the middle of their supposed conspiracy But that e-mail, which Bob will read to all of you, fell upon blind eyes and deaf ears for that evening Maureen was distracted with other interests

The prosecutors in this case are going to attack Bob's integrity and character at every turn, claiming that he's entitled, claiming that he's greedy, claiming that he was financially desperate You will hear a lot of evidence about disclosure in this trial and you will hear innuendo about Bob hiding things, but the evidence will show that Bob was hiding in plain sight As Governor of Virginia, as head of the Republican Governor's Association and as a possible running mate for Mitt Romney, Bob had no privacy, none All day, everywhere, people were watching him, scrutinizing him, paying attention to everything he said and to everything he did

Now, ladies and gentlemen, over the next several weeks, we are going to address head-on each of the government's allegations One by one, we will show you why everything they accuse Bob McDonnell of doing was wrong

For instance, Ms Aber, this morning, said that Bob lied to two banks when he was seeking refinancing on a couple of properties She claimed that Bob intentionally left off Mr Williams' loans What she forgot to tell you is that Bob has been friends with the president of TowneBank for 20 years and started doing business with PenFed when he was a young soldier in the Army nearly 40 years ago

She also didn't tell you that neither bank ever claimed it had been lied to or that any of the forms submitted were false In fact, the very bank that the government alleges Bob supposedly lied to renewed that very loan a month after the government returned its indictment The evidence will show that at the time Bob submitted the applications, numerous people knew that Williams had loaned them money His youngest sister knew His youngest sister's estranged husband knew Jerri Fulkerson knew And Bob's bookkeeper and accountant had full and direct access to his accounts, which clearly showed Williams' loans

The idea that Bob would suddenly, in the third year of his governorship, in the full glare of the public spotlight, lie on bank applications because he didn't want a few bankers to know that he had taken loans from Jonnie Williams defies all logic and common sense

The evidence will also show that Bob McDonnell never hid or tried to hide Mr Williams' support, generosity or friendship In fact, while Bob McDonnell was Governor -- Ms Aber discussed this morning these statements of economic interest While Bob McDonnell was Governor, he publicly reported nearly $170,000 in donations, gifts, and loans from Mr Williams and his company All, all of them perfectly legal under Virginia law And Bob McDonnell complied with Virginia law in every respect In fact, there will be no suggestion at this trial that Bob McDonnell ever violated Virginia disclosure laws or reporting requirements, ever

You will see that for every year, from 2009 through 2012, Bob McDonnell disclosed publicly for all to see that Mr Williams had donated to his campaign, had given to his Political Action Committee and had provided him and his family some gifts and loans And Bob did nothing to hide his friendship with Mr Williams They golfed together They ate together In fact, on one occasion, their families went on a vacation together Bob McDonnell never hid anything or tried to hide anything about Mr Williams, and, ladies and gentlemen, any assertion to the contrary is simply not true

I have thought a lot about today and this moment and how I would like you to think about Bob McDonnell as we begin to hear the evidence in this case As I think about Bob McDonnell, I am reminded of one of my favorite quotes from a book I read as a young Army officer, now some 26 years ago The book, Once an Eagle, was written by Anton Myrer It is a novel about a young soldier in World War I who rose to the rank of general officer in World War II Toward the end of the book, on learning that his own son had been killed in action, he recalls what he said to his son some years ago "That's the whole challenge of life, to act with honor and hope and generosity no matter what you've drawn You can't help when or what you were born and you may not be able to help how you die, but you can and you should try to pass these days between as a good man "

Ladies and gentlemen, the evidence will show in this case that Bob McDonnell is a good man who always acted with honor and hope and generosity

Now, as this trial goes on, some of you may be surprised at how aggressively we are defending Bob McDonnell We are not going to apologize for that It is a tremendous privilege and honor for each of us to defend Bob McDonnell, to defend his freedom, to defend his family, to defend his reputation, and to defend his future against accusations by the federal government that the evidence simply will not support

We are going to defend Bob McDonnell with every ounce of energy we can muster and with every single witness you will hear And at the end of this trial, when all the chips are on the table, all the hands have been played, and there is no more evidence to hear, my co-counsel, Hank Asbill, will have the privilege of speaking to you personally in his closing argument And when that day comes, Hank will not hesitate to ask each of you to return the only just verdict in this case and that is not guilty on all counts Thank you

Thank you, Your Honor

THE COURT: All right We are at 1:07, or thereabouts We are going to stop now for lunch, and I would like for you to come back at ten minutes past 2, a little over an hour from now And you're going to be on your own today So remember the admonition: Be careful Don't let anybody talk to you, and as I said before, if anybody attempts to discuss this case with you, please let me know If you all would follow the marshal, we'll see you at 2:10

(The jury exited the courtroom)

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(Luncheon recess taken from 1:10 p.m. to 2:10 p.m.)

THE COURT: All right, let's bring in the jury, please. All right, let me invoke the rule on witnesses. All of those who expect to be called as a witness in this case, except for the government's representative, and defense expert as appropriate, will have to leave the courtroom to await their call.

MR. DRY: Just to confirm, that's only one government representative witness, case agent?

(The jury entered the courtroom.)

THE COURT: Let's approach on that.

(At Bench.)

MR. DRY: The defense has not objected to having the case agents in the courtroom, it is my understanding.

THE COURT: How many do you have?

MR. DRY: Two.

THE COURT: That's fine.

MR. DRY: Yes, sir, thank you.

(In Open Court.)

All right, government, call your first witness.

MR. HARBACH: Thank you, Your Honor. The government calls Ryan Greer.

RYAN GREER,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR HARBACH:

Q Mr Greer, please state your name and spell your last name for the court reporter, please

A Ryan Greer, G-R-E-E-R

Q What do you do for a living?

A I'm a food and beverage manager

Q Did you used to work for a company called Seasonings Fine Catering?

A Yes, sir

Q It is probably obvious, but what kind of company is that?

A It is a catering company

Q When was it that you worked there?

A 2008 through 2011

Q During your time working for Seasonings Fine Catering, were you personally involved in catering a wedding for the daughter of Mr and Ms McDonnell?

A Yes, sir

Q When was that wedding, do you recall?

A It was June, 2011

Q In connection with doing your planning for that wedding, did you have occasion to meet personally with both Mr and Ms McDonnell?

A Yes

Q Tell us about that Where did it happen?

A We had a dinner at the Governor's Mansion.

Q Who was present at the dinner besides yourself?

A That would have been Mr and Ms McDonnell, Cailin, and Chris

Q Chris being the groom-to-be?

A Yes

Q What was the purpose of the dinner meeting at the Mansion?

A To discuss planning for the wedding, plates, glasses

Q Who was it who negotiated the price of the catering and the contracts terms?

A Todd Schneider

Q Who is Todd Schneider?

A He was the owner of Seasonings

Q Was he your boss?

A He was

Q Was there a draft contract prepared for the McDonnells' event?

A There was

Q Who prepared that?

A Myself and Todd

Q If we can please show to the witness only Government Exhibit 80 Do you recognize the document that's on your screen there, sir? Can you see it okay?

A Yes

Q What is that that we are looking at there? Just identify the document, please

A That's an e-mail that was sent to Cailin

Q Who sent the e-mail to Cailin McDonnell?

A Myself

Q Have you reviewed this document in preparation for your testimony here today, sir?

A Yes, I have seen this document

Q Are there attachments to the document?

A There are

Q And are the attachments paperwork related to the catering job you were going to do for Cailin McDonnell's wedding?

A Yes

MR. HARBACH: The government offers Government Exhibit 80

MR. ASBILL: No objection

THE COURT: It will be admitted Are you saying 8 or 80?

MR. HARBACH: 80

THE COURT: All right

BY MR. HARBACH:

Q Could we take a look at Page 2 of Government's 80?

What are we looking at here, Mr Greer?

A That would be an invoice that was prepared for the wedding

Q And a couple questions about this First of all, there is a gray box around the word "Sales Rep," about a third of the way over from the left Do you see that?

A I do.

Q It has the initials RPG.

A Correct

Q Who is that?

A That's me

Q Let's take a look at Page 3, please What is this?

A That would be the menu.

Q This was the proposed menu for the wedding that you all were catering?

A Correct

Q Who prepared this thing?

A Todd Schneider

Q Could we please take a look at Page 3 of Government's Exhibit 80 Is this a continuation of the menu, talking about the details of the pricing?

A Yes, sir

Q Okay Finally, Page 4 of Government's 80

A That would be the contract

Q And I note on the top right-hand corner, the first page, it says Page 1 of 3 Before we go on to the last two pages of the document, I want to note if we could blow up where it says "Total Cost" down there at the bottom, those four lines or so Thank you, sir Total cost is listed at just under $16,000 Do you see that there, sir?

A Yes

Q And then there are two 25 percent installments that are due Was that standard practice at Seasonings, to require deposits in advance like that?

A Correct

Q Then briefly if we could look at Page 5, excuse me, Page 6 of Government's 80, this is good, Page 2 of 3, a continuation of the draft contract that you sent to Cailin McDonnell, sir?

A Yes

Q And then finally the last page of Government's 80, a signature page?

A Correct.

Q Okay After you -- you can take that exhibit down, please After you e-mailed the paperwork we just looked at to Cailin McDonnell, did you eventually hear back from Mr McDonnell?

A Yes, sir

Q If we could pull up for identification, please, Government Exhibit 81 Are you able to see the page on that screen, sir?

A Yes, sir

Q Okay Do you recognize this document?

A I do

Q Is this the documentation you received back from Mr McDonnell?

A Yes, sir

MR. HARBACH: The government offers Government's 81

MR. ASBILL: No objection.

THE COURT: It will be admitted.

MR. HARBACH: Your Honor, would you like me to ask to publish to the jury each time or is it okay to publish once it is admitted?

THE COURT: Once it is admitted it can be published.

MR. HARBACH: Thank you.

BY MR. HARBACH:

Q Okay, Mr Greer, the first thing I'd like to identify is the handwriting at the bottom of the page there Could we blow that up? Whose handwriting is that, Mr Greer?

A That's my handwriting

Q And could we walk through it briefly, where it says "Do LED lights," what was that about?

A That would have been for the tables at the wedding

To put lights on the table

Q Then can you read the next few lines of your notes?

A "Electricity very limited, bring power from garage How many fans and what the pull," and then to "Doug and Rich "

Q Do you recall what the issue was surrounding the electricity and the power from the garage?

A I felt that it wasn't going to be enough power to power everything

Q It was going to be needed for the reception?

A Correct

Q Okay Zoom back out, please. Now, there's some more handwritten notes on the right-hand side of the page there And are you able to make out who it appears signed that handwritten note to you?

A Yes

Q What does it say?

A "Bob McDonnell "

Q Now, I'm going to read this into the record and ask you if I've read it correctly, okay? Can you follow along with me?

A Sure.

Q It says: "Ryan, I have made a few reasonable changes to the contract which I hope you find acceptable Left a voicemail as well Likely final head count closer to

200-200-" something, "and will advise in advance Thanks, Bob McDonnell " There is a phone number "P S Thanks for all your help with Cailin to get this set up."

As best you could tell, did I read that correctly, sir?

A Yes, sir

Q Now, let's take a look at Page 2 of Government's 81, please And Page 3 On this one there's some other handwritten notations Do you recognize that handwriting or know who wrote that, sir? By that, I mean the $757 that's handwritten in there, and the total

A I'm not 100 percent sure of whose handwriting that is

Q Let's look at Page 4, please. And if we could just blow up right there, thank you, this area where some other handwritten notations have been made To your recollection, sir, when you received this document that we are looking at now, that is Government's 81, back from, eventually back from Mr McDonnell, to your knowledge, had anyone else marked it up?

A Not to my knowledge

Q Did Mr Schneider tell you that he marked it up by hand?

A I don't recall

Q Okay If you could back out, please Let's go to the next page of Government's 81 There is some line editing on this page Appears to say, "The deposit will be refunded if an act of God or death occurs which prevents the wedding reception from occurring " Did I read that correctly?

A Yes, sir

Q What was your understanding of who made that change to the document when you received this thing?

A Bob McDonnell

Q Please back out, Mr Starnes Then also, thank you, the bottom half, we don't need to go through all of these details, the jury can read them. But would your answer be the same on these other handwritten notations to the contract, namely, that it was your understanding that it was Mr McDonnell who made them?

A Yes, sir

Q And finally, the last page of the draft contract, which is also the last page of Government's 81, one of those signature lines has a name on it Next to the word "Client," you see the signature there that appears to be Robert McDonnell's signature?

A Yes

Q What's the date that he apparently signed it?

A December 29th, 2010

Q Thank you. You can take the exhibit down, Mr Starnes Earlier in your testimony, Mr Greer, we talked about a couple of deposits that were going to be due before the event Do you recall that testimony?

A I do.

Q Do you recall whether Seasonings received deposits like that from the McDonnells?

A We did

Q Take a look with me at Government's 79, please Do you recognize that document, sir?

A Yes

Q What is it?

A That would have been the first deposit check from the Governor

MR HARBACH: The government offers Government's 79

MR. ASBILL: No objection.

THE COURT: It will be admitted.

BY MR HARBACH:

Q What's the amount of this check, sir?

A $3,974 25

Q And the names at the top left of the check, whose names are on this check, sir?

A Robert McDonnell and Maureen McDonnell

Q Did you deposit this check for Seasonings?

A Yes, sir

Q Could we see for identification Government's 82, please Is this the deposit slip with which you deposited the check we were just looking at, sir?

A Yes, sir

MR HARBACH: The government offers Government's 82

THE COURT: It will be admitted

BY MR HARBACH:

Q I don't know if you can turn your head to the side and read when you deposited that check, sir

A December 31st, 2010

Q There we go. Thank you, sir

A You are welcome

Q That's it for that exhibit, Mr. Starnes. Could we please pull up for identification Government's 156 Do you recognize this document, sir?

A I do

Q What is it?

A That would be an invoice history statement from QuickBooks

Q Is that a Seasonings record?

A It is That's where we enter the payments

MR. HARBACH: The government offers Government's 156

MR. ASBILL: No objection

THE COURT: It will be admitted.

BY MR HARBACH:

Q Okay, Mr Starnes is blowing this up for you, Mr Greer First question is, what's the entry next to "Customer"?

A "Governor Bob McDonnell "

Q And down there, what's the purpose of this record? Sorry, that was a bad question. Let me just ask you, what's the purpose of an invoice history document like we are looking at here?

A So we would know how much payment or what's due by the time the wedding comes

Q Okay And in this case, the first payment there that's marked December 31st of 2010 of $3,974 25, is that the check we were just talking about a moment ago?

A Yes, sir

Q Was there a second deposit in identical amount a couple of months later?

A There was

Q Let's take a look for identification, please, at Government's 85 Do you recognize this to be the check for that second deposit, sir?

A Yes, sir

MR HARBACH: The government offers Government's 85

THE COURT: It will be admitted.

BY MR. HARBACH:

Q What's the date of this check, Mr Greer?

A January 22nd, 2011

Q And what's the name on the upper left corner of the check?

A Robert McDonnell

Q And an identical amount to the first deposit check?

A Yes, sir

Q Did you deposit this one?

A I do believe I did.

Q Could we look for identification at Government's 86 Is this the deposit slip for the second check we were just looking at, Mr. Greer?

A Yes, sir

MR HARBACH: The government offers Government's 86.

THE COURT: It will be admitted

BY MR. HARBACH:

Q When did you deposit the second deposit -- excuse me, the second check, sir?

A February 3rd, 2011

Q Take that exhibit down, Mr Starnes Mr Greer, do you recall how the balance of the amount due and owing on the contract was paid?

A I do

Q How was it paid, sir?

MR. ASBILL: Objection, based on hearsay

THE COURT: Overruled.

BY MR. HARBACH:

Q Go ahead, sir

A It was paid for by a check made out to Seasonings for $15,000

Q If we could take a look for identification at Government's 121, please Is this the check you were just describing, sir?

A Yes, sir

MR. HARBACH: The government offers Government's 121

THE COURT: It will be admitted.

BY MR. HARBACH:

Q What's the amount of the check, sir?

A $15,000

Q And what's the name on the top left of this check, the account holder?

A Starwood Trust

Q In the pay line where it says "Pay To The Order Of," it says "Great Seasons Catering " Is that your handwriting, sir?

A No, sir

Q Do you know whose handwriting it is?
A No, sir
Q When you received the check, was that filled in with Great Seasons Catering?
A It was
Q Do you recall how you received, you personally received this check, sir?
A I know I received it at the restaurant, and to be honest, it was either Todd Schneider handed it to me or Mary-Shea I don't know 100 percent who gave it to me But I received it at the restaurant
Q You think it was one of those two people?
A One of those two
Q But you don't remember which?
A I don't
Q When you say "the restaurant," what are you talking about?
A Seasonings Fine Catering We also had a restaurant
Q Here in Richmond?
A Yes, in Midlothian
Q Okay Back to the check that's displayed on Government's 121 I ou deposit this one?
A I did.
Q Did you receive any different instructions about your deposit of this check?

A Yes I was asked to cash the check

MR HAUSS: Objection, hearsay

THE COURT: Overruled

THE WITNESS: I was asked to cash the check.

BY MR. HARBACH:

Q By whom?

A Todd Schneider

Q Did you take it to the bank?

A I did.

Q What happened?

A They wouldn't cash it because it is a business account so they made me deposit it

Q If we take a look for identification at Government Exhibit 133, please Is this the deposit slip for the check we have just been talking about?

A Yes, sir

MR. HARBACH: The government offers Government's 133

THE COURT: It will be admitted.

BY MR HARBACH:

Q Now, this deposit slip looks different from the others What happened here, Mr Greer?

A I went to the bank and had intentions on cashing the check, so I didn't have a deposit slip with me So the teller, when she refused to cash the check, she filled out a deposit slip for me

Q If you could look in the bottom right hand of the top portion of Government's 133, there is a date there that's on the far right that's kind of typed in there Can you see that date, sir?

A May 26th.

Q Of what year?

A 2011

Q You can take that exhibit down, sir One other question about when you received this check, Mr Greer Around the time that you received the check, did you receive any other instructions about what -- about how to handle it?

MR HAUSS: Objection, calls for hearsay, Your Honor

THE COURT: He can answer the question

THE WITNESS: I was instructed not to tell anybody about the check.

BY MR HARBACH:

Q By whom?

A By Todd Schneider

Q Okay After the $15,000 check that we have been talking about was deposited, was there a difference between the amount that was due and owing on the contract and the amount of the $15,000 check when you received it?

A Yes

Q Which is to say there was a refund due?

A Yes, sir

Q Did you receive any instructions about how to handle the refund?

A I was instructed by Mr Schneider to issue a refund check in the difference to Maureen McDonnell

Q Okay What did you do to take care of that?

A I advised Sarah, who issued the checks, to issue the check for the difference

Q Okay Let's take a look at Government's 159, please Is this the refund check you just mentioned?

A Yes, sir

MR. HARBACH: The government offers Government's 159

MR. HAUSS: No objection, Your Honor

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Now, Mr Greer, were you personally involved in setting the exact amount of this check, sir?

A I was instructed by Mr Schneider on what the refund would be

Q Okay And so as far as you are aware, it was Mr Schneider who selected the amount?

A Yes

Q What is the amount of this check, sir?

A $5,266 50

Q Okay Do you,recall having any discussions personally with Maureen McDonnell around the time that the refund check was issued?

A I recall one conversation in regards to a generator that I had to order

Q Tell us what you recall about that

MR. HAUSS: Your Honor, that's irrelevant

THE COURT: Overruled.

THE WITNESS: That there was an issue because the generator was ordered for the power, and she refused to pay She didn't want to pay for it So she did call me, but I discussed it with Mr Schneider and we decided to adjust the way the gratuities were paid out for the wedding to cover the cost of the generator

MR. HARBACH: May I have one moment, please, Judge?

THE COURT: Sure

MR HARBACH: Thank you, Your Honor No further questions at this time

THE COURT: Cross?

CROSS-EXAMINATION

BY MR ASBILL:

Q Good afternoon, Mr Greer

A How are you?

Q I see you getting a glass of water I'll do the same Where is Chef Todd these days?

A Last I heard was Florida, but the last I spoke with Mr Schneider was probably back in 2011

Q Do you have any reason to believe he is not alive and well?

A Couldn't tell you.

Q Any reason or any understanding of why he may not be here today instead of you?

A Good question

Q Now, let me go back to these, just in reverse order, the things the government was asking you about With respect to this refund of what, approximately $5,200?

A Yes, sir

Q And that refund check, what did you do with that? Did you deliver that?

A I did not deliver that

Q What did you do with it? How did you get it to somebody?

A I gave it to Todd.

Q You gave it to Todd You have no personal knowledge of what happened to it after that, do you?

A I do not

Q Who was the check made out to?

A Maureen McDonnell

Q And I believe you said that this contract or the person who signed as client was Bob McDonnell; is that right?

A There was a signature I do believe it said Robert McDonnell

Q This was for Cailin McDonnell's wedding, right?

A Yes, sir

Q Initially you sent Cailin McDonnell the contract itself and you deemed her to be your client, correct?

A That's correct

Q All right So you thought Cailin and Chris Young, her fiance', were your clients for the wedding, right?

A Yes

Q At some point Bob McDonnell signs the contract and sends in some deposits, right?

A Yes

Q And you send a check back to Maureen McDonnell

A That's correct

Q Who was never a client, right?

A Right

Q And it was never her wedding, correct? Right?

A Correct

Q You said that Todd tells you, "Don't tell anyone about this check." Correct?

A Yes, sir

Q Did my client ever tell you not to tell anyone about anything?

A Sorry, your client is?

Q My client is Bob McDonnell Did he ever tell you not to tell anyone about anything?

A No, sir

Q Now, with respect to the check for $15,000 made out to Seasons that you have testified about, you say you took that to the bank and tried to cash it, correct?

A Yes

Q And you wanted to get cash money, dollar bills or hundred-dollar bills in hand for that check; is that right?

A That's what I was instructed to do by Mr Schneider, yes

Q And Mr Schneider wanted you to do that why?

A Couldn't tell you.

Q Well, can you tell me whether or not at this time Mr Schneider was bouncing checks to employees at your company or to vendors?

A Yes

Q Did it ever occur to you that maybe he wanted the cash so nobody could cash a check against the 15,000?

MR. HARBACH: Objection, argumentative

THE COURT: Sustained

BY MR ASBILL:

Q You tried to cash the check. I take it there was not enough money in the Seasonings account to cover that check if it bounced; is that right?

A No, sir I wasn't on the account It was a business account, so they wouldn't cash it for me

Q They couldn't cash it for you because it was a business --

A It is a business account and a business check, it was deposit only That was explained to Mr Schneider prior to me going to the bank.

Q Then why did you go to the bank and try to cash it then?

A Because I was doing what I was told. He was my boss

Q Okay And you say a business account The account in fact was a trust, Starwood Trust

A No, speaking of the Seasonings account

Q The Seasonings account I'm talking about the check itself

A The check, I didn't know about the -- the check was the check. It wouldn't have mattered if it was a personal check or anything, I still wouldn't have been able to cash it

Q Because they were going to wait five days?

A Because I wasn't on the account

Q So you couldn't cash the check.

A I explained that, but he wanted me to try anyways

Q Any reason why he didn't go try himself?

A I couldn't answer that

Q All right And this check, I know it was shown on the screen, it had the full information about the trust that wrote the account; isn't that right? It has been blocked out on what Mr Harbach showed you

A There was an address on it

Q There was a name of a trust and an address and a phone number for the trust on the account, wasn't there?

A I don't recall

Q Take a look at the check again Do you want to see a copy of it?

A Yeah, sure

MR ASBILL: May I approach the witness, Your Honor?

(Document proffered to witness)

BY MR ASBILL:

Q Does that refresh your recollection?

A There is a phone number on there

Q There is a name of a trust, Starwood Trust, right?

A Uh-huh.

Q There is an address in Bradenton, Florida, correct?

A Correct

Q There is a phone number, correct?

A Yes

Q Okay And the account information, the numbers that were blocked out for privacy reasons, those are all visible, in terms of what Mr Harbach showed you, those are all visible on the check itself, correct?

A They are

Q Okay Now, this check, you say you received it from either Todd or Mary-Shea; is that correct?

A Correct

Q So was that at the restaurant?

A That was at the restaurant

Q Right And you can't tell which one?

A I don't recall

Q Do you ever recall talking to the government in this case and telling them you didn't recall, aside from whether it was Mary-Shea or whether it was Todd, you didn't recall whether you got it at the restaurant or picked it up at the Mansion?

A I don't understand.

Q Do you ever recall telling the government that you got the check from the Mansion, not from an individual at the Mansion, but it wasn't at the restaurant, it was at the Mansion; do you recall that?

A I do not

Q Are you sure about it coming to the restaurant and being given to you there as opposed to it being left at the Mansion for you?

A It was delivered to me at the restaurant

Q All right And you never told the government otherwise; is that correct?

A Correct

Q All right Now, the deposits, the initial deposits, one of those was at the end of December of 2010, correct?

A Yes

Q And that was on time in accordance with the contract, wasn't it?

A Yes, sir

Q And the second one was not several months later, as Mr Harbach suggested It was in fact at the end of -- excuse me, the 22nd of January, less than a month later in the beginning of 2011, correct?

A I think it was in February But I don't remember the exact date

Q Do you need to take take a look at the deposit slips again?

A Sure

(Document proffered to witness.)

Q Here is a check and deposit slip.

A February 3rd

Q February 3rd you deposited it?

A Yes

Q And the check was written when?

A The check was dated January 22nd

Q So again, less than a month later from the time you got the first check, and in accordance with the terms of the contract and on time, correct?

A Yes

Q Now, the balance due, so the totals of the deposits that are made at the end of December in 2010 and the end of January in 2011, rough total, $8,000 towards a 15-and-change or $16,000 contract, correct?

A Correct

Q So there's $8,000 remaining to be paid going forward to the wedding, correct?

A Correct

Q And per the contract, that $8,000 was due within ten days of the date of the wedding, which was June 4th, 2011 Am I right?

A That's correct

Q And in between the end of January and June of 2011 in comes this $15,000 check, correct?

A Correct

Q Okay Now, with respect to the contract itself, I believe when Mr Harbach was talking to you, he started with a dinner that you had at the Mansion with my client and his wife and Chris Young and Cailin McDonnell That was in December or November of 2010?

A I don't remember the exact date I know the dinner occurred.

Q I know It was at the end of the year of 2010; is that correct?

A I'm not 100 percent sure It was in 2010

Q Okay And at that time, and shortly thereafter that, there was a contract, a proposed contract that you sent to Cailin McDonnell, correct?

A Correct

Q And that, again, was for 15,000 and change or $16,000 total, for the entire catering bill, correct?

A Uh-huh.

Q Earlier, go back to October, go back to the early fall in 2010, you had a meeting at your restaurant with Chris and Cailin about their wedding plans, correct?

A I don't recall

Q You don't recall the date or you don't recall meeting with Chris and Cailin about the wedding in the fall, early fall, well before December when you had the dinner at the Mansion?

A I don't recall

Q You don't recall having any meeting with them?

A I mean, the meeting may have occurred, but I don't recall It was 2010 Sorry

Q Okay Well, do you recall that there was an initial contract proposal for more money than $16,000? For something over 20,000 or $23,000?

A There was a few that Todd Schneider dealt with that had different prices on them.

Q Higher prices, correct?

A Correct

Q And Cailin and Chris, to your understanding, pushed back against that price because they wanted something that they could afford, which was in the $15,000 range Correct?

A And that's why I received the price, the lower contracted price

Q Okay And so did you have any knowledge of how the original, earlier $23,000 contract proposal came into being in terms of the gap between the two contract prices?

A That was all dealt with by Mr Schneider

Q Do you have any knowledge that Chris and Cailin were trying to set up a catering event for their wedding with a budget that they could afford, and Todd and Mary-Shea were, "Oh, no, no, that's not good enough for the Governor's daughter, you've got to have fancier stuff at the wedding"?

MR. HARBACH: Objection.

THE COURT: Sustained.

BY MR ASBILL:

Q The handwriting on the final contract by my client, aside from the signature and aside from the date, those all related to legal terms, not price terms, am I right?

A That's correct

MR ASBILL: And I know that it was taken down pretty quickly, but maybe we can pull the government's exhibit up again.

MR. HARBACH: I would be happy to. Which exhibit would you like?

MR. ASBILL: The one with the handwriting on Page 2, the contract, the final contract

(Document displayed.)

MR ASBILL: Next page, please There we go Can you blow up the handwriting, please?

BY MR ASBILL:

Q You see the handwriting on the terms and conditions page?

A Yes, sir

Q All right And the interlineation by my client goes, "The deposit will be refunded if an act of God or death occurs which prevents the wedding reception from occurring " And then his initials, R.M., at the bottom, right?

A Yes

Q Okay And the next one, three paragraphs down, reads: "Seasonings is not liable for any damage to goods, personal property or injury to guests at the event or elsewhere resulting from theft or any other cause, unless caused by its own negligence or intentional acts " Then that's initialed by my client?

A Yes, sir

Q Is that right?

A Yes, sir

Q At the very bottom of that page there is another edit, "Seasonings agrees to pay 33-and-a-third percent of the total claims of client if Seasonings fails to perform as noted in the contract " Correct?

A Correct

Q All right And my client basically asked, "I hope you will find these changes, these legal changes to the contract, acceptable " Right?

A I do believe that's what was on Page 1

Q Okay

A Of the e-mail

Q So at the end of the day, why no refund was made to Cailin or no refund was made to her father is something you don't have any idea about; is that correct?

A No

MR. ASBILL: Thank you I have no further questions

THE COURT: Anything else for this witness?

MR. HAUSS: Very briefly, Your Honor

CROSS-EXAMINATION

BY MR. HAUSS:

Q Good afternoon, Mr Greer How are you?

A Good.

Q I'm going to be very, very brief You mentioned, with regard to the $15,000 check, you got that from either Todd Schneider or Mary-Shea; is that correct?

A Correct

Q And when you say Mary-Shea, is that Mary-Shea Sutherland?

A Yes

Q And Mary-Shea Sutherland was the First Lady's Chief of Staff; is that correct?

A Yes, sir

Q And then you also mentioned a refund check that was made out to Maureen McDonnell?

A Yes

Q And Maureen McDonnell did not instruct you to make that out to her, did she?

A No

MR HAUSS: Thank you. Nothing further

THE COURT: Any redirect?

MR. HARBACH: No May Mr Greer be excused?

THE COURT: Absolutely

(Witness stood aside)

MS ABER: The United States calls Cailin McDonnell Young

CAILIN McDONNELL YOUNG,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good afternoon, Ms Young

A Good afternoon.

Q Please state your name and spell it for the court reporter

A Cailin McDonnell Young, C-A-I-L-I-N, M-C-D-O-N-N-E-L-L, Y-O-U-N-G.

Q Is it correct that you are the daughter of the defendants here today?

A Yes, I am.

Q And you have how many brothers and sisters?

A There's is five of us altogether I have an older sister, myself, my younger sister, and then the twin baby boys

Q Now, I'd like to turn your attention back to your wedding in 2011 On what date did you get married?

A June 4th, 2011

Q And to whom did you get married?

A Christopher Young

Q Approximately when did you get engaged?

A It was December of 2009

Q And so going forward in time from that engagement, I assume you began planning your wedding?

A We did

Q And did you and your fiance', Mr Young, have any discussions about who would be paying for that wedding?

A We did. My husband and I really were excited and we wanted to pay for the wedding ourselves

Q And why did you want to pay for yourself?

A It was something we felt very strongly about We thought it spoke a lot about us as a couple, and my parents had done the same thing and we really admired that

Q Were you planning to pay for the entire wedding or bits and pieces of it?

A The entire wedding

Q Did you have discussions with your parents about your intention to pay for the wedding?

A We did. Shortly after we got engaged, we had to schedule a meeting to have dinner with my parents, and we went and spoke with them and told them that this was our desire and that we wanted to pay for it ourselves

Q What was your parents' reaction to that?

A You know, they respected it They thought it was, you know, admirable that we wanted to do something like that But I knew my dad wasn't that thrilled about it

Q What did your father say that led you to believe that he was not thrilled with it?

A I don't know if it was at that time exactly, but you know, he would make comments, "Okay, Cailin," you know, that kind of thing

Q That suggested to you that your father did not want you to pay for your wedding; is that right?

A Well, I know being his first daughter, I mean, I can't tell you exactly what he was thinking, but being his first daughter, of course, you know, I would think that he would want to pay for it

Q Where was your wedding going to be held?

A We got married, the ceremony was at St Patrick's Church, and then we had the reception at the Executive Mansion.

Q And did you have to find a caterer to prepare food for the reception?

A We did

Q Who did you use?

A We used -- well, we first spoke to Todd Schneider and we used his, who was the Mansion chef at that time, and we used his catering company, Great Seasonings

Q I'd like to bring up Government Exhibit 76, please Government Exhibit 76, is that an e-mail from you to Mr Schneider and your fiance' on November 9th, 2010?

A Yes, it is

MS ABER: I'd like to move that into evidence My copy is yellow

THE COURT: It will be admitted.

MS. ABER: For the record, it is yellow for everyone, Your Honor

BY MS ABER:

Q Tell the jury, please, what exactly this e-mail says Can you read it to them, please?

A It says -- it says: "Todd: Christopher and I are meeting with mom and dad on Thursday to go over a few more things After that we will be able to get the deposit to you Thank you for being patient with us "

Q And what is the subject of your e-mail?

A "Wedding "

Q Now, what were the few more things that you needed to go over with your mom and dad?

A If I remember correctly, at this time we had already received the contract and things like that So I wanted to go over with my parents the terminology in the contract My dad being a lawyer, it had a lot of legal mumbo-jumbo in it that I didn't understand. I'd never planned a big event like this, so I wanted to go over everything in that and make sure I knew what I was signing As well as in the invoice, everything was affected by the guest list and how many people we were having at the wedding And the guest list was constantly changing and we were going back and forth with my parents, and so it was months and months of trying to figure out how many people were going to be invited.

Q So at this point in time when your e-mail says, "we will be able to get the deposit to you," who is the "we" in that sentence?

A My husband and myself

Q Okay I'd like to bring up what's already been admitted as 80, please Now, Ms Young, let's start at the bottom here, please Is it fair to say this is an e-mail from Mr Greer to you with attachments?

A Yes

Q Okay Scrolling upward, please, is it fair to say that Mr Greer forwarded this back to you a couple days later?

A He did

Q And then you in turn sent this to whom?

A I sent it to my father

Q Okay If we could back up, Ms Taylor, please Let's look at Government Exhibit 77, please That has not been admitted. If we could zoom in, please, on the top. Now, Ms Young, is it fair to say this is an e-mail from you to your parents on December 3rd, 2010?

A Yes, with my husband cc'd.

Q Great Thank you.

MS ABER: I'd like to move 77 into evidence, please

THE COURT: It will be admitted.

BY MS ABER:

Q What is it that you are attaching to this e-mail for your parents?

A It is the invoice for the reception

Q As well as the contract?

A I can't tell from this, but the title just says "Invoice "

Q So that makes sense Ms Taylor, could we flip through this document briefly to show the attachments to Ms Young It is hard when it is all electronic Is it correct now that the contract was appended to this e-mail?

A Yes, ma'am.

Q Okay Why are you sending your father the catering contract at this point in time?

A Like I stated earlier, I wanted him to look at it, all the terms on there, make sure everything was correct so I knew what I was signing And also, I had never had an event at the Mansion. They have held events there, and I wanted to make sure that we were following protocol for everything that was done at the Mansion.

Q Okay Let's look at Government Exhibit 81, please That's already been admitted. And specifically, Page 4 Is this the completed contract for your wedding catering, Ms Young?

A Yes

Q And turning to Page 5, if we could go down to the bottom there, excuse me, Page 4, head on back Thank you One more page back Thank you. Let's go to the bottom there where it indicates the total cost Now, at the time the contract was being executed, were you aware of the cost of your wedding catering?

A I was

Q Okay Were you aware of the installments that were going to be due?

A I was

Q Now, flipping forward, please, two pages Towards the end, Ms Taylor Page 6, please When did you find out that your father signed this wedding catering contract?

A It was after he had made the second payment I don't know the day, though

Q Okay What was your reaction to that?

A I was furious

Q Did you tell him?

A I did. My mother told me that he had done this I immediately called my father and yelled at him.

Q Let's turn to Government Exhibit 79, please This has already been admitted This is a check, Ms Young, dated December 29th from your father to Seasonings Fine Catering Is it fair to say that's the first payment?

A Yes

Q Let's look at 85, please So this is the second payment dated January 22nd of 2011?

A Yes, ma'am.

Q Okay As you sit here today, you are saying you learned sometime after January 22nd that this payment had been made

A Yes, ma'am.

Q Do you remember how far after January 22nd?

A I don't

Q Do you remember how far back in time from your wedding in June this was?

A I cannot accurately give you a time I'm not sure

Q Let's look at Government Exhibit 111, please Is it fair to say this is an e-mail from your father to you and then you in response on May 1st and May 2nd of 2011?

A Yes

Q Okay

MS ABER: I would move 111 into evidence

THE COURT: It will be admitted.

BY MS ABER:

Q Can you please read for the jury your father's e-mail to you on May 1st?

A "Please advise me on May 20th or so the final count and final payment amount for the wedding so I can make payment on time ten days out Thanks, Dad "

Q On the top, what is your response?

A "I will, everyone has asked RSVP by the 20th "

Q Is it fair to say your father seems to be suggesting he would be making the final payment for the wedding in this e-mail or is that not how you understood it?

A He is saying that he wanted to, yes But that was not our desire, and I was not going to send him the bill to pay that

Q After your father sent this e-mail on May 1st, did you communicate to him, say, "Hey, dad, you got this all wrong, I'm paying?"

A I had done that numerous times ever since that first time that we sat down with him shortly after we got engaged, and time and time and time again we had told them. He was aware that that's how we felt

Q As of this date, do you think you knew your father had signed the catering contract?

A I can't say 100 percent whether I did or not I might have, but I don't know Because I don't know when I found out.

Q But as of this date, May 1st, how much money did you owe on the catering contract? I don't mean an exact number; math is not my thing Would it have been the total balance minus the two payments your father had made?

A That depends if I knew he had made them or not So I can't answer that question.

Q Okay Let's talk about instead, enough with the wedding for a moment, Jonnie Williams

A Okay

Q When did you first meet Mr Williams?

A The first time I remember meeting Mr Williams was, I think it was April 29th.

Q Of what year?

A 2011

Q And how far before your wedding was that?

A I think it was about five weeks

Q What were the circumstances of your meeting?

A That day, my mother and I had actually gone skydiving One of her initiatives was military families and appreciating the military and all of that So the Golden Knights had asked her to go skydiving And they so graciously included me in that So we got to do that that morning And then I went back to work. If I remember correctly, it was a Friday I went back to work, and then when we had jumped, they had gentlemen that jumped with us to videotape and take pictures So they told us that they were going to have that video ready for us I was over the moon about it I was really excited I wanted to go get that video, and I had heard that it had been dropped off at the Mansion So after work I went, or I'm not sure what time, but sometime that evening I went to the Mansion to retrieve that video and I wanted to stop in and say hi to my parents And as I was calling around upstairs I walked in and my parents were having dinner with Mr and Ms Williams

Q So what room of the Mansion were they in?

A It was the far back right room. It is called like the library-office But we had kind of turned it into our own little family dining room when we got the dining room set after my grandparents passed away

Q How long did you speak with Mr Williams?

A It was about ten, fifteen minutes

Q What did you talk about?

A Well, first we were talking all about skydiving, and my mother and I were reenacting and explaining everything that happened. And she had actually had a faulty parachute before she jumped out, so we were talking about that And they were asking all about it And then we started talking about my wedding And I don't remember specifics of everything that was said, but I remember there was a window in the back room that looks out into the garden, the back yard, and that's where we were going to have the reception And it has a staircase that my husband Christopher and I were going to be first introduced as man and wife as we come in. So I was explaining that to them.

Q Did you stick around for dinner?

A I did not I kind of walked in as they were eating

Q Okay Did you say that was the first time you met Mr Williams?

A The first time I remember meeting him, yes, ma'am.

Q So then you leave After that evening, did you receive a call from your mother stating that Mr Williams wanted to pay for your wedding reception?

A I did.

Q Can you tell the jury what your mother said?

A My mother called me and told me that Mr Williams was so impressed by me and really enjoyed meeting me, and as a wedding gift he wanted to pay for our reception.

Q What was your reaction to that?

A I was shocked I mean, it was a hugely generous gift

Q How far after that dinner do you think your mom called you to tell you this?

A I can't say accurately, but it would have been possibly a couple days, maybe a week. But I don't know the day that I got the phone call

Q Okay I'd like to bring up Government Exhibit 121 that's been admitted Had you seen this check before, Ms Young?

A Not until the first time I met with you.

Q All right Do you know how this check got to the caterer?

A It was delivered to the Mansion

Q Who told you that?

A It was my mother

Q Did you talk to your father at all about this $15,000 check?

A I'm sure we did at some point in time, but I don't remember a conversation about it

Q Okay But somebody had to pay for the balance of the wedding contract, right?

A It was going to be Christopher and I, yes, ma'am.

Q Is it fair to say that the final payment was due ten days before your wedding?

A Yes

Q So as of May 1st, 2011, somebody had to pay for this

A Correct

Q Okay Did other folks, "folks" isn't the right word, did other guests or friends or family give you wedding gifts?

A They did

Q Did any of them give you money?

A They did.

Q Family members, I assume?

A Yes

Q Friends?

A Yes

Q Did anyone else give you a gift close to $15,000?

A No, ma'am.

Q What was the next largest gift you received from anybody else?

A I can't say accurately I'm not sure what everything cost But my husband's family gave us an amount towards, to use for the rehearsal dinner

Q How much was that?

A I think it was $4,200

Q Those were family members of Mr Young's?

A Yes

Q Now, during the time period in which you are planning the wedding, I assume you put together a guest list

A We did, and it was changing up until probably a day or two before the wedding

Q Did you consult with your parents when putting this list together?

A We did, tried to. It was a very painful process working with them on my guest list

Q Was Mr Williams on that guest list before he gave you or your family, whomever, $15,000 for the catering?

A He gave it to me as a wedding gift to me and my husband, and no, he was not on there before that

Q Why did you add him to the list?

A Obviously because of the generous gift he gave us We added multiple people that were helping us in our wedding and contributing

Q Do you recall seeing Mr Williams at your reception?

A I do not. Unfortunately, we didn't get to see a lot of people at the wedding So I'm not sure if he was there or not He did respond, yes, that he was coming

Q Is it fair to say that the caterer had been paid a sufficient amount of money between your father's deposits and the $15,000 check that there was an overage?

A Yes That was not my understanding of what happened, but that's ended up what happened, yes, ma'am.

Q So the catering company, what did they do with that overage, to your knowledge?

A What I found out later is they gave a reimbursement check to my mother

Q And when did you find out about that?

A It was February of 2012 -- 2013 I don't know the year 2013

Q As you sit here today, which year are you going with? I don't mean that sarcastically I'm sorry As you sit here today, which year do you think it was that your mother told you about this?

A It was February of 2013

Q Okay And how did your mother bring this up? What was the conversation?

A She called me and asked me if she could come over and chat with me and have dinner So she did. And she told me that she had had a conversation with the FBI and they had asked about Jonnie, and the wedding, and my dad found out about this reimbursement check, a check that I didn't even know about I didn't know it existed, either And he was very upset with her, very upset that she had taken this money and said, "This is Cailin's gift Go take it to her This is hers " So she came and gave me that check.

Q So for the sake of the record, let's look at Government Exhibit 159, please This is the check from Seasonings to your mother in May of -- June of 2011 Have you seen this before?

A I had not

Q Okay So let's look at Government Exhibit 493 that has not been moved into evidence If we could zoom in on the check Is that the check that your mother wrote back to you in February of 2013?

A Yes, ma'am.

Q Okay Did you ever reimburse your father --

MS ABER: Your Honor, let me move Government Exhibit 493 into evidence

THE COURT: It will be admitted.

BY MS ABER:

Q What is the memo line on this, Ms Young?

A "Wedding Reception Reimbursement "

Q Thanks Did you ever reimburse your father for his two deposits on the front end?

A I did not. Because my understanding of what happened was, Mr Williams wanted to pay for the reception. And when my mother asked me how much that cost and who to make it out to, I told her it was around $15,000, and so my understanding was that he was paying for the entirety of the reception since that's what I was told he wanted to do. So I thought my father would get his money back since Mr Williams wanted to pay for the entire reception So I thought my dad was made whole with his money So I didn't know that there was any outstanding money left over at the end

Q So why did you accept that reimbursement check from your mother?

A There was no point fighting at that point with them about it They were very adamant, "This was your money, this was left over " You know, after my dad's math that he did, this is what was left over of Mr. Williams's gift, which was the gift to my husband and I, so they gave us that check

Q In terms of other wedding expenses, did you and your fiance', now husband, pay for other wedding expenses?

A We did.

Q What about the location? You had the reception at the Mansion. Did you have to pay a fee for that venue?

A No, we did not

Q How many guests did you have at the wedding? At the reception. Let's talk about that

A I think it was somewhere between 200 and 250 I can't remember exactly at this point I'm sorry

Q Did you serve alcohol at the reception?

A We did

Q And did you pay for that?

A We paid for most of it, yes, ma'am.

Q What did you pay for, exactly?

A We paid for the beer, liquor, and wine, and then we had some wine that was also donated.

Q Do you remember how much wine was donated?

A I can't remember exactly I know Ms Kluge wanted to donate some, and as I have thought more on it, I think what ended up happening is she was just able to donate a bottle of champagne and Mr Morris, who was her security, he donated three boxes of red wine Then we ended up buying the rest from different vineyards And then we had a stock-the-bar party, too, to help for that, and then we bought all the beer and liquor, also.

Q Okay So you used the liquor provided at the stock-the-bar party by your friends and relatives at your wedding; is that right?

A This was a couple bottles We went out and bought much, much more, also There was just a couple bottles It was a small engagement party that we had, so we got a couple bottles, yes, ma'am.

Q How did your wedding party travel from the church to the reception at the Mansion?

MR. ASBILL: Objection, relevance.

MS ABER: I can make a proffer that Ms Young didn't pay for several expenses out of her wedding

THE COURT: All right Go ahead.

BY MS ABER:

Q How did you all travel from the church to the reception?

A A friend of ours, when he travels, travels in his limo And he was invited to the wedding and he came up and so he let us use his limo He was staying at the hotel next-door where all the guests were staying So he let the limo drive us down the street to the church and back

Q What kind of limo was it?

A I think it was an Excursion, if I remember correctly

Q Where did you purchase your wedding dress?

A It was at Maya Couture down in Virginia Beach

Q Did you pay for that?

A We paid --

MR. ASBILL: I object, relevance

THE COURT: I've heard enough.

MS ABER: Your Honor, if I may? Your Honor, Ms Young respectfully is saying she paid for a bunch of her wedding and in fact the evidence is that she did not pay for several high ticket, big ticket expenses in this wedding And further, the statements about the wedding dress go further to representations her father made to the media

THE COURT: Go ahead and answer the question, but so far, every answer is she paid for it or most of it If you've got something that indicates that she didn't pay for stuff, let's get to it

MS ABER: I'm sorry, Your Honor, that she did or did not?

THE COURT: That she did not

BY MS ABER:

Q Did you pay for the wedding dress?

A We paid $43, yes, ma'am.

Q What was the original value of your wedding dress?

A I don't remember the actual cost It was somewhere over a thousand dollars And I had a friend that worked at a wedding store and she called me and said -- and they do this for a lot of people -- they called and said that they wanted to give me a thousand dollars' gift certificate off for any wedding dress that I wanted. So I decided I was down in Virginia Beach, just driving back, we decided to stop in and look. I didn't even know what style I liked. And me and my girlfriends tried on a bunch of dresses and we tried on this one and we all started crying when I had it on because it ended up being the dress And the dress at the time was a little bit over a thousand It was on sale that day So when we went to the checkout, it ended up being $43 and I don't know how many cents

Q That was the sales tax, right?

A I'm assuming

Q Did you and your fiance' pay for your wedding rings?

A We have not, no

Q They were a gift from someone else as well?

A They were not supposed to be a gift, and I have asked the gentleman to please send us, multiple times, to send us the bill for them, and he has not

Q Did you give jewelry to your bridesmaids?

A I did.

Q Did you pay for that?

A I did not

Q Did you give favors to your wedding guests?

A I did.

Q Did you pay for that?

A We paid for some of them, yes, ma'am.

Q Is it fair to say you did not pay for the engraved silver picture frames provided to the guests?

A We did not

Q I'd like to show you Government Exhibit 549, please

Do you recognize this photo, Ms Young?

A Yes, ma'am.

Q Is it fair to say this is a picture of your mother and your brothers at your wedding?

A It is

MS ABER: I'd like to move 549 into evidence

THE COURT: It will be admitted.

BY MS ABER:

Q So that's your mother in the middle Can you identify your brothers on the sides, please?

A Looking at it, the one on the right is Sean and the one on the left is Bobby

Q Do you know how your mother's dress was purchased?

A I do now

Q At the time of your wedding, did you know where it came from?

A I don't remember I don't believe so I'm not sure

Q Okay When did you find out?

A I don't remember when I actually found out I found out a lot of information over the past couple years that I don't know

Q As you sit here today, do you believe you found out about the purchaser of this dress before the media started publicizing these stories or after?

A I can't say accurately I'm not sure

Q Okay Let's look at Government Exhibit 548, please Is this also a picture from your wedding, Ms Young?

A Yes

Q Let's zoom in, please

MS ABER: And I move to admit 548

THE COURT: It will be admitted.

BY MS ABER:

Q Do you see your parents in this picture, Ms Young?

A Yes

Q On your screen, if you touch, you can identify where they are in the back Is it fair to say they are sort of in the center of the picture?

A Yes

Q Okay Then turning to Page 2 of the exhibit, do you see your mother in this picture?

A Yes, I do

Q Okay You can take that down, Ms Taylor. I'd like to direct your attention actually away from the wedding and to the following month of July of 2011 Did you attend a family vacation -- would you like some water?

A I have some

Q Okay Did your family take a vacation to Smith Mountain Lake that summer?

A Yes, we did.

Q Can you tell the jury where Smith Mountain Lake is?

A I don't know, it is like two hours away

Q And who went on this family vacation?

A My whole entire family

Q Where did you guys stay?

A We stayed at Mr Williams's house

Q Can you tell the jury --

A I'm sorry

Q That's okay, take your time Can you tell the jury a little bit about what the house looks like?

A It is on the point It is on the lake It is on the water

Q Could we bring up Government Exhibit 181, please?

THE COURT: Do you need a break? We can take a break. Let's take ten minutes Just take the jury out

(The jury left the courtroom.)

We will be back in ten minutes

(Recess taken from 3:27 p.m. to 3:36 p.m.)

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THE COURT: All right Ms Young, are you ready to proceed?

THE WITNESS: Yes, sir Thank you

THE COURT: All right Let's bring in the jury, please

(The jury entered the courtroom)

THE COURT: All right Government

BY MS ABER:

Q Ms Young, I'm going to bring up Exhibit 181, just the second page of it Do you recognize this photograph?

A Yes, ma'am, I do

Q And what is it?

A It's Mr Jonnie's -- or Mr Williams' house on Smith Mountain Lake

MS ABER: Your Honor, I'd like to move the second page of 181 into evidence

THE COURT: What's the number?

MS ABER: 181

THE COURT: All right It will be admitted

BY MS ABER:

Q And so how long did you all stay?

A It was just a weekend I came Friday after work, so sometime that evening, and I left Sunday after brunch So early afternoon, I think

MS ABER: Let's bring up Government Exhibit

198, please Can you zoom in, Ms Taylor, please

BY MS ABER:

Q Is this an e-mail from your husband to you with copies to your brothers and your parents and your sisters?

A Yes, ma'am

Q On August 4th, 2011?

A Yes, ma'am

MS ABER: Okay I'd like to move Government Exhibit 198 into evidence

THE COURT: It will be admitted

BY MS ABER:

Q And what is the subject of this e-mail?

A Mom and dad in Ferrari

Q And is there a picture attached?

A Yes

Q Let's look at page 2, please Does that depict both of your parents in a Ferrari?

A Yes, ma'am

Q Do you know where this photograph was taken?

A It was taken in the driveway of Mr Williams' house

Q Do you know whose Ferrari that is?

A Mr Williams'

Q Did your father drive that Ferrari during your weekend at Smith Mountain Lake?

A On that Sunday I think he drove it down the street, and I -- from the best of my memory, I think he drove it to brunch that Sunday

Q Now, while serving as Governor, did your father typically drive himself?

A No, ma'am

Q Who drove him?

A The Executive Protection Unit with the state police

Q Were you with your parents when they returned from Smith Mountain Lake to Richmond?

A No, ma'am

Q Did you leave early?

A Yes, ma'am

Q Changing subjects yet again I'd like to go back to 2011 before the wedding We're not talking about the wedding Did your mother ever discuss her ownership of Star Scientific stock with you?

A I don't remember a conversation about that, no, ma'am

Q At the time of your wedding, did your mother offer to give you and your husband Star Scientific shares as a wedding gift?

A She told us about it, yes, ma'am, and --

Q And when did she do that?

A It was June 6th, that Monday It was about 4 in the morning My parents drove us to the airport to take us to our honeymoon And on the car ride there, we were going over all the logistics and giving them all the information for our honeymoon, where we're going to be so in case something bad happened. they would have that information

And as we got to the airport, my mom gave us this little makeshift kind of certificate, telling us that she had gotten these thousand shares of Star Scientific to give to us for our wedding gift

Q So she made up a -- like a little handwritten certificate for you guys?

A Yes, ma'am

Q Do you still have that certificate?

A I do not

Q Did your mother indicate whether she presently owned the stock?

A Not to my memory I don't think -- I don't know if she said it one way or another

Q Let me step back for a moment This trip to the airport, who was driving?

A The EPU

Q Okay So folks from the Executive Protection Unit are driving?

A Yes, ma'am

Q And who else is in the vehicle with you?

A There -- there was two EPU, I remember -- if I remember correctly There was always two Then my husband and I and my parents

Q And when your mother is handing you this certificate, did she say anything about the quality of this investment, that it was a good one?

A What do you mean? I'm sorry

Q Did your mother say, "Hey, this is a great stock"? Did she say anything about what she believed in stock -- in Star?

A Oh, yeah She thought it was, you know, going to be really good You know, she believed in it And she had told me about Anatabloc previously, thinking that it would help me because I have a lot of joint and body issues So she thought -- she had told me about Anatabloc previously

Q At some point in time in reference to this stock gift to you, did your mother reference using money from her father's passing to purchase the stock?

A She did I don't know if it was at that point or when she said that to me, but she did say that she used the inheritance she got after my grandfather passed away to buy the stocks

Q Now, you were the first McDonnell child to get married, right?

A Yes, ma'am

Q And did your mother indicate whether she was going to provide similar gifts for your siblings when and if they got married?

A She did And, again, I'm not sure when she said this I don't think this was in the car because the car was very, very brief when she was giving them to me But she did she did say that, excuse me, it was her plan to give a thousand shares to each child when they got married

Q Did you actually get the Star shares in the June of '11 time period?

A No, ma'am

Q When did you actually get them?

A It was December of 2012 when we were filling out the forms

MS ABER: Okay Let's bring up Government Exhibit 446, please

BY MS ABER:

Q Is this the form you were talking about, a brokerage opening account at Davenport & Company?

A Yes, ma'am

MS ABER: Okay I'd like to move Government Exhibit 446 in evidence

THE COURT: It will be admitted

MS ABER: Ms Taylor, if we could back out for a second so the jury can see it Thank you

BY MS ABER:

Q So this is your particular form?

A Correct

Q Do you know if your siblings filled out similar forms?

A To my knowledge, yeah -- I'm not sure

Q Yeah, that's all Your knowledge

A I don't know

Q Okay Why did you open this Davenport account at this time period, in December of '12?

A To put the stocks into that account, to set up an account for it

Q So you were opening this Davenport account specifically for the Star Scientific shares your mother was going to give to you?

A Correct

Q Now, why were you doing this at the end of December of 2012?

A My mother had told us that the -- well, it was already our gift We just never went about exchanging it But she had told us that the tax laws were changing and that obviously it needed to be in our name for us to either reap the benefits or not have -- I don't remember exactly what the -- the tax laws were changing with the administration or with the -- the new law that was taking effect in January 1st

Q Of 2013?

A '13, yes, ma'am

Q And so what were the circumstances of your mother telling you about these tax laws changing? Were you with your family?

A It was Christmas Day, Christmas evening It was after dinner We had had dinner and we cleaned up, were doing the dishes, all that kind of thing, and my mother was speaking to some of us kids and explaining this I don't know if the other kids knew about the stock yet

Q Who else was present?

A No one else was married at this point in time So I don't know if the rest of the children else knew about the stock But I remember Rachel, Bobby, and Sean being there at the table when my mother was telling us about this and giving us these forms

Q So was your father there?

A I'm sorry?

Q Was your father there?

A I'm not sure

Q Christmas dinner, you're not --

A This was not Christmas dinner This was way after Christmas dinner We had already cleaned up everything

I'm not saying that he wasn't there I just don't recall I just remember the three siblings sitting across the table from me as we're talking about the form

Q What about your older sister Jeanine, was she there?

A I'm not sure At that point they were going back and forth between her and her fiance at the time's house His family lives in Richmond also And I just don't recall whether they were sitting there I just remember the three little siblings sitting there

Q Did your mother hand you all documents, these account opening forms for you all to fill out?

A Yes, ma'am She had already printed them out and gave them to us

Q And did you fill them out while you were there?

A My husband and I did not, no, ma'am

Q What about your other siblings?

A I don't remember what they did

Q Okay When did you complete your form?

A I honestly think it was New Year's Eve I think we were rushing to get it in Because my husband wanted to look into it and talk to Mr Piscitelli, who we were opening this with, and do some of his own research before we just jumped in

Q And who is Mr Piscitelli?

A He works with Davenport and he's also a very close family friend of ours and he's my little sister's God

Father too

Q Ultimately, did you, in fact, have a Davenport account opened?

A Yes, ma'am

Q And your mother gave you those thousand shares of Star stock?

A Correct

MS ABER: I'd like to bring up Government Exhibit 455, please And if we could zoom in, sort of on the bottom so Ms Young can -- take it from the bottom and go and back up to the top If we could scroll so she could see that, please

A Can you go down now? I don't --

BY MS ABER:

Q And I have a paper copy, actually, if that's easier, Ms Young I don't mean to rush you

A Either way I just -- I don't remember seeing this So I was just trying to read it Okay

Q Is it fair to say this is an e-mail chain between you and Mr Piscitelli and you and your husband at the end of the year of 2012, in the beginning of 2013?

A Yes, ma'am

MS ABER: Your Honor, I'd move 455 into evidence

THE COURT: It will be admitted

BY MS ABER:

Q Can you explain, starting at the bottom there, why you were sending Mr Piscitelli an e-mail on December 31st, 2012? What were you sending to him?

MS ABER: Up one page, Ms Taylor

A It says, "ID " So I guess I was sending him my ID

BY MS ABER:

Q Was that to go with your Davenport opening account forms?

A To the best of my memory, yes, ma'am

Q Okay And moving up a little bit, on January 2nd at 8:49 a m you are writing to Mr Piscitelli; is that correct?

A Yes, ma'am

Q Okay And then zooming -- scrolling up, scrolling up a little more, can you read for the jury what you're writing at 9:16 to your husband and Mr Piscitelli?

THE COURT: I'm having a problem hearing you Could you --

MS ABER: Oh, I apologize, Your Honor

BY MS ABER:

Q Ms Young, there's a top e-mail on there at 9:16 Could you please read it to the jury?

A It says, "Did we miss the deadline now for last year? I know mom really wanted it done last year Sorry we're so late "

Q And why did your mom really want it done last year?

A Because of the tax laws is what she told us

Q And why were you rushing to get these forms done on New Year's Eve?

A Because it was the end of the year

MS ABER: Thank you You can take that down, Ms Taylor

BY MS ABER:

Q Now, was the Star Scientific stock your parents' primary wedding gift to you and your husband?

A No, ma'am They gave us -- they gave us some furniture and things also

Q And do you know whether your parents also gave the thousand shares to each of your siblings at this time, at the end of December 2012?

A I can't answer that

Q Now, before the media started reporting on the investigation into your parents in March of 2013, were you aware that Mr Williams had loaned your mother $50,000 in May of 2011?

A I found out, it was Easter weekend It was right before the first article broke on Easter Sunday

Q In 2013?

A Yes, ma'am

Q And from whom did you learn that information?

A My mother

Q And before the media started reporting on this -- these matters in March of '13, were you aware of Mr Williams' 50,000-dollar loan to your parents in March of 2012?

A No, ma'am

Q And before the media started reporting, were you aware of Mr Williams' 20,000-dollar loan to your parents in May of 2012?

A No, ma'am

MS ABER: One moment, please, Your Honor Thank you, Your Honor I have no further questions

THE COURT: All right Cross

CROSS-EXAMINATION

BY MR ASBILL:

Q Good afternoon, Ms Young How are you?

A Good How are you?

Q With respect to the last series of questions that you were just asked; namely, were you aware of a 50,000-dollar loan to your parents, of another 50,000-dollar loan to your parents, et cetera, you don't have any idea whether or not the loans were to your parents or to a company or to your mother independently, do you?

A I have no idea --

Q So --

A -- or had no idea

Q With respect to the stock certificate or the stock, the thousand shares of stock in 2012 at Christmastime, your parents didn't give you that gift Your mother gave you that gift; isn't that correct?

A Correct

Q Your father never indicated to you that he had anything to do with it or knew anything about it; is that correct?

A Yes, sir

Q Now, when your mother told you that she -- she wanted to open -- you to open an account at Davenport and the tax laws were changing or whatever, Chris, your husband, wanted to investigate this; is that correct?

A Yes, sir

Q All right So he wanted to investigate whether Davenport was an appropriate company with which to deposit stock, basically?

A Yes

Q And did he want to investigate whether or not owning this stock was something that was worth doing, or as opposed to selling it or --

A Correct He wanted to --

Q -- some kind of investment?

A I had never had stock before And so he had a lot of the knowledge that I didn't, and he wanted to look into that and ask a bunch of questions about this firm compared to others and that sort of thing

Q Okay Going back to the day you left your -- left Richmond to go on your honeymoon, that was June 6, 2011; is that correct?

A Yes, sir

Q All right And you said you went to the airport at approximately 4 a m in the morning?

A It was -- I think our flight was around 6 or so in the morning So I think we were on the way at 4 --

Q Okay

A -- ish

Q You and Chris and your mom and dad, and the EPU was driving --

A Yes

Q -- is that correct?

All right And how long is the trip from the mansion to the airport?

A I would estimate, I don't know, 15, 20 minutes maybe I'm not sure Not that far

Q And how awake were you all?

A Well, Christopher and I were on cloud nine because we were finally getting to go to our honeymoon after planning this entire wedding My parents, on the other hand, were half asleep We -- we drove there to my parents' house from our home, and I think they were still in bed and so we were not exactly happy with them because we were going to be late So we were yelling at them to kind of get moving And my dad is not the greatest in the morning I get that from him So we were kind of dragging them out to get in the car so we could go

Q Okay And on the -- on the way to the airport for this 15-minute trip, you were trying to tell your mom and dad about the logistics, like where you were going and how you can get in touch with me if you need me, et cetera?

A Correct First, we talked a couple minutes about the wedding and just recapping, because I hadn't seen them since we left the wedding night And then my husband had a whole folder worth of every kind of document you can think of having to do with our honeymoon and everywhere we were going and location and all that kind of thing So we were going over piece by piece with my parents

Q Okay And at some point during the trip your mom took out a piece of paper and drew like a CigRx stock, 1000 shares, on the piece of paper?

A Correct She was scribbling in the back, I didn't know what she was doing, as we were going over these documents

Q So this was not a stock certificate It was a mock stock certificate?

A Correct It was just like a white piece of printer paper that she wrote on.

Q Okay And did you have any idea, you know, what this was worth or anything of that nature at that time?

A I don't know if she told me at that time, but I found out what it cost

Q Well, do you know whether she owned the stock at the time or not or whether this was to be purchased and given to you?

A I have no idea

Q Okay And it took a year and a half for you to -- or more, for you to get the certificates?

A Yes

Q Actual stock certificates?

A Correct

Q And between June of 2011 and the end of December 2012 when you opened this account at Davenport, did you have any more discussions about this with anyone?

A I don't remember having a discussion about it Kind of slipped my mind I didn't -- didn't really think about it

Q Was it particularly important to you and Chris financially or for any other reason over the next year and a half?

A We weren't dependent on it financially, no, sir

Q Now, the Smith Mountain Lake trip, the pictures of your dad in the Ferrari. You say he never drove as a Governor, generally?

A Not really I mean, when my sister got her new car, he drove it around the block and little things like that, but --

Q Okay

A But I also wasn't with him all the time So I can't tell you what he did every day, but --

Q Well, when you got to Smith Mountain Lake, was this Ferrari there?

A To the best of my knowledge, yes, it was already there

Q Do you have any idea how it got there or when it got there?

A I have no idea

Q Do you have any idea what discussions there may have been with Jonnie Williams and with him about it?

A I have no idea

Q Do you have any understanding of whether or not Mr Williams asked your father to bring it back as a favor to him, bring it back to Richmond?

A No, sir

Q Was it a nice car?

A Yeah I mean, I particularly like my Ford Escape That's -- so I'm happy with that

Q Seemed like a fun-thing to drive for a couple hours back to Richmond?

A I'm sure it would have been

Q How about the -- you said three days you were there at Smith Mountain Lake at Jonnie Williams' house; is that correct?

A It was maybe 48 -- well, I got there Friday evening and left Sunday afternoon So --

Q Do you have any idea how that trip was set up?

A I was not involved in it I was just given the information

Q And who was there?

A It was the -- the five siblings, my mother and father, and then that was the first time that my husband Christopher was able to go on a family vacation It's something my family does We don't have anyone else outside of our family go on vacations until you're married in the family So it was pretty exciting because that was the first one he could go on

Q Okay And was this the first time you had any real opportunity to have any sort of family time with your mom and dad in a while?

A Yeah, it had been

Q Particularly with your father?

A Yeah I didn't -- during the election and during his time as Governor and even AG, barely ever saw my father

Q Now, with respect to the wedding gifts that you were asked about, the limo ride, who was that from?

A Dr Davis

Q Who is Dr Davis?

A Well, he's recently passed away, but he's a good family friend of my family's

Q And how long has Dr Davis known your family?

A Oh, I don't even know how long Since we lived back in Virginia Beach they've been friends I don't know exactly how long

Q All right

A I think it was my mom's doctor for years and years and years

Q Did you ask him to give you, you know, a limo or use his limo for 10 or 12 hours or whatever?

A No, sir

Q Do you know whether -- did your dad ask him to lend you the limo or use the limo?

A Not to my knowledge He said, "I'm driving up there in it I'd love for you to use it, and it's just going to sit there otherwise, you know "

Q With respect to the other gifts, the engraved frames or -- those were, what, bridesmaids' gifts?

A The frames were gifts for the people invited to the wedding It was one per family

Q All right And those were from whom?

A Mr Ramadan

Q And who is Mr Ramadan?

A He's -- he's a friend of ours He's -- he's a jeweler And as part of the jewelry company, they had different gifts like that, like the picture frames And he's now a state delegate

Q Is he a personal friend of yours and Chris'?

A Yes, he became one

Q Before the wedding?

A Yes, sir

Q Did your father have anything to do with whatever Mr Ramadan wanted to give you as a wedding gift?

A No, sir I had meetings with Mr Ramadan

Q With respect to the wedding dress, did your father have anything at all to do whatsoever with the wedding dress in terms of how you got that or --

A No, sir

Q -- or the cost or anything else?

A No, sir That was through me

Q Did you ever talk to your father about the wedding dress before 2013, in terms of the cost of the wedding dress or how you got it?

A I don't remember a specific conversation

Q I mean, did you ever -- do you remember in 2013, after the investigation began, do you remember talking to your father about the wedding dress?

A I can't -- I can't think of a specific conversation But if there was one, I would have told him exactly what happened

Q Okay And did you -- did you -- is that -- would that be the first time he would have knowledge of whatever the issues, the cost was or gift certificates or anything of that nature?

MS ABER: Objection

THE COURT: Sustained

BY MR ASBILL:

Q Do you know whether he had any independent knowledge, before talking to you in 2013, about anything relating to the dress?

MS ABER: Objection

THE COURT: Sustained

BY MR ASBILL:

Q You never had any discussions with him about it that you can recall?

A No, sir My dad was not involved in any of the wedding planning whatsoever except for I wanted him to look over the contract and the guest list

Q And the person who ran this store, the wedding dress store, is that somebody that's a friend of your father's?

A No, sir

Q Whose friend is it?

A The young lady that works there is my friend, and she -- she doesn't own it, but it's a friend of mine And she called me and made the offer

Q Were you surprised that when you got married in the mansion and you were the Governor's daughter at the time that folks wanted to give you gifts?

A It was -- I mean, it was very flattering I was not going out asking for any -- any gifts or anything from anybody You know, it was flattering that people wanted to help us because they liked us or liked my parents

Q Did you think that any of it had anything to do with any return promise from your father as Governor?

A No, sir

Q You wanted to pay for the wedding yourself; is that correct?

A I did

Q And how much of the wedding did you and Chris actually pay for?

A I think it was somewhere over $12,000 My husband did a lot of the money so he -- he knows that better than I do He was the bookkeeper, so to speak

Q But your understanding is that you and Chris yourself paid $12,000 for your wedding; is that correct?

A Yes, sir

Q All right Are you embarrassed that other folks gave you gifts for the wedding?

A I am now You know, at the time, I thought people were wanting to just do something nice and help us out, and if I could go back, obviously, I wouldn't have taken anything I would have done like Christopher and I wanted to do and just have a small backyard wedding and just have our friends and family together and pay for everything ourselves and not let anyone else get involved Because, you know, our wedding is now -- has this black cloud over it, you know, with all of this that's gone on and you can't look back at it with a happy memory

Q Your plans basically, and Chris' plans, got hijacked?

A They did

Q Is that fair to say?

A Yes, sir

Q Partly by Chris' mom and dad They wanted to give you the rehearsal dinner?

MS ABER: Objection Relevance

THE COURT: Overruled

A Yes, they wanted to pay for the rehearsal dinner They came up with the $4,200 and they said, "This is what we can give you for that " Obviously, if we went over that, it would have been coming from us But, I mean, at that point it just wasn't worth the fight anymore with -- with them

BY MR ASBILL:

Q And your dad paid 8 grand towards the catering?

A Yeah He did that behind my back I did not know he had paid that I asked him strictly just to look at the contract and make sure that everything looked right legally and all of that And he told me that he had made some corrections and sent it back to Mr Greer He did not tell me that he signed it or that he started writing checks I found out later, and I was very upset with him because he was not supposed to do that

Q In terms of planning to pay for your own wedding, you said you started doing that and started trying to put that together after you were engaged?

A Correct My husband had been saving way before he ever proposed He paid for my ring in cash because he had been saving for such a long time, and then he had his own money set aside And you would have to ask him, but I -- it was several -- several thousands of dollars set aside for the wedding And then him and I started what we called the wedding fund, and every paycheck we had a certain amount that went straight into this wedding fund At one point I was doing -- I got paid biweekly So it was 300 every paycheck So 600 a month, and I think my husband was 800 a month that we put straight into this wedding fund so that we would have the money saved there to pay for everything

Q So if I understand you correctly, Chris started saving for the wedding before he even knew you would marry him?

A Yeah I guess he was pretty hopeful But yeah, he had been saving way before

Q And Chris saved on his own even before you were married, $10,000 for the wedding Is that your understanding?

A I think that's what it was about You'd have to ask him I don't know the exact price, but yes, sir

Q And then the two of you saved together for the next year and a half?

A Yes, sir

Q Before your wedding?

A Correct

Q And by the way, what kind of job does Chris have?

A He's a civil engineer He does transportation design He designs bridges and roads

Q All right And where do you work?

A I work for the Henrico Commonwealth Attorney's Office I'm a victim advocate I'm in the juvenile and domestic court So I deal with victims of domestic violence, sexual assault, murder, that kind of thing

Q And prior to working in that office, tell us a little bit about your educational background

MS ABER: Objection, Your Honor

THE COURT: No, you can go ahead and answer the question

A I went to Old Dominion and got my undergrad in -- I got a bachelor of science in criminal justice And I immediately -- that was when we moved up here, when my dad became AG And I went back to VCU and I got my master's in criminal justice And during that time, I was a full-time master student and I was a graduate teacher's assistant at VCU and then I was also working at the National White Collar Crime Center

And then after that, I worked on my father's Governor campaign I was the youth outreach coordinator So I was going around speaking to high schools and colleges and the young professionals, and then I started and I've been at the Commonwealth Attorney's Office for a little over four years now

Q Did you pay for any of your education?

A I did

Q What did you pay for?

A My father started a savings program before, when we were younger, and then we took out some loans and I'm paying all of those back

Q Now, aside from your testimony about wanting to -- you and Chris wanting to pay for our own wedding because you -- that's what you understood your parents had done and you thought that was admirable and you wanted to do it, were there other reasons why you wanted to pay for or control your own wedding?

A We didn't really want this wedding to get out of control and become some big political mess, and I was very firm with my father that I did not want him working at my wedding No matter where he is, people are always coming up to him and, you know, talking work and he never gets to just relax

So we were -- we wanted control over it because we didn't want it to turn into something that it wasn't And it was also, we thought it spoke a lot of us as a couple and we didn't want it to be this big fancy thing We really just wanted to dance in the backyard with our close family and friends

Q Is it fair to say that you really wanted to have some personal family time with your mom and dad at this wedding?

A I did I did I didn't want them to be off working or doing who knows what I wanted them to be on the dance floor with us and enjoying themselves You know, I never -- didn't really get to see my dad that much or my mother I mean, I had to put this on his -- I'm sorry, put this on his schedule Whenever we first picked the date, I had to e-mail his scheduler and get the wedding date on there to make sure this they saved that

And, I mean, that's how it was Anytime I ever wanted to see my father, I had to go through a scheduler and weeks and weeks and weeks, you know, before I could set something up with him And days to call back I mean, he was just extremely busy

Q And you didn't want this wedding to be with a lot of folks, a lot of political people or other people that you didn't know?

A Correct We wanted people that Christopher and I knew as a couple together We didn't want to be meeting people at our wedding

Q Now, going back to the -- to the wedding contract itself, did you ever meet with Ryan Greer to discuss the terms of the catering?

A Yeah We met with him a couple times

Q And when did -- when you say "we," you mean you and

Chris?

A Yes

Q And when did you meet with Ryan?

A I don't know the exact dates We met with him a few times, and there's numerous e-mails and phone calls and texts going back and forth through this whole process

Q And did that start in the fall of 2010?

A Yeah -- yes

Q And where is the first time -- do you recall where the first time is that you met with Ryan?

A We first met with Mr Schneider to ask him --

Q Okay

A -- and that was at his restaurant

I think the first time we met with Mr Greer -- I'm -- I think it might have been the mansion I'm not sure

Q Okay And this correspondence back and forth or phone calls and stuff, I mean, was your dad involved in this?

A No, sir

Q And did you make it very plain to Chef Todd and Ryan what your budget was?

A Yeah We -- that was another thing with the contract and why it kept -- why it was so long that it took to get back because we kept chopping, chopping, chopping

Because I think the first time they came back to us it was $24,000, and that was just outrageous You know, they -- Todd and other people were saying that I'm the governor's daughter I have to have this certain level of, you know, what everyone sees and all this kind of stuff And so they were all telling us what we needed to have and what things needed to look like And so we just kept chopping and chopping I mean, we really just wanted chicken and mashed potatoes, you know, something very simple

Q When you say they were telling you what you needed to have, who's "they"?

A It was Todd and Mary-Shea

Q Had Mary-Shea previously been married herself in the mansion?

A At the first meeting that we had with her, I'm not sure I think it might have been before she was married

Q Was she married before you?

A She was

Q And did she get married at the mansion?

A She had her ceremony there She got married in a church

Q And in terms of sort of fancying up the wedding, the push was from those two?

A Yes

Q Is that correct?

A Yes, sir

Q So whatever kind of modest menu you wanted, it started getting more elaborate?

A It did I didn't even get to see all the food at the wedding I didn't eat any of it, but we -- one of the things was we wanted fruit And I've seen pictures since of -- it was a watermelon carved into a swan and all this fancy kind of stuff when that's not what we had asked for We really just wanted fruit on a plate

Q Did you view yourself as the client with respect to the wedding contract?

A Yes, sir Everything -- all the conversations, everything going back and forth, it was all through Christopher and myself

Q When you found out at some point after January in 2011 that your father had made two initial payments on the contract, you said you were furious with him?

A I was

Q And you yelled at him?

A I called him and yelled at him, yes, sir

Q And his reaction was what?

A I don't remember exactly what he said, but I think he kind of felt like he got a one-up on me because he had control over it and he wanted to pay for something, but I didn't want him to So I think --

Q All right Eventually you got this -- eventually another check from Mr Williams, apparently, $15,000 was sent to the caterer --

A Correct

Q -- is that correct?

And you found that out when, roughly?

A What do you mean? I'm sorry

Q When did you find out that that had happened?

A That the check went in?

Q Yeah, that Mr Williams was making -- was giving a wedding gift

A It would have been after I met him So sometime in -- let's see I met him April -- sometime early May

Q Of 2011?

A Yes, sir

Q All right And you understood that he was making a payment towards your wedding or making a gift towards your wedding of $15,000; is that correct?

A Yeah Well, he -- my understanding was that he wanted to pay for the reception

Q All right And whatever the total cost was, he actually made a payment of $15,000; is that correct?

A Correct

Q Did you thank Mr Williams for that gift?

A I did We -- my husband and I sent him a thank you card and then we also saw him in July and thanked him personally for the gift

Q All right And you -- you fully believed it was a gift to you from him; is that correct?

A I did That's what I was told

Q All right And you talked about, in connection with that, and there was an overage or there's a refund of 5,000, $6,000, whatever it is I think there's a 7,000-dollar check to you that you talked about --

A Yes

Q -- from your mother that was given to you by her in the middle of February --

A Correct

Q -- is that correct -- of 2013?

A Correct

Q And you said that she came over to your house and said she wanted to talk to you, and that's when she gave you the check?

A Yes, sir

Q All right And did she tell you at that time that she had talked about having that refund for a long time, for a year or so, or a year and a half or whatever, and had not given it back to you and she said that her husband was very upset about that? That's basically what she said to you?

A I mean, I don't think she made any comments as to how long she had it, but she told me my dad found out about it and was very upset with her, yes, sir

Q Did she tell you your dad found out about it before the Virginia State Police had interviewed your mom?

MS ABER: Objection

THE COURT: Overruled

A My understanding was that he found out right before she came to my house

BY MR ASBILL:

Q And you took that check and you kept it?

A I did

Q Because you believed that the gift was to you, correct?

A Correct Yes, sir

Q Ms Aber referenced speaking to you in the past Have you met with the prosecutors in this case?

A Yes, I have

Q Where was that?

A It was at Hunton & Williams was the first time

Q All right And why at Hunton & Williams?

A Because that's where my attorneys are and that's where we met

Q All right Did you testify in the grand jury in this case?

A I did

Q You were subpoenaed to the grand jury?

A I think we went in voluntary -- I'm not sure But we weren't opposed to it We went and answered all their questions

Q Were you asked to provide pictures from your wedding to the government for use in this trial?

A I was

Q And did you do that?

A I did

Q And how do you feel about having your wedding be the subject of testimony here today?

A It's extremely painful

MS ABER: Objection

THE COURT: Sustained

MR ASBILL: Court's indulgence One second

BY MR ASBILL:

Q The April 29th dinner with Jonnie Williams and Celeste Williams, that's who was there, and your parents?

A Yes, sir

Q And that's when you came in to get the video of you skydiving?

A Yes, sir

Q And is it fair to say that you were real excited when you came in the door?

A I was very excited

Q And were you equally as excited talking to them about your wedding and your wedding plans?

A I was I was very

Q And pointing out the stairs and --

A Yeah I got up and was showing them out the window, and everyone was all very excited

Q Do you recall whether or not you said anything to the Williams about you and Chris doing this or your planning it, paying for it, et cetera?

A I can't recall It wasn't something that we were hiding It was something we were very proud of and we were telling people But I just cannot recall exactly if that conversation happened or not

Q Do you know whether there were any further conversations between your parents or your mom alone or your dad alone with Mr Williams about your plans to pay for your wedding yourself?

A I have no idea

Q Did you also thank Jonnie Williams personally --

A I did

Q -- for the wedding gift?

A I did It was at my parents' anniversary party, which was in July My husband and I went up, after the dinner, went up and chatted with him for a while and thanked him again for -- for the very generous and kind gift

MR ASBILL: That's all the questions I have, Judge

THE COURT: All right Ms McDonnell?

MR BURCK: Thank you, Your Honor

CROSS-EXAMINATION

BY MR BURCK:

Q Good afternoon, Ms Young How are you?

A Good How are you?

Q I'm going to start where Mr Asbill left off

A Okay

Q The -- you testified about this dinner on April 29th, you came to the mansion and your parents were having dinner with the Williamses, right?

A Yes, sir

Q And was that a business dinner, from your perspective?

A It looked like a very friendly dinner I didn't see -- I don't remember seeing any documents or anything They were --

Q Did it seem like a social dinner?

A Yes, sir

Q Was everyone having a good time?

A They seemed to be Everyone was in smiles when I got there

Q Did the subject of who was going to pay for your wedding come up while you were there talking to Mr Williams and your parents?

A I cannot remember I don't remember all the exact conversations during that time, but it very well might have It's not something that, like I said, that we had -- we had told numerous people about it because we were proud of ourselves for being able to do that

Q And your mother, you testified, called you a couple days later and told you about this gift that Mr Williams wanted to give you, the $15,000?

A Correct

Q And did your mother tell you that she had asked Mr Williams to give you that gift?

A She did not

Q What did she tell you?

A She told me that Mr Williams was so impressed by me and really enjoyed meeting me and wanted to pay for our reception as a wedding gift to my husband and I

Q And you added Mr Williams to the invite list?

A We did

Q And why did you do that?

A We wanted to add him for, obviously, his generous gift We added other people that helped us at the time, and we were very honored for him to do that for us We wanted him to be a part of our special day

Q So you were grateful to him?

A Very much

Q And did you understand Mr Williams to be your mother's friend?

A It was my understanding that he was both of my parents' friend

Q And did your mother tell you that?

A I mean, my parents said this is our friend, and they were all together having dinner

Q So both of your parents, you understood that Mr Williams was your parents' friend?

A My parents' friend, yes, sir

Q Now, you testified also about the stock certificate that your mother drew up?

A Yes, sir

Q The day -- I guess it was the -- two days after your wedding?

A Yes It was that Monday morning

Q And your mother told you that she had -- she wanted to give you a thousand shares of stocks as a wedding present?

A Correct

Q And it was in Star Scientific?

A Right

Q And you said at some point, maybe then, maybe later, she told you that she wanted to gift stock to all the children as presents, as wedding presents?

A Correct

Q And she did that in December of 2012; is that right?

A Yes, at that Christmas

Q And you testified that she said that she wanted you to make sure the stock was in your name before the end of the year?

A Because of the tax law changing, yes, sir

Q This is December 2012?

A Yes

Q Did she mention anything about disclosure laws to you?

A She did not

Q I want to talk to you -- you mentioned that she had talked to you a bit about Anatabloc?

A Yes

Q And did you understand that Anatabloc was the product of Star Scientific, Mr Williams' company?

A I did

Q Did you believe your mother when she said that she wanted you to take Anatabloc, that it was for your health?

A I did My mother has been very active in nutritional health care since she was 19 and sold different nutritional health care products and had us all on them And so she did -- I did believe her that it would help me

Q You mentioned 19 What was so special about 19?

A My mother had a -- had a breast tumor when she was 19 It was very, very scary for her to go through that and she had surgery, and ever since then, she became very involved in nutritional health care and vitamins and being healthy and all that kind of stuff And so she's always taught that to us and wanted all of her children to be healthy and have these certain vitamins and things

Q Is that something she told you about your whole life?

A Yes, sir, our whole entire lives

Q I think you also mentioned -- was she in the business of nutraceuticals as well?

A Yes My mother, very admirably, stayed at home to raise all of -- all of -- five children, kind of played chauffeur for -- and still is, 33 years now, and during that time, she had her business that she would sell the nutritional health care products

Q And did she make some money to supplement the family's income?

A Yes, sir

Q But she was at home?

A Correct

Q You testified, I think, that you had to contact your father's scheduler to find time to meet with him; is that right?

A Yes, I did

Q And did that start, when he was Governor, or did that happen before?

A No That happened way before

Q This was for many years?

A Many, many years

Q Did you ever speak to your mother about the difficulty of having time with her husband?

A I'm sure we had conversations I mean, it was hard for all of us My mom had -- wore many hats at home, taking care of everything, raising -- running everyone around, doing all the grocery shopping, everything So, I mean, I knew it was hard and I could see that

MR BURCK: Your Honor, may I just confer?

THE COURT: Go ahead

MR BURCK: That's it, Your Honor Thank you

THE COURT: All right Anything else from the government?

MS ABER: Yes, Your Honor

REDIRECT EXAMINATION

BY MS ABER:

Q Ms Young, you've said it was difficult to get on your father's schedule

A Yes, ma'am

Q How often do you talk to your father -- when he was Governor, how often did you talk to him by telephone?

A Sometimes I'd call him and wouldn't get a call back for days, and sometimes he'd answer in a meeting You know, if I'd call once or twice and he'd, "Hey, I'm in a meeting Is everything okay? Is it an emergency?" Or send a text, "All okay? In meeting Love dad "

So, I mean, that's kind of hard to say on average because it was so scattered And usually when we did talk, it was a very quick conversation "How are you doing? I love you Can I do anything to help you? Good-bye "

Q Would you say that was once a day, once a week, once a month?

A It wasn't always once a day, no, ma'am Sometimes it was days without talking to him

Q But at least once a month?

A Yes, ma'am

Q Once a week?

A Yeah, I would say at least once a week

Q Now, I think you said that you and Mr Young paid approximately $12,000 out of pocket for your wedding Did I catch that right?

A I think that's what it was I'd have to go back and look, and my husband was more the money keep-tracker person, but I think it was around 12

Q It's been a few years But roughly how much of that would you say constituted the rehearsal dinner?

A That's without the rehearsal dinner With the rehearsal dinner, it was over 16

Q And how much of that was the honeymoon?

A I think the honeymoon was right around upper 3,000s My husband did the honeymoon That was his job So -- but I think it was around 4

Q Okay

A I'm not exactly sure

Q So of the 12, roughly 4 is the honeymoon, thousand dollars?

A Around 4, yeah I would -- maybe a little less

Q Now, you had made some observations, I think, about when you came through the mansion and saw your parents having -- having dinner with Mr and Ms Williams; is that right?

A Yes, ma'am

Q How long were you there?

A It was about 10, 15 minutes

Q Now, when we met with you and your attorneys at Hunton & Williams last year --

A Uh-huh

Q -- which you voluntarily came, did you have a proffer agreement?

A What do you mean?

Q Did you sign something with the government in advance saying that whatever you said wouldn't be used against you?

A No I don't -- I don't -- I don't remember

Q Have you met with your parents' defense attorneys to prepare for today?

A I have

Q How many times?

A Three times

Q And you testified before the grand jury probably about eight, ten months ago; is that right?

A Yes

Q But you refused to meet with the government after that date; is that correct?

A Correct

Q And finally, when you learned that your father had paid those $8,000 in deposits and you called him and you yelled at him, did you try to pay him back?

A I did not We were going to clean up at the end Once everything was said and done, we were going to pay him back

MS ABER: Thank you I have no further questions

THE COURT: All right Thank you, ma'am You may stand down

(Witness stood aside)

THE COURT: All right We're going to take our 15-minute break and then we'll push on We'll stop at around 5:30 So we may have one more witness that we may get in But you all take these 15 minutes and we'll be back in a few minutes

(The jury exited the courtroom)

THE COURT: All right Fifteen minutes

(Recess taken from 4:31 p m until 4:44 p m)

(The jury entered the courtroom)

THE COURT: All right Government

MR HARBACH: Thank you, Your Honor The government calls Jerri Fulkerson

JERRI FULKERSON,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

MR HARBACH: May I inquire, Your Honor?

THE COURT: Go ahead

DIRECT EXAMINATION

BY MR HARBACH:

Q Good afternoon, Ms Fulkerson

A Good afternoon

Q Would you please state your full name and spell your last name for the record?

A Jerri Fulkerson, F, like in Frank, U-L-K-E-R-S-O-N

Q If you could please pull that microphone down a little bit for you That's better Thank you, ma'am

Tell us about your educational background

A High school education, and everything else has been on-the-job training

Q In the course of your career, have you worked for a company called Star Scientific?

A Yes

Q When did you start working for Star?

A July 1995

Q What were you hired to do at that time?

A Receptionist

Q What kind of company is Star, generally?

A They were manufacturing in the beginning Now they are research and development, I guess you would call it

Q What sorts of products?

A They make a product called Anatabloc now Manufacturing, they made cigarettes, smokeless tobacco products?

Q Do you recall meeting somebody shortly after you started at Star named Jonnie Williams?

A Yes

Q When did you meet him?

A The day I started

Q Did there come a time during your tenure at Star that you came to work for Mr Williams?

A Yes

Q About how long after you started would you say you started working for him?

A Couple years, maybe two

Q What did you start out doing for Mr Williams?

A Writing his checks, paying his bills, the regular household bills

Q Was this in addition to your Star duties at the time?

A Yes

Q What were your Star duties at the time you started paying Mr Williams' personal bills?

A Accounts receivable and invoicing

Q Did there come a time a few years later when you started to assume a more official role as Mr Williams' executive assistant?

A Yes

Q About when was that?

A Best of my memory, '98, '99

Q And how did your duties change when you assumed that more official role, if at all?

A I became his secretary, his executive assistant and more personal assistant also

Q Are you familiar with an entity called Starwood Aviation?

A I am

Q What's that?

A It's a company that owns the jet that -- or -- yeah It owns the jet that Jonnie owns, Jonnie Williams owns

Q Mr Williams owns a jet?

A Yes

Q And Starwood Aviation is the company that officially owns it?

A Yes

Q Is Starwood Aviation affiliated at all with the company Star that we've been talking about?

A Only through Jonnie Williams

Q What was your role with respect to Starwood Aviation? What sorts of things would you do?

A Take requests for the jet, invoicing for the jet, keeping up with the regular maintenance, invoices and the bills, paying bills

Q Whose decision was it about who and when the jet would be used, who the jet would be used for and when it would be used?

A Jonnie Williams

Q Did you have the authority to decide to book the plane on your own?

A No

Q Did you ever book the plane without Mr Williams' permission?

A No

Q Are you familiar with a company called -- excuse me, not a company, an entity called Starwood Trust?

A Yes

Q What's that?

A It's the trust Mr Williams set up for the benefit of his wife and children

Q And what was your role with respect to Starwood Trust?

A Just to pay the monthly bills, the household bills or bills generated by Starwood Trust

Q Did you have signing authority over the bank accounts for Starwood Aviation and Starwood Trust?

A Yes

Q In other words, you were authorized to write checks?

A Yes

Q And was that authority, meaning the authority to write checks, did you exercise that independently or with Mr Williams' permission all the time or a mix? Tell us about that

A It was a mix If it was a regular monthly bill for the same amount or a regular household bill, I had the authority to go ahead and write the checks and sign them Anything out of the ordinary had to be cleared through him or through Donnie

Q Who's Donnie?

A Oh, I'm sorry Donnie is the trustee of Starwood Trust

Q What's Donnie's last name?

A Williams

Q Is he related to Jonnie Williams?

A Yes He's --

Q How so?

A He's Jonnie's brother

Q Now, besides the -- oh, on the checks that we've been talking about for Starwood Trust or for Starwood Aviation, when we say that you have authority to sign checks, would you sign your own name?

A Yes

Q In other words, you're a signatory on those accounts?

A I am

Q Now, in addition to those types of examples where you would sign your own name to checks on those accounts, were there occasions, during your work for Mr Williams, where you would actually sign Mr Williams' name for him?

A Yes, at his expressed direction

Q Do you have Mr Williams' permission each time you did that?

A Yes

Q How did that practice come about?

A In the beginning, when I first started working for him, he told me to sign his name on a document and thereafter, every time he needed something signed with his name, he would tell me when to do it

Q I want you to focus now, please, on the time frame, if you can, from approximately 2009 through 2012 Okay? And my question for you is: During that time frame, how frequently would you say you had contact with Mr Williams?

A If he was in town, I had daily contact with him If he wasn't, it was at least by telephone once or twice a week at least

Q Did you know how to get ahold of him if you needed to, for the most part?

A Yes

Q How would you characterize your relationship with Mr Williams as you sit here today?

A It's employee/boss, but we're -- we're friendly We can talk

Q Do you still work for him?

A I do

Q Have you ever met Mr McDonnell, the former Governor, who's a defendant here today?

A No

Q What about Mr McDonnell's wife, Ms McDonnell, have you ever met her?

A No

Q Now, from time to time in your experience, did Mr Williams allow various politicians to use his jet?

A Yes

Q Do you recall an occasion in the fall of 2010 when Mr Williams allowed Mr McDonnell to use his plane to travel back and forth from Virginia to California?

A Yes

Q And in general, before we get to that specific example, can you tell us, in general, what would the process be if a politician was interested in using Mr Williams' plane? How would the process work?

A Generally, I would either get a telephone call or an e-mail requesting the use of the plane, and they would generally tell me from point A to point B and what time it had to be there

Q What would you do once you had that information?

A I would then call Mr Williams or contact him some way, give him the request and find out if it was okay or not And then at that point call the politician's office back, or e-mail them

Q And let's assume that -- that Mr Williams were to approve the flight we're talking about What would happen next?

A I would get the details, hopefully who was going to be on the plane, where they needed to go, what airport they needed to land at, what time they needed to be there I would turn that information over to the pilots They would figure out the times that it would take to get there and then send me back the itinerary to send to the -- whatever politician's office

Q Now, let's focus on the occasion in the fall of 2010 that we were talking about a moment ago where the -- where the then-Governor, Mr McDonnell, went to California and back Okay?

A Okay

Q Do you recall how that specific trip came to your attention?

A I don't know if it was a phone call or -- I think it was an e-mail, but I can't really remember, telling me they needed to go I believe to San Fran- -- Sacramento

Q And when you say "they," you mean someone on the Governor's staff?

A Someone -- the Governor and probably someone on his staff They normally travel with people

Q What was Mr Williams' reaction to that possibility? Did he approve that trip?

A He did

Q So did you make the arrangements for it?

A I did

MR HARBACH: Will you please pull up for identification Government's 64?

BY MR HARBACH:

Q Can you see that on your screen, ma'am?

A Nothing

THE COURT: It didn't come up?

A Okay It's kind of blurry, but I can see it

BY MR HARBACH:

Q Okay

MR HARBACH: Mr Starnes, can you blow up the top half of that for us, please Excuse me For the witness at least

BY MR HARBACH:

Q Can you see that, . 'am?

A It just needs to scroll down a little bit

MR HARBACH: Scroll down a little bit,

Mr Starnes

A Okay

BY MR HARBACH:

Q Ms Fulkerson, is this paperwork related to the flight that we've been talking about, the one in the fall of 2010, to California?

A Yes

MR HARBACH: Your Honor, the government offers Government 64

THE COURT: It will be admitted

BY MR HARBACH:

Q Publishing for the jury the first page of Government 64 In the description box under there, Ms Fulkerson, what's the date of this trip?

A October 3rd, 2010

Q Okay

THE COURT: We're having problems?

THE CLERK: The jury can see it, right? They're on

MR HARBACH: Shall I continue, Judge?

THE CLERK: The jury can see it

THE COURT: Go ahead The jury has seen it

MR HARBACH: Very good, Your Honor

BY MR HARBACH:

Q Okay, Ms Fulkerson The question was: In the description box there, what was the date of the trip to California?

A October 3rd, 2010

Q And as best you can tell from what's written here on this document, was the return trip the same day?

A It appears to be

Q Okay

MR HARBACH: Thank you, Mr Starnes You can take that down

BY MR HARBACH:

Q Now, Ms Fulkerson, did part of your duties for Mr Williams, when you were his executive assistant, include monitoring his e-mail?

A Yes

Q How many e-mail addresses did Mr Williams have with Star?

A Two

Q And did you have access to both of those accounts?

A Yes

Q What was the difference between the two?

A One was very public You could find it on the Web site or anywhere The other one was a more private e-mail that the general public didn't have access to

Q Do you recall which address was which?

A One was jwilliams@starscientific The other one --

Q And --

A The other one was Jonnie Williams

Q And the one that was jwilliams@starscientific, was that the public one or the more private one?

A Yes It was the more public one

Q Okay And then the one that was Jonnie Williams was the more private one?

A It was, yes

Q How did that system get started? Do you remember?

A I -- Mr Williams didn't read a lot of e-mails He just got -- he just got really overwhelmed with all the e-mails going to JWilliams So it was just kind of to filter out what he needed to see for the other one, for the Jonnie Williams

Q In your experience, in general, did Mr Williams have difficulty reading?

A Yes

Q I'm sorry?

A Yes

Q Do you recall whether he has any particular condition that makes reading hard for him?

A I believe he's dyslexic

Q Now, when Mr Williams started getting overwhelmed with all the e-mails to the public account, what was the solution? What was the arrangement that you all worked out?

A That I would filter through the e-mails, the real junk mail, the ads, the -- you know, life insurance, whatever it was The important ones then, I would send them to the Jonnie Williams e-mail address and I would normally text him if he had something he needed to see

Q How would you decide whether an e-mail was important enough to forward to Mr Williams' private account?

A In the beginning -- well, naturally, if it's an ad for weight loss or it's somebody who's in a foreign country wanting money, that's obviously junk mail

Q Okay The --

A The other ones, if I recognized the name, if I thought it was a -- a business practice, he would automatically get it If I had a question, I would send it to him and text him

MR HARBACH: Okay Can we pull up for identification Government 66, please?

BY MR HARBACH:

Q This is a new subject, Ms Fulkerson

A I see it

Q Can you see it a little better now?

A Yes

Q Okay Now, is this an example of you forwarding an e-mail from Mr Williams' public account to some other people?

A Yes

MR HARBACH: Okay Your Honor, government offers Government 66

THE COURT: It will be admitted

BY MR HARBACH:

Q Now, let's start with the e-mail on the bottom It's from someone called Sara Machir to three different offices Do you see that there?

A I do

Q Do you know who Sara Machir is?

A She was public relations and communications director for Star Scientific

Q All right Now, at the top it says "From: Jonnie Williams, Sr ," and then it has that JWilliams address there, and I hope the horse isn't dead, but is that the public or private address for Mr Williams?

A The public

Q Okay And then I note in the body of the e-mail, whose signature block is there?

A Mine

Q So is this you forwarding something from Mr Williams' e-mail account?

A Yes

Q The date of this e-mail is October 8th at 10:39 And the first addressee there, Monica Block, do you recall who Ms Block was?

A She works in the Governor's office

Q Do you recall what her job was?

A I'm not positive, but I think she was a scheduler

Q Okay Now, the body of this e-mail says, "Jonnie asked that I forward this press release and the next one to Governor McDonnell and AG Cuccinelli "

A Yes

Q My question for you is: Would you have written something like if Mr Williams had not, in fact, asked you to do so?

A No

MR HARBACH: If we could now take a look for identification at Government 68, please

BY MR HARBACH:

Q Ms Fulkerson, can you see that okay on the monitor?

A Yes

Q Is this another e-mail in the same exchange involving your forwarding press releases?

A Yes

MR HARBACH: Your Honor, the government offers Government 68

THE COURT: It will be admitted

BY MR HARBACH:

Q And the first thing I want to note is, what is the date and time that the e-mail at the top was sent, Ms Fulkerson?

A October 8th, 2010, at 10:39 a m

Q So about 40 minutes after the one we just saw?

A Yes

Q And the -- is there an attachment to this e-mail?

A It doesn't appear that it --

Q Well, look under the Subject line there

A It does say attachment, "Star Scientific's Comments on Roskamp Institute "

Q And you wrote, indeed, "Star's Press Release" in the body of the e-mail?

A I did

Q Now, is Ms Block among the folks who this e-mail is sent to?

A Yes

MR HARBACH: Now if we could show page 2 of -- actually before we do that, Mr Starnes

BY MR HARBACH:

Q What does it say in the attached field at the top of the email, what does it say there?

A "Star Scientific's Comments on Roskamp Institute "

MR HARBACH: Can we look, just briefly, at page 2 of Government 68, Mr Starnes?

BY MR HARBACH:

Q Is this the press release that was attached to that e-mail, ma'am?

A Yes

Q The next exhibit I'd like to show you for identification is Government 69, please Ms Fulkerson, is this another e-mail in the same exchange involving press releases that we've been talking about?

A Yes

MR HARBACH: Your Honor, the government offers Government 69

THE COURT: It will be admitted

BY MR HARBACH:

Q Okay Ms Fulkerson, this one is sent at what time at the top there?

A 10:40

Q So one minute after the e-mail we were just looking at a moment ago?

A Yes

Q And is this one also to Ms Block?

A Yes

Q And other people, of course?

A Yes

Q Now, the subject line on this one and the attachment refers to what?

A "Roskamp Institute Press Release "

Q Is this a different press release from the one we were just looking at a moment ago?

A I believe so, yes

Q All right Let's take a look at page 2, briefly, of Government 69

MR HARBACH: Could you blow up the text, please, Mr Starnes, just the whole thing Thank you, sir

BY MR HARBACH:

Q Is this the press release that you forwarded in connection with the e-mail we've been looking at?

A Yes

Q All right We're going to come back to Roskamp Institute in a few minutes Okay?

A Okay

Q Finally, if we could take a look at Government 70 for identification, please Is this the conclusion of the e-mail communication about the press releases, Ms Fulkerson?

A Yes

MR HARBACH: Your Honor, the government offers Government 70

THE COURT: It will be admitted

BY MR HARBACH:

Q Okay And now, at the top, who's this e-mail from, Ms Fulkerson?

A Monica Block

Q And the date and time that this one is sent?

A October 8, 2010 at 10:42 a m

Q A couple minutes after the e-mail that we were looking at a moment ago that was Government 69?

A Yes

Q And who's it addressed to?

A Myself

Q What does Ms Block say to you in the e-mail?

A "Got it, Jerri" -- "got it Thank you, Jerri I will print this for the Governor "

MR HARBACH: Okay Thank you, Mr Starnes You can take that down

BY MR HARBACH:

Q Different subject, Ms Fulkerson Do you recall being involved in helping to arrange a meeting between Mr Williams and a Dr Bill Hazel?

A I remember the meeting was set and it was just the fact to confirm the date and time I mean -- yeah, the date, time, and place

Q And do you recall how you found out that the meeting was set?

A I believe Mr Williams told me

Q Do you recall, as you sit here today, when exactly that meeting was?

A I -- I couldn't tell you when the dates were I believe it was in October sometime, maybe November

Q Do you remember what year?

A 2010

Q Do you --

A I don't really remember

Q Okay Let's move on, then Next subject Do you recall being involved in a request to help make arrangements for the Governor and Ms McDonnell to travel to the Final Four in Houston, Texas?

A Yes

Q Tell us what you remember about how you learned of that request

A I believe I got an e-mail from Monica Block stating that VCU had made it to the Final Four and that the Governor was invited to attend and could Starwood Aviation do the flight

Q And do you recall what Mr Williams' reaction was to that prospect?

A I remember it being a difficult flight because he was in Michigan, I believe

Q "He" who?

A Mr Williams, and the jet would take Mr Williams back and forth to Michigan for meetings concerning Anatabloc It was a difficult trip, but Mr Williams agreed to do it

Q Okay Let's take a look at, for identification, please, at Government's 92

MR HARBACH: If you could, just maybe blow up the top half so she can see it better, Mr Starnes

BY MR HARBACH:

Q Ms Fulkerson, is this an e-mail exchange concerning the flight arrangements to Houston that you've been talking about?

A Yes

MR HARBACH: Your Honor, government offers Government's 92

THE COURT: It will be admitted

MR HARBACH: Okay I'd like to start, Mr Starnes, on page 2 of the exhibit And just blow up the e-mail at the bottom of the page, the one from Ms Fulkerson to Ms Block Thank you, sir

BY MR HARBACH:

Q And what's the date of this e-mail, Ms Fulkerson?

A March 29th, 2011

Q All right And could you just read the first sentence for us?

A "I just talked to JW This is a really hard trip for us to do, but Jonnie will never turn the Governor down if he can help it" -- "at all help it "

Q Okay Now, same question as I asked you before Is that something that you would have written if Mr Williams had not told you to say that?

A No

MR HARBACH: And if we could back out to page 1 Actually, take the exhibit down for just a minute, please, before we go to page 1

BY MR HARBACH:

Q Do you remember whether, after the initial arrangements were made, there was a change?

A Yes

Q What do you recall about that?

A Ms McDonnell was going to the Final Four with him, but she had to come back early The same day, I believe

Q And --

A And it threw a wrench in everything

Q Okay Was Mr Williams able to accommodate that requested change in plans?

A Yes

Q All right Now let's take a look at the first page of Government's 92, which is in evidence

MR HARBACH: And if we could blow up that e-mail from Ms Fulkerson at the top there, please, Mr Starnes Yeah, that's fine Both of them Okay Thank you, sir

BY MR. HARBACH:

Q Okay, Ms Fulkerson I'd like to look at the one at the bottom that's from you Okay?

A Yes

Q Is what's the date on that one, your e-mail to Ms Block?

A March 30th, 2011

Q So the next day from what we were looking at before?

A Yes

Q All right Now, this one says -- actually, I'll ask you to read up to that first smiley face, please

A "Okay Jonnie said that just because it's the Governor's wife, they" -- which should have been "the" -- "pilots will stay in Houston and bring her back after the game "

Q All right Is that -- were those -- is that what Mr Williams asked you to convey?

A Yes

MR HARBACH: You can take that exhibit down, please

THE COURT: What's the number on that list exhibit, please?

MR HARBACH: That's 92, Your Honor

THE COURT: Thank you All right

BY MR HARBACH:

Q Next topic Do you recall, at some point, receiving word of an invitation for Mr and Ms Williams to have dinner at the Governor's mansion with Mr and Ms McDonnell?

A Yes

Q Could we take a look at, for identification, Government's 103, please, and --

MR HARBACH: Thank you, Mr Starnes Just so she can see what we're talking about

BY MR HARBACH:

Q Ms Fulkerson, do you recognize this to be an e-mail exchange about that invitation?

A Yes

MR HARBACH: Your Honor, the government offers Government's 103

THE COURT: It will be admitted

MR HARBACH: Okay Can I please start on page 2, Mr Starnes, and the bottom half, just the e-mail from Ms Fulkerson there Okay My mistake

BY MR HARBACH:

Q The e-mail at the very bottom of this page is actually from Ms Block; is that right?

A Yes

Q It's addressed to you?

A Yes

Q And it's obviously an invitation to have dinner at the mansion Do you see that there?

A Yes

Q My question for you is: At the end of the first line there where it says, "The Governor and the First Lady would like to invite Jonnie," do you see that?

A Yes

Q Is that the correct spelling of Mr Williams' first name?

A Yes

Q Okay Now let's go back to page 1, please I think we saw this a moment ago, but did Mr Williams and Ms Williams accept the invitation?

A Mr Williams accepted

Q Understood Now, do you recall whether there were any additional invitations related to the dinner?

A He was invited to spend the night at the mansion

MR HARBACH: Okay Let's take a look at the middle of 103, the e-mail from Ms Block, please, Mr Starnes There you go

BY MR HARBACH:

Q Is that what you were just referring to?

A Yes

Q Did you have any conversations with Mr Williams about whether he would take the Governor and Ms McDonnell up on the offer to stay overnight in the mansion?

A Yes

Q What did he say about that?

A He said he had a perfectly good house in Goochland, there was no reason for him to spend the night

Q And then just to finish this off, if we could scroll up a little bit and see how you responded on Mr Williams' behalf What did you say to him?

A "I just talked to JW He is not bringing anyone with him, and thank you for the offer to stay overnight, but he said he'll go home to the house in Goochland "

Q All right Let me ask you, do you recall one way or the other whether or not Ms Williams went to the dinner?

A No, she did not

Q Okay And if we could go back to page 2 of Government's 103 I want to make sure I spoke correctly The invitation at the bottom there, if we could blow up Ms Block's invitation That is, in fact, only to Jonnie Am I right about that?

A Yes

Q Thank you, ma'am It was my mistake

Do you have any idea what precipitated the invitation from the Governor and Ms McDonnell to

Mr Williams to have dinner with them at the mansion?

A No

Q Do you recall any conversations with Mr Williams about the dinner afterward?

A No

Q Okay Now, a moment ago I told you we were going to come back to the idea of Roskamp Do you recall that?

A I do

Q Do you know what the Roskamp Institute is?

A It's research center on Alzheimer's, for Alzheimer's

Q Do you know where it's located?

A Sarasota, Florida

Q And do you know what relationship, if any, it has with Star?

A It has a working relationship Star Scientific was working with Roskamp to develop Anatabloc with the help -- for the help of Alzheimer's

MR HARBACH: Could we take a look, for identification, please, at Government's 114 And maybe blow up the bottom half of the page for her to be able to identify it, Mr Starnes Thank you, sir

BY MR HARBACH:

Q Can you see that okay, Ms Fulkerson?

A Yes

Q Is this an e-mail exchange concerning the possibility of Mr McDonnell going to Roskamp?

A Yes

MR HARBACH: Your Honor, the government offers Government's 114

THE COURT: It will be admitted

MR HARBACH: And I think -- you can leave it right there, Mr Starnes That's good

BY MR HARBACH:

Q The e-mail that's on display for the jury right now, Ms Fulkerson, right there in the middle, the one that's dated May 4, '11, at 12:55 p m , do you see that there?

A I do

Q It says, "Jonnie said that gov is going to Sarasota to Roskamp Institute on the 1st " Would that be June 1st?

A I believe so

Q "And we are providing the transportation " Meaning -- does that mean Mr Williams' plane?

A Yes

Q "Roskamp is the company working with Jonnie on Anatabloc, et cetera " Did you -- did you -- would you have, in fact, had a conversation with Mr Williams on this subject --

A Yes

Q -- prior to sending this e-mail?

A Yes

Q All right

MR HARBACH: Now, if we could scroll down Actually, leave it right there, Mr Starnes We're good

BY MR HARBACH:

Q What does Ms Block say in reply to your e-mail one minute later at the top?

A "The 1st of June?"

MR HARBACH: And then if we could scroll up a little bit Very good

BY MR HARBACH:

Q You say to her, "Let me know after you check with him"?

A Yes "Let me know after you check with him "

Q All right Now, let's go on to Government's 118, please, for identification Is this an e-mail exchange a few days later on this same subject?

A Yes

MR HARBACH: Your Honor, the government offers Government's 118

THE COURT: It will be admitted

BY MR HARBACH:

Q Okay Let's start at the bottom, please, with the e-mail from Ms Block, and could you read the -- the first paragraph there?

MR HARBACH: Maybe you could blow that up for her, Mr Starnes The one that begins "I spoke "

A "I spoke with the Governor regarding flying down to speak to the Roskamp Institute on June 1st Unfortunately, after checking with his daughter, she is getting married that Saturday He doesn't believe he will be able to attend due to some dad commitments that day I'm so sorry this won't work out "

BY MR HARBACH:

Q Okay And then at the bottom, why don't you read the rest of this, please?

A "What else we can do to fix this? The Governor is planning on being in Florida in December Could we tie something in then? When is their next event?"

Q All right And then if we could scroll up to see how you all concluded your conversation

A I replied to her, "I will let JW know Dads and daughters come first "

Q All right Now, that second sentence, is that Mr Williams or is that you?

A That's me

Q That's your observation?

A Yes

Q Okay Now, do you recall one way or the other whether the -- Ms Block's reference to the event in Florida in December, do you recall whether anything ever happened with that?

A I don't remember

Q Did you inform Mr Williams when you learned from Ms Block that the Governor wasn't going to be able to go?

A Yes

Q What was his reaction?

A He was very disappointed

Q Do you recall anything specific that he said or just his demeanor?

MR BROWNLEE: Objection Hearsay

MR HARBACH: I expect the answer to be no, Judge

THE COURT: You can go ahead and answer the question

A I just remember him being upset, that he really wanted the Governor there

BY MR HARBACH:

Q Okay Did you yourself attend the Roskamp meeting on June 1st?

A No

Q Do you recall whether you and/or Mr Williams was giving out samples of Anatabloc early in 2011?

A I believe so

Q Do you recall how you all would decide who would get the samples? How did that work?

A Mr Williams decided If people requested them, I had to get permission from Mr Williams

Q And were there some people that you were authorized to send samples to?

A Did he authorize me to send them to?

Q Yes, ma'am

A Yes

Q Do you remember how early in 2011 you all were doing that?

A I really don't know without seeing something

MR HARBACH: Okay Let's show the witness Government's 94 for a refreshment only, please

A Okay

BY MR HARBACH:

Q Just take a look at it, especially all the way down at the bottom there

MR HARBACH: It's the bottom e-mail that I'm interested in, Mr Starnes

A Okay

BY MR HARBACH:

Q The date range at the bottom Ms Fulkerson, does taking a look at this refresh your memory about how early in 2011 you were sending samples out to various people of Anatabloc?

A Yes

Q Okay

MR HARBACH: Mr Starnes, can you take it down, please

BY MR HARBACH:

Q As early as when?

A January

Q Next subject I'm going to start this one with a document It's Government's 120, please Do you recognize this document, Ms Fulkerson?

A Yes

Q Is this a check that you prepared?

A It is

MR HARBACH: Your Honor, the government offers Government's 120

THE COURT: It will be admitted

BY MR HARBACH:

Q Publishing 120 to the jury, this check is written on the account of whom?

A Starwood Trust

Q Who asked you to prepare this check?

A Jonnie Williams

Q Is that your signature that appears on it?

A Yes, it is

Q Whose decision was it to make this check out to Maureen McDonnell?

A Jonnie Williams

Q Did he tell you to do that?

A Yes

Q What's the date on the check?

A May 23rd, 2011

Q What about the decision to write the check on the account of Starwood Trust, was that your call?

A No

Q Whose call was it?

A Jonnie asked me to write the check on Starwood Trust I had to get Donnie Williams', the trustee's permission

Q Did you do that?

A I did

Q Let's take a look now at Government's 121, please Oh, I'm sorry Before we take that one down, same question about the amount The $50,000, was that amount selected by Mr Williams?

A It was

Q Okay And so now if we could look for identification, at Government's 121, please Do you recognize this to be a check that you prepared?

A It is

MR HARBACH: Your Honor, the government offers Government's 121

THE COURT: It will be admitted

BY MR HARBACH:

Q This check is written on the account of whom?

A Starwood Trust

Q Did you go through the same process with respect to this check that you just described?

A Yes

Q Getting Donnie Williams' permission?

A Yes

Q What's the date on this check?

A May 23rd, 2011

Q Now, at the time you prepared this check, was the payee part, the pay to the order of, was that filled in yet?

A No

Q Did you receive any instructions from Mr Williams about that?

A He told me to leave it blank

Q What about the memo line that says, "Wedding gift," whose idea was it to put that there?

A Mr Williams

Q Do you recall what Mr Williams said about that, about why he wanted you to put "wedding gift" in the memo line?

A It was to pay for one of the McDonnell daughter's wedding reception

Q Did Mr Williams, when he asked you to prepare these checks, did Mr -- and incidentally, can you -- well, withdrawn

When Mr Williams asked you to prepare these checks, did he say why he wanted them?

MR BROWNLEE: Objection Hearsay

THE COURT: Sustained

BY MR HARBACH:

Q Did you have any conversation with Mr Williams about whether the 50,000-dollar check was to be a loan or a gift?

A I believe he told me it was a loan

MR BROWNLEE: Objection Hearsay

THE COURT: She's already answered it now Go ahead

BY MR HARBACH:

Q To your recollection, did Mr Williams say anything to your about the terms of the loan, if you recall?

MR BROWNLEE: Objection Hearsay

THE COURT: Sustained

BY MR HARBACH:

Q Looking at Government's 121 where it says, Great Seasons Catering," is that your handwriting, ma'am?

A No

Q What did you do with the checks after you prepared them?

A Handed them to Mr Williams

Q You all were together in person?

A Yes

Q When you handed the checks to Mr Williams, did he make any comments about any concerns he had about the checks?

MR BROWNLEE: Objection Hearsay

THE COURT: Sustained

BY MR HARBACH:

Q Did Mr Williams tell you what he plans to do with them?

MR BROWNLEE: Objection Hearsay

THE COURT: Sustained

BY MR HARBACH:

Q Okay If we could look at the next exhibit, which is Government's 122, please And before we zoom in, Ms Fulkerson, do you recognize this document?

A It's the general ledger that, when you enter checks or bills into the QuickBooks system, this is what's generated

Q Okay And were you involved with entering this data?

A Yes

MR HARBACH: The government offers Government's 122

THE COURT: It will be admitted

MR HARBACH: Okay Now, if we could blow up Mr Starnes has it blown up already That's good Is there a way to zoom in on --

A I can see it

MR HARBACH: Sure Just the left-hand side for now

BY MR HARBACH:

Q Okay Now, about midway down the screen there you see there are a couple of checks, number -- thank you, there you go -- number 1001 and 1002 Do you see that there?

A I do

Q And the name that's associated with those in this paperwork is who?

A Maureen McDonnell

Q And then, if we could -- there you go Thank you

Now, the top line, the one that's associated with check number 1001, in the column there, does that say, "loan receivable"?

A It does

Q In the amount of $50,000?

A Yes

Q And then the second line, gift in the amount of $15,000?

A Yes

Q Let's take a look now at Government's 123 for identification, please Do you recognize this to be another page from the ledger we've been discussing?

A Yes

MR HARBACH: Your Honor, the government offers Government's 123

THE COURT: It will be admitted

MR HARBACH: All right And if we could just look at the top line there Thank you, Mr Starnes

You can -- let's do the same thing like last time, please Left side first so it gets a little bigger Thank you

BY MR HARBACH:

Q Now, this entry says, "Loan receivable Maureen McDonne," and then the Ls are cut off Is this for that check number 1001, is that the 50,000-dollar check we've been talking about?

A It is

Q And what does it say in the memo column?

A "Two-year loan at 5 percent Okayed by Donnie "

Q Now, would you have put "two-year loan at 5 percent" in the memo line? Would you have just decided that on your own?

A No

Q Where did you learn that from?

A Jonnie

Q Okay And now, if you could scroll to the right, please, on the same entry There's the amount of $50,000, correct?

A Yes

Q And finally, there's Government's 124 Another page from the ledger we've been talking about?

A Yes

MR HARBACH: Your Honor, the government offers Government's 124

THE COURT: It will be admitted

MR HARBACH: And we're going to blow up just the first line, which is -- there it is

BY MR HARBACH:

Q This is for the second check, which was numbered 1002; is that right?

A Yes

Q And what's written in the memo column on this one?

A "Wedding gift for caterer and flowers for daughter "

Q All right And if we could scroll over to the right In the amount of --

A -- $15,000

Q Thank you, ma'am

MR HARBACH: Your Honor, that's a good place to stop, if you'd like to stop for the day, or I can keep going

THE COURT: No We're going to go ahead and stop here It's about 5:35, thereabouts, and looking at the pile of papers there, he's not even close to being finished So let me give you all the admonition that I will give you every day about not talking to anybody about this case

Now, I've been doing this a long time so I know a lot about how these things work This is the toughest day Today there will be 6:00 news, 11:00 news, 6 a m tomorrow, front page So the pressure will come today, the biggest pressure Your friends and your family, they'll want to talk about it So please, don't -- don't succumb to that temptation I guarantee you, you'll find out I'm right You'll face this tonight It gets easier as we go along After two or three days, that pressure will subside

And I know you're thinking, as you're sitting there, I'm going to be in this courtroom for the rest of my natural life, but again, things will start to move The first week is the slowest The first, you know, important witnesses, things will move a little slowly But as we start to go along, we'll get a better clip and we will get through this I am thanking you in advance for your patience in this matter I know it's a tough deal

We will wish you God's blessing this evening and hope that everybody will be fine We'll see you tomorrow -- let me just check Let's make it 9:30 9:30 tomorrow morning and we will get started and hopefully we'll move a little quicker tomorrow You all be blessed All right Follow the marshal, please

(The jury left the courtroom)

THE COURT: All right We'll be in adjournment until 9:00 -- or 9:30 in this case, but I have another matter at 9

(The trial adjourned at 5:33 p m)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

July 30, 2014
Richmond, Virginia
9:50 a.m.

JURY TRIAL - VOLUME III

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
DAVID V HARBACH, II, ESQ
JESSICA D. ABER, ESQ.
RYAN S FAULCONER, ESQ.
Counsel for Government;

JOHN L. BROWNLEE, ESQ
HENRY W ASBILL, ESQ
JAMES M. BURNHAM, ESQ.
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WILLIAM A. BURCK, ESQ.
HEATHER H. MARTIN, ESQ
STEPHEN M. HAUSS, ESQ.
Counsel for Maureen G. McDonnell

JEFFREY B. KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

(In Chambers)

THE COURT Whatever the problem is, let's deal with it succinctly

MR BROWNLEE: Yes, sir Last night about 9 o'clock, Your Honor, we were notified by government counsel of what we believe to be pretty highly exculpatory evidence just now provided to us after opening statement The evidence they provided was during Mr Williams' first interview on January 23rd, 2012 Apparently, at the conclusion of that interview, they asked Williams if he would wear a body wire or do some sort of recording of Bob McDonnell Williams declined and lawyered up

We think that that information is important for two reasons One, it signaled to Williams immediately that the government was in fact looking at the Governor at that time hard; and then secondly, the fact that he declined, we think, goes to his state of mind

THE COURT: So you know now What do you want?

MR. BROWNLEE: What we request is a 48-hour delay for Jonnie Williams We have about eight questions we provided to the government this morning that we think we should -- we are entitled to the answers to, how this information came to light, why we didn't know it, what the agents actually asked him, and to be able to scrub this down. We are not accusing anyone of bad faith or anything like that But we do ask for a 48-hour delay for Williams, he is supposed to be called today, to allow us to scrub this down And we think that's fair So that's our request

THE COURT: Your request will be denied If you all can't effectively cross-examine Jonnie Williams, you should leave the profession I mean really Let's go.

(Recess taken from 9:54 a.m. to 10:00 a.m.)

THE CLERK: Criminal Number 3:14-CR12: United States of America versus Robert F McDonnell and Maureen G McDonnell Mr Michael Dry, Ms Jessica Aber, Mr David Harbach, II, and Mr Ryan Faulconer represent the United States Mr John Brownlee, Mr Daniel Small, Mr Henry Asbill, Mr James Burnham, and Mr Christopher Iaquinto represent the defendant, Robert F McDonnell Ms Heather Martin and Mr William Burck and Mr Stephen Hauss represent the defendant, Maureen G McDonnell Are counsel ready to proceed?

MR. DRY: The United States is ready

MR. BROWNLEE: Defense is ready

MR. BURCK: Maureen McDonnell is ready

THE COURT: All right Let's bring in the jury, please

MR. HARBACH: Would you like the witness in the stand first?

THE COURT: Yes, have her come on up.
Ms Fulkerson, you realize you are still under oath?

THE WITNESS: Yes, sir

(The jury entered the courtroom.)

JERRI FULKERSON,

called as a witness by and on behalf of the government, having been previously sworn by the Clerk, was examined further and testified as follows:

DIRECT EXAMINATION (Cont'd.)

THE COURT: All right Good morning, ladies and gentlemen. Glad to see everybody is back. I apologize for the delay I had a sentencing that went longer than I thought it would. Stuff happens Government?

MR. HARBACH: Thank you, Your Honor

BY MR. HARBACH:

Q Good morning, Ms Fulkerson

A Good morning

Q I'd like to start this morning by asking you about whether in your time working for Mr Williams there were occasions when Mr Williams would pay for something with his own money and then expense it to Star; did that ever happen?

A Yes

Q Did you guys have a system in place to process those expenses?

A Yes

Q Tell us about what you would do

A It is an expense report I tried to do them at the end of every month or the beginning of the next month. The bills would come in, we would go over them, he would tell me what was to be expensed and the purpose of the expense, and I would submit it to Star

Q How often would you prepare those expense reports?

A Hopefully every month. Sometimes it was longer

Q Could we take a look for identification at Government's 182 Ms Fulkerson, do you recognize this to be an expense report of the type you have been testifying about?

A Yes

MR. HARBACH: The government offers Government's 182

THE COURT: It will be admitted.

BY MR HARBACH:

Q Could we blow up the text, please, Mr Starnes? Thank you, sir Okay, you know, I think let's do the left-hand side of the screen so we get the columns and description and then we will scroll over to get the amounts Okay? Thank you, sir Are you able to see the first entry on there of May 31st, 2011 and then in the payee column it says "Kinloch"?

A Yes

Q What's Kinloch?

A Golf club in Goochland.

Q Was Mr Williams a golfer?

A Yes

Q Was he a member at the Kinloch Golf Club?

A Yes

Q You said it is in Goochland?

A I believe so

Q Now, on this expense report, there is an entry for May 31st of 2011 that says "Kinloch " Do you see that there?

A Yes

Q Okay And then let's, on June 30th, 2011, is that another entry for Kinloch?

A Yes

Q And then finally, on July 31st of 2011, a third one?

A Yes

Q Okay Now, let's briefly scroll over to the right if we could and just see the amounts that are associated with those three entries

A Yes

Q How much is associated with the first entry for Kinloch?

A It looks like $2,604 49

Q Okay And now, before we go on to the others, let me ask you a question. That one was dated May 31st, correct?

A Yes

Q Now, does that mean that all of those charges were incurred on Mr Williams' account on May 31st?

A No

Q Please explain

A Kinloch's statements come out once a month, and the statement is dated May 31st, so it was charges for throughout the month.

Q So the 2,600 and change there is the total to Kinloch for the month of May, 2011?

A Yes

Q Related to this purpose

A Yes

Q Namely, meetings with and golf merchandise for Governor McDonnell; have I read that right?

A Yes

Q Let's go to the next entry now The second one, second Kinloch entry on the expense report, how much is that one?

A $2,099 29

Q For this one, Mr Starnes, we need to zoom out a little bit Scroll over That's fine Do you see where it is written in the margin there, "Dues, $2,000"?

A Yes

Q Do you know what that refers to?

A National dues for Kinloch Golf Club.

Q Is $2,000 the correct annual amount for national dues?

A Yes

Q So for that month, only $99 29 is attributable to Mr McDonnell, correct?

A Yes

Q Okay And that's for the entire month of June?

A Yes

Q All right Now, the third entry down there on the bottom, that one is for how much?

A $2,133 91

Q And again, so the record is clear, is that an entry for the entire month of July?

A It is

Q And could you scroll a little bit to the left, Mr Starnes, and so that entire amount, $2,133 91 is attributable to what's listed in the "Purpose" block?

A Yes Meetings with and golf merchandise for Governor McDonnell

Q Thank you You can take that down, Mr Starnes Yesterday, you may recall that we talked a little bit about the Roskamp Institute in Florida; do you remember that?

A Yes

Q Do you recall testifying about an e-mail exchange you had with Ms Block about whether Governor McDonnell might be able to attend?

A Yes

Q And I think we learned yesterday that he did not attend; is that right?

A Yes

Q Now, did you assist in making flight arrangements for that trip for other folks?

A I believe I did.

Q Let's take a look at Government's 146, please, for identification Can you blow up the middle part so she can see the description, please, Mr Starnes?
Ms Fulkerson, do you recognize this to be paperwork related to the flight arrangements for a trip to the Roskamp Institute that you prepared?

A Yes

MR. HARBACH: The government offers Government's 146

THE COURT: It will be admitted.

BY MR HARBACH:

Q What's the date of the trip down to Roskamp according to these papers?

A May 31st, 2011

Q All right Take that down, Mr Starnes Let's take a look for identification at Government's 151, please. Same drill Could you please just blow up the description in the middle? Thank you, sir Take a look at that, Ms Fulkerson. Does this appear to you to be paperwork related to the return trip from Roskamp that you helped prepare?

A Yes

MR. HARBACH: The government offers Government's 151

THE COURT: It will be admitted.

BY MR. HARBACH:

Q What was the date of the return trip from Roskamp?

A June 1st, 2011

Q All right The next subject is going to start with an exhibit for identification, it is Government's 161, please Can you blow up the text for her, please? Thank you, sir Ms Fulkerson, do you recognize this document?

A Yes

Q Is this an e-mail that you prepared, excuse me, that you sent to Mary-Shea Sutherland with a couple of attachments?

A Yes

MR HARBACH: The government offers Government's 161

THE COURT: It will be admitted.

BY MR. HARBACH:

Q All right Let's start with this cover page Could you read for us the text of the e-mail? What does it say?

A "Jonnie asked that I forward the attached letter and information to you."

Q Would you have sent this e-mail to Ms Sutherland if Mr Williams had not asked you to do so?

A No

Q Does it indicate that there are a couple of attachments?

A Yes

Q What's the first attachment?

A Letter to Governor McDonnell

Q And before we go to the attachment, what's the date and time of the e-mail, ma'am?

A June 16th, 2011 at 4:38 p.m.

Q Let's take a look at Page 2 of Government's 161, please Blow up the text, please, Mr Starnes Thank you This appears to be a letter to Governor McDonnell; do you see that there?

A Yes

Q Now, do you have any recollection about how this letter came to be?

A He either dictated it to me or it was forwarded to me

Q Okay And then the signature at the bottom, is that Mr Williams' signature or is that an example of you signing his name for him?

A I believe it is an example of me signing his name

Q And to reiterate, is that something that you ever did without his express authorization?

A I never signed his name without his direct authorization.

Q All right Were you involved in drafting this letter at all other than physically putting it together?

A No

Q If we could look at Page 3 of Government's 161 Actually, before we do that, I'm sorry, Your Honor, could we go back to Page 1, please? Blow up the header there What's the second attachment, Ms Fulkerson?

A "Approved Protocol for CRP Study "

Q All right Now let's take a look at at least Page 3 of Government's 161 You have reviewed this document before you came to Court here today, correct?

A Yes

Q Is this a multi-page report?

A Yes

Q Do you recall where it came from?

A I believe it came from Roskamp

Q You can take the exhibit down, please One last question Why did you send the e-mail to Mary-Shea Sutherland?

A Mr Williams asked me to

Q The next subject concerns a trip to the Homestead in June of 2011 Do you recall Mr. Williams making a trip over there for an event?

A Yes

Q And were you involved at all in making travel preparations for some people in connection with that event?

A Yes

Q All right First let's start with Government's 160, please Ms Fulkerson, is this an e-mail exchange between you and Ms Block on the subject of a trip to the Homestead?

A Yes

MR. HARBACH: The government offers Government's 160

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Now, I'd like to focus with you on the date of this e-mail, ma'am. It says Wednesday, June 15th Do you see that there?

A I do

Q And Ms Block is inquiring of you whether Mr Williams is going to attend the Governors' Retreat next weekend at the Homestead

A Yes

Q So the following weekend, would that be the weekend that begins Friday, June 24th?

A I believe so.

Q Now, you mentioned a moment ago that you were involved in making some flight arrangements Tell me what you remember about that

A First of all, I can never book the plane or agree to anything without Mr Williams' approval They asked could the Governor's Office, or Ms Block asked could Jonnie fly, I believe it was, Ms McDonnell to the Homestead. Then things changed. He agreed to it Then things changed and they asked if he could take the two children, two of the children, to the Homestead.

Q Okay Let's take a look at Government's 163, please Ms Fulkerson, is this an e-mail exchange between you and Mary-Shea Sutherland on the subject of these flight arrangements?

A Yes

MR HARBACH: The government offers Government's

THE COURT: It will be admitted.

BY MR HARBACH:

Q Let's start with the e-mail at the bottom of the page, please, the one that you got the beginning of from Ms Sutherland. What's the date of this one, Ms Fulkerson?

A June 21st, 2011

Q So approximately three days before the event?

A Yes

Q It mentions a change that you just talked about, the first -- says, "The First Lady just requested and Jonnie agreed to skip the Thursday flight She will drive out with our security detail And instead, the plane will take the twins and Jeanine to the Homestead on Friday " Did I read that correctly?

A Yes

Q Do you recall confirming this with Mr Williams?

A I remember discussing it with him.

Q All right If we could, it says, "I'm waiting on a time " If we could see the next page to finish this e-mail from Ms Sutherland, " that they would be able to go "

All right, now, read the last sentence for us there, the one that begins "The route would include "

A "The route would include the twins getting on board in Richmond, the plane would then go to Virginia Beach to get Jeanine, and then take the three of them to the Homestead."

Q Do you recall that issue?

A Yes

Q Tell us what you remember about that

A I remember Mr Williams not wanting to go to Virginia Beach

Q Not wanting the plane to go to Virginia Beach?

A Yes, I'm sorry, not wanting the plane to go to Virginia Beach

Q So what ended up happening?

A I believe everybody left out of Richmond

Q Instead of making the trip to Virginia Beach?

A Correct

Q Now, as you sit here today, how long have you worked for Mr Williams approximately?

A 19 years

Q And over the years, we have talked about the fact that Mr Williams has allowed politicians to use his plane from time to time?

A Yes

Q Do you recall any other occasion in your experience where a politician requested the use of Mr Williams' plane to transport one of their children across the span of an hour-and-a-half drive?

A No

Q Do you recall in your experience with Mr Williams any other occasion where a politician ever asked for use of Mr Williams' plane to transport their children, period?

A No

Q Do you recall whether Mr Williams received an invitation to Mr and Ms McDonnell's anniversary party?

A Yes

Q Can we take a look at Government's 164, please, for identification. Is this the invitation that you just described?

A Yes

MR HARBACH: The government offers Government's 164

THE COURT: It will be admitted

BY MR. HARBACH:

Q Mr Starnes, if you could back out, please, I just need the two headers at the top Both of them, please Ms Fulkerson, this e-mail from Maureen McDonnell is directed to jwilliams@starscientific.com. Remind us which of Mr Williams' two addresses that was

A jwilliams is the public

Q The public one?

A Yes

Q Not the sort of private one?

A Correct

Q Okay And is this an example of you forwarding an e-mail from Mr Williams' public account to his private account?

A Yes

Q Next subject Did Mr Williams have any vacation homes?

A Yes

Q In particular, did he own one at Smith Mountain Lake?

A Yes

Q Let's take a look at what's already in evidence as Page 2 of Government's 181 Do you recognize that photo?

A Yes

Q What is that?

A Mr Williams' Smith Mountain Lake home

Q Okay What about, for identification, please, the first page of Government's 181 Do you recognize that?

A That's the front side

MR. HARBACH: The government offers Page 1 of Government's 181

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Same house?

A Yes

Q One last question Is there a dock associated with this house?

A Yes

Q That you can bring up boats to?

A Yes

Q Can we please take a look at Page 3 of -- excuse me, Page 4 of Government's 181 Do you recognize that?

A Yes

MR. HARBACH: The government offers Page 4 of 181

THE COURT: It will be admitted

BY MR HARBACH:

Q Is that the dock we are talking about?

A Yes

Q On the right side of the page?

A Yes

Q You can take that down, Mr Starnes To your recollection, were you ever involved in helping make arrangements for the McDonnells to stay at Mr Williams' Smith Mountain Lake home?

A Yes

Q Do you recall what year that was?

A I'm sure you can show me a document, but --

Q I surely can Can we put up 129 for identification, please?

A 2011

Q All right I'm going to go a bit further Can you blow up the top of that for her, Mr Starnes?
Ms Fulkerson, do you recognize this to be an e-mail exchange with Ms Block on the subject of the arrangements for the McDonnells to stay at Mr Williams' Smith Mountain Lake home?

A I do

MR. HARBACH: The government offers Government's 129

THE COURT: It will be admitted

BY MR. HARBACH:

Q I'd like to focus on the top e-mail from Ms Block, Ms Fulkerson. Let me ask you what the date and time is of that one, ma'am.

A May 24th, 2011 at 1:26 p.m.

Q All right And she is asking you to see if SML, which you understood to be what?

A Smith Mountain

MR. BROWNLEE: Objection

THE COURT: Overruled. Go ahead

BY MR HARBACH:

Q What are the dates that Ms Fulkerson requests use of the house for the McDonnells for?

A July 28th through July 31st

Q Okay Do you recall having a discussion with Mr Williams about this?

A Yes

Q Did Mr Williams agree to let them use the house?

A Yes

Q Let's take a look at Government's 131 for identification, please And if you could just blow up just the top there That's good. Thank you, Mr Starnes Is this your response to Ms Block, to her inquiry about the house?

A Yes

MR. HARBACH: The government offers Government's 131

THE COURT: It will be admitted.

BY MR. HARBACH:

Q What was the answer, Ms Fulkerson?

A "It is available "

Q You can take that down, Mr Starnes Were you personally involved in making any other arrangements related to the McDonnells' stay at the Smith Mountain Lake home?

A Yes

Q Let's take a look at 176, please If you could just blow up the bottom half of the page, Mr Starnes It is an e-mail from Ms Fulkerson Thank you, sir My question first for you is, do you recognize this document?

A Yes

Q Is this an e-mail from you to Ms Sutherland concerning -- well, what does it concern?

A Delivery of a boat

MR. HARBACH: The government offers Government's 176

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Okay You write to Ms Sutherland -- incidentally, do you recall what Ms Sutherland's job was?

A Assistant to Ms McDonnell

Q Okay Now, what you write in the e-mail is, "They would like to shoot for delivery between 10 and 11 Friday morning and will call right before they leave " Did I read that correctly?

A Yes

Q Who is the "they" there?

A Bridgewater Marine

Q And delivery of what?

A A boat

Q To where?

A Mr Williams' house at Smith Mountain Lake

Q For what purpose?
A Use for the McDonnells
Q All right ·The last sentence of your e-mail says: "I'm still trying to find out about Rachel and the car "
A Yes
Q First question: Who is Rachel?
A Rachel McDonnell
Q Is this person related to Mr and Ms McDonnell?
A Yes
Q How so?
A Their daughter
Q "And the car," what does that mean?
A I believe it is the Land Rover, Range Rover I'm not sure
Q Whose Land Rover, Range Rover?
A Mr Williams
Q What was that all about, if you recall?
A To the best of my memory, it was about a car for Rachel to drive, either up there or while she was there
Q Okay I apologize, could we pull up the second page of 176, please? Actually, I take that back. The first page of 176, at the bottom.

MR. HARBACH: I'm sorry, Your Honor, I neglected to talk about an e-mail at the very bottom, Mr Starnes I just need the header at the bottom.

BY MR. HARBACH:

Q That last e-mail is from Ms Sutherland to you; is that right?

A Yes

Q Could we go to Page 2 for the text, please, Mr Starnes? This is earlier in the exchange The second sentence says: "The First Lady will be arriving at the Smith Mountain Lake house Thursday night with the twins " Do you know who "the twins" are?

A I believe it is their sons

Q It says: "She will be on site Friday morning to accept delivery of the boat and sign for it " Then she authorized her cell phone number to be given out Did I read that correctly?

A Yes

Q Thank you. Sorry about taking those out of order You mentioned a Land Rover or Range Rover a moment ago Do you recall being involved in making any other arrangements relating to vehicles for this vacation trip?

A Yes

Q Tell us about that

A Mr Williams arranged for a Ferrari to be taken to the lake house for Mr McDonnell's use And I arranged for the car and driver to bring back the employee that took the Ferrari up there

Q Whose Ferrari?

A Jonnie Williams'

Q You mentioned an employee

A A Star Scientific employee.

Q Let's take a look at Government's 195, please Do you recognize this document?

A Yes

Q What is it?

A It is a Carey invoice for picking up the Star Scientific employee to bring him back from Smith Mountain Lake

Q After delivery of the Ferrari?

A Yes

MR HARBACH: The government offers Government's 195

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Okay So what kind of company is Carey International?

A A limo company

Q Did you make these arrangements?

A I did

Q And in the middle of the screen toward the bottom, it says, "Passenger: Hunter, Matt " Do you know who that is?

A Yes

Q Who is that?

A An employee of Star Scientific

Q What does it indicate the service date was there to the left? In the bottom left-hand part of the screen.

A July 29th, 2011

Q Thank you, ma'am. Oh, I'm sorry, 195, please, just for one more minute Blow up the middle for me, please That pickup location, 1825 Waters Edge, it says Glen Allen, Virginia, excuse me, for the pickup location, do you know where 1825 Waters Edge is?

A Waters Edge Country Club

Q Where is that?

A Smith Mountain Lake

Q I'd like to direct your attention now to August of 2011 Okay? At that time, did you know anything about Ms McDonnell requesting a Rolex for her husband or anything about a Rolex?

A No

Q Did you know at the time that Mr Williams actually bought one?

A No

Q Do you recall an important event at the Mansion that was scheduled for August 30th of 2011?

A Probably

Q Okay Let's take a look at Government's 217, please Do you recognize this document, ma'am?

A Yes

Q Is this an e-mail exchange -- correction, is this another example of you forwarding an e-mail on Mr Williams' behalf to someone else?

A Yes

MR. HARBACH: Government offers Government's 217

THE COURT: It will be admitted

BY MR HARBACH:

Q Okay, let's start at the top where it says, "From: Jonnie Williams, Sr " I think we just established that this was you sending this e-mail?

A Yes

Q Not Mr Williams?

A Yes

Q Second question: The e-mail at the bottom is from someone named Caroline Birgmann.

A Yes

Q Do you know who that is?

A She was an employee at Star Scientific

Q Do you recall what her job was?

A She was involved in the launch and promotion of Anatabloc

Q When you say the launch, what are you talking about?

A Bringing it out public I don't know how to describe it Announcing its production into the market

Q Okay And if we could look at, actually, at the top of this page, does this appear to be an attachment?

A Yes

Q It says "Gov lunch invitations"?

A It does

Q All right Could we look briefly at Page 2 of this document? Just blow up any part of it, Mr Starnes, just as an example

A Yes

Q Is this contact information for various people?

A Yes

Q You can take that down, Mr Starnes Ms Fulkerson, were you involved in planning this event at the Mansion on August 30th?

A No

Q Did you attend the event?

A No

Q Do you recall at some point a little bit later in 2011 being involved in helping make -- withdrawn. Were you ever involved in making arrangements for a trip to Bar Harbor, Maine?

A Yes

Q Tell us what you recall about that

A I made the arrangements for the Williamses and the McDonnells, there may have been other people involved, to go to Bar Harbor I believe it was for a weekend. One of the hurricanes came in, and Virginia was a disaster area and the Governor couldn't leave, so the trip was canceled.

Q Let's take a look at Government's 211, please Could you blow up the top half, please, Mr Starnes? Do you recognize this document, ma'am?

A Yes

Q Is this an e-mail concerning travel arrangements for the trip to Bar Harbor that you just described?

A It looks like it

MR. HARBACH: The government offers Government's 211

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Okay now, the first question is, in the middle where you have e-mailed to Mary-Shea Sutherland on August 23rd, is there an attachment to this e-mail chain, ma'am?

A Yes

Q What does it say is the attachment?

A "August 26-28 itinerary doc, Starwood Aviation Trip Sheet "

Q Let's take a look at Page 3 of Government's 211 If you can blow that up, please What is this we are looking at here?

A An itinerary

Q For what?

A August 26th through 28th, 2011

Q Concerning what trip?

A The trip to Bar Harbor, Maine

Q And this was the trip that you described a moment ago that never happened?

A Correct

Q And so -- oh, actually, that begs a question. You mentioned a moment ago that because of the hurricane, Mr and Ms McDonnell weren't able to go. And so did you say the entire trip was canceled?

A I believe so

Q Did Mr Williams go up there on his own anyway?

A I don't believe so.

Q New subject During your time working for Mr Williams, did he pay you annual bonuses?

A Yes

Q And when he decided to pay you a bonus, what form would that bonus take?

A Either stock or cash

Q And whose choice was it to get stock or cash?

A Usually the person he was giving the bonus to

Q So you got to choose?

A Yes

Q Do you recall an especially large bonus in July of 2012?

A Yes

Q Do you recall the circumstances that resulted in you getting an unusually large bonus?

A A stock certificate was missing, a very large stock certificate, and he told me that he would pay me a large bonus if I found the stock certificate

Q Were you able to find it?

A Yes

Q Did it take some doing?

A Yes

Q When you found it, did Mr Williams pay you the bonus?

A Yes

Q What form did the bonus take?

A He gave me stock

Q Do you recall how much stock he gave you?

A I can't really remember the value of the stock.

Q Okay Do you recall, what did you do with that stock after you got it?

A What he asked me to do I cashed it and bought a vehicle

Q Approximately how much money did you get when you cashed this stock bonus in?
A $40,000 to $45,000
Q Did you in fact buy a car?
A I did.
Q And that was about July of 2012?
A I believe so.
Q Okay What about in December of 2012; did you have a conversation with Mr Williams concerning a bonus in December of 2012?
A Yes
Q Tell us about that
A He offered my year-end bonus or Christmas bonus and asked me which I preferred, stock or cash
Q What was your answer?
A Stock
Q Okay Did he say during that conversation how much stock he planned to give you?
A 10,000 shares
Q Ten or two?
A 10,000 shares
Q All right Did you in fact receive that bonus?
A Yes, but not until the next year
Q When exactly?
A January of 2013

Q Do you recall whether it was the beginning or the end of January?

A End.

Q Was that an in-person conversation with Mr Williams?

A Yes

Q Tell us what you recall about that, about the conversation where you received your bonus

A When I finally got my bonus?

Q Yes, ma'am.

A Okay I was told that he could no longer give me stock

Q By him?

A By him. And that he would give me the cash equivalent of the stock.

Q So how much cash was he going to give you, did he say?

A $20,000

Q And how did that get conveyed to you?

A He wrote me a check.

Q He wrote you a check?

A I wrote the check, he signed the check

Q Oh, I see So he instructed you to prepare a check for yourself?

A Yes

Q How much did you make it out for?

A $20,000

Q When Mr Williams conveyed that bonus to you, did he mention anything about this investigation?

MR. BROWNLEE: Objection, hearsay

THE COURT: She can answer that

THE WITNESS: He just said that in light of everything that had happened, he couldn't give me stock.

BY MR. HARBACH:

Q Did he ask for your help in connection with the investigation?

A No

Q Did he tell you to do anything or say anything in connection with the investigation?

A No.

Q Okay Next subject Let's take a look for identification at Government's 315, please And Mr Starnes, this is another one that bleeds across two pages I'd like to start at the top Ms Fulkerson, do you recognize this e-mail exchange?

A Yes

Q Is this an example, another example of you communicating for Mr Williams' account on his behalf?

A Yes

MR. HARBACH: The government offers Government's 315

THE COURT: It will be admitted.

BY MR HARBACH:

Q I'd like to,start on Page 2, please, Mr Starnes The very last e-mail This one is from someone named Paul Ladenson to you, and the date is February 10th of 2012 Who is Paul Ladenson, if you know?

A Dr Paul Ladenson is affiliated with Johns Hopkins University

Q Do you recall whether he had any connection to Star?

A He was doing Anatabloc research.

Q What about the e-mail address that's referenced in the subject line It mentions a Dr Frank Crantz Do you know who that is?

A No

Q Mr Ladenson says, "Jonnie wanted this for Dr Crantz's invitation to the Governor's reception on February 29th." Other than this e-mail exchange that you are involved in here, were you involved in any way with planning the February 29th event at the Governor's Mansion?

A I wasn't involved in the planning I may have corrected e-mail addresses or provided addresses

Q Contact information?

A Yes

Q For invitees?

A Yes

Q All right And then if we could go back to Page 1 for a moment At,the bottom of the page, let's look at the header information for the e-mail that appears on the next page This is an e-mail, it says it is from jwilliams@starscientific com. Who is actually sending this e-mail, ma'am?

A Me

Q Who is it to?

A Maureen McDonnell

Q What's the date?

A February 12th, 2012

Q Now, if we could look at the top of Page 2 for the content of that e-mail, please Read what it says there for us

A "Jonnie asked that I forward this to you and ask that Dr Crantz gets on the list for the event on the 29th. Please call or e-mail me with any questions "

Q Then the same question I keep asking you: Would you have written that if Mr Williams had not in fact asked you to do so?

A No

Q If we could just blow up briefly Ms McDonnell's response in the middle of the page there It is a little tough to read because of the text Tell me if I read this correctly, okay? Ms McDonnell appears to write: "Sure, we will mail an invitation to him tomorrow at the below address I found the address on the Internet so let me know if it should be mailed anywhere different I'll see if my staff can scan the invite so we can send it to him by e-mail, also " Did I read that right?

A Yes

Q There is one other name on there we haven't talked about yet, Sarah Scarbrough That's among the people that Ms McDonnell copies this e-mail on. Do you know who she was?

A A member of the staff for the Governor

Q You don't recall what her job was?

A No

Q You can take down 315, please Next document for identification is Government's 318 Is this another example of you forwarding an e-mail to Mr Williams' private account from his public one?

A It is from one account to another I can't tell

Q Okay Take a look at the bottom of the page

A Yes

Q Do you see the e-mail address that the original e-mail is sent to?

A Yes

Q So is this an example of you forwarding it to

Mr Williams' private account?

A Yes

MR. HARBACH: The government offers Government's 318

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Who is the original e-mail from?

A Governor Robert McDonnell

Q And what's the date of it?

A February 16th, 2012

Q And it is addressed to Mr Williams' public or private address?

A Public

Q At the top, you forward it to which?

A His private. Mr Williams' private

Q And this is the following morning?

A Yes

Q What time did the original e-mail from Mr McDonnell come in?

A 11:56 p.m.

Q You can take down 318, please Do you recall at some point in the spring of 2012 Mr Williams instructing you to make out some additional checks on behalf of the McDonnells?

A Yes

Q Let's take a look at Government's 350, please Do you recognize this check, ma'am?

A Yes

Q And is this a check that you prepared at Mr Williams' direction?

A Yes

MR. HARBACH: The government offers Government's 350

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Okay Ms Fulkerson, do you recognize the handwriting on this check?

A Yes

Q Is that your signature on there?

A It is

Q And the word "Void" across the center of it, who wrote that?

A I did

Q Why did you write it?

MR. BROWNLEE: Objection, hearsay

THE COURT: Overruled.

THE WITNESS: He asked me to take Maureen McDonnell's name out of the memo line

BY MR HARBACH:

Q Who asked you to do that?

A I'm sorry, Jonnie Williams did.

Q What about this voided check being made out to MoBo Realty? How did you know to put that there?

A Mr Williams told me

Q What about the amount of $50,000, whose decision was that?

A Jonnie asked me to write the check, Donnie okayed the amount

Q What's the date of this voided check?

A March 6th, 2012

Q Let's take a look at Government's 351, please Is this another check you prepared at Mr Williams' direction?

A Yes

MR. HARBACH: The government offers Government's 351

THE COURT: It will be admitted

BY MR. HARBACH:

Q All right This is the next check from the register, 1286; is that right?

A Yes

Q Is your handwriting on this one?

A Yes

Q Why did you void this one?

A Because when I made out the check, I forgot to take off Maureen McDonnell out of the memo line

Q You did it again?

A I did it again.

Q Okay And is this check the same payee, same amount, same date as the one we were looking at before?

A Yes

Q All right Next is Government's 352 for identification. Is this another check you prepared, ma'am?

A Yes

Q Was this also at Mr Williams' direction?

A Yes

MR HARBACH: The government offers Government's 352

THE COURT: It will be admitted

BY MR. HARBACH:

Q Finally, we are at one that's not voided; is that right?

A Right

Q How much is this check for?

A $50,000

Q What's the date of it?

A March 6th

Q Of what year?

A 2012

Q Now, is the payee the same as before?

A Yes

Q What about the memo line?

A It says, "Beach House "

Q How did you know to put "Beach House" there?

A Mr Williams told me

Q Were you involved in delivering the check that is Government's 352, were you involved in delivering that to anyone?

A I may have been I believe I Fed Ex'd it

Q To the address that's on the check?

A Yes

Q For the record, if we could put up 352 Thank you for your patience, Your Honor The address that you mailed it to is the one for MoBo Realty; is that right?

A Yes

Q Not the one for Starwood Trust?

A Correct

Q Okay Later on that spring in 2012, did Mr Williams provide you some instructions concerning a wire transfer?

A I believe so

Q Let's take a look at Government's 386 for identification. Is this a wire transfer confirmation for the one you just described?

A Yes

MR. HARBACH: The government offers Government's 386

THE COURT: It will be admitted

BY MR. HARBACH:

Q Now, Mr Starnes, could you blow up just the space between the stars? Thank you. What does it say is the transaction date, ma'am?

A 5-22-2012

Q In what amount?

A $20,000

Q And the beneficiary name?

A MoBo Real Estate Partners, LLC

Q And then underneath it it says, "Attention: Michael Uncapher " Do you know who that is?

A At the time I didn't Now I know it is --

Q I'm just interested in what you knew at the time, ma'am.

A I didn't know who it was

Q Could you back out, Mr Starnes? Last question about this one Is the handwriting at the bottom right there where it says "Gov McDonnell," whose handwriting is that?

A It is mine

Q Why did you write that on there?

A A note for my records so I knew how to -- knew where to file it

Q Okay One last question: You mentioned in connection with the checks that were on the Starwood Trust account that you had to get in touch with Mr Donnie Williams to get approval Do you recall whether you did that in connection with the wire transfer?

A Yes

Q Did you?

A Yes

Q All right Earlier in your testimony, we saw how a couple of checks that you wrote in 2011 were reflected on the ledger Do you recall that?

A Yes

Q Let's take a look at Government's 509, please Is this another excerpt of the Starwood Trust general ledger from QuickBooks?

A Yes

Q Were you involved in preparing this?

A Yes

MR HARBACH: The government offers Government's 509

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Can you see that okay?

A Yes

Q Now, on the far left-hand there, it says "Rent" in bold face Do you see that?

A Yes

Q We will come back to that in a second. The third entry is the third line down, it says "Bill 3-6-12 " I can't even read that "MoBo Realty "

A Yes

Q Are you able to see what letters are highlighted there in the same column where there are a bunch of months; can you make that out?

A Reading from left to right, it says "Bill, March 6th, 2012," it is the beginning of McDonnell, "McDO," then "MoBo Realty," and then "Beach House "

Q Let's back out and see -- scroll over and see what the amount is on the third line down.

A $50,000

Q Let's go back to the left, please, and on the sixth line down there is another entry I want to ask you about

A Yes

Q It says, "Check," and then "5-22-12, Wire MoBo Realty " Did I read that right?

A You did.

Q Let's go over to the other end and see how much that one was

A $20,000

Q Okay Now let's back out and let me ask you the question I mentioned a moment ago Why did you put these items in the rent section of the ledger?

A Mr Williams directed me

Q You can take that down, Mr Starnes Could we pull up for identification, please, Government's 395

Ms Fulkerson, is this another example of you forwarding an e-mail to Mr Williams' private account?

A Yes

MR. HARBACH: The government offers Government's 395

THE COURT: It will be admitted.

BY MR HARBACH:

Q Let's start at the bottom. Who is the original sender of the first e-mail, Ms Fulkerson?

A Governor Robert McDonnell

Q On what date did he send this e-mail?

A June 26th, 2012

Q At what time?

A 2:52 p.m.

Q What does it say in his message to Mr Williams?

A "Congrats on the patent for Anatabine Progress continues "

Q And then you forwarded it to Mr Williams' private account?

A I did

Q At what time?

A 10:07 p.m.

Q Look again.

A 2:52, June 26th -- I'm sorry, 7:10 p.m.

Q Thank you, ma'am. You can take 395 down Next subject As part of your duties for Mr Williams, were you involved from time to time in helping him prepare various financial paperwork, loan applications and the like?

A Yes

Q Can we take a look at Government's 421 for identification, please? Is this a document you have reviewed before coming into court to testify here?

A Yes

Q Do you recognize it to be a loan application of sorts?

A Yes

Q For whom?

A Capstar Bank for Jonnie Williams

Q Were you involved in helping prepare this particular one?

A Yes

MR. HARBACH: The government offers Government's 421

THE COURT: It will be admitted

BY MR HARBACH:

Q Let's show the jury the first page for a moment And now, if we could go to Page 4, the signature down there at the bottom, is this Mr Williams' signature or is this you signing his name for him?

A I'm not really sure, but I believe this is me signing for him.

Q Okay And what's the date?

A October 30th, 2012

Q Whose handwriting is the date?

A Mine.

Q All right And then if we could also look at Page 8, please

MR. HARBACH: Can I have one second, Your Honor?

THE COURT: Sure

(Counsel conferring with co-counsel)

BY MR. HARBACH:

Q Page 8?

A Yes, sir

Q Same couple of questions The signature that's there, is that Mr Williams' signing his own signature or is that you signing for him?

A I believe this is me signing for him at his direction

Q Okay And then what's the date of this signature?

A October 30th, 2012

Q Is that also your handwriting on the date?

A Yes

Q Okay Before we go further with this particular document, can you tell us what your general practice was when you were preparing a document like this for Mr Williams? How would you go about preparing it?

A The first time I prepared a personal financial statement, he went over it with me in detail From there, I would update the financial statements from the past We would go over them, I would go through every line with him to make sure that he knew what was on them and to ask him any questions if they were correct

Q Now, let's look at Page 7 of Government's 421, please. In particular, I want to blow up the block at the bottom, Mr Starnes, the one that says Schedule 9 Ms Fulkerson, you see that this schedule is called what?

A Other Loan Payables

Q And there is one loan listed on there

A Yes

Q At the time that you helped Mr Williams fill this out, did Mr Williams have other loans in addition to the one that is listed here that did not make their way onto this?

A Yes

Q In particular, did Mr Williams have some loans that were payable to someone called John McKeon?

A Yes

Q Who is John McKeon?

A A friend and investor of Mr Williams' -- a friend of Mr Williams and an investor in Star Scientific

Q Why did you not include the loans from Mr McKeon in this section on this form?

A I didn't remember about the loans, because they weren't payable monthly I didn't pay a monthly bill to him. They just totally slipped my mind.

Q How did you become aware that the McKeon loans were not on here?

A Mr Williams asked me some months later if it was on there

Q Some months later after the October 30th date we saw before?

A Yes

Q Do you recall about when it was?

A I believe it was in January

Q Of what year?

A 2012 I mean 2013

Q Okay Was the conversation you had with Mr Williams in person or over the phone or do you remember?

A It was over the phone

Q Okay And prior to that call, prior to that call, had Mr Williams ever told you to keep these loans off?

A No

Q Prior to this call with Mr Williams, were there any discussions with him about the loans not being on there?

A No

Q Did Mr Williams give you any direction in the call that you had with him?

A Yes

Q What did he direct you to do?

A He asked me to --

MR. BROWNLEE: Objection, hearsay

THE COURT: Overruled.

MR. BROWNLEE: Thank you.

MR. HARBACH: Can I have one second, please, Your Honor?

THE COURT: Sure

(Counsel conferring with co-counsel)

MR. HARBACH: The objection was overruled?

THE COURT: The objection was overruled

MR. HARBACH: Thank you, sir

BY MR HARBACH:

Q The question was, what did Mr Williams direct you to do?

A He asked me to contact Bob Pokusa, the General

Counsel for Star Scientific, to ask Mr Pokusa should the loan have been on the personal financial statement

Q Okay And did you do that?

A I did.

Q Let's take a look at Government's 474, please Is this an e-mail exchange you had with Mr Pokusa on this subject?

A It is

MR. HARBACH: The government offers Government's 474

THE COURT: It will be admitted

BY MR HARBACH:

Q Page two, please Just blow up the body of the e-mail, Mr Starnes Could you just read what you wrote to Mr Pokusa, Ms Fulkerson?

A "Jonnie has had with John McKeon/JMB, LLC over the last five or six years It never crossed my mind that I need to list those on his financials I need to list them on the financials for the jet loan Of course I was at the big house yesterday and didn't pull them. Do you have a copy you can send to me so I don't have to turn around and go back over the weekend?"

Q Thank you, ma'am. You can take down 474 Next subject: Were you involved in helping to plan travel arrangements to Cape Cod on Labor Day weekend of 2012?

A Yes

Q Let's take a look at Government's 403 for identification, please Just blow up the small text Just blow up the top, please, Mr Starnes Do you recognize this e-mail exchange, Ms Fulkerson?

A Yes

Q Is this an e-mail concerning the arrangements you helped make for the trip to Cape Cod that you just described?

A Yes

MR. HARBACH: The government offers Government's 403

THE COURT: It will be admitted.

BY MR HARBACH:

Q First question: This is an e-mail from you to someone named Kristen Kaplan Who is that?

A A staff member of Governor McDonnell's or Ms McDonnell's

Q And then the text is small so I'll read this one for you Tell me if I read it okay "I'm sorry for the delay in returning this e-mail I've made reservations at Chatham Bars Inn in Cape Cod, MA for Friday, August 31st and checking out (requested a late check-out) September 3rd. I have a total of four room/suites booked and paid for per Jonnie's instructions " Did I read that right?

A I believe so

Q Had Mr Williams in fact instructed you to make these arrangements?

A Yes

Q Now, what's your recollection of who went on this trip?

A Jonnie and Celeste Williams, Mr and Ms McDonnell, Dr and Ms Ladenson, and Mr And Ms Phil Cox and their toddler

Q Who is Phil Cox?

A I don't know

Q Were you involved in making flight arrangements in connection with this trip?

A On the Starwood Aviation jet, yes

Q Let's take a look at Government's 408, please Is this paperwork related to the flight arrangements for the trip to Cape Cod that you have just been describing?

A I believe so.

MR. HARBACH: The government offers Government's 408

THE COURT: It will be admitted.

BY MR HARBACH:

Q What was the date of the trip up to Cape Cod, ma'am?

A This one is dated August 31st, 2012.

Q All right You can take the exhibit down Apart from the hotel accommodations that you have already talked about, do you recall being involved in helping make any other arrangements for recreation and the like on the trip?

A Yes

Q What do you remember?

A I remember I made yacht reservations for a day of yachting, sailing; golf reservations or golf tee times; and spa times for the women.

Q Now, after the trip, did you have any --

A Oh, and dinner reservations Sorry

Q Okay After the trip, were you involved at all in helping fill out paperwork at the request of the Governor's Office?

A Yes

Q Let's take a look at Government's 410, please This is a two-page document I'm going to show you Page 1 and then ask Mr Starnes to let you see Page 2

THE COURT: Could you hold up a second?

MR. HARBACH: Yes, Your Honor

THE COURT: Go ahead

BY MR. HARBACH:

Q Thank you, Your Honor Ms Fulkerson, the documents you have just looked at that are Government's 410, do you recognize those to be the documents that you prepared in correspondence with the Governor's Office following the trip to Cape Cod?

A Yes

MR. HARBACH: The government offers Government's 410

THE COURT: It will be admitted

BY MR. HARBACH:

Q Okay Now, the first page, let's just blow up the text there Actually, before we do that, Mr Starnes, do you recall where you got this form from, Ms Fulkerson?

A The Governor's Office would have sent it to me

Q Was this standard practice for them?

A Pretty much. If they needed it filled out they would send me the form.

Q I see And in this particular case, the block that's filled in, Date of Contribution, is August 31st of 2012 and then the details, it says, "From Richmond, Virginia to Hyannis, Massachusetts " Is this connected with the Cape Cod trip we have been talking about?

A Yes

Q All right And in Contribution Information on this one, it has "Flight Checked" and there is an amount listed there?

A Yes

Q What was the amount?

A $1,299 74

Q And then let's look at Page 2, please By the way, did you have an understanding of what the purpose of these forms was?

A I believe it was for reporting purposes on the Governor's staff's end

Q Understood. This second page of Government's 410 includes some more contribution information And is this your handwriting on both of these pages?

A Yes

Q There's some amounts listed there, and some math calculations that were done And I don't intend to walk you through all of those except to ask you this question: Did you make an effort to calculate some, only some portion of the expenses associated with the trip to attribute to the McDonnells?

A I did

Q Instead of just putting the whole number on there?

A Correct

Q You can take down 410, please Were you involved in making additional travel arrangements for another member of the McDonnell family also on Labor Day weekend of 2012?

A I believe so

Q Let's take a look at Government's 401, please. Ma'am, do you recognize this to be an e-mail exchange between you and Rachel McDonnell on the subject of travel arrangements you were making for her?

A Yes

MR. HARBACH: The government offers Government's 401

THE COURT: It will be admitted

BY MR. HARBACH:

Q The first place I'd like to start is on the second page, at the bottom. If you can blow that e-mail up, please This one says, "Jonnie asked me to contact you to get details on your trip to Florida so I can make the flight reservations, et cetera " Did I read that right?

A Yes

Q Did Mr Williams in fact get in touch with you about this?

A Yes

Q What do you recall about how this came about?

A Jonnie asked me to call or contact, e-mail Rachel McDonnell because she was going to Florida for the weekend with a girlfriend

Q Okay Now, if we could look back at Page 1, the e-mail at the bottom first, please Now, this is from Rachel McDonnell to you.

A Yes

Q And it says: "We are hoping to leave Wednesday, August 29th in the early evening and come back Monday, September 3rd in the evening "

Is that the same weekend that the McDonnells, the parents McDonnell, and the Williamses were in Cape Cod?

A Yes

Q All right Let's back out and look at the e-mail at the top, please. This is an e-mail from you to Mr Williams at his private account; is that right?

A Yes

Q What do you ask him?

A "Do I get her a commercial flight," or is he going to be around to take her down, basically, in the jet

Q Could you explain what you mean by that?

A I asked him do I get her a commercial flight or is the jet going to be in Richmond and that Rachel McDonnell could, or wherever she was, to fly on the jet

Q Okay Let's take a look next at Government's 404, please Ms Fulkerson, do you recognize this to be another e-mail in your exchange with Rachel McDonnell concerning this trip?

A Yes

MR. HARBACH: The government offers Government's 404

THE COURT: It will be admitted.

BY MR HARBACH:

Q Could you read us the first couple of lines there, please?

A "I just talked to Jonnie (JW) He is going to pick you up in Tampa on Wednesday Just need to -- what time and where and where " It should have been "where and when " "Also, you will be staying at the condo located located at --"

Q And then the address is blacked out?

A Yes

Q When you wrote "He is going to pick you up in Tampa on Wednesday," what did you mean by that?

A He is going to pick you up by vehicle, by automobile

Q We are not talking about the jet here

A Correct

Q And then the next paragraph, "And JW said you are going to drive his white Range Rover"?

A Yes

Q Same vehicle we were talking about before with respect to Smith Mountain Lake?

A It may not have been the exact same one, but one just like it

Q Okay And then it says, "He will get the passes to Ritz Carlton Beach Club for you and take care of all that when you get there " Did I read that correctly?

A Yes

Q Do you recall why you needed to cancel her flight?
A I don't remember
Q Okay To your recollection, did she fly down commercial or did she use Mr Williams' jet, or do you recall?
A If he picked her up in Tampa that would have meant she flew commercial
Q Understood. You can take down 404, please Let's take a look at, well, let me just ask you before we show you the document Were you involved in helping make any other arrangements for Rachel McDonnell's trip to Florida besides the flight exchange e-mails and transportation?
A Yes
Q What were you involved in?
A Arranging for her to go out on a yacht that Jonnie had access to
Q Okay Let's take a look at Government's 414, please Is this paperwork related to that arrangement for the yacht?
A Yes
MR HARBACH: The government offers Government's 414
THE COURT: It will be admitted.
BY MR. HARBACH:
Q Now, you said a moment ago that this was a yacht that

Mr Williams had access to Did he own it?
A No
Q What does it indicate was the, on the left-hand side, the date there?
A September 3rd, 2012 I'm sorry, the date of the trip was September 2nd, 2012
Q Okay Did you pay this invoice?
A I'm not sure if I paid it or Star Scientific paid it
Q Understood You can take down 414, please New subject At some point along the way, were you involved in helping to make arrangements for a high-dollar wedding gift for Jeanine McDonnell and Adam Zubowsky?
A Yes
Q What kind of high-dollar gift are we talking about?
A A whole-house generator
Q And whose idea was it to get that as a gift?
A Jonnie Williams'
Q So what did you do to help look into that?
A I was asked to contact contractors in the Virginia Beach area to set up an estimate and installation
Q Did you do that?
A I did.
Q Let's take a look at Government's 428 for identification, please Do you recognize this e-mail exchange, ma'am? I can show you more of it if you need me

to.

A I just can't see it Yes

Q Is this an e-mail exchange you had with a company in your efforts to procure a generator for Jeanine McDonnell and her groom-to-be?

A Yes

MR. HARBACH: The government offers Government's 428

THE COURT: It will be admitted.

BY MR HARBACH:

Q Let's start at the top There is an attachment that says Michael & Son CCAF Can you read that there?

A I can

Q What's Michael & Son?

A It is the company I contacted about the generator installation.

Q All right And did you in fact get an estimate?

A After this was completed, yes

Q Okay Let's take a look at Page 5 of Government's 428 This says it is a credit card authorization Did you fill this out?

A I did.

Q Why did you need to do this?

A Michael & Son would not give the estimate without a credit card authorization

Q Okay Now, at the bottom of Page 5 here, there is a signature And let me ask you, do you know, is that Mr Williams' signature or is this another example of you signing his name for him?

A I believe this is my signature that he directed me to sign for him.

Q Okay And what's the date of this one, 10-13 --

A 2012

Q All right Before we go further on the generator issue, during your time for Mr Williams, have you also worked as a Notary Public?

A Yes

Q And from time to time, while you were working for Mr Williams, would you ever notarize his signature when you had in fact signed it?

A At his direction, telling me to sign it, yes

Q Now, back to the generator for Jeanine McDonnell and Adam Zubowsky Did Mr Williams in fact end up getting a generator for them?

A No

Q Why not?

A The logistics of trying to get it installed, the cost, it was more than what he thought it was going to be, and the logistics of trying to get it installed long distance was too much

Q Did he give them a different gift instead?

A Yes

Q What did he direct you to help prepare for them?

A A check. And he also gave them first class tickets for their honeymoon, airline tickets

Q Airline tickets Do you recall how much the check was?

A I believe it was $10,000

Q Let's take a look at Government's 442, please, for identification I can do it with paper if it suits the Court Here we go Ms Fulkerson, can you see the screen there okay?

A No It is still blank.

MR. HARBACH: Can I tender a paper copy to the witness for identification?

THE COURT: Sure

THE WITNESS: Oh, here it is Stop.

BY MR HARBACH:

Q Is this an e-mail exchange between you and Mr Adam Zubowsky related to this issue we have been talking about?

A Yes

MR. HARBACH: The government offers Government's 442

THE COURT: It will be admitted.

BY MR HARBACH:

Q What's the date of this e-mail, ma'am?
A December 20th, 2012
Q It says, "I know I have your address somewhere but for the life of me I can't lay my hands on it" and so on. Why did you need Mr Zubowsky's address?
A In order to mail the check
Q The gift check we have been talking about?
A I believe so, yes
MR. HARBACH: Excuse me one second, Your Honor
(Counsel conferring with co-counsel)
BY MR HARBACH:
Q My colleagues point out I haven't asked you who Adam Zubowsky is Do you know who he is?
A I believe he is now Jeanine McDonnell's husband
Q How is Jeanine McDonnell related to Mr and Ms McDonnell, if you know?
A Daughter
Q Do you know whether Mr Zubowsky worked for Mr McDonnell?
A I believe so.
Q Do you know in what capacity?
A I can't remember
Q Okay Were you involved at all -- this is a new subject Were you involved at all in helping to make arrangements for a trip to Savannah, Georgia for other

members of the McDonnell family in January of 2013?

A Yes

Q Do you have, a recollection of that?

A Yes

Q Tell us what you recall

A I remember being contacted by telephone in the evening by Ms McDonnell telling me that Jonnie had okayed flights, commercial flights for the girls, and I can't remember which girls, their daughters, for the bachelorette party for one of them.

Q Okay And this is for the trip that I asked you about?

A Yes, I'm sorry Yes

Q That's quite all right Apart from the conversation you just related, have you ever talked to, excuse me, spoken to Ms McDonnell yourself besides that one time?

A Not that I can remember

Q Okay Let's take a look at Government's 464, please

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Q Now, I'm going to represent to you, Ms Fulkerson, that this is a text message Okay?

A That's fine

Q Do you recognize it to be one between yourself and Jonnie Williams on this subject?

A Yes

MR HARBACH: Your, Honor the government offers Government's 464

THE COURT: It will be admitted

BY MR HARBACH:

Q All right Could you read this one to us, please?

A Just the body of the text?

Q Yes, ma'am

A It says, "1st lady of va called Tried to call u She is looking for flights round trip to Savannah for 2 of her girls For Jeanine bachelorette party Is it ok to book for points?"

Q What do you mean by that last question?

A "To book for points"?

Q Yes, ma'am

A Jonnie has a lot of American Express points, and you can book flights and pay for them with his points so it doesn't cost him dollar wise

Q I see So we're talking about commercial flights here?

A Yes

Q Not the private jet?

A Correct

Q Do you know if Mr Williams agreed to that request?

A Yes

Q Did you, in fact, purchase tickets on points for two of the McDonnells' daughters?

A Yes

Q Do you recall which ones?

A I'm guessing Caitlin or Rachel Cailin or Rachel I'm sorry

MR HARBACH: May I please have one second, Judge?

THE COURT: Sure

(Counsel conferring with co-counsel)

MR HARBACH: For refreshment purposes only, I'd like to show the witness Government's 467, page 4 Just the bottom e-mail, please, Mr Starnes

BY MR HARBACH:

Q Ms Fulkerson, does taking a look at this help you remember which two daughters you made these arrangements for?

A Yes

Q Okay Which two? Can you take a look at --

A Rachel and Cailin

Q I'm sorry?

A Rachel and Cailin McDonnell

Q Thank you, ma'am Okay New subject Do you recall Mr Williams ever telling you that Ms McDonnell had sent him a box with items he had purchased before -- purchased for her along with a note? Did he ever tell you that?

A No

MR HARBACH: May I please have a moment, Judge?

THE COURT: Yes

(Counsel conferring with co-counsel)

MR HARBACH: Thank you, Your Honor I have no further questions at this time

THE COURT: All right We'll take our morning break now, 15 minutes If you all would follow the marshal

(The jury left the courtroom)

(Recess taken from 11:16 a m until 11:34 a m)

THE COURT: All right Let's bring in the jury, please

(The jury entered the courtroom)

THE COURT: All right Cross-examination

MR BROWNLEE: Thank you, Judge

CROSS-EXAMINATION

BY MR BROWNLEE:

Q Good morning, Ms Fulkerson How are you today?

A I'm okay

Q Good My name is John Brownlee and I'm an attorney for Bob McDonnell, and I'm going to ask you just a few questions this morning Okay?

A Okay

Q Thank you very much Now, I believe that you testified that you've worked for Jonnie Williams for a very, very long time; is that right?

A Yes

Q Okay And you've been his personal assistant I believe since about 1996, '98?

A '98

Q Okay

A Sometime around then

Q Okay

A I'm very bad with years

Q Okay That's all right So it's a good long while?

A Yes

Q Okay And is it fair to say that you respect Mr Williams?

A Yes

Q Okay And you like Mr Williams?

A Yes

Q Okay And fair to say that, in your opinion, you've been a loyal employee to Mr Williams for a very, very long time?

A Yes

Q Okay And he has, in your opinion, treated you well over those years?

A Yes

Q Okay Now, you still work for him; is that correct?

A Yes

Q Okay Now, it's my understanding that he no longer works for Star Scientific; is that correct?

A I believe he's still employed with Star

Q Okay But you work for him personally; is that correct?

A I work for Star Scientific as well

Q Okay So you work for the company --

A And for Mr Williams

Q And for Mr Williams Okay So just so I understand and the jury is clear, does your paycheck come from Star Scientific or Mr Williams or both?

A From Star Scientific

Q Okay So you're paid for by the company, but you still are the personal assistant to Mr Williams?

A Yes

Q Okay And he has some affiliation now with the company?

A Yes

Q Okay And you still work for him today, as you sit here today; is that correct?

A Yes

Q Okay And you still work for Star Scientific today; is that correct?

A Okay

Q So as you're sitting here today, you are an employee and being paid for by Star Scientific and Jonnie Williams?

A Correct

Q Now, Mr Harbach asked you a couple things about some bonuses you've received?

A Yes

Q I think one of them was 50 or $60,000 for finding a stock certificate; is that right?

A Somewhere around that range, yes

Q Fair to say Mr Williams is very generous?

A Yes

Q Okay And then I think you testified that you also received a 20,000-dollar cash bonus in January of 2013; is that right?

A Yes.

Q Okay Now, when you received that bonus, did you know that Mr Williams was being investigated at that time for securities fraud?

A I didn't know what he was being investigated for, but

I knew he was being investigated

Q Okay And so after that, after you learned that he was being invest- -- you -- he was being investigated, he gave you $20,000 cash is that right?

A Yes, in lieu of my bonus I was already supposed to get

Q Okay Is it fair to say that the $20,000 bonus was the largest cash bonus you had received to date, at that time?

A I don't remember when I got the other one

Q Okay So it could have been before or after?

A The year-end bonus?

Q Yes

A Yes

Q Okay So the year-end bonus that you received in January of 2013 was the largest year-end bonus you had ever received?

A As cash

Q As cash Okay And you received that from Mr Williams?

A Yes

Q After you knew he was being investigated for securities or some other type of case?

A Yes

Q Okay Now, you are represented by counsel here today is that correct?

A Yes

Q And your lawyer here is Mr George Terwilliger; is that correct?

A Yes

Q And you understand Mr Terwilliger at one time was the Deputy Attorney General of the United States; is that right?

MR HARBACH: Objection

THE COURT: Sustained

BY MR BROWNLEE:

Q He also has an associate working for him; is that correct?

A Yes

Q And that is Dallas Kaplan; is that correct?

A Yes

Q And they have been working with you in preparation for your testimony here both yesterday and today; is that correct?

A Yes

Q Okay And it's fair to say those lawyers are very expensive?

A I guess

Q You guess Okay Are you paying for your lawyers?

A No

Q Okay Star Scientific and Mr Williams taking care of that?

A I believe Star Scientific is paying it

Q Okay So fair to say that the company that Mr Williams has some affiliation with, Star, who pays your salary, is also paying for your attorneys?

THE COURT: We don't need the summary question She's already answered all of that

MR BROWNLEE: Thank you, Your Honor

BY MR BROWNLEE:

Q Now, prior to today, we've never had a chance to meet; is that correct?

A I don't believe so

Q Okay So you and I have never talked before; is that right?

A To the best of my memory

Q Okay Fair enough And yet prior to coming here today, you met with the good folks from the government here on at least four or five occasions; is that right? I think with maybe one or two of them were phone calls, but you've met with them on several occasions; is that right?

A Yes

Q To go over your testimony and to prepare for being here?

A I've met with them to cooperate

Q Okay Now, as Mr Williams' assistant, is it fair to say that you were responsible, from time to time, for paying for his personal bills?

A Yes

Q Okay And so do you also pay the bills for his adult children?

A Yes, some of them

Q And do you pay the bills for Starwood Trust?

A With Donnie's authorization on the unusual bills, yes

Q Okay Let's talk a little bit about Starwood Trust so we kind of understand what that is It's my understanding Starwood Trust is a trust that Mr Jonnie Williams set up for the benefit of his children; is that correct?

A I believe so

Q Okay And that Mr Donnie Williams is his brother who is the trustee?

A Yes

Q Okay So in order for you to write a check from Starwood Trust or to pay a bill from that account, you need to get Donnie Williams' approval; is that correct?

A If it's an unusual bill, yes

Q Okay And if it's an unusual, does that mean high, a lot?

A High or not a monthly bill

Q Okay And then also there's -- you pay the bills for Starwood Aviation --

A Yes

Q -- is that right?

And Starwood Aviation, just so we understand, is the company that holds the airplane that Mr Williams uses; is that right?

A Yes

Q Okay So -- now, Starwood Aviation is separate from Star Scientific; is that correct?

A Yes

Q Okay So if Mr Williams were to use the aircraft for the benefit of Star Scientific, then Starwood Aviation would bill Star Scientific; isn't that right?

A Yes

Q Okay And who are the owners of Starwood Aviation?

A Jonnie Williams

Q Okay So Jonnie Williams is 100 percent owner of Starwood Aviation?

A Yes

Q And he's the largest shareholder of Star Scientific; is that correct?

A I believe so

Q Okay And so when he would use the plane for the benefit of the company, Star Scientific, Starwood Aviation, from which he's 100 percent owner, would make money; isn't that right?

A I don't really know if they made money

Q Okay

A The agreement was we would bill it at cost, plus maintenance

Q I see Now, you discussed some instances in which you signed documents for Mr Williams; is that correct?

A Yes

Q Okay And I think you've testified or you've stated that you -- when you first came on board you kind of took the time to learn how to copy his signature; is that correct?

A At his direction

Q The answer is yes?

A Yes

Q Okay And you did that because Mr Williams asked you to learn how to sign his name?

A Yes

Q Okay And -- now, are you left-handed?

A No

Q Okay Mr Williams is; is that correct?

A Yes

Q Okay So you kind of had to learn how to write his signature with your right hand or your left hand?

A My right hand

Q Okay So you had to -- how long did that take to kind of learn how to get Mr Williams' signature down?

A I don't remember

Q Okay Is it fair to say that you've looked over some documents here over the past month or so and you've had difficulty determining which one Mr Williams signed and which one you signed?

A Yes

Q So it's a pretty good copy of it; is that right?

A I guess

Q Okay All right Now, is it fair to say that you would sign on his behalf more than just bills for companies that we talked about? Is that right?

A Yes

Q Okay And, in fact, I think it's fair to say you would sign whatever Mr Williams asked you to sign?

A What he directed me to, yes

Q Okay Now, I think that counsel asked a little bit, you are a notary public; is that right?

A Yes

Q Okay And so we're all clear, a notary public is an official, designated by Virginia law, to notarize; that is, kind of confirm under oath signatures; is that

correct?

A Yes

Q Okay And as a notary, fair to say that you took an oath that you would faithfully perform, to the best of your ability, the duties of the office of notary public?

A Yes

Q Okay And essentially what you are attesting to when you are a notary is that the person is, in fact, in your presence, correct?

A Yes

Q And that the person who is signing the document is, in fact, signing the document?

A Yes

Q Okay Now, you do understand that it could be a crime under the laws of Virginia to notarize a document if the signor is not in the presence of the notary at the time the document is signed?

A That's not for me to determine I don't know

Q Okay Now, when you became a notary, did you -- did you take any training?

A You read a book

Q Ma'am?

A I believe you read a book

Q Okay And in that book did it describe Virginia Code 47 1-15 that goes through the fact?

A I'm guessing it does

Q Okay And you do understand that when you are a notary and you notarize a document, you are attesting to the fact that that person is, in fact, there?

MR HARBACH: Objection We've been over this

THE COURT: The objection is overruled Go ahead You can answer

A I'm sorry Could you repeat the question?

BY MR BROWNLEE:

Q Well, let me ask it this way Mr Williams, most of the time, lived in Florida; is that correct?

A Over the years, it's half and half, I guess

Q And he would ask you, from time to time, to sign documents for him and then notarize them, and you would do that; is that correct?

A Yes

Q Okay And so you would essentially forge his signature and then notarize that he was there when he was not?

A I don't know if you would call it forgery

Q Okay

A I'm just -- I did what he told me

Q Okay And so he asked you to -- to sign his name for him; is that correct?

A Yes

Q Okay And he wasn't there?

A Correct

Q Okay And then you notarized it, you put the seal on it and attested to, pursuant to being a notary?

A Yes

Q Okay Now, I believe, Ms Fulkerson, you had met with the government three times, and during those three times, this whole notary issue was never raised; is that right?

A I don't remember We met about a lot of things

Q Okay

A Okay?

Q Is it fair to say that this whole notary issue came up fairly recently?

A I believe so

Q Okay And is it fair to say that recently you informed the government that you would not testify unless you were immunized, provided immunity from prosecution for all the things that happened with Mr Williams unless -- and you wouldn't testify unless they granted you immunity; is that correct?

A I don't know what immunity is My lawyers went to the government or to the judge to protect my constitutional rights

Q Okay So Mr Terwilliger, who's paid for by Star, went to the government and said you won't testify unless you got some protection Is that fair?

MR HARBACH: Objection

THE COURT: Overruled

A I -- I've always been willing to cooperate and to be truthful I felt like I needed some protection and my constitutional rights upheld

BY MR BROWNLEE:

Q Okay And that protection is because you did some things based on what Mr Williams asked you to do?

A That's not for me to judge I just felt like I needed my protection

Q Okay Well, can you tell me what you think you needed protection for?

A I just wanted my -- none of my own words to be used against me I just wanted my constitutional rights upheld

Q Okay And so -- okay Well, let me move along

Now, it's my understanding that what you told the United States in all your interviews is that you never signed anything for Mr Williams in an effort to help him kind of cover up something; is that correct?

A To the best of my knowledge, I've never signed anything to help him cover up anything

Q Okay And so -- can we -- Your Honor, can we pull up, just for the witness and counsel, not for the jury, RM-1970? And can you show me the last page of that, please? Okay

BY MR BROWNLEE:

Q Ma'am, I'm going to show you what has been marked as RM-1970, and in looking at this document, is your signature on it?

A Yes

Q Okay And is this your certificate of notary?

A Yes

Q Okay And can you read the part there that begins, "On December 31st, 2007," for us?

A "On December 31st, 2007, before me, Jerri M Fulkerson, a notary public in and for said state, personally appeared, Jonnie R Williams, known to me, parens, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument, and acknowledged to me that he or she executed the same in his or her authorized capacity and that by his or her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument "

Q Okay And then you signed that --

A Yes

Q -- attesting to that?

MR BROWNLEE: Okay Can you go to the other page?

BY MR BROWNLEE:

Q Okay And if you look at the last part there, I believe you stated that on this document, this is actually your signature for his; is that correct?

A I believe it is

Q Okay And so fair to say that Mr Williams came to you or called you and said, "I need you to sign this document for me," and you did so and then attested that he was actually there?

A I attested that he actually executed it

Q Okay And that he signed it?

A If that's what the whole blurb says, yes

Q Right Right But you signed it?

A Yes

MR BROWNLEE: Can you pull it back up?

BY MR BROWNLEE:

Q Now, if you look there, the date is 12/31/07?

A Correct

Q Okay And that's the date that he -- that you purportedly signed it on his behalf?

A Yes

MR BROWNLEE: Okay And can you go back to the front page, please? First page

BY MR BROWNLEE:

Q Okay And this is a loan document in which Mr Williams is loaning money to a company of his called Starwood Industries, Inc ; isn't that right?

A Yes

Q Okay And he's loaning a company that he owns a million dollars on the last day of the year for December 31, 2007; isn't that right?

A I don't remember this document, but yes

Q That's what it looks like?

A That's what it looks like

Q Now, let me just ask you, Ms Fulkerson, do you recall, in this instance, that Mr Williams asked you to prepare this document after the end of the year; that essentially what he wanted you to do was to prepare this loan document and then backdate it? Do you remember that?

A I don't remember the document So no, I don't remember that

Q Okay Let me -- let me show you -- just for her -- RM-1969

MR BROWNLEE: If you'll blow up the top part, please

BY MR BROWNLEE:

Q Now, Ms Fulkerson, this is an e-mail sent to you, it says Jonnie Williams, but we've seen, from the prior testimony, that you control his e-mail account And for 14 95, you purchased this LoanBack, Incorporated document to create this loan; isn't that right?

A I purchased a LoanBack document on February 8th

Q Right And so you got this LoanBack document, which is just a good old standard legal document that you can get on-line to create a loan, but here you're getting it on February 8th and you see it was signed on December 31, '07, correct?

A It may not be the same one

Q It may not be the same one

A I've got them before

Q Okay So you just don't recall whether or not you got this one in February of '08 and then used it in December of -- at the end of the year '07 to backdate that loan?

A Correct

Q Okay And were you aware that by backdating that loan Mr Williams was able to reap a windfall of about $300,000 on his taxes?

MR HARBACH: Objection

THE COURT: Sustained

BY MR BROWNLEE:

Q Okay Let me show you 1966 Thank you Now, Ms Fulkerson, this is a -- what they call an Affidavit of

Inventorship, which -- and you've been shown this before, in which you've acknowledged that this is, again, your signature and not Mr Williams'; is that correct?

A It may be

Q Does it look like it may be yours?

A Possibly

Q Okay And it's dated December 3rd, 2010, correct?

A Yes

Q Okay Is that the right date or is that -- could that be a different date?

A I don't know

Q Okay

A I don't -- I don't remember the document So I don't know

Q Okay Is it fair to say that from time to time, Mr Williams asked you to put different dates on documents?

A No I don't remember him ever asking me

MR BROWNLEE: Okay Now come down a little bit on the document

BY MR BROWNLEE:

Q And, again, this is your notary signature affirming that, in fact, Mr Williams was present when this could be your signature, right?

A Yes

Q Okay And you understood that -- if you go back to the top part -- that Frank O'Donnell here, mentioned in the document, was a former business partner of Mr Williams, correct?

A Yes

Q And at the time this document was used, Mr O'Donnell was going through a divorce in Arizona; is that correct?

A I don't know

MR HARBACH: Objection

THE COURT: If she knows You can answer the question

A I don't know I don't know when his divorce was

BY MR BROWNLEE:

Q Okay Do you recall being asked to send this affidavit to a court for use in a proceeding?

A I don't remember the affidavit So no, I don't remember it

Q Okay All right Thank you

MR BROWNLEE: Let me look up 1967 All right And if you'll turn to page 2, please

BY MR BROWNLEE:

Q Again, now, Ms Fulkerson, this is a Bank of America authorization to re-register securities form

A Okay

Q And here once again, you are the notary on the document; is that correct?

A Yes

Q And that's your signature on it, correct?

A Yes

Q Now, I believe you've told the government that this signature here is -- is not Mr Williams' It's, in fact, yours; is that right?

A I believe it -- I believe that's true

Q Okay So that's not -- so you signed that for him?

A I believe so

Q Okay And that was dated January 27th, 2009; is that correct?

A Correct

Q And then to the right there is Celeste Williams?

A Yes

Q Okay And you signed for her as well; is that correct?

A No She signed

Q She signed?

A That's her signature

Q Okay So was she there in Virginia when you did that?

A I believe so

Q Okay But Mr Williams was not?

A That's possible

MR BROWNLEE: Okay And then if you go to the -- I think the top of that page, please

BY MR BROWNLEE:

Q And this was sent to Bank of America; is that correct?

A I believe so

Q Okay And if you go to the top there -- I think if you go a little higher -- you see there's a facsimile indicator --

A Yes

Q -- is that right?

A Yes

Q Okay So you sent this document, false document, by facsimile to a bank, correct?

MR HARBACH: Objection

THE COURT: Sustained

BY MR BROWNLEE:

Q Did you send this document to a bank?

A It appears I faxed this document to a bank

Q Okay And this document has Mr Williams' signature on it, but, in fact, you signed it; is that right?

THE COURT: She said that

MR BROWNLEE: Thank you, Your Honor

All right Let's look up 1975 If you'll go down, please, thank you, to the next page, to the last page Okay

BY MR BROWNLEE:

Q Now, again, this is a BB&T Note Modification Agreement, and is, again, this your notary on this?

A Yes

Q Okay And if you go to the page before, there's a signature apparently of Mr Williams, and, again, does that appear to be his signature or yours?

A I can't tell

Q You can't tell Okay

BY MR BROWNLEE:

Q Let me -- we can take this down Thank you

Let me change direction here a little bit I think you talked about you were responsible for making payments from the Starwood Trust; is that correct?

A Yes

Q And I think you testified Mr Williams set this trust up for the benefit of his children?

A Yes

Q Okay And you understood that by law, that's what it had to be used for because it was a trust?

A Yes

Q And his brother, Donnie Williams, was the trustee; is that correct?

A Yes

Q Okay And fair to say that Mr Jonnie Williams really controlled this trust and used it however he wanted to; is that right?

A It's -- I don't know -- I -- I'm not Jonnie I don't know

Q Okay Now, when Mr Williams was low on cash, which he would be from time to time, fair to say you would then take money from the trust and give it to him; is that right? I mean, he would ask you to do this?

A Well, the trust owes Mr Williams -- Mr Jonnie Williams a small fortune, in my opinion

Q Okay So -- so just to go back to my question, then, so then on time to time, Jonnie Williams would call you and say, "Can you get some money from the trust and give it to me"?

A I would have to call Donnie and ask Donnie could the trust repay Mr Williams

Q Okay

A Part of the loans --

Q And Donnie would typically approve that, right?

A Some -- I guess If there was a question, they would talk about it

Q All right

MR BROWNLEE: Can we look at 1742, please? Can we blow up the bottom part first? Thank you Sorry about that

BY MR BROWNLEE:

Q Ma'am, this appears to be an e-mail from Jamie Madry to you?

A Yes

Q Do you know who Jamie Madry is?

A It was the accountant

Q The accountant Okay And what she asked to you do was to verify apparently that Mr Williams, in December of 2012, was going to buy a new plane; is that right?

A Yes

Q Okay And she's -- she says, "I believe at the meeting that Jonnie said that the trust has already loaned the money to Jonnie for purchase of the jet"; is that right?

A That's what it says

Q All right And this is the Starwood Trust that we're talking about, correct?

A Yes

MR BROWNLEE: Could we go up to the top part of it?

BY MR BROWNLEE:

Q And this is another e-mail from you It says, "Ok Trust to Jonnie $3,605,000 for new jet"; is that correct?

A Yes

Q So Jonnie used the trust for his children to buy a 3 6 million-dollar plane for himself; is that right?

A Jonnie got repaid from the trust It was a -- it was ultimately to Aviation, but I was told -- I'm not an accountant I was told how it had to go It couldn't go from trust to Aviation

Q Okay

A It had to go from trust to Jonnie to Aviation

Q Right But the trust, which appears to be the starting point for this, is a trust that was established for the benefit of his children?

A Yes

Q And so the 3 6 million went from his trust to Jonnie to Aviation to buy a 3 6 million-dollar plane?

A Yes

Q Okay

MR BROWNLEE: You can take that down Thank you

BY MR BROWNLEE:

Q Let me shift gears here a little bit here Now, you testified, I believe yesterday, that Mr Williams donated flights to Governor McDonnell when he was both running for Governor and when he was actually Governor; is that correct?

A I believe so

Q And I think you testified that he did that a lot for the politicians; is that correct?

A He's done it for other politicians, yes

Q Okay And is it fair to say that public officials, politicians request Mr Williams, ask him to use his plane often; is that right?

A Yes

Q Okay And so when Mr Jerry Kilgore was in public service, he used Mr Williams' plane; is that correct?

A I believe so

Q Okay And former Attorney General Ken Cuccinelli used his plane; is that correct?

A I believe so

Q And former presidential candidate John McCain used his plane; is that correct?

A I can't remember

Q Okay How about former presidential candidate Mitt Romney?

A Yes

Q Let's change a little bit here Now, you testified yesterday about a dinner that was held at the Governor's Mansion for Jonnie Williams in April of 2011; is that correct?

A I believe so

Q Okay And I believe you testified yesterday that only Mr Williams attended that dinner; is that right?

A To the best of my knowledge, yes

Q Okay

MR BROWNLEE: And if we can look at 0869

BY MR BROWNLEE:

Q All right This is the follow-up e-mail to the e-mails that the government showed you yesterday They didn't show you these So I wanted to show you these and see if we could refresh your recollection

THE COURT: We don't need you to editorialize Just ask a question

MR BROWNLEE: Thank you, Your Honor

BY MR BROWNLEE:

Q On -- this is an e-mail on April 25th, and it says, "Jonnie would like to know if it's ok to change his mind and bring Celeste with him to dinner "

A Yes

Q And then the response is, "Of course! Does she have any dietary concerns?"

So Ms Williams attended the dinner, correct?

A Now you've refreshed my memory

Q Okay

A Apparently she did

Q Okay Great

MR BROWNLEE: You can take that down

BY MR BROWNLEE:

Q Now, we've talked about Mr Williams' generosity Is it fair to say that he gives lots of folks gifts?

A Yes

Q And I think you mentioned at one time he spends a lot of money on golf clubs; is that right?

A He does

Q Okay And he --

A In my opinion

Q Okay Fair enough And he buys them for the sales reps Is that fair?

A He has, yes

Q And doctors?

A Yes

Q Okay And he also gives away, I guess, Louis Vuitton bags to people?

A Yes

Q Now, is it fair to say that he would, from time to time, lavish gifts on female friends of his?

A He's very generous, yes

Q Okay And is it true that from 2004 -- 2003 to 2004, he paid some bills for a woman living in South Carolina?

MR HARBACH: Objection May we please approach?

THE COURT: Sustained

BY MR BROWNLEE:

Q Now, you had talked before about Mr Williams' -- I think you called it generosity Do you think it fair to say he likes to impress people with how much money he has?

A I don't know why he does it

Q But he does it?

A He just gives gifts Okay?

Q And he gives a lot of gifts; is that correct?

A I don't know what people consider a lot

Q Okay Fair to say that he would brag to people about how much money he has?

A I -- I've never heard him brag about it that I can recall

Q Okay Let me shift here

MR BROWNLEE: All right Can we show 896? That's the wrong one You can put that down Show 897

BY MR BROWNLEE:

Q Okay Now, this is a -- I think you've looked at this before I think it's in evidence, but we won't put it in evidence since we're using one of ours I apologize But this is a check to Mr McDonnell for $50,000 dated May 23rd, 2011, from Starwood Trust; is that correct?

A Yes

Q Now, you wrote this check at Mr Jonnie Williams' direction; is that correct?

A With Mr Don -- yes, it's correct, with Mr Donnie Williams' approval

Q Okay Mr Jonnie Williams asked you to write this, and then you went and got Donnie Williams' approval?

A Yes

Q And these funds are supposed to be for the benefit of Mr Jonnie Williams' children, right?

A Yes

Q Okay Now, you testified that this loan to Ms McDonnell, I think you said, was two years and 5 percent; is that right?

A Yes

Q And that's what Mr Williams told you?

A Yes

Q Okay But you weren't there when that loan was negotiated; is that correct?

A No

Q Okay And you've never seen a written agreement for that?

A No

Q Okay Now, Mr Williams has, and I believe you've stated before that he has in the past made loans to people without documentation; is that correct?

A Yes

Q Okay Can we show -- now, the check underneath that, the one below it --

A Yes

Q -- for $15,000, again, this is from Starwood Trust?

A Correct

Q And this check, you were asked to prepare this check by Mr Jonnie Williams?

A Correct

Q Okay And the Pay to the Order Of was left blank?

A Yes

Q And Mr Williams, Jonnie Williams, asked that that be left blank?

A Yes

Q Okay And on the bottom there in the Memo line it says "wedding gift"?

A Yes

Q And on the ledger you booked it as a wedding gift?

A Yes

Q Okay

MR BROWNLEE: All right Take that down

BY MR BROWNLEE:

Q Now, you mentioned Mary-Shea Sutherland, and I believe you testified it was your understanding that she was an assistant to Ms McDonnell; is that correct?

A Yes

Q Okay

A I don't know her official title

Q Okay

MR BROWNLEE: Could we pull up 1160?

Your Honor, we may have to do this the old-fashioned way May I approach and show the witness the e-mail?

THE COURT: Just give it to the marshal

MR BROWNLEE: Thank you, sir

BY MR BROWNLEE:

Q Now, Ms Fulkerson, this is an e-mail to you on September 2nd of 2011 from a woman named Abigail Farris Rogers?

A Yes

Q Okay And you remember getting this e-mail?

A I don't remember getting it, but --

Q Okay And when you got it, I think she had some trouble spelling your name, but when she eventually got it, you then forwarded it to Mr Williams?

A Yes

Q Okay

A I believe I did

Q And this e-mail references an attachment; is that correct?

A It looks like it, yes

Q Okay All right And let me show you, if we can, 0004 And this is a document that was attached to that e-mail to Mr Williams from Ms Rogers that references a potential contract between Ms Sutherland and Mr Williams Do you recall that?

A I don't remember seeing it, but it's here

Q Okay

A So --

Q Okay And -- you can take that down

And Ms Sutherland was the person that you coordinated with with this Mansion event or this Mansion launch event that you talked about; is that correct?

A Yes

Q And she was your point of contact for this event; is that right?

A I didn't coordinate the event, but she was the point of contact for -- if I needed something

Q Okay And when there was the hurricane, I guess, and there was some question as to whether or not it would be delayed, you contacted Ms Sutherland to see if it was still on?

A Yes

Q Okay And is it fair to say that you learned that Ms Sutherland was your contact from Mr Jonnie Williams?

A I believe so

Q Okay And just so I'm clear here, when you were told about the point of contact, the point of contact was not a gentleman by the name of Martin Kent?

A No

Q Or Jason Eige?

A Not that I remember

Q Okay It was Mary-Shea Okay

A I believe so

Q Thank you

MR BROWNLEE: Can you pull up 1426?

BY MR BROWNLEE:

Q I believe the government showed you this check, and these were the checks made out to MoBo Realty from Starwood Trust; is that correct, ma'am?

A Correct

Q And I believe that there were three of them prepared, two had to be voided and then one actually was sent?

A Correct

Q Okay But on the first one, it's made out to MoBo Realty, Attention Maureen Uncapher; is that correct?

A Yes

Q And the second one was still made out to MoBo Realty, correct?

A Yes

Q And the third one was as well?

A Yes

MR BROWNLEE: You can take that down

BY MR BROWNLEE:

Q All right Let me show you 1958 Ma'am, this is a text message from you to Mr Williams in April of 2013

Do you know who Talhia is?

A I believe her last name is Tuck She is -- she was the communications person for Star Scientific

Q So she dealt with the press; is that correct?

A Yes

Q And you are here telling Mr Williams that "Talhia sent draft 3 of press release What do you want me to do?" Do you remember what you were sending him and what you were doing here, what this related to?

A It relates to the third draft of a press release

Q Okay

A What did he want -- what did he want me to do

Q Okay And did this press release have to do with the company's response to the federal investigation?

A I have -- I have no memory

Q You can't --

A I don't know

Q Okay Thank you Now -- Court's indulgence for one second, Your Honor

(Counsel conferring with co-counsel)

BY MR BROWNLEE:

Q Let me show you, ma'am, 725

MR BROWNLEE: If you'll go down to the bottom

BY MR BROWNLEE:

Q This is an e-mail, it says Jonnie Williams, but I believe it's from you, to Janet Neal, who worked for Attorney General Cuccinelli And can you tell us what you were doing here in this e-mail, ma'am?

A It says, "Jonnie is in New York today and" --

MR HARBACH: Object to the witness reading from a document not in evidence

THE COURT: Sustained

BY MR BROWNLEE:

Q Can you just tell us what you were trying to convey here? Please don't read it I apologize

A He would like to get an appointment with Attorney General Cuccinelli

Q Okay And do you recall, were you able to do that?

A I don't remember

Q Okay Fair to say, though, Mr Williams met with a lot of different public officials from time to time?

A Yes

Q Okay

MR BROWNLEE: Let's see 1179, please If

you'll go down to the bottom

BY MR BROWNLEE:

Q This is an e-mail from Attorney General Cuccinelli to you requesting permission to use the aircraft to go from Manassas to Louisville, Kentucky Do you remember that?

A Not particularly, but I see the e-mail

Q Okay And if you scroll up, your response there is, "The jet is all yours " So, again, he's requesting to use the aircraft personally, and you authorized it?

A I don't know if it's personal or business wise, but Mr Williams --

Q No, no I apologize It wasn't for personal, but it was he personally requested This e-mail actually came from the Attorney General himself, correct?

A Yes

Q Okay Excuse me And you would not have authorized that unless Mr Jonnie Williams gave you permission; is that correct?

A Correct

Q Okay

MR BROWNLEE: Let me see 1988 I'm sorry, 19 -- yeah 1988 All right And if you'll just highlight the bottom portion there

BY MR BROWNLEE:

Q All right Now, this is an hand e-mail from Teiro

Cuccinelli --

MR HARBACH: I'm sorry, Your Honor I have to object to counsel reading from a document not in evidence

THE COURT: Just ask the questions you want If you want it admitted, then we can deal with it completely, but the way you're doing it Ask her a question about it

MR BROWNLEE: All right Yes, sir

BY THE COURT:

Q Is this an e-mail from Ms Cuccinelli?

A It appears to be

Q And it's dated in June of 2012; is that correct?

A Yes

Q Okay And she is thanking you for allowing she and her family to use the lake house at Smith Mountain Lake; is that correct?

A Yes

Q Okay Fair to say that Attorney General Cuccinelli and his family used the lake house on occasion?

A Yes

Q Okay More than once?

A I believe so

Q Okay And this is her just thanking you for that?

A It appears to be

Q Okay All right

MR BROWNLEE: Can 1 show 1989?

BY MR BROWNLEE:

Q Let me show you the bottom portion of this, and this is an e-mail from you to Elaine Thompson Do you know who Elaine Thompson is?

A A receptionist/secretary at Star Scientific

Q Okay And this is an e-mail reflecting that you are sending Attorney General Cuccinelli's mother-in-law more Anatabloc?

A Yes

Q And you did that from time to time?

A Yes

Q And did you send a lot of it to her

A I can't remember

Q Okay More than once?

A It says "more," so I would think so

Q Okay Thank you This is Government's Exhibit 410, and I believe Mr Harbach showed it to you and it is in evidence So I believe that it can be -- subject to the Court's approval, it can be seen

THE COURT: It's been admitted already

MR BROWNLEE: Thank you, Your Honor

BY MR BROWNLEE:

Q This is a -- just so I understand, this is a document that when a politician or a public servant were to accept a gift or travel from your company, Star Scientific, they would send this to you, and then you would fill it out and figure out an amount, and then that way the politician can take that amount and put it on a public disclosure form. Is that your understanding?

A I'm not sure what the government's or the politician's office does with it If they asked me to fill it out, I filled it out

Q And if you look at the -- next page, sir Thank you

Down in the middle part of it, you've come up with an estimate of whatever the value the company believes is appropriate and that's what you submitted?

A I believe so

Q Okay Now, is it fair to say that -- so in this case it's $6083; is that right?

A Yes

Q Okay Is it fair to say that if you don't get this sent to you, then you can't fill it out? Is that -- that makes sense, but is that fair to say?

A Yes

Q Okay And in this case someone from Mr McDonnell's staff apparently sent this to you in an e-mail; is that right?

A I would think so, yes

Q I mean, the Governor didn't personally send this to you Somebody who worked for him did?

A I'm guessing

Q Okay All right And then they filled it out as best you could, and you sent it back so they could do whatever they needed to do with it?

A That's correct

Q Okay Now, you had talked about -- thank you very much

You had talked about some -- a trip that Rachel McDonnell took down to Florida, I think with a girlfriend of hers, and stayed at one of Mr Williams' condominiums; is that correct?

A It's his brother's condominium, but yes

Q And Rachel is Mr McDonnell's daughter?

A Correct

Q Okay Now, did you get one of these forms that we just discussed here, did they send you one of those to fill out?

A I don't remember

Q Okay All right All right And you also talked about that the Governor's daughter and her friend used a dock or a boat while they were down there; is that correct?

A Yes

Q And you said that that wasn't Mr Williams' -- it was not Mr Williams' boat; is that right?

A No

Q Okay Do you know, is that John McKeon's boat?

A I believe it is

Q Okay Did you receive one of these forms to fill out for Rachel McDonnell using Mr McKeon's boat?

A I don't remember

Q All right Now, you had talked about Adam Zubowsky, who married Mr McDonnell's oldest daughter There was this effort for Mr Williams to give them a generator?

A Correct

Q And were you aware that that was what Mr Williams was trying to give them as some sort of engagement gift?

A I believe it was a wedding gift

Q Wedding gift Okay And he didn't give the generator He ended up giving a 10,000-dollar wedding gift?

A Correct

Q Do you remember if anyone sent you one of these forms to fill out?

A I don't remember

Q Okay All right And I'll ask you as well, you had talked about some flights that Mr Williams used -- he had some points And so he gave some points to fly some of the children to some event; is that right?

A Yes

Q To Savannah, Georgia, I think you said?

A Yeah I believe it's Savannah

Q Savannah Okay And you don't remember getting one of these forms to fill out, do you?

A No

Q Now, let me ask you this You had testified that on one occasion you actually spoke to Ms McDonnell; is that correct?

A Yes

Q And is that the only time you remember talking to her?

A The only time I can remember

Q Okay But you were aware that -- that Mr Williams, Jonnie Williams, was very close with Ms McDonnell; is that correct?

A I don't know how close they were

Q Okay

A I know they talked

Q Okay Well, let me ask you, then Were you aware that in about 15-month period, beginning in April of 2011, that they had over 1,200 either cell phone calls or text message transfers?

A No

Q Were you aware that they traveled to Michigan together?

A Yes

THE COURT: She says she doesn't know how close they were You can ask ten of these "were you aware" questions She doesn't know She doesn't know Ask a question that she can respond to

MR BROWNLEE: I think she said she did know, sir

A The Michigan trip was for business

MR BROWNLEE: Okay So I -- I think --

BY MR BROWNLEE:

Q Did you know they went to California?

A Give me some more detail here

Q Okay They went to a nutraceutical event in both Salt Lake City and then also a trip to California?

A With other people

Q So the answer is yes?

A Yes

Q Okay Now, what was your understanding of Mr Williams' relationship with Mary-Shea Sutherland?

A I -- professional, I guess I don't really know

Q Okay So were you aware that Ms Sutherland wrote Mr Williams a letter in January of 2012 indicating that Mr Williams had informed her that at that time -- this is January 2012 -- that Mr Williams was planning to replace you?

A No

MR HARBACH: Objection

THE COURT: Sustained

MR BROWNLEE· Court's indulgence for one moment

(Counsel conferring with co-counsel)

MR BROWNLEE: Thank you very much, Your Honor

Thank you, Ms Fulkerson

THE COURT: All right Counsel for Ms McDonnell

MR BURCK: Your Honor, I'll try to finish up before lunch

CROSS-EXAMINATION

BY MR BURCK:

Q Good morning

A Good morning

Q My name is Bill Burck I represent Maureen McDonnell I just wanted to start by going over some of the exhibits the government showed you earlier

A Okay

MR BURCK: And I'd ask that we put up Government Exhibit Number 146, and could you blow up the text, please? Thanks

BY MR BURCK:

Q I believe you testified about this document earlier

Do you remember this document?

A I do

Q And this reflects a trip that Mr Williams took with Ms McDonnell and others down to the Roskamp Institute in Florida; is that right?

A The text on this indicates that it was Jonnie Williams, Jr on the flight --

Q Right Mr Williams --

A -- with Ms McDonnell and Mary-Shea Sutherland

Q And Mary-Shea Sutherland was on that flight; is that right?

A It appears she was

Q Thank you

MR BURCK: And could you take that down, please? Thank you

Government Exhibit 151, please, and blow up the text

BY MR BURCK:

Q And I believe you testified about this document as well Do you remember this document?

A Yes

Q And does it say that Mary-Shea Sutherland was on that trip as well?

A It does

MR BURCK: You can take that down

Government Exhibit 182 Would you mind blowing up the text as much as you can? Actually, if you -- under 6/30/2011, there's a 7/6 Can you blow that up, please?

BY MR. BURCK:

Q Now, Ms Fulkerson, do you remember testifying about this document?

A Yes

Q What is this document?

A It's an expense report from Jonnie Williams to Star Scientific

Q And do you see underneath the Kinloch highlighted, the second Kinloch highlighted Do you see an entry there?

A Yes

Q And it says July -- 7/6/2011, July 6, 2011, AMEX - Berkley Hotel Breakfast with Ms McDonnell - Anatabloc meeting?

A Yes

Q Did the government ask you about that meeting?

A I don't remember We talked about a lot of things

Q And how would you get the information that you put on these expense -- or the ledger?

A Mr Williams would tell me

Q So he would have told you that there was a Ms McDonnell about Anatabloc on July 6, 2011; is that

right?

A Yes

Q But you have no idea if Ms McDonnell was actually present for a breakfast with him on that day, do you?

A No

MR BURCK: Thank you You can take that down

Now on my side, I would ask that we put up RM -- just for the witness, of course -- RM-0523 RM-0523 We can do this the old-fashioned way, Your Honor RM-0523 Your Honor, may I approach?

BY MR BURCK:

Q Now, Ms Fulkerson, do you recognize this document?

A It's an expense report

Q And do you --

A I'm sorry

Q Sorry

A It's an American Express report

Q American Express report For whom?

A Jonnie Williams

Q Jonnie Williams, Sr ?

A Yes

Q And do you see -- the second to bottom entry there, do you see that?

A Yes

Q And that's an entry on July 26, 2011; is that right?

A Yes

Q It says "Martinair, Inc "; is that right?

A Yes

Q And would you mind reading the entry that's -- that's next to it as to what the expense is?

MR HARBACH: I object, Your Honor Document is not in evidence

THE COURT: Sustained

MR BURCK: That's fine, Your Honor

BY MR BURCK:

Q Ms Fulkerson, does the entry reflect a flight between the First Lady and doctors?

MR HARBACH: It's the same objection, Judge

THE COURT: Overruled Let's get through this

A It indicates it's a charter flight for doctors and the First -- First Lady McDonnell

BY MR BURCK:

Q Okay And it says from Richmond to Baltimore?

A Yes

Q For Anatabloc John Hopkins Symposium?

A Correct

Q How much does it say?

A $8,001 44

Q And on this big thick stack, can you turn to -- I think it will be the third to last page in your document

A Yes

Q It's 64 on the bottom, RM-05230064?

A Yes

Q Do you recognize that document?

A Yes

Q What is that?

A It's a -- an invoice Martinair sent

Q And do you see a date for that invoice?

A July 23rd

Q Okay

A 2011 The trip date

Q Trip date Fine

A Okay

Q There's an invoice date as well?

A July 25th, 2011

Q Okay And does it say the passengers?

A It does

Q And who does it say the passengers were?

A John Clore, Mary-Shea Sutherland, Margaret Shupnik

Q Do you know who John Clore or Margaret Shupnik are?

A No

Q You know who Mary-Shea Sutherland You've testified about her?

A Yes

Q Does this reflect that Ms McDonnell was on that flight?

A No

Q And the information that you received on the first page -- I'm sorry to have to flip back to the first page -- the first page, that's information that you would have entered?

A Yes

Q And Jonnie Williams would have told you what to say?

A Yes

Q And that says First Lady McDonnell?

A Yes

Q Does it say Mary-Shea Sutherland?

A No

MR BURCK: We can move on to -- briefly, just on -- I'll have to ask -- I don't think -- it's not working RM-1990 No? Okay I'm sorry, Your Honor

BY MR BURCK:

Q Ms Fulkerson, would you turn to the second page? It's RM-1990-0002 Do you see that?

A Yes

Q You see there's an e-mail from Mary-Shea Sutherland to yourself dated August 24, 2011?

A Yes

Q Do you remember this e-mail?

A No

Q Have you had a chance to look at it?

A Just now

Q It refers to something called the Gibson event?

A Yes

Q Do you recall what that was?

A No

Q Do you -- have you ever heard of a place called Gibson Island?

A Yes

Q Where is that?

A Maryland

Q Is it near Baltimore?

A I believe so

Q Thank you

MR BURCK: It's on, Your Honor I can do it a little more quickly Could you -- could you blow that -- is that RM -- that's not going to work Your Honor, I'm going to have to use the paper document

THE COURT: Okay

MR BURCK: It's like old school, Your Honor Sorry

THE COURT: What's the number on this one?

MR BURCK: This one is RM-0618, and I'm going to be turning to the 23rd page, Your Honor

BY MR BURCK:

Q Ms Fulkerson, will you please turn to -- are you on that 23rd page?

A Yeah

Q Thank you I know it's hard to read It's easier to read, though, on paper than it is on the screen Do you recognize this document in all its fuzziness?

A I believe it's an expense report from Mr Williams

Q And would you have filled out the information in that report?

A Yes

Q Okay And I want to direct you to the third entry I believe it says July 25th, 2011 Do you see that?

A Yes

Q And I think beside that it refers to The Jefferson Hotel?

A Yes

Q And there's some text that -- again, I think you testified earlier that you would have entered this information for Mr Williams?

A Yes

Q And does it refer to a lunch with somebody?

A Yes

Q And who is that person?

A It looks like, if I can read it correctly, Mary-Shea Sutherland, assistant to First Lady, concerning Anatabloc

Q Okay And that's on July 25th, 2011?
A It looks like it
Q And then there's one right below it And is that basically the same -- it says July 26th, 2011?
A It looks like it
Q And it says -- it's at The Jefferson Hotel again?
A Yes
Q And what does it -- does it say lunch? I'm sorry If you could describe it or read it, however you --
A It looks like the exact same entry
Q Okay And can you look at the prices, to the best you can, if you can see, the far right For the 7/25/2011, what's the price?
A 7,716
Q And then the price for the 7/26/2011?
A 4,441
Q Those aren't the same prices?
A No
Q Okay And then further down on that list you'll see I think third from the bottom, August 17, 2011?
A Yes
Q Do you see The Jefferson Hotel there?
A Yes
Q And, again, can you describe what the entry that you wrote says, or you can read it?

A It looks like, "Lunch with Mary-Shea Sutherland, slash, assistant to First Lady, concerning Anatabloc "

Q And do any of those entries refer to Ms McDonnell being present?

A I'm sorry I didn't hear you

Q I'm sorry Do any of those entries refer to Ms McDonnell being present?

A No

Q Thank you You can put that aside Thank you

Now, I think you testified briefly about a document that Mr Brownlee showed you It was an e-mail that -- that Abby Farris sent to you Do you recall that?

A Yes

MR BURCK: Can I have RM-1991, please?

A I've got nothing

BY MR BURCK:

Q Here I'll give you --

A Oh, here it is

Q Great Thank you Could you take a moment to just read that?

A Okay

Q Do you remember this document?

A No

Q Did you -- it's an e-mail from Mary-Shea Sutherland to yourself; is that right?

A Yes
Q And it's dated September 2nd, 2011?
A Yes
Q And do you recall you testified about an event that happened at the Mansion in August of 2011?
A Yes
Q So this is a little bit after that event?
A Yes
Q And can you describe, without reading from the document, what this e-mail is?
A She's suggesting ways to -- a film maker to do something for Anatabloc Either -- there was two suggestions on it
Q And I'm sorry The "she" is Mary-Shea Sutherland?
A Oh, I'm sorry Yes, Mary-Shea Sutherland
Q And you said that she's describing two different ways to do a --
A A documentary or --
Q -- documentary
A -- or a film
Q Okay And is there anybody else on this e-mail other than yourself and Mary-Shea Sutherland?
A She asked me to print it and send it to Jonnie
Q Okay Thank you Back in 2011, the summer of 2011, around this time we just talked about, September and

August, were you planning to stay working for Mr Williams?

A Yes

Q Did you ever have excuse me Had you ever had any intention at that time to leave his employment?

A No

Q You've been working for him for 20 years or so?

A Approximately

Q And you've never said to him you want to leave your job?

A No

Q To this day, you are still working for him?

A I am still working for him

Q Did he ever tell you that he had offered Ms Sutherland a job?

MR HARBACH: Objection

THE COURT: Sustained

BY MR BURCK:

Q Ms Fulkerson, you were asked some questions about personal e-mails and public e-mails for Jonnie Williams Do you recall that?

A Yes

Q And you were shown from e-mails from -- I think it was from my client and maybe also from the Governor to his public address Do you recall that?

A I believe so

Q All right Did Jonnie Williams have a cell phone?

A Yes

Q Did he use his cell phone?

A Yes

Q Did he text people?

A Yes

Q Did you monitor his texts?

A No

Q Did he use a cell phone to call people?

A Yes

Q Did you record his calls?

A No

MR BURCK: Would you mind showing Government Exhibit 161?

BY MR BURCK:

Q Ms Fulkerson, do you remember this document?

A Yes

Q And I think there's an attachment to it as well that's a -- it's a document that -- if you wouldn't mind showing the last page

This is the letter that you testified Jonnie Williams had dictated at least in part to you?

A It was prepared and sent to me

Q Prepared and sent to you Okay

MR BURCK: And can you turn to the e-mail on the first page? Thanks

BY MR BURCK:

Q And this is an e-mail from you to Mary-Shea Sutherland, and you say, "Jonnie asked that I forward the attached letter and information to you "

A Yes

Q Do you recall if Jonnie Williams had Maureen McDonnell's e-mail address at this point?

A I don't know I can't -- I don't remember

Q You don't remember Do you recall if -- if he had the Governor's e-mail at this point?

A Again, I'm really bad with years So --

Q Sure No, of course Fair enough

A -- I don't remember

Q I understand And did you have their e-mail addresses? Do you remember if you had their e-mail address at that time?

A I may have I don't remember when I got them

Q Okay Is there any particular reason that you knew why Jonnie asked that you send this to Mary-Shea Sutherland and not directly to Maureen McDonnell or the Governor?

A No

Q So he didn't discuss that with you?

A No

MR BURCK: Thank you You can take that down

Could you put up Government 163, please, and could you please turn to -- I believe it is the second page Could you blow up the bottom e-mail?

BY MR BURCK:

Q Ms Fulkerson, do you remember testifying about this document with the government?

A Not about --

Q Not about this part, I'm sorry, but about the document itself Do you remember that?

A Yes

Q Okay And this is an e-mail that's part of that document that you testified about?

A I believe so

Q And it's an e-mail from Mary-Shea Sutherland to you?

A Yes

Q On June 21st, 2011?

A Yes

Q And it says, "Hi, Jerri I was on the phone with Jonnie, but he got off before I could ask him the following question"?

A Yes

Q So did you understand that e-mail to say that Mary-Shea Sutherland had been on the phone with Jonnie

Williams?

A Yes

Q It's Jonnie Williams, Sr ?

A Yes

Q So did you have an understanding that Mary-Shea Sutherland spoke to Jonnie Williams on her own, directly to Jonnie?

A Yes

Q And was that something that happened frequently, in your view, or you don't know?

A I don't know

MR BURCK: You can take that down Thank you

BY MR BURCK:

Q I'm almost done I promised before lunch, and I'm going to be done before lunch

You testified -- or I think Mr Brownlee asked you about whether or not -- well, let me back up

Mr Williams, you said, was -- he's a generous person, right?

A Yes

Q I think you testified that he likes to give gifts?

A Yes

Q And I think you testified, I think Mr Brownlee asked you whether or not he bragged about that?

A I don't know if he bragged about it to other individuals

Q I understand Do you recall being interviewed by the -- the FBI and the prosecutors last year?

A Yes

Q You had an interview with them at some --

A Yes

Q It was roughly June or so? You don't know But you did have an interview with them?

A I did have an interview

Q Do you recall telling the FBI and the prosecutors that you've known Mr Williams for about 20 years?

A Approximately, yes

Q Do you recall telling them that Mr Williams brags about everything?

A I may have

Q Okay And do you recall telling them that Mr Williams would brag to anybody if he was trying to impress somebody?

A I may have

Q And I'm almost done This is it I think last month, maybe early last month, you had another interview with the FBI?

A Okay

Q I'm asking you Don't take my word for it Did you meet with the FBI?

A With the prosecutors?

Q I'm sorry The prosecutors and FBI agents

A Yes

Q Excuse me I think of them all the same

A Okay

Q And that was about early last month?

A I've met with them several times So --

Q Okay

A Yes

Q And I think you testified today that Mr -- you testified about the stock bonus that you got?

A Yes

Q The $20,000 in early 2013 from Mr Williams?

A Yes

Q And that was the largest cash -- I'm sorry I said stock bonus It was cash bonus, right?

A I got cash in lieu of stock

Q Cash in lieu of stock?

A Yes

Q And that was the largest cash bonus you had ever received from Mr Williams or from Star Scientific?

A Besides the car, yes

Q Besides the car, right But it started with the stock and then it became a car?

A And this bonus was supposed to be stock

Q Right, it was supposed to be stock And I think you testified that Mr Williams said something along the lines of he wanted to give you cash instead of stock because of everything that's happened?

A Because of the invest- -- he said -- I believe he said he cannot give stock that year

Q I think you were about to say because of the invest- --

A Yeah, he may have said because of the investigation But I know he said he can't give stock

Q Okay It was your understanding that he was not giving you stock because of an investigation?

A I can't remember exactly what he said --

Q No I understand

A -- but yes

Q That was your impression?

A Yes

MR BURCK: Okay Your Honor, that's it Thank you

THE COURT: All right Redirect?

MR HARBACH: Your Honor, Mr Dry suggests that I inform you this might take a little while Would you like me to go ahead?

THE COURT: No I want you to go ahead and see if you can't exhaust this

MR HARBACH: Very good Your Honor

REDIRECT EXAMINATION

BY MR HARBACH:

Q Okay, Ms Fulkerson I think I'd like to start, kind of maybe go backwards

MR HARBACH: If we could pull up Government's 163

BY MR HARBACH:

Q Mr Burck asked you about this document This is a document you testified about on direct Does this have to do with the trip to The Homestead?

A I believe so

Q Okay And if we could go to page 2, please I guess down at the bottom, the portion that Mr Burck highlighted for you?

A Right

Q Where it says -- it's an e-mail from Mary-Shea and it says she was on the phone with Jonnie Do you recall having any conversations with Mr Williams about his reaction to Ms Sutherland calling him directly?

A I don't remember

Q You were asked several questions on cross-examination about other politicians, for example, for whom Mr Williams has provided the plane?

A Yes

Q Do you recall being asked by Mr Brownlee about former Attorney General Kilgore?

A Yes

Q Former Attorney General Cuccinelli?

A Yes

Q Former presidential candidate John McCain?

A Yes

Q And former presidential candidate Mitt Romney?

A Yes

Q To your knowledge, ma'am, did Mr Williams ever provide five-figure loans to any of Mr Kilgore, Mr Cuccinelli, Mr McCain or Mr Romney?

MR BROWNLEE: Objection, Your Honor

THE COURT: Sustained

BY MR HARBACH:

Q Ms Fulkerson, to your recollection, did Mr Williams -- in your experience working for him booking his plane, to your recollection, did Mr Williams ever allow any of those men to use the plane to transport their children?

A To the best of my knowledge, no

Q To your recollection, did any of those politicians or any members of their staff ever ask Mr Williams to transport their children on his plane?

A To the best of my memory, no

Q You mentioned on cross-examination a couple of times Mr Williams' generosity and the fact that he gives gifts to lots of people?

A Yes

Q Does he give gifts to both men and women?

A Yes

Q You were asked a few questions about -- in which you provided an answer about your constitutional rights Do you recall that series of questions Mr Brownlee asked you?

A Yes

Q I think I only have one question on that on you, and that is: As you sit here today, do you have any agreement with the government whatsoever governing your testimony at trial today?

A I don't believe so

Q You talked at some length about your practice of signing Mr Williams' name for him from time to time?

A Yes

Q And you were asked a series of questions by Mr Brownlee about your notarizing them sometimes?

A Yes

Q Why did you do that? Why did you sign Mr Williams' name for him from time to time?

MR BROWNLEE: Objection, Your Honor I think we've been through this

THE COURT: She can answer the question

BY MR HARBACH:

Q Why did you do that? Why did you sign his name for him sometimes? Why did you notarize it sometimes?

A He directed me to

Q You -- at the beginning of your testimony, you talked about your contact with Mr -- your testimony on direct -- this was a while ago -- you talked about your frequency of contact with Mr Williams, and you mentioned that he was in town sometimes and he was out of town sometimes Do you recall that?

A Yes

Q When he was out of town, where was he most often?

A Usually in Florida

Q Okay And were there times when you were filling out paperwork for Mr Williams or signing his name when you were in Virginia and he was in Florida?

A Yes

Q You testified on cross-examination, in response to questions from Mr Brownlee, about Starwood Trust You were asked some questions about that Do you remember those?

A Yes

Q At one point you said that the trust owes

Mr Williams a small fortunate, in your opinion?

A Yes

Q Do you recall that testimony?

A Yes

Q Could you explain that, please?

A Mr Williams has funded the trust with different things He's paid for houses He's paid for cars, paid for a lot of different things that the trust should have paid for, and it's -- and I've been informed or told that I should book it as a loan from Mr Williams to the trust

Q Thank you When you -- when you originally met with the government, did you agree to meet voluntarily?

A Yes

Q Now, you were also asked some questions about your bonus, and with the Court's indulgence, I'm afraid I only have one copy of this Can I tender it to counsel for a moment before I show the witness?

THE COURT: Go ahead

BY MR HARBACH:

Q Tendering to the witness, for the record, what's been marked for identification as Government's 616 Ms Fulkerson, I'm going to represent to you that those are some bank records from Wells Fargo Okay?

A Okay

Q Now, could you take a look at page 3 of that document?

A Okay

Q Do you see your name anywhere on that page, ma'am?

A Yes

Q Okay Do you -- does this page appear to document any transactions between yourself and Mr Williams or Star?

A I've never seen these before On first glance, it looks like the dates and the certificate numbers where he's gifted me stock

Q Thank you, ma'am.

MR HARBACH: Your Honor, the government offers Government's 616?

THE COURT: It will be admitted

MR HARBACH: Now, may I please use the Elmo to publish it for the jury or is that --

THE COURT: All right It's not in your electronic documents?

MR HARBACH: No, sir, it's not I'm sorry

THE COURT: All right Well, go ahead and use the Elmo

MR HARBACH: Publishing page 3 of Government's 616 for the jury

BY MR HARBACH:

Q And, Ms Fulkerson, can you see it on your screen there, ma'am?

A Yes

Q Now, this is your name up here in the account name block; is that right?

A Yes

Q Now, a little bit further down there's an entry for -- in the "Current Certificate Value" column it has 10,000 Do you see that there?

A I do

Q And there's a date associated -- I'm sorry, a date associated with that of July 17th of '12?

A Yes

Q Do you recall testifying on direct examination about a bonus you received from Mr Williams in July of '12 with which you purchased a vehicle?

A Yes

Q Would that be these 10,000 shares?

A It appears to be

Q Okay And then on January 18th of' 12, in the "Issued" column --

A Uh-huh

Q -- there's a -- a transaction involving how many shares?

A 10,000

Q On January 7th of 2011, in the "Issued" column,

there's a transaction involving how many shares?
A 10,000
Q On November 11th of 2010, there's a transaction involving how many shares.
A 10,000
Q And on December 23rd of 2009, there's a transaction involving how many shares?
A 20,000
Q Now, how many shares did you say on direct examination was the bonus, the -- cash bonus that you received in January of '13 was the cash equivalent of how many shares?
A 10,000 shares

MR HARBACH: Could we look at Government -- back to the regular display, please, Kathy Could we look at Government's 352, please?

BY MR HARBACH:
Q These are the checks we've talked about several times I want to ask you about the entry there for MoBo Realty At the time you prepared these checks, did you know what MoBo Realty was?
A Mr Williams explained to me it was a real estate agency
Q Okay And then underneath that, it says "Attention Maureen Uncapher " Now, at the time you prepared these

checks, did you know who Maureen Uncapher was?

A No

Q Okay

MR HARBACH: You can take that down, please

Can I have one moment, please, Judge?

THE COURT: Sure

(Counsel conferring with co-counsel)

BY MR HARBACH:

Q Ms Fulkerson, do you recall -- at the time that you completed the checks that we were just talking about, you prepared those, you said that Mr Williams told you that MoBo was a real estate agency?

A Yes

Q Do you recall whether you learned whether it was affiliated with anyone or owned by anyone or do you know?

A I believe he told me it was affiliated with the McDonnells

Q Finally, based on your personal observations of Mr Williams and your conversations with Mr Williams, just speaking for yourself now, did you ever suspect that there was anything to Mr Williams' relationship with Ms McDonnell other than a business relationship?

MR BURCK: Objection, Your Honor

THE COURT: Sustained

MR HARBACH: I have nothing further, Your

Honor Thank you

THE COURT: All right Thank you, ma'am You may stand down

(Witness stood aside)

THE COURT: All right We're going to stop here for lunch

MR HARBACH: Your Honor, may Ms Fulkerson be excused?

THE COURT: Absolutely

MR HARBACH: Thank you

THE COURT: All right If you all would come back at 2:15, we'll get started with the afternoon session Just follow the marshal

(The jury left the courtroom)

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(Luncheon recess taken from 1:15 p.m. to 2:15 p.m.)

All right, let's bring in the jury, please

(The jury entered the courtroom.)

All right, government, call your next witness, please

MR. FAULCONER: Thank you, Your Honor The United States calls Phil Owenby

PHIL OWENBY,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FAULCONER:

Q Could you please state your name and spell your last for the court reporter?

A Phil Owenby O-W-E-N-B-Y

Q What city do you currently live in?

A Richmond.

Q Where do you currently work?

A Kinloch Golf Club.

Q Spell Kinloch.

A K-I-N-L-O-C-H.

Q Where is that located?

A It is in Goochland County

Q How long have you worked there?

A Approximately 14 years

Q Have you been there since it opened?

A Yes

Q What's your current title at Kinloch Golf Club?

A General Manager

Q In addition to being General Manager, are you also a certified PGA Professional?

A I am.

Q What exactly is a PGA Professional?

A It is a person that is professional in the game of golf and the business of golf

Q Now, before working at Kinloch Golf Club, how many other golf courses have you worked at?

A Four

Q And is Kinloch the nicest or how does it compare to the other ones?

A It is the nicest

Q How many golf courses have you played at in your life would you say?

A Approximately a thousand.

Q How does Kinloch compare to the other courses you have played?

A Top 50

Q As General Manager of Kinloch, where were you in the food chain in terms of the employees you have there?

A I lead the operation. I answer directly to the Board of Directors

Q About how many employees do you have?

A Approximately 75

Q We have been saying Kinloch Golf Club Is Kinloch a public or private course?

A It is a private club

Q How many members does it have?

A About 475

Q Is there actually a cap on the membership?

A Yes, cap is 500

Q Now, of your 475 members, about how many are in the Richmond area?

A The resident members, about 260

Q How much does it cost for someone to become a member in the Richmond area of Kinloch?

A Approximately $50,000

Q On top of that $50,000, does it cost any money on a yearly basis?

A Yes The annual dues are $11,000

Q Compared to the other courses that you have worked or played at, does Kinloch have more or fewer people playing there every day than most other golf courses?

A Fewer

Q How about compared to a public course, just a little fewer or a lot fewer?

A I would say a lot fewer

Q Now, can members of your club bring guests to your club?

A Yes

Q Can they also have guests come without the member actually being present?

A Yes.

Q If you arrive and you are not a member or with a member, what's the first thing that you do when you get to the property?

A You would go to a gate, which we have a dial pad at the front gate They would call the club, call the inside of the clubhouse

MR. FAULCONER: Your Honor, with the assistance of the Court Security Officer, I'd like to offer up to the witness Exhibits 137 through 144, a series of photographs

THE COURT: All right

(Documents proffered to witness.)

BY MR. FAULCONER:

Q Mr Owenby, if you could flip through these real quick and let us know when you've gotten a chance to look through each one of them.

A Yes, sir

Q Are these photographs of the Kinloch Golf Club property?

A Yes, sir

MR. FAULCONER: We would offer Exhibits 137 through 144 into evidence

THE COURT: They will be admitted.

BY MR. FAULCONER:

Q I'd like to walk through some of these photos to make sure we understand what each one is of If we could pull up Exhibit 137 What is this a photograph of, Mr Owenby?

A This is a photograph of the front gate of Kinloch Golf Club

Q If we could zoom in on the little hedge there to the left, the part where the little box is, is that the little call box that you were talking about there, Mr Owenby?

A Yes

Q When a non-member comes up to the club and dials into this call box, what do they say to be able to get access?

A They would hit the call button. It would be answered by one of our staff members, and they would say that they were there as a guest of the member's name

Q Got it If we could pull up Exhibit 138 Mr Owenby, what is this a picture of?

A It is a photograph of the practice area and also the main clubhouse

Q About how many square feet is that clubhouse?

A About 26,000

Q Now, what happens once a person drives in? Where do they bring their car?

A They would come up to the front of the clubhouse and be greeted by one of our staff people

Q And where on this picture would they actually be greeted?

A It is on the far right-hand side where the vehicle is

Q When somebody comes up to the club, do you actually try to make an effort to be out there to greet them yourself?

A As often as I can, yes

Q I'd like to show you just a couple quick photographs of the course If we could pull up Exhibit 139 Is this a photograph of one of the holes out at Kinloch Golf Club, Mr Owenby?

A Yes

Q I see there that it is very tiny, but there are some people out in the picture there Is there typically staff members with people when they are playing out at Kinloch?

A When they are playing the golf course there will be caddies with the players, yes.

Q For anybody who is not a golfer, what is a caddy?

A A caddy is a staff member that would be carrying the golf bags and also giving advice during the course of the round.

Q How much does a caddy cost at Kinloch?

A The base fee is $55 plus gratuity per bag

Q Do the caddies at Kinloch, is it T-shirt and jeans or how are they dressed?

A No, they have khaki shorts or pants, white shirt, a Kinloch khaki cap, and then a blue overbib or overall

Q Kind of like they wear on the pro tours?

A That's correct

Q Are there actually caddies, can you tell whether those are caddies in the picture there with the individuals?

A Yes, sir, there is one on the right and one on the left

Q If we could pull up briefly Exhibit 140 Is this another hole at Kinloch?

A Yes, sir

Q That building to the right in this picture, what is that building?

A That's the clubhouse.

Q Buildings to the left, are those part of the Kinloch club facilities?

A No. Those are private homes

Q If we could pull up Exhibit 141 This is the last one of the course, Mr Owenby What hole is this at Kinloch Golf Club?

A This is the 18th hole

Q If we could zoom in on it a little, there looks like a metal object there in the lower left-hand corner Could you tell us what that logo is there?

A That's the Kinloch logo

Q In addition to the golf course itself, are there actually places to eat when you are on the property?

A Yes.

Q If we could pull up Exhibit 142 What is this, Mr Owenby?

A This is our Halfway House Snack Bar

Q If we could pull up Exhibit 143 Could you tell us what's shown in this picture, Mr Owenby?

A Yes, that's the men's club room, men's locker room, club room, dining area

Q And do you actually have another separate dining room within the building?

A Yes

Q So where is this particular dining room located?

A This is located in the men's locker room, which is in the central part of the clubhouse

Q Got it All right, now, just so everybody understands, if somebody just wants to walk in off the street and have dinner in this locker room, are they able to do that?

A No, sir

Q Who is allowed into this locker room?

A Members and accompanying guests

Q We can take that one down. Now, I'd like to direct your attention to this case here in particular Is a man named Jonnie Williams a member of Kinloch Golf Club?

A Yes.

Q Starting in around May of 2011, do you recall Mr McDonnell playing at your club on Mr Williams' account?

A Yes.

Q Before that time, do you recall Mr McDonnell ever being at your club?

A No.

Q On this particular or the first occasion, do you recall how you first learned that Mr McDonnell would be coming?

A Yes.

Q How was that?

A Mr Williams called.

Q Do you actually recall Mr McDonnell arriving?

A Yes

Q When he arrived, did you greet him?

A Yes

Q And do you recall what you said to him when you greeted him?

A Introduced myself and welcomed him to the club.

Q Did you say anything about Mr Williams when you greeted him?

A You know, other than "Nice to have you with us and I know you are with Mr Williams or a guest of Mr Williams "

Q Now, is it typical for you when you do greet somebody to mention the member's name of who they are playing on, whose account they are playing on?

A Yes

Q Do you remember who was with Mr McDonnell the first time he came to your club?

A He had his sons

Q Did he also have a security detail with him?

A Yes He had two security detail

Q Just to be clear for everyone, the first time he came to your club, was Mr Williams with him?

A No.

Q Did Mr McDonnell and those who were with him go out on the course that day?

A Yes

Q All right I'd like to talk about what exactly they did at the course that day Do you keep receipts of people's visits to your course?

A Yes

Q Are those typically made and kept in the regular course of business at Kinloch?

A Yes

Q And are they generally made around the time that the purchases are made?

A Yes

Q I'd like to show you Exhibit 135 Can you tell us what the first page of this document is?

A This is the member statement for May of 2011 for Jonnie Williams

Q If we could turn to the second page, could you tell us what's shown there? We will zoom in a little bit, but generally speaking

A Those are the individual tickets for the month for that statement

MR. FAULCONER: We would offer Exhibit 135 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q I'd like to zoom in on these and make sure we understand exactly what these expenses were for I'd like to start with the second one in the farthest left-hand column. Zoom in on that little square Can you tell us what this particular receipt is for?

A This is for four guest fees for unaccompanied guests

Q And what's the first name listed there under "Players"?

A Governor Bob McDonnell

Q And what's the total cost of this particular receipt?

A $1,200

Q If we could scroll down to the next one Could you tell us what this receipt is for?

A This is for merchandise in our golf shop

Q That's $410?

A That's correct

Q Now, if we scroll down to the next one, what is that receipt for?

A That's for the caddy fees

Q Does that caddy fee there include the tip?

A Yes

Q Now, if we could zoom out and look at some of the other columns briefly Focusing on the middle column, that one right there where it says "Area Food and Beverage", is that expense for food and beverages at your course?

A That's correct

Q From looking at this, can you actually tell which are in the dining room and which are at the snack bar?

A Yes

Q When it says "Food and Beverage," what does that mean?

A That would be the dining room.

Q This is a receipt for it looks like 3:14 p.m.

A I'm sorry, the question?

Q Was this a receipt that looks like 3:14 p.m.?

A Yes

Q Are those a couple more receipts about 8:59 and 8:20 p.m.?

A Yes.

Q All right, now last one real quick if we could zoom back out and go to the top receipt on the right Can you tell where that purchase was made that day on May 29th?

A That was in the snack bar

Q All the receipts that we just went over, can you tell us whose account they were charged to?

A Jonnie Williams'

Q We can take that one down Was May of 2011 the last time that Mr McDonnell or one of his sons played at your club?

A No

Q Do you recall his sons actually coming out with Mr Williams in late July of 2011?

A Yes

Q I'd like to show you Exhibit 177 Is the first page of this the July, 2011 statement for Mr Williams?

A Yes

Q Turning quickly to the second page, are these the receipts associated with that month for Mr Williams' account?

A Yes

MR. FAULCONER: We would offer 177 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q If I could start with the top receipt -- sorry, the receipt in the lowest left-hand corner there. What does that show there in that particular receipt?

A It shows two guest fees

Q And is one of the names there Sean McDonnell?

A Yes.

Q Now, the guest fee there is $125 What was the guest fee on the receipts we just looked at a little bit ago?

A $300

Q What's the reason for the difference between those?

A This particular receipt is for $125, which is the accompanied guest fee, means the guests were playing with the member The previous was $300, which was an unaccompanied fee There was not a member in the group

Q There is also a name there, David Dean. Do you recognize that name?

A Yes.

Q Was he also a previous member of your course?

A Yes

Q And do you recall any relationship that he had to Mr Williams?

A Yes, I think he worked for Mr Williams

Q Now, if we could zoom back out and if we could focus on the top receipt in the middle there. Could you tell us, are those more caddy fees for about $400 that day?

A Yes

Q Again, do those caddy fees include the tip?

A Yes

Q If we could scroll down to the next receipt real quick. Is that a purchase of apparel at your club for about $648?

A Yes.

Q And then go to the next one down. That's another expense at your snack bar, right?

A That's correct

Q All right We can zoom back out on that Now, again, all the charges for July 26th that are shown on this receipt, whose account were they charged to?

A Jonnie Williams'

Q Now, do you recall Mr McDonnell's sons again coming to the course in August of 2011?

A Yes

Q I'd like to show you Exhibit 200 Is the first page of this exhibit the August, 2011 statement for Mr Williams?

A Yes.

Q Turning to Page 3 of this exhibit Then also to Page 4 Are Pages 3 and 4 receipts for particular visits in August of 2011?

A Yes

MR. FAULCONER: We would offer Exhibit 200 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Starting with Page 3, looking at the first receipt in the upper left-hand corner, could you tell us what that particular receipt is for?

A That is for merchandise in our golf shop.

Q Does that include -- what's a Ping Voyage bag?

A That's a golf bag

Q Now, if we could scroll down real quick, on that next one there, does that show -- what does that show in that receipt?

A It shows unaccompanied fees for two guests for nine holes

Q If we could scroll down. What does that one show there?

A That's the caddy fee

Q If we could zoom back out Now, if we could zoom in -- the date of the prior ones was August 5th; is that right?

A That's correct

Q If we could zoom in on the top one in the middle Does this show another visit on August 11th of 2011, six days later?

A Yes

Q Do you remember Mr McDonnell's sons coming out with a friend on or around that time?

A Yes

Q What's the total cost of their visit on that occasion?

A $900

Q And scrolling down again, does that show caddy fees for about $300 there?

A Yes

Q Again, does that include the tip on that charge?

A Yes

Q Then below that, I guess there's two receipts for beverages, right?

A Yes

Q And then zooming back out and going to the upper right, is that a charge at the snack bar for that visit?

A Yes

Q Looking at the next receipt down, what's the date on that receipt?

A That is August 13th.

Q Do you recall Mr McDonnell coming out with his son, Sean, on that date, two days after the prior visit?

A Yes

Q And on, I guess this would have been the second time Mr McDonnell came there, did you actually greet him yourself the second time as well?

A Yes.

Q Would the greeting have been similar with the first greeting you had with him?

A Yes.

Q The next receipt down from that one, just scrolling down, what does that mean there, for Titleist Pro V1x?

A Those are golf balls purchased in the golf shop

Q Below that, are those more caddy fees there?

A Yes

Q Those caddy fee charges, based on what you can tell, the prices include the tip?

A Yes

Q Turning to Page 4 of this exhibit briefly Are there some more charges for food in the upper left-hand corner there?

A Yes

Q And all of these charges that we have looked at from August of 2011, whose account did those charges go on?

A Jonnie Williams'

Q And this last visit in August of 2011 when Mr McDonnell again came, was Mr Williams present on that occasion?

A No.

Q All right Now, zooming forward just a little bit to the winter of 2011, winter of 2012, do you recall a later visit by Mr McDonnell and his two sons in or around January of 2012?

A Yes

Q I'd like to show you Exhibit 285 Is this the first page of Mr Williams' statement for January of 2012?

A Yes

Q Turning to the second page, are those the specific charges from that month?

A Yes

MR. FAULCONER: We would offer 285 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Zooming in on the second receipt down on the left, does that show again the golf charges for that particular occasion?

A Yes

Q On this occasion in January of 2012, did you again personally greet the Governor, former Governor, when he showed up?

A Yes.

Q Was the greeting similar to the first one that you had had with him?

A Yes

Q I see here that there is both the guest fee of $300 and then the $90 cart fee. Are you allowed to take a cart at Kinloch?

A Yes

Q If you do, does the caddy still come with you or no?

A Caddy still comes with you, yes

Q So scrolling down to the next one, is that the caddy fee there on top of the cart fee for that day?

A Yes

Q Again, does that caddy fee there include the tip being charged to this account?

A Yes.

Q Now, based on these receipts or your recollection, was Mr Williams present in January of 2012 when Mr McDonnell and his sons played there?

A No

Q But whose account did all of these charges go on?

A Jonnie Williams'

Q All right Now, do you recall after that January, 2012 visit, a fourth visit by Mr McDonnell to your property?

A Yes

Q I'd like to show you Exhibit 433 Is this the first page of David Dean's bill for November of 2012?

A Yes

Q That's the member that we referenced earlier, the former member that worked for Mr Williams

A Yes

Q Turning to the second page of this document, are these some of the charges from that month?

A Yes.

Q Turning to the third page, are those more charges from that month?

A Yes.

MR. FAULCONER: We offer Exhibit 433 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Just zooming in on the top left corner of that page, can you tell us what individuals are listed there under that particular receipt?

A David Dean, Jonnie Williams, Governor Bob McDonnell, Sean McDonnell, and Bobby McDonnell

Q Do you recall those individuals playing at your course in about November of 2012?

A Yes

Q What was the total charge for that golf on that day?

A $187 50

Q Now, to be clear, was this the first time that you had seen Mr McDonnell and Mr Williams together?

A Playing golf together, yes

Q Now I'd like to show you Exhibit 434 Is this Mr Williams' receipt from that same month, November of 2012?

A Yes

Q Turning to Page 2, are there some charges for November 23rd, 2012 on that receipt?

A Yes

MR. FAULCONER: We would offer Exhibit 434 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q The second receipt down on this page, could you tell us what that shows?

A Caddy fees

Q Again, like the others, does this one include the tip?

A Yes

Q Now, I'd like to zoom out real quick, and then just looking at those other receipts as best you can tell, do those show additional charges for food and beverages while they were there on that occasion?

A Yes.

Q Like the other ones we have talked about, whose account did these charges go on?

A Jonnie Williams'

Q Mr Owenby, since that visit in November of 2012, have you ever seen Mr McDonnell at Kinloch again?

A No.

Q What about his sons?

A No

Q All right Now, we have seen some receipts for items that were purchased like clothing or things like that Do you sell clothing at the course?

A Yes.

Q Does some of that clothing include that logo that we saw earlier in that one picture where we zoomed in?

A Yes.

Q Clothing that has the Kinloch logo on it, can you get it other places or where can you actually get a piece of clothing like that?

A Only at Kinloch.

MR. FAULCONER: I'd like to offer up to the witness Exhibits 9-A, 10-A, 11-A, 12-A, 14-A, and 19-A with the assistance of the security officer

(Documents proffered to witness)

BY MR. FAULCONER:

Q Mr Owenby, if you could take a second to look through these photos and let us know when you have had a chance.

A Yes, sir

Q Mr Owenby, are these items with the Kinloch logo on them?

A Yes, sir

MR. FAULCONER: We would offer Exhibits 9-A, 10-A, 11-A, 12-A, 14-A, and 19-A into evidence

THE COURT: They will be admitted.

BY MR. FAULCONER:

Q We will try to flip through these pretty quickly Looking at 9-A first Is this a shirt purchased at Kinloch Golf Club?

A Yes.

Q Where is the logo on this one that lets you know that?

A On the left sleeve.

Q If we could look at 10-A briefly Is this another shirt purchased at Kinloch?

A Yes

Q 11-A? Is this also a shirt purchased at Kinloch?

A Yes

Q 12-A, if we could. Would the same be true for this one?

A Yes.

Q And then finally, 14-A. Is the same true for this one?

A Yes

Q If we could look at 19-A. Could you tell us what this is?

A This is a golf bag

Q Can you tell what brand of golf bag this is from looking at it?

A It is a Ping

Q And is that the Kinloch logo on it?

A Yes

Q Now, all the items we just looked at, where would you buy them at Kinloch?

A In the golf shop.

Q If I could show you Exhibit 144, which we haven't looked at but was previously admitted. Could you tell us what that's a photograph of, Mr Owenby?

A That's the golf shop at Kinloch Golf Club

Q Is that where you would purchase the items we just looked at?

A Yes

Q If we could zoom in to the right of the keyboard there, in the left of this picture, what is that item there?

A That's a credit card machine.

Q Now. at Kinloch, do the items you sell in the pro shop, do they have price tags on them?

A Yes.

Q If somebody who comes in as a guest of a member wants to pay for something, can they offer to give you their credit card and pay for the item at the pro shop?

A Yes

Q Do you accept credit cards generally at Kinloch for other expenses as well?

A Yes

Q Now, in the four times that Mr McDonnell was at your property, did he ever ask you about how he should pay for anything?

A No.

Q Do you have any record of Mr McDonnell paying for anything at Kinloch Golf Club?

A No.

MR. FAULCONER: One moment, Your Honor No further questions for this witness, Your Honor

THE COURT: All right Cross?

CROSS-EXAMINATION

BY MR. BROWNLEE:

Q Good afternoon, sir

A Good afternoon.

Q My name is John Brownlee, and I represent Bob McDonnell I just have a couple questions for you. I believe you testified that in May, August, 2011 and then in January of 2012, Mr McDonnell came out to your course and golfed; is that right?

A Yes

Q On each of these three occasions you met him at the entryway and welcomed him to your club; is that correct?

A Yes

Q Okay And he was unaccompanied in those three instances? Mr Williams did not golf with him; is that correct?

A Correct

Q And on those occasions, I think he had some combination of his sons with him and then he always had his protective detail with him; is that correct?

A Correct

Q And I believe you testified that when you greeted him, you informed him that you had been notified by Mr Williams that he was coming and you were expecting him.

A Correct

Q Okay And so you were fully aware at that time that Mr Williams would be paying for the golf that day; is that correct?

A Correct

Q And many of the receipts that Mr Faulconer showed you today actually had Mr McDonnell's name on it or his sons' name on it; is that correct?

A Yes

Q So people knew that he was actually out there playing that day

A Yes

Q And if you recall, when he was at your club, was he open and interacting with people and playing openly out in the club?

A Yes

Q He appeared to be comfortable at the club? I don't know how good a golfer he is, but he seemed to be comfortable?

A Yes

Q He was outgoing, friendly with people?

A Yes

THE COURT: Mr Brownlee, I need to stop One of my jurors needs to go out So we've got to deal with this If you all would leave and let the juror take care of himself

(The jury left the courtroom.)

All right, we will take a break. A juror was feeling ill, so I don't know how long this is going to be So we will get back as soon as we can.

(Recess taken from 2:53 p.m. to 3:14 p.m.)

THE COURT: All right Bring the jury in, please

(The jury entered the courtroom.)

All right, proceed.

BY MR. BROWNLEE:

Q Mr Owenby, I just want to go back. We were talking about the times that Mr McDonnell came out and played at the course I just was asking you was he -- did he appear to be comfortable there, friendly to people, and kind of acting very normally when he was at your course?

A Yes

Q Okay And let me talk on the one instance in November of 2012 when Mr McDonnell was there and

Mr Williams was there. Was Mr McDonnell's security detail with him on that trip as well, if you recall?

A I don't recall

Q Is it fair to say on the other times there, though, his detail was always with him?

A I think so, yes, sir

Q On all the times that Mr McDonnell was at your course, did you ever see him do anything in an effort to try to conceal his appearance there or hide that he was there?

A No.

Q And is Mr Williams still a member of your course?

A Yes

Q Okay

MR. BROWNLEE: Nothing further

THE COURT: Any questions?

MR. HAUSS: No questions, Your Honor Thank you.

THE COURT: All right Thank you, sir You may stand down.

(Witness stood aside)

Government, call your next witness, please

MR. FAULCONER: Your Honor, the United States calls Robert Ryan McDonnell

ROBERT R. McDONNELL,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FAULCONER:

Q Could you please state your name and spell your last name for the court reporter?

A Robert Ryan McDonnell, M-C-D-O-N-N-E-L-L.

Q What's your relationship to the defendants, Robert F McDonnell and Ms Maureen G. McDonnell?

A I am the son.

Q Do you recall meeting a man named Jonnie Williams, Sr sometime around the summer of 2011?

A Yes, late spring to summer, 2011

Q And 2011, was that before or after your dad took office as Governor?

A This was after my dad took office.

Q Before your dad ran for Governor, did you know who Jonnie Williams was?

A No, sir

Q Had you ever seen him around family events before your dad ran for Governor?

A No, sir

Q Now, before 2011, the year that you met Mr Williams, had you ever played golf at a place called Kinloch Golf

Club?

A No, sir

Q After you met Mr Williams, did you play out at Kinloch Golf Club?

A Yes, sir

Q Is that a private course?

A I believe it is a private course, yes

Q Is anyone in your family a member of Kinloch?

A No, sir

Q When you played there, who was the member who was sponsoring you?

A Jonnie was the member at Kinloch.

Q The first time you played at Kinloch, do you remember when that was approximately?

A The first time we played was, I believe, late May, 2011

Q Do you remember who was with you the first time you played?

A Yes It was myself, my twin brother, my soon-to-be brother-in-law, and my father

Q And who did you understand to be paying for your day when you were at Kinloch on that particular occasion?

A I believe Jonnie was the member, so I believed he was paying

Q Now, later, after that first round of golf at

Kinloch, can you tell the jury whether you actually received some golf apparel from Mr Williams?

A After Kinloch?

Q Yes, after the first visit to Kinloch.

A I don't remember if I received any after the first visit

Q Do you remember receiving a golf bag from Mr Williams?

A I do

Q Could we show Exhibit 20-A for identification? Do you recognize this item that's shown in this picture?

A Yes That's a Virginia golf bag and a set of clubs

MR. FAULCONER: We would offer Exhibit 20-A into evidence

THE COURT: The number again?

MR. FAULCONER: 20-A.

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Mr McDonnell, is this a golf bag that you received from Mr Williams?

A Yes I received this golf bag about a week after an event at the Homestead. Jonnie sent the clubs to me

Q Now, if we could bring up Exhibit 21-A. Do you recognize what's shown in this photograph?

A Yes, sir These are the particular clubs in the bag,

Callaway

MR. FAULCONER: We would offer Exhibit 21-A into evidence

THE COURT: It will be admitted.

MR. SMALL: No objection.

BY MR. FAULCONER:

Q Now, are these the golf clubs that you received from Mr Williams?

A Yes, sir

Q Now, backing up for just a moment, you had mentioned earlier that these clubs came off an event at the Homestead. Do you remember Mr Williams being at the Homestead as well?

A Yes, sir, Mr Williams was at the Homestead.

Q And when you were at the Homestead, did you play golf with Mr Williams when you were there?

A Yes, sir

Q When you played golf with Mr Williams while you were there, was your father present?

A No, sir, he was not My father was busy at meetings, and Jonnie asked if I wanted to just go play with him, and we just played about nine holes until the sun went down together

Q Do you recall if Mr Williams played with your father apart from being with you on that particular visit to the

Homestead?

A No, he did not play with my father

Q Now, going back to the golf -- moving on from the golf clubs, if we could show you Exhibit 17-A. Do you recognize what's shown in this photograph?

A Yes, sir

Q What's shown in this photograph?

A Two pairs of golf shoes

MR. FAULCONER: We would offer Exhibit 17-A into evidence.

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Are these golf shoes that you received from Mr Williams around the same time as that bag and clubs?

A Yes, sir These shoes showed up along with the clubs and bag

Q When you received the clubs and the bag and the shoes, did you discuss the fact that you had received them with your father?

A Yes. So I remember the week or so after the Homestead, I got a call from Jonnie saying, "Hey, there is a present for you waiting at your house." And I get home and there is a bag and clubs just sitting there along with these shoes So I told my father -- well, first I called and thanked Jonnie. I don't know where the gesture came from. But I told my father that he had sent me these shoes and clubs

Q What was your father's reaction to that?

A My father's reaction was that I should send them back to Jonnie

Q Do you remember him saying something about it being a little excessive?

A Yes, sir

Q Now, did you actually end up returning the clubs and the shoes and the bag to Mr Williams?

A No I believed the gift to be -- obviously I was excited, so I believed it to be a gift to me Jonnie and I had developed a relationship by that point, so I thought it was just an independent present to me and I didn't think that we -- that I should return them.

Q So did you keep them?

A I did keep them.

Q Did you use them in your father's presence?

A I believe so, yes

Q You played golf with your father after that time?

A Later possibly, yes

Q Now I'd like to show you Exhibit 18-A. Do you recognize the item shown in this photograph?

A Yes, sir, I do.

Q And what is it?

A It's a Notre Dame golf bag

Q Do you know who this bag previously belonged to?

A I believe my father

MR. FAULCONER: We would offer Exhibit 18-A into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Do you know where this bag came from before it got to your father?

A I believe this came from Jonnie

Q Now, this was around June or July of 2011 that you received these items; is that right?

A Yes. This was late June, I believe

Q Now, later in August of 2011, do you remember playing at Kinloch Golf Club again?

A I would like to see the date or like a calendar Like a specific day

Q Let me put it this way: Do you remember playing out at Kinloch Golf Club again later that summer without your father present?

A Yes, sir

Q Do you remember playing there with your brother and a friend of yours?

A Yes I believe it was Brandon DeGraff

Q And after, when you played that time, was

Mr Williams with you?

A No , He was not

Q And do you recall ever discussing with your father that you had played at Kinloch without Mr Williams present?

A I don't remember a particular discussion about going out there, about that specific outing

Q Do you ever recall whether you talked to him in general about the fact of going out to Kinloch without him or Mr Williams present?

A Yes. there was probably a discussion that I went and played golf at Kinloch that day or along those lines

Q And do you remember what your father's reaction was to that?

A I don't remember his particular reaction. But I just told him I went and played golf that day

Q I guess after -- do you remember him saying anything about it being excessive like about the bag and the shoes?

A No, not particularly

Q Now, I'd like to show you briefly something that's previously been admitted, which is Exhibit 177 Sorry, Exhibit 200 If we could turn to the third page of this document If we could zoom in on the top receipt in the middle Does that show that outing that we were talking about earlier with Mr DeGraff?

A Yes, sir

Q Does that seem like about the right time frame, August 11th of 2011?

A Yes, sir

Q All right We can go and take that down. One moment, Your Honor, I apologize.

Now I'd like to direct your attention to December of 2011 And specifically, around Christmastime Were you at home for Christmas that year with your family?

A Yes, sir

Q And do you recall any expensive gifts that your father received?

A December, 2011?

Q Yes.

A Not particularly

Q Do you recall him receiving a watch that Christmas?

A Oh, December Okay Yes, sir, a watch.

Q And could you describe that for the members of the jury?

A I believe it was a Rolex watch.

Q And do you remember who he received it from at Christmas?

A Yes, he received it from my mother

Q And do you recall that Rolex watch being engraved?

A Yes, I believe it had my dad's name on it

Q Do you recall his reaction when he received that particular item?

A Yeah, I do. He was surprised. It was a nice watch. But really, his first reaction was like, to my mother, "Another watch?" He had a Seiko watch of 10 to 15 years that she gave him before. He didn't know he needed another watch, was really his first reaction.

Q I guess before that, before the Rolex watch, what would you say was the next nicest gift you had seen your mother give your father?

A Probably that Seiko watch before

Q Well, Christmastime of 2011, that would have been obviously around December 25th, right?

A Yes

Q Do you recall actually playing out at Kinloch with your father a few weeks after that?

A A few weeks after -- possibly

Q If we could show Exhibit 285, which has been admitted. If we could turn to the second page of that document If we could zoom in on the second receipt down on the left Looking at that document, Mr McDonnell, does that look like about the date, January 7th, 2012, of another time that you went out to Kinloch?

A Yes That seems right, January 7th.

Q And do you recall going out to Kinloch in January of

2012 with your father and your brother?

A Yes I believe it was an unusually nice day for January to be able, to play golf So I do remember that

Q And like the prior occasions, who did you understand to be paying for your dad at Kinloch that day?

A Jonnie was a member there, so I assumed it to be Jonnie

Q Now, I'd like to briefly direct your attention to another Christmas, and that's the Christmas of 2012 Do you recall receiving shares of stock in Star Scientific around Christmas of 2012?

A Yes, sir

Q And do you actually recall a conversation about that around the time of Christmas dinner?

A Yes I think it was later in the evening, as dinner was wrapping up.

Q Was your father present for that conversation?

A Yes, sir

Q Now, I'd like to show you what's been marked for identification as Exhibit 448 Looking at the first page of this document, do you recognize this as a Davenport & Company form that you filled out?

A So that is not my handwriting

Q Do you recognize this as a Davenport form that you reviewed and then later signed?

A Can I see my signature?

Q Sure If we could go to the third-to-last page There we go. If we could zoom in on the bottom there Is that your name and signature?

A Yes, sir

MR. FAULCONER: We would offer Exhibit 448 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Could you tell us what the date is there by your signature?

A December 26th, 2012

Q If we could zoom back out and then go to the first page So is this a form that you filled out to receive those shares of stock in Star Scientific?

A Again, I did not That is not my --

Q I apologize Was this a form that you signed in order to receive the shares of Star Scientific stock?

A Yes, sir, I signed the form.

Q When you were discussing receiving this stock, can you tell us whether your parents said anything about how they had bought it?

A So my understanding was that my grandfather, who had passed away, had left each kid a thousand dollars, and that was invested into the Star Scientific stock.

Q Was there any discussion about having gifted shares of that stock to your sister, Cailin, the prior year?

A I don't remember that

Q Was there any discussion of having purchased and sold the stock at various points in 2011 with your parents?

A I don't remember that conversation.

MR. FAULCONER: One moment, Your Honor

THE COURT: Sure

(Counsel conferring with co-counsel)

BY MR. FAULCONER:

Q With respect to what you said earlier about the money for the stock having come from your grandfather's estate, who was it that said that?

A My mother

Q And that was in the same conversation that we were talking about?

A The dinner table conversation?

Q Yes

A Yes, sir

Q Was there any conversation at that dinner about taxes or tax consequences as it related to that stock?

A Not that I remember

MR. FAULCONER: Your Honor, I think now I have no further questions

THE COURT: All right

CROSS-EXAMINATION

BY MR. SMALL:

Q You testified you met Jonnie Williams in the spring of 2011, correct?

A Yes

Q And who did you meet him through?

A So the first time I met Jonnie, he was with my mother and she introduced me to him.

Q Okay And you understood him to be a friend of your mother, correct?

A Yes, sir

Q Now, you said you developed a friendship with Jonnie Tell us what that means to you.

A So after I met Jonnie, we exchanged text messages and phone calls I was really interested, I grew up interested in nutraceuticals and I was health conscious through my mother, but I also had a passion for business and I understood Jonnie to be a successful businessman. So I think that developed into this mentor/mentee relationship He kind of took me under his wing and taught me about business

Q Okay And he also, I take it, invited you to play golf, correct?

A Yes.

Q And who called who? Did he call you or did you call him?

A So the first initial times, Jonnie called me to play golf in the summer of 2011 I was busy with my internship and also preparing to play soccer at UVA, so I declined the offer for the first few times But eventually, we did connect and play golf

Q You were on summer vacation from college, right, at the time?

A Yes

Q And Jonnie Williams called you and invites you to play golf, right?

A Yes, sir

Q And you said no. You couldn't do it

A No, I was busy

Q And he called you again and invited you to play golf, right?

A Yes, sir

Q You said no again.

A Yes

Q That happened a couple times.

A The first couple times, yes.

Q But then you were asked questions about the Homestead event The Homestead event was basically some kind of a political gathering or convention, am I right?

A Yes It was some sort of RGA or PAC convention out at the Homestead

Q And you had been to, I assume, you had been to a few political events before, right?

A Yes, I've grown up around politics, so I've been to quite a few

Q Fair to say that if you are not directly involved, the evenings are interesting but the afternoons are not?

A Yes.

Q Okay So in the afternoon, you met up with Jonnie Williams at the hotel; is that right?

A Yes, sir At the hotel

Q Tell us what happened.

A So as all the political, politically-involved individuals at the Homestead, they had their meetings during the afternoon, and Jonnie approached me and he asked if I wanted to salvage the last few hours of daylight So just him and I went off and played about nine, ten holes of golf until the sun went down, really

Q So you are a college kid?

A Yes.

Q He is a successful businessman. Did that feel strange to you, that he was inviting you to play golf?

A No. Again, because I've grown up around politics, I am used to communicating and interacting with people two to three times my age So it really didn't strike me as strange And furthermore, I was really interested in business, so I wanted to talk to him and learn from him.

Q So the two of,you went out and played nine holes of golf

A Yes

Q What did you talk about?

A Really just current events, small talk, casual talk. We would talk about golf in general Just very social

Q All right And over time, I take it you continued to develop a relationship with Jonnie; is that right?

A Yes, sir

Q Friendship with Jonnie

A Yes A friendship.

Q And did you consider that separate from your mom or your dad's friendship with Jonnie?

A Yes, I really did. As time went on and we communicated through phone calls and texts, I considered it a legitimate friendship outside of whoever my father was, and I viewed him as a mentor

Q You said that you both were interested in nutraceuticals, correct?

A Yes, sir

Q You talked about those issues?

A Yes Just generally It was just more of a background of being health conscious. My mom has always been interested in nutraceuticals and health, so that was a shared common interest

Q You were also both interested in business, right?

A Yes, sir

Q Talked about those issues?

A Yes So during the summer of 2011, I was getting ready to apply for business school at UVA, so we would talk about how that was going, what classes, courses I was taking, just general business

Q And you are in business school now; is that correct?

A Yes, sir, I'm at Duke University School of Business

Q Over time, did you continue to have conversations with Jonnie Williams?

A Yes, sir

Q Did Jonnie Williams ever tell you that his father was helping him with his company?

A Jonnie Williams' father?

Q No, that your father was helping him -- let me rephrase it Forgive me. You are right, I'm wrong Did Jonnie Williams ever tell you that your father was helping him with his company?

A No, sir, never

Q Did he ever say that he had an agreement with your father to promote his company?

A No, sir, never

MR. FAULCONER: Objection.

THE COURT: Overruled.

BY MR. SMALL:

Q Did he ever ask you to talk to your parents, either of them, about his company?

A No, sir, never

Q Did Jonnie Williams ever ask you for anything other than to play golf with him?

A No. Nothing other than golf

Q I take it Jonnie Williams offered you a number of different things, right?

A Can you explain "things"?

Q Sure Well, we saw some shirts and some rounds of golf, right?

A Yes

Q You understood he was a wealthy businessman?

A Yes, sir

Q And did he ever say anything about "Gee, you ought to pay for some of this"?

A No, sir

Q And when you went golfing, you knew that Jonnie was going to pay, right?

A Yes, sir

Q Did you ever ask Jonnie Williams to pay for your golf?

A No, sir

Q Did you ever ask Jonnie Williams to pay for a shirt or something?

A No, sir

Q He offered to do those things, right?

A Yes, sir

Q So you said that the golf clubs showed up You used that word. Where did they show up, the golf clubs that Jonnie Williams gave you?

A Yes So again, I remember the phone call I was driving in the car and he said, "There is a present waiting for you at home " Home at that point was the Governor's Mansion. So when I got home, the clubs were in the bag, were just there

Q Let me back up a little bit This was shortly after you and Jonnie played at Homestead?

A Yes, sir This was about five to seven days after the Homestead event

Q So at Homestead, you had your own set of golf clubs, right?

A Yes I was playing with my original set of Ram golf clubs that my father had gotten me seven years prior

Q Wait a minute How old were you at the time, when you were playing at Homestead?

A 2011, I would have been 19

Q So your dad bought you a set of golf clubs when you were 12 or 13?

A Yes, 12 or 13

Q And at Homestead, with Jonnie, the wealthy businessman, you were still playing with those golf clubs, right?

A Yes, the same clubs.

Q Fair to say, I don't know much about golf clubs, they are pretty old and beat up by that point?

A Yes, they were used, and used a lot

Q Did Jonnie notice that or say anything about it?

A I believe he noticed the clubs I was playing with.

Q But did you ever ask Jonnie Williams to buy you a new set of clubs?

A No, sir

Q Did you have any expectation at all that he would do that?

A No, sir

Q And so when you got home and the surprise was there, what did you do?

A I immediately called Jonnie and thanked him many times

Q What did he say?

A He said, "Don't worry about it, you are welcome I can't wait to see you playing with them."

Q And you were asked about whether your father thought the gift was a little excessive And you said that yes, he said something about that, right?

A Yes, my father believed it was excessive

Q Fair to say there was a bit of an argument within the family about those golf clubs?

A Yes So I was clearly excited about the clubs and I thought it was a gift directly to me, and so there was a disagreement between myself and my father And my mother even weighed in on the situation and she sided with me, that I should be able to keep the clubs because it was a gift to me

Q So your mom and you thought you should keep them and your dad thought you ought to give them back

A Yes

Q Who won that argument?

A I won the argument, because I ended up keeping the clubs

Q Okay And Jonnie Williams made some other offers to you as well, did he not?

A Can you be specific?

Q I don't want to get into details, but just quickly, you have sort of a recurring bronchitis, right? Fair enough?

A Yes, I have had recurring upper respiratory infections for many years.

Q And when you were out playing golf with Jonnie, did that come up?

A Yes. We would talk about my bronchitis and he would mention his product, Anatabloc, and how it decreases inflammation and he thought it would be helpful for me to take because it would help calm the inflammation that causes bronchitis

Q And did he offer to provide you with this product, Anatabloc?

A Yes, I believe he just gave me a few capsules

Q Okay And said you could get more? He would get you more?

A I don't remember that specific part, but --

Q Okay Did you in fact start taking Anatabloc?

A Yes, I did start taking Anatabloc

Q And he also offered, am I right, to arrange for you to see a specialist, right?

A Yes In the fall of 2011, after taking Anatabloc, I had another serious case of bronchitis, so he thought that I should go visit a specialist that he knew at Johns Hopkins

Q Okay Did you?

A I did not. By that point I was back at UVA and I was too busy and told him that I didn't think it would work out I was seeing a doctor at UVA, so I did not go see a specialist

Q He also offered to give you an internship; is that right?

A Yes.

Q All right Tell us about that

A So during the summer of 2011, I was interning at a law firm, at Eckert Seamans, and again, Jonnie and I, as we would talk, we would talk about my business interest So he thought it would be a good idea for me the following summer, 2012, to be his apprentice or do an internship with him to some degree So that was the conversation.

Q Okay And what happened?

A So I thought it was a good idea because I'm applying to business school I thought it would look good, be a learning experience for me. I went back and told my father And he said, "Absolutely not," that I had a good internship at Eckert Seamans and he told me if I worked hard it could materialize into an internship the next summer and he didn't think interning or traveling around with Jonnie was a legitimate internship.

Q So what did you do?

A That was the end of the conversation I told Jonnie I didn't think this would materialize, it was not going to work

Q That was another thing Jonnie offered you where you said no, right?

A Yes, sir

Q Just briefly, a couple other things. You recall your family going for a weekend to Smith Mountain Lake?

A Yes I remember Smith Mountain Lake

Q And that was Jonnie's house at Smith Mountain Lake?

A Yes

Q Okay And when you arrived at Smith Mountain Lake, was there a car in the driveway?

A Yes, there was a Ferrari parked in the driveway

Q And tell the ladies and gentlemen of the jury what happened with that car

A So my understanding was that the car had to be brought back to Richmond for some reason. And we all, all the kids, thought it would be really funny if my dad drove it back, so we pushed him to drive it I personally was scared. He hadn't driven himself in two or three years So it was kind of amusing to see

Q So when you say he hadn't driven himself, every Governor has a protective service, right?

A Yes, sir He had the protective service and then campaigning the last year as Attorney General he wasn't driving, either

Q And the protective service, their job is to take him everywhere he goes, right?

A Yes

Q And in fact, you are aware that they get a little upset if he kind of sneaks off and goes to the ice cream store himself or something

A Yes They don't like that

Q He had a ride back from Smith Mountain Lake, right?

A Yes, he had the EPU

Q Who encouraged him to get in the Ferrari and drive it?

A It was the kids

Q You said previously, I think, that it was kind of a family joke What did you mean by that?

A Yes So again, none of us had seen my dad drive a car in forever, and to be driving a Ferrari, it was amusing to us and we knew it would be fun for him. So it was really quite fun.

Q You were asked some questions about this watch that was a Christmas present Who is it your understanding that the watch came from?

A From my mother

Q Okay And the watch, you said it was -- it said "Rolex" on it; is that right?

A Yes, it was a Rolex.

Q But did it come in a Rolex box? It didn't come in a

Rolex box, did it?

A I don't remember the particular box, but I don't think it was Rolex.,

Q And it didn't have a Rolex certification, did it?

A No.

Q What did you think about the watch?

A So originally, I thought the watch was a fake

Q A fake meaning sort of a knock-off?

A A knock-off Exactly I looked at the watch, and I've seen a Rolex once or twice before, and the second hand on this particular watch ticked instead of rolled, so I thought it was a fake at first That was my first intuition.

Q Is the roll your understanding of why it is called a Rolex?

A That's my understanding

Q And also, do you have -- I gather your parents had been, both parents had quite recently been on some job development, business development trips to the Far East?

A Yes They were in Asia at some places on a job expansion tour

Q Did that contribute to your view that the watch was probably a knock-off?

A Yes It played a part I know the black market, or the black market over there. So I believed, I thought it was just purchased through that

Q You were asked some questions about Christmas of 2012 and the Star Scientific stock. Do you recall there being any particular rush to sign the forms?

A No real rush to sign the forms

Q And the prosecutor asked you if your parents explained what was going on. Who actually explained what was going on?

A My mother told us that we had been given a thousand dollars from my grandfather, her dad, and that it was invested in Star Scientific

Q Did your father, do you recall your father saying anything about this?

A No He was just present, but never talked.

Q So you testified that you thought that Jonnie Williams was a friend and a mentor, correct?

A Yes, I believed him to be a mentor

Q And because of that, because you thought he was a genuine friend and mentor, you thought it was okay to accept gifts from a wealthy friend. Is that fair to say?

A Yeah. I thought it was a personal gift to me from a friend and a mentor

Q In hindsight, can you tell the jury, has your view of that changed?

A Yes

MR. FAULCONER: Objection, Your Honor

THE COURT: The objection is sustained

BY MR. SMALL:

Q How old were you when your father started in public service?

A I was a month and ten days old.

Q So throughout your life, he has been in public service?

A Yes He has been 22 years or 21, 22 years in public service.

Q And has that put some demands and strain on your family?

A Yes.

Q I take it despite that, your family supported him in his work; is that right?

A Yes We supported him.

Q Why is that?

A We know that my dad loves Virginia and he loves to serve I always remember, one of his favorite Bible verses is "The greatest among us is the servant of all "

MR. FAULCONER: Objection.

THE COURT: Sustained.

MR. SMALL: Thank you, Bobby Nothing further

THE COURT: Anything from Ms McDonnell?

CROSS-EXAMINATION

BY MR. HAUSS:

Q Good afternoon.

A Good afternoon.

Q How are you today?

A I'm doing well, yourself?

Q Good, thank you. So you just testified that you understood that Mr Williams was your mother's friend; is that correct?

A My mother's friend.

Q And he was also at some point your friend.

A Yes, sir

Q Did you ever, did Mr Williams ever tell you he was hanging out with you to try to get closer to your father?

A No, sir

Q He made you feel like he wanted to hang out with you; is that right?

A Yes

Q Like he valued spending time with you; is that right?

A Yes, sir

Q And you testified that Mr Williams never told you that your dad was trying to help his company, correct?

A No, sir

Q Did Jonnie Williams ever say to you that your mom was trying to get your dad to help Star Scientific?

A No, sir

Q Now, you also mentioned that a shared interest that you and Mr Williams had was nutraceuticals, right?

A Yes, sir

Q That's not something you recently got into That's something you have been interested in your whole life; is that right?

A Yes, sir

Q That's because that's something that your mom has been really interested in your whole life

A Yes, sir

Q In fact, would you say that your mom is very passionate about nutraceuticals?

A She is very health conscious

Q Now, when you would spend time with Mr Williams, when you would golf with him, did he ever talk to you about his product, Anatabloc?

A Yes, we would casually talk about Anatabloc

Q And would you say he was enthusiastic about Anatabloc?

A Yes He was enthusiastic

Q Fair to say that Mr Williams was a bit of a salesman?

A Yes, he is a businessman and a salesman.

Q And would he ever tell you about the launch of Anatabloc and how great that was going to be?

A There were conversations about the launch.

Q You also mentioned the strains and demands that your dad's public service has put on your family

A Yes, sir

Q Fair to say that your dad, throughout your life, has been very, very busy?

A Very busy, very hard-working

Q And did that become worse after he became Governor, even busier?

A Yes, even busier

Q Then you mentioned the Rolex that your dad got being a gift from your mom; is that right?

A Yes, sir

Q Did you ever hear your mom say that watch was from Jonnie Williams?

A Not at that time.

Q And with respect to the shares of stock that you got in Christmas, 2012, your mom didn't say anything about disclosure requirements, did she?

A No

MR. HAUSS: One minute, Your Honor Nothing further, Your Honor Thank you.

THE COURT: All right Any redirect?

REDIRECT EXAMINATION

BY MR. FAULCONER:

Q Now, Mr McDonnell, before your testimony here today, did you meet with the defense lawyers in this case, your parents' lawyers?

A Yes, sir

Q About how many times did you meet with them?

A One to two times Three times

Q And did you decline to meet with us before your testimony here today?

A Yes, my counsel advised me to decline.

Q Now, you talked a little bit about your communications with your father About how often would you say that you spoke to him on the phone?

A My father?

Q Yes

A Around that time?

Q Around the time of about 2010 to 2012

A So I was at UVA and we probably talked once or twice a week by phone.

Q Now, you talked also about your interactions with Mr Williams When you interacted with Mr Williams, was it mostly in person or by phone?

A Most of it was -- well, I mean, there was texts and then personal contact So it was varied.

Q When you interacted with him, though, how many times did you meet him in person?

A Possibly around ten.

Q How many times do you remember playing golf with him?

A Five, four or five

Q I just want to make sure we are crystal clear on this The first time you spoke to Jonnie Williams on the phone, who called whom?

A The first time I spoke to Jonnie?

Q Yes

A I don't remember who called who

Q Okay Now, you also talked a little bit, I think Mr Hauss asked you about this, when you were interacting with Jonnie Williams, did he mention his product, Anatabloc?

A Yes, sir

Q Did he specifically mention the launch of the product Anatabloc?

A He vaguely would talk about like when he was -- he was excited for it to hit the markets

Q Now, you also were asked about the trip to Smith Mountain Lake that you took. In addition to driving the Ferrari home, do you recall whether your father drove the Ferrari anywhere else while you were at Smith Mountain Lake?

A I don't believe it was driven anywhere except from the house back to Richmond.

Q And you also talked about the Rolex a little bit on cross-examination. And you talked about your opinions of the Rolex. To be clear, your father never said anything about thinking the Rolex was fake in your presence, did he?

A Not in my presence.

MR. FAULCONER: One moment, Your Honor No further questions, Your Honor

THE COURT: All right Thank you. You may stand down.

(Witness stood aside)

All right, we will go ahead and take our normal afternoon break. Another 15 minutes We will make sure everybody can have something to drink or use the bathroom.

(The jury left the courtroom.)

(Recess taken from 4:02 p.m. to 4:18 p m.)

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THE COURT: All right Let's bring in the jury, please

(The jury entered the courtroom)

THE COURT: All right Government, call your next witness

MR DRY: The government calls Mark Sykes to the stand

MARK SYKES,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR DRY:

Q Good afternoon, Major Sykes

A Good afternoon, sir

Q Can you please state your full name for the record?

A Yes Mark Jeffrey Sykes S-Y-K-E-S

Q And where do you work, sir?

A Division of Capitol Police

Q And how long have you worked for the Capitol Police?

A Two years

Q And your rank is major?

A Correct

Q And what's your title?

A Assistant Chief of Police

Q And how many people do you supervise, sir?

A We have 73 sworn officers, 14 -- 31 wage and 14 civilian, for a total of about 118 people

Q And can you briefly describe what the Capitol Police does?

A Capitol Police provides law enforcement and -- police law enforcement security services for the Capitol complex and area, state buildings, parking facilities We also, our jurisdiction, extends out to the Science Museum of Virginia, which is a state property, also as well as the War Memorial

Q And does that jurisdiction go over the Patrick Henry Building?

A It does, sir

Q And can you briefly describe what the Patrick Henry Building is?

A The Patrick Henry Building is one of the government facilities It houses the office of the Governor and most of the individuals who are on the Governor's staff, cabinet officials, folks of that nature

Q And does the jurisdiction of the Capitol Police also include the Executive Mansion?

A It does

MR DRY: I'd like to bring up Government's Exhibit 551 for identification, please

BY MR DRY:

Q Have you had an opportunity to review this document before?

A I have

Q And what is it, sir?

A This is the site plan, area plan for the Capitol area

MR DRY: I'd like to move Government's Exhibit 551 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q Sir, zooming in on the Capitol Square portion -- right there, Mr Starnes, thank you -- can you point out on the screen where the Executive Mansion is?

A Yes, sir It would be here

Q Okay And how many entrances are there for the Executive Mansion?

A There are three primary entrances, a main gate, a north gate and a south gate to that facility

Q And do you see a building, the Patrick Henry Building you were talking about before?

A Yes, sir, I do

Q Can you point on the screen where that building is?

A Okay

Q And is that commonly referred to as the PHB?

A Correct

Q And how far away, approximately, are those two buildings?

A Approximately 100 yards

Q And is there a private way to get from the Patrick Henry Building to the Executive Mansion?

A There is

Q And what is that?

A A set of tunnels

Q And who's allowed to use those?

A Executive Protection, the Governor, and his staff

Q Okay And as part of your duties, do you oversee the officers who provide security to both the Patrick Henry Building and the Executive Mansion?

A Yes, sir

Q I'd like to -- you can take that down, Mr Starnes

Bring up Government's Exhibit 531, please

And do you recognize this photo, sir?

A I do

Q What is it?

A That's a photograph of the Executive Mansion, also referred to commonly as the Governor's Mansion

MR DRY: I'd like to move Government's Exhibit 531 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q Sir, what are we looking at here? You described three entrances What are we looking at here?

A Yes, sir This would be the entrance I described as the main gate That's the main entrance off North Drive, leading into the front entrance of the Mansion To the left of this photo, which would be in the northerly direction, you'd have the north gate, and that gate is essentially between the Patrick Henry Building -- the exterior of the Governor's Mansion Complex and the Patrick Henry Building To the south or to the right of this photo as you move down, there's a slight grade on the hill There's a carriage house or a cottage, Mansion cottage, and there's a south gate that allows you access into and out of the facility from that point as well

Q And where -- which gate do most visitors come through?

A Most visitors would come through the main gate, the gate that's depicted here

Q Okay And are there records kept of when visitors come to the Executive Mansion?

A There are

Q And I'd like to now hand the witness Government's Exhibit 110, 125, 186, 287, and 290

Have you had an opportunity to review these records before your testimony here today, sir?

A Yes, sir, I did

Q And what are those records?

A These are daily guest logs for the Executive Mansion

Q And are these visitors' logs kept in the course of the regularly conducted activity of the Capitol Police?

A Yes, sir, they are

Q And who actually fills out the information on the logs?

A The officer on duty

MR DRY: At this time the government would like to admit Government's Exhibit 110, 125, 186, 287, and 290

THE COURT: They'll be admitted

BY MR DRY:

Q Now, the Capitol Police were served with a federal grand jury subpoena for these records, sir?

A Yes, they were

Q And were you personally involved in trying to respond to that grand jury subpoena?

A Yes, I was

Q And can you tell the members of the jury what the process was that was involved?

A I have a records coordinator that I went to and asked her to collect and assemble all the records and documents we had to comply with the federal grand jury subpoena for the time in question, time period in question

Q And were you able to find each and every daily log for the visitors' logs to the Mansion that were requested in the grand jury subpoena?

A No, sir, we were not, but we found quite a few of those

Q Okay And can you just briefly give an overview of the ones that you weren't able to find, as far as date wise?

A I can In 2010, I think there were eight months that we could not locate And I want to say the -- my recollection was the latter two months of the -- that year were what we did have

There were also a segment of those records I think from 2011, January, I believe March and April, that were missing from 2011 And I think there may have been one month or portion of a month from 2012 But we had everything else

Q Now, is it fair to say you guys went through the records multiple times trying to find these?

A Yes, sir I can assure you we did

Q Okay But the five logs that I've admitted into evidence there, those were among the records that you did find?

A Yes, sir That's correct

MR DRY: Let's bring up Government's Exhibit 110 as an example

BY MR DRY:

Q What is the date of this particular Mansion log?

A This is May 2nd, 2011

Q And in the left-hand corner, it says "Shift #1 OIC: Sergeant Bassett " What does that mean?

A That would be the shift, the particular shift sergeant, our officer in command of that particular shift So that sergeant is in charge of that particular shift

Q And then to the right of that it's got Officer Brackett and Robinson, what does that mean?

A Those were the two officers who would have been on duty that day

Q For that shift?

A For that shift, correct

Q And tell the members of the jury which shift -- what does Shift #1 mean?

A Shift #1, we have a midnight shift And that's why you see two officers' names there Midnight shift runs from 12 midnight until 8 a m And at that point we have one officer positioned at the Mansion gate and a second officer inside the Mansion in the Executive Protection Office

Q And then Shift #2?

A Shift #2 is day shift That essentially runs from 8 a m until 4 p m We have one officer at that point because the Virginia State Police Executive Protection are on duty during day shift So we have one officer That officer is positioned at -- outside at the Mansion gate

Q And then Shift #3?

A Shift #3 is from 4 until midnight And once again, that would be one officer positioned at the Mansion gate

Q And so just so we're clear, during the day, EPU officers assist and protect in the Mansion Is that fair?

A Correct

Q How many days off does Capitol Police take from protecting the Mansion?

A We are not off It's a 365-day-a-year operation, 7 days a week

Q On this particular log, do you see an entry in the "Time In" column for 7:50, since we're up there?

A Yes, sir

Q And whose -- whose name is next to that?

A Mary-Shea

Q And in the "Organization/Guest" column, what does it say there?

A Mansion staff

Q Can you -- can you tell the members of the jury, who's required or who's supposed to sign in on the visitor logs?

A Anyone other than VSP, Executive Protection Unit, First Family, Capitol Police, and visitors who would come for major events Tax Tribute would be an example of one such event

The other folks are an approved personnel list, to include Mansion staff and so forth But everyone else, with the exception of those three primary groups, are to be signed in or to be logged in

Q Now, if you're on this approved list, are you still supposed to sign in?

A Yes, sir, you do

Q Do you see, on this particular log, going down at 9:24, do you see a name listed there under the "Time In" column or -- or the "Name" column for 9:24?

A Yes, sir

Q And who is that?

A John Williams

Q Okay And in the "Organization/Guest" of, what's listed there?

A 102

Q And who does 102 refer to?

A 102 is the call sign we use for the First Lady

Q Okay And does anyone else have a numerical identifier?

A They do Each member of the family would have a distinct call sign

Q And for the Governor, what's his call sign?

A 101

Q Going back now to Government's Exhibit 531 You've previously testified that most visitors come through the front gate right here, right?

A Yes, sir

Q Is it possible for someone to get into the Executive Mansion without signing in to the visitors' log?

A Yes, sir

Q Can you describe when that would typically happen?

A There could be an occasion where a member of the First Family or someone on staff would say we're coming in through the north gate That person or family member may have someone else in the car We would not necessarily go over and look in the car to see who else would be in there, sir

Q Fair enough

Thank you very much, sir

A Yes, sir

THE COURT: Any questions, Mr McDonnell?

MR BROWNLEE: Nothing, Your Honor Thank you

THE COURT: Anything?

MR BURCK: No, Your Honor

THE COURT: All right Thank you, Major You may stand down

THE WITNESS: Thank you, Your Honor

(Witness stood aside)

THE COURT: Call your next witness, please

MR DRY: The United States calls Jonnie Williams to the stand

JONNIE RAY WILLIAMS, SR.,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR DRY:

Q Mr Williams, can you please state your full name for the court reporter?

A My name is Jonnie Ray Williams

Q And, sir, how do you spell your name?

A It's spelled -- first name is spelled Jonnie, J-O-N-N-I-E, R-A-Y, Williams

Q And are you senior or junior?

A I'm senior

Q Okay Were you one of the founders of a company named Star Scientific?

A I was

Q And when you founded Star Scientific, what type of business were you founding?

A What type of business was it?

Q Yes What type of --

A It was a tobacco business

Q And specifically, what type of tobacco business? What were you doing?

A I had the -- I bought the old Brown & Williamson cigarette facility in Petersburg, Virginia, and we manufactured cigarettes and we manufactured cigars for Swisher Sweets

Q And at some point did your tobacco company have -- kind of transition of trying to find healthier ways of curing tobacco?

A Yes

Q Can you briefly describe that?

A I came from health care, and I ended up with the cigarette factory And the first thing was to get it into the black, making money, and I did that and the company was doing very well

And then I set out believing that -- you know, understanding that the cigarettes are a problem, and I set out to see if I could make them less toxic, make them no more harmful than they had to be

Q And eventually, did you patent a way of doing that?

A I did that I did do that

Q But at some point did Star Scientific's focus change from tobacco to what's been called a nutraceutical?

A Yes

Q And kind of describe how that happened

A Well, as we left the cigarette business, I discovered a way to remove the -- prevent the tobacco-specific nitrosamines -- which is the strongest, most abundant carcinogens in tobacco -- from forming

One of the major tobacco companies came in, British American Tobacco, as a partner, and -- through their Brown & Williamson subsidiary And so that was moving along, and then one of the other companies in the industry started to copy what Brown & Williamson was doing; R J Reynolds And we litigated the case against R J Reynolds, and we lost the case on infringement All the patents were upheld, but we lost on the infringement side, and then we ultimately settled the case

But once that had happened, I had taken the company from a very profitable cigarette business into this area of trying to make it less harmful tobacco And then my partner, Brown & Williamson, was purchased by R J Reynolds Tobacco Company that I was litigating with So it made it a little difficult

But through the process of discovering and figuring out how to block the nitrosamines from forming, what I was looking for was why can't people just quit smoking, why can't they -- you can go down to the drugstore and buy all the nicotine you want, and the quitting rate is 4 or 5 percent at the end of the year There must be something else in there And that led me to identifying the compound in tobacco that I believe is not only responsible for people smoking, but I believe it's responsible for -- is the explanation was the key for why people that smoke aren't developing these autoimmune diseases like thyroid disease, Parkinson's disease that have been studied in hundreds of thousands of patients

Q So is it fair to say that when you were working on this product, you identified something called Anatabine?

A I did

Q And you believed that that would reduce inflammation diseases in the human body Is that true?

A I did I tested it for that, and that's -- that was the result

Q Well, let's go back What -- Star Scientific, in 2009, what was your title with Star Scientific?

A CEO, chair -- CEO of the company

Q And how much were you paid in salary as CEO?

A Base salary was a million dollars a year

Q And in 2009 was Star Scientific a profitable company?

A No, not at that point I had taken it into a biotech area

Q And what were your duties as the CEO of Star Scientific?

A Well, when you're -- when you're in a biotech area, you're trying to develop a technology that's going to change things The number one rule in business is to stay in business So what I did was I covered Wall Street and the investment community from several prior deals that I had, companies that I was a founder or co-founder of that were very successful So my access to capital was very good

And so I would routinely meet with investors, meet with the investment community to keep a base of support underneath of what I was doing to support this going forward Because when you start doing this, when you -- when you're not funding it from operating cash flow and you're relying on investment capital, new investment capital to come into the company while you complete whatever it is until you reach the point of commercialization, your access to capital is very important

Q Were you the owner of a company named Starwood Aviation?

A Yes

Q And what's Starwood Aviation?

A Starwood Aviation is a company that just houses the airplane

Q And when you say "the airplane," what type of airplane?

A Learjet

Q And ultimately, whose jet is that?

A Mine

Q Okay And what type of things did you use the jet for?

A Raising capital, product development I move around a lot It's a small infrastructure in the company, and I'm busy and I move around from place to place a lot

Q And when you're using the jet for company business, do those flights come out of your pocket or who pays for them ultimately?

A No The company reimburses me for the business trips

Q And if they are just personal trips, who pays for them?

A I pay for them

Q Did you occasionally lend your -- your jet to Virginia politicians to use?

A I did

Q And why would you let Virginia politicians use your jet?

A I think it's become common practice here in Virginia and know other people that have jets here in Virginia, and you allow the politicians to use the airplanes because if you're a Virginia company, you want to make sure that you have access to these people, and the airplane -- the airplane accomplishes that

Q Well, and to be clear, what type of politicians are you loaning your jet out? Are they Republican, Democrat, a mix?

A I'd say mine is on the Republican side

Q And beginning in March of 2009, did you start lending your jet to Mr McDonnell during his campaign for Governor?

A The first time Governor McDonnell used my airplane, I was coming into Richmond, and someone had contacted my secretary and said they need to use the jet to go to Roanoke, Virginia, I believe And I said okay, I'm coming in at this -- this time and they can take it and go to Roanoke with it And I met the Governor on the tarmac as I was walking into the FBO

Q Now, in March of 2009, was he the Governor?

A No

Q Okay So had you ever met Mr McDonnell before this March of 2009?

A I don't recall ever meeting him

Q During Mr McDonnell's campaign for Governor, do you know how many times you -- you met him?

A Three times, two times

Q Okay And how would you -- how would you characterize your relationship with the Governor prior to him becoming Governor, Mr McDonnell?

A He's -- he's -- he's a politician and I'm a businessman

Q Okay Now, after the election in November of 2009, after he's actually elected but before he goes into office, did you ask to meet with him?

A Yes

Q And where was this meeting going to occur?

A At the Four Seasons Hotel in New York

Q Okay Why did you want to meet the Governor?

A To develop a relationship with him

Q A personal relationship?

A No A business relationship

Q And did the meeting actually occur at the Four Seasons?

A It did

Q And that was in New York?

A Yes

Q Who was present during this meeting?

A The Governor's wife; several of the aids; one of the aids, Adam Zubowsky; another gentleman by the name of Phil Cox; and a friend of mine by the name of Brad Kroenig

Q And -- now, Kroenig was your personal friend, right?

A I invited him to come to dinner

Q Okay And who is he?

A Brad lives in New York

Q And what's his occupation?

A Brad is a model, a professional model

Q Now, had you ever met Ms McDonnell before this meeting?

A I don't think so

Q Okay Now, during -- kind of place this Where does this meeting occur in the Four Seasons?

A Physically?

Q Yeah I mean, just kind of set the stage for where this meeting is at

A In the lobby of the Four Seasons on 57th Street, when you walk in, it's a grand lobby And off to the right is not a formal restaurant, but a -- a restaurant that's available, you know, to have light lunch -- to have lunch, to have breakfast and dinner, light dinners

Q And how long do you think you spoke to the Governor and Ms McDonnell at this? Was it a three-hour thing or --

A No, no They were going to -- they were going to a Christmas show in New York, a Broadway Christmas show So I'm going to say I was there with the Governor and his wife for, at the most, an hour

Q Okay And generally, what was the topics of discussion? Are you pitching anything or what are you --

A No In that environment, I don't have -- it's not an environment to be trying to sell the Governor anything or pitch anything to him I'm just trying to -- I'm just trying to establish a relationship with him and it happens to be in a nice environment

Q And during this -- this conversation, did the subject of Ms McDonnell's inauguration dress come up?

A It did, yes

Q And just walk me through what happened

A When I introduced my friend, Brad Kroenig, he is -- as a male model, he's in the fashion industry She was very interested in that And she said, you know, "I have a problem with" -- "I've got to come up with a dress to wear for the inauguration " And so she mentioned to Brad, you know, "Do you know anyone in" -- "with you being in the fashion industry, that could help me, you know, with a dress?"

And Brad turned it to me and said, "One of Jonnie's good friends, his daughter is the goddaughter of

Oscar de la Renta " And so that sort of put it back with me

Q And then what happened?

A I told her that I would help her -- I'd help her get a dress for the inauguration

Q And what kind of dress were you offering to help get her?

A I didn't know at that point what the dress needed to be like, but a nice dress for the inauguration

Q And when you said offered to help her, were you offering to pay or offered to find or how did that work?

A Well, at that point I was hoping that -- through my friend that, you know, maybe from one of these shows or whatever, maybe Oscar de la Renta, as close as my friend is with him, that they would let her borrow one for the inauguration

Q But did you learn whether that was going to be possible or not?

A I found out that that wasn't an option

Q Now, when you were having this conversation with Ms McDonnell, is Mr McDonnell present?

A To her left, seated to her left

Q Seated to her left And does she say anything to Mr McDonnell about the dress?

A She did

Q What did she say?

A She said, "This is great Jonnie is going to help me get a dress for the inauguration "

Q Now, did you subsequently -- you said that you found out that you couldn't get a loaner dress and you were going to have to buy it?

A Right

Q Did -- did you have conversations with Ms McDonnell about that?

A I did

Q Describe those

A I told her I needed to get a date when she could come to New York as soon as possible so that we could go to Oscar de la Renta so that she could be fitted for the dress to have it in time for the inauguration

Q Did you ultimately buy Ms McDonnell's inauguration dress?

A I did not

Q Why not?

A When I received a phone call from a lawyer at the Governor's office saying that, you know, "I understand that you're getting ready to purchase Ms McDonnell a dress for the inauguration I'm calling to let you know that you can't do that "

And I said, "Thank you very much "

Q Okay And do you remember, was that lawyer's name Jason Eige?

A Yes

Q Did you have a subsequent conversation with Ms McDonnell about not purchasing her the dress?

A I did

Q And what was discussed then?

A She wasn't happy about it She was disappointed, and she indicated that she had been told that the dress for the -- an inauguration dress -- it was actually two things It was, one, a fancy dress like this would look bad in this economy to be wearing at the inauguration And secondly, the dress would have to be given away, the inauguration dress, if I purchased the dress, and she said she would just take a rain check

Q Did she use those words?

A Yes

Q Now, in October of 2010, did you fly back from California with Mr McDonnell on your private jet?

A Yes

Q How did that come about?

A Someone on his staff contacted my assistant and said that they -- they really needed to use the airplane to go to California

Q So did you agree to that request?

A I agreed to that request and allowed them to use the airplane

Q And did you fly out there with the airplane or how did you get on board?

A I took a commercial flight

Q Okay So you took a commercial flight to where?

A To San Francisco And then I had the plane come pick me up from Sacramento to San Francisco to pick me up so that I could spend time with the Governor to explain to him what I was -- you know, what our business -- what I was trying to accomplish

Q All right Just so I'm clear, so your jet flies from Richmond to California, and where do you fly from commercial to Sacramento?

A I don't remember whether I left out of Richmond or Florida or where I left out of, but I took a commercial flight to intercept that trip

Q Okay And why -- why did you want to be on board your aircraft for the flight back from California to Richmond with the Governor?

A I figured that would give me five or six hours with the Governor to explain to him what I had discovered here in Virginia and to explain to him that I needed his help and -- in moving this forward

Q And during this five or six hours with the Governor, what did you tell him?

A Well, what I did was I explained to him how I discovered it I gave him a basic education on the -- on smoking, the diseases that don't happen with smokers and just tried to make sure he understood, you know, what I had discovered in this tobacco plant and that I was going to -- what I needed from him was that I needed testing and I wanted to have this done in Virginia And I did ask him -- I told -- I asked him, "Would you connect me with the person in Virginia in your administration so that I can move this forward" --

Q And --

A -- after I finished explaining, you know, how Anatabine works and the properties of it

Q So you said that you mentioned testing Did you talk about -- and the testing that you wanted was where?

A In Virginia He thought -- we both agreed, he agreed, that the independent testing in Virginia was a good idea

Q But he -- he didn't agree in any way to -- he didn't guarantee you, yeah, I'm going to get you the testing or anything else like that What did he actually agree to do for you in that flight?

A He agreed to help me find -- he agreed to introduce me to the person that I needed to talk to

Q And did he tell you who that was?
A Dr Hazel
Q And who is Dr Hazel?
A Dr Hazel is an orthopaedic surgeon that's in charge of Virginia's equivalent of HHS, health and human services
Q Now, we talked about the trip to New York City in November of 2009, and then we just went over this flight in October of 2010 Both of those are interactions with the Governor In between then, how often did you meet the Governor?
A I don't recall meeting -- I don't recall, unless there's a paper or some sort of record that says that I met with him I don't recall
Q Let's do it this way During that time frame, how would you describe your relationship with the Governor?
A He was busy doing his business I was busy doing mine
Q Okay Did you actually get a meeting with Dr Hazel in November of 2010?
A I did
Q Where did you meet Dr Hazel?
A At the Patrick Henry Building
Q And what was the purpose of the meeting with Dr Hazel?

A To explain to Dr Hazel what I had discovered And I explained to him that I was early with this and I was trying to set it up to where ultimately this compound that I discovered, which was an anti-inflammatory, that was very potent, that appeared to have -- look like a vitamin from a safety profile, and I was doing the work and working with medical researchers and physicians at Johns Hopkins to try to demonstrate -- try to develop this into a product that could be ultimately shown to lower the health care cost in Virginia

Q And did you mention to Dr Hazel anything about your wife Celeste's experience with Anatabine at the meeting?

A I did

Q And briefly, what was that about?

A I shared with him the experience of what happened with my wife when she developed Hashimoto's thyroiditis

Q And your wife had this condition?

A She did She developed thyroid disease, and it accelerated to the point where the nodules became atypical And when the endocrinology -- endocrinologist at VCU Medical School said that she needed surgery, then I contacted the chief of endocrinology at Johns Hopkins And I took her there, Dr Paul Ladenson Dr Paul Ladenson did -- conducted a full examination of my wife He's a thyroid expert, and he agreed that her thyroid was going into cancer It was too high of a risk with the mortality associated with that and her thyroid needed to be removed

And while I was there with Dr Ladenson and my wife in his office, I asked Dr Ladenson, I said, "Have you ever conducted any studies with smokers and Hashimoto's thyroiditis?"

And he said, "Why would you ask that?"

And I said, "I'm curious "

He said, "The only study that I know of that's ever been done was done here, and smokers generally don't get thyroid disease "

So I asked him, I said, "Before you do the surgery, can you give me" -- "can you give me 60 days so I can try something to stop it?"

And --

Q And that was Anatabine that you were going to try?

A I took Anatabine I took it at a level of what smokeless tobacco people using chewing tobacco and various varieties of that That was the only guideline I had for the level of Anatabine

And I made them into a form of a Tic Tac for my wife, and I asked her to take these right up until the time that we showed up for surgery at Johns Hopkins and before the surgeons

Before she was going into surgery, I insisted that they do a sonogram or a test once more to check the thyroid disease And they came back in maybe an hour with her, and this thoracic surgeon contacted Dr Ladenson over at endocrinology and said, "Ms Williams is no longer a candidate for surgery "

Q Is it fair to say that this -- your wife's experience made you enthusiastic about this idea?

A Very enthusiastic

Q But, sir, first of all, you're not a scientist, you're not a doctor, right?

A I am not a scientist I am not a doctor

Q Okay And when you first say this to Dr Ladenson about, "Hey, can you give me 60 days," what's his kind of reaction to your idea?

A "Jonnie, I get a lot of" -- "I get a lot of quirky relatives that suggest things" --

Q Okay But --

A -- "but I'll give you" -- "I'll give you like 60 days to try this "

Q All right But when you're telling Dr Hazel about your wife's experience and about the product and your beliefs, what's his reaction?

A It's interesting

Q But did you feel like he was as enthusiastic as you were?

A No

Q Okay And at this point did you have any human studies, human trials that you could point to to say, yes, this is effective for X, Y and Z?

A No I was there to start the dialogue and let him know what it was that I had discovered and what it -- what I hoped the testing would demonstrate

Q As you left there, did you get any commitments from Dr Hazel regarding what he was going to do to help you?

A No I invited Dr Hazel to come to the Roskamp Institute, which was conducting testing

Q Let's talk about that Just briefly describe what the Roskamp Institute is

A It's a private research institute, funded by a philanthropist, Bob Roskamp, that -- in Sarasota, Florida And he brought in a group of maybe 100 researchers on his own privately to try to address Alzheimer's

Q And did Star Scientific and the Roskamp Institute, did they have any financial relationship?

A I don't believe with the institute itself, but with an arm of the institute that is engaged in commercial activity

Q Okay So that's a financial relationship that benefits Roskamp?

A It does

Q Okay Did Dr Hazel agree to go to the Roskamp Institute?

A I believe he did I'm confident that he agreed I just don't remember exactly how that went to the next step

Q Okay

A He said he was -- he was interested in going

Q And why did you invite Dr Hazel to the Roskamp Institute?

A Well, Dr Hazel is a physician He's a key person -- he is the key person that I know at this point in the administration And with him being a physician, I felt like if he sees the test results and he sees the work that's going on, maybe he would understand better than someone like me, that's not a doctor or a scientist, trying to explain this discovery that I had

Q Did you ultimately schedule a flight for him -- for Dr Hazel to go down to the Roskamp Institute?

A I did

Q And did he actually go?

A No

Q What happened?

A Somewhere through that period, he said that he wouldn't be able to attend

Q And what was your reaction to him not going down?

A Disappointed

Q Now, I want to move to February of 2011 Did Star Scientific have an event in February of 2011 for a product called CigRx?

A Yes

Q And what was the purpose of that event?

A CigRx used this Anatabine, and unlike using it as an anti-inflammatory to try to help people with a particular problem, I believed that the anti-inflammatory contributed to why people were smoking And so we developed a product called CigRx as a dietary supplement, hoping that smokers would find that Anatabine that they're used to that makes them feel good in tobacco in this product

And so what we had done is I had engaged a -- a national health group with a test market in Richmond where we had a field sales force to contact physicians and health care professionals in the Richmond area and bring them together at The Jefferson Hotel so I could bring in our medical director, who's a former chief of anesthetics and addictive substances at the FDA

And so I wanted him to be able to explain to the Richmond health care community what we had discovered in this new product that we were making available in the stores and the drug stores and to them to assist smokers

Q And just for clarity sake, the compound you're talking about is Anatabine; is that correct?

A It is It's Anatabine

Q And then you have a product that you're promoting in February of 2011 called CigRx?

A CigRx

Q And Anatabine is in CigRx?

A Yes

Q And then later on you have a product with Anatabloc?

A With an increased level of Anatabine for a different purpose

Q Okay And the cigarette's purpose is the smoking cessation?

A It's an alternative to smoking We would like to think -- smoking cessation is actually a drug claim at the FDA

Q Okay

A So we --

Q An alternative --

A -- wanted to avoid any problems with that, but we believe that this is the active ingredient in tobacco, aside from nicotine, and that this could be helpful to smokers as an alternative not to use cigarettes

Q Okay And Anatabloc, that has a higher dosage, but that is for anti-inflammatory?

A It's an anti-inflammatory Chronic -- autoimmune diseases -- the underlying cause of an autoimmune disease is chronic inflammation that eventually --

Q Okay I want to stop you there

All right So going back to the CigRx event at The Jefferson Hotel, I just want to make sure I understand You've got this doctor that's going to talk to other doctors and trying to explain CigRx, correct?

A Correct

Q And the goal of doing that is to get these other doctors to do what?

A To recommend the product to their patients

Q Okay And did Mr and Ms McDonnell attend the CigRx event?

A At the end of it, that evening

Q Okay And how did that come about?

A From having met the aid to the Governor, Adam Zubowsky, I contacted Adam and asked him could they stop by

Q Okay

A And he text me back and he said, "Let me know when you need" -- "what time you're going to be finished so we can come by towards the end "

Q And when did you contact -- did you know that Adam Zubowsky is the body man for the Governor, the aid?

A The aid, yes

Q The traveling aid?

A Yes

Q When did you contact him in reference to when the Governor showed up, how far in advance? Just ballpark me

A Well, I think I contacted him that afternoon and alerted him to the event

Q Okay

A And then I -- my recollection is that he responded to me and said, "Let me know what time and then" -- maybe 30 minutes, 30, 40 minutes

Q And why did you want the Governor and First Lady to stop by your event?

A Well, I had Richmond physicians and health care professionals in the room, and I thought the credibility of the Governor towards letting them know that our company was important, this discovery was important would be very helpful to our company

Q And did Mr McDonnell make any remarks at this event?

A Yes

Q And briefly, just -- were they really long remarks or just brief remarks?

A Those remarks were related to, I think it's important that we have companies in Virginia with this entrepreneurial in pursuing ventures like this This is sort of the backbone of Virginia, or companies that are pursuing technology like this, and, you know, we're proud to be supportive of this company

Q As of this event, had you socialized with the Governor or Ms McDonnell in February of 2011 when they showed up at this or is this more the donor relationship?

A I have had no -- I have not socialized with them

Q Okay Now, did you see Mr and Ms McDonnell again in April of 2011 in New York?

A Yes

Q And, in fact, did Ms McDonnell contact you about going up to New York?

A That's correct

Q Tell the -- tell the jury about that

A She contacted me and said, "We can go to New York now Can you come up for this event at the Union League Club and I'll have you seated with the Governor and we can go shopping now "

And I said, "Are you sure that's okay?"

She goes, "It's okay It's okay now "

Q And what type of event was this Union League Club event?

A It was a typical political rally The people in that audience were investment banking groups in New York that were interested in the Republican agenda, and the Governor represented that

Q Now, did you agree to take Ms McDonnell shopping in New York City?

A I did

Q And who was present during this shopping trip?

A Ms McDonnell, her Chief of Staff Mary-Shea, and myself

Q Were there EPU officers nearby?

A One from New York One from Virginia

Q And where were they at?

A They drove the car

Q Okay And what stores did you go to in New York City?

A We had lunch at Bergdorf Goodman, a department store on Central Park And after lunch, I had made an appointment with -- I don't know how you would describe it -- a designer or a fitter at Oscar de la Renta, through my friend, to show her some dresses And so that's the first place we went to

Q And where did you go after that?

A Louis Vuitton on 5th Avenue

Q Okay And then where did you go after that?

A She wanted to go back to Bergdorf Goodman

Q And kind of walk us through what's happening in each of these stores I mean, when you went there, was it to purchase one dress or what was going on?

A She needed two dresses She needed one for the anniversary, and she needed one for the upcoming wedding with her daughter --

Q Okay

A -- or wedding reception I'm not sure

Q Okay When you say "anniversary," whose anniversary?

A Hers and the Governor's

Q Okay So you go there for two dresses, correct? And --

A I'm not sure if it was two -- you know, this went on for hours I'm not sure if there were two dresses at Oscar de la Renta or what -- two dresses at Bergdorf Goodman I'm not -- I don't know the number of dresses from what stores

Q All right But ultimately, were only two dresses purchased through the whole shopping trip or were more --

A No There were more things

Q Okay Kind of describe what was bought

A At Oscar de la Renta, there was at least one dress, maybe two, a white leather coat, a full-length white leather coat At Louis Vuitton, shoes, a purse, a raincoat And at Bergdorf Goodman, at least one dress And that dress was tailored and it didn't work So I called back to the store and purchased another one and had it sent to the Governor's Mansion

Q Okay And what was Ms McDonnell's demeanor during the shopping?

A I'd say she was happy

Q Okay Is Mary-Shea there, I think you said?

A She is

Q And did you buy anything for Mary-Shea Sutherland?

A I did

Q And tell the jury how that came about

A Well, after Oscar de la Renta and Louis Vuitton, we went back to Bergdorf Goodman a few hours later And I'm sitting in the designer dress department at Bergdorf Goodman and I'm sitting on an ottoman while Ms McDonnell is trying on dresses Mary-Shea is sitting there And we're sitting there for a while, and I said, "Mary-Shea, you may as well try" -- "try a dress on "

Q Okay And did she ultimately get a dress?

A She did

Q Total how much, approximately, did you spend on Ms McDonnell during the shopping trip?

A $20,000 or so

Q And Mary-Shea Sutherland got how many items?

A One

Q And that was one dress?

A Yes

Q That was approximately $1,600?

A I don't recall exactly how much it was

Q Okay Did you go to the Union League Club event later that night?

A I did

Q And who did you sit next to at the event?

A I sat with the Governor and his wife

Q Okay Now, I want to fast-forward to the end of that month Did you go to dinner at the Governor's Mansion on April 29th of 2011?

A I did

Q And how did that come about?

A Maureen McDonnell invited my wife and I to attend dinner with her and her husband at the Governor's Mansion upstairs in the private residence

Q And did you buy Ms McDonnell anything as a hostess gift for the dinner?

A I did

Q And tell the members of the jury how that came about

A Well, I didn't know what to get I told my wife about what had happened in New York

Q What do you mean "what had happened in New York"?

A That, you know, I had purchased these things for her in New York

Q That you had purchased what?

A In particular, a purse in New York And she said, "Well, let's go over to Stony Point, if you can remember what it looked like, and get a wallet to go with the purse "

Q What store in Stony Point?

A Louis Vuitton

Q Okay Just so I'm clear, so your wife suggests that you go to Louis Vuitton to pick out a matching wallet?

A Yes

Q Okay Did you do that?

A I did

Q And you show up at the Governor's Mansion Who are you having dinner with at the Governor's Mansion?

A The Governor and his wife

Q Okay And did you meet any of the Governor's children during this dinner?

A I did

Q Who?

A Rachel, his daughter that was going to school, came by, and Cailin, his other daughter that was getting married

Q And how long were these interactions with the kids?

A The Governor talked to Rachel for a couple minutes, standing there She was standing there And Cailin, maybe a couple minutes or -- I just don't -- it was brief

Q It was brief But you don't know specifically? You couldn't tell us 5 minutes, 10 minutes, 15 minutes, right?

A I can't tell you that I can tell you that it wasn't over five minutes

Q Okay What did you discuss during dinner with Mr and Ms McDonnell?

A Anatabloc that contains Anatabine

Q Okay And was your wife discussing it as well?

A Yes

Q And what was she saying about --

A She was -- she heard me pitching this, or selling this to the Governor, and I think she decided on her own just to explain to the Governor what had happened with her experience And he listened very well He listened closely to what she had to say

Q And during this, are you bringing up the studies again?

A I am

Q Before -- before your meeting with Cailin McDonnell and Rachel McDonnell, had you ever met them before?

A I don't recall ever meeting them

Q Okay

MR DRY: Can we bring up Government's Exhibit 110? I believe that's been introduced into evidence already

BY MR DRY:

Q You've seen this document before, sir?

A I have

MR DRY: And can we blow up where his name is? Yeah, right at the 9:24 part

BY MR DRY:

Q That's your name on the Mansion log?

A Yes, it is

Q And that reflects that you came to the Mansion at 9:24 and left at 11:25, right?

A This is on the date of the dinner?

Q No, no, no, sir

A This is a different one?

Q I'm sorry Let's go up

A Okay

Q Upper right-hand corner

A Yes

Q Do you see the date of May 2nd, 2011?

A I do

Q And you see where you arrive at 9:24 and 11:25?

A I do

Q Did you actually meet with Ms McDonnell on that date --

A I did

Q -- at the Mansion?

A I did

Q How did that come about?

A She contacted me and asked me if I would come see her

Q And who was present during this meeting?

A Her and myself

Q Did you know what the purpose of the meeting was going into the meeting?

A She wanted to talk about Anatabloc

Q Okay And then while you're at the meeting, what happens?

A Maureen McDonnell was explaining to me hers and the Governor's financial situation, that they were -- that they were in financial trouble

Q And did she describe how much financial trouble she was -- they were in?

A She said her and her husband were discussing filing bankruptcy, but he thought it was a bad idea And she told me that they had a loan with a physician in Virginia Beach that was a high interest loan, short term, and she explained to me that the real estate at Virginia Beach, with the economy, was not renting and covering the payments and that they were basically in trouble

Q And did she mention who the high interest rate loan was from?

A A doctor in -- she may have said the name I don't -- I don't think she said the name, but some doctor in the Virginia Beach area that they knew

Q Did the subject of credit card debt come up?

A Yes

Q What was said about that?

A She said their credit cards are -- were basically tapped out and they were high, and -- and she -- she became very emotional at this point

Q And what did she -- what was your response? Was she asking for anything or what is she doing, just commiserating with you?

A I sat there and listened And then she said to me, "I have a background in nutritional supplements and I can be helpful to you with this project, with your company The Governor says it's okay for me to help you and" -- "but I need you to help me I need you to help me with this financial situation "

Q And specifically, what did she ask you to do?

A She said that they had a wedding -- their daughter Caitlin was about to be married and they had a balance on the reception bill of approximately $15,000 or so And she said she needed to borrow $50,000 And she said she would help me, and I said, "Okay, I'll do it "

Q Well, to be clear, she's saying that she's going to help you, but she's not promising you that the Governor is going to help you, right?

A No

Q And she never tells you at this meeting, "I'll get Bob to do X, Y or Z if you give us the money"?

A No

Q Okay So you agree to the $50,000 Does the subject of Cailin's wedding expenses, Cailin McDonnell's wedding expenses, does that lead to a request as well?

A Yes And I agreed to do that as well

Q And what was that?

A $15,000

Q Did she tell you why she needed the $15,000?

A She was short on the -- she didn't know how she was going to cover the expenses of the wedding reception

Q And did she tell you how much the reception was going to cost and how much was left over?

A I don't recall exactly the numbers I think the reception cost was maybe 25 or $30,000

Q And that was according to Ms McDonnell?

A Yes

Q Now, you tell Ms McDonnell you're going to help her Is there anything that you want to do before you write the checks?

A No The only thing I cared to do before I gave her

$65,000 in two checks is I needed to make sure her husband knew about it

Q Why?

A He's the breadwinner in the house, and I'm not writing his wife any checks I'm not writing his wife checks without him knowing about it

Q Did you have a conversation with Mr McDonnell before you loaned the 50,000 and gave the 15,000?

A I did

Q Do you remember the exact date of that conversation?

A I don't I recall that it was on the day that I came there or somewhere -- I just don't recall whether it was in person or whether I talked to him on the phone

Q Well, tell the members of the jury what you remember about the conversation with Mr McDonnell

A I called him and said that, you know, "I met with Maureen I understand the financial problems and I'm willing to help I just wanted to make sure that you knew about this "

Q And what does he say?

A "Thank you "

Q Does he dispute that they are having financial problems?

A He just mentioned that the real estate in Virginia Beach was the problem

Q Is there any discussion about -- you knew he was a lawyer, right?

A I did

Q Did you agree on terms for the loan?

A I don't recall what the terms were at that time

Q Okay Did you draft up any loan paperwork?

A No

Q Okay Why did you agree to loan $50,000 and give $15,000 to the Governor?

A I needed -- I needed his help

Q Help personally?

A Not personally I needed the -- I needed the help of -- what I was trying to do was I discovered this compound in the tobacco plant that I believed that would lower the health care costs I know that he controls the medical schools here in Virginia And so I needed his help with the testing of this to help me implement this into the system, and I needed the credibility that comes with that office and with the state of Virginia for letting people know about the benefits of Anatabine

Q When you agreed to give the 50,000 and 15,000, were you doing it because you thought that Mr McDonnell and Ms McDonnell were your personal friends?

A No

Q What were they?

A This was a business relationship

Q At some point in May of 2011, did you invite the Governor himself to go down to the Roskamp Institute?

A I did

Q And what event did you want him to come to?

A There was a fundraiser being held at the Roskamp Institute, and it was also investors from New York and different places that were attending that meeting But also doctors from Johns Hopkins were attending to discuss with the physicians from Roskamp the science

Q And this meeting was going to be on June 1st, 2011?

A I think so

Q And that was down in Florida?

A In Sarasota, Florida, at the Roskamp Institute

Q Did Governor McDonnell tell you that he would go, decline? What did he tell you?

A He wasn't able to go, but his wife was

Q Okay At some point did you think he might go?

A I did

Q Okay And you said that his wife went Did you have a conversation with Ms McDonnell about that?

A I did

Q And what was that co sation?

A I talked to her and I told her what was going to happen, and she was willing to come down and as long as she could get back the next afternoon because the wedding was coming up

MR DRY: Okay I'd like to show Government's Exhibit 125, which I believe has already been introduced into evidence

BY MR DRY:

Q On the top right-hand corner, do you see the date on that, sir?

A May the 23rd, 2011

MR DRY: And can you go -- scroll down to the noontime and then highlight both the noon blocks

BY MR DRY:

Q And, sir, that says 12:00, right?

A Yes

Q And that's your name, Jonnie Williams?

A It is

Q And it says "To see 102," correct?

A Yes

Q And below that says "Alia Williams," right?

A It does

Q With the same time in and time out?

A Yes

Q Do you know who Alia Williams is?

A No But I know who Celeste Williams is I think they -- they just misspelled my wife's name

Q Okay Did you actually go with your wife to the Executive Mansion that day?

A I did

Q And was that a significant date for you?

A It's our anniversary

Q Your wife and yours anniversary?

A Yes We were going to The Jefferson to have lunch, but I told her I had to stop by the Governor's Mansion first

Q And why were you stopping by the Governor's Mansion that day?

A To deliver these checks

Q What were the amounts on the checks?

A One was for 15,000 One was for 50,000

Q And did you instruct your assistant, Jerri Fulkerson, to write those checks?

A I did

Q One of the checks was made out to Maureen McDonnell Why was it to Maureen McDonnell?

A That's who I was told to make the check out to

Q By whom?

A Maureen

Q On the 15,000-dollar check, that was made out in blank Why was that made out in blank?

A It was going to the catering company, I thought

Q Okay Before Ms McDonnell asked you for the 15,000, had you been invited to attend the wedding? Before she asked you for the money, not before you delivered it

A I don't recall

Q Had you planned on going to the wedding?

A No

Q What was Ms McDonnell's demeanor when you gave her the 50,000 and 15,000-dollar checks?

A She was pleased

Q And, in fact, can you walk the jury through what happened as you're delivering the checks? Does your wife come into the Mansion as well? You were there for an hour and 15 minutes

A I left her in the car for a little bit I had trouble getting out, and Maureen McDonnell eventually came out and asked my wife to come in

Q And what are you and your wife doing with Ms McDonnell for an hour and 15 minutes?

A We went upstairs and had a salad --

Q Okay

A -- with Maureen McDonnell, I believe

MR DRY: Can you please bring up Government's Exhibit 134, please?

BY MR DRY:

Q Sir, this is an e-mail from Mr McDonnell to you,

correct?

A Yes

MR DRY: I would like to move Government's Exhibit 134 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q Sir, do you have difficulty reading?

A On two fronts When I don't have my glasses on --

Q Okay

A -- and just reading in general is difficult

Q And have you always had difficulty reading?

A Yes

Q Okay I'm going to read this aloud and you tell me if I'm -- if I'm messing up Okay?

A Okay

Q The date of this is May 28th, 2011 "Johnnie Thanks so much for all your help with my family Your very generous gift to Cailin was most appreciated as well as the golf round tomorrow for the boys Maureen is excited about the trip to Florida to learn more about the products and to see Celeste Have a restful weekend with your family Thanks "

Is that the correct spelling of your name, sir?

A No

Q Okay And I read that accurately?

A I think so

Q Okay What's the Governor referring to when he mentions "the golf round tomorrow for the boys"?

A Ms McDonnell had contacted me and said that they would like to go to the Kinloch Golf Course with the boys as they prepared for the wedding of their daughter

THE COURT: Did you say Mr or Ms ?

BY MR DRY:

Q Who -- who called to make the request?

A I believe Ms McDonnell called me I'm sorry

Q No That's okay Just make sure that if you're going to look over, you've got to pull the mic over so that --

A Okay

Q There we go

A All right

Q So I believe you said Ms McDonnell called you To be clear, had you previously mentioned, hey, I've got this private golf course in Kinloch and made a general invitation at this point?

A Yes

Q Okay And Ms McDonnell calls you to take you up on it --

A Yes

Q -- is that accurate?

All right Now, were you invited to play on that day with the McDonnells or was it just the family?

A Just the family

Q Okay Did the Governor call you after they played?

A That evening

Q That evening And what did he say? Was it a voice mail or did you actually talk to him?

A I think it was a voice mail

Q Okay And do you remember what he said?

A That, Jonnie, thank you for all you do for my family Thank you for this wonderful day that we had at Kinloch

Q Okay So it was a general thank you call?

A Yes

Q Okay Now, going on, it says, "Your very generous gift to Cailin was most appreciated " Had Cailin and you ever talked about -- had she made the request for the money, for the $15,000 to you or had Ms McDonnell?

A Ms McDonnell

Q Okay The Governor writes, "Maureen is excited about the trip to Florida " What's he referring to?

A The Roskamp Institute meeting that's coming up

MR DRY: Judge

THE COURT: All right We'll stop for the evening We will get back together tomorrow morning Let's make it 9:30 again I have a sentencing, and hopefully that won't take more than a half an hour But you all get here at 9:30, and we'll -- we'll get started with tomorrow's session

Again, please don't discuss the case with anyone, allow anyone to discuss it with you, and if that happens, come and tell me, please You all have a good and safe evening and be healthy All right We'll see you tomorrow

(The jury left the courtroom)

THE COURT: All right We'll be back at 9:30 in the case and 9:00 generally

(The trial adjourned at 5:37 p m)

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No. 15-4019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v

ROBERT F McDONNELL,
Defendant-Appellant,

On Appeal from the United States District Court for the Eastern District of Virginia, Richmond Division, James R. Spencer, District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G McDONNELL,

Defendants.

July 31, 2014
Richmond, Virginia
9:45 a.m.

JURY TRIAL - VOLUME IV

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ
DAVID V HARBACH, II, ESQ
JESSICA D. ABER, ESQ
RYAN S FAULCONER, ESQ
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JOHN L BROWNLEE, ESQ.
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HEATHER H MARTIN, ESQ.
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Counsel for Maureen G McDonnell

JEFFREY B. KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day four, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Daniel Small, Henry Asbill, James Burnham, and Christopher Iaquinto Maureen G McDonnell is represented by Heather Martin, William Burck, and Stephen Hauss Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed.

MR. ASBILL: The defense is ready

MR. BURCK: Maureen McDonnell is ready, Your Honor

THE COURT: All right Thank you. Let's bring in the jury, please

(The jury entered the courtroom.)

All right, good morning once again Mr Dry?

DIRECT EXAMINATION (Cont'd.)

BY MR DRY:

Q Good morning, Mr Williams

A Good morning

Q You recognize you are still under oath, correct, sir?

A Yes

Q Mr Williams, I think we left off talking about the

June 1st, 2011 Roskamp meeting So I want to start with that First of all, did Ms McDonnell fly down for the Roskamp event?

A Yes

Q And who went down there, did her Chief of Staff, Mary-Shea Sutherland, go down there with her?

A Yes

Q And was their EPU there?

A Yes

Q How did Ms McDonnell and Ms Sutherland and the Executive Protection Unit personnel get down to Roskamp?

A In my airplane

Q And what was the purpose of the event from your perspective?

A This was a fundraiser, but it was also combined with investigators were coming And doctors from Johns Hopkins and doctors from Roskamp were presenting the science to the attendees

Q When you say investors, investors in what?

A Investors in the company, Star Scientific.

Q Okay Was there a dinner the night before this event?

A There was

Q And where was that dinner at?

A At the Ritz-Carlton Hotel in Sarasota, Florida

Q Who attended that dinner?

A Ms McDonnell, Mary-Shea Sutherland, Dr Ladenson, my wife, Dr Dale Wilson, several other doctors and investors

Q And where did Ms McDonnell and Ms Sutherland stay overnight?

A At the Ritz-Carlton.

Q Okay And who paid for that?

A I did.

Q Now, going to the next day, can you tell the members of the jury basically what happened at this Roskamp event, you know, who was speaking and generally what was said?

A Dr Mullan as the Director of the Roskamp Institute, he is a well-known physician in the area of research in Alzheimer's, and he explained what had happened with this discovery and the impact and showed videos of what had happened when they give mice with Alzheimers Anatabine and showed how it improved them to normal functions Dr Ladenson and his colleague, Dr Caturegli, they showed their studies on mice models where the mice are genetically engineered to develop thyroid disease, and in the presence of Anatabine in their drinking water, those mice who are genetically engineered to develop it no matter what in about 30 days, it stops the onset of the thyroid disease

Q Okay So these doctors are presenting this to the attendees How many attendees approximately, if you can remember?

A 75, 80, or more

Q Okay And just to be clear, you were talking about studies, mice studies, but you still hadn't gotten human trials underway at this point

A No

Q Correct?

A That's correct

Q Okay Did Ms McDonnell make any statements at the event?

A Yes

Q And tell the jury how that came about

A She was seated beside me, and I said to her, I said, "It is up to you, if you don't want to say anything, that's okay But I wanted to offer if you wanted to address this group, I just wanted to, felt like I should offer," since given who she was, the First Lady of Virginia, and a guest, that I offered if she wanted to address the audience

Q To be clear, did you want to introduce her as the First Lady regardless of whether you expected her to make comments?

A Yes

Q Okay And what did she say in response when you said, "Hey, if you would like to make some comments, you can"?

A She said, "Yes, I would like to "

Q And what did she say?

A She stood up and she told everyone it was an honor to be there today, it was very exciting given her background in nutritional and supplements and wellness, and given that she had had some health issues on her own when she was younger, and that she thought what our company was doing and this new discovery was very important, and she was there to lend her support to the company

Q Did she make any comments about how she was willing to lend her support?

A She did. She said, she said at some point when she was speaking, she said, "I'm going to go with Jonnie and the State Trooper and have him drive us to every doctor in Virginia to let them know about this " And then she invited everyone in the room for the launch, to have it at the Governor's Mansion

Q The launch of what?

A The launch of Anatabloc, which was going to happen in a few months

Q And had you discussed that with her beforehand?

A No

Q Were you surprised that she offered for everybody to come to the Governor's Mansion for the launch of Anatabloc?

A Yes

Q When you introduced her, did you introduce her as Maureen McDonnell or First Lady of Virginia Maureen McDonnell?

A First Lady of Virginia Maureen McDonnell

Q Okay Did you think that Ms McDonnell's comments at the launch were helpful to you?

A I did

Q Why?

A We are a Virginia company And the Governor's wife has taken the time to come all the way to Florida to lend the credibility to this company in Virginia, that what they are working on and what they have discovered is important And so the credibility of Virginia came with that

Q Now, to be clear, she didn't say that the Governor was going to pass any legislation for Star or anything like that, right?

A No.

Q Okay After the event, did Ms McDonnell bring up the subject of Star's stock price?

A Yes

Q And how did that happen, where were you, kind of how did that conversation come about?

A When everyone was leaving, we walked out the front doors And there was an SUV there to take them back to the airport to come back to Virginia And she turned to me and said, "Jonnie, why is the stock down today with, you know, all of these good things going on?" And I said, I just turned to her and said, "Maureen, I guess there are more sellers than there are buyers today " And I said, "But in these biotech companies like this, when they are at this stage, they are going through this long development stage and testing, the stock gyrates " I said, "Why?" She said, "Because I bought stock " And I said, "What do you mean you bought stock?" She said, "Well, we missed out before and I didn't want to miss out this time when the stock was steadily going up " And so I said to her, I said, "Maureen," I said, "this is a risky investment doing things like that I thought I loaned that money to help you with your bills " I said, "You need to sell that stock and just use that money to pay your bills "

Q Did she tell you whether she was going to sell the stock or not?

A I don't recall her saying anything

Q Okay I'd like to go to Government Exhibit 161 that's previously been admitted This is the e-mail from Jerri Fulkerson to Mary-Shea Sutherland, and the jury has already seen that It is basically just saying, "Jonnie asked that I forward the attached letter and information to you." You have seen this e-mail and this letter before, right, sir?

A I have

Q And if we could go, first of all, did you in fact ask Ms Fulkerson to e-mail this to Mary-Shea Sutherland?

A I did

Q And why did you ask for this letter to be sent to Mary-Shea Sutherland?

A Because either Maureen McDonnell or Mary-Shea had contacted me and they asked me to put in writing, to put in writing what it was that I wanted.

Q And did you understand why you needed it in writing? Who was it going to?

A To the Governor

Q Let's go to the second page And first of all, sir, did you write this letter out yourself? You can blow up the top for me, please

A I wrote the first sentence

Q You wrote the first sentence And how do you know that you wrote the first sentence?

A Because whenever it says, "The particular intent of this letter" is something that I have carried through from the eighth grade in an English class

Q Okay But the rest of the letter, who wrote that?

A I went over to the Roskamp Institute and asked Dr Crawford and Dr Mullan to help me write this letter because the Governor wanted the -- needed this in writing

Q Okay, sir To be clear, you write, "The particular intent of this letter is to provide the Commonwealth of Virginia with a technology platform to lower healthcare costs "

Had you discussed this idea with the Governor personally before sending this letter?

A Yes

Q When?

A On the flight back from California

Q Okay You had raised that subject matter with him on that flight?

A Yes

Q Okay Now, in the remaining part of that first paragraph, you describe various ongoing studies, some of which I think you referenced before Had you previously discussed the ongoing studies with the Governor before writing this letter? I'm not talking specifics about each and every one of them, but generally

A In general, yes Specifically, I don't recall that, the specific studies being discussed.

Q But you had talked to him about you guys are doing some studies

A Yes

Q And when did you discuss that generally?

A When?

Q Yes When was the first time?

A The first time I recall doing that was on the Meg Whitman flight

Q That's the flight back from --

A Sacramento, California from where he was supporting Meg Whitman in her bid for some office

Q So the California flight back, you understood that the Governor was out there to support Meg Whitman; that's why you refer to it as the Meg Whitman flight?

A That is

Q Okay Going to the second paragraph, I'm just going to read this to you "I am suggesting that you use the attached protocol to initiate the 'Virginia Study' of Anatabloc at the Medical College of Virginia and the University of Virginia School of Medicine, with an emphasis on endocrinology, cardiology, osteoarthritis, and gastroenterology "

First of all, can you tell the members of the jury what you meant by the "Virginia Study"?

A The "Virginia Study," I came to call it the "Virginia Study" from working with Dr Ladenson over at Johns Hopkins He thought it was, you know, he could be helpful with the medical schools in Virginia, and was just -- we started referring to it as the "Virginia Study "

Q And why did you want the medical schools in Virginia to do it? Why not just have -- when we say "do it," are we talking human trials, mice studies? What type of trials was the "Virginia Study"?

A Both. Animal and human studies

Q Both. And why did you want Virginia research universities to do those studies instead of like Roskamp?

A Roskamp is a private research institute I don't think they are really equipped to do this. But the goal was, with this discovery from the tobacco plant, this Anatabine, if this was what was causing people to have less auto immune diseases, then it made sense to me that the medical schools in Virginia should be interested in this and the State of Virginia should be interested in this given that the people that were researching this were very credible, well-known physicians that were helping me with this And if Virginia, if Virginia and the Governor, the State of Virginia, and its medical schools, I felt like they needed to know this

Q Well, to be clear, you just said that you didn't think Roskamp was equipped to do these kind of studies Would studies from these universities be more prestigious than from Roskamp, have more credibility?

A Yes

Q Now, when was the first time you remember talking about the "Virginia Study" with the Governor?

A I recall specifically talking about it and laying it all out because I was on the plane with him for five or six hours

Q That was the California flight?

A Yes

Q Okay Going to the last sentence of the letter, please, all the way down now, "Once you have had a chance to review this, please have someone on your staff contact me "

Did you ever get any formal response from the Governor on this, a letter back?

A I don't recall any response from this

Q Okay And that signature there, did you authorize Ms Fulkerson to sign for you?

A Yes

Q Just go up to the top really quickly, please That was addressed to the Governor?

A Yes

Q Okay You can take that down, please, Ms Taylor

Okay, that was June 16th Later that month, did you attend an event at the Homestead Resort?

A I did.

Q Okay What type of event was that?

A I understood that event to be an annual rally and a meeting for the Governor where his top supporters, donors, get together for a meeting And it was in combination with Eric Cantor was there, and then there was a panel discussion on various topics, and it was combined with that.

Q And how did you travel to the event?

A In the plane

Q Okay And did anyone else fly with you to the Homestead?

A I believe Bobby McDonnell and Rachel McDonnell were on the plane Maybe Jeanine I'm not sure A few of the McDonnell children were on the plane

Q Okay So you know that there was some children of the McDonnells, but you are not sure exactly which ones?

A I'm not sure which ones

Q But how did it come to be that you were transporting the Governor's children to this event?

A Maureen contacted me and said, "Jonnie, you need to come to this event and you will get to spend some time and play golf with the Governor And I need you to bring my children, a couple of my children with you when you come "

Q How did she originally -- where did she want the plane to go in the original plan?

A For me to pick up one of the children in Newport News or Virginia Beach somewhere

Q And how about the other child?

A The other one was in Richmond

Q Okay So just so I'm clear, where did Ms McDonnell want the plane to travel to?

A She wanted me to leave Richmond with one of her children and then pick up another one in Newport News or Virginia Beach, and then fly over to an airport on the mountaintop over in the western part of Virginia near the Homestead.

Q And did you agree to do that, to make that --

A I agreed to take them, but not to go to Newport News, because it is too difficult in a jet to do short hops like that

Q Okay But you did transport them from Richmond to the Homestead?

A I did

Q Okay When you arrived at the Homestead, do you see anybody in the lobby of the Homestead when you get there?

A An aide to the Governor, Adam Zubowsky, Maureen McDonnell, and Jeanine McDonnell

Q And did you have any conversations about electronic cigarettes?

A I did, because I knew Adam smoked.

Q Okay Just briefly, what was the conversation?

A I just told Adam, I said, "You know, Adam, I know you would rather not smoke, so I made this electronic cigarette with Anatabine in it to help you get away from smoking "

Q Now, was the Governor present for any of this conversation?

A I don't believe so.

Q During your visit, your time at the Homestead, did you and the Governor discuss the Anatabloc studies that you wanted at UVA and VCU?

A I don't specifically recall Like I was with him playing golf for four hours or so, but I can't tell you exactly, specifically You know, this is something that's important to me, and so I'm generally trying to move this forward every opportunity I get

Q But you don't remember the specific conversation?

A I don't recall any specifics of that meeting

Q At some point, do you get the idea that you want to get funding for these studies from the Virginia Tobacco Commission?

A Yes

Q All right Well, tell the jury what your understanding of the Virginia Tobacco Commission was

A I was familiar with the Tobacco Commission from being in the business, and that the MSA settlement, various states had this additional money coming in that they were collecting And some of the states were using it for revitalization of the communities that are hit the hardest by the impact of tobacco And so as I discussed this with the Governor on the flight back from California and at different times, he thought it was a good idea that the funding be independent, away from us in Virginia, and thought the Tobacco Commission would be a good source of funding for something like this

Q Now, to be clear, did you eventually hire Jerry Kilgore to help you with this idea?

A I did

Q And were your conversations with the Governor about the Virginia Tobacco Commission, were those before or after you hired Mr Kilgore?

A Before

Q And when you are discussing this with Mr McDonnell, he is encouraging you or discouraging you from making the application?

A No, he thinks it is a good idea

Q Okay But does he sit there in these conversations and say, "I guarantee you I'll get that done," or anything like that?

A No

Q Okay So you hire Mr Kilgore Why do you hire Mr Kilgore, first of all?

A I knew Jerry Kilgore. I have known him for a while And after he left being Attorney General, he was at a law firm in Richmond and he was involved in lobbying activities as well And I just thought that given his background, having been the Attorney General and been involved when the MSA and the Tobacco Commission and all of that was constructed, that he would be skilled at assisting us

Q And did you know that he had any family relationship with the Tobacco Commission that might be helpful?

A I don't recall that

Q Okay Now, what's Mr Kilgore's role in this process going to be? What's he hired to do?

A He was hired to work with our General Counsel, Bob Pokusa, to assist us in preparing applications for grants to the Commission for studies to be conducted at Virginia medical schools

Q You said that you have known Mr Kilgore for a while. Did you lend your plane to Mr Kilgore for his run for Governor?

A I may have

Q Okay Had you ever given Mr Kilgore any personal loans while he was running for Governor?

A No

Q Had you ever taken any of his family members on shopping trips when he was running for Governor?

A No

Q Had you ever bought a Rolex watch for Mr Kilgore?

A No

Q At the time that you are hiring Mr Kilgore, I understand he is going to make the applications What is Star Scientific doing regarding the UVA and VCU piece in order to get them on board?

A We are working with him.

Q What does that mean, sir?

A The medical director of our company and another person there, Dr Ryan Lanier, are working with researchers to facilitate these studies

Q Okay And what are the universities going to have to do in order for the studies to get funded by the Virginia Tobacco Commission?

A Prepare grant applications and attach the study to show what it was that they were going to be doing in the use of funds

Q So they are going to help prepare the grant or they are going to have to agree to do the studies and then they are going to be responsible for making the applications that Mr Kilgore is going to help.

A Yes, the administrative part of that

Q Prepare As this is going on and you are trying to get UVA and VCU on board, does Star Scientific have an event at Gibson Island?

A Yes

Q That was July 23rd, 2011?

A Yes

Q What was the purpose of that event?

A Dr Ladenson, the chief of endocrinology at Johns Hopkins, said that they have done things like this before, and it was a good idea to get, to have all of the doctors get together and learn the science behind what was going on so they could have an open discussion and exchange ideas about how to proceed with validating Anatabine as an anti-inflammatory or for treating diseases

Q And did you have a conversation with Ms McDonnell before this event?

A I did

Q And what did you ask her?

A I asked her if she could attend, because doctors from VCU's medical school and from the University of Virginia were being invited and I thought it was a good opportunity to have her along

Q And what did she say?

A She said she wasn't able to make that meeting And I asked her if Mary-Shea Sutherland would be able to attend.

Q What did she say in response?

A She said, "I'll check with her and see "

Q Why did you want Ms McDonnell or Mary-Shea Sutherland to attend this event?

A I think it was really important, that we had researchers from the medical schools in Virginia, with prestigious physicians from Johns Hopkins, to see that Virginia was supportive of this; and for VCU's doctors and for University of Virginia's doctors to see that this is important, this is being taken seriously by the State of Virginia, by the physicians at Johns Hopkins, and by researchers at University of Virginia and VCU taking the time to come to Gibson Island to spend the day addressing these issues

Q Did Ms Sutherland attend the event?

A She did

Q And who else attended this event? Do you remember specific people from UVA or VCU?

A Dr Peggy Shupnick from University of Virginia, she was a colleague of Dr Ladenson's when they were at Harvard Dr John Clore, an endocrinologist from VCU that was a colleague of Dr Ladenson's And maybe three or four other physicians from different departments at Johns Hopkins, from cardiology, gastroenterology I don't recall the additional ones

Q That's fine Now, that event is on July 23rd. Did you let the McDonnells use your Smith Mountain Lake house from July 28th to July 31st of 2011?

A Yes

Q Where is that home located?

A About 165 miles southwest of here in Virginia

Q Now, did you live at this house full time?

A No

Q What was it?

A It was a vacation house that we would use from time to time

Q How did it come to be that the Governor and his family were vacationing at your house?

A I either offered it or they knew about it

Q Okay But you had let other politicians stay at your Smith Mountain Lake house occasionally, right?

A I have

Q Okay Before this trip, had you had any conversations with Ms McDonnell about wanting to meet with a representative from Bill Hazel's office?

A From, say, HHS, yes

Q Tell the members of the jury about that conversation.

A I was talking to her and I said, "I need to meet, if you could contact someone over there, I need to meet with someone so that I can, you know, things are improving and we are moving forward and I need to bring someone, if you could bring someone over so we could bring them up to speed."

Q Okay And what was Ms McDonnell's response?

A "Okay "

Q Before the Governor and his family stayed at your Smith Mountain Lake home, did you have any conversations with Ms McDonnell about your Ferrari and vehicles?

A No, the only time that ever happened was, I had lunch with Mary-Shea and Maureen McDonnell one day at Kinloch to discuss Anatabloc And my home is on the way back from there, and she said she would like to see it So we went, stopped by my house, and we went in through the side of the house, the garage, and she commented, she was asking, you know, "What kind of cars are those? They are nice cars "

Q And did you tell her what type of cars they were?

A I told her

Q And before the vacation, did you have a conversation with Ms McDonnell about whether one of those cars was going to be at your Smith Mountain Lake house?

A Yes

Q And what did she say?

A She said, she, mentioned to me, "All right, do you have any of those cars over at the lake house?"

Q And what did you say?

A I said, "No "

Q What was the response?

A She said, "It would just be nice, you know, we never get to do things like that " It was, "You know, if we had that, you know, something like that over here " And I said, "I'll bring one over "

Q And in fact, did you have the Ferrari delivered?

A I did.

Q Did you have any other conversations with Ms McDonnell about the Ferrari when she arrived at the Smith Mountain Lake house?

A I think twice she called me and asked me when was it coming, and I said he was on his way

Q Okay

A And then I believe when it got there, I just wanted to make sure that -- I told them a couple of things that I thought they ought to know about it

Q Did you know who was going to be driving the Ferrari?

A I asked her not to let the children drive it

Q Okay Fair enough. Did you have any conversations with Ms McDonnell while they are at your home about what you had requested, about the representative from HHS?

A Yes She just confirmed to me that, you know, the meeting was set for when she returned.

Q Okay Can we pull up Government Exhibit 185? I believe this has already been -- maybe not Sir, this is an e-mail from Ms McDonnell to you.

A Okay, there is no text here

Q I know I'm sorry The e-mail itself, it has attachments But does it say from Ms McDonnell to you?

A Yes

Q And that's on July 31st, 2011?

A That's correct.

MR DRY: The government moves to admit 185 into evidence

THE COURT: It will be admitted

BY MR. DRY:

Q All right, can you go to the second page of the exhibit, please? Do you remember getting this e-mail, sir?

A I do.

Q And what was the context of when you received this e-mail?

A They were returning from Smith Mountain Lake

Q What color is the Ferrari that you had shipped up to

Smith Mountain Lake?

A It is called white with cuoio tan interior

Q And what model is your Ferrari?

A It is a Ferrari California

Q Is that a convertible or a hardtop?

A It is both.

Q All right Now, going to Government Exhibit 186, please And this has been admitted. Have you seen this document before, sir?

A Yes

Q That's dated August 1st of 2011?

A Yes

Q And that's the day after Ms McDonnell e-mailed you the picture of the Governor driving the Ferrari, right?

A Yes

Q Going down, do you see your name on this Mansion log next to 9:45?

A I do.

Q And it has a departure time of 12:14; is that correct?

A Yes

Q And that's your name, sir?

A It is

Q And in the Organization/Guest column, what does that say?

A "See 102 "

Q You knew 102 as what?

A I have no idea.

Q Two lines down, please, that's got, it says M. Huffstetler there Do you see that, sir?

A I do.

Q A time in of 9:55 Do you recall -- and a time out, just to be clear, 11:05 for M. Huffstetler and 12:14 for you.

A I do

Q Where did -- did you meet with a Ms Huffstetler?

A I did.

Q And that was while you were at the Mansion?

A Yes

Q And where did Ms Huffstetler work?

A For Dr Hazel in the Patrick Henry Building in the Health and Human Services Department

Q Okay And who was present during this meeting?

A Maureen and myself and Ms Huffstetler

Q It was the three of you?

A Yes

Q Where did the meeting occur?

A In her office at the Governor's Mansion.

Q And was Ms McDonnell present for the entire meeting?

A Yes

Q Now, was the Governor here for this meeting?

A No

Q Okay What did you discuss with Ms Huffstetler?

A The test results, and what we were planning, and at some point we hoped to reach with enough data to where we could test this at some point to lower the healthcare costs in Virginia

Q And did you mention to Ms. Huffstetler the idea of testing Anatabloc on state employees?

A Yes

Q What did you mean by that? What was the plan there?

A The idea was, if you take, I don't recall exactly how many thousands of state employees there are, but if you gave them this to take as part of their diet, and you started improving the attendance from cold symptoms, which are inflammatory, or it began lowering the use of prescription drugs, and you started lowering the healthcare cost on a volunteer population within the state, that would be a good model

Q You just said "volunteer " Were the people going to know that they were taking this and have agreed to do that?

A Yes They would be volunteers

Q Okay Did you mention anything to Ms Huffstetler about your conversation with the Governor vis-a-vis

Virginia Tobacco Commission?

A That's who we were using That's one of the places we were seeking funding from.

Q Okay Now, on Government Exhibit 186, can we go down, please, I want to go to the 10:34 There we go. And can you highlight the 10:34 line, please, Ms Taylor? Do you see a name next to, on the 10:34 line, who is the visitor?

A Appears that it is Dr John Clore from MCV, or VCU

Q Did you know who Dr Clore was?

A Yes, I had met him through Dr Ladenson from Baltimore He is an endocrinology professor at VCU's medical school

Q Was he one of the people you went to, as you mentioned a while ago, the Gibson Island event?

A Yes

Q Did you have a meeting with Dr Clore in the Executive Mansion?

A I did.

Q And who attended that meeting?

A Myself, Maureen McDonnell, Dr Clore, and I'm not sure whether Ms Huffstetler was there at that particular time with Dr Clore or not

Q Okay How did Dr Clore come to be invited to the Executive Mansion?

A I called him up from Maureen's office and asked him could he come over

Q And did you just do that or did you have a conversation with Ms McDonnell before you --

A I did

Q Okay Tell us about what your conversation with Ms McDonnell was before you picked up her phone and invited Dr Clore over to her house

A I told her that, you know, Dr Clore was important, and he could cause studies to happen at VCU's medical school as well as other doctors, and that I thought it was important to instill in him that this was important

Q And what was her reaction?

A "Call him up "

Q At the meeting with Dr Clore, generally, what were you telling Dr Clore? You had already seen him at Gibson Island. So --

A Yes I was just letting him know with Maureen McDonnell sitting there how important this was to Virginia, to the Governor This was important

Q Okay Now, according to the Mansion log, Ms Huffstetler leaves at 11:05, Dr Clore leaves at 11:31, and you leave at 12:14 Did you have any private conversations with Ms McDonnell during your visit to the Mansion?

A Is the question did I have any private conversations?

Q Yes In other words, you just said that you were, first of all you,were in a meeting with, I believe, Ms Huffstetler in Ms McDonnell's office, right?

A Yes

Q And then Dr Clore in Ms McDonnell's office, yes?

A Yes

Q You are there after they leave Did you have any conversations with Ms McDonnell outside the presence of Ms Huffstetler or Dr Clore?

A I did.

Q All right Tell the members of the jury about that

A Well, we summed up what was going on after meeting with those people, and then I was, as I was sitting here like this, she noticed my watch and she says, "Jonnie, what kind of watch is that?" And I said, "It is a Rolex." And she was, you know, she was interested in it So I took it off and handed it to her so she could look at it And she said, "I would really like to get one of these for the Governor He just wears these old, you know, watches " And I was sitting there, and I said, "Do you want me to get you one of these watches for the Governor?" And she said, "Yes, that would be nice "

Q And did you agree to buy the Rolex for the Governor?

A I did.

Q Did you subsequently buy the Rolex?

A I did

Q Can I get Government Exhibit 33, please? Can you bring up 33-A?

(Exhibit proffered to witness)

Sir, is that the Rolex watch that you purchased?

A Yes

Q When did you buy the watch? Was that after the meeting?

A Yes

Q Where did you buy it?

A Malibu Jewelers in Malibu, California

Q How much did the Rolex cost?

A I don't remember, six or seven thousand dollars

Q Can we go to the second page, please? Can you look, because it is hard to see in the picture, Mr Williams, can you look on the back of the watch?

A Yes

Q It is part of the reason we needed the watch What's engraved on the back?

A It says, "Robert F McDonnell, 71st Governor of Virginia "

Q Did you have any discussions with Ms McDonnell about the engraving?

A I did.

Q And tell the jury about that

A When I was in the store, I was there with my daughter and my wife, and I was looking at this And I was buying it And my wife actually suggested to me, she says, "Well, you should have something engraved on the back of it " So I called Maureen McDonnell from the store and asked her what would she like engraved on the watch.

Q What did she say?

A She thought about it She said, "Put 71st Governor of Virginia on it "

Q What was her reaction to you buying the watch for the Governor?

A I can't tell so much over the phone

Q But did she ever tell you not to tell the Governor that you had bought the watch?

A No

Q And when you gave the watch to Ms McDonnell, what type of box was it in?

A It comes in a green Rolex box

MR. DRY: I'd like to publish the Rolex to the jury, Your Honor

THE COURT: Sure Go ahead.

MR. DRY: I'd like to enter Government Exhibit 33 and 33-A into evidence, publish the Rolex to the jury, and I still have a few more questions about it

THE COURT: They will be admitted. All right, Mr Marshal, just take it

BY MR DRY:

Q Sir, you give the Rolex to Ms McDonnell, it is in the green Rolex box Did you want --

THE COURT: Stop asking questions while he is -- let him do this Just pass it down the row to each juror

(Exhibit proffered to jury)

All right What's the number on the watch again?

MR DRY: 33, Your Honor Here is the bag that it goes in. The pictures are 33-A, Your Honor

BY MR. DRY:

Q I believe you just said that Ms McDonnell never told you not to tell the Governor But did you want people to know that you had bought a Rolex watch for the Governor of Virginia?

A No

Q Why not?

A I thought it was wrong, it was a bad idea for anyone to know that

Q Wrong how?

A I shouldn't, it was a bad -- it was a bad decision on my part to buy that watch when she asked for it

Q But why, Mr Williams, why was it a bad decision?

A I shouldn't have had to buy things like that to get the help that I needed. And I thought, I just thought it was a bad idea I took a business risk, and it was a bad idea It was a bad business decision

Q But to be clear, sir, you didn't have to buy the watch Nobody held a gun to your head, did they?

A No No. I made a mistake when I bought that watch

Q But that was your decision You bought it

A It was my decision, no one else's

Q And you knew it was wrong?

A I knew it was wrong

Q You previously mentioned that Ms McDonnell told the Roskamp attendees that the launch of Anatabloc would happen at the Governor's Mansion, right? You talked about that a little bit yesterday

A Yes

Q Or very early this morning Was there in fact an event at the Mansion for Anatabloc on August 30th, 2011?

A There was

Q What was the purpose of the event?

A That was the day that the company launched Anatabloc for sale And it was the physical launch of that Associated with the launch that day was tied in with the Governor's Mansion, with a luncheon at the Governor's

Mansion

Q And who was going to be attending this luncheon?

A Doctors from Johns Hopkins, doctors from University of Virginia, doctors from VCU, prominent doctors here in Richmond, Maureen McDonnell, the Governor, Mr Roskamp, the philanthropist behind the Roskamp Institute, and doctors from the Roskamp Institute

Q How was the date of the event selected?

A I believe it was selected on a day that was convenient to have the use of the Mansion and the Governor and Maureen McDonnell's schedules

Q You mentioned the Governor twice Did you want the Governor to attend the event?

A I did.

Q First of all, did you discuss that with Ms McDonnell?

A I did.

Q What did you tell her?

A I said, "We need the Governor there "

Q What did she say?

A "Okay "

Q So why did you want the Governor to attend?

A Well, I had this dilemma of I'm going to pursue the prescription version of Anatabine because it needs to be in a prescription form so that doctors have the testing and know how much to dose And that was going to take a number of years And I had these physicians here from the medical schools so that they would become interested in it and doing the testing on Anatabloc itself, not necessarily the drug version, because it appeared to have a food-safe profile, and to have Virginia, the seal of Virginia and have Virginia's medical schools behind it, and to have the doctors from Johns Hopkins that have been doing the basic testing to validate all of this work with the doctors in Virginia As it is a Virginia study for Anatabloc, I thought that made good business sense That would be very good for our company

Q I understand you wanted to get the studies at UVA and VCU done I think my question is, why did you want the Governor in the meeting between your company and the UVA and VCU people, doctors?

A Because it sends a signal to those medical schools that this is important The credibility associated with it

Q And did you discuss that with Ms McDonnell?

A I did

Q Was Ms McDonnell supportive of the idea of having this event at the Mansion?

A It was her idea

Q What do you mean it was her idea?

A At the Roskamp Institute, when she announced it

Q All right It might have been her idea, but who decided who to invite? Who is the one that's actually saying, "I want that doctor, that doctor, that doctor, this person, this person, this person"?

A Me.

Q On the day of the event, did you bring any samples of Anatabloc?

A I did.

Q And why did you bring samples of Anatabloc?

A I wanted to make sure everyone knew they could take the product with them. It was the day of the launch, the day of the introduction of this product I was proud of it I thought it was -- I actually thought it was an historical moment; that from this tobacco plant, which I brought tobacco plants from the farms out in Virginia, from a farm in Southside Virginia, to use that to explain to everyone at that meeting that hidden in this tobacco plant was Anatabine that was responsible for the health benefits from tobacco

Q When you said that you wanted samples to be available for the attendees, were the samples actually placed at each place setting?

A They were

Q And who did that?

A I don't know particularly who set them, who the person was that put it beside each one, but it was, I believe it was my idea to do that

Q Okay Walk us through what happens during this event First of all, is the Governor there at the beginning?

A No

Q All right Well, walk us through generally what happens at this event

A I was at the end of one table, Maureen McDonnell was at the end of the other First she spoke and welcomed the doctors, and shared again with them why this was important to her, and how exciting this was to have this launch here, introduction at the Governor's Mansion, and to have physicians from the medical schools in Virginia here to get involved and study and test Anatabine

Q And after Ms McDonnell speaks, what happens?

A I spoke next

Q Okay You mentioned tobacco leaves What are you doing with tobacco leaves during your chat?

A Well, that's where I discovered Anatabine, you know From working with, you know, it was part of -- I've been working with it for years with organic chemists from the University of Kentucky So I thought I would bring the tobacco plant just as a prop to be able to show the doctors where I found this anti-inflammatory

Q Does the Governor come in at some point?

A He did.

Q Do you remember roughly when?

A Towards the end. He sat down and was eating lunch

Q So everybody ate lunch during this event?

A Yes

Q Okay

A And he began asking the doctors their questions

Q When you say "the doctors their questions," had doctors given presentations during the lunch?

A Dr Ladenson was talking about it, Dr Wright was talking about it, our medical director I don't recall much after that

Q You said that the Governor was asking questions Can you kind of describe what's going on at this point?

A Asking questions like, you know, "What are the end points here? What are you looking for to show efficacy with the studies? How are you going to proceed with that?"

Q And did you think the Governor's attendance was helpful?

A Yes

Q When he is asking questions, is he expressing any support for Star, the idea of further studies?

A He was generally supportive I mean, that was the purpose

Q Did you give any money out to UVA and VCU?

A We handed out eight checks for $25,000 apiece to doctors at the medical institutions, including doctors from Johns Hopkins, so that they could prepare the grant applications to study this and whether it was for gastroenterology, cardiology, endocrinology, osteoarthritis, a variety of disorders

Q So what's the plan, sir? You give the $25,000 grants to the research universities What are they supposed to do with those? Use that money to do what?

A They are supposed to use that money because preparing a grant application is a lot of work. It is not just simple application It requires a lot of work, a lot of back-up material, the trial, the study design of what it is that you are going to do And so the idea was to prime the pump, to assist them in funding so they would have the incentive to have the cost of preparing, covering the cost of preparing, the time it takes to prepare the application so that it could be submitted to, hopefully, the Tobacco Commission for funding

Q All right Just so we are clear, they are going to do basically a study proposal

A Yes

Q That's going to be turned into a grant application.

A Yes

Q And that's going to hopefully go to the Virginia Tobacco Commission That's the plan

A That's the plan

Q Okay Did you think that having the event at the Governor's Mansion was helpful to your company?

A I did

Q Why?

A The credibility that came with that I'm trying to have this tested in Virginia The doctors from Johns Hopkins are helping me with the doctors in Virginia because I don't know them at the medical schools And with an institution like Johns Hopkins, with physicians contacting their colleagues here at Virginia medical schools, I felt like I had their attention And since it was going to be done in Virginia, to have the crown of it or the "Virginia Study" or, you know, "This is what happened in Virginia "

Q As of the date of that event, what were the things that you had already given to the McDonnells?

A Plane trips, shopping spree

Q $50,000 loan?

A $50,000 loan, a $15,000 catering bill, golf trips -- I mean golf outings I don't know, maybe some other things

Q Which of those things did you give to the McDonnells because you thought that they were your friends?

A The McDonnells were not my personal friends

Q But why are you giving them this stuff then?

A I thought it was good for our company

Q Do you think you would have had that event had you not given them things of value?

A No, I did not

Q Let's go to Government Exhibit 243, please And blow up the bottom part, please. Mr Williams, do you recognize this as an e-mail from Ms McDonnell to cjw01@me com and your e-mail account?

A Yes

MR DRY: I move Government Exhibit 243 into evidence

THE COURT: It will be admitted.

BY MR DRY:

Q First of all, who is cjw01@me com? Whose e-mail account is that?

A My wife

Q Okay I'm just going to read this to you and you tell me if I've read this correctly "Jonnie and Celeste, here is the info about the Cure By Design Dinner on September 24th I'll have an invitation mailed to you and you'll be my guests " Go up, please And then Ms Fulkerson forwards this to you with an attachment, correct?

A Yes

Q And you have reviewed this before?

A I have

Q Let's go to the second page, please This is a flier At the very bottom, what is the date of the event going to be, right next to Saturday?

A September 24th, Saturday, 6 to 10, 2011

Q Okay And going to the next page at the very top, where is the event going to be at?

A At the Hilton Hotel in Richmond

Q Okay Did you have a conversation with Ms McDonnell about this event?

A I did.

Q Tell the members of the jury about that

A She contacted me and described the event and said she would like for Celeste and I to come, and that she was nervous about it because it was a fashion show and she was going to have to model a dress on a runway set-up that they had for the event

Q Did she make a request of you?

A She did.

Q What did she want?

A She says, "Well, I don't know how to do this like Brad. It would be nice to have Brad here for something like this "

Q When you say "Brad," who is Brad? Is that Brad Kroenig, the model?

A Brad Kroenig is a friend of mine in New York

Q He is a male model, I think you testified earlier?

A He is

Q Did you and Kroenig go to the charity event?

A We did.

Q Did your wife attend?

A No.

Q Why didn't she attend?

A She wasn't interested.

Q Okay Going to Government Exhibit 246, please Have you had the opportunity to review -- well, just go through those briefly, please Have you had an opportunity to review these, sir?

A I've seen these photos

Q And are these photos of the Cure By Design event?

A They are

MR DRY: I would like to admit Government Exhibit 246 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR DRY:

Q Sir, first of all, actually, can we go back to the first photo real quick? Can you just, where are you located at while this picture is being taken?

A The table in front of the gentleman speaking

Q And whose table was that?

A Maureen McDonnell's and the Governor's

Q Okay So where are you seated at in relationship to them? Are you at their table?

A I'm at their table

Q Okay Going to the second photo Now, obviously, for the record, that's Mr and Ms McDonnell holding hands on the left-hand side?

A Yes

Q On the right-hand side, who is that gentleman?

A The far right is Brad.

Q Okay

A And the fellow that has the microphone is the host, the director of the Cure By Design event

Q Okay And while this is going on, what's happening? What is the gentleman, the M.C gentleman doing?

A Well, there was a runway fashion show of cancer survivors, and then once that was done, there was an auction to raise money

Q An auction And was one of the things that was auctioned off a trip to New York City?

A Yes

Q And who was the trip going to be with?

A The Governor and his wife

Q Okay Walk us through -- did you bid on the trip?

A I did.

Q Walk us through why and how that all came about

A Well, they were offering, auctioning off different items They were auctioning off -- what seemed to gain the most attention was beach house vacations in North Carolina's Outer Banks, and people were bidding on that, multiple bids on those sorts of things And then it came up to where the host offered his home in New York for the weekend, and included the McDonnells as a weekend in New York, as an item to be auctioned off

Q What was the bidding like at first?

A I was the only bidder

Q Okay And so you bid on the event Was that the last bid that you make?

A I bid against myself

Q And where are Mr and Ms McDonnell while this is going on?

A They are standing on that stage with the host

Q Going to the fourth photo in the series, please, did you win the trip?

A I won the trip.

Q Okay

A I was the winning bid, if that's what you mean

Q Yes, sir And how much approximately did you spend at this auction?

A Well, a little girl was first, and she was auctioning off a painting And so I bought that

Q Can you go to the sixth page of the exhibit, please? Was that the painting that you bought from the little girl?

A It is I gave it back to her

Q Okay So just to be clear, everything that you spent at the auction wasn't spent on the trip with the McDonnells, right?

A No

Q Okay So you bought this painting that this little girl did and you gave that back.

A I did

Q But then you also bought the trip with the McDonnells

A Yes And the amount came to, I don't know, maybe it was around $15,000, $13,000, $14,000

Q After the event, did you have dinner that night? Did you have dinner?

THE COURT: Let's stop for the morning break. We will take 15 minutes

(Recess taken from 11:06 a m until 11:26 a m)

THE COURT: All right Let's bring in the jury

(The jury entered the courtroom)

THE COURT: All right Mr Dry

BY MR DRY:

Q Mr Williams, I believe that we left off at after the Cure By Design dinner -- that was at the Hilton, I believe you testified about, correct?

A Yes

Q After the event, did you go to dinner that night?

A I did

Q And who did you go to dinner with?

A The Governor, his wife, and my friend Brad

Q And who picked up the tab for dinner?

A I did

Q Do you remember approximately how much you spent at the restaurant?

A Twelve, $1,500 or so

MR DRY: I'd like to now bring up Government's Exhibit 250, please

BY MR DRY:

Q Actually, you know what, before we get to that Mr Williams, I think that we talked about Ms McDonnell and the Ferrari at Smith Mountain Lake Did you ever have any other conversations with Ms McDonnell in the summer of 2011 about automobiles for the McDonnell children?

A Yes

Q Please tell the jury what those conversations were about

A The first one was for her daughter Caitlin She -- Maureen mentioned to me that she needed to get a car because her old one, you know, was in bad shape and what have you And I just listened

And then I received a phone call from her daughter She said, "I found a car at this place This is how much it is, this is who you contact, and my mother said you're going to pay for it "

Q And what did you say?

A "Your mother has been very helpful to me I need to call her "

Q And did you have a conversation with Ms McDonnell?

A I did

Q And what did you tell Ms McDonnell?

A I told her I just couldn't buy a car I just couldn't do anything like that

Q Any other conversations about vehicles? You said the first conversation --

A The two boys going to school, I believe they were sharing a car, and she asked me if I would sell her one of the Range Rovers at a low price for the boys

Q What did you tell her?

A I told her the Range Rover drinks too much gas and the maintenance is high

Q So ultimately, did you buy a vehicle or sell a vehicle to Ms McDonnell at a discount for her children?

A I did not

Q And why not?

A It's too visible

Q What does that mean, "too visible," sir?

A I thought I had an understanding she was helping me, they were helping me with my company, but the thought of writing a check to a car dealership for one of the McDonnell children that I didn't even know, I just had a tough time with it

Q And, sir, I believe you keep saying Caitlin

A Cailin

Q Okay

A Yes

Q All right When you say Caitlin, do you mean Cailin McDonnell?

A I'm not sure of the spelling

Q Okay

MR DRY: Let's go ahead and go to Government's Exhibit 250, please

BY MR DRY:

Q Have you seen this document before?

A I have

Q And this is a flyer for an event for Anatabloc at the Westin Hotel; is that correct?

A It is

MR DRY: Government's Exhibit 250 We'd like to move that into evidence

THE COURT: It will be admitted

BY MR DRY:

Q All right Sir, first of all, just -- Rock Creek Pharmaceuticals, what is that?

A Star began as a tobacco company, and we formed Rock Creek Pharmaceuticals, and that's where the Anatabloc products and the pharmaceutical version of this was going to be housed

Q So when that says "Rock Creek Pharmaceuticals," is that just a subsidiary of Star Scientific?

A It is

Q Okay

A A wholly owned subsidiary of Star Scientific

Q Okay And this event was going to be at the Westin Hotel; is that correct?

A That's correct

Q And what's the -- on the -- is that October 18th on the left-hand side?

A Yes

Q Okay And what was the purpose of having this event at the Westin?

A This particular event was the beginning or part of these meetings that we were going to conduct around the United States to showcase this discovery and to present the data that had been conducted so far to the medical community

MR DRY: Can you go -- scroll down on the -- there you go Right there

BY MR. DRY:

Q And those are three doctors that are going to be speaking; is that right? Mr Mullan, Dr Ladenson, and Dr Caturegli; is that correct?

A Yes It's pronounced Dr Mullan

Q Mullan I'm sorry

Now, the featured guest, who's listed as the featured guest?

A The First Lady of Virginia, Ms McDonnell

Q And how did Ms McDonnell come to be the featured guest for this event?

A I called and asked could the Governor attend

Q And what did she say?

A He wasn't able to, but she was

Q And why did you want the Governor or the First Lady to attend the event?

A These were local doctors They were doctors from VCU, and I thought it was important that these physicians realize this was important in Virginia

Q Did Ms McDonnell attend the event?

A She did

Q Did she give brief remarks in support of the company?

A She did

Q Okay

MR DRY: Let's go to Government's Exhibit 254, 254 There you go

And, Judge, just to -- I don't think there's going to be an objection The government moves -- would request moving 254 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q And, sir, this is another flyer, correct?

A Yes

Q And is this a second event?

A Yes

Q Where is it going to be at?

A In Michigan at the Warwick Hills Country Club

Q And what's the date of the event?

A Saturday, October the 22nd

MR DRY: Going down on the flyer

BY MR DRY:

Q Who's going to be the featured guest, sir?

A The First Lady of Virginia, Maureen McDonnell

Q Did you have a conversation with Mr McDonnell about his wife attending this event before she flew to Michigan?

A I did

Q Tell the members of the jury about that

A On Friday, before the event, I asked him was it okay, and he said yes, he was going to sleep in late in the morning, just have her back by so-and-so -- such and such time

Q And why did you call Mr McDonnell to ask this?

A I wanted to make sure it was okay

Q Why did you want the First Lady to attend the event?

A Because of the credibility that came

Q And did she give any remarks at this event?

A She did

MR DRY: Your Honor, we have a videotape that's Government Exhibit 253

BY MR DRY:

Q Mr Williams, have you reviewed the videotape of the Michigan event?

A I've seen the tape before

Q And did it accurately depict what happened on that date in Michigan?

A It does

MR DRY: I'd like to move Government's Exhibit 253 into evidence, and we're going to play excerpts of that, Your Honor

THE COURT: It will be admitted

MR DRY: All right Could we play the first excerpt from 251, please?

BY MR DRY:

Q And just -- these are going to be the First Lady's remarks

(Video Played)

(Video Ended)

BY MR DRY:

Q Sir, just for clarity, who is the gentleman that introduced Ms McDonnell there?

A That's Dr Dale Wilson He's a professor of OB-GYN at Michigan State, and he is a practicing physician in Flint, Michigan

MR DRY: Okay Can you go ahead and start the tape?

(Video Played)

(Video Ended)

BY MR DRY:

Q Did Ms McDonnell know she was going to speak at the event?

A Yes

Q And were you happy that Ms McDonnell flew to the event and made the remarks for Star?

A I was

Q How did you travel there?

A In the airplane

Q Okay

MR DRY: Can we go ahead and play the second excerpt?

BY MR DRY:

Q This is going to be your remarks, sir, at 30 minutes, 30 seconds and 34 minutes, zero seconds

(Video Played)

(Video Ended)

BY MR DRY:

Q Sir, how important was it for your company to get the human trials of Anatabloc done at this time?

A It's what physicians are used to Physicians are used to seeing clinical data, double-blind studies

You know, it's anecdotal with my wife It's important because it's never happened before, and it links up with the studies that have been done at Johns Hopkins that show that women that smoke have 73 percent less thyroid disease even at low levels So it matches up

But for a physician to treat a patient, they need that data The data is -- the data is just so necessary

MR DRY: Can you play the third excerpt?

BY MR DRY:

Q This is going to be your remarks at hour and 53 minutes of the presentation

THE COURT: I didn't hear you

MR DRY: These are going to be Mr Williams' remarks at hour 53 of the presentation, 1 hour and 53 minutes

(Video Played)

(Video Ended)

BY MR DRY:

Q Sir, you keep talking about UVA and VCU studies Were those -- what are you talking about there? Were you talking about the studies that you had given planning grants for?

A Yes

Q And at the time did you think that VCU and UVA were going to agree to do the studies?

A I did

Q And was it important to you?

A It was

Q Why?

A Those studies would give -- make the physicians comfortable with recommending it to their patients

Q Show you what's Government's Exhibit 258, please This is another flyer for a separate event at Pelican Hill in Newport Coast, California

MR DRY: The government would request to move for Government 258 to be put into evidence

THE COURT: It will be admitted

BY MR DRY:

Q And, sir, we're not going to go through all of this again, but was there an event at The Resort at Pelican Hill?

A Yes

Q And was this similar to the other events?

A It was

Q And did Ms McDonnell attend this event?

A She did

Q Why did Ms -- why did you want Ms McDonnell to come to this event? For the same reason as the last event?

A Yes

Q Did she give any remarks?

A She did

Q Was this event videotaped?

A I believe so

Q Have you previously reviewed a videotape of it?

A Not the entire tape, but I've seen clips of it

Q Okay

MR DRY: Well, let's -- I'd like to move Government's Exhibit 257 in, and we'll play the clips, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q All right This is going to be you introducing Ms McDonnell at the California event at Pelican Hill

MR DRY: Can you play the first excerpt, please?

(Video Played)

(Video Ended)

BY MR DRY:

Q Who is that gentleman, sir?

A That's Dr Kiet Doan He's a general surgeon

Q Where at? Do you know?

A In Flint, Michigan

MR DRY: Can you go ahead and continue playing the tape, please?

(Video Played)

(Video Ended)

BY MR. DRY:

Q Would you have had Ms McDonnell speak at your event had she not been the First Lady of Virginia?

A No

Q Ms McDonnell makes a comment in that excerpt about you being a long-time friend of the Governor How many times had you and the Governor actually met by October of 2011?

A Maybe six times

Q Did you talk frequently on the phone with the Governor?

A No

Q Were your interactions with the Governor business or personal?

A They were business

Q Did you consider the Governor a long-time friend in October of 2011?

A No

Q Were you happy that Ms McDonnell made that comment, though?

A I wasn't going to correct her

THE COURT: I didn't hear you

THE WITNESS: I said I wasn't going to correct her, Your Honor

BY MR DRY:

Q All right The next excerpt is short This is your remarks about the studies It's -- can we play the second excerpt?

(Video Played)

(Video Ended)

BY MR DRY:

Q Sir, is this just another example of the importance of UVA and VCU studies to you?

A It is

Q Now, let's talk about that a little bit This is in October of 2011 What is Star Scientific doing to get those studies done at UVA and VCU?

A Well, we've already passed out grants to facilitate the preparation of the applications And Dr Curtis Wright, as I mentioned, is the medical director of our company that was a former chief of anesthetic and addictive substances for the Food & Drug Administration. So he was very capable of working with the institutions to conduct clinical studies

And assisting him was Dr Ryan Lanier So they were trying to assist the physicians that were going to be studying Anatabloc and preparing the applications with whatever they needed

Q But by December of 2011, are things imminently going to happen or what's going on?

A I would say we're caught in the bureaucracy of large institutions

Q What do you mean by that?

A Anytime it's a large institution, it's very slow to move projects through

Q Okay And did you think that you were -- what -- which institutions were you trapped in the bureaucracy of?

A VCU and UVA

Q Okay

A And UVA in particular

Q Well, let's go to January of 2011 -- I'm sorry, '12 January of 2012 Does the subject of the McDonnells' beach properties come back up?

A Yes

Q And tell the jury about how that occurs Initially, in January of 2011, who were you having conversations with about the beach properties?

A Maureen McDonnell

Q Okay And what is Ms McDonnell telling you?

A She said the rent is not covering the payments

Q And what does she want you to do about it?

A She wants me to loan them some more money

Q And do you have conversations with a man named Michael Uncapher about that as well?

A I did

Q And tell the jury about who's on the phone, what's the conversation

A I recall having a conversation with him to where Maureen put him on the telephone and -- because I didn't think -- I didn't think Maureen -- Maureen knew there was a problem, but she didn't have a grasp of the financial details of the problem specifically

And her -- I believe this was her brother-in-law, and he was sort of a manager of the -- the real estate venture at Virginia Beach, the houses in Sandbrige, Virginia And I asked him particular questions I was trying to get a handle on, okay, they need to borrow some money You know, how much money are we going to end up -- how deep is this hole here

Q And was there any discussion about you buying the beach properties?

A There was

Q And tell the members of the jury about that

A That didn't go far I had no interest in buying real estate in Sandbrige, Virginia

Q And who brought that up to you?

A Maureen McDonnell

Q So you don't agree to buy the beach properties, but what do you agree to?

A I agreed to help them with money

Q And when you say "them," who are you talking about?

A The Governor and his wife

Q And specifically, why are you agreeing to help them?

A Because they are helping me

Q How?

A With these meetings, with introductions, the launch at the Governor's Mansion, the credibility that they are lending to what I'm doing

Q At the same time that you're having conversations about lending more money, does the subject of the studies at UVA and VCU come up?

A Yes

Q How?

A The Governor called me

Q Tell the jury --

A That was later

What happened was is Maureen McDonnell asked me, "How are the studies going over at UVA?"

Q Okay

A And I said, "They're slow "

She said the Governor wanted to know how the studies were going at UVA

Q Did she call you back after that conversation?

A She did

Q And what did she say?

A She said he was furious when I told her that it was bogged down in the administration

Q So in the initial conversation, you tell her it's bogged down?

A Yes

Q And then subsequently, she calls you back?

A She calls me back and she says, "The Governor wants the contact information of the people that your company is dealing with at University of Virginia "

Q Were you happy with this news?

A I was I was pleased that they were -- someone was going to follow through with it

Q What did you do as a result of this conversation with Ms McDonnell?

A I contacted Dr Wright Dr Wright had Ryan Lanier get the contact information, forward it to my son, and I asked my son to send it to Maureen

MR DRY: Can we bring up Government's Exhibit 298, please?

BY MR DRY:

Q And, sir, this is an e-mail from Dr Wright to you, correct?

A Yes

MR DRY: I'd like to move Government's Exhibit 298 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q And, sir -- just scroll down, please Thank you A little bit higher up, the second e-mail Thank you

And this is the e-mail that you just talked about from Mr Lanier to Dr Wright?

A That's correct

Q And the subject line is "UVA people," correct?

A That's correct

Q And then if you go up, Mr Wright forwards that information to you And why had you requested this contact information?

A Because Maureen McDonnell said that the Governor wanted it

Q And how -- this is on February 3rd of 2012 How much -- how long did -- before this e-mail did Ms McDonnell ask you for the contact information?

A Within a few days

Q Okay And then at the same time -- can you take that down, please

At the same time this is going on, you are having conversations with Ms McDonnell about something called a Healthcare Industry Leaders Reception?

A Yes

MR DRY: And I'd like to show -- well, let me go back

BY MR. DRY:

Q When you ask Dr Wright to send this information, had you written a check yet to help out with the beach properties?

A No

Q Okay

MR DRY: Let's go to Government's Exhibit 301, please

BY MR. DRY:

Q Sir, this is an e-mail from Maureen McDonnell to Caroline Birgmann, and you are cc'd, courtesy copied, on this, correct?

A Yes

MR DRY: I'd like to move Government's Exhibit 301 into evidence, please

THE COURT: It will be admitted

BY MR DRY:

Q All right Let's go to the bottom e-mail And who is Ms Carolyn Birgmann, sir?

A She's a sales representative in Virginia

Q Okay I'm going to read what Ms Birgmann wrote to Ms McDonnell Subject line, "MD e-mail addresses " I'm going just going to read the first sentence, and you let me know if I'm reading it correctly "Hi, Maureen I hope you are doing well! Jonnie Williams, Sr has asked me to compile a list of MDs in the area for you to include on your invitation list for the event coming up the end of February "

Had you asked Ms Birgmann to give this list to Ms McDonnell?

A Yes

Q Why?

A Because the Healthcare Leaders Reception was an annual event held at the Governor's Mansion to recognize healthcare leaders, and I was given the opportunity to invite people, doctors, to the reception

Q What do you mean you were given the opportunity?

A Maureen McDonnell called me and said, you know, invite all the doctors that you want to invite to the Healthcare Leaders, to the meeting

Q And who did you want to invite?

A Besides local physicians?

Q Yes

A Dr Ladenson and a colleague of his, Dr Crantz

Q And how about Star folks?

A Yes, employees from Star as well

Q And did you want to go?

A I did

Q Okay And can we go -- well, hold on before that

When you said that you wanted to invite local doctors, why did you want to invite local doctors?

A Because they would be there and see that our company was there, and we would get the opportunity, at the

Governor's Mansion at the reception, to talk to various doctors

Q And what were you hoping these doctors would do?

A I was hoping they would do the same thing that we were traveling around the country for is to share with them what we had discovered and to learn about Anatabloc

Q But did you want them to do something with their patients after they learned about all this?

A I did I wanted them to use the product because it would be good for the company

Q Okay And let's go to the top portion of the e-mail This is Ms McDonnell response, and you're cc'd on this All right I'm going to read this Just let me know if it's incorrect

"P S By the way, the docs we are identifying for the reception are healthcare industry leaders in Virginia

Thanks, Carolyn! We appreciate the list of docs that you sent, but wanted you to know that you didn't have to limit them to this area It's a reception for healthcare leaders from all over the state of Virginia, so please expand on your list I checked our number of invites, and if Jonnie has any more than these 39 docs, send them along because we have room to invite more We may already have some of these docs on our invite list

So if you can put them in alphabetical order, we can run your list against ours and remove the duplicates We're actually sending out invitations this week, and I was wondering if you also have the physical addresses of the docs you're referring? If so, and if it's not too much trouble, could you send them over to us? Thanks so much for your help "

Did you think it was a benefit to your company that you'd be able to invite who you wanted to the Healthcare Leaders Reception?

A I did

Q Why was that --

A Well --

Q -- just briefly?

A Anytime in front of the showcase of the Governor's Mansion, the credibility that comes with presenting your product to someone, it automatically takes on an importance from the credibility

Q Okay

MR DRY: I'd like to bring up Government's Exhibit 312 And, Your Honor, Mr Williams isn't on this e-mail, but I believe it's been stipulated to authenticity, and we'd like to admit Government's Exhibit 312 into evidence at this time

THE COURT: It will be admitted

MR DRY: Okay Let's go to the bottom e-mail first -- or the middle e-mail No, no That's -- there we go Thank you, Ms Taylor

BY MR. DRY:

Q Okay This e-mail here says from Jonnie Williams, Jr Who is that?

A My son

Q And it's to Maureen McDonnell, and it says, "FD: Anatabine clinical studies - UVA, VCU, JHU Please let me know if this helps I have not heard from my father on that" -- "on this yet "

Why is your son e-mailing Ms McDonnell this information?

A I'm not sure I understand this Is -- is --

MR DRY: We can go down Go down a little bit so he can see

BY MR DRY:

Q And, in fact, I've got a paper copy of this if you want to just take a minute to look at it, sir I know that you're not on this e-mail

THE WITNESS: Thank you

BY MR DRY:

Q Let's just do it this way Is this Mr Lanier e-mailing your son and then your son forwarding the information to Ms McDonnell about who the contact information is at --

A Yes

Q -- UVA?

A I understand what it is now It just --

Q It's okay

A It just didn't make sense the way it was -- to me

Q On the screen

A I didn't understand it

Q Okay

MR DRY: And then can we go to the top e-mail, please?

BY MR. DRY:

Q And, sir, that e-mail is from Ms McDonnell Do you know who rfmva09@gmail com is?

A The Governor of Virginia

Q And then it's got a separate e-mail, Bob McDonnell

Do you know who Jasen Eige is?

A He's a lawyer for the Governor for the state of Virginia

Q Okay And can you read that to me?

A Which part?

Q What she wrote

A "Here's the info from Jonnie He has calls in to VCU and UVA and no one will return his calls "

Q Did you have a conversation with Ms McDonnell in which she talked to you about what she did with the information that she had requested from you, the contact information that your son had sent?

A She said she forwarded it to her husband

Q At the time of this e-mail, had you actually written another check for any additional loans to the beach properties?

A No

Q Okay

MR DRY: I'd now like to show Government's Exhibits 318, please And let's go to the bottom e-mail first, please

BY MR DRY:

Q This is an e-mail from the Governor to you; is that correct, sir?

A It is

MR DRY: I'd like to admit Government's Exhibit 318 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q And, sir, Ms McDonnell is not on this e-mail; is that correct?

A That's correct

Q And the date of the e-mail is February 16th, 2012?

A Yes

Q It says, "Johnnie Know u have been slammed Do u want me to call your lawyer on the certificates and the documents Thanks for all your help Gov "

First of all, is that the correct spelling of your name?

A No

Q When the Governor references "know u have been slammed," what is he talking about? Generally, what is going on with this e-mail?

A Well, we had had a conversation where I discussed with him that I had been really busy, and we had conversations -- where it refers to "certificates and the documents" -- was possibly loaning his stock certificates so that he could borrow money against them

Q Let's talk about that a little bit What -- when you say loan him stock certificates, first of all, stock certificates in what?

A In Star Scientific

Q And whose stock certificates were those?

A They were mine

Q And your conversation with the Governor, what was the plan or the discussions about loaning stock certificates?

A We had a conversation where I wasn't exactly sure, from talking to his brother-in-law, just how deep this hole was at Sandbrige and how much money it was going to take So I thought a way to keep him out of my cash would be that I would just loan him -- take some certificates and split them into individual certificates, maybe take them out of the airplane account, since there were shares over there, and let the Governor either sell those or borrow money against those as he needed them once they determined what the amounts were that they needed monthly for the cash deficiencies at Sandbrige

Q All right Well, let's a step back Stock certificates Are these literally pieces of paper that is shares of Star Scientific stock?

A Yes

Q And whose name are those in, if they're yours?

A They're in my name, or if they're in the airplane account, they're in Starwood Aviation

Q Fair enough And you're talking about physically delivering stock certificates to who?

A To the Governor's broker, stockbroker

Q Okay And were the -- in the initial discussions, were the shares going to be transferred out of your name?

A No They would have a stock power signature guaranteed from me, attached to the certificate so that he could borrow against it But the idea was is that okay, the lending institution has the ability to take that once I've signed it

Q Okay

A But it would stay in my name for purposes of, you know I wanted to keep the stock certificates in my name

Q Well, why did you want to keep the stock certificates in your name?

A I didn't want anyone to know what I was doing

Q What does that mean?

A I didn't want to see stock certificate shares being transferred to the Governor of Virginia

Q All right If you physically -- or if you actually transferred the shares into the Governor's name, what's the process that that would require?

A It would be sent to the transfer agent with that stock power, as I just described, and the stock -- the stock transfer agency, which is usually a bank that administers and keeps the accounting of the shares of a company, of who owns what, they would then transfer those as per the instructions with the stock power being signature guaranteed and signed

Q Okay So the stock power basically allows whoever -- if you don't do it that way and you just put a stock power with the certificate --

A Yes

Q -- and the Governor would borrow against that --

A Yes

Q -- is that right?

A That's correct

Q And if for some reason the Governor didn't pay back the loan --

A Right

Q -- then what could the lender do, based on that stock power?

A They would take the stock and sell it to cover the loan

Q Okay But the benefit of this, in your mind, this approach, was what?

A It was two-fold It was, one, to keep them out of my cash, since I had the certificates and had no intentions of selling them, and that would facilitate whatever these cash needs were going to be down here in Virginia Beach And the second one was I didn't want anyone to know

Q Why don't you want people to know that you're loaning the Governor money?

A I think it's a problem

Q What does that mean, sir?

A I think it's a problem -- I think a problem with why I'm loaning the money

Q All right Well, why are you loaning the money?

A I'm loaning him money to help me

Q Help you do what, sir?

Let's stop beating around the bush Why are you not wanting people to know that you're loaning the Governor money?

A It may be wrong I think it's wrong It could be wrong, and it could be -- it could be violating laws I don't know that, but it could be

Q You knew it was wrong, and you were hiding it?

A I knew it was wrong I was uncomfortable I didn't think I should have to be doing this

Q I understand you keep saying --

A Yeah

Q -- you shouldn't have to be doing this

A Yeah

Q But it was your choice, right?

A I made a bad decision I knew it was wrong I thought the ends justified the means for what I was trying to accomplish here in Virginia, and I made a mistake It was a bad mistake I should have never written the checks

Q When you're talking about stock certificates with the Governor, did the subject of whether you were going to document this -- this new loan come up?

A Yes

Q Tell the members of the jury about that

A I met with the Governor and discussed it

Q And what?

A I told him I would just as soon keep it between us with a handshake

Q And what did he say?

A He had his own disclosure issues

Q Did he say he had his own disclosure issues?

A He did

Q In your conversations with the Governor about this stock plan, did the two of you discuss whether you would have to report the transaction to the SEC?

A I told him that I believe I was required to report it, and his position was is he didn't understand why because you wouldn't have to list the person that it was transferred to And I told him I needed to check into that because I wasn't sure of that under Sarbanes-Oxley laws, under the disclosure I wasn't sure about that, whether it could be done without it showing who they would be transferred to

Q Well, hold on Let's talk about that a little bit First of all, the SEC is the Securities and Exchange Commission?

A That's correct

Q And when you transfer -- if you had transferred shares using the transfer agent so that the shares were actually in the Governor's name, the transfer agent would know about that, right?

A That's correct

Q And would lawyers at Star know about that?

A That's correct

Q And the lawyers at Star would have required you to do what, if they had known you had done it?

A They would have stopped it But I would have been required to file a Form 4 with the Securities and Exchange Commission within, I believe, 48 hours

Q Okay Well, let's talk about that What's a Form 4?

A A Form 4 is a disclosure form from the Securities Exchange that anytime you have any changes to your beneficial ownership, you're required to file that document

Q So is it fair to say there was no way for you to get the stock certificates into the Governor's name without other people knowing?

A That's what I had learned

Q You mentioned Sarbanes-Oxley What's Sarbanes-Oxley?

A Sarbanes-Oxley is law that was passed to strengthen the disclosure of companies in transactions, financial transactions to the shareholders

Q And financial transactions of whom?

A It's complicated There --

Q Well, let's put it this way Does Sarbanes-Oxley apply to you as the CEO of a publicly traded company?

A Yes, I believe so

Q And that requires -- that puts restrictions on and disclosure requirements on you as CEO, right?

A That's correct That's my understanding

Q And is Sarbanes-Oxley often referred to as Sarbox?

A It is

Q During your conversations with the Governor about you providing this additional money to him, is Maureen McDonnell present?

A No

Q Is anybody else present?

A No

Q During these conversations, does the subject of UVA and VCU come up, the studies at UVA and VCU?

A In a phone call

Q Okay Let's --

A Let me back up I'm not sure if you are referring to the -- the conversation in person or in phone calls I need to make sure I understand what your questions are

Q My question --

A Your question is

Q -- is during your conversation with the Governor about you providing him money, was anything mentioned about UVA and VCU studies?

A During this dialogue over a period of time?

Q Yes

A Yes

Q What?

A He said -- he called me and he said, "I'm following up with the situation over at UVA," and then it shifted to that he needed some more money for Sandbrige

Q Do you remember the exact date of that conversation?

A I think it was the day of the Healthcare Leaders meeting

Q Well, let's talk about the Healthcare Leaders meeting

MR DRY: I'd like to show Government's Exhibit 341, please This has been stipulated to, and the government would move to admit 341 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q Going down to the bottom, please, can you blow up the -- or actually, on the top right-hand corner, what's the date there, sir?

A February the 29th, 2012

Q And it says "Building: 706 - Patrick Henry Building," correct?

A That's correct

MR DRY: If we can scroll down, I think it's fourth from the bottom

BY MR DRY:

Q Do you see your name there, "Jonnie Williams"?

A I do

Q And in the "Agency Name" it says "Gov," correct?

A Yes

Q And that's a "3r" and "Room Destination" of 1:25, correct?

A Yes

Q Now, is this the same day as the Healthcare Leaders Reception event?

A Yes

Q And did you have a private meeting with the Governor that day?

A Yes

Q How did that meeting come about?

A In a conversation with -- I'm not sure exactly the time and how it was arranged, whether it was with the Governor or Maureen McDonnell

Q All right So either a conversation with either the Governor or Ms McDonnell --

A -- about the setting up of the meeting

Q About the setting up of the meeting And where was this meeting held at?

A In a conference room at the Patrick Henry Building

Q Okay Who else was present for the meeting?

A No one The Governor and I

MR DRY: All right I'd like to -- this has not been stipulated to, but I'd like to pull up Government's Exhibit 2, but only the third page And I'd like to move this page into evidence

THE COURT: It will be admitted

MR ASBILL: No objection

BY MR DRY:

Q Okay, sir Do you recognize those notes?

A I do

Q And, sir, in the middle of that page, whose notes are those or whose handwriting is that?

A That's mine

Q Okay And the top of the page, is that your handwriting?

A No

Q And the bottom of the page, is that your handwriting?

A No

Q Do you recall, at this February 29th, 2012, meeting scribbling down these notes?

A I do

Q When it talks about 50,000 -- and this meeting is with the Governor?

A Yes

Q Is the top portion of your part of it, "50,000 SHS M," what does that refer to?

A This was -- that, in particular, refers to loaning them 50,000 shares at that point It's one of the options that we discussed was loaning them 50,000 shares so that they could borrow against it

Q Well, let's talk about that for a second You've previously talked about, I believe, the stock power of attorney idea where the shares won't leave your name --

A Right

Q -- but they'll -- they'll borrow money against that, right?

A Right

Q Were there discussions about rent?

A There were

Q Tell the jury about that

A Well, it was considered that I could rent the house down at Virginia Beach and help them with it that way and just write the checks as rent

Q Did you have any intention of renting those beach houses?

A No

Q Okay Now, you said that this was about loaning the shares How many shares was being discussed?

A 50,000 shares

Q And there's a notation to the left, it looks like "$ 10 "

A Yes

Q What does that mean?

A That means -- what was going on right here is let's suppose that I loaned him 50,000 shares He borrows the money against the 50,000 shares The stock price goes up or the shares are called in or sold and the stock price goes up He would be on the hook and have an obligation to purchase those shares back at a higher price to return those

Q Okay

A And one of the ways to address that was I had options, a security to purchase shares in the future at a price that were below the market So I suggested to the Governor maybe you could buy 50,000 of these at $ 10 and that would cover -- if the stock ran up, that would cover it

Q All right Well, let's break that down a little bit All right First of all --

A That would cover your exposure for the difference between what you're borrowing and what the increased appreciation could be That would cover that exposure

Q Okay First of all, let's -- let's unwind that a little bit

A Okay

Q So you have stock in Star Scientific, right?

A Yes

Q And you have what s called options?

A I own options also It's securities It's part of my ownership

Q Okay And an option is basically a right to purchase the stock at a certain price?

A At a certain price and at a certain time

Q At a certain price, at a certain time Okay Now, you're discussing a way that you could protect the Governor from the danger of giving him shares, him selling them and then him being on the hook to give you back those shares at a higher price; is that right?

A That's correct

Q Okay Now, you're offering to sell him those options at $ 10, right?

A Yes

Q How much were those options worth at this point?

A Probably a dollar

Q Okay So if you sold him 50,000 options at $ 10 a piece --

A Right

Q -- how much would he owe you?

A $5,000

Q And how much were those options worth at that time?

A 50,000

Q Okay And what would happen if -- what was the benefit to him?

A Well, if he owned the options -- if he bought the options and he just borrowed the money, it could repay the money But if the stock appreciated, the options would cover the entire loan, if the -- if the appreciation was enough

Q What was Mr McDonnell's reaction to this discussion?

A These were just options we were sitting there discussing

Q Okay Does the subject of reportability come up in this meeting?

A Yes

Q In what context?

A He says -- he said, "I have disclosure I have reporting requirements," and I said, "So do I "

Q And was he saying "I want to report this" or "I don't want to report this"? And when I say "this," I'm talking --

A I said that I'd just as soon keep this between us and no one know this

Q And what was --

A And he said that was fine with him And that's why no lawyers were contacted after that

Q Did you do the $ 10 option plan?

A I did not

Q Why not?

A Because I later found out I would have to disclose that also

Q So in order to transfer the shares, the options to Governor McDonnell, what would have had to happen?

A I would have had to file Form 4s with the Securities and Exchange Commission and disclose who they were transferred to

Q Okay And would lawyers have known if you had transferred -- was there a way for you to transfer those options to the Governor without lawyers knowing about it?

A No

Q Was there a way for you to transfer those options to the Governor without the transfer agent knowing about it?

A No

Q Okay Why didn't you want to do the option plan because it would be reported?

A I didn't want anyone to know about it, once I found out it was the same situation with restrictions of transferring the shares

Q And why didn't you want anybody to know about it?

A I didn't want anyone to know that I was helping the

Governor financially with his problems while he was helping our company

Q After your meeting with the Governor, did you attend the Healthcare Leaders Reception?

A Yes

Q And that was the event that Ms McDonnell told you that you could invite people to?

A Yes

Q I'm just curious, at this point was Mary-Shea Sutherland, had she left Ms McDonnell's employment?

A Yes

Q Okay And she left back in September of '11, right?

A I don't recall the specific month, but I -- she had left

Q Did all of the people that you invited actually attend the event?

A Not all of them

Q Okay But did you have Star Scientific folks there?

A I did

Q Your son attended?

A David Dean

Q David Dean Who is who?

A Head of sales

Q And did anybody -- Dr Ladenson?

A Dr Ladenson, at this point, we had retained as a consultant to the company

Q Okay

A And --

Q And did he bring somebody?

A Dr Crantz, a colleague of his, an endocrinologist from McLean, Virginia

Q Okay Let's go -- and there were several doctors that you were trying to get to sell -- or convince that Anatabloc was good for the local area, right?

A Yes

MR DRY: Let's go to Government's Exhibit 334, please?

BY MR DRY:

Q Do you recognize this picture, sir?

A I do I'm standing beside Dr Crantz

Q All right That's a picture of you at the Healthcare Leaders Summit, correct?

A It is

Q Or Healthcare Leaders Reception

MR DRY: Government moves to admit Government's Exhibit 334 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q Okay Sir, that's you in the middle with your arms crossed?

A Yes

Q And I think you've already said this, but I just want to clarify To your right with the white hair, who's that gentleman?

A That's Dr Crantz, Dr Ladenson's friend

Q And Dr Ladenson was the Johns Hopkins researcher, right?

A He's the chief of endocrinology at Johns Hopkins School of Medicine

Q And I think you said Star had retained his services, right?

A Yes

Q Did the Governor announce Dr Ladenson's attendance at the event?

A He did

Q How did that come about?

A While the Governor was speaking, I asked Maureen to go over and have the Governor recognize Dr Ladenson as a special guest that evening

Q And what did she say?

A Okay

Q And did she go up to the Governor?

A She did

MR DRY: Can we bring up Government's Exhibit 338 into evidence? Government would move Government's

Exhibit 338 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q That's a picture of the Governor and Ms McDonnell at the event?

A Yes

MR DRY: Then let's bring up Government's Exhibit 336 into evidence Government would move Government's Exhibit 336 into evidence as another picture from the Healthcare Leaders Reception

THE COURT: It will be admitted

BY MR DRY:

Q And this is while the Governor is making remarks, sir?

A Yes

MR DRY: I'd like to move -- come up -- Government's Exhibit 337 into evidence, please

THE COURT: It will be admitted

BY MR DRY:

Q Sir, you're on the left by the pillar?

A I am

Q And to the left of you is who?

A Dr Crantz

Q And to the left of him in the back with the white hair next to Dr Crantz, who is that?

A That's Dr Ladenson

Q Were you happy about the Governor recognizing Dr Ladenson at this event?

A I was

Q Why?

A It drew the attention in the place that Dr Ladenson was important

Q And if Dr Ladenson is important, who is he representing at that event?

A Star Scientific

MR DRY: Can we bring that down, please?

BY MR DRY:

Q After the reception, did you go out to dinner that evening?

A I did

Q Who did you go with?

A The Governor and Ms McDonnell, Dr Ladenson, Dr Crantz, David Dean, and myself

Q And where did you go?

A A couple of blocks from the Governor's Mansion, a restaurant called La Grotta

Q Okay And what was discussed at the dinner?

A Anatabloc

Q Okay And were there often occasions where you were with the Governor that you didn't discuss Anatabloc?

A I don't recall -- I don't recall any

Q All right Well, let's bring up Government's Exhibit 346 into evidence This is an American Express bills for Mr Williams Government would move Government's Exhibit 346 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q And the top of this bill, the closing date is March 29th, 2012, Mr Williams

MR DRY: Can we go down?

BY MR DRY:

Q Do you see an entry for La Grotta?

A Yes

Q And the date not of the charge, that's February 29th of 2012?

A Yes

Q And what was the cost of the dinner?

A $1,423 19

Q Did you pay the entire bill?

A I did

Q And just so we're clear, is this your personal credit card or is this your corporate card?

A It's the company one

Q Okay So included in this bill is whenever you travel on company business, things like that?

A When I'm working

Q Okay

MR DRY: Can we bring that down, please?

BY MR DRY:

Q Did anybody offer to pay other than you?

A No

Q Okay Mr Williams, we've talked a lot about your cars and your homes a little bit, but just -- let's be clear You've traveled around in a private jet for a long time, haven't you?

A Over 20 years, 25 years

Q And what are some of the kind of cars that you own or have owned?

A All sorts, Ferraris, Aston Martins, Range Rovers

Q Rolls-Royce?

A One time I didn't care for it

Q Okay And you own a lot of homes?

A A few homes

Q And you've -- your homes are nice homes They're typically more than a million dollars a piece, aren't they?

A They are

Q And many of your expenses, Star Scientific would reimburse you, didn't they?

A Yes

Q What kind of expenses did Star Scientific reimburse you for?

A Mostly travel and entertaining people, dinner, New York, California, meeting with investors, travel-related expenses

Q And when you travel, you travel in style, generally, nice rooms, nice hotels, right?

A Generally

Q Okay Did anyone at Star Scientific review your -- the expenses that you charged to the company?

A The chief financial officer

Q But where is he in the food chain at the company? Is he above you or below you?

A Below

Q Did you expense to Star Scientific things that you bought for the Governor and his wife and his family members?

A Such as?

Q Dinners, golf clubs

A Yes

Q Okay Kinloch golf outings?

A Yes

Q But did you expense -- I think you referred to it as this, the shopping spree for Ms McDonnell, did you expense that to Star?

A No

Q Why not?

A It was out of line It wasn't normal for me to do anything like that

Q Well, and isn't it true that the CFO would have seen that, right?

A Yes, he would see that

Q And that would -- that might be questioned, wouldn't it?

A I would hope so

Q Did you expense the Rolex that you bought for the Governor?

A No

Q Why not?

A I didn't want anyone to know about it

Q Did you inform the other executives at Star Scientific that you were loaning money to the Governor?

A No, I did not

Q Other than Ms Fulkerson, did anybody know at Star Scientific?

A No one

Q Why not?

A I didn't want anyone to know what I was doing

MR DRY: Let's -- let's bring up Government's Exhibit 348, please

BY MR DRY:

Q Mr Williams, this is an e-mail from John Piscitelli to you, correct?

A It is

MR DRY: Government would move Government's Exhibit 348 into evidence

THE COURT: It will be admitted

BY MR. DRY:

Q And, sir, the subject of this is "Transfer instructions"?

A Yes

Q And this is March 2nd of 2012?

A Yes

Q Who is John Piscitelli?

A He's a stockbroker at Davenport & Company for the Governor

Q Did you know that Mr Piscitelli was going to be e-mailing you with transfer instructions?

A Yes

Q But -- and you talked to the Governor about that?

A I did

Q Now, in the fourth line down, it says "For Further Credit " Who is that to?

A It's for further credit to the McDonnells' account 7502-4806

Q Now, it talks about "Incoming Fed Wire Instructions " Is there a distinction between transferring shares this way, according to these wire instructions, and the way we talked about earlier with the stock certificates --

A Yes

Q -- and the power of attorney?

A There is

Q And what is that?

A The DTC system is set up for brokerage firms to transfer shares electronically from one brokerage firm to another

Q Okay And were you excited about the idea of electronically sending shares over to Davenport?

A This was in a time frame of when it was being considered whether it had to be disclosed with filings at this point

Q If you had transferred the shares -- could you transfer shares, first of all, in stock certificate form or would they have to be held --

A No It would be electronically The shares would follow at some point

Q Okay So you would have to have shares in a brokerage account?

A Yes

Q And then you would have to transfer those shares into the McDonnell brokerage account?

A That's correct Electronically they would show up, and the paperwork would follow

Q Okay Did you want to transfer the shares electronically?

A I couldn't do that

Q Why?

A Because I found out that it would have to be disclosed

Q Did you have any discussions with a man named John McKeon about the idea of transferring shares to the Governor?

A I did

Q What were those discussions?

MR ASBILL: Hearsay Objection

THE COURT: You need to stand up when you address

MR ASBILL: I'm sorry, Your Honor I object

MR DRY: They're not for the truth of the matter asserted, Your Honor

THE COURT: The objection is sustained

BY MR DRY:

Q Did you ask Mr McKeon to do anything regarding the transfer of the shares to the Governor?

A I did

Q What did you ask him?

A I asked him if he would loan the shares to the Governor because the Governor was in financial trouble

Q And did you explain to him why you wanted him to do it?

A I told him that, you know, I was too close to it

Q And did he agree to transfer the shares?

MR ASBILL: Objection

THE COURT: Sustained

A He said he would sleep on it

THE COURT: Sustained

BY MR DRY:

Q Stop

THE WITNESS: Sorry Sorry

BY MR. DRY:

Q Ultimately, did Mr McKeon transfer any shares?

A No

Q Okay After the e-mail from Mr Piscitelli March 2nd -- can we pull that down, please? -- did you have a discussion with the Governor in which you told him that you couldn't transfer the shares?

A Yes

Q And what did you tell him?

A I told him it was unavoidable and that I needed to just loan him the money and write a check

Q What was unavoidable?

A The disclosure

Q And what was his reaction to this?

A Okay

Q And, sir, I'm sorry Let me just back up for one second Mr McKeon, is -- what's your relationship with Mr McKeon?

A He's a friend of mine

Q Is he also a shareholder?

A Yes, he is

Q Okay

MR DRY: I'd like to now go to Government's Exhibit 347, please

BY MR DRY:

Q Sir, this is a questionnaire that attorneys from Star Scientific ask you to fill out, correct, a disclosure requirement?

A It's an internal one at the company

MR DRY: Okay Would move Government's Exhibit 347 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q What's the purpose of this internal questionnaire?

A It's a questionnaire sent to the officers and the directors of the company so they can obtain the materials that they need in order to accurately prepare the company's security exchange filings

Q So is this information used by the company's lawyers to complete like the annual report?

A That's correct

Q And who does the annual report go to?

A The shareholders

Q And what was your understanding of your legal obligations to be truthful to shareholders?

A My understanding was to be truthful to the shareholders

Q All right Well, let's -- let's talk about that a little bit Going to -- and you knew that you had disclosure requirements to shareholders, right?

A I did

Q And you knew generally that it was prohibited for you to give things of value to government officials in return for stuff, right?

A I did

Q And you knew that if you were going to do that, that would be something that you'd have to report You knew that, right?

A Yes

Q Well, let's go to -- let's go to the sixth page of the exhibit

A I knew that in general Not from in writing and documents, but I just -- my general understanding

Q You knew it?

A I knew it

Q All right Well, let's go to the question 11 I'm going to read this and you make sure that I've read this correctly "I have knowledge, or a reason to believe, that the company, at any time since January 1, 2011, has or may have engaged, directly or indirectly, in: Any bribes or kickbacks to government officials (both domestic and foreign) or their relatives, or any other payments to such persons, whether or not legal, to obtain or retain business or to receive favorable treatment with regard to business "

Did I read that correctly?

A Yes

Q And that's marked false, right?

A Yes

Q What box should have been checked?

A It should have been true

Q Why?

A It should have been true because I was making payments

Q And you were making payments in exchange for what?

A To help our company

Q And at this point you had already loaned the McDonnells $50,000, right?

A Yes

Q And you had already given a 15,000-dollar check for the wedding reception?

A Yes

Q You had already had the shopping spree, the Rolex, the vacation, right, all of that?

A Yes

Q The dinners, golf clubs, all of that?

A That's correct

MR DRY: Let's go to the eleventh page of the exhibit I'm sorry It should be 681 on the bottom I think the next page The top of that, please

BY MR DRY:

Q This is the Signatures and Certifications block, right?

A Yes

Q I'm just going to read to you the second paragraph in the first block "I understand that the information that I am furnishing to you herein will be used by the company in the preparation of the annual report The answers to the questions set forth above are accurate and complete to the best of my knowledge "

Did you sign that?

A It's not my signature, but I authorized it to be signed

Q Okay That's Jerri Fulkerson's signature?

A It is

Q And you told her to sign it?

A I did

Q And the date was March 12 -- 2nd of 2012, right?

A Yes

Q Did you even bother to review this document before telling her to sign it?

A I did not read it

Q But you knew generally, you knew that you had to keep what you were doing with the Governor secret, didn't you?

A I did

Q If you had read it, would you have checked that box any differently?

A No

Q You would have still lied, right?

A I didn't want anyone to know

THE COURT: All right We are going to stop here for lunch It's 1:00 If you all could come back, let's make it five after 2, we'll get started with the afternoon session

(The jury left the courtroom)

THE COURT: All right

(Luncheon recess taken from 1:05 p.m. to 2:05 p m.)

THE COURT: All right, bring in the jury, please

(The jury entered the courtroom.)

All right, Mr Dry?

BY MR. DRY:

Q Mr Williams, I think where we finished up was the March 2nd of 2012 disclosure, the Internal Disclosure Form. I'd like to now bring up what's previously been admitted as Government Exhibit 352 Can we blow up the top portion, please? Sir, this is a check written to MoBo Realty in the amount of $50,000 off of Starwood Trust. What is Starwood Trust?

A It is a trust that my children are the beneficiaries of

Q Okay, sir And who is the trustee of this trust at this time?

A My brother, Donnie Williams

Q Okay And Donnie was the trustee, but were you making decisions regarding what happened in the trust?

A Yes

Q And if the trust was writing checks, typically you would authorize those and Ms Fulkerson would check with your brother; is that right?

A Yes In this case I called my brother, also.

Q You called your brother and explained to him you were going to do this $50,000 check?

A Yes

Q Okay Did you instruct Ms Fulkerson to write the check after speaking with your brother?

A I did

Q Why is the check written to MoBo Realty, sir?

A That's who I was asked to have the check made out to

Q Asked by whom?

A I believe Maureen or the Governor, one or the other

Q One or the other?

A Yes

Q Did you know what MoBo Realty was?

A Somewhere through here, I had learned what it was from the brother-in-law, I believe, earlier on talking about it

Q Okay And what was your understanding when you wrote this check of what MoBo Realty -- instructed Ms Fulkerson to write the check, what MoBo was?

A MoBo Realty was, I don't know the legal entity of it, but it was a partnership owned by the Governor and his wife, and the Governor's sister and her husband.

Q Okay And the Governor's sister was Maureen Uncapher at this time?

A I believe so.

Q Now, were you aware that there were checks that were voided out?

A I've learned that

Q Okay But at the time you didn't --

A I didn't pay any attention to it

Q And did you instruct Jerri Fulkerson not to have Maureen McDonnell's name on the checks?

A All I can tell you is that I just had the check made out to who I was told by the Governor or his wife who to ultimately make it out to

Q So you don't remember a specific conversation with Jerri Fulkerson about that?

A As I sit here, I don't

Q Now, what was this $50,000 for? What was it?

A It was additional money to help them out with the beach property

Q Okay And so I think you previously testified you didn't do the stock transaction, right?

A That's correct

Q And so was this basically a way to get more money to the Governor and his family?

A It was

Q Did you ever have any loan paperwork associated with this new $50,000 loan?

A No

Q And at the time that you wrote this check, what did you expect to get in return from the Governor?

A I expected what had already happened, that he would continue to help me move this product forward in Virginia

Q And how, sir?

A Whether it was assisting with the universities, with the testing, or help with government employees, or publicly supporting the product

Q Now, after this $50,000, did you give another $20,000 to the McDonnells?

A I did.

Q Let's bring up Government Exhibit 374, please The top e-mail is from Jerri Fulkerson on behalf of you to Mr McDonnell, correct?

A Yes

MR. DRY: I'd like to move for the admission of Government Exhibit 374

THE COURT: It will be admitted.

BY MR DRY:

Q Now, going to the bottom e-mail, sir, that's from Mr McDonnell to your e-mail account, correct?

A Yes

Q And that says, "Can you talk tomorrow for a few minutes on Sandbridge Hope all is well How is your golf game Best to Celeste " And Celeste was who?

A My wife

Q And Sandbridge, what did you understand him to be talking about as, far as a few minutes on Sandbridge?

A That they needed some more money

Q Okay And the date? When you say "they," who?

A The Governor and his wife.

Q And the date of that e-mail is May 14th, 2012?

A Yes

Q And on the top of it, Ms Fulkerson responds and says: "Jonnie asked me to send you an e-mail asking you to call him at your convenience He is available all day " There is a number listed. Is that your cell phone number?

A It is

Q Is Ms McDonnell on this e-mail? Either one of them?

A I don't see it

Q Okay Let's go to Government Exhibit 375 That is very small So let's go to the second, I think it is blown up. This is a text message from you to the Governor on May 14th, 2012 at 1:20 p.m. Correct?

A Yes

MR. DRY: Government would move Government Exhibit 375 into evidence

THE COURT: It will be admitted.

BY MR DRY:

Q Sir, that basically just says, "Got e-mail, call any time Jonnie " Correct?

A Yes

Q These text messages were just between you and the Governor, correct?

A That's correct

Q Government Exhibit 379, please This is an e-mail from the Governor to you on May 18th, 2012 at 5:26 p.m., correct?

A Yes

MR. DRY: The government moves for admission of Government Exhibit 379 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q The date of that text message is May 18th. That's four days later, right?

A Correct

Q And Mr McDonnell writes: "Johnnie Per voicemail, would like to see if you could extend another 20k loan for this year Call if possible and I'll ask Mike to send instructions Thx Bob " Did you receive this text message, sir?

A I did.

Q First of all, is that the correct spelling of your name?

A No

Q Government's Exhibit 380, please Now, this is a text message from you to the Governor at 5:38 p.m., correct?

A Yes

Q That's basically 12 minutes after that other text message was sent to you, right?

A Right

Q And in this one, you write: "Done Tell me who to make it out to and address Will FedEx. Jonnie " Why are you asking him who to make it out to?

MR. DRY: I'd like to admit Exhibit 380 into evidence, Your Honor

THE COURT: It will be admitted

BY MR. DRY:

Q Why are you asking the Governor who to make the check out to?

A I have no idea who to make the check -- who he wants the check written to

Q Now, you say yes within 12 minutes Did you have a conversation with the Governor about what the terms of this new $20,000 loan was going to be?

A I don't recall having that conversation

Q So did you think it was going to be -- what did you think the terms were going to be?

A Whatever the ones were before

Q Okay And was there a written loan agreement for this one?

A No

Q Let's go to Government Exhibit 389, please. This is a text message from you to the Governor, 5/25 2012 at 12:02 a.m.; is that correct?

A Yes.

MR. DRY: Government moves Government Exhibit 389 into evidence

THE COURT: It will be admitted.

BY MR DRY:

Q There, you say, "MoBo was done Tuesday Golf game improving Hope to play with you and Phil Homestead Star doing great Jonnie " You say MoBo was done Tuesday Is that because you had sent the money, the $20,000?

A Yes

Q And these text messages that we have just gone over, those were just between you and the Governor, correct?

A Yes

Q Let's go to Government Exhibit 390, please. Now, this is a text message from the Governor to you, correct?

A Yes

MR. DRY: The government would move Government

390 into evidence

THE COURT: What's the number again?

MR. DRY: 390, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q And this one, the Governor writes: "Thanks so much for the help See you in a few weeks " You in fact loaned the Governor another $20,000, right?

A I did.

Q Now, this one, was it a check or a wire transfer? Do you remember?

A I don't recall I don't know

Q Okay. At the time that you loaned the money to the Governor, did you think he was your personal friend?

A No

Q Why were you loaning him money, the next $20,000?

A I was loaning him money so that he would help our company

Q Were there various times in 2012 that you and the Governor communicated about Star Scientific stock?

A Yes

Q And let's do some examples Government Exhibit 370, please This is a text message from the Governor to you, correct? That's your phone number there?

A Yes

MR DRY: The government would request the admission of Government Exhibit 370 into evidence

THE COURT: It will be admitted.

BY MR. DRY:

Q The date of this text message is April 28th of 2012

A Yes

Q So this is before the $20,000 that we just talked about, right?

A Right

Q And it is sent at 1:59 a.m. Can you read what the Governor wrote to you there?

A "Stock going great Alzheimers study announcement really helped. Thanks for coming to Romney event and helping him. Gov "

Q And you have had an opportunity to review these text messages before today, correct?

A I have

Q And that makes it easier for you to read them?

A It does

Q Can we go to Government Exhibit 392, please Do you recognize this as an e-mail from Mr McDonnell to you on June 13th, 2012?

A Yes

MR DRY: The government moves Government Exhibit 392 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR. DRY:

Q This is on June 13th, 2012 What does the Governor write to you there?

A "Stock looking good. Well done Gov "

Q All right Let's go to Government Exhibit 395, please I believe this is already admitted. Now, the bottom e-mail is from the Governor to you What does he say there, sir?

A It says, "Congrats on the patent for Anatabine Progress continues "

Q Okay And then Ms Fulkerson forwards you that e-mail, right?

A Yes

Q Do you see Ms McDonnell on that e-mail at all?

A No

Q Okay Let's go to Government Exhibit 396, please This is another text message from the Governor to you, correct?

A Yes

MR. DRY: Government moves for the admission of Government Exhibit 396, Your Honor

THE COURT: It will be admitted

BY MR. DRY:

Q That's dated July 3rd of 2012, right?

A Yes

Q Can you read what the Governor wrote to you there?

A "Good announcements lately Stock looks good. Hope all is well You and Celeste enjoy the 4th of July
Gov "

Q Was it unusual for you to get text messages from people about how Star Scientific's stock price was doing?

A No.

Q Why not?

A They generally comment when it is good and they generally comment when it is bad.

Q When you say "they" --

A Shareholders

Q Did you and the Governor ever discuss the ownership of Star stock?

A He said he was a shareholder I didn't know how many shares he owned, though.

Q What was the context of those conversations?

A Make a comment like, you know, "I'm a shareholder and I'm rooting for you."

Q Okay And was that generally when you were discussing how things were going with Star?

A I can't say in particular

Q Okay But you know that you had those kinds of conversations

A Yes

Q Let's go to Government Exhibit 397, please This is another text message from you to the Governor This is July 3rd of 2012 Do you recognize this document, sir?

A I do

MR. DRY: Government moves for admission of Government Exhibit 397 into evidence

THE COURT: It will be admitted.

BY MR. DRY:

Q Now, sir, this is dated July 3rd of 2012, right?

A Yes

Q I'm going to read this to you. "Johns Hopkins human clinical trials report on August 8th. If you need cash let me know Let's go golfing and sailing Chatham Bars Inn, Chatham, MA, Labor Day weekend if you can Business about to break out strong Jonnie "

Did you in fact go on vacation with Mr and Ms McDonnell to Chatham Bars Inn?

A Yes

Q Okay And that was in September of -- from August 31st to September 31st of 2012?

A Yes

Q But before that, in July of 2012, do you remember any discussions with Ms McDonnell about a National Governors' Association meeting in Williamsburg that was going to be

held on July 12th?
A Yes
Q Tell the jury about those discussions
A She called and said she was in Williamsburg and that they were having the Republican Governors' Meeting there, and she said it would be a good opportunity to have Anatabloc there, but it was kind of late And I said, "Well, I'll have someone run it down so that they can place it in the rooms for the governors "
Q And when you say "run it down," what does that mean?
A Deliver it
Q And you are delivering samples of Anatabloc?
A Samples of Anatabloc, I believe to the Williamsburg Inn or wherever it was that they were staying
Q Were you happy about this?
A Any time I have an opportunity to put Anatabloc in front of somebody, I feel good about it
Q And was it good that these were governors?
A That was very good.
Q Okay Now, let's go to the Chatham Bars Inn trip What is the Chatham Bars Inn? What is that?
A It is a resort in Chatham, Massachusetts on the ocean, on the Cape
Q And you went on vacation with Mr and Ms McDonnell to this resort, right?

A Yes

Q Who was -- well, let's actually bring up Government Exhibit 412, please Have you had an opportunity to review this picture before?

A I know that photo

Q Okay. And can you just actually go through briefly, these are all pictures of Chatham Bars Inn?

A Yes

MR. DRY: The government moves Government Exhibit 412 into evidence, please

THE COURT: It will be admitted

BY MR. DRY:

Q All right Is this the front entrance, the front of the resort?

A It is not the entrance that you arrive at It is actually that it is positioned that way overlooking the ocean Guests normally aren't arriving and leaving from that entrance That goes down to the ocean.

Q Okay And who all accompanied you on this trip?

A My wife, Dr Ladenson, his wife, the Governor, his wife, Phil Cox, his wife, and their young newborn child.

Q Was Phil Cox a friend of yours?

A No

Q Who is Phil Cox?

A Phil Cox is, I believe he is the director of the

fundraiser for the Republican Governors' Association.
Q And how was Phil Cox invited? Did you invite him?
A No
Q Who invited him?
A The Governor
Q Okay. Why did Dr Ladenson go on this trip?
A Dr Ladenson is my friend, but he is also a consultant to the company And so I asked him if he would come along with me to help educate the Governor more about Anatabloc
Q Okay And where did everyone stay during this trip?
A They have -- you are looking at the main hotel And they have cottages along the ocean So people were in different cottages
Q Okay And who made the arrangements for the cottages?
A My secretary, Jerri
Q And you told her to do that?
A I did.
Q During this vacation, well, first of all, how did people get to Chatham Bars Inn?
A They flew in to Hyannis
Q On what?
A My plane.
Q Okay Who paid for the cottages?

A I did

Q Was there a sailing trip during this vacation?

A There was

Q And was it a public charter?

A A private charter

Q And who arranged for that?

A My secretary

Q And she did that at whose direction?

A At mine

Q And who paid for the sailing?

A I did

Q Was there a golf trip? Was there golfing during the trip?

A Yes

Q Who played golf?

A Phil Cox and the Governor and I

Q And where did you play?

A A place, at a private country club called Eastward Ho

Q Eastward Ho?

A Eastward Ho It is on the ocean

Q And was this a public or private course?

A Private

Q How did you get on then?

A I called Kinloch and asked them if they would arrange for it

Q And did they?

A They did

Q And who paid for the golf?

A I did.

Q Was there a clambake? Can we go to the second picture? I think it is 62 Was there a clambake during this vacation?

A Yes

Q Tell the jury about the clambake

A The clambake was in this building with a buffet set up, and also outside there was a fire pit right there in front of the building on the right

Q Can you just go ahead and point to the building on the screen? If you just touch the screen, I think Right there, that building?

A Yes

Q During the clambake, first of all, was there expensive, I don't know if it is Cognac or Louis XIII?

A Yes

Q What is that?

A It is a Cognac.

Q Okay What kind of Cognac?

A It is expensive Cognac

Q Okay Ball park me on how much. If I went to a store, how much would this cost me?

A If you bought it at the ABC store, it would probably cost 3,000 a bottle In a restaurant it would probably be 5,000 or so

Q And did you drink this Louis XIII Cognac during the clambake?

A Yes

Q Who was drinking that?

A Everyone except the wives

Q So the men were drinking the Cognac?

A Yes

Q Who paid --

A I don't recall anyone's wives drinking it My wife wasn't drinking She doesn't drink.

Q Who paid for the clambake?

A I did

Q Now, you had previously talked about this charity auction that was back in September of 2011 This Cure By Design and the auction for a trip. Right?

A Yes

Q Was that trip that you won or that you purchased --

A I bought

Q That you bought, was that to Chatham Bars Inn or was that something else?

A That was a trip in New York.

Q Okay So were these trips related in any way?

A Not in my mind.

Q Did you expense this trip to Star Scientific?

A I did.

Q And why did you do that?

A Because I was working the entire weekend.

Q What do you mean by that, sir?

A I was working I was there with Dr Ladenson to try to help get the Governor more involved.

Q And at this time, did you think that the Governor was still going to assist you with your company?

A I did.

Q Let's go to -- let's take that down, please I want to change topics I want to go to Government Exhibit 431 Now, this is a series of text messages, sir And these are between you and the Governor; is that correct?

A Let me look at it just a moment and make sure, unless you know it is

Q No, I want you to make sure

A Yes

Q Okay In fact, let's go down all the way to the bottom. These text messages were produced by you from your cell phone, right?

A Yes

Q Okay So let's go to the top and let's take these in order These are November 22nd, this is from you to the Governor Can you just read what you wrote to the Governor on November 22nd?

A "Happy Thanksgiving from the Williams kitchen."

MR. DRY: I'm sorry I'd like to admit Government Exhibit 431 into evidence

THE COURT: It will be admitted.

BY MR. DRY:

Q Sorry to interrupt you, sir Go ahead.

A "Happy Thanksgiving from the Williams kitchen."

Q And then let's scroll down And this was from the Governor back to you What did he write there?

A What do I write or what does he write?

Q What did he write

A "Jonnie Thanks for all you do for me and my family Governor "

Q Is that the correct spelling of your name?

A I didn't see it Yes, it is

Q Okay Now, going down, this is your response to him. What do you write there?

A "Your family is very special "

Q And then I think on the second page you continue Keep going down. You send another text message right after that Go down to the content You write, "You too " Correct?

A Yes

Q Okay Now, the first, can we go back to the first page, because it is,a little bit -- the very top one, the text message That was sent at 6:56 p.m. on November 22nd, right?

A Yes

Q Okay And let's go to Exhibit 432, please This is a text message photo that you send to the Governor

MR. DRY: The United States would ask to admit Government Exhibit 432 into evidence, Your Honor

THE COURT: It will be admitted

BY MR. DRY:

Q And this was right after you sent that first text message, you sent a photo, right?

A Yes

Q Can we go to the second page to blow up the -- yeah In fact, let's just go to the third page, because that's even bigger There we go What is this photo of?

A That's the kitchen at my house out in Goochland

Q Okay And who are those people?

A The left is Chef Leo and his wife

Q Chef Leo

A Yes

Q Who is Chef Leo?

A Chef Leo is someone I met a few years ago that when we are home in the house out in Goochland on Thanksgiving and Christmas, he comes over and prepares dinner

Q And in fact,✓ was this Thanksgiving?

A It was

Q And what was Chef Leo's relationship with the McDonnells at this time?

A He was their chef, too

Q At the Mansion?

A Yes

Q And how did that come about?

A They had lost their chef or had a problem with their chef, and she called me

Q When you say "she," who?

A Ms McDonnell And said, "Jonnie, do you know a chef?" And I said, "I do And I'll give you his name and number But if you hire him, you can't have him on Thanksgiving and Christmas "

Q Why not?

A Because I need him.

Q Okay Fair enough. So why are you sending this e-mail or text message to the Governor?

A I was poking at the Governor a little right here Sort of, I knew that Leo had told me that they -- he had prepared their dinner and it was being heated up

Q I got you.

A And I was probably being silly a little bit right here

Q Okay Well, this wasn't the only photo of the chef that you sent to the Governor, was it?

A No.

Q Let's go to Government Exhibit 445 This is a text message you sent on December 24th of 2012 to the Governor, correct?

A Yes

MR. DRY: Government seeks to admit Government Exhibit 445 into evidence

THE COURT: It will be admitted

BY MR. DRY:

Q Okay You sent that at what time, sir?

A 7:46 in the evening on Christmas Eve

Q On Christmas Eve Let's go to the second page That's the photo Then let's go to the third page, which is the actual digital portion of this Who is that on the left-hand side?

A Chef Leo.

Q Who is on the right-hand side?

A That's my wife, Celeste

Q And this was Christmas Eve of 2012; is that right?

A Yes In the living room.

Q And why are you sending him this photo of the chef?

A Because Chef Leo told me that they were -- he had prepared dinner and they were heating it up.

Q Okay Well, did you get a text message response from these photos?

A I did

Q Let's go to Government Exhibit 444, please This is an image that was on your cell phone; is that right?

A Yes

MR. DRY: The government seeks to admit Government Exhibit 444 into evidence

THE COURT: It will be admitted.

BY MR DRY:

Q Let's go to the larger one Sir, did you receive that soon after you sent that text message on December 24th?

A Yes

Q And this is a picture of what?

A Picture of the Governor showing off a watch

Q And the watch there, what does that look like?

A Your question was?

Q Do you recognize the watch?

A It looks like the Rolex that I purchased in Malibu

Q Before you received this picture, had you ever had any discussions with the Governor about the Rolex?

A No

Q Okay So did you know whether he knew who it was from or anything like that before you received this photo?

A No

Q Okay

A I had no direct communication with him about it

Q Okay Now, at some point, does your brother start helping out the McDonnells in some way?

A He does

Q And how does that come about?

A The McDonnells were going to, I believe, a football game that they wanted to go to one Sunday and Maureen called me and said, "I have to go over to Wyndham." It may have been on a Saturday, was telling me what the problem was They wanted to go to a football game, but they had to go paint the deck and clean up the house over at Wyndham, the yard work, landscaping And so she was complaining about it And so I told her I would help her with it

Q She is complaining about doing the yard work?

A She is complaining about doing the yard work and painting the deck.

Q And did she ask you how you got that stuff done for your house?

A She knew that

Q She knew what?

A She knew from when she was over at my house out in Goochland that there are people that work there

Q Okay And you agreed to help her out What did that mean?

A Whether to do the minimal amount of landscaping or deck painting or whatever it was that she needed so she could go to the football game on Sunday

Q And so what did you do?

A My younger brother is a retired police officer, and I called him and asked him if he would help me out with it and deal with it

Q And what did he do?

A I think he got, arranged for another person or two to help him and went over there and dealt with it

Q Okay And was there -- how much work did he do there?

A I'm not sure I didn't learn until two or three weeks later that he was still doing work there I hadn't talked to him. And he said he was still there

Q Okay Was the Governor aware that your brother was doing yard work and home improvement projects at his house?

A Yes

Q How do you know that?

A I talked to the Governor about it

Q And what did he say?

A He said, "Donnie is a good guy He is a nice fellow Thank you for helping us out "

Q Okay Now, Mr Williams, you were interviewed by law enforcement agents on January 23rd, 2013? Do you remember that?

A I remember it very well, sir

Q Okay And you were interviewed by Special Agent, FBI Special Agent Kennedy and Virginia State Police Special Agent Charlie Halen; do you remember that?

A That's correct

Q Now, when they came to interview you, were you completely honest with them?

A No

Q In fact, what did you tell them about, first of all, who is Paul Perito?

A Paul Perito is a very good friend of mine, a very close friend of mine, and he also happens to be the Chairman and the President of Star Scientific He is a lawyer

Q He is a lawyer?

A Former federal prosecutor

Q Okay What did you tell the agents about whether Paul Perito knew about all your business dealings?

A I told them that everything that I do goes through

Paul Perito

Q Was that true?

A Not in this case it wasn't

Q In fact, did Mr Perito know about the loans to the McDonnells?

A He didn't No one did except for my secretary and myself

Q What did you tell the law enforcement agents when they asked you whether you ever got anything in exchange for the loans to the McDonnells?

A I don't recall what I said to that

Q Okay

(Document proffered to witness)

A I see it There are a lot of highlighted areas

Q Okay I want you to put that to the side now So the question before you is, what did you tell the law enforcement agents when they asked you whether you ever got anything in exchange for the loans to the McDonnells?

MR. ASBILL: Objection.

THE COURT: Does that refresh your recollection?

THE WITNESS: Does it refresh my recollection? Yes Seeing this document and saying that, yes

MR. BURCK: I just ask that Mr Dry identify the document that he has put in front of the witness

THE COURT: Go ahead and identify the document for me.

MR. DRY: It is your Report of Interview from that interview, correct?

THE WINTESS: Okay, yes

BY MR DRY:

Q And you hadn't seen that report before today?

A I've never seen this document

Q The question is, what did you tell the law enforcement agents when they asked you whether you ever got anything in return for the loans to the McDonnells?

A I was not truthful and I told them that I didn't receive anything

Q All right What did you tell the law enforcement agents about whether you ever asked for anything in return from the Governor?

A I don't recall telling them I asked for anything

Q But had you in fact been asking for things?

A I had.

Q And can I see that back?

(Document proffered to Mr Dry)

THE COURT: Holdup, Mr Dry We have a juror having a little coughing spasm. So we will just wait I'll tell you what, let's take ten minutes

(The jury left the courtroom.)

(Recess taken from 2:58 p.m. to 3:11 p.m.)

THE COURT: All right, let's bring in the jury

(The jury entered the courtroom.)

All right

(Document proffered to witness)

BY MR. DRY:

Q Mr Williams, I believe that the question I asked was, what did you tell the law enforcement agents about whether you asked for anything from the Governor? And you said that you did not specifically recall Right?

A Yes

Q I'd like you to review that document That's a separate portion That's the same report It is a different page of that I'd like you to review that, the underlined portion. I'd like you to put it aside Does that refresh your recollection?

A Yes

Q What did you tell the law enforcement agents about whether you ever asked for anything from the Governor or expected anything?

A I didn't ask for anything and I didn't expect anything

Q And was that true?

A No, it wasn't

Q And why were you lying to the law enforcement agents?

A The questions that they were asking me caused me to believe that the Governor was in trouble or may be in trouble, and if he was in trouble, I could be, also

Q Okay And if the Governor was in trouble, what were you and the Governor going to be in trouble for?

A The Governor was in financial trouble And I needed his help And I think the trouble would be, what was wrong was, I went to the Governor with this big discovery that I had, and I just made a mistake because I thought the Governor could help bring this product to marketplace and it was the right thing to do But the reasons that I was loaning him money and helping his family, I needed his help, but it was wrong to do that.

Q Well, to be clear, you knew it was wrong at the time; that's why you were hiding it

A I did. I knew it I knew it was wrong I thought the ends justified the means And I was wrong I should have just, you know, I should have just tried to figure out how to do it a different way, but I didn't.

Q All right

MR. DRY: I want to make sure he is not looking at anything

(Document retrieved from witness)

BY MR. DRY:

Q Now, after you were interviewed by law enforcement, did you have any conversations with Mr and Ms McDonnell to tell them that law enforcement agents had interviewed you about their relationship with you?

A No

Q Let's bring up Government Exhibit 470 This is a text message produced from your phone from Ms McDonnell; is that correct?

A It is

MR. DRY: Government seeks to admit Government Exhibit 470 into evidence

THE COURT: It will be admitted.

BY MR DRY:

Q Blow that up And that's sent on January 24th That's a week after your interview with law enforcement, correct?

A Yes

Q And I'll just go ahead and read this "Jonnie Would you like to stay at our beach house in Sandbridge for some of the time you are in Virginia? Pick the best days and take the time with your family on the ocean Or you can have a Star Scientific retreat there and have your team come down and join you for a meeting If one of the weekends works out with his legislative schedule, I'll bring Bob down and then you would have some private time to talk somewhere he is comfortable Let me know what you think. MM."

Did you follow up on this?

A No

Q Let's go to Government Exhibit 484, please This is an e-mail between you and Ms McDonnell, actually, between your wife, you, and Ms McDonnell; is that correct?

A To my wife, me, from Ms McDonnell

MR. DRY: Government seeks to admit Government Exhibit 484 into evidence

THE COURT: It will be admitted.

BY MR. DRY:

Q Okay, sir, the date of this is February 11th, 2013, correct?

A Yes

Q Had you had any conversations with Mr McDonnell or Ms McDonnell informing them that you had been interviewed by law enforcement regarding your relationship with them?

A No

Q Okay The bottom e-mail is from the Governor It is e-mailing his children and cc -ing his wife I'm going to read this to you, sir Make sure I get it correct

"Kids Asking for help Need to rent the beach houses at Sandbridge more Willing to give your friends a discount for the times its tougher to rent Will you help us and e-mail your friends list and tell them your family has a few beach houses for rent Do not mention me And will give a friend discount 10 percent off from now until May 15 and 20 percent off October 15 through March 30, 2014 They can go to www sandbridge com to see Sunseeker or east coast palace Thanks kids Also plan to use it some yourselves this year Love Dad."

Ms McDonnell forwards that to you and your wife, correct?

A Yes

Q And what did you think was the purpose of that e-mail?

A It is wintertime, and I don't think many people are attracted to Sandbridge in the wintertime

Q And so why is she e-mailing that to you or forwarding the e-mail to you?

MR. BURCK: Objection, Your Honor

THE COURT: Sustained

BY MR. DRY:

Q All right Let's go to Government Exhibit 3, please Do you recognize that document?

A I do

Q And this is a handwritten letter that you received from Ms McDonnell?

A It is

MR. DRY: The government moves Government Exhibit 3 into evidence, Your Honor

THE COURT: It will be admitted

BY MR. DRY:

Q All right, before we read the document, sir, let's take a step back. How did you receive this letter?

A It was in a box that was delivered to my house in Goochland on the kitchen counter

Q And do you remember approximately when it showed up?

A Sometime in February.

Q February or March?

A Or March. I don't know the date I don't know the date --

Q Okay

A -- that it was there

Q But you said it was in a box.

A It was

Q Is it the only thing that's in the box?

A No It was a large box on the kitchen counter when I came in the house, and I actually thought it had been shipped there from my wife or daughter from somewhere.

Q All right What happens? There is a big box in your house in Goochland. What happens? Do you open the box?

A I'm curious, so I open the box

Q And what do you find in the box?

A Looked like most of the things from the shopping spree in New York. And this letter

Q When you say the shopping spree, is this the stuff that you had purchased for Ms McDonnell in New York?

A It is

Q And you said the letter was in there What was your reaction when you opened up the box?

A It was a sinking feeling It was like, "Oh, no "

Q And why?

A I sat down in a chair in the den and read this letter over and over, and this letter, this letter was a fabrication.

Q Let's talk about, first of all, you are not sure of the exact date, but this was March of 2013?

A Yes

Q I'm going to read the letter to you.

A Okay

Q "Dear Celeste and Jonnie. I can't begin to thank you how special you made me feel on Cailin's wedding day and on our 35th wedding anniversary day all dressed up in the beautiful outfits you adorned me in on both momentous occasions I'm so happy we have been able to share so many significant milestones in our lives with you both I Truly hope your daughter will now be able to enjoy these lovely outfits and show them off on many grand occasions If not, I'm sure there are many exemplary charitable organizations like we talked about who would welcome the opportunity to auction them for a wonderful cause, having been worn only once by the First Lady of Virginia to her daughter's wedding at the Executive Mansion and celebrating her 35th wedding anniversary with the Governor Actually, if that happens, I think I'll be there to bid on them myself Please know that we cherish our friendship with you and look forward to many more wonderful memories together ahead. XOXO, Maureen McDonnell "

Let's take a step back. This 35th wedding anniversary, what's she referring to there?

A When we went to New York, it was for an anniversary dress, and also for one of the parts of the wedding, maybe the reception or what have you.

Q And did you attend a 35th wedding anniversary party?

A I did.

Q And where was that at?

A In Barboursville, just outside of Charlottesville

Q And whose anniversary was this?

A The Governor and his wife

Q And who did you bring with you?

A My wife

Q Okay Now, in the letter, it talks about your daughter enjoying the outfits Had you ever discussed with Ms McDonnell the idea of her returning the outfits to you before this box showed up?

A No.

Q And had she ever discussed returning the outfits so that your daughter could enjoy them?

A No.

Q Had she ever discussed the idea of returning the outfits so that they could be auctioned off for charity?

A No

Q What was your reaction when you read the letter?

A I was -- I felt sorry for her

Q Were you worried for yourself?

A I was worried for myself, but at that moment when I read this letter and I sat down, I felt sorry for her

Q Well, what's the first thing you did after you got this letter and box? After you read the letter, what did you do?

A I called Jerry Kilgore at McGuireWoods

Q That's a law firm?

A A law firm here in Richmond

Q He is a lawyer as well, right?

A I called him right after I read it

Q What happened next? After you called him, what happened?

A He sent someone to come pick the box up.

Q With the letter?

A With the letter

Q All right At some point, the investigation, there starts to be news accounts of your relationship with Mr and Ms McDonnell, right?

A Yes

Q And that was around Easter of 2013?

A Yes

Q By that point, you had hired your own personal attorneys?

A Yes

Q And let's go to 506, please This is, the bottom is an e-mail from you to Ms McDonnell; is that right?

A Yes

Q I'm sorry, a text message

A A text message

MR. DRY: The government seeks to move Government Exhibit 506 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR. DRY:

Q Now in this, sir, you write to Ms McDonnell: "Celeste and I are proud to be your friends We both admire how hard you and Gov work for Virginia We will do anything for you. Jonnie " This is after you have been interviewed, right?

A Yes

Q And you knew that Ms McDonnell had been interviewed?

A Yes

Q By law enforcement?

A Yes

Q Why are you sending this text message?

A I felt sorry for her

Q Why do you feel sorry for her, sir?

A I don't want anyone in trouble, and she was in financial -- they were in financial stress and hardship.

Q Let's be clear, though. How did you know that Ms McDonnell had been interviewed by law enforcement?

A My brother No, I don't recall

Q Did you have a conversation with your brother when the box comes back?

A I did.

Q And does he relay a conversation he had with Ms McDonnell?

A He did.

Q As a result of that, did you understand that Ms McDonnell had been interviewed by law enforcement?

A I did.

Q And this is going to go into the press; the press now is getting a hold of this, right?

A Yes

Q When you say you felt sorry for Ms McDonnell, had your brother communicated anything that Ms McDonnell wanted told to you through your brother?

A Yes

Q What was that?

A That's why I felt sorry

Q What was that?

A He said that she was crying --

MR. BURCK: Objection, Your Honor

THE COURT: Sustained

BY MR DRY:

Q All right Did you have a romantic relationship with Ms McDonnell?

A No

Q Did she ever say anything to you indicating that she believed you had some romantic relationship?

A No

Q What type of relationship did you have with the McDonnells?

A I thought I had a business relationship with both of them.

Q But you called them your friends in some text messages?

A Business friends I liked them both But it was a business relationship

Q Now, after you are interviewed by law enforcement, you knew that you were under investigation for things unrelated to your relationship with the McDonnells, right?

A Yes.

Q And you understood that you might be under investigation for that, too, right?

A Yes

Q The other stuff, what was your understanding of what you were being investigated for that was not related to the McDonnells?

A Securities filings, a bank loan -- bank loans, and the Starwood Trust investments

Q And when you say the Starwood Trust investments, that was your control of Starwood Trust?

A Yes

Q And your relationship with Mr McKeon?

A Yes

Q And some transactions that you two had entered into, right?

A That's correct

Q Now, ultimately, you agreed to cooperate with federal authorities in their public corruption investigation of the McDonnells

A I did.

Q Why did you agree to cooperate in that investigation?

A It was the right thing to do

Q Were you worried about yourself?

A I was worried about myself, too

Q Let's talk about what you got in return for your cooperation Let's start with -- you agreed to be interviewed by law enforcement on July 1st of 2013, right?

A Yes

Q And between your first interview with law enforcement on January 23rd of 2013 and July 1st of 2013, had you talked to any law enforcement agents?

A No

Q Had you been interviewed?

A No

Q And you had lawyers at that point, right?

A I had lawyers

Q Okay Now, let's bring up Government Exhibit 524 And sir, this is a proffer agreement Have you seen this document before?

A I have I have seen it

Q And under the terms of that, this agreement, what were you required to do?

A To answer all the questions truthfully

Q And could anything that you say during this interview be used against you if you were charged?

A Not as long as I told the truth.

Q Okay Going to the third page of the exhibit, did you sign this?

A I did sign this agreement

Q And that was with your attorneys, right?

A That's correct

Q Now, after you are interviewed --

MR. DRY: Government Exhibit 524 into evidence, Your Honor?

THE COURT: It will be admitted

BY MR. DRY:

Q When you are interviewed, do you want immunity from prosecution for your relationship with the McDonnells, right?

A Yes

Q Let's go to Government Exhibit 523 And this is an actual immunity agreement that was entered into after your interview; is that right?

A Yes

MR. DRY: Government seeks to admit Government Exhibit 523 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR DRY:

Q Now, what was your understanding of what you were required to do under the terms of this agreement?

A The first one

Q The first one

A To answer all the questions truthfully

Q I'm sorry, there is a proffer agreement and this immunity agreement‹ So this one

A Yes

Q What is your understanding of what you have to do under this agreement?

A To cooperate with the government in its investigation and answer questions.

Q And what are you getting in return?

A That I won't be charged for any corruption.

Q Any corruption involving anybody?

A Involving the Governor during this period.

Q Okay Well, on that first paragraph, it says, "would receive transactional immunity in exchange for his complete and truthful cooperation regarding potential violations of criminal law related to his agreement to provide, and his provision of, things of value to Virginia Governor Robert F McDonnell, First Lady of Virginia Maureen P McDonnell, and their family members "

A Yes

Q Does this say anything about securities fraud, sir?

A No

Q Does it say anything about your relationship with Starwood Trust?

A No

Q Does it say anything about your relationship with Mr McKeon?

A No

Q What was your understanding of whether you could be prosecuted for any of those other things after this agreement?

A I could.

Q And why did you want immunity from prosecution related to your relationship with the McDonnells?

A Because when I answered those questions truthfully, the answers to those questions exposed me to trouble

Q Trouble?

A Trouble, possible criminal charges

Q Okay Now, let's go to the second page of this That's your signature at the bottom?

A Yes

Q Going to the third page, that's your attorneys' signatures?

A Yes

Q Okay Now, that was July 1st of 2013 From that time until June 5th of this year, did you have any other agreements with the government?

A No

Q During that period of time, did you continue to be interviewed by the government?

A I did.

Q Were you interviewed on September 12th, 2013?

A I want to answer the question, but unless I know that particular date, I just don't like saying that I did that

Q You were interviewed in between the time you got the first immunity agreement and the time that you got the second one?

A Yes

Q And you were interviewed about your relationship with the McDonnells, right?

A Yes

Q Did you tell the truth during those interviews?

A I did.

Q But subsequently, you entered into another immunity agreement with the government, right?

A I did.

Q Please bring up Government Exhibit 530 Now, before you entered into this second agreement, what was your understanding of whether you could have been charged with your relationship with Mr McKeon, the Starwood Trust, or anything else unrelated to the McDonnells?

A I could, but I wasn't concerned about that

Q Okay Did you ask for a second immunity agreement?

A I did not I did not ask or demand an agreement

Q Let's talk about this second agreement In the second paragraph, I'll read it --

MR DRY: Admit Government Exhibit 530 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR DRY:

Q In the second paragraph, it says the conduct for which you would receive immunity "is limited to conduct involving his agreement to provide and his provision of things of value to former Virginia Governor Robert F McDonnell, former First Lady of Virginia Maureen P McDonnell, and their family members; conduct related to loans Williams received from 2009 to 2012 in exchange for his pledge of Star Scientific stock; and conduct related to Williams' gifts of Star Scientific stock to certain trusts from 2009 to 2012 No other conduct or potential violations of federal criminal law are covered by this agreement "

So you understood -- what did you understand you to be getting immunity for?

A For what it just says here

Q Were you getting immunity for anything else?

A No

Q Now, what was your understanding of what you were required to do under the terms of this agreement?

A To cooperate with the government and tell the truth

Q And what was your understanding of whether this agreement provided you any protection from civil lawsuits or civil government investigations or anything like that?

A It doesn't

Q As long as you provide truthful testimony here today, sir, what is your understanding of the risk of you going to jail?

A I don't have any risk of going to jail if I'm truthful

Q But if you lie under oath, what's your understanding of the risk of you going to jail?

A There is a possibility

MR. DRY: Just one moment, Your Honor

THE COURT: Sure

(Counsel conferring with co-counsel)

BY MR. DRY:

Q One last thing, sir On this agreement that we just spoke about, is this the agreement that you have been testifying under today, this last one?

A I don't have it on my screen The last one --

Q 530

A -- that was just here?

Q Yes, 530 In fact, I should have done this Let's go to the third page of that That's your signature there, sir, at the top?

A Yes, it is That's the agreement

MR DRY: The government will tender the witness, Your Honor

THE COURT: All right Cross? Mr Burck, just so you will know, we are going to stop for the afternoon break at 4:15

MR. BURCK: Thank you, Your Honor

CROSS-EXAMINATION

BY MR. BURCK:

Q Good afternoon, Mr Williams

A Good afternoon.

Q My name is Bill Burck and I represent Maureen McDonnell Have we ever met before?

A I don't think so

Q And you have never met with me preparing for this trial, did you?

A No

Q And you have met with the government, though, to prepare for your testimony today?

A I have

Q How many times roughly?

A Maybe seven or eight times

Q Is that in addition to the meetings that you discussed, some of which you discussed with Mr Dry over the last year-and-a-half? He mentioned a meeting in

September of last year, a meeting in July of last year, some other meetings

A I would say seven or eight times

Q Total?

A I just don't recall having that many meetings with them.

Q Okay Thank you You told us yesterday, and it was a while ago now, but yesterday you told us a little bit about yourself

A Yes

Q And Star Scientific and building up this business Do you remember that?

A Yes

Q And you mentioned, I think, that -- how long have you been at Star Scientific, or when did you start the company?

A About 1990

Q 1990 And before that, had you been in other businesses?

A Yes

Q Can you tell us a little bit about those businesses? Tell us where you come from.

A From the beginning?

Q From the beginning

A I grew up in Fredericksburg, Virginia, and went to

Stafford High School My family has been from that area for many, many generations And then I went to a small college in Providence, Rhode Island, Johnson and Wales And then I got married. I met my wife up there

Q That's Celeste?

A Celeste And then I came back to Virginia During the summers, I had worked at a car dealership in Fredericksburg at home I came back and went to work there for a short period of time. Then I went to work for a real estate developer in Fredericksburg His name was Carl D. Silver Then I invested into an optical business in one of the shopping centers that Carl --

Q An optical business?

A An optical business for eyeglasses And I invested money into that and was part owner of it The partner had a drug problem and left And so I was, I came in from in the real estate business, where I was successful, and tried to operate that business And it had a lot of debt and I couldn't make it work. When I was maybe 21 years old And it ultimately failed And during that process, I had met a friend of mine that's one of my best friends today He is an opthalmologist from Johns Hopkins His name is Frank O'Donnell And Frank O'Donnell was a real bright fellow And he would come down on weekends from Johns Hopkins and see patients in the optical and a physician practice and refer people to the optical shop And him and I developed a great friendship And then Dr O'Donnell was very bright, he graduated from Johns Hopkins He was chief resident his last year and was first in his class for plastics and ophthalmology And he left, and he was the Chairman of the Department of Ophthalmology at St Louis University School of Medicine, was his first job out of Johns Hopkins

Q Can you just orient us in time right now?

A Maybe 1980

Q Thank you Please go ahead

A Okay And then Dr O'Donnell moved to St Louis, back to his home, where he was the Chairman of the Ophthalmology Department and him and I kept in touch. The optical business didn't work out I don't want to drag you through this if there is --

Q I'm interested. Please

A Okay I just want to make sure I'm answering the question is all And then when the optical business didn't work out, my wife was from Massachusetts, and so we moved to Massachusetts to Hingham, Massachusetts, and I went to work when I was maybe 22 at a Mercedes Benz dealership called Prestige Imports in Hingham, Massachusetts. And Dr O'Donnell contacted me from St Louis, said, "Jonnie, I want to come visit you, I have an idea on something "

So Dr O'Donnell and I started a company called CME-SAT And then, so Dr O'Donnell had this idea about providing continuing medical education via satellite, so the doctors that are required to have their continuing medical education credit wouldn't have to travel and be inconvenienced. And at this time, satellite receivers were starting to come into play And so we formed this company And at the Mercedes Benz dealership, one of my customers was Tom Burns of the large law firm in Boston, Burns & Levinson. And one day I was in Boston going to, looking for Mr Prifty's office

Q Who is Mr Prifty?

A A corporate lawyer And I ran into Tom Burns walking down the street And Tom said, "Jonnie, where are you going?" And I said, "I'm looking for Mr Prifty, because my friend, Dr O'Donnell and I, are forming a company to broadcast continuing medical education via satellite " And he said, "Well, you don't need Mr Prifty, just come on with me " And I went inside Milk Street in Boston, and he introduced me to his partner, Larry Levinson And they said, "Listen, Jonnie, we know you are doing very well over at the Mercedes Benz dealership but we want you to move into our law firm. We are going to incubate you as a client for the law firm."

Q This is for the satellite business?

A Yes

Q So you are running two businesses at this point?

A No, I was starting it up I was just getting ready to start it up So then I quit my job And a person I got to be friends with and I'm still friends with, one of my customers was Doug Hajjar Doug Hajjar was a very bright fellow, Chief Financial Officer of M/A-Com. You see their satellite dishes around. So I called Doug, and Doug agreed to help me And so M/A-Com came into the deal with us And I went to New York and I arranged for the financing for us to start that company And we later sold out of that company and a group out of Canada took it over

Q Roughly how much money did you make off of that?

A I was 25 years old at the time I think I made $500,000 off of that

Q Then tell us, where did you go from there, because obviously you built Star Scientific, a big company

A Okay And then from there, Frank O'Donnell, Dr O'Donnell, the opthalmologist, he read a story in Time Magazine about a gentleman named Dr Werner Baumgartner at the hospital in Long Beach, California, where he had discovered a technology called radioimmunoassay of hair analysis to use for drug testing And so I contacted the doctor and went out and met with him. And at this point he just had an idea And so I brought in management, I raised the capital, put the company together, and that's a very successful company today It is actually used in the federal court system and major corporations for drug testing It is a profitable New York Stock Exchange company called Psychemedics. And --

Q What's the market cap on that?

A I don't know right now, maybe it is 70 or $80 million I haven't paid any attention to it It may be higher But it has been profitable, 69 quarters or so in a row

Q What's your percentage ownership of it?

A I don't own it now I sold it earlier

Q How much did you make off of that?

A I don't remember

Q Was it more than $500,000?

A Yes

Q Millions?

A Maybe

Q Please continue I just want to understand how you got to where you are

A Yes And then at the time, also at the time I was doing Psychemedics, I had invested in a company called Spectrum Pharmaceuticals at the request of my friend, Dr

O'Donnell His friend was starting this company And I invested money in it, but I wasn't involved in the organization or putting the company together And I made maybe $700,000 or a million dollars or more off of that, maybe two or so

And then right there at the same time, a fellow named Charles Munnerlyn had left CooperVision, a company that makes intraocular lenses in Sunnyvale, California -- I skipped one in there, a company called Eye Technology that makes intraocular lenses, and I did well with that With VISX, VISX was a company, an idea of Charles Munnerlyn. This is when, this is why you have lasik now, is because of VISX And I learned about it through Dr O'Donnell And I flew out Sunnyvale, California and met with Charles Munnerlyn He had just one office He had left CooperVision in a small rented place and had this idea that he could reshape the cornea to correct people's vision. And on the spot, I called Dr O'Donnell while I was there in Sunnyvale, and I said, "Frank, this looks good, you know, rush, we are like in Star Wars right here with this laser for putting a prescription on someone And, you know, they haven't even made it to animals This is a concept " And he said, "Well, it makes sense " And so I wrote them a check for $600,000, and I was the second largest shareholder of VISX And then I probably ended up raising them another $50 million back then.

Q When is this?

A This is back in maybe 1990, 1989 or 1990 somewhere

Q Right before Star Scientific?

A Through there And with VISX, by that time, this was maybe 24 years or so ago, by that time I was, off of VISX, I was making millions of dollars off of VISX.

Q Per year?

A At that point, I didn't come under -- until I started going into this healthcare area with the tobacco part, I was up in the millions of dollars a year Up until that point, even 25 years ago. 24 years ago My tax returns would show that

Q And did you use that money, the money you made off of that company, to start Star Scientific?

A I did.

Q Tell us about that How did Star Scientific --

A Star Scientific came about because I had loaned some money to a company in Petersburg, Virginia that had the old Brown & Williamson Tobacco Company

Q You mentioned that yesterday Go ahead

A So it was there, empty, and so I went in and bought it

Q How much did it cost?

A I put up at the time, the first check I wrote there, I paid off a bank for the equipment and then bought the building and maybe I spent a million-and-a-half dollars or so back then, 20 years or so ago And so at that point, I went to the President of Swisher International That's the largest cigar company in the world. They are in Jacksonville, Florida And I persuaded the CEO of that company, Tim Mann, since they didn't manufacture their own little cigars, to let me manufacture them in Petersburg, and that if that business grew large enough, I would help him move it out of there into Jacksonville at their manufacturing facility

Q Let me stop you there Swisher was the largest cigarette manufacturer in the world?

A Cigar

Q Excuse me You went to them and persuaded them to do what?

A To allow me to contract manufacture their small cigars at the Brown & Williamson factory in Petersburg

Q Had they been doing that in Petersburg before that?

A No.

Q So you are the one who convinced them to do it?

A I did

Q How did you do that?

A I went and met with Tim Mann, and I took with me a gentleman from Petersburg that's a friend of mine today, for many years, Paul Lamb And he was in charge of Brown & Williamson's operations when they were functional in Petersburg He was a tobacco engineer And I took Paul with me and convinced them that we could manufacture them in Petersburg

Q That was a big step forward for Star Scientific as a new company?

A Yes Within about -- I had the company profitable in maybe 120 days or so

Q And when you, let me make sure I understand, did you start it from scratch?

A I did

Q And you grew profitable in 120 days?

A I did I started it from scratch

Q How many successful companies is this for you?

A Psychemedics -- up until that point? Or up until now?

Q We will get to now But let's start with up until that point

A Up until that point, Eye Technology, Opthalmic Imaging Systems, a company called CA Blockers that didn't work, but the successful companies were VISX -- I don't know if I'm missing anything But four or five through there And then once I got the tobacco factory going in Petersburg, then I took that one into making millions of dollars fairly quickly, and then took the sales up to about 150 million

Q When did that happen, the 150 million?

A The 150 million was maybe fifteen years or so ago

Q Roughly late 1990's?

A I don't remember I don't recall exactly when it was But at the time, what I was doing is I had the company very profitable, and I had no debt And so at that point, Wrigley's Chewing Gum had just won the Advertising Age Award of the Year, marketing it to smokers And so I had an idea if you could put tobacco into -- small amounts of tobacco into the chewing gum, it may compete well with that So I went to Wrigley's, to the chewing gum company in Chicago, and they were afraid of it being tobacco So I found a company in, a large company in Mexico that was willing to make it

And then before I did that, I contacted the Food and Drug Administration at the Food Division, Bob Lake, and I went and met with him to explain to the FDA what it was; that I was in the cigarette business, contract cigarette business, and that I was manufacturing little cigars, but what I really wanted to do was try to move away from that and market products that would be safer alternatives for smokers

Q That must have been tough You are a cigar company and you are going to the FDA, Food and Drug Administration, to explain to them how you are now going to move into healthcare or health improvement products That can't be an easy conversation

A I don't think it was difficult They were very interested at this period in history with tobacco So I met with them, and they said, "You need to have experts " It is called under the Grass Certification, generally recognized as safe three experts And so I found the experts that worked in this area, and I went back to the Food and Drug Administration with that And when I went back, the room was full of people, and they had the FDA out of Rockville piped in from the Drug Division, other people, Legal And Bob Lake said, "Jonnie, you have to go to the -- go over to the Drug Division with this "

So I went to the Drug Division. And at the time, I had met Dr Jaffe, who was a former U S Drug Czar, and probably the most well-known addiction expert in the world, but he was anti-tobacco And I had him coming down to Virginia, to Richmond, on the weekends helping me so I could understand this When I went to the Drug Division, they said, "Jonnie, the problem," or actually, I was still back at the Food Division, they said, "The problem with what you have are the nitrosamines " And I asked one of the experts, "What are nitrosamines? Is this like hot dogs or what is this?" He said, "They are tobacco-specific nitrosamines that are formed during the curing of tobacco So I said to them, I said, "What about if I can remove the nitrosamines?" They said, "Good luck. No one has been able to do that "

Q Is this the origins of Anatabloc, the Anatabine?

A It is

Q Continue

A If you want me to stop, just say so

Q No, I don't Please continue

A And then at this point, I thought, well, I called Virginia Tech because it is an agricultural school And I tried to find an organic chemist that was familiar with that tobacco and they said, "You have to go to the University of Kentucky " So I called the University of Kentucky, and a nice fellow answered the phone, Dr Harold Burton. He was a nitrosamine expert And I asked him to give me a 101 to a 404 fast on tobacco-specific nitrosamines

Q What does that mean?

A In school, where you started your classes, 101 to 404

Q Okay

A So what happened was, I asked him, I said, "Dr Burton, are there nitrosamines in tobacco when it is green?" He said no. I said, "What about when it is yellow and it is ripe like a banana and the starches have gone to the sugar and the chlorophyll is left, like seventh grade science?" He said, "No, they haven't formed yet " "So when do they form, at the end of yellowing?" He said, "Yes, that's when they begin to form." I said, "So if I can put the brakes on the nitrosamines from forming, if I can put the brakes on at the end of yellowing, I should be able to prevent the nitrosamines from forming " And again, just real fast, the Indians had to learn this, the settlers had to learn this when they first came to Virginia in rotating the crops -- tobacco plants are large, leafy plants -- when you see that they are pulling a lot of nitrogen out of the soil that nitrogen gets converted into nitrate and in the presence of alkaloids or salts, like nicotine, anatabine, nornicotine, anabasine, in the presence of those salts, the microbial reduction of the nitrate to nitrate present, you form carcinogens In tobacco itself they are the carcinogens In tobacco smoke, 23 percent transfers the strongest and most abundant carcinogens even in cigarette smoke For my purposes I'm in smokeless and I'm trying to prevent this from forming at this point Now, once I did that, here is how I did it I thought, "Well, it must be a microbial situation This has to be bacteria during this, if it is at the end of yellowing " Now, I'm not a scientist, I'm not a doctor, but I'm rationalizing, but I've been exposed to technology companies from lasers to radioimmunoassays to drugs

Q You had technology companies, you came from technology

A Yes So I understood, I had a basic understanding of that So what I did was, I thought, well, maybe the microbials on the surface I'll send it out to Dr O'Donnell and have him take an excimer laser and hit it and see if that -- whatever microbial activity that is, that will work. But while I was waiting for that, I was sitting in my office at the cigarette factory in Petersburg and I thought, and that wavelength, microwave, removes moisture, and fast And it should also kill any microbial activity So I took the tobacco and put it in a microwave, a kitchen microwave at the end of yellowing And I stood there for 60 seconds, two minutes, three minutes, and I sent it off to the University of Kentucky to Dr Burton to be tested for nitrosamines And he received it and called me up and he said, "What did you do to the tobacco?" I said, "I'm not going to tell you Are the nitrosamines in the tobacco?" And he said, "No, how did you do this?" I said, "I'll tell you later I need you to come over here and visit with me " So when I received the tobacco back from the laser, the microbial part of it, I realized that the microbes were down in the plant The UV laser for, you know, ablating tissue was surface and that wasn't going to work. So I focused on the microwave I flew out to Amana Corporation in Iowa and met with the CEO and had him build me --

Q You said Humana?

A Amana Corporation that builds microwaves in Iowa And I built some microwaves, the length of this room.

Q Big microwave

A Well, what I did, once I had it working in a kitchen microwave, I sent someone that worked for me in the office down to Wal-Mart and bought 200 microwaves so I could see if I could cure enough tobacco by hand to make some cigarettes to show that this was commercially -- that I had to figure out how to apply it commercially at some point And during that period, there was a meeting in Richmond. I'm trying to think of the name of it I haven't been around it for a while I think it was called like the TRC or something like this, it was Tobacco Research in Chemistry And all of the leading tobacco researchers and chemists came here in Richmond to the old Hyatt Hotel And I went there and met with R.J Reynolds, Philip Morris, British American Tobacco, the leading tobacco companies

Q All the big companies

A All the big companies I met with And they were all, I would say, I just took the lead out of the gasoline

Q How did you do that?

A By curing the tobacco. These were the strongest and most abundant carcinogens in cigarette smoke, and I figured out how to stop it At that point, I was using giant microwaves And it was cumbersome, because I had to remove so much moisture when it would come in off the farm, so I had a 50, 60-square foot building down in Chase City The farmers would bring in the tobacco, and I would run it through the microwave Even at that point, with the microwave, Brown & Williamson Tobacco came in with me But once I had removed the nitrosamines, Warner-Lambert, Schering-Plough, SmithKline, three of the largest drug companies in the world, they came to my house out in Goochland.

Q They came to you.

A The CEO's of those companies came there Because keep in mind, I'm back over at the Drug Division, and I've just taken the nitrosamines out So maybe this is a good drug for them to attack the tobacco industry So I had a deal with Schering-Plough for a couple hundred million dollars And it went to the Board

Q The Board of Star Scientific?

A No Yes, back early on Star Scientific. When it was private And so I had a deal with Schering-Plough for like first payments, like $200 million or so going on And then the, what happened was, the Board voted it down because the drug company was afraid of tobacco. And at that point, I went back to -- Brown & Williamson had contacted me, the CEO, Nick Brooks That's the largest operating division of British American Tobacco, the second largest tobacco company in the world

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A And he called me and said, "Listen, Jonnie I need what you have I won't try to take it from you I won't try to steal it from you I need what you have " He said, "So let's get together and work out a deal," and I did

And while I was doing that, they had agreed to buy the tobacco from the microwave They didn't care how I was doing it --

Q Right

A -- as long as the nitrosamines were out of it

And while I was doing that, one of the engineers from Brown & Williamson one day made a comment Because I had a group of their engineers that they assigned now down in Chase City with me, and he said, "We'll never be able to convert all the tobacco over using these microwaves, Jonnie, not as big as our business is " And so then I realized it would be a specialty situation

So then I went back to the drawing board while we were doing the microwaves, and I believed that what was causing this microbial situation I could solve with oxygen So I took a -- a Maytag clothes dryer, the -- I had -- I bought it from a used appliance store because the old dryers would get hot enough to where you could heat it up enough to kill the microbial activity, which was maybe around 170 degrees or so

And so I took a -- a Maytag clothes dryer and I took a magazine rack and bolted it inside the spinning dryer, and I had a fellow that used to work for me at the cigarette factory, Tommy I said, "Tommy, we don't have time to hot-wire this I need to you stay here all night and every hour, or whatever it is with the clothes dryer, just reset this thing for me "

And so I came back the next morning I took the tobacco that looked like normal tobacco, where the microwave made it flat because it removed the moisture so fast, and I sent that to the University of Kentucky And they said, "We can't find the nitrosamines in here "

So what I did then is I got in my car -- and I don't know if I got in a car or got in a plane I went to Bennettsville, South Carolina, to the largest company that makes curing barns, and within a week from my Maytag clothes dryer, I had designed a unit for curing tobacco, and I ordered $30 million worth of them

And I went to Brown & Williamson and I said, "I need you guys to bankroll this thing for me because this is how you're going to take the lead out the gas with the tobacco " And I had a very good relationship with Brown & Williamson Their general counsel and their executive vice president, Mick McGraw, was a nonsmoker and he was very interested in what I was doing

So Brown & Williamson bankrolled it, and I started going to Macon, Georgia, every few weeks or so and was basically leading them that way And in the British American Tobacco's annual report the following year, British American Tobacco, the parent company, said that they were using my company to make their tobacco products less harmful

Q Mr Williams, can we just stop there for a moment?

A Yeah

MR BURCK: I think it's 4:15, Your Honor I didn't know if you wanted to continue or --

THE COURT: Let's stop We'll take 15 minutes

(The jury left the courtroom)

(Recess taken from 4:13 p m until 4:21 p m)

MR BURCK: Your Honor, I understand that the witness is in the bathroom

THE COURT: All right Just hold on a second

(The jury entered the courtroom)

THE COURT: All right Mr Burck

MR BURCK: Thank you, Your Honor

BY MR BURCK:

Q Mr Williams, just before we continue, I was just wondering, did you speak to your attorneys in the last 15 minutes during the break?

A I did

Q Did you talk to them about your testimony?

A I did About my testimony?

Q About your testimony

A Yes

MR BURCK: Would you mind, the court reporter, I would ask that you read the last two sentences or so of Mr Williams' testimony before we went on break

(Record read)

MR BURCK: Thank you

BY MR BURCK:

Q I just wanted to have it read back so that you could reorient where we were in your testimony

A Okay

Q So please, if you could continue

A Yes So at that point, things were going very well with our partner, Brown & Williamson And -- and I had worked with -- I brought in some other people to help, scientists from the University of Kentucky, neurologists, different people, to come in and fill in background on things that I was trying to do

And where I was trying to go with Brown & Williamson was to convince them that, okay, we block the nitrosamines from forming They're the strongest, most abundant carcinogens in tobacco, but where you really need to go with this is you need to go with smokeless in a form of a

Tic Tac, and that way we can eliminate the carcinogens and have your products much safer

And so I did that

Q When you say "Tic Tacs," the form of a Tic Tac, actually?

A Compressed -- I would take the tobacco and pulverize it in like Pillsbury flour and then put some binders in it to make it into the form of -- a Tic Tac form of a dissolvable mint And they had embraced that, and they were test marketing that around the United States

They were also test marketing a safer cigarette, or a cigarette with less toxins with this new tobacco in it, they were testing that around the United States

And so the rest of the industry saw what Brown & Williamson was doing And they basically had no choice, once the nitrosamines were coming out of the tobacco, and they started to copy Not as well, but they were copying what I was doing

Q You mean copying patents?

A Yes, copying -- copying the technology of lowering the nitrosamines through using airflow and controlling the temperature and the humidity inside of a curing chamber to prevent the microbial activity from reducing nitrite to nitrite with those alkaloids for the nitrosamines So the other companies started to do this

Q Right

A And then I -- I --

Q I'm not sure what they were doing, but it sounded very --

A Okay

Q And so the patents themselves, you owned the patents or did the company own the patents?

A They're in my name --

Q They're in your name

A -- and I signed them to the company

Q Okay

A And then Reynolds, we -- we sued R J Reynolds Tobacco Company for patent infringement, and that was quite a challenge when you sue a tobacco company and you're a small company It's quite a challenge when you do that because the lawyers pile in on that

Q Right

A And so the problem was not so much that I would litigate Reynolds, but my partner was Brown & Williamson I had carved them out, and we decided that, okay, if Brown & Williamson takes the lead out the gas here, the other ones won't have any choice And that's what we were working on

And so what happened was that Mick McGraw called me up one morning, the general counsel and the executive vice president of B&W, and said, "Jonnie, I hate to tell you this, but Reynolds is buying our company " And that's the company that I'm litigating with

Q Right

A And so that was a -- that was a surprise And so at that point I decided I didn't want to stay making cigarettes I wanted nothing to do with it So I sold out of the cigarette part of it

Q Right

A Now I found myself in straight litigation here on a very large lawsuit with a very large tobacco company, which is very high risk

And so while I -- while I was doing that, while I was doing that, I asked Dr Jaffe one day, "Dr Jaffe, why are people smoking?" Dr DeLorenzo says the nicotine has such a weak half-life, it doesn't last very long It's addictive, but it's really not why people are smoking, in his view

I said, "You're a psychiatrist and you're an addiction expert Why are they smoking?"

And he said, "I think they're mildly depressed "

And so --

Q Mildly depressed?

A Mildly depressed And so then I brought in some neurologists and I asked them, "What are you writing prescriptions for for people that are depressed?" And they explained to me Pargyline, different drugs, MAO inhibitors like Wellbutrin like you'll hear on TV advertised sometimes.

And so once I heard that and I understood that maybe there's another alkaloid in tobacco Just because nicotine is the most abundant one and it's addictive, maybe there's another one in tobacco That's maybe the reason that they're smoking And so what I did was I had some tests performed at the tobacco company, brought in chemists from the University of Kentucky and put it into the form of an extract, like a vanilla extract, Marlboro cigarettes I put into an extract Then I took Nicorette Gum with the nicotine, put it into an extract

And then what happened was we took all the alkaloids in tobacco And now I'm trying to match them up to an MAO inhibitor, and nicotine was zero as an MAO inhibitor And then I --

Q What does that mean?

A It -- in your brain you produce monoamine oxidase Monoamine oxidase regulate your dopamine levels And so that's why a class of drugs were developed called MAO inhibitors to try to inhibit the monoamine oxidase, and then you have more dopamine available And studies had shown that smokers had lower MAO levels, just testing in general

And so the challenge I had was to isolate the alkaloid or the compound in tobacco that was responsible -- that would match up to a Marlboro on an MAO assay as an antidepressant And when we conducted that MAO assay on nicotine, it was no MAO activity on nicotine, and this is a drug that's used for antidepressant activity

Q Right

A So I thought, well, maybe there's another mechanism or something, but nicotine is zero I've ruled that one out because, you know, nicotine is available everywhere so why can't you just go to the drugstore and purchase it in any form and quit, and it doesn't work very well

So then I tested a Marlboro cigarette in extract form, and when the neurologists and the chemists did that assay, a Marlboro cigarette inhibits this monoamine oxidase activity It's 60 percent And so the drugs -- the reason they have a problem with the drugs for MAO inhibitors, it's very difficult to regulate They'll go to 80, 90 percent, and they have black box warnings and you'll have a stroke

But on the MAO activity of a Marlboro, it went to 60 percent, and no matter how hard you dosed it, it stayed -- it stayed at 60 percent Okay And so now the challenge was is is there an alkaloid in tobacco that matches up with that

And so when I got to Anatabine, I knew that nornicotine was very addictive and it was -- you know, it showed that activity but too high Anabasine was -- had aspects to it from prior tests, from livestock in Russia eating it and having the animals deformed And then when I tested it with Anatabine, when I held the chart up at the light, it was 100 percent dead match on a Marlboro cigarette, the Anatabine was, for MAO It was a hundred percent statistically dead match on a Marlboro cigarette

So at that point I thought, well, if I take it and make it a drug, it's -- you know, I'm looking at ten, who knows how many years this is going to take And so I had done the work on it and I left it alone, and then when we went into the R J Reynolds trial, it didn't work out All the patents were upheld at the appellate office Every claim in the patents was upheld, but they were infringing just a little bit below our levels and we ran into trouble with that, and we settled the case for less than we wanted with R J Reynolds And once that happened, I was in a situation, we were in a situation where, okay, what do I do now with this

And so I went back to the Anatabine And the medical director of our company, as I had mentioned earlier in this trial, is a former chief of anesthetics and addictive substances, which covers nicotine, at the FDA So he ended up coming on board as the medical director of the company So that gave me a tremendous resource in in-house for that

And so then what I set out to do is -- with Dr Wright was can you organize the tox -- the toxicology work to show that Anatabine is food safe, and since it's found in potatoes and tomatoes and the night shade plants, let's sell it as a vitamin And Dr Wright organized the toxicology studies up at Harvard And we went through that for about two years, and then that takes us up to about 2009 or so where you heard me talking about the CigRx product

Q Right Right

A And so at that point I had isolated, we had synthesized Anatabine chemically We had figured out how to make it And so now the challenge was to go to market and see if there was a market and see if this was going to work with the smokers

Q Right You told us a little bit about the experience your wife had with --

A Yes

Q -- the product?

A Yes

Q Can you tell us a little bit more about that?

A Okay My wife had developed --

MR DRY: Judge, relevancy We've been here for --

THE COURT: I think he's been very thorough about that issue I don't know that we need to hear any more about it

MR BURCK: That's fine, Your Honor

A Okay

BY MR. BURCK:

Q Mr Williams, it's fair to say that you are -- you're a very successful businessman; is that right?

A I feel that way

Q And you told us that you've built five -- at least five different companies up from nothing?

A Yes

Q All right And I understand that you come from very humble beginnings; is that right?

A Rural Virginia

Q And you were not wealthy when you were a child, were you?

A No

Q What is your net worth in this period of time, last five years, roughly?

A I don't care to answer that, unless I have to under the law

Q You don't have to answer it specifically Can you give me a range?

A I really don't care to do that --

Q Okay

A -- in public, unless it's required of me by this court

Q It could be, but I will not press you on it

A Okay

Q But you're well -- you're worth well over a million dollars, right?

A Yes

Q Now, this whole experience, this investigation, everything that's gone on has been difficult for you, has it not?

A It's been very difficult

Q And your reputation has taken a beating, hasn't it?

A It has

Q And people think you've done something wrong, right?

A I don't know if they do or not Some may Some may not

Q Well, you testified earlier that you did to Mr Dry's questions Do you remember that?

A Yes I was concerned about it

Q Has this hurt your -- has this whole experience, this investigation, has it hurt your financial situation?

A Other than the impact maybe on -- since I left Star Scientific and brought two physicians in, I felt some impact in it from there But as far as my ability to operate and move forward in business, I don't believe it has

Q That's good to hear

And you are no longer the CEO of Star Scientific, but you're still employed by Star Scientific, right?

A I'm a low-level employee

Q Right

A A dollar a month

Q What's your current -- what's your current position there?

A I don't think I have a position, other than they pay me a dollar a month, and I try -- I'm available when they need me to help them with anything

Q And what's your -- what percentage of the company do you own at this point, roughly?

A I don't know percentage wise Maybe a little over 10 percent or so

Q And what's the market cap in the company, generally?

A It's dropped quite a bit with all this

Q Yeah, yeah

A It's probably -- maybe $80 million or so

Q So roughly your -- your percentage ownership is about $8 million right now?

A Maybe in Star

Q But it hasn't -- but that has not -- even though there's been a dramatic decline in the stock price, that has not overall affected your ability to do business?

A It's not -- it doesn't impact my ability to do business

Q Okay Did you tell the government at any point that you are a -- you are just a vitamin salesman?

A I don't recall ever saying that I was a vitamin salesman

Q Do you think you are a vitamin salesman? Is that what you would think you'd sum up your career?

A Well, I'm a salesman for whatever product our company is developing And Anatabloc is a dietary supplement, and I've been working with people at the company trying to sell it

So if --

Q And --

A Some days I would say I'm doing that, yes

Q So some days you're a vitamin salesman, but --

A Probably

Q -- is that how you'd sum up your career?

A It's not

Q How would you sum up your career, just briefly?

A I try to develop technologies that are going to change, have a change in the marketplace or change and try to improve products for people I try to -- that's what I'm focused on would be disruptive technologies that have the capability to improve people's lives

Q And Anatabloc, CigRx, those are disruptive technologies in your view, right?

A Yes, they are

Q Tell us about CigRx and Anatabine and what they mean to you

A What Anatabine means to me?

Q What it means to you

A Let me try it this way, and if it doesn't work for you, I'll try it a different way --

Q However -- whatever way you want to try it

A Since you're just letting this go here, I'll try

Let me tell you what Dr Ladenson thinks of it

Q Okay

A Is that okay?

Q Absolutely

A All right Dr Ladenson thinks that the Anatabine discovery is one of the most significant discoveries in modern medicine, right there with antibiotics

Q Antibiotics? Is that what you --

A Antibiotics That's what he thinks

Q And we've heard testimony about Mr -- Dr Ladenson, right?

A Yes

Q Do you agree with him?

A I do I've had firsthand experience of it working

Q And this is -- this is the story about your wife that you spoke about briefly yesterday?

A Yes

Q Okay So is it fair to say that you truly believe in Anatabloc, CigRx and your products, right?

A I do

Q Now, what you've been telling us today, has this been just a pitch to you or do you really believe what you've been saying?

A What I've been telling you --

Q Today

A -- all day or just about this --

Q No, no Just in the last -- in the last half hour

A I've been trying to respond to your question about where I started and where I've arrived

Q Right Absolutely And so it's -- it's genuinely what you believe; isn't that right?

A It is

Q I just want to take you back to some testimony you had yesterday or maybe it was earlier today Mr Dry described a period of time October 2010 Do you remember that?

A Yes

Q And I believe you were on your private jet with then Governor McDonnell Do you remember that?

A I do

Q And do you remember your testimony about that?

A I recall discussing it

Q And you -- I think you testified that you spoke to the Governor for five or -- the whole trip about Anatabloc, right?

A Only the period that he fell asleep for a while Other than that, I was talking about Anatabloc

Q He fell asleep while you were speaking?

A Somewhere during the trip, I think I put him to sleep

Q How -- how long do you think you were able to speak to him during that period?

A All the time he was awake It was hours

Q Hours Okay Okay Did he engage with you or did he just sort of stare at you?

A He had to listen to me

Q It was a confined area, right? So he had to --

A I had his attention

Q Okay And did he respond as you were speaking or did he just let you talk?

A He asked questions, and the Governor is a bright fella and he listened politely

Q And he actually got you a meeting with Dr Hazel after that, right?

A He did

Q And how long after the flight was the meeting with Dr Hazel?

A It seemed like maybe a week

Q And Dr Hazel was the Secretary of Health for the state of -- or the Commonwealth of Virginia?

A Yes

Q In that meeting did you explain to Dr Hazel or try to explain what your products could do for the state of Virginia?

A I did

Q But I think you testified that Dr Hazel didn't share your enthusiasm, right?

A Well, I didn't expect him to share my enthusiasm He's an orthopaedic surgeon and he's a doctor And I didn't have the clinical data So that didn't surprise me

Q I want to ask you a question, and stepping back to some testimony you gave yesterday about a conversation you had with my client in May of 2011, on May 2nd, 2011

A Yes

Q And that was the meeting that you described --

A Yes

Q -- and you testified that she told you about the couples' financial difficulties?

A Yes

Q Is that what you said?

A Yes

Q And I believe that you testified about what she said to you in the course of that meeting about what she would do for you and what you would do for her Do you remember that?

A Yes, I do

Q And do you recall your testimony?

A In general

Q In general? And did she tell you that -- did Maureen McDonnell tell you that she was going to get the Governor to do anything for you?

A No

Q Did she say that she was going to do --

A She said, "I'll help you all I can "

Q "I'll help you all I can " Okay

A She said the Governor said it was okay for her to help me

Q Right The Governor was saying it was okay for her to help you?
A Yes
Q But he never said that he was going to help you?
A No, not that day
Q I just want to ask you a question just so I understand the testimony --
A Yeah
Q -- because it was a long day
A Yeah
Q Just sitting here today, are you 100 percent sure that Bob McDonnell agreed to help your company, Star Scientific, because of the loans and gifts that you gave him and his family? Are you 100 percent sure of that?
A I am 100 percent sure of that I believe that
Q And -- and so you believe that but for the gifts and the loans, you would not have gotten the launch, as you called -- or as it was referred to at the Mansion, right?
A Yes
Q And you would not have gotten the second meeting with Dr Hazel, right?
Do you remember there were two meetings?
A I'm listening You're listing --
Q I'm asking I'm asking --

A Well, I didn't know if it was -- I was to respond to each one separately

Q I'm sorry I thought you responded to the launch saying that -- would you have --

A No, I didn't say anything

Q No That's fine

A I'm sorry I was listening

Q My apologies The launch, would you have gotten the launch but for the gifts and the loans?

A No

Q Would you have gotten the second meeting with Dr Hazel but for the gifts and the loans?

A I don't know that

Q You don't know that?

A I don't know the second meeting because -- I don't know the second meeting because -- I just don't know about the -- I don't know of -- when you ask me that because I loaned the money and I got the meetings So I didn't -- I just don't know that

MR DRY: Objection, Your Honor I don't think that the witness testified about a second meeting with Dr Hazel I think he --

THE COURT: Well, he's asked the question sufficiently Ask another one, please

BY MR BURCK:

Q And the healthcare event in early 2012 --

A Yes

Q -- do you think that -- you were able to invite a number of doctors --

A Yes

Q -- from very prestigious universities and hospitals; Johns Hopkins, one of the top schools in the country, right?

A Yes

Q And do you think that you got that, the invitations, only because you gave these loans and these gifts?

A I think the -- the whole evening, sir, from the -- from the invitations to the private dinner with Dr Ladenson and Dr Crantz, and then when they surprised me and invited him to spend the night -- the two of them to spend the night at the Governor's Mansion after dinner, I don't believe that I would have -- that would have happened

Q Okay So that was because of the loans and the gifts?

A I think so, yes I believe that

Q The -- the second one I talked about, that's the only one you're not sure about?

A The second one?

Q The second one I talked about the --

A With Huffstetler?

Q Huffstetler, the -- with his staff

A Well, they had arranged for the meeting with Dr Hazel --

Q Right

A -- but I just don't -- you know, I just --

Q You're not sure about that one?

A I'm not sure about that one

Q That's fine That's fair

Now, let's talk a bit about my client, Ms McDonnell, and discussions you had with her about Anatabloc, and I think you testified that you spoke to -- every time you met with the Governor, you spoke about Anatabloc?

A Every time I had the opportunity

Q Every time you had the opportunity Okay And Ms McDonnell, did you talk to her a lot about Anatabloc as well?

A I did

Q And when you -- you knew that -- or she told you that she was -- she had a history with nutraceuticals, right?

A She did

Q And when did you first learn that? Do you remember? Was it the first time you met her or was it sometime thereafter?

A I don't recall when I first learned that

Q Okay But it was something you understood; that was something that she was really interested in?

A Yes

Q And you told her about the experience your wife had, right, with Anatabloc?

A Yes

Q And you mentioned Dr Hazel really didn't share the enthusiasm with this product?

A I didn't have the data to show him

Q You didn't have the data, right Ms McDonnell did share your enthusiasm; isn't that fair to say?

A Yes, she did

Q And you genuinely believe that she did?

A I believe she thought it was -- I believed that she believed in the product

Q Okay And that was from the very beginning of when she learned about Anatabloc?

A I believe it was early on, yes

Q And you know that she started taking it herself, right?

A Yes

Q And you know she gave it to her children?

A I didn't know she gave it to her children

Q Now, you testified yesterday, in response to a question from Mr Dry, that you are a businessman and

Governor McDonnell is a politician, right?
A I did say that
Q And that was the foundation of the relationship that you were trying to build with Governor McDonnell, right?
A It was a business friendship and I needed -- I needed him to help me as the head of Virginia
Q So from the very get-go, you saw Governor McDonnell as a potential business -- call it target?
A I wouldn't call it a target
Q What would you call it?
A I would call it -- in the beginning, I thought it was -- when I first met him, I just wanted to form the relationship just like with other people that have used the airplane over the years
Q So it was no different than other politicians at the -- at the early point?
A Not at the early point
Q Okay And would it be fair to say that you had -- let's call it an agenda with Governor McDonnell?
A Yes
Q And the agenda was to promote your business?
A To promote the company and try to have him help with the testing of the product, yes
Q You testified earlier about a social gathering with Governor McDonnell and Ms McDonnell in December of '09 in

New York City Do you remember that?

A Yes

Q And that was in the lobby of the Four Seasons Hotel?

A Not in the lobby ,but off the lobby in a small -- in a restaurant area

Q And just so I understand the sequence of what happened at that -- that -- that meeting that you testified about, you had a friend with you, Brad Kroenig?

A Brad Kroenig

Q Kroenig Who was a male model You testified about him

A Yes

Q And you met with the Governor and the First Lady in the lobby? No?

A No We had drinks

Q You had drinks

A And they were going to a show

Q Okay And they went to the show, right?

A Yes

Q Now, when they went to the show, they left behind members of staff?

A They did

Q And that was Phil Cox?

A Phil Cox, Adam Zubowsky, and I can't recall the names of the other people

Q Okay And when you were -- you were at a bar area?

A No Sitting in the restaurant

Q Sitting in the restaurant Did you order any drinks while you were --

A Yes

Q And I think you testified about some Cognac --

A I did

Q -- earlier at a different event, a couple years later, right?

This was at -- I think at the vacation --

A Yes, at the Chatham Bars Inn

Q Yeah

A Yes

Q So in the Four Seasons I think you ordered the same Cognac, right?

A I did

Q And that was the Louis XIV -- XIII? Excuse me

A Louis XIII

Q XIII XIV would probably be $10,000

A I don't know if they make one

Q How much was the Louis XIV that you bought, that bottle?

A It may have been $5,000

Q $5,000 Did anybody ask you to buy it?

A No

Q You wanted to buy it?

A I was entertaining the folks, those people

Q You were entertaining the people who were there?

A Yes And Brad Kroenig was there

Q Okay

A And so that's commonplace for Brad in his world And I had invited Brad to come along because I thought people would find Brad interesting and it would make it --

Q Right

A -- soften the -- the meeting

Q Soften --

A Make it interesting --

Q Right

A -- to them

Q And that's because Brad is a male model, he's -- he's famous in the fashion industry?

A He's very famous in the fashion industry

Q Phil Cox and Adam Zubowsky, how long had you know them -- known them? Excuse me

A I don't know if that may have been the first time I met Phil Cox I'm not sure Adam Zubowsky I had met maybe once before that or so

Q So you bought -- but you did buy the Cognac?

A Yes

Q And you shared it with them?

A Yeah, I shared it with them

Q Is it fair to say that when you're around, nobody else has to reach for their wallet?

A I would say -- I would say when I'm around, I try to make things a little easier for people

Q Right And you don't -- no one is -- you're a generous person, right?

A I am I think I am

Q And you've done extremely well in your life?

A I think I've done well

Q No one is forcing you to provide 5,000-dollar bottles of Cognac, right?

A No one is forcing me to do that

Q You enjoy it?

A I actually don't care for that, but other people seem to I'd rather have a milk shake from Carl's

Q I'm sorry I'm not talking about the taste of the Cognac I'm saying you enjoy --

A Oh

Q -- giving people things that make them happy, gifts?

A I generally like to -- I try to help people

Q Okay Now, going back to the -- excuse me

When the Governor and the First Lady -- or actually, excuse me

They were not -- he was not the Governor at the time, right? He was the Governor-elect?

A That's correct

Q And Maureen McDonnell, when they returned from the show, they joined you?

A No I don't recall seeing them after the show

Q Okay So you saw them before?

A It was maybe 45 minutes or so before the show

Q Got it And that's where you had the conversation with them about -- or with Ms McDonnell about the Oscar de la Renta dress?

A That's correct

Q Do you remember -- you know Oscar de la Renta personally, right?

A No, I don't

Q You don't?

A No

Q You didn't show, on the phone, people where Oscar -- that you had Oscar de la Renta on the phone?

A I have no idea -- if Oscar de la Renta walked in the room, I wouldn't know him

Q Okay And you testified that Brad Kroenig had been talking to Maureen McDonnell about a dress?

A Yes And Brad reminded me that a very good -- close friend of mine that I spend time with every week, his -- his daughter, Oscar de la Renta is the godfather of his daughter

Q I see

A And that's where that came from

Q I understand I understand Ms McDonnell didn't ask you to buy a dress at that -- at the Four Seasons, right?

A She asked me to get her -- if I could get her -- she turned -- told her husband I was going to get her a dress But at that point I was hoping I could borrow one

Q Well, let's just back just up a little bit

A Yeah

Q Because I think you testified earlier that Brad Kroenig had said -- turned to you --

A Yeah

Q -- after he was talking to Maureen McDonnell --

A Yeah

Q -- and said to you, "Don't you know Oscar de la Renta's" --

A Yes

Q -- right?

A Yes

Q And then you said -- and he said -- and Brad Kroenig said to you, "Can you help her get a dress"?

A No Brad Kroenig said can I help her get a dress?

Q Is that what you testified?

A I don't believe so Brad Kroenig turned to -- he turned to me and pushed it back to me

Q Right I mean -- what does that mean? What does it mean pushed it back to you?

A He shifted it back to me because Brad realized that he didn't know anyone -- see, in my mind, I thought -- my daughter was a model with Ford and --

Q That's Rachel, right?

A -- and I met Brad from -- at one of the runway shows And they have all these clothes at the runway shows So I thought that, you know, when we're talking to Brad, maybe he could -- there's a place to borrow one of these dresses for the inauguration

Q Right

A And then Brad reminded me of my friend that was real close to Oscar de la Renta So then I said, "I'll get you" -- "I'll help you get a dress "

Q Okay So you said that "I'll help you get a dress" to --

A "I'll get" -- "I'll help you get a dress," yes

Q You said it to Maureen McDonnell?

A Yes, I did

Q And she was happy about it, right?

A She was very happy

Q And she turned to her husband and told him?

A "Jonnie is going to help me get a dress for the inauguration "

Q But you didn't end getting a dress for -- for Maureen McDonnell, right? You didn't actually get one for her at that time?

A No, not at that time

Q You testified that was because you were informed that it would be inappropriate?

A The lawyer called me --

Q The lawyer --

A -- and told me

Q -- Jasen Eige?

A Yes

Q All right And you testified that you had a conversation with Maureen McDonnell around that same time?

A Yes

Q And you recall, I think, that she said to you that it would be too expensive, given the economy at the time, in sum and substance?

A I did

Q And you testified that she said that she would take a rain check on that?

A Yes

Q And I --

A On a shopping trip to --

Q On a shopping trip

A On a shopping trip Not on another inauguration dress

Q No I think only one for Virginia, right?

A Yes

Q Do you recall telling Mr Eige that -- that you -- that you wanted to convey to Maureen that after the Governor-elect's term is up, you want to fly her up to get a dress?

A No

MR BURCK: Your Honor, may I approach just to refresh recollection?

THE COURT: Sure

MR BURCK: This is RM-0676

THE COURT: Could raise your voice a little bit?

MR BURCK: I'm sorry, Your Honor RM-0676

THE COURT: All right

BY MR BURCK:

Q And without reading from it, just -- out loud, just start from the bottom and read it up and then I'll -- then put it aside, please

A This is from Jasen --

Q Wait Mr Williams, don't -- please don't read from the document Just read it to yourself

A Okay

Q Before I ask you any questions, this is -- you're not on this e-mail, right?

A That's correct

Q This is an e-mail dated December 18, 2009?

A Yes

Q And it's between Jasen Eige and someone named Crystal Cameron?

A Yes

Q Do you know who Crystal Cameron is?

A I have no idea

Q And after reading that document, do you remember my question: Did you tell Jasen Eige that after the Governor-elect's term is up, you want to fly her up to get a dress?

A I don't recall that at all

Q Thanks

Now, I just want to shift gears just a little bit

Actually, before I go on, did you meet with the prosecutors in this case about three weeks ago or so?

A Yes

Q Did you tell the prosecutors that you did not recall -- excuse me -- that after meeting with FLOVA -- do you know who FLOVA is?

A It's a nickname for Ms --

Q First Lady of Virginia?

A Yes

Q -- that after meeting with FLOVA in December of 2009, after meeting with her, that you don't recall any other interactions with her until October 2010? Do you remember telling them that?

A I may have said that I don't recall As I sit here, I don't recall that

Q And you did testify to a conversation, a phone call you had with her --

A Yes

Q -- after the meeting?

A Yes

Q So when you said -- or you may have said to the prosecutors that after meeting with FLOVA in December of 2009, you do not recall any other interactions with her until October 2010?

A Not in person On the phone call when she talked to -- called me about the dress

Q Okay Now, shifting gears just a bit You talked to Mr Dry about an interview that happened in January of 2013 with the Virginia State Police --

A Yes

Q -- and the FBI Do you remember that?

A Yes

Q And the agent, the FBI agent and the Virginia State

police officer, or detective, he -- they showed up at your home --
A They did
Q -- in Florida?
A They did
Q Did they call you to tell you that they were coming?
A No
Q So it was a surprise?
A It was a surprise
Q And they knocked on the door and there they were?
A Yes
Q And you spoke to them voluntarily, right?
A I did
Q And you didn't have any lawyers present?
A No
Q Now, one of the topics I think they wanted to talk to you about was the McDonnells, right?
A Yes
Q And the other topic -- or there were two other topics, at least One was about Mr McKeon, right?
A Yes
Q And you touched briefly on who Mr McKeon is
A Yes
Q Can you tell us a little bit more about who Mr McKeon is?

A John McKeon is a friend of mine He's become a friend of mine, and I met him in Richmond maybe six -- six years or so ago, six or seven years ago

Q And what does Mr McKeon do?

A He's a private investor He used to be a fund -- a money manager in New York

Q And is he a wealthy man?

A I think so

Q I think in that interview with the Virginia State Police and the FBI in January, you told them that you had gotten a 2 million-dollar loan for Mr McKeon in June of 2009?

A Do you have something that --

Q Yes, I can --

A Help me with that

Q I'll help you out Absolutely

A I just don't want to guess at that

MR BURCK: Your Honor, we're just going to pull it up We're going to pull it up

THE COURT: All right

BY MR BURCK:

Q Now, Mr Williams, can you see that okay?

A I can

Q And Mr Dry actually showed you this document earlier, right?

A He showed me this document earlier today?

Q I'm asking you the question If you don't recall, I can take you to the sections that he showed to you

A No I -- as I sit here, I don't recall this document

Q Mr Williams, what I'll do is I'll take you down -- can you move the pages down to, say, the third page Further down, please And further -- oh, actually, right there is perfect Thank you

Now, without reading out loud from the document -- could you blow up the bottom paragraph of that page?

Now, without reading that out loud, can you just read it to yourself?

A Okay

Q Do you recognize that paragraph?

A Okay Give me just a moment

Q Sure

A Okay

Q Do you remember this document now?

A I don't remember the document itself, but I've just read this one

Q Okay Well, we're actually going to go up to page 2, the fifth paragraph

Could you blow that up? I think that's the wrong paragraph Can you move it up just a little bit? There we go

Can you read that paragraph to yourself?

A Yes

Q And remember, my question to you is whether or not you told the investigators that you received a 2 million-dollar loan from John McKeon?

A Okay

Q Do you remember telling the -- does this help refresh your recollection as to whether or not you told these investigators that you received a 2 million-dollar loan from John McKeon?

A I don't recall specifically if I did or not

Q Okay Let me ask you this Did you receive a 2 million-dollar loan from John McKeon?

A I would like to see -- I would be --

THE COURT: Well, this question calls for independent memory If you recall whether you got --

A I don't recall specifically

THE COURT: All right

BY MR BURCK:

Q You don't recall receiving --

A I recall --

Q Go ahead

A I recall loans with John McKeon, a credit line, but I can't recall that specifically as I sit here

Q Okay That's fine Let me ask you --

A Okay

Q -- do you recall telling the investigators in the January 2013 interview that you had not repaid the loan as of that date --

A Yes

Q -- the loan you talked about just now --

A Yes

Q You remember telling them?

A I remember saying that

THE COURT: All right We're going to stop here primarily because I can't take another second I've had all I can stand for the day, and I'm sure you feel the same We will get back It's been a long day, and I'm -- I'm starting to lose focus so let's stop here

We will start tomorrow at 9:30 And, again, please don't discuss the case with anyone, allow anybody to discuss it with you and take care We'll see you tomorrow Hang tough We'll get through it All right We'll see you tomorrow

(The jury left the courtroom)

THE COURT: 9:30 tomorrow

(The trial adjourned at 5:24 p m)

I N D E X

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

August 1, 2014
Richmond, Virginia
9:40 a m.

JURY TRIAL - VOLUME V

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ
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OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day five, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Daniel Small, Henry Asbill, James Burnham, and Christopher Iaquinto. Maureen G McDonnell is represented by Heather Martin, William Burck, and Stephen Hauss Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed

MR. ASBILL: Mr McDonnell is ready to proceed.

MR. HAUSS: Maureen McDonnell is ready to proceed, Your Honor

THE COURT: All right I had just one kind of administrative thing And this is meant for the media mostly I had such a large number of media outlets who missed a deadline on the request for cell phone, exception to our cell phone policy So I've decided to give another opportunity We are going to go up on the website today, make an announcement this morning, so I hope the information gets out The folks who have missed the previous deadline will have an opportunity to apply in writing, and the new deadline for this new opportunity is close of business on August 5th. I'll try to get that word out And then, of course, we will have to do our due diligence and vetting, so it will be a while That's the reason why we had a deadline to begin with It takes us a while to go through these Most of the folks who missed the deadline, a lot of them were out of town, and I thought it was a little bit unfair, so we are going to give them an opportunity, just so you know.

The next thing is, the Marshals have informed me that we have had some violations of our cell phone use policy And I just want to warn you, if you do that and you get caught, not only are you going to lose the phone, you are going to lose the privilege of having the phone So just beware Let's bring in the jury, please

(The jury entered the courtroom.)

Good morning Good to see you. All right, we are ready to get started again Go ahead.

CROSS-EXAMINATION (Cont'd.)

BY MR BURCK:

Q Thank you. Your Honor, I'd like to hand up to the witness a document we looked at yesterday, a Virginia State Police report, January 26th, 2013 Good morning, Mr Williams

A Good morning

Q Last night, did you speak to your lawyers or this morning did you speak to your lawyers about your testimony?

A Not about my testimony, but I met with them this morning and walked‹over here I rode over in the car I'm sorry

Q But you didn't speak to them about your testimony yesterday?

A In particular, I don't recall talking about my testimony They just said I did a good job answering the questions

Q Okay Then this morning you didn't talk to them about your testimony?

A Not about my testimony, no

Q Okay Thank you Yesterday, where we left off, we were talking about the January, 2013 interview, surprise interview by the Virginia State Police and the FBI Do you remember that?

A Yes, I do

Q What I am going to do, I gave you a document that's a report from that interview

A Okay

Q I'm not going to ask you to read from it I'm going to ask you a series of questions about what you said at that interview, and you just tell me whether or not you said it Okay? You don't have to look at that document Just put it off to the side

A Okay

Q So during that interview, did you tell the police that you had given Maureen McDonnell a $50,000 check and that it was a personal loan?

A Yes.

Q Okay And you told them, didn't you, that you did not get anything in return for the loans?

A I did.

Q And you told them that the Governor is a friend of yours and that he plays golf with you?

A Yes, I think I said that

Q And you told them that you first met the Governor when he was the Attorney General of Virginia; isn't that right?

A Yes

Q And you said that you were a rural Virginia boy? Do you remember saying that?

A I'm from rural Virginia, but I don't recall ever referring to myself as a rural Virginia boy

Q Okay Well, do you remember saying that Bob McDonnell is the best Governor Virginia has ever had; do you remember saying that to them?

A Yes

Q Do you remember saying that the Governor is a very hard working individual?

A Yes

Q And do you remember telling them that you never asked for anything from the Governor and never expected anything from him; do you remember that?

A Yes

Q And you told them that Maureen McDonnell is into wellness and supported your product; isn't that right?

A Yes

Q You also said to them that you had never paid her for anything Didn't you tell them that?

A Yes

Q Now, remember this loan where you testified, the first loan, the $50,000 loan to Maureen McDonnell, you testified about it yesterday?

A Yes.

Q I want to ask you some questions about what you told the Virginia State Police and the FBI in January of 2013, okay? You said that Maureen McDonnell had approached you for the loan, right?

A I recall that

Q Okay And you explained that, or she explained that the McDonnells were upside down with their rental properties in Virginia Beach and that they needed $50,000?

A I believe that's correct

Q Okay So you gave her a loan, right? That's what you told them?

A To the best of my recollection, I did

Q Okay And you told the police and the FBI in that interview that you were sure the Governor was aware of the loan because about two days later after the loan, the Governor called you on his cell phone Do you remember saying that?

A I don't recall that

Q Okay Do you remember that you told the police that Governor McDonnell called to discuss the terms of the loan with you and that you told him to repay the loan when the real estate situation turned better? Do you remember saying that?

A I remember that

Q Okay Could you take the document that's right there, and if you turn to Page 5 of the document

A Turn to what page?

Q Page 5 It is actually highlighted to make it a little easier

A Okay

Q See the top, the first paragraph, the top of the page, Page 5?

A Yes

Q Okay Can you read that to yourself, that paragraph? Don't read it out loud, please Just read it to yourself and I'll ask you some questions

(Witness perusing document)

A The first paragraph or the entire page?

Q Just the first paragraph, please

A Okay.

Q Okay Now, you remember I just asked you whether or not you told the police that you were sure the Governor was aware of the loan because about two days later after the loan, Governor McDonnell called you on his cell phone? Do you remember saying that now?

A That's what that says, but that's not my recollection.

Q That's not what I asked you. You don't recall?

A I don't recall it being two days later, no

Q So if it says that in the document, it is incorrect?

A I believe that's incorrect, yes

Q So then, did you tell the police and the FBI that you had given a check for $15,000 as a wedding gift for Cailin McDonnell?

A I did.

Q And did you tell the investigators again that you did not get anything in return for the loan to the Governor and Maureen McDonnell; did you tell them that?

A I don't recall telling them that I received anything

Q You don't recall telling them that you received anything I asked you a different question

A Okay

Q Did you tell them that you did not get anything in return for the loan to the Governor and Maureen McDonnell?

A I don't recall specifically how I answered that question at that time. But that's why I responded the way I just did. I just don't -- I didn't recall saying that I received anything

Q Okay Did you tell them that you did not ask for anything and that you did not want anything? Did you tell them that?

A I don't recall that specifically I may have, but I don't recall that

Q Okay Well, can you take a look at that document again? Look down to the fourth paragraph It is a small paragraph right in the middle of the page Again, I would ask you to read that It starts -- well, fourth paragraph. It is highlighted. Just read that to yourself without reading it out loud.

(Witness perusing document)

It is a very short paragraph One sentence Have you finished it?

A I understand it is short I just want to make sure I understand it so when you ask me the questions, I'm giving an accurate answer

Q Sure

A Okay

Q Okay Now, I, asked you, did you want to make sure, did you tell the Investigators that you wanted to make sure that they knew that you did not get anything in return for the loan you gave to the Governor and Maureen McDonnell; did you tell them that?

A I don't know if I told them I didn't receive anything or not I may have

Q Okay And did you tell them that you did not ask for anything and that you did not want anything; did you tell them that?

A I don't recall that

Q Okay Now, did you tell them about Maureen McDonnell traveling to Sarasota, Florida to support your product? Did you tell them about that?

A I may have

Q Okay Did you tell them about the Roskamp Institute in Florida?

A I may have

Q Did you tell them that Maureen McDonnell came to that conference?

A I may have

Q Did you talk about the conference that Maureen McDonnell went to in California?

A I may have I don't recall that

Q Did you tell them that Maureen McDonnell had other business in California and agreed to talk about your product?

A I don't recall that

Q Do you remember telling them about a third conference at the Westin Hotel in Richmond, Virginia?

A I don't recall saying that specifically

Q Do you remember telling them Maureen McDonnell was supportive of your product, even handing out samples to individuals; do you remember telling them that?

A I may have I just don't recall specifically saying that

Q Did you equate her support as similar to what the support she would give to, say, the Virginia wine business; did you tell them that?

A I don't recall

Q Okay If you look again at that document, there is the fifth paragraph that's right underneath the very short paragraph that you read before Please read to that to yourself Don't read it aloud And I'll ask you some questions

A Would you ask the question again?

Q The fifth paragraph down, right underneath the short paragraph you just read, it says, "Williams was told "

That's how it starts Do you see that? It is highlighted.

A I don't see that Yeah, I see that now

Q Please just read that to yourself

A Okay

(Witness perusing document)

Okay.

Q Now, I just asked you whether or not you remember telling the police and the FBI that Maureen McDonnell was supportive of your product and even handed out samples to individuals; do you remember telling them that?

A I recall her being supportive of the product

Q That's what you recall, but did you tell them that?

A I don't recall that as I sit here now It has been a while ago

Q Okay And did you equate her support for your product to the support she gives to the Virginia wine business; did you tell them that?

A I don't know if I did or not

Q Okay Now, you told them also about the launch of your product at the Executive Mansion Do you remember telling them about that?

A Yes

Q You said to them that you planned the event and decided who to invite and sent out the invitations; you told them that, right?

A I don't recall that

Q You told them that you thought launching the product from the Mansion would add credibility to your product, right? You told them that?

A Yes

Q And you told them that it was important to stress the importance of the new discovery from a Virginia company, right? You told them that?

A Yes

Q Now, just looking at the paragraph right beneath the one you just read, "Williams confirmed. " is how it starts

A Yes Do you want me to read that?

Q I just want you to read that first couple sentences

A Okay Just a second.

(Witness perusing document)

Okay

Q Okay Now, do you recall saying that you planned the event, decided who to invite, and then sent out the invitations?

A I don't recall saying that I planned the event at all

Q Okay

A That I planned the event I don't recall that

Q So if the document says that, it is inaccurate?

A I'm just saying I don't recall I don't recall that I've never seen this document

Q Okay Now, at the end of this interview in January, 2013, didn't Special Agent Hagan, one of the two who is present, didn't he ask you to wear a wire?

A He did He asked me would I wear a wire

Q And it was about the McDonnells?

A It was It was about the Governor

Q The Governor So it wasn't about Maureen McDonnell; it was about the Governor?

A I believe so

Q And you understood that he wanted you to wear a wire without informing the Governor and record the conversations you had with the Governor, right?

A I didn't think much about it at that point

Q Yes or no Is that what he asked?

A Ask that question again

Q Did he want you to wear a wire so that you could, without the Governor knowing about it, record your conversations with the Governor; is that what he wanted you to do?

A I'm not sure He asked me would I wear a wire, and I stopped the meeting right then.

Q You stopped the meeting right then?

A That's my recollection

Q Why did you stop the meeting right then? Let me ask you this way , Did you stop the meeting right then because there was nothing to record?

A I stopped the meeting right then because I felt like I better call the lawyers in Washington, that there is a problem.

Q So you stopped the meeting because you were worried about the fact that he had asked you to wear a wire against the Governor, right?

A At that point when he said that, my thoughts were, the Governor could be in trouble, and I could be, too

Q Okay So you wanted to talk to your lawyers

A Yes

Q All right And you called your lawyers, right? Is it right after that meeting, the same day?

A I called them immediately afterwards

Q And your lawyers are from what law firms?

A Steptoe & Johnson in Washington, D C and McGuireWoods in Richmond.

Q Okay

MR. BURCK: I would ask your assistance in calling up Government Exhibit 524 It was admitted yesterday

(Document displayed.)

BY MR. BURCK:

Q Do you see that? You can blow it up just a little bit so it is easy to read.

THE CLERK: Who is publishing the exhibit?

MR BURCK: We are

THE COURT: Let me switch back

BY MR. BURCK:

Q Now, Mr. Williams, you discussed this document yesterday with Mr Dry This is a July 1st, 2013, something called the Proffer Agreement It doesn't say that, but that's how Mr Dry described it Do you remember discussing this document yesterday?

A I do.

Q Okay And if you look, the last page, Page 3, you see your signature on that document?

A I do.

Q What's the date of your signature?

A July 1st, 2013

Q Okay So you had an interview with the government on July 1st, 2013, right?

A Yes, I believe so

Q Okay Now, this document was provided to you by your lawyers?

A Yes

Q Okay And they described it to you, they discussed it with you before you signed it?

A Yes

Q And this document says in sum and substance that anything you tell the government at this meeting about the McDonnells can't be used against you, right?

A Yes

Q So long as you are truthful, right?

A As long as I'm truthful.

Q Who tells you what the truth is? The government is the one who decides whether or not something is true, right?

A I think if it is truthful it is truthful It is

Q It is what it is from your perspective?

A From my perspective, the truth is the truth

Q But this document doesn't say a court of law or a jury is going to decide whether or not it is true?

A I don't know if it says that in here or not But I'm just trying to answer your question

Q I'll tell you it doesn't

A Okay

Q Now, at that meeting, you had a second meeting where you discussed the same topic that you discussed with the Virginia State Police and the FBI in January, right? You talked about the McDonnells?

A Yes

Q Is that right?

A You mean on that date?

Q On that same day Right?

A Yes

Q This document was provided to you at the meeting

A Yes

Q Okay

MR. BURCK: May I approach the witness?

THE COURT: Go ahead.

(Document proffered to witness)

THE WITNESS: Am I keeping this one still?

MR BURCK: You can put that to the side

BY MR. BURCK:

Q Now, what I have just given you is a report by the FBI It is dated July 2nd, 2013, but it is of the interview that occurred on the 1st I don't want you to read from the document I'm going to do the same thing I did before with the Virginia State Police report I'm going to ask you some questions about what you said to the FBI, then I'm going to ask you to review the document to see if it helps you refresh your recollection if you don't recall anything Okay?

A Okay

Q I ask you to, well, let me ask you the questions first and then I'll direct you to the page You talked to them about the loan that you gave to Maureen McDonnell, right? Do you remember doing that in July of 2013? $50,000 check?

A I believe that was discussed.

Q Okay And you said that Maureen McDonnell told you that she and the Governor were in financial trouble Do you remember telling them that?

A Yes

Q And you said that her husband, you told the prosecutors that her husband had borrowed money from a doctor in Virginia Beach at a high interest rate and that they had maxed out their credit cards and they were at the point of filing bankruptcy Do you remember saying that?

A That they were -- I didn't say at the point of filing it I said my recollection of that is, they had discussed filing bankruptcy I didn't say that, I don't recall ever saying they were at the point of it, that they had discussed it

Q Okay So if the document says something different, the document is inaccurate to you?

A I'm just giving you my recollection If the document says something different from my recollection --

Q You told them that Maureen asked you for a $50,000 loan to pay down their credit cards and help their rental property through a tough rental market Do you remember telling them that?

A I believe so

Q You didn't tell them at that meeting, though, that Maureen McDonnell had said she would do anything for you, right?

A I don't recall

Q Well, you told them about a friend who is a judge that you met in Florida sometime around the time that Maureen had asked you for the loan Do you remember that?

A Yes

Q Okay And did you tell them that you asked this friend, who is a judge, if there was anything wrong with you loaning the Governor $50,000? Do you remember telling them about that?

A I recall that

Q And do you remember that the Judge said, "As long as you do not ask for anything in return, you can loan anybody money " Do you remember saying that?

A I recall saying what the judge told me, was that "As long as you don't get any contracts, you can loan money The reporting of that, it is their problem, not yours "

Q So is your understanding from this judge that as long as you don't get any contracts?

A As long as I don't get any contracts is what he said

Q Contracts from the state, the Commonwealth of

Virginia?

A Yes

Q That was your understanding

A That was my understanding

Q Is that your understanding today?

A That's my understanding of what he said, yes, that day

Q Okay So you remember telling the FBI about this

A I do

Q Okay Now I'd like you to take that document I showed you before, handed up, and go to Page 5, please

THE COURT: Has he indicated an exhausted recollection?

MR. BURCK: Your Honor, he said that he did not recall that he did not tell them that Maureen McDonnell said that she would do anything for him.

THE COURT: All right

THE WITNESS: I don't understand that

THE COURT: There is a difference between the witness saying "I don't recollect something" and you refreshing it by letting him look at the document, and the witness saying something different and you using the document to impeach. Now, we've got two different routes that we go, and you know you have to do one thing with the other and something else with the next He has not indicated an exhausted recollection on this particular point His recollection is different

MR BURCK: Yes, Your Honor Your Honor, what I am asking the witness here is simply does he recall telling the FBI at this meeting that Maureen McDonnell said she would do something for him. And he says he does not recall telling them that So what I wanted to do is show him this document in the relevant area, have him read it, and see if it refreshes his recollection

THE COURT: Ask him that question again. Let's see

BY MR. BURCK:

Q Mr Williams, do you recall, you did not tell the FBI and the prosecutors at this meeting on July 1st, 2013 that Maureen McDonnell had said she would do anything for you in exchange for the loan You didn't tell them that, did you?

A I don't recall whether I did or not

THE COURT: Go ahead

BY MR. BURCK:

Q Please turn to Page 5 And there is a paragraph that begins, "After reviewing Exhibit 6 " Do you see that? That's the second paragraph

A Yes

Q You can read the whole paragraph if you like, but you can start at the second sentence which begins, "Maureen later met with Williams " and just read the rest of that paragraph to yourself

(Witness perusing document)

A Okay

Q Does this help refresh your recollection about whether or not you told the prosecutors and the FBI on July 1st, 2013 that Maureen McDonnell had said she would do anything for you in exchange for the loan? The only question is whether or not it refreshes your recollection. That's all

A I don't recall

Q You don't recall whether or not you said it or you don't recall -- is that what you are saying, you don't recall whether you said that?

A Ask that question again It was a little quick

Q Sure Does this document refresh your recollection about whether or not you said to the FBI and the prosecutors on that day that Maureen McDonnell had offered to do anything for you in exchange for the loan?

A This document doesn't say that And it doesn't refresh my recollection -- my recollection is different from what I just read, parts of it

Q Okay Thank you, sir Now, about this loan and the same meeting, July 1st, 2013 After you told them about the conversation -- after you told the prosecutors about the conversation you had with the judge, you told them that you called Maureen and that you said you would loan them the money, but that you wanted to talk to the Governor first Do you remember saying that?

A I recall that

Q Okay And you said to them that you met with the Governor in the Governor's Office boardroom; do you remember saying that?

A I may have said that I was confused. Actually, I may have said that then, yes But later, I learned, my memory was refreshed, and I'm not sure whether on that occasion, because clearly, the second one I did, but on the first one, I wanted to just make sure that he knew about this loan. And I don't know if I did that on the phone or if I met with him.

Q Okay

A In person

Q Okay So you don't know if what you told them that day was accurate or not

A I'm telling you what I am telling you right now is I recall just making sure that the Governor knew before I gave Maureen these checks that he understood what I was doing

Q Okay And you told them that you agreed with the

Governor to a two-year five percent loan; do you remember telling them that?

A I recall generally that, those terms generally

Q And you recall or you told them that the Governor asked if you guys needed to draw up some paperwork for the loan Do you remember telling them that?

A I recall having a conversation about paperwork.

Q And that you said it was not necessary because a handshake was still the law in Virginia You told them that that's -- that that's what you said to the Governor, right?

A Yes

Q Now, you met with the government again in around September, 2013; do you remember that?

A If a document says there is a meeting, that says I met with them, then I'll accept that

MR. BURCK: May I approach?

THE COURT: Go ahead.

(Document proffered to witness)

BY MR BURCK:

Q Sir, I'm going to do the same thing I've been doing

A It's okay

Q This is an FBI report dated 10-16-2011 I'm sorry, 2013 Excuse me That's of an investigator interview that occurred on September 12th, 2013

A Okay

Q Now, at this second meeting, if you recall, were your lawyers with you for that meeting as well?

A Yes

Q And before you had this meeting, had you signed an immunity agreement with the government?

A Yes

Q Okay.

MR BURCK: Could you guys pull up Government Exhibit 523?

(Document displayed.)

BY MR BURCK:

Q All right, so the date of this document, you discussed this a bit with Mr Dry yesterday, this is July 1st, 2013?

A Yes

Q And this is the immunity agreement that you signed. It is separate from the prior agreement that we talked about earlier

A Yes

Q And this agreement gives you immunity from prosecution for anything related to public corruption and the McDonnells, right?

A That's my understanding

Q So the first document said that they couldn't use anything you said at the meeting against you, right? The first document you signed?

A The Proffer Agreement?

Q The Proffer Agreement

A I believe so

Q Right Now this one says you can't be prosecuted, right?

A That's my understanding

Q Okay And if you look at the second page?

A As long as I tell the truth.

Q As long as you tell the truth But again, there is nothing in this document that says anything about a court or a jury deciding whether or not it is true, right?

A You said there wasn't

Q You can read the document if you like, but I can tell you there is nothing in there that says that

A Okay

Q Look at the second page, please Signed by you?

A Yes

Q Dated July 2nd, 2013?

A Yes

Q It is a day after the interview? You testified that July 1st was the time of the first interview?

A I'm taking your word that it was on the 1st I don't know if it was the 1st or this was done on the 2nd. I'm just taking your word at that

Q I'm just asking when you signed it You signed it July 2nd.

A I signed it July 2nd.

Q So you got this agreement the day of or the day after you had talked to the government for the first time with your lawyers Right?

A I don't know if it was that day or the day after

Q But it was after the meeting

A After the meeting

Q And after the meeting, you got immunity

A I don't know, I'm sorry, I don't know if it was before or after the meeting I don't recall whether it was before or after the meeting

Q You don't recall if it was before or after the meeting But you got immunity

A I did

Q Okay Let's talk about that meeting in September, a couple months after you get immunity

A Yes

Q You tell them at this meeting, again, about the loan You told them that you had a private meeting with Maureen where she said that she had a background in healthcare supplements and was willing to help you in any way she could Do you remember telling them that?

A I recall that You are referring to May 2nd, that this is when I met with her?

Q That's right

A Is that what you just said?

Q May 2nd of 2011 is what you are discussing

A I just wanted to make sure I understood.

Q This is what I am asking you right now, is what you told the FBI and the prosecutors in September of 2013.

A Yes

Q Okay?

A Okay

Q So you told them, again, just to make sure I understand, you told them that she had a -- that she told you that she had a background in healthcare supplements and was willing to help Williams in any way she could, right?

A I recall her saying that she would help me in any way she could.

Q Okay, that's fine That's what you told them.

A I believe so, yes

Q Okay And that was something different than what you told them in July, right?

A I don't know why I don't recall why it would be different

Q Okay Now, you got another immunity agreement,

right?

A Later, I did.

Q And that was in May of 2014 So a couple months back

A Yes

MR. BURCK: Can you please publish Government Exhibit 530, please

BY MR. BURCK:

Q Now I'm going to read to you, this is already in evidence, I'm going to read to you the second paragraph of this immunity agreement It says: "The conduct for which Williams would receive immunity is limited to conduct involving his agreement to provide, and his provision of, things of value to former Virginia Governor Robert F McDonnell, former First Lady of Virginia Maureen P McDonnell, and their family members Two: Conduct related to loans Williams received from 2009 to 2012 in exchange for his pledge of Star Scientific stock. And three: Conduct related to Williams' gifts of Star Scientific stock to certain trusts from 2009 to 2012 "

Do you remember that?

A I do

Q And your lawyers discussed this with you before you signed it?

A Yes

Q And you got this agreement on May 30th, 2014, right?

A Yes

Q What date did you sign it? I think you signed it on, look at the third page, you signed it on June 5th, 2014 Right? Is that your signature?

A Yes

Q It says June 5th?

A Yes

Q The very next day you met with the government, right? Right after you signed this document, you met with the government

A I'm accepting that, that you know that

Q I'll do better than that I'll give you a document

(Document proffered to witness)

Now, Mr Williams, what I have given you is an FBI report of a meeting that occurred on June 6th, 2014 Now, this is after you have signed your second immunity agreement on June 5th, 2014

A Okay

Q Didn't you tell the FBI and the prosecutors that at this meeting, that Maureen McDonnell said that she and the Governor were in financial trouble and if you gave them the $50,000 loan, she would help you? Do you remember saying that?

A I recall that

Q Now, you had another meeting with the government about two weeks later And I will approach.

A On that last question where I said I recall that, I recall her husband -- she saying that her husband said it was okay for her to help me, too

Q Okay

(Document proffered to witness)

Now, you met with the FBI a couple weeks after June 19th Do you remember that? Roughly, June 19th? I've given you a document that is an FBI report of an interview you had with them on June 19th

A On June 19th

Q 2014 About a month-and-a-half ago

A Okay It says June 23rd, but you are saying the meeting was on the 19th.

Q The document, that's the date it was transcribed. The interview happened on June 19th

A Okay

Q Now, at that interview, which occurred a month-and-a-half ago or so, less, you told the government, didn't you, that Maureen said that she and the Governor were in financial trouble, and that if you would help them out financially, she and the Governor would help you and Star Scientific out Do you remember saying that to the government?

A I don't recall that as I sit here

Q Do you remember telling them at that meeting, the June 19th meeting, that you and your wife, Celeste, had driven to the Governor's Mansion and dropped off the $50,000 loan check to the First Lady? Do you remember telling them that?

A I may have

Q Do you remember telling them that you did not believe your wife knew that you were dropping off the check?

A My wife did not know I was dropping off checks

Q And you told them that You told the prosecutors that on that meeting

A I may have I'm trying to -- there is so much material, I'm trying to recall all this and I'm trying to tell you the truth. I'm just trying to make sure that I'm not rationalizing dates, and I just want to make sure that I specifically know that on this date these happened without me guessing So that's why --

Q Right now all I'm asking you is whether or not you remember telling them this, and I'll show you the document if you don't remember

A My answer to that question was that I did not -- my wife did not know what I was doing

Q Okay And at this time, you told the prosecutors that the Governor came over from his office using the tunnel between the Governor's Office building and the Mansion. This is right after you gave the check.

A Yes

Q Do you remember telling them that?

A I recall telling them that the Governor came over because I learned about that tunnel that comes over from the Patrick Henry Building to there But I'm not sure if that's -- I'm not 100 percent sure if that's where I met with him and briefly with his wife and made sure about that the loans or that I talked to him over the phone I'm not 100 percent sure of that as I sit here

Q Okay That's what you told them a month-and-a-half ago.

A I think that's -- I think that's what happened But I can't tell you with 100 percent that that's what happened I can just tell you that before I gave the Governor and his wife these checks, I made sure that the Governor knew about it

Q And you don't recall telling the Virginia State Police and the FBI back in January, 2013, that it was only after you had given Maureen McDonnell the check that you told the Governor about it?

A No, I don't recall

Q You don't recall telling them that?

A I don't recall saying that

Q Okay And do you remember that you met with the government about less than two weeks ago, on July 16th, 2014?

A Yes

Q And do you remember telling them at that meeting that when you were first interviewed by law enforcement officers in January of 2013, that you had not been truthful; do you remember telling them that?

A I do recall saying that

Q And you had never told them that before, right?

A I don't recall if I had or not As I sit here, I don't know if I've said that or not I may have

Q We talked a bit yesterday about --

A It wasn't truthful, but I don't --

Q Thank you, sir We talked a bit yesterday about John McKeon and the loans that he gave you.

A Yes

Q He gave you roughly $10 million; is that right?

A I thought it was a little more than that

Q A little more? $12 million?

A Maybe 12

Q $12 million. Now, you were interviewed by the prosecutors in this case for the first time about that McKeon loan in May of this year, right?

A I don't recall

Q You don't recall?

A If that was the first time

Q Had you talked to them about it last year?

A At some point, that's been discussed I just don't recall when it was

Q Okay

MR. BURCK: Your Honor, may I approach?

THE COURT: Yes

(Document proffered to witness)

BY MR BURCK:

Q This is, what I have given you is an FBI transcript of an interview or summary of an interview that was conducted on May 27th of this year I'm going to ask you some questions about what you talked to them about, the prosecutors about, at that meeting Okay?

A Okay

Q Now, you were talking about the McKeon loan. You remember that was the discussion, that was the topic, right? Without looking at the document, the May 27th meeting, was that about --

A I don't recall whether -- I just don't have the recollection to go back. I'm not, you know, I just don't have a recollection to go back and just say on a date in May when I met with someone that I discussed --

Q That's fine.

A Discussed this Okay?

Q Please take a look at the document If you look at the first page of the document and you look at the bottom of the page first where there is some data, it says "Investigation on 5-27-2014 at Richmond, Virginia " Do you see that?

A I see 5-27-2014 I do.

Q Do you see the top, "Federal Bureau of Investigation"?

A I do

Q Can you read to yourself the second paragraph of this, on this page, without reading out loud? Just read it to yourself

(Witness perusing document)

A Okay

Q Does this refresh your recollection that you had an interview with the FBI about two months ago about the McKeon loan?

A It refreshes my recollection about when I met John McKeon.

Q Okay

A But I just don't recall that interview

Q Okay This was two months ago You don't recall the interview?

A I don't recall the specifics of it

Q I'm not asking about the specifics I'm asking if you recall being interviewed by the prosecutors about the McKeon loan.

A I don't

Q You don't recall that?

A No

Q Sir, can you turn to the second page?

A Not as I sit here, I don't right now.

Q I understand. I'm just asking some questions

A Okay

Q Second page, the second paragraph on that page, can you read that to yourself?

A The second paragraph on Page 3 of 7?

Q No, it is on Page 2 of 7

A 2 of 7

Q The second page The second paragraph Can you read that paragraph to yourself?

(Witness perusing document)

A Okay

Q Are you now refreshed that you had a meeting with the FBI and the prosecutors about the McKeon loan two months ago?

A Yes, I just couldn't place the time two months ago.

Q Okay At that meeting, did you explain to them that the McKeon loans were a way for you to access cash without having to report the sale of your stock? Did you say that to them?

A I recall saying it was a way to borrow money against the shares

Q Okay So you didn't say to them that it was a way to access cash without having to report the sale of your stock?

A I may have, because I wouldn't have to report it But there is no requirement to report that that I was aware of

Q Did you tell them that if you sold your stock, you would have to make a public reporting that you sold your stock in Star; did you tell them that?

A I may have

Q Did you tell them that it could look negatively to other investors if you were selling your shares and could cause the price of the stock to go down? Did you say that to them?

A I may have

Q You may have?

A I don't recall specifically whether I said that or not

Q Can you turn to Page 3 of that document?

A Okay

Q The top paragraph, the very first paragraph on that page Please read it to yourself

(Witness perusing document)

A Okay

Q Is your memory refreshed?

A It is

Q And did you tell them that?

A I believe I did.

Q Do you recall you were asked about transfers of shares you made to your children in a trust account?

A Yes

Q At that same meeting, right?

A I don't know if it was at the same meeting or not

Q Well, do you remember telling the prosecutors when they asked you why you did not just sell your Star shares, rather than gift the shares to your children and have the shares sold, you said that the benefit of getting Star stock to his kids was that the restrictions on the shares were removed and you would not have to comply with Securities and Exchange Commission regulations or Star's company policies? Do you remember saying that?

A I wouldn't have any filing requirements if I did that

Q I'm asking, did you remember saying that?

A I recall saying that I wouldn't have any filing requirements

Q Do you recall saying that the motivation for gifting the shares to your kids and directing the sale of them was to avoid people knowing that the CEO of Star was selling his stock in the company and to avoid insider trading rules; do you remember saying that?

A I don't recall saying that

Q Sir, would you turn to Page 6 of the document? Actually, I'm sorry, start with Page 5, the very bottom.

A Okay

Q There's one line on that page, "When Williams was asked " Do you see that?

A Yes

Q Please read that paragraph It goes over to Page 6 Read the whole paragraph to yourself, please

(Witness perusing document)

A Okay

Q Having read that paragraph, does it refresh your recollection about the things -- I'll ask you again if you don't remember what I asked you.

A Ask the question

Q I'll ask the questions again. Do you remember telling the prosecutors when they asked you why you did not just sell your shares and gift them to the children, that you said the benefit of gifting Star stock to your kids was that the restrictions on the shares were removed?

A Yes

Q And that you would not have to comply with SEC, Securities and Exchange Commission, regulations or Star's company policies Do you remember saying that to them?

A I believe so

Q And do you remember saying to them that your motivation for gifting the shares to your kids and directing the sale of them was to avoid people knowing that the CEO of Star was selling his stock in the company and to avoid insider trading rules?

A I don't recall that.

Q So if the document says that, that was not true, you didn't say that

A I'm just saying as I sit here, I don't recall that

Q And this interview happened two months ago, right?

A It says so But I don't specifically recall that part

Q All we can ask is for your recollection, sir

A Okay

Q Now, on Sunday, this past Sunday, July 27th, the day before the jury was picked, trial started, you met with the government again, right?

A I did.

Q And they asked you about the McKeon loans and the stock transfers to your kids' trusts, right?

A This past Sunday?

Q This past Sunday

A I don't recall if they did or not

MR BURCK: May I approach?

THE COURT: Go ahead.

(Document proffered to witness)

BY MR BURCK:

Q Mr Williams, did you tell the prosecutors that you did not want the share transactions disclosed because there may be security law issues; did you tell them that? I'm not asking you to look at the document now, sir I'm asking you to tell me if you remember saying that to them.

A And the question again?

Q I'll do it again Mr Williams, did you tell the prosecutors on Sunday, less than a week ago, that you did not want share transactions disclosed because there may be security law issues?

A What kind of shares? That's a general -- I don't understand

Q I'm asking you whether or not you remember saying that

A Sorry to do this to you, but would you ask that question one more time, make sure I understand it?

Q I will Did you say to the prosecutors on Sunday that you did not want share transactions disclosed because there may be security law issues?

A I may have I don't recall sitting here

Q Okay Did you tell them that you did not know if it was a crime, but it could be?

A I don't recall as I sit here

Q Did you tell them that you knew what you did was wrong, and you were hiding it but you are not an attorney; did you tell them that?

A I don't recall that

Q Sir, could you look --

A I may have But as I sit here right now, I'm trying to answer your questions

Q Sir, the document that I provided to you, it is handwritten notes, but I'll proffer to you and to the Court that these are notes that the government provided us of a meeting between them and Mr Williams on Sunday

MR. DRY: The government will stipulate to the document

THE COURT: All right

BY MR. BURCK:

Q Please read the second paragraph, it is highlighted, to yourself

(Witness perusing document)

A I can't make out this writing

Q Okay So you can't read the --

A Would you read this?

MR. BURCK: Your Honor, with your permission? It is very short.

THE COURT: It is not in evidence If you all want to put it in, fine, you can read it all you want

MR. BURCK: Your Honor, we offer it

THE COURT: Okay

MR DRY: The government would object This is no way to refresh a witness's recollection. In fact, this wasn't even about the McKeon transactions

MR. BURCK: Your Honor, I would ask that Mr Dry is testifying here

THE COURT: I want you all to come up here a second.

(At Bench.)

THE COURT: Let me see it All right, I've got to read this myself I'm going to let you make your best attempt to read the highlighted, and then ask him the question.

MR. BURCK: Okay Thank you, Your Honor

(In Open Court)

BY MR BURCK:

Q So Mr Williams, to help you out, because I know it is handwritten notes provided by the government, I'm going to try to read this to you.

A Okay

Q "JW did not want share transaction disclosed because there may be security law issues Did not know if it was a crime but it could be Knew what he was doing was wrong and was hidding it," it is misspelled, should be "hiding it," "hiding it, not an attorney "

A What was this in relation to?

Q I wasn't there Do you recall saying this to them?

A I don't know in what context or what this is in relation to

Q Do you recall saying those words to them, or anything to that effect?

A I'm confused about that, because I don't understand what that's in relation to.

Q Okay Now, switching topics -- actually, before we switch the topic, on this immunity deal that you got, the one in May of this year?

A Yes

Q Which we read it, it is in evidence, we read it to the jury You got coverage for this case, for the McKeon transactions, for the stock transfer to your kids Right?

A Yes

Q You testified yesterday that you didn't ask for that That was additional immunities

A I said I didn't demand that

Q You didn't demand it?

A I didn't demand it I don't recall demanding that at all

Q Did you ask for it?

A I don't recall as I sit here I worked with the lawyers, my counsel

Q So your lawyers asked for it for you?

A I just don't remember exactly how it happened is all

Q But you didn't, it is your testimony that you didn't ask for it all or you just don't remember?

A My testimony is I did not demand anything like that

Q "Demand" is a little different than "ask." Right?

A I don't know if I asked for it

Q You don't know if you asked for it

A If I asked for it But I did not demand it

Q Okay So just so I'm clear, you don't know if you asked for immunity for a $10 million loan that you received from Mr McKeon in exchange for a transfer of stock, right? You don't know

A I don't recall I just know I didn't demand any of that

Q Okay And you are telling the jury that you didn't -- it wasn't something you were worried about It didn't bother you

A It was not something I was worried about I wasn't worried about those issues

Q You weren't worried about those issues?

A No

Q You weren't worried about those issues because you don't think it is a crime?

A I didn't think there was a crime there

Q So you don't think you violated insider trading rules?

A I don't think there was any -- I don't think there was any criminal activity there I don't recall that That's my view on it

Q Okay You don't think you committed securities fraud?

A I don't think so

Q And you don't think you committed any crime with any of these transactions?

A I'm not a lawyer I may have But I don't know that

Q So you are not sure, but you might have

A I don't think I did is what I'm saying

Q Did you ever tell the government that what you did with the McKeon loan and your stock transfers to your kids was wrong?

A I don't recall that as I sit here

Q So the only reason that you are sitting here today is because you got immunity to testify in this case; is that what are saying?

A I'm here today testifying because I've been subpoenaed to be here today to testify And I understand that I have immunity in certain areas from the government in exchange for my truth and cooperation, that they will not prosecute me in those areas for my -- and that's for me to be here and to cooperate and to tell the truth about any and all of these transactions or whatever happened.

Q So you are testifying because of your immunity in this case and in these other cases, right?

A I'm testifying, like I said, because I'm required to be here to testify But I am testifying with immunity in some of these areas where I may have legal exposure, and maybe -- some laws may have been broken. I'm not familiar with all of that

Q Okay Let's move on to another topic The shopping trip

A Yes

Q In April of 2011 You testified about that earlier, right? Yesterday?

A I did.

Q And you testified that Maureen McDonnell called you sort of out of the blue and said, "Take me on a shopping trip," more or less?

A She did Well, it was in connection with going -- she timed it with going to the event at the --
Q Timing of the event going to the --
A I think it was called the Union League Club in New York
Q Right So isn't it the case that you organized the entire shopping trip for Maureen and for Mary-Shea Sutherland, who was accompanying her; isn't that right?
A She called me and said --
Q I didn't ask you that I asked you, did you organize the trip for Mary-Shea Sutherland and for Maureen McDonnell? Did you organize the whole trip for them?
A Yes
Q Now, when you took Maureen McDonnell on this trip, she didn't make you any promises that she was going to help you do anything, right?
A She told me she was going to have me seated with her husband at the Union League Club that evening
Q Okay
A "Come up here so you can spend some time with the Governor and then we can go -- we will go shopping during the day And th[illegible]hat evening we will go spend time with the Governor "
Q So you understood you couldn't have access to the Governor unless you took her on a shopping trip; is that

what you are saying?

A I understood that the two were linked.

Q But you had flown with the Governor for five hours in October, 2010 on your jet, right? You testified about that earlier

A I did.

Q And you had actually texted him in February or texted actually his body man, as Mr Dry described it --

A Right

Q In February, and he arrived at your event for CigRx, didn't he?

A He did arrive at the event for CigRx.

Q So you are saying that in April, a month later, you had to pay, you had to buy Maureen McDonnell dresses in order to sit next to him at an event in New York; is that what you are saying?

A She was calling it a rain check.

Q That's not what I asked you

A Okay

Q Are you testifying that in order to get to sit next to the Governor in New York at an event, you had to take her on a shopping trip?

A Absolutely

Q Absolutely

A That's my testimony

Q Okay Did she ever say to you at that event or in New York that she was going to get the Governor to do stuff for you in exchange for buying her dresses? Did she say that to you?

A No

Q Did she say to you that she was going to do anything other than seating you next to the Governor? Did she say she was going to do anything other than that for you in exchange for getting the dresses?

A She said she was going to arrange for me to be seated with the Governor and I would have time with the Governor

Q Okay

A And that was the -- I felt like that was the inducement for me to come to New York.

Q The inducement for you to come to New York?

A Yes

Q Okay To sit next to the Governor Okay You took Mary-Shea Sutherland shopping, too, right? Or she was there

A I didn't take Mary-Shea It wasn't my --

Q Was she there?

A It wasn't my understanding to take her shopping, but she was there She was present with Ms McDonnell

Q She was present with Ms McDonnell?

A Yes

Q Did you buy her a dress?

A I did

Q $1,600 or so?

A I did.

Q Did Mary-Shea go to the event that night, do you know?

A She did

Q Did she introduce you to somebody by the name of James Abel?

A If that was the catering -- there was a gentleman there that has a catering business But I don't know him. But she introduced me to someone

MR. BURCK: Your Honor, I'd like to publish just to the witness RM-0185

THE COURT: All right

BY MR. BURCK:

Q Can you just blow up the to and from line? Now, Mr Williams, this is an e-mail from James Abel to Jonnie Williams, Sr , cc-ing Mary-Shea Sutherland, dated April 15th, 2011

A Yes

Q Do you see that?

A I do.

MR. BURCK: Your Honor, we would offer this e-mail into evidence

THE COURT: It will be admitted.

BY MR. BURCK:

Q Can you blow it up? Thank you. Now, sir, I'm going to read the e-mail that's below, or the first e-mail on the page It is from James Abel, it is dated April 15th, 2011, 9:54 a.m. It is to jwilliams@starscientific com. That's your public e-mail address; is that right?

A Yes

Q It cc's Mary-Shea Sutherland, right?

A Yes

Q Anybody else cc'd on that?

A No

Q Okay The subject is: "Nice meeting you Jonnie " I'm going to read it to you. "Good morning Jonnie It was such a please meeting you at the Union League on Wednesday evening at the McDonnell event Mary-Shea and I had a wonderful dinner brain storage were are launch event I understand you are in New York often. I would love to set up a meeting and talk some real details as to how we can make this launch truly the most effective to your attendees I recently did a huge event for Stryker Orthopaedics You probably know of them. I am attaching some images of larger events that show the scope of what we do and how we can brand the event for you Enjoy your weekend. James Abel "

Above that is a forward from James Abel to you, Jonnie Williams Sr , same e-mail address, cc-ing Mary-Shea again, right?

A Yes

Q Did Mary-Shea Sutherland talk to you during that meeting or the shopping trip in New York about helping you launch your product at the Mansion?

A That evening when I met this gentleman at the Union League Club, he was someone trying to get business from us, and him and Mary-Shea were standing together when I was introduced to him. And I just talked to him for a few minutes Other than that, there was no conversation.

Q Okay Did you talk to Mary-Shea -- that wasn't quite the question I asked, but that's fine Did you talk to Mary-Shea in New York or in April, that time frame, about helping you launch your product, Anatabloc?

A That evening, I recall talking to both of them and told them that we were going to do a launch of the product, of Anatabloc

Q Okay, thank you Mary-Shea Sutherland was the Chief of Staff to Maureen McDonnell, right?

A Yes

Q And Maureen McDonnell was not present for those discussions with Abel and Mary-Shea Sutherland, right?

A No

Q All right

MR BURCK: Now, please publish for the witness only RM-2019

BY MR. BURCK:

Q Sir, you see that that's an e-mail dated April 18th, 2011 from Maureen McDonnell to you; do you see that?

A Yes

Q And the subject is "2008 Nutraceutical Healthcare"; do you see that?

A Yes

Q And attached to it is a series of pages of a speech written by Ms McDonnell

A I don't see that Okay

MR BURCK: Your Honor, we would offer into evidence RM-2019

THE COURT: It will be admitted.

BY MR BURCK:

Q Now, Mr Williams, you received this e-mail about one week after the shopping trip, right? Less than one week?

A Okay

Q Shopping trip was on April 13th, you received this on April 18th, right? That's what the document says?

A Yes

Q Okay And this is an e-mail from Maureen McDonnell attaching a speech or an article she had written about nutraceuticals, right? Go ahead and read the second page I'll read it to you to make it faster "Nutraceutical Healthcare, the'Life Insurance Policy You Can Cash In On When You Are Living " Second paragraph says I'm a work-from-home mom and I have been married for almost 23 years to a wonderful man. He is your Attorney General, Bob McDonnell " She goes to know to describe the rest of the family Then she talks in the last two paragraphs, "Probably every one of us here has wondered, or faced the question of what would happen if we were diagnosed with cancer At the age of 17 I discovered a lump in my left breast " She goes on to describe her experiences with nutraceuticals Do you remember receiving this document?

A No

Q You don't remember receiving this?

A No

Q Okay Now, you testified about a dinner you had, yourself and your wife, with the Governor and Maureen McDonnell on April 29th of 2011, right?

A Yes

Q Okay You testified that you and your wife brought a new gift to Ms McDonnell

A Yes

Q It was a Louis Vuitton --

A It was a wallet to match the purse from New York.

Q Okay And Ms McDonnell didn't ask you for that, right? That was a surprise

A My wife's suggestion.

Q But she didn't ask you, Maureen McDonnell did not ask you for that purse, right?

A No

Q It was a surprise

MR BURCK: Please publish for the witness only RM-0873 Actually, why don't you do the second page Blow up the middle You will have to show him the top so he can identify it

BY MR BURCK:

Q Sir, this is a Corporate Card Statement of Account from American Express, right? And it is prepared for Mr J R Williams, Sr

A Yes

Q You recognize this is your AMEX receipt or statement?

A Yes

MR. BURCK: Your Honor, we would move RM-0873 into evidence

THE COURT: It will be admitted

BY MR BURCK:

Q Now, the purse you bought on April 29th, 2011, it is there circled, right?

A Yes

Q And how much did it cost?

A $866 25

Q And you hadn't -- she hadn't asked for that, right?

A She did not ask for that

Q You just delivered it I want to talk to you a little bit about the loan discussion you had with Ms McDonnell You testified that she had asked you to come to the Mansion on May 2nd and you talked to her, she told you about her financial problems, told you about the financial issues with the real estate, right?

A Yes

Q And then you said yesterday that she said that she would help you if you gave a $50,000 loan to her, right?

A The way it was said was, she said she would help me but she needed me to help her

Q She needed you to help her But she did not say she was going to help you with getting the Governor to help you, right?

A She did not

THE COURT: All right This is a good time to break. We will take a 15-minute break for the morning so that you all can make your switch

(The jury left the courtroom.)

(Recess taken from 11:02 a.m. to 11:18 a m.)

///

THE COURT: All right Let's bring the jury in

(The jury entered the courtroom)

THE COURT: All right Mr Burck, you may proceed

MR BURCK: Thank you, Your Honor

BY MR BURCK:

Q Mr Williams, I want to talk to you about the Roskamp event You testified that Maureen McDonnell traveled with you or traveled down on your plane to the event, right?

A Yes

Q And Mary-Shea Sutherland was with her, right?

A Yes

Q And you testified that she gave some remarks at the event?

A Yes

Q Ms McDonnell gave remarks --

A Yes

Q -- at the event, right?

And were they long or short? They were short, right? Were they 10 minutes --

A Few minutes

Q -- 15 -- few minutes?

A Five minutes

Q Few minutes?

A A few minutes Five minutes

Q So just a few minutes

A Ten minutes Five, 10 minutes

Q And you testified that you asked her if she would like to make some remarks, right?

A I did

Q So there was no expectation going in that she was actually going to give a speech or anything like that, right?

A That's correct She was a special guest

Q And she mentioned that you said in this -- at this event a launch She offered to have people come to the Executive Mansion for a launch or Anatabloc; is that right?

A Yes

Q Do you know if Mary-Shea Sutherland told her to say that?

A I have no idea

Q So you weren't present for all the conversations between Mary-Shea and Maureen McDonnell, were you?

A No

Q Did you know that Mary-Shea Sutherland bought stock in Star Scientific the same day that Maureen McDonnell did?

A No

Q Because you testified yesterday that you learned that

Maureen McDonnell had bought stock in Star Scientific because she told --

A At the end of that meeting

Q At the end of that meeting?

A Yes

Q Because she told you about it, right?

A Yes

Q Or she asked you about the stock price?

A As we left --

Q Right

A -- she --

Q But you didn't know until I just told you that Mary-Shea Sutherland bought stock --

A No

Q -- in Star Scientific?

A No

MR BURCK: Please put up on the screen Government Exhibit 161 Blow up the --

BY MR BURCK:

Q Now, sir, you testified about this yesterday This was -- the attachment, actually, is from you to Governor McDonnell Do you remember talking about this document?

MR BURCK: Can you show the second page so that the witness can see it?

A Yes, I do

BY MR BURCK:

Q Okay Now the first page of this document is from Jerri Fulkerson -- who is your assistant, right? -- and it's to Mary-Shea Sutherland, right?

A Yes

Q And it's dated Thursday, June 16, 2011, right?

A Yes

Q And this is the letter you talked about where it sort of lays out what you want from the Governor, right?

A Yes I was responding to the request, is what this is

Q The request And you testified yesterday you weren't sure if it was Maureen McDonnell or Mary-Shea Sutherland who came to you and said you should draft a letter like this, right?

A I wasn't sure

Q You're not sure today?

A I'm not sure today

Q Okay So it could have been either one?

A It could have been

Q Okay

MR BURCK: You can take that down

BY MR BURCK:

Q I want to talk to you a little bit about your relationship with Mary-Shea Sutherland Okay?

A Okay

Q Do you remember calling her in June or so after the Roskamp event and talking to her over the phone?

A I don't --

Q Let me ask you this Do you remember speaking to her over the phone? Did you talk to her over the phone occasionally?

A Yes

Q Okay Do you remember telling her that she was the type of person you wanted working for you?

A I don't recall saying that But Mary-Shea is very professional, and I --

Q But you don't --

A -- respected her, but I don't --

Q You don't recall saying that to her?

A I don't recall saying that

Q Okay Do you recall telling her that you would pay her outside of her job with the State to help you?

A No

Q You did not say that?

A I don't recall saying that

Q Did you meet with her for breakfast in the summer of 2011?

A I did

Q Okay Do you remember at one of those breakfasts that you focused on her unhappiness and you told her that she couldn't fool an old Southern boy? Do you remember saying that?

A I had breakfast with Mary-Shea, but I --

Q Sir, before you explain it, tell me yes or no Do you remember saying that?

A I did not say what you just read

Q Okay Go ahead What do you remember about the breakfast? Go ahead

A I met with Mary-Shea for breakfast She wanted to talk to me And she expressed her unhappiness working for Ms McDonnell and that she would like to -- you know, she would rather be working for, you know, someone other than her Maybe our company

Q Maybe your company?

A Maybe our company

Q Okay And she told you that she was looking to leave her position as Chief of Staff, right?

A She said she was unhappy, and later she said she was going to leave no matter what

Q Okay And she told you that she wanted to go back to her position as an event planner for the firm Benedetti & Farris She told you that, right?

A At some point she did

Q And Benedetti & Farris, to your knowledge is an event planning company?

A It's a fundraising firm here in Richmond I'm not sure all of what they do

Q Okay

A But I'm -- I know the name

Q She told you that she needed an anchor --

MR DRY: Objection, Your Honor Hearsay

THE COURT: Go ahead and answer the question

Q She told you, Your Honor (sic), that she needed an anchor client to cover her salary Did she tell you that?

A I don't recall

Q You don't recall or she didn't say it?

A I don't know if she said that or not

Q You told her, did you not, that you were not interested in being her anchor client, but you gave her a different suggestion, right?

A If you can help me with --

Q I'm asking you do you recall --

A I don't recall that

Q -- saying that you were not interested in being her anchor client?

A No, I don't recall that

Q Didn't you tell Mary-Shea to talk to a man by the name of Jerry Kilgore about the law firm of McGuireWoods putting her on its staff?

A I had her talk --

Q Sir, I'm asking you did you say to Mary-Shea that she should talk to Jerry Kilgore about the law firm of McGuireWoods putting her on the staff?

A I don't recall whether I did or not

Q Jerry Kilgore is who?

A Jerry Kilgore is a -- one of my lawyers, and he's the former Attorney General

Q Of the Commonwealth of --

A State of Virginia

Q -- Virginia?

A Commonwealth of Virginia

Q And McGuireWoods is a law firm based here in Richmond?

A It is

Q It's your law firm that's representing you in this case?

A It is

Q Okay And didn't you tell her that the law firm would just charge you extra for putting her on the staff?

A I may have I don't recall that

Q Okay So you may have said that?

A I may have I don't recall

Q Didn't you tell Mary-Shea Sutherland at this breakfast meeting, or one of the ones that you had that summer, that you didn't just want her working on Anatabloc but for you personally?

A That was her suggestion, not mine

Q So she said that to you? She asked you? You didn't say that to her?

A That's correct That's my recollection She was unhappy where she was

Q Didn't you tell her that you did not have time to organize your own life and that with the work going on at your home in Richmond and all of your travel, you saw Mary-Shea Sutherland as the person to manage all of that for you? Didn't you tell her that?

A I don't recall if I did or not I may have

Q Then you went on to talk about your secretary, Jerri Fulkerson --

A Yes

Q -- right?

And didn't you tell Mary-Shea Sutherland that she wasn't going to be with you much longer?

A I don't recall saying that Jerri is still with me

Q But you didn't tell Mary-Shea Sutherland that Jerri Fulkerson wasn't going to be with you much longer, did you?

A I don't recall that

Q Didn't you tell her that Jerri Fulkerson -- "her" being Mary-Shea Sutherland -- didn't handle all that you needed covered?

A I don't recall that

Q Do you remember testifying about a meeting you had with Maureen McDonnell and Mary (sic) Huffstetler on August 1st, 2011?

A Yes

MR BURCK: Please show the witness -- or publish Government Exhibit 186 I believe it's in evidence It is in evidence

BY MR BURCK:

Q Now, sir, do you remember testifying about this document yesterday? This is a Mansion log of people who come in and out of the Mansion on August 1st

A Yes

Q And you talked -- the prosecutor showed you some names on this to orient you as to what time that meeting occurred between Mary Huffstetler, Maureen McDonnell, and yourself, right?

A Yes

Q Now, you see in sort of the middle of the document, about two lines up from the highlight, you see Mary-Shea, right?

A Yes

Q Okay And it says 9:04 she came in, and it looks like it says 17:34 that she left, right?

A Okay

Q It could be 12:34 It's hard to tell

A Yes

Q And you see further down the document, near the bottom it says 10:34, 11:31, and it says "Dr J Clore"?

A Yes

Q You see -- you testified about that yesterday, and it says "See Mary-Shea"?

A Yes

Q Now, the entry that you testified about yesterday, which is a little above that, it says 9:45, 12:14 -- in 9:45, out 12:45, Jonnie Williams, See 102 And I think that there's been -- that 102 is Maureen McDonnell, right?

A Okay

Q And Dr J Clore, though, is seeing Mary-Shea, right, according to this log?

A Yes

Q Now, do you know if these logs are 100 percent accurate?

A I don't know that

Q You wouldn't have any reason to know one way or the other, would you?

A No

Q Now, on that day, August 1, 2011, didn't you have lunch with Mary-Shea and Jerry Kilgore that afternoon?

A I had lunch with Jerry Kilgore and Mary-Shea at some point I don't know if it was that afternoon or not

Q So you don't know one way or the other whether it was August 1st?

A No

Q At this meeting, this lunch between Jerry Kilgore and Mary-Shea Sutherland, you asked Jerry Kilgore to handle compensation for Mary-Shea Sutherland, didn't you?

A I don't recall that I may have, but I don't recall it sitting here

Q At that lunch, didn't you decide with Jerry Kilgore and Mary-Shea that it would not work to have Mary-Shea working at McGuireWoods?

A I don't recall that

Q Now, this -- before we go on, the lunch that you recall happening -- it may have been August 1st, it may have been some other date -- happened at the Berkley Hotel here in Richmond, right?

A The Berkley Hotel At the restaurant in the Berkley

Q So you just testified that you don't remember if it was decided that she would not work at McGuireWoods, right?

A I don't recall that

Q Didn't you tell Mary-Shea and Jerry Kilgore that

Mary-Shea would return to Benedetti & Farris and that you would be the anchor client?

A I don't recall that

Q Didn't you shake her hand on the deal?

A I -- I don't recall shaking her hand on anything

Q When she asked you about compensation -- did she ask you about compensation?

A Don't recall having any conversations with Mary-Shea about compensation

Q Okay That's because you didn't want to talk about her compensation, right? Isn't that what you told her?

A I'm just telling you that I don't recall having any conversations like that

Q Didn't you tell her that you didn't want to talk about compensation because you're not worried about compensation?

A I don't recall anything like that

Q Didn't you tell Mary-Shea to just send the paperwork to Jerry Kilgore and you would get it all taken care of? Didn't you tell her that?

A I don't recall that

Q You had another breakfast with Mary-Shea thereafter, right?

A Yes

Q At The Jefferson Hotel?

A Yes

Q Here in Richmond?

A Yes I don't know if it was before or after or when it was, but I did have lunch with her

Q Didn't you tell her at that meeting that she would leave her job as Chief of Staff and that she would become your anchor client?

A I don't recall saying that

Q Didn't you tell Mary-Shea not to tell the Governor's office that she was leaving until after the luncheon event at the Mansion? Didn't you say that to her?

A I do not recall ever saying anything like that

Q Didn't you tell Mary-Shea to trust you and that you should only give them a couple weeks' notice -- "them" being the McDonnells -- instead of a month's notice, as she had suggested?

A I don't recall that

Q Didn't you tell her to stay in her job as Chief of Staff to Maureen McDonnell until you got Anatabloc launched?

A I don't recall saying anything like that

Q Didn't you agree with Mary-Shea that she would stay in her position until October 1st of 2011, about a month after the launch? Didn't you agree with her?

A I don't recall having that conversation with her

Q Sometime after these breakfasts and lunches, didn't you call Mary-Shea to tell her that because of your company's policies you could not sign a consulting contract with Benedetti & Farris?

A At some point I had a conversation -- if you would like for me to -- I'm trying to answer your questions as best I can, but --

Q I'm asking a simple question So --

A Okay

Q -- is that --

A Okay I'll just --

Q The question, I'll repeat it Did you tell her at some point after these breakfasts and lunches that because of company policies you could not sign a consulting contract with Benedetti & Farris? Yes or no

A I believe so

Q You believe you said that?

A Yes

Q And you told her that each month of her services to you should be invoiced and you would pay it out of your marketing budget? You told her that, right?

A I don't recall that specifically

Q Didn't you ask her to have Tom Benedetti of Benedetti & Farris call you and that while you couldn't sign the agreement with him, your word was something to take to the bank? Didn't you tell her that?

A I don't recall saying that

MR BURCK: I'd like to publish to the witness only RM-0009

BY MR BURCK:

Q Now, sir, is this an e-mail from Jerri Fulkerson to you on September 2nd, 2011, at 7:56 p m ? Is that right?

A Yes

MR BURCK: Your Honor, we offer into evidence RM-0009

MR DRY: No objection

THE COURT: It will be admitted

MR BURCK: Can you blow up the whole thing? Thank you And then start with the bottom e-mail, please

BY MR BURCK:

Q Okay Sir, I'm going to read from this The bottom e-mail is from Abigail Farris Rogers, Benedetti & Farris, right? That's the Farris?

A Yes

Q To jfulkerson@starscientific, Friday, September 2nd at 12:40 Subject: Contract for Benedetti & Farris And here's what it says

"Jerri, I was asked to forward this agreement so that Mr Williams could look at it today It is in reference to the services to be provided by Mary-Shea Sutherland "

Do you see that?

A I do

Q And then above that is an e-mail from Ms Farris to Ms Fulkerson saying, I typed your name wrong Please let me know if you got this one "

And then above that is an e-mail from Jerri Fulkerson to you forwarding this e-mail and an attachment, right? Do you see the attachment underneath that, "Star Scientific Agreement"?

A I do

MR BURCK: Please publish for the witness RM-1992-0001

BY MR BURCK:

Q Sir, can you read that okay --

A Yes Yes

Q -- or do I have to blow it up? Okay

Sir, this is a letter from -- on Benedetti & Farris letterhead dated August 23rd, 2011?

A Yes

Q And is it addressed to you, Jonnie R Williams, Sr ?

A It is

Q And is it from Benedetti & Farris?

A It is

MR BURCK: Your Honor, we would offer RM-1992-0001 into evidence

MR DRY: No objection

THE COURT: It will be admitted

MR BURCK: Objection?

MR DRY: No objection

BY MR BURCK:

Q Now, sir, I'm going to read this e-mail -- this -- sorry -- this letter to you

A Okay

Q "August 23rd, 2011 " Before I read it, do you recall that the Mansion event was on August 31st, 2011?

A Yes August 31st

Q August 31st, 2011 Okay So this is dated about a week earlier?

A Right

Q It's to Jonnie R Williams, Star Scientific "Dear Jonnie We appreciate the opportunity to work with you and your company We believe our combined unique experiences and skills will be an asset to your efforts Mary-Shea Sutherland will be the lead consultant for Star Scientific "

Now, do you recall that Mary-Shea Sutherland was still working for the Commonwealth of Virginia on that date of August 23rd, 2011?

A I believe she was at this time

Q And she was still the Chief of Staff to Maureen

McDonnell, right?
A I believe so
Q "Benedetti & Farris" -- sorry I'm going to continue to read

"Benedetti & Farris, (B&F), has been contracted for consulting and event planning services for your ongoing efforts B&F will offer strategic advice, organize, manage and produce events as directed For these services, B&F will be compensated as follows: $9,000 per month for the period of October 1, 2011, to September 30th, 2012 In addition to fees for services, B&F will bill back expenses incurred in relations to activities undertaken for Star Scientific, Inc , to include, but not limited to, overnight shipping, event costs, and travel expenses "

And there's some more in there, but I think that the point -- you can get the point of the letter, right?
A Yes
Q Okay Do you remember getting this letter?
A I don't recall seeing this letter
Q Okay Even though it was e-mailed to you by Jerri Fulkerson?
A Yes I just don't remember seeing this
Q Okay And the e-mail that -- this is RM-0009 This is dated September 2nd, 2011, right, the top?

A Yes

Q So Jerri Fulkerson sent you this e-mail with this attachment on September 2nd, 2011?

A As I said, I don't recall seeing this agreement

Q Okay

A I knew Mary-Shea wanted to come to work for us, but I think she got ahead of herself

Q Okay She got ahead of herself

A No one had agreed to any of this

Q You received a contract from --

A No I'm just saying I don't -- I don't recall that contract going there I recall it -- her approaching it a different way

Q Okay But you're not disputing that this contract was actually sent to you, right?

A Oh, I don't know if I received that or not

Q Okay

A I don't recall ever seeing that is what I'm saying

Q Okay You're not sure if you received it I got it Okay

A I didn't say I'm not sure I said I don't -- I just -- I don't believe -- I did not receive this I don't recall seeing this

Q Okay That's fine That's fine

But the e-mail says September 22nd, 2011?

A Yes

Q And that's two days, three days, depending on how you count it, after August 31; is that right?

A Yes

MR BURCK: Please publish for the witness only RM-1991

BY MR BURCK:

Q Now, sir, I'm going to tell you that this is an e-mail from Mary-Shea Sutherland to Jerri Fulkerson dated Friday, September 2nd, 2011 And it is -- the subject is "For Jonnie to read " Do you see that?

A Yes

MR BURCK: Your Honor, we'd offer RM-1991 into evidence

MR DRY: No objection

THE COURT: It will be admitted

BY MR BURCK:

Q Now, I'm going to read from this e-mail as well
Again, this is September 2nd, 2011 It's the same day as the Benedetti & Farris contract was e-mailed to at least your e-mail account This is from Mary-Shea Sutherland to Jerri Fulkerson, your assistant, and it says, "Can you print this and give it to Jonnie to read? Thanks "
It's from Mary-Shea to Jerri, right?

A Yes

Q "Jonnie, for your consideration PBS documentary

Idea 1) There is a filmmaker currently working on a documentary for PBS that has to do with Virginia agriculture and taking traditional products to new realms His name is Bob Griffith, and I can get you in to talk with him Your story is great and he could be convinced to include Anatabloc in his film

Idea 2) Fund your documentary (PBS only takes funded projects) According to our film office, it would be around $500,000 for a 30 minute program, and I have contact with the man that made the documentary on Virginia wine and had a lot of succes with getting national distribution Think about it, and I'm happy to discuss ideas anytime, exclamation point Mary-Shea Sutherland, Chief of Staff, Office of the First Lady "

Did you receive this document?

A I know about it It may have been read to me by my secretary, but I know about this

Q That was her practice, to read to you --

A A lot of the times she would just read it to me

Q Okay So you recall this document?

A I do

Q And did you have an agreement with Mary-Shea Sutherland to help you find ways to help you promote your product?

A No

Q No?

A No

Q So what was this -- what did you understand this e-mail to be about?

A This was Mary-Shea offering to introduce us to someone that produces documentaries I didn't pay much attention to it

Q To do a documentary about Virginia or about Anatabloc?

A About -- Anatabloc would be included is what I'm understanding from what I just read here

Q When she says "according to our film office," do you have any idea what she's talking about?

A Let me look at that again I don't know

Q Wasn't it about the film office that works with the Office of the Governor? Isn't that right?

A I don't know that

Q Okay

A But I remember -- I remember hearing about this

Q Now, sir, Mary-Shea Sutherland left her position as Maureen McDonnell's Chief of Staff sometime in around October of 2011?

A I'm not sure Sometime that year

Q Okay But it was after the launch event, right?

A Yes

Q Didn't you tell Maureen McDonnell, in sometime around September of 2011, that Mary-Shea had been approaching you for a job?

A I did

Q And you told her that because you didn't want Maureen McDonnell to find out only after Mary-Shea had left, right?

A That's correct

Q Didn't you tell Maureen McDonnell that you didn't think that what Mary-Shea had been doing was appropriate?

A I didn't comment on it I don't recall commenting on that

Q Didn't Maureen McDonnell get upset when she found out that Mary-Shea had been negotiating with you for a job for months and she had never known about it?

A She had mentioned that she had heard Mary-Shea was talking to other relationships that they have at the Governor's Office about finding work

Q And was she happy or was she upset about that?

A She was upset

Q And was she upset when she heard from you that you had been talking to Mary-Shea as well?

A Yes

Q Didn't you exchange a number of texts with

Ms Sutherland during those several months over the summer of 2011?

A I don't recall how many

Q Didn't those texts make very unkind comments about Maureen McDonnell?

A From me?

Q From you

A I don't recall

Q Didn't you tell Mary-Shea Sutherland that you really wanted her to be helping with your life?

A With our company

Q So you didn't say that you really wanted her to help you with your life?

A She had offered She says, "One of the things that I could do" -- Mary-Shea was unhappy and she was trying to get a job with us, and it was awkward for me She was helpful to us being at the Governor's Mansion, but she was unhappy and she wanted to leave and she wanted to come to work for us

Now, I have a great respect for Mary-Shea Mary-Shea is very professional I would have liked for Mary-Shea to have been helping our company, but it just -- that did not happen That was my view of Mary-Shea

Q So all those breakfasts and lunches that you met with her and talked to her about coming to work for you in one capacity or another --

A Yes

Q -- you weren't really that interested, right?

A No I was interested in her I was listening to what she had to say And it's like in one of those lunches with Jerry Kilgore and myself at the Berkley, she made the comment that "It makes me sick to go to work there and I'm leaving No matter what, I'm leaving my job "

Q Right

A So -- and I just listened

Q And the person she was upset with was Maureen McDonnell, right?

A She was

Q She didn't like working for Maureen at all, right?

A Not at all

Q And then you went to Maureen and told her, "Oh, by the way, I've been talking to Mary-Shea for the last several months and she's looking for a job with me," right?

A At some point --

Q Sir, answer --

A Yes

Q -- my question Did you do that?

A Yes

MR BURCK: I'd just like to offer a couple of documents into evidence, sir -- Your Honor, without asking questions about them

Please publish for.the witness RM-0523

BY MR BURCK:

Q Sir, this is a document produced by your lawyers, and it is the -- the front page of it is a summary of expenses, and attached to it are a number of invoices, and I direct you to the third to the last page

MR BURCK: Your Honor, I'm sorry I do have a few questions quickly on this

Before I do that, we offer RM-0523 into evidence

THE COURT: 0523?

MR BURCK: Yes, sir

MR DRY: What page is it? The whole thing?

MR BURCK: The whole thing, or we could just do the front page, RM-0523-0001 and RM-0523-0064

MR DRY: Are these all -- what Bates, JWS?

MR BURCK: JWS

MR DRY: Do the whole thing

MR BURCK: Okay I'm sorry

THE COURT: They will be admitted

MR BURCK: Thank you, Your Honor

Can you go back to the first page? Can you blow up the bottom of the -- not the whole thing Just the bottom, second to the last entry

BY MR BURCK:

Q Sir, do you see on that entry it says 7/26/2011?

A Yes

Q Martinair, comma, Inc ?

A Yes

Q $8,001 44 And it says, "Charter flight for doctors and First Lady McDonnell from Richmond to Baltimore for Anatabloc, slash, Johns Hopkins Symposium " Do you see?

A Yes

Q You went to an event called the Gibson Island event --

A I did

Q -- in that period, right?

A Yes

Q And that was to help promote Anatabloc?

A Yes, to the physicians To bring physicians from UVA, VCU And physicians from Johns Hopkins attended this symposium at Gibson Island that was being discussed by Dr Ladenson and Dr Mullan

Q Okay And the -- Mary-Shea Sutherland accompanied you on this trip, right?

A No I was in -- I was already there She didn't --

Q You were already there Excuse me

A -- accompany me

Q She was there? She attended?

A She came on one of the flights with the doctors

Q Okay These are your flights?

A On the -- I don't know if she was on the charter flight or on my plane I don't know

Q Okay Well, this -- this says, "Charter flight for doctors and First Lady McDonnell from Richmond to Baltimore for Anatabloc," right?

A Yes

Q Maureen McDonnell didn't go to that, did she?

A She wasn't able to, and Mary-Shea came in her place

Q Right But she did not attend, right?

A No

Q And these entries are made by your assistant, Jerri Fulkerson, based on information you provided her?

A Generally, yes

Q Okay And then if you turn to the -- it's the third to last page It's RM-0523-0064 Now, you'll see Martinair, and this is the invoice that corresponds to that entry And do you see the passengers?

A Yes

Q It says "John Clore, Mary-Shea Sutherland, Margaret Shupnik," right?

A It does

Q It does not say Maureen McDonnell, right?

A No

Q Okay Because she wasn't there?

A She wasn't able to attend

Q Okay And John Clore, he's a doctor from where?

A He's an endocrinologist at VCU's Medical School

Q Okay And do you remember --

MR BURCK: If you can flash up, please, Government's Exhibit 186 And if you can highlight the 10:34 entry and 11:34 departure of Dr J Clore

BY MR BURCK:

Q And this was dated August 1, 2011 So about five or six days after the Gibson Island event Do you see that it says Dr J Clore came to see Mary-Shea, right?

A Yes

MR BURCK: You can take that down Thank you

And also, just please publish to the witness RM-0618-0023 Sorry Just that page And -- thank you

BY MR BURCK:

Q Can you see that okay, sir?

A Actually --

Q It's very hard to read I'm sorry It's highlighted now so it's a little easier

A I see The Jefferson Hotel

Q Okay And before you start, this is a -- this is an expense report completed by your assistant, Jerri

Fulkerson?

A Yes

MR BURCK: Okay We offer RM-0618 into evidence, Your Honor

MR DRY: No objection

THE COURT: It will be admitted

BY MR BURCK:

Q And you can see the highlighted entries One says, "7/25/2011, AMEX, Jefferson Hotel, lunch with Mary-Shea Sutherland, assistant to First Lady concerning Anatabloc "

Do you see that?

A Yes

Q And then below it it says, "7/26/2011, AMEX Jefferson Hotel, lunch with Mary-Shea Sutherland, assistant to First Lady, concerning Anatabloc"?

A I see that

Q And then a few entries down it says, "8/17/2011, AMEX Jefferson Hotel, lunch with Mary-Shea Sutherland, assistant to First Lay, concerning Anatabloc," right?

A Yes

MR BURCK: Can you take that down, please And can you show Government's Exhibit 182, please, which has already been admitted into evidence Can you blow up the entry that says, "Breakfast with Ms McDonnell, Anatabloc meeting"? If you can just highlight that, that would also be fine Thank you

BY MR BURCK:

Q That says, "7/6/2011, AMEX, Berkley, breakfast with Ms McDonnell, Anatablœc meeting," right?

And it says it was for $52 69 --

A It does

Q -- right?

A Yes

Q Isn't it true that you had breakfast with Mary-Shea Sutherland that day and not Maureen McDonnell?

A I definitely didn't have breakfast ever, that I can recall, with Ms McDonnell at The Berkley

Q Okay And this is information that is provided to -- or the entries that are in this document is information that's provided to Jerri Fulkerson by you to fill out the ledgers, right?

A Yes, but it's not always accurate

Q Okay

A Sometimes we have -- there are mistakes with that

Q That's fine Understood Thank you

One other document to talk about

MR BURCK: Please show the witness RM-1117-0001

Q Now, sir, you're not on any of these e-mails

A Okay

MR BURCK: But I would offer this document into evidence

MR DRY: No objection, Your Honor

THE COURT: It will admitted

BY MR BURCK:

Q Sir, again, I'm just going to read this to you I have no reason to believe you've ever seen this document, but I just want to -- I'm going to read it into the record Okay?

This is an e-mail from Mary-Shea Sutherland It's dated August 16, 2011 It's to Adam Zubowsky, and it reads as follows "The lunch is with doctors and researchers from MCV, UVA, Johns Hopkins, and Roskamp Institute, along with Jonnie Williams, and a few others that are involved in the various research projects

This would be an occasion to bring all of the medical professionals together as they begin to start the studies at UVA and MCV on Anatabloc and its uses for reducing public health costs Johns Hopkins has done the bulk of the research and now UVA and MCV are going to further the studies The dates for the lunch was selected due to the launch of the product Does that help?"

Do you see that?

A Yes

Q Now, the question that she's answering in that e-mail on the prior page is from Adam Zubowsky

Now, you knew that Adam -- you met him during the Cognac incident in December 2009 at the Four Seasons? Do you remember?

A I met him at the Four Seasons

Q Okay So he works for the Governor, right?

A He does He's his aide

Q He's his aide And this is from Mary-Shea to the Governor's aide, right?

A Yes

Q And this is on August 16 of 2011, right?

A Yes

Q And it says, "Can you send me info on the fl lunch at the Mansion, the wtop day, so I can ask him Know he's going to ask for details Thanks "

A I see --

Q And Mary-Shea answers with the e-mail we just read, right?

A Yes

MR BURCK: You can take that down

Please publish Government Exhibit 250 It's already been admitted into evidence

BY MR BURCK:

Q Sir, you were asked questions by Mr Dry about this document yesterday Do you remember this?

A Yes

Q And this is an advertisement for Anatabloc from -- Rock Creek Pharmaceuticals presents Anatabloc breakthrough technology conference It's at the Westin Hotel in Richmond, Virginia Dated October 15th is the event And it says the featured guest is the First Lady of Virginia, Ms Maureen McDonnell, right?

A Yes.

Q Rock Creek Pharmaceuticals What is Rock Creek?

A It's a subsidiary of Star Scientific where Anatabloc is

Q It's owned by you?

A It's owned by the company

Q And -- you're right It's owned by the company You are the largest shareholder in Star Scientific and in Rock Creek Pharmaceuticals, right?

A I'm right up there

Q Okay This was a document created by your company, right?

A Yes

Q And it was your company that put the First Lady of Virginia, Ms Maureen McDonnell, on the advertisement; isn't that right?

A Yes

Q It wasn't the Office of the Governor, was it?

A No

MR BURCK: Can you please take that down and put up Government Exhibit 254

BY MR BURCK:

Q Again, similar to the last document, this is an advertisement, or advertisement, for -- from Rock Creek Pharmaceuticals for a breakthrough technology conference in Grand Blanc, Michigan And once again it says -- this is October 22nd Once again it says the First Lady of Virginia, Maureen McDonnell, right?

A Yes

Q And this was created by your company and they put her name on it, right?

A It is created by our company

Q And they put her name on it, right?

A Yes

MR BURCK: Please put up Government Exhibit 258

BY MR BURCK:

Q Once again, this is a document created by your company, putting -- actually, excuse me It doesn't put her name on it It's in California, right?

And this is an event that you testified about?

A Yes

Q And she did attend this event, right?

A She did

Q And her name is not on this because it was a last-minute decision, right?

A I don't recall that.

Q Well, didn't she plan to go to Salt Lake City for a Nu Skin convention at the time?

A I knew she was going there, yes

Q That's why she was traveling with you originally; isn't that right?

A I wouldn't have been traveling to go to a Nu Skin convention I'm not sure

Q You wouldn't be traveling to go to a Nu Skin convention Okay

MR BURCK: Well, can you publish to the witness RM-1262-0001?

BY MR BURCK:

Q Sir, this is a reservation form, Nu Skin, 2011 Nu Generation convention

A Yes

Q If you look below, it says something about guest information Do you see that?

A Yes

Q Weren't you planning to go to the Nu Skin convention with Maureen McDonnell?

A No She was planning for my wife and I to go, trying to get my wife to go I was not planning for it at all

Q Okay But it says Jonnie Williams on it?

A I had no intention of going to that convention

Q I understand you had no intention, but did you tell Maureen McDonnell that you would go? You did, didn't you?

A No

Q You didn't?

A No I stopped on the way back from Laguna Beach at Pelican Hill and dropped her off there and met -- she -- she arranged for a meeting with a couple of Nu Skin people there, and then --

Q Which you went to?

A -- I left --

Q Which you went to?

A -- at that point

Q You went to those meetings, right?

A No, no I didn't go to those meetings I just met with an individual there

Q An individual from Nu Skin?

A A doctor from there

Q Which --

A But I had not planned on going --

Q To the conference?

A -- to this Yes

Q But Maureen McDonnell introduced you to the doctor

from Nu Skin?
A No
Q Was it a social event?
A No It was a business meeting
Q And Nu Skin is a nutraceutical company?
A It is
Q And Ms McDonnell was receiving pay from Nu Skin; isn't that right?
A Yes, I believe so
Q And she had been -- she told you she had been receiving money from Nu Skin for many years, right?
MR DRY: Objection, Your Honor Hearsay
A I don't know how long or what --
THE COURT: Overruled
A -- what all of her involvement was with that
BY MR BURCK:
Q So you understood, did you not, that Ms McDonnell was free to take pay from private companies even though she's the First Lady of Virginia?
A That's what she said
MR DRY: Objection Objection, Your Honor He can't go --
THE COURT: Sustained
MR DRY: -- for Ms McDonnell's understanding
BY MR BURCK:

Q Sir, you understood that she could receive pay, right?

A She said she could

Q Now I want to talk about some of the gifts that you talked about that you gave the McDonnells You told us about the Rolex story?

A Yes

Q The Rolex And I think you said that Ms McDonnell saw the Rolex on your wrist at the meeting with Mary Huffstetler or --

A Yes

Q -- around the time of the meeting --

A Yes

Q -- with Mary Huffstetler --

A Yes

Q -- right?

A Yes

Q And she said, "Oh, I'd like that for the" --

A Yes

Q -- "Governor," and you said -- or you said -- she said that she'd like something like that for the Governor?

A Yes

Q And you said that, "Do you want me to get that for you?"

A Yes Or I said, "Are you ask" -- "do you want me to get you one? Are you asking me to get you one for the Governor?"

Q Okay And you did, right? You bought one?

A I did

Q And it cost about $6,000, right?

A Six or $7,000

Q And you testified that that made you very uncomfortable, right?

A It did

Q And you were very upset with the fact that you had to do this to get the McDonnells to do stuff for you, right?

A It was uncomfortable

Q It was uncomfortable Do you remember the Cognac in December of 2009 --

A Yes

Q -- at the Four Seasons?

A Yes

Q That cost $5,000?

A Yes

Q And you served that to Phil Cox and Adam Zubowsky?

A Yes

Q And your friend, Brad Kroenig --

A Yes

Q -- Kroenig, right?

A Yes

Q Were you uncomfortable then?

A No, because Brad likes it and people seem to like it

Q So if Brad had been with you and Maureen McDonnell, you would have been fine with the Rolex?

A Pardon?

Q I'm asking you You said that the reason why you were okay with the Cognac was because Brad likes the Cognac

So if Brad had been present for the meeting that you had with Maureen McDonnell and Mary Huffstetler or -- let's excuse Mary Huffstetler from the scene for the moment -- Maureen McDonnell and you, she saw the Rolex and she said, "Hey, can I have a Rolex for the Governor," if Brad had been there, you would have been fine with getting her a Rolex for the Governor?

A That's outrageous

Q I agree I'm just asking the question You said that the Cognac, you were fine with the Cognac because of Brad Kroenig, right?

A I'm having a difficult time connecting a drink to a Rolex watch

Q The drink cost $5,000

A I understand that But I'm just having a difficult time That drink was shared by a group of people, and that Rolex watch was for an individual And I'm sorry, I'm just having a difficult time --

Q I understand

A -- with that

Q So it's more the sharing aspect of it that's -- that's --

A It's more the disconnect of what -- of a watch to the Cognac I'm having -- I don't understand -- I don't understand that, sir

Q Well, the Cognac you were -- you bought in December in order to impress people, right?

A People like it It was -- I was entertaining them, yes

Q Okay. And actually, you -- you -- you testified about Cognac that you shared with the McDonnells and the Coxes a couple years after December '09 at a vacation that you invited the McDonnells to and the Coxes to, right?

A I did

Q And didn't you take -- you drank some, or you and Mr McDonnell, everyone except the wives --

A Yes

Q -- drank the Cognac, right?

A Yes, but it wasn't a whole bottle

Q Right But what was left you poured into the fireplace, right?

A It was a little bit left I was curious what it would do

Q Okay What did it do?

A I didn't want to drink any more of it so -- it flamed --

Q So that was about $2,000 just tossed into the fireplace?

A No No, no, no, no It wasn't $2,000 into the fire It was maybe a small amount of it It could have been worth maybe $50, or it could have been as high as a hundred dollars of what I did

Q Okay

A I was curious what it would do

Q Now, the Rolex, isn't it true that Ms McDonnell never said to you, "Hey, can I have a Rolex? I'd like to get a Rolex like that for my husband"?

She never said that to you, did she?

A That's not true

Q Didn't she tell you, after you had offered her the Rolex, that it was -- that was a little too much? Didn't she say that to you?

A No, sir, she didn't

Q All right Didn't you offer her a Rolex as a surprise for the Governor?

A I offered her the Rolex because she asked me to get it for her, and that's why I had it engraved, which she asked me to engrave on the back of the watch, sir

Q Isn't it true that Maureen McDonnell actually said to you you should actually return the Rolex because it was too much and her husband would feel uncomfortable with it?

A That's false

Q Didn't she tell you that she couldn't give it to the Governor in the way that you were giving it to her?

A She never had that conversation with me, sir

Q Didn't you tell her, "I can't return the Rolex because I've already had it engraved to the Governor"?

A I never said that

Q Now, you testified as well about a conversation that you said you had with Cailin McDonnell Sometimes I think you referred to her occasionally as Caitlin, but she's the daughter

A Cailin

Q Cailin McDonnell

A Okay

Q And you said that she called you and told you that her mom would buy you -- would buy her -- I'm sorry Excuse me Let me reverse that

She called you and said to you that her mom had told her, Cailin, that you would buy Cailin a car, right?

A Yes

Q That didn't happen, did it?

A No

Q The phone call didn't happen?

A No I wouldn't buy the car is what didn't happen, sir

Q Cailin McDonnell never said to you that her mom said that you would buy her a car That didn't happen, did it? That conversation never occurred?

A That's false It did occur

Q It did occur Cailin McDonnell said to you on that call that her mom said that you would sell Cailin a car, one of your Range Rovers Isn't that what happened?

A Sir, that young woman called me and had a car --

Q Sir, I'm asking --

A -- picked out at a dealership --

Q I ask you to answer my question

THE COURT: Let him answer the question

A She called me and had a car picked out at a dealership, I believe a Ford Explorer, and it was 18 or $20,000, and said that her mother said that I was going to pay for it and to call me so I can make arrangements to do it because they didn't want to -- she didn't want to lose the car so she wanted to get it done quickly

And I said to her, I said, "I appreciate all that your mother is doing for me, but I need to call your mother and talk to her about this "

That's what happened

BY MR BURCK:

Q This conversation occurred two years ago?

A It happened sometime maybe in the summer of '11 or something I don't recall a specific date, but it was back early on

Q Okay But you remember a lot of details of that conversation?

A I remember that I remember her daughter calling me and asking me to buy this car, and I was surprised

Q Okay So you remember a conversation from two years ago, but you don't remember what happened on Sunday of this week with the prosecution?

A Well, sir, I can remember -- there's some things in my life that are more outstanding events than others, and that was one

Q Meeting with the prosecution before you get on the stand to testify against Bob McDonnell and Maureen McDonnell is not one of those things that's really important to you?

A Sir, they are asking me a lot of questions This young woman asked me one

Q Okay

MR BURCK: Please publish Government Exhibit 3, which has already been admitted into evidence

Can you blow that up, please, so that it's easier for the witness to read it

BY MR BURCK:

Q Sir, this is the letter that you testified about This happened -- I guess you got this letter from Maureen McDonnell in 2013 after the investigation had come to light, right?

A I did

Q Can you read that letter line by line to us?

A It would be easier if you read it for me

Q Okay I can do that

I'm going to ask you -- I'll ask you some questions as we go along Okay?

It says, "Dearest Celeste & Jonnie I can't begin to thank you how special you made me feel on Cailin's wedding day and on our 35th wedding anniversary day all dressed up in the beautiful outfits you adorned me in on both momentous occasions, period I'm so happy we've been able to share so many significant milestones in our lives with you both, explanation point I truly hope your daughter will now be able to enjoy these lovely outfits and show them off on many grand occasions, period "

Sir, just stopping on that sentence because you were asked about that sentence yesterday You testified about one daughter you have, Rachel?

A I did

Q Do you have another daughter?

A Caroline

Q In that sentence you testified yesterday -- what does that sentence mean to you exactly?

A It means that she was -- she was happy about the dresses that I bought that she used for her -- you know, part of the wedding That dress and another dress for her anniversary

Q And just focusing on the "I truly hope your daughter will now be able to enjoy these" --

A "I truly hope your daughter will now be able to enjoy these lovely outfits "

I thought she meant Rachel

Q Okay And let me ask you, does that sentence say that you had -- she had discussed with you previously returning the dresses to Rachel or your other daughter? Does it say that you discussed it previously?

A "Will now be able" -- I don't see that

Q Okay Let's keep reading "If not, I'm sure there are many exemplary charitable organizations like we talked about who would welcome the opportunity to auction them for a wonderful cause, having been worn only once by the First Lady of Virginia to her daughter's wedding at the Executive Mansion and celebrating her 35th wedding anniversary with the Governor "

Okay That's a long sentence so let's break it up Start with the beginning "If not, I'm sure there are many exemplary charitable organizations like we talked about "

Had you ever talked to her about charitable organizations?

A No

Q Maureen McDonnell

A Other than attending an event at Cure By Design, an auction, I don't recall ever having a conversation with her about any charities to donate dresses to

Q Did you talk to her about Cure By Design? You were there Did you talk to her about it, Cure By Design, at any point?

A I was at Cure By Design

Q Right So you probably talked to her about it, right?

A I don't think you can donate dresses to Cure By Design

Q That's not my question, sir Did you talk to Ms McDonnell about Cure By Design, a charitable organization?

A That's the cancer society event

Q And it's a charitable organization, right?

A I assume it's charitable

Q Okay And Cure By Design, do you know what "By Design" means?

A I'm having trouble with this

Q Okay

A Okay? I'm having trouble with what you're doing with this letter right here I'm just being honest with you

Q That's fine

A Okay That is --

Q That's all --

A This is a fabrication right here, and I'm trying my best to answer your questions, but you're putting me in a very awkward spot to answer questions for something that's not true

Q Well, what's not true?

A What's not true is that this -- these clothes were never intended to be returned to me I purchased these clothes for Maureen McDonnell And either one of my daughters is a size zero These dresses were never intended to be given back to my daughters

Q I'm going to read the sentence to you again

A Okay

Q "If not, I'm sure there are many exemplary charitable organizations like we talked about" --

A But -- but -- but I'm having a problem with this, sir You're saying "if not " It's -- help me with this Because this implies that these dresses were intended to go back to one of my daughters, and I assumed it was -- one daughter is a school teacher that would never be wearing Oscar de la Renta dresses The other one is a fashion model for Ford in Los Angeles And so I'm just -- and she knows that

Q I understand

A Okay So I'm just -- I'm having trouble with you moving me around something that's not true I'm having a problem with it I'm sorry

Q Sir, I'm reading right from the letter and --

A I understand that

Q Sir --

A I'm trying to follow you, and you're just getting a reaction from me for the way you're handling me in asking these kinds of questions about something that's a fabrication

Q Okay You keep saying it's a fabrication I'm just --

A It is

Q Sir, I'm just trying to understand --

A Okay I'm sorry

Q -- how it's a fabrication Okay?

A Okay It's a fabrication because I purchased these dresses and went on this shopping trip because Maureen McDonnell asked me to do that

Q Understood, sir Sir --

A But they were not ever intended for my children

Q Sir, I'm just asking you a different question Okay?

A Okay

Q I'm asking you -- there are words written on this page Okay? You are aware, are you not, that Maureen McDonnell has been charged with obstruction of justice because of the words she wrote on this page, right? You're aware of that?

A I didn't know if this was the particular reason why No, I did not know that

Q The reason I'm focusing on the words is because she's been charged based on the words in this letter Okay?

A Okay

Q So I asked you a question about the -- the sentence before the "if not" where I said you -- where she wrote, "I truly hope your daughter will now be able to enjoy these lovely outfits and show them off on many grand occasions," right? That's what she wrote

And you agree that there's nothing in there that says you had a prior agreement or understanding that she would do that That's not what the words say, right?

A I'm just trying to follow you to understand this, sir You said you were going to break it down in parts

When it says, "I truly hope your daughter will now be able to enjoy these lovely outfits and then show them off," I'm saying how can my daughters, either one of my daughters, in -- how could either one of my daughters wear those dresses?

Q Okay That's what's in your mind?

A That's what's being -- that's what it says here I --

Q And I understand, but --

A Unless I don't read the words right, and maybe you can read it again for me, but it says --

Q Sir, I'm asking you a different question

A Okay

Q Does that sentence suggest that Maureen McDonnell and you had an agreement before to have her return the dresses to you to give to your daughters?

A Yes

Q To you it does?

A It does to me

Q Okay And then the next sentence, "If not, I'm sure there are many exemplary charitable organizations like we talked about who would welcome the opportunity to auction them for a wonderful cause "

To you that means that you had a prior agreement with -- or that she's saying you had a prior understanding or agreement to return the dresses so they could be auctioned for a charitable cause? That's what that means to you?

A That's what she's saying

Q That's what she's saying to you?

A She's saying that if your daughters don't want the dresses -- if your daughters don't want the dresses, donate them to charity She's returning them

Q Okay That's what she's saying?

A That's my impression

Q Understood

A I don't know I'm sorry I'm having problems with this one

Q Okay No problem We'll put that aside

MR BURCK: Take that down, please Thank you

BY MR BURCK:

Q Now, Mr Williams, you had a number of phone calls, texts, e-mails with Maureen McDonnell over the years you've known her, right?

A Yes, I have

Q Okay And your telephone number --

MR BURCK: Well, Your Honor, I -- just for privacy purposes, I'd rather not read it If I could ask just the government, I would like to move for entry into evidence of Mr Williams' telephone records

MR DRY: The government doesn't object as long as they are redacted for the last four Are they redacted?

MR BURCK: The last --

MR DRY: We stipulated to the authenticity and admissibility of the phone records I just --

THE COURT: Let's make sure we got the appropriate redactions, but I don't have any problem with the exhibit

MR BURCK: I think we do, right?

THE COURT: If you don't have it redacted yet, don't flash it up

MR BURCK: Okay, Your Honor Thank you Your Honor, what I'll do, then, is I will -- if I could give the witness copies?

THE COURT: Sure

MR BURCK: Thank you

(Counsel conferring with co-counsel)

THE COURT: All right Give him the paper copies and let's go on

MR DRY: And, Your Honor, we don't have paper copies here Could we not publish it externally but just to counsel?

THE COURT: Well, that's what I'm saying Don't publish anything until you're sure we got the redactions

MR BURCK: Yeah Your Honor, we won't publish it all We gave a hard copy to the witness, and that's it

THE COURT: Sure

MR BURCK: These are the government's records, actually So we're giving them just copies of their own records

THE COURT: Go ahead Ask your questions

MR BURCK: Thank you, Your Honor

BY MR BURCK:

Q So, sir, you testified that you had essentially a business relationship with Ms McDonnell?

A Yes

Q And that you didn't really have a real friendship with her or the Governor, right?

A I like both of them

Q You like them both, but they were not real friends, right?

A No This was something that was important to our company and important for me to -- to bring the credibility of Virginia to this discovery and this product and to have the testing done in the State of Virginia

Q Understood, sir I think you have in front of you the exhibits We've highlighted -- there are over 10,000 pages of records So what we're doing is highlighting certain days --

A Yes

Q -- so we don't spend the rest of the year here There's a day, May 25th, 2011, that's in front of you That day there are ten texts between yourself -- I thought we weren't going to publish this, okay -- ten texts between yourself and Ms McDonnell on that day

A Okay

Q Eight of those texts are between 1 a m and 8 a m Do you see that?

A I don't recall having any texts with Ms McDonnell from 1 in the morning until 8 in the morning I think this is incorrect

Q Okay So this is -- the government produced this to us So the government's production is incorrect?

A Whomever produced it, the recording of the times, to think that I had texts and phone calls with anybody other than one or two doctors that I wake up in the middle of the night when I have questions about science problems that they tolerate me for sometimes, I don't do this And I did not have these calls and texts during the middle of the night

Q Okay August 5th, I think there's a second set of -- sir, if you would take off the clip I'm sorry Because we're not publishing this, I'm going to have to explain to you what to do There's a second set of records there, and this is for the date of August 5th, 2011 On that date, there are 15 texts between you and Maureen McDonnell That's what the records show

A Okay

Q And they start at 2:20 and they end at 6:12 p m 2:20 p m and end at 6:12 p m , right?

A Let me make sure I have the right page here You're talking about the page number that says 15 here or -- and the top left corner it says in 001?

Q I believe that's right, sir

A Okay And you're asking me, on August the 5th, about the calls or texts --

Q Texts

A -- that day, right?

Q That's right I'm just asking the number I'm not asking you for the context I'm just asking the --

A How many of them are there or you're telling me?

Q You can count them I told you it was 15 You can count them if you want

A I don't disagree with that There's a lot of them

Q Okay And then if you take -- move to the next page -- the next document Put that one aside

A Okay

Q All right Thank you And then you'll see there's records from September 5th, 2011 Do you see that?

A This one says March the 6th, 2013 The second -- let's see We go from 5/25/11 to the next one is -- there's nothing highlighted until I get out to 9/22 with two on that day

Q Okay

MR BURCK: Your Honor, may I just grab the document?

THE COURT: Go ahead

A Pardon?

BY MR BURCK:

Q I just wanted to make sure I'll show you the right one

A Okay

Q Sir, if you -- now you'll see highlighted a series of texts dated September 5th, 2011?

A Yes

Q And you see that there are five of them between yourself and Ms McDonnell, correct?

A Yes

Q And they start at 9:51 p m ?

A Yes Texts or phone calls?

Q They are texts

A Okay

Q And did Ms McDonnell tell you that day that she had had a fight with Bob McDonnell?

MR DRY: Objection, Your Honor Hearsay

THE COURT: Overruled

A No

THE COURT: If he recalls

A No, no

BY MR BURCK:

Q She didn't?

A She did not ever discuss her personal relationship with the Governor either with me

MR BURCK: Okay I'm just going to hand up more documents I'm just going to identify the pages so that we don't waste time

THE COURT: All right

MR BURCK: Thank you, Your Honor

BY MR BURCK:

Q Now, sir -- sorry Now, sir, you have in front of you records of texts and phone calls between yourself and Ms McDonnell first on September 22nd of 2011, and this document shows that you had, on that day, you had 22 texts and 6 phone calls with her Do you see that?

A I'm actually taking your word for it

Q Okay You can flip to the next document I think that's right beneath that, and that should be from

December 4th, 2011, highlighted times

A Yes

Q On that day you had 52 texts, all in a 3-hour period with Ms McDonnell, right? That's what the records say?

A Yes

Q And you had one phone call with her, right?

MR DRY: Objection, Your Honor If the witness isn't even reviewing it --

MR BURCK: Your Honor, it's in evidence I'm just trying to speed it along

THE COURT: You can answer the question

The objection is overruled Go ahead and get through it

BY MR BURCK:

Q And then finally, on November 11 of 2012 -- it's also there if you'd like to look at it --

A Okay

Q -- there are records that you had on that day alone of 2 texts and 8 phone calls with Ms McDonnell?

A Okay

Q And then in total, would it surprise you to find out that you and Ms McDonnell had over 1,200 texts and telephone communications during the period of April 2011 through February of 2013?

A I was busy

Q With Ms McDonnell?

A I was busy texting or she was busy texting and talking to me There was certainly a lot of activity in those period -- that period of time

Q And it's your testimony that every one of those texts and phone calls was about Anatabloc?

A I would say that --

Q Sir, first answer my question and then you can answer Yes, were they all about Anatabloc?

A Every single one?

Q Every single one

A I can't say that every single one was

Q But most of them were?

A I'd say 95 plus percent had to do with the business relationship, or 98 percent

Q Okay I just want to go through a few additional things that you had testified to over the last couple of days Make sure that I understand your testimony

You testified that you had a call in December 2009 where you say that Maureen McDonnell told you that she would take a rain check on the trip to New York?

A Yes

Q And that phone call was just between you and Maureen McDonnell, right?

A Yes

Q There was no one else on the call?

A No

Q You testified that there was a call in April 2011 between yourself and Maureen McDonnell where you say she called in the rain check and asked you to go shopping in New York, right? You testified to that?

A She did

Q And it was just you and Maureen McDonnell on that call too, right?

A Yes

Q You testified that you met with Maureen McDonnell on May 2nd of 2011 where you say that she offered to help you in exchange for you helping her?

A That's --

Q And the Governor was okay with that, right?

A She said the Governor said it was fine

Q It was just the two of you in the room, right?

A That's correct

Q There was no one else there?

A No one that I'm -- that I recall

Q Did you record the conversation?

A No

Q And then when you testified -- you testified that when you delivered the checks of $50,000 for the loan and $15,000 for Cailin's wedding on -- in late May of 2011, you testified that you left your wife in the car for a bit?

A In front of the Governor's Mansion while I went in to take these checks in

Q So when you took the checks in, it was just you and Maureen McDonnell together in the room, right?

A I'm -- I'm not sure

Q You're not sure? You think there might have been another witness?

A I'm not sure if the Governor came over through the tunnel that day or whether I talked to him on the phone about when I delivered the checks

Q Okay So it was either you and Maureen McDonnell or you and Maureen McDonnell and the Governor in the room together?

A Yes I just don't --

Q There was no one else present?

A Yes

Q And you didn't record that conversation either, did you?

A I did not

Q You testified that before the McDonnells went on the trip to your home in Smith Mountain Lake that you talked to Maureen McDonnell about meeting with a representative from Bill Hazel's office, that you had a conversation with her about that?

A Yes

Q And, again, it was just you and Maureen McDonnell on that call?

A It was

Q Okay No one else was on that call?

A I don't believe so

Q And then, of course, the Rolex that we talked about, that -- that meeting where you said that she asked you for the Rolex, essentially, that was just you and Ms McDonnell together, right?

A Yes

Q Ms Huffstetler wasn't there?

A No

Q No one else was there?

A No one else was there

Q And you didn't record the conversation, right?

A I did not record the conversation

Q And then the conversation that we talked about with Cailin McDonnell where you say that she said that her mom told her that you would buy Cailin a car, right?

A That's correct

Q That was just between you and Cailin, right? There was no one else on the call?

A Not that I'm aware of

Q And you didn't record it, right?

A I didn't record it

Q And then the January 2012 discussion -- this is now the time period with the MoBo Realty loans --

A Yes

Q -- that discussion that you said that you had with Maureen McDonnell about the MoBo Realty loans in January --

A Right

Q -- that also was just the two of you, right?

A Yes

Q The conversation?

A Yes

Q Right No one else was present?

A No one else was present

Q Sir, I want to talk a little bit more about --

A Other than there was a phone call Whether it was '12 or when I was there at the Governor's Mansion and she got her brother-in-law on the phone --

Q Right

A -- that would have been the only time there was another person

Q Right That was a second -- that was a subsequent call to the one you testified about where it was just you and Maureen on the phone?

A Yeah I just don't recall at the moment I just wanted to make sure that --

Q Of course Yeah

A -- when I was telling you that I had only met with her on that one or another one, there was another person on the phone, I believed to be her brother-in-law, discussing the real estate problem

Q Thank you I want to talk to you just now about -- a little bit about your relationship, business relationship, as you've described it --

A Yes

Q -- with Maureen McDonnell

A Yes

Q Okay You would agree with me that you were closer to Maureen McDonnell than you were to Bob McDonnell, right?

A Yes

Q You were much closer to Maureen McDonnell than you were to Bob McDonnell?

A Much

Q You spent a lot more time with Maureen McDonnell than you did with Bob McDonnell, right?

A Yes

Q You traveled with her to Michigan in October of 2011 --

A Yes

Q -- right?

On your plane?

A I did

Q You traveled with her to Utah and California in October of 2011?

A Yes, with a group of people

Q I think you even took her to a luxury hotel in California at one point?

A The meeting was at Pelican Hill Resort

Q Right

A The event was I didn't take her there specifically

Q You also had her over to your home in Goochland several times, right?

A No We -- after lunch at Kinloch one day, my house was on the way home and she wanted to see it

Q And that was the only time?

A I don't recall any other time

Q Okay You also testified you took her shopping in New York, right? We've gone over that many times

A I did take her shopping in New York

Q And you bought her dresses, shoes, purse, personal items on that trip, right?

A I did

Q And I think that you testified that she was happy about the trip, but would it be fair to say that she was like a kid in a candy store?

A I don't know about the kid in the candy store But I would say maybe not just happy, but I would take it up to exuberant

Q Exuberant All right You told the FBI and the prosecutors that she was like a kid in the candy store, didn't you?

A Well, I'm -- exuberant may be more how I would describe that to someone But she was -- I mean, she was very -- she was -- like I said, she was very happy about that day, was my observation

Q We've already gone over the phone calls and summary, about 1,200, over 1,200 phone calls in that period?

A Yes

Q Do you know -- well, I won't ask that question That's not a fair question

How -- how -- would it surprise you to find out that Bob McDonnell and you exchanged, during that same period, 60 texts and phone calls?

A That's a lot to the Governor

Q Compared to 1,200 to Maureen McDonnell?

A I'm working with her on this project, but 60 to me to the Governor is a lot

Q You were working on her on this project; is that

right?

A I didn't say what you just said I was working with her You said I was working on her on this project, I thought you just said

Q I thought that's what you said

A This is a long process Maybe I made a mistake

Q Do you know how many calls you had with Maureen McDonnell in just April of 2011 when you first --

MR DRY: Objection, Your Honor If he wants to --

THE COURT: Sustained We've heard enough of this

MR BURCK: Your Honor, just one last comment on this and then we can --

THE COURT: Sustained Let's move on

BY MR BURCK:

Q You testified that you had a business relationship with Ms McDonnell, right?

A I did

Q And that you -- the 95 plus percentage of your conversations with her were about Anatabloc or business, the business of convincing the First -- the Governor and the First Lady to help out your company, right?

A I'd say the whole -- the whole relationship of what I was doing would be 100 percent Maybe it's not

95 percent, but it's high I don't -- I have a difficult time with the percentage part It may be just 100 percent

Q Do you remember back in August of 2011 there was an earthquake in this area of the country?

A Was it an earthquake or a hurricane?

Q It was both, actually

A Okay I recall that

MR BURCK: Your Honor, may I just show this to the government?

THE COURT: Go ahead

(Counsel conferring with co-counsel)

MR BURCK: Please publish RM-0532 to the witness Can you blow that up, please

BY MR BURCK:

Q Now, sir, this is an e-mail from Maureen McDonnell to you on August 23rd, 2011, right?

A I don't recall ever seeing this, but it's funny

Q It is funny And it's a week before the -- the Mansion event, right?

A Yes

Q Okay

MR BURCK: Your Honor, we offer into evidence RM-0532

THE COURT: It will be admitted

BY MR BURCK:

Q Sir, this is an e-mail from Maureen McDonnell to you on August 23rd, 2011, and it says, subject line, multiple explanation points, "I just felt the earth move and I wasn't having sex," multiple explanation points, right?

A It says that

(Counsel conferring with co-counsel)

MR BURCK: Your Honor, that's it for us Thank you

Thank you, Mr Williams

THE COURT: All right All right Before we get to Mr McDonnell's cross, this is probably a good place to stop right here, and we'll get started with that after lunch

You all come back at 2:00 We'll get started with the last cross-examination

(The jury left the courtroom)

(The clerk conferring with Judge Spencer)

THE COURT: All right Mr Burck, there were some phone records that we need at least an identification number --

MR BURCK: Yes, Your Honor

THE COURT: -- on those So we'll work that out with the clerk

MR BURCK: Yes, Your Honor

THE COURT: But we need to have something

MR BURCK: Absolutely, Your Honor I'm sorry I think that actually the document could have been admitted, but I wasn't sure because there are a lot of phone numbers That's why I stopped it

THE COURT: Right No, that's -- better safe than sorry

MR BURCK: Thank you, Your Honor

THE COURT: All right Thank you

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THE COURT: All right, let's bring in the jury, please

(The jury entered the courtroom.)

All right, Mr Asbill?

CROSS-EXAMINATION

BY MR. ASBILL:

Q Good afternoon, Mr Williams How are you?

A I'm fine

Q My name is Hank Asbill You and I have never met; is that correct?

A I don't recall ever meeting you.

Q Did you know that I wanted to meet with you and I wanted to talk to you before this trial?

A No.

Q Never heard that?

A That you wanted to meet with me?

Q Yes, that I requested through your attorneys an opportunity to meet with you before this trial

A Not that I am aware of

Q If you had known about it, would you have met with me?

A No.

Q You didn't hurt my feelings I don't have anything you want, do I?

A No

Q There is nothing I can do to help you in any way Correct?

A Let me go home.

Q On the other hand, my folks to the right here, these colleagues of mine to the right, they can help you and you met with them repeatedly, correct?

A Can't help me with what?

Q Help you with immunity

A I already have immunity

Q Right. They helped you and you have immunity

A I do

Q Okay Now how many hours have you spent preparing for your testimony in Court this week, total? All your lawyers, all their lawyers, total, what's your best guess?

A Prior to this week?

Q Until today

A Until today?

Q Right

A How much time have I spent with the lawyers preparing from the beginning?

Q Right

A Number of days, can I do it in days?

Q However you want

A I don't think any more than two weeks

Q Okay Is there any reason why you didn't ask to see copies of the reports of your prior interviews with the government?

A Is there any reason --

Q That you did not ask to see copies of the reports of interviews that you had with the government

A I don't know why -- I don't recall -- I didn't ask for that

Q No, I know I said, is there any reason why you didn't ask so you would be more refreshed in terms of your memory and you would be more prepared to more quickly answer questions here?

A I think the lawyers, the lawyers that I have retained are very experienced lawyers, and I think they have used their best judgment to prepare me to answer these questions And apparently, that didn't include what you just asked, was reviewing those documents

Q Well, you have answered many times during the course of cross-examination that you don't recall, can't remember things, correct?

A From time to time Some things I can, some things I can't The dates are difficult for me I can generally recall what happened.

Q You have trouble remembering what you have told the investigators before, right?

A I have a problem remembering the dates But if I could just tell you what happened in my own words, I think I'm good at that

Q Well, you have had trouble during cross-examination remembering whether or not you said certain things to the investigators or to the prosecutors at the various times, the six or eight times you met with them before this trial, right?

A I have had to relive all of this, and it is a lot of material And I think I've done my best with trying to work with the lawyers to be prepared with the questions

Q Okay You have testified a couple of times that you historically and presently have a little trouble reading; is that correct?

A Yes

Q And that's something that is a lifelong thing?

A Yes

Q And to compensate for that, has your memory been really good over the years?

A I generally don't have a problem with my memory

Q All right And you are really good at listening and retaining even if you are not good at reading; is that true?

A I could be a better listener than I am.

Q Does Anatabloc help with your short term memory?

A In mice it does

Q You have taken it before?

A I take it now

Q And does it seem to improve your memory?

A I don't think it has had an effect on my memory I don't think I have a problem with my memory for it to need anything to address any issues with that

Q Okay I want to ask you a series of sort of miscellaneous questions. I hope they are not too miscellaneous, but I have taken notes during your testimony when prior attorneys have been questioning you, and I'm just trying to go through some follow-up questions that I wanted to ask. And I may get back to some of these subject matters in more detail But you remember talking about the April 29th dinner at the Mansion?

A I do

Q Correct? Is that right?

A I recall

Q You recall that

A A question about it

Q You recall generally being questioned about it?

A Yes

Q Okay And do you recall at that dinner that my client was very tired and very distracted?

A I don't

Q You don't Do you recall him talking about what he had been doing earlier that day, going to funerals, going to disaster areas, things of that nature?

A I don't

Q Now, at the end of Mr Dry's examination of you on direct, he pressed you hard. And you remember when he pounded on the table, said, "Stop beating around the bush" when he was trying to ask you whether you thought you had done something wrong?

A I remember being pressed at the end of his examination. But I don't remember him beating on the desk or the table

Q That was not staged by Mr Dry, was it, to your knowledge?

A I have no idea

Q Well, when you were preparing to testify, did you answer that question a little more easily than you did in Court when Mr Dry had to press you on it?

A What question is that?

Q Stop beating -- you know, "I did not want someone to know I was loaning money to the Governor I thought it was a problem. It could be wrong I don't know that "

A I'm not a lawyer I don't know if it was what the laws are.

Q This is when you said the ends justified the means in your view

A I took a high risk and I felt like what I was doing to try to bring this product to market, the ends justified the means, and I said it was a bad decision. And it was

Q Now, let's see if there are any other notes I want to go over before I get into --

(Counsel perusing notes)

You talked about the Union League dinner And I want to get back to that in more detail, but I had a question of you. I believe you said this afternoon or this morning that at that dinner, you felt you had to do the shopping trip in order to get a seat at that dinner

A I said that I believed the two were connected. Maureen was calling for the rain check to go shopping, and she connected the time with being seated there with her and the Governor, and I connected that

Q Okay And that connection cost you $20,000? Is that right?

A Yes It cost me that plus the transportation.

Q Okay And you had in the past offered your plane to the Governor for various trips just like you offered it to other politicians?

A I have.

Q Is that correct? So you could have offered the Governor a plane ride somewhere and had him as a captive audience where you could talk to him directly, $5,000?

A Only if he was going somewhere

Q He was always going somewhere, wasn't he? Don't these governors always need plane rides somewhere?

A Sir, I don't know if he would allow me to go with him where he was going

Q If you provided the plane, don't you think he would let you ride along?

A If I called his office and said, "The next time the Governor goes on a trip, would you let me take him on the trip?" That's possible

Q Okay I want to talk to you about, just a minute, about the one aspect of the MoBo loan transaction with the Governor Would you please pull up Government Exhibit 2, which is in evidence Page 3 of Government 2 Do you see that in front of you?

A I do.

Q Mr Dry, I believe, moved that into evidence, that particular Page 3 of five pages of notes He put that into evidence yesterday?

A Yes

Q Okay And in the middle of that page, where it starts $50,000 --

A 50,000 shares

Q That's your handwriting?

A That is my handwriting

Q And above that, that's the Governor's handwriting?

A I think so.

Q Okay And below, the part that you wrote, that's the Governor's handwriting as well, correct?

A Yes

Q All right You can take that down And this was the discussion that you described in which room, which building?

A In the Patrick Henry Building in the conference room.

Q Okay And basically what happened is the Governor had a pad of paper when he came to meet with you?

A Yes.

Q All right And you took the pad of paper at one point in time and you wrote the things that you have just seen on that screen here?

A Yes.

Q And he wrote other things, correct?

A Yes.

Q All right And take a look at the legend at the bottom of that page now Show that again to him. See all the way down at the bottom?

A Yes.

Q Where it says RFM 1431-0003?

A I do.

Q And would you take my word for it that that means it is a document that has been produced by my client, Robert F McDonnell, to the government?

A Yes

Q So whatever your discussions were that day, Mr McDonnell made notes about it and he saved those notes apparently, and he produced them to the government, didn't he?

A It appears so

Q You don't have any notes of that conversation, do you?

A I don't have any notes of that conversation.

Q Right And would it strike you as odd that if that conversation were somehow memorializing illegal activity and was problematic from my client's view, that he would keep handwritten notes and turn them over to the prosecutors in this investigation?

MR. DRY: Objection, calls for speculation.

THE COURT: Sustained.

BY MR. ASBILL:

Q Let's talk a little bit about your first interview with the FBI This is the January 23rd interview And I believe we will give you copies of it There may be still copies on the desk There were copies before we broke for lunch up on the table I'm sorry Mr Burnham will give you some.

(Documents proffered to witness)

This is the report of the interview, at least according to the investigators who were there, Investigator Hagan and Investigator Kennedy, correct? Those are the ones who met you at your house?

A Yes

Q And obviously, they wrote up what they thought you said, and it may or may not be accurate from your perspective, but in any event, I want to ask you some questions And if you need to refer to this document to refresh your recollection, please do so. Okay?

A Okay

Q And would you rather see it on the screen or rather see it in hard copy?

A Both.

Q Both. Okay Let's put it up on the screen. Just for the witness

MR. DRY: Your Honor, he needs to pose the question, then if he doesn't answer it, then let him review it

THE COURT: Go ahead and ask the question, but he will have that available in whatever format he needs

BY MR. ASBILL:

Q You were surprised they were at your door, right?

A I was

Q What time of day or night, do you recall?

A Afternoon.

Q And basically, what were you doing before they came?

A I was sitting in the den on the phone

Q Okay And when they came in, they sat down, started talking to you, and this was totally voluntary on your part, correct?

A I was trying to answer their questions

Q And when the questioning began, you wanted to know why they were there

A I did.

Q And you wanted to know whether or not you were a target of any investigation.

A I asked them who was the target

Q And you wanted to be sure it wasn't you. Right?

A I wanted to know who was the target

Q Who was the target of their investigation.

A I had no idea.

Q Okay With respect to the question of who was the target of their investigation, you know, where did you learn how to answer a question like that? Ask a question like that? Excuse me

A The Chairman and the President of the company is one of my best friends for 20 years, Paul Perito, and Paul is the Chairman of the Harvard Alumni for the Law School for

Harvard, and he is a former federal prosecutor for major crimes

Q I know Mr Perito.

A Paul is a very good friend of mine, but Paul and I have been working together for many years He is the Chairman and the President of the company And Paul is my business partner So when you are around Paul that many years, you are used to lawyers

Q Okay

A I'm used to lawyers

Q Are you also used to --

A Being with Paul

Q I know you are used to lawyers, but are you also used to being questioned in criminal investigations?

A I am not

Q Okay But you knew enough to ask them whether or not you were a target or the target, correct?

A I don't know where I learned that

Q Okay TV, maybe?

A It may have been TV

Q All right And they told you they wanted to talk to you about a variety of different issues

A Yes

Q And they started getting into those issues sequentially; is that correct?

A Yes.

Q Okay And you basically told them that you were the CEO of Star, right?

A Yes

Q And that you owned 10 to 15 percent of the company, basically?

A Yes

Q And that was like 11 million shares of Star stock

A Whatever it was

Q Well, what did you tell them?

A Whatever it is

Q Did you tell them 11 million shares?

A I don't recall exactly what it was

Q Why don't you take a look at the third paragraph of the first page of the document in front of you and see if it refreshes your recollection.

A It says that I --

Q Not what it says Does it refresh your recollection? You can read it and just see if it refreshes your recollection about what it may have said.

A I just did.

Q Okay

A That's what I told them. I didn't give them an exact number I believe that I probably said that

Q And what were --

A I didn't have specific numbers, but that's close

Q Close enough.

A Close enough.

Q Okay I mean, it is not something -- you keep track of how many shares of Star stock you own, do you not?

A I don't keep close track of it

Q Well, I mean, you keep pretty close track, right?

A I don't keep pretty close track of it

Q What's within a ball park, a million shares more or less?

A A million two or three

Q So 11 million would be a reasonable estimate?

A Reasonable

Q Okay And at that time, this is the 26th of January, 2013, what were 11 million shares of Star worth?

A I believe 20-some million dollars

Q Okay And at various points in time in the life of Star, what would the 11 million shares have been worth, high, low?

A Anywhere from five-and-a-half million to 50 to 60 or 70 million.

Q All right Ar[illegible] u were shown some SEC Form 4's

A Yes

Q Correct?

A Yes.

Q All right And when they went over those forms with you and you realized that they related to you, you started to get the idea that the investigators were looking into possible securities fraud or securities problems, right?

A I wasn't sure

Q Well, they started asking you about your Form 4's

A Right

Q And you know they are there and they are criminal investigators

A Yes

Q And they want to talk to you about a variety of issues

A Right

Q They give you a document with your name on it It didn't dawn on you that they were suspecting some securities problems, looking into securities problems that you may have committed?

A Not right away, because I had asked them who it was that they were after

Q And did they --

A In the beginning

Q And did they mislead you and tell you that you were not a possible target?

A They did not say I was a target

Q Did they say that you were not a possible target?

A They didn't say I was a target They said they had some questions they wanted to ask me and they were just, they were interested.

Q Okay And as the interview went on, it became more and more clear to you that you might be one of their targets, if not the target, correct?

A It became clear to me who a target was when the State Policeman asked me would I wear a wire

Q It didn't dawn on you before then when they talked to you about various securities issues and talked to you about the Starwood Trust issues, tax issues related to that, before they got to talking to you about the McDonnells, that you were not possibly in the line of fire here?

A I think they were trying to learn about it, and it could be a possibility that there was a problem. But I didn't know that at that point

Q Well, they asked you to talk to them about the Starwood Trust assets, correct?

A Yes

Q And you told them you wouldn't do that

A I told them I wouldn't do that?

Q You told them you wouldn't do it; isn't that right?

A May I look at this --

Q Sure, look at the second page, second paragraph, and see if that refreshes your recollection.

A I'll take their word for it

Q And you will take their word that you didn't want to discuss it?

A I don't remember it specifically, but it is there.

Q Okay They then asked you about this Mr McKeon that you said is a friend of yours, right?

A They did.

Q Okay He has various loan transactions with you or he had loan transactions with you that you have said today are north of $12 million, right?

A Yes

Q And McKeon, was he an investor in Star?

A He is an investor

Q Was he a member of the board ever?

A No

Q How long have you known Mr McKeon?

A Six or seven years

Q He is a friend of yours?

A He is

Q And in fact, he has a 70-foot boat in Florida that you pay for the dockage for and you get to use when you want?

A No, he left it there after he had bought a new one and had that for sale and just put it at the marina.

Q At the marina where you have property?

A No, at a marina at a country club that I belong to

Q Okay And you told him you know Mr McKeon but you were not sure what he did for a living Right?

A He is a private investor, but I don't know of all his business dealings

Q You could have said he is a private investor or a money manager just like you said in Court today, right? Or yesterday

A I could have

Q So you basically sort of dodged questions about McKeon, right?

A I don't feel like I dodged any questions

Q All right They started talking to you about loan agreements with McKeon, correct?

A His name is pronounced McKeon

Q McKeon. Excuse me I apologize

A Yes.

Q And they started talking to you about various loans that totaled roughly $10 million, correct?

A Yes.

Q And whether or not you had repaid the loans?

A Yes

Q All right And you knew in fact that you had not repaid the loans?

A That's correct

Q And you knew that the loans were overdue, correct?

A It was basically a line of credit he had extended and there was no demand at that point

Q You had a deal with him basically where you got money from him and you gave him stock as collateral

A Yes

Q Correct?

A Correct

Q And the idea basically, in simple terms, was that you could pay the money back and get your shares back.

A That's correct

Q Right Okay And the deal was also that there was a time limit

A Yes

Q On the loan

A Yes

Q Right So if you didn't pay him back in time, then Mr McKeon could sell the shares

A Well, he would be -- he was required to make a demand before that in the agreements, I understand.

Q Is that what happened or did Mr. McKeon sell the shares?

A I don't know exactly what all he did with those shares. But it is my understanding that I could still get those shares back

Q Today?

A Yes

Q You don't know that the shares were sold long ago when the deadline for redemption passed? You don't know that?

A I don't know exactly what his number of shares, ownership, was But I understand he owns a lot of shares

Q If Mr McKeon sold those shares that you had pledged as collateral for the loans, you would be required to notify the SEC, correct?

A I don't know Because what I did with Latham & Watkins, the law firm in Washington, D C , is they prepared and handled the loan agreements And I believe it was their understanding that they were in forbearance and it was a line of credit

Q Well, the bottom line is that if the shares are sold, there has been a change in the beneficial ownership of the shares, correct? It is just simple

A I understand that, but the securities laws, if he sold those particular shares or he still has those shares, I just don't know, I'm not sure what the reporting is on that

Q Did you get the sense during the interview --

A Because I had legal counsel handle all of this at

Q Did you get the sense during the interview that they were concerned, the investigators were concerned that you had sold the shares, secretly sold the shares, basically, or let McKeon sell the shares, and you didn't report it to the SEC, which is why they are talking about Form 4's? Did you get that idea during this interview?

A It crossed my mind.

Q Okay And you told them you hadn't repaid the loan, right?

A I did say that

Q Now, they went through the various loans with McKeon, one, two, three, correct?

A Yes.

Q All right Then they started talking to you a little bit about Anatabloc and your company; is that right?

A Yes

Q And you told them that, in your view, that Anatabloc is probably the most important discovery since penicillin. Is that right?

A I believe so

Q And that's what you told them.

A Yes. I believe that now

Q All right And you told them that this was going to be a huge deal obviously, both medically and health-wise and financially

A Yes

Q Now, you also told them, did you not, that you had no loans with anybody other than McKeon; is that right?

A No loans of any kind?

Q Well, look down on that Page 3, three paragraphs up from the bottom, where it starts, "Williams stated. "

A Yes. Let me just read it just a second because it is like three or four sentences

(Witness perusing document)

Yes, I see it

Q So you told them that you have no other loans with McKeon or anyone else, correct?

A Any individuals Is that what that means?

Q I don't know Anyone else. You tell me what you thought it means

A I thought it meant any other individual

Q Was that true at the time? This is January 23rd.

A I don't recall anyone else that I owed any money to

Q All right They asked you about a company called JDS Limited Liability Corporation, correct?

A Yes

Q That deals in real estate in Virginia.

A Yes

Q Okay And you told them that JDS has three partners,

right?

A JDS started off with three partners, and now it has, the owners of that are, I believe, either three or four of my children.

Q Okay At the time of the interview, did JDS have three partners?

A At the time of the interview, JDS had -- I believe it was three of my children. The JDS, what did it stand for, was Jonnie, Donnie, and Sam, a friend of mine that's a lawyer in Boston. But it had, I believe it had three partners, which are three of my children.

Q Okay You told them that JDS stands for, you are the J, right?

A Yes.

Q And your brother, Donnie, is the D?

A Yes

Q And you told them that?

A That's correct

Q Then you had a friend, Sam, and you wouldn't give the last name

A Sam Sears, a lawyer in Boston.

Q You didn't give them the last name

A They didn't ask for it If they had asked me for it, I would tell them.

Q It says there, "Last name not provided," and that's not because you wouldn't give it to them?

A Not because I wouldn't give it to them.

Q Okay Now, they then got into a discussion with you about Jerri Fulkerson paying your bills, going over to the next page

A When you say next page, do you mean four?

Q Yes, sir

A Okay

Q Okay And they got into a discussion with you about Jerri Fulkerson paying a million-and-a-half dollars in gift taxes

A Yes

Q And this was gift taxes that you had to pay to the IRS?

A Yes.

Q Is that right?

A Right

Q And when they started to get into that topic, you told them that this was all about some accounting issue that went wrong and you had gotten rid of, you changed your accountants in Washington, D.C. to some guy whose name, some guy in D.C. that did your accounting work for you, but you couldn't recall his name but you now were working with someone in Fredericksburg, right?

A Yes I'm trying to think of the name of the firm in

Washington.

Q I don't really need the name now I'm just asking if you knew that

A I didn't remember it at the time

Q Couldn't remember the name of the accounting firm that made a million-and-a-half dollar mistake for you?

A No.

Q As we speak, do you remember the name?

A No. What had happened here was, B.J Haynes, an accountant in Northern Virginia, would review the returns and work with the accountants and he made a mistake And I had to pay a million-and-a-half dollars in gift tax because of it

Q What was the mistake that the accountant made?

A He exceeded the gift tax amounts that an individual is alloted, I believe That's my understanding

Q Well, let me go back to the lawyers issue for a minute You've got some very skilled lawyers who represent you right now in this matter; is that correct? From Steptoe & Johnson and from McGuireWoods

A I think so.

Q And in the past, corporate securities work, you have used one of the largest and most prestigious firms in the country, Latham & Watkins; isn't that correct?

A Yes.

Q But when it comes to accountants, you know, they are not as good?

A I'm not saying they are not as good. They are not as large But I'm not saying they are not as good. B.J Haynes is a very sophisticated accountant, a tax lawyer, and a former IRS top agent in the United States He is very sophisticated. And he reviews my returns when the accountants are finished with it at the end of the year And he made a mistake

Q Okay

A The mistake from that cost me a million-and-a-half dollars that it shouldn't have cost

Q And did you go after him for that money?

A No, he is my friend.

Q Okay And it wasn't a problem with respect to you not providing accurate or timely information to him; it was all his fault Is that correct?

A I think he would tell you that

Q Okay They also talked to you about gifting stock to someone named Burton Haynes; is that correct?

A That's B.J Haynes

Q Same guy

A Same lawyer

Q This is the Certified Public Accountant and an attorney, right?

A Yes

Q And you said you had; is that right?

A Yes He is a friend of mine for 20 years

Q Okay And you also at one point in time gave gifts to Mr Haynes' daughter; is that right?

A I did.

Q And that's when she was getting married.

A I did.

Q Right And you like, do you not, in general, helping out young folks starting into business or starting into a marriage That's something you like to do, isn't it?

A I like helping anyone as far as people are concerned. I don't want anyone to have any problems I think I'm a compassionate human. But in this case, B.J Haynes had helped me with a lot of things over the years, and I was doing this to help him.

Q Okay

A He is a friend of mine

Q I'm not suggesting he is not. I'm just saying his kids were getting married and you gave them what, 20 grand worth of stock to help them get started?

A I think it was more than that

Q Okay

A I think it was much more than that

Q All right You also talked to the agents about having previously been fined by the SEC; is that correct?

MR. DRY: Objection, Your Honor We have gone over this before ,May we approach?

THE COURT: Come on up

(At Bench.)

MR. DRY: This was the issue that we filed the motion in limine on. The Court has already ruled.

MR. ASBILL: I'm not going any farther than this I'm not going into it in depth.

THE COURT: The objection is sustained.

(In Open Court)

BY MR. ASBILL:

Q Now, at this point in the interview, you decide that you probably should have legal representation; is that correct?

A I don't know if it was that particular point, but there came a point in the interview where I felt like I tried to be polite to them, but I was, it reached a point where I felt like I needed to call Washington to the lawyers

Q All right You were getting into possibly dangerous territory and you thought you ought to stop

A I stopped it at the wire on the Governor, sir

Q All right You asked them before they asked you about wearing a wire whether or not there was a grand jury impaneled? Right?

A I didn't ask that question. I didn't know that

Q Look at the bottom paragraph on Page 6 and see if that refreshes your recollection

A I don't recall that

Q You don't recall any discussion about whether or not there was a grand jury that had been impaneled?

A No.

Q No?

A No

Q You don't recall asking them any questions about how long the investigation might take?

A No, I asked them when did this start, when did this investigation begin.

Q You didn't have any discussion about federal versus state grand juries?

A No.

Q And the difference between the two?

A I have no idea the difference between the two.

Q My question was, did you ask them about it at the time?

A I did not

Q You did not So if they wrote that down, that would be inaccurate; is that right?

A Yes

Q Okay

A It would be a mistake

Q And you wanted to know whether other people were aware of the investigation?

A I did not ask that

Q Okay So that would be a mistake if they wrote that

A I don't recall asking that question at all

Q Did they tell you that several grand jury subpoenas had been served on financial institutions?

A I don't recall that

Q And did they serve you with a grand jury subpoena?

A It was a letter I don't know if it was a grand jury subpoena or not

Q Well, they gave you something and --

A Whatever they handed me, I sent to the lawyers

Q Okay I want to talk to you, move to a different subject matter, and I want to talk to you about some just sort of timeline issues

A Yes

Q Okay?

A Okay

Q Then I just want to make sure I have this straight And please correct me if I am mistaken. You first met the Governor when he was Attorney General; is that correct?

A Yes

Q And can you give me the month and the year?
A 2009, I believe.
Q Sometime in 2009?
A I think so
Q Okay And fast forwarding a little bit from whatever that was, in December of 2009, he had been elected Governor; is that correct?
A He was Governor-elect at that point
Q He was Governor-elect at that point in December of 2009
A Yes
Q That's when you all had this Four Seasons event in the restaurant off to the side of the lobby of the Four Seasons?
A Yes
Q Okay And you come up there and people have talked about the Cognac, et cetera, but in any event, your appearance at the Four Seasons that day or that night was not because you talked to my client, right?
A No It was to see your client
Q Right But you didn't talk to him about coming up there and meeting him. You came to see him, but you didn't talk to him about coming up
A No.
Q And how did you get there and how did that all

happen? I don't mean how did you get their physically

A Through Adam Zubowsky, an aide to the Governor

Q I believe just,for the record, it is Zubowsky

A I'm sorry

Q And he is an aide to the Governor And you had met Adam before when you first met the Governor when he was AG? Or when he was running for office?

A Somewhere through there, somewhere prior to that, I had met Adam.

Q You had met Adam once with the Governor for about twenty minutes at a private airport?

A Here in Richmond at the FBO facility

Q And you had an opportunity at that point to chat a little bit with the Governor and Adam about your company?

A Yes

Q About twenty minutes or so?

A Yes. Before they took off on a flight in my plane

Q So that's how you knew Adam; is that correct?

A Yes

Q Okay And in the meeting in New York, or the reason that the McDonnells were in New York was what?

A I'm not sure if it was a Regional Governors' Association meeting, I mean a Republican Governors' Association meeting I'm not sure

Q You think to the best of your recollection it was an

RGA meeting in New York?

A It possibly was

Q And you wanted to come up and attend some of that or try to attend some of that?

A No, I just wanted to come up and have an opportunity to meet with the Governor there

Q Okay So you call Adam and you get that opportunity

A Yes, I do

Q Is that right?

A Yes

Q Okay And you have, you see him that night, and what do you do during the day?

A What did I do during the day?

Q Yes

A That day?

Q Yes

A I don't remember

Q Do you remember taking a cross-country -- I mean, excuse me, how did you get up there, just from Richmond to New York?

A I took my plane

Q Okay And at this event in restaurant/bar, whatever --

A It was a restaurant

Q That's when you were talking to Ms McDonnell about the dress issue; is that correct?

A That's correct

Q All right And as you have described it, you sort of tried to dodge the issue of whether or not you were going to have to buy the dress You were hoping you wouldn't have to --

A I was hoping I could borrow one.

Q You were hoping you could borrow one basically, but your plan was not to buy one.

A That's correct

Q That's what you wanted when you had this conversation.

A Absolutely

Q All right And you said that my client heard some or all of that conversation; is that correct?

A No, your client heard the part where Ms McDonnell turned to him when I'm seated beside her and she said to him, "Jonnie is going to get me a dress for the inauguration."

Q Okay And shortly thereafter, my client's lawyer, his counsel, Jasen Eige, made it very plain to you, "No way "

A He called me and said, "Jonnie, you can't buy the dress " And I said, "Thank you very much."

Q Right He said, "This is not something in terms of an image that we want to portray in the midst of a recession."

A No, he didn;t say that

Q He didn't say it looked bad in a bad economy?

A No, that's what Maureen McDonnell said. He just called me and said, "Jonnie, you can't buy the dress " And I said, "Thank you very much."

Q All right So he didn't give you any reasons, he just said no.

A He said "That's not --" "You can't do it "

Q "No way "

A He just said, "You can't do it," and that was good enough for me

Q And this was good enough for the Governor, too, I guess, right?

MR. DRY: Objection.

THE COURT: Sustained.

BY MR. ASBILL:

Q Fast forward from December, 2009, did you have any contact with my client until October of 2010?

A I don't recall any

Q So ten months or so before you have any contact with my client again. Is that correct?

A Yes.

Q And that would be this California trip where

Mr McDonnell goes to give a million-dollar check from the Republican Governor's Association to Meg Whitman?

A He took my plane to California and I caught a commercial plane When I finished what I was doing, so I would be able to have the time with him to come back.

Q And did you tell him -- so you didn't fly out with him. You just intercepted the plane in California?

A I just let him use the plane and I flew to San Francisco and had the plane come from Sacramento to pick me up and went back and picked up the Governor

Q Okay Did he know that you were flying to California to meet him for the plane trip back or did you just show up for the return trip?

A I don't know

Q You didn't arrange anything with anyone about meeting him there to fly back with him. You just did it

A Somewhere through the office, I believe my secretary let them know But I don't have the specifics of that

Q Okay But you never talked to him directly about it. You just came out to meet him and take a shot at riding back with him, right?

A Well, it was my airplane

Q I understand. But he was on it and you wanted to have a chance to talk to him, right?

A It was a safe -- it was not a risky flight to San

Francisco that I would be able to come back with him.

Q Since you owned the plane

A I did. Yes, it wouldn't leave without me

Q Okay All right And on the plane ride back, you know, you basically told him the same story that you spent 90 minutes yesterday telling Mr Burck, right?

A I spent more than 90 minutes telling that story

Q I know Yesterday was the Reader's Digest condensed version, right?

A No. Yesterday, that gentleman asked me about what I've been doing, and the flight from Sacramento wasn't about what I have been doing, it is about Anatabine, until he fell asleep And then when he woke up it was Anatabine again.

Q So you never got around to telling him your story about, you know, being an entrepreneur in five different companies and where you grew up and all that

A He knows that I am from Virginia, somewhere through here, that doesn't take 90 minutes to do that I was trying to answer that lawyer's questions yesterday, and I didn't know what to do with all of that

Q Okay In any event, aside from whatever time he spent sleeping, you spent four or five hours chatting him up about your company

A I was more than chatting I was working I was making sure that he knew the material I was comfortable that he knew the material because the State Policeman on the plane, he knew the material when I had finished.

Q I'm sure the pilots did, too. They already knew, right?

A The pilots already knew it, but the State Policeman asked me if he could have some for his father I knew he understood

Q So it was a pretty potent pitch; is that fair?

A As well as I could do it

Q And basically, as I think you have described it, you said, or Bob said basically, "You ought to talk to my Secretary of Health, Bill Hazel "

A He didn't say that I asked him, "I need to talk to someone in the administration that's equivalent of HHS in Washington."

Q He said, "That's Dr Bill Hazel, Secretary of Health."

A He said, "I'll set that up."

Q So he said he would get you an opportunity to make your case to Hazel

A That's right That's great

Q Right?

A It was worth the trip.

Q And, it is something that you felt in all fairness, because you had a company that you thought was really significant and a product you thought was really significant, and, you thought you should have access to somebody in the Virginia government to hear about your company Isn't that fair?

A I thought that because I thought I had the capability in Virginia, I was very proud of this, I thought this was an important discovery with our company and I actually thought it would lower the healthcare costs in Virginia And I still do

Q Okay Bob McDonnell didn't disagree that you should get an opportunity to meet someone to talk about that, did he?

A That's correct

Q And he set that up

A He did.

Q And said, "Call Hazel and get up with him and talk to him about it," right?

A I don't know if he said, "Call Hazel" or someone, I don't know how it was facilitated, but Governor McDonnell assisted me in meeting with Dr Hazel, yes

Q Okay And Dr Hazel is a physician, right?

A He is an orthopedic surgeon from Northern Virginia

Q And he is a scientist, basically?

A I don't think he is a scientist He is an orthopedic surgeon from Northern Virginia.

Q But medical issues relating to your product are something that he would know much better than my client would know; is that fair?

A Yes, that's fair

Q He is the expert in those sorts of things, not Bob McDonnell

A Yes.

Q Okay So you have a meeting with Bill Hazel in November of 2010

A Yes.

Q Right?

A Yes

Q You got the access or chance to make your pitch that you wanted.

A Yes

Q And you got the opportunity to make it to somebody who was much more experienced in these issues than my client, right?

A Yes

Q And Hazel heard your story, told you it was interesting, but he didn't think it was ready for prime time yet; isn't that fair?

A I didn't think it was ready for prime time at that point It was a starting point for me to establish a line of communication with that person.

Q All right

A In the government

Q And that at this time, and he declined to take any action or he didn't say he was going to take any action relating to your company?

A I didn't ask him to

Q Okay And at this point, whenever this was in November of 2010, no personal gifts to anyone in the McDonnell family, no loans

A Nothing

Q Nothing

A Except some jet rides for whatever the Governor was doing

Q Okay Just like you had given to many politicians in the past, right?

A Just like politicians in the past Not usually California trips, because they are so expensive

Q Okay Now, December, fast forwarding from November, 2010 to December, 2010, the next month, no contact, right?

A Right

Q January, 2011, no contact

A Right

Q February, 2011, you have your CigRx event at the Jefferson Hotel here in Richmond.

A I'm making progress, yes

Q You are making progress And you call and get in touch with Adam Zubowsky And you knew how to get in touch with him; you had met him before

A I did, and I liked him.

Q And Adam basically, this was pretty late that same day, right, of the event?

A Yes

Q And Adam gets up with the Governor and basically asked if he will stop by for a few minutes and he does

A He does

Q He comes in, and whatever your event is, he comes in and he gives his, you know, sort of canned remarks that are supportive of Virginia business, et cetera, spends a few minutes and makes some nice comments about your company

A He did.

Q He did.

A It was wonderful

Q And this is what he should do, shouldn't he?

A That's what I felt like

Q Right He should support Virginia companies that are trying to make a difference not only in Virginia but around the country That's exactly what he should do.

A I agree with that

Q Okay Now, as we have talked about, that was coordinated with my client's staff, not with him directly Right?

A Yes

Q And nothing in February, no gifts, no loans, right? No gifts, no loans, as of February, 2011

A Sir, may I say something just a moment so I don't forget about it? You had asked me about the accountant in Washington and I had a block with it The accountant was Al Feit

Q Spell that for the court reporter

A F-E-I-T You said it was odd that I didn't know my accountant's name, and I've known Al Feit for many years And just so I can get that out of the way so I don't have to think about that anymore

Q If you forget something when I am asking a question and you remember it as we go forward --

A I'm just trying to answer your question.

Q That's fine If you remember something you have overlooked as we speak, please interrupt me and add it

A Okay

Q All right So at this point, February, 2011, no gifts, no loans

A Yes

Q Right Moving forward to March, 2011, no contact, no gifts, no loans Right?

A That's correct

Q Then we get to April, 2011 And I believe you have testified that Ms McDonnell calls you and asks you to take her shopping

A She did.

Q She did.

A She said, "Let's go to New York."

Q Okay And this was the rain check.

A Yes She said, "Let's go to New York and go to Oscar de la Renta."

Q Okay And you do not recall from back in December Mr Eige telling you that if you want to do something like this, you should wait until Bob McDonnell is out of office

A I don't recall -- I don't recall any conversations like that as I sit here But Ms McDonnell, I asked her was it okay "Is this okay to do this?" And she said yes, it is okay now that it was all about the inauguration. I took her for her word.

Q Whatever she says, you don't discuss it with my client, do you?

A She is the Governor's wife

Q Do you discuss it with my client or not?

A No.

Q You said a couple of days ago that you would never loan money to a man's wife without talking to him first, right?

A I wasn't loaning him money I was going to New York with him where I was meeting him and his wife.

Q You are making a distinction between buying a man's wife $20,000 worth of clothes and loaning it to her and you think one is okay not to talk to a husband and one is not?

A If I'm going to do something like that, I want him to know And how you can hide those shopping bags from someone, I don't know that day

Q Go back You never talked to my client about it before you go on the shopping spree, right?

A I didn't, but he was there in New York

Q He was in New York

A He was in New York They were staying in a hotel in New York, and I assume with all these shopping bags, what are you going to do with them? What are you going to do with all these bags?

Q You are making assumptions You don't have any personal knowledge about whether he knew about it or not, do you?

A I just don't know how you could hide it

Q Do you know from personal knowledge whether he knew about it or not? Yes or no?

A No

Q You told the FBI when you were interviewed, do you remember being interviewed by the FBI in July of 2013, July 1st of 2013?

A I don't recall the dates

Q That would be the second meeting

A But I think I can recall generally what I have told them people

Q Okay This is the second meeting We talked about the one on January 23rd down in Florida. Please stop me if I'm talking too fast So the second meeting that you had with investigators in terms of describing the shopping event, you told them that that day or that shopping event with Mary-Shea and Ms McDonnell was the most awkward moment in your life, didn't you?

A It was very awkward.

Q My question was, did you tell them that?

A It still feels awkward. I probably told them that But you said a moment ago --

Q Is there a question pending to you? Or is this just something that --

A I was going back to what you said a moment ago, if I thought about something that I could tell you.

Q Okay Tell me

A When you said, "Did you tell the Governor's wife that day you were taking her shopping to buy her a dress," well --

Q I said did you tell the Governor

A Did I tell the Governor I wanted to make sure that you understood that the Governor previously thought at the Four Seasons that I was getting her a dress She told him I was getting her a dress

Q Right Then his lawyer said no.

A I understand that But I'm just following up with it It shouldn't surprise anyone if she showed up with them. It is just a thought

Q You don't know whether he saw the bags or not, do you? You don't know whether he saw the contents of the bags or not, do you?

A I don't

Q Okay

A But you just happened to think of that

Q But the one thing you know for sure is that never in life from that moment until now did my client thank you for the 20 grand worth of stuff that you bought that day

A Now, that would really be awkward.

Q Yes Well, he didn't ever acknowledge to you anything about it; isn't that right?

A That's the truth.

Q All right Now, during this trip, I believe you, excuse me, the shopping spree, you quarrel with whether or not you told the interviewers that you thought Ms McDonnell was "like a kid in a candy store? Or is that not a phrase that you would ever use?

A It is a phrase that I would use, but in public like this, I think exuberant is a better choice of words

Q Let's go back to private with the investigators I want to know what you said to them.

A I may have said "like a kid in a candy shop." That wouldn't be unusual for me, to say something like that But not in front of a group of people

Q And you obviously were very uncomfortable about this shopping trip; is that correct?

A Yes

Q And as it progressed, you got more and more uncomfortable; is that fair?

A Yes.

Q But I believe you told the investigators that Ms McDonnell was strong-willed and relentless about it, basically, and you caved. Right?

A I caved.

Q Now, that night -- this shopping trip was in the afternoon, right?

A All afternoon, from 12 o'clock all afternoon.

Q Several different stores

A Three At least three

Q And at some point, Mary-Shea was with you all and Mary-Shea got herself a $1,500 dress?

A Yes

Q So the rough total is $20,000, 18,500 for Ms McDonnell and --

A I think 20,000 plus a dress that she got at Bergdorf came and it didn't fit right, so I called and bought another one and had it shipped there, so maybe it was a little more

Q You tell me, 22? 23? What?

A I don't know 20 or so

Q Okay That night, you sat next to my client at the Union League Club dinner

A I did.

Q And you had never discussed Anatabloc with him, did you?

A It wasn't the setting for that

Q My question was, did you discuss it with him at that dinner?

A No

Q And you certainly didn't discuss with him what you had been doing all afternoon with Ms McDonnell and Mary-Shea, right?

A No

Q Okay Now, I want to move forward from there, a little later in April, to the April 26th dinner at the Mansion. Okay? Let's talk about that And this was Maureen McDonnell invites you and Celeste over for dinner This is about a week later after the New York trip.

A Yes.

Q You and Celeste go and you have talked to us about the wallet that you got, et cetera; is that right?

A Yes

Q And at that dinner, you don't say anything to my client about the shopping spree in New York that occurred a week earlier?

A No, I didn't

Q Okay And you all had a nice dinner, it has been described, and two of the girls came by, et cetera, right? That's when the two daughters stopped by?

A Yes

Q Okay Going forward --

THE COURT: Excuse me I have a question.

BY THE COURT:

Q Is this dinner we are talking about, is this when you provided the wallet as a gift?

A Yes

Q Was Governor McDonnell present when you provided the wallet?

A I believe so I think my wife handed it to them. I don't know, Your,Honor But it was brought in as you would go to someone's home with a gift And I just don't recall -- I don't know whether my wife handed it to them when they were both present or she gave it to Ms McDonnell, but it was my wife's idea.

THE COURT: All right Thank you.

BY MR. ASBILL:

Q But there was no discussion in front of my client about "This is a wallet and it matches the purse that you got in New York," and nothing like that

A No

Q All right Going forward another week later into 2011, this is May 2nd, that's when you meet with Ms McDonnell at the Mansion, correct?

A Yes

Q Okay And that meeting was one that you set up with her, not with my client Correct?

A She called me and invited me to come over

Q Okay The two of you had a conversation.

A Yes

Q You go to meet her

A Yes

Q Bob McDonnell is not part of that conversation,

correct?

A No. She just said that he said it was okay for her to help us

Q Okay You never talked with him about that But in any event, you go over and meet with her; is that right?

A Yes.

Q It is a couple-hour meeting? Is that fair?

A Yes

Q Okay And my client wasn't present in the meeting?

A No

Q And Ms McDonnell said that she could help you, right?

A Correct

Q And she didn't say Bob would help you, did she?

A No.

Q And Mr Dry made that very clear in his direct examination of you a couple of days ago; isn't that fair?

A It is accurate

Q Okay Now, at that meeting with Ms McDonnell, you agreed to the $50,000 loan and the $15,000 catering, wedding gift to Cailin; is that correct?

A That's correct

Q Okay And some 21 days later, May 23rd, so the meeting was on May 2nd, we are going forward to May 23rd, that's when you deliver the checks

A Yes.

Q To Ms McDonnell

A Yes

Q And this is the anniversary of you and Celeste, right?

A It is

Q So it is a memorable day in your mind?

A It is an important day

Q And you all are planning to go have lunch at the Jefferson and you have to stop by the Mansion first

A We have to stop by there for a few minutes

Q You end up staying there longer than you wanted; is that right?

A We had a difficult time getting away

Q Okay And Bob McDonnell was not present when you dropped the checks off, was he?

A I just don't remember I have a problem with that part I just don't know whether I talked to him on the phone or I met him briefly upstairs I just don't remember

Q You don't have any -- you have no recollection of whether you saw him that day at all or talked to him that day at all, do you?

A I either talked to him or I met with him there, because the purpose of me getting these checks from my secretary rather than just FedEx'ing them was I wanted to make it a point

Q We will get to that in a second. But before those checks were cut, between the 2nd of May and the 23rd of May, you never talked to Bob McDonnell about those checks, do you?

A No.

Q One was made payable to --

A I didn't make the checks out until then.

Q Okay One was made payable to Maureen McDonnell and one was blank because you didn't know the caterer's name

A I didn't know the catering company

Q All right Two days ago here under oath, you testified that you called my client a couple of days after that, so that would be roughly the 25th or 26th of May, about the loan.

MR. DRY: Objection. He didn't testify to that

THE WITNESS: I don't agree that I did that

BY MR. ASBILL:

Q Let me see if this refreshes your recollection. I'm reading from transcript, Page 682

MR. DRY: You can't read from the transcript to refresh his recollection.

THE COURT: Go ahead.

MR. ASBILL: I called him and said that, you know, 'I met with Maureen. I understand the financial problems and I'm willing to help. I just wanted to make sure you knew about this ' Question: And what does he say? Answer: 'Thank you.'"

This is what you testified to two days ago, right?

A I may have testified -- you may be confused with two days ago versus two days after the 23rd.

Q So, I'm saying that you testified that you called him, here, in Court, that you called him a couple days after the 23rd and had this discussion.

A No, that's wrong I don't believe I said that If I said that, that's not what I meant Because it was that day that I was delivering the checks, on May 23rd, 2011, that I was there on purpose to do this

Q I know you were there on purpose to deliver the checks

A Not just deliver the checks I could have -- the checks could have been delivered easily without me Okay? It didn't take me to deliver checks there

Q You were coming into town to go to the Jefferson Hotel, right?

A No, I was in town. I made it a point to go there and do this and had my secretary bring me checks She could have easily taken those checks or just Federal Expressed them, sir I'm just trying to tell you that's what I was thinking

Q That's what you were thinking Regardless of what the transcript says, that's what you are thinking

A And I think that's wrong

Q Okay And Mr Dry has a complete copy of your phone records, does he not?

A I believe Mr Dry has copies of a lot of things Including the phone records probably

Q And they would show your phone records in May of 2011, correct?

A Yes

Q All right And do you have phone records that reflect calling Mr McDonnell on the 23rd?

A I don't know

Q Well, have they been introduced in this trial? Has Mr Dry introduced any phone records that would corroborate a statement by you that that's when you called him?

A Not that I know of

Q Okay The first time, and I think this was gone over by Mr Burck and I'm not going to get into it, but the first time you talked to the FBI after getting your immunity agreement, you told a much more elaborate story than you did in Court two days ago about a simple phone call in terms of talking to my client about these two checks, didn't you?

A I think that's when I confused the two and was explaining to them at that point the second meeting over at the Patrick Henry Building I believe that's what that was.

Q Okay That was a year ago, and you had a very -- it wasn't about a phone call or anything; it was about some personal meeting And now you say you have confused that

A I'm just telling you, a lot of things go by in those time frames, and the more I'm refreshed with all of this, it is like when someone calls you and asks you what happened, where did you meet with him, you know, I clearly remembered the meeting because I was there for a while sitting at the Patrick Henry Building the second time and may have gotten that confused at that point

Q As you say, as you are sort of going over things and thinking about it more, one of the things you are thinking about is looking at a log of the Patrick Henry Building that doesn't reflect you appearing on the visitor logs; isn't that right?

A On May 23rd.

Q Or on May 25th or 26th, right?

A Somewhere, I don't know that, but I've seen where the second trip --

Q I'm not talking about the MoBo meeting I'm talking about relating to the first $50,000

A I don't know

Q Okay Then you also came up with some story about a tunnel where you supposedly meet during the middle of the day, right?

A I thought that may have been possible, May the 23rd, because I learned about this tunnel where he came over through and I had met him once before when he came over that way But on May 23rd, I went, all I can tell you is May the 23rd, I personally delivered these checks, left my wife in the car out front so I could go make sure the Governor knew about these checks And whether I met with him there briefly or whether I called him, I did that That was my purpose of going to the Governor's Mansion. It was not just to deliver checks, because that was an easy thing to do

Q And what I am asking you is whether there is any documentation that you met with my client --

A And I don't know that

Q -- on the 23rd, that you are aware of of any kind.

A I'm not I'm not I don't know

Q Now, fast forwarding a little more to May 28th, you remember seeing an e-mail that my client sent you, correct? Would you please pull up Government Exhibit 134?

You have seen that before, correct?

A I have

Q That's in evidence now Correct?

A Yes

Q All right It says, "Jonnie Thanks so much for all your help with my family Your very generous gift to Cailin was most appreciated." That's relating to the $15,000 check, right?

A Yes

Q "As well as the golf round tomorrow for the boys "

A Yes

Q And you understood that Cailin was getting married in early June and all the family was coming into town?

A I don't know about all the family coming into town But I knew she was getting married right through that period.

Q All right "And Maureen is excited about the trip to Florida to learn more about the products and to see Celeste " That's Roskamp, right, on June 1st?

A Yes

Q That's what that refers to. "Have a restful weekend with your family Thanks." Correct?

A Yes

Q Okay There is no mention in this thank you note of the $50,000 check, is there?

A Just the $15,000 check to the caterer

Q Okay Thank you. You can take that down. Have you ever given Bob McDonnell anything where he has not sent a thank you note to you? Ever?

A Do you mean, are the loans included in that?

Q Yes. Have you ever given him anything that he hasn't thanked you for it, that he hasn't graciously thanked you for any assistance that you have provided?

A I assumed that when you just showed me that e-mail, if you would pull it back up --

Q Sure Pull it back up, please

A I assumed that when he says, "Thank you for all your help with my family," that he is also thanking me for the money that I have just loaned, too

Q Your assumption may not coincide with what he is thinking?

A It may not I'm just telling you what my thinking is when I see, "Thanks so much for all your help with my family," that's what that means to me

Q That's what that means to you. Okay

A "And your generous gift to Cailin was most appreciated." Well, I paid half of the catering bill

Q I know We have talked about that

A Okay I just wanted to make sure that that part where it says, "Thank you so much, thanks so much for all your help with my family" is, I assumed, I'm assuming that he is thanking me for loaning this money

THE COURT: There was a question pending Has he ever given you anything and not provided a thank you note?

THE WITNESS: I don't know

BY MR. ASBILL:

Q All right Now, I believe you testified a couple days ago, about three days ago, that you have offered the use of the Kinloch golf course to Maureen for her sons and Bob whenever they wanted to go?

A Yes

Q And you never expected my client or the boys or anyone else in the family to pay for golf at Kinloch, did you?

A No.

Q That was something that you were generously offering?

A Yes.

Q All right Now, the Roskamp Institute meeting --

A Generous in the sense that it was good for our business, for the relationship. I just want to make sure, I'm trying to make sure I answer these questions clearly

Q You don't want to tell me you have any kind of personal friendship, feelings towards my client, do you?

A I like your client I like Ms McDonnell But I'm doing these things because of a business relationship. But I like both of them.

Q And you made that plain every time you talked to --

A I just want to make sure

Q There is nothing friendship-related here

A It is a business friendship. I'm in business This is business to me

Q That may be, but that doesn't mean you tell somebody else that you are with that "The only reason I'm with you is for business purposes"?

A I don't think anyone does that

MR. DRY: Objection

THE COURT: Sustained. Mr Asbill, just ask a question, please

BY MR. ASBILL:

Q With respect to Roskamp, at the dinner on April 26th, going backwards a little bit, you described that to my client as, it was a meeting for researchers and you show clinical studies, et cetera?

A Yes

Q You never said anything about it being an investors' conference, did you?

A There were investors there

Q I know Did you tell my client at the dinner it was an investors' conference as opposed to clinical studies researchers' meeting?

A No, because there were only a handful of investors there Most of them were people coming there to learn about Anatabloc So it was a fundraiser, and it was also the science and the technology and the Roskamp Institute --

Q I know what you are describing it as I'm asking what you told my client it was

A At the Roskamp Institute, it was a fundraiser highlighting Anatabloc

Q My question again to you is, you did not tell my client it was an investors' meeting, did you?

A It was not an investors' meeting

Q That wasn't my question. My question is, did you tell my client it was an investors' meeting?

A No, because it wasn't

Q All right Now, my client didn't go to Roskamp, right?

A No

Q And his scheduler got back to you all and said he was too busy; is that right?

A He did.

Q And he wanted to spend particular -- the reason he was busy is he wanted to spend time with his family right in advance of his daughter's wedding on June 4th, correct?

A Yes

Q Now, June 16th, 2011, the "Virginia Study " Would you pull up, please, Government Exhibit 161? This is in evidence Would you go to the attachment, please? Excuse me, back up one second first This is a letter from you about Roskamp that you send to Mary-Shea Sutherland, correct?

A Yes

Q Through Jerri Fulkerson. You asked her to send it to Mary-Shea

A Yes

Q All right And it is a letter to the Governor, PDF attached. Is that right?

A Yes

Q Okay Now please pull up the attachment And this is a letter that you have talked about

A Yes

Q Several times during this case; is that correct?

A It is

Q And you talked about the first sentence is yours because that's something you learned in school?

A Eighth grade

Q Right And the rest of it is all, who, Ladenson's?

A No, the rest of it, I went over to the Roskamp Institute because there are two doctors that run the

Roskamp Institute, Dr Fiona Crawford and Dr Mike Mullan, and I asked them to assist me with preparing this letter, that the Governor wanted a letter stating what it is that we wanted.

Q Okay So two doctors wrote the rest of the letter, basically

A Yes, they helped me with that Yes

Q Okay And you send that to Mary-Shea, and you don't have any idea whether my client, you have no personal knowledge that my client saw that letter, do you?

A I don't

Q Now. I want to move forward to June 24th-June 26th time frame This is the Homestead PAC retreat Remember that?

A Yes

Q And you told us the story, the long story about the plane having to go to various places and you tried to simplify it

A I did.

Q Okay And my client didn't ask you to do that, did he? He didn't ask you to send your plane to pick up his family members and from various locations?

A He did not

Q Okay And if I am correct in terms of remembering your testimony here in Court, you couldn't recall whether you talked business with my client that weekend.

A I couldn't recall specifically I played golf with him for four hours. And I was at a breakfast meeting with him that morning before golf But I just don't recall

Q Okay

A Specifically

Q And if you were playing golf with him and you weren't talking about business, would you talk about your family or other things social friends might chat about?

A Sir, I just don't remember what I talked about that day

Q Fair enough.

A You know, I just don't remember what all I was talking about

Q Okay I want to talk to you about the Tobacco Commission. I believe you said yesterday that it is sometime in June is when you became interested in the Tobacco Commission as a possible source of funding

A Yes

Q For clinical studies Is that correct?

A Yes. Well, we were making progress and moving forward to where that, too, became an issue with that

Q Coming up with some serious money to fund studies; is that right?

A Well, we wanted the studies done in Virginia and the

Tobacco Commission made sense

Q As a possible source of funding?

A As a possible source of funding And that way it would be independent

Q And this was not something that at this particular point in time Star could or wanted to fund on its own; is that right?

A Not unless we had to

Q Not unless you had to. And by the way, I know you told us yesterday that, not your present salary from Star, that historically, it was north of a million dollars, right?

A You mean before 18 months or 20 months ago when I lowered it to a dollar a month?

Q I'm not talking about right now It used to be north of a million dollars And often it was in the $10 million range, right, in terms of stock and cash that you got?

A I don't remember -- there may have been for accounting reasons the stock showing up But the salary has been around a million dollars for a while Up until a couple of years ago.

Q If you get salary of a million bucks and you get nine million bucks in options, you've got 10 million bucks, right?

A Right

Q Okay And that's the kind of money that you were taking out of Star, right?

A Well, they were options I still have all those options and they are under water now

Q And your friend, Mr Perito, at the time was getting roughly salary and stock options, $8 million?

A Paul and I generally got paid the same But again, those, I just want to make sure you understand, the cash portion of the million dollars, the option is something that's down the road.

Q I understand.

A I want to make sure you know we didn't just walk out with eight or nine million dollars

Q Okay But the company at that time could not afford or didn't want to afford, even if it could, paying for clinical studies Fair?

A If it needed to pay for the clinical studies, if we needed to pay for the clinical studies, I could raise the capital to do that I was dealing --

Q You would prefer to have someone else -- you prefer to use other people's money

A I preferred to use the Tobacco Commission in Virginia, because that money was sitting here and it was for revitalization to benefit Virginia from the Tobacco Fund.

Q You called it the MSA, right?

A Well, it was a result of the MSA. The Master Settlement Agreement with the tobacco industry caused that to happen here in Virginia and Virginia to be allocated these funds annually from the tobacco companies

Q Okay And basically, you know, this was your goal, right?

A It was.

Q Okay And you hired Jerry Kilgore to help you.

A I did.

Q You said that Jerry Kilgore was a former Attorney General

A Yes

Q Ran for Governor?

A Yes

Q Lobbyist-lawyer at McGuireWoods, right?

A Yes.

Q And you didn't know or you don't know as we speak whether he has family relationships with the Tobacco Commission?

A I have learned through this process here that his wife may now or maybe in the past, that she worked there

Q Wait a minute When you hired Jerry Kilgore as your lawyer-lobbyist --

A When I hired him did I know that? No

Q Did you know it the day after you hired him?

A No

Q You didn't know?

A I didn't know

Q That his brother, Terry Kilgore, is the Chair of the Tobacco Commission and Jerry's wife, Marty, is the Director of the Virginia Foundation for Healthy Youth, which is another Tobacco Commission that funds research on health?

A I didn't know that

Q Never came up in your discussions with Jerry Kilgore?

A Maybe somewhere later on it came up, but I didn't know that when I did that, no

Q Did you think that Jerry was a well-connected lobbyist-lawyer in Richmond?

A I think Jerry Kilgore is a very capable person, yes

Q I'm sure he is a very capable person. But my question is, do you think he has those kinds of connections with the Tobacco Commission and with the program that Marty runs, Foundation for Healthy Youth?

A Again, I didn't know about the Foundation for Healthy Youth. And I don't recall whether his brother was the head of the Tobacco Commission. But I knew that Jerry Kilgore, being a former Attorney General, would know how to go about dealing with this Because I've known him for a number of years, and have a lot of confidence in him.

Q Okay Regardless of whether he is related to somebody that possibly could help you, he sure knows who to call; isn't that fair?

A That's why I went to him. I thought he was an able person to deal with this.

Q Now, next time frame I want to talk to you about is July, 2011 Gibson Island. July 23rd, 2011

A Yes

Q That's the Star symposium at Gibson Island, right?

A Yes

Q And you never talked to Bob McDonnell about that event and he didn't go.

A No

Q And you say Mary-Shea did.

A Mary-Shea did.

Q Okay And then fast forwarding to a little bit later, five days later in July, this is the July 28th to 31st time frame, Smith Mountain Lake

A Yes

Q Okay That's when you graciously offered to let the McDonnell family use your house there for a couple of days Right?

A For a few days I believe the weekend or so. I'm not sure how many days

Q My client never asked you to make that house available to him, did he?

A No.

Q And you had previously offered that house to other politicians for a few days or a week or whatever; is that fair?

A Yes

Q And my client never asked you to arrange to have a Ferrari there for him to drive, did he?

A No.

Q And the photo of him driving the Ferrari, he didn't take that of himself, did he?

A I don't think so.

Q All right And you don't have any idea what he knew about how the Ferrari got there or why it was there or whether somebody asked you to get it there or not, do you?

A It showed up

Q It was there Okay

A It was delivered in the afternoon.

Q Do you know when he got there the first day?

A I have no idea

Q So it might have been there when he got there

A Like I said, the Ferrari just showed up.

Q Okay Do you know whether -- you needed that car back or you wanted it back in Richmond, right?

A At some point I would like to get it back I had
it delivered over there for them to use it

Q Okay And you thought it would be fun for him to
drive it; is that right? Is that fair?

A I don't have any problems with that

Q Is it fun to drive?

A It is okay I'm driving a Toyota Camry right now and
I'm all right with that, too

Q You had a Rolls-Royce you didn't like, right?

A I didn't care for that much. I kind of like this
Camry I'm driving

Q Okay So Bob McDonnell brings it back to Richmond,
correct?

A Yes

Q All right And any reason to believe that he didn't
think that he was doing something that in essence was a
favor to you, just driving it back?

A I wouldn't call that a favor to me

Q It was a favor to him, too.

A Favor to him.

Q But you needed it back in Richmond and it had to get
there somehow, didn't it?

A I would probably send a truck to bring it back I
would get it there somehow

Q You don't want to put a hundred miles on it?

A It is not something I drive much. I just don't do that

Q The next day, August 1st, 2011, that's when you meet with Molly Huffstetler, right?

A Yes

Q And that weekend you say --

MR. DRY: Can we approach for a second?

THE COURT: Come on up.

(At Bench.)

THE COURT: We are going to take a break.

MR. DRY: That's what it was about

(In Open Court)

THE COURT: All right We are going to take 15 minutes Jury, would you please follow the Marshal?

(The jury left the courtroom.)

THE COURT: Mr Dry, what did you say?

MR. DRY: I have one matter to bring to the Court's attention. When Mr Asbill is cross-examining the witness with the transcript, he says it is in evidence The problem being is, he mischaracterized what the transcript said. He did not put the entire thing for the witness to be able to review If he is going to use it that way, he shouldn't just be flashing it back and forth without publishing it to the jury

THE COURT: You don't have to respond to that

Look, if the transcript is available, and as long as Mr Asbill gives his page and line, he can use it to impeach if there is something different And then when you stand up. you can clear up whatever there is to clear up by giving full context

MR. DRY: I just want it up on the screen for long enough for the characterization to be clear to the jury one way or the other That's all I'm asking for

THE COURT: Well, I don't even think it has to be up on the screen. As long as the witness is looking at it and has an opportunity to see it, he can say yea or nay, then that's all that can be done with it

MR. DRY: Yes, Your Honor

THE COURT: All right

(Recess taken from 3:41 p.m. to 3:53 p.m.)

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THE COURT: Counsel, if you all would approach

(At Bench)

THE COURT: I -- the jury was really dragging I mean, they -- you know, they were fighting not to go to sleep, and one fella actually nodded off I'm thinking about quitting early, like at 4:30 But, Mr Asbill, if it will mess you up in any way

MR DRY: Judge, we'd like to be -- we understand Mr Asbill could be done by 5, and then we would do our redirect and be done by 5:30 So it's only an hour more

THE COURT: How much more do you have?

MR ASBILL: Well, I don't know the answer to that I truly don't

THE COURT: From all the areas, I figured from all the areas that you were going into, you wouldn't finish today

MR DRY: Mr Asbill told us that he might be done by 5 today

MR ASBILL: I didn't raise this I am -- I am willing to do whatever If the jury is falling asleep --

THE COURT: I'm going to stop early There's no point in going on when they are not listening

MR DRY: That just means that we have to bring everybody back to do the whole thing over again Monday

THE COURT: That's exactly right, what it means, but -- but it is what it is

MR DRY: Yes, Your Honor

THE COURT: mean, the witness is here until he's exhausted

MR DRY: Absolutely, Your Honor

MR BURCK: Thank you, Your Honor

(In Open Court)

THE COURT: All right Bring in the jury, please

(The jury entered the courtroom)

THE COURT: All right, Mr Asbill

MR ASBILL: Thank you, sir

BY MR ASBILL:

Q Mr Williams, before I get into the August 1 meeting with Ms Huffstetler, I want to go back to Government Exhibit 161 and ask you a few more questions

A Okay

Q This is the letter that we've talked about where you wrote the first sentence?

A Yes

Q Now, in the second paragraph of that letter, at the bottom, would you please read aloud the last sentence of that second paragraph?

A "We propose to use Health Diagnostic Laboratory, Incorporated, a Virginia company, for some of the blood analysis to be carried out in these studies "

Q Okay Now, with respect to that company, Health Diagnostic Laboratory, going back to the shopping trip in New York, do you recall telling Mary-Shea Sutherland that that company, HDL, was the company that you needed to partner with to perform blood sample testing for proposed clinical trials in Virginia?

A I don't, but I met with them

Q Right And do you recall that Mary-Shea's cousin, Leslie Strickler, was HDL's marketing director?

A Okay I had forgotten or didn't realize that was her cousin

Q Okay And that she contacted her cousin and set up a meeting for you with the co-founder of the company in May -- May 16th of 2011?

A Yes

Q And Mary-Shea personally drove you to that meeting?

A Okay

Q And Ms McDonnell did not attend, did she?

A No

Q Thank you All right Let's go back to the Molly Huffstetler meeting, the Huffstetler meeting on August 1st, 2011 That's the Monday after the weekend of the Smith Mountain Lake trip, right?

A Yes

Q Okay And you met with Ms McDonnell and Molly Huffstetler, who was a member of Dr Hazel's staff --

A That's correct

Q -- is that correct?

And my client didn't go to that meeting, did he?

A No, he didn't

Q All right And you never talked to him about that meeting, did you?

A No

Q And initially you were going to go meet that day with Ms McDonnell and Mary-Shea; is that correct?

A I don't remember

Q Do you know how Molly -- I mean, do you have any personal knowledge about how Molly Huffstetler happened to attend that meeting?

A I thought she came from Ms McDonnell, from Maureen McDonnell

Q All right But you don't have any personal knowledge of how that occurred?

A I don't know I don't recall exactly how it happened

Q Well, do you recall --

A I just know I met with her there

Q I'm sorry I didn't mean to --

A I met with her there --

Q Yeah

A -- is all

Q Well, do you recall talking to Ms McDonnell that weekend or before the weekend or talking to Mary-Shea and wanting to get up with the two of them to talk about clinical trials in Virginia and -- do you recall doing that --

A Yes At some --

Q -- and trying to set up a meeting with them?

A At some point, yes

Q Okay All right And you met with -- with Ms Huffstetler at the meeting --

A Yes

Q -- is that right?

And do you recall at the meeting telling Ms Huffstetler that you had already gotten $3 million approved or earmarked or whatever from the Tobacco Commission for your company?

A No

Q And that wouldn't have been true if you said that, would it?

A It would not have been true

Q Okay All right Let's -- let's talk about the Rolex I believe you said that after the meeting that same day, I think it's August 1st, that that's when Ms McDonnell, you say, asked you for --

A Ms McDonnell

Q That's what you say?

A Yes

Q Okay My client didn't ask you for a Rolex?

A Your client, no

Q And he never discussed a Rolex with you?

A No

Q Did you think it was weird, for lack of a better term, to buy him an expensive watch without talking to him?

A She asked me to get it for him, that it was going to be coming to him as a gift from her

Q Without him supposedly knowing about it?

A That's what --

Q Knowing that it was from you

A That would be between the two of them That's between the two of them

Q Well, you said it was going to come to him as a gift from her?

A From her

Q Not from you?

A Not from me

Q And you described a couple of times that you felt bad about this and you bought it out in California and your wife was with you, et cetera, right?

A I didn't feel bad It just was a little uncomfortable buying something like that But I was asked to do it and I agreed to do it So I was doing it --

Q Okay

A -- while I was shopping with my wife and my daughter

Q Now, you said that -- by the way, did you ever hear of a company in Virginia, Northern Virginia, jewelers by the name of Michael Beem, B-E-E-M, Jewelers?

A Never heard of him

Q Okay With respect to the disclosure of gift issues within Star, I believe you said that Star's CFO reviews your expense reports, correct?

A Yes

Q All right And because he reviews the expense reports, that's why you didn't want to put the Rolex through the company for business expense reimbursement; is that correct?

A I didn't -- I didn't want to turn it in to the company, period

Q Okay

A I just paid for it myself

Q All right And you disclosed everything else to Star's CFO in those expense reports; is that correct?

A That's the practice

Q All right And you disclosed the golf, the travel, the golf bags for --

A Yes

Q -- Bobby McDonnell, the flights All of that you disclosed to your company, to your CFO; is that correct?

A Yes

Q You did not disclose the shopping spree in New York or the Rolex?

A No, because I paid for them myself

Q Okay Now, how about the Chatham Bars trip up in Massachusetts where the Cognac got poured into the fire, did disclose that to them?

A To the --

Q To the CFO?

A To the company?

Q Yeah

A It was on the bill

Q It was on the -- I mean, all the expenses for that trip?

A All the expenses of that trip that we went on with Dr Ladenson and the Governor and Governor's friends was -- was on the bill

Q All right And neither you nor the CFO thought there was anything wrong about that, did you?

A It was expensive, but nothing wrong

Q Okay Now, back to the -- or, you know, going back -- I want to go back to the August 30 Mansion lunch And with respect to the lunch at the Mansion, you never had any discussions with my client about that lunch, did you?

A Prior to it, no

Q Not prior to it I mean, obviously, until he shows --

A Yes

Q -- up at the lunch?

A That's correct

Q You never had any discussion with him?

A That's correct

Q And your conversations about that event were through Maureen McDonnell and Mary-Shea --

A Yes

Q -- is that right?

And at the event, my client showed up at some point midway through or towards the end of the lunch?

A Towards the end

Q Towards the end of the lunch He asked some hard questions?

A Asked good questions

Q Good questions of the folks who were presenting?

A I thought so

Q And then he left; is that correct?

A Yes

Q And I believe, you said that this lunch, you all were giving $200,000 to Virginia universities, in total; is that correct?

A Not just Virginia universities There were eight physicians there I believe one of them or two of them were from Johns Hopkins But most of that was -- maybe seven out of the eight, maybe 175,000 out of 200, or 150,000 of it went to --

Q 75,000 went to out-of-state universities?

A No, no I'm saying 175,000 went to in-state The majority of the money -- I just don't recall There was a cardiologist from Johns Hopkins there, and I'm just trying to recall was there another doctor there that we gave the grants to from Johns Hopkins, but I think the rest of it was UVA and VCU

Q Okay

A I'm just trying to make sure I'm giving you an accurate --

Q No I appreciate the accuracy But I guess my basic question, whether it's 175 or whatever, this is money you're giving to Virginia, not taking from Virginia, right?

A That's right That's right

Q And, again, you thought it was appropriate to be able to do that and to make those gifts to Virginia universities, and that was an appropriate thing to have done at the Mansion, didn't you?

A I couldn't imagine a better place to have it done

Q All right And by the way, in terms of whether it was a launch or a lunch or some combination of the two, at one point your marketing folks sent over some description of a press release in advance of the lunch that they wanted to issue about this event --

A Yes

Q -- is that correct?

A Yes

Q And my client's staff dialed that way back, in terms of making it a launch or making it something like that?

A Right

Q They dialed it way back in terms of the press release, didn't they?

A I didn't have the input with that That would have been between the staff and Sara Machir at Paul Perito's office in Washington Meaning our office in Washington

Q Okay But they give -- in advance of this event, they give how they're going to describe it, in terms of --

A Yes, because that was the day --

Q -- the press releases?

A That was the day that we began the sales, and it was the launch -- formal launch of Anatabloc was that day

Q You said it was a national formal --

A Yes

Q -- launch?

A Yes

Q That day?

A Yes, that day

Q Okay We'll get back to that in a second

In any event, whatever promotional materials they wanted to use, the Governor's Office staff dialed -- dialed -- dialed the language of -- you know, the description of it way back?

A I'm not familiar with all of that

Q Okay

A I didn't have anything to do with that

Q All right Let me go forward to September 24th, the Cure By Design event, the Cancer --

A Yes

Q -- Society event

A Yes

Q Bob didn't invite you to that event, did he?

A No

Q All right And Maureen invited you to the event?

A She did

Q All right And Bob didn't ask you to bring Brad Kroenig down, did he?

A No

Q And he showed up at the very end of the event, basically?

A He did

Q And he wasn't in a suit He was in a blue blazer or sports coat or something and khakis, right?

A I think so

Q And did you understand that he had been up at UVA attending a football game with his sons?

A I didn't know where he had been

Q Okay But he came separately to the event; is that correct?

A Yes

Q All right And to your recollection, was a weekend in New York with the First Lady and the Governor a listed auction item?

A No

Q So this was something that the MC or the auctioneer just sort of dreamed up on the spot?

A He did

Q And would it be fair to say that he had had a little too much to drink?

A I don't think he was drinking at all It was maybe a glass of champagne A few people had champagne But I wouldn't characterize it as that This was a very serious and a very sad event for me because there were cancer survivors and young children there

Q I'm not -- yeah, I understand the --

A Okay

Q -- the nature of the event --

A Yeah

Q -- basically, but this was -- the weekend in New York with my client and his wife was not a listed auction item, and this is something that the auctioneer just --

A Yes I was just --

Q -- just free --

A -- responding to whether he was drinking or not I don't --

Q Or whatever

A Maybe he had a glass of champagne I don't know what he had But that's --

Q But in any event, he came up with this on his own --

A Yes

Q -- right?

A It appeared that way to me

Q Okay And -- and it was a surprise to my client?

MR DRY: Objection Calls for speculation

THE COURT: Sustained

BY MR ASBILL:

Q Did you observe any sort of physical reaction to this announcement?

A No

Q Okay Did you think it was awkward for my client?

A I didn't pay any attention to it

Q Well, you sort of jumped in and, you know, made it --

A I only jumped in when he got in trouble

Q You jumped in and made it work, right?

A I just made it work That's true

Q Okay The money went to a good cause, didn't it?

A It did

Q And my client and his wife didn't have to spend some weekend in New York at some place with strangers, did they?

A I didn't do it for that reason, but --

Q Okay Now, afterwards there was a dinner?

A Yes

Q And who went to that dinner?

A Brad Kroenig, my friend, the Governor, and his wife

Q Okay And you paid for the dinner --

A I did

Q -- is that right?

And I believe, if I'm -- please correct me if I'm

mistaken I think you said it was something like 15 -- 12 or $1,500; is that right?
A Somewhere around there
Q And clearly the food would have been in the couple-hundred-dollar range, right?
A No That was -- let's see Two, four --
Q Four people
A -- of us I think that place is a little bit more expensive than that And the rest would have been wine
Q And who picked the wine?
A I did
Q And, you know, so when the wine list came, you basically took it and you ordered, and you didn't consult with anybody about the price of the wine; is that right?
A No
Q Now, you also talked earlier about having discussions with Ms McDonnell about cars for Cailin and Rachel; is that correct?
A Not at this dinner
Q No, no, no I'm just talking earlier in your testimony today
A For Cailin and the -- and the two boys, the cars
Q Oh, okay
A Is that what you're referring to?
Q Yeah You testified about -- about that issue

earlier today, did you not?

A Yes

Q Okay And did my client ever ask you to buy a car for anyone?

A No

Q And do you have any personal knowledge that he has any -- that he was involved in any way with whatever discussions were going on about this?

A No

Q Now, I want to forward to the October 18th Westin event This was when Rock Creek, you said, was owned by Star --

A Yes

Q -- at this Westin Hotel event?

And did Bob McDonnell attend that event?

A No He wasn't able to

Q Okay And did he ever talk to you about that event?

A No

Q And, again, back at the -- back at the Mansion, you know, event where you give away these checks -- David Dean, who is he?

A David Dean is in charge of sales

Q At Star?

A He is

Q Okay And would -- do you have any idea why David

Dean, on the Westin event, would have issued or drafted promotional materials that announced the Westin Hotel event as the national launch of Anatabloc?

A What was the date?

Q October 18th was the Westin event, I believe

A I don't know I thought it was August the 31st was when we did that

Q Well, is it possible that the national launch was really 45 days later, basically?

A I would have to check with someone.

Q Okay But do you recall that the -- that the flyer that shows the event details says national launch at the Westin?

A I'm taking your word for it at the moment

Q I can bring the exhibit back up

A Unless you -- I'll trust you with that

Q Thank you, sir The October 22 event, the Michigan event -- and by the way, I've gone back and looked at the transcript, and I was mistaken talking about those calls

You didn't -- you testified you called my client at some point, undefined in terms of when, about the first loan It wasn't two days later I'm mistaken

A It wasn't undefined, though I want to make sure I got that part straight

Q Well, I'm just saying --

A It was sometime prior to that

Q I'm just saying when you testified, you didn't say --

A Yes

Q -- you didn't say --

A Yes

Q -- what the --

A Okay

Q -- date was

A Okay

Q Now, with respect to the Michigan event, that's Flint, Michigan, right?

A That's correct

Q And you -- your recollection is that -- that Ms McDonnell went, but Bob McDonnell said he sleeps in -- or wanted to sleep in and --

A Well, I talked to him briefly

Q -- have her back early?

A That afternoon --

Q Okay

A -- before the event

Q So you would have talked to him on the 22nd, the same day of the event?

A I think that's when it was And then he said, "Just make sure you have her home" -- "I'm going to sleep in late in the morning Make sure you have her home by 1:00

or 2:00," or something Whatever it was

Q So he said --

A By the afternoon I'm not sure what time

Q And you talked to him on the 22nd or the 21st?

A When -- I thought I talked to him on the 21st

Q Okay And, again, if -- if you had called him, that should be in the phone logs?

A Yes Unless she called him and handed me the phone

Q Okay

A But one of those phones would have it, you would think

Q Okay I mean, do you recall anyone in this trial showing you a phone log with a call from you to Bob that day?

A No

Q Okay And the videos of that event that -- that Mr Dry played in court here yesterday, did you ever show those videos to my client?

A No

Q And would that be true about the Pelican Inn, or whatever the name of that place is out in Malibu?

A Pelican Hill

Q Pelican Hill Out in Malibu?

A Laguna

Q Laguna Okay

A Newport Beach, actually

Q Never showed those -- that's a real nice place, isn't it?

A Pretty nice place.

Q Okay And you never showed Bob McDonnell those videos?

A No

Q Did you ever talk to Bob McDonnell about what Ms McDonnell may have said at any of those events?

A No

Q Roskamp, Flint?

A No

Q Okay Now, forwarding to November 2012, no contact between you and the Governor --

A Between --

Q -- is that right?

A What are the dates?

Q November 2012 Fast-forwarding from October 2011 to November 2012

A Okay

Q Thirteen months

A Okay

Q No contact?

A I don't think that's right

Q Well, as you think about it, if you think of something, please let me know

A Okay I don't know That just doesn't sound --

Q That may be wrong

A -- right

Q My associate has just --

A It doesn't sound right, but --

Q I may be wrong

A Okay That's okay

Q December 2012 you don't remember anything?

A December?

Q Excuse me This is 2011 It's supposed to be 2011 That's why

November -- we were talking about October 2011 Now I'm talking about November 2011 Nothing happens between you and Mr McDonnell; is that right?

A You've confused me now

Q We talked about the Westin event October 2011 And now I'm going to the next month, November 2011

A Okay

Q Nothing happens --

A We're still in '11

Q Still in '11

A Okay The '12 threw me --

Q We're fast-forwarding to '14 soon --

A Okay

Q -- I promise

A Okay

Q Nothing happens in November 2011 between you and my client; is that correct?

A Not unless someone shows me something

Q Okay

A I can't sit here and recall it

Q And -- and as you sit here, you don't recall anything in December of 2011 happening either, correct?

A Not unless someone shows me something

Q Okay And then I believe the next year, we're into 2012, in January --

A Yes

Q -- that's when you say that you had some discussions with Ms McDonnell about the beach properties?

A Right

Q And my client was not on that call, was he?

A I don't think the initial one

Q Okay And February 2012, that's when Ms McDonnell tells you that my client is furious that these people at UVA are not calling you back?

A Well, she contacted me and asked -- said the Governor wanted to how things were going --

Q Yeah

A -- at UVA, and I said they're not The bureaucracy is bogged down It's just stopped, it appears to me

And she said -- she came back to me and said the Governor wants a list of the contacts at UVA

Q And, I mean, you know, were folks not returning your calls or what?

A No No The medical director, scientific director of the company, were working with UVA, and they were -- they had been complaining to me that it was just bogged down

Q Okay

A That nothing was -- you know, after we had given these grants, they were basically -- it wasn't moving forward And -- and then Maureen McDonnell asked me how it was going And I shared that with her, and she asked for the -- for the contact information, and -- and I had it sent to her

Q All right But my client never asked you for the names and numbers of anybody at the school, did he?

A No He just told me on the phone that he was following up with it one day

Q Okay And whatever e-mail exchanges you had about that issue, you don't know whether my client read them or not, do you?

A I have no knowledge of that

Q All right Do you remember when my client called you on the phone and said he was, quote, following up on it?

A Sometime in February, I believe

Q Could you find that call on the logs?

A February or March or -- I think the call would be there I don't know what date But he called me and said that he was following up with UVA and he also needed to talk to me about the problem that he needed some more money for Sandbrige

Q And with respect to the issue about following up at UVA, were you shown any phone log that you identified in this trial as being the call of the day that --

A That he actually did follow up?

Q Yeah -- well, no

A That he followed up?

Q No That he told you on the phone that he was going to, supposedly?

A Oh, I don't know That was just a phone call between him and myself

Q Yeah But my question is has anyone shown you any phone log in court where you've identified a call on your phone records that's consistent, date wise, with your memory of that discussion?

A As I sit here, not that I can recall

Q Okay The Healthcare Leaders Reception, what day was that on?

A I believe that was February the 29th

Q Leap year?

A Yes

Q And would I be accurate in saying that you viewed yourself as a healthcare leader?

A I think so Our company

Q And you personally?

A I think we were one of -- I think -- well, I would say representing the company, I think we were -- we were leading the way towards trying to lower the healthcare costs in Virginia So I would say we would be included in that

Q Okay And there were a lot of other folks at this event as well that -- that you would agree were healthcare leaders --

A Yes

Q -- in the state?

A I would

Q Did you ever have any discussions with my client about the Healthcare Leaders Reception before the event itself?

A I thought that morning I met with him at the Patrick Henry Building

Q It was already -- but the event was already in place, essentially, right?

A The event was scheduled a while ago, I believe But you're -- I'm just responding to did I have any discussion with him And it was the same day

Q Well, you surely saw him that day at the event as well; is that correct?

A I did

Q Yeah

A And I had dinner with him afterwards

Q And what I'm saying is that prior to it, in terms of setting up the event or anything, did you have any discussions --

A Not prior to it, no

Q -- with my client at all?

A Not prior to it

Q Okay And your discussions about it prior to the event were with whom?

A Maureen

Q Do you have any knowledge that -- that my client ever spoke with Caroline Birgmann about who to invite?

A No

Q And please remind us who Ms Birgmann is

A She's a sales representative for the company

Q Okay And Mr McDonnell welcomed Dr Ladenson to the event publicly; is that correct?

A I asked Maureen McDonnell during the meeting, while it was going on, to walk over to the Governor and have the Governor recognize him as a special guest

Q And when his wife asked him to do that, he did it?

A He did that

Q And, in fact, Dr Ladenson is a healthcare leader in your view, is he not?

A He is

Q He's the head of endocrinology at Johns Hopkins?

A I think that qualifies him as a healthcare leader

Q All right And after that event, you folks went to La Grotta, a restaurant in town?

A We walked over to the restaurant, I believe

Q All right And, again, you ordered the wine and the liquor?

A You know, I don't think of it as "the wine and the liquor "

Q Okay That's --

A But I think I ordered the wine

Q I'm sorry?

A I ordered the wine

Q You ordered the wine Okay

A I don't know if there was so-called liquor involved --

Q I don't know if there was either

A -- but I ordered the wine

Q But if the bill was expensive, it was because of the wine; is that right?

A Well, if I can just clarify that, since you know Mr Perito, is I spent time -- Mr Perito used to represent the French wine industry So that's the only reason I learned a little bit about that

So I did order the wine

Q Okay And, you know, I mean, the folks that are -- and you paid for the dinner, didn't you?

A I did

Q And the folks who are at the dinner with you, I mean, they're not trying to figure out, you know, whether you were ordering a 500-dollar bottle or a 50-dollar bottle of wine?

A I wouldn't let them know that

Q Do you even recall whether my client was drinking any -- any alcoholic beverages at that time or whether he was not drinking alcohol because it was Lent and he had given up alcohol for Lent?

A I can't tell you who had what to drink

Q Okay Now I want to talk to you about the first MoBo loan This is in February 16th to the March 12th time frame

MR ASBILL: And, Victoria, would you please pull up Exhibit 138

Your Honor, this is going to take about 15 minutes
Do you want me to stop here?

THE COURT: All right Yeah, we're going to stop

Ladies and gentlemen, we're going to stop early, get you an early start on your weekend I've been watching the jury carefully, and some of you are dragging, mightily So -- really and seriously, you know, we want you to be sharp and focused and aware And the purpose of having these folks here and getting this information out is for you It's all for you So -- but it's understandable It's been a tough week and a long drag here So I thought it might be best to just give you a little early start on the weekend

If you could come in at 9:30 on Monday, we will get started Remember, don't let anybody discuss the case with you, and if they try that, again, bring that information to me You have a long weekend, and I will pray for everybody's health, hoping that you will get back here in good stead But take care of yourselves and be careful, and we will see you on Monday morning at 9:30

(The jury left the courtroom)

THE COURT: All right Monday morning, 9:30

(The trial adjourned at 4:27 p m)

I N D E X

WITNESSES

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G McDONNELL,

Defendants

August 4, 2014
Richmond, Virginia
9:30 a.m.

JURY TRIAL - VOLUME VI

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
DAVID V HARBACH, II, ESQ
JESSICA D ABER, ESQ
RYAN S FAULCONER, ESQ
Counsel for Government;

JOHN L. BROWNLEE, ESQ.
HENRY W ASBILL, ESQ
JAMES M BURNHAM, ESQ.
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Counsel for Maureen G. McDonnell

JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day six, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, and Christopher Iaquinto Maureen G. McDonnell is represented by Heather Martin, William Burck, and Stephen Hauss Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed.

MR. ASBILL: Mr McDonnell is ready to proceed.

MR. BURCK: Maureen McDonnell is ready to proceed, Your Honor

THE COURT: All right Let's bring in the jury, please

(The jury entered the courtroom.)

THE COURT: Good morning, ladies and gentlemen Good to see you again All right?

CROSS-EXAMINATION (Cont'd.)

BY MR ASBILL:

Q Good morning, Mr Williams How are you?

A Just fine, thank you

Q Over the weekend, have you talked to any lawyers about your testimony from last week?

A I did.

Q And who were they?

A Lawyers for McGuireWoods and Steptoe & Johnson

Q All right And did you talk about adjusting any of your testimony based on what you had said in Court before?

MR. DRY: Objection

THE COURT: Sustained.

BY MR. ASBILL:

Q Let's go back to the timeline we were talking about when we left off Friday I want to talk to you about the beginning of 2012 Okay?

A Okay

Q All right And the first MoBo loan was in the February 16th to the March 12th time frame That's where I'm trying to concentrate right now Okay?

A Okay

Q I believe you testified that Ms McDonnell was the one who initially asked you or solicited the $50,000 loan from you for MoBo; is that correct?

A Yes

Q All right And at some point after that, my client calls you about that loan?

A Yes

Q And do you recall when that was exactly or do you have any dates you can give me for that?

A I think it was sometime in February

Q Can you be more specific than that or is that the best you can do?

A It was either January or February. It was at the beginning of the year. I believe it was in February

Q All right And after you all talked on the phone, then my client sent you an e-mail; is that correct?

A Yes

Q Let me pull up Government Exhibit 318 I believe this is in evidence This is the e-mail that we are talking about?

A Yes

Q That's dated February 16th, 2012, correct?

A Yes So it was sometime after that

Q Sometime before that you all had a phone call

A Yes

Q Okay And this e-mail to you is: "Jonnie Know you have been slammed. Do you want me to call your lawyer on the certificates and the documents Thanks for all your help Gov " Right?

A Yes

Q Okay Now, apparently he wants to talk to your lawyers and to document the loan; is that correct?

MR. DRY: Objection, calls for speculation

MR. ASBILL: Is that the way you read the e-mail?

THE COURT: Overruled Go ahead

BY MR. ASBILL:

Q Is that the way you read the e-mail? He asked you, "Do you want me to call your lawyer on the certificates and the documents " Right?

A Yes, he did

Q Okay But I believe you testified that my client didn't want to document the loan because he had disclosure issues; is that correct?

A We both said that This was part of we had been discussing a variety of different ways to get this real estate problem under control And one of the ways, what's being referred to here, as I understand it, is one of the things that we were considering doing at that time was, not knowing how much money was going to be required at Virginia Beach during this negative cash flow season was, one of the things that had been discussed was maybe I could loan him stock certificates that he could borrow against Because I was trying to get a handle on just how much money was going to be involved, and that would keep him away from cash

Q Keep him away from your cash.

A From my cash.

Q From your cash. My specific question to you, I understand you have testified to that before essentially, but you say that my client didn't want to document the loan. I'm not talking about you He didn't want to document it because he had disclosure issues Is that right?

A Well, we both discussed it And as part of that, we considered whether it would be rent, whether it would be with the stock certificates or whether it would be a cash loan or, you know, different things

Q Let me try my question again one more time

A Okay

Q The specific question is, you say my client didn't want to document the loan because he had disclosure issues True or false?

A He said he had disclosure issues

Q Okay And therefore, he didn't want to document the loan. That's what your testimony is; is that correct? Forget about this e-mail You are saying that he told you he didn't want to document the loan because he had disclosure issues Correct?

A I don't recall the document part, but our discussion that we had was, I sa [illegible] him, I said, "Governor, I would just as soon keep this between us and just do this as a handshake," is where this ended up. And after this

Q Okay

A So, you know, we sat there and we had this conversation I said, "A handshake, as far as I know, is still the law in Virginia I have disclosure issues " He says, "Well, I have my own " And I said, "Are you comfortable with us just keeping this between the two of us?"

Q The answer to my question is that you say he said he had disclosure issues he was concerned about, correct?

A Yes.

Q Now, with respect to any disclosure issues that my client had, had you ever seen any of the forms or any of the materials relating to whatever disclosure issues or disclosure things my client had to go through? Did you ever see those forms or know anything about them?

A No

Q Do you know whether he had disclosure issues regardless of whether the loan was documented or paper? Let me give you an example You walk in with a bag of cash for $50,000, and you give it to the Governor Do you think he still has disclosure issues or he only has disclosure issues if there is a paper trail?

A I don't know his disclosure issues I just knew that I had them. I don't know what his disclosure issues are

Q So you can't say whether he had disclosure issues no matter how the loan was actually consummated.

MR DRY: Objection, Your Honor

THE COURT: He just said he doesn't know what they are

BY MR ASBILL:

Q I believe you also testified that my client was supposedly advising you about SEC disclosure requirements Do you recall that?

A Well, what is being referred to, I believe, there is I was telling -- I had found out that if it was done as a sale, I had to report who it was being sold to. And he had told me previous to that, he says, "Well, even if you do it as a sale you don't have to list who you are selling it to." And I said, "Well, I don't know if that's right or not I'll find out " And I found out that that was wrong

Q My specific question to you is, did my client give you advice about SEC disclosure requirements?

A He gave me his opinion that I didn't have to disclose who it would be sold to

Q Do you have any reason to believe that my client has any knowledge about SEC disclosure requirements?

A Well, I didn't rely on him for that. I went to the securities lawyers, because even though he said that, I went to the securities lawyers because I knew they knew

Q Okay And you are the CEO of a public company at this time, right?

A I am.

Q Right And you were experienced, highly experienced in trading securities, were you not?

A I wouldn't say highly experienced in trading securities, but I have a good level of experience at this point in my career.

Q Okay And you had outside and inside lawyers, basically, that were securities law experts?

A Experts

Q Right? Okay Now, Mr Dry asked you about the notes that my client took during the meeting on February 29th with you That was an in-person meeting, correct?

A Yes

Q Victoria, please pull up GX 2, Page 3

(Document displayed.)

Did you not tell my client during that meeting that you were going to have the stock transaction, if there were going to be a stock transaction, reviewed by securities and tax lawyers? You didn't do that?

A I recall telling him that I had to make sure what we were doing, you know, wasn't going to trigger any disclosure issues and I would find out about that

Q From your tax and/or securities law experts, correct?

A I don't recall the tax, but from the securities people

Q Securities law experts Okay But nonetheless, despite that conversation, you claim that my client and you agreed to keep all this between us; is that right?

A Yes.

Q And that's why no lawyers were contacted afterwards?

A There were no lawyers representing either one of us other than the information that I was obtaining from our lawyers outside the room just to get a general understanding of this to try to understand what we were doing Because this was prior to the end of the month when we actually finalized what we were going to do

Q Okay

A This was a meeting where we were -- this meeting was, the purpose of that meeting where all of this paperwork took place that day, what I was trying to do was understand how deep the hole was, also, in Virginia Beach.

Q Whether $50,000 was what my client needed or he might need a little more?

A If he needed more, that's what I was trying to do, and this was an example of what we could do.

Q You say at the end of the meeting, whatever the discussion was at the meeting, at the end of the meeting the basic agreement, you claim, between my client and you was, "Let's just keep this between ourselves"; is that

right?

A We shook hands And when I was walking out of the room at the Patrick Henry Building, the only thing that was odd about it was the Governor said, "Jonnie, by the way, a handshake is not the law in Virginia."

Q Regardless of that conversation, what I am trying to get at is, did you, according to your testimony, do you claim that my client and you at the end of the meeting basically agreed "Let's keep this between ourselves"? Is that accurate or not?

A Yes

Q All right Victoria, please load up Government Exhibit 348, Page 1. You saw that document last Thursday, I believe

A Yes

Q In Court

A Yes

Q And you are familiar with it?

A I am.

Q Now, Mr Dry showed that to you last week?

A Yes

Q Okay And this is an e-mail --

A Mr Dry or the lawyers showed it to me I don't recall which one

Q Okay And it is an e-mail to you from John

Piscitelli, correct?

A Yes

Q Dated the 2nd, of March, 2012

A Yes

Q And the subject is transfer instructions Correct?

A Yes

Q And there are some, there is some information relating to that subject matter relating to transfer instructions below in the body of the e-mail

A That's correct

Q Is that correct?

A That is

Q So these are basically electronic wiring instructions from Mr Piscitelli, the stockbroker at Davenport?

A Yes

Q So that's March 2nd That's two days after you and my client supposedly agreed to keep this between ourselves, and here comes Mr Piscitelli talking about it, right?

A Yes

Q Okay So by the 2nd of March, my client had already broken this agreement to keep it between ourselves, didn't he?

A Well, what I was doing right here and the reason this didn't go forward was because of that meeting, because this didn't happen because I couldn't transfer the shares into his name because I didn't want anyone to see those shares going into his name This was sent to me, but it didn't happen because of that

Q I understand, you say it didn't happen

A It didn't happen

Q My question to you is, Mr Piscitelli is asking you about it, whether or not it happens or not. So obviously, my client brought the stockbroker into the mix, correct?

A He did bring the stockbroker in

Q Okay Now, after -- you can take that down After Mr Piscitelli e-mailed this to you, at some point you told my client that this share thing or stock transfer or whatever was not going to work and you needed to write him a check; is that correct?

A Yes, I did.

Q Do you recall that you actually had this discussion on the 12th of March with my client?

A I don't know if it was the 12th of March unless someone shows me a phone record. But I recall having a conversation with the Governor I said, "This is too much trouble It is easier just to write you a check."

Q All right Let me show you a document, and this is to see if it refreshes your recollection Just read it to yourself Victoria, please pull up RM-1431-0001? Just look at that and read it to yourself And if it refreshes your recollection about the date, tell me

A There's a lot,of information.

Q Does it help refresh your recollection about the date?

A Oh, on March 12th, yes It does

Q Okay

A I'm sorry.

Q Does it refresh your recollection that that's the date?

A It does

Q Okay Now, you can take that down, please Let's go now to another exhibit, this is RM-0104-2525 This relates to phone records that are all in evidence Now, these are your phone records; is that correct? Your phone bill?

A Yes

Q From March, 2012?

A Yes

Q And would you look at the entries for the 12th of March, 2012?

A Okay

Q And do you see some calls there to my client's cell phone number, or one in particular for 23 or almost 24 minutes?

A Okay

Q Do you see that?

A I do

Q Does that also help refresh your recollection about the date and the further discussion with my client?

A Yes

Q Okay That was a call from you to my client, I believe, around 10 o'clock at night?

A Yes

Q Okay And it is 23 minutes and 49 seconds, correct?

A It says that

Q Do you have any reason to doubt --

A I don't

Q Okay Take that down, please, and pull up Government Exhibit 352 You recognize this document; this is in evidence, correct?

A Yes, I've seen that

Q So this is the $50,000 check that ultimately you send to MoBo Realty, correct?

A Yes

Q And it says "Beach Properties" at the bottom, right?

A Yes It does

Q And what's the date on that check?

A March 6th.

Q So despite having conversations with my client about various alternatives, you had already written a check on March 6th

A I asked them to hold the check while we were exploring this

Q Asked who to hold the check?

A Whomever I sent it to or the Governor It must have been the Governor

Q Must have been?

A Well, it was whomever $50,000 went to I asked them to hold it while we were trying to clear this up, and it is my recollection as I sit here that it was the Governor

Q But you had already sent the check six days before you were having later conversations about alternative types of loan arrangements, right?

A Yes If that didn't work out, my commitment basically when I went there was, and it had been from May 2nd, the previous year, that "I'll help you with your financial problems " And so I was letting him know that I'll help you; let's try to figure out and maybe we will talk about some other ways to do it, just because I was trying to get a handle on whether is this $50,000 here makes $100,000, is this $200,000, is this $300,000, exactly what's going on here when you start pulling that much cash out and it is just sitting in dead -- it is dead money

Q The bottom line is, you don't know who you sent this check to, whether it was my client or whether it was Maureen McDonnell or whether it was Michael Uncapher or somebody associated with the MoBo partnership?

A I sent that check to -- I made that check out to MoBo Realty because I was told to make it out to MoBo Realty And I believe it was the Governor at this point, because at this point, the financial dealings here have shifted to where the Governor and I are having direct communication I believe it was the Governor When I sent him the check, I said, "I'll send you the check, but let's try to figure out if we can come up with various ways to try to cover this hole " And again, as I said, I was trying to figure out just how deep it was

Q Do you recall between the 6th of March and the 12th of March having discussions with people other than my client about this transaction? Ms McDonnell, for example?

A As I sit here, I don't recall talking to Ms McDonnell about this part

Q Victoria, please pull the phone records back up, RM-0104 And would you look for an entry on the 2nd of March, see if you had a phone call with Ms McDonnell

A I see that

Q All right And on March 3rd, did you and

Ms McDonnell exchange three text messages?

A If it says that, I don't dispute it

Q Okay And how about March 4th? Is there a text message between the two of you on that date?

A Yes, I see that

Q And on March 5th, are there three texts and seven phone conversations between you and Ms McDonnell?

A If it is there, I don't refute that

Q Okay And March 6th, were there four text messages and a phone call, one or two phone calls between you and Ms McDonnell?

A It appears so

Q Okay You can take that down, please And give me RM-1427 Blow that up a little, please You recognize this document, do you not?

A I don't I don't recognize this one I recognize the one that was the $50,000 check, but I don't recognize this one

Q Do you recall asking Jerri Fulkerson, your secretary, to write a check from Starwood Trust to MoBo MoBo Realty, and in the memo line, she puts "Maureen McDonnell" instead of "Beach Properties"?

A I'm not familiar with that, but Jerri wouldn't write a check unless I told her to

Q She wouldn't void it unless you told her to, either, would she?

A No

Q You can take that down. You viewed this $50,000 loan to MoBo as another loan you were making to Ms McDonnell at her request?

A I viewed this $50,000 loan as what I viewed the first one as: they were in trouble financially, and I was helping their family out

Q And that first loan was to her, was it not?

A The first loan was

Q Okay

A The first loan, the check was made out to her But the loan from my perspective was to both of them.

Q All right Now, you say that you didn't want anyone to know about the loan Yet there is a paper trail here from the check itself Isn't that right?

A Paper trail between my secretary and myself

Q Well, there is a paper trail from the final check that is in your bank?

A Yes

Q Is in the MoBo bank accounts

A Yes

Q Your secretary knows about it

A Yes

Q MoBo people know about it

A Yes

Q All right Now, I believe last Friday, you testified that you had a friend who was a judge in Florida; is that correct?

A I do

Q And that's Judge Farrance?

A It is

Q F-A-R-R-A-N-C-E?

A It is

Q A good friend of yours?

A He is

Q What kind of a judge is he?

MR. DRY: Objection, Your Honor We went over all this on Friday Now he is retreading things he has already gone over

MR. ASBILL: I'm trying to correct one point

THE COURT: Go ahead.

BY MR ASBILL:

Q You recall talking to him about making a loan to the Governor of Virginia, correct? You discussed that topic with him.

A He didn't give me an opinion We were playing golf and I just asked him generally, I asked him generally, "You know, Bob, is it okay? The Governor is having financial problems Is it okay if I loan --" "He is hitting me up for money," is what I actually said to him. And "Is it okay for me to do this?"

Q And you testified that he said to you, "As long as you don't get any state contracts " Right?

A Yes.

Q But in fact, what he told you was much broader than that, wasn't it?

A I remember him saying, "As long as you don't get any state contracts," but I don't recall after that It was just a general question where I was trying to get some comfort about what I was doing

Q You don't recall him --

A In a casual way I was not asking him for a legal opinion.

MR. DRY: Objection There is more than one question.

MR ASBILL: I'm trying to set it up

THE COURT: So far we have gone over stuff I've already heard So if you have something, go ahead

MR. ASBILL: A new thought on it right now

THE COURT: Go ahead.

BY MR ASBILL:

Q In fact, Judge Farrance told you it didn't just relate to contracts He said it was okay for you to loan money to the Governor of Virginia as long as you didn't get anything in return

A Actually --

Q Isn't that correct?

A No Actually, what he said, he says, "Jonnie, you can loan money to anyone you want If you loan money to the Governor, it is his problem, not yours "

Q And he didn't limit it to contracts, is what I am asking you. He told you it is okay as long as you don't get anything in return, not just a contract

A I don't recall him saying that, but I do recall him saying that "It is not your problem, Jonnie, it is the Governor's "

Q I'd like you to take a look at something to see if it refreshes your recollection Take a look at the notes of the report of your interview with the FBI on the 1st of July, 2013

MR. DRY: He has already said he doesn't recall

MR. ASBILL: I want to see if I can help him recall

THE COURT: Go ahead

(Document proffered to witness)

BY MR ASBILL:

Q Please look at that, Page 5, last paragraph.

A Okay

Q Can you read that last paragraph to yourself?

A Yes I did.

Q Okay Does that refresh your recollection about whether Judge Farrance told you that it is okay to loan money to my client as long as you don't ask for anything in return?

A That's not what Judge Farrance said.

THE COURT: All right That means it doesn't refresh his recollection Let's go on to the next point.

MR. ASBILL: Okay

BY MR. ASBILL:

Q By the way, I'll get back to it in more detail in a minute, but the Chatham Bars Inn trip?

A Yes

Q You had another judge friend of yours on that trip; is that correct?

A My good friend, Chris Amrhein, from when I was 20 years old, is a lawyer in Massachusetts, and we have been friends for 40 years And his wife became a judge over the past few years

Q So the answer is yes, there was another judge, a friend of yours, on that trip?

A She is a friend of mine, but her husband is my good friend.

Q Okay

A And he is a lawyer

Q And I believe you said on Friday that you extended this loan, this $50,000 loan, to keep getting my client's help Is that correct?

A Yes

Q Is that what you said?

A Yes

Q So please tell me a single thing that my client did for you or your company after you gave him this $50,000 loan to MoBo

A Okay

Q Let's do it month by month Try March.

A I was going to answer it with an example You asked me for a single example

Q Let's do it month by month, and you give me your example

A We will get there

Q March, 2012, nothing Right?

A I need to ask you a question first before that, if it is okay, to help me recall, to answer that question for you on a date, since you have all these papers

Q That's not the way this works

A Okay All right Then let me -- I'm trying to help you with it On the day that --

Q Just your memory

MR. DRY: Let him answer the question.

THE COURT: Let him answer the question.

THE WITNESS: I recall that one of the outstanding ones was that at the Healthcare Leaders event at the Governor's Mansion, in which I was allowed to invite basically the doctors that I wanted to invite to the Healthcare Leaders meeting that day, and while the Governor was addressing the Healthcare Leaders meeting, I asked Ms McDonnell to interrupt him and recognize one of our consultants, Dr Ladenson, from Johns Hopkins, as the special guest And she did

Q Okay

A And after that dinner, after that -- during the course of that evening, one of the people that was there who was very important to the company, where I felt like I was making good progress, was a lady named Sara Wilson, who was in charge of the $400 million a year that Governor -- that Virginia spends on healthcare for drug treatment And then we went that same evening, we went down to the La Grotta restaurant with the Governor and his wife with my consultants and talked about Anatabloc And my consultant was asked by the Governor, "How big of a discovery is this?" And then the Governor and his wife invited my consultant and his friend to spend the night at the Governor's Mansion. And for me --

Q This is on the 29th This is the 29th of February

So the question is, in March of 2012

A I'm trying -- I'm thinking in that time frame That's why I asked you for a date, because that was a very significant -- that was a very significant evening, to have all those sort of important events happen for our company

Q It was significant because you dropped about a thousand bucks on wine for four people, right, at La Grotta?

A I thought I was answering a question about the $50,000, the second $50,000 that I was loaning them.

Q April, 2012 Anything you remember then?

A I'm not sure whether it was April -- sir, I have a hard time I can tell you what happened, but I can't, unless you direct me to something, for example, when the Governor contacted me about, you know, "Jonnie, I'm going to look into the problem you have at UVA --"

Q We will get to that.

A Okay The dates I'm having trouble with There is no way I can recall -- I can tell you what happened.

Q Okay

A Okay

Q But you can't tell me as you sit here whether anything happened in April or not

A I can't give you specific dates --

Q Okay

A -- is all

Q Let's go to May In May, basically, that's when you give my client another $20,000 loan to MoBo

A Yes

Q Okay And that was a wire transfer from Starwood Trust?

A Yes

Q Correct?

A That's correct

Q And that's the trust that your brother, Donnie, supposedly is a trustee on?

A For my children, yes

Q And the same trust that your secretary administers and your children are supposed to benefit from?

A Which they do

Q Right. And that transfer, wire transfer, also creates a trail of records, does it not?

A Yes

Q Okay And Mr Dry, I believe, asked you last week some questions about my client saying he owned stock. Correct?

A On multiple occasions he confirmed that to me

Q You can't tell me the dates of those or whether anyone else was present, and you have no notes of that

A No one was present

Q Okay

A But on multiple times, he would say to me, confirm to me that, "Jonnie," the stock looks good. I'm a shareholder. I'm rooting for you."

Q "I'm a shareholder."

A "I'm a shareholder."

Q Not just "Your stock looks good" because there is some news article or something you send over It is, "I'm a shareholder and the stock looks good"; is that what you claim?

A Yes

Q And there is no record of that anywhere

A Not that I am aware of

Q So we have your memory for that and your word for that; is that correct?

A We do

Q And the fact is, according to you, that you told Ms McDonnell when she first bought stock in your company to sell it and pay down credit card debt, correct?

A I did.

Q And that's because you thought Star's stock was too volatile?

A I thought it was -- I thought -- the first thing I thought was that "You told me you folks needed this money because you were in trouble in Virginia Beach, and now I just walk out of a meeting and find out that you have purchased stock in this company " And yes, I did say, "You shouldn't have your money in this stock because you can't afford to make these sorts of risky investments "

Q So let me see if I get this right Did you tell her that the stock was risky because it was too volatile; is that essentially what you said?

A I said to her, I said, "These companies at these stages, the stock gyrates until they gain traction and reach these milestones, and I think this is too risky of an investment given that you don't have the extra money to be able to afford to take these risks " I told her that

Q Gyrate, volatile, these are distinctions with a difference to you?

A Gyrate, volatile, it is the same for me

Q High beta factor? Does that ring a bell?

A I don't know what that means

Q You don't know what that means Okay Let me go forward to June, 2012 Nothing you recall then, right?

A Again, if you have an event, just to say June or May or May 16th, I don't know how to respond to that

Q If you have a memory of June and something --

A Unless you ask me a question about June and show me something that happened.

Q The question is nothing, right?

A Then I'm okay with that

Q July, 2012, July 12th, the National Governors' Association meeting in Williamsburg I want you to focus on that with me, please

A Okay

Q I believe you mentioned that Maureen McDonnell asked for some Anatabloc to put in gift bags for the governors' spouses at that meeting and you sent some over

A I had some delivered, I believe, to the Williamsburg Inn for that

Q You never discussed that issue with my client, did you?

A With the Governor? No

Q Yes

A No

Q And you had no reason to believe that he was personally involved with gift bags, did you?

A I didn't think he was

Q Now, moving on to August of 2012, late August, last day of the month, the 31st of August, 2012, to the beginning of September

A Yes

Q Three days That's the Chatham Bars Inn trip.

A Yes

Q Correct? All right And other than the things that we have talked about, that's it basically You decide you are going to ask him and Maureen to come up to Chatham Bars for the weekend, correct?

A I didn't decide that at all

Q You worked that out with Ms McDonnell

A Maureen worked that out with me and wanted to go to Bar Harbor, and this was the trip from the previous year And my wife said she didn't want to go to Bar Harbor And so I talked her into settling and going to Chatham Bars Inn instead

Q Okay Now, the Bar Harbor trip the previous year would have been, if it had happened, it would have been in the same time frame, roughly?

A Yes, I think so

Q The idea about Bar Harbor the previous year --

A I don't know if it was the same, it was somewhere between May and the summer, somewhere through there

Q And the idea about the Bar Harbor trip was that both couples had either gotten married or honeymooned in Bar Harbor Independently, obviously?

A Yes

Q So that was something that you all had in common, the two couples had in common; that you had both spent a honeymoon in Bar Harbor, Maine?

A Yes

Q That was something you were trying to arrange the previous year just, for the four of you to celebrate your mutual anniversaries?

A I was accommodating her I was not celebrating our mutual anniversaries

Q They just happened to coincide at the same time.

A I don't remember if the trip was on the anniversary I was trying to explain, which mine is May 23rd, and you asked me earlier, "Was this the same trip the previous year in August, September, for the following year?" And I responded and said, "Well, somewhere through May through that period" is all

Q That trip was canceled because there were multiple emergencies in the State of Virginia; is that correct?

A Yes

Q In 2011

A Yes

Q All right. Now, at the Chatham Bars Inn trip, you testified, I believe, that you are working the whole weekend, correct?

A I am working the whole weekend.

Q That's 100 percent work and you are 100 percent sure about that; is that right?

A I'm working

Q And you are 100 percent sure that's what you are doing the whole time, right?

A Even when I am sitting around that fireplace at night outside, I'm working

Q And even when you are talking family stuff and children and the rest of it, you are working Is that right?

A When I'm --

Q When you are talking about anything, you are working Is that right?

A No, I would just consider that weekend as that was an opportunity for one of our consultants, Dr Ladenson, and I to spend more time with the Governor to get him to help us, and I thought we achieved that I thought that went very well

Q Okay So when you golf you are working?

A I'm always on point when I'm around the Governor, sir

Q So when you are sailing you are working?

A It doesn't matter what I am doing

Q Having dinner on the beach, you are working?

A Even if I'm goofing around.

Q Throwing the Cognac into the fire you are working?

A Right down to that

Q Tell me, you are not social friends, this is just business friends, right?

A Absolutely

Q Is it difficult for you to three days straight, all your waking hours, pretend you are a personal friend? Is that hard for you or does that come easy?

A I don't feel like I was pretending They brought their businesspeople, too

Q Phil Cox and his wife are not personal friends of my client?

A It is my idea that if they are personal friends, the conversations I was there with are about raising money and budgets and advertising budgets like the people that he invited out to dinner that run the campaign advertising events that were there at dinner with us one night, another couple

Q Can you be both personal and business friends simultaneously with somebody?

A I can be business friends The difference for me is I needed something here, okay? It is business My personal friends, I just don't recall paying my personal friends money to hang around with me and go play golf and do things

Q You have never loaned money to a personal friend you played golf with; is that your testimony?

A I don't recall loaning money to many -- I just can't sit here and recall loaning money to, other than just family members I loan money to, it seems like, quite a bit

Q How about Burt Haynes, one of your board members we talked about?

A B J Haynes is a very close friend of mine that Paul Perito and I asked to come on the board because we had so much confidence in him and his background And he has been a friend of mine for a long time

Q I don't challenge that I'm just saying he is a business friend and a personal friend.

A He is both

Q And you gave his kids money when they got married; is that right?

A I gave it to B.J to help out, and I believe I gave B J maybe $200,000

Q Okay

A Because B J has been very helpful to me over the years

Q Let me move on to September of 2012 Nothing you remember for that month?

A What month was this?

Q September, 2012 The month after Chatham Bars

A Not unless you show me something

Q Okay October, 2012, remember anything then?

A Not unless you show me something

Q Okay Let's go to November of 2012 Nothing that you recall until Thanksgiving of November, 2012; is that right?

A Unless someone shows me a document or something, I can't recall anything specifically

Q All right You remember testifying basically that you had this text message exchange with my client, "Happy Thanksgiving from the Williams kitchen"?

A Yes

Q Okay And my client responding back to you that "Your family is very special"? That's what he said back to you?

A He said that or I said that

Q No, he said that

A He said that Okay

Q Right And again, this is not about friends This is just about business

A It is about a business relationship. I'm maintaining a very important business relationship.

Q Okay And in late, I believe you said, in late 2012, your brother, Donnie, did some home improvement work at Ms McDonnell's and Mr McDonnell's home; is that correct?

A Yes

Q Okay And Ms McDonnell offered to pay Donnie for that work? Any time he did something at the house, she offered to pay him for it, didn't she?

A I believe she said she offered to pay for it

Q Okay And isn't it true that my client, whatever work Donnie did, my client thanked you for that?

A Yes

Q Now, in December of 2012, fast forwarding one month, you recall you were invited to a tool party for Adam Zubowsky and Jeanine McDonnell; is that correct?

A Yes

Q So this is the guy's equivalent of a bridal shower; is that what you understood?

A That's what I came to understand. I had never heard of it before

Q Okay People are bringing tools as gifts

A I got it But I just never heard of that before

Q All right And it was Ms McDonnell that invited you to that event?

A She did

Q And --

A Wait a minute I don't know if she -- I don't know if she invited me to the event, but she called me and said, "Jonnie, you are going to do the same thing for Jeanine as what you did for Cailin?"

Q You don't even get to come Just send money Right?

Is that what you are testifying?

A Basically

Q Just send the money You can't even come to the party, right? Just send the money Is that it?

A I'm sure I could come to the party But I was in Florida, and so I'm in Florida, and I'm going to fly all the way to Virginia for a tool party?

Q Well, whatever You were invited. You didn't come for whatever reason, but it wasn't because you weren't invited, correct?

A I don't recall whether I was invited or not But I recall being asked for the money

Q It wasn't your idea to try to give a generator? This was Ms McDonnell's idea, you ought to give a generator?

A That generator is a long story, sir

Q I don't want the long story Was it your idea or not?

A That generator was a way for me to keep from writing another check.

Q If the generator cost a lot of money, it is $10,000, you have to buy that, that's different than writing a check?

A No What I ran into, I thought the generator, I actually spent that Saturday going to look for generators myself And I thought, I went to the Honda store first thinking "They can't cost but so much, I'll just buy them a generator " They live down at Virginia Beach And then I ran into trouble with that, and then I eventually laid it off on my brother and then my brother said, "These generators can cost 15 or $20,000 " Finally, by Sunday afternoon, I threw in the towel and sent a check for $10,000

Q You can also get a generator for three or $400, can't you? Fills up with gasoline and plugs into your garage outlet?

A I don't know that I wasn't, I didn't see any three or $400 It was called -- GE makes these generators, and then what had happened, it was more to it than that. I actually had my secretary even send a generator company in Virginia Beach over to see what kind they wanted and what they had picked out was 15 or $20,000 So it was actually not just that Saturday and Sunday, but it had turned into a production.

Q You are claiming that Jeanine McDonnell picked out a $15,000 generator and asked you for that specific one? That's what you are saying?

A I'm saying right here, sir, under oath, that her husband and her met with the generator company that my secretary sent from Virginia Beach to their home to assess what they needed for a generator Because I wasn't -- I couldn't, you know, I was trying to find one I certainly couldn't, the one I was looking at, I certainly couldn't fit it in the airplane And so I gave it to my brother, I gave it to to my secretary, and said, "Get this generator thing away from me "

Q Secretary, brother, whatever, you didn't talk to my client about it at all, did you?

A I talked -- not about --

Q My client

A I talked to your client the evening --

THE COURT: Let him answer the question, Mr Asbill Don't talk over him.

THE WITNESS: I talked to your client the evening of the tool party

BY MR. ASBILL:

Q And you told him you were giving a generator?

A No I told him -- they called me and said, "Thank you for this wonderful gift for Jeanine and Adam," and I don't know if that was the generator or the $10,000 check that they were calling me to thank me for It was one or the other

Q You claim you talked to my client that night as opposed to the kids, Jeanine and Adam, and Maureen?

A I did talk to your client and Ms McDonnell that evening

Q Okay Let me talk to you about December, 2012

A Okay

Q The Rolex photo. That's a topic I want to talk to you about

A Okay

Q Now, last Thursday, you talked about a photo of Chef Leo that you sent to my client on Christmas Eve, 2012 Do you remember that?

A I will never forget it.

Q Okay You send him this picture, and this was the shared Chef Leo, right?

A Yes

Q You had Thanksgiving, you had Christmas

A I paid for Chef Leo that evening myself, though.

Q I understand. I'm talking about this is your house

A This is my home

Q You reserved him, you had used him in the past and when the other chef at the Mansion leaves, that's when Chef Leo starts working at the Mansion?

A Yes

Q But you have reserved Christmas and Thanksgiving for you.

A Yes

Q Okay So Chef Leo was at your house on Christmas Eve

A Yes

Q Correct And you send my client a text with a picture of Chef Leo at your house on Christmas Eve at dinner time Is that right?

A I sent him a picture of Chef Leo and my wife standing beside the Christmas tree in the living room.

Q Dinner time, Christmas Eve

A Yes

Q Correct Mr Dry asked you if you got a text message response to that text from you with the photo of your wife and Chef Leo, correct?

A Yes

Q And your response was what?

A I received a picture of the Governor showing the watch on his wrist

Q Okay And are you testifying that my client sent you a photo of himself with the Rolex on his wrist; is that what you are saying?

A Yes

Q That's what you say

A That's what I'm saying

Q That's what you are saying All right, let's go to Government Exhibit 444 This is the photo that you identified when Mr Dry was examining you; is that correct?

A Yes, it is

Q And you claim this was in response to your text to my client He responds by sending you this picture; is that right?

A Yes

Q Okay And you interpret that as "You've got my chef but I've got your watch." That's your interpretation of this picture, even though there is no text written associated with the picture

A My first thought was I was scared to death

Q Okay That's one way you interpret it The other way you interpreted it is, you know, "You've got my chef but I've got your watch"; is that right?

A Yes

Q Okay This is the first time you claim you ever heard anything from my client about the watch for a year-and-a-half from the time you bought it

A First time that I knew for sure that he knew it came from me

Q You knew for sure because he sent you back this text message in response to your photo of the chef to him.

A Yes

Q Is that right?

A Yes

Q All right Would you please pull up Government

Exhibit 444 Government Exhibit 445 And is this related to that picture?

A Is what related to the picture?

Q This message right here, this exhibit.

A That's the picture --

Q That's the picture you claim my client texted you

A No

Q Go back to the document that reflects what you claim he sent you in response

A To the photo of my wife and Chef Leo Yes.

Q Okay How did you get that photo? You don't know, right? You don't have any idea

A On my iPhone It came to me on my iPhone

Q Where on your iPhone is there any legend of any kind that reflects this is in response, in direct response to your text to my client?

A I don't --

Q Where do you see that?

A I have no idea I'm just telling you that came right away

Q It came right away And you assume it came from my client

A Because it said GOV on my phone

Q Okay And during the course of this investigation, you turned over documents to the government, did you not?

A Yes

Q And they pulled text messages and photos from your iPhone?

A They did.

Q The Chef Leo photo and that text was one of the messages they collected; is that right?

A Yes

Q You can see at the top of that, blow up the top of that, this is the 24th of December, 2012, at about 7:46 p.m. Correct?

A Yes

Q And the (804) ***-5321, what's that number?

A I think that's the Governor's number But I would have to look on my phone and see

Q All right That's when you are sending it to him. It is to him from you and that's the picture of the chef and your wife

A Yes

Q Is that correct?

A Yes

Q And at the top of that exhibit, 445, blow that up at the top. See it says, "Mobile Phone Examiner Plus Report"?

A I see that

Q Do you know what that means?

A I have no idea

Q And is there all kinds of data about this message on this text?

A Okay

Q All right, there are to, from, date, time, message type, file name, all of that is on this text; is that correct?

A I don't understand it, but okay

Q It is all there

A All right

Q And that shows that you sent the message to the phone number at the top that we have agreed belongs to my client, correct?

A Yes

Q And it looks like all that data comes from your phone, correct?

MR. DRY: Objection, Your Honor He just said he didn't know what the report was

THE COURT: If you have a point, get to it

MR. ASBILL: I do

BY MR ASBILL:

Q Let's go back to Government Exhibit 444 Do you see any message data on this exhibit?

A No

Q No to, no from, no date, no time.

A I just see a picture

Q No message, no file name Right?

A No

Q All right So your attorneys pulled both texts from your phone, but for some reason there is no data on the picture, e-mail; is that correct? Or picture text

A If there is no data, there is no data There is nothing I can do about that

Q Please pull up RM-0104-1003 These are your phone records from December 24th, 2012; is that right?

A Yes

Q All right And do you see at 6:08, 12-24 at 6:08 p.m., there is a text to the Governor from you?

A Okay

Q I want you to look down there and find me one from my client back to you

A What was the time of the, when I sent the picture on your --

Q I think it is 6:08

A Was it 6:08? I thought this was later in the evening, like at 7:30 or 8 o'clock.

Q Go down further

THE COURT: The other message said seven something

THE WITNESS: Seven something

BY MR. ASBILL:

Q Look in the 7 o'clock to 8 o'clock time frame

A That's what I,was trying to do And the Governor's four numbers for the Gov phone number ends in what? I'm just trying to answer your question

A 1

Q It ends in 1? Numeral 1, the originating number?

A The originating number from him is 1

Q Right

A Okay I don't see a 1

Q There is one at 6:08 p.m.

A Right But I don't see -- go down to 8:16 What is that? No, scroll back the other way I thought I saw some 1's Go up a little more Maybe when you move it, move it so I can see, it looks like when you move it, it goes to 1's, all 1's across there

Q We will try to blow up the whole thing for you.

A I don't know I'm just telling you that when I sent that picture, that's how I received that picture, was in response to me sending that text of the chef with my wife

Q I understand you say that And what I am asking you --

A I believe that

Q Can you find any record on your phone bill of my client texting you that night with any attachment that would include the photo of himself with the Rolex watch?

A I don't see any on these phone records

Q So you just assume that the responsive text you got was from my client, but you don't have any proof of that at all, do you?

A I sent him a picture of my wife with the Christmas tree and I received this as a response on my phone that said GOV

Q And you assume that he sent it to you, but there is no record of him doing that, is there?

A I don't see it I don't see that, no

Q And if he didn't send it to you, the unstated "I've got yours, you've got mine" message is not from him, is it?

A I don't know who else would have GOV on their phone to send me a picture of his wrist with the watch

Q You don't have --

THE COURT: Mr Asbill, the document was, parts of it was previously admitted but not all of it And we are using parts that weren't previously admitted. So if you could just move it in

MR ASBILL: I will move it in I apologize, Your Honor

THE COURT: Sure It will be admitted.

BY MR. ASBILL:

Q Let's move on to January, 2013

A On the 23rd of January, that's when you first met with the investigators You have talked about that at some length; is that correct?

A Yes

Q At the end of the meeting they asked you to wear a wire

A They did.

Q You said no, right?

A I didn't say no I stopped the meeting and called the lawyers

Q To call your lawyers You understood at some point that in terms of some sort of a public corruption kind of case, if you had worn a wire and had captured my client saying something incriminating, that would be a very valuable thing for you to be able to negotiate with in terms of a deal with the government, correct?

A Those things never crossed my mind that day I just wanted those fellows to leave

Q I don't mean that day I'm talking about you said you had to think about it and you went forward.

A I didn't say I had to think about it I stopped the meeting, I said, and called the lawyers

Q And my question to you is, at some point after the meeting, going forward --

A Yes

Q -- into the year, did it dawn on you that if you had a recording of my client saying something incriminating, that that would be a very valuable thing for you to have in terms of negotiating a deal with the government?

A Never crossed my mind that day. I thought he was in trouble

Q I'm not asking you that day Did it ever cross your mind that that would be useful?

A No

Q Never thought about that?

A No That's a movie scene

Q Oh, it is If you have an admission from my client of some criminal activity, you are basically irrelevant, right?

MR. DRY: Objection.

THE COURT: Sustained

THE WITNESS: I wouldn't say I'm irrelevant

BY MR. ASBILL:

Q To a prosecution of my client

A I don't think that -- I didn't think any of the things that you are saying, sir

Q Okay Now, we talked or somebody talked to you a while ago, I believe last week, about Government Exhibit 470, Page 1 Will you pull that up? Blow up the e-mail on that This is the next day, basically, where there is an opportunity to, an offer to go down to the beach house at Sandbridge where you would have had an opportunity to spend time alone with my client; is that right? That's a text message to you?

A Let me read it, just a second, to make sure

Q Okay

A Yes She is inviting me to come down to spend some private time with the Governor where it is comfortable at the beach

Q Okay And you don't take her up on that; is that right?

A It is cold in Sandbridge

Q Okay Regardless of whether it is cold or not, you don't take her up on it; is that right?

A I don't know if I would or not

Q Did you, is the question.

A No

Q And you never think about, "Gee, maybe if I wear a wire, this would be a great opportunity to get some evidence against the Governor"?

MR. DRY: He has already said --

THE COURT: Sustained

BY MR. ASBILL:

Q Let's go next to RM-0607 Do you recognize this?

A Who is it from?

Q Blow it up for him, please Did you ever see this e-mail?

A I asked, who is it from?

Q Ms Fulkerson to you on April 22nd, 2013

A Okay So it is from Jerri to me.

Q 2013, April 22nd, 2013 Do you recognize that?

A Okay. Okay. This is from -- this is my secretary referencing Mike Bujakowski

Q Who is Mike Bujakowski?

A Mike Bujakowski was the HR person at the company

Q Okay And this is after the investigation in this case broke in the press; is that correct?

A Yes

Q So we are in April of 2013 and the investigation story, first story about the investigation broke when?

A Yes

Q Broke when?

A Okay

Q When is your recollection of when the story broke of your giving gifts for my client's family?

A I don't know what day I'm not sure exactly when that happened

Q March, at least March

A It happened in March Okay

Q So this is in April

A Okay, after it is already in the newspapers

Q It is in the newspaper about the investigation, correct?

A Right What's the question?

MR. ASBILL: I want to move the admission of that e-mail

THE COURT: It will be admitted.

BY MR ASBILL:

Q And in discussions, in the discussion in this e-mail, basically, Ms Fulkerson is saying here that the idea that you wanted anything in return is totally ridiculous

MR. DRY: Objection, Your Honor

THE WITNESS: Does it say that?

THE COURT: Hold up The objection is sustained. The form of this question, you are asking him what was in her head, which he can't answer

BY MR ASBILL:

Q What does she say?

A Do you want me to read to you what it says?

Q What does she say to you about the investigation?

A She is saying to Mike Bujakowski, is what it looks like, "I swear, it is totally ridiculous Mike called me," I'm assuming Mike Bujakowski, "called me and wanted to know why Star doesn't tell everyone that you give to everyone and write good stuff on you." I'm assuming that's because of the tar and feathering that I was taking

Q Your secretary of what, almost 20 years?

A Yes

Q Thinks that the idea of you doing this is totally ridiculous Apparently that's what she says

MR DRY: Objection.

THE COURT: Sustained.

THE WITNESS: I don't know --

THE COURT: Sustained.

BY MR ASBILL:

Q Please pull up RM-1958 Do you recognize this document?

A No

Q Dated April 15th. Take a look at it, take a close look at it It is dated April 15th, same year, 2013

A Okay

Q And is it a message to you? Text message?

A To me, and it says Talhia, referring to Talhia Tuck --

MR. DRY: Objection, Your Honor He doesn't recognize this document How is he supposed to get it in the record?

BY MR ASBILL:

Q Take a look at this document and take a look at the attachments to it.

A I've never seen this before

Q See if you see any of the attachment, this Draft 3 attachment

A Sir, the only thing on my screen is one sentence

Q You say you received this text message, did you not, whatever is on it right now? You got it, right?

A I'm just saying to you, I don't recall seeing a text message that says, "Talhia sent Draft 3 of press "

MR. DRY: Objection.

THE COURT: That's the end of of it He doesn't recall

BY MR. ASBILL:

Q Do you know who Talhia Tuck is?

A She is our investor relations -- Vice-president of Communications in the Washington, D.C. office

Q And she is a Harvard-trained lawyer that works for Star?

A She is, but she is the Vice-president of Communications

Q VP of communications

A Yes She has no legal business She is a lawyer by training, but she was not hired in that capacity

Q She is hired a Vice-president of Investor Relations, is that what you are saying?

A Yes Vice-president of Investor Relations/Communications.

Q Okay Do you know whether or not she issued a press release from Star about the investigation?

A At some point, probably

Q Do you recall approving a press release from Star about the investigation in response to whatever you call it, the tar and feathering of you all?

A No, that would be Mr Perito's responsibility

Q And you would not approve a public press statement on a matter of this significance?

A I may have an opinion on it, but no, when you go into this area, sir, you are in Mr. Perito's department now Nothing goes out that he doesn't -- you have just gone into Mr Perito's department And you know him, so --

Q And if Mr Perito and Ms Tuck working together issued a press release to the effect that your company never sought or received --

MR. DRY: Objection Can we approach for a second?

(At Bench)

MR. DRY: Where Mr Asbill is going with this, basically he wants to get in a Washington Post quote by Talhia Tuck commenting on the investigation. The problem is, it is not a press release He keeps mischaracterizing it as a press release, and the actual press release that coincides in time with what that text message was saying has nothing to do with the investigation He is mischaracterizing what happened It is inadmissible hearsay to the newspaper article, what Talhia Tuck said

THE COURT: You are just going around in circles and he is not the witness, bottom line

(In Open Court)

BY MR. ASBILL:

Q Did you personally take any role in response to the news of the investigation? Did you personally have any role or any consultations with Mr Perito or Ms Tuck or anyone else in your company about what Star's public position about the stories ought to be?

A I don't recall that

Q Never discussed it

A I discussed a lot of things with Mr Perito If this was discussed, this was very serious, but generally, Talhia writes a draft of it, Mr Perito finalizes it, and sometimes I don't see them until after he sent them out

Q Well, would a comment, a formal comment from the company to the press on this issue be something that you would be interested in at all?

A I can't say I wouldn't be interested in it But at this point, you know, everything had come unglued Mr Perito -- you are in legal now As you know, he is a trained prosecutor,

MR. DRY: Objection.

THE COURT: Let's go on to another topic

THE WITNESS: I don't know what to tell you about that It is just not what I do

BY MR. ASBILL:

Q To your knowledge, nobody from Star ever admitted that you had done anything wrong, is that correct, in the press at this time frame?

A I don't recall that press release

Q That's not my question Do you recall anybody from Star saying anything to the press admitting the company did anything wrong?

MR. DRY: Objection

THE COURT: He can answer this

THE WITNESS: I don't recall that

BY MR ASBILL:

Q Now, I believe your testimony, I'll move on to another topic. Your testimony in Court is the only time that my client actually told you he would do something for the company after January, 2011, was when he said he would look into the UVA and the VCU bureaucratic delay?

A Right

Q Okay And that was supposedly between the two of you on a private phone call?

A Right

Q Nobody recorded it, nobody ever heard it?

A Right

Q All right And you do not claim that my client did anything to assist or promote your company after that, correct?

A At what time frame is this?

Q This is in 2012 when the UVA -- you are having problems, you can't get your phone calls returned, whatever

A Right

Q Okay. And from that point forward, you said that, I believe you said that one of the things you wanted is, aside from the Healthcare Leaders event that you have talked about in February, nothing forward after that, but I want to talk to you about the Tobacco Commission. You say you want funding from the Tobacco Commission That's one of the things you wanted; is that right?

A Yes Because the Governor encouraged that, that the studies be funded independently instead of me funding them here in Virginia

Q Okay That's what you say, I know that's what you say, and you don't have any proof of that other than your word; is that correct?

A Other than after that I went to McGuireWoods and hired a lawyer for that

Q And you talked about that before But you never applied, Star never applied to the Tobacco Commission for any funding, did it?

A I don't know the particulars of that We missed -- the idea was they were working with the lawyers. There were several lawyers involved with that, to file with the Commission, and we had missed a cutoff date of that I didn't deal with that

Q Before the cut-off date, after the cut-off date, Star never sent in an application to the Tobacco Commission, to your knowledge

A Not to my knowledge

Q Is that correct?

A Yes

Q Never filed a request for funding with the Tobacco Commission, to your knowledge; is that correct?

A To my knowledge

Q And you say you wanted UVA and VCU to do some clinical research; is that correct?

A Yes

Q And I believe you testified in answer to a question from Mr Dry that you know the Governor controls the medical schools here in Virginia Correct?

A I did say that

Q You did say that

A What I meant was, he approves the budgets for the medical schools So it was my understanding that he had influence there

Q You don't have any real idea how those institutions are governed, do you?

A I don't

Q So the idea, your testimony that "I know he controls the medical schools here in Virginia" is an assumption or maybe an overreach?

A No, it is based upon me hearing from one of the lawyers that the budget is approved by him. That's not something I speculated about

Q That's one of your lawyers, you are saying?

A Our lawyer, one of our lawyers, I heard say that

Q All right You say that no one was returning your calls as of February, 2012; is that right?

A Returning the calls to the doctors at our office in Gloucester, Massachusetts that are responsible for dealing with the medical schools

Q No one is returning Star's calls

A Star's calls Those doctors' calls Not mine personally

Q Are you aware that three Star representatives had a conference call with UVA officials on November 29th, 2011?

A I don't recall that specifically I know they were in communication with them.

Q And that was a discussion about grant applications to the Tobacco Commission where Star people are directly talking to UVA people?

A Great.

Q And Paul Perito and Bob Pokusa, your General Counsel, and Chris Nolen, one of your lobbyists, were on that call?

A Okay

Q Nolen is a lobbyist from McGuireWoods, your law firm?

A He is

MR. DRY: The witness said he didn't know about a specific call

THE COURT: Right He doesn't know about it, and everything else is testimony from you, Mr Asbill So ask another question

BY MR ASBILL:

Q You didn't get any intel back about that phone call?

A I can't tell you that phone call At some point, Dr Wright and them through Paul Perito, Paul is always the person, generally the person that delivers messages to me when things are important, and Paul called me and said that "They are stiff-arming us over at UVA."

Q Okay

A "They are going slow "

Q They are stiff-arming you

A Yes

Q The bottom line is, three months before you say you have a conversation with Ms McDonnell where you are asking "Can you get somebody to return our calls," you have already had the calls and it has gone nowhere, right?

A I don't know where it -- I don't think much is going on.

Q Right

A And it has been, for some reason, it is bogged down in the Administration, is what I later understood

Q It is also bogged down --

A I recall that call, but things have been stalled That's what the people that work for me say

Q It is also bogged down on the Star side because you are not even applying to the Tobacco Commission; isn't that right?

A My understanding was that our doctors were complaining that there was a slowdown there

Q Did you really want clinical studies at a major university? Is that something you really wanted? Yes or no?

A That's what I was -- I needed that I needed those studies

Q What if they failed?

A I would go back to the drawing board.

Q Star is gone

A It is never gone Number one rule of business, sir, is stay in business

Q We will get to that Have you ever told anyone aside from Agents Hagan and Kennedy on your January 23rd, 2013 first interview that Governor McDonnell was your friend? Anyone else in life?

A I may have

Q Photos on your wall, playing golf with the Governor, anything like that?

A I don't have any photos that I can recall other than a Ferrari picture and a Rolex picture And I don't know of any other pictures I have

Q No pictures with you and the Governor at all?

A I don't have any that I can recall

Q No bragging to friends or business colleagues or associates that you are friends with the Governor?

A Clearly, our company, the business friendship, I developed this relationship with the Governor, was important to our company

Q We already talked about Dr Hazel and the meeting with him and we talked, I believe, a little bit about the meeting with Molly Huffstetler You got meetings with those two folks as we discussed previously, correct?

A Yes

Q All right And nothing was coming of it, correct?

A Well, just this is work in progress

Q Right But nothing solid or concrete was coming of it; is that right?

A I can't say that It was working in progress

Q Okay And nonetheless, you kept making loans and continued being generous to my client and his children and his family; isn't that right?

A I wouldn't file that under me being generous

Q That's just business

A It was business

Q Just business Was it business when you asked my client to call your father on his 80th birthday?

A It was very personal for me

Q It was?

A Yes

Q What kind of business was it?

A That was very personal for me because my father likes the Governor, from watching him on television and in the news And so I was at his birthday party and I thought I had enough pull to call Maureen and ask her to have him do that for me

Q Please pull up RM-0559 I would ask you to take a look at this and just see if that's a text message from you to my client on March 10th, 2012

A Okay

Q Do you recognize it as a text message from you to my client?

A I do.

MR. ASBILL: I would ask that that be moved into evidence

MR. DRY: No objection

THE COURT: It will be admitted What's the number on that?

MR. ASBILL: The number on that, Judge, is RM-0559

THE COURT: All right

BY MR. ASBILL:

Q Let's publish that and highlight it. This is you to my client, right?

A Yes

Q At your father's birthday party?

A Yes

Q Why don't you read to us what you say to him.

A I'm happy to "You are a wonderful man I am proud to know It has been a highlight in my life You made an old man very happy Anything I can do for your family I will. On way to Florida now Thank you Jonnie "

Q All right You can take that down I take it your dad, is he Albert;,is that his name?

A His name is Albert

Q And he was proud to know that his son from a modest upbringing was now a friend of the Governor of Virginia; isn't that right?

A I don't think it was that I think it just made him feel good that it was the Governor of Virginia

Q But again, it is just all business, right?

A Well, this was a very personal thing for my father, but this cost me, in my mind as I sit here, hundreds of thousands of dollars to be able to even do that

Q So you paid for that gift to your father, too; is that right?

A I wouldn't have been able to have the Governor of Virginia call my father in the evening to somebody in rural Virginia and wish him happy birthday

Q Just because you were close friends with the Governor and his family, you don't think he would have done that?

A I had a business relationship, and I don't believe I would have been close friends with the Governor's family other than this business relationship if not for all of this money

Q Okay That's your belief?

A That is what I believe sitting right here

Q I want to talk to you about your immunity agreement and some issues relating to your immunity agreements

A Okay

Q You testified you signed two? Correct?

A I did

Q And the first one of those was in July of 2013, correct?

A Yes

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MR. ASBILL: Okay Would you pull up that one, please, Victoria, GX 523

BY MR ASBILL:

Q All right And I want you to go down -- this is in evidence I want you to go down to the fifth line

A Could you highlight where the fifth line is?

Q Yeah.

MR. ASBILL: That one, right That section Okay And would you highlight three lines above that too, please

BY MR ASBILL:

Q Okay Basically, twice in the first paragraph in this immunity agreement it talks about seeking your cooperation, essentially, regarding potential violations of criminal law, right?

A Yes

Q It doesn't say actual It says potential; is that correct?

A Yes

Q Okay You read that document carefully and you signed it; is that right?

A Yes

Q Okay And in that agreement, you are not conceding that you were involved in any public corruption or violations of federal public corruption laws; am I

correct?

A I understand that what I was doing was wrong What I'm trying to understand here is, to answer the question, regarding what you described as -- it says here "potential violations of criminal law "

I don't know the law, but I just know what I was doing was wrong.

Q Well, then those would be actual violations rather than potential violations, right?

A No I'm just telling you, I'm not a lawyer I don't know the laws --

Q Okay

A -- that are being referred to here under this Hobbs, under color of official right extortion by government officials I'm saying I don't know what all of that is No one has ever read all that to me But what I'm saying is I thought what I had done was wrong

Q But you didn't -- you weren't conceding --

A But I didn't know the laws

Q Right But you weren't conceding in this letter that it was necessarily illegal; is that right? That's my question to you

MR DRY: Objection, Your Honor He didn't write the letter

MR ASBILL: He signed it

THE COURT: If he can answer the question, go ahead

A I don't know the laws of whether -- that's why I'm trying to help you I knew what I was doing was wrong It couldn't be right for me to be paying all this money

BY MR ASBILL:

Q Okay

A Okay So what I'm trying to say is these sections and this Hobbs Act, no one, through the course of this, has ever read me these laws of these definitions of all of that

Q Let me see if I understand this You, on your own, or anyone else you work with --

A Yes

Q -- whether it's the government or your lawyers --

A Yes

Q -- nobody ever read you the laws that you were getting immunity from?

A No The lawyers have explained to me --

Q Okay

A -- what it means But I'm just saying, I don't know all of this area I'm relying on the lawyers for this

Q Okay

A I'm just saying I know what I did was wrong, but I don't know all of that

Q And in this immunity agreement, you are not just protected from your own words being used against you, correct? Whatever you say to the government in your debriefings, that can't be used against you, right?
A My understanding of the immunity agreement is that in exchange for cooperating on this issue --
Q Yes
A -- and telling the truth about it --
Q Yes
A -- then we're going to give you immunity from exposure here
Q Okay
A That's what I understand
Q And so you get immunity from exposure even if the government could make a case against you through totally independent witnesses? No reference to what you say No leads you give them If they had some other witness who could come in and say you did something wrong, you still get a pass from the government, right?
A It's my understanding that if I don't tell the truth or didn't truth -- tell the truth about any aspect of this case, it's off the table, null and void
Q That's one aspect of it The other aspect I'm asking you about --
A Okay

Q -- is your understanding you cannot get prosecuted -- it's not from a truth issue

A Okay

Q You can't get prosecuted with any evidence the government might have, whether it comes from you or whether it comes from independent sources Isn't that your understanding of this agreement; transactional immunity?

A In regards to the first one?

Q Yes

A In the -- in these corruption charges --

Q Right

A -- that are referenced here?

Q Right

A Again, it's -- I don't want to go back to that, but my understanding of all of this is is if I cooperate and I'm truthful and they believe I'm truthful, then I am immune from the consequences of these laws

Q Okay

A That's -- that's my understanding

Q You're immune no matter where the evidence that could be used against you comes from, right?

A I don't know -- I don't know that part right there

Q Okay

A I'm just -- I'm trying to let you know what I understand and what I'm familiar with

Q This was an important agreement for you?

A It's a very important agreement And like I said, it's my understanding that I have immunity as long as I tell the truth about what happened for the potential corruption violations as they rely -- relate to these laws right here in the letter That's my understanding

Q All right

MR ASBILL: If you can take that down

BY MR. ASBILL:

Q Do you have any understanding of how unusual it is in federal criminal prosecution --

MR DRY: Objection, Your Honor

BY MR ASBILL:

Q -- to get transactional immunity?

MR DRY: Objection

THE COURT: Sustained

BY MR ASBILL:

Q In your deal, if you cooperate, if the government thinks you're truthful, you have no problems, correct?

A That's correct That's my understanding

Q And I believe you testified that you didn't want anything from the government because you already had your deal; is that right?

A Are you talking about the first one or the second one?

Q Both

As we speak --

A No

Q -- you want nothing from the government, right?

A No Let me answer the question

Q Sure

A What I wanted from the government is I did not want to be prosecuted for telling the truth and telling what happened with my interaction with the Governor and his wife I didn't want -- I didn't want anything from that

Q I thought you just said you didn't want to be prosecuted?

A I didn't want to be prosecuted for anything to come out of that

Q Okay

A Of course

Q All right And going forward, you had a second deal, right?

A Yes

Q You had a deal that was broader?

A Yes

Q Than the first deal?

A Yes

Q And in the second deal, you not only got immunity from public corruption charges, or potential public corruption charges --

A Yes

Q -- right?

You got immunity from three years' worth of potential securities crimes between 2009 and 2012 --

A Yes

Q -- right?

And you got immunity from anything relating to the Starwood and other trusts that might be criminal; is that correct?

A Yes

Q And so that could include tax violations with respect to the trusts, or other types of criminal activity relating to those trusts, right?

A I don't know if it included taxes or not

Q Well, anything relating to Starwood and other trusts --

A Yes

Q -- that's the language, isn't it?

A I understand, from that second agreement that I have, that immunity covers me for transactional on those areas

Q Of those three areas?

A Yes

Q Okay Now, what other trusts are they talking about in that second letter, aside from the Starwood Trust?

A None that I know of

Q Although the language in the agreement --

MR ASBILL: Pull up the second agreement, please

A Unless it's the individual trusts for children There's a Starwood Trust and then there are individual ones

BY MR ASBILL:

Q There are individual trusts for the children too?

A Yes

Q Do you have any other trusts that are encompassed by your deal?

A Not that I'm aware of

Q I mean, do you have any other trusts? You'd be aware of that, wouldn't you?

A That's what I'm saying Not that I'm aware of

Q So it's Starwood and other individual trusts for the children?

A Yes

Q Okay Now, in your second agreement, that's the latest -- that's the latest agreement you've got; is that correct?

A Yes

Q All right Now, is it your understanding that you are also immunized, given a pass, for any kind of obstruction or lies to government agents that you may have engaged in before the deals were signed?

A You know, I'm just not that familiar with that part here.

Q Okay Let me try it this way

A Okay That's -- I didn't understand it very well

Q You've had how many, six interviews with the agents and the prosecutors; is that right? Roughly six?

A Maybe more

Q Okay Six, eight Let's start with the first one And you claim that on at least that occasion you lied to them about the Governor?

A I did lie about it

Q Okay So my question is in any of the interviews that you had with the government, if you ever lied or ever misled them, do you know that that is an independent crime, to mislead federal agents who are interviewing you on purpose?

A I think if I did that and they felt like I did that, that's a problem

Q That would be a problem That would be a false statement to --

A It would just be a problem and they could break these agreements

Q Well, they could prosecute you too; is that correct?

A Probably so

Q Okay So my question to you is even though there is nothing in your deal that specifically -- your latest deal --

A Yeah

Q -- that specifically references false statements to the government or obstruction, you think you are immunized from all of those kinds of issues if you ever made a false statement to them before the deal occurred; is that right?

A I can say this That's complicated, what you just described

Q Well, how about yes or no?

A My response would be if I don't tell the truth to any of these questions that I'm asked, then the agreement could be torn up

Q All right Let me back up I'm sorry Did you want --

THE COURT: No, I didn't say anything

MR ASBILL: Oh

BY MR ASBILL:

Q Let's back up I want two distinct time periods

A Okay

Q Going up till the second deal is signed

A Yes

Q That's what I'm talking about Not after it Not what's happening right now

A Okay Prior to it

Q Right So prior to your second deal, that's what -- when was your second deal?

A The second one was back a few months ago

Q Okay Shortly before this trial?

A Yes

Q Okay So from January -- March '13 -- excuse me, January 2013, up until a little bit before this trial, during that time frame -- that's what I want you to focus on --

A Okay

Q -- if you ever lied to the agents or the prosecutors in any of your meetings and you could be accused, if you did lie to them, of false statements -- making false statements to them or obstructing --

MR DRY: Objection, Your Honor

BY MR ASBILL:

Q -- their investigation --

MR ASBILL: Can I finish my question?

THE COURT: What's your --

MR DRY: The agreement explicitly has a provision on that If he wants to ask Mr Williams about that provision, he's free to do so

MR ASBILL: I'm asking him about his memory of it

THE COURT: We're going to -- we've gone around the Roseberry Bush here. Let me ask the question directly

BY THE COURT:

Q Mr Williams, you have acknowledged that in the first interview you were untruthful with the agents, and if that's true, there's the potential that that could have been an independent crime.

A Yes

Q Right?

A Yes

Q Is it your understanding, as you sit there now, that whatever deals you have covers that; that they can't prosecute you for telling a lie initially?

A Yes

THE COURT: Okay All right

BY MR ASBILL:

Q And if at any time during that interview or any other interview you ever said anything that was untrue, is it your understanding that you could not be prosecuted either?

A You've lumped a lot together

Q I'm just talking about all your pretrial statements to the government

MR DRY: Objection, Your Honor That's not what the agreement says

THE COURT: He's answered the question sufficiently Let's move on

MR ASBILL: I'm asking for his understanding, though, Judge

THE COURT: No Let's move on to something else

BY MR ASBILL:

Q Now, in terms of deciding whether or not -- let me back up for a second

Your understanding, as I get it, is that if you lie in court, then the government can break the deal?

A Yes

Q And if they broke the deal --

A If I lie at any time Whether it was in court or any time during any of this --

Q All right

A -- they could break the deal

Q And if they broke the deal, in your view, that would be catastrophic; is that right?

A It would be a problem

Q Is that fair?

A It would be a problem

Q It would be a problem

A It could be a problem

Q And if they think you have lied and you don't, who wins?

A I think my understanding of it is this agreement from the government is offered to me to tell the truth, and they are the ones gathering all the facts and they are determining whether I'm telling the truth or not

Q So it's not your independent belief that you have told the truth that controls; isn't that right?

A No It is that too I think the truth is the truth no matter how many different ways it could be trying to color it

Q Well, if you say it's the truth and they say it isn't the truth, can you still get prosecuted?

A You know what I have to tell you, I'm operating under that I'm telling the truth, period Okay

Q And I'm asking you if there's a disagreement, does your belief control or not?

A I'm -- I don't -- I'm not going to have to have a disagreement because I'm not going to not tell the truth here This is a very serious situation Okay I'm telling the truth, period

Q I hear that's what you say

A Okay

Q Now, let me ask you if you've got any problems, as we speak, with any other government agencies? Any other federal government agencies?

A Me personally --

Q Yeah, you personally --

A -- or the company?

Q -- and Star

A Well, you -- Star has an issue right now where they have been working with the Food & Drug Administration over there Anatabloc product, over the claims

Q And you recall that the FDA also contacted you personally about that; is that correct?

A Well, I'm the CEO They sent me a letter I'm the person that they would send it to, and they sent me a warning letter at the end of December about claims in the way it was being marketed

Q About the way Star was marketing Anatabloc?

A Yes About the claims

Q All right

A A warning letter

Q A warning letter And the essence of that was that the FDA thought that Star was marketing Anatabloc as a drug, not a supplement; is that correct?

A They thought that some of the claims were drug -- could be construed as drug claims

Q And if they were drug claims, then your product had not been approved by the Food & Drug Administration That would be illegal, correct?

A Well, we just stopped -- whatever they directed our attention to that they were uncomfortable with, we stopped it And the company has, since then, filed the application with them and is working with the Food & Drug Administration to have it approved as a dietary supplement

And at the same time, we have a drug application now over at the Drug Division to do clinical trials on this for a drug at the same time

Q That issue, or what the FDA's concerns are, is still ongoing, still pending, still up in the air; is that correct?

A They are working with the FDA to try to -- like I just described, when that happened -- you know, that happens many times, and what we did to try to correct it was you contact the FDA and you work with them First of all, we stopped whatever they were uncomfortable with, and then we prepare an application, which is not required, but we -- we went ahead and prepared -- the company prepared an application to have it as an approved vitamin or, slash, dietary supplement

Q Okay

A But at the same time, over at the Drug Division, we filed to begin prescription drug clinical trials for a variety of diseases

Q Yeah, you got a lengthy letter from them -- I'm not going to go into it -- right?

A I just said, sir, we received a warning letter from them

Q Okay. And the warning letter was a lengthy document, right?

A Yes

Q Okay And the essence -- the essence of their concern was that your company had made --

MR DRY: Objection Asked and answered

MR ASBILL: I don't think it's been answered yet specifically

THE COURT: He -- he spent a considerable amount of time telling us what it was If you've got something else specific out of it that you want to highlight, go ahead

MR ASBILL: Yeah

BY MR ASBILL:

Q Do your websites, or did your websites, promote Anatabloc for conditions that caused a product to be considered a drug?

A We didn't think so, but they did

Q They did Did your website say that Anatabloc was intended for use in the cure, mitigation, treatment or prevention of disease?

A I don't believe so.

Q That isn't what your website said?

A No, not to cure diseases Not -- not the dietary supplement version

Q Well, this is still up in the air and pending, as you've described, right?

A I'm just saying, I don't know of anything where we would say anything that it cures a disease A prescription drug is approved on safety and efficacy

Q Would it refresh your recollection about exactly what the FDA was concerned about if I showed you the letter?

A If you would like

Q All right

MR DRY: Objection, Your Honor We've gone over far enough with the FDA thing He hasn't -- the witness said he thinks there was a problem with the websites There's been no linking that Mr Williams is responsible for any of this

THE COURT: Yeah, I don't know how much of these particulars are really very helpful I'll let you --

MR ASBILL: I'll finish up quickly, Your Honor

THE COURT: All right

BY MR ASBILL:

Q I'm just asking you to look at the highlighted paragraph

A Okay

Q Is that a letter that you received from the FDA?

A Yes

Q All right And what do they say their concern is, generally?

A Here's what they are saying their concern is is there are therapeutic claims on these websites that establish that this product is a drug because it's intended for use in the cure, mitigation, treatment or prevention of disease

We disagree with that

Q Okay In this battle, who wins? Just because you disagree, you win?

MR DRY: Objection, Your Honor Relevance

THE COURT: Sustained It doesn't matter who wins

BY MR ASBILL:

Q All right Let me ask you about another topic

A Okay

Q How many civil suits are there now pending against you and Star for securities violations, or alleged securities violations?

A I'm not sure I'm not sure They may have -- most all of that may have been resolved I'm not sure

Q Settled?

A It's possible

Q You don't know?

A There were -- there's been -- you know, I'm not an officer or director in the company, but I understand that all of that is being settled or has been settled, or there's discussions to -- that these issues have all been settled or are about to be settled

Q You don't know that there are several -- there are six cases pending against you and Star where your name is --

A And those are the ones I'm just describing to you I believe that they recently are in discussions to be settled or have been settled right here

Q To be settled or have been settled?

A Or they are in the process -- it's in -- it's -- I don't know the particulars of it, but I understand that it's in mediation and it may have been -- it may have been resolved in the past few days

Q Those were suits in various parts of the country that were filed against you and Star?

A As a result of this, you mean?

Q No, not necessarily as a result of this alone

A Yeah

Q Just as a result of allegations by shareholders that Star and some of its officers and directors --

A Yes

Q -- were involved in securities fraud?

A I'm not sure of all the allegations in there, but I believe -- it's my understanding that it was brought about primarily because of this

Q No other -- no other type of fraudulent activity?

A It was brought about because of this, and someone wrote a negative report on the company out of Boston, Massachusetts, claiming that, you know, one of the press releases misrepresented a -- a consultant versus an institution -- a doctor's role as a consultant versus the institution And it's my understanding that that's what caused this

Q And you don't recall specifically the details of the allegations in the complaints that were filed; is that correct?

MR DRY: Your Honor, it's asked and answered And what is the relevance of all this?

THE COURT: He can answer that question

You don't recall?

THE WITNESS: Mr Perito -- Mr Perito is a very skilled lawyer, Your Honor, and he keeps me up to speed on what's going on

BY MR ASBILL:

Q Do you recall that two of the suits that were filed were filed in the Eastern District of Virginia; one here in Richmond, and one in Alexandria?

A That's -- that may be the case

Q Okay Do you recall that, in connection with those suits, they were filed and they were pending before this trial started? Correct?

A Before the trial?

Q Before this trial started, there were two civil securities fraud cases pending against Star and you personally?

A After -- you mean -- before the trial started --

Q Before the trial

A -- or after all of this came out in the press?

Q Before the trial Before the --

A Yes

Q -- trial

A Yes

Q There were two cases pending?

A Yes

Q Okay

A And I just said that I think that that is about to be resolved or may have been settled, all of that

Q And do you recall that those cases were stayed, you know, pushed pause, on those cases because the government intervened in those cases?

A I do

Q And you were in favor of that intervention and stopping those suits in their tracks Is that fair?

A The suits are going to be what the suits are going to be

Q Did you want the suits stayed or stopped, in the short term at least?

A Not from a concern of the contents of the suit Just from the concern of how many more lawyers and how many more meetings do I deal with right here over this

Q And how much more money Star has to spend on those lawyers and those meetings?

A It's been expensive

Q Were you concerned that if the suits progressed, that you might be deposed under oath?

A No

Q Did you know that that is likely what would happen if you were a defendant in the lawsuit?

A Yes, but I wasn't worried about it I just said to you it was the combination of what was going on here compared to all of that I didn't think those suits would go anywhere

Q Did you know that -- that discovery in civil suits like that is very expensive, the discovery process?

A The insurance would handle that

Q And if the insurance ultimately concluded that there was fraud, Star or you personally would be on the line for whatever the insurance company advanced, correct?

A Then I would handle that

Q And you would handle that Okay There is -- you know, was it advantageous to you personally and to your business to have those suits stayed?

A From my perspective, it was just -- not from the business part of it My perspective it was is, you know, this has been quite an ordeal If -- if you're in my shoes and you've been dealing with all of this, this has been quite an ordeal, and to pile on another one, nuisance ones, it's just a lot

Q Well, I mean, if the suits are not yet settled, you can't tell whether it's a nuisance suit or not, can you?

A My view is they were nuisance suits because that's what the lawyers have expressed to me

Q Right And the plaintiffs may not agree with you, correct?

MR DRY: Objection It's calling for speculation

THE COURT: Sustained

BY MR ASBILL:

Q You said, I believe, way back at the beginning of your testimony, that the first rule of business is to stay in business?

A I did And I still say that

Q Right Okay And would you agree with me that the second rule of business is to stay out of jail?

MR DRY: Objection Argumentative

THE COURT: No He can answer

A I don't think any businessman wants to go to jail

BY MR ASBILL:

Q Well, I mean, these days in public companies, that's a --

A Yeah

Q -- that's a concern, that's a real concern, is it not?

A You know what I just don't think businessmen generally think about going to jail I think they think about what you just said is number one; staying in business

Q But you can't operate your business from a prison, can you?

A No

Q Now, you say right now that you are -- you are not really in the CEO position You've got some side position?

A I'm a dollar-a-month employee

Q Dollar-a-month employee But you're protecting your interest in your Star stock, are you not?

A I am

Q So you are, in essence, being retained by Star to be a litigation consultant and to be a witness for them in all the litigation or other problems that you all have got?

A I was a dollar-a-month employee way before this started I think I'm there just to help them with whatever they need, whether it's capital raising or -- or whatever I've done in the past, whether it has to do with anatabine or any of the business relationships that have been developed over the years I think that's -- you know, I'm just there to help them as long as they need me The day they ask me to go home and don't want to pay me a dollar a month, I'm okay with that

Q Because you do think that there's some financial value to your being still with Star?

A As long as they do I don't run the company But I have -- I have an agreement with them that I would stay through the end of this year at a dollar a month and help them

Q Have you ever tried to, in your own mind, come up with some dollar figure about the potential value of all the benefits that you've received from the government?

A From the government?

Q Yeah

A Been a big expense I haven't thought about the financial benefits

Q Well, you haven't thought about not getting prosecuted, not possibly going to jail?

A I haven't spent --

MR DRY: Objection, Your Honor

THE COURT: Objection sustained

Mr Asbill, are you about finished?

MR ASBILL: About another five minutes

THE COURT: All right

BY MR ASBILL:

Q Let me talk to you about your business relationship with my client's son, Bobby McDonnell

A Yes

Q That was a business relationship too, wasn't it?

A I like Bobby But this family and what I was doing, I was there for business But I think a lot of Bobby McDonnell

Q Okay

A In the brief times I've been around him

Q Open invitation to play golf, right?

A Yes

Q Played golf with him at The Homestead?

A Yes

Q Sent him some golf equipment unsolicited?

A Yes

Q Called, texted over a hundred times?

A I don't recall it being a hundred times, but --

Q Would you quarrel with that number?

A Not if you have it on your screen I like Bobby McDonnell I think he's a nice young man

Q Talked to him about college life, first year college life, that sort of thing?

A No, I don't recall ever having a conversation like that

Q Did you know that he had an argument with his father about whether or not he could keep the gifts that you gave him?

A I did not know that

Q All right And --

A His mother thought it was a good idea

Q So you talked to her about it, right?

A I did

Q So you knew there was an argument within the family?

A No, I didn't -- I've never known they have ever had an argument

Q Did you know that Bobby admired you and thought you were a mentor?

A That's good

Q Did you know that?

A No

Q Would that surprise you that he thought that?

A It wouldn't surprise me that Bobby McDonnell didn't have an unfavorable impression towards me because I like Bobby McDonnell

Q Okay

A I just naturally like him

Q I'm going to wrap up in a few minutes, but I just want to ask some concluding questions to you. Just to make sure I'm clear and we're clear on a few things, never got any state contracts, right?

A No

Q No state grants?

MR DRY: Objection, Your Honor

THE COURT: Sustained We just -- we don't need a summary

BY MR ASBILL:

Q Did you get any money from the Virginia Economic Development Partnership Fund?

A No

Q And you know that that's an organization where the

Governor appoints all the board members and they have got millions of dollars to give away to companies, correct?

A I don't think I ever asked for it

Q You know that is what the VEDP is all about, right?

A I'm not familiar with it

Q You never applied --

A In general --

THE COURT: He's not familiar with it

A In general, I understand it, but --

THE COURT: He never applied Let's ask another question

A -- I'm not familiar with --

THE COURT: Mr Williams, there's no question before you

THE WITNESS: Okay

BY MR ASBILL:

Q No visits by the government or photo ops at Star headquarters?

A No Visits by the government or photos ops?

Q Visits by the governor or photo --

A Or photo --

Q -- ops at Star headquarters?

A At the headquarters itself?

Q Right Right

A No

Q No executive commissions, boards, anything like that at all, right?

A What do you mean by that?

Q That you got on the executive commissions or any kind of boards of the State?

A No

Q And no money, period?

A "No money " What do you mean?

Q No money from the State to you?

A No You mean no checks --

Q To Star

A -- written to Star?

Q Right

A No

Q No Okay Okay Did you have any idea about whether or not my client's marriage was complicated or difficult in any way?

A No idea

Q You said what you did was wrong, correct?

A I did

Q And what you did that was wrong was misjudge that man's --

MR DRY: Objection

BY MR ASBILL:

Q -- integrity --

MR DRY: -- closing argument

THE COURT: Sustained

BY MR ASBILL:

Q And what he did that was wrong was misjudge yours?

MR DRY: Object --

THE COURT: Sustained

MR ASBILL: No more questions

THE COURT: All right Before we do the redirect, we're going to take 15 minutes We'll see you all in a few minutes Follow the marshal

(The jury left the courtroom)

(Recess taken from 11:37 a m until 11:51 a m)

THE COURT: Let's bring in the jury, please

(The jury entered the courtroom)

THE COURT: All right Mr Dry, go ahead

REDIRECT EXAMINATION

BY MR DRY:

Q Mr Williams, during cross-examination, Mr Burck and Asbill spent a lot of time asking you about what exact statements you made to the government on exact dates during your interviews

Do you recall those lines of questioning?

A Yes

Q And they showed you a lot of the reports of interviews of the agents and tried to refresh your recollection, correct?

A Yes

Q Had you ever seen those reports before your testimony?

A No

Q The government never provided those to you, did they?

A No

Q Did you write those reports?

A No

Q When you were interviewed, were you taking notes during all of your interviews?

A No

Q Now, I think Mr Asbill said that you were interviewed about six times My count is ten Does that surprise you that you were interviewed about ten times?

A No

Q Okay Can you list all of the dates of each of those interviews for me?

A No

Q Do you recall exactly what topics were discussed on each of those dates?

A No

Q Now, let's talk about the interviews themselves Sometimes during those interviews, did you go back over topics that you had already discussed with the government previously?

A Yes

Q And were you asked additional questions about things you had brought up in prior -- prior interviews?

A Yes

Q Now, sometimes during the interviews, did prosecutors and agents ask you about new topics that you never discussed before?

A Yes

Q Now, on cross-examination, you said that you did not recall saying something on a specific date When you said that you don't recall that, are you saying that you just couldn't recall saying anything like that or just anything like that on a specific date?

A On that date

Q When you're being interviewed by prosecutors and agents, are you focused on what you said in the prior interviews or are you focusing on what's being asked of you then?

A I'm trying to just answer their questions

Q Apart from that first interview with Agents Hagan and Kennedy down in Flor[illegible] have you been truthful?

A I have

Q Now, Mr Asbill spent some time talking about the Rolex photo

MR DRY: Can we bring up Government's Exhibit 444, please

BY MR DRY:

Q Now, when he was asking you about it, you said that you were scared, but you didn't explain why you were scared when you received the photo Why was that?

A If this shows up on the nightly news, I have a problem We have a problem

Q What does that mean, you have a problem?

A I had no business paying for things like that to get -- to do business here

Q I'm sorry I just --

A I just had no business buying -- when I was asked to buy that, I should not have purchased it, but it was -- I didn't want anyone to know that we had a relationship -- the business relationship involved buying a Rolex

Q Now, you got lots of questions from Mr Asbill about this exchange of photos He made a big deal out of the fact that there's no data on Exhibit 444, right?

A Yes

Q And that that text message didn't show up on your phone records Do you remember him --

A I do

Q All right Well, let's look at Government's Exhibit 445, please

MR DRY: Can we blow that up?

BY MR DRY:

Q Now, this is the text message that you sent to the Governor, right?

A Yes

Q What's the time listed there?

A 7:46

Q P m ?

A Yes

MR DRY: I hate to ask you guys to do this, can you all pull up -- I think it's RM-0104, and it's page 10032

BY MR DRY:

Q Now, that's Christmas Eve that you're sending that, right, sir, at 7:46:26 p m ?

A Yes, sir

MR DRY: I think it's 104, RM- -- no, no RM-0104 Okay And can we go to the page, Christmas Eve at 7:46? Can you blow up that part that would have the time that that text message was shown, that Mr Williams sent that text message from the Governor at 7:46 p m ?

BY MR DRY:

Q Sir, do you see in your phone records a text message that was sent at 7:46 p m ?

A No

Q And, sir, do you have an iPhone?

A I do

Q And was that your primary cell phone number over the last years?

A Yes

Q And do you know whether the Governor had an iPhone?

A I think he does

Q And did you know whether Ms McDonnell had an iPhone?

A I believe so

Q And do you know that iPhone messages often don't show up?

MR BURCK: Objection, Your Honor

THE COURT: Overruled

BY MR DRY:

Q Do you know that iPhone messages don't show up in your phone records, do they?

A I don't know much about that

Q Okay Well, we'll go on

You spent a lot of time with Mr Burck talking about Mary-Shea Sutherland yesterday Do you remember those questions generally?

A Generally

Q I know There were a lot of them

MR DRY: Can we show Government's Exhibits 186, please

BY MR DRY:

Q And you've previously testified about a meeting with Ms Huffstetler, right?

A Yes

Q And that was on August 1st Where was your meeting with Ms Huffstetler?

A In Maureen McDonnell's private office downstairs in the Governor's Mansion

Q Okay And was Ms McDonnell there?

A Yes

Q And you also testified about meeting with Dr Clore on that day Do you remember that testimony?

A Yes

Q Where was that meeting at?

A In the same office

Q I'm sorry The same office?

A Same office

Q And whose office was --

A Ms McDonnell's, downstairs in the Governor's Mansion

Q Okay The log says to see Mary-Shea Sutherland, but as you sit there today, you know that Ms McDonnell and you met with Dr Clore in her office?

A Yes

Q Did Mary-Shea Sutherland ever ask you for cash or loans?

A No

Q Did she ask you to buy a Rolex?

A No

Q How about vacations?

A No

Q Did Mary-Shea Sutherland ever ask to use your Ferrari?

A No

Q How about cars for family members? Did she say, "Hey, can you buy my sister a car"?

A No

Q Now, you did buy her something, though? You bought her that dress, right, during that shopping spree for Ms McDonnell?

A I did

Q Did she ask you for that?

A No

Q How did that come about?

A In the dress department, in the department that we were in Bergdorf Goodman, they don't -- they don't have a comfortable place for you to sit And so there were like these little ottomans, and we were sitting on these little ottomans for a long period of time And so I was just sitting there with Mary-Shea, and it was kind of awkward just sitting there with these -- the dresses back and forth going on

And so I'm just sitting there and it's kind of like Ms McDonnell is having, you know, a great time trying these dresses on and everything, and Mary-Shea is just sitting here And I said, "Mary-Shea, you should go ahead and just try" -- "try a dress on "

Q Okay So that was your idea?

A It was my idea That one was

MR DRY: Let's go to Government's Exhibit 101, please

BY MR DRY:

Q You were shown this e-mail on cross -- all of these have been admitted Government's Exhibit 101, by the way

Do you remember being shown this?

A Yes

Q Okay And what's the date on that e-mail?

A April the 15th, 2011

Q And in the body of this -- I think you were read this -- "Mary-Shea and I had a wonderful dinner brainstorming about your launch event "

Do you remember being asked about that, generally? I'm not --

A Yes

Q Now, specifically, though, do you remember Mr Burck saying, "Did Mary-Shea Sutherland talk to you during the meeting or the shopping trip in New York about helping your" -- "you launch your product at the Mansion?" I mean, do you remember that specific question as you sit there today?

A She didn't do that

Q Okay Well, let's talk about that a little bit And first of all, have we spoken since you testified on direct that very first day? I think it was Wednesday Have we spoken?

A No, sir

Q Okay So before you went to New York, had you been planning to do some kind of launch, or thinking about doing some kind of launch, for your new product, Anatabloc?

A Yes

Q Now, before you went to the Roskamp meeting on June 1st of 2011, what kind of event are you thinking about having?

A Normal one at a hotel, at a banquet facility A gathering to invite doctors and a lunch

Q And, in fact, in February of 2011, you had an event like that for CigRx?

A We did Very similar to that

Q And where was that at?

A At The Jefferson Hotel at one of the banquet facilities

Q Okay So back in April of 2011 when you're discussing -- well, first of all, how long did this conversation with Mr Abel occur? You said that he was trying to sell you something --

A Just a couple of minutes He was trying to get the business of doing this

Q And in your discussions with Mary-Shea Sutherland and Mr Abel -- well, do you even remember Mary-Shea participating in that discussion?

A She may have been standing there

Q Okay Does the idea of the launch of Anatabloc at the Mansion, is that ever discussed in that meeting?

A No

Q Okay Well, when is the first time this idea of launching the product from the Mansion ever take place?

A At Roskamp Institute

Q Okay And whose idea was that? Who brought that up?

A Maureen McDonnell, while she was standing in front of everyone

Q And before that Roskamp event, had you had any discussions with Mary-Shea Sutherland about launching the product from the Mansion?

A No

Q Now, you were asked a series of questions about discussions with Ms Sutherland about the idea of her working for Star or you, right?

A Yes Yes

Q All right You remember, generally, those? In those discussions, did she make it clear to you that she was leaving government employment?

A No matter what

Q No matter what?

A No matter what

Q No matter whether she got a job with you or not, she's out?

A No matter what, with Jerry Kilgore and I at The Berkley Hotel at lunch

Q And what was -- what was the reason that she was leaving?

MR BURCK: Objection, Your Honor

BY MR DRY:

Q That she expressed to you?

THE COURT: The second question is okay

A What was the second question?

BY MR DRY:

Q What did she say to you was the reason she was leaving?

A She said she's tired of the way she's treated and she didn't -- it was embarrassing for her that Maureen McDonnell hits everyone up for everything

Q What was her demeanor during this?

A Well, when she said it makes -- with Jerry Kilgore and I sitting there, when she said, "It makes me sick the thought of coming to work every day," Jerry and I looked at each other like we -- we understood what she had just said It was -- it was unpleasant It was unpleasant for Jerry and I to sit there

Q And when she's saying this, is she upset? What's her demeanor?

A She's upset She's emotional about it

Q Now, I think that you were asked a question, you started to talk about what your thoughts of Mary-Shea Sutherland was, but I don't think you got to finish Just tell everybody here, what did you think of Mary-Shea Sutherland?

A Mary-Shea --

MR BURCK: Objection Relevance

THE COURT: Overruled

A Mary-Shea Sutherland is very professional She's a wonderful, wonderful person, from my perspective, and I would have liked for her to be at our company

BY MR DRY:

Q Okay

A I would like -- I liked Mary-Shea

Q You said that you -- you would like her -- for her to be at your company But you didn't hire her?

A No

Q All right And, in fact, you said that it would have been awkward if you had hired her?

A I couldn't hire her while she was working there at the government or -- I couldn't do anything like that

Q Okay Well, why? Why couldn't you hire her? You like her

A I like her, but, you know, it's going to foul up the relationship It's going to foul up the relationship with the business of all I've been working on during this time

Q Foul it up how?

A Well, I wouldn't want to take someone from there

Q What were you worried was going to happen?

A Maybe the McDonnells would be upset about it

Q Okay But you -- despite the fact that you like Mary-Shea and you'd be interested in hiring her, you go to Ms McDonnell and tell her that -- I think you testified you told her that you -- Mary-Shea was looking for a job?

A Yes

Q Do you remember that?

A Yes

Q Why did you tell Ms McDonnell that Mary-Shea is looking for another job?

A Mr Perito

Q What does that mean?

A Paul Perito and I had discussed Mary-Shea coming to work And I said, "Paul, Mary-Shea has contacted -- "Mary-Shea wants to come to work for us And he said, "We can't do that "

And so -- and then he said, "You need to let Ms McDonnell know that she's thinking about leaving or it's going to be a poor reflection us "

Q Okay So what were you worried would happen if -- if Ms McDonnell found out that Mary-Shea had been talking to you about the possibility of her being hired from somebody other than you?

A From being hired other than us?

Q If she learned that from someone other than you, what were you worried was going to happen?

A That could foul up the relationship Because it was my understanding that she was talking to other people

Q Okay And let's talk about Mr Perito for a second Did you ever -- well, did you tell Mr Perito, before you were interviewed by law enforcement, that you had been loaning money to the McDonnells?

A No

Q Did you tell him you bought him a Rolex?

A No

Q Did you tell him that you -- you were doing this to further Star's business?

A No

Q Other than your secretary, does anybody at Star know what you're doing?

A No

Q As it pertains to the 50,000, the 50,000, the 20,000, the Ferrari ride, the shopping spree, nobody knows?

A No one knows

Q Okay In your mind, what's more important, your relationship with Mary-Shea Sutherland and how much you like Mary-Shea Sutherland or your relationship with the McDonnells?

A The McDonnells

Q Who could do more for you?

A The McDonnells That's not even close

Q Now, Mary-Shea Sutherland, she leaves -- I think you testified you knew she left in the fall of 2011?

A Yeah

Q You didn't know a specific date?

A Right

Q Was Ms Sutherland even employed when you're being recognized as a healthcare leader in February of '12?

A No

MR BURCK: Your Honor, asked and answered

A Not that I know of

THE COURT: No He can answer Go ahead

A Not that I know of.

BY MR DRY:

Q Was she employed at the Governor's Mansion when you gave the Governor another $50,000?

A No

Q Was she employed at the Mansion when the Governor asked you for another $20,000?

A No

Q Now, Mr Burck, he spoke a little bit about comparing a Rolex to the Cognac Do you remember that?

A I do

Q You got upset, I think

A No I was confused about it --

Q All right

A -- I think I probably didn't understand the analogy

Q Okay Well, let's talk about that a little bit

A Okay

Q I think you said -- Mr Burck reminded you that you testified that buying the Rolex made you uncomfortable?

A It did

Q And then he asked you about, well, were you uncomfortable buying the Cognac in December of 2009 Do you remember him asking you that?

A Yes

Q And you said I'm not uncomfortable about the Cognac?

A Right

Q But as you sit there today, is that still your testimony, you're not uncomfortable about the Cognac?

A Right Everyone is sharing that

Q Now, when Mr Burck compared the Cognac to the Rolex, you said it was a, quote, outrageous comparison, I believe You do you remember that, using the word "outrageous"?

A I remember saying that word

Q Okay But he didn't let you explain why you were uncomfortable about the Rolex

Now, I want you to explain, when you're thinking about buying that Rolex, when Ms McDonnell -- you're in the meeting, it's August 1st -- she's saying -- and you've talked about this repeatedly -- "I'd like you to buy the Rolex for the Governor" --

A Right Right

Q -- why are you uncomfortable?

MR BURCK: Objection, Your Honor This is a repeat of direct

THE COURT: Overruled

BY MR DRY:

Q Why are you uncomfortable?

A I don't want anyone to know about it

Q You don't want anybody to know about what?

A I don't want anyone to know that I'm buying this watch that's going to the Governor

Q Okay And were you worried that somebody would find out?

A I was worried if -- I was worried not only that part, but I was worried if -- what I was really worried about is if someone -- you know, if it came out that the Rolex, the loans, all of these things, why was I doing all of these things, then the Rolex, in particular, was -- the Rolex was a hard thing to hide It was just -- that's a difficult one

Q Mr Burck asked you, quote, Isn't it true that Maureen McDonnell actually said to you you should actually return the Rolex because it was too much and her husband would feel uncomfortable with it

Do you remember being asked that?

A No

Q Okay

MR DRY: Can we bring up page 1016 of the transcript?

MR STARNES: We do not have 1016

MR DRY: It's okay I can do it a different way

BY MR DRY:

Q Let's just bottom-line it In all of your interactions with Ms McDonnell and all the things that you bought for and paid for for the McDonnells and the children, did she ever, ever tell you, "Hey, that's too much"?

A No. I turned down a lot of the requests

Q But did she ever tell you, "It's too much" regarding the Ferrari, the Rolex --

A No

Q -- the money, any of it?

A No It's like I said, a lot of the requests I declined

Q Before you were interviewed by law enforcement, did Ms McDonnell ever try to return anything to you?

A No

Q Let me ask you this Before the investigation, did Mr McDonnell, did he ever call you and tell you, "Hey, you shouldn't be buying things for my family"?

A No

Q Never said a word?

A No

Q Golf clubs?

A No

Q Never calls you up and says, "Hey, you shouldn't send a $1,000 set of golf clubs to Bobby That's too much"?

A No

Q When he gives the -- when you give him the $50,000 check, he never calls you -- that's made out to Maureen -- he never calls you and says, "Mr Williams, we really can't be taking these" -- "these loans"?

A He asked for the loans

Q He asked for the later loans But on the first loan, did he ever call you up right after it happened and say, "Hey, can't have this"?

A No

Q And you had spoken to him about the first loan?

A Yes

Q If he had called you during this whole period of time and said, "Look, Mr Williams, I appreciate that you're trying to help me and my family, but no, this just" -- "this just isn't right and you can't do it," would you have continued to do these things?

A No

Q Why not?

A If he said don't do this, I wouldn't do it Because that would mean also there was -- you know, there was no business There was no -- nothing was going to come out of that

Q Mr Burck asked you a series of questions about phone records and text messages -- and I think Mr Asbill had some this morning -- between you and Ms McDonnell Do you remember sending those questions, or the general nature of the questions?

A Just -- I remember questions

Q Okay He showed you phone records for specific dates and tried to get you to read them Was that difficult for you?

A Yes

Q And they weren't all highlighted and you had never seen -- had you ever reviewed your phone records before testifying?

A No

Q Never been shown your phone records by the government?

A No

Q Do you -- one of the days he asked you about was May 25, 2011, and he talked about eight phone records -- or eight text messages between 1 a m and 8 a m Do you remember that specific?

A Yes

Q And you -- it looked like you were upset about the idea that you were text messaging between Ms McDonnell and yourself at those times?

A Well, I was upset about it after I heard about what happened this week and then with text messages in the middle of the night

Q Okay And Mr Burck seemed to suggest that, you know, you and Ms McDonnell are text messaging back and forth from 1 a m to 8 a m , right?

A He did

Q Okay Well, let's -- you denied texting Ms McDonnell, I think, quote, in the middle of the night You denied that, right?

A A hundred percent

Q Okay Well, let's talk about --

MR DRY: Can we bring up Government's Exhibit 625, please And I believe that this is the same thing that's already been admitted We've just redacted and -- Judge, we have a redacted copy that doesn't show the phone numbers, and we have an unredacted copy So there's a -- there's a version that we think that we can publish to everybody, and then there's an unredacted -- an unredacted portion that we can show the witness

THE COURT: All right

BY MR DRY:

Q Sir, this is a phone record excerpt from May 23rd to May 25th of 2011 Okay? And for ease, we've highlighted in yellow --

MR DRY: Can we go ahead and admit this, Your Honor, the redacted version?

THE COURT: Let me make sure, now What's on my screen now, is this redacted or unredacted?

MR DRY: That's the redacted version, Your Honor

THE COURT: All right Go ahead and publish it

BY MR DRY:

Q Okay Okay And for ease, Mr Williams, we've highlighted in yellow texts that Ms McDonnell has sent to you, and then we've highlighted in green texts that you've sent back Okay? And the green doesn't happen for a couple pages in

A Okay

Q Now, on page 1, that goes to -- in the middle, that's where the May 24th starts In the grayed out portion, those are text messages that are not between you or Ms McDonnell Those are text messages you have with other people

Do you see any text messages that are yellow on that first page?

A No

Q Okay

A Other than up at the top

Q At the top there's one And what's the date on that message?

A May the -- May the 23rd

Q And what time is that text message sent out?

A 4:49 p m

Q Okay Now, let's go down another page Any text messages between you and Ms McDonnell on May 24th? Any yellow that you see on that screen?

A No

Q Okay And then the next page Do you see -- all right Let's go to the split between May 24th, 2011, and May 25 That last text message on May 24, 2011, what time do you send that -- or actually, that's sent to you

What time is listed as the last time May 24th, on the 24th?

A 9:18

Q Okay Now, those next four text messages are the ones in the yellow from Ms McDonnell to you What time are they sent?

A 1:02 to 1:11

Q Okay Now, do you see any green in between those?

A Yes

Q No, no, no In between the first four?

A No No No No

Q Okay Now, on May 25th, you respond at 4:31 a m with one text Do you see that?

A Yes

Q And then two more texts from Ms McDonnell at 6:44 and 7:06

A Okay

MR DRY: Can you scroll down a little bit?

BY MR. DRY:

Q Now, you're texting other people in between those times, and then what's the time -- the next time you text back? What time is that?

A 7 -- 7:27

Q Okay So is that consistent with what you said; that you're not text messaging Ms. McDonnell in the middle of the night?

MR BURCK: Objection, Your Honor

THE COURT: Sustained

BY MR DRY:

Q Mr Williams, you text message a lot, don't you?

A I do

Q And you make a lot of phone calls?

A I make a lot of phone calls

Q Okay Do you remember, Mr Burck, I think, made a big deal that he asked you if you'd be surprised that you text messaged Ms McDonnell 1,200 times between April of 2011 and February of 2013 Do you remember him asking you

that?

A I do

Q And you said that you were busy, or a busy man?

A I am busy

Q Okay And that was calls and text messages between you and Ms McDonnell?

A Okay

Q Would you be surprised that during that same period of time that Mr Burck talked about, April of 2011 to February of 2013, that you had 109,000 phone calls and text messages in that period of time?

A I'm a busy person

Q All right Mr Burck asked you, I believe, if every single one of your communications with Ms McDonnell was about Anatabloc, and then you said, well, 95, 98, it might have been more, but it was about the business relationship And it sounded like you were drawing a distinction between you talking about Anatabloc and the business relationship, but you didn't explain what you meant by the business relationship Can you talk -- just tell me about that, briefly

A The business -- the business relationship is that really everything I'm doing is because of that Even if there's a -- a personal response to something that she sends or whatever, this was -- you know, this -- after what happened with my thyroid -- my wife's thyroid disease, this became my purpose So that business relationship was important to me So I maintained it

MR DRY: Can we bring up defense -- can the defense do this? I'm sorry I don't know if we've got this loaded in RM-053 -- you know what Actually, we don't have to even do this We can do this

BY MR DRY:

Q Do you remember a text message that Mr Burck sent you about -- I'm paraphrasing It's August 23rd, 2011, from Ms McDonnell to you saying something about I felt the earth move and I'm not even having sex Do you remember seeing that?

MR BURCK: Objection, Your Honor I have never sent Mr Williams a text message

BY MR DRY:

Q I'm sorry That Ms McDonnell sent you a text message?

MR DRY: Are you sure? Are you absolutely positive? Okay

THE COURT: The objection is sustained

MR DRY: Very good, Your Honor

BY MR DRY:

Q Do you remember seeing the e-mail from Ms McDonnell to you saying I felt the earth move and I wasn't even having sex?

A I did

Q You saw it?

A I think I saw that.

Q Okay And I think you said it was --

A I'm not -- you know, when I saw it the other day, you know, I think I saw it, but it was funny to me

Q All right Well, why was it funny?

A I don't know what to say about things like that I mean, it's just -- you know, it's just an odd message to get

Q Well, let's -- let's --

A It's so odd

Q Let's just ask you this question Did you ever have a physical or intimate relationship with Ms McDonnell?

A You know, I've never -- I didn't know Ms McDonnell had any -- I didn't know she had any interest in me until this past week

Q Well, let's be clear Did she ever express to you in any way --

THE COURT: All right Let him answer the question You didn't answer that question, just so the record is clear

BY MR DRY:

Q Did you have a physical --

A No

Q Did you have any physical --

A No

Q -- or intimate --

A No I've never had any contact with Ms McDonnell

Q Okay

A Any physical contact with her, period

Q Okay Did she ever indicate to you in any way, while you're giving all the money and all the -- the Rolex and all the rest of that, did she ever indicate in any way that she had any romantic interest in you whatsoever?

A No

Q Did you ever indicate to her that you were romantically interested in her?

A No, I didn't

Q When Ms McDonnell asked you to take her shopping for the dresses, I believe you said that one of the dresses was for an anniversary party Whose anniversary?

A Hers

Q Hers and who else's? Mr McDonnell?

A Yes

Q And you attended that?

A I did

Q Who did you attend it with?

A My wife

Q And who did Ms McDonnell -- did Ms McDonnell invite both you and your wife?

A She did

Q When Ms McDonnell asked you to have the Ferrari at the Smith Mountain Lake house, whose use is she asking -- who does she want to have that car available for?

A Her husband

Q When Ms McDonnell asked you to buy the Rolex, who -- who's the Rolex going to?

A Her husband

Q As you sit there today, did Ms McDonnell ever indicate to you in any way that she was ever having marital problems?

A No

Q Before this trial began, had you ever heard anything like that?

A No

Q From your interactions with the McDonnells, did you think they were having marital problems?

A No

MR DRY: Can we bring up Government's Exhibit 548, please

BY MR DRY:

Q Did you go to Cailin's wedding, sir?

A No

Q But you were invited?

A I was

Q Okay

A I think

MR DRY: Actually, let's go -- let's do it a different way Can we go to Government's Exhibit 246, page 2

BY MR DRY:

Q You attended the Cure By Design dinner?

A Yes

Q And when you're interacting with the McDonnells, is this typical; that they would have public displays of affection in your interactions with them?

A Yes

Q Did you ever notice any tension between the two of them at this event, this Cure By Design event?

Because you went out to dinner with them after, right?

A Yes, I did

MR DRY: Let's go to Government's Exhibit 338

BY MR DRY:

Q That's the Healthcare Leaders Reception, right?

A Yes

Q And you went out to dinner with them after that?

A Yes

Q Notice any tension there or any marital discord?

A No

Q Let's -- on a side note, regarding the Healthcare Leaders Reception, you told Mr Asbill, I believe, that you thought that Dr Ladenson was a healthcare leader, right?

A Yes

Q You think that?

A I believe that

Q All right And Dr Ladenson was at the event and the Governor recognized him, right?

A Yes

Q Now, the event was for healthcare leaders of Virginia, wasn't it?

A Yes

Q Dr Ladenson is from what school?

A Johns Hopkins University School of Medicine

Q Okay What state is John Hopkins in?

A Baltimore, Maryland

Q Why did you ask Ms McDonnell to recognize Dr Ladenson? Was it just because you think he's a great guy?

A Because I thought it would be important for our company

Q Explain that

A Well, for two fronts One is Dr Ladenson had invited a colleague of his, a distinguished endocrinologist from McLean, Virginia, to come with him

Q Do you remember who that was?

A Dr Crantz They went to medical school together in Boston

Q Okay

A And so the second reason -- I thought that was important Dr Ladenson, after they completed the animal models on their own up at the medical school, then he became a consultant to our company

Q So --

A And I thought given who he was, it was -- would be important that he be recognized, and it would benefit our company with anyone that was in the audience, including the people that we invited

Q Because Dr Ladenson was associated with Star?

A Yes, as a consultant

MR DRY: One moment, Your Honor

THE COURT: Sure

BY MR DRY:

Q Mr Williams --

MR DRY: Can we bring up Government's Exhibit 211? This is already in evidence And can we go down --

BY MR DRY:

Q Well, you see on the top, that says "Itinerary docx," correct?

MR DRY: Can we blow that up?

BY MR DRY:

Q It's from Mary-Shea Sutherland to the First Lady, August 26 to 28th This is August of '11

MR DRY: Can we go down? The next page

BY MR DRY:

Q This is about a trip on August 26th through 28th, 2011, that was planned And then the next page, do you see where you're arriving at, sir? Just take a moment with it

A Okay

Q Okay You didn't -- you said the Bar Harbor story was a long story, and you didn't really get a chance to explain it What I'd like you to do is take me through, whose idea was it to go to Bar Harbor Inn?

A Maureen McDonnell

Q And specifically, what did she ask you?

MR DRY: And you can take that --

A She said she would -- you know, "Let's" -- "I'd like to go away with the Governor and" -- "so let's go to Bar Harbor, Maine, since you had your honeymoon there "

BY MR DRY:

Q And who was going to be paying for this trip?

A Me

Q Okay And was this trip -- this was before the Cure By Design, right?

A Yes

Q Okay And I think Mr Asbill said something to you about, well, that was -- it was canceled because of a hurricane

Did you have communications with Ms McDonnell about -- well, first of all, do you remember around that time where you were planning to go that there was a hurricane coming?

A I do

Q Well, talk me through what's going on there, your conversations with Ms McDonnell about this trip Walk me through that

A I contacted her too, and I said, you know, Jerri says there's a hurricane coming and, you know, it may come on up the East Coast, and it could be a real problem here

And she kept insisting on, you know, that -- you know, to go And -- and the hurricane is getting a little closer, and, you know, we've gone ahead -- even myself I've talked to the golf courses up there in Bar Harbor, Maine, to try to set up some tee times

And then finally she called and she goes, "The Governor" -- "we can't go because of this" -- "it would look terrible to be gone while the hurricane hits here

MR DRY: Can we bring up that itinerary one more time, and just the last page of it?

BY MR DRY:

Q Sir, so the original plan was for you to take Ms McDonnell and Mr McDonnell to Bar Harbor three days before your launch event at the Mansion?

A Yes

Q Okay

MR DRY: Let's go to Government's Exhibit 318, please

BY MR DRY:

Q Mr Asbill talked to you about, "Do you want me to call your lawyer on the certificates and the documents " That was just an hour or two ago

And then you testified about, well, yeah, you'd need to talk to the lawyers about whether it was going to -- whether the transfer of the shares was going to trigger reporting obligations Do you remember that testimony?

A I do

Q And then you said something about, well, I spoke to him generally?

A Yeah

Q Do you remember specifically who you talked to about this?

A Bob Pokusa

Q And when you're talking to Mr Pokusa -- first of all, who is he?

A General counsel.

Q Of Star Scientific?

A Yes

Q When you're talking to Mr Pokusa about it, are you disclosing to him that, hey, I'm thinking about transferring 50,000 shares of Star stock to the Governor of Virginia?

A No

Q Why not?

A I didn't want him to know I was trying to find out, you know, what you could and what you couldn't do

Q Mr Asbill yesterday, I think, was talking about -- and I got a little con- --

MR ASBILL: That would be a Sunday

THE COURT: Not yesterday

MR DRY: I'm sorry Friday It's been a long weekend

BY MR DRY:

Q Mr Asbill, on Friday, spoke to you about the 50,000-dollar loan, the first one, and your certainty about whether you -- the certainty of when you spoke to the Governor And you indicated that you weren't certain on whether it was a phone call or a meeting; is that right?

A That's correct

Q Okay As you sit here today, how certain are you that before you hand those 50 -- that first $50,000 check and that next $15,000 check, how certain are you that you had a conversation with the Governor of Virginia explaining that you were loaning $50,000?

A A hundred percent

MR DRY: Show Government's Exhibit 134

BY MR DRY:

Q And five days after that, you get this e-mail, right?

A Yes

Q And you interpret that e-mail as what?

A He's thanking me for helping him out

Q Okay And he also thanked you for the $15,000 check, right, that you had given?

A Yes

Q Mr Williams, Mr Asbill made a big point of saying, well, we only have your word to thank for various things

Was this e-mail sent to you before this investigation -- before you were ever even interviewed by law enforcement?

A Yes

MR DRY: Let's bring up Government's Exhibit

352, please

BY MR DRY:

Q This check was sent before you were ever interviewed?

A Yes

Q Mr Asbill asked you questions -- a question about whether you had discussions with the Governor before he appeared at the launch event about the launch event You said no, I can't recall any specific conversations

Do you remember that testimony?

A Yes

Q Who showed up at the launch event? Did the Governor show up?

A He did

Q Was the First Lady in attendance?

A Yes

Q When he came into the room for the launch event, did he look surprised; "Oh, my gosh, here's Jonnie"?

A No

Q Did he look surprised when the Anatabloc is at the place settings?

A No

MR DRY: Can we bring up Government's Exhibit 186, please

BY MR DRY:

Q Sir, I believe that there were questions about not only these meetings that you had, but whether you believed that they were linked, in your mind, to your meetings with giving the Governor and Ms McDonnell things of value

Before -- how certain are you that you spoke to Ms McDonnell the weekend before you got this meeting, before you're sitting in that room with Ms Huffstetler and then Dr Clore, how certain are you that you had conversations with Ms McDonnell --

A Yes

Q -- confirming that you're going to get your meeting?

A I'm certain

MR DRY: Let's go to Government's Exhibits 312, please

BY MR DRY:

Q Mr Asbill asked you questions about whether you had conversations with the Governor in which he told you that UVA and VCU were, in fact, going to do the studies And you said -- I believe what you said was, well, we had conversations that he was going to look into it

Do you remember that?

A Yes

Q Did Ms McDonnell ever tell you that she forwarded the information that your son had given to the Governor and he was going to look into it?

A Yes

MR DRY: Can we go down?

BY MR DRY:

Q And that's the information from your son to Ms McDonnell, right?

A Yes

MR DRY: And then go up

BY MR DRY:

Q And there's Ms McDonnell forwarding it to the Governor So that's consistent with that conversation?

A Yes

Q Was this e-mail in existence before you were interviewed by law enforcement?

A Yes

MR DRY: Let's just quickly do the next one Government's Exhibit 318 Actually, you know what Let's take that one down I think the more important one, Government's Exhibit 2, page 3

BY MR DRY:

Q Now, you've been shown this a few times And that middle part, again, is what? The middle part, whose handwriting is that?

A That's mine

Q And I think Mr Asbill, in his questioning, he said that the bottom part was the Governor's handwriting

Who -- when you're discussing this with the Governor, who did you understand the loan was going to be to? Like are you giving Ms McDonnell money or are you negotiating with Mr McDonnell to give him money?

A The Governor

Q But, sir, can you see at the bottom there? Whose idea was it that the loan of the shares would go to Ms McDonnell instead of Mr McDonnell? Did you come up with that idea?

A No

Q Whose was it?

A The Governor's, or whomever wrote this on this paper

Q Oh, so you don't know whether this handwriting is the Governor's?

A I can't -- I'm talking --

Q You were just taking Mr Asbill's word for it?

A I'm just taking his word But this is not something that I know that that's the Governor's I can tell you that that's my handwriting of what was going on

Q Well, let's do it this way Did you have discussions with the Governor about this in which he discussed that the shares should go to Maureen and not him?

Don't worry about the notes I just want your best recollection as you sit there today, sir

A I thought they were -- I actually thought they were going to the Governor I didn't realize that they were going to Maureen

Q Okay Eventually, where did the -- well, let's --

A I thought this was going to the Governor's account here I'm just realizing that it was Maureen

Q Okay That's fine Now, you testified that those notes, your notes, were in your meeting on February 29th of 2012, right?

A Yes

Q Who is asking you for this money? Is it Ms McDonnell at this point or is it Mr McDonnell?

A It's the Governor

MR DRY: Government's Exhibit 379 Second page, please This has already been admitted

BY MR. DRY:

Q Do you know who Mike is in this one, sir?

A I think that's the brother-in-law

Q And Mr Asbill asked you, he said, well, the MoBo people would know about this loan, right? The MoBo people Who were the MoBo people?

A My understanding, I learned that the MoBo people were the Governor and his wife and the Governor's sister and her husband

Q Okay So those would be the people that would know about the loan?

A Yes

MR DRY: Let's bring up Government's Exhibit 348, please

BY MR DRY:

Q I believe you were shown this by Mr Asbill, and he said that Mr Piscitelli would know

Do you have any idea what conversations the Governor had with Mr Piscitelli and what he knew about this transaction --

A No

Q -- or this proposed transaction?

A No

Q Okay Oh, one last thing I apologize for skipping around on you Mr Williams, I have to ask, Mr Asbill asked you about the end of the meeting on February 29th and that you got to say something about there was some kind of handshake is not the law discussion

Do you remember that?

A I do

Q Can you explain what was said? Because I don't think you got an opportunity to kind of explain where you're at, who you're talking about, what was said, and what was your impression

A I always thought it was still on the law books in Virginia, I had heard someone say, that if you shake hands with a man or a woman in Virginia, that's the law It could be upheld in a courtroom even if you shake hands in Virginia

And -- and I was doing this with the Governor on a handshake

Q No loan documentation?

A No paperwork of any kind And I'm the one at risk advancing this money

And as I was leaving the conference room at the Patrick Henry Building, he said to me, "Jonnie, by the way, it's" -- "it's no longer the law that a handshake is the law in Virginia "

Q And how did you take that?

A Actually, it was just like, that's an odd thing to say to someone that's loaning you money

Q Okay

MR DRY: Let's bring up Government's Exhibit 530 And I do not want to beat this dead horse any more than I have to

BY MR DRY:

Q This is your immunity agreement, right?

A Okay

Q And this is the one you're operating under now In other words, your testimony -- your agreement with the government is this?

A The first one or the second one?

Q This one The second one?

A The second one Okay

Q Is that right

A Okay

Q Well, and let's go to the first paragraph, last sentence Do you see that? "This letter supersedes and replaces the one from" --

A Yes

Q -- "July 1st" --

A Yes, I see that

Q Okay And then let's go down on the very -- where is this? In the very bottom, the second -- the very bottom where it starts "Second " "Second," and I'll give you a chance to read that, and then I want to go to the top page Just signal to me when you're done reading that

A Okay

MR DRY: Second page, please

BY MR DRY:

Q Now, your first meeting in which you laid out what happened between you and the Governor was July 1st of 2013?

A Thereabouts

Q If you had lied after that meeting in any way to law enforcement, what happens to your agreement?

A Tear it up

Q As long as you tell the truth to this jury, what's your understanding of the risk that you face of going to jail?

A None

Q Is your immunity agreement in any way conditioned on whether Mr or Ms McDonnell are convicted?

A No

Q So it doesn't matter You know -- it doesn't have anything to do with whether they are convicted or acquitted, right?

A It's just whether I tell the truth

Q What if you tell the truth and no one gets convicted? What happens?

A That's -- that's the law That's the justice system

Q What is the first thing that you've been told in every interview with prosecutors in this case?

A They have always said, "All we're looking for from you is to answer the questions truthfully "

Q And have they made it clear what would happen if you didn't?

A Yes

Q What's that?

A That there would be no immunity, and I may be prosecuted

Q And they could use all your statements?

A Everything

MR DRY: Nothing further, Your Honor

THE COURT: All right You may stand down, sir

(Witness stood aside)

THE COURT: We will stop now And if you all could come back -- let's make it 2:05, we'll get started with the afternoon session Just follow the marshal

(The jury left the courtroom)

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(Luncheon recess taken from 1:00 p.m. to 2:05 p.m.)

THE COURT: All right, bring in the jury

(The jury entered the courtroom.)

All right, government, call your next witness

MR HARBACH: Your Honor, the government calls Phil Cox

PHILIP COX,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR HARBACH:

Q Good afternoon, Mr Cox.

A Good afternoon.

Q Could you please state your full name and spell your last name for the court reporter?

A Philip Cox, C-O-X

Q What do you do for a living, sir?

A I'm Executive Director of the Republican Governors' Association

Q What's is that?

A It is the political committee for all the nation's 29 Republican Governors

Q What is its purpose?

A Support them, reelect them, elect them.

Q How long have you held your current position?

A Since January of 2011

Q Could you tell us about your educational background, please?

A I graduated from the University of Virginia

Q With what kind of degree?

A A B.A. in history

Q During your career, did you work for Mr Robert McDonnell?

A I did.

Q Tell us about when you started working for him.

A 1999 I was his political advisor/consultant on his state House race

Q At the time was he serving in the Virginia House of Delegates?

A He was He was running for reelection.

Q What about his campaign for Attorney General, did you work on that?

A I did I was his political advisor for that as well Essentially, I wasn't the campaign manager but was essentially responsible for the campaign

Q During the time that Mr McDonnell was running for Virginia Attorney General, did you develop a personal relationship with him?

A Yes

Q Would you say that you became friends?

A Absolutely

Q As you sit here today, do you still consider Mr McDonnell a friend?

A Very much so

Q Did you work in the Attorney General's Office while Mr McDonnell was serving as Attorney General?

A No.

Q What did you do next professionally?

A Well, we prepared the run for Governor

Q Who is "we"?

A Governor -- Bob and I And Attorney General McDonnell and I

Q When did the campaign for Governor begin, what year approximately?

A You know, really probably picked up steam in 2007, 2008

Q What was your role with respect to the gubernatorial campaign?

A I was the campaign manager

Q What does that mean?

A I was responsible for the campaign.

Q What sorts of things did you do on a daily basis generally?

A Everything, managing the staff, we had a staff of, now, probably anywhere, at its height, probably 70 or 80 people Managed the fund raising operation, made sure we had the resources ,to do what we needed to do Managed the message, and then managed the candidate

Q Let's talk about your professional relationship with Mr McDonnell during the gubernatorial campaign. How often would you say in your role as campaign manager was it that you interacted with him?

A Multiple times a day

Q Would it be fair to say that you were one of his closest advisors during that time?

A Yes

Q Based on your interactions with Mr McDonnell and your relationship with him, would you say that he is an intelligent guy?

A Yeah, very much so

Q How would you describe his management style?

A Well, I mean, I think he at times would try to micromanage But, you know, when you are running for statewide office, it is impossible to do so And he very quickly learned he couldn't do it, and he was focused on being the best candidate he possibly could be, and by all accounts, I thought we ran a pretty good campaign

Q In general during the time, focusing on the time you have worked with him or for him, would you say that he was more of a details guy or more of an altitude guy?

A I think he could be both. At times he was very detail-oriented, but at times, you know, he needed to kind of take a look from 30,000 feet He was able to do both.

Q During the 2009 campaign for Governor, did the campaign have a bumper sticker-type motto?

A Yes. Bob's For Jobs

Q And what did that mean?

A Well, we were in the middle of a recession. You remember sort of the world kind of falling apart in the fall of 2008, and there was a lot of concern about the state of the economy And if you polled voters at that time, 2008 throughout 2009, by far the number one issue in the campaign was jobs and the state economy

Q So was that an important issue?

A It was the central issue

Q For Mr McDonnell's campaign?

A The central issue

Q Are you familiar with an entity called Opportunity Virginia?

A Yes

Q What is that?

A It is the Governor's political action committee

Q What is a political action committee?

A It raises money to support, in this case, the

Governor's political and policy agenda

Q And about when was the PAC, that's what people call them, right?

A Uh-huh

Q About when was the Opportunity Virginia PAC started?

A It would have been just after the campaign was concluded. So sometime in the fall of 2009.

Q Okay. After Mr McDonnell was elected, to your knowledge, did he participate or have any other campaigns after that?

A After he was elected Governor?

Q Yes, sir

A No

Q Did a campaign even exist after the gubernatorial campaign wound down?

A No

Q Who was in charge of the Opportunity Virginia PAC?

A I was responsible for it

Q And what were your duties in that capacity?

A Look, I was the Governor's political advisor, so in that capacity, you know, the PAC was really focused on two things One, you know, we were looking ahead to the 2011 legislative elections when the House, State House and State Senate were up for election We raised and spent probably $4 million that year, in 2011, so we spent a lot of time, you know, sort of driving towards that Then we also supported his policy agenda So there were, you know, at times when there were big debates happening just down the street here in the General Assembly and the PAC would spend money on advertising in support of his jobs agenda or his transportation agenda or ABC privatization, those sorts of things

Q Speaking for yourself, were you personally involved at all in the Governor's transition team after he was elected?

A Yes I was the director of his transition.

Q Tell us generally what the transition team's mission was

A Really, we had, you know, probably the hardest job I have ever had. 75 days, you know, starts the day after the election, essentially 75 days to staff the government and hire his core senior staff and his cabinet and then get him ready for the first legislative session which, you know, started January 15th.

Q So about when would you say the transition team's work was finished approximately?

A Well, I mean it was officially concluded when he was sworn in

Q His inauguration?

A Yup

Q After your duties working with the transition team, did you continue to work for Mr McDonnell's administration after he was inaugurated?

A No, sir

Q Where did you go next?

A Well, I was a consultant, continued to do what I have been doing for 20 years, which is helping candidates around the country One of my clients was the Republican Governors' Association, and in that capacity I handled eight to ten campaigns, governors' races across the country This was in 2010 I was hired as the Executive Director in 2011 Throughout that time, I was continuing to offer strategic advice, political advice to the Governor and his team.

Q Okay Let's go back a little bit in time from the 10-11 time frame to December of 2009 Is that during the time that the transition team is most active?

A Yes, sir

Q Do you recall roughly in that time frame meeting someone named Jonnie Williams?

A I do

Q Tell us what the circumstances were What event do you associate with that meeting?

A You know, we were in a hotel restaurant in New York. We had flown up there, I believe the Governor was attending an RNC, Republican National Committee fundraiser around that time, and so, you know, we had flown up to do that

Q Who is "we"? Who went up on the trip besides you and the Governor?

A Myself, the Governor, Maureen, the First Lady was there, Adam Zubowsky, who is his personal aide, and probably some of his protective detail.

Q And if I were to suggest to you that this was approximately December of 2009, does that sound about right?

A Yes, sir

Q You have just told us what the purpose of the trip was Could you describe for us the specific circumstances of how you came to meet Mr Williams?

A Yeah. I mean, we were at dinner, and, you know -- I think it was a dinner That was the circumstance

Q Let me ask you, do you recall whether Mr or Ms McDonnell had any plans that evening in particular?

A Yes I think they were going to a play

Q So you were at dinner before they go to the play?

A Yes, sir

Q Who all is at the dinner?

A Just the folks I mentioned. There was also a friend of Mr Williams who was apparently a male model who had a billboard in Manhattan, downtown Manhattan.

Q Just so the record is clear, the folks you just mentioned a moment, ago who flew up on the trip with you, namely Mr Zubowsky, the Governor, Ms McDonnell, yourself, Mr Williams, and possibly this model person?

A Yes

Q Before this occasion where you met Mr Williams in New York, do you recall ever having heard of him before that occasion?

A I don't recall I don't think I had

Q Do you have any recollection of Mr McDonnell ever mentioning him to you before that trip to New York?

A No

Q Do you have any recollection of Mr McDonnell mentioning Mr Williams' company, Star Scientific, before this trip to New York?

A No

Q Do you recall during the dinner the subject of an inaugural dress for Ms McDonnell coming up during conversation?

A Yes

Q Tell us what you remember about that

A You know, there was discussion about, you know, potentially the First Lady potentially wearing an Oscar de la Renta dress, very nice dress at the inaugural, potentially very expensive dress at the inaugural

Q What do you recall Mr Williams' participation in that conversation to be?

A Well, I mean, I think he was essentially offering the dress He had the relationship with Oscar de la Renta, and was offering the dress to Maureen

Q And based on what you saw and heard, did you have an impression just speaking for yourself one way or the other about whether Mr. Williams was offering to pay for the dress?

A Yes That was my impression.

Q Do you recall whether he actually said that?

A I don't But I think that was my strong impression at the time

Q Understood. Was Mr McDonnell present and within earshot when this discussion about the dress was happening?

A Yes, he was present

Q When you heard about this prospect of Mr Williams helping find or, as you interpreted it, pay for a dress for Ms McDonnell, what did you think about that idea?

A I didn't think it was a good idea

Q Why not?

A You know, we were in the middle of a recession, and I thought the optics, you know, again, as his political advisor, I thought the optics of something like that were not something we should -- were not ideal

Q Could you spell that out, please? What was the optics concerning?

A We were in the middle of a recession You are going to wear a 20 or $30,000 dress, you know, someone is going to write about that

Q Any other concerns besides this optics concern?

A Yes. The potential legal concerns. I didn't know what the law was We were in this sort of interim period between the campaign and when he took office, or in this transition period And, you know. before we did anything like that, we would have to check with legal counsel

Q Are you yourself a lawyer, sir?

A No

Q Did you express these concerns that you have just described for us, the optics concern and the potential legal concern, did you express those to Mr McDonnell?

A I did.

Q Do you recall whether you did so at the dinner?

A I don't think so I think it was probably after

Q Afterward?

A Yes

Q Based on what you observed at the dinner, what was Ms McDonnell's reaction to the idea of Mr Williams helping find and/or pay for a dress for her?

A She was excited about it

Q Okay Show for the witness for identification, please, Government Exhibit 53 We will blow that up for you, Mr Cox Can you see that okay, sir?

A Yes, sir

Q You recognize that to be an e-mail exchange between you and, among others, someone named Jasen Eige about the dress issue?

A Yes

MR. HARBACH: The government offers Government's 53

THE COURT: It will be admitted

BY MR. HARBACH:

Q Let's start at the bottom, Mr Cox First question is, who is Jasen Eige?

A At the time, he was our policy director on the campaign, and he was the policy advisor during the transition, but also legal counsel So he was policy and legal He kind of wore two hats

Q Is he a lawyer?

A He is a lawyer, yes

Q What about the other person to whom Mr Eige sends that first e-mail, Mike Reynold. Who is that?

A Mike was the political director on the campaign, kind of ran all the grassroots efforts for the campaign

Q Is he a lawyer?

A He is

Q Okay Mr Eige's e-mail says, "Spoke with Jonnie Williams He said he absolutely understands and agrees with the decision. Hopefully this is the last chapter of the dress saga " What was the decision?

A The decision was no Oscar de la Renta dress

Q Okay And then your reply to that simply is "Thanks " Did you have discussions with Mr Eige about the dress apart from this e-mail exchange?

A Yeah, I did

Q Tell us generally what the substance of those discussions was

A Look, I thought from my standpoint as the political advisor, I thought it was a bad idea And so I sort of asked Jason as a lawyer to see if there was a legal reason we could offer -- that would prevent us from being able to take it So it would be an additional reason to give to Maureen outside of just "It is not a good idea "

Q Do you recall whose job it was to inform the First Lady of the tough decision that you mentioned a moment ago?

A You know, I think it was probably Jasen. But I don't know for sure

Q Okay Did you yourself --

A I did not

Q Did you and Mr Eige at any point discuss any alternatives to Mr Williams' buying a dress for Ms McDonnell?

A Yes. There was some discussion about, you know, could we take the Oscar de la Renta dress, she could wear it at the inaugural, and then we could auction it off for charity, which I thought was a good compromise

Q As opposed to her keeping it?

A Yes

Q Do you recall whose job it was to communicate this alternative idea or any others to the First Lady?

A I don't know who did.

Q Did you yourself do it?

A I did not communicate it, no.

Q Now, based on your personal observations, what was Ms McDonnell's reaction to the news that she wouldn't be able to keep or receive this designer dress from Mr Williams?

A She was not happy about it

Q How do you know that?

A She sent me an e-mail

Q When was that?

A December 24th, 2009

Q How do you remember the exact date?

A It was Christmas Eve

Q Tell us what you remember about her e-mail, sir

A I mean, she basically called into question my loyalty and said, you know, that I didn't have the best interest of, you know, her or her husband, you know I wasn't looking out for their best interests And so, you know, the e-mail had literally no basis in reality It was sort of an insane rant of an e-mail And coming on Christmas Eve, I just thought it was inappropriate and it really angered me

Q Did you draft any e-mails in response to Ms McDonnell?

A Yes, I drafted about half a dozen.

Q Did you send any of them, sir?

A No, I did not I thought better of it

Q Did you ever show the e-mail that Ms McDonnell sent you to Mr McDonnell?

A I didn't show it to him. I talked to him about the contents of it

Q Tell us about that

A I just remember it was two days later, I was in Pittsburgh with my wife's family and he called me just to wish me a merry Christmas because, you know, that's the kind of guy he is, and he wanted to see how Christmas was

I raised it with him. I said, "Look, I think you need to talk to her about this, or I will, and if I do the conversation is probably not going to go very well " So, and he said he would.

Q Could we see Government Exhibit 56 for identification, please? I'll blow this one up, too Can you see this okay?

A Yes, sir

Q Does this appear to you to be an e-mail exchange where you are on at least part of it involving a meeting with the Governor to discuss the dress?

A Yes

MR. HARBACH: The government offers Government's 56, please

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Okay Let's start at the bottom. The first e-mail on the chain is from Mr McDonnell It is addressed to cjeige@hotmail com. Is that your address in the cc block?

A Yes, sir

Q It says, "Please set call in a.m. with you me and Lee to discuss the dress and gift issues Thanks " Did I read that correctly?

A Yes, sir

Q That's the only e-mail on this chain that you are on. Let's just talk about that one Who did you understand Lee to be when you received this?

A Lee Goodman.

Q Who is that?

A He was also, I think he was officially counsel to the campaign or one of our lawyers, and so he was counsel to the transition, one of the transition's lawyers

Q Now, do you recall whether this call that the Governor requested ever in fact occurred?

A I don't I wasn't on the call

Q You can take the exhibit down A moment ago when I asked you about what you did after the transition team, I believe you talked about going to work for the RGA or them being one of your clients And did I understand you correctly to say that you continued to be a political advisor to Mr McDonnell even after he was inaugurated as Governor?

A Yes

Q Did you remain close with him?

A Yes

Q How often would you say you either saw or spoke to him while he was Governor, if you can generalize about that?

A I mean, the frequency was certainly less than during the campaign, which was many times a day When he was Governor, you know, probably a couple times a week.

Q Okay Did you continue to have communications with the Governor's staff during that time frame?

A Yes

Q Do you recall becoming aware at some point of a request from Mr Williams' company, Star Scientific, for Mr McDonnell or the PAC to tweet about a product of theirs?

A Yes

Q Can we take a look for identification at Government's 63, please. And could we maybe just blow up the bottom half so we can identify it Mr Cox, do you recognize this to be an e-mail exchange between you and someone named Monica Block about this twitter issue?

A Uh-huh

MR. HARBACH: The government offers Government's 63

THE COURT: It will be admitted

BY MR. HARBACH:

Q I'd like to start at Page 2, please Correction, the bottom of Page 1, just for the header information at the bottom. This is the first e-mail in the chain. This is from someone named Jerri Fulkerson to Monica Block. Do you know who either of those people are, sir?

A I don't know Mr Fulkerson. I know Ms Block.

Q I'll just let you know that Jerri Fulkerson is a female, okay?

A Sorry

Q Quite all right Who is Ms Block?

A The Governor's scheduler

Q Let's look at the substance of that e-mail on the next page, please, at the top. Can you see that okay?

A Yes.

Q All right She is asking, she is relating that "Jonnie asked that she forward the following information to you and if you would ask the Governor and the AG if they could possibly view the link and twitter or whatever about it, he would really, really appreciate it It is very important to him." Did I read that correctly?

A Yes

Q Okay So let's go back to the first page of the exhibit now, please. Let's see when it lands in your in-box Which is the e-mail that's currently highlighted, at 9:40 a.m. Who is the cc there, DJ Eckert, do you know who that is?

A He works for the PAC Political director of the PAC.

Q So a little over an hour after the first e-mail, this lands in your in-box And you can see the request that Ms Block relates there Let's scroll up and see what your response was About an hour and 40 minutes later, you say, "The Governor should not twitter about a product launch." Why did you write that, sir?

A Well, first of all, the Governor would never personally tweet He doesn't do it Somebody does it for him. But, you know, in this case my opinion as his political advisor is that the Governor should not be a pitchman for a specific product You know, he shouldn't be picking winners and losers within a marketplace and shouldn't be a product pitchman

Q How is that different from what you described earlier as the theme of the campaign being to promote Virginia business and Virginia jobs; can you distinguish those two for us, please?

A Yes I mean, first of all, this is nuanced and it is a judgment call and these things are subjective But, you know, my advice, my opinion as his political advisor is that there is a line there between supporting industry and supporting a specific product And I think you need to be careful not to pick winners and losers I'll give you an example The Governor and his administration did a great job promoting the Virginia wine industry, and I think that's perfectly appropriate and that ought to be what he does He ought to wake up every morning thinking about "How do I create more jobs and opportunity for the citizens of the Commonwealth?" And he did a great job of that But I think it would be, I wouldn't recommend him going out and saying, you know, promoting Barboursville at the expense of, you know, Williamsburg or King Family Vineyard or some other wine, because I think then you are picking winners and losers. I think that's where the line is. But again, it is subjective and it is a judgment call

Q Did you have any discussions to your recollection with Mr McDonnell about the two categories that you just described for us?

A Not that I recall

Q Why not?

A I don't think I needed to I think he got it

Q Your impression was that he understood that concept?

A Yes

Q In particular, the e-mail we were just looking at a moment ago, do you recall having any discussions with Mr McDonnell about this specific request from Star that there be a tweet about the product?

A No Again, he didn't tweet That would never rise to the level of something he would look at

Q Understood. During one of Mr McDonnell's campaigns, do you recall there arising an issue concerning Ms McDonnell's promotion of specific products along the lines that you are talking about?

A Yes, nutraceuticals

Q Tell us what you recall about that

A I think it was during the governor's race, although it may have come up during the AG's race, I can't remember, but during the governor's race, I do specifically remember there were a couple of instances where she was contacting donors or activists, supporters of the campaign, you know, kind of pushing this product or line of products

Q And was that a concern to you?

A It was, yeah.

Q What did you do about it?

A I talked to the Governor about it

Q Why?

A Because it wasn't something, I mean, it wasn't something we should have been doing And I think it may have made, from an optics standpoint again, as his political advisor, I didn't think it was something we should be doing, and I think also in some cases it may have made our supporters uncomfortable

Q Did you discuss those concerns with Mr McDonnell?

A I did

Q What was his reaction when you explained it?

A He agreed, and, you know, it didn't happen. It stopped

Q Do you recall whether he said he would do anything about it?

A He talked to her about it

Q Different subject now At the time that it happened in April of 2011, did you know that Mr and Ms McDonnell had hosted Mr And Ms Williams for a private dinner at the Mansion?

A No

Q To be fair, is hosting private dinners something they did from time to time?

A Yes

Q But you didn't know about that one

A No

Q At the time that it happened in April of 2011, did you have any idea that Mr Williams had spent some 19 or $20,000 on designer clothes for Ms McDonnell?

A No

Q Did you know at the time that in May of 2011, Mr Williams cut a $50,000 check to Ms McDonnell as a loan to the McDonnells?

A No.

Q Mr McDonnell never told you that?

A No

Q Do you recall when you learned about it?

A Probably in the Washington Post

Q About when?

A It would have been Easter, well, around March of 2013

Q When the investigation broke in the papers?

A Uh-huh

Q At the time, meaning May of 2011, did you know that Mr Williams also gave the McDonnells a check for $15,000 to cover the catering expenses for their daughter, Cailin's, wedding?

A No

Q Mr McDonnell never told you about that before it broke in the papers?

A No

Q What about Mr McDonnell golfing on Mr Williams' tab at a private golf course twice in 2011 and racking up some $3,000 in charges; did you know about that back then?

A No

Q Do you recall how you learned about that?

A I'm sure it was in the Washington Post

Q Do you know what the Roskamp Institute is?

A I do now, yeah

Q Okay Were you aware at the time, and by that, I mean in June of 2011, that Ms McDonnell flew down to Roskamp and spoke about Star and its products?

A No

Q Do you recall how you learned about that?

A I'm sure it was published reports

Q Similarly, did you know at the time that either Mr On Ms McDonnell ever owned Star stock?

A No

Q When did you learn that Mr McDonnell received a Rolex watch?

A Again, in the spring of 2013 when it was written about in the Washington Post

Q Do you know who Dr Bill Hazel is?

A I do

Q Who is that?

A Secretary of Health and Human Services or whatever we call it in Virginia Secretary of Health

Q Did he serve in that position under then-Governor McDonnell?

A Yes, he was in the Cabinet

Q Did you know at the time that on August 1st of 2011, Mr Williams got a meeting with a member of Dr Hazel's staff?

A No

Q Did you know at the time that that meeting was on Mr McDonnell's request?

A No

Q New subject Do you recall hearing about an issue surrounding a press release related to an event that happened at the Mansion in late August of 2011?

A Yeah, I vaguely remember Tucker Martin, the Communications Director, flagging something and having concerns about it

Q You remember any other details?

A I don't really remember the content of it

Q Did you yourself attend the event?

A No

Q Did you ever discuss this particular event on August 30th, did you ever discuss that with Mr McDonnell?

A No I did discuss it in probably April of 2013

Q Thank you for clarifying it But at the time?

A No

Q Mr Cox, in your experience, could a private company just rent out the Governor's Mansion for an event?

A I'm not expert on the Mansion, but no, I don't think so

Q Understanding that you are not an expert, based on your experience, is it your understanding that in order for an event to get scheduled, you know, and actually happen at the Mansion, would some sort of government official need to approve that?

A Yes

Q Sticking with this event that happened on August 30th of 2011, do you have any recollection of how that event was paid for?

A Opportunity Virginia, the PAC, paid for the event

Q Okay Now, generally speaking, if a member of the Governor's administration was of the view that the PAC should pay for something, who would they go to?

A Me

Q And in your experience, who on the staff would make the decision about whether it was appropriate to use state funds or whether they should seek funds from the PAC for a given event?

A It would be the Chief of Staff or the counsel, either one Jasen Eige or Martin Kent

Q Which was which?

A Martin Kent was the Chief of Staff Jasen Eige was counsel

Q And in this particular case, do you recall whether a member of the Governor's staff came to you seeking to have the PAC pay for this August 30th event at the Mansion?

A Yes

Q Who was it?

A It was Martin, I believe

Q Mr Kent?

A Yes

Q Did you authorize the expense to be billed to the PAC?

A Yes

Q Was this any kind of momentous decision for you?

A No

Q Did you spend a lot of time thinking about it?

A No

Q Did you have a lengthy discussion with Mr Kent or any of the other staff about this?

A No

Q By the way, were you aware at the time that samples of Mr Williams' product had been placed at each setting at the event?

A No

Q At any time, again, leaving aside post-investigation, at any time during the events in question, did you ever discuss the fact that the PAC paid with Mr McDonnell?

A No

Q Were you part of a trip in January of 2012 with Mr McDonnell and others to South Carolina?

A Yes

Q What was the purpose of the trip, sir?

A He had just endorsed Governor Romney for President He was in -- we flew from New York to South Carolina It was going to be his first appearance after the endorsement

Q Now, at this time, to your recollection, was Mr McDonnell's name, you know, at least in the discussion as a possible Vice-presidential candidate?

A Yeah. It was in the discussion, I would say

Q Could we take a look for identification at Government Exhibit 292, please If we can blow up the top half for the witness so he can see it Then maybe scroll down to the bottom so we can see the whole page You recall, do you recognize this to be a schedule for Mr McDonnell for January 20th of 2012?

A Yes

Q Let's just for further identification look at Page 2, briefly Blow up the top for him, please Do you recognize this schedule to include the trip to South Carolina we are talking about?

A Yes

MR. HARBACH: The government offers Government's 292

THE COURT: It will be admitted.

BY MR. HARBACH:

Q And let's start with Page 2, please And if you could, Mr Starnes, blow up the entry for 1:45 and go down to the entry for 3:20 and include that The first entry I want to talk to you about, Mr Cox, is the one that is from 1:45 to 3 o'clock. Do you see that there?

A Yes, sir

Q Right in the middle of the screen Where is it that you were flying from, you know, what state were you flying from to get to South Carolina?

A We were in New York in the morning, flying to South Carolina.

Q Where it says "Wheels up" there, what does that mean?

A You are taking off.

Q On an airplane?

A Yes, sir

Q Okay The manifest for that entry includes who? Read those names off for us

A Governor McDonnell, Adam Zubowsky, Tucker Martin, Phil Cox, and Ron Kaufman

Q I believe you have already told us what Adam was Who was Tucker Martin?

A Communications Director for the Governor

Q Who was Ron Kaufman?

A Ron was an advisor to the Romney campaign

Q So those are the folks who flew down on that airplane with the Governor; is that right?

A Yes

Q Let's scroll down a little bit to the entry for 3:20 to 3:30, please That's good. All right, now, this says, "Depart for Charleston Area Convention Center " And who are on the manifest for this trip?

A Governor McDonnell, Ms McDonnell, myself, Tucker Martin, Adam Zubowsky, Ron Kaufman, and Jonnie Williams

Q Okay So there are two new people now, namely, Ms McDonnell and Jonnie Williams, who are on this manifest but did not fly down with you in the plane according to this schedule Is that fair?

A That's correct

Q Is that consistent with your recollection?

A Yes

Q Could you tell us about your memory of when you first became aware that Mr Williams was present? What were the circumstances, where were you? Tell us about that

A We were in a conference room at an airport The Governor had been on the phone, you know, literally all day giving interviews He was really focused on that Tucker and I were, you know, acting in support of him during those calls And at some point, Ms McDonnell and Mr Williams came in

Q What happened after they came?

A I don't know, there was sort of a flurry of activity

Q Okay Do you recall either Ms McDonnell or Mr Williams or some combination of them expressing an interest in doing something?

A Yeah. My understanding was that they were trying to get a meeting with Governor Romney

Q About what?

A It was about Anatabloc

Q When you say they were trying to get a meeting, who are you talking about?

A I would assume Jonnie and Maureen

Q Okay I believe you answered this You mentioned that Mr McDonnell was on the phone and what not Were all these folks in the same room?

A Briefly I think we sort of, you know, got him out of there because he was, again, doing interviews with national reporters

Q Do you know one way or the other whether Mr McDonnell actually overheard in that conference room this interest about meeting Mr Romney?

A No

Q Based on what you observed, did it appear to you -- well, let me ask it this way: How did it appear to you that Ms McDonnell was reacting in terms of this idea -- withdrawn. That's a terrible question Did Ms McDonnell appear to you to be interested in meeting Governor Romney for the purpose of talking about Anatabloc?

A Yes

Q What did you think about that idea?

A I just -- it wasn't going to happen.

Q Did Ms McDonnell and/or Mr Williams get a meeting with Mr Romney?

A No

Q Why not?

A It just wasn't going to happen. It is not the way things work.

Q Tell us what you mean.

A I mean, something like that would have had to have been vetted far in advance and arranged far in advance and they just sort of showed up

Q During any portion of this trip, did you witness yourself Ms McDonnell have a conversation with Ms Romney?

A Yes

Q What were the circumstances?

A We were on a campaign bus

Q Who is "we"?

A Myself, Maureen, Tucker Martin, Communications Director, the Governor, Governor Romney, probably a half dozen other Romney staff

Q And Ms Romney, I assume?

A And Ann Romney, sorry

Q Was Mr Williams on the bus?

A No

Q Tell us what you saw

A Ms McDonnell was talking to Ann Romney within earshot of me about how Anatabloc could potentially cure MS And Ms Romney has a well-publicized case of MS

Q How far away were you sitting or standing?

A I was sitting. I was probably four or five feet away.

Q How long would you say this interaction between the two ladies lasted?

A Not long

Q A few minutes?

A Yes Five minutes

Q Based on what you saw, how did Ms Romney appear to handle it?

A I mean, I think she was incredibly classy and she listened. She listened.

Q Politely?

A Yes

Q As you are watching this happen four feet away from you, what are you thinking?

A I was horrified.

Q What do you mean by that?

A I just thought it was a train wreck, basically

Q Why?

A Well, you know, I thought it was inappropriate that Maureen would be trying to kind of push this product on to Ms Romney, and I didn't think it sort of showed the Governor in a great light

Q Do you have a recollection of where relative to you Mr McDonnell was when this was going on?

A I really don't You know, he was probably in the back of the bus with Governor Romney

Q Did you yourself do anything to try and intervene in this conversation that the two ladies were having?

A I did

Q What did you do?

A I just kind of interjected and found an opening in the conversation and changed the subject

Q At least from what you observed for the remainder of that bus ride, was there any further discussion between the two ladies about Anatabloc?

A No

Q Did you observe any further discussion between the two of them on this subject for the remainder of the trip?

A No.

Q Just speaking for yourself

A No.

Q Focusing on this trip now, meaning the trip to South Carolina we are talking about, at any point during that trip, did you have any conversation with Mr McDonnell about Mr Williams or why he was there?

A You know, I don't remember any specific conversations I'm sure I sort of raised it in the context of "What the heck is he doing here?"

Q Do you have a recollection of doing that generically but without remembering exactly what you said?

A Yeah.

Q Okay Do you recall anything about Mr McDonnell's reaction to that?

A I mean, he always listened

Q Do you recall whether he said anything?

A I don't

Q Now, let's talk more generally for a second. Not in the context of the South Carolina trip specifically, but do you recall generally at any time during 2012 having conversations with Mr Williams about what you perceived -- excuse me, with Mr McDonnell about what you perceived to be Mr Williams' intentions?

A Yeah, I mean, I think I raised it a couple of times

Q How so?

A Just like, you know, "He is around a lot What's he looking for?" That kind of thing

Q Why did you feel it necessary to raise that with the Governor?

A Look, I just, you know, he struck me, Mr. Williams struck me as a very over-the-top salesman, and he seemed like he was trying,a little too hard, and he was around a lot

Q Did it appear to you that he wanted something?

A You know, I mean at the time, a lot of people want something from the Governor So I think it was a possibility, but it wasn't anything concrete

Q Did you express your concerns that Mr Williams might want something to Mr McDonnell?

A Yeah. I just said, "Look, he is around a lot " He definitely raised some red flags for me because he was around a lot He was sort of over the top. You know, he was a sales guy And, you know, I thought he was a little bit of a snake oil salesman

Q When you say snake oil salesman, can you spell out what you mean by that?

A Yeah, I mean, he had this product that he would say could cure this, that, and the other thing I mean, it was a cure for everything, according to him. And so I just -- you know, I didn't really believe in the product

Q When you raised with the Governor, for example, that "He is around a lot," again, is it your concern about what he is looking for? In other words, when you say he is over the top, spell that out for us

A He is just aggressive He was just an aggressive salesman.

Q Okay. Did you yourself believe that Mr Williams was looking for something in return based on how much time and energy he was spending?

A I mean, nothing specific It just, there's some red flags that were raised, and so I had some concerns in general, but there was nothing specific I could point to

Q And I want to be clear, I'm not asking you about whether you knew chapter and verse what he wanted.

A Right

Q I'm just trying to understand whether you had a concern that in general he was looking for something.

A Yeah. But a lot of donors are looking for something

Q Okay Had other donors in your experience raised the same red flags for you that Mr Williams had?

A Sure, some did.

Q At the time you had the conversations with Mr McDonnell that you have been telling us about, were you aware of the $50,000 loan that we talked about earlier?

A No

Q Were you aware of the payment for Cailin's wedding that we talked about earlier?

A No

Q Were you aware of the Rolex --

MR. BROWNLEE: I object We have been through this

THE COURT: Sustained. We don't need to go through that litany again

BY MR. HARBACH:

Q Approximately how many times did you raise your concerns about Mr Williams with Mr McDonnell?

A Approximately, you know, a couple times, two or three times

Q And when you would raise it, what would he say?

A I really don't recall

Q Do you recall whether in 2012 it was your perception that the Governor knew about the Anatabloc product?

A By 2012?

Q Yes, sir

A Yeah.

Q Do you recall whether the Governor said anything about that in answer to your raising concerns about Mr Williams?

A No, I don't recall what he said.

Q Okay Did you testify before a grand jury in this investigation, sir?

A I did.

Q Was there a court reporter in there just like there is a court reporter here today?

A Yeah

Q Taking down the answers and questions just like this gentleman is here today?

A Uh-huh

Q Do you recall the date that you testified in the grand jury, sir?

A It was, I think it was the day after the election.

Q In what year?

A Sorry, 2013.

Q So sometime in early November of 2013?

A Uh-huh

Q About nine months ago?

A Yup

Q Nine months closer to the events that you have been testifying about?

A Yeah.

Q When you testified in the grand jury, did you take an oath just like you did today?

A Yes

Q Okay Bear with me one minute, please Do you recall -- withdrawn. Were you asked this question and did you give this answer, sir

MR. BROWNLEE: Could we have a page number?

MR HARBACH: I apologize, counsel It is Page

95

BY MR. HARBACH:

Q Starting at Line 4 "Question: Mr Cox, I don't -- it just seems somewhat incongruous that your job is to protect the Governor, you've got the First Lady pitching Anatabloc to Ann Romney You've got Jonnie Williams, the only donor on the plane You're trying to figure out who this guy is You have your antenna up And there is no discussion? I mean, you said that you -- Answer: Yeah, we had discussions about Mr Williams I can't tell you exactly when they occurred."

MR. BROWNLEE: I object

THE COURT: What are you doing?

MR. HARBACH: I'm impeaching, Your Honor

THE COURT: Go ahead, proceed

BY MR HARBACH:

Q Continuing with the answer: "I would say it was probably sometime in 2012, you know "

MR. BROWNLEE: I object The question that he has just asked is not the question he just asked this witness

THE COURT: Go ahead and finish

BY MR HARBACH:

Q " when were we were on some, you know, flight going somewhere or coming back from somewhere in the context of the Republican Governors' Association I remember being very frustrated and uncomfortable that he would be around and, you know, clearly, you know, he had an interest in this -- in pushing this product And I remember being a little confused, thinking, okay, what is he trying to get out of this? I mean, he wants Ann Romney to be the poster child for Anatabloc. It just seemed like an odd way to go about doing business But you know, beyond that, I had --I certainly had some discussions about -- with the Governor about, you know, what is Jonnie -- what does he want? What is he trying to get? And -- because somebody who spends that much time and energy is looking for something in return. Question: And so you asked the Governor -- did you express that? Hey, what does he want? Answer: I did express that "

Were you asked that question and did you give that answer, sir?

A Yes

Q You mentioned a moment ago that you raised this issue with the Governor, I think you said a couple three times Why did you stop?

A I think he knew where I stood, sort of We had the conversation.

Q Did Mr McDonnell ever tell you that Mr Williams was interested in pursuing studies of Anatabloc at UVA and VCU?

A Not at the time I don't think I was aware of that at the time.

Q Next subject: Did you go on a vacation trip with the McDonnells to Cape Cod on Labor Day weekend of 2012?

A Yes

Q Tell us how that came about

A I got a call from the Governor, you know, fairly late one night, and I recall it because he was on speaker and Maureen was on the phone as well

Q They are both on the other end?

A Yes And my wife and I were on the line

Q Very good. What was said?

A Actually, I think Maureen extended the invitation for us to join them for this weekend in Cape Cod

Q What did you think about that when you got invited?

A It was nice It was a very kind invitation

Q Did you have any discussion with Mr and Ms McDonnell during that phone call about who was paying for the trip?

A I did Yes I asked, you know, how did this trip come about And Maureen indicated that Mr Williams had bid on the trip in a charity auction.

Q I'm sorry, who was it who said that?

A Maureen said that, I think.

Q Okay During that conversation, did you ask any other questions or express any concerns about how the trip was being paid for or anything related to that?

A Just raised, I just recall raising with the Governor just making sure that this was reported correctly

Q What was his response to that?

A That it would be

Q Did you yourself attend the charity event?

A No

Q Did you question at the time -- withdrawn. How did you get up to Cape Cod?

A On Mr Williams' plane

Q Who all was there once you got up there? Who was the party, the vacation party that was together? You, your wife, who else?

A The McDonnells, the Williamses, and there were a few other people And pardon me, I don't recall exactly who they were, but there was somebody there from Johns Hopkins and there was a judge that was a friend of Jonnie's, and a few other couples

Q Do you recall the name of the hotel where you all stayed?

A Yes, we were at the Chatham Bars Inn

Q A nice place?

A Very nice, yup

Q During the trip, well, actually, can we pull up for identification Government's 411? Just blow up the top half for the witness, please, Mr Starnes Mr Cox, do you recognize this to be the itinerary for the trip to Cape Cod that you and your family went on?

A Yes, sir.

MR. HARBACH: The government offers Government's 411

THE COURT: It will be admitted

BY MR HARBACH:

Q Just leave the zooming right where it is, Mr Starnes The bottom of this screen mentions a sailing trip on the Sea Witch Did you go on that?

A I did not

Q Did others in the party go sailing?

A Yes We had a eight-month-old, so we weren't taking her on a sailboat

Q Can you scroll down a little bit? Toward the bottom of the page on Sunday There you go, from 11 to 3 there is an entry for golf Do you see that there?

A Yes, sir

Q Did you play golf?

A Yes, sir

Q The schedule says you played at the Chatham Seaside

Links Golf Course; is that where you all played?

A We actually played at Eastward Ho, which is another course there locally

Q Was it nice?

A Yeah, it was very nice

Q Who else played golf?

A It was the Governor, myself, Mr. Williams, and then it must have been -- the fourth must have been a member, club member

Q You can take down 411 please Did the group that you described a few minutes ago who was on the trip together, did you all have dinners together in the evenings?

A We did. We participated in two dinners

Q Do you recall a private clambake?

A I do

Q From your perspective, if you can generalize about the weekend, was it mostly business or was it mostly, you know, R&R?

A I thought it was far more social R&R. I didn't really see any business being done

Q Okay How many nights did you and your family stay there?

A We were there two nights

Q Do you know if the McDonnells stayed longer than that?

A Yeah, we left a day early

Q Did you pay for anything on the trip, sir?

A No, sir

Q You know one way or the other whether Mr McDonnell did?

A I don't know

Q Did you see him pay for anything?

A No

Q You told us not too long ago about your concerns that you raised with Mr McDonnell about Mr Williams, why he was around, and what not After you had expressed all these concerns in 2012, why was it that you agreed to go on the trip?

A Well, I mean, it was a very kind invitation And, you know, I thought the way it was presented to us was, you know, this was for, I think it was for the Governor's birthday And, Maureen had asked Bob, you know, "Who do you want to invite? Who can you relax with, who can you have fun with?" And they invited us

Q Was it your understanding that Mr Williams paid for this whole trip?

A Yeah, my understanding was that he bid on the trip in a charity auction.

Q I assume that -- I shouldn't assume anything Did the fact that he was the one who was funding the trip at all deter you from going?

A Clearly it didn't We went

Q Why didn't you tell Mr and Ms McDonnell on that phone call when you learned that Mr Williams was paying for it, why didn't you say to them, "Hey, you know, this is a bad idea, we shouldn't be --"

MR BROWNLEE: Objection.

THE COURT: Sustained

BY MR HARBACH:

Q Did you tell him that in the phone call, sir? Did you tell Mr and Ms McDonnell during the phone call that you thought it was a bad idea?

A No

Q Did you think it was a bad idea?

A I don't recall thinking that I recall asking him, making sure that it was going to be reported correctly

Q And you were satisfied that he had addressed that issue?

A Yes

Q After the investigation broke and you learned in the newspapers so many of the things that you didn't know at the time, and we have been through this them, did you have a conversation with Mr McDonnell?

A Sure I had a number of conversations with him.

Q Do you recall how soon after it broke in the papers that you had your first such conversation with him?

A I'm sure it was within a day Yeah, definitely

Q What do you remember? Again, I'm not intending to point to any specific conversation But generally, what were the tenor of the things that you communicated to Mr McDonnell?

A I mean, at first we were just trying to get the facts and trying to understand what had happened Again, my role as his political advisor is to really help out on the communications And so we were trying to figure out, you know, does the Washington Post, who wrote the story, do they have the facts right And at a certain point pretty quickly after that happened, after the story broke, lawyers got involved And so one of the first things they tell you is not to discuss the facts of the case And so, you know, I think we were at that point kind of speaking more in terms of generalities My advice to him at that time was really along the lines of "Let's get back to governing Let's get out there, let's remind the people, you know, let's go back to the business of governing Let's do our jobs and let's, you know, try to stay focused on that "

Q At any point, did you, again following the disclosure of the investigation in the newspapers, did you ever communicate to Mr McDonnell your views about his conduct?

A Yes

Q In what context?

A So, I remember being, you know, frustrated, particularly when the disclosure came out on the loan, I think it was -- I can't remember. It was like three months after the initial article came out, so probably, I think that occurred around Easter and then this would have been in, you know, probably July, somewhere in that time frame, when there was disclosure about the business loan

Q Okay.

A I thought we had made progress over the course of the last, you know, the previous 90 days in terms of, you know, kind of getting back to the business of governing and not letting this story consume us And so I expressed my, you know, frustration that I thought that this revelation, this disclosure of the business loan, was, you know, I think the way I said it, it was a couple steps back for us

Q Did you tell Mr McDonnell that you were angry?

A Yeah, I think I was angry, frustrated, upset

Q Did you tell him that you were disappointed?

A Yes

Q Did you tell him that you thought he showed very poor judgment in taking this loan from Mr Williams?

A Yes

Q Is there anything wrong with the Governor getting a loan, sir?

A No

Q What was different about the loan from Mr Williams in your view?

A I think it was just about the context of it, that we had all been working really hard for three months to try to, you know, sort of, you know, continue to move beyond the story And it came at a really bad time, and, you know, it just really set us back from a public relations standpoint

Q Was it not your view that what made the Governor's acceptance of the loan from Mr Williams different, that he was obviously, he, Mr Williams, was obviously trying to get something?

Q I'm sorry, can you repeat the question?

MR BROWNLEE: Objection

THE COURT: The objection is sustained

MR. HARBACH: Can I have just a moment, please, Judge?

(Counsel conferring with co-counsel)

BY MR. HARBACH:

Q Sir, in the grand jury, were you not asked this question and did you give this answer: "Question: But why was it so --"

MR. BROWNLEE: Your Honor?

THE COURT: The objection is sustained.

BY MR. HARBACH:

Q Mr Cox, why did you think it was poor judgment for Mr McDonnell to accept the loan from Mr Williams?

A Well, in light of what we knew at the time, you know, there was the gift of the wedding, and so from a public relations standpoint, it didn't look good.

Q Is your testimony that, in your judgment it had nothing to do with Mr Williams' obviously trying to get something?

MR BROWNLEE: Objection, leading

THE COURT: Sustained.

BY MR HARBACH:

Q Based on the job that you held and your closeness with Mr McDonnell, are these things that you learned about only when the papers broke them things that you would want to have known?

A Sure

Q When you expressed to Mr McDonnell that you were angry, disappointed, and thought that he showed poor judgment, what was his reaction?

A I mean, I think he felt bad about the whole thing

Q Did he blame his wife for it when you confronted him about this issue?

A No

Q Is that something that in your knowledge about him you would have expected him to do?

A No.

MR. HARBACH: May I please have a moment, Judge?

THE COURT: Go ahead.

(Counsel conferring with co-counsel)

MR. HARBACH: Thank you, Your Honor I have no further questions at this time

THE COURT: All right. Cross?

CROSS-EXAMINATION

BY MR BROWNLEE:

Q Good afternoon, Mr Cox My name is John Brownlee I represent Bob McDonnell I've got a few questions for you here today

It was your testimony that you first met Bob McDonnell in 1998; is that correct?

A Yes, sir

Q And that is, is it accurate that you had graduated from UVA, went to work on a political campaign, won, and then you went to work for the House of Delegates or for the Delegate; is that correct?

A Yes, sir

Q Through that, you met Bob McDonnell?

A Yes, sir

Q He was a member of the House of Delegates?

A He was

Q And in the year later, in 1999, I think you testified that you joined his campaign for his reelection that year; is that correct?

A That's correct

Q Was that a particularly tough year or an important year?

A Yes. It was an important year The margins were really close in the House, and there was a lot of money involved in those races He was viewed as, you know, a rising star in the party He had a big target on his back. And the Democrats spent a lot of money, it was well over half a million dollars, which was pretty much unheard of at the time for a state House race

Q Is it fair to say that in 1999 he was the number one target?

A I think it is fair to say that, yes

Q Okay You won the race

A We did.

Q And so after that he went back to the House, and did you stay in touch? Did you stay close?

A Yeah, we did. You know, he was, you know, thinking about perhaps a leadership post within the House or running for Attorney General

Q And then in 2002, late 2002, is it fair to say that you all together decided he would run for statewide office, Attorney General?

A It was his decision He made the decision and off we went

Q You joined him in that endeavor?

A Yes, sir

Q So that election would have been then in 2005?

A Yes, sir

Q He won that one as well?

A Yes, by a landslide

Q I believe that was about 300 votes or something

A 360 votes

Q Was there a recount?

A There was

Q Did you stay with him throughout that process?

A I did.

Q Is it fair to say that you all became closer through that process?

A Yes, sir

Q And then he served as Attorney General and you stayed close through that?

A Yes, sir

Q Then he decided to run for Governor and he came back to you to ask for your help

A Yes, sir

Q And then you two ran that campaign for Governor, and then he was elected there as well

A Yes, sir

Q Now, after he was elected, you ran his transition, I believe you said; is that correct?

A Yes, sir

Q And then after he was inaugurated, you did not join the administration, but you ran the PAC

A Correct

Q And he set up this political action committee that essentially raises funds and uses them to forward the party and his agenda

A Correct

Q That was your role at that time

A Yes, sir

Q Okay And then after you did that for a while, you then, I believe you said, in January of 2011, became the Executive Director for the Republican Governors' Association.

A Yes, sir

Q I think what you said there is that you kind of managed, for lack of a better phrase, the 29 Republican governors in their elections and reelections

A Yes, sir

Q So counting all that up, I think you have known Bob McDonnell about fifteen years; is that correct?

A Yes, sir

Q So is it fair to say that in your opinion, this is a man who volunteers public service?

A Yeah. He's got a great heart for public service.

Q His work ethic --

A He is a workaholic

Q What does that mean? Describe for us what that means

A First time I ever saw him he was walking around the General Assembly building He had, you know, just binders full of legislation underneath his arm and, you know, was prolific legislator He usually carried the most legislation of anybody But honestly, you know, he would work from morning until very late in the night, you know, including weekends I would often get calls, you know, when his sort of days of appearances were over, that would be sort of his time to think, and it ended up unfortunately for me being between 11 o'clock and one in the morning And that's where we got a lot of work done

Q And when he was Governor, he worked a lot as well?

A Yeah Nothing changed.

Q Traveled a lot?

A Yeah, even more

Q From your vantage point, from what you saw, he was pretty much kind of always on the job when he was Governor?

A Oh, 24/7

Q In watching not only Bob McDonnell but other politicians you are involved with, is it fair to say that others have a similar kind of schedule?

A Yes

MR. HARBACH: Objection.

THE COURT: Overruled.

BY MR BROWNLEE:

Q And does this schedule that these folks keep, have you seen that in some cases it has an impact on their family life, takes a toll?

A Sure It can be very stressful

Q Did it take a toll on your life?

A Yes

Q Let me switch gears just a bit You have known this man a long time Have you ever known him to talk about or indicate his desire to have luxury items like Rolexes or Ferraris?

A No, he is like the least materialistic person I know

Q Let me switch gears a little bit You talked a little bit about this bumper sticker, I believe Mr Harbach talked about it Bob's For Jobs

A Yes, sir

Q Fair to say you were part of the group that came up with that idea?

A Yes

Q This was part of his campaign?

A Uh-huh.

Q And tell us once again, what was the economy, what was kind of it like here in the United States and in Virginia when he started his campaign?

A It was a mess He had TARP, he had the bank bailouts It looked like the financial sector was coming apart at the seams in the fall of 2008, you know Unemployment was increasing rapidly and people were feeling it They were watching their retirement funds get cut Many people were losing their jobs. We were in a recession, a serious recession

Q All right And so the central theme, I think you said, of his campaign for Governor was to put people back to work

A Yes, sir

Q And part of that from his perspective was to get the private sector, companies, to expand and hire more people

A Yes, sir

Q And so is it fair to say that part of your plan for his campaign was to have him out there talking about this expansion, private companies, bringing more jobs to Virginia?

A Central focus of the campaign.

Q After he was elected, was that the central tenet or central part of his Governorship?

A Yes

Q Now, fair to say you have been around politicians a lot in your professional life Is that pretty much what you have dedicated your life to, are these folks?

A Yes, sir

Q Okay And so for a politician to promote a home state company, is that just what pretty much every Governor does?

A Yes, it should be It should be their central priority

Q And nothing wrong with that, right?

A No, sir

Q Okay Now, is it fair to say that over his four years as Governor, that the program that you helped design and he helped implement with others actually worked?

A Absolutely The unemployment rate came down dramatically Virginia is viewed as a magnet for jobs

Q All right Let me switch to another topic for politicians, and that is aircraft. Is it fair to say that Bob McDonnell is not the only Governor in the country who will use, take a donation of a private aircraft and use it to travel from Point A to Point B?

A Yes, it is a common occurrence

Q Okay. And unless a particular state prohibits it, pretty much all of them do; is that correct?

A Correct

Q Okay Some states have restrictions on how much a candidate or an official can accept, and that might limit them; is that correct?

A Yes, sir

MR. HARBACH: Objection, relevance, state laws on this issue

THE COURT: Overruled.

BY MR BROWNLEE:

Q And in Virginia, it is unlimited; is that right?

A That's correct

Q So for either a candidate or an official for the Commonwealth of Virginia, they can take unlimited amount of donations with regard to whether it is a flight or money or whatever

A Yes, from a corporation or an individual Yes

Q That's the same for gifts; is that right?

A Yes, sir

Q Okay And what's required is that under the state laws, that these, for instance, a flight, it would be an in-kind contribution; is that correct?

A Yes, sir

Q And that they need to be publicly disclosed; is that right?

A Yes.

Q All right Now, when Mr McDonnell was running for Governor, he had an entity that was kind of the fund raising, and it was called McDonnell for Governor; is that correct?

A Yes, sir

Q So that entity raised funds and then spent funds; is that correct?

A Yes, sir

Q And people could donate to that entity

A Yes

Q And so if a company or an individual wanted to allow the candidate to use the aircraft, they could make an in-kind contribution to that entity; is that correct?

A That's correct

Q And then it would be reported?

A Yes

Q Now, and Mr McDonnell did that when he was running for Governor

A Yes

Q Okay And he used many different people's airplanes?

A Yes, sir

Q And there was a whole team of people who would help schedule these things.

A Yes

Q Okay And let me just talk with regard to Mr. Williams' aircraft When he was running for Governor, were you aware that Star Scientific, the corporate entity, donated the aircraft?

A I don't think I was aware at the time.

Q Okay If I were to show you a document, first of all, do you know what VPAP is?

A The Virginia Public Access Project

Q What does VPAP do, sir?

A Kind of takes all these financial reports, the campaign expenditure reports that are filed with the State Board of Election and puts them online in a user-friendly format that the public can access

Q If I were to show you a screenshot from VPAP, might that refresh your recollection?

A Yes, sir

(Document proffered to witness)

Q If you will take a look at that and just read it to yourself

(Witness perusing document)

A Okay

Q Okay Now, so I asked you when Mr McDonnell was running for Governor, were you aware Star Scientific made in-kind contributions to his campaign through the use of an aircraft?

A I wasn't at the time

Q Does that refresh your recollection?

A Yes, it does

Q How many times was that done?

A Four times

Q All right And is the total value of that $28,582?

A Yes, sir

MR. HARBACH: I will lodge an objection. The witness wasn't aware of that at the time

THE COURT: Sustained

BY MR. BROWNLEE:

Q Now, once the campaign was done, you said you started up the PAC; is that correct?

A Yes, sir

Q Okay And did the PAC function much like the entity for the campaign in which it would raise funds and would accept from time to time in-kind contributions?

A Yes

Q Okay And were you aware while the PAC was created, or active, that Star Scientific made certain in-kind contributions through the use of Mr Williams' aircraft to the PAC?

A Yes

Q Okay And do you know exactly the number and the amount?

A No

Q Okay If I were to show you a screenshot from VPAP once again for the PAC, might that refresh your recollection?

A Yes

(Document proffered to witness)

(Witness perusing document)

Q Please take a look at that document Does that refresh your recollection? How many flights were donated by Mr Williams?

A Four flights

MR. HARBACH: Same objection, Judge

THE COURT: You never asked him how many His recollection wasn't -- there was no indication it was exhausted. It is so marginal in its relevance, I'll let him go ahead and answer the question. But you are not doing this refreshing your recollection If I don't know something and you give me a piece of paper, that doesn't mean that I'm now recalling I don't know You are now educating me. There's two different things So do it right or don't do it

MR. BROWNLEE: Thank you, Your Honor

BY MR BROWNLEE:

Q Fair to say there were four flights donated by Mr Williams' aircraft?

A Yes, sir

Q Totaling over $79,000?

A Yes, sir

Q All of these flights, in light of the fact they are on VPAP, were publicly disclosed?

A Yes

Q Now, with regard to these flights and all these contributions and the disclosure here with regard to the flights, was there any time that Bob McDonnell ever asked you not to disclose a flight or any other donation that would have come in through either one of these entities?

A No

Q Okay Now, the government showed you an e-mail from 2010, from Monica Block Could we pull up RM-704? Mr Harbach asked you about this e-mail

MR. BROWNLEE: I believe this is in evidence, Your Honor This is not? You didn't put it in?

BY MR. BROWNLEE:

Q He asked you a question about whether or not -- well, what is this?

A It is an e-mail from Monica Block saying that

Mr Williams offered his plane, and I'm asking Monica if Mr Williams is doing any state business

MR. BROWNLEE: We would offer RM-704 into evidence

THE COURT: It will be admitted

BY MR BROWNLEE:

Q And so you sent this e-mail, they said that, the e-mail is coming from Monica Block, the Governor's scheduler; is that correct?

A Yes, sir.

Q She is saying that Mr Williams changed his plans and had called back to offer his plane

A Yes, sir

Q She sent that to you

A Yes

Q And you responded back, "Jonnie is not doing any state business, correct?"

A Yes

Q She responded back, "That's correct, he has no --" Why did you ask that question?

A There was a new law that went into effect, I think it was July 1st of 2010, that said that we cannot, a PAC could not accept contributions from any business that was doing business with the state or potentially could end up doing business with the state. Might be an RFP process or bidding process

Q So you were confirming that in fact it was okay to take this plane

A Correct

Q Is it fair to say that your boss, Bob McDonnell, would want you to do just that?

A Yes, sir

Q And that's how he expected you to conduct yourself?

A Yes, sir

Q To make sure that things were done right

A Yes, sir

Q And legal

MR. HARBACH: Objection.

THE COURT: The objection is sustained.

BY MR BROWNLEE:

Q Okay Let me talk a little bit about fundraising I think they raised that You have raised a lot of money for and with Mr McDonnell over many years; is that correct?

A Yes, sir

Q And these were dollars that were raised or funds that were raised for his political campaigns

A Yes, sir

Q And you raised them for his campaign for Governor; is that correct?

A Yes

Q And then with his PAC?

A Yes

Q And now you do that for the RGA; is that correct?

A Yes

Q Now, at some point, was -- did Governor McDonnell have a leadership position within the Republican Governors' Association?

A Yes, he was the chairman.

Q Was he the chairman in 2011?

A He was through part of 2011 and then through 2012

Q Now, when a candidate has to raise money, it is fair to say there are times when they just literally sit in a room with a phone with someone like yourself and a book and call potential donors and ask them if they will donate to the campaign?

A Yes

Q Okay Fair to say you have sat in those rooms with Bob McDonnell for numerous hours over your career?

A Yes

Q Okay And in engaging with a donor, I think Mr Harbach talked to you a little bit about this, some donors ask for something back. Some donors -- tell me how that works, what kind of donors are they, and some ask for things Give us a sense of what that's like

A I think there's any number of kinds There's folks who want something, that are more transactional There are plenty of people who don't want anything. There are folks that just like the candidate, want to support the candidate And there's some people who, you know, for lack of a better term, are sort of groupies and just like being around politicians

Q Okay. And in your time in working with Bob McDonnell, was there ever a time that you can recall in which you felt he crossed the line or did something unethical with a donor?

A No

MR. HARBACH: Objection.

THE COURT: Sustained

BY MR BROWNLEE:

Q Let me talk a little bit about a term we have heard called "donor maintenance " Do you know what that is?

A Yes, I mean, it is the idea that you want to have a relationship with these people outside of just asking them for money And so, you know, you don't want to, every time where you are calling them, you don't want to just be asking them for money So you find points to contact them, see how things are going in their life

Q And this is folks like yourself train candidates and officials to do these things. It is important These campaigns are expensive and they need to raise funds; is that correct?

A Yes

Q Let me show you Government Exhibit 370 This one is in evidence, Your Honor This is a text message from Bob McDonnell to Mr Williams "Stock going great Alzheimer's study announcement really helped. Thanks for coming to Romney event and helping him. Gov "

Is that the kind of thing you would view as donor maintenance?

A Absolutely

MR. HARBACH: Objection, relevance

THE COURT: No, he can answer that

THE WITNESS: Yes

BY MR. BROWNLEE:

Q Can we show Government Exhibit 396? This one is in as well, Your Honor "Good announcements lately Stock looks good. Hope all is well You and Celeste enjoy the 4th of July Gov " Same kind of thing?

A Yes

Q From a candidate or official, you would expect them to do this with their donors; is that correct?

A Yes

MR. HARBACH: Objection

THE COURT: Overruled

BY MR. BROWNLEE:

Q Now, sometimes when a candidate, or particularly an official, interacts with a donor or non-donor, has it been your experience that they will suggest that they go meet with other people, perhaps in their Cabinet?

A Yes

Q Okay Is that a common thing for politicians that you see?

A Very common.

Q Have you seen Bob McDonnell do it?

A Yes

Q And is it true that he has a radio show from time to time where callers will call in and he will on the radio show say, "You know, we will get your name and number and we will forward you to the person you need to talk to"?

A Yes

Q Nothing wrong with that

A No It is constituent service

Q Thank you Let me move here to this event at the Mansion. Mr Harbach asked you some questions about that I just want to make sure we are clear on this If there was -- if a donor had an event at the Mansion, and that donor was giving $200,000 to various state universities, research universities at that event, and the Governor was invited to attend that event and make remarks, do you think that's appropriate for him to go to?

MR. HARBACH: Objection.

THE WITNESS: I do

MR. BROWNLEE: Okay

THE COURT: So we can stop this constant objections, it is all right for him to describe the facts that he is familiar with. He has been around the governors and other politicians. But you keep bumping up against asking his opinion on things, which is not right. So please don't do that

MR. BROWNLEE: Yes, Your Honor, thank you

BY MR. BROWNLEE:

Q All right, now, I think you talked about this Mansion event and how it was paid for Is it your recollection that your political action committee paid for the Mansion event?

A Yes

Q Okay And Martin Kent, the Governor's Chief of Staff, came to you and said, "We believe it is appropriate that the PAC pay for this"; is that correct?

A Yes

Q I believe you testified that when it is a non-official event, then the PAC will pay for it; is that right?

A Correct

Q And in this instance, Mr Kent came to you, had made a judgment, and asked the PAC to pay for it; is that right?

A Correct.

Q And you have no problem or issue with Mr Kent's judgment on these things

A No

Q Okay Now, Mr Harbach asked you if the Governor had spoken to you directly about whether or not the PAC should pay for it or not Does he routinely get involved in those things?

A No

Q He has staff to do that, right?

A Yes

Q The government asked you about Twitter I believe they showed you an e-mail in which there was a request that -- I think we can pull it up, 0720 So this came to you and your response was "The Governor should not twitter about a product launch"; is that correct?

A Yes

Q All right Now, you understand, is it true, Governor McDonnell doesn't twitter about anything

A He doesn't tweet Somebody does it for him.

Q Doesn't do Facebook. Staff sets these things up and does this for him.

A Yes, sir

Q Okay Thank you. Mr Harbach talked to you a little bit about, as he describes it, a product launch I think you all had a discussion about what would be appropriate and what's not Is that correct?

A Yes

Q Okay. And you talked about, as you described, he shouldn't be picking winners and losers; is that right?

A Yes

Q Okay Tell us what you mean by that

A I've used the example of the wine industry, which is, you know, I think it is very, in my opinion as political advisor, it is very appropriate that the Governor, you know, be supporting the wine industry But I don't think, you know, as Governor, you want to be careful about, you know, supporting Barboursville at the expense of Williamsburg and another winery So I think it is kind of subjective, but there is a line there

Q Okay And if there is a Virginia company that only has one product, where does that fall?

MR HARBACH: Objection.

THE COURT: The objection is sustained.

BY MR. BROWNLEE:

Q If there is a Virginia company and they only have one product and the official were to promote that business, do you believe that would fall in this winners or losers since there is only one?

THE COURT: The objection is sustained. He is discussing a market when he is talking about wines.

MR BROWNLEE: I understand

THE COURT: All right

BY MR BROWNLEE:

Q In an instance where there is not a market, where there is just one, where the company --

THE COURT: Is there a dietary supplement market? So if you are going to ask him about something, you ask about the same thing

MR BROWNLEE: Yes, Your Honor

BY MR. BROWNLEE:

Q So in this instance, if there is a Virginia company and there is only one Virginia company that makes this particular product, what is your view of that?

MR. HARBACH: Objection.

THE COURT: Sustained.

BY MR BROWNLEE:

Q Have you ever heard of Sabra?

A Hummus

Q Sabra is a company, an Israeli company, isn't it?

A I don't know

Q Do you know or do you recall that Sabra opened a facility in Chesterfield County?

A I'll take your word for it

Q Okay And, well, let me ask you, are you aware that Sabra had an event at the Governor's Mansion?

MR HARBACH: Objection

THE COURT: Sustained.

BY MR. BROWNLEE:

Q Let me move on to Mr. Williams. You were in New York with him; is that correct?

A Yes, sir

Q I just want to make sure that we are correct on a couple of things Is it your testimony that Mr Williams indicated through his conversation with you that he knew Oscar de la Renta?

A Yes

Q And he told you that?

A Yes, he told the table about it, yes

Q Okay And when there was this conversation, Mr Williams was talking about perhaps getting Ms McDonnell this inaugural dress I believe it is your testimony that it was your sense that he was going to say he was going to pay for this; is that correct?

A Yeah, that was my perception, yes

Q Okay You thought that was a bad idea?

A Yes

Q And that idea was eventually killed; is that correct?

A Yes

Q Okay And when you discussed that with Mr McDonnell, he didn't fight you on that, did he?

A No

Q Okay Now, when Mr. Williams, after the McDonnells left, Mr Williams stayed behind with you and I believe it was the male model and a couple others; is that right?

A Yes, Mr. Zubowsky

Q Is it at that time he bought this $5,000 bottle of Cognac?

A Yes

Q What was your sense of Williams; what was your impression of him at that time?

A I thought he wanted everybody to know how much money he had.

Q Was he bragging about it?

A Yeah He made sure everyone knew it was a $5,000 bottle of Cognac

Q Let me move to this event, the Romney event down in Charleston, South Carolina I believe Mr Harbach showed you the manifest You flew down there with Mr McDonnell and others on a Romney charter; is that correct?

A I believe that's correct

Q And Mr Williams and Ms McDonnell were not on that plane with you

A Correct

Q Okay So when you show up there, Ms McDonnell and Williams are there together; is that right?

A Correct

Q Okay And then there is a bus and everybody gets on the bus.

A Yup Not Mr Williams and Ms McDonnell They did not get -- Ms McDonnell got on the bus, Mr Williams did not get on the bus

Q Where was he?

A I don't know

Q But he wasn't on the bus?

A No

Q Okay You talked about this e-mail that you got from Ms McDonnell Christmas Eve, 2009; is that correct?

A Yes

Q All right And you said that it angered you

A Yes It angered me

Q Okay And over the next several years with you watching Ms McDonnell, whether it be at the Romney event or these other things, what was your sense of her and how she conducted herself

A Well, I think when she was happy, she could be incredibly sweet and caring But when she was unhappy, she could be very difficult, and at times mean.

Q All right And did you all go through many staff members?

A We did

Q All right Is it fair to say that someone who is in politics like you are, that you kind of bring a certain level of skepticism about folks?

A Yeah

Q All right And in your interactions with Bob McDonnell, does he share that? Does he have that same thing?

A No, he tends to, I think he tends to think the best of everybody

Q Okay Has that served him well as a politician?

A Absolutely Never lost an election

Q Now, as close as you are to Bob McDonnell, does he typically discuss his personal finances with you?

A No.

Q Okay And so were you aware of -- Mr Harbach asked you if you were aware of certain loans he got from Mr Williams Were you aware of any loans that he ever had?

A No

Q Okay Were you aware that he had purchased some real estate down in Virginia Beach with his younger sister and had this little business, MoBo?

A I knew he had some properties, just because, you know, he would ask,us if we wanted to go stay at Wintergreen, so I knew he had the house at Wintergreen. I knew he had the house in Virginia Beach.

Q And he would offer that to you?

A Yeah

Q Would he typically talk to you about the -- about the privates of his marriage?

A No

Q All right You testified about being, when this story broke, of learning some of the facts and being disappointed; is that correct?

A Yeah. Specifically on the loan, the business loan, I think it was

Q And is it fair to say that that disappointment stemmed from a political perspective; that politically, this was damaging to him?

A Yeah We had gone through, you know, three months of Washington Post stories and I thought we had sort of gotten beyond it, and then we had another story that came, and it was sort of, as I think I described it, it was sort of two steps back from a public relations standpoint

Q And you let him know

A Yes

Q Okay I just have a couple things In your judgment, is Bob McDonnell an ethical man?

MR. HARBACH: Objection

THE COURT: Sustained

THE WITNESS: Absolutely

BY MR. BROWNLEE:

Q In your time with him, have you ever seen him do anything that you believe would be unethical or illegal?

A No.

MR HARBACH: Same objection.

THE COURT: The objection is sustained If you want to turn him into a character witness, then do it right.

MR BROWNLEE: Okay Thank you, Your Honor

THE COURT: All right Why don't we go ahead and stop here for our afternoon break before you get started. We are going to take 15 minutes

(The jury left the courtroom.)

(Recess taken from 3:54 p.m. to 4:13 p.m.)

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THE COURT: Bring the jury

(The jury entered the courtroom)

THE COURT: Mr Burck

MR BURCK: Thank you, Your Honor

CROSS-EXAMINATION

BY MR BURCK:

Q Good afternoon, Mr Cox My name is Bill Burck I represent Maureen McDonnell

A Good afternoon

Q So you are an expert in politics and political elections, right?

A Most of the time

Q Okay Can -- can someone run for First Lady of Virginia?

A No

Q Can someone be appointed to First Lady of Virginia?

A No

Q Does the First Lady of Virginia receive a salary from the State?

A No

Q Is there an official position called the First Lady of Virginia, in your expertise?

A No

Q Now, you testified about various discussions you had with the Governor about concerns you had about Jonnie

Williams Do you remember those -- that testimony with Mr -- Mr Harbach?

A Uh-huh

Q And you testified that you thought it was a bad idea for Jonnie Williams to buy the inaugural dress for Maureen McDonnell back in 2009 Do you remember that?

A Yes

Q Your main concern was how Maureen McDonnell, having such a dress, would reflect on the Governor, right?

A Yes

Q It was a political concern?

A Yes

Q And that's because this was about the politics and the appearance of having an inaugural dress of this sort during a recession, right?

A Yes

Q And the Governor, of course, is a public official, right?

A Yes

Q Now, you testified that during the campaign, prior to the Governor being elected, that you had concerns that Maureen McDonnell was pushing nutraceuticals on donors and on activists, Republican activists, right?

A Yes

Q Your concerns there were also about how that would reflect on the Governor, right?

A Yes

Q It wasn't a legal concern?

A No

Q And you testified about the Romney event and your discomfort with Maureen McDonnell's pushing Anatabloc on Ann Romney. Do you remember that?

A Yes

Q Again, your concern there was how it would reflect on the Governor, right?

A Yes

Q There wasn't -- you didn't have a legal concern about what she was doing, right?

A No

Q In fact, you testified that the type of behavior that you were concerned about with Ms McDonnell was how it -- how it would cast the Governor in a -- as you said, it would not cast him in a great light Is that what you said?

A Yes

Q So is it fair to say that your concern was about how Maureen McDonnell's behavior, as you saw it, would reflect on the Governor's image and on his popularity?

A Yes

Q But you weren't really concerned that Maureen

McDonnell might be breaking any laws, right?

A No

Q It was your understanding that Maureen McDonnell, as the First Lady of Virginia, could have a private sector job?

A You know, I'm not a legal expert so -- I'm not a lawyer I don't know the answer to that I assume she could She's a -- you know, it's a volunteer position It's not an official position, as you said.

Q Now, you also testified about how you would occasionally raise concerns about Jonnie Williams to the Governor and whether he wanted something, when he wanted something, when Jonnie Williams wanted something from the Governor, right?

A Yes

Q You didn't raise those concerns directly with Ms McDonnell, did you?

A No

Q So as far as you know, she didn't know about your concerns about Jonnie Williams maybe wanting something, as far as you know?

A Correct

Q And that's because it wasn't your job to protect her, as it were, right? You were there for the Governor?

A Correct

Q That was somebody else's job, right?

A Correct

Q Just a few more questions

A Uh-huh

Q Now, you had an opportunity to observe Ms. McDonnell and Jonnie Williams together, right?

A Uh-huh

Q How would you describe Maureen McDonnell's demeanor around Mr Williams?

A She adored him She would light up when he would walk in the room

Q She adored him She would light up when he walked into the room Is that what you said?

A Yeah

Q And what was Mr Williams' demeanor around Maureen McDonnell?

A I think, you know, very -- very friendly I think he returned -- returned those feelings

Q From your -- from what you could see?

A Yeah

Q So it was your understanding that Maureen McDonnell and Jonnie Williams were friends?

A Yeah

Q Good friends?

A Yes

Q Was there anything that -- did anything about their relationship strike you as unusual, from your perspective?

A I think just the amount of time that he was around and -- and, frankly, the amount of time she spent talking about him It was constantly -- constantly talking about Jonnie

Q Was it always about business?

A No

Q It was about Jonnie Williams the person?

A Yeah

Q Chatham vacation that you had testified about?

A Uh-huh

Q You said that it was mostly a social event?

A Yeah I really didn't witness any business going on So it was completely -- it seemed completely a social event to me

MR BURCK: No further questions, Your Honor Thank you

THE COURT: All right Redirect

MR HARBACH: Thank you, Your Honor

REDIRECT EXAMINATION

BY MR HARBACH:

Q Good afternoon, Mr Cox I think I'll start right there where Mr Burck left off

These occasions when you would witness Maureen

McDonnell and Mr Williams in the same room together, was Mr McDonnell present on those occasions?

A Sometimes These were usually like receptions, big receptions, that kind of thing

Q Fair to say that if you're bothering to show up at an event, given your role related to the Governor, that odds are that he's going to be there?

A Pardon me? That the Governor will be there?

Q Yes, sir

A Yeah

Q And a moment ago when you said that Mr Williams -- I believe the phrase you used was -- returned those feelings, I just want to make sure I understand Were you suggesting that based on your observation, Mr Williams adored Ms McDonnell and Mr Williams lit up whenever Ms McDonnell walked in the room?

A Yeah Yeah I think he was --

Q That was your observation?

A I think he really liked her, yes

Q So both of those things?

A Yeah

Q Okay At the beginning of your cross-examination by Mr Brownlee, you were asked some questions about what a political campaign is, how campaigns work and so forth

Do you recall those questions?

A Sure

Q Okay After Mr McDonnell was elected Governor in November of 2009, to your knowledge, was there any campaign in existence after that point?

A After he was elected in 2009?

Q Yes, sir.

A No The campaign shuts down at a certain point, although the committee may have stayed open legally

Q That was his last campaign, wasn't it?

A Yeah I mean, unless he -- you know, unless he decided to, you know, run for senate or run for president or something like that

Q Did he do that between then and now, sir?

A He did not, no

Q Okay Now, let's talk a little bit about the subject of how the campaign works You were asked about the concept of in-kind contributions, both in the context of the campaign and in the context of the PAC

Do you recall that?

A Yes, sir

Q In your experience, how is it that a campaign person becomes aware of an in-kind contribution?

A Well, you know, in-kind contributions, first of all, they are services So they can be, you know, flights or catering is a good example of it So they will be on the report

Q Okay And the reports are prepared by whom?

A Usually our -- you know, someone on our finance team

Q A member of the staff?

A Yes, sir

Q Fair to say that as far as the reporting is concerned related to the campaign or the PAC, that the reports are only as good as the information that the staff receives about the various contributions or events?

A Yes

Q Sort of a garbage in, garbage out situation?

A Yeah

Q With respect specifically to the Political Action Committee and the four flights I believe you testified about that Star Scientific donated to the PAC, do you know how the PAC become aware of those flights, meaning -- and then the fact that they needed to be disclosed?

A You know, I don't I just know, you know, we had someone who handled that, and we made sure that they were reported correctly

Q And, again, same phenomenon The reports are only as good as the information that's flowing to the staff, correct?

A Yeah

Q You were asked several questions by Mr Brownlee about donors to either the campaign or to the PAC The loans that you've testified about not becoming aware of until after the investigation broke, to your recollection, were any of those donations to the campaign, sir?

MR BROWNLEE: Objection, Your Honor

THE COURT: Overruled

A No

BY MR HARBACH:

Q Were any of those donations to the PAC?

A No

Q What about the check for Mr and Ms McDonnell's daughter's wedding? Was that a donation to the campaign?

A No

Q Was that a donation to the PAC?

A No

Q What about the Rolex and the golf -- last one, Judge -- were those a donation to the campaign?

A No

Q Were those a donation to the PAC?

A No

Q Would you take a look briefly at Government's 370 in evidence? Mr Brownlee asked you about this one, and if memory serves, you described this or were willing to accept his description of this as donor maintenance; is that right?

A Yes

Q And, similarly, with Government's 396, if we could take a look at that So that one -- before we leave that one, Mr Starnes -- let's just note the date

The date of Government's 370 is April 28th of '12, okay?

And then Government's 396 is July 3rd of '12 This was -- this second one, 396, was another one that you agreed could be fairly characterized as donor maintenance; is that right?

A Yes

Q And in either October -- excuse me, April 28th, which is the date of 370, or July 3rd of '12, at either of those times did you know that Mr McDonnell or Ms McDonnell owned Star --

MR BROWNLEE: Objection Leading Objection Leading, Your Honor

THE COURT: Go ahead and finish your question

BY MR HARBACH:

Q Did you know whether on October -- I keep saying October -- April 28th of '12 or July 3rd of '12, at either of those times did you know that either Mr or Ms McDonnell owned any Star stock?

A No

MR HARBACH: You can take the exhibit down,

please

BY MR HARBACH:

Q Finally, the event at the Mansion, there's been some testimony about -- just forgive me for reiterating this

Did you attend that event, sir?

A No

Q Do you have any personal knowledge of, in fact, what happened at that event?

A No, no firsthand knowledge, no

MR HARBACH: Can I just have a moment, Judge?

THE COURT: Sure 1

(Counsel conferring with co-counsel

MR HARBACH: I have no further questions, Your Honor Thank you

THE COURT: All right Thank you, sir You may stand down

(Witness stood aside)

THE COURT: Call your next witness, please

MR DRY: The government would call Monica Block to the stand, Your Honor

MONICA BLOCK,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR DRY:

Q Good afternoon, Ms Block

A Hi

Q Could you please state your full name for the record?

A Monica Jean Block

Q Okay And how do you spell your middle name?

A Jean J-E-A-N

Q Okay Can you tell the jury about your educational background?

A Sure So I went to George Mason University and got a double major in government and international politics and communication

Q And then after college, where did you go to work?

A I went to work on the McDonnell campaign for Governor

Q Okay And what -- approximately when was that?

A That was in March of 2009

Q And what type of work did you do on the campaign?

A So I started off being the political assistant So I was our campaign manager's assistant, basically And then also was kind of like the political assistant for the Governor

Q And when you say "campaign manager," who is that?

A That was Phil Cox

Q Okay So Phil Cox was your boss?

A Yes

Q Okay And then at some point did you become the Governor's scheduler?

A I did I think that was in August July or August of that year

Q Of 2000 --

A Of 2009, yeah

Q Okay Now, as Mr McDonnell's scheduler, how often would you interact with him?

A Every day

Q Okay And could that be by -- what mode of communication?

A Phone, e-mail or texts

Q Okay And walk me through, what are the duties of the Governor's scheduler?

A Sure So the way it was described to me when I very first started was that I was responsible for his personal, political, and official duties

At the time, he was still -- he wasn't AG anymore, but when he transitioned into the official office Basically anything that he was doing in his day, making sure he was prepared for it and ready to go

Q So you were responsible for making sure he was where he was supposed to be, with who he was supposed to be, and he was doing what he was supposed to be doing Is that fair?

A As much as humanly possible, yes

Q Okay And as your role as scheduler, were you aware of various requests by people for the Governor to attend events?

A Oh, yeah

Q Okay And how would those requests typically come in?

A So in the Governor's Office, everything we required to come in through writing, typically through like an e-mail, or we had an on-line form that people could fill out to request a meeting or for him to come to an event, thing like that

And then from there, we put them all -- if it was something he would consider -- in a log, an Excel spreadsheet, and then we had weekly meetings to talk about what would be recommended that he do or not do

Q Do you have an sense of an average week how many requests for the Governor to come to something would come in?

A A lot

Q A lot?

A I don't know how to put a number on it, but it was -- it was overwhelming, yes

Q Okay And is it fair to say that he couldn't attend everything he was invited to?

A Yeah No way

Q Okay So can you walk me through the actual process? A request comes in for the Governor to attend an event What happens? And walk me through the decision on yes or no

A Sure So like I said, the requests would come in Some things would be -- could be immediately declined just based on the fact that he would be overseas or it wouldn't work in the schedule or something like that

And then from there, we would put it in the log, in the spreadsheet And then once a week, in his scheduling meeting, we would go through and recommended whether or not -- basically talk through with the staff what we thought he should go to, what he should not go to And then from there, that was updated and given to the Governor to look at for his final sign-off to agree or disagree with our recommendations

Q And this scheduling -- I'll call it a conference --

A Uh-huh

Q -- for lack of a better term, who typically attended that?

A So in that meeting was Martin Kent, our Chief of Staff; Jasen Eige, who was our counsel For the beginning, or when I was there, it was often Eric

Finkbeiner, who was our policy director; Janet Kelly, who was Secretary of the Commonwealth; Tucker Martin, the communications director; myself; and then Phil Cox would sometimes attend via phone

Q And Mr Cox, is it fair to say, attended during the early parts of the administration, but --

A Yeah I mean, he was really busy So when it worked, he would be on, but there was oftentimes he couldn't be

Q And you mentioned Janet Kelly?

A Uh-huh

Q Was Janet Kelly also known as Janet Polarek?

A Oh, Janet Polarek Sorry Yes

Q No No

A She's married now

Q She's married Okay So when you say Janet Kelly or we see a document that says Janet Polarek, that's both the same --

A Same person, yeah

Q Okay And I just want to make sure I understood Who had the final say when you guys were finished with your conference?

A Well, we would make recommendations It was kind of a group recommendation, what everyone thought And then from there, I would update it, give it to the Governor every week for him to sign off or agree or disagree

Q And how much in advance would you give that to the Governor? Would it be for the next week's events or a month out or how did that work?

A I mean, usually pretty far out things would be put on the schedule We said nothing more than six weeks in advance, but as far as events would come in, typically, it was for things further down the road, like in the next month

Q Were there times where the Governor couldn't attend an event but somebody else would go in his place?

A Yeah So we actually created on our website a whole surrogate scheduling process The Governor was really big about saying no with a smile If I had a dollar for every time he told me that, and being able to give people something if he couldn't make it So whether it was sending them a letter that could be read at the event or doing a proclamation or having a cabinet secretary go or having the First Lady go, offering them something while we said no with a smile

Q Okay And when you were sending someone else, are they going as the Governor's surrogate?

A Yeah, typically

Q And that included -- when you say "cabinet secretaries," what kind of cabinet secretaries would you send to what kind of events?

A Well, it would depend what the event was If it was a winery, it would make sense for Secretary Haymore to go Or if it was some sort of public safety event, it would make sense for Secretary Decker to go So just based on whatever the event was and whose, I guess, place it would fall into

Q And the First Lady was a surrogate as well, used as a surrogate?

A Yeah, she was sometimes

Q When did you first hear about Jonnie Williams?

A So I first heard about Jonnie Williams, he was on a list I had gotten, or that was used during the campaign, of people who had offered their plane to help fly the Governor when he needed to be flown places

Q And were there other donors that were on this list?

A Yeah

Q Okay And so was the list 100 people or 50 people or --

A Probably like 20, 20 to 30 maybe

Q And how did you decide when to make requests to particular donors for their -- for their jet?

A So I had a spreadsheet that listed everybody, and then I would keep track of when we asked people, when they said yes and when they said no, just because we didn't want to ask somebody too much and use them too much and kind of overstay our welcome

Q Okay

A And then there was notes Like different planes would make more sense for different trips based on if it was a -- you know, trip to Blacksburg or a trip to Chicago or a trip to California

Q Now, did -- and Mr Williams was on the donor list during the campaign for Governor?

A So he was on -- so Brandon, who worked on the campaign, he had the list during the campaign He was kind of responsible for getting the planes during the campaign And then he sent me his list, which was just like names and phone numbers of people

Q And Brandon is Brandon DeGraff?

A DeGraff, yes

Q Okay So he was the -- was he the Governor's schedule before you took it over?

A No No No He was the Governor's like body guy

Q Okay Body guy?

A So the guy who was always traveling with him, yeah

Q Okay And did -- who -- after Mr DeGraff, who became the Governor's body guy?

A After Brandon, it was Adam Zubowsky

Q Adam Zubowsky Okay After Mr McDonnell won his election for Governor, did you continue to use Mr Williams' jet or ask for the use?

A Yes

Q And have you ever personally met Mr Williams?

A No

Q Never seen him anywhere?

A Never -- well, I mean, I've seen his picture

Q Okay

A But I've never like been in the same room with him

Q And who would you interact with to request Mr Williams' jet? Did you call him up?

A No I would call his assistant, Jerri Fulkerson

Q Okay

MR DRY: Can we bring up Government's Exhibit 50, please?

BY MR DRY:

Q And you've seen this document before, and it's an e-mail from Ms Fulkerson to you, correct?

A Yes

MR DRY: The government would ask to move Government's Exhibit 50 into evidence, Your Honor

THE COURT: It will be admitted

MR DRY: Can we go to the -- let's go to the fourth page of the exhibit and start there Okay And at the bottom of that, if you could just blow the bottom up for Ms Block

BY MR DRY:

Q Ms Block, I'm going to -- this is -- I'm going to paraphrase this because it's late in the afternoon

A Sure

Q But just make sure I'm -- I'm characterizing this correctly Is it fair to say that you're e-mailing Ms Fulkerson to talk about a plane request for a Friday flight for the Governor?

A Yes

MR DRY: And if we could go to the fifth page at the top

BY MR DRY:

Q And was this going to be for a December 4th, 2009, trip up to -- up to New York City?

A Yes

Q Okay And this is the specifics Would you typically need to get the specifics to Ms Fulkerson?

A (Nodding head)

Q And did that often include who was attending -- or who was flying?

A Who was flying, yes

Q And why was that, was your understanding?

A Usually they want it for the manifest for the flight so the pilots are aware

Q Okay

MR DRY: And let's go to the first page of the document And in the middle from Ms Fulkerson -- well, that's good right there.

BY MR DRY:

Q Do you recall receiving this request from Ms Fulkerson for a meeting with the governor on December 3rd?

A Yes

Q And did you confirm with the Governor that, you know, hey, Jonnie wants a meeting and he's going to come up to New York?

A I don't know how I did it, but probably just putting it on the schedule

Q Okay

A I'm not sure exactly how I told him

Q Fair enough At this point had you scheduled, as of December 2009 -- I think you said that you were responsible for scheduling pretty much everything to do with the Governor's life, right?

A As best I could, yeah

Q Okay Do you remember ever scheduling any kind of meetings, events or anything for the Governor and Mr Williams before this meeting?

A For the Governor and Mr Williams?

Q Yeah

A No, not that I remember

Q Okay And from your perspective, at this time how would you characterize Mr Williams? What is he?

A A donor, a guy with a plane

Q Okay

MR DRY: Let's go to Government's Exhibit 63, which is already into evidence Okay I want to go --

BY MR DRY:

Q You've seen this document before? I've shown it to you?

A Yes Yes

Q A couple times And at the bottom, that's from Ms Fulkerson to you; is that right?

A Yes

Q And the subject is "CigRx Launch " And the next page, this is Ms Fulkerson saying that Jonnie wanted this to be followed Do you recall that?

A Yes

Q All right

MR DRY: Let's go to the first page

BY MR DRY:

Q And at this point you asked for Phil Cox's input and DJ Eckert's input Who is DJ Eckert?

A He's the -- or at the time was the political director for the Governor's PAC

Q Okay And then Mr Cox at the top, "I don't see a problem with that Go ahead DJ "

Do you recall that?

A Yes

Q What did you do with this document after you received it?

A After Phil's e-mail?

Q Yes

A I don't think I did anything, I think Because DJ would have been the one to tell whoever controlled that account to have them follow it

Q But did you give the document to the Governor?

A I don't remember doing that

Q Okay I am going -- I'll let you see something to see if it refreshes your recollection

I'd like you to look at the bottom of page 2 to the first paragraph at the top of page 3, the highlighted portion of the last sentence

(Counsel conferring with co-counsel)

A Okay I think -- I guess I'm confused Because I think -- I remember putting another document in his read folder about -- but I don't know if this was this same document or if it was a different document

There was another e-mail where I said I would put it in his read folder That's the one I'm thinking of

BY MR DRY:

Q Can I see that document back? Thank you

Well, let's talk about what the read file was. Can you explain that, the read file?

A Sure So we had -- or the Governor always had this folder system There was four folders, and they were color coded So there was the read folder, which was things that were just kind of like FYI, eventually he'll read and get to this folder Like if he's sitting in the car for two hours, he can read through things

There was a write folder for thank you notes or notes that he needed to write There was a hot folder, which were items that were important, urgent, that sort of thing And then there was a draft folder maybe I don't remember what the fourth folder was

Q Okay

MR DRY: Can we bring up 63-1 again?

BY MR DRY:

Q As you sit here today, you don't recall specifically printing this out and placing this in the Governor's read file, after your recollection has been refreshed?

MR BROWNLEE: Objection, Your Honor Asked and answered

MR DRY: It hasn't been answered

THE COURT: No She can answer if she can

A No I don't think -- I know which document you're talking about, the one where she sent me a press release or some release, and I remember putting that for the Governor's read file I don't remember putting this

Q Okay

MR DRY: Let's go to Government's Exhibit 70, which is a press release

BY MR DRY:

Q Do you recognize this e-mail?

A Yes

Q Okay What is it?

A It's an e-mail from Jerri forwarding a press release to me about the Roskamp Institute

Q Okay

MR DRY: This has already been admitted, Your Honor

THE COURT: All right

BY MR DRY:

Q And what's the top line of the e-mail?

A "Got it Thank you, Jerri I will print this for the Governor "

Q Okay Was it unusual for the Governor's Office to receive announcements from constituents?

A No, I don't think so

Q Okay And did you act as like a filter for a lot of information coming in?

A I not so much But I think a lot of us did I think we all kind of -- anybody who had a contact in the Governor's Office would send, whoever their contact was, various things

Q Okay And -- but do you recall what you did with this --

A Yeah This, printed and put in the read folder

Q Okay

A Yeah

MR DRY: Let's go to Government's Exhibit 626 This has not been admitted yet, Your Honor

BY MR DRY:

Q Is that an e-mail from you to Adam Zubowsky?

A Yes

Q And that's on October 14th, 2010?

A Yes

MR DRY: The government seeks to admit Government's Exhibit 626 in evidence, please?

THE COURT: It will be admitted

BY MR DRY:

Q All right Going to the bottom e-mail, is that an e-mail from Cailin McDonnell to you?

A Yes

Q And can you please read what Cailin wrote to you?

A "Monica and Adam Dad had informed me to talk to each of you about some ideas and options for our wedding He told me a few different things to check out" -- "check with you about

He said someone had offered their limos for our wedding He didn't remember who Do you all know?

Number 2, he said tons of people have offered their restaurants, hotels, houses, etc to dad to host different events He told me to follow up with you about these offers We are trying to decide where we are going to have our rehearsal dinner We would like to have it somewhere in downtown Richmond So that way it is close to the church, the hotel, and the Mansion Do you all know of anyone around the area that offered their restaurant/hotel/house to dad? There is no rush to get back to us with these answers Thank you both so much for your help Cailin "

Q And were you involved in assisting with the wedding, Cailin McDonnell's wedding?

A Not that much This and maybe like a few other things, but not that much

Q Okay

MR DRY: And can we go up?

BY MR DRY:

Q What do you write in response?

A I forward it to Adam and I say, "I knew this would happen I quit "

Q And why did you do that? Why did you know that would happen?

A I don't know how we knew it would happen I think we just assumed that we would be asked to help or something I don't really know why I said that

Q You -- did you get a lot of requests from Cailin McDonnell to assist with various things?

A No, I don't think so

Q Okay Going up, Mr Zubowsky writes, what?

A "What are we going to do? I don't recall these huge favors, especially in downtown Richmond Easier to find a plane "

Q And what did you write in response?

A "I don't know, dot, dot, dot We can figure this out We always do "

Q Okay

MR DRY: Let's go to Government's Exhibit 74, please

BY MR DRY:

Q Do you recognize this document?

A Yes

Q And this is between -- it's a string of e-mails between Elaina Schramm and Monica Block; is that correct?

A Yes

Q Okay

MR DRY: Government seeks to ask to move Government's 74 into evidence, Your Honor

THE COURT: Are you saying 74?

MR DRY: 74, Your honor I'm sorry

THE COURT: All right It will be admitted

BY MR DRY:

Q Who is Elaina Schramm?

A She was Secretary Hazel's assistant

MR DRY: And can you go to the third page of the document? Oh, second page Sorry Bottom of that

BY MR DRY:

Q That's from you to Ms Fulkerson?

A Yes

Q And what were you doing there?

A I was confirming a meeting for Jonnie Williams and Secretary Hazel

Q And the day of the meeting was going to be on what date?

A Thursday, November 4th at 9 a m

Q Okay And where was that going to be held at?

A The Patrick Henry Building, our office

MR DRY: Let's bring up Government's Exhibit

87, please

BY MR DRY:

Q This is an e-mail again from you and -- between you and Mr Zubowsky?

A Uh-huh

Q It's February 3rd of 2011?

A Yes

MR DRY: Government moves Government Exhibit 87 into evidence, Your Honor

THE COURT: It will be admitted

MR DRY: Okay Can we go to the bottom? Actually, I think I need the bottom of page 2, the very bottom That's -- I just want to make sure she sees at the very bottom where it says from Adam Zubowsky There Right there And then the actual e-mail goes on to the next page

BY MR DRY:

Q Mr Zubowsky is asking you for what there?

A For Jonnie Williams' cell phone

Q And at this time did you have Mr Williams' cell phone?

A No

Q Why not?

A I don't know I didn't talk to him I usually went through Jerri So --

Q Okay And do you know why -- why Adam Zubowsky is asking you for the phone number?

A I think this is the day that they were stopping by an event --

Q Okay

A -- and needed --

Q Okay

MR DRY: Let's go to the first page

BY MR DRY:

Q And what event did you think they were stopping by?

A I don't remember the name, but this was the event that they added to the schedule It was like the day of added to the schedule

Q Do you remember a CigRx or Star Scientific event?

A Yeah That's -- I don't know what the title of it was, but it was one of those

Q Okay And do you remember where that was going to be at?

A I think it was somewhere in downtown Richmond

Q Okay And at this time, in February of 2011, what's going on? Is it a busy time in the Governor's schedule?

A Oh, yeah, very busy

Q Well, kind of what was --

A I'm sorry So the legislative session was going on and so anytime the legislator was in town, it was just busy And there was tons of events going on every night He probably got requested to go to six different places just in one night

Q Just in one night?

A Yeah

Q And do those requests -- are those typically done at the last minute or were they typically the week before? How did that work?

If I wanted to get the Governor to come to my thing, what do I have to do?

A I lot of them would come in the week before Usually before session started, a lot of the firms and everything would send their things, their calendars or whatever events they were having that they wanted the Governor at

Q And was it -- is it easier to get the Governor to come by an event if you tell him more than the day of the event?

A I guess it just depends But yeah, probably

Q Okay Let's -- let's go to the bottom e-mail What are you asking Mr Zubowsky there?

A If they're stopping by the event

MR DRY: Can we scroll up?

BY MR DRY:

Q And then Mr Zubowsky writes what?

A "Yes 102 loves Jonnie "

Q And then what's your response?

MR DRY: Go up

A "Why does 102 like him? Because he's loaded?"

BY MR DRY:

Q And why are you writing that there? You've known Mr McDonnell and Ms McDonnell for a while there Why are you assuming that it's about Mr Williams' money?

A I guess that's why I thought that -- that Ms McDonnell liked him or why -- that's why the event was being added to the schedule

Q Well, were there any observations of Ms McDonnell that had formed your opinion at this point?

A I know I had that opinion I don't know if I could necessarily tell you what made me form it But I just kind of had that opinion

Q But were there events or things that happened where you observed Ms McDonnell asking people for things before this?

MS MARTIN: Objection

THE COURT: Overruled

A So I answer it?

BY MR DRY:

Q Yeah Ms Block, I know this is difficult I know you don't want to say these things, but --

MR BROWNLEE: Objection

THE COURT: Ask a question

BY MR DRY:

Q Were there events that you observed before this that led you to the assumption that the reason that Ms McDonnell liked Jonnie Williams was because he was rich?

A I had that opinion That was my opinion, yes But I couldn't tell you how I formed it or what I never seen her ask somebody for something I was typically in my office all the time I didn't see much outside of that

Q All right Let's see what Mr Zubowsky's response was? What does he write there?

A "Yep He wanted to make the gown for the inauguration "

Q Had you heard about this idea of Mr Williams buying the gown for the inauguration?

A Yes

Q How did you hear about it?

A I don't remember It was one of those stories I think was told many times, many different ways It was -- I've heard it at some point I don't remember who told me

Q Okay And just to be clear, who is 102?

A Ms McDonnell

Q Okay

MR DRY: Let's go to Government's Exhibit 89, please

BY MR DRY:

Q This is an e-mail to you from Sara Machir, I believe?

A Yes

Q And the date is February 9th of 2011 Do you remember that?

A Yes

MR DRY: Government moves Government's Exhibit 89 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q Going to the bottom e-mail, the one from Sara Machir, what is the subject of that?

A "Event photos - Star Scientific "

Q And going to the next page at the top, what does she write to you?

A "Monica, thank you again for returning my call this afternoon The two photos shown below are the subject of our request to publish These photos will be posted on the following social media engines: Facebook (CigRx page) and Twitter Thanks again for your help in getting these to the Governor's counsel for review Best regards, Sara "

Q Okay And you write back on the first page What do you write to her?

A "Sara, thank you for running these by us I checked with counsel and the only concern is regarding the text that will be associated with these pictures Can you send me what it would say? As you probably know, the Governor, as Governor, does not officially endorse products If you can keep it relatively vague: Quote, Governor McDonnell stopped by to say hello at our recent meeting/dinner" and not explicitly promotional, it should be fine Just send me text to go along with it, and I'll do one last check and should be good to go Thank you again, Monica "

Q Did you, in fact, check with anybody in the Governor's Office about this?

A I don't -- I can't like remember, but I wouldn't have said I checked unless I checked So I'm sure I did

Q And who was counsel at the time to the Governor?

A Jason Eige

Q Okay

MR DRY: Can we go up, higher?

BY MR DRY:

Q Sara Machir writes you back, basically giving you what they want to say, right?

A Yes

MR DRY: And then go higher

BY MR DRY:

Q So after speaking to Mr Eige, you informed them that this was fine, right?

A Yes

Q Okay Were you typically aware of the types of events that the Governor would attend?

A Was I typically -- yeah Yes

Q Okay And were you surprised that the Governor attended the Star Scientific event for the CigRx?

A I think the surprising part for me was that it was added to the schedule at the last minute, like a stop by on an already busy day That was the surprising part

Q Okay How many events were there on that day? Do you remember?

A I don't remember There was a few

Q Okay And do you remember any other last-minute events on that day, possibly like this one?

A I don't remember

Q Okay

A But I probably wouldn't remember this one unless, you know, we were talking about it

Q Can you ever recall scheduling a similar event on the Governor's calendar that involved a particular product for a particular company?

A Oh, I -- I think a lot of the events we did through -- like with Economic Development Partnership and through Secretary Cheng's office were all about businesses And like I remember doing the big hummus announcement, that was for Sabra Hummus

Q But putting aside the companies, I'm talking about a product launch event for a specific type of product Can you recall ever putting something like that on the Governor's schedule?

A I don't know if I would remember if I did or not All the events start to blur together

Q Okay

MR DRY: Let's go to Government's Exhibit 97, please

BY MR DRY:

Q Do you recall this e-mail, ma'am?

A Yes

MR DRY: Government --

BY MR DRY:

Q And this is an April 11th, 2011, e-mail The bottom one is from you to Ms McDonnell and Mary-Shea Sutherland?

A Yes

MR DRY: Government moves Government's Exhibit 97 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q What was the Union League Club event?

A It was a -- like a fundraising reception that the Governor's PAC was doing

Q And can you read your e-mail to Ms McDonnell?

A Sure "Maureen, per our conversation, I've attached a copy of the invitation to the Union League Club Reception on Wednesday night in case you would like to pass it along to Jonnie Williams This invitation is only for the reception because the dinner isn't being hosted by us It is hosted by the Union League Club We have added his name to the list for dinner in case he would like to attend that immediately following the reception Let me know if you need anything else Monica "

Q And what -- did you have a conversation with Ms McDonnell about this?

A I think she had called me and asked for the invitation

Q And did you know who the invitation was for?

A I think she must have told me, because I say if you want to pass along So I assume she told me

Q And who was it?

A Jonnie Williams

Q Okay And the date of the event --

MR DRY: I guess let's go to the second page

BY MR DRY:

Q The date of the event was what?

A April 13th

Q And the date of this e-mail is April 11th?

A Yes

Q And is to fair to say that Mr Williams was a last-minute add-on?

A Yes and no I mean, with events like this, last-minute add-ons is kind of the norm Like you're usually printing name tags up to an hour before the reception So --

Q But do you know if Mr Williams was invited to attend this event before this --

A I don't think he was, no, before the 11th

Q And why do you -- what do you base that on?

A Well, if she was asking for the invite, I assume he didn't already have it

Q Okay Do you recall that Ms McDonnell sent you an e-mail or told you that she wanted Mr Williams seated next to her and the Governor?

A I -- I don't remember how I got that information, but I -- I think I told Paige or told someone that that's what -- to do that But I don't remember how she told me

Q And that would be at the Governor's table?

A Yes

Q Okay

MR DRY: Let's go to Government's Exhibit 99

BY MR DRY:

Q Do you recognize this?

A Yes

Q And this is the April 12th e-mail between you and Adam Zubowsky; is that right?

A Yep

Q Okay

MR DRY: And let's go to the -- the government moves Government's Exhibit 99 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q Moving to the bottom e-mail, who is that from and to?

A It's from me to Ms McDonnell and Mary-Shea Sutherland

Q Okay And can you read to the jury just the first -- let's just go with the first line?

A "I just spoke with Jonnie and firmed up your schedule for tomorrow morning Here is what he would like to do "

Q And why were you contacting Mr Williams? Was that your idea?

A I don't remember how, if I was supposed to call him or he was supposed to -- I don't remember how that happened We just talked

Q But did you know that you needed to talk to him?

A I really don't remember up to that point

Q How many times have you spoken to Mr Williams?

A I'm pretty sure this was the only time

Q And before sending this e-mail, did you know that Mr Williams and Ms McDonnell were going to go shopping?

A No

Q Okay But after this e-mail, what was your understanding of what was going to happen?

A That he was going to take her around to all these places in New York

Q And did you know who was going to be paying?

A No

Q Okay From your observations, did Ms McDonnell typically dress in Louis Vuitton and Oscar de la Renta and shop in these kinds of places?

A I don't think I would know what it looked like if she did, but I didn't think she did, no

Q And why did you think she didn't?

A I -- I don't know I just -- I didn't -- I don't know I just didn't think she wore those things

Q Okay Going up, can you read what you wrote -- or what Ms McDonnell wrote back?

A "Thanks, Monica Mary-Shea is checking to see how close our 10 a m appointment is to the Four Seasons so we can meet up with Jonnie as early as possible We may even see if we can change our first appointment time till after we meet w/Jonnie If we can do that, do you know if Jonnie would want to start as early as 10 a m ?"

Q Okay And then what do you write back?

A "I just heard back from Jonnie He said he is available anytime tomorrow morning Just text or call him when you are ready "

Q And then the top e-mail Who do you send that to?

A Adam

Q And what's his role at the time?

A He was the Governor's body guy

Q Okay And how often is Adam with the Governor?

A Most of the time, if not all the time

Q And at any point were you instructed by Ms McDonnell to not -- to hide the shopping trip from anyone?

A No

Q And at any time did you have any conversations with Ms -- Mary-Shea Sutherland about hiding it?

A No, not that I remember

Q Okay Why are you e-mailing Adam Zubowsky about this?

A We would often send e-mails back and forth that just said "loop " Like keeping him in the loop of what we were doing, like -- so he knew what the First Lady was doing that day

Q How many e-mails a day would you get in your job as scheduler?

A In my job?

Q Yeah

A I don't know That's a very good question A lot

Q Okay And was it -- why would you -- did you loop every e-mail to Adam Zubowsky?

A No I think because they were up with the Governor So he would know that they weren't going to be with the Governor all day

Q Okay So the -- the Governor was up there at this -- up in New York City at the same time Ms McDonnell was?

A I think so, yeah

Q And were they staying at the same hotel? Do you remember?

A I assume so, yeah

Q Okay

MR DRY: Let's go to Government's Exhibit 114 This has already been admitted into evidence And then let's go to the third page of the bottom

BY MR DRY:

Q And is it fair to say you're asking for the use of Mr Williams' plane for a trip to Chicago for the Governor at this point?

A Yes

Q Okay

MR DRY: And then going back to the first page, on the bottom of the chain

BY MR DRY:

Q And the date of that is May 4th, 2011?

A Yes

Q And --

MR DRY: Oh, I think I messed up I think I need to go to the second page at the top Do this easier

BY MR DRY:

Q So at the very bottom of the first page -- I'm going to just give you this one Okay?

A Okay

Q Can you read the very bottom of the e-mail where it goes up to the second?

A From Jerri to me?

Q Yeah

A "Just talked to JW He will do trip on 7th and he told me gov is going to Florida on the 1st "

Q Okay And then going back to the first page, and then go to the bottom where Ms Block responds to Jerri You write back what?

A "Great Thank you so much I'm not aware of a trip to Florida until December Hm, question mark "

Q Okay And what does Ms Fulkerson write back?

A "Jonnie said the gov is going to Sarasota to Roskamp

Institute on the 1st and we are providing the institution Roskamp is the company working with Jonnie on Anatabloc, etc "

Q What did you do as a result of receiving this e-mail from Jerri Fulkerson?

A Well, I wrote back to confirm that she was talking about the 1st of June And then I tried to get to the bottom of this It was rare that someone would tell me what the Governor was doing that I didn't already know about, and I was kind of territorial of the schedule, I guess

Q Okay

A So I probably went around, trying to figure out if anyone knew about this event or what this was or why we didn't know about it

Q Was it unusual that less than a month before an event, that you wouldn't know about an out-of-state event the Governor was going to attend?

A Very unusual

BY MR DRY:

Q And going up in the e-mail, after you -- after you -- well, first of all, who did you go and ask about the trip?

A I don't remember who specifically I mean, I would probably start with Adam, just because he would have known if there was a conversation, but -- my assumption was is that Jerri was confused

Q Okay Did anyone that you know about -- did anyone that you speak with know about the trip?

A I don't believe so, no

Q Did you talk to the Governor about the trip?

A Eventually, yes

Q And what did he say?

A I don't remember exactly, but I don't think, in his opinion, he had confirmed to go It was something that Jonnie wanted him to do

Q Did he act surprised, like what is he talking about or did he say -- what?

A I don't remember I don't remember the exact conversation

Q Okay But it was clear to you that he knew that Jonnie wanted him to go down to Roskamp?

A I think he was aware of the event, but it -- he didn't think that he was going

Q Okay

MR DRY: Let's go to Government's Exhibit 117 Well, hold on

BY MR DRY:

Q Before we do that, do you recall whether the Governor told you to -- after your conversation, told you to go check with somebody?

A I think I sent an e-mail to Bill Hazel about Roskamp

Q And do you recall the Governor telling you, "Hey, you should talk to Bill Hazel to see if this is something I should do"?

A It was probably something like that That was a typical response with him with events if -- like check with whoever the secretary might be to see what they think about it

Q So as you sit there today, do you think that the Governor told you, "Go check with Bill Hazel"?

A I don't think I would have done it on my own So he probably said, "Check with Hazel," yes

MR DRY: Okay Let's go to Government's Exhibit 117, please

BY MR DRY:

Q Do you remember this document, ma'am?

A Yes

Q And it's a May 9th e-mail from you to Bill Hazel?

A Yes

MR DRY: Government moves Government Exhibit 117 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q On the bottom of the first page, who is that e-mail to?

A It's from me to Bill Hazel, with Elaina Schramm and Katherine Harris copied

Q And what is -- what do you write there?

A "Bill, the Governor said that he sent you some material on the Roskamp Institute" -- and their web address -- "and that you were going to get back with him regarding your thoughts on the organization Have you had a chance to look at that yet? If so, could you let me know your thoughts? We're currently evaluating having the Governor go down to Florida to speak to this group and wanted to get your feedback prior to moving forward on this Thank you, Monica "

Q And would you have sent that if you hadn't had a conversation with the Governor?

A I don't think so

Q Okay

MR DRY: Go up, up in the e-mail chain, please

BY MR DRY:

Q Can you read starting with, "He mentioned this to me"?

A "He mentioned to this to me on Thursday so I have not gotten to it yet How soon do you need to make a decision?"

Q Then let's go to your response?

A "The person inviting the Governor is a good friend so

I would like to be as responsive as possible "
Q When you say "a good friend" there, what is that?
A Good friend was typically how I would refer to a donor in an e-mail like this
Q Okay Did you think at this time that Mr McDonnell and Mr Williams were personal friends?
A I don't think I knew
Q Okay Had the Governor ever asked you, "Hey, can you schedule some personal time" -- at this time -- "personal time for me and Jonnie"?
A No, I don't think so
Q Okay What time did you send this to Mr Hazel?
A What time of day?
Q Yeah, on the e-mail
A 2:29 on May 9th
Q Okay
MR DRY: Let's go to Government's Exhibit 118, please
BY MR DRY:
Q Do you recognize this document, ma'am?
A Yes
Q And this is from you to Jerri Fulkerson on May 9th?
A Yep
MR DRY: Government moves Government Exhibit 118 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q On the middle part right there, can you read what you wrote?

A "Jerri, I spoke with the Governor regarding flying down to speak to the Roskamp Institute on June 1st Unfortunately, after checking with his daughter (she is getting married that Saturday) he doesn't believe he will be able to attend due to some dad commitments that day I'm so sorry this won't work out What else can we do to fix this? The Governor is planning on being in Florida in December Could we tie something in then? When is their next event? Thank you, Monica "

Q Okay And can -- I know you read a lot faster than I do

A Oh, sorry

Q But I think the court reporter is -- is --

A I'll read slower

Q -- giving me dirty looks, not you

Okay Do you remember speaking with the Governor about not going to Roskamp?

A Yes I mean, I must have, if I wrote this I don't remember the conversation

Q You don't remember the conversation?

A No

Q At the time that you wrote that e-mail, had Dr Hazel gotten back to you yet about going to Roskamp?

A I think the e-mails were sent almost like simultaneously Right

Q Do you recall the specifics -- I just want to make sure I understand You don't recall any specifics of the conversation that you had with the Governor about Roskamp and not going to Roskamp?

A Not -- I don't remember the specifics, no

Q At some point did you become aware that Ms McDonnell was going to go down to Roskamp?

A I -- I did, but I don't remember when

Q Okay

MR DRY: Can we bring up Government's Exhibit 130, please

BY MR DRY:

Q This is an e-mail from you to -- I'm sorry, from Jerri -- at the top it's from Jerri Fulkerson to you, correct?

A Yes

MR DRY: Government moves Government Exhibit 130 into evidence

THE COURT: It will be admitted

MR DRY: Can we go to the middle part, the part that's from --

BY MR DRY:

Q Well, first of all, what's the date on the top?

A Tuesday, May 24th

Q And can we go to -- that's 2011?

A Yes Sorry

Q What did Ms Block write to Jerri?

A This one?

Q Yes, ma'am

A Okay "Can you check and see if the SML house would be available from Thursday, July 28th through Sunday July 31st? Assuming that Jonnie is still interested in letting the Governor and his family use it Could you also send me the address if you have it? Thank you, Monica "

MR DRY: And then scroll all the way to the bottom, please

BY MR DRY:

Q In the first e-mail in this chain, that's from you to Jerri Fulkerson, right?

A Yes

MR DRY: And then we go to the next -- I'll just -- yeah

THE COURT: I didn't hear you

MR DRY: I'm just going to ask her to read one sentence out of this

BY MR DRY:

Q Can you read the first full sentence?

A "The Governor mentioned to Jonnie that the McDonnell family was going to spend the weekend at Smith Mountain Lake in July, and Jonnie offered the Governor the option of staying in his place down there "

Q And how did you -- how did you learn about this?

A I assume the Governor told me

Q And do you remember any specifics of that conversation?

A No It might have been an e-mail or he might have told me in person I don't remember

Q And, in fact, did the Governor spend the weekend at Smith Mountain Lake?

A Yes, I think so

Q Okay I'm going to now hand you up what's Government's Exhibit 105, 115, 136, 623, and 624 Have you had an opportunity to review these before your testimony today?

A Yes

Q And are those schedules that were the Governor's schedule, various schedules at different times during the time you were the Governor's scheduler?

A Yes

Q Were these schedules typically kept in the ordinary course of business?

A I'm sorry?

Q Did you typically keep schedules like this in your job?

A Oh, yeah I sent them out every day

Q Okay

MR DRY: The government moves Government's Exhibit 105, 115, 136, 623, and 624 into evidence

THE COURT: They will be admitted

BY MR DRY:

Q When did you leave the Governor's Office?

A It was June of 2011

Q And where did you go work after that?

A The Republican Governors Association

Q And what you do at the Republican Governors Association?

A I am the governors' liaison

Q What does that mean?

A So my job is to help coordinate all the activities that the Republican governors do with our organization

Q And is it fair to say that as a liaison, you're trying to facilitate the relationship between donors and governors and the Republican Party?

A Yeah I guess like having the governors travel to our events where we have our members there and go on trips for us and do fundraising calls for us, that sort of thing

Q And does it make it easier to raise money if the governors will come to your events, for the donors to come as well?

A Sure

Q With their checkbooks, right?

A Well, our events are typically fulfillment events So they have already given us money

Q They have already written the check? All right

MR DRY: Let's bring up Government's Exhibit 308 into evidence

BY MR DRY:

Q Do you recall this e-mail, ma'am?

A Yes

Q And this is an e-mail from you to Adam Zubowsky on February 8th of 2012?

A Yes

MR DRY: Government moves Government's Exhibit 308 into evidence

THE COURT: It will be admitted

MR DRY· Judge, I only have about five or ten more minutes

THE COURT: All right

BY MR DRY:

Q Ma'am, can you read -- do you recall that there was going to be a healthcare reception at the Governor's Mansion in February of 2012? Do you remember learning about that?

A Yes, because I've seen this e-mail I don't think I otherwise would remember, but yes

Q Okay And can you read what you wrote at the top there?

A To Adam "Here is who the RGA would like to invite to the Healthcare Reception We would prefer to send out the invites from the RGA so we can do the appropriate follow-up Could you give me an invitation we could send out?"

MR DRY: And could we just scroll down?

BY MR DRY:

Q And when it says "Membership Level, Board," what does that mean?

A That's a membership level with one of our corporate programs

Q Okay And who are these people?

A All people in the healthcare industry

Q Okay And why did you want to send out --

MR DRY: You can stop there

BY MR DRY:

Q Why did you want the RGA to be the one to send out the invitations?

A Just so they would know who it was coming from Our membership directors interact with them on daily bases So if they saw an e-mail from a familiar name, they would know who it was coming from

Q And did Ms McDonnell -- do you remember Ms McDonnell wanting to send out the invitations herself, or have them come from the Mansion directly?

A I think that's what wound up happening

Q Okay

MR DRY: Let's go to Government's Exhibit -- well, hold on one second Let's go to Government's Exhibit 311

BY MR DRY:

Q When you're sending that list that we just spoke about to Adam Zubowsky, why does the RGA want its donors to go to this Healthcare Reception?

A I don't remember what the logic was But assuming that they would want to go to an event with one of our governors that's in their industry

Q And it would have allowed them to do what?

A Mix and mingle with the Governor and their peers

Q And was that -- did you perceive that as a benefit to your donors?

A I guess

Q On this Government's Exhibit 311, at the very top, that's an e-mail from you to Adam Zubowsky?

A Yep

MR DRY: Move Government's Exhibit 311 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q And what is the subject line of this e-mail?

A "Please Print for FLOVA."

Q I'm sorry. No No

A The attachment?

Q At the top The attachment, you're right

A "Healthcare Companies with Virginia Presence Invites "

Q Do you know why Adam Zubowsky was writing -- or the subject line was "Please Print for FLOVA"?

A I would have to scroll down I don't know what the original e-mail was

Q Here we go I can give you --

A Oh, okay

Q Got lots of paper

A Thanks So it looks like Adam sent it to Kristen to print for the First Lady

Q Okay Do you recall whether any of the RGA donors actually got to attend the event?

A I don't remember

Q Okay Moving on to the last topic At the time that you left the Governor's Office, were you aware that Williams had paid for the reception cost for Cailin's wedding?

A I don't think so

Q You hadn't heard anything like that?

A I do think so, no

Q Okay When did you first become aware of that?

A I think when it was just in the news

Q Okay At the time that you left the Governor's Office, were you aware that Williams had provided a $50,000 loan to the McDonnells?

A No

Q When did you first become aware of that?

A When it was in the news

Q As the Governor's scheduler, it was your job to kind of be aware of what he was doing pretty much all the time?

A As best I could, yeah

Q And you were the Governor's scheduler from when to when?

A So I started, I think it was in August of 2009 on the campaign and then until June of 2011

Q During that time, did the Governor ever mention Williams in a way that suggested to you that the two of them were personal friends?

A Not that I remember

Q Did you review -- did you view Mr Williams as a personal friend or a dónor?

A I looked at him as a donor with a plane

Q When the Governor mentioned Mr Williams, did he mention him in the same context or the same ways that he referred to other donors?

A I don't really remember talking about him ever with the Governor So I don't -- when we talked, it was usually about the schedule It wasn't about things like that, I guess

MR DRY: One moment, please

(Counsel conferring with co-counsel)

MR DRY: The government will tender the witness, Your Honor

Thank you, Ms Block

THE COURT: All right We'll go ahead and stop for the evening We'll get started tomorrow, 9:30 tomorrow

Ladies and gentlemen, let me give you that admonition again Please don't allow anybody to discuss the case with you, and if they do, bring it to my attention And continue staying away from the newspapers, the TV, and any media items relating to this case We'll get started at

9:30 sharp You all, again, be careful and have a great evening We will see you tomorrow morning

(The jury left the courtroom)

(The trial adjourned at 5:24 p m)

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Redirect - MR. DRY 1254

PHILIP COX

Direct - MR. HARBACH 1303
Cross - MR BROWNLEE 1356
Cross - MR BURCK 1386
Redirect - MR HARBACH 1391

MONICA BLOCK

Direct - MR DRY 1397

No. 15-4019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v

ROBERT F McDONNELL,
Defendant-Appellant,

On Appeal from the United States District Court for the Eastern District of Virginia, Richmond Division, James R. Spencer, District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

August 5, 2014
Richmond, Virginia
9:30 a.m.

JURY TRIAL - VOLUME VII

BEFORE: HONORABLE JAMES R SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
DAVID V HARBACH, II, ESQ
JESSICA D. ABER, ESQ
RYAN S FAULCONER, ESQ.
Counsel for Government;

JOHN L. BROWNLEE, ESQ
HENRY W ASBILL, ESQ
JAMES M. BURNHAM, ESQ
DANIEL I SMALL, ESQ
CHRISTOPHER M. IAQUINTO, ESQ.
Counsel for Robert F McDonnell;

WILLIAM A. BURCK, ESQ.
HEATHER H MARTIN, ESQ
STEPHEN M. HAUSS, ESQ.
Counsel for Maureen G. McDonnell

JEFFREY B. KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day seven, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, and Christopher Iaquinto Maureen G McDonnell is represented by Heather Martin, William Burck, and Stephen Hauss Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed

MR. BROWNLEE: Mr McDonnell is ready to proceed

MS MARTIN: Ms McDonnell is ready to proceed.

THE COURT: All right Bring in the jury

(The jury entered the courtroom.)

Good morning Cross?

CROSS-EXAMINATION

BY MR. BROWNLEE:

Q Good morning, Ms Block

A Good morning

Q My name is John Brownlee and I'm an attorney for Bob McDonnell And I just have a few questions for you this morning Okay?

A Okay

Q Thank you In your time working with Mr McDonnell, did he routinely share the details of his private finances with you?

A No

Q How about information about personal loans or the amount of his mortgage?

A No.

Q How about the details of his marriage?

A No

Q Okay Mr Dry asked you several questions about things that you knew or didn't know Did you ever believe at any time Governor McDonnell was trying to deceive you?

A No

Q Okay Can we pull up RM-0709? If you could focus on the bottom of that page Okay, Ms Block, you had testified yesterday about this e-mail This was from July of 2010 in which they were going to try to set up a meeting between Mr Williams and Governor McDonnell at the airport for a few minutes before the Governor used his aircraft to fly somewhere Were these kinds of meetings normal that you would set up for people who were offering their plane?

A Sure.

Q Okay And Governor McDonnell is not on this e-mail; is that correct?

A No.

Q Okay Could we see 0720, please? Is there a Page 2 to that? If we could blow up the bottom part of that Okay, this is another e-mail that Mr Dry asked you about This is from Ms Fulkerson to you It is also to Noah Rogers Who is Noah Rogers?

A At the time he was the Attorney General's scheduler

Q Mr Cuccinelli's scheduler?

A Yes

Q This e-mail was sent to both the representative of Mr Governor McDonnell as well as the representative for Attorney General Cuccinelli?

A Yup

Q If you could scroll up, please I believe this is a part where you wrote where it says, "See the below request from Jonnie Williams As you know he is an awesome supporter and saved our butts for numerous times when it comes to flights " You remember writing that; is that correct?

A Yes

Q When you say "awesome supporter," it's fair to say that's because he has allowed you to schedule his airplane numerous times

A He saved our butts numerous times

Q Okay, let me go to the next page, please I think you need to scroll down just a bit This was about a request to have Governor McDonnell's twitter account follow this CigRx; is that correct?

A Yes

Q That was ultimately approved; is that right?

A Yes

Q By the staff, correct?

A Yes

Q Governor McDonnell wasn't involved in that?

A No

THE COURT: Is this document admitted?

MR BROWNLEE: Yes, sir

BY MR. BROWNLEE:

Q And he is not on this e-mail; is that correct?

A No

Q Thank you. RM-0744 Okay, this is, if you will blow up the top there, please

MR. BROWNLEE: Your Honor, these are all e-mails introduced yesterday through the government.

THE COURT: All right

MR. BROWNLEE: Thank you.

BY MR. BROWNLEE:

Q It says, Ms Fulkerson sent you an e-mail about a press release to go to Governor McDonnell and Attorney General Cuccinelli; is that correct?

A Yes

Q Eventually you did get this; is that right?

A Yes

Q I think you testified that this was put into his read file

A Yes

Q There is another file called a hot file

A Yeah

Q I guess I'll go to the obvious The hot one is the more important?

A Yup

Q The read file is the less important?

A Get to it eventually, yeah

Q All right And he would, is it your understanding that the Governor would then read all that stuff and assign it to the relevant individual?

A Yes

Q I think you testified if it had to do something with agriculture, it might go to the Secretary of Agriculture, Todd Haymore?

A Yup

Q Did he throw away a lot of stuff or always try to keep stuff?

A I don't think he threw away, I think every piece of paper wound up going to somebody, whether back to the person that originally gave it to him, it always went back to somebody

Q Thank you. 0756 Now, this is an e-mail you had talked about yesterday in which Ms Fulkerson was trying to get a meeting scheduled between Mr Williams and Mr Hazel; is that correct?

A Yes

Q Okay And is it fair to say that from your vantage point as his scheduler, that you would see this kind of traffic from time to time about trying to set up meetings between constituents, donors, and members of the Cabinet?

A Yes

Q Very routine?

A Yes

THE COURT: Mr Brownlee, I think if you would say the number and previously admitted, it will pop up for everybody to see As long as you just say the number, she doesn't know whether it has been admitted or not

MR BROWNLEE: I'm sorry, I didn't notice that My apologies I've got it This is Government Exhibit 74 Thank you, Your Honor My apologies

BY MR. BROWNLEE:

Q Okay So setting up these kinds of meetings is routine?

A Yes

Q Okay Let me see RM 0818, please This is Government Exhibit 89 If you could go to the second page If you could blow up those photographs It is my understanding from this e-mail, this was forwarded, eventually it came to you and the request was that these pictures, that Star would be allowed to post these pictures on their website; is that correct?

A Yes

Q Okay And you then forwarded it to the attorney; is that right?

A I don't know if I forwarded it or printed it out, but at some point I brought it to Jasen, yes

Q You spoke to Mr Eige, and Mr Eige was Governor McDonnell's attorney at the time?

A Yes

Q Okay And if you go to your part of the e-mail, right down at the bottom there, "Thank you." Now, this is you writing back to Sarah. Now, the substance of this e-mail, I understand you may have typed it, but did you write it or did this come from the lawyer through your conversation with him?

A It would have come through my conversation with him. Otherwise, I wouldn't have known to say that

Q Okay So what he was telling you is that the pictures were fine to run but he was concerned about how the caption described it

A Yes.

Q Is that correct?

A Yes

Q Okay If you go up, I think they eventually were satisfied on the caption, "Virginia Governor Bob McDonnell making brief remarks at our recent dinner for healthcare providers in Richmond "

With that, it was approved and it was allowed to be posted, whatever they wanted to do with it?

A Yup

Q Okay And Governor McDonnell wasn't on this e-mail; is that correct?

A No

Q Okay 0853 Actually, if you will go to, I'm sorry, 0848 RM 0848 This is --

MR. BROWNLEE: I'm sorry, Your Honor, this is Government Exhibit 97

BY MR BROWNLEE:

Q This is an e-mail from you to Ms McDonnell with sending the invitation to the Union League reception; is that correct?

A Yes

Q Okay And this was a dinner for the Governor's PAC with other donors up in New York; is that correct?

A Yes

Q Okay Now, Governor McDonnell didn't have anything to do with assigned seating, did he?

A No.

Q Okay And if you know, at the time, was Mr Williams considered a pretty big donor to the campaign through his plane?

A I think, there was a lot of big donors, but I think so.

Q And Governor McDonnell is not on this e-mail, either?

A No.

Q You can take that down. Now, one of the things I think you talked about was keeping track of gifts that were received by the Governor; is that correct?

A Yes

Q And I think you said that you created or tried to maintain some sort of gift log?

A Yes

Q Okay And was it one of your duties that if you were to accept a gift, to contact the giver of that to try to get the value of it so it can be logged?

A Yes

Q Okay Would you also use the calendar, his calendar, to also confirm these kinds of things?

A Yes I basically looked at anything at the end of every month, anything in the last month on the calendar that I would have touched that might have been a gift, like a flight or something like that

Q Okay It is your experience Governor McDonnell himself didn't follow up on these things It was a staff responsibility.

A That was our job, yeah.

Q Okay Thank you 0514 This is Government Exhibit 114, Your Honor Actually, if you just go to the next page Next one, please Other way There you go Just in the top there, this is Ms Fulkerson sending you an e-mail saying, "Jonnie said the Gov is going to Sarasota to Roskamp Institute on the 1st and we are providing the transportation."

I think Mr Dry asked you about this, and you said that you didn't have any recollection, you didn't know that, it wasn't on your calendar

A No, it wasn't

Q I believe Mr Dry asked you if it was unusual that you didn't know about a trip. And you said yes Is that right?

A Yes

Q It is fair to say that you didn't know about this trip because in fact it wasn't calendared.

A Because it wasn't happening, yeah.

Q Governor McDonnell is not on this e-mail, either, right?

A No

Q 0887, RM-0887 Government Exhibit 117, Your Honor This is another e-mail that Mr Dry asked you about This is you writing an e-mail to Bill Hazel, and I believe this was the Secretary of Health and Human Resources?

A Yes

Q And this is following up on him to get some feedback, and I think he is specifically asking, "Have you had a chance to look at that yet? Let me know your thoughts "

Based upon your job there for almost two years, is it common for Governor McDonnell to seek the advice, perhaps the thoughts of his staff and Cabinet on various issues?

A Oh, yeah, all the time

Q And Governor McDonnell is not on this e-mail, either, right?

A No.

Q 0888, please If we could just have the middle portion there, please This is an e-mail from you back to Ms Fulkerson basically telling her that he is not going

A Yeah.

Q Then you have the last little paragraph: "What can we do to fix this, planning on being in Florida in December, could we tie it into something then " Is this an example of what you said, saying no with a smile?

A Yes

Q That's what Governor McDonnell expected you to do with all the people you interacted with?

A With every request.

Q Now, with regard to Roskamp, you understand that Ms McDonnell went to Florida on the 1st; is that correct?

A Yes

Q Okay And Mr Dry asked you some questions about a surrogate Now, when anyone, whether it be the First Lady or anybody else, acted as his surrogate, you would know about it?

A If it came to us and we were trying to decline it with a surrogate, yeah

Q I think you said that that would typically go through the planning meeting and then from there it would get placed on the calendar?

A Yes

Q That didn't happen in this case, did it?

A No.

Q Okay And you had no discussions with Governor McDonnell about her going

A No

Q And Governor McDonnell wasn't on that e-mail, either

A No

Q RM-0901 Government Exhibit 130 Let me go back to the first page I think there is a page before that Blow up the top part This is an e-mail that you sent to Ms Fulkerson. This has to do with the Smith Mountain Lake trip And this is what you wrote: "I just want to make sure, it says the Governor mentioned to Jonnie that the McDonnell family was going to spend the weekend at Smith Mountain Lake in July "

Had the family gone to Smith Mountain Lake before?

A Yes, they had gone the year before

Q Okay Had they, did they stay at Mr Williams' home or somewhere else?

A Somewhere else

Q Then it goes on, " and Jonnie offered the Governor the option of staying in his place down there " Is that correct?

A Yes

Q Let's go to the next page And then blow up that middle piece Then this is your follow-up, and if you look at the second line, beginning with the word "Assuming," it says, "Assuming that Jonnie is still interested in letting the Governor and his family use it "

So this was, from your perspective, Mr Williams was offering this and you were still checking to see if that offer was open

A Yes

Q Okay And Governor McDonnell is not on any of these e-mails?

A No

Q Last thing When you were the scheduler, you prepared the Governor's calendar; is that correct?

A Yes

Q You maintained that

A Yes

Q So beginning, I believe, beginning in '09?

A Yup

Q All the way through, I think, June of 2011, that was your calendar

A Yup.

Q And you maintained it; is that right?

A Yes

Q Let me show you RM-0178-0001 through RM-0178-0638

(Documents proffered to witness)

BY MR BROWNLEE:

Q Ms Block, is this the calendar that you prepared and maintained during your time working with Governor McDonnell?

A Yes

Q You have had a chance to review this?

A Yes

Q Is it in the condition as you prepared it?

A Yes Looks great

Q Did you keep it in the normal course of business?

A Yes

MR. BROWNLEE: We would move this into evidence

THE COURT: It will be admitted

MR. BROWNLEE: That's all I have, Your Honor Thank you.

THE COURT: All right

CROSS-EXAMINATION

BY MS MARTIN:

Q Good morning, Ms Block.

A Hi

Q My name is Heather Martin, and I represent Ms McDonnell I'll try to keep this very brief for you

A Okay

Q I'd like to start by showing you a couple documents that the government showed you yesterday

A Okay

Q Victoria, if we could pull up Government Exhibit 87, please And just to orient ourselves in time, the date of this e-mail is February 3rd, 2011, correct?

A Yes

Q And at the time of this e-mail, you knew Jonnie Williams as a guy with a plane

A Yes

Q And so if we scroll down in the e-mail, you were being asked for his cell phone number, correct?

A Yes

Q Actually, if we could go to the second page And just below that, where you couldn't find it, Adam Zubowsky asks, "PAC database?"

A Yes

Q You understood him to be asking you to check the PAC database for Jonnie Williams' telephone number because you couldn't find it, correct?

A Yes

Q The reason he was asking you to look there was because Jonnie Williams was a donor, correct?

A Yes

Q He had donated airplane time and this is how you had understood him.

A Yes

Q If we go to back to the first page, and, yes, right in there, scroll up a little bit, and we go to the line that says, "Yes 102 loves Jonnie " That's Adam speaking to you?

A Yes

Q That's his statement?

A Yes

Q We understand in the context of that statement, "102" is Ms McDonnell? Correct?

A Yes

Q You respond with two questions, correct?

A Yes

Q You say, "Why does 102 like him? Because he is loaded?"

A Yes

Q So that was a question on your part, more so than an assertion, correct?

A Yes It was a question.

Q And you have stated before that the reason that you thought that she perhaps loved Jonnie Williams was because everybody loves friends who are loaded, correct?

A I mean, yeah, who doesn't like a friend with a lot of money?

Q All right We can take that down. If we could pull up Government Exhibit 99, please If we could go to the bottom section. All right, now, this is an e-mail that you drafted, correct?

A Yes

Q It is an e-mail that you drafted after getting off the telephone with Jonnie Williams; is that correct?

A Yes

Q And I think you testified yesterday that until you sent this e-mail, you didn't know that Ms McDonnell was supposed to go shopping But just to be a little clearer, I think it would be that you didn't know she was supposed to go shopping with Jonnie Williams until you got off the phone with Jonnie Williams, correct?

A Yes I don't know when I knew that the trip or shopping was happening, but I don't think it was until I talked to Jonnie

Q He told you the things that are in this e-mail, correct?

A Yes

Q You wouldn't have had any reason to write this e-mail unless he had told you these things?

A No.

Q Let's walk through it a little more slowly than the government did with you yesterday

A Okay

Q I just want to go to the end of that first line where it says, "Here is what he would like to do " What that represents is Jonnie Williams was setting the agenda on this shopping trip, correct?

A Yes

Q If I could go back up to the subject line where it says, "NYC!" The mark is meant to convey enthusiasm, right?

A Usually

Q It is exciting, going on a shopping trip to New York City, getting the VIP treatment

A Yes

Q Now, first bullet point, it says, "Meet Jonnie in the lobby of the Four Seasons." You understood that the Four Seasons is where Jonnie Williams was staying in New York, correct?

A I think I would have assumed that I don't really remember

Q This is after your 10 a.m. appointment Ms McDonnell had other appointments scheduled in New York that day already, correct?

A Right, yes.

Q All right It says from there that they were going to walk to Bergdorf Goodman for lunch Was that something Jonnie Williams told you they should do?

A Yes

Q Was it something you suggested?

A No

Q "Jonnie has a friend, Ping, who works at the Bergdorf Chanel counter " Is that a makeup counter?

A I think so, yes

Q Jonnie was the one who told you that he has this friend Ping, correct?

A Yes

Q You didn't ask Jonnie Williams if he had a friend who worked at the Chanel counter?

A No

Q Then he offered that his friend, Ping, is going to make a reservation to have lunch and then take you around to see all the dresses there at Bergdorf Correct?

A Yes

Q Those are all things that Jonnie Williams offered without being asked, correct?

A Yes

Q The third bullet point: "Jonnie said to not eat a big breakfast because they have the best lunch in NYC " Correct?

A Yes

Q That's something that Jonnie offered?

A Yes

Q The fourth bullet point says, "After you are finished at Bergdorf, he said he is going to take you to Oscar de la Renta's store " Right?

A Yes

Q Then he said, "He isn't sure if Oscar is in town, but if he is, he will meet you all there " He said that, correct?

A Yes

Q This conveyed to you while you were on the telephone with him that he knew Oscar de la Renta?

A Yes

Q He wasn't saying he knew a friend of a friend who had a grand niece or something like that

A No

Q He conveyed he had personal knowledge of Oscar de la Renta, the human being

A Yes

Q And while you were on this telephone conversation with Jonnie Williams, he never did or said anything that indicated to you that he thought that fulfilling this agenda would be awkward, did he?

A No.

Q All right We can take that down Now, during the time that Robert McDonnell was the Governor of Virginia and you were his scheduler, you have described his schedule as crazy Right?

A Yes

Q And you have stated that he was always doing too much

A Yes

Q That's something you believe

A Yes

Q And you know that he has been in public service for

20 years?

A Uh-huh

Q You know he is dedicated to the people of Virginia?

A Uh-huh

Q And the time that you saw him spend with Ms McDonnell was lunch once a week, right?

A Yeah, we tried to do it once a week. I don't think it ever happened once a week as far as that consistently

Q It was difficult to even get in lunch with his wife once a week as far as on his schedule

A Yes

Q And you recall scheduling maybe one or two dinners between them during the entire one-and-a-half years you were his scheduler?

A Yes, usually on birthdays

Q And during his time as Governor, Ms McDonnell did not have the ability to add or remove appointments from his calendar, correct?

A No, she didn't

Q And she previously had access to it during the campaign, correct?

A She did.

Q That access was taken away after the election, wasn't it?

A I don't remember exactly when it was taken away, but it was taken away

Q The reason it was taken away is because her priorities on his time sometimes conflicted with what the staff considered to be his priorities on his time, correct?

A Yes

Q And you observed that as a result, she could get frustrated

A Yes

Q She could be emotional about it

A Yes

Q She could act out from time to time?

A Yes

Q And this is because you observed that she felt abandoned.

A I don't really --

MR. DRY: Objection, Your Honor

THE COURT: Sustained

BY MS MARTIN:

Q Now, you observed that Jonnie Williams spent time with Maureen McDonnell, correct?

A Yes

Q And he indulged her passion for nutraceuticals?

A I don't think I knew that

Q You have described Jonnie Williams and Maureen

McDonnell as being close?

A Yes

Q You believe they were?

A Yes

Q And you have described the Williamses and the McDonnells as friends, correct?

A Yes

Q And at the time at least, you believed they were?

A I think so, yes

MR. DRY: Objection. What time?

MS MARTIN: 2011 --

THE WITNESS: I don't remember when I did

BY MS MARTIN:

Q During the time you were Mr McDonnell's scheduler, or Governor McDonnell's scheduler?

A If I described them as friends?

Q Uh-huh

A I think so, yes

Q And you have described Jonnie Williams' personality as over the top?

A Yes

Q This is because he displays his wealth?

A Yes

Q And he displays his connectedness to people like Oscar de la Renta?

A Yes

Q And you have also described Jonnie Williams as Maureen McDonnell's blind spot, correct?

A I don't remember, but I may have said that, yes

Q Is that something you observed Jonnie Williams to be, Maureen McDonnell's blind spot?

A I don't know what I would have said it in reference to, but maybe, yes

Q Have you ever said that Maureen McDonnell did not know the difference between donors and friends?

A I did say that, yes

Q And could that be one of the reasons that you might have described Jonnie Williams as Maureen McDonnell's blind spot?

A Yes

Q Maureen McDonnell, she had a person who was supposed to protect her from blind spots, correct?

A Right

Q And that person was Mary-Shea Sutherland?

A Yes

Q And but you observed that Mary-Shea Sutherland was also perhaps blinded by Jonnie Williams' charms?

A I don't know how much I saw of their interaction.

Q Do you believe that -- you don't believe that Ma[illegible] Shea Sutherland protected Maureen McDonnell --

MR. DRY: Objection, Your Honor

THE COURT: Sustained.

BY MS MARTIN:

Q Have you ever referred to Mary-Shea Sutherland as Maureen McDonnell's last line of defense?

A Yes

Q Do you believe she fulfilled that role when it comes to Jonnie Williams?

MR DRY: Objection

THE COURT: Sustained. What she believes is not relevant

THE WITNESS: Does that mean I answer it?

THE COURT: No, don't answer the question. Ask another one if you have one

BY MS MARTIN:

Q Did you observe whether or not Mary-Shea Sutherland was able to protect Maureen McDonnell from Jonnie Williams?

MR DRY: Objection, Your Honor, she is asking her to characterize it

THE COURT: She can say what she observed, if she did

THE WITNESS: I don't really know how to answer that

MS MARTIN: No further questions, Your Honor

THE COURT: All right

REDIRECT EXAMINATION

BY MR DRY:

Q Ms Block, Mr Brownlee introduced himself to you. Had you ever met Mr Brownlee before?

A Yes

Q And had you ever met Mr Brownlee before you testified here today regarding your testimony?

A Yes

Q How many times did you meet with Mr Brownlee or any of Mr McDonnell's defense counsel?

A Just twice

Q Twice? And did you meet with Ms McDonnell's defense counsel?

A No

Q Okay You were asked about -- well, let me ask you this: Did you know Mr Brownlee before you met him to prepare for your testimony?

A Yes

Q And how long have you known him?

A I met him back in 2009 2008, 2009, somewhere in there.

Q Let's talk about, Mr Brownlee asked you about the use of calendars to track gifts, I believe

A Yes

Q I don't know if I asked you about that So what was the purpose of using the calendars to track gifts?

A So it was kind of everyone had their own sphere of who tracked what gifts, like if somebody handed the Governor a gift at an event, Adam would be the one to track it down because he was with the Governor But anything that was on the schedule, that was my job, to track down if it was on the schedule and there was a gift involved

Q Can we pull up Government Exhibit 136, please And can we blow up the bottom part? So you would have seen this entry, correct?

A Yes

Q And would you know who was paying when the Governor was playing golf at Kinloch; would you have known that?

A I don't think so, no

Q Okay So would you typically ask?

A I didn't, and I probably should have

Q Okay And ultimately, what are these gift logs being used for?

A So whether it was being reported into like his Statement of Economic Interests, which was gifts he receives, for me, the most I did with the gifts was with flights, so depending on where the flight was going or what he was doing on it, where it would be reported.

Q I'm sorry, maybe I misunderstood your earlier testimony So when you are reviewing the calendars, are you primarily looking for what flights he has gone on?

MR. BROWNLEE: Objection, leading

THE COURT: Overruled.

BY MR. DRY:

Q Are you looking on the calendars, are you looking for flights that need to be reported?

A My job was to look for anything on the calendar that might have involved a gift, which were typically flights.

Q Which were typically flights And then these were used for the SOEIs, is that right, what kind of product are you delivering?

A We just had an in-kind form and we had one that was going to the PAC or one that was going to, I think, the state, and then there was another form, I think, for a gift I honestly don't remember it all now

Q Okay Are you responsible for the accuracy of the Governor's SOEI?

MR. BROWNLEE: Objection.

THE COURT: No, you can answer the question.

THE WITNESS: No, I don't think so A lot of people put stuff into it I think everything went to Pam and she was the one who originally compiled it

BY MR. DRY:

Q Do you sign the Governor's SOEI?

A No

Q Let's go to Government Exhibit 117, please Then let's go to the middle of that I think Mr Brownlee showed you this Would you have sent this e-mail to Dr Hazel had you not spoken to the Governor and him asking you to do so?

A No, I don't think so

Q Let's pull up Government Exhibit 130 And this is the Smith Mountain Lake itinerary Correct?

A I wouldn't call it an itinerary, but yes, it is about Smith Mountain Lake, yes

Q Mr Brownlee asked you did the Governor typically go to Smith Mountain Lake on vacation or had he previously gone

A Yes

Q You said he had

A Yes

Q Do you know, did he pay for those vacations at Smith Mountain Lake?

A The year before when he went?

Q Yeah.

A No, I don't think they paid for use of the house

Q Whose house did they stay at?

A I don't know who specifically owned it It was through Wendy Tepper, I think

Q Was that another donor?

A Yes

Q Let's go to Government Exhibit 99 again. You were asked a series of questions about this Why do you write "Maureen" and then in parenthesis "(and Mary-Shea)"?

A I guess because they were both going I don't know

Q Who had asked you to speak to Mr Williams?

A I don't remember if anyone asked me to speak with him or he just called me or Jerri told me he was calling I don't remember how that happened

Q Let's go up on the e-mail Who is the one that responds to you about the itinerary?

A Ms McDonnell

Q Okay And in fact, she is trying to figure out whether they can move the schedule around so to meet for shopping earlier, right?

A Yes

Q I believe you testified that you tried to schedule dinners between Mr and Ms McDonnell but it was difficult

A Dinners? Is that your question?

Q Yes

A Yes, family dinners were sometimes hard to get on the schedule

Q But if something was on the schedule, then typically the Governor was there, right?

A Yes, I mean sometimes things were on the schedule and they got kind of bulldozed over when things came up

Q How certain are you regarding the amount of time? I believe you said that you thought you only could schedule one or two scheduled dinners during the time you were there How certain are you of that?

A I would have to look, but I know it wasn't, for the two of them just to have dinner? That was -- they did it on birthdays, but I don't think there were many other times

Q How about family dinners?

A Family dinners there were more of

Q Typically, family dinners, who is at the family dinners? Who is it scheduled for?

A If like one of the kids was in town.

Q Would that be with Mr and Ms McDonnell?

A I think so, yeah.

Q Okay I believe that you talked about how you interacted with the Governor on a daily basis Did you also interact with Ms McDonnell frequently?

A Yes

Q Did you observe a lot of times whether Mr McDonnell and Ms McDonnell were together?

A I mean, I was always in my office so I never really saw them together

Q Okay Did Mr McDonnell oftentimes -- well, maybe you don't know this At the end of your tenure there, had you ever observed Mr Williams and Ms McDonnell showing any types of affection, physical affection towards each other?

A I mean, I never saw them together I was always in my office I didn't go to events

Q In your interactions with Ms McDonnell, did she ever talk about Jonnie Williams in a way that you thought they were having some kind of romantic relationship?

A I don't think so I don't know

Q Would that be something that you would remember?

A I believe I would remember that, yeah.

Q As far as you know, there was no indication from Ms McDonnell that she had any romantic relationship with Jonnie Williams?

A No, but I don't think she would tell me even if there was one

Q Okay I'm sorry, one last question on Government Exhibit 136 and I'll be done Did Mr McDonnell tell you who was paying for golf at Kinloch?

A No. Not that I remember

Q Okay And if he had, then that would have been annotated on what you produced for his SOEI?

A It should have been if it was

MR. DRY: Thank you very much

MR. ASBILL: May I approach Mr Dry for a second?

THE COURT: Sure

(At Bench.)

MR ASBILL: A cautionary note: A lot of these witnesses are under government subpoena and our subpoena, and sometimes we may not, because of the scope of direct issue, we may need them back And maybe there ought to be an admonition to these witnesses that if they are still under subpoena, I don't want them to think they are through necessarily

THE COURT: Sure Let me know which ones to tell that

MR. ASBILL: I think this is one we may recall I just wanted to raise that

THE COURT: All right

(In Open Court)

Ms Block, before you stand down, I understand there is a possibility you may be recalled by the defense, so you are still under subpoena And don't discuss your testimony with anyone. Thank you. You may stand down.

(Witness stood aside)

Call your next witness, please

MR HARBACH: Thank you, Your Honor The government calls Molly Huffstetler

MOLLY HUFFSTETLER,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR HARBACH:

Q Good morning, Ms Huffstetler

A Good morning

Q Could you please state your name and spell your last name for the reporter?

A Sure It is Mary Huffstetler I go by Molly The last name is H-U-F-F-S-T-E-T-L-E-R.

Q What do you to for a living?

A I currently am the Director of Development for a non-profit Medicaid-only health plan

Q Where do you work? I don't mean what company, but what state do you work in?

A I work out of North Carolina

Q Tell us about your educational background, please

A In 2004 I graduated with a Bachelor's in Religion and Psychology from Meredith College in Raleigh, North Carolina, moved on, and in 2007 graduated from Virginia

Commonwealth University with a Masters in Social Work, Planning and Public Policy

Q During your career, have you worked in Virginia government?

A Yes, I have

Q In what capacity?

A In 2007, I began with the state in a program planning role with the State Aging Department Quickly moved it over to the State Medicaid Agency and worked as a senior policy analyst At which time I was pulled over under the former Governor Kaine Administration to coordinate legislative activities during the transition between the Kaine and McDonnell Administrations. A couple months later, following that legislative session, federal health reform was passed. I stayed on in a borrowed capacity for a couple months and then was formally hired under the former McDonnell Administration to support state agencies and Health and Human Resources and then also to help with health reform for the Commonwealth I then took --

Q Excuse me for interrupting What was your title in that last job?

A In that last job I was Deputy Director of the Virginia Health Reform Initiative

Q In what state department did you work?

A I worked for the Cabinet Secretary of Health and

Human Resources

Q Who was who at the time?

A Bill Hazel

Q Was this the last job you held, the most recent job you held in Virginia government?

A Yes

Q You held it until when, ma'am?

A I separated from the state in September of 2013

Q Okay So focusing on the last job that you had, you ended in September of 2013 When did you start that job?

A I began my time at that office in 2010 My specific role with health reform began in 2011

Q What were your duties in that last job that you held?

A The last job, I was specifically tasked with helping coordinate the development and shaping the development of health reform and making sure Virginia was complying with federal law where we needed to, exercising our options where we had options, and working with the Bureau of Insurance and the other Health and Human Resources agencies, coordinating those processes

Q Where physically was your office located in that position?

A In that position I was in the Patrick Henry Building

Q During the time that you were working in the Health and Human Services Department, do you recall having a meeting with the former First Lady, Ms Maureen McDonnell, and a gentleman named Jonnie Williams?

A Yes

Q Do you recall how you learned that that meeting was going to occur?

A I was sent an e-mail that morning

Q Can we take a look for identification, please, at Government's 191 Just blow up the top half for the witness, please, so she can identify it

A Okay

Q Is this the e-mail exchange that we are talking about where you learned about this meeting?

A Yes, earlier in the e-mail Yes, sir

Q Thank you.

MR. HARBACH: The government offers Government 191

THE COURT: It will be admitted

BY MR HARBACH:

Q Could we start at Page 2, please, which is the first e-mail chronologically in the chain Just the one at the bottom there, and we will scroll up This earliest e-mail in the chain is from whom, ma'am?

A It is from former Governor McDonnell to my direct supervisor, Secretary Bill Hazel

Q What's the date and time of this one?

A July 31st, 2011, time, 11:29 p.m.

Q If we could scroll up a little bit Forgive me, we will need to go back to the first page, the very bottom, just to see who sent this next e-mail Who is that, ma'am?

A Bill Hazel was my direct report, Secretary of Health and Human Resources

Q Then this e-mail that bleeds onto the second page of Government's 191 is sent to whom?

A This was sent to the deputies in the office, Matt Cobb and Keith Hare.

Q When you say the deputies in the office, what do you mean?

A They would have been essentially second in the chain of command to Secretary Hazel

Q Were they supervisors of yours as well?

A More co-workers than supervisors We were all direct reports

Q Okay Back to the first page now, the next e-mail in the chain is the first one that you appear on. It is from Mr Cobb to you, a little bit later on the morning of what date?

A Monday, August 1st, 2011

Q And who is Keith there?

A Keith would be the corresponding deputy

Q Okay If we could scroll up a little bit to see what your response was to that request You say, "Um-hum, tic-tac man " And this is at what time?

A That was at 9:46 a.m.

Q So about an hour-and-a-half later Before we get to who Tic-Tac Man is, do you recall having any conversations in the intervening hour-and-a-half with any of your colleagues about this issue?

A I do not

Q Okay So now tell us what your reference to Tic-Tac Man means

A Sure Following a previous meeting that Mr Williams had with my boss, Secretary Hazel, sample products as a custom were left behind that resembled Tic-Tacs and we therefore referenced Mr Williams as the Tic-Tac Man.

Q Okay But before we move on, I neglected to ask you a question about the preceding e-mail I apologize This one where Mr Cobb is asking if you can cover The last sentence on that e-mail says, "It is a Governor request," My question for you is, what did that communicate to you?

A It communicated that it was a direct request from the Governor Sometimes meetings originated directly from the Secretary, sometimes from the Governor He was just pretty much describing where it was coming from.

Q Was that important to you?

A Of course

Q If we could scroll up a little bit, please Briefly pause on Mr Cobb's response He tells you "Have a good time " Then the next e-mail from you, fair to say this is tongue-in-cheek?

A Yes, sir

Q Let's keep going More joking from Mr Cobb in the reply?

A Yes

Q All right Then finally, if we could blow up so we can see the header on this, too, Mr Starnes This last one is sent by you at what time on the 1st?

A 10:22 a.m.

Q Okay And it says: "On a more serious note, I am not planning to commit to anything but will just stick with we will do what we can to carry out the desires of the Governor and First Lady " Then you sign it My first question is, why did you say that you were not planning on committing to anything?

A I didn't believe it was my role to I was there to listen to information and take that back for further action if requested

Q Okay Then the end of the sentence says, "We will do what we can to carry out the desires of the Governor and First Lady "

Did you mean specific to this particular issue or just in general?

A I believe specific to this issue as written in context

Q What did you understand the desires of the Governor and the First Lady to be specific to this issue?

A At the time of the note, nothing more than attending the meeting

Q Thank you, ma'am. You can take that exhibit down. Now, did you in fact meet with Ms. McDonnell and Mr Williams that morning, August 1st?

A Yes

Q Tell us about that How did you physically get from the Patrick Henry Building to wherever the meeting took place?

A I simply walked out of my office over to the Mansion property

Q Is that where the meeting was, in the Mansion?

A Yes, sir

Q Could we take a look at what's in evidence as Government's 186, please Just blow up the middle of the page The jury is familiar with this document You have seen this document in meetings before you came in here, right?

A Yes, sir

Q It is a Mansion log Is that right?

A Yes, sir

Q And just briefly, tell us, what time it indicates you arrived at the Mansion

A It indicates that I arrived at 9:55

Q And says you left at approximately when?

A 11:05

Q Okay, thank you. You can take that one down When you got to the Mansion, you check in with the security guy, what happens next?

A I was escorted into the Mansion by the First Lady's Chief of Staff

Q Who is that?

A At the time it was Mary-Shea Sutherland

Q What happened after you got escorted in?

A I was seated in the foyer of the Mansion and Mr Williams was there.

Q Kind of a waiting area?

A Yes

Q Did you have any discussion or conversation with Mr Williams while you were waiting?

A Yes

Q Tell us briefly what you all talked about

A My memory recalls him talking about his wife, about the product which I would later learn that he was there to talk about, Anatabloc, and the success in treating a thyroid condition of hers

Q Okay How long would you say you were sitting there with Mr Williams chatting?

A Ten minutes roughly

Q What happened next?

A At that time, the First Lady's Chief of Staff came and took us down to the office, the First Lady's office that was in the Mansion for the meeting

Q Okay When you got there, who participated in the meeting besides yourself?

A I recall the First Lady and Mr Williams being there as well

Q Just the three of you?

A That's my recollection.

Q All right Now, we are going to get to details in a minute But before we do that, could you tell us just generally what the meeting was about?

A The meeting was about Mr Williams talking about the product, Anatabloc, that he was involved in from a company standpoint, talking about the successes and the trials that were going on, scientific trials, if you will

Q How long would you say the meeting lasted all told?

A I would imagine we were together maybe an hour

Q Okay And indeed, the Mansion log indicated you left about an hour and ten minutes after you showed up Now, did you take notes during this meeting?

A I did.

Q Was that kind of standard practice for you?

A Yes, sir

Q Could we show the witness for identification Government's 187, please. Do you recognize these, ma'am?

A I do

Q Are these -- you have reviewed this document before you testified here today, I take it?

A Yes, sir

Q All right Are these the notes you took from that meeting?

A They are

MR. HARBACH: The government offers Government's 187

THE COURT: It will be admitted

BY MR. HARBACH:

Q Okay Now, before we get to the details of the notes, tell us, who is doing most of the talking during the meeting?

A Mr Williams

Q And what was your perception when you were sitting in that meeting, what was your perception of who the audience was for Mr Williams?

A I believe the audience was me

Q Now, let's take a look at the first page of your notes I don't intend to go through all of these, Your Honor, but we are going to focus on a few of them. Okay, Ms Huffstetler?

A Sure

Q So near the top there, there is a line that appears to say, "Hopkins brought in UVA/MCV " Do you see that there?

A Yes

Q Do you recall what that was about?

A I believe it was Mr Williams speaking to what was going on saying that Johns Hopkins had brought in UVA-MCV dealing with the clinical trials

Q Underneath UVA there, can you blow that up, Mr Starnes, that chunk before that wavy line? There you go. Thank you Underneath "UVA" there, does that say "head of research"?

A Yes

Q And underneath that, can you read what that says? It looks like "shop" something?

A I cannot read what that says, no

Q Okay. And then a little bit further to the right under "MCV" there is a line and it looks like "K-L-O-H-E-R"; is that right?

A I'm not sure

Q Did you write this?

A I wrote it, yes, sir

Q So you can't read your own handwriting on that one?

A No.

Q Okay What about underneath it, can you read what that says underneath, the word that starts with a K?

A The word that starts with a K?

Q I'm sorry, underneath that word that starts with a K, can you read what it says?

A "Endocrinologist/diabetes "

Q Let's just scroll down a little bit, leave that blown up, Mr Starnes. We see a reference on the left there to Anatabloc; is that right?

A Yes

Q And then on the right-hand side of the screen now, we are still on the first page of Government's 187, underneath that circle, the word "Roskamp" appears to be written Do you see that?

A Yes

Q At the time, did you know what Roskamp was before Mr Williams told you about it?

A Prior to, no

Q Okay On the left it says, "UVA/MCV-clinicals running animal models " Any recollection what that's about?

A No

Q A little further down it says, "Johns Hopkins School of Public Health to do healthcare costs for Va-post trials " How about that one, does that ring any bells?

A Nothing more than Johns Hopkins University involved in research prior to trials being held. No

Q Toward the bottom of the page, it looks like the word "Michigan" appears, and then in parenthesis, "Flint Mic " Do you know what that was a reference to?

A I do not

Q Did I read that correctly?

A That's the way I read that as well

Q Is that Flint, Michigan in the parenthesis?

A That's what I would assume.

Q To the far right-hand side, it says "double blind " Did I read that one right?

A That's what it says

Q Do you know what that was about?

A I do not I was writing just as he was talking

Q In the middle of the bottom of the first page of 187, does it say "thyroid disease in women"?

A That is how I read that, yes, sir

Q Thank you. Let's take a look at Page 2 of your notes Can you read what the first two lines of this page say?

A Yes Would you like me to read?

Q Yes, please.

A "Model for Virginia template, economic burden to the health system."

Q Do you recall what Mr Williams was talking about in relation to these notes here?

A Specifically, diabetes, chronic conditions being expensive in the health system.

Q The health system in Virginia?

A Overall, yes, sir

Q And then how about that next small paragraph there, can you read that one to the jury, please?

A Sure "If clinicals are right blocking autoimmune-significant financial impact on Virginia "

Q Somewhat self-explanatory, but any more light you can shed on this?

A No

Q Okay The next paragraph, could you read that one for us, please?

A Sure. "Low income-present to ER/Wal-Mart if model can show through trials, there will be support "

Q That says, "will be support"?

A That is how I read it

Q Okay Do you recall what that refers to?

A Going into the cost of chronic conditions on the state If the models and if the trials produced a product that would help, that it would be low cost for the low income to use and it would help offset the cost of healthcare

Q When you say the "low income," you mean low income families and people?

A I don't think it is fair to surmise what he was saying at the time

Q I'm asking, when you explained it just now, when you said "low income," did you mean low income families?

A I was just reading from what he would be saying

Q Understood. Let's keep going The next paragraph says, "MCV-planning grant two-three months, three months IRB." Did I read those two lines correctly?

A Yes

Q What is an IRB?

A IRB stands for Institutional Review Board. It is a research committee at most universities that researchers must go through to ensure that the trials do not in any way, shape, or form possibly pose risk to the control group.

Q As you sit here today, do you recall what the "two to three months" or "three months IRB" was in reference to?

A No No, sir

Q Okay Then the next thing says, "By end August-MCV /VCU submit test protocol-small planning grant/large grant " Did I read that one right?

A Yes, sir

Q Any recollection of what this little blurb was about in terms of what Mr Williams said about it?

A No more than what's written.

Q Very good Then the next paragraph, this one has a star by it And it says: "Tobacco Fund in Virginia is paying for this-by request of Gov Kilgore working with VFHY-Jerry-law firm." To the outside it says "3 million." For the record, this is the bottom of Page 2 of Government's 187 Did I read that correctly?

A That is how I read it as well

Q Okay First question: Do you remember, same question I've been asking you, do you have a memory what Mr Williams was talking about beyond what's written here?

A No. As written, just taking the note

Q Okay And by the way, is Ms McDonnell participating in the meeting? Is she talking during this meeting, to your recollection?

A I would say Mr Williams did the vast majority of the talking during the meeting

Q Do you remember Ms McDonnell saying anything at all other than greeting you?

A I have no memory, no

Q Okay Let's go to Page 3, please Almost finished This one at the top, does it say, "MCV-project-expensive in who involved MCV employees," is that "citizen, etc "?

A Yes

Q "Two-three months-glucose control across board." Did I read that right is the first question?

A That's how I read it

Q Any recollection of what was said by Mr Williams besides what's written here?

A No, sir

Q Finally the last little piece, this one says, "Control group-PHB? Diabetes/pre-diabetes " Did I read that one correctly?

A That is how I read it as well

Q What's PHB?

A PHB is in reference to the Patrick Henry Building

Q That's the physical building where you worked?

A Yes, sir

Q I bet you can guess what my next question is going to be Any recollection beyond what's written here of what Mr Williams said about this issue?

A No

Q Okay And then "affordability, autoimmune," and then the very last note, what's that?

A Ankylosing Spondylitis

Q What was the significance of you writing that?

A That's an autoimmune disease my father suffers from.

Q Did you mention that during the meeting?

A I have no memory of mentioning it during the meeting, no, sir

Q That's it for the notes Thank you, ma'am.

Prior to this meeting that you had with Ms McDonnell and Mr. Williams, had you ever had a meeting, a work meeting with Ms McDonnell before?

A Not that I recall

Q How about since then, did you have any others after that?

A No

Q Prior to this meeting, had you ever attended a meeting, a work meeting at the Executive Mansion?

A No

Q Now, let's take a look at Government's 193 for identification, please Could you just blow up the bottom half for her so she can see it? Ms Huffstetler, do you recognize this e-mail?

A I do

Q What is it generally?

A It is a typical e-mail that we would send following meetings with individuals that met with us

Q Did you send this one?

A I did.

MR. HARBACH: The government offers Government's 193

THE COURT: It will be admitted

BY MR. HARBACH:

Q We have blown up your e-mail on this one Who are you writing to?

A I'm writing to Mr Williams.

Q On what date?

A Date, August 1st, 2011

Q At what time?

A 12:40 p.m.

Q Same day of the meeting?

A Yes, sir

Q A little bit later that afternoon?

A Uh-huh.

Q I'm sorry, as made obvious by the subject line Let's go on The first sentence says: "I enjoyed meeting with you this morning and look forward to receiving the information from you regarding the clinical trials and other advancements of Anatabloc "

My first question is, do you recall where you got the idea that information on clinical trials was forthcoming?

A Other than talking about them in the meeting, no

Q So it would be from Mr Williams?

A Yes

Q Okay Then a little bit further down the e-mail, you say: "As you know, it is necessary for us to make policy recommendations and decisions off of sound data I am grateful that you are making strides to validate the incredible anecdotes and stories that result from your work At times I found myself drifting to excitement thinking about my father, who suffers greatly from Ankylosing Spondylitis (severe form of arthritis)"

Now, earlier today we saw an e-mail where you mentioned Tic-Tac Man and you were joking a little bit with your staff members and your colleagues about this meeting My question for you is, did the meeting you had with Mr Williams change your view about the product?

A No, sir

Q Was it true that you found yourself drifting to excitement thinking about your father during the meeting?

A Can you reask that question?

Q I was just asking was it true that in fact you found yourself drifting to excitement thinking about your father during the meeting with Mr Williams?

A Sure

Q Was that related to the product?

A I would say the anecdotes

Q Okay Then toward the end, you say: "It thrills me to think that within his lifetime there is a possible method to alleviating his significant pain without costly side effects "

Did you believe that? Did you believe that Anatabloc might actually do that?

A I don't think that's a fair statement

Q Okay Generally, just tell us why you wrote this e-mail, ma'am.

A Protocol in the office

Q Being polite?

A Being polite

Q Okay Now, you close the e-mail by saying: "I will continue to work alongside of the First Lady as we identify how best to move forward "

When you wrote this e-mail, what did you understand your job to be going forward as far as this issue was concerned?

A Nothing at the time of the written e-mail

Q Okay And we can just see very briefly how you close the e-mail on Page 2 You just say, "Thank you for your time today "

You can take the exhibit down. Thank you, Mr Starnes

Following this e-mail, ma'am, did you receive any further direction, to your recollection, from any of Mr McDonnell, Ms McDonnell, or Dr Hazel about this Anatabloc issue?

A No, sir

Q Last question: Would you have attended the meeting with Mr Williams if the Governor had not requested it?

A Can you ask that another way?

Q I can try If you had not learned via that e-mail that the Governor had requested that a member of Dr Hazel's staff attend the meeting, would you have attended it?

A No

MR HARBACH: Nothing further for this witness, Your Honor Thank you.

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. ASBILL:

Q Good morning, Ms Huffstetler How are you?

A Good morning I'm well, thank you.

Q Do you and I know each other?

A We have met before

Q How many times?

A Once

Q When was that?

A The middle of last month

Q Okay Do you know the folks over at this table, any of them?

A Yes, sir

Q And how many times have you met with them?

A Collectively, three

Q All right You said right in closing here, you were asked by Mr Harbach whether you would have met with Mr Williams if the Governor hadn't requested it; is that correct?

A That was the question he asked.

Q Would you have known about the meeting if the Governor had not requested it?

A No, sir

Q Would you have met with Mr Williams if Mr Hazel or one of his deputies asked you to meet with Mr Williams?

A Yes, sir

Q Now, during this meeting with Mr Williams, I want to get back to the beginning of that. You were a block away or less than a block away, 500 feet away from the Mansion where you work?

A Yes, sir

Q When you came over in the morning to take this meeting, did you notice a Ferrari in the driveway?

A I did.

Q When you waited outside of the First Lady's office for a few minutes before you actually commenced the meeting, did you hear, overhear any discussion about any Rolex watch of any kind?

A No, sir

Q Okay Now, with respect to the meeting, you knew that you were asked to go to this at approximately 8:12 in the morning; is that correct?

A Yes, sir

Q All right So no notice before that morning that later in the morning you were going to have a meeting with Mr Williams, correct?

A Correct

Q All right Now, I believe you testified through an e-mail chain that Dr Hazel asked you to attend the meeting?

A No, sir, he had initially asked the deputies, who then asked me because they weren't there

Q So he asked the deputies and then the deputies pushed it down to you essentially because they were not available?

A That's true

Q All right So you were not specifically asked by Dr Hazel to attend the meeting; is that correct?

A That's correct

Q All right And there was no problem as far as you understood, either from Dr Hazel or from his immediate deputies, that you rather than they attended the meeting; is that right?

A Not at all That's correct

Q Okay Within the hierarchy of Dr Hazel's office, where would you rank among his deputies and policy people, et cetera? Where would you rank in that hierarchy?

A Hierarchically, it would have been Secretary Hazel, Matt Cobb and Keith Hare, who were the deputies, and then me But organizationally, we are each other's peers and co-workers

Q All right With respect to how the meeting was set up, you saw an e-mail where my client writes to Dr Hazel late at night the night before and asks him to send someone to the meeting; is that correct?

A That's correct

Q And I take it you have no idea from any source why my client did that; is that correct?

A That's correct

Q What his reason or reasons were for asking Dr. Hazel to send someone to meet with Mr Williams; is that correct?

A Yes, sir

Q All right Just it was a request from the Governor and you all tried to honor that request; is that right?

A Yes, sir

Q And were similar requests made by the Governor to Dr Hazel for meetings with folks on a regular basis?

A I would say yes.

Q How frequently would that occur?

A I would say often as a function of the office

Q When you say a function of the office, what do you mean by that?

A As the Governor, I would imagine, I know he was approached often by folks interested in marketing whatever it was that they had to share that they thought would better the Commonwealth As the Governor, he would farm that out to his respective Cabinets to be taken care of

Q Would he farm that out to people who were experts in the field?

A I would say the closest he could get, yes

Q All right To your knowledge, was my client an expert in the field of the kinds of issues that Jonnie Williams wanted to discuss?

A I would imagine no

Q All right Were you an expert in the field that Jonnie Williams wanted to discuss?

A I would say closer than the Governor, but no

Q When Mr Williams was talking to you during the meeting, and let me back up for a minute, this meeting lasted roughly an hour; is that correct?

A Yes

Q All right And during that meeting, would it be fair to say that 59 minutes were spent by Mr Williams talking?

A I would say the vast majority, yes.

Q Okay You don't recall Ms. McDonnell saying anything during the meeting, do you?

A I cannot recall that, no

Q Do you recall yourself saying anything or interjecting or trying to question Mr Williams or get more information from him?

A No

Q Okay Were the things that Mr Williams was talking about all things that you understood in terms of science or whatever it was that he was talking about?

A No

Q You just took notes basically and listened to what he said and wrote it down; is that right?

A Yes

Q Historically, you have been through school, through your work, through your employment, you consider yourself to be an accurate note taker, do you not?

A Yes

Q And you are good at doing that; is that correct?

A I would say yes

Q It is also easier, correct me if I'm mistaken, is it easier for you to take notes when you are just listening than when you are simultaneously trying to talk and then combine the two?

A That's fair

Q So you believe that your notes of what Mr. Williams said are accurate; is that correct?

A Yes

Q Okay So what you wrote is what he said

A Yes

Q All right Now, you can pull up the last exhibit, please Can we go to the part where it talks about the Virginia Tobacco Commission? Can you blow that up, please? At the bottom of the page, the star The little asterisk there, what is that? This little circled thing there What is that?

A I'm sure in my notetaking process that would have just alerted me to something to pay attention to

Q This is something that you thought was important essentially during the conversation -- not conversation, during the download?

A The asterisk would indicate that, yes

Q It indicated it to you, that's why you put it there, is that right?

A My notes, yes, sir

Q And your note reads, and correct me if I misstate it: "Tobacco Fund in Virginia is paying for this-by request of Gov "

A That's how I read that, yes

Q And that's what Mr Williams said to you; is that correct?

A I believe the notes were in dialogue and I wrote what he said, yes

Q And at any time after this meeting, did you ever verify whether or not what Mr. Williams said to you was in fact true?

A No

Q Where there is a notation for $3 million, do you know what that's about or what that relates to?

A It is in direct relation to the note that I had been taking due to placement

Q And does it reference the Tobacco Fund or does it reference something else?

A Due to placement, I would believe it would be related to the Tobacco Fund note

Q Okay So your recollection is that Mr Williams tells you the Tobacco Fund is paying $3 million for this, whatever he is talking about, by request of the Governor Is that correct?

A I believe that's what the note reads, yes, sir

Q All right You can take that down. Let me talk to you a little bit about your last correspondence or your e-mail with Mr Williams at the end after the meeting That's, I believe, Government Exhibit 193 Would you put that up, please? But wait Before I ask you a question about this, I am going to ask you about it, whatever Mr Williams told you, did you ever verify or figure out or try to corroborate whether any of the things that he told you were true?

A No, sir

Q You just basically wrote down what he said and that's it.

A Yes, sir.

Q Never tried to go back and double-check or corroborate or figure out whether what he said was true or false or misleading in any way; is that correct?

A No

Q All right So how long after the meeting, roughly, do you write this e-mail back to Mr Williams?

A I believe the time stamp would indicate about an hour and 40 minutes later

Q Okay And you left, so you left basically the meeting and you go back to your office and an hour and 40 minutes later you write this e-mail; is that correct?

A That's what the time would indicate, yes, sir

Q In between the time you leave the meeting and you go back to your office to write this e-mail, do you touch base with anybody else in your office about how if at all you are going to respond to Mr Williams?

A No, sir

Q So you make this decision on your own an hour and 40 minutes later to write this e-mail to Mr Williams, correct?

A Yes, sir

Q And you had no doubt in your mind that you were authorized or empowered to make the decision to write this e-mail and whatever you say in it Is that correct?

A That's correct

Q So you clearly had that authority?

A Yes, sir

Q You were empowered to do that, were you not?

A Yes, sir

Q All right So you were empowered to make your own decision about what to do going forward if at all here with Mr Williams, correct?

A That would be fair

Q All right And would I be accurate in characterizing this e-mail to Mr Williams as basically a blow-off e-mail?

A That's probably fair, yes

Q "No" with a smile?

A Yes

Q When you say, "I will continue to work alongside of the First Lady as we identify how best to move forward," did you have any plans to move forward on anything?

A I personally did not

Q Okay Do you know whether anyone else in your office had any plans to move forward?

A No

Q In fact, did anyone in your office move forward with anything?

A No

Q Now, with respect, you told us a little bit about the back channel story here before you went to the meeting and you are talking about Mr Williams as the Tic-Tac Man That was sort of office scuttlebutt, gossip, whatever?

A Yes

Q And that had been based on a prior meeting between your boss, Dr Hazel, and Mr Williams that you heard about, essentially?

A Yes, sir

Q Is that correct? Okay, going over to the meeting, I mean, you had a sense of Mr Williams before you even came to the meeting?

A A sense, yes

Q And in the meeting, were you impressed by him particularly?

A I would say no, not impressed.

Q Okay And Dr Hazel had previously asked you to attend a lot of meetings of this type; is that fair to say?

A Yes

Q Whether or not they occurred at the Mansion or at some other location?

A Correct

Q All right So if somebody had an idea that related to health, was it your understanding that was the job of Dr Hazel's office, to listen to these folks and hear them out?

A One of the functions, yes

Q I don't know whether you can put a number on it, but maybe 1 out of 10, 1 out of a hundred folks might have a really good idea, others may not be so great, but it is the job of your office to listen to them, evaluate them, look at the science, and make a decision; is that right?

A That's fair, yes

Q And with respect to that process of hearing people out, listening to what they have to say, make a decision, that's something that you all did independently, correct?

A Yes

Q And in your experience, did my client, Governor McDonnell, ever interfere with that decision-making process by you or your colleagues in your office?

A Interfere, no

Q Okay And if he thought that you were -- you were entitled, you all were entitled to make those kind of decisions in your subject matter area; is that right?

A Yes

Q Okay Now, with respect to afterwards, was it at the meeting or afterwards that Mr Williams left some samples of Anatabloc?

A Which meeting are you referencing?

Q Did he leave any or give any to you or send any to you after the meeting or did you already have some samples from Mr Williams' meeting with Dr Hazel that had occurred earlier?

A Both.

Q Both?

A Yes, sir

Q So he sent you some Anatabloc after the meeting?

A He did

Q Okay And with respect to folks sending you sample products, was that unusual?

A No

Q It had occurred with other people on other types of -- on other occasions?

A Sure

Q Okay Did you view this meeting as a big deal or just doing your job?

A Just doing my job

Q Now, go back to the e-mail, please, where it talks about the desires of the Governor and the First Lady Could you blow that up, please, where it talks about that?

A It is at the top, sir

Q I'm sorry, I missed it Okay All right, in this e-mail, you write to Matt Cobb and Keith Hare, correct?

A That's correct

Q Those are folks that are deputies to Dr Hazel?

A Yes, sir

Q You write, "On a more serious note I am not planning to commit to anything but will just stick with what we will to do what we can to carry out the desires of the Governor and the First Lady " Right?

A Yes, sir

Q This was an e-mail that was sent before the meeting; is that right?

A Yes, it appears that way

Q So they asked initially, Matt Cobb, Dr Hazel asked Matt Cobb to go, he is busy, he can't go, he asked you to go, and before you go you send this e-mail back, right?

A Yes

Q So when you talk about the, quote, desires of the Governor, what you meant by that was to go to the meeting That's what they desired Right?

A At the time that would be fair, yes

Q All right Nothing more, just go to the meeting is what my client desired from your understanding.

A At the time of the e-mail, yes

Q Okay Pull that down

Now, you talked a little bit in the meeting with Mr Williams about the Virginia Foundation for Healthy Youth. Is that correct? VFHY?

A That would be what that stands for, yes, sir

Q What did you understand that to be?

A Virginia Foundation for Healthy Youth was established in Virginia out of tobacco settlement money and they help administer grants

Q To try to stop kids from smoking?

A That's their primary function, yes

Q When Mr Williams as talking to you about this organization, VFHY, did you understand how they could possibly be involved with Mr Williams and his company?

A I don't recall any more than my note reads, sir

Q Do you recall thinking that it would be odd for that organization to be involved with Anatabloc? I mean, did you understand Anatabloc to be some sort of product that would keep kids from smoking?

A No.

Q Okay And with respect to grants from that organization, the VFHY, did you have any sense of whether or not whatever Mr Williams was doing would be appropriate for a grant from that organization?

MR HARBACH: Objection.

THE COURT: Sustained

BY MR ASBILL:

Q Now, you say that, I believe, and your notes say, and if you need to refer back to your notes to refresh your recollection in any way, please do, but Mr Williams was talking about PHB, Patrick Henry Building employees possibly being involved in some sort of a mini-trial of some sort? That's what he wanted to do? Is that correct, or you tell me if I'm wrong

A Can I have the notes, please?

Q Sure.

A It would be the next page, I believe

Q There it is

A Actually, maybe the next page There it is Could you ask the question again, sir?

Q Yes What do you recall Mr Williams saying about Patrick Henry Building employees who were diabetic or pre-diabetic?

A Nothing more than what's written here

Q Okay Do you recall Mr Williams making an ask to you to have this occur?

A No, sir

Q All right Was there, during the meeting, anything that you construed to be an ask to your office by Mr Williams?

A No

Q Did you perceive there to be anything either in the e-mail from my client to Dr Hazel or from anything that was done by Ms McDonnell at the meeting to be pressure on you to do anything other than have the meeting?

A No

Q Do you think that your e-mail to Mr Williams an hour and a half or hour and 40 minutes after the meeting was in any way designed or helped to try to move forward some scheme by Mr Williams?

A No, sir

MR HARBACH: Objection

THE COURT: Overruled

BY MR. ASBILL:

Q Now, let me ask you about from the date of the meeting, which is August 1st, 2011, correct? When do you leave? When do you leave your job?

A I left my job in September

Q Your job in state government

A September of 2013

Q All right

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Q Between August 1, 2011, and September 2013, to your knowledge, within your cabinet, was there any work in progress relating to Jonnie Williams or Star, any work in progress at all in terms of a going-forward plan that involved your office?

A No, sir

MR ASBILL: I don't think I have any more questions

THE COURT: All right Ms McDonnell

CROSS-EXAMINATION

BY MR HAUSS:

Q Good morning, Ms Huffstetler

A Good morning

Q How are you?

A I'm well Thank you

Q My name is Steve Hauss I represent Ms McDonnell
You and I have never met; is that right?

A That's correct

Q So for this August 1st, 2011, meeting with Ms McDonnell and Jonnie Williams, you were basically asked to fill in at the last minute; is that right?

A Attend the meeting, yes

Q And you were asked to attend just a couple hours before it started?

A That's correct

Q So you were not involved at all in initially setting up the meeting; is that correct?

A Correct

Q Okay So you don't know if Ms McDonnell or Maureen -- Mary-Shea Sutherland or someone else entirely who set up the meeting; is that right?

A That's correct

Q Now, when you arrived at the Mansion, you said it was Mary-Shea Sutherland who escorted you into the foyer; is that correct?

A Yes

Q And it was also Ms Sutherland who escorted you in to the meeting?

A That's correct

Q And you said that the people who attended the meeting were yourself, Mr Williams, and Ms McDonnell?

A That's who I remember at the meeting Yes

Q Do you recall, is it possible that Ms Sutherland also was there for a portion of the meeting?

A That's not what I recall

Q Is it possible?

A Sure

MR HAUSS: Now, if we could bring up Government Exhibit 191, which is in evidence And if we could focus on the very top e-mail

BY MR HAUSS:

Q And you've been asked about this a couple of times, but you -- going into this meeting, you had decided you were not going to commit to anything with Mr Williams, correct?

A That's correct

Q And then where you say "the desires of the Governor and the First Lady," did you speak with Ms McDonnell prior to the meeting at all?

A No

Q And you testified that between getting the e-mail asking you to attend and the meeting itself, you did not speak to any of your colleagues, is that correct, about the meeting?

A Other than the e-mails, no

Q And, in fact, prior to this meeting, you had never spoken with Ms McDonnell about Jonnie Williams; is that right?

A That's correct

Q You had never spoken to her about Star Scientific?

A Correct

Q Okay So going into this meeting, you had no idea what Ms McDonnell's desires were, if any, with respect to Mr Williams or Star Scientific Is that fair?

A That's fair

Q You did know at the time of the meeting, is it fair to say, that Ms McDonnell was generally interested in nutraceuticals?

A That's fair

Q And you knew that as First Lady, she had initiatives in health and nutraceuticals Is that fair?

A Initiatives in, no

Q Okay But you knew she was interested in nutraceuticals?

A Yes

Q And during the meeting, did it appear to you that Ms McDonnell was attentive and was listening?

A Sure

Q But you testified that your best recollection is she basically didn't say anything during the meeting?

A That's what I recall

Q So after this meeting that lasted about an hour where Ms McDonnell didn't say anything, you still had no idea what her desires, if any, were with respect to Mr Williams and Star Is that fair?

A Shy of attending the meeting, no

Q And then you indicated just now with Mr Asbill that there was no ask during the meeting; is that correct?

A Correct

Q And so since there was no ask, is it fair to say that by the end of the meeting, you still did not commit to anything with Mr Williams?

A That's accurate

MR HAUSS: And if we could have Government Exhibit 193, which is in evidence The bottom e-mail

BY MR HAUSS:

Q And down here at the bottom of this e-mail where you say, "I will continue to work alongside the First Lady as we identify how best to move forward," prior to this meeting, had you ever worked with the First Lady?

A No

Q After this meeting, did you ever work with the First Lady?

A No

Q You basically said that -- you testified earlier this is basically a polite blow-off?

A Yes

Q Did Ms McDonnell ever follow up with you in any way after this meeting?

A She did not

Q Did you ever follow up with her?

A I did not

MR HAUSS: If we could bring up Government Exhibit 187, Ms Huffstetler's notes If we could go to the second page, and then the portion down at the bottom about the Tobacco Fund

BY MR HAUSS:

Q You indicated that, based on your notes during the meeting, Mr Williams mentioned Kilgore and then you see Jerry Law Firm Do you recall if Mr Williams referred to Marty Kilgore, his wife?

A I have no recollection of that

Q Do you remember if he referred to his brother, Terry Kilgore?

A I have no recollection of that as well

MR HAUSS: You can take that down

If we could bring up, just for the witness for identification, RM-1124 If you could blow up the top portion

BY MR HAUSS:

Q And Ms Huffstetler, is this an e-mail from you to Elaina Schramm?

A That's what it states, yes

Q And Ms Schramm was Mr Hazel's assistant; is that right?

A Yes, sir

Q And it's dated Monday, August 22nd, 2011, at 9:48 a m ?

A It is

MR HAUSS: And, Your Honor, we'd offer this for

evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q And you indicate here, "Mary-Shea just called requesting Dr Hazel for a meeting and lunch with the First Lady regarding Anatabloc"; is that right?

A That's how it reads, yes, sir

Q And it indicates that the proposed date is August 30th?

A Yes

Q And to the best of your recollection, it was Mary-Shea Sutherland who called you; is that right?

A That's what the e-mail says, yes

Q Do you recall whether -- or do you know whether any meeting or lunch ever took place?

A I do not know

Q And then finally, you indicated that when you arrived at the Mansion, you saw a Ferrari out front; is that right?

A Yes

Q And do you recall the color?

A Yes

Q What color was it?

A White

Q And was the Ferrari already there when you arrived?

A Yes

Q Was it just parked right out front where basically anyone could see it?

A In front of the Mansion, yes

Q Great

MR HAUSS: One moment, Your Honor

(Counsel conferring with co-counsel)

MR. HAUSS: Nothing further, Your Honor

THE COURT: All right Any redirect?

MR HARBACH: Yes, Your Honor Thank you.

REDIRECT EXAMINATION

BY MR HARBACH:

Q Ms Huffstetler --

A Yes

Q -- hi

About that Ferrari When you saw it in the driveway, do you have any idea that the Governor and Ms McDonnell had driven it down the night before?

A No, sir

Q You were asked some questions by Mr Asbill about your notes?

A Yes

Q And the -- the young lady sitting there with the earphones on, do you know what she's doing today?

A I would imagine she's taking notes

Q Okay And you understand those to be exactly what people are saying in the courtroom --

A Yes

Q -- is that right?

Is that what you were doing with Mr Williams, retaking down everything he was saying verbatim?

A I don't know that that's fair, no Not verbatim

Q I take it your notes would have been a lot longer if you were doing that?

A That's a fair statement

Q You were doing what we all do when we take notes; your impressions based on what he was saying?

A I believe my notes recollect the dialogue that was going on at the time, yes

Q And he was the one doing the talking?

A That's right

Q Okay Now, one of the questions Mr Asbill asked you was about whether Mr McDonnell ever -- I believe the word he used was "interfered" with the work that you and your colleagues were doing in your department And I believe your answer was, correct me if I'm wrong, I believe your answer was "interfere, no "

Was that your answer?

A Yes

Q Okay Was there anything else that Mr McDonnell did that affected your work over there besides interfering?

A Generally? Is that what you're asking?

Q Sure

A My job, I believe, was to inform the Governor so that he could govern So he was a part of decision-making But I don't believe he interfered with the process of research and analysis in bringing those ideas to him

Q If the Governor set certain priorities for his administration that involved your department, would you consider that to affect your work?

A Prioritization purposes, yes

Q What about directing members of the cabinet to do certain things? Would that -- would you call that affecting part of your work?

A Affecting, yes

Q Okay Relatedly, we saw the e-mail earlier, the one that set up the meeting, the one where you -- where you first mentioned Mr Williams as Tic Tac man?

A Yes

Q First question Did -- to your recollection, did either Mr or Ms McDonnell, as far as you're aware, ever express the same skepticism that you and your colleagues apparently shared that you were aware of?

A There was never a discussion with them to express that

Q Okay You never heard it?

A No, sir

Q So -- this is a question I probably should have asked you earlier When you get this request to go have the meeting --

A Uh-huh

Q -- you make the observation to your colleague that, you know, Tic Tac man, you make the hamster wheel comment, why didn't you say, "Hey, Matt" or "Hey, Keith, you know I'm not meeting this guy He's a nut I'm not going to do that"? Why didn't you say that?

A I wouldn't have considered it an option

Q Why?

A Because we took the meetings that were requested of us

Q Okay Is it because you were directed to take the meeting by your direct supervisor, Mr Hazel?

A Yes

Q Who was, as you understood it from the e-mail, directed to do so by his supervisor, Mr McDonnell?

A Yes

Q You were asked -- finally, you were asked some questions by Mr Hauss about whether it was possible that Mary-Shea Sutherland attended this meeting that you had Do you recall that?

A I recall the question

Q Yes And do you recall your answer being that it was possible that she was there?

A It's possible I don't personally remember her being there

Q Okay Do you remember her saying anything at the meeting?

A No

Q Is there anything in your notes about her being there?

A No

Q Do you have any independent recollection of her being there?

A No

Q Final -- I said finally I shouldn't have said that

You were asked several questions about the portion of your notes concerning the Tobacco Commission, the one where you put the star in the margin

A Yes

Q Do you recall talking about that?

My question for you about that is -- is your testimony about what Mr Williams said, is that a -- a -- something you're deducing from what your notes say or do you have an independent recollection as you sit here of exactly what Mr Williams said? Is it -- is it box one or box two?

MR ASBILL: Or neither

BY MR HARBACH:

Q Excuse me Or neither?

THE COURT: Or a combination

MR HARBACH: Sure Thank you, Judge

A I'm going to have to go with the judge on this one

BY MR HARBACH:

Q Combination?

A Combination

Q Wise choice

MR HARBACH: Thank you, Your Honor I have nothing further

THE COURT: All right Thank you, ma'am You may stand down

(Witness stood aside)

THE COURT: We are going to take our 15-minute morning break You all follow the marshal

(The jury left the courtroom)

(Recess taken from 11:18 a m until 11:39 a m)

THE COURT: All right Bring in the jury

(The jury entered the courtroom)

THE COURT: All right Government, call your next witness, please

MR FAULCONER: The United States calls Dr John

Clore

DR JOHN CLORE,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

MR FAULCONER: May I proceed, Your Honor?

THE COURT: Go ahead

DIRECT EXAMINATION

BY MR FAULCONER:

Q Can you please state your name, and spell your last name for the court reporter

A John Newton Clore C-L-O-R-E

Q And, Dr Clore, where do you currently live? What city?

A I live in Lanexa, Virginia

Q And where do you currently work?

A I work at the Medical College of Virginia in Richmond

Q And is that part of Virginia Commonwealth University?

A It is

Q How long have you worked there at VCU?

A Twenty-five years

Q What is your current title there?

A I'm a Professor of Medicine and Associate Vice President for Clinical Research

Q What sort of educational background do you have?

A My medical -- I got my medical degree at MCV, following a bachelor's degree and a master's degree And then I did my internship, residency, and fellowship there

Q So altogether, have you been at VCU about 30 years or so?

A Correct

Q What are your day-to-day duties at VCU in terms of how it breaks down in your job?

A So about 50 percent of my time is in research, basically directing the Center for Clinical and Translational Research Thirty percent of my time is in clinical practice, and the rest is teaching

Q And could you tell the jury whether VCU is a state school or a private school?

A VCU is a state institution

Q So as a VCU employee, are you a state employee?

A I am

Q As a state employee, do you receive certain e-mails that are addressed to all state employees on occasion?

A I do

Q And do those include e-mails from whoever is Governor at the time?

A They did

Q And did that include Mr McDonnell when he was

Governor?

A Yes

MR FAULCONER: Your Honor, I'd like to show the witness for identification what's been marked as Exhibit 271

THE COURT: All right

MR FAULCONER: If we could just zoom in on the upper portion there

BY MR FAULCONER:

Q Dr Clore, is this one of those types of e-mails that would go out to all state employees?

A It looks familiar, yeah

Q And December 19th, 2011, were you employed by VCU at that time?

A I was

MR FAULCONER: Your Honor, we'd offer Exhibit 271 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, Dr Clore, could you tell us what the subject at the very top of this document, what the subject of this e-mail is?

A It says "2012-2014 Proposed Budget to All State Employees "

Q And the introduction there where it says, "Dear," what does it say there?

A "Dear Fellow State Employees "

MR FAULCONER: And if we could go to the second page

BY MR FAULCONER:

Q And at the bottom there, what's the name at the bottom of the e-mail?

A It's signed by the Governor

MR FAULCONER: We can take that down

BY MR FAULCONER:

Q Now, Dr Clore, I think you said that one of your roles is Vice President of VCU Clinical Research Did I get that right?

A Correct

Q As the Vice President of VCU Clinical Research, do you have to worry about funding and infrastructure, and things like that?

A Sure My job, actually, is to make sure that there's adequate infrastructure to do clinical research at VCU

Q And does that infrastructure, does that include things that are funded by the State?

A Some of those funds are state funds as a state institution, yes

Q Now, I'd like to transition to the case that brings us here today Before the summer of 2011, had you heard of the company Star Scientific?

A I had not

Q Before the summer of 2011, had you heard of Rock Creek Pharmaceuticals?

A I had not

Q Before the summer of 2011, had you heard of the product Anatabloc?

A I had not

Q In early July 2011, did you receive a phone call in which you learned about Anatabloc for the first time?

A I did

Q And who was it that called you?

A I was called by a Dr Ladenson from Johns Hopkins University to tell me about a compound of potential research

Q And had you ever met Dr Ladenson in person before?

A I had not

Q Now, after that call, did you report what had happened to some of your superiors within VCU?

A I did

Q Essentially, were you keeping them apprised of what was going on?

A Yes

MR FAULCONER: Your Honor, we'd like to pull up for identification Exhibit 167

MR BROWNLEE: Your Honor, may we approach?

THE COURT: Come up

(At Bench)

MR BROWNLEE: Your Honor, this is an e-mail, and there's another one we believe the Government is going to introduce These are the e-mails here These are packed full of hearsay that Dr. Clore talked with another physician, and now he's reporting what this other physician said

We think in order for that to come in, they should have to call the other physician This is an out-of-court statement and we believe offering for its truth We object to the hearsay

MR FAULCONER: Your Honor --

THE COURT: The objection is overruled

(In Open Court)

BY MR FAULCONER:

Q Now, Dr Clore, the document that we're looking at here, this is an e-mail from you to three other individuals at VCU, right?

A Correct

Q And this is dated July 1st of 2011?

A Right

Q And is this essentially the e-mail we were just referring to, summarizing what had -- what had just gone on in that call?

A It is

MR FAULCONER: Your Honor, we'd offer this exhibit into evidence

THE COURT: What's the number again?

MR FAULCONER: 167

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, Dr Clore, could you start by telling us who the three names are that are referenced there: Strauss, Macrina, and Retchin?

A Yes In my role as Associate Vice President for Clinical Research, the three people, these are senior leaders at my institution, and we work closely together in building and implementing infrastructure

So Dr Strauss is the Dean of the School of Medicine Dr Macrina is Vice President for Research And Dr Retchin is Vice President for Health Sciences at MCV/VCU

Q Now, looking at this e-mail, do you see about halfway down where it starts, "And Mr Williams specifically"?

A Correct

Q Could you read the end of that sentence and then the next sentence that starts with "Mr Williams"? If you could read that out loud

A It says, "Mr Williams specifically wants to fund projects in Virginia to test the compound Mr Williams is a very good friend with the Governor and the Governor would like to sponsor these trials as evidence of Virginia's commitment to research and entrepreneurship "

Q Now, when you send this e-mail to Dr Retchin, do you -- why did you include Dr Retchin on this e-mail?

A Again, he's one of the three senior leaders that I report to Dr Retchin is Vice President for Health Sciences, but he is one of three, yeah.

Q And does Dr Retchin interact, to your knowledge, with government officials in his day-to-day job?

A Yeah In his role as Vice President -- Vice President for Health Sciences, he has numerous interactions with the legislature, every year when the legislature comes to town, to talk about potential funding for the institution So he advocates for the institution

Q And is this e-mail essentially a summary of the conversation that you had with Dr Ladenson?

A It is

Q Now, in that conversation, I think you mentioned study or research Did Dr Ladenson mention the possibility of trials or research into this product Anatabloc?

A He said there was some interest in performing research with anatabine, yeah

Q Now, coming out of the call, what was sort of the next step or the next thing you understood was going to happen in the process?

A My understanding was that there was going to be a scientific session to discuss anatabine and to discuss potential research

MR FAULCONER: We can take that exhibit down

BY MR FAULCONER:

Q Now, did you understand where that meeting was going to be?

A Yes I had been told it was going to be on Gibson Island, which was in Maryland

Q And did you agree to go to that?

A I did

Q How did you get there?

A I flew

Q And was it a private jet or a commercial flight?

A It was a private jet

Q And who flew with you up to Gibson Island?

A So my counterpart at UVA, Dr Shupnik, was on the plane, and Mary-Shea Sutherland was on the plane

Q And, Dr Shupnik, could you explain exactly who she is?

A She is my counterpart at UVA So a similar person directing the research enterprise at UVA

Q And when you met Ms Sutherland, I think -- is that what you said?

A Yeah

Q Who did you understand her to be?

A I didn't actually know who she was for quite some time, but she introduced herself as a member of the staff of the First Lady

Q And could you describe what happened on the plane flight up to Gibson Island, what the conversation was like?

A We flew from Richmond to Charlottesville to pick up Dr Shupnik, and then flew to BWI, Baltimore And during that conversation, it was fairly -- we talked about nutraceuticals and potential medications for the treatment of disease, that kind of thing

Q And Ms Sutherland, you said that she had mentioned that she worked for the First Lady, Maureen McDonnell?

A Right

Q Did she mention Ms McDonnell's name in the course of that conversation?

A I guess only to the -- I don't recall exactly, but only to the extent that I understood that she was the First Lady's assistant

Q And when you got to BWI, how did you get to the actual event itself?

A We were met with an SUV, and we met Mr Williams there I met Mr Williams for the first time, and we drove to Gibson Island

Q And could you describe the conversation in the car on the way to the actual event?

A Sure It was a discussion about anatabine and its potential as a -- an anti-inflammatory drug to treat -- hopefully prevent and treat disease

MR FAULCONER: If we could pull up for identification Exhibit 170

BY MR FAULCONER:

Q And, Dr Clore, do you recognize what this document appears to be?

A Yes It's the agenda of the meeting that I attended

MR FAULCONER: And if we could go to the second page

BY MR FAULCONER:

Q Does that appear to be a list of the participants that attended the meeting?

A It does

MR FAULCONER: Your Honor, we'd offer Exhibit 170 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, if we could go back to the first page, Dr Clore, and down at the bottom where we have -- in the 3 to 4:00 range, do you see there where it has your name and Medical College of Virginia?

A Correct

Q Do you recall speaking at the meeting?

A I did

Q And could you describe for the jury what it was that you said at the meeting?

A Yeah Dr Shupnik and I were asked to present the resources that our respective institutions had that might be suitable to conduct clinical research

Q And do you recall, at the end of this meeting, being given actually a packet of information?

A I was

MR FAULCONER: If we could pull up for identification Exhibit 171

BY MR FAULCONER:

Q Dr Clore, do you recognize this document here?

A I do

Q And was this one of the materials or one of the documents that you received at that meeting?

A It was

MR FAULCONER: Your Honor, we'd offer Exhibit 171 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Dr Clore, this says "Request for Applications " Is that a common lingo in the research community?

A It is Anytime that a potential sponsor is interested in doing research, they issue an RFA, or Request for Applications, and they are letting potential researchers know that there might be funding opportunities for a particular area

Q And could you read what it says under the -- after "Purpose" at the top of this document?

A The whole paragraph?

Q Yeah If you could read it out loud

A Okay "This RFA issued by Rock Creek Pharmaceuticals solicits Clinical Trial Planning Grant Applications from investigators/institutions that propose development of studies that will answer research questions essential for the design of phase II and/or III clinical trials related to the potential anti-inflammatory and immunomodulatory effects of anatabine The resulting clinical trial proposals would then be submitted for consideration of funding by the Virginia Tobacco Settlement Trust, wherein the anticipated allotment will be $2 5 million for single- or multi-site applications The application cycle begins on or before December 1, 2011 "

Q And then lower below where it says, "Budget and Project Period," what's the dollar amount in the -- in that section?

A $25,000 for planning grants

Q And so based off of this and the conversation that was at the meeting, could you describe what your understanding was of what you were being asked to consider doing?

A I was being informed that there -- that planning grants would be available so money for us -- for any interested investigator to prepare an application for a complete grant funding for studies using anatabine

Q And just to break that down a little bit, when you say initial planning grants, which dollar amount are we talking about for the initial planning grants?

A The $25,000

Q Okay And then when you say ultimately some sort of application, where would that application go to?

A That application would go to the sponsor, which in this case would be Rock Creek Pharmaceuticals

Q Right And then the funding itself would come from -- does it say the Virginia Tobacco Settlement Trust?

A That's what we were informed of, yeah

Q Now --

MR FAULCONER: We can go ahead and take that down

BY MR FAULCONER:

Q Now, when you got back from this event, did you again report to others at VCU what had happened at the event?

A I did

MR FAULCONER: If we could show Exhibit 173 for identification

BY MR FAULCONER:

Q And is this an e-mail to the same three people that we referenced earlier: Dr Strauss, Retchin and Macrina?

A It is

Q And is it dated July 23rd, 2011?

A It is

Q Did you write it?

A I did

MR FAULCONER: Your Honor, we'd offer Exhibit 173 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, Dr Clore, is this e-mail the same date as the symposium at Gibson Island, July 23rd?

A It is

Q And does it appear to be later that night at 8:44 p m ?

A That's after I got home

Q So you got right to it?

A I did

Q Now, if you could read for us the sentence that starts with "the Governor" on the second line out loud?

A "The Governor would like to use tobacco funds to support Virginia research demonstrating the State's commitment to support research to reduce healthcare costs in the Commonwealth "

Q And was that consistent with what had happened at the meeting?

A That's what I was -- that's what I was told, yes

Q And do you recall if you actually told other researchers at VCU, in addition to Drs Strauss, Macrina, and Retchin, about this potential RFA?

A Yeah Once I had communicated to my senior leadership and essentially gotten a go-ahead to pursue this, I contacted other investigators at VCU that were engaged in research that dealt with anti-inflammatory medications to treat diseases that are associated with inflammation

MR FAULCONER: If we could pull up for identification Exhibit 174

BY MR FAULCONER:

Q And, Dr Clore, is this an e-mail from you two days later on July 25th, 2011?

A It is

Q And is this an e-mail to those other researchers you were just referencing?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 174 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q And just one name I wanted to ask about on this list Who is George Vetrovec?

A George Vetrovec, at this time, was the Chair of Cardiology at the MCV And so he's, for many years, been interested in inflammation and the role of inflammation in cardiovascular disease

Q And when you say "RFA" on the first line of this e-mail, are you referring to that document that we saw earlier, the Request for Applications?

A I am

Q At this point in time, Dr Clore, were you legitimately interested in doing these studies?

A I was I -- and I think I stated in one of those e-mails that I've had a long -- I had had a long-standing interest in compounds that had anti-inflammatory effects In my area of diabetes, there's a lot of interest in diabetes and agents that decrease inflammation might actually have a salutary effect

Q Now, after the Gibson Island event, do you recall a meeting at the Governor's Mansion in Ms McDonnell's office on or about August 1st of 2011?

A I do

Q Now, we'll get to that meeting in just a second But at some point between those two events, so between Gibson Island and the meeting at the Mansion, did you actually receive a phone call from Mr Williams?

A I did

Q And without getting into the specifics of it, did Mr McDonnell's name come up in that phone call?

A It did

Q And did Mr Williams ask you for a referral for another doctor in reference to Mr McDonnell?

A He did

Q Now, going to the meeting on August 1st, 2011 --

MR FAULCONER: If we could pull up Exhibit 186, which has already been admitted Zoom in on the highlighted lines there

BY MR FAULCONER:

Q Now, Dr Clore, do you see there at 10:34 to 11:31 where it has what looks like your name there?

A I do

Q Is that misspelled, I guess? It has a --

A Yes, it is

Q Does that happen a lot?

A All the time

Q There where you say to see Mary-Shea, do you recall being greeted there by Mary-Shea Sutherland?

A She opened the door for me, yeah

Q Now, looking up earlier, do you see there where it says 9:45 to 12:14? What name is listed there?

A J Williams and M Huffstetler

Q And M Huffstetler is 9:55 --

A Oh, I'm sorry

Q -- to 11:05, right?

A Yes I'm sorry

Q But at least according to this, it looks like you stayed longer than whatever Ms Huffstetler was there to do, right?

A Yes

MR FAULCONER: Now, if we could pull up Exhibit 187, which has already been admitted

BY MR FAULCONER:

Q And, Dr Clore, this is a document that you haven't seen before, I don't think

MR FAULCONER: If we could turn to the second page -- or sorry Back on the first page And if we could zoom in where it says UVA/MCV and then the writing underneath it

MR BROWNLEE: I'm going to object These are not anything that he's seen or his notes So I don't know why we're showing him somebody else's notes

MR FAULCONER: Your Honor, I'm simply asking him, there was reference during the earlier testimony to a name that was written and a profession and the location I'm simply going to ask him if that's where he works, in his profession, to clarify that his name may have come up

THE COURT: You can ask him that without the document

MR FAULCONER: We can go ahead and take that down

BY MR FAULCONER:

Q Now, Dr Clore, are you a -- just to make sure we have it clear, are you an endocrinologist?

A I am

Q And do you work at MCV?

A I do

Q And does your name often get misspelled?

A It does

Q Now, when you got to this meeting on August 1st of 2011, where did you go?

A So Ms Sutherland greeted me at the front door We went into the Mansion, immediately turned left and down the stairs to a very small office in the bottom of the -- in the basement or the -- I guess the basement

Q And who were you there to meet?

A The First Lady

Q So was this a meeting with Ms Sutherland or with the First Lady?

A It was with the First Lady

Q And earlier we saw Mr Williams' name on that log around the same time frame Do you specifically recall whether Mr Williams was there?

A I really do not remember

Q Is it possible that he was?

A It is

Q Now, do you remember anything about that day being a particularly hot day or anything like that?

A That's the only thing I really remember about that day is it was very hot and I was given a bottle of water and was very grateful

Q Now, Dr Clore, during that meeting, do you recall Ms McDonnell talking about some of her interests as it relates to the sort of medical or nutraceutical business?

A The conversation was fairly broad, and the conversation really seemed to be about health and wellness in the Commonwealth of Virginia I don't remember any specifics about particular compounds or anything It was really just about that

My sense of the meeting was that she was exploring the possibility that MCV might be interested in participating in projects for health and wellness in the Commonwealth of Virginia So that's -- that's -- that's what I felt the meeting was about

Q And did you talk a little bit about what you do at MCV during that conversation?

A Exactly I talked about my role as a diabetologist and my interest in health and wellness in Virginia for that very reason

Q And whether Mr Williams was there or not or whether you specifically recall it, can you tell us whether you've ever been around Mr Williams and not heard him talking about Anatabloc?

A I can say never

Q Now, as of this date, Dr Clore, did you know that Ms McDonnell had been vacationing at Mr Williams' house in Smith Mountain Lake earlier that week?

A No knowledge of that

Q Now, as of that time, August 1st of 2011, had you ever met Mr McDonnell?

A I had not

Q And before the meeting we just discussed, had you ever met Ms McDonnell?

A I had not

Q Had you ever been to the Governor's Mansion?

A I had not

Q Now, later in 2011, do you recall getting an invitation for an event at the Mansion related to Star Scientific?

A I do

MR FAULCONER: If we could show what's been marked for identification as Exhibit 228

BY MR FAULCONER:

Q Dr Clore, do you recognize this document?

A I do

Q What is it?

A It's an invitation to a luncheon on Tuesday, August 30th, 2011

MR FAULCONER: Your Honor, we'd offer Exhibit 228 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q And, Dr Clore, do you remember receiving this invitation?

A I do

Q Do you recall having a seal, like it does here at the top, for the State of Virginia?

A It looks like the invitation I received, yes

Q And could you read the first three lines of this invitation?

A Sure "Governor and Ms Robert F McDonnell request the pleasure of your company at a luncheon "

Q And what's the name in a lot smaller font there down at the bottom with an e-mail address?

A It says, "Kindly RSVP to Mary-Shea Sutherland at" -- a phone number

Q Now, based on having received this with the invitation, the Governor's name on it, everything like that, did it seem to you like this was an official government event?

A It did

Q When you went to this as the representative for VCU, did you take leave or vacation time to go?

A No

Q So let's talk a little bit about the event itself When you arrived, what was the first thing that happened?

A We were all escorted in, and the First Lady actually showed us around the -- the atrium, I guess, if you will, the main part of the room

There were a number of paintings on the wall, and she described some of those paintings So I was able to see the first -- the Governor's Mansion for the first time, and then spent time talking to some of the guests

Q And about how many people were there?

A I would say 20 I'm not sure

Q Was Mr Williams there?

A He was

Q And after Ms McDonnell showed you around and you sort of mingled for a little while, where did you go next?

A We went into the dining room -- I assume it's the dining room -- and sat down for the lunch

Q And who was the first person who spoke once you sat down?

A The First Lady

Q And what exactly do you recall her saying?

A I recall her welcoming us all and asking all of us to go around the table and introduce ourselves to each other

Q And do you remember there being representatives from -- or at least a representative from UVA there?

A There was a representative from UVA

Q And at some point do you recall Mr McDonnell arriving?

A He did After -- my recollection, it's a little lazy, but my recollection was after the introductions and all of that, the Governor came in

Q And during the event, do you recall Mr Williams speaking?

A I do

Q And do you recall Mr McDonnell being present when Mr Williams spoke?

A Yes

Q During the presentation, did it seem like Mr McDonnell was paying attention?

A Yes

Q And based on what Mr Williams and everyone else was saying, what did it seem to you like the relationship between this event and the product Anatabloc was?

MR BURCK: Objection

THE COURT: Ask the question again.

BY MR FAULCONER:

Q Based on what Mr Williams and everyone was saying, what did it seem to you like the relationship between this event and the product Anatabloc was?

THE COURT: Objection is sustained

BY MR FAULCONER:

Q Was there any -- did anybody say anything during the event about the rollout of the product into the stores?

A Yes Mr Williams described the fact that the compound Anatabloc was about to be released in drug stores in the Greater Richmond area

Q And have you previously described this as the sort of thing that was designed to make a big splash?

A That's what it seemed to me

Q And after the presenters spoke, do you recall other people other than Mr Williams speaking? Sorry That was a terrible question, Dr Clore

After Mr Williams spoke, do you remember other people speaking at the event?

A After Mr Williams spoke, I believe the Governor did have some remarks

Q And do you recall him engaging with the people who were there?

A I do

Q And were the comments that he made, were they topical? Were they on point?

A They were topical

Q Could you describe what you recall about them?

A I actually recall very little about those comments, honestly I just remember that the comments had to do with Anatabloc and -- and health and wellness in the Commonwealth I don't remember them being terribly specific, and so I really can't say

Q And do you recall, during the course of the conversation, the various people who spoke, the issue of the product having a relationship to tobacco coming out at all?

A Yes That was the conversation that Mr Williams really gave the whole history Prior to the Governor speaking, he basically described the history of anatabine and the discovery of anatabine and its anti-inflammatory effects

Q And at the end of the event, can you tell us whether you were given anything?

A I was

Q What were you given?

A I was given a check for $25,000

MR FAULCONER: If we could show what's been marked for identification as Exhibit 233

BY MR FAULCONER:

Q And, Dr Clore, do you recognize this?

A I do

Q What is it?

A It's a $25,000 check made out to VCU Medical Center

MR FAULCONER: Your Honor, we'd offer Exhibit 233 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q And, Dr Clore, does this look like the check that you received on that day?

A It does

Q Now, Dr Clore, at any time during this event, did anyone tell you who was paying for the event?

A No

Q At any time during this event, did anyone tell you this wasn't an official government event?

A No

Q Now, after the event, did you mention what had happened to other people at VCU?

A I'm sorry Say that again

Q After the event, when you went back to work in the weeks or months that followed, did you mention what had happened to other people at VCU?

A Basically what I mentioned was that the RFA was available, the planning grants were being awarded, and people -- those people that I had talked to about doing -- possibly doing the research should begin to work on creating grants

Q And did you actually put together your own grant proposal?

A I did

Q Did it ever actually go through to the Tobacco Commission?

A It did not

Q But if we fast-forward, as of February of 2012, a couple months later, was it still something you were considering?

A It was

Q Were you actually considering it through much of

2012?

A At least for the first half of 2012

MR FAULCONER: If we could show what's been marked for identification as Exhibit 402

BY MR FAULCONER:

Q And, Dr Clore, is this a letter from you to Rock Creek Pharmaceuticals?

A Yes

Q And is it dated August 9th, 2012?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 402 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q And, Dr Clore, could you describe for us, in general terms, what this letter is?

A This is a letter to Ryan Lanier, who is Chief Clinical Research Scientist at Rock Creek

I had received that $25,000 check Had not spent any of it Had deposited it at the university, but had not spent it because a lot of the information that I needed to be able to really put together a grant with information that was scientific I had not been able to get So this is a no-cost extension I'm basically asking to continue the process

Q But as of August 9th of 2012, was doing a study still a possibility in your mind?

A Still a possibility

Q Now, Dr Clore, since the event in late August of 2011 --

MR FAULCONER: We can take that down

BY MR FAULCONER:

Q -- have you ever been back to the Governor's Mansion?

A I have not

Q Did you ever meet Mr McDonnell again?

A I did not

Q And at the time of the event, were you aware of any payments from Mr Williams to the McDonnells?

A I was not

Q And after the event in 2012, were you aware of any subsequent payments from Mr Williams to Mr McDonnell?

A No

MR FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

MR FAULCONER: No further questions, Your Honor

THE COURT: All right Mr Brownlee, any questions?

MR BROWNLEE: Yes, Your Honor Thank you

CROSS-EXAMINATION

BY MR BROWNLEE:

Q Good afternoon, Dr Clore

A Good afternoon

Q My name is John Brownlee, and I'm an attorney for Bob McDonnell I just have a few questions for you this afternoon

A Okay

Q Mr Faulconer showed you Government's Exhibit -- let me start back

This whole thing with regard to Anatabloc, is it true, started with a phone call from Dr Ladenson to you; is that correct?

A That is correct

Q Okay And I think you've described that as a cold call?

A It was

Q Okay And Dr Ladenson, I believe you've testified, was the Chair of Endocrinology at Johns Hopkins University in Maryland; is that correct?

A That's right

Q Fair to say, that's a -- that is a very prestigious position to have for a physician?

A Yes

Q Could you speak up just a little bit? I'm having a little --

A Sure No Yes, that's right

Q All right Thank you

And when you spoke -- when Dr Ladenson called you, he invited you to this -- he told you about Anatabloc Is that true?

A Right

Q Okay And he told you about some of the things that he wanted to try to potentially accomplish with this product; is that right?

A Yes Right

Q And he told you that there was an event at Gibson Island?

A He did

Q Okay And he invited you to come to that event?

A He did

Q Okay And the event was to discuss some of the merits of potential testing of Anatabloc; is that correct?

A Correct

Q Okay And based upon that conversation, you decided to attend the Gibson Island event; is that correct?

A I did

Q Okay Now, he also said -- well, you then prepared an e-mail, and that's Government's Exhibit 167

MR BROWNLEE: If we could see that Blow that up a little bit

BY MR BROWNLEE:

Q All right If you look in the middle of that e-mail, sir, we'll highlight where it starts, "Mr Williams is a very good friend with the Governor "

A Right

Q I'll read it to you "Mr Williams is a very good friend with the Governor and the Governor would like to sponsor these trials as evidence of Virginia's commitment to research and entrepreneurship "

A Yes

Q Now, sir, when you wrote this e-mail on July 1st of 2011, you wrote that because that's what Dr Ladenson told you, right?

A Correct

Q Okay You had never talked with Bob McDonnell about that, had you?

A No

MR BROWNLEE: Okay You can take that down Thank you

BY MR BROWNLEE:

Q Now, at the time that you got this call from Dr Ladenson, were you aware that Dr Ladenson was actually being paid by Star Scientific?

A I did not know that

Q You did not know that Okay And part of his pitch to you was that there was potential funding involved in this; is that correct?

A Correct

Q Okay And is that, for someone in your position, important?

A Yes

Q Okay And so based upon that call, you decided that you would, in fact, attend Gibson Island?

A Yes

Q Now, did you seek permission from your superiors to attend?

A And I think that's what that e-mail addresses is it was a little irregular, not the unusual process that I'm familiar with, and so I wanted to make sure it was okay to go

Q Okay And folks said that it was okay to go?

A They did

Q Okay And I believe you testified that they -- that you went up there on Mr Williams' plane?

A I did

Q And seated in the plane with you was Mary-Shea Sutherland?

A Correct

Q Okay And Ms Sutherland introduced herself as a staff member, Chief of Staff for the First Lady; is that

correct?

A She did

Q Now, at that time, were you aware that Ms Sutherland had been negotiating a job with Mr Williams?

A I was not

Q Okay She didn't tell you that?

A No

Q Okay Now, at the event itself, I believe you talked about that there was a discussion of these $25,000 planning grants; is that correct?

A Correct

Q Okay And there was also a discussion that Mr Williams, at some point, would put in two and a half to four million dollars; is that correct?

A That's what the brochure that we received stated

Q Okay Now, then when you got back that evening --

MR BROWNLEE: If we could look at Government's Exhibit 173 If we could blow that up

BY MR BROWNLEE:

Q All right When you got back that evening, this is the e-mail that you wrote, and you sent it to some of your colleagues; is that correct?

A Correct

Q Okay Let's take a look at this First of all, you started out, "It was an interesting meeting "

Okay What did you mean by that?

A Well, it -- actually, what I meant by that. it can be interpreted lots of ways, but actually, the science was actually very interesting science So I found the preliminary research that had been done, mostly animal type research, but I found the research actually compelling; that there really was a possibility that the compound had potential anti-inflammatory effects So that's really what I meant by "interesting "

Q Okay And I think Mr Faulconer had showed you, and we won't go through it, but a list of all the people who attended And these were really experienced physicians, is that fair to say, and scientists?

A Yes -- or correct

Q Okay And so then you go on, "Jonnie Williams has a nutraceutical, anatabine, which appears to have potent anti-inflammatory effects "

A Right

Q And you wrote that because at Gibson Island, that's what Mr Williams and the folks who were there told you?

A That's what the scientists told me, yes

Q Okay And then you say, "The Governor would like to use tobacco funds to support Virginia research demonstrating the State's commitment to support research to reduce healthcare costs in the Commonwealth "

Now, again, you wrote this to your colleagues because this is what folks at Gibson Island told you?

A Correct

Q Now, at this point, had you ever talked to Bob McDonnell about this?

A No

Q Okay You never had a one-on-one meeting with him and he told you he wanted to do all this?

A No

Q Okay This is what the folks at Gibson Island said?

A Yes

Q Okay Then it says, "$25,000 planning grants are proposed towards submission of demonstration grants, which have a very high likelihood of funding " And then, "Jonnie would supplement this to the tune of two and a half to four million dollars "

So just two things here These $25,000 planning grants would be that Star gives them to the university; is that correct?

A Correct

Q Okay And then the second would be -- it says "Jonnie " After this weekend, were you kind of on a first-name basis with Mr Williams? He likes folks to call him Jonnie?

A Yes

Q Okay And he was going to give two and a half to four million, according to what he said; is that right?

A No, I didn't say that Really -- and maybe that's a slight misstatement But the source of the money really came from what was in the brochure that was handed to us, and that specifically talked about tobacco settlement money

Q Okay So you wrote, "Jonnie would supplement," but what you really meant was that this was through some tobacco?

A Correct

Q Okay And then you said, "I'm happy to discuss the possibilities " And then it says, "I proposed a study to pursue the effect of anatabine on progression of diabetes based on similar studies," and then, "which was enthusiastically received "

So is it fair to say at Gibson Island, based on everything you heard at that point, you were proposing to go forward with the study?

A I thought it had potential, yes

Q Okay Let me just ask, were you -- were you empowered to make that decision at that time as someone at VCU?

A Well, this would not be a decision -- I think the answer is yes

Q Okay

A As an individual investigator, if I see a funding opportunity for something that really has scientific merit, I'm empowered to pursue it, sure

Q Okay And you had made that judgment at that time to go ahead and do that?

A My observation coming out of that meeting was that there was a lot of potential

Q Okay Great And just to -- at Gibson Island, Bob McDonnell wasn't there, correct?

A Correct

Q Now, let me talk --

MR BROWNLEE: You can take that down Thank you

BY MR BROWNLEE:

Q Mr Faulconer asked you about a phone call you received from Mr Williams

A Right

Q The first time you had ever -- well, was this after Gibson Island?

A It was

Q So he -- you had met him You knew him at that point?

A Correct

Q And he called you -- tell the ladies and gentlemen of the jury what he asked you about

A I'm not sure -- I will just say, and it was already addressed, I was asked about a medical condition and whether there was somebody at MCV that might be able to help with that particular -- address that particular condition

Q Okay. And I just need you to answer the question I know you might not want to, but can you tell us what exactly Mr Williams was asking a referral for?

A I'm not sure that -- if I should do that This is a personal medical condition, and I'm not sure that's appropriate

Q Okay Let me see if I can do it this way This was a personal medical condition of Bob McDonnell?

A Correct

Q Okay And Mr Williams was calling you to see if you could give a referral for a medical condition that Mr Williams thought he might have?

A Correct

Q Okay And did you give him anyone?

A I did

Q Any follow-up on that?

A I never followed up And I don't know what became of it

Q Okay Did Bob McDonnell ever talk to you about it?

A No

Q Okay Okay And then I want to move to August 1st You discussed this short meeting where you received a call and you came over and you met briefly with Ms McDonnell; is that correct?

A Correct

MR BROWNLEE: Could we bring up Government's Exhibit 186, please

BY MR BROWNLEE:

Q And these are the logs from the Governor's Mansion for that day, sir Now, do you remember who called you and asked you to come over?

A I do not I have tried very hard to remember, but I do not remember who called

Q That's fine That's fine But when you got to the gate, is it fair to say you asked to see Ms Sutherland?

A I was actually greeted -- well, no I got to the gate, and my name was already there at the gate They recognized that I was supposed to come in, yeah

Q Okay And it was Ms Sutherland who met you?

A Correct

Q Okay And you went and you had a conversation Governor McDonnell was not there; is that correct?

A Correct

Q And you never spoke to him?

A I did not

Q All right Let's --

MR BROWNLEE: You can take that down Thank you

BY MR BROWNLEE:

Q Let's move to August 30th This was the event at the -- at the Governor's Mansion, the larger lunch And you received an invitation When you received the invitation, did you contact Ms Sutherland and tell her that you would be coming?

A I suppose I did I actually don't remember

Q Okay Now, at this time, as we previously discussed, you had already kind of made a decision to pursue this; is that correct?

A The research Yes

Q Okay Good And at this lunch, Mr Williams spoke about his company and Anatabloc; is that correct?

A Correct

Q Okay And do you recall, he had like a tobacco leaf or something? Do you remember that?

A That may be true I don't actually remember that

Q Okay And then I think you testified that Mr McDonnell came in at some point --

A He did

Q -- during the event?

A He did

Q Okay And I think you have -- well, let me just ask, you've met with government prosecutors and the FBI before coming in here today; is that correct?

A I have

Q Okay And I think you told them -- you tell me if it's right -- that Governor McDonnell spoke, as you described, on a high level?

A I don't remember specifics Yes Correct That's a fair statement

Q Okay And I think you told the FBI that you were not sure that the Governor was sold on the benefits of the product; is that correct?

A I actually don't remember exactly what I told them But the gist of the conversation was the Governor spoke at a high level about health and wellness in Virginia and the compound, I suppose

Q Okay Did he ever have any specific conversations with you that day, just one-on-one?

A No

Q Okay And then towards the end of the event, I understand that Mr Williams came up to you and actually handed you a check; is that correct?

A He did

Q And you were surprised by that?

A It's never happened before in my life

Q And just so we understand, you were surprised because you had never received a check, a funding grant like that before, correct?

A Generally, the way it works is you apply for funding The funding goes through the university or institution, and that funding -- that money then gets deposited to an account that you can then draw on

Q Right And I understand you immediately went back and gave the check to somebody else?

A As fast as possible

Q As fast as possible Okay All right Now, you were asked about your appearance at this, as to whether it was a -- well, let me ask you this When you went to Gibson Island, did you take leave to go?

A I did not I considered it university business

Q Okay And Mr Faulconer asked you about who paid for this You don't know who paid for the event?

A I do not

Q Now, after the event, sir, I understand that then there was some back and forth between you and Star about trying to kind of get this -- the ball going Is that fair?

A Correct

Q Okay Because you were sold on it, based upon your conversations with Dr Ladenson and these other doctors at Gibson Island?

A I was interested in doing the research, yes

Q Okay And -- but is it fair to say that at some point the ball kind of went into Star's court and it just never came back?

A Yeah I've sent a number of e-mails to Rock Creek Pharmaceuticals, and I never really got any response So it just sort of died, yeah

Q Okay Now, Mr Faulconer showed you a letter I think it's Government's Exhibit 402 And this is a letter you wrote in August of 2012, correct?

A Correct

Q And is it fair to say that when you wrote this letter, had you received anything from Star that would spark this or were you just sending them a letter hoping that this might kind of --

A No This is almost perfunctory because the planning grant was supposed to be in a year, and we were coming up on a year since the money had first been awarded And institutional policy would be if you've not spent the money or if you have not spent all the money, you have to request from the sponsor a no-cost extension

Q Okay Did you hear anything back from them on this?

A I don't recall hearing anything

Q Okay And there was never an application to the Tobacco Commission?

A Not that I'm aware of

Q Okay And no money from them ever came to your institution?

A It did not

Q Okay And you were never able to do this research that you had considered, at least through this process?

A Correct

Q Okay Now, after the event at the Mansion, did you ever talk to Bob McDonnell?

A I did not

Q Okay In fact, is it fair to say you've never had a one-on-one meeting with him ever?

A Ever

Q Okay Now, I'm going to ask you a question Do you recall telling the FBI, when you were initially interviewed, that you would not normally touch this type of product with a ten-foot pole, but because of Johns Hopkins' involvement, you thought it was legitimate research?

A I may have said something to that extent The gist of that is that there are lots of nutraceuticals There are lots of compounds that have potential benefit And as a researcher and as a clinician myself, I tend to have a fairly high level of skepticism about novel compounds unless they are actually tested And so yes

Q Okay

MR BROWNLEE: Thank you, Your Honor

Thank you very much, Dr Clore

THE COURT: All right, Mr Burck

MR BURCK: Thank you, Your Honor Very briefly

CROSS-EXAMINATION

BY MR BURCK:

Q Good afternoon, Dr Clore

A Good afternoon

Q My name is Bill Burck I represent Maureen McDonnell Just a few questions

You testified about the flight that you took on Jonnie Williams' plane to Gibson Island in July of 2011?

A Yes

Q And Mary-Shea Sutherland was present on that flight?

A She was

Q And you said that the only time that Maureen McDonnell's name came up was in the context of Ms Sutherland saying that she was the Chief of Staff to Maureen McDonnell?

A She introduced herself I had no idea who she was, and so I inquired and she told me

Q Okay And you just -- you testified there was discussion about nutraceuticals on that plane ride?

A Yeah There was some discussion about the fact that the First Lady was interested in those kinds of things, yes

Q Okay And this is what Mary-Shea Sutherland told you?

A Correct

Q Now, the --

MR BURCK: Could you please pull up Government Exhibit 186

BY MR BURCK:

Q This is a document you've testified a bit about today This is showing the date that you came to the Mansion to meet with Ms McDonnell and Mary-Shea Sutherland?

A Yes

Q August 1st, 2011?

A Yes

Q And you testified at that meeting, Mary-Shea Sutherland and Maureen McDonnell were present?

A Right

Q You know that for sure?

A I know that

Q Okay You recall them being there?

A Yes

Q But you don't remember Jonnie Williams being there?

A I do not remember him, whether he was there or not

Q Okay And I think as the prosecutor mentioned, he's somebody you would probably remember being there, right?

A He's pretty memorable

Q Okay And you knew him before this?

A I did. At Gibson Island

Q Okay And I think you testified that you don't recall who invited you over to the Mansion that morning?

A I do not

Q Did you tell the investigators in this case that Mary-Shea Sutherland had initiated the idea?

A I'm not sure I told who did it, because I honestly don't remember who did it

Q Okay And do you recall saying that Mary-Shea Sutherland may have invited you to the --

A She may have I mean --

Q Okay And the -- you testified that Ms McDonnell did not pitch you on anatabine or Anatabloc, is that right, at this meeting?

A That is a true statement

Q And as far as you recall, she never even mentioned the words anatabine or Anatabloc?

A Not that I recall

Q It was about wellness, obesity, general health issues?

A That is my recollection of the meeting

MR BURCK: That's it, Your Honor Thank you

THE COURT: All right Redirect?

MR FAULCONER: Yes, Your Honor, briefly

REDIRECT EXAMINATION

BY MR FAULCONER:

Q Dr Clore, I'd like to ask you real quick Mr Brownlee asked you about whether you met with the government before your testimony here today Did you actually meet with the defense attorneys too?

A I have Yes

Q And were you told by the government, when you met with the government, that you were free to do that if you wanted to?

A I was

Q Now, you were also asked by Mr Brownlee about the e-mails that happened before you went to the launch event and the fact that you hadn't spoken to Mr McDonnell before that Do you remember that?

A Say that again I'm sorry

Q You were asked by Mr Brownlee about some of the e-mails you wrote --

A Oh

Q -- before you went to the launch and the references to the Governor and the fact that you hadn't actually spoken to him before Do you remember that?

A Correct

Q Was there anything that happened at the launch, at the event at the Mansion, that was inconsistent with what you had been told before?

A No

Q Now, Mr Brownlee also asked you about whether or not you were interested in doing the research already when you went to the event Do you recall that?

A Yes

Q Had VCU actually made the final decision to apply to the Tobacco Fund at the time that you went to the event?

A That wasn't a decision that VCU could make All we could do was apply to Rock Creek Pharmaceuticals The source of the money was not something that we knew

Q And as of that time, had you even done the planning process that would go --

A No

Q -- before applying to the Tobacco Commission?

A No

MR FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

MR FAULCONER: No further questions, Your

Honor

THE COURT: All right Thank you, Doctor You may stand down

THE WITNESS: Thank you

(Witness stood aside)

THE COURT: Call your next witness, please

MR. HARBACH: Your Honor, the next witness is going to be pretty lengthy I'm happy to call him and get started, or whatever your pleasure is, sir.

THE COURT: All right We'll go ahead and stop a little early for lunch If you could come back at 1:35, we'll get started with the afternoon session

(The jury left the courtroom)

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(Luncheon recess taken from 12:32 p.m. to 1:35 p.m.)

THE COURT: All right, bring in the jury

(The jury entered the courtroom.)

All right, call your next witness, please

MR. HARBACH: Thank you, Your Honor The government calls Jasen Eige

JASEN EIGE,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR HARBACH:

Q Good afternoon, Mr Eige

A Good afternoon.

Q Could you please state your name and then spell your first and last name for the court reporter, please?

A Jacob Jasen Eige J-A-S-E-N is the one that usually has the trouble spelling, J-A-C-O-B, Eige is E-I-G-E

Q What are you currently doing for a living?

A I've started my own government relations consulting practice

Q Tell us about your educational background.

A I have a Bachelor's in Arts in Political Science and History I have a JD or a law degree, and also a Masters in Public Policy

Q During your career, have you worked for the defendant, Mr Robert McDonnell?

A Yes

Q When did you start working for him?

A I started working for him at the Attorney General's Office

Q Approximately what year?

A 2006 when he took office

Q What did you do for him at the AG's office?

A When I first started working for him, I was in the Financial, Law, and Government Services Section, and then subsequently moved up to his administrative side of his office and oversaw kind of the -- I was Chief of Staff and Counsel, which oversaw kind of the administrative side of the office such as HR, Finance, the technology side, also oversaw a division of attorneys, the one I had left

Q Did there come a time when you left your work at the AG's office to work on Mr. McDonnell's gubernatorial campaign?

A Yes Approximately August-September of 2009 I left the Attorney General's Office to join the campaign full time

Q What about after the election, after Mr McDonnell won the election for Governor, did you serve in his

Administration in any capacity?

A I did I was on his transition team, which is kind of the entity that forms after the campaign is over And a couple of months subsequent to the campaign and before the Governor takes office, you have basically what's called a transition team, transition office I was his counsel on that transition team.

Q What about after he was inaugurated, did you serve in his Administration?

A I did.

Q In what capacity?

A I was counsel and senior advisor, and then in 2011 I took over also duties supervising the Policy Office, so I was counselor and senior policy advisor at that time

Q Would you tell us briefly what your duties were as senior policy advisor?

A It was basically to oversee the Policy Office and manage the Governor's legislative agenda, so any legislation that he had during his term in office, we would help develop that legislation and then lobby for its passage during session We also reviewed regulations and also dealt with other policy matters in the Administration in between the legislative sessions

Q During your time working for Mr McDonnell and in your most recent role, and incidentally, did you continue to work in the capacity you just described until the end of his term as Governor?

A I did To the last day

Q So focusing on that most recent role, how would you characterize your professional relationship with the then-Governor?

A It was good. I have had a good working relationship with him, even when I was an intern in law school with him. I would probably interact with him if he was in the office on a weekly basis, probably several times a week, probably more daily when he was actually in the office and wasn't traveling for his duties as Governor

Q Do you recall the circumstances in which you first learned of any connection at all between the McDonnells and a gentleman named Jonnie Williams?

A Yes

Q What was the circumstance that brought that to your attention?

A There was an issue of an inaugural dress for the First Lady when I was on the transition team. Phil Cox, the director for the transition, asked me to talk to them about a potential dress being donated First, I believe I thought it was from the designer himself, and then it turned out, I at least found out that it was actually from Jonnie Williams, who was wanting to purchase an inaugural dress for the First Lady

Q Let's take a look for identification, please, at Government Exhibit 52 Can you see that all right, sir?

A Yes

Q Is this an e-mail exchange involving you concerning this inaugural dress issue?

A Yes, it is

MR. HARBACH: The government offers Government's 52

THE COURT: It will be admitted.

BY MR. HARBACH:

Q What's the date of the e-mail at the bottom, Mr Eige?

A Friday, December 18th, 2009

Q Who is the person you are sending this to, Crystal Cameron?

A Crystal Cameron was one of the staff members who was on the campaign and also in the transition Her primary duties on the transition was being kind of the staffer to the First Lady

Q Okay Then in the e-mail you say, "To close the loop on this issue, Phil asked that I call Jonnie Williams and respectfully decline the offer for the dress " Is that Phil Cox?

A Yes

Q The last sentence says: "He did want me to convey to Maureen that after the Governor-elect's term is up, he wants to still fly her up to get a dress Thanks "

The question for you is, who is the "he" in that sentence?

A Jonnie Williams

Q So it was he who wanted you to convey to Maureen? Is that right?

A Correct

Q It was he who wanted to still fly up to get a dress?

A Correct

Q Was that based on a conversation you had with Mr Williams?

A Based on the phone conversation I had with him, yes

Q Let's take a look now at what's in evidence as Government's 53 This e-mail exchange is the same day as the one we were just looking at, Government's 52, December 18th of 2009 You are e-mailing Phil Cox and Mike Reynold, and it is self-explanatory You in fact had spoken with Mr Williams?

A Yes

Q Does what you write here accurately convey the conversation you had with Mr Williams to your recollection?

A To my recollection, yes

Q Speaking for yourself, did you have an opinion about whether it was wise or advisable for Mr Williams to purchase Ms McDonnell a dress for the inauguration?

A Yes

Q What was your view at the time?

A Well, when Phil approached me about this, this dress matter, he explained, you know, he had some concerns about just the optics of having this type of dress, this expensive designer dress at the inauguration. I agreed with that assessment This was 2009 We were still in a recession. Part of the campaign pledge was to help bring jobs to Virginia and help the economy So we didn't think it was appropriate to have an expensive designer dress being used for the Governor's inauguration

Q How would anybody in the public know that it was an expensive designer dress?

A There was a couple of ways One, it could easily just be somebody asking her at the inauguration, whether it be the press corps or somebody else, and that becoming just public knowledge at that point "Where did you get that dress?" and the explanation would come where we would get the call, the transition office or the Governor's Office by that point, we would get a call of where that dress came from. The other concern we had was whether it needed to be expressed in the public financial disclosure form, which is called the Statement of Economic Interests that the Governor as an elected official had to file upon taking office and then subsequently every year along with other state officials have to file this form. So we had a concern that this dress was really being given for the Governor's inauguration, therefore, one analysis of that would mean that that dress was really a gift to the Governor And gifts on the Statement of Economic Interests are displayed, so you have to complete that form and show gifts given to the person, the declarant, the person filing that form.

So our concern was that we would have to report that in the Statement of Economic Interests even if nobody asked while she was at the inauguration

Q With respect to that second piece relating to the SOEI, did you share that view that you had with the Governor?

A Yes, we had that conversation

Q Let's take a look at the next exhibit, which is for identification only at the moment, Government's 54, please. Do you recognize this e-mail exchange, Mr Eige?

A Yes

Q Is this an e-mail exchange you had with Ms McDonnell on the subject of the dress, among other things?

A It is

MR. HARBACH: The government offers Government's 54

THE COURT: It will be admitted

BY MR HARBACH:

Q Can we start at the bottom, please, with the very first e-mail chronologically at the bottom of Page 1 Is this e-mail from Ms McDonnell to you?

A Yes

Q What's the date of this one, sir?

A Monday, December 21st, 2009

Q Now, incidentally, the e-mail address to which she sent this e-mail, was that a personal e-mail address for you at the time?

A It was

Q And was it unusual or routine for Ms. McDonnell to e-mail you there or somewhere in between?

A Probably somewhere in between. We had a campaign e-mail address, and I had that e-mail address So it wasn't necessarily unusual to get it sent, you know, to one of my e-mail addresses at the time

Q Okay Let's talk about the text of the e-mail now It says: "I need to talk to you about inaugural clothing budget I need answers and Bob is screaming about the thousands I'm charging up in credit card debt We are broke, have an unconscionable amount in credit card debt already, and this inaugural is killing us I need answers and I need help and I need to get this done How do I reach you?" Did I read that correctly, sir?

A Yes

Q First question is, before you received this e-mail from Ms McDonnell, did you have any idea that the McDonnells were having financial problems?

A No

Q Second question: She concludes the e-mail by saying, "I need to get this done " What did you understand that to mean?

A I understood that to mean finding some solution to having the proper attire for the inauguration. After we declined the dress from Jonnie Williams, we looked into other opportunities or options for the First Lady to have appropriate attire for the inauguration that wasn't a designer dress from Jonnie Williams

Q Okay Let's just roll through the remainder of these e-mails quickly so the jury can see them. Is this your response to her?

A Yes

Q Apologizing for not resolving this And her response to you, reiterating that she wants to talk to you; is that right?

A That's correct

Q And then you say that you will call right now Did you eventually talk to Ms McDonnell following this e-mail exchange to your recollection?

A To my recollection, I did have a conversation with her, yes

Q Do you recall any of the details about that call?

A I don't remember specifically the details or what we actually discussed other than my impression was she wasn't happy with us regarding the dress situation and wanted it resolved quickly and find something for her to use

Q Okay One last question about the e-mail we just saw, and you don't need to put it back up there The subject line had in all capital letters "CONFIDENTIAL." Did Ms McDonnell in your conversation with her around this time, do you recall whether she said to you why this was confidential in her view?

A I don't recall

Q Do you recall around the time of this e-mail exchange when this issue of the inaugural dress is still brewing, do you recall participating in any discussions with your colleagues about possible alternatives to Mr Williams buying Ms McDonnell a dress for the inauguration?

A Yes

Q Tell us about those

A Phil Cox and I again talked about this situation, tried to figure out whether this is something maybe the PAC, which is the political action committee, the campaign committee that was there, then you also have a new entity that's the transition committee that raises money and pays for the costs of the inauguration, whether either one of those two entities could actually purchase a dress or obtain a dress for the First Lady to use

Q And was there any option discussed concerning a charity?

A Yes We talked about what legally could be done, whether she could keep the dress or not Under the law, there is --

Q Let me interrupt you I really don't want to ask you to opine on the law Okay? For present purposes, let me just ask you, were you involved in communicating any of these alternatives to Ms McDonnell?

A Correct I did an analysis of what alternatives were available, and one alternative was that the inauguration committee could purchase a dress, let her use it, and then it would be donated to charity afterwards

Q I see In that option, for example, would she have been able to keep the dress?

A No.

Q Did you say that you related these possibilities to Ms McDonnell; do you have a recollection of doing that?

A I don't have a specific recollection whether I related it directly to her, Phil, or Crystal or somebody on our team when we were all working on this issue

Q Okay Do you have a recollection of Ms McDonnell's reaction to these alternatives where she would not be able to keep the dress?

A My impression from that whole scenario was just that she was not happy about the Oscar de la Renta dress and was, you know, wanting something But I don't remember any specific conversation with her about that afterwards

Q Okay Let's take a look at the next exhibit, which is in evidence as Government's 56 Blow up the text, please Thank you. Let's start at the bottom, Mr Eige This one is dated December 27th of 2009 First question in that e-mail at the bottom from Mr McDonnell: Who is Lee?

A Lee is Lee Goodman He was an attorney at the time that did election law work, so we had him as outside counsel so if we had any further questions about election law matters, we would ask him.

Q Do you recall whether after this e-mail exchange the call that Mr. McDonnell was requesting actually occurred?

A Yes, it did.

Q Do you remember any of the details of that conversation?

A Just again going through the scenarios that I had researched in determining what were permissible scenarios and essentially confirming that we had already kind of come to the conclusion of

Q Okay Take the exhibit down, please Do you recall ever, yourself, discussing with Mr McDonnell the fact that Ms McDonnell was upset or angry?

A No, I never discussed that with the Governor.

Q Okay. Next subject: We are fast forwarding to February of 2011 My question is, do you recall learning anything around that time about the Governor attending an event at the Jefferson Hotel for a product called CigRx?

A Not prior to the event, no.

Q Not prior to?

A Not prior to that event, no

Q Okay Do you recall any discussions among the staff in the aftermath of that event concerning a request from the CigRx manufacturer, Star, to post something on a Twitter account?

A Yes

Q Could we take a look at -- actually, before we do that, let's just take that down. What is your view -- withdrawn I apologize Tell us about those discussions that you recall concerning the Twitter issue

A I believe the Governor's scheduler asked whether it was okay or permissible for the Governor's picture at that event which had, I believe, a CigRx logo behind him at this event when he was talking, whether it was okay if they posted that on Facebook or Twitter or some type of social media outlet

Q Speaking for yourself, would that raise any concerns for you?

A Not in that context, no, not in a vacuum with those things, absolutely not. The Governor goes to a lot of events and goes to a lot of companies and ribbon cuttings and tours factories and things of that nature, and we never have had a problem with them posting that after the fact

Q Let's take a look at Government's 89 now, please This is in evidence This is an e-mail exchange Actually, just blow up that one at the bottom, please Now, you are not a party to this e-mail, Mr Eige But there is a line on here that Ms Block writes where she says, "As you probably know, the Governor as Governor does not official endorse products " Did you see that sentence there?

A Yes

Q Do you share that view, sir?

A Yes

Q Okay Could you explain what you mean by that, what you understand that view to be, and if you could, distinguish the concerns you had versus the Governor's generalized mission to promote Virginia business?

A There is no bright-line rule in Virginia on promoting companies, promoting products, frankly, or industries The Governor's duties, as everybody well knows, is in part to promote Virginia jobs, develop economic opportunities in Virginia, and promote those industries that are in Virginia So, again, it is part of one of the Governor's primary duties is to go around the state, around the country, and frankly, around the world, and promote Virginia industries, companies, and products as a whole Obviously, for our own purposes in our Administration, we didn't think it was appropriate to necessarily promote or sell a product as a, you know, as a spokesperson for a particular product People have used the -- described picking winners and losers, and I think that's probably a good way of describing it But again, there is no bright-line rule It is kind of one of those things where we feel like the optics of it is okay to promote these industries, go to a company, promote this company as a Virginia company But, you know, it is kind of a sliding scale at some point, you know We obviously don't want somebody taking the Governor's likeness and putting it on a product and selling it on a store shelf That's too far the other way

Q Of course If I understand you correctly, and do correct me if I am wrong, please, that to the extent that you or your colleagues had any concerns about the other side of this line, you know, becoming too close to advertising a specific product, you are talking about optics and political concerns, not legal ones

A Right There is nothing in Virginia law that I can point to that says you can't do this as Governor

Q Understood Now, at the time, and by that, I mean in April of 2011, were you aware that during a shopping trip to New York City, Mr Jonnie Williams purchased some $19,000 in designer clothes for Ms. McDonnell?

A Not until after this matter became public last year

Q So you were not aware at the time?

A At the time, no.

Q Were you aware at the time of a private dinner on April 29th of 2011 between the McDonnells and the Williamses?

A No

Q Were you aware at the time in May of 2011 that Mr Williams cut a check for $50,000 to Ms McDonnell as a loan to the McDonnells?

A No

Q Do you recall when you learned about that for the first time?

A After this matter became public last year

Q Moving to late August of 2011 now, specifically, August 30th, do you recall becoming aware around that time, sometime before then in the summer of 2011, that Star was planning an event at the Mansion?

A Yes

Q How did you find out about it, if you recall?

A My recollection is it came from the Mansion. I believe from Mary-Shea Sutherland, who was the First Lady's Chief of Staff She informed us that there was going to be an event at the Mansion It was actually originally proposed to our office as two events, one which is a luncheon where grant money from Star Scientific was going to be given to two of the state research universities, and then another event where there would be some type of a public launch of the Anatabloc product on the Mansion grounds or somewhere outside of the Mansion after the lunch, I believe, is the way it was described to us So basically two events

Q When you learned about that, did you have any concerns?

A Yes

Q What were they?

A Particularly myself and Martin Kent, Chief of Staff, we were concerned about this public launch event Not the grant luncheon where, again, private sector is giving two universities grant money for research, but this public launch of a product at the Mansion. We didn't think that was an appropriate use of state property or the Mansion, particularly, and having the Governor's Office involved in that in any way, whether it was just the fact it was at the Mansion or not

Q And so what did you do after you learned this information?

A Again, talked to the Chief of Staff and I discussed this, I knew that Jerry Kilgore represented Star Scientific or did some work for them in some capacity

Q Let me interrupt you and just ask you to tell us who Jerry Kilgore is

A Jerry Kilgore is a partner at McGuireWoods, former Attorney General I actually worked in his Administration prior to when the Governor was Attorney General He ran for Governor in 2005

Q So you knew Mr Jerry Kilgore prior to learning about this event at the Mansion?

A Correct

Q All right So did you have any contact with him following this?

A I did. We decided that let's go ahead and call Jerry and see if he can help us change the expectations from Star Scientific

Q If you have already said this, forgive me Were you aware at the time that Mr Kilgore was a consultant for Star?

A I was

Q Okay So go ahead.

A So we thought the best course of action is this seems to be coming from Star Scientific, so let's just see if we can't stop it at the source Martin and I were in my office, and actually, I remember picking up my cell phone, I had Jerry's number programmed in my phone, and called Jerry We explained the situation to him, said, "We don't have a problem with the luncheon necessarily with the grants going to the universities, but it is not appropriate to have this public launch at the Mansion as well "

Q Did you make any requests to Mr Kilgore during this conversation?

A Yes We asked Mr Kilgore if he could change those expectations from Star and explain to them that doing a public launch at the Mansion was not appropriate

Q Okay Do you recall the exact date of that phone conversation with Mr Kilgore, sir?

A I don't It was sometime in August, fairly close in time to when the luncheon occurred, which I believe was August 30th, 2011

Q Do you recall in late August of 2011 an issue surfacing concerning a press release related to the event at the Mansion?

A Yes

Q What was the issue generally to your recollection?

A We received an e-mail from Mary-Shea Sutherland, again, Chief of Staff to the First Lady, asking, I think Tucker Martin, the Communications Director, to take a look at a press release that had been drafted and sent over from Star Scientific regarding the luncheon that was going to occur the next day, August 30th

Q Time out Let me ask you this before we go any further: So we are clear, the press release we are talking about here, is that one that Star put together or was that one that -- and was going to release, or was this a press release that Star was seeking the Governor's Office to release?

A This was a press release, to my knowledge, that Star not only drafted but was going to release

Q On its own?

A On its own

Q Then they were running it by the Mansion?

A Yes

Q Let's take a look at Government's 224, please This is not yet in evidence Take a look at this, sir, and let me ask you: Is this one of the e-mail trains that you were just describing concerning this press release issue?

A Yes

MR. HARBACH: The government offers Government's 224

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Let's start at Page 2, please That first e-mail from Sarah Machir You are not on this e-mail yet, we will get to your part in the chain Before we move on, let me ask you, do you know who the cc there is, David Dean? Do you know him?

A No

Q And then let's just roll through this until it gets in your in-box The next e-mail is Ms Sutherland responding to Ms Machir Then if we could go to Page 1, Ms Machir indicates that there has been some revisions to the draft Scrolling up, please, Ms Sutherland e-mailing Tucker Martin. Did you say he is the communications person?

A Correct Communications Director

Q And then finally, now you are in the loop at six p.m. on the 29th. This is the night before the event?

A Correct

Q It says, from Mr. Martin, copying you: "Jasen and Martin and Matt should go through this thoroughly. Are we sure we can do something like this?"

Move up to the top, the last e-mail on the chain. It is an e-mail from Mr Kent to Ms Sutherland. My question for you about this is, that last question where it says, "Is the Governor aware of his inclusion in this release?"

Did you know the answer to that question at the time, whether he was aware?

A I didn't know

Q And next question is, Mr Kent says: "We need to discuss first " Do you recall in fact discussing this issue with Mr Kent and your colleagues?

A Yes

Q Tell us what you remember about that conversation briefly

A Regarding the press release itself, after looking at it, it had multiple references to the Governor and the First Lady "We are here at the Mansion to learn more about Star Scientific and Anatabloc and the research." It probably mentioned the Governor and First Lady two, three, maybe more, at least two or three times in the e-mail regarding their interest in Star and thanking them for their interest in Star Scientific and this product

Q What was your view of the appropriateness of that?

A That started looking like it was going into that area on that spectrum or on that scale of promoting this product Again, there is no fine line, but it started seeming too close for comfort, that they weren't just hosting an event for some state universities to receive grant research funding, but were somehow being brought in to look like they are, you know, more interested or promoting this specific product

Q Okay Do you recall whether during the process of dealing with this press release issue, it got edited and changed?

A Yes, it did

Q Let's take a look at what's been marked for identification as Government's 235, please Is this an e-mail exchange between you and Ms Sutherland on this press release issue?

A It is

MR. HARBACH: The government offers Government's 235

THE COURT: It will be admitted.

BY MR HARBACH:

Q Let's start with the e-mail at the bottom here, which is the first e-mail in the chain. This one is dated August 30th of 2011 at 11:32 in the morning Do you happen to recall at what time the event actually started on the 30th?

A I don't I know it was a lunch event, so assuming noon, but I can't say for sure that it was actually noon

Q Okay And she, meaning Ms Mello, apparently, do you know who she is?

A No.

Q She says, "Please find attached the the Anatabloc press release for today, August 30th. Please feel free to contact me directly with any questions " Ms Sutherland forwards it to you almost two hours later That's at 1:30 on the 30th Do you have a recollection one way or the other of whether that was before, during, or after the event?

A I believe that was after the event

Q Ms Sutherland makes reference in her e-mail to "This is what I showed you on m phone " Do you have a recollection of her showing you something on her phone?

A I do remember Mary-Shea showing me the revised draft on her phone I think I ran into her outside of the Mansion or, excuse me, walking over back to the office

Q If we could take a look at Page 2 of this exhibit, which is the attachment Just blow up the text there for the witness, please Are you able to read that okay or is that too small for you?

A Maybe a little bit more My eyes aren't as good as they used to be

Q Maybe blow up the first half My only question for you, we will scroll down for this for you, I believe you testified this was the revised version?

A This appears to be, yes

Q Okay. And what we can see on the screen here is are the Governor or the First Lady mentioned anywhere?

A No, if maybe you could scroll down Because it is the next paragraph It mentions the Governor's Mansion.

Q So the Mansion is mentioned, but is either the Governor or the First Lady mentioned?

A No, not in this version.

Q Were you satisfied that your concerns had been taken care of with this version of the release?

A Yes And I told Mary-Shea that

Q Okay In general, based on your dealings with Ms Sutherland during the course of this press release issue, what did it appear to you that she was trying to do?

A It appeared that she was trying to get this event kind of off the ground or going to make sure it happened in a timely fashion. I mean, this press release obviously came in the day before, so it seemed like she was trying to just facilitate this event going forward

Q With respect to the press release in particular, did Ms Sutherland resist any of the changes that you suggested?

A No. Not to my recollection.

Q Indeed, if we can go back to Government's 224, Page 2, just for a moment, this is in evidence, blow up that top portion here It appears that she herself resisted Star's initial press release saying there was no way it can go as written.

A Appears so in that e-mail.

Q Thank you You can take that down. During this back and forth that we have been talking about concerning the press release, did you discuss any of the issues surrounding the press release with Mr McDonnell?

A No

Q Did you yourself attend the August 30th event at the Mansion?

A Yes

Q Tell us how that came about

A Well, after, you know -- two issues One was the two different events, the one that we shut down regarding the public launch of the product, and then this kind of last-minute press release that had the Governor and First Lady's name throughout the press release, particularly that one paragraph, you know, we had some concerns about how this lunch may proceed. Martin Kent, again, Chief of Staff, and myself had a discussion about this We weren't originally scheduled to be at the lunch, but we decided that maybe one of us should attend just to make sure it stayed within the bounds of what the event was explained to us, which was, again, giving grant money to these two universities So we discussed who was going to go I told Martin, "Look, let me go, you are busy, I'll be glad to go sit in on it " That's how I ended up at the luncheon

MR. HARBACH: May I please have one moment, Judge?

THE COURT: Go ahead.

(Counsel conferring with co-counsel)

BY MR. HARBACH:

Q So tell us your memory of what happened at the event When you walked in, first of all, what room were you walking into?

A It was the main dining room, so it is kind of in the back of the first floor, which is kind of the public area That's where the public can come in and do their tours, that's where receptions are typically held, at least where the food is served. Then obviously when the Governor has dinners or meals served for various reasons like this luncheon, that's where that's taking place It is kind of a large oval room.

Q Dining room?

A It is a dining room. There is a large dining room table That's about it

Q About how many people were there, sir?

A Easily over 20 The table seemed full The table can kind of contract and take leaves out and so forth, but it was a large group There was at least -- it seemed like at least 20 people. But I didn't do a head count

Q Were all the attendees sitting around the same table?

A They were, yes

Q Tell us what you recall about what happened after everyone came in and got seated

A At some point the Governor came in I think everybody was already seated. The Governor sits, always sits at the southern end of the dining room table and the First Lady always sits at the northern end of the table

Q Was the First Lady there?

A She was there Yes

Q Go ahead.

A The Governor came in, kind of made his usual greetings He really loves showing the Mansion to the citizens He loves explaining the history behind the Mansion, particularly for those who have never had the opportunity to go through the house So like he usually does, he gives an explanation of kind of the house and maybe some of the restoration aspects that have gone on both during this Administration and in prior Administrations There is usually some unique artwork, painting on the wall, and he usually makes a comment about that So I believe he did it at that time.

Q When you say, you have used the word "usually" a couple of times in describing the Governor's remarks Had you attended other events, other luncheons, where the Governor had made similar remarks during your time at the Mansion?

A Virtually every event we held.

Q So lots of events?

A Lots of events, yes

Q What about the First Lady? Do you recall whether she made any remarks at the beginning of the luncheon on August 30th?

A My recollection, she did do some type of greeting as well She usually follows up after the Governor and usually has a few remarks, just again welcoming them to the Mansion, and usually maybe something related to the topic or subject matter of the event

Q Let me ask you just in light of how you have answered those questions: As you sit here today, do you have a specific recollection of on this occasion in particular the Governor talking about the history of the Mansion and the First Lady doing a little bit of that, or are you making assumptions based on the number of these events you have attended? And only you can tell us, sir

A I remember them having those conversations Specifically what things they said, no, I don't have that recollection anymore. But I do remember them discussing those things at that particular lunch.

Q Do you recall whether Mr Williams was present at this event?

A He was

Q Did he speak to the group?

A He did

Q What do you recall about that?

A I recall him obviously talking about the product and talking about the research behind Anatabloc He particularly spent a lot of time talking about his own wife's health conditions and exploring options for her and how this product has been helping her He talked some about the research that went into where they were at that point with the product and what they had already done I think he, my recollection was, I think, he introduced some of the researchers that were around the table There was somebody from Johns Hopkins that was there that I remember striking me --

Q Do you recall whether during any of the remarks you have discussed to this point there was any mention or discussion of the Tobacco Commission at the event?

A I don't recall any discussion regarding the Tobacco Commission

Q Were there any presentations or remarks by any of the doctors or scientists who were in attendance?

A There was some discussions from those researchers or doctors that were there.

Q And do you recall at the time what your reaction was to what you saw and learned about Anatabloc?

A Frankly, I was a little surprised. I really didn't think there was much to Anatabloc or that it was really a viable product or that it did what it was being claimed to do. But I was taken aback by the type of doctors and researchers and institutions that were represented at that luncheon

Q Do you recall whether there was any of the actual product at the event, Anatabloc?

A I don't recall

Q Did you receive any of the product on the day of the luncheon?

A I did receive some from the First Lady, actually I don't recall whether it was handed out by, you know, the group or not But she gave me some on the way out

Q Okay Do you have any recollection of how this event was paid for?

A I don't

Q Do you recall any discussions with any of your colleagues about who should pay for it?

A No

Q Okay Next subject: For this one, I need to show the witness, please, for identification Government's 245 Do you recognize this to be an e-mail exchange among you and some of your colleagues concerning a dinner and the possibility of the Governor attending it?

A Yes

MR. HARBACH: The government offers Government's 245

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Let's start at the bottom, please This is an e-mail from Katherine Harris to Mary-Shea Sutherland in September of 2011 Who is Katherine Harris?

A Governor's scheduler at the time

Q Did she follow --

A Monica Block

Q Ms Block?

A Yes

Q And if we could see what the question she is asking there is Let's go to the response e-mail from Ms Sutherland. Read what Ms Sutherland says to Ms Harris

A "It is Jonnie Williams Anatabloc dinner to tell docs about the product He wants both Gov and FL to attend Jasen and Martin should discuss "

Q And that indeed, if we scroll up to see Mr Kent's reaction to this, he says, "Yes, we should discuss " That's my question for you. Do you recall having any discussions with either Mary-Shea Sutherland, Mr Kent, or any of your other colleagues about this dinner?

A I don't have any recollection regarding discussing that

Q As you sit here today -- withdrawn. Did you know at the time whether Mr or Ms McDonnell actually attended the event?

A No

Q Did you attend the event?

A I did not

Q The next exhibit is for identification Government's 252, please Now, this e-mail is dated October 19th of 2011, which is the day after the event that was described in the prior e-mail Do you recall that?

A Yes This e-mail, yes

Q Okay Are you involved in this e-mail exchange, sir?

A I am.

MR. HARBACH: The government offers Government's 252.

THE COURT: It will be admitted

BY MR. HARBACH:

Q Let's start at the bottom. Mr Tucker Martin says to you: "First Lady would like you and I to talk to Jonnie Williams today about what she is doing with them. I think that will be good. Any time available?"

At the time, what did you understand the First Lady to be doing with Jonnie Williams?

A I wasn't really sure at that time

Q Okay Let's go to the next e-mail, well, the whole series of e-mails is just you all trying to work out a time to meet; is that right?

A Correct

Q Do you recall whether you in fact had an in-person conversation with Mr Martin about this?

A I think I may have talked to him about the purpose, like I have in this e-mail, about the purpose of the call with Jonnie Williams, but I have no memory of us actually making that phone call I don't recall ever being on the phone with Jonnie Williams

Q Okay Could we keep that exhibit up for a second? I want to make sure you understand my question. If you will blow that up. I'm not asking you about whether you had any conversations with Jonnie Williams. My question to you is whether you recall discussing this issue with Mr Martin

A Like I said, I think we may have discussed it briefly, but my recollection is neither one of us knew what it was about, and I don't remember us ever going to one of our offices and talking to Jonnie So I'm still not sure I can speculate, but I have no idea what this e-mail exactly is referring to.

Q All right I don't want you to do that You can take the witness down -- you can take the exhibit down

A You can take me down, too

Q Paying attention. That's good Do you recall when you first noticed Mr McDonnell wearing a Rolex watch?

A Yes It was right after we got back from the Christmas holidays

Q Do you recall what year?

A I guess, I think it was actually 2013, but it was the 2012 Christmas But I don't think we were back in the office until probably January after Christmas

Q Okay Tell us what you recall happening on that occasion

A I remember Tucker Martin, Communications Director, and I were in the office that morning meeting with the

Governor I don't remember what the reason for the meeting was, but we were sitting around in the chairs He has a couch and a couple chairs We were sitting around talking about something And I noticed he had a new watch on At the moment, I didn't realize it was a Rolex And then I think Tucker, if I'm not mistaken, was the first person to actually say something about it

Q What did he say?

A He asked the Governor, "Is that a Rolex?" And something to that effect

Q What did the Governor say?

A He said, "Yeah, it is," you know "The First Lady gave it to me for Christmas " And I believe Tucker and I both were thinking this, I think Tucker probably was the one that said it, "Well, you probably don't need to be wearing this " And then the Governor said to him something to the effect, "Well, I don't even think it is real " I then spoke up and said, "That's not any better Really, we shouldn't be wearing that regardless " And that was pretty much the end of the conversation.

Q Okay Now, do you recall this investigation becoming public in early 2013?

A The investigation, no. The first I heard of this, I guess, was through media accounts Probably March, I think

Q Of 2013?

A Of 2013, yes

Q I'm only offering that to you as a guidepost to see about your recollection of the year in which you had this visit with Mr McDonnell about the Rolex that you described. Is it your recollection that this exchange that you and Mr Martin had was only a couple of months before the investigation hit the papers, or was it the prior year? Or do you recall?

A I guess it could have been the prior year

Q All I can do is ask for your best memory, sir

A I'm not sure, maybe -- that's a good question I guess my recollection is, it is either one of the last two Christmases that we had. It would have either been the 2011 Christmas and then 2012 when we returned in January, or --

Q Or the next one

A Or Christmas 2012 and then we came back January 13th

Q All right Speaking of newspapers, do you recall around the time that you and Mr Martin had this exchange with Mr McDonnell seeing any photos in the Richmond Times Dispatch of Mr McDonnell wearing that watch?

A I do recall seeing that in their press clips

Q Okay Could we take a look for identification only, please, at Government's 281 Let's try that one Do you recognize this photo, sir?

A Yes, it looks similar to the one that I saw in the Richmond Times

MR. HARBACH: Your Honor, the government offers Government's 281

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Okay Do you recall noticing at the time that there was a photo of the Governor in the paper wearing a Rolex?

A Yes, I think I did

Q Do you recall where in relation to the meeting you had with the Governor time-wise it was that you saw this photo in the paper?

A I want to say we actually met with the Governor the first morning we were back in the office, and I think he had a press interview that afternoon, sometime later that same day So the clip would have been the following day or sometime shortly thereafter Sometimes they will do an interview and then run something like on a weekend special, a longer piece So I can't tell you whether it was the next day or a couple of days, but a very short period of time

Q Other than seeing this photo in the newspaper, do you recall ever seeing Mr McDonnell wearing the Rolex again after the conversation you and Mr Martin had with him?

A Just that one day

Q Meaning the paper?

A Yes I mean, literally the day we saw and talked to him that morning, he had it on that day and I don't recall ever seeing him come back to the office on another day with the watch.

Q Okay Incidentally, when you were there talking to him about it, did he take it off and show it to you?

A No.

Q He did not?

A No

Q At the time of this conversation that you just described, based on the information that you had, did you think that the McDonnells could afford a Rolex?

A No, I didn't really think that was something they probably could afford

Q Did you investigate any further where the watch came from at the time?

A I didn't

Q Why not?

A Because the Governor followed it up by saying, he said, "Well, I think it is not real anyway It is a fake " So that seemed to ring true to me, so I figured there was no reason to investigate further

Q Okay You can take the exhibit down, please Okay, new subject: Were part of your duties in working for Governor McDonnell and his administration to assist him in preparing a form that you have referenced already called the Statement of Economic Interests?

A Yes

Q During the course of your career, have you had experience with the form and have you become familiar with it generally?

A Yes

Q Generally, tell us, what is an SOEI and what is its purpose?

A SOEI, Statement of Economic Interests, is a form that certain public officials complete every year They are due January 15th for the prior calendar year So it is a document that you list certain items, basically your financial records such as owning securities, having loans, debts, gifts that people have given you, any interest in businesses, things of that nature that you set forth in this document The purpose of this document is essentially so the public can have a good understanding of what the financial interests are of the public officials, whether elected offici[illegible] whether appointed, whether employees under certai[illegible]rcumstances, to give them just a view of what, where their finances stand, where their interests stand, and for the public to make their own judgment as to whether there could be or may be any type of influences on that particular public official

Q I take it from your answer that the information once filed is publicly available?

A It is Yup

Q And is the Governor among the officials who files these things?

A Yes

Q You said annually?

A Annually, every January 15th

Q If we could take a look for identification, please, at Government Exhibit 5

MR HARBACH: Mr Starnes, just so the witness can identify it, can you leaf through a few pages for him to take a look at this, please?

(Document displayed as requested.)

BY MR. HARBACH:

Q Mr Eige, do you recognize this to be a blank Statement of Economic Interests form?

A Yes

MR. HARBACH: The government offers Government's 5

THE COURT: It will be admitted

BY MR HARBACH:

Q Okay Now, a little bit, Mr Eige, a little bit later we are going to talk about the Governor's specific SOEI's But I have a question for you about this blank one first Prior to coming to court today, have you had an opportunity to review the instructions for this form that appear on Government Exhibit 5 and compare them to the instructions that appeared on the Governor's filed Statement of Economic Interests form for 2011 that he filed in 2012? Have you done that comparison of the instructions?

A Yes

Q And based on your review, are they the same or how do they differ?

A They are essentially the same The only difference is, between 2011 and this one is actually labeled 2012, so it is a newer form, and the only difference is there used to be a Notary requirement You used to have to sign with a Notary stamping it So in the 2011 form, there is actually one line in these instructions that indicate you have to have it notarized In this form, the Notary is no longer required. It is now filed electronically And so that one line requiring the notarization is no longer on the form.

Q Any other differences that you discerned between the instructions?

A I didn't discern any others

Q Okay If we could, Page 1 of Government's 5 is up now If we could just blow up the table of contents briefly and let the jury take a look at that Then let's zoom back out and go to Page 2 Is this part of the instructions, sir?

A Yes

Q And then Page 3, more instructions

A More instructions

Q All right, now we are on to Page 4 Could you tell us generally about the structure of the form?

A The form starts off asking a series of questions, again, regarding any securities you own, any debts you own, any gifts, things of that nature It is a check, yes or no. If you check "Yes" under those series of questions, then you move on to what they call schedules The schedules basically just ask for more information. So if you say you have certain types of debts or liabilities, you put that If you have certain gifts and you checked yes, then you go to that particular corresponding schedule and then fill in the information.

Q Okay I'd like to focus on three schedules in particular, please The first one is Schedule B that appears at Page 7 of the exhibit If we could go there, Mr Starnes Just blow up the top portion. Schedule B is for what, Mr Eige?

A It says liabilities Those are debts, basically Loans Things of that nature

Q What kind of liabilities?

A Again, bank loans, certain things like that

Q What I am going for is it says "Personal Liabilities," doesn't it?

A Schedule B says "Personal Liabilities," yes

Q According to the instructions there, what's the monetary threshold that triggers the reporting obligation?

A More than $10,000

Q So next is Page 8 This is Schedule C This one concerns securities; is that right?

A Correct

Q And according to the form, if you look on the left there where it says, "Securities includes " Do you see that?

A Yes

Q What does it say that securities includes for purposes of this form?

A It includes stocks, bonds, mutual funds, limited partnerships, and commodity futures contracts

Q And then there is a small paragraph right below that double line that begins "Identify each business " Could you read that first sentence for us, please?

A "Identify each business or Virginia governmental entity in which you or a member of your immediate family, directly or indirectly, separately or together, own securities valued in excess of $10,000 "

Q Now, is the term "immediate family" defined in the instructions?

A It is

Q Could we go back to Page 2 of the exhibit, please, and blow up that for us Could you read to us the definition of immediate family according to the form, please?

A "Immediate family means (i), a spouse, and (ii), any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent "

Q Okay Thank you. If you could zoom out and let's go back to Page 8, please, what we were just looking at a minute ago. Blow up those instructions again for us Next question: The sentence you just read, for this particular schedule, is the relevant question whether the filer or member of the filer's family owns securities as of the time of filing?

A Yes

Q In other words, the question is not whether they have owned at any time during the year securities; is that right?

A It is a snapshot at the time you file the form.

Q Okay Next one I'd like to look at is Page 10, please This is Schedule E This one is called "Gifts " According to the instructions, sir, the filer is supposed to report single gifts in excess of what value?

A $50

Q And the filer is supposed to report any combination of gifts from a single source where the value exceeds how much?

A $100

Q Is there an exception on the form for gifts from relatives or personal friends?

A Yes

Q And in particular, there is a sentence three lines up from the bottom, look to the right, it begins "Do not list gifts " Do you see that there?

A Yes

Q Read that to us, please

A "Do not list gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position "

Q Okay You can take the exhibit down, please Do you recall during the course of your job ever being called upon to make a determination about whether Ms McDonnell was required to file an SOEI?

A Yes Either the end of -- kind of the tail end of the transition or maybe the beginning of the actual Administration after inauguration, I think the question first was posed to me

Q Excuse me. And what determination did you make about that?

A I determined that she was not required to file the Statement of Economic Interests

Q And despite that, did you institute any efforts to try and keep track of gifts that she received?

A Yes I had discussions early on with Mary-Shea Sutherland, again, the First Lady's Chief of Staff, to keep track of any gifts that they felt were really more gifts, although they may have been given to the First Lady, were really gifts to the Governor so we can track that, look at them, and determine whether they needed to be on his Statement of Economic Interests

Q Let's take a look at Government's 284, please, for identification. Mr Eige, do you recognize this to be an e-mail exchange on this issue of whether the First Lady needed to file and so forth?

A Yes This was another follow-up question, same issue, in January, 2012, just confirming that she was not required to file a Statement of Economic Interests

MR HARBACH: The government offers Government's

284

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Just briefly, let's look at the e-mail that you see at the bottom there that you wrote. Read what you wrote there to Ms Harris and Mr. Conrad

A Yes I said: "No, she does not need to complete one But if there are any gifts that were directly given to her but were really gifts to the Governor, we need the info for those by Monday Thanks "

Q Is the reason you needed them what you just explained a moment ago?

A Yes, to determine whether they needed to go on his form for the January 15th filing deadline

Q Who is Matt Conrad?

A Matt Conrad, at that time, was Deputy Chief of Staff and one of my deputy counsels

Q Take down 284, please Let's go back to Mr McDonnell now Could you tell us generally speaking in your experience what the process was for putting together information and drafting the Governor's annual SOEI?

A Yes. The information regarding gifts, regarding flights, travel expenses, those were also things that needed to be posted on the Statement of Economic Interests depending upon the context, were gathered primarily by the scheduler and the Governor's traveling assistant because oftentimes he would go to an event or a trade mission, they would hand him some type of item, for instance So those individuals were primarily responsible for making a log of all these type of gifts, travel expenses, et cetera Then that information was given to the Governor's confidential assistant, his executive assistant, his secretary

Q What's her name?

A Pam Watts They would give her that information, and I think, I wasn't involved in this at the Attorney General's Office, but I think she has been helping the Governor for years doing this, but she would take that information and put it into the Statement of Economic Interests and start that first draft of what we would ultimately file

Q What role did you have in the process?

A So typically when she finished that, she would hand it off to me, let me review it I would look it over, see if there was anything that needed to be changed, see if it seemed to be in order Usually at that point in time there's still a lot of blanks, like what was the value of this gift or what was the value of this travel and things of that nature So I would try to see if we had that information yet But sometimes getting that information from the donors usually took, you know, sometimes up until the day before they were due So we'd just kind of go through it, make sure it looked good and presentable for the Governor's first pass at it Then I would give my edits back to Pam Watts and she would make those edits and I would look at it again and determine is this in enough of a form to meet with the Governor

Q Tell us about that next step when you meet with him.

A The next step after we get it into that initial draft phase is usually we would have a meeting with Pam and myself and the Governor would sit down and go through it And he would make corrections or ask questions about it, and we would go through that, make some handwritten notes, he would make some handwritten notes, and we would just kind of do our first pass of this statement Then we would go back, Pam would make those changes, and sometimes we did that a couple of times There was instances where we made those changes and then Pam would give the Governor the draft and he would make more handwritten notes and give it back to us, and we just kind of continued the cycle of making those edits and also gathering the additional information we needed to complete the form.

Q And when that process is complete, what happens?

A When that process is complete and the Governor feels satisfied with his Statement of Economic Interests, he obviously signs it And through 2011, you signed it and had it notarized and then you filed it with the Secretary of the Commonwealth's office That's who keeps those forms and that's where the public and media and press can go to get the form if they want to review it after it is filed.

Q In your experience during the Governor's Administration working with him on these forms, how closely would you say Mr McDonnell reviewed and edited his SOEIs?

A He made extensive edits He was meticulous with it like he is with speeches, with press releases I think that's one of his qualities, frankly But he did spend a lot of time looking at the forms himself and making his own edits just like I did and Pam and so forth

Q Ultimately, you mentioned at least three people who were involved in this process: you, Ms Watts, and the Governor himself

A Yes That last part of the process Yes

Q Sure Whose call was it ultimately whether a particular item should be included or edited or deleted; who had the last word on that?

A The Governor in that case Everybody has the responsibility, I guess, for their own form ultimately

Q Let's take a look at what's been marked for identification as Government's 277, please. Before you came to Court today, have you had an opportunity to review a couple of drafts of the Governor's SOEI for calendar year 2011?

A Yes

Q Does this appear to be one of those, sir?

A It does.

MR HARBACH: The government offers Government's 277

THE COURT: It will be be admitted.

BY MR HARBACH:

Q The first page I'd like to go to is Page 4, please And in this particular draft, what box is marked? Scroll down a little bit, please, Mr Starnes, for Question 3 there, the one that says "Securities " What box appears to be checked here?

A "No "

Q Then could we look at Page 8 This is Schedule C for securities Is there anything on -- well, zoom out again for a minute, Mr Starnes, please Is there anything filled in on this chart here, sir?

A It doesn't appear to be other than it says, "No reportable securities, check here." And there is an X there There doesn't seem to be anything else on the form.

Q Let's take a look at Page 9 now, please This is Schedule E for gifts And Mr Starnes, if you could just blow up, say, a third of the chart there and we will just scroll down Again, for the record, we are looking at Page 9 of Government's 277 If you could scroll down a little bit further, please Mr Eige, do you recognize the handwriting that appears on the screen now?

A This looks like the Governor's handwriting

Q You have familiarity with the Governor's handwriting from working with him?

A Yes

Q Okay Let's take a look at Page 10 of this exhibit, please Now, this e-mail is interspersed in this draft that we are looking at; is that right?

MR. ASBILL: Objection, Your Honor

THE COURT: Overruled.

BY MR HARBACH:

Q This e-mail that we are looking at on the screen is interspersed among the exhibit that we are discussing, correct?

A It appears to be

Q Okay And the first question is, do you recognize the handwriting on the top right here?

A Yes That's Martin Kent, the Governor's Chief of

Staff

Q Could you blow that up for us, Mr Starnes? Thank you. Can you read what that says, Mr Eige?

A It says, "August 16th, 2011 Governor: FYI As you can see, I have asked for written guidance on this and other issues Thanks MLK."

Q Mr Kent's initials?

A Yes

Q Scroll down a little bit. There is a P S What does that say?

A "P S Issued by Mary Sue Terry as AG "

Q Let's zoom out and take a look at the bottom e-mail there just from the line down. Thank you. This is from someone named Jeff Palmore Do you know who that is?

A He was my deputy counsel and deputy policy director

Q It is addressed on August 15th of 2011 to Mr Kent And then at the top, the first paragraph there refers to a 1988 OAG opinion. Who is OAG?

A Office of Attorney General

Q And then it goes on to talk about the opinion giving some guidance on the definition of personal friend; is that right?

A Correct

Q Okay And then the opinion appears to be quoted.

MR. ASBILL: I object to that. There is a legal opinion contained in this document

MR. HARBACH: It is part of the exhibit, Judge, as it was produced to us

THE COURT: Well, come up here a second.

(At Bench.)

THE COURT: Where are you going with this?

MR. HARBACH: All we intend to do, Your Honor, is inquire whether any guidance that Mr Eige gave Mr McDonnell was consistent with this paragraph. That's it As this document is --

THE COURT: The objection is sustained You all spent a whole day trying to keep this kind of stuff out of here

MR DRY: It goes to the effect on the listener, Your Honor

THE COURT: You can ask him what advice he gave, not whether it is consistent with this legal opinion

MR HARBACH: Understood, Your Honor I understand.

(In Open Court)

BY MR HARBACH:

Q We can take the exhibit down. Mr Eige, during your time working for Mr McDonnell, was this issue of the scope of the definition of personal friend something that came up from time to time?

A Yes I think we first discussed it during the transition when preparing his, the Governor's first Statement of Economic Interests so he could take office I remember doing some research on that matter and we had some discussions about it, and we probably talked about it just about every time, I think, we filled out the statement

Q Okay Do you recall generally what guidance you gave the Governor on what that meant?

A Yes Unfortunately, which is true of a lot of aspects of the Statement of Economic Interests, there's not a lot of guidance on it Personal friend, there is really no legal definition for personal friend in the context of the Statement of Economic Interests So it was one of those things where if we think we could defend somebody if we were ever questioned of why a personal friend was, you know, listed on there or not listed, so factors of did you know the person prior to becoming Governor, what was the context of the gift in relation to the filer in this case, the Governor's, position And just kind of the context On gifts, had gifts like this been given prior to him being Governor So there's a lot of those things But again, no real bright-line determination as to what a personal friend is

Q The factors that you just enumerated, did you pass those along to the Governor in your discussions with him?

A We discussed those, yes

Q If we could go back to Page 9 of Government's 277 for a minute Let's blow up that paragraph at the top, the instructions paragraph. Again, the instructions on the form themselves say, "Do not list gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position." Did I read that right?

A Yes

Q I think those are all my questions on the initial draft If we could pull up the next exhibit, which is Government's 288 for identification, please Mr Eige, do you recognize this to be another draft of the SOEI for calendar year 2011 for Governor McDonnell?

A Yes

MR HARBACH: The government offers Government's 288

THE COURT: It will be admitted.

BY MR. HARBACH:

Q The handwriting that appears on the first page here belongs to whom, sir?

A It belongs to me except for the "Draft 2011 " So that's right below the circle I'm not sure who wrote that But the date circled is mine and then the note to

Pam Watts is my handwriting.

Q Could you read your note to Ms Watts?

A Yes "Please make these edits before 9 a.m. meeting Thanks P S Please keep this copy for me after edits are made JE "

Q Okay And the next page in this exhibit that I would like to focus on, please, is Page 9 This is Schedule D. All I'm asking you to do on this one is identify the handwriting on this page, sir

A That's my handwriting

Q These are your edits?

A Yes

Q Okay And then Page 10

A That's mine again

Q Same question

A My handwriting

Q All right Now, at the time that you edited this particular draft, which apparently was in mid-January of 2012; is that right? The date on the first page, that was 1-16 Do you recall that?

A Correct

Q As of that date, were you aware that in May of 2011, Mr Williams had provided the McDonnells with a $15,000 check to cover their daughter's wedding?

A No

Q Mr McDonnell never told you that during your meetings with him about this form?

A No

Q Were you aware at the time that you edited this draft that Mr McDonnell had golfed on Mr Williams' tab at a private golf course twice in 2011 to the tune of some $3,000?

A No

Q Mr. McDonnell never told you that during your meetings with him about this draft?

A No

Q Let's take a look at Page 13 of that same exhibit, please This is a continuation of Schedule E; is that right?

A Yes Gifts

Q Just like you said Gifts Can you identify the handwriting on this page, sir? Can you blow up the top part for him, Mr Starnes?

A It is a combination of my handwriting and the Governor's

Q Which is which?

A The "Complimentary" in several sections or several places is the Governor's The "To" circle with a question mark are my edits

Q If we could scroll down to the bottom of this one, please Just as an example There are a couple of entries near the bottom where there is a $50 figure that's X'd out on the right

A Yes

Q What's that all about?

A Those are edits because it is in excess of $50, so if a gift is $50 or less they are not required to be on the form.

Q Okay Last page on this exhibit is Page 22, please Can you identify the handwriting that appears on this page, sir?

A Yes

Q Whose is it?

A This is the Governor's

Q All right. Can you read this for us?

A Can any of the flights or hotels go on Opp Va for political trips or there personal or official " That was Number 1 This is Number 2: "How do these gift numbers compare with Warner/Kaine."

Q What's Opportunity Virginia?

A That was the Governor's political PAC.

Q Do you recall with respect to Number 2 there, pardon me, do you recall Mr McDonnell being concerned with the gift numbers for other governors during your time working with him?

A He did ask us to make that comparison

Q Did he say why he asked you to do that?

A We didn't really talk about why

Q Finally, could we take a look at Government's 289 for identification, please? Mr Eige, do you recognize this document, and Mr Starnes, can you show him Page 2? Do you recognize this to be the final filed version of Governor McDonnell's 2011 SOEI?

A Yes.

MR HARBACH: The government offers Government's 289

THE COURT: It will be admitted.

BY MR. HARBACH:

Q First question: On this, back on the first page, Question 3, "Securities " We saw earlier in the first draft that the "No" box was checked What happened on the final filed version?

A It is a "Yes "

Q For securities?

A Sorry, it is a "No "

Q Still a "No "

A Yes

THE COURT: We are going to take a break All right, jurors, if you would follow the Marshal

(The jury left the courtroom.)

We will make it 15 minutes

(Recess taken from 3:07 p.m. to 3:19 p.m.)

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THE COURT: All right Let's bring them in

MR BROWNLEE: Your Honor, could we have one moment? I think the restroom was closed here

MR ASBILL: Our client is in the restroom It was closed

THE COURT: Oh, I'm sorry

MR ASBILL: That's all right

THE COURT: Sure Sure Hold them up,

MR BROWNLEE: Thank you, Your Honor

(The jury entered the courtroom)

THE COURT: All right Go ahead

MR HARBACH: Thank you, Your Honor

BY MR HARBACH:

Q Mr Eige, before we leave the final filed SOEI, I have one more question for you about it This is Government's 289, Page 8, please This is Schedule E gifts, and I'm asking Mr Starnes to blow up the bottom third or so of that chart

I notice on there there's an entry for "Jonnie R Williams " Do you see that there?

A Yes

Q And it indicates lodging and entertainment in the amount of $2,268 Do you recall what this item was?

A Yes That was vacation that the Governor and his family took at Jonnie Williams' lake house

MR HARBACH: Your Honor, can we please publish this for the jury?

THE COURT: Sure

BY MR HARBACH:

Q Okay And so it's that third line up from the bottom?

A Correct

Q Okay And this appeared on the schedule, despite the personal friend exception; is that right?

A Yes

MR HARBACH: Okay You can take that exhibit down, Mr Starnes

I apologize Page 11 of 289, please

BY MR HARBACH:

Q At the top this one says "Amended Schedule E " During your preparation for testifying here, have you been able to discern what was amended on this schedule, sir?

A Yes It's about quarter to a third of the way down It's the "ITT Defense & Info Solutions, McLean, Virginia, Monocular Night Vision Goggles "

Q So there's the note down at the bottom?

A Correct The stars indicated a footnote at the bottom The night vision goggles were donated to the State police for law enforcement purposes That wasn't on the original statement

Q Any other amendments that you were able to discern?

A No

Q Okay Next subject Do you recall whether you were involved in preparing the next year's SOEI, the one for calendar year 2012?

A I was not That was finalized and filed, obviously, January 2013 That was our last legislative session for the Governor's term, and obviously, I, again, oversaw the policy office and we had a lot of big-ticket items that -- that session So I asked my deputy counsel, Matt Conrad, to assist with that -- that SOEI

Q Do you recall a conversation at any time with Ms McDonnell about the possibility of her serving on the corporate board of Star Scientific?

A Yes She -- she did bring that up to me at one time

Q Do you recall when that was?

A I believe it was 2012

Q What do you recall about that conversation?

A I -- I -- my recollection is we were at the Mansion I don't remember what event or why we were there, for what purpose But she had pulled me aside and started asking me some questions about whether she could serve on the board, things of that nature

Q Did you have any questions for her during that conversation?

A Yes First and foremost, I wanted to know whether she was talking about serving on the actual corporate board or was this some type of foundation charitable board that many companies have as well

Q Did she know the answer to that?

A She didn't seem to -- to know the answer to -- to that question or whether she would be compensated, things of those -- of that nature that I asked her, which was -- which was my primary focus when she asked me about serving on the board.

Q Did she make any suggestions to you about how you might find out the answers to those questions?

A I think after, you know, several questions of not being real sure whether it was corporate board, foundation board, whether it was paid, unpaid, those kind of things, she said I should talk to Jonnie Williams about it

Q Did you, in fact, speak to Mr Williams after that?

A I did

Q In person or over the phone?

A Over the phone

Q Do you remember the circumstances?

A Yeah I remember being over at the Capitol I'm not sure why this sticks in my mind, but in the downstairs floor of the Capitol, there's kind of these white-and-black tile floors And I was outside in one the caucus meeting rooms, doing my job, working the Governor's legislation and those things, and I got the call from him I decided I probably wasn't going to initiate a call with Jonnie Williams, but he ended up calling me

Q Okay Do you recall how soon after your conversation with Ms McDonnell it was that you received the call from Mr. Williams?

A I think it was in close proximity, but how close, how many days apart, I'm -- I couldn't tell you at this point in time

Q Okay Tell us what you remember about the conversation

A I just remember asking him, again, kind of the same questions I asked the First Lady, whether this was a corporate board, foundation board, whether she was being paid, unpaid Obviously, I had significant concerns if this was the corporate board paid

Q Why? What were your concerns?

A Well, first and foremost, there was a previous governor, his -- his wife served on at least one corporate board, and it -- it created some bad publicity for the Governor, things of that nature

So that was, again, kind of the PR optics of the whole issue There's nothing that -- you know, it doesn't say in the law that you can't do that, but those were some of my concerns, and particularly, you know, Star Scientific at that point

Q So on the optics concern spectrum, would it have been better, in your judgment, optically, if it was the actual corporate board or a foundation?

A It would have been better foundation An unpaid foundation would have been preferable

Q Unpaid as opposed to paid?

A Correct

Q Do you recall -- well, did you express any of these concerns to Mr Williams?

A I did briefly It was a brief conversation, but I did Like I said, I was busy doing legislative work at the time

Q Do you recall Mr Williams' reaction when you did so?

A Any recollection is he seemed to understand I don't remember him pushing back or arguing with me or anything of that nature

Q Okay Thank you I'd like to show you the next exhibit, which is marked for identification, which I believe it's in It's Government's 312

MR HARBACH: And could we just blow up maybe the top half of this, please The jury has seen this document before

BY MR HARBACH:

Q This is an e-mail exchange from Jonnie Williams, Jr to Ms McDonnell, which she, in turn, forwards to Bob McDonnell and you --

A Yes

Q -- is that right?

A Correct

Q Do you recall -- and she says in the e-mail, "Here's the info from Jonnie He has calls in to VCU and UVA and no one will return his calls "

Do you recall whether you discussed this issue here; namely, VCU and UVA, not being responsive to Mr Williams with Ms McDonnell prior to receiving this e-mail?

A Yes

Q Okay Do you recall any of the details of that conversation?

A I remember her calling me about this and indicating that Jonnie Williams is having trouble getting any type of response back from UVA or VCU They were the recipients of the grants that we had at the Mansion luncheon, and if -- if there was something we can do to get some type of response back from -- from these two universities

Q Okay And let's note, before we proceed, the date and time of this e-mail is February 9th at 3:13 in the afternoon; is that right?

A Correct 2012, yes

Q Okay

MR HARBACH: And now let's take a look at what I believe -- I believe this is for identification only, Government's 314 If you could blow up maybe the top half, the first two e-mails there Actually, keep going There you go Thank you, sir.

BY MR HARBACH:

Q Now, Mr Eige, you recognize this to be a continuation of the e-mail exchange we were just looking at a moment ago?

A Yes

MR HARBACH: Your Honor, the government offers Government's 314

THE COURT: It will be admitted

BY MR HARBACH:

Q Now, at the very bottom of the screen is the e-mail that I just read to you that Ms McDonnell sent you on the 9th, and then later that evening you replied to her And why don't you read to us what you say?

A "Thanks Sorry for the delayed response It has been a very busy" -- "it has been very busy with session Let's talk next week when you return Jasen "

Q Okay And then the following day, Ms McDonnell replies to you and asks you to call Jonnie?

A Correct

Q And she also points out that the Governor wants to know why nothing has developed with studies after Jonnie gave $200,000 What did you understand that monetary amount to be a reference to?

A The grants given to those two universities

Q On August 30th?

A At the luncheon, yes, at the Mansion

Q Okay And then it says, "I'm just trying to talk with Jonnie Gov wants to get this going with VCU/MCV Please let us know what you find out after we return."

A Correct

Q When you received these e-mails from Ms McDonnell, what did you think she wanted you to do?

A Somehow reach out and see if there -- if we couldn't elicit some type of response from these two universities

Q Did you do that?

A No

Q What did you think about that idea?

A I didn't think that was an appropriate activity for the Governor's Office, for the Governor to be involved with for the staff This was really a matter between the donor -- in this case, Star Scientific -- and the donees, which were the two research universities It really wasn't our role, our place, to get in the middle of that discussion Frankly, we -- you know, we -- we really can't tell the universities what to do anyway in a matter like this and it just wasn't an appropriate thing for us to be involved with That was a matter for, like I said, the companies and the universities to deal with

Q What you just said, did you express that to Ms McDonnell?

A I'm not sure at the time I expressed that I think I took in the information originally Honestly, at that time -- again, this was during session I was busy doing what I thought was my actual job, which was working our legislative agenda I, frankly, wasn't sure, at the time, whether this was something that, you know, Jonnie Williams and the First Lady were talking about, whether the Governor was actually involved with this, if this was something he was actually interested in and, frankly, was just kind of hoping it would go away

Q Did you do anything after receiving this e-mail? Did you call anybody or talk to anyone?

A Yes

Q Tell us about that

A Similar strategy we employed in dealing with the second event that was planned by Star Scientific at the Mansion I called Jerry Kilgore up Thought if I can just ask him to go to the source of this, which was Jonnie Williams and Star Scientific, and change the expectations again of his client, then -- then he wouldn't be asking the First Lady to ping me on this issue So I thought that was the most appropriate way to kind of shut this request down, from our perspective

Q Did you, in fact, make that request to Mr Kilgore?

A I did. I called --

Q What did he -- how did he react?

A He seemed to completely understand He agreed with my assessment; that this is something we can't help out and that he would talk to Jonnie and explain that this isn't something the Governor's Office can do

Q Okay

MR HARBACH: You can take that exhibit down, please Let's take a look at, for identification, please, Government's Exhibit 320

BY MR HARBACH:

Q Do you recognize this to be an e-mail exchange between you and Governor McDonnell about this Anatabloc, slash, VCU issue?

A Yes

MR HARBACH: Your Honor, the government offers Government's 320

THE COURT: It will be admitted

BY MR HARBACH:

Q Publishing 320 to the jury, Mr Eige, is this the first exchange you recall between yourself and the Governor himself about this issue of studies at either of these universities?

A Yes

Q Okay And what's the date and time that Mr McDonnell e-mails you?

A February 17th, 2012, 12:02 a m

Q And what does he say to you, sir?

A "Please see me about Anatabloc issues at VCU and UVA Thanks "

Q And you reply how, four minutes later?

A "Will do We need to be careful with this issue "

Q Okay First question is a moment ago you said you weren't even sure whether the Governor himself was interested in this issue when you got the e-mails from Maureen McDonnell Now, this is the governor himself e-mailing you about this

Did that change your view at all about whether it was appropriate for the Governor's Office to be involved in this?

A No I mean, frankly, I thought the First Lady was now pushing on the Governor a little bit to send this, you know, reach out to me on this

Q Okay Did she ever tell you that that happened?

A No

Q Did Mr McDonnell ever tell you that she was pushing him to send this?

A No

Q Why, in your view, did "we need to be careful with this issue"?

A Well, as I mentioned before, this was just not something the Governor's Office should be involved with. This wasn't an appropriate use of our time or resources It wasn't something that we really had, frankly, the authority to do, and it just was not a matter that -- that we should be involved with as far as trying to broker some type of an understanding or compliance with the universities who had received this grant money and a company That was a matter between them and not something that I felt like was an appropriate use of our time or our -- our authority

Q Did you meet with Mr McDonnell following this e-mail exchange?

A I was planning to I have every reason to believe I popped in the next morning and kind of explained that it was taken care of, we didn't need to bother with this

But today, sitting here, I can't say that I remember specifically having a particular conversation or meeting

Q What were you planning on telling him?

A Just that, again, this was something that really needed to be worked out between the company and the universities, that we didn't need to get involved with it

I believe by that point in time, I had called Jerry Kilgore, and I think had -- had changed -- you know, hoped that that would change the expectations, and so that request of us would have been withdrawn by Star

Q Did you -- do you recall whether -- one way or the other, whether you shared with Mr McDonnell that you called Mr Kilgore?

A I don't recall at this point

Q Do you recall anything about Mr McDonnell's reaction during this conversation that you think took place?

A I don't The only -- you know, I have a recollection that he never followed back up with me or never pushed back or never directed me to actually go forward and try to make something happen with the universities

Q Okay Let me ask you the same question with respect to Ms McDonnell Do you recall any follow-up or additional requests or pushback from her?

A I don't have any recollection of her doing that either

Q The last exhibit I will identify with you is Government's 319, please I neglected to ask you about this

Is this you forwarding the Governor's e-mail to your

Chief of Staff, Mr Kent?

A Yes

MR HARBACH: Your Honor, the government offers exhibit Government's 319

THE COURT: It will be admitted

MR HARBACH: Publish it briefly for the jury

BY MR HARBACH:

Q You're just saying for his information?

A Yes I think I had informed him of the First Lady's request that I assist in this matter, and so I think he knew already So I just wanted him to know that it was still percolating

Q And now that the Governor himself is asking about it?

A Yeah

Q Okay

MR HARBACH: You can take that down, Mr Starnes

BY MR HARBACH:

Q While you were working for Mr McDonnell, did you know that he owned two vacation homes at Virginia Beach?

A Yes

Q Did you know that he created a company to administer those homes with his sister?

A Yes

Q Do you remember what it was called?

A MoBo

Q Did you know at the time, in the spring of 2012, that Mr Williams, Jonnie Williams, and Mr McDonnell had had conversations about Mr Williams conveying stock to Mr McDonnell for the McDonnells to borrow against? Did you know anything about that?

A Not at the time, no

Q Were you aware, in 2012, that Mr Williams ended up conveying approximately $70,000 in loan proceeds to MoBo?

A No, not at the time

Q What about the fact that either Ms McDonnell or Mr McDonnell owned any Star stock during the time you worked for Mr McDonnell? Did you know that at the time?

A Not at the time, no

MR HARBACH: May I please have a moment, Judge?

(Counsel conferring with co-counsel)

MR HARBACH: Thank you, Your Honor I have no further questions

THE COURT: Cross

MR BURCK: Thank you, Your Honor May I proceed, Your Honor?

THE COURT: Go ahead

CROSS-EXAMINATION

BY MR BURCK:

Q Good afternoon, Mr Eige

A Good afternoon.

Q My name is Bill Burck, and I respect Maureen McDonnell

Have you and I ever met before?

A Not that I -- no

Q Have we ever spoken on the phone before?

A No

Q Okay Now, you testified that your job was to provide legal and political advice to the governor; is that right?

A And policy advice

Q Policy advice?

A Yes

Q Legal, political, and policy advice?

A Yes

Q Okay Was there a lawyer dedicated to Ms McDonnell as the First Lady to give her advice while you were there?

A No

Q Okay And that's because she doesn't work for the Commonwealth?

A Correct

Q She's not a public official, right?

A Correct

Q But she would occasionally ask you for advice about a variety of things, right?

A She or her staff, yeah

Q Okay And you testified about the difference between legal problems and sort of political problems or image problems?

A Yeah Optics PR-type problems, yeah

Q Right And you advised on both types of problems, right?

A Right. I mean, everybody in our office was a little bit of everything, I guess

Q Right That's how it works in a political environment --

A Yes

Q -- for an elected official, right?

A Correct

Q Okay Now, just turning to December '09 You testified about this inaugural dress?

A Yes

Q And you explained that your concern with Jonnie Williams potentially purchasing the dress was a political or public relations standpoint principally, right?

A That's what initiated the discussion about the inaugural dress from Jonnie Williams, yes

Q You were not concerned that there was a legal issue that Jonnie Williams could not buy Maureen McDonnell a dress, right?

A Correct There's nothing in Virginia law that said he couldn't do it Just the question was whether it had to be reported or not if he did

Q Right And that's because it's an -- the reporting issue, as you testified, was because it's a -- it was inauguration and so that was for the Governor?

A Correct

Q And so there's potentially an issue there?

A Correct Correct We took a conservative view of that law

Q Right

A Somebody could make a good-faith argument that, well, it was really a dress to her You don't have to do it

So -- but we took the vantage of let's be more cautious than anything and let's -- you know, it's really -- it wasn't as if she was just given clothing separate and apart from the Governor's inauguration So because of the inauguration and the aspect that it's actually the Governor's, that's why we felt that more information would be better, and that would include that dress, if it was given to her

Q Okay So it's fair so that had Mr Williams bought the dress for the inauguration, you would have advised the Governor to put it on the SOEI?

A Correct

Q Okay And you testified that -- that Maureen McDonnell, your conclusion was, over those -- the course of your analysis, that the First Lady of Virginia does not have a requirement to file an SOEI?

A Correct Both I couldn't find anything in the law that said she was required to, and then we also went back and -- so often the case in these situations is just loc at precedent, what have other administrations, and we couldn't find any indication, at least in the most recent administrations, that the First Lady ever filed an SOEI

Q Okay And that would be consistent with your view at the time that she was not a public official?

A Correct

Q Okay Now, you testified that the -- the inaugural dress, because it was the inauguration of the Governor, that was something different than a dress that was given to her for a different purpose, a non-government -- Governor-related purpose, right?

A Possibly, yes

Q Okay Now, the SOEI, you testified that the Governor would have to put gifts to him or gifts that were meant for him on the SOEI, right?

A Right, unless they were excluded, like the family or a friendship exclusion

Q Okay And if gifts were given to Ms McDonnell, those would not have to be put on the SOEI, from your perspective?

A Typically, yes I mean, the reason I caveat it is there may be some fact pattern that would say, well, it really is something for the Governor; again, like the inaugural type situation But generally, just run-of-the-mill here's some clothes, no, it wouldn't be reportable on the Governor's SOEI

Q Okay So a wedding and a -- and a -- a marriage anniversary, those would be considered personal events or would they be considered like the inauguration?

A Probably more personal, I would say

Q Okay And do you know if the Governor enjoyed wearing women's clothing?

A I have no knowledge of that

Q Okay So would it be fair to say that if women's clothing was purchased for the First Lady, from your perspective, that would be for the First Lady, for Maureen McDonnell, not for the Governor?

MR HARBACH: Objection

THE COURT: You can answer that

A Generally speaking, yes Again, the inaugural -- it was a dress for the First Lady, but it was for the Governor's inauguration But generally, clothes given to the First Lady, dresses in that nature, would be hers, not his

BY MR BURCK:

Q Okay So from your perspective, was there any -- would have there have been any legal restriction on the First Lady receiving clothing from a friend?

A No, not at all

Q Now, we were talking about the New York shopping trip You've probably heard a little bit about that, and you were actually asked about that by Mr Harbach that you did not know about it at the time, right?

A At the time, correct

Q Mary-Shea Sutherland, you knew she was Chief of Staff to Maureen McDonnell, right?

A Yes

Q And as the Chief of Staff -- although it's the Chief of Staff to the First Lady, she's actually employed by the Office of the Governor, correct?

A Correct

Q And she is a State official?

A She is, yes

Q Because she's paid by the State?

A Yes

Q Did you know that Maureen -- sorry -- that Mary-Shea Sutherland was with Ms McDonnell during the New York shopping trip with Jonnie Williams?

A No

Q Did Mary-Shea Sutherland tell you that she had observed Jonnie Williams purchase dresses and other clothing for Maureen McDonnell?

A I don't recall her saying that, no

Q Did Mary-Shea Sutherland ever tell you that Maureen McDonnell, actually, and Mary-Shea Sutherland had purchased stock in Star Scientific?

A I believe Mary-Shea, at one point, did tell me that

Q Did tell you which part?

A Told me that she had purchased stock She was --

Q "She" Mary-Shea had purchased stock?

A Yes She was singing the praises of Star Scientific one day while we were -- I think it was actually a scheduling meeting And before we sat down to actually -- we were waiting on, I don't know who, to show up, and I seem to recall her saying that she -- she spoke highly of the product, and I believe she said something about purchasing stock And, again, it was just kind of in passing

Q Right

A And, you know, it wasn't the focus of the meeting or anything like that She wasn't telling just me

Q Did she tell you that Maureen McDonnell had bought stock?

A I don't recall her saying that, no

Q Okay Now, you testified at the Mansion event that Mary-Shea Sutherland was the person you principally dealt with leading up to the event, right?

A Yes

Q And you testified that there was a press conference or a public launch that was supposed to be on the -- in the Mansion?

A There was a suggestion that there would be two events when we were first informed of what was going to happen on August 30th One was going to be that luncheon regarding the grant to the universities, and then there would be some other type of public launch

The way I recall it, it was -- you know, it sounded like they wanted to like do the lunch, come outside and maybe do it in front of the Mansion or something out -- you know, again, it was going to be a press conference So they'd have press there and so forth

Q But you said no -- you and Martin Kent said no way to the public launch or the press conference at the Mansion?

A Correct

Q So it was only lunch?

A Do what?

Q You were only allowing the lunch to go forward?

A The lunch, yes

Q Lunch, not launch?

A Yeah, launch I know That's why I was making sure I understood you -- or heard you

Q It can happen

And the press release itself, you testified that you went back and forth -- or maybe not back and forth But you looked at the press release You had some comments You gave them to Mary-Shea, and then there was a final press release that was provided --

A Correct

Q -- by Star Scientific?

A Correct

Q And that press release was okay, from your perspective?

A It was, because they removed the references to the Governor and the First Lady

Q Fair to say -- and you also attended the event, right?

A Yes

Q Fair to say that you would not have allowed a product launch -- launch, not lunch -- launch to occur at the Mansion under your watch?

A Correct That was the primary reason why I sat in on that lunch

Q So you don't think it was a product launch?

A No I did not -- we did not view it as such We felt like they were going to do that at a separate event sometime that day, presumably

Q Did Maureen McDonnell complain to you when the public launch, slash, press conference was canceled or you said no way to that?

A I don't remember having any conversations with her until we were just at the lunch itself It was just talking to Mary-Shea, I believe So --

Q But you don't recall Maureen McDonnell --

A No

Q -- never said, "Hey, I'm upset about that" --

A No

Q -- or, you know -- nothing like that?

A She never did, no

Q Okay And the press release Did you ever hear anything from Maureen McDonnell complaining about changes to the press release?

A No

Q Nothing at all?

A Nothing at all

Q In fact, you didn't discuss the press release with her at all?

A I don't recall ever having a conversation with her about the press release Just Mary-Shea Sutherland

Q Just Mary-Shea Okay Now, your concern with this Mansion event was really about whether or not the Governor would appear to be endorsing a product That's why you were taking the steps you were taking?

A Correct

Q Were you -- well, let me ask you this Were you aware of any law preventing Maureen McDonnell from promoting a product if she wanted to?

A No I was not aware of any -- any law that prevented that

Q So she could have put her face up on a billboard for some product? It might have been a PR nightmare, but a legal issue, would that have been a problem, from a legal perspective?

A I think in a vacuum, no Like you indicated, we would have concerns, a multitude of concerns, regarding that But I don't know of a provision in Virginia law that says she couldn't promote products

Q Okay Now, we talked a little about Mary-Shea Sutherland and her role in this event You did not know at the time that you were speaking to Mary-Shea Sutherland about the event that she was in discussions with Jonnie Williams about a job?

A Correct I didn't know about that

Q And you didn't know that she was -- she, in fact, shortly after the event, received a -- or sent a contract to Mr Williams via Mr Williams' secretary? You didn't know that either?

A Not at the time, no

Q And you didn't know that Mary-Shea Sutherland had been on this shopping trip with Maureen McDonnell and actually had a dress purchased for her?

A No, I didn't know at the time

Q And she didn't tell you, of course, about Maureen McDonnell's shopping trip either, right?

A I don't have any recollection of her ever discussing that with me

Q Now, the Rolex that you testified about -- well, that you found out about, you saw it on the Governor's wrist?

A Right

Q And then you learned subsequently its origins Now, the -- as I understand it from your testimony, again, the Governor would have to know that a gift was meant for him in order to put it on his SOEI, right?

A Yes

Q He couldn't -- if somebody didn't give him a -- for example, if somebody didn't give him a gift but he intended it for the Governor but never gave it to him, he wouldn't know about it, right?

A Presumably, yes

Q So it wouldn't go on the SOEI?

A Right

Q So if someone got a gift for him, then transferred it to him but didn't tell him that it was from -- from -- well, let me -- withdrawn That was a terrible question

If his wife gave him a watch and didn't tell him that it was from Jonnie Williams, would he -- in your view, would have to disclose that in the SOEI?

A Based on just those facts, I would say no

Q You testified about a discussion you had with Maureen McDonnell about being on the board of either a foundation or the company of Star Scientific?

A Yes

Q And you also testified about a conversation you had with Jonnie Williams after that?

A Yes

Q Now, it was Ms McDonnell who said, "Go talk to Jonnie Williams," right?

A Correct

Q And it was Ms McDonnell who came to you and said something to effect of, "I'm thinking about going on the board of Star Scientific What do you think"?

A Yes

Q And you said that she was confused about it I think that's what you told the FBI?

A She seemed to be confused about what type of board it was, whether there was compensation, exactly what the board was Again, whether it was a foundation, a corporate board and whether there would be any type of compensation associated with it

Q Okay And are you aware of any law that would have prevented her -- I think you testified you were not aware of anything that prevented her from going on the board legally?

A No

Q Okay And were you aware of any law that would have prevented her from being hired by Jonnie Williams as an employee of Star Scientific?

A Again, while we would have other concerns, I'm not sure of any -- any law that would prohibit that

Q Terrible optics, bad PR, but law?

A Yeah There could be exceptions with the Conflict of Interest Act if it looked like she was -- you know, there would definitely be some concerns --

Q Right

A -- if that company was doing business with the Commonwealth and things of that nature But generally speaking, in a vacuum with those fact patterns, no

Q Now, you mentioned conflicts of interest As a -- as the First Lady of Virginia, did -- did Maureen McDonnell have any power to instruct anyone to do anything in the State government?

MR. HARBACH: Objection

THE COURT: Overruled

A I mean, she had staff that worked for her So instructing them on what to do, even though they were State employees and she wasn't a State official But as far as having some type of legal authority over agencies, over the budget or anything like that, no No, not at all

BY MR BURCK:

Q And you testified earlier that Mary-Shea Sutherland was actually an employee of the Office of the Governor, right?

A Sure

Q So fair to say that her job description, Mary-Shea Sutherland's job description, as handed down by the Office of the Governor, was to assist Maureen McDonnell, right?

A Yes

Q Okay Now, turning to the VCU/UVA --

MR BURCK: Please publish Government Exhibit 314

BY MR BURCK:

Q You testified about this e-mail exchange This is --

MR BURCK: Start scrolling from -- start from the bottom, please Stop right there Thank you

BY MR BURCK:

Q This is an e-mail from Jonnie Williams, Jr to Maureen McDonnell Attached is a bunch of information that I think you testified about?

A Right

MR BURCK: Scroll up please

BY MR BURCK:

Q And here this is a -- well, in between there's an e-mail from Maureen McDonnell saying, "Here's the info from Jonnie He has calls in to VCU and UVA and no one will return his calls "

A Correct

MR BURCK: Actually, if you show Government Exhibit 312, I think it will be easier Thank you Please go to the top Just blow that up

BY MR BURCK:

Q Now, that's -- as we talked, the e-mail, "Here's the info from Jonnie He has calls in to VCU and UVA and no one will return his calls " That's from Maureen McDonnell and Bob McDonnell and to you, right?

A Yes I'm cc'd

Q Now, Ms McDonnell knew you were the lawyer for the Office of the Governor, right?

A Yes

Q And you were cc'd on the very first e-mail that she sends to the Governor about this request from Jonnie Williams, Jr , right?

A Right

MR BURCK: Please show Government Exhibit 314 Publish, please

BY MR BURCK:

Q And in the bottom e-mail, you reply to her -- you don't cc the Governor Any idea why?

A I don't remember

Q Just hit reply?

A Probably just hit reply, frankly

Q Okay And then you have a response from Ms McDonnell, right, above that?

A Correct

Q And, again, she's discussing with the lawyer for the Office of the Governor this request from Jonnie Williams, Jr and Jonnie Williams, Sr , right?

A Yes

Q So is it fair to say that Maureen McDonnell went to you, the lawyer, and her husband, the Governor, when she was asked about what was happening with these clinical studies? Right?

A I can't tell you why she went to me, whether it was because of the lawyer or I was at the lunch It could have easily been the Chief of Staff Her and I were both talking about going there I went So I can't tell you whether I was because I was the lawyer or because I was already doing some of these other things, like being at the Mansion lunch

Q But she came to you?

A She did, yes

Q She didn't reach out to them herself, as far as you know?

A I have no knowledge either way of that

Q Is it fair to say that you would want the First Lady of Virginia to come to you whenever somebody is asking her to do something with respect to a -- an official act?

A It would be helpful, yes

Q That's what you would expect, being the lawyer for the Office of the Governor, right?

A I would hope she would, yes

Q Okay And you testified that you shut down this request from Jonnie Williams to check in or intercede with the universities, right?

A Yes

Q And I think you testified that you didn't get any pushback or complaint from Maureen McDonnell, right?

A Correct

Q You did testify that you saw an e-mail -- or in response to a question from the government, that there was an e-mail that the Governor sent to you, and you thought it might be Maureen McDonnell asking him to send that?

A Yes

Q But that was just based on your speculation?

A That was based on the phone call I had with her and the e-mails that she had sent prior to that, which I just looked at But I didn't know for sure

Q You didn't know for sure But you never actually heard from Maureen McDonnell saying, "Hey, following up on any of this"?

A My recollection is a phone call with her, then this e-mail that she sent to the Governor and cc'd me I don't recall having any other conversations with her about this matter

Q I think you told the prosecutors that she didn't bug you, bug you any longer about this Do you remember that?

A Correct

Q And just one last question -- or couple of questions

You learned subsequently -- or subsequent to the investigation becoming public that Maureen McDonnell had received a $5,000 loan from Jonnie Williams, right?

A Yes

Q But you didn't know about it at the time, right?

A I did not

Q And, again, Maureen McDonnell does not have to file an SOEI or anything like that, right?

A Correct

Q And does she -- does she have a requirement to review the Governor's SOEIs?

A There's no requirement for her to, no

Q Do you have any idea if she did review his SOEIs?

A To my knowledge, she didn't But I -- you know, there was sometimes the Governor took a draft home I don't know what happened at that point But I had no -- I have no knowledge of her ever reviewing his statements

Q And the $50,000 loan, based on the information you've learned, that was reported by the Governor on his SOEI as one of his liabilities, right?

A Of immediate family member's liability

Q Okay

MR BURCK: Your Honor, one moment

(Counsel conferring with co-counsel)

MR BURCK: Thank you, Your Honor That's it

THE COURT: All right

CROSS-EXAMINATION

BY MR ASBILL:

Q Good afternoon, Mr Eige

A How you doing?

Q Eight years you worked with my client?

A Yes, sir

Q To your knowledge, did my client ever scream at anyone?

A No

Q Was that how he governed or dealt with people?

MR HARBACH: Objection

THE COURT: Overruled

A He was always very cordial with everybody that he worked with He treated everybody with respect regardless of who they were, what position they were taking on maybe his piece of legislation or a decision he made

BY MR ASBILL:

Q You were there until the very end in January of 2014?

A I was the last staffer to leave the office at the end of the administration

Q Was that nine months after the press started reporting about this investigation?

A I think so Yes, sir

Q On the last day, was there a cabinet meeting, a final cabinet meeting?

A We did have a final cabinet meeting

Q What happened there?

A It was an emotional time We met at the Capitol, in the Governor's office on the third floor, which we typically did not meet there It really wasn't big enough to hold a cabinet meeting But we started the administration meeting there at the -- at the historical, you know, cabinet room, and so we thought it would be a good fitting in I think it may have been even been Martin's idea or the Governor's idea to kind of end it the same way we started

So very emotional People went around the room and kind of told their stories and their appreciation for being able to have the opportunity to work for the Governor and the accomplishments that the administration, the Governor had achieved during that time period

Q And what was your personal emotional state at that meeting?

A I was --

MR HARBACH: Objection Relevance

A I was --

THE COURT: Sustained We've had enough of that

BY MR ASBILL:

Q Would you work for my client again?

MR HARBACH: Objection Same objection

THE COURT: Sustained

Do you have anything else?

MR ASBILL: No, sir

THE COURT: Okay

You can answer that question I don't think anybody would be surprised at his answer

BY THE COURT:

Q Would you work for the Governor again?

A I would

THE COURT: All right

MR ASBILL: Thank you I have no further questions

THE COURT: Redirect?

MR HARBACH: Yes, please, Your Honor

REDIRECT EXAMINATION

BY MR HARBACH:

Q Hello again, Mr Eige

A Hi

Q You mentioned on cross-examination by Mr Burck that Ms McDonnell had a staff?

A Yes

Q About how many people were on her staff?

A She had -- I guess if you count the Mansion Director, I think three I'm hoping I don't leave somebody out, and they'll be mad at me for not -- but I think approximately three people

Q Were they paid?

A Yes, they were paid And, again, that's not -- there was other staff that worked the Mansion There was a Mansion Director, a Chief of Staff, and then somebody that was more or less like a Deputy Chief of Staff type administrative type person

Q And did the three, or so, staff members you just mentioned, did they report to Ms McDonnell?

A They did

Q You mentioned, in one of your answers to Mr Burck, when you were talking about the inaugural dress issue, I believe you said that you took the conservative and cautious approach with regard to whether it would have to be disclosed on the Governor's SOEI

Do you recall that answer?

A Correct

Q And did you make clear to Mr McDonnell that you all were going to take the conservative, cautious approach?

A Yes We talked about what we felt the law required and what was the best approach under our interpretation

Q Turning to the launch -- excuse me, the Mansion event

A It wasn't a launch

Q I'm not going to get into a launch/lunch debate Okay The August 30th event at the Mansion?

A Yes

Q Do you recall whether Mr McDonnell appeared surprised when he walked in the room and Jonnie Williams and other Star personnel were in there?

A I don't -- I don't recall him being surprised

Q Okay You were asked some questions about Mary-Shea Sutherland and whether you were aware about her possibly looking for a job with Mr Williams Do you remember those questions?

A Correct Yes

Q Were you aware at the time that you were working for the Governor, when Ms Sutherland was also there, that she was unhappy at her job? Did you know anything about that one way or the other?

A I think at some point I knew that there were some issues with the staff at the Mansion I never had a specific or direct conversation with Mary-Shea about her own experience But I had the impression that there were issues at the Mansion as far as staff and kind of morale issues

Q But no specific recollection of any conversations with Ms Sutherland herself about her own job satisfaction?

A Yeah I don't recall having a discussion directly with her about that

Q Mr Burck asked you, in particular, about some phrasing concerning Ms McDonnell's e-mails to you in

February of 2012 on this issue of the universities not being responsive to Mr Williams, and in particular, he asked you whether you ever stated that she didn't bug you anymore

Do you recall that phrasing?

A Yes

Q And I believe you testified on direct examination, when you were talking about that subject, that you hoped that the issue would just go away?

A Correct

Q Do you recall that testimony?

A Correct

Q Why did you feel that way?

A Well, two things One, I was really busy, again, with the legislative session I guess I can't emphasize that enough During that time period, we're extremely busy in the Governor's Office And two, again, I didn't think it was something that was appropriate for us to be involved with And it was coming from the First Lady so I hoped that it would just kind of go away, we didn't have to deal with it It would be an issue that would just kind of resolve it itself and we would move forward

Q Focusing on that same time frame, you recall that following that, there was the e-mail exchange you had with the Governor --

A Yes

Q -- on this issue, and I believe you said that there was no follow-up from either of them after that?

A Correct

Q Do you recall whether around that time Mr McDonnell ever said to you, "Hey, Jasen, you know, we really can't be doing anything with Star over at UVA and VCU because I'm in discussion with Mr Williams about a $50,000 loan"?

Did he ever say anything like that to you?

MR BURCK: Objection

MR ASBILL: Objection He said there was no follow-up

THE COURT: Overruled

A No, didn't have a conversation like that

BY MR HARBACH:

Q Can we take a look at Government's 320, which I believe I asked you about during direct examination? And this is the e-mail exchange you had with Governor McDonnell, and we noted that the time was at 12:02 a m on February 17th?

A Yes

Q Is that right?

MR ASBILL: Outside the scope of cross-examination

MR BURCK: Same objection, Your Honor

THE COURT: For Mr Burck, it's a good objection The objection is sustained

MR HARBACH: All right

BY MR HARBACH:

Q Let's take a look at Government's 318, please This is in evidence I haven't shown it to you yet

Looking at the e-mail at the bottom from Mr McDonnell, sir, my question to you is were you aware, when you received Government's Exhibit 320, that six minutes before Mr McDonnell had sent this e-mail to Mr Williams, did you have any knowledge of that, sir?

MR BURCK: Same objection, Your Honor

THE COURT: No He can answer it

A Not at the time, no

MR HARBACH: Okay Can I have just a moment, Judge?

(Counsel conferring with co-counsel)

MR HARBACH: Thank you, Your Honor, for your patience

Can we please pull up Government's Exhibit 289, please

BY MR HARBACH:

Q This is the -- just to refresh your memory, Mr Eige, this is the final filed SOEI for calendar year '11 Okay?

A Okay

Q Could we take a look at -- do you recall on --

MR ASBILL: I object This is outside the scope

MR HARBACH: I'm trying to get there, Judge

THE COURT: No, I don't think so. Go ahead

BY MR HARBACH:

Q Do you recall on cross-examination by Mr Burck, him asking you some questions about whether the -- there was a $50,000 loan disclosed on the SOEI?

A Yes

Q Okay

MR HARBACH: Could we take a look at Page 4 of Government's 289, please

BY MR HARBACH:

Q And down there under -- actually, in either case, the box on number 2, let's start there, where it says, "The personal debts of members of my immediate family are as follows:" "Individual creditors," is that box checked in the $10,001 to $50,000 column?

A Yes

Q And what's the entry there under "Individual Creditors"?

A "Medical Services "

Q Is there anything on this page that indicates that Mr Jonnie Williams loaned the McDonnells $50,000, sir?

MR BURCK: Objection, Your Honor The document doesn't ask for that

THE COURT: Overruled

A Nothing indicates it's from Jonnie Williams

BY MR HARBACH:

Q And were you aware of the $50,000 loan to the McDonnells when this SOEI was filed, sir?

A No

Q Do you recall yourself now whether -- what you interpreted "Medical Services" to mean there on Page 4?

A At the time, I just figured it was some type of, you know, healthcare bill Medical service bill from some type of doctor or hospital, something of that nature

Q All right And I'm not suggesting, necessarily, that you would, but I have to ask, were you aware, at the time, whether Mr or Ms McDonnell or any member of their family had any serious medical problems during calendar year '11?

A I wasn't aware of any that year, no

MR HARBACH: Okay Thank you

Nothing further, Your Honor Thank you

THE COURT: All right Thank you, sir You may stand down

(Witness stood aside)

THE COURT: Call your next witness, please

MS ABER: Dr John Faessel

JOHN FAESSEL,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good afternoon, sir Please introduce yourself to the jury

A My name is John Faessel

Q And how do you spell your last name?

A F-A-E-S-S-E-L

Q In what city and state could you currently reside?

A San Diego, California

Q Can you tell the jury how you're employed?

A Self-employed, basically retired I do some financial writing still

Q Is it fair to say you write financial articles on occasion about companies in scientific areas that interest you?

A Yes

Q I think I referred to you as a doctor In another time in your life --

A Yes I was --

Q -- were you --

A I was a dentist

Q Now, how long have you been writing these financials articles of interest to you?

A Twenty-two years

Q Have you ever written about a company called Star Scientific?

A Yes.

Q I'd like to turn your attention back to June of 2011 Did you attend a Star Scientific event at the Roskamp Institute in Florida?

A Yes

Q Where, precisely, was it held?

A At the Roskamp Institute in Florida In Sarasota, Florida

Q Tell the jury generally what kind of event it was

A It was basically a scientific meeting It lasted about four hours 125 people, I would say Mostly --

Q What kinds of folks are in the audience?

A Medical related, science related, investor related, a few other individual investors that were interested in the -- what was going on there too as far as the science

Q And who was giving the presentations, generally?

A Star Scientific was

Q Okay Were there scientists speaking to the crowd?

A Yes

Q How long did this event last?

A Approximately four hours, as I recollect

Q Now, at some point during the meeting, did a gentleman named Jonnie Williams speak to the audience?

A Yes

Q Did he introduce Maureen McDonnell, the First Lady of Virginia?

A Yes, as I recollect

Q Okay Did Ms McDonnell make any comments to the audience?

A Yes

Q Okay In general terms, what did she tell the audience?

A Very briefly, she said that the Governor's Mansion would be offered to the Star Scientific to launch a new product, which was to be Anatabloc

Q How long did she speak?

A Couple of minutes It was very brief

Q And is it fair to say she sort of broke the ice?

A Yes Yeah Very much so

Q Now, after the meeting, did you write one of your financial articles about the event?

A Yes

MS ABER: I'd like to bring up Government Exhibit 154, please, for identification

BY MS ABER:

Q Dr Faessel, did you have an opportunity to look at this before coming to court today?

A Yes, I did

Q And is this an e-mail from you to some folks recapping your experiences at Roskamp?

A Yes

Q Okay

MS ABER: Your Honor, I'd like to move Government Exhibit 154 into evidence

THE COURT: It will be admitted

BY MS ABER:

Q Okay Starting at the bottom there -- thank you, Ms Taylor -- you are John Faessel, right?

A Yes

Q And to whom are you sending this particular commentary?

A Well, it -- first of all, to a -- a list of names that I've accumulated over the years that have either followed my interest in the market or interest in particular companies or they follow on -- follow me from some -- they know that I'm writing about a particular company So --

Q Okay So is it --

A And then it goes to a couple of blogs too, which have their own audience

Q Okay So even though -- if I've got -- is it fair to say --

A Yeah

Q -- this e-mail is to three folks, Robert Scannell, Scott Peters, and then speters@tradewinds?

This actual article went to a much broader distribution?

A Yes, it did

Q And who are the kinds of folks who would get this more broadly?

A For the most part, investor types Mutual fund analysts, scientists, doctors, and investors of all stripes

Q How broad -- how wide is your distribution list, how many folks?

A About 4000 And on the blogs it can get a lot higher, depending on the particular company I might be writing about or issue

Q Okay So the subject of this e-mail, if you'll follow along with me, is "Dr Faessel - Report from the Roskamp meeting in Sarasota, Florida - 6/2/2011"; is that right?

A Right

Q And how soon after the Roskamp event did you write this e-mail?

A I wrote it, I think it was that night It was early morning I got up early and pretty much wrote it, and I think it went out the next day

Q Okay

MS ABER: Let's turn to Page 3 of the exhibit, please

BY MS ABER:

Q I'd like to direct your attention to the second full paragraph starting with, "Another communiqué " Could you please read that to the jury?

A "Another communiqué" -- "another communiqué that wowed the attendees Star Scientific CEO Jonnie Williams introduced the First Lady of Virginia, Virginia Governor Bob McDonnell's wife Maureen, and in a brief talk, she offered the Governor's Mansion for the launch of Anatabloc that Star is now packaging and readying to go to market, period Likely by the end of the month, I hear Williams called the coming event an historic occasion Star Scientific's home base is in Glen Allen, Virginia "

Q Thank you, sir Is that consistent with your recollection of what Ms McDonnell told the crowd?

A Yes

MS ABER: Okay If I could have one moment, please

(Counsel conferring with co-counsel)

MS ABER: Thank you, Your Honor I have no further questions

THE COURT: All right Any questions?

MR HAUSS: Yes Thank you, Your Honor

CROSS-EXAMINATION

BY MR HAUSS:

Q Good afternoon How are you today?

A Good

Q My name is Steve Hauss I'm a lawyer for Maureen McDonnell You and I have never met; is that correct?

A That's correct

Q So for this Roskamp meeting, you heard about it, and so you called someone at Star Scientific to see if you could reserve a space; is that right?

A I believe so

Q And when you called, you were informed that the event was a show-and-tell; is that right?

A Something like that I wouldn't -- I can't recollect, but certainly --

Q Well, do you --

A -- certainly I was told who was going to be there and as far as the scientific speakers, et cetera

Q Do you recall being told that the attendees would be invited to take a tour?

A Yes

Q And did you, in fact, take a tour?

A I did not take a tour I got there a little bit late, and the tour went on a bit earlier

Q Now, you testified that during the event, Ms McDonnell gave some brief remarks?

A Yes

Q And Ms McDonnell spoke about how excited she was about the product Anatabloc; is that right?

A Yes I think so

Q She expressed enthusiasm about the product?

A Yes

Q Okay And she said that she would do what she could to promote this Virginia company; is that right?

A I didn't say that But I -- she was exuberant about, you know, the science, I think, from what we had just heard

Q Is it fair to say that you shared the enthusiasm for the science?

A I was just getting into the science, and at this point I'm becoming more interested because that's why I'm there, really, to report on what I heard

Q Do you remember telling the prosecutors in this case that everyone was taken aback by the science at the meeting?

A I would say so, yes

Q Do you remember saying that it was an incredible meeting, how the science evolved?

A Yes I can't remember if I said that in that particular piece or not, but I probably said it subsequently.

Q And do you recall telling the prosecutors it was a very powerful meeting?

A Very, yes

Q Now, you said that you're a doctor You were a practicing dentist at some point?

A Yes, uh-huh

Q So you had, I assume, medical training?

A Yes

Q Now, there were other speakers at the Roskamp event other than Ms McDonnell, correct?

A Yes

Q And was one of those speakers Michael J Mullan, M D , Ph D ?

A Yes

Q Okay And he spoke about Alzheimer's research; is that right?

A That was the basic theme, yes I would say it would be -- it would be research pertaining to what could be Alzheimer's, yeah

Q And you found his speech very exciting; is that

correct?

A Yes

MR HAUSS: And could we show -- bring up Government Exhibit 154?

MS ABER: Mr Taylor can bring it up

MR HAUSS: Great Thank you And if we go to the fourth paragraph If you could just blow that up A little bit more There Perfect

BY MR HAUSS:

Q And you actually wrote in your article, "First and foremost was the explanation from John Mullan, M D , Ph D That was worth the cost of the trip as far as I was concerned " Is that fair?

A Yes

Q Now, one of -- there were two other prominent scientists who spoke from Johns Hopkins University; is that correct?

A That's correct

Q And those were Dr Paul Ladenson and Dr Patrizio Caturegli?

A That's correct

Q And in your article, you described Dr Ladenson as widely known and acclaimed endocrinologist; is that correct?

A That's correct

Q And you described Dr Caturegli as an internationally known scientist Is that fair?

A That's true Yes

Q Now, is it fair to say that both Dr Ladenson and Dr Caturegli spoke very highly of the science of Anatabloc?

A Yes

Q And, in fact, Dr Ladenson referred to it as astonishing?

A Yes

Q Would it be fair to say that when you said that everyone was taken aback by the science of Anatabloc and that it was very powerful, you were referring to the presentations of these preeminent scientists?

A Yes

Q About their data, their anecdotes?

A And videos, et cetera

Q Great Now, do you recall Ms McDonnell saying something to the effect that she would drive around Virginia to contact every single doctor to tell them about Anatabloc?

A I don't -- I didn't -- I was asked that I can't recollect that I saw that written also afterwards, but I -- I -- I don't -- I can't remember that exactly

Q Do you remember something -- if not the exact words, something to that effect?

A Maybe to that effect Because she was -- she was, in a way, exuberant, almost comic relief after all this very detailed science, you know, chemist -- biochemistry, molecular biology, et cetera, and then finally there was a -- you know, the Governor's wife was --

Q Some levity Is that fair?

A Yeah, levity And I said she wowed the crowd, I think I wrote in there

Q And when you said "wowed the crowd," is that because of the, as you said, comic relief?

A Yes And the fact she was exuberant Just the fact that there was the Governor's wife in this meeting was sort of out of the -- came out of the -- I didn't realize it was -- out of the blue, so to speak

Q Now, after hearing about all this powerful, astonishing science, you yourself purchased shares in Star Scientific; is that right?

A Yes I purchased them before, and after -- after that, I purchased some more

Q And you were very excited about the stock?

A About the science especially

Q Okay And you actually described it as a stock for the ages?

A Yes Could be I -- with a question mark after it, I think

Q Okay

MR HAUSS: One moment, Your Honor

Nothing further Thank you

THE COURT: All right Anything over here?

CROSS-EXAMINATION

BY MR BURNHAM:

Q Good afternoon, Doctor My name is James Burnham I'm here for Mr McDonnell Just two quick questions for you

Governor McDonnell wasn't at the Roskamp meeting, was he?

A No, he was not.

Q Okay And so you've never spoken with Governor McDonnell about Star's products, product launches or anything else?

A No

MR BURNHAM: All right Thank you, Doctor

THE COURT: All right Anything else?

MS ABER: Yes, Your Honor One question

REDIRECT EXAMINATION

BY MS ABER:

Q Dr Faessel, you said that everyone was taken aback at this meeting by the science How many people were in the audience at this meeting?

A I think 125, roughly

MS ABER: Okay

Thank you, Your Honor I have no further questions

THE COURT: All right Thank you, sir You may stand down

(Witness stood aside)

THE COURT: Call your next witness

MR HARBACH: Thank you, Your Honor The government calls Pam Watts

PAMELIA WATTS,

called as a witness by and on behalf of the government,
having been first duly sworn by the Clerk, was examined
and testified as follows:

MR HARBACH: May I, Your Honor?

THE COURT: Go ahead

DIRECT EXAMINATION

BY MR HARBACH:

Q Good afternoon, Ms Watts

A Hi

Q Could you please state your name and spell your first and last name for the record?

A Pamelia Watts P-A-M-E-L-I-A, W-A-T-T-S

Q How are you currently employed, ma'am?

A I'm unemployed right now

Q Was there a time in your career when you worked for

Mr McDonnell?

A Yes

Q Tell us about your educational background

A I've a bachelor of arts degree from the University of Michigan So --

Q Okay When was it -- what year, approximately -- that you started working for Mr McDonnell?

A 1992, I believe

Q What was he doing at that time?

A He was an associate with Huff, Poole & Mahoney in Virginia Beach, Virginia

Q Did you continue to work with him throughout his political career?

A Yes

Q In what capacity have you served him, generally?

A His legal assistant at the law firm, executive assistant with the Attorney General's Office, and his confidential assistant at the Governor's Office

Q What does "confidential assistant" mean? What is that title?

A It's the title that's given to the assistant to the Governor of Virginia

Q I see And did you hold that job through the end of his term as Governor?

A Yes

Q How would you describe your professional relationship with Mr McDonnell, in terms of working for him?

A He was a great boss for the last 22 years I had a great relationship with him professionally

Q Did you consider him a friend?

A Yes

Q Based on your lengthy history working for Mr McDonnell, would you consider him a -- in the main, a detail-oriented guy?

A Yes

Q Focusing on the time when Mr McDonnell was Governor, in your capacity as the confidential assistant, you said? --

A Yes

Q Okay. -- could you tell us what your job duties were in that position?

A I did a little bit of everything for the Governor I handled his schedule for getting his secretaries downstairs if they needed to see him He had a scheduler, of course She did a lot of that work

But I did correspondence for him I greeted guests I helped out with the morale of the office, planning events for the office in the Patrick Henry Building

Q When you say you handled correspondence for him, is that incoming and outgoing?

A Yes

Q Let's talk about the incoming for a minute Did you have any kind of system in place to get documents to the Governor and process them?

A Yes, we did The Governor had a system of file folders, different colors

Q Tell us about that

A His red was for immediate, his hot folder Yellow was read Green was his draft, anything that needed -- he needed to see to get out And his signature file was his blue file

Q Okay And can you explain to us, apart from the obvious, the difference between the yellow read folder and the red hot folder? How would those be handled differently?

A They weren't handled really differently If there was something that needed his immediate assistance, it went into a red hot folder and it would be left for him to review

Now, if he didn't get to that for a couple of days, I would take that, hand deliver it into his office or he would come to my space, and we would go through that file folder together

Q And how is that different from the yellow one?

A That's mail, incoming mail for him Anything that a secretary wanted him to see I would put in that folder for him, anyone in the office

Q Okay And in your experience, generally speaking -- I know it may not be this way all the time -- but generally speaking, was the Governor pretty good about getting through the stuff in his folders?

A Yes

Q Okay Let's take a look at the first exhibit I want to show you, which is Government Exhibit 71 This is for identification only

MR HARBACH: Can we just blow up the top couple e-mails for Ms Watts?

BY MR HARBACH:

Q Can you see them okay, ma'am?

A Yes

Q Is this an e-mail exchange between you and Monica Block and someone named Bill Hazel?

A Yes

Q That you handled during your job?

A Yes

Q Okay

MR HARBACH: Your Honor, the government offers Government's 71

THE COURT: It will be admitted

MR HARBACH: Focusing -- if we could scroll down a little bit and see how this all got started

BY MR HARBACH:

Q This is somebody forwarding a press release Do you see that there?

A Yes

Q Okay

MR HARBACH: And now scroll up

BY MR HARBACH:

Q Ms. Block asks you to print the attachment for the Governor's read folder And then you send an e-mail to Mr Hazel And incidentally, what's the date of your e-mail to Mr Hazel?

A October 12th, 2010

Q Okay And if Ms Block asked you to print the attachment for the Governor's read folder, is that something that you typically would have done?

A Yes

Q Okay Now, the e-mail to Mr Hazel, he was the Secretary of Health, right?

A Yes

Q It says, "Bill, the Governor would like you to review the attached I'm sending the original note up to you today "

My question for you is would you have written that first sentence about what the Governor would like if he hadn't, in fact, asked you to do so?

A No, I would not have

Q Okay

MR HARBACH: Can we take a look just briefly at the attachment, which is Page 2 of this exhibit?

BY MR HARBACH:

Q This is an article about the Roskamp Institute; is that right?

A Yes

MR HARBACH: Okay We can take that down

Next exhibit is Government's 70 -- Government's 72 for identification, please Let's blow up the top half of this one for the witness, please

BY MR HARBACH:

Q Ms Watts, is this another e-mail like the one we saw before involving printing something out for the Governor?

A Yes

MR HARBACH: Your Honor, the government offers Government's Exhibit 72

THE COURT: It will be admitted

BY MR HARBACH:

Q Looking at the e-mail in the middle from Ms Block to you, same instructions as the last one?

A Yes

Q Any reason to think you didn't do it?

A No

Q Okay And then the top e-mail is from you to Mr Hazel It says, "More on Roskamp Sending original up to you today "

A Yes

Q Now, was that common practice for you, to send originals along to cabinet members and the like?

Why would you have done that?

A If the Governor had something -- something handwritten on it, I would have sent the original up to the secretary

Q Okay

MR HARBACH: Can we take a look briefly at the attachment to this e-mail, which is -- which starts at Page 3 It's an article about Star Scientific And we can take that one down

The next exhibit in this trio is Government's 73 for identification, please

BY MR HARBACH:

Q And is this another one like the ones we've been looking at where you printed something for the Governor?

A Yes

Q Okay Actually, it's my mistake, Ms Watts

A I think it's the --

Q I'm sorry It's a continuation --

A Yes

Q -- of the e-mail chain we were just looking at --

A Yes

Q -- right?

A Yes

Q I'm sorry about that

MR HARBACH: Your Honor, the government offers Government's 73

THE COURT: It will be admitted

BY MR HARBACH:

Q And the last piece is the one at the top here where Mr Hazel responds to you and says, "Got it Is there something specific that I need to do or is this FYI only?"

Do you recall -- do you happen to recall what the answer was, whether it was something specific or whether it was just FYI or do you remember?

A I don't remember

Q Okay Over the years that you've worked for Mr McDonnell, have you become familiar with his handwriting, ma'am?

A Yes

MR HARBACH: If we can take a look at Government's Exhibit 116 for identification, please Let's blow this one up

BY MR HARBACH:

Q This is -- is this an e-mail exchange between you and Dr Hazel involving another attachment from the Governor?

A Yes

MR HARBACH: Your Honor, the government offers Government's 116

THE COURT: It will be admitted

BY MR HARBACH:

Q This one looks a little different, Ms Watts. The e-mail at the bottom is from someplace called "No Reply " Do you recall what was different about this one?

A It looks like it's just another scanned -- machine that I scanned the document into

Q Okay And then you forward it to Mr Hazel and say, "Please see attached from Governor "

Again, is this something that you would have said if the Governor hadn't asked you to send it to him?

A I'm sorry What was the question again? I'm sorry

Q Would you have said to Mr Hazel, "Please see attached from Governor" if the Governor had not, in fact, asked you to send it to him?

A Yes I've sent stuff to him before If it's something that I know that goes to the secretary and the Governor is not in the office, I would send it up to that secretary

Q Okay And would you have said, "Please see attached from Governor" in that circumstance?

A Yes

Q Okay

MR HARBACH: Let's take a look at the attachment on this particular one, starting at Page 2

BY MR HARBACH:

Q Top right-hand corner, do you recognize the handwriting that appears there?

A Yes It's the Governor's

Q It's the Governor's handwriting So in this one -- I believe you said you scanned this document?

A Yes

Q Okay

A It looks like I scanned it I mean, from the previous e-mail, it looks like I scanned it and sent it to him

Q And e-mailed it to Dr Hazel?

A Yes

Q Okay While we're on the subject of handwriting, if I could bring up Government Exhibit 2 for identification, please

And my only question for you on the various pages of this document, ma'am, is going to be --

MR HARBACH: Yeah, if we could leave this for identification, please, Kathy, just for the moment One page of this is in evidence but not the others

Let's look at Page 1, Mr Starnes

BY MR HARBACH:

Q Ms Watts, I'm just going to ask my colleague to leaf through these papers, and then I'm just going to ask you to help identify the handwriting Okay?

And so the question is do you recognize the handwriting that appears here?

A Yes

Q Okay

MR HARBACH: Your Honor, the --

BY MR HARBACH:

Q And whose is it?

A The Governor's

MR HARBACH: Your Honor, the government offers Government's 2, the remaining pages that are not yet in evidence

THE COURT: It will be admitted

BY MR HARBACH:

Q Okay And so just so the record is clear, Page 1 on Government's that appears on the screen there, is that the government's handwriting, ma'am?

A It's the Governor's handwriting, yes

Q Okay

MR. HARBACH: Could we look at Page 2 of

Government's 2

BY MR HARBACH:

Q Same question

A The Governor's

MR HARBACH: Page 3.

BY MR HARBACH:

Q Now, with the exception of the material that's between the two horizontal lines, apart from that, whose handwriting is it?

A Governor's

Q Okay

MR HARBACH: Next page, please

BY MR HARBACH:

Q Is Page 4 the Governor's handwriting?

A Yes

Q What about page 5?

A Yes

MR HARBACH: Is that the last one? Oh, no Page 6

BY MR HARBACH:

Q Is that the Governor's handwriting?

A Yes

Q Okay

MR HARBACH: Is that the last page, Mr Starnes

MR STARNES: It is

MR HARBACH: Okay Thank you You can take that down

BY MR HARBACH:

Q Ma'am, were you personally involved in helping Mr McDonnell prepare his Statements of Economic Interest?

A Yes

Q What was your role in that process?

A I was the keeper of the gifts I would get the list together Any gifts that came in from January to December, a log was kept Gifts came in from community relations Anytime that the Governor was out and about, his aide would bring me -- if he received a gift at an event, that was -- those gifts were given to me

And then in December, first of January we would get the statement, putting the gifts together to meet with the Governor on the Statement of Economic Interest for the year

Q Okay Let's focus on the first part of that for the moment, which is gathering information

A Uh-huh

Q What would be your sources of information for information about gifts? You mentioned the staff

A Scheduler

Q Okay

A Any letters that would come in, people who had, you know, given the Governor gifts, they would send -- some groups would send letters stating that, you know, how much the gift was --

Q Uh-huh

A -- for their reporting purposes

Q Would you sometimes get information from the Governor directly?

A Yes He -- yes, he would bring a gift in If he was at an event the night before and he would say, "Make sure that got on the list "

Q Okay Let's talk about the second half of your answer a moment ago Once all that information is gathered, what would you do with it?

A I would go through it, take out any gifts that were under $50 They would not make the Statement of Economic Interest at all, and then anything that was 50 and above would And so that would -- I would start getting -- entering that information for the Governor's review

Q Okay You know who Mr Jasen Eige is?

A Yes

Q W s he involved in the process of putting together the reports as well?

A Yes, somewhat He was at the meetings, yes

Q Okay Who was it who would propose the initial draft of the SOEI? Whose job was that?

A Mine

Q Let's take a look at -- actually, before we look at these drafts quickly, what do you recall happened at the meetings you just mentioned? Who were the meetings among?

A Myself, the Governor, Jasen Eige, Matt Cobb -- I'm sorry, Matt Conrad

Q Okay And what was -- generally speaking, what went on at these meetings that you all would have?

A We would just make sure that everything was reported that we knew about We would go through -- before we got to the meetings, Jasen would get a copy of it, of the Statement of Economic Interest The Governor would have a copy, and they would look at it before we met and make sure everything was reported as -- as it should have been

Q Was -- in your experience, was the Governor interested and engaged at these meetings?

A Yes

Q Did he participate in the mark-up and editing of these drafts?

A Yes

Q Let's take a look at what's in evidence as Government's 277, which I'll represent to you is a draft of the SOEI for calendar year 2011 And the first question is do you recognize the handwriting on the first page of this one?

A That's mine

Q Where it says "Draft 2011"?

A Yes

Q Okay Next question is page 7 of Government's 277

MR. HARBACH: I'm going to have to ask Mr. Starnes to please blow that top part up for her

BY MR HARBACH:

Q Are you able to discern, at the bottom of the screen there, underneath that squiggle line where it says "Medical Services" and it's been scratched out? Do you recognize that handwriting, ma'am?

A The Governor's

Q Okay

MR HARBACH: And then if we could scroll down the page a little bit

BY MR HARBACH:

Q What about where it says "Medical Services" at the bottom of this page?

A The Governor's

Q If you could look, just briefly, at page 9

MR HARBACH: Blow up the bottom half for me, please

BY MR HARBACH:

Q Are the words that are written in here, is that the

Governor's handwriting too, as best you can tell, or can you tell?

A No It's the Governor's

Q Okay

MR HARBACH: Page 13, please There you go That one Could you blow up the top piece?

BY MR HARBACH:

Q Is this a continuation of the gifts schedule, Ms Watts?

A It is

Q And whose handwriting is this?

A The Governor's

Q Are you able to read that?

A It looks like, "I think on these put heading above there saying" -- "above these saying following received on economic development overseas trips "

Q Thank you, ma'am

MR HARBACH: That's it for that exhibit Thank you, Mr Starnes

BY MR HARBACH:

Q The next exhibit I'd like to show you for identification only is Government's Exhibit 282

MR HARBACH: Could you blow up the top part of this to help her see it, please Actually, could you back out and show her a little bit more of the exchange,

Mr Starnes? Thank you

BY MR HARBACH:

Q Are you able to read that okay, Ms Watts?

A Yes

Q Do you recognize this as an example of an e-mail you received from the staff concerning a gift for the Governor?

A Yes

MR HARBACH: Your Honor, the government offers Government's 282

THE COURT: It will be admitted

BY MR HARBACH:

Q Now, what's the date of this e-mail, ma'am, from Mr Zubowsky?

A January 3rd, 2012

Q Is that around the time that you all are gathering data for the SOEI?

A Yes

Q Who is Adam Zubowsky, by the way?

A He was the Governor's aide

Q Did he travel with him?

A Yes

Q And it says, "Please put the items below on the Governor's Statement of Economic Interest per his request " And it looks like a couple pairs of shoes and a jacket; is that right?

A Yes

Q Is the shoes are -- well, the prices are right there

MR HARBACH: Okay You can take that one down

BY MR HARBACH:

Q The next exhibit is in evidence as Government's 288 This is -- I'll represent to you this is another draft of the 2011 SOEI Okay?

A Yes

Q Where it says "Draft 2011" on the first page, whose handwriting is that?

A That's mine

Q And then on this one, the only other page I'm interested in is the very last page, which is page 22 This is the government's handwriting as well?

A It's the Governor's

Q Okay

MR HARBACH: Thank you

BY MR HARBACH:

Q The next exhibit is in evidence It's Government's 289

MR HARBACH: Can we show the witness the second page, please

BY MR HARBACH:

Q Is this -- is this the final filed version of the

2011 statement, ma'am?

A Yes

Q Okay How do you know that?

A It's notarized --

Q Okay

A -- and signed by the Governor It's signed by the Governor and notarized by Kim Steinhoff

Q Okay I'd like to focus you on page 11 of this exhibit This appears to be an Amended Schedule E for gifts. Do you see that there?

A Yes

Q My question to you is really just about process here What do you recall the process was for if the Governor had part of his SOEI that needed to be amended, how would that get fixed?

A We would make the correction, put amended on it and send it up to the Secretary of the Commonwealth

Q Okay

A And they would file it with the original

Q I see Thank you, ma'am

Are you able to tell -- withdrawn

The next exhibit is in evidence -- no, it's not in evidence Excuse me Identification only as Government's 456

Do you recognize this document, ma'am, as a draft of the Governor's SOEI for calendar year 2012?

A Yes

Q All right Now, have you had an opportunity to review this document before you came to court today?

A Yes

Q All right

MR HARBACH: And with His Honor's permission, I'll ask a leading question to try and short-circuit some of this.

BY MR HARBACH:

Q Is this, in fact -- despite being marked "Second Draft," in fact, a first draft of the 2012 SOEI?

A Yes

MR HARBACH: Thank you, Your Honor.

BY MR HARBACH:

Q And thank you, ma'am

Next question I believe you said earlier that there was -- Mr Eige was involved in the process With respect to this SOEI, the one for calendar year 2012, the one that was filed in January of '13, do you recall whether Mr Eige was involved with that one or was it someone else?

A I believe it was Matt Conrad at that time

Q Okay Who is that?

A Jasen was involved as well

Matt was the Deputy Chief of Staff

Q Okay

MR HARBACH: Excuse me one second

My colleagues reminded me that I haven't offered this yet So, Your Honor, the government offers 456

THE COURT: It will be admitted

MR HARBACH: Thank you, Your Honor

BY MR HARBACH:

Q Now, on this one, Page 1, whose handwriting is that at the top there?

A It's mine

MR HARBACH: And let's go to page 6 Can we blow up the bottom half?

BY MR HARBACH:

Q Now, on this one, "Medical Services" has been crossed out, and the words "Healthcare" have been written in

Do you recognize that handwriting?

A It's the Governor's

Q Now let's take a look at Page 8, please

MR HARBACH: And let's blow up as much of that as you can, Mr Starnes Thank you

MR ASBILL: Judge -- excuse me May we -- I want to object Can we approach on this one?

THE COURT: Come on up

(At Bench)

MR ASBILL: I just want to preserve my objection to 404(b) evidence relating to Mr Goodwin I think that's what's on this page

MR HARBACH: The Court has already ruled --

THE COURT: The objection is noted but overruled

MR ASBILL: Okay Thank you

(In open court)

BY MR HARBACH:

Q Ms Watts, I think the easiest way to do this may be to ask you this question Is there any handwriting on this page that is not the Governor's?

A Yes

Q Okay What is the handwriting that is not the Governor's?

A The total here reading "1,894 57, Bill Goodwin," and the figure "7,383 14 " And at the bottom of the page, "Keswick Retreat " Those are my handwriting

Q Okay And as far as you can tell, all the other handwriting on this Page 8 of Government's 456, is that the Governor's?

A Yes

Q Do you know who Bill Goodwin is?

A Not personally, no

Q Okay Do you remember hearing about a Mr Goodwin while you worked for Governor McDonnell?

A I've seen his name and heard it, yes

Q Do you have any recollection, from your personal observation, of Mr McDonnell socializing with Mr Goodwin?

A No

Q Okay Finally, on Government's 456, if we could look at Page 12 Let's start with what is this chart that we're looking at here, ma'am? Do you recognize what this is?

A It looks like a log of gifts from his scheduler, Katherine Harris

Q Was this standard operating procedure, to prepare a log like this in connection with the SOEI?

A Yes

Q If you could identify for us the handwriting that appears on the third line there, on the left where it says "Bill Goodwin, purse, friend," whose handwriting is that?

A The Governor's

Q And then on the far right, whose handwriting is that?

A The Governor's

Q And am I reading this right? Does it say, "Check to see if personal or reportable"?

A Yes

Q Okay

MR HARBACH: The next exhibit is Government's 460 for identification only

BY MR HARBACH:

Q Do you recognize this to be a later draft of the Governor's 2012 SOEI, ma'am?

A Yes

MR HARBACH: Your Honor, the government offers Government's 460

THE COURT: It will be admitted

BY MR HARBACH:

Q And let me ask you the same question on this one Based on your review of these documents before coming to court, in your judgment, is this, despite being marked "First Draft," in fact, a later draft than the one we saw before?

A Yes

Q Okay And on this one, is that your handwriting on the first page where it says "First Draft 2012"?

A Yes

MR HARBACH: Can we publish -- excuse me The government offers Government's Exhibit 460, Your Honor

THE COURT: It will be admitted

MR HARBACH: Thank you, Your Honor

Can we go to Page 8, please Can we blow up the chart for the witness, please

BY MR HARBACH:

Q Okay On this one, ma'am, the third line down on the chart, it is squiggled through there It says "Bill Goodwin, Kiawah Island, South Carolina, lodging" and so forth, and there's an amount listed there And out in the margin it says "Personal " Whose handwriting is that?

A The Governor's

Q And can you read what the margin note further down that page is?

A No

Q Okay

MR HARBACH: That's it for that one Thank you, Mr Starnes

Next one is for identification, Government's 459

Could you show the witness the second page, please, and blow up the signature block for her?

BY MR HARBACH:

Q Ms Watts, do you recognize this document to be the Governor's filed final Statement of Economic Interest for calendar year 2012?

A Yes

MR HARBACH: Your Honor, the government offers Government's 459

THE COURT: It will be admitted

MR HARBACH: Could we take a look --

BY MR HARBACH:

Q Oh, incidentally -- you can leave it right here -- what's -- what's different about the filing protocol for this one?

A It was electronically signed

Q Was this the first year that that occurred?

A Yes

Q What's the procedure for that? How would something be electronically filed? In other words, once the thing is all ready to go, what happens?

A I would hit the send button Simple as that

Q Simple as that

MR HARBACH: Can we go look at Page 1, please?

BY MR HARBACH:

Q Actually, just so the record is clear, would you -- before you would hit the send button, would you get a final approval from the Governor before you actually filed it?

A Oh, yes Certainly

Q Of course

MR HARBACH: First page Could w look at question 3?

BY MR HARBACH:

Q Just note for the record, what's the answer to the securities question here, ma'am? Is it marked yes or no on question 3?

A It looks like it's marked yes

Q Which of the two answers is bolded and bracketed?

A Oh, the no

Q Okay Thank you, ma'am

MR HARBACH: And then on Page 5 -- actually, if we could go back to Page 4 so we can see what schedule this is, please

BY MR HARBACH:

Q Down at the bottom it says "Schedule E Gifts"?

A Uh-huh

Q And then the actual chart is on Page 5 of the exhibit Do you see that Kiawah Island trip anywhere on this chart, ma'am?

A No

MR HARBACH: Can I have just a moment, Judge?

(Counsel conferring with co-counsel)

THE COURT: Sure

MR HARBACH: Thank you, Your Honor I have no further questions

THE COURT: Cross

MR ASBILL: Briefly

CROSS-EXAMINATION

BY MR ASBILL:

Q Good afternoon, Ms Watts How are you?

A Fine

Q Do you see any entries on that page for Star Scientific?

A I'm sorry What was your question?

Q Do you see on any entries on this page for Star Scientific?

A Yes

Q One, two, three --

A It looks like there are two

Q Two entries about five and six lines down?

A Yes

Q Okay This process that you've described --

MR ASBILL: You can take that down Thank you

BY MR ASBILL:

Q This process you described of the SOEI forms and how that all works, a number of people involved in that process"

A Yes

Q And you are collecting information that has accrued over an entire year?

A Yes, sir

Q Is that correct?

A Yes

Q And when in the year, generally, or in 2011 and 2012, did you all try to sit down and collect all the data and enter it and evaluate it or do whatever you're going to do?

A It's usually after the holidays

Q So between Christmas and the time it needs to be filed?

A Yes That's when we meet

Q For the entire year; is that correct?

A Yes

Q And how many pages are these forms?

A Of the statements?

Q Yeah Roughly

A Fifteen

Q Okay

A I mean, but not every page is completed

Q Right I'm talking about the list of things

A Oh, the gifts?

Q Yes

A Oh, oh Wow That could be 50, 60 pages of stuff, depending on -- I mean, because you're talking about gifts that come in from community relations, you know, little trinkets that the Governor receives And all of that's put on the list, and you're talking about lists from Katherine, a list that the Governor -- all the gifts that he receives from any -- plaques, a brush, anything, those gifts are listed But they don't make the Statement of

Economic Interest if they are, you know, little trinkets

Q All right I mean, but you evaluate the value of those and then make a decision about whether --

A Yes

Q -- whether they need to be on it?

A Yes

Q This time frame, the sort of post Christmas or the holiday time frame and the end of the year and beginning of January, are those, to your knowledge, particularly busy times for the Governor in terms of his day job?

A Yes

Q And why is that?

A We're getting ready for the General Assembly Session will start in January He's out and about, around the Commonwealth So the busy thing is getting ready for session

Q Okay And was that particularly true in 2011 and 2012 or either of those two years? Do you recall one being particularly busy or both being particularly busy during that time frame?

A Yes It's busy

Q Okay And would I be accurate in saying that as you all go over these forms and go over the entries, if mistakes are made, you all try to correct them?

A Yes

MR ASBILL: Thank you very much No further questions

THE COURT: All right Anything?

MS MARTIN: No questions for Ms McDonnell

THE COURT: All right Anything else?

MR HARBACH: Just one question, Judge

REDIRECT EXAMINATION

BY MR HARBACH:

Q Ms Watts, during those busy times between the holidays and when the SOEI was filed for the Governor, do you have any recollection, with respect to either the 2011 SOEI or the 2012 SOEI, of the Governor saying to you, "Hey, I'm too busy for that I don't have time You all just take of care of it"?

Did he ever say anything like that?

A Not "just take care of it " He could be too busy, and if we had a meeting set up to discuss it, he would push it back or change it to another day, yes

Q Did you, in fact, have meetings with respect to both of those SOEIs with the Governor?

A Yes

Q And did you discuss the draft SOEIs and allow him to make comments and make edits with respect to both filings?

A Yes

MR HARBACH: Thank you, Your Honor No further questions

THE COURT: All right Thank you, ma'am You may stand down

(Witness stood aside)

THE COURT: Call your next witness

MR FAULKNER: Your Honor, the United States calls Special Agent Tim Huff

TIMOTHY HUFF,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

MR FAULKNER: May I proceed, Your Honor?

THE COURT: Go ahead

MR FAULKNER: And, Your Honor, we may be able to get through his direct examination today, but obviously, if there's any -- any point where you want me to stop, just let me know

THE COURT: All right

DIRECT EXAMINATION

BY MR FAULKNER:

Q Could you please state your name and spell your last for the court reporter?

A My full name is Timothy Leslie Huff Last name is spelled H-U-F-F

Q And where are you currently employed?

A At the Richmond office of the FBI

Q How long have you been with the FBI?

A Since September of 1996

Q How long have you been in the Richmond office specifically?

A September of 2007

Q And what is your current title and role?

A My primary duties at the Richmond office is a computer forensic examiner

Q And are you a special agent?

A Yes, I am.

Q Now, as a computer forensic examiner, are you able to extract what's called metadata from electronic files like a Microsoft Word document or an Outlook file?

A Yes, I can

Q And you briefly, it's late in the day, but can you briefly tell the members of the jury what metadata is?

A Metadata is -- a strict definition is data about data It's the stuff inside a file that tells a file what it is, where it came from, what it's supposed to do under certain conditions

Q And how do you extract that sort of information, metadata, from a Word document or an Outlook file?

A I use a forensic suite of tools This one called AccessData Lab But most of the metadata is available within any Windows system if you know where to call up the -- the options

Q   Now, just so we're clear for anyone who's not a computer person, Microsoft Word, that's a word processing program, right?

A   Yes, it is.

Q   And Microsoft Outlook, could you explain briefly what that is?

A   That is a scheduling program that incorporates contact lists, e-mail, and calendar entries

Q   And so does any person using Microsoft Outlook have what's called an Outlook account?

A   In order to use it, you have to establish an account, correct

Q   And can that be associated with an e-mail address?

A   Yes   It's usually directly associated with a contact list

Q   Now, within Microsoft Outlook, are you able to set a calendar event and then actually send it to someone else?

A   Yes, you can

Q   And are you able to set it up so that other people can put events on your calendar for you?

A   Yes   If you set your permissions to do that, yes

Q   And did you say "permissions"?

A   Permissions

Q And using AccessData Lab, are you able to see that information about which account set an event on which calendar?

A Yes, I can

Q And how does it typically show up if it's that situation you just talked about where other people have permission to set up an event on your calendar?

A Typically, it shows up on a normal user's system as an organizer

Q Will it show up in the metadata as representing?

A Yes, representing -- the person sending it representing another, yes

Q And so just so we're up-front for the members of the jury, when you pull out the metadata and it shows these accounts, is it telling you for certain that the actual person set the event or just that the account with that name set the event?

A Correct I can't put the fingers on the keyboard

Q Now, using AccessData Lab to look at a file, are you also able to see when a particular calendar event is set for someone else?

A Yes, I can

Q Now, Special Agent Huff, I'd like to start with a document that we just need you to recognize and talk about, but we won't be necessarily offering it in evidence right now, Your Honor

And that's Exhibit 502 for identification

MR FAULKNER: If we could zoom -- or just leave it how it is

BY MR FAULKNER:

Q Looking at Exhibit 502, Agent Huff, is this a Word document that you analyzed in this case?

A Yes, it is

Q And was this a document produced to the FBI by an individual named Dan Cook?

A Yes.

Q Is this document, Exhibit 502, how the document looks when you just pull it up in Word?

A That is correct

MR FAULKNER: Now, if we could pull up for identification Exhibit 503

BY MR FAULKNER:

Q Looking at this again just for identification at this point, is this a document showing metadata that you pulled from this document?

A That's correct

Q And the last two rows of text there, without saying anything that's written, do those show the creation and save date of that document?

A Yes, it does

MR FAULKNER: All right We can take that down

BY MR FAULKNER:

Q All right So now I'd like to go to some documents that we will be offering in evidence

Did you also review a number of Outlook files or calendar events in this case?

A Yes, I did

Q And did those come from what are called pst files?

A Yes Outlook accounts are stored in pst files

Q And were they produced to the FBI by VITA, the Virginia Information Technologies Agency?

A Yes

Q And I'm going to show you what's been marked for identification as Exhibit 104 Is this an Outlook event that you analyzed in this case?

A Yes, it is

Q And did this come from a pst file from VITA called FLOVA pst?

A Yes, it did

Q And is this the version as it would appear within Outlook?

A Yes

Q And does it have a Word document attached to it?

A Yes, it does

MR FAULKNER: Your Honor, we've offered Exhibit 104 into evidence

THE COURT: It will be admitted

BY MR FAULKNER:

Q Now, could you tell us what the subject of this event is, just that first line?

A "Dinner with Jonnie and Celeste Williams."

Q And the start date and end date and time, April 29th, 2011, from 7:30 to 9:30 p m ?

A Yes, it is

Q And turning to the second page briefly, is that the Word document that was attached to that calendar entry?

A Yes, it is

Q I'd like to show you Exhibit 102 for identification And is this a document showing the metadata that you extracted from this file?

A Yes, it is

Q Now, the subject on this, is this the same as the subject we were just looking at?

A Yes, it is

MR FAULKNER: Your Honor, we'd offer Exhibit 102 into evidence

THE COURT: It will be admitted

BY MR FAULKNER:

Q Now, Special Agent Huff, it looks here on the time, we earlier said that the event itself was 7:30 to 9:30, and here at the very top in the blue text it says 11:30 to 1:30, four hours later

Can you explain what the reason is for the distinction there?

A Well, the plus zero on the end of it tells you that it's Zulu Time So since it's daylight savings time at the time this was made, you'd be at a minus four time zone

Q And would that same distinction, in this blue text area, apply to all the other documents that you -- or all the other Outlook entries you reviewed in this case?

A Yes

Q Now, looking at the bottom, can you tell us who is listed in the "from" field as the account who set this event on the calendar?

A That would be Block, comma, Monica

Q What about representing?

A That would be representing McDonnell, comma, Bob

MR FAULKNER: All right We can go ahead and take that one down

BY MR FAULKNER:

Q Showing you for identification Exhibit 113 Is this another Outlook calendar event that you analyzed in this case?

A Yes, it is

Q And did this one also come from the FLOVA pst account?

A Yes, it did

MR FAULKNER: We'd offer Exhibit 113 into evidence

THE COURT: It will be admitted

BY MR FAULKNER:

Q And what is the subject of this event?

A "Meeting with Jonnie Williams "

Q Is that May 2nd, 2011, from 9:30 to 10 a m ?

A Correct

MR FAULKNER: Now, if we could turn to Exhibit 112 for identification

BY MR FAULKNER:

Q Is this the metadata that you pulled from that Outlook calendar entry?

A It is

MR FAULKNER: Your Honor, we'd offer Exhibit 112 into evidence

THE COURT: It will be admitted

BY MR FAULKNER:

Q Now, Special Agent Huff, what account does it show as setting this calendar entry?

A That would be from Mary-Shea Sutherland

Q Who does it show Mary-Shea Sutherland representing on this particular calendar entry?

A That would be FLOVA McDonnell

Q And looking at this one earlier, the event itself said 9:30 to, I believe, 10 a m.

What time is this one set on the calendar?

A Do you want me to the show the Zulu Time?

Q Sorry No In the "sent" and "delivered" --

A Oh, okay

Q -- what time is it that this was actually sent and put on the calendar?

A That was sent and delivered on May 2nd, 2011

A JUROR: Your Honor, sorry to interrupt I need to be excused

THE COURT: Okay Let's -- we're going to stop right here

(The juror left the courtroom)

THE COURT: Okay We will gather again tomorrow at 9:30 Again, you all take care of yourselves this evening and don't allow anybody to discuss it with you, this case, and stay away from the media, as I've said before We'll see you all in the morning

(The jury left the courtroom)

THE COURT: Okay We will be in adjournment until 9:30 in this matter, 9:00 generally

(The trial adjourned at 5:19 p m)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

August 6, 2014
Richmond, Virginia
9:35 a m.

JURY TRIAL - VOLUME VIII

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
DAVID V HARBACH, II, ESQ
JESSICA D. ABER, ESQ.
RYAN S. FAULCONER, ESQ.
Counsel for Government;

JOHN L. BROWNLEE, ESQ
HENRY W ASBILL, ESQ.
JAMES M. BURNHAM, ESQ
DANIEL I SMALL, ESQ.
CHRISTOPHER M. IAQUINTO, ESQ
OWEN T CONROY, ESQ.
Counsel for Robert F McDonnell;

WILLIAM A. BURCK, ESQ.
HEATHER H. MARTIN, ESQ.
STEPHEN M. HAUSS, ESQ.
Counsel for Maureen G McDonnell

JEFFREY B. KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day eight, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer. Robert F. McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, and Christopher Iaquinto Maureen G. McDonnell is represented by Heather Martin, William Burck, and Stephen Hauss Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed.

MR. BROWNLEE: Mr McDonnell is ready to proceed

MR. HAUSS: Ms McDonnell is ready to proceed

THE COURT: We are still missing one juror, but I came out because I wanted to go ahead and deal with this exhibit issue that you all have indicated is a problem.

MR. BROWNLEE: Just very briefly, I believe it is Government Exhibit 277 The government introduced the document, at least the first page of it that we saw on the screen. I do believe it was admitted. We saw the second page and we asked for a bench conference and objected to that portion of the document which referenced the Attorney General's opinion from 1988 It was our understanding that was sustained at the time, and we just wanted to confirm that that portion of the document is not in evidence Thank you, sir

MR. HARBACH: Could I be heard briefly, Judge? Or do we need to?

THE COURT: Go ahead if you have something you want to say on it Go ahead.

MR. HARBACH: Two things we wanted to say, Your Honor The first is that it is actually Page 10 of the exhibit, and this document in its entirety was produced to the government by Mr McDonnell The page that's in question was interspersed among the draft SOEI as we received it That's precisely how it was produced to the government

The government's understanding of Your Honor's ruling was that the Court sustained an objection to a question the government was going to put to Mr Eige about whether his advice to Mr McDonnell was consistent with what's reflected on the page I believe Your Honor made the point at the Bench that we could inquire what advice he gave Mr McDonnell, but not whether it was consistent with the opinion, which leads to the reason that the page containing the opinion is relevant You can look at the face of it and discern from the note from Mr Kent that it was plainly intended to be communicated to the Governor There is a note on the page to the Governor from Mr Kent, and so that's why it is relevant, because it was in the Governor's mind at the time that the draft was completed Thank you, Judge

THE COURT: Page 10 will be redacted. All right I'll have to go back down. We will come back as soon as this juror gets in here And we are trying to locate him.

(Recess taken from 9:47 a.m. to 9:58 a.m.)

THE COURT: All right, bring in the jury, please

(The jury entered the courtroom.)

All right, go ahead.

MR. FAULCONER: Thank you, Your Honor

DIRECT EXAMINATION (Cont'd.)

BY MR FAULCONER:

Q Good morning, Agent Huff

A Good morning

Q All right Yesterday we picked up -- or I'd like to pick up where we left off yesterday Do you remember talking about time zones a little bit during your testimony yesterday?

A Yes

Q Do you remember referencing Zulu time?

A Yes Zulu time Unfortunately, I should have said Greenwich Mean Time Zulu time is a military term.

Greenwich Mean Time, GMT, is a little more civilian.

Q I would like to pick up with some more of these Outlook entries we were talking about yesterday If I could show you what's been marked for identification as Exhibit 150 Special Agent Huff, is this another calendar event that you analyzed in this case?

A Yes, it is

Q And like some of the others we have talked about, did this come from the FLOVA.pst account?

A Yes

MR. FAULCONER: 113 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Could you read what the subject is for this particular entry?

THE COURT: Did you say 113?

MR FAULCONER: 113, yes

THE COURT: I had that as previously admitted.

MR. FAULCONER: I meant 150, Your Honor

THE COURT: Go ahead

BY MR FAULCONER:

Q Agent Huff, could you read the subject for Exhibit 150?

A Roskamp Breakthrough Technology Conference (Highlighting HDL)

Q Is the date on this June 1st, 2011 from 8:30 a.m. to 6:30 p.m.?

A Yes, it is

Q I would like to show you what's been marked for identification as Exhibit 119 Agent Huff, is this the metadata you pulled from that Outlook event we were just looking at?

A Yes, it is

MR. FAULCONER: We would offer Exhibit 119 into evidence.

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Agent Huff, looking at the From line down towards the bottom of this metadata, who does it show is actually setting this on the calendar for this particular entry?

A FLOVA McDonnell

Q And which account is it being sent on?

A Representing FLOVA McDonnell as well

Q Is there anything about Mary-Shea Sutherland on the metadata for this calendar entry?

A No, not that I see

Q What's the date that this was set on the calendar?

A It was set on May 17th, 2011

Q I'd like to show you what's been marked now for identification as Exhibit 190 Agent Huff, is this another Outlook entry that you analyzed from the FLOVA.pst account?

A Yes, it is

MR. FAULCONER: We would offer Exhibit 190 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Could you read the subject of this calendar entry?

A "Meeting with Jonnie Williams "

Q Is the date and time there August 1st, 2011 from 10 to 11:30 a.m.?

A Yes, it is

Q Now, if we could show you what's been marked for identification as Exhibit 179. Agent Huff, is this the metadata you pulled from that entry we were just looking at?

A Yes, it is

MR. FAULCONER: We would offer Exhibit 179 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q Now, this particular entry here, Agent Huff, who does it show in the From line as setting this calendar entry?

A That would be Mary-Shea Sutherland.

Q But who does it show her representing in this particular calendar entry?

A FLOVA McDonnell

Q Special Agent Huff, what is the date and time at which this was sent?

A July 28th, 2011

Q Agent Huff, is there anything in the metadata from this document that shows the name Molly Huffstetler?

A No, not that I see.

MR FAULCONER: We would like to show the witness what's been marked for identification as Exhibit 234

BY MR. FAULCONER:

Q Special Agent Huff, is this another Outlook entry from the FLOVA.pst account?

A Yes, it is

Q Does this one also have a Word document and an Excel spreadsheet attached to it?

A Yes, it does

MR. FAULCONER: We offer 234 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q What's the subject of this calendar entry?

A "Lunch with VA researchers "

Q If we could turn to the second page Is that the Word document that was attached?

A Yes, it is

Q If we could turn to the third page, is that the Excel spreadsheet that was attached?

A Yes, it is

Q If we could show you what's been marked for identification as Exhibit 192 Is this the metadata you pulled from that Outlook entry we were just looking at?

A Yes, it is

Q On this one, who does it show is the account setting this entry?

A It shows from FLOVA McDonnell

Q What's the date and time at which this entry for the August 30th event is set on the calendar?

A August 1st, 2011

Q And what time -- sorry

MR FAULCONER: Your Honor, we would offer Exhibit 192 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q All right So is that there where you see at the bottom from FLOVA McDonnell, is that what you were saying as far as which account set this entry?

A Yes

Q What's the date and time there at the bottom at which this was set?

A August 1st, 2011 at 11:44 a.m.

Q Now, keeping in mind that time, if we could go back really quickly to Exhibit 190, and zoom in on the time there How long after the end of the meeting on August 1st was that calendar entry for the August 30th event set?

A Less than 15 minutes afterward.

MR. FAULCONER: If we could show the witness what's been marked for identification as Exhibit 325

BY MR. FAULCONER:

Q Is this another calendar event that you reviewed?

A Yes, it is

Q Is this one actually from a different account, the McDonnell, Bob account?

A Yes

MR. FAULCONER: We would offer 235 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q What is the subject of this particular calendar entry?

A "Scheduled call with John Piscitelli "

Q Am I reading correctly there there is a note that says, "Adam will connect you to this call Once all participants are on the line, it will be transferred to your office/desk line"?

A Yes

Q Does it say "Participants: Governor McDonnell, Ms McDonnell, John Piscitelli"?

A Yes

Q If I can show you what's been marked for identification as Exhibit 556 Is this the metadata that you pulled for that calendar entry?

A Yes, it is

MR FAULCONER: We would offer Exhibit 556 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q Agent Huff, which account does it show setting this calendar entry?

A Katherine Harris

Q And who is Katherine Harris representing when setting this calendar entry?

A Bob McDonnell

Q And what time was this calendar entry set?

A February 23rd, 2012

Q At what time?

A At 1:32 p.m.

Q If we could show you what's been marked for identification as Exhibit 555 Is this another one of the calendar entries that you reviewed?

A Yes, it is

Q Is this one back to the FLOVA.pst account?

A Yes

MR. FAULCONER: We would offer Exhibit 555 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Agent Huff, what's the subject on this calendar entry?

A "Call with John Piscitelli "

Q Is this the same date and time, February 23rd, 2012, as that one we were looking at a moment ago?

A Yes, it is

Q Now, if I could show you what's been marked for identification as Exhibit 324 Is this the metadata that you pulled for that calendar entry?

A Yes, it is

MR. FAULCONER: We would offer Exhibit 324 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, looking at the From line down there in the metadata section, who set this calendar entry into the FLOVA pst account?

A Kristen Kaplan.

Q Who was this actually sent to?

A Adam Zubowsky

Q But who was Ms. Kaplan representing according to the metadata?

A FLOVA McDonnell

Q What time was this set onto the calendar?

A That was February 23rd, 2012 at 2:03 p.m.

Q Now, I'd like to show you what's been marked for identification, I would actually like to go back in time for just a moment in terms of the sequence of these calendar entries and show you what's been marked for identification as Exhibit 244 Is this another calendar entry that you looked at in this case?

A Yes, it is

MR. FAULCONER: We would offer Exhibit 244 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q And what is the subject of this particular calendar entry?

A "Private meeting "

Q Who are the participants written at the bottom under organizer?

A Governor McDonnell, Ms McDonnell, Martin Kent, and Mary-Shea

Q If I could show you what's been marked for identification as Exhibit 242 Agent Huff, is this metadata from that document we were just looking at?

A Yes, it is

MR. FAULCONER: We would offer Exhibit 242 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, looking down at the bottom here, where it says "Private meeting" and then there is a number and then it says "From." Whose name is listed as the From setting this calendar entry?

A Bob McDonnell

Q And whose calendars is it being sent to?

A Martin Kent and Bob McDonnell

Q At what date and time is this calendar event being set?

A September 14th, 2011 at 4:52 p.m.

Q So according to the metadata, is this meeting set by Mary-Shea Sutherland or FLOVA McDonnell's accounts?

A No, it is not

Q I would like to show you what's been marked for identification as Exhibit 345

MR. FAULCONER: Your Honor, this is the last one It is almost over

BY MR. FAULCONER:

Q Is this another Outlook calendar entry that you reviewed?

A Yes, it is

Q Is this one from the McDonnell, Bob account?

A Yes, it is

MR. FAULCONER: We would offer Exhibit 345 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q Now, what is the subject of this particular calendar entry that we see here?

A "Meeting with Jonnie Williams "

Q What does it list as the location?

A Governor's conference room.

Q What is the date and time that the meeting is scheduled to start and end?

A February 29th, 2012, 1:30 p.m. to 1:55 p.m.

Q Who does it list as the participants down below?

A Governor McDonneil and Jonnie Williams

Q What does it list as the topic?

A "Healthcare Group Leaders reception tonight at the Executive Mansion "

Q Was there anything on this page, in this document, about stock transactions?

A No

Q I'd like to show you what's been marked for identification as Exhibit 330 Is this the metadata that you pulled from that document?

A Yes

MR. FAULCONER: We would offer Exhibit 330 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q Now, Agent Huff, which account does it show setting this calendar entry?

A From Adam Zubowsky

Q And who is the Zubowsky account representing?

A Bob McDonnell

Q And what date and time is this event set at?

A February 28th, 2012 at 3:15 p.m.

Q If we could zoom back out for a moment Now, earlier we were looking at the first page that we looked at, the prior exhibit, that was actually the way it looks in Outlook, right, and this is the metadata?

A Yes

Q Is there anything in the metadata when you pulled it that talks about stock transactions?

A No

MR. FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

MR. FAULCONER: No further questions, Your Honor

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. CONROY:

Q Good morning, Agent Huff My name is Owen Conroy, and I'm one of Bob McDonnell's attorneys You are an expert in metadata; is that right?

A I wasn't qualified as one for Court.

Q But out in the world?

A I know more than most, yes

Q Okay So I just have a couple of questions about the limitations of the To and From fields we were just talking about So you testified that these Outlook calendar entries have metadata that shows a From field; is that right?

A Yes

Q Can we pull up Government Exhibit 102? And this is in evidence, Your Honor So your testimony was that the From field shows that a particular person's account created this calendar entry; is that right?

A That's correct

Q So here, we see that it was from Monica Block, correct?

A Yes

Q But you can't tell whether Monica Block, the person, created this entry; is that right?

A No. Like I said before, I can't put people's fingers on the keyboards

Q Correct Okay So in other words, if someone else had access to Monica Block's Outlook password or computer, that other person could have created this entry under her account?

A It is very poor security, but yes, it can happen

Q Similarly, you testified that the To field shows that the calendar entry is delivered to the named person's account; is that right?

A Yes

Q But you are not, sir, in looking at this data, sure whether the person named there ever looked at or accessed this entry?

A Not from this document, no

Q Okay And one other question about the field at the bottom that says Representing Tell me, just summarize, what does that mean?

A That means permissions have been sent through Bob McDonnell's account to allow people to make appointments for him.

Q So in this instance, it would be Monica Block's account making an appointment for Bob McDonnell's account?

A Correct

Q But so you can't tell looking at this, or this doesn't say anything one way or the other about whether Bob McDonnell's account had anything to do with creating this entry?

A No

Q And you can't say one way or the other whether Bob McDonnell, the person, had anything to do with creating this entry?

A Correct

Q Okay

MR. CONROY: Thank you.

THE COURT: Any cross from Ms. McDonnell?

MR. HAUSS: No questions, Your Honor Thank you.

THE COURT: All right Anything else?

MR. FAULCONER: No, Your Honor.

THE COURT: All right. Thank you, sir You may stand down.

(Witness stood aside)

Call your next witness, please

MR. FAULCONER: Your Honor, the United States calls Dr John Lazo.

DR. JOHN LAZO,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FAULCONER:

Q Good morning

A Good morning

Q Could you please state your name and spell your last name for the court reporter?

A My name is John Lazo, L-A-Z-O.

Q And is it Dr Lazo?

A Or John.

Q Where do you currently live?

A I live in Charlottesville, Virginia The address is --

Q We don't need that

A Charlottesville, Virginia

Q Where do you currently work, sir?

A University of Virginia

Q How long have you worked at the University of Virginia?

A About three-and-a-half years

Q Is that since about 2011?

A That is correct

Q And what is your current title at UVA?

A I'm the Harrison Distinguished Professor of Pharmacology and Chemistry

Q Before this year, did you also have another role at UVA?

A I was the Associate Dean for Basic Research in the School of Medicine

Q And did that last from about 2011 to July of 2014?

A That is correct

Q Now, when you were Associate Dean of Basic Research, what were your responsibilities in that role?

A So I had a number of responsibilities One was within the School of Medicine, there's a number of departments The basic science departments have chairs I was responsible for helping them interact among themselves as well as with the clinical chairs; also, to build bridges with other schools; also, to work with the Vice-president of Research's office to coordinate team science and collaborative research

Q About how much much your time when you had that job did you spend on that role?

A That was approximately 50 percent of my professional effort

Q What was the rest of your time spent on?

A Research and teaching, and then a variety of departmental service activities at the University

Q Now, what sort of educational background do you have, just briefly?

A My undergraduate degree is in chemistry from Johns Hopkins My Ph D. is in pharmacology from University of Michigan I was Post-doctoral Fellow at Yale University, then became a faculty member there, Assistant Professor, Associate Professor, and then after ten years was at the University of Pittsburgh for approximately a little bit over 20 years, and then came to the University of Virginia

Q Now, could you tell the members of the jury whether UVA is a state school or a private school?

A UVA is a state school

Q And as a UVA employee, do you receive certain e-mails that are addressed to all state employees?

A I'm on the state's Listserve, so I receive e-mails from the Commonwealth

Q Do those include e-mails from whoever is Governor?

A That is correct

Q Did that include Governor Bob McDonnell when he was Governor?

A That is correct.

MR. FAULCONER: I'd like to show the witness what's been marked for identification as Exhibit 209 Dr Lazo, just zooming in on the top portion here, is this one of those e-mails you were just referencing?

A Yes, it is

Q Is the date of that August 18th, 2011?

A That is correct

Q Was that when you were employed at UVA?

A Yes.

MR. FAULCONER: We would offer Exhibit 209 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q What is the subject line of this e-mail, Dr Lazo?

A "Financial status of the Commonwealth "

Q Who is it addressed to underneath the date?

A "Dear Fellow State Employees "

Q If we could turn to the second page down at the bottom. What is the name at the bottom of this e-mail?

A "Governor Bob McDonnell "

Q If we could show the witness what's been marked for identification as Exhibit 525 Dr Lazo, is this another one of those e-mails?

A Yes, it is

MR. FAULCONER: We would offer Exhibit 525 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Dr Lazo, what's the subject of this particular e-mail?

A "State employee pay increase."

Q Did some of these e-mails that you got have this seal like we see here?

A Yes

Q We can take that down Now, Dr Lazo, as the Associate Dean for Basic Research when you were in that role, did you attend events where other state government employees were present?

A Well, yes I mean, for example, any university employee would be a state employee I obviously went to a lot of those events. But also, I was at events that would include individuals, representatives from state government

Q Now, within UVA, do you also interact with UVA officials who have responsibility for interacting with state government officials that aren't at the University but are, for example, in something like the Governor's Office?

A Yes

Q And generally speaking, would you prefer to have good relationships or bad relationships with those government officials?

A I think it is always good to have good relationships with anybody, but yes, government officials

Q Dr Lazo, I'd like to focus your attention now on what sort of brings us here today Before the summer of 2011, had you heard of the company Star Scientific?

A No

Q Before the summer of 2011, had you heard of the product Anatabloc?

A No

Q Before the summer of 2011, had you heard of the compound anatabine?

A No

Q Before the summer of 2011, had you met former Governor Robert McDonnell?

A No

Q Had you ever met Ms McDonnell?

A No

Q Had you ever been to the Governor's Mansion?

A No

Q Now, in late August of 2011, did you actually get an invitation to an event at the Governor's Mansion?

A I did

MR. FAULCONER: I'd like to show the witness what's been marked for identification as Exhibit 213

THE COURT: It will be admitted.

MR. FAULCONER: Sorry, Your Honor?

THE COURT: I thought you were moving it in.

MR. FAULCONER: I was just showing it to the witness

THE COURT: Okay

BY MR FAULCONER:

Q Is this an e-mail exchange between you and another individual at UVA?

A It is

Q Is it dated August 25th, 2011?

A That is correct

Q Is this part of the e-mail exchange in which you learned about this event that was at the Governor's Mansion?

A It is

MR. FAULCONER: Now we would offer Exhibit 213 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, on this e-mail, Dr Lazo, is you and someone named Ronald Turner Could you tell us who Ronald Turner is?

A Ron Turner is the Associate Dean for Clinical Research. It would be my counterpart in the Research Dean's group of people

Q If we could turn to Page 2, and the e-mail at the top there that says, it is to John and then it is signed by Ron. Could you read the e-mail that's between the two names there?

A It says: "You free to go to Richmond on Tuesday next week? There is a lunch related to Star Scientific slash Tobacco Commission studies with anatabine. Peggy is out of town and I am on service They would like to have a representative from UVA."

Q And when the name "Peggy" is there, who does that refer to?

A That's Peggy or Margaret Shupnik. She is the Senior Associate Dean in the School of Medicine

Q Is this e-mail where Dr Turner is describing it consistent with what your understanding of the event was before you went?

A That's the information that I had, yes

MR. FAULCONER: I'd like to show the witness what's been marked for identification as Exhibit 216

BY MR. FAULCONER:

Q Dr Lazo, is this an e-mail that you received from an individual named Mary-Shea Sutherland?

A That is correct

Q Is it dated August 25th, 2011?

A That is correct

Q Is this actually the invitation that you received to the event?

A Well, this is -- the invitation, I think, was actually formally on an attachment But this was the e-mail that said "Find an attached invitation" which was attached to that particular e-mail

MR. FAULCONER: We would offer Exhibit 216 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q If we could zoom back out, and then if we could go to the second page of this exhibit If we could zoom in on the portion where there is actually some text Dr Lazo, is this the invitation that you received attached to that e-mail?

A It is

Q And when you got it, do you remember it having a seal like it does there at the top?

A Yes

Q Could you read the first three lines of that document?

A "Governor and Mrs Robert F McDonnell request the pleasure of your company at a luncheon

Q We can go and take that down Dr Lazo, based on this invitation, did it seem to you like this was an official Commonwealth event?

A I mean, I'm not quite sure It seemed as though it was an event I was a relatively new person in Virginia, only being here for six months So it looked like it was something that was official

Q When you went, I assume you drove over from Charlottesville to Richmond, right?

A I did.

Q Did you take any leave or time off to attend the event?

A No. It was part of my regular job as Associate Dean, I thought, so I did not take any official time off

Q Let's talk a little bit then about the event itself The invitation that we just looked at said 11:30 a.m., I think, was when it started. Do you know about what time you got there?

A It was only the second time I had ever been in Richmond, so I sort of came a little bit early because I didn't know exactly where to park I probably got here around 11, 11 o'clock or so

Q What was the first thing that happened when you got to the Governor's Mansion?

A I walked up to the gate I asked a guard -- I walked up to the gate and there was a guard in front of the gate, so we stood around I stood around with a number of other individuals waiting to enter into the Governor's Mansion.

Q Who else do you remember being there when you got there?

A I didn't really know anybody else that was there, so there were a variety of people that introduced themselves But I didn't know any of them. Actually, I've never talked to any of them since, so --

Q Do you recall a researcher from VCU being there?

A Yes, there was an individual I don't know actually whether I talked to him before we entered or once we entered. But John Clore was there from VCU

Q What was the name?

A Clore, I think.

Q Now, after you got there, did you eventually go inside the Mansion?

A Oh, yes I would say probably around, I don't know, twenty after 11 or something like that, we were allowed to go into the Governor's Mansion, so we walked up into the Mansion.

Q What happened when you got inside?

A So there is sort of a foyer area, and we were standing in the foyer area and people were talking

Q And did you eventually leave that foyer area and go somewhere else within the Mansion?

A I don't know quite how long, but it wasn't very long, we were there for maybe ten minutes or so, 15 minutes

There is a set of doors The doors opened up and we went into the area where the luncheon was

Q Where was that?

A It was an adjacent room. It is in the Executive Mansion I'm not quite sure what the room would be called

Q Did it look like a dining room?

A It was It had a large table

Q Now, once you were seated, could you tell us where Ms McDonnell was? Was she there?

A Ms McDonnell was there She was at the northernmost end of this kind of elliptical table that had everybody sitting down. I was about midway I was sort in the middle of the table

Q Was Mr Jonnie Williams there?

A Yes, he was

Q Where was he seated?

A He was on the other end of the table in the sort of southern part of the table.

Q Now, when you sat down at the table, do you remember whether there was anything on the table in front of you?

A Yes There were several boxes of Anatabloc that were sitting in front of us, as well as plates and silverware and napkins

Q Those boxes of Anatabloc, were they just one box or two boxes in the middle or were they at each individual place setting?

A As I recall, they were at each place setting I'm not sure if they were at every place setting, but they were certainly on either side of me and the ones I could see across

Q Had you ever seen a bottle of Anatabloc before?

A No.

Q Once you sat down and everybody was seated, who spoke first?

A As I recall, I believe that Ms McDonnell stood up and welcomed us and briefly thanked us for coming And then there was a request to introduce ourselves

Q After everybody introduced themselves, did Ms McDonnell make other comments?

A Yes, I think she made some comments about the purpose of why we were here and her enthusiasm for the meeting

Q And do you recall her saying that she actually takes Anatabloc?

A I think she said that, yes I believe she said that

Q Now, at some point after Ms McDonnell spoke, did Mr Williams speak as well?

A Yes, he did.

Q And do you recall when Mr Williams spoke, was he holding anything?

A There was in front of him a stalk of tobacco, at least what he said was a tobacco stalk I've actually never seen one But yes, that was in front of him and he did pick it up and show it to all of us

Q What did Mr Williams talk about when he started speaking?

A Well, he talked about the Anatabloc and how exciting it was and that it was something that he thought had major potential benefits to health and also to the economy

Q Did he talk about studies of the product at all?

A He did mention, yes, he talked a little bit about -- he spoke at length about I guess what we would professionally say are anecdotal results of taking it But he also talked about pre-clinical studies -- that would be studies that are not in humans -- as well as, as I recall, a plan to have some studies that would be done, clinical studies that would be done in Michigan, as I recall, Michigan or Minnesota

Q Now, did other individuals who were at the table speak as well after Mr Williams spoke?

A There was a group of investigators from Roskamp, which is an institution in Florida They did talk briefly about some of their scientific studies

Q Now, at some point during the presentations and the discussions, did Mr McDonnell arrive?

A Yes He was not there in the beginning He arrived sometime during the luncheon I'm not exactly sure when, but it was at least halfway through, maybe a little bit later than that

Q After he arrived, was at least some of what Mr Williams was talking about after Mr McDonnell arrived?

A I think so But again, it was three years ago, so I'm not really positive if he was there during the formal presentation or afterwards

Q Now, when Mr McDonnell arrived, what happened?

A I actually don't know if we stood up or we remained seated. But he did sit down to join us

Q Do you remember, you said Ms McDonnell was at the northern end of the table Do you remember where Mr McDonnell sat?

A He sat at the southernmost part of the table

Q And who was sitting next to him, do you recall?

A Mr Williams was to his right

Q Now, when Mr McDonnell came in and sat down, did he appear to be paying attention to what was being said?

A Yes, I think so.

Q And during all of the conversation and exchanges, did anyone say anything about the relationship of the event to the product being rolled out into stores?

A So I'm not quite sure who mentioned that, but I know that when I left, I recognized that this was the day that the product was being launched. So it was mentioned there, but I'm just not sure who said it, whether it was Mr Williams, whether it was somebody else at the table. But I do remember it being mentioned.

Q Now, when the researchers were talking, did you say earlier that they were talking some about studies of Anatabloc?

A Yes

Q Now, at the end, did Mr McDonnell engage with the people who were present?

A So I'm not sure it was at the very end, but somewhere toward the end of the luncheon he did ask us some questions as a group about our thoughts on Anatabloc

Q What do you recall him talking about?

A So I think the one question he asked us was, did we think that there was some scientific validity to the conversation and some of the pre-clinical studies that were discussed, or at least alluded to He also, I think, asked us whether or not there was any reason to explore this further; would it help to have additional information And also, he asked us about could this be something good for the Commonwealth, particularly as it relates to economy or job creation

Q And do you recall there being discussion about the relationship of the product Anatabloc to tobacco?

A Oh, yes As I mentioned earlier, Mr Williams had the tobacco stalk there And I think the point he was trying to make was that this anatabine, which is the major active component in Anatabloc, is a minor alkaloid that's found in tobacco By minor, I mean it is a small fraction of the alkaloids, nicotine being the largest And that this, if indeed this compound was useful, then we would be able to say that something good came out of tobacco I think that was the point that was being made

Q Based on what Mr McDonnell said, did it seem like he knew Mr Williams?

A You know, I don't know that I can say that I mean, I don't know whether he knew him or didn't know him based on my observations at the luncheon.

Q Let me ask it this way: When Mr McDonnell walked in, did he say, "What's going on? I don't understand what this is "

A No, he walked in and was cheerful and greeted people But I thought he was aware of what was going on.

Q And based on the tenor of the conversation, was it generally a positive conversation about Anatabloc or was it all negative about Anatabloc?

A Well, I don't think the tenor was negative I think it was, the conversation of Mr Williams was, I would characterize as positive I think the Governor's position was more of an interrogative type of a sort of questioning rather than "Isn't this great?" or "Isn't it this awful?" if that's what you are asking me

Q Did the Governor say anything negative about the product?

A No, he didn't say anything negative about the product

Q Now, I'd like to show you what's been marked as Exhibit 232 for identification Dr Lazo, do you recognize this document?

A Yes, I do

Q What is it?

A It is a check.

Q Is this a check that you received at the end of this event?

A It is

MR. FAULCONER: I would offer Exhibit 232 into evidence

THE COURT: It will be admitted.

THE WITNESS: It is a photocopy of the check.

BY MR. FAULCONER:

Q Got it Is this made out to University of Virginia Medical School?

A Yes, it is

Q Does this look like a copy of the check you received on that day?

A It does

Q Could you tell us what you remember about receiving the check?

A Well, as I was leaving, after the luncheon was over, we stood up and I walked around to the southern part of the table and Mr Williams shook my hand, introduced himself to me, and gave me the check at that time

Q Before you left the event, do you recall any one-on-one conversations with Ms McDonnell?

A Ms McDonnell did come over and talk to me briefly as I was leaving Again, thanked me for coming and shook my hand

Q What do you recall about the conversation with Ms McDonnell?

A The only thing that specifically I remember was that she asked me to watch over her boys, her children Which actually, I'm embarrassed to say, I didn't realize she had two sons at UVA. That's why I remember it, because I was a little bit surprised and later on found out that her sons were students at UVA.

Q Dr Lazo, at any time during this event before you left, did anyone tell you that it wasn't an official government event?

A No No

Q Did anyone tell you who was paying for the event?

A No Nobody told me it was, either, but nobody told me it wasn't. I was just told to go.

Q You attended as the UVA representative, right?

A Absolutely

Q Walking away from the event, what was your overall general impression of it?

A Well, first of all, as I said earlier, I had only been in Virginia for six months So I was pretty impressed with the Executive Mansion. So I was wide-eyed, I guess, because of that I just, I thought it was an interesting event, and I had not expected to get the check, so I was a little bit surprised to have the check. But I decided I had better get back to UVA and give it to the right person quickly

Q Now, after you left the event, Dr Lazo, do you recall informing others at UVA about what you had experienced?

A Yes I had, in driving back, I made a phone call to Sharon Krueger, who is in the Vice-president for Research's office, Tom Skalak's office, just to give her a follow-up, partly because, as I said earlier, I had a responsibility to be sort of a liaison with the

Vice-president of Research's office That was, by the way, hands-free phone And then when I got back I also reported back to the Dean of the School of Medicine, Dean DeKosky, Stephen DeKosky And also, I reported back to, I don't know if it was that afternoon, because I got back around 3:00 or 3:30, and if it wasn't that afternoon it was the next day, to Peggy Shupnik, Margaret Shupnik, about what was going on Those are the first two people, because they are my direct reports

Q I'd like to just break that down just a little bit to make sure we understand who those people are. You said the person you called on the drive back was an individual named Sharon Krueger; is that right?

A That's correct

Q Is that K-R-U-E-G-E-R?

A That's correct.

Q I'm not quite sure what her official title is, but she works for the Vice-president for Research That's Tom Skalak. And she is sort of the liaison, at least in my mind, she is the liaison for a variety of interactions between the Vice-president of Research and the Dean of the School of Medicine and the School of Medicine's activities

Q Now, when you talked to Ms Krueger, did you mention where the event had taken place?

A Oh, yeah, I'm sure I did.

Q Why is that?

A Well, because it was the first time I had ever been to the Governor's Mansion, so I was pretty excited about that

Q Did you mention that Governor McDonnell had attended?

A I suspect that I mentioned both that the Governor and the Governor's wife were there.

Q Why did you mention that the Governor had attended?

A I mean, it is the Governor I thought it was appropriate to mention that he was there It was the invitation from him, too, so in a sense I was just completing the story that I was invited or we were invited, UVA was invited by the Governor and his wife and both were there

Q If this had just been an event at the Westin Hotel or somewhere, would you have mentioned where the event had occurred?

A I probably would not have mentioned that the event occurred in the Westin, unless the Westin is really opulent, but I probably would have said that the Governor and the Governor's wife was there

Q Now, after Ms Krueger, I think you said that you actually gave an update to a whole group of people at some later time Do you recall that?

A Yes. We have a regular Research Dean's meeting, so we have already discussed Peggy Shupnik, we mentioned Ron Turner, myself, and there are two or three other people who are what wee call research [redacted] in the School of Medicine We have weekly meetings every Wednesday, Wednesday morning at 8 o'clock. And I would have certainly, I don't remember the details Your Honor but I would have certainly debriefed them on the event, just pro forma That would be my responsibility, to tell them what happened, give them a background.

Q Would you have mentioned again that it was at the Governor's Mansion?

A I'm sure I would have.

Q Would you have mentioned Governor McDonnell's presence?

A I'm sure I would have mentioned that

Q I'd like to show you what's been marked for identification as Exhibit 175 Is this an e-mail from Dr Peggy Shupnik to you?

A It is

Q It is also to those other individuals you were referencing that participate in this regular Wednesday meeting?

A As I mentioned, there are five of us total, so with her name, those are all the e-mails of those people, yes

Q Is this dated Monday, July 25th, 2011?

A It is

MR. FAULCONER: We would offer Exhibit 175 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q Dr Lazo, this is July 25th, 2011 So this is actually about a little over a month before the event. Do you actually recall reading this e-mail at the time it was sent to you?

A So, I don't recall reading it. I didn't attend this particular Wednesday meeting I mentioned there were weekly meetings So I don't recall -- I certainly don't recall reading it and I don't recall seeing the attachment at the time it was sent

Q If we could turn to the second page of the attachment

MR. BROWNLEE: I object. He said he hasn't read it I'm not sure why he is asking about it

THE COURT: Sustained. What can he do with this?

MR FAULCONER: I was simply going to ask the witness about whether the attachment was consistent with something that occurred at the event

MR. BROWNLEE: We would object He hadn't seen this document

THE COURT: He can answer that

MR BROWNLEE: Thank you

THE COURT: Go ahead.

BY MR FAULCONER:

Q Turning to the attachment, if we could zoom in on where it says "Budget and Project Period" in the very middle? What is the dollar amount that's listed there by "Budget and Project Period"?

A So this says, "Budget and Project Period: The total project period for an application submitted in response to this funding opportunity may not exceed six months Direct costs are limited to $25,000 over this period "

MR. BROWNLEE: I object. That wasn't the question he asked.

THE COURT: Objection is overruled

BY MR. FAULCONER:

Q Is that the dollar amount of the check you received?

A It is

Q We can go ahead and take that down. Now, in addition to talking about it at your weekly meeting, did you also say that you talked to the Dean of the School of Medicine, Stephen DeKosky, about it?

A That is correct

Q You talked to Dr Peggy Shupnik about the event at the Mansion?

A That is correct

Q Now, later on in November of 2011, did you actually have a subsequent conversation with Sharon Krueger again about this event?

A I did

Q And do you recall why you were having a subsequent conversation with her about this event again?

A I think she initiated it So, as I mentioned, I had this phone call, kind of a brief phone call conversation in my car about what the meeting was about And then she had contacted me to say, "I just wanted to follow up and get your point of view on what happened at that event "

Q During that conversation, do you recall discussing the issue of transparency?

A Yes I think we were talking globally about how the University of Virginia, or in my view, any university that's a research university, should act One of my cardinal principles is you need to be transparent about everything that you do.

Q Do you recall discussing whether the Governor wanted to get something good out of tobacco in that conversation?

A Well, you know, I thought that the tenor of the meeting was that it would be great, particularly for Virginia, which is a tobacco -- again, as a northerner coming to Virginia -- the tenor of the meeting was that it would be great if we could show that tobacco was a useful product And I think the Governor and Ms McDonnell both were extolling that as something that would be a good thing for the Commonwealth.

Q Did you discuss that with Ms Krueger more than two months after the event in November of 2011?

A Yes I think that that was certainly something that we brought up.

Q Why is that?

A Well, I mean, the issue is what's special about Anatabloc, for example, as opposed to Vitamin C or something like that And, you know, I think the fact that it has a relationship to tobacco and the Commonwealth is associated with tobacco was something that, to me, sounded reasonable.

Q Why were you talking about the Governor again in that conversation?

A Well, the luncheon was in the Executive Mansion. The Governor and the Governor's wife was here So I think it made sense Again, I may have even had the impression that the Commonwealth would like to be able to say there is something good about tobacco.

Q Now, Dr Lazo, since the event, have you ever been back to the Governor's Mansion?

A No, I have not

Q Have you ever met Mr McDonnell in person again?

A No, I have not

Q At the time of the event, were you aware that Mr Williams had given Mr and Ms McDonnell $50,000 in May of 2011?

A No I didn't know that.

Q At the time of the event, were you aware that Mr Williams had given $15,000 for the McDonnells' child's wedding in May of 2011?

A No. I did not know that

Q At the time of the event, were you aware that Mr McDonnell had vacationed at Mr Williams' home in Smith Mountain Lake in late July, 2011?

A No, I did not know that

Q Last one on this subject: At the time of the event, were you aware that Mr Williams had paid for multiple rounds of golf for Mr McDonnell and his children in 2011?

A No, did I not know that

MR. FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

MR FAULCONER: Thank you, Your Honor No further questions

THE COURT: All right Cross?

CROSS-EXAMINATION

BY MR. BROWNLEE:

Q Good morning, sir My name is John Brownlee I'm an attorney for Bob McDonnell and I just have a few questions for you this morning

Now, you indicated that when you received the invitation to come to this lunch, that you had been at UVA about six months; is that correct?

A That is correct

Q Okay And you were essentially a fill-in, is that right? There was somebody else, I believe her name was Peggy Shupnik, who was perhaps supposed to attend and she had another meeting or something and so they asked you to go kind of in her place; is that right?

A As I understood it, actually, Ron Turner, who is the Associate Dean for Clinical Research, was the number one person. He was on service He is a clinician who was on service Peggy Shupnik also was unavailable So they sent me

Q Okay And now, were you aware that Ms Shupnik had gone a week or so prior, a few weeks prior to an event at Gibson Island with Star Scientific?

A I did not know that at the time I subsequently found out, but I did not know that at the time

Q You didn't go to that, did you?

A No, sir

Q I think as Mr Faulconer said, before you got this you had never heard of Star Scientific

A That is correct

Q Okay So once you got this invitation, I think you said you looked up the anatabine on the Internet and did some, a little basic research or something?

A So I'm a pharmacologist, so I study drugs and substances I thought it might be a good idea if I knew a little bit about what we were -- what the product was So I did do a quick, what we call a MEDLINE search to look up the peer literature on it

Q I think you said after that review that Star sounded to you like a scientific company; is that fair?

A Well, I don't know if I thought it was a scientific company So I'm not sure, I looked up, I didn't actually look up Star Scientific, I looked up the composition of their product I'm not sure I made a judgment on what Star Scientific was other than "scientific" was in its name

Q Fair enough So you then agreed to attend, and I believe you received an invitation, and we have seen the invitation Did the actual e-mail with this invitation at some point come from Ms Sutherland?

A Yes. I believe that it came directly from her There was a little bit of confusion when I originally responded that I would attend. Apparently, my e-mail wasn't properly received, so there were a couple of e-mails coming from Dr Turner and other people that said, "Are you going?" And I said, "Yes " So I believe, it is certainly on the e-mail, it said her name And that's who I thought it came from.

Q Okay Did you remember meeting Ms Sutherland?

A No, I don't believe I met her. But she may have been at the luncheon. I just don't remember meeting her

Q You weren't aware at that time that she was negotiating for a job with Mr Williams at Star?

A No

Q Okay And you mentioned that once you got to the event, at some point you sat down at the lunch table, and I believe you said that some folks, some scientists or doctors, spoke. Do you remember one of them being Paul Ladenson?

A I think so I think that's correct

Q And he was the doctor from Johns Hopkins?

A Yes That is correct

Q Okay And he seemed legitimate to you at the meeting? Being from --

A Well, seems legitimate? I guess he is a peer professor So he is at Hopkins So I thought that he was certainly an individual who was worth listening to

Q Fair to say Johns Hopkins is a world-renowned medical institution?

A Yes As an alum, I have to say yes

Q Very well Now, did you know at that time that Dr Ladenson was being paid by Star to be at that event?

A No, I did not know that

Q Now, at some point, you said that Mr McDonnell came in. And when he spoke, I think you said that he asked for some of the thoughts from the audience; is that correct?

A That is correct

Q Then he asked some questions regarding the validity of this product, I think is what you said; is that right?

A I think, again I'm not quite sure I have the exact phraseology, but my impression was that he asked, you know, did this sound like it was something that was exciting and something that would be worth investigating further

Q Okay

A I'm not sure he would have said "validity " That wouldn't be a word that would ring true to what I think somebody would say

Q Okay Did his questions seem to be pretty good questions and thoughtful questions?

A Yes I actually thought they were appropriate for a Governor, and were thoughtful I was actually pretty impressed by the fact that the Governor cared what I thought

Q Okay Now, Governor McDonnell, was the only time you spoke to him when he, or listened to him, when he was at the lunch table?

A Yes And if I spoke with him at all as I left, it was a very brief handshake and just to say hello So that's the only time I've ever heard him speak.

Q He didn't come up to you and grab your arm, pull you to the corner, and say, "Listen, I really want you to go research this stuff"?

A No

Q Okay And I think you have testified you have never spoken to Bob McDonnell again; is that correct?

A No.

Q I believe you spoke very briefly about what you called research, the principles about the integrity of research; is that correct? You mentioned that in your prior testimony?

A I think the question was asked of me about transparency, and I said that, you know, one of the core principles, I think all of us at research institutions need to maintain is to be sure that we are transparent As you are saying, obviously, I think there has to be integrity with respect to what we do.

Q And nothing Bob McDonnell said, in your opinion, would violate any of those research principles, correct?

MR. FAULCONER: Objection, Your Honor

THE COURT: No, he can answer that Go ahead

THE WITNESS: Could you repeat the question?

BY MR. BROWNLEE:

Q Nothing Bob McDonnell said would have violated any of those research principles, correct?

A No

Q Okay

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MR BROWNLEE: Mr Starnes, if I could impose Could you pull up Government's Exhibit 213?

213, Your Honor This has been admitted by the government If you would go to the prior page, sir, and if you could blow up that bottom part

BY MR. BROWNLEE:

Q Sir, this is the e-mail that is kind of getting the invitation to UVA that you ultimately responded to And down at the bottom it says "Mary-Shea Sutherland," correct?

A That is correct

Q All right And then above that it says "Jerri Fulkerson "

Were you aware that Ms Fulkerson worked for Star?

A No, I didn't know that I was looking over this the other day, and I still didn't -- I didn't know that No

Q Okay

MR BROWNLEE: And if you scroll down -- or up, sir, a little bit If you stop there

BY MR BROWNLEE:

Q It says, "Ron, Attached is the official invitation Mr Williams said he would be most appreciative "

So the invitation appears to be coming from Mr Williams? Yes?

A I'm sorry?

Q This is from Mr Williams forwarding this, or he's involved with this with Ms Fulkerson?

A I'm sorry I'm -- I don't quite understand your question

Q Bad question I withdraw it My apologies

A I mean, this is -- I said earlier I thought Ron was the primary person, in part This said that --

Q Exactly

A -- Mr Williams would like Ron to try to be there

Q Okay And then last lastly, obviously, Governor -- you've never had a conversation with Governor McDonnell about his finances or his mortgage, his loans, anything like that; is that correct?

A That is correct

MR BROWNLEE: Okay Thank you very much for your time

THE COURT: Ms McDonnell

MR HAUSS: Very briefly, Your Honor

CROSS-EXAMINATION

BY MR HAUSS:

Q Good morning How are you?

A I'll be good in a little while

Q This will be very quick

I just wanted to go over very briefly Ms McDonnell's remarks at the event You indicated that she basically stood up and welcomed you and thanked you for coming; is that correct?

A That is correct

Q And then after everyone went around and introduced themselves, she made a few brief remarks; is that right?

A That is correct At least that's my recollection The -- it could be that she made the brief remarks and then we introduced ourselves So I'm not positive of the timing But both of those things happened

Q Great And as to those brief remarks, do you recall her explaining that she believed in natural products and believed that society was not using enough of them?

A Yeah I -- I -- I remember her standing up I'm not quite sure whether she used the word "natural products," which is a word I would use, or if she was talking about things from nature or nutritional material But I do remember her standing up and extolling the virtues of using materials that come from nature

Q Would you say that the gist of her remarks was less about a product needing a supplier and more about a philosophy or a way of life?

A Yeah I mean, I thought it -- it -- the introductory remarks were really a philosophical statement of this is a good way to live And that was the impression I got

Q So was the general impression that we all should be joyful? We're going back to mother nature

A Well, I'm not sure I'd phrase it that way But I think that the gist of it was that there are good things in nature, and we should try to take advantage of those I'm not quite sure how to phrase it, but that was the gist of it

MR HAUSS: Great Thank you

Nothing further, Your Honor

THE COURT: Anything else from the government?

MR FAULCONER: Yes, Your Honor

REDIRECT EXAMINATION

BY MR FAULCONER:

Q Just briefly, Dr Lazo You were asked a little bit about the conversations that you had with Ms Krueger afterwards

Do you remember political involvement coming up in your conversation with Ms Krueger?

A I think when we were talking about the fact that the Governor and the Governor's wife were there, I think, again, at this sort of high level -- and in my conversations with her, this is now the November conversation, not the conversation in the car

Again, transparency is a very important thing And I think another important thing for a university is to be apolitical and to try not to have any influence or -- you know, that you should be -- the science should drive the science

Q And was that something you spent time discussing with Ms Krueger?

A Well, I think we -- we -- we did talk a little bit about the -- the -- the fact that the luncheon was in the Governor's Mansion

MR FAULCONER: And if we could briefly just pull up Exhibit 216, Page 2, which has been admitted

BY MR FAULCONER:

Q Dr Lazo, do you see Jonnie Williams' name on this invitation anywhere?

A No, I do not

Q Do you see Jerri Fulkerson's name on this invitation?

A No, I do not

MR FAULCONER: One moment, Your Honor

No further questions, Your Honor

THE COURT: All right

Thank you, Doctor You may stand down

(Witness stood aside)

THE COURT: Call your next witness

MS ABER: The United States calls Mary-Shea Sutherland

MARY-SHEA SUTHERLAND,

called as a witness by and on behalf of the government,

having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good morning, Ms Sutherland

A Good morning

Q Please state your name, and spell it for the court reporter

A Mary-Shea Sutherland Mary, M-A-R-Y Shea, S-H-E-A Sutherland, S-U-T-H-E-R-L-A-N-D

Q Is there a hyphen between Mary and Shea?

A I put it in there now It's not on my birth certificate.

Q Okay In what city and state do you reside?

A Richmond, Virginia

Q And tell the jury how you're currently employed

A I am -- I'm self-employed I have contracts doing event work

Q Did you previously work in the administration of Robert McDonnell?

A I did

Q Okay Can you tell the jury about the capacity in which you worked there?

A I served in his personal staff as Chief of Staff to the First Lady

Q Tell us a little bit about how you ended up getting that job What led you to that point?

A The company I had previously worked for had done fundraising during the Governor's campaign when he ran for Attorney General And when he won, I planned the inaugural events and got to know the First Lady, the Governor, and the family at that point

I was not involved in his campaign for Governor And when he was elected, I assisted with the soon-to-be First Lady in inaugural plans, what she would wear, that type of thing

Q We'll get to that

Prior to all this, did you work in any other gubinatorial administrations?

A I worked for Governor George Allen, Governor Jim Gilmore

Q When were you officially hired to be Ms McDonnell's Chief of Staff?

A My start date was January -- it was the Monday after he was sworn in

Q Okay Fair to say you're right there at the beginning --

A Yes

Q -- of the administration?

Can you tell the jury what a Chief of Staff to the

First Lady does? What were your job duties?

A It's a position that evolves Different First Ladies had different needs So this one was more running her office, doing scheduling At the time, it didn't include speech writing, but it developed into some speech writing, coordinating with the Governor's staff, working with the Mansion staff, traveling with her It was a variety of things

Q Is it fair to say that as the Chief of Staff to the First Lady, you are a -- an employee of the Commonwealth of Virginia?

A Correct

Q And when you worked in the Governor's Mansion, to whom did you report?

A Officially report? That would be to the Governor's Chief of Staff

Q And what was his name?

A Martin Kent

Q Okay So you took direction from Ms McDonnell, but technically your boss was Martin Kent?

A Correct Well, technically, I guess the boss would be the Governor, but --

Q Okay Now, were you the only staff member in the Governor's Mansion?

A No

Q Tell the jury a little bit about how many folks worked there and what, generally, their jobs were

A Well, you had staff that had been there for a while The butler had been there through, I believe, eight governors You had a full-time housekeeper She had been there for several governors

And then we had a staff We had a Mansion director and an -- kind of an executive assistant in the early days, and then that staff expanded

Q Okay So were there other staff members who took direction from Ms McDonnell? Were there other assistants?

A At the time I was there?

Q Yes, ma'am

A There were -- it was myself, Sarah and Alex So there were really just three of us in the staff position The others were Department of General Services

Q And "Sarah," do you mean Sarah Scarbrough?

A Yeah, Sarah Scarbrough

Q And what was her title?

A Mansion director

Q And Alex Who is Alex?

A Alex Stanley She was our second administrative assistant We had one that was only there a few months

Q Okay Now, I'd like to turn your attention back to the end of 2009 Even though you were not formally Ms McDonnell's Chief of Staff, did you assist in the planning for the inauguration?

A Some I was not on the Inaugural Committee, but -- so in an unofficial -- I had planned inaugurals before I had done George Allen's inaugural So I had experience

Q So what were you doing in this time period for the McDonnells?

A We were talking about, you know, how to shape her events, what the First Lady's lunch would look like, schedules, what she would need to wear to the variety of events

Q And for those of us who haven't been to an inauguration, is this a singular event or are there several events?

A No There are multiple They are spread out usually over the course of the week Typically, you would do something in Southwest Virginia, something in the Tidewater area The swearing in is in Richmond, although Governor Kaine was sworn in in Williamsburg due to construction of the Capitol

There are lunches There are sponsor dinners And then there's usually the big ball, and that's usually the night of the swearing in

Q Is it fair to say that -- that a lot of clothes are needed for all these various events?

A Yes

Q And was Ms McDonnell, at the time, concerned about her apparel for these events?

A Well, she wanted to look appropriate for all of the events So yes

Q Did there come a point in time when you heard that Jonnie Williams was going to purchase Ms McDonnell an inauguration dress?

A I heard about a dress I don't remember at what point his name was brought into it But there was going to be a designer dress purchased for her later on into -- multiple conversations about the ball gown At one point during one of those conversations, I was told who the donor was

Q So you were not around when Mr Williams agreed to pay for the dress --

A No

Q -- or made any offers?

A No

Q Was it your understanding that at some point in time Ms McDonnell was told, "No This won't work Mr Williams cannot buy you a dress"?

A Yes

Q What did Ms McDonnell tell you was the reason why

Mr Williams couldn't do that?

A Because she wouldn't be allowed to keep the dress

Q She could only --

A If it were brought for her for the inaugural, she would have to donate it or give it away

Q What was Ms McDonnell's reaction to this information?

A She didn't like it She was unhappy She wanted to be able to keep the dress and wasn't pleased with the staffer who told her that

Q And who was the staffer who told her that?

A I believe it was Jasen Eige

Q Was this a singular event at which Ms McDonnell expressed her unhappiness or did you hear about it more than once?

A We talked a lot about the dress

Q Were you, nevertheless, involved in Ms McDonnell's subsequent purchase of a gown for the inaugural ball?

A Yes I took her We went to Tiffany's Bridal and found a beautiful dress

Q Okay

MS ABER: I'd like to bring up for identification Government Exhibit 58, please

BY MS ABER:

Q Now, Ms Sutherland, fair to say we're going to go through a lot of documents Have you had an opportunity to look at all of these before you came to court today?

A Yes

Q Okay Do you recognize this as an e-mail chain between you and Phil Cox in January of 2010?

A Yes

Q Okay

MS ABER: Your Honor, I'd like to move Government Exhibit 58 into evidence, please

THE COURT: It will be admitted

BY MS ABER:

Q All right Let's start at the bottom of Page 1, please I'm going to -- for the sake of speeding this along, Ms Sutherland, I'm going to read some of this to you and ask you if it's accurate. Mr Cox writes, "Mary-Shea, The Governor-elect called this morning to ask for reimbursement on dresses Per our conversation from two weeks ago, I need you to let me know the total so I can cut a check today and police up the receipts for our records "

Is it fair to say that you were dealing with Mr Cox -- well, first of all, did I read that right?

A Yes

Q Okay Is it fair to say you were dealing with Mr Cox in reference to getting reimbursement on all of the gubinatorial inauguration outfits?

A Yeah I had kept ahold of all the receipts so they wouldn't get lost

Q All right

MS ABER: And scrolling up

BY MS ABER:

Q You respond, in part, on the first paragraph, that "These are on my card"; that being the shoes to replace a pair that was lost last weekend "Do you need original receipts or just a total and faxed copies?"

Did I read that right?

A Yes

Q Okay Why -- why are you putting things on your card for the inauguration?

A The -- Maureen's card, one of the cards that she was using, was maxed out

Q We're talking about credit cards?

A Credit -- sorry Yes, credit cards

Q Okay

MS ABER: And scrolling up one more, please, Ms Taylor

BY MS ABER:

Q Mr Cox indicates that "you are balancing a lot right now and spending a lot of time with Maureen in addition to Vegas "

Did I read that right?

A Yes

Q What things were you balancing, specifically?

A I work every January for the Consumer Electronics Association and do their VIP events So that was at the time I was out there working on all of that

Q Okay

MS ABER: You can take that down

A I was not on vacation

BY MS ABER:

Q Now, when did you actually begin formally working as Ms McDonnell's Chief of Staff? What date did you give?

A I think it was January 18th. It was the Monday after all of the inaugural activities

Q And who actually offered you the job?

A I dealt mostly with Martin Kent

Q Did Mr McDonnell at all call you during the hiring process?

A Yes

Q And what did he say to you?

A I had been a little concerned about not being a part of his original team and coming in as an outsider And he called me one evening, close to Christmas, to assure me that he wanted me in that position and that Maureen wanted me It was a very friendly call

Q Did he say anything to you about his expectations for you in this position as Ms McDonnell's Chief of Staff?

A We had -- we had gone over what the job might entail, and I asked him, as I've done in other interviews, "How would you define success?"

And he said, "When I come home to a happy wife "

Q As a side note here, have you ever heard Ms McDonnell referred to as FLOVA?

A Yes

Q What does that stand for?

A First Lady of Virginia

Q Okay Changing subjects once again I think we talked about Mr Williams once in reference to the inaugural gown Was that the first time in that process, was that the first time that you had ever heard of Jonnie Williams?

A No The fundraising company I had worked for, his company had, at times, sponsored, you know, a table at an event or a golf foursome for a fundraiser So I was familiar with the name

Q Is it fair to say, in your prior experience, you had known him as sort of a Republican donor?

A Correct

Q Now, when did you first meet Mr Williams in person?

A That I can be sure of, it was on the shopping trip in the spring of 2011 There's a possibility I would have met him at a Republican event at some point, but I don't really recall that

Q Now, the spring of 2011 Is it accurate that that's the second year of Mr McDonnell's administration?

A Yes

Q And did you take a trip to New York City with Ms McDonnell in April of 2011?

A Yes

Q How did you travel to there?

A Private plane

Q And who was on the plane with you?

A The First Lady, the Governor, one of the members from the security detail I was on; Adam, the Governor's travel aide There were probably one or two other people on the plane

Q Was Mr Williams on the plane?

A No

Q Why was Ms -- excuse me Why was Mr McDonnell going to New York?

A Official business

Q Tell the jury exactly what was going on that week

A It had something to do with economic development I don't -- I wasn't participating in the meetings So I couldn't tell you who he was meeting with up there But it was an official trip

Q So he had a trip planned Why was Ms McDonnell tagging along?

A Because at -- we were going to do some shopping, looking for a mother-of-the-bride dress Her daughter was getting married And there was an event that night that was a Political Action Committee event, and she was going to be attending that as well

Q Before we start talking about Mr Williams and the shopping, was the plan always, before Mr Williams entered the picture, to have Ms McDonnell go shopping in New York to look for outfits for the wedding, or was that precipitated by Mr Williams making whatever offers we're going to discuss?

A We had -- we were desperately looking for a mother-of-the-bride dress, and going to New York made the most sense

Q Okay

A So --

Q So did you join Ms McDonnell on any shopping that occurred during New York City --

A Yes

Q -- while in New York City?

MS ABER: I'd like to bring up what has been admitted as Government Exhibit 99, please

BY MS ABER:

Q Is it fair to say that this is an e-mail exchange between you, Ms Monica Block, and the First Lady?

A Yes

Q Okay

MS ABER: Let's go down to the bottom, please, Ms Taylor

BY MS ABER:

Q Is it accurate that this bottom e-mail of 99 sort of summarizes the plans for your New York City trip?

A It's close It doesn't happen exactly that way

Q Okay Did you, in fact, meet Mr Williams on April 13th, the day following this e-mail?

A I believe so

Q And --

A I mean, I know we met him As for the date, I --

Q Okay Let's start with where did you meet him?

A In the entrance to Bergdorf Goodman This says that he was suggesting we meet at his hotel But we did not We met him at the department store

Q And what happened once you got there?

A We did some shopping We had lunch

Q Okay So it's you, Mr Williams, and Ms McDonnell?

A Correct

Q Anyone else?

A The security detail was comfortable with me being with her, so they stayed in the car

Q And when you say you did some shopping, is Mr Williams present for the shopping?

A Yes

Q And did Mr Williams pay for whatever was purchased at Bergdorf Goodman?

A Yes

Q What was Ms McDonnell's demeanor during the shopping trip?

A She was having a great time

Q Did you all have lunch together?

A We did

Q And who was at the lunch?

A The three of us: Ms McDonnell, Jonnie Williams, and myself

Q Did Ms McDonnell say anything about her opinions on this shopping trip to Mr Williams?

A She went into what she was looking for, you know the occasions, and -- I'm sorry Can you repeat the question?

Q Sure Terrible question

Did Ms McDonnell, at this lunch, say anything about her -- her opinion -- well, did Ms -- excuse me, Your Honor

Did Ms McDonnell say anything to Mr Williams about whether she could keep the dresses?

A Yes

Q What did she say?

A It's paraphrasing It's been a couple years But this was actually better than getting the inaugural dress because she could keep these

Q Did you do any shopping after lunch?

A Yes

Q And where did you all go?

A We shopped all day

Q Okay What other stores did you go to?

A Louis Vuitton We went to Oscar de la Renta Earlier in the day, we had gone to a bridal salon to see if they had things He was not with us at that part

Q So day one, what was your reaction to Mr Williams purchasing these items for Ms McDonnell?

A That he was very generous

Q Were you surprised?

A A little But, you know, if he was going to buy an Oscar de la Renta original as an inaugural gown, you know, buying other dresses wasn't out of line

Q Did you know, on your way to New York, that Mr Williams was going to foot the bill for all the shopping?

A No

Q And when did you first figure that out?

A When he was talking about buying a dress for her

Q Okay

MS ABER: You can take that down, Ms Taylor

BY MS ABER:

Q Okay After that first day of shopping, did you go to anything that night?

A Yes It was the PAC event

MS ABER: Let's bring up Government Exhibit 97, please

And that's already been admitted, Your Honor

BY MS ABER:

Q Is it accurate that this is an e-mail between you, Ms McDonnell, and Ms Block in reference to that PAC event?

A Yes

MS ABER: Let's turn to Page 2, please

BY MS ABER:

Q So with whom did you go to the Union League Club event?

A I would have traveled with the official party: The Governor, First Lady, EPU Whatever staff was there

Q Did you bring anyone with you?

A I had a friend meet me there

Q Who was that?

A Jim Abel He's a gentleman that I've worked with for years and decorates for my big events

Q Is that his line of work? He's an event --

A Yeah His company is James Abel Events

Q Now, when you were at the event; that is, the Union League event, did you and Mr Abel speak to anyone?

A Yes

Q To whom did you speak?

A Well, he said hello to the First Lady They had met before And we were standing there talking, and I introduced him to Mr Williams I mean, it would have been awkward not to

Q Okay So Mr Williams was at the Union League event?

A Yes

Q And so were Mr and Ms McDonnell?

A Yes

Q And you brought Mr Abel?

A Well, he met me there

Q Okay

MS ABER: Let's bring up Government Exhibit 101, Your Honor I think the defense version of this has been admitted, but I will move 101 into evidence, please

THE COURT: It will be admitted

MS ABER: Thank you

BY MS ABER:

Q Now, Ms Sutherland, this e-mail makes reference, on the bottom there, to -- well, let me back up

This is an e-mail from Mr Abel to Mr Williams, carbon copying you; is that right?

A Correct

Q Okay And it says there that you and Mr Abel had a wonderful dinner brainstorming about your launch event

First question How long did you and Mr Abel stick around the Union League event?

A We stayed until the cocktail part ended And then I got the First Lady and Mr Williams up to where the dinner was going to be held, made sure they got in okay, and then Jim and I left

Q And how long, approximately, were you speaking with Mr Williams before you and Mr Abel left?

A Not long You know, 15 minutes or so

Q Okay So fair to say that you and Mr Abel proceed on to a separate dinner?

A Yes

Q Okay When you're saying you're talking about "your launch event," what launch event were you talking about?

A The -- Jim, Mr Abel, had talked with Mr Williams about, you know, when you first meet someone, what do you do, what do you do Jim had told him what he did He said, "Well, I'm getting ready to do a series of product launches Send me your information " They exchanged cards

Q Did Mr Williams or you or Mr Abel raise the idea of having an Anatabloc launch at the Governor's Mansion?

A No

Q What kinds of launches were we talking about?

A The kind you do in a hotel ballroom or private event space

Q And, in fact, at that point, that is, April of 2011, did you even know that there would ever be a Mansion -- an event at the Governor's Mansion --

A No

Q -- for Anatabloc?

A No

Q Not even in your mind?

A No

Q Okay So day two in New York Did you and Ms McDonnell continue shopping?

A Yes

Q Was Mr Williams with you?

A No, he was not

Q What stores did you go to?

A We went, very early, to a store called Century 21

Q Uh-huh

A It's a discount department store And then we went back to Oscar de la Renta, and we might have gone to Lord & Taylor, but that could have been on a different trip

Q Did Ms McDonnell make any comments about what had been purchased by Mr Williams?

A Well, we had found the mother-of-the-bride dress So she was pleased about that

And then we went back to Oscar de la Renta She had seen a dress the day before that wasn't in her size, and so they had to get it from another store So she went back there to try it on

Q Was Ms McDonnell also looking for a dress for her 35th wedding anniversary party?

A That was the dress we want back to look at at Oscar de la Renta

Q Now, during the shopping trip, did Mr Williams buy anything for you?

A He did

Q Tell the jury how that came about

A We were -- I was helping the First Lady, as I did with most of her shopping trips, in and out of the dressing room, bringing different things in and out and different sizes and zipping and unzipping And Mr Williams, at some point during all of this, said, you know, "We should get you a dress too "

And I said, "No No No " Argued with him a couple times And he brought a couple things back that he thought I'd like, and they really weren't my style

And he kept insisting, and he brought a dress back and he said, "Just, you know, placate me Try it on " And he told me, he said, you know, "I'm a father of two daughters When I buy for one, I like to buy something for the other "

It was starting to become a scene, and it was easier to accept the dress than to continue fighting about it

MS ABER: Your Honor, I -- if I may have a moment Your Honor, I'd like to show the witness what has been marked as Government Exhibit 633, please

THE COURT: All right

BY MS ABER:

Q Ms Sutherland, take a look at that, please, and tell the jury if that's the dress that Mr Williams purchased for you in New York City?

A It is

MS ABER: Your Honor, I'd like to move 633 into evidence

THE COURT: It will be admitted

BY MS ABER:

Q Now, Ms Sutherland, can you tell the jury, are the tags still on it?

A They are

Q What does the tag say the price was for that dress?

A I'd have to dig it out It's --

Q I think it's on the far --

A -- 16 and change

Q When you say "16 and change," do you mean $1,600 --

A Yes

Q -- and change?

Have you ever worn that dress?

A No It's never come out of the packaging

Q Is it accurate that you voluntarily produced that to the government yesterday?

A I offered it to the FBI the first time I met with them

Q All right

MS ABER: Let's look at Government Exhibit 30-A, please, which has not been admitted

BY MS ABER:

Q Is this a photograph of two dresses and a blue jacket purchased in New York City?

A Yes

MS ABER: All right Your Honor, I'd move 30-A into evidence

THE COURT: It will be admitted

BY MS ABER:

Q So, Ms Sutherland, these are items that Mr Williams purchased for Ms McDonnell while on the shopping trip?

A To be very clear, one dress and the jacket were purchased When we got back to Richmond, the First Lady was uncomfortable with the sizing of one dress and asked for the second one in a different size

Q Is it your understanding that Mr Williams also paid for the second identical dress?

A Yes

Q Okay

MS ABER: Government Exhibit 521, please

BY MS ABER:

Q Now, Ms Sutherland, have you had an opportunity to look at this picture and, actually, this full magazine prior to coming to court?

A Yes

Q And does that depict a picture of Mr and Ms McDonnell?

A Yes

MS ABER: Your Honor, I'd like to move in 521, please

THE COURT: It will be admitted

BY MS ABER:

Q Ms Sutherland, do you recognize what dress Ms McDonnell is wearing in that picture?

A It's the dress she wore as mother-of-the-bride that

Mr Williams purchased at Bergdorf Goodman

Q And is it fair to say, prior to coming to court, you saw this was the full magazine? This is the front page of a magazine?

A Yes

Q Okay

MS ABER: Government Exhibit 29-A, please

BY MS ABER:

Q Do you recognize this picture?

A I do

Q And what is it?

A It's the coat purchased from Oscar de la Renta

Q By Mr Williams?

A Yes

MS ABER: I'd like to move 29-A into evidence, please

THE COURT: It will be admitted

BY MS ABER:

Q Do you remember where this dress was purchased? If you don't, that's okay

A It's the coat still

Q Oh, excuse me Do you remember where this coat was purchased?

A At Oscar de la Renta

Q Okay

MS ABER: 28-A, please

BY MS ABER:

Q Is this another dress that Mr Williams purchased for Ms McDonnell?

A No It's a raincoat

Q Raincoat Gotcha

MS ABER: Your Honor, I'd move 28-A into evidence

THE COURT: It will be admitted

BY MS ABER:

Q And turning to Page 2, the close-up Where was this coat purchased?

A At Louis Vuitton

MS ABER: 36-A, please

BY MS ABER:

Q Is this a pair of shoes that Mr McDonnell purchased for Ms McDonnell -- Mr Williams purchased for Ms McDonnell?

A Yes, to go with the mother-of-the-bride dress

MS ABER: I'd like to move 36-A into evidence

THE COURT: It will be admitted

BY MS ABER:

Q And where were these shoes purchased?

A At the Louis Vuitton store

MS ABER: 37-A, please

BY MS ABER:

Q Another pair of shoes from Louis Vuitton?

A Correct

MS ABER: I'd like to move 37-A into evidence

THE COURT: It will be admitted

MS ABER: And now 32-A, please

BY MS ABER:

Q What is this?

A It's the purse that Mr Williams bought for the First Lady at the Louis Vuitton store

MS ABER: I'll move 32-A into evidence, please

THE COURT: It will be admitted

BY MS ABER:

Q Did you ever see Ms McDonnell wear this purse, carry it?

A Yes

Q How often?

A Frequently

MS ABER: I'd like to bring up 31-A, please

BY MS ABER:

Q Do you recognize this dress?

A I do

Q What is it?

A It's a metallic threaded knit dress from Oscar de la Renta

MS ABER: I'd like to move 31-A into evidence

THE COURT: It will be admitted

MS ABER: Excuse me One moment, Your Honor

(Counsel conferring with co-counsel)

MS ABER: And finally, 8-A please, Your Honor

BY MS ABER:

Q Do you recognize this picture?

A It's a sweater that was purchased at Oscar de la Renta

MS ABER: Your Honor, I'd move 8-A into evidence

THE COURT: It will be admitted

BY MS. ABER:

Q Now, to be clear, Ms Sutherland, we've looked at a lot of pictures Did Mr Williams purchase all of these items for Ms McDonnell in April of 2011 in New York, aside from the blue dress that came later?

A Yes

Q Okay Now, when you all returned from New York to Richmond, how did you travel back?

A By private plane

Q And who was on the plane?

A Governor, First Lady, me, Adam, whoever from EPU was traveling, and whoever else was on the plane I just don't recall the other passengers

Q Okay But both Mr and Ms McDonnell were on the plane?

A Yes

Q All right When you get back to Richmond, did you tell anyone about Mr Williams' purchases for Ms McDonnell?

A I believe I shared with Sarah Scarbrough --

Q Okay

A -- that we had found the mother-of-the-bride dress

Q Did you tell anyone else, "Gosh, Mr " -- "Mr Williams bought Ms McDonnell all this" -- "all these clothes"?

A I told my husband. He wasn't -- he didn't understand the significance of the boutiques we had been in So -- for anyone who is interested in fashion, to walk in to Oscar de la Renta is very -- very special

MR BURCK: Objection, Your Honor Just on the prior question, I think that the witness did not answer that she knew -- she had informed Ms Scarbrough that Jonnie Williams had purchased the dress And then the question that was asked by Ms Aber assumed that; that she had informed the -- Ms Scarbrough of that So I just would ask that the question be clarified

THE COURT: All right You want to --

MS ABER: I will clarify

BY MS ABER:

Q Who did you tell Jonnie Williams bought clothes for Ms McDonnell, if anyone? And if you didn't, tell them that too

A I don't recall if I told who paid for it I do recall saying we found the mother-of-the-bride dress

Q Why didn't you tell anyone that Mr Williams had paid for these items?

A Because she liked to keep things private

Q And who is "she"?

A Oh The First Lady, Maureen

Q And why do you say that?

A She didn't want other people knowing her business

Q Did you have an understanding at this time about whether you were supposed to be keeping track of Ms McDonnell's gifts?

A I kept track of things that would be considered gifts for the Governor An example is we had gone to The Nutcracker And the tickets, I made sure, got -- the value given to his secretary So that type of gift log

Q Okay Now, at this point -- and I mean spring of '11 -- you have been Ms McDonnell's Chief of Staff for approximately 16 months; is that right?

A January -- 12 -- 14 months or so

Q Okay How was it going thus far?

A It was stressful

Q Why was that?

A The First Lady was a little difficult to -- to work for

Q Did Ms McDonnell often, in your experience, speak to you in a raised voice?

A Frequently

Q Did there ever come a time when the protection unit came to check in on you because of the yelling?

A Yes A couple times

Q Tell the jury about that

A There were instances where I was in her office and the yelling and screaming had gotten loud enough that it went through to the next room where the protection detail had their offices And at least two occasions, they came out to see if I was all right

Q Did you observe Ms McDonnell behaving in the same manner in front of other staff members?

A Yes

Q So it wasn't just to you?

A No

Q How often did Ms McDonnell text you?

A Constantly

Q How often did she call you?

A All the time

Q So even when you're not at work at the Mansion, was she trying to contact you?

A It was not unusual that I would get home and would have talked to her on my drive home and then once home, preparing dinner, get a call Get a call an hour later or get a call before -- I mean, I go to bed early So I finally told her, I said, "At 10:00, I can't respond to you I've turned my phone off I'm going to bed "

Q Were there times when you woke up in the morning and found that she had tried to contact you overnight?

A There would be some text messages

Q Are you aware of whether she tried to contact other staff members in the same fashion?

A Yes

Q Okay What do you know about that?

A They would, you know, be upset about the amount and sometimes what was said on them And I told them the same thing I did, "Turn your phone off It's 10:00 at night Turn it back on in the morning There's nothing we can't handle the next day "

Q Did you ever tell anyone about these issues with Ms McDonnell?

A Yes

Q Okay Who did you tell?

A Mostly Martin Kent

Q And did you ever speak to the Governor about your -- the issues in the Mansion?

A One time

Q Tell the jury about that

A It had been a particularly ugly day at the Mansion, and most of the First Lady's anger was directed at Sarah Scarbrough It had to deal with reimbursement receipts And I had called Martin and said, "I need to see you " And Martin and I had an understanding that if I said I needed to see him, he made time for me

And I went over there and was waiting to go into his office And the Governor came out and saw me sitting there, and I think he could see that I was visibly upset And he asked me to come in and sit with him in his office and asked what was going on And I -- I caged it -- you know, I didn't go into all of the details, but I let him know that there had been a lot of screaming and yelling and she was very angry and it was very difficult for us staff people

And he was very kind and sat there with me and reassured me that we were doing a good job and asked that we try and understand that the First Lady had had a difficult year and was trying to get used to her job and that her father had recently died

And I pushed back a little on him on that, and I told him that my mother had recently been killed in a car accident and my father had died five months later and I never treated anybody the way she treated us

Q So at this time, had you started seeking employment elsewhere?

A Yes I was letting a variety of contacts know that I would not be staying there

Q Is it fair is to say you were sort of sending out feelers, but not anything formal?

A Correct

Q And when would you say that started?

A I let the woman that I had been employed by just before taking the job, I let her know within a couple months of taking the job that I had made a big mistake

Q But nevertheless, you remained at the Mansion working for Ms McDonnell?

A Yes

Q Okay Now, during your time working for Ms McDonnell -- let me ask you, how -- how close were you and Ms McDonnell? I mean, were you just -- was she just the boss or were you friends or how would you characterize your relationship?

A We were close I mean, she shared a lot with me When you spend a lot of time together, you develop a relationship And we had had, you know, the startings of a relationship prior to taking the job We were, you know, close in age

Q Now, during your time working in the Mansion, did Ms McDonnell ever discuss their personal finances with you?

A Yes

Q And what, if anything, did she say about their finances?

A That they were buried in debt

Q Did the McDonnells keep their personal home out in Glen Allen when they moved to the Mansion?

A Yes The First Lady was insistent She did not want her house sold

Q Did Ms --

A She wanted to move home there

Q Did Ms McDonnell ever talk about the mortgages on that house?

A A little

Q And what did she say?

A That, you know, they -- they would never be able to sell it for what they owed on it, but she wanted to keep the house She loved that house

Q Did Ms McDonnell ever mention beach houses?

A Yes

Q What did she say?

A That they had two beach properties in the -- down in Sandbrige, a small house on the beach side, and then a bigger one that they had recently done some renovations to on the opposite side of the road

Q Did she say anything about how the rental income compared to the expenses related to the homes?

A That they weren't matching up They weren't getting enough renters

Q Now, going forward So after April of '11, moving forward in time, how often did you see Mr Williams at the Mansion?

A Through the course of the summer Without -- maybe -- maybe once a week or every other week I'd have to check the visitor logs, but he was a frequent visitor

Q Did you have access to Ms McDonnell's calendar?

A Yes

Q And was her calendar kept electronically in Microsoft Outlook?

A Yes On both my computer and hers

Q Could you add events to Ms McDonnell's calendar?

A Yes

Q Did you ever put an event on Ms McDonnell's calendar without her consent?

A No I mean, I might have put something on there and then told her, "I was asked to add this by the Governor's

Office " And we had color coding for different events, if it was something she was going to with the Governor or if it was something she was doing alone or if it was a speech event There were different color codes

Q Now, in reference to Mr Williams coming to the Mansion, were those the kinds of events that you'd put on the Outlook calendar or were they more spontaneous?

A Depending on if it was planned ahead I mean, if somebody, you know, called and said, "I'm coming down," you know, I would alert the guardhouse But it wouldn't necessarily just get on the calendar

Q Now, did -- did Ms McDonnell ever say anything to you indicating that she was interested in Mr Williams romantically?

A No

Q Did you ever see anything, did you ever observe anything between Mr Williams and Ms McDonnell --

A No

Q -- to suggest -- let me finish my question -- to suggest there was anything romantic going on?

A No

MS ABER: Let's bring up Government Exhibit 34-A, please

BY MS ABER:

Q Do you recognize this dress?

A It's a yellow dress

Q And do you know anything else about it other than its color?

A It was sent to the First Lady It was not part of the shopping trip She had told Mr Williams that she was looking for a yellow dress

Q Let me stop you there

MS ABER: I'd like to move 34-A into evidence, please

THE COURT: It will be admitted

BY MS ABER:

Q Why did Ms McDonnell tell Mr Williams that she was specifically looking for a yellow dress?

A It went back to when she and the Governor were first a couple, and she said that he had fallen in love with her in yellow

Q Was there -- was Ms McDonnell on a search to find a yellow dress?

A We had -- on a number of our shopping trips, we had looked at yellow dresses

Q In this time period -- and by "this time period" I mean 2011 -- did Ms McDonnell ever say anything about -- well, actually, let me back up

In your observations of Mr and Ms McDonnell, did they appear to be romantically interested in one another?

A To my eye, yes

Q Did Ms McDonnell ever say anything about a poem that Mr McDonnell had written to her?

A She told me that he had written her a poem, and let me read it

Q Without being too crass, is it fair to say it was romantic in nature?

A It was lovely

Q And when, roughly, do you think that was?

A I don't remember whether it was Valentine's Day or her birth -- it was an occasion

Q In 2011?

A Yes

Q Did you ever observe the frequency with which Mr and Ms McDonnell had meals together at the Mansion?

A We tried -- the scheduling team tried to put them together for lunch at least once a week, tried to put the -- make sure that he was home for dinner, even if he had to go back to work It was something we made a concerted effort to do It didn't always work, but, you know, we tried to schedule those times

Q Was that your idea or was that something that came from Ms McDonnell?

A It might have been a group effort, trying to make sure that they had time together But, you know, she had expressed wanting to see him more

Q Now, turning your attention to the month after the New York City shopping, so the end of May 2011, did you accompany Ms McDonnell on a trip to Sarasota, Florida?

A Yes

Q And what was the purpose of that trip?

A To go down to see and meet with the researchers who were doing all of the work on Mr Williams' Anatabloc product

Q Was it your idea to go to Sarasota?

A No

Q Whose idea was it?

A Mr Williams invited -- I believe he invited both the Governor and First Lady But it was his invitation

Q And why did you go along?

A She -- well, I usually accompanied her on most trips, and it was, you know, part of the job

Q How did you get to the Roskamp Institute?

A Mr Williams' plane

Q So who's on the plane with you?

A The First Lady, me, a member of our protective detail, Mr Williams' son, and I believe his son had a friend with him, but -- or a colleague, who was a doctor

Q Once you arrived in Sarasota, did you have dinner that evening?

A We did

Q And tell the jury about that

A It was a dinner for people who were in from out of town to hear the research And the dinner was in the hotel that we stayed, and the table was done in a -- kind of a conference style, closed -- closed -- I call it a closed U

Mr Williams, the First Lady and his wife and one of the doctors sat at kind of the head, and then people were seated around He had not done a very good count, and we were adding chairs at the last minute And I kind of went into event mode and was working with the hotel staff He didn't have anyone there managing the event, and it's kind of instinct in me to take over So I got the staff to add some extra chairs, and we actually ended up bringing in an extra table for --

Q So Mr Williams had not planned it adequately in advance?

A Yes

Q And you sort of stepped in to get it together?

A Yes

Q Okay The following day, what happened?

A We went to the Roskamp Institute We had a tour, got to meet some of the scientists, saw the facilities And then there was a lunch with presentations from the researchers

Q During the lunch, were you and Ms McDonnell seated at the same table?

A No

Q Did there come a point in time in which Ms McDonnell made some remarks?

A Yes During the lunch

Q What did she say?

A She was excited to be there and said she thought the product was wonderful and that she would get in a car with Mr Williams and drive all over Virginia promoting the product It was very -- very friendly

Q And I'm sorry What did Ms McDonnell say, if anything, about -- about using the Mansion for any sort of event?

A That she would invite everyone to come there to kind of have a kickoff party

Q Prior to that moment when Ms McDonnell stands up, did you know that she was going to make that kind of offer?

A No She wasn't even scheduled to speak

Q What was your reaction to Ms McDonnell offering the Mansion?

A That I thought it would be risky We -- you know, you don't launch a -- you don't do a product launch from the Mansion You can have receptions and dinners and lunches and things like that, but --

Q Were you surprised at this offer?

A A little

Q Had you ever heard Ms McDonnell talk about this before?

A In terms of doing a product launch?

Q From the Mansion

A No

Q And just to be clear for the jury, did you tell Ms McDonnell to make this offer?

A No

Q How long were you in Sarasota?

A A day and a half

Q Okay So you leave the next day And how did you get back to Richmond?

A The -- Mr Williams' plane

Q Okay

MS ABER: I'm going to change topics

THE COURT: Let's stop before you change topics We'll take our morning break We'll make it 15 minutes

(The jury left the courtroom)

(Recess taken from 11:47 a m until 12:10 p m)

THE COURT: Bring in the jury

(The jury entered the courtroom)

THE COURT: All right

MS ABER: Thank you, Your Honor

BY MS ABER:

Q Ms Sutherland, I'm going to bring up Government Exhibit 34-A that has been admitted, please

MS ABER: Thank you

BY MS ABER:

Q Another question about this yellow dress From whom did it come and to where did it go? What do you know about this dress?

A It came from Mr Williams to the First Lady, and it was shipped to the Mansion

Q To your knowledge, did Mr Williams pay for this dress?

A I didn't see a receipt for it I would assume if he sent it, he paid for it, but that's --

Q You don't have to assume It's okay

And how did you know that it came to the Governor's Mansion?

A There was a big box delivered to the First Lady's office, and I was there when she opened it

Q And what was her reaction when she opened it?

A She was excited about the dress But after trying it on, she didn't like it And I never saw her wear it

Q Okay Thank you Now, let us change topics, please

MS ABER: You can take that down, please

BY MS ABER:

Q Around June of 2011, did Ms McDonnell ask to borrow some money from you?

A Yes

MS ABER: I'd like to bring up Government Exhibit 152, please

BY MS ABER:

Q This is the check that you wrote to Ms McDonnell?

A Yes It was a loan

MS ABER: Your Honor, I'd like to move in 152, please

THE COURT: It will be admitted

BY MS ABER:

Q What is the date on this check?

A June 2nd, 2011

Q And why did Ms McDonnell say she needed a loan?

A To cover a stock purchase she had made

Q And did she provide the amount, the $6,000 figure?

A Yes

Q Did Ms McDonnell say anything about her children in relation to this stock purchase?

A She was going to give some of it to each of them

Q In approximately this time period of June 2011, did you observe Ms McDonnell calling her stockbroker?

A When we were in Florida, I walked -- I went into her hotel room, and she was on the phone with him at that time

Q With the stockbroker?

A Correct

Q Did Ms McDonnell ever tell you not to tell the Governor about her stock purchase?

A Not that I recall

Q Now, did Ms McDonnell ever pay you back?

A Yes

MS ABER: Let me bring up Government Exhibit 205, please

BY MS ABER:

Q Is this the repayment from Ms McDonnell?

A Yes

MS ABER: Your Honor, I'd move 205 into evidence, please

THE COURT: It will be admitted

BY MS ABER:

Q What's the date when Ms McDonnell paid you back?

A August 16, 2011

Q So that's roughly two and a half months later?

A About

MS ABER: You can take that down, Ms Taylor

BY MS ABER:

Q Ms Sutherland, did you buy stock in Star Scientific?

A Yes

Q Did you keep that a secret?

A No

Q Who, in the Mansion or in the Governor's Office, did you talk about that with?

A I know I talked with Sarah Scarbrough

Q Did you ever talk to Tucker Martin about it?

A I talked to Tucker I mean, it could have -- maybe one or two other people It wasn't -- it didn't seem like it was a big deal to me

I had been using the product, and I had -- it made my back much better, and I thought if it makes my back better, you know, maybe it's a good thing to put money into

Q Now, when we looked at Government Exhibit 152, you wrote Ms McDonnell the check on June 2nd of 2011

Is it fair to say that Cailin McDonnell got married around the time that you made this loan?

A It would have been within a couple days I don't remember the exact date of her wedding, but it was the weekend of the week we went to Florida

Q Okay So you go to Florida, and then the upcoming weekend is Cailin McDonnell's wedding?

A Correct

Q Did you ever talk about the wedding planning with Ms McDonnell?

A Some, yes

Q Were you involved in the wedding planning?

A Not as much as I've been on other weddings But somewhat, yes

Q Did Ms McDonnell seek your advice, given your experience with wedding planning?

A Yeah We talked a lot about, you know, order of events and who should toast when Those kinds of things

Q Now, based on your conversations with Ms McDonnell, who did you believe was paying for the reception?

A The reception, she and the Governor

Q And why do you say that?

A Because there had -- I had talked with Cailin about she was going to have a stock-the-bar party leading up to the wedding in order to use that for the bar at the wedding and that she was paying -- I believe she got her dress --

Q We don't -- that's okay Let's talk about conversations you had with Ms McDonnell

Did she say anything that led you to believe that Mr or Ms McDonnell were paying for the reception?

A Yes

Q What did she say?

A That she and her husband were going to be doing the -- the catering piece of the wedding

MS ABER: I'd like to bring up what's been admitted as Government Exhibit 121

BY MS ABER:

Q Do you recognize this?

A It's the check for -- that I was given from the First Lady to give to the catering company

Q Was it given to you with the words "Great Seasons Catering" in it?

A No She gave it to me and asked me to fill it in

Q Did Ms McDonnell tell you who this check came from?

A Yes

Q What did she say?

A She said that Mr Williams had given it to her to pay for the wedding

Q Were you around when Mr Williams gave Ms McDonnell the check?

A No

Q Did you, in fact, give this check to Great Seasons Catering?

A Yes

Q To whom did you give it?

A Ryan, who is the head -- head of the wedding He was the catering director

Q Is that Ryan Greer?

A Ryan, yes, Greer

Q Did Ms McDonnell say anything about whether the check should be cashed or whether it should be deposited?

A I don't recall her saying either

Q Based on your conversations with Ms McDonnell, did you believe that this check, plus any deposits that had been made to date, would result in an overpayment to the catering company?

A I would have told her, you know, it would come close, but until you ever get a final invoice, you don't know if you have to owe more or if you've going to get something back But it would have probably been close

Q Okay Let me back up Were you -- it was a terrible question

Were you aware that the McDonnells had made some deposits on the catering contract?

A Yes

Q Was Ms McDonnell expecting a refund check from Great Seasons Catering?

A She felt there would be one coming

Q Did Ms McDonnell ever express to you an opinion about the cost of the wedding reception?

A We discussed, post-wedding, the final invoice

Q Did you go through the invoice with Ms McDonnell?

A Yeah There were charges she didn't feel that she should have to pay for

Q Okay How did she feel about the quantity -- what did she say to you about her opinions on the amount of the overpayment, the refund check?

A I'm sorry Can you clarify?

Q Yeah Did Ms McDonnell say anything to you about the amount of the refund check she got back from Great Seasons Catering?

A That she -- she was putting it into her -- it was made out to her and to deposit it into her account

Q Did she express any opinion about whether it was the right amount, too much, not enough?

A She had hoped it would be more.

Q Now, did you tell anyone about that check from Mr Williams, the $15,000 check?

A I told Martin Kent about it

Q And why did you do that?

A It was a large amount from a donor, and I didn't want to be the only staff person with the knowledge of it

Q Do you remember where you were when you told Mr Kent this?

A Yes We were on the grounds of the Mansion And there was a staff event, and he was coming into the event, and I caught him before he got into the party

Q And did you know that around this same time, Mr Williams had loaned $50,000 to Ms McDonnell?

A No, I did not

Q Do you know what Ms McDonnell wore to her daughter Cailin's wedding?

A Yes

Q And what did she wear?

A She wore the dress and jacket that had been purchased at Bergdorf Goodman by Mr Williams

MS ABER: Let me bring up Government's Exhibit 30-A, please, that's been admitted

BY MS ABER:

Q Is that -- one of those dresses, plus the jacket, is that what she wore to Cailin's wedding?

A Yes

MS ABER: Let me bring up Government Exhibit 548, please

BY MS ABER:

Q Did you attend Cailin's wedding?

A I did I was the unofficial person in charge that day

Q Okay And is that Mr and Ms McDonnell in the back of that picture?

A Yes

Q At Cailin McDonnell's wedding?

A Correct

Q Okay Let me turn your attention back to mid-May of 2011, back a few weeks Did you have a meeting at Health Diagnostic Laboratories with Mr Williams?

A I set up a meeting

Q Okay Why did you set that up?

A When we were having lunch in New York, Mr Williams was discussing his product, and one of the things he said it did was reduce inflammation

The First Lady and I had been at Health Diagnostic Labs for a tour, and they had sent one of their nurse techs over to the Mansion to draw our blood so that they could do their testing and show us, you know, what our blood work said One of the things they tested for was inflammation

So she -- the First Lady had brought that into the conversation, and I was asked to set up a meeting for Mr Williams to go and explore more about what HDL could do

Q Who asked you to set up that meeting?

A I don't recall if it was the First Lady or it was Mr Williams, but it was during the lunch

Q Was Ms McDonnell aware that you were having a meeting with Mr Williams at HDL?

A That I was setting up a meeting Yes

Q Did you actually go to the meeting?

A I drove him over there and then went back to the -- parking is bad over there So he came to the Mansion I dropped him off, and then we came back

MS ABER: I'd like to bring up Government Exhibit 617, which has not been admitted

BY MS ABER:

Q Do you recognize this as an e-mail chain between you and Ms McDonnell in May 16, 2011?

A Yes

MS ABER: Your Honor, I move Exhibit 617 into evidence

THE COURT: It will be admitted

BY MS ABER:

Q Looking at the very last line of the e-mail from Ms McDonnell to you Ms McDonnell asks, "How was Jonnie's meeting with HDL last week"; is that correct?

A Correct

Q Did you talk about Mr Williams' meeting at HDL with Ms McDonnell?

A I told her that it had gone well and -- I mean, I didn't sit in on the meeting so I couldn't give her all the details But he seemed pleased

Q Mr Williams did?

A Yes

Q Did you keep it a secret from Ms McDonnell?

A No

Q Okay

MS ABER: We can take that down

BY MS ABER:

Q So moving forward in time, back to June '11 June 16, 2011

MS ABER: I'd like to bring up Government Exhibit 162, please It's already been -- this has not been admitted Excuse me

BY MS ABER:

Q Is this an e-mail from Ms Fulkerson to you that you forward to Ms McDonnell?

A Correct

MS ABER: I'd like to move Government Exhibit 162 into evidence

THE COURT: It will be admitted

MS ABER: Now, let's go to Page 2, which the jury has seen in a different format

BY MS ABER:

Q Is it fair to say that this letter is about a Virginia study of Anatabloc?

MS ABER: Let's back out, if you don't mind Thank you

BY MS ABER:

Q Is it fair to say -- let's start here -- that it's a letter from Jonnie Williams to Governor McDonnell on Star Scientific letterhead?

A Yes

Q Have you had a chance to orient yourself with it?

A Yes

Q Is it fair to say that this is the letter about the Virginia study of Anatabloc?

A Yes

MS ABER: Now, turning back to the first page

BY MS ABER:

Q Looking at the bottom there, Ms Sutherland, when Ms Fulkerson sends this to you, had you requested it?

A No

Q Do you have any idea why Ms Fulkerson sent this letter to you?

A Mr Williams didn't do a lot of e-mailing, and he had told me that his secretary, Jerri, would send something over and could I print it and get it delivered

Q Did you ask Mr Williams to draft this letter so you could forward it on to the Governor?

A No

Q Why did you forward this e-mail to Ms McDonnell?

A It was from Mr Williams, and she was interested in anything that was going on with the product

Q Do you recall whether you printed this out and passed it along as well?

A My recollection is that I would have printed it out and put it in a folder

Q What kind of folder?

A A read folder

Q For Mr McDonnell or for Ms --

A For both

Q For both Was there some mechanism on which you put these documents on an elevator in the Mansion?

A If it was something that the Governor needed attention on, there was a little table in the elevator and we would put things on it Sometimes the staff would bring things over, and we would put it on for them. It wasn't like an official mailbox

Q Fair to say there's an elevator in the Executive Mansion?

A Yes It goes from the basement up to the private quarters

Q Private quarters are at the top?

A Correct

Q Okay Now, was this letter -- was this the first time you had ever heard that Mr Williams wanted to do a Virginia study of Anatabloc?

A No He had mentioned it before

MS ABER: We can take that down, Ms Taylor

BY MS ABER:

Q When had Mr Williams mentioned a Virginia study of Anatabloc?

A He had first mentioned doing it when we were at the lunch in New York

Q Okay And did he subsequently -- to be clear, at that lunch, who was present?

A Mr Williams, the First Lady, and myself

Q Did Mr Williams subsequently mention a Virginia study of Anatabloc?

A He talked about it frequently

Q Was Ms McDonnell around when he talked about it?

A Yes

Q What was Ms McDonnell's reaction to having a Virginia study of Anatabloc?

A She thought it was a great idea, it was a Virginia product and should be studied in Virginia

Q Did Mr Williams ever mention the idea of having UVA or VCU research Anatabloc?

A Yes

Q And generally, what was Mr Williams talking about?

A Well, they were the two premier health institutes in Virginia, and if you were going to have someone do a study, why not go to the best

Q Was Ms McDonnell around when Mr Williams was talking about studies at universities?

A Yes

Q And I don't mean to ask you for a precise number, but just so the jury can understand, is this a singular event or are there lots of times at which Mr --

A Multiple

Q I'm sorry?

A Multiple times

Q And did Ms McDonnell ever express an opinion, "No, can't do this Wouldn't be right Don't want to do it"?

A No She was very interested in this product

Q And was she interested in both -- not only the product, but was she also interested in the studies?

A The studies on the product? Yes

Q Was she also interested in having a Virginia study of Anatabloc?

A Yeah She thought it would be a good idea But as I said, you know, it was a Virginia-based product and a Virginia company, that Virginia should take the lead

Q Now, in early summer of 2011, were you aware of an event at The Homestead Resort in western Virginia?

A Yes

Q And what was the event for?

A It was a yearly event done by the Governor's PAC for donors that would bring the Governor's Cabinet together, and donors It was a yearly event.

Q And what is a PAC?

A Political Action Committee

Q And do you recall the name of Mr McDonnell's PAC?

A Opportunity Virginia

Q Did you talk to Ms McDonnell about -- about the PAC event at The Homestead?

A Well, we would have gone into what activities were going on and who was attending and what she should wear.

Q Did Ms McDonnell say anything about Mr Williams in relation to this event?

A That she wanted to see if he would fly her children, or some of the children, to the event and have them stay for the event

Q Did Ms McDonnell say anything about folks that Mr Williams could meet at the PAC event?

A Yes She said that if he brought the children up, she would make sure he sat at one of the tables -- there's a dinner at this event -- with Dr Hazel

Q Now, the letter we looked at in Exhibit 162 was dated --

MS ABER: If we can bring it up, Ms Taylor, so they don't have to take my word for it 162 Thank you

First page, please

BY MS ABER:

Q That e-mail is dated June 16th, right, on the bottom?

A Yes

Q Okay In the following month, July, did there come a point when Mr Williams invited you to an event in Maryland?

A Yes

Q And what was the event?

A It was another research-based presentation, bringing the -- the Florida researchers together with the Johns Hopkins team I don't recall if there were other doctors there from other universities But they brought a representative from MCV -- I guess it's now VCU -- and UVA to hear the presentations And I flew up with them

Q Okay

MS ABER: Let's look at already admitted Government Exhibit 170, please

BY MS ABER:

Q Is this the agenda for the Gibson Island, Maryland, event you were speaking of?

A Yes

Q Okay Do you remember very much of what happened at this symposium?

A It was a lot of repeating of what we had heard in

Florida

Q Was it scientific information?

A Very

Q Did you say anything at this event?

A No

Q Now, during this time period of July 23, the weekend of that --

A You -- I mean, I talked to people there

Q Did you talk about science?

A No No I mean, I didn't speak officially

Q Okay You didn't make any remarks on behalf of the First Lady's Office?

A No

Q Was anything significant happening in this time period with the McDonnells?

A Their wedding anniversary was planned for that weekend

Q Was there going to be a party?

A A big one I was coordinating

Q And where was that going to be held?

A At Barboursville Winery

Q So in reference to that Gibson Island event, did you tell Ms McDonnell that you were going to go?

A I don't recall if I told her or if Mr Williams said he had told her

Q Did you try to hide your attendance from Ms McDonnell?

A No I brought her all the materials back

Q What did you do with the materials?

A I gave them to her They were in a tote bag

Q Ms Sutherland, did you go to this event in Maryland as a means of a job interview for Mr Williams?

A No

Q Was anything about a job with Mr Williams discussed at this Maryland meeting?

A No.

Q Now, when we talk about the Governor's and Ms McDonnell's 35th wedding anniversary party, do you recall when that was in reference to the July 23rd Gibson Island event?

A It was Sunday, the 24th The actual day of their anniversary

Q Do you know whether Mr Williams attended that?

A He did

Q Did you attend it?

A Yes

Q Did Ms McDonnell say anything to you about Mr Williams' attendance and where he would be seated?

A That was prior to the day of the event We sat down and did a seating chart for where everyone would sit, and she made the decisions on who would sit where

Q Did she want to place Mr Williams next to anyone in particular?

A She wanted her daughter Rachel seated with him

Q And why was that?

A She wanted to organize a second shopping trip and wanted Rachel to get to know Mr Williams because she planned to bring Rachel with her

Q Do you know what Ms McDonnell wore to her 35th wedding anniversary party?

A The dress and sweater that had been purchased at Oscar de la Renta

MS ABER: Let me bring up already admitted Government Exhibit 31-A

BY MS ABER:

Q Is that the dress you're speaking of?

A Yes

MS ABER: And let me bring up Government Exhibit 550, which has not been admitted

BY MS ABER:

Q Is Ms McDonnell wearing the dress in that picture?

A Yes

MS ABER: Your Honor, I'd move 550 into evidence

THE COURT: It will be admitted

BY MS ABER:

Q What about the sweater she's swearing, Ms Sutherland? Do you recognize that?

A Yes It also came from Oscar de la Renta

Q Both items that Mr Williams had purchased in April on the New York City shopping trip?

A Correct

Q Okay

MS ABER: You can take that down

BY MS ABER:

Q Now, are you generally aware that the McDonnell family went to Mr Williams' house at Smith Mountain Lake in July of 2011?

A For a family vacation Yes

Q Do you know whether Mr Williams provided any vehicles for the McDonnell family's use during the trip?

A Yes He told me to make sure they knew he was renting a boat for them, gave me the instructions on it

He had a boat there, but it was his personal boat and he didn't like lending it to people So he rented one for them to use

Q Did Mr Williams say anything about the Range Rover for the use of the family?

A Not directly to me

Q Okay

MS ABER: Let me bring up Government Exhibit 196, please And this has not been admitted

BY MS ABER:

Q Is this an e-mail chain between you and Ms Fulkerson, August 2nd of 2011?

A Yes

Q Okay

MS ABER: I'd like to move Government Exhibit 196 into evidence, please.

THE COURT: It will be admitted

BY MS ABER:

Q Now, starting at the bottom, please, with an e-mail from you to Ms Fulkerson -- there you go -- at 8:58 a m , you are requesting, I believe, to return a vehicle to Jonnie, that is, Mr Williams; is that right?

A Yes That's when I was asked to get the car Rachel McDonnell drove That's the Range Rover It was driven back to the Mansion, and then I needed to -- I was asked to get it to Mr Williams' offices out in the Innsbrook area

Q Okay So taking that piece by piece You're aware that Rachel drove one of Mr Williams' vehicles, a Range Rover, back from Smith Mountain Lake; is that right?

A I believe she did a round trip

Q Both to Smith Mountain Lake and back?

A Correct

Q And who told you to return it to Mr Williams?

A My recollection is that he called and asked could I get it back

Q Meaning Mr Williams called?

A Yes

Q Okay

MS ABER: And scrolling up

BY MS ABER:

Q Did you, in fact, take the vehicle, the Range Rover, out to Mr Williams' office?

A Yes And Tutti followed me and drove me back

Q Okay Just for clarification, did you do anything to get a Ferrari back to Mr Williams?

A No

Q Do you know how the Ferrari got back to Mr Williams, if at all?

A I don't

Q Now, the day after the McDonnells came back from Smith Mountain Lake, August 1st of 2011, did Ms McDonnell have any meetings at the Mansion?

A Yes

Q Okay

MS ABER: Let's bring up Government's Exhibit 190, which has already been admitted

BY MS ABER:

Q Do you recall Mr Williams coming over to the Mansion on August 1st?

A Yes

Q Okay Do you remember how this particular meeting came about on the calendar?

A I don't

Q If you had put it on Ms McDonnell's calendar, would you have done that on your own, on your own volition? Would you have done that without --

A No

Q -- Ms McDonnell asking you to do so?

A No

MS ABER: Let me bring up Government Exhibit 186, please. And this is already in evidence, Your Honor Thank you

BY MS ABER:

Q Are you aware, generally, that a woman named Molly Huffstetler also came for a meeting that morning of August 1st?

A Yes

Q Were you around for that meeting?

A I greeted her

Q Okay Did you sit in on the meeting?

A I brought her in -- the First Lady wasn't ready to come down yet So I brought her in

When you go into the Governor's Mansion, there are two parlors on either side The left is called the old Governor's office The right is the lady's parlor

So I brought her in to the old Governor's office, introduced her to Mr Williams, and stayed until -- there's a phone in that room So if she's up in the personal quarters, she can call down and say "I'm coming" or "give me ten minutes" or whatever the instruction is

So I stayed until she came down

Q And do you know who was present at the meeting, specifically?

A The -- Molly, from Secretary Hazel's office, and Mr Williams and the First Lady

Q Okay After that meeting, are you aware that Mr -- excuse me, Dr John Clore came for a meeting as well?

A Yes That one took place down in the First Lady's private office

Q Had you met Dr Clore before?

A Yes At the Gibson Island event

Q Okay Who was present at the meeting with Dr Clore?

A Mr Williams, the First Lady, Dr Clore And I was in and out So -- a lot of times I would have to leave a meeting to deal with something

Q Do you recall generally what was discussed?

A The -- Dr Clore's research I remember him talking about how inflammation impacts diabetes and how the study -- there -- MCV/VCU could participate in a study, different groups that could be affected That type of thing

Q Okay

MS ABER: I'd like to bring up what has not been admitted as Government Exhibit 188, please

BY MS ABER:

Q Ms Sutherland, is that a set of notes that you took during the meeting with Dr Clore?

A Yes

Q And were you taking them at the time, like contemporaneously, at the meeting?

A Yes

MS ABER: Your Honor, I'd like to move 188 into evidence

THE COURT: It will be admitted

BY MS ABER:

Q Now, I'm not going to go through this in total, Ms Sutherland, but I'd like to clarify some of your handwriting for the jury

A It's not very good I'm sorry

Q I wasn't judging Bottom half, under the line, can you read that to the jury, please

A "State government interest in economic impact Grants for organization separate for state dollars "

Q Okay Who is doing the talking at the meeting with Dr Clore?

A It was conversational It would have -- I don't remember one person just doing all the talking So conversational between the First Lady, Mr Williams, Dr Clore I probably offered, you know, insight as appropriate

Q And do you remember in particular who made the comments that are reflected here about "state government interest"?

A I don't

Q Did Ms McDonnell at all disagree with any of that?

A Not that I recall

Q Okay

MS ABER: Let's turn to Page 2, please

BY MS ABER:

Q And at the top there above the line, could you read that to the jury, please

A "UVA, resources for clinical trial, have human subject, slash, outpatient facility "

MS ABER: And scrolling down a little more, Ms Taylor, please Yep

BY MS ABER:

Q "Issue of" -- can you read that for the jury, please

A "Issue of UVA, slash, VCU, data share "

They had different systems That had something to do with how their computer systems were set up

Q Okay

A And they would have barriers to share research findings

Q Okay And turning to the third page, please, in the middle there where it says -- exactly Can you read that to the jury, please

A "Virginia Found" would be Virginia Foundation for Healthy Youth They get their money from the tobacco settlement Their mission includes youth obesity

Q Do you remember anything else about that particular topic at the meeting?

A About youth obesity?

Q About the Tobacco Settlement Commission or the Virginia Foundation for Healthy Youth

A That the foundation does -- they provide grants, and one of their areas of focus is youth obesity

BY MS ABER:

Q Okay

MS ABER: Thanks, Ms Taylor

BY MS ABER:

Q Now, in reference to Tobacco Commission funding, had you ever heard Mr Williams talk about Tobacco Commission funding?

A At some point, yes

Q Okay Did he ever speak generally about getting funding for studies?

A In general terms

Q Did he ever do that with Ms McDonnell in your presence?

A Yes Talking about the -- you know, how you get the opportunity to get grants and all that goes involved in grants

Q And did that relate somehow to the studies that he said he wanted?

A Yes In order to do a study, from what I understand, they are costly Mr Williams had said that he would provide funding to UVA and MCV, MCV/VCU, that would allow their teams to write the grant -- or write the proposal so that they could qualify to get grants

You don't just willy-nilly write a grant proposal It takes an effort So he was going to do the funding so that the grants could be solicited

Q And did Mr Williams have these conversations with Ms McDonnell present?

A Yes

Q How many conversations are we talking about? One or more than one?

A More than one, less than a dozen

Q Did Ms McDonnell ever express any opinions about Mr Williams' plans for funding?

A She thought it made sense

MS ABER: I'd like to bring up Government Exhibit 234, please And this has been previously admitted, Your Honor I apologize

BY MS ABER:

Q Is this an Outlook calendar invite for a lunch with Virginia researchers on August 30th?

A Yes

Q Do you recall how this August 30th event got on the Mansion calendar?

A We were in the First Lady's office looking at open dates to see when we could do the lunch

Q Let me stop you there When were you in the First Lady's office, and with whom were you in the office?

A It was after Dr Clore left, and we were sitting with Mr Williams

Q Okay So Dr Clore is out of the Mansion You're in Ms McDonnell's office?

A Yes

Q And it's you, Ms McDonnell, and Jonnie Williams?

A Correct

Q Okay And then what happened?

A We had the calendar open on her computer and found a date that was agreeable And I honestly can't tell you if I typed it in or she typed it in There were occasions where either was possible

Q And whose idea was it to have a lunch with Virginia researchers at the Mansion?

A The First Lady had volunteered the Mansion to Mr Williams

Q And is that in reference to the Roskamp event back in June?

A Down in Florida, yes

Q Now, stepping back, talking about this event generally, did you ever talk to Ms McDonnell about the purpose of having a lunch with Virginia researchers at the Mansion?

A We talked in general terms about it It would be an opportunity for them to hear what we had heard in Florida and that Mr Williams was going to present these grant planning checks

Q Did Ms McDonnell ever say anything about the -- I won't use the "launch" word, but the presentation of this product on the market in reference to that event?

A I'm sorry Can you clarify?

Q Yeah Did Ms McDonnell ever say anything about the correlation of the launch of the product in time to this event?

MR BURCK: Objection, Your Honor Leading

THE COURT: Overruled

A The -- the product was going to come onto the market within, if my recollection is correct, a few days to a week or so of the date for the lunch Mr Williams wanted to have the lunch prior to the release

BY MS ABER:

Q Okay

A So --

Q And was Ms McDonnell present for that conversation?

A Yes

Q And did she disagree with Mr Williams' plan?

A No

Q Now, were you involved in planning the event, the lunch with Virginia researchers?

A Yes

Q Were you more involved than you might normally have been?

A Sarah was on vacation So anytime she was -- Sarah Scarbrough was the Mansion director Anytime she was on vacation, I was much more involved

But at the same time, if it was an event that was important to the First Lady, then I was more involved

For instance, when she hosted the spouses of the legislators, I was much more involved in the planning of that So it depended on the event

Q So you believed that this event, in particular, was important to the First Lady?

A Yes

Q And why did you believe that?

A She told me

Q Can a member of the public just rent the Mansion if they want to?

A No

Q How -- do you have to be affiliated with state government in some way?

A Well, it has to be approved by the Governor's Office

BY MS ABER:

Q I'd like to bring back -- sorry, Ms Taylor -- 234 and talk to you about the attachments on this Outlook invitation

MS ABER: Turning to Page 2, please

BY MS ABER:

Q What is an Event Briefing Information form?

A One of these forms would have been done for any event that took place at the Mansion that involved the Governor

Q And looking at "Owner/Contact," there are four names listed there?

A Uh-huh

Q Talk us through once more who those folks are

A Sarah Scarbrough is -- was the Mansion director Myself Tutti was the Mansion butler And Todd would have been the chef

Q Now, even though you four are listed as the owner/contacts -- well, let me back up

Why are you listed as the owner/contacts?

A So that anybody on the Governor's staff would know who to call if they had questions

MS ABER: Turn to Page 3, please

BY MS ABER:

Q What is this?

A It's the guest list for the lunch

Q Who came up with the guest list?

A It was provided by Mr Williams' company

MS ABER: Let's look at Government's Exhibit 212, please That has not been admitted

BY MS ABER:

Q Is this an e-mail chain between you and Ms Fulkerson on August 24, 2011?

A Yes

MS ABER: Your Honor, I move 212 into evidence, please

THE COURT: It will be admitted

BY MS ABER:

Q Okay Looking at the bottom e-mail, is it accurate that Ms Fulkerson says that "their complete names, titles and affiliations can be found in the booklet that was given you at the Gibson Island symposium"?

A Yes

Q And then do you respond?

A That I didn't have that information anymore, I had given it to the First Lady when I returned

Q Okay Did you send out invitations for the lunch?

A There was a problem with the invitation When --

Q What was the problem?

A Right before Sarah went on vacation, she had, as she always did, printed the invitations It's not the easiest machine in the world to work And we have a standard invitation that's used for Mansion events

So she had them printed And I went to get them off of her desk and there was an error on the invitation I was not good at working the machine So the only thing I could do was correct the -- the computerized copy and send it by e-mail

MS ABER: I'd like to bring up Government Exhibit 217, which has been admitted

BY MS ABER:

Q Tell the jury what the bottom e-mail is there

A You want me to read it?

Q Sure

A "Hello everyone I hope you are all doing well Attached is the final list for the lunch on August 30th at the Governor's Mansion Thanks to everyone for your hard work in putting this together Caroline "

Q And is it fair to say that Mr Williams forwards this to you on the top e-mail?

A Yes

Q Okay Did you understand Caroline Birgmann to be affiliated somehow with Star Scientific?

A That -- yes

Q Okay Turning to Page 2 of this exhibit, please Is this the attachment?

A Yes

Q Okay Now, just for the jury's understanding, why is Mr Williams -- why are you the point of contact on this? Why isn't -- you know, does Ms McDonnell participate in the invitation process of events?

A The only time she would participate is if she wanted to -- if it was, you know, approving the wording of a specific invitation, although most of the invitations were standard, or if it was an event that, you know, she was hosting solely, we would talk more about it

And like I mentioned, some of events she planned, she was more involved in, if we were going to do entertainment So it really was kind of a -- she would never have taken the RSVPs I'll put it that way

Q Were you hiding this event from Ms McDonnell?

A No

Q Did you talk to Ms McDonnell about the event as it's being planned?

A Yes It was the -- I would have updated her on the guest list, as I would have with any event

MS ABER: Let me bring up Government Exhibit 214, please, which has not been admitted

BY MS ABER:

Q Is it fair to say this is an e-mail chain between you and Jerry Fulkerson on August 25th of 2011?

A Yes

MS ABER: Okay I'd like to move Government Exhibit 214 into evidence, please, Your Honor

THE COURT: It will be admitted

BY MS ABER:

Q Now, turning to the middle, Ms Fulkerson Is it fair to say -- excuse me Ms Fulkerson Ms Sutherland

Is it fair to say that Ms Fulkerson would provide additional names as the planning process went on?

A Yes

Q Okay

MS ABER: And moving to the top Oh, could we -- Your Honor, if we could publish it to the jury I think I moved it in 214, please

THE COURT: It will be admitted

MS ABER: Thank you

BY MS ABER:

Q And on the top e-mail, Ms Sutherland, does that sort of, in summary, discuss the problem that you've described with the invitations --

A Yes

Q -- and the printing wrong?

A Yes

Q Okay

MS ABER: Take that down, please

Government Exhibit 221, which has not been admitted

BY MS ABER:

Q Is this an e-mail from you to Ms McDonnell on August 29th, 2011?

A Yes

MS ABER: I'd like to move 221 into evidence, please

THE COURT: It will be admitted

BY MS ABER:

Q Now, Ms Sutherland, what is the attachment on this e-mail?

A It would have been the -- an Excel file of who was coming to the lunch

MS ABER: Let me flip to the second page, please

BY MS ABER:

Q Is that the final list, to the best of your knowledge?

A To the best of my knowledge, yes

Q Okay

MS ABER: Turning back to the first page

BY MS ABER:

Q Why did you send this to Ms McDonnell?

A So that she would know who would be at the table with her

MS ABER: Let's look at Government Exhibit 216, please, that's already been admitted 216

BY MS ABER:

Q Now, Ms Sutherland, why are you sending Dr Lazo this invitation?

A He was probably added at the last minute

MS ABER: Turning to Page 2, please

BY MS ABER:

Q Now, Ms Sutherland, even though you are listed as the RSVP, are you -- is this your event?

A No

Q Okay

MS ABER: Moving along, please, to Government Exhibit 220 That has not been admitted

BY MS ABER:

Q Is this an e-mail chain between you and Ms Fulkerson on August 29th of 2011?

A Yes

MS ABER: Your Honor, I'd move 220 into evidence, please

THE COURT: It will be admitted

MS ABER: Okay Let's look at the second page, please, very bottom of the chain

BY MS ABER:

Q Can you read the first line of Ms Fulkerson's e-mail to you?

A "Hope you survived Irene ok And I also take the lunch is still on for tomorrow "

Q Do you remember what Irene references?

A I don't know if it was an official hurricane or tropical storm, but it was a weather event

Q Okay Was it a busy time, in your memory?

A Yes

MS ABER: Moving up a little bit, please, Ms Taylor, on the first page Scrolling up, please And if we could take the top half, please

BY MS ABER:

Q Was Ms Fulkerson helping you with the RSVPs?

A Yes Because it was a seated lunch at the dining room table, we couldn't have somebody showing up that we weren't prepared for So those who I had not gotten an RSVP from she was following up with

MS ABER: Thank you You can take that down

BY MS ABER:

Q Now, did Ms McDonnell say anything about having Mr McDonnell attend the lunch event?

A Yes

Q Okay What did she say?

A That she wanted to make sure he was there

MS ABER: I'd like to bring up Government Exhibit 204, please, which has not been admitted

BY MS ABER:

Q Is this an e-mail chain between you and Katherine Harris, and at some point Adam Zubowsky hops on and hops off?

A Yes

Q All right

MS ABER: I'd like to move Government's Exhibit 204 into evidence

THE COURT: It will be admitted

BY MS ABER:

Q Now, who is Katherine Harris?

A The Governor's scheduler

Q Is it fair to say she picked up after Monica Block left?

A Yes, she did

Q Okay Starting at the bottom of Page 2, please, can you read that to the jury, please?

A "Also, per the FL" -- First Lady -- "please put lunch on August 30th on the Governor's calendar The lunch is with a number of researchers and doctors that she is hosting that day She wants the Governor to attend the lunch Thanks "

Q Now, where did you get that information?

Did Ms McDonnell tell you this?

A Yes

Q Okay Did you come up with the idea to have the Governor attend the lunch?

A No

Q Okay

MS ABER: First page, please

BY MS ABER:

Q At the bottom, how did Ms Harris respond?

A "Hi, Mary-Shea The Governor will be in D C on this morning for WTOP and won't be able to attend this To make the most of going up there, we will be filling the day with other events/meetings, and he will come home later that evening for the Mansion reception Thanks, Katherine "

Q What is WTOP?

A It was a radio program that the Governor did

Q Sort of a standing commitment?

A It was pretty usual I don't remember if it was weekly or monthly, but --

Q Okay

MS ABER: Scrolling up, please

BY MS ABER:

Q How did you respond to Ms Harris?

A "The FL isn't going to be happy about it "

Q And what did you mean about that?

A That she -- if she wanted the Governor there, she wanted him there, and she would not be happy with the news that he couldn't attend That was -- that was not an unusual thing for me to tell the scheduler, that they were used to hearing things like that from me

Q Okay And in summary -- if we could scroll up, Ms Taylor -- fair to say that you indicate you will give Ms Harris a call to talk about this?

A Yes

Q What -- what is the history on this, to which you refer?

A So that she understood the event came out of meetings with Mr Williams He was a valuable donor You know, the scheduler didn't always know what the First Lady was, you know, doing

Q Okay And on what date do you say you will call -- excuse me -- "can you call me in a m "

What date is that that you write that?

A August 15th

Q Okay

MS ABER: Let's bring up Government Exhibit 207, please, which has not been admitted

BY MS ABER:

Q Is this an e-mail between you and Mr Zubowsky that next day, August 16th?

A Yes

MS ABER: Okay Your Honor, I'd move Government Exhibit 207 into evidence

THE COURT: It will be admitted

BY MS ABER:

Q Starting at the bottom -- just for everybody's sake, who is Adam Zubowsky?

A He was the Governor's aide We were -- probably of anybody on staff that was the closest to him

Q And what does Mr Zubowsky ask of you in that e-mail on 250?

A To explain the lunch so he can explain it to the Governor

Q Okay

MS ABER: And scrolling up

BY MS ABER:

Q How did you respond? Can you read that, please?

A "The lunch is with doctors and researchers from MCV, UVA, Johns Hopkins, and the Roskamp Institute, along with Jonnie Williams and a few others that are involved in the various research projects This would be an occasion to bring all of the medical professionals together as they begin to start the studies at UVA and MCV on Anatabloc and its uses for reducing public health costs Johns Hopkins has done the bulk of the research, and now UVA and MCV are going to further the studies The date for the lunch was selected due to the launch of the product Does that help?"

Q Okay

MS ABER: And scrolling up, please, Ms Taylor

BY MS ABER:

Q How does Mr Zubowsky respond?

A "Perfect Going to get an answer on this in a little Thanks a lot "

Q And at what time does he send that e-mail to you?

A 2:56 in the afternoon, August 16th

Q Okay Thank you

MS ABER: Let me bring up Government Exhibit 208 This has not been admitted If we could scroll down a little bit, Ms Taylor, just to show Ms Sutherland

BY MS ABER:

Q Is this a continuation of your original chain, sort of a branch off of the chain we just looked at in 207?

A Yes

Q Okay

MS ABER: Your Honor, I move 208 into evidence

THE COURT: It will be admitted

MS ABER: And can we publish it to the jury, please Thank you

BY MS ABER:

Q All right So the e-mail there at 2:55 from you to Mr Zubowsky, is it fair to say that is your explanation that we previously saw in the -- in 207?

A Correct

Q Okay

MS ABER: Scrolling up, please

BY MS ABER:

Q How does Mr Zubowsky respond to you?

A "Governor wants to make it to the last part of this lunch, the last 30 minutes Says he can't be there the entire time but will come for 30 minutes Going to work

Katherine to get that going Thanks Adam "

Q Okay

MS ABER: You can take that down, please

BY MS ABER:

Q Now, August 30th, did you actually attend this lunch?

A I ended up not Originally, I was to be seated at the table, but that morning we got word that a -- an invitee was then going to be able to come, and so I gave my seat up.

Q Okay Were you -- fair to say you're sort of in and out throughout the process --

A Yes

Q -- of the lunch?

Did you have an opportunity to observe the place settings at the table?

A Yes

Q And what did you see?

A Well, you don't want me to describe the china?

Q Don't need china

Did you see anything out of the ordinary at the place settings?

A Well, at each place would have been a card saying who was sitting there and then a little sample pack of Mr Williams' product, Anatabloc

Q Did Mr McDonnell attend the lunch event?

A Yes He sat in his standard seat

Q Now, were you aware that Star Scientific planned to do a press release related to the event?

A I was, just prior to the event

MS ABER: Okay Let's bring up already admitted 224, please And I'd like to start at the second page, please, at the very bottom

BY MS ABER:

Q Okay Now, fair to say, Ms Sutherland, that Ms Machir sent you a draft press release at 4:49 p m the day before the event?

A Yes

Q Okay

MS ABER: Scrolling up, please

BY MS ABER:

Q And what is your response?

A "I just sent David" -- and that refers to David Dean -- "a message No way this can go as written You can call me at" -- my number -- "and I'll talk you through the issues "

Q Now, who is David Dean?

A David Dean was the -- either senior or standard Vice President -- I'm not sure of his specific title -- at Star Scientific

Q So when you're pushing back to Star about their press release, what is the issue that you see?

A They had, in the press release, talked about the Governor and First Lady launching the product And that was something that we had told them was not the case It was a lunch for researchers

Q Okay And going to the first page, so we can see how this continues, is it accurate that Star Scientific, Ms Machir, revised the press release in some way?

A Yes

Q Okay

MS ABER: And then moving up

BY MS ABER:

Q Did you forward this to Mr Martin?

A Yes

Q This revised version?

A Yes

Q Why did you send it to Mr Martin?

A Because any press release would be approved by his office

MS ABER: Let's scroll to the top so the jury can see the rest of this

BY MS ABER:

Q Is it fair to say there were subsequent discussions about the press release among the staff members?

A Yes

Q Okay

MS ABER: Let's look at Government Exhibit 235, please That's already been admitted 235

THE COURT: Let me -- let me stop you there

All right Ladies and gentlemen, we're going to stop for lunch And I want you to be back at 2:15 And just by way of explanation, why you're getting an extra 15 minutes today, I've got a matter that I have to hear at 1:00 It will probably take about 15 minutes And so my staff can get an hour, you all are getting an hour and 15 minutes Just so you know that, you know, we're working here

All right We'll see you at 2:15.

(The jury left the courtroom)

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(Luncheon recess taken from 1:01 p.m. to 2:15 p.m.)

THE COURT: All right, let's bring in the jury

(The jury entered the courtroom.)

BY MS ABER:

Q I'd like to bring up Government Exhibit 235, which has already been admitted. Ms Sutherland, as you may recall, we were talking about the press releases related to the Anatabloc luncheon. Do you remember that?

A Yes

Q Okay Is it fair to say that this is sort of the final version of the press release that you received on August 30th?

A If I'm showing it to Jasen, yes

Q Let's go to Page 2 and then we will talk about why you showed it to Mr Eige I'd like to direct your attention to the fourth paragraph down, please Can you read the first few lines to the jury?

A "A group of Richmond area physicians and healthcare providers are gathering at the Virginia Governor's Mansion today to learn more about the state of the research on Anatabloc The lead researchers who have overseen pre-clinical studies will discuss the results of testing with this group at the private luncheon today They will be joined by researchers from the University of Virginia Medical School and the VCU Medical Center, who also are interested in studying further potentials for Anatabloc."

Q One more sentence

A "Rock Creek has solicited research proposals from these institutions, and expects to issue planning grants for the preparation of full research proposals "

Q Thank you If we could flip back to the first page Tell the jury why you were showing this to Mr Eige

A Jason was coming for the lunch, and there could have been conversation where he had not had a chance to see it

Q Were you concerned about the way the Mansion lunch event was reflected in Star Press?

A That's why I had stopped the initial press release

Q Okay We can take that down, please I'd like to change subjects entirely Assuming we are in the summer of 2011, your second year at the Mansion, right?

A Yes

Q Your second year of the McDonnell administration?

A Yes

Q Had things gotten any better with Ms McDonnell?

A They were getting more difficult

Q And toward the end of the summer, or in the summer generally of 2011, were you still looking around for other employment?

A I was seriously looking, having actual meetings and conversations And I had told Martin Kent that I was seriously looking

Q Okay Let's take this piece by piece Had Mr Williams mentioned the idea of you working for Star Scientific?

A Yes

Q When did he first --

A Well, to be clear, working for him.

Q Okay When did he first do that?

A In June I don't have the exact date, but I was, I had my niece shopping at Macy's and we were in the dressing room and my phone rang and it was him. And he was, he just launched off on that I had impressed him and I was the type of person he liked having around him and working for him. I stopped him and said I was in the dressing room with my niece, and he asked could we talk further

Q Okay You said June What year was that?

A 2011

Q And did Mr -- did you ultimately agree to work for Star Scientific or for Mr Williams at that time?

A No

Q Did Mr Williams later in the summer extend sort of another offer to you?

A We met once if not twice over breakfast, and then at a lunch meeting, he officialized his offer

Q And in general, what were going to be the arrangements; were you going to be a Star Scientific employee?

A No I was going back to my original consulting firm that I had worked for before taking the job with the McDonnells, and he was going to become a client of the firm.

Q Now, did you need Star Scientific or Mr Williams as a client in order for you to return to that firm?

A It would have helped, but it wasn't the only thing we were looking at

Q Okay For the record, what's the name of the firm?

A Benedetti & Farris

Q Can you spell that?

A Benedetti, B-E-N-E-D-E-T-T-I, and Farris, F-A-R-R-I-S

Q Is it fair to say that you had sort of an open invitation to return at any time?

A Yes

Q But also fair to say that you sort of ate what you killed at Benedetti & Farris in terms of --

A I'm sorry

Q That was probably a poor choice of words here Did you need clients from which to draw a salary at Benedetti & Farris?

A The whole business was dependent upon client business I had brought a number of clients over the years

Q Okay Had you told Ms McDonnell about your job search in the summer of 2011?

A No. I didn't want things to get any more difficult

Q Around the end of the summer of 2011, were you going to receive any adjustments in your salary at the Mansion?

A Yes Both Sarah Scarborough and I were scheduled to get raises

Q Okay While the conversation about Mr Williams contracting with Benedetti & Farris was pending, did Ms McDonnell call you into her office?

A Yes

Q And roughly, ballpark estimate, when was that?

A Around Labor Day

Q Of 2011?

A Yes

Q And what did Ms McDonnell say to you?

A She asked was I going after Jonnie Williams, and did I know that Benedetti & Farris was calling him soliciting business

Q What was the tone of Ms McDonnell's conversation with you?

A Her voice was ratcheting up

Q And after that, did you firmly decide to leave your employment at the Mansion?

A I had decided back earlier in the summer

Q To clarify for the jury, did you need a job from Mr. Williams in order to leave the Mansion?

A No, there were a number of contracts pending with Benedetti & Farris

Q So there was other work for you to do at Benedetti & Farris?

A Pending

Q Options on the table potentially Just for the jury's understanding, what was one of those big contracts that ultimately came to pass?

A Richmond 2015, the cycling contract to do the initial fundraising stages

Q If you had gone back or when you went back to Benedetti & Farris, that is one client for which you could do work?

A Correct

Q Okay Now, to your knowledge, were you involved in the nitty-gritty of the contract back and forth between Benedetti & Farris and Star Scientific or Jonnie Williams?

A No.

Q Did you draft a contract?

A No

Q To your knowledge, did that contract ever get off the ground?

A No It did not

Q So Star Scientific and Benedetti & Farris did not ultimately ink a contract to work with one another?

A They didn't even negotiate

Q I'd like to bring up Government Exhibit 244, which has already been admitted. Is it fair to say this is an Outlook invitation for a September 16th meeting?

A Yes

Q Do you recall this meeting?

A Yes, I do

Q We can take that down. Do you recall what was discussed at the meeting?

A It was a meeting about asking would I continue on in my job as Chief of Staff

Q Who was asking you that?

A The meeting was with the Governor, his Chief of Staff, Martin Kent, and the First Lady

Q And did either the Governor or First Lady suggest that one of them or both of them wanted you to stay?

A The Governor did most of the talking

Q Okay And how did you respond to this conversation?

A I politely told him that my gas tank was empty

Q What did you mean by that?

A I was ready to leave

Q Okay Did you feel like Mr McDonnell wanted you to stay?

A I understood him to want that

Q So after this meeting, did you ultimately leave employment at the Mansion?

A I did, in October

Q Of 2011?

A Correct

Q Even without the contract with Mr Williams and Star, did you go back to Benedetti & Farris anyway?

A Yes

Q Is it fair to say you were upset with Mr Williams for not agreeing to hire Benedetti & Farris or not getting that done?

A I was upset for him mischaracterizing the situation

Q Did you express some of those sentiments in a letter?

A In a journal

Q In a journal But did you ever send that letter or communicate it to Mr Williams?

A No That's how I -- some people journal, some people diary, I write letters

Q Okay Changing subjects entirely: Before you left the Mansion, did you attend an American Cancer Society Cure By Design event on September 24th, 2011?

A Yes, I was staffing the First Lady

Q What does that mean, to say you are staffing the First Lady?

A You go with her to the event, you troubleshoot I mean, sometimes it would be holding my purse and her purse if she were speaking, carrying the speech box If somebody asks, you know, gives her a card to set up a meeting, you would take that It is staffing

Q Did Mr Williams attend this event?

A Yes, he did.

Q And did both the McDonnells attend?

A The Governor came late

Q Was there an auction portion of the evening before a dinner? Was the whole thing an auction?

A It was a reception with an auction

Q Were you present for the auction?

A Yes

Q Did you observe Mr Williams bid on an item?

A Several items

Q I'd like to bring up Government Exhibit 246, Page 2, which has already been admitted Is this a picture of the auction portion of the Cure By Design?

A Yes

Q Okay And who is the gentleman with the microphone?

A He is a fashion designer, Alex Garfield.

Q Do you recall Mr Williams bidding on an item that involved a weekend in New York City?

A I don't know if I would characterize it as a weekend It was to, whoever would get the successful bid would go and spend a day with the designer, Mr Garfield. He would take them around the fashion district, have lunch or dinner, depending on the schedule of the day He, Mr Garfield, had offered the package in the past

Q And did there come a point in the bidding process in which Mr and Ms McDonnell somehow became looped into this prize package?

A Yes The whole thing kind of spun out of control

Q Tell the jury about sort of the beginning to end of the bidding on this item.

A Mr Garfield was serving as the auctioneer, and he is a very excitable gentleman, so he was having a lot of fun He was bouncing all over the stage And he brought up the weekend package And a couple other people in the audience were bidding And Mr Williams eventually got into the bidding, and at one point was actually bidding against himself He kept raising his bid All the money went to charity And he said that he would bring the First Lady and the Governor to New York with him, and Mr Garfield said, "Well, I'll host an event at my apartment It will be the first time I have had a

Republican in my apartment " It kept going on and on and as I said, Mr Williams kept bidding against himself And I finally went and found the Executive Director and told her she needed to cut this off, it was becoming uncomfortable to see the Governor and First Lady up there with all of this going on

Q To be clear, was there any point in this bidding process when a weekend at the Chatham Bars Inn in Cape Cod came up as a possible prize?

A No

Q You can take that down, Ms Taylor Later that evening, same night as the auction, did you have a separate conversation with Mr McDonnell?

A Yes He, the First Lady, Mr Williams and Mr Williams' guests had gone to dinner in the restaurant in the hotel And I had stopped to have a drink at the bar with two friends And I was coming back from the ladies' room and the Governor was going to the men's room, and we stopped and exchanged some nice words And he said, "I really don't want to do the next two years without you." I said, "I just can't do it anymore " And he gave me a hug and that was it

Q Now, approximately when did you leave your employment at the Mansion?

A October, 2011 Towards the end of the month

Q When did Mr. McDonnell finish his term as Governor?

A This past January

Q Now, before you were interviewed by law enforcement, did you know that after you left the Mansion, Mr Williams had given a $50,000 loan to the McDonnells in March of 2012?

A I did not

Q Before you were interviewed by law enforcement, did you know that after you left Mr Williams had loaned the McDonnells $20,000 in May of 2012?

A I did not

MS ABER: One moment, please, Your Honor

(Counsel conferring with co-counsel)

MS ABER: I'm finished, Your Honor Thank you I pass the witness

THE COURT: All right Cross?

CROSS-EXAMINATION

BY MR. BURCK:

Q Good afternoon, Ms Sutherland

A Good afternoon.

Q My name is Bill Burck I represent Maureen McDonnell Have we ever met before?

A I have not met you.

Q We haven't spoken on the phone, either, have we?

A No

Q You testified that you had a conversation with then Governor-elect McDonnell back in December of 2009 about potentially joining the staff, right?

A Uh-huh.

Q And would it be fair so to say he personally recruited you to that job?

A He did the closing pitch.

Q So he spoke to you directly and he asked you to join the team, right?

A Yes

Q And you testified that you were a state employee You worked for the Office of the Governor, right?

A Correct

Q There is no such thing as the Office of the First Lady of Virginia, right?

A No

Q And you actually officially reported to Martin Kent; is that right?

A That's correct

Q And he is the Chief of Staff or he was the Chief of Staff to Governor McDonnell?

A That's correct

Q Okay Now, you were brought in to help Maureen McDonnell, right? That was the purpose for bringing you in?

A Well, to serve as her Chief of Staff, yes

Q In that position, you would be there to help her, right?

A Correct

Q Okay And you were told at the time that she was having some difficulties with the campaign and also transitioning into becoming the First Lady, right?

A Not at that time

Q Not at that time You were aware of the inaugural dress issue?

A Yes

Q You knew she was upset about the inaugural dress?

A We talked a lot about clothes

Q You were aware of the fact that she had gone through a number of staff members; that's why they were coming to you at the time from the campaign?

A For the position of First Lady -- of Chief of Staff to the First Lady?

Q Well, actually, just she had staff that helped her during the campaign and that a lot of people had come and gone Were you aware of that?

A I was not on the campaign staff

Q I'm not asking if you were on it I'm asking if you were aware that there had been a number of staffers who had come and gone during the campaign who had worked for

Ms McDonnell

A I knew of at least one

Q She had come and left?

A I don't know if she left the campaign staff, but I know she had worked some for the First Lady at the time she wasn't First Lady, she was on the campaign, and then didn't stay in that position.

Q And I think you testified that when you spoke to then Governor-elect McDonnell, that he said that the most important requirement is that, for him, was that he come home at night to a happy wife, right?

A That was in response to me asking what would he consider success

Q Okay So you were chosen to help guide the First Lady through this process of become being the First Lady

A Yes

Q Okay And part of that job is to help protect her, not physically, of course, but to make sure she sees what is needed from her, what is appropriate for her as the First Lady, right?

A A lot of it was in helping her establish her office and develop an agenda and what would be appropriate to wear There were a lot of aspects to the job

Q Okay And you had significant experience before, right? You had worked in two prior administrations?

A But never for the First Lady

Q But two prior administrations, gubernatorial administrations?

A Under Governor Allen I worked in public safety, and under Governor Gilmore I was actually assigned to his office

Q To the office of the Governor?

A Correct

Q Prior to taking on the position of Chief of Staff to Maureen McDonnell you were employed as an event planner for Benedetti & Farris, right?

A Correct

Q You consider yourself, as do others, as being a very professional person, right?

A I try

Q And you were someone that the Governor-elect could trust, right? That's what you understood to be the situation?

A Yes

Q And also, you knew going in that it wasn't going to be easy with Maureen McDonnell, right? Isn't that what you understood at the time?

A No, my understanding was that they wanted me to work with her My experiences with her when we were working as -- when he was running for Attorney General and I was doing the event planning was, you know, the only thing I did with her was plan the events for the inaugural, and we went shopping for her inaugural outfits for the Attorney General's events

Q Didn't Martin Kent tell you something to the effect that Maureen McDonnell could be a handful around that time?

A He might have I don't specifically recall that

Q And didn't Jasen Eige tell you around that time that Maureen McDonnell threw a fit about the inaugural dress, something like that?

A This was in an e-mail

Q That is was back in '09, December '09-2010 time frame?

A The inaugural was January, 2010

Q So the answer is it was in that time frame

A Yes

Q Okay Now, you talked a bit about how difficult it was once you were on board as the Chief of Staff to work for Ms McDonnell, right?

A Not every day, but there were difficult moments There were some days that were very -- when we had a good time

Q Some good days, some bad days

A Correct.

Q I think you told the prosecutors on several occasions that most of the staff that were either working with her or around her were generally unhappy Not all the time, but often unhappy.

A There were times.

Q And I think you said that she was a quote/unquote screamer Did you say that?

A Many of us said she was a screamer

Q Right And you had multiple conversations with Mr Kent about the challenges of working with Ms McDonnell, right?

A Yes

Q And it was so difficult that by the summer of 2011, you testified that you were looking for a new job, right?

A I had started looking before then

Q You started to look earlier in 2011?

A Yes

Q It was about a year you had been there and you had had enough

A I believe my conversation with Martin was March of 2011

Q You told Martin Kent around that time that you were thinking about leaving, right?

A Yes

Q And I think you said to the prosecutors that you were very clear with Mr Kent that you were done being a babysitter in a nuthouse Isn't that what you said?

A I don't recall saying that

Q Do you recall saying that --

A I recall using the term "babysitter."

Q Do you recall telling prosecutors that you thought the First Lady was a nutbag?

A I used that before I don't recall when I said it with them.

Q But you did say that about the First Lady?

A Probably

Q Okay And you said she was constantly blaming and that she was never -- that nothing was ever good enough and that you did not want to be her babysitter

A Correct

Q Things to that effect You also witnessed Maureen McDonnell scream at the Governor, right?

A I would say raised voice

Q Raised voice By the time you left the office as Chief of Staff, you and Maureen McDonnell were barely speaking, right?

A I was maintaining contact as I needed to for my job The First Lady had stopped speaking to me

Q Okay But you said it wasn't all bad, right?

A No, there were times where we had a lovely day and we had, you know, laughs, some private moments

Q Right When Maureen was happy she could be sweet, right?

A Absolutely

Q And you became close to her You testified you were friends You were professionally close as well?

A You can't spend as much time as we did and not develop a close relationship

Q You shared personal information about each other?

A Yes

Q She treated you, I think you said, like a girlfriend.

A At times

Q And you also, I think, told the prosecutors that for a long time Maureen McDonnell didn't have any close friends other than you.

A She did not have close friends that I was aware of You know, like a girlfriend that would come and have lunch with you or go to a movie I did not see any of that.

Q You understood that Maureen thought of you as being her confidant, right?

A Yes

Q And she and the Governor allowed you to use the Executive Mansion for your own wedding, right?

A Yes I was one of two staffers that had the privilege

Q Okay. And I think you told the prosecutors that after you left your position and you were out back at Benedetti & Farris you saw Maureen McDonnell at some events and you actually went up to her and gave her a hug

A Yes, it was an event at The Jefferson.

Q And she was surprised?

A Seemed to be

Q That you hugged her Did you at all feel sorry for Maureen McDonnell and the position she found herself in with everyone really not liking her that much in the Mansion; is that something that occurred to you?

A I felt sorry for her that she didn't enjoy the experience more There was so much, you know, so many wonderful things that were going on

Q And Jonnie Williams, you got to know him a bit, too. Did you ever get a sense that he felt sorry for her?

A Not to my knowledge Not that I saw

Q Let's talk a bit about Mr Williams In particular, about Maureen McDonnell's relationship with him from your perspective You would agree with me that Maureen gravitated toward Jonnie pretty quickly

A Fairly quickly, yes

Q They had the shopping trip in April and then pretty soon thereafter she was inviting him and his wife to the Mansion for dinner and then he would see her quite frequently

A Yes

Q I think you testified that he came over to the Mansion once a week or so?

A It seemed like that, like I said, I would have to have the visitor log to be very specific on that But he was a friendly man. Very gregarious

Q Was it your sense, you testified that Maureen did not have many close friends that you were aware of Was it your sense that she was lonely?

A I don't know if I would use the term "lonely " I think there were lonely moments But, you know, she is a mother of five I don't know how lonely that can be

Q Her kids were around?

A Some

Q But they had moved out, most of them, right?

A The boys were at school, so they would be home during the summer as their youngest daughter was there during the summer, you know, in and out

Q And Jonnie Williams, you would agree with me, gave her a lot of attention, right?

A Yes Like I said, he was very friendly

Q And he bought expensive gifts for her, didn't he?

A Yes

Q And when you went on the shopping trip with Maureen and with Jonnie, I think you testified that Maureen was like absolutely giddy?

A She was enjoying it

Q Like a kid in a candy store?

A Yes Beautiful clothes It was a fun day No stress

Q And Maureen also, you knew, really cared a lot about nutraceuticals, right?

A Very much so

Q That was, of course, Jonnie Williams' business

A Yes

Q He talked about nutraceuticals all the time, didn't he?

A She was very excited to find someone who understood what she did about the product

Q She told you that, right?

A Yeah.

Q Did you believe her when she said that to you, that she was excited to find somebody who believed in nutraceuticals like she did?

A Oh, yes

Q I think you said that Maureen was all in on Anatabloc, right?

A Yes

Q And you said that she believed, this is what you told the prosecutors, that she believed in the product, she believed in the company, and she believed in Jonnie Williams

A Yes

Q And Jonnie Williams even got to know the family beyond the Governor-elect and Maureen. He got to know the kids, too, right?

A He spent some time with them.

Q Bobby, for example?

A Playing golf

Q Do you know that Bobby considered him to be a mentor?

A I did not know

Q And the $15,000 wedding gift for Cailin's wedding, you were aware of that, right?

A Yes

Q She didn't try to hide that from you?

A She gave me the check to give to the caterer

Q You delivered it to the caterer?

A Correct

Q Personally?

A Correct, yes

Q And Jonnie Williams went to the Governor-elect and Maureen's 35th anniversary, right?

A Yes, at Barboursville.

Q Would you say that over time, not even a very long time, they became fairly close, Jonnie and Maureen?

A Define close

Q He would visit her, they would spend time talking

A They would talk.

Q And he was a frequent visitor to the Mansion, as you said

A Yes

Q You told the prosecutors they usually met privately upstairs in the personal residence or in her basement office Do you remember telling them that?

A I know that when they would meet, it was usually in her office. Sometimes upstairs

Q But it was usually private

A Usually

Q So most of those --

A I think it depended on the meeting If there were someone else involved, sometimes others were there

Q They would often meet privately

A I don't know that I would say often, but they met privately

Q You were not present for those meetings?

A Correct

Q So you don't know what they said to each other

A I have no idea

Q You also told the prosecutors that many of the meetings between Maureen and Jonnie Williams were spontaneous Do you remember telling them that?

A Yes

Q You characterized Maureen's meetings with Mr Williams as play dates Do you remember telling the prosecutors that?

A She would enjoy his company

Q Do you remember saying that they were play dates?

A I don't recall using those words

Q Please put up just for the witness and just for identification -- to refresh her recollection, the FBI 302 dated June 28th, 2013 Please go to Page 5 Now, Ms Sutherland, this is a little strange, but here is what I need you to do Can you just read that paragraph to yourself, don't read it out loud, and all I'm asking you to do, and it is actually highlighted for you, what I am asking you to do is just read it to yourself and then put it aside or they will turn it off and I'll ask you some questions

(Witness perusing document)

A Okay

Q Now, I'm going to ask you a question again Do you recall telling prosecutors that Maureen's meetings with Williams were play dates?

A Yes, now having read it

Q And you told them also that the Governor wasn't there a lot, right?

A Correct

Q And you told them that Jonnie paid attention to Maureen and she had fun with him. Didn't you tell them that?

A Yes

Q And you also described Jonnie Williams as Maureen McDonnell's favorite playmate Do you remember telling them that?

A I'm not denying I did. I just don't recall that specifically

MR. BURCK: I'll just briefly, please, show the witness the 302 from September 24th, 2013, FBI 302, Page 7 Please publish it just to the witness

BY MR BURCK:

Q Ms Sutherland, when I show you this, the same drill Just read it, please, don't read it out loud, and then I'll ask you some questions

(Witness perusing document)

Just highlight the last paragraph Thank you. Just read that to yourself

A I'm done

Q Do you remember telling the FBI and the prosecutors that Jonnie Williams was Maureen McDonnell's favorite playmate?

A That's my testimony there I know, I just --

Q You don't recall saying that?

A I don't recall saying it I obviously did

Q That's fine. Put that aside. Do you remember telling the prosecutors that you had never experienced anything similar to the relationship and apparent access Williams had with Maureen at the Executive Mansion; do you remember telling them that?

A To be honest, no, I don't recall telling it, but I've just read it So --

Q Okay

A It was a while ago

Q That's fine Now, you also told the prosecutors about what's called annoying calls that Jonnie Williams told you he would get from Maureen in the summer of 2011 Do you remember that?

A Yes, I do.

Q And you told the prosecutors that Williams would call you and ask for your assistance in stopping Maureen from calling him constantly Do you remember telling them that?

A I remember referencing one conversation he had with me complaining about the late night calls

Q Okay And you told us a bit about a second shopping trip that Maureen McDonnell had thought about during the 35th anniversary?

A She wanted to arrange a second trip.

Q Right And you also had a conversation with Mr Williams about that, didn't you, that second trip?

A At some point, yes

Q And you recall that you said that, you told the prosecutors that Maureen was hounding Mr Williams to take her and her daughter, Rachel, to New York for another shopping trip, right?

A Yes

Q And you said that Maureen sat her daughter, Rachel, next to Jonnie Williams at the 35th anniversary?

A Correct

Q The purpose of that, as you understood it, was that so Rachel could somehow convince Jonnie Williams to take them shopping

A No, that's not correct To develop a rapport

Q Develop a rapport Between Rachel and Jonnie?

A Yes

Q Okay And you also said that Mr Williams didn't want to take her on the second shopping trip, right?

A From what he told me

Q Okay And he said no ultimately, didn't he?

A Ultimately, yes

Q So he told her no to the second shopping trip.

A Yes

Q Let's talk a little bit more about Jonnie himself from your perspective He was a very likeable, charming guy?

A Yes

Q Kind of larger than life, a funny guy?

A Funny

Q And also, he was generous, right, not just with Ms McDonnell but with other people, too

A Yes

Q And with you as well sometimes

A Yes.

Q He took you to lunch at the Kinloch Country Club, right?

A With Ms McDonnell

Q With Ms McDonnell

A Uh-huh.

Q On the Florida Roskamp trip, you flew down in his jet, right?

A Correct

Q You stayed at the Ritz-Carlton and he paid for that

A Correct

Q And you got a spa facial that he paid for

A Yes

Q Jonnie always paid for everything, right, as far as you know?

A Seemed to.

Q And you also became excited about Star Scientific and Anatabloc during that Roskamp visit, right?

A No, that's incorrect I had started back when we first met him in New York. He had given us each samples of the product and I was taking it Years ago I broke my coccyx, maybe this is more information than you need, I broke my coccyx bone and actually I felt the product was helping with that old injury So I was excited about how I was feeling

Q So you were excited about Anatabloc even before Roskamp

A Correct

Q But you bought the stock after Roskamp.

A I was taking the product, I guess at that point two or three months, so yes

Q It was June 2nd

A I know it was in June

Q It was in June Okay That's roughly the same time that Maureen McDonnell bought stock

A Correct

Q And it would be fair to say that Jonnie Williams, during that summer of 2011, that he was there for you during a difficult time professionally?

A Yes He lent a sympathetic shoulder

Q As you testified, you were very unhappy in your job, right?

A Yes That was not unknown to others in my circle

Q He took you to lunch and breakfast and he listened to you, didn't he?

A I recall two breakfasts, I recall two, and a lunch. That was it

Q He allowed you to vent a bit about your professional issues, right?

A I did some, not a lot

Q But he also admired your professional skills, didn't he?

A That's what he said

Q I'm going to show you, it is already admitted into evidence, it is the phone records of Mr Jonnie Williams And it is RM-0104, Page 02394 This is already in evidence This is a particular page from Jonnie Williams' phone records There we go You see that there are two highlighted phone calls

A Uh-huh.

Q And what are the last four digits of your cell phone at this time?

A 8927

Q And then Jonnie Williams', I don't know if you recall, but his was 5828

A I don't recall, but --

Q These are his records

A I'll take your word for it

Q So you see on January 20th, 2012 at 9:41 a.m., you received a phone call from Jonnie Williams that lasted about 42 seconds?

A Okay

Q Now, who knows if that was a missed call or if it was a voicemail or what have you, but right beneath that is a phone call the same day, 9:52 a.m., from you back to Mr Williams See that?

A I see it

Q That's a nine-minute phone call?

A Uh-huh

Q You testified about, on direct examination, about a letter or a journal that you wrote?

A Yes

Q And that was written by you?

A Right

Q And it was addressed to Mr Williams

A Uh-huh

Q But you said that it was not in fact sent to Mr Williams; is that right?

A Correct

Q I'm going to ask you to publish -- please take that down and just publish for the witness RM-0014 And, just looking at that first page, do you recognize that document?

A I do.

MR. BURCK: We offer RM-0014.

THE COURT: It will be admitted.

BY MR. BURCK:

Q Can you just blow up the date? The date of this letter is January 20th, 2012?

A Yes

Q That's the same day of the phone calls we just looked at?

A Uh-huh.

Q Can you also just blow up the first sentence of the letter? And it says, "Mr Jonnie Williams Dear Jonnie, thank you for taking the time to call today I made the decision to write to you because I have little confidence the a breakfast meeting with ever take place again." Do you see that?

A Yes

Q Did you write this letter just about the same time of the phone call?

A Yes It was after the call

Q Please take that down Thank you

Q Following the Roskamp event in June of 2011, Jonnie Williams called you to tell you that you were the type of person he wanted working for him.

A It was initially to do some after hours work for him which I told him I couldn't do I had enough on my hands

Q He actually told you that he would pay you outside of your job?

A Correct

Q This is outside of your state job that he offered

A Correct

Q But you said no.

A Correct

Q And you met with him for breakfast

A After that

Q Now, do you recall that you met with him sometime, one breakfast was in early July of 2011?

A I know it was post-shopping with my niece and prior to the Barboursville event

Q Do you recall it was at the Berkeley Hotel?

A That was a lunch in August

Q So you did not have a breakfast with him?

A Not at the Berkeley

Q Okay At one of these meetings or breakfasts or lunches, Mr Williams sort of zeroed in on your unhappiness, right?

A Yes

Q And he said to you something like "You can't fool an old southern boy," right?

A Correct

Q And you explained to Mr Williams that you were looking to leave your job as Chief of Staff for Maureen McDonnell, right?

A Correct

Q But you also told him that you needed an anchor client to take back to Benedetti & Farris in order to cover your salary, right?

A I told him I was looking for one

Q And at the time, Mr Williams was not interested in that plan, right, himself He was not interested in being your anchor client

A No, what he wanted was for me to go and work for his law firm.

Q Did you ask him to be your anchor client?

A At that time, no

Q And Mr Williams suggested that you should talk to Jerry Kilgore about having McGuireWoods put you on staff?

A That was his idea

Q Okay McGuireWoods is the law firm that Jerry Kilgore works for?

A That's correct

Q That was Mr Williams' law firm?

A That's what he told me

Q He told you that McGuireWoods or Jerry Kilgore would just charge him extra for your time, your pay

A That was his plan.

Q And he reiterated to you that you were just the type of person he wanted working for him, right?

A Correct

Q Not just on Anatabloc, but for him personally

A For other things

Q He said he wanted you -- I'm sorry, he said he didn't have time to organize his own life, right?

A That's right

Q And that with work going on at his home in Richmond, all his travel, he saw you as the kind of person to manage all of that for him.

A Correct

Q And he also told you that his secretary, Jerri Fulkerson, was not going to be around with him much longer, right?

A That's what he told me

Q And even then she didn't handle everything he needed done

A Some of it also would have been to do some of the events as he was bringing out his product

Q Okay I ask to publish, it has been previously admitted, RM-618 Can you turn to Page 23, please, of that exhibit? Can you blow up the highlighted part as much as possible? It is a little hard to read. I'll tell you, this is an expense report that Jerri Fulkerson filled out for Jonnie Williams relating to lunches that he says you had with him. You see there is one on July 25th of 2011, it says, "Jefferson Hotel, lunch with Mary-Shea Sutherland, assistant to the First Lady, concerning Anatabloc"?

A I can see it is there, but I did not have lunch with him on the 25th

Q That would be untrue?

A That is incorrect It is my birthday I know what I was doing on my birthday for that day

Q What about on the 26th?

A I never had lunch with him at The Jefferson We had one lunch, and it was at the Berkeley And we had a breakfast meeting, and I think it was the second breakfast meeting And the breakfast meetings were at The Jefferson. So this is incorrect

Q And the August 17th, 2011, do you see that, Jefferson Hotel?

A Yes

Q "Lunch with Mary-Shea Sutherland, assistant to the First Lady, concerning Anatabloc"?

A The only lunch I ever had with him was at the Berkeley

Q All of that is untrue

A It could have been the date's right and he wrote The Jefferson instead of the Berkeley, but you would have to ask him.

Q Now, I'm sorry, you had lunch at the Berkeley

A Correct, with Jerry Kilgore

Q And that was on August 1st, wasn't it?

A No, it was in August I don't remember the exact date

Q You don't remember the exact date Do you have any reason to believe it wasn't on August 1st?

A I don't I know it was in August

Q Okay And Jerry Kilgore, he was a former Attorney General of Virginia, right?

A Correct

Q And were you aware that he was assisting Mr Williams in his efforts to get funding from the Tobacco Commission?

A I was not

Q Were you aware that Mr Kilgore's brother and wife were affiliated with the Tobacco Commission?

A Yes, I know both of them well

Q You knew that at the time that you met Mr Kilgore

A Yes.

Q And Mr Williams didn't mention that to you?

A When we had lunch we talked about what I could do for him in terms of my skillset and what an employment or a consulting contract would look like

Q Okay The topic of this meeting was a potential job for you, right?

A It was how a consulting contract could be shaped.

Q Consulting contract with whom?

A For Mr Williams and Benedetti & Farris
Mr Williams' only experience with Benedetti & Farris was as Republican fundraisers. He didn't understand the breadth of services they offered

Q You were going to explain that to him?

A And Jerry did

Q So you and Jerry and Mr Williams are at this lunch together talking about a job for you in some capacity

A Right And Jerry was very clear that Mr Williams' plan about McGuireWoods would not happen.

Q Okay Because it was decided that McGuireWoods could not hire you?

A Correct

Q And it was decided that it made sense for you to return to Benedetti & Farris with Mr Williams as your anchor client; isn't that right?

A Right My plan for months had been to go back to Benedetti & Farris and I had met with a number of former clients and contacts about that

Q And did you agree at that lunch with Mr Williams and Mr Kilgore that you would return to Benedetti & Farris with Mr Williams as your anchor client?

A Mr Williams asked Jerry Kilgore to contact Benedetti & Farris on his behalf and work on a deal

Q For him to be your anchor client

A To be a client At that point I was not using that word.

Q Okay And you and Mr Williams shook hands on this, didn't you?

A Yes

Q And when you asked Mr Williams about compensation -- you did ask him about how much you would get paid, right?

A And he said he didn't want to talk numbers

Q You asked and he said he didn't want to talk numbers

A He said he would put everything in Jerry's hands

Q And he said "Just send everything to Jerry, send the paperwork to Jerry and we will get it all taken care of," something like that?

A That's what he said to Jerry Kilgore I know there are a lot of Jerrys

Q Now, you had another breakfast or lunch, I'm not sure which, but something with Mr Williams after this meeting, right?

A I don't recall anything after that. I mean, I met with him, but not privately

Q Do you recall, maybe it is the same lunch with Mr Kilgore, but do you recall that Mr Williams confirmed with you that you would leave the First Lady's office and that he would be your anchor client?

A He said that he would put it in Jerry Kilgore's hands to put a deal together The deal never went through

Q Before we get to the deal not going through, I'm asking you about --

A I don't know that he used the word "anchor "

Q Was he insistent with you that you not tell the Governor's Office that you were leaving until after the luncheon at the Mansion with the doctors?

A Yes

Q Now, I think you testified that you had told Martin Kent about your job search

A Yes

Q Did you tell him you were talking to Jonnie Williams?

A No, I just told him I was searching

Q So you didn't tell him about Jonnie Williams?

A I didn't tell him about any of the meetings I had.

Q You told him you were looking generally for a job.

A That I was actively pursuing

Q Okay And Mr Williams said, "Trust me, me, Jonnie, and you should only give them two weeks' notice" instead of the month you had suggested

A Correct

Q And he asked you to stay until you got Anatabloc launched.

A Until he did

Q He said that until he got Anatabloc launched?

A Uh-huh

Q And you agreed with him that you would leave on October 1st, 2011

A I don't know if I agreed with him on that date or not But I left at the end of October

Q Okay Now, following the contract -- I'm sorry, following that breakfast, at some point Benedetti & Farris sent you a contract

A Sent Jerry Kilgore

Q Sent a contract to Jerry Kilgore with Mr Williams' instructions, right?

A Correct

Q And Mr Kilgore told you that he tried to reach Mr Williams a number of times to get the contract signed by Mr Williams?

A Correct

Q But he could not get hold of Mr Williams, and he sent the contract to Mr Williams' other attorneys Is that what he said?

A That's my recollection

Q This was in September This was after the launch.

A Right Well, actually, I don't know I don't remember the dates

Q I'll show you some documents soon. Mr Williams calls you at some point, roughly September time frame, to say that because of company policies, he could not sign a consulting agreement with you?

A And that he would pay for any invoices through his Marketing Department

Q Okay Let's break that down. He said that he could not sign a consulting agreement with you because of company policies?

A Correct

Q But that he would pay for you by invoicing Star Scientific each month for your services

A Can you repeat that?

Q Sure He told you that instead of signing you on as a consultant, that he would pay Benedetti & Farris or Benedetti & Farris should invoice Star Scientific each month for your services

A For whatever the company provided That's the advantage of having a consulting company, you get more than just one person So whatever the agreed-to consulting arrangement would have been, he suggested paying it through his marketing dollars

Q And when you say "his," you are talking about Star Scientific's

A Correct That's his company, Mr. Williams' company

Q And he also told you that his word was something that you could take to the bank, right?

A Correct

Q Now, Benedetti & Farris actually sent a contract to Mr Williams, right?

A That's my understanding

Q Please show to the witness only RM-0192 This has not been admitted. Can you read that okay or do you want me to blow it up?

A No, I can see it

Q Read it to yourself This is an e-mail or two e-mails, one from you to Ms Fulkerson and then one, a return e-mail from Ms Fulkerson to you dated September 2nd, 2011 We would offer this in evidence.

THE COURT: It will be admitted.

MR. BURCK: Publish it to the jury Thank you

BY MR. BURCK:

Q Now, the bottom e-mail, which is the first e-mail, it is at 1:23 p.m. on September 2nd. It is from you to Ms Fulkerson. And she is Jonnie Williams' assistant, right?

A Correct

Q "Hi Jerri Abby Farris will send you a new proposal today The confusion came in with Jonnie originally saying to send it to Jerry Kilgore - he has had it."

A Yes

Q The e-mail above that is from you -- Jerri Fulkerson back to you, is that correct?

A Correct

Q Please take that down and publish RM-0009, which is already admitted You are not on these e-mails, but this is a forward from Abigail Farris Rogers to Jerri Fulkerson on the bottom. And if you scroll up, it is forwarded from Ms Fulkerson to Mr Jonnie Williams and the subject line is "Contract for Benedetti & Farris "

A Uh-huh.

Q Who is Abby Farris?

A She is one of the co-owners of Benedetti & Farris

Q Can you take that down and show RM-1992? It is already admitted into evidence Now I'm going to read this to you. This is a letter dated August 23rd, 2011 It is to Jonnie Williams from Ms Farris "Dear Jonnie, we appreciate the opportunity to work with you and your company We believe our combined unique experiences and skills will be an asset to your efforts Mary-Shea Sutherland will be the lead consultant for Star Scientific "

Now, this is in contract form what you had been discussing with Jonnie Williams in August; is that right?

A When we would do things like this we considered it a proposal until it was signed. So it is a proposal for a contract

Q Proposal for a contract It is dated August 23rd, right?

A Yes

Q That's about a week before the Mansion event

A Yes

Q Now, you can take that down After this contract, this proposal came through, there wasn't actually any follow-through from Mr Williams He didn't actually hire you or hire Benedetti & Farris pursuant to that agreement, right?

A No

Q He reneged on his promise to you.

A Yes

Q And in fact, you learned that he told Maureen McDonnell that you were leaving and that you were soliciting him for a job

A She told me that he had told her that

Q And Maureen McDonnell was mad, right?

A Yes

Q She confronted you, she went through your desk?

A Uh-huh.

Q And she questioned you about this whole experience, right?

A She questioned me about a lot of things, but some of that, yes

Q I would ask that we go back to RM-0014 Please publish that That's already in evidence What I would ask you to do, this is a two-and-a-half page letter If we can blow it up so it is easier for her to read. Now, Ms Sutherland, I would ask that you read this letter to the jury

A Just the letter part or start with very top part?

Q Start with "Mr Jonnie Williams Dear Jonnie."

A "Dear Jonnie Thank you for taking the time to call today I made the decision to write to you because I have little confidence the a --" this was typing quickly -- "breakfast meeting with ever take place again. I do believe that you owe me an explanation on the events that occurred last September The following outlines the months leading up-to-date "

MS ABER: I object The letter is in evidence The jury can read it

THE COURT: The objection is sustained

BY MR. BURCK:

Q Let's start with, I'll just take pieces of it rather than have her read the entire thing The third paragraph, "In June, following the trip to Florida where I accompanied the First Lady, you called me to say that I was the type of person you wanted working for you and that you would pay me outside of my job with the state to help you I remember the day clearly I was in a dressing room with my niece when you called We arranged to meet for breakfast, the first of several " Right?

A Correct

Q Was that true?

A That's what I have testified to.

Q "And you said at breakfast we had a very honest conversation I explained that I was looking to leave but in order to do so needed an anchor client to take back to Benedetti & Farris in order to cover my salary "

I think you testified you did not use the word "anchor client "

A In discussions with him. My initial meeting with him was explaining what I wanted to do, go back to Tom and Abby, how the types of clients I had brought before, who I had been talking to It was a general conversation.

Q So the letter, when it says "anchor client," that's not what you actually said to Mr Williams?

A These are my summaries of something that occurred six months prior

Q Then you said that "At that time you were not interested in that plan," "you" being Mr Williams, "but suggested that we should talk to Jerry Kilgore about having McGuireWoods put me on staff and he would just charge you extra "

A I knew that Jerry Kilgore would be able to explain to Mr Williams that McGuireWoods would not go along with that plan.

Q Then you see the next paragraph down, it is a short paragraph. It says: "You went on to discuss that Jerry your secretary was not going to be with you much longer but that even she didn't handle all that you needed covered "

A This is a summary of a conversation.

Q Now, the next paragraph, you said, "It was decided at that time it would not work to have McGuireWoods hire me, and that it made more sense for me to return to Benedetti & Farris and you would be the anchor client "

A Again, this is all a summary of a multitude of conversations

MS ABER: I object.

THE COURT: The objection is sustained The letter is in evidence The jury can read it There is no point in you going through paragraph by paragraph Come on

MR. BURCK: I understood, I'm just pointing out some --

THE COURT: Get to something else

MR. BURCK: Your Honor, I will go to the end of the letter, which has not been testified to, Your Honor

THE COURT: What is the question? What is the question? She wrote the letter She admits she writes the letter It is in evidence What question do you have that can elucidate something?

MR. BURCK: Your Honor, my question to the witness would be did she conceal information from Ms McDonnell and the Governor

THE COURT: Perfectly fine question

THE WITNESS: I did not tell them I was looking for another job I told the Governor's Chief of Staff, Martin Kent

BY MR BURCK:

Q You told the Governor's Chief of Staff, Martin Kent?

A That I was looking for another job

Q But not --

A I didn't tell them about any of the conversations I had with any of the folks I was talking to

Q Okay And did you also keep all your conversations and sentiments about the First Lady, all the things that he had expressed to you and that you had expressed to him, silent?

A I started sharing them when the FBI was questioning me

Q Okay What about texts? Text messages? Did you have text messages with Mr Williams?

A Yes

Q And you printed out all those text messages?

A Some

Q And do you have those text messages any longer?

A No They would have been from, you know, the summer of 2011

Q And when you spoke to Mr Williams on January 20th of 2012, when you wrote this letter, he told you how badly the McDonnells had treated him; is that right?

A Yes

Q Did he explain to you what he meant by that?

A No We were talking about Richmond 2015 at the time

Q Okay And isn't it true that Mr Williams sought you out to work for him?

A Yes

Q Not vice versa?

A Correct

Q Okay

A I can put the letter in context for you That might help you understand more

Q Sure Go ahead

A Like I said, a lot of people journal, a lot of people use diaries I write letters It is a way of releasing what you've got in you and letting it go If I were going to be doing work with his company -- and at the time, Richmond 2015 thought Star Scientific would be a good fit for the cycling race that's coming next year If I were going to be doing any kind of ongoing work with them, I needed to let go of any anger I had from that episode, release it and get past it That letter came after the conversation where I knew there was a good chance I would be working with he or someone from his company on Richmond 2015 In fact, I was talking with him about an event that was going to be held in April to benefit 2015

Q Okay

A So when you keep saying a letter, I understand it is in letter form, but that's how I write

Q Understood But this is a diary

A Well, it is not a diary in that there is a book I would write something and let it go I never printed it

I don't have a copy of it You write things down, you release, and you are done

Q It was meant only for you.

A Correct

Q So as best you recollect, it is accurate

A Well, again, it was a summary of things that had happened six months before over a multitude of conversations

Q Okay Let's move on, or somewhat back in time, back to Roskamp Let's talk about that a little bit more Now, following the Roskamp event in June of 2011, this is when Mr Williams called you to say that he wanted someone like you working for him, right?

A Yes.

Q And Roskamp itself, you went down there with Ms McDonnell, right?

A Yes

Q And I think you testified that it was Mr Williams that invited you down, you and Ms McDonnell

A Correct

Q Do you recall whether or not Ms McDonnell was on the invitation for Roskamp?

A I don't remember ever seeing an invitation

Q You don't remember seeing one?

A No

Q So you would handle invitations, right, for her?
A Yes
Q So if her name was going to be officially appearing on something, that would be something you would typically know about
A Correct
Q Now, the speech that you mentioned, or the brief discussion that Ms McDonnell provided or gave at Roskamp --
A I would say off-the-cuff remarks
Q It was impromptu, right?
A Yes
Q Did you consider Ms McDonnell to be a good public speaker?
A There were times where she could hit it out of the park, and other times she was very nervous
Q Usually when she was impromptu or off the cuff, she was less good, right?
A It would depend on the situation.
Q That day, was she pretty good, not so good?
A She was excited. She stood up and was very gracious to the guests, talked about her excitement for the product and how impressed she was with the research.
Q Now, when you arrived at Roskamp, Mr Williams showed you and Ms McDonnell his knew Aston Martin?

A Not at the Roskamp event When we arrived at the hotel

Q When you arrived at the hotel in Florida

A Yes

Q And Ms McDonnell didn't know what an Aston Martin was, right?

A I remember we talked about James Bond cars

Q That's what Mr Williams told her, it was a James Bond car?

A I think so.

Q And Ms Williams gave him -- excuse me, Ms McDonnell gave him some cookies from the Mansion

A Yes It was a particular kind he liked that the chef made It had cranberries, I know

Q They went inside for lunch. Did you join them for lunch?

A Yes

Q Okay Now, when she was giving these impromptu remarks, you hadn't heard about this launch event before, had you?

A No

Q Can you please publish RM-0185, it has been previously admitted. And this is an e-mail that you talked about on direct examination.

A Yes, I'm familiar with it

Q This is about Mr Jim Abel, your friend, the event planner?

A Yes He does my decorations

Q And this e-mail, he tells Mr Williams, cc's you, that you and he had had a wonderful dinner brainstorming about your launch event

A This was not in reference to the Mansion event This was in reference to launching the product that Mr Williams described to Jim at the cocktail party across the country using ballrooms or private event spaces or whatever he would choose to use, bringing doctors together that he would introduce the product to

Q Okay Did you ever discuss with Ms McDonnell the fact that you had had this conversation with Mr Abel?

A No It is what party planners talk to each other about

Q Now, after Roskamp in early June, please show or publish Government Exhibit 162 Now, this is an e-mail and an attachment that you testified about earlier

A Uh-huh.

Q This is an e-mail from Ms Fulkerson to you that attaches -- if you could show the witness the attachment This is a letter from Mr Williams to Governor McDonnell

A Right

Q And if you go back to the first page, the e-mail, you will see that the e-mail from Ms Fulkerson to you is dated June 16th at 12:39

A Uh-huh.

Q And then you forward it on to Ms McDonnell on June 20th of 2011 Do you see that?

A Uh-huh.

Q Why did it take you four days to send it on?

A It could have been that I was off on Friday I would have to look at calendars to be able to explain that

Q Okay And I would ask that we publish, it is already in evidence, these are more phone records, RM-0104-01839 Now, just to speed this up, there are about ten pages of phone records here from Jonnie Williams' cell phone And from June 13th through June 18th, there are 25 phone calls and texts between yourself and Mr Williams going back and forth. Do you recall if during any of those phone calls or texts that you discussed with Mr Williams the letter that you had received from Ms Fulkerson?

A I don't recall what those conversations were about.

Q Okay We don't have those texts, right?

A Not that I am aware of

Q Going back just a couple months to just on phone records, on April 13th of 2011 when you went on the shopping trip, do you recall that that was during the day, right?

A Yes

Q And about when did it end, late afternoon, early evening?

A It would have been late afternoon because we would have had to have gotten back to the hotel to change for the event that night Refresh, all that lady stuff

Q RM-0104-1649, please publish that It is already in evidence. These are more phone records Again, just to speed up the process, I'll represent to you that there are 15 phone calls and texts between yourself and Mr Williams on that day, most of which occur after 5 o'clock

A Some of it was, the morning ones were settling what time we were going to meet him because we were shopping elsewhere And then the evening ones would have been getting him to wherever he needed to go where the event was He was not originally scheduled to attend that event

Q Okay Now, July 6th, this is RM-0104-09158, now, on that -- sorry 10409158 Now, on that date, that's July 6th, you have 13 texts with Mr Williams Do you recall that I asked you some questions about whether or not you might have had a breakfast with him on that day? Do you remember that?

A Like I said, without a calendar --

Q You are not sure

A No

Q Okay We will turn to that in a second. Let's go to RM-0523 Can you blow up the highlighted section? Now, this says, this is on July 26th, it says it is a charter flight This is an expense report that Ms. Fulkerson filled out for Mr Williams "Expense report, charter flight, doctors and First Lady McDonnell from Richmond to Baltimore for Anatabloc, John Hopkins symposium." Turn to, I think, the third-to-last page of that exhibit You see that that's a manifest or invoice that shows John Clore, Mary-Shea Sutherland, Margaret Shupnik, this is the trip to Gibson Island?

A Correct

Q This is in evidence Please publish this to the jury Now, I think you testified on direct that you did not go to this Gibson Island event in any way for a job opportunity with Mr Williams

A Correct I had nothing to do with setting it up or doing any of the arrangements

Q I'll ask the question As I understood it, she asked you did you go there for a job opportunity with Mr Williams

A No, I did not

Q Do you know someone by the name of Todd Haymore?

A Yes

Q And tell us, who is Todd Haymore?

A He is currently and was under Governor McDonnell the Secretary of Agriculture

Q He was and he currently is the Secretary of Agriculture?

A Yes, he stayed on with the current Administration

Q Do you recall telling Mr Haymore that you were going to Gibson Island on a private jet to meet with Jonnie Williams about a job opportunity?

A No I mean, I talked with Todd all the time, but I don't remember specifically saying that

Q Do you remember generally saying that?

A I could have told him I was going I don't recall

Q Sorry, you don't recall that you said it or you didn't say it?

A I don't recall saying it

Q Okay What I am going to do then is show you a document, and this is FBI report, 10-23-2013, of Todd Haymore This is the same drill we did earlier I don't want you to read it out loud. I just want you to read it to yourself

MR. DRY: Judge, can we approach just one second?

(At Bench.)

MR. DRY: Judge, it is bad enough that they are identifying they are refreshing with a 302 when it is the witness's own 302 Now they are doing it with other witnesses' 302's

THE COURT: If that's an objection, it is sustained. This is really getting old This is something that someone else said to the FBI

MR. BURCK: I'm only asking to see if it refreshes her recollection

THE COURT: But there is not something to refresh This is what somebody else said The objection is sustained

MR. DRY: For the record, they shouldn't be identifying what they are refreshing the recollection with

THE COURT: Yes Don't say that out loud

MR. BURCK: Okay, Your Honor

(In Open Court)

BY MR. BURCK:

Q You just testified that you do not recall saying to Mr Haymore that you were going down to Gibson Island for a job opportunity, right?

A That's correct

Q Okay And you don't recall telling Mr Haymore sometime thereafter that the job prospect was not going well?

A I'm sorry?

Q The job prospect was not going well

A I'm not sure what you are referring to.

Q You do not recall telling Mr Haymore sometime there after the Gibson Island event that your job prospect with Mr Williams was not going well?

A I don't recall that I talked to Todd a lot He knew I was unhappy We talked a lot about what I could do future-wise

Q Okay Now, let's go to August 1st, 2011, same month, beginning of the Mansion event month. Can you show Government Exhibit 190? It is already in evidence This is a meeting with -- this is something you have already testified about, meeting with Jonnie Williams, Mansion, 88-1-2011

A Yes

Q And can you also now show Government Exhibit 179? This is also in evidence Now, Ms Sutherland, you have heard of metadata?

A I've heard of it

Q It is the To and From lines, just basically tells you who actually sent -- it doesn't say who actually sent it, but what account it was sent from and what account it was received at This was a calendar event for Jonnie Williams between the First Lady and Jonnie Williams on

8-1-2011 And if you look in the bottom, it says, "Meeting with Jonnie Williams from Mary-Shea Sutherland."

A Uh-huh

Q Below that it says sent 7-28-2011, 2:04 p.m. That's something called either Zulu Time or some other -- it is not Eastern Standard.

A It is Greek.

Q It is Greek Do you recall that you are the one who actually put in the calendar invite for this meeting on August 1st, 2011?

A I entered a lot of calendar things I couldn't specifically speak to this one

Q Okay And you have testified that you are not on the 1st, on August 1st, you testified that that was the date that you may have entered a calendar invite for the August 30th event for the First Lady

A Right I don't know if it was me sitting at the First Lady's computer or if it was her sitting there typing in There were times when she would enter things and I would read them off to her Other times she would sit on the sofa and I would enter them. Sometimes they were entered from the computer in my own office

Q Okay Now, again, we talked a bit about this lunch you had with Mr Kilgore and Mr Williams at the Berkeley Hotel

A Correct

Q And you didn't recall if it was August 1st

A I don't recall the date

Q But it could be

A It could be

Q Okay That would be the same date that we just looked at for the meeting between Jonnie Williams and Ms McDonnell?

A Yes

Q That was also the meeting that Molly Huffstetler was present for?

A I believe so. The dates are starting to get a little jumbled.

Q I hear you. Now, can we show RM-01117? It is already in evidence? Blow up the bottom. I'm not going to spend much time on this because you already talked about this This is an e-mail from you to Adam Zubowsky on August 16th, and you are talking about the date for the lunch was selected due to the launch of the product

A Correct

Q The word "launch," that was based on what Jonnie Williams had told you?

A Yes That he was going to launch his product sometime in September

Q And you also testified that you had a breakfast or lunch, it is hard to remember exactly which, but with Mr Williams sometime in the latter half of August, right?

A No, I said I had breakfast with him in July

Q In July

A After the shopping trip with my niece It wasn't appropriate to have a conversation in a dressing room.

Q Understood. But you had a lunch with him where you talked about the job opportunity?

A One lunch It was at the Berkeley

Q And then we saw before, August 23rd, the contract, Benedetti & Farris, was dated August 23rd?

A Right

Q Now, between the 24th and 30th, you are spending most of your time helping get the lunch ready, right?

A Not most of my time

Q A lot of your time?

A No It doesn't take that much time to put a lunch together I mean, you send an invitation out, you take RSVP's, the chef comes up with a menu It doesn't take that much time

Q And how many people went to this lunch?

A It would have been somewhere in the neighborhood of 30 Maybe less The dining room table only seats so many

Q A lot of these people were from Star Scientific or affiliated with Jonnie Williams?

A They provided the guest list, so they were all affiliated somehow

Q At this event you were not present for the actual discussions or the talks that were given.

A No

Q You were sort of in and out?

A Uh-huh.

Q You didn't hear what Ms McDonnell said?

A No

Q Leading up to this event, you testified about press release changes that you had worked on

A I had looked at a press release, told the woman who sent it to me that it was unacceptable, she made changes, and I sent it over to the press office

Q Okay Do you recall that there was discussion about having some kind of press conference on the Mansion grounds?

A At some point there was talk about that, but that never happened.

Q That didn't happen because Jasen Eige and others had intervened to stop it?

A I don't recall I know at one point there was talk about it But that has been several years ago

Q And --

A And it never happened. So there were no details for me to remember

Q And the press release and this press conference that you have some recollection of, neither of those happened -- the original press release didn't come out in the form that you found uncomfortable

A No, they made corrections to it

Q Okay

A And we were not sending the press release out It was his company sending it out They sent it to us so that we could see it ahead of time, and I told them what they were saying was incorrect

Q Ms McDonnell didn't complain to you about that, did she?

A Not that I recall

Q Do you recall her complaining about the fact there was no press conference on the Mansion grounds?

A I don't recall that

Q It was right after this Mansion event that you had some further discussions about the Benedetti & Farris job, right?

A It was after the event I couldn't tell you a date

Q Let's talk a little bit about some of the things that you did with Jonnie Williams over the course of that summer You showed us the dress?

A Yes

Q That you got It was about $1,600?

A Yes

Q I understand you never wore it?

A Never came out of the packaging

Q Is there a reason why you kept it?

A I put it in the back of the closet and didn't think about it again until the FBI knocked on my door and I offered it to them.

Q So you had it for about roughly a year or so before they asked for it?

A I would have to see the date on when they came to my home

Q You testified that Mr Williams had said something to the effect that he does not buy one daughter something without buying the other daughter something, too?

A Something along those lines

Q And you also told the prosecutors that Mr Williams appeared to enjoy the shopping trip, right?

A He was, yeah, there were times, I think, he wandered off and got on his phone He seemed to enjoy the lunch part more

Q Okay And you also discussed the various iterations of the job opportunities potentially with Mr Williams

A During the shopping trip?

Q No, I'm sorry, during the rest of the summer

A We had conversations But I couldn't tell you the specifics on any day or repeat them verbatim.

Q Now, we talked about, you were a state official, right? You received a salary?

A Correct

Q And you didn't tell Mr Kent that you were looking for a job with Mr Williams, right?

A No I told him I was looking for a job with several -- I was talking with a variety of people

Q Did you tell Mr Eige?

A I don't recall talking to Jasen about that I talked to Jasen about a lot of things, but I don't recall telling him that

Q Did you tell anybody in the Office of the Governor that you were looking for a job with Mr Williams?

A I believe I talked with some of the Mansion staff

Q Some of the Mansion staff Who would that be?

A Sarah, at that time we had hired a new girl, Celine. I don't recall telling Celine specifics, but that I was not going to be there long

Q Why did you not tell Mr Eige or Mr Kent that you were talking to Mr Williams?

A I didn't tell them I was talking to any specific person. I didn't feel I needed to.

Q That was my question. I was wondering, why didn't you tell them about Mr Williams specifically?

A Because I didn't tell them about anyone I had talked with I can list you six names of people that I met with and talked to and I didn't tell them about any of them.

Q Were you at all concerned about the fact that you were talking to Mr Williams at the same time that you were assisting in setting up the Mansion event?

A I was doing my job Setting up the Mansion event was part of my job Sarah Scarborough, the Mansion director, was on vacation for two weeks.

Q So you were not concerned.

A No

Q Okay Going back to April and May, HDL, I think it is called --

A Health Diagnostic Labs

Q Health Diagnostic Labs

A Uh-huh

Q You testified you took Mr Williams to that --

A I dropped him off

Q You dropped him off personally You also said it was during the New York shopping trip that this first came up?

A Correct

Q Because you and Ms McDonnell both had blood work done there

A They did a series of testings that showed a variety of things

Q Who was Laura Strickler?

A Leslie Strickler

Q Excuse me Who is that?

A A distant cousin of mine, and at the time was I guess the marketing director for HDL

Q The marketing director for HDL. She is a distant cousin of yours?

A Yes We were also college friends

Q Did you contact her to help set up a meeting with HDL?

A Yes, it made sense, she was my contact

Q Now, after the Benedetti & Farris contract in August and early September after the proposal, you sent an e-mail to Ms Fulkerson about some documentaries that you were going to help Mr Williams with; do you remember that?

A Mr Williams asked a question I told him I wasn't familiar with documentaries, but that I could call the Virginia Film Office and get information on it I typed up the information that they provided and sent it

Q And I'm going to show you -- actually, that's all right. As you just said, it was a film --

A He was interested in how he could promote the fact that this inventive product came from the tobacco leaf

There had been a film documentary on Virginia wine that he was familiar with The First Lady had talked about it He asked me did I know how to make documentaries I said, "I'm not a filmmaker, but I would be happy to make a phone call and get you some information."

Q And did you talk to the Film Office as part of this?

A That's the Virginia Film Office

Q Is that a state office?

A Yes I've been friends with Rita McClenny, who was the head of it, for years

Q Did you consider this to be part of your official job?

A Yes

Q So this was not part of your attempt to get Star Scientific as a client for Benedetti & Farris?

A No

MR. BURCK: I want to show RM-0006 Publish this to the jury, please It is already in evidence, I believe Oh, it is not. Take it down. It is not in evidence yet

Look at the bottom of this e-mail You will see these are a series of e-mails, but there is one at the bottom from Mary-Shea Sutherland to Sarah Scarborough.

A Uh-huh

Q Then there's some other e-mails above that, some of which you are on, some of which you are not

A Okay

MR. BURCK: We would offer RM-0006

THE COURT: It will be admitted.

BY MR. BURCK:

Q Can you turn to the next page? Now, this is an e-mail on August 29th, Monday I'm not sure who it is from, actually, because it is on the prior page From Sarah Scarborough Who is Sarah Scarborough?

A She was the Mansion director

Q Can you go back to the second page of the e-mail? Blow up the top, please It is from Sarah Scarborough to Emily Rabbitt, and who is she?

A She was the assistant scheduler

Q It cc's you?

A Yes

Q This is dated August 29th It says, "I really do not know anything about tomorrow's lunch - that's Mary-Shea's deal - she is cc'd on it, so I will have her respond, or get the info from her and send your way shortly "

A Sarah had just returned from vacation.

Q So when she says it is your deal?

A I had been managing it for the weeks while she was gone

Q And so I understand your testimony, you were basically doing all of this at Maureen McDonnell's request?

A Doing all of what?

Q All of the Mansion event planning at her request?

A Sarah, if Sarah wasn't there, it fell to me There were many times where if Sarah was on vacation, I managed the event process

Q And during the course of the summer, the several months leading up to the Mansion event, all of the efforts you took to get the Mansion event up and running, that was all at Maureen McDonnell's request?

A Well, the First Lady wanted to host a luncheon. The staff had to put it together

Q So you put it together.

A Because Sarah was on vacation

Q Because Sarah was on vacation It had nothing to do with all the meetings you had with, or the several meetings that you had with Mr Williams?

A No

THE COURT: She said it five times

MR. BURCK: Thank you, Your Honor

BY MR BURCK:

Q Now, you have spoken to prosecutors or law enforcement about 11 times before you came here to testify today?

A If you count all the times with the police and FBI, I don't know if it is 11 It was a number A number of times

Q But that doesn't sound crazy

A I don't remember exactly how many More than five, less than 15

Q And you have spoken to lawyers from McGuireWoods a couple times?

A I know once, maybe twice

Q That's the law firm that represents Mr Williams?

A Yes

Q And you have been following the trial in the papers?

A On the news more I don't get a newspaper at home

Q Okay Now, we have looked at some of the phone records that show various communications you had with Mr Williams over the years, right?

A Yes

Q You got rid of that phone in August of 2013?

A No. The phone that I had when I was at the Mansion, my personal BlackBerry, when I went back to Benedetti & Farris it was a very old one One of their staff people had left, so we got rid of that phone and they gave me the former staff person's phone I had that phone until August of this past year, when I -- when it was dying, you couldn't make calls on it, and I got a new phone.

Q I'm not sure which that phone is So you had a phone, the phone that we were looking at, the phone records we were looking at showed --

A The BlackBerry that I had when I was working for the First Lady was disposed of in either November or December of 2011

Q 2011 Okay And that's the phone that would have had the texts between yourself and Mr Williams?

A Yes The phone was very old.

Q Okay Now, you said, I think in your diary, you said that you had printed out all of the texts you had with Mr Williams Do you remember saying that in the diary?

A Yes

Q Then you testified you did most?

A There was no way I could have printed out all of them. I know at one point I had printed out a couple key texts to keep, and then when I left the office I got rid of them.

Q And you said that you had, in your letter, in your diary, you said you had maintained copies of all of them.

A Again, that was a summary of what had happened during the summer

Q So you did not keep copies of all of them?

A No

Q Okay And just a few last questions

MR BURCK: Your Honor, may I confer briefly?

THE COURT: Go ahead.

(Counsel conferring with co-counsel)

MR. BURCK: Your Honor, may we approach briefly?

THE COURT: Come on up

(At Bench.)

MR. BURCK: Your Honor, the letter is in evidence, but I think it is important that the jury actually read the letter out loud with the witness because the letter contradicts a lot of what she said.

THE COURT: Absolutely not Go ahead and finish up. If you've got some more questions, go ahead No They can read this at their leisure I have never let a jury read anything while testimony is going on And there is a reason for that We would have to sit here and go through it No

MR. BURCK: Thank you, Your Honor

(In Open Court)

BY MR. BURCK:

Q Just a few last questions You testified or you told Ms Aber that there were, that you had been hired by Benedetti & Farris regardless of whether or not you brought on Mr Williams or Star Scientific as a client, right?

A Right They were expecting a number of contracts to come through.

Q Isn't it true that you were paid less than you would have been paid by Benedetti & Farris because Mr Williams did not come through?

A Yes But it is not the first time I've left a job for a lower-paying job It is all about being happy in where you work

Q Understood It was about half the amount that you got paid, in fact, by Benedetti & Farris because Mr Williams did not come along?

A I would have to do the math, but that doesn't sound correct

Q Okay Now, you haven't been charged with anything in this case?

A Absolutely not

Q You don't have any kind of immunity deal or anything like that?

A No.

Q And you are -- you don't have any other deal with the government, right?

A No

Q And they haven't accused you of anything, right?

A No There is nothing to accuse me of

Q That's because you don't think you have done anything illegal

A That is correct

Q You haven't done any corruption of any sort, right?

A No

Q You are a state official -- you were a state official?

A I was a state employee

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Q Okay And you agree with me that Ms McDonnell is not a state official?

A Because she was the First Lady It is not a paid position

Q And it's not a public official of --

A Well, she's not elected to that

Q And is she paid a salary?

A No

MR BURCK: Your Honor, that's it for us

THE COURT: Thank you

We're going to take the afternoon break It will be 15 minutes

(The jury left the courtroom)

(Recess taken from 4:03 p m until 4:25 p m)

(The jury entered the courtroom)

THE COURT: Mr Asbill

MR ASBILL: Thank you, Your Honor

CROSS-EXAMINATION

BY MR ASBILL:

Q Good afternoon, Ms Sutherland My name is Hank Asbill, and I represent former Governor McDonnell

A Good afternoon

Q I want to go back to the beginning a little about when you got first hired

MR ASBILL: And I would like to pull up

RM-1224, please

BY MR ASBILL:

Q Do you recognize that document?

A Yes

Q That's a copy of your resume?

A Uh-huh

Q And it's a three-page copy of your resume, I believe?

A Uh-huh

Q Is that correct?

A Yeah

Q Is that a current version of your resume, or a relatively current version?

A It would be current as of the summer of 2011.

Q As of the time you started thinking -- or you started to actively look for a new job?

A Yes

Q Okay And is that -- is that resume accurate and that accurately describes your prior employment and your prior qualifications, those sorts of things?

A It -- I would assume so Without reading every line, it looks like it's correct

Q Okay

MR ASBILL: I'd move that into evidence, Your Honor

THE COURT: What's the number again?

MR ASBILL: It's RM-00 -- excuse me, it's RM-1224

THE COURT: 1224

MR ASBILL: Yes, sir

THE COURT: All right It will be admitted

MR ASBILL: Thank you

You can pull that down

BY MR ASBILL:

Q Now, please correct me if I'm mistaken, but you got hired in roughly -- in the end of 2009 right after the campaign ended; is that correct?

A After -- after the Governor was elected and before taking office

Q Okay

A That was when the job was offered I started once he was already sworn in

Q You started in January of --

A Correct

Q -- 2010; is that correct?

A Correct

Q And I believe you described the -- you had a prior relationship; essentially, you knew the Governor before he was elected; is that correct?

A Yes Because the company I worked for had done the fundraising when he was running for Attorney General

Q Okay Did you apply, affirmatively apply for that job or did my client reach out and ask you to interview for it or to take -- or consider it?

A He did not reach out to me initially A group of ladies did

Q Okay And then you met, I believe, with Martin Kent, his Chief of Staff; is that correct?

A Correct

Q And ultimately, you talked to the Governor about the job?

A Correct

Q And he was very enthusiastic about your qualifications and really wanted you to take on that job as the Chief of Staff for his wife; is that correct?

A Yes He was very nice

Q Okay And you obviously felt that you were very well qualified for that job; is that correct?

A I felt I could bring something to the table

Q Okay And you had worked for two -- in addition to the other things you had done, you had worked for two prior governors, correct?

A And a member of Congress

Q Right And so you had -- did you work in the Governor's Office for those governors or in the --

A No For Governor Allen, I worked in public safety

And for Governor Gilmore, I was on his staff, but I wasn't in his physical offices I was over in the 9th Street office building, and I managed the Governor's Safe and Drug-Free Schools It was, you know -- it was a division of Department of Education

Q Okay But in any event, I mean, you had experience and substantial experience in state government and actually in federal government too --

A Yes

Q -- is that correct?

A Uh-huh

Q Okay And when you took that job, I think you said you -- after you talked to my client and you asked him what are the expectations of the job, correct?

A Well, I --

Q Ultimately, what --

A Yeah What would you define as success

Q Okay And he said happy life, happy -- excuse me, happy wife, happy life?

A Coming home to a happy wife

Q Okay And you certainly did not interpret that to mean putting up with any kind of inappropriate behavior of any sort from anyone?

A No

Q Is that fair?

A That's fair

Q Okay And you started into that job And you were there for, what, about 18 months; is that correct?

A Maybe -- I'd have to do the math, but less than two years

Q January till September the following year; is that correct?

A October

Q October of the following year Okay So 20 months, approximately? Nineteen, 20 months?

A Like I said, less than two years So --

Q Okay And did the job more become more and more difficult as you went on or did it have fits and starts or how did that work?

A Like I said earlier, there were good days and bad days It became a little more difficult incrementally Towards the end, some of the -- it became increasingly more difficult towards the end

Q All right And ultimately, at the end -- or between the time you started and the time you left, in term of difficulties with the job, you only talked to my client one time; is that correct?

A One time that stands out in my mind, because it was very emotional

Q And that was one time before you ultimately left?

A Yes I mostly talked with the Governor's Chief of Staff That was the appropriate way to do it

Q Because you actually were hired by him and you reported to directly to him?

A I reported directly to Martin

Q Okay And how often would you talk to Martin Kent about difficulties with your job?

A There were a number of times I don't have a specific number

Q Over the 20 months, or whatever, can you give me a ballpark estimate?

A I would say easily once a month

Q Once a month you would --

A Maybe --

Q -- about some particular incident or an accumulation of incidents?

A Probably accumulation You know, I had to respect Martin's time as well

Q All right And he had to respect the Governor's time?

A I would assume so

Q Okay In the one time before you left that you talked to my client, would you tell me about that time again, please

A The time where I was in his office with him?

Q Yes, ma'am

A I had come over to meet with Martin It had been -- the First Lady had been very upset It had to do with reimbursements that Sarah Scarbrough would keep She would keep any of the expenses and mark what the family would need to reimburse the State for

The First Lady was very upset about what she didn't think she had to pay for, and there had been a lot of yelling and screaming, and Martin had called to find out what was going on

So I went over to meet with Martin And while I was sitting in the hallway, the Governor came out and could tell that I was upset And I had -- I don't cry a lot, but I had cried that day And he could tell I was upset

So I went into the office with him, and we talked And it was not sitting behind a desk It was very -- he was being very comforting and very kind, and we sat in his office There was a sofa and some chairs So we were sitting there instead of across the desk And he was -- he was generally concerned that I was upset And we talked about what was going on, and he asked me to try and understand what Maureen was going through I mean, I -- just what I said earlier

And, you know, he gave me -- he said that she had had a rough time and her father had died And I related that, you know, I had lost both of my parents and I didn't -- you know, I maintained a full-time job and I had a lot of stress as well and I had never treated people the way she was treating the staff

Q Okay So regardless of the death issue, that, in your view, was not an appropriate excuse for the behavior Is that fair?

A That's what I related to him

Q All right And did you focus that discussion specifically on whatever the reimbursement issues were?

A I don't recall that we went specifically into anything I was just -- I was very upset And, like I said, I was there to meet with Martin I did not go over to meet with him

Q Okay

A I was going through chain of command

Q But you did not expand on any issues you may have had with the First Lady?

A I don't recall Like I said, I was crying I was upset

Q And you talked to him again right before you left, is that correct, or right at the time you left?

A Yes

Q And at that time did you tell my client any more detail, give any more color to the accumulation of things that occurred -- had occurred over the preceding 20 months that led you to want to leave?

A Are you talking about when I passed him going to the lady's room?

Q No Not in the Hilton Hotel That's not what I'm talking about

A That was the last time we had talked So --

Q That's the last -- so the only other time you talked was at the Hilton Hotel?

A No No I thought you said the last time I talked with him

Q I didn't mean that I'm sorry I thought -- the Hilton Hotel was before you left, right?

A Just before, yes

Q Just before you left And at that time, he knew that you were leaving?

A Yes

Q Okay And that's when he hugged you in the hallway and said, "I really" -- "I can't go for the next two years without your help"; is that right?

A He didn't want to, yes

Q All right And he gave you a hug, et cetera, and you said, "My gas tank is empty"?

A Yes

Q All right

A He was always very, very kind

Q And right before that is when you all had the conversation -- you, my client, Ms McDonnell, and Tucker Martin --

A Martin Kent

Q -- excuse me, Martin Kent -- had that conversation as a group where your leaving was solidified, essentially --

A Yes

Q -- is that correct?

A Yes

Q All right Now, during that conversation, were you fully candid with my client about all the things that were on your mind and all the things that bothered you?

A No I had made a decision to leave, and I'm not going to sit there with the Governor of Virginia and go into bad behavior, enumerate bad behavior It was just -- I didn't feel it was appropriate to say to a Governor

Q Okay Would you tell us, please, and tell us -- tell us the types of issues that led ultimately, cumulatively to you wanting to leave

A It was a -- it was a combination of almost two years of emotional stress You know, like I said, there were days where the First Lady was a delight to be around, but they were fewer and farther between

Nothing could make her happy The yelling I felt like I couldn't protect the staff Everybody was in a constant state of tension and distress You know, driving to work in the morning, your stomach is in knots Your phone rings and you feel sick It just became intolerable

Q Was it only yelling or was it more than that?

A It was -- it was yelling It was accusations You know, nothing -- like I said nothing, ever was, you know, was ever right

Q Were the --

A It just led to stress

Q Okay Were the accusations, in your view, fair or --

A No

Q -- accurate?

A No

Q Were there exaggerations or false accusations about issues?

A At times I didn't keep a running log So -- you know, I've tried to put that all behind me

Q Well, were there accusations that you felt were untruthful?

A There were -- you know, yes You know, saying that -- I remember getting a text message during the holidays, you know, having to do with the chef serving her bad shrimp and he was doing it intentionally to ruin her holidays Those types of things

Q Well, when she yelled at you, was she yelling at you for good cause or not?

A No I don't believe you ever yell at a staff person

Q Did anyone else in that office yell at anyone?

A No

Q Your offices were in the Mansion itself; is that correct?

A We were on the grounds Not within the house

Q There was a carriage house outside the Mansion?

A Yes

Q Okay And then there's -- and the Governor's Office and the Governor's staff was where in relation to the Mansion?

A In the Patrick Henry Building

Q I'm sorry I didn't hear you

A In the Patrick Henry Building

Q And that was how far away?

A Less than a football field

Q Okay But if there was yelling in the Mansion, essentially, you can't hear it in the Patrick Henry Building; is that right?

A No

Q All right I believe you described to Mr Burck, and to use your words, like a nutbag, in describing to the police or to the investigators Ms McDonnell; is that right?

A Yes

Q And I know you said you didn't think it was appropriate to -- I mean, did you give them the full download of all the reasons why you were really concerned?

A Did I give the Governor?

Q No, not the Governor I know you said you didn't give my client that download

But did you give the agents, when you talked to them, the true reasons, all the true reasons that you had for leaving?

A No

Q Did you tell them about constant blaming others for something that wasn't their fault?

A Yes

Q And did you -- nothing ever being done well enough or good enough to her satisfaction; is that correct?

A Yes

Q All right And you didn't want to be a babysitter?

A Correct

Q Were there other -- other reasons as well, any others that you can think of?

A I was miserable

Q Any other kind of behavior that made you miserable?

A Like I said, I didn't keep a log of instances
Q I don't mean specific
A It was just -- you know, it was -- I didn't feel you could breathe It was just this intense -- I don't know what word to use It was -- it never stopped It's not like you went home at night and you got, you know, to breathe I'd leave the office and the phone calls would start and the text messages would start and -- you know, I was 50 years old I thought, I don't need to live this way
Q So it -- it -- it was incessant Is that a fair --
A Yes
Q -- characterization?
A Yes
Q And your only sanctuary was to go home to your house and turn off the phone?
A Yes
Q Now, with respect to -- I know you've talked about a lot of various events here, Roskamp and Gibson Island and the Mansion lunch and things of that nature
With respect to all those events, did you have any direct discussions with my client about any of them?
A Not that I recall
Q All right And just a miscellaneous thing The chef in the Mansion, that was Chef Todd; is that correct?

A Well, there have been several But yes

Q He was one of the chefs

A He came on a couple of months into the administration

Q All right And do you know when he left?

A I had already gone So I don't know the exact date

Q Do you know why he left?

MS ABER: Objection Relevance

THE COURT: Sustained

BY MR ASBILL:

Q The Virginia study letter, you talked a little bit about that That's Exhibit 617

MR ASBILL: Could you please pull that up for me?

BY MR ASBILL:

Q This is a document that you previously talked about This is the 16th of June 2011; is that correct?

A I'm looking at something from May

Q I'm sorry Take a look at it and just make sure we're talking about the same document

MR ASBILL: 6 -- excuse me 617 is the document, I believe Nope I may be wrong Let me see if I can just do it this way

BY MR ASBILL:

Q There was a Virginia study letter -- I may have the document exhibit wrong -- that you you said you forwarded to -- you forwarded it to Ms McDonnell; is that correct?

A Yes

Q To put in a read folder?

A I forwarded it to her My recollection is I printed it out as well and put it in a read folder

Q Okay This is the one -- I'm sorry

MR ASBILL: It, apparently, is 162 is the exhibit number; is that correct?

MR BURNHAM: It's in evidence

MR ASBILL: It's in evidence, yeah

BY MR ASBILL:

Q This is the one I'm talking about, June 16th, 2011 You get an e-mail from Fulkerson, from Jerri Fulkerson, and then you forward it to Ms McDonnell; is that correct?

A Yes

Q Okay And this is something that you print out and put in a read folder and leave in an elevator of some sort?

A That's my recollection

Q Okay And do you know whether the Governor ever saw it, or if he did, what he did with it?

A I don't know

Q Okay The Homestead event that you talked about, the

yearly event for donors, did you attend that?
A No
Q All right And did you ever talk to my client about it?
A Not that I recall
Q Okay And the 35th wedding anniversary and the Barboursville Vineyard wedding anniversary, you did attend that; is that right?
A Yes I was running the event
Q Okay And at that event, do you recall who sat with the McDonnells at their table?
A The owner of the winery and his -- actually, I don't recall if his wife was there The gentleman is Italian
Q Zonin? Is that the name?
A That sounds correct Justice Scalia, I believe, and his wife, because they were friends of the owner I don't recall who else was at the table
Q Okay You testified a lot about the lunch with the Virginia researchers on the 30th of August --
A Uh-huh
Q -- is that correct?
And you testified a lot this morning -- I don't want to go back over it -- about various talks or discussions that you had with Jonnie Williams and with the First Lady; is that correct?

A Correct

Q And with respect to that event, did you ever talk with my client?

A Leading up to it?

Q Yeah

A No, not that I recall

Q All right And you weren't able to attend it because there were only a certain number of seats, and at some point one of the invitees who had not accepted --

A Who had --

Q -- decided to --

A Show up Uh-huh

Q -- at the last minute, come So your seat got taken away?

A Correct

Q Okay Now, I believe you said, and please correct me if I'm mistaken, that -- that something like that had to be approved by the Governor's Office?

A Well, most events, there was a -- there was a way you did them People would request -- and when I say "people," Cabinet secretaries wanting to host a reception to, you know, honor transportation workers, or whatever the reception might be There was a process

And Sarah Scarbrough, the managing director, usually dealt with keeping track of the requests and then would, you know, work with Martin Kent on approval for the events If it came over from the Governor's Office, you know, then it was just a matter of making the event happen.

Q Okay And if it was an outside event or an event that the First Lady wanted to host, there's some process in place in the Governor's Office to do that?

A Usually we would talk about it in the scheduling meetings or I would -- it really kind of depended on the event

It was a common thing to dc, during the General Assembly, that she would host the legislative spouses That didn't need an approval process That was something that you did And we would put it on the calendar and talk about what we were going to do at the event We tried to make them creative and interesting and --

Q Is it fair to say that there were a lot of events at the Mansion?

A There were a lots of events

Q Okay Now, with respect to that particular event, I believe because Sarah Scarbrough was not present, you had something to do with the invitation?

A Sarah had done the invitations before she left on vacation, and there was an error in the invitation So when I went to get them -- when I had received the guest list to send them out, I couldn't send them by mail So I had to go into the computer to redo the -- to correct the error, and then I could send the invitations by e-mail

Q And in connection with sending out the invitations, did you ever ask my client to -- his approval for putting his name on the invitation?

A No

Q Now, are those invitations that were sent out, the invitation that you actually sent out via the computer that you've just described, is that different in some serious way or is it consistent with other types of invitations to Mansion events that you --

A There was a standard template for invitations Pretty much all you changed was the date and the time and whether it was a reception or a dinner

Q Okay And I believe you said that -- and I think you talked about it in an exhibit, an e-mail to Adam Zubowsky I believe it's Exhibit 204 We don't need to -- if you want to look at it to refresh your recollection, it's in evidence, we can do it

But you indicate to Adam Zubowsky, my client's body man, that a couple of days beforehand, that you wanted -- you want to see if Mr McDonnell can actually attend that event?

A Well, I had done what I normally would do If the

First Lady wanted the Governor to attend something, I'd send it to the scheduler When she came back that it wasn't going to work on his schedule, I responded that the First Lady wasn't going to be happy, which was something the scheduler's office had heard on other occasions And so they worked to correct it

Q Is it fair to say that she wanted him to come to a number of her events?

A Yeah Some of -- well, depending on the event

Q Well, I mean -- okay And so help me here Was the event set up before anyone figures out whether or not Governor McDonnell was available?

A We -- the First Lady had access to the Governor's calendar --

Q Right

A -- where she could look at it, but she couldn't change anything on it So she -- when we looked at the dates, if we were going to select something, it would have been that either the calendar -- that, when we were looking at it, was clear or it appeared to be clear

A the lot of times things weren't scheduled too terribly far in advance

Q All right And how far in advance was this particular event scheduled initially?

A I recall that we were -- the -- the date was selected post the meeting that we had in her office with Mr Williams

Q So that was August 1?

A Yes

Q And the event is August 30th, right?

A Yes

Q So sometime in between the two is when this was scheduled?

A Correct

Q All right And then a couple of days beforehand, the Governor basically initially says, "That doesn't work for me," right?

A Well, he didn't The scheduler said it would not work

Q All right The scheduler said it will not work for him?

A Correct

Q All right And then basically at the last minute, he was able to come for 30 minutes of the event?

A I -- I wasn't in the room so I don't know how long he was there I know he came in and took his seat at the table where he typically sits

Q Someone had told you that?

A I was in the kitchen So the word would have come down that, you know -- we all knew when he was moving

Q I'm sorry You all knew when who was moving?

A I'm sorry When the Governor would leave the Patrick Henry Building, usually someone would -- one of the EPU would let us know 101 is moving And 101 was the term for the Governor So that we knew he was coming into the house

Q Okay And to your knowledge, at that event were there any press folks there at the event?

A Not that I am aware of There were no press invited I don't know if there was someone you would consider press that worked for Star in their job capacity

Q But no press were invited?

A No

Q All right Now, the Cure By Design dinner, I think you've talked about that And let me get up to -- with respect to the issue of nutraceuticals, I believe you testified that Ms McDonnell was very passionate about nutraceuticals?

A Yes She believed that it was a better alternative than, you know, surgery or some prescriptions

Q And do you have any -- do you have any knowledge of whether the Governor shared her passion for nutraceuticals?

A I didn't talk to him about it

Q All right Did you ever get any sense that he did or he didn't or do you know at all?

A I don't know

Q Okay The letter that Mr Burck talked to you about, this is the Dear Diary letter?

A Uh-huh

Q And I believe that's RM-0014-001 If you -- I don't need to get into the weeds on it If you need to have it in front of you, because I want to just ask you a couple of questions

It was dated the 20th of January 2012 Is that an accurate date? Is that when you actually wrote it to yourself?

A I would assume so, but --

Q I mean, that would be your habitual practice, in terms of how you did this diary?

A Well, sometimes they were handwritten It depended I did a lot of Dear God letters when my mother died So --

Q Okay

A -- it depended on -- you know, if the computer was sitting in front of me, I just started doing it

Q All right But you don't have any reason to believe that the date on the letter is not actually when you composed it?

A I didn't even remember the letter until after it got brought up --

Q Okay

A -- during all of this

Q And in general, I mean, you're writing to Jonnie You're writing to Jonnie Williams; is that right?

A Yes

Q And --

A You know, like if you were writing to a boyfriend who wronged you You know, Dear Mark You hurt my heart

You know, people write letters

Q Okay And am I accurate in thinking that -- that you felt wronged by Jonnie Williams?

A Yes I didn't understand why he had -- you know, especially accusing Benedetti & Farris of coming after him for business that they didn't do

Q Okay And this -- this related, going back in time, to when the First Lady found out from Jonnie Williams that you were looking for a new job and possibly looking for one that --

A And I didn't know that he had initially told her

Q You didn't -- you didn't know it And how is it that you found out that he had told her?

A It was admitted later

Q Okay And she confronted you about it?

A Yes

Q And searched through your office and through your desk and through your e-mails and that sort of thing?

A Yes

Q And your communications with Jonnie Williams that were not job related, job Office of the Governor related were on a separate computer or on a separate cell phone; is that correct?

A I had two cell phones I had a state phone and a personal phone Depending on -- I mean, I carried them both at all times So depending on who -- different people used different phones

Q Well, did you communicate often via text or phone with Jonnie Williams on your personal phone?

A Probably

Q Okay

A I mean, I tended to use that one more often That was the number the First Lady used

Q You mean to reach you?

A Yeah

Q To reach you during the day or after hours?

A Oh, at any time

Q At any time Okay And with respect to -- I think you've told us that you don't have any of the texts that you may have exchanged with Jonnie Williams?

A No I mean, I offered the police to search my house if they wanted to I have nothing

Q No I'm talking about, you don't have the phone itself that had the texts on it?

A Right I don't I offered that I said -- the last time I got a -- I was subpoenaed to see if I had the phone, I said, "I don't have it You're welcome to come search I have nothing "

Q Okay And you reference in the letter that you've taken, what, screen shots of some texts and you've saved them in hard copy Is that what you're saying in the letter?

A I'd have to read -- I mean, I remember saying something about printing texts

Q I think it's the third paragraph from the bottom on the second page, 0002 The "She then forced me," that paragraph

A "Every communication you and I had was via text I do have copies of all of them but did not keep them at the office If I had kept those copies in my desk, she would have had quite an eyeful "

Those were referring to the phone calls and late-night texts That type of thing

Q Any other type of complaints that would have given her an eyeful?

A Those are the ones that stand out in my mind

Q You also tell him, I think at the conclusion of the letter, that you kept every confidence that he's ever shared with you; is that correct?

A Actually, the letter doesn't conclude It stops So --

Q Okay The second to the last paragraph on Page 3, last line of that paragraph?

A Yes I did not tell her that he was complaining about her texting him

Q And that's the only type of complaint that he made to you about Ms McDonnell?

A He -- he said something about the -- the First Lady wanted Mr Williams to take she and the Governor on a trip in -- to Bar Harbor, Maine, and at one point he called and he said, "You've got to get me out of this "

And I said, "Just say no "

Q And that's the extent of what you remember about the types of complaints --

A Those are the bases

Q -- complaints that he made?

A I mean, if I had known I was going to be here, I would have paid more attention

Q All right The last paragraph talks about "Even today when you called me" -- or "you called you told me how badly the McDonnells treated you and yet I know you continue to lend your plane "

What did Jonnie Williams tell you about my client treating him badly?

A He just felt used That's what he told me

Q Regardless of whatever issues you may have had -- oh, let me ask you this Just go back to -- to some of the behavior that you described

Would it be fair to say that you felt that Ms McDonnell was very secretive?

A There were times she didn't want other staff people or the public to know things She always used -- she didn't use a state-issued phone She didn't -- she had a state-issued computer but usually used the computer that belonged to the Political Action Committee

Q And regardless of what your issues were with Ms McDonnell, did the Governor ever mistreat you in any way?

A No

Q Did you ever witness him mistreat anyone else?

A No

MR ASBILL: I have no further questions

THE COURT: All right Redirect

REDIRECT EXAMINATION

BY MS ABER:

Q Ms Sutherland, turning your attention back to that day on which you went towards Martin Kent's office and was intercepted by the Governor In that conversation with Mr McDonnell, did he act surprised by your complaints?

A No

Q Did he ask for any clarification?

A Not that I recall

Q Did he indicate that in that time period he wasn't talking to Ms McDonnell?

A No

Q And did Mr McDonnell say he'd take care of it?

A I don't remember that we had any kind of resolution

Q Okay I'd like to now talk about the contract that was sent back and forth And for the jury, it's -- I won't pull it up, but it's RM-1992

Do you know what I'm talking about?

A The proposal from --

Q The proposal

A (Nodding head)

Q In that proposal, it shows a payment of $9,000 a month Is that the amount you would have been paid personally if Benedetti & Farris had contracted with Star Scientific?

A No And that was a starting point for them to have a discussion

Q Before going to work at the Mansion in 2010, you worked at Benedetti & Farris, right?

A Yes

Q Okay I don't want to talk about the specifics of what your salary was, but let's just say it's X before you went to work at the Mansion

When you came to the Mansion, was your salary as a government employee more than X or less than X?

A A little bit more

Q Okay

A Not by much

Q And when you went back to Benedetti & Farris, ultimately, at the end of 2011, how did your salary compare to what was your salary at the Mansion?

A It was a little less

Q And in percentage wise, can we ballpark it? I don't want to make you say your salary, but -- five to ten percent?

A I'm not good with math I was -- I was contracted with them as a consultant -- when I went back to Benedetti & Farris, I went on first as a consultant So I got a project fee And then starting with the new year, I went back to a salary that would have been about 12 to 15,000 less than I was making at the Governor's Office

Q Okay Now, when you went to tell Ms -- or when Ms McDonnell called you into her office in September of

2011 in reference to you seeking employment elsewhere, why had you not previously told Ms McDonnell that you were seeking employment elsewhere?

A Because I didn't want to deal with the hell that would come from it

Q And Mr Asbill made reference to Ms McDonnell searching through your office

Can you tell the jury a little bit more about what Ms McDonnell did that day when she found out you were looking for a job?

A She wanted to search my computer e-mails So I gave her -- she asked for my password So I gave her that And she went through -- I don't know if this was that time or if it had been leading up to that She had gone through my desk and Sarah Scarbrough's desk and taken business cards that we had in our desk drawers

Q Okay Now, coincidentally, do you know how many employees it took the Mansion to replace you, how many women they had to hire?

A I believe they increased the staff by three

Q Now, turning your attention to the diary letter in January of 2012 When you wrote that, how long had you been gone from the Mansion staff?

A Three -- three months

Q Okay And is it fair to say, for the jury's knowledge, that that letter was found on a server belonging to Benedetti & Farris? Do you know that?

A Yes

Q Okay Did you ever send that letter to anybody?

A No

Q And in that letter, there's a reference to text messages that we've been talking about

Why did you not keep copies of those text messages?

A I didn't think it was important

Q In reference to the number of times you've met with the FBI, were some of those meetings about another investigation?

A Yes. The first one was.

Q And fair to say that has to do with potential theft of food from the Mansion by the chef?

A Yes The first meeting was

Q The cell phone on which you were texting Mr Williams during the relative time -- the relevant time, when did you get rid of that phone?

A Prior -- it was when I went back to Benedetti & Farris And I don't remember whether it was November or December But a staff person had left They had -- I got that person's phone I got rid of my old one

Q So that was 2011?

A Late 2011

Q And do you recall the first time that law enforcement ever asked you about a cell phone? Was it after that time?

A Well after

Q Now, you told Mr Asbill, I believe, that you did not tell the FBI every reason why you left the Mansion

Why didn't you do that, and what were we missing?

A They were asking questions, and I was giving them answers So I wasn't going to go into -- it didn't seem to matter to them They weren't pushing for answers on what did she do to you So I didn't offer anything

Q And I want to be fair I don't want to put words in your mouth But we're talking -- the things you didn't tell the FBI were the nitty-gritty of some of the unkind things that happened in the Mansion Is that fair?

A Right It didn't seem pertinent

Q Now, turning your attention to the anniversary party, the McDonnells' anniversary party on July 24th, 2011 Do you know if Mr Williams' wife attended that?

A She did

Q Do you know who paid for that party?

A Originally, it was supposed to be split between the McDonnells and Barboursville And then when, post-event, I called Barboursville to get the invoice, I was told that the owner of the winery was going to pick up the entire tab

Q I'd like to show you Government Exhibit 190, please, that's already in evidence This meeting with Jonnie Williams on August 1st, did you contact Dr Bill Hazel and direct him to have someone come to this meeting?

A No

Q Did Ms McDonnell say anything to you about asking Mr Williams for a Rolex in relation to this meeting?

A No

MS ABER: Thank you, Ms. Taylor

BY MS ABER:

Q Did Jonnie Williams ever give you any cash?

A No

Q Did he ever give you any loans?

A No

Q Did you ever ask him for either of those things?

A Absolutely not

Q And finally, when, again, did you leave employment at the Mansion?

A October of 2011

MS ABER: Thank you I have no further questions

THE COURT: All right You may stand down, ma'am Thank you very much

(Witness stood aside)

THE COURT: I think we'll go ahead and stop there

All right We are going to adjourn for the day I've got two things on the schedule for tomorrow So let's -- let's make it 9:45 9:45 And please be on time All right

All right Don't let anybody discuss the case with you and continue, as you have been, not reviewing any media items, newspaper, radio, television All right We'll see you in the morning on time

(The jury left the courtroom)

THE COURT: All right We'll be back --

MR DRY: Judge, I have just one thing

THE COURT: Yes

MR DRY: Your Honor, the government noticed that at the break of Ms Sutherland's testimony, right after Mr Burck began -- or finished his cross-examination and Mr Asbill began his, Mr McDonnell went out in the hallway, gave Ms Sutherland a hug and had some kind of conversation with her We don't know what that was But obviously, he shouldn't be having contact with witnesses at all, much less while she's still on the stand

THE COURT: All right

Mr Asbill, please talk to your client If that happened, don't let it happen again

MR ASBILL: Yes, sir

THE COURT: All right Thank you

(The trial adjourned at 5:06 p m)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G McDONNELL,

Defendants

August 7, 2014
Richmond, Virginia
9:35 a.m.

JURY TRIAL - VOLUME IX

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ
DAVID V HARBACH, II, ESQ.
JESSICA D. ABER, ESQ.
RYAN S FAULCONER, ESQ.
Counsel for Government;

JOHN L. BROWNLEE, ESQ.
HENRY W ASBILL, ESQ.
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Counsel for Maureen G McDonnell

JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell The United States is represented by Mr Michael Dry, Ms Jessica Aber, Mr David Harbach, II and Mr Ryan Faulconer Robert F McDonnell is represented by Mr John Brownlee, Mr Daniel Small, Mr Henry Asbill, Mr James Burnham and Mr Christopher Iaquinto. Maureen G. McDonnell is represented by Ms Heather Martin, Mr William Burck, Mr Stephen Hauss, and Mr Daniel Koffmann. Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed.

MR. ASBILL: Your Honor, Mr McDonnell is ready to proceed, but I'd like to make one comment before the jury comes out

THE COURT: All right

MR. ASBILL: You asked me at the end of the day yesterday, I believe the jury had been excused, when Mr Dry made some representations about my client's conduct outside of the courtroom during the break. I've investigated that and I don't believe my client did anything at all improper, but I've addressed it and I want that to be clear on the record in this case

THE COURT: I appreciate your opinion, regarding whether it was improper or not But what I told you to do is speak with him and make sure that it doesn't happen again.

MR. ASBILL: I did.

THE COURT: Okay So we are clear

MR. BURCK: Maureen McDonnell is ready, Your Honor

THE COURT: All right

THE COURT: All right, let's bring in the jury

(The jury entered the courtroom.)

All right, good morning Government, call your next witness, please?

MR. FAULCONER: The United States calls Sarah Scarbrough.

SARAH SCARBROUGH,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FAULCONER:

Q Good morning

A Good morning

Q Could you please state your name and spell your last name for the court reporter?

A Sure Sarah Scarbrough, S-C-A-R-B-R-O-U-G-H.

Q And what city do you currently live in?

A Chesterfield, Virginia.

Q What sort of educational background do you have?

A I have my Ph.D from VCU.

Q What about undergraduate?

A Undergraduate from UVA-Wise, and my Master's also from VCU.

Q You said you have your Ph.D Do you go by Dr Scarbrough?

A Sure

Q We have had some others

A Okay

Q Where are you currently employed?

A At the Richmond Sheriff's Office

Q Where did you work before that?

A At the Governor's Mansion.

Q And who was Governor while you worked at the Governor's Mansion?

A Bob McDonnell

Q About how long did you work there?

A Three-and-a-half years

Q Was that from the beginning of the term until sometime in August of 2013?

A Yes

Q Now, before you started working there, did you actually know the McDonnells?

A I did.

Q Did you know their daughter, Cailin McDonnell?

A Yes

Q Is Cailin McDonnell actually a personal friend of yours?

A Yes

Q Was she before you ever worked in the Administration?

A Yes

Q So is testifying here today a pleasant experience for you?

A Not at all

Q Now, Dr Scarbrough, when you worked at the Mansion, were you a state employee?

A Yes, I was.

Q Did you get your salary from state funds?

A Yes

Q Now, as Mansion Director, could you describe for the members of the jury what your job responsibilities were?

A Sure The bulk of my job was actually event planning We had a number of events at the Mansion, every day and every week, actually, so that was the bulk of it But I was in charge of overseeing the budget, coordinating some things with the First Lady's schedule in her events, as well as overseeing and working with the Board that helps the Mansion in dealing with the history as well as being a spokesperson for the Mansion and the contents there

Q And who else worked at the Mansion while you were there?

A At the beginning, it was myself, the First Lady's Chief of Staff, Mary-Shea Sutherland. We had a butler, a housekeeper, and an assistant, and a chef as well And then that changed a little bit once Mary-Shea left and that position went into a senior aide position and the others remained the same

Q And when Mary-Shea Sutherland was there, who did you report to?

A To her directly

Q After she left, who did you report to?

A To Martin Kent, the Governor's Chief of Staff

Q Regardless of who you directly reported to, who was your ultimate boss?

A The Governor

Q So if Mr McDonnell told you to do something, would you do it?

A If it was legal, yes.

Q Now, Dr Scarbrough, could you tell us how often you interacted with Ms Sutherland when she was Chief of Staff for the First Lady and you reported to her?

A Daily

Q What kind of person was she to work for?

A I enjoyed working for her and with her She was very personable, very professional She was always available to lend support or advice if I had a question, to help me out when I needed it

Q Did she ever ask you to hide anything?

A No.

Q Did she ever ask you to do anything deceitful?

A No.

Q Dr Scarbrough, as Mansion Director, could you tell us whether you saw the McDonnells, Mr McDonnell and Ms McDonnell, interact with each other quite a bit?

A I did.

Q Did you see them together at events that would be at the Mansion?

A Yes.

Q Did you see them together outside of events, formal events at the Mansion?

A Yes.

Q About how often would you say that they, for example, had dinner together?

A A couple times a month at least, I would say

Q Was there a decent amount of family time spent together amongst them?

A Certainly not as much as most people have. The

Governor was gone a lot But he made time for his family and his wife.

Q Now, based on what you saw of Mr McDonnell's interactions with his wife, could you tell us how you would describe their interactions with each other?

A They seemed like a very happy, in-love couple

Q Do you recall having previously described them as Mr McDonnell worshipping the ground Maureen walked on?

A Yes

Q Dr Scarbrough, could you tell us whether you ever saw them be affectionate in public towards each other?

A I did.

Q Dr Scarbrough, I'd like to shift now to a little bit about more detail about what your job entailed on a day-to-day basis

A Okay

Q Based on your interactions with Mr McDonnell, as his Mansion Director, and what he told you to do, could you tell us where on his Administration's list of priorities the matter of Virginia business and economic development was?

A It was one of the most important priorities, I believe

Q How common was it for him to talk about business and economic development in Virginia?

A Very, very common.

Q You said earlier that one of your jobs as Mansion Director was to coordinate and plan events, right?

A Correct

Q How customary was it for those events to relate in some way to business and economic development in Virginia?

A Very common.

Q Now, how common was it for Mr McDonnell to attend events?

A Very common.

Q How about other government officials?

A Also very common.

Q Other businesspeople?

A Common as well

Q Now, so based on your experience, was hosting and attending events a customary part of the Governor's position?

A Yes.

Q And in fact, did you actually keep a list of events as part of your job of all the events that would happen at the Mansion?

A I did.

MR. FAULCONER: If we could pull up for identification what's been marked as Exhibit 511

BY MR. FAULCONER:

Q If we could just blow up the e-mail at the top there Dr Scarbrough, is this a list of Mansion events from 2010 to 2013?

A Yes.

Q I guess it is an e-mail with you forwarding that along; is that right?

A Correct

Q Have you had a chance to review this before you came into Court to testify?

A I did.

MR. FAULCONER: We would offer Exhibit 511 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, if we could just flip to the first page of the attachment I guess it goes on for a number of pages; is that right?

A Yes, sir

Q But this lists the date, the event, the attendees, the payer Sorry, if we could just stick on the first page The date, the event, the attendees, who paid, and the number of attendees; is that right?

A That's correct

Q Now, if we show show you what's been marked for identification as Exhibit 512 Zoom in on the top there

Dr Scarbrough, is this an e-mail from you to Tucker Martin and Jeff Caldwell on April 11th, 2013?

A Yes, it is

Q Is this attaching a smaller subset list of Mansion events?

A Yes.

MR. FAULCONER: We would offer Exhibit 512 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Dr Scarbrough, this event list, if we could skip to the first page of the attachment Now, could you describe what sort of smaller subset this list is as compared to the full list of Mansion events we saw a moment ago?

A This is a list of the events we hosted that were for Virginia businesses or non-profits

Q We can take that down. Now, Dr Scarbrough, I'm assuming these events don't happen just sort of snap of the finger

A No

Q Could you describe what exactly the process is for you to get one of these off the ground and make it happen?

A Sure All of the events that we hosted at the Mansion actually had to be approved by the Governor and the Governor's Chief of Staff Once we got the approval, I would work with the Governor's scheduler to confirm a date that would work for the Mansion as well as the Governor's calendar and the First Lady's as well Then we would work on the invitation list, which often took some time to make sure we didn't leave anybody off Invitations would go out, we would manage all of the RSVP's and in the meantime work with the chef to develop a menu and order flowers or whatever else was needed for the event And then we would have the event

Q When you are doing all that, are you on official time?

A Yes

Q Now, can a private person just call you up, the Mansion Director, and say, "Hey, I want to have my event at the Mansion, give me a date"?

A No.

Q So there is a formal process

A Yes.

Q Now, you have said a little bit about events related to organizations and businesses being something that's common, right?

A Right

Q Now, can you tell us how typical it was for events to be about a single product rather than about business or industry more generally?

A It wasn't very common. It was generally about an industry

Q Now, I'd like to shift attention a little bit to Jonnie Williams

A Okay

Q Do you recall how you first heard about Mr Williams?

A I believe it was by either the First Lady or Ms Sutherland

Q And the first time that you heard the First Lady, Ms McDonnell, talk about Mr Williams, can you tell us how she described him?

A She just really described Anatabloc, his product, and not necessarily him as a person.

Q Do you ever recall at the time she first talked about Mr Williams Ms McDonnell describing Mr Williams as a longtime family friend?

A No, I don't

Q At any time, before the investigation broke at least, did you hear Ms McDonnell describe Mr Williams as a longtime family friend?

A No.

MR. BROWNLEE: Objection, Your Honor, asked and answered.

THE COURT: Overruled.

BY MR. FAULCONER:

Q At any time, not just the first conversation, but at any time after that, before the investigation broke, did you ever hear Ms McDonnell describe Mr Williams as a longtime family friend?

A No

Q Did you ever hear Mr McDonnell describe him that way?

A No.

Q Now, do you recall having previously told law enforcement that it seemed to you like there was an ulterior motive on Mr Williams' part?

A I do recall

Q Just to be clear, when you said that, did you mean ulterior romantic motive or business motive?

MR. BROWNLEE: Objection, leading

THE COURT: Overruled.

BY MR. FAULCONER:

Q Sorry When you previously said ulterior motive on Mr Williams' part, did you mean ulterior romantic motive or business motive?

A Business motive

Q Now, you have said, I think earlier, that you have seen sort of affection in public between Mr and Ms McDonnell

A Correct.

Q Give us just a brief example of that

A Typically, when they were at events with one another, the Governor might give her a kiss on the cheek or put his arm around her, or if he was introducing her, say something very nice and sweet about her

Q Did anything about what he was doing in those circumstances seem fake or inauthentic to you?

A No

Q Compared to that, did you ever see Ms McDonnell and Mr Williams be affectionate to each other in public?

A No.

Q All right I'd like to show you what's been marked for identification as Exhibit 104 Dr Scarbrough, do you recognize this as an Outlook entry?

A I do

Q What's the subject for this particular entry? This has already been admitted.

A "Dinner with Jonnie and Celeste Williams "

Q Does that appear to have a Word document attached to it?

A It does

Q If we could flip to the attachment, the second page. Could you tell us what type of document this is?

A This is a briefing document that was done before all events and functions at the Mansion.

Q And who typically puts these together?

A I did.

Q Now, do you see there where it says, "Owner/Contact: Sarah Scarbrough"?

A Yes

Q What does that mean?

A That means that I was the person to coordinate from the Mansion, and typically that I am the on-site contact if something comes up and somebody needs to be contacted.

Q Does that mean it was your idea to have this event?

A No.

Q Down below under "Additional Information" where it says, "Per FLOVA request," can you tell us why you wrote that there?

A Because it was Ms McDonnell who requested to have this dinner

Q All right Now, we can take that down. Earlier in the trial we have heard a little bit about a shopping trip to New York City in April of 2011 Did you know about that shopping trip with Ms McDonnell and Mr Williams when it happened?

A No.

Q Did you learn about it after it happened?

A Yes

Q Who did you learn about it from?

A Mary-Shea had mentioned it

Q What was the tone of Mary-Shea's voice when she described it to you?

A Kind of a shocking

Q Before the investigation became public, did Ms McDonnell ever mention anything about that shopping trip to you?

A No

Q Did Mr McDonnell?

A No.

Q We have also heard some testimony about what are called Statements of Economic Interests Do you know what that is?

A I do.

Q And when you were working at the Mansion, did the First Lady, Ms McDonnell, fill out a Statement of Economic Interests, to your knowledge?

A I don't believe so

Q But did you track gifts that came in for her at the Mansion?

A For about a year-and-a-half I did.

Q And if I could show you what's been marked for identification as Exhibit 272 Zooming in on the top here, is this an e-mail from you to Kristen Kaplan and Kathleen Scott?

A Yes, it is

Q Who are Kristen Kaplan and Kathleen Scott?

A Kristen Kaplan was the First Lady's senior aide and Kathy Scott was an assistant

Q Are these two of the people that helped replace Mary-Shea Sutherland?

A They are.

Q Is this dated December 19th, 2011?

A It is

MR. FAULCONER: Your Honor, we would offer Exhibit 272 into evidence.

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, Dr Scarbrough, could you tell us what this e-mail and its attachments are?

A The e-mail is from Kristen asking if I would send her the gift log that I had been compiling, and so I responded and attached the gift logs

Q Now, if we could turn to the last page of this document If we could zoom in on the second row there Do you see there in what's sort of the far right column, is that the To column?

A Yes

Q Who is listed in who that gift is to?

A The Governor and First Lady

Q What does that mean when you would put it on a log?

A That is who the gift was intended to be for

Q We can take that down. Now, Dr Scarbrough, could you tell the jury a little bit about what Ms McDonnell's reaction was -- first off, did she know that you were tracking gifts when you were doing it?

A Yes

Q What was her reaction to that?

A She was not pleased.

Q Could you describe that a little bit?

A She did not think that she needed to report any gifts because she was not an official state employee, so she was not happy when it was discussed that I was tracking them.

Q Now, in the April to June time frame of 2011, were you aware that Cailin McDonnell was getting married?

A I was

Q And where was the wedding reception held?

A It was at the Mansion.

Q Do you know who did the catering for the reception?

A Yes

Q Who was that?

A Great Seasons Catering

Q Is that a catering company related to the chef that was working at the Mansion?

A Yes. He owned it

Q If I could show you what's been marked for identification as Exhibit 147 Dr Scarbrough, is this an e-mail that you sent from your state government account?

A Yes

Q It is an e-mail to Cailin McDonnell and her then fiance', Christopher Young?

A Yes

Q Is this a conversation about you tracking expenses as part of your job?

A Yes

MR. FAULCONER: We would offer Exhibit 147 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now. Dr Scarbrough, if we could go to the bottom e-mail in this chain The first e-mail that starts this chain, who sent that e-mail?

MR. BROWNLEE: Could we approach?

THE COURT: Come on up

(At Bench.)

MR. BROWNLEE: Lead counsel at this point is going to get into a bunch of stuff with the children and wedding gifts and things like that I don't see how this is relevant to anything to do with Jonnie Williams Now, what they are going to try to show is that young woman knew about the wedding There is a small piece of it that relates to Williams, and the rest of it just seems excessive

MR. FAULCONER: I plan to ask about one thing and one thing only: Who was going to pay for it

THE COURT: The objection is overruled.

(In Open Court)

BY MR. FAULCONER:

Q All right Dr Scarbrough, if you could, could you just read the last paragraph of this e-mail that we are looking at that you wrote to Cailin McDonnell and Christopher Young?

MR. BROWNLEE: Objection The jury can read it

THE COURT: Overruled

BY MR. FAULCONER:

Q Go ahead and read the last paragraph.

A "The most important one, I think, will be your parents' check for the catering That's a huge chunk and it will eventually come out that it is Todd's company We are trying to keep it quiet and not release right now But if it comes up, then we think they will want to see proof of payment by family and not state "

Q Dr Scarbrough, why did you write "parents' check" there in that sentence?

A I was under the impression that Mr and Ms McDonnell would be paying for the catering

Q Was that based on conversations with Cailin McDonnell?

A Yes

Q Now, after the investigation broke, did you have a conversation -- that is, in the media -- did you have a subsequent conversation with Cailin McDonnell about the payment for the catering?

A A brief one, yes

Q What did she tell you after the investigation broke?

MR. BROWNLEE: Objection, hearsay

THE COURT: Overruled.

BY MR. FAULCONER:

Q What did she tell you after the investigation broke?

A She said that Jonnie was a friend who was giving them a wedding present

Q Had she ever said that before the investigation broke?

A No.

Q In response to this e-mail that you sent, did you ever get any sort of e-mail saying, "No, it is not my parents' check, it is my check"?

A No

Q We can take that down. Dr Scarbrough, before the investigation went public, but after the wedding itself, were you aware that Mr Williams had paid part of that money for the wedding?

A Yes

Q Who told you about it?

A Mary-Shea

Q And was this before or after the wedding?

A It was after the wedding

Q When she told you, could you describe sort of the tone or demeanor of what she was telling you?

A She was surprised that it had happened.

Q Before the investigation became public, did Ms. McDonnell ever tell you anything about that check coming from Mr Williams?

A No.

Q How about, sorry, I forget which one I asked, Ms or Mr , but did either of them say anything to you?

A No, neither of them did.

Q Now, at some point during the summer of 2011, do you recall whether Ms. McDonnell ever told you anything about Star Scientific's stock?

A No

Q Sorry, do you recall whether Maureen McDonnell ever mentioned anything to you about stock relating to her daughter, Cailin?

A Oh, yes, I'm sorry

Q Could you describe what you remember Ms McDonnell saying about stock to you?

A She had said that she had purchased some stock and was going to gift it to her daughter for her wedding

Q Did she ever say what type of stock that was?

A Star Scientific

Q Now, did she say that she herself had stock or that she was going to give it to her daughter, Cailin?

A She had said she bought it and was going to gift it to her daughter

Q Did she ever tell you she actually gave it to Cailin during that year at all?

A No, that was the first and last conversation about it

Q Did she ever tell you anything about selling it and repurchasing it, anything like that?

A No.

Q All right Now, just since we are sort of in this point in the timeline, in the summer of 2011, so May-June time frame, or at any time before the investigation went public, were you aware of Mr Williams writing a $50,000 check to the McDonnells in May of 2011?

A No.

Q Back in May of 2011, were you aware that Mr McDonnell and his sons played golf on Mr Williams' tab at Kinloch Golf Course shortly before Cailin McDonnell's wedding?

A No

Q Later that summer, were you aware that Mr and Ms McDonnell drove Mr Williams' Ferrari back from Smith Mountain Lake after a vacation?

A Yes

Q How did you become aware of that?

A People in the Mansion who had seen it were talking about it

Q Was the conversation "This seems totally normal" or "This is surprising"?

A Surprising

Q Could you describe why that was?

A Because typically the Governor, whoever it was, didn't drive anywhere during his term. He has a security detail who would drive him.

Q And during this time frame, were you ever aware of a Rolex being purchased by Mr Williams for either of the McDonnells?

A No.

Q All right I'd like to shift now to the end of August, 2011

A Okay

Q I'd like to show you what's been marked for identification as Exhibit 218 Dr Scarbrough, is this another Event Briefing Form for the Mansion?

A It is

Q Do you recognize what information this is for?

A Yes

Q Is this the lunch related to Star Scientific at the end of August?

A Yes

MR. FAULCONER: We would offer Exhibit 218 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Looking at this document, who is listed under Owner/Contact?

A Myself, Mary-Shea, Tutti, the butler, and Todd, the chef

Q Why are you listed there again?

A Because it was my job to coordinate events at the Mansion.

Q Does that mean it was your idea?

A No.

Q How about the butler? Was it his idea to have this event?

A No.

Q Now, could you read who is listed in the

"Participants" field of this document?

A Sure "Researchers and doctors to discuss the latest information on the anatabine, a by-product of the tobacco plant, and two studies that UVA and VCU Medical will conduct "

Q When an Event Briefing Form like this would be put together, would it be sent over to the Governor's staff?

A Yes. If he was involved.

Q And is his name listed there from 12:30 to 1:30 under "Event Time"?

A Yes

Q What was your understanding of what would happen after the form would go over to the Governor's staff?

A It would then be attached to his calendar, and then a copy of it would be printed for his briefing book.

Q Have you actually seen him carrying that briefing book around before?

A Yes

Q Now, Dr Scarbrough, stepping away from what's on the form, can you tell us how you first learned about this event at the Mansion at the end of August, 2011?

A It was either Mary-Shea or Ms McDonnell who notified me of it happening

Q Did you actually, did you have personal in-person conversations with both Mary-Shea Sutherland and

Ms McDonnell about this event?

A I did.

Q Focusing on your conversations with Ms McDonnell, can you tell us what you remember her saying about the event when you talked about it with her?

A She had said that it was an event for Jonnie and for Anatabloc

Q And do you recall whether she ever said anything about the event being related to the launch of Anatabloc?

A Yes

Q What did she say?

A That it was to launch Anatabloc

Q Do you ever recall any conversation about whether the event had anything to do with encouraging universities to do research on the product?

A Not initially at the beginning, but when it got closer to the event, yes

Q Do you recall Ms McDonnell telling you that?

A Yes.

Q Now, can you tell us whether or not you were -- were you actually there in sort of the lead-up to when the event was actually held at the end of August?

A No

Q Why is that?

A Typically, it would have been pretty much me planning the whole thing But about a week-and-a-half prior to the event was my family vacation, so I was gone and so Mary-Shea pretty much took the reins and planned it in my absence

Q Now, had you not been on vacation, would you have participated in the planning of this event?

A Yes

Q Was it Mary-Shea that told you to take the vacation?

A No.

Q Now, if I could show you what's been marked for identification as Exhibit 630 Now, Dr Scarbrough, is this an e-mail exchange between you and someone named Katherine Harris?

A Yes

Q Who was Katherine Harris?

A She was the Governor's scheduler

Q Is this discussing that event at the Mansion related to Star Scientific?

A It is

MR. FAULCONER: We would offer Exhibit 630 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Just focusing on the last e-mail, the third one down, actually, sorry, one up from that, could you read what you say in that e-mail, August 15th, 2011, to Katherine Harris?

A "That's the lunch MM is hosting for Jonnie Williams that Mary-Shea mentioned to you."

Q And who does "MM" refer to there?

A Maureen McDonnell

Q From looking at this e-mail, from your perspective, whose idea was the event in terms of who was actually hosting it?

A Ms McDonnell

Q I'd like to show you another exhibit that's been marked for identification.

MR. FAULCONER: I think this has already been admitted, Your Honor I apologize Exhibit 219 If we could publish that to the jury

BY MR. FAULCONER:

Q Dr Scarbrough, is this an e-mail exchange between you, an individual named Emily Rabbitt, and also at points in the e-mail, Mary-Shea Sutherland?

A It is

Q Is this the day before the event at the Mansion?

A It is

MR. FAULCONER: We would offer Exhibit 219 into evidence.

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q If we could scroll down. All right Now, at the very bottom of this e-mail thread, this very bottom e-mail, it looks like it is from you, right?

A Correct

Q If we could go to the second page Do you see there the e-mail is to Emily Rabbitt and Mary-Shea Sutherland? Who is Emily Rabbitt?

A She was -- worked in scheduling for the Governor

Q Do you see there where you are talking about the event and you say, "That's Mary-Shea's deal"; do you see that there?

A I do.

Q Could you describe for us what you actually mean when you say that there?

A She was the one planning it from the side of the Mansion, so doing all coordination in my absence

Q Had you been the one doing the planning instead, would it have been accurate to say, "That's Sarah Scarbrough's deal"?

A Yes

Q When you wrote this, did you mean the event was Mary-Shea's idea or Mary-Shea's event of any kind?

A No, I just meant she was planning it from the Mansion angle

Q If we could take that down. Now, Dr Scarbrough, did you attend any portion of the event?
A I did.
Q Was it the whole thing or just part of it?
A Just part of it
Q Which part?
A The very beginning when people got there, I was at the door and greeted folks as they got in.
Q After that, what did you do during the remainder of it?
A Went downstairs to where my office was
Q Now, when the event was sort of starting, before people arrived, did you see how things were being set up?
A I did.
Q Could you describe how the table was set up for the event?
A The table is set up like how we have any -- how we had any formal sit-down event at the Mansion. Very nice, very elegant. There was a little bit of difference there in that there was Anatabloc placed in front of each place setting at the event
Q What do you mean when you say that was different?
A We hadn't placed any products in front of people's plates before like that
Q Now, did you see who was actually putting the

products in front of each place setting when it was being set up?

A Yes

Q Who was that?

A Ms McDonnell and Jonnie Williams

Q Was Ms Sutherland doing that?

A No.

Q Now, Dr Scarbrough, from what you could see as it was being set up, did it seem like a product launch to you?

A Yes

Q Now. earlier we talked about all the events at the Mansion and we saw that long list, we sort of scrolled through it Based on your experience as the Mansion Director, comparing that list to this event, did this seem like a typical Mansion event to you?

A No.

Q Do you remember how this event was paid for?

A Ultimately, the Governor's PAC ended up paying for it

Q And PAC, that's the political action committee?

A Yes

Q Do you recall whether that decision was made before or after the event?

A I believe it was after the event

Q And who told you how the event should be paid for, to your recollection?

A I don't exactly recall It would have either been the First Lady, Mary-Shea, or Martin Kent, though.

Q Did you ever talk to Mr McDonnell or Ms. McDonnell about how that event was going to be paid for?

A I did not talk to Mr McDonnell about it But I don't recall Ms

Q Just to be clear, Dr Scarbrough, when the PAC pays for an event, does that mean that you get a check for the work you did from the PAC?

A No

Q Now, it may sound sort of obvious to ask, but are you aware of any steps that were taken in the planning process to inform anyone at the event that the PAC was paying for the event?

A No

Q And from what you could see at the event itself, I understand that the conversation wasn't until after, but from what you could see of the event itself, was there anything saying that isn't an official government event to any of the people who were attending?

A No

Q I'd like to shift topics to an event at the Mansion in February of 2012 Do you recall an event at the end of

February, 2012, described as the Healthcare Leaders Reception?

A Yes

Q Could you tell us what that event was for the jury?

A Sure It was an event for Healthcare Leaders from around the state

Q Was this a regular event or something that only happened once?

A It was a regular event

Q Now, if I could show you what's been marked as Exhibit 344 Zooming in at the top there, is that an e-mail from Katherine Harris?

A Yes

Q Can you tell us what type of e-mail this is?

A This was the Governor's daily schedule

Q Did you typically receive a copy of this when it came out?

A Sometimes I did, sometimes I didn't

Q If there was an event at the Mansion on the schedule, would you typically receive it?

A Yes

MR FAULCONER: We would offer Exhibit 344 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Dr Scarbrough, is this the schedule for February 29th, 2012?

A Yes

Q If we could zoom out for a moment and then focus in on the meeting from 1:30 to 1:55 p m. Do you see that meeting there with Jonnie Williams, PHB, Governor's conference room?

A Yes

Q Did you have any idea what this meeting was about?

A No

Q It says "Healthcare Group Leaders Reception." Who was planning the reception?

A I was

Q Did you attend this meeting?

A I did not

Q Is February 29th, is that consistent with your recollection of when the event was held?

A Yes

Q All right I'd like to back up and sort of walk the jury a little bit through the job that you did on this event and sort of how it got planned.

A Okay

Q Is it fair to say that it was a little complicated in terms of the number of lists that went back and forth?

A Yes

Q Have you reviewed a lot of lists before preparing for your testimony today?

A Yes

Q All right So I'd like to walk through those with the Judge's and the jurors' patience a little bit If I could show you what's been marked for identification as Exhibit 294 Dr Scarbrough, who is this an e-mail from?

A Elaina Schramm.

Q Who is it addressed to?

A To me

Q Is the date on it January 24th, 2012?

A It is

Q And does this pertain to the Healthcare Leaders Reception?

A Yes.

MR. FAULCONER: We would offer Exhibit 294 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, Dr Scarbrough, can you explain to us what this particular list was that was sent about a month plus a little more before the event?

A This is the list of people that Dr Hazel would like to invite to the Healthcare Leaders event

Q Is this, at least based on your review, sort of the first list that you got on the Mansion side?

A Yes

Q All right Now, if we could just turn to the first page of the attachment of that document briefly Is this sort of, we won't zoom in or look at any specific one, but are these the list of names that you recall getting?

A Yes

Q Have you had a chance to review this list and compare it to some of the other lists we are going to look at?

A I have.

Q If I could show you what's been marked for identification as Exhibit 300 Dr Scarbrough, is this an e-mail from you?

A Yes

Q And who is it addressed to?

A To Ms McDonnell

Q What is the date of it?

A It is Saturday, February 4th.

Q And is it attaching that same list that we were just looking at that you got from Elaina Schramm?

A Yes

MR. FAULCONER: We would offer Exhibit 300 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, Dr Scarbrough, can you explain to us why you sent that list of names that you had gotten from Elaina Schramm over at Dr Hazel's office to Maureen McDonnell on a Saturday afternoon?

A Most likely because she requested it

Q Now, if I could show you what's been marked for identification, actually, hang on one moment Can you tell us whether you recall discussing her potentially adding names to this list for this event with Ms McDonnell?

A We did.

Q Could you describe that conversation to the members of the jury?

A She simply said that she had some names she would like me to add and she would get those to me and ask if invitations would be sent out to those people

Q After having that conversation with her, did you receive some names from her via e-mail?

A I did.

Q Do you recall having any conversations with Mr McDonnell about adding names to the list for this event?

A Yes

Q Could you describe that to the members of the jury?

A He reviewed the list, as he typically does, and looked and asked me to add a few people that we had missed.

Q Now, Dr Scarbrough, I'd like to show you what's been marked as Exhibit 304 Zooming in on this document, is this an e-mail from Maureen McDonnell to you?

A It is

Q What's the date on it?

A February 7th.

Q And is this attaching names to add to that particular event?

A Yes.

MR. FAULCONER: We would offer Exhibit 304 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, Dr Scarbrough, could you just read the one line of this e-mail?

A Sure "Please add these docs to the Healthcare Leaders event and mail invites today Thanks "

Q Now, if we could turn to the first page of the attachment, and if we could just zoom in on the first five rows there Dr Scarbrough, and actually, scroll down just one more row Dr Scarbrough, have you had a chance to compare this list to the original list that you got from Elaina Schramm?

A Yes

Q And was the name George Vetrovec on the original list that you received from Health and Human Services?

A I do not believe so.

Q How about Antonio Abbate?

A I don't think so.

Q If we could go to the second page Zoom in on the portion that sort of is out of the normal spreadsheet format Do you recall whether Dr Michael Mullan from the Roskamp Institute was on the original list that you got from Health and Human Resources?

A No, he was not

Q How about Dr Paul Ladenson from Johns Hopkins?

A No.

Q And how about Dr John Clore from VCU Medical Center?

A No.

Q All right Now, if we could pull up what's been marked for identification as Exhibit 299 Dr Scarbrough, is this an e-mail to Maureen McDonnell?

A It is

Q And have you had a chance to review it and its attachments and compare them to some of the other lists that you have looked at?

A Yes

MR. FAULCONER: We would offer Exhibit 299 into

evidence. Its authenticity has been stipulated to

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q All right Now, Dr Scarbrough, this e-mail is February 3rd, 2012 Just to orient us in time, is that the day before Ms McDonnell forwarded you the list of names?

A Yes

Q And were you on this e-mail exchange with Caroline Birgmann?

A No

Q Do you even know who she is?

A No.

Q Now, if we could turn to the attachment on this list Just zoom in on the names and e-mail addresses there Dr Scarbrough, have you had an opportunity to compare this list of names to the list of names that Ms McDonnell forwarded to you?

A Yes.

Q Are some of these names on that list that she forwarded to you?

A Yes

Q About, ballpark, could you tell us about how many there are?

A Probably 15 to 20

Q Now, if I could show you what's been marked for identification --

MR. FAULCONER: Actually, it has already been admitted, Your Honor, Exhibit 217

BY MR. FAULCONER:

Q Dr Scarbrough, have you had a chance to review this e-mail and its attachment before coming in to testify?

A Yes.

Q If we could turn to the attachment page Have you had a chance to compare this attachment to the list of attendees that you had for the lunch event at the end of August, 2011?

A Yes

Q Does this appear to coincide at least roughly with who attended that event in August?

A Yes.

Q Are some of these names from this list on the list that Ms McDonnell forwarded to you in February of 2012 for the Healthcare Leaders Reception?

A Yes.

Q All right If we could take that down. Now, I'd like to show you -- we are almost through the list, Your Honor, I apologize -- what's been marked for identification as Exhibit 629 Dr Scarbrough, is this a list of about 30 pages or so of names of doctors and contact information?

A It appears so

Q Have you had a chance, if we could just flip through it a little bit, have you had a chance to review this list?

A I have

Q And is there some handwriting on this document that you recognize as belonging to either of the defendants?

A Yes

MR. FAULCONER: We would offer Exhibit 629 into evidence.

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q If we could turn, is this the second page of this document?

A Yes

Q Now, looking at this document, does this document match that e-mail we were just looking at that related to the reception at the end of August, 2011?

A Yes

Q And do you recognize any of the handwriting on this document?

A The handwriting at the bottom, the one that says "south river," it looks like Mary-Shea's handwriting

Q Zooming back out, are you actually able to recognize any of the other handwriting on this page?

A No

Q If we could flip forward just to the next page Do you see there the list of doctors, Mullan, Ladenson, Derco, Clore, and Beach?

A I do.

Q Does that appear to be in the same format as the same list of names that ended up on the list that was forwarded to you?

A Yes

Q If we could flip through the next couple of pages, and then if we could go to Page 21 Now, the whole subsequent list of pages, what's on the remaining 20 or so pages of that document?

A Doctors.

Q Are some of the names circled as you go through?

A Yes

Q Have you compared those circled names to the list you got from Ms McDonnell?

A There's similarities in them.

Q Are some of the circled names on the list that you got from Ms McDonnell?

A Yes

Q Zooming in on the handwriting that we have here, could you tell us if you recognize the first word there that's written as "Chief"?

A Yes

Q Whose handwriting is that?

A Ms McDonnell's

Q Now, immediately below it, the next three lines, do you recognize whose handwriting that is?

A Yes

Q Whose handwriting is the next three lines below Ms McDonnell's handwriting?

A The Governor's

Q What about right below his, the next three where it says, "VCU, UVA, EVMS"?

A Ms McDonnell

Q What about right before that, the remaining four lines?

A Ms McDonnell, also.

Q I'd like to show you what's been marked for identification as Exhibit 306 Dr Scarbrough, is this an e-mail from you to Elaina Schramm again referring to this event?

A Yes.

Q I guess it is February 8th, 2012 We are still a couple weeks out, right?

A Uh-huh.

MR. FAULCONER: We would offer 306 into

evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Dr Scarbrough, could you read just the first two lines of this e-mail?

A "The First Lady and Governor were going over the list last night for the healthcare industry event The Governor wants to make sure the people below are included in the list "

Q Am I correct that the first bullet point there refers to VCU and UVA?

A Yes.

Q Now, Dr Scarbrough, would you have said "The First Lady and Governor were going over the list last night" if somebody hadn't told you that?

A No

Q Who, do you recall specifically who told you that?

A It was either the Governor or First Lady

Q I'd like to show you what's been marked for identification as Exhibit 307 Zooming in on this e-mail, is this that same day, February 8th, 2012?

A It is

Q Is this you forwarding the list of names that Ms McDonnell had sent you to Elaina Schramm?

A Yes

MR. FAULCONER: We offer Exhibit 307 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q If would he could just flip to the first page. Then to the second page Dr Scarbrough, I know that the orientation of the page is a little different, but does this match the list of doctors that Ms McDonnell had sent to you?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 309 Dr Scarbrough, is this an e-mail chain, the first one you are not on, but the second one down below, is that from Adam Zubowsky to Ms McDonnell and you?

A Yes.

Q I guess it is actually cc'd to you all and Kristen Kaplan is the addressee, right?

A Right

Q Is this that same day, February 8th, 2012?

A It is

MR. FAULCONER: We would offer Exhibit 309 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, Dr Scarbrough, could you tell us what the subject line of this e-mail is?

A "Please print for FLOVA."

Q Scrolling down through this document, Dr Scarbrough, could you tell us what this list of names is?

A These are names of additional people associated with the medical industry

Q I see it says "RGA" there Do you know what the RGA is?

A Yes, Republican Governors' Association.

Q From looking at this e-mail, who was it that sent this list of names over to Ms McDonnell related to this event?

A I believe Paige Hahn sent it

Q Who is Paige Hahn?

A She worked for the Governor's political action committee and had some association with the RGA as well

Q Now, do you see there, if we could scroll up just a little bit, do you see there in the e-mail where it says, at the end of that first big paragraph, "Once invites are sent by them, they will work with your staff to give them all RSVP feedback for the Mansion event " Do you see that?

A Uh-huh.

Q What was your understanding of what at least the initial request was from the RGA of who would actually send out the invitations?

A That they would send them out and then touch base with us regarding who was able to come

Q If we could show you what's been admitted as Exhibit 311 Now, if we could go to Page 2 towards the bottom. Yes, those last two e-mails Dr Scarbrough, is this a later e-mail in that same thread?

A Yes, it is

Q Is this an e-mail exchange that you are on right there?

A Yes

Q Could you read to us what Kristen Kaplan says in that e-mail?

A "Heads up, she told me in the car she wants their mailing addresses so the office can mail out invites "

Q And do you know who Ms Kaplan is referring to when she says "she" there?

A Ms McDonnell

Q Now. Dr Scarbrough, if we could go to Page 11 of this document Is this a list of the names of the people that were forwarded to Ms McDonnell by the RGA?

A Yes

Q If you could turn to the next page briefly Now, Dr Scarbrough, have you had a chance to compare this list of names to the list of names that eventually actually got invited to the event?

A I have.

Q Are any of these names on the list that actually got invited?

A No.

Q Now, we can take that down. Now, that exchange was in the February 8th-9th time frame, right?

A Correct

Q Now, if I could show you what's been marked for identification as Exhibit 316 Is this an e-mail from Ms McDonnell to Jonnie Williams with you and Dr Ladenson copied?

A It is

Q Is it dated after that exchange, February 12th of 2012?

A Correct

Q And does it pertain to an invitation for that event at the end of February?

A Yes

MR. FAULCONER: We would offer Exhibit 316 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, Dr Scarbrough, could you first start by reading just the last three lines, those short lines at the bottom of this document?

A "Sarah, please also make sure you have mailed an invitation to Jonnie Williams, Star Scientific "

Q Based on this, did you add Jonnie Williams to the list?

A Yes

Q Now, up above there I see there is a Dr Frank Crantz mentioned. Have you had a chance to review the list that existed prior to you receiving this e-mail?

A Yes

Q Did any of them include Dr Frank Crantz?

A I believe so.

Q You believe they did or did not?

A I'm sorry, they did not

Q When you received this e-mail from Ms McDonnell, did you send an invitation to Dr Frank Crantz?

A Yes.

Q All right We can take that down. I'd like to show you what's been marked for identification as Exhibit 322 Dr Scarbrough, is this you sending along an updated list a couple days later to Elaina Schramm, I guess it is, from Audrey Trussell, correct?

A Correct

Q Who was Ms Trussell?

A The Mansion assistant

MR. FAULCONER: We would offer 322 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q We can take that down. I'd like to show you what's been marked for identification as Exhibit 329 Dr Scarbrough, is this the Event Briefing Form for the event on February 29th, 2012?

A It is

MR. FAULCONER: We would offer Exhibit 329 into evidence.

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, Dr Scarbrough, is this that document that, as you described earlier, you would have sent over to Mr McDonnell's office?

A Yes

Q And could you read what it says just by "Participants" there?

A "Leaders in Virginia healthcare industry, personal doctors of McDonnells, doctors' friends. (Original list put together by HHR, then FLOVA office added some names)"

Q If we could zoom out Then just looking at the bottom of that page and then flipping to the next page, are those the attendees and who is coming and who is not?

A It is who is coming

Q Oh. Now, Dr Scarbrough, one last list, I think, on this one If I could show you what's been marked for identification as Exhibit 516 Is this an e-mail from you to Matt Conrad?

A Yes.

Q Who is Matt Conrad?

A He was the Deputy Chief of Staff

Q Is this dated April 29th of 2013?

A It is

Q Does this e-mail have an attachment?

A Yes

Q What's the attachment to this document?

A The people who attended the event, the Healthcare Leaders event

Q Now, is there sometimes a discrepancy between the final briefing form and the actual final list that you maintain?

A Sometimes

Q Why is that?

A Sometimes people don't RSVP, they just show up; or they may RSVP and not show up.

Q Is the document attached to this e-mail the final, final list?

A Final in the sense of it is updated with all of the RSVP's we received. That said, if somebody showed up to the event and hadn't responded, they weren't necessarily added in by me; or if somebody didn't show up, they weren't eliminated from the list

MR. FAULCONER: We would offer Exhibit 516 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q If we could turn to Page 2 Dr Scarbrough, do you see George Vetrovec listed there?

A No

Q Sorry, George --

A Betrovec I'm sorry

Q B turned into V Is that George Vetrovec?

A Yes.

Q Turning to Page 3, do you see Dr Paul Ladenson there a little ways down?

A I do

Q Turning to Page 4 at the bottom, do you see Jonnie Williams, Jr and Jonnie Williams, Sr ?

A Yes.

Q We can take that down. Now, to be clear, Dr Scarbrough, at any of the times that you were planning this event, was Marty Shea Sutherland working at the

Mansion?

A No.

Q Did she have anything to do with this event, to your knowledge?

A No

Q I'd like to talk a little bit about the event itself, now we've gotten through all the lists

A Okay

Q Did you attend the event?

A Yes.

Q When you attended, did you do that as a government employee?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 340 Is this a picture of you and Mr Williams in the Mansion?

A It is

Q Does it appear to be from the Healthcare Leaders event?

A It does

MR. FAULCONER: We would offer Exhibit 340 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Dr Scarbrough, based on the other people who were at the event, did it seem to you like Mr Williams fit in?

A Primarily, people that were there were actual doctors and he wasn't So it was a little odd.

Q I'd like to show you what's been marked or what's already in evidence as Exhibit 338 Dr Scarbrough, do you recognize who is in this picture?

A The two people on the right I do.

Q Who are they?

A Governor and Ms McDonnell

Q Now, do you recall Mr and Ms McDonnell both being at the event that day?

A They were

Q Do you recall noticing any tension between the two of them at that event?

A Not at all

Q Do you recall Mr McDonnell making comments at the event?

A Yes.

Q What do you recall him saying?

A He welcomed everybody, thanked them for coming and thanked them for their work, as well as introduced somebody associated with Star Scientific to make some remarks as well

Q Do you remember that being somebody from Johns Hopkins?

A I think so, yes

Q Are you aware of where Johns Hopkins is located?

A Outside of Virginia

Q If we can take that down. Now, Dr Scarbrough, for an event at the Mansion, if you just have an event and you don't do anything, you don't invoice or bill anybody, where do the funds come from to pay for that event?

A The Mansion's budget

Q The Mansion budget, as Mansion Director, are you aware of whether or not those are state funds?

A They are state funds

Q In this case, do you recall whether you invoiced anyone for any part of this event?

A I did.

Q If I could show you what's been marked as Exhibit 364 Dr Scarbrough, do you recognize this e-mail?

A I do.

Q Who is the e-mail from and to?

A It is from me to Bill Hazel and copying Elaina Schramm.

Q I think we have heard, but who is Dr Bill Hazel?

A The Secretary of Health and Human Resources

Q And is this attaching a partial invoice for the event at the end of February?

A Yes.

MR. FAULCONER: We would offer Exhibit 364 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, Dr Scarbrough, could you read after the smiley face there, could you read the rest of the e-mail?

A "Attached is the healthcare event invoice I took off the cost for the 25 people who came because the First Lady invited them, which brings your guest count to 100 people "

Q If we could turn to the second page, the attachment Is this the invoice that you sent to Dr Hazel's office?

A It is

Q Just to be clear, when you send an invoice to Dr Hazel's office and he pays it, does that still come from state funds?

A Yes.

Q Now, if we could scroll down, could you tell us what the total amount of this invoice is?

A $2,750 46

Q Scrolling up just a little bit, can you tell us how the food cost is broken down there?

A By person.

Q How many people are listed there?

A 100

Q Was that all of the people who attended the event?

A No, it was not

Q What happened to the remaining people?

A The remaining people, Dr Hazel said that his budget was not able to cover them because he didn't invite them to the event, so it went back to the default, which was the Mansion's budget

Q Did that include Mr Williams and the individuals that were invited because the First Lady forwarded them to you?

A Yes Those are the 25 people

Q Now, keeping that up on the screen, 364, Page 2, now, zooming in there on the "Beverages, Staff, Table, Linens," just sort of a technical point, but are those costs associated by person or overall costs for the whole thing?

A They are pretty much overall for the whole event One person, two people, they are not going to make a huge difference, but we charge by the amount of beverages that were consumed. The same with wait staff We staffed the floor according to the number of people that were coming

Q All right We can take that down. So Dr Scarbrough, based on the invoicing that you did and the review of your documents, where did the funds come to pay for Jonnie Williams, Dr Ladenson, Dr Crantz, and those individuals to attend this event?

A From the Mansion budget

Q Are those state funds?

A They are.

Q Now, as of the date of this invoice, was it March 16th, 2012?

A I believe so

Q If we could pull it up just to make sure

A Yes, March 16th, 2012

Q Now, as of that date, Dr Scarbrough, were you aware that Mr Williams had provided the McDonnells a $50,000 payment that had been cashed four days before, on March 12th, 2012?

A No, I was not

Q Before the investigation, were you aware of a $20,000 payment by Mr Williams to the McDonnells in May of 2012?

A No

Q I'd like to transition now to February of 2013

A Okay

Q I'd like to start by showing you what's been marked as Exhibit 554 Dr Scarbrough, do you recognize this as a calendar?

MR. BROWNLEE: I object, Your Honor Oh, you are laying ground. My apologies Thank you.

BY MR. FAULCONER:

Q Is this a calendar from February of 2013?

A It is

Q Have you had a chance to review it before coming in to testify?

A Yes.

Q Is it a calendar for Ms McDonnell for that month?

A I believe so

MR. FAULCONER: We would offer Exhibit 554 into evidence

MR. BURCK: no objection.

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q I'm assuming no one can read this, but zooming in on February 15th, do you see there what's listed on Ms McDonnell's calendar for 1 p.m. on February 15th?

A I do.

Q What is that?

A "Meet with Officers Kennedy and Hagan, FLOVA office "

Q We can take that down. Now, Dr Scarbrough, do you recall law enforcement coming to interview Ms McDonnell around that time frame?

A I do.

Q Who actually greeted the officers when they arrived?

A I did.

Q Where did you take them when they arrived?

A Back to Ms McDonnell's office.

Q Now, did you sit in on whatever conversation they had?

A No.

Q Now, the interview said 1 p.m. Later that day, do you recall, do you have any recollection of getting a call from Mr McDonnell?

A Yes

Q Could you tell us what you remember about this?

A He asked if the First Lady was out of her meeting

Q What did you say?

A I didn't believe she was.

Q Did you eventually relay that you had gotten a call from Mr McDonnell to Ms McDonnell?

A Yes, I let her know

Q Do you recall what Ms McDonnell's behavior was like after the interview?

A She was mad.

Q Could you describe a little bit more about what you mean?

A She made a comment to me that they came and interviewed her and were interrogating her and it wasn't fair and they were trying to set her up.

Q Now, do you recall ever talking to Ms McDonnell about Mr McDonnell's reaction to that interview?

A No

Q Did she ever describe anything about whether Mr McDonnell was upset by the interview?

A No.

MR. FAULCONER: Your Honor, if I could have one moment

(Counsel conferring with co-counsel)

MR. FAULCONER: I'm handing the witness a document to refresh her recollection.

(Document proffered to witness)

MR. BURCK: Your Honor, I'm not sure what is being refreshed, what recollection is being refreshed here

MR. FAULCONER: I asked the witness if she recalled Ms McDonnell saying anything about them. She said she couldn't recall

THE COURT: That's correct Go ahead.

BY MR. FAULCONER:

Q I'm handing the witness a document And Dr Scarbrough, if you could just read silently to yourself, don't read anything out loud, the last paragraph on that page and let us know when you have had a chance to read it

(Witness perusing document)

A I'm finished.

Q Dr Scarbrough, having read that document, does it refresh your memory at all about whether Ms McDonnell mentioned Mr McDonnell when she was talking about that interview with law enforcement?

A Yes

Q What do you recall Ms McDonnell saying?

A That she was just being interrogated and had been set up for failure, basically

Q Sorry, does the document refresh your recollection about whether Ms McDonnell mentioned Mr McDonnell?

A I'm sorry, yes

Q What do you recall her mentioning about Mr McDonnell?

A That he was upset by this

MR. FAULCONER: One moment, Your Honor No further questions at this time, Your Honor

THE COURT: All right Cross?

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MR FAULCONER: Your Honor, if I could just grab back that document

THE COURT: Sure

MR BROWNLEE: May I proceed, Your Honor?

THE COURT: Go ahead

MR BROWNLEE: Thank you, Your Honor

CROSS-EXAMINATION

BY MR BROWNLEE:

Q Good morning, Ms Scarbrough

A Good morning

Q My name is a John Brownlee, and I represent Bob McDonnell, and I have a few questions for you today Okay?

A Okay

Q All right Thank you I'd like to start with the -- this event at the Mansion that we talked about in August of 2011 Okay?

A Okay

Q And I think you testified that you typically handle these events, but in this particular one, you had been on vacation, and so these duties fell to Ms Sutherland; is that correct?

A Yes

Q Okay

MR BROWNLEE: And so if we could pull up

Government's Exhibit 219 Go back to the back page If you could pull up -- go up a little bit

BY MR BROWNLEE:

Q Okay I think you've looked at this This is August 29, 2011

A Uh-huh

Q And you write that -- it's to Emily and cc'ing Mary-Shea "I really don't know" -- "I really do not know anything about tomorrow's lunch That's Mary-Shea's deal She's cc'd on it "

And Mr Faulconer asked you this is what you wrote, correct?

A Yes

Q And it was your understanding that at that time Ms Sutherland was really taking the lead on this particular event; is that correct?

A On planning it, yes

Q Say again

A On planning it, yes

Q Right This is Mary-Shea's deal That's what you wrote?

A Right

Q Okay And just so I'm clear, now, were you aware at that time that Ms Sutherland had been negotiating a contract with Mr Williams to go work for him?

A No

Q Okay And you -- Ms Sutherland had never showed you a contract that had been prepared on her behalf and then forwarded to Mr Williams for his review and consideration?

A No

Q Okay And you didn't attend any lunches with Ms Sutherland and Mr Williams and Mr Kilgore in which they discussed these things; is that correct?

A I did not

Q Okay

MR BROWNLEE: Now, if you'd go to the next page, if we can, and just pull up the bottom there

BY MR BROWNLEE:

Q Okay And then in this instance, Ms Sutherland sends you a quick e-mail and kind of describes -- since you didn't really know what it was about, she describes this for you?

A Uh-huh

Q And it says, "To bring researchers and doctors together to discuss the latest information on the anatabine and two studies that UVA and VCU Medical will conduct The First Lady is the hostess "

Ms McDonnell is typically the hostess; is that correct?

A Either her or the Governor

Q Right It's their house?

A Uh-huh

Q Okay So this is how she describes this event And then I understand you take this description, and that's kind of your understanding now of what it is?

A Correct

Q Okay And Mr McDonnell is not on that e-mail, but eventually this event is actually forwarded to him in some briefing book; is that correct?

A Yes

Q I think -- do you remember having a chance to sit down with some of the members here on the prosecution team and the FBI and some of the folks from the State Police?

A I do

Q Okay And you've talked to them on numerous occasions; is that correct?

A Yes

Q Okay And do you recall telling the FBI that leading up to this event, that it was your belief that Governor McDonnell was not aware that the event was happening?

A Yes

Q Okay Now, they were asked -- you were asked about the payment, and I think you said that it was your understanding that the PAC paid for it; is that correct?

A Yes

Q And do you recall telling investigators in an interview that you advised that the Governor's PAC paid for this event, and she explained that the State could not pay for events such as this since it is not a government function?

Do you remember telling them that?

A I do

Q Okay Thank you

MR BROWNLEE: Now, Mr Faulconer had introduced Government's Exhibit 512 If we could pull that up

BY MR BROWNLEE:

Q Now, this is an e-mail, and it's a conversation with you and some others And I believe you've testified that at some point in April of 2013 you were asked to prepare a list of events that had occurred at the Mansion --

A Correct

Q -- is that correct?

A Uh-huh

Q And you did that?

A Right

Q And this e-mail reflects -- I know there's a lot of working up there, but it says "Attached "

A Uh-huh

Q So you have done your work, and now you're forwarding it to Tucker Martin and Mr Caldwell And this is your work product?

A Correct

Q Okay And there's an attachment

MR BROWNLEE: If we could look at the attachment

BY MR BROWNLEE:

Q Now, this is what -- now, did you put this together kind of in realtime or did you already have it done or was it a combination of both?

A It was pretty much done I think some of the 2013 events I had to add because it wasn't up-to-date to the minute, but I pretty much, every month, would update the list

Q Okay And so these are events that were at the Mansion, and so you put together this list and forwarded it on?

A Correct

Q All right I want to talk a little bit -- I think Mr Faulconer asked you about a couple things, but let me ask you --

MR BROWNLEE: Let's take a look at the top one, if we could, on March 8, 2010

BY MR BROWNLEE:

Q Now, this is described as a reception for Volkswagen executives Okay?

A Okay

Q Do you remember that event?

A Not particularly

Q Okay

MR BROWNLEE: Let me -- if we could take that down and pull up, just for the witness, RM-0223-1.

BY MR BROWNLEE:

Q Okay Take a look at this This appears to be similar to what we've seen before from the Governor's working papers as a description of the meeting, this Volkswagen meeting Is that what it looks like?

A Yes

Q Okay And are these papers the type of papers that you would keep at the Governor's Mansion for events that they are having at the Mansion?

A Yes I did not put this one together, though

Q Okay Do you recall who did?

A Probably somebody from the Secretary of the -- or Secretary of Commerce and Trade's Office

Q Okay But they would forward it to you all at the Governor's Mansion?

A Uh-huh

Q And therefore -- and then you would use this to have this event; is that correct?

A Correct Yes

Q Okay And these are kept in the normal course of your business?

A Uh-huh

Q Okay

MR BROWNLEE: Your Honor, at this time we ask that RM-223-01 through 08 be admitted

THE COURT: It will be admitted

MR BROWNLEE: Thank you, Your Honor

BY MR BROWNLEE:

Q Now, this describes an event at the Governor's Mansion for Volkswagen; is that correct?

A Uh-huh

Q And these are some executives from Volkswagen I'm not going to go through the whole thing, but it's clear that the company participants or executive --

MR FAULCONER: Objection I don't have any problem with her -- she said she doesn't recognize the document, doesn't remember the event So admitting it as a business record is one thing, but having her talk about the event if she doesn't remember it, we object to that

MR BROWNLEE: This is a form that is routinely kept in their offices, Your Honor, and I'm just going to have her talk, just briefly, on the form

THE COURT: We can talk -- you can talk her through what she would normally do --

MR BROWNLEE: Yes, sir

THE COURT: -- with these kinds of documents

MR BROWNLEE: Okay Thank you

BY MR BROWNLEE:

Q And do these documents kind of normally include some of the participants who will be attending these functions?

A Yes

Q Okay And here it shows that there are company participants Those are folks from Volkswagen, I would presume, correct?

A That's what it appears to be

Q Okay And then from Virginia, it's got Bob McDonnell, and then his Secretary of Commerce --

A Uh-huh

Q -- and others; is that correct?

A Yes

Q Okay Down at the bottom, it just says, "Volkswagen would like to discuss the overall Virginia Volkswagen relationship "

Okay So that's the purpose of this meeting?

A Uh-huh

Q Okay All right And it's pretty clear that there are other types of cars other than Volkswagen, correct?

A Uh-huh

Q Okay

MR BROWNLEE: All right Thank you You can take that down

All right If we could go back to 512 And the attachment If we could go to the next page The next page

BY MR BROWNLEE:

Q If we look at September 8th, 2011, New York Stock Exchange This is an event at the Governor's Mansion for the NYSE Do you remember this event?

A I do

Q Okay

MR BROWNLEE: Okay If we could pull that down and pull up, just for her, RM-226-01 RM-0226 RM I think it's 0226 There we go

BY MR BROWNLEE:

Q Now, does this document look familiar, Ms Scarbrough?

A Yes

Q And, in fact, you are the owner/contact for this event, correct?

A Yes

Q Okay And is this document kept in the normal course of the Mansion's business?

A Yes

MR BROWNLEE: Your Honor, we'd move this into evidence

THE COURT: It will be admitted

MR BROWNLEE: Okay And if you would turn to the next page

BY MR BROWNLEE:

Q Is this the invitation that went out?

A Yes, it is

Q And Mr Niederauer is the CEO of the New York Stock Exchange; is that correct?

A Yes

Q Okay And fair to say his name is actually on the invitation itself, along with Governor and Ms McDonnell?

A Correct

Q Okay If you turn to the next page, it's invitations of people who were invited Okay And there's another page And other page

Okay Do you recall if the NYSE had anything to do with submitting any names of folks who might want to attend?

A I don't believe so I think it was the Secretary of Commerce and Trade who put together a list of Virginia businesses that were on the New York Stock Exchange

Q Okay And do you know if the NYSE gave the Secretary of Commerce any names?

A That I don't know

Q Okay

MR BROWNLEE: Okay Thank you You can take that down

Let's go right to the -- can you pull up, just for the witness, RM-0225 That's probably 225-0001 No That's wrong I'm sorry. It's RM-0225-0001 There you go Thank you

BY MR BROWNLEE:

Q All right, Ms Scarbrough Is this an event for Forbes Magazine?

A Yes, it is

Q Okay And is this document similar to the others we looked at here with regard to being kept in the ordinary course of business --

A Yes

Q -- for the Mansion?

A Uh-huh

MR BROWNLEE: Your Honor, we move RM-225-01 through 11 into evidence

THE COURT: It will be admitted

BY MR BROWNLEE:

Q Okay All right And if you just look down at the end there, "the talking points included," and this is for -- "RFM" is who?

A Robert Francis McDonnell

Q Okay So that's the Governor?

A Yes

Q And part of his talking points is to thank Forbes for the partnership for the section; is that correct?

A Yes

Q And one of the people attending was Steve Forbes, the chairman and CEO of Forbes Media; is that correct?

A That is correct

MR BROWNLEE: And if you turn to Page 3

BY MR BROWNLEE:

Q And if you look at 6:45 p m , Mr Forbes actually got an opportunity to speak, did he not?

A Yes

Q Okay Now, let me ask you --

MR BROWNLEE: If you'll turn to the next page

BY MR BROWNLEE:

Q This discusses a drop-in discussion with the CEO of Reynolds Packaging Group

Do you remember ever helping coordinate these kind of drop-ins at the Mansion during other events?

A From time to time

Q Okay And is this an instance in where another CEO, this one of Reynolds Packaging, had some issue regarding power supply issues that he wanted to have an opportunity to speak with the Governor about, and they set that up -- it looks like in the parlor -- in which he would come and have an opportunity to be heard?

A That's what it appears I wasn't the point of contact planning this other than he was arriving at the Mansion and showed him where the parlor was

Q Okay But these things happened from time to time?

A Uh-huh

Q Okay Now, if you look at Page 6, the bottom of Page 6 Down at the bottom This is the --

MR FAULCONER: At this point I would object on this event She said she wasn't there

THE COURT: I can't hear you

MR FAULCONER: Your Honor, we'd object She said she wasn't at the event

THE COURT: Go ahead and answer the question

MR BROWNLEE: I'm almost done Thank you

BY MR BROWNLEE:

Q If you look at the bottom, you've got invitations, people from Forbes Magazine are invited; is that correct?

A Yes

Q Okay And then if you go to the top of the next page, there are more people from Forbes?

A Uh-huh Can I clarify? I was at the Forbes event I was not in the meeting with the Reynolds person

Q Okay Great

A Just to clarify that

Q And so is it possible that The Forbes Company, the magazine, submitted these people's names so that they would be invited?

A I guess it's possible I didn't receive the list from them so I can't say

Q Thank you

MR BROWNLEE: Last one, Your Honor, and then I'll move along

RM-0224-0001

BY MR BROWNLEE:

Q And this is the last one I'm going to ask you about

A Okay

Q This is another document, similar to the ones we talked about, for an event with a company called Sabra and PepsiCo officials?

A Yes

Q Okay Do you remember that event?

A I do

Q Okay Did you attend that event?

A I did

Q Okay And is this document the ones normally kept in the ordinary course of business there at the Mansion?

A Yes

MR BROWNLEE: Your Honor, we move 224-01 through 04 into evidence

THE COURT: It will be admitted

MR BROWNLEE: Thank you, Your Honor

BY MR. BROWNLEE:

Q And just looking at the guests We've got the CEO of Strauss, the parent of Sabra, and then other officials from the company, the CEO of PepsiCo; is that correct?

A Yes

Q Okay And this was kind of a big event; is that right? It was a morning event? This is the hummus manufacturer that I think we may have heard a little bit about; is that correct?

A Yes

Q Okay And then after this event, there were other events throughout the day in which the Governor participated; is that correct?

A Yes

Q Okay And if you look at the last page -- well, I'll tell you what It's in evidence We'll deal with it

Thank you very much

Just one thing At Sabra -- and I may be mispronouncing it, but Sabra is an Israeli company who had built a facility in Virginia; is that correct?

A Yes

Q And do you recall at that event that Governor McDonnell wore a yarmulke out of respect for that company?

A No, he did not.

Q He did not?

A Not that I recall

Q Okay We'll get back to that Thank you

I want to talk just very briefly on this healthcare event that Mr Faulconer went in and talked to you about

This was an event for many healthcare leaders throughout Virginia; is that correct?

A Yes

Q Okay It's a lot of doctors and people related to the healthcare field; is that correct?

A Uh-huh

Q Okay And this was not an event for Star Scientific, right?

A No

Q Okay Only thing about Star Scientific is that a few members of the company were invited; is that correct?

A A few members of the company and some other medical folks that they wanted to be there

Q Okay But those were doctors?

A I think so

Q Dr Ladenson is a doctor, right?

A Yes

Q Dr Clore is a doctor?

A Right

Q Dr Caturegli is a doctor?

A Yes

Q Okay Let me talk a little bit about -- about Ms McDonnell Is it fair to say that Ms McDonnell was difficult at times?

A Yes

Q Okay And you've testified as to that; is that correct?

A Yes

Q Okay And I believe you, on questioning by Mr Faulconer, discussed how you viewed the McDonnells' relationship; is that correct?

A Yes

Q Okay And I believe that in interviews with the FBI, you testified that -- or stated that in your opinion, Mr McDonnell and Ms McDonnell's relationship in public as being so sweet and so in love; is that right?

A Yes

Q And that, in your view, Mr McDonnell worshiped the ground Ms McDonnell walked on; is that correct?

A Yes

Q Okay But did you not also say that you felt that Mr McDonnell was in denial about Ms McDonnell's mental capacity?

A Yes

Q What did you mean by that?

A There was difficult working days at the Mansion She stated several times she did not want to be the First Lady, and just seemed upset and sad and down often

Q Okay And did you tell them that you did not believe the relationship between Mr and Ms McDonnell was the healthiest in terms of communications?

A Yes

Q That Ms McDonnell did what she wanted?

A Yes

Q Okay And that their face-to-face time was limited because of his travels?

A It was

Q All right Now, did you also refer to Ms McDonnell as a spoiled brat?

A I don't recall using those exact words

Q Okay And that it was her way or no way?

A Yes

Q Okay And that she would scream and yell at people?

A She did

Q Okay Did you refer to her as sneaky?

A Yes

Q Okay Now, were there times where you felt like

Ms McDonnell would use the Governor's name without his permission to get things done?

MR FAULCONER: Objection, Your Honor May we approach?

THE COURT: Come on up

(At Bench)

MR FAULCONER: Your Honor, I believe Mr Brownlee is going to get into instances that this witness said, but it's only based on hearsay and based on what other people told her about Ms McDonnell using Mr McDonnell's name

THE COURT: The last question he asked was okay So if something with a problem comes up, but at this point, that's --

MR FAULCONER: Your Honor, he should ask her first did that happen, did you observe that happen, and then ask whether or not she said it to law enforcement

THE COURT: No You can ask the question It's okay The objection is overruled

(In Open Court)

BY MR BROWNLEE:

Q Now, I asked were there times when you spoke to the investigators, did you tell them that there were times when Ms McDonnell would use Governor McDonnell's name to try to get things done?

A Yes

Q Okay And was there one particular instance when there was some bottles of Anatabloc that she wanted placed in some gift bags and that she said that the Governor wanted this done when you knew that wasn't the case?

A Yes

Q Okay You had mentioned that you were friends with Cailin McDonnell; is that correct?

A That's correct

Q And that's the McDonnells' daughter; is that correct?

A Uh-huh

Q And you were very close to her; is that correct?

A Yes

Q And is it fair that you all, when you started working there, kind of made a pact that you just wouldn't talk about your work, and that way you could try to maintain this friendship; is that right?

A Yes

Q Okay You talked about your observation of Mr Williams, and I believe you testified that you thought he had an ulterior motive; is that right?

A Uh-huh

Q Is it fair to say that those were observations from seeing him at the Mansion?

A Yes

Q Okay So you never saw him, perhaps, at like the Patrick Henry Building or some other place?

A No

Q Okay Now, just to give us a little bit of a sense of these You have all these events, and I know you planned them and there's a lot of them, but is it fair to say that Governor McDonnell's role in the planning of these events is either very limited or almost zero?

A That's correct

Q Okay So most of these events, he just kind of shows up Maybe somebody hands him a briefing book There's a little bit of a description, as we saw here, and then he's on? He comes in and does his thing?

A Pretty much Yes

Q Okay All right Now, did you ever discuss with Bob McDonnell his personal finances?

A No

Q Okay Did he talk to you about the nature of his mortgages?

A No

Q Okay Did you talk to him about the nature of any other loans he might have had?

A No

Q Okay Did you ever have a conversation with him about the personal nature of his marriage?

A No

Q Okay Did you ever share the personal nature of your marriage with him?

A No

Q Okay

MR BROWNLEE: Court's indulgence for one moment, sir

(Counsel conferring with co-counsel)

MR BROWNLEE: Your Honor, that's all

Thank you very much

THE COURT: All right Thank you

We'll stop now for our morning break Fifteen minutes

(The jury left the courtroom.)

(Recess taken from 11:36 a m until 11:56 a m)

(The jury entered the courtroom)

THE COURT: All right Mr Burck

MR BURCK: Thank you, Your Honor

CROSS-EXAMINATION

BY MR BURCK:

Q Good afternoon

A Good afternoon

Q I'm Bill Burck I represent Maureen McDonnell

A Okay

Q You and I haven't met before, right?

A No

Q So, Dr Scarbrough, just a few questions You testified about the gift -- the list of gifts for the First Lady that you would maintain when you were working in her office?

A Yes

Q And that was an internal list that was used for internal purposes, right? It wasn't something that was supposed to be published to the public?

A No, not to the public

Q And you eventually came to understand that the First Lady did not have a filing requirement, an SOEI filing requirement; is that right?

A That's correct

Q But there was -- for some period of time, there was doubt on that score, right?

A Yes

Q And, in fact, there was so much doubt on that that there was a training course set up and Ms McDonnell attended; isn't that right?

A Yes

Q And that was roughly in December of 2011?

A I believe so

Q Okay And it was after that training course, sometime after that training course, that the determination was made that because she's not a public official, she doesn't have to file an SOEI at all; isn't that right?

A Correct

Q You were asked some questions about your observations on Ms McDonnell's interaction with her husband, and you answered those questions I have some questions about your observations on her interactions with Mr Jonnie Williams

A Okay

Q When you learned about the shopping trip from Mary-Shea Sutherland --

A Uh-huh

Q -- is that right?

A Yes

Q When you learned about it from her, did you think it was peculiar that Mr Williams had purchased these gifts for Ms McDonnell?

A Yes

Q Did you think it was inappropriate for a married man to be purchasing a married women, who is not his wife, personal items like that?

A Yes

Q Did you think that their relationship was, in fact, inappropriate?

A Yes

Q Just a few more questions

You were asked about the events, the Mansion event and also the Healthcare -- the Virginia Healthcare Leaders event Do you remember that?

A Yes

Q And with the Healthcare Leaders event, I think on direct examination you were asked about Governor McDonnell introducing Dr Ladenson?

A Uh-huh

Q Was it unusual for the Governor to introduce people at events?

A No

Q Was it a standard practice for him to introduce guests, especially special guests?

A Yes

Q And he -- and Dr Ladenson was from out of state, right?

A I believe so Yes

Q You were asked about Johns Hopkins being from -- not headquartered here in Virginia, right?

A Right

Q Isn't Johns Hopkins -- or do you know if Johns Hopkins has facilities here in Virginia?

A That I'm not sure

Q Would it surprise you to learn that their emergency campus, or emergency room campus, is located in Arlington, Virginia?

A I did not know that

Q Okay And what about, do you think Johns Hopkins accepts patients from Virginia?

A I'm sure they do

Q And provides medical services and research for people from Virginia?

A I'm sure they do

Q And when Governor McDonnell introduced Dr Ladenson, did he say, "This is Dr Ladenson Please, everyone, speak to him about Anatabloc Jonnie Williams is in the crowd He's his friend"?

Did he say anything like that?

A No

Q Did he introduce him as Dr Ladenson from Johns Hopkins, one of the world's greatest medical universities?

A Yes

MR BURCK: Could you please pull up -- and this is already in evidence -- Government Exhibit 554 And please blow up February 15, please

BY MR BURCK:

Q Now, you testified about an interview by law enforcement of Ms McDonnell on February 15, 2013?

A Yes

Q And you'll see on the calendar there that there is a 1 p m meet with Officers Kennedy and Hagan, FLOVA Office?

A Uh-huh

Q Are those the gentlemen, as far as you know, who showed up that day?

A Yes

Q And did Ms McDonnell bring a lawyer with her into that meeting?

A Not that I'm aware of

Q Did she go into the meeting by herself with the agents?

A I believe so

Q You have no reason to believe she brought anyone else in there with her?

A No

Q She never said that she had anybody else with her?

A No, she didn't

Q Did you understand what the meeting was about?

A I had an assumption, but I wasn't for sure

Q What was your assumption?

A That it was [illegible]ut the chef case

MR FAU[illegible]NER: Objection, Your Honor

THE COURT: Sustained

BY MR BURCK:

Q And after the meeting when Ms McDonnell, you said, was mad --

A Uh-huh

Q -- and she said that they had tried to set her up and it wasn't fair, right?

A Uh-huh

Q Do you have any idea what she meant by that?

A Not really

Q She didn't tell you?

A No

MR BURCK: Your Honor, just one second

(Counsel conferring with co-counsel)

MR BURCK: That's it, Your Honor Thank you Thank you very much

THE WITNESS: Yes, sir

THE COURT: All right Redirect?

MR FAULCONER: Yes, Your Honor

REDIRECT EXAMINATION

BY MR FAULCONER:

Q Dr Scarbrough, I noticed that, when he got up, Mr Brownlee introduced himself to you Had you actually met him before coming to court today?

A Yes

Q How many times were you interviewed by Mr Brownlee before coming to court today?

A Twice

Q And who were the first people to ever ask you about a potentially inappropriate relationship, romantically speaking, between Jonnie Williams --

MR BURCK: Objection, Your Honor

BY MR FAULCONER:

Q -- and Ms McDonnell?

MR BURCK: I never said romantically

THE COURT: He didn't say that You were the one He's asking who, if anybody, said this to her

MR FAULCONER: Sorry, Your Honor I'll make sure I'm clear

BY MR FAULCONER:

Q You said that you met Mr Brownlee before?

A Right

Q Who were the first people to ever ask you about whether there was a potential romantic relationship between Jonnie Williams and Ms McDonnell?

A The Governor's attorneys

Q Now, you said that you have been interviewed a number of times; is that right?

A Yes

Q And do you recall every specific date on which you've been interviewed?

A No

Q Could you list out for us everything you've said in every interview?

A No

Q You don't have immunity or anything like that, do you?

A No

Q Now, in those interviews, we saw the name Officer Hagan, right?

A Yes

Q And have you met Officer Hagan?

A I have

Q And has he sat in on a lot of your interviews?

A No.

Q Did you ever feel pressured by him?

A Not at all

Q Did you ever feel trapped by him?

A No

MR BURCK: Objection, Your Honor

THE COURT: Sustained

BY MR FAULCONER:

Q Now, Dr Scarbrough, there was some questioning of you on cross-examination about Mary-Shea Sutherland looking for outside employment?

A Uh-huh

Q Did Ms Sutherland ever hide from you that she was

unhappy in her job?
A No
Q Did she ever hide that she was looking to potentially leave?
A No
Q And there was some questions about the difficulty that you had in working for Ms McDonnell?
A Uh-huh
Q Did you communicate those concerns to anybody on staff?
A Yes
Q Did that include Martin Kent?
A Yes
Q And what did Mr Kent say he was going to do?
A Speak to the Governor about it
Q There were also some questions about a training course for SOEIs, conflict of interest Can you tell us what you recall about why that happened?
A Because there was so many questions of whether the SOEI needed to be submitted or not as it pertained to the First Lady So Matt Conrad just went over everything and the importance of submitting the document
Q And did any of that have to do with Ms McDonnell not wanting her gifts tracked?
MR BURCK: Objection, Your Honor

THE COURT: Overruled You brought it up

BY MR FAULCONER:

Q Go ahead

A Yes

Q Now, there was also a couple of questions from Mr Brownlee about an event related to the NGA and gift bags Do you remember that?

A Yes

Q And there were some questions about whether or not Ms McDonnell might have used Mr McDonnell's name, and that may or may not have been true

Do you recall those questions?

A I do

Q Was any of that that Mr Brownlee asked about based on anything you personally observed or was it based on what other people told me?

A What other people told me

Q Now, by contrast, the Healthcare Leaders Reception that we talked about a little bit, in that one, did Ms McDonnell tell you that she had discussed it with Mr McDonnell?

A No

Q Well, in that one, did Mr McDonnell discuss it with you personally?

A Discuss? I'm sorry?

Q Sorry The invitations to the Healthcare Leaders Reception --

A Uh-huh

Q -- did he discuss those invitations with you personally?

A No

MR BROWNLEE: Objection Leading

THE COURT: Overruled

BY MR FAULCONER:

Q And do you recall the document we looked at earlier where both of their handwriting was on the same page?

A Yes

Q And at the Healthcare Leaders Reception, do you recall how many other companies had a doctor there affiliated with their company recognized?

A I am not sure

Q Now, the launch event itself

MR FAULCONER: If we could pull up Exhibit 219, which is already in evidence

MR BROWNLEE: Your Honor, I'm going to object The evidence in this record, this was not a launch event This was a lunch event Thank you, Your Honor

THE COURT: You say lunch He says launch We all know what we're talking about So the jury will decide

MR FAULCONER: If we could turn to the second page And zooming in on those first two paragraphs

BY MR FAULCONER:

Q Could you read for us what it says at the end of the first line of the second paragraph, starting with "Gov" and going to the word "Reception"?

A "Said Gov wanted to do a small reception "

Q And when it says "Martin" there, who do you understand that to refer to?

A Martin Kent

Q And, Dr Scarbrough, that event briefing form that we saw earlier for the event on August 30th, again, what was your understanding of what would happen with that form once it was sent over to the Governor's Office?

A It would then be placed in his briefing book for him to review

Q And, Dr Scarbrough, these events that we've been talking about, the August 30th event, the February 29th event, are you aware of whether Mr McDonnell attended those events?

A Yes

Q And when he attended, did he attend as Governor, in his official capacity?

A Yes

Q And when you -- you were asked some questions about something you had said to law enforcement about not being sure, not being totally firm, on whether it was an official government function Do you recall that?

A Yes

Q And could you explain, did you later clarify that for law enforcement?

A Yes

Q And could you explain that clarification as it relates to the intended beneficiary of the event?

A I'm sorry I'm not understanding your question

Q When you had said to law enforcement previously that you weren't sure whether the event on August 30th was an official government function --

A Right

Q -- did you later clarify that that was because you weren't sure whether it was intended to benefit the government or Mr Williams?

A Yes

Q And what was your impression from the event as to what it was intended to benefit?

A Jonnie Williams

Q And did you interpret any of Mary-Shea's actions in setting up that event, or any of your actions in helping with that event, as being in any way unofficial?

A No

Q And, lastly, Dr Scarbrough, on these other events, Forbes, Volkswagen, were there any of those products out at the place settings?

A No

Q And do you recall ever hearing anything about payments from those companies to Mr McDonnell's personal bank account?

A No, I don't

MR FAULCONER: No further questions, Your Honor

THE COURT: Thank you, ma'am You may stand down

THE WITNESS: Thank you

(Witness stood aside)

THE COURT: Call your next witness, please

MS ABER: Dr Patrizio Caturegli

DR. PATRIZIO CATUREGLI,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good morning

A Good morning

Q Sir, please state your name, and spell it for the court reporter

A My first name is Patrizio, like Patrick P-A-T-R-I-Z-I-O And my last name is Caturegli C-A-T-U-R-E-G-L-I

Q And how are you employed, sir?

A I am employed by the Johns Hopkins University in Baltimore, Maryland

Q And what do you do there?

A I am a researcher mainly I work with mice, to do experimental studies in autoimmune diseases, and also I work in pathology So I take care of patients through the pathology department

Q Could you tell the jury about your educational background, please

A I train as a medical doctor in Italy, the University of Pisa I finish in 1987 Then I did five years residency in endocrinology also at University of Pisa

Then I came to Baltimore in 1993 for three months to do some research using a technique that was available here for my patients, and I never went back to Italy So I've been to the U S since 1993

I've done a fellowship in immunology, a master in public health, and a residency in pathology And since 1998, I am a faculty member of the Pathology Department at Johns Hopkins

Q And where are you your offices?

A My office is in the Ross Building, Room --

Q In what city?

A Baltimore, Maryland

Q Okay Are you presently a consultant for Rock Creek Pharmaceuticals?

A I've been a consultant from March 2011 to August 2013, and then I continue -- officially And then I continue to consult with Mr Williams after that time

Q Okay So is it fair to say you've been both a formal and informal consultant --

A Yes

Q -- for Rock Creek?

A Yes

Q Is Rock Creek Pharmaceuticals affiliated with Star Scientific?

A Yes I think it's the same -- the same -- it was the same unit, the same company

Q And in general, what do you do as a consultant for them?

A I mainly interacted with Mr Williams to discuss the many ideas that he has, scientific ideas, about everything that he reads So I give my opinion on the scientific topics and -- basically, that's one aspect

And then I did a study, mice testing, Mr Williams' compound in my mice And then probably last contribution, I also help them in the clinical trials that they did for patients

Q And when you talk about Williams' compound, are you talking about Anatabloc?

A Yes Anatabine is the scientific name, and commercial name is Anatabloc

Q Okay Do you -- were you working as a consultant for Star Scientific, or Rock Creek, back in 2011?

A Yes As I say, I start in -- formally, in March 2011 But I met Mr Williams, first time, in July 2010

Q And as a consultant, do you periodically appear at Rock Creek Pharmaceuticals events?

A It was only in the fall of 2011 I appear four times

Q Okay

A Or three times, I think

Q Okay Let's talk about that

A Okay

MS ABER: I'd like to bring up what's been admitted as Government Exhibit 250 If we could publish that to the jury, please I think it's been admitted

It's been admitted Okay

BY MS ABER:

Q Dr Caturegli, do you recall attending an event in Richmond, Virginia, on October 18th of 2011?

A Yes I remember

Q Now, where was that event held?

A It was in a hotel in Richmond, Virginia I don't remember the name, but it's written there So probably that place

Q Okay What was the purpose of this conference?

A We understand it -- understood it was to promote or to publicize, to advertise the product, anatabine, to local physician or local -- members of the local community

And I went there to show what I was doing with my mice using this compound

Q And is it fair to say you were excited about the research you were doing on your mice with anatabine?

A Yes Yes, I was I am still I think it's interesting

Q Who was in the audience at this Richmond event?

A I don't remember I don't -- I didn't -- I don't know any one of them Mainly, they were physician I didn't know from where Like the people that were there, I didn't know them But I think -- I was told that they were local, either local physician or member of the community in the area

Q And what did you do particularly at the Richmond event?

A I presented the stage of my work that I was doing with mice, and I had some slides, which I show and discuss a little bit about the mouse model, what does that entail and where I was at that time with the experiments

Q I note on this Exhibit 250 that the First Lady of Virginia, Ms Maureen McDonnell, is listed as a featured guest?

A Yes I remember

Q Did you meet her that night?

A Yes I was introduced to her briefly before the talk, the presentation And I knew I -- I heard her speaking Yes, I saw it I remember vaguely

Q Was that the first time you had met Ms McDonnell

A Yes

Q Have you ever met Mr McDonnell?

A No I never met him

Q Did Ms McDonnell make any remarks at this Richmond event?

A Yes She opened the event with a few remarks, with just a few, a couple minutes words

Q And I know you probably don't remember precisely what she said Is that fair?

A Yes

Q Do you remember in general terms what she was talking about?

A Yeah, I remember The -- the -- I think the purpose was that she was happy to promote a product that was made by a Virginia company, and she was proud to participate I think that was the gist

Q Okay Now, did you travel to any other similar events for Rock Creek?

A Yes I traveled to two additional events One is -- one was in Michigan, and the other one in California. In this same period, the fall of 2011

Q Okay

MS ABER: I'm going to bring up, please, 254, Government's 254, that has already been admitted

BY MS ABER:

Q Is this a flyer for the Michigan event?

A Yes

Q And what was the date of that?

A The date of that, I can read it here, was October 22nd

Q Okay How did you get out to Michigan?

A I went, on both occasions, in Mr Williams' airplane I was taken by Mr Williams' pilots

Q Do you remember who else was on the plane with you out to Michigan?

A Yes Usually it was Dr Mullan, Dr Ladenson, and Mr Williams

Q Do you recall whether Ms McDonnell was also present at this Michigan event?

A Yes Yes

Q And did she make any remarks?

A She talk I mean, they talk When Mr Williams is there, he always -- he talks So yes, probably many remarks, but I don't remember It was nothing to me that stuck in my mind

Q Okay When Ms McDonnell spoke, is it fair to say it was similar to what she said --

A Yeah I would say almost identical Yes

Q Okay So similar, Michigan and Richmond, same speech?

A Yes Very similar principle

Q Okay And on your -- when you left Michigan --

A Yes

Q -- came back to Baltimore -- is that right" --

A Yeah

Q -- how did you travel?

A I also was taken by Mr Williams' airplane

Q Was Ms McDonnell on that plane?

A Yes, she was there

Q Can you tell the jury, in case they don't travel by private plane, what -- how the folks are seated in a private plane?

A Yes I remember the plane is a nice plane, but not many seats So there are four -- there's the pilot, of course And then there was four -- one is one seat for someone And then there are the main area -- there's the main area with four seats, like this And then there is a seat --

Q Like a circle?

A Yes Like four individual chairs And then there was a -- like a little combined chair in the back for two people, or three people like me probably could fit

Q And were you seated near Ms McDonnell on the plane ride back?

A Yeah The second -- on the plane back, I was seated in one of the main seats I think it was in front of Ms McDonnell, or just across So very close, yes

Q Was Mr Jonnie Williams also seated near you?

A Yes Yeah, he was

Q And did you and Mr Williams and Ms McDonnell speak to one another on the way back to Baltimore?

A Yeah Definitely I mean, yes

Q Do you remember what was discussed during this conversation?

A I mainly participate just little words, few words

But in this occasion, I said a little bit more because Mr Williams was discussing about this famous Virginia study, possibility of doing this study that for me, at the time, was just as another topic of discussion I didn't know it was -- become so important after the fact

So -- and I said a little bit more because Mr Williams ask me how is -- how could this study be done, how -- the type of clinical studies There are several types of clinical studies So he asked me what do you think of this type, how it can be done or what -- is that useful to do a study like this

So I put my -- because through my MPH degrees, I knew a little bit So I contribute to discussion in that fashion

Q Okay As a clinical researcher, did you explain to Ms McDonnell why a study like a Virginia study would be helpful on Anatabloc?

A Yes I say it on the plane And then during the -- either just right there or a few hours after, Mr Williams ask me, "Can you summarize it in writing, what you said?"

And so when I went back home, I did summarize, and I wrote Ms McDonnell an e-mail that you have

Q Well, let's all look at it

MS ABER: Let's bring up Government Exhibit -- oh, thank you -- 255, please

BY MS ABER:

Q Dr Caturegli, is this your e-mail to Ms McDonnell on October 23rd, 2011?

A Yes As you can tell, it has some English accent -- or English mistakes So it's me

Q Okay

A Yeah, I wrote it

MS ABER: Your Honor, I'd like to move in 255, please

THE COURT: It will be admitted

BY MS ABER:

Q Okay, sir So scrolling down to your e-mail, could you read the first two lines to the jury after, "Dear Maureen"?

A "At Jonnie's request, we I sending you" -- I meant I'm sending you -- "a short summary of our discussion yesterday "

Q Okay And is it fair to say the rest of the e-mail summarizes precisely what was discussed on the plane?

A More or less Yes

Q Okay And to the fourth paragraph, starting with, "Consequently," can you read the first two sentences of that, please?

A "Consequently, it would be of value to perform a study of Virginia government employees of to determine the prevalences of autoimmune and inflammatory conditions "

Q Go ahead

A "This information could be derived from their medical histories and blood tests, such as the C reactive protein marker that was discussed yesterday "

Q Okay

MS ABER: And then scrolling down just so the jury can see To the next page, please

BY MS ABER:

Q That you signed it as well?

A Yes I wrote it, yeah

Q Okay

MS ABER: Going back to the first page, please

BY MS ABER:

Q Do you see, at the very top there, sir, to whom Ms McDonnell forwarded this e-mail?

A To Jonnie Williams

Q Okay

MS ABER: And now I'd like to bring up Government Exhibit 256, please, for identification

BY MS ABER:

Q Is this a response e-mail that you got back from Ms McDonnell?

A Yes She wrote me back that time The only time she wrote Yes

Q Okay

MS ABER: I'd like to move Government's Exhibit 256 into evidence, please

THE COURT: It will be admitted

BY MS ABER:

Q Can you read to the jury how Ms McDonnell responded to you?

A She said, "Thanks, Mario Thanks for your e-mail and I printed out" -- "I printed your it out and shared it with my husband He said he'd like to talk to some people to look into it and discern what the best approach for Virginia would be See you in California Maureen McDonnell "

Q Okay And she wrote that on what date?

A October 24th, 2011

Q When Ms McDonnell wrote "see you in California," what was she referring to?

A She was referring to the third and last of these events that you indicated before

Q Okay

MS ABER: You can take that down, Ms Taylor

BY MS ABER:

Q How did you travel to the event in California?

A I went to that meeting as before, with Mr Williams' airplane

Q And was Ms McDonnell on the flight as well?

A Yes

Q Tell the jury what kind of event that is

A It was a similar type of event, advertised event There were many local doctors in California, in that place, and there was a reception with -- in this case, it was a bit more elaborate because it was like cocktail and meeting And it was a lunch, and while people were eating, we were presenting our research

And, again, Ms McDonnell did the same introduction, speaking about Virginia company, something similar

MS ABER: If I could have one moment, Your Honor

(Counsel conferring with co-counsel)

BY MS ABER:

Q Dr Caturegli, in the times in which you spoke with Ms McDonnell, did she express enthusiasm for the possibility of studying Anatabloc?

A The only time that we discuss were the second time, and she seemed, to me, was genuinely interested in doing -- promoting the public health or the people of Virginia So that's the only time

The other time I don't think we spoke about it The third time, I don't think we spoke about it

MS ABER: Okay Thank you, Your Honor I have no further questions

THE COURT: Any questions?

MR KOFFMANN: Yes, Your Honor

CROSS-EXAMINATION

BY MR KOFFMANN:

Q Good afternoon, Dr Caturegli

A Good afternoon to you

Q My name is Dan Koffmann, and I represent Maureen McDonnell

A Okay

Q Dr Caturegli, you testified on direct that you have met Ms McDonnell four times; is that right?

A I think so Yes

Q And the first time was here in Richmond?

A Yes

Q And you were speaking at -- there was an event at the Westin Hotel?

A Yes Yeah

Q And you testified that Ms McDonnell made some introductory remarks; is that right?

A Yes

Q And you testified, I believe, that her purpose was she said she was happy to promote a Virginia business?

A She didn't say happy That's my -- but the meaning was -- at least the way I understood was that she was proud of introducing a company from Virginia, something like that?

Q Some local --

A Yes

Q -- Virginia pride?

A That was my interpretation of her words

Q And I believe you testified that when she spoke in Michigan, it was the same -- the gist was the same?

A I think so Yes

Q And Ms Aber asked you some questions about the e-mail that you sent to --

A Yes

Q -- Ms McDonnell?

A Yes

MR KOFFMANN: And can we pull up Government's 255, please

BY MR KOFFMANN:

Q And you testified that this e-mail was sent at whose request?

A Mr Williams request me to summarize, as I said before, what I expressed my opinions on the plane So he --

Q So it was Mr Williams who asked you to send this?

A He said, "Can you summarize it for her?" Yes

Q And, Dr Caturegli, to your knowledge, has any -- has this study that was discussed on the plane ride or discussed in this e-mail, has this study ever occurred?

A I never had -- so the answer -- short answer is no

And I never had -- after this meeting, I never heard anything back, either informally or formally. So for me, that's -- I could have never imagined -- if you ask me if this would be such a thing, it would become such a big thing, I could never imagine that my involvement was important like this because I never hear anything back after that

Q Okay And Ms Aber also showed you some of the invitations or the public -- the flyers for these events

MR KOFFMANN: And can we pull up, just for example, Government's Exhibit 254

BY MR KOFFMANN:

Q And she pointed out, I believe, that Ms McDonnell was listed as a featured guest?

A Yes I never seen this except for -- I think last month I think Ms Aber, she show it I just went I didn't actually receive -- this I didn't receive, but evidently

Q So you have no idea, then, whether or not putting Ms McDonnell's name on this event was approved by Ms McDonnell or the Governor's Office or anyone else?

A No I mean, this was beyond my -- no I don't know

MR KOFFMANN: May I have a moment, Your Honor?

THE COURT: Sure

MR KOFFMANN: No further questions Thank you

THE COURT: Anything?

MR BURNHAM: Just a few

CROSS-EXAMINATION

BY MR BURNHAM:

Q Good afternoon, Dr Caturegli My name is James Burnham I'm here for Mr McDonnell

A Okay

Q So you've never met Mr. McDonnell before, right?

A No

Q He's the one in the gray suit

A Yes Good-looking man

Q You've never spoken to him before?

A No I was supposed to see him, to go to his place, but I actually went to Philadelphia to help my daughter move in her apartment So --

Q I bet that was less fun

You've never corresponded with him, e-mailed him?

A No

Q And you have no idea whether he actually saw the e-mail you sent to Ms McDonnell?

A No, I don't

Q Okay Just a couple more questions

Dr Ladenson is your colleague at Johns Hopkins, right?

A Yes

Q And he's also a consultant for Rock Creek?

A Yes At least he was Yes

Q Okay And the two of you, Dr. Ladenson and you, perform research on anatabine?

A Yes

Q Okay And you've heard him discuss Anatabloc and its potential, correct?

A Who is "him"?

Q Dr Ladenson I'm sorry

A Yeah When we went to this meeting, he was speaking as well So of course Yes

Q Have you ever heard Dr Ladenson say that Anatabloc is the most significant medical discovery since antibiotics?

A That -- so I don't know you were the one that asked me about this yesterday

Q Yeah

A No So I wrote to you No, I never heard him say

Q You never heard him say that Okay

A No

Q And based on what you know about Anatabloc, would that be an exaggeration?

A Exaggeration is a subjective word, as I wrote you

The state of the knowledge now would be an exaggeration because it's not -- this statement is not substantiated by experimental results So yes, it would be something that is not proven

Q Okay And would you agree that Mr Williams is a very enthusiastic person?

A In a good way

Q Right Right In a good way

A Yeah I think he's a very dynamic person He's always -- seems that he cares about what he's doing He always come up with some ideas that -- for a known scientist, to me, he's always remarkable And he does it, in the way I interpret it, in a good way

Q Right But he's a very excitable --

A Very excitable, yes Very energetic, yes

MR BURNHAM: Thank you, Dr Caturegli

THE COURT: Anything else based on that?

MS ABER: Yes, Your Honor

REDIRECT EXAMINATION

BY MS ABER:

Q Dr Caturegli, did you say that you wrote to Mr Burnham?

A Sorry?

Q Did you say that you wrote to Mr Burnham?

A Somebody -- I forgot Somebody -- I can find out But my lawyer, through an e-mail, that they asked me the same questions

Q Okay

A And I replied to them Because they wrote at 6 I was driving And when I got to the hotel, I saw the e-mail and I replied to them

They asked me -- he asked me three questions, and two of them were identical to this So I am assuming it's him I just don't know the name or remember the name

Q Sure

You had said that you were supposed to meet the Governor Can you tell us what event that was?

A Yes It was -- I was invited to go with other colleagues to the -- his house, his home, the -- the State of Virginia home for a -- I'll say celebration or it was like manifestation or a sponsoring of Anatabloc

Q Oh, okay Was that in August of 2011?

A It was, yes It was -- I don't recall the date, but it was in that period, yes And I didn't go, but I was invited to go

MS ABER: Okay Thank you I have no further questions

THE COURT: Thank you, sir You may stand down

(Witness stood aside)

THE COURT: Call your next witness, please

MR FAULCONER: Your Honor, the United States calls -- Your Honor, the United States calls Dr Frank Crantz

THE COURT: All right

DR. FRANK CRANTZ,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

MR FAULCONER: Thank you, Your Honor

DIRECT EXAMINATION

BY MR FAULCONER:

Q Could you please state your name, and spell your last for the court reporter

A Frank Crantz. C-R-A-N-T-Z

Q And, Dr Crantz, where do you -- what city do you currently live in?

A I live in Potomac, Maryland

Q And what do you currently do for a living?

A I'm an endocrinologist I practice medicine, with a specialty in diseases of the endocrine glands like diabetes, thyroid disease

Q And do you own your own practice?

A I practice with two other endocrinologists, and we share our space We have our own individual practices

Q And how long have you been in that line of work?

A I've been in McLean since 1982 I finished my endocrine fellowship in 1981

Q Now, could you briefly describe what sort of educational background you have?

A I was raised in Detroit, Michigan I went to high school there I went undergraduate education at the University of Michigan I have my master's degree from Cambridge University in England, and I have my doctorate in medicine from Johns Hopkins University I did my internship and residency at the New York Hospital at Cornell University Medical College, and my endocrine fellowship at Brigham and Women's Hospital at Harvard Medical School

Q And about how much of your time do you spend with patients as opposed to doing other things?

A I spend almost all of my time with patients

Q And the time that you don't spend with patients, what do you spend your time doing?

A I do some teaching of interns and residents who are in programs at Fairfax Hospital or Georgetown And I have an academic appointment as the Clinical Associate Professor of Medicine at Georgetown University School of Medicine

Q Now, Dr Crantz, before early 2012, had you heard of the company Star Scientific?

A No

Q Before early 2012, had you heard of the product Anatabloc?

A No

Q Before early 2012, had you heard of the product anatabine?

A No

Q In late January 2012, or sometime in that time frame, did you receive a call that sort of put Anatabloc on your radar for the first time?

A I got an e-mail from one of my colleagues about a clinical study that he was organizing using Anatabloc

Q And who was that colleague?

A Paul Ladenson

Q And how did you know Dr Ladenson?

A Dr Ladenson and I were fellows in Boston at about the same time He was at Massachusetts General Hospital I was at Brigham and Women's Hospital Those are two of the Harvard hospitals

He subsequently joined the endocrine division at my old medical school, at Johns Hopkins, and was Chief of Endocrine there And we're both -- had done research, when we were fellows, and he carried on, in a more research-oriented career in thyroid disease And we were both members of the American Thyroid Association, and the group of sort of thyroid physicians is really not as big as you might expect

Q Got it If I could show you what's been marked for identification as Exhibit 296 And, Dr Crantz, is this an e-mail from Dr Ladenson to you?

A Yes

Q And is it part of an e-mail exchange where you had actually sent an e-mail to Dr Ladenson?

A I believe so Yes

Q And is the date on this January 31st, 2012?

A Yes

Q And is this pertaining to the study that he called you about?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 296 into evidence

THE COURT: It will be admitted

MR FAULCONER: Now, if we could scroll down to the e-mail from you to Dr Ladenson

BY MR FAULCONER:

Q Dr Crantz, could you tell us who's cc'd on that e-mail, in addition to you and Dr Ladenson? An "smtanen"?

A Dr Tanen, who is one of my associates Yeah, that's who's cc'd

Q Now, could you --

MR FAULCONER: Turning to the second page of this, and then on to the third page Sorry Back one All right

I apologize, Your Honor

BY MR FAULCONER:

Q All right Could you read what Dr Ladenson writes to you here on January 31st, 2012

A "Dear Frank Thanks for your message and interest in the trial Before we move ahead with further discussions, I wondered if your office would be able to carry out the study based on its approval by Essex IRB, a highly reputation commercial IRB with a 25 year history of reliability performance - or whether the study would have to be approved by your hospital/health system as well I look forward to hearinq from you Paul "

Q Now, Dr Crantz, when "the study" is referenced here, I guess in two separate parts of that e-mail, can you tell us what type of study that was potentially going to be?

A My understanding was that a preliminary study had been done with a rodent model using Anatabloc and looking at whether there was some alteration in the immune system in a -- a rodent model for autoimmune thyroid disease

And there seemed to be the possibility that there, in fact, was a positive effect of this supplement in the rodent model, and that the next step would be to -- since it was a supplement already approved, to do a similar trial in human subjects

Q And when we say "human subjects," would that, at least in the idea stage here, have been patients of yours?

A It would have been patients of mine

Q Now, in the conversation --

MR FAULCONER: And we can take that one down

BY MR FAULCONER:

Q In that conversation with Dr. Ladenson, did he mention what company he was affiliated with?

A I don't recall if he referred to Star Scientific at the time or not, but -- at that time, I'm not sure

Subsequently, he did mention that the product was a product of Star Scientific

Q And in the course of these initial conversations with Dr Ladenson, did he mention the company's connection, if any, to Virginia?

A He did mention that the company was headquartered in Virginia and that they were interested particularly in having a physician practicing in Virginia as part of the study because the company was a Virginia company

Q Now, after that e-mail, did you actually do some legwork in figuring out what would be required for a study?

A I did

Q If I could show you what's been marked for identification as Exhibit 302 Dr Crantz, is this an e-mail exchange between yourself and Dr Ladenson about some of that legwork that you were doing?

MR FAULCONER: If we could scroll down just a little bit

A Yeah, I see that

BY MR FAULCONER:

Q I guess first off, is this an e-mail from you to Dr Ladenson -- or actually -- sorry It's to somebody with Rock Creek?

A This is -- the thing I'm looking at right now was something that came from Amy Cohen at Rock Creek Pharmaceuticals

MR FAULCONER: I guess if we could scroll up just one more line

BY MR FAULCONER:

Q Do you see there in that "From" line, is this an e-mail from you?

A Yes

Q And it's to Amy Cohen at Rock Creek Pharmaceuticals?

A Right With a cc to Paul and to my colleague, Dr Tanen

Q Got it And it's dated February 7th, 2012?

A Yes February 7, 2012

MR FAULCONER: And, Your Honor, we'd offer Exhibit 302 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, Dr Crantz, you say here, "I've had the chance to review the information you forwarded to me I don't think we would have any problem completing the protocol in our office "

Did I read that correctly?

A Correct

Q At this time were you seriously considering the possibility of doing a study?

A Yes, I was We -- I've never done a clinical study utilizing my patients, and I've always, and continue to be, of the opinion that I want to look at my patients and do what's best for them I don't want to look at them and say, "That would be a great person for a study "

On the other hand, it looked possibly, based on the rodent studies, that this supplement might possibly be helpful in some patients with autoimmune thyroid disease, which is the most common cause of an underactive thyroid, and actually effects maybe 15 percent of women by the age of 65 And that the risk was minimal because the product had been on the supplement market for a period of time with no apparent adverse effect So it seemed like something that might be worth offering to my patients

MR FAULCONER: Now, if we could scroll up to the e-mail response from Dr Ladenson

BY MR FAULCONER:

Q Do you see there where Dr Ladenson says, "Please look at your calendar for the evening of February 29th"? Do you see that?

A I do

MR FAULCONER: If we could take that down

BY MR FAULCONER:

Q Do you recall Dr Ladenson referring to a potential event on February 29th?

A He said there was going to be a -- potentially a reception in Richmond at the Governor's Mansion and that maybe, you know, if I could make it, that would be lovely We'd have a chance, Paul and I, to go down together and to talk and to go over things at more leisure

Q And do you recall what you would talk about if you came down to this event?

A It was going to be about the study, as far as I was concerned

Q Now, before you were invited to this event, had you ever been to the Governor's Mansion?

A No

Q Did you decide to go?

A Yes

Q Did you actually receive a formal invitation?

A I did

Q I'd like to show you what's been offered into evidence already as Exhibit 216, Page 2 Now, Dr Crantz, have you had an opportunity to review this document before coming into court?

A You showed me this document before we came into court and asked if I had seen -- if the invitation I received was similar to this, and I said, "Yes "

Q Got it And so the invitation you received, this one is attached to an e-mail But the one that you got, was it an e-mail or a hard copy?

A It was a hard copy

Q And you don't still have it, do you?

A No

Q Now, the one that you got in hard copy, did it look like this one? Have a seal at the top?

A Yes, it did

Q All right

MR FAULCONER: We can take that down

BY MR FAULCONER:

Q Now, when you were invited to this event and you received this one in the mail, was there anything saying who was paying for the event?

A No

Q Anything saying it wasn't an official government event?

A No

Q So how did you ultimately get to the event?

A Paul Ladenson was flown down from Baltimore I was picked up at Dulles And we were flown to Richmond and then driven to the event

Q And on what kind of plane did you get down there on?

A It was a Learjet from Mr Williams

Q And when you got down to Richmond, how did you get over to the Mansion?

A There was a car -- I think it was an SUV, actually -- and driver that -- Mr Williams' driver

Q And was Mr Williams there?

A Yes

Q And when you got to the Mansion, where did you park?

A Very close Right up front

Q And can you recall where -- if you could see where other folks were parking?

A I didn't see where other folks were parking, but it was a drizzly kind of night So people were walking in with their umbrellas

Q And when you got inside, how many people do you remember being there?

A It was difficult to say because it was in several different rooms But if you said 50 or -- people, that would be close, as far as I could say If you say no, no, there were really 100 people there, I couldn't refute that

Q But there were plenty of people there?

A There were a good number of people Yes

Q Now, at some point during the evening, did you actually meet Mr McDonnell?

A Yes

Q Who introduced you to him?

A Mr Williams introduced me

Q And I'd like to show you what's been marked as Exhibit 333 Dr Crantz, is this a photo of events at the reception that you attended?

A I can only say that that is a photo of Governor McDonnell his wife, and Bill Hazel, whom I know as a colleague from Northern Virginia where he practiced orthopaedics --

Q Now, is this --

A -- before coming here

Q Oh, sorry, Dr Crantz

Is this consistent with what you recall occurring at the event?

A Yeah In other words, he was there All three people were there I don't remember if that was the tie that Dr Hazel was wearing, but --

MR BROWNLEE: We have no objection, Your Honor

THE COURT: All right

MR FAULCONER: We'd offer 333 into evidence, Your Honor

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, just to make sure that everybody is clear here Who's -- could you go through, left to right, who the individuals are?

A Left would be Ms McDonnell Center would be Governor McDonnell Right would be Dr Hazel

Q Now, during this event, do you recall Mr McDonnell making remarks to the individuals who were there?

A Only in a hazy fashion

Q Do you recall anything that he talked about or anything that he said?

A I -- what I recall the gist of things being predominately was just about medicine in Virginia and moving forward and having, at this reception, a number of people that were involved with efforts to improve medical care in Virginia

Q And do you recall him referencing Dr Ladenson specifically?

A He did introduce Dr Ladenson and said that Dr Ladenson was here from Johns Hopkins University, yes

Q I'd like to show you what's been marked as Exhibit 334 And, Dr Crantz, the furthest to the right in this photograph, who is that?

A That's I

MR FAULCONER: And this has already been offered into evidence, Your Honor

I'm correct on that right, right?

BY MR FAULCONER:

Q And who's standing to your right, to the left as you look at the picture?

A Mr Williams

Q And do you recall talking to Mr Williams about the potential study at the event?

A I'm sure we did And he was very excited about Anatabloc and its potential So he -- we certainly did Or if I didn't discuss it, he did

Q And I'd like to show you what's been marked for identification as Exhibit 339 Is this another photograph from the Healthcare Leaders Reception --

A Yes

Q -- that you attended?

A Right

MR FAULCONER: Your Honor, we'd offer Exhibit 339 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q And, Dr Crantz, can you tell us, other than yourself here, whether you recognize anybody else in this photograph?

A That's Dr Ladenson who's beside me

Q And then one more photo Exhibit 337 for identification

A Right

Q And, Dr Crantz, is this another photo that appears to be from that event?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 337 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, Dr Ladenson (sic), do you see there, is that you that's sort of a little bit blurry in the background?

A Yeah I'm beside Dr Ladenson On the photo, I'm to his right

Q Okay So the face that's sort of partially obscured, that's actually Dr Ladenson?

A That's Dr Ladenson, yes

Q Now, Dr Crantz, I'd like to show you what's already been admitted as Exhibit 309 Now, before coming in to testify today, you've had an opportunity to review this document, right?

MR FAULCONER: Well, if we could zoom back out and zoom in on the list of names that's there

MR BROWNLEE: Your Honor, I'm going to object This e-mail isn't to him I'm not sure what -- I just object to the relevance This e-mail is not to him It's an internal e-mail from the Governor's Mansion

MR FAULCONER: Your Honor, I'm going to ask him if he recognizes any of the companies that are listed

THE COURT: Go ahead

BY MR FAULCONER:

Q Dr Crantz, can you tell the members of the jury whether you recognize any of the companies that are on this list?

A Yes

Q Could you tell us which ones?

A Well, Bristol-Myers Squibb is a pharma company, a major manufacturer of medication CIGNA is a healthcare insurance that insures a number of my patients Medtronic is a company that makes insulin pumps Merck is another pharmaceutical manufacturer

All of these I recognize Sanofi-Aventis is another pharmaceutical manufacturer Those are the ones immediately that I recognize

Q Dr Crantz, if Star Scientific had been on a list like this before you got that call from Dr Ladenson, would you have --

MR BROWNLEE: Objection, Your Honor That calls for speculation

MS MARTIN: Same objection

THE COURT: Sustained

BY MR FAULCONER:

Q Now, Dr Ladenson (sic) --

MR FAULCONER: We can go ahead and take that down

BY MR FAULCONER:

Q -- at the event itself, were you told anything about who was paying for it?

A No

Q And after the event, did you go straight home?

A After the event, we went out to dinner

Q And when you say "we," who are you referring to?

A Dr Ladenson, Mr Williams, the Governor, and his wife

Q And when you went out to dinner, could you tell us whether Anatabloc came up at all during the dinner?

A Yes, it did

Q And can you recall who was talking about Anatabloc at the dinner?

A I recall Mr Williams and Ms McDonnell talking about it Ms McDonnell saying that she was -- had -- using it and it was helping her

Q And during the conversation, was Mr McDonnell engaged in the conversation at dinner?

A About Anatabloc or just in general was he engaged?

Q Well, in general, did he seem to be paying attention?

A Yeah Sure

Q And could you tell us, based off of the conversation that you had, what was your impression as far as why you were there at the dinner?

A I wasn't certain why I was there I -- from my -- my conception of the whole thing was a chance to spend a little time with Paul, to hear a little bit more about the study, and it was a very social kind of thing

Q Did it seem to you like you were being recruited --

MR BROWNLEE: Objection

BY MR FAULCONER:

Q -- to do the studies?

MR BROWNLEE: Calls for leading

THE COURT: Sustained

BY MR FAULCONER:

Q Now, Dr Crantz, this may sound a little strange, but at some point did Mr McDonnell's chef actually come up in the conversation?

A Briefly, it did

Q Can you tell us what that was?

A That was just a little banter back and forth about stealing somebody's chef

Q And who was that between?

A It was between the Governor and Mr Williams

Q Now, do you recall who paid for dinner?

A I do not recall who paid for dinner, although -- I don't recall for sure I was not paying careful attention to who paid for dinner

Q Did you pay for dinner?

A I did not pay for dinner

Q Was it a nice dinner?

A It was a very nice dinner

Q Now, after the dinner, did you fly straight back to Northern Virginia?

A Although I had been promised that I would be back at home by the end of this thing, it was late Mr Williams said his pilot didn't want to fly back that late, it would have been a very late night, so that we would stay over and fly back the next morning

Q And where did you actually stay that night?

A We stayed at the Governor's Mansion

Q And who invited you to stay at the Governor's Mansion?

A The Governor and Ms McDonnell

Q Now, after the event, did you actually end up doing the studies of Anatabloc?

A I did not

Q Now, since the event, have you been back to the Governor's Mansion?

A No

Q After the event, did you ever meet Mr McDonnell again?

A No

Q When you went to the event, were you aware of any payments from Jonnie Williams to the McDonnells?

A No

Q And at the time of the event, were you aware that Mr Williams and Mr McDonnell had a private meeting earlier that day?

A No

Q Did that come up at all at dinner or that night?

A No, it didn't

MR FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

MR FAULCONER: No further questions, Your

Honor

THE COURT: Cross?

CROSS-EXAMINATION

BY MR BROWNLEE:

Q Hello, Dr Crantz My name is John Brownlee, and I represent Bob McDonnell, and I just have a couple of questions for you

Is it fair to say that this whole thing kind of started when you received a phone call from Dr Ladenson? Is that correct?

A Yes

Q Okay And he informed you that he had received some grants from Rock Creek Pharmaceuticals and he had been doing some testing and he wanted to talk to you about that Is that fair?

A That's fair

Q And you knew Dr Ladenson from many years ago, and he was at Hopkins And I believe you had, at one time, worked at Hopkins or went to school there, I think?

A As I said, the endocrine community is small I saw Dr Ladenson --

Q Okay And Dr Ladenson --

A -- a couple of times every year at meetings, and we shared patients from time to time So we had a -- you know, a nice collegial relationship

Q Okay And you have the utmost respect for Dr Ladenson as a person and as a physician Is that true?

A I do

Q Okay

MR BROWNLEE: Could we see -- may I impose? -- Government's 302? Thank you very much If we could just look at the bottom part of that Thank you

BY MR BROWNLEE:

Q Sir, I believe this is an e-mail that you had sent And it's my understanding that you had had the conversation with Dr Ladenson Perhaps he had forwarded you some information or had someone forward you some information You looked at it And then this was your reply; is that correct, sir?

A Correct

Q Okay So just based on those things, your conversation with Dr Ladenson and your review of whatever they sent you, you made the decision, you say, "I don't think we would have any problem completing the protocol in our office We have the space and the personnel," and then you go on

So you were fairly supportive of it at that time of at least looking into this; is that correct?

A Correct

Q And at that time, had you ever met Bob McDonnell?

A No

Q Okay Now --

MR BROWNLEE: Thank you very much

MS TAYLOR: She did it

MR BROWNLEE: Oh, thank you too

BY MR BROWNLEE:

Q Now, then you talked about, at some point, Dr Ladenson informed you of this reception in Richmond, and you received an invitation And I think the government showed you Government's Exhibit 216

MR BROWNLEE: Could we pull that up? And, actually, if you look at the attachment Okay Could you blow that up?

BY MR BROWNLEE:

Q Okay And the government asked you if this was your invitation, and you said yes; is that correct?

A No

Q That is not your invitation, is it?

A No He asked me if I received an invitation that looked similar to this

Q Okay

A Because this --

Q All right This is not your invitation, correct? It's a different date --

A Yes

Q -- right, Doctor?

A It's not my invitation

Q You didn't go anywhere in August, did you, sir?

A I'm sure I went somewhere, but it wasn't to the Governor's Mansion

Q Very good You didn't go to Richmond to the Governor's Mansion on August 30th?

A No

Q No Okay Thank you

MR BROWNLEE: You can take that down Thank you

That's all I have Thank you

Thank you, Judge

THE COURT: All right Any questions, Ms McDonnell?

MS MARTIN: Yes, Your Honor

Thank you, Your Honor

CROSS-EXAMINATION

BY MS MARTIN:

Q My name is Heather Martin, and I represent Ms McDonnell

Have you and I ever spoken before --

A No

Q -- Dr Crantz?

And have we ever spoken on the phone?

A No

Q And going back to your day-to-day practice, you are -- you're in patient care most of the time, correct?

A Yes

Q And you are in private practice?

A Yes

Q You don't work for the State of Virginia?

A No, I don't

Q Or the government in any other capacity --

A No

Q -- correct?

A Except for consulting

Q On a consulting basis only But --

A But I'm not an employee of the government

Q Thank you for the clarification

Now, when you were speaking about your potential interest in this study, I want to make sure I understood your testimony You stated that you were interested in potentially helping out with the study with Dr Ladenson because of the results of the rodent studies; is that correct?

A Because the results of the rodent studies suggested the possibility that there would be a salutary effect, a positive effect, for some of my patients It might be helpful for some of my patients

Q And a second reason that you stated was that the product had been used on the supplemental market with no adverse effects?

A In making a decision as to whether I would offer this product to my patients, the fact that it had been on the supplement market for a period of time without any adverse effects was certainly important

Q And without having to slow us down by pulling up documents, I think it was around early February 2012 that, as you testified in response to the government's questions, you were seriously considering participating in the study; is that correct?

A Correct

Q And at that time, had you ever met Maureen McDonnell?

A No

Q And did Maureen McDonnell have any influence in your -- on your interest in this study?

A No

Q Now, you testified that later in the month you attended a dinner at the -- or I'm sorry, at event at the Executive Mansion, correct?

A Correct

Q And that after that event, you went to dinner, correct?

A Right

Q And Jonnie Williams was present at that --

A Yes

Q -- dinner?

And the Governor and Ms McDonnell were both present at that dinner?

A Yes

Q All right Now, you've spoken with the government agents and prosecutors before, correct?

A Correct

Q And they asked you some questions about that dinner during the times that you've spoken with them before, correct?

A Yes

Q And in response to their questions about that dinner, you stated that Williams was treated like a member of the McDonnell family

Do you recall saying that to them?

A I don't recall saying that to them But he was treated as a very close friend

Q And is it your impression that he was treated like a family member?

A Yes

Q And the context in which the discussion about the chef came up is they were discussing it in sort of a joking manner, correct?

A It was banter, yes

Q And that they were joking about having stolen Mr Williams' chef, correct?

A Yes

MS MARTIN: No further questions, Your Honor

THE COURT: All right

Anything else based on that?

MR FAULCONER: No redirect

THE COURT: All right

Thank you, Doctor You may stand down

THE WITNESS: Thank you

(Witness stood aside)

THE COURT: All right We're going to stop for lunch I have the same deal as yesterday I've got a matter that I have to take up So you all will get an hour and 15 minutes Let's make it 2:20 for our return, and we'll see you then Have a good lunch

(The jury left the courtroom)

THE COURT: All right I'm going to go down briefly We'll be back for this 1:00 arraignment

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(Luncheon recess taken from 1:04 p m. to 2:20 p m.)

THE COURT: All right, let's bring in the jury

(The jury entered the courtroom.)

All right, government, call your next witness

MR. DRY: The government calls Dr William Hazel to the stand.

DR. WILLIAM A. HAZEL, JR.,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DRY:

Q Good afternoon, Dr Hazel.

A Good afternoon.

Q Would you please state your name for the record?

A I am William A. Hazel, Jr

Q What city and state do you currently live in?

A You have to have a life to do that But our home is in Oakton, Virginia

Q Very good. Briefly describe your educational background to the jury

A I went to high school at a place called Woodberry Forest in Orange, Virginia I got a Bachelor of Science in Civil Engineering at Princeton University I took some courses at Georgetown in pre-med, then I went to Duke

University School of Medicine, where I finished in 1983, and trained in orthopedic surgery at the Mayo Clinic between 1983 and 1988

Q After you completed your residency, what did you do from that period until you became a government employee?

A I had a practice in orthopedic surgery in Northern Virginia

Q Okay At some point, well, what's your current position, sir?

A I am currently the Secretary of Health and Human Resources for the Commonwealth.

Q When did you originally become the Secretary?

A January of 2010

Q Can you please describe to the members of the jury what duties you have in that role?

A As Secretary, I'm appointed. I'm a political appointee I am appointed by the Governor, confirmed by the General Assembly I oversee on behalf of the Governor's Office a number of state agencies, to include the Medicaid Agency, Health Professions, the Health Department, Social Services, Aging and Rehab Services, a group called the Comprehensive Services Act, which deals with at-risk children, the program for Department for the Deaf and Hard of Hearing, Department for the Blind and Vision Impaired, Virginia Board for People with

Disabilities And I was told by one of my predecessors never to try to list them because you will forget some, but I know I'm missing two

Q Okay Now, I think you said you were appointed by the Governor. Who exactly appointed you?

A Governor McDonnell

Q And is that a Cabinet-level position, sir?

A It is

Q And who did you -- who was your direct report?

A Chief of Staff, Martin Kent

Q Okay But ultimately, who could fire you?

A The Governor

Q Okay Now, when you came on board as the Secretary of Health and Human Resources in the McDonnell Administration, were you aware of -- what were the priorities as you understood them for the Administration right out of the game?

A That was pretty straightforward. The bumper sticker said "Bob's For Jobs "

Q Okay Did your work as Secretary of Health and Human Resources, did that also relate to promoting business and Virginia businesses in some ways?

A I think it did, because we looked at the agenda of the various departments, and obviously, one of the things that encourages people to come to a Commonwealth like ours is a good, healthy workforce Certainly we have all struggled with insurance costs going up in the private sector, so doing reforms in the healthcare system to lower the cost for government, the taxpayers, and for the private sector were very important to us We do a lot of work around vocational rehabilitation for individuals with disabilities. And so that contributed to that agenda as well So we touched in a number of areas

We also in the Health Department have some control over water quality or some regulation there, which is important Water is an important natural resource to us Our shellfish regulation contributes to that industry significantly in terms of being a mark of quality So I think we did fit into that agenda

Q Now, what percentage of the overall budget in rough terms was your department responsible for?

A Well, the agencies that I sit over spend about a third, at least it did when we started

Q A third of the overall budget?

A State budget, yes, sir

Q Now, when you were working for Mr McDonnell, was it unusual for him to send you information relating to health and medical issues?

A It was far from unusual It was pretty common

Q Okay How did Mr McDonnell typically correspond with you?

A We would get -- some papers would be dropped off, or his assistant would send us an e-mail basically that had a photocopy of a request, and it was pretty common And there was normally something up at the top that says, "Bill, please follow up," "Bill, what do you think," "Please handle," those types of things

Q To be clear, the assistant you were talking about, which one in particular typically would forward you the correspondence? Pam Watts?

A It would mostly be Pam. Occasionally Kim.

Q Let's show Government Exhibit 71, which is already in evidence, and the top of this one This e-mail is from Pam to you in October of 2010 Is this an example of how things would normally come to you from the Governor's Office?

A Yes

Q And prior to -- first of all, can you just tell us what the subject line on this one is?

A "FWD Roskamp Institute press release "

Q Now, prior to receiving this e-mail in October of 2010, had you ever heard of the Roskamp Institute?

A That was four years ago, almost five years ago now, so I'm -- I don't think so, but certainly I hadn't heard of the Roskamp Institute prior to meeting Jonnie Williams

Or if I did, it was in that time frame So if this was when that happened, that's when it was

Q Well, do you remember hearing anything about Star Scientific before meeting Jonnie Williams?

A No

Q Okay Let's go to Government Exhibit 73, please That's already in evidence Can we blow up the top, please? Sir, you write: "I got it Is there something specific that I need to do or is this an FYI only?"

Do you remember getting a response to this e-mail?

A No I mean, if you didn't show me the e-mail, I wouldn't remember it, either

Q Okay Well, let's go to -- do you recall around this time the idea of you meeting Jonnie Williams coming up?

A Yes

Q All right Let's go to Government Exhibit 75 And this is not in evidence At the top, sir, this is a calendar invite, and the organizer is you, correct? And the required attendees are Keith Hare and Matt Cobb; do you see that?

A It is a little hard to focus on from here, but yeah

Q It is dated November 4th, 2010?

A Probably my assistant, Elaina, sent that

MR. DRY: The government would move Government Exhibit 75 into evidence

THE COURT: It will be admitted.

BY MR. DRY:

Q What is the subject line on this calendar invite?

A "Meeting with Jonnie Williams, CEO, Star Scientific "

Q And who is Keith Hare?

A Keith was one of my deputies. I had two deputies.

Q The other one was?

A Matt Cobb

Q Okay Did you in fact meet with Mr Williams on November 4th of 2010?

A I met with him, and that was probably the date.

Q Okay Prior to this meeting, around this date, had you ever met Mr Williams before?

A No.

Q Okay Where was the meeting held at?

A In my office in the Patrick Henry Building

Q And who attended this meeting?

A Mr Williams and myself were the only two

Q So Mr Hare and Mr Cobb did not attend?

A That's correct

Q Why didn't they attend?

A As I recall the meeting, we had a lot of stuff going on that morning, and they had other things that just took higher priority and I just said, "I'll handle it myself "

Q Now, when you are going into this meeting, what's your understanding about why you are attending the meeting?

A Well, the Governor sent Jonnie Williams to me to talk to

Q And let's just -- what did -- what do you recall Mr Williams saying during the meeting?

A Well, you know, he talked a little bit about himself and his company, and he talked about having been in the tobacco industry and the devastation of the tobacco industry on Southside Virginia, and that he had had these tobacco barns, and along the way they had found this chemical that he was quoting some literature that smokers often didn't get other diseases, and that they had found the reason was this product that was in tobacco And that it was, if we could figure out a way to make this a marketable product, it would help the economy, and that by the way, he knows the stuff is good because, you know, family members were taking it and a lot of other people Then he actually took some of the pills while I was there That was the long and short of the conversation.

Q Was there any discussion about clinical trials?

A You know, I don't remember there being at that point in time

Q I'll try to refresh your recollection.

A I think sometimes my wife tries to refresh my recollection this way, too

Q I don't even know how to respond, so I'll leave it alone Discretion is the better part of valor

(Counsel conferring with Mr Asbill and Mr Burck)

(Document proffered to witness)

(Witness perusing document)

Okay, just put that to the side Did Mr Williams ever mention clinical trials of Anatabloc or scientific studying of Anatabloc?

A As I said, I don't recall at that meeting that he did, and I know there is a whole -- this was four-plus years ago now So I don't recall that

Q Do you ever remember him mentioning it?

A Yes, later we had a discussion. That was sometime after that, I think.

Q Okay Did Mr Williams bring anything with him to the meeting?

A Yes, he did. He brought a box of the stuff that he was selling, the Anatabloc.

Q Anatabloc And did Mr Williams ask you for anything at this meeting?

A He gave them to me and he told me how they made people feel better and everything, and offered that I should have some to try And I don't actually, other than that, I don't know, I missed the punch line of the meeting because I never got the ask at that point

Q Okay

A At least I don't remember

Q Was there a subsequent conversation about the idea of you going to Roskamp?

A There was, and I think there is plenty of e-mail evidence of that that you probably already have But there was a discussion, and I don't remember whether it was -- my recollection was always it had been at a different time But there was a discussion to ask me to come down to Roskamp. But again, I don't remember whether it was that meeting or a subsequent communication I just don't know

Q Putting the timing aside, you are sure there was an ask for you to go to Roskamp?

A There was, yes, definitely

Q Coming out of that meeting or around this time frame, let's just do it that way, what was your reaction to Mr Williams' claims regarding Anatabloc?

A Well, they were unbelievable to me Let's put it that way I'm an orthopedic surgeon, and in the hierarchy of medicine and medicines, we do surgery, and there's certain medicines we use, and the rest of the profession jokes at us because we use very few medicines But something that was too good to be true I probably would have heard of somewhere along the line And I think I knew at the time there was already some Federal Trade Commission advertising issues that this company had had, because in preparation for the meeting I had gotten that information So then you do worry about things in an unregulated manufacturer like the quality of the medications, the compositions, the dosages, all of these things And so to say I was skeptical was an understatement

Q Okay But Mr Williams had told you all these stories about his wife and gave you anecdotes That didn't sway you?

A An anecdote is an anecdote

Q What would you rely on as a doctor before having less skepticism; what would you want to see?

A Professionally, there is a process by which medications come to market And I think we all know that even medications that come to market have problems Side effects, you know I can think back to when statins were just coming out and getting real big for cholesterol and there was this theory that we should all take a statin for cholesterol because we will live longer, and set aside the liver issues and the muscle pains and things like that, and the fact that maybe it doesn't do all of these things So, you know, there is a body of literature, a body of evidence that's developed scientifically that's reviewed. The FDA, love them or hate them, they are slow as molasses, but if you do get their seal, you have probably got something that is likely to be safe So I tend to rely on those

Q The science?

A Correct

Q Did you ultimately go down to the Roskamp Institute?

A No

Q Okay Let's bring up Government Exhibit 116, please That's already in evidence This is an e-mail from Ms Watts to you, correct?

A Yes

Q That's May 5th of 2011 What day of the week is that?

A Thursday on this

Q Okay And let's go to the attachment Can you just read the title of this?

A "Seeking Alpha" and the symbol "Star Scientific has Home Run Potential by Dr John Faessel, April 29th, 2011 "

Q Had you ever heard of Dr John Faessel before this?

A Not that I recall

Q Do you recognize the handwriting on the upper right-hand portion?

A I have seen that many times, and it is generally in red

Q Okay From whom?

A I believe that would be the Governor He liked to play doctor sometimes, so that scratch is the McDonnell scratch

Q The handwriting is bad?

A Yes It is at times

Q Okay Do you recall talking to the Governor about Star Scientific on Thursday, May 5th, 2011?

A The Governor and I, as far as I know, only spoke about Star one time directly that I can think of Today sitting here, you may have something else. But he did ask me to talk to Jonnie

Q And do you think it was around this time frame or are you not certain?

A You know, when we went through all of our preparation, a timeline was generated. And absent that timeline, it is hard for me to put everything in order

Q Let's do it this way Let's go to Government Exhibit 117, please And the top e-mail is from Ms Block to you That's dated what date?

A This is Monday, May 9th, 2011

Q Okay And then if you look at what -- let's just scroll down to give some context to this Stop there, please Ms Block writes to you: "The Governor said he sent you some material on the Roskamp Institute and that you were going to get back with him regarding your thoughts on the organization "

Now go up. What do you write to her in return, sir?

A "He mentioned this to me on Thursday so I have not gotten to it yet How soon do you need to make a decision?"

Q Does that refresh your recollection, or are you still just --

A Whether it was in person or a phone call or something said at a meeting, I don't deny that it happened, but I just don't remember the conversation.

Q You don't remember the date, but when Mr McDonnell asked you to meet with Mr Williams, do you remember what he said other than that?

A At one point, he did say that Mr Williams was a very good friend of his wife, and that he wanted me to meet with him. And I believe that my response was, "I have met with him once, but I really don't know what he wanted from me "

Q So was this before -- so this conversation occurred after you met with Mr. Williams in November of 2010?

A It clearly did.

Q Was it before a subsequent meeting with Mr Williams at the Healthcare Leaders Reception?

A I wouldn't say that I had a meeting with him there I ran into him. But yeah, I assume so I don't know when that was because I think we were in a lobby or a hallway someplace, so there was just -- it was just a conversation.

Q Did you have an opportunity to provide the Governor your views regarding the idea of him going down to Roskamp?

A By the time -- I do remember that by the time that they jogged my memory and I got back to it, there had been a decision already made that they weren't going, so my input was not needed.

Q And who informed you of that?

A It might have been the scheduler, Monica, or might have been the Chief of Staff I just know that I was racing down to get the information to answer the question and it had already been decided

Q Do you recall saying that you had spoken to Martin Kent about the trip and learned that --

A That sounds right to me

Q Okay By May of 2011, how were you and your staff referring to Mr Williams?

A I think the jury has heard that he was known in our ring as the Tic-Tac Man.

Q And why were you referring to him as the Tic-Tac Man?

A Well, the day that he came he left me this box of stuff, which I will swear under oath I never declared as a gift because I had no thought that it had any value I mean, I just want you to know that But they were -- they looked like Tic-Tacs and they were in a Tic-Tac container

Q Is it fair to say that you were very skeptical of Mr Williams and his product?

A Well, yes One of my deputies, I think it was Keith, asked if I would take them, and I said no, I would not take them. And he asked if Matt would take them and Matt says, "If you pay me " Keith said, "I will give you a dollar a day to take them," and after two days Keith didn't pay and Matt didn't take them. That's my recollection

Q Did you attend a Governor's event at the Homestead Resort in June of 2011?

A Did I attend in June, 2011?

Q Yes

A I think I attended. I get my years mixed up, but I think I attended that year, yes 2010, I did not 2011, I think I did.

Q Before that event, were you asked to sit next to Mr Williams during the event?

A Yes

Q And who had asked you to sit there?

A Secretary Polarek.

Q And Secretary Polarek is who?

A Janet was our Secretary of the Commonwealth

Q Is she also known as Janet Kelly?

A Yes, she is now.

Q Okay

A Got married along the way

Q Did you agree to sit next to Mr Williams?

A No. I asked not to be seated next to Mr Williams.

Q Why didn't you want to sit next to Mr Williams?

A Frankly, I thought it would be a very long evening

Q Long how, sir?

A Well, I didn't need to get the Anatabloc sale again, the Anatabuse, whatever

Q Going to Government Exhibit 189, please Sir, do you remember receiving this e-mail on July 31st at the bottom?

A Yes, sir

Q And who is that from and who is that to?

A This was from the Governor to me asking that I have Keith or Matt attend a short briefing at the Mansion about ten with the First Lady

Q And it is sent at 11:29 p.m.?

A That's what it says here, yes, sir

MR. DRY: The government would move to admit Government Exhibit 189 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR DRY:

Q To be fair, sir, was it unusual for the Governor to e-mail you late at night?

A No

Q And --

A He had some very bad habits that way

Q He would often e-mail you late at night?

A I probably encouraged him because I was one of those who responded sometimes in the middle of the night

Q At the time that you received this e-mail, were you aware that Mr McDonnell had just returned from a vacation at Mr Williams' home?

A No

Q At the time that you received this e-mail, were you aware that Mr Williams had provided a $50,000 loan to the Governor's wife?

A No

Q At the time you received this e-mail, were you aware that Mr Williams had paid $15,000 for the Governor's daughter's wedding reception expenses?

A No

Q Sir, after your meeting with Mr Williams, did you have any intention on having additional meetings or sending your deputies to have additional meetings with

Mr Williams?

A Nothing proactive on my part, no

Q Where did you think that the Mr Williams thing was at? Before this e-mail, was Mr Williams and his product even on your radar screen?

A Before this one?

Q Yes, sir As far as what you needed to do going forward.

A Again, because of the timetable and the discussion, I knew somewhere along there that he wanted scientific studies And I did speak to Mr Williams someplace, I think it might have been at the Mansion, and I basically said, "Jonnie, you don't need me to do this You go talk to -- there is a process for this that people go through when they want to bring drugs to market "

Q Did you know that before this e-mail?

A Without my cheat sheet of what happened chronologically, I don't know whether it was before this or after this, Mr Dry I just plain don't recall

Q Was it unusual for Mr McDonnell to ask you or your deputies to attend a meeting on less than eleven hours' notice?

A It was not uncommon for us to show up for meetings on very short notice.

Q Okay Can you remember any other time that that occurred?

A I would say that, truthfully, I would have to say that I don't recall any other -- I can only recall one other time where I was asked to go to the Mansion, but I can tell you that it would probably be easier to remember the times we had advance notice for meetings, which was almost never

Q What was the other --

A Things just popped up

Q What was the other time you went to the Mansion?

A Early on in the Administration, I was asked to go speak to the First Lady about her agenda as First Lady

Q Who asked you to?

A I don't recall, probably the Chief

Q You say the Chief?

A The Chief of Staff, probably Martin Kent

Q Did you go talk to her?

A We did, yes

Q And approximately when was this?

A I think Keith was already on board, so it would have been in February of 2010

Q And what was said during that meeting?

A That was a discussion about what the First Lady wanted her sort of role to be and agenda and so forth

Q What did you tell the First Lady?

A We explored a number of options at that point, about what -- and I don't think anything was really settled in her mind as to what she wanted to focus on.

Q Did the subject matter of nutraceuticals come up?

A It did.

Q What did you tell Ms McDonnell during the meeting?

A I did ask that we avoid nutraceuticals as being not evidence-based and sound and that the Health Department would be happy to provide things that would be on good solid footing for her to talk about

Q What do you mean provide things? I guess I don't understand

A If the interest was health, which I think the First Lady was clearly interested in health and health promotion, I think that there were things that would be considered more mainstream and less controversial, and I think would have been a much -- my advice was to steer clear of these things that really are unfounded.

Q Let's go back to the e-mail You say, "Will do " Correct? To the request from the Governor?

A Yes We we would get somebody there.

Q Did someone actually go to the meeting?

A Yes Molly Huffstetler went to the meeting

Q What was her job?

A Molly worked in our office as an advisor She worked a lot on health policy, Medicaid policy

Q And why did you direct one of your subordinates to go to this meeting?

A The Governor asked us to have someone there

Q All right Let's go forward to the Healthcare Leaders Reception. In January of 2012, were you planning a reception at the Mansion, or were you having your staff plan the meeting?

A We had wanted for a long time to recognize the folks that had worked with us on the Virginia Health Reform Initiative and other places and some of the stakeholders around healthcare I think it is pretty evident that healthcare and health reform have been critical issues during our time in Richmond. And at some point, somebody said, "Let's have an event at the Mansion." And I don't recall whether that was in response to us directly or just sometime it bubbled up to the top of the list But at a certain point, we said we were going to have a healthcare event at the Mansion. So we started to plan one

Q What was the purpose of this event?

A I think it is like a lot of the events, when you have been working with people on a variety of things, and it was Governor McDonnell would frequently invite groups in around topics where we had just worked closely, and some people agreed with us on the issues and some didn't, but it was just a chance to show appreciation that they were there and participating in the process

Q When you say appreciation, appreciation for doing what? You are going to invite somebody to a Healthcare Leaders Reception You are recognizing them for their contributions of doing what?

A I think for my perception when we set out was that these would be people who were involved in one way or another in sort of the improving healthcare in Virginia, improving in the public area, thought leaders in healthcare, political leaders, organizational leaders in the delivery system.

Q Was it your understanding as you were planning this event that you were going to invite businesses in?

A Well, if a hospital executive represents a healthcare business, the answer would be yes

Q But how about a pharma company?

A You know, a pharma representative of one of the major companies that has a plant in Virginia would probably have been on the list if they had been involved in the policy world or participated in some of the -- see, we had had a whole series of activities that we engaged people in This Virginia Health Reform Initiative had 22 or 24 individuals on it and we had six work groups So there were people who had contributed and shown up month in and month out to contribute and those are the ones that I was focused on

Q Was Mr Williams one of those people?

A No

Q Who was responsible for paying for the cost of the reception?

A My impression had been that our office as Secretariat was going to pay for that

Q When you say your office, that's Department of Health and Human Resources?

A The Secretariat There is a Secretariat budget It is roughly $700.000, may have been a little less than that, and we pay our employees out of that and that's what we have to work with

Q Let's talk a little bit, how do you put together the guest list?

A Have you ever planned a wedding?

Q Not yet I probably will have to

A Good luck You try to, you figure out how much money you have, how many people that the building will hold, how much it is going to cost per person to have them, and then you look at the list of people and you try to pick through who you feel, based on what we were trying to do, should get priority in being in the room.

Q And who on your staff were you working with on that process?

A My assistant, Elaina Schramm, did most of the coordination for us. But I lean heavily on my deputies, Keith and Matt who you mentioned, who helped us draw the list and helped me remember, we ran it by the Commissioner or the Director of the Medicaid program, and others, just to try to be sure we got the people who had been most helpful in terms of coming to working on our Health Reform Initiative

Q Did anyone else add names to the list that you came up with?

A Yes

Q Who?

A We sent the list over and it did come back with names added When I say we went sent it over, I think we sent it to the Governor, the First Lady, but somebody handled it and sent it back to us Mostly when you plan these events at the Mansion, which we didn't do very often, you present sort of the program and the agenda and then they amend it and send it back. So I'm not exactly sure who did it

Q At some point, did you understand that Ms McDonnell was adding names to your list?

A That was my impression, yes

Q And had you or had you requested that Ms McDonnell review the list and provide her names? Did you have any conversations with her saying, "Hey, please add who you want"?

A No

Q Did you review the people that Ms McDonnell had added to the list?

A I reviewed a list that had names added to it And yes

Q Did that include people from Star Scientific?

A It did.

Q Did that include people from the Roskamp Institute?

A I believe it did, yes

Q Well, bottom line, at this time did you view these people as Healthcare Leaders in Virginia?

A I did not

Q Did you become upset about this?

A I was frustrated, because I felt we had a limited number of spaces, and that it should be directed more to people that were mainstream involved in the systems in Virginia

Q You wanted it to be people that had actually made contributions to the policy of healthcare in Virginia

A That was the general idea

Q Did you express your frustration?

A Well, I basically determined that we could not pay for those other people If that's expressing your frustration, yeah, I was not excited to see these outsiders or people I would not consider leaders involved.

Q Let's go to Government Exhibit 343, please This is an e-mail from Elaina Schramm to you dated February 29th of 2012 Ms Schramm is your secretary or assistant?

A My assistant, yes.

MR. DRY: Government moves Government Exhibit 343 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR DRY:

Q You have had the opportunity to review this e-mail before your testimony today?

A I believe so, yes

Q All right And in general terms, what does she write to you right there?

A I'm sorry, could you repeat that?

Q I'm sorry What does Ms Schramm write to you there?

A It says, "Looks like there will be 125 guests tonight "

Q Can we go to the attachment? And the attachment to this is the people that are coming to your event?

A You really expect me to read this?

Q No, not that quick.

A It is not that it is moving, it is just that it is fuzzy Now you know why I'm not doing surgery anymore, I guess

Q Let's blow up some names Let's go to OGV-002444 The upper left-hand corner, can we blow up just the first three columns? And you see in Cell A-2, this is the list of people that would be attending?

A Yes, sir

Q Going down to the 26 block, do you see that name?

A Frank Crantz

Q And you knew Dr Crantz, right?

A I did know Dr Crantz His wife is a gerontologist in Northern Virginia and I had known Frank previously

Q Was Dr Crantz one of the people that you wanted to invite to your reception?

A No. I didn't put him on the list

Q Going down on Line 34, please

A By the way, I like Frank a lot He is a good guy But I just wasn't --

Q He seems to like you, too

A That's nice to know somebody does

Q Go to Cell 34, please Do you see that name there?

A David Dean.

Q And then can we go over, and what company is he associated with?

A It says here Star Scientific

Q Just to be clear, did you even know David Dean?

A No

Q You didn't add him to the list?

A No.

Q Going to the next page, on Line 72, do you see a name, Paul Ladenson?

A Uh-huh.

Q Did you know Mr Ladenson?

A No. I think I might have met him at the reception I'm not even sure The name now rings a bell, but I don't know him.

Q Did you subsequently learn that he was a consultant for Star?

A Could have been Slide over and see, does he have an association on this thing?

Q So you think you might have met him, but you are not certain?

A The name is ringing a bell now, but I --

Q Do you recall the Governor giving him a shout-out during the reception?

A No

Q Okay Fair to say that you wouldn't have identified Dr Ladenson as a healthcare leader of Virginia then?

A No

Q Going to the next page, 2446, Lines 117 and 118 Do you see Jonnie Williams, Jr and Jonnie Williams, Sr ?

A They were Star Scientific I can see that

Q Fair to say you are still referring to Mr Williams as the Tic-Tac Man?

A I think I did describe him otherwise, as you are aware of, at one point

Q All right We will talk about it But at this time, is one of the ways you are referring to him as the Tic-Tac Man?

A Yes

Q Fair to say you didn't want him at your event?

A That's correct

Q And are any of those people, are those people that you would consider -- let's take Dr Crantz out Are any of these other people, were they in your opinion Healthcare Leaders of Virginia?

A No

Q As far as you know, did they contribute in any way to the policies, public policy and healthcare in Virginia?

A Or even the economics of healthcare in Virginia No

Q Okay Let's go -- on this one, under the "Not Attending," can we go down to 139, please? You see a Michael Mullan from the Roskamp Institute?

A I see the name, yes

Q And same thing with Dr Mullan?

A The Roskamp is in Florida

Q Okay So you weren't inviting the Roskamp people to come to Virginia?

A No

Q Was that the same place that you were invited to attend?

A Yes

Q Fair to say he is not a healthcare leader of Virginia?

A Yes

Q Overall, were you happy that these individuals were being invited to your event?

A No I would like to clarify, I don't look at these events as my events. They are our events I think it would be wrong to say, you know, the goal here is to do the right things for the folks, and frankly, for the Governor to show appreciation to the people who have worked for Virginia

Q Let's talk about that It is "our event " What do you mean "our event"?

A I looked at it as sort of between the Governor's Office and the agencies of the Secretariat who had been working in healthcare policy

Q In fact, the invitations, were they sent by your office or sent by the Executive Mansion, do you know?

A You know, I don't know in this case I really don't remember

Q Okay

A It is kind of like that wedding we were talking about A lot of things happened I didn't know about

Q I think you said that you weren't willing to let your office pay Did you communicate that to anybody?

A I did definitely to my staff in the office, and I think they communicated that back. An agreement was reached that we would pay for the people we invited and they would pay for the people they invited.

Q At any point in this planning process, did you become aware that in fact Mr Williams was being allowed to provide names to invite to this event?

A I do believe I knew that, yes

Q How did you know that?

A It would have come back up through my assistant, whoever was doing the communication

Q You knew that not just that Ms McDonnell was providing names, but you knew that Mr Williams was providing those names to Ms McDonnell?

A That is my recollection, yes

Q Okay I think we have touched on this a couple times I want to just see if we can flesh out the timing While you are at the Healthcare Leaders Reception, did you talk to Mr Williams?

A I do believe I spoke to him.

Q And do you remember -- first of all, were you happy to see Mr Williams?

A Really want me to answer that again?

Q I'm sorry What did you say to Mr Williams and what did he say to you?

A You know, at this point, I'm sure you are about to show me what I told you last year, and I'll have to rely on that because I don't really remember that well But --

Q I want your best recollection as you sit here

A I think that this is when he talked about getting his product tested I think that's when it was And I think that, you know, we spoke and I just said, "Jonnie, what do you want from us?" I believe that was the conversation I get confused on the dates I really do But I think that was the conversation, you know, "Jonnie, what is it that you want?" He says, "I want help getting my product tested." I think that was when it was And that was probably when I told him that "There are ways to get that done "

Q But did you tell him that you would help him with it?

A No

Q What did you tell him?

A I told him he needed to speak to the people who do that directly, the universities and so forth, and see if what he had is worth studying I know at some point we also had a conversation, whether it was the same time or not, it is hard for me to imagine we had this whole conversation in the Mansion, but I said, "Look, Jonnie, there are ways to get products tested. People do it all the time " But he was reluctant to turn over his product or, you know, his patents, whatever, to a pharmaceutical company I think he wanted for some reason for us to do it I said, "But there is an established way you can get this done without us "

Q Let's talk about that for a second. When you say "us," who does he want to do the studies?

A I think he wanted us to contact and get MCV and UVA to do the studies That's what I told him he should do I said, "If you want to prove this stuff works, we don't just take a bunch of it and give it to our employees I won't even put the stuff in my mouth. You need to have it tested."

Q Did you know that Mr Williams had broached the idea of having studies involving government employees?

A I did know that I don't know when, though That's what I am telling you I did know that I did know that in the process It wasn't really my area The Secretary of Administration and Human Resource Management does the employee programs And it is not unusual for us to do trials to see if we can do better delivery, better services But I would not want to subject our people to something like this

Q Let's just be clear on this Are there -- do you have any other examples of products being medically tested on government employees?

A Not outside an IRB, a review board and a formal scientific study, no

Q Okay I just want to make sure I understand You mentioned having a conversation with the Governor about him asking you to meet his wife's friend When was that?

A Again, the dates, it was obviously between the time I met Jonnie Williams and it was between the time and the Mansion event or whenever it was I had that next conversation with him. I remember the conversations and I can vaguely remember settings, but the dates just don't come for me

Q Going back just real quickly to that Healthcare Leaders event, did you want to include political donors to that event?

A For me, political donors wasn't anything that was really on my horizon I was looking more for the people who were involved in the policy and things like that The fact is that some people donate and some don't Some voted for the Governor, some didn't That wasn't my concern, really, as much as getting the folks who were involved in the policy and having some time for us to socialize and express our appreciation

Q I'm not trying to say there is anything wrong --

A I'm just saying, I would not --

Q Was that part of your thought process when you were putting the list together, like, "Hey --"

MR BURCK: Objection, Your Honor

THE COURT: He has answered the question

BY MR. DRY:

Q When was the first time you learned that Mr Williams had given the $50,000 loan to Ms McDonnell?

A I would imagine that was sometime last year Probably read it in the paper with everybody else

Q As you sit there today, can you recall any other group other than Mr Williams that had -- that was unique for the level of support from the McDonnells?

A I can't recall that there was ever a situation quite like this one

Q Please explain that

A Well, you know, the Governor in doing his job would go out and meet with all kinds of people and would come back with all kinds of ideas Let me give you an example

If I had a dollar for everything that these technology firms were going to save us by using their product, we would be giving the taxpayers money back But our job was to sort through them and figure out whether it applied to Virginia or not But looking from sitting here now four years into this, there was never anything quite like this that I saw I don't think I was ever looking at a product like this I don't think that there was the involvement that we had in terms of just the repeated contacts The Mansion event was unique That was the only time that happened. Not that Mansion events were unique, but the whole arrangement thing that we just went through.

MR. DRY: Nothing further

THE COURT: All right Cross?

MR. ASBILL: I have no questions

THE COURT: Thank you

MR. BURCK: Just very briefly

CROSS-EXAMINATION

BY MR. BURCK:

Q Good afternoon, Dr Hazel I'm Bill Burck and I represent Maureen McDonnell You were testifying about a meeting you had in February of 2010 with Maureen McDonnell And that was at the very beginning of the Administration?

A Yes, sir

Q This was many months before you had ever heard of Jonnie Williams?

A Yes

Q You talked about nutraceuticals?

A We did.

Q You thought she was a true believer in nutraceuticals?

A I did.

MR. BURCK: That's it Thank you, Your Honor

THE COURT: You may stand down, sir

(Witness stood aside)

Call your next witness

MS ABER: Alfred Walden

ALFRED WALDEN,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good afternoon, sir

A Good afternoon

Q Please state your name and spell it for the record

A Alfred Jerome Walden

Q Spell the Walden.

A W-A-L-D-E-N

Q How are you employed?

A Right now I work for the State Police as a background investigator

Q How long have you been with the State Police?

A I was a trooper for 33-and-a-half years I retired January 1st, 2014 I went back to work February 1st, 2014 as an investigator, part-time

Q Was there a time during that tenure that you worked with the Executive Protection Unit?

A Yes.

Q What time period was that?

A I started with the Executive Protection Unit September 1st, 1996.

Q And how long did you do that?

A I retired January 1st, 2014 as an Executive Protection Unit

Q You were with quite a few governors; is that fair to say?

A Yes

Q Was one of those governors Mr McDonnell?

A Yes, he was

Q Briefly, can you tell the jury what the Executive Protection Unit or EPU, what do they do?

A It is a unit specifically designed for the protection and security of the Governor and the First Family

Q How often is an EPU agent with Mr McDonnell, for example?

A We are with the Governor 24 hours a day if he is out of the Mansion area If he is in house, then we stay as late as midnight and then Capitol Police takes over the grounds once he is in for the night They go in at 12 But if he is not in the house, if he is out, we are with him all the time

Q Does EPU also provide protection to the family of the Governor?

A Yes

Q Same hours all the time? Or fewer hours?

A We work the same hours

Q I'd like to direct your attention specifically to the end of July, 2011 Did you accompany the McDonnells on a vacation to Smith Mountain Lake, Virginia?

A Yes, I did

Q What was your role in the protecting of that trip?

A I was with the Governor We had some events earlier that day, and at the end of the events, we drove to Smith Mountain Lake, where we took his gear and carried it into the house, and I was there for that entire weekend

Q I'd like to bring up Government Exhibit 628, actually What I would like to do, actually, 'I don't want to confuse you, let me hand you the paper version of this,

please

(Document proffered to witness)

Take a look at that, please

(Witness perusing document)

A Okay

Q Okay Is that Mr McDonnell's schedule for July 28th, 2011?

A Yes, it is

MS ABER: I would move Government Exhibit 628 into evidence

THE COURT: It will be admitted.

BY MS ABER:

Q Now, turning to the last page of this exhibit, does that reflect what you just said, that you all, you took the Governor to the home of Jonnie Williams at Smith Mountain Lake to spend the night?

A Yes, ma'am.

Q Were you with the family at the time or not?

A I was -- I had been with the Governor all day long, and another co-worker of mine took him to the house

Q Okay Thank you Now, when you get to the house, were there any vehicles parked in the driveway other than EPU vehicles?

A Not that I can recall at that time

Q And do you as EPU stay in the home with the

McDonnells?

A No Once we get him secured for the night, we had another residence we were staying at

Q The following day, did you come back to the house?

A Yes

Q Let me ask you: At that time, did you understand who owned the house in which the McDonnells were staying?

A I didn't know exactly who owned it. I just assumed who owned it

Q At the time you assumed who owned it?

A It was told to me it was Jonnie Williams' home

Q Day two you come back to the house. I'd like to bring up Government Exhibit 180, please I think you have seen this before, but if you would feel more comfortable, I can hand you the paper version. Is this Mr McDonnell's schedule for the Smith Mountain Lake weekend? Take a look at the screen, sir If you are not comfortable with the screen, let me hand you the paper It is up to you.

A Yes, it looks like his schedule, yes

Q The schedule for July 29th through 31st, 2011?

A Yes

MS. ABER: I would move Government Exhibit 180 into evidence

THE COURT: It will be admitted.

BY MS ABER:

Q Day two, July 29th, you come back to the house where the McDonnells are staying Is something else there?

A There was another car in the driveway when we come back.

Q What kind of car was that?

A That was the tan or white Ferrari sitting in the driveway

Q How did you know it was a Ferrari?

A The words on the side helps a lot But I've seen those cars before It is kind of a dream car of mine

Q I'm not trying to joke with you, but did you and the other trooper take any pictures of the vehicle?

A The trooper that was with me wanted me to take a couple pictures so he could send back to his son, so I wound up taking several pictures of the car and sent it to his phone

Q Further along in the vacation during that weekend, did you see anyone driving that vehicle?

A Yes

Q The Ferrari

A Yes

Q Who was driving it?

A Governor Bob McDonnell was driving it

Q To where did he drive it?

A We had, my co-workers and I had went to the clubhouse for lunch. And we had just finished having lunch and we were coming out of the clubhouse And before we could get into our vehicles, Governor Bob McDonnell and the First Lady, Maureen McDonnell, was coming towards the clubhouse driving the vehicle with the top down.

Q Did you take any pictures of Mr McDonnell driving the vehicle?

A I was kind of fascinated seeing him drive a car I took a video off of my phone

Q For the jury's knowledge, do you have that phone anymore?

A No, ma'am, I do not

Q Was it surprising to you to see the Governor driving at all?

A I was just, it was nice to see him driving a nice car like that That's about it

Q I understand. Did you have any involvement in any return trip to Richmond from Smith Mountain Lake?

A No.

Q Okay

MS ABER: One moment, please, Your Honor

(Counsel conferring with co-counsel)

MS ABER: I have no further questions, Your Honor

THE COURT: All right Any questions from

anybody over here?

MR. BROWNLEE: No, Your Honor Thank you.

MR. KOFFMANN: No, Your Honor

THE COURT: Thank you, sir You may stand down.

(Witness stood aside)

Call your next witness, please

MS ABER: Todd Claiborne

TODD CLAIBORNE,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good afternoon, sir

A Good afternoon.

Q Please state your name and spell it for the court reporter

A Todd Claiborne, T-O-D-D, C-L-A-I-B-O-R-N-E

Q And Mr Claiborne, how are you currently employed?

A I'm a trooper with the Virginia State Police

Q How long have you been with the State Police?

A Seventeen-and-a-half years

Q And during that time period, have you ever worked with the Executive Protection Unit?

A Yes, I have

Q What time period did you work there?

A Since January, 2008

Q So part of your time was with the McDonnell Administration?

A Correct Yes, ma'am.

Q Okay I would like to direct your attention to the end of July, 2011 Did you meet up with the Governor's -- with the McDonnells, did you meet up with the McDonnells while they were on vacation at Smith Mountain Lake?

A Yes, ma'am.

Q Okay What was your role in the EPU for that vacation?

A For that vacation, I was relieving the day shift units and I was assigned to bringing them home that day

Q So is it fair to say that you arrived at the tail end of the vacation?

A Correct, the last day

Q What was the plan to get Mr and Ms McDonnell and the family back to Richmond?

A It was to drive them back as assigned

Q Is that what you would normally do?

A Correct

Q I'd like to bring up Government Exhibit 184, please. Is this an e-mail exchange between you and your bosses on

July 31st, 2011?

A Yes

MS ABER: I would move 184 into evidence, please

THE COURT: It will be admitted.

BY MS. ABER:

Q So, sir, instead of you driving the McDonnells back, did other plans arise?

A Correct They did. Kind of last minute

Q What were those plans?

A That the Governor and the First Lady would be riding back in a separate vehicle, and the kids would be riding back in yet another separate vehicle So we would have four vehicles coming back.

Q One for Mr and Ms McDonnell, one for the kids, and two for EPU?

A Correct

Q In what vehicle were Mr and Ms McDonnell driving back to Richmond?

A In the property owner's vehicle It was a Ferrari, as noted in the e-mail

Q When the e-mail here makes reference to "101" and "102," is that Mr and Ms McDonnell?

A That's correct That was our shorthand designator for them.

Q Now, what time does this e-mail say you all were going to be leaving?

A It said we should be leaving here, being Smith Mountain Lake, by 7 p.m.

Q How long is the trip back from Smith Mountain Lake to Richmond?

A Approximately three hours

Q So Mr McDonnell actually drove the Ferrari back?

A Yes, ma'am.

Q How did EPU position themselves?

A In the front and the rear to control the trip back.

Q Was it typical for Mr McDonnell to be driving?

A It was not No, ma'am.

Q To date, how many times as of July of 2011 had he driven?

A To that date, I don't recall any, any times that he had driven to that time That's why I sent the e-mail

Q Okay And where was Ms. McDonnell seated, in which vehicle?

A She rode back with the Governor

Q Okay

MS ABER: One moment, please

(Counsel conferring with co-counsel.)

BY MS ABER:

Q Last question, sir: In reference to the other vehicle in which the children were driving, were you able to see what kind of vehicle that was?

A I think it was a Range Rover

Q Okay They caravanned back with you to Richmond?

A Yes, ma'am.

MS ABER: Thank you I don't have any other questions

THE COURT: Any questions?

CROSS-EXAMINATION

BY MR. BROWNLEE:

Q Trooper Claiborne, my name is John Brownlee I represent Bob McDonnell I just have a couple questions for you, okay?

A Yes, sir

Q You stated you are a member of EPU, and that stands for Executive Protection Unit; is that correct?

A More specifically, Executive Protective Unit

Q Thank you And is that essentially kind of like the Secret Service, but for the Governor of Virginia?

A Yes, sir That's how we explain it We try to provide the same service, but with less people

Q So your duty is to protect the physical safety of the Governor; is that right?

A That's correct

Q So when Bob McDonnell was Governor, your duty was to protect his physical safety; is that right?

A Yes, sir

Q And today, we have a new Governor, Governor McAuliffe, and your duty is to protect his physical safety; is that right?

A Yes, sir

Q Is it fair to say in order for you to do that you have to be able to get physically close to them when you are out and about so you can protect them if something were to happen?

A Yes, sir

Q Okay Is it fair to say that in order to do that, the Governor, whoever is Governor, has to trust you?

A Yes, sir.

Q Okay Bob McDonnell trusted you?

A I felt he did, yes, sir

Q He trusted you with his life

A Yes, sir

MS ABER: Objection.

THE COURT: Sustained.

BY MR. BROWNLEE:

Q Now, Trooper Claiborne, you were interviewed by the FBI as part of this investigation; is that correct?

A That's correct, sir

Q All right Do you recall telling them that you had heard that the cars were transported as a favor?

A I recall that, yes, sir

Q Okay And when Governor McDonnell drove back, there was a trooper vehicle in front and a trooper vehicle behind; is that correct?

A That's correct That's the way I set it up

Q Okay And he got back safely?

A Yes, sir

Q Okay

MR. BROWNLEE: Thank you, Your Honor

THE COURT: Thank you. Anything for Ms McDonnell?

MR. KOFFMANN: No, Your Honor

THE COURT: Anything else for this witness?

REDIRECT EXAMINATION

BY MS ABER:

Q Mr Claiborne, do you recall who told you that the Ferrari was being transported as a favor?

A I don't No, ma'am.

MS ABER: Thank you, Your Honor We have no further questions

THE COURT: Thank you, Trooper You may stand down.

(Witness stood aside)

Call your next witness

MS ABER: Tucker Martin.

TUCKER MARTIN,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good afternoon, Mr Martin

A Good afternoon

Q Please state your name and spell it for the court reporter

A John Tucker Martin, but I go by Tucker T-U-C-K-E-R, M-A-R-T-I-N

Q Did you previously work in the McDonnell Administration?

A I did I worked for the Governor as Attorney General, for his campaign for Governor, and throughout the Administration.

Q So what year did you start working for him?

A January of '06

Q And in what capacity did you work in each of those jobs?

A I was always his Communications Director

Q And what does a Communications Director do?

A It depends on the day But essentially, manages the messaging and the narrative and the public interface of the elected official and the press corps, and the public, anything from speech writing if that's called for, serving as chief spokesman, putting together talking points, briefing him for events and essentially managing that interface between the Administration and the public

Q Is it fair to say you interact the media regularly?

A Yes

Q Did you interact with Mr McDonnell

A Yes

Q How often did you do that?

A Constantly Probably more than just about anybody in my life other than my wife

Q Was it that way just when he was Governor or also when he was Attorney General?

A Oh, yeah, from day one in January of '06

Q Now, when Mr McDonnell ran for Governor in 2009, did he have a complain slogan about jobs?

A Absolutely, Bob's For Jobs

Q Just so you might get credit or not, did you come up with that?

A No, I did not

Q Okay In reference to your time specifically as Communications Director for Governor McDonnell, just in those four years, were you aware of scheduling meetings?

A Yes

Q They existed, scheduling meetings?

A Right

Q Can you describe for the jury how scheduling meetings occurred?

A Sure Well, the ones that I was in, we do typically every week, maybe every two weeks, depending on when we could, there would be a number of individuals and sort of the scheduler at the time would have a list of all the events that the Governor would be invited to, sort of the details on it, and would get advice from press capacity or policy side or other individuals about should we do this event or not

Q Who was in these scheduling meetings?

A Always myself, always Janet Polarek, now Janet Kelly, Secretary of the Commonwealth, Mary-Shea Sutherland would be there during her time, if it involved the First Lady I don't know she was there for every meeting Martin Kent, the Chief of Staff, Jasen Eige would also be there, Matt Conrad would be there a number of times

Q What was his title?

A Matt Conrad, I believe his official title was Deputy Chief of Staff. He would be there, the scheduler obviously, be it Monica or Catherine, Adam Zubowsky would be there, and occasionally Emily Rabbitt would be there

And there could be others that would probably come in or out but those are the names I would think of.

Q Even though Governor not present for these meetings, I take it?

A Correct

Q Did he have any input on his schedule?

A Yeah. I mean, he was the time arbiter, I believe

Q So once the scheduling meeting produces some resolution, some calendar or some draft, is that presented, was that presented to Mr McDonnell for his review?

A Yes, but it is not like, I mean, not a firm resolution. Oftentimes that meeting would end up with some of us say you should do it, some of us say you shouldn't Some of us say if you've got the time, what the heck, go Some would say no That would then be carried to the Governor in a smaller meeting that would involve scheduling and the Governor

Q Okay Let's change topics a little bit and speak about things that happened generally

A Okay

Q During your time in the Administration, how customary was it for Mr McDonnell to talk about promoting Virginia business and economic development?

A Constant. That's why we got elected.

Q During your time in the Administration, how customary was it for your day-to-day work to relate to promoting Virginia business and economic development?

A Everything we possibly could do

Q Probably an obvious question, but I'm going to ask it: Based on your observations of Mr McDonnell's actions and what you were being asked to do, did it seem like promoting Virginia business and economic development was a priority for the Administration?

A It was the priority

Q We will move along How common was it for the Mansion to host events in your experience?

A Very

Q How common was it for those Mansion events to relate to promoting Virginia business and economic development?

A Yeah, that seemed very common

Q How common was it for Mr McDonnell to attend those events?

A Very

Q How common was it for other Virginia government officials to attend those events?

A Oh, yeah, very, depending on the event, who would attend.

Q In your experience, how common was it for Virginia businesspeople to attend those events at the Mansion?

A Very

Q Now I'm going to ask you a question that is probably going to make you pause How common was it for the Governor to have meetings on his schedule?

A Very

Q Lots of meetings?

A Lots of meetings

Q How common was it for you and other government employees to participate in planning those meetings? Setting them up?

A My participation would be meetings with the press, which you would obviously call interviews If you want to put it all under an umbrella of meetings, if he was doing anything with the press, that kind of meetings, I would be involved in setting it up Other people, depending on their Secretariat and area, would depend on something that fell within their area of expertise

Q Are you aware of if any of those meetings the Governor had related to promoting Virginia business and economic development?

A Lots of them.

Q Changing subjects, let's talk about something more concrete I'd like to take you back to April of 2011 Do you recall being on a trip to New York City with Mr McDonnell?

A Yes

Q What was that trip for, do you recall?

A We were going up there to do some media hits I believe we had several media appearances we were doing

Q A media hit?

A We were going up there to meet with, we may have done some TV interviews, may have done some print interviews We would go to New York periodically and when you are there you try to do as much in national press as you can.

Q Did you have an occasion during that trip to run across Mary-Shea Sutherland in a bar at the hotel at which you were staying?

A Yes

Q Did you talk to her?

A Yes It was, she had gone to a dinner, I had gone to a baseball game At the end of the night, typically the staff traveling, it was "Hey, let's all meet up and have a drink." That's when I saw her late that night in a bar

Q Did you talk about why Ms Sutherland was up in New York for that trip?

A She told me that she was --

MR. ASBILL: Objection

THE COURT: He can answer

THE WITNESS: She told me she was with the First Lady shopping

BY MS ABER:

Q Now, was the topic of Mr Williams raised during that dialogue?

A Yes She said she they were shopping with her friend, Jonnie Williams.

Q Now, this might seem a little embarrassing when I ask you this, but was there a time when you owned Star Scientific stock?

A Yeah, Absolutely

Q Were you aware that Ms Sutherland also owned Star Scientific stock?

A Yeah, it was that night, she either told me she owned it or was getting ready to buy some I liked buying stocks, small amounts of small companies, and it was a company from Petersburg which is near where I'm from so I thought it was great to buy a little stock from a Virginia company near my home

Q When did you actually first meet Mr Williams?

A I didn't meet him -- can I note one thing for purposes of my relationship with the press? Just so they know when this was all going on, I sold the stock before I ever spoke to them about it, so I do not have a conflict of interest That's important to me I didn't want to have a conflict

Q There is a court reporter

A Just wanted to note that It is important to me I met Jonnie in, would have been September of 2011, I believe, on a trip to New York and New Hampshire

Q Now, moving forward or backward as the case may be to June, 2011 Were you aware that Cailin McDonnell got married in that month?

A Yes

Q Did you have to answer press inquiries about the wedding?

A Yes, quite a few

Q What sorts of questions were the press asking of the Governor's Office?

A They were asking who is paying for it and they were also asking the historic questions, everybody wanted to know who else has been married here, what's the menu. Those sort of questions that you would expect from a wedding and a venue such as the Mansion.

Q Around the time of Ms Cailin McDonnell's wedding, did you talk to Mr McDonnell about how the wedding was being paid for?

A Yes

Q And what did Mr McDonnell say was the source of funds for Cailin McDonnell's reception?

A He said the family was paying

Q Did you communicate that to the media as a result?

A I did

Q I'd like to bring up Government Exhibit 148, please This has not been admitted. This is an e-mail exchange between you and a reporter at the Times Dispatch in May of 2011

A Uh-huh

MS ABER: Your Honor, I'd like to move 148 into evidence, please

THE COURT: It will be admitted

BY MS ABER:

Q So Mr Martin, is it fair to say the reporter is asking the kinds of details you just mentioned?

A Yup

Q Colors?

A Yes

Q How many guests?

A A little bit beyond my skillset

Q Did there come a point in the 3:55 e-mail at which, excuse me, at the 7:58 p.m. e-mail on the top, where you are telling Ms Meola of the source of funds for the reception; is that accurate?

A Yes

Q Read the top e-mail to the jury

A My words in the e-mail?

Q Yes

A "Yes, MCDONNELLS are covering all costs of reception Stand by on others "

Q Okay I would also like to bring up now Government Exhibit 621, please Did you communicate this about the McDonnells' payments to other media sources?

MR ASBILL: I object A newspaper article?

THE COURT: Overruled

BY MS ABER:

Q In addition to the Times Dispatch, did you tell other media outlets that Mr McDonnell said the family was paying?

A Yes

Q Okay Is Government Exhibit 621 a Washington Post story about the Cailin McDonnell wedding?

A Yes

MR. ASBILL: Objection

THE COURT: Overruled.

MS ABER: I would move 621 into evidence, please

THE COURT: It will be admitted

BY MS ABER:

Q Sir, I'll move past the wedding colors and so forth and direct your attention to Page 3, please At the very top paragraph there Can you read the last sentence to the jury, please?

A Sure. "McDonnell's spokesman, Tucker Martin, said the family is picking up the tab for all wedding costs "

Q Did you ever hear Mr McDonnell saying that "You got it wrong, Mr Martin, actually, something else is up," or this was the consistent message you got from Mr McDonnell?

A No, this was the message

Q Okay Thank you. Did you know that Mr Williams had provided a $15,000 check to the McDonnells to cover the wedding catering?

A I did not

Q When did you find that out?

A I believe when the story broke while I was on my delayed honeymoon in South Africa

Q 2013?

A 2013

Q Did you know that around that same time in May of 2011 that Mr Williams had loaned $50,000 to Ms McDonnell?

A No.

Q When did you find that out?

A When that story broke in 2013, which it might have been summer Just as all those stories were happening

Q I'd like to change topics and move forward in time to an event at the Mansion on August 30th, 2011 Do you recall a lunch being held that day?

A I do

Q I'd like to talk about the week that led up to this lunch

A Right

Q Were there any things going on in the Commonwealth?

A Yeah, that was an incredible week for folks who do remember in Virginia, we had the Louisa earthquake, Governor declared a state of emergency That was then followed up by a hurricane. The Governor was working around the clock. I've never seen him work harder All of us were We were on no sleep, and he called it the week of earth, wind and fire, because there was an earthquake, a fire in the Dismal Swamp, and the hurricane It was probably the toughest week of the Administration It was Wednesday to Wednesday, look at it that way Heck of a series of events

Q Were any federal officials coming to Richmond during that time period as well?

A Yes, I believe on that same day, August 30th, I think Secretary Napolitano and Secretary Vilsack were coming to the Virginia Department of Emergency Management for a briefing with the Governor about recovery from the hurricane

Q Despite all that, did there come a point in time when you got a draft of a press release related to an Anatabloc luncheon at the Mansion?

A I did That Monday evening, I guess the event was a Tuesday, am I right in my chronology?

Q I'd like to bring up Government Exhibit 224, which has already been admitted. I'd like to scroll down slightly There is an e-mail there, sir, from Mary-Shea Sutherland to you at 5:44 p.m. Do you see that?

A I do

Q Is that how you learned about the Anatabloc press release, Mansion press release?

A That is

Q I spoke over you Is that how you learned about it?

A That is, right.

Q How did you react to receiving this draft?

A Well, obviously the e-mail spells it out, but it was a surprise to me, and it was also coming through a channel that wasn't normal It is just -- I had never before received a press release that had gone from a company to Mansion staff to me saying, "Here you go " That's not the way things work. And so my initial decision was, I got a lot of questions here, I better put the lawyers on it When in doubt, put the lawyers on the e-mail That's why I cc'd the following individuals

Q For the jury's knowledge, who are the lawyers that you cc'd?

A Jasen Eige, Martin Kent, and Matt Conrad.

Q How would a press release normally be issued through the Governor's Office?

A Well, there's various routes by which one can occur The simplest is we write a press release We're the origin of it and we're the release point There could also be press releases that come through agencies, an agency of the state could say, "Hey, here is some good news we have, do you guys want to put this out?" Economic development such as this would be the Virginia Economic Development Partnership would sometimes send us things like job announcements or "This company gets millions of dollars or grants," and Commerce and Trade would send us something on economic development Those would be the normal avenues by which a press release would come to me, to look at, sign off on, and edit

Q So I'm clear, was your primary concern the manner in which this had come to you or the text of the press release itself?

A I really believe at the time and knowing how tired I was and what we were going through, that my concern was it was coming through an avenue that I had never seen a press release come to me by that manner and I thought when in doubt, put the the lawyers on this e-mail and find out what's going on

Q Do you remember any subsequent conversations with the lawyers or anybody else in the Governor's Office about the press release?

A I really don't.

Q Okay We can take that down, please Changing subjects entirely: Have you ever seen Mr McDonnell wear a Rolex watch?

A I have

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Q And when did you see that?

A It would have been when Olympia Meola, a reporter for the Richmond Times-Dispatch, came to do -- typically, before a General Assembly session, the Governor will sit down with reporters and do interviews on "Here's my agenda for the year Here's what we're looking to accomplish "

She came to do that interview along, with a photographer And I would have noticed it -- then I noticed in that interview

And I believe Olympia came back to my office and specifically mentioned, "Is he wearing a Rolex watch?"

Q Do you recall roughly when that was? Like what year, what month?

A Yeah Well, I know now It was -- I think it was like January 2nd of 2012 is the article she wrote, or -- yeah That's --

Q I can't tell you

A Yeah No I'm trying to think I mean, I've seen her e-mail and I've seen the article

Yeah, that sounds right Right after we came back from Christmas break

Q Of 2012?

A Yeah 2011 into '12

MS ABER: I'd like to bring up Government Exhibit 281, which has already been admitted

BY MS ABER:

Q Do you recognize that as a photo that was taken roughly at that meeting?

A Yeah I mean, I believe that would be a Bob Brown photo for the Richmond Times-Dispatch

Q Okay

MS ABER: Thank you

BY MS ABER:

Q Now, did you talk to Mr McDonnell after the issue of the Rolex was brought to your attention?

A I did

Q And what did you say, and then what did he say?

A I remember I went back down the hall after Olympia left Jasen was there I think I asked him, "Is that a Rolex?"

And the exchange, not verbatim He said, "Yeah Maureen got it for me for Christmas "

And I said, "I don't think it looks great for you to be wearing a Rolex "

And I think he sort of made a joke, "It's probably not even real "

And I think Jasen and I both said, "That doesn't matter if it's real or not It just doesn't look good "

That's my role is optics and how things look I just didn't think it looked great

Q When you say "Jasen," what is Mr -- Jasen's last name?

A Oh Eige

Q And did you ever see Mr McDonnell wear the Rolex ever again?

A I did not

Q Okay Moving forward in time a little bit January of 2012 Did you travel with Mr McDonnell to Greenville, South Carolina?

A I did

Q And why were you all going to there?

A For the endorsement of Governor Mitt Romney for president

Q How did you get to Greenville?

A We were in New York doing press interviews The Romney campaign sent us a plane We flew from New York City down to Charleston, South Carolina, for the first events, or North Charleston, South Carolina And then we flew on the Romney press plane from North Charleston to Greenville that night

Q And who was with you during the trip to Greenville?

A On the Romney press plane?

Q Yes, sir

A Myself, Phil Cox, Adam Zubowsky and the Governor and First Lady

Q When you got to Greenville, did you find Mr Williams there?

A Yes, he was there

Q And what was your reaction to seeing him?

A I don't know if I had a huge reaction to seeing him I mean, he was there with the First Lady

Q Did you subsequently meet up with Mr Romney and his wife, Ann Romney?

A We did, yeah Briefly that night We also -- if I remember right, it was raining We all hung out in this airport And then we took the RV back to the hotel for that night, before events in Greenville the next morning

Q So the next morning -- well, let me ask it this way

Was there a point in time in which you're on the Romney campaign RV with Ms McDonnell, Mr McDonnell, Mr Romney, Ann Romney?

A Yes

Q Was that that night or was it the next day?

A Well, no It would have been that night on the way to the hotel And literally, I felt like that was a five-, ten-minute drive Like we're going to the hotel for the night

I remember getting off the RV and going into the hotel with everybody Didn't see him again But then the next morning, we took the RV to a Romney for President event in Greenville, and we would have all been together

Q On one of those trips, did you see Ms McDonnell speaking with Ms Romney?

A I did

Q Which of the two trips?

A Oh, the one on the Saturday morning, the day of the primary

Q Was Mr Williams on the van at that time?

A No

Q And -- but was Mr McDonnell?

A Yeah

Q Okay What did you see or hear Ms McDonnell saying to Ms Romney?

A I mean, we were on the RV We were heading to an event I know I was staring at my BlackBerry, probably working, and everybody was having little conversations But I could tell that Ms McDonnell and Ann Romney were, it seemed like, in a deeper conversation towards another end of the RV

Q Was Phil Cox there as well?

A Yeah, Phil Cox was there

Q Okay So did you -- were you able to overhear any of the content of the conversation between Ms McDonnell and Ms Romney?

A Yeah We could overhear enough And we could tell that she had a bottle of Anatabloc out

And so Phil and I sort of stood there, "What are we going to do about this?" Phil, by virtue of seniority, got to break it up

Q Changing topics February 10th of 2012 You had previously mentioned that you had participated in meetings about Mr McDonnell's schedule, right, setting the schedule?

A Right

Q Okay And are you familiar with the daily schedules that would be circulated to the staff?

A Yeah I get those

Q Okay

MS ABER: Let us look at Government Exhibit 313, please

BY MS ABER:

Q Now, first question, Mr Martin Have you had an opportunity to look at this one before coming to court?

A I think so Yeah I think it was shown to me

Q Okay I can show you the paper version or we can flip through it

A That's okay If you just scroll down, that helps

Q Sure

A Okay Yeah

Q Okay So is this a schedule from February 10th of

2012?

A It looks like it

MS ABER: All right Your Honor, I'd move Government Exhibit 313 into evidence

THE COURT: It will be admitted

BY MS ABER:

Q Now, Mr Martin, recognizing -- recognizing that this isn't the only schedule -- or let me back up

Is there anything in particular about February 10th that you recall? Like do you remember this day in particular?

A I mean, it doesn't stand out If I remember, I think we went --

Q Before you speculate, let me show you the paper version of 313, please

A Yeah Thank you

Yeah I mean, there's one reason I remember this specifically

Q Why was that?

A Well, it was a particularly busy day I remember the W&L convention That was a neat event And I also remember that's the night we got back We had gone to a brewery to wrap up the day, Devils Backbone Brewing, which is a great Virginia company We were doing a great thing for a Virginia company

But we got back, and I think that's the night that Martin Kent had to go over to the Mansion to talk to the event chef I remember -- that's what stands out for that day

Q Okay Well, let's start sort of with the beginning of the day and walk through very briefly Is it fair to say you started with a reception in Reston, Virginia, at 7:35 in the morning?

A Yeah That sounds right Absolutely

Q Okay And then where did you all go from there at 8 a m ?

A Well, it looks like we stayed there It looks like we did a little pre-reception that you would do Shake hands The Governor would take photos The rest of us would look for breakfast

And then he did the presidential series with Governor Romney And then it looks like we went to D C We went to CPAC, which is a big event

Q And let me stop you there, sir

On the way to CPAC, who is with you?

MS ABER: Scroll up, please

A According to the manifest, the Governor, the First Lady, Adam, and Phil

BY MS ABER:

Q And would you all travel in the same vehicle together?

A If it was a small enough group I mean, we traveled in Suburbans So you just got to figure you got EPU, usually two members And so, you know, you could easily do four people in the back, maybe five people in the back And if it got bigger than that, you'd probably take two cars

Q And then who was present at the CPAC event?

A I've got to tell you, this day is not a clear line for me at all as far as standing out in our life But, I mean, it would have been the same people

The manifest usually nails who's there I mean, that's accurate

Q Okay

A Sorry

Q Is it fair to say, as you look at that schedule, that Ms McDonnell was with you all for the entirety of the day?

A Yeah That sounds right Yeah And I remember I remember her being at the brewery in particular and at W&L Yeah

Q Okay Thank you

MS ABER: You can take that down

BY MS ABER:

Q Now, were you aware that in the following month, in

March of 2012, that Mr Williams had loaned $50,000 to the McDonnells?

A No

Q And were you aware, in May of 2012, that Mr Williams loaned $20,000 to the McDonnells?

A No

Q When did you find out about those items?

A Again, it would have been when Ros Helderman called me A year later Sorry

Q Now, are you familiar with an annual filing called a Statement of Economic Interest?

A I am

Q And tell the jury very briefly what that is

A It's just every year anybody in state office, from the Governor down to somebody like me, you have to fill out any gifts you've taken, any securities you hold over a certain amount, any loans you have

Basically, it's a snapshot of your financial picture every year that people can access

Q And what was your role in relation to Mr McDonnell's filing of the Statement of Economic Interest?

A Once it was done, I would get a copy I always asked for an advanced copy because I knew that the press found it very interesting They'd write a story every year on here are the gifts the governor may have gotten Here's how it compares to previous administrations

So I would just -- when the lawyers and everybody were done, I'd ask, "Can I please get a copy of that before" -- I guess they send it to the Secretary of Commonwealth's Office Once it's there, it's live so reporters would see it

So I would -- yeah I would definitely ask, "Can I get a copy before it's live," because then my phone rings

Q Aside from whatever was listed on a Statement of Economic interest, how much did you know about the McDonnells' personal finances?

A Nothing really Besides that

Q Besides what was listed on the form?

A Yeah

Q Did you know about an entity called MoBo?

A I don't believe I did at the time But I think it was -- it may have been on there It may have not

But I've got to get honest I looked at the gifts That was my interest, because that was the press' interest

Q Changing subjects Is it fair to say that you were employed with Mr McDonnell fairly much to the -- to the end of his term?

A Yeah To the last minute

Q And were you around when the media began to run stories about this investigation in 2013?

A Absolutely I was actually, again, on a delayed honeymoon when it broke and returned to it

Q And so did you have to field calls from media asking questions as this broke?

A Absolutely As soon as I got back

Q Did you go to Mr McDonnell in order to find answers to those questions?

A Initially, we did, before we established a different process And then after that, we tried to separate the questions to a different entity But initially, yes

Q And the different process, in a nutshell, was what?

A Well, in a nutshell -- I mean, when I got back, I was frustrated because I was gone The first story had happened And, you know, it's a bad story, but you survive bad stories That's part of this business

But then all that week, it felt like they were fielding more inquiries and there were more stories And then there were stories about contradictions coming out And so I got back and recognized that this may be a problem I thought then, you know, maybe it's a problem for a month I didn't think it would be a problem for longer than that

And so yes, I did try to step in as soon as I could shake my jetlag and say, "What is going on here? We've got to tighten this up," because I didn't like the way it was going

Q Specifically, did you receive any questions about the McDonnells' trip to Mr Williams' estate at Smith Mountain Lake?

A I did

Q And were any of those media questions related to Mr McDonnell's use of a Ferrari?

A They were

Q Did you go to Mr McDonnell to ask him about that?

A I believe I did Yes

Q And what did he say?

A They were moving a car from point A to point B I mean, helping somebody out

Q Did Mr. McDonnell say whether he had driven the Ferrari while at Smith Mountain Lake?

A I'm trying to think if that was in the article that he had I think Ros' article said that he had driven it

I won't rely on my memory there It's out there in The Washington Post But the issue --

Q Well, let me --

A I think that's right I think that's right If I recall from my memory, that yeah, the article was about he drove the Ferrari from Smith Mountain Lake to Richmond I believe that's right

Q And is your reliance on the article -- why do you say that?

A I'm sorry?

Q Do you believe that whatever was reported in the media as your statement was an accurate --

A Absolutely I may not have liked the coverage, but the coverage was fair

Q And would you contact the media to seek a correction if you read something that was inaccurate?

A I definitely would have

Q Okay

MS ABER: Let's bring up Government Exhibit 618, please

MR ASBILL: Same objection, Judge Same objection

THE COURT: Overruled

BY MS ABER:

Q Is this a story in The Washington Post on April 18th of 2013 about the Smith Mountain Lake vacation?

A It is

MS ABER: Your Honor, I'd move 618 into evidence, please

THE COURT: It will be admitted

BY MS ABER:

Q And what's the title of this article, sir?

A "Donor gave McDonnell and family a lake house vacation "

Q And what's the date on it?

A The date is April 18th, 2013

Q Okay And I'm going to direct you to Page 4, please And in the third paragraph there, there's a statement from you Can you please read that to the jury?

A Sure "There was no recreational use of vehicles, Martin said The family was simply helping Mr Williams get one car to his Smith Mountain Lake house and return another to Richmond "

Q And so from whom did you get that statement?

A That would have been me discussing it with the Governor

MS ABER: Thank you You can take that down

BY MS ABER:

Q Did you also receive questions from the media about a photograph of Mr McDonnell holding a bottle of Anatabloc?

A I don't know if the media asked me about that picture in particular, and I don't know when I first saw that picture

Q Okay

MS ABER: Well, let's bring up the picture, 7, please, for identification

BY MS ABER:

Q Is that the picture that we're referring to?
A That's the one, yeah, that you've shown me
Q Okay

MS ABER: I'd like to bring up Government Exhibit 7 -- or I'd like to move Government Exhibit 7 into evidence, please, Your Honor

THE COURT: It will be admitted

BY MS ABER:
Q So as you sit here today, Mr Martin, when do you think you first saw this picture?
A You know, I've been around and around on that one, and -- maybe a reporter showed it to me I don't think that sounds right

I feel like I first saw it maybe with you all, or maybe I saw it on somebody's desk in scheduling I mean, really, this is one that, I'm sorry, I am foggy on that picture, which I've said before
Q That's okay I guess the more important question is did you ever talk to Mr McDonnell about this picture?
A No, not to my memory
Q Okay Hang on one second, please

Did you also help craft statements to the press in response to media questions?
A Absolutely
Q We've talked about that

MS ABER: I'd like to bring up Government Exhibit 620, please

BY MS ABER:

Q I'll let you take a look at that, please

Have you had an opportunity to read it?

A Yeah

Q Okay Is that an e-mail communication between you and Mr McDonnell, Mr Kent, a gentleman named Mr Flood, and a gentleman named Edward Gillespie?

A Yes

Q Okay And is that dated July 6th of 2013?

A It is

MS ABER: Your Honor, I'd like to move 620 into evidence, please

THE COURT: It will be admitted

BY MS ABER:

Q What is the subject of this e-mail, sir?

A It was about our response to an article -- a profile of the First Lady that was going to run in The Washington Post

Q And looking at your e-mail at 10:33 p m , it says, "With his edits "

Who is the "his" in that statement?

A I believe it would be the Governor

Q And can you please read the statement below?

A Sure "I am deeply saddened that The Washington Post, relying almost entirely on anonymous sources, would print such a misleading and hurtful story about my wife, Maureen Maureen is a loving wife and a wonderful mother to our five children, and she has worked tirelessly as First Lady for her fellow Virginians She and her staff have traveled the state and held countless events to support veterans and their families, businesses and their employees and the tourism and agricultural industries After 37 years of marriage, we're blessed with a deep and abiding love, and I thank God for her love and her service to the people of Virginia "

Q Thank you

MS ABER: One moment, please, Your Honor

BY MS ABER:

Q Mr Martin, a little bit ago we talked about traveling in a Suburban I think you said it seated four to five folks?

A Right That sounds right

Q When the Governor and the First Lady traveled together, did they commonly travel in the same vehicle?

A Uh-huh Typically

Q Okay

MS ABER: Thank you I have no further questions, Your Honor

THE COURT: All right We're going to take the afternoon break Fifteen minutes

(The jury left the courtroom)

(Recess taken from 4:10 p m until 4:29 p m)

(The jury entered the courtroom)

THE COURT: Cross?

CROSS-EXAMINATION

BY MR ASBILL:

Q Good afternoon How are you?

A Hey Well

Q If I talk at normal speed, will you try to respond in kind?

A I will try I'm sorry I know I will try I apologize

Q I want to talk to you a little bit first about the post-investigation media issues?

A Yeah

Q And when were you first aware of the investigation?

A That's a good question as to when there was an investigation Because if you remember, I think the very first Washington Post story sort of alluded to "our people looking into this "

So as far as like when I knew there was an investigation, I couldn't truthfully tell you a date on that

Q A month?

A When this story hit, it sort of took on a life of its own, and there just started more and more and more stories And a lot of the stories would say, "People are looking into this There could be an investigation "

I don't know how to give you that answer because I couldn't pinpoint in my own mind when I knew there was an investigation

Q Roughly sometime in the first quarter of 2013?

A Well, the first story hit from The Washington Post on March -- on, what, Easter Sunday

Q Okay

A That would have been towards the end of the first quarter So I think you'd say end of that or start of second, I guess if you're ballparking

Q Okay And from that period, from April -- April through January '14, April '13 through January 2014, you were the person who had to deal basically with all media inquiries regarding the investigation?

A Yes, sir

Q And when is the first time that lawyers became involved with Mr McDonnell?

A It seemed to me it must have been at some point in April it began being the process that questions would have to go through a chain of command Different than we had done before It would go to the attorneys You know, I'd say, "Here's the question I'm getting," and I would await the answer that I could give

Q All right And before the investigation commenced, when you were talking about attorneys, you're talking about Jasen Eige and other people that worked for him?

A Correct That would be staff

Q Staff attorneys?

A Yes

Q Right And then when the investigation commences, then there are outside lawyers?

A Right The Governor, at some point, got a legal team And so they started saying, "Press inquiries need to go through us "

Q Okay And would it be fair to say that when outside lawyers come in, that there's really sort of a lot of tension or conflict between press folks that are in the Governor's Office and the outside lawyers about what to do with the media?

A I think the best way to put it is I remember being very frustrated early on because I thought it was a crisis that could be handled, and I thought we should just dump everything out and move on We typically would in crisis management And it became very clear that no, this is not that kind of situation There are now lawyers involved, and I will just give the answers that I'm told it's okay to give

Q Okay And Governor McDonnell, at that point, was right in the middle of his press people's instincts versus his outside lawyers' advice?

MS ABER: Objection

THE COURT: Sustained

BY MR ASBILL:

Q In any event, ultimately, with respect to responding to the media, after the investigation was made public, the outside lawyers controlled; is that correct?

A They would control responses And I was the mouthpiece, if somebody asked us

But we also split the responses too The Governor, at that time, had somebody else who would speak about matters related to this, and then I would speak only on matters related to state business

Q Okay And I believe you testified that for eight years you worked for the Governor in the capacity that you've described?

A Yes

Q All right And in the AG's Office for four years, and then in the Governor's Office for four years?

A Right AG's Office three years The gubernatorial campaign in the middle And then the Governor's Office for four It adds up to eight, but he left office early, remember, to run for Governor

Q Okay And would I be correct in saying that the pace and the demands of your job, in terms of time and travel, increased, essentially, each year?

A Oh, absolutely

Q All right And so would I be correct in saying that the -- whatever you had to do in your job in the AG's Office was magnified or was multiplied when you went to the Governor's Office?

A Yeah It's like going from the minors to the major leagues

Q Okay And how many hours a day would you work when you were in the Governor's Office?

A You know, it was -- I couldn't even put a number on it We worked all hours If something was happening, we were working You know, like that week with the hurricane and everything else, we were almost around the clock

But if an issue needed to be responded to at midnight, we respond at midnight If it's 8 a m , it's 8 a m So you're never off the clock You know, when you're in an office and when you're out of the office, there's no difference because you're working You're always on your phone, always on your BlackBerry

And the Governor was a workaholic I mean, he worked around the clock

Q And the Governor's top staff people versus the Governor, who worked harder?

A The Governor

Q Than anybody on his staff?

A Absolutely

Q Who traveled more?

A I mean, the Governor

Q Did it take a toll on your personal life, this pace?

MS ABER: Objection Relevance

THE COURT: Sustained

BY MR ASBILL:

Q Did you have time to deal with family issues or personal issues?

MS ABER: Objection

THE COURT: Sustained

BY MR ASBILL:

Q Now, in terms of -- and I don't want to -- I don't want to mischaracterize your job, but for ease of reference here, would Press Secretary, is that sort of essentially --

A No There would be a Press Secretary who was in the press office Communications Director sort of oversaw the press office, and then we'd have a Press Secretary, a Deputy Press Secretary, and a Deputy Communications

Director But people know it better as Press Secretary So if it helps, easy way to describe it

Q I mean, ultimately, whatever you do in communications, ultimately or generally feeds into the press one way or another; is that correct?

A Oh, absolutely

Q Now, in terms of that job, please help me understand this You have to have regular interaction with folks in the media in this job; is that correct?

A Right

Q And so you're talking to reporters, TV reporters, print reporters or whatever, magazine people all the time --

A Right

Q -- is that correct?

And often those calls would come in late in the day or on weekends or Friday nights or whatever?

A They'd come in whenever something had to be responded to or a reporter wanted to talk

Q All right And you may know the answer off the top of your head or you may have to go get help and find out from somebody what the facts are before you can respond; is that right?

A Oh, absolutely You know, I mean, 90 percent of this stuff is easy; what's he doing tomorrow, what's going on

You know, simple questions

But if it's a more complex answer, then yeah, I'd have to run the traps and sort of go through the right secretary or the Governor or whoever was the subject matter expert to then return with an answer

Q Okay And you tried to be totally truthful and honest and accurate with the media whenever you gave them any kind of a response; is that right?

A Yeah A hundred percent

Q All right And you never would purposely mislead or lie to the media about any inquiry --

A No

Q -- is that right?

A That's right

Q All right And you were relying on people, when you didn't know the answer yourself, to do the same with you? In other words, give you accurate information so you could accurately convey the answer to whatever question you were asked; is that right?

A Right We had a good team I trusted our team

Q All right And would it be -- would I be right in saying that if you were getting false information, purposely, intentionally false information from the Governor, that you would have walked away from that job?

A Yeah I've always trusted the Governor

Q All right Well, your reputation is at stake as well as his, correct?

A Correct

Q Now, at any time did my client ever ask you to lie for him about Jonnie Williams or Star Scientific?

A No

Q Did he ever ask you to lie -- lie for him about his feelings about his wife?

A No

Q Or about the wedding or the Rolex or anything else along those lines?

A No I don't think he would ever ask me to lie

Q Now, have you voluntarily cooperated with the government in this investigation?

A I have.

Q And you've met with them multiple times?

A Yeah I met with them twice

Q I'm sorry?

A I think twice

Q Okay Let me talk to you a little about the Smith Mountain Lake trip specifically That was in April of 2013 the press first started to report on the two-year prior, 2011, Smith Mountain Lake trip?

A Uh-huh

Q And was that something that, prior to the press reporting about it, that was a recent topic of discussion among you and the Governor or anyone else on the staff, to your knowledge?

A No

Q All right And the press was specifically interested in the issue about the Ferrari and driving the Ferrari, et cetera?

A Right

Q All right. And I think you told the press, and I think an article has been put up, introduced into evidence, that said the Governor drove it back as a favor to Jonnie Williams?

A I believe that was my response Yeah

Q All right And that is what the Governor told you?

A Yes

Q All right And that is what you understood him to believe at the time?

A Correct

Q All right You don't have any personal knowledge about -- yourself, about, you know, why the car was at Smith Mountain Lake or whatever the circumstances were about returning it, et cetera?

A No I mean, I do now from all the press coverage, but I didn't then

Q Okay And you don't know now whether the press coverage is 100 percent accurate or not, do you?

A I know what's been reported

Q All right And so it was your understanding, after talking to my client, that the purpose of returning -- or the purpose of bringing the car was not -- back to Richmond was not recreation, as opposed to transportation?

A Yeah It was a logistical thing is what I was told

Q Okay With respect to the wedding stories about who's paying for the wedding

A Uh-huh

Q Was your primary objective to make sure that the press understood that no taxpayer money was being used for the wedding?

A I mean, that would have been the press' main interest There was a prior wedding at the Mansion in which some taxpayer dollars were used for a tent, and a reporter here, a really good reporter, Tyler Whitley, I think, did the story But we were well aware of it when it happened

So when this wedding came up, obviously, on our radar was, "Hey, let's make sure no taxpayer dollars are being used here and, you know, that we get that straight with the press right out of the gate " And obviously, the press wants to know because it's a public building

Q Okay And based on your talking to various -- did you talk to just my client or did you talk to other folks about the issues relating to the wedding and the payment?

A I know I talked to the Governor And then my main interface, staff wise, I think was Sarah Scarbrough I think I would have been asking her questions, you know, how many people are coming, what are they wearing, what's the history, all that sort of -- because those are the kind of questions that I was getting

Q Okay And you didn't -- whenever you came back to the press with whatever you said, you didn't have any reason to believe that taxpayer dollars were being spent on the wedding?

A That's right Yeah

Q All right And with respect to the idea of the family paying for the wedding or family -- did your know that family and friends were doing anything or friends were giving gifts as part of the wedding?

A I don't think I got anywhere near that detailed I mean, the answer was "the family is paying "

Q Okay So if some friends contributed wine or anything like that, you wouldn't know about it?

A I don't think I knew about it My interest was what's the answer? Is the family paying? Who's paying?
The family is paying Okay

Q Okay

A Pretty easy answer to give

Q So if a family friend gave a gift of something towards the reception, that's what you would consider family?

MS ABER: Objection Asked and answered

A Me?

BY MR ASBILL:

Q Yeah

THE COURT: Sustained

BY MR. ASBILL:

Q Let me talk to you about the Rolex The press also asked you about the Rolex watch when somebody in the press noticed the Governor wearing it?

A They didn't ask me in an official capacity It was after the interview, and the reporter walked down to my office, as they would typically do And I think she's the one who noticed it first, to be true, and said, "Is he wearing a Rolex?"

So it wasn't like an on-the-record thing It was the interview is over We're sort of shooting the breeze for a little bit

Q And when, in time, do you recall that conversation occurring?

A I mean, it would have been right after that interview, right after Christmas of '11 So early '12

I remember we walked down the hallway She pointed it out I went back down the hallway Jasen was there and said, "Are you wearing a Rolex?"

Q All right And you talked to my client about that, did you not, after you were --

A Yeah, I did

Q -- after you had this conversation that you just described?

A I did

Q And your understanding, from my client, was that it was a -- he said to you it was a Christmas gift from his wife?

A Yeah He goes, "Oh, this, you know, it's a Christmas gift from Maureen "

Q All right And he said he wasn't sure if it was real or not?

A Yeah And I said, "Well, I don't think you should be wearing it "

He goes, "I don't even know if it's real "

And then Jasen and I both were like, "That doesn't matter Don't wear a Rolex "

Q Okay You don't have any personal knowledge of any communications between Mr and Ms McDonnell about the watch; is that correct?

A No

Q Or any other knowledge, personal knowledge, about the source of the watch; is that correct?

A No

Q All right And you advised that from an optics point of view, that it was not a good thing for him to be wearing; is that right?

A That's right

Q And he took your advice and stopped wearing it?

A Right

Q Now, with respect to Governor McDonnell wearing a Rolex watch, is that -- is that something that was in character or out of character for him, in general, to have something like a Rolex watch?

A Oh, out of character

Q In what sense?

A I mean, we used to make fun of him because he always had holes in his shoes I mean, we'd give him ties sometimes for Christmas because I didn't like the way his ties looked when he was in the press He was just -- you know, he was thrifty

Q A material goods guy?

A No

Q In any way?

A No

Q Do you recall what kind of briefcase he used?

A Yeah He used a milk crate

Q Could he afford a briefcase?

A Yeah, I'm sure he could afford a briefcase But a milk crate worked best for him

Q The issues with respect to gifts, loans, SOEI forms, et cetera, et cetera Do you have any reason to believe that my client didn't try to follow the instructions on the form and list anything that was required appropriately?

MS ABER: Objection

THE COURT: Sustained

BY MR ASBILL:

Q Government counsel asked you about loans to him Do you know whether those were loans to him or to a corporation that he was a part owner of?

A I think they detailed it for me Didn't they say some were the real estate company?

Q All right

A And then maybe -- I mean, now I've read so much and heard so much But yeah, wasn't there like one a marine and real estate company, and that's how they broke down? Yeah

Q Now, during the course of the entire time that you were in the Governor's Office, you -- you really -- I mean, if he wasn't away on a short vacation or something, you communicated with him, talked to him, saw him every day?

A Even on vacation, I talked to him

Q All right And in the entire time you were there, did you ever -- did you ever notice him or think that he was doing something inappropriate to try to benefit Star or Jonnie Williams?

A No

MS ABER: Objection

THE COURT: Overruled

BY MR ASBILL:

Q Did he ever say anything to you or did you ever overhear any other conversations about him trying to get state funds to -- state dollars to help Star?

A No

Q How about trying to influence the Tobacco Commission?

A No

Q This question I'd like you to answer yes or no After the reports came out in the press, do you know whether or not, within the Governor's Office, there was an internal investigation about the reports?

MS ABER: Objection

THE COURT: Sustained

MR ASBILL: It was just a yes or no answer, Judge

THE COURT: Sustained

BY MR ASBILL:

Q With respect to the kind of things that were in your ballpark that you could help the Governor with, I mean, in terms of communications, et cetera, did you ever help the Governor take -- take any kind of action that promoted Virginia businesses?

A Oh, all the time

Q Press conferences at a company, et cetera? Is that --

A We'd do job announcements We'd do ribbon cuttings We'd welcome companies to the state I mean, we were Bob's For Jobs

Q All right But press conferences at the headquarters of the company?

A Yeah I think -- yeah That sounds right

Q All right Photo opportunities in the Governor's Office with the company's representatives?

A Definitely photo opportunities My memory is probably not good enough to lock down every location

Q Okay Did the Governor ever ask you to do any such things with respect to Star Scientific or Jonnie Williams?

A No

Q Now, with respect to the Mansion lunch event, that came across your radar screen when?

A It would have been the night before It looks like about 5:45 or 6 p m

Q And it came to you in sort of an odd way Is that what you testified to?

A Yeah It came as an e-mail from Mary-Shea Sutherland to me, saying something like, "Can you approve this press release" or "look over this press release" or something?

Q All right And it was odd because it came from Mary-Shea Sutherland?

A It was odd because it -- yeah It didn't come through the normal channel I'm not saying I thought it was an evil event or anything I just thought it didn't come through the normal channel

And, look, I'm not a lawyer So I wanted our staffers and people above me to look at it

Q Okay And you looked at it, and you reviewed it? And what did you think? Did you think it was appropriate or not?

A I didn't look at it very long, to be honest with you That's the thing I flagged it, put them on it, and honestly, I went back to working on the next day where we had Secretary Napolitano and Secretary Vilsack coming

Q Because this all coincided with earth, wind and fire --

A Correct

Q -- as you've described it?

A Yeah I mean, that was the focus of the press office

Q So you pushed this over to Jasen, and who else?

A Jasen Eige, Martin Kent, and Matt Conrad

Q Okay Two lawyers and the Chief of Staff of the Governor?

A Right

Q All right And they looked at it and did whatever they thought was appropriate and -- and made Star revise this release?

MS ABER: Objection

THE COURT: Overruled

A Yeah I -- to tell you the truth, I never thought about it again, really, until all this stuff happened I gave it to the proper people, and I went about what I was doing

BY MR ASBILL:

Q And your reason for pushing it to those people, essentially, was to make sure that everything was properly vetted and reviewed?

A Yeah I mean, if you get a press release that comes through a government agency or that comes through the Virginia Economic Development Partnership, or a similar entity, you know that they have lawyers and staff who have vetted everything and looked at everything And you're fine You don't have to think any more about it

But if I see a company send a press release to the First Lady's Chief of Staff and then I'm asked just to sign off on it, I don't think that's appropriate because I don't think -- at this point I didn't know if the right people had looked at it

Q Okay And this -- and this -- you know, this procedure that you've described where you get it and you push it to other people, et cetera, was that something -- that procedure, had that been set up within the Governor's Office, basically, to deal with issues like this?

A I mean, every press release would go through a certain list of people before it went out But, again, that's an important distinction That press release is from our office

This was not a press release going out from the Office of the Governor This was a company's press release So did we really have a process for that sort of situation? No I just thought that I trust our staff and our lawyers and I wanted them to see it so they knew what was going on and could make the right decisions

Q Well, I mean, was there -- was there a formal -- there was no formal process in place for sort of odd or oddball kind of things that might occur, you know, regularly?

A I mean, was there a regular process for irregular events? I mean, probably the fact that myself and Martin Kent and Jasen Eige and Matt Conrad and Jeff Palmer, people like that, we'd look it over and use our collective intelligence to figure out -- limited, though it may be, at times -- but what we thought it was

But that was just an irregular press release to receive, and it just felt odd to me, and so I wanted them to see it

Q All right And you all had no -- to your knowledge, none of you had any discussions with the Governor about it You just took care of it?

A No I mean, I --

Q Is that right

A Yeah Again, I put them on it, and I didn't think again about it

Q And did you expect the Governor to want you to do anything other than that?

A No I figured I was doing the right thing I had a question So I raised it with lawyers

MR ASBILL: Thank you I have no further questions, Judge

CROSS-EXAMINATION

BY MR HAUSS:

Q Good afternoon My name is Steve Hauss I'm a lawyer for Maureen McDonnell I'll try to be brief

You testified on direct about a trip to New York in April of 2011?

A Right

Q And I believe you testified that you met up for a drink with Mary-Shea Sutherland?

A Uh-huh And there were other people there

Q Okay And I believe you testified that you asked her why she was in New York, and I believe your answer -- her answer was that they had gone shopping with their friend Jonnie Williams; is that right?

A Yeah

Q And when you -- and when she said "their friend," you understood that was Maureen McDonnell and Mary-Shea Sutherland's friend Jonnie Williams?

A Yeah I would not put specificity around the word "their." I mean, I'm trying to remember the conversation at a drink after a long day on the road I had been at a baseball game I mean, it was just, "We're shopping with Jonnie " "Our" friend Jonnie "Their" friend Jonnie I can't choose for you the right word there

Q Okay And did she tell you that Jonnie Williams had bought clothing for Ms McDonnell?

A No

Q Did she tell you that Jonnie Williams had bought clothing for her, for Mary-Shea Sutherland?

A No

Q Now, you said that during that conversation she talked to you about Star Scientific, the company and the stock?

A Uh-huh

Q And after that, did you do some research about the company yourself?

A Yeah I mean, the extent of my research was I liked buying stocks that I could afford I was single back then I was trying to get a portfolio of little companies that I could afford

And I went back and looked And she didn't pitch it or anything She just said, "Hey, he's a good guy He's a friend of ours," or theirs, whatever that word was, and, you know, "he supports the Governor and he supported us, nice guy and he's got this tobacco company They are doing neat stuff "

And, I mean, really, I went home and found out the company started in Petersburg And I'm from Hopewell, and I thought that was great And the stock was really up, and I was like, "Oh, I'll buy a little " And I felt really good about it because I thought I was investing in a Virginia business

Q And so you bought stock yourself?

A I did

Q And was it about a thousand shares?

A Yeah About $3,600

Q Now, you said that you sold the stock approximately March 2013?

A No It would have been April It was as soon as I got back from my honeymoon

The story had all broken I had gotten calls in South Africa about what was going on, and I decided that I thought I shouldn't own stock in a company that I was talking about And so before I talked to any reporters, I called my broker and sold it for a loss

Q So you had it for about two years?

A Uh-huh

Q Now, with respect to Ms Sutherland, did you think she was a professional person?

A Yeah

Q Did you think she was competent and good at her job?

A Yes

Q Did you think she had a tough job?

A Yeah

Q Why is that?

A I think the Mansion was a tough place to work

Q And did you think -- let me ask you this Did you understand that she was unhappy in her job?

A Yeah

Q And was that because of conversations you had had with her?

A I mean, that was just a known fact I'm sure she expressed her unhappiness with me and everyone

Q Did she tell you that she was, in the summer of 2011, looking for a new job?

A Not that I remember

Q Did she tell you that she was in negotiations with Jonnie Williams for a contract to provide services to Star Scientific and to him personally?

A No

Q Now, you first met Mr Williams in September 2011; is that right?

A That's right

Q And you said it was at a political event in New Hampshire?

A Well, we went to New York City first We did Education Nation, an NBC news panel with some other governors And then we flew to New Hampshire We did several events up there, political events, and then came back that night

Q And was Ms McDonnell on that trip?

A Yeah Yeah I think she -- I believe she was

Q And did you have an opportunity to see the interaction between Mr Williams and Ms McDonnell?

A I did Yeah, she was I remember her being in a Suburban

Q And did they seem familiar with each other?

A Yeah They seemed like buddies

Q Now, you also testified on direct about an event in South Carolina?

A Right

Q And you said -- I believe your testimony was he was there with the First Lady; is that right?

A Right

Q And what did you mean by that?

A I mean that we got there, and Jonnie Williams had come down with the First Lady

Q And, again, they seemed like they were friends?

A Yeah Seemed like buddies

Q You also testified about an incident where you saw Ms McDonnell talking to Ms Romney -- Ms Romney about Anatabloc?

A Right

Q And you were aware that Ann Romney has multiple sclerosis?

A Right

Q And based on what you saw and what you heard, was it your understanding that Ms McDonnell was suggesting that Anatabloc could help Ms Romney with her MS?

A I don't want to overestimate or overstate how much of their conversation I heard But, I mean, you could see what was happening I work in politics so I know the parameters of a conversation If I see it, I can guess what's going on there Yeah

Q And in terms of what your role was and your job, you deal with the press Is it fair to say that your main concern is an optics concern?

A Yeah My main concern is the reputation and brand of Bob McDonnell

Q And so your concern was how it would look and how it might reflect on the Governor?

A How anything would look and reflect on the Governor

Q Now, were you aware that Ms McDonnell was interested in nutraceuticals?

A Uh-huh

Q Is it fair to say that she was very passionate about nutraceuticals?

A Uh-huh

Q And that's something that you were aware of even before you ever met Jonnie Williams; is that right?

A Yeah

MR HAUSS: That's it

Thank you, Your Honor

THE COURT: Anything else from the government?

MS ABER: Yes, Your Honor

REDIRECT EXAMINATION

BY MS ABER:

Q Mr Martin, I believe Mr Asbill talked to you a little bit more about your response to the media once the investigation broke in second quarter-ish of 2013?

A Right

Q Did you get any questions about Cailin McDonnell's wedding dress?

A I did

MR ASBILL: Objection It's beyond the scope

THE COURT: Sustained

MS ABER: Your Honor, he inquired about whether there were questions about what Ms McDonnell wore

THE COURT: The objection is sustained

BY MS ABER:

Q Mr Martin, I believe you said that you were frustrated in this time period because you wanted to dump everything out

Could you explain to the jury what that meant?

A That just comes from the School of Crisis Management

I always believe it's best, if you're in a crisis, that you should just get everything out there You know, just handle it all at once Get your bad story and then live to fight another day

And so that is what I recommend when you're going through a bad situation is typically, it's best to get ahead of it and get everything out and just go from there

Q And is that what happened?

A No, it did not

Q I think we talked a little bit about -- you talked a little bit about Mr McDonnell being thrifty

Is that the right word?

A Yeah, absolutely

Q Do you know what Mr McDonnell earned as Governor?

A Yeah Didn't he make 175,000? I believe that's right

Q Do you know if --

A It's in the code

Q I'm sorry, sir?

A I'm sorry It's in the state code I think it's 175,000 I think

Q Do you know if he had to pay to reside in the Governor's Mansion?

A No I don't think you pay to live in the Governor's Mansion

Q Did you know that he accepted a $23,000 vacation to South Carolina for his family?

A That's where I have to question what I knew then and what I've learned through the press So as far as -- I mean, I knew he went to Kiawah But I wouldn't have known the price or anything like that

Q Okay

MS ABER: One moment please, Your Honor

(Counsel conferring with co-counsel)

MS ABER: No further questions Thank you, sir

THE COURT: All right Thank you, sir You may stand down

(Witness stood aside)

THE COURT: Call your next witness, please

MR DRY: May we approach, Your Honor?

(At Bench)

MR BROWNLEE: The government has been good about sending over a list the evening before so we can prepare They have run out We've run out So we'd ask that we'd be able to start this up tomorrow If not -- we're trying to be efficient, but it helps to prepare

MR DRY: We've underestimated some of the cross-examinations is why we've run out

THE COURT: Okay We'll do this I'll go ahead and stop now, but in the future, just have one in the hole just in case

MR DRY: We've got one right now The problem is that they -- we ran out So they are not prepared for the cross-examination

THE COURT: Right I gotcha

(In Open Court)

THE COURT: All right We're going to stop now They got through these witnesses quicker than they thought they would So we've kind of run out for today But we'll get started tomorrow Let me give you a time

Okay I've got a couple things tomorrow Let's make it 9:45 again All right If you all will come in tomorrow at 9:45

Remember, as I've said every day, please don't let anybody discuss this case with you, and you do not discuss it with anyone else And continue to stay away from any news reports, newspaper, radio, television, media items that relate to this case Thank you all for your patience Hang in there We're getting there We are doing the best we can We'll see you tomorrow, and be blessed

(The jury left the courtroom)

(The trial adjourned at 5:01 p m)

I N D E X

WITNESSES

Examination By: Page

SARAH SCARBROUGH

Direct - MR FAULCONER 2032
Cross - MR BROWNLEE 2095
Cross - MR BURCK 2117
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DR PATRIZIO CATUREGLI

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No. 15-4019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ROBERT F McDONNELL,
Defendant-Appellant,

On Appeal from the United States District Court for the Eastern District of Virginia, Richmond Division, James R. Spencer, District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

August 8, 2014
Richmond, Virginia
9:45 a.m.

JURY TRIAL - VOLUME X

BEFORE: HONORABLE JAMES R SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
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JEFFREY B. KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day ten, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Daniel Small, Henry Asbill, James Burnham, and Christopher Iaquinto Maureen G McDonnell is represented by Heather Martin, William Burck, Stephen Hauss, and Daniel Koffmann. Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed

MR ASBILL: Mr McDonnell is ready

MS. MARTIN: Ms McDonnell is ready to proceed

THE COURT: For those members of the media who made an application for cell phone or computers, I have resolved all but one or two of those And if you would like to know the result, contact Ms Hancock at a break and she will let you know so you can start bringing those things in. As I said, Kathy, is it one or two?

THE CLERK: Two

THE COURT: There are two we haven't completed our due diligence on, but we will get that done quickly All right Let's bring in the jury

(The jury entered the courtroom.)

All right, good morning once again. Good to see you Government, call your next witness, please

MR. HARBACH: Thank you, Your Honor The government calls Matt Conrad.

MATTHEW A. CONRAD,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR HARBACH:

Q Good morning, Mr Conrad.

A Good morning, Mr Harbach

Q Could you please state your name and spell your last name for the reporter, sir?

A Matthew A. Conrad, C-O-N-R-A-D.

Q What do you do for a living, sir?

A I'm an attorney by training, but I'm currently an administrator at VCU

Q Tell us briefly about your education.

A Undergraduate at James Madison University, law school at George Mason University

Q During your career, have you worked for the defendant, Mr McDonnell, during his tenure as Governor?

A I did, yes, sir

Q What jobs did you do for him in his Administration?

A I first joined the Administration in May of 2010 as the Deputy Secretary of Agriculture and Forestry And then sometime in the summer of 2011, I believe it was July 1st or 15th, I became Deputy Chief of Staff and Deputy Counselor

Q Briefly, what were your duties as Deputy Chief of Staff?

A As Deputy Chief of Staff, I assisted Martin Kent with sort of the administration of state government That meant, you know, organization for Cabinet meetings, special projects as assigned, standing up and taking down state agencies, and also administering sort of the day-to-day processes of the Office of the Governor

Q And in your role as Deputy Counselor, who was your direct report? Who were you a deputy to?

A Jasen Eige

Q Did you serve in those two positions through the end of Governor McDonnell's term?

A I left shortly before the end of the term. I think it was, my last day was October 31st, 2013

Q In your role as Deputy Chief of Staff and Deputy Counselor, how frequently did you have personal contact with Mr McDonnell?

A I probably saw the Governor almost every day

Q And how frequently would you have, say, one-on-one meetings with him?

A One-on-one was far less frequent I would say infrequent

Q Do you recall when you first learned about a gentleman named Jonnie Williams, approximately?

A I don't recall specifically I remember hearing his name probably sometime in the summer of 2011

Q Did you ever meet Mr Williams yourself?

A I did not

Q Do you know who Mary-Shea Sutherland is?

A I do

Q What job did she have in the Administration?

A She was the First Lady's Chief of Staff

Q And how frequently would you have contact with her in your position?

A Fairly infrequently, and also, because I took on the role of Deputy Chief of Staff and Deputy Counselor only, I think, six months or so before she left the Administration.

Q Did you ever discuss with Ms Sutherland her reasons for leaving or the circumstances of her departure?

A Not in those terms, no, I don't think so

Q Well, in what terms do you had some hesitation about, sir?

A I think she had :ioned occasionally her sort of displeasure with the job. She seemed exhausted by the job

Q Generally speaking

A Generally speaking

Q But no discussions about her leaving or the specific reasons for her leaving?

A No, sir

Q Okay What about Ms McDonnell? How frequently would you have personal contact with her?

A Perhaps once or twice a month.

Q More or less frequent than your contact with the Governor?

A Less frequent for sure

Q Did you personally have any bad experiences with Ms McDonnell?

A Never one.

Q Turning your attention to approximately August of 2011, so I guess a month or two after you started, do you recall an issue arising involving a press release from a company called Star Scientific?

A I do

Q Could we take a look for identification, please, at Government's 225 Can you see that e-mail okay on the screen, Mr Conrad? We can blow it up for you a little bit

A Yes, sir, I can see it

Q Have you had an opportunity to review this e-mail before coming to court today?

A Yes, sir, you and I have discussed it

Q Okay Does this concern the press release issue you just mentioned?

A It does in fact

MR. HARBACH: The government offers Government's 225

THE COURT: It will be admitted

BY MR HARBACH:

Q Let's start at the bottom of the first page there with the e-mail from Ms Machir You are not on the e-mail chain yet, but this first e-mail is from Sarah Machir to Mary-Shea Sutherland involving a press release Let's scroll up a little bit Ms Sutherland e-mails Mr Martin And then you first become involved when Mr Martin e-mails and says, "Jason and Martin and Matt should go through this thoroughly Are we sure we can do something like this " My question for you is your response there at the top where you say, "I went straight to Kent on this one You were exactly right to be suspicious " And that e-mail is addressed to Mr Martin, right? That's who you are writing to?

A That's correct

Q And Mr Martin was the, for shorthand, the press guy?

A Communications Director That's right

Q When you say, "I went straight to Kent on this one," what did that mean?

A It means I contacted Martin Kent in response to this e-mail

Q Do you recall the substance of your discussion with Mr Kent on this issue?

A I actually don't recall whether I called him or e-mailed, but I just remember bringing it to his attention. You have to remember, in context, that this was shortly after the August 23rd earthquake and there were many other things going on.

Q What else was going on to your recollection besides the earthquake?

A There was an earthquake, the Dismal Swamp was on fire, there was a hurricane that had either come or was about to arrive, and there were issues at the North Anna Nuclear Plant

Q Busy time for the staff?

A Busy time

Q Busy time for the Governor?

A That's right

Q Your second sentence there where it says, "You were exactly right to be suspicious," what did you mean by that?

A I meant that I think that Tucker's instinct to bring that to the attention of the Chief of Staff was correct, that there was something that was definitely not normal about the origin of this press release

Q What do you mean?

A Well, in my very brief experience at that time as Deputy Chief of Staff, I had not seen a press release originate from a third party, or in particular, go through the First Lady's office

Q Now, was it your understanding that this was a press release that Star was seeking the Mansion to issue or was this a press release that Star wanted to issue itself, or do you recall?

A I don't recall I believe it was that the Governor's Office was to issue

Q Were you involved in editing the press release at all?

A I was not

Q Did you ever discuss the press release issue with Mr McDonnell?

A I did not

Q What about Mary-Shea Sutherland?

A Not to my recollection

Q Did you attend an event at the Mansion the day following this e-mail, August 30th of 2011?

A No, sir

Q You can take the exhibit down. Changing subjects with you: Do you know what a Statement of Economic Interests is?

A Yes, sir, I do

Q I'm quite confident the jury knows what it is by now Have you had some experience working with it in your career?

A I have had to fill one out pretty much every year of my state employment

Q Do you have a recollection of whether Ms McDonnell was required to fill out an SOEI?

A I remember some conversation around that topic, and the conclusion being that Ms McDonnell was not required to file a statement because she does not have an official role with the Commonwealth and is not a state employee

Q Despite that, do you recall an effort to keep track of gifts to the First Lady?

A I do

Q Can we take a look at what's in evidence as Government's 284, please Just maybe the top three e-mails for this witness This is an e-mail exchange between you and, among others, Mr Eige Have you seen this before, sir?

A Yes, sir, we have discussed this

Q Okay As you point out, on the bottom, Mr Eige advises that Ms McDonnell -- that's the "she," right?

A That's right

Q Does not need to complete one He explains about "If there were any gifts given directly to her but were really gifts for the Governor, we need the info for those by Monday " And then in your response, you point out that the staff were asked by you to help keep track of those gifts for your ultimate review Do you recall that?

A I do, yes, sir

Q Okay What was your understanding of the reason or reasons why you and Mr Eige decided it would be appropriate to keep track of those gifts?

A I believe there was a concern that they were gifts arriving directly to the Mansion; that we wanted to make sure they were intended for the First Lady or for the Governor, and if for the Governor, they could be included on his Statement of Economic Interests and they could be acknowledged with a thank you note or similar

Q Turning your attention to late 2012 and early 2013: Do you recall during your time working in Mr McDonnell's Administration being personally involved in the preparation of one of his SOEIs?

A I do, yes, sir

Q Was that the one for calendar year 2012?

A It was

Q Now, was that something that you did every year or was it unusual for you to be involved in it?

A It was unusual that year

Q Who normally did it?

A That was the responsibility of Jasen Eige along with Pam Watts

Q Do you recall why it was that you were involved in this year in particular as opposed to Mr Eige?

A I don't recall specifically, but I do know that Mr Eige was not available at that time It was right in the thick or the beginning of the General Assembly session where he was probably needed more And so as I recall, he and I were going to meet together with the Governor and Pam Watts to review the Statement of Economic Interests in draft form, but he was called away

Q From your experience working with the form in that one year, who was it who prepared the initial draft of the SOEI if you recall?

A I believe it was Pam Watts

Q What happened next after she prepared that draft, to your recollection?

A It was brought -- pam Watts and I walked in together to the Governor's office and provided it to him for review.

Q The draft?

A The draft, yes, sir

Q Could we take a look at Government's 456, please? Have you had a chance to review this document before you came to court today, sir?

A Yes, sir, with you.

Q And is this at least one of the early drafts that was prepared for Mr McDonnell's 2012 SOEI?

A I believe it is

Q All right Now, you mentioned a moment ago that you and Ms Watts took a draft to the Governor Could you please tell us about that? Where did that happen, and how did it unfold?

A As I recall, the Governor was in his office and Pam Watts and I walked in. I believe Pam gave him the draft, and he flipped to the schedule of gifts, I believe, just to look at how that turned out for the prior year

Q Do you recall whether he said anything or reacted in any way that was memorable when he saw the schedule of gifts?

A As I recall, I think either the total was written out for him or he quickly totaled up the number of gifts from the prior year and it was something approximating $80,000, I think, and -- in value And he was displeased with that amount

Q Would you take a look at Page 8 of Government Exhibit 456, please? Is this the draft Schedule E concerning gifts that's part of the form, sir?

A Yes, sir, it is

Q And you see up in the right-hand corner there, there is a figure that's in the neighborhood of $80,000 Is that what you think you may be referring to?

A I believe so

Q And --

THE COURT: Excuse me, I have a question I want to make sure I understood you Did you say he was "displeased" or he was "just pleased"?

THE WITNESS: Displeased with the total

BY MR. HARBACH:

Q Why did you believe that he was displeased?

A I imagine it is just --

Q Let me withdraw that question and make sure I ask it the correct way What, based on what you observed, led you to believe that he was displeased?

A He asked if I could get copies of prior governors's statements of economic interests for purposes of comparison

Q Did you in fact do that for him?

A I did Later on that afternoon or perhaps the next morning I went into Jasen Eige's office, and I think I knew that he had them in a file on his credenza, and so I retrieved those and placed them on Pam Watts's desk for the Governor's review the next day

Q During the time that you and Ms Watts were in his office, do you recall the Governor asking you any questions?

A I do, yes, sir

Q What did he ask you about?

A He asked me if there was, what the definition of a personal friend was

Q Did you answer his question?

A I did, in fact

Q What did you say to him?

A I said, "Governor, I don't believe there is actually any law defining who a personal friend is, but Janet Polarek, now Kelly, had said that a good place to start is, those persons you knew prior to running for Attorney General are good candidates for personal friends At least your analysis should begin there "

Q Okay Apart from your recollection of what Ms Kelly said, did you do any independent research on that issue yourself?

A No, sir, I wasn't asked to.

Q Okay Do you recall any discussions with Mr Eige or Mr Kent on this subject of guidance for the Governor about what a personal friend is?

A No, sir, I do not

Q About how long would you say you were in the office with the Governor when you dropped this form off and had this exchange?

A It was less than ten minutes

Q Did you all actually sit down and go through the form page by page or not, or do you recall?

A No, our conversation ended there

Q And when you left, did Ms Watts also leave?

A I don't recall

Q Did you have any further follow-up meetings with the Governor about his draft SOEI for that year, to your recollection?

A No, sir

Q Were you involved any further with the preparation of subsequent drafts or finalizing the actual filed version for this form, sir?

A No, sir, I was not.

Q At the time you had the meeting with the Governor in his office, what did you understand your role to be; what was your purpose?

A As we discussed, I wore sort of two hats, reporting to Martin Kent as Deputy Chief of Staff, and I was very clearly there that day in my role as Deputy Counselor working for Jasen Eige

Q Could we take a look briefly at the same exhibit that's up, which is Government's 456, Page 6 If we could blow up -- can you read that there at the bottom where "Medical Services" is crossed out and it says, "Healthcare," sir?

A Yes, sir

Q My question for you is, were you aware at the time of any significant health problems of Mr McDonnell or any member of his family that took place in calendar year 2012?

A No, I was not But I would not be, generally

Q Understood. One last question about the SOEI, or this particular SOEI At the time that -- you can take the exhibit down At the time that you had this brief meeting in the Governor's Office concerning this draft, did you know anything about $70,000 in loans that Mr Jonnie Williams had made to MoBo Realty during calendar year 2012?

A No, sir

Q You mentioned a moment ago that you filled out the form yourself, the SOEI form. How many years would you say you have done that?

A Probably, not consecutive years, but probably seven or eight years

Q Okay

MR HARBACH: Can I have just a moment, Judge?

THE COURT: Sure

(Counsel conferring with co-counsel)

BY MR HARBACH:

Q Ultimately, sir, what was your understanding of who had the final say on the accuracy and correctness of the form?

A Each filer is responsible for his or her own filing

MR. HARBACH: No further questions, Your Honor

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. BROWNLEE:

Q Good morning, Mr Conrad. My name is John Brownlee I'm an attorney for Bob McDonnell I just have a few questions for you this morning

A Good morning Yes, sir

Q Let me begin with the press release that you discussed. I believe what your testimony was is that there was a press release that had been -- can we pull up 225, Government Exhibit 225? If we go down to the bottom. Mr Harbach showed this to you. Now, this is actually a press release or an e-mail that's being sent from Star Scientific, Sarah Machir, to Mary-Shea Sutherland; is that correct?

A It appears to be, although I don't know Ms Machir

Q But if you look at the e-mail address, it says "Star Scientific"; is that correct?

A Yes, sir

Q Okay What she says is, "Mary-Shea, I have revised the paragraph in question and have moved it further down in the release Hope this works better "

So, is it your understanding that this was a press release that was being prepared by Star to be released by Star?

A I actually don't know

Q Okay We will keep going then. Let's move up then And then, "Jasen and Martin should go through this," that's Mary-Shea to you all, and then you testified that you were somewhat suspicious by this Is it fair to say, I believe your testimony was you were suspicious because this was a private entity preparing a press release Correct?

A Not just that, but also the way that it came to the attention of the Communications Director, Tucker Martin

Q There were two issues The process was being circumvented, that was, at least the normal process, to have a press release released by the Office of the Governor Correct?

A That was my primary concern.

Q Could we pull up 235 Let's show this This is "Please find the Anatabloc press release for today " Again, this is coming from Star Scientific to Ms Sutherland Then Ms Sutherland is forwarding that to you. Then the attachment is the press release itself If you look at it, it says, "Star Scientific has announced. " So let me ask you again: Is it your understanding that this press release was being released by the company and not the Office of the Governor?

MR. HARBACH: Objection

THE COURT: Sustained. He has indicated he doesn't know

BY MR BROWNLEE:

Q Let me ask you this way: In looking at the press release, you reviewed this that day, correct?

A I was not involved in the review of this press release The context, as I mentioned, we were responding to a wildfire, a hurricane The Chief of Staff himself was actually on vacation in North Carolina So I was helping the Secretary of Public Safety sort of coordinate the disaster response team.

Q Okay Let me ask you this: Do you recall, you were interviewed by the prosecutors and the FBI; is that correct?

A Yes, sir

Q Do you recall telling them that you were initially suspicious of the reference in the attached press release because it originated from a private sector source?
A That's a possibility, correct
Q All right, thank you I believe you testified you did not attend the event?
A No, sir
Q Okay Now, let me talk to you, let's pull up, if we can, Government Exhibit 456 Mr Harbach showed you, this is the first draft of Mr McDonnell's 2012 Statement of Economic Interests; is that correct?
A That's what I have been told. It appears to be the first draft
Q It says "Second Draft," and I think everybody has looked at it, it is really the first draft
A Okay
Q Okay If we look at Page 3, Mr Harbach showed you this, and if you can blow this up, I think it is your testimony that when you met with Mr McDonnell and he saw this, that he was displeased, I think was your term, because of the total amount Is that correct?
A Yes, sir
Q You understood that what happens is once this is completed, it is handed over and then the press reports on it and they go through it and there is a political dynamic

to this form; is that fair?

A That's absolutely correct As an observer, I know that the press corps tend to wait for these things to come out and be available in January of each calendar year, and then report on sort of the top three executive branch officers and their filings

Q Okay And did you also, I believe in your meetings with the FBI, you told them that one of the things he was concerned about were these Redskins tickets; is that correct?

A That's correct

Q And that is, I think it is about a quarter of the way from the bottom, and it was for $19,000 to a game; is that correct?

A Yes, sir

Q Okay And that was what he raised with you as kind of a big ticket item on his form.

A It was really a very passing reference to it He looked at the number, 19,000 for that particular football game, and said, you know, "Why is this?" I think maybe Pam explained that it was because the entire family or a large group had attended with him.

Q Okay Now, there is also, if you could pull up, please, two entries from Star Scientific Right in the middle there You see those, sir?

A Yes, sir

Q Do you have any recollection of him saying anything about these?

A I do not

Q Okay So he didn't raise these with you at that time?

A No, sir

Q Okay Let's take that down. Then I believe there was another draft, so if we could pull up Government's 460 and look at Page 8

A Okay

Q Now, on this form, the Redskins tickets are still there; is that correct?

A Yes, sir

Q Okay And is Star Scientific still on the form?

A It is

Q Okay And then let's look at Government Exhibit 459 I don't know if it is Page 8 or on this one -- let's go to Page 5, I think, for this version. This is actually the time that was submitted, and Washington Redskins tickets are still on there; is that correct?

A It is As I've testified, I was not involved in any subsequent discussions about this

Q This is in evidence And Star Scientific is still on there?

A Yes, sir

Q Okay Now, if we can pull up, if you will go to Page 1 on this, on Government Exhibit 459, Your Honor Actually, let's look at Page 4, the top of Page 4 You see at the very top there, this is actually a continuation from the other page, but these are a listing for "The personal debts of members of my immediate family are as follows " And there is a range there, and you can't see it because it is on the other page, but you see the X indicating that there is an amount?

A Yes, sir

Q Okay And you understand the ranges are between $10,001 up to $50,000, and then more than $50,000, correct?

A That's my recollection, yes, sir

Q You can't see this on this one, but this one is for the 10,001 and 50; correct?

A Yes, sir, it is

Q If we could go back to the other page Thank you. Very top. Now, Mr Harbach asked you if you were aware that Mr McDonnell had some sort of medical condition. Do you remember him asking you that?

A Yes, sir

Q You said you weren't aware of that And he asked you in the context of this This area doesn't require that the individual state the purpose of the loan, correct?

MR. HARBACH: I object to that question

THE COURT: If he knows

THE WITNESS: Could you repeat that question?

BY MR. BROWNLEE:

Q Let's just look at the document It says, "Individual creditors: State principal business or occupation for each creditor State principal business or occupation for each creditor " That's the requirement for this section, correct?

A That's right

Q It doesn't say anything about what's the purpose of the loan

A No, sir, it does not

Q Okay So if an individual got a loan for a medical condition, you wouldn't put down here your medical condition, right?

MR. HARBACH: Objection.

THE COURT: Sustained.

BY MR BROWNLEE:

Q It doesn't require that you put the name of the person that gave you the loan, correct?

A There is no place for that

Q Okay Now, if we could go to -- you can just take this down Mr Harbach asked you about this "personal friend." And it is fair to say that for this form, that the filer is not required to submit gifts from family members, correct?

A That is correct

Q Or personal friends And I believe the definition is, it says -- make sure this is right -- it says, "Do not list gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position."

Is that your understanding of what the form requires?

A Yes, sir

Q And you testified that with regard to "personal friend," that there is no definition of that in the Code

A There is no definition in the Code, and there is no case law At least -- I think it has been defined since that time

Q And do you recall telling the FBI that with regard to the "personal friend," that in your view there was no bright-line rule and that it was possible one could develop a close personal relationship with someone after being elected?

MR. HARBACH: Objection

THE COURT: He can answer that

THE WITNESS: I think there is a potential for that It is certainly in each individual filer's discretion and best judgment

BY MR BROWNLEE:

Q When a filer goes to file this, it is the person who prepares it has to make that judgment about an individual, whether or not they believe they are a personal friend; is that correct?

A That's correct

Q Okay And when you filled it out, you made a decision as to who your personal friends were?

A That's right

MR. HARBACH: Objection.

THE COURT: Sustained.

BY MR. BROWNLEE:

Q Let me just add a couple things on these gifts Under Virginia law, there are no limits, on this form that Mr Harbach showed you, it doesn't have a limit on how much any individual can accept with regard to a gift; is that correct?

A That is correct

Q Okay Now, in working with Governor McDonnell, did he ever take the time to share with you the specifics of his personal finances?

A No, never once

Q How about all his loans and his mortgages and interest rates and all those things?

A No, sir

MR BROWNLEE: Your Honor, thank you very much.

THE COURT: All right Ms McDonnell?

CROSS-EXAMINATION

BY MS MARTIN:

Q Good morning, Mr Conrad. My name is Heather Martin. I represent Ms McDonnell

A Good morning.

Q Have you and I ever met before?

A No, we have not

Q Have we ever spoken on the phone?

A We have not

Q I want to turn your attention back to the SOEI's that the government asked you about And even though it was determined that the First Lady had no SOEI requirement, gifts were, you kept track of gifts to the First Lady internally, correct?

A The First Lady's staff did, that's correct

Q And the reason for doing that was that in case any of the gifts that made it to the First Lady were actually intended for the Governor, they could be disclosed on Governor McDonnell's SOEI and that a thank you card could be sent; is that correct?

A That is correct

Q And the purpose of the internal tracking was not to track gifts that were intended for the First Lady alone, correct?

A Correct

Q Since she had no requirement to report, right?

A That's right

Q But there was a period of uncertainty on whether or not Ms McDonnell needed to file an SOEI, correct?

A I don't recall there being uncertainty around that At least in my mind.

Q But you did give a training to Ms McDonnell and others on her staff about Mr McDonnell's filing requirements, correct?

A That's correct.

Q And one of the reasons that you gave that training is because there were concerns that she was not telling people about all of the gifts coming into the Mansion?

A We thought it best that she understand her husband's filing requirements, and also, give the staff the same training

Q Was there any concern that she was taking gifts and putting them in closets in the Mansion?

A Not by me, because I didn't have any direct interaction of that kind. But I had heard that

Q And it was almost like a concern that she was sort of hoarding gifts?

A I had heard that there were piles of gifts or things that were being put in closets that needed to be at least acknowledged and determined who they were intended for

Q But again, sometime, there did come a time that at least everybody came to the conclusion that she did not need to file an SOEI at all, correct?

A That's correct

Q Now, I think you testified earlier that you can't recall when you first heard of Jonnie Williams; is that right?

A That's right

Q But it is sometime after you became the Governor's Deputy Chief of Staff; is that fair to say?

A It was around about that time, probably 2011 at some point

Q And the context in which you heard about Jonnie Williams is that you heard Mary-Shea Sutherland mention something along the lines of "Can you believe what Ms McDonnell has done?" and mentioning her friendship with Jonnie Williams?

MR. HARBACH: Objection.

THE COURT: He can answer it He can go ahead and answer the question.

THE WITNESS: I don't recall those specific terms, but I do recall hearing from Mary-Shea that she was probably dismayed with kind of that relationship, and she mentioned specifically a shopping trip to New York.

BY MS MARTIN:

Q Do you recall speaking to the government a couple of times about this case?

A Yes, ma'am, I do

Q There were agents and prosecutors in the room?

A That's correct

Q And was there an agent taking notes?

A There was Yes, ma'am.

Q And can we bring up for Mr Conrad only the notes from August 27th, 2013? I'm going to direct your attention to Page 3, please Not the typewritten The handwritten notes If we could zoom in on the sort of top paragraphs And I'm going to direct your attention to that sort of third bullet point down. Have you had a chance to review that?

A Yes, ma'am.

Q We can take that down. And does reviewing that document refresh your recollection that you told the prosecutors and the FBI agents that in the context of learning about Jonnie Williams, you heard Mary-Shea Sutherland state something along the lines of "Can you believe what Ms McDonnell has done?" and her friendship with Jonnie Williams?

MR. HARBACH: Same objection, Judge, hearsay

THE COURT: Overruled.

THE WITNESS: I understand where you want me to go, and I don't recall using the word "friendship " It is possible that I characterized it in those terms

BY MS MARTIN:

Q Now, I think you stated that she did mention something about a shopping trip, correct?

A That's correct

Q And you were unaware of any shopping trip in August -- I'm sorry, not August, April of 2011; is that correct?

A That's correct At that time I was still serving as the Deputy Secretary of Agriculture and Forestry

Q And when talking about the shopping trip, Ms Sutherland didn't go into any significant detail about it, correct?

A No, she did not She may have mentioned that she tried on a very expensive dress or coat or handbag of some kind. I don't recall

Q And you recall observing that Ms Sutherland's comments about the shopping trip seemed kind of catty to you?

A That's an unfortunate characterization, but I would say it was definitely she didn't look favorably on that trip

Q And she didn't look favorably on Ms McDonnell's relationship with Jonnie Williams, either, did she?

A I don't recall discussing that relationship

Q Did Mary-Shea Sutherland tell you that Jonnie Williams had bought Ms McDonnell clothing?

A I don't recall that specifically I remember hearing about trying something on

Q And what about Jonnie Williams buying Mary-Shea Sutherland herself clothing?

A No, ma'am.

Q Did Mary-Shea Sutherland tell you that Ms McDonnell had given her a check from Jonnie Williams for Cailin's wedding?

A No, she did not

Q And did Mary-Shea Sutherland tell you that Ms McDonnell had bought stock in Star Scientific?

A No, she did not

Q And did Mary-Shea Sutherland tell you that she was seeking a job with Jonnie Williams in the summer of 2011?

A She did not

MS MARTIN: If I could have a moment, Your Honor

(Counsel conferring with co-counsel)

BY MS MARTIN:

Q Just one last question on that training regarding SOEI's that I mentioned earlier That was in December of 2011; is that correct?

A I don't recall the precise time That sounds about right

MS MARTIN: No further questions, Your Honor

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR HARBACH:

Q Mr Conrad, were you a supervisor of Mary-Shea Sutherland?

A No, sir, I was not

Q Who was her supervisor? Who was her direct report, as you understood it?

A That would be to the Chief of Staff

Q Who was that at the time?

A Martin Kent

Q I believe Mr Brownlee asked you some questions about the SOEI form and some questions about this "personal friend" definition Do you recall those questions?

A Yes, sir, I do

Q Could you please reiterate for the jury, the one time that you actually gave the Governor guidance on that issue, what did you tell him?

A I said that Janet Kelly, then Polarek, had as a recommendation that he consider those persons who he was friends with prior to running for Attorney General as candidates for personal friend

Q Possibilities for that exemption?

A Correct The analysis should start there

Q Okay Finally, Mr Brownlee asked you some questions in which he referred to the SOEI as a political form. Do you recall those questions?

A Yes, sir, I do

Q Could we take a look at Page 2 of Government's 459, which is the final filed 2012 SOEI? Could you blow up the Affirmation for us, please, Mr Starnes? Mr Conrad, could you just read for us the single-line Affirmation that is above the signature block there, please?

A Part of it is missing, but I know it says, "Swear or affirm that the foregoing information is full, true, and correct to the best of my knowledge "

Q Thank you, sir

MR. HARBACH: That's all I have, Your Honor Thank you.

THE COURT: Thank you, sir You may stand down.

(Witness stood aside)

Call your next witness, please

MR HARBACH: Thank you, Your Honor The government calls Paul Perito.

PAUL L. PERITO,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARBACH:

Q Mr Perito, could you scoot up to that microphone, please, sir? It moves around.

A Is this all right?

Q Yes, sir, that's just fine Would you please state your name and spell your last name for the court reporter, sir?

A Paul L. Perito, P-E-R-I-T-O

Q Are you currently working, sir, or are you retired?

A I'm quasi-retired and quasi-working

Q What are you quasi-working on?

A I remain a consultant to Rock Creek Pharmaceutical, and have formed a small group called The Perito Group on issues of which I purportedly have competence, and I'm working on those and getting to know my grandchildren

Q Okay Could you tell us briefly about your educational background, sir?

A I was born in Boston, Massachusetts right outside the city, reared there My parents were first-generation Americans

Q Where did you go to high school?

A Went to Medford High School

Q Did you go to college after that?

A Yes, sir, I did

Q Where did you go to college?

A Tufts University

Q Do you have any advanced degrees, sir?

A I do.

Q What advanced degree do you hold?

A An LLB and a JD from Harvard Law School

Q What's an LLB?

A Bachelor of Law It is the old degree that they used to award, and now they do the JD degree in lieu of the LLB.

Q After you graduated from law school, did you perform any government service?

A I did

Q Where did you do that?

A I became a federal prosecutor in the United States Attorney's Office in the Southern District of New York

Q What city is that in, sir?

A It is in Manhattan and New York.

Q How long did you serve in that role?

A Approximately four-and-a-half years

Q Did you ever perform any government service in the

City of Washington?

A I did

Q What did you do in Washington?

A First position in Washington was Chief Counselor, and then Chief Counsel and Staff Director for the House of Representatives Select Committee on Crime

Q How long did you serve in that role?

A Approximately two years

Q All right Anything else in the nation's capital?

A Yes I got nominated by the President, President Nixon, to be the first Deputy Director of the White House Special Action Office on Drug Abuse Prevention, the office that the President dubbed the first Drug Czar's office

Q How long did you do that?

A Until late 1973, early 1974, when I returned to the private sector

Q And when you returned to the private sector, were you practicing law, sir?

A Yes, sir, I was

Q Okay Do you recall when it was when you first met Mr Jonnie Williams?

A Sometime in the early 1990's

Q And during your career, did you eventually come to work for a company called Star Scientific?

A I did.

Q About when was that?

A About 1999 Late 1998, early 1999

Q When you first started at Star, in what capacity were you hired, sir?

A I was hired in the capacity as Chief Counsel and Executive Vice President

Q And at the time that you started working at Star in the late 1990's, what sort of business was Star in at that time?

A Star was primarily in the leaf, the cigarette, and then ultimately the less harmful cigarette and the less harmful smokeless tobacco business

Q And could you tell us briefly why you decided to leave private practice to join Star?

A In short, the scientific work that Mr Williams was doing, which I had vetted out by my former boss at the White House, Dr Jerome Jaffe, caused me to believe that it was possible to substantially reduce harm associated with the inhalation of toxic tobacco smoke And that discovery, which had bedeviled the tobacco companies for 60 years, could in my opinion and Dr Jaffe's change the life-death equation of compulsive smoking However, we believed that if they moved from smoke tobacco to smokeless, and we were able to reduce the nitrosamines which are the most abundant serious carcinogens in tobacco and tobacco smoke, they could perhaps replicate the Swedish experience and have a dramatic drop in face and neck cancers and a dramatic drop in the mortality and morbidity long associated with tobacco use

Q Thank you, sir You told us what you did when you started at Star in the late 1990's I'd like to turn your attention now to about ten years later, which is to say in approximately the 2009 to 2012 time frame Okay?

A Yes, sir

Q Can you please tell us what your job title was in that time frame?

A I wore several hats My job title for the parent corporation was Chairman, President, and COO, Chief Operating Officer But the Board asked me to take on special responsibilities in 2007 to set up a subsidiary called Rock Creek Pharmaceuticals

Q Let me interrupt you there --

A That title was -- I'm sorry, sir

Q That's quite all right I interrupted you Please tell us what your title was

A My time was Chairman and CEO of the subsidiary

Q What was the function of the subsidiary, Rock Creek Pharmaceuticals?

A The primary function was to develop a nutraceutical from an alkaloid which Mr Williams focused on, which had very little epidemiological base No one had really studied that alkaloid. And that alkaloid, we believe, was an active alkaloid and was without nicotinic impact It would not cause dependence and so forth.

Q Is this alkaloid anatabine, sir?

A Yes, sir, it is

Q The jury has heard a little bit about that Let me ask you, this is just a housekeeping matter, within the last few months, did the parent company, Star, assume the name Rock Creek Pharmaceuticals, sir?

A Yes, sir, it did.

Q But from 2009 to 2012, was the parent company known as Star?

A Star Scientific

Q Star Scientific

A Yes, sir, it was

Q So just to avoid confusion for the remainder of your testimony today, when I say Star Scientific, I'm referring to that parent company, okay?

A Right

Q Do you understand?

A Yes, I do

Q Focusing on that same time frame, 2009 to 2012, how frequently would you say you had contact with Mr Jonnie Williams?

A Telephonically or physically?

Q All of the above

A Telephonically, ten, fifteen, 18 times a day or more

Q What about in person?

A We would try to get together every few weeks Sometimes we would travel together But essentially, we had this rule that if we didn't have to do it together, because it was important that he had my skills and his skills, it would be better if we did it separately I was in Washington. He was in Florida

Q Okay Again, during that time frame, 2009 to 2012, you have been at Star some ten-plus years?

A That's correct

Q You have known Mr Williams for some 20 years by that point

A That's correct

Q How would you characterize your professional relationship with him during that time frame? Did you have a good working relationship?

A Exceedingly good working relationship.

Q What about personally?

A We had a personal relationship We had a lot of parallel interests, and I think, also, Mr Williams in part regarded me as an older brother

Q Did you socialize with him?

A I did.

Q How frequently did you do that?

A Not that frequently, but a fair amount We would go to dinner together, I would have dinner at his home, and so forth.

Q How would you characterize your relationship with him as you sit here today, sir?

A It is not dramatically different, notwithstanding the events that have occurred since he has shown to me that he owned up to egregiously bad judgment

MR. ASBILL: Objection.

THE COURT: Sustained.

BY MR HARBACH:

Q We will get to that a little bit later Is your relationship, as you sit here today, with Mr Williams, would you still characterize it as a good relationship?

A Yes

Q Okay Now, let's focus on a couple of these products briefly Are you familiar with the product called CigRx?

A I am.

Q And approximately when was that product introduced by Star?

A August of 2010

Q And what is CigRx and what was it intended to do?

A CigRx is composed of anatabine, Yerbamate, Vitamin A and D. And it was designed to diminish the desire to smoke

Q What about products, a Star product called Anatabloc; do you know what that is?

A I do.

Q What is it, briefly?

A It has anatabine in it, Vitamin A and D It was designed to assist in lowering internal inflammation in the body

Q Do you recall when Anatabloc was introduced to the public market?

A On or about August 30th, 2011

Q We will talk more about that date a little bit later For the moment, let me ask you some other background questions These products that Star marketed, CigRx and Anatabloc, were those products distributed nationwide during the time period we are talking about?

A Yes, they were

Q And again, that same time period, from 2009 to approximately 2012, did Star have offices in various states?

A It did.

Q Tell us about that What states did Star have offices in?

A It had offices, scientific office in Gloucester, Massachusetts It had executive and regulatory and legal office in Washington.

Q Washington State or D C ?

A I'm sorry, D.C

Q Okay

A It had an executive/administrative office in Glen Allen It had a facility that was a leaf processing facility in Chase City, Virginia

Q The facility that you mentioned that was in Glen Allen, just for the record, what state is that in, sir?

A That's in Washington D C I'm sorry, Glen Allen is in Virginia, sir Yes

Q Okay What about manufacturing facilities, where were they located?

A In New Jersey

Q You mentioned the term "nutraceutical" already in your testimony so far Could you tell us briefly what the difference is between a nutraceutical and a pharmaceutical or a full-fledged drug, briefly, please?

A Very different categories under the Food, Drug, and Cosmetic Act A nutraceutical is a product that has fulfilled safety requirements, similar to foods There is no specific requirement for nutritional supplement to prove efficaciousness or effectiveness If you want to make a claim, and if that claim involves the treatment, mitigation, or prevention of a disease, then you have to go the drug route If you want to make a limited assertion or claim, function/structure under DSHEA, under the Act that set it up, then you could have a nutraceutical The difference is dramatic in that there are perhaps 65,000 nutritional supplements on sale at GNC and other places like that You have only a very small number of those that are truly effective And in the literature, it shows that many thoughtful people believe that a lot of nutraceuticals are placebos

Q Let me interrupt you there and ask you specifically with respect to Anatabloc, which you have testified about already, when that product was first introduced to the market in August of 2011, was it a nutraceutical or a pharmaceutical drug?

A Clearly a nutraceutical

Q Did the company have any strategic plans to attempt to shift it to the pharmaceutical column?

A Yes, sir, it did

Q Why was that?

A Well, a nutraceutical has only limited viability because of the inherent limitation on claims If you want to make serious claims about this helping to cure a disease or an ailment, you need to go the NDA drug route, and that's a longer route. But finally, from a business perspective, there is a dramatic difference between the potential for generating profit for your investors with an approved NDA as opposed to a nutritional supplement

Q Could you tell us, if you can, what are the steps that a company like Star would have to go through to get a product from the nutraceutical column to the pharmaceutical column?

A You would start with an IND

Q What's that?

A Investigatory New Drug And when you file your IND, you have to have a plethora of data to support safety So you go through, as we went through, long toxicological testing You go through bench-top testing You go through animal testing And you take that data collectively, go to the FDA, and request a review of that under the IND. FDA can either approve it, put a hold on it, have you do more, have you repeat tests, do tests on larger animals rather than smaller animals

Q Okay

A But let's say you make it through the next step

Q What's next?

A You go into a Phase 1 trial, clinical trial

Q What does that mean?

A Clinical trial in humans The FDA won't allow you to start a clinical trial unless there's no holds and they are satisfied with the clinical, the pre-clinical data So you start with a very small number, sometimes three or eight or 10 or 15 of subjects, of individuals

Q People

A People And you know you are putting a drug in men or women that is, quote, safe Now, you don't know whether that drug has the other arm of effectiveness, efficaciousness So after you go through Phase 1, say it is a limited study, eight or ten individuals, at one site, one hospital, one university, and so forth, then you take that data, you go back to the FDA, and there's long communications about moving to Phase 2

Q What's Phase 2?

A Phase 2 is a much larger single study, single It could be -- and there are stages within the phase.

Q When you say larger, you mean in terms of number of people?

A Number of human beings who are willing to be tested under that So that might be 250

Q Let's say you get through that phase Then what?

A Then you go into Phase 3, where you have multi sites, multi claims that you want to make, or you prove that you can make some and you can make others, but by that, at the end of that phase, you can either go onto the market through an NDA new drug approval, or you could do as the

FDA often does, start it with limited distribution, have black block claims if there are concerns about some potential side effects You have seen on TV a commercial of a drug, and you will see all of the various side effects.

Q Sure

A That's developed in that So the FDA could require follow-up studies while you are marketing the drug and so forth

Q I see

A You have to remember that each of these phases is very expensive, and very time consuming

Q Okay Thank you for that We will talk about those phases in the context of Star in a little while Okay? Did you become aware at some point when you were working for Mr Williams of his, generally speaking, cultivating a relationship with the then Governor of Virginia and his wife, Mr and Ms McDonnell?

A Yes

Q How did you learn about it, and approximately when?

A Approximately four years ago

Q Sometime in 2010?

A I think it is either 2009 or 2010

Q How did you learn about it?

A Mr Williams told me that he was playing golf with the Governor or having dinner with the Governor and his wife

Q When you first learned from Mr Williams about his potential relationship with the McDonnells, what did you think of that in terms of how it could fit into the strategy?

A I was a little wary, and I shared that with Jonnie.

Q Why were you wary of it?

A Because I have always preached the gospel "Let the science lead the company " "Let the science lead the company " And I was concerned about the potential political ramifications; that we would not be taken seriously as a company if that relationship expanded and there was too much emphasis on that

Q Over time, did your wariness subside?

A Yes, it did, to a certain extent

Q Explain that generally

A As time progressed, and I gave it some considerable thought, I thought that a reasoned approach would be that there would not be a dwarfing of focus on science But there could be a halo, I describe it as a halo effect, if the Chief Executive of the Commonwealth of the state, which is the home state of the product, embraces the worthiness of the product It gives it a type of credibility

Q Okay Let me show you the first document I'm going to show you today, sir, and it is already in evidence as Government's 161 I'm going to ask the witness to look at Page 2 And blow that up for him, please

Mr Perito, is this a letter that you have reviewed before coming to court today?

A Yes Yes, it is

Q My question for you, sir, is whether at the time this letter was sent, which was in June of 2011, did you know anything about it at the time?

A I did not

Q Did you know that Mr Williams had sent it?

A I did not know he had sent it

Q Based on your experience working with Mr Williams and your respective roles, is this the type of letter you would expect to have seen or known about before it was sent?

A Absolutely

Q Why was that?

A Because one of my responsibilities was regulatory issues And one of my responsibilities was overseeing the science And before a letter like this would have gotten through the matrix that I had set up formally or informally, it would have been vetted by Dr Wright, who was formerly with the FDA. It would have been vetted perhaps by Dr Lanier, who is one of our senior scientists It would have been vetted by some of our consultants, if that was the case And ultimately, I would see it and I would spot things For example, if you look --

Q I don't think we need to do any examples on this one Suffice to say, you never saw this letter before it went out?

A I never saw it before it went out

Q What about the fact that it was addressed to a state's Chief Executive; would that have been of interest to you at the time?

A Of course

Q Why?

A Well, because, one, if we are writing to the Chief Executive of the state, just like if we were writing to the Secretary of HHS, I want to make certain that everything that's in there is absolutely accurate; that the science is accurate, and that we have gone through the proper steps I mean, I learned in years in government that you've got to do things in an organized fashion and move up the line You just don't go to the secretary of the department

Q Okay Thank you You can take the exhibit down, please Mr Perito, did you know in the spring of 2011 that Mr Williams had taken Ms Maureen McDonnell shopping in New York City and bought her thousands of dollars' worth of designer clothes?

A I had no knowledge of that whatsoever

Q Did you know at the time in the spring of 2011 about a private dinner that Mr Williams and his wife had with the McDonnells at the Governor's Mansion in April?

A I didn't know about that when it occurred.

Q Did you know at the time, namely, the summer of 2011, when this letter that we were just looking at was sent, did you know that Mr Williams had provided a $50,000 check to Maureen McDonnell as a loan?

A I had no idea that that activity took place

Q What about a $15,000 check that Mr Williams provided to the McDonnells for a catering bill for their daughter's wedding in May; did you know about that at the time?

A Absolutely no knowledge whatsoever

Q During the spring and summer of 2011, did you personally know anything about the McDonnells' financial situation?

A I did not, sir

Q Are you familiar with a company, excuse me, an entity called Roskamp?

A Yes, sir, I am.

Q What's that?

A It is a 501(c)(3), a not-for-profit entity involved in brain and related research, with a particular specialty in Alzheimer's disease And it was run by a very well-known philanthropist who made most of his gifts to fund neurological research Now, it has one arm of it, it is the small arm, SRQ Company, which is proprietary But 95 percent of it, as I understand it, is charitable

Q Okay Do you know what state it is located in?

A Yes

Q What state?

A Florida

Q Were you aware at the time whether there was any kind of formal relationship between Roskamp and Star Scientific?

A The relationship was formalized with a written agreement.

Q What was basically the nature of the agreement, sir?

A Essentially, it was that we would take the 30 or 40 scientists and researchers that they had, staff headed by Dr Mike Mullan, an M.D./Ph D., we would take a vaunted place in the research agenda for Roskamp In other words, we would get our projects done faster and at a better rate of cost And in return for which we would pay them five percent of the gross royalty on Anatabloc

Q Okay Are you aware of an event that took place at the Roskamp Institute on June 1st of 2011?

A I'm aware of it now, yes

Q Did you attend the event?

A No, sir, I did not

Q Do you know the event to which I'm referring, sir?

A Yes

Q Did you have any conversations with Mr Williams following that event about it?

A I did

Q What did Mr Williams say about the event to your recollection?

A Well, he said that he had been asked by Bob Roskamp if he would assist in a fundraising effort for Roskamp You know, it is an eleemosynary institution, and they need contributions And Mr Roskamp, according to Mr Williams, asked if some of Jonnie's high net worth friends would attend And Jonnie also agreed that he would make available two of the consultants that we had from -- who were affiliated with Johns Hopkins to come to that event, and that there would be a presentation of the data involving the research on anatabine that was being done there

Q Following the event, what was your impression of Mr Williams' take on how it went?

A Well, he was somewhat elated and, he told me, somewhat shocked He said he introduced the First Lady, and she said to the assembled group, my best recollection, in words or substance, "I'm going to invite everybody to the Governor's Mansion for the launch of this product I think it is a great product, and we are very excited about it and it is a home state company "

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Q What did you think when Mr Williams shared this news with you, sir?

A I had some reservations about it at the -- when it was first shared with me.

Q What were those reservations?

A Again, science is, to me, the end point of what we were doing, which was the breakthroughs that we wanted to make, and we needed good science And I didn't want there to be any confusion, particularly since at the launch we were going to be having a lot of internal medicine people, professors and otherwise, about our interest in the science

Q And did your view on that subject, namely, the launch meeting at the Mansion, did your view on that subject change?

A Yes

Q How so?

A It softened in that I thought again of the halo effect I thought again of the worthiness of having the Chief Executive and his wife embrace the local company and embrace the product

Q What specifically did you see as the advantages of holding the event at the Mansion?

A I saw that it could create potentially better word of mouth, which is very important in the marketing of a nutraceutical I saw that potentially it could cause the attendees to think seriously about the science And clearly, at some point in time, I knew that among the attendees would be professors and researchers from UVA School of Medicine and from VCU Medical School

And they were key because we had started to focus, or were moving to focus, on attempting to get a grant from the Tobacco Commission

Q Let me ask you about that How did you learn about the possibility of pursuing a grant from the Tobacco Commission?

A I learned in a conversation that Mr Williams had, I think, shortly after he met with Governor McDonnell

Q Do you recall what Mr Williams said about it?

A In words or substance, I recall him saying that the Governor said the Tobacco Commission would be an ideal place for Star to make an effort to secure some of the grant funding

Q Now, to your mind, why would it have been advantageous to secure funding from an outside entity like the Tobacco Commission?

A If you secure a grant -- and there came a time -- let me answer your question

Research done by an independent entity is always more valued in the arena of particularly NDAs and new drugs than research done in-house And so I was focused on how we could get two highly reputable institutions to do research to test the hypothesis, which one of our consultants had so brilliantly articulated as to what we were about in this process

Q Earlier you mentioned that the process of going from a pharmaceutical to a -- excuse me -- from a nutraceutical to a full-fledged pharmaceutical drug, I believe you said it was time-consuming, and you also said it was quite expensive

Do you recall that testimony?

A Yes, sir, I do

Q My question for you is taking Anatabloc from, you know, phase one all the way through full-on drug status, is that a financial expenditure that, in your judgment at the time, Star could have supported on its own?

A There was no way Star could support that on its own at that point in time

Q Was that among the factors that was involved in pursuing a Tobacco Commission grant?

A Yes

Q So you mentioned the independence of the funding first, and then what you just described Anything else that you recall, or are those the two key ones?

A It was independent science It was doing it in a way that would prompt the other scientists in the university to get interested

One of the best things that can happen in the process of a research like this is that another scientist at another university will say, "I'd like to try to replicate your science " So those were all things that I took into consideration

Q Did Star, to your recollection, hire anyone to assist in its efforts pursuing the grant from the Tobacco Commission?

A Yes Two lawyers

Q Do you remember their names?

A Jerry Kilgore, former Attorney General, and Chris Nolen, who's a partner at McGuireWoods

Q Is Mr Kilgore at that same firm --

A Yes

Q -- to your recollection?

A Yes

Q You mentioned that you first learned about this possibility of pursuing -- excuse me -- the Tobacco Commission funding from Mr Williams?

A Yes, I did

Q Did he remain involved in the discussions with Mr Kilgore and your other consultants as the process moved forward?

A He would be kept up on things, generally, by me or by my general counsel

Q By -- based on your conversations with Mr Williams, did it appear to you that he, meaning Mr Williams, understood the importance of UVA and VCU to the strategy?

A Acutely

Q I'm sorry?

A Acutely He was totally turned in to that for business purposes

Q Okay

MR HARBACH: Could we look, for a moment, for -- excuse me

Your Honor, may we approach for a moment please, sir

THE COURT: Come on up

(At Bench)

MR HARBACH: Your Honor, I'm sorry I'm feeling a little nauseous and lightheaded Can I please have five minutes?

THE COURT: We'll go ahead and take our break

MR HARBACH: Thank you, sir

THE COURT: All right

(In Open Court)

THE COURT: All right We are going to take the morning break now We'll make it 15 minutes

(The jury left the courtroom)

THE COURT: All right Mr Harbach, you let me know when you're ready to come back in

MR HARBACH: Thank you, Your Honor

(Recess taken from 11:15 a m until 11:33 a m)

THE COURT: All right

(The jury entered the courtroom)

THE COURT: All right Government

MR HARBACH: Thank you, Your Honor

BY MR HARBACH:

Q Mr Perito, before we continue with the Tobacco Commission discussions, just a couple of loose end questions Okay?

Do you recall, in -- over the years in knowing Mr Williams, whether he has any difficulty reading?

A Very -- very much know that

Q Have you experienced that in your dealings with him?

A Absolutely I'm the person who alerted him to his disability -- potential disability, and I'm the person who had him tested for that

Q Okay And what is the reading difficulty that he has, to your understanding?

A Dyslexia and dysgraphia, ADD and ADHD The combination of those forces

Q What's dysgraphia?

A Inability to write clearly

Q Okay Second loose end If the approximate 2009 to 2012 time frame, do you recall, ballpark, about how many employees Star had in the State of Virginia?

A Approximately, FTEs, full-time employees, would be 39 or 40, and maybe 10 to 12 consultants

Q Thank you, sir

A You're welcome

Q Now, let's go back to our discussion about the Tobacco Commission

MR HARBACH: And to continue that, I'd like to bring up for identification Government's 168, please

A Could you kindly enlarge the print? Is that possible?

BY MR HARBACH:

Q We've just done that for you, sir

A Thank you

Q We've enlarged the header for you

MR HARBACH: And, Mr Starnes, if you could scroll down a little bit to what -- and zoom out just a tad to allow the witness to identify the document, please And scroll down a little bit for him

BY MR HARBACH:

Q Mr Perito, do you recognize this e-mail, sir?

A Yes, sir I authored it

Q Is it an exchange between you and someone called Bob

Pokusa?

A Yes He's our -- he was our general counsel

Q Okay

MR HARBACH: Your Honor, the government offers Government's 168

THE COURT: It will be admitted

BY MR HARBACH:

Q All right Starting with the header information at the top, sir What is the date that you sent this e-mail to Mr Pokusa?

A On July 5, 2011

Q All right

MR HARBACH: And then substance wise, I'd like to scroll down to the -- focus on the second paragraph, please If you would blow that up for the witness

BY MR HARBACH:

Q Can you see that okay, Mr Perito?

A Yes, sir, I can May I just read it for a second?

Q Please Read it to yourself, and let me know when you're ready

A Yes

Q Okay I want to ask you a few questions about some of what you wrote here My first question is in the first sentence you mentioned a Professor Ladenson, a Dr Caturegli, and a Dr Wright Now, the jury is acquainted with the first two gentlemen Who's Dr Wright?

A Dr Curtis Wright is a scientist researcher with an M D , Ph D degree, and an MPH degree

Q How is he connected to Star, if at all?

A He was the person that I recruited to be our senior medical advisor and senior medical officer

Q Okay

A And he used to work for several years, 11 years, for the Food & Drug Administration

Q All right Let's continue a little bit further on in the paragraph You write, "This is somewhat of a milestone meeting, since it entails two great research institutions that will be focusing on clinical trials relating to our nutraceutical RCP006 "

First question is what's nutraceutical RCP006?

A Anatabine

Q And what were the two great research institutions that you were referring to there?

A Medical College of Virginia, UVA, and the medical -- medical school at MCV

Q A little bit later in the paragraph --

A -- or VCU too VCU

Q Thank you, sir

A little later in the paragraph there's a sentence that reads, "Jonnie" -- I assume that's Mr Williams; is that right, sir?

A Yes, sir

Q Okay -- "anticipates from his discussions with the most senior officials in the Commonwealth that the studies at both MCV and Hopkins will be paid for out of the Tobacco Fund if everything falls into place "

First question is who did you understand, from Mr Williams, to be "the most senior officials in the Commonwealth" that you reference here?

A The Governor, and perhaps -- I'm not sure in the second official then It could have been Jasen Eige, the Governor's counsel, or Ms McDonnell

Q All right And then the conclusion of that sentence reads, "That these funds will be paid for out of the Tobacco Fund if everything falls into place "

Was that sentence that you wrote based on a conversation you had with Mr Williams?

A Yes Yes, it was And with Dr Wright

Q Okay

A But there were certain things that I didn't know about the Tobacco Fund on that date that I learned subsequently

Q I think we'll get there

A Okay

Q Let's take a look at the next document I'd like to show you for identification, please, which is Government's 169

MR HARBACH: And let's start by showing the witness the header information

BY MR HARBACH:

Q Do you recognize this to be another e-mail that you wrote, sir?

A Yes, sir

Q Also in the July '11 time frame?

A Yes

MR HARBACH: Mr Starnes, could you scroll down and let the witness see some of the text?

BY MR HARBACH:

Q Do you recognize this e-mail, sir?

A I do

MR HARBACH: Your Honor, the government offers Government's 169

THE COURT: It will be admitted

BY MR HARBACH:

Q So let's start -- now that we've published it to the jury, let's start at the top, please You've addressed this one to Mr Wright?

A Dr Wright

Q Excuse me Dr Wright, Mr Pokusa, and Sara Machir

Now, the subject line says "VA Grant " And let me just ask you, both of these e-mails that we looked at were from July of 2011 Is that consistent with your memory of the time frame during which you all were formulating the strategy about pursuing the grant at the Tobacco Commission?

A Yes, it was

Q Okay So let's -- focusing on that, there's a large paragraph that we're going to have to go through a bit at a time so that we can blow it up for you

And my first is --

MR HARBACH: You can stop it there, Mr Starnes

BY MR HARBACH:

Q Mr Perito, the first sentence there mentions you following up with JRW regarding his conversations with senior officials in Virginia Who is JRW?

A Jonnie R Williams, Sr

Q And the sentence continues to reference his conversations with senior officials in Virginia Who did you understand those to be when you wrote this e-mail, sir?

A Based upon my conversations with Mr Williams, I understood that to be the Governor and the First Lady

Q Okay

MR HARBACH: If we could scroll down a little bit That's good

BY MR HARBACH:

Q If you look in the middle of the highlighted block there, a little bit to the right, there's a sentence that begins, "Jonnie plans to meet "

Do you see that sentence, sir?

A Yes

Q It says, "Jonnie plans to meet with those" -- excuse me -- "these two key senior officials on Wednesday of next week "

Same two senior officials here?

A That was my understanding from Mr Williams Yes, sir

Q Okay Do you know one way or the other whether that next Wednesday's meeting actually took place?

A That I don't know, sir

MR HARBACH: Scrolling down a little bit

BY MR HARBACH:

Q There's a sentence that begins, "The plan is to secure " Almost dead center of the screen

A Right

Q Do you see that, sir?

MR HARBACH: Can you highlight it for him, Mr Starnes?

BY MR HARBACH:

Q Do you see that highlighted in yellow, Mr Perito?

A Right

Q It says, "The plan is to secure an informal sign-off by the State officials on the budget and the outline, and then have these officials energize the key medical school department heads at MCV/VCU and UVA "

Was your explanation here of what the plan was, was that based on discussions with Mr Williams?

A Yes, it was, sir

MR HARBACH: Going down to the bottom of the paragraph You can stop there, Mr Starnes

BY MR HARBACH:

Q There's some discussion of the budget And then the very last sentence says, "If this budget is approved informally by the two senior officials, we will inform our consultant to proceed forward with this number "

Who's the consultants to whom you're referring in that last sentence, sir?

A It could be former Attorney General Kilgore or his partner --

Q Mr Nolen?

A Yes, Mr Nolen That's the two that I was referring to

Q Okay

MR HARBACH: You can take down the exhibit, please

BY MR HARBACH:

Q New subject, Mr Perito Do you recall, later in July of 2011, attending an event in Gibson Island, Maryland?

A I do, sir

Q What was that event?

A That was a scientific symposia, which was crafted by our paid consultant

Q For what purpose?

A It was for the purpose of exciting the intellect of the scientists and researchers that we had invited to take a seed grant, which we planned to give to any serious researcher who would apply and fill out the requisite information, to hopefully be energized in their respective discipline to focus on a grant from UVA or VCU

And at that time, I was aware of the fact that we could not, our company could not be an applicant The applicant had to be a Virginia, not-for-profit entity So it had to be a school with illustrious credentials, as these two medical schools have

Q And when you say "an applicant," you're referring to an applicant to the Tobacco Commission?

A Yes, sir

Q Okay And so the researchers who were invited to this symposium at Gibson Island hailed from which institutions?

A VCU and MCV and -- Medical College of Virginia and VCU

Q All right It's a little confusing

A It is confusing I'm sorry

Q That's quite all right

Are you aware that Virginia Commonwealth University, VCU, and MCV are the same institution?

A Yes Yes, sir, I am

Q And so was that one of the institutions from whom --

A Right

Q -- researchers were invited?

What about the University of Virginia?

A Yes Dr Peggy Scholick

Q Shupnik?

A Shupnik, rather She was Vice Dean, and she was a very key player for us Vice Dean for Research at UVA

Q And on the -- on the other side of the equation, at the Gibson Island event, who were the presenters at that event? Who was presenting the science, to your recollection?

A There were eight or nine -- eight or nine presentations of the science, all from different disciplines We wanted to branch out from the -- the disciplines of Dr Patrizio Caturegli and Dr Ladenson to another areas

Dr Ladenson is an iconic figure in his area He's -- he was really Mr and Ms thyroid of the world

Q Did he make any remarks or presentations at Gibson Island?

A He did He did

Q And what about Dr Caturegli? Was he there?

A Yes, he did And he talked about the pathological research He had done both -- both the -- the so-called benchtop research that one does with test tubes, as well as animal research

Q Now --

A And then, for example, added was Dr. Haugh, who is a luminary in gastrointestinal disease, and we were interested in Crohn's disease Dr Pete Miller, I recall his -- I mean, we're talking about real hard science now Very esoteric stuff

Q Do you recall whether anyone from either the Governor's Office or the First Lady's Office attended this event at Gibson Island?

A I do

Q Who was that?

A Mary-Shea Sutherland

Q And I believe you mentioned you yourself attended How did it go, in your judgment?

A I think, for a scientific symposia, where we were trying to excite the participants to develop study designs which could test the hypothesis that anatabine was an effective anti-inflammatory and an immunological entity or compound, that word means, in the language of science, that we possibly -- possibly had a compound that could neutralize inflation by flipping the switch in the cells, called NF-kappa-B, off and on

Q Let me ask you this question

A And we wanted to test that proposition

Q Did you think that the symposium effectively communicated that to the attendees?

A I do

Q Do you recall what the reaction was, in terms of seed grant applications, following that event?

A We -- we ultimately had eight or nine seed grant applications

Q Did you view that as a successful number?

A We did, very much so

Q Earlier in your testimony, you mentioned that the product Anatabloc was introduced to the marketplace on August 30th of 2011 Did you attend an event at the Virginia Governor's Mansion on that date, sir?

A I did, sir

MR HARBACH: Can we take a look at Government's Exhibit 228 for identification, please

BY MR HARBACH:

Q Do you recognize this document, sir?

A I do

Q Does it appear to be -- to look like the invitation you received, sir?

A Yes

MR HARBACH: Your Honor, the government offers Government's 228

THE COURT: It will be admitted

MR HARBACH: You can take down 228, please

BY MR HARBACH:

Q Mr. Perito, were you involved in planning this event at all?

A Partially

Q How so?

A In that my executive assistant, Elizabeth Pfeifer, was the adjunct support staff for Dr Ladenson But the intellectual framework of this --

Q Apart from Ms Pfeiffer, were you personally involved in any of the planning, sir?

A Only to the extent that I reviewed the list of attendees, A And B, that I reviewed the enormous package of data that we sent to the attendees, particularly to the scientists

Q   Okay

A   And they included a -- an investigator's brochure, which would give the scientists all of the knowledge about our preclinical work. You asked me questions before about preclinical toxicologic work

Q   Uh-huh

A   We had condensed that into maybe 80 or 90 pages   And Dr Curtis Wright had done that.

Q   Let me ask you this question   Going in to the event, what was your understanding of its purpose?

A   Going in to --

Q   The August 30th event at the Mansion, sir

A   The August 30th event, in my judgment, was a way to showcase the good science, say, from the presentations of Dr Caturegli and Dr Ladenson and Mike Mullan, who was then doing significant research for us   He's an M D , Ph D

Q   Okay   So showcasing the research?

A   Showcasing the research   Showcasing the tox work Getting the medical practitioners, particularly family practices -- practitioners or internists to be interested enough in the product being introduced that they would recommend the use of that to their patients

Q Okay When you --

A And -- and also, since I had a metamorphosis in my thinking regarding the impact of having it at the Governor's Mansion, I thought that it could be a potential halo effect that the Governor and the First Lady were supporting a local company on a worthy product

Q About how many people, would you say, attended, to your memory?

A Forty to 50 people

Q Were you all in the same room?

A Yes

Q Do you recall whether either -- well, first of all, did Ms McDonnell attend the event?

A She did

Q Did Mr McDonnell attend the event?

A The Governor was late But he was there, and he spoke also

Q Okay We'll get to that in a minute

What about Mr Williams? Was he present?

A Yes, sir, he was

Q Let's start with Ms McDonnell Do you recall whether she made any comments at the event?

A I do

Q Tell us what you remember about that

A Well, because the Governor was running late, the pre-luncheon discussions -- I'm talking about discussions with the various scientists and so forth, before formal presentations -- was prolonged And then we were shown into what was an elaborately scripted meeting, I thought, to the credit of the planners

And Ms McDonnell gave an effective and thoughtful presentation about the history of the Mansion I had never been to the Governor's Mansion before, and I was interested in the history And she also talked about her enthusiasm for the product and what Star and Rock Creek were doing

Q Do you recall whether there were presentations at the event by any of the doctors that you mentioned, Dr Ladenson, Dr Caturegli, and so forth?

A I do I do And each of them, in their disciplines, gave a brief discussion And then the work that Dr -- Dr Mullan was doing in his work at Roskamp was very well articulated by him

Q What about Mr Williams? Did he make any remarks?

A He did make some remarks

Q What do you recall him saying?

A Well, he was gracious in his praise of the scientists who were there

Q What -- go ahead

A And he also talked about the -- he hoped for the support of the Governor and his wife, for the grants to be -- to be made to the Tobacco Commission

Q By that time, was Mr McDonnell himself present?

A Yes The Governor arrived at that time

Q Okay And do you recall whether the Governor made any remarks around the time that Mr Williams made his comment about the Tobacco Commission?

A I think he made them after that

Q Go ahead Tell us what he said, if you recall

A I mean, the Governor was very gracious and thanked everybody for coming and talked about his interest in a Virginia company doing this, and his interest in the product

He did say, because Mr Williams suggested, that the support of the Tobacco Commission would be -- he hoped would come from the Governor And the Governor, I think very politely, said, "This is" -- "I have limited decision-making power in this area "

Q Did he make those remarks to the group or just to Mr Williams?

A No I remember him making those remarks to the group

Q Okay Who did you perceive to be the audience for these various presentations? What was the target audience, from your perspective?

A I think it was clear to me that there were two targets One was we gave small seed grants, small -- I mean, to me, it's a lot of money, but to the -- I mean, it was $20,000 20, $25,000 for the seed grants

But we wanted the seed grants to mature into a full grant application, which would hopefully involve the commitment of the institution So I wanted those institutions committed and so forth And I also wanted our target audience, which was the doctors who prescribe both pharmaceuticals and recommend nutraceuticals, I wanted them excited about a new product that could be helpful as an anti-inflammatory and provide anti-inflammatory support, which was the limited claim that we made, function structure claim, on the product

Q To your recollection, Mr Perito, were there any other events introducing the product to the market on that day?

A No, sir There were not

Q At the event, did you personally have any interactions with Mr and Ms McDonnell?

A It was the first time that I met the Governor and his wife

Q Let's start with Ms McDonnell What do you recall about your interaction with her?

A Mr Williams, after briefly introducing me to the

Governor and so forth, brought me over to meet the First Lady And I thanked her for making the Mansion available, her and her husband I told her I very much appreciated her interest in the worthiness of our product and we -- and the hopes and aspirations we had for it

And she said she was anxious to be of assistance and planned to make herself available for meetings with various doctors within the Commonwealth who would be visited by people from Star and Rock Creek

Q Let's rewind a little bit, and let me ask you about your interaction with the Governor, which I understood to have happened first

A Right

Q Tell us about that

A Mr Williams took me over to meet with the Governor I thanked him for his gracious hospitality, thanked him for the support of the local company and for the support of the product Those were kind of perfunctory discussions And he asked me if I used the product, and I said I did And he said, "So do I " And that was it There were other people waiting to talk to the Governor It was the only time I met the Governor during this entire period I haven't seen him before or after

Q Following the event, did you have any conversations with Mr Williams about how it went?

A I did

Q What did Mr Williams say to you about how he thought it went?

A He was on cloud nine He thought it went swimmingly He thought it went -- he kind of chided me and said, "See, I do focus on science "

Q Now, speaking for yourself, what was your view on the importance of the Governor's attendance at the event?

A I think it gave a type of gravitas to the event that the Governor of the Commonwealth were supporting a local company, he and his wife, and that it might resonate with state officials -- other state officials and might resonate with Dr Clore and Dr Shupnik, since they were the keys to getting the other scientists involved

If -- if they thought that the Governor was behind it and the First Lady was behind it, and that we had all this good science, overwhelming science, vis-a-vis safety, I thought that that would be -- have a propitious impact on the future sales of the product in Virginia

Q Next subject

MR HARBACH: Let's take a look for identification at Government's 229, please. If we could just blow up the headline and maybe the first paragraph of this for the witness

BY MR HARBACH:

Q Do you recognize this document, sir?

A I do

Q Is this a press release that Star issued the same day as the event at the Mansion, August 30th, 2011?

A It is, sir

MR HARBACH: Your Honor, the government offers Exhibit 229, if it's not in already

THE COURT: It will be admitted

MR HARBACH: Let's take a look at this briefly

Okay You can take that down, please

BY MR HARBACH:

Q Mr Perito, do you know who Dr Bill Hazel is?

A He is the -- I believe Dr Hazel is the Secretary of Health and Human Services in the Commonwealth of Virginia, or was at that time

Q Did you know, at the time of the Mansion event that we've been talking about, did you know that a month before that, Mr Williams had met with a member of Dr Hazel's staff and the First Lady in her office?

A I did not

Q In your capacity and in your relationship with Mr Williams professionally, is that something you would have ordinarily expected Mr Williams to have told you?

A Absolutely

Q Did you know, at the time of the Mansion event, that approximately one month before it, Ms McDonnell asked Mr Williams to buy a Rolex for her husband?

A I did not know that, sir

Q Next subject Do you recall, in the fall of 2011, having a conference call with personnel from the University of Virginia to discuss the -- the effort to move the ball forward with the Tobacco Commission and so forth?

A Yes.

Q Did you participate in that call?

A I did

Q Was -- to your recollection, in the fall of 2011, was Star still in the business of pursuing a Tobacco Commission grant at that time?

A Until that conference Are you talking about the conference call in late November?

Q Yes, sir

A Yeah The conference call changed my view of the pursuit

Q Understood And we'll get there in just one second.

A Okay

Q But until the conference call, was Star still interested in pursuing those grants?

A Absolutely

Q What was the intended purpose of the call that we're about to talk about, from your perspective, this call with UVA personnel?

A It was supposedly to get the decision-makers at Health and Human Services and the decision-makers primarily at Medical College of Virginia and VCU to file a grant application I mean, we had a short window If a grant application was going to go in to make the cutoff, it would have to go in in September, and I was very worried

Q Okay I'm asking you to focus on a call that was in November with University of Virginia personnel

A Right Okay

Q And you mentioned a moment ago that -- please correct me if I'm wrong Did you say that when the late November call occurred --

A Right

Q -- that it changed your view of the pursuit of the Tobacco Commission grant?

A It did, sir

Q How so?

A Well, there was another window to apply in December, but there would be no way, except if you had an extraordinary effort, to make that But we -- we had lost support -- it seemed to me, from what was said, we had lost support from the real decision-makers at these two institutions, and we were dealing with some bureaucrats who were totally unprepared for the discussion They didn't know the facts They didn't know the background Petite functioniers, as I think I described them to -- to Dr Wright

Q Now, this call in -- in November 2011, you mentioned bureaucrats Were these people from the University of Virginia on the call?

A Yes

Q After the call occurred, this call where you described them as totally unprepared, did you inform Mr Williams about the call?

A Yes

Q And your reaction to it?

A I did

Q What was Mr Williams' reaction when you shared this with him?

A He was furious and said, "I can't understand it The Governor and his wife are so supportive of this and suddenly the administration has no interest "

Q In the months that followed this November of 2011 call, did you have further conversations with Mr Williams about this call and his general disappointment with it?

A It seemed to go off the radar screen, in my discussions with Mr Williams I -- in light of the fact of the way that Dr Wright felt and I felt, I think that Mr Williams did not continue discussions about that issue with us

Q Subject change Do you have any recollection of becoming aware, at one point, that Mr Williams and Ms Mary-Shea Sutherland, whom you've referred to in your testimony, had been in communications about her employment situation?

A I was totally unaware of that until that document arrived -- a document arrived on my desk

MR HARBACH: Can we take a look at what I believe is in evidence as Government's 210, please

THE CLERK: No, it's not

MR HARBACH: All right Well, then let's look at it for identification for the moment It may be in under a different number

BY MR HARBACH:

Q Do your recognize this document, Mr Perito?

A I do That's the document that arrived on my desk

MR HARBACH: Your Honor, the Government offers Government's 210

THE COURT: It will be admitted

MR HARBACH: If we can scroll up so the witness can see the letterhead there It's on Benedetti & Farris letterhead

BY MR HARBACH:

Q So as you say, Mr Perito, when this document landed on your desk, that was the first you learned of these discussions with Ms Sutherland?

A That's correct, sir

Q Were you surprised to learn about it?

A Astounded

Q What did you do after this landed on your desk?

A I called Jonnie

Q Tell us about that conversation

A I will delete expletives

Q Please do

A But I explained to Mr Williams that it had to be painfully obvious that to even entertain the thought of a consultancy with a person who was still employed, as I understood, by the First Lady But more than that is there was nothing, in my judgment, in the areas that I was responsible for, that -- that she could do to assist the company in any meaningful way And I reminded Jonnie that consulting relationships had to be approved by the board, and I would not put this before the board It was a nonstarter

And I also said to him, in words or substance, there's some conflict here, and since you have a relationship with the First Lady, you should tell her that her Chief of Staff is looking for a job

Q Did Mr Williams -- how did Mr Williams react to your advice?

A He said that he would not pursue the matter any further and that I had tired him out on this issue

Q Did he indicate whether he intended to notify Ms McDonnell?

A He said he would notify her

Q Would or would not?

A He would

Q By the way, at the time that this letter landed on your desk, did you have any idea that Mr Williams had, in fact, purchased the Rolex that Ms McDonnell had requested?

A Absolutely no idea

Q Mr Williams never told you about that at the time?

A No, sir He did not

Q Next subject Moving forward to early 2012 Do you recall Mr Williams ever mentioning to you the possibility of Ms McDonnell's serving on Star's corporate board?

A I certainly do

Q Tell us what you remember about that conversation Was it in person or over the phone?

A Over the telephone

Q Go ahead

A Mr Williams called me up and said, "I've been talking at length to the First Lady, and she's been reading some of our filings on our website with the SEC and believes that we treat our consultants very well by monetary remuneration and that she would like to be considered for a board seat "

Q What did you think of that?

A I thought it was one of the worst ideas I ever heard

Q Did you tell Mr Williams that?

A I certainly did

Q Why did you think it was such a bad idea?

A Well, first of all, it's a thicket of potential conflicts Secondly, in all due respect to the First Lady, I didn't think she had any of the qualifications that would merit being on board And I didn't know of any public company that had the wife of the chief executive on their board

And thirdly, I said, "We had been actively pursuing one of the luminaries of science, who was at a major pharmaceutical company, about going on the board " And I should -- I won't say his name because he's still employed by that major company

But I said, "How would we ever, as a company, have the intellectual integrity to present to him that the Governor's wife is on the board?"

I thought it was a very, very bad idea, and it was not going to happen. I told him, "This is not happening on my watch."

Q What was his reaction to everything you said to him?

A He said, "What do I tell her?" I said, "You tell her the truth

And you can -- he said, "She's going to be very angry " I says, "Well, tell her to be angry at me "

And then there was a second conversation

Q There was a second conversation?

A I -- as I was thinking through these issues, I think there was a second conversation

Q Between you and Mr Williams?

A Between me and Mr Williams

Q On this subject?

A Yes

Q Tell us about it

A It was after he talked to Ms McDonnell

Q What do you remember about that?

A I remember him saying -- do you want it in haec verba or do you want --

Q I want, in substance, what you recall of the conversation, sir

A He said that she was really pissed

Q Okay And this was, according to him, after he had shared this with her?

A Yes

Q A little bit later in 2012 now, into the spring of 2012, did you have any idea at the time that in March of 2012 Mr Williams had a $50,000 check cut to a company called MoBo?

A I didn't know what MoBo was And I had no idea, no knowledge of that at all

Q What about Mr Williams having $20,000 wired to MoBo in May of 2012? Did you know about that at the time, sir?

A I did not know about that, sir

MR HARBACH: Can I have just one moment, please, Judge?

THE COURT: Sure

(Counsel conferring with co-counsel)

MR HARBACH: Thank you, Your Honor

BY MR HARBACH:

Q Mr Perito, do you recall a conversation in January of 2013 in which Mr Williams told you about some of the things that he had given the McDonnells?

A Yes

Q Was this conversation in person or over the phone?

A Initially, over the phone

Q And when Mr Williams first was speaking to you about this, did he say what prompted his conversation with you?

A Yes

Q What did he say about that?

A He said that he had been served with a subpoena and he had been interviewed by an FBI agent and a state agent

Q Okay Now, tell us what else Mr Williams told you in that conversation

A He told me that he had written some checks to the Governor and to a company called MoBo He told me that he had made some purchases And I just -- I stopped him I was -- I was breathless

I said, "How could you possibly do this? How could you leave me out of the loop?" I said, "The impact of this on the company, our investors, third parties, third parties, the government It's one of the most egregious errors in judgment It's taking business risks to a new level "

Q Did Mr Williams say why he hadn't kept you in the loop or hadn't told you any of this?

A He did say that

Q What did he say?

A He said, "You know, we've had a long road today, but you're still a prosecutor at heart " And I said, "I take that as a compliment, because one of my duties has been to keep this company always within the lines, get the best lawyers possible, stay out of trouble " And I said, "I don't want you to talk to anybody about this I want you to get up here, and we'll go meet with some special lawyers who can" -- "who can assist in the process "

Q Okay I don't want to get into those details

A No I -- and I just stopped him at that point in time

Q Okay How would you describe Mr Williams' demeanor during this call?

A He was crushed He was crushed He was sobbing It was a very emotional conversation, and --

Q Did you ask Mr Williams whether he had used any of the company's money for any of these things?

A Absolutely That's the first question I asked him "Please tell me Don't" -- "did you use corporate funds?" And he said, "No " He said, "These were my funds " He says, "There might have been some reimbursements that Jerri had, but these were my funds "

I said, "That doesn't make it right, but at least" -- I said, "Jonnie, this is so serious "

Q Did you, in fact, follow up and determine whether Mr Williams had received some reimbursements for some of these items?

A Yes And I told him the Reagan Doctrine was going to apply in our relationship: Trust, but verify

Q If you had known about -- well, actually, before I get there First question All of the conversations before this one --

A Yes

Q -- that you have testified about today, were all of those conversations with Mr Williams prior to his being interviewed by law enforcement?

A Yes

Q Now, the things that Mr Williams told you about in this conversation that he had done, if you had known about any of those things at the time they were happening, what would you have done?

A We would never all be here today I would have put a stop to it I -- I would have done, I mean, our own internal investigation to make sure what he represented was accurate I would have made sure that what he did would never happen again in this company

MR HARBACH: Those are all the questions I have, Your Honor Thank you

THE COURT: All right Cross?

CROSS-EXAMINATION

BY MR ASBILL:

Q Good afternoon, Mr Perito

A Good afternoon, Mr Asbill

Q You and I know each other?

A Yes, sir, we do

Q And how is that?

A Well, your brother was a partner of mine We've known each other professionally We've exchanged notes and telephone calls over the many years that we were both practicing

Q Our sons attended the same school?

A School, yes

Q We saw each other occasionally at school receptions?

A Absolutely And I think I once tried to refer a matter to you but then there was a conflict

Q I don't remember that, but thanks for trying

Now, we've never -- we've never played golf together or tennis together?

A No, sir, we haven't

Q We've never vacationed together?

A No, sir, we have not

Q Our families don't really know each other?

A No It's a professional acquaintance

Q And you and I have never discussed 1,000 or 1,200 -- or had 1,000 or 1,200 texts or e-mails in an 18-month period?

A We certainly have not

Q Okay Now, in connection with your testimony here in this court, you knew that I wanted to talk to you about it before you testified, didn't you?

A Yes

Q And you didn't agree to meet with me; is that correct?

A That's incorrect My lawyers were handling it, and I understood that you were going to work out something with them

Q All right You and I have never talked, though?

A No, we haven't

Q About your testimony here today; is that correct?

A That's right

Q Now, you have met often, obviously, with Star's lawyers?

A Yes, I have

Q In connection with your testimony?

A Yes, sir, I have

Q And do you have personal counsel in addition to that or just Star lawyers?

A Just Star lawyers

Q Okay And you've met often with the government representatives?

A Well, I don't know how you'd describe "often "

Q Well, you tell me how many times you've met with them

A I had one initial meeting during the grand jury phase with Mr Dry and Ms Aber, and I've had three meetings with Mr Harbach and Agent Kennedy.

Q Okay I want to go back and ask you about some parts of your testimony first right now Where you ended up, basically, was the discussion with Jonnie Williams at the end of January of 2013 after the agents had come to visit him?

A Yes

Q Okay And after you and he got off the phone, and he told you about the events that occurred at his house in Florida, with respect to that interview, it's fair to say, is it not, that you didn't trust him at all?

MR HARBACH: Objection

THE COURT: Overruled

A It's fair to say that I was very skeptical about Mr Williams, and it took a while for trust to be restored

BY MR ASBILL:

Q All right You say you were basically astonished at that point, correct?

A Yes, sir, I was?

Q Apoplectic?

A Yes

Q Have a drink I'm sorry I don't mean to interrupt your having some water

A Thank you, Mr Asbill

Q Now, did Mr Williams tell you at that time that in addition to discussing issues relating to my client, Mr McDonnell, that the investigators talked to him extensively about potential securities fraud issues?

A He mentioned securities fraud.

Q And did he mention anything about tax issues with relation to various trusts that he might have owned?

A He did not

Q Never told you about that? No questioning about trusts and tax issues?

A We didn't discuss that

Q Did he tell you that they spoke to him about the loans that he had given or received from Mr McKeon? Ever talk about that with you?

A He mentioned that He mentioned John McKeon's name.

Q All right And were those issues ones that you were personally familiar with or not?

A I was not personally familiar with them

Q So whatever Jonnie Williams may have done that might have been improper with respect to tax or trust issues, you don't have any idea about that, right?

A I know that -- that Mr McKeon was involved in some transactions with Mr Williams that had been vetted by our lawyers, but --

Q But whether there's anything that got by the lawyers, you don't know?

A I don't know

Q You don't know And with respect to how he used Starwood Trust or other family trusts and whether his conduct with respect to those trusts was proper, you don't know?

A I have no knowledge of that, Mr Asbill

Q Now, with respect to the discussion you had -- as you started -- let me just go back to your most recent testimony here

You were not aware, you say, that Jonnie Williams had some sort of talks with Mary-Shea Sutherland about a job?

A Not until that document reached me

Q All right And you were not aware that he claimed to have had conversations with Ms McDonnell about a possible board position?

A I'm -- I'm not sure --

Q Prior -- I mean, you're not aware in advance?

A No No

Q All right And you talked about a lot of other things that you were not aware of that -- that apparently Mr Williams had been engaged in?

A That's correct

Q Would it be fair to say that from your perspective, Mr Williams was a corporate governance nightmare?

MR HARBACH: Objection

THE COURT: He can answer the question

A I don't know if I'd use those words

BY MR ASBILL:

Q Well, a bad dream? Is that better?

A It's pejorative I mean, clearly -- clearly he was -- he was involved in conduct that was egregiously bad

Q Okay And you talked about some conversations with UVA and, I believe, VCU researchers?

A Yes, sir

Q And during that conversation, you thought that they were just bureaucrats who were really unaware of what was going on or what should have been going on?

A Well, they manifested the total lack of the substance of what we were about, total lack of the research that we had done beforehand

Q All right

A And so both Dr Wright and I concluded that the -- they did not have sufficient interest to do their homework And so it was highly unlikely that they could make any recommendations for us in a favorable context

Q And you say that Mr Williams was furious about that?

A He was furious

Q And that's -- that's your term or his term or both?

A No That's -- no I'm characterizing When I told him that Dr Wright and I had concluded that these state officials had no interest whatsoever in moving forward and were so poorly prepared for the meeting, I thought that we're just wasting time

Q Okay So would it -- in sum, there was a real disconnect here between you and these folks on the phone?

A There clearly was a disconnect between them and doing what the other folks said they were interested in exploring

Q Okay You talked a little bit about Dr Hazel, and you knew that he was the Secretary of HHS --

A Yes

Q -- in Virginia?

A Yes, sir, I do I've never met the gentleman

Q Never met him All right And were you aware, at the time of these conversations that you've described, that -- that HHS and Dr Hazel did not run the medical schools of Virginia?

A Sure

Q You were aware of that?

A Yes

Q That was a separate Cabinet Secretary --

A Yes

Q -- is that right?

A Yes

Q Okay

A And that's why Peggy Shupnik, as Vice Dean, and John Clore, and his responsibilities, were key people in the decision-making process

Q Okay With respect to meeting my client, you met him, you say, at the 8/30 lunch at the Mansion 8/30/11 lunch at the Mansion?

A Correct

Q August 30 --

A My --

Q August 30th, 2011?

A My only meeting with him, sir

Q That's the only time in life that you've ever met with my client?

A To the best of my knowledge

Q All right And you say you had some perfunctory, in your words, conversations with him at that time, right?

A Yes

Q Okay So that's all you know, in terms of personal knowledge, about my client and any relationship, discussions, e-mails, texts, anything else between my client and Jonnie W ams?

A That's correct

Q At that lunch, $200,000 of Star money were given out in grants --

A That's correct

Q -- isn't that correct?

A Well, to be more accurate -- may I -- may I clarify?

Q Sure Be more accurate about it

A Please. To be more accurate, there were only, I think, two checks given out at the actual lunch The couple were given before that, and the rest were given after that

Q Okay And your recollection is that Dr Caturegli was there at the lunch?

A That's my recollection

Q So if he said he wasn't under oath in court, he'd be mistaken?

A He could be mistaken

Q Because you're sure that he was there; is that right?

A My recollection is that he was there And he was certainly on the invitation list that I reviewed

Q And -- well, whether or not he was on the invitation list, my question was whether he was actually physically present?

A I thought that he was -- my best recollection was that he was there

Q All right And your recollection is that my client talked -- came to the lunch late, right?

You say he came to the lunch late --

A Yeah

Q -- is that correct?

A Yes, sir

Q Okay And when he got there, you're saying that he spoke And it was after Jonnie Williams had already spoken and held up the tobacco leaf and that sort of thing?

A I believe that's correct

Q So that couldn't be reversed in your mind, right?

A I'm sorry, sir?

Q Could that be reversed in your mind? Could you be wrong about that as well?

A Well, I -- you're mischaracterizing my answer

Q Well, if -- you said -- you testified that my client talked after Jonnie Williams talked

A That was my --

Q And my question is could you be wrong about that and could he have talked before my client arrived?

A It's -- it's -- it's possible that I could be confused as to that

Q Okay And you talked about this lunch in connection with involvement of VCU and UVA researchers, right?

A Right

Q But researchers from UVA and VCU were already on board after Gibson Island and well before this lunch, weren't they?

A I can't testify as to the accuracy of that representation you're making

Q Well, you talked about the Gibson Island event, right?

A Right.

Q Okay And by the way, my client wasn't at the Gibson Island event, was he?

A No, he was not.

Q And whatever package of materials or anything like that, you know, you don't have any knowledge that he ever saw any package of materials from --

A No

Q Okay You talked about the issues -- excuse me

MR ASBILL: Pull up Government 168

BY MR ASBILL:

Q This is the letter you talked about this morning in court; is that correct?

A Yes

Q And down in the second paragraph, could you blow up the line about the most senior officials?

A Right

Q And in your mind, that was my client and Jasen Eige and Ms McDonnell?

A I -- what I testified to, best on my recollection, is I was referring to the Governor, your client, and either Jasen Eige or Ms McDonnell But I'm not sure The -- subsequently, when I wrote the memo to Dr Wright, I spoke to Mr Williams, and he was referring to both the Governor and Ms McDonnell

Q And not -- not Mr Cuccinelli? He wouldn't be what's referring to there?

A Mr Cuccinelli?

Q Uh-huh

A Cuccinelli? Caturegli?

Q No Cuccinelli is what I asked

That's not what your recollection is? Okay

A Where is Mr --

Q I'm not -- I'm just asking you what that reference was to

A I don't know a Mr Cuccinelli

Q Okay

A Oh, you're talking about the former Attorney General?

Q Yes

A Oh, no He was not talking about the former He was talking about your client and your client's wife

Q And he was saying that my client's wife was a senior official in the Virginia government?

A Well, she's -- that's how Jonnie characterized her

Q Okay You say that -- and I know you've testified a little bit about Mr Williams had dyslexia and dysgraphia and ADHD and some other issues?

A ADD, right

Q Is that correct?

A Yes, sir

Q Okay And that affected his reading; is that correct?

A Yes, sir, it did

Q Ability to read quickly?

A Ability to read anything lengthy quickly

Q Okay

A And that's why I use PowerPoint with him and so forth

Q All right And would I be right in saying that Mr Williams had a very good memory?

A I think he has a pretty good memory

Q I mean, is he able to orally -- instead of reading, is he able to orally take in information and remember it well?

A Exceedingly He has a very high IQ

Q Okay

A He's a very bright man

Q And have you dealt with others who have had similar issues in terms of ADHD and dyslexia?

A Yeah My daughter One of the reasons I recognized what I saw in Mr Williams was he replicated the conduct that I saw in my eldest daughter, and it tore my heart out And people who have problems with reading are very embarrassed You live in a literate society, and very intelligent people have reading disabilities

Q And folks who often have those kinds of issues, obviously, develop ways to compensate for the problems with reading?

A Sometimes

Q In terms of memory, for example?

A Yes Yes

Q Okay All right You, obviously, did not know that -- that -- Jerri Fulkerson was an employee of Star; is that right?

A I'm aware of that, sir

Q And were you aware that at Jonnie Williams' direction, Ms Fulkerson was being asked to notarize documents in ways that were not quite proper?

A I was not

Q Would you have been upset if you had known that; that Jonnie Williams had put a Star employee in harm's way in that regard?

A Of course, I would be

Q When Jonnie Williams told you about the Tobacco

Commission and the Governor supposedly telling him to go to the Tobacco Commission, et cetera, these are all just Jonnie Williams telling you about conversations that you've got no personal knowledge about, right?

THE WITNESS: Could that -- Your Honor, respectfully, could that question be repeated, please

THE COURT: Sure

He wants the question If you want to read it back or --

MR ASBILL: Yeah Would you please read it back to the witness?

(Record read as requested)

A No My knowledge is derivative My knowledge of this is based upon the representations that Jonnie Williams made to me

BY MR ASBILL:

Q Okay That's what I mean by no personal knowledge Okay?

A It wasn't clear, Mr Asbill

Q All right Well, if I say "no personal knowledge," that means that you didn't hear it You didn't see it Okay?

Now, with respect to your lawyers, or Star's lawyers, Mr Kilgore and Mr Nolen, you talked about them; is that right?

A Yes

Q And you hired them, or Star hired them, to pursue grants to the -- from the Tobacco Commission, correct?

A To give us advice and aid in the pursuit process, right

Q All right And were you aware of Mr Kilgore's connections to folks on the Tobacco Commission?

A I learned at some point in time that one of his -- I guess his brother was a member of the commission

Q All right And did you know whether or not his wife had any position with the -- with another tobacco-related entity that could give grants?

A No, I did not know that

Q And when did you learn this after hiring Mr Kilgore? Was this like immediately or did this take a long while to figure out?

A I think a few months after hiring him or a month or two after hiring him, I learned that

Q So this didn't come up in terms of trying to figure out who to hire; is that right?

A That's correct

Q And after you hired him and he got the assignment, there was no discussion about, oh, that's a good one for me because I've really got some connections there?

A I certainly didn't have those discussions with him, sir

Q Do you know whether anyone else at Star did?

A To the best of my knowledge, I do not

Q Okay And did you know that the Governor doesn't control the Tobacco Commission in any way?

A I know that now

Q Did you know it then?

A No

Q Did you know that the Governor doesn't control the universities and what they do on research grants or anything else?

A That's correct

Q And you knew that then; is that correct?

A Yes May I give a complete answer?

Q Sure Please do

A Even though he doesn't directly control it, he could indirectly impact it if the project was one that he thought was meritorious for a Virginia company

Q That's your view of what he could do if he wanted to; is that correct?

A That's correct

THE COURT: You asked what he knew So what else can he give you?

MR ASBILL: Now I understand I'm just trying to make --

THE COURT: Just ask another question

BY MR ASBILL:

Q Mike Mullan you've talked about, right?

A I'm sorry

Q Mike Mullan you've talked about?

A Yes Dr Michael Mullan.

Q And what was Michael Mullan's original relationship to Star? Was he on the board?

A Never on our board

Q And what was -- well, what was his relationship?

A He was the CEO of the Roskamp Institute. And he was the person who helped design some additional tests for us and some clinical tests, and he did some benchtop research for us

Q Okay And Star has morphed into Rock Creek Pharmaceuticals; is that correct?

A That's correct

Q Okay

A I don't know if I'd use the word morphed It changed its name to better reflect the purposes of what it's doing

Q And it moved out of the state?

A Yes, sir

Q It's not in Virginia anymore; is that right?

A No No No It did not -- it's moving to close down its Virginia office at some point in time, as I understand it

You understood, Mr Asbill, that since my formal departure on the 19th of May, I no longer can speak as a -- an office officer of the company

Q I'm sorry You can no longer speak as what?

A I'm not speaking as an officer of the company or an employee I'm a consultant at will

Q Okay And Mr Mullan presently --

A Dr. Mullan

Q -- Dr Mullan is the CEO of Rock Creek Pharmaceuticals, is he not?

A That's correct

Q Now, you talked a little bit about your personal background, and I want to get into that in a second But I want to understand, aside from the conversation with Jonnie Williams on roughly the 23rd of January of 2013 when the agents came to his home, is that the first time you learned that there were any investigations of him or Star?

A Yes, sir

MR HARBACH: Objection

THE COURT: Overruled

BY MR ASBILL:

Q And is that the only way you learned about that fact that there was an investigation is through the call with Jonnie Williams?

A Yes

Q Now, we've talked about the subject matter of those before And you kicked in at that point, basically, and said, "We've got to get lawyers" or "Jonnie has got to get a lawyer"; is that right?

A Among other things

Q And Star also got lawyers?

A Yes

Q Did you think, at that point, that you had -- now that you were aware of that investigation and the fact that it related to securities transactions, that you had any reporting obligations to regulators, like the SEC?

A I did And we discussed -- without going into the substance of the discussions, I discussed that with the -- I discussed --

Q You discussed --

A -- the issues, the relevant issues with our corporate counsel

Q These are the people at Latham & Watkins in Washington?

A That's correct

Q And I'm not going to get into the discussions either But at the end of the first quarter of 2013, or around that time, did you make any public disclosures in SEC filings about the existence of the investigation?

A At a time appropriate, we made disclosures You'd have to recollect -- refresh my recollection as to the actual document we filed I think it was an 8-K or it was included in a filing

Q It was included in a public filing to the SEC; is that correct?

A Yes

Q Because you were required to do that; is that right?

A Yes

Q Now, you talked a little bit about your background, but you were in private practice You talked about being a former federal prosecutor and your various positions on the Hill

You also were in private practice roughly 25 years?

A That's right, sir

Q And in your private practice, your specialty was litigation and white-collar criminal defense?

A Litigation, white-collar criminal defense, and healthcare law

Q Okay And would I be accurate in saying that -- that based on that background, you understood -- when Jonnie Williams was interviewed and he told you about that in January of 2013, you basically understood the ramifications of that?

MR HARBACH: Objection

BY MR ASBILL:

Q -- is that correct?

Or the potential ramifications?

THE COURT: Sustained

BY MR ASBILL:

Q Did you all start gathering documents within Star at that point?

A We relied upon our lawyers, the lawyers for Star, as to the internal investigation, as to what had to be gathered and what didn't have to be gathered

Q Well, I'm just asking you, did you all gather documents? I'm not asking you about your lawyer's advice to you Just did you do it?

A Yes

Q All right Did you gather e-mails?

A To the best of my knowledge, we did

Q Phone records?

A We turned over everything that was requested by the government

Q I'm asking you whether you gathered it or not

A I personally? No, sir, I did not

Q All right Did you direct anyone at Star to gather?

A Yes My general counsel and people who work with him

and the lawyers from outside the office
Q All right And did you ask them to gather text messages?
A I asked that they follow to the letter the advice that we were getting from counsel, how and what be pulled And there was an enormous effort made to comply with the subpoena
Q The subpoenas that had been given to Mr Williams on the 23rd of January by the agents?
A Mr Williams had his own lawyers who were doing that And we were working -- we and the other law firm representing the company and the directors, Chadbourne & Parke And they are highly proficient at what they were doing and former prosecutors, and I have no doubt they followed the rules to the letter of the law
Q Do you know whether Mr Williams tried to preserve, either at your direction or otherwise, tried to preserve text messages from all phones that he had?
A I don't know that, sir
Q Okay Now, at this point in time, this is the first quarter of 2013, in the corporate structure, you were the highest ranking officer at Star; is that right?
A Yes
Q You were the chairman of the board, correct?
A Right

Q And the chief --

A I was not the CEO

Q No You were the chairman of the board, and you were the chief operating officer --

A Yes, sir

Q -- is that correct?

And did Jonnie Williams have any official position at that time in the corporate hierarchy?

A At the time of --

Q -- first quarter 2013

A No He resigned his positions on December 27th, 2013, but he remained as an employee of the company

Q You said December 27, 2013 I'm talking about January 2013

Did he have any official position in the company?

A No He was an employee

Q And what was his job?

A He was working on getting lined up potential companies that might have an interest in investing in Star or might have an interest in purchasing the company, among other things

Q Was he the single largest shareholder in Star at the time?

A No Certainly not

Q Who was?

A He was one of the largest shareholders, but he was -- I believe at that time Tradewinds was the largest shareholder in Star

Q But Mr Williams had roughly 11, 12, 13 percent of the stock at that point?

A I'd have to go back and check the records, but somewhere in the 10 percent range

Q And what about you? Do you have any shares of stock in Star?

A About 2,400,000 Something like that I'd have to check the records

Q And Mr Williams, at that time as an employee of Star, in terms of cash compensation and stock compensation, it was around 10 million bucks?

A No Mr Williams had voluntarily given up his salary in Star about -- almost two years ago

Q Two years ago You mean 2012?

A Twenty -- I think it was 2012 or early 2013 He stopped receiving any money Voluntarily decided, because of the cash situation, and he reduced his salary to zero or a dollar a year And I reduced my -- my salary 50 percent

Q And before you all reduced your salaries, what were your total comp benefits --

A Well --

Q -- you and Mr Williams?

A I'd have to look, but --

Q Give me a ballpark

A It's -- it's difficult because the options were underground The strike price was higher than the market price, and the company was -- had a very volatile situation with the price So I can't give you the specifics unless I see the records

Q Well, did you all make SEC filings in which you reported --

A Absolutely

Q -- the compensation of the major executives within Star?

A Yes

Q And what sort of ballpark figures did you report?

A I'd have to go back and check

Q Would you quarrel with me if I told you $7 million for you and $9 million for Jonnie Williams?

A Oh, I'd certainly quarrel with you on me

Q And that's something that --

A I think you were counting options and warrants

Q You count everything

A Pardon?

Q Counting everything

A Then I think your numbers are wrong

Q Now, you say that you left your job as a partner in a large law firm because you were, in essence, convinced about the -- the potential health benefits of whatever Star was doing?

A Yes

Q Did it have also -- your leaving, did that have also anything to do with the thought that you might be able to make a lot of money?

A You know, the money issue was really less important to me The law had been good to me And I had had the joy -- I testified to it -- of working with Dr Jaffe on an experiment in government that worked, what we did in Vietnam and what we did to build a treat -- treatment network And I had -- I had the thought that we could do this potentially in the -- in the tobacco area or in the area of making some breakthroughs with drugs

You know, I'm living the American dream, Mr Asbill. My parents spoke Italian before they spoke English And so being a prosecutor was one of the great experiences of my life, or being a senior official at the White House And I -- and I thought, I've done well, my family has done well, and I took a lesser salary than I was making at the law firm

And frankly, the last few years, when law firms were interested in my talent, I could have done much better if

I were back in practice, without the risk But I -- I believed in the dream and what we could do, and I had a lot of scientists who supported the worthiness of that dream

Q Are you telling us that the prospect of making a real lot of money through Star Scientific, stock options, whatever other compensations, was not an incentive for you to join that company?

A It wasn't the sole incentive, no

Q I'm not saying that

A No

Q I'm asking whether or not it was an incentive

A It was an incentive, but it was not the sole incentive And it was not the primary incentive

Q You represented, before you went to Star, Jonnie Williams in other matters when you were a lawyer; is that correct?

A I and Paul Hastings represented him in certain matters

Q All right Can you give us any idea of the amount of fees for your law firm that those representations generated?

MR HARBACH: Objection Relevance

THE COURT: Sustained

BY MR ASBILL:

Q Can you give us an idea of how much money in stock or compensation you made total at Star during your tenure there?

MR HARBACH: Same objection

THE COURT: Sustained

BY MR ASBILL:

Q Did Mr Williams tell you, after the interview on January 23rd, that the agents had asked him to wear a wire?

A He mentioned that Yes

Q Okay Were you aware that during the investigation, during the agent's investigation, that they interviewed a gentleman on the board of Star named Leo Tonkin?

A I found out only recently that Mr Tonkin was interviewed

Q And who is Mr Tonkin?

A He is former president of the Washington Workshops Foundation, of which I was chairman, and was a former board member and was a couple of years ahead of me at Harvard Law School So I've known him for 50-something years

Q He was -- he is and was a personal friend of yours?

A Yes

Q And you recruited him to Star's board?

A I did

Q Right And were you aware that he was interviewed by the agents too?

A I wasn't until recently

Q And recently when you became aware of that, did you become aware that he was asked to wear a wire against you?

A No, I wasn't

Q That he was asked to have lunch with you at Cafe Milano in Georgetown, in Washington, D C --

MR HARBACH: Objection

BY MR ASBILL:

Q -- and try to get you to --

THE COURT: Sustained

BY MR ASBILL:

Q If you had known about any, in realtime -- and I'm talking about 2013 -- in any potential government interest in investigating you personally, would you have been concerned about that?

MR HARBACH: Objection

THE COURT: Sustained

BY MR ASBILL:

Q You say that you are still close friends with Jonnie Williams?

A Yes I've forgiven him, and he's showed appropriate redemption

Q Okay And Jonnie was -- was an inventor He was a good inventor --

A Yes

Q -- is that right?

And he was a great promoter?

A Yes

Q And a great salesman?

A He was a great salesman if he -- if he got interested in the issues and was -- and bought in to the worthiness of a project.

Q Okay. Well, I mean, if he believed in something, he was a great salesman --

A Right

Q -- is that right?

A Right

Q But he relied on you and you became his friend, his personal friend, in addition to being his business colleague, right?

A Yes

Q And he relied on you primarily, I know he had outside counsel as well, but he relied on you to keep him in bounds legally?

A Right

MR HARBACH: Objection

THE COURT: No He can answer

BY MR ASBILL:

Q And would I be accurate in saying that other executives at Star or other board members also relied on you to keep him in bounds?

MR HARBACH: Relevance

THE COURT: Sustained

BY MR ASBILL:

Q You talked about if -- if Jonnie Williams, if you had known all these things and you thought that Jonnie Williams was engaged in inappropriate behavior, that that could be really problematic on a whole host of fronts to a lot of people, correct?

A Correct

Q Financially? Criminally? Both?

A It would -- if -- if I had known about any of the things that I didn't know about, I sustain my -- I'm strong in my belief that none of us would be here today

Q Because if Jonnie had been honest with you, you would have stopped him from doing anything that jeopardized Star, you or anyone else?

A Absolutely

Q You are aware, I take it, that you personally, as we speak, are a defendant in various civil actions by shareholders?

MR HARBACH: Objection

THE COURT: Sustained

BY MR ASBILL:

Q You talked a little bit about FDA and FDA approval Was there ever a formal or a real plan to try to get FDA approval for anatabine?

A No It was too premature The first step was to get all of the tox work done and have some studies where there's a statistically significant scientific advancement We had that in a thyroid study that was reported in November of 2012

But our plan was the Abbott plan Abbott did this with fish oil, and they went from a -- a nutraceutical to a pharmaceutical over the course of years, and that was one of the plans that we wanted to follow

Q Trying to get formal FDA is a lengthy and very expensive process?

A Yes But what has been confused is that FDA does not approve nutritional supplements FDA requires that you have sufficient toxicological data to support that

But insofar as efficacy is concerned, it is not needed But you cannot make any health or therapeutic claims You can make function and structure claims

Q Was there ever a plan to try to get big pharmaceutical companies interested in acquiring Star?

A There was

Q Okay And was that something that Mr Williams

wanted to do or was he not willing to give up --
A No No He was --
Q -- give up his patents, et cetera?
A He was very interested As you probably note with patents, those patents, the vast majority of those patents were directly assigned over to the company
Q Okay Was there a plan to generate buzz in the company or market hype to try to increase stock prices?
A To try and increase stock prices? Absolutely not
Q Never?
A No
Q By the way, do you know a Mr John Faessel? F-A-E-S-S-E-L
A I've, I think, met him once or had one or two conversations with him
Q And you were aware that he wrote a blog basically talking about Star and particularly in connection with the Roskamp event?
A I was aware he wrote a blog I didn't -- I didn't direct -- direct it totally to the Roskamp event
Q And were you aware that his remarks were -- in these blogs about Star were very enthusiastic?
A I was And I conferred with Latham & Watkins on how to handle that, and I followed their advice
Q Did that include trying to get Mr Faessel to stop

exaggerating about Star?

MR HARBACH: Objection

THE COURT: Sustained

BY MR ASBILL:

Q In your role as COO and C -- excuse me, chairman of the board, did you have any authority over any press releases that Star issued after the investigation commenced?

A Yes

Q And did you authorize press statements by Star to the effect that company never sought or received any special benefits from anyone in the Virginia state government?

MR HARBACH: Objection

THE COURT: He can answer that

THE WITNESS: Can the question be repeated, Your Honor?

THE COURT: All right We are going to have to stop What we'll do now is stop for lunch Once again, I have something scheduled for 1:00 Obviously, they have been sitting and waiting for this next hearing So what we'll do is give you the hour and 15 minutes, which would make it, what, 2:25 So if you all come back

And I know that one of the jurors just indicated they needed a break I was trying I was hoping that we could get through Mr Asbill's cross, but obviously, that didn't happen So we'll deal with what is

All right We will see you at 2:25

(The jury left the courtroom)

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(Luncheon recess taken from 1:09 p.m. to 2:25 p.m.)

THE COURT: All right, let's bring in the jury, please

(The jury entered the courtroom.)

All right, Mr Asbill?

BY MR. ASBILL:

Q Good afternoon, Mr Perito.

A Good afternoon, sir

Q How are you? I pared things down and I think just another minute or two.

A I appreciate that

Q I think when I left off right before lunch we were talking about the press in the June, 2013 time frame And my question to you basically is whether or not you authorized a person at Star, and in particular, the person I'm talking about is Talhia Tuck, let me just focus on that for a minute, do you know who Talhia Tuck is?

A Talhia Tuck

Q Excuse me for mispronouncing that

A She was our Vice-president for Communications and Investor Relations

Q In 2013 that was her position at Star?

A That's correct She succeeded Ms Machir

Q Okay And she was somebody that you hired?

A Yes, she was

Q She was a Harvard law graduate as well?

A Harvard College, Harvard Law School

Q So my question to you is with respect to her, did you authorize her to make a statement on the company's behalf to the press, to the Washington Post, on or about June 5th, 2013?

A At that time, Mr Asbill, I had delegated review of all statements, either a statement or a press statement, to our General Counsel, Bob Pokusa, to then coordinate with lawyers and just keep me in the loop But that was the structure So if you are talking about a statement, press statement, it would have gone through that process

Q Go ahead

A Mr Pokusa, then to the lawyers, and then a release of the press statement

Q I'm talking in particular about just a particular comment or a quote to a Washington Post reporter that was printed in the press on the 5th of June, 2013

A And the quote was?

Q And the quote was --

MR HARBACH: Objection.

THE COURT: No, give it to him and let him read it

BY MR. ASBILL:

Q Would you prefer a hard copy or prefer on the screen or both?

A Hard copy would be fine if you have it

MR. ASBILL: Judge, I'm showing the witness RM-0107-0001 and 2

(Document proffered to witness)

(Witness perusing document)

THE WITNESS: I believe that this statement that she made went through the channels that it was supposed to go through, and I was not uncomfortable with the statement at that time on behalf of the company

BY MR ASBILL:

Q Okay And so on behalf of the company --

A On behalf of the company

Q Yes, I know I said on behalf of the company at that time, what was the statement?

A That we -- that Star is a company that neither sought nor received any special benefits from any public official

MR. ASBILL: Thank you, sir I have no further questions

THE COURT: All right Anything from you?

MR HAUSS: Yes, thank you, Your Honor

CROSS-EXAMINATION

BY MR HAUSS:

Q Good afternoon, Mr Perito

A Good afternoon, sir
Q How are you today?
A I'm well, thank you.
Q My name is Steve Hauss I'm one of the lawyers for Maureen McDonnell. You and I don't know each other; is that correct?
A Never met you before, sir
Q Now, prior to going to work for Star, you worked at a law firm; is that correct?
A I did. Yes, sir.
Q Was that your own law firm, or was it a large law firm?
A It was 1,500-person law firm. Paul, Hastings, Janofsky & Walker is the name of the firm.
Q Was leaving the law firm and private practice to go to Star a difficult decision for you?
A It was something that I gave an enormous amount of thought to, and I delayed making the decision for three or four years
Q Is the reason that you ultimately decided to go to Star because you thought that you would make history with what Jonnie Williams was working on?
A I thought we would save a lot of lives if what he was working on, if we could substantiate, if we could substantiate the hypothesis that I articulated on direct,

namely, that anatabine or anatabine citrate is not only an anti-inflammatory, but an immunomodulatory agent, i e , if we found ways to control the switch, control the temperature within the body of an individual, we could make great headway But a lot of steps had to be made to reach that

Q Let me ask you this: Would it be fair to say that after meeting Mr Williams and hearing about his company and what he was doing, you believed in the potential of Star Scientific?

A We are talking about a multi-year process

Q I understand.

A My original verity for what Mr Williams was doing was helped by Jerome Jaffe, who was perhaps the most iconic and respected addiction psychiatrist in the world. And then I spent a lot of time talking to people like Dr Wright, talking to people like Dr Mendelsohn, who was a professor, then was a professor at Harvard Medical School And they believed there was the chance, if the hypothesis could be proven, that it could significantly impact medicine and the health of individuals And that concept was enormously exciting for me

On the other hand, before I left Paul, Hastings, I had several major matters that were important to clients, so I worked out a relationship that I would spend part of my time at Star and part of my time at Paul Hastings finishing my professional responsibilities And that gave me some additional flexibility of not having to make a definitive decision until the end of that process

Q Fair enough Now, you testified on direct about a number of gifts and loans and the fact that you did not know about any of that; that's correct?

A The gift or loans or monies that were talked about I knew nothing about

Q Okay So I'd like to ask you --

A Until they were revealed publicly

Q Were you aware in April, 2011, that Mr Williams bought a $1,600 dress for Mary-Shea Sutherland?

A Totally unaware of that

Q Were you aware that Mr Williams flew Ms Sutherland up to the Roskamp event and paid for her room at the Ritz-Carlton and also paid for her to get a facial at the spa?

A I was unaware of that, sir

Q Now, you testified that you had some small amount of involvement in the planning regarding the August 30th, 2011 event, correct?

A No, I testified that I had some involvement in the planning of the Gibson Island event And I was very clear on that But I think the question was conflated with the other reference So clearly, on the Gibson Island, I had more involvement in it The principal, however, was Professor Ladenson

Q But with respect to the August 30th event, were you aware that the primary person on the side of the Governor's Office handling the planning was Mary-Shea Sutherland?

A I knew that she was involved I didn't know she was the primary person

Q You understood that she was involved in the planning?

A Yes

Q Were you aware in the summer of 2011, in June, 2011, that Mr. Williams called Ms Sutherland to tell her he wanted her working for him and for Star Scientific?

A I was not

Q Were you aware that in July and August of 2011, that Mr Williams took Ms Sutherland to various lunches and breakfasts to discuss possibly giving her a job?

MR. HARBACH: Objection This whole line is characterization

THE COURT: The objection is sustained He is not aware, but we are, because we have heard it five times

MR. HAUSS: Fair enough, Your Honor Thank you

BY MP HAUSS:

Q You testified that you did attend the event on August 30th at the Mansion; is that correct?

A That's correct, sir

Q And that was the one and only time you ever met and spoke with Ms McDonnell; is that correct?

A That's correct

Q She made some remarks at that event?

A She did at the outset

Q Her remarks were, you said, about the history of the Mansion

A I thought that they were articulate and very well put, and I learned things about the Commonwealth that I had never known before

Q And she also made some remarks about her own interest in nutraceuticals; is that fair?

A Yes

Q She also testified about being proud to assist with a company that was based in Virginia; is that correct?

A That's my recollection.

Q Now, you testified about a conversation you had with Mr Williams about Ms McDonnell possibly being on the Board of Star Scientific Do you remember those questions?

A Yes Yes, very much so

Q And did Mr Williams tell you that he had told

Ms McDonnell that she needed to speak with the Governor first and that the Governor had told her absolutely not, she could not serve on the Board?

A I had no way of knowing that I was unaware of that But it was a dead letter once I heard about it

Q It is fair to say Ms McDonnell never in fact served on Star Scientific's Board?

A No, she wasn't asked to and she did not serve.

Q In response to Mr Asbill's questions, you mentioned the term "derivative knowledge " I want to make sure I understand what you were talking about Am I correct what you were suggesting was that as to some of the stuff you testified to today, your only source of knowledge is Mr Williams' representations; is that fair?

A Yes Some of the things

Q So with respect to, for example, the conversation with Mr Williams about Ms McDonnell serving on the Board, that's just based on what Mr Williams told you; is that correct?

A That's correct

Q With respect to the Tobacco Commission and Mr Williams' conversations with the Governor, that's based on just what Mr Williams told you; is that correct?

A That's correct

Q Okay Now, you learned in 2013, January of 2013, for the first time about the things, about what Mr Williams said his relationship was with the McDonnells; is that correct?

A Yes

Q You learned for the first time that Mr Williams had been concealing a number of things from you.

A Yes

Q You learned that Mr. Williams had not been honest with you

A On those things, that's correct He had not -- he had not been forthright

Q So given that, you cannot be sure sitting here today that the other things Mr Williams told you about his conversations with Mr and Ms McDonnell --

A Counsel, with all due respect, I think that's a legal conclusion That's the province of the jury

Q But is it correct that you cannot be sure that what Mr Williams told you about his conversations with the McDonnells were correct?

MR. HARBACH: Objection.

THE COURT: The objection is sustained

MR. HAUSS: One moment, Your Honor? Nothing further Thank you, Your Honor

THE COURT: Redirect?

MR. HARBACH: Yes, please, Your Honor

REDIRECT EXAMINATION

BY MR HARBACH:

Q Mr Perito, a few minutes ago you were asked some questions by Mr Asbill about the statement to the press that Ms Tuck made Do you recall those questions?

A I do, sir.

Q And I believe your answer was that you were comfortable with her statement at that time on behalf of the company Do you recall that being your answer?

A Yes

Q I'd like to unpack that, please Could you tell us what you meant by the fact that you were comfortable at that time, meaning June 5th of 2013 when the article ran?

A Because I knew more things about his conduct than I had previously

Q Did you know all of the facts by that time, sir?

A Absolutely not

Q Second part of your answer where you said you were comfortable making that statement on behalf of the company --

A Not me making that statement

Q Thank you for correcting my question as well You were comfortable with Ms Tuck making that statement on behalf of the company at the time

A Having gone through the process that I set up, I was comfortable vis-a-vis the company

Q Had the company funded the $120,000 in loans to the McDonnells or MoBo?

A Absolutely not

Q Had the company paid $15,000 for the McDonnells' daughter's wedding?

A No, sir

Q You were asked some questions earlier in Mr Asbill's cross-examination of you about the conversation you had with Mr Williams in January of 2013 after he was interviewed by the FBI Do you recall those questions, sir?

A I do

Q When Mr Williams was emotional and sobbing in that conversation with you, was he sobbing, from your perspective, did he appear to be sobbing because of a transaction he had done with John McKeon?

MR HAUSS: Objection.

THE COURT: Sustained.

BY MR. HARBACH:

Q Mr Perito, during that same conversation with Mr Williams, was he -- when did he start becoming emotional? Was it when he was discussing the things that he had kept from you concerning his payments to the McDonnell family or was it concerning the -- did it start when he was talking about the McKeon transactions? If you recall?

A It was such an emotional event for me and for him that I can't differentiate very well My best recollection is that he was concerned that not only was the trust broken, but that I was going to leave the company And it was a valid concern.

MR HARBACH: Thank you, Your Honor

THE COURT: Thank you, sir You may stand down

(Witness stood aside)

Call your next witness

MR. DRY: The United States calls John Piscitelli to the stand, Your Honor

JOHN A. PISCITELLI,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR DRY:

Q Good afternoon, Mr Piscitelli

A Good afternoon

Q Can you please state your name for the record and spell it, please?

A I'm John Anthony Piscitelli P-I-S-C-I-T-E-L-L-I

Q Can you pull the microphone up just a little bit closer, sir?

A How is this?

Q Better Can you please state your occupation?

A I am a Senior Vice President of Investments at the firm Davenport & Company

Q And what certifications and licensing do you have?

A Certifications are a Series 7 for general securities; Series 8 for management of securities; Series 3 for commodities and futures; Series 63, 65, state license, and for managed money, and I am also insurance licensed.

Q I believe you said your current employer is Davenport & Company; is that right?

A That's correct

Q What does Davenport & Company do?

A We are a stock brokerage firm established 151 years ago, and we do financial planning as well as invest money on discretionary and non-discretionary bases for clients, whether they be families or small businesses

Q And where is your actual office located?

A My office is in Virginia Beach

Q And what is your job title there?

A It is, the title is Senior Vice President of Investments I'm also the branch manager of that office.

Q Okay When did you first meet Mr and Ms McDonnell?

A I believe it was in 1987

Q Okay And was Mr McDonnell in law school at the time?

A He was

Q And where were you living and where was he living at the time?

A We were both living in Virginia Beach, I believe a few miles apart from each other

Q Okay Can you characterize your personal relationship with the McDonnells?

A I think we became friends very early We both attended the same church We had similar stages in life where we were raising young kids And Bob led a Bible study at the time that we both belonged to, so we would meet in each other's homes on a weekly basis

Q Is it fair to say you would go out to dinner with them, talk on the phone with them, both of them?

A Occasionally Mostly we would see each other at church on Sunday But certainly we would meet socially, also

Q Is it fair to say that you are very good friends with the McDonnells?

A I'd like to think so

Q Okay You have met with Mr McDonnell's defense counsel?

A Yes, I have

Q How many times have you met with them?

A Several times I've met with prosecution and met with defense both, and both times I've just attested that I will tell the truth with whatever is asked of me.

Q You said several times?

A I believe so.

Q That you have met with defense counsel?

A Yes

Q And how long did each of those meetings last?

A Hard to say I'm guessing an hour

Q For each one of them?

A I imagine so

Q Were you invited to Mr and Ms McDonnell's joint birthday party this year?

A Yes, I was

Q Did you attend?

A I did.

Q When did that occur?

A June of this year

Q Okay While you were there, did you get an opportunity to see them together?

A I did.

Q And how were they interacting?

A For most of the party they were separate But for a time towards the end of the party, they were dancing together and they looked to be in a loving way

Q Did they display affection publicly?

A I believe you could say that

Q Were they holding hands, things like that?

A No, we really just saw them dancing towards the end is my only recollection of them being together, towards the end of the party

Q Is it fair to say that from your observations they appeared as much in love as they ever were?

MR BURCK: Objection, Your Honor.

THE COURT: I don't know how he could possibly answer that question. So the objection is sustained

BY MR DRY:

Q From your observations over the last 20 years, did you ever believe that the McDonnells were having marital problems?

A To my knowledge, outwardly, I could not tell that

Q Are you the godfather of any of the McDonnells' children?

A Yes The McDonnells have honored us and asked us to be their youngest daughter's, Rachel's, godfather Again, back in the 1980's

Q Were you subpoenaed to testify before the grand jury on October 3rd, 2013?

A Yes, I was

Q Since testifying in the grand jury, have you met with the government?

A Yes, we have seen each other at social events

Q I'm sorry, the government

A The government

Q The prosecutors and agents

A I don't believe so

Q And did you know that the government wanted to speak to you?

A I was told that you had asked to speak with me again

Q And you declined.

A Yes, I felt like I had said everything I needed to say at that point

Q Are you closer friends with Mr McDonnell or Ms McDonnell?

A I would say we are friends equally with the two of them.

Q Before 2011, had you any business relationship in your role as a stockbroker or money manager with the McDonnells?

A Yes I opened an account for them, strictly to sell some shares of stock, back in the late 1980's

Q How did they obtain that stock?

A This is 25 years ago My recollection is it was through some gift or inheritance I really don't recall exactly I seem to recall that they didn't purchase the shares outright

Q What was the extent of the transaction?

A They simply asked if they could deposit the shares and have me sell them, needing some money at the time, and I gladly did that for them.

Q That transaction occurred, I think you said, approximately 25 years ago?

A Yes, in the late 1980's

Q Since that point up until 2011, any business relationship between the two?

A No, none

Q Let's bring up Government Exhibit 153, please Do you recognize this document, sir? We can blow it up That would be good.

A Yes, I do This is our New Account Data Sheet

Q You have seen this document before?

A Yes, I have

Q And this relates to an account that was opened up in the name of Ms McDonnell?

A Yes, that's correct

MR. DRY: The government moves Government Exhibit 153 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR. DRY:

Q What is the --

MR SMALL: This is a one-page document?

MR DRY: I believe it is a two-page document

MR. SMALL: I would object, Your Honor The first page clearly says Page 1 of 1, and what they have is a second page starts at Number 22 It is clearly two different documents

BY MR DRY:

Q Have you seen these documents before, sir, both pages of these? Can you go to the second page?

A Yes, I have.

Q Were these the two -- were these two documents given to you, or part of the Account Data Sheet that you produced in relationship to this account?

A Yes They are actually two separate forms One is the data sheet, where we just essentially fill in the basic information about the client This is what we call a Cash Agreement, which is several pages long, but only requires the client to sign the bottom of the last page

MR DRY: Well then, we would move Government Exhibit 153-A in as the second page, Your Honor

THE COURT: It will be admitted.

BY MR DRY:

Q Going to just 153, can we go back to the first page? What is the date in the bottom right-hand corner of the document, if we go down? I believe this is right.

A June 2nd, 2011

Q Okay Walk the members of the jury, what happens when a client, what typically happens when a client opens an account at Davenport?

A A client can open the account either over the phone or in a personal meeting We take down the information required to open the account, and send them documents to sign, the Cash Agreement being one of them, and we can transact that business, whether they choose to buy stock or do some other type of business, we can do that before we actually receive their signed document

Q Can we go to the top of the document? In the upper left-hand corner And whose Account Data Sheet is this for?

A This is for Maureen McDonnell

Q Walk the members of the jury through what led to you opening an account, a Davenport account for Ms McDonnell

A Maureen had called me and said she had some money to invest, and said that she had seen a demonstration for this company, Star Scientific, and was very interested in purchasing shares I think at the time she had mentioned she wanted to give some gifts to her children, and thought that this would be a good stock to buy in So I did open the account for her, we bought the shares of stock, and I told her at the time that the money would be due in three business days

MR SMALL: Your Honor, if I might, there is a redacted version of this Counsel, do you have it? If so, could you use it?

MR. DRY: I think the address is actually going to be significant

MR. SMALL: I don't object to the address It is the other information.

MR DRY: Can you do that on the fly, Ms Taylor? If not, that's okay We can just walk him through it

BY MR DRY:

Q I'm sorry, Mr Piscitelli You mentioned something about you could open the account and buy the stock, but the money didn't have to be in immediately?

A Exactly If you call me and buy shares of stock, I can lock in the price today The settlement day where the money is due to pay for that is in three business days

Q And did you understand what stock, did she inform you in that first call what particular company's stock she wanted to buy?

A Yes, at the time she mentioned Star Scientific

Q And on this data sheet, who is actually filling out the information? Is this Ms McDonnell or how does the information get on there?

A This looks like it was taken from another sheet that I filled out by hand and recopied on this entry form, which they use to keypunch the account

Q Where did you get the information that was ultimately put on this sheet?

A Some I would do personally, but some I would ask Maureen for

Q Can you tell, what information -- did you know her Social Security Number at that point?

A I don't believe I did. The kind of thing I would know is "How long have you known this client," that sort of thing

Q Any of the additional information would have come from Ms McDonnell?

A That's correct

Q And in the upper left-hand corner, can you say what date "Date Opens" says?

A June 1st of 2011

Q If we go down to the bottom right-hand portion of the form, whose signature is that and signature of Registered Representative?

A That's my signature

Q Can you go to the top right-hand portion of it? I apologize, Ms Taylor Is this originally opened as a joint or a single account? Or originally, what was your belief whether it was going to be joint or single?

A You know, I assumed it was going to be joint because the last account I opened for them was a joint account, and Maureen quickly corrected me and said this should be an account in her name so we were able to correct that before any transactions occurred in it

Q So it was opened in an account only in Maureen McDonnell's name; is that correct?

A That's correct

Q In order for it to be opened in a joint account, would both account owners have had to sign?

A Yes, they would.

Q And then you've got that address there Was that address given to you by Ms McDonnell?

A I believe it was

Q What address would Davenport mail account statements to?

A To this address of record.

Q And in the Source of Funds block, what is listed there on the right-hand side? Do you see where it says Source of Funds right above Negotiable Transaction?

A Yes It says Salary or Wages

Q What is listed next to Estimated Net Worth? I think we are going to have to go down The Investment

Objectives block on the left-hand side Do you see that, sir?

A Estimated Net Worth, yes, in the range of $500,000 to a million

Q And what's Estimated Annual Income listed?

A Looks like it was crossed out Initially, it was keypunched as 200,000 to 300,000, and then changed to looks like 100 -- I'm not sure if that's $150,000 or $190,000

Q Did you understand at the time whose salary was being reflected there?

A I assumed it was household salary

Q Okay Did you know whether Ms McDonnell was working at that time?

A I believe she wasn't, but we didn't talk about that specifically

Q Okay Where did you get this information from?

A At the time, I think of the initial phone call, I believe I asked Maureen for these figures, and she said she would need to speak to Bob to get the actual figures for me And I said, "Well, we need to put something down to get the account opened. We can ballpark it and adjust it as soon as you can get me the figures to adjust it "

Q We will get to the subsequent conversation in a second. But can we go to the second page, so that's going to be 153-A, and can you, I think you briefly touched on exactly what this document is Can you kind of explain it?

A It is our standard Cash Agreement that anyone who opens an account with us just abides by our firm policies, which are pretty standard among any brokerage firm.

Q And do you recognize the signature there?

A Looks like Maureen McDonnell

Q What's the date?

A June, looks like June 1st of 2011

Q At the time you are discussing this with Ms McDonnell, did she ever tell you, "Hey, don't talk to Bob about this, this is just between the two of us"?

A She never told me that, and I wouldn't be allowed to talk to anybody about her account anyway because it is in her name only

Q Did you communicate that fact to her?

A No

Q Okay Let's go to Government Exhibit 149, please Sir, what is this?

A This is, can be quarterly account statement It is monthly if there is any activity But it is our basic account statement

Q Okay And this is for Ms McDonnell?

A That's correct

MR. DRY: Government moves Government Exhibit 149 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR DRY:

Q When does Davenport send out account statements?

A The first few days of the month following every quarter, or again following the month if there was any activity in the account that month

Q So when you say "activity," what does that mean?

A That means any transactions where a client buys or sells securities It could be a dividend paid from a stock, anything that would generate cash or a stock or bond transaction in the account

Q Let's go to the second page of this exhibit, Ms Taylor And on the second page, in the Purchases and Sales block, what does that information reflect?

A It shows on June 1st, 6,000 shares of Star Scientific was purchased at a price of, rounding off, $5 18, for a total cost of $31,079 40

Q And can we go down to the Funds Withdrawn and Deposited? What does this reflect?

A That reflects that we deposited funds from that same amount and the check was written off Maureen McDonnell's personal bank account

Q Okay That reflects that the check was from her personal bank account?

A Yes

Q Can you show me where it says personal bank account?

A It doesn't say that, but it just says "Maureen McDonnell" as opposed to --

Q This doesn't reflect whether it is from a personal account or any other account, right?

A It would have been in her name

Q Okay But could it be a joint account? Just from this, do you even know?

A I believe it would show up differently if it was a joint account

Q Okay As you sit here today, you know it came from her account

A Right And knowing because I saw the check

Q Who directed the purchase of these shares of stock?

A Maureen McDonnell

Q Did you advise her to purchase these shares?

A No

Q Had you heard of Star Scientific before?

A I had never heard of it before she brought it up

Q So this wasn't a company that you were following and promoting to your clients?

A No

Q Okay Was Star Scientific a publicly traded company at this point?

A It was

Q And can you briefly explain what a publicly traded company is?

A Basically, as opposed to a private company where you cannot buy shares unless it is directly from the company, publicly traded company means you can buy shares from another person who owns it on an exchange

Q When you say an exchange, what are the big exchanges?

A New York Stock Exchange, for instance This one trades on what we call NASDAQ, an electronic global trading platform.

Q Did you ever buy or sell any shares of any company out of this account without authorization from Ms McDonnell?

A No

Q Let's bring up Government Exhibit 155, please This is a Davenport document, sir? You can scroll down for him.

A Yes, that's correct

Q And this reflects, this is basically a print-off of a check that Davenport received?

A Yes, that's correct

MR. DRY: The government moves Government Exhibit 149 into evidence, Your Honor

THE COURT: It will be admitted.

MR. DRY: I'm sorry, that's 155 I apologize

THE COURT: All right

BY MR DRY:

Q Is this the check that Ms McDonnell used to purchase the shares?

A I believe it was

Q Like you said earlier, that's just only from her account, right?

A Yes, that's correct

Q What's the date on the check?

A June 4th, 2011

Q Now, I noticed in the account statement it says the shares were purchased June 1st Can you just kind of walk us through why the shares are purchased on June 1st, but the check is June 4th?

A Well, again, the shares were purchased over the phone, and again, I advised Ms McDonnell that the shares were due in three business days I believe the trade occurred on a Wednesday So the settlement date where the money would have been due would have been that following Monday And she was able to hand it to me over that weekend.

Q Let's talk about that You said she was able to hand it to you When did she hand it to you?

A At her daughter, Cailin's, wedding

Q You attended the wedding

A I did. And the reception

Q Talk about the circumstances of how she hands you the check

A I don't exactly remember how You know, she was pretty tied up obviously with being the mother of the bride, with a lot of wedding things, so we weren't able to spend a lot of time speaking to Maureen, but we were able to see her, I think, for just a little bit of time And I think at the time she said, "Oh, I need to get you the check," and so she gave it to me

Q You said that "We were able to see her "

A I'm sorry, my wife and I

Q So your wife and you are at the wedding?

A Yes

Q And Ms McDonnell and you are talking?

A Yes

Q Your wife is next to you?

A Yes

Q Where is the Governor?

A Somewhere off talking with other people

Q But your wife is next to you?

A Yes

Q And Ms McDonnell says what?

A "I need to get you the check as payment of the stock "

Q All right

A Or something to that effect.

Q Did she pull you off to the side? Is she whispering this to you?

A No

Q Okay Let's go to Government Exhibit 634, please Do you recognize this document, sir?

A I do.

Q And this was turned over by your lawyers a couple days ago?

A Yes

Q And what is it?

A This is where Maureen had given me the figures that we had asked for for the financials to just put as record in the account

MR DRY: The government moves Government Exhibit 634 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR DRY:

Q Tell me the circumstances Was this attached to the check, or --

A I really don't remember exactly if she gave it to me at the wedding, if it came in at a different time, exactly when it got to us I think it was very early in the opening of the account But I can't recall exactly how it got to me

Q Just so I'm clear, you have the first conversation with her, say, "I need this information," she tells you, "I need to talk to Bob," and then you get this

A Yes

Q Okay Do you recognize whose handwriting is on this?

A I believe it is Maureen's handwriting

Q Do you recall whether she was secretive when she handed you this sticky note?

MR. BURCK: Objection, Your Honor

THE COURT: Sustained.

BY MR DRY:

Q At the time of the purchase of the shares of Star Scientific stock, did Ms McDonnell mention getting money from Jonnie Williams for the purchase in any way?

A No His name had never come up before

Q Let's go to Government Exhibit 194, please Do you recognize this document, sir?

A Yes

Q And what is this?

A This is called our Non-solicitation Letter

Q This was sent from you to Ms McDonnell?

A It was sent from our headquarters automatically I wasn't aware that it was being sent at the time

Q Okay

MR. DRY: Government moves Government Exhibit 194 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR DRY:

Q The account number listed at the top, can we just, I don't know, is it possible, I just want the last four

MR. SMALL: We will stipulate it is the same account

THE COURT: 2323 So the last four on this is 2323

BY MR. DRY:

Q Did you have a conversation with, first of all, is this a new order of Star shares?

A Yes This is a second order to buy fewer shares of Star Scientific

Q Approximately what's the date on the top left-hand corner?

A August 2nd, 2011

Q And walk me through what Ms McDonnell tells you that leads to the purchase of 522 shares?

A It is a little difficult to remember exactly the circumstances of why she wanted to invest more in this My recollection is that she had a couple thousand dollars extra that she wanted to add to it, the price was down I thought I remembered it was to round up somehow as she was still thinking of giving gifts and splitting this up among the children, but the math doesn't work out, so I don't really know exactly why

Q Okay And I think you testified earlier, she had mentioned back in June the idea of eventually gifting shares to the kids; is that right?

A Yes

Q Okay Let's go to Government Exhibit 166 Is this another Davenport account statement for July 1st through August 31st of 2011?

A It is

Q I'm going to let Ms Taylor redact that for a second No pressure. Thank you, Ms Taylor

MR DRY: I'd like to now move Government Exhibit 166 into evidence

THE COURT: It will be admitted

BY MR. DRY:

Q Turning to the second page in the Purchase and Sales block, what does that information reflect?

A Reflects that 522 shares of Star Scientific were purchased at $3 82 for a total of $1,994.04

Q When somebody places an order with you, how quickly do you typically execute on that order?

A Immediately

Q Okay But can the settled date be the following date?

A For stock It is always three business days

Q Okay. So do you believe that your conversation with Ms McDonnell happened at around August 2nd of 2011 about the new purchase?

A Yes

Q And going down to the Funds Withdrawn/Deposited block. What does that show, sir?

A It shows we received another check from Maureen from that same account for a total of $1,994.04.

Q Then going to the portfolio holdings block, can you just walk me through what this information is next to the 6,522?

A Well, it is portfolio holdings, so it shows at that moment, 6,522 shares of Star Scientific were owned, shows the cost basis of the total amount of shares was $33,734 04, the current market value was $15,326 70, so there was an unrealized loss of $17,746 74

Q I'm sorry, I need you to slow down, first of all, because you talk fast It is okay When you say unrealized loss, what does that mean?

A That means, that loss can be, you buy a stock, it can move up and down in price It is never a true realized loss until you sell it

Q Okay

A So it can be a gain or loss on an unrealized basis When you sell it, it becomes realized

Q You haven't made any money or lost any money until you sell the stock.

A Technically, yes

Q Let's go to the third page, please Just go to the Owner and Associated Persons Again, sir -- we can just do it this way Can you see that on your screen, sir?

A I can.

Q Where would this account statement have been mailed to?

A To Maureen at 5913 ***, Glen Allen, Virginia

Q Let's bring up Government Exhibit 240, please Do you recognize this letter, sir?

A I do.

Q What's the date of the letter?

A September 9th, 2011

Q Who is the letter from and to?

A The letter is from me to Maureen McDonnell

MR DRY: The government moves Government Exhibit 240 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR. DRY:

Q Starting with the second paragraph, you say: "As I mentioned when we last spoke, I thought it would be easier to spell out for you what is needed to move securities from your account into the kids' names. Hopefully this outline will be clear enough " Do you see that?

A Yes, I do.

Q Did you have a conversation with Ms McDonnell before sending this letter?

A Yes, a few weeks prior

Q Okay How certain are you on that date?

A Fairly certain Because I knew it took me a while to think of what she wanted to do, and I was busy at the time, and I think that's why I'm apologizing for it has taken a while since we last talked.

Q What did Ms McDonnell tell you during that conversation?

A In that conversation, she said that she was again thinking about how to gift these securities to the kids, and how to do it I thought at the time she was still thinking of how many shares or how much in dollars to give to each one. Or at least it wasn't communicated fully to me at that time. And she seemed to want some shares to remain in her name, but was still not necessarily wanting them to show up in her name and wondering maybe how we could avoid doing that

Q Let's unpack that a little bit What do you mean by she wanted the shares not to remain in her name?

A Could they be moved somewhere else where she still owned them and not show up as her owning them. And she had mentioned, she was mentioning a lot of different things all in the same conversation She had heard about a blind trust, is that a possibility So she was just trying, I believed, to find a way to not have the shares show up on the year-end statement as her owning them.

Q And did in fact she tell you that there was annual reporting requirements?

A I believe that, you know, it is difficult for me to remember the exact terms she used, but I got the idea that the purpose that she didn't want these shares in her name was some type of reporting I don't know what that was

Q Did you understand that it was her reporting?

A I didn't really know, and it didn't really matter to me because I was focused on how to accommodate her wishes The why didn't matter so much as how to get done what she wanted to get done

Q When she is talking about this, did she use the words "reporting requirements"?

A I can't say for certain that she did. In my mind, it had something to do with reporting, but I don't remember the exact words she used

Q Okay Do you remember, sir, first of all, you testified in front of the grand jury on October 3rd, 2013?

A Uh-huh.

Q And you took an oath to tell the truth in front of the grand jury?

A I did

Q And there was a court reporter present?

A Yes

Q Just like there is one today?

A Yes

Q And there were at least a dozen good citizens serving as grand jurors, is that true? Do you remember that?

A I'll take your word for it that they are good citizens

Q Were questions asked and you given a full opportunity to answer them?

A Yes

Q I just want to make sure I understand. Were you asked, "Was it fair to say that in --"

MR. SMALL: What page?

MR. DRY: 25, Line 20, all the way through 26 to three

BY MR. DRY:

Q "Was it fair to say that in your conversation that precipitated this letter, Maureen McDonnell made it clear to you that she needed these shares out of her name or a portion of these shares out of her name because she was trying to avoid disclosure requirements for her and the Governor?" You responded, "I don't know if she ever used the word disclosure requirements, but she made it clear that she wanted them out of her name and that she didn't want them reported, yes "

Do you recall saying that?

A Yes, I did.

MR. BURCK: Objection After hearing the testimony from the grand jury, his testimony is the same

THE COURT: That included reporting, which he didn't recall. So it is not the same Go ahead.

MR DRY: Thank you, Your Honor

BY MR. DRY:

Q Before your discussions with Ms McDonnell, did you have any knowledge of what requirements a government official would have to disclose stock here as family members owned? Did you have any knowledge of what the disclosure requirements were?

A No, I didn't

Q Let's go back to your letter On the last paragraph of Page 1, do you see, "I don't have the answer about how to avoid shares remaining in your name without transferring them to another entity You had mentioned the use of a blind trust "

I believe you said, but whose idea was the blind trust?

A She brought it up I don't know where she had heard it from, but she asked me "Is that a possibility?"

Q Okay And then what is your advice? Basically just paraphrase what you say on this, the rest of it, and the top of the next word

A Essentially that a blind trust is something that we could have as an account if she had an attorney draft up the trust, but that it is a discretionary account that we would run Typically as money managers, we buy and sell in a more conservative nature larger companies with earnings and a track record of growing earnings So the Star Scientific company, which is more speculative, did not have earnings, wouldn't be something that we would hold, and we would most likely sell it So a blind trust for these purposes, I didn't think, would serve her needs

Q Was this in the context of getting the shares out of her name that this is coming up?

A Yes

MR SMALL: Judge --

BY MR DRY:

Q Why did you write this letter to Ms McDonnell?

A The main reason I wrote the letter was because she had asked about a lot of things in our conversation, and it is very complicated as to how to gift shares into the kids' names as far as opening the accounts, as far as having a letter of authorization come in. She had asked about other options of, again, how to not have these shares remain in her name And in that conversation, because it was going a lot of different places, I said, "Let me think about this Let me send you a letter that outlines what I think your options are and give you a course of action, as well as explain to you how we move shares into the kids' names "

Q Did you write the letter in any way, in any measure, because the request from Ms McDonnell made you uncomfortable?

A It was mostly for the reason that I suggested. Otherwise, I do like having a paper trail if we make recommendations and people are talking about a lot of different things that we explain what they were and what our advice is

Q Sir, my question was, did the request make you uncomfortable?

A It didn't really make me uncomfortable

Q Okay Sir, going to grand jury transcript Page 26, Lines 4 through 8 In the grand jury were you asked: "In fact, this request made you uncomfortable You wanted a written record to make clear that this was not your idea, correct? Answer: Yes I guess there are different levels of discomfort "

MR. SMALL: Could we read the next several lines where he explains the different level of discomfort?

MR DRY: I'm about to do just that

THE COURT: Let him finish answering this question.

BY MR. DRY:

Q Do you recall that, sir?

A Yes, I do recall it

Q As you sit there today, is that accurate?

A It is accurate that there are different levels of discomfort, and probably "discomfort" is probably not the best word.

Q As you sit there today, did the request make you uncomfortable?

MR SMALL: Asked and answered

THE COURT: It hasn't been answered

THE WITNESS: Yes

BY MR DRY:

Q Okay I think Mr Small wants us to go further Do you recall saying, "Question: To be clear, you are not a lawyer, right? Answer: Yes Question: You don't know what the disclosure requirements are for the Governor, right? Answer: I was just more puzzled I really was giving them the benefit of the doubt I thought certainly they know the disclosure rules and they are going to do what is right and legal and really never crossed my mind that -- you know, they weren't going to have this checked out and make sure they were doing the right thing I was more puzzled Question: But you at least felt some, as you stated earlier, discomfort about what you were being asked to do? Answer: Yes "

Do you recall all of that?

A I do

Q Now, were the shares transferred to the McDonnells' children in 2011?

A That wasn't until 2012

Q We will get to that Let's go to Government Exhibit 247, please Do you recall this document or do you recognize this document, sir?

A Yes

Q This is a Davenport account statement for October 1st through December 31st of 2011?

A Yes

Q And in fact, this is Maureen McDonnell's Davenport account statement?

A Yes

MR. DRY: Government moves for admission of

Government Exhibit 247, please

THE COURT: It will be admitted

BY MR DRY:

Q Now, on the first page, is that the same address as all the other account statements that we have reviewed?

A Looks to be

Q Okay And that would be where the account statement was mailed to, correct?

A Yes

Q Turning to the third page under the Purchases and Sales, what does that information reflect?

A Reflects a sale of 6,522 shares of Star Scientific at a price of $2 34, again rounding up, for a total proceeds of $15,279 45

Q Did you direct this sale just on your own?

A No, Maureen asked me to sell the shares

Q Let's talk about that What exactly did she -- how close in time was this conversation to the actual sale?

A It had to have occurred the same day

Q Okay And what can you recall Ms McDonnell saying during that conversation?

A I think she -- you know, I don't remember exactly the conversation other than I know she was still thinking about gifting shares to the kids, but at this point it was getting late in the year and she didn't want the shares, again, I believe, to be shown or reported

Q And was she emphatic that they be sold before the end of the year?

A Yes

Q At that time, what was your understanding of why she wanted the shares to be sold before year end?

A Again, just so an account statement at year end would not show that account owning shares of Star Scientific.

Q And did she describe that again in that conversation?

A I believe so

Q During that same conversation, did Ms McDonnell say anything to you about repurchasing the shares?

A Yes, she said she wanted to buy them back at the beginning of the year

Q Okay During that conversation, did Ms McDonnell ask you anything about confirming to her that the shares were sold before the end of the year?

A I don't know that she asked me that, but we have to do that anyway We have to confirm all executions of trades

Q Sir, if I showed you something to refresh your recollection --

MR. DRY: I'm going to show him the grand jury Exhibit 29, Page 29, Lines 24, 25, and then Page 30, Line 1

BY MR. DRY:

Q I just want to refresh your recollection.

(Document proffered to witness)

A I'm sorry, which lines?

Q 24 and 25 at the bottom, and the top I'm going to ask you again, during that conversation, did she ask for confirmation that the shares had been sold before year end?

A Okay, I didn't remember that now, but --

Q Does that refresh your recollection? Do you remember that?

A You know, at this point I still don't remember that she asked me in that phone call, but I'm sure that I did confirm them and we send confirmations out as we legally have to do

Q I guess the question is, as you sit there today, do you remember her asking for confirmation that the shares had been sold before year end?

MR BURCK: Objection, asked and answered.

THE COURT: He said several times he doesn't remember

BY MR DRY:

Q All right When you were before the grand jury, that was a while ago; is that true?

A Yes

Q Things were fresher in your mind than they are today?

A I think that's maybe so.

Q Well, in the grand jury were you asked, "Did she ask for confirmation that they had been sold before year end? Answer: Yes "

Do you remember giving that answer?

A I do

MR. DRY: Can I have that grand jury transcript back, please?

(Document proffered to counsel.)

BY MR. DRY:

Q Did Ms McDonnell ever talk to you about or in any way mention any tax implications, and that was the reason she wanted to sell the shares before year end?

A Not that I recall

Q Did you ever advise her, "Hey, you might want to sell these at a loss and then re-purchase them the next year for tax purposes"?

A Not that I recall

Q Okay That would be something you probably would recall, right?

MR. SMALL: Objection

THE COURT: Overruled.

BY MR DRY:

Q That would be something you would recall, right?

A I believe I would.

Q Okay Let's go to Government Exhibit 278, please Sir, is this an account statement for Ms McDonnell's account in January of 2012?

A Yes, it is

MR. DRY: Government moves for admission of 278, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q All right On the third page, this is probably redacted, but do you recall that that's --

MR DRY: We need him to unredact that one It is all right, Ms Taylor I think we have beaten that horse enough

BY MR. DRY:

Q Turning to the fifth page, can you go to the Purchases and Sale block, please? What does this reflect, sir?

A This reflects on January 20th of 2012 we purchased 6,672 shares of Star Scientific at a price of $2 29, rounded off, for a total cost of $15,276 88

Q Out of the sale proceeds from the December 20th sale, how much of the sale proceeds were used for this purpose?

A Most all of it

Q And who instructed you to repurchase the shares?

A Maureen McDonnell

Q Okay And how did that come about?

A I had a conversation with her at the beginning of the year where she had thought that the shares were going to be automatically bought back, and there was a miscommunication apparently between us when the sale was made prior, because I couldn't do that without talking to her first Probably my fault for not explaining it in more detail at the time because I know this is something she is not used to doing So the shares were purchased later than she expected that they were going to be purchased, but it worked to her advantage because the price had dropped further, she was able to buy them even cheaper, and buy more shares than she would have had.

Q Was she upset at you for not repurchasing the shares earlier in the year?

A She showed some frustration at the time that what she thought was going to happen didn't happen. But that was quickly relieved when she understood that it worked to her benefit

Q Okay At any point in your communications with Ms McDonnell about the repurchase, are tax implications being discussed?

A Not that I recall

Q Can we go out, please? What's the market value of the securities that she holds on this account statement, sir?

A At this time, the end of January, 2012, market value was $20,159 44.

Q Okay Can we bring up Government Exhibit 323

MR. DRY: Your Honor, these documents have been stipulated to as to authenticity It is an e-mail or text message between Ms McDonnell and Mr McDonnell The government would move Government Exhibit 323 into evidence

THE COURT: It will be admitted

BY MR. DRY:

Q What's the date of this text message?

A February 22nd, 2012

Q And can you read the text, please?

A It says, "Jonnie texted me to say he needs our broker's name and phone number to transfer shares this week "

Q What time was listed in the text message?

A 1:19 in the morning

Q Do you recall having a telephone conversation with Mr and Ms McDonnell the day after this text message, February 23rd?

A I do

Q Okay

MR. DRY: I thought we moved for admission of 323 Can we publish that? Thank you.

BY MR DRY:

Q Can you tell the members of the jury how that call on February 23rd of 2012 came about?

A I believe Maureen had notified me that she and Bob were, wanted to have a conference call with me, and so that was set up and the call was made and I spoke to both Bob and Maureen on the phone

Q And going -- from your communications before getting on the call, did you understand why you were going to have a conference call with Mr and Ms McDonnell?

A I don't know that I fully understood that at the time

Q Okay I'm going to try and refresh your recollection This is Page 35, Lines 7 through 11

(Document proffered to witness)

(Witness perusing document)

A Okay Apparently at this time I did remember that that was the purpose of the call

Q What was the purpose of the call, sir?

A To discuss margin loans

Q Okay And just briefly, what's a margin loan?

A Margin loan is a loan against a security held at a brokerage firm. We are typically able to loan half the value of any security placed with us

Q Your conversation with Ms McDonnell going into this call, did she ever tell you, "Hey, Mr Piscitelli, don't tell Bob about the other transactions we have done"?

A No

Q Okay On the February 23rd, 2012 call, who is on the call?

A I believe just Bob and Maureen.

Q Okay And you are on one end?

A Uh-huh

Q Was it obvious to you that everybody could hear each other, that Mr McDonnell and Ms McDonnell could hear what each other were saying?

A Yes

Q And let's go through what Mr McDonnell told you during this call

A That they had some property in Sandbridge that was in need of repair, and asked if they moved shares of Star Scientific to an account with me, could money be borrowed against it And I told them that I would need to get an approval just because of the low share price, but I would get back to them on that

Q Did Mr McDonnell, at the early part of the call or at any point during the call, did he thank you for helping Maureen out?

A Yes, he did.

Q What was the context of that?

A He basically, I think he basically started the call by saying, "I understand you have been helping Maureen I just want to thank you "

Q And did Mr McDonnell tell you that Star Scientific was holding stock for him?

A I don't remember if he told me they were holding it or if it was a hypothetical, if they moved shares from there I don't know for certain All I knew is that we are talking about the possibility of shares being moved from Star Scientific to our firm.

Q Sir, in the grand jury, these are lines -- Page 36, Lines 8 through 10 The question is: "So the Governor is saying, Hey, Star Scientific is holding some stock for me?" What's your response?

A "Yes "

Q Okay

MR DRY: Can I have that back? I'm sorry

(Document proffered to counsel)

Sorry about making you go back and forth.

BY MR. DRY:

Q So when Mr McDonnell is raising this issue with you, what is he telling you is going to happen with the Star stock; what's the plan?

A He is asking if shares moved to us directly from Star Scientific, if we could make a loan against it And so I told him that that would be something I would need to get approval on, but -- yeah, that was it

Q Did it strike you as odd that a Governor would have a publicly traded company that would be holding stock for him?

A It was a bit puzzling

Q Did you ask Mr McDonnell to clarify what he meant when he said that Star Scientific was holding Star stock for him?

A No, and upon further reflection he may have not actually said, "They are holding it for me " But if we move shares to you, I never saw any statement or anything showing that he actually did hold it there

Q But sir, in the grand jury you were asked that and you used the word "holding," right?

A Yeah. You asked did the Governor say, "They have stock for me " The gist was, I believe, that they either had it or were going to have it Yes

Q Sir, why didn't you ask, you said that -- is it fair to say you were confused about what Mr McDonnell was saying? Will you give me that?

A Yes

Q Okay Now, you are confused You were asked, "Why didn't you seek clarification?" Right?

A At the time I wasn't really confused. All I knew was that there was some possibility that these shares would be transferred to me.

MR. DRY: Let's go to grand jury transcript Page 37, please. I'll get you a pinpoint cite in a second

(Document proffered to witness)

BY MR. DRY:

Q We are going to go through Lines 10 through 19 In the grand jury, sir, you were asked, "In fact, did you previously tell an investigator that you were confused about what was going on but did not ask questions because you did not really want to know what Bob and Maureen were up to? You figured Bob knew what was legal and was not your job to question why they were doing what they were doing Answer: Yes I figured if they have fully paid assets that are able to be transferred to us, that it really wasn't my business anything that went on before the assets coming into our account here "

Did you say that?

A Yes, that's correct

Q During that February 23rd, 2012 call, sir, did the subject of Mr and Ms McDonnell opening a new Davenport account, was that discussed?

A On that same conference call you are saying?

Q Yes

A I can't remember if it was on that call or a later call with Maureen to determine opening the second account

Q Okay In the grand jury, sir: Were you instructed --" in the context of that call, "did they talk about opening another account to accept these shares into it? Response: Yes, and we actually did open that account also in Maureen's name as an account number two, so to speak. And that account was opened Nothing ever was transacted in there, and it ultimately was closed."

Did you say that in the grand jury under oath?

A I did And under further reflection, I'm not sure if it was made on that call or a later call

Q Okay Let's go to grand jury transcript Page 50 then, Lines 9 through 20 Were you asked: "Also in reference to that call, which of the two of them, that is, Ms McDonnell or the Governor gave instructions that the account -- sorry guys -- that the account to which the shares should be transferred from Star to Davenport, who gave that instruction that the account should be in Ms McDonnell's name alone? Answer: I really don't remember Question: But was it discussed in that call that the new account would be in Maureen's name only? Answer: Yes, and somehow it was also discussed that it should be a segregated account from the initial one "

Did you say that in the grand jury?

A I did

Q Sir, do you recall during that call this idea of a segregated account being discussed? During the call with Mr and Ms McDonnell on February 23rd, 2012?

A At this point, I don't recall if it was on that call, but I do recall that we discussed that a second account, segregated account, was discussed

Q Grand jury transcript, Page 52, Lines 5 through 10 "Question: But do you recall that it was going to be a segregated -- the new account would be segregated in Maureen's name only? Answer: Correct Question: During the call with the Governor and First Lady Answer: Yes "

Did you say that, sir?

A Yes, I did

Q I think we talked a little bit about this margin loan idea Did you ultimately inform them that Davenport could actually loan them money?

A Yes, I did.

Q And did you have to do some checking before giving that answer?

A Yes, I had to get approval prior to that

Q And did you receive any instructions about what to do after you advised that you could do a margin loan on the Star shares?

A In the instructions from who?

Q Maureen McDonnell

A No Ultimately, it never happened.

Q Sir, grand jury, Page 36, we are going to have to do for context Lines 8 through 22 "Question: So the Governor is saying, Hey, Star Scientific is holding some stock for me? Answer: Yes Question: And what was he telling you was going to happen with that stock? Answer: Well, he was asking if they moved that into an account at Davenport, could it be borrowed against I had to do some checking, and it turns out we could have loaned them the money And so after that call, I replied to Maureen saying, yes, we're able to loan you the money if you decide to go through with this She had asked me to contact the chairman of Star Scientific and give him our instructions of how to transfer assets to us That was my only conversation with him."

A That's correct

Q Okay And the chairman of Star Scientific, sir, do you know what his name is?

A Jonnie Williams

Q And in fact, do you recall during the call itself Mr and Ms McDonnell, while they are both on the call, asked you to reach out to Mr Williams?

A Yes, I believe they gave me his phone number at that point

Q Okay Let's go to Government Exhibit 327, please Do you recall seeing this document before, sir? Let's do it this way: Is this an e-mail from Ms McDonnell to you with an attachment?

A Yes

Q Okay, sir And that was sent on February 24th, 2012?

A Yes

MR. DRY: Government moves for admission of Government's 327, Your Honor

THE COURT: It will be admitted

BY MR. DRY:

Q What's the time of this e-mail, sir?

A Looks like roughly 9:25 in the morning

Q And that's your e-mail account, right, jpiscitelli?

A Yes

Q And Ms McDonnell writes what to you there? Do you see the "Here you go"?

A Yes

Q Okay Is there an attachment to this document? Does it say an attachment?

A Does look like there is an attachment

Q Turn to the second page Do you recognize this document?

A Yes

Q What is it?

A It is, again, a Cash Agreement to open an account with Davenport

Q Whose signature is on the bottom right-hand corner?

A Maureen McDonnell

Q What's it dated?

A February 24th, 2012

Q Why is Ms McDonnell sending you another account opening signature page?

A For what we had discussed, the possibility of transferring shares in from Star Scientific directly

Q Was this going to be a joint account?

A No.

Q Whose name was it going to be in?

A Again, just Maureen McDonnell

Q All right Relating to -- and that was because that had been discussed and instructed in the call with Ms McDonnell and Mr McDonnell, right?

A According to the grand jury testimony, that's what I remembered at the time At this point, I don't recall that

Q Okay, sir To be clear, your memory was much better in the grand jury than it is here today; is that accurate?

A I would say that's accurate

Q Okay Let's go to Government Exhibit 328, please

Do you recall sending this e-mail to Ms McDonnell?

A I do

Q That was on February 24th, 2012?

A Uh-huh

MR. DRY: Government moves for the admission of Government's 328 into evidence.

THE COURT: It will be admitted.

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BY MR DRY:

Q What's the subject line on this?

A "An article from Seeking Alpha has been sent to you "

Q Now, this is a different e-mail address that you were e-mailing this from, right?

A Yes This, actually, was sent directly from the Seeking Alpha website, where you clink on a link to say send this to a friend, but you have to put your e-mail address in there as sender

Q Were you allowed to send a document like this from your work account?

A I would normally not send a client a document like this from my work account But in this case, this was warning a friend about who they might be getting involved in --

Q Okay

A -- involved with

Q Let's talk a little bit about that What was the purpose of you sending this e-mail to Ms McDonnell?

A Well, upon getting approval of being able to borrow against the potential transfer stock to us, someone had tipped me off that, hey, there are some things about this company that you might want to know about and led me to this blog, if you will, talking about Star Scientific and, you know, some of the dubious forecasts the company has had and some not-so-nice things to say about Jonnie Williams And so I just wanted to make sure that she knew who she might be getting involved with

Q Okay Is it fair to say it's a warning?

A Yes

Q The McDonnells are your friends You just want to say, "Hey, take a look at this"?

A Yes

Q Okay

MR DRY: Let's go to Government's Exhibit 326, please

BY MR DRY:

Q Do you recall seeing this document before sir?

MR DRY: You might need to blow it up a little bit, at least at the top

BY MR DRY:

Q Do you recall seeing this, sir?

A Yes

Q What is it?

A This is the Account Data Sheet for the second account for Maureen McDonnell

Q Okay This was still listing the 5913 Leabrook Way?

A Yes

Q And that's where the account statements would be sent to?

A Yes

Q Still has the joint household income listed?

A Yes I believe all the information was copied from the information on the first account

Q And the "Account Registration" block, do you see that?

A Yes

Q Okay What's listed as the "Initial Transaction"? What's listed next to it? It's in the "Account Registration" block, right-hand side at the very bottom So the second block, right-hand side

A Oh, deposit of stock

Q And that was -- that was your understanding of what this account was to be opened for?

A Yes

MR DRY: Going to the second page -- I'm sorry Move for government's admission of 326 and published to the jury

THE COURT: It will be admitted

MR DRY: Just one second, Your Honor

BY MR DRY:

Q Bottom right-hand corner, whose signature is that?

A Maureen McDonnell

Q And that's just the same document that had been earlier e-mailed to you, right?

A Yes

Q That page?

A Yes

Q Okay

MR DRY: Let's go to Government's Exhibit 348 This has already been admitted.

BY MR DRY:

Q Do you recognize this document, sir?

A Yes

Q And who is that from, and who is it to?

A It's to me from Jonnie Williams

Q And let's -- what are you providing him here?

A Our transfer instructions to be able to either move securities or cash to us

Q Okay And how would -- with these transfer instructions, could somebody just give you a stock certificate? Could they just come to Davenport and say, "Hey, here you go Here's the stock certificates"?

Would these transfer instructions be related to that type of transaction in any way?

A It would be different It would accomplish the same thing Someone could deposit a stock certificate directly in our branch

But this was an actual transfer through what's called DTC, or the Depository Trust Company, which is how most investment firms transfer securities between each other

Q Well, just so I'm clear, is this going to be basically a wire transfer of shares? You're instructing Mr Williams on how to wire transfer shares into this account; is that right?

A Essentially, yes

Q Okay Now, if I were to take a stock certificate and it had my name on it, could I just give it to you, and then you would transfer it in the McDonnells' account?

A Wait Can you repeat that?

Q Sure If I had a stock certificate -- well, let's just do it this way If there was a stock certificate in Mr Williams' name, could he just hand you the stock certificate and you would just put it in Ms McDonnell's account?

A I couldn't do that without -- if it was a physical certificate, I could not do that without a letter of authorization

Q Or a stock power? Is that what they're called sometimes?

A That would accomplish that too, right

Q Okay And had you talked to Mr Williams before this?

A No I had one brief conversation, and that was only to let him know that my understanding was that he was sending us some shares of Star Scientific and needed our transfer instructions And he just asked could I e-mail them to him, and he gave me his e-mail address That was the total extent of the conversation

Q Okay So how long did that last?

A A couple minutes

Q Okay And that was all you remember him saying?

A That was it

Q Okay Now, going down to the fourth line of this, which account is this going into?

A This would have been that newest account of Maureen McDonnell, account number two

Q The segregated one?

A Yes

Q Did Mr Williams ever transfer any stock into this account?

A No He never did

Q Did you have a subsequent conversation with Ms McDonnell about the transfers of securities into that account?

A Yes Some time had gone by, so I asked her was she still -- was this still planning to happen, and she responded, "No We've decided to go another way "

Q Okay Did you ask what they were going to do? What the other way was?

A No She provided no details, and I didn't ask her

Q Why didn't you ask her?

A It was not my business

Q Were you relieved?

A Relieved is a good word Yes

Q Okay. Do you recall talking to Mr McDonnell on March 6th of 2011?

A I don't recall No

Q Let me see if I can refresh your recollection

I'm sorry. '12. March 6 of 2012 I was trying to refresh your recollection about something that didn't happen So let's try it this way

March 6th of 2012, did you talk to Mr McDonnell for three minutes?

A I don't recall that I might have been calling to leave him a message on his cell phone, saying that we were able to get approval of this stock, if it was around that time period But otherwise, I don't remember a conversation

Q Okay Fair enough Did you talk a lot to Mr McDonnell?

A No He was a little too busy for me to have conversations often w[illegible] him

MR DRY: L[illegible]s go to Government's Exhibit 368

BY MR DRY:

Q Is this the Davenport statement for April through -- April 1st through June 30th of 2012?

A Yes, it is

MR DRY: Move for admission of Government's Exhibit 368, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q On the first page of this -- was that on the first page?

MR DRY: Do you need me to give you a little time? First page of the account statement

Oh Again, we'll just let the jury do this one as far as the address

Turning to the last page of the exhibit

BY MR DRY:

Q What are the number of shares owned at this point?

A 6,672 shares

Q And what's the market value of the shares?

A $30,424 32

Q So it had gone up?

A Yes

Q Now, to be clear, though, I mean, to be fair, when it says unrealized gain of $15,000, that's just the gain from the prior purchase, right?

A Right The entire market value was still below where she initially invested.

Q It's roughly, ballpark, the same, not --

A It's close

Q Okay

MR. DRY: Let go to Government's Exhibit 443, please.

BY MR DRY:

Q Do you recall seeing this e-mail before, sir?

A Yes, I do

Q And this is an e-mail from you to Ms McDonnell on December 21st of 2012, correct?

A That's correct

MR DRY: Government moves for admission of Government's Exhibit 443 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q Now, right there in the second paragraph --

A It disappeared

Q I'm sorry?

A It disappeared

Q Oh, it disappeared?

A Okay

Q Right there in the second paragraph, you write, "Regarding our conversation today, attached are the two forms needed for each kid to sign to open an account "

Did you have a conversation on that day with Ms McDonnell?

A Yes, I did

Q And what did Ms McDonnell say during the call?

A That she was ready to transfer shares as gifts to her children. And I told her I would spell out again in an e-mail and attach the forms of exactly what we would need to do to make that happen

Q And did she tell you how quickly she wanted it to happen?

A Yes She said she wanted this accomplished by year-end

Q And was she adamant that the shares be transferred before year-end?

A Yes She -- I was -- I understood that that's -- that was her wishes

Q And at the time, was she adamant that they be transferred before year-end to avoid reporting requirements?

A That was my understanding as to why we needed to do it by year-end

Q I'm sorry, sir I just want to make it clear Did she -- did you get that understanding from your conversation with Ms McDonnell?

A Yes

Q That it was -- she wanted it done before year-end, right?

A Yes

Q And it was to avoid reporting requirements, right?

A That's my understanding Yes

Q She told you that?

A Yes.

Q Okay

MR DRY: Let's go -- let's go -- I need that document back It's okay.

BY MR DRY:

Q In this you say, "Lastly, just a signed note from you requesting that shares of Star Scientific be distributed from your account, listing for each quantity of shares and for whom "

What is she telling you? I think before you talked about, well, she wanted them sold and then repurchased Are we doing that again or are we doing something new?

A Now she's actually gifting the shares, which I think was the original intent of buying the shares to begin with, finally accomplishing the fact of gifting these shares

Initially, I believe that she wanted to gift shares to her daughter Cailin as a wedding gift, and mentioned at the time, "I think I want to do equal shares" -- "or equal amounts to all the kids I don't know when any of them may get married in the future "

And so we're finally accomplishing this

Q Well, let's talk about that for a second Did she tell you that -- because you just said "married in the future "

Didn't Ms McDonnell tell you that her plan was to gift shares to the kids upon their marriage?

A No, not that I recall

Q So early back in 2011, she didn't tell you that when she was talking about gifting shares, "Hey, I'm going to" -- "when the kids get married, then I'm going to gift them shares"?

A No I don't believe that -- I don't believe that was the way she put it

Q Okay In this, you're asking about -- what forms are you sending?

A The standard new account forms that -- similar to what Maureen signed to open her account, the children would have to sign similar forms for accounts -- for shares to be moved into their names

Q And was she saying that she wanted to gift all the shares to the children or was she going to keep shares?

A My belief was that she was going to keep some portion of it

Q Okay And did she tell you how much she wanted to keep?

A I don't recall at this time that she did

Q Okay

MR DRY: Well, let's go to Government's Exhibit 450, please

BY MR DRY:

Q Do you recall seeing this document, sir?

A Yes

Q Now, this is a letter from Ms McDonnell to you?

A Yes

MR DRY: Government moves Government's Exhibit 450 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q Is this the letter that you had requested in that earlier communication?

A It is

Q That's the authorization letter, right?

A Yes

Q Okay And just so I'm clear, whose handwriting is this?

A I believe it's Maureen McDonnell's

Q And can you read what she wrote there, because I'm having trouble with it?

A "Dear, John This is to request that $5,000 shares of Star Scientific, Inc to be distributed from my account and equally divided between my five children "

Q And at this point, she had about 6,700 shares?

A Roughly

Q Okay So this was going to leave approximately 1,700 shares?

A Just under that, I believe

Q Okay. Now, as of the date of this letter, were your instructions that had to be accomplished before year-end from Ms McDonnell?

A Well, when we receive instructions like this, we have to -- we have to immediately act on them

Q So as of the date of this letter, you knew, hey, we've got to get this done before year-end?

A Yes

Q And that was from your conversation with Ms McDonnell?

A Yes

Q Okay Did you receive text messages from Ms McDonnell regarding checking in to see whether this was going to get accomplished before year-end?

A I believe so

Q Do you have those text messages?

A No I don't keep them

Q Do you have the phone that the text messages were on?

A I'm not sure if the current phone I have now is the one that I was using at the time

Q You don't know? But you're not hiding them, are you?

A No No I would not do that

Q Can you tell the members of the jury about those text messages?

A I really don't recall anything about them

Q Okay

MR DRY: Let's go to grand jury exhibit -- pages 46, 47, starting with line 13

I'm almost done, Your Honor Sorry

BY MR. DRY:

Q I just want to try and refresh your recollection, sir

A Yes What page?

Q We're on page 46, and I think we're on line 13 It keeps going You talk about how it's characterized All the way to the bottom and the top of the next page

A Oh, okay

Okay I do recall now

Q Do you recall in those text messages, sir, that Ms McDonnell was expressing a little frustration? Do you recall that?

A Yes

Q And that she was trying to get everything from the kids collected and gotten to you, right?

A That's correct

Q And you needed driver license photos, right?

A Yes

Q And you needed the account statements, right?

A Uh-huh Yes

Q Was that coming in as quick as Ms McDonnell wanted?

A Not for all the kids

Q Okay Fair enough

MR DRY: Let's go to Government's Exhibit 452, please

BY MR DRY:

Q Do you recall -- this is an account statement for January 1st through January 31st, right?

A Yes

Q And is the address the same as it had been for the other accounts or for the other statements?

A No It looks like the address is now a post office box

Q Do you recall how it got changed?

A I do not

Q And do you know what that post office box is?

A I do not

Q You have no idea?

A I have no idea

Q Okay Let's go -- I think it's on the -- yeah What's the value from the last statement there, sir?

A Current -- from the -- value from the last statement, which would have been the prior statement to this, was $17,883 67

Q What was the current value?

A $3,513 91

Q And just to be clear, that would be the account value as of -- the 17,000 would have been the account value as of year-end 2013?

A Yes

MR DRY: I'm sorry I'd like to move Government's Exhibit 452 into evidence

THE COURT: It will be admitted

MR DRY: Published to the jury

BY MR DRY:

Q And just so we're clear, as of this document, the value from account -- value from last statement would be $17,883, right?

A Yes

Q I'm not trying to trick you I'm going to let you explain how this worked out Okay?

A Okay

Q But the current value as of January 31st, 2013, was what?

A $3,513 91

Q Okay And then turning to the sixth page of the exhibit, how many shares does Ms McDonnell own as of January 31st, 2013?

A 1,672 shares

Q Now let's go back to the other activity, and you can explain how it came to be Okay?

A Okay.

MR DRY: No No Back to Page 6 There's an "Other Activity" log

BY MR DRY:

Q Okay So just tell the members of the jury what happened that it came to be that the shares were transferred I believe as of 12/31/12

A Right Because the information we needed to open these accounts, some were coming late in the day on the 31st, and this was the last day of the year So a lot of our back office staff was already gone for the holidays We weren't able to accomplish actually moving the shares on the 31st So the first business day of January, we moved the shares with an as-of date, which is the standard way to show that legally and for tax purposes, that it was actually done at year-end We received instructions, the letter of authorization, prior to year-end, and we actually did receive all the forms and instructions from the children to accomplish it, but --

Q And it's not unusual for people that sell shares at the end of one year and buy shares at the -- or at the beginning of the next, right? That's not unusual?

A It's unusual to do it quickly Mostly they will wait 30 days to avoid the wash sale rule where --

Q Well, let's talk about that a little bit Not too much But in your discussions with Ms McDonnell around this transaction, was there any discussion of tax implications?

A Not that I recall

Q Any discussion about capital gains, implications for these transactions?

A You know, I may have, but I don't recall at this point

Q Okay And you said the wash sale rule Something has to be held for 30 days?

A Well, if you sell a stock, in order -- at a loss, in order to write that loss off your taxes, you need to have not bought it back for 30 -- for at least 30 days

Q And did you have any discussions with Ms McDonnell about that?

A I may have, but I don't recall at this point

Q And when you say you may have, do you recall explaining something as technical as wash sale rules to Ms McDonnell?

A I'm sure if I tried to explain it, I would have not used the term "wash sale "

Q Let's do it this way.

A Okay

Q When Ms McDonnell talked to you about the sale and repurchase in 2012, did you say to her, "Hey, Ms McDonnell, we need to actually wait 30 days Sorry you told me to buy it back, you know, as soon as it was available, but I'm waiting 30 days for the wash sale rule"?

A Yeah No And that's not my call to be able to do that

Q Okay All right

THE COURT: All right We're going to have to --

MR DRY: I've got like four questions left, and I'll get out of here, or you can stop me now Your choice, Judge.

THE COURT: Well, you said a few minutes ago you were almost finished, and we're still here Go ahead If you have four questions that can be dealt with, go ahead and finish

BY MR DRY:

Q Throughout Ms McDonnell's transactions in this Davenport account, did she ever trade any stock other than Star Scientific?

A No

Q And in any of your communications with Ms McDonnell about the transfer of Star Scientific stock to the children, did she ever raise anything about the reasoning for the transactions to be done before year-end other than the reporting requirements?

A Not that I --

Q That you remember?

A Not that I remember

MR DRY: One moment, Your Honor

I got it done in two

THE COURT: All right Okay We'll take 15 minutes, and then we'll come back and try to finish this up

(The jury left the courtroom)

(Recess taken from 4:20 p m until 4:39 p m)

THE COURT: Cross?

MR SMALL: Thank you, Your Honor

CROSS-EXAMINATION

BY MR SMALL:

Q Good afternoon, Mr Piscitelli

A Good afternoon

Q I'm Dan Small We met, I think, day before yesterday; is that right, sir?

A We did

Q I represent Governor McDonnell in this case

First, you were asked about the birthday party recently for the Governor and his wife Do you recall those questions?

A I do

Q And you testified that for pretty much the entire party they were separate, in different parts of the room Do you recall that?

A It was an outdoor event But separate for most of the event

Q Different parts of the yard, really?

A Right.

Q Okay But they did do a dance together, right?

A They did

Q Do you recall, actually, that their daughter Cailin surprised them by calling them up and sort of challenging them to do a dance together?

A I do remember that

Q And that's how that happened, right?

A That's correct Yes

Q And they -- at their daughter's request, they had a dance together, right?

A Yes

Q The -- going back to June 1st of 2011, the first call you had with Maureen McDonnell about Star Scientific You were asked about -- asked questions about that, correct?

A Yes

Q And am I correct that it was very clear to you -- well, first of all, Bob McDonnell wasn't on that call, right?

A He was not

Q And as far as you know, he had no idea that call was made, right?

A Not to my knowledge

Q And you never talked to him about it, right?

A No

Q In fact, I think you testified that given the rules, it would be illegal for you to talk to one spouse about another spouse's stock transactions unless they both agreed?

A That's correct

Q Okay But regardless, it was clear to you that this was very much Maureen's thing, right?

A She made it clear that the account was to be in her name only So --

Q And you knew that she had a long history of interest in nutraceuticals, right?

A Oh, yes From way back

Q And this kind of fit right in, didn't it?

A It did

Q In fact, I think you made a comment that -- earlier, it might be the grand jury, that she showed kind of the same excitement that she had for other nutraceutical products; is that correct?

A Oh, she did Yes

Q And she was -- you made another comment that she had drunk the Kool-Aid, right?

A So to speak, yes

Q Okay And she said something to you that the product was going to revolutionize the world, right?

A Maybe not in those exact words But that was kind of the gist I think she was excited by the potential of the products

Q So this was very much her thing, right?

A Yes

Q It was not Bob's thing, right?

MR DRY: Objection, Your Honor

THE COURT: He's already told us --

MR SMALL: Okay

THE COURT: -- once We don't need to know about --

MR. SMALL: Thank you, Your Honor

BY MR SMALL:

Q The -- you testified that over the phone she gave you some rough financial information, right?

A That's my recollection

Q And she said something about, "Well, I've got to check with Bob to get other information"?

A That's right

Q You have no knowledge whether or not she, in fact, did that, right?

A I do not.

Q But she said she gave you -- at some point, she gave you that Post-it --

A Yes

Q -- that you showed us?

A Yes

Q And you have no knowledge -- the Post-it is in her writing, right?

A I believe it is

Q You have no knowledge where that information came from?

A No

Q In fact, fair to say that the Post-it actually doesn't make much sense, does it, sir?

MR SMALL: Can we call up Exhibit 634, please?

A I don't understand what you mean by that

BY MR SMALL:

Q What?

A I don't understand what you mean by "it doesn't make sense "

Q What does the last line on this mean?

A Oh. Net minus real estate

Q Do you have any idea what that means?

A That would normally imply to me that that's liquid net worth, which is your net worth minus real estate, which is typically illiquid

However, there are other illiquid assets Art, for instance, collectibles That kind of thing

Q Do you have any knowledge that the McDonnells were art collectors?

A No, I don't

Q So is it fair to say that that doesn't make much sense in this context?

MR DRY: Objection, Your Honor

THE COURT: I think he answered the question It makes sense to him It, obviously, doesn't make sense to you Let's ask another question

MR SMALL: Okay

BY MR SMALL:

Q Now, on August 2nd, there was another smaller purchase, right?

A Yes

Q And you testified that that was to round up shares to divvy up among the children; is that right?

A I thought -- I thought, at the time, it might have been the reason But in reflection of that, I don't know that that was the case. It may have just been she had a couple extra thousand dollars to invest

Q Well, didn't you testify to the grand jury -- I know we've heard a lot about the grand jury

A Uh-huh

Q But didn't you testify that that's, in fact --

MR DRY: Objection, Your Honor I'd like to know where we're at in the grand jury.

MR SMALL: Certainly Page 18, line 21

BY MR SMALL:

Q Didn't you testify that "I believe she wanted to round up the amount of dollars that were in this investment and the reasoning All I can remember is that she was trying to divvy up some of the money among her children and was trying to make it as even as possible "

A As I was reflecting at the time, that was what came to mind

Q Okay And you went on to say, "That's the only reason I can remember why she did this"?

A Yes

Q Okay And, again, in August when she bought this extra -- was it 522 shares, Bob McDonnell wasn't involved in that transaction, was he?

A No, he was not

Q And you have no reason to believe he was aware of it?

MR DRY: Objection

THE COURT: Sustained

BY MR SMALL:

Q You didn't talk to him about it?

A I did not talk to him about it

Q You talked about the letter on September 9th that you wrote to Ms McDonnell, correct?

A Yes

Q You didn't write that to Bob McDonnell, right?

A No

Q You never talked to Bob McDonnell about that letter?

A No

Q Did she mention at all -- you talked about reporting You said you didn't know much about the state reporting requirements, correct?

A I still don't, really

Q You're a lucky man Did she mention at all whether the state reporting requirements would require her to disclose these transactions to her husband, to Bob?

A No She didn't go into any detail about the explanation of why And, frankly, I wasn't concerned with why Just executing what she was asking me to do

Q So you don't know whether or not she was trying to hide these transactions from Mr McDonnell?

MR DRY: Objection, Your Honor

THE COURT: Sustained

BY MR. SMALL:

Q The next transaction on December 19th, you had a call, you said, with Ms McDonnell, correct?

A Yes

Q Again, same question Bob McDonnell wasn't on that call, was he?

A He was not

Q You never talked to him about it?

A I did not

Q Ms McDonnell never said that she had talked to him about it?

A She did not tell me that, no

Q And then there was this -- you repurchased -- or you purchased other stock in January, right?

A Yes

Q Bob McDonnell wasn't involved in that, right?

A He was not

Q A month or so later, there was this phone call about margin loans, right?

A Yes

Q Nothing wrong with margins, right? Nothing illegal about margin loans?

A No Not -- no

Q And you testified that you -- you all do them fairly often, right?

A We are able to accommodate someone who wants to borrow money against securities that are held with us

Q And you testified that Bob McDonnell thanked you, in some fashion, for helping Maureen in some way in the past, right?

A Yes

Q But it's true, isn't it, that Bob McDonnell never mentioned that he knew that she owned Star Scientific stock? Correct?

A That's correct

Q It's also true that he never mentioned that she had been transacting that stock with you, correct?

A That's correct

Q It was just a general thank you?

A He knew I had a brokerage account for her He knew I was doing some business with her, but no details were ever discussed

Q Okay And certainly no details as to Star Scientific, correct?

A Correct

Q And -- so you had this call about a margin, and then nothing came of it, right?

A That's correct

Q In fact, am I correct that the next call -- phone call of any length you had with Bob McDonnell wasn't until December 19th of 2012?

A I'm not exactly sure, but that --

Q Do you recall having -- you and your wife having a lengthy call --

A Oh

Q I'm sorry I interrupted you

A I do recall the date now

Q Okay And what was discussed about Star Scientific in that call?

A Nothing

Q What was discussed about any stock in that call?

A Nothing That -- that was -- that was a call where Bob had called the house My wife, the day before, had had a mastectomy, had surgery And he had found out about it and called for support

I answered the phone and maybe might have talked for a minute, and then handed it to my wife, who basically spoke to him for the remainder of the call

Q Well, that call was 21 minutes long How long did he talk to your wife?

A About -- approximately 20 of those minutes

MR DRY: Objection

THE COURT: Sustained

MR SMALL: One moment, Your Honor

Thank you, Mr Piscitelli Nothing further

THE COURT: Mr Burck

MR BURCK: Thank you, Your Honor

CROSS-EXAMINATION

BY MR BURCK:

Q Good afternoon, Mr Piscitelli

A Good afternoon

Q I'm Bill Burck, and I represent Maureen McDonnell

Now, I know that Mr Small, he mentioned that he had met with you before?

A Yes

Q Have you and I ever met?

A We never have

Q Ever spoken?

A Never spoken

Q I just have a few questions for you

A Yes

Q From the very beginning -- I think you testified that from the very beginning, in June of 2011 when Maureen McDonnell contacted you about buying the Star Scientific stock, that she was always telling you she wanted to gift it to the children; is that right?

A That was my understanding Yes

Q And that was from June 2011 right through to December 2012?

A Yes

Q And the September 9th letter That's grand jury exhibit -- excuse me, Government Exhibit 240

MR BURCK: Can you please pull that up?

BY MR BURCK:

Q I just want to talk briefly about the conversations you had with Ms McDonnell leading up to this letter?

A Uh-huh

Q Fair to say that she's not a sophisticated stock purchaser or investor?

A I'd say that's fair

Q And she had -- had you ever actually purchased stock for her before?

A No Never before this

Q Did you have a sense, when you were speaking to her, that she knew what she was doing?

A No And that's one of the reasons I wrote the letter, because I knew she really didn't understand how this worked, and I was trying to help her accomplish what I thought she wanted to accomplish

Q In the conversations you had with her leading up to this letter, is it fair to say that a lot of what she said didn't make much sense to you?

A I wouldn't say a lot of what she said didn't make sense Maybe some of it just because she -- of her lack of understanding

Q Okay And would it be fair to say that she asked you a lot of different questions, and that's one of the reasons why you had to write this letter?

A Yes It was -- it was -- it was really too much for one to understand over the phone And I would say if they were even sophisticated, I would have preferred to write a letter like this to explain all the details of what we're trying to accomplish

Q And I recognize this letter says --

MR BURCK: And if you scroll to the bottom of it, please There's a paragraph, the last paragraph on that page

BY MR BURCK:

Q It says, "I don't have the answer about how to avoid shares remaining in your name without transferring them to another entity "

A Uh-huh

Q "You had mentioned the use of a blind trust "

Do you recall -- this letter doesn't say anything about reporting requirements, does it?

A No, it does not

Q And it does not use those words at all?

A No, it does not

Q Did Ms McDonnell mention to you, in December of 2011, when she sold the stock, that she had a training class on December 19th at the Mansion about SOEI requirements?

A I don't recall that

Q Now, you mentioned and you testified about the fact that you didn't think this was a good stock, right?

A Yes One that has no earnings you would have to consider more speculative and more of a gamble than an investment

Q Right You thought it was an inappropriate stock for her?

A I wouldn't use the word "inappropriate " But I did warn her that it was speculative And I'm careful not to talk someone out of a stock

Q Right

A Because one out of a hundred may work And I don't want to be the one that forever is known to not let them buy their winning lottery ticket So all I can do is warn them against the risk of it

Q Okay And you sent her an article? I think you testified to that article on that?

A Yes

Q And the article wasn't introduced into evidence, but the article appeared, based on the document, to suggest it was a risky investment?

A Right It was a negative article about the company

Q Okay And that was in early 2012, right, that you sent that article?

A Yes I believe so

MR BURCK: And could you please put up Government Exhibit 452 And please turn to the -- it's Page 4 of 5 on that exhibit Page 4 of 5 It would be two more pages down Thanks

And then can you blow up the part of the page that says 1,672, Star Scientific? Actually, I'm sorry. It's further up Perfect

BY MR BURCK:

Q And that's the number of shares that Ms McDonnell had as of January 31st, 2013; is that right?

A That's correct

MR BURCK: You can take that down, please

I'd ask you to show just the witness RM-2047 And can you please turn to Page 6 Actually, it's Page 4 of 4 It's the very last page of the document Blow that up And, actually, if you can -- actually, the whole page would be fine Thanks

BY MR BURCK:

Q If you look at this document, do you recognize this as a Davenport statement to Ms McDonnell?

A Yes, I do

MR BURCK: Your Honor, we'd offer RM-2047

MR DRY: No objection

THE COURT: It will be admitted

MR BURCK: Could you blow up the --

BY MR BURCK:

Q This is dated January 1st, 2014, through March 31st, 2014, this statement? Mr Piscitelli, the date is right up there

A Yes January 1st, 2014, through March 31st, 2014

Q So this is her statement from earlier this year?

A Yes That's correct

Q And can you tell us how much stock she owned as of early this year?

A In shares, 1,672

Q That's the same that she had when she transferred -- after she had transferred the stock to her children?

A That's correct

MR BURCK: And just one more document Can you take that down, please RM-2046, just for the witness to identify

BY MR BURCK:

Q And, sir --

MR BURCK: Are you going to Page 5 or Page 6? Okay Perfect

BY MR BURCK:

Q Do you see that document? This is also a statement from Davenport of Maureen McDonnell's?

A Yes

MR BURCK: Your Honor, we'd offer RM-2046

MR. DRY: No objection

THE COURT: It will be admitted

MR BURCK: Can you blow up the date, first, please, at the top of the page for Mr Piscitelli

BY MR BURCK:

Q And that is dated April 1st to June 30th of this year?

A That's correct

Q So about a month and change ago?

A Yes That's correct

Q Can you tell us how much stock she owned as of that date?

A The same quantity of shares, 1,672 shares

Q So is it your understanding she had not sold the shares or done anything with the shares since January of 2013?

MR BURCK: That's it, Your Honor Thank you

THE COURT: Redirect?

MR DRY: Very briefly, Your Honor

REDIRECT EXAMINATION

BY MR DRY:

Q Mr Piscitelli, do you remember being interviewed by law enforcement I believe on June 21st, 2013?

A Yes, I do

Q And do you remember talking about whether Ms McDonnell was a sophisticated investor or not?

A Yes, I do

Q And do you remember telling law enforcement that Ms McDonnell might not have been a sophisticated investor, but you thought she was a smart woman?

A I believe that was the case Yes

Q Sir, I think it was Mr Small asked you about the sticky note And we don't need to bring that back up But as you sit here today, your June 1st conversation with Ms McDonnell opening the account, did she have that information on the sticky note when you asked her for that information in that first call?

A No

Q And she told you she was going to get that from who?

A From Bob

Q Sir, when you mailed that September 9th, 2011, letter to Ms McDonnell, did you mail it to her address that was with Mr and Ms McDonnell, their home address?

A That was the address we had on record So yes

Q And in your mind, as you sit there today, is there any ambiguity or confusion on your part that Ms McDonnell wanted the shares of Star Scientific out of her name by year-end 2011 and 2012?

A I believe that was the case

MR DRY: Nothing further

THE COURT: All right Thank you, sir You may stand down

THE WITNESS: Thank you

THE COURT: We'll stop there

(Witness stood aside)

THE COURT: All right Ladies and gentlemen, we made it through another week I don't know about you, but I'm really thanking God it's Friday Friday is here I want you all to abide by my earlier admonition Please don't discuss the case with anyone, and please don't review any media items relating to this case

We certainly want you to have a wonderful weekend, put this behind you for a few days and then get back in here on Monday I have a short matter on Monday morning, and let's make it 9:45 We'll get started at 9:45 You all be careful and have a great weekend

(The jury left the courtroom)

THE COURT: We'll be in adjournment until 9:00 generally, 9:45 in this matter

(The trial adjourned at 5:02 p m)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

August 11, 2014
Richmond, Virginia
9:45 a.m.

JURY TRIAL - VOLUME XI

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ
DAVID V HARBACH, II, ESQ
JESSICA D. ABER, ESQ
RYAN S. FAULCONER, ESQ.
Counsel for Government;

JOHN L. BROWNLEE, ESQ
HENRY W ASBILL, ESQ
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Counsel for Robert F McDonnell;

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DANIEL KOFFMANN, ESQ.
Counsel for Maureen G McDonnell

JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day eleven, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Daniel Small, Henry Asbill, James Burnham, and Christopher Iaquinto. Maureen G. McDonnell is represented by Heather Martin, William Burck, Stephen Hauss, and Daniel Koffmann. Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed.

MR ASBILL: Mr McDonnell is ready to proceed.

MR. BURCK: Ms McDonnell is ready to proceed

THE COURT: All right Let's bring in the jury

(The jury entered the courtroom.)

Good morning All right, government, call your next witness, please.

MR FAULCONER: Your Honor, the United States calls Martin Kent

MARTIN KENT,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FAULCONER:

Q Good morning

A Good morning

Q Could you please state your name and spell your last for the court reporter?

A Martin Kent, K-E-N-T

Q What city do you currently live in?

A Bristol, Tennessee

Q Could you briefly tell the jury a little bit about your educational background, Mr Kent?

A I can. I graduated from the University of Richmond and I attended law school at the Mercer University School of Law in Macon, Georgia

Q Where are you currently employed?

A At The United Company

Q What is The United Company?

A It is a private diversified investment company primarily focused on art, entertainment, and energy

Q Before working at the United Company, where did you work? I worked for Governor Bob McDonnell as his Chief of Staff

Q How long did you work as Mr McDonnell's Chief of Staff?

A Four years

Q Was that the entire Administration?

A It was

Q Now, before Mr McDonnell took office as Governor, where did you work?

A I worked at the Office of the Attorney General, and started working there in 2001

Q By the time that Mr McDonnell left the Office of the Attorney General, what was your role?

A When he left the Office of Attorney General in 2009 to run for Governor, I was then serving as Chief Counsel to the Attorney General

Q As Chief Counsel to him while he was Attorney General, what were your general responsibilities?

A Primarily dealing with the General Assembly, dealing with the Governor's Office, I was a directly liaison to the Governor's Office, and then representation of state boards and commissions

Q Now, as Chief of Staff for Mr McDonnell when he was Governor, what were your responsibilities then?

A They are actually spelled out by an executive order, Executive Order 3 Primarily, I was the Deputy Budget and Personnel Officer for the Commonwealth, and I was responsible for overseeing sort of the daily work of the Governor's Cabinet

Q Would it be fair to characterize you as sort of the catch-all guy?

A Pretty much, yeah.

Q As Chief of Staff, who did you report to?

A The Governor

Q Given that you reported to him directly, how often would you say you spoke to him?

A There were days we spoke multiple times, and then when he was traveling there were days that we may communicate by text message or e-mail, but at least daily in some communication mode

Q If Mr McDonnell told you to do something when he was Governor, would you do it?

A Absolutely

Q So was he your boss?

A He was my boss, yup

Q I'd like to get a little bit of a sense, we have heard some testimony about it, but since you were Chief of Staff, I'd like to get a sense of who else was in the office and how things were structured. Can you explain how many Cabinet Secretaries there were?

A There were 12 official, and when I say official, the Governor by executive order also made some appointments that were Cabinet-level positions, but there were 12 primary Cabinet positions when we started in office

Q All those Cabinet Secretaries, did they have subordinate staff of their own?

A They did.

Q Do you recognize the name Dr Bill Hazel?

A I do

Q Which Cabinet Secretary was he?

A Health and Human Resources

Q Do you recognize the name Molly Huffstetler?

A I do.

Q Who was Molly Huffstetler?

A She worked for Dr Hazel We had, early on, actually it predated the Administration, but the Affordable Care Act was passed into law and we developed an initiative called the Health Reform Initiative, which really the design of that was sort of to oversee Virginia's implementation of the Affordable Care Act And she was in essence the director of that initiative

Q Do you recognize the name Lisa Hicks-Thomas?

A I do

Q Who was Lisa Hicks-Thomas?

A The Secretary of Administration.

Q How about the name Sara Wilson?

A I do

Q Who was Sara Wilson?

A She was the Director of Human Resource Management

Q Who did Sara Wilson report to?

A To Lisa

Q Ms Hicks-Thomas?

A Lisa Hicks-Thomas I apologize

Q Who did she report to?

A She reported through me to the Governor

Q Each of these people -- sorry, you have talked a little bit about Cabinet Secretaries Could you tell us the difference between the Cabinet Secretaries and what sort of is referred to as the Office of the Governor itself?

A Sure Probably it is easiest to give you sort of a visual of the way the office is structured at the Patrick Henry Building In what we called the pod, which was the area directly where the Governor's Office was and my office was, and then immediately on each side of that were staff members They could be anything from our communications shop to our policy and legal shop, scheduling, anything legislatively-related. Those were staff members that were sort of contained within the unit called the Governor's Office But the Governor's Office is actually made up of not only those staff members, but the secretariats which are around the building, so to speak, at the Patrick Henry Building

Q Now, how did the Mansion staff relate to the Governor's Office?

A The Mansion staff also reported to the Governor's Office ultimately But they were sort of self-contained at the Mansion They had offices at the Mansion They did not have offices at our office at the Patrick Henry Building

Q The staff that were at the Mansion, were those state employees?

A They were

Q Would that include Mary-Shea Sutherland and Sarah Scarbrough?

A It did

Q All of those people, including those at the Mansion, who did they ultimately report to?

A Ultimately reported to the Governor

Q Now, in your job, was it also common for some of those staffers to relay information to you from either Mr McDonnell or Ms McDonnell?

A That did happen, yes

Q I'd like to talk a little bit now about sort of what happened on a routine basis within the office and some of the Administration's priorities Based on your interactions with Mr McDonnell as his Chief of Staff, and the things that he asked you to do, can you tell us where on the Administration's list of priorities the matter of Virginia business and economic development was?

A It was at the top of the list. I would say it was probably only second to public safety

Q During your time in the Administration, how common was it for Mr McDonnell to talk about promoting Virginia business and economic development?

A Did it on a daily basis

Q How common was it for your day-to-day work to relate to furthering those issues?

A I did so on a daily basis as well

Q I'd like to take a couple examples about sort of breaking down how that would work. How common was it for the Governor's Mansion to host events to promote Virginia business and economic development?

A It was very common I think staff, long time staff members at the Mansion had commented to me that we probably had more events at the Mansion than any other administration they could recall

Q How common was it for you or other government employees to participate in planning those events?

A It was common.

Q Would that include people like Sarah Scarbrough?

A It would. Actually, her primary job, or one of her primary jobs as Mansion Director, was to coordinate that to send out invitations, to ensure that the bills were paid. That was one of her main functions, yes

Q When those people had planned those events, as Chief of Staff, did you expect them to take time off or was it official time when they did that?

A That was part of their job

Q How common was it for Mr McDonnell to attend those types of events?

A Very common

Q Was part of your job to try to figure out which event you should or shouldn't host or which events Mr McDonnell should or shouldn't attend?

A At the Mansion, I would not say that was my primary job We had, it was a little complicated, but to simplify it, we had a scheduling process where events, invitations to events outside of really Richmond, but more specifically, outside of the Governor's Office, or the Mansion, we had a scheduling process where we would review those, if we got them in advance, and make a threshold determination of whether it was something that seemed to be gubernatorial in nature or something more appropriate for a Cabinet member or staff member to attend on the Governor's behalf But then on occasion there were events at the Mansion where I may or may not be pulled in, but on a day-to-day basis I was not pulled into the decision-making process on the events at the Mansion That was primarily the Mansion staff that dealt with that

Q Was there a process in place to your awareness as Chief of Staff for deciding which events to have and not to have?

A Yes, there was

Q How common was it for other government officials to attend events at the Mansion and elsewhere?

A Very common

Q How common was it for Virginia businesspeople to attend those events?

A Very common.

Q How common was it for Ms McDonnell to attend those events?

A She attended regularly She did not attend all If she was in town and the Governor felt like it was important for her to be there, she usually made an appearance

Q Were there times where Mr McDonnell couldn't attend an event and a surrogate would be sent instead?

A There were

Q Now, with all this process and all these events potentially on the table, who was it who had the final authority to decide whether or not an event would make it onto the calendar or not make it onto the calendar?

A Ultimately it was the Governor's call

Q We have talked a little bit about events I'd like to talk just a little bit about meetings How common was it for Mr McDonnell to have meetings on his schedule?

A Very common.

Q Was it part of your job to help figure out which meetings he should and shouldn't attend?

A There were meetings that were, yes, filtered through me and that was part of my job But there was also sort of a separate track where we are all extremely busy in the office I mean, everyone in the office is really going 24/7 There would be calls that would come in to the Governor's scheduler, and there would be meetings between the Governor and the scheduler with certain events and then there were some that I was pulled into as well It was really sort of hit or miss depending on the issue at hand.

Q How common was it for those meetings to relate to promoting Virginia business and economic development?

A Very common.

Q How common was it for other Administration officials like Cabinet Secretaries to attend meetings?

A Scheduling meetings or --

Q Just meetings in general

A Very common

Q At times, would those Cabinet Secretaries or other Administration officials attend meetings instead of Mr McDonnell?

A Yes, routinely

Q Now, would one of the types of meetings that Mr McDonnell would have on his schedule be Cabinet meetings with his Cabinet Secretaries?

A And that was one of the things that I was responsible for We attempted to do that on a weekly basis

Q Would those include at times people like Lisa Hicks-Thomas and Sara Wilson?

A It did

Q Now, when Mr McDonnell was in meetings like that, was it common for him to ask his Cabinet officials to do things?

A It was

Q Would that include asking them to look into something?

A Absolutely

Q Would that include asking them to meet with people?

A It did.

Q Just to be clear, we have talked about meetings a little bit Assuming it had nothing to do with an emergency, like some sort of public safety issue, but they were talking about a meeting with an outside third party, would you typically try to give Administration officials some notice so they could prepare for that meeting?

A You tried to I would say more oftentimes than not you did But inevitably, there were times when people would call in and, just by the caller, you knew it was probably an issue of statewide importance and you would take those sometimes on the fly

Q How common was it on the spectrum for a meeting to be arranged on less than 12 hours' notice?

A Not common, but it happened.

Q We talked about meetings and events, so now I'd like to talk a little bit about interactions with other state government entities and agencies In addition to hiring staff and appointing Cabinet officials, did Mr McDonnell also have a role in appointing members of various state boards and commissions?

A He did.

Q Did that include the Board of Visitors for Virginia Commonwealth University?

A It did.

Q Could you tell us just sort of generally what the Board of Visitors is in more common language?

A Sure Each state university in Virginia, there is a code section which spells out what the role of the Board of Visitors would be, but generally speaking, they set sort of the policy goals and initiatives for the university One of the biggest things they do that gets the most attention is they vote on any tuition increases which occur at the university They are designed to set sort of the broad policy objectives of the university, and the President of the university is then to carry out those goals

Q For Virginia Commonwealth University, did that Board of Visitors include 16 members?

A I believe that's correct. It was certainly more than 12

Q Were all of them appointed by the Governor?

A To my knowledge, they were, yes.

Q How about the University of Virginia? Was it the same process for UVA?

A Generally speaking, yes

Q Did that Board of Visitors have about 17 people on it?

A That sounds right, yes

Q Did all of those, or were all of those individuals appointed by Mr McDonnell?

A To my knowledge, yes, they were

Q Or whoever was Governor at the time

A Correct

Q Just to be up front with the jury, just because the Governor appoints members to the Board of Visitors, does that mean he controls every last thing that happens at the university?

A No, and particularly in the case of the University of

Virginia, the Board members sort of jealously guard their role, and so there is no day-to-day communication with them about what they should and shouldn't do However, we did hold periodic meetings, particularly when new members were appointed, and give them sort of the things that the Governor had ran on, the initiatives he promised, an example being lower tuition. You know, Virginians spoke loud and clear that they wanted lower tuition at state schools, and that was an issue we did discuss with them. But generally speaking, we didn't control their day-to-day activities, no

Q Regardless of that, if the Governor wants to ask the Board of Visitors to resign, can he do so?

A He can ask them to resign. There is some limitation in the State Code as to whether he can force them to resign, but he can certainly always ask them to resign, yes

Q I'd like to show you what's been marked for identification as Exhibit 619 Mr Kent, is this a letter from Mr McDonnell to the Board of Visitors of the University of Virginia?

A It does appear to be, yes

Q Is it dated June 22nd, 2012?

A It is

Q Does this relate to a controversy surrounding the resignation of the UVA President?

A Yes, it does appear to

Q Turning just to the last page of this document, is that Mr McDonnell's signature at the bottom?

A It is

MR. FAULCONER: We would offer Exhibit 619 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q Now, Mr Kent, if we could turn back to the first page briefly Do you recall actually being involved in the preparation of this letter?

A I do. You know, it wasn't something -- we had a Secretary of Education and our Secretary of the Commonwealth that really dealt day in and day out with board members and education issues But this was an issue that got so much attention that I was part of this, yes

Q If we could turn to the third page Could you read just the third-to-last paragraph there that starts with "But let me be absolutely clear "

A It says, "But let me be absolutely clear; I want final action by the Board on Tuesday If you fail to do so, I will ask for the resignation of the entire Board on Wednesday Regardless of your decision, I expect you to make a clear, detailed, and unified statement on the future leadership of the University "

Q We can take that down We have talked about VCU and UVA.

A We did

Q Does the Governor, whoever it is at the time, also appoint individuals who sit on something called the Tobacco Commission?

A He does That is a bifurcated board that's appointed in part by the Governor and in part by the legislature

Q Does it have approximately 31 members?

A There are over 30 But yeah, that sounds correct.

Q Is it accurate that Mr McDonnell either appoints or one of his Cabinet secretaries appoints around 20 or so of those?

A That sounds about right, yes

Q The Tobacco Commission, I know that's sort of the shorthand for it, is it actually called the Virginia Tobacco Indemnification and Community Revitalization Commission?

A It is We referred to it, the acronym is TICR

Q T-I-C-R?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 93 Is this an e-mail from an individual named Gerard Robinson to you, Tucker Martin, and an individual named Kim Steinhoff?

A It is

Q Is it dated April 5th, 2011?

A It is

Q Who is Gerard Robinson?

A Gerard Robinson at the time was Secretary of Education

Q Who was Kim Steinhoff?

A Kim was my executive assistant

MR FAULCONER: We would offer Exhibit 93 into evidence

THE COURT: 93?

MR FAULCONER: Yes, 93

THE COURT: All right It will be admitted.

BY MR FAULCONER:

Q Now, Mr Kent, could you explain just in general terms what this e-mail is asking for from Gerard Robinson to you?

A It appears that Gerard was asking whether or not the Governor was interested in writing a letter of support to the Tobacco Commission for an application for the Virginia Early Childhood Foundation

Q If we could turn to the second page of the attachment Is that actually a draft letter that was sent over to you?

A It appears to be, yes

Q We can take that down Now, Mr Kent, in your experience, when interacting with state agencies, your experience as Chief of Staff, if Mr McDonnell encouraged somebody else in state government to do something, would it typically help or hurt the process?

A I would say it helped the process Definitely helped the process

Q All right Now, before we get to Mr Williams and Star Scientific, I just have a couple questions about some things that came up before that Now, before Mr Williams or Star Scientific entered the picture, can you tell us whether you ever saw a company associated with Ms McDonnell try to use Mr McDonnell's image to promote a product?

A Yes We had a situation, it was either just before or just after the Governor had left the Attorney General's Office to run for Governor, where a company, my recollection is a company tried to use his likeness to promote their product, and it came to mine and Jasen Eige's attention. Jasen was also at the Attorney General's Office at the time It came to our attention through our Consumer Affairs Division at the Office of the Attorney General

Q After that came to your attention, did you speak to

Mr McDonnell about it?

A We did.

Q Could you tell us how that conversation went?

A I believe the Governor had just left to run I think I'm right on that And we brought it to his attention and asked if he had ever authorized that And my recollection is he said he had not And we asked what he wanted us to do about it He said to handle it as we would in the normal course, which would mean that the Attorney General's Office, if it was fraudulent or done without the other person's authorization, then we could take certain action on their behalf And so Jasen and myself, we reached out to the company and said, "You have used a likeness of the Attorney General," at that time, former Attorney General, "and it was unauthorized. And if you fail to take that down, then we will pursue legal action to do so "

Q Now, earlier you said that you worked for Mr McDonnell, and I think you were sort of just alluding to it, not only when he was Governor but also when he was Attorney General, right?

A I did. That's correct

Q Before Mr McDonnell ran for Governor, did you know who Jonnie Williams was?

A I do not recall ever hearing the name Jonnie Williams when he was Attorney General But candidly, I was not involved in the political operation of the Attorney General's Office I had been at the Attorney General's Office since 2001, so I started out as a career Assistant Attorney General and worked my way up through the office But no, I had not heard that name before

Q Before Mr McDonnell ran for Governor, did you know anything about Star Scientific?

A No, I did not

Q Before he ran for Governor, did you know anything about Anatabloc?

A I did not

Q Before the investigation into Mr McDonnell's relationship to Mr Williams sort of broke in the media, had you ever heard Mr McDonnell refer to Mr Williams as a longtime friend?

A No We had never discussed it

Q And in fact, before sometime in 2011, do you actually have any specific recollection of meeting Mr Williams in person?

A I did not I have only met Mr Williams one time

Q All right Let's focus in on late July of 2011 I'd like to show you what's been already admitted into evidence as Exhibit 180 Now, do you recognize what type of e-mail this is? From Katherine Harris, attaching RFM schedule

A It appears to be part of the Governor's daily schedule.

Q Was it common for Ms Harris to send these out to everybody on the staff?

A She sent them out She actually had two schedules She had one schedule that was more detailed that went out to sort of the senior leadership in the office, and a less detailed version that went out to others in the office

Q I'd like to turn to the sixth page of this document All right, do you see there at 11:30 p.m., sort of at the end of that day's schedule, where it says, "Home of Jonnie Williams"?

A I do

Q Do you recall Mr McDonnell and his family vacationing at Mr Williams' home at Smith Mountain Lake in this time frame of late July, 2011?

A I do

Q We can take that down Leave it up for a second, sorry At the time of this trip, were you aware that Mr Williams had gone on a shopping trip with Ms McDonnell in New York City in April of 2011?

A I was not

Q At the time of this trip in late July, were you aware of any loan from Mr Williams to Mr or Ms McDonnell in

May of 2011?

A I was not

Q At the time of this trip, were you aware that Mr Williams had paid more than $2,300 for Mr. McDonnell and his sons to play golf at Kinloch Golf Club in May of 2011?

A I was not

Q I'd like to turn to Page 10 of this document There at the bottom where it says, "Depart for Executive Mansion," what time does it say on this schedule that Mr McDonnell was scheduled to leave Smith Mountain Lake for the Executive Mansion?

A It appears to be 7:00 to 7:30 p.m.

Q We can take that down. Now, before the McDonnells went on this trip, did you know anything about Mr McDonnell potentially driving Mr Williams' Ferrari on that trip?

A I did

Q Sorry?

A I'm sorry, before or after?

Q Before

A Before, no. Sorry, I did not

Q Can you tell us whether, I think we have heard some about it, Mr McDonnell would usually drive himself around?

A No, the protocol once you become Governor is that the Executive Protection Unit will transport the Governor and the spouse wherever they need to go during their term as Governor

Q Now, after they got back from the trip to Smith Mountain Lake, did you learn about Mr McDonnell driving Mr Williams' Ferrari?

A I did.

Q Can you tell us a little bit about how you learned about that?

A It was probably a week or so, the following week after he had returned, and the Executive Protection Unit's office, I mentioned previously, sort of the layout of the office, the Governor's Office and my office, my assistant, his assistant, are in what is referred to as the pod It is sort of a self-contained unit that's within the Patrick Henry Building Immediately outside of that pod, that door to the pod, is the Executive Protection Unit's office. And there was someone, I'm sure I passed him going in and out of the hallway, and someone from the Executive Protection Unit, I believe, brought to my attention what had happened. And it had had an effect on some of the members of the Unit

Q What do you mean by that?

A I think it had hurt morale You know, their primary job is to protect And I think from their perspective, they couldn't protect him if he is driving a vehicle and they are behind him in their own vehicle

Q After the Executive Protection Unit, somebody in the Unit, talked to you about this, did you talk to Mr McDonnell about it?

A I did

Q What did you say?

A I went into his office and told him that I understood that he had driven a sports car, I'm not sure at the time I knew it was a Ferrari, but that he had driven a sports car And I reminded the Governor what the job was or the duty of the Executive Protection Unit, and I told him that it had had an impact on the morale of some members of the Unit, which was very important, and I asked him not to do it again

Q Do you recall what if anything he said or did in response?

A He didn't say a lot I don't recall there was any specific -- he just sort of listened.

Q Do you recall any sort of physical reaction or facial reaction from him?

A Yeah, I think he might have smiled when I asked about the sports car But, you know, there wasn't a lot of communication He heard me He listened to what I said and didn't really push back in any way

Q All right I'd like to hand up, with the assistance of the Court Security Officer, what's been marked for identification as Exhibit 183 This is a 21-page document, Exhibit 183 Have you had a chance to review this before coming in to testify here today?

A I have

Q And are each of those 21 pages a photograph?

A They appear to be, yes

Q Do you recognize what individual is in each one of those photographs?

A It appears to be Governor McDonnell

MR. FAULCONER: We would offer Exhibit 183 into evidence

THE COURT: It will be admitted.

MR. FAULCONER: Your Honor, if we could just have, with the assistance of Mr Starnes, just flip through each page briefly so the jury can see it?

THE COURT: All right

(Documents displayed to jury)

BY MR. FAULCONER:

Q All right, we can take that down Now, earlier we looked at a schedule that said that they left Smith Mountain Lake at 7 p.m., or at least were scheduled to

A Correct

Q I'd like to show you what's already been entered as Exhibit 189 Zooming in on the bottom e-mail, or on both e-mails here, do you see the bottom e-mail dated July 31st, 2011 at 11:29 p.m.?

A I do.

Q Mr Kent, were you copied on either of these e-mails that were sent between Dr Hazel and Mr McDonnell?

A I was not

Q At the time of this e-mail, did you know about this meeting that Mr McDonnell was contacting Dr Hazel about?

A I did not

Q We can take that down I'd like to move forward two weeks to August 16th of 2011 I'd like to show you what's been marked for identification as Exhibit 635

MR. ASBILL: I object to this unless it is redacted Same problem we had before

MR FAULCONER: Could I lay a couple of foundation questions and then we can approach to discuss it?

THE COURT: We will deal with the redaction before it is published to anybody Go ahead

BY MR FAULCONER:

Q Mr Kent, is this a document with your handwriting on it?

A It does appear to be my handwriting, yes

Q Is it a printout of an e-mail dated August 16th, 2011?

A It does appear to be, yes.

Q After you wrote what you wrote in your handwriting on this e-mail, can you tell the members of the jury what you believe you did with this document?

A Typically, what I would do when there was handwriting on a document for the Governor's attention, as I mentioned previously, my office was adjoining his in what we referred to as the pod I would usually take whatever it was that I had written on and place it on his desk in his office

Q Do you believe that you either did that or handed it to him personally with this document?

A I can't remember with absolute certainty that I did that, but that was certainly normally what I would do, yes

MR. FAULCONER: May we approach briefly?

THE COURT: Come on up

(At Bench)

MR FAULCONER: Your Honor, now that we have laid the foundation, he believes he gave this document to the Governor We would ask that it be entered into evidence unredacted

THE COURT: All right

MR. ASBILL: This is the same document we dealt with before that references the Attorney General's opinion and summarizes it at the bottom of the e-mail and attaches the opinion to it

MR. FAULCONER: Your Honor, as we understand it, previously we said although it was obvious from the document that it was intended to be given to the Governor, we didn't previously lay a foundation that it was written on by Mr Kent, and his normal course would be to hand it to the Governor or place it on his desk. We offer it for the fact that it was given to Mr McDonnell but not for the substance

THE COURT: You have established that this is what he would normally have done We haven't established that he did. Which I think is --

MR FAULCONER: Doesn't that go to weight, Your Honor?

THE COURT: I agree with Mr Asbill on this Unless we've got some direct testimony that he has this, I'm not going to enter this into evidence

MR. DRY: One more fact That document was produced by the defendant in the Statement of Economic Interests, the draft So he got it He produced it to us

MR. FAULCONER: It was mixed in with the other pages of the SOEI

MR. ASBILL: We produced what we had That doesn't mean he saw it or read it We produced what was in the Governor's files at their request

MR. FAULCONER: If the question is whether or not he received it, if he produced it, then we know for certainty he received it How closely he read it is a matter of weight

THE COURT: The objection is overruled.

(In Open Court)

MR. FAULCONER: Could we publish this document to the jury?

THE COURT: Go ahead

MR. FAULCONER: I assume this is admitted into evidence now?

THE COURT: It will be admitted.

BY MR FAULCONER:

Q Mr Kent, could you read what you write in your handwriting on this document?

A Dated 8-16-11 "Governor: FYI As you can see, I have asked for written guidance on this and other issues Thanks " Those are my initials

Q Is that MLK?

A MLK, yes

Q Then "P S ," what do you write there?

A "P S , issued by Mary Sue Terry as Attorney General, AG "

Q If we could zoom out on this document The e-mail you actually print out here, what's the subject line of the e-mail?

A It says: "COIA, Personal Friend "

Q Do you recall having had some conversation with Mr McDonnell leading up to this time frame about the definition of a personal friend?

A Vaguely I must have had some conversation, which is why I would have assumed that I would have given this to the Governor, yes

Q If we could scroll down, was there actually a part of this document that you underlined before you took it in to the Governor's Office?

A It appears it is underlined. That could very well have been my underlining

Q Read what's underlined on that document

A It says: "When the circumstances suggest a relationship between the gift and the declarant's public position, even when the relationship is relatively distant, it is my opinion that the gift is required to be disclosed in Schedule E "

Q It says "Schedule E" there Is this referring to the Statement of Economic Interests?

A I believe it is, yes

Q We can take that down I'd like to show you what's been marked for identification as Exhibit 206 Mr Kent, is this an e-mail chain that is essentially a later set of e-mails in this same thread of e-mail conversation?

A It appears to be, yes

Q And is it between you and Jasen Eige?

A It is

MR. FAULCONER: We would offer Exhibit 206 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, first, looking, if we could zoom out a little bit, and looking at Page 1 down at the bottom, do you see there the e-mail, Tuesday, August 16th, 2011 at 10:18 a.m.?

A I do.

Q Could you read to us what you write to Jasen Eige?

A It says: "I talked to the Governor about it yesterday Prompted this follow-up "

Q Then turning to the next page, do you see in the e-mail that preceded that that Mr Eige wrote to you, "This is the standard we have been using, no bright line, but you and I need to discuss the matter we talked to JK about " Did I read that right?

A You did.

Q Based on your review of this e-mail, who do you believe that JK is referring to here?

A I believe that was Jerry Kilgore

Q Now, Jerry Kilgore, did both you and Mr Eige know Mr Kilgore?

A We did. We both worked for him when he was Attorney General

Q Did you interact with him being a lobbyist on a number of different issues?

A We did. I probably did less than Jasen, because that was Jasen Eige's primary role, but sure, we did.

Q During this time frame, that being August of 2011, did you know at some point that month that Mr Kilgore represented Jonnie Williams and Star Scientific?

A I did

Q Did you also interact, to be clear, with Mr Kilgore on some other issues on something related to something involving a bank?

A I did, and it was all in that same time frame

Q Was that Bank of Mellon?

A That's correct

Q Sitting here today, can you specifically recall the conversation that Mr Eige is referring to here?

A I can't. I have struggled to try to recall exactly what that is, and the best I can think of, because there were two separate issues that involved Jerry Kilgore, that we were potentially conflating two issues in the same e-mail That's the best I can come up with

Q Just to be clear, when you would interact with Mr Kilgore or any other lobbyist, was it common to have conversations that would start on one topic and go on to another?

A Particularly with lobbyists, they try to get as many issues as they could so they could bill as many clients as possible

Q Take that down Regardless of the specifics of that e-mail chain, when you wrote those e-mails on August 16th, 2011, were you aware that Mr McDonnell and one of his sons had been out to Kinloch Golf Club again on August 13th and spent more than $800 on Mr Williams' account?

A I was not

Q I'd like to move forward in time a little bit and go to late August of 2011 I'd like to show you what's been entered into evidence as Exhibit 230

MR. FAULCONER: For identification as Exhibit 230, Your Honor

THE COURT: All right

BY MR. FAULCONER:

Q Mr Kent, do you recognize this as a regular daily schedule for Mr McDonnell?

A It appears to be, yes

Q Is it dated August 30th, 2011?

A It is

MR. FAULCONER: We would offer Exhibit 230 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q Before we sort of walk through this document in a little bit of detail, can you tell us whether late August of 2011 was a busy time for you and the Governor's Office?

A I believe it was probably one of the busiest times of the four years we were in office As those I'm sure in the room can recall, within a one-week span, we had an earthquake, a sizeable earthquake in Louisa County; we had a major hurricane, one of the most devastating hurricanes that Virginia has had come up its east coast; and there were fires in the Great Dismal Swamp and the Chesapeake area which were affecting traffic up and down the interstate in Virginia as far west as the Richmond area

Q So in that time frame, could you tell us what the first thing is on Mr McDonnell's schedule at 8:20 a.m. that day?

A Says depart for the helipad

Q Then that interview there, can you tell us what that interview generally would have been?

A There are two radio stations in Virginia, AM radio stations, which have what we call a monthly Ask The Governor It is WRVA in Richmond, and WTOP, which is in Northern Virginia. And typically, once a month, the Governor will do both radio shows But this appears to be an interview with Jimmy Barrett, the host of WRVA, specifically about the hurricane, Hurricane Irene

Q Now, going down past the travel to the next item that looks like reference is WTOP, that radio station you just referenced, in that 9:30 to ten time frame, if we could scroll down just a little bit Then actually at 10 to 11 where it actually has the show itself, could you tell us what it says there under "Note"?

A It says, "Note: Governor O'Malley is scheduled to call into the show regarding Hurricane Irene "

Q Do you recall which state Governor O'Malley is from?

A The Governor of Maryland

Q At the top of the second page of this document, can you tell us what travel is listed there at the top?

A At the very top, "11:30 a.m. to 12:30 p.m., Helo from Northern Virginia to Richmond "

Q Then what is listed from 12:35 to 1:30 p m.?

A From 12:35 to 1:30 p.m., it says, "Lunch with Virginia researchers-Executive Mansion "

Q Do you see there the two little icons? It looks like a Word document and an Excel document?

A I do

Q Can you tell us what significance those have in terms of what those documents would typically be?

A Typically, the scheduler will attach supporting documentation to the Governor's calendar It could be a list of attendees, it could be the request, the original request for the event, and it could also be talking points the Governor may or may not use at that event

Q When they were attached to the schedule, would they ultimately be printed out and given to Mr McDonnell?

A They would, yes

Q Do you recall seeing him carry those documents around at times?

A He had what we referred to as The Notebook, and it was a black binder which contained his daily schedule

Q To be clear, Mr Kent, you said this was a busy time, and we have seen entries about the hurricane Did Mr McDonnell have the authority to remove things from his schedule?

A He did

Q To your knowledge, did he remove this event from 12:35 to 1:30 p.m. from his schedule that day?

A To my knowledge, he did not

Q I'd like to show you what's been marked for identification as Exhibit 231 Do you recognize this as what looks like an Outlook calendar entry for that lunch with Virginia researchers?

A It appears to be

Q Do those icons in this document appear to match the icons we were just looking at?

A I believe so

MR. FAULCONER: We would offer Exhibit 231 into evidence.

THE COURT: It will be admitted.

BY MR FAULCONER:

Q All right, now, if we could zoom out and go to the second page Does that appear to be that Event Briefing Form that you were talking about?

A It appears to be a briefing form, and it looks to be lunch with researchers and doctors, yes

Q Now, the handwriting towards the bottom of that page, if we could just zoom in on that sort of box right there Could you tell us whether you recognize that handwriting?

A That appears to be the Governor's handwriting

Q Could you tell us below the handwriting what name has an asterisk next to it?

A John Clore

Q At that time, did you know who John Clore was?

A I did not

Q If we could turn to the second page Do you recognize the handwriting that's on this page?

A I do

Q And whose is it?

A It appears to be the Governor's

Q Could you walk us through what names have an asterisk or handwriting by them on this page?

A Jasen Eige, Office of the Governor has an asterisk. John Lazo has an asterisk next to it Then there is handwriting next to a name, Diane Roskamp. Then handwriting next to a name that says Bob Roskamp. And then there is handwriting next to the name Mary-Shea Sutherland

Q We can go ahead and take that down. Taking a step back from the schedule and briefing form, did you actually attend this event at the Mansion?

A I did not

Q Do you recall some conversation and e-mail traffic about a press release before the event occurred?

A The night before, yes

Q I'd like to show you what's been marked for identification as Exhibit 223 Is this an e-mail from Tucker Martin to you and other Governor's Office staff members attaching a draft press release?

A It appears to be, yes

Q Is it dated August 29th, 2011?

A It is

MR. FAULCONER: We would offer Exhibit 223 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, in that e-mail at the top, that's from Tucker Martin, right?

A It is.

Q Now, if we could turn to the third page of this document Does that look like the draft press release that you received?

A I believe it is, yes

Q Could you read what it says in the first sentence of the fourth paragraph?

A "The Governor of the Commonwealth of Virginia, Robert McDonnell, and First Lady Maureen McDonnell, are joining with a group of physicians and healthcare providers in the Richmond area today to learn more about the state of the research."

Q Then could you read the sentence there sort of a little ways down that starts with "Jonnie R. Williams"?

A "Jonnie R Williams, Star Scientific CEO, expressed his appreciation for Governor and First Lady McDonnell's interest in the company's work. 'All of us at Star and Rock Creek are very grateful to the Governor and Ms McDonnell for their interest in our research and product development '"

Q Mr McDonnell -- Mr Kent, what was your reaction to this press release when you saw it?

A Well, if I could step back just a second and sort of put it in context I had mentioned that there were literally three natural disasters that were ongoing the week prior and the weekend before this To make matters more complicated, I actually was on my family vacation the preceding week, actually had to leave my family vacation a day early, partly due to the hurricane and partly because of what had happened here in Richmond, to come back. So the weekend leading up to this, to say it was busy is an understatement We were, I believe, at the Emergency Operations Center, the Governor was as well, senior members of the Administration, the Secretary of Public Safety We had lost several lives in the hurricane that took place There was a lot of wind, a lot of wind damage, a lot of trees had fallen, and several people died as a result of trees actually falling either on their house or their car So there was a lot going on

I had just come back from my vacation We were dealing with the natural disasters that had occurred, and then that evening, the first full workday back from my vacation, is when we received this e-mail And when I received the e-mail from Tucker -- actually, it was sent, if I am not mistaken, it was sent by Mary-Shea to Tucker, and then Tucker replied to all and included Jasen Eige and myself on the response And when we saw the e-mail, I read the attachment, I believe I responded to Mary-Shea, "What is this, when is this, is the Governor aware of his inclusion in this," something to that effect I don't recall specific conversation with her, although I'm sure I probably had some conversation to try to get more information about it And I believe I immediately went to go see Jasen Eige about it at well

Q Why did you immediately go to see Mr Eige?

A Because I was concerned at first, the way this looked to me to be a press release, the way it was worded. And, you know, I think it struck me as the press release and what it appeared to be, I'm assuming I got this from Mary-Shea because I didn't really talk to anybody else about it, would appear to be an effort to actually hold a press conference at the Mansion with regard to this And that struck me as unusual

Q You were talking a little bit about your reaction. If we could go to the first page, could you tell us sort of at the bottom of that page, Mary-Shea Sutherland, could you tell us what she wrote in that e-mail lower in the thread?

A It says: "I just sent David a message - NO WAY this can go as written You can call me," and it gives a number

Q If we scroll up a little bit Can you tell us one more e-mail past, can you tell us, you might have already said this, but who forwarded it to Tucker Martin?

A It appears that she did, yes

Q All right I'd like to show you what's already been entered as Exhibit 224 Zoom in on that top e-mail Is that the response back to Mary-Shea that you referenced just a moment ago?

A It is

Q I'd like to show you what's been marked for identification as Exhibit 226 Zooming in on that top e-mail, is this Mary-Shea Sutherland's response to you?

A It appears to be, yes

Q Is that also dated August 29th, 2011?

A It is

MR. FAULCONER: We would offer Exhibit 226 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q Mr Kent, could you just read for us that one-line response from Mary-Shea Sutherland?

A It says, "I didn't know about release until an hour ago. Call me when you can."

Q We can take that down. Now, after you went and spoke to Mr Eige, can you sort of walk us through what happened in the process after that?

A We talked about it, he agreed that it was unusual, and we were concerned about the way it was worded. And I believe he was the one that was aware of the fact that Jerry Kilgore represented, I believe represented Mr Williams And we got on the phone immediately -- my recollection is we got on the phone immediately and spoke with Jerry Kilgore about it

Q How did that conversation go?

A It went well My recollection is we explained to Jerry what we had received and that we had some concerns, and my recollection is, he understood and agreed with those concerns and told us that he would address it with his client

Q Now, after talking to Mr Kilgore, do you recall whether either you or Mr Eige decided to attend the event?

A Yes As I mentioned, I had just returned from my vacation, we were still in the midst of dealing with the natural disasters that had taken place or were taking place And that was one of my many roles, was to basically coordinate that with the Secretary of Public Safety's office in the event of a natural disaster to make sure the Governor was issuing executive orders, emergency declarations, things of that nature that a Governor would typically do And Jasen and I discussed it and we agreed someone should go to make sure what we had discussed with Jerry was actually done. And Jasen, his role didn't require that involvement in the natural disaster process, so he agreed to go

Q To be clear, Mr Kent, at that point, on August 29th, 2011, were you aware of the things of value that had been provided by Mr Williams to the McDonnells?

A I was not

Q Now, after the event, did you become aware of how the event was paid for?

A At some point, I don't remember exactly when, I have tried to go back and piece that together I'm not sure there is any documentation to help with that But at some point I learned that the Governor's PAC had paid for that event

Q Just to be clear, do you remember any of that conversation happening before the event or was it after?

A No, I don't recall it It couldn't have happened before because I don't believe I knew about the event until the night before, so I think it had to have happened after the event

Q To be clear, do you recall having any conversations with Mr McDonnell about the PAC paying for the event?

A I do not recall that, no

Q All right I'd like to move forward to September of 2011, a few weeks later I'd like to show you what's been marked or what's already been entered as Exhibit 245 Is this an e-mail exchange with you, Katherine Harris, and Jasen Eige?

A Yes, it is

Q If we could scroll down to see the first e-mail in the exchange Katherine Harris is the scheduler; is that correct?

A That's correct

Q Scrolling back up again, do you recall getting this e-mail forwarded from Katherine Harris to you and Mr Eige asking about a dinner related to Anatabloc in October of 2011?

A I do

Q Can you tell us what happened once you got this e-mail?

A She forwarded it to myself and Jasen, it looks like, about 11 a.m. on the 21st, and it looks like I responded back to her at 2:22 p.m. on the same day and basically said, "Yes, we should discuss " I do recall this And one of the parameters we talked a few moments ago about the Governor attending events generally, one of the factors that we look at is, has the Governor recently done something with this person or something for this industry And I believe, I saw this, recalled the event that had occurred three weeks prior, and I believe I told Ms Harris that we did not need to schedule the Governor for this

Q All right I'd like to move to 2012 Now, earlier we saw a little bit of e-mail traffic about the SOEI or Statement of Economic Interests Are you aware of when each year that document would typically be filed?

A I believe it has to be filed by the 15th of January for the preceding year

Q And in January of 2012, were you aware that Mr McDonnell and his sons played golf at Kinloch on Mr Williams' tab on January 7th, 2012?

A I was not

Q I'd like to move forward to February of 2012 and show you what's been entered into evidence as Exhibit 319 Now, is this an e-mail forward from Mr Eige to you on February 17th, 2012 at 12:06 a m.?

A It appears to be, yes

Q It looks like Mr Eige says "FYI" there

A Yes

Q Do you recall ever discussing this e-mail with Mr McDonnell?

A No And I actually, when this was brought to my attention last year, I actually went first to Mr Eige, to Jasen, and asked him if we had ever discussed this, because I did not recall this e-mail And he informed me that he did not recall we had ever discussed it So, you know, I'm not sure, given the time of day, although it was not unusual to get e-mails all throughout the night, it could have been that I just simply didn't see it, didn't focus on it at the time.

Q So sitting here today, do you have any specific recollection of any conversation with either Mr McDonnell or Mr Eige about this e-mail?

A I do not, no

Q I'd like to ask you one quick question about this, which is, do you see there where it says, "rfmva09@gmail com"?

A Yes, I do

Q Was that a common e-mail address for Mr McDonnell to use while he was Governor?

A It was, yes

Q Even though it is a gmail address, would he typically use that for things that involved official government business?

A Yes He had at one point in time, I think we started out with a BlackBerry, and then ultimately migrated to an iPhone And the Governor, I think probably the only person that received more e-mails than I did was probably the Governor. And it got to a point, I believe the Governor's aide actually did this, and we didn't discuss it until afterwards, but the Governor would get so many e-mails, he would receive them on the same device He would receive e-mails to his official account and e-mails to a personal account, and oftentimes he would just look at the e-mail and respond. And the way the BlackBerry was set up, you have to actually go out and go into the particular e-mail system to make sure you are responding on that e-mail server, if that makes sense And the Governor would oftentimes respond to personal e-mails on his state system, and respond to state e-mails on his personal system. So a decision somewhere along the way was made to simplify it to give him one e-mail address that he used as his primary e-mail address

Q You mentioned a couple different types of e-mail addresses Do you recall him during the campaign using an e-mail address rfmcandidate@bobmcdonnell com?

A That sounds familiar It was on the campaign I'm not sure if I used it a lot, I didn't use it a lot But that's possible, yes

Q Once he became Governor, do you recall him using the e-mail address governor@bobmcdonnell com?

A Yes, he did

Q That bobmcdonnell com sort of suffix on the end of the e-mail, what did that refer to?

A That was part of his campaign.

Q Was that related to the PAC?

A Initially it was the campaign and then ultimately I think it became part of the PAC, yes

Q Did he also have an official governor virginia gov e-mail address?

A He did, yes

Q I'd like to show you what's been entered as Exhibit 318 This is an e-mail, the lower one down there, that was six minutes before the e-mail we just looked at To be clear, were you aware of this e-mail from Mr McDonnell to Mr Williams on February 16th, 2012?

A No

Q All right I'd like to move forward a little bit further into February and show you what's been marked or what's been entered as Exhibit 345 Does this appear to be an Outlook calendar event?

A It does

Q Now, can you tell us, where it says "PHB Governor's conference room," what that refers to there?

A As I mentioned previously, what I referred to as the pod, in addition to my office, the Governor's Office, and our executive assistants' offices, the Governor has a conference room, which is connected to his office through a door And that is what we referred to as the Governor's conference room.

Q This particular meeting on February 29th, 2012, what does it list as the topic for that meeting?

A "Healthcare Group Leaders Reception Tonight at the Executive Mansion."

Q To be clear, are you listed as a participant on this meeting?

A No.

Q Did you attend this meeting?

A No

Q Is Mary-Shea Sutherland listed as a participant on this meeting?

A No

Q To your knowledge, was Mary-Shea Sutherland even working at the Mansion in February of 2012?

A No, she was not

Q Is Ms McDonnell listed as a participant?

A No

Q Now, are you aware of what Mr McDonnell and

Mr Williams actually discussed in this meeting?

A No.

Q I'd like to show you what's been entered into evidence as Exhibit 2 Now, this document, do you recognize the handwriting that's shown on this first page of this document?

A It appears to be the Governor's handwriting, yes

Q Now, could you read for us what it says where it says "File Form 4" there down the second bullet point, it looks like?

MR. ASBILL: I object He has no knowledge of this meeting

THE COURT: Overruled

THE WITNESS: It says: "File Form 4 with the SEC saying sold = doesn't disclose who sold to for Jonnie "

BY MR. FAULCONER:

Q Mr Kent, at the time, any time in 2012, were you aware of Mr McDonnell and Mr Williams discussing anything about this?

A No

Q I'd like to go to Page 3 of this document Actually, Page 2 real quick. Do you recognize that handwriting?

A That appears to be the Governor's as well

Q Turning to Page 3 Apart from the section that's between the lines, do you recognize the handwriting at the top of that document and below the line at the bottom?

A Very top appears to be the Governor's handwriting as well

Q Then down below?

A I believe it is, yes That appears to be his handwriting

Q If we could zoom back out and zoom in on that bottom section, do you see where it says, "Loan of 50k shares to Maureen"?

A I do

Q Were you aware of anything about loaning shares to Maureen McDonnell in this time frame?

A No

Q All right I'd like to go to Page 4 of this document Does this document appear to be, or do you recognize the handwriting on this page?

A It appears to be the Governor's handwriting

Q And have you had a chance to review this page of handwriting before coming into Court?

A I have

Q And any of this information that's referenced on this document, we you aware of any of it in 2012?

A No

Q I'd like to go to Page 5 Do you recognize the handwriting on this page?

A It appears to be the Governor's as well

Q Now, do you see where it says, could you read what it says there starting with "Pay back" and down to "Maureen"?

A "Pay back in cash at 50,000 times 1 90 = $90,000 either return or 50-70 K shares " It looks like "Plan" to the left, "split into 10k shares certificates for delivery to Maureen" or "son deliver to Maureen " Sorry

Q Do you ever recall meeting Mr Williams' son, Jonnie Williams, Jr ?

A No

Q At this time or any time in 2012, were you aware of anything involving share certificates being delivered to Maureen McDonnell by Jonnie Williams, Jr

A No

Q Turn to Page 6 of this document Do you recognize the handwriting on this page?

A It appears to be the Governor's handwriting

Q What's the date written there at the top?

A 3-12-12

Q If we could turn to the seventh page Do you recognize what this seventh page of this document appears to be?

A This appears to be another copy of the Governor's daily schedule

Q Is that for March 12th of 2012?

A It appears to be, yes

Q Now, I think we have sort of asked about it a little bit, but before the investigation went public, were you aware of either a $50,000 loan or a $20,000 loan from Mr Williams to the McDonnells in March or May of 2012?

A I was not

Q All right I'd like to move forward and focus on February of 2013 Do you recall learning that month that Ms McDonnell was interviewed by law enforcement?

A I do

Q And after that interview took place, do you recall speaking to Mr McDonnell about it?

A I do. Yes

Q And do you recall how close in time that was to the interview?

A My recollection is, it was either that day or the next day It was within 24 hours

Q Could you tell the members of the jury what Mr McDonnell's reaction was to that interview when he discussed it with you?

A I can. I should explain sort of how I was involved in this I was contacted because I was the closest to the Governor as far as staff is concerned, to --

Q Sorry to interrupt, Mr Kent, but just to make sure we don't get into any problems with who said what to whom, could you just focus in on what Mr McDonnell's reaction was and what he said after the interview?

A Yes He was upset He was upset, and basically said that the interview was not what it was purported to be for

Q Did he describe at all what he meant in terms of what the difference was?

A No We didn't get into a lot of back and forth It was a pretty short conversation But he was visibly upset

Q Do you recall whether he said whether it was broader or narrower than he thought it was going to be?

A Broader, was the indication I got

Q Just to be clear, at that time, when you were talking about the interview that Ms McDonnell had with law enforcement, did Mr McDonnell tell you anything about a $50,000 loan from Mr Williams in May of 2011?

A No

Q Did he tell you anything about a $15,000 payment for a wedding?

A No

Q Anything about a $50,000 second loan?

A No

Q Anything about a $20,000 third loan?

A No

Q Anything about any of the golf at Kinloch?

A No

Q Now, before, at some point before the press stories broke, do you recall Mary-Shea Sutherland saying something about credit card debt to you as it related to Mr Williams?

A She did It was, it had to be sometime before she had left, during a general conversation that we had And there was some reference to credit card debt

Q Could you explain exactly what that was as it related to Mr Williams?

A It was unclear at the time At that time, there were, I'm assuming that's when it was, Mary-Shea had been to my office several times just upset in general about her situation And she did reference that There was some vague reference to credit card debt, and I believe she mentioned Maureen at the time when she said it

Q Did she mention something about Mr Williams in that context?

A Yeah, I think she did. It was, again, sort of not something we spent a lot of time harping on It kind of was out of sight, out of mind for several years

Q And did she tell you anything in that conversation about what amount of credit cart debt she was talking about?

A I recall her mentioning, I believe, $20,000 That sounds right

Q Now, after the press stories broke about the investigation or any of the press stories about the relationship between Mr Williams and Mr McDonnell, did you ask Mr McDonnell about whether a loan from Mr Williams had anything to do with credit card debt?

A I did. It was sometime, probably early spring of last year, and he corrected me quickly and said that, "No, that was a loan." And that was really the extent of the conversation we had

Q Did he tell you whether the loan had anything to do with credit card debt?

A Well, I think I brought up the question of credit card debt, and he responded that, "No, that was a loan." My recollection is, that was pretty much the extent of the conversation

Q Did you also have a conversation or during the conversations that you had with Mr McDonnell after the press stories broke, did you ever talk to him about the second $50,000 loan from Mr Williams in May -- March of 2012?

A No At some point he mentioned to me, it was during the process of obviously he had, I believe, retained counsel, and we were being inundated with requests on a daily, sometimes hourly basis, by the media And at some point I went into his office and asked, I believe, about, generally about the loan or the loans And his response to me was that it was a matter that he was discussing with his counsel and we shouldn't get into it any further

MR. FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

MR. FAULCONER: No further questions at this time, Your Honor

THE COURT: Cross?

CROSS-EXAMINATION

BY MR ASBILL:

Q Good morning, Mr Kent How are you?

A Just fine

Q I want to go back a little bit to the beginning of your examination, of your direct examination. And you told us you went to the University of Richmond and then to Mercer Law School; is that right?

A Yes, sir, that's correct

Q You were at one point obviously the Chief of Staff to my client, correct?

A That is correct, yes, sir

Q Prior to that you were at the Attorney General's

Office?

A Yes, sir

Q And was one of your assignments at the Attorney General's Office heading the Criminal Division?

A At one point I was in charge of what was referred to as the Special Prosecutions Section, which was a subset of the Criminal Division I was never the Deputy of the Criminal Division, but I was the Chief of the Special Prosecutions Section

Q Okay That was one of your many jobs at the Attorney General's Office before you came over to the Governor's Office; is that correct?

A Yes, sir, it is

Q Okay I believe you testified early on this morning that if my client said to you to do something, that you would absolutely do it Is that correct?

A Yes, sir

Q And obviously, that would not include doing something that you thought was wrong or improper or unethical or immoral, right?

A Absolutely not

Q So if he asked you to do something that you thought was a legitimate request, you would obviously do it

A That's what I was referring to, yes, sir

Q To your recollection, in all the time that you spent with my client, in the Governor's Office, Attorney General's Office, did he ever ask you to do something that you didn't do because you thought it was wrong to do it?

A No, sir

Q Now, I think you talked a little bit about Dr Hazel and Molly Huffstetler. Both of those people are part of the Governor's staff; is that right?

A They are part of the Secretariat which ultimately would be part of the Governor's staff, yes, sir, that's correct

Q Ultimately, for example, Ms Huffstetler reports to Dr Hazel but Dr Hazel reports to the Governor?

A Yes, sir

Q Anyone who works in a Cabinet position is viewed as part of the Governor's staff?

A Loosely, yes, sir, that's correct

Q And anyone who works in his office is part of his staff, right?

A Yes, sir

Q And with respect to the First Lady's office at the Mansion, are those his staff or are they her staff or what?

A I guess to answer your question, they are, on a day-to-day basis, viewed as part of her staff But at the end of the day they are ultimately Governor's staff as well

Q Those folks ultimately report to you before, I mean, in the chain of command, they report to you before it would get to the Governor?

A Yes, sir

Q So they would go to you if they had a problem, at least in the first instance?

A Typically, yes, sir

Q All right Now, you said, I believe, that it was -- that my client's primary interest and focus as the Governor was jobs in Virginia; is that correct?

A That was certainly the top of the priority list, yes, sir

Q Other than public safety, and what did you mean by that?

A Well, obviously, public safety took priority over everything Classic example would be if there is, you know, an emergency, no matter what we were doing, even if it was economic development, it would take a back seat to public safety But other than public safety, the top priority of the Administration was economic development

Q What were the third or fourth priorities?

A Education was probably amongst the top three or four I would probably, I had to rank them, I would say public safety, followed closely by economic development, education, and probably health.

Q All right And you said it was very common for, at the Mansion, or to host events at the Mansion; is that correct?

A Yes, sir

Q Do you have any sense of how many Mansion events there were during the four years that you were with the Governor's Office?

A I couldn't give you an exact number, but there were many

Q Would 1,150 or so ring a bell?

A That's entirely possible, yes

Q At any point in time, did you ever try to figure out after the investigation started, for example, how many events there were at the Mansion?

A I don't think I did at the Mansion The Governor and I had discussed how many events, meetings he had taken and Cabinet members and myself had taken, and at that point in time, I did a very quick extrapolation by reaching out to several Cabinet members just to get an idea of how many meetings they felt they took, and I think the Governor took that information and extrapolated from that

Q Okay I'm sorry, were you going to say something else?

A No, that's it

Q You talked about the scheduling process There was a protocol or a process for scheduling the Governor for various events?

A Yes. There were really two different processes The first was sort of the day-to-day schedule, for lack of a better explanation, and that was really more the scheduler, Governor, occasionally myself, I was included in some of those discussions But then there was a separate weekly scheduling process which would be typically invitations to go to Northern Virginia, invitations to go to Roanoke, invitations to go to Virginia Beach, events outside the office And we -- staff had an initial meeting where we tried to sort through some of those to try to narrow the scope a little bit

Q Okay But there were constant requests being made for his time and attention; is that fair to say?

A Yes, it is

Q Whatever the scheduling process was or the protocol was, sometimes it would get bypassed, either by mistake or because there wasn't enough time to go through the normal process?

A That happened, yes

Q Would that -- would it ever be -- who would be people that would potentially interfere with the protocol in terms of trying to schedule something?

A Well, people would call People would call, and sometimes they would call the scheduler, sometimes they would call me, or sometimes they would call the Governor or he would run into them at particular events and ask to meet with him. Classic examples would be legislators Whenever they were in town your schedule was kind of out of the window because they would come across the street and ask to speak to the Governor and wanted to speak to him immediately So that happened.

Q How about family members?

A Yes

Q And they have the ability at times to try to redirect the schedule? At least potentially to redirect the schedule?

A Yes

Q All right And do you know whether or not that was in consultation with my client or was it just something that they wanted him to do and he may or may not agree?

A I'm sure it happened both ways, you know You could ask about a specific example and I could try to answer your question. But generally speaking, I'm sure it happened both ways

Q Okay Did you have any protocol in place for taking a closer look at those sort of requests that were unusual or not the regular sort of process?

A No You know, a lot of reliance was placed on the Governor's scheduler to really sort of know what he had on his schedule and to deal with those If there was a question, an example was shown earlier about an event where she did bring it to to my attention and asked for my input But typically, she would handle that

Q All right

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Q You talked about everybody in the office working 24/7 Who led the pack in terms of hardest working?

A The Governor did

Q Outworked everybody else on the staff?

A No question

Q Now, you talked about meetings that would occur, meetings on a weekly basis, or something, and these were Cabinet members, I believe, you were discussing that?

A Yes, sir

Q And at those meetings, sometimes the Governor would ask somebody to look into something or to meet with somebody?

A He did

Q All right So, "Take a look at this and tell me what you think," basically? Is that the idea?

A That's generally the idea

Q Or, "Meet with everybody and see if they got a good idea, and if so, do what you need to do"?

A Yes

Q As those meetings, was the Governor ever more affirmative in terms of, "I want you to do this I want you to take action on it I want you to get this done"?

A No That was not the Governor's MO The Governor -- you know, you could sense when it was something -- and it was typically in the realm of economic development You could sense when it was something that he felt like we should spend time and look at But no, there was never a situation where he demanded a response and a response -- a specific response at a specific time, no

Q Did he know how to make it plain that he wanted something done?

A I'm sure he could Sure

Q Now, at any of these meetings that you talked about, that you talked about earlier today, did you ever hear my client ask anything to be done for Jonnie Williams or Star Scientific?

A No

Q All right With respect to board, board members, did you have any knowledge of my client ever appointing anyone to any board or commission that was in any way related to Star or related to Jonnie Williams?

A Not to my knowledge, no

Q You talked about the UVA Board, I believe, and you said, I think in reference to that Board in particular, that those members of the Board, jealously guard their independence, despite having been appointed by the Governor?

A Yes, sir

Q And there's some issue legally about whether or not they can be fired by the Governor or there's some other process that would be required --

A There is

Q -- in order to fire -- there is another process?

A No There is -- there has -- there's been debate about how far the Governor's authority goes I think it's pretty clear by the code that when there's -- when they have taken an inappropriate act, certainly in that situation he has the ability to act But it's a little more gray when it comes to just general disagreement over a policy position

Q If they did something illegal, he could fire them But if they did something that disagreed -- you know, they disagreed with his policy on something, that would be a harder decision or a harder issue?

A Illegal or violate a university policy that's been established by the Board But yes, that's generally correct

Q With respect to -- so you were knowledgeable about the people that -- that Governor McDonnell appointed to boards and commissions? You were in that process?

A Not regularly But on particular instances, the UVA example is a classic example, I was pulled into it because of the high profile nature of it But typically, that process, as I mentioned previously, was handled by the Secretary of the Commonwealth

Q And that would be Janet Kelly?

A Yes, sir That is correct

Q All right With respect to the -- when you were involved in these issues like that, the high profile situation you described, did you believe that the Governor was appointing people to boards on merit?

A The term he used throughout the administration, going back to when we chose members of the Cabinet, all the way through, was the best and the brightest Those are the terms that he used He wanted the best and the brightest

Q How did it work in terms of hiring the staff? Not the Cabinet folks or people on boards, but in terms of -- obviously, he hired you Did you then hire all the people under you or was the Governor involved in those hires as well?

A I never hired any high-level position without the Governor signing off on it You know, there were positions, clerical positions where we had a need and quickly needed to fill it that I would make that decision on But anything deputy agency head or higher, I asked the Governor to weigh in and approve

Q And when you asked him to weigh in and approve, do you believe that the two of you collectively, in that situation, were hiring the best and the brightest you could?

A I believe so, yes We certainly tried to

Q Now, with respect to this UVA issue --

MR ASBILL: Can we pull up 619, please

Government Exhibit 619

BY MR ASBILL:

Q This is the letter to the Board members that you talked about previously

A Okay

Q I don't want to get into the details of the letter I just want to talk to you generally about it The letter is in evidence What was that controversy about, just in a nutshell?

A There was an effort by certain members of the Board to remove President Sullivan as the President of the University of Virginia, and they initially took steps to do so I believe she initially agreed to step down Then she rescinded that offer And it became a very high profile, public situation, and ultimately, she was reinstated as President

Q All right And that particular controversy occurred, what, in June of 2012? Is that when it occurred?

A I don't remember the exact date But this is the date of the letter So it must have been around that time frame, yes

Q Do you recall the letter being contemporaneous with the controversy?

A I'm -- it was It was A decision was made -- because the matter had lingered for a period of time, I think the Governor made a decision that he had to do something to get the Board to make a decision one way or the other, and basically told them that if they failed to act, that they were not carrying out their responsibilities as members of the Board of Visitors and that he would take action.

Q All right And he was very direct in terms of what he was going to do if they failed to take action and deal with this situation; is that right?

A He was

Q Now, that particular controversy had nothing to do with Jonnie Williams or Star Scientific in any way, did it?

A Not to my knowledge No

Q All right Let's talk about the Tobacco Commission And I believe you talked that the appointees to that commission, it's some sort of joint process?

A It's a hybrid process Yes, sir

Q Okay And the Secretary of Agriculture is the only person that the Governor appoints directly to that commission?

A No I believe he appoints, by statute, actually, the

Secretary of Agriculture, the Secretary of Finance, and I believe it's the Secretary of Commerce and Trade And I believe since that time, we may have even added Secretary -- no That's, I'm sorry, a different board Those three other Cabinet members

Q Those are the Cabinet members --

A I believe so

Q -- out of how many folks on the Board?

A There are over 30 in total The Governor appoints a number, and then the legislature appoints a number as well

Q And then the Board does what it wants or it does what the Governor tells them to do?

A Well, the Tobacco Commission is a little more complicated than that The Tobacco Commission has what's referred to as an Executive Committee And the Executive Committee, I think, makes a lot of preliminary decisions and then meets with the full Board and basically adopts those decisions But they are independent of our office

Q Okay And to your knowledge, did Governor McDonnell ever appoint anyone to the Tobacco Commission Board that had any connection whatever to Star Scientific or Jonnie Williams?

A Not to my knowledge, no

Q To your knowledge, did my client ever try to influence the Tobacco Commission in any way either by testifying in front of them, calling them up on the phone, sending them an e-mail, whatever, to support anything that Jonnie Williams or Star Scientific may have been trying to get from the Tobacco Commission?

A Not to my knowledge, no

Q I believe you said you didn't -- or you only met Mr Williams one time; is that correct?

A Yes, sir That's correct

Q And did you ever talk to him on the phone or anything like that?

A I don't remember ever speaking with Mr Williams but one time And that was when we took a trip to New York

Q Okay Did you ever have discussions with my client about Jonnie Williams before the start of the investigation before the public knew about the existence of the investigation?

A Not specifically about Mr Williams As we discussed earlier, there was an incident driving his vehicle, which the focus of that conversation was not Mr Williams It was the fact that the Governor had driven the vehicle But no, we, to my knowledge, did not have any conversations about Mr Williams

Q Prior to outside lawyers becoming involved when the investigation became public, going all the way back, however long you've known the Governor, did he ever refuse to talk to you about anything you wanted to talk to him about?

A No

Q Now, I believe you said that there was a time, at least one instance, when you were aware of somebody using the Governor's likeness or name to try to promote something without his permission, correct?

A Uh-huh

Q And that related -- can you give me some more details about that? Did that relate to a product called Nu Skin and --

A I believe it did And I believe it involved a company that Maureen -- at the time, she wasn't the First Lady -- was involved in

Q And your understanding was that somehow his likeness and the fact that he was the Attorney General was being used to promote the product?

A Yes, sir

Q And he was not aware of that?

A I don't believe he was No, sir

Q And when it came to his attention or your attention, then you all shut it down?

A Yes, sir

Q No pushback from my client on that?

A No, sir I don't recall any pushback

Q Now, the Smith Mountain Lake trip That was the end of July 2011, correct?

A I believe that was what we saw Yes, sir

Q Okay And you were obviously aware of that trip, correct?

A I was aware of that trip

Q And you were aware that that was a gift from Jonnie Williams?

A I don't think I got into how it was valued and how it was reported I did know that the Governor took a trip and that the home was, I believe, Jonnie Williams' home I did know that Yes, sir

Q Okay So regardless of exactly how it was reported, you knew that it was connected to Jonnie Williams and/or Star --

A I believe I did

Q -- at the time the event occurred?

A I believe I did Yes, sir

Q All right And you knew that fact well before the Mansion lunch, which was 30 days later, right?

A Yes I would have That's correct

Q Okay Now, Mr Faulconer, I believe, asked you about were you aware of my client playing golf with Jonnie Williams or playing at Kinloch, correct?

A He did Yes, sir

Q And do you play golf or --

A I'm not very good I play at golf

Q Miniature golf?

A Better at miniature golf Yes, sir

Q And you say you were not aware of some of the golf outings that my client may have had --

A No, sir

Q -- with Mr Williams at Kinloch?

A No, sir

Q How would you have -- I mean, other than it coming up in a conversation with my client, what are the other ways that you generally might be aware of something like that?

A Conversation If it did or didn't show up on his calendar on any particular day, I may or may not have noticed it But truthfully, if the Governor was away on vacation, in particular, or out of the office for personal things, I typically didn't focus on his calendar on any given day or time It was only when he was acting as Governor that I would

Q So if there were calendar events on a weekend, you would not review those, generally?

A They would typically have been sent But it was rare Unless I needed the Governor If something came up and I needed to get him and get him immediately, I would refer back to his calendar, determine where he was, and then try to track him down

Q Okay But you had transparency into his calendar, to the extent things were calendared; is that correct?

A That's a fair statement Yes

Q Okay And if something like a game of golf was not on the calendar, are there reasons why that might be other than trying to hide the game of golf?

A I'm sure there could be Sure

Q It could come up at the last minute or --

A Sure

Q Do you know whether or not people got information from my client or from others that were, for some reason, mistakenly not on the calendar?

MR FAULCONER: Objection, Your Honor He's calling for him to speculate

THE COURT: Sustained

BY MR ASBILL:

Q Now, the Ferrari You looked at the schedule and saw that my client was scheduled to leave Smith Mountain Lake at around 7 p m on the 31st of July?

A Yes, sir

Q Do you know if that's exactly when he left or not?

A No, sir, I do not

Q Okay But he was supposed to come back that night?

A Yes, sir

Q All right And then later on you find out, I guess, I think you said within a week or so, that the EPU people were upset about it?

A Yes, sir It was sometime that week afterwards, I believe

Q Okay And you -- I mean, I don't want to use this word improperly, but you chastised the Governor for that?

A I didn't -- I didn't chastise the Governor I reminded the Governor of their job, and that was to protect he and the First Lady, and stressed the fact that they couldn't do that if he's driving a vehicle and they are following behind

Q Okay And after you talked to him about that, he never did it again?

A To my knowledge, no, sir He did not

Q And prior to that time, had he ever driven himself against the wishes of the EPU?

A To my knowledge, no, sir

Q Had he ever done anything against the wishes of the EPU that came to your attention?

A No, sir

Q Ultimately, the decision to drive the car without the EPU, whether it was over their objection or not, his call?

A Yes, sir

Q Did you understand it was difficult to have EPU people around you all the time?

A Absolutely

MR FAULCONER: Objection, Your Honor

THE COURT: Sustained

BY MR ASBILL:

Q Did you know anything about the EPU eavesdropping on my client's conversations --

MR FAULCONER: Objection, Your Honor

THE COURT: Sustained

BY MR ASBILL:

Q Now, I believe you looked at Exhibit 189

MR. ASBILL: Can you pull that back up for me, please

BY MR ASBILL:

Q This is an e-mail that you are not copied on?

A That's correct

Q From my client to Bill Hazel?

A Yes, sir

Q And this is the night that he gets back from Smith Mountain Lake?

A That's what -- that's what I've been told Yes, sir

Q Okay It's at 11:29 p m on the 31st of July of 2011, right?

A It appears to be Yes, sir

Q And you're not copied that Are you copied on everything that my client sends to Cabinet officers?

A No, sir Not everything

Q Do you have any reason to believe that you were not copied on this on purpose for some bad reason?

MR FAULCONER: Objection Calls for speculation

THE COURT: Sustained

BY MR ASBILL:

Q With respect to why my client wanted Bill Hazel to have Keith or Matt or somebody on his staff attend this meeting the next day, do you have any transparency into that?

A This e-mail came to my attention when I was conducting a review

MR FAULCONER: Objection, Your Honor We're getting into anything that came to his attention after the investigation If he knew at the time, he can testify to that But I object to any conversation about anything after the investigation

THE COURT: You're talking about something you learned later?

THE WITNESS: Yes, sir

THE COURT: All right Objection sustained

BY MR ASBILL:

Q So at the -- at the time that this -- that this happened, basically, you don't know why my client wanted Bill Hazel to do this, right?

A No, sir

MR ASBILL: Let's go to Exhibit 635 for a minute

BY MR ASBILL:

Q This is an exhibit with your handwriting on it; is that correct?

A It is

Q All right And you don't have any recollection about ever talking to my client about that after you wrote those notes?

A It had to have occurred for me to have made the request But specifics about a conversation, no, sir, I do not recall that

Q Okay But, again, didn't try to talk to him and he refused to talk to you, did he?

A No, sir I can't say that

Q All right

MR ASBILL: Let's go to Exhibit 206 that you were shown on direct Can you blow that up, please

BY MR ASBILL:

Q So this is on the 16th of August, and from you to Jasen, right?

A Yes, sir

Q All right

MR ASBILL: Scroll up Okay

Let me go to 230

BY MR. ASBILL:

Q This is the Governor's schedule for 8/30, the day of the Mansion lunch?

A Yes, sir It appears to be

Q And he had a pretty busy day that day?

A He did

Q And this was overlaid by the earth, wind and fire events that everybody has talked about?

A It was

Q You have no recollection, either on the 16th or between the 16th and the 30th, ever talking to my client about the Mansion lunch?

A No I don't think I was aware of it until the 29th And I did not discuss it with him that night

Q All right And do you know when he first became aware of it?

A I do not

Q Do you have any reason to believe that he planned it or he organized it?

MR FAULCONER: Objection, Your Honor

THE COURT: Sustained

BY MR. ASBILL:

Q You say you know Jerry Kilgore, right, and you talked to him in August on an earlier occasion? Was that the 12th of August?

A I don't remember the exact date, but it was sometime in the August time frame, middle August time frame

Q All right And whenever you and Jerry were talking, who was with you, Jasen?

A Well, for that discussion?

Q Yeah For the August 12th discussion

A For that discussion, Jasen, myself There were several members of the McGuireWoods legal team that were there, and I believe at one point the Governor actually was at that meeting as well

Q All right And so a lot of lawyers, outside lawyers? There was inside counsel?

A Yes, sir

Q And you have no recollection that that discussion had anything at all to do with the Mansion lunch; is that correct?

A They were two separate discussions

Q All right So you learn about this Mansion lunch, basically, on the 30th; is that correct? One day before the event or --

A That would have been the 29th

Q 29th Excuse me

A I believe so Yes, sir

Q All right. And it comes to your attention how?

A Through an e-mail that was forwarded to me by Tucker Martin

Q All right And when that e-mail was forwarded to you, you then -- you read it, obviously, and then you met with Tucker; is that correct?

A Actually, I met with Jasen

Q Jasen Excuse me

A Yes, sir

Q And did you meet with Tucker as well or just Jasen?

A I'm assume we did discuss it He had sent it to us But I recall specifically meeting with Jasen

Q All right And before you all took action, did you ever have a discussion with my client about it?

A No It was the night before the event There was a lot going on My recollection is we saw it, and we attempted to address it as quickly as possible

Q All right And you thought that the -- you thought that the press release was essentially -- that Star was thinking about issuing was overaggressive or not appropriate --

A Yes

Q -- in terms of your view?

A Yes, sir

Q All right So you all shut that down, correct?

A We did Yes, sir

Q Did you have any reason at all to believe that you were not doing something that my client would have wanted you to do?

MR FAULCONER: Objection, Your Honor

THE COURT: Sustained

BY MR ASBILL:

Q Did you ever later talk to my client about what you had done, in terms of revising the press release?

A In 2013, yes, sir, I did

Q Pre -- pre the commencement of the investigation?

A No, sir

Q Did my client, between the time of the lunch and the start of the investigation, ever give you any pushback on what you had done?

A No, sir

Q Did you ever talk to Mary-Shea Sutherland about it?

A As I mentioned previously, based on the e-mail traffic, there had to have been some sort of conversation, I assume, with her to get more information But beyond that, I don't recall any conversation No, sir

Q Did you inquire of her whether or not she was aware of whether or not my client knew about the existence of the press release?

A That would be logical, based on my question to her in the e-mail, and I'm assuming I had to get more information about the event from her But I can't sit here and tell you specifically how that conversation -- you know, how it played out I just don't recall that

Q But in any event, after you talked to her, you didn't talk to my client about it, correct?

A It was the night before the event, and we moved as quickly as possible, in the midst of everything else going on, to try to deal with it No, sir, I did not

Q Okay Or at any time after the lunch itself?

MR FAULCONER: Your Honor, this has been asked and answered

THE COURT: Sustained

BY MR ASBILL:

Q Now, you talked about sort of a black book, some sort of a briefing book that the Governor would get before events, and it would be stuck in the elevator in the Mansion?

A He would get his schedule for the next day It would typically either be given to him as he left, or if he had already left, it would be left in the elevator at the Mansion for him to get the night before the day

Q Okay And did you see the actual briefing memo that he got about the Mansion lunch event before he went to the lunch?

A Did I review it or see it --

Q Yeah. Review the hard copy?

A Honestly, I don't remember Again, there was so much going on that day I just -- I can't say if I did or didn't

Q Okay You looked at an exhibit in this courtroom with that particular information on it, and there were some stars or asterisks, et cetera?

A Yes, sir

Q And you said -- I believe you said that you thought that was my client's handwriting?

A It appeared to be Yes, sir

Q And do you know when, in time, those asterisks were placed on that document?

A No, sir

Q All right That particular event, the Mansion lunch, you did talk to Jerry Kilgore, you and Jasen did, on the 29th; is that correct?

A I believe that's the case Yes, sir

Q And you just told him that, you know, this is not something that was appropriate, from your perspective. And you thought the meeting went well?

A I do Yes, sir

Q The conversation, I mean

A I think he understood our concerns Yes, sir

Q And did you ever tell my client, before the investigation began, about that conversation that you had with Kilgore?

A Before this occurred?

Q Yeah

A No, sir I don't recall that

Q Did you tell him about it afterwards that you had talked to Kilgore?

A Yes, sir

Q Before the investigation commenced?

MR FAULCONER: Objection, Your Honor, to conversations post investigation

THE COURT: We don't know when -- in response to this last question --

THE WITNESS: Yes, sir

THE COURT: -- are you talking about before this hit the media or sometime after?

THE WITNESS: No, sir

THE COURT: The objection is sustained Ask another question

BY MR ASBILL:

Q With respect to concern about the press release that you've been discussing or you've been describing in your conferences with Mr -- or conference with Jerry Kilgore, would I be accurate in saying that your concern was with the press release, not about the Governor?

A The concern was the press release and the inclusion of the Governor and the First Lady in the press release, the way it was worded

Q Okay But your concern was not about the Governor's conduct It was about Star's press release, right?

A It was about the press release, yes, sir That's correct.

Q Okay You talked about an e-mail I'm sorry I don't even know the exhibit number February 17th, 2012, with some -- that you didn't have any knowledge of, but you were cc'd on the e-mail

Did that kind of thing happen often; that even if you were on an e-mail, you missed it, you overlooked it?

A It did I mean, I probably averaged 3 or 400 e-mails a day, in addition to phone calls and personal visits And I did my best to read as many of the e-mails I received on days I could, but inevitably, there were some e-mails that I just did not get to in the next day's work

Q Do you have any knowledge of whether the Governor got more or fewer e-mails than you?

MR FAULCONER: Objection, Your Honor

THE COURT: He can answer that

A It wouldn't surprise me if the Governor received as many or more

BY MR. ASBILL:

Q All right The Healthcare Leaders Reception in the end of February 2012 I want to focus on that

MR ASBILL: Exhibit 345, please

BY MR ASBILL:

Q This is a calendar entry; is that correct?

A Appears to be Yes, sir

Q Reflecting a meeting between my client and Jonnie Williams that same day for 25 minutes?

A Appears to be Yes, sir

Q Okay And that's in advance of the reception that night; is that correct?

A I'm not sure what time of day the reception was But that appears to be in the afternoon The reception was likely in the evening

Q Okay

A I did not attend the reception So --

Q All right No I know you said you didn't attend the reception But this meeting is scheduled, is on the record at the Governor's Office, correct?

A It appears to be Yes, sir

Q All right And you were asked about a lot of handwritten notes by my client, four or five pages of handwritten notes

Do you know when those notes were prepared? In other words, do you know whether they were all in one day or in multiple days?

A No, sir, I do not

Q Do you know whether they were all in one meeting or all about one meeting or they were about several discussions?

A Do not.

Q Do you know whether those notes reflect my client's views, opinion, analysis, as opposed to writing down what someone else said?

MR FAULCONER: Objection, Your Honor

THE COURT: Sustained

BY MR ASBILL:

Q You just don't really have any idea about the contents of that exhibit; is that right?

A Other than what I testified to, no, sir

Q Okay The event that you've described briefly, the February 13th, 2013, you say you learned that Maureen McDonnell was going to be talked to by the Virginia State Police; is that right?

A Yes, sir

Q And how is it that you learned that that was going to occur?

A I believe I received a call from the Superintendent

Q And what was your understanding of the purpose of the meeting?

MR FAULCONER: Objection, Your Honor Relevance as to his understanding

THE COURT: Sustained

BY MR ASBILL:

Q Did you talk to my client about the meeting before it occurred?

A Yes, sir.

Q Did you tell him the meeting had anything to do with Jonnie Williams?

A No, sir

Q You talked to him after the meeting, correct?

A Yes, sir

Q And you say he seemed upset at that point?

A Yes, sir

Q Do you know why?

A The only thing I recall him saying was that the interview was not what it was purported to be about

Q With respect to my client's personal finances, was that something that he discussed with you at any time during the years you worked for him?

A No, sir

Q With respect to his marriage and any issues between himself and his wife, are those things that he discussed with you?

A No, sir

Q Correspondingly, are those the types of things that you ever brought up or raised with him and discussed with him?

A Only if I felt like it somehow spilled over into state government

MR ASBILL: Court's indulgence one moment, Your Honor

BY MR ASBILL:

Q Going back to the discussion with Jerry Kilgore about the Mansion lunch Did Kilgore ever report to you in that discussion that my client had somehow promised Star that they could have a launch event at the Mansion?

MR FAULCONER: Objection, Your Honor

THE COURT: Sustained

BY MR ASBILL:

Q After the investigation became public -- that's, what, Easter March 2013?

A I couldn't tell you the exact date, but it was sometime around that time frame Yes, sir

Q And at that point, did you do anything to look into the allegations?

MR FAULCONER: Objection, Your Honor

THE COURT: Sustained

BY MR ASBILL:

Q Were you legally authorized to do anything --

MR FAULCONER: Objection, Your Honor

BY MR ASBILL:

Q -- to look into it?

THE COURT: Sustained

BY MR ASBILL:

Q Did you take any action after the investigation broke --

MR FAULCONER: Objection, Your Honor

BY MR ASBILL:

Q -- with respect to the subject matters of the investigation?

THE COURT: Sustained

BY MR ASBILL:

Q That was in March 2013 when the investigation broke or the public knew there was an investigation?

A It was sometime in that time frame March, April time frame

Q And you stayed until the following January; is that right?

A Yes, sir, I did

MR ASBILL: I have no further questions

THE COURT: All right We're going to stop now for the morning break We'll take 15 minutes

(The jury left the courtroom)

MR DRY: Judge, I just wanted to apprise the Court The government anticipates calling witnesses Skunda and Bridge tomorrow And there's a pending motion to exclude filed by the defendants, and we filed a response I don't know when the Court wants to take that up, but I just wanted to apprise the Court of that

THE COURT: So I guess that means I'll have to look at it during lunch today I'll deal with it

MR DRY: Thank you, Your Honor

(Recess taken from 11:38 a m until 11:55 a m)

THE COURT: Hold up We need the witness.

(The jury entered the courtroom)

THE COURT: All right Cross for Ms McDonnell?

MR BURCK: Thank you, Your Honor

CROSS-EXAMINATION

BY MR BURCK:

Q Good morning, Mr Kent

A Good morning

Q My name is Bill Burck, and I represent Ms McDonnell I have a handful of topics that I want to go through with you as fast as possible

A Okay

Q First, I just want to start with when Ms McDonnell was the First Lady of Virginia, she was not a state employee, right?

A That is correct

Q She did not receive a salary?

A She did not

Q And she was not a public official?

A That is correct

Q She had no authority to hire or fire anyone, did she?

A That is correct

Q Mary-Shea Sutherland, she left the Mansion in October of 2011; is that right?

A I believe that's correct Yes

Q And I think that technically, you fired her; is that right?

A She was involuntarily separated

Q Involuntarily separated And that was your -- your authority that she was voluntarily separated, right?

A That is correct

Q It wasn't Ms McDonnell that -- that involuntarily separated her?

A That is correct

Q Now, in fact, Ms McDonnell didn't ask you to terminate her at all, did she?

A No, she did not

Q You were asked about an incident involving Nu Skin

This is back when the Governor was the Attorney General Do you remember that testimony?

A I do

Q And the -- the incident that you described was that Nu Skin was using Mr McDonnell's likeness without his permission; is that right?

A That was my understanding Yes

Q And you guys put an end to that? "You" the staff

A That is correct

Q Did Ms McDonnell, in any way, object or complain about that?

A I do not recall that No

Q Okay. Now, during the time that you were Chief of Staff, which is, I guess, the entire period of the Governor's time in office, you testified that he was the busiest person in the -- in the administration?

A No question

Q And there were times that Ms McDonnell came to you to try to get times scheduled with him; isn't that right?

A She didn't come to me I think she came to the scheduler

Q She came to the scheduler?

A She did Yes, sir

Q And you were aware of the times that she would come to the scheduler looking for time to be with

Mr McDonnell?

A I was aware of several I'm not sure if I was aware of all But I was aware of several Yes

Q And you were aware that she found that it was very difficult to find time with him; isn't that right?

A That is probably correct Yes

Q Let's talk a little bit about the summer of 2011 and Mary-Shea Sutherland and your interactions

A Sure

Q Now, you were asked about a shopping trip, I think, by the prosecutor that you didn't know about at the time in April 2011?

A (Nodding head)

Q You -- please, can you just answer --

A That's correct

Q Thanks

A I'm sorry I was waiting for you to finish your question I apologize

Q No That's okay

Did Mary-Shea Sutherland ever tell you about the shopping trip?

A I do not recall her ever telling me about that No

Q And did she ever tell you about the wedding gift to Cailin that Mr Williams provided?

A I do not believe she did No

Q Now, you testified that you recall that she said something about credit card debt of about $20,000?

A That's my recollection, yes

Q And "she" being Mary-Shea Sutherland She told you about this?

A Referencing the First Lady

Q Referencing the First Lady And also Jonnie Williams came up in the same conversation?

A I believe it did Yes Yeah It was -- again, it was in the midst of a very long protracted conversation about other issues, but I do believe she did Yes

Q So to you -- sitting here today, your best recollection is that Mary-Shea Sutherland told you something about $20,000 worth of credit card debt that Jonnie Williams may have paid for the First Lady?

A That was the gist of it Yes

Q Okay And, again, this is while Mary-Shea Sutherland was actually employed by the Mansion; isn't that right?

A That is correct

Q Did Mary-Shea Sutherland tell you that she received a dress as a gift from Mr Williams in April 2011?

A No, she did not

Q Did she tell you that she was negotiating for a job or a position of some sort with Mr Williams during the summer of 2011?

A No, she did not

Q You testified about --

MR BURCK: Can you please publish Government Exhibit 226, which is already in evidence

BY MR BURCK:

Q This is -- take a moment to look at it

MR BURCK: If you could blow it up a little bit so it's easier to read

BY MR BURCK:

Q This is a series of e-mails you testified about on direct concerning the press release, leading up to the launch?

A Yes

Q Now, do you recall if Maureen McDonnell had any involvement at all, as far as you knew, in the press release?

A No I have no specific knowledge of that

Q And these -- this e-mail chain has -- Maureen McDonnell is not on it at all, is she?

A No, she's not

Q Do you recall if, when the press release was changed, to make it more acceptable to the Mansion, to the Office of the Governor, that Ms McDonnell complained in any way, pushed back in any way?

A No

Q Okay

MR BURCK: You can take that down Thank you

BY MR BURCK:

Q Do you recall that there was supposed to be a press conference of some sort in front of the Mansion for the launch event?

A That was my understanding Yes

Q Or the lunch or the launch event, whichever?

A Yes That's my understanding

Q And that was also canceled, right?

A That's -- that's what we focused on

Q That's what you focused on You and Jasen Eige --

A Yes

Q -- and Tucker Martin?

A Tucker to a lesser extent, but primarily Jasen Eige and myself Yes

Q Okay And did you ever hear any kind of pushback or complaint from the First Lady when that was canceled?

A No

Q In December of 2011, there was SOEI training provided for the staff; isn't that right?

A December of 2011?

Q Yes

A There was some provided at some point in time I'm not sure of the exact date But yes, there was

Q Do you recall that the First Lady was provided training as part of that SOEI training?

A She -- I believe she was Yes

Q Do you recall why she was included in the training?

A I do And I think the timing, in large measure, had to do with the change in transition of staffs And she -- we -- several new hires were made after Mary-Shea had left and a few other folks had left

And I believe I spoke with my Deputy Chief Of Staff, Matt Conrad, who, I believe, is the one who conducted the training, and we felt like it was important for multiple reasons One, to try to ensure there was some cohesion within the Governor's -- I mean the Mansion Office with staff, you know And it was sort of the -- the unknown, and we felt like it was better to be safe than sorry and to have her, along with the staff at the Mansion, included to make sure that everyone was on record as to what the requirements were

Q Okay And the SOEI training, at some point you concluded that the First Lady did not have to file an SOEI because she's not a state employee, right?

A I believe our counsel's office did make that determination Yes

Q But the staff were employees of the -- of the state?

A They were Yes

Q So they would have to file SOEIs?

A Yes They should

Q Okay So the First Lady was present for the reasons you mentioned, not because she had to file an SOEI?

A That's correct

Q Okay And you -- there was a transition in staff, you talked about, after Mary-Shea left --

A Yes

Q -- or was terminated?

Can you tell us a little bit about that? There was three people that replaced Ms Sutherland?

A No There weren't three that replaced her There was one individual that technically replaced her There was another individual that was hired for a different purpose That was -- part of her job was to deal with the First Lady's initiative dealing with military spouses And so she, by default, was sort of folded into the work of the Mansion, but she was not really hired to replace Mary-Shea per se

Q Okay But when Mary-Shea left, is it fair to say that the First Lady's -- the people, the number of staff, that reported technically to the First Lady grew in number?

A There were more individuals That is correct

Q And was that partially because there was concern

about the First Lady's ability to manage her office?
A Well, one individual was a request of the First Lady, someone that she had known personally and was a personal aide to her And she -- we hired her primarily at the First Lady's request

There was an individual who, I would say, to answer your question, was the primary replacement for Mary-Shea

And then there was another individual that I mentioned to you that was sort of morphed into part of the First Lady's initiatives that was actually working at the time, initially, for Public Safety and Commonwealth Preparedness
Q Okay I want to talk about the -- briefly, about the Virginia Health Leaders event
A Okay
Q Was it -- is it fair to say that it was not uncommon for any kind of event that was going to be held at the Mansion for the Governor's staff to ask the First Lady's staff whether or not they wanted to invite people to an event?
A I didn't get involved in that level of granularity, but that wouldn't surprise me if that request was made
Q And not just for that event, but I'm talking more generally That was a typical --

MR FAULCONER: Objection, Your Honor He said he's not familiar

THE COURT: Sustained

BY MR BURCK:

Q Going to February of 2013 There was a -- an interview conducted by -- by the Virginia State Police of Ms McDonnell?

A Ms McDonnell Yes

MR BURCK: Please show the witness only, for identification purposes, RM-2028 And can you blow it up and then start at the bottom

BY MR BURCK:

Q Now, Mr Kent, you testified that you recalled that you received a phone call from Virginia State Police in advance of that -- that interview Do you recall that?

A I did

Q Is this an e-mail from a Steven Flaherty to yourself, dated February 13, 2013?

A It appears to be Yes

Q Do you know who Mr Flaherty or Colonel Flaherty is?

A He's the Superintendent of the Virginia State Police

MR BURCK: Your Honor, we would offer RM-2028

THE COURT: It will be admitted

MR BURCK: Could you blow it up entirely so we can see the whole page?

BY MR BURCK:

Q So starting at the bottom, this is an e-mail, again, from Mr Flaherty to you on February 13th It says, "Martin We want to wrap up the Chef Todd case Plan to go to the grand jury next week If the First Lady is available Friday and can block off about two hours (probably won't need that long) to talk to Charlie Hagan and Tyler Kennedy, we would appreciate it Thanks, Steve "

Do you see that?

A I do

Q And above that, you respond, "Will talk with her tomorrow Thanks, Steve," from Martin?

A That's correct

Q And then immediately above that, it says, "Thanks "

Now, what was the Chef Todd case?

A That was a separate matter in the City of Richmond involving some alleged misappropriation of state assets, mainly, food, by the former chef of the Mansion

Q And was that your understanding of what the agents were there to interview Ms McDonnell about?

A That -- that was my understanding, yes

Q Do you recall if they had mentioned to you that they wanted to talk with Jonnie Williams?

A No

Q If you look at the top of the e-mail just briefly, it says -- this is from you to Colonel Flaherty on the next day, February 14th "She is pulling together her notes so she can refresh her memory for tomorrow Go ahead and work through her office to schedule Thanks, Martin "

And then above, that Colonel Flaherty says, "Thanks, Martin," right?

A Yes That's correct

Q So as of -- this is the day before the interview, which is on February 15th, as of that point, you understood that this interview was about the Chef Todd case, correct?

A That's correct

Q And you had no idea it was also about the Jonnie Williams issue?

MR FAULCONER: Objection, Your Honor

THE COURT: He's already answered that

BY MR BURCK:

Q Now, prior to -- on the day of the interview on February 15th, did you -- were you planning to attend this interview with Ms McDonnell?

A I had initially offered to attend the interview with her

Q I'm sorry Who did you offer that to?

A I believe I offered that to the Governor

Q Okay And what did the Governor say to you?

A At the time, I think he thought it was okay And, you know, that was kind of the end of that conversation I think the understanding was is that I would attend with her

Q Okay And did you attend with her?

A No

Q What happened?

A I was contacted by Deputy Superintendent of State Police and notified that I would not be -- I would not be needed at the interview

Q You would not be needed at the interview But did you still have a choice to attend the interview?

A I don't think so

Q You did not have a choice?

A It was made clear to me that I was not invited

Q And that was made clear to you by whom?

A By the Deputy Superintendent

Q Do you know if Ms McDonnell took anyone with her into the interview?

A I do not know that she did

Q Do you know if she took a lawyer with her into the lawyer?

A I do not believe she did

Q Just a few last questions for you

MR BURCK: Just pulling up Government Exhibit

231 This has already been admitted into evidence

BY MR BURCK:

Q If you look at the second and third pages of that exhibit, you were asked about the handwriting You thought you believed that it looked like the Governor's handwriting?

A That's correct

Q And you were asked about stars that were placed next to people's names?

A Uh-huh

Q And one of the stars is John Clore, and another one is Carrie Cantrell?

A Yes

Q And the next page, Jasen Eige, John Laso And then I think Roskamp and Roskamp are written down on the third page --

A Yes

Q -- next to Diane Roskamp and Bob Roskamp And Mary-Shea Sutherland has "1st Lady Office," right?

A Yes

Q Do you see Jonnie Williams and Jonnie Williams, Jr below Mary-Shea Sutherland on that list?

A Yes, I do

Q Do you see any stars next to their names?

A I do not

Q If you look, top of the page, above John Laso, Paul Ladenson?

A I do

Q Do you see a star next to that name?

A I do not

Q And prior page, David Dean, and Fiona Crawford Do you see stars next to those names? It says Roskamp and Star Scientific?

A I do not

MR BURCK: You can take that down Thanks

BY MR BURCK:

Q And then just some final questions for you Are you aware of any -- during your time as Chief of Staff to the Governor, are you aware of any budget money going to Star Scientific or Jonnie Williams?

A No

Q Are you aware of any economic grants going to Jonnie Williams or Star Scientific?

A No

Q Are you aware of any Board appointments made to Star Scientific or Mr Williams?

A No

Q Are you aware any of legislation provided to or on behalf of Star Scientific or Mr Williams?

A No

MR BURCK: Your Honor, just a moment

(Counsel conferring with co-counsel)

MR BURCK: No further questions, Your Honor

THE COURT: Redirect?

MR FAULCONER: Yes, Your Honor

REDIRECT EXAMINATION

BY MR FAULCONER:

Q Now, Mr Kent, just to follow up real quick on something that Mr Burck was just asking about with respect to state funds Are you aware of what the default is for an event held at the Mansion in terms of what pays for an event at the Mansion?

A Who pays for an event at the Mansion?

Q Yeah So if Sarah Scarbrough, for example, doesn't invoice anybody for an event, are you aware of what the default is of where that's paid out of?

A I would assume it would probably be the Governor's PAC

Q Sorry An event held at the Mansion, is that paid out of Mansion funds?

A No You said the default if it wasn't paid for out of the Mansion

Q I'm sorry Let me rephrase the question --

A I may have misunderstood your question

Q -- to be a little bit more accurate

A Yeah

Q If an event is just held at the Mansion --

A Yeah

Q -- and no invoicing is done to the PAC or to any outside groups, what's your understanding of what the default is of who pays for?

A Typically, it would be paid for by the Cabinet secretary that has requested the event or the agency head that's requested the event

Q And if no agency head pays for it, does it then come out of the Mansion budget?

A Yes It would typically come out of the Mansion budget

Q And is the person who would typically be monitoring that typically be Sarah Scarbrough?

A She would

Q Now, you were asked a few questions about the interview with law enforcement on February 15th of Ms McDonnell And you discussed potentially going or you potentially offering to go?

A Uh-huh

Q Just to be clear, were you offering to go as Ms McDonnell's private personal attorney?

A No

Q You were also asked some questions about Mary-Shea

Sutherland on cross-examination

A Uh-huh

Q And you were asked about whether or not she told you about any conversations she had with Jonnie Williams about employment

A Uh-huh

Q To be clear, in the summer of 2011, did Mary-Shea Sutherland tell you that she was looking for outside employment?

A She, most likely, did, in the midst of everything, but she never mentioned Jonnie Williams

Q But was it a surprise to you that she was --

MR BURCK: Objection, Your Honor

BY MR BURCK:

Q -- potentially looking for outside employment?

THE COURT: Overruled

A No, it was not a surprise

BY MR FAULCONER:

Q And shortly before she left, do you recall whether or not Mr McDonnell wanted, based on his conversations with you, wanted Mary-Shea Sutherland to stay on staff or whether he wanted her to leave?

A He initially wanted her to stay

Q You also were asked about a couple of conversations involving Nu Skin, the product endorsement type thing that happened before Mr McDonnell took office as Governor And I believe either Mr Asbill or Mr Burck asked you about whether or not you got any pushback from Ms McDonnell about that Do you remember that question?

A I do

Q To be clear, did you have any conversation with Ms McDonnell about the Nu Skin, whatever that event was?

A No

Q You were also asked about -- I'd like to go back for just a moment to the interview with law enforcement --

A Uh-huh

Q -- of Ms McDonnell Did Mr McDonnell or Ms McDonnell, to your knowledge, ever ask you about having a personal attorney there for Ms McDonnell in that interview?

A I don't remember they ever asked me about it

Q So going back to -- past the Nu Skin, and then now into the press release for the event at the Mansion in late August of 2011 And you were asked about whether or not Ms McDonnell pushed back on you, whatever you and Mr Eige did with that press release?

A Uh-huh

Q To be clear, did you have any conversation with Ms McDonnell in which she would have pushed back?

A No

Q You were also asked about Mr McDonnell and whether he pushed back Again, did you have any conversation with Mr McDonnell about that?

A No

MR FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel

MR FAULCONER: No further questions

THE COURT: All right, sir You may stand down Thank you very much

THE WITNESS: Yes, sir Thank you

(Witness stood aside)

THE COURT: Call your next witness, please

MS ABER: The United States calls Sara Wilson

SARA WILSON,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good afternoon, Ms Wilson

A Good afternoon

Q Please state your name, and spell your first and last for the record

A Sara Redding Wilson And it's S-A-R-A, W-I-L-S-O-N

Q What is your current title?

A I am the Virginia Department of Human Resource Management Director

Q Tell the jury, please, what that involves

A I'm head of human resources That -- one of the things I manage is healthcare, EEO, any type of fairness and equity type of issues, human resource policy for the state Any kinds of things like that that relate to people Worker's compensation Various human resource issues

Q Do you work within the office of a Cabinet secretary?

A I do I work within the Office of the Secretary of Administration

Q How long have you had this job?

A I've had this job since April 1998 This is my fifth governor

Q So does that mean you worked in the administration of Governor Robert McDonnell?

A Yes, it does

Q And during that administration, to which Cabinet secretary did you report?

A Secretary of Administration

Q And what was her name?

A Lisa Hicks-Thomas

Q Is it fair to say that you oversee, in part of your many hats, the health plan for the employees of the

Commonwealth of Virginia?

A Yes, ma'am

Q Now, are you familiar with a company called Star Scientific?

A I am

Q Did you have a meeting with someone from Star Scientific on February 29th, 2012?

A I did

Q And who was that?

A David Dean

Q And did he make an appointment or did he just sort of swing by?

A He was a cold call Just walked in, asked if I had time to meet with him, and I did So I met with him

Q Is it common for folks to just knock on your door, swing by?

A Has it been done? Yes Is it the most common? No But it's not unheard of

Q Now, at that time --

A And it was his lucky day He didn't have to wait

Q At that time, what did you understand that David Dean did for Star Scientific?

A He was involved in sales and marketing for Star Scientific

Q And, in essence, what did David Dean want from you in that meeting? What was his ask?

A He walked into the meeting I said, "What can I do for you? What is it you want?"

And he said, "I would like Anatabloc to be covered by the employee health plan "

And I said, "Well what is this? Is this a drug? Is it covered by the FDA? What is it?"

And he said, "Oh, no No No This is a dietary supplement "

And I said, "Well, that's going to make this meeting really short because we don't cover dietary supplements in the state health plan "

Q Did you ask Mr Dean about studies of Anatabloc, scientific studies?

A Oh, yes Yes Because he's a salesman He's a good salesman And he talked about who was taking it and all the people interested in it And I wanted to see studies I wanted to see the scientific research behind this Even though we didn't cover it, I was very interested in results And we have a lot of employees that have -- that need things that would be anti-inflammatory So I looked for detailed scientific information

Q Did he say anything about having state employees participate in a pilot research study?

A At some point in time, I've talked to him several times, he may have mentioned it But employees can participate in any kind of study There's that 1 800 on the billboard, "If you have these kind of symptoms, call " They are free to participate, but it's not anything that we would sponsor

Q Okay So after you sent Mr Dean on his way, did you see him later that evening?

A Yes, I did

Q And where did that happen?

A At the Executive Mansion

Q For what kind of event at the Executive Mansion?

A I believe it was called Health Leaders meeting or Leaders in Healthcare Something along that line

Q Did you also briefly meet a gentleman named Jonnie Williams at that reception?

A Briefly

Q Okay Now, moving forward in time, almost a couple weeks, were you present at a meeting with Mr McDonnell on March 21st, 2012?

A 21st Yes Yes, ma'am

Q On or about?

A Yes 21st

Q Who else was at this meeting?

A Lisa Hicks-Thomas, Martin Kent And others may have come and gone, but those two were there for the duration

Q And Lisa Hicks-Thomas was your boss at the time, right?

A Yes, ma'am

Q Where did the meeting take place?

A Governor's Office

Q So the Governor was present?

A The Governor was present

Q Okay What was the purpose of this particular meeting?

A We were talking about healthcare

Q Was there any particular aspect that related to your job and the Virginia healthcare plan for employees?

A Yes He was very interested in implementing a consumer-driven health plan, and we were always giving him updates on that particular item Of course, I always try to get in employee compensation and other issues when I have an audience with the Governor, but the primary meeting was for healthcare

Q In a nutshell, can you tell the jury what a consumer-driven healthcare plan is?

A A consumer-driven healthcare plan is a plan that we've put in place to try and get employees to really know their numbers and be much more engaged in their health, taking care of themselves And we give them tools so that they can understand the quality and cost from their providers where you can go look it up on-line to see what certain procedures cost or what providers charge So they have the tools

And then the big difference from a regular plan is that they pay more out of pocket But to offset that, the employer gives them cash So that we give them cash for them and for their spouse, and then they can earn additional funds, what we call do rights Like if you go to the doctors, you can get a reward If you get your flu shot, you can get a reward So would get additional rewards to put into your account And anything you don't spend rolls over for your own account for the next year and keeps rolling over and over and over So it's your money to spend on healthcare

So the concept is is that if you're an employee spending your money, you're going to be a good shopper And that's what we're looking for the consumer to be a good shopper Because if they are, then they win and so does the state plan, which also means all other state employees would win too because hopefully the cost would drop

Q Now, based on your conversations with Mr McDonnell during the administration, would you say that he was a proponent of this consumer-driven plan?

A Oh, he was very much in -- very, very interested in the consumer-driven plan Yes

Q Now, at this meeting on March 21st, did Mr McDonnell make any reference to Anatabloc?

A At the end of the meeting, he did

Q Okay Tell the jury what exactly happened, to the best of your --

A He was mentioning -- we were talking about all these issues, and he pulled out a bottle, you know, one of those small bottles, of Anatabloc and talked about how much it had helped him and his wife

Q Did you try to respond to him?

A I did try to respond to tell him that I had already met with these people But there was a lot of conversation, and so I just didn't finish the -- I didn't finish my thought with him to tell him I had already met with these people

Q Had you ever seen Mr McDonnell bring out a product during a meeting like this?

A No

Q Now, after the meeting had finished, did you walk out with your boss, the Secretary of Administration, Lisa Hicks-Thomas?

A I did

Q Did you two ladies have a conversation?

A We did

Q And tell the jury what you recall about that conversation

MR BROWNLEE: Objection, Your Honor Hearsay

THE COURT: Overruled

A I participated in this conversation And when we left the meeting, Lisa turned around and looked at me and said, "He wants us to meet with these people "

And I said, "I didn't hear that He never asked" -- "there was no specific ask in the meeting "

And she said, "Well, let's go down and" -- and she said, "Well, trust me That's what he wants "

And we walked down to her office and we Googled it, because I understood from David Dean that it was being sold by GNC, but I had never scoped it out So we pulled it up and looked at the price and looked at how it was being sold And I explained to Lisa the kinds of things that I mentioned with David Dean; that, no, we wouldn't cover it, but I did offer to him a chance to give -- if it's marketed publicly, if he wanted to give an employee discount, we'd post it on the website, if employees wanted a discount, and I never heard back from them on that

Q Okay

MS ABER: One moment, please, Your Honor

(Counsel conferring with co-counsel)

MS ABER: I have no further questions, Your

Honor Thank you

THE COURT: All right Anything for Mr McDonnell?

CROSS-EXAMINATION

BY MR BROWNLEE:

Q Good afternoon, Ms Wilson

A Good afternoon

Q My name is John Brownlee I represent Bob McDonnell, and I have a few questions for you today

A All right

Q Just to review, you were first appointed to the government by Governor Gilmore in 1998; is that correct?

A That's correct

Q And I believe you've testified that you're now on your fifth governor?

A Yes, sir

Q Okay And is it fair to say that with regard to healthcare policy and this consumer-driven policy that you talked about, that this was something that Governor McDonnell was very interested in from the very beginning of his administration?

A Absolutely

Q Okay And I believe you testified that you met with him regularly on budget issues; is that right?

A Well, if I met with the Governor, generally, it was budget, but the topic was always involving healthcare because it is a big driver for us for the budget

Q Okay Just to talk about this first meeting, this meeting with David Dean I believe you testified this was a cold call So he just --

A Cold call Just walked in

Q Wanted to talk?

A "Can we talk?" And I said, "Okay "

Q All right And is it fair to say within -- because you are the Director of Human -- let me make sure I get this right -- the Human Resources Management, that this happens somewhat frequently that you meet with these types of sales reps?

A I get vendors all the time Call all the time And we will meet with everybody Usually they make an appointment

Q Okay

A But I do meet with anybody that asks to have a meeting

Q All right And you see part of your job is to kind of hear them out?

A That's part of my job, to listen to them And anything that looks like it has merit to further along, then we move it up to the healthcare team

Q Okay And Mr Dean, according to your testimony, wanted Anatabloc added to the state employee health plan; is that correct?

A That's what he asked for

Q All right And you told him no?

A And I said, "Well, this will be a short meeting " Yes, I told him no

Q Okay And at that point he said he would try to -- I think you -- is it true that you told him that you needed to see some science behind this?

A I was interested in hearing -- I mean, he was an engaging fellow I was interested in hearing the details And if -- you know, somebody has to come up with a new product sometime, and so I wanted to see the research It sounded like it was not ready for prime time, but I was really interested in the scientific evidence that would support it --

Q Okay

A -- to keep my eye on it

Q Okay And so as the meeting left, he said he would try to follow up with you at some later date; is that correct?

A He would give me additional information at a later date Yes, sir

Q Okay Now, with regard to that meeting, best of your knowledge, Bob McDonnell didn't have anything to do with that; is that correct?

A No From best of my knowledge, this was a salesman trying to do his job, cold call on a -- somebody with the health plan where his product could be -- he thought could be benefited

Q Okay

A No I had no idea -- I didn't -- never assumed it was from the Governor

Q Okay

A Thought it was a cold call from the company

Q Okay Let me move to this Healthcare Leaders Reception You said that you attended that evening --

A I did

Q -- in February?

That you saw Mr Dean that evening?

A I did

Q This was the gentleman who had just dropped in on you --

A Yes

Q -- a few hours before?

A He must have been killing time or something He came to see me I don't know

Q Okay And did you see Bob McDonnell that night?

A I did

Q Okay Did he come by and talk to you? Do you recall?

A I don't know if I talked to him But I saw him He was busy

Q All right He didn't come by and --

A It could easily have I don't recall But it would not be uncommon for him to acknowledge your presence and say hello

Q Okay

A But I cannot recall specifically whether he did at that time or not

Q Okay Let me -- now, you had a second meeting with Mr Dean; is that correct?

A I did

Q Okay And this is, I guess, the follow-up to his original; is that correct?

A That's correct

Q Okay And at this second meeting, did he bring some slides?

A He brought a PowerPoint presentation

Q Okay And let me --

MR BROWNLEE: Could we pull up, please, RM-1448 -- just for the witness -- 0001

BY MR BROWNLEE:

Q And does this look like at least the front slide and the other slides of the --

A These slides Yes

Q Okay And there was a --

A Yes

Q These are these other folks

A Uh-huh

MR BROWNLEE: Your Honor, we would move RM-1448-01 through 31 into evidence

THE COURT: It will be admitted

MR BROWNLEE: Thank you, Your Honor

BY MR BROWNLEE:

Q And so this is the package of materials that he left for you to take a look at; is that correct?

A That was his leave behind, yes, sir

Q Okay And fair to say that you reviewed these?

A I did

Q Okay And --

A We reviewed them together

Q Okay And after that, did you, once again, tell him that -- first of all, State of Virginia, your office, this kind of stuff doesn't go on your formulary; is that correct?

A Oh, he knows that

Q Okay

A He knew that

Q Okay

A I think he was just following up that -- I had asked for specific details, and this was his -- this was his specific detail, I think

Q Okay Fair to say this didn't convince you to --

A No This is not what I had in mind I was looking for a scientific document, you know, where there were studies done and research done and the probabilities and percentages of the study I consider this more marketing material

Q Okay So once again, he left without getting any of your assistance?

A That's correct

Q Okay And Bob McDonnell didn't have anything to do with this meeting?

A Not that I'm aware of Not to my knowledge at all, huh-uh

Q Okay I mean, he never asked you --

A Never

Q Now, I want to touch, finally, on this meeting that Ms Aber talked about in the Governor's Office

A Yes

Q And this was on March 21; is that correct?

A That's correct

Q Okay And this meeting talked about this rollout of this consumer-driven healthcare plan; is that correct?

A Yes, sir

Q Okay And I think you testified that at some point at the end of the meeting Mr McDonnell pulled out a bottle of Anatabloc and talked about the fact that he took it and that it had helped him; is that --

A That's correct

Q And you testified that you were talking about numbers Were those numbers, like cholesterol numbers and blood numbers? Things that people refer to in their own health?

A Yes We were trying to get employees -- one of the things about a consumer-driven health plan is to get employees to know their numbers Whether it's their blood pressure, their BMI, their --

Q What is BMI, for the record?

A We have -- it's -- it is the measure, really, of whether you're overweight or not

Q Okay

A And so that's -- we are really interested in that because if you are, it has a collateral impact on a lot of other diseases --

Q Okay

A -- which raises the cost of the healthcare So we're trying to get everybody to do right and do all the things to help them be healthier And if they're healthier, then they're at work more, and they are -- we get the work done, and they are better and healthier

Q All right Do you remember, if you recall, one of the numbers that was discussed was something called C-reactive protein? Do you recall that?

A I don't recall that, but it could easily have been discussed But I am familiar with C-reactive protein

Q All right And is that a number or a marker --

A That's an inflammatory piece to -- that goes with that, that measures that

Q All right And that has some indication of the status of your heart Is that fair?

A Yes.

Q Okay Now, I believe you stated before that it was your view that when he pulled this out, that it was like someone would pull out and say, "I like an Advil gel cap over Tylenol"; is that correct?

A He pulled it out I didn't know why he pulled it out I mean, for me, it could say -- I would say, "I like Advil gel caps over Aleve " I had no idea why he pulled it out because there was no ask There was nothing there He did pull it out of his pocket, though, and talk about it It was personal

Q Okay Now, Ms Aber talked with you about -- after the meeting you had this conversation with Ms Hicks --

Secretary Hicks-Thomas; is that correct?

A Yes

Q And there was some confusion between the two as to whether or not -- exactly what Mr McDonnell had said in the meeting?

A Well, I don't know if there was -- I did not hear him ask for anything, and she thought that -- it was my -- my recollection that she said, "He wants us to contact them " And that wasn't my recollection at all because he didn't say that

Q Okay

A And I had already met with these people

Q Okay And so then you went and --

A Googled them

Q -- you looked it up on -- on Google?

A We Googled them

Q And Googled them Okay Fair enough Now, you did have on your calendar, did you not, just scheduled for the next day, this meeting with Dean that you just talked about?

A That was just a follow-up meeting from our first meeting

Q Okay But that didn't have anything to do with Bob McDonnell?

A No

Q Okay All right And after that, were there ever any other follow-up or any additional meetings or anything about Anatabloc or -- or Star Scientific with you?

A The only issue that I -- when we went down, as we walked down to Secretary Lisa Hicks-Thomas' office, I explained the history I had had with learning about Star Scientific, and I explained to her that David Dean had been to see me, that I told him it was not covered, that I -- I did offer an employee discount if they wanted to offer that, and I had not heard back

We Googled them, and I said, "I'll keep you posted if I hear anything more about it And to date, we've not even heard back on the discount for state employees So we've really not talked about it since

Q Okay

A I mean, other than related to something like that But no Never followed up

MR BROWNLEE: All right Great

Thank you, Your Honor

Thank you

THE COURT: All right

MR KOFFMANN: Nothing for Ms McDonnell

THE COURT: All right Cross for Ms --

MR KOFFMANN: Nothing for Ms McDonnell

THE COURT: All right Any redirect?

MS ABER: Yes, Your Honor

REDIRECT EXAMINATION

BY MS ABER:

Q Two questions Although every lawyer says that and it's four Why, Ms Wilson, did you have an instinct to say that you had already met with the Star Scientific folks if you didn't think that Mr McDonnell was asking for anything?

A Because he was mentioning about a product, and I didn't think anybody else in the room knew about it I wanted him -- I had an instinct to say, "Yes, I was familiar with the product "

Q Okay Second question

A If you mentioned something to me, I would tell you if I knew about it or not

Q Yes, ma'am Second question I believe on cross-examination you said you didn't know why Mr McDonnell pulled the bottle out of his pocket

A That's correct

Q Were you aware that Mr McDonnell had received a 50,000 loan from --

MR BROWNLEE: Objection, Your Honor

BY MS ABER:

Q -- Mr Williams?

THE COURT: Sustained

MS ABER: Then I have no further questions, Your Honor Thank you

THE COURT: All right Thank you, ma'am You may stand down

(Witness stood aside)

THE COURT: All right I think we're going to go ahead and stop now for lunch If you all could come back at 2:00 It's about a quarter of now Come back at 2:00, and we'll get started with the afternoon session

(The jury left the courtroom.)

THE COURT: I'm going to resolve this Skunda and Bridge matter at the end of the day We'll probably send the jury home, and then we'll take a few minutes to deal with it And I -- we didn't get a written reply from the defendants, I don't believe, but we'll --

MR BURNHAM: We just filed it

THE COURT: You just filed it?

MR BURNHAM: Yes, sir, Your Honor Twenty minutes ago

THE COURT: Oh, okay Well, I haven't seen it yet Then that will save us some time this afternoon, then So, you know, I'll give you all a few minutes to say whatever you have to say, and then I'll resolve it so we'll know what we're doing tomorrow All right Thank you

(Luncheon recess taken from 12:42 p.m. to 2:00 p.m.)

THE COURT: Let's bring in the jury, please

(The jury entered the courtroom)

All right, government?

MS ABER: The United States calls Lisa Hicks-Thomas

LISA HICKS-THOMAS,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good afternoon

A Good afternoon.

Q Please state your name and spell it for the record.

A It is Lisa Hicks-Thomas, L-I-S-A, H-I-C-K-S - T-H-O-M-A-S

Q Did you previously serve in the Administration of Governor Robert McDonnell?

A Yes, I did

Q In what capacity?

A I was the Secretary of Administration.

Q Can you tell the jury briefly what a Secretary of Administration does?

A Sure The Secretary of Administration is a member of the Governor's Cabinet, tasked with basically the responsibility of running the back office of state government And I had a number of agencies that reported to me, including the Department of Human Resource Management, the Department of General Services, the State Board of Elections, the State Compensation Board, the Department of Employee Dispute Resolution, the Department of Minority Business Enterprise, and the State Compensation Board I think I said that

Q Did a woman named Sara Wilson report to you?

A Yes, she did. She was the head of the Department of Human Resource Management

Q And to whom did you report?

A I reported to the Governor

Q So fair to say you are part of or were part of the Cabinet?

A Yes

Q Could the Governor fire you?

A Yes

Q Just to be clear, you don't work in state government anymore, right?

A No.

Q All right In your capacity as Secretary of Administration, did you have a hand in administering the health plan for the employees of the Commonwealth of Virginia?

A Yes, I did As I said, the workforce, state employees, about 105,000 employees, were under our state health plan, and that fell under the purview of the Department of Human Resource Management and then ultimately up to me as the Secretary.

Q Who administers the health plan for Virginia state employees?

A The company, you mean?

Q I mean --

A We are self-insured The state is self-insured, but we have a third-party administrator and that is Anthem.

Q Approximately how much money during your tenure did the State of Virginia spend on the healthcare plan for state employees? Ballpark?

A Definitely in the millions of dollars

Q Now, did the state employee health plan authorize certain drugs that could be used and not used by state employees?

A Yes

Q And who made the decision about what drugs would be covered and which ones would not?

A Well, it was a joint decision I mean, the Department of Human Resource Management and the folks that were directly assigned to look at the healthcare plan, they would do research over the year as well as with our, we had different advisors, different companies that worked with us, like Aon, for example, and they would make calculations as to what was more effective or what was, you know, not being utilized or what would be, you know, less expensive, for example, and so they would make recommendations to Sara. And then Sara would bring those to me and we would look over the plan and then we would sit down ultimately during the budget cycle when we were going over the state budget, we would sit down with the Governor and folks from the Department of Planning and Budget and make those decisions together

Q Did you periodically have meetings with the Governor about the state employee healthcare plan?

A Yes

Q Did you have such a meeting back in the spring of 2012?

A Yes

Q Who was present at the spring meeting?

A I was present, Sara Wilson was present, I believe Martin Kent was there, and the Governor was there

Q And where did the meeting take place?

A I believe that meeting took place in the Governor's office

Q In general, what was the topic of that particular meeting?

A We were talking about the state employee health plan.

Q In very short terms, how would you describe a consumer-driven health plan?

A We were talking about implementing a consumer-driven health plan, which just to be brief, it is really empowering state employees or whoever is covered by the plan to have more information about their healthcare costs, and it is a way to drive down healthcare costs for the Commonwealth of Virginia and ultimately for the taxpayers

Q During this particular meeting, did Mr McDonnell make any reference to Anatabloc?

A Yes At some point in the meeting, he reached in his pocket and pulled out, he showed us the pills and he said that he had been taking them and that they were working well for him, and that he thought it would be good for like state employees, and then he said that, he asked us if we would meet with them, meet with the people

Q In that meeting, did you respond?

A I'm sure we said, "Sure " I can't remember I really don't remember word for word what I said. But that was pretty much the gist of it

Q And after the meeting finished, what did you do?

A After the meeting finished, Sara and I left the office, and I'm not sure if she told me at that point that she had already met with the folks, but we went down to my office and we went and looked it up on the computer to see what it was

MS. ABER: If I could have one moment, please, Your Honor.

THE COURT: Sure

(Counsel conferring with co-counsel)

MS ABER: Thank you, Your Honor I have no further questions

THE COURT: Cross?

CROSS-EXAMINATION

BY MR BROWNLEE:

Q Good afternoon, Secretary Hicks-Thomas My name is John Brownlee, and I'm an attorney for Bob McDonnell And I just have a few questions for you this afternoon. You worked for Governor McDonnell when he was Attorney General; is that correct?

A Yes

Q What was your duties or title when you worked in the Attorney General's Office?

A When I worked for him or when I first started?

Q When you worked for Governor McDonnell

A Okay, when Governor McDonnell became the Attorney

General, I was originally the Chief of the Computer Crime Unit for the Attorney General's Office And then in 2006 or 2007, he appointed me as his Deputy Attorney General for the Transportation, Real Estate, Environmental and Technology Division

Q Okay And so, then when I guess he left for a brief period to run for Governor and then when he was elected Governor, you joined his Cabinet; is that correct?

A Right. He appointed me as the Secretary in 2010, in January

Q When he was inaugurated?

A Right

Q You served in that position for four years?

A Yes

Q You stayed until the end of his Administration?

A I did

Q Just a couple of questions about this meeting I think you said that Martin Kent was there?

A That's correct

Q Ms Wilson was there?

A Yes

Q And yourself and Governor McDonnell

A Right

Q At some point -- and the purpose of the meeting was to talk about this consumer-supported or consumer-driven kind of healthcare plan.

A That's right

Q This is something that had been part of the Administration's drive since he started; is that correct?

A It is something we had been looking at doing right for the entire Administration.

Q I think you testified at some point during this, he pulled out an Anatabloc pill or something and said he took it and thought it helped him; is that correct?

A That's correct

Q Okay And then there was some other conversation, and I think you testified that you can't remember word for word, but at some point after the meeting, you and Ms Wilson had a discussion about what he actually said, and whether or not he wanted you all to meet with him; is that right? Do you remember that?

A I don't recall that I know at some point after the meeting, Sara and I left and she said that she had already met with the people, the Anatabloc folks And then we walked down to my office and looked it up on the Internet

Q Okay You looked up the company?

A Right We looked up Anatabloc

Q Okay Now, if it was after that -- was there any other follow-up?

A No

Q Governor McDonnell never came back to you and said "Did you meet with them? Did you take care of that?"

A Never

Q Okay Now, Ms Aber asked you about whether or not the Governor could fire you. I just want to be clear, he didn't fire you, right?

A No, he did not

Q You stayed until the very last day; is that right?

A Until the very last day

Q Okay Fair to say that if you had the opportunity you would go work for him again?

MS ABER: Objection.

THE COURT: She can answer it if she wants

THE WITNESS: Well, yes I guess if he was the Governor again, I guess I would work for him again Yes Although I like where I work now, I will say

MR. BROWNLEE: Thank you very much.

THE COURT: Anything?

MR. KOFFMANN: No questions, Your Honor

THE COURT: Anything else based on that?

MS ABER: No, Your Honor, thank you

THE COURT: You may stand down

(Witness stood aside)

Call your next witness, please

MR HARBACH: Thank you, Your Honor, the

government calls Michael Uncapher

MICHAEL UNCAPHER,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR HARBACH:

Q Good afternoon, sir

A How are you?

Q All right, thanks Could you please state your full name and spell your last name for the reporter?

A Michael David Uncapher, U-N-C-A-P-H-E-R.

Q What do you do for a living?

A I own a crossfit gym and do muscle therapy

Q Tell us about your educational background

A Graduated from Ohio State University with a degree in exercise science, and then have a certification in muscle activation techniques

Q At one time in your life, were you married to Maureen C. McDonnell?

A Yes

Q How was that person related to Mr Robert McDonnell, if you know?

A Maureen is Bob's sister

Q Are you still married to her?

A No.

Q During what time frame were you married to your former wife?

A 2006, June, 2006 to the divorce was just final this year, 2014

Q Okay You said the divorce was finalized in 2014?

A Right

Q Was there a time prior to the divorce during which you were separated from your ex-wife?

A Separated starting October of 2012

Q Are you familiar with a business entity called MoBo Realty LLC?

A Yes

Q What is that?

A It was a partnership between Bob and Maureen that managed the rental properties that they had

Q And you are talking about Maureen, your ex-wife, his sister?

A Yes

Q The rental properties that the company managed were located where?

A Sandbridge, in Virginia Beach.

Q How many properties were there that the company managed in Virginia Beach?

A Two

Q Do you recall whether those properties had names?

A Yes East Coast Palace and Sunseeker

Q Do you recall approximately when the first of those two homes was purchased by the partnership?

A Sunseeker was 2005, and East Coast Palace was 2006, I think

Q Are those two houses physically close to one another in Virginia Beach?

A Across the street from each other

Q You mentioned that the company was formed by Mr McDonnell and his sister. Do you know what the division of ownership was between them in terms of proportion?

A 50/50

Q I take it then that you yourself were not an owner?

A No.

Q Did you perform any services on behalf of MoBo?

A I did, kept track of bookkeeping, kept track of the statements that the realty company or the management company for the two properties sent, and paid bills

Q During what time period did you perform those services?

A 2005 until our separation in 2012

Q Which you said was in October of 2012; is that right?

A Yes

Q Is 2005 when this business entity was first created?

A Yes

Q So you started performing these services from the get-go until your separation from your ex-wife?

A Right

Q Were you paid for the duties that you performed?

A At the beginning, I was I don't know exactly when I stopped being paid, but --

Q Are you a CPA, sir?

A No

Q Did you do any formal accounting work for MoBo?

A No.

Q Did you prepare the taxes for MoBo?

A No

Q Did you work with any accounting or tax professionals to accomplish those tasks?

A Yes

Q Who do you recall working with?

A Dan Cook and Brenda Chamberlain.

Q Who is Mr Cook?

A He is the accountant that we used.

Q What about Ms Chamberlain?

A She was the bookkeeper

Q How frequently would you interact with them to help them do their jobs?

A Dan Cook, at tax time, to give him all the information, make sure he had all the information or answer any questions that he had. And then Brenda, a few times throughout the year I would send her just the bills and numbers or statements that we got from Sandbridge Realty

Q For her work as the bookkeeper?

A Right

Q From time to time, would Ms Chamberlain or Mr Cook provide you with copies of work product they did, whether it was tax returns in the case of Mr Cook, or copies of QuickBooks and the like in the case of Ms Chamberlain?

A She usually sent them directly to Dan Cook, and then he would give us the tax return at the end of the year

Q Who is "us"?

A Maureen and I

Q Just so we are clear in the record, your wife at the time?

A Right

Q Let's go back to 2005 or thereabouts when Sunseeker, the first of the two, was purchased In retrospect, where was the market then, if you recall generally?

A At the height

Q And have real estate values fallen since Sunseeker and later East Coast Palace was purchased?

A Yes

Q In fact, did the real estate values begin to fall shortly after those homes were purchased?

A Yes

Q What is your recollection of how the properties did in terms of rental income versus expenses year to year? On that metric, did they make money, to your recollection, or did they lose money?

A Lost money

Q And again, on an annual basis in terms of cash flow, say during the last five years you were working there, 2008 to, I guess, 2012, do you have any recollection of the approximate amount of money that the properties lost in terms of cash flow each year?

A Between the two of them?

Q Yes, sir

A 50 to $60,000

Q Now, to be fair, was your understanding that a business purpose for MoBo was to make a bunch of money on these homes?

A It was always to -- for long term investment It was for long term investment and enjoyment We knew out of the gate that they weren't going to make money

Q Okay And in fact, they didn't

A Right

Q Now, did there come a time, let's say approximately 2009, when there were some discussions about trying to sell the homes?

A Yes

Q Could we put the first exhibit for identification up on the screen, which is Government's 48 Mr Uncapher, take a look at that screen there, and we will blow up the top and scroll down to the bottom form, please, so he can identify the document Can you see this okay, sir?

A Yes

Q Go back to the top, please My question for you, sir, is whether this is an e-mail exchange in the 2009 time frame concerning putting the homes on the market

A Yes

MR HARBACH: The government offers Government's 48

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Let's start at the bottom, please, with at least the beginning of the e-mail from someone named Tom Bucker Who is that?

A Real estate agent at Sandbridge Realty

Q The e-mail that Mr Bucker has addressed his e-mail to, mcdonnell71@cox.net, do you know whose retail -- e-mail address that was?

A My wife, Maureen.

Q Your wife, Maureen

A Yes

Q Let's scroll up, please, to the next e-mail It says, the signature block on this one is from Maureen McDonnell Uncapher That's your then wife, right?

A Right

Q And do you recall what her reference to the Seibert folks means?

A Seibert was just the competing real estate company

Q Okay Then if we could scroll up to the top, the e-mail from Mr McDonnell, and what's the date of the e-mail that Mr McDonnell sends to his sister?

A April 24th, 2009

Q If we could take that one down The next one is Government's 49 for identification Same drill If you could blow it up for him a little bit Take a look at that, sir, then I'll scroll down for you. Go ahead, Mr Starnes Thank you.

MR. HARBACH And with the Court's indulgence, we will show him Page 2 just so he can identify it, please

BY MR. HARBACH:

Q Mr Uncapher, do you recognize this as an e-mail exchange in August of 2009, again, about the attempts to sell the homes?

A Yes

MR. HARBACH: The government offers Government Exhibit 49

THE COURT: It will be admitted.

BY MR. HARBACH:

Q I'd like to start at Page 2, the very first e-mail on the chain, at the bottom. Could you just blow that one up for us. This is an e-mail from your then wife to Mr McDonnell and you; is that right?

A Yes

Q Okay And she is talking about dropping the price on Sunseeker to 1 399k from a higher price Is it your recollection that the Sunseeker property was actually on the market at this time in August of 2009?

A I believe so.

Q All right Then a little bit later in the paragraph there is a sentence that begins "For ECP " Is that East Coast Palace, the other house?

A Yes

Q And in this one, your then wife is reporting that she recommended listing at 900,000 Does that mean that folks were contemplating putting ECP on the market at that time or do you remember whether it was in fact already on the market?

A I don't remember

Q Then finally, in that e-mail, she says, "We will either need to take a hit on the sales price or come up with 60k in a few months to make it through another off season "

What was significant about the off season to your recollection?

A Less rental

Q Say again?

A Less rental income

Q Did that make it more difficult to get through?

A Yes

Q Financially speaking?

A Well, it was definitely not even throughout the year as far as income

Q Then if we could just go back to Page 1 just to see how this turns out The second e-mail from the top is the one I care about, please, Mr Starnes Now, the second one on the screen from your then wife, Mr McDonnell's sister, she mentions somebody called Gail, and says she is going to go ahead and lower the price Was Gail a real estate agent, I take it?

A Yes

Q That's it for 49 Next document is Government's 51 for identification Again, scroll down so he can see the whole thing to identify it, please Mr Uncapher, do you recognize this to be an e-mail exchange involving, among other people, you, your then wife, and Mr McDonnell involving sale of the house?

A Yes

MR. HARBACH: The government offers Government's 51

THE COURT: It will be admitted.

BY MR HARBACH:

Q On this one, the first e-mail chronologically is from you, and what's the date on there?

A December 4th, 2009

Q It is sent to Mr and Ms McDonnell and in addition, your then wife; is that right?

A Yes

Q You say, "Any luck finding a magical partner?" What does that mean?

A We were looking for, or had talked about finding somebody that was interested in either buying or becoming an investor in the properties

Q When you say "we," we are talking about that, who do you mean, sir?

A Bob, Maureen, Maureen, and myself

Q Bob, meaning Mr McDonnell?

A Right

Q Both Maureens?

A Yes

Q And you

A And myself

Q The next e-mail, that's from the Governor's sister, right, your then wife?

A Right

Q And could you read just the first couple of sentences that she writes there, please, beginning with "In other words "?

A "In other words, we are in trouble and need to act now We can look into a short sale, but we need to come up with a buyer first I understand short sales will not hurt our credit, unlike bankruptcy "

Q That's enough, sir Thank you First question is, what is your recollection of why you were in trouble?

A Just there was a shortfall every year That's what I believe she is talking about

Q Financially speaking?

A Just the shortfall for income versus revenue of the properties

Q Okay She then states, "We can look into a short sale but we need to come up with a buyer first " Do you know what a short sale is?

A Vaguely

Q Tell us your best understanding then

A That the property is sold for less than it's worth, or less than is owed on it

Q Okay Then the next sentence is: "I understand short sales will not hurt our credit, unlike bankruptcy " Do you have a recollection of bankruptcy being discussed among this group of people at the time as a possibility?

A No

Q The very end of her e-mail, she states: "From what Mike indicated last month, we need money now to make December payments " What did you understand that to mean? What are the December payments that needed to be made?

A Mortgage, mortgages of the properties

Q Then if we could scroll up to the top, Mr McDonnell responds and says, "We are working on a couple of ideas " Please, could you just note for us the date of his e-mail?

A December 4th, 2009

Q Was that after he had won the election to become Governor?

A Yes

Q But before he was inaugurated?

A Right

Q That's it for 51 Did the houses sell in 2009?

A No

Q You have testified a couple times in reference to these e-mails about a cash shortfall that you all encountered from year to year, I think you said; is that right?

A Yes

Q Generally speaking, how did the -- how did the business deal with that cash shortfall each year? In other words, what sorts of arrangements would be made to overcome those issues?

A Maureen and Bob put money into the -- personal money into the account We had a line of credit that we used for expenses And then we got a couple of loans from other people

Q All right So when you say, "Bob and Maureen could invest further themselves in the business," you are talking about the business owners, Mr McDonnell and his sister

A Yes

Q Now, the loans that you mentioned a moment ago, do you recall someone named Dr Davis?

A Yes

Q Was he among the people that a loan was obtained from to deal with these cash shortfalls?

A Yes

Q Who is Dr Davis?

A He was a friend of Bob and Maureen's

Q Do you recall what sort of doctor he was?

A Radiologist

Q Did you ever meet him?

A I did.

Q Tell us about that

A I first met him at a Christmas party

Q Do you recall when that was?

A It was Scott Rigell's Christmas party, I think, in December of 2010

Q And how did you learn that Dr Davis was going to provide a loan? If you recall?

A I don't remember

Q Okay Did you ever have any conversation with Mr McDonnell about that possibility, to your recollection?

A I don't remember a specific conversation. But, I mean, I was told either by him or Maureen --

Q Which Maureen, sir?

A My wife at the time

Q That?

A That we were going to go to Dr Davis' house to talk to him.

Q And did you in fact do that?

A Yes

Q Do you recall when it was that you went to meet with Dr Davis?

A I don't know the exact month

Q Okay We will get to a document that can help you with the date in a moment Let me ask you this before we get there Who went over there besides yourself?

A My wife, Maureen

Q The two of you?

A Yes

Q What happened when you got there?

A We talked with him and had lunch, and it was more social for most of it, and most of the time I think we were there for about an hour

Q What else happened besides lunch?

A And then talked about the loan, him giving us money for a loan

Q Did he in fact do that at that meeting?

A Part of it, I think.

Q Now, how long would you say it was after you met Dr Davis at the Christmas party that you went to his house?

A A few months

Q Could we take a look for identification at Government's 55, please? Take a look at that, Mr Uncapher Do you recognize these documents?

A Yes

Q Is this a check and deposit slip related to monies that Dr Davis provided at that meeting at his place?

A It looks like it

MR. HARBACH: The government offers Government's 55

THE COURT: It will be admitted

BY MR HARBACH:

Q Let's start at the bottom with the check, please Could we blow that up? What's the date on this check, sir?

A December 19th

Q What year?

A 2009

Q You said a moment ago that you thought the Christmas party may have been in 2010. Does this change your view of that?

A Yes

Q What year do you think the Christmas party was?

A 2009

Q Okay And did Dr Davis provide this check to you and your sister at his home that day?

A I believe so

Q All right Now, let's scroll up to the top, please, and see the very first document This appears to be a deposit slip to a bank called TowneBank, and the name up there, it says MoBo Real Estate Partners Is that your handwriting, by chance?

A Yes

Q And then on the right-hand side of the slip, it indicates $100 is in the cash block, and $9,900 for a check. Is this the deposit slip for monies you received from Dr Davis, sir?

A Yes

Q Now, did he give you a check for $9,900 and $100 cash?

A I don't remember

Q Do you remember where the $100 cash came from?

A No.

Q In any event, all $10,000 was deposited to MoBo's account on the same day; is that right?

A Right

Q And just so we can show the jury, the last part of this document, scroll down a little bit, that's the teller receipt for $100 cash, right?

A Right

Q Let's take down Government's 55, please A moment ago you said that at the meeting at his house, Dr Davis advanced part of the monies that he ultimately loaned MoBo. Did there come a time after that where he provided additional funds, additional loan proceeds?

A Yes

Q Let's take a look at Government's 59, please Blow this up for the witness Do you recognize this to be a later check that Dr Davis provided for MoBo?

A Yes

Q And the associated deposit slip

A Yes

MR. HARBACH: Your Honor, the government offers Government's 59

THE COURT: It will be admitted

BY MR. HARBACH:

Q Now, the check at the bottom of the screen here, this one is dated February 6th of 2010 And it looks as if it was deposited on the 8th Do you recall the circumstances of how you all received this check?

A I don't remember

Q You don't remember? So now we are up to in the neighborhood of $30,000, correct?

A Right

Q Was this the end of the line or were there additional funds after this to your recollection?

A There was a total of 50

Q A total of $50,000?

A Right

Q Now, let's take a look then, actually, you can take 59 down. Let's take a look at Government's 61, please Do you recognize this document, sir, to be an additional check that Mr Davis -- Dr Davis provided to MoBo?

A Yes

Q And the associated deposit slip?

A Yes

MR. HARBACH: The government offers Government's 61

THE COURT: It will be admitted.

MR. HARBACH: Can I have just a second, please?

THE COURT: Yes

(Counsel conferring with co-counsel)

BY MR. HARBACH:

Q Now, the date on this check, sir, is March 15th of 2010 It appears that it was deposited five days later on the 15th Do you have a recollection of how you all obtained this check from Dr Davis?

A I believe we went to -- I went to his house, but I don't exactly recall

Q And the handwriting on this deposit slip at the top, is that you again?

A Yes

Q Before we go on, because I forgot to ask you this, could we take a look at Government's 59, which is in evidence, just for a second? Blow up that top deposit slip for the witness, please Thank you, Mr Starnes Do you recognize the handwriting on this deposit slip, sir?

A No.

Q You can take that down So to this point, we have two checks for $20,000, correct?

A Yes

Q And then one check for $9,900, correct?

A Yes

Q So that's a total of $49,900; am I right about that?

A Yes

Q You said a moment ago that the total amount that was loaned by Dr Davis was $50,000 Do you recall that?

A Yes

Q Does that help you remember whether that additional hundred dollars in cash was part of the Dr Davis loan?

A I assume it is

Q Okay Let's take a look -- actually, before we look at the next exhibit, I think you said that the March 15th of 2010 check that we just looked at, that was Government's 61, did you say that you think you got that at Dr Davis' house again?

A I think so

Q Who was there that day, if you remember?

A I don't remember

Q Do you remember anything else that happened that day besides picking up the check?

A No.

Q At any time, was there a promissory note signed as to any portion of these loan proceeds?

A We did sign a promissory note

Q Let's take a look at Government's 60, please Is this the promissory note you just mentioned?

A Yes

MR. HARBACH: The government offers Government's 60

THE COURT: It will be admitted

BY MR. HARBACH:

Q What's the date on this promissory note, sir?

A March 15th, 2010

Q That's the same day that was on the check that was on Government's 61 we looked at a minute ago, right?

A Right

Q Do you recall whether this promissory note, was that also signed at Dr Davis' home or done later in the day or what's your memory of that?

A It was signed by Maureen and I on that day

Q Okay Do you know when your brother-in-law, your ex-brother-in-law, Mr McDonnell, signed it?

A No.

Q That is your signature that appears at the bottom?

A Yes

Q Do you recall yourself, do you recall having any discussions with Dr Davis about the promissory note or the necessity for it?

A No

Q What was, according to the promissory note, if we could blow up the text of the note, please, without the signature blocks Thank you, Mr Starnes The principal sum is how much money?

A $50,000

Q What's the interest rate on this loan?

A Seven percent

Q The repayment term? How many years?

A Five years

Q Thank you, sir It indicates a monthly payment of how much, sir?

A $1,001 90

Q Say that again.

A $1,001 90

Q Thank you, sir Could we take a look for identification now at Government's 622 Do you recognize this, sir?

A Yes

Q This is an amortization schedule for the Dr Davis loan

A Right

Q Did you prepare this thing?

A Yes

MR HARBACH: The government offers Government's 622

THE COURT: It will be admitted

BY MR. HARBACH:

Q Blow up the top of the form so we can explain this to the jury What's this document, sir? What's its purpose?

A To see how each payment is broken down and what the balance is at the end of each month

Q Okay And so the interest and principal together should be that $1,001 90 that was reflected in the promissory note?

A Right

Q Thank you. You can take down 622 That's it for the Dr Davis loan

Do you recall whether there was another person who provided -- withdrawn. Do you recall whether Mr McDonnell's father ever provided a loan to the business?

A Yes

Q What do you know about that?

A I don't even remember how much it was, but Maureen and Bob talked with their sister because she was in charge of their dad's money

Q When you say Maureen and Bob, you mean --

A My wife

Q Your wife, and then yet another sister that they talked to?

A Right

Q Do you recall her name?

A Eileen.

Q Okay And I heard you say you don't remember much about it Do you remember even approximately how much it was, sir?

A No.

Q Were you interviewed by the FBI approximately a year ago about this?

A Yes.

Q And did you answer their questions?

A Yes

MR. SMALL: I have a running objection to the prior loans from the father just as to relevance I will stipulate that they were loans

THE COURT: Overruled.

MR. HARBACH: Can I tender the report to the witness, Judge?

THE COURT: Go ahead.

(Document proffered to witness)

BY MR. HARBACH:

Q Mr Uncapher --

MR. HARBACH: Just for the record, I've tendered to the witness a copy of the Report of Interview from his meeting with the FBI that he just talked about.

BY MR HARBACH:

Q If I could direct your attention, sir, to Page 3, the second paragraph. It begins with the word "Regarding " Do you see that there?

A Yes

Q Just read that paragraph to yourself, let me know when you are done, and then I'll ask you a question

(Witness perusing document)

A Okay

Q My question to you is whether that refreshes your recollection at all about the approximate amount of the loan that was obtained from Mr McDonnell's father

A Yes

Q And what was that approximately, to your recollection?

A Over a hundred thousand dollars

Q Thank you, sir You can put that down Now, the Dr Davis promissory note that we saw a little while ago was signed in March of 2010 I'm going to ask you to fast forward with me to early 2011 Okay, so nearly a year later Do you recall an effort to refinance various bank loans for the rental properties in early 2011?

A I remember trying to refinance. I don't exactly remember dates

Q Okay Let's take a look for identification at Government's 84, please Just blow the content up for the witness Take a look at this for a minute and then I'll ask a question Can you see that okay?

A Yes

Q Do you recognize this to be an e-mail exchange about refinancing the loans on the rental properties?

A Yes

MR. HARBACH: The government offers Government's 84

THE COURT: It will be admitted

BY MR HARBACH:

Q Let's start with the e-mail at the bottom. Mr Starnes, if you could go out and zoom back in a little bit because that's small text It would be useful Thank you. This first e-mail is dated January 5th of 2011 It is from Mr McDonnell And it begins with "Ted and I had a good meeting " Do you recall who Ted is, sir?

A Ted Yoder

Q Who is that?

A He was with Monarch Mortgage

Q He worked for a mortgage company?

A Right

Q Next sentence says: "He has a plan to refinance all five loans as interest only at five percent," and so on

When Mr McDonnell says "all five loans," do you have a recollection about what that refers to?

A I believe three loans for Sunseeker, one loan for ECP, and one loan for a house in Wintergreen

Q Okay Which we will talk about in just a second. A little bit further down in that paragraph, there is a sentence that says: "This gets us halfway to savings we need." My question for you is, do you have a recollection of what you understood Mr McDonnell to mean by that, what the savings was that you all needed?

A I would be guessing at what his --

Q I don't want you to guess. My question is, do you remember whether you had any conversations with him on that issue around that time or have any recollection of what you understood him to be talking about?

A Just getting a better rate for the loans

Q Okay Let's scroll up a little bit This is your response to Mr McDonnell's e-mail on January 5th, same day And you say here: "We need to talk about BRH " What's that?

A Blue Ridge Heaven.

Q Could you explain to the jury what Blue Ridge Heaven is, please?

A That's a house in Wintergreen

Q This is the same home you mentioned a moment ago?

A Right

Q Do you recall who owned that vacation home?

A Bob and his wife and Maureen, my wife, and their sister, Eileen, bought in later

Q So in addition to Mr McDonnell and his wife, Mr McDonnell's sister, Maureen, and you, were you an owner as well or no?

A I was on the deed but not on the mortgage

Q Okay Then a new party, an additional sister of Ms McDonnell, Eileen and her husband; have I got that right?

A Right

Q Okay So last question at the top of this e-mail, there is a reference to Wintergreen. That's the same house as BRH, right?

A Right

Q So the partnership that you described just now with respect to Wintergreen, was that just a single property?

A Yes

Q Were you involved yourself at all in handling the finances for Blue Ridge Heaven?

A In the same capacity as I did for the beach properties

Q For MoBo

A Right.

Q Okay. You can take that down. Next document I'd like to show you is Government Exhibit 90 for identification, please Scroll down for him so he can see the rest Thank you, Mr. Starnes Do you recognize this to be an e-mail exchange among you, your then wife, and Mr McDonnell about loan payments related to MoBo?

A Yes

MR HARBACH: The government offers Government's 90

THE COURT: It will be admitted.

BY MR HARBACH:

Q And we can start at the bottom. This e-mail bleeds on to the next page, but let's start here What date did you send this e-mail, sir?

A March 9th, 2011

Q You say, "Here is the breakdown for what is owed for February and March." What's NFCU?

A Navy Federal Credit Union.

Q TB 1?

A TowneBank.

Q TB 2?

A TowneBank as well

Q And then Bank at Lantec Is that just another loan?

A Right

Q At least on this page, that's four different loans?

A Right

Q Okay And then let's look at the next page You tally up those payments for February and March there And then it says Bob and Mo Who is the Mo there?

A My wife

Q That's split in half because they were 50/50 partners?

A Right

Q Now, you say, "Regular payments for mortgages only are," and then the four different mortgages listed there Have I got that right?

A Yes

Q So that total that's listed there, $11,557 23 on the second page of Government's 90, what does that represent?

A The total for the mortgages of the two beach properties

Q That's a monthly payment?

A Right

Q And that's what you say in the next sentence Now, you also say, "I sent an e-mail to TB. " is that TowneBank?

A Yes

Q " this morning letting them know I would be getting both loans up-to-date by this Friday " Were you a little behind on those payments at this stage?

A Yes

Q Now, finally, if we could go back to Page 1 of Government's 90, down here, same e-mail, your opening sentence, you say, "Here is the breakdown for what is owed for February and March." Why were you doing this? Why did you prepare and send this e-mail to Mr McDonnell and your wife?

A So that they could put money into the bank to pay the mortgages

Q Take down Government's 90 Next document is Government's 91, please We are still in March of 2011, but take a look at this one for identification, please Do you recognize this to be an e-mail exchange that you and others were on concerning the attempt to refinance the loans on the homes?

A Yes

Q Or some of the loans

MR. HARBACH: The government offers Government's 91

THE COURT: It will be admitted

BY MR. HARBACH:

Q Let's start at the bottom, please We will just scroll up. You can see what Mr McDonnell says, it is an e-mail to Mr Yoder on March 21st, Mr Yoder's response And the date of this e-mail is March 24th of 2011 My question for you, sir, is Mr Yoder refers in his second sentence there, "I recommend that you let Bruce and I work on a private solution for you " What did you understand that to mean?

A I didn't know

Q Do you recall having any discussions with Mr McDonnell about a private solution or a private proposal, as he refers to it in the next e-mail?

A He directed me to talk to or call Bruce Thompson.

Q Who is that?

A A developer in Virginia Beach.

Q For what purpose?

A Just to get his advice

Q On?

A On I didn't know what at the time

Q Did you have a conversation with Bruce?

A I did.

Q Did it concern an alternative financing proposal?

A It wasn't about financing, it was more marketing

Q Okay Were you involved in any way with discussions with Mr Yoder about the refinance issue?

A No

Q Okay If we could look at the e-mail at the top of the screen right now, which is the one from Mr McDonnell A little bit later on, he refers to someone named Will, says, "Will is helping with 2 75 percent on both loans for a year " Do you recall who Will is?

A Will Sessoms, President of TowneBank.

Q Okay And then finally, the e-mail at the top, this is from your ex-wife, correct?

A Yes

Q Could you read to us what she says there?

A "What an unfortunate waste of time Thanks for all you are doing, Bob. Mike--can you get on the phone with John Bishard tomorrow I can participate a few times during the day if desired."

Q Who is John Bishard?

A He is a developer in Virginia Beach.

Q Is that you, are you the Mike she is directing to get in touch with him?

A Yes

Q What was that all about?

A I don't know I never talked to him.

Q Finally there is an e-mail at the top that says mmem1@mac com. Is that your e-mail address, sir?

A Yes

Q That's it for 91 Did you ever meet Mr Jonnie Williams?

A No.

Q Did you ever speak to him?

A Yes

Q Tell us what you recall about that, the first time you spoke to Mr Williams

A I talked first with Maureen, Bob's wife, and I don't recall if she called me or I called her, and there was phone calls back and forth to try to get in touch, so I talked to her first and Jonnie was with her at the time

Q Okay

A And she passed the phone to him to talk to me

Q And do you recall what your conversation with Ms McDonnell was during that call?

A She said that Jonnie was there to talk about either buying or investing in the properties, the beach properties

Q Did you, tell us what you recall about your conversation with Mr Williams after she put him on the phone

A I told him what we owed on each property and what the approximate revenue and expenses or shortfall was for the property

Q Okay Do you recall approximately when this telephone call took place, sir?

A I don't I don't remember

Q Take a look at that document that's in front of you I'm going to direct your attention to Page 3, please There is a paragraph in the middle of the page that begins, "Regarding the loans. " Do you see that, sir?

A Yes.

Q Just take a minute, read that paragraph to yourself and let me know when you are done

(Witness perusing document)

A Okay

Q Does that refresh your recollection about when this first time you talked to Mr Williams was, approximately?

A In 2011

Q Approximately when in 2011, sir?

A Summer

Q Thank you Now you can put that down Focusing on this conversation that happened sometime in the summer of 2011, do you recall whether Mr Williams asked you any questions during that call?

A Just about the information that I gave him.

Q And did a similar incident to the one you have just described occur again several months later?

A Yes

Q Tell us what you remember about that

A It was basically the exact same conversation I had talked to Maureen first, and she passed the phone to

Jonnie Williams, and I explained the financial situation of the two properties

Q And do you recall anything about your conversation with Ms McDonnell before she passed the phone to Mr Williams?

A Same thing. She said that he was basically following up from the previous conversation, and just wanted an updated version

Q And based on your conversations on the two occasions with Ms. McDonnell, what did you understand from her to be Mr Williams' interest?

A Either buying or investing

Q Okay Now, same question as before: Do you recall approximately when this second phone conversation was?

A Early, 2012

Q And do you recall, other than asking the questions that prompted you to provide the same information as before, do you recall any other comments or questions by Mr Williams during that call, sir?

A No

Q How long would you say you talked to him on each of these occasions?

A 10 or 15 minutes

Q Between the two or each?

A Between the two I'm sorry, each phone call, is that what you are asking?

Q Yes, sir

A The same for each phone call

Q Let's take a look for identification at Government's 295, please Just scroll down for him so he can see the e-mail at the bottom. Sir, do you recognize this to be an e-mail that you sent to Mr and Ms McDonnell and some additional e-mail traffic between them?

A Yes

MR. HARBACH: The government offers Government's 295

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Let's start at the bottom, please, which is what's on the screen right now Your first paragraph there, you say, "I just wanted to follow up from our meeting " Do you recall what that meeting was about?

A Not specifically No, I don't

Q Okay The date of this e-mail that you are sending is January 25th of 2012; is that right?

A Right

Q The next paragraph says: "Could you please send a check for $1,000 for your portion of past pay-in for BRH?" That's the property in Wintergreen?

A Right

Q It says Mo and Boo have both put money in and so forth Is Mo your ex-wife?

A Yes

Q Who is Boo?

A Eileen, their sister

Q The other sister

A Right

Q Okay Then a little bit down, further down there, the last line on the screen says: "For MoBo, I talked with your Mo . " Who is that?

A Maureen, his wife

Q " last week and she had me talk to the guy who is helping us." Who were you referring to when you said "the guy who was helping us"?

A Jonnie Williams

Q It then says, "He said he was going to call me the next day to get an address so he could send the first check." Who is the "he" in that sentence?

A Jonnie Williams

Q Had he in fact said that to you?

A Apparently

Q Do you have a recollection of it, sir?

A No

Q And then the e-mail says, "I did not hear from him and I left Mo " and which Mo is that?

A Maureen, his wife

Q " a message yesterday We will need to get that in the next week so we can keep up-to-date " You need to get what, sir?

A The check.

Q Now, if we can go back to Page 1 Well, just let -- you are not on either of these e-mails, are you, sir?

A No

Q We will let the jury take a look at them for a second and then I'll move on Okay, you can take down 295, please

Now, at the time that you sent the e-mail we were just looking at, which to remind you was January 25th of 2012, did you know the amount of money that Mr Williams was going to be providing?

A No

Q To your recollection, did MoBo eventually receive some money from Mr Williams?

A Yes

Q How much?

A I don't recall the total

Q Do you recall a $50,000 amount in approximately March of 2012?

A Yes

Q And then a $20,000 amount in approximately May of 2012?

A That sounds right

Q Do you recall, specifically with respect to the $50,000 payment, how you learned about that?

A No.

Q What about the $20,000 payment?

A No

Q Do you recall at all being involved in communications concerning some wire instructions?

A Yes

Q Let's take a look at those We can start with Government's 381 for identification, please. This looks a little strange I'm going to represent to you that it is a text message from Mr McDonnell to you Okay?

A Right

Q And does it concern the wiring instructions that we were just -- that you just testified about?

A Yes

MR. HARBACH: The government offers Government's 381

THE COURT: It will be admitted.

BY MR. HARBACH:

Q Can you just read to us the text there, sir, from what Mr McDonnell sends to you?

A "Can you send wiring instructions to Jonnie Williams for sending 20k to MoBo account "

Q You don't need to read the phone number It just says, "Thx, Bob" there at the bottom?

A Yes

Q What's the date of that one according to the time stamp?

A May 18th, 2012

Q Finally, take a look at Government's 385 Just blow that one up for the witness, please Same deal here, this is, I'm going to represent to you that this is a text message, okay, from Mr McDonnell to you All right?

A Right

Q Does this also concern those wiring instructions?

A Yes

MR HARBACH: The government offers Government's 385

THE COURT: It will be admitted

BY MR. HARBACH:

Q Looking at the bottom, sir, what's the date on this one?

A May 18th, 2012

Q Could you read to us just what the text says?

A "Michael, Jonnie's instructions Can you do Monday, Bob. Hi Michael, call my secretary Monday early afternoon she returns and will promptly wire money Jerri Fulkerson "

Q You can skip the number Thank you. Do you recall having any conversations with Mr. McDonnell about any of the terms regarding this money from Mr Williams?

A He said he was working out the terms That's all I --

Q Do you recall what the duration of the loans was going to be?

A No.

Q What about whether there were any payments due on a monthly basis for the loans?

A I don't know.

Q Okay Could you take a look with me, please, at Page 4 of that same report that's in front of you, sir There is a paragraph -- are you on Page 4, sir?

A Yes

Q There is a paragraph near the top that begins "Over the next few months " Do you see that there?

A Yes

Q Same drill Could you just read that paragraph to yourself and then I'll have a question for you, okay?

(Witness perusing document)

Let me know when you are finished.

A Okay

Q Are you finished reading?

A Yes

Q First question is, do you recall having read that now whether you had an understanding at the time about whether these monies received from Mr Williams were gifts or loans?

A It was a loan.

Q And do you recall based on conversations with Mr. McDonnell, among other things, and your ex-wife, what the term of the loans was; in other words, how long the loan term was going to be for?

A No payments due for three years.

Q Okay And then finally, do you recall any -- whether any provision was made for Mr Williams to use the properties from time to time?

A Yeah, he could use it and that would offset some payments

Q Do you know -- you can put that down. Do you know whether Mr Williams in fact ever used either Sunseeker or East Coast Palace?

A Not to my knowledge

MR. HARBACH: Can I have a moment, please, Judge?

THE COURT: Sure

(Counsel conferring with co-counsel)

BY MR. HARBACH:

Q Last couple of questions, Mr Uncapher Do you recall whether there there was any loan paperwork that you saw related to the $70,000 in proceeds from Mr Williams in 2012?

A No

Q Do you have any recollection of whether MoBo in fact made any loan payments to Mr Williams or Starwood Trust while you were handling payments for MoBo?

A No

MR HARBACH: Thank you, Your Honor I have no further questions at this time

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. SMALL:

Q Good afternoon, Mr Uncapher I'm Dan Small I represent Bob McDonnell A few questions for you You said that MoBo was an entity, an LLC; is that correct?

A Yes

Q And it was owned jointly by Mo and Bob That was the reason for MoBo, right?

A Right

Q The name Could we call up just for the witness RM-0502, please? Do you recognize this as the certificate for MoBo LLC, MoBo Real Estate Partners, LLC?

A Yes

MR. SMALL: I offer that into evidence, Your Honor

THE COURT: It will be admitted. What's the number on it, again?

MR. SMALL: 0502, RM-0502

THE COURT: All right

BY MR. SMALL:

Q Now, so there were just two partners, correct?

A Right

Q Mo and Bob And if I call your wife Maureen, Mo, that's what you called her, right?

A Yes

Q So maybe that will make it a little easier

A Yes

Q So, and we talked about the fact that there may be a gap between expenses and income, right?

A Right

Q In fact, that was the understanding you said right from the beginning, correct?

A Right

Q And so if there was a gap, it would be up to Mo and Bob to decide whether to fill it and how to fill it, correct?

A Right

Q And --

THE COURT: I have a question It was the understanding from the beginning that they were going to be looking at 50 and $60,000 --

THE WITNESS: That there was a shortfall, yes

THE COURT: All right Go ahead.

BY MR SMALL:

Q Am I correct that the reason for that is that this was viewed more as a family gathering place than as a day-to-day profit/nonprofit investment, right?

A Yes

Q Bob McDonnell, there are five siblings, right?

A Right

Q And at one time or another, all five of them and their families came to these properties to use them?

A Yes

Q And you and Mo used them?

A Yes

Q And other members of the family would use them?

A Yes

Q Now, most of the costs were covered by rents; is that correct?

A Yes

Q The overwhelming majority of the costs were covered by rents each year, right?

A Yes

Q And we saw the mortgage numbers Most of the mortgage payments were covered by rents, right?

A Yes

Q But there was always going to be a gap, correct?

A Right

Q So, and that gap, you testified, was also somewhat aggravated by the season; is that correct? It is going to be bigger during the winter

A It wasn't even through the year

Q Got you When MoBo was started in 2005, Bob McDonnell was running for and became Attorney General, correct?

A Right

Q And your wife, Mo, chose a different career path, right?

A Right

Q And she became a very successful executive in the private sector, right?

A Yes

Q Earning a large salary?

A Yes

Q Had a large amount of money in stock accounts and other savings accounts?

A Yes

Q And in fact, you are aware that in 2012 she had over half a million dollars in income?

A Yes

Q In the seven years that you were involved in managing MoBo's books, did you ever have any concern that the partners were not going to be able to come up with the money to pay the bills?

A No

Q Okay That was a given, right?

A Right

Q The question only was, how would they do it; is that fair?

A Right

Q And in some years, so in those seven years, there were loans from three different people; is that correct?

A Yes

Q The father, John McDonnell, and Dr Davis, and Jonnie Williams, right?

A Yes

Q So I assume that means that in some years there were no loans, right?

A Right

Q So from about 2005 through about 2008, things went pretty smoothly in the management of MoBo, correct?

A Yes

Q In that four or five-year time there wasn't a single late fee, correct?

A Right

Q In 2009, in addition to what we talked about, the fact that the market crashed, right? But there were some other things that changed, weren't there?

A Yes

Q Tell the jury what those were

A In 2008, Mo and I had a baby During her pregnancy she was on bedrest for six-and-a-half months And then my business, I closed my business in September of 2009 And then after having our baby, she was, she had a significant amount of health concerns that we were in and out of the hospital, or she was in and out of the hospital right after our daughter was born, and then up to and including going to the Mayo Clinic for ten days

Q With all of this going on, where did MoBo fit on your list of priorities?

A At the bottom.

Q Okay And is it fair to say that you started to have problems just with managing the cash?

A Right.

Q And there started to be a lot of late fees

A Yes

Q And those late fees reflected your mismanagement of the money, didn't they?

A Right.

Q They didn't reflect problems with finances, right?

A Right

Q Mo had plenty of money, she just needed to know when to put it up, right?

A Right, she did.

Q I'm not going to go into the details, Mr Uncapher, but isn't it fair to say that there were also problems with your having moved some money out of the MoBo account to other accounts?

A Yes

Q And that also made the finances of MoBo a little more difficult

A Right

Q But that all got resolved, right?

A Right

Q So the loan from the father, John McDonnell, that was back in 2007; is that right?

A Right

Q And then the Dr Davis loan was in 2009, correct?

A Yes

Q Okay And then we talked about the Jonnie Williams loans in 2012, correct?

A Yes

Q The Jonnie Williams loan, the first loan, I think we saw, was in March of -- I'm sorry, in May of 2012; is that correct?

A Yes

Q Now, I was right the first time. It was in March of 2012. Right?

A Uh-huh

Q And you are aware -- and so, again, they made a decision that they would use a loan to fill that gap

A Right

Q But there was plenty of other money available to fill that gap, right?

A Right

Q And in fact, you are aware, aren't you, that within literally days of that $50,000 loan in March of 2012, Mo got a bonus of $70,000 from her company, right?

A Right

Q So there was never any desperation, was there?

A No

MR. HARBACH: Objection

THE COURT: Sustained.

BY MR. SMALL:

Q You knew the bills were going to be paid one way or the other, right?

A Yes

MR HARBACH: Objection.

THE COURT: Sustained.

MR SMALL: Nothing further

THE COURT: Mr Burck?

CROSS-EXAMINATION

BY MR. BURCK:

Q Good afternoon, Mr Uncapher.

A Hi

Q My name is Bill Burck, and I represent Maureen McDonnell, your former sister-in-law

A Right

Q I just want to focus on the two phone calls that you had with Jonnie Williams One, you testified you recall it was in the summer of 2011, and the other one you recall was in the early part of 2012 Remember that testimony?

A Right

Q Is it possible that -- you had to be shown a document to refresh your recollection on the timing of the first call Do you remember that?

A Yes

Q Is it possible that the call actually occurred in the spring of 2011?

A It is possible, yes

Q It is possible?

A Yes

Q Please call up Government Exhibit 110 This has already been admitted into evidence So I don't believe you have ever seen this before, but this is a Mansion log, May 2nd, 2011

A Yes

Q And if you will blow up the 9:24 time in the middle It says, "John Williams " I'll proffer to you that's Jonnie Williams

A Yes

Q And he entered the Mansion at 9:24 and left at 11:25 102, I will also let you know, is a term for Ms McDonnell, the First Lady

A Right.

Q 101 being the Governor, 102 being the First Lady I'd like to show just the witness RM-0106 And it would be a specific page, which is 220 Could you blow up the bottom part there? Actually, I'm sorry, just blow up the top first just to identify it Sir, these are phone records of Maureen McDonnell, the former First Lady And these are from Verizon Wireless If you go to the bottom of that page, highlighted, you will see a series of phone calls Your cell phone number at the time, the last four digits only, were 2465?

A Right

Q And do you recall that your then wife's phone number at the time, the last four digits, was 0673?

A Yes

Q Do you recall that the Governor's cell phone at the time was 0714?

A Yes

MR BURCK: We would offer RM-0106-220, 221, and 287 into evidence I would offer all of the phone records, Your Honor, but we don't have them all redacted yet

THE COURT: All right 220, 221, and 287 will be admitted

BY MR. BURCK:

Q Sir, you will see there that there are, there is a call starting at 9:57 a.m., this is from Ms McDonnell to 2465 on May 2nd. Do you see that?

A Yes

Q That's your phone number?

A Yes

Q You will see that it is for one minute

A Right

Q Then you will see below that there is a phone call from Ms McDonnell to 0673, which I think you have testified is your former wife's number?

A Yes

Q That's for one minute

A Right

Q You will see below that there is a call from Ms McDonnell, two minutes after that, to 0714, which you testified is the Governor's cell phone, correct?

A Right

Q Right after that, you see that there is, one minute later, there is another call to 0673, which is Maureen, your wife's, phone number?

A Yes

Q Another one a minute later again to your wife, and then another one a minute later to you

A Yes

Q So that's six phone calls to your former wife, the Governor, and yourself in that roughly five-minute period

A Yes

Q Then you will see on the next page, turn the page to 221, please, the very top There is a phone call at 10:44, this time from you to Ms McDonnell Do you see that?

A Yes

Q And that is actually for 13 minutes

A Right

Q So that looks like you actually had a conversation with her in that period, right?

A Right

Q I showed you in the Mansion log earlier that Mr Williams was present at the Mansion on May 2nd from 9:24 to approximately 11:30 that day, remember that?

A Yes

Q So does this help refresh your recollection as to when you had this phone call with Maureen McDonnell that she put Jonnie Williams on the call?

A Yes

Q You think it was May 2nd, 2011?

A Yes.

Q Now, focusing on that conversation, you testified that you got a call, you called or received a phone call from Maureen

A Right

Q It looks like that you actually called her back, right?

A Right

Q And you said that Maureen gave you the phone to talk to Jonnie Williams?

A Gave Jonnie the --

Q I'm sorry, excuse me, gave Jonnie Williams the phone to talk to you

A Right

Q Because she was present with Jonnie Williams; that's what you understood?

A Right
Q Can you tell us, what did Maureen McDonnell say to you describing Jonnie Williams? The best you recall.
A Just that he was interested in buying or investing in the properties
Q Okay Did she mention to you that he has been looking for property in Virginia Beach?
A Not that I remember
Q Okay And when you talked to Jonnie Williams about the properties, what did you say to him, to the best of your recollection?
A I just told him what we owed on each property and what the average expenses were for the mortgages
Q Did you tell him what the annual deficit was?
A Yes
Q What was that?
A Between 50 and $60,000
Q The words 50, $60,000 came out of your mouth?
A Yes
Q Then Mr Williams handed the phone back to Maureen?
A Yes
Q And when you said 50 or $60,000 to Mr Williams, was Maureen McDonnell on the phone?
A Was she on the phone?
Q Was she on the phone?

A I was talking to Jonnie

Q He didn't have it on speaker or anything like that?

A Not that I know of, no

Q Okay Now turning to page RM-0106-287 Actually, before we do that, can you call up Government Exhibit 290? It is already admitted into evidence If you could blow up the 11:05 period. You will see that there is a reference there, this is again a Mansion log, and this is dated January 19th, 2012 You will see there is a reference to Williams, Bobby is crossed out, it says, "To see 102 " I'll proffer to you that's Jonnie Williams to see the First Lady He comes in at 11 o'clock and leaves at 1300, 1 o'clock.

A Yes

Q If you could show Government Exhibit 295 This is already admitted into evidence And the bottom e-mail This is from you, you testified a bit about this e-mail, from you on January 25th, 2012, so about six days later, to Bob and Maureen McDonnell It is actually to Bob McDonnell, I think you testified, "Dear Bob " The last sentence you say on that page, "For MoBo, I talked with your Mo last week and she had me talk to the guy who is helping us " Right?

A Right

Q And "your Mo," you testified, was Maureen McDonnell, the First Lady, right?

A Right

Q You were telling him that you had spoken to Maureen McDonnell the prior week, right?

A Yes

Q Going back to, please put up the phone records for RM-0106-0287 Blow up the middle there for me, please You will see, these are phone records of Maureen McDonnell Again, there are two calls, one to you and one from you. One is at 12:01 p.m. on January 19th This is to you from Maureen McDonnell And there is one on January 19th at 12:11, which is from you back to Maureen McDonnell, 12 minutes Does this help refresh your recollection as to when you had the call with Jonnie Williams the second time?

A Yes

Q So January 19th, 2012, fair to say?

A Yes

Q And during that call, you testified that it was more or less sort of a replay of the first phone call; is that right?

A Right

Q And you discussed in that call the financial situation of MoBo?

A Yes

Q And you told him again about a 50 to $60,000 deficit?

A Yes

Q And those words again came out of your mouth, right?

A Yes

MR. BURCK: Your Honor, no further questions for us

THE COURT: All right Redirect?

MR HARBACH: Yes, Your Honor, thank you

REDIRECT EXAMINATION

BY MR. HARBACH:

Q Mr Uncapher, during either of these phone calls where you spoke with Jonnie Williams, did he say to you, "Sounds great, Michael, I'm going to loan MoBo $70,000"? Did he tell you that?

A No

Q Do you recall how you learned that Mr Williams was going to be helping you out?

A I don't recall specifically I just heard it from either Bob or Maureen, my wife

Q You testified on cross-examination to Mr Small with respect to the loan from Mr McDonnell's father He asked you, "That was in 2007, correct?" And you said, "Right " My question for you is, do you actually remember that that loan was in 2007?

A It was early on I don't exactly remember what the date was

Q Okay How many times did you meet with Mr Small before you testified here today, sir?

A Three

Q And after the one interview that you have testified about you had with the FBI that was approximately a year ago, how many times have you met with government counsel?

A None

Q You testified on cross-examination about the anticipated shortfall for MoBo year to year, and I think His Honor asked you a question about the 50, $60,000 amount Do you recall that exchange?

A Yes

MR. HARBACH: Could I show the witness for identification, please, Page 8 of Government's 513?

BY MR. HARBACH:

Q Do you recognize this document, sir?

A I don't know who did it

Q Does this look like the type of document that Ms Chamberlain prepared based on the books of the business?

A Again, I never saw this She sent those directly to Dan Cook.

Q Okay Then we will leave it up just for the witness, please, and look at Page 9 I'm sorry, take that down for a second, please Do you recall exactly how much the shortfall was for each of the years of 2008 through 2012?

A I don't know exactly It was an estimate of 50, that was what we banked on, an estimated 50 to 60

Q Now, let's take a look now at Page 9 of Government's 513 just for the witness's review Blow that up for him. Are you able to see that okay, sir?

A Yes

Q Does that refresh your recollection about whether in fact for the years from 2008 to 2012, at least, and in three of those five years, the shortfall was substantially in excess of $60,000?

A Again, I never saw those things, I was always going off the estimate I see what's written there

Q All I can ask you is what your recollection is Do you recall --

A No --

Q Let me ask the question first, please Do you recall in 2009, 2010 --

MR. SMALL: Your Honor, may we approach? He is talking about depreciation and paper losses I object to the use of a document this witness knows nothing about

THE COURT: That objection will be sustained.

MR HARBACH: You can take the document down, please

BY MR HARBACH:

Q Did you know at the time, do you have any recollection of knowing in 2009, 2010, 2011, what in fact the cash shortfall was year to year? Did you know?

A No For me it was always an estimate of 50 to $60,000

Q And what was that based on?

A Just rough guesses of handing over the numbers to Brenda

Q And then my last question is, did I understand your testimony correctly on cross-examination to be that when the business was formed, it was anticipated that there would be a cash shortfall year to year of 50 to $60,000; is that your testimony?

A That was the rough estimate, yes

MR. HARBACH: Thank you, Your Honor

THE COURT: I have a question.

BY THE COURT:

Q Were the loans, and I guess we have identified three, were the loans to fill the shortfall?

A Yes

Q So at one time there was a $100,000 shortfall?

A Apparently Like I said, I've never seen that document

Q All right Thank you.

THE COURT: You may stand down, sir

(Witness stood aside)

All right, we will go ahead and take a break. 15 minutes

(Recess taken from 3:41 p.m. to 3:55 p.m.)

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MR BROWNLEE: Your Honor --

THE COURT: Yes

MR BROWNLEE: -- before we bring the jury in, can we -- Ms Krueger is next?

MR DRY: Yes

MR BROWNLEE: Yeah Can we just -- can we raise one issue with this next witness before she comes in, Your Honor?

THE COURT: Okay.

MR BROWNLEE: Do you want us to --

THE COURT: Come on up

(At Bench)

MR BROWNLEE: Judge, I think that the government is going to try to introduce an e-mail, going to try to introduce that

MR FAULCONER: Let me double-check It may be an e-mail depending on her recollection

Which one is that?

THE COURT: What's -- who's the witness?

MR FAULCONER: The witness' name is Sharon Krueger, Your Honor K-R-U-E-G-E-R

What's the date of that one, John?

MR BROWNLEE: It's 11/22/11

MR FAULCONER: Can I see that?

MR BROWNLEE: Sure

MR FAULCONER: Is this the one that has a photo on it, the other version?

MR. BROWNLEE: No

MR FAULCONER: I don't think we currently intend to offer it, but it's possible

MR BROWNLEE: Just to raise this, Your Honor Basically, this is an e-mail that summarizes a call she had with John Lazo Mr Lazo has already testified So when he was on the stand, this particular subject wasn't -- they didn't go into it so we didn't cross on it

And now what I think they are going to try to do is ask her about this conversation, about what he told her And we just can't confront him now He's come and gone He was here And so we just wanted to raise this If they are not going to do it, that's fine, but I just wanted to do it before the witness got in the seat

THE COURT: I don't see any particular problem with that If -- if you have to use it, you'll have an opportunity to deal with whatever he does here That's an objection that will be overruled at this time

MR FAULCONER: Thank you, Your Honor

(In Open Court)

(The jury entered the courtroom)

THE COURT: All right Government, call your next witness

MR FAULCONER: Yes, Your Honor The United States calls Sharon Krueger

THE COURT: All right

SHARON KRUEGER,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

MR FAULCONER: May I inquire, Your Honor?

THE COURT: Go ahead

DIRECT EXAMINATION

BY MR FAULCONER:

Q Good afternoon

A Good afternoon

Q Could you please state your name, and spell your last for the court reporter

A It's Sharon Ann Krueger K-R-U-E-G-E-R.

Q And, Ms Krueger, what city do you currently live in?

A I live in Earlysville, Virginia

Q And where do you currently work?

A I work for the University of Virginia

Q And how long have you worked at UVA?

A I have worked at UVA since July of 2003

Q And what is your current title at UVA?

A My current title is I'm the Program Director for Innovation Grants & Relationships

Q Now, prior to taking on that role and focusing in on the time frame of August to December of 2011, what was your role during that time frame?

A I oversaw strategic partnerships Basically, I'm still doing the same that I did then, but I have added responsibilities that just started in May

Q And which office within UVA are you working in?

A I work for the Vice President for Research, and I have a cross appointment in an initiative out of the VPR Office called UVA Innovation

Q Now, the VPR Office is that the Vice President for Research?

A Correct

Q And could you tell us, just briefly, what exactly is UVA Innovation?

A UVA Innovation is primarily the technology transfer arm of the university And part of that involves -- in addition to the technology transfer arm, it involves oversight on our internal proof-of-concept Translational Research funds Industry partnerships that advance research

Q And so during that time frame of about August to December of 2011, what were your day-to-day responsibilities, generally speaking?

A I serve as a point person for research industry --

serve as a point person for industry interactions for R&D, for research and development I also partner with people across the university to plan and manage and run entrepreneurial and innovation events, be it at the university level, the community level, and all the way up to the national level

Q Now, Ms Krueger, UVA, is that a state school or a private school?

A We are a state school

Q As a UVA employee, do you receive certain e-mails addressed to all state employees?

A Yes, I do

MR FAULCONER: I'd like to show the witness what's already been admitted as Exhibit 525 And if we could zoom in just on sort of the top half of that

BY MR FAULCONER:

Q Ms Krueger, does this look like one of the types of e-mails that you would get on the state employees's ListServ?

A Yes, it does

Q Is this dated during a time period when you were employed by UVA?

A Yes, it is

Q And would some of the e-mails that you received have this seal and Office of Governor Bob McDonnell at the top of them?

A Yes They all do

Q All of them at least that come from the Governor's Office?

A That come from the Governor's Office Yes.

Q Now --

MR FAULCONER: We can go ahead and take that down

BY MR FAULCONER:

Q Now, as someone working within UVA Innovation as part of the Vice President for Research, do you interact with state government officials who aren't UVA officials?

A Yes, I do

Q And, generally speaking, would you prefer to have good relationships or bad relationships with those people?

A Good relationships

Q Now, while working at UVA Innovation, have you also helped plan events related to UVA research initiatives?

A Yes, I have

Q And have those included events in which you have invited public officials to attend them?

A Yes

Q Has that included the Governor?

A Yes

Q Did that include when Mr McDonnell, when he was

Governor?

A Yes

Q And have those included events in which Mr McDonnell declined to attend, despite having been invited?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 517 Now, Ms Krueger, is this a fairly lengthy e-mail exchange between you and other individuals at UVA?

A Yes

Q And does this pertain to an invitation for Mr McDonnell to attend an event in 2013?

A Yes, it was

MR BROWNLEE: Your Honor, I'm going to object This is an invitation that was declined in May of 2013 I don't know what the relevance to this case would be

THE COURT: Overruled

MR FAULCONER: Your Honor, we'd offer Exhibit 517 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, without going through the whole e-mail exchange, can you just tell us, if you recall, what the event was that you invited Mr McDonnell to attend?

A Charlottesville and UVA, as the host school, was selected by the Association of Public and Land-Grant Universities to host a summer meeting for one of their Councils and Commissions on graduate studies, and the Commission on Innovation and Economic Prosperity

Last year -- or the prior year, when the conference was at the University of Nebraska, the Governor spoke So we were just following the protocol that Nebraska followed, did the year before

Q And when you say the Governor spoke at the prior year, was that the Governor of Nebraska?

A The Governor of Nebraska

Q And why did you want Mr McDonnell to attend the event?

A More so, we were just following the protocol that if Nebraska had their Governor when the event was in Nebraska, we wanted our Governor at the event when it was held in Virginia

Q To your recollection, did Mr McDonnell actually attend this event?

A No, he did not

Q Did he send someone in his place? Do you recall?

A Yes, he did

Q And who was that?

A That was Secretary Jim Cheng

Q Do you know which secretary he is?

A Oh, of Trade and Commerce

MR FAULCONER: All right We can take that down

BY MR FAULCONER:

Q Now, before 2011, had you heard of the company either Star Scientific or Rock Creek Pharmaceuticals?

A No, I had not

Q How about Anatabloc or anatabine?

A No, I had not

Q Do you recall learning, at some point in 2011, about an event at the Governor's Mansion involving Star Scientific and its Anatabloc product?

A Yes, I did From one of my colleagues

Q Was that individual Dr John Lazo?

A Yes, it was

Q Did you also talk about it with some other people?

A Really, pretty much it was John -- the best I can recall, it was just Dr Lazo

Q Now, do you recall actually having both some e-mail correspondence and a couple of phone conversations with various people in 2011 about Star Scientific and Rock Creek Pharmaceuticals?

A Yes, I do

Q And in the course of that process, did you learn about a number of UVA doctors who had received planning grants from Star Scientific for the purpose of creating study proposals?

A Yes, I did

Q And I'd like to show you what's been marked for identification as Exhibit 268 Ms Krueger, do you recognize this as a chart of essentially doctors and -- that received grants?

A Yes

Q And is this a document that you actually had in your files as you were looking into this?

A Yes This is created by our Office of Sponsored Programs It's a standard research document

MR FAULCONER: Your Honor, we'd offer Exhibit 268 into evidence

THE COURT: It will be admitted

MR FAULCONER: All right Now, if we could zoom in on the first five columns there I guess it doesn't get that If we could zoom in on sort of the top half to start Thank you, Mr Starnes

BY MR FAULCONER:

Q Now, do you see the names there, Ronald Turner, Brian Annex, and Eugene Barrett?

A Yes, I do

Q And do you know who those individuals are?

A Yes, I do

Q Who are they?

A Well, they are all clinicians in the School of Medicine, clinician researchers in the School of Medicine

Q And do you know why they ended up on this chart?

A They received a pilot grant from Star Scientific

MR FAULCONER: And if we could scroll down a little bit

BY MR FAULCONER:

Q Do you see there also the name Jonathan Truwit?

A Yes, I do

Q Is that another UVA researcher, who, to your understanding, had a grant from Star Scientific?

A Based on this document, yes

Q Now, when you were looking into this, what was your understanding of what the purpose of the -- I think you said pilot grant was?

A Yes My understanding was that it was just to start to do -- to test the potential compound in different disease states

Q And was it your understanding of whether there would be any follow-on funding from any alternative source later on?

A No, not to my -- not to my knowledge

Q Well, do you recall what the size of the initial planning grants were that came in?

A Yeah They were $25,000 each

Q And was that all the money to fund all the research or would there need to be an application made at some point for additional funding?

A Via e-mail conversation, I know a request for proposals went out for the -- for the researchers to apply to get the money

Q Okay And was that to apply for a larger amount of funding to actually do the studies themselves?

A No That was to apply to get the $25,000 each

Q All right Well, let me show you what's been marked for identification as Exhibit 259 Do you recognize this as an e-mail from an individual named Jeffrey Blank to you?

A Yes

Q Is this dated November 8th, 2011?

A Yes

Q And is this towards the beginning of when you started to look into these grants?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 259 into evidence.

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, can you start by telling us who Jeffrey Blank is?

A Jeffrey Blank also works in the Vice President for Research Office He primarily is -- he's not on the research end like I am He primarily takes care of a lot of the HR issues He works with gathering a lot of the information for reports that are due to the President of our university.

Q Now, do you see there where -- do you see what the subject line of this e-mail says?

A Yes

Q And what is the subject line?

A "Star Scientific and State Tobacco Commission Collaboration" with a question mark

Q And in the body of the e-mail that's forwarded to you, do you see a reference to planning grants of $25,000 each?

A Yes, I do

Q And those doctors' names, Gene Barrett, Ron Turner, and Brian Annex, are those some of the doctors we saw on the prior page?

A Yes, they are

Q Now, can you tell us -- where the sentence says, "At UVA they went to," what does it say after "to support" in terms of where the larger amount of money was supposed to come from?

A "To support planning work in advance of what was to be a larger award expected from the" -- "from the Virginia Tobacco Commission that Rock Creek indicated to the schools they would secure "

Q All right

MR FAULCONER: Now, if we could scroll down a little bit

BY MR FAULCONER:

Q Could you read for us just the first two sentences of that second paragraph?

A "Peggy mentioned these planning awards were announced by the Governor of Virginia at a public event In addition, the Governor's wife has publicly disclosed that she is a happy user of the company's products and perhaps the Governor as well "

Q Do you know who Peggy is that's referred to in that --

A Yes Peggy Shupnik is the Dean of Research in the School of Medicine and also an endocrinologist researcher

Q All right

MR FAULCONER: We can take that down

BY MR FAULCONER:

Q Now, after learning this information and getting these e-mails forwarded to you, did you actually do some due diligence or looking into Rock Creek Pharmaceuticals and Star Scientific?

A Yes

Q And did you keep individuals who worked with you in the VPR's Office apprised of what you found?

A Yes, I did

Q And was one of those supervisors or individuals someone named Mark Crowell?

A Yes

Q And is his name actually Wriston Mark Crowell?

A That -- legally, yes. But he professionally goes by Mark Crowell

Q And was he the predecessor to the position you're now in?

A No He was actually my boss

Q Got it

A And he has since retired from the university

Q Got it Now, I'd like to show you what's been marked for identification as Exhibit 261 Is that an e-mail exchange between you and Mr Crowell the following day, on November 9th, 2011?

A Yes

Q And is this discussing what you were looking into?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 261 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, Ms Krueger, could you read the bottom e-mail, the one that you sent to Mr Crowell on November 8th, 2011, at 8:17 p m Just that first paragraph there

A "So got more information, interesting I'm going to do a bit of diligence as well and let you know what I found out Personally, I think the Governor's wife or assistant may look like the Governor is influencing UVA to a potential action Just odd in my opinion "

Q And what does Mr Crowell write in response to you?

A "Great reports Kind of agree that the Rock Creek thing - this makes me uncomfortable "

Q All right

MR FAULCONER: We can take that down

BY MR FAULCONER:

Q Now, I'd like to show you what's been marked for identification as Exhibit 262 Is this another e-mail from you to Mr Crowell dated November 9th, 2011?

A Yes, it is

Q And is this another e-mail where you're forwarding some of the information that you've obtained?

A Yes, it is

MR FAULCONER: Your Honor, we'd offer Exhibit 262 into evidence

THE COURT: It will be admitted

MR FAULCONER: Now, if we could zoom out and then go to the second page of this document

BY MR FAULCONER:

Q Can you tell us what that photo is that is embedded within this e-mail?

A This is a photo of Governor McDonnell with a microphone, speaking at an event with a company logo behind him

Q And do you recall where you obtained this photograph from before you put it in the e-mail?

A I captured it from a Facebook page

Q And do you know if that was a Facebook page affiliated with Star Scientific or Rock Creek?

A You know, honestly, I don't remember, because it was taken down almost immediately I honestly don't remember

Q All right

MR FAULCONER: Well, if we could go to the first page of the e-mail

BY MR FAULCONER:

Q Could you read the last bullet point in that e-mail, just at the very bottom under --

MR FAULCONER: Yeah Right there

BY MR FAULCONER:

Q Just that last e-mail where it says, "Virginia State

Government "

A "Set up visit to UVA by Curtis Wright from Rock Creek UVA: You, me, Tom" -- that's referring to the Vice President for Research -- "Peggy, Ron and maybe Phil Rock Creek: Curtis Wright Virginia State Government: Yes/no -- this is the awkward part -- as Governor McDonnell has publicly announced his support for the parent company Star Scientific "

Q Now, that statement there about Mr McDonnell, what was your basis for making that statement?

A The photo and just the press release

Q Now, I'd like to ask you about as part of your due diligence, did you also have some phone conversations with Dr Lazo? I think you referenced him earlier

A Yes, I did

Q And what was your understanding of his role within this whole process as it unfolded?

A So he attended a luncheon at the Governor's Mansion, and we talked about what that event was like

Q During at least one of -- did you have just one conversation with him or do you think you had several?

A According to his testimony, it looked like he called me when he was driving back But I think he called my boss because I was --

Q Ms Krueger, just focusing on your recollection and not commenting on anything else Do you recall having any conversations with Dr Lazo?

A Yes, I do

Q And do you recall one of those being in November of 2011?

A Yes, I do

Q All right I'd like to show you what's been marked for identification as Exhibit 264 In looking at this page, and then flipping briefly to the second page, are these handwritten notes that you took during your conversation with Dr Lazo, at least whatever one occurred in November 2011?

A Yes, they are

MR FAULCONER: Your Honor, we'd offer Exhibit 264 into evidence

MR BROWNLEE: Just note our objection, Your Honor

MR KOFFMANN: Same objection

THE COURT: They will be admitted

BY MR FAULCONER:

Q Now, what are the -- after you write down, "Call with John Re: Meeting at Gov - lunch," do you know what you're referring to when you say, "Gov" there, before the word "lunch"?

A Governor

Q And what do you write underneath that on sort of the first line where there are two lines on either side?

A "Governor Mansion for lunch."

Q Do you recall that coming up in your conversation with Dr Lazo?

A Yes, I do

MR FAULCONER: Now, if we could go to the second page, and the bottom right-hand portion

BY MR FAULCONER:

Q Do you see there --

MR FAULCONER: Yep There we go

BY MR FAULCONER:

Q Do you see there what you write on the first two lines that are being shown here?

A Yes

Q What do you write?

A "Governor wants to get something good out of tobacco - grow - harvest - medical "

Q And do you recall that coming up in your conversation with Dr Lazo?

A Yes

Q Now, going over to the left of this document, do you see where you say -- there's something Am I reading this correctly? It says, "It's transparent and not put us in comprised position " Do you see that?

A Yes

Q What are you talking about there?

A We were talking about if we would put in a Tobacco Commission grant, to make sure that everything is completely transparent and not to put UVA in a compromised position with doing research -- how can I describe this? We didn't want to be put in a position that we were being told to do or directed to do research

Q By whom?

A By the company

Q Just the company or did it also include politics?

A To the best that I can remember, probably both

Q All right

MR FAULCONER: We can go ahead and take that down

BY MR FAULCONER:

Q Now, at some point after your conversation with Dr Lazo, did you participate in a conference call with some individuals affiliated with Rock Creek and Star?

A Yes, I did

Q And do you recall, was that later on, towards the end of November 2011?

A Yes, it was

Q Do you recall who was on that call?

A It was myself from -- from UVA was myself, Mark

Crowell, and Phil Parrish, another colleague and the Vice President for Research Office, and he's our Tobacco Commission liaison

Q And did you actually take handwritten notes during this call as well?

A Yes, I did

MR FAULCONER: Your Honor, we'd offer -- sorry Show the witness for identification what's been marked as 269

Now, if we can flip to the second page of this document, and then to the third page

BY MR FAULCONER:

Q Are these handwritten notes that you took on an e-mail and then the back of the e-mail for this call?

A Yes, they are

MR FAULCONER: Your Honor, we'd offer into evidence Exhibit 269

THE COURT: It will be admitted

MR FAULCONER: Now, if we could go to the second page of this document

BY MR FAULCONER:

Q Do you see about two-thirds of the way down where you say, "Consider grant process by gov"? Do you know what "gov" is referring to there?

A I have -- I have read this over and over again, and based on my other abbreviations from Governor, that's the only thing I can think of that I wrote down was that "gov" meant Governor

Q All right

MR FAULCONER: Well, zooming back out and going to the second page Sorry I guess I meant third

BY MR FAULCONER:

Q Looking on the portion, sort of the upper right-hand corner that's between those lines, can you read for us what you wrote there?

A "Let McDonnell know about Tobacco Commission proposal Look favorable on Commonwealth Proof-of-concept funds "

Q Can you explain -- can you sort of decode that for us? What are you --

A So that was just a little note to myself that if we would decide to go ahead with a proposal, that their current -- at that time, there was an initiative worked on by many different universities to create a proof-of-concept research fund And so just doing some internal thinking, you know, I was trying to maybe connect the two

Q And when you say, "Let McDonnell know about Tobacco Commission proposal," what are you contemplating doing there?

A That would be probably -- well, it wouldn't be me letting him know It would be probably the Vice President for Research

Q And when you say, "Favorable on Commonwealth POC funds," is that referring to Star or an entirely separate --

A Oh, this is entirely separate

Q Now --

MR BROWNLEE: We can go ahead and take that down

BY MR FAULCONER:

Q Now, as you sort of did your due diligence and you were participating in these calls with Dr Lazo and Star and Rock Creek, did you also brief one of the individuals I think we've referenced named Tom Skalak?

A Only one.

Q And does Mr Skalak, to your knowledge, interact with government officials in his job?

A Yes, he does

Q Now, before you briefed Mr Skalak, did you put together a list of pros and cons in your -- as part of your due diligence?

A So that was a document I created just for myself When you -- when -- personally, when I'm wrestling with making some decisions, it's easier if I write down pros and cons So it was a document I created for myself, to be seen by no one except myself And yes, I did

MR FAULCONER: I'd like to show the witness what's been marked for identification as Exhibit 267

BY MR FAULCONER:

Q And is that the pros/cons list that you created?

A Yes, it is

MR FAULCONER: Your Honor, we'd offer Exhibit 267 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, we won't be long on this, but could you just read for us the first thing that's listed in the "Pro" column there?

A "Perception to Governor that UVA would like to work with local companies to support future economic development "

MR FAULCONER: And if we could scroll over to the right

BY MR FAULCONER:

Q What is the first thing written in the "Cons" column?

A "Political pressure from Governor and impact on future UVA requests from the Governor "

Q All right

MR FAULCONER: We can go ahead and take that down

BY MR FAULCONER:

Q Now, we've talked a lot about the process that unfolded In the end, did the UVA researchers end up making any applications to the Tobacco Commission?

A No, they did not

Q At the time of your various deliberations and due diligence and these conversations, did you have any knowledge of any payments or things of value given from Mr Williams to the McDonnells?

MR BROWNLEE: Objection, Your Honor

THE COURT: Overruled

A No, I did not

MR FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

MR FAULCONER: No further questions, Your Honor

THE COURT: All right Cross?

CROSS-EXAMINATION

BY MR BROWNLEE:

Q Good afternoon, Ms Krueger My name is John Brownlee, and I represent Bob McDonnell I've got a few questions for you here today Thank you

MR BROWNLEE: If we can begin with 267, Government's Exhibit 267

BY MR BROWNLEE:

Q This is this pros and cons that you've testified you prepared Now, government counsel asked you, on the cons, it says, "Political pressure from Governor and impact on future UVA requests from Governor "

You never spoke with Bob McDonnell about Star or Rock Creek; isn't that correct?

A That is correct

Q Okay So whatever you're referring to here, it didn't come from this man, right?

A That is correct

Q Okay

MR BROWNLEE: All right. You can take that down

BY MR BROWNLEE:

Q Now, I want to start back one step as we begin here

MR BROWNLEE: If we could pull up -- well, let's take a look at Government's Exhibit Number 261

BY MR BROWNLEE:

Q All right And I believe the government showed this e-mail to you Do you remember that?

A Yes

Q Okay So this is an e-mail, we'll start at the bottom, from you to Mr Crowell on November 8th And this is at 8:17 p m Okay?

A Yes

Q And you're saying, "So got more information Interesting I'm going to be" -- "I'm going to do a bit of diligence as well Let you know what I find out " And then you talk about the governor's wife and all this

Now -- and then you forwarded it up and it says, "Great reports Kind of agree on the Rock Creek thing "

And this is what the government showed you; isn't that right?

A This is correct

Q Okay And they just showed it to you just a few moments ago?

A This is correct

Q Okay

MR BROWNLEE: Let's pull up Government's Exhibit 260

MR FAULCONER: Your Honor, I don't think this one has been entered

MR BROWNLEE: If we could just show the witness If we'd go down below

BY MR BROWNLEE:

Q Okay Now, this is an e-mail that has got your name on it that was sent to you You're in the cc block, from Mr Crowell; isn't that correct?

A Yes

Q Okay And it's on November 8th?

A Yes

Q Same date as the other one, except this one is at 5:04 a m , correct?

A Correct

MR BROWNLEE: Your Honor, we move Government's Exhibit 261 -- 261 -- 260 into evidence

THE COURT: It will be admitted

MR BROWNLEE: Thank you

Okay Now, if we scroll up.

BY MR BROWNLEE:

Q The e-mail that sets up the one that was shown to you by government counsel is from Mr Wright And who is Mr Wright?

A He is from Rock Creek Pharmaceuticals

Q So he's a Star guy?

A Yes

Q Okay And he sends this e-mail, and you're on it And it says, "We do not know yet It is one of the following three " And then it has three people, "Assistant to the Governor, Attorney General, wife of Governor I will try to find out more "

Now, this is who Star is telling you might show up at some meeting?

A That is correct

Q Okay And Bob McDonnell is not on this e-mail, right?

A That is --

Q No one from the government is on this e-mail?

A That is correct

Q Okay

MR BROWNLEE: And then it scrolls up.

BY MR BROWNLEE:

Q Okay And then Wriston responds, and you're cc'd And then it says, "Mark, I will call Peggy and see what are the compelling time-related issues she sees at this point "

Now, Peggy is Peggy Shupnik; is that correct?

A That is correct.

Q And Ms Shupnik, if you know, attended this Star event at Gibson Island in July; isn't that right?

A That is right

Q Okay And so when she went to Gibson Island, she got the full pitch from Star about Anatabloc; isn't that correct?

A That is correct

Q Okay And it was at that time, after that, that Ms Shupnik decided that they would accept this $25,000 planning grant from Star; isn't that right?

MR FAULCONER: Objection, Your Honor, as to what Ms Shupnik decided

THE COURT: Sustained

BY MR BROWNLEE:

Q Well, do you know when UVA, Ms Shupnik, decided to accept this money from Star?

A No, I do not

Q Okay All right So if we take this down and then bring up 261, Government's Exhibit 261, and we blow this up, this is a continuation of the e-mail I just showed you, right?

A That's correct

Q Okay Because those were starting in the morning, and now we're in the evening?

A Right

Q Okay And so this is a follow-on And so when you're talking here about -- when you say, "I think involving the Governor's wife or assistant may look like the gov is influencing UVA," that information came from Star, didn't it?

A That is correct

Q Okay

MR BROWNLEE: You can take that down

Can we pull up Government's Exhibit 262? And go to the next page If we could blow up that photograph

BY MR BROWNLEE:

Q Now, Ms Krueger -- am I pronouncing it right, by the way?

A Krueger

Q Krueger I apologize Ms Krueger, you testified that you -- at some point you decided to do some due diligence and you went on I think the Star website, or somewhere, and pulled this photograph?

A I pulled it off of Facebook

Q Off the Facebook Okay And you said that in seeing this photograph, that influenced one of your later statements that you thought he supported this product; is that correct?

A That is correct

Q Okay Were you aware that this picture went through the channels in the Office of the Governor and was actually approved by staff to be released?

A No, I do not

Q Okay All right

MR BROWNLEE: We can take that down

BY MR BROWNLEE:

Q Now, I think you were -- you met with government counsel, I believe; is that correct?

A Yes

Q Yes Okay And at some point you testified that you attended an event for a company called MicroAire; is that

correct?

A That's correct

Q Okay And tell us what that event was about.

A So MicroAire is a -- a small surgical supply company located in Charlottesville, Virginia And in -- gosh, it was in the spring, and I can't remember the year, they actually moved to a much larger facility And the Governor and his wife were at the grand opening at that facility

Q All right

MR BROWNLEE: Let me show you, just for the witness, RM-0166-0001 No 0166-0001 There you go If you could blow that up

BY MR BROWNLEE:

Q Is this the event you're referring to?

A Yes, it is

MR BROWNLEE: All right Your Honor, we move RM-0166 into evidence

THE COURT: It will be admitted

MR BROWNLEE: Thank you

If we could just publish this

BY MR BROWNLEE:

Q And so this is Governor McDonnell at MicroAire, and they are expanding and they make apparently -- I think you said surgical --

A Orthopaedic equipment

Q Like saws and things?

A Yes

Q Okay

MR BROWNLEE: You can take that down

BY MR BROWNLEE:

Q And one other thing I won't pull it up again, but you -- in one of your notes, you say, "This is the awkward part as Governor McDonnell has publically announced his support for the parent company, Star Scientific "

And I think you testified one of the reasons you wrote that is because of the picture; is that right?

A That is correct

Q But up to that point, you had never had a conversation with Bob McDonnell about Star or Rock Creek or any of that?

A That is correct

Q Okay You talked a little bit about your conversations with Dr Lazo; is that correct?

A Yes

Q Okay And you mentioned something You said his testimony was -- he asked you a question, and you said something about his testimony was different or something What did you mean by that, "his testimony"?

A I guess I'm kind of unclear of -- was it the conversation John and I had? John Lazo and I had are you talking about?

Q No, ma'am You just referenced Dr Lazo's testimony And I was just wondering --

A Oh Oh He -- just following the trial, the media portrayal on the trial

Q I see

A It was mentioned that John spoke to a senior researcher official at the university on his drive home

Q I see

A And I don't think that he meant me

Q Okay All right And so -- I just wanted to make sure So when you referenced his testimony, you're just following the press accounts?

A Yes

Q Okay Now, counsel asked you about Dr Lazo and some of his thoughts on these research principles I believe you have some reference to that in your notes; is that correct?

A Yes

Q Okay Were you aware that Dr Lazo has testified -- you obviously know that, correct?

A Yes

Q And he was asked whether or not Bob McDonnell -- if there's anything Bob McDonnell had done that would have violated any of those principles?

MR FAULCONER: Objection, Your Honor, as to commenting on Dr Lazo's testimony

THE COURT: Sustained

BY MR BROWNLEE:

Q All right And in those notes, in your conversations with Dr Lazo, would you agree that Dr Lazo's in court, under oath testimony is a better reflection of what he actually saw and said than your notes of a conversation you had with him?

MR FAULCONER: Objection, Your Honor

THE COURT: Sustained

MR BROWNLEE: Thank you, Your Honor

BY MR. BROWNLEE:

Q Now, you testified that Star, or Rock Creek, never actually responded or got back to you guys about applying for any of these tobacco grants; is that correct?

A That is correct

Q Okay So there was some discussions I think you had a phone call with some of the folks at Star, and then after that, nothing ever happened?

A The day after the call, I was sent, and maybe Mark Crowell was cc'd on it, just a follow-up, scientific journal article and a poster from a research presentation from Rock Creek And then that was it

Q That was it And did you ever have any conversations with Bob McDonnell about Rock Creek or Anatabloc or anything?

A No, I did not

Q Okay. So fair to say that all this -- these e-mails and notes and all -- all of it comes from someone else other than Bob McDonnell?

A That is correct

Q Okay

MR BROWNLEE: And let me just do one last thing, Your Honor, and I'm just about done

Can you pull up Government's Exhibit 268 and just look at the far two left, the left-hand side

BY MR BROWNLEE:

Q It's kind of hard to see, but I think the first one, it says, "Date Letter Received " One of them says August 1 Number 2 says August 11th Number 3 says August 15th Number 4 says August 17th Number 5 says August 18th maybe

MR BROWNLEE: If you'll go down

BY MR BROWNLEE:

Q Then 6 is August 18th The 7th is the 19th

Are those accurate dates, ma'am?

A So I -- you know, this is a document that's created by our Office of Sponsored Programs So I never saw the request for proposals So this is how they track either when letters were submitted or funding was granted But I never -- I wasn't aware of anything at this time, in August

Q Okay

MR BROWNLEE: You can take that down

BY MR BROWNLEE:

Q And then lastly, they asked you about some event in May of 2013 with the Governor of Nebraska

A Yes

Q Okay Did that event have anything to do with Star or --

A No No No That did not

Q Okay And I believe at that event Secretary Cheng attended?

A Yes, he did

Q Okay And has Governor McDonnell, in prior times, attended those types of events at Virginia?

A Yes

Q Okay So he has --

A Yes

Q He has, I guess, positively responded to your invitations on occasion?

A Not necessarily mine, but the -- from the Office of the Vice President for Research Yes

Q Okay Good All right

MR BROWNLEE: Thank you, Judge

THE COURT: All right Ms McDonnell

CROSS-EXAMINATION

BY MR KOFFMANN:

Q Good afternoon, Ms Krueger My name is Dan Koffmann, and I'm an attorney for Maureen McDonnell

Ms Krueger, you testified -- you were shown a picture by Mr Brownlee of you at a -- or Governor McDonnell at a MicroAire event?

A Correct

Q And you attended that event, right?

A Yes

Q To your knowledge, did Maureen McDonnell attend that event?

A Yes, she did

Q And did you have an opportunity to speak with her at that event?

A No, I did not

Q Have you ever had an opportunity to speak with Ms McDonnell?

A No, I have not

Q So Maureen McDonnell has never pressured you to do anything?

A No, she has not

Q And she's never even spoken to you about Anatabloc?

MR FAULCONER: Objection, Your Honor Asked and answered

THE COURT: Overruled

A That is correct

MR KOFFMANN: Thank you

THE COURT: Any redirect?

MR FAULCONER: Very briefly, Your Honor

REDIRECT EXAMINATION

BY MR FAULCONER:

Q Ms Krueger, you were shown the dates on that -- on that form --

A Yes

Q -- that originally was sent to you

As of the time that you were on the conference call in late November 2011 talking about the potential applications to the Tobacco Commission, was it your understanding that that application had already been made to the Tobacco Commission or that that was something that was being considered?

A So this actually was an exploratory call to discuss the early opportunity of -- or to discuss potentially putting in a Tobacco Commission grant

Q So those dates on the form, are those referring to the planning grants or to the Tobacco Commission grants?

A Those are referring to the pilot study grants

MR FAULCONER: One moment, Your Honor

No further questions, Your Honor

THE COURT: All right

Thank you, ma'am You may stand down

(Witness stood aside)

THE COURT: Call your next witness, please

MR DRY: The United States calls Jerry Kilgore to the stand, Your Honor

JERRY KILGORE,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR DRY:

Q Mr Kilgore, can you state your full name for the record, sir

A Yes Jerry W Kilgore

Q And what city and state do you currently live in?

A I live in Glen Allen, Virginia

Q And how are you currently employed?

A I work at McGuireWoods Consulting

Q And what is McGuireWoods Consulting?

A It's a -- it's a lobbying firm, for lack of a better description

Q Okay And how long have you been with McGuireWoods Consulting?

A For five years

Q And specifically, what do you do at McGuireWoods Consulting?

A I co-chair the National Practice Team, which is the team that goes out and -- and works with state Attorneys General and state Governors

Q Okay And who are you interacting with these state Governors and state Attorney Generals on behalf?

A On behalf -- business clients, usually

Q Okay So business clients hire you to do what?

A They hire me to -- to go to meetings with state AGs or governors and work on their issues, whether it's consumer protection issues or -- or just dealing with various investigations by state Attorneys General So just a whole gamut of things

Q And when did you first meet Mr McDonnell?

A It would have been in '93, '93 when I was working with the George Allen campaign, but then became Secretary of Public Safety for then Governor George Allen in January '94

Q Okay I'm sorry Who was Secretary of Public Safety?

A I was Secretary of Public Safety, and became

Secretary of Public Safety in January of 1994

Q Okay And that was in whose administration?

A Governor George Allen

Q Since the time you met him, how would you describe your personal relationship with -- or your relationship with Mr McDonnell?

A Right It was, you know, a political relationship He was a member of the General Assembly on the Courts of Justice Committee, which was the committee that the Secretary of Public Safety had to deal with and get legislation passed out of He handled a lot of our legislation from -- from the Governor Allen administration on pro abolition, juvenile justice reform

And then over time, you know, I would say we became personal friends He ran for -- after I served as Attorney General, he ran for Attorney General with me running for Governor on the same ticket

Q Okay And let's just unpack that a little bit When did you run for Attorney General of Virginia?

A I ran twice, actually First in 1997, in a four-way primary, and I didn't quite make it then And then I won in 2001 and started service in January of 2002

Q And during your campaign for Attorney General, did you use private airplanes of political donors?

A When we could Yes

Q Okay

A It made it easier to get to Southwest Virginia or other areas of the state

Q Okay And was Mr Williams one of your political contributors?

A Yes.

Q And you rode on his plane?

A Yes

Q When did you first meet Mr Williams?

A It would have been during the Attorney General's campaign

Q And what was the context of your meeting him?

A He was a political supporter

Q Okay And what did you know about Mr Williams at that time?

A Just that it was Star Tobacco at the time, Star moving into Star Scientific, and that he was one of the independent tobacco marketers, if you will, in Southside Virginia

Q When you say "independent," what does that mean?

A Well, it's not one of the big five, like Philip Morris and some of those But one of the more independent tobacco manufacturers and growers in Southside Virginia

Q And how would you describe your relationship with Mr Williams during your campaign for Attorney General?

A It would -- it would have been political supporter Candidate, political supporter

Q Okay And did Mr Williams ever donate actual money to your campaign for Attorney General?

A Yes I believe so

Q And were these all in the context of campaign contributions?

A Yes

Q Okay Did you ever receive any personal money or loans from Mr Williams while you were running for Attorney General?

A No

Q Okay And when did you serve as Attorney General of Virginia?

A From 2002, January 2002, until the beginning of 2005

Q And during that time, how would you describe your relationship with Mr Williams?

A Political supporter, candidate for Governor then, you know, running for Governor during some of that time

Q And while you were Attorney General, did you receive any personal loans or money from Mr Williams?

A No

Q Did he ever offer you any?

A No

Q Now, you stepped down as Attorney General in 2005, I believe you said?

A Correct

Q And what did you do after you stepped down from your role as Attorney General?

A Unfortunately, I ran for Governor

Q Okay And while you were running for Governor, I believe -- you alluded to this I just want to make sure I'm clear on it

Who was also running on your ticket, I guess?

A Governor McDonnell was running for Attorney General

Q And did you make joint campaign appearances with Mr McDonnell, who was running for Attorney General?

A Oh, yes Absolutely Plenty of those

Q Okay And what's your relationship like with Mr McDonnell at that point?

A I -- I would say personal friend, political ally All of the above

Q Now, did Mr Williams ever make campaign contributions for your campaign for Governor?

A Yes

Q And do you have any idea how much those would be? Was he the largest contributor?

A He wasn't the largest, but I would say he and Star together were probably around $100,000

Q Okay And at the time you're running -- I'm sorry

I know this is going to be painful, but I'll ask What were the results of your race for Governor?
A I did not win
Q And what were the results of Mr McDonnell's race for Attorney General?
A He did win.
Q Okay. Now, after -- and that was in 2005, I believe?
A Correct
Q After that, where do you go next?
A I went to Williams Mullen and basically did the same thing there that I'm doing at McGuireWoods
Q You were a lobbyist?
A I was a lobbyist
Q And then --
A And attorney Sort of a mix, a hybrid there
Q Okay And then when did you -- what year did you go to McGuireWoods?
A I went to McGuireWoods in -- in January 2010
Q Okay Now, in 2009, Mr McDonnell is running for Governor; is that right?
A Correct
Q Did you assist in his campaign?
A Yes I was on the Finance Committee
Q And what do you do - what was your role as being on the Finance -- first of all, can you explain what a

Finance Committee does?

A Finance Committee is a group of people that assist a candidate in raising money for their race

Q When you say "raising money," what is that?

A Contacting donors, contacting businesses that might contribute to a candidate and bringing those dollars in for the campaign to be used on advertisements and -- and campaign expenses

Q All right Can you distinguish between a campaign contribution and somebody giving personal money?

A Well, I mean, a campaign contribution is to be used solely for that campaign You know, expenses of the campaign, like you have staff or you -- you want to save as much money as possible to -- to buy those ads at the end, in September and October, that go on TV or the radio and things like that

Personal would just be outside of the campaign It would have nothing to do with the campaign

Q Okay And you mentioned briefly what a campaign contribution is Can you describe what an in-kind contribution is?

A That would be a contribution of services, whether it's a plane You mentioned that earlier It could be an in-kind Somebody giving you an office space, buying -- buying dinners for -- for everybody at an event or something Those could be in-kind You just put the value, to the best of your ability, down on the campaign finance report and report it.

Q Okay And you mentioned a "campaign finance report " If somebody makes a campaign donation, how is that tracked and reported?

A Well, you -- you're obligated, under state law, to file with the State Board of Elections every so often, every -- you know, and it gets shorter and shorter as your race is getting shorter and shorter in days So you may start out reporting every six months, and then you'll file reports every 30 days And then at the end, you're filing them every ten days, and then maybe every day if you get large enough donations

Q And are you reporting just money in or are you required to report money out?

A You're reporting money in and money out You're reporting the money you've raised and the expenditures you've made

Q Okay So during the Governor's -- Mr McDonnell's campaign for Governor in 2009, how would you describe your relationship with Mr McDonnell at this point?

A Great relationship Just working to raise the dollars necessary to be competitive

Q Okay And you're out of politics at this point --

A I'm --

Q -- as a candidate?

A As a candidate for sure. Yes.

Q Okay. And how is -- what's your relationship with Mr. Williams like at this point?

A I mean, just, you know, good I mean, it's a -- he's a political person He's a donor I would call to -- to raise money for candidates

Q Okay Now, when do you first start having a business relationship with Mr Williams?

A In -- during the summer of 2011

Q Okay So this is after Mr McDonnell has been elected Governor?

A Correct

Q And you've worked on his campaign committee, or his --

A Finance

Q -- Finance Committee?

A Correct

Q Was there any other committee after he won the election that you worked on?

A Yes The Higher Education Board Appointments Committee I worked on that with the Governor and his staff

Q How about the Inaugural Committee?

A Yes I'm sorry Yes, I did I worked on -- I was the co-chair of the inauguration

Q Okay Now, going to -- I believe you said the summer of 2011, you started having a business relationship with Mr Williams Can you -- just tell us, how did that come about?

A He called me in the summer of 2011, July time frame, and asked me to meet him for lunch in town, and we met for lunch And he wanted to talk about getting research dollars from the State for his product

Q And what product was that?

A Anatabloc And he, you know, was describing anatabine and all that -- the good it could do. And he needed it researched in Virginia, and he thought I and the consulting firm would be the place to go to make sure that we helped him get the research dollars through -- he mentioned first the Tobacco Commission and --

Q Okay So he brought that up in that meeting?

A He brought up the Tobacco Commission, going after Tobacco Commission funding for this research And I brought up that, you know, you should look broadly at state government for research dollars, that, you know, just don't rely on the Tobacco Commission You should look at other ways to get those dollars, whether through the budget or through grants And you just got to look at all of state government to figure out if there are research dollars out there

Q And when you mention "the budget," what exactly are you discussing with him about potential funding sources?

A Well, when I'm -- when I mention the budget, I mean the biannual budget that the Commonwealth passes every two years, but it amends every year So it's like dealing with a budget every year, technically

And you try to, on behalf of clients, get support for, if you will, a line item in the budget for particular research or for a particular product or for a particular item

Q Okay And this meeting was July 6th of 2011; is that right?

A That sounds right Correct

Q What did Mr Williams tell you during this meeting regarding his relationship with Mr McDonnell?

A During that meeting, he did say that the Governor and the First Lady both supported his product and supported -- would support getting research on his product

Q And did he mention their support for state funding for the research?

A He mentioned that they would be supportive of that, yes

Q Now, was anyone else present during your meeting with

Mr Williams on July 6th?

A No

Q It was just you and he?

A Just the two of us

Q Now, can you kind of -- first of all, were you aware of the process -- he mentions the Virginia Tobacco Commission, right? Were you aware of the process of the Virginia Tobacco Commission?

A Yes I mean, for the most part, I'm aware of the Virginia Tobacco Commission process But I do know they have deadlines and they have specific funding cycles, you know, whether it's research cycle or other types of cycles They have defined cycles at the Tobacco Commission

Q And can you just briefly describe what the Virginia Tobacco Commission is?

A It was -- the Virginia Tobacco Commission was established by the large -- what we call the master settlement agreement with the five large tobacco companies back before I was AG that sends a stream of money into each state that was -- into each state, now all 50 states But Virginia chose to use their stream of dollars in two ways One would be to give 90 percent of those dollars to the Tobacco Commission to give out through grants to regions of the Commonwealth that grew tobacco to diversify those economies and to make sure they are no longer tobacco dependent

The other 10 percent goes to the Virginia Healthy Youth Foundation to deal with anti-smoking campaigns

Q Okay And who serves as commissioners?

A The -- it's a 31-member committee -- commission You would have -- members of the House and the Senate would probably be -- I think 11 of those members are -- 11 or 12 are members from the House and the Senate The rest are appointed by the Governor or the Governor's designates

Q Okay And, in fact, do you have a family relation that works on --

A Yes, I do.

Q -- that?

A My brother is the Chairman He's in the House of Delegates, and he's the Chairman of the Tobacco Commission at this point

Q And to be clear, the Governor didn't appoint him to the Tobacco Commission? That's --

A No He's appointed by the House of Delegates And the House and the Senate have to appoint members from those tobacco growing areas So since he represents the -- the far western corner of state, then he represents the Burley tobacco area

Q Okay Now, as a result of your meeting on July 6 with Mr Williams, what resulted? What was your relationship? He had been a political donor Now what is he?

A He became a client

Q All right

A So I just go back and --

Q Yeah

A -- talk with my staff, mainly Chris Nolen, in my office to, "Let's come up with a plan, how do you want to deal with" -- "how do we want to deal with approaching the Tobacco Commission and looking for other funding sources " And I immediately said, "Well, I better call and see if there's a deadline coming up "

So I called my brother to see if there was a deadline coming up, and there was one coming up for research And it was coming up in August

Q Okay You just mentioned "research " Could the Virginia Tobacco Commission use Tobacco Commission funds for research?

A Yes, they could And they have a cycle for research and development And that's the cycle I'm referring to that was going to come up in August, in the August time frame of 2011

Q Okay And that cycle, the August time frame, is that for the pre-applications for the final application?

A That's for the application

Q Okay Were you able to make that August deadline as far as submitting grants applications?

A No, we did not We were working with Bob Pokusa, who is the general counsel, at the time, at Star, and we were pushing them, "If you're going to do this, we've got to" -- "if you're going to do it for this cycle, we've got to it quickly We've got to get all of our information together "

And we had some problems with how they wanted to do it because Mr Williams had suggested that the partnership needed to be with Johns Hopkins, and I totally advised against that because I did not believe that -- that the -- this Tobacco Commission would partner with a University of Maryland

Q So what did you recommend that he do?

A I told him you have to get a Virginia research institution to deal with this And we suggested VCU or UVA, to go for research folks at those facilities because that would make it more palatable to the Commission

Q And just so I'm clear Why is it going to be more palatable to have UVA or VCU rather than Johns Hopkins?

A Because they are in the Commonwealth of Virginia And this money, the commissioners would -- I'm convinced the Commission likes to spend money on Virginia projects, not see Marylanders getting the money

Q And did you mention that to Mr Williams?

A Mr Pokusa

Q Mr Pokusa?

A Yes

Q And did Mr Williams, in your conversations with him, did he agree, "All right UVA and VCU sounds great"?

A Eventually, yes They -- they all agreed that we should be focusing on UVA and VCU

Q Now, in July of 2011, were you aware -- after your meeting with Mr Williams, were you aware that Star Scientific was going to hold a conference at Gibson Island?

A Yes I was invited to that conference originally by Mr Williams He said that I should go to the conference and learn more about Anatabloc and learn more about the benefits and hear the researchers talk about it

And I was like, "Okay I can go " And then Mr Pokusa called me and told me I should not go I did not need to go

Q Okay Were you excited about listening to more about Anatabloc?

A No I was happy not to go, actually

Q After the Gibson Island event, did you have any conversations with Mr Williams about it?

A After the Gibson Island?

Q Yep.

A Yes. At a lunch

Q Okay And what did Mr Williams tell you regarding the Governor's support?

A That the Governor was very supportive of -- of Anatabloc and that the First Lady was attending -- going to attend the Gibson Island

Q And did you subsequently learn that the First Lady didn't attend, but somebody else attended?

A I did learn that she did not attend, and that Ms Sutherland, instead, attended for her

Q Okay

MR DRY: I'd like to bring up Government's Exhibit 202, please.

BY MR DRY:

Q Do you do you recognize this e-mail sir?

A Yes, I do

Q And just to be clear, Mr Nolen works for you?

A He works with me I don't think he'd like me to say he works for me

Q And this is to Bob Pokusa?

A Yes

Q And you authorized Mr Nolen to send this e-mail?

A Yes We worked on this together

MR DRY: Government moves for the admission of Government's Exhibit 202, please

THE COURT: It will be admitted

BY MR DRY:

Q Sir, basically, what is the purpose of this e-mail?

A It's to outline for Mr Pokusa the activities that we believe needs to be done to ensure that we have the opportunity to get research dollars for the testing of Anatabloc

Q And there's an attachment with a memo?

A Yes Correct

MR DRY: Can we go to the second page of this

BY MR DRY:

Q And did you and Mr Nolen author this memo to Bob Pokusa?

A Yes, we did

Q And at this point, to be clear, who's your primary point of contact at Star Scientific?

A At this point, it had become Mr Pokusa only

Q Okay And Mr Pokusa was what?

A He was the general counsel

Q Okay And can you -- what's the subject line of this?

A It's the "Draft Timeline of Activities to Obtain Tobacco Indemnification and Community Revitalization

Commission, TICRC, Grant Funds "

Q And going to the second paragraph, you talk about, "A pivotal aspect of the proposed activities is to know the decision-making process at UVA to pursue grants of this nature "

Walk us through what had to happen before you could make an application to the Tobacco Commission

A Well, the Tobacco Commission rarely would give a grant to a private entity I mean, it would -- it's just rare I mean, they prefer to have localities or universities, someone with a governmental function to apply for those grants on behalf of a company

And that's why we were pushing UVA or VCU, and at this -- and we wanted to understand -- because it wasn't part of our job to get -- to locate these researchers at UVA -- what is the decision-making process at UVA "We need to know that, Bob, so that we can project a timeline with you "

Q Okay Just so I understand You're going to be responsible for putting together the grant application or submitting it to the Tobacco Commission, right? That's what McGuireWoods is hired to do?

A Yes And working with the Commission staff and working with the commissioners, if we get that far

Q But before that happens, what does UVA have to decide to do under this plan?

A They have to decide to be a partner with Star, and they have to decide to take the lead on applying with the Tobacco Commission

Q Now, is part of your role to call the UVA administrators up or the scientists and start that process?

A This was not our role in this case No

Q Who was responsible for doing that?

A That was Star's role.

Q Okay And on the third paragraph where it says, "Additionally, we think it is worth exploring whether the McDonnell Administration would consider allocating some additional funds to UVA's state appropriations for use as matching funds to leverage TICRC funds "

First of all, TICRC, that's the Tobacco Commission acronym?

A Correct

Q Okay Sometimes it's VTC for that?

A I have

Q Okay Now, what are you talking about "matching funds"?

A Well the Tobacco Commission, on their pre-application, their application, like to see others have skin in the game, if you will, to other entities to be supporting this as well Whether it's the private entity or the locality or the other state entity, they like to know that others are supporting this project through some funding or through giving all the staff -- you know, to quantify, if you will, that process

Q Now, your next sentence you write, "We need to determine whether this is possible and if so, make the ask directly to the Governor "

Why did you want to make the ask directly to the Governor?

A So that it would be included in the Governor's budget or the budget amendments

Q Going to the third page of this exhibit, sir, is this the draft timeline that you put together?

A Yes

Q All right

MR DRY: Let's go to the first block

BY MR DRY:

Q In August, it says, "Determine extent of interested researchers/partners Determine UVA internal approval process Initiate UVA approval process "

Who's going to be doing that?

A The -- Star is supposed to do that

Q Okay And then going down, the September time frame -- and these are -- is it fair to say this is like a timeline proposal to your client where you're saying, hey, these are what needs to be checked off?

A Yes This is our wish list of things we want Star to accomplish with us

Q Okay And then it talks about, "Prepare advocacy materials for use in meetings with government officials Complete a pre-application Schedule a meeting with Tobacco Commission staff Initiate drafting of the application "

But this next bullet point, you have, "Schedule meeting with Governor McDonnell and Governor's policy staff," and you write "J Williams and J Kilgore required to request Governor to include state appropriation to UVA for specific research, which could be eligible for the match "

Why did you want -- I think we talked about why you wanted to have a meeting with Mr McDonnell Why did you want Mr Williams to be at that meeting?

A Because generally, if you're making an ask for the state Budget, you want the principal in the room to ask the other principal, which would be the Governor, and to express why it's needed and what the background is

I mean, I would submit that just having me in the room wouldn't possibly get the job done because we're -- we're in the Governor's Office on so many other things

Q And did Mr Williams express to you anything about the Governor's support of his product by this point?

A Yes I mean, he had said that the Governor and First Lady strongly supported Anatabloc

Q Now, at the time of this memorandum -- Mr Williams has told you about the Governor's support Did he tell you anything about taking the First Lady shopping in New York City?

A No

Q And had he told you anything about writing a $50,000 check made payable to her?

A No

Q Had he told you anything about paying $15,000 for the Governor's daughter's wedding reception?

A No

Q Anything about the Governor playing golf at Kinloch on his tab?

A No

Q Now, have you known Mary-Shea Sutherland for a while?

A Yes

Q Okay

A I have

Q I'd like to move to the meeting that you had I believe it was at The Berkley Hotel on August 1st of 2011 Do you remember that meeting?

A Yes

Q Okay And how did that come about?

A Originally scheduled by Mary-Shea as just a catch-up time We do this occasionally to catch up with each other She worked with me back in '94 through '97

Q And in what context did Ms Sutherland work with you?

A She was -- I was Secretary of Public Safety, and she worked in my inner office And she was the grants administrator for the entire Secretary of Public Safety

Q And did you know her while she was working at Benedetti & Farris in any context?

A Yes I knew her as a fundraiser that I worked with on various campaigns

Q Okay Now, let's go to this Berkley Hotel meeting You said it was originally scheduled, it was just going to be with Ms Sutherland?

A Right

Q It was kind of a typical thing, every now and then?

A Right

Q Who else shows up at this meeting?

A Jonnie Williams

Q And who -- it's Ms Sutherland, Mr Williams, and you Anybody else at it?

A That's it

Q Just walk me through what's discussed at this meeting

A Catching up first But then, you know, Mary-Shea and Mr Williams start talking about getting her a job and finding her another job because she's telling me she's totally unhappy at the Mansion and does not want to work for the First Lady anymore and wants a new job and wants out of there

And immediately they bring up that she wants to go to work for Jonnie, and they are talking this back and forth And Jonnie turns to me and asks me if -- if we would hire her at -- at McGuireWoods Consulting and make a place for her and he would find a way to -- to give her business

And I'm like, "We just don't have a position like that that's open right now, and I'm not sure we're going into that area "

So then they started talking about other ways to make it happen And they -- I think Mary-Shea -- Mary-Shea brought up, you know, going back to Benedetti & Farris, with Jonnie being a client of hers at Benedetti & Farris

Q And what's -- what's Ms Sutherland's demeanor as she's telling you that she's unhappy on the First Lady's staff?

A Oh, she's very emotional that day about her work at the Mansion

Q Was it -- did she make it clear to you that she was leaving the Mansion no matter what?

A Oh, I left there thinking she was leaving the Mansion

Q Okay What did Mr Williams say as you're -- as the meeting is discussing Ms Sutherland's employment, what is Mr Williams saying regarding whether he's going to hire her or not?

A Well, it seems to me like during that meeting, it's a -- a job negotiation lunch more than anything Here I thought I was going to this lunch just to causally meet up with Mary-Shea, and it becomes a job negotiation lunch.

And he -- at the end of it, as we're leaving, he's asking her to get with Benedetti & Farris and put a proposal together And then he says send it to me, which I didn't know I was going to be involved in that until that very moment, to send that proposal to me And that's how we left that lunch And then I got the proposal a few weeks -- or a week or so later Two weeks later, I think Two or so weeks later

Q Okay And --

A Maybe longer than that I'm trying to -- longer than that

Q Okay And are they talking about salary at this meeting? When you say a job negotiation, are they sitting there saying, "This is what you've got to pay" or anything?

A No No We did not get into that detail But we got into, you know, she would work -- you know, her proposal was she would work for him He would be a client of Benedetti & Farris

Q Okay And he says, "Send a proposal to Jerry Kilgore"?

A Correct

Q Okay And were you negotiating on behalf of Mr Williams this proposal that came over later?

A No I mean, I got the proposal from Abby Farris at Benedetti & Farris And I've known her for a -- for almost my entire -- my entire political career So, you know, Abby called me about it, sent it over And I said, "Well, I'll just get it on to Mr Williams " And so I tried to call him, tried to reach out to him several times, and actually never reached him about this particular contract And -- or this proposal

And they kept calling Abby would call And then I got a call from -- one day from Tom Benedetti And I eventually talked with Chris Nolen, who also works with me, and we decided we best just ship that off to Mr Pokusa and ask Mr Pokusa, since he was general counsel to Star, and that's who would be using her, I would -- we thought So just have Mr Pokusa take care of it

Q Before you sent the proposal that you received from Benedetti & Farris to Mr Pokusa, did you have any conversations with Mr Williams about it?

A I tried to call him about it, but never really had a conversation or reached him about it

Q But after you sent it to Mr Pokusa, did you subsequently have a conversation with Mr Williams about the proposal?

A Yes

Q And tell us what happened then

A That would have been in September of -- after we had sent it to Mr Pokusa And I asked Mr Williams about it I said, you know, "It was" -- "I thought, you know" -- I said, "I thought, you know, you all were going to hire her, and what happened?" He said he just could not hire her It was poaching on the First Lady's Office, and he was not going to do that

Q Did he explain why he didn't want to do that?

A He needed -- he told me he needed the support of the First Lady for his product and did not want to make her mad

Q What did he ask you to do after that call?

A I didn't deal anything with that issue because I had already shipped it off to Pokusa

Q All right Let's take a step back Because that -- I believe that was in September of 2011 Let's take a step back

A Right

Q At some point do you learn that there's going to be an event at the Mansion related to Anatabloc?

A Yes, I do

Q How do you learn that?

A Well, I had -- I learned it from Mr Eige and Mr -- and Martin Kent called me to come to a meeting at their office And I went to the meeting I had other business there as well, and I was glad to get a quick meeting And they had major concerns about this launch that was going to happen at the Mansion

MR DRY: Can we bring up Government's Exhibit 4, please

BY MR DRY:

Q Do you recognize this document, sir?

A Yes

Q And this is basically a time sheet for you and Mr Nolen at McGuireWoods?

A Correct

MR DRY: Government moves for Government's Exhibit 4 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q And just to be clear, how great of a timekeeper are you?

A Well, we normally -- on the consulting side, which is why I want to be on the consulting side, we don't have to do time sheets that are -- account for every tenth of an hour that the law firm has to do And we generally don't do work on an hourly basis We do work on a project basis or a monthly retainer basis

Q So it's more of a -- either like a flat fee or --

A It is a -- it's a flat fee That's how I would describe it

Q Okay

MR DRY: Can we go down to August 12th of 2011

BY MR DRY:

Q And right there, it shows an hour -- or 9?

A Right

Q Is that the length of time?

A Right

Q And then that's how much it cost? Not to be rude

A Yes

Q Okay And then here -- what are you referring to, "Discussions with C Nolen on strategies at Tobacco Commission"? Do you recall what that --

A We -- Chris and I met before I went to this meeting

Q Okay And then it says, "Meeting with J Eige and M Kent, Chief of Staff, regarding rollout issues"?

A Correct

Q Do you recall Mr Williams informing you of concerns by Eige and Kent before you had the meeting?

A Yes

Q What did he tell you?

A That they were concerned about the launch of Anatabloc being at the Mansion, that they didn't want it at the Mansion

Q And what did he tell you to do?

A He said, "Well, the First Lady and the Governor want it at the Mansion So we're going to have it at the Mansion "

Q And did he ask you to reach out to Eige and Kent about this?

A They reached out to me

Q Okay And what did they tell you?

A They were opposed to having a launch at the Mansion, that it was -- they did not believe that it was appropriate to have this launch at the Mansion, that -- and they suggested that any launch of the project be at the -- at the BioTech Park here in Richmond and not at the Mansion

Q Did they --

A And they asked me to pass that back on to Mr Williams

Q Did they say anything about whether they were familiar with any other similar event like this?

A I mean, they just went on that we don't do those rollout -- we don't do announcements like that at the Mansion We should not do those announcements at the Mansion

Q And they ask you to talk to Mr Williams Do you?

A I do

Q And what do you tell Mr Williams?

A I told him that they did not want it at the Mansion and that, you know, he needed to look at the BioTech Park as a potential place to do a rollout

Q And what was his reaction?

A His reaction was he didn't want to do that He needed the Mansion He wanted the Mansion because that would be a great place, get better press, he said, so that he could rollout his product

Q Is he talking about the Governor and Ms McDonnell's support of this?

A Yeah He always would say that they support this project and that we need -- he needs to have this at the Mansion because they want to have it at the Mansion

Q Now, were you actually involved in the planning of the Anatabloc event at the Mansion?

A I was not

Q Were you invited to the event?

A I was not.

Q Okay At this point, after your conversations with Mr Eige and Kent and then your conversation with Mr Williams -- first of all, I believe you -- your time sheet says August 12th, 2011 How long after that do you think that you relayed Mr Eige and Mr Kent's message to Mr Williams?

A I would have tried to call that day So I would have reached him that day or the very next day

Q Okay And from your call with Mr Williams, let's ballpark it, August 12th, August 13th, up to August 30th, did you know whether there was actually going to be an event at the Mansion?

A I did not

Q Okay

A Up until August 29th

Q Okay Well, let's talk about that How do you find out that the event is -- there's going to be an event and it's going forward at the Mansion on August 30th?

A That Mr Eige, again, calls to say, "Have you seen this press release that Star wants to put out with the Governor's statement in it?"

I was like, "I don't know now what you're talking about " And he was reading it to me And I said, "Well, you know, I didn't write it I didn't" -- "I don't know anything about this It's not what they have hired me to do, but I will call I will deal with it "

And so I called Mr Williams, who -- to say, "They're" -- "they're not going to" -- "they don't want you to put out a statement that the Governor hasn't approved on your letterhead "

Q Okay And what was his reaction?

A Well, he just said he would call in to Star, in to Star

Q Did you -- well, how certain are you that you talked to Mr Williams or Mr Pokusa about that? I just want your best recollection

A No It could have been Mr Pokusa, because we were working with him on all the other issues

Q Okay All right Did you attend the event at the Mansion?

A I did not

Q After the August 30th, 2011, event at the Mansion, was -- did you discuss with Mr Williams whether he wanted to go forward with the studies at UVA and VTC -- or Tobacco Commission funding?

A We discussed that with Star

Q Okay

A But Mr Pokusa significantly

Q And what was --

A We had another conference call I mean, we were trying to move this forward, do a conference call. We had another conference call in November of that year to sort of, you know, get moving on the research

Q Well, let me ask you about that You said originally that there was like this deadline of August that you missed

A Right

Q Now you're talking about a conference call in November Why didn't you move the ball forward from August to November?

A Well, the August -- you know, Star wasn't ready in August, and our view was Star wasn't moving forward with the researchers until that November phone call when we had a phone call scheduled with the researchers at UVA and VCU

Q And did you actually participate in that call, sir?

A I opted out of that call, and Chris Nolen participated in the call because it was going to be a research call

Q Okay Now, from the time of that call through February of 2012, what's going on with this grant application process? Did you make a submission?

A We did not The -- Star is supposed to be working with the researchers, getting the researchers on board so that we can submit for the next deadline

Q And were they --

A They were not being successful at that time

Q Okay And in February of 2012, did you discuss the fact -- did you discuss with Mr Williams UVA and VCU not moving the ball forward?

A Yes He was wondering why we weren't moving forward with the Tobacco Commission, and I said, "Well, UVA and VCU haven't stepped up to the plate yet So we can't move forward "

Q And what was Mr Williams' reaction with UVA and VCU?

A Well, he -- he was not happy about that.

Q And in that conversation with Mr Williams, did he bring up Mr McDonnell and Ms McDonnell?

A He again reminded me that they supported his research and they wanted to find a way to help the research

Q From your perspective, if the Governor does support this idea of the research, as the lobbyist, was that going to be helpful for you doing what you needed to do?

A Well, it's always helpful to have the Governor support something you're doing as a lobbyist

Q Why?

A Well, I mean, the Governor is the Chief Executive of the Commonwealth He has this bully pulpit, if you will, to go out and talk about issues Whatever the issue is, he has the power of that office to go out

Q But to be fair, I mean, the commissioners of the Tobacco Commission make the decisions on the Tobacco Commission funding?

A Absolutely

Q So why does it matter to you whether you have the Governor's support?

A It's always helpful to have the Governor on the front of your -- or in your application materials, to say the Governor supports a project

Q All right After your conversation with Mr Williams about things not moving forward with UVA and VCU, do you have a subsequent conversation with Mr Eige about this?

A Yes Yes, I do Jasen Eige called me about it again to say that, you know, "I don't think we should be pressuring UVA and VCU on this research " And I'm like, "What are you talking about?"

And he's again saying, "Well, I've been asked by the Governor to call and put" -- "you know, show support for this research, and I'm just" -- "I just don't think we should be doing it "

And I'm thinking, "It's Jasen being Jasen," and just say, "Well, you know it doesn't hurt to have the Governor's support for these projects, and we'd like to have his support for the research "

Q Well, I mean, at this point did you see anything wrong with the Governor supporting the research?

A Oh, I thought it would be helpful I wanted the Governor's support

Q But there was nothing inherently illegal about the Governor supporting the research?

A Oh, absolutely not. I wouldn't be asking if it were

Q Okay Fair enough

Did Mr Eige say that the Governor had asked him to call you or was he calling you on his own from your call?

A He said the Governor had made an inquiry

Q An inquiry of him?

A To him, yes

Q What did you tell Mr Eige -- well, what did you tell Mr Eige?

A That, you know, "We'd like to have the support We'd like to have the Governor's support, that the Governor can" -- "can voice support with" -- "with any of Virginia's universities about research he may support "

Q Did Mr Eige specifically ask you to do anything as a result of his call?

A No Not at that time

Q But did you have a feeling about what he was hoping you would do?

A Well, I certainly passed it back to -- to Star and Mr Williams to say that, you know, the -- that Jasen isn't confident that the Governor should weigh in here

Q Are you telling Mr Williams, "Hey, the Governor has said" -- "personally said he's not going to do this"?

A I didn't say the Governor -- no The Governor didn't say -- Jasen did not tell me the Governor wasn't going to do this Jasen said he was uncomfortable with the Governor doing it And I passed that back on to Mr Williams

Q Well, what is Mr Williams' reaction when you tell him, "Hey, Eige is saying that he's uncomfortable"?

A Well, he again said they support his research, and he would like their help

Q When you're having any of these conversations with Mr Eige or Mr Williams, at any of these points is he telling you about the things of value that he had given to the Governor and the First Lady?

A No

Q Okay We can do this fairly quickly

You said that you were --

THE COURT: Mr Dry, are you almost finished?

MR DRY: I think I've got about 15 more

minutes, Your Honor

THE COURT: All right

Well, Mr Kilgore, it looks like you're going to have to come back tomorrow Obviously, we've got two cross-examinations, and you're not even close So we might as well look out for the comfort of our jury and allow you all to leave now

As I've said over and over again, please don't review any media items regarding this case Don't allow anyone to discuss it with you And you all be safe, and we'll see you tomorrow morning at -- just a second. Let's make it 9:45 again All right

(The jury left the courtroom)

THE COURT: I'm going to go down for about five minutes and come right back in, and we'll have a hearing on this -- this witness issue So I'll be right back

(Recess taken from 5:32 p m until 5:39 p m)

THE COURT: All right Let's approach this in this way I know this is the defendants' motion, but I think I understand the defendants' position completely I'll hear from the government, and then from the defendants if they feel it's necessary

Government

MR COOKE: Thank you, Your Honor I'll try to be brief As I understand the defendants' position, particularly through their reply brief, they are emphasizing the comparison between the testimony -- proposed testimony of Mr Skunda and Ms Bridge with that that was excluded from Mr Earley

And the testimony is very different The essence of Mr Earley's testimony was to give an opinion about the legality of conduct, and in particular, the legality of the McDonnells' conduct, and tell the jury when an official can be paid personal funds for performing acts that --

THE COURT: Let's save some time I don't need to hear that

Tell me what it is that you're going to present through these witnesses, why it's relevant, and --

MR COOKE: Sure

THE COURT: -- what is fact and what is opinion

MR COOKE: Okay I'll start with Ms Bridge, who was Mansion director from 2002 to 2010 for Governor Mark Warner and Tim Kaine And she could testify about the types of events that were held at the Governor's Mansion She would not be saying what -- she wasn't -- did not have a role in selecting what events would be held at the Mansion, but she had personal experience and knowledge about what was done at the Mansion

And that's relevant because under the definition from

JEFFERSON and BIRDSALL for an official act, the Fourth Circuit has a firm instruction that said, "Official acts include those activities that have been clearly established by settled practice as part of a public official's position "

And we think it's helpful to the jury to understand the types of events, meetings, and the promoting a Virginia business that have been the subject matter of this case are the types of things that other governors have done and, therefore, are part of a settled practice that's been clearly established

I also would emphasize, this is going to be very short testimony We expect that both Ms. Bridge and Mr Skunda, combined, that their direct examinations would take less than a half an hour.

THE COURT: All right And Mr Skunda, what is -- he's just going to do the same thing?

MR COOKE: Essentially He was Secretary of Commerce from 1994 to 1997, and so he would testify about meetings that were held to promote Virginia businesses and events

THE COURT: Okay Thank you

MR COOKE: Sure

THE COURT: Okay The McDonnells

MR BURNHAM: Just very quickly, Your Honor

All I would emphasize is that the reason that Mr Cooke gave for this being relevant -- these are not fact witnesses, of course, since they don't have any personal knowledge of the facts in this case And that sounded to me like classic expert testimony

Other than that, I think the Court understands our position So thank you

THE COURT: All right As to Mr Skunda, the defense motion will be granted As to Ms Bridge, the Mansion executive, that motion will be denied

And let me say this as to Skunda Just so we're clear, it is possible that the defendants, in putting on their case, could make Skunda relevant and material Just so you know, I mean, if this comes back for rebuttal, there might be another look at that But at this point, I'm not going to allow Skunda and his testimony about the meetings All right

(The trial adjourned at 5:43 p m)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v.

Criminal Action
3:14CR12

ROBERT F. McDONNELL and
MAUREEN G. McDONNELL,

Defendants.

August 12, 2014
Richmond, Virginia
9:43 a.m.

CHAMBERS CONFERENCE - UNDER SEAL

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S. DRY, ESQ.
DAVID V. HARBACH, II, ESQ.
JESSICA D. ABER, ESQ.
RYAN S. FAULCONER, ESQ.
Counsel for Government;

JOHN L. BROWNLEE, ESQ.
HENRY W. ASBILL, ESQ.
TIMOTHY J. TAYLOR, ESQ.
JAMES M. BURNHAM, ESQ.
Counsel for Robert F. McDonnell;

WILLIAM A. BURCK, ESQ.
HEATHER H. MARTIN, ESQ.
STEPHEN M. HAUSS, ESQ.
Counsel for Maureen G. McDonnell.

JEFFREY B. KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

(In Chambers.)

THE COURT: All right What's up?

MR. DRY: Sorry to be back here again, Your Honor. The government received a phone call from a practicing attorney, Jim Watson. The government had never heard of Mr Watson before, had no knowledge of him, did not reach out to him. It was a complete cold call phone message Mr Watson identified himself as a member of the Virginia Bar, said that he had a client of his that had contacted him. And in the message, he stated that the client was a member of the jury in the McDonnell case, and that the attorney informed him that he didn't want to talk about the case. And Mr. Watson basically said that he felt obliged to bring it to our attention, the Judge's attention, the defense counsel's attention. He then left his phone number for the government.

We got the message and contacted him and spoke to him. During the interview -- we have interview notes that have been turned over. Both the voicemail and the interview notes have been turned over to both defense counsel. Mr. Watson informed us that the call came from Juror Louis Denitto. He stated that they have a relationship that goes back some thirteen years because Mr Denitto runs a construction business and had asked him to help him out on legal issues from time to time He said that before the phone call at 6:15 p.m. that night, last night, that they hadn't spoken for six to eight weeks, and that there was an introductory part of the call where Mr Denitto asked about family or something like that

And then after the introductory portions were concluded, Mr Denitto said, "I'm calling you because --" and he stated that he was on the jury. Mr Watson responded, "Like a venire?" Mr Denitto says, "No, one of 12 " Mr. Watson says, "You mean now?" And Mr Denitto responded, "Yeah, I'm the Foreman. I've got 12 people all over the place, and I don't know what to do " And Mr Watson said he might have said, "I don't know what I am supposed to do." Mr Watson said that Mr. Denitto did not use the word "sequester," but stated that he was in a hotel for the trial And it became clear to Mr Watson that he was talking about the McDonnell trial

Mr. Watson told him that he couldn't talk to Mr. Denitto about the trial We asked, again, Mr. Watson during the interview, "Are you sure that he stated that he was a Foreman?" He goes, "Yes, he used the 'Foreman' word and he said that there were '12 people all over the place and I don't know what I am doing '" Mr. Watson said there was no substantive discussion, no discussion of the evidence, but Mr. Watson believed that it was something that the parties should be aware of He stated that the relationship, their business relationship, was on an as-needed basis, that they never socialize, that Mr. Denitto calls him when he has a business problem, that the call last night had nothing to do about a new business matter. In other words, it wasn't in the context of "I've got something else I want you to work on." Mr. Watson believes that Mr Denitto appreciates his honesty and candor, thinks that they have mutual respect, and that Mr. Denitto viewed him, Mr Watson, as his confidant and that he needed to talk to somebody But Mr Watson shut him down.

So what the government has done is, it has asked Mr Watson to be here. He is in a witness room. If the Court or the parties want to inquire of him, that's obviously the Court and defense counsel's discretion. We have no position at this point because we frankly don't know what happened. We've got what Mr. Watson has told us, and from there we are kind of looking for everybody else's thoughts

THE COURT: All right. I'll hear from both defense counsel, and then I'll tell you what I am going to do.

MR. ASBILL: Okay Obviously, we were not parties to the conversation with Mr Watson last night that the government conducted. We've got the notes of the call and we've got a transcript of the voice message. I'd like to make those part of the record in this case.

Our position is we would like to, in the first instance, hear from Mr. Watson directly And then we will give you our views of what should happen next after we hear from him.

THE COURT: Bring Mr Watson in.

MR. BURCK: Just for the record, my client is not present but we waive her presence.

MR. DRY: We have a transcript of the voicemail and the handwritten notes that were turned over. And for the record, we did turn over the voicemail, which included the cell phone number

MR. BURNHAM: I don't know if we need your permission, but we would make this part of the record, Judge

THE COURT: Sure

(Documents proffered to Law Clerk.)

(Mr Watson entered chambers)

THE COURT: How are you doing? Good to see you.

BY THE COURT:

Q Mr Watson, we got this information about the phone call that you had with one of our sitting jurors. And I just wanted to hear from you about the conversation. Now, when did you receive the phone call?

A About 6:15 yesterday evening

Q Yesterday evening?

A Yes, sir

Q All right. And the juror is a person that you have known for some time?

A The person that called me I've known for some time. He told me he was a juror. I did not know that. I have not sought to know that.

Q Tell me about the beginning of the conversation.

A The call came in, and there was a lot of static on the line so I pulled over into a small shopping area close to my home. And I could see it was from Mr Denitto or his business, and I called him back. And when I called him back, the clarity of the conversation was much improved; good, if you will. And he just starts off with the basic conversation: "Hi, Louis, how are you doing?" "Hi, Jim, how are you doing? Haven't heard from you for a while." He knows that I am in the process of transitioning out of my active practice of litigation, because I had worked with him on a case fairly recently, this past spring So he asked me how that was going. I asked him how he was doing He told me that he had had some health problems, which I was surprised to hear I hadn't heard about those. He indicated that he had had a difficult time. And I think that was pretty much the sum and substance of the introductory type of conversation.

And pretty much typical with Louis, he would go through some type of, you know, informal conversation. Then he said, "Jim, I wanted to call you," and I will try to relate to Your Honor the way the conversation came down. I have not taken any notes or attempted to preserve that So he says, "Jim, I'm calling you because I am a Foreman on a jury " I think he said "Foreman" before he said anything else. In other words, I don't think he said, "I'm on a jury" or something like that He may have And I said, "Really?" I said, "Do you mean you are like in what we call the venire where you have a bunch of jurors and you haven't been selected yet?" And he said, "No, I'm on a jury " And he said, "I'm calling you because I'm the Foreman, and there are 12 people, and they are kind of all over the place and I don't know what to do "

And I could tell that he, in my judgment, was stressed I think "befuddled" would be too strong of a word. And he needed some guidance, reassurance. And having worked with Louis on some matters, I felt I could make that judgment, and I think I had the sense that he was calling me because I had always told him, I said, "Louis, if you ever have any problems, give me a call You've got my cell phone, just give me a call." I thought he was taking advantage of that, if you will, or making use of it And I asked for clarity. I said something along the line, "Louis, you are a Foreman on a jury?" And he said, "Yes." And I can't remember which way this came first He said -- I think it was this way -- he said, "I'm up, I'm put up," I think that's what he said, "I'm put up in a hotel here in the McDonnell case "

And when he said, "I'm put up here in a hotel," and I coupled that with when he said a 12-person jury, which you don't usually have in state courts, you know, a light kind of went off, and I thought he was saying he was sequestered. But it may have been that he was just put up in the hotel because I know he lives down in Blackstone, which is an hour-and-a-half to two-hour drive away

I said, "Whoa, Louis Louis, I know you think you have the right to an attorney, and I can understand that because I've been your attorney But when you are in the jury, on the jury, I can't talk to you and you shouldn't be talking with me. And I know that kind of runs counter to the fact that everybody is entitled to their lawyer, but you just have to listen. I can't talk to you. I just can't do it. And I hope you understand that." And the conversation pretty much ended at that time That's pretty much it. I'm trying to think if there is anything else that -- no, that was it.

THE COURT: All right.

MR. DRY: Can I ask just one question?

THE COURT: Go ahead.

BY MR. DRY:

Q Just to confirm, there were no substantive discussions or any discussions of the evidence in the case in any way, shape, or form?

A Absolutely none, not even close.

BY MR. BURCK:

Q Sir, did Mr Denitto actually say that he was on the McDonnell trial or did you infer that?

A He said it.

Q He said "the McDonnell trial"?

A Yes, sir

THE COURT: All right Thank you You may be excused. Thank you very much.

MR. WATSON: Am I free to go?

THE COURT: Absolutely. Thank you.

(Mr Watson left Chambers)

All right. I'll hear what you have to say

MR. DRY: After you.

MR. BURCK: Just one thing before Mr Asbill starts, just for the record, I have seen Mr. Denitto over at the Marriott Hotel There is a Starbucks over there, and I go there every morning. I know that Mr. Dry is staying there as well. I've seen him physically there But I obviously haven't spoken to him. So I know he is at the Marriott, for what it is worth.

MR. DRY: I haven't seen him.

THE COURT: Anything else before I tell you what I am going to do?

MR. ASBILL: Yes. I'd like to propose, I don't know if there is unanimity in the defense camp, but I would like to propose we interview on the comments "I'm the Foreman on the jury," "There are 12 people all over the place and I don't know what to do."

THE COURT: It is on the record what you want, but that's not happening Anything else from anyone? Mr. Denitto is gone He violated the Court's instruction, simply by making the phone call and identifying himself as being on this jury. So he is finished. All right?

MR. ASBILL: Judge, there are a number of other people that are implicated by his comments, and I think they need to be interviewed. I would ask the Court to follow the procedures in U S v RESKO, Third Circuit case from 1993, 3 F.3d 684, 1993, which I think outlines the procedure that needs to be followed in a situation like this I'm happy to make a copy available.

THE COURT: I know the case. Your request is noted and denied. Thank you all very much.

MR. ASBILL: I would also ask for a mistrial then under these circumstances

THE COURT: Denied.

MR. BURCK: Just for the record, Ms. McDonnell joins the objections of Mr McDonnell.

(All counsel left the courtroom.)

THE COURT: Have Kathy come in here.

(Deputy Clerk Kathy Hancock entered Chambers)

THE COURT: All right, who is next up?

THE CLERK: I have to look at the list to get her name. I think it is one of the females

THE COURT: So give me the name

THE CLERK: Actually, it is the guy, the sleeper guy

THE COURT: This guy right here?

THE CLERK: Yes

THE COURT: Okay. Who do we have in there, Lee?

THE CLERK: Lee and Grant and then the tall guy I'm not sure of his name.

THE COURT: Have them come in.

THE CLERK: Lee or Grant?

THE COURT: Both of them.

(Court Security Officers entered Chambers.)

Hi, how your doing? All right, we've got a problem with one of our jurors. And what I need you to do, this is Mr. Denitto, Louis Carmen Denitto. I need you to get him. Is our conference room -- I'm trying to think of someplace where we can put him.

THE CLERK: Our conference room in the hall is the media room. The media is in there. The only other place we can put him --

THE COURT: We can put him in one of the offices back here.

THE CLERK: Back in this hallway, you mean?

THE COURT: Yeah, back down the hallway Let's get Mr. Denitto, put him in there, and then I have to have counsel back in here I have to have them back.

THE CLERK: All right.

THE COURT: So what we will do is, I want you all to put him back in the office, one person to stay with him. Okay? And then at some point we are going to bring him in to talk to him. If it's not one thing, it's another

THE CLERK: I think you should tell that tall guy, I can't think of his name, to just come back and stay in the courtroom. I'll bring counsel back now

(Counsel entered Chambers.)

THE COURT: All right, have a seat. Bring Mr Denitto in Mr. Denitto, come on in and have a seat.

BY THE COURT:

Q Good morning. Mr Denitto, we have been informed by a lawyer, Mr Watson, that you called him yesterday.

A Yes

Q And identified yourself as a juror in this case

A Well, I had called him on some other business He is one of my lawyers in the company And we had called about government work and had mentioned that, I was asking him if in the jury room, when it is all over, what is the normal procedure, I mean, how does that work. I had never been to that point on a criminal trial like this

Q Did you tell him you were Foreman?

A No, no, no. I said, "Is it possible to be open with me as well as anyone else?" He said, "Are you talking about the McDonnell trial?" I said, "Yes." He said, "Well, we can't talk about it any further " And that was it But the call, the phone call originated about some other legal stuff that we were dealing with.

Q Did you tell him you've got 12 people all over the place?

A Twelve people all over the place?

Q Right.

A What I meant, I did say that. What I meant by that was we didn't know, I didn't know where the charges referred to in what we were, the lawyers and so forth were talking about in the trial And that's why this morning I asked if we could get a copy of the charges on each individual That's what that was, you know -- that's what I meant by "it is all over the place " I don't know based on what you told us when we started, and writing it down, I didn't get it all You were talking fast And I wanted a copy of the 12 charges.

Q You say "12 people all over the place," that indicates that you have talked to 12 --

A No, no, no It wasn't intended like that at all. Not at all No I didn't talk to anyone about it, about the specifics of the case or anything, you know. Different comments are made when you walk back in there, like, "Wow, glad that's over with," or that sort of thing, whatever I didn't call Jim Watson about this case, by no means. It was about something else.

THE COURT: Do you all have any questions for him?

MR. ASBILL: No questions.

THE COURT: All right Thank you, Mr Denitto. You can go back outside.

(Juror Denitto left Chambers.)

All right, obviously he is still out. But --

MR. ASBILL: I object to that Based on what he said, Your Honor, I don't think he should be out And the fact he said he was in the McDonnell case, I think, is an irrelevancy. There has been newspaper reports that he and another juror from the same hometown are on the McDonnell jury That is public knowledge. That's not any secret or anything that I think is inappropriate for him to say to a lawyer.

MR. DRY: Forty-five minutes before he got on that phone call, you told him he shouldn't talk about this case to anybody

THE COURT: I appreciate what you have to say, counsel, but he is gone All right Thank you.

MR. DRY: Can he be instructed not to discuss anything?

MR. ASBILL: There is also a problem with the first alternate. We collectively noticed he has been sleeping a lot of this trial.

THE COURT: Well, there is no question about it He has been drifting later in the day But I don't know that there is anything we can do about it

MR. ASBILL: Obviously, the government thinks that we think that Denitto is a favorable juror to the defense, and we do. And he has now been cut over our objection. We would like to cut the sleeping juror

THE COURT: That's not how it works, Mr Asbill.

MR. ASBILL: Whatever.

THE COURT: He hasn't been asleep. He has been listening intently with his eyes drifting downward.

MR. ASBILL: That's a distinction with a difference that I am missing.

THE COURT: No, as far as I can tell, he is still up to snuff But we will see We've got a long ways to go. But no, he is not going to get cut just because -- and I, well, it is total speculation as to what is a good juror for whom. But this guy violated my instructions, and so he has to go.

MR. DRY: Judge, we have looked at case law It might be beneficial if you just remind the jury sometime during the day about no discussions with anybody, no talking amongst yourselves, that kind of stuff

MR. ASBILL: He obviously reports that they are having some discussion. Whether those are benign or malign or intra-jury discussions that are improper, we don't know unless we interview these jurors.

MR. DRY: The government opposes that.

THE COURT: No, I'm not interviewing them. Thank you all very much.

(Counsel left Chambers.)

Bring Mr Denitto back in.

(Juror Denitto entered Chambers)

All right, Mr Denitto, you are going to be excused from the jury. This is a violation. I'm sure you probably didn't mean it this way, but I keep saying, "Don't talk about the case or discuss the case," and, you know, to make this call and even have these kinds of discussions with this lawyer was not appropriate And so you are going to have to be excused. And do you have anything in the jury room?

THE JUROR: No, huh-uh.

THE COURT: We will see you. Thank you for your service.

THE JUROR: I certainly apologize for that. It wasn't intended in any way I've dealt with that lawyer for 20 years

THE COURT: All right. Thank you. You are excused.

(Juror Denitto left Chambers)

(Chambers Conference ended at 10:20 a.m.)

CERTIFICATE OF REPORTER

I, Jeffrey B. Kull, Official Reporter, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter

__________/s/_________________

Jeffrey B. Kull,
Official Federal Reporter

__________/s/_________________

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

August 12, 2014
Richmond, Virginia
10:25 a.m.

JURY TRIAL - VOLUME XII

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
DAVID V HARBACH, II, ESQ
JESSICA D ABER, ESQ
RYAN S FAULCONER, ESQ.
Counsel for Government;

JOHN L BROWNLEE, ESQ.
HENRY W ASBILL, ESQ
JAMES M BURNHAM, ESQ
DANIEL I SMALL, ESQ
CHRISTOPHER M. IAQUINTO, ESQ.
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Counsel for Robert F McDonnell;

WILLIAM A. BURCK, ESQ.
HEATHER H MARTIN, ESQ.
STEPHEN M. HAUSS, ESQ
DANIEL KOFFMANN, ESQ
Counsel for Maureen G. McDonnell

JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day twelve, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Daniel Small, Henry Asbill, James Burnham, and Christopher Iaquinto Maureen G McDonnell is represented by Heather Martin, William Burck, Stephen Hauss, and Daniel Koffmann. Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed.

MR. BURCK: Maureen McDonnell is ready to proceed

MR. ASBILL: Mr McDonnell is ready to proceed

THE COURT: All right Let's bring in the jury

(The jury entered the courtroom.)

All right, good morning, ladies and gentlemen. For the record, Juror Number 0356 has been excused. First alternate, Juror Number 12, Mr ***, has been moved up to the active jury Mr Dry?

DIRECT EXAMINATION (Cont'd)

BY MR. DRY:

Q Mr Kilgore, you know you are still under oath?

A Yes

Q Okay Upon further reflection, I only have two questions for you, I think.

A That's good.

Q Now, without getting into the substance of the conversation, on March 15th of 2013, did you receive a call from Mr Williams regarding a package he had received from Ms McDonnell?

A Yes, I did.

Q And as a result of that call, what did you do?

A I was out of town, so I directed my assistant to go to the Star office here in Glen Allen, Virginia, and pick up all the material

Q Okay

MR DRY: No further questions

THE COURT: Cross?

CROSS-EXAMINATION

BY MR BROWNLEE:

Q Good morning, Mr Kilgore My name is John Brownlee I represent Bob McDonnell and I have a few questions for you this morning

A Good morning

Q Thank you I believe you started your testimony indicating that you had a meeting with Mr Williams here in Richmond on July 6th; is that correct?

A In July, yes, correct

Q And Mr Williams apparently flew up here from his home in Florida and you all met at one of the local hotels and had breakfast or some meal; is that correct?

A I'm not sure how he got here, Mr Brownlee, but I know we met at the Berkeley Hotel for lunch

Q Okay And Mr McDonnell was not there; is that right?

A That's correct

Q Okay Let me pull up just for the witness, if I can, RM-0520 Mr Kilgore, this is a receipt or an invoice for Mr Williams' trip that day to meet with you on July 6th.

A Okay

Q It indicates that Governor McDonnell was at that meeting with you; do you see that there, sir?

A I see meetings with Governor McDonnell and former Governor Kilgore

Q Right He was not at that meeting with you, correct?

A Correct Nor was I Governor

Q Thank you

MR. BROWNLEE: We move RM-0520, Your Honor

THE COURT: It will be admitted

BY MR BROWNLEE:

Q Now, you indicated that -- you can take that down. Thank you. You had indicated that at this meeting, Mr Williams decided to retain you to assist him in trying to get some state funding for the research of his product,

Anatabloc

A Correct

Q Okay And it is my understanding that what you kind of laid out on the table for him at that time were really two options for him; is that correct?

A Correct Tobacco funds through TICR, the TICR organization, or Virginia -- I think you are calling it Virginia Tobacco Commission; and then or, a state budget line item for research.

Q Okay So just so I'm clear, the Tobacco funding is the process, and I think you and Mr Dry went through some of it; that's where you have to get some public entity to kind of apply on your behalf

A Yes

Q And if this whole Commission approves it, then you could get some of their tobacco money

A Correct

Q Okay And I think you testified that from the tobacco side, your brother, Terry Kilgore, who is a member of the House of Delegates, correct?

A Correct

Q He is the Chairman of that Tobacco Commission.

A Yes, he is now Yes

Q Okay And did you inform Mr Williams that you had this connection with the Tobacco Commission?

A I'm sure I said that Terry was on the Commission But I just can't -- I would normally say that I can't recall for sure that I said that

Q That's a pretty big deal

A I would normally say that.

Q To hire you as lobbyist for this project, and you happen to have your brother kind of running it That's a pretty big deal, right?

A Well, I mean, I'm glad he is there

Q Fair enough Now, I understand that your wife, Marty, also has some relationship with the Tobacco Commission; can you let us know that?

A It is not the Commission. She runs the, what's now called the Healthy Use Initiative for the Commonwealth, which is the other side of the tobacco settlement funding, if you will, and their mission is to stop smoking in teenagers, and the mission of that, just because I know from Attorney General days, is to spend those dollars on advertising campaigns, to deal with smoking cessation in kids and youth

Q Okay So at that meeting when you are discussing those two, Mr Williams is now aware that you have this relationship, these relationships with the Tobacco Commission, and that's one option for him to try to get some state dollars?

MR. DRY: Objection, Your Honor That's not what the witness testified to He said he may have said something about his relationship, but he didn't say he could say, it was normal

THE COURT: Sustained.

BY MR. BROWNLEE:

Q You believe you informed Mr Williams that your brother was head of this Commission?

A I can't say for sure, but I think I did. But I can't say for sure

Q So that's the Tobacco Commission. There was another option that you discussed with him, which is this line item.

A Correct

Q Is it accurate that that's a process where the Governor can simply insert into the state budget a line item for a particular project?

A Correct Yes, can insert it, and submit it as part of the Governor's budget or budget amendments, depending on the year you are in

Q And it is my understanding that the biennial budget is about $99 billion; am I in the ballpark?

A Yes Used to be, when I got here in Richmond, it was $20 billion

Q So it is a lot of money

A Right

Q What we are talking about here for this research is about three to $4 million

A I think so

Q Is that what Mr Williams was thinking it might cost?

A I never got to an exact amount because we were still pursuing UVA and VCU

Q All right Now, of those two, I think that -- well, let me move forward a little bit You then prepared kind of a memorandum for him; is that right?

A Correct

Q And I believe that's been put into evidence as Government Exhibit 202 If we could pull that up If we go to the next page This is kind of the main body of the memo where you are kind of outlining for Star the options that you think or the schedule you believe you would have to do to get what he wanted; is that correct?

A Correct

Q Okay So this is kind of your plan for him.

A Yes

Q If you look at the next page, it is actually kind of a checklist of things that need to be done for them to be successful; is that correct?

A Correct.

Q Okay So the first three, those in August, you stated that those were kind of up to Star themselves to do

A Yes We weren't designated to deal with UVA and that process, finding the researchers and things like that

Q Okay So that would be Star And it is your understanding that that just never got done

A It was on the slow roll, that's for sure

Q Okay Let's look at September This memorandum is dated August 10th So now in September we have another, I think it is seven items there, action items to do. And so the Number 1, "Prepare advocacy materials " Who was to do that?

A We would do that

Q Did you all ever do that?

A No

Q Okay The second one is the "Complete the tobacco pre-application for funds and submit to staff " Who was to do that one?

A Chris Nolen with me was going to do that He gathered information but did not complete it He met with staff or talked to staff

Q But that never happened.

A No

Q The next one, "Schedule meeting with staff "

A Mr Nolen did do that, yes

Q "Initiate the drafting of the grant " Was that ever done?

A No, because we needed to do the pre-application.

Q Okay Now the next one here says, "Schedule meeting with Governor McDonnell and Governor's policy staff to request Governor to include state appropriation to UVA for specific research which could be eligible for match." This is what we talked about earlier where you would just sit down with the Governor and ask for the money

A Correct

Q And then if he supported this, then he would just put it in his budget?

A He could, yes

Q And if the General Assembly supported it, boom, it is done

A Right Correct

Q All right The next one is "Determine professional economic impact analysis " That wasn't done

A No.

Q And then, "Develop list of supporters for use, southside-based businesses " That wasn't done, either, right?

A No

Q Let's go to the next ones quickly We've got October, "Schedule meeting with Chairman " Was that done?

A No.

Q "Meetings with the Chair of subcommittees"?

A No, it was not

Q Were any of the other ones done?

A No, sir

Q Okay So none of the other stuff was done So you put this plan out in August There's really two options: You have the Tobacco Commission, and then the other one is just to go straight to the Governor and ask for the money

A Correct

Q Let me talk about that one I think you testified -- you can take that down -- I think you testified that when you proposed this, that the meeting with the Governor and Star to make that ask just never happened; is that right?

A It did not

Q And it didn't happen, it is my understanding, because Star never authorized you to set up that meeting

A They weren't ready to -- right They didn't have the researchers at UVA lined up at that point

Q But if you were just going to make the ask to the Governor, you didn't need all the researchers, right? All you would need to --

A You would need the researchers to take the money to research I would think you would I wouldn't ask for the meeting if I didn't have VCU or UVA on board

Q But you said that you had advanced this out for Star and Star had never come back to you and asked for this meeting

MR. DRY: Asked and answered

THE COURT: Overruled.

THE WITNESS: No, they did not

BY MR BROWNLEE:

Q Fair to say that between the two options, going through the Tobacco Commission and getting the public entity to approve and all that, just going straight to him and asking for the money is a lot easier, right?

A Oh, yes, than dealing with 30-some members of the Tobacco Commission.

Q That's just a direct route right then He is the Governor He can just do it if that's what he wants to do

A Correct

Q Okay Let's move to this event at the Mansion Fair to say that when this was coming up, Jasen Eige and Martin Kent contacted you at some time and basically had two issues with what was going on; is that correct?

A They had the issue with it being at the Mansion, yes

Q Well, let me ask you this: Is it accurate that when Jasen first called you, he said, "It is my understanding there is a lunch and the launch and we don't like the launch," and you agreed, "Fine, we will move that to an off site"?

A He said he didn't like the -- it was the launch He didn't like the launch at the Mansion. He did not distinguish on that day between lunch and launch

Q That you recall

A That I recall

Q But he didn't like the launch or whatever, and that was not done, apparently?

A He suggested that it be moved to the Biotech Park, and I called Mr Williams to pass that on

Q Okay And then with the press release, there were some issues with it, and you got that changed.

A Yes Jasen complained about some of the language in the press release

Q Okay And when you heard that from Jasen, you believed that was a legitimate concern and you helped him change that

A I did. Absolutely

Q Okay Now, let me just step back How long have you known Jasen Eige?

A Oh, probably -- his mother-in-law was the Clerk of the Court in the Western District of Virginia, so I've known him since he married into the family

Q So a long time

A A long time

Q He worked with you?

A He came to Richmond as one of the Assistant Attorney Generals when I was Attorney General

Q Okay So fair to say you have known him for a long time and you have worked with him as well?

A Yes, absolutely

Q And you have respect for him and you trust his judgment on things?

A Yes, I do

Q When he worked for you, he was loyal and he looked after your best interests; is that correct?

MR. DRY: Objection, Your Honor

THE COURT: Overruled.

BY MR. BROWNLEE:

Q When he worked with you, you believe that he acted in your best interests when you were Attorney General?

A Yes, I did.

Q Now, you have testified that sometime in February, he contacted you and said, "Hey, you all need to back off here, okay?" And it is my understanding what he said was, "Listen, the Governor supports all this, but we don't think it is appropriate, and so we are asking you to back off," and it is our understanding you followed up with that and did that

A He contacted me to say he didn't think it was appropriate for a Governor to weigh in with research institutions on research I pushed back some to say, "Well, governors weigh in on things all the time " But I passed that on to Star

Q But he also was, fair to say that he also told you in that same conversation, "But I want to let you know that the Governor supports this"?

A Yes

Q Right?

A Yes

Q And so let me ask you this: Because you know Jasen, is there any chance, Mr Kilgore, that what he was doing to you, what he was communicating, was what we have referred to as a polite no? That "Listen, Jerry, I want to let you know the boss really supports this, but we just can't do this," and so that's what he was really communicating to you?

MR. DRY: Objection, calls for speculation

THE COURT: Sustained.

BY MR. BROWNLEE:

Q You do know what a polite no is, right?

A I do.

Q When Jasen was talking to you, he made it pretty clear that whatever Mr Williams wanted was not going to happen

A You know, I didn't leave the conversation that it was not going to happen. I left the conversation with it was Jasen being Jasen, Jasen was concerned, and didn't know that the Governor could or should call and weigh in with university researchers And I pushed back some to say, "Well, the Governor can make a statement on whatever the Governor wants to make a statement on "

Q But despite your pushing back, nothing ever happened after that, right?

A I passed that on to Mr Williams and Star And I don't know that the researchers ever got on board at that point

Q Well, let's pull up Government Exhibit -- where did I put that, the one we just had up? Government Exhibit 202 Go to the last page We just went through this, Mr Kilgore Once you hit September here, none of this ever happened So when he calls you in February and tells you, "I think this is a bad idea, it is not going to happen." It never happened, right?

A It was not happening at that time, correct The only thing that had happened from like September to November was the November conference call with the research institutions

Q Okay That was in November

A Correct

Q We are talking now in February

A Correct

Q So nothing ever happened.

A I didn't know of anything happening between November and -- I mean, that wasn't my job, to deal with UVA and VCU And I hadn't gotten an update on it

Q Let's pull up Government Exhibit Number 4 Let's go to the second page These are your billing records that were put into evidence; is that correct?

A Correct.

Q Let's look at -- and these are all the records that the government has given us from you all

A Right Correct

Q How much time have you billed or did you bill on this matter after February of 2012?

A Just under -- oh, after February, none

Q Zero, right?

A Correct

Q Nothing

MR DRY: Objection, asked and answered

THE COURT: Last I checked, zero was nothing Why are you asking three questions in one? He has answered it

MR. BROWNLEE: Thank you, Judge

BY MR BROWNLEE:

Q We can take that down Now, you had talked a little bit about when you were brought on to the case Were you aware that it was Attorney General Cuccinelli who recommended you to Mr Williams?

A Not at the time, I was not

Q You now know that?

A I now know that

Q Okay And when you were first spoken to, Mr Kilgore, Mr Dry asked you where you presently work. And that's at McGuireWoods; is that correct?

A That is correct

Q And McGuireWoods represents Mr Williams; is that correct?

A Yes, they do

Q Okay If we pull up Exhibit 530 This is Mr Williams' immunity agreement with the United States And if you look at just the address on the top, Mr Cullen from McGuireWoods, that's the Chairman of your firm; is that correct?

A That is correct

MR. BROWNLEE: Court's indulgence for one moment, Your Honor You can take that down.

(Counsel conferring with co-counsel)

MR. BROWNLEE: That's all, Judge Thank you.

THE COURT: Mr Burck?

CROSS-EXAMINATION

BY MR BURCK:

Q Good morning, Mr Kilgore

A Good morning

Q My name is Bill Burck and I represent Maureen McDonnell

A Yes

Q I want to focus on the summer of 2011 You were asked questions about the 2012, period but I'm just going to focus on 2011

A Okay

Q You testified about the lunch meetings you had with Mr Williams in the summer of 2011 Remember that testimony?

A Yes

Q And you talked to him about the various universities that could support the clinical trials, right?

A Correct

Q And he had come to you with Johns Hopkins; isn't that right?

A He did

Q As one of the options

A Yes

Q And you testified that --

A That was his option.

Q Because that's in Maryland principally, right?

A Right

Q You testified that you were telling him to focus on the Virginia options

A Correct

Q VCU, UVA, places like that?

A Correct

Q So that suggestion, as far as you know, came from you, right?

A It did

Q As far as you know, it didn't come from Governor McDonnell, right?

A No, I suggested VCU and UVA.

Q Ms McDonnell, it didn't come from her, either, right?

A Not that I know of

Q Let's talk about the August 1st lunch you had with Mary-Shea Sutherland and Mr Williams

A Yes

Q I think you testified that this was in fact a lunch that Mary-Shea Sutherland had set up, that you were going to meet her for a regular lunch?

A Correct

Q And you met with her a couple times a year; is that what you said?

A Like every year Once a year

Q Once a year So when she showed up with Mr Williams, that was a surprise to you.

A Right Well, they called right beforehand to say he would be joining us Right

Q When she called and said she was bringing Mr Williams, you hadn't known that before?

A I did not know that, yes

Q When she showed up, did they mention, did either Mr Williams or Ms Sutherland mention to you that they had been at the Mansion together before the lunch?

A They did not

Q Did they mention to you that Ms Sutherland had been in a meeting with a Dr Clore and Maureen McDonnell?

A Not to my knowledge I don't remember that, no

Q Did Mr Williams say anything about being at the Mansion with Maureen McDonnell and anyone from the Virginia Health Department?

A On that day?

Q On that day

A No

Q So as far as you knew, they just showed up together for lunch.

A For lunch

Q Then I think you described the lunch as a job negotiation That was your takeaway.

A Yes

Q And you said that, I think did you feel it was a little bit strange that you were there witnessing a job negotiation?

A Well, I was trying to figure out my purpose then at the lunch. Was I going to be the -- going to negotiate between the two

Q You are a lobbyist, right?

A Correct

Q And you had been hired by Mr Williams to look into research opportunities for Anatabloc for Star Scientific, right?

A Star Scientific, right

Q You are not an employment lawyer?

A No.

Q You don't negotiate employment agreements, right?

A Not normally I have in the past

Q You have in the past But that was not something you had been hired, as far as you knew, by Mr Williams to do?

A Correct

Q So you were there feeling a little uncomfortable with the situation?

A As the lunch progressed and Ms Sutherland was talking about her issues, yes

Q Okay You testified that she had mentioned that you rejected the idea that McGuireWoods could hire her You testified about that

A Right

Q But that she raised the idea that he could be a client of hers at Benedetti & Farris?

A Correct

Q And did she use the term "anchor client"?

A "A client" is all I remember.

Q "A client"?

A "A client " Yes

Q And did you understand that her -- that this was something that was important to her, to go back to Benedetti & Farris?

A I understood that she wanted to leave and go back to Benedetti & Farris

Q Okay And you testified that Mr Williams, it seemed that there was -- let me ask you this: Did it seem that they had an agreement in principle by the end of that lunch?

A I wasn't sure how to read it I mean, she really wanted to leave, and he wanted to, seemed like he wanted to find her a place to go. And when we were leaving, he asked her to just send me a proposed contract

Q Okay This is the Benedetti & Farris contract that you received in September?

A Correct

Q Okay Now, did the topic of the August event, the Mansion event, come up at that lunch?

A I do not remember that

Q You don't remember that?

A No

Q Do you recall at any point learning that Mary-Shea Sutherland was involved in helping set up the launch or lunch?

A Not until the press -- the call from Mr Eige about the press issue

Q So it was when you got the press releases from Mr Eige, when he was asking you "What are we doing with this? This is not something we can do," that's when you learned that Mary-Shea Sutherland was involved in the lunch?

A I figured out she was involved with the lunch.

Q You figured out -- okay So at this point you understood that she was involved with the lunch, and of course you knew that on August 1st, that she had been present for a job negotiation with Mr Williams

A Right

Q Okay Now, you testified that after the lunch occurred, and you received the Benedetti & Farris contract in early September, that thereafter, nothing ever happened between Mr Williams and Ms Sutherland, hiring her

A Correct

Q And you testified that Mr Williams told you that he couldn't do that because it would upset the First Lady, couldn't hire Mary-Shea because it would upset the First Lady?

A His words, he wasn't going to poach on the First Lady

Q Did Mr Williams tell you that Mr Perito had told him that hiring Mary-Shea Sutherland would present a conflict of interest?

A He did not tell me that

Q He never said that?

A No

Q Okay So the only thing you understood was that he was worried about poaching; is that right?

A Correct

Q Did you have any response to him being concerned about poaching?

A No, I just, it is his decision It wasn't -- I had already forwarded on to Mr Pokusa to deal with it

Q Did you say anything to him about the poaching idea? When he said "poaching," did you say anything back?

A I did say, did reply that "It happens all the time

People leave state government for other jobs all the time." And I was always happy if somebody got a better job, better opportunity

Q Right Okay By the way, did you ever hear Jonnie Williams say to Mary-Shea Sutherland in the August 1st lunch, or I guess any time after that, that she should not tell the Governor's Office that she was leaving until after the event? Do you remember hearing that?

A No, because I didn't know about the event

Q Right Until at the end of the month.

A Right

Q Now, is it fair to say that your understanding was that Mary-Shea Sutherland was genuinely interested in leaving the Mansion and going to work for, in some capacity, for Mr Williams or Star Scientific?

A Yes

Q That her interest was genuine?

A Yes

Q And you didn't think, putting you in September of 2011, this is after you have learned that she is involved in the lunch, and also you know that she is negotiating a job with Mr Williams, you didn't think that she was negotiating a job in order to help Mr Williams with the launch, right?

A Didn't cross my mind. No

Q Didn't cross your mind because you thought she had a genuine interest

A Right

MR DRY: Asked and answered.

THE COURT: Sustained

BY MR. BURCK:

Q After speaking to Mr Williams, did you believe that his interest in her coming to work for him had been as genuine as her interest in working for him?

MR. DRY: Objection, relevance

THE COURT: Sustained

BY MR. BURCK:

Q It never occurred to you that, given what you understood about the conversation that you witnessed, and your discussions with Mr Williams and your discussions with Mary-Shea Sutherland, you never thought that she was looking for some kind of quid pro quo? Is that right?

MR. DRY: Objection, relevance

THE COURT: Sustained

MR. BURCK: No further questions, Your Honor

THE COURT: All right Redirect?

REDIRECT EXAMINATION

BY MR DRY:

Q Bring up Government's Exhibit 202, please Can we go to the second page? I'm sorry, third page Can we blow up the second block, the September block? Sir, in this, you write "Schedule meeting with Governor McDonnell and Governor's policy staff, J Williams J Kilgore required, to request Governor to include state appropriation to UVA for specific research which could be eligible for match " Right?

A Right

Q Would it be possible for you to have a meeting --

MR. BROWNLEE: Objection, calls for speculation

THE COURT: Let him finish the question first

BY MR. DRY:

Q In order to discuss with the Governor what state appropriation you would want and how much and what research it was related to, didn't UVA have to be on board before that meeting could occur?

MR BURCK: Objection, Your Honor

THE COURT: The "wouldn't it be possible" question is sustained

BY MR DRY:

Q What was the reason you didn't have the meeting with the Governor?

A Because UVA wasn't on board yet

Q And without UVA being on board, did you know what to ask the Governor for? How much money, specifics?

A I did not I did not know the specifics

Q Now, regarding the line items in the state budget, the Governor can put the line items in; is that right?

A Correct

Q But who ultimately has to approve it?

A The General Assembly

Q Let's go to, I believe you were asked questions about this August 1st, 2011 lunch And I believe Mr Burck asked you about finding out that Ms Sutherland was involved with the, I think he said "launch," and then corrected himself and said "lunch " Exactly what was your knowledge of Ms Sutherland's involvement in the lunch?

A Not any until the August phone call, the late August phone call from Mr Eige about the press statements

Q In your conversations with Mr Williams, I think you testified that there were several conversations about this lunch and event at the Mansion, right?

A Right

Q At any point in that, did Mr Williams ever, ever say that Mary-Shea Sutherland, it was her idea to have this event?

MR. BURCK: Objection, Your Honor

THE COURT: Overruled.

THE WITNESS: He did not

BY MR. DRY:

Q And in those conversations, who was he telling you supports his product?

A The Governor and the First Lady

MR DRY: Nothing further Thank you, sir

THE COURT: All right

MR. BROWNLEE: Could we have just one question?

THE COURT: No, sir All right Thank you, sir You may stand down.

(Witness stood aside)

Call your next witness, please

MS ABER: Emily Rabbitt

MR. ASBILL: May we approach for a minute?

THE COURT: Sure Come on up

(At Bench)

MR ASBILL: The 302's for this witness contain an incredible amount of hearsay and gratuitous personal opinion and irrelevant material about the kids and whether they were looking for gifts and things of that nature I don't want to constantly be objecting in front of the jury about these issues But it is certainly, based on the 302, I'm really worried about that kind of information coming in constantly in this case

THE COURT: I don't know how I can help you. I can't resolve your objection to any question until the question is asked But I'm alerted.

MR. ASBILL: Thank you

(In Open Court)

EMILY RABBITT,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good morning, Ms Rabbitt Please state and spell your name for the record

A Emily Rabbitt, E-M-I-L-Y, R-A-B-B-I-T-T

Q Did you previously work in the Administration of Governor Robert McDonnell?

A I did.

Q When did you start working there?

A I started in June, 2011 as Deputy Scheduler

Q Did you subsequently gain an additional job?

A I did In late November, early December, 2012, I became Deputy Director of Scheduling and Travel Aide

Q Does that mean that you picked up where Adam Zubowsky left off?

A Yes

Q You took over for him?

A Yes

Q And so is it fair to say that you maintained your job as Deputy Director of Scheduling, but added additional duties as Travel Aide?

A Yes

Q Okay How long did you continue working for Mr McDonnell?

A I stayed until the end of his Administration in January, 2014

Q If you were the Deputy Scheduler, who was the Principal Scheduler?

A Katherine Harris

Q Is it fair to say you started roughly when Monica Block was on her way out the door?

A Yeah I think we had just a couple-day overlap

Q In a very brief summary, can you tell the jury about what your job as Deputy Scheduler entailed?

A I was responsible for the briefing information for the Governor's briefing book. Every day we assembled a binder for him that had a divider for each event that he needed briefing information for, whether it was talking points or just background information on what he was supposed to be doing So it was my responsibility to go in and work with the appropriate contacts to make sure he had the information he needed for the book.

Q If I can stop you there, Ms Rabbitt, we will talk about that in a little bit

A Okay

Q Tell the jury how Mr McDonnell's schedule was determined from your perspective How did things get on the calendar?

A Well, I wasn't totally involved in the actual, like complete process, but basically we would receive scheduling requests Our rule was they had to be in writing And then we would determine if it would work with his schedule, and if it seemed like a good event for him to do, and then it would be put on a log for consideration with a larger group of members of his staff

Q Who had final approval over Mr McDonnell's schedule?

A He did

Q Now, I'd like to talk about that briefing book you started to talk about Let's bring up Government Exhibit 230 This has been admitted, Your Honor Okay So assuming we are talking about a day like August 30th, what would be in the briefing book that you would provide to the Governor?

A Typically, let's see --

Q Would this document be in it?

A Yes, definitely It would be the first page in the book.

Q Okay What else would be in there?

A Based on the events, he had maybe something for WTOP if he needed it, or for the Legislator Call Time further down the page if he needed specific background information for that call

Q If I could direct your attention, please, to Page 2 of the exhibit For example, the 12:35 event

A Yes We had a set briefing for the Executive Mansion events that he would have for each event

Q Okay So you would print all those Word documents and the Excel document out and put it in the binder?

A Uh-huh.

Q Were you able to leave for the day if the binder was not complete?

A No

Q So you had to stay until it was done?

A I guess I could have left, but I chose to see it through to the end. It was my job to complete it

Q I understand So Government Exhibit 234, please, that's been admitted. Is this the sort of item that you would include in the binder as the specifics of an event?

A Yes

Q Okay How did you get -- you can take that down How did you get this binder to the Governor?

A Every night I would drop it off at the guardhouse of the Executive Mansion, and I would give it to a member of the Capitol Police, who would then put it on the elevator for him to see

Q Based on your experience, when did Mr McDonnell review his briefing book?

A It depended He had the opportunity to see it the night before, but in some instances he was just reviewing what he needed to be doing before he would go into an event. So --

Q Now, I'd like to talk a little bit more about the e-mail schedules Let's bring up not-admitted Government Exhibit 291, please Now, the jury has seen quite a few of these, but can you tell them more precisely when they were sent out, to whom they were sent out, and why they were sent out?

A It was -- the schedule was sent out to the Governor's security detail, the Executive Protection Unit, as well as members of his senior staff

Q Let me stop you there

MS. ABER: I'd like to move 291 into evidence, please

THE COURT: It will be admitted

BY MS ABER:

Q So it went to those folks When was it sent out?

A Typically at the end of the day Sometimes we were waiting for things to be finalized, but between six, any time after six p.m., really, I would say

Q Even though this e-mail shows To: Katherine Harris

From: Katherine Harris, are there other folks who are blind carbon copied on this?

A Yes

Q Whose responsibility was it to send out the final scheduling e-mail?

A Katherine's

Q Did there come a point in time when you took that over?

A Katherine left the Administration in December of 2013 and I just assumed that duty as well

Q Now, did you rely on these schedules from your perspective to determine where Mr McDonnell was located at a given time?

A Yes

Q And did Mr McDonnell largely follow the schedules?

A Yes

Q Now, for the sake of moving this along, I'm going to hand you a stack of schedules that are Government Exhibit 552, 553, 305, 310, 317, and 378 Have you had an opportunity to take a look at those before coming to court?

A Yes

Q Okay Are they all schedules from various dates in the Administration?

A Yes

MS ABER: I'd like to move those into evidence, that being 552, 553, 305, 310, 317, and 378, please

THE COURT: They will be admitted

BY MS ABER:

Q Okay Now, I'd like to direct your attention back to Government Exhibit 234 Do you remember anything about this particular lunch with Virginia researchers?

A Well, just that I remember when I went to go get the briefing information for it, because each morning I would touch base with Katherine about what events would need information, what the status of things was, because she had worked to get it on the calendar She, I remember that I went and I said, "Sarah, what about the briefing form?" And then I had also heard there might be a press release involved with the event And I would typically, if an event had a press release, I liked to include it just as additional background information for the Governor to make sure he had everything But I remember hearing that there was some, as best I can recall, that there was some issue with the press release, so I was like, okay, I won't worry about that until I hear more about it

Q Did you attend this event?

A No

Q Were you aware in general that before this event, a couple months before, that Mr Jonnie Williams had given some money, $50,000, to Ms McDonnell?

MR ASBILL: Objection.

MS ABER: Your Honor, she worked in the Administration. It is relevant to know whether she was aware of the loans that Mr McDonnell was providing

THE COURT: Go ahead and answer

THE WITNESS: I was not aware of it

BY MS ABER:

Q Is it fair to say you didn't know about any of these gifts or loans until after the media stories broke in 2013?

A Yeah I mean, I think, I guess at that point in time I had known about like flights maybe and that kind of thing had been donated.

Q But not anything other than flights?

A Yeah, I don't think so As best I can recall

Q Okay You can take that down, please I'd like to bring up Government Exhibit 627, please That has not been admitted. Is this an e-mail exchange between you and Adam Zubowsky in January of 2013?

A Yes

MR. ASBILL: I object to this

THE COURT: Come on up

(At Bench.)

THE COURT: So state your objection.

MR. ASBILL: It is not relevant It is extraordinarily prejudicial

MS ABER: Your Honor, the defendants have made an issue about Mr McDonnell's thriftiness and suggesting that Mr Williams foisted these gifts upon him. The government would like to introduce this evidence to show that he was willing to accept other folks' gifts and other free items if available

THE COURT: This is an e-mail from?

MS. ABER: From Mr -- it is a chain between Mr Zubowsky and Ms Rabbitt in January of 2013 The witness is on it

THE COURT: Okay So how does the Governor fit into this?

MS ABER: The e-mail makes reference to Zubowsky's prior experiences as Travel Aide, the new position that Ms Rabbitt assumed, and his practice was to seek out free golf and free vacations for the Governor

THE COURT: Not through this witness The objection is sustained

(In Open Court)

BY MS ABER:

Q Okay Moving along Let's look at Government Exhibit 458, please, which has not been admitted. Is this a January of 2013 exchange between you and Katherine

Harris?

A Uh-huh.

Q You have to say yes

A I'm sorry, yes

MS ABER: Your Honor, I would move Government Exhibit 458 into evidence, please

THE COURT: It will be admitted

BY MS ABER:

Q Is it fair to say this e-mail pertains to a P O Box?

A Yes

Q Okay And in the top part there, you write to Ms Harris that "Apparently he has a P O. Box, a personal P O Box that Pam checks " And that lists P O. Box 406; is that right?

A Yes

Q Who is the "he" in that sentence?

A The Governor

MS ABER: I'd like to bring up already-admitted 452, please

BY MS ABER:

Q Ms Rabbitt, is that the same P O Box number on the top left there that we just saw in Government Exhibit 458?

A Yes

Q Okay Thank you You can take that down. We would like to change subjects entirely, directing your attention to February of 2013 So at that point, what job did you have?

A I was Deputy Director of Scheduling as well as Travel Aide at that time

Q And as Travel Aide, did you accompany Mr McDonnell to various events?

A Yes

Q Did you attend an event with Mr McDonnell at the SunTrust Building here in Richmond?

A Yes

Q Do you remember roughly when in February that was?

A I would say, I don't remember the exact date, but I think early February

Q And what was this particular event at the SunTrust Building?

A I think we went to several, but it was either an event for, I think it was an event for the Thomas Jefferson Institute I believe that was the one We went to several in a row there, but I think that might have been the one

Q When you were finished with the event, did you exit via elevator?

A Yes

Q Who was in the elevator with you?

A Myself, the Governor, First Lady, a member of EPU, and a security guard from the SunTrust Building

Q While you were in the elevator, did Mr McDonnell say anything in particular that stood out to you?

A I did hear him, I believe I may have heard him say something about stock with the First Lady But I didn't hear much beyond that

Q Did Mr McDonnell remove anything from his pocket when making this statement?

A Yes It appeared he had taken something from his bottle and was about to take something with it, took something from his pocket and was about to take something

Q Could you identify what item he pulled out of his pocket?

A I'm assuming it was --

THE COURT: Sustained.

THE WITNESS: I think it might have been Anatabloc, but I can't say with certainty

BY MS ABER:

Q To whom was Mr McDonnell making this statement?

A The First Lady

Q Did Ms McDonnell say anything in return?

A I think she -- i'm not entirely certain what she said. She may have [illegible], "Okay "

MR HAUSS: [illegible]jection, Your Honor

THE COURT: Sustained. She doesn't know what she said.

BY MS ABER:

Q You can only say what you know

A I'm sorry

Q Let's change subjects again. Let's talk about in general your experiences in the Administration Okay?

A Yes

Q How common was it for the Governor to have meetings on his schedule?

A Very common

Q Did any of those meetings pertain to business and economic development?

A Yes

Q In your experience, did Administration officials other than Mr McDonnell ever attend those meetings?

A Yes

Q How common was it for you to participate in planning the logistics of those meetings?

A Fairly common, especially with the briefing information on the back end

Q How common was it, if you know, for other Administration officials like Cabinet Secretaries or Deputies to have meetings on their schedules?

A Common Very common, yes

Q How common was it for you to facilitate in some way getting those meetings on those Cabinet Secretaries' schedules?

A Common Not incredibly common, but yeah, pretty common, I guess I would get, if a request came to me and the Governor was not able to take the meeting for scheduling purposes, sometimes we would say, "You can meet with the Cabinet member on his behalf, on behalf of the Governor "

MS ABER: One moment, please, Your Honor

(Counsel conferring with co-counsel)

MS ABER: I have no further questions

THE COURT: Cross?

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MR ASBILL: Court's indulgence one second, please

CROSS-EXAMINATION

BY MR ASBILL:

Q Good morning How are you?

A Good

Q You've talked a little bit about the Governor's schedule and how he would learn about his schedule Isn't it true that he often didn't know what to expect on his schedule or didn't know what his exact schedule was going to be until the morning of the day that was scheduled?

MS ABER: Objection Speculation

THE COURT: No She can answer

A I -- it just depended when he would look at his book He received it the night before, but I'm sure some days he wouldn't look at it until the day of

BY MR ASBILL:

Q And would there be any possible changes overnight or early morning on his schedule?

A Yeah Certainly

Q Okay And is it fair to say that many meetings for the Governor were set without somebody personally asking him whether or not it was okay with him to set the meeting?

A I do not know

Q All right And during the day, would schedules often get changed and substitutions on the schedule be made?

A Yes

Q Okay With respect to the number of meetings that the Governor had while you were in this job, did you ever estimate that number?

A No.

Q Do you have any idea how many hours he worked during the day or during a year?

A He worked very long days I do know that

Q Would you have any idea whether -- how many hundreds, thousands of meetings he might have had during the four years?

MS ABER: Objection Asked and answered

THE COURT: Overruled

BY THE COURT:

Q He's asking you if you know a number, the number of meetings he might have had

A I --

Q If you have any idea

A No, I do not

BY MR ASBILL:

Q Okay With respect to your testimony about the P O Box, do you know the details of that, where the box was and when it was opened and why it was open?

A Not -- no, not with certainty

Q Okay

MR ASBILL: I have no further questions

THE COURT: All right.

Anything for Ms McDonnell?

MR HAUSS: Very briefly, Your Honor

CROSS-EXAMINATION

BY MR HAUSS:

Q Is it fair to say that Mr McDonnell had a very busy schedule?

A Yes

Q Frequently would work 14, 15, 16-hour days?

A Yes

Q Was it common for Mr McDonnell to travel?

A Yes

Q And would he often travel without Ms McDonnell?

A Yes

MR HAUSS: Nothing further, Your Honor

THE COURT: Any redirect?

MS ABER: No, Your Honor

THE COURT: All right Thank you, ma'am You may stand down

(Witness stood aside)

THE COURT: Call your next witness, please

MS ABER: One moment, Your Honor I'm sorry

MR DRY: Can we approach, Your Honor?

(At Bench)

MR DRY: Your Honor, we were told that Kilgore's cross would take an hour and a half for Mr Asbill and a half hour for Mr Burck Obviously, that didn't happen We can put -- we have a witness, Hagan, Special Agent Hagan, who's ready to go That would be out of the order that we'd given it to you So we're basically --

MR FAULCONER: Vetrovec and Bridge are on their way, but they're not here quite yet

THE COURT: Why don't we take our 15 minutes, and we'll see where we're at

MR FAULCONER: Thank you, Your Honor

(In Open Court)

THE COURT: All right We are going to go ahead and take 15 minutes now

(The jury left the courtroom)

(Recess taken from 11:17 a m until 11:36 a m)

THE COURT: All right Let's bring in the jury, please

(The jury entered the courtroom)

THE COURT: All right Call your next witness, please

MR FAULCONER: Yes, Your Honor The

United States calls Dr George Vetrovec

DR GEORGE VETROVEC,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

MR FAULCONER: May I inquire, Your Honor?

THE COURT: Go ahead

DIRECT EXAMINATION

BY MR FAULCONER:

Q Good morning

A Good morning

Q Could you please state your name, and spell your last for the court reporter

A George Wayne Vetrovec, V, like in Victor, E-T-R-O, V again like in Victor, E like in Edward, C like in cat

Q What city do you currently live in Dr Vetrovec?

A Richmond, Virginia

Q And what do you currently do for a living?

A I am a cardiologist at VCU Medical Center

Q How long have you worked at VCU?

A Since -- I've been on the faculty since July of 1976

Q And what is your current title at VCU?

A Professor of Medicine, and I direct the adult catheterization laboratory

Q What sort of educational background do you have?

A I have an undergraduate degree from the University of Virginia and a medical degree from the University of Virginia, postgraduate medical training at VCU Medical Center in internal medicine and cardiology

Q And how do your day-to-day duties break down in terms of patients, research, admin stuff?

A Well, the majority of my work is patient care, but an awful lot is also teaching Now, when I say that, I think you have to understand that our teaching is more apprentice, on-job training So much of the clinical work I do is in conjunction with the trainee who's learning to do procedures that I do and so forth So it's hard to separate out entirely teaching and patient care And then I do probably 10 percent research, and I do some administration

Q Now, as a VCU employee, do you receive certain e-mails that are addressed to all state employees?

A Yes, I do

Q And do those include e-mails from whoever is Governor at the time?

A Yes, I do

Q I'd like to show you what's been already admitted as Exhibit 271 And zooming in on the top there, does this look like one of those types of e-mails that you would generally get?

A Yes

MR FAULCONER: We can take that down

BY MR FAULCONER:

Q All right Now, I'd like to shift gears and talk about an individual named Jonnie Williams, and I'd like to show you what's been marked for identification as Exhibit 248 Zooming in on that top portion there, does that appear to be a calendar entry to you for a meeting with Jonnie Williams and yourself?

A Yes, it does

MR FAULCONER: Your Honor, we'd offer Exhibit 248 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, Dr Vetrovec, I see that this says, "Jonnie Williams, Founder of Visx Laser Vision, CEO of Star Scientific " And the date of this dated October 3rd, 2011 And it says, "Location: Lobby of Gateway "

Could you orient us about sort of how this meeting came to be and got to your attention?

A Yes It entirely came through scheduling by my assistant at the time, Cindy Dutilly, who was contacted by Mr Williams, who said he had a new drug, he needed to talk to me about it and potential studies And that was what the crux of the meeting was But I never talked to him before I actually met with him at this time

Q In that year at least?

A That's right

Q Now, before 2011, before this meeting got put on your calendar, had you heard of the compound anatabine?

A No

Q Had you heard of Anatabloc?

A No

Q But had you met Mr Williams prior to this meeting?

A Yes

Q How long before it, approximately, had you met him?

A A number of years Maybe ten But that's a guess He -- the first time I met him, he brought a patient to my office that was scheduled, but he came with the patient and introduced the patient to me not as a family care member or anything like that He simply introduced the patient, said he was a very important person to him and he wanted me to take care of him, and then he just -- he left So that's the first time I saw Jonnie

Q And was there one interim time between the first time you saw him and then this meeting?

A I saw him some years later, it's like three or four or five, in the Atlanta airport one evening We were waiting for a flight to Richmond, and he reintroduced himself I, frankly, wouldn't have probably remembered him Reintroduced himself about the patient and so forth And so I saw him in the Atlanta airport

Q Now, on this particular occasion in October of 2011, did you ultimately meet Mr Williams at the lobby of the Gateway building?

A I did

Q And just for anybody who's not from Richmond, do you know where the Gateway building is?

A The Gateway building is meant to be the main entrance into the hospital for inpatient and outpatient activities It fronts onto Marshall Street, approximately where 12th Street intersects

Q Do we need to move that microphone?

A Am I too close to it?

Q I think if you sit back just a little bit Thanks

All right So that's -- is that on -- you said the main entrance to the hospital Is that the VCU Medical Center?

A Correct

Q Now, when you met Mr Williams at that location, where did you go from there?

A Well, Mr Williams said to me, "How much time do you have?" And I said, "Thirty minutes " And he said, "Make it 45 " He said, "The Governor's wife makes really good cookies, and I asked her to make us some cookies We're going over there "

So I got in his car, and we drove over to the Mansion

Q And before that time in 2011, had you been to the Governor's Mansion before?

A Not that I can recall

Q And do you recall what kind of car he was driving?

A I don't recall the car, and I hesitate to say, but it -- it is fair to say that I couldn't open the door It was sort of embarrassing So I --

Q Was that because it was an old car or --

A No It was a different kind of lock that I wasn't used to

Q Okay Now, during your ride over from the Gateway building to the Governor's Mansion, did Mr Williams talk about this new product that he had?

A Yes He did talk about the drug Anatabloc and what its potential, he thought, was And he said it, you know, was just still sort of in its infancy That's my term, but it's new He was excited to have physicians get involved and perhaps do some studies with it

Q And did he tell you that he was interested in you potentially being one of those physicians?

A I can't remember, but that certainly, over time, became clear that he wanted me involved if I was interested in doing studies with it

Q And did he say anything about the relationship between the product and tobacco?

A Yes, he did

Q Do you recall what he said?

A Well, he basically said that if -- I think the background was there were many -- obviously, a lot of bad things related to tobacco, but there were some conditions, medical conditions where patients maybe did better if they had smoked at some time or had had tobacco contact, and that what he was doing was trying to use -- utilize the positive or good agents out of the tobacco for potentially medical use

Q Now, when you got to the Governor's Mansion, do you recall where Mr Williams parked?

A He parked on the lawn of the Governor's Mansion

Q And once he parked the car, where did you guys to go?

A We went into the Mansion

Q And do you recall what sort of event was going on, if any, out on the lawn

A Yes This was a large event there, which was -- it turned out to be the official state recognition, I guess is the best description, for Steven Spielberg when he was here for the movie Lincoln

Q And did you actually meet Mr Spielberg at the event?

A I did

Q And can you describe -- I think you said earlier you only had 45 minutes Could you describe how that happened?

A Well, after the official introductions and so forth, I said to Mr. Williams that I needed to get back, and he said, "Wait a minute Before you go," he said, "let me get you to meet Mr Spielberg " And he spoke to the Governor's wife, who took me over and introduced me to Mr. Spielberg.

Q Now, was there a line of people or how exactly did it work for you to walk --

A It looked like -- as I recall, it looked like there was starting to be sort of a receiving line, if you will, that was gathering And she just sort of took me to the head of that, and I spoke to Mr Spielberg for a few minutes

Q Now, just to be clear, do you recall whether you spoke to Mr McDonnell at that event?

A I do not recall speaking to him at all

Q Now, after -- or as you left the event and got back in Mr Williams' car, do you recall whether he continued to talk about this product that he had?

A He did

Q And coming away from the event, what was sort of your impression of why you had gone to this thing?

A I thought it was someone who was using an opportunity that -- an event that was going on to help enhance my interest in potentially being involved in the product

Q And when you say "someone," do you mean Mr Williams?

A Mr Williams

Q Now, after this meeting, or after this going over to the Mansion, sorry, did you tell any of your colleagues or anybody about sort of what had happened?

A Of course

Q What did you tell them, in general?

A I just told them, "You can't imagine This was the most unusual event that you can imagine You just never know what's going to happen every morning when you get up "

Q And do you recall ever discussing it with a colleague of doctors named Dr Abbate?

A Now, that was a little bit different approach The reason I spoke with Dr Abbate, he's a junior faculty member at Virginia Commonwealth University in cardiology He is originally from Italy, Italian trained An excellent young scientist And I actually talked to him about, "Let's look at this and think about whether this is worth exploring as a new entity and new drug "

Q Got it Now, after your visit to the Mansion, did you also attend an event related to Star Scientific or its company Rock Creek Pharmaceuticals later in October at the Westin Hotel?

A I can't confirm the date, but it was after that that I did attend an event at the Westin Hotel, which was sponsored by, as you say, Rock Creek Pharmaceuticals or Star Scientific It's unclear to me

Q All right I'd like to show you what's been marked for identification as Exhibit 251 And zooming in on this, is this an e-mail chain between someone named Caroline Birgmann and it looks like yourself; is that right?

A Yes That's certainly my name.

Q And does this appear to be dated October 18th, 2011, at least the top e-mail?

A Yes

Q Does this appear to be discussing this event that --

A I believe so

MR FAULCONER: Your Honor, we'd offer Exhibit 251 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, where it says there at the top, "I plan to attend and am bringing Dr Antonio Abbate with me Thanks Looking forward to event," is that the e-mail that you wrote here?

A I assume that's mine

Q And do you recall if Dr Abbate also went to the event?

A He did

MR FAULCONER: We can take that down

BY MR FAULCONER:

Q Now, when you went to the event, do you recall whether you were there the whole time or were you only there for part of it?

A My recollection is is I got there somewhat late, as the program was starting

Q And what do you recall about the part of the event that you were there for?

A There were -- I recall, really, the science of it And there were at least two or three lectures One specifically talking about the animal studies that had been done with this drug in patient or animal models of Alzheimer's There were two or three, quote, scientific presentations that were there And that's what I basically remember from it

Q All right Now, I'd like to move forward from October to the end of February of 2012 And I'd like to show you what's been marked for identification as Exhibit 342 And, Dr Vetrovec, does this appear to be a calendar entry for an event that you attend at the Executive Mansion on February 29th, 2012?

A Yes I went to such an event I can't recall the specific date But the -- in that time frame, yes

Q Okay In the late February time frame?

A Yes, sir

MR. FAULCONER: Your Honor, we'd offer Exhibit 342 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, Dr Vetrovec, you said that you attended an event at the Executive Mansion in February of 2012; is that right?

A Correct

Q When you arrived at that event, or at some point when you were there, did you meet Mr McDonnell?

A Yes, I did

Q And do you recall what you spoke about with him?

A Yes The conversation turned around -- at that time frame, there was some issue going on in the legislature relative to his getting passed, his budget And he spoke to myself, and there was someone else, I can't remember who it was, about he would like to -- he said, you know, "I will need your support with this perhaps, and I hope you would be willing to come down and help by supporting it because it could be important to your institution " It was the entire state budget that he was referring to

Q And just to be clear, in that conversation with Mr McDonnell, did Mr Williams' name come up?

A No, not that I can recall at all

Q But at that event at the Mansion, did you see Mr Williams there?

A Yes He was there

Q And could you tell us what you spoke about with Mr Williams when you were at that event?

A I can't remember specifically, but we talked about potential studies with the drug He was still saying, "Are you" -- "are you interested in doing some studies?"

Q And do you ever recall Mr Williams saying anything specifically about Virginia schools doing a study, as opposed to other types of schools?

A His only reference at one time, and I don't know if it was that night or at some point, said, you know, this is a Virginia drug, and it's sort of disappointing that I don't have better scientific support coming out of the schools here I have somebody doing studies at Johns Hopkins as a -- and, you know, I'd like to see more in the Commonwealth "

Q And do you recall whether Mr Williams ever said anything to you about potential state funding for studies of his product?

A You know, I don't recall anything about the source of funding I recall -- and the fact was that I never got far enough with developing a research protocol to basically say to him, "Okay Where do I apply for money for this? Is it through your company," et cetera So I really never had that discussion with him because I never got that far research wise

Q Do you ever remember him saying anything about it, though?

A I don't clearly recall anything

Q All right Now, I'd like to show you, sorry, what's been already admitted as Exhibit 309 Now, Dr Vetrovec, is this a -- just zooming in on the list towards the bottom, sorry, is this a list of names and individuals that you've had a chance to review before coming into court?

A I believe you've shown me this before

Q And we've heard some testimony about these individuals not being invited to that event Do you recognize -- I guess maybe it's easiest to put this way Are there any companies on this list that you don't recognize?

A I don't know what AmeriHealth Mercy or CGI are, or Generic Pharmaceutical There are some of these I don't know what they are Majority of them I do recognize as -- such as Amgen and Sanofi-Aventis, Medtronic, Merck, so forth

Q And the ones that you do recognize, are those ones that you interact with as a cardiologist fairly regularly?

A Yes

Q Other --

A In general

Q Oh, sorry

A In general, yes

Q And other than the discussions that we've been talking about with Mr Williams, had you interacted with Star Scientific before 2011 in your practice?

A No

Q And at the time of the event that you went to in late February of 2012, were you aware of any conversations between Mr McDonnell and Mr Williams about any financial transactions between the two of them?

A No

Q All right I'd like to shift gears just a little bit forward and talk about early March of 2012 And I'd like to show you what has been either marked or admitted as Exhibit 353

MR STARNES: It's not admitted

BY MR FAULCONER:

Q All right What's been marked as Exhibit 353 Dr Vetrovec, is this an e-mail from Dr Abbate to an individual named John Clore, with a blind carbon copy to yourself?

A Yes

Q And is this dated March 7th of 2012?

A No It looks like it's March 3rd -- March 3rd

Q I'm sorry I guess in the upper right-hand corner does it say 3/7/2012?

A Okay Okay That's correct

Q Okay

MR FAULCONER: Your Honor, we'd offer Exhibit 353 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, you've told us who Dr Abbate is Can you tell us who Dr Clore is?

A Dr Clore is head of what I guess would be called the Clinical Research Center at VCU and is significantly involved in clinical research

Q And I see there on -- it looks like the fourth line, it says, "George Vetrovec and I were exploring the use of anatabine in patients with CAD or CHF "

At this time, were you and Dr Abbate still discussing the possibility of doing some studies on anatabine?

A Yes. We had on and off We sort of had outlined, I don't know if written, but verbally and in our discussions, a list of potential studies that might be of interest to do with this compound We were operating on the idea that it had anti-inflammatory properties based on some of the science that had been -- has been written about it

Q Got it Well, I'd like to fast-forward now to May of 2012 and show you what's been marked for identification as Exhibit 391 And, Dr Vetrovec, is this a -- it looks like a page to you from somebody on your staff at VCU?

A Yes Michele is an assistant in the general cath office staff pool

Q And is this dated, it looks like May 30th, 2012?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 391 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, Dr Vetrovec, do you recall being alerted that Mr Williams had reached out to you again in May of 2012?

A I do not recall this specifically

Q Okay But do you recall at some point later in that year, late 2012, Mr Williams reaching out to you?

A Yes I mean, I -- I don't know the specific dates, but I know he continued to have intermittent contact with me about potentially doing studies with the drug

Q And did that extend at least sometime into sort of late spring, summer of 2012?

A I believe so I think in addition to that, because we had not offered an individual proposal, he had some type of one or more center studies going, and he had also asked if we wanted to join an existing group of centers I'm saying group I don't really recall how many or what that was, but to be a multicenter, part of a multicenter experience with the drug

Q All right One moment

MR FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

BY MR FAULCONER:

Q Dr Vetrovec, it says on here, "Personal call Jonnie Williams," and it gives a phone number Do you recall having a phone conversation sometime in this general time frame with Mr Williams?

A I must say I don't I know I had phone calls with him, but I can't pinpoint it to the time

Q And when you did have phone calls with him, would he generally be bringing up the studies that he was talking about?

A Yes

Q Is it fair to say -- do you recall a conversation with him in which he wasn't referring to the studies?

A No I don't recall any

MR FAULCONER: No further questions, Your Honor

THE COURT: All right

Cross?

CROSS-EXAMINATION

BY MR ASBILL:

Q Good morning, Doctor How are you?

A Thank you

Q My name is Hank Asbill, and I represent Bob McDonnell You briefly described your credentials You said you were at VCU, and you're a cardiologist, and you're on the faculty; is that correct?

A Correct

Q And you said you -- am I correct in thinking that you're also an internist, in addition to being a cardiologist?

A Well, my credentialing is -- to become a cardiologist, you have to be an internist, and then you do specialized training in cardiology

So I am board certified in internal medicine, cardiology, and interventional cardiology, which is putting in stents and the like But I don't really practice internal medicine except as it interrelates with cardiology

Q All right And you said you're the head of the cath lab at VCU; is that correct?

A Right

Q And are you -- aside from being board certified, are you on any boards or do you hold any positions within medical societies?

A Yes I have, over the years, been on the National Board of the American Heart Association, the Board of Trustees of the American College of Cardiology Been on the Board of Trustees of the Society for Cardiac Angiography and Interventions Been President of that President of several other organizations

Q All right Now, government counsel put up Exhibit 271

MR ASBILL: Could we bring that back up, please

BY MR ASBILL:

Q This, I believe you described, is a -- is a general e-mail you received from my client?

A Well, to qualify that appropriately, I -- the question was do I receive these, and I said yes Do I recall this one? No

Q Okay Whether or not you recall it, in realtime have you had a chance to read it before you came into court today?

A I don't recall reading it

Q You don't recall reading it All right I don't want to go through it with you I just want to ask you this question Do you have any recollection of receiving these kind of e-mails from my client, or letters from my client, to state employees that mentioned Jonnie Williams or Anatabloc or Star Scientific?

A No

Q Okay

MR ASBILL: You can take that down Thank you

BY MR ASBILL:

Q The next exhibit they showed you was Exhibit 248

MR ASBILL: Would you please pull that up again

BY MR ASBILL:

Q This was an e-mail that you described, and this was Jonnie Williams wants to discuss some interesting cardiology topic And apparently he has set up a meeting with you for the 3rd of October; is that correct?

A That's correct

Q Okay And this is something that was set up with your assistant --

A Correct

Q -- is that correct?

And --

A And she did tell me that it was about -- it may say a "cardiology topic " But she did tell me it was about a new drug

Q Okay And she also told you that Jonnie Williams, presumably, told her that he was the founder of Visx Laser Vision and the CEO of Star Scientific?

A I assume that's where she got that

Q I mean, do you have any reason to believe she'd look him up and put that in there?

A I think she probably did whatever he told her, or maybe he sent her something I don't know

Q Okay And with respect to -- to this meeting, at least this message doesn't say anything about my client, Governor McDonnell, right?

A No

Q Okay And, in fact, you met with Jonnie Williams on that evening of October 3rd, 2011 --

A Yes

Q -- at approximately 6:30?

A Yes

Q And that's when you told him, basically, you got 30 minutes, and he said how about 45?

A Correct

Q Okay Now, prior to -- between the time of this note to you about scheduling the meeting and the meeting itself, do you recall another e-mail that you received from your scheduler suggesting to you that Jonnie Williams told her -- or your assistant telling you that Jonnie Williams was going to bring the Governor with him to come see you?

A She made some reference to that, saying -- she was sort of puzzled is the way to say it. She said, "I'm not quite sure what's involved in all of this " She said, you know, "He said he might bring the Governor with him."

Q Okay But --

A I didn't --

Q All right

A I didn't go too far with that

Q But, in fact, he did not?

A He did not

Q Okay And then you two met and you talked about Anatabloc, et cetera, and whatever his story was about that

A Right

Q And would I be accurate in saying that you were very interested in what he was describing to you?

A Well, as someone who's been involved in scientific studies over the years and development, you know, opportunities to get something early are a good opportunity if it's a valuable potential product or study and so forth So I was interested, if this had any potential, because it looked like an opportunity to get in on the ground floor

Q So it was an opportunity, in your view, if it was real, essentially, to get in on the cutting edge of a potential very serious breakthrough in medicine Is that fair?

A Correct

Q All right So after Mr Williams talked to you, you all drove over to the Mansion; is that correct?

A Correct

Q All right And this was to, supposedly, get some cookies that my client's wife makes?

A That's correct

Q Did you ever get a cookie?

A No

Q And on that night, this was the Spielberg event for the Lincoln movie; is that correct?

A Correct

Q All right And you drove over in the car You described you couldn't open the door; is that right?

A That's correct.

Q And that's because it was a very fancy, expensive car that was sort of complicated?

A That's correct

Q And you thought it was a Maserati, or something like that?

A I'm not sure what it was

Q All right So --

A I'm not good on expensive cars

Q So up until this point, Mr Williams had said, "Well, I'm going to bring the Governor over, and he did And he's got this fancy car And did you get the sense --

MR FAULCONER: Objection, Your Honor There's been testimony as to what --

THE COURT: Sustained Don't editorialize Just ask a question

BY MR ASBILL:

Q Did you think Mr Williams was trying to impress you?

A I guess so I guess I didn't think about it too much I mean, it seemed to me that it was far more than I expected to discuss a drug

Q All right Let me go back to when you first met Mr Williams When you first met Mr Williams, this is when he brought a patient to you that he said was of interest to him; is that correct?

A That's correct

Q All right And I take it you helped the patient out?

A We took care of the patient I will --

Q All right And later, some ten years or whatever, you see Mr Williams in an airport in Atlanta; is that correct?

A I don't know if it's ten years or five years Probably closer to five years But I don't --

Q Okay And he recognizes you?

A Correct

Q All right And when he recognizes you, he says hi again to you; is that correct?

A He came up and reintroduced himself to me, reminded me of the previous incident with the patient --

Q Okay

A -- and sort of --

Q And he does something else as well, does he not?

A That's correct We had our brief discussion for a few minutes I went off to the side, still waiting for the airport -- for the airplane, and I got paged by the person at the gate, who said, "Mr Williams has upgraded you to first class "

Q And you thought that was a gracious gesture?

A I did

Q Okay Now, going back to the Spielberg event When you arrive at the Spielberg event in Mr Williams' car, you say that you parked on the grass there --

A Correct

Q -- at the Mansion?

And were there cars parked everywhere for this event?

A I don't recall

Q And you were not on the guest list, were you?

A What he said to the -- I guess it's the gate guard that was there

Q Right

A He said, "I'm Jonnie Williams, and this is my guest for tonight, Dr Vetrovec "

Q Okay And the guard happened to know you, right?

A Well, the guard looked into the car and he looked at me, and he said, "Oh, I think I know him He did my brother," referring to a procedure

Q Did you do his brother well?

A I hope so

Q So you go into this event, and there are hundreds of folks at this event Is that fair?

A That's correct

Q All right And you don't recall talking to my client at all during that event?

A No, I do not

Q But you did get to meet Mr Spielberg?

A I did

Q And the two of you had some California connection that you talked about for a second Is that fair?

A That is true It turned out that he was very personable and he funds research for a cardiologist in Los Angeles at Cedars-Sinai that I know, and so we had a little discussion

Q Okay And do you recall whether you talked to Jonnie Williams at that event about Anatabloc or Star?

A I don't recall at all, at the Governor's Mansion event, speaking about Anatabloc We talked about it in the car coming over, in the car going back

Q Okay And then I believe, going forward in time --

MR ASBILL: I'd like to see Exhibit 251

BY MR ASBILL:

Q -- you were invited to an event at the Westin Hotel mid-October of 2011?

A That's correct

Q Okay And up to this point in time, and with respect to any e-mails or documents other than my client's letter to Virginia employees, my client is not on any of these exchanges relating to you and Mr Williams; is that correct? Not cc'd or not copied in or directed to or from?

A None that I can recall

Q Okay And this is from Carolyn Birgmann And who did you understand her to be?

A An employee of Rock Creek Pharmaceuticals or Star Scientific I'm not sure what -- what particular agency, but that she worked for --

Q I'm sorry Well, did you understand that Rock Creek Pharmaceuticals and Star were essentially one in the same?

A Well, I thought they were somehow separate entities, but -- but would not be surprised to think they were somehow closely associated

Q Okay And this is inviting you to attend the Westin event; is that correct?

A Correct

Q All right

MR ASBILL: And can we pull up the invitation, please I think it's attached Is it not attached? Try RM-1232 Can you pull up the invitation from that document

MS TARAKTCHIAN: It's not attached

MR ASBILL: Not there We'll try to find it in a second

BY MR ASBILL:

Q Do you recall what the invitation said?

A No

Q All right You attend the event, correct?

A Correct

Q And there are two or three lectures talking about studies and anatabine or Anatabloc's effects on Alzheimer's?

A There was at least one on its effects on Alzheimer's

Q Okay And my client wasn't there, right?

A No I do not recall seeing him at all

Q Okay And to your knowledge, he was not advertised on the invitation; is that correct?

A I don't recall that

Q All right Now, going forward to the Healthcare Leaders event

MR ASBILL: And I believe this is Exhibit 342 Would you please pull that up, Victoria And is there an attachment to that Don't worry about it if there's not

MS TARAKTCHIAN: No

BY MR ASBILL:

Q With respect to this event, this was on what -- this is, what, leap year, right? 2/29/2012; is that correct?

A That's the --

Q The event was on --

A -- date on that exhibit

Q Okay And that, in fact, was the date of the event; is that correct?

A Correct

Q Okay And you go to the Healthcare Leaders event

You're invited to that And would I be correct in saying -- and I'm not asking you to brag -- that you viewed yourself as a healthcare leader in Virginia?

A Well, when I got the invitation, you say, Why am I invited to this?

MR FAULCONER: Objection, Your Honor

A And at that time, I was on the --

MR FAULCONER: I'm sorry, Your Honor Just objection as the witness speculating as to why he was invited If he doesn't know

THE COURT: Overruled

Go ahead

A Okay Well, my speculation was that I was invited because I was on the VCU Health System Board at the time, which I thought would qualify for that recognition

BY MR ASBILL:

Q So you thought you were qualified to be at a Healthcare Leaders event --

A Right

Q -- correct?

All right And I believe you said that you -- you met my client at the event, and you all talked about budget issues?

A That's correct

Q And that related to the entire state budget; is that

correct?

A That's correct That's how I recall

Q Do you have any sense of what the health component, healthcare component part of the total budget is? Do you have any idea what the percentage is?

A No

Q Would you think it's large or small or somewhere --

A Large

Q Large Okay And there was no discussion at all with my client or in the presence of my client about Anatabloc or Star Scientific?

A None that I can recall

Q Okay You say you had a side conversation at some point with Jonnie Williams at the event about his interests; is that correct?

A Correct

Q All right Now, you looked at Exhibit 309, which is a list of the attendees at the event

MR ASBILL: Could we pull that back up, please

BY MR ASBILL:

Q And I think you said you recognized some of the names there, et cetera

MR FAULCONER: Just -- Your Honor, objection real quick It's not a list of attendees to the event I think the prior testimony established none of these people attended

THE COURT: Sustained

BY MR ASBILL:

Q You looked at the -- you looked at this list, and you said you recognized some of the names, right?

A Correct I really did not recognize the people, but really recognized the companies

Q You recognized the companies Okay And were there folks at the event that you did recognize personally?

A There were a handful of people There were some VCU people I can't remember who they were But I remember seeing people that I knew

Q How many -- can you give me an estimate of how many people actually attended that event?

A I think I probably can't Because I got there late I realize that's a little bit of a pattern But I got there late, and so when I got there, a lot of people, I think, had already left at that point So there were probably 25 people when I was there

Q At the time you got there?

A Yeah

Q And did you go through all the various rooms where people might be mingling?

A I don't think I went -- it seemed to me there were just like two rooms or something I didn't see an expansive But maybe I didn't figure it out

Q Okay Going forward to early March 2012, and you talked about that time frame with respect to Exhibit 353, which is an e-mail from Mr Abbate to Mr Clore, or visa versa, and you're copied in on it?

A Yes That's Dr Abbate to Dr Clore.

Q Right Okay And you're cc'd on that e-mail?

A Correct

Q And I believe you said that in that time frame in early March you and Dr Abbate were discussing a list of potential studies; is that correct?

A Correct

Q Had you focused in on that point in terms of how much the studies might cost?

A No, we had not Well, only to the extent of saying if we plan a study, how long should the follow-up be Because the longer the follow-up, the more cost How complicated is the study Because all of that does affect money, and we, frankly, didn't think that was going to be a high budget study

Q All right But you hadn't pinpointed any particular dollar amount --

A No

Q -- or anything like that?

A No Not at all

Q And no discussions with Jonnie Williams about that at all?

A Not anything about dollar amount

Q Okay And then you say sometime later in May or end of May, that there was a note that he had called you? You got some note in, I believe, the 30th of May

MR ASBILL: Exhibit 391 Can we pull that up

BY MR ASBILL:

Q You get a message to call Jonnie Williams, right?

A Right I affirm that that's there I don't remember what we talked about, when I actually returned the call, et cetera

Q Okay And at some point later you return -- do you know whether it's shortly after this or months after it or what that you talked to him again or talked to him in response to this?

A I don't know I assume it was fairly soon, but I don't know

Q All right And at that point he wanted to talk to you about joining a different group of some sort of centers or something? I wasn't quite sure what you said

A Well, I think -- he had some type of ongoing study, and he said, "Since you're not currently involved in this, maybe you would want to join another group and you could pool your data "

Q Okay And --

A That's what I mean by multi-center study And I don't recall whether there were other centers grouped already or whether it was just one other center that he was offering for us to join

Q And that was the -- basically, the end of your conversations with Jonnie Williams about all this?

A I think so I can't -- I can't remember

I know that there was also a time when someone contacted me from Rock Creek Pharmaceuticals And, actually, when we -- and I assume this is after we didn't participate in this study They wanted me to review the data from a study, which I didn't do But they wanted me to review it

Q Did he offer to pay you to do that?

A Yes

Q And you didn't accept it?

A I didn't

MR ASBILL: Thank you, sir I have no further question

THE COURT: All right

Ms McDonnell, cross?

MS MARTIN: Thank you, Your Honor Briefly

CROSS-EXAMINATION

BY MS MARTIN:

Q Dr Vetrovec, my name is Heather Martin, and I represent Ms McDonnell

Directing your attention back to the Steven Spielberg event

A Yes

Q Do I correctly understand your testimony that your only interaction with Ms McDonnell that night is that Jonnie Williams asked you -- or asked her, rather, to introduce you to Mr Spielberg?

A That's correct

Q And at that time, you did not get the impression that Mr Williams and Ms McDonnell had previously discussed who you were, correct?

A No I thought -- not at all

Q And then moving forward a couple of weeks to the Westin Hotel event You testified that you attended that event, correct?

A Yes

Q An event sponsored by Star Scientific or Rock Creek Pharmaceuticals, correct?

A Correct

Q And you do not recall Ms McDonnell speaking at that event, correct?

A I do not recall her speaking at the event Recall, I said I came late But I have some recollection that she was leaving as I came or had been there in some way

Q You don't recall having seen her at the event?

A I can't say that I know she was there, and if I saw her leaving or something to there, that I probably did see her But I didn't -- I don't recall hearing her speak

Q And then moving forward to the Healthcare Industry Leaders event in February of 2012 This is an event you attended, correct?

A Yes

Q And you did not speak to Ms. McDonnell at that event, correct?

A I do not recall In fact, I do not recall seeing her at the event That doesn't say she wasn't there. I just don't recall

Q Now, you stated that you and Dr Abbate periodically talked about the possibility of participating in a study of Anatabloc, correct?

A Correct

Q And is it fair to say that your interest in participating in such a study had nothing to do with Ms McDonnell?

A That's correct

MS MARTIN: No further questions

THE COURT: Redirect?

MR FAULCONER: Very briefly, Your Honor

REDIRECT EXAMINATION

BY MR FAULCONER:

Q Without getting into the full number, Dr Vetrovec, was one of the numbers -- phone numbers associated with you in this time frame a number that ended in 2968?

A Correct

Q All right

MR FAULCONER: No further questions, Your Honor

THE COURT: All right Thank you, Doctor You may stand down

(Witness stood aside)

THE COURT: Call your next witness, please

MS ABER: Amy Bridge

AMY BRIDGE,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good afternoon

A Good afternoon

Q Please state your name, and spell your last for the court reporter

A Amy Bridge B-R-I-D-G-E

Q How are you currently employed, Ms Bridge?

A I work for the Library of Virginia Foundation

Q Previously, did you work at the Executive Mansion?

A I did

Q And when did you do so?

A From August of 2002 until January 2010

Q So which Governors did you work for?

A Governor Mark Warner and Governor Tim Kaine

Q Is it fair to say you helped with the transition, a little bit, when Governor McDonnell took office in 2010?

A I did I stayed for one month

Q Is it also fair to say that you had roughly the same job that a woman named Sarah Scarbrough had in the McDonnell administration?

A Yes

Q Okay Now we will turn your attention back, please, to your time as a Mansion Director in both the Warner and Kaine administrations

A Uh-huh

Q I'm going to ask you these questions lumping them together If they are appropriately separated, please answer the question in that way Does that make sense?

A Yes

Q Okay In those administrations, how common was it for the Mansion to host events?

A We had events, on average, about twice a week

Q And how much of your day-to-day job involved event planning?

A About half of my time

Q What did you do with the other half?

A I spent serving as Curator for the house and the furnishings, working on facilities management, assisting the family, that sort of thing

Q With regard to event planning, how common was it for you and the other government employees to participate in the planning?

A A hundred percent

Q So when you say that, do you mean that -- what do you mean by that?

A Well, the plans for events, the decision on having events would be made in the Governor's Office or the Office of the First Lady The information would come to me, and I would take over the planning at that point

Q So who had the decision-making authority to schedule an event at the Mansion?

A That would be the Governor and First Lady's staff, the Governor's scheduler, Chief of Staff, that sort of role

Q In those two administrations, did the Governor and First Ladies have to bless an event that was put on a calendar?

A Yes An event had to be part of their -- applicable to their job and their roles, and they had to be hosted by either the Governor or the First Lady

Q Now, can a -- in those two administrations, could a member of the public just come on in and rent the Mansion?

A No

Q Did either or both Governors ever have Mansion events that related to Virginia business and economic development?

A Yes

Q Were both Governors supportive of Virginia business?

A Yes

Q Can you tell the jury a little bit about what kinds of events related to Virginia business and economic development they might have had or had?

A We hosted events for companies that were considering opening operations in Virginia or that had opened operations in Virginia When JetBlue decided to fly to Richmond, we had an event for them When the Commerce and Trade was wooing the Sabra Hummus people, we had an event for them as well We also had events for the Tourism Office, the Film Office, the Virginia Economic Development Partnership, all came under Commerce and Trade

Q Was it your experience that events at the Mansion had to be applicable to the work being done by the Governor and First Lady?

A Absolutely

Q Now, in those two administrations, if the Mansion events were related to business, is it fair to say that they were generally related to a significant business opening or luring a business to Virginia?

A Yes

Q Did the Mansion ever host receptions for the Department of Commerce and Trade?

A Yes

MS ABER: If I could have one moment, please, Your Honor

(Counsel conferring with co-counsel)

MS ABER: Thank you, Your Honor I pass the witness

THE COURT: Cross

CROSS-EXAMINATION

BY MR ASBILL:

Q Good afternoon, Ms Bridge My name is Hank Asbill I represent Bob McDonnell

A Good afternoon

Q How are you?

A Fine Thank you

Q You spent only a brief period of time during the transition of administrations, essentially --

A Correct

Q -- with my client?

So you were there for about a month; is that correct?

A Yes.

Q And then Sarah Scarbrough took your job; is that correct?

A Yes We worked together for that month so that I could provide some training

Q So you could provide some training and help in the transition; is that correct?

A Uh-huh

Q And, you know, with respect to hosting events in the Mansion and that sort of thing, is there any kind of law or regulation that governs what someone can do as a Governor or First Lady in the Mansion?

A To my knowledge, the only rule is that there cannot be ticketed events at the Mansion People cannot pay to buy a ticket to come to an event at the Mansion

Q Okay And is there some sort of -- as you transitioned, was there some sort of manual, basically, of how to operate a Mansion that was left behind?

A I -- yes I wrote a Mansion manual that we used during my two administrations

Q And those were about sort of administrative things or were those about hosting events?

A They were the day-to-day operations, staff requirements, procedures, that sort of thing

Q Okay And you experienced that position with two different Governors, correct?

A I did.

Q And is it fair to say that each Governor who comes in basically does it his own way?

A They are given the freedom to run the Mansion however they would like

Q Okay And with respect to the idea of supporting Virginia businesses, were you aware that -- that my client's campaign initiative was Bob's For Jobs?

A I think I had heard that But that was not part of my job in that month

Q Okay And you talked about events for opening operations or, what, expanding operations or what was it that you said?

A That could be But generally, it was for bringing new companies to Virginia

Q Or perhaps trying to keep companies in Virginia to stay in Virginia instead of going to another state?

A Perhaps I don't recall that

Q Okay Were there any events when you were there that were designed to -- for companies to give money to

Virginia?

A Not to my knowledge

Q All right And I take it that you had, I mean, a brief interaction in the transition period with my client; is that correct?

A Correct

Q And since that time, have you seen him?

A I saw the Governor twice Once on election day last year at my previous employer, and once recently at a funeral

Q And did you all exchange greetings?

A Just greetings and hello, how are you type things

MR ASBILL: Thank you very much

THE COURT: Mr Burck

MR BURCK: Your Honor, very briefly

CROSS-EXAMINATION

BY MR BURCK:

Q Good afternoon, Ms Bridge My name is Bill Burck, and I represent Maureen McDonnell Just a few quick questions

A Yes, sir

Q The Governors you worked for were both married, right?

A Correct

Q And they both -- so they had First Ladies of

Virginia?
A Correct
Q And the First Ladies would participate in Mansion events on occasion?
A Yes
Q And the -- the Mansion would typically invite people to these events, right?
A Yes, uh-huh
Q And typically, the First Lady would also have an opportunity, when she was going to be part of an event, to invite people to events, right?
A Yes
Q So there was nothing unusual about that, in your experience?
A No.
Q And do you know -- I think the First Lady, the only official position she has is she's the Honorary Chair of some kind of Citizens' Committee?
A Correct There is a Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion, known as the CAC, and the First Lady is an ex officio member of that
Q And ex officio meaning, I guess in common parlance, sort of honorary?
A Yes

MR BURCK: That's it, Your Honor.

THE COURT: All right Anything else?

MS ABER: No, Your Honor Thank you

THE COURT: All right Thank you, ma'am You may stand down

(Witness stood aside)

THE COURT: Call your next witness

MS ABER: Special Agent Charles Hagan

CHARLES HAGAN,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good afternoon, sir

A Hello

Q Please state your name, and spell your last for the record

A Charles Hagan H-A-G-A-N

Q How are you currently employed, Special Agent?

A I'm a Special Agent accountant with the Virginia State Police

Q How long have you had that job?

A Ten years

Q Okay Were you employed in law enforcement before

that?

A Yes, I was

Q Let's start at the beginning of your law enforcement career, please, and walk through it to present for the jury

A Okay In 1975, I became a police officer in the City of Baltimore I left there in 1978 to attend graduate school in New York City I then took a position as a Special Agent with the Internal Revenue Service in Chicago Took a promotion and transferred to Washington, D.C While I was there, I transferred over to the FBI, and I retired from the FBI in March of 2004

Q And instead of retiring to a beach, you joined the State Police?

A Yes, I did

Q Okay And just for the jury's knowledge, were you run out of these various law enforcement agencies? Why were you leaving each of them?

A It was -- the police department was so I could attend school, go to graduate school I left the IRS because I was traveling six months out of the year I was in the International Division And then I stayed with the FBI, and retirement was at 57, mandatory retirement And I left in 2004 because there was an opening in the State Police

Q Now, are you one of the case agents in the investigation of Mr and Ms McDonnell?

A Yes, I am

Q Before that, were you a case agent on any related cases?

A Yes I was the case agent on the investigation concerning the chef of the Executive Mansion that was embezzling food from the Mansion

Q Now, Special Agent, was there ever a federal, federal grand jury investigation opened on the case about the chef stealing food from the Mansion?

A No, there was not

Q Okay Were you also involved in the investigation of Jonnie Williams for suspected securities fraud?

A Yes, I was

Q And was a federal grand jury opened on that case?

A Yes, there was one

Q And is it fair to say there was a federal grand jury involving Mr and Ms McDonnell opened in this case?

A Yes, there was

Q Now, in the course of these various investigations, did you have to keep your supervisors at the Virginia State Police apprised of your progress?

A Yes, I did

Q And why was that?

A Because it involved -- first, it involved the Mansion, and they were very worried about someone stealing from the Governor's Mansion

And then when we got involved with the Governor's investigation, Mr McDonnell was the boss of all of us in the State Police, and my supervisors wanted to know what was going on regarding the investigation

Q Now, did you have an opportunity to interview Defendant Ms McDonnell back in February, that being February 15th of 2013?

A Yes, I did

Q Did you set up that interview?

A No, I did not

Q Do you know what explanation was given to put on her calendar?

A At the time, I did not

Q Now, Special Agent, do you typically tell folks that you're going to interview what topics will be addressed during the interview?

A No, I do not

Q And why don't you do that?

A Normally when we do interviews, we'll knock on someone's door and identify ourselves and explain we're here and we need to ask you some questions We do that so that we don't give them an opportunity to think about their answers prior to us coming to interview them

Q Now, setting aside the topic of lawyers who want to attend an interview, putting that aside, do you customary permit just additional folks to tagalong to participate in interviews?

A No You normally want to have the person you're interviewing be by themselves so there's no distractions I found if somebody is present, they might interject things as I'm talking to the witness

Q Now, on that day in February of 2013, why did you go interview Ms McDonnell?

A I had to -- for several reasons Number one was one of the allegations in the chef case was that -- Todd Schneider had mentioned that Ms McDonnell had authorized a bartering agreement between the two where he owned a catering company on the side as well as being the chef for the Mansion, and he would provide services to the Mansion In exchange, he was allowed to take food from the Mansion Kind of like in a bartering system

Q And --

A And secondly, I needed to -- we had some information where we had found a $50,000 check made payable to Ms McDonnell from a trust, Starwood Trust, and also a $15,000 check from Starwood Trust that paid for her daughter's wedding

Q Now, at the time of this interview, what payments from Starwood Trust to Maureen McDonnell did you know had, in fact, occurred?

MR BURCK: Objection, Your Honor Can we approach briefly?

THE COURT: Come on up

(At Bench)

MR BURCK: Your Honor, the objection is actually to the prior question The testimony that came in was that she was involved in the bartering transaction I just wanted to make sure that the -- they are going to elicit that she, in fact, did not, that she was not involved in any criminal activity with the chef Because right now the impression that maybe left is that she's committed another crime that has not been either informed of --

THE COURT: I don't have any -- any of that You'll be able to deal with that on cross-examination That objection will be overruled

MR BURCK: Okay Thank you, Your Honor

(In Open Court)

BY MS ABER:

Q Let me ask the question one more time At the time that you went to the Mansion for the interview, what payments from Starwood Trust to Maureen McDonnell did you know had, in fact, occurred?

A I was aware of the $15,000 check from Starwood Trust, payable to Great Seasons for the benefit of Ms McDonnell's child's wedding And I was also aware of a $50,000 check made payable to Maureen McDonnell

Q Did you take a second agent with you to the interview?

A Yes, I did

Q And why did you do that?

A Several reasons Normally, whenever I interview a female, I always bring another person so that there could never be any allegations of something misappropriate

Secondly, I wanted a witness when I did the investigation -- interview And thirdly, because it was Ms McDonnell, the First Lady of Virginia, I thought I better have another witness with me

Q Who did you take with you?

A Special Agent -- well, we know him as Doc Lyons Well, it's -- James Lyons is his official name He's a Special Agent with the State Police

Q And why did you pick him?

A Because he was a senior agent and mature

Q Did he have anything else to do with this investigation?

A No He was not involved in the investigation at all

Q Now, where did your interview take place?

A It took place on the grounds of the Executive Mansion There was a building to -- as you're looking at the Executive Mansion, there's a building to the right, and it was in that building

Q And within that building, were you in Ms McDonnell's office?

A It looked like her office. Yes

Q Had you ever interviewed Ms McDonnell before?

A No, I had not

Q Who was present at this interview?

A Ms McDonnell, Agent Lyons, and myself

Q Did either of you take notes during the interview?

A I took notes

Q Who did the questioning of Ms McDonnell?

A I did the questioning

Q Was it -- is it fair to say you were trying to ask questions and take notes at the same time?

A That's correct

Q Now, talking about the interview itself, did you say anything at the beginning of the interview to Ms McDonnell?

A We introduced ourselves We displayed our credentials and our badges, identified ourselves to her I engaged her in some conversation, kind of like trying to build up a rapport with her I knew that she had been a former FBI employee, as I was So we talked about that for a while. And then I learned that when her father was an agent, an FBI agent, he lived in New York, and we found out that we lived in the same neighborhood She lived in the neighborhood that I grew up in

Q Now, at the interview, what was the very first topic you addressed?

A We talked about the chef and how she came about meeting him

Q And did the conversation then turn to Cailin McDonnell's wedding?

A Yes, it did

Q Did you ask Ms McDonnell about the contract for the wedding catering?

A About the wedding catering?

Q Uh-huh Did you ask her about the contract?

A Yes

Q Did you ask Ms McDonnell about the payment on the wedding catering contract?

A Yes

Q Did you then explain to Ms McDonnell that a search warrant had been conducted at the catering company?

A Yes

Q And did you tell Ms McDonnell that investigators had found a $15,000 check?

MR BURCK: Objection, Your Honor Leading questions

THE COURT: Sustained

MS ABER: Your Honor, can we approach for a moment?

THE COURT: Come on up

(At Bench)

MS ABER: Your Honor, I'm trying to tread carefully in light of our previous -- the motion in limine filed by the defendant in reference to the three particular statements that Special Agent Hagan can articulate that Ms McDonnell provided Other than that, we're constrained to topics And I'm not sure, other than having him list all the topics, how I can list --

MR BURCK: If that's the basis of the objection, then -- they just didn't tell me that

THE COURT: Okay

MR ASBILL: Excuse me one second I can hear the conversation from counsel table I don't know if there's a hush, but I can hear it That's why I came up

THE COURT: Okay

(In Open Court)

BY MS ABER:

Q Special Agent Hagan, did you explain to Ms McDonnell that a search warrant had been conducted at the catering company?

A Yes, I did

Q Did you tell Ms McDonnell that investigators had found a $15,000 check from Starwood Trust to the catering company for Cailin McDonnell's wedding?

A We explained to her that we found $15,000 that had been applied to the catering bill, yes

Q Did you talk to Ms McDonnell about Jonnie Williams?

A Yes, I did

Q Okay Now, tell the jury what Ms McDonnell said about the origin of her relationship with Mr Williams

A She explained that Mr Williams was a friend of the family for a long time She indicated that her husband, when he left the Army, first had employment at the American Hospital Supply Company And that's where he met Jonnie Williams, who was a representative for American Hospital Supply, at the same time

Q Did Ms McDonnell say how many -- how long ago she had met Mr Williams?

A She said that her husband met him first, and that was when he got out of the Army

Q Okay Did you talk to Ms McDonnell about her May 2011 trip to the Roskamp Institute?

A Yes, we did

Q Did you talk to Ms McDonnell about the August 30th 2011 lunch at the Mansion?

A Yes, I did

Q Did you talk to Ms McDonnell about her attendance at a Star Scientific event in California?

A Yes, I did

Q Did you tell Ms McDonnell then that you had uncovered a check from Starwood Trust to her?

A Yes, I did

Q Is it accurate that that was a $50,000 check?

A It was a $50,000 check payable to her It was written on May 23rd, I believe

Q Okay What did Ms McDonnell say about the $50,000 check in reference to a loan agreement?

A Well, she said that the $50,000 was a personal loan to her and that Jonnie Williams had provided the money and that she had signed a contract for the loan agreement and that she was making periodic payments on the loan

Q Did Ms McDonnell ask you any questions?

A Yes, she did

Q And what did she ask?

A She -- when we were talking about the $15,000 check for the catering bill, she asked if we had interviewed her children

Q Could you tell the jury what Ms McDonnell's demeanor was like during the interview?

A She was very pleasant She was -- when we began the interview. She was pleasant throughout the interview But she got a little more inquisitive of why we were asking questions about the $50,000 check and the $15,000 check

Q Once you concluded the interview in her office, what happened next?

A She escorted us out through the gardens, telling us this was the gardens of the Executive Mansion As we were walking out, I asked her for a copy of the loan agreement And she advised me she didn't think she had a copy of it, she remembers signing it, giving it back to Jonnie Williams, and she would try to get a copy from him for us

Q At any time during your interview with Ms McDonnell, or your time walking through the gardens, did she ever ask for an attorney?

A No, she did not

MS ABER: Okay One moment, please, Your Honor

(Counsel conferring with co-counsel)

BY MS ABER:

Q Special Agent Hagan, at the beginning of your testimony, I believe you mentioned the various reasons why you went to go interview Ms McDonnell; is that right?

A Yes

Q Okay Did your investigation reveal that this purported bartering agreement between the chef and Ms McDonnell had actually occurred?

A It had not occurred There was -- she said that she had not made -- entered into an agreement with the chef

Q Okay. And so is it fair to say, as sit here, that Ms McDonnell -- your investigation didn't show that she did anything wrong in the chef --

A No

Q -- investigation?

A No No, not at all

Q Okay

MS ABER: Thank you, Your Honor I have no further questions

THE COURT: All right Cross?

MR BURCK: Thank you, Your Honor

CROSS-EXAMINATION

BY MR BURCK:

Q Good afternoon, Special Agent Hagan

A Hello

Q My name is Bill Burck, and I represent Maureen McDonnell

A Hello, sir

Q Can you just -- how long have you been in law enforcement?

A Oh, over 30 years

Q Over 30 years And during that time, you received training on how to take police reports and take notes as part of your interview process?

A Yes

Q And when you -- when you testify in a case where you've conducted the investigation, sometimes you use reports to help refresh your recollection if you don't remember things that well?

A That's correct

Q And these reports that you -- you come up with that you write as part of your job, it's important that they be accurate?

A They -- they are my best recollection of what the person has told me Yes

Q Okay But -- but they are --

A It's my best recollection

Q And your best recollection to you, it's important that that be accurate?

A Yes We strive to be accurate Yes

Q Okay And do you try to have these reports be thorough?

A Yes, sir

Q And you try to have them as complete as possible --

A Yes, sir

Q -- within reason?

Okay Now, you, obviously, can't write a report while you're conducting an interview So you have to take notes?

A Yes, sir

Q And is that your typical practice, to take notes while you're interviewing somebody?

A Normally, if I'm with two people, one person is -- asks the questions, and the second person is the note taker In this particular case, Agent Lyons didn't know much about the case so I took both, as we normally do in the State Police because we do a lot of our interviews by ourselves

Q Okay We'll get back to Agent Lyons in a moment So -- and sometimes do you use your handwritten notes? Well, let me put it this way You use your handwritten notes to help inform your -- your typed up report?

A That's correct

Q And just to be clear, the handwritten notes are typically taken at the time that you're interviewing the person?

A Yes And they are not verbatim notes

Q Of course

A As you know, they are just to refresh my memory when

I'm sitting down to write the report

Q Okay And just to be clear, in this case, for the February 15, 2013, interview of Maureen McDonnell, those notes were being taken simultaneous -- or contemporaneously with you interviewing her?

A That's correct

Q And you were asking the questions?

A Yes, sir

Q Okay Now, you testified that -- you answered some questions on direct about having started this investigation -- or let me put it this way That you had begun looking at the McDonnells in connection with another case, the Chef Todd case, Chef Todd Schneider?

A Todd Schneider Yeah, Todd Schneider

Q It was Todd Schneider And you also -- excuse me Todd Schneider

A Schneider

Q And you also said that you had been looking at Jonnie Williams as well, right?

A Yes, sir

Q Okay Now, in connection with the Chef Todd Schneider case, which is related to this one, at least in the origins, you had originally scheduled an interview with Ms McDonnell in early part of 2012; is that right?

A That is correct

MR BURCK: I'd like to show, just for the witness, only RM-2072 And if you could blow up the second page, the bottom -- the first e-mail

BY MR BURCK:

Q You'll see this is an e-mail, sir, from Rick Jenkins to Steven Flaherty, cc'ing Herman Davis, and it's dated February 29th of 2012 Can you tell us, who is Rick Jenkins, and who is Steven Flaherty?

A Steven Flaherty is the Colonel with the State Police And Rick Jenkins is the Major of the Criminal -- Bureau of Criminal Investigations He's like the Deputy Chief of the Bureau of Investigations

Q Okay And had you told Mr Jenkins, as of February 29th, that you would like to interview the First Lady --

A Yes

Q -- that week?

A Yes, I did

Q Okay

MR BURCK: And can we please go to the first page

BY MR BURCK:

Q You'll see there's an e-mail from Martin Kent to Steven Flaherty, dated February 29th, 2012, same day And it's -- do you know who Martin Kent is?

A Yes, I do

Q And who is he?

A He's the Chief of Staff for the Governor

Q Okay And you'll see there's a series of e-mails above that.

MR BURCK: If you would just blow up the whole page so that he can see that.

BY MR BURCK:

Q And fair to say that this e-mail is a -- reflects this attempt to set up an interview back in 2012, early 2012?

A That's correct

Q Now, I know you're not on these e-mails, but is this a fair reflection of your recollection as well?

A My recollection was there was a -- a scheduled interview, yes

MR BURCK: Your Honor, we would offer RM-2072 into evidence

MS ABER: I object He's not on the e-mails He's testified about his knowledge

THE COURT: Sustained

MR BURCK: You can take that down

Can you also show the witness RM-2074 Just for the witness

Now, you'll see this is an e-mail from Mr Flaherty to Mr Michael Morehart Do you know who Michael Morehart is?

A Yes, I do

Q Who is he?

A Well, I've known him for many years I knew him when he was with the FBI I used to car pool with him up to Washington headquarters And I know that he became the Special Agent in charge of the FBI office here in Richmond, and then he also become the first Inspector General for the State of Virginia

Q Okay Now, you see this e-mail suggests that a meeting was canceled, an interview. Do you have any recollection of whether or not that interview occurred with Maureen McDonnell on that date?

A It did not

Q It did not It was canceled?

A Yes, sir.

MR BURCK: You can take that down Thank you

BY MR BURCK:

Q And why was it canceled?

A At that time, we were starting to find additional checks made payable to Ms McDonnell So we asked to hold back until we could further find out what was going on before we interviewed

Q Okay So this was in February, March of 2012 you had discovered additional checks -- or checks involving Ms McDonnell?

A No This was the $15,000 check We found out -- we were told on February 22nd, from Ryan Greer, about the $15,000 check

Q And this is -- so you knew -- you had learned about the check for Cailin's wedding And had you learned about the $50,000 loan as well?

A No, I was not at that time

Q Just the $15,000 check for Cailin's wedding?

A I was aware of the $15,000 check, yes But I had not obtained a copy of it yet

Q Okay Now, back at this time, were you working with the FBI on these investigations?

A Yes We worked everything jointly

Q And there was a meeting between yourself, Colonel Flaherty, who you testified about earlier, FBI Special Agent Tyler Kennedy and others to discuss the Mansion investigation, is that right, in January 2012?

How about I do this

MR BURCK: Can you show the witness RM-2067 Just the witness, please

BY MR BURCK:

Q And what I would ask you to do is just take a look at that page, and this is just to refresh your recollection

If this reminds you of anything in January of 2012?

A Yes

Q So do you recall if you had a meeting with Colonel Steven Flaherty, Special Agent Tyler Kennedy, and yourself about the Mansion investigation?

A That's correct

Q And this was the -- this was the -- the period of time, meaning this meeting, that you learned that Jonnie Williams had given a $15,000 check for Cailin's wedding, right?

A No

Q No

A No

Q Go ahead, please

A All right This is -- in January 30th This is when we first became aware of the allegations about the chef and the embezzlement I was called at home that night before the meeting, was told to report to the Colonel's office the next morning and -- they didn't tell me why

And when I arrived, I met Agent Kennedy and his assistant, Special Agent Allie Mackenzie

Q Okay So when did you learn, if you can recall, about the Cailin check precisely?

A We were first -- all right Based on the January 30th meeting, they provided us the information about the chef embezzlement They had the information first They passed it off to us We started looking into the matter On February 22nd, I interviewed Ryan Greer That's when he mentioned the $15,000 check

Q Okay

A I was able to obtain a copy of the check by -- I believe it was March 1st, from BB&T And that's when I had a copy of the check

Q Okay. And Ryan Greer, he worked with Todd Schneider?

A Yes He was the general manager for Todd Schneider's catering company

Q Okay And around this time, when did you learn about the Roskamp visit by Ms McDonnell?

A It would have been after March 1st

Q After March 1st? Do you know -- is it around March 1st or long after March 1st? Do you have a recollection?

A I know it was between March 1st and May 23rd when I briefed my bosses on the matter

Q Okay And it was around this time that the FBI opened a wire fraud or public corruption investigation of the McDonnells?

A My understanding is back in January they opened it, or maybe February I don't know when they opened it, specifically But we worked it jointly

Q Okay So -- but around --

A As of January 30th, we worked it jointly

Q Okay And this was the -- just to make sure I'm clear, because there were two different investigations

A Yes

Q This was -- the wire fraud/public corruption investigation of the McDonnells had been opened in that time frame as well?

A The McDonnells had not been opened yet No

Q Okay I'm sorry So the McDonnells were opened in March of 2012?

A I -- what happened was on March 8th, we had met with Todd Schneider and his attorney They provided us with the contract that the Governor had signed for the wedding

And as a result of that, since it appeared that there might be something that -- some illegality by the Governor, I was -- by rule, or by law, I have to stop investigating because he's an elected official And that's what happened

Q Okay

MR BURCK: Could you show, just for the witness only, RM-2068, please Page 2, please

BY MR BURCK:

Q You see some highlighting This is just for ease so that you can read it more easily

By the way, do you recognize the handwriting on this?

A No

Q Does this document refresh your recollection as to about when a wire fraud/public corruption investigation was opened by the FBI into the McDonnells?

A No, it does not

Q Okay

MR BURCK: Please take that down

BY MR BURCK:

Q Now, the FBI and the -- and the Virginia State Police, is that common for the FBI and the Virginia State Police to work together on investigations?

A Yes, sir, it is

Q And it's common for public corruption cases; isn't that right?

A Yes

Q Is there -- would it be fair to say that it enhances the credibility of an investigation if the FBI is involved?

A That, and also what it does, it -- for the State Police, I know in this particular investigation, since it regarded the Executive Mansion and the Governor, my management wanted very much to have an outside agency to basically investigate it with us so it wouldn't look like we were trying to -- if it was unfounded, that we were trying to, you know, slip it underneath the rug or something So they wanted to have an outside, independent agency investigating with us

Q Okay And that's -- and, again, that's Special Agent Tyler Kennedy --

A Yes

Q -- who was the -- and is he here in the courtroom today?

A Yes, he is

Q He's sitting over here at the prosecution table?

A Yes

Q Next to Mr Dry?

A Yes

Q Okay

MR BURCK: Your Honor, I have quite a bit left So I don't know if you want to stop now or --

THE COURT: All right We'll stop here for lunch And let's make it 2:05 We'll get back and get started with the afternoon session

(The jury left the courtroom)

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(Luncheon recess taken from 1:01 p.m. to 2:05 p.m.)

THE COURT: All right, let's bring in the jury, please

(The jury entered the courtroom.)

All right, Mr Burck?

CROSS-EXAMINATION (Cont'd.)

BY MR. BURCK:

Q Special Agent Hagan, I know you have been doing this for 30 years, so I'm going to ask you this for the record. You didn't speak to the prosecutors during the break, right?

A At lunch?

Q Yes, sir

A No, I did not, sir

Q Just to reorient you where we were before we broke, we were talking about the 2012 period and the investigations that led up to the McDonnells -- the charges that were brought in this case

A Okay

Q And in 2012, at this point, you were also looking at Jonnie Williams; is that right?

A I don't know what point you are talking about Around the end of March, April is when we began looking into Jonnie Williams, yes

Q You were looking at securities fraud issues related to him; is that right?

A Yes, sir

Q Now, on May 23rd, 2012, I think you testified a bit about this on direct, you had a briefing about the investigation, the status of the investigations that were going on at the time, right?

A That's correct

Q And the status, the briefing was about Jonnie Williams, about Chef Todd Schneider, and also about the McDonnells investigation; is that right?

A That's correct

Q And you drafted a memo that would summarize how you saw the investigation at that time and the facts that you had developed and the legal theories you were looking at at the time, right?

A Well, yes It wasn't a memo It was notes from myself to present to the upper management, yes

Q If you could just show just for the witness only, this would be RM-0016 Now, sir, this is the document, the notes that you prepared for yourself, right?

A That's correct

Q And the first part of this document is about Todd Schneider, the Todd Schneider investigation?

A That's correct, sir

Q Then if you turn to the third page of the document, you will see that this section is where it begins to discuss the Robert and Maureen McDonnell investigation?

A Correct

Q And then you walk through, I think, in this document the various aspects of your investigation, the various suspicions you are looking at, the facts you are looking at, right?

A Suspicions and then anticipated additional investigation that was going to be needed. Yes.

Q Okay. And then on the second-to-last page, under Number 7, that's where you start talking about Jonnie Williams and his companies?

A Yes.

Q Okay Then on the last page, this is the end of the document, right?

A Right That's where it says "Additional Investigation," that's what I anticipated would happen, we would have to look at

Q At this time on May 23rd of 2012, at this point, had you concluded that gifts to, or say, money to Maureen McDonnell was not illegal?

A No

MS. ABER: Objection, Your Honor

THE COURT: Sustained. His legal conclusion is not relevant

BY MR BURCK:

Q Let me ask you this: Had you been told by someone that money to Maureen McDonnell was not illegal?

MS ABER: Objection.

THE COURT: Sustained.

BY MR. BURCK:

Q Were you told as part of your investigation, had you been told by anyone that the Governor was not required to list gifts to his spouse?

MS ABER: Objection.

THE COURT: He can answer that

THE WITNESS: I don't know if someone told me that, but reading the statute, if it was gifts, it was gifts for the Governor, not for his immediate family

BY MR. BURCK:

Q And at this point in the investigation, had you -- were you suspicious that Jonnie Williams had possibly committed securities fraud?

A There were indications, yes We were starting to -- we, Agent Kennedy and myself were starting to receive some of the documentation that we had subpoenaed underneath the state subpoena power, and it appeared there might be, yes

Q Okay And did you also have suspicions that Jonnie

Williams had committed fraud in obtaining financing for his company?

A Suspicions, yes

Q Okay And did you wonder at the time whether or not you could use Williams to go after the McDonnells?

A It was a possibility down the road, yes

Q Okay And what did you mean by that? What was your thinking at that point?

A Well, what I had at the time was I had the $15,000 check that was to the Governor's benefit It was not reported on his Statement of Economic Interests, which is, at that time, I thought was a violation I had the $50,000 that was being given to Maureen. I didn't know what that was If it was a loan, it should have been reported It wasn't on the Statement of Economic Interests form. If the $50,000 was for her services to go to Roskamp and talk on behalf of Star Scientific, that wasn't reported, which should have been reported. And if it was considered a gift, then it did not have to be reported

Q Okay So why were you saying or why were you thinking that you could use Williams to go after the McDonnells?

A Well, someone was going to have to tell me eventually down the road what kind of document was this, what was the

$50,000 for

Q Okay But you knew or you suspected at that time that Mr Williams had committed securities fraud in a separate matter.

A Yes We suspected, yes

Q Okay Is it fair to say that you thought you could use the fact that Mr Williams might have committed fraud in something else to get him to assist you against the McDonnells?

A Yes

Q And this is May 23rd of 2012, right?

A Right And this was what I anticipated what was going to happen There was a lot more work to be done because we weren't trying to go overt yet

Q The investigation is ongoing, you are looking for leads and facts, et cetera Right?

A I was letting my bosses know that this was going to be a prolonged investigation; it was not something that was going to be handled or resolved quickly

Q And of those bosses was Colonel Flaherty, right?

A Yes, sir

Q As of May 23rd of 2012, you had not interviewed Maureen McDonnell, right?

A No, we didn't go overt until January of 2013

Q You had not interviewed Jonnie Williams at that point, either?

A No, we had not

Q You testified that you were investigating Mr Williams on direct, so I'd like to ask you a little bit about that interview in January of 2013 Now, that interview occurred on January 23rd, 2013; is that right?

A 23rd, yes

Q Okay That was you and Special Agent Tyler Kennedy of the FBI?

A Yes

Q And you showed up at Mr Williams' house unannounced, right?

A Correct

Q And you started asking him questions about his potential violation of securities laws

A Yes, sir

Q You asked him about a possible scheme to sell his stock through John McKeon without reporting it; is that right?

A It was more of a collateralization of stock for a loan that Mr McKeon had provided to Jonnie Williams

Q And the reason why you were asking about that is because you thought it might constitute a securities fraud?

A Yes

Q Okay And you were asking about transfers of shares to his children, right?

MS ABER: I have to object as this being beyond the scope of direct examination If they want to make Special Agent Hagan their witness, that's fine

THE COURT: Our philosophy is exhaust the witness You go ahead

BY MR BURCK:

Q So you asked him about transfers of shares to his own children, right?

A Yes

Q And you asked him about withdrawals from a trust set up for his children

A Yes

Q And your reason for asking these questions, again, was because you thought he might have committed some kind of securities fraud, all those questions

A Yes

Q At some point in the interview or the meeting -- by the way, Mr Williams, he was alone, right?

A Yes, he was

Q Okay And he didn't have any lawyers with him or anything like that

A No, he did not

Q Now, at some point in that interview you started asking him about his relationship with the McDonnells, right?

A That's correct

Q And he told you that he had provided Maureen McDonnell with a $50,000 loan, right?

A Correct

Q He said it was a personal loan.

A Yes

Q And he told you that it was two days after he gave the $50,000 loan to Ms McDonnell that Governor McDonnell called him on his cell phone to discuss the loan, right?

A That's my recollection, yes.

Q Okay And he said that Governor McDonnell would repay the loan when the real estate situation had improved

A Right He was explaining that there was no due date He said when things got better, he would end up paying it

Q He also told you about the $15,000 wedding gift for Cailin McDonnell, right?

A Yes

Q And he said that the Governor and he were friends?

A Yes, he did

Q And he said that the Governor was the best Governor Virginia had ever had, something like that?

A That's correct

Q And he said that he never got anything in return for the $50,000 personal loan to Maureen McDonnell, right? He said that?

A Yes, he did.

Q And he said that he never asked for anything from the Governor and never expected anything from him; is that right?

A I don't remember expected, but he did not ask for anything or receive anything, yes

Q He told you also that Maureen McDonnell was into wellness, into his products, right? He said that?

A Yes, he did

Q And he also said that he had never paid Maureen McDonnell for anything, right?

A Yes, he did.

Q Now, he also asked you several questions generally about the investigation, like whether or not he was a target of the investigation?

A That was in the beginning of the interview, yes

Q So he asked you is he a target

A Yes

Q What did you say?

A I didn't say anything

Q You just didn't answer the question?

A I wasn't the lead for the interview Agent Kennedy was

Q So what did he say, if you recall?

A He told him that, he said he did not have a target letter for Mr Williams, and that there was a grand jury investigation going on, but he did not have a target letter for him.

Q Okay So did he say how long -- I'm sorry, did Mr Williams ask Tyler Kennedy or yourself how long the investigation would last?

A Yes, he did ask that

Q What did you say or what did Special Agent Kennedy say?

A Well, both of us explained some of that, because Agent Kennedy talked about the federal grand jury portion of it, and I had the state grand jury portion of it And we basically told him we didn't know how long it would take

Q So Special Agent Kennedy, because he is with the FBI, talked about the federal grand jury investigation at that time?

A That's my recollection

Q It is your understanding there was a federal grand jury investigation at that time?

A Yes, there was

Q This is on January 23rd, 2013

A That's correct I believe it was in July, 2012, the U S Attorney's Office opened up a federal grand jury investigation on the securities case

Q That's on Mr Williams' securities case?

A Right

Q Then the grand jury, federal grand jury investigation that you are talking about in January of 2013 -- January 23rd, 2012, just so I'm clear, this is a grand jury investigation about Mr Williams only, or also about the McDonnells?

A At the time it was Mr Williams and everything that fell underneath it, yes

Q So it included the McDonnells?

A I don't know if it did. I was pursuing the, at the time, we thought we had state charges against the McDonnells, so that was being pursued on the state grand jury The time of the interview was underneath the federal grand jury, so in answer to your question, it was two separate grand juries going on

Q But again, I just want to be clear, there is a federal grand jury investigation that covered Williams and there was a state grand jury investigation that covered the McDonnells?

A That's correct

Q Was there overlap between the two?

A No No, because my recollection is most of the federal grand juries were to get bank records At that time, that was our first overt interview, so everything had been done collecting documents, and it was usually done by the particular grand jury that was, whatever we were looking at at the time

Q Okay Now, as part of the collecting the documents, you and Special Agent Kennedy would serve subpoenas, right?

A Yes, sir

Q Did you give Mr Williams a subpoena at this interview on January 23rd, 2013?

A Agent Kennedy served him with a federal grand jury subpoena, yes

Q Okay He served him with a federal grand jury subpoena?

A Correct

Q And this was for records in his possession?

A Yes

Q Relating to what?

A Star Scientific I don't remember the specifics of the subpoena, but anything that related to his dealings as part of Star Scientific

Q Okay Would that subpoena, did that subpoena cover the McDonnells as well?

A No Not that I am aware of, no.

Q Did you give him a state grand jury subpoena?

A No, I did not

Q Okay And as part of this meeting, did you take notes of the meeting?

A Yes, I did.

Q So did Special Agent Kennedy, he did most of the questioning?

A He did.

Q You took the notes?

A Yes, sir

Q A little different than what you did with Ms McDonnell, where you both took notes and listened.

A That's correct

Q We talked about this at the beginning: You were trained in how to take notes of things that had happened in the meeting, right?

A I mean, trained to take notes, no I mean, you were trained you should take notes to help you recollect, but not how to take them, no

Q Is it fair to say that your notes are intended to help you remember the important things that happened in the meeting?

A Yes What's relevant

Q Okay Now, during this interview or near the end, did you or Special Agent Kennedy ask Mr Williams to wear a wire against Governor McDonnell?

A It wasn't that specific What happened was, Mr Williams, after we had basically concluded the interview, said he was willing -- he was going to contact his attorneys, he was going to cooperate with the investigators, he was going to turn over documents that we wanted, and I mentioned to him, "Would that also include consensually monitoring a conversation some day?" So it was not specifically to Mr McDonnell

Q So you didn't tell him that it was actually, you were asking him to record Governor McDonnell?

A No It was more of, "While you are talking to your attorneys and you want to cooperate, consider this "

Q Let me ask you, what was your intention when you said that? Were you asking him to consider recording Governor McDonnell?

A If it needed to be, yes

Q And he had just told you, though, that -- Mr Williams had just said he had not gotten anything or received anything or offered anything Why did you not -- why did you want him to consensually record Governor McDonnell potentially?

MS ABER: Objection

THE COURT: Sustained

BY MR. BURCK:

Q Now, you took the notes of this interview?

A I did

Q Those notes don't include a reference to the request for a consensual recording, do they?

A No, they do not

Q Is there a reason why you didn't include those in the notes?

A It was just a suggestion to him. It was nothing that was specific

Q But he did end the interview after you said, you asked him whether or not he would consensually record?

A That wasn't the last thing that was said, but it was in that little segment of explaining where he said he wanted to cooperate and we threw that out to him.

Q Okay And you informed the prosecutors about the request for consensual recording while this trial had occurred, right, the first time you told them about it? I'm sorry, let me be more clear The trial started on July 28th, last month.

A That's correct

Q You first told the prosecutors about the consensual recording request after the trial had started.

MS ABER: Objection, relevance

THE COURT: Sustained.

BY MR BURCK:

Q Going on to Maureen McDonnell's interview, which occurred about three weeks or so after the Jonnie Williams interview, which was on February 15th, 2013. Remember that interview?

A I do

Q Now, if you would call up, publish RM-2028, which has already been admitted into evidence If you could blow up the bottom e-mail, please Now, sir, you are not on this e-mail, but this e-mail is in evidence and it is an e-mail from Steven Flaherty to Martin Kent I think you testified earlier that Mr Flaherty was your supervisor?

A He is the Colonel of the State Police, Superintendent

Q He is one of the people that you were keeping informed of the progress of your investigation of the McDonnells and Mr Williams?

A Yes He wasn't there for all of the updates He would be there occasionally when he could, because he was busy But yes, at times he was there present when I was filling him in

Q He was aware that you were investigating the McDonnells?

A Yes, he was

Q Okay And as of February 13th of 2013, a year ago, did he know that you were investigating the McDonnells?

A Yes, he did

Q And when -- that week, before you went to interview Ms McDonnell, was he aware that you were planning to interview Ms McDonnell about the Jonnie Williams matter?

A I'm sorry, I lost that

Q Was he aware as of this week, the week of February 13th?

MS ABER: Objection. He knows whether the Colonel was aware or not?

THE COURT: He can answer

THE WITNESS: Judging from this e-mail, yes, he was aware that we wanted to.

BY MR BURCK:

Q You had spoken to him about it

A I don't know if I spoke to him specifically one-on-one about it I did speak to the executive management It could have been the Major or Lieutenant Colonel But I don't have any clear recollection of actually talking to the Colonel and saying I wanted to It may have worked its way up the chain.

Q You testified that you were diligent about keeping your supervisors apprised of the progress of this investigation, right?

A Yes

Q Okay Now, this e-mail, as you will see, Martin Kent, you also testified earlier, is the Chief of Staff to the Governor. And in this e-mail, Colonel Flaherty says, "We want to wrap up the Chef Todd case, plan to go to the grand jury next week. If the First Lady is available Friday, you can block off about two hours to talk to Charlie Hagan and Tyler Kennedy we would appreciate it Thanks, Steve " That e-mail doesn't reference anything about the Jonnie Williams investigation relating to the McDonnells, right?

A No, it does not

Q Okay Going into that meeting -- you can take that down Going into that meeting, did you have a discussion with anybody at the Office of the Governor prior to showing up on the 15th of February to interview Maureen McDonnell?

A I was instructed by someone from the executive management to call Ms McDonnell's scheduler and confirm a meeting, which I did. The lady asked what it was about, and I said, "She knows "

Q "She knows," meaning Maureen McDonnell knows?

A Yes

Q Okay And do remember, you said executive management Do you remember who it was who told you to call?

A No, I don't recall Probably the Major, but -- the Major is the one that would usually communicate with me, but I had no clear recollection of the individual or when it was done

Q What's the Major's last name?

A Jenkins

Q Major Jenkins We saw him from an earlier e-mail, the first time you wanted to interview Maureen McDonnell

A Yes

Q This is the second effort to interview her, because the first time you had canceled?

A Correct

Q Now, you show up at the Mansion Do you show up with Special Agent Kennedy?

A No, I did not

Q So it was just yourself and --

A Special Agent Lyons

Q Was Special Agent Kennedy supposed to be at the interview?

MS ABER: Objection, relevance

THE COURT: Sustained

BY MR. BURCK:

Q So it was just yourself and Special Agent Lyons?

A Correct

Q And when you meet Ms McDonnell, you go into her office; is that right?

A I presume it was her office No one ever told me it was, but it appeared to be, yes

Q Did you have an understanding of Martin Kent, you know he was the Chief of Staff, did you know that he had requested to be part of that interview?

A I have no recollection of him wanting to be part of the interview for the second interview I know he wanted to be there for the first one that was set up that was eventually canceled

Q Right But you have testified earlier that your practice is not to have a second person who you are not interviewing present

A Right I recall being asked if I would want him present, and I said, "No "

Q Okay And you don't recall if that happened in 2012 or 2013?

A Right

Q Okay So the interview starts at around 1 o'clock on the 15th? Roughly?

A I think so, yes.

Q And again, Colonel Flaherty had contacted Mr Kent 48 hours before, right?

A It appears from the e-mail you showed me, yes

Q Okay Now, you conducted the interview, Mr Lyons sat there

A Correct

Q Did he ask any questions at all that you can recall?

A He may have asked one or two, but I don't know what they were I don't recall what they were

Q You testified earlier that he hadn't really been involved in this investigation at all

A He wasn't He wasn't involved

Q He wasn't involved at all until this day

A Right

Q And why was it that you brought him and not Special Agent Kennedy?

MS ABER: Objection.

THE COURT: Sustained.

BY MR BURCK:

Q And Ms McDonnell did not have an attorney present, right, for the interview?

A That's correct

Q Now, at the beginning of the interview, at any point, did you advise Ms McDonnell that she was under investigation?

A No, I did not

Q At any point, did you advise her that she has a right to an attorney?

A She was not -- it was not a custodial interview

Q Custodial interview, right You did not advise her that she had a right to remain silent?

A No It wasn't custodial

Q You started the interview by asking her about the chef, Todd Schneider, and his theft issues, right?

A Well, I mean, I started by talking about our common denominators, yes But then the meat of it, yes, we started talking about Todd Schneider Of course, the AG's office was anticipating indicting him relatively soon.

Q And at the beginning of the interview, you said, testified on direct that you were trying to build a rapport with her

A That's correct

Q You said that she had worked at the FBI?

A Yes

Q Do you know what she did at the FBI?

A No.

Q Okay Was she a lawyer? Do you know if Ms McDonnell is a lawyer?

A No, not that I am aware of

Q And you also testified that she mentioned at some point during the interview or the part of the interview about Jonnie Williams, that she said that her husband had met him 30 years before or knew him for 30 years? Do you remember that?

A I don't know if I said 30 years I think I said when he got out of the Army, he took a job with American Hospital Supply, and that's where he met Jonnie Williams, who also worked for American Hospital Supply as a representative

Q Okay Do you recall that in fact what she said was that her husband and Mr Williams had overlapped at American Hospital Supply sometime many years before and that's the original connection?

A That's not my recollection of what she told me

Q Okay Now, you prepared -- while you were listening to the interview, you are taking notes, right?

A Correct

Q And you also eventually, or maybe the next day, you do a typed-up version of your handwritten notes, right?

A I do a summary of what she told us during the interview to my best recollection while I'm looking at the notes helping refresh my memory

Q Okay

A I'm not taking the notes and writing them on a document

Q I'm sorry But you are handwriting the notes and then separately later on you use those notes to write the typed-up version?

A Yes, that's what I do

Q Okay Now, just focusing on what you have testified Ms McDonnell said during the interview about Jonnie Williams and her relationship and the Governor's relationship with Jonnie Williams, let's just focus on that, you testified that Ms McDonnell said that she had -- she had received a $50,000 check as a personal loan from Jonnie Williams, right?

A That's correct

Q And she also said that, this is nothing you testified to, but I'm asking you the question, she also said that Jonnie Williams, that she had asked Jonnie Williams for a loan to help with the McDonnells' expenses and cash flow Do you recall that she said that?

A I don't remember if there was a -- those were the specific words, but yes, they had accumulated some debts with regards to the election There was also something about some houses that they rented, some beach houses

Q And you also testified that she said she had a written agreement or contract with Mr Williams?

A Yes

Q And that she was making periodic payments to satisfy that loan

A That's correct

Q And you also testified that she had or could get a copy of the loan.

A Yes

Q And again, you said that, I think you already testified to this, but just to be clear, you said she also said that Jonnie Williams and the Governor had been friends for many years, right?

A Since the Governor left the Army I don't know when he left, so I can't say how long

Q What I would like to do is just show you now RM-2079, which is just for the witness Okay Now, these are your handwritten notes of that interview?

A Yes

Q Okay Now, let me ask you just some questions about the notes Again, these are the notes that you took while you were listening to her

A Yes

Q Now, these notes don't say anything about a written contract, do they? You can read it, if you would like to spend a minute to look it over

A Yeah, I'd like to. Can you make it bigger?

Q Sure Actually, what we will do is, we will do even better We will turn you to the right section of the notes Please show the witness 2079-0004 That's easier, I think.

(Document displayed to witness)

A That little segment that you are showing me does not say anything about, except for written notes, it says, "I have a contract."

Q Doesn't say "written contract"?

A No

Q And what about, does it say anything about periodic payments being made?

A "I am paying back."

Q It says, "I am paying back"?

A Uh-huh.

Q Does it say anything about periodic payments being made?

A No Doesn't say specifically periodic

Q It says "I am paying back."

A Right That's this section. I haven't seen the rest of it

Q Did you have a chance to review your notes as part of the -- preparing for trial today?

A Yes, I tried to I have done a lot of interviews

Q I understand. I'll give you, with the Court's indulgence, I'll let you, there are two pages of handwritten notes that you can review right now This is your handwriting

MR BURCK: I don't think it will take more than a couple minutes, Your Honor

THE COURT: Go ahead Have you got the hard copy of this?

MR BURCK: Oh, yes, Your Honor, that would be easier

(Document proffered to witness)

(Witness perusing document)

THE WITNESS: Okay.

BY MR BURCK:

Q So can you tell us now, do the notes say anything about -- I'm sorry, I've lost what I was asking you about A written contract?

A No, it just says "contract "

Q Does it say anything about periodic payments?

A Just says "paying back."

Q Does it say anything about Jonnie Williams being a friend for many years? Look at the top of the page, I'll just direct you to it, the third-to-last page The very top

A Okay Yes, it says that "Williams was a family friend "

Q So it doesn't say "many years "

A No

Q "He had been a friend for many years "

A No.

Q Does it say anything about a signed agreement? I think you testified she said she had also signed this written contract

A That's correct.

Q Do the notes say anything about a signed agreement?

A No, they do not

Q Now, during the interview, Ms McDonnell one time or twice, actually, asked to speak to her husband, didn't she?

A No

Q She never asked to speak to her husband?

A No.

Q Okay That's not you don't recall; that didn't happen, right?

A I have no recollection of her saying that, yes

Q Okay And you said that she tensed up or she became more, her demeanor became more tense when you started asking her about the Jonnie Williams checks?

A Yes When I say "tensed up," I didn't use -- she became more inquisitive, why we were asking

Q Had you told her prior to entering the meeting that this meeting was going to be about Jonnie Williams as well as Chef Todd Schneider?

A I didn't talk to her at all prior to the interview

Q Okay Did you hear Special Agent Lyons say anything to her prior to going into the meeting that this was going to be about Jonnie Williams as well as Todd Schneider?

A No, I don't remember him saying that

Q So as far as you know, she has no idea what the interview is about?

A That's correct

Q Although you did say, "She knows what it is about" before

A Yes

Q You didn't really mean that?

A No, I meant it, because I knew that the Executive Office had set up the interview And I didn't want to tell the scheduler what I was there for So she had been told by the executive staff what What that was, I don't know

Q Understood. And just one last question: In March of 2013, that's about a month after the Maureen McDonnell interview, you learned from the Tobacco Commission, the Executive Director of the Tobacco Commission that no one had approached the Tobacco Commission to initiate a research project involving anatabine or Anatabloc, right?

MS ABER: Objection

THE COURT: He can answer that

THE WITNESS: I recall interviewing, I think his name was Neal Noyes, and that's what he told us, yes

MR. BURCK: Thank you, Your Honor Just one moment, Your Honor

THE COURT: Can I see that hard copy?

MR. BURCK: I'm sorry, Your Honor Just for, we would like to offer the notes, the handwritten notes into evidence

THE COURT: All right Is this RM-2079?

MR. BURCK: Yes

THE COURT: You had some particular pages?

MR. BURCK: Yes, Your Honor We have RM-2079-0003, through RM-2079-0005 What we will do is make sure there is nothing in there that should be redacted in terms of personal information But we offer that, Your Honor

THE COURT: All right Before I admit them, you all take care of any redactions

MR. BURCK: Thank you, Your Honor

THE COURT: All right Mr McDonnell?

CROSS-EXAMINATION

BY MR BROWNLEE:

Q Agent Hagan, good afternoon. My name is John Brownlee, and I represent Bob McDonnell And I have some questions for you today Let me begin, I believe you testified that in a meeting in May of 2012, that you had anticipated, that was -- at that time, I think you testified that you anticipated using Mr Williams to go after the McDonnells; is that correct?

A That's what I wrote, but what I was explaining to my supervisors was that we were in the initial stages of the investigation; it was going to take a lot of documentation to put it together; and down the line I anticipated possibly that we would have to get Mr Williams to tell us what's going on.

Q All right. Now, let me show the witness, just for the witness, RM-2069 Just blow up just the bottom part there Sir, this is an e-mail that you received in February of 2013 from John C Bullard. Do you know who that is?

A Yes Mr Bullard, B-U-L-L-A-R-D, is the Deputy Commonwealth's Attorney for the City of Richmond

Q Okay And you had testified earlier about you had a state investigation as well; is that correct?

A Yes

Q On the McDonnells

A Yes

Q Okay

MR. BROWNLEE: Your Honor, at this time we would move RM-2069 into evidence

MS ABER: Objection, Your Honor This is a communication between the Special Agent Hagan and the Commonwealth's Attorney for the City of Richmond and his deputy about various legal requirements under the PAC rules

THE COURT: Let me take a look at it, and come on up here

(At Bench)

MR. BROWNLEE: This is just classic bias testimony This was an investigation into PAC resources It turned out that they couldn't prosecute the McDonnells for that He sent it to his own private e-mail, and then flips it to us and says, I forgot exactly what he said, but basically he is disappointed that this didn't work out We think it is biased testimony, Your Honor

THE COURT: No The objection is sustained.

(In Open Court)

BY MR BROWNLEE:

Q Now, Agent Hagan, as part of your investigation, first of all, do you know who Christopher Young is?

A Yes, I do

Q Who is Christopher Young?

A He is the individual that married Cailin McDonnell

Q Okay And as part of your investigation in May of 2012, did you and some of your agents put a tail on him and follow him?

A I did a solo surveillance on him. What I believe And yes

Q And you went to his place of employment and sat outside and watched him leave work; is that correct?

A That's correct

Q And this is -- he works, he is an engineer?

A Yes, he was, or is

Q Okay And he married Cailin McDonnell; is that right?

A Yes

Q Okay Also as part of your investigation, did there come a time when you learned that one of Mr Williams' loans went to a company called MoBo?

A Yes, I did.

Q All right And you investigated that; is that correct?

A Yes, I did.

Q All right And as part of your investigation, did you investigate whether or not the Governor's sister was involved in disguising some loan?

A Sister involved with what?

Q With attempting to disguise the loan

A I don't recall that

Q Okay

MR. BROWNLEE: May I approach the witness?

THE COURT: Go ahead

(Document proffered to witness)

BY MR. BROWNLEE:

Q Look at the last line of the e-mail there, sir

(Witness perusing document)

A Okay

Q All right Does that refresh your recollection that part of your investigation, you looked into whether or not the Governor and his sister were trying to disguise this loan from it going to their company?

A What I was thinking possibly is that the second $50,000 loan may have been given to the sister when it should have been going to Maureen, the wife

Q Okay So as part of your investigation, you looked at his sister and her involvement; is that right?

A No, did I not look at her involvement Well, the check indicated that it was possibly to the sister And what I was saying is possibly we need to look into this, that the $50,000 may have been to Maureen, but went to the sister

Q His sister's name is Maureen?

A Yeah, that's where the confusion is

Q All right Now, let me take -- if I can take your memory to May of 2013 Do you recall having a meeting with Mr Dry and Mr Kilgore and Mr Kilgore's boss, Richard Cullen, to discuss this case? Do you remember that meeting?

A I attended several meetings Can you be more specific? Mr Kilgore?

Q This is a meeting in which it was yourself, Mr Kilgore -- I tell you what Since you are having trouble, let me just show you --

MR DRY: Your Honor, may we approach?

THE COURT: Come on up.

(At Bench)

MR. DRY: Judge, Mr Brownlee has asked me about whether there was any kind of meeting like this He has handwritten notes I'm not sure whose they are, but they are not this witness's, and this meeting never occurred I told Mr Brownlee that Now what he is trying to do is dirty up the prosecution team with these kinds of questions This meeting never occurred and it is irrelevant what meetings happened

THE COURT: What is it regarding this?

MR. BROWNLEE: The government just called as their witness Jerry Kilgore These are notes from the Superintendent of State Police which indicates Charlie Hagan met with Mike Dry, Kilgore, Williams' attorney and Richard Cullen to discuss the federal case He agreed to testimony, by documents and testimony they could prove the payments to McDonnell were not loans So their last witness --

MR. DRY: You should have asked Mr Kilgore about it

THE COURT: The objection is sustained.

MR. BROWNLEE: Thank you.

(In Open Court)

BY MR BROWNLEE:

Q Agent Hagan, let me ask you, do you know an individual named Marc Wiley?

A Yes, I do

Q Marc Wiley is, at the time of the investigation, was in charge of EPU; is that correct?

A No

Q What role did he have at EPU?

A When I first met Marc Wiley, he was a Sergeant in the Executive Protection Unit I met him when I went to the Mansion to review and make copies of the closed circuit TV in regards to the chef embezzlement investigation

Q But he is a part of EPU?

A Yes, he is

Q EPU, we have had a couple of the officers here, but EPU was the Executive Protective Unit and they protect the Governor and his family; is that correct?

A Yes, they do

Q Okay Did there come a time in April of 2012 when Mr Wiley on your behalf began to communicate back to you what was going on with the Governor?

A It wasn't -- well, my recollection when we first started talking to Sergeant or First Sergeant Wiley, I was asking at the time, I was looking for additional gifts that Jonnie Williams may have provided to the Governor that were not reported on his Statement of Economic Interests And yes, I did reach out to him and ask for some assistance

Q Okay And so for the next 19 to 20 months, he on behalf of you essentially was eavesdropping on conversations of the Governor and reporting them back to you; is that correct?

A No, I've never instructed him to do that I don't know why you say -- well, no, I never instructed him to eavesdrop

Q Okay

MR BROWNLEE: Court's indulgence, Your Honor Let me grab one thing, Your Honor

(Counsel retrieving document)

BY MR. BROWNLEE:

Q Agent Hagan, did you not write in a State Police document in April of 2012 that Mr Wiley reported back to you that he advised Trooper John Dudley, who was assigned to the Governor on a trip, the flight manifest indicated Jonnie Williams was supposed to be on the plane but he wasn't, one of Williams' co-workers was on the flight and sat next to the Governor for most of the flight, but Trooper Dudley could not hear their entire conversation because of the jet engine noise, but he was able to hear them talking about Anatabloc?

MS ABER: Objection

MR. BROWNLEE: I'm just asking if he recalls that, Your Honor

THE COURT: I'll let you answer that

THE WITNESS: Okay I recall First Sergeant, may have been Sergeant then, Wiley telling me that, but I never instructed him to tell me that

BY MR. BROWNLEE:

Q Did you have Officer Wiley get a new cell phone when he started this process back in 2012?

A I have no knowledge of that, no

MR BROWNLEE: May I approach to refresh his recollection?

THE COURT: Go ahead.

(Document proffered to witness)

BY MR BROWNLEE:

Q Just take a look at the first page

(Witness perusing document)

A Okay

Q Does this refresh your recollection that Mr Wiley got a new cell phone in April of 2012 right after he started reporting back to you?

A He advised me that he had a new cell phone and he gave me his number, yes

Q All right

MR. BROWNLEE: That's all, Your Honor Thank you.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS ABER:

Q Special Agent Hagan, let start where Mr Brownlee left off About Officer -- what's Mr Wiley's title?

A He is a First Sergeant right now

Q First Sergeant Wiley Is the EPU at all affiliated with the Virginia State Police?

A Yes, they are

Q And were they at all aware, had you informed Mr Wiley in some terms about what you were investigating?

A Yes, I did

Q Okay And tell the jury, when Mr Brownlee uses words like "on your behalf," what was your affiliation with Mr Wiley, First Sergeant Wiley? Was he acting on your behalf?

A No, he never acted on my behalf, except if I asked for specific information, such as, "Can you give me a list of what flights the Governor has been on in the last year or so?" The reason we did that is because we were still in the covert stage, we didn't go overt yet, and I didn't want to go to the travel office in the Mansion to let them know we were looking into that area

Q Did you ever ask First Sergeant Wiley to listen in on Mr McDonnell's phone calls?

A No, never

Q Did you ever ask him to look at e-mails that Mr McDonnell may have been writing?

A No, never

Q How would you characterize, in sum, the information that First Sergeant Wiley was providing to you?

A He would provide information that I had asked him specifically for And then he knew the areas that we were looking into, the investigation was centered on, based on what I was asking about And he would voluntarily call me many times and say, "Hey, this might help your investigation "

Q And were you using Special Agent Wiley as some sort of deliberate secret spy on the Governor?

A No.

Q Changing topics At the very beginning, I believe, of Mr Burck's cross-examination, I believe there was a lot about investigations and who had what open when. At the time you went to interview Ms McDonnell in February of 2013, was there a federal grand jury investigation open into the McDonnells for public corruption?

A No, there was not

Q Was there a state grand jury investigation into the McDonnells for public corruption?

A Yes, there was

Q Now, I believe you mentioned something about a custodial interview Could you describe to the jury what that is?

A Normally --

MR. BURCK: Objection, Your Honor, relevance

THE COURT: Overruled.

BY MS. ABER:

Q What's a custodial interview?

A A custodial interview is when I conduct an interview, usually of a suspect, and my intention, either the person has been placed under arrest or my intention is to place the person under arrest after I interview the person Underneath those circumstances, my understanding is I'm supposed to let the suspect know the Miranda warnings; that the person is allowed to get an attorney and whatever they say can be used against them. In a non-custodial interview, it is just a normal interview that I would normally do I have no intention of detaining the person I take their information and leave

Q Which one occurred here with Ms McDonnell?

A Non-custodial

MR. BURCK: Objection, asked and answered.

THE COURT: Overruled.

THE WITNESS: Non-custodial

BY MS ABER:

Q Let's talk a little more about those notes I'm going to show you so you have it in front of you RM-2079, the set of notes of your interview with Ms McDonnell Now, I think we have established, sir, is it fair to say that your notes are not a verbatim transcript of this interview?

A Oh, yes, definitely

Q Did you ask Ms McDonnell at certain points for clarification on issues that interested you?

A Yes

Q What would something like that have been in this interview?

A Well, while I was interviewing Ms McDonnell, I was interested in the $50,000 She told me it was a loan She indicated that there was a written agreement that she had signed, a written contract And that contradicted what I had been told three weeks earlier, so there was a conflict, contradictory information, from what I had heard from Jonnie Williams Secondly, she indicated that she was making payments for the loan. Again, that was contradictory from the knowledge I had at the time, because I had pulled her bank records and I analyzed her Wachovia and her Beach bank accounts, and I think they were from March of 2010 to March of 2012, and I did not see any payments going back to Jonnie Williams

Q Now, Special Agent, did those notes say that Special Agent Lyons was present at that interview? Do you see his name anywhere?

A I don't believe it does

Q So how do you know he was there?

A I was there

Q Okay. Do those notes say the word "Jonnie Williams" or do you just use the shorthand "JW"?

A "JW "

Q How do you know that that's a reference to Jonnie Williams?

A Because it is his initials that I, I guess, created so I would know that's who they were talking about

Q Why did you testify before this jury that Maureen McDonnell said there was a written contract?

A Because that's what she said

MS ABER: One moment, please, Your Honor I have no further questions, Your Honor Thank you.

MR. BURCK: Your Honor, I just want you to know, this document is okay with us It doesn't need redaction

THE COURT: So you are ready to move that in?

MR. BURCK: Yes, just those two pages, unless the government wants to put in the entire document For us, all we need is RM-2079-0003 through RM-2079-0005 We have no objection if the government wants to put in the entire document

THE COURT: They will be admitted.

MR. BURCK: Thank you.

(Witness stood aside)

Call your next witness, please

MS ABER: James Lyons

JAMES LYONS,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good afternoon, sir

A Good afternoon

Q Please state your name and spell your last for the record.

A James R. Lyons L-Y-O-N-S

Q Do they also call you Doc?

A Yes, ma'am.

Q You are not a doctor, though, right?

A No, ma'am.

Q Where are you presently employed?

A I am presently employed with the Northumberland County Sheriff's Office as their Undersheriff

Q Were you previously employed with the Virginia State Police?

A I was

Q For how long did you work there?

A 25 years

Q Okay I'm going to turn your attention back to February 15th of 2013, please Were you working for the Virginia State Police on that date?

A Yes, ma'am.

Q On that day, did Special Agent Charlie Hagan ask you to join him for an interview?

A Yes, ma'am, he did.

Q Who was that interview of?

A Ms McDonnell

Q Until that day, did you have anything to do with the State Police investigation of food thefts at the Mansion?

A No, I did not

Q Until that day, did you have anything to do with any investigations of Jonnie Williams?

A No, I did not

Q Until that day, had you had anything to do with any investigations of Mr and Ms McDonnell?

A No, I did not

Q Did you attend any briefings or witness interviews related to those investigations?

A No, I did not

Q After that date, did you assist in any way with those investigations?

A No, ma'am.

Q Okay Thank you Now, did you help schedule that interview of Ms McDonnell?

A No, ma'am.

Q All right Let's talk about the interview itself Walk us through what happens when you got to the Mansion

A We went to the Mansion, myself and Special Agent Hagan We were met at the entrance to Ms McDonnell's office by, I don't remember the young lady's name, but we were told that she was expecting us And we went in, introduced ourselves, and the interview began

Q Okay In what room were you conducting the interview?

A I believe it was her office

Q And who was present for the interview?

A Myself, Special Agent Hagan, and Ms McDonnell

Q Did either you or Special Agent Hagan take notes during the interview?

A Special Agent Hagan did.

Q Is it fair to say he did most of the questioning of Ms McDonnell?

A Yes, ma'am.

Q Now, I'd like to ask you first if Special Agent Hagan said anything at the beginning of the interview

A Just an introduction, and then just we introduced ourselves and then it was just general conversation for a few minutes

Q All right And in sum, what was that general conversation about?

A Growing up in -- apparently, Special Agent Hagan and Ms McDonnell had grown up in the same neighborhood in New York Just general chit-chat I think Ms McDonnell asked me if I was from New York, and I told her I was from the other side of the state in Southwest Virginia It was just general conversation.

Q Do you recall whether Special Agent Hagan said anything about previously working for the FBI?

A Yes, he did.

Q Now, what was the first topic addressed at the interview?

A The first topic addressed was the food from the Mansion, as I recall

Q Did the conversation then turn to Cailin McDonnell's wedding?

A Yes, ma'am, it did

Q And did you or Special Agent Hagan ask about the contract for the wedding catering?

A There was discussion about the contract for the reception Ms McDonnell had said --

Q Hang on there Let me stop you Did you explain or did Special Agent Hagan explain to Ms McDonnell that a search warrant had been conducted at the catering company?

A Yes, ma'am.

Q And did one of you tell Ms McDonnell that investigators had found a $15,000 check from the Starwood Trust to the catering company for Cailin McDonnell's wedding?

A Yes, ma'am.

Q Did you both talk to Ms McDonnell about a gentleman named Jonnie Williams?

A Yes, ma'am.

Q Okay Now, tell the jury, please, what Ms McDonnell said about the origin of her relationship with Mr Williams

A May I refer to my notes?

Q Yes, sir, but you need to tell -- just for the record, what is it that you are looking at?

A I have a copy of the interview, the VSP-102 that was done by Special Agent Hagan after the --

Q They are signed by Special Agent Hagan Did you review them at the time they were made?

A Yes, ma'am, I reviewed them as soon as he made them.

Q Before they were finalized and processed through the State Police?

A Yes, ma'am.

Q At the time, did you agree with everything that Special Agent Hagan had written?

A Yes, ma'am, I did.

MR. BURCK: Objection If the witness doesn't remember and has to refer to notes, then the testimony is -- there is no point in testifying

THE COURT: Let's determine whether or not the witness has any independent recollection before we start dealing with the notes

BY MS ABER:

Q Let me ask you to put them away for a second. If I were to ask you if you could tell this jury about what Ms McDonnell said about the origin of her relationship with Mr Williams, how long they had known each other, do you know that off the top of your head?

A I can tell you that, yes, ma'am. She stated that they had, she and the Governor had first met Mr Williams a long time ago, after Governor McDonnell had left the Army That Mr Williams was a sales rep for American Hospital Supply, and that Governor McDonnell had gone to work with American Hospital Supply. And that is where they met

Q Now, did you talk to Ms McDonnell about her May, 2011 trip to the Roskamp Institute?

A She discussed that in my presence, yes, ma'am.

Q Okay Did the subject of the August 30th, 2011 lunch at the Mansion come up?

A Yes, ma'am, it did.

Q And did the topic of a Star Scientific event in California come up?

A Yes, ma'am, it did.

Q Did you all tell Ms McDonnell that you had uncovered a check from the Starwood Trust to her?

A Yes, ma'am.

Q Okay And from your recollection, what did Ms McDonnell say about the existence of a loan agreement for that $50,000 check?

A She said that there was a loan agreement that she had signed, and that she was making payments on that loan

Q Now, did Ms McDonnell ask you any questions, ask any questions of both of you?

A Yes, she did. At one time she asked if we had interviewed the children, and then she also asked was it necessary that the children be interviewed.

Q When the interview concluded, how did you all exit?

A We went out the front door of her office, she escorted us around the Mansion, and we left at the gate

MS ABER: One moment, please, Your Honor No further questions Thank you.

THE COURT: Mr Burck?

MR. BURCK: Very briefly

CROSS-EXAMINATION

BY MR. BURCK:

Q Special Agent Lyons, my name is Bill Burck. I represent Maureen McDonnell I just have a few questions for you

A Yes, sir

Q You testified that you didn't have anything to do with this investigation before the interview of Maureen McDonnell or after the interview of Maureen McDonnell, right?

A That's correct, sir

Q So the words Starwood Trust and all this that you heard from Ms Aber, did that mean anything to you at the time?

A Well, the only thing I knew about the investigation at the time when I went over to the Mansion was what I had read in the paper

Q What you had read in the paper

A Yes, sir

Q Fair to say the information you were hearing from Special Agent Hagan that was being asked of Maureen McDonnell at the time didn't mean much to you?

A It didn't mean a lot to me No, sir

Q Jonnie Williams didn't mean a lot to you, other than what you read in the paper?

A I had heard of him, but again, other than what I read in the paper or heard on the news

Q You were asked by Ms Aber whether or not you have prepared for your testimony here today

A Yes, I have prepared for my testimony

Q I think you said that you reviewed a VSP report, Virginia State Police repor right?

A That's correct, sir

Q Is it a typewritten version?

A Yes, sir, it is

MR BURCK: May I approach the witness?

THE COURT: Go ahead.

(Document proffered to witness)

BY MR. BURCK:

Q Sir, is that a copy of the same thing you reviewed?

A No, sir, it is not This is more -- the information that I reviewed is different from what I am seeing here

Q Okay So there is a -- so you have something else that you reviewed? That's not that document?

A Yes, sir This document is dated January 26th, 2013. And the information that I referred to was dated February 15th, 2013

Q Okay

A I have not seen this document

Q Okay I'm going to show you another document Actually, bring up RM-2079

MR. BURCK: Your Honor, I'm sorry, I gave him the wrong document My apologies

(Document proffered to witness)

BY MR BURCK:

Q That one, sir I'm sorry, I gave you the wrong report Is that the same document?

A Yes, sir, this is the same report

Q That's a typewritten document that was created by Special Agent Hagan?

A That's correct, sir

Q And if you could just publish for the jury as well, RM-2079-0003 Can you just flip through, sir, would you just look, you don't have to read it, but do you recognize that document?

A On the screen?

Q Yes

A No, sir

Q These are handwritten notes of Mr Hagan's You have never seen those before?

A No, sir, I have not

Q You didn't review them prior to testifying today?

A No, sir This is the first time I've seen them.

MR BURCK: Thank you. That's it, Your Honor, for us

THE COURT: Mr McDonnell?

CROSS-EXAMINATION

BY MR ASBILL:

Q Good afternoon, sir My name is Henry Asbill I represent Governor McDonnell

A Yes, sir

Q I just want to make sure I understand your testimony clearly At the time you went to this interview you were not involved in the planning of it or anything of that nature

A No, sir, I was not

Q You say what you knew is just what you read in the paper?

A Basically, that's correct

Q Did that relate only to the Chef Todd issue or was it broader than that?

A Sir, I don't recall It was whatever was popular in the paper in February

Q Did it involve the McDonnells in any way, do you recall?

A Yes, sir, it did.

Q It did

A Uh-huh

Q So you knew that that was at least a subject matter of the interview

A That's correct Yes, sir

Q As you got into the interview, Agent Hagan was doing the questioning and it became very clear to you what the various subjects were in the interview, correct?

A Well, it became clearer to me what the subjects were, yes

Q So whatever you knew beforehand, it became more clear once the interview commenced; is that right?

A That's correct, yes, sir

Q During the interview, Agent Hagan was the one who was doing the questioning, and simultaneously taking notes Correct?

A That's correct Yes, sir

Q And you were not doing the questioning, but you also were not taking notes

A I think I asked two questions the entire time

Q But you didn't have to worry about trying to talk and write at the same time

A No, sir, I did not

Q So would you have been or would somebody have been recording this interview in any way?

A I don't recall, sir, whether it was recorded I know that I did not record it And whether Charlie Hagan recorded it or not, I don't know

Q Was there any discussion between the two of you about whether or not you should record it?

A Not with me, no, sir

Q Is there any reason to think of why it wouldn't be appropriate to record it?

A No, I can't answer that I have done interviews that I have recorded and I've done interviews that I have not recorded. So I can't speak for him. I don't know why he chose not to record it

MR. ASBILL: Thank you, sir No further questions

THE COURT: Anything else?

MS ABER: No, Your Honor

THE COURT: Thank you, sir You may stand down.

(Witness stood aside)

Call your next witness

MR HARBACH: Thank you, Your Honor The

government calls Donnie Williams

DONNIE WILLIAMS,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARBACH:

Q Good afternoon, Mr Williams

A Good afternoon

Q Could you please state your full name for the record?

A It is Donnie O Williams

Q What do you do for a living, sir?

A I'm a retired Deputy Sheriff

Q Are you working right now?

A I have a lot of rental property that I work on

Q What sorts of work do you do?

A A little bit of everything: painting, carpentry work, roof work

Q When did you retire from law enforcement?

A Four or five years ago

Q Are you related to Mr Jonnie Williams?

A Yes, he is my brother

Q Do you recall, turning your attention to the fall of 2012 now, okay, do you recall around that time making the acquaintance of Ms McDonnell?

A Yes, I do

Q What were the circumstances?

A My brother asked me to go by there and see if I could help them out, and I didn't have the time I said, "As a favor to you, I'll run by there and see what they have, see what the problems are "

Q Where was it that you were going to run by and check out?

A It was over in Glen Allen I forgot the street name

Q And what was the location? Was it their home?

A Yes, it was their home

Q We are not talking about the Governor's Mansion here, right?

A No, we are not Their personal home

Q Did you in fact provide some assistance in terms of repairs and what not at the McDonnells' home in Glen Allen?

A Yes

Q What sorts of stuff did you do for them?

A We replaced some hardwood floors that got damaged from a water leak in a bathroom. We had to pull them up. I bought some hardwood flooring and matched the stain and we put them back down.

Q How did you learn about the stuff that needed to be done at the house?

A She told me

Q Who is "she"?

A Ms McDonnell

Q Did you meet with her in person?

A Yes

Q Did you also communicate with her via text message?

A Yes

Q Have you had a chance to review some text messages between yourself and Ms McDonnell before you came into Court today?

A No

Q Have you reviewed them at any time in the past with the government?

A Yes.

MR. HARBACH: Your Honor, can I tender hard copies to the witness? It might make this easier

THE COURT: Sure

MR. HARBACH: For the record, I'm sending up paper copies to the witness of Government 424 through 427, 437 through 441, 463, 473, and 491

BY MR HARBACH:

Q My question for you, Mr Williams, is that stack of paper that the Court Security Officer just handed you, do you recognize those to be paper copies of text messages between you and Ms McDonnell?

A Yes

MR. HARBACH: The government offers that same list, I'll repeat for the record, Government's 424 through 427, 437 through 441, 463, 473, and 491

THE COURT: They will be admitted

BY MR HARBACH:

Q Now, before we get to the texts, Mr Williams, do you recall having any conversations with your brother about the list of repairs that Ms McDonnell had requested that you do?

A He didn't know what it was, he just said, "Go by there and see if you can help them out "

Q After you did that, did you talk to him again about it, to your recollection?

A To Jonnie?

Q Yes, sir

A Yes I called him because they had a hot tub and they couldn't find or they didn't know anybody, it needed a new top on it She asked me could I find one I found it They would need a new hot tub cover, and I deal with a pool company in Fredericksburg, and I talked to the guy there and he was going to order it

Q Did you relate that to your brother?

A Yes And I asked him did he want, "What's going on, are you going to pay for it or do you want me to bill them?"

Q What did he say?

A He said he would go ahead and pay for that

Q Let's take a look at some of those text messages We can roll through them quickly I'd like to start with Government's 424 in evidence, please We can blow this one up for the witness and the jury This one is from Ms McDonnell And you mentioned a moment ago not remembering the exact location of their home Seeing on the screen now there is a reference she makes to Wyndham. Is that where their private home was located, their personal home?

A Yes

Q Let's take a look at 425, please Noting the date on this one is November 12th of 2012, is this your response to her? It says, "No, everything's fine"?

A Yes

Q Okay Let's keep going and look at 426, please Before we blow up the text, let's let the jury see the date, please Thank you. We are still on November 12th of 2012 Ms McDonnell is asking you: "Do you need me to get a key out to you? To get into the garage " And she gives you other instructions Do you recall whether in fact you were provided a key to their residence?

A Yes, they left a key for me

Q They did Can we take a look at the next one, please, which I believe is 427 Blow up the date and the content for the witness We are still on November 12th; is that right, sir?

A Yes

Q And Ms McDonnell, she is making reference here to a hot tub cover which you testified about a moment ago Is this what got that started?

A Yes

Q Okay Let's look at the next text message, please, which is Government's 437 Now, this is about a month later This is December the 12th of 2012 Do you see that there, sir?

A Yes

Q And Ms McDonnell is asking you, "Forgot to ask you, were you able to get the model number of the Jacuzzi?"

Were you able in fact to get hold of a new Jacuzzi top from your contact?

A I did. I never found the model number on it, and I had to go drive from Fredericksburg and pick it up and take it to the pool company in Fredericksburg so they can get the measurements and get the accurate ones

Q Did a replacement cover end up coming?

A Yes

Q Let's take a look at 438, please This is your response to Ms McDonnell a couple of days later on the 14th And you say, "Spa cover will be here in three weeks " Is that consistent with your memory?

A Yes

Q Can we take a look at 439, please This is Ms McDonnell's response to you Now, you told us a moment ago that you had a conversation with your brother about him paying for it; is that right?

A Yes

Q Let's take a look at Government's 441 That's what you tell her

A Yes

Q Now, you mentioned some other odd jobs that you did for the McDonnells around their home I think you said you replaced some flooring; is that right?

A Some hardwood flooring

Q Okay Any other jobs of significance that you remember besides that?

A Well, we ended up staining the deck and fixing some lattice on it, and ended up replacing some bushes on the side of the house and putting new rows of bushes in the back, trimming bushes I told her, at the time I told her we were really busy, Jonnie was aerating and seeding his lawn, you know, it is a large lawn, and she asked could we do theirs And I said, "Okay " So we ended up getting all the leaves up, aerating it, bringing the machine over, aerating it, seeding it We fixed a couple of the sprinkler heads, let's see, stained the deck

Q You are saying "we" when you describe this How big of a team of workers do you have out there?

A Well, when we done aerating and seed, there was four people It took us a good part of the day

Q Are you yourself actually out there working, too?

A Yes

Q And what about the staining the deck and replacing the hardwood floors, ballpark, how many people are we talking about?

A Well, there was two people the first day and three people the second day and we were there all day because it was getting cold and we wanted to finish it up.

Q Over the course of time that you are doing these things for the McDonnells, did Ms McDonnell ever say anything to you about offering to pay for any of it?

A She offered to pay several times

Q She did?

A She did.

Q Before the investigation in this case became public, did she ever ask for an invoice?

A Before that, no.

Q Before the investigation ever became public, did

Ms McDonnell ever ask you how much anything cost?

A No

Q Before the investigation became public, did Ms McDonnell ever actually pay for anything?

A No

Q Approximately how many times -- withdrawn. On approximately how many different occasions would you say you went over to the McDonnells' home in Wyndham to make repairs? How many times did you all go over there?

A Ten to twelve times

Q Let's take a look now at what's in evidence as Government's 463 The date on this one is January 19th of 2013 And if you see there, about three lines in, she is inquiring whether any of your days next week might work for meeting out at Wyndham. Was this an example of another occasion when you went out there to do some work?

A Yes

Q I'm sorry?

A Yes

Q Okay Let's take a look at Government's 473 in evidence, please This is five days later on January 24th of 2013, and she is asking about if you can help out with the heat and furnace unit in the garage The e-mail goes on Do you recall if you in fact do some work on their HVAC?

A Yes, replaced all the filters in the house, but they didn't know anything around the Richmond area, they said, that worked on it, so I called the company I use, and they came down and it ended up being the internal filter in there. He ordered a new one, I picked it up from him in Fredericksburg, and my little brother and I put it in.

Q What's your little brother's name?

A Deanie

Q Dean?

A Dean Excuse me, I call him Deanie

Q Can we take a look at the last text message, which is Government's 491, please Now we are into February of 2013 This is February 19th. And in this one, Ms McDonnell references a granite guy Do you recall what that was about?

A Yes She had a crack in some granite, and she asked me, you know, did we know anybody And I have a guy I use for granite in the Richmond area, and he came over

Q To do some repairs?

A Yes, to get an estimate on if he can fix it, and I think he was looking in the kitchen at the granite

Q We are still at their personal residence in Wyndham; is that right?

A Yes

Q You can take the exhibit down Mr Williams, did you ever have any conversations with Mr McDonnell about any of these repairs?

A Yes, one day they came together

Q And where were you when you had this conversation with Mr McDonnell?

A We were in the garage He was talking about the air-conditioning It wasn't working properly on -- I forgot what floor it was But it was the air-conditioner located in the garage

Q Did you all end up fixing that? Was this the same filter problem you described a few minutes ago?

A Yes That's what was the problem.

Q During that conversation with Mr McDonnell, did he offer to pay for the work?

A No

Q During your conversation with Mr McDonnell, did he ask you how much it cost?

A No

Q Now, after the investigation became public in early spring of 2013, after that point, did you get a request from Ms McDonnell for an invoice?

A Yes

Q What do you recall about that?

A She wanted it on a paper with all the work on it from my company And I said, "Look --" I felt uncomfortable then because I'm not a contractor I work on my own stuff I've built houses and stuff, but it is my personal stuff And I didn't want to get involved with taxes or if you needed any kind of permits for any of the stuff

Q Was there conversation with Ms McDonnell in person or over the phone or do you remember?

A It was in person

Q Did Ms McDonnell say why she wanted a receipt or an invoice?

A She said she wanted -- she needed a record of it

Q Did you in fact provide her with one?

A I did.

Q Let's take a look at Government's 496, please Mr Williams, can you see that okay?

A Yes

Q Is this an e-mail exchange that at least is in part between you and Ms McDonnell with the list of expenditures?

A Yes

Q That you have been discussing?

A Yes

MR. HARBACH: The government offers Government's 496

THE COURT: It will be admitted.

BY MR HARBACH:

Q Publishing to the jury, what's the date, looking at the bottom e-mail there, Mr Williams? Is the date that you sent this list of expenditures, is that March 4th of 2013?

A Yes

Q And was this what you sent that was in response to Ms McDonnell's prior request?

A Yes

Q Let's take a look at the next page of Government's 496, please Let's blow up the top part for the witness. Did you prepare this document, sir?

A Yes

Q Now, looking at the figures that are on here, for example, staining the deck, you charged $150 of labor and apparently no materials costs Was that the actual cost of the labor that was involved here?

A No

Q How did it compare to what the actual cost of the labor was?

A A third. A third of that

Q Okay And similarly, look at the next-to-the-bottom line, "Repair and replace hardwood flooring " You charged only $50 in labor Was that similarly a fraction of what the actual labor cost was?

A Yes

Q Why did you make the prices so low on this invoice, sir?

A I just made it up in a couple minutes I wanted to get it and get it to her, get it over with.

Q Let's scroll down to the bottom so we can see the total, please $1,685 50; is that right?

A Yes

Q Did Ms McDonnell, after you sent her this invoice, did she send you a check?

A Yes, she did.

Q Did you either cash or deposit it right away?

A No

Q Why not?

A I wasn't going to -- I wasn't even going to cash it I didn't want anything to do with any of this mess So I just left the check in my vehicle

Q Did you eventually either cash or deposit the check?

A Yes

Q Why did you eventually do it?

A I talked to my brother He said, "You might as well go on and cash it You can get some money "

Q Did you have any conversations with Ms McDonnell about whether you should cash or deposit the check?

A I believe she sent me text messages

Q What do you recall the substance of the text message as being?

A Questioning "When are you going to cash the check?"

Q Did you eventually do that?

A I did

Q Do you recall at some point having an encounter with Ms McDonnell in the garage of their home where she gave you something?

A Yes

Q Tell us what you remember about that

A She had, she said it was a couple of dresses in there that she had worn, I believe it was in a box, and she had written a note I believe it was for Jonnie I didn't look at the note, but she said to give them, you know, get them to Rachel so she can maybe auction them off for charity, and say the First Lady wore the dresses

Q Who is Rachel?

A Rachel is my niece

Q Whose daughter?

A Jonnie's daughter

Q Prior to this conversation with Ms McDonnell where she gave you the box, had you heard anything about any of this clothing from anybody?

A No

///

///

Q You mentioned that there was -- your recollection is that there was a note or something, some kind of letter with the box?

A Yes

Q And you said you did not look at it?

A No, I did not

Q How would you describe Ms McDonnell's demeanor when she gave you the box with the note attached?

A She was nervous

Q Did she say anything to you that made you think she was nervous?

A The tone of her voice, and she was talking fast

Q Did she say anything about anything that had happened to her recently?

A I don't -- I don't know

Q Do you recall whether she made any reference to having any contact with law enforcement?

MR HAUSS: Objection

A Oh, yeah

MR HAUSS: Leading

MR BURNHAM: Leading

THE COURT: Overruled

BY MR HARBACH:

Q What do you recall about that, sir?

A I think we were in the living or the foyer or something, and she was upset And she said that she was going to call the FBI agent up and tell him Jonnie is a generous person and they shouldn't be doing this, you know, to him

And I told her, I said, "It doesn't make any sense, you calling up the FBI agent" -- I forgot his name -- "and tell them Jonnie is a good person. It just doesn't make any sense You need to talk your attorney before you talk to, you know, one of the FBI agents about something It just doesn't make any sense "

Q Now, were you aware, at the time of this conversation with Ms McDonnell, that your brother Jonnie had loaned the McDonnells, you know, many thousand dollars of dollars?

MR HAUSS: Objection

THE COURT: Overruled

A Yes

BY MR HARBACH:

Q How did you know about, let's say, the $50,000 loan?

A Jerri Fulkerson called me up on the telephone

Q For what purpose?

A To tell me she was giving the $50,000 loan out to the Governor and his wife

Q Do you have an understanding of why Ms Fulkerson needed to call you about that?

A She calls me for everything because I'm the trustee on Jonnie's trust, on the Starwood Trust for the kids

Q The day that you had this conversation with Ms McDonnell when she mentioned the FBI, did she also mention the $50,000 loan?

A Yes

Q What do you recall her saying about that?

A She was worried about it because they didn't have a contract and stuff And I -- I said, "Well, you know" -- I told her it was a check, and on the check it was written "loan" on it And -- but she was -- you know, because they didn't have a contract with Jonnie or anything, and they were upset over that So -- she was

Q Now, let's go back to the -- the box for a minute What did you do with the box with the note that was with it?

A I took the box and put in my little brother's truck and told him to take it back to Jonnie's and put it on the kitchen counter, because I was going to Fredericksburg at the time --

Q All right

A -- when I left

MR HARBACH: Can I have just a moment, Judge, please

THE COURT: Sure

(Counsel conferring with co-counsel)

MR HARBACH: Thank you, Your Honor

BY MR HARBACH:

Q Mr Williams, do you recall the -- when Ms McDonnell asked you for the -- the invoice for the stuff -- all the stuff you had done at the McDonnells' house, was that after you had had this conversation with her where she gave you the box?

A Yes

Q Okay

MR HARBACH: No further questions, Your Honor Thank you

THE COURT: All right Cross?

MR HAUSS: Thank you, Your Honor

CROSS-EXAMINATION

BY MR HAUSS:

Q Good afternoon

A Good afternoon

Q So you -- my name is Steve Hauss I'm an attorney for Maureen McDonnell

You did not meet Ms McDonnell until October or November 2012; is that correct?

A Somewhere around there

Q And you had testified that your brother Jonnie was the one who asked you to do some repairs on the

McDonnells' home; is that correct?

A Yes

Q And you testified that it was around November 11th, 2012, when you first went over there, correct?

A Yes

Q And when you went to the home the first time, you met with my client, Ms. McDonnell?

A Yes

Q And she pointed out to you the various things that needed to be repaired; is that correct?

A Yes There was a lot -- a lot of things

Q Okay Do you recall at some point after that Ms McDonnell calling you and telling you that a list had been left for you?

A I told her to make a list because it was so many things that needed to be done around there

Q And do you recall that, in fact, she had left a list for you in a black folder by the door?

A It was -- I remember it was in the garage I never looked at it

Q Okay

A I never got to that part

Q Do you recall her telling you that the Governor had written out the items that needed to be worked on for -- on the list that was in the folder?

A I don't recall that But I -- she told me that she was writing stuff -- I told her to make the list She was writing stuff I don't know who wrote it, whether it was the Governor or her So --

Q Do you recall her telling you that she had already marked off the items from the list that had been completed so that you could send her a bill?

A No

Q Okay. And you never looked at the list?

A I never -- no

Q So you don't know if things were marked off or not?

A No

Q Now, you've testified that you went over to do work at the McDonnells approximately 10 to 12 times?

A Yes

Q Okay And every time you met with Maureen McDonnell, she offered to pay; is that correct?

A No

Q Okay

A She offered several times during the time I was there to pay It wasn't every time

Q Do you recall meeting with the prosecutors and the agents in this case in about October of last year?

A Yes

Q Okay Do you recall telling the prosecutors and the agents that every time you met FLOVA, she offered to pay?

A Every time I --

Q You met with Ms McDonnell, she offered to pay?

A It wasn't every time

Q I'm asking do you recall telling that to the prosecutors?

A I don't recall

Q Okay

MR HAUSS: Could we pull up for the witness the 302 dated October 23rd, 2013

Your Honor, if I could approach I have a hard copy I can just show the witness

THE COURT: Go ahead

MR HAUSS: Thank you

BY MR HAUSS:

Q And I'm showing you a hard copy of the interview summary from your October 23rd, 2013, interview with the prosecutors Have you had a chance to read that?

A Yes

Q And does that refresh your recollection reading that?

A It does But I -- I just don't recall every time I'm trying to remember back a couple years I just don't remember every time But she did offer several times I remember that

MR HAUSS: If I may approach again, Your Honor

BY MR HAUSS:

Q Now, you were shown some text messages from the prosecutor, by Mr Harbach, on your direct

MR HAUSS: And if we could pull up Government Exhibit 439 And this is in evidence And if we could blow up the body of the text

BY MR HAUSS:

Q And you testified that this is a text between yourself and Ms McDonnell regarding the spa cover that you just talked about?

A Yes

MR HAUSS: And if we could go now to Government Exhibit 429, also in evidence Sorry 439 Thank you

BY MR HAUSS:

Q And this was Ms McDonnell's response to you; is that correct?

A Yes

Q And she asked, "Do I need to give you a credit card?"

A Yes

MR HAUSS: Now, if you could pull up Government Exhibit 440

BY MR HAUSS:

Q And this is a response from you to Ms McDonnell This is you indicating, "No Jonnie is paying for it"?

A That's correct, because I called Jonnie and asked him

MR HAUSS: And if we could pull up Government Exhibit 441

BY MR HAUSS:

Q And this is Ms McDonnell's response to you; is that correct?

MR DRY: It's not in evidence

A Yes

MR HAUSS: I'm sorry?

MR HARBACH: We don't think it's in evidence

MR HAUSS: 441?

MR HARBACH: No My mistake

BY MR HAUSS:

Q And this, I'm sorry, is Ms McDonnell's response to you; is that correct?

A Yes

Q And she says, "OMG I didn't expect him to do that " That's correct?

A Yes

Q Now, in the end, Ms McDonnell, in fact, paid you for the work you did at the house, correct?

A Yes

Q You've also indicated to the prosecutors that she paid the plumber and the air conditioning contractors directly; is that correct?

A Yes

Q Now, you testified that Ms McDonnell did not request an invoice until the investigation became public, correct?

A That's correct

Q Okay Now, you could have sent her an invoice before that, couldn't you have?

A Well, I was doing very small things Sometimes I was there a couple hours Sometimes it was four or five And it was just too many little things I just waited until the end to, you know, put everything on there So --

Q Ms McDonnell never told you not to send her an invoice; is that correct?

A That's correct

Q And Mr McDonnell never told you not to send an invoice, correct?

A That's correct

Q Now, you also indicated that she never asked you what the price was; is that correct?

A She did not

Q Okay And you could have told her the price She never told you not to tell her the price, correct?

A That's correct But never asked So --

Q So it was your choice not to send her an invoice and not to give her the price?

A Yes

Q Now, you testified that it was only after the investigation became public that she asked for an invoice What do you mean when you say "the investigation became public"?

A When it hit the newspapers

Q Okay

MR HAUSS: So could we pull up Government Exhibit 496, which is in evidence

BY MR HAUSS:

Q Now, this is when you sent the invoice to Ms McDonnell, correct?

A Yes

Q And the date on here is March 4th, 2013?

A Yes

Q Now, prior to this, Ms McDonnell had asked you for the invoice, correct? You're saying that's in response to her because you had previously asked her for -- I'm sorry -- she had previously asked you for the invoice?

A Can you -- I'm not sure what you're trying to --

Q Sure She had asked you, prior to you sending this, Ms McDonnell had asked you for an invoice?

Let me ask you this Do you recall telling the prosecutors that Ms McDonnell asked you at least three times, both in person and over the phone, for an invoice before --

A Oh, yes

Q -- you sent this?

A Yes

Q And that was prior to this date, March 4th, 2013?

A Yeah I'm not sure

Q Now, you said that your first meeting with her was on November 11th, 2012, correct?

A Yes

Q And this invoice was sent on March 4th So that's about four months later?

A Yes

Q Now, Ms McDonnell asked you for an invoice from a business, correct?

A Yes

Q She didn't want one from you personally?

A Yes

Q But you did not give her an invoice from a business, did you?

A No

Q And the reason for that was because you didn't have a contractor permit, correct?

A I don't have a contractor's license And I have several LLCs, and I didn't want any of that into my -- my personal stuff

Q Okay So during your direct examination, you said that you charged less than the cost of the labor and the actual work, correct?

A I just wanted it over with

Q Okay You're not a professional contractor, correct?

A No

Q Okay And you don't have a business or construction license?

MR. HARBACH: Objection. Relevance

A No.

THE COURT: He's already answered this

BY MR HAUSS:

Q Is it correct that you generally only do jobs for family and friends?

A Yes

MR HAUSS: And could we show, just for the witness, this is not in the evidence, RM-146-0029 I'm sorry RM-1546-0029 And if you could blow it up for the witness

BY MR HAUSS:

Q So, Mr Williams, this is a text message sent from Ms McDonnell to you on November 17th, 2012; is that correct?

A Yes

MR HAUSS: And, Your Honor, we would offer RM-1546-0029

THE COURT: It will be admitted

BY MR HAUSS:

Q And, Mr Williams, this is a text message where Ms McDonnell invited you and your brother to a Christmas party; is that correct?

A Yes

Q Now, you testified that at some point Ms McDonnell gave you a box; is that correct?

A Yes

Q Okay And that was in the garage of the McDonnells' home?

A Yes

Q Okay Do you remember what the date was when she did that?

A No

Q Do you recall if it was in March 2013 versus February?

A I believe it was -- it was in 2013

Q Okay

A March That sounds about right

MR HAUSS: Could we --

A I'm not sure of the exact date I don't know

BY MR HAUSS:

Q Sure Now, there was no one else there that day but you and Ms McDonnell, correct?

A That's not true

Q There was someone else there?

A Several other people there

Q Who else was there?

A My little brother was there and a helper Because I put the dress in his truck

Q And did you have an interview with the prosecutors and the police in this case just a month ago, on July 8th, 2014?

A Yes

Q Okay Do you recall telling the prosecutors that you did not recall anyone else being present at the time?

A It was just her and I in the garage They were outside

Q Okay. So --

A But, you know

Q Okay Just -- so to clarify, it was just -- in the garage where she gave you the box, it was just you and Ms McDonnell?

A Yes

Q Okay And you testified that you never looked in the box?

A I did not

Q You never saw what was inside of the box?

A No

Q You never saw the note that accompanied the box?

A No It was for Jonnie I wasn't going to read it

Q Now, you testified on direct that when she gave you the box, Ms McDonnell said some things about the loan from Mr -- from your brother Jonnie; is that correct?

A Yes

Q Do you remember that when you met with the prosecutors last month you told them, at first, that Ms McDonnell never said anything about the loan when she delivered the box to you?

A That was a -- I believe that was a different day on that I'm not sure if it was the same day When the loan come up and when the dresses, I think it might have been a different day

Q So you're not sure, when Ms McDonnell gave you the box, if that was the time she talked about a loan?

A It was approximately the time But I talked to her several times I believe the $50,000 check was a different time or a different day than that

Q Okay So sitting here today, you're not sure if when she talked about the loan and when she gave you the box were at the same time? You're not sure?

A That's true

Q Okay And you also testified on direct that when she gave you the box, Ms McDonnell referred to Rachel, your niece?

A Yes

Q And that she said that the dresses were for Rachel?

A She said -- well, she said to give them back to Jonnie, to give them to Rachel and she could auction them off for charity or something, say the First Lady wore them So --

Q Okay Do you recall that when you met with the prosecutors last month, that what you said to them was that you learned the box contained clothing belonging to Rachel and you recall thinking to yourself why would Ms McDonnell have Rachel's clothing?

A I didn't have a clue, because I hadn't heard nothing about these dresses But she told me there were dresses in there

Q Is it fair to say you have no idea if Ms McDonnell ever met your niece Rachel? Is that fair?

A I don't have a clue Yeah

MR HAUSS: One moment, Your Honor

Thank you Nothing further, Your Honor

THE COURT: All right

Anything from Mr McDonnell?

MR BURNHAM: No, Your Honor We're good

THE COURT: All right Any redirect?

MR HARBACH: Yes, please, Judge

REDIRECT EXAMINATION

BY MR HARBACH:

Q Mr Williams, you were asked a moment ago about a Christmas party that Ms McDonnell invited you to go to
Did you go to the party, sir?

A No

Q You testified on cross-examination that -- and I believe on direct also, that you mainly did contractor work and the like for friends; is that right?

A Yes That's -- it's mainly relatives or friends.

Q Okay At the time that you first went over to Mr and Ms McDonnell's residence, were they personal friends of yours?

A No

Q Why did you do the work for them?

A Because Jonnie asked me to stop by there

MR HARBACH: Nothing else, Your Honor Thank you

THE COURT: All right
Thank you, sir You may stand down

(Witness stood aside)

THE COURT: All right We're going to take the afternoon break It will be 15 minutes

(The jury left the courtroom)

MR BROWNLEE: Judge, could we steal your ear just for a second

THE COURT: Sure

(At Bench)

MR DRY: This last witness, who is also on the list, we didn't give them So they're not prepared to cross And we have additional witnesses I think our stuff is moving quicker than maybe anticipating, but -- no one's fault We're just moving quicker We're going to be done with our case, most likely, by Thursday We did not give them additional names today so they are, understandably, not prepared to cross

If the Court is willing to take a break at this point

THE COURT: Well, we'll get through what we have and then go -- we'll just have to break early

MR DRY: Do you want to break now or -- the next witness is the one that they are not prepared to cross on We do have a witness ready to go We have a witness here ready to go, but they are not prepared to cross that witness because we didn't give that name to them before We're going to give them all of our remaining witnesses' names so that this doesn't happen again

THE COURT: Oh, jeez, man We don't have --

MR DRY: We can do the direct and the --

THE COURT: All right We'll do the direct, and then we'll give you all overnight to --

MR BROWNLEE: Okay Thank you.

MR DRY: Does that make sense? The direct might take a while So I don't think we're going to break too early

MR BROWNLEE: Thank you, Judge

(Recess taken from 4:07 p m until 4:25 p m.)

(The jury entered the courtroom)

THE COURT: Call your next witness, please

MR FAULCONER: Yes, Your Honor The United States calls William Sessoms

WILLIAM SESSOMS, JR ,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

MR FAULCONER: May I, Your Honor?

THE COURT: Go ahead

DIRECT EXAMINATION

BY MR FAULCONER:

Q Good afternoon

A Good afternoon

Q Could you please state your name, and spell your last for the court reporter

A William D Sessoms, Jr S-E-S-S-O-M-S

Q And what is your -- what are your current occupations?

A I am President of Towne Financial Services Group and Mayor of the City of Virginia Beach

Q And how long have you been the Mayor of Virginia Beach?

A Six years

Q And Towne Financial Services Group, is that what you said?

A Correct

Q Is that part of TowneBank?

A Yes, it is

Q How long have you been with TowneBank?

A I've been with TowneBank eight years

Q And how long in the current position that you have?

A Approaching three

Q Now, where is the TowneBank location that you work at?

A In Virginia Beach, and it's 622nd Street

Q And TowneBank, does it offer mortgages to borrowers?

A Yes, it does

Q Could you move the microphone just a little closer to you?

A I'd be glad to

Q Thanks Now, you said that TowneBank offers mortgages, right?

A Correct

Q And in the roles that you've served in, have you overseen parts of that mortgage process?

A Yes

Q And are you familiar with the types of documents that you all have?

A Yes

Q Now, you said that TowneBank offers mortgages Are those sort of the typical 30-year mortgages or are they usually different types of mortgages?

A No, they are not They are usually short term In the commercial bank, we have mortgages that might have a 30-year amortization, but could have anywhere from a one year to five year, seven year type call

Q And are those sometimes interest-only loans?

A Yes Sometimes

Q Now, do you also offer what's called a -- I think the term is HELOC?

A Yes

Q Could you explain what a HELOC is?

A It's a home equity loan

Q And does HELOC stand for Home Equity Line of Credit?

A Yes, it does

Q And could you explain, just briefly, what that is?

A If someone has a residence and there's equity in their home, they can establish a line of credit to use that equity if and when they want to and be available to them

Q All right Well, I'd like to transition to some of your interactions with the McDonnells

A Okay

Q Can you explain -- have you met Mr McDonnell?

A Yes

Q Could you explain how you met Mr McDonnell?

A I -- I met Mr McDonnell in the late '80s I had just run on the City Council seat in Virginia Beach, and he was just starting his political career, running for the House of Delegates, and ended up supporting him and working very hard for him

Q Would you consider him a friend?

A Yes

Q And in the years that you've known him, have you socialized with him and Ms McDonnell?

A Yes

Q All right Well, I'd like to focus in on your interactions with them as President of TowneBank

A Okay

Q And can you tell us how -- did you end up doing some loans with them?

A Yes, I did

Q Can you tell us how it first came about that you were doing some loan transactions with Mr McDonnell?

A This was a number of years ago I believe it was 2005 and 2006, if my memory is correct And they were purchasing homes down at Sandbrige, and I had the opportunity to offer them a mortgage loan on -- on one of those and I believe a HELOC on another

Q And when you say "they were purchasing properties," did you actually talk to Mr McDonnell about these loans?

A Yes.

Q And do you know who "they" were in that conversation?

A He, his wife, and his sister

Q And his wife and his sister have the same name, right?

A Correct

Q Now, did he tell you how he was planning to buy the properties? Are these -- let me clarify that a little bit

Did he tell you how he was planning on running the properties or what type of properties these were going to be?

A Yeah These would be rental properties and investment properties

Q And did he tell you whether there was any sort of entity that was going to be affiliated with running the properties?

A Not that I recall

Q Do you recall any conversation at any point about any sort of partnership or entity with him and his sister?

A Down the road, I believe there was one established Yes

Q But in terms of your interactions as TowneBank, did you ever actually do any business with that entity or was it always just with the individuals?

A As I recall, the key reason I was making these loans were the reason for their personal income and assets that the three of them held I said, at one point, if they were going to form a partnership or something along those lines, however they wanted to do it would be fine as long as they understood they would be personally guaranteeing the debt

Q Got it So any business you did with them was a personal guarantee?

A Correct

Q All right Well, you said that there were two loans Do you remember, were there two properties as well?

A Correct

Q And I'd like to show you what's been marked for identification as Exhibit 41

MR FAULCONER: And if we could just zoom out on sort of the top third of that there

BY MR FAULCONER:

Q Is this a document called a "Disbursement Request and Authorization"?

A Yes, it is

Q And is this one of the standard documents that will be part of a TowneBank loan package?

A Yes, it is

Q I'm sorry If you could just make sure to pull the microphone over

A I picked up on that Got it

Q And does this appear to be for the first of the two loans that you did with Mr McDonnell and his sister?

A I would believe so If my recollection, another loan was made in 2006 So -- this is in 2005 So that's -- I believe this was the first one

MR FAULCONER: Your Honor, we'd offer Exhibit 41 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, Mr Sessoms, what is the date under "Loan Date" on this document?

A September 23rd, 2005

Q And is that consistent with your recollection of when the first loan was?

A Yes

Q And what's the dollar amount on this loan?

A $249,990

Q And is that consistent with your recollection of what the loan amount was?

A Yes

Q Now, earlier you said that you had both mortgages and HELOCs Do you remember whether this was a mortgage or a home equity line of credit?

A I -- my recollection, this is a HELOC

Q And there under borrower, could you tell us what names are listed under borrower?

A "Robert F McDonnell Maureen C McDonnell "

Q And do you recall whether, when it says "Maureen C McDonnell," is that the wife or the sister?

A I don't recall

Q Well, in terms of whether you recall the initials or not, do you recall whether the loan that you did was with the wife and Mr McDonnell or with the sister and Mr McDonnell?

A The sister

Q Okay Now, when it says there "Borrower: Robert F McDonnell, Maureen C McDonnell," does that -- can you tell, from looking at that, whether it was a personal guarantee or a business guarantee?

A This was a personal loan So that would result as being a personal guarantee

Q All right So there's no MoBo or anything --

A No

Q -- any entity like that on the paperwork?

A No

Q All right I'd like to show you what's been marked for identification as Exhibit 42 Zooming in on the top third or so there, is this a settlement statement that appears to be for that same loan?

A I'm looking for the date

Q Over in the sort of right, middle portion, there's a box that says "Settlement Date " Is that the same date?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 42 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, just looking at the -- where it says "Name and Address of Borrower," again, what are the names that are listed there?

A "Robert F McDonnell" and "Maureen C McDonnell "

Q And that address that's listed on Sandfiddler Road, is that consistent with where you understood the properties to be?

A Yes

Q I'd like to show you now what's been marked for identification as Exhibit 43 Zooming in on that top portion there, is this another "Disbursement Request and Authorization"?

A Yes, it is

Q And does this appear to be for the other loan?

A Yes, it does

Q And what's the loan date on this?

A 3/1/2006 March 1st, 2006

MR FAULCONER: Your Honor, we'd offer Exhibit 43 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, what's the dollar amount listed on this loan?

A $722,550

Q And under "Borrower," again, who's listed on this document as the borrower?

A "Robert F McDonnell" and "Maureen C McDonnell "

Q Is there anything about MoBo Realty on this document?

A No, there's not

Q All right Now, do you recall what type of loan this was in terms of when you were earlier talking about 30-year mortgages versus more short-term mortgages?

A This would have a long-term amortization, which could be a 20- to 30-year mortgage -- I don't recollect the term -- with a call of a number of years less than that, 20 to 30 years Probably five years, I believe.

Q Okay

A I'd have to look at it closer

Q Got it And we may have some documents later on that

A Okay

Q But do you recall whether or not, during the initial period of this loan, whether principal was being repaid or whether it was interest only?

A I believe -- we started with interest only, as I recall

Q Now, I'd like to show you what's been marked for identification as Exhibit 44 And is this a settlement statement?

A Yes, it is

Q And the date there, sort of in the middle, right-hand portion, under "Settlement Date," is that the same date --

A Yes, it is

Q -- as the document we were just looking at?

A Yes, it is

MR FAULCONER: Your Honor, we'd offer Exhibit 44 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, Mr Sessoms, do you recall that the first settlement statement we were looking at says 3113 Sandfiddler Am I right about that?

A Yes, sir

Q Okay And this one is 3112; is that right?

A Yes

Q And do you recall the properties being relatively close in proximity to each other?

A Yes

MR FAULCONER: Now, if we could go back briefly to Exhibit 43 I apologize, Mr Starnes

BY MR FAULCONER:

Q The dollar amount on that one is what, again?

A $722,550

Q And do you recall the combined loan exposure being somewhere around a million dollars?

A Yes, I do

Q Now --

MR FAULCONER: We can take that down

BY MR FAULCONER:

Q Now, at the time that you extended these loans, you said you had conversations with Mr McDonnell about them Do you recall what, if anything, he told you about how he intended to pay for the mortgages?

A Well, the -- the hope is, you know, the rental income would be a big part of paying it At the same time, it was investment property And there was no guarantee that that would be available But the vast majority should be paid by the rental income generated by the property

Q And do you recall him telling you; that he believed that there would be sufficient income to cover the mortgages?

A I don't recall that specifically, but that, I believe, was the intent

MR FAULCONER: Your Honor, I'd like to hand the witness a document for purposes of refreshing his recollection

BY MR FAULCONER:

Q And, sir, if you could just take a look at the bottom of Page 24, on to the top of Page 25 Starting on Page 24, line 19 And if you could read through the bottom of that page on 24

A Start at line 19?

Q Yes Just read it to yourself Don't read it out loud

A Oh, okay

Q Starting on line 19 on Page 24, down to the bottom, and then on to the next page, down to line 24 on the next page

Have you gotten a chance to read that?

A Yes, uh-huh

Q All right Does that refresh your recollection about whether or not -- about whether or not the subject of the rentals covering the mortgage payments came up in your conversation with -- with the Governor?

A Correct

Q And what was the conversation?

A If I read through the whole thing, it's basically what I just said But I do say that it's expected that the rents will cover the debt service.

Q And that was based on what Mr Mr. McDonnell told you?

A Yes

Q Now, I'd like to talk about how things sort of unfolded with these loans as time went along I'd like to show you what's been marked for identification as Exhibit 518 And zooming in on sort of top portion of this, is this a "TowneBank Loan Transaction History"?

A Yes, it is

Q And is this for the smaller of the two loans?

A Yes, it is

MR FAULCONER: Your Honor, we'd offer Exhibit 518 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, I see there at the top, it starts with January 1st, 2009 Am I correct that the loan actually started a number of years earlier, back in '05, right?

A Correct

Q So is this a transaction history that just goes from the beginning of '09 until sometime in 2013?

A I just see the two dates, '09 But I'm assuming that's correct

MR FAULCONER: Now, if we could -- okay Now, if we could zoom back out, Mr Starnes I apologize

BY MR FAULCONER:

Q All right Now, Mayor Sessoms, have you had a chance to review this document before coming in to testify?

A Yes

MR FAULCONER: And if we could turn to the second page of this document, and if we could zoom in on the entry on 4/24/2009

BY MR FAULCONER:

Q Could you tell us what's indicated there on 4/24/2009?

A A late fee of $28 22

Q And, Mayor Sessoms, could you tell us, is that the only late fee that's listed in this document?

A No, it's not

Q Have you had an opportunity to count how many late fees are shown on this document from 2009 to 2013?

A I did

Q Do you recall how many there are?

A I don't

Q All right Let me give you a moment, and I can hand you a paper copy

MR FAULCONER: And for the record, Your Honor, this is a paper copy of Exhibit 518

THE COURT: All right

THE WITNESS: Thank you

BY MR FAULCONER:

Q All right Now, Mayor Sessoms, if you could start with the first page of this document And I don't -- do you see any late fees on the first page?

A I do not

Q All right On the second page, can you tell us how many late fees you see on the second page of this document?

A Two

Q And turning to the third page, can you tell us how many late fees are indicated on the third page?

A One

Q So that -- so we're up to three now Turning to the fourth page, could you tell us how many additional ones are on the fourth page?

A One

Q All right So that's up to four Turning to the fifth page, how many are located on that one?

A Two

Q All right Is that six now? Am I right? I shouldn't do math in public, but is that right?

A Yeah

Q Now, on to the sixth page, how many late fees are indicated on the sixth page?

A One

Q So that being seven Turning on to the seventh page, are there any located on that seventh page?

A No

Q Turning to the eight -- eighth page, am I correct that there are two located on that page?

A Yes

Q All right So that being up to nine Turning to Page 9, am I correct that there is a tenth late fee on Page 9?

A Yes

Q Turning to Page 10, am I correct that there are no late fees on Page 10?

MR BROWNLEE: We don't object if Mr Faulconer wants to give the final number, and we'll agree with it

THE COURT: He said he didn't remember the final number So we have to do this

BY MR FAULCONER:

Q Okay So turning to Page 10, are there any late fees on that page?

A No

Q Turning to Page 11, am I correct that there is an 11th and a 12th late fee on that page?

A Correct

Q Turning to Page 12?

A Two of them

Q So that would be up to 14 Am I right?

A Correct

Q Okay And then on to Page 13, how many late fees there? Are there two?

A Yes, two

Q All right So we're up to 16 Turning to Page 14, how many are on that page?

A Two

Q I'm sorry How many is that?

A Two

Q All right So we're up to 16 How many on Page 15?

A I don't see any

Q Okay On to Page 16?

A Don't see any

Q On to Page 17?

A Do not see any

Q All right Now, regardless of whether or not you and I just doing that math was correct, are all the late fees from that time period located on that document?

A Yes

Q And do you recall there being late fees, at times, on this loan?

A Yes, I do

Q All right I'd like to show you what's been marked for identification as Exhibit 519 And zooming in on the top, is this a loan transaction history for the other larger one of the loans?

A Yes, it is

Q Now, without --

MR FAULCONER: Your Honor, we'd offer Exhibit 519 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q And, Mayor Sessoms, have you had a chance, at some point, to look over this document?

A Yes, I have

Q And without asking you to, necessarily, count this one up, does it seem about accurate that there are somewhere in the range of 29 late fees on this document?

A Yes

Q And is that consistent with your recollection of how this loan unfolded over time?

A Yes

Q All right

MR FAULCONER: We can take that down

BY MR FAULCONER:

Q All right So we've talked a little bit about late fees Can you tell us whether you ever discussed those late fees with Mr McDonnell?

A What I discussed would be late payments

Q Probably scoot back from the microphone just a little bit

A And just acknowledging that we just don't want the loan to go 30 days past due

These payments, the late payment was at 15 days, as I recall But that would be the extent of just saying we cannot let those payments go up to 30 days past due

Q All right Just lean back just a little bit Sorry

Now, can you explain what you mean by the late fee coming at 15 days and not wanting it to go to 30 days? What would happen at 30 days?

A We consider a loan reportable to the Board when it goes 30 days past due

Q Got it

A And that's something we always try to avoid We want to make sure all the payments are in prior to that date

Q And at times during the course of these loans, in that 15- to 30-day period, or at least between the late fee and whenever the 30 days would come, would you have conversations with Mr McDonnell about them?

A Yes

Q And would you tell him that -- what would happen if it went 30 days overdue?

A Yes

Q And what would usually happen at that point?

A If it goes to the Board, in other words, it hits a Board report, and that would have an impact on your credit

Q And about how many of these conversations would you say you had with Mr McDonnell?

A I don't recall off the top of my head

Is it somewhere in here?

Q Well, let me ask you this way Was it more than just two or three?

A I would say more than two or three Yes

Q Now, as time went on, over the course of these loans, did you also have conversations with Mr McDonnell about him trying to get more permanent financing for these properties?

A Yes, I did

Q And could you tell us what happened in those conversations?

A Well, as you know, interest rates were extremely low during this time period, and he wanted to take advantage of getting the lowest interest rate and, again, fixed for a longer term

As I shared with you, we have an amortization that might be long, but the loan would be callable in a shorter term period It was his desire to get a long-term rate of 20 to 30 years at a fixed rate for that term, also with the market being, you know, low interest rates like they were

Q And about how often do you think you had conversations with him, in terms of how often annually, about potentially getting more permanent financing?

A I'd say we probably had that annually

Q And was that from the time that the loan started in '05 on through until at least 2012?

A I would say that's fair Because he always was trying to get a long-term interest rate, you know, especially with the rates being low, yes

Q Now, can you recall what he told you about whether or not he was able to get, at least from 2005 to 2011, whether he was actually able to get that refinancing?

A He was having issues getting refinanced because the real estate market had turned, and as such, the values of the properties had decreased and that would result in not being an acceptable loan to value on trying to obtain the permanent financing

Q Now, what about any conversations about something we had talk about earlier, about whether or not the rentals were covering the mortgage payments? Did you have conversations with Mr McDonnell about that?

A Yes

Q And can you tell us what you recall about whether or not the rental payments were covering the mortgage payments?

A It -- they were not covering it, and they were using their personal assets to cover the debt service

Q And do you recall about how much there was in a gap?

A I do not

Q Now, I'd like to show you what's been marked for identification as Exhibit 227 Zooming in on the top there, is this a document called a "Change in Terms Agreement"?

A Yes, it is

Q And is it dated August 30th of 2011?

A Yes, it is

Q And does this pertain to the larger of the two loans we've been discussing?

A Yes, it does

MR FAULCONER: Your Honor, we'd offer Exhibit 237 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q All right Now, Mayor Sessoms, do you recall -- this is, I guess -- am I correct that this is about five years after the loan had started in 2006?

A That would be correct

Q Do you recall the terms in the loan changing in 2011?

A I -- I do

Q Looking at this document where it says "Description of Change in Terms," what does it say the change in terms is?

A It says, "Description of Change in Terms " Is that what you're looking at?

Q Yes Could you just read what it says there?

A "Change payments from interest only to principal and interest payments; fixed rate of 2 75 will expire on September 28, 2012 "

Q All right So before this time, they had just been interest payments; is that right?

A Correct

Q And then after this time, what was going to change?

A We would be getting a principal payment as well as interest In other words, we would start collecting principal The loan had been extended for five years, which is about right on an interest only, and then we had to start terming it out

Q Now, where it says "fixed rate of 2 75 percent will expire on September 28, 2012," what does that mean in terms of that only being about a year from when this document is dated?

A Well, two things First of all, the rent -- the interest rate is lowest -- lower because it's only a one-year commitment And then secondly, the intent of trying to find permanent financing

Q So at this time, what was going to happen about a year from then, or so?

A We'd have the option to reprice the loan, renew the loan or call the loan

Q And is it typical for you, when you have situations like this, to do sort of an annual review after that year is up?

A Absolutely

Q And based on your review of the bank files from TowneBank on these loans, was there a renewal process the following year?

A Yes

Q As part of that, do you request a personal financial statement?

A Yes

Q I'd like to show you what's been marked for identification -- sorry Real quick

Could you tell us what it means to call a loan? You used that terminology.

A We have the ability to demand payment for the loan to be paid in full.

Q Got it And does that allow you, then, to go after somebody's assets if they say no?

A Yes

Q Now, I'd like to go back to showing you what's been marked for identification as Exhibit 416 And is this a personal financial statement -- if we could scroll up to include the top portion

Is this a personal financial statement that was located in the TowneBank file for these loans?

A Yes, it is

MR FAULCONER: Your Honor, we'd offer Exhibit 416 into evidence

THE COURT: It'll be admitted

BY MR FAULCONER:

Q All right Now, Mayor Sessoms, looking at this page,

I see there that it says "TowneBank" at the top, but it says "Heritage Bank" on the actual top of the document
A Correct
Q Do you accept personal financial statements that are filled out on a different bank's form, at times?
A Yes
Q And did you do that in this case?
A Yes
Q All right Looking at this document, can you tell us whose handwriting is on that first page?
A It's Mr McDonnell's
MR FAULCONER: And if we could zoom out
BY MR FAULCONER:
Q Zooming in on the numbers that are there towards the bottom, is that also Mr McDonnell's handwriting?
A Yes, it is
Q All right
MR FAULCONER: Turning to the second page
BY MR FAULCONER:
Q Have you had a chance to review this second page as well?
A At some point, yes
Q And do you recognize the handwriting on it?
A Yes
Q Whose is it?

A Mr McDonnell's

Q All right Turning to the third page, do you recognize the handwriting on this page?

A Mr McDonnell's

Q Turning to the fourth page, do you recognize the handwriting on the fourth page?

A Mr McDonnell's

Q Now, turning back to Page 1 of this document, zooming in on the box on the lower right-hand corner, do you see there where it says $2,075,000 under "Total Liabilities"?

A Yes, I do

Q Sir, is there anything listed on this document under "Other Loans Payable"?

A No, there's not

Q Where it says "Loans on Life Insurance," am I correct that there's about $4,000 listed there?

A Correct

Q "Taxes Due, Income," there's nothing listed, right?

A Correct

Q How much is listed under "Credit Card or Accounts Payable"?

A 10,000

Q Is there anything listed under "Liabilities of Proprietorships"?

A No, there's not

Q Is there anything listed under "Liabilities of Partnerships or Joint Ventures"?

A No

Q Is there a number there of about $2,061,000 for loans on wholly owned real estate

A Yes, there is

MR FAULCONER: If we could zoom back out

A Excuse me?

BY MR FAULCONER:

Q Sorry I'm just asking Mr Starnes to zoom back out

Now, Mayor Sessoms, in the chance that you've had to review this document, have you looked at it to see whether or not there's anything about any loans from Jonnie Williams or Starwood Trust on this document?

A I have looked at that

Q And is there any reference to any loan from Jonnie Williams or Starwood Trust on this document?

A No, there's not

Q All right Now, I'd like to show you what's been marked for identification as Exhibit 373 Mr Sessoms, does this appear to be a version of that same document with the same handwriting, but just a different fax header on it?

A Yes, sir

MR FAULCONER: Your Honor, we'd offer Exhibit

373 into evidence It's been stipulated as a business record

THE COURT: It will be admitted

MR FAULCONER: Now, if we could take that down

BY MR FAULCONER:

Q I'd like to show you what's been marked for identification as Exhibit 106 Mr Sessoms, is that another Heritage Bank personal financial statement?

A Yes, it is

Q Now, to be clear, was this one in your TowneBank files?

A I don't see where it says TowneBank anywhere on it

Q Got it But I --

MR. FAULCONER: Your Honor, I'm simply going to ask him about recognizing handwriting It's a stipulated business record

THE COURT: All right

BY MR FAULCONER:

Q Mr Sessoms, on this first page of this document, do you recognize the handwriting?

A Yes, I do

Q Whose handwriting it is?

A Mr McDonnell's

MR FAULCONER: If we could zoom back out And if we could just flip through the second page

BY MR FAULCONER:

Q Is that also Mr McDonnell's handwriting?

A Yes

Q The third page, is that Mr McDonnell's handwriting?

A Yes

Q And the fourth page --

A Yes

Q -- is that also his handwriting?

Sorry Was that a yes?

A Yes

Q And then on the fifth page, is that also Mr. McDonnell's handwriting?

A Yes

Q All right

MR FAULCONER: We can take that down

BY MR FAULCONER:

Q Now, I'd like to show you what's been marked for identification as Exhibit 417

MR FAULCONER: All right And zooming in -- yes

BY MR FAULCONER:

Q All right Now, is this a credit report for Mr McDonnell?

A Yes, it is

Q And where you see there under "User ID," do you recognize who that indicates is the user ID?

A Yes, I do

Q And is that -- who does it indicate?

A Denise Stolle She was a loan administrative person at the bank

MR. FAULCONER: Your Honor, we'd offer Exhibit 417 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, Mr Sessoms, before coming in to testify, have you had a chance to review this document?

A Yes, I have

Q And on this document, are there any loans from Jonnie Williams or Starwood Trust listed?

A No

Q Now --

MR FAULCONER: We can take that down

BY MR FAULCONER:

Q Now, to be clear, Mr Sessoms, you've been in banking for a while, are personal undocumented loans typically put on credit reports?

A Yes -- oh, no Not on credit reports, no

Q So how do you find out about them if there is an undocumented loan?

A On a financial statement

Q Now, was the loan that was being reviewed in 2012 ultimately renewed?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 423 Zooming in on the top half of this, is this the document that shows that loan being renewed?

A Yes, it does

MR FAULCONER: Your Honor, we'd offer Exhibit 423 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, Mayor Sessoms, this says, "Loan Change Authorization " From looking at the loan amount on this document, can you tell whether this was the larger or the smaller of the two loans?

A It's the large loan And you can see where the principal has been reduced

Q Got it So over the course of the -- I guess how long is it, about six years now, since the 2006 origination?

A Yes

Q About how much had been paid down in principal?

A 15,000

Q And, Mayor Sessoms, at any time before this loan change was finalized, whether it was on the phone or in person, did you have any conversations with Mr McDonnell in which he told you anything about loans from Jonnie Williams or Starwood Trust?

A No

MR FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

MR FAULCONER: No further questions, Your Honor

THE COURT: Thank you

All right Ladies and gentlemen, we're going to have to stop a little early today I'm sorry about that, but it couldn't be helped

I have some instructions that I'm going to give you, repeating what I told you earlier, but simply for emphasis And as I said, I'm simply repeating what I told you earlier, but I want you to listen to me

I instruct you that during the trial, you are not to discuss the case with anyone or permit anyone to discuss it with you Until you retire to the jury room at the end of the case to deliberate on your verdict, you simply are not to talk about this case And that means between yourselves as well as outsiders It also means you are not to discuss what goes on in the jury room with anyone outside

Second, do not read or listen to anyone or anything touching on this case in any way If anyone should try to talk to you about it, bring it to the Court's attention promptly

Third, do not try to do any research or make any investigation about the case on your own Everything that you will learn about this case should come here in open court And finally, do not form any opinion until all of the evidence is in Keep an open mind until you start your deliberations at the end of the case

So jealously guard your -- the juror's prerogative and privacy in this matter Do not discuss this case with anyone You will find that we are absolutely serious about this

And the reason for this should be clear We want a fair trial We want a fair trial for these defendants as well as the government A fair trial And they can only get a fair trial from a jury that's unbiased and impartial and follows the instructions of the Court

So everybody understand it? You hear it? All right Great

Now, we will see you tomorrow -- let me give you a time Again, it will be 9:45 So we will see you in the morning You all take care, and we will see you at 9:45 sharp

(The jury left the courtroom)

(The trial adjourned at 5:03 p m)

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No. 15-4019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ROBERT F McDONNELL,
Defendant-Appellant,

On Appeal from the United States District Court for the Eastern District of Virginia, Richmond Division, James R. Spencer, District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

August 13, 2014
Richmond, Virginia
9:45 a.m.

JURY TRIAL - VOLUME XIII

BEFORE: HONORABLE JAMES R SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
DAVID V HARBACH, II, ESQ.
JESSICA D. ABER, ESQ
RYAN S FAULCONER, ESQ.
Counsel for Government;

JOHN L. BROWNLEE, ESQ
HENRY W ASBILL, ESQ
JAMES M BURNHAM, ESQ
DANIEL I SMALL, ESQ.
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Counsel for Robert F McDonnell;

WILLIAM A. BURCK, ESQ
HEATHER H MARTIN, ESQ
STEPHEN M. HAUSS, ESQ
DANIEL KOFFMANN, ESQ
Counsel for Maureen G McDonnell

JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day thirteen, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell The government is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F. McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, and Christopher Iaquinto Maureen G. McDonnell is represented by Heather Martin, William Burck, Stephen Hauss, and Daniel Koffmann. Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed

MR. ASBILL: Mr McDonnell is ready, Your Honor

MR BURCK: Maureen McDonnell is ready.

THE COURT: I understand you had some preliminary issues

MR. ASBILL: The parties are trying to figure out scheduling for this week and the beginning of next week. We subpoenaed a lot of witnesses for the 18th anticipating the government's case would go through the end of this week, and we understood that Friday afternoon was going to be off for other matters There is the motion hearing pursuant to the motion that the Washington Post has filed So we are really trying to figure out Thursday and Friday of this week and what you want to do, and we are trying to accomodate that I'm not sure of precisely when the Government's case is going to end

MR DRY: The government can't say when its case is going to end precisely Based on the pace, our summary witness may be on as early as this afternoon We don't know what the length of cross is, but we anticipate that we will be resting sometime tomorrow

THE COURT: All right This is what I would envision If we finish with the government's case tomorrow, then I would give the jury Friday off while we deal with your end-of-government-case motions Friday morning And then, of course, we have the media issue at noon on Friday And then Monday we would get started with your case

MR ASBILL: That's fine, sir

THE COURT: Okay?

MR ASBILL: That's fine

THE COURT: So we may have some, you know, some down time tomorrow if we finish early tomorrow, but it can't be helped.

MR. ASBILL: Thank you, sir

MR DRY: Thank you, sir

THE COURT: All right Bring in the jury

(The jury entered the courtroom.)

CROSS-EXAMINATION

BY MR. BROWNLEE:

Q Mr Sessoms, good morning My name is John Brownlee I represent Bob McDonnell, and I have some questions for you this morning First of all, you had testified yesterday you are the President of TowneBank; is that correct?

A President of Towne Financial Services Group. I was President of Townebank-Virginia Beach a few years ago

Q Okay And is TowneBank Financial Services, is the bank part of that?

A Yes

Q Okay Now, it is my understanding that you have met with the government twice on both August 8th, 2013, and again on July 1st, 2014; does that sound about right?

A It does

Q You have also then testified in the grand jury, I believe, on November 6th, 2013; is that correct?

A That sounds right

Q Sir, the document at issue in this case as it pertains to TowneBank is Government Exhibit 416. Could we pull that up? If you could blow up the top part of that Now, Mr Sessoms, this is in evidence This is a personal financial statement that was submitted to your bank, it is actually for a Heritage Bank, but it was submitted to your bank by Robert McDonnell; is that correct?

A Yes, sir

Q This is dated April 30th, 2012; is that correct?

A Yes

Q Okay And this is filled out by one person, Robert McDonnell; is that right?

A Yes

Q Okay Now, if you look down, if you scroll down just a bit, there is a block there in the middle It says, "You may apply for credit individually or jointly with another party " Is that correct?

A Yes

Q So the person filling out this form has an option They can go by themselves or jointly; is that correct?

A That's correct

Q And below that is the place where you pick which one And in this case, Mr McDonnell picked Individual Financial Statement Is that correct?

A Yes

Q Below that, it says, it is a little hard to read, but it says, "Does not include jointly-held assets " Is that correct?

A Yes

Q Okay Then below that, it says, "If joint, complete the following " And there is an area there below for information, and that is blank in this form; is that correct?

A Yes

Q So from this information, this is an individual personal financial statement, not a joint financial statement; is that right?

A Yes

Q And therefore, it only requires information pertaining to Mr McDonnell and not his wife; is that right?

A Yes

Q Okay We can take down the highlights and just kind of leave up the document

Now, Mr Faulconer asked you at the close of your testimony yesterday whether loans that were provided by Mr Williams were on this form. Do you remember that question?

A Yes, I do

Q And you answered no

A Yes, that's correct

Q Well, I want to talk about those loans in relation to this form. First of all, the first, if we could pull up RM-0896 No, no, keep going Scroll down. There you go

MR BROWNLEE: I believe this is in evidence as a government's exhibit number I'm not sure what the government's exhibit number is

MR. FAULCONER: That's right, Your Honor, at least this page is

MR. BROWNLEE: This is in evidence If we could publish this

THE COURT: All right

BY MR. BROWNLEE:

Q And this is a check from Starwood Trust to Maureen McDonnell for $50,000 And this, Mr Sessoms, is the loan that Mr Williams gave to Ms McDonnell on --

MR FAULCONER: I object to that The check is made out to Ms McDonnell Mr Brownlee is testifying about who the loan is to

THE COURT: Sustained.

BY MR. BROWNLEE:

Q This is made out to Ms McDonnell, correct?

A Correct

Q If you look at the deposit slip below it, that's signed by Ms McDonnell; is that correct?

A Yes

Q Okay Now, Mr McDonnell's name does not appear anywhere on this check; is that correct?

A Yes

Q Okay Now, could we pull up RM-2058?

MR. BROWNLEE: Court's indulgence for a moment, Your Honor We will do this the old fashioned way

THE COURT: Go ahead

(Document proffered to witness)

BY MR. BROWNLEE:

Q This is an account showing on May 25th, where there is a deposit of $50,000 Do you see that, sir?

A Yes, I do

Q Whose account is this?

A Maureen G McDonnell's

Q Okay Mr McDonnell's name is not on this anywhere, is it?

A No

Q Okay Now --

MR BROWNLEE: Your Honor, we move RM-2058 into evidence

THE COURT: It will be admitted

BY MR. BROWNLEE:

Q Now, Mr Sessoms, you testified that the form in question here is a personal financial statement; is that correct?

A Correct

Q So a loan to Ms McDonnell would not need to be on that form, correct?

A Correct

Q Okay Now, if we could pull 416 back up, please If we could go to the bottom right-hand corner, that block Now, Mr Faulconer showed this area to you yesterday in your examination And he asked you about liabilities of partnerships and joint ventures, he asked you about liabilities of proprietorships; do you remember that?

A Yes

Q Now, what he didn't ask you is about liabilities to an LLC, did he?

A No

Q Okay The documents that we just showed you with regard to the check to Maureen McDonnell, her account balance, the deposit slip, when you interviewed with the government three times, did they ever show you those records?

A No, sir, that I recall

Q Okay Now, what is an LLC?

A It is a Limited Liability Company

Q Okay I want to show you what's been previously admitted, RM-0502 This has been admitted, Your Honor This is an Incorporation Certificate of Organization for MoBo Real Estate Partners, LLC Is that correct?

A Yes

Q An LLC is a separate legal entity; is that correct?

A Yes

Q Okay And so it is fair to say that debts of a separate legal entity do not need to be on a personal individual financial statement

MR. FAULCONER: Objection, Your Honor

THE COURT: Sustained.

BY MR BROWNLEE:

Q Okay Well, would a debt of an LLC need to be on the debt of a personal financial statement?

MR. FAULCONER: Objection Depends on how the LLC is --

THE COURT: Sustained.

BY MR. BROWNLEE:

Q Well, are some loans personally guaranteed? Can you have a loan that is personally guaranteed by an individual?

A An individual signing on a loan by themself is their personal guarantee

Q So in instances where people actually sign for a loan, they take on what you call a personal guarantee

A Yes

Q Okay And in instances where people get loans without signing, are those not personally guaranteed?

A If they haven't signed a guarantee agreement or an endorsement agreement --

MR. FAULCONER: Objection as to if somebody doesn't sign a guarantee.

THE COURT: He can answer that

BY MR. BROWNLEE:

Q If someone doesn't sign a personal guarantee, is there in fact a personal guarantee on that loan?

A If there is no personal guarantee or personal signature or endorsement, no

Q It has to be in writing, right?

A Correct

Q Okay Now, let me show you what's been marked as Government Exhibit 355. If we could blow that up. Now, this is in evidence This is a check from Starwood to MoBo MoBo Realty, and a deposit slip for MoBo Realty of $50,000; is that correct?

A Yes

THE COURT: We don't have that in evidence

MR FAULCONER: Your Honor, I don't know if this specific version is in evidence, but --

MR BROWNLEE: Why don't we just show the checks I believe the checks and deposit slip are in evidence from the government

THE COURT: You can just move it

MR. BROWNLEE: Okay We will move RM-2059 into evidence, Your Honor

MR. FAULCONER: No objection

THE COURT: It will be admitted.

BY MR BROWNLEE:

Q So as I asked, this is a check from Starwood Trust to

MoBo Realty, and a deposit slip of that check for MoBo; is that correct?

A Yes

Q Okay Can we pull up RM-1454? Blow that up Now, if you look there in the middle, there is a deposit on March 12th of $50,000

A Got it

Q Do you see that?

A Yes

Q And if you go to the top, this is the account, keep going up, thank you, for MoBo Real Estate Partners, LLC; is that correct?

A That's correct

MR. BROWNLEE: We move RM-1454 into evidence

THE COURT: It will be admitted.

BY MR BROWNLEE:

Q So this is a check to an entity; is that correct?

A This is a checking statement I have in front of me

Q That's right And the check I showed you that is the basis for this deposit, it is to an entity

A Yes

Q And that entity is MoBo Real Estate Partners, LLC

A Correct

Q Okay And sir, is this corporate debt something that would need to be included on a personal financial statement?

MR FAULCONER: Objection, Your Honor, as to Mr Brownlee testifying

THE COURT: Sustained

BY MR. BROWNLEE:

Q Well, let me just ask it this way: Would this $50,000 check to MoBo, in your view, need to be on a personal financial statement?

MR. FAULCONER: Objection, Your Honor

THE COURT: Sustained

BY MR. BROWNLEE:

Q This debt on a personal financial statement, is the individual only required to put on debts from which he has personal guarantees?

A Yes

Q Okay So if there is no personal guarantee for a debt, it doesn't need to be placed on the personal financial statement; is that correct?

MR. FAULCONER: Objection, Your Honor Asked and answered

THE COURT: The objection is sustained Let me ask you a question: If you have outstanding liabilities, joint or otherwise, and you apply for a personal loan, is your bank interested in the outstanding liabilities even thou[illegible] they are shared?

THE WITNESS: We are required -- by law, we have to be very careful how we address that And as such, with an individual financial statement, we cannot ask about any other debt except the individual's debt based on the way that statement is filled out

THE COURT: All right My question to you is, if my debt is shared, let's just pick a figure, there is a $100,000 outstanding liability, and I am 50 percent responsible for that liability, is that something that your bank needs to know about under the personal loan?

THE WITNESS: Yes

THE COURT: All right

MR BROWNLEE: May I follow up?

THE COURT: Sure, go ahead

BY MR. BROWNLEE:

Q But if you don't have a personal guarantee on that debt, that debt, as the Court has explained, is a corporate debt, it doesn't need to be on your personal financial statement

A Correct

Q So it doesn't, that's right?

A Correct

Q So in this instance, this $50,000 went to MoBo, LLC, that entity that you testified is a separate entity So under the Court's hypothetical, this would not need to go on someone's personal financial statement; is that correct?

MR. FAULCONER: Objection, Your Honor He is conflating where the check goes versus where the loan --

THE COURT: The objection is sustained Go ahead

BY MR BROWNLEE:

Q Just to make sure I'm clear, and then I'll move along, a debt that does not have a personal guarantee, that goes to -- that is a corporate debt, does not need to go on someone's personal financial statement; is that correct?

A Repeat it one more time You are getting me confused

Q All right A debt that is held by an entity, a separate corporate entity, that debt, unless there is a personal guarantee, and you said a personal guarantee in writing, it doesn't need to go on someone's personal financial statement

MR. FAULCONER: Objection, Your Honor He did not say "personal guarantee in writing "

MR. BROWNLEE: Actually, he did

THE COURT: The objection is sustained If there is any point to be made, you have made it So move on

MR. BROWNLEE: Thank you, Judge

BY MR. BROWNLEE:

Q Let me move to this next loan if we can. If we could pull up RM-1521 If you blow up the middle there, there you see a wire transfer on 5-22 from Starwood Trust for $20,000; is that correct?

A Yes

Q If you go to the top, once again, this is to MoBo Real Estate Partners, LLC?

A Yes

Q We won't go into it again, but again, this is now a payment, and if it is a loan, it is a debt for the LLC; is that correct?

MR. FAULCONER: Objection, Your Honor Characterizing the payment

THE COURT: No, he can answer that. It is clearly a debt of the LLC

BY MR. BROWNLEE:

Q Okay And then if you just blow up that part, the date on it is what, sir?

A The date for the deposit, the wire, was 5-22, May 22nd.

Q That's May 22nd. Now, if we pull up Government Exhibit 416, a government exhibit, I think, that's dated as of April 30th, 2012 Do you see that?

A Correct

Q So if you have a financial statement and it is submitted as of this date, do you need to include debts that you incur after that?

A Financial statement is good for one year from the date it is issued. And it would not be required

Q So the answer is no

A Right

Q Okay Let's move on The government asked you yesterday about late fees And I want -- and there were a series of late fees that we went through for the year 2009 Do you remember that?

A Yes, I do

Q Is it fair to say that a late fee is imposed on an individual or an entity after 15 days; is that right?

A Correct

Q And then the payment is considered missed after 30 days So if 30 days lapses, it is a missed payment, and after 15, it is late Is that fair?

A Yes

Q All right And based on your knowledge, Mr McDonnell and his sister never missed a payment; is that correct?

A Correct

Q Okay And of course they never defaulted on the loan; is that correct?

A Correct

Q Okay And I think you have testified before that as long as the bank receives the payment within 30 days, the bank is what you called very comfortable; is that right?

A Yes, that's correct

Q All right Now, let me talk generally about Maureen McDonnell We will call her sister Maureen and Bob You have known them for a long time; is that correct?

A Yes

Q Okay And it was your understanding that combined, they had sufficient resources to cover these debts, and you knew that and you felt comfortable with that; is that correct?

MR. FAULCONER: Objection, Your Honor, to the analysis after the fact

THE COURT: If you give it a time that's relevant, you can go ahead and ask the question. But after the fact, it is not good.

BY MR. BROWNLEE:

Q At the time they had this loan, you felt very comfortable that together, his sister and him together could make the payments on these loans; is that right?

A Yes

MR. FAULCONER: I apologize, I object again

The time they had this loan to MoBo was before and after the financial statement

THE COURT: "At the time that you granted these loans " You can ask that question.

BY MR. BROWNLEE:

Q At the time you granted the loans, did you feel comfortable that Bob and his sister, Maureen, could make payments on these loans?

A Yes

Q Okay And they always made their payments and they never missed a payment, I believe you testified.

A Yes

Q Okay Now, this loan was originated in 2005; is that correct?

A I don't know We have one in 2005 and one in 2006 I don't know which one you are referring to.

Q Let's pull up RM-0035 Is this a loan transaction history?

A Correct

Q Okay And this goes all the way back to 2005; is that right?

A Okay

Q And I just want to walk through this If you could make the page a little smaller And these loan transaction histories here show late fees if there are any; is that right?

A Yes

Q So is there any late fees on this page?

A No

Q How about the next page?

A Can you make it bigger, please? No

Q How about the next page?

A No

Q How about the next page?

A No

Q How about the next page?

A No.

Q We are up to 2007 How about the next page?

A No

Q How about the next page?

A No.

Q We are up to 2008 How about the next page?

A No

Q How about the next page?

A No.

Q How about the next page?

A No

Q How about the next page?

A No.

Q How about the next page?

A Yes

Q In April

A Yes

Q All right So there are no late fees from 2005 until 2009, in April of 2009; is that correct?

A Yes

Q Okay You can take that down. Now, it is understood that one of the reasons you gave this loan is the strength of the Governor's sister's financial status; is that correct?

A Yes

Q Okay And you understood -- well, let me show you what's been marked as RM-077 This has been admitted. I think it is 0077 All right, this is Maureen McDonnell's W-2 for 2012 If we could redact the Social Security information, please All right And in 2012, at the time these loans were made from Mr Williams, you see the Governor's sister made nearly $530,000 that year

A Yes

Q All right And if you look at, pull up RM-0033 This is in evidence as well, Your Honor The date of this is what, sir? If you look at the top right-hand corner

A Advice date?

Q Do you see it? Is that March 9th, 2012?

MR FAULCONER: Objection, Your Honor May we approach?

THE COURT: Come on up

(At Bench.)

MR. FAULCONER: Your Honor, the objection to this question is materiality, which you have already excluded. Looking at documents which are on the face of the financial statement couldn't go to a material point relevant to Mr McDonnell

MR. BROWNLEE: This is not materiality The first section was about falsity These documents are not false He went through every single late fee to try to establish that somehow they were financially desperate This goes directly at that The partnership of MoBo had more than sufficient resources So they raised this, and I think it is fair to allow us to show that, yes, there may have been some late fees, but these people had more than enough resources to cover these debts, and this is the President of the bank.

THE COURT: What does this have to do with this witness?

MR. BROWNLEE: The financial information we are showing now is of the Governor's sister, and the testimony here is when he made these loans, he made it to both of them. They want to try to lay this all on one guy, when in reality she was a big part of this

THE COURT: The objection is sustained.

MR. BROWNLEE: Thank you, Judge

(In Open Court)

BY MR BROWNLEE:

Q All right, Mr Sessoms, yesterday Mr Faulkner talked about when they first got these loans, that their intent was that the rental payments would cover what you testified as the debt service; is that correct?

A Correct

Q And I think you have said that that was your understanding and that was what they communicated to you that they would hope would happen; is that correct?

A Correct

Q Okay And now, covering the debt service is different than covering all the expenses of the business; is that correct?

A You are correct, yes

Q Okay So let me pull up Government Exhibit 513, Page 8, just for the witness If you look at the line called "Total Rental Income," okay, that's for 2008 through 2012 If you will highlight "Total Rental Income" all the way across

A Yes

Q Okay And then if you look down at the bottom line, total interest expense, is it fair to say that the rental income for every year from '08 to 2012 --

MR. FAULCONER: He is testifying This document is in evidence The witness has never seen it before He is asking him to compare numbers on a document that's not in evidence

THE COURT: Do you know anything about this document?

THE WITNESS: No, sir

MR. BROWNLEE: You can take it down.

BY MR BROWNLEE:

Q If the rental income is more than the debt service, the interest that they are paying on the debt, is that your understanding of what the point was, when they went into this, that the debt service -- that the rental income would be more than the debt service?

A That was certainly the desire, yes

Q Fair enough

MR. BROWNLEE: Court's indulgence for one minute

THE COURT: Sure

(Counsel conferring with co-counsel)

MR. BROWNLEE: Your Honor, could we just approach for a moment?

THE COURT: Come on up.

(At Bench)

MR. BROWNLEE: This is the first of a series of bankers we are going to hear from today, Judge And we understand the Court's materiality ruling and we are going to follow it to the letter But we also believe that the elements they have to establish is that, number one, the document is false, and secondly, it was done with the intent to influence the bank And so our questioning is about falsity and I want to make sure that we are in line with the Court's rulings, but that we can try to show, because if they don't have to be on there --

THE COURT: Let's go back to the previous ruling I'm not saying that you can't get that information out through the right witness But this wasn't the one

MR BROWNLEE: I understand the last part of it, Judge I'm just talking generally speaking --

THE COURT: If you want to make the case that they had sufficient financial wherewithal to do that, there is nothing wrong with that But you can't have a witness get up and start talking about stuff --

MR. BROWNLEE: I understand I'm really talking about the initial part of the examination when we were trying to establish that these loans to an entity don't need to be on this form. And I think we got that in, but I want to make sure because all these witnesses are coming up, and that's the heart of this, that the document itself is not false

MR. FAULCONER: We didn't have any problem with him asking questions about what does the form say, does it say LLC, partnership, other loans payable That kind of testimony is fine We also have our own testimony about the conversations with the defendant on direct examination. We don't have any problem with any of that testimony It is when they start going to things that are either after the loan or things that are just the banker's subjective intent, legal conclusions, materiality conclusions

THE COURT: I'm afraid you've got all the guidance I can give you. I rule on the questions as you ask them.

MR. BROWNLEE: I don't want to run afoul of the Court's position. But our position is these documents are not false because the loans didn't need to be on there That's what the evidence is in the 302's from the other witness They never asked those questions They never asked if it was false

MR FAULCONER: Respectfully, that's not true And obviously, we disagree with that position as to who the loans are to.

MR. ASBILL: Our client is going to testify as well, and the question, and if in fact the loan is to Ms McDonnell, if in fact the loans are to MoBo, they are not required to be on the form

MR. FAULCONER: To clarify, this particular transaction is only charged with omitting $50,000 in liability Even if the first loan is to Ms McDonnell, that makes absolutely no difference on whether we have sufficient on this particular charge. It is our position based on the testimony that these loans were to Mr McDonnell and that he had gauranteed these just as much as Ms McDonnell

THE COURT: Listen to me When the bankers come along, the question that you ask is, are these particular procedures, methods, how things are done as the bankers You can't ask him "In your view " Right? This is an inappropriate question. So I can't tell you how to ask this question to get you to do it right, but what I will tell you, if the objection is made and your question is inappropriate, I will sustain it I don't have anything, any problem with the area of inquiry

MR. ASBILL: We have several bankers, who could justify under the Court's ruling that the practice of the bank would be you wouldn't have to put it on.

THE COURT: Well, if you can make that out

MR. ASBILL: He has been President

THE COURT: We will see

(In Open Court)

BY MR. BROWNLEE:

Q Mr Sessoms, I'm just about done. I just want to go back and make sure Sir, is it the practice of the bank that loans to LLC's that don't have personal guarantees in writing, they do not need to be on personal financial statements? Is that an accurate statement?

A Yes

Q Okay Thank you.

THE COURT: All right. Mr Burck?

MR. BURCK: Your Honor, just very briefly

CROSS-EXAMINATION

BY MR. BURCK:

Q Good morning, Mr Sessoms

A Good morning

Q My name is Bill Burck, and I represent Maureen McDonnell Now, just for clarity, the application that you were going through with the government and Mr Brownlee, Ms McDonnell was not -- Ms McDonnell, the wife, was not an applicant on that form, right?

A On the financial statement?

Q The financial statement

A That's correct

Q Just so I understand, a personal guarantee in your practice and your experience with this form and as the President of this bank, a personal guarantee is required for a loan that is not in the name of the applicant in order for that loan to be listed on this form, right?

A One more time

Q Let me try it this way If a personal loan is to Ms McDonnell, and there is no written guarantee by Mr McDonnell for that loan, would that loan have to be listed on Mr. McDonnell's application?

A No

Q No

MR. BURCK: Thank you, Your Honor, that's it

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR FAULCONER:

Q Mr Sessoms, how many conversations did you have with Mr McDonnell about whether or not any loans from Jonnie Williams or Starwood Trust were personal guarantees, LLC guarantees, personal loans, LLC loans? How many conversations?

A None

Q As a banker, how do you typically know who is responsible for a loan?

MR BROWNLEE: Objection

THE COURT: Overruled.

THE WITNESS: The financial statement

BY MR. FAULCONER:

Q Piece of paper, right?

A Right

Q How many pieces of paper or loan documents did you as TowneBank sign with MoBo, LLC?

A I do not know.

Q Are you aware of any loans that you made to MoBo, LLC?

A No

Q But you were aware that there was a real estate partnership that was operating these properties, right?

A Yes

Q But you made the loan to Mr McDonnell and his sister, right?

A Correct

Q Now, as a politician, it is fair to say, have you shaken a lot of hands before?

MR. BROWNLEE: Objection, Your Honor

THE COURT: Overruled

THE WITNESS: Yes

BY MR. FAULCONER:

Q How many of those have been of a corporation?

A Have I shaken hands with a corporation?

MR BROWNLEE: I object

THE WITNESS: None

BY MR FAULCONER:

Q Have you ever Done a handshake deal with a corporation?

A No

MR. FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

BY MR FAULCONER:

Q If we could pull up Exhibit 416 Just to be clear, Mayor Sessoms, looking at the top of this document, can you tell us what date this document was actually sent to TowneBank?

A October 3rd, 2012

Q And scrolling down to the bottom right-hand portion of this document, could you read what it says, the first line under "Liabilities and Net Worth"?

A The first line?

Q Yes

A "Other Loans Payable "

MR. FAULCONER: One moment, Your Honor No further questions

THE COURT: All right Thank you, Mayor You may stand down

THE WITNESS: Thank you, sir

(Witness stood aside)

Call your next witness

MR. FAULCONER: Your Honor, the United States calls Barbara Tierney

BARBARA TIERNEY,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FAULCONER:

Q Could you please state your name and spell your last for the court reporter?

A Barbara Tierney, T-I-E-R-N-E-Y

Q And what city do you currently live in?

A Virginia Beach

Q Am I correct that you recently retired?

A You are correct.

Q Before that, where did you work?

A I worked for TowneBank.

Q What was your role there?

A I was a Senior Vice President My functional title was Senior Credit Analyst

Q About how long did you work there?

A Almost nine years

Q Now, are you familiar with any real estate-related loans that TowneBank had with Mr McDonnell, Robert

McDonnell, and his sister, Maureen McDonnell, while you worked there?

A Yes, I am familiar

Q How many loans were there, to your knowledge?

A Two

Q And just to be clear, was that the wife, Maureen McDonnell, or the sister, Maureen McDonnell?

A No, it would be the sister

Q Now, I'd like to show you what's been previously admitted as Exhibit 41 Zooming in on the top portion there, is this the Disbursement Request and Authorization for one of those two loans?

A Could I see the bottom, please, as well?

Q Sure If we could scroll down.

A Yes I believe it is

Q And what's the dollar amount at the top of that one?

A $249,990

Q We can take that down Now, if we could turn to what's been previously admitted as Exhibit 43 Do you recognize this document?

A Yes

Q Is this the Disbursement Request and Authorization for the other of the two loans?

A Yes, it is

Q All right You can take that down. Now, Ms Tierney, do you recall participating in a loan renewal process for the larger of these two loans in October of 2012?

A Yes, I do

Q Could you explain exactly what a loan renewal process is?

A On a regular basis, the bank reviews its loan portfolio to ensure that the credit is of good standing

Q During that process, do you typically request a personal financial statement from the borrower?

A Yes, we do.

Q I'd like to show you what's been admitted into evidence as Exhibit 416 If we could show this to Ms Tierney, and then flip through the pages Ms Tierney, do you recognize this document?

A I do

Q What is it?

A It is a personal financial statement of Robert McDonnell

Q Is this the personal financial statement that you used in the annual review in the October of 2012 time frame?

A It is

Q If we could go to the first page of that document And zooming in on the lower right-hand portion, Ms Tierney, do you see anything listed on "Other Loans Payable" there?

A No, I do not

Q Is there anything listed under "Liabilities of Proprietorships"?

A No, there is not

Q Is there anything listed under "Liabilities of Partnerships or Joint Ventures"?

A No, there is not

Q If we could zoom back out Now, Ms Tierney, I see that this says that it is a Heritage Bank personal financial statement Even if somebody submits a personal financial statement from another bank, will you still use it in your renewal process?

A Yes, we do

Q Is that what you did in this case?

A Yes, I did.

Q Now, in addition to receiving and incorporating a personal financial statement, did someone on your staff or someone at TowneBank also run a credit report as part of this annual review?

A Yes

Q I'd like to show you what's been previously admitted as Exhibit 417 Zooming in on the top portion there, does this look like the credit report that was run as part of this annual review?

A Yes, it is

Q Have you had a chance to review this credit report before coming in to testify today?

A Yes, I have

Q To your knowledge, are there any loans related to Jonnie Williams or Starwood Trust listed on this credit report?

A To my knowledge, no, there are not

Q Now, in your experience, would you typically see a personal undocumented loan on a credit report?

A No, you would not

Q As someone who is doing this process, how would you typically find out about that type of loan?

A It would have to be disclosed on the personal financial statement

Q Now, we have looked at the personal financial statement and at the credit report In the entire process that you did here for this loan renewal, did you ever become aware in any way of any loan related to Jonnie Williams or Starwood Trust?

A No, I was not aware of any loan.

MR. FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

No further questions, Your Honor

THE COURT: All right Cross?

CROSS-EXAMINATION

BY MR BROWNLEE:

Q Ms Tierney, my name is John Brownlee, and I represent Bob McDonnell I just have a couple of questions Mr Faulconer showed you what's been marked as Government Exhibit 416 This is the Heritage Bank financial statement for Bob McDonnell And he asked you if there were loans from Mr Williams that were on this document And he asked you if you ever became aware of that; is that correct?

A That's correct

Q Is it fair to say, ma'am, that if those loans are not required to be on this document, then they wouldn't be on the document; is that correct?

A I'm not sure that I understand your question

Q Okay Well, he asked you if they are on there, and you said no I'm just asking, if they are not supposed to be on here, they don't need to be on here, that wouldn't be a surprise to you, right? That they are not on there?

MR FAULCONER: Objection as to relevance

THE COURT: Sustained.

MR BROWNLEE: Thank you.

THE COURT: Sure.

CROSS-EXAMINATION

BY MR. BURCK:

Q Good morning

A Good morning

Q My name is Bill Burck, and I represent Maureen McDonnell Maureen McDonnell, wife, was not a borrower on this transaction, this account, right?

A That's correct

Q So you wouldn't have been collecting information from her

A No.

Q And is there any circumstance in which you would have collected information from her for this transaction?

A No, not really, if she is not a borrower No, we would not

MR. BURCK: Thank you, Your Honor No further questions

THE COURT: Anything else?

MR FAULCONER: No, Your Honor

THE COURT: All right Thank you, ma'am. You may stand down

(Witness stood aside)

Call your next witness, please

MR. DRY: The United States calls Frank Pollack to the stand.

FRANK R POLLACK,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR DRY:

Q Good morning, Mr Pollack.

A Good morning

Q Could you please state your name for the record?

A Frank Richard Pollack.

Q And how do you spell your last name?

A P-O-L-L-A-C-K.

Q Now, where did you work in January of 2013, sir?

A Pentagon Federal Credit Union.

Q How long had you worked for Pentagon Federal Credit Union?

A Since April of 1978

Q Is Pentagon Federal Credit Union often called PenFed?

A Yes, sir, it is

Q Now, in January of 2013, what was your title?

A I was President and CEO

Q And how long were you the President and CEO of PenFed?

A Since January 1st, 2000

Q At some point did you step down from that role?

A I did, March 31st of this year

Q Okay Now, is PenFed a federally-chartered credit union?

A Yes, it is

Q How long has it been federally chartered?

A 1935

Q Now, I'd like to bring up Government Exhibit 453 Do you recognize this document, sir?

A Yes, sir, I do

Q What is it?

A It is my calendar for January of 2013

MR DRY: Government moves to admit Government Exhibit 453, Your Honor

THE COURT: It will be admitted.

BY MR. DRY:

Q Do you normally record your meetings and phone calls on this calendar?

A Yes, I do

Q That was your standard practice?

A Yes

Q Okay Turning your attention to January 11th, if we could blow up that block, please Now, you see where it says phone call around 1:10 p.m. with Governor McDonnell, and what is the "Re:," what does that mean?

A There was a phone call to take place regarding a mortgage refinancing on his home

Q Did you in fact have a call with Mr McDonnell on January 11th?

A Yes, sir

Q And how did that come about?

A I had been contacted earlier by a gentleman named Richard Pillow, the CEO of the Virginia Credit Union League, and he had asked whether we would be interested in the Governor refinancing his home with us

Q Okay At this time, when you are getting this call, did you even know that Mr McDonnell was a customer of PenFed at that point?

A Yes, we knew he had been a member for a long time

Q Okay What did you and Mr McDonnell discuss during your call on January 11th?

A He was interested in the rates that we had, and we had a brief discussion regarding rates and loan-to-value requirements

Q Did he discuss what kind of mortgage, what type of properties he wanted mortgages for?

A Initially, the conversation revolved around their personal home, as well as later on, a second home that was owned in, I think, Nelson County

Q And from your call, did you understand that these were going to be rental properties or these were personal residences?

A They were personal residences

Q And during that call, did the Governor, Mr McDonnell, talk about how quickly he wanted to move forward on these?

A We had very good rates and he was interested in closing quickly

Q That's not unusual, for people to want to lock down rates?

A It is very frequent

Q Okay Let's go to Government Exhibit 466, please Do you recognize this document, sir?

A Yes, I do

Q And that's an e-mail from Mr McDonnell to you?

A Yes

MR. DRY: Government moves Exhibit 466 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q If we could blow up the top for a second. What's the date of this e-mail, sir?

A January 21st

Q And when he talks about "We are interested in pursuing both," what is he referring to?

A Both properties

Q Okay And those are the properties we just talked about, the personal residences?

A Yes, sir

Q At this point, had you had any discussions or communications with Mr McDonnell about the idea of refinancing rental properties?

A No, sir

Q Okay Now, going back to Government Exhibit 453, I want to turn your attention to January 23rd. Did you have another call with Mr McDonnell on January 23rd?

A Yes, we did.

Q And who participated in that call?

A The Governor, his wife, and his sister

Q That was sister, Maureen?

A Yes, sir

Q And from PenFed, who participated in the call from that side?

A Myself, our Executive Vice President for Mortgages, Debbie Ames Naylor, her number two, Larry Blake, and our loan processor who was going to handle the Governor's requests, Nan Bolt

Q B-O-L-T; is that correct?

A Yes

Q Now, while you are on this call, what's being discussed?

A Well, I wasn't on this call very long, actually I introduced the Governor to the people that were going to handle his account, made sure that he knew we would take good care of him and get the loan closed quickly

Q Do you typically participate in phone calls with people seeking mortgages or was this kind of a special case?

A This was a special case He was the Governor

Q Fair enough Now, PenFed is what's referred to as a full doc lender?

A Yes, we are That's the only kind of loan we make

Q What is a full doc lender? What does that mean?

A It means that you have to verify your income, your place of employment, all of your debts, everything that is involved in the loan application It is what the rest of the world didn't do and why we got in trouble

Q When you say "we got in trouble," you are talking about the financial crisis?

A Yes

Q So how do you go about verifying information provided by a lender -- by a borrower?

A With regard to employment, we require pay stubs and bank statements for their assets, and we check on valuations of the home, so an appraisal is required, and we will pull a credit report to see their credit history

Q Do you want to see documentation of any debts?

A Generally speaking, debts are in the credit report, so we might occasionally ask for documentation on a particular mortgage But not necessarily so.

Q Let's talk about that If a loan applicant has personal loans that are undocumented --

MR. BROWNLEE: Objection

THE COURT: Overruled.

BY MR DRY:

Q If an individual has personal loans that are not documented on the credit report, what would be the way that you would be able to find out about those?

A The consumer would have to tell us about them.

MR. DRY: I have nothing further Thank you, sir

THE COURT: Any questions, Mr McDonnell?

CROSS-EXAMINATION

BY MR BROWNLEE:

Q Good afternoon, sir My name is John Brownlee, and I represent Bob McDonnell I have just a few questions Mr Dry asked you about, that you are a full doc lender; is that correct?

A Yes

Q I think he asked you what that meant You testified that it means you had to verify income, place of employment, and debts and liabilities; is that correct?

A That's correct

Q You take that seriously, do you not?

A We do

Q So if you felt like someone wasn't complying with full doc --

MR DRY: Objection, Your Honor

THE COURT: Finish the question.

BY MR. BROWNLEE:

Q If you felt like someone wasn't complying with what Mr Dry talked about full doc lender, you would have an issue with that; is that correct?

MR. DRY: Objection, relevance

THE COURT: Sustained.

MR. BROWNLEE: We have nothing further

THE COURT: Mr Burck?

MR. BURCK: Nothing, Your Honor, thank you

THE COURT: I assume you don't have anything else?

MR DRY: No, Your Honor

THE COURT: You may stand down

(Witness stood aside.)

Call your next witness, please

MR. DRY: The government calls Nanette Bolt

NANETTE BOLT,

called as a witness by and on behalf of the government,

having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DRY:

Q Good morning, Ms Bolt

A Good morning

Q Can you please state your name for the record and please spell both your first and second?

A Nanette, N-A-N-E-T-T-E, Jeanine, J-E-A-N-I-N-E, Bolt B-O-L-T

Q Now, what city and state do you currently live in?

A Woodbridge, Virginia

Q And do you work in the banking industry? Or the credit union industry, I should say?

A Yes, I do.

Q And how long have you worked in that industry?

A 24, 25 years

Q And where do you currently work?

A Pentagon Federal Credit Union.

Q And what was your first job at PenFed?

A Equity Supervisor

Q What does an Equity Supervisor do?

A Essentially overlook the equity processing staff, underwriting, managing the department

Q Were you subsequently promoted from that job?

A Yes, I was

Q And what were you promoted to?

A First Mortgage Supervisor

Q That was about three-and-a-half years ago?

A Yes

Q What does a First Mortgage Supervisor do?

A Basically the same thing, receive processors, troubleshoot loans, take care of higher profiles, higher profile files, difficult files, anything like that

Q When you say "processors," what are you talking about, processors of what?

A Loan processors

Q Including mortgages?

A Yes

Q Okay And as part of your job at PenFed, did you work on certain loan refinancings for Mr and Ms McDonnell?

A Yes, I did.

Q How did that come about?

A One day I was requested to go up to Frank Pollack's office for a conversation in regards to a Governor loan

Q Did that occur on January 23rd, 2013?

A Around there, yes

Q And who was on the call from PenFed?

A Frank Pollack, Debbie Ames Naylor, Larry Blake, and myself

Q And who was on the call from the Governor's family side?

A The Governor was, I think Ms McDonnell, I don't recall, and the sister, Maureen McDonnell

Q Okay Now, can you just walk me through what's discussed on this January 23rd -- at some point, Mr Pollack drops off; is that right?

A Yes

Q And what was discussed? Were you on the call the entire time?

A Yes

Q What was discussed during the call?

A We discussed refinancing a property on Devils Knob Loop, which was a second home that they had. We kind of discussed the primary residence which we currently held lien at that time

Q Whose primary residence are we talking about?

A I'm sorry, that would be Robert and Maureen McDonnell

Q Okay Not sister Maureen, but wife Maureen?

A Correct

Q Was there any discussion, were you collecting any information from the Governor and Ms McDonnell, wife Maureen?

A Wife Maureen. I did Maureen McDonnell, the sister, dropped off the conversation. We basically went over some of the information as far as assets, income, credit properties owned. We briefly scanned that information and I did so off of the previous application we had with them.

Q Let's talk a little bit about that. When you say there is a previous application, what are you talking about?

A I'm sorry, it was a previous loan that we had done for the primary residence

Q So at the time of this call, PenFed was carrying the Morton the primary residence of Mr and Ms McDonnell?

A Yes

Q And do you remember approximately when that was?

A I want to say it was like 2007, 2008

Q Okay And what is the purpose for you getting this information from the Governor?

A In order to process the loan to move forward with an application for Devils Knob Loop.

Q When you say Devils Knob Loop, was there another -- was there an entity associated with Devils Knob Loop?

A Yes, there was

Q Blue Ridge Heaven?

A Yes

Q Okay Now, how quickly did the McDonnells want to close on -- first of all, taking a step back, in the conversation are you discussing only Devils Knob Loop or are you also discussing refinancing the personal residence of the McDonnells'?

A Briefly, the personal residence at that time

Q Okay

A But mostly Devils Knob Loop.

Q How quickly did they want to refinance the loan on Devils Knob Loop?

MR. BURCK: The witness doesn't recall if Ms McDonnell is on the phone call He is referring to both McDonnells

THE COURT: Is that what you said? That you didn't recall whether she was, Ms McDonnell, was on the call or not?

THE WITNESS: Correct

THE COURT: Okay Well, confine it to who she can testify about or do something else, move on.

MR. DRY: Yes, sir

BY MR. DRY:

Q How quickly did at least Mr McDonnell want to close the loan on Devils Knob Loop?

A Pretty quickly They were looking at about a 30-day turnaround.

Q Is that unusual, ma'am?

A No

Q Why is that not unusual?

A Everybody wants to refinance quickly to get a lower rate

Q That's locking in the current rate?

A Yes

Q Okay During that conversation, were you taking any notes?

A I was, yes

Q And do you have those notes today?

A No, I do not

Q And do you know what happened to them?

A They were most likely shredded My desk had moved around a couple times and I was carrying a lot of paperwork and our office is primarily paperless

MR. DRY: One moment, Your Honor The government would like to refresh the witness's recollection.

(Document proffered to witness)

BY MR. DRY:

Q Just read to yourself the second paragraph.

A You want me to read this?

Q I just want you to read it to yourself, the second paragraph. You can flip over to the second page as well

(Witness perusing document)

After reviewing that document, ma'am, do you remember Ms McDonnell participating in this call on January 23rd, 2013?

A She most likely was

Q Okay At any point during this initial call, do you remember Mr or Ms McDonnell mentioning personal loans that they had?

A No

Q Did you recall any mention of a Mr Jonnie Williams?

A No

Q Any mention of an entity called Starwood Trust?

A No

Q Now, in order to fill out -- to obtain a mortgage loan from PenFed, do borrowers have to fill out a mortgage application?

A Yes

Q Okay And typically, how do they go about that?

A Through our institution, typically they would apply online or they would call up a member services representative who will complete the application for them over the phone

Q That's the typical way a mortgage application gets filed?

A Yes

Q In this case, for Mr and Ms McDonnell, wife Ms McDonnell, did they use either one of those processes?

A No, they did not

Q And in fact, what process was used in this case?

A I built the applications in because of the sensitivity of the applications

Q And when you say "the sensitivity," PenFed was trying to assist with what?

A Assist with, one, expediting their applications, and kind of keeping their applications a little more sensitive

Q Their personal identifiers, limiting the number of people It is nothing nefarious And it was your idea, it wasn't their idea, correct?

A Correct

Q I just want to make sure When you say build the application or build the loan, I guess, what do you do to build a loan?

A I go into the system and input the information that's provided, create an application number

Q Okay And in this case, this is after, you would be doing this after the January 23rd call?

A Yes

Q Okay And what did you rely on to build the loan application?

A I relied on the notes I had at the time, the previous application from the loan that we had with them, part of our conversation that we had on the 23rd, and discussing the application with Larry Blake

Q Had you run a credit report?

A Yes

Q Did you consider the credit report in building the application as well?

A Yes

Q I'd like to go to Government Exhibit 475, please Ma'am, do you recognize this string of e-mails?

A Yes, I do

Q This is between you and Mr McDonnell as well as Larry Blake and it appears Ms McDonnell, correct?

A Correct

MR. DRY: Government moves for Government's Exhibit 475 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q I'd like to go to your e-mail at 6:56 p.m., ma'am. Who is that e-mail to?

A Governor McDonnell and his wife

Q Okay Regarding the, where it says, "The encrypted documents can be accessed using the last four digits of the primary borrower's Social Security Number," what does that mean?

A When we send electronic documents, we encrypt the documents because they are personal information. And typically we will use the four last digits of the primary borrower's Social Security Number

Q I got you. Then the second paragraph, you talk about "Attached are the documents for refinancing on Devils Knob Loop Please review the information, sign, and return. Please make any changes, corrections you feel are necessary on the application "

First of all, what documents are you sending them on the encrypted system?

A The Application, the Good Faith Estimate, Truth In Lending, Notice of Intent to Proceed, Borrower's Authorization for Additional Information, Affiliated Companies There's quite a few different documents

Q Okay And then you write, "Once received, this will provide your authorization for PenFed to begin ordering services, appraisal, and title " Is this kind of like a necessary first step from them for you to go forward?

A Yes Because I needed their permission to move forward.

Q Okay And when you, going up, can you just read what Mr McDonnell responds with, please?

A "Nan, thanks so much for your very prompt service

We will review and edit and sign and fax back soon

Thanks "

Q Okay Let's go to Government Exhibit 476, please Have you had an opportunity to review this document before your testimony today, ma'am?

A Yes, I have

Q And generally, what is this document?

A This is the Uniform Residential Loan Application, also known as a 1003

Q Does it also include the other documents that you were talking about earlier, the Good Faith Estimate and Borrower's Authorization, all of that?

A Uh-huh

MR. DRY: The government would move government Exhibit 476 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR DRY:

Q Is it fair to say that what we have, this packet of documents, is what you were referencing in your earlier e-mail that was going to be accessed with the last four digits of the Social Security Number?

A Correct

Q That's this packet?

A Correct.

Q Now, this is typically, this is a Uniform Residential

Loan Application; is this often referred to as a URLA?

A Yes

Q Who put input of the information on this form?

A I did.

Q Okay And had you had any subsequent conversations from the 23rd to the date of this e-mail, January 28th, before you filled out this, that you can remember, with the McDonnells?

A I don't recall off the top of my head.

Q Okay But what information did you use to fill out this loan application or input the data?

A Again, it was from our initial conversation. It was going over the application with Larry Blake and using previous information that we already had on file

Q Okay Now, going to the next page, can you blow up on the right-hand side, please, the liabilities? Go up a little bit, please In fact, can you blow up the paragraph, the instruction paragraph right there? Can you read that, ma'am, where it says, "Liabilities and pledged assets "?

A Just a little bit more

Q There you go

A Yes

Q Okay And this requires that a borrower list the creditor's name, address, and account number for all outstanding debts, including automobile loans, revolving charge accounts, real estate loans, alimony, child support, stock pledges, et cetera, and to use a continuation sheet if necessary

Can we scroll down and just slowly scroll down, are any of these, do any of these mention Starwood Trust?

A No, they do not

Q Any mention of Jonnie Williams?

A No

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MR DRY: Okay Now, stop there

BY MR DRY:

Q Now, on the bottom there, it says what?

A "See Attached "

Q Okay

MR DRY: And can you come back out to the full document, and then go on the left-hand side towards the bottom Thank you, Shelly

BY MR DRY:

Q And is there a place for stocks and bonds?

A Yes, there is

Q And is there anything listed there?

A No

Q Okay

MR DRY: Now, going to the fourth page of the application Okay And going to the top Thank you, Ms Noble

BY MR DRY:

Q Do you see where it says "Additional Liabilities"?

A Yes

Q And this is continuation sheet that was mentioned on the "See Attached"?

A Yes

Q Okay And, again, nothing about Jonnie Williams or Starwood Trust, correct?

A No
Q All right Now, just briefly, going to the next page, can you briefly describe what a good faith estimate is?
A A good faith estimate gives an estimate of the charges that will be applied to the application
Q All right
MR DRY: And, Ms. Noble, if we can go to the eighth page of the exhibit
BY MR DRY:
Q And what is an Affiliated Business Arrangement Disclosure Statement?
A It discloses any affiliates that we deal with, what their potential charges would be, what the average charges are in the market for different services that are required for the application
Q Okay And on the next page, it has to be signed by the borrowers?
A Correct
Q And on the tenth page of the exhibit, please, which should be the next What's a Borrower's Authorization?
A It authorizes the lender to obtain information for the processing of the application
Q From third parties?
A Yes Yes

Q And I believe PenFed is a full doc lender?

A Correct

Q And does this authorize you to go get back-up documentation as needed?

A Correct

Q Okay And that's -- the borrowers have to sign on that as well?

A Yes

MR DRY: Going to the 13th page of the exhibit, please

BY MR DRY:

Q And what is this document, ma'am?

A The Notice of Intent to Proceed

MR DRY: And can you just blow that up

BY MR DRY:

Q And what does this authorize you to do?

A It authorizes me to start ordering services, full-blown processing of the application

Q Now, what property is listed on that?

A 770 Devils Knob Loop

MR DRY: And can we go back? I apologize I don't know if I did this, and I should have Can we go back to the first page of this exhibit? And can you blow up just that top paragraph? No No No You were right before Right there Thank you

BY MR DRY:

Q And what property is this loan package related to?

A 770 Devils Knob Loop

Q And that was the Blue Ridge Heaven?

A Correct

Q Okay

MR DRY: All right Let's go to Government's Exhibit 479, please

BY MR DRY:

Q Do you recognize this string of e-mails?

A Yes, I do

Q And this is between you and Mr McDonnell?

A Correct

Q And this is dated February 1st of 2013?

A Yes

MR DRY: Government moves Government's Exhibit 479 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q Now, going to the bottom of this Right there The very bottom, is that -- 6:56 p m , is that the same e-mail that we talked about earlier, and then this is just a separate response at a later date from the Governor? Is that right?

A Correct

Q Okay And in this, it says, "Nan, did you send documents to my sisters also for signature Some of my originals show a space for their signatures, but I assume you sent them their own copies "

When you have multiple people -- borrow -- or multiple people on one loan, do you typically try to make sure that personal information from one borrower goes to that borrower only, and there's not -- the borrowers, regardless of family relationship, don't see each other's personal information?

A Correct

Q Okay Now, he asked, "Can I fax back the forms and mail originals and then send the supporting documents Monday after I find them all this weekend?"

And, again, the date of that e-mail, ma'am?

A January 31st

Q And what's the date -- or the day of the week?

A Thursday

Q Okay

MR DRY: And can we go up?

BY MR DRY:

Q And, in fact -- stop -- wait No Down a little bit lower There you go

And, in fact, is this your response?

A Yes, it is

Q And is that your fax number that you can -- that you informed Mr McDonnell he could fax the information to?

A Yes, it is

Q And you tell him it's not necessary to send the originals Faxes are fine?

A Correct

Q And then he responds with a "thanks," correct?

A "Thanks, Nan "

Q Okay Now, that's Thursday -- I'm sorry That "thanks" response is Friday, February 1st, correct?

And what's the time on that?

A 9:32 a m

Q Okay

MR DRY: Now, let's go to Government's Exhibit 480, please

BY MR DRY:

Q Ma'am, this is an e-mail from Pam Watts to you, correct?

A Correct

Q It's on February 1st of 2013?

A Yes

Q And it's later that afternoon?

A Correct

Q Okay

MR DRY: Government moves for Government's

Exhibit 480 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q Can you please read the subject line of this?

A "Ms Bolt, attached are the loan documents from Governor McDonnell Please do not hesitate to contact me with questions Thank you "

Q And on the subject line it says, "Scanned from a Xerox multifunction device"?

A Correct

Q What was attached to this e-mail?

A That would most likely be all the documents that I had sent to them Disclosures

Q And let's take a look at this

MR. DRY: Let's go to the second page of the exhibit

BY MR DRY:

Q And was this the Affiliated Business Arrangement Disclosure Statement that we talked about?

A Yes

MR DRY: And then if we go to the next page

BY MR DRY:

Q And who is signing and acknowledging?

A Robert McDonnell and Maureen McDonnell

Q And what's the date?

A February 1st, 2013

Q Okay And then going to the fourth page of the exhibit, this is the Borrower's Authorization we spoke about?

A Correct

Q And who signs that document?

A Robert McDonnell and Maureen McDonnell

MR DRY: Can you go down, please

BY MR DRY:

Q Okay And to be clear, this is wife Maureen?

A Yes

Q The Maureen G Okay And then on the Borrower's Authorization, can you just read the first sentence for me?

A "I/we have applied for a mortgage loan from Pentagon Federal Credit Union "

Q Okay

MR DRY: Now let's go the eight page of the exhibit

BY MR DRY:

Q And, again, ma'am, this is the Intent to Proceed?

A Yes Yes

Q And who signs this, and what's the date?

A Robert McDonnell and Maureen McDonnell

Q And what property is this referring to?

A 770 Devils Knob Loop

Q All right

MR DRY: Now let's go to the ninth page of the document, and let's just kind of, yeah, blow it up

BY MR DRY:

Q Have you had an opportunity to review this, the URLA that was contained in this packet before?

A Yes

Q And this is what was faxed to Pentagon Federal Credit Union on federal 1st?

A Yes

Q February 1st of 2013?

A Correct

Q Okay Now -- just going down, scrolling down, please

Now, I see some handwriting on this document For all the non-handwritten portions, who would fill that out?

A I had

Q Okay And, again, you base that on the prior loan app, the credit report, and information from the call?

A Correct

Q Okay Did you fill out any of these handwritten corrections?

A No, I did not

Q Okay And had you previously informed the Governor in that e-mail we talked about, "Make any corrections and send it to me"?

A Yes

Q Okay Now, on the first page, what's written, handwritten in the years of school for Mr McDonnell?

A Twenty-one

Q And on the first page, what's handwritten in the years of school for Ms McDonnell?

A It looks like 23

MR DRY: Can you just blow that up?

A Twenty-three or 13

BY MR DRY:

Q Okay Either 23 or 13 One of the two Okay On the first page of the loan application, what's handwritten in for number of dependents?

A Two

Q And what is handwritten in for years at current address?

A Six

Q And I think we might have --

MR DRY: Can you go down, please? Okay I think we redacted the business phone block

BY MR DRY:

Q What is handwritten in for the -- well, first of all, can you look on your copy and see if there is a handwritten phone number on that page? It's going to be GMP-02588169 is the Bates number That's been redacted as well Don't worry about it, ma'am

What's handwritten next to the position title for Ms McDonnell?

A Director

Q All right

MR DRY: Now, going to the second page of the application That's Bates Number 170 There we go

BY MR DRY:

Q On the left-hand side, towards the bottom, the "Stocks & Bonds" block, is there anything listed?

A No

MR DRY: And then on the right-hand side, if we could scroll up

BY MR DRY:

Q Is there anything listed in any of the liabilities on this page regarding Jonnie Williams, Starwood Trust?

A No

Q Okay Now, on the bottom of that, it still says, "See Attached," correct?

A Correct

Q All right

MR DRY: And then going further down -- sorry Going to the next page --

BY MR DRY:

Q This isn't the continuation sheet This is just part of the loan application, correct?

A Correct

Q Going down, who signs and dates that?

A Robert McDonnell and Maureen McDonnell

Q Okay And what's the date on that?

A February 1st, 2013.

MR. DRY: Now, let's go to the next page, please And going to the -- yeah Blow up the top, please

BY MR DRY:

Q This is the "Additional Liabilities" block?

A Correct

Q Or box?

A Correct

Q Is there anything listed for Mr Williams there?

A No, there is not

Q Starwood Trust?

A No

Q At this point, you pulled the credit report?

A Yes

Q Was there anything regarding Mr Williams on the credit report?

A No, there wasn't

Q Starwood Trust?

A No

Q Before you filled out the application for -- for Mr and Ms McDonnell, up to this point, before this comes back, had either one of them ever mentioned Jonnie Williams or Starwood Trust to you?

A No

Q Ever mention personal loans that they held?

A No

Q All right.

MR DRY: Going to the bottom of that page, please On the very bottom, keep going There we go Can you just blow up that bottom, please.

BY MR DRY:

Q And this is the continuation page They sign again, correct?

A Correct

Q Can you read what is right above their signatures?

A Can you blow it up just a little more?

Q We can try

A "I/we fully understand that it is a federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18 United States Code, Section 1001 "

MR DRY: Okay We car take this exhibit down, please

BY MR DRY:

Q Now, what's the next step in the loan process? After you get this from the borrower, the signed Loan Application, Intent to Proceed, all that, what do you do? What's the next order?

A I order appraisal, order title, and then I start accumulating the information I requested

Q Okay

MR. DRY: Let's bring up Government's Exhibit 483, please

BY MR DRY:

Q Do you recognize this document, ma'am?

A Yes, I do

Q And what is it?

A It's a --

Q -- series of e-mails between you and Mr McDonnell and some of the people at the bank?

A Correct

Q And the date is February 5th of 2013 on the top one?

A Correct

MR DRY: Government moves Government's Exhibit 483 into evidence, please

THE COURT: It will be admitted

MR DRY: Turning to the second page of the exhibit, please, towards the top There you go That top e-mail

BY MR DRY:

Q And this e-mail is from Mr McDonnell to Debbie Ames Naylor First of all, who is that?

A She is the executive vice president in charge of mortgages at Pentagon Federal Credit Union

Q Okay So just the chain of command It goes from Mr Pollack to Ms Naylor, and then to you?

A Larry Blake is between Debbie and myself

Q Gotcha And in this, Mr McDonnell writes, "We have decided that on the 3112 and 3113 Sandfiddler properties we would like to apply" -- it looks like for a loan

Do you recall, what are 3112 and 3113?

A Those were two properties that they had down in Virginia Beach, also known as MoBo

Q They were rental properties?

A Correct

Q And can you read what he writes, starting with the "Since"?

A I'm sorry?

Q On the fifth line -- or fourth line, it says, "Since"?

MR DRY: There we go

A "Since we provided all the data for the loans already to Nan on the Wintergreen loan application, what else do you need from us on these applications? Thanks again The appraiser can call me on these properties Thank you "

Q Okay

MR DRY: And can we go up, please -- or actually, to the next -- or the first page of the exhibit

BY MR DRY:

Q And then at the bottom, Ms Naylor is responding back to you and Mr Blake

A Correct

Q And what is she instructing you to do at this point?

A "Can you please incorporate this info into their applications and confirm with him that we have adjusted the loan to those products Also see his comment on appraiser Thanks much, Debbie "

Q Okay

MR DRY: And then can you go up in the e-mail chain?

BY MR DRY:

Q And just being clear, what are you being told to do there? Exactly what are you supposed to do with the 3112 and 3113, building those loan applications?

A Build those applications in like I did with the 770

Devils Knob Loop and apply --

Q What are you going to use that --

A We're going to use the products that they chose, the 5/5 ARM at the 2 625 percent

Q But in order to build the loans, what are you going to be using for information to fill out the URLA?

A The information they provided for 770 Devils Knob Loop

Q Okay And, in fact, Mr Blake writes back, "We will use information from your existing applications for the loans on these two properties " Is that accurate?

A Correct

Q Okay

MR DRY: And then can we just go to the top part of the e-mail, please

BY MR DRY:

Q And that's Mr McDonnell's response, correct?

A Correct

Q All right

MR DRY: Let's go to Government's Exhibit 485

BY MR DRY:

Q And this is an e-mail chain between you and Mr McDonnell?

A Correct

Q And the date on this is February 15th of 2013?

A Correct

MR DRY: Government moves Government's Exhibit 485 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q This is a long e-mail chain, but let's see if we can move it along

MR DRY: Going to the fifth page of the exhibit It's going to be RFM-012655

BY MR DRY:

Q And I want to go with -- in the middle at 4:59 What are you telling the -- this is an e-mail from you to the Governor and Ms McDonnell; is that correct?

A Correct

Q And what are you telling them there?

A "The encrypted attachment can be accessed " And then, "Attached are the disclosures and estimated closing amounts for 31222 Sandfiddler "

Q Okay

A "We are awaiting the appraisal to see what the current value actually is "

Q And at this point, had you started ordering appraisals for the prior loans, the 77(sic) Devils Knob Loop?

A Yes

Q Okay And in this, you're sending them disclosures and estimated closing costs, correct?

A Correct

Q But not a new URLA, or did you, or do you remember?

A I usually would

Q Okay

A I do believe I did Because each application will have its own application

Q And on -- going to the fourth page of the exhibit, you say, "Sign me up " What is that in reference to?

A A phone meeting

Q With who?

A Governor McDonnell

Q Okay And, in fact, if you go down in the e-mail chain -- we can just show this quickly -- is that him setting up a 1:30 call with you on February 13th?

A Yes, it is

Q Okay And, in fact, did you talk to him on that date?

A Yes, I did

Q And what -- what, generally, was discussed?

A I don't recall at this time

Q Okay Well, during that call, do you ever remember him mentioning --

MR BROWNLEE: Objection Leading

THE COURT: Go ahead and answer the question

BY MR DRY:

Q Any mention of Starwood Trust or Jonnie Williams during that call?

A No There wouldn't have been

Q Okay And then going to the second page of the exhibit, do you see where that's from you at 6:57 p m ?

A Correct

Q And you write, "I have received information from Maureen and Eileen I have requested additional items from both " You write, "I reviewed your documentation very quickly," and these are the few items I need from you

What are you asking them for there? What's the 2000 -- well, first of all, "Beach Municipal: Provide statement reflecting you/Ms McDonnell as the account holder "

What was that?

A There was a document from Beach Municipal, and I don't believe they had identifiers on them It was basically a snapshot from computer

Q And then you've got K-1s there for various things What are K-1s?

A K-1s establish their part of the corporate tax returns that reflect the percentage of ownership in a company

Q Okay And there you've got, "Profit and loss covering 2012 for herbal supplements (Schedule C income)" Do you remember what that was in reference to?

A On the Schedule C of their personal tax returns, Ms McDonnell claimed income for herbal supplements

Q You're just looking for proof of that?

A Correct

Q Okay

A Correct

Q And "Mortgage" --

A Basically, I had a proof I just needed a profit and loss to see what she had made year to date

Q Gotcha And the "Mortgage statements from TowneBank"?

A Yes

Q Okay Is this just you requesting the actual documentation to support the loan application?

A Correct

Q Okay And then going to the first page, the top there, this is Mr McDonnell's response to you And he's providing you, it looks like, with a fax And those were the MoBo -- or the beach rental properties; is that right?

A Correct

Q Okay And did any of the information that

Mr McDonnell faxed to you, as of February 15th of 2013, did any of that reference Mr Williams or Starwood Trust in any way?

A No, it did not

Q And in any of your discussions with Mr McDonnell, did he ever reference Mr Williams or Starwood Trust --

A No, he did not

Q -- as of that date and time?

A No

Q Okay As of the date and time of this, did Mr McDonnell ever tell you, "Hey, I still need to look at that loan application, the URLA, for 777" -- "770 and update it"?

A No

Q Okay

MR DRY: Let's go to Government's Exhibit 487, please

BY MR DRY:

Q Ma'am, do you recognize this document?

A Yes, I do

Q And this is a fax from the Governor to you containing an amended loan application?

A Correct

MR DRY: Has this been entered into evidence?

Government moves to admit Government's Exhibit 487

THE COURT: It will be admitted

BY MR DRY:

Q Now, on the top, what's the date and time of this?

A February 18th, 2013, 10:57 a m

Q And do you remember what day of the week that was?

A Not off the top of my head

Q Okay We can -- on the top left corner, that says 10:57 a m Do you see that?

A Correct

MR DRY: Now, going down to the bottom, stop right there

BY MR DRY:

Q Can you read what Mr McDonnell wrote?

A "Nan, I reviewed the general loan application again this weekend and made some updates concerning information that was incomplete Please use this as the template for the loan" --

MR DRY: And then go down, please

A -- "applications for all four loan refinances we requested Please advise if you have any questions Thank you for your work "

BY MR DRY:

Q All right

MR DRY: Let's go to the third page of the exhibit

BY MR DRY:

Q And on the left-hand side, in the "Stocks & Bonds," is there handwritten any information?

A Yes there is

Q What is that?

A There's stocks There's a car There's retirement plans There's Racehorse, LLC, which is a company that's held

Q And do you see "Star Scientific 1,672 SH common" with a 3,143 value?

A Yes, I do

MR DRY: And then let's go to the right-hand size, please And first of all -- let's go up a little bit

BY MR DRY:

Q Had there been some confusion regarding which loans went with which properties?

A Yes

Q And kind of describe that?

A Specifically, it was 3112 and 3113 Both of those properties had numerous liens against them, and it was just -- I had trouble matching them up One of the liens was actually held by the sister's name alone So it wasn't reflected within the Governor's credit report

Q But is it fair to say he's just kind of laying it out, hey, this loan goes with this property?

A Yes He -- yes Yes

Q Okay

MR DRY: And then can we scroll down, please

BY MR DRY:

Q And in the "See Attached," what's handwritten there?

A "Starwood Trust" and "J Williams "

Q Okay And zero and -- it looks like 36 months, and zero and 24 months

A Correct

Q Does that look right?

A Yes

Q And then 70,000 and 50,000?

A Correct

Q Okay As of this date, receiving this, had you even heard Mr McDonnell refer to unsecured loans?

A No

Q Okay

THE COURT: Why don't we stop now for our morning break We'll take 15 minutes

(The jury left the courtroom)

(Recess taken from 11:31 a m until 11:30 a m)

(The jury entered the courtroom)

THE COURT: All right

MR DRY: Thank you, Your Honor

Can we bring back up the exhibit, please That's 487, Page 3

BY MR DRY:

Q Okay Ma'am, to be fair, there are other handwritten changes in this document as well other than the Mr Williams loans and the Star Scientific stock, correct?

A Correct

Q We talked about one of those was the Devils -- putting the correct properties next to the correct loan balances?

A Correct

MR DRY: Now, I'd like to go on the left-hand side of the document, on the bottom left

BY MR DRY:

Q Where it says "457, 401(a) Plan," what are those?

A Those are retirement plans

Q Okay And then Racehorse, LLC, what is that?

A That is a limited liability company that Governor McDonnell belongs to

Q And you --

MR DRY: Well, let's go the top of the document where it says, "Racehorse Properties K-1 distribution "

BY MR DRY:

Q That's handwritten, right?

A Correct

Q But on the right-hand side, that's -- that's 16 -- it looks like 67 Had you filled that in?

A Correct Yes

Q And what did that represent?

A That represents his -- his percentage of income from that company

Q Okay So you had taken that into account --

A Yes

Q -- and put that there yourself?

A Yes

Q And he's just putting in the name of the entity?

A Correct It had previously been disclosed on his previous application

Q I gotcha Now, to be fair, is it unusual for borrowers to make changes to their loan applications occasionally?

A No, it's not unusual

Q But before this, had Mr McDonnell ever communicated to you in any way that he needed to do any further review on his loan application before you received this fax?

A No

Q Okay

MR DRY: Let's go to Government's Exhibit 489, please

Oh, I'm sorry Before you go there Back on this one I just want to make sure I don't know if I did this

BY MR DRY:

Q The next page of the document, that still has Mr and Ms McDonnell's signatures as of February 1st, correct?

A Correct

Q And then the following page of the document, there's some additional handwriting explaining, on the right-hand side, who's guaranteeing --

A Correct

Q It's just further explanation on the guarantee of certain car loans, it looks like. And then at the bottom of the document, that's still the signature that you received from the McDonnells on February 1st, right?

A Correct

Q Okay

MR DRY: All right Sorry about that, Mr Starnes

Let's go to Government's Exhibit 489, please

BY MR DRY:

Q Is this an e-mail from Mr McDonnell to you dated February 18th at 11:42 p m ?

A Correct

MR DRY: Government moves Government's Exhibit 489 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q And on this, I just want to focus, what's -- it's from you to -- I'm sorry From Mr McDonnell to you, and do you know who "Senior Management Maureen" is?

A By the last name, I'd identify that as his sister

Q Okay You think it's his sister, or are you talking about "Uncapher Mo"? It looks like there's two different addresses I'm just asking what you know If you don't, it's fine.

A I don't know

Q Okay But on the last line, can you just read what he wrote?

A "Also sent fax with updated information for loan application Thanks "

Q Okay

MR DRY: Now let's go to Government's Exhibit 492

BY MR DRY:

Q And this is an e-mail from you to Mr McDonnell, and then it looks like to Ms McDonnell's wife; is that correct?

A Yes

Q Okay

MR DRY: Government moves Government's Exhibit

492 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q The date on this is February 21st, correct?

A Correct

Q Okay And then it looks like -- you write, "I have been through your paperwork and had a few things I still need " And then what are you -- what are you asking for? Generally, what's the stuff, "K-1s, Profit and Loss, Source of Deposit"?

A The "K-1s" were part of the -- their ownership in Blue Ridge Heaven, which was the Devils Knob Loop property "MoBo Real Estate" for the properties down in Virginia, 3112 and 3113 Sandfiddler -- or Sand -- Sandfiddler "Profit and Loss Statement," which is typically covered under the company just to show what has been made year to date Also requesting the Schedule C And also a source of deposit for a large deposit that was made on January 2nd

Q Okay Is it fair to say that you're just looking for paperwork to back up the loan application?

A Correct Supporting documentation

Q Okay And then what do you ask for -- can you just read starting with "Question"?

A "Question regarding unsecured notes for Starwood

Trust 0/36 months $70,000 and J Williams 0/24 $54,000 Do you have a note with a terms/maturity date? The loans you are guarantor for, can you provide documentation reflecting the other party is making the payments? (Typically they look for 12 months canceled checks) "

Q Okay And why are you requesting additional information regarding Starwood Trust and the J Williams loans?

Had you had -- at this point, did you have any information other than what was in the loan application, the amended loan application?

A No, I didn't, other than the conversation I had had with the Governor --

Q Okay Well, let's --

A -- which pretty much reinstated this information

Q Okay Well, let's go into that Did you have a conversation after this e-mail with Mr McDonnell in which he provided you additional information that you had requested in this e-mail?

A Yes

Q I'm sorry?

A Yes

Q Okay And can you tell the jury -- can you tell the jury what Mr McDonnell told you about the Starwood Trust loan and the J Williams loan?

A The conversation reflecting the 70,000, I was told that that was part of the company MoBo And the $54,000, it was -- there was no documentation

Q And to be clear, when you say "no documentation," there was no loan application?

A A verbal agreement

Q Okay It was a verbal agreement?

A Yes

Q And was it unsecured?

A It was unsecured

Q Okay But did Mr McDonnell want those reflected on this personal financial statement?

A He did The 54,000 -- the 54,000 was a personal loan to Maureen McDonnell, the wife The 70,000, what I had explained to him was under MoBo --

Q Well, hold on I want you to stop there

A Okay

Q I'm just asking for what he explained to you

A Okay

Q Had he told you -- well, I'll withdraw that question

In your discussion with Mr McDonnell, did he ever mention to you that his wife had been interviewed by law enforcement on February --

MR BROWNLEE: Objection, Your Honor

THE COURT: No If he mentioned it, she can recall

BY MR DRY:

Q Did he ever mention to you that his wife had been interviewed by law enforcement on February 15th, 2013?

A No

(Counsel conferring with co-counsel.)

BY MR DRY:

Q And just to be clear, where is -- is PenFed located within the Eastern District of Virginia?

A Alexandria, Virginia

Q Okay Thank you

MR DRY: Nothing further

THE COURT: All right Cross?

CROSS-EXAMINATION

BY MR BROWNLEE:

Q It's still good morning, Ms Bolt

A Good morning

Q My name is John Brownlee I represent Bob McDonnell I have some questions for you today

Now, when you -- I think you've testified that when most people -- or it's typical when folks come and apply for a loan with PenFed, that they do so on-line; is that correct?

A Correct

Q Okay And -- but in this case, Mr McDonnell, there was a phone call He didn't do it on-line You actually had a phone call from which he provided you his information; is that correct?

A Correct

Q Okay And I think you testified that because of his position and the bank's efforts to keep his personal identifiers and financial information, I guess, protected because it was sensitive, that's why the phone call was done; is that correct?

A Correct

Q Okay Now, is it fair to say that the bank wants to be careful with everybody's private information?

A Yes

Q Okay And you are familiar with the bank's policy and procedures 709?

A I don't know the number

Q Okay Let me show you on the screen

MR BROWNLEE: If we could pull up, just for the witness, RM-0229

BY MR BROWNLEE:

Q And if you look at I A -- just take a look at that First of all, are these the policies and procedures with regard to third-party requests for members' records?

A Yes

Q Okay

MR BROWNLEE: Your Honor, at this time we'd move RM-0229 into evidence

MR DRY: We would object, Your Honor If there's no evidence that Mr McDonnell was aware of the internal policies at PenFed, they're irrelevant

MR BROWNLEE: Your Honor, these are speaking objections Your Honor, this is --

THE COURT: Go ahead and answer the question

BY MR BROWNLEE:

Q Are these the policies of your bank?

A Yes

Q Okay And the one I've highlighted, is that with -- talking about the protecting of members' information?

A Yes

MR BROWNLEE: Your Honor, at this time we'd move RM-0229 into evidence

MR DRY: Objection Relevancy

THE COURT: Overruled Admitted

BY MR BROWNLEE:

Q All right And will you please read just the last sentence of A?

A "According" --

Q Go ahead

A Am I starting at the correct place?

Q Please The word "Accordingly" is perfect Thank you

A "Accordingly, unless requested or consented to by the member of a thrift share or credit account, required by law, or otherwise authorized, member information shall be withheld from dissemination

Q Okay Thank you

MR BROWNLEE: We can take that down

BY MR BROWNLEE:

Q Now, Ms Bolt, Mr Dry talked a lot about some of the interaction you had with Bob McDonnell through this loan process --

A Uh-huh

Q -- and we're going to talk about some of that. But I just want to confirm, is it accurate that in your dealings with him, that he appeared to be forthcoming and responsive to your requests?

A Yes

Q Okay Okay If we can start on January 23rd I believe you testified that there was a conference call with the Governor and several members of his family on that date; is that correct?

A Correct

Q Okay And you took the call with your boss, Debbie Naylor; is that right?

A Correct And Larry Blake

Q And Mr Blake was on the line?

A Correct

Q And at the beginning, the head of the bank, Mr Pollack, was on kind of to give the intro?

A Correct.

Q Okay And this -- I think you've testified that this first call, as you've described it, was general in nature; is that right?

A Yes

Q Okay And you were -- the purpose of the call was to collect information about the Governor's general assets and liabilities; is that right?

A Correct

Q Okay So it wasn't all his assets or all his liabilities It was just the general; is that correct?

A Correct

Q Okay All right And is it fair to say that this first call, it was to get the very basic information at that time with the understanding that it would be followed up with later?

A Correct

Q And so, in other words, it was your understanding, as of this first phone call, that you collected some basic information to begin the loan process, and then it was your understanding that the information would be supplemented thereafter?

A Correct

Q Okay So Mr Dry has gone through several iterations of this loan application So is it fair to say this doesn't happen like all at one time? It happens over a period of time --

A Correct

Q -- the actual process itself?

A Correct

Q Okay And the person, the borrower, sends in lots of information and then supporting documentation, tax documentation And I think Mr Dry asked, I think appropriately, is this -- sometimes people make mistakes in providing you this information?

A Correct

Q And your job is to kind of help them give you the right information that you need so that the form, at the end of the day, can be prepared properly?

A Correct

MR DRY: Objection, Your Honor

THE COURT: Overruled

BY MR BROWNLEE:

Q I think you also stated that, pursuant to Mr Dry's question, that sometimes borrowers will write down things incorrectly Is that fair?

A Correct

Q Okay And -- or miss something on one of these drafts?

A Correct

Q Okay And that with regard to the Form 1003, which is the main form we're talking about here, that it's quite common for borrowers to make multiple updates to these loan documents, including the Form 103 -- 1003?

A Correct

Q Now, on this first phone call, if you remember, do you remember Mr McDonnell talking about any auto loans that he had?

A I don't recall

Q Okay How about student loans?

A I don't recall

Q Okay How about any credit card debt?

A It was very basic Most of that information is pulled up through the credit report

Q Okay Personal lines of credit with a bank?

A Correct

Q Okay Or any business loans?

A Typically, not business loans

Q Okay And did you also then have another conversation with Mr McDonnell's sister Maureen?

A Yes

Q Yes Okay And that was the same, similar type of call where you got some -- just the basic information?

A Correct

Q All right

MR BROWNLEE: If we could pull up RM-2049 just for the witness

BY MR BROWNLEE:

Q And this is an e-mail --

MR DRY:

MR BROWNLEE: Is this the right one? Could you go up on that? That's it

BY MR BROWNLEE:

Q Okay If you look down at the bottom, this is an e-mail from Mr Pollack to Bob McDonnell on January 24th; is that correct?

A Yes

Q Okay And if we scroll up, it eventually gets to you; is that right?

A Correct

MR BROWNLEE: Your Honor, at this time we move RM-2049 into evidence

THE COURT: It will be admitted

BY MR BROWNLEE:

Q All right

MR BROWNLEE: So if we go down a little bit, right in the middle In the middle If you'd go up just a bit There you go Thank you

BY MR BROWNLEE:

Q This is from Mr McDonnell, and it looks like it's sent to his family members on January 24th, and it's titled "Estimates on Your Loan " And then he says, "FYI, estimates coming tomorrow "

So the FYI is referring, in this one, to the e-mail that he just received from Mr Pollack; is that correct?

A Yes

Q Okay So is it accurate that as of January 24th, 2013, they were still -- the rates were still moving a little bit? They were still kind of trying to figure out what the rate was to lock down?

A Correct

Q Okay And that's why -- and that is the -- when they say "estimates coming tomorrow," that's hopefully more rates?

A Correct

Q Okay Okay Let's look at RM-2050-01 All right Now, this date -- I believe this is -- I believe this is in evidence, but we'll do it this way This is an e-mail, on the top, from Bob McDonnell to you, is that correct, on January 28th?

A Correct

Q All right

MR BROWNLEE: Your Honor, at this time we move 2050 into evidence

THE COURT: It will be admitted

MR BROWNLEE: All right Can we publish this?

BY MR BROWNLEE:

Q All right So if we go to the middle there, it says, "Attached" -- it says, "Attached are the documents for the refinancing of Devils Knob Loop Please review the information, sign and return " And then you attach some documents to the e-mail; is that correct?

A Correct

Q And you attached a draft loan application that you had filled out; is that correct?

A Correct.

Q Okay And you had prepared an Affiliated Business Arrangement Disclosure Statement; is that right?

A Correct

Q And Mr Dry asked you a little bit about that I want to make sure

MR BROWNLEE: Can we just -- just for a second pull up 2050-10? It's the tenth page of this document

BY MR BROWNLEE:

Q This is the Affiliated Business Arrangement Disclosure Statement?

A Correct

Q To be clear, this is a disclosure of PenFed?

A Correct

Q All right This isn't a disclosure of the borrower?

A Correct

Q And you are, in this document, disclosing to the borrower your relationships with another entity?

A Correct

Q Okay

MR BROWNLEE: We can take that down

BY MR BROWNLEE:

Q And then you also gave him a Borrower's Authorization? Yes?

A Correct

Q A Federal and State Compliance Document?

A Correct

Q A Borrower's Notice of Intent to Proceed with Loan Application?

A Correct

Q A PenFed Closing Credits document?

A Correct

Q A Notice to First Lien Mortgage Loan Applicants?

A Correct

Q A Truth-in-Lending Disclosure Statement?

A Correct

Q Okay And so once these documents were -- were prepared and sent back, that now gives you the authorization to begin; is that -- once all that's done and completed, now you have the authority to disburse funds; is that correct?

A We have to go through the entire process, but yes

Q Right But when it's all done --

A Yes

Q -- when everything is completed, then we have closing, that's when you have the authority to disburse funds?

A Yes

Q So when you got these documents back, when the first set came back -- I guess the first draft, we'll call it, got back, at that point it wasn't completed You didn't have authority to disburse funds, did you?

A No

Q Okay All right Let's talk about a couple of them First, the Truth-in-Lending Disclosure Statement

MR BROWNLEE: If we could pull up Page 24 of that document RM-2050 Page 24

BY MR BROWNLEE:

Q All right This is the Truth-in-Lending Disclosure Statement; is that correct?

A Yes

Q All right And you see the two boxes on the right?

A Yes

Q And in this case, the "Preliminary" is checked; is that right?

A Correct

Q And not the final; is that correct?

A Correct

Q Okay

MR BROWNLEE: Can we pull up Page 13 of that document?

BY MR BROWNLEE:

Q Okay There is called a Federal and State Compliance Document?

A Yes

MR BROWNLEE: And if we could pull up the line that starts, "This "

BY MR BROWNLEE:

Q It says, "This document is neither a contract nor a commitment to lend"; is that correct?

A Correct

Q Okay

MR BROWNLEE: All right Can we pull up Page 16 of that document? If you highlight the first paragraph -- or second paragraph

BY MR BROWNLEE:

Q This document says, "This form is not a commitment to extent credit"; is that correct?

A Correct

Q And then there's some information on the form about closing credits; is that right?

A Correct

Q Okay And that's, what, $10,000 at closing?

A I don't recall at that time what the credits for closing costs were We changed our program a number of times

Q Okay I think if we pull it up there, we might see it I'm sorry It's small to read So it says, "If the loan closes using our preferred title/settlement provider," correct?

A Yes But I don't recall Is this document dated from that time frame?

Q Yes

A Because it may not have had a limit on it

Q Okay This is what you sent --

A Okay

Q -- to Bob McDonnell

MR DRY: Objection, Your Honor She's just asking when the document is

MR BROWNLEE: Oh, I see Okay

BY MR BROWNLEE:

Q I don't think there's a date on it

Okay And so then it discusses origination charge; is that correct?

A Correct

Q Okay And it talks about required service, "All Required Services" there?

A Correct

Q It talks about "Title Service and Lender's Title Insurance"?

A Correct

Q Okay It talks about a "Settlement Fee"?

A Correct

Q And "Government Recording Charges"?

A Correct

Q And "Transfer Taxes"?

A Correct

Q Okay And all these things happen at closing; is that correct?

A Correct

Q So when this was sent out on January 28th, none of these things had happened yet?

A Correct It was an estimate

Q Okay And fair to say that none of these things had happened when Bob McDonnell sent the form back to you on February 1st?

A Correct

Q Okay And I think the document also says that it is "subject to change at any time prior to the time you submit a loan application"; is that correct?

A Correct.

Q Okay

MR BROWNLEE: Let's highlight that

BY MR BROWNLEE:

Q Okay It's the last line of that paragraph?

A Correct

Q Okay Now, if we also look at Page 16 of that document, if you look at where it says "Purchases "

MR BROWNLEE: If you could blow that up.

BY MR BROWNLEE:

Q And it says if you want this special deal, on closing you must send "the application and a fully executed purchase agreement during the promotional period"; is that correct?

A Correct

Q What is a "fully executed a personal agreement"?

A It's a purchase agreement between seller and buyer --

Q Okay

A -- executed -- fully ratified

Q Okay And that means -- how does that apply in a refi?

A It does not

Q Okay So in this case, you wouldn't have that because you already own the property?

A Correct

Q Okay

MR BROWNLEE: All right And let's look at Page 1

BY MR BROWNLEE:

Q And this is back in this original e-mail that was sent that says, "The Account Condition Letter reflects items that are needed for verification of the processing of your application"; is that correct?

A Correct

Q And this document is called the "Account Condition Letter"?

A Correct

Q Okay

MR BROWNLEE: Let's take a look at RM-17959 That's not it 17 -- there it is If we could blow that up Can you show that just to the witness?

BY MR BROWNLEE:

Q What is this, ma'am?

A Accounts Condition Letter

Q And is it dated -- what's the date?

A It looks like 1/28/2013

Q Okay. And is this for the loans for 770 Devils Knob Loop?

A Yes

Q All right For Bob and Maureen McDonnell?

A Correct

MR BROWNLEE: Your Honor, we move in 1759-22

THE COURT: It will be admitted

MR BROWNLEE: Thank you, Your Honor

BY MR BROWNLEE:

Q Now, this is a document that lists all kinds of information that's needed from the borrower; is that correct?

A Correct

Q Okay Tax returns, pay stubs, stock account statements, and the like?

A Correct

Q Okay And this is information that the bank needs before it can act on the loan; is that correct?

A Correct

Q Okay And, now, when Mr McDonnell had sent in his application -- or his draft application on February 1st, had all these things been done?

MR DRY: Objection, Your Honor The witness has never called this a draft application

THE COURT: Would you characterize it

differently, please

MR BROWNLEE: Yes, sir

BY MR BROWNLEE:

Q When Mr McDonnell sent in his document on February 1st, had he completed all these things?

A I -- I don't recall

Q Okay All right Do you see about halfway down where it says, "Provide copy of most recent stock account statement"?

A Yes, I do

Q Okay And is written next to that "Maureen"?

MR DRY: Objection, Your Honor I don't believe this witness has any personal knowledge of this document

THE COURT: All right Let's -- let's get through this We --

MR BROWNLEE: Very well, Your Honor

THE COURT: This is -- this is a process, right? And this is a loan process?

THE WITNESS: Correct

THE COURT: Things don't -- as you asked the question, it doesn't happen all at once

MR BROWNLEE: Yes, sir

THE COURT: So if you've got some point, make it But dragging through this, demonstrating that some of these things are not at the point of closing, it's really not helping us

MR BROWNLEE: Okay Thank you, Your Honor

BY MR BROWNLEE:

Q Let's move -- now, I want to move to January 31st, 2013

MR BROWNLEE: If we could pull up 2051 And if you would blow up the middle part of that, please

BY MR BROWNLEE:

Q Okay This is a document that's in evidence that was introduced by the government

A Uh-huh

MR BROWNLEE: And if you go -- scroll down.

BY MR BROWNLEE:

Q This is Mr McDonnell and -- a couple things In this, he's saying, "Nan, did you send documents to my sister " And you've read this for the government Is it fair to say that he asked if he could fax back the forms?

A Correct

Q And that is -- he's asking if he can do that before he locates the supporting documents; is that correct?

A Correct

Q Okay And so essentially what he's saying is I'm going to send in this paperwork now, some of it, and then I'll find the other documents and I'll get those later?

MR DRY: Objection, Your Honor

THE COURT: Sustained

MR BROWNLEE: Okay

BY MR BROWNLEE:

Q And you replied to him; is that correct?

A Correct

Q Okay And if we move up, what you -- first word you said is, "Yes " So were you telling him it was okay for him to go ahead and fax the documents and then get the supporting documentation later?

A Correct

Q Okay Let me just ask you

MR BROWNLEE: You can take that down

BY MR BROWNLEE:

Q Were you aware at the time that Governor McDonnell was in the middle of a legislative session?

A Yes He mentioned it to me in one of our conversations

Q Okay And did he mention that in the sense of how busy he was and that he had a lot going on?

A I think that goes without mentioning

Q Okay Great

MR BROWNLEE: Okay Let's pull up RM-1787-0006 87

BY MR BROWNLEE:

Q Okay And I believe you've -- this has been introduced by the United States as Government's Exhibit 480

MR BROWNLEE: This is in evidence, Your Honor

THE COURT: All right

MR BROWNLEE: If you would publish it. Now, let's start at the very top, if we can. If you'll blow up just the very top part

BY MR BROWNLEE:

Q All right Can you read this for us, Ms Bolt?

A "This application is designed to be completed by the applicant with the lender's assistance Applicants should complete this form as borrower or co-borrower as applicable Co-borrower information must be provided and appropriate boxed checked "

Q Okay Let me stop you there So it says co-borrower information must also be provided if that box is checked; is that -- and then check the appropriate box; is that correct?

A Correct

Q Okay Now, on this application, or this document, are there any boxes checked?

A No, there is not

Q Okay So let's start, then, with the last line, beginning with "If "

A "If this" --

Q And read that for us

A "If this application" -- "if this is an application for joint credit, borrower and co-borrower each agree that we intend to apply for joint credit (sign below) "

Q Okay And this is unsigned; is that correct?

A Correct

Q Okay Let's look at the asset section of this Is it fair to say that in looking at all the documents that Mr Dry introduced to you and you talked about, that Mr McDonnell didn't include many assets in this -- in this submission; is that correct?

A Correct

Q Okay And once again, to state the obvious, in a loan, assets are good; is that correct?

A Correct

Q Okay And they improve the chances of getting a refi; is that correct?

MR DRY: Objection, Your Honor

THE COURT: Sustained

BY MR BROWNLEE:

Q Okay Well, if one is applying for a loan, the more assets you have, the greater likelihood you'll get a loan?

MR DRY: Objection, Your Honor

THE COURT: She's indicated assets are good

MR BROWNLEE: Okay Thank you

THE COURT: Why do you want to beat the dead horse?

BY MR BROWNLEE:

Q And -- we'll come back and look at that

Now, in one section here -- if you could blow it up -- his application talked about a note for a car for 9,877 Do you see that?

A Yes

Q Okay But if you look on the asset page, he didn't include the actual collateral for the car itself?

A Correct

Q Okay

MR BROWNLEE: You can take that down

All right Let's look at Page 9 of 1787 If you'd blow up the middle section here

BY MR BROWNLEE:

Q Now, this is a document that was dated February 1st that he sent back to you; is that correct?

A Correct

Q Okay And in the "Liabilities" section, did he add $704,000 worth of debt?

A Yes, he did

Q Okay And then another $250,000 in debt; is that correct?

A Correct

Q Okay And that was sent back to you on February 1st?

A Correct

Q Okay All right So you received this on --

MR BROWNLEE: We can take that down

BY MR BROWNLEE:

Q -- on the 1st And then let's look at -- I believe on the 15th -- you had a call, I think you talked about, and then there was some additional information sent to you on the 15th; is that correct?

A Yes

MR BROWNLEE: Let's you pull up 0591-09 009

BY MR BROWNLEE:

Q Okay And do you remember Mr Dry showing you this?

A Yes

Q Okay And this is -- Mr McDonnell --

MR BROWNLEE: If you could blow up that last -- that bottom part

BY MR BROWNLEE:

Q Mr McDonnell is indicating that he is sending several faxes One of them is 18 pages, and one of them is 34 pages; is that correct?

A Yes

Q Okay And these are for -- these are forms for two additional properties that --

MR BROWNLEE: Can we publish this?

MR DRY: I don't believe it's bee -- I don't think the top has been admitted I think this is a -- this is a chain where the top has not been admitted We don't object to it admitting it

MR BROWNLEE: Okay I thought this was in I'm sorry

We would request admission of 0591, Your Honor

THE COURT: It will be admitted

MR BROWNLEE: Thank you

BY MR BROWNLEE:

Q So he's sending you some documents on this date, some facsimiles; is that correct?

A Correct

Q With some additional information And most of this information has to do with two additional properties that they are considering refinancing; is that correct?

A Correct

Q Okay And what he says is --

MR BROWNLEE: If we go to the actual page, let's look at 0591 Go ahead The next page Let's look at 0591 The next page The next page Keep going

Actually, let's look at RM-0612 No

Okay Your Honor --

BY MR BROWNLEE:

Q If you'll take a look at this, is this one of the facsimiles that was sent to you on February 15th, 2013?

A Yes

MR BROWNLEE: All right Your Honor, we move in RM-0612

MR DRY: No objection

THE COURT: It will be admitted

BY MR BROWNLEE:

Q All right And Mr McDonnell wrote, "Nan, here are the forms for the loan As discussed on the phone, please disregard the ones that have the incorrect loan amounts and resend when revised"; is that correct?

A Yes.

Q Okay

MR BROWNLEE: And if we could look at page 18

BY MR BROWNLEE:

Q Okay On top, is it true Mr McDonnell has written in "for 770 Devils Knob Loop"?

A Yes

Q And if you go to the bottom where it says, "Total Assets" -- I think it's on the next page -- it says 804

And if you move to the right -- keep going -- what does it have for "Total Liabilities"?

A Zero

Q Zero Right Okay And if you go to the next page, and one more page Excuse me At the bottom, did Mr McDonnell sign this as well?

A Yes, he did

Q Okay All right Any reason why he would have signed this having put no liabilities on it?

MR DRY: Objection Calls for --

THE COURT: Sustained

BY MR BROWNLEE:

Q Okay Let's look at RM-0612-0032 And, again, this is another application, still for Devils Knob Loop?

A Correct

Q And if we go down to the next page, once again, he puts in no liabilities; is that correct?

A Correct

Q Okay And if you look at the next page and the one next, he signs this one as well?

A Correct

Q Okay Let's move along If we go to the actual February 18th application

MR BROWNLEE: I believe that is Government's Exhibit 487

BY MR BROWNLEE:

Q And this is what he faxed you on the 18th; is that correct?

A Yes

Q Okay And when you received this, is it fair you've testified that it struck you that he must have used his free time over the weekend to review what he had previously sent and had come up with these edits?

MR DRY: Objection, Your Honor She did not testify to that

THE COURT: Sustained

BY MR BROWNLEE:

Q Well, let me ask it this way When you got this, did you have any sense of that?

MR DRY: Objection, Your Honor

THE COURT: Just ask her a question about a fact

BY MR BROWNLEE:

Q When you got this, what did you think, ma'am?

MR DRY: Objection, Your Honor

THE COURT: Sustained

BY MR BROWNLEE:

Q Fair to say that you were not surprised to get these edits?

A Correct

Q Okay Now, let me walk through, if I can, a couple of things on this document We'll try to do this quickly

MR BROWNLEE: Can we go to the next page?

BY MR BROWNLEE:

Q All right First of all, in the very top part that we had talked about earlier, in this one he signed the very top, indicating the borrower and -- that he was a borrower; is that correct?

A Correct

Q Okay

MR BROWNLEE: Let's move down The next page And let's look at the right-hand column

BY MR BROWNLEE:

Q I believe Mr Dry discussed this with you Mr Dry talked about these edits on the right-hand side, and that you said that -- I think you said this was in an effort to try to clear this up; is that correct?

A Correct

Q All right What was confusing at the time?

A The number of liens against the number of properties not totally reflecting all on the individual's application It was also reflected on his sister's application I believe there was one lien that was not reported on the credit report, which is where I was kind of vague until I became more familiar with the application

Q Okay And so fair to say that what he's providing here is giving you clarity as to some of this confusion?

A Yes

Q Okay

MR BROWNLEE: All right Let's move to Page 5

BY MR BROWNLEE:

Q And then on the right-hand side there, also providing you additional information about which one is co-signed, guarantors and things for some of these other debts; is that correct?

A Correct

MR BROWNLEE: All right Let's go down to the next page Actually, if you could go one page up One more up Okay And on the left-hand side for the assets.

BY MR BROWNLEE:

Q Okay Here, he's added -- or edited certain things This PedFed IRA and Share Okay Do you see that?

A Yes, I do

Q Okay He's also added the Star Scientific stock I believe he's also added a life insurance policy with a cash value of about $4,000; is that correct?

A Yes

Q Okay He's also added his ownership of this 2005 Toyota; is that correct?

A Yes

Q And then he's also added the 457 and the 401 Plans and then the Racehorse, LLC?

A Correct

Q And take my word for it That adds to up about $243,000 Challenge that?

A I can't challenge it

Q Okay Fair enough All right

MR BROWNLEE: And then if you move to the other side If you blow that up

BY MR BROWNLEE:

Q The Starwood Trust and the loans from Mr Williams put on there, those equal 120,000; is that correct?

A Correct

Q Okay Let's look at RM-0591-0037 And if you look at the line second from the bottom there -- first of all, this is an e-mail from you; is that correct?

A Correct

Q All right

MR BROWNLEE: Your Honor, we move in RM-0591

MR DRY: Objection, Your Honor This is subsequent to the charge account, and any communications other than what Mr McDonnell is telling to her after about these --

MR BROWNLEE: I think we should approach

THE COURT: Come on up

(At Bench)

MR DRY: Your Honor, I think we're going to start veering into materiality world if we're going for anything after February 18th

THE COURT: What's the point of it?

MR BROWNLEE: Your Honor, the charge account is February 1 So once the government went beyond February 1, they have put in play all the communications after that So we think that's all relevant, particularly -- we are not talking about materiality We're talking about the ultimate question that this witness --

THE COURT: I mean, tell me what this is going to prove that's relevant to this

MR BROWNLEE: Two points One is that this was, in fact, a draft This is a charge account for a first draft in a multi-layer process That's one Secondly --

THE COURT: When was the draft?

MR BROWNLEE: The February 1 submission I mean, that's the charged offense What he submitted in, in February, the first thing he submitted is what the government alleges is false The government has already gone beyond that date So --

THE COURT: Don't start -- a tit for tat is not an argument

MR BROWNLEE: Your Honor --

THE COURT: Tell me again I want to make sure

I understand Your point is that this document indicates that the relevant document was a draft Is that -- that's your point?

MR BROWNLEE: Yes, sir That is one That is one thing Secondly -- or where we ultimately get is that when he submitted it, there was no intent to influence because it was a draft Secondly, what we'll ultimately get to is that the loans themselves do not need to be on this form

THE COURT: That's a complete -- yeah The objection is overruled Go ahead

MR DRY: Thank you

(In Open Court)

MR BROWNLEE: If we could pull up RM-0591-0037 And if we highlight that again

BY MR BROWNLEE:

Q Second to the last line, could you please read that?

A "I am continuing to review the documentation you provided and am including it in all files open now "

Q Okay

MR BROWNLEE: We can take that down If we could pull up RM-0598

BY MR BROWNLEE:

Q Now, two days later, this is an e-mail from you; is that correct?

A Correct

MR BROWNLEE: All right We move into RM-0598

MR DRY: Objection It has the defendant's hearsay on the top

THE COURT: Let me see it Just let me have it, if you've got a hard copy

MR BROWNLEE: Do you have a hard copy of that?

(At Bench)

MR DRY: If Mr McDonnell wants to get on the stand and talk about this document is one thing But getting into this, it's hearsay to Nanette Bolt two weeks after the February 1st and after he disclosed the Starwood Trust and Jonnie Williams relationship

THE COURT: This witness is not on this?

MR DRY: She's on it But he's the one writing to her

MR BROWNLEE: He's writing back to her

MR DRY: It's hearsay

THE COURT: Let me see

MR DRY: He has to take the stand and talk about it

MR BROWNLEE: Well, he's going to, but --

MR DRY: Your Honor, they shouldn't be able to put the defendant's statements of Nanette Bolt --

THE COURT: Just be quiet

MR DRY: Yes, sir

THE COURT: The objection is overruled

MR BROWNLEE: Thank you, Your Honor

(In Open Court)

MR BROWNLEE: Your Honor, we move in RM-0598

THE COURT: It will be admitted

BY MR BROWNLEE:

Q So two days later, you asked for some loan documentation; is that correct?

A Correct

Q All right And then he responded to you If you -- Governor McDonnell responded If you move up And this is on February 22nd, 2013 Do you remember this e-mail?

A Yes

Q Essentially, what is he telling you here?

A He received the appraisal on 3112, and the appraisal came up much lower than anticipated

Q Okay So he's letting you know that --

A Yes

Q -- and trying to come up with ways that they can continue to work with you all?

A Yes Yes

Q Okay All right Thank you Now, if you go down, you were asked about -- if you look in the middle of the page there, you were asked about these loans; is that

correct?

A Correct

Q Okay And I believe Mr Dry -- messed up my dates here maybe But you talked with Mr McDonnell on the phone after that; is that right?

A Yes

Q Okay And do you remember what he told you about those loans?

A The 70,000 was MoBo, and the 54,000 would have been to -- I believe it was Maureen

Q All right And did he tell you that these were balloon loans and there were no payments due until 2013?

A That was the 0/36 Zero due in three, and zero due in two

Q Okay

MR BROWNLEE: We can take that down

BY MR BROWNLEE:

Q Now, Ms Bolt, this process went through -- and I'm going to try to just cut to this -- over time, and ultimately, these loans closed, I believe, in the May, June time frame of 2013; is that correct?

A The primary residence I believe closed in April

Q Okay

A And the other -- Devils Knob Loop and 3112 I believe closed both in May

Q Okay

A Or beginning of June

Q Okay And is it -- when these things went to closing -- let me just talk about the MoBo loans first Did the bank make a judgment that the MoBo loans did not need to be on the application?

MR DRY: Objection, Your Honor

THE COURT: Sustained

MR BROWNLEE: Okay

BY MR BROWNLEE:

Q Well, let me ask it this way When you prepared for closing, after having -- going through this whole process, were the MoBo loans on the final closing documents?

MR DRY: Objection, Your Honor

THE COURT: Nope She can answer that

Go ahead

A They were reflected on the application

BY MR BROWNLEE:

Q The MoBo loans?

A No The MoBo loans were not I'm sorry I misunderstood your question

Q Okay And tell us why those loans were not on the closing documents

MR DRY: Objection

THE COURT: Sustained

BY MR BROWNLEE:

Q Well, would the fact that they were not on there, was that a decision of the bank?

MR DRY: Objection, Your Honor

THE COURT: Sustained

BY MR BROWNLEE:

Q Let me talk -- let me focus on this again, because I want to make sure we have this The MoBo loans you testified to were not reflected on the final closing papers?

MR DRY: Asked and answered

THE COURT: Sustained

MR. BROWNLEE: Okay.

BY MR BROWNLEE:

Q And can you tell us why?

MR DRY: Objection, Your Honor

THE COURT: Sustained

MR BROWNLEE: Your Honor, can we approach?

THE COURT: No, we cannot

MR BROWNLEE: Okay

BY MR BROWNLEE:

Q One of the things you requested were tax returns; is that correct?

A Correct

Q Okay And can you tell us why you requested tax returns?

A Personal tax returns?

Q Business tax returns

A Business tax returns To reflect any income or loss of income on any of the companies that were held by the borrowers

Q Okay Did you request tax returns for MoBo?

A Yes

Q Okay And did you receive those?

A I did

Q Okay And did you receive those before closing?

A Yes

Q Okay Let me ask --

MR BROWNLEE: I'm just about done, Your Honor

BY MR BROWNLEE:

Q Let me ask about Ms McDonnell's loan Was that loan on the final closing documents, that you recall?

A Not initially, no

Q Not initially Okay And did that have anything to do with the nature of this balloon payment that this loan reflected?

MR DRY: Objection, Your Honor The reason that it wasn't on there is immaterial We're getting into the materiality analysis again

THE COURT: No I -- she can answer that

BY MR BROWNLEE:

Q Okay Why wasn't that loan on the final closing papers?

MR DRY: That's a different question, Your Honor

THE COURT: That is a different question

MR BROWNLEE: Okay Let me see if I can remember the one before, Judge

BY MR BROWNLEE:

Q With regard to Ms McDonnell's loan, you testified it was not on there, on the final closing papers originally; is that correct?

A Correct

Q Okay Why?

MR DRY: Objection, Your Honor

BY THE COURT:

Q The question was the balloon payments, what impact did that have on them not being on or being on the form?

A There were no immediate payments due at that time

Q Thank you

MR BROWNLEE: Thank you

All right Thank you for your patience, Your Honor

THE COURT: All right Mr Burck

MR BURCK: Thank you, Your Honor

CROSS-EXAMINATION

BY MR BURCK:

Q Good afternoon, Ms Bolt My name is Bill Burck, and I represent Maureen McDonnell

A Hello

Q Just starting off where Mr Brownlee left off You testified that the personal loan to Maureen McDonnell was initially not on the final application; is that right?

A Correct

Q And you also testified that the MoBo loan was not on the final application; is that right?

A The MoBo loans were not on any of the applications

Q Any of the applications, right?

A Correct

Q And they had been disclosed to you by Governor McDonnell prior to the final application; is that right?

A Yes

Q And did you give them the loan, the McDonnells?

A Yes

Q Okay Now, you testified earlier about a conversation that happened on January 23rd of 2013 And you said that you recall that Governor McDonnell was on and Maureen McDonnell sister was on the call?

A Yes

Q And you were not -- you said that you did not recall if Ms McDonnell was on the call, right?

A Correct

Q And you had to be shown a document by Mr Dry to refresh your recollection that she was on the call?

A Correct

Q Is it fair to say that even though she was on the call, that you don't recall her saying anything on that call?

A Correct

Q Okay.

A She -- if she was there, she didn't speak much

Q Okay And is it fair to say that the Governor did -- the Governor and Maureen the sister, who you recall being on the call, did most of the talking?

A Correct

Q You have no idea if she was even listening on that call, do you?

A I -- I -- I don't know

Q Okay Now, the -- you've testified about a number of conversations and e-mails you had with Governor McDonnell today And do you recall having any specific conversations with Ms McDonnell, Maureen McDonnell, the wife, about this application?

A Not very much

Q Okay Is it fair to say that Governor McDonnell was the person you were dealing with with respect --

A Point of contact, right

Q And getting information during the various iterations of the application, that information came from Governor McDonnell, right?

A Correct

Q Okay Just to -- one thing that I -- clear

MR BURCK: Can you show RM-2049, please I think this is already in evidence Actually, you know what It's not worth the time You can take it down That's okay Thanks

BY MR BURCK:

Q Now, just a couple of last questions. On the forms that were -- the various iterations of the application, there was one dated February 15, 2013, and that is RM-0612 I believe that's in evidence It's a government exhibit

MS TARAKTCHIAN: 06 --

MR BURCK: 0612

MR DRY: I don't think that we introduced it I think he may have, but I'm not sure So many --

MR BURCK: This is in evidence, Your Honor It's RM-0612

THE COURT: All right

BY MR BURCK:

Q And this is a fax cover sheet dated February 15, 2013 It's from Robert McDonnell to yourself Do you see that?

A Yes

Q And you testified a little bit about this document

A Yes

Q Were you aware on that date that Ms. McDonnell was interviewed by the FBI -- excuse me -- by the Virginia State Police?

A No

Q Okay And Mr McDonnell didn't tell you about that?

A No

Q Okay

MR BURCK: If you turn to -- please turn to page 0612-00019 And if you blow up the bottom half of it, please, just so it's easier to read

BY MR BURCK:

Q This is a page that you testified about in response to questions from Mr Brownlee And it is -- it's supposed to list assets and liabilities; is that right?

A Correct

Q Do you see anything listed on either side, other than a total number?

A No

Q So you don't see any assets and no liabilities listed?

A Correct

Q And then a few -- two pages later, 0612-00021, that's -- I think you testified that was signed, actually, by Mr McDonnell, and it appears to be Ms McDonnell as well, on the 13th, right?

A Correct

Q Okay So this document didn't contain any assets or liabilities?

A Correct

Q And was this a document that -- that there are typewritten notes or typewritten aspects of it? This was typed in by you?

A Yes.

Q Okay

MR BURCK: And then finally, on -- can you bring up the February 18, 2015, document Government Exhibit -- this is the -- the -- RM- -- Your Honor, just one moment

THE COURT: Sure

MR BURCK: Government Exhibit 487 Thank you

BY MR BURCK:

Q And this is the -- you've testified about this document as well This is from Governor McDonnell to yourself on the 18th, a few days after the 15th, correct?

A Yes

Q And on this document, page -- the third page of the exhibit, right I know you've testified a bit about this today too, so I'm sorry to replow old ground But on this page is handwriting from the Governor listing additional assets and liabilities; is that right?

A Correct

Q And, for example, he -- Mr Dry took you through the Starwood Trust and the Jonnie Williams, right?

A Correct

Q And he also mentioned the Racehorse, LLC, right?

A Correct

Q Do you see that there's also an addition of a car, the 2005 Toyota Avalon?

A Correct

Q And the 457 Plan, the 401(a) Plan?

A Correct

Q And above that there's an IRA and Share? Do you see that above the Star Scientific stock?

A Correct

Q So this had not been previously provided by the Governor as of that date, right?

A Correct

MR BURCK: Your Honor, just one moment

(Counsel conferring with co-counsel)

MR BURCK: That's it for us, Your Honor Thank you

THE COURT: All right Redirect?

MR DRY: Can we have -- can we have RM-229? Can you -- somebody RM-229 I believe it was the first document

REDIRECT EXAMINATION

BY MR DRY:

Q Ma'am, I believe Mr Brownlee talked about this and the highlighting

MR DRY: Can you blow up the highlighting again?

BY MR DRY:

Q Did you ever have any discussions with Mr McDonnell discussing the policy regarding disclosure of his information by bank staff?

A I don't recall having that conversation

Q Okay

MR DRY: Let's bring up RM-2050 And can you -- can we scroll through and -- just scroll through some pages Do you guys have a paper copy? Do you have a paper copy? Okay

BY MR DRY:

Q I'm sorry Do you see this?

A Yes

Q Mr Brownlee took you through a lot of things that were talking about how things hadn't happened until the closing table, that there was things that had to happen before the -- after the application, the URLA was filed before closing Do you remember those questions?

A Yes

Q Before you could order appraisals, before you could go through that process, did you have to get the loan application from him?

A Yes

Q So that was like a necessary first step, right?

A Yes

Q Okay

MR DRY: Now, let's go to Government's Exhibit 480, please And then let's go to the second page Actually, I think I'm going to -- can we get to the URLA? The loan application Right there And can you blow up the top of that?

BY MR DRY:

Q Now, Mr Brownlee asked you about the check boxes of whether it was going to be a joint application or not, right?

A Correct

Q From your conversation with Mr and Ms McDonnell on the 23rd, did you understand this was going to be a joint application?

A Yes

MR DRY: And can we actually go down, please

BY MR DRY:

Q And, in fact, when you were building this loan application and when Mr McDonnell is doing handwritten notes, is he providing information for both himself and his wife?

A Yes

Q And then -- I'm sorry, ma'am You've seen this document before, correct?

A Yes

Q This URLA?

A Yes

Q Do you recall, in reviewing it, ever seeing anything about first draft or draft anywhere on this document?

A No

Q Okay And Mr Brownlee, he talked about, I think, your role is to assist in helping a borrower in filling out this information and collecting information, right? Do you recall that question?

A Correct

MR DRY: Can we go to the signature block, please I think it's going to be on the second page of the URLA Third page, then

BY MR DRY:

Q Ma'am, is there anywhere for you to sign and make any representations regarding the accuracy of this information?

MR BROWNLEE: Objection, Your Honor

THE COURT: Overruled

BY MR DRY:

Q Do you have to sign this?

A Typically, it's signed down at the bottom My name is down there

Q But are you making any representations regarding the accuracy of the information?

A No

Q Whose responsibility is that?

A The borrower's

MR DRY: And then let's go -- I just need -- thank you very much

MR BURCK: Sure

MR DRY: I really appreciate it

BY MR DRY:

Q You were asked questions about the additions of information I believe on the fourth page of the exhibit -- or I'm sorry Fourth page of the URLA

MR DRY: It's going to be Bates number GMP-02588172 Right there Can we blow up that middle part?

BY MR DRY:

Q Now, ma'am, we talked a lot -- there's confusion about which loan went with which But is it going to be possible for you to actually give the McDonnells the money that they are applying for for 3112 and 3113 later without knowing what the correct amounts are?

A Correct

Q You have to know what the liens are in order to refinance the property, right?

A Yes

Q Okay

MR DRY: Then let's go to -- let's go to 0612 RM-0612, please Can we -- 0612

Oh, I think we need to flip it Okay And the first page, please 0612-1 Right there

BY MR DRY:

Q Do you know what time of day Mr McDonnell faxed this to you?

A I don't see a time on it

Q Okay

MR DRY: And can we go through the document slowly so I can -- keep going All right Stop there One page back

BY MR DRY:

Q What is the date that Mr McDonnell and Ms McDonnell are signing this document?

A 2/13/2013

Q Okay

MR DRY: And can we keep going, please I'm sorry I'm having to do this I just don't have a paper copy I want to get to the URLAs that were discussed Oh, stop there One page back

BY MR DRY:

Q What date is being signed there by Ms McDonnell?

A 2/13/2013

MR DRY: Thanks a lot, John I really appreciate it Was this in the admitted exhibit?

MR BROWNLEE: I don't think so Not the top

MR DRY: Okay

Then let's go to -- I believe we talked about total assets and -- let's go to the 19th page, 0612-19

BY MR DRY:

Q Now, when you're sending this, ma'am, is this populated?

A No

Q It's not populated Why isn't it populated with all the information?

A I, most likely, didn't populate the information before sending out the application

Q And when you're sending this, this is just the -- had you already been informed to use the 770 information for these loans?

A I don't recall

Q Okay Well, let's do it this way

MR DRY: Can I pull up -- actually, I don't think I need to

And can you go down a little bit further on this one, please

I apologize, Your Honor

Right to the -- can we go to 612-21?

BY MR DRY:

Q And I believe you were shown the signature at the top?

A Correct

Q Do you remember that?

MR DRY: Can we scroll down to the bottom?

BY MR DRY:

Q What date is Mr and Ms McDonnell signing this?

A February 13th, 2013

MR DRY: One moment, Your Honor

(Counsel conferring with co-counsel.)

MR DRY: Nothing further Thank you, ma'am

THE COURT: All right Thank you, ma'am You may stand down

(Witness stood aside)

THE COURT: We're going to stop here for lunch And if you all could come back at -- let's make it 2:25, we'll get started with the afternoon session

MR DRY: Judge, just one thing

(The jury left the courtroom)

MR DRY: I just want to confirm We don't object to the bank record portions coming in, but there's a lot of handwritten notes on the first page and the back page that we didn't know were going in So to the extent that they are in, we'd object to any of that

MR BROWNLEE: Right That was not admitted, and we'll make sure we get it all cleaned up, Your Honor

THE COURT: Okay

MR DRY: Thank you, Your Honor

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(Luncheon recess taken from 1:09 p.m. to 2:25 p.m.)

THE COURT: Let's bring in the jury

(The jury entered the courtroom.)

All right, government, call your next witness, please

MR. FAULCONER: The United States calls Jeffrey Creekmore

JEFFREY CREEKMORE,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR FAULCONER:

Q Good afternoon

A How are you doing?

Q Could you please state your name and spell your last for the court reporter?

A Jeffrey Creekmore, C-R-E-E-K-M-O-R-E

Q What city do you currently live in?

A Chesapeake, Virginia

Q Could you briefly tell the jury what sort of educational background you have?

A I have a Bachelors degree from James Madison University

Q And where are you currently employed?

A Heritage Bank in Norfolk, Virginia.

Q What is your title or role there?

A Senior Vice President, Business Banking Executive, essentially a commercial loan officer

Q Now, have you ever met Mr or Ms Robert or Maureen McDonnell?

A I have not

Q Can you tell us, though, whether Heritage Bank has ever done any business with entities that are affiliated with Mr McDonnell?

A Heritage Bank currently banks Poole Mahoney, which was formerly Huff, Poole & Mahoney which was the law firm that Mr McDonnell was a partner in

Q Have you also done some loans for an entity called Racehorse, LLC?

A Racehorse Properties, LLC. Yes, sir Racehorse Properties is a holding company that was formed in 2004, I believe, by ten partners of Huff, Poole & Mahoney to purchase a building where the law firm would operate out of it

Q Is one of those partners Mr McDonnell?

A He is

Q Can you tell us what -- are there two types of loans that you had with them or can you describe what the loans are that you had?

A Yes, sir We have a commercial mortgage, which is a first mortgage that we refinanced from the institution that originated it, and later, we refinanced it again and combined a second mortgage that was held on that property into one loan. And we also have a line of credit to that entity that's used for, very rarely, for repair purposes, tenant upgrades, things like that The law firm does not occupy the entire building, so sometimes it is used for tenant outfit for a new tenant in the additional parts of the building

Q Do these loans go back a number of years?

A Yes, sir The line of credit goes back to 2006 with Heritage Bank, and the mortgage was refinanced originally over in 2009

Q All right Now, can you tell us what a personal financial statement is?

A A personal financial statement is a document that the bank requests from guarantors on a loan who are going to be personally obligated for the debt of the loan that basically states the assets and liabilities of the individual who is guaranteeing the loan.

Q Is it common for you to request those as part of a loan renewal process on a periodic basis?

A That's correct

Q Did you require them at various times for these transactions, the two that you have mentioned?

A Yes, sir, we have We require it on, I believe, an annual basis for the line of credit renewal, and also, when we did the refinance with the first mortgage combining the second and first, we also requested them.

Q Typically, would you request them from all ten partners?

A Yes

Q I'd like to show you what's been admitted as Exhibit 106 There we go. Mr Creekmore, do you recognize what type of document this is?

A Yes, sir, that is Heritage Bank's standard personal financial statement

Q And looking at this, is this a personal financial statement that came from the files for these loans?

A Yes, sir

Q Could you tell us what the date is there stamped in the upper right-hand corner as received?

A Received on June 15th, 2011

Q Can you tell us what the crossed-out date is there next to "As of"?

A The crossed-out date is June 1st, 2011

Q Is that June or may?

A May 1st, 2011 I apologize

Q What's the actual date for the personal financial statement?

A December 31st, 2010

Q Now, that "Date Received," is that the date that you got it at Heritage Bank?

A I assume that's what that stamp represents, yes, sir.

Q If we can go down to the lower right-hand corner, am I reading correctly that first line says, "Other Loans Payable"?

A That's correct

Q And then "Liabilities of Proprietorships" and "Liabilities of Partnerships/Joint Ventures" down below that?

A That's correct

Q Now, if we could turn briefly to what's been admitted as Exhibit 373 Do you recognize this document?

A That's also Heritage Bank's personal financial statement

Q Is this a later one dated April 30th of 2012?

A That's correct

Q Was this in the Heritage Bank files for a subsequent renewal process?

A That is correct.

Q Now, if we could zoom in on the box in the lower right-hand corner Does that, I know it is harder to read on this one, but does that list all the same categories we saw on that form just a moment ago?

A Yes, sir, it is the same form.

Q On this form, is there anything listed under "Other Loans Payable"?

A No, there is not

Q Is there anything listed under liabilities of proprietorships?

A No, there is not

Q Is there anything listed under "Liabilities of Partnerships/Joint Ventures"?

A No, there is not

Q If we could turn on this document to, I believe, the last page, Page 4 If we could zoom in on the "Representations and Warranties" at the bottom. Now, sir, I'm not going to ask you to try to read this one, but have you had a chance to compare the "Representations and Warranties" on this financial statement, the April 30th, 2012 one, to that other one that we looked at a moment ago from December of 2010?

A It is the same form.

Q So if we could go back to Exhibit 106 And sir, could you read just the first three lines of those representations and warranties there?

A "The information contained in this statement is provided to induce Heritage Bank (Heritage) to extend or to continue the extension of credit to the undersigned or to others upon the guaranty of the undersigned. The undersigned acknowledge and understand that Heritage is relying on the information provided herein in deciding to grant or continue credit or to accept a guaranty thereof Each of the undersigned represents, warrants, and certifies that the information provided herein is true, correct, and complete "

Q If we could scroll down, what's the date that this one is signed?

A Signed May 1st, 2011

Q All right And now I'd like to show you what's been marked for identification as Exhibit 394 Sir, is this a credit report from your Heritage Bank files?

A Yes, sir, it is

Q Is that date there June 14th of 2012?

A That's correct

Q So is this part of the annual review for the second renewal that we have been talking about?

A That date would most likely have been the renewal of the line of credit for Racehorse Properties

MR. FAULCONER: We would offer Exhibit 394 into evidence

MR SMALL: Objection as to relevance.

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Just to clarify, if we could go back to Exhibit 373 Could you tell us what the date is there?

A April 30th, 2012

Q So going back to Exhibit 394, that's June 14th, 2012, right?

A Correct

Q Have you had an opportunity to review this credit report before coming into Court?

A I have not reviewed it as of very recently, no, sir

Q Let me hand up a paper copy to you with the assistance of the security officer

(Document proffered to witness)

Taking a look at this --

MR SMALL: Can I see that?

MR. FAULCONER: It is up on the screen.

MR. SMALL: I wanted to take a look at the whole thing

MR. FAULCONER: One moment

THE COURT: Why don't you go ahead while they look for that

BY MR. FAULCONER:

Q Sir, could you take a look at that document and look at each page of that credit report and tell us, look to see whether or not there is anything referencing Jonnie

Williams or Starwood Trust

(Witness perusing document)

A No, sir, I do not see anything referencing either of those two items

Q All right

MR. FAULCONER: One moment, Your Honor.

(Counsel conferring with co-counsel)

No further questions, Your Honor

THE COURT: All right

MR. FAULCONER: I believe 106 was admitted on Mayor Sessoms' testimony yesterday, but if not, I would move it into evidence now

THE COURT: It will be admitted.

CROSS-EXAMINATION

BY MR. SMALL:

Q Good afternoon, Mr Creekmore My name is Dan Small I represent Bob McDonnell I think we talked briefly on the phone a week or two ago, sir

A Right

Q I appreciate your being here You weren't here this morning in Court The jury has heard a lot of this, so I'm going to try to move pretty quickly through it If I move too fast for you, just let me know All right?

The government interviewed you several times in this investigation, correct?

A Yes, sir

Q And they interviewed you about these loans, correct?

A Yes, sir

Q They never actually showed you the loan documents, though, did they? Relating to Jonnie Williams

MR. FAULCONER: Objection. There are no loan documents

THE WITNESS: No, sir, I did not receive any

BY MR. SMALL:

Q They never showed you any of the checks, did they, sir?

A No, sir

Q Now, going to, I guess 373, please This is your bank's form, correct?

A Correct

Q And it is a form for a personal financial statement, correct?

A Correct

Q And it is dated April 30th, 2012, right?

A Yes, sir

Q Now, personal financial statement means it is for an individual, correct?

A Yes, sir

Q You all have a different form if there is an entity applying for a loan, correct?

A We would generally request the tax returns or financial statements of that entity, yes, sir

Q All right So this is for a person, and the person here is Robert F McDonnell, correct?

A Correct

Q He is the only person listed on this

A Yes, sir

Q Going down a little bit, go up just a little bit here, okay, so right in the middle there, there is a box with writing in capital letters Do you see that, sir?

A Yes, sir

Q That box says, "You may apply for credit individually or jointly with another party " Have I read that correctly?

A Yes, sir, you have

Q Below that, there are about four lines of text which I'm not going to try to read, but am I correct that those are the instructions on how to apply either individually or jointly? Is that fair?

A Correct

Q And then below that, there are two boxes One says, "Individual Financial Statement," the other says, "Joint Financial Statement " Correct?

A Yes, sir

Q And there is a box to check one or the other, and here, individual has been checked, correct?

A Yes, sir

Q And then below that box, blow up the box again, where it is checked. Right below there, it says, "Does not include jointly-held assets " Is that correct?

A That's correct

Q And then right below that, it says, "If joint, complete the following " And all of that is left blank; is that correct?

A Yes, sir

Q So it is clear on the bank's practice, this is an individual personal financial statement for Mr McDonnell, correct?

A That's how it is intended, yes, sir

Q Not a joint statement, correct?

A Correct

Q Now, there are three loans related to Jonnie Williams or Starwood Trust Let me just walk through them very quickly Going first to RM-0896, already admitted, do you see this as a check -- that's the wrong one

MR. FAULCONER: This has not been admitted.

MR SMALL: No. Did I have the wrong number? I want the Starwood Trust check to Maureen McDonnell I have it as 96, but I could have the wrong number

(Document displayed.)

BY MR. SMALL:

Q You see this check from Starwood Trust to Maureen McDonnell?

A Yes, sir

MR. SMALL: That's been admitted. Please publish it

MR. FAULCONER: 896 has not been admitted There is a version of this that's a government exhibit, not this document

MR. SMALL: What number is that?

MR. FAULCONER: One moment

THE COURT: Is there some problem with offering this exhibit as your own, even though the government --

MR. SMALL: I have no problem.

THE COURT: That's too bad then That way we know what's in

MR FAULCONER: We ask it be just this page, Your Honor

MR. SMALL: That's fine to offer this page

THE COURT: It will be admitted. Give us the number again.

MR SMALL: I have 0896-0015

THE COURT: All right It will be admitted.

BY MR SMALL:

Q And this is a check from Starwood Trust to Maureen

McDonnell, correct?

A Yes, sir

Q So am I correct that based on your experience with Heritage Bank and your form, the bank's practice would be that a loan to a different individual would not have to appear on a personal financial statement, correct?

A Correct

Q And that would include a loan to a spouse would not have to appear on a personal financial statement, correct?

A If that statement was individual, it would not, correct

Q And we already said this is an individual personal financial statement Correct?

A Yes

Q So clearly, a loan, if this was a loan, I know you weren't here for the testimony, but if this was a loan to Maureen McDonnell, it would not have to appear on the Heritage Bank statement, correct?

MR. FAULCONER: Objection, Your Honor

THE COURT: Only to the fact that it has been stated a number of times

MR SMALL: Okay

BY MR. SMALL:

Q Now, are you familiar with an LLC generally? You know what that is?

A Yes, sir

Q Just tell the jury very quickly your understanding of what an LLC is You can take this down.

A Limited liability corporation, often used to -- I see it most often used to hold assets such as real estate or other items that multiple parties can hold an entity in.

Q The prosecutor asked you a question about a proprietorship That's different than an LLC, correct?

A My understanding is, yes, sir

Q He asked you questions about a partnership. That's different from an LLC, correct?

A Yes, sir

MR. FAULCONER: Objection

THE COURT: He can answer the question based on his experience

BY MR. SMALL:

Q Finally, he asked you a question about a joint venture That's also different in your experience

A Legally, yes, sir

Q So pull up 0502 previously admitted Publish it, please I don't know if you have seen this particular document, but you have seen Certificates of Organization of LLC's before, correct?

A Yes, sir, I have

Q This is Certificate of Organization of MoBo Real

Estate Partners, LLC, correct?

A Yes, sir

Q And that means that -- well -- so am I correct then, the bank's practice with regards to a personal financial statement such as this one is that a loan to an LLC would not have to appear on the bank's personal financial form, correct?

A The bank has a separate page for contingent liabilities, and if the loan to the LLC was guaranteed by the individual, it would appear on the contingent liability page

Q Fair enough. Let's address that quickly Sometimes, am I correct, you see a loan to an LLC which is in addition to the loan documents or whatever the loan agreement, whatever it is, there is also a personal guarantee by one or more of the members of the LLC, correct?

A That's the practice of our bank, to do a loan

Q You understand that, well, the bank's practice is that a guarantee, a personal guarantee like that has to be a document in writing, correct?

A That's my understanding, yes, sir

Q That's also Virginia law, correct?

A Correct

MR FAULCONER: Objection, Your Honor

THE COURT: Sustained.

BY MR. SMALL:

Q And so if there is no written, signed personal guarantee, let's take that situation out, assuming for the moment there is no written, signed personal guarantee, the bank's practice is that a loan to an LLC would not have to be disclosed on a personal individual financial statement; is that correct?

MR. FAULCONER: Objection, Your Honor, hypothetical We have already been over this

THE COURT: Plus it has been asked and answered like five times

MR. SMALL: No, sir, not of this witness, Your Honor

THE COURT: Let's go on to something else

BY MR. SMALL:

Q Could I see Government Exhibit 355? RM-2059 You see this is a $50,000 check from Starwood Trust to MoBo Realty; is that correct?

A Yes, sir

MR. SMALL: One moment, Your Honor

(Counsel conferring with co-counsel)

MR. SMALL: Thank you, Mr Creekmore No further questions

THE COURT: Mr Burck?

MR. BURCK: No questions, Your Honor

THE COURT: Government?

MR FAULCONER: Briefly, Your Honor

REDIRECT EXAMINATION

BY MR. FAULCONER:

Q If we could pull up Exhibit 106 and go to Page 4 I apologize -- oh, there we go In that upper right-hand corner, is that the contingent liability section you were talking about?

A That's a smaller version of it There is a full page on Page 5 of our form.

Q Got it Does that say, "Are you indirectly liable for obligations of others?"

A Yes, it does

Q And turning to Page 5, is that a longer list for those types of liabilities?

A Yes, sir

MR FAULCONER: No further questions, Your Honor

THE COURT: Thank you, sir You may stand down

(Witness stood aside)

Call your next witness, please

MS ABER: George Floyd

GEORGE FLOYD,

called as a witness by and on behalf of the government,

having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good afternoon, sir Please state your name and spell it for the court reporter

A Good evening It is George, G-E-O-R-G-E, Floyd, F-L-O-Y-D.

Q And where do you work, sir?

A I work for Verizon Wireless

Q What is your title there?

A I am a custodian of records

Q How long have you been so employed?

A I have been employed for six years with Verizon Wireless

Q As the custodian of records, have you received training on how Verizon keeps records of phone calls and text messages and data?

A Yes, I have received several hours of training

Q Okay In short, are you aware that Mr and Ms McDonnell are Verizon customers?

A Yes, I am.

Q Did Verizon get a federal grand jury subpoena back in April of 2013 for subscriber information and toll records related to their account?

A Yes, we did.

Q Did Verizon produce records in response to that subpoena?

A Yes, we did

Q I'd like to walk through very briefly a couple pages of that. I'd like to bring up Government Exhibit 145 Sir, with the assistance of the Court Security Officer, I'd like to show you an unredacted version of this to help you follow along

(Document proffered to witness)

Are these a few pages from the very many documents that Verizon produced in response to the subpoena?

A Yes

MS ABER: I would move 145 into evidence, please

THE COURT: It will be admitted.

BY MS ABER:

Q If we could back out for one second Is it fair to say this is the first page of a bill sent to Robert McDonnell?

A Yes

Q Okay If we could zoom in there, please Going to the second page, is it accurate that this is what you might call a toll record?

A Yes

Q What's a toll record?

A A toll record, and this is commonly known, as you stated, as a bill, toll records are pretty much the records that we store that can consist of text messages, call logs, and even data transferring information from one device to another

Q Okay And does this show that the phone number associated with Bob McDonnell ends in the four digits 0714?

A Yes, it does

Q Okay So walking through the columns here very briefly, specifically taking the first row as an example, tell the jury what each of those columns means, please

A Yes The first column to the far left is the Date That's the date that the call was processed The next column is the Time That's the time that the call was processed. It is based upon the origin on the call, where the time zone indicates In this case, it would be Eastern Standard Time The Number that you see is the number that was called, and in some cases, it would appear as the number that the call was made to as being the call that was received. The Rate, that's basically how Verizon Wireless bills the calls As you can see, it is Peak, so that means that it was during the time frame of 6 a.m. in the morning to 9 p.m. at night Off Peak indicates that, of course, it is a night call and you have your weekend calls Usage Type, it says "M to M," that means on the very first one at the top, that shows that's a mobile-to-mobile call Origination, that shows where the call was actually processed from. So as I stated earlier, if a call was processed on the East Coast, it is going to be East Coast time, or if it is processed on the West Coast, it will be West Coast time And again, the Origin indicates that The Destination indicates where the call was placed to So if a call, as I stated earlier, was made in Virginia and it was processed in California, then it is going to show California in that particular section Then you have the Minute section. All calls are rounded to the next minute, so if you are on a call for 30 seconds, it is basically rounded to the next minute That includes a voicemail as well Then the Airtime Charges, as you can see, there is nothing there, mainly because all of that was indicated in the billing peak hours and what have you

Q How far back does Verizon keep toll records like this?

A On average, it is three to five years

Q This may sound like a silly question, but I have to ask it anyway Does Verizon record phone calls? Do you have content available?

A We record calls for quality and training purposes, which is to train our representatives, and they are only kept for like 30 days

Q Absent a court order, at the time the call was made contemporaneous, could you go back in time and find the content of these calls?

A No, we couldn't

Q Does Verizon keep records of text messages in a similar way?

A Yes, we do

Q How long do you all keep text message data like that?

A We keep text message data in records to where the call was processed from, to That's typically kept for a year The content, meaning the actual message itself, we keep that roughly about three to five days

Q So even with a grand jury subpoena, the government, or anyone with a subpoena, couldn't go back and get content of text messages

A Correct

Q Would a message remain on the cell phone itself if the user had not deleted it?

A Yes

Q Now, are you i liar with an Apple application called iMessaging?

A Yes

Q Is that something that can be used, among other things, on iPhones?

A Yes

Q Tell the jury very simply what is an iMessage

A In contrast to a text message, Verizon Wireless, of course, we keep our text messages because they are sent on our network iMessage is a third-party application, commonly known as a chat They can be used through Apple, Yahoo Messenger, AOL uses it as well Basically, as you just stated, it is something that's kept on the device We process it as data so it is processed through like an IP address, through the Internet from Verizon Wireless's standpoint

Q Would a toll record showing text messages capture iMessages?

A They would not

MS. ABER: One moment, please, Your Honor

(Counsel conferring with co-counsel)

MS ABER: No further questions, Your Honor

THE COURT: All right Any questions?

CROSS-EXAMINATION

BY MS JOCHUM:

Q Good afternoon, Mr Floyd.

A Good afternoon.

Q I'm Elizabeth Jochum. I represent Bob McDonnell

Just a couple questions for you Does a user decide when to use text messaging and when to use Apple iMessage?

A Yes, it is totally independent on the user

Q So if you are engaged in a text message conversation and the phone switches to a Wi-Fi connection, does that automatically transfer the conversation to iMessage?

A It necessarily does not Again, it is really going to be independent on the user

Q iMessage functions very similar, though, to text message conversations?

A Yes It is easy to get them confused. They are typically in the same thread as your text messages so you can easily, you know, attempt to send a text message and actually send an iMessage

Q So a user may, they wouldn't necessarily make a conscientious choice of text message or iMessage, they are just trying to send a message?

A That's totally independent of the user

Q So if you have toll records showing, for example, a thousand text messages between two individuals, that would not necessarily represent the entire universe of messages sent between the two?

A Correct

MS JOCHUM: No further questions

THE COURT: Anything?

MR. BURCK: No questions

THE COURT: Anything else from the government?

MS ABER: No, Your Honor

THE COURT: Thank you, sir You may stand down

(Witness stood aside)

Call your next witness, please

MS ABER: William Long, please

WILLIAM LONG, JR

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good afternoon, sir

A Good afternoon

Q Please state your name for the court reporter

A Sure My name is William John Long, Jr

Q Mr Long, where do you work?

A I work for AT&T

Q In what capacity?

A In the Asset Protection Group

Q How long have you been so employed?

A A little over a year

Q In the course of that position, have you received training on how AT&T keeps records of phone calls, text messages, and data?

A Yes

Q Now, are you aware that a user named Celeste Williams is an AT&T customer?

A Yes.

Q And that a gentleman named Jonnie Williams is listed as a user on her account?

A That is correct

Q Did AT&T get a federal grand jury subpoena back in roughly February of 2013 for subscriber information and toll records for the phone number associated with those folks?

A That's correct

Q Okay Did AT&T produce records in response to that subpoena?

A Yes

MS ABER: I'd like to bring up Government Exhibit 96, please, which has not been admitted. And to facilitate Mr Long, if you don't mind, I'd like to hand him up an unredacted version of what we've got

(Document proffered to witness)

BY MS ABER:

Q Mr Long, before you is an unredacted version On the screen is a redacted version. Does 96 reflect a few pages from the large production that AT&T sent in response to the subpoena?

A Yes, it does

Q Okay

MS ABER: The United States would move 96 into evidence, please

THE COURT: It will be admitted

BY MS ABER:

Q Very briefly, sir, if we could scroll in on the top, please, could we walk through the columns and let the jury know what kinds of data AT&T maintains on these sorts of calls?

A Sure, absolutely So at the very top in the upper left-hand corner, that first number is just going to be an internal AT&T case number So when we receive the order, our court order compliance folks would create an internal AT&T case number to supply the records So that's an internal number The date below that would be the date that the records were run, and where it says SCAMP, that's the application, internal proprietary application that we use to extract the information from our billing system.

Q Let me direct your attention to the line that says "Voice Usage" for a phone number ending in 5828 Is that affiliated with the user Jonnie Williams on Celeste Williams' account?

A Sorry, repeat that, please

Q Absolutely The phone number there, the number ending in 5828, sir, is that affiliated with the user, Jonnie Williams?

A Yes, it is It is listed as the user on the account

Q Thank you. Scroll down. Tell the jury briefly what is the item, what does that column mean?

A So the item is just a line number for each transaction or connection or event that took place

Q What does Conn Date mean?

A That's going to be the connection date that the transmission or connection actually took place

Q And the third column, what is that?

A The connection time That's going to be the local switch time

Q What does Seizure Time mean?

A Seizure Time is best described as the time it takes somebody to push the send button on their cell phone and the person receiving the call to hit Talk on their phone So it is the time distance between Send and somebody answering the call

Q Okay Originating Number, does that mean the call from which the phone -- the phone number from which the call is coming?

A The Originating Number is going to be the person placing the call

Q Got you. What does Terminating Number mean?

A The Terminating Number is going to be the person receiving the call

Q What does Elapsed Time mean?

A That's going to be the duration of the call itself

Q Number Dialed?

A The Number Dialed is generally going to be the same number that is dialed by the originating number. The number that's being called

Q Moving along quickly to the other columns, is it fair to say these are associated with the serial numbers on the phone and the SIM card?

A That's correct The IMEI is International Mobile Equipment Identification number That's specific to the actual phone And then the IMSI number, International Serial Identification, is specific to the SIM card, which is specific to the phone number

Q Let's back out, please Turning your attention, sir, to the column that says Conn Time, is it fair to say that that reflects the local switch through which the call is being routed?

A That is going to be the local switch where this phone user was at the time that the call was either received or placed.

Q Okay Thank you

A There is no location information, so I can't say

Q Yes, sir Now, how long does AT&T keep these sorts of records?

A We maintain these toll records for seven years

Q And does AT&T record any content of phone calls absent a court order?

A No.

Q Now, does AT&T keep similar records of text messages?

A Yes

Q And how long does AT&T keep those kinds of records?

A For a minimum of four years up to -- it could be seven years

Q In reference to content of text messages, do you all keep that?

A So the content of text messages is maintained, not reviewed, but maintained for a period of seven days going back. It is maintained only for subscribers that use Android devices It is only supplied with court-ordered search warrant through law enforcement And it is only that seven-day period.

Q Finally, are you familiar with a program called iMessaging?

A Yes

Q Would a record of an iMessage appear on an AT&T toll record?

A It would appear somewhere in the data formula that's provided for the data usage It would not show up in the SMS or the Short Message Service, texting, or call records So iMessage doesn't use the AT&T network other than using data It is a proprietary application owned by Apple They would maintain the records I'm not sure if they maintain content, but it is an application proprietary to Apple

MS ABER: One moment, please No further questions, Your Honor Thank you

THE COURT: Any questions from Mr McDonnell?

CROSS-EXAMINATION

BY MS JOCHUM:

Q Good afternoon, Mr Long

A Good afternoon.

Q I'm Elizabeth Jochum. I represent Bob McDonnell

A Yes, ma'am.

Q Can you tell us, does a user decide when to use a text message and when to use Apple iMessage?

A There is, I believe, a way to turn that feature on and off with the phone The iMessage is only available on the i products, the Apple products So I can't tell from these records here

Q Do you know under some circumstances if when a user goes from a data service to Wi-Fi, if it can automatically switch from text to iMessage?

A I don't know that information.

Q Okay Do you know if text messages and iMessages show up in the same thread, the same application?

A They are two completely different services, so they don't show up in any of these records, iMessages

Q So the toll records that reflect text messages, SMS, if they happen to show, say, a thousand text messages, that would not reflect necessarily the total communications between the two users?

A I can only speak to these records So if you are asking if it is possible, I'm not sure if folks were using this application or not according to these records So the only thing that I can say is that if there are a thousand text messages listed, that a thousand text messages occurred. So I don't know about this iMessage program, how many messages would travel through that So we maintain data usage, and those iMessages are exchanged through the data usage So we don't maintain records in relationship to applications and what's being used So if somebody is using the iMessage service, it would look no different than if somebody was using Facebook or another type of application

Q But just to clarify, the text messages, the toll records would not show iMessages?

A That's correct

MS JOCHUM: Nothing further, Your Honor

THE COURT: Mr Burck?

MR. BURCK: No questions, Your Honor

THE COURT: Government?

MS ABER: No, Your Honor

THE COURT: All right, sir You may stand down.

(Witness stood aside)

Call your next witness, please

MR. HARBACH: We have a couple stipulations we would like to read into the record, please.

THE COURT: Sure

MR. HARBACH: There are two, Your Honor May I proceed?

THE COURT: Go ahead

MR. HARBACH: The first stipulation is labeled Stipulation 1 and the parties have agreed as follows: "1: All documents bearing a Bates number prefix of RFM or otherwise associated with FBI tracking numbers," and there is a series of numbers which I won't read, were produced by defendant, Robert F McDonnell, to the United States in response to a grand jury subpoena All such documents are authentic

"2: All documents bearing a Bates number prefix of MPM or otherwise associated with FBI tracking numbers" listed, "were produced by defendant Maureen G McDonnell to the United States in response to a grand jury subpoena All such documents are authentic

"3: All documents bearing a Bates number prefix of OGV or otherwise associated with FBI tracking numbers," list following, "were produced by the office of the Governor of Virginia to the United States in response to a grand jury subpoena and were so produced when defendant Robert F McDonnell was Governor of Virginia and defendant Maureen G McDonnell was the First Lady of Virginia All such documents are authentic

"4: Records produced to the government by Star Scientific, Inc , Starwood Aviation, and Starwood Trust or otherwise associated with FBI tracking numbers," list, "were produced by Star Scientific, Starwood Aviation, or Starwood Trust and are authentic

"5: The documents associated with FBI tracking numbers," again, a list, "are e-mails, attachments, calendar invites, and other electronic files produced by the Virginia Information Technologies Agency and are e-mails, attachments to e-mails, Outlook calendar events, and other electronic files located in Commonwealth of Virginia government e-mail accounts All such documents are authentic

"6: Visitor logs from the Patrick Henry

Building are authentic

"7: Records received from AT&T and Verizon, including," list of FBI tracking numbers, "are authentic and constitute records of regularly-conducted activity under Federal Rule of Evidence 803(6)

"8: The phone numbers shown on Attachment A to this stipulation, which the parties have reviewed and signed, accurately reflect the phone numbers for the listed individuals

"9: All bank and financial records, including those associated with the following entities and FBI tracking numbers, are authentic and constitute records of regularly-conducted activity under Federal Rule of Evidence 803(6) " Following is a list of 47 entities and the associated FBI tracking numbers which I won't read, but are part of the stipulation.

"10: At all times material to the indictment, including the duration of January and February, 2013, Pentagon Federal Credit Union was a federally-chartered credit union

"11: At all times material to the indictment, including the duration of October, 2012, TowneBank was an institution the accounts of which were insured by the Federal Deposit Insurance Corporation.

"12: The Washington Post article dated May

10th, 2013 and available at" an Internet address "is an authentic Washington Post article

"13: GMP-2588131 through GMP-2588133 is an authentic Word document drafted by Mary-Shea Sutherland.

"14: MPM-042938 is an authentic e-mail sent from and to the e-mail accounts reflected on the e-mail

"15: GMP-0766239 to GMP-0766243 is an authentic document authored by and with handwritten notes from Virginia State Police Agent Charles Hagan.

"16: GMP-2558918 to GMP-2558920 and GMP-IRGJ-008285 to GMP-IRGJ-008287 are authentic

"17: As First Lady of Virginia, defendant Maureen G. McDonnell was not a public official "

That concludes the first stipulation There is, the Attachment A included with the names and phone numbers which I won't read, Your Honor, and the entirety of this stipulation is marked Government Exhibit 532 and we offer it into evidence

THE COURT: All right It will be admitted.

MR. HARBACH: The second stipulation reads as follows:

"1: E-mails and Outlook calendar entries sent from an e-mail account were sent from that e-mail account and attachments to those e-mails and Outlook calendar entries were attached to those e-mails and Outlook calendar entries E-mails and Outlook calendar entries received by an e-mail account were received by that e-mail account and attachments to those e-mails and Outlook calendar entries were attached to those e-mails and Outlook calendar entries The fact that an e-mail or calendar entry was sent or received from or by an e-mail account does not mean that the account holder personally sent or viewed the e-mail or Outlook calendar entry and attachments

"2: The historical stock prices for Star Scientific, Inc , STSI, as listed on Yahoo! Finance," and there is an Internet address, "under the ticker symbol RCPI for Rock Creek Pharmaceuticals, Inc , are accurate and constitute market reports under Federal Rule of Evidence 803(17)

"3 The Excel spreadsheet of text messages electronically Bates stamped MOBO000630, and associated with FBI Tracking Number 1A208, was produced by Maureen McDonnell, formerly Uncapher, the sister of Robert F McDonnell The text messages reflected in MOBO0003060 are authentic

"4: An 'inspection of items' bearing a Bates number of GMP--2008936 to 37 is authentic and admissible On or about August 9th, 2013, Robert F McDonnell and Maureen G McDonnell, through their separate counsel, returned the listed items to Jonnie R Williams, Sr , through his attorneys Mr Williams' attorneys, in turn, provided all of the listed items to the Federal Bureau of Investigation

"5: The photos of Robert and Maureen McDonnell produced by the defense to the government and Bates Numbered with the prefix RFM-R16 are authentic.

"6: All tax returns and other tax documents filed with the IRS as produced by the government are authentic

"7: Public filings with the Securities and Exchange Commission are authentic.

"8: Records maintained by the Virginia Public Access Project at," web address, "are authentic

"9: The specific wire communications alleged in Counts Two through Four occurred on the dates alleged, were interstate wire communications in furtherance of completing the referenced financial transactions, and were transmitted from the Eastern District of Virginia to a location outside the Eastern District of Virginia "

The stipulation is signed by counsel for the parties It is marked as Government Exhibit 533, and we offer it into evidence, Your Honor

THE COURT: It will be admitted.

MR HARBACH: Thank you, Judge

THE COURT: All right Call your next witness

MR FAULCONER: Your Honor, the United States calls Special Agent David Hulser

DAVID HULSER,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR FAULCONER:

Q Good afternoon.

A Good afternoon

Q Could you please state your name and spell your last for the court reporter?

A Yes It is David Patrick Hulser, H-U-L-S-E-R

Q How are you currently employed?

A I'm a Special Agent with the FBI

Q And what office of the FBI do you work in?

A The Richmond Division.

Q How long have you been at the FBI?

A It will be 19 years this October

Q What did you do before you worked as an FBI agent?

A I worked for six years with a CPA firm.

Q Now, in your current role as an FBI Special Agent, what are your responsibilities?

A I'm currently assigned to a white-collar criminal squad, which is responsible for public corruption and other financial matters

Q Now, turning to this case, approximately how many agents have worked on this case, to your knowledge?

A Approximately eight

Q What agencies have those been from?

A The FBI, the Virginia State Police, and the IRS

Q Where has your work focused on the course of the investigation?

A Sir, my work has focused primarily on conducting interviews as well as review of texts, toll, and financial records

Q As one of the agents on this case, have you participated in every single interview that's been done?

A I have not

Q Do you know approximately how many interviews have been done?

A In excess of 300

Q Have you reviewed every single document that's been collected?

A I have not

Q Do you know approximately how many pages of documents that have been collected?

A Approximately three-and-a-half million

Q Are some of those pages duplicates?

A They are

Q Are some of those pages from related investigations that aren't actually Mr and Ms McDonnell's investigation?

A That's correct

Q Have you looked at every single page of those more than three-and-a-half million pages?

A No, sir

Q Now, have the documents that the FBI collected in this case included documents obtained from the defendants, Robert McDonnell and Maureen McDonnell?

A They have

Q How were those documents obtained?

A Through the federal grand jury subpoena process

Q Now, generally speaking, are you able to tell which defendant produced which document when you look at it?

A Yes, sir Documents received from Robert McDonnell are Bates stamped with a prefix RFM. And documents produced from Ms McDonnell are Bates stamped with the prefix MPM.

Q What types in general terms, what types of documents were obtained from the defendants?

A We received text messages, toll records, and other documents containing handwriting and then other documents

Q Did those include some e-mails?

A They did

Q You said text messages and e-mails Just to be clear, do the documents that you obtained from the defendants via grand jury subpoena include every text or e-mail that one of the defendants ever sent?

A No.

Q What documents do they include?

A Only those that were responsive to the federal grand jury subpoena

Q Now, that's the defendants Did you do essentially the same thing for Mr Jonnie Williams?

A We did

Q And setting aside those three individuals, did you also obtain e-mails and other records from the Office of the Governor of Virginia?

A Yes, sir

Q Did you also obtain records from the Virginia Information Technologies Agency or VITA?

A We did

Q Were those generally e-mail records?

A Yes

Q How about Star Scientific; did you get any records from them?

A Yes

Q Now, in addition to the parties, those entities that we have heard a little bit about, have you also collected financial and bank records for the defendants?

A We have

Q Could you walk us through in general terms what types of bank and financial records you got and reviewed?

A Sure We received bank records, credit card records, tax records, other accounting records, and also some mortgage records

Q Now, did the bank records that you got, did they include every transaction and every detail of those transactions or just detail for ones over a certain dollar amount?

A Just detail over, generally, a $500 limit

Q And did those include at least some financial records related to the various things of value given by Mr Williams to the McDonnells?

A Yes

Q Have you also obtained some phone records via grand jury subpoena?

A We have

Q Did those include records for the McDonnells and for Mr Williams?

A Yes

Q Could you walk us through the phone records that you got and describe them just a little bit, starting with the ones that you got for the McDonnells?

A From the McDonnells, as we just heard, they both maintained their accounts through Verizon Wireless So for Mr McDonnell, he had two cell phones during the period that we received the subpoenaed records, and that covered the period from December of 2009 through April of 2013 Ms McDonnell maintained one cell phone, and that covered the period June of 2009 through April of 2013

Q To be clear, we heard a little bit about it from the Verizon and AT&T folks, but did you obtain any sort of recorded phone calls?

A No

Q Was there any sort of wiretap done in this case?

A There was not

Q What about text message records for the McDonnells? Did you get any text message records for their cell phones?

A We did, but only during the period September of 2012 through September of 2013

Q To be clear, is that because that's all you asked for or why is that the only year that you got?

A No, they only maintained one year worth of text records

Q Even for the text records that you do have, speaking just to what you obtained from the phone companies, did you get any content of text messages from the phone companies?

A No, we did not

Q Now, for Mr Williams, could you walk us through the phone records that you got for Mr Williams?

A Sure From Mr Williams, he maintains his account with AT&T, and we received records from July of 2009 through February of 2013 We also received information relative to text messages and data covering the period February of 2010 through February of 2013

Q And generally speaking, the text message records that you have for either of these two companies, well, just talking about AT&T real quick, did you get any content of text messages from AT&T?

A We did not

Q Are you aware that text messages that are sent via iMessaging don't show up on those text records?

A Correct

Q Just talking a little bit about the two different types of records, could you walk us through, is there a difference in terms of the type of information that you can locate in a Verizon record versus an AT&T record?

A Sure With the Verizon records, they typically utilize a rounding as far as the duration of the call So, for example, if it was a 50-second call it would be rounded up to one minute If it was a 1 minute 20 second call, it would be rounded up to 2 minutes The Verizon records also indicate generally the location of the user, where they were when the call was placed.

Q Is that sort of a general location?

A Correct

Q Now, for the AT&T records, do those include both minutes and seconds in terms of duration?

A They do.

Q And to be clear, again, for the AT&T records for Mr Williams, did you have any sort of content of the phone calls?

A We did not

Q Any sort of wiretap done?

A No, sir

Q Now, we have talked a little bit about cell phones Did you obtain any phone records for landline, residential, or office phones?

A We did not

Q For the phone records that you did obtain, how did you compile and review them?

A Primarily through utilizing a spreadsheet program, which allowed us to sort and analyze the data

Q Now, for the specific calls and text messages that you are going to talk about during your testimony, have you actually gone back and looked at the paper records to confirm that they are there?

A I have

Q Did it take a while?

A It did

Q Earlier you said that your work on this case focused mostly on financial, phone, and text message records Did I get that right?

A That's correct

Q Could you tell us how you tied all of that together to prepare for your testimony here today?

A Sure Through the analysis of all that information, approximately 50 summary charts were prepared.

Q Have you also sat through all of the testimony here at trial?

A I have

Q With the exception, I guess, of occasionally helping out to run grab a witness and the like

A Correct

Q Now, I'd like to start by showing you what's been marked for identification as Exhibit 566 Special Agent Hulser, is this a two-page chart?

A It is

Q What is on the first page, generally speaking?

A Generally, it is just a listing of names and abbreviations

Q And what is on the second page, generally speaking?

A The second page is a key or a legend that contains particular marks or notations that are utilized throughout the summary charts

MR FAULCONER: We offer Exhibit 566 into evidence

MR. ASBILL: We object

THE COURT: Come on up

(At Bench.)

MR. ASBILL: I believe all of these charts are under 1006, and these are not admissibile These are demonstratives, and I object to them being admitted into evidence

MR FAULCONER: We provided these charts a week ago We were told yesterday that we would get any objection last night We got no objection to these charts last night They are Rule 1006 charts They are phone records, financial records This is a legend for the other charts If these aren't in evidence, nobody can understand the others

THE COURT: The objection is overruled.

(In Open Court)

MR. FAULCONER: Is 566 in evidence?

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q All right Now, Special Agent Hulser, walking through this sort of names and abbreviations, does this apply for all the rest of the charts you are going to be talking about?

A Yes, sir, it does

Q Could you start just by telling us what the initials and color coding mean in the first couple of rows there?

A Sure For Robert F McDonnell, the initials or the abbreviation used throughout is RFM, and also highlighted in yellow For Maureen G. McDonnell, the abbreviation is MM, and highlighted throughout in orange For Jonnie R Williams, Sr , the abbreviation would be JRW, and highlighted in green. One other, Maureen C McDonnell, who is the sister of Mr McDonnell, formerly Ms Uncapher, the abbreviation is SisM.

Q For these other ones, I see there is Celeste Williams, Michael Uncapher, Cailin McDonnell Young, Robert Bobby McDonnell, Sean McDonnell Are those simply the first names throughout the rest of the charts?

A Yes

Q What does MSS stand for in the rest of them?

A Mary-Shea Sutherland.

Q For anybody on this summary chart, is generally their last name used?

A That's correct

Q If we could turn to the second page Just to walk everybody through these, since we will be looking at a few of them, could you tell us what the asterisk next to a time means on these subsequent charts?

A Sure That asterisk next to a time would indicate a one-minute time difference between the records So for example, if there was a toll record with a call between Jonnie Williams, or JRW, and Ms McDonnell, and there was a one-minute time difference, we would utilize the time for Mr Williams and the asterisk would be notated next to Ms. McDonnell's

Q If you didn't have -- let's say it is a call involving not Jonnie Williams, but Maureen McDonnell and Mr McDonnell Then whose records would you default to when there is that one-minute time discrepancy?

A Ms McDonnell's

Q Looking at the asterisk on the call recipient, could you tell us what that indicates if it is on one of these subsequent charts?

A That just indicates that one of the two parties, the call did not appear on their recipient records

Q And then where it says there a double asterisk on call recipient, could you explain what that means if it shows up on one of these charts?

A Sure. That applied to Ms McDonnell only, and there were several instances where Mr McDonnell had a phone conversation with her and it would show up as Unavailable due to the Caller ID block

Q So is that, for those records, are those only calls where it is RFM to MM?

A Correct

Q So in those, does the record show up in the RFM records, am I right?

A It does

Q They show up in the MM records just as an unavailable call

A Correct

Q Now, what does the, I don't know exactly what to call it, the upside down V next to the time, what does that indicate?

A That indicates that we had to make a time zone adjustment, which is typically based on the records that we have received, some of the text records, were in UTC format, which is the coordinated universal time, also known commonly as Greenwich Mean Time or Zulu Time, so the four-hour conversion was made

Q When you made those adjustments, were they generally based on trying to compare two different records and figure out which one is the most likely the Eastern time?

A That's correct

Q We can take that down. All right Now, just to clarify a few things before we get into some of the charts themselves When you have calls listed on some of these later charts, do you, Special Agent Hulser, personally know what was or wasn't discussed on any of those calls?

A No

Q When you list calls or text messages for a given day, do you necessarily include every single call or text message from that given day?

A No. Only those that are relevant to our investigation.

Q I'd like to show you what's been already admitted as Exhibit 54. Now, are you familiar with this e-mail dated December 22nd, 2009?

A I am.

Q I'd like to focus on two parts of this e-mail The first is there at the top Do you see Mr Eige and Ms McDonnell exchanging an e-mail conversation about a potential phone call?

A I do.

Q Have you reviewed the phone records to determine whether or not Ms McDonnell's cell phone and Mr Eige's cell phone had a phone call in that time frame?

A Yes

Q I'd like to show you what's been marked as Exhibit 567 Is this a chart showing what the phone records indicated in terms of calls in proximity to that e-mail?

A It is

MR. FAULCONER: We offer Exhibit 567 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q Now, starting with the, just reading across the time there, is that the time of either the e-mail or phone call?

A Yes, sir

Q From or To is the individuals or e-mail accounts, phone numbers involved.

A Correct

Q Now, that 11:19 a.m., is that the e-mail, at least the last one in the thread of what we were just looking at?

A Yes, sir

Q Could you walk us through what this chart shows on the next two lines subsequent to that e-mail?

A Approximately six minutes later, Ms McDonnell contacts Jasen Eige and a phone call is connected for approximately 17 minutes And immediately thereafter, Ms McDonnell contacts Mr McDonnell's cell phone and a call is connected for two minutes

Q All right Now, during this time frame, up through December of 2009, based on your review of the records, are there any calls between Mr Williams' cell phone and either of the McDonnells' cell phones?

A No, there were no calls during calendar year 2009 or 2010

Q All right Let's go back to Exhibit 54 briefly I'd like to focus on the e-mail at the bottom of the first page Do you see there where it says, "We are broke, have an unconscionable amount in credit card debt already, and this inaugural is killing us"?

A Yes

Q Have you reviewed Mr and Ms McDonnell's credit card records for that general time frame?

A I have

Q I'd like to show you what's been marked for identification as Exhibit 568 Could you tell us what this chart shows?

A Sure This chart shows credit card balances in seven different credit cards during the month of January, 2010 for Mr and Ms McDonnell

Q Is this the month following that e-mail we were just looking at?

A It is

MR. FAULCONER: We would offer Exhibit 568 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q All right Now, Special Agent Hulser, if we could just zoom in on the portion that's in color there Looking at this, could you start by walking us through what the color coding means on this chart?

A Sure The color coding is associated with the credit card account holder, so those in yellow are Mr McDonnell's and those in orange are Ms McDonnell's

Q How many credit cards are listed on here in each person's name?

A Seven.

Q Is that four for Mr McDonnell and three for Ms McDonnell?

A That's correct

Q And what is the total credit card balance as of January, 2010?

A $74,941 11

Q And when we look at this document or this chart, the statement dates being different in the far left-hand column, can you explain why those are different dates?

A Sure Each account just has its own independent statement closing date for the month.

Q We can take that down Now, there is also a reference in the e-mail that we saw to being broke Have you heard some of the testimony in trial about MoBo Realty?

A I have

Q And based on the records that you have reviewed, can you tell us what the ownership percentages are in MoBo Realty?

A It is 50/50, Mr McDonnell and his younger sister, Maureen.

Q During the course of the investigation, have you reviewed some e-mails in which Mr McDonnell and his sister are discussing MoBo's financial situation in this 2009 time frame?

A Yes

Q I'd like to show you what's been admitted as Exhibit 51 If we could just focus on the middle e-mail there Do you see where it says, "In other words, we are in trouble and need to act NOW," and then discusses a short sale?

A Yes

Q Based on your review of the mortgage and financial records, was there actually any sort of short sale or refinance done in this time frame?

A No.

Q We can take that down. Now, in addition to reviewing some of the e-mails, have you also looked at MoBo's tax returns and bank records for the 2009 and 2010 time frame?

A I have

Q Are you familiar with what its cash flow situation was like in that time frame as reflected on the tax returns?

A Yes

MR FAULCONER: I'd like to show the witness what's been marked for identification as Exhibit 569

BY MR FAULCONER:

Q Special Agent Hulser, can you tell us what this chart is, generally speaking?

A This is just a summary chart, scheduling out the rental real estate activity for 2009 and 2010 for MoBo Real Estate Partners

MR FAULCONER: We would offer Exhibit 569 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q All right Now, Special Agent Hulser, could you walk us through what each of the three rows on this chart are indicating?

A Yes The first row is the rental real estate income, so that's actual monies received for the rental of the combined two properties that make up MoBo So we have for 2009, it is just over $178,000 For 2010, it is just over $196,000

Q Does that number there, rental real estate income, does that include any sort of outside loans or owner contributions into MoBo Realty?

A No

Q Now, the second line there, rental real estate expenses, can you tell us what's included within that?

A Sure Those are the annual operating expenses that were incurred for both 2009 and 2010 So for 2009, just over $221,000 For 2010, over $236,000

Q Now, there in rental real estate expenses, can you tell us whether that includes any principal repayments on loans?

A It does not

Q So what part of any loan repayment is included in that category?

A Just the interest

Q Does that row include any sort of capital improvements or expenses on capital improvements?

A None that were capitalized

Q Now, what is the net rental real estate income for each of those two years, 2009 and 2010?

A For 2009, it is a negative 43,203 And for 2010, it was a negative 40,321

Q Just to be totally clear, Special Agent Hulser, is this number that we are seeing here actually the tax loss that's taken or is that a different number?

A No, that number does not include depreciation expense, which is a tax entry It is a non-cash item that's calculated and deducted for income tax purposes only

Q All right We can go and take that one down. All right, now I'd like to move forward in time to April of 2011

MR. FAULCONER: Unless Your Honor wants us to stop here for the break?

THE COURT: No, let's try to get to 4 o'clock

BY MR FAULCONER:

Q Moving forward in time to April of 2011, have you heard the testimony at trial about the shopping trip to New York in April, 2011?

A I have

Q I'd like to show you what's been admitted as Exhibit 97 Have you reviewed this e-mail?

A Yes, sir

Q Do you see there where Monica Block and Ms McDonnell, at least Monica Block refers to "Per our conversation"?

A Yes

Q Have you reviewed the phone records for that day for Ms McDonnell?

A I have

Q I'd like to show you what's been marked for identification as Exhibit 570. Special Agent Hulser, can you tell us what this chart is for Monday, April 11th, 2011?

A Sure, this is a summary chart summarizing communications involving Ms McDonnell, Jonnie Williams, the RFM Travel Aide, and Monica Block.

MR. FAULCONER: We would offer Exhibit 570 into evidence.

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q I see here that the first call is from Maureen McDonnell to Jonnie Williams at 5:28 p.m. Before this call that's shown on this chart, how many calls were there between Ms McDonnell, Ms McDonnell's cell phone and Mr Williams' cell phone?

A Zero

Q How about between Mr McDonnell's cell phone and Mr Williams' cell phone?

A Also zero

Q Now, before we sort of walk through this in a little bit more detail, can you remind us again what the asterisk there means on the time?

A Yes, that just indicates that this was a one-minute time difference between the records for Jonnie Williams and Maureen McDonnell as far as when the call was placed.

Q Now, after the 5:28 call from Ms McDonnell to Mr Williams for about 12 seconds, is there then a text message at 5:33 p.m., same people, Ms McDonnell to Mr Williams?

A Yes

Q Could you walk us through the next three rows in terms of what's shown there?

A Sure. There were a series of text messages from Mr Williams to Ms McDonnell followed by a 15-minute phone call from Mr Williams to Ms McDonnell, and then also followed by a text message

Q Now, what does this chart show three minutes after the last of those text messages from Ms McDonnell to Mr Williams?

A That Ms McDonnell has contacted the RFM Travel Aide and had a brief conversation, two minutes

Q Is that about two minutes?

A Correct

Q Immediately after that conversation concludes, what is that next eight-minute conversation, at least phone call?

A Ms McDonnell contacts Ms Block.

Q And then that 10:31 entry, is that the e-mail we looked at right before we looked at this chart?

A It is

Q All right We can take that down. Now, we have also, we heard some testimony about the shopping trip that actually occurred on April 13th of 2011 Have you reviewed Mr Williams' credit card bill for that time frame?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 571 Can you tell us what this chart is?

A Sure This is a summary chart providing detail for Mr Williams' American Express bill during the days April 13th and 14th, 2011

Q Does this focus on the stores that were mentioned during testimony?

A It does

MR. FAULCONER: We offer Exhibit 571 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Without necessarily reading off every dollar amount, could you just tell us how many transactions are located here and what the total is?

A Sure There are a total of six transactions: two charges at the Louis Vuitton store, two charges at the Bergdorf Goodman store, and two charges at the Oscar de la Renta store The total of those charges is $20,979 28 We then backed out the amount for Mary-Shea Sutherland's dress that was purchased, which was $1,690, to arrive at a total associated with Ms McDonnell of $19,289 28

Q The dollar amount listed there for the Mary-Shea Sutherland dress, did you just take that from something Ms Sutherland told you or where did you take that amount from?

A No, it is on the tag of the dress right over here

Q Is that the dress over there?

A Yes

Q Okay Now, earlier we saw a chart of the McDonnells's credit card debt in January of 2010 Are you aware of what their credit card debt was like from the span from January of 2010 until April of 2011?

A I am.

Q I'd like to show you what's been marked for identification as Exhibit 572 Special Agent Hulser, is this a chart showing that credit card debt over that time span?

A It is

MR. FAULCONER: We offer Exhibit 572 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Again, Special Agent Hulser, without reading off every single amount on here, could you just tell us how that amount of credit card debt generally changed over time?

A Sure From the point that we started in January of 2010, the balance was just shy of $75,000 And in September, by September of 2010, it hit a high watermark of over $90,000 And by January of 2011, the combined balances were just over $30,000 and remained fairly consistent until April of 2011

Q In that time frame from September of 2010 until January of 2011, where that drop occurs, have you reviewed the bank accounts for Mr and Ms McDonnell to determine whether there were any large deposits that weren't deposits that would happen on a routine basis?

A I have

Q Could you describe what if any such deposits there were?

A During that time period there was a deposit of just shy of $25,000 from the Gardner Family Trust And there were also in excess of $30,000 of deposits from a series of insurance companies I believe life insurance

Q   The Gardner Family Trust, was that associated with the death of one of Ms McDonnell's parents?

A   I believe so

Q   Now, earlier you said that April 11th, 2011 was the first communication between Ms McDonnell and Mr Williams by cell phone After that time, did their communication frequency increase?

A   It did.

Q   We have heard a number of, a number was sort of tossed out there about how many communications there were Have you reviewed the number of communications?

A   Yes

Q   Have you also reviewed the communications between Ms McDonnell and Mr McDonnell in that same time frame?

A   I have

Q   I'd like to show you what's been marked for identification as Exhibit 573 Now, what is this chart that we are looking at here, generally speaking?

A   This is just a summary of overall phone record totals associated with Mr McDonnell, Ms McDonnell, and Jonnie Williams during the period April 11th, 2011 through February 15th, 2013

MR FAULCONER: We would offer Exhibit 573 into

evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Agent Hulser, could you tell us why you picked the dates April 11th, 2011 through February 15th, 2013?

A April 11th was the date of the first contact, and February 15th was through the date of the law enforcement interview with Ms McDonnell

Q When you say "first contact," is that first contact between whom?

A Between Jonnie Williams and Ms McDonnell

Q After February 15th, 2013, were there any communications between Ms McDonnell and Mr Williams?

A No

Q Now, does it also say here, it says "Number of calls greater than one minute " Does this only include calls greater than a minute?

A Yes

Q Now, in the AT&T records, do those records include some calls that actually show up as zero seconds?

A They do.

Q Can you explain whether those sometimes duplicate calls that actually show up for a duration of time?

A I'm sorry, could you repeat that?

Q I phrased that very confusingly Could you explain whether any of the zero-second calls appear to duplicate any of the calls that actually have a time duration on them?

A No

Q Were there any calls that lasted zero seconds that corresponded with a call that lasted more than zero seconds?

A Yes

Q Does this chart include any call that lasted zero seconds?

A No

Q Does it include any call that lasted less than a minute?

A No

Q In that first upper left-hand corner, how many calls are shown between Mr McDonnell and Ms McDonnell from April 11th of 2011 to December 31st of 2011?

A 130

Q Where it says "RFM Verizon," can you explain why this says RFM Verizon in the furthest left box there?

A We utilized Mr McDonnell's records primarily because of the Caller ID issue that was previously testified to

Q Can you explain exactly what that was one more time?

A Sure Caller ID block on Mr McDonnell's phone If he contacts Ms McDonnell, it would show up as Unavailable on her records

Q As compared to that first time frame, April 11th, 2011 to December 31st, 2011, compared to that first time frame, what are Mr McDonnell and Ms McDonnell's communications greater than a minute from January 1st, 2012 to February 15th, 2013?

MR. BURCK: Objection, Your Honor The question was communications or was it phone calls?

BY MR. FAULCONER:

Q How many phone calls greater than one minute?

A 178

Q Going to Ms McDonnell and Mr Williams, how many phone calls greater than one minute are in that first time frame during 2011?

A 94

Q And how if at all do those number of communications compare to the number of communications from January of 2012 to February 15th, 2013?

A They decreased to 73

Q Now, to be clear, Special Agent Hulser, are you aware that Ms McDonnell and Mr Williams exchanged at least 733 text messages during that left-hand time frame in 2011?

A That's correct

Q Were you able to do sort of an apples to apples comparison of the number of text messages exchanged between Mr McDonnell and Ms McDonnell during that same 2011 time frame?

A No

Q And why were you unable to do that?

A Because we didn't have those records We only had the records for a one-year period that began in September of 2012

Q Now, during the 2012 time frame to February 13th, 2013, are you aware that Mr McDonnell and Mr Williams exchanged around 179 text messages?

A Yes

Q Were you able to do a comparison of that number to whatever number of text message communications were between Ms McDonnell and Mr McDonnell during that same time frame?

A No

Q Now, during the time frame that's indicated here, how did this overall number of text messages that we were just discussing, 733 and 178, how did that compare to the total number of text messages that Mr Williams sent or received, at least as indicated in his phone records, during that time frame?

A Sure During that time frame, April of 2011 through February of 2013, Mr Williams had sent or received over 40,000 text messages

Q But again, were you able to look at a comparison of the number of text messages Ms. McDonnell sent to Mr Williams as compared to how many text messages she generally sent?

A I'm sorry, repeat that

Q Looking at Ms McDonnell's records, were you able to look at how many records she sent to Mr Williams in that time frame and compare it to how many she sent generally during that time frame?

A No

Q Again, why is that?

A We didn't have the records

Q Now, during this same time frame, three more questions about this time frame. Are you aware of how many communications Mr McDonnell had with Mr Williams, phone communications, greater than one minute in 2011?

A One

Q And how many phone communications in 2012 greater than one minute?

A Nine

Q During 2011, are you aware of how many text messages the records showed Mr Williams and Mr McDonnell exchanging in 2011?

A Five

Q And how about number of text messages between, at least according to the records, Mr McDonnell and Mr Williams in 2012?

A 22.

Q But as of April of 2011, had there been any communications by cell phone between Mr McDonnell and Mr Williams?

A No, sir

MR. FAULCONER: Do you want to stop at 4 o'clock now?

THE COURT: Yes We will go ahead and take the afternoon break 15 minutes

(The jury left the courtroom.)

(Recess taken from 4:05 p m. to 4:24 p.m.)

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THE COURT: All right

(The jury entered the courtroom)

THE COURT: All right Government

MR FAULCONER: Thank you, Your Honor

BY MR FAULCONER:

Q All right, Special Agent Hulser I'd like to pick up with what's been admitted at Exhibit 104 Are you familiar with this calendar entry from April 29th of 2011?

A Yes, sir

Q Were you in court for the testimony about this dinner between Mr and Ms Williams and the McDonnells?

A I was

Q Have you also reviewed e-mails produced by the defendants, pursuant to the grand jury subpoena, for e-mails discussing Star or MoBo properties in this general time frame?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 107 Is this an e-mail from Ms McDonnell to Mr McDonnell?

A It is

Q Was this produced by Ms McDonnell?

A Yes

Q And is it dated May 1st of 2011?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 107 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, Special Agent Hulser, starting with what's at the bottom there, could you tell us what is written in that link at the bottom of this e-mail chain?

A Sure It's "seekingalpha com/article" -- some numbers, and then "star-scientific-has-home-run-potential "

Q In the middle e-mail, what is written by the individual who sends this e-mail to Ms McDonnell?

A "Please give to the Governor and his wife as per Jonnie Williams Thank you Rob "

Q Now, after that e-mail at 10:45 a m , what does Ms McDonnell's e-mail account do with that e-mail?

A She forwards that e-mail to Mr McDonnell on May the 1st, 2011, at 12:17 p m

Q Now, is there any difference between the subject line in the middle e-mail and the first e-mail and the subject line of that e-mail when it's sent by Ms McDonnell to Mr McDonnell?

A There is It's been changed to "Home Run Potential "

MR FAULCONER: Oh, Your Honor We offer this into evidence I apologize

THE COURT: It will be admitted

MR BURCK: Your Honor, I'm sorry Objection May we approach on this document?

THE COURT: Come up

MR BURCK: Your Honor, the only reason for the objection is that this document, the subject line that he just testified about where it says "Home Run Potential," the agent testified that somebody changed it But on the face of it, it could be that they forwarded the document And the document comes up as a forward as a "Home Run Potential" as the title of the article. So I'd like --

MR FAULCONER: The face of the first e-mail to the middle e-mail has something different So I can clarify

MR BURCK: If you would just clarify, that would be fine Because I don't know if there's proof --

THE COURT: All right

MR BURCK: Thanks

(In Open Court)

BY MR FAULCONER:

Q All right Agent Hulser, just looking at the subject line from the first e-mail to the middle e-mail to the top e-mail, can you just tell us what, on the face of this document, the difference is in the text from the middle e-mail to the top e-mail? Without necessarily saying what happened, just tell us whether there's a difference in the text on the face of it

A Sure The subject in the middle e-mail is "FW:" and, in parens, "no subject "

The subject line in the e-mail that's forwarded is "FW: Home Run Potential."

Q All right Now, I'd like to show you what's been marked for identification as Exhibit 108 Now, is this an e-mail produced by Ms McDonnell?

A Yes, sir

Q And is this an e-mail from Ms McDonnell to Celeste Williams?

A Yes

Q Is it dated May 1st, 2011?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 109(sic) into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, looking at this document, can you tell us -- can you read just what the first three lines of this e-mail say?

A Sure It says, "Hi, Jonnie and Celeste Here's one of our beach rental properties that we own with Bob's sister and her husband MoBo Realty "

Q And where it says "Sunseeker" there, were you in court for the testimony of Mr Uncapher that that refers to one of the two MoBo properties?

A I was

Q All right Now, I'd like to show you what's been marked for identification as Exhibit 109

MR FAULCONER: Your Honor, just to clarify, the one that we just showed was 108 I believe I might have misspoke and said we offer 109 Just to clarify, 108 is what we just offered

THE COURT: 108 has been admitted

MR FAULCONER: Thank you

BY MR FAULCONER:

Q Now, showing you what's been marked for identification as Exhibit 109. Is this another e-mail dated May 1st, 2011, from Maureen McDonnell to Celeste Williams?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 109 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, could you read for us what the subject -- or the first three lines of this e-mail are?

A Yes "Hi, Jonnie and Celeste Here's the other beach rental property that we own with Bob's sister and her husband MoBo Realty "

Q And East Coast Palace Were you in court for the testimony about that being the other MoBo property?

A I was

Q Now, all three of these e-mails that we've looked at, the Home Run Potential e-mail and these MoBo e-mails are May 1st, 2011 Have you reviewed the phone records and Mr McDonnell's schedule for that day?

A I have.

Q I'd like to show you what's been marked for identification as Exhibit 574 And is this a chart that -- chart that shows texts and tolls as they relate to and surround those e-mails that we just looked at?

A Yes, sir

Q And does it also include some information from Mr McDonnell's schedule for that day?

A It does

MR. FAULCONER: We'd offer Exhibit 574 into evidence, Your Honor

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, Special Agent Hulser, could you walk us through what's shown on the first line of this chart here?

A Sure On the first line, from 11:20 to 12:55 p m , Government Exhibit 105 references personal time, Executive Mansion, for Mr McDonnell

Q Now, during that same frame time, while that's on his schedule, could you tell us which one of the three e-mails we just looked at is sent at 12:17 p m ?

A Yes The e-mail from Ms McDonnell to Mr McDonnell.

Q Now, at 1:11 and 1:13 p m , can you tell us what's indicated on that line on the chart?

A Yes, sir That's a combination of two texts that are sent from Mr McDonnell to his younger sister, Maureen, SisM

Q Could you read that text, that combined text message there?

A Yes "Any chance we could do a call tonight on MoBo and bank options Need about an hour I can walk thru loans, and Mike, if you can outline expenses that would be great Need to make some deciosions Mo, any ideas on properties we can buy if we sell these 2 a reasonable prices? If not tonight, another this week? Bob "

Q Now, just to be clear, at least to the best of your ability, are the typos that are on here, did you try to get it how the materials that were produced to you look?

A Yes

Q Now, after the response text message there at 1:20 p m from sister Maureen McDonnell to Mr McDonnell's cell phone, can you tell us what calls are shown there -- what call is shown there at 3:02 p m ?

A Sure Ms McDonnell contacts Jonnie Williams, and the call is connected for just over 41 minutes

Q And those next two rows, are those the two e-mails about the two different Sandbrige or MoBo properties that we just looked at?

A They are

Q And then ten minutes after the second of those e-mails, can you tell us what the phone records indicated at 4:16 p m ?

A Mr Williams contacts Ms McDonnell, and a call is connected for 8 minutes and 53 seconds

Q All right Now, let's move to the next day May 2nd, 2011 I'd like to show you what's already admitted as Exhibit 110 Have you reviewed this Mansion log for May 2nd, 2011?

A I have

Q And have you also reviewed the toll records for Mr and Ms McDonnell for this day?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 575 Can you tell us, is this the type of similar types of information for Monday, May 2nd, 2011?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 575 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, the times there where there's sort of the bracket on the right, and then it says 9:24 a m to 11:25 a m , where are those times taken from?

A Those are taken from the Mansion log as referenced on Exhibit 110

Q Now, what does this chart show the phone records indicated at 7:53 a m , about an hour and a half before that?

A That Maureen McDonnell, the sister, contacted Mr McDonnell, and a call was connected for seven minutes

Q Now, a few minutes after that, at 8:03 a m , what does that refer to there in reference to Government Exhibit 112?

A If references an Outlook calendar invite being set on Ms McDonnell's -- Ms McDonnell's calendar

Q And is that one of the Outlook invites that Special Agent Huff testified about earlier in the trial?

A Yes, sir

Q Now, after Mr Williams arrives at the Mansion, according to the log, at 9:24 a m , can you walk us through the progression of phone calls from 9:57 a m to 10:02 a m from Ms McDonnell's cell phone?

A Sure There are a series of cell phone calls where Ms McDonnell reaches out for Michael Uncapher, then sister Mo, or sister Maureen, then Mr McDonnell, followed by sister Maureen again, and a second time, and then at 10:02 a m , Michael Uncapher again

Q Now, to be clear, the asterisk that's located there next to RFM at 10 a m , does that indicate that that call didn't actually show up in Mr McDonnell's record?

A It does

Q Or does it indicate that it does not show up there? Sorry That was a terrible way of asking it

What does the asterisk indicate?

A It does not show up on his records

Q So do you know if that even connected for a call?

A I don't

Q Now, were you in court for Mr Burck's testimony of Michael Uncapher?

A Yes

Q Or Mr Burck's cross-examination of Michael Uncapher? I apologize

A Yes

Q And were you in court when he showed him some of the phone records from May 2nd, 2011?

A I was

Q And were in you court when he asked him about this 10:44 a m call from Michael Uncapher back to Maureen McDonnell?

A Yes.

Q And is that a call for 13 minutes during the same time frame when Mr Williams, according to the log, was in the Mansion?

A It is

Q Now, after that, at 1:19 p m and 1:41 p m , what does this chart show?

A It shows two -- two calls connected between Mr Williams and Ms McDonnell

Q And then at 9:34 p m , is that a 48 minute and 18 second call between the two of them?

A It is

Q What does this chart show happens a little while after that call ends at 10:37 p m ?

A Mr McDonnell contacts his younger sister Maureen, and that call is connected for 84 minutes

Q Now, have you reviewed Mr McDonnell's schedule for this day, Monday, May 2nd of 2011?

A I have

Q Now, keeping in mind the times here, 9:34 and 10:37 Could you tell us what Mr McDonnell's schedule shows on the last page of this exhibit for where he's scheduled -- I'm sorry, this is Exhibit 623, which has already been admitted

On the last page of this document -- sorry, second to last page, is this the portion for May 2nd, 2011?

A It is

Q And what does this schedule say as far as where Mr McDonnell is scheduled to be after 7:15 p m on Monday, May 2nd, 2011?

A At the Executive Mansion

Q And is there anything on his schedule after 9 p m ?

A No

MR. FAULCONER: Just for comparison purposes, can we flip back briefly to Exhibit 575?

BY MR FAULCONER:

Q All right Now, in addition to these calls and some of the e-mails that we've looked at, have you also reviewed any e-mails regarding Cailin McDonnell's wedding that were sent by Mr McDonnell in this time frame?

A I have

Q I'd like to show you what's already been admitted as Exhibit 111 Now, the two dates that we just looked at were May 1st, 2011, and May 2nd, 2011 Can you tell us when these two e-mails that are shown here on Exhibit 111, when they were sent relative to the dates that we just looked at?

A Sure The first -- the e-mail string starts on May 1st, 2011 And that's an e-mail from Mr McDonnell to Cailin McDonnell And she then replies on Monday, May 2nd Cailin McDonnell replies to Mr McDonnell

Q And is that e-mail on May 1st a few minutes before the call between Mr McDonnell and sister Maureen McDonnell?

A It is

Q And is the e-mail back from Cailin McDonnell a few minutes before the call between sister Maureen McDonnell and Mr McDonnell?

A Yes

Q All right Now, we've looked at May 1st and May 2nd Have you compared the link that Ms McDonnell sent to Mr McDonnell, the one that ended in Home Run Potential, from May 1st, 2011, with any documents that Mr McDonnell or his staff forwarded on to other individuals?

A I have

Q I'd like to show you what's been entered as Exhibit 116 Have you reviewed this e-mail from Pam Watts to Dr Bill Hazel?

A I have

Q And what is the date of that e-mail?

A Thursday, May 5th, 2011, at 12:25 p m

Q Now, turning to the second page of this document, and going down to the very bottom there, can you tell us whether or not the links shown at the bottom of this printout matches the link from that e-mail that we looked at earlier?

A It does

Q And this e-mail was dated May 5th, 2011 But can you tell us what the date is that shows that this document was printed?

A On May 1st, 2011

Q Now, going back to the first page real quick, what is the time on May 5th, 2011, that's shown here?

A 12:25 p m

Q All right Now, turning to Exhibit 117, which has already been admitted, this is Monday, May 9th, 2011 What day of the week does Dr Hazel refer to in his e-mail there in the middle where he says, "He mentioned this to me"?

A "He mentioned this to me on Thursday "

Q Now, have you reviewed Mr McDonnell's schedule for the prior Thursday, May 5th, 2011?

A Yes

Q I'd like to show you what's already been admitted as Exhibit 115 Now, could you tell us, is this the schedule for May 5th, 2011?

A It is

Q And at the bottom of that first page, could you tell us, what's shown there from 11 to 11:45?

A Sure It states, "Meet on HHR Strategic Plan -- PHB: Governor's Conference Room "

Q Now, turning to the next page, who does it show is the scheduled participants for that meeting?

A Bill Hazel and Martin Kent

Q All right So keeping that in mind and turning briefly back to Exhibit 116, where does that 11 to 11:45 a m meeting fall relative to when Pam Watts forwards this e-mail on to Dr Hazel?

A It's about an hour difference

Q All right I'd like to move forward to May 23rd of 2011 Are you aware that that's the date of the two checks, $50,000 and $15,000 from Starwood Trust?

A Yes

Q And were you in court when Mr Williams testified about dropping the checks off at the Mansion that day?

A I was

Q And did you hear him testify about potentially seeing Mr McDonnell on that day?

A Yes

Q I'd like to show you what's been already admitted as Exhibit 125 Have you reviewed this Mansion log for

May 23rd of 2011?

A I have

Q And have you compared it to the phone records and Mr McDonnell's schedule for that day?

A Yes, sir

Q I'd like to show you what's been marked for identification as Exhibit 576 Is this a chart that shows information that you obtained from phone records and Mr McDonnell's schedule for May 23rd of 2011?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 576 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, this one has a little bit more on it than some of the other ones we've looked at The first two lines on there, is that two calls from Mr Williams to Ms McDonnell at 9:21 to 9:24 a m ?

A That's correct

Q And then a text message back at 10:40 a m from Ms McDonnell?

A Correct

Q Now, could you tell us what is shown there from noon to 1:15 p m as being scheduled on Mr McDonnell's calendar during the same time frame when Mr Williams is at the Mansion, according to the log?

A Sure The schedule states, "Private work time -- PHB" Governor's Office "

Q And what does Mr McDonnell's schedule say that he is scheduled to do at 1:15 p m , around the same time that Mr Williams leaves the Mansion?

A Scheduled to depart for RIC, or the Richmond airport, with Maureen McDonnell

Q All right Now, in that time frame from 1:30 p m to 10:15 p m , what does Mr McDonnell's schedule say there from, Exhibit 624, about what he and Ms McDonnell are scheduled to be doing?

A They are scheduled to be traveling together

Q And what do those three bullet points underneath that show about the cell phone records from that time?

A The cell phone records indicate that they had made separate calls, both -- both cell phones utilized at various locations Verona, Virginia Staunton, Virginia, and Warm Springs, Virginia

Q And are those locations -- just to be clear, for each one of those bullet points, is there at least one call from each one of their two cell phones from those various origination locations?

A There is

Q And do those locations generally match the locations that are shown on the travel schedule?

A Yes

Q And then at 10:15 p m , what are Mr and Ms McDonnell scheduled to be doing that day?

A They are scheduled to depart for the Executive Mansion from the Richmond Airport

Q All right Well, let's move forward in time, then, to the end of May of 2011 And I'd like to show you what's been marked for identification as Exhibit 134 -- sorry What's already been admitted as Exhibit 134. Do you see -- are you familiar with this e-mail?

A I am

Q And do you see there where it refers to a round of golf tomorrow for the boys?

A Yes.

Q Have you also reviewed the Kinloch Golf Club records for the next day?

A I have

Q Showing you Exhibit 135, which has already been admitted, on Page 2, the second receipt, zooming in on that one, who, in addition to Mr McDonnell's sons, is listed on that receipt?

A Governor Bob McDonnell and future son-in-law

Q Now, looking at this receipt, what's the first time that's on this bill, as best you can tell? Do you need a paper copy?

A No I've got it right there 1:39 p m

Q And what is the last receipt time that's shown on this bill?

A You have to back out I think it's the middle -- the middle one right there Yeah It's at 8:59 p m

Q Now, have you reviewed Mr McDonnell's cell phone records for this day?

A I have

Q I'd like to show you what's been marked for identification as Exhibit 577 And this is a chart that you prepared based off of those records?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 577 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, the first row there, is that essentially the first and last receipt time from the Kinloch receipt we just looked at?

A Yes, sir

Q What do the cell phone records show Mr McDonnell's cell phone did at 15 minutes after the last of those receipts?

A Mr McDonnell contacted Mr Williams' cell phone

Q And how many contacts, prior to this phone call, were there between Mr McDonnell and Mr Williams' cell phone?

A Zero

Q Approximately 24 minutes, or so, after that contact, what did the phone records indicate for Mr McDonnell's cell phone?

A Mr McDonnell reaches out to Ms McDonnell, and the call lasts for six minutes

Q And to be clear, that double asterisk again, what does that mean?

A That the records indicate an unavailable source on her records

Q But do those records still indicate a six-minute call?

A They do

Q All right Let's go forward a few days to June 1st of 2011 Have you heard the testimony about both a purchase of stock that day and Ms McDonnell's travel to the Roskamp Institute in Florida?

A I have

Q I'd like to show you what's been already admitted as Exhibit 149 Have you reviewed this Davenport & Company statement from June 1st to June 30th of 2011?

A Yes

MR FAULCONER: And I'd like to go to Page 2 of this document And zooming in on the sort of bottom half there

BY MR FAULCONER:

Q Do you see there the purchase date of June 1st, 2011?

A I do

Q Now, the deposit date there says June 6th of 2011 Have you reviewed the check that was actually used to make that deposit?

A Yes

Q And do you know what the date of that check is?

A June 4th, 2011

Q Have you reviewed Ms McDonnell's toll records for those two days?

A I have

Q I'd like to show you what's been marked for identification as Exhibit 578 Is this a chart showing some of the calls from Ms McDonnell's toll records for those two days?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 578 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, what's the first call shown here on the chart on June 1st of 2011 from Ms McDonnell's cell phone?

A A call from Ms McDonnell to Mr Piscitelli at 9:55 a.m , what lasts approximately 11 minutes.

Q Now, what is the next call shown in Ms McDonnell's phone records for that day, June 1st, 2011?

A A call to Mr McDonnell's cell phone, which lasts four minutes

Q Now, the date of the check, June 4th, 2011, is that a call from Ms McDonnell to Mr Piscitelli for about one minute at 11:27 a m ?

A That's correct

Q What's the next call in Ms McDonnell's phone records on that day?

A Ms McDonnell contacts Mr McDonnell's cell phone, and that call is connected for approximately two minutes

Q And is that another call at noon from Ms McDonnell to Mr Piscitelli?

A Yes

Q And just to be clear, Agent Hulser, we've said it a couple of times, but do you know personally what was discussed on any of these calls?

A I do not

Q Now, the checks from Mr Williams were written on May 23rd, 2011 Have you reviewed the account into which the $50,000 check was deposited?

A I have

Q Have you reviewed the other checks, in addition to the one to Davenport, from around that time frame out of that account?

A Yes

Q And I'd like to -- and have you also reviewed the other deposits?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 579 Is this a chart showing the activity in that bank account during that general time frame?

A Yes, sir

MR FAULCONER: Your Honor, we'd offer Exhibit 579 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, Agent Hulser, what does this chart show the balance was in that account as of May 20th of 2011?

A Just over $4,700

Q After the deposit from Starwood Trust -- the Starwood Trust check on May 25th, 2011, could you tell us what the entries there that are in color, what those refer to?

A Sure Those are credit cards that are associated with Ms McDonnell in orange or Mr McDonnell in yellow

Q Now, with respect to the credit cards that are indicated there in yellow, for Mr McDonnell, can you tell us, based on your review of the accounts, whether Ms McDonnell had ever made any payments before or after these payments to any of those credit cards?

A She had not

Q And what is the total amount that was withdrawn from this account between May 25th and June 4th of 2011?

A Over $55,000

Q Now, I'd like to show you -- in reference to some of these credit card payments that are here, I'd like to show you what's been marked for identification as Exhibit 127 And is this one of those checks to Pentagon Federal Credit Union?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 127 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q Now, this check is from Maureen McDonnell's account To be clear, whose name was that credit card in?

A Mr McDonnell's

Q I'd like to show you what's been marked for identification as Exhibit 128 Is this a check to MoBo

Realty from that time frame?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 128 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q And, again, was Ms McDonnell a partner in MoBo Realty?

A No

Q I'd like to show you what's been marked for identification as Exhibit 132 Is this a check from Ms McDonnell's Wachovia account to Bank of America?

A It is

Q Is it dated May 25th, 2011?

A Yes, sir

MR FAULCONER: Your Honor, we'd offer Exhibit 132 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q And, Special Agent Hulser, this check is for Ms McDonnell But can you tell us, whose name was the Bank of America credit card in?

A Robert McDonnell

Q All right Now, stepping back from the specific checks for a moment, have you reviewed the activity more generally in the McDonnells' checking accounts in this time frame, sort of the first half of 2011?

A I have

Q I'd like to show you what's been marked for identification as Exhibit 580 And is this a two-page chart?

A It is

Q Can you tell us what's shown on the first page of this chart?

A Yes The first page just summarizes all of the accounts that are -- and checking accounts that are held by either Mr McDonnell, Ms McDonnell or joint accounts

Q And the second page of this chart, what does that show, generally?

A Generally, that shows a summary of deposits and withdrawals from the period January to June 2011

MR FAULCONER: Your Honor, we'd offer Exhibit 580 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, turning to the -- the first page is the list of accounts, right?

A Correct

Q All right Now, turning to the second page, without going through every number on here, could you tell us what each column here means?

A Sure The "Deposits" column is simply a summary of deposits by month, which totals up to just over $178,000 from January to June

Q And what about the "Withdrawals" column there?

A Same thing A total of all withdrawals from the account, from the combined accounts, from January to June, totaling just over $175,000

Q So how big of a difference is there here in the "Net" column between the total deposits in and the total withdrawals out in this time frame?

A Just over 3,000

Q Now, does the number there on the left, the total deposits, does that number include both the $50,000 payment from Mr Williams as well as the refund from the catering company in June of 2011?

A It does

Q And if you subtracted that amount from the number on the far right, would that number be positive or negative?

A It would be negative

Q All right Now, let's move forward from that time frame to late July of 2011 I'd like to show you what's been already admitted as Exhibit 180 Are you familiar with this schedule for Mr McDonnell for July 29th to July 31st of 2011?

A Yes

Q And turning to Page 4, partway down, do you see there where it says a 7 p m departure for the Executive Mansion?

A I do

Q I'd like to show you now what's been already admitted as Exhibit 185 Are you also familiar with this e-mail from 7:47 p m that same day?

A I am

Q And just to make sure everybody knows, what is the attachment to this document?

MR FAULCONER: If we flip forward to the next page

BY MR FAULCONER:

Q Special Agent Hulser, do you recognize that?

A I do

Q What is it?

A Picture of Mr McDonnell driving

Q Now, have you reviewed texts and toll records relating to the time frame when the McDonnells visited Smith Mountain Lake?

A I have

Q I'd like to show you what's been marked for identification as Exhibit 581 Now, Agent Hulser, is this a four-page chart?

A Yes

Q And does this show some of the text and toll records from around this time frame?

A It does

Q The third page of this chart, can you tell us what that is?

A That is a map of Virginia

Q And the fourth page, does that show some of the text records -- or toll records as they relate to origination locations?

A It does

MR. FAULCONER: Your Honor, we'd offer Exhibit 581 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, going to the first page and walking through this, can you tell us, what's shown there on July 28th, 2011, at 2:04 p m ?

A Yes A Outlook calendar invite was sent from Mary-Shea Sutherland to Maureen McDonnell, and it referenced a meeting with Jonnie Williams on 8/1

Q Now, that same day, how many text messages are exchanged between Ms McDonnell and Mr Williams?

A Eleven

Q The next day, is that a 12 minute, 33 second call from Mr Williams to Ms McDonnell?

A It is

Q And does that show 14 text messages exchanged?

A Yes

Q Now, the next day, on July 30th of 2011, how many phone calls are shown there between Ms McDonnell and Mr Williams?

A Seven

Q All right Turning to the second page of this chart, July 31st, 2011, is that the date of the scheduled departure?

A It is

Q Now, after that text message shown at the top and then the scheduled departure at 7 p m , can you tell us what's shown there at 7:10 p m ?

A At 7:10 p m , Ms McDonnell sends Mr Williams a text message

Q Now, that 7:47 p m entry, is that the e-mail with the photo that we just looked at?

A Yes

Q And then an 8 p m text message on the next line, could you tell us what's shown there at 8:12 and 8:13?

A Sure An exchange of telephone calls between Ms McDonnell and Mr Williams

Q Now, have you reviewed those phone calls as far as what they show about the origination location of where those cell -- where Ms McDonnell's cell phone was when those calls were made?

A I have.

MR FAULCONER: If we could turn to the second -- or third page

BY MR FAULCONER:

Q Is that the sort of just general map of Virginia?

A Correct

Q Turning to the fourth page All right Could you tell us what, first off, is the furthest left circle that you have there?

A Smith Mountain Lake

Q And what is the sort of circle I guess a little bit up and to the right?

A Rustburg is circled

Q And do you recall what's indicated for the origination location in Ms McDonnell's phone records for the calls at 8:12 and 8:13 p m ?

A Yes It was Yellow BR

Q And do you know what that refers to?

A I believe it refers to Yellow Branch, which is very close to Rustburg

Q And then what's circled on the furthest right on that chart?

A Richmond

Q All right

MR FAULCONER: Now, if we could go back to Page 2, briefly

BY MR FAULCONER:

Q That e-mail at 11:29 p.m If we could go to what's been already admitted as Exhibit 189, is that the e-mail that's referenced on that chart?

A It is

Q All right And, now, if we could go to Exhibit 183, which has already been admitted, is this a series of 21 photographs that was produced by Ms McDonnell to the FBI?

A Yes

Q To be clear, Special Agent Hulser, was there any metadata produced showing when these text -- when these photographs were taken or what was done with them?

A No

Q All right Now, we just saw the e-mail for the scheduling of the meeting on August 1st, 2011 I'd like to now go to the Mansion log that's already been admitted as Exhibit 186 Are you familiar with this Mansion log?

A Yes, sir

Q And does that show Mr Williams, Ms Huffstetler, and Dr John Clore at various times?

A It does

Q Now, I'd like to show you, in reference to the same date, August 1st, 2011 -- well, first off, what's the last time next to John Clore's name for time out there?

A 11:31

Q All right Now, if I could show you what's been already admitted as Exhibit 192 Are you familiar with this document showing a calendar entry being set on Ms McDonnell's calendar?

A I am

Q And what's the time there at the bottom that it shows that this calendar event for August 30th was set on her calendar?

A It was set at 11:44 a m

Q Is that August 1st, 2011?

A That's correct

Q All right Well, now I'd like to show you what's been marked for identification as Exhibit 582 Is this a chart showing certain calls and text messages both before -- or before and during Mr Williams' time at the Mansion that day?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 582 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, are those three text messages between Ms McDonnell and Mr Williams before he arrives, on the first three rows?

A Yes

Q Now, at the same time of the last of those three text messages, what does Ms McDonnell's records show in terms of phone calls?

A At 9:41 a m , Ms McDonnell contacts Mr Williams -- oh, I'm sorry At 9:41 Ms McDonnell contacts Mr McDonnell

Q Now, again, that asterisk, does that mean that the call -- am I correct to say that that means that the call did not actually show up in Mr McDonnell's records?

A Correct

Q So do you know whether that call actually connected?

A I don't

Q All right Now, after that, I see there that Mr Williams arrives at 9:45 and Ms Huffstetler at 9:55 What happens, according to the phone records, six minutes after Ms Huffstetler's arrival?

A Ms McDonnell reaches out to Mr McDonnell, and the phone call -- or the contact is four minutes

Q Now, 33 minutes after that, it says that Dr Clore arrives What happens at 10:57 a m , according to the phone records, between the time that Dr Clore arrives and the time that Ms Huffstetler leaves?

A Mr McDonnell contacts Ms McDonnell for a one-minute contact

Q And then are those remaining rows essentially the people leaving the Mansion and then the calendar entry being set?

A Correct

Q All right Now, in reference to this date of August 1st, 2011, did you recover any e-mails from Mr or Ms McDonnell discussing Star Scientific in the days following this meeting?

A Yes

Q I'd like to show you what's been marked as Exhibit 199 Is this an e-mail produced by Ms McDonnell?

A It is

Q Now, looking at the top of this e-mail, can you tell us, who is it from and to?

A Sure The e-mail is from Ms McDonnell, and it's to governor@bobmcdonnell com

Q And is it dated August 4th, 2011?

A Yes, sir

MR FAULCONER: Your Honor, we'd offer Exhibit 199 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, that's August 4th, 2011, at 5:58 p m Can you read underneath where it says "Quote," and then the sort of part that's a little grayed out? Can you read what that says in the e-mail from Ms McDonnell to Mr McDonnell on August 4th?

A Sure It's, "Quote from Patrick Cox, today, in Breakthrough Technology Alert " And in quotes, "As an economist, however, I am utterly certain that Anatabloc is going to shake our political system to its very roots This is because even" -- something -- "changes to the actuarial tables will have enormous budgetary" -- I can't read that.

Q It's hard to read Is that fair to say?

A Yeah, it is

Q Now, I'd like to show you, keeping this date and time in mind, Exhibit 201, what's been marked for identification Is this an e-mail produced by Ms McDonnell dated August 5th of 2011?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 201 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, is this an e-mail from Ms McDonnell to Patrick Cox?

A Yes, sir

Q Could you read what Ms McDonnell writes in sort of the italicized text there on the e-mail to Patrick Cox on August 5th of 2011?

A Sure It states, "Would it be possible for you to send this as an attachment like you did in the first e-mail so I would be able to print out a clean copy for my husband?"

Q All right Now, if we could move forward to what's been already admitted as Exhibit 200 Have you reviewed this Kinloch receipt?

A I have

Q And have you also reviewed Mr McDonnell's and Mr Williams' toll records in this time frame?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 583 Is this a chart showing Mr McDonnell and Mr Williams' toll communications as they relate to the various golf transactions in August of 2011?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 583 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, where it says August 5th, 2011, there in the first row, and it says "From JRW to Sean & Pfister," does that include -- does that indicate that Mr Williams was there or what does that actually indicate there?

A Yes, it does

MR FAULCONER: Well, if we could turn back to Exhibit 200 and to the second page and on to the third page

BY MR FAULCONER:

Q On August 5th, 2011, the receipt at the top there -- sorry, going down -- is Mr Williams indicated on that receipt?

A No, he's not It's Sean McDonnell and Hunter Pfister

Q All right

MR FAULCONER: So if we could go back to Exhibit 583

BY MR FAULCONER:

Q After that golf on August 5th, 2011, what is the contact between Mr McDonnell and Mr Williams' cell phone there two days later?

A On August the 7th, at 11:48 p m , Mr McDonnell contacts Mr Williams via text

Q And how much cell phone contact was there between

Mr McDonnell and Mr Williams between May 29th of 2011 and that day?

A None

Q It looks like on August 8th there's a response back from Mr Williams. Is that another text message then on August 13th, 2011, at 9:59 a m from Mr Williams to Mr. McDonnell?

A It is

Q And to be clear, from the Kinloch records, did Mr McDonnell play golf on August 13th, 2011, at Kinloch Golf Club?

A No

Q Sorry Was that a no, as far as whether Mr McDonnell played on --

A Oh, I'm sorry Mr McDonnell played, yes Mr Williams did not

Q I'll try to stop mumbling quite as much All right And is that dollar amount taken from the Kinloch Golf Club receipts?

A It is

Q All right Now, earlier we heard testimony about a Rolex being purchased on August 14th in Malibu in this same general time frame Did you review Mr Williams' credit card records for any purchases in Malibu on August 14, 2011?

A I did

Q I'd like to show you what's been marked for identification as Exhibit 203 Is this that credit card bill?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 203 into evidence

THE COURT: It will be admitted

MR FAULCONER: All right Now, if we could turn to Page 2 of this bill, and if we could go halfway down there

BY MR FAULCONER:

Q What purchase is indicated there on August 14th, 2011, with a posting date of August 16th, 2011?

A A purchase at Traditional Jewelers in Malibu, California, for $6,500

Q All right So let's move forward a little bit to some of the information about the lunch event at the Mansion at the end of August 2011 I'd like to show you what's been admitted, I think, as Exhibit 204

Now, zooming in there, what is the date of the exchange there between Ms Harris and Ms Sutherland about whether Mr McDonnell is going to go to this event?

A On Monday, August 15th, 2011, at 8:16 p m

Q Now, going to Exhibit 207, which has already been admitted, and focusing in on the bottom e-mail in this thread, can you tell us what date and time Mr Zubowsky e-mails Mary-Shea Sutherland asking for "info on the fl lunch at the Mansion, the wtop day, so I can ask him"?

A August 16th, 2011, at 2:50 p m

Q All right Well, have you looked at Mr McDonnell's -- Ms McDonnell and Mr Williams' toll records around this time frame?

A I have

Q I'd like to show you what's been marked as Exhibit 584 And is this a chart showing toll records from August 15th and 16th of 2011, the same two days we were just looking at?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 584 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right So August 15th, 2011, is that e-mail shown on the top line the same e-mail that we were just looking at a moment ago, or the first of the two?

A Yes, sir

Q All right Now, on August 16th of 2011, how many phone calls are there between Mr Williams and Ms McDonnell in the morning?

A Three calls

Q And then what happens at 11:17 a m ?

A She sends Mr Williams a text message

Q And then at 2:47 p m , what's shown in Ms McDonnell and Mr McDonnell's phone records?

A A three-minute call

Q And how does that relate to the time of the e-mail from the Travel Aide asking Mary-Shea Sutherland for "info on the fl lunch at the Mansion"?

A Three minutes prior

Q All right I'd like to show you what's been admitted as Exhibit 552. Now, is this Mr McDonnell's schedule for the second of those two days, August 16th of 2011?

A It is

Q And turning to the end of this schedule, where does it show, at the bottom there, Mr McDonnell ending his day on this schedule?

A The Executive Mansion

Q Now, showing you what's been admitted as Exhibit 208, and turning -- zooming in on the middle of those e-mails, what is the date and time of the e-mail response back from Mr Zubowsky saying, "Governor wants to make it to the last part of this lunch"?

A Wednesday, August 17th, 2011, at 8:25 a m

Q All right So let's move forward in time to December of 2011 Have you reviewed the Davenport & Company records that were provided related to purchases and sales of stock in Ms McDonnell's name?

A I have

Q I'd like to show you what's been already admitted as Government's Exhibit 247 Do you recognize this document?

A Yes

Q What is it?

A It's a Davenport & Company statement

Q Now, turning to the third page of this document, what is the date shown there on sort of the upper third for the sale of Star Scientific stock?

A The date is December 20, 2011

Q Now, have you reviewed Ms McDonnell's toll records for that day and the day before?

A I have

Q And were you in court for Mr Piscitelli's testimony that he would typically execute sales either the day or the day after he spoke to clients?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 585 Is this a chart showing the tolls that you pulled from those two days, December 19th and 20th of 2011?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 585 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right. So what is the first call shown on this chart at 1:15 p m on December 19th of 2011?

A A five-minute call between Mr. McDonnell and Ms McDonnell

Q And immediately after that, at 1:20 p m , what occurs, according to the phone records?

A Ms McDonnell reaches out for Mr Piscitelli

Q And then after that call to Mr Williams in the middle, is there another call there from Ms McDonnell to Mr McDonnell?

A There is A one-minute call

Q And then how long is the call at 4:03 p m from Ms McDonnell to Mr Piscitelli?

A A 20-minute call

Q And then the next day, the date of the sale of the stock, how long of a call is there between Ms McDonnell and Mr Williams at 10 p m ?

A Thirty-one minutes

Q All right Now, are you aware of when Mr McDonnell's SOEI was filed for the following year in 2012?

A I am

Q And do you know what date that was?

A Yes July -- or January 16th

Q And are you aware, according to the Davenport records, on when the stock was repurchased?

A I believe it was on January 20th

Q All right Now, were you in court earlier for the trial testimony from Bobby McDonnell about the Rolex watch being given to Mr McDonnell over Christmas of 2011?

A I was

Q When you served grand jury subpoenas, or when the FBI did, on the defendants, did either of them produce any pictures of Mr McDonnell wearing what appears to be a watch?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 274 Now, taking a moment -- have you had a chance to review this exhibit before your testimony?

A I have

Q And is this a series of photographs of Mr McDonnell?

A Yes

Q And were all of these produced by Ms McDonnell?

A They were

Q All right

MR FAULCONER: Now, if we could go back to the first page

Your Honor, we'd offer Exhibit 274 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, Agent Hulser, if we could just flip through these -- or sorry

MR FAULCONER: Mr Starnes, if we could just flip through these briefly for the jury to see

BY MR FAULCONER:

Q All right Now, Special Agent Hulser, was there any metadata associated with these pictures produced to the government in response to the grand jury subpoena about what phone these were on or when they were sent or whether they were sent anywhere?

A No, there was not

Q But were you in court for Mr Williams' testimony about receiving a picture of Mr McDonnell posing with a watch at some point in time?

A I was

Q I'd like to show you what's been entered into evidence as Exhibit 444 And looking at the first and second page of this document, are these the photos that Mr Williams testified about?

A They are

Q Did you compare these photos to the photos that we just reviewed that were produced by Ms McDonnell?

A Yes.

Q Did it appear that these photos here matched any of those obtained from Ms McDonnell?

A Yes It appeared that it matched the eighth photo

MR FAULCONER: Now, if we could turn to the second page of this one more time And then could we turn back to the eighth page of Exhibit 274 for the jury's comparison

BY MR FAULCONER:

Q Now, to be clear, Special Agent Hulser, were you in court when Mr Williams testified about sending photos of a chef to the McDonnells before receiving whatever photo he got back in return?

A I was

Q And have you reviewed Mr Williams' toll records to determine whether those text messages that he actually produced showed up in his toll records?

A Yes

Q And did they actually show up in his toll records?

A No

Q So sitting here today, can you tell the members of this jury exactly how that photo of Mr McDonnell got to Mr Williams?

A I can't

Q All right Now, I'd like to move forward to January of 2012, and I'd like to show you what's been already admitted as Exhibit 285 Are you familiar with this Kinloch receipt, Agent Hulser?

A I am

MR FAULCONER: Judge, do you want to stop now or have us keep going for a little longer?

THE COURT: We'll go ahead and stop

All right We'll stop for this evening. I know it may not seem like it, but we are -- we're making progress We're getting there Tomorrow, 9:45 And we'll see you at 9:45

Again, let me tell you, as I do every day, please don't discuss the case with anyone or allow anyone to discuss it with you, and please don't review any media items related to this -- to this case You all have a great evening, and we will see you at 9:45

(The jury left the courtroom)

THE COURT: All right We'll be back at 9:45 in in case 9:00

(The trial adjourned at 5:25 p m)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G McDONNELL,

Defendants

August 14, 2014
Richmond, Virginia
9:45 a.m.

JURY TRIAL - VOLUME XIV

BEFORE: HONORABLE JAMES R SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ
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JESSICA D. ABER, ESQ
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Counsel for Maureen G. McDonnell

JEFFREY B. KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day fourteen, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, and Christopher Iaquinto Maureen G McDonnell is represented by Heather Martin, William Burck, Stephen Hauss, and Daniel Koffmann Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed.

MR. ASBILL: Mr McDonnell is ready

MR. BURCK: Maureen McDonnell is ready

MR. BROWNLEE: We just wanted to confirm, Your Honor, that Exhibit RM-0077 has not been admitted. I thought it was and said that, but it has not been admitted into the record.

THE COURT: You don't intend to?

MR BROWNLEE: I think it will be admitted at some point, but as of this time, it is not

THE COURT: It is not in. All right Go ahead.

(The jury entered the courtroom.)

Good morning All right, government?

DIRECT EXAMINATION (Cont'd.)

BY MR. FAULCONER:

Q Agent Hulser, you know that you are still under oath, right?

A Yes, sir

Q Now, I'd like to pick up by just clarifying a couple of things from the end of your testimony last night If we could pull up what's been admitted as Exhibit 444 Now, do you recall that we talked a little bit at the end of your testimony about whether or not there was any record of an iMessage between Mr McDonnell and Mr Williams; do you recall that?

A Yes

Q Do you know based on your review of the phone records whether Mr McDonnell and Ms McDonnell had iPhones during this time frame?

A I do

Q And did they?

A They did

Q All right In addition, we talked a little bit yesterday about the federal grand jury that the FBI used to subpoena the records from Mr and Ms McDonnell Can you tell us whether that grand jury, that federal grand jury, was located within the Eastern District of Virginia?

A Yes, sir, it was

Q So now I'd like to move to January of 2012 I'd like to show you what's already been admitted as Exhibit 285

Are you familiar with this document, sir?

A I am.

Q Is this one of the Kinloch Golf Club receipts from January of 2012?

A It is.

Q If we could turn to Page 2 of this document Do you see there on the receipt, it looks like about the second receipt down, can you tell us the individuals that are listed on that receipt?

A Sure It is Governor Bob McDonnell, Bobby McDonnell, and Sean McDonnell

Q Agent Hulser, have you reviewed Mr McDonnell's and Ms McDonnell's credit card records for this particular time frame?

A I have

Q Are there any charges to Kinloch Golf Club in that time frame?

A No, there are not

Q In this same time frame, have you obtained any e-mails in which Mr McDonnell in January of 2012 is discussing his and his sister's finances as they relate to MoBo Realty?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 283 Is this an e-mail exchange between Mr McDonnell and his sister, Maureen McDonnell?

A It is

Q Is it dated January 4th, 2012?

A Yes

MR. FAULCONER: We would offer Exhibit 283 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q All right, focusing in on the e-mail down below, where it says from Mark Shulman to governor@bobmcdonnell com. Can you tell us what property they are referring to in that area down towards the bottom of the e-mail?

A The Sandbridge oceanfront property, so the smaller of the two properties in Virginia Beach.

Q Then turning to the second page, do you see there where it refers to Wintergreen *** Devils Knob Loop?

A I do

Q Do you know what property that is?

A Yes That is the property at the Wintergreen resort It is included within Blue Ridge Heaven partnership

Q We have heard a little bit about Blue Ridge Heaven, but a little bit less than we have about MoBo Based on your review of the records, do you know what Mr McDonnell's ownership percentage was or is in Blue

Ridge Heaven?

A 20 percent

Q Going back to the first page, where it refers in the e-mail below, if we can scroll down just a little bit, do you see there where it refers to financing alternatives at the bottom of where it is on the screen right now?

A Yes

Q If we could scroll up. What does Mr McDonnell write to his sister in that response e-mail?

A "FYI, meeting with a few banks tomorrow Thoughts "

Q Agent Hulser, based on your review of the financial records and the mortgage records, did a refinance actually go through in this time frame?

A It did not

Q Let's go to about a week or so later, a little over a week later, to January 13th of 2012 I'd like to show you what's been admitted as Exhibit 287 Agent Hulser, are you familiar with this Mansion log?

A I am.

Q Whose name is listed there from 1318 to 1358 on January 13th of 2012?

A Jonnie Williams

Q Now, Agent Hulser, did you review the text and toll records for this day?

A I did.

Q To be clear, did you actually put together any sort of chart for that particular day?

A Yes

Q Sorry, for January 13th, 2012

A Correct

Q Agent Hulser, I can show you what's been marked for identification as Exhibit 586 What's the date of this chart?

A January 19th, 2012

Q So for January 13th of 2012, was there any chart that you put together?

A No

Q All right Now, turning to what's been admitted as Exhibit 290, so now this is a Mansion log from January 19th of 2012; is that right?

A That's correct

Q And what name is shown from 1100 to 1300 on that particular Mansion log?

A "Williams "

Q Who does it say Williams is there to see?

A "To see 102 "

Q I'd like to show you what's been marked for identification as Exhibit 586 Is this a chart that you put together showing text, tolls, and information from Mr McDonnell's schedule for January 19th, 2012?

A Yes

MR FAULCONER: We would offer Exhibit 586 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q I'd like to start at the top here The section in green where it goes across and then down and comes back over at 1 p.m., where is that information taken from?

A That's taken from the log for the Mansion

Q Now, after Mr Williams arrives at the Mansion according to that log, what happens at 11:57 a.m ?

A Ms McDonnell calls Jasen Eige

Q Now, according to Mr McDonnell's schedule, where is he scheduled to be from 12 to 12:45 p.m. while Mr Williams is at the Mansion?

A He is scheduled to be having lunch with Ms McDonnell at the Executive Mansion

Q Now, at 12:02 p.m. there, what call does Ms McDonnell make according to the phone records?

A She reaches out to sister Maureen.

Q And then from 12:11 to 12:23 p.m., what call is shown there?

A A call from Michael Uncapher to Ms McDonnell

Q Agent Hulser, were you in Court when Mr Burck cross-examined Mr Uncapher about this particular date and some of the phone records?

A I was

Q Were you in Court when Mr Uncapher said that this is the date he believes he talked to Jonnie Williams?

A Yes

Q So then after Mr Williams leaves the Mansion according to the log at 1 p.m., can you walk us through the next four calls that are shown here on this chart?

A Sure Jonnie Williams reaches out for Ms McDonnell, and that call is connected for four minutes Then Ms McDonnell immediately contacts Mr McDonnell for a short two-minute call Ms McDonnell then calls Jonnie Williams, and thereafter she contacts Mr McDonnell's Travel Aide, and that call was connected for six minutes

Q Then later at 4:05 p m., how long of a call does Mr Williams have with Ms McDonnell?

A 16-minute call

Q This chart says that that lunch with Ms McDonnell was on Mr McDonnell's schedule Have you also reviewed Ms McDonnell's calendar for January 19th of 2012?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 276 Is this first page of this document Ms McDonnell's calendar that she produced for that same time frame?

A Yes, it is

MR FAULCONER: Your Honor, we would offer Page 1 of Exhibit 276 as 276-A.

THE COURT: It will be admitted

MR FAULCONER: Could it be published to the jury, Page 1?

BY MR FAULCONER:

Q So Mr Starnes, if we could zoom in on January 19th there Could you tell us what is shown on Ms McDonnell's calendar for 12 p.m. on January 19th of 2012?

A "Lunch with RFM, Executive Mansion."

Q After this day, January 19th, 2012, but later in January, have you reviewed any e-mail communications in which Mr or Ms McDonnell discuss Mr Williams?

A Yes

Q I'd like to show you what's been admitted as Exhibit 295 Is this an e-mail that was produced by Ms McDonnell?

A It is

Q If we can look at the bottom e-mail in this exchange Is that an e-mail that Mr Uncapher testified about earlier in the trial?

A Yes

Q Do you see there where it says for MoBo at the bottom, "I talked with your Mo last week and she had me talk to the guy who is helping us " Do you see that there?

A I do

Q If we could go back to the first page Could you tell us what Mr McDonnell's response is to that e-mail that he sends to Ms McDonnell?

A "Maureen, who are we talking about that is helping us and talking to Mike? Jonnie?"

Q And what is Ms McDonnell's response?

A "Just got home. I'll talk with you upstairs "

Q What's the subject line of that e-mail?

A "BRH and MoBo."

Q All right Now, just like the calls and text messages that we have talked about, do you personally know what if any conversation Mr and Ms McDonnell had after that e-mail exchange?

A I do not

Q So I'd like to move forward to February 8th of 2012 I'd like to show you what's already been admitted as Exhibit 312 Focusing in on the middle e-mail as well as the header of the e-mail right below it, could you tell us what time the e-mail from Ryan Lanier to Jonnie Williams, Jr is sent?

A Sure That's sent at 10:58 a.m.

Q What's the date?

A February 8th, 2012

Q Then what time does Mr Williams, Jr forward that e-mail to Ms McDonnell?

A At 3:14 p.m. on February 8th

Q All right So now I'd like to show you what's been marked for identification as Exhibit 587 Is this a chart showing certain calls from Ms McDonnell's phone records for that same day, February 8th, 2012?

A It is

MR. FAULCONER: We would offer Exhibit 587 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q So Agent Hulser, could you tell us what the first two calls are shown on this chart at 10:14 and 10:16 a.m.?

A Sure At 10:14, Ms McDonnell reaches out for Jasen Eige on his office phone Right after that, she reaches out for Jonnie Williams, Jr , and that phone call lasts for approximately 13 minutes

Q If we could go back real quick to Exhibit 312 That says 10:16 a.m. there How long after that call does Mr Lanier forward that e-mail to Mr Williams, Jr at 10:58 a m.?

A Less than an hour

Q Now, looking at 3:14 p.m. there, and now going back to Exhibit 587, after that, is that e-mail shown in the middle there, that e-mail we were just looking at?

A It is

Q Now, what happens after that e-mail a few hours later at around 6:30 p.m. that evening?

A Ms McDonnell reaches out for Jasen Eige again, and at 6:36 and 6:37

Q Now, going back to Exhibit 312 one more time, all right, so looking at the top e-mail now, can you tell us who Maureen McDonnell then forwards this e-mail to?

A She forwards that to Mr McDonnell

Q Is there a cc on it?

A Cc is Jasen Eige

Q What is the date and time of that e-mail?

A That is on Thursday, February 9th, 2012 at 3:13 p.m.

Q Now, do you see the attachments that are located there in the attachments portion?

A Yes

Q If we could flip forward, have you reviewed those attachments to this document?

A I have

Q If we could flip forward, keep going, keep going, all right Back one page Could you read for us what it says starting with "The Governor " and then through the three things that are listed there?

A Sure "The Governor of Virginia and his wife became interested, and asked the company to present the results of the symposia at the Governor's Mansion After reviewing the material the Governor asked three questions: 1: Was there enough evidence to suggest that this might be an important scientific finding? 2: Would the findings, if positive, have the potential for significant health gains for Virginia? 3: Would successful findings result in good jobs in economically depressed counties in Virginia "

Q What's the sentence right after that?

A "Hearing affirmative answers to all three questions, he suggested a grant be made to the Tobacco Commission "

Q All right Now, going back to Page 1 of this exhibit, to be clear, Special Agent Hulser, this e-mail says it was forwarded from Ms McDonnell to Mr McDonnell Can you say for certain whether or not Mr McDonnell read that attachment or that portion of it?

A No, sir

Q But keeping in mind that timing on February 9th, 2012 at 3:13 p.m., I'd like to show you what's been marked for identification as Exhibit 588 Is this a document showing certain toll records as well as information from Mr McDonnell's schedule on that day?

A It is

MR. FAULCONER: We would offer Exhibit 588 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q Now, can you tell us what's on Mr McDonnell's schedule that day from 11:35 to 12:20 p.m.?

A Sure It is lunch with Ms McDonnell at the Executive Mansion.

Q Then later that afternoon from 3:07 to 3:10 p.m., who does Ms McDonnell call?

A Jasen Eige

Q Was Mr Eige copied on that e-mail that we just saw?

A He was

Q At 3:10 to 3:15 p.m., what is Mr McDonnell scheduled to be doing?

A He is scheduled to be departing for the Executive Mansion from the Governor's Office

Q When in relation to that portion of the schedule does the e-mail we just looked at fall?

A Before

Q Right there at 3:13 p.m.?

A Correct

Q Then at 4:20 p.m., what does Mr McDonnell's schedule say that he is supposed to do on that day?

A Supposed to be packing luggage at the Executive

Mansion.

Q Then what about that evening from 4:55 to eight p.m.?

A From 4:55 to eight p.m., Mr and Ms McDonnell are traveling together to Washington, D.C for an event, and thereafter, they are staying overnight together at the Hyatt Regency in Reston, Virginia, Northern Virginia

Q And do their cell phone records in fact indicate some calls with origination locations in Northern Virginia on that day?

A They do.

Q So now let's go to the following day, February 10th, 2012 I'd like to show you what's been admitted as Exhibit 314 Zooming in on the top portion of this e-mail, who is this an e-mail from and to?

A This is an e-mail from Ms McDonnell to Jasen Eige

Q Can you read for us the first couple of sentences down to where it says "VCU MCV"?

A Sure "Please call Jonnie today, get him to fill you in on where this is at Gov wants to know why nothing has developed with studies after Jonnie gave $200,000 I'm just trying to talk with Jonnie Gov wants to get this going with VCU MCV Please let us know what you find out after we return. Jonnie's cell is "

Q Agent Hulser, have you compared the time of this e-mail, February 10th, 2012, 9:27 a.m., to Mr McDonnell's schedule for that day?

A I have

Q I'd like to show you what's been already admitted as Exhibit 313. Now, do you see there at the bottom of the schedule, what's the time listed there?

A 9:20 a.m. to 10:05 a.m.

Q What does it indicate?

A Depart for the Marriott Wardman Park Hotel

Q Turning to the top of the next page, who is listed on the manifest for that particular travel at that particular time?

A Governor McDonnell, Ms McDonnell, Tucker Martin, Adam Zubowsky, and Phil Cox

Q Were you in Court for Tucker Martin's testimony about recalling that travel with Ms McDonnell?

A I was

Q All right So let's move forward to the following week I'd like to show you what's been already admitted as Exhibit 318 Are you familiar with this February 16th, 2012 e-mail from Mr McDonnell to Mr Williams shown there at the bottom?

A I am.

Q What's the time on that e-mail?

A 11:56 p.m. on February 16th.

Q Going to what's been already admitted as Exhibit 320, bottom e-mail there from Mr McDonnell to Mr Eige, what's the time on that e-mail?

A Friday, February 17th, 2012 at 12:02 a.m.

Q Now, have you reviewed Mr Williams', Ms McDonnell's, and Mr McDonnell's toll records in this time frame?

A I have

Q I'd like to show you what's been marked for identification as Exhibit 589 Special Agent Hulser, is this a chart showing communications between Ms McDonnell and Mr Williams as they surround those two e-mails we were just talking about?

A It is

Q What's the date on this chart?

A February 13th through the 18th of 2012

MR. FAULCONER: We would offer Exhibit 589 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Agent Hulser, I'd like to actually start with the bottom of this chart Do you see there where it shows a text message from Mr Williams to Ms McDonnell at 8:18 p m. on February 18th?

A I do

Q Before that time, going all the way back to February

13th, spanning those two e-mails, were there any communications in which Mr Williams was reaching out to Ms McDonnell in the records?

A No.

Q Were there any communications in the records where Mr Williams was reaching out to Mr McDonnell?

A No.

Q How long are the two phone calls on February 13th and February 16th that are shown there?

A Seconds

Q Now, after the two e-mails from Mr McDonnell that we just looked at, what's shown at 8:50 p.m. later on February 17th?

A Ms McDonnell sends a text message to Mr Williams

Q And then the next day at 4:22 p.m., who is it that reaches out to Mr Williams again?

A She does

Q How long is that call?

A That's eight seconds

Q Now, that's what the tolls say Have you reviewed Mr McDonnell's schedule for the night of February 16th, 2012 in the middle there?

A I have

Q I'd like to show you what's been admitted as Exhibit 317 Turning to the second page, could you tell us at the bottom there where Mr McDonnell is scheduled to be that evening of those e-mails?

A At the Executive Mansion

Q All right Now, prior to this time frame, we have seen some of these calls that are just a few seconds Do you recall when the last call greater than a minute was between Mr Williams and Ms McDonnell during that time frame prior to February 13th?

A I believe it was back on February 4th.

Q After that, when was the next call that lasted more than a minute?

A February 20th

Q And to be clear, were there any calls from Mr Williams to the McDonnells during that time frame for more than a minute?

A No.

Q Let's move to February 21st and 22nd of 2012 I'd like to show you what's been admitted as Exhibit 323 Turning to the second page, could you tell us what the date and time at least reflected on this document is?

A February 22nd, 2012 at 1:19 a m.

Q Now, to be clear, Agent Hulser, do you recall your testimony yesterday about time zone adjustments?

A I do

Q Is this one of the text messages to which, based on your review of the records, you made a time zone adjustment?

A It is Four hours

Q Now, and that would be four hours to when?

A Four hours back

Q So to 9:19 the prior day?

A Correct

Q Now, have you compared this text message to Mr Williams' text message records around that same time frame?

A I have

Q Just to be clear, is this a text message here from Ms McDonnell to Mr McDonnell?

A It is

Q All right So now I'd like to show you what's been marked for identification as Exhibit 590 Is this a chart showing some of the text message records from this time frame surrounding that text message?

A Yes, sir

MR FAULCONER: We would offer Exhibit 590 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q Before Ms McDonnell sends the text message that we just looked at talking about Jonnie texting her, can you tell us what two text messages are shown earlier that same evening?

A Sure. Mr Williams sends a text message to Ms McDonnell at 6:50 p.m. And Ms. McDonnell sends a text message back at 8:22 p.m.

Q Now, one thing on that last text message, does it say there, "Needs our broker's name"?

A It does

Q Did you recover any text messages from Ms McDonnell in this time frame saying "my broker's name"?

A No.

Q I'd like to show you what's been already admitted as Exhibit 556 Are you familiar with this metadata poll that Special Agent Huff did and testified about earlier in trial?

A Yes

Q Now, it shows there that the call is scheduled from 8:30 to 9 p.m. Do you see that in sort of the upper portion?

A I do.

Q Is that, again, one of those areas to which a time zone adjustment applies?

A That's correct

Q Now, going down, what time is that calendar entry set on Mr McDonnell's calendar?

A 1:32 p.m.

Q Now, going to -- sorry, one more thing about this one Read for us what it says under "Note "

A "Note: Adam will connect you to this call Once all participants are on the line, it will be transferred to your office/desk line "

Q Do you recall during this time frame what the name was of Mr McDonnell's Travel Aide?

A Yes, Adam Zubowsky

Q All right So going forward from this one to Exhibit 324, does this show that same meeting being set, or at least a meeting for the same time frame referencing John Piscitelli on Ms McDonnell's calendar?

A It does

Q And who is this entry being sent to by an individual named Kristen Kaplan?

A It is being sent to Adam Zubowsky

Q All right Now, between these two calendar entries, and we can flip back to the other one if you need to, what is the order in which these are set? Whose calendar does it get put on first?

A Mr McDonnell's

Q Have you reviewed the toll records for that day for any calls that corroborate the set-up of how this was arranged?

A I have

Q I'd like to show you what's been marked for identification as Exhibit 591 Is this a chart showing some of those phone call records?

A It is

MR. FAULCONER: We would offer Exhibit 591 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q All right Now, the first two entries on this chart, are those the Outlook entries we were just looking at?

A They are.

Q So after that, at 3:38 p.m., can you tell us what's shown in the phone records?

A Yes There is a phone call from the RFM Travel Aide office to Maureen McDonnell, phone call lasts for 22 minutes, and then immediately after that, Ms McDonnell reaches out to Jonnie Williams, and that call lasts for a minute and 40 seconds

Q Does that 3:38 to 4 p.m. call, does that fall within the scheduled time frame of the scheduled call with John Piscitelli?

A It does

Q All right Now, that was February 23rd, 2012 I'd like to show you what's been already admitted as Exhibit

330 Are you familiar with this Outlook entry for a meeting on February 29th, 2012?

A Yes

Q And what date and time is this meeting set on Mr McDonnell's calendar?

A It is sent on February 28th at 3:15 p.m.

Q Have you compared the tolls in this time frame to that meeting that Mr Williams -- sorry, real quick, what is the topic that's listed under that meeting there?

A "Healthcare Group Leaders Reception tonight at the Executive Mansion "

Q All right Now, have you reviewed this Outlook entry as it relates to certain texts and toll records?

A I have

Q I'd like to show you what's been marked for identification as Exhibit 592 Is this a chart showing those toll records that you reviewed?

A Yes

MR. FAULCONER: We would offer Exhibit 592 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q All right, now, can you walk us through what those two calls are at the top there before the meeting with Jonnie Williams is set on Mr McDonnell's calendar the next day?

A Sure There was an exchange of calls between Mr Piscitelli and Mr Williams

Q Then the next day, after the 1:30 to 1:55 p.m. meeting between Mr Williams and Mr McDonnell, can you tell us what's shown there at 3:30 p m.?

A Yes Mr Williams reaches out again for Mr Piscitelli

Q Then what's shown there at the bottom of the chart?

A The bottom of the chart, that shows that from 5:30 to 7 p.m., Mr McDonnell and Ms McDonnell and Jonnie Williams attend the Virginia Healthcare Industry Leaders Reception at the Mansion Mr McDonnell was only from six to seven.

Q Got you. Now, the schedule, at least the Outlook entry we see there for the meeting earlier that afternoon says, "Topic: Healthcare Group Leaders Reception." Have you reviewed any handwritten notes produced by Mr McDonnell in this case?

A I have

Q Are there any notes that have the date February 29th, 2012 written on them?

A Yes

Q I'd like to pull up what's been previously admitted as Exhibit 2 Is this a set of handwritten notes that were produced by Mr McDonnell?

A Yes

Q Have you actually reviewed the originals of these notes?

A I have

Q Now, turning to Page 3 of this document, zooming in on the portion there, do you see where February 29th, 2012 is written?

A I do

Q Now, Agent Hulser, we have seen those various invitations and scheduling things referring to the Healthcare Leaders Reception. Do you see any reference to the Healthcare Leaders Reception here?

A No, I do not

Q We have also heard some testimony about these notes having been produced to the government Again, how did you obtain these notes from the defendants?

A These notes were turned over to us

Q Was that after a grand jury subpoena?

A It was

Q Now, originally, were these notes produced in color?

A No

Q What were they produced in?

A Just black and white

Q And how about the order of them? When they were originally produced, were they in the same order they were produced in color later on?

A No

Q I'd like to show you Exhibit 1 marked for identification Agent Hulser, is this the same set of handwritten notes as they were originally produced?

A Yes

MR. FAULCONER: We would offer Exhibit 1 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Agent Hulser, sitting here today, can you be certain yourself of the order in which any of these notes were actually taken?

A No, I cannot

Q I'd like to show you what's been already admitted as Exhibit 352 Are you familiar with this check?

A I am.

Q What is the date of this check?

A March 6th, 2012

Q Have you reviewed the texts and toll records for that date, March 6th of 2012?

A I have

Q I'd like to show you what's been marked for identification as Exhibit 593 Is this a chart that you prepared for texts and tolls from that particular day?

A Yes, sir

MR. FAULCONER: We would offer Exhibit 593 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q All right Now, Agent Hulser, this is the date of the check we were just looking at Can you tell us what call is shown or what the first two calls are that are shown here on this chart?

A Sure At 11:01 a m., Mr Piscitelli reaches out to Jonnie Williams, and at 12:11 p.m., Mr McDonnell reaches out for Mr Piscitelli

Q Then what's shown on the next row?

A Mr Williams reaches out for Ms McDonnell

Q Then there, later on that same day at 11:52 p.m , could you read the text message that's sent from Ms McDonnell to sister Maureen McDonnell?

A Sure "Mo, I've tried to call you and sent you the above text Need to talk. You will be receiving a check written out to MoBo tomorrow by overnight delivery Don't deposit "

Q And Special Agent Hulser, again, that notation there on the time there, what does that reflect?

A That we had to make a four-hour time conversion

Q Was that text message produced by sister Maureen McDonnell?

A It was

Q All right Now, I'd like to show you what's been -- excuse me Exhibit 357, has that already been admitted? It has been marked for identification as Exhibit 357 Zooming in on the second page Is this a text message produced by Mr McDonnell of a text to Mr Williams?

A Yes

MR FAULCONER: We would offer Exhibit 357 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q Now, could you read the content of this text message from Mr McDonnell to Mr Williams?

A "Do you have time tomorrow to talk with me on business matters Governor What time are you available "

Q Do you see there where it says March 12th, 2012 at 3:09 a.m.?

A I do

Q Is this another one of the text messages that you made a time zone adjustment to?

A It is

Q I'd like show you what's been marked for identification as Exhibit 358 Going to the second page, is this a text message from Mr Williams to Mr McDonnell?

A It is

MR. FAULCONER: We would offer Exhibit 358 into evidence.

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q All right, now, is this dated the same date and time at least on this document?

A Yes

Q What is the text from Mr Williams to Mr McDonnell?

A "Now or any time tomorrow Jonnie "

Q Now, have you reviewed the text message and toll records for the time on March 11th, 2012 leading up to those text messages?

A I have

Q I'd like to show you what's been marked for identification as Exhibit 594 Agent Hulser, is this actually a two-page chart?

A Yes, sir, it is

Q And what does this show?

A It shows a series of text messages and communications involving sister Maureen, Mr McDonnell, Ms McDonnell

MR. FAULCONER: We would offer Exhibit 594 into

evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, starting with Page 1, am I correct that the jury hasn't seen these text messages between Ms McDonnell and sister Maureen McDonnell yet; is that right?

A That's my understanding

Q So could you start by just reading for us the first text that's shown on this page from Ms McDonnell to sister Maureen McDonnell?

A Sure "Hello Have you received my messages? Know you have been traveling and got back Friday Need to talk to you. Anxious friend waiting for me to confirm you received FedEx valuable package Please call "

Q Then how does sister Maureen McDonnell respond within the hour?

A "Mo, so sorry Got back Friday night and have been sick Just got out of bed for the first time now Yes, hit FedEx package Should I not deposit? Love Mo "

Q What is Ms McDonnell's response?

A "No, I asked you to call because we need to talk first You don't even know what it is for and what agreement and arrangement I've made He didn't want to write to MoBo and --"

Q Special Agent Hulser, to be clear there, who is the

50 percent partner in MoBo Realty with Mr McDonnell?

A His younger sister Maureen.

Q There does it say, "You don't even know what it is for and what agreement and arrangement I've made"?

A That's correct

Q So then after sister Maureen McDonnell responds "Mike and I will call shortly," what's the text message that comes in about the same time from Ms McDonnell back?

A "I talked him into it He has been calling all week needing to know it got there He preferred to write to me and I handle loan with you "

Q Then two minutes later, who calls, whose cell phone calls Ms McDonnell's cell phone?

A Michael Uncapher's

Q What's the last text message shown on this page?

A It is a text message from Ms McDonnell to sister Maureen stating, "We will have to wait until later because Bob's fallen asleep "

Q Now going to Page 2 Now, this is a few hours later Can you tell us the text message or could you read the text message from sister Maureen McDonnell to Mr McDonnell?

A "Hey Bobby I'm leaving church. Mike called Mo earlier and got disconnected She said we needed to talk about check when you woke up Please call now if you would like "

Q Now then, at 6:15 p.m., how long of a phone call is there between Mr McDonnell and sister Maureen McDonnell?

A Approximately 22 minutes

Q Then what happens later within that same hour?

A Mr McDonnell reaches out for Ms McDonnell, phone call for a minute And then sister Maureen reaches out for Mr McDonnell and there is a three-minute call connected.

Q Then at 7:19 p.m., could you read the text message from Ms McDonnell back to sister Maureen McDonnell?

A Sure "I left you messages because I worked on this loan for a year, not Bob I needed to speak to you directly, not Michael Why do you always do that to me? But you could return Bob's call "

Q And then the last two lines that are shown there, are those the text messages that we looked at a little bit earlier?

A They are

Q Is there any reference in these text messages to the loan being to MoBo?

A No

Q Now, I'd like to show you what's been already admitted as Exhibit 356 Are you familiar with this deposit slip?

A Yes, I am.

Q Is this a deposit slip for that same check we were just looking at a moment ago?

A It is

Q Now, have you reviewed the text and toll records for March 12th of 2012?

A I have

Q I'd like to show you what's been marked for identification as Exhibit 359 Turning to the second page, is this a text message from Mr McDonnell to Mr Williams?

A Yes, it is

Q Is it dated March 12th, 2012?

A That's correct

MR. FAULCONER: We would offer Exhibit 359 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q Now, could you read this text message from Mr McDonnell to Mr Williams that evening?

A Yes "Please call when you can Governor "

Q I'd like to show you what's been marked for identification as Exhibit 360 Turning to the second page --

MR. FAULCONER: Has this been admitted? Your

Honor, I think I misspoke earlier Could we go to Exhibit 356 briefly? Your Honor, I don't believe that this has been admitted, but we would offer it into evidence now This is the deposit slip.

THE COURT: It will be admitted

BY MR FAULCONER:

Q Again, Agent Hulser, what's the date on that deposit slip?

A I lost the screen.

Q Is it back up now?

A There it is The date on the deposit slip is March 12th, 2012

Q All right So I think we were on Exhibit 360 Turning to Page 2 of this, is this a text message from Mr Williams back to Mr McDonnell?

A It is

MR. FAULCONER: We would offer Exhibit 360 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q Now, could you read the content of this text message from Mr Williams to Mr McDonnell?

A "Battery went dead. Can talk any time after nine "

Q All right Now let's go to what's been marked for identification as Exhibit 361 Turn to the second page

Is this another text message from Mr McDonnell back to Mr Williams?

A Yes

MR. FAULCONER: We would offer Exhibit 361 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q All right, so now let's go to what's been marked for identification as Exhibit 363 Going to the second page, is this an exhibit from Mr Williams back to Mr McDonnell after that last one we were just looking at?

A Yes

MR. FAULCONER: We would offer Exhibit 363 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, this one says "March 13th, 2012" on it, but again, is this whole series a series in which that time zone adjustment was made?

A Yes

Q Could you read the text message from Mr Williams back to Mr McDonnell?

A "Can you talk? Jonnie "

Q Now, we have looked at this series of four texts Have you also reviewed the texts and toll records for that same time frame?

A I have

MR. FAULCONER: Your Honor, I'd like to show the witness what's been marked for identification as Exhibit 595

BY MR FAULCONER:

Q Special Agent Hulser, is this a chart showing some of those texts and tolls as they relate to the text that we just reviewed?

A It is

MR. FAULCONER: We would offer Exhibit 595 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q All right, Agent Hulser, there is a little bit more on this one What is the first call shown there at 2:36 p.m., the date of the check deposit?

A Call from Mr McDonnell to sister Maureen

Q And then two minutes later, could you read the text exchange that occurs between Mr McDonnell and sister Maureen McDonnell?

A Yes "Mo Call me Just want to finish our call Bob "

Q Then how does sister Maureen McDonnell respond?

A "Okay, I can call you later today Around 6 o'clock or so?"

Q Then Mr McDonnell responds "Please call at six"; is that right?

A Correct

Q Now, about 12 minutes after that, what's shown in Mr McDonnell's phone records and Mr Williams' phone records?

A Mr McDonnell reaches out for Jonnie Williams

Q Then at 5:45 p.m. that same day, a little while, about eight minutes later, is that one of those text messages we were just looking at?

A It is

Q Then about 17 minutes later, what call is shown in the phone records?

A Call from sister Maureen to Mr McDonnell

Q How long does that call last?

A 41 minutes, approximately

Q After that call, who is it that contacts Mr Williams at 7:23 p.m.?

A Mr McDonnell

Q Then those next three entries, are those the three subsequent texts that we were looking at in the original form a moment ago?

A They are

Q Then could you walk us through the last three lines that are shown on this chart here?

A Sure There's a couple of short telephone exchanges between Mr Williams and Mr McDonnell, and then at 9:52 p.m., Mr Williams has a call with Mr McDonnell that lasts 23 minutes and 49 seconds

Q All right Now, Agent Hulser, I'd like to show you what's been marked for identification as Exhibit 362 Are you familiar with these pages?

A I am.

Q What are they?

A That is handwritten notes and a schedule for Mr McDonnell

Q Is this the last two pages of that set of handwritten notes that we saw earlier with Exhibit 2?

A Yes

MR. FAULCONER: We would offer Exhibit 362 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q All right Now, zooming in on the portion that's actually the page, is this a photograph that you actually took personally, Agent Hulser?

A It is

Q Have you heard some of the testimony about Mr McDonnell carrying around a briefing binder?

A I have

Q And were those, are those three holes on the right side of that paper punch holes through the paper?

A Yes

Q What's the date at the top of that page?

A 3-12-12

Q Now, going to the next page of this exhibit, is that the opposite side of the page we were just looking at?

A Yes

Q And what does that document appear to be?

A The Governor's schedule

Q What's the date if you can tell in the upper left-hand corner?

A March 12th, 2012

Q All right Now, the deposit that we looked at earlier, the deposit slip showed March 12th of 2012 Have you reviewed MoBo's bank account at TowneBank into which that check was deposited for the time period following that check deposit?

A I have

Q I'd like to show you what's been marked for identification as Exhibit 596-A. All right, is this a two-page chart?

A It is

Q Does this show that, does this show the activity in that account in that time frame?

A Yes

MR. FAULCONER: We would offer Exhibit 596-A into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, Agent Hulser, starting with March 11th, 2012, what's the balance shown there in the account the day before the check is deposited?

A Just over $1,500

Q Then after that check is deposited, that entry down a little ways, down bank loan, are you familiar based on your review of the records what that was a payment towards?

A Yes, that was a payment towards one of the mortgage loans

Q The references above and below that to BRH, do you know what BRH is?

A Blue Ridge Heaven.

Q Then the next couple down on March 16th, 2012, where it says "NFCU," are you familiar with what that was a payment towards?

A I believe that's the Navy Federal Credit Union mortgage

Q Down below that, "@@Lantec loan," do you know what that's a reference to?

A Another one of the MoBo mortgages

Q Dr Paul Davis there, were you in Court for the testimony about the loan from Paul Davis?

A I was

Q Does that dollar amount match the dollar amount on the promissory note?

A Yes

Q Now, you have said there are several mortgage payments that are shown here on this chart Are there any payments in from rentals in that time frame?

A No

Q Now, "Resource Building Corp" there shown at the bottom, are you aware based on your review of the tax returns how that particular expenditure was treated for the year 2012?

A Yes That amount was capitalized to the balance sheet of MoBo

Q Does that essentially mean it is an improvement to the property?

A It does

Q Now, turning to the second page of this chart, could you tell us there, the TowneBank credit line and TowneBank business loan entries, can you tell us what types of payments those were?

A Those were also related to the TowneBank mortgages

Q Now, there on April 12th of 2012, can you tell us what that entry shows in terms of that deposit?

A Yes That shows that there were partner contributions, $12,500 from Mr. McDonnell and $7,500 from sister Maureen.

Q Then lastly, those two payments down there, Bank @Lantec and NFCU, are those also mortgage payments?

A Again, mortgage payments.

Q What's the ending balance on April 30th of 2012?

A Just over $2,300

Q Now, I'd like to show you what's already been admitted as Exhibit 370 Going to the second page, are you familiar with this text message from Mr McDonnell to Mr Williams?

A Yes

Q Could you read it?

A Sure "Stock going great Alzheimer's study announcement really helped Thanks for coming to Romney event and helping him. Gov "

Q I'd like to show you what's been marked for identification as Exhibit 371 Is this a text message from Mr Williams to Mr McDonnell?

A Yes

MR. FAULCONER: We would offer Exhibit 371 into

evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q And again, this says April 28th, 2012 at 2:10:08 a.m. Is this one of those e-mails with that time zone adjustment?

A Yes, it is

Q I'm sorry, text message

A Right

Q Now, I'd like to show you what's been marked for identification as Exhibit 372 Is this a text message back from Mr McDonnell to Mr Williams?

A It is

MR FAULCONER: We would offer Exhibit 372 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q Could you read that text message back from Mr McDonnell?

A Sure "Phenomenal This will be great for Virginia and medicine Will talk to you about Virginia Beach soon Thanks."

Q Now, this is April 27th or so of 2012 Have you reviewed text messages between Mr McDonnell and his sister discussing the financial status in the month leading up to this?

A Yes

Q That being the financial status of MoBo?

A Correct

Q I'd like to show you what's been marked for identification as Exhibit 597 Is this a chart showing some of those text messages from March 23rd and 24th of 2012?

A It is

MR. FAULCONER: We would offer Exhibit 597 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q Again, Agent Hulser, are these text messages that were produced by sister Maureen McDonnell?

A Yes, sir

Q Have any of these been entered into evidence previously?

A No.

Q Now, after that first one that's shown there saying "We paid the builder today, we will have not quite enough to pay all expenses through June," who is that from there?

A From Mr McDonnell to sister Maureen.

Q Then what's the next one shown there at 8:33 p.m. from Mr McDonnell to sister Maureen McDonnell?

A It is another text message

Q Could you read it?

A Sure "FYI this is the payoff for Dr Davis $33,004 53 after March payment. $16,500 each Bob "

Q Now, after sister Maureen McDonnell's response at 8:40, could you read the next message that Mr McDonnell sends to his sister at 8:54 p.m.?

A Yes "Total or on top of the 6-7k more we will probably need by June for expenses?? Bob "

Q How does sister Maureen McDonnell respond two minutes later?

A "In addition likely "

Q Then the next day, could you read the text message from Mr McDonnell to sister Maureen McDonnell?

A Okay "Will work on that premise for an April 15th payoff to Davis "

Q I'd like to show you what's been marked for identification as Exhibit 369 Is this an e-mail produced by Mr McDonnell?

A It is

Q Is it an e-mail exchange between him, Michael Uncapher, and sister Maureen McDonnell?

A Yes

MR FAULCONER: We would offer Exhibit 369 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q What is the date of this e-mail exchange?

A It begins on April 4th, 2012 at 12:26 a m

Q Now, could you read for us on the bottom e-mail just the last two lines where it starts with "As soon as I get "

A It states: "As soon as I get the rental income estimates from Sandy I will estimate our shortfall this year. Thanks."

Q All right And that e-mail was from Mr McDonnell, right?

A Correct

Q Now, turning to the top e-mail, can you tell us what Mr McDonnell then writes a little bit later that same day?

A Sure It says: "Mo and Mile Just found another better loan opportunity 1 9 percent for 13 months but can only borrow 8,000, meaning we would need to pay 12,500 each toward the Davis loan However the monthly payment for MoBo is only 679 for twelve months Can you do this or is that a stretch? Advise soon "

Q To be clear, Agent Hulser, does this say "meaning you," sister Maureen McDonnell, "would need to pay $25,000 yourself" or does it say "$12,500 each"?

A $12,500 each.

Q Based on your review of the financial records, did you find any evidence of this loan opportunity actually coming to fruition?

A No

Q All right Now, moving past that April exchange and into May of 2012, I'd like to show you what's been already admitted as Exhibit 386 Are you familiar with this wire transaction document?

A Yes

Q If we could just zoom in on the middle portion there What is the date of that wire transaction?

A May 22nd, 2012

Q Is this $20,000 to the MoBo Real Estate Partners bank account?

A Yes

Q And based on your review of the other records, is this a wire in from Starwood Trust?

A It is

Q Did you review text message conversations for text messages discussing this transaction in the days leading up to it?

A I did.

Q All right Agent Hulser, I'd like to hand up to you with the assistance of the Court Security Officer paper copies of what's been marked for identification as Exhibit 382, 383, and 384 Agent Hulser, if you could take a moment to look at those and tell us if those are text messages between Mr McDonnell and Mr Williams on May 18th, 2012 once you adjust for time zone

A Yes, they are.

MR FAULCONER: We would offer Exhibit 382, 383, and 384 into evidence

THE COURT: They will be admitted

BY MR FAULCONER:

Q All right, now, Agent Hulser, have you actually taken these text messages and some others from that same day and put them into a chart that corrects the time zone issue?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 598 Is this that chart?

A Yes, sir, it is

MR. FAULCONER: We would offer Exhibit 598 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q There's a lot of text on this one, Agent Hulser, but could you start with what the first line on this chart shows?

A The first line on this chart shows that Mr McDonnell reached out to Mr Williams and a short phone call was connected.

Q Now, four minutes later at 1:26 p.m., could you read the text message from Mr McDonnell to Mr Williams?

A Yes "Jonnie Per voicemail would like to see if you could extend another 20k loan for this year Call if possible and I'll ask Mike to send instructions Thanks Bob "

Q And then what's the text message three minutes later to Michael Uncapher?

A "Can you send wiring instructions to Jonnie Williams for sending 20-K to MoBo account Phone is," the last four digits, "5828 Thanks Bob "

Q 12 minutes after Mr McDonnell had texted Mr Williams, what's the response back from Mr Williams?

A "Done Tell me who to make it out to and address Will FedEx Jonnie "

Q Is that next text message a text message that says, "It is addressed to Michael" and then has instructions for wiring money?

A Yes

Q And then at 4:13 p.m., what's the text message from Mr McDonnell to Mr Williams?

A "Jonnie Thanks so much for your help and friendship. Bob."

Q And then Mr Williams responds at 4:16 p.m. At 4:35 p.m., could you tell us what the text message is from Mr McDonnell to Michael Uncapher?

A "Michael Jonnie's instructions can you do Monday Bob " With forward of a 3:54 p.m. text

Q When you say forward of the 3:54 p.m. text, is that the same one shown at 3:54 there?

A It is

Q All right Now, this is May 18th, 2012, four days before the wire goes over Are you aware of where Mr McDonnell's schedule shows he was scheduled to be located at or around this time frame?

A Yes, Kiawah Island.

Q I'd like to show you what's already been admitted as Exhibit 378 Is this the schedule for that time frame?

A It is

MR. ASBILL: Objection. May we approach?

(At Bench.)

MR ASBILL: I understood the Kiawah Island trip for 404(b) evidence, it is Government's rebuttal evidence, or is it now something they are trying to admit?

MR. FAULCONER: The evidence from the SOEI is already in evidence The schedule is already in evidence I'm simply asking where he was that day I'm not going to ask him follow-up questions

THE COURT: The objection is overruled.

(In Open Court)

BY MR FAULCONER:

Q All right, now Agent Hulser, we have looked at a number of calls between Mr Williams and Mr McDonnell and some text messages in this time frame, May of 2012 Can you tell us in May of 2012, were there any calls between Mr Williams and Ms McDonnell greater than a minute?

A No, there were not

Q Were there any text messages between Ms McDonnell and Mr Williams in May of 2012?

A None

Q All right So earlier you walked us through the $50,000 that was deposited in MoBo in March of 2012 and how that was expended over the course of that month. Could you tell us whether you did the same thing for the $20,000 in May of 2012?

A Yes, I did.

Q I'd like to show you what's been marked as Exhibit 599-A. Is this a one-page chart showing that activity in that time frame?

A It is

MR. FAULCONER: We would offer Exhibit 599-A into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q All right, so Agent Hulser, what is the balance shown in this account the day before the Starwood Trust wire comes in?

A Approximately $3,200

Q And then on May 22nd, 2012, two lines down, those next three lines, TowneBank, Bank @Lantec and NFCU, can you tell us if you know what payments those went towards?

A Mortgage payments for MoBo

Q Then Resource Building Corp, was that expenditure also capitalized as an improvement to the properties that year?

A It was

Q And then after the entry for Michael Uncapher, could you tell us TowneBank there, is that another mortgage payment?

A It is

Q And then Bank @Lantec on 5-31-12, what type of payment is that?

A Again, related to the mortgage

Q So in total, what does this chart show as the total withdrawals in the nine days, including and following that wire coming in?

A $18,775

Q Now, let's take a step back and talk about MoBo and the real estate holdings more generally Have you reviewed MoBo's bank records to determine what the ending monthly balance was in the account each month in this early 2012 time frame?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 600 Is this a chart showing what that analysis revealed?

A It is

MR. FAULCONER: We would offer Exhibit 600 into evidence

THE COURT: It will be admitted

MR. FAULCONER: Could we publish it to the jury?

BY MR FAULCONER:

Q Now, Agent Hulser, which month of these six months is the ending monthly balance in the MoBo account the highest?

A I'm sorry, I didn't hear that

Q Which of these six months is the ending balance the highest on this chart?

A In March

Q And which month did Jonnie Williams' $50,000 check come in?

A March

Q In June of 2012, what's the ending monthly balance in

June?

A $332

Q Now, in addition to looking at the ending monthly balances, do you remember earlier yesterday when you testified about looking at the deposits and withdrawals in the McDonnells' personal bank accounts in early 2011?

A I do

Q Did you do the same thing for MoBo in early 2012?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 601 Is this a chart showing what that analysis of the bank accounts determined?

A It is

MR. FAULCONER: We would offer Exhibit 601 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q All right Now, Agent Hulser, it says there "Deposits and Withdrawals " To be clear, did the deposits there, is that limited to rental income or does that include every type of deposit in those accounts?

A Every type of deposit

Q When it says 53,312 in March, 2012, does that include the $50,000 from Mr Williams?

A It does

Q When it says 23,356 02 in May of 2012, does that include the $20,000 from Mr Williams?

A Yes.

Q With those amounts included, can you tell us what the difference is between the total deposits into the accounts in that time frame and the total withdrawals?

A Just over $5,400

Q If you subtracted out the $70,000 from Mr Williams, would that $5,000 go into the positive category or further into the negative?

A Further into the negative

Q All right Now, in addition to the bank records at TowneBank themselves, have you also reviewed the MoBo tax returns as they were prepared by Dan Cook?

A I have

Q Do you know who Dan Cook is?

A I do

Q Is he the CPA who did the taxes?

A Yes

Q Now, did those documents have MoBo's real estate income and expenses on them?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 602 Is this a chart showing that information?

A It is

Q Is this essentially a version of the same '09 to '10 chart just adding on '11, '12, the one we saw earlier?

A Yes, it is

MR. FAULCONER: We would offer Exhibit 602 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q All right Now, Agent Hulser, we saw the first two columns on this chart yesterday, right?

A We did

Q Could you walk us through what the changes are in the rental real estate income and expenses in 2011 and 2012?

A Yes The net for 2011 is a negative 32,912 And the net for 2012 is a positive $5,004

Q Now, 2012, is that the same year that Mr Williams' $70,000 came in?

A It is

Q But to be clear, that $70,000 is not included in the rental real estate income, right?

A No, it is not

Q But looking at this document, does this document from the tax returns show all deposits into the account and disbursements out of the account?

A No

Q Have you looked at all of the disbursements out of the account to compare how they, or to compare them in this time frame to earlier time frames?

A I have

Q And based on that review, did the total cash disbursements out of the account in 2012, did they go down from 2011 or did they go up?

A Up

Q Have you prepared another chart based on the tax returns that shows how that was done?

A I have

Q I'd like to show you what's been marked for identification as Exhibit 602-A. Is this that follow-up chart that you prepared?

A Yes, sir, it is

MR FAULCONER: We would offer 602-A into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q All right Now, Agent Hulser, are the first three lines on this chart just the same as the chart we were just looking at?

A They are

Q Can you tell us what's shown in the next line down where it says "Less: Loan Principal Payments"?

A Yes That is the portion of the payments for mortgages and other loans that represented principal So for the payment, if it is principal plus interest, the interest was only included in the rental real estate expenses row The principal payments are the rest of the payment that was made

Q Of course, you are not saying there is anything wrong with doing that; that's just what the tax return showed, correct?

A Right

Q The next one down where it says "Less: Capitalized Expenses," can you tell us what that's showing?

A That's just showing expenses or disbursements that were made each year for items, that for tax purposes are capitalized, so over time they are depreciated You don't take the full amount of the expense in the year that you paid that out

Q And what's the total amount of capitalized expenses in 2012?

A $30,040

Q Does that dollar amount include those payments to Resource Building Corp that we saw earlier?

A It does

Q Now, could you walk us through what the last row on this chart shows?

A The last row just shows the net cash disbursements or essentially the cash shortfall by year

Q Is that the difference between all of the disbursements in the account and all the rental real estate income?

A It is

Q So does this chart include any loans or owner contributions that are put into the account?

A No.

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BY MR FAULCONER:

Q Which of these four years is the highest shortfall in terms of net cash disbursements?

A 2012

Q All right Now, let's go back to -- or let's talk about Blue Ridge Heaven for a moment Have you also looked at the Blue Ridge Heaven tax returns for this same time period?

A I have

Q I'd like to show you what's been marked for identification as Exhibit 603 And is this a chart that you put together for Blue Ridge Heaven for 2009 to 2012?

A Yes, sir, it is

MR FAULCONER: Your Honor, we'd offer Exhibit 603 into evidence

THE COURT: It will be admitted

MR FAULCONER: And could we publish that to the jury?

BY MR FAULCONER:

Q All right Now, Agent Hulser, looking at this, is this basically the same chart just for Blue Ridge Heaven instead of MoBo?

A It is

Q In which of the four years is the net rental real estate income loss the highest for Blue Ridge Heaven?

A 2012

Q To be clear, though, what was Mr. McDonnell's percentage ownership in Blue Ridge Heaven?

A Only 20 percent

Q All right So let's go back to MoBo for a second Were you in court when Mr Uncapher testified about the loans that were taken out by MoBo over time?

A I was

Q And have you reviewed the tax returns and other records from Mr Cook to track how those loans increased or decreased over time?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 604 Is this a chart showing that information?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 604 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, there are a lot of numbers on this one too, Agent Hulser But can you tell us the total number of loans, do they go up or down over time?

A Over time, they go up

Q And the total dollar amount of loans that are listed

Does that go up or down overtime?

A It goes up

Q And during that time frame, are both Mr McDonnell and Ms McDonnell shown -- Ms McDonnell the sister shown loaning money to MoBo?

A Yes, they are

Q And looking at their two dollar amounts in 2012, can you tell us what the gap is between the amount that the two of them are contributing each to MoBo in that time frame?

A The gap, as of the end of 2012, is less than $4,000

Q Now, do you also see the line there where it says John McDonnell?

A I do

Q And do you recall Mr Uncapher's testimony about a loan from Mr McDonnell's father?

A I do

Q Now, does that dollar amount change at all over the course of the four years?

A No

Q Does any principal get added to it?

A No

Q Are any payments made on it in those four years?

A No

Q Do you also see there where it says Dr Paul Davis?

A I do

Q And have you actually reviewed the checks for the loan that was written by Dr Paul Davis to the McDonnells?

A Yes, I have

Q I'd like to show you what's been admitted as Exhibit 55 Now, is this the first of those three checks from Dr Davis?

A Yes

Q Now, zooming in on the bottom of these three checks, could you tell us who or what entity this check was made out to?

A MoBo Real Estate Partners, LLC

Q And to your knowledge, was this then deposited into the MoBo Real Estate Partners, LLC bank account?

A It was

Q I'd like to show you what's been admitted as Exhibit 59 Is this the next check in the series from Dr Davis?

A Yes

Q And was this check also written out to MoBo Real Estate Partnership, LLC?

A It was

Q And was this check also deposited into the MoBo bank account?

A Yes, it was

Q Also, I'd like to show you what's been admitted as

Exhibit 61 Is this the third in the checks from Dr Davis?

A Yes

Q And like the others, is this written out to MoBo Real Estate Partners?

A It is

Q And was it deposited into that bank account?

A Yes, it was

Q Now, I'd like to show you Exhibit 60, which has been previously admitted Is this the promissory note for the Dr Davis loan?

A Yes, it is

Q Agent Hulser, could you show us where on this promissory note it says MoBo Partners, LLC?

A No, I can't

Q Did you recover any documents in this case showing this loan being to MoBo, LLC?

A No

Q And in all the subpoenaed materials that you got, did you get any documents showing a loan from Mr Williams to MoBo, LLC?

A No

Q All right So we've talked about the payments through May of 2012 Are you also aware of the trip to Chatham Bars Inn in Cape Cod, Massachusetts, in September of 2012?

A I am

Q And have you reviewed the records produced by Chatham Bars Inn for the expenses charged at that establishment during that trip?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 605 Is this a chart showing the expenses as you reviewed them for that trip?

A Yes, sir, it is

MR FAULCONER: Your Honor, we'd offer Exhibit 605 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, Agent Hulser, could you walk us through what each column on this chart shows?

A Sure The first column is the Date Second, the Room Charged The third column is the Charge Type The fourth is the Amount of the charge, and the last column is Paid By

Q And what's the total that was charged to Mr Williams' credit card during this trip?

A $36,618 07

Q And what's the total that was spent on food and beverage during this trip?

A $9,276 39

Q Now, I'd like to show you what's been marked for identification as Exhibit 407 Is this a series of pages that shows the room charges for the Chatham Bars Inn?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 407 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, on the first page, whose room bill is this page?

A Mr Jonnie Williams

Q All right And then going a little ways down, a little past halfway, where it says, "McDonnell Bob & Maureen #393" there in the middle, is that the room charge for the McDonnells?

A Yes, it is

Q Now, when you go a little bit lower below that, do you see there where it says "Stars Charge, Check #2968, "1309 02"?

A I do

Q Did you obtain, from Chatham Bars Inn, a receipt for that charge?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 409 Is this that receipt?

A Yes, it is

MR FAULCONER: Your Honor, we'd offer Exhibit 409 into evidence.

THE COURT: It will be admitted

MR FAULCONER: All right Now, if we could just zoom in on sort of the top third maybe, and then scroll down a little bit

BY MR FAULCONER:

Q Is this what looks like a meal charge for that evening, August 31st, 2012?

A Yes, it is.

Q And there at the bottom, whose room is that charged to?

A Williams'

Q And August 31st, 2012, is that the night that Mr McDonnell and Ms McDonnell's room charges start?

A Yes

Q All right Well, now, I'd like to go back to Exhibit 407, briefly, to Page 2 And do you see --

MR FAULCONER: Is this Page 1 or 2? Oh, it's Page 2 Okay

BY MR FAULCONER:

Q Do you see there, a little ways down in that portion, the catering charge that says $5,823 79?

A I do

Q Do you have the receipt for that charge?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 413 Is this that receipt?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 413 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, how many drinks there of Rémy Louix XIII does it show there?

A Sixteen

Q And what's the total cost?

A $2,400

Q Now, do you see there at the bottom it says "Payment Made," and then it says "393/McDonnell"?

MR FAULCONER: If we could go back to 407, Page 2

BY MR FAULCONER:

Q Regardless of what it says on the receipt, does that charge show up on Mr Williams' room?

A Yes, it does

Q All right Now, going to Page 7 of room -- of -- room -- of Exhibit 407 Is that the room bill for Phil Cox?

A Yes, it is

Q Now, it shows that the charges are on Phil Cox's room To be clear, the credit card at the bottom there, whose credit card is that? The one ending in 5005

A Mr Williams'.

Q And then finally, flipping back one page to Page 6, whose room bill is that?

A Bob and Maureen McDonnell

Q Now, to make sure that we're totally up-front with the jury, Agent Hulser, did you also review the McDonnells' credit card bills for charges that they made during the time frame of this trip?

A I did

Q And can you tell us whether you found any charges that appeared to be when they were at Chatham Bars?

A Yes

Q And can you tell us what those were?

A Two charges that totaled up to just over $1,100

Q And what was the total amount of food that was on the Chatham Bars Inn bill?

A Somewhere over $9,000

Q All right So let's shift gears a little bit, unless Your Honor wants to take a break?

THE COURT: No Let's try to make it until 11:30

MR FAULCONER: Got it

BY MR ASBILL:

Q All right. So let's go forward a little bit until December of 2012 Have you reviewed the Davenport & Company documents produced by John Piscitelli in this case?

A I have

Q And have you also reviewed the text messages that Mr McDonnell sent to Mr Williams referencing Star Scientific stock?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 606 Is this a three-page chart, Agent Hulser?

A Yes, it is

Q And the first page, does that just list out the stock transactions?

A Correct

Q And the second two pages, what are those?

A Those are basically a tracking of the stock price during that period; June 1, 2011, through December 31, 2012

Q And do those also include certain text messages from Mr McDonnell to Mr Williams in that time frame?

A They do

MR FAULCONER: Your Honor, we'd offer Exhibit 606 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right So looking at this first page, are those the -- the first four lines, are those the stock transactions that Mr Piscitelli testified about earlier in the trial?

A They are

Q And when is the last of those four transactions?

A December 20, 2011

Q And to be clear, based on your review of the records, are there any gifts of stock to Cailin McDonnell in that time frame?

A No.

Q All right Well, then looking at the three transactions in 2012, can you tell us when, in 2012, the Star stock goes down to 1,672?

A December 31st, 2012

Q All right

MR FAULCONER: So if we can turn to Page 2 of this exhibit, we'll zoom in on this in a second

BY MR FAULCONER:

Q But can you tell us what the time frame is that's shown here?

A June 1, 2011, through December 31, 2012

Q And the -- the graph, can you tell us what that's a graph showing?

A It's a graph showing the fluctuations in the stock price for Star

Q All right Now, if we could go to the second page of this document Is this showing some of these text messages from Mr McDonnell to Mr Williams in that same time frame?

A That's correct Text and e-mail

Q Now, could you walk us through what the share prices are as these text messages and e-mails are sent over the course of the summer of 2012?

A Sure On April 28th, 2012, the share price is 3 59 a share And there's a message "Stock going great," which is a text from Mr McDonnell

On June 13th of 2012, the share price is $4 05 a share, and there is an e-mail from Mr McDonnell to Mr Williams which states, "Stock looking good "

On June 26th of 2012, the share price is $4 56 a share, and there is a another message, an e-mail, from Mr McDonnell to Mr Williams "Congrats on the patent for anatabine "

And finally, on July 3rd of 2012, with the share price at $4 99 a share, there is a text message from

Mr McDonnell to Mr Williams which states, "Stock looks good "

Q All right Now, Agent Hulser, we also have heard some testimony during the course of trial about Donnie Williams doing work for the McDonnells at their residence Have you reviewed text messages between Mr McDonnell and Ms McDonnell talking about Donnie Williams?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 607 And with the assistance of the court security officer, I'd like to hand up to you what's been marked for identification as Exhibits 435, 457, 471, and 472

All right Now, focusing first on the documents I just handed you, and starting with 435, 471, and 472, are those text messages between Mr McDonnell and Ms McDonnell?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 435, 471, and 472 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, looking at Exhibit 457, is that an e-mail exchange between Mr and Ms McDonnell?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 457 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, to try to make this a little bit easier, going to Exhibit 607, is that a chart that corrects some time zones and puts those messages that we just saw into a single chart?

A That's correct

MR FAULCONER: Your Honor, we'd offer Exhibit 607 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, Agent Hulser, it starts with what looks like a message from Mr McDonnell to Ms McDonnell, "Any update on Jonnie's brother on Wyndham house Can I get his number soni can call Thanks "

Did I read that correctly?

A That's correct

Q And then on -- that's on December 6th of 2012, right?

A That's correct

Q Could you read for us the message a little over a month later from Mr McDonnell to Ms McDonnell on January 12th of 2013?

A Yes At 12:44 a m , it states, "Pa. Any updates on" -- "any update on what Johnny's brother has done "

Q And, again, is that the correct spelling of Jonnie Williams' name?

A It's not

Q At 12:47 a m on January 12th, 2013, could you read the response in that e-mail exchange from Ms McDonnell?

A Sure "Hasn't done anything since before Christmas I haven't gone out to meet with him yet What are you anxious to get done "

Q And then on January 24th of 2013, could you read the text message from Mr McDonnell to Ms McDonnell that day?

A Yes "Need to do at Wyndham house to be ready for Cynthia Will work on lease this weekend Can we get carpets cleaned soon Are you seeing Jonnie's brother today Great job on speech Nice to see Cheryl Are you coming to hairdresser tonight Bob "

Q And two minutes later, what is Ms McDonnell's response to Mr McDonnell?

A That states, "Donnie had to cancel due to snow Reschedule for next week Yes for tonight "

Q All right Now, I'd like to show you what's been already admitted as Exhibit 554 And zooming in on February 15th of 2013, can you tell us what it says there at 1:00?

A "Meet with Officers Kennedy and Hagan (FLOVA

Office) "

Q Now, is this Ms McDonnell's schedule from that time frame?

A It is

Q Have you looked at Mr and Ms McDonnell's toll records before and after that 1 p m scheduled interview?

A Yes, I have

Q I'd like to show you what's been marked for identification as Exhibit 608 Is this a chart showing certain calls by Mr McDonnell and Ms McDonnell that day?

A Yes, sir, it is

MR FAULCONER: I'd like to -- Your Honor, we'd like to offer Exhibit 608 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, Special Agent Hulser, what does this chart show was the first call -- or what's the first call shown on this chart, rather?

A Call from Mr McDonnell to Ms McDonnell at 12:44 p m

Q And, again, I know we've been over these a number of times, but that asterisk there on Ms McDonnell's, does that show that it wasn't actually in her records?

A That's correct

Q So do you know if that call actually connected?

A I don't

Q Then at 1 p m , it shows the scheduled start of the interview Can you tell us what the next call is shown there at 3:01 p m ?

A Mr McDonnell reaches out for Sarah Scarbrough

Q And then two minutes later, after that call ends, what call does Mr McDonnell's cell phone make?

A To Ms McDonnell's office

Q And how long does that call last?

A Three minutes.

Q And then at 3:07 p m , what number does Mr McDonnell call?

A It calls the Mansion phone, the Mansion line

Q And then about ten or so minutes later, who does Ms McDonnell call?

A Cailin Cailin McDonnell

Q Three minutes after that, what's shown at 3:21 p m ?

A Cailin McDonnell returns her call, and the call lasts -- or it's connected for approximately 11 minutes

Q And then the last line on this chart at 3:34 p m , who does Ms McDonnell call that day?

A Jonnie Williams

Q And how long is that phone call shown in the records?

A Six seconds

Q Now, Special Agent Hulser, after that call that's shown there, are there any records of any cell phone contact between Mr Williams and either of the McDonnells?

A No

Q Now, I'd like to show you briefly what's been already admitted as Exhibit -- keeping the times in this chart in mind, that 1 p m time of the interview in mind, I'd like to show you what's been already admitted as Exhibit 485 And zooming in on the top portion there, do you see that this is an e-mail from Robert McDonnell to Nanette Bolt?

A Yes

Q And were you in court for Nanette Bolt's testimony about the Pentagon Federal Credit Union loan?

A I was

Q And can you tell us, when, in relation to the 1 p m scheduled interview, is this e-mail about having sent an 18-page and 6-page fax?

A I'm sorry What was the question again?

Q When, in relation to the 1 p m scheduled interview of Ms McDonnell by law enforcement, does Mr McDonnell send this e-mail about sending in a fax?

A He sends this at 12:24 p m

Q Now, I'd like to show you now what was previously admitted as Exhibit 487 Now, could you tell us what -- on the very top of this page, the fax header there, what's the date and time of this fax header?

A February 18th, 2013

MR FAULCONER: And if we could zoom out and then go to the second page, and then on to the third page

BY MR FAULCONER:

Q And do you see there, Special Agent Hulser, where it has Starwood Trust and Jonnie Williams written into that loan application?

A Yes, I do

Q Based on your review of the mortgage and financial records, are there any personal financial statements or loan applications prior to this one that list Starwood Trust or Jonnie Williams?

A No

THE COURT: All right We'll stop for the morning break Let's take 15 minutes

(The jury left the courtroom)

(Recess taken from 11:28 a m until 11:52 a m)

THE COURT: All right Government

MR FAULCONER: Thank you, Your Honor

BY MR FAULCONER:

Q All right Agent Hulser, I'd like to pick up by just going back to two things from some of your prior testimony First, I'd like to show you what's been marked for identification as Exhibit 40 Flipping through these pages, Special Agent Hulser, are these those historical stock prices of Star Scientific stock from January of 2011 all the way until December of 2013?

A Yes, they are

Q And are these the prices that you used for that chart we looked at earlier?

A They are

MR FAULCONER: Your Honor, we'd offer Exhibit 40 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q And then I'd also like to go back briefly to the -- the calendar that we were looking at for Exhibit 554 And we looked at February 15th of 2013 earlier That's the law enforcement interview day

MR FAULCONER: If we could zoom back out and go back to February 18th

BY MR FAULCONER:

Q Can you tell us what holiday is February 18th of 2013?

A President's Day

Q And then really quickly, back to Exhibit 487 Is that the same date as the fax that was sent to PenFed that we were looking at right before we stopped?

A Yes, it is

Q All right Now, in the course of your review of the financial records, have you calculated, to the best you can, the dollar amounts of the various things of value that Mr Williams gave to the McDonnells?

A Yes

Q I'd like to show you what's been marked for identification as Exhibit 609

MR FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

A I had it

MR FAULCONER: I think it's showing everything that's written on there So for that one, at least, I think we can probably use it Can you put it back up? 609?

Sorry, Your Honor

BY MR FAULCONER:

Q All right Now, Agent Hulser, is this that chart showing some of the items and dollar amounts?

A Yes, it is

MR FAULCONER: Your Honor, we'd offer Exhibit 609 into evidence

MR BURCK: Your Honor, objection One of the -- two of the entries refer to payments Actually, three of the entries One is a May 2011 payment All the evidence in this case, including Mr Williams, was that that was a loan And then there's a wedding payment of

May 2011 and also a payment May 2012, which, again, all the evidence, including Mr Williams, said that was a loan And this is referred to as a payment on this chart So I think it's a characterization, Your Honor

MR FAULCONER: Your Honor, a loan is a payment The jury has heard the evidence about that They can take that for what it's worth It goes to weight, not admissibility

THE COURT: All right The objection is overruled

BY MR FAULCONER:

Q All right Now, Agent Hulser, looking at this chart, can you tell us, the first entry for April 2011 shopping, is that taken from the Jonnie Williams American Express bill, the chart that you showed us yesterday?

A Yes, it is

Q And then the $50,000 and the $15,000, are those to the two checks from Starwood Trust in May of 2011?

A They are

Q And can you tell us, the May 2011 Kinloch Golf, where did you get that total of 2380 24 from?

A From Jonnie Williams' Kinloch statement

Q Now, the next entry down, Smith Mountain Lake from July 2011, did you take that from Mr McDonnell's SOEI?

A That's correct

Q So does that include anything other than the boat rental that was referenced on the SOEI?

A No

Q The next one down, Kinloch Golf in August of 2011, is that also from Mr Williams' bill?

A It is

Q And is that only the golf when Mr McDonnell was there on August 13th?

A That's correct

Q So does that include any of the golf from Sean McDonnell or Bobby McDonnell when Mr McDonnell wasn't there?

A No, it doesn't

Q The next entry down, the Rolex, August/December 2011, where did you get that bill?

A From Mr Williams' AMEX bill, the statement

Q Was that actually the Visa bill that we looked at earlier

A The Visa bill, yes

Q Now, the Kinloch Golf in January of 2012, where did you get that total from?

A Again, from Mr Williams' statement from Kinloch

Q And then the next two, the $50,000 and the $20,000, are those the dollar amounts of the check and the wire from Starwood Trust?

A Yes

Q The next one down, Chatham Bars Inn, can you tell us where you took that number from?

A From Mr McDonnell's SOEI

Q And is that number actually lower than the number of the lodging that was there?

A Yes

Q But did you take this number essentially to try to be conservative on it?

A Correct

Q Now, going down to Kinloch Golf in November of 2012, can you tell us why it says "Caddies Only" there?

A That's only the amount that was on Mr Williams' bill for that outing The rest of the tab was picked up by another member, David Dean

Q And then finally, the Donnie Williams amount, invoiced March of 2013, where did you get that dollar amount from?

A From the invoice Donnie Williams provided

Q And is that total there at the bottom just totaling up everything above it?

A It is

Q Now, Special Agent Hulser, these dollar amounts that we're looking at here, to be clear, do these include anything for the dinner after the Cure By Design event?

A No

Q Does this include anything for the dinner at La Grotta after the Healthcare Leaders Reception?

A No

Q Are you purporting to encompass every single thing of value given by Mr Williams to the McDonnells on this chart?

A No

Q All right Now, do you recall the investigation being reported on in the media at some point in the spring of 2013?

A I do

Q After that time, did the McDonnells give some of the things of value they received from Mr Williams back to Mr Williams through their respective attorneys?

A They did

Q To be clear, from the time of Ms McDonnell's interview with law enforcement until stories hitting the media, were any of the items returned?

A No

Q I'd like to show you what's been marked for identification as Exhibit 528 Is this a letter and check from Cailin McDonnell Young and Christopher Young's attorneys?

A It is

Q Or I guess a letter from their attorneys on the first page?

A Correct, the letter

Q And turning to the second page, is that a check from Christopher Michael Young to Starwood Trust?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 528 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, looking at that check on the second page, what's the dollar amount on that check?

A $15,000

Q To be clear, though, Special Agent Hulser, was the $15,000 check from Starwood Trust that was written in May 2011, was that deposited into Christopher Young's bank account?

A No

Q Was the wedding refund from Great Seasons Catering deposited into Christopher Young's bank account?

A No

Q All right I'd like to show you Exhibit 527, marked for identification Is this a letter from Mr McDonnell's attorneys to Mr Williams' attorneys?

A Yes

Q And is the second page a copy of two checks attached to that letter from Mr McDonnell's attorneys?
A Yes
MR FAULCONER: Your Honor, we'd offer Exhibit 528 into evidence -- or 527, sorry, into evidence
THE COURT: It will be admitted
BY MR FAULCONER:
Q Now, if we could turn back to the first page Is that the letter there that we were talking about?
A It is
Q And going to the second page, could you tell us the dollar amount of the check at the top there?
A $71,837.
Q Do you see there where it says "Full MoBo, LLC loan repayment" in the memo line?
A I do
Q To be clear, did you ever recover any sort of loan agreement showing MoBo, LLC?
A No
Q Do you see there where it says July 18th, 2013, on the second check?
A Yes
Q And what's the dollar amount of that check?
A $52,278 17
Q And is that a check from Maureen McDonnell's account?

A It is

Q And going back to the first page, that's the letter from Mr. McDonnell's attorneys, right?

A Correct

Q Now, did you receive any sort of loan agreement for the $50,000 repayment?

A No

Q Now, Special Agent Hulser, after the investigation went public, did the McDonnells also give certain physical items to Mr Williams through their respective attorneys -- or sorry, certain physical items that they received from Mr Williams back to Mr Williams through their respective attorneys?

A Yes

Q And after Mr Williams received those items through his attorneys, what happened to them?

A They were turned over to the FBI

Q And for some of those items, have there been corresponding exhibit numbers with an (a) at the end that have been offered into evidence as photos during trial?

A Yes

Q Now, I'd like to start with a couple of -- or one item for which we have only a photograph I'd like to show you what's been marked for identification as Exhibit 16a Now, Special Agent Hulser, is this a photograph of two iPhones given by Mr Williams to the McDonnells?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 16a into evidence

THE COURT: It will be admitted

MR FAULCONER: And can we publish that photo?

BY MR FAULCONER:

Q Now, Special Agent Hulser, to be clear, am I correct these -- the iPhones themselves were not returned, but a dollar amount was returned to try to correspond to those?

A Correct

Q All right Now I'd like to walk through, with the assistance of the Court Security Officer, some of the physical items, and I'd like to start with what's been marked for identification as Exhibit 8 Special Agent Hulser, is that a Oscar de la Renta sweater?

A Yes, it is.

MR FAULCONER: Your Honor, we'd offer Exhibit 8 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q And, Agent Hulser, was this one of the items returned by the McDonnells to Mr Williams?

A Yes

Q And could you hold it up for the jury to see?

MR FAULCONER: And, Your Honor, do you want us to just have the Court Security Officer hold those over there and then publish them at the end or how do you want us to deal with this?

THE COURT: I don't see any -- if you mean by publishing, pass them to the jury, that's not going to happen

MR FAULCONER: Right

THE COURT: But they can see it We'll just take and put it with the rest of the exhibits

MR FAULCONER: Got it

BY MR FAULCONER:

Q All right Now I'd like to hand up what's been marked for identification as Exhibit 9 And if I could grab also 10, 11, 12, 13, and 14 And Special Agent Hulser, could you tell us, are 9, 10, 11, 12, 13 and 14, are those shirts, some with Kinloch logos, that were returned by the McDonnells to Mr Williams?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibits 9 through 14 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q And if you could just hold those up briefly, Special Agent Hulser

All right Now if I could hand up, with the assistance of the Court Security Officer, Exhibit 15 Special Agent Hulser, is this a painting returned to Mr Williams by the McDonnells?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 15 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now I'd like to hand you what's been marked for identification as Exhibit 17 Agent Hulser, are these two pairs of golf shoes returned to Mr Williams by the McDonnells?

A They are

MR FAULCONER: Your Honor, we'd offer Exhibit 17 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q I'd like to hand up what's been marked for identification as Exhibit 23 Special Agent Hulser, is this a Louis Vuitton wallet returned by the McDonnells to Mr Williams?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 23 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q I'd like to hand up Exhibit 24 And Special Agent Hulser, is this a pair of earrings returned by the McDonnells to Mr Williams?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 24 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q I'd like to hand up Exhibit 25 Special Agent Hulser, is this a Chatham Bars Inn sweatshirt returned by the McDonnells to Mr Williams?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 25 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now I'd like to hand up Exhibit 27 And, Special Agent Hulser, is this a carton containing Anatabloc that the McDonnells returned to Mr Williams?

A It is Multiple boxes

MR FAULCONER: Your Honor, we'd offer Exhibit 27 into evidence

THE COURT: It will be admitted

MR FAULCONER: All right Now I'd like to hand up Exhibit 28 Special Agent Hulser, is this a Louis Vuitton trench coat returned by the McDonnells to Mr Williams?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 28 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now I'd like to do Exhibit 29 Special Agent Hulser, is this a Oscar de la Renta coat returned by the McDonnells to Mr Williams?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 29 into evidence

THE COURT: Go ahead

MR FAULCONER: Exhibit 29 we'd offer into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q And I'd like to hand up Exhibit 30 Special Agent Hulser, is this two blue dresses, along with a jacket, that were returned to Mr Williams?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit

30 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q I'd like to hand up Exhibit 31 Agent Hulser, is this a Oscar de la Renta dress that was returned to Mr Williams?

A Yes, it is

MR FAULCONER: Your Honor, we'd offer Exhibit 31 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q I'd like to hand up Exhibit 32 And Special Agent Hulser, is this a Louis Vuitton purse that was returned to Mr Williams?

A Yes, it is

Q I'd like to hand up Exhibit 34 Is this a yellow dress that was returned to Mr Williams?

A It is

Q And I'd like to hand up Exhibit 35

THE COURT: You need to move in -- you've gone through a series without --

MR FAULCONER: Have I gone through some without admitting, Your Honor?

THE COURT: Yes

MR FAULCONER: What was the last one that I admitted?

THE COURT: I think you're at 31 or 32

MR FAULCONER: Okay Your Honor, we'd offer, just to make sure we're getting all of them, Exhibits 30, 31, and 32 into evidence

THE COURT: They'll be admitted

MR FAULCONER: And also 34, Your Honor

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, Exhibit 35, Special Agent Hulser, is this a pair of Rebecca Minkoff shoes?

A Yes

MR. FAULCONER: Your Honor, we'd offer Exhibit 35 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q And were these also returned to Mr Williams, Agent Hulser?

A Yes

Q I'd like to hand you Exhibit 36 Special Agent Hulser, is this a pair of Louis Vuitton shoes that were returned to Mr Williams?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 36 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q And Exhibit 37 Is this another pair of Louis Vuitton shoes that were returned to Mr Williams?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 37 into evidence

THE COURT: It will be admitted

MR FAULCONER: And I think the next one might be up with the Deputy Clerk, but I'd like to just to confirm the order in which this went Give Special Agent Hulser what's been entered into evidence as Exhibit 33, the watch

BY MR FAULCONER:

Q Well, I guess to try to save a little bit of time, Agent Hulser, was the watch one of the items that was returned to the FBI by Mr Williams?

A Yes

Q Now I'd like to hand up together Exhibits 19 and 22 And, Special Agent Hulser, is this a Kinloch Golf bag for Exhibit 19, as well as assorted golf clubs for Exhibit 22 that were returned by the McDonnells to Mr Williams?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 19 and 22 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q I'd like to hand up Exhibit 20 and 21 together Special Agent Hulser, are these -- is Exhibit 20 a UVA golf bag?

A It is

Q And is Exhibit 21 a set of Callaway golf clubs?

A Yes

Q And were these also items returned to Mr Williams and then the FBI by the McDonnells?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibits 20 and 21 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q And then I'd like to also hand up Exhibit 18 Special Agent Hulser, is this a Notre Dame golf bag that was returned by the McDonnells to Mr Williams?

A Yes, it is

MR FAULCONER: Your Honor, we'd offer Exhibit 18 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, Agent Hulser, I'd like to show you on the screen now what's been marked for identification as

Exhibit 529 Is this an inventory of some of these physical items that the McDonnells gave to Mr Williams, through their attorneys, after the investigation went public?

A Yes, it is

MR FAULCONER: Your Honor, we'd offer Exhibit 529 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, Agent Hulser, in your review of the McDonnells' bank accounts and credit card records, did you ever find any expenses that appeared to be for a Rolex watch?

A No

Q Did you find any expenses that appeared to be for luxury cars?

A No

Q Did you find any expenses or credit card purchases at Kinloch Golf Club?

A No

Q In what was the dollar amounts and the physical items that were sent back to Mr Williams, was there anything included for the boat rental at Smith Mountain Lake?

A No

Q Was there anything included for the dinner at

La Grotta?

A No

Q Was there anything included for the dinner after the Cure By Design event?

A No

Q Was there anything included for the trip to Chatham Bars Inn?

A No

Q Was there anything included for any of the golf that Mr McDonnell played on Mr Williams' tab at Kinloch Golf Club?

A No

MR FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

MR FAULCONER: No further questions, Your Honor

THE COURT: All right Cross

CROSS-EXAMINATION

BY MR ASBILL:

Q Good afternoon, Agent How are you?

A Good afternoon How are you?

Q Fine Thank you

You started working on this case about two and a half years ago; is that correct?

A No, sir I started last May, June time frame

Q Okay But other agents have been working on this case for approximately two and a half years?

A Correct

Q All right And you described a total of eight agents working on the case, obviously, in addition to the prosecution team?

A Yes, sir

Q And that included IRS agents as well?

A One

Q One IRS agent Okay And you, sir, have a -- do you have a CPA degree? Do you have an accounting -- you said you had CPA experience Do you have --

A Yes

Q -- a CPA license?

A Yes, sir

Q Okay And I take it that you all have looked at -- with respect to my client, Mr McDonnell, you've looked at all of his relevant tax returns?

A All of the relevant ones, yes

Q And that would include state and federal tax returns?

A Yes

Q And you've looked at every bank account that he's associated with?

A That we were aware of

Q Well, do you have any -- do you think you found them all?

A I believe so

Q You've looked at every credit card and statements related to credit cards that he's associated with?

A Yes

Q You have interviewed, both inside and outside of the grand jury, all of his children?

A Let me think about that I personally have not

Q Somebody -- somebody on your team I don't mean you personally

A I believe so I'm not sure if every single one of the children has been interviewed, but a number of them have

Q How about the people who are married to his children? Do you recall them being interviewed or put in the grand jury as well?

A Yes

Q How about his sister Maureen?

A Yes

Q And her former husband, Mr Uncapher?

A Correct

Q A number of Mr McDonnell's friends have been interviewed; is that correct?

A I don't know You'd have to tell me who that would be

Q Well, did you interview people who knew him that were not working in the government?

A Yes

Q Did you interview or put in the grand jury all of his staff?

A Not all of his staff, but a good number of people that worked in his office

Q How about all of his Cabinet members?

A No

Q A number of them you've interviewed or talked to as well, though?

A Some

Q All the ones that you thought might be relevant?

A I'm sorry?

Q All the ones that you all thought might be relevant?

A Correct

Q All right Now, getting into -- and basically, you subpoenaed all the documents that you wanted from my client and from his office?

A We've subpoenaed your client and from his office, and we have what we have, what was turned over to us

Q Okay And those included personal notes that my client had made that you all were interested in?

A Some that we've seen

Q Okay Do you have any reason to believe that there are others that you have not seen?

A I don't know I can just testify to what we have seen

Q Okay Now, you've -- you've searched phones, is that correct, phone accounts?

A We've analyzed phone records

Q Okay And you've gotten text message records from my client; is that right?

A Some

Q All right And you did not, by the way, get any text messages or recover any text messages, either screen shots of text messages or the actual text messages, for correspondence or texts between Mr Williams and Mary-Shea Sutherland, correct, relating to the time frame when she wrote her Dear Diary letter?

A The Dear Diary letter?

Q Right Where she references --

A I don't believe it covered -- I don't believe it -- I personally have not seen anything in reference to that

Q Do you know what I'm talking about in terms of her Dear Diary letter?

A I believe so

Q Where she references that she has made a -- she had sent a number of text to Mr Williams that she has made screen shots of, supposedly?

MR FAULCONER: Objection, Your Honor That's mischaracterizing the letter It says that they were printed out and --

THE COURT: Well, the letter is in --

BY MR ASBILL:

Q Printed out --

THE COURT: -- evidence Go ahead

BY MR ASBILL:

Q Printed out text messages that she referenced in that letter?

A I recall her testimony, sir

Q All right And you have not recovered any of those printouts or any of the texts between the two of them that might relate to that; is that correct?

A No, sir

Q You have not recorded -- or you have not recovered any recorded calls; is that right?

A Correct

Q And you have not recovered any recorded conversations; is that correct?

A Off of your client?

Q Yeah Or of anyone associated with this case

Did you record any phone calls or record any conversations?

A Not associated with this case, no

Q Now, you've talked about a number of phone calls or -- phone calls that you've referenced in your charts that you've gone over?

A Right

Q By "charts," I mean the exhibits that look like this

A Right

Q And you did not reference in those ones -- or very rarely did you reference ones that were more than -- that were less than a minute; is that correct?

A Correct We -- we focused more on the ones that were over a minute.

Q Okay And that's not to suggest that a -- that a one minute or less call could not be significant, correct?

A Correct

Q Now, I believe you also said that in your charts you only included calls that you thought were relevant to the investigation?

A Those calls that were related and surrounding significant events, and they were laid out in a way that would allow the jury to make that judgment

Q All right But you've chosen ones that you've wanted, essentially, that you thought were relevant for your purposes, correct?

A That's correct

Q All right And so -- and you don't have any recordings So there's no way to tell whether other calls that you have not included might be relevant to this case, correct?

A Correct

Q And you testified, I believe, how many calls were there between -- or texts or calls between my client and Mr Williams in 2011?

A In 2011, I think there was one call and five texts In 2012, I believe there was 9 calls and 22 texts

Q Okay And in 2012 --

A Correct that I think it was 5 calls and 22

Q I'm sorry I didn't hear you I was talking over you I apologize

A Yeah No I apologize In 2012, I think it was 5 and 22

Q All right One call in 2011 and -- I'm sorry, and how many texts?

A I believe it was nine

Q Nine texts Okay And then in 2012, 5 calls and 22 texts, correct?

A I believe so

Q And of the calls in 2012, is that when the Chatham Bars Inn trip incurred?

A That's when it occurred

Q And what percentage of the calls or texts in 2012 between my client and Mr Williams surrounded the time frame of the Chatham Bars vacation?

A I can't recall, unless you give me an exhibit that I can look at

Q Well, I don't have an exhibit But would 30 percent of those calls or texts, would that be a fair estimate of the ones that were, in essence, around the time frame of the Chatham Bars event?

A Possibly, but I don't have that data in front of me at the moment

Q And that's not something you've calculated; is that correct?

A I'm sorry?

Q That's not something that you have calculated?

A No

Q Okay In your investigation of my client, did you also conduct any inquiry into his credit scores or credit ratings in 2010, '11, and '12?

A I saw bank records that referenced his credit score So I've seen some documents from the loan analysis

Q All right And those credit scores were excellent at all times?

A I believe so

Q With respect to the credit card statement that you've talked about, and I'll get into this in some more detail, did you calculate at any given time or during, for example, during 2010 or 2011 and 2012, with respect to all of the credit cards for the McDonnells, what sort of excess capacity there was on those cards? And by that, let me give you an example If I have a credit card with a $50,000 line of credit on it and I've got $10,000 in debt to the credit company, I would have $40,000 in capacity

Have you ever made that sort of calculation?

A Not so much a calculation But I have seen the credit limits on the cards in going through the records

Q All right And were you aware that -- that during the time frame of this case, the unused credit limits were in the 175 to $200,000 range?

A Sure I'm sure it would fluctuate

Q Well, I mean, were you aware that there was that kind of credit card capacity for the McDonnells during the relevant period of this case?

A I never calculated the total capacity of credit card availability

Q All right Were you aware that with respect to the credit cards, that in addition to be able to -- to being able to charge an item on the credit card, I go to a store and charge something, that there were convenience checks associated with those credit card accounts? So if I wanted to, instead of buying an item, write myself a check for $5,000, I could do that on a credit card?

A For a cash advance?

Q Yes

A Yes, sir, I am aware of that

Q And those sorts of things were available on those credit cards; is that correct?

A Yep

Q All right Now, with respect to short phone calls, you know, roughly a minute or less or a minute or two minutes, could a lot of calls that are referenced in your charts be voice messages, as opposed to connected calls and conversations?

A They could possibly be

Q All right So when you say call, it doesn't necessarily mean call, as opposed to call or voice mail?

A It means that a call was connected in some form or fashion

Q But either to a mailbox or to a human being?

A Possibly

Q Now, with respect to the Governor's schedule -- and you have looked at the various schedule records for various days in this case; is that correct?

A Yes, sir

Q And have you found times when scheduled events did not occur?

A I'm sure that there are We did hear some testimony about things changing in the schedule periodically

Q Well, in particular, did you find occasions when scheduled lunches with -- that are part of your charts with Ms McDonnell did not occur?

A I'm not aware of any

Q All right And you knew that schedules changed, though, sometimes immediately before events or on the day of events; is that correct?

A We heard -- we heard testimony both ways We heard that sometimes things changed, but we also heard when he was Governor, that oftentimes he did stick to the schedule

Q So you've heard he tried to stick to the schedule, but sometimes things happened, correct?

A Sure

Q Okay Would you take a look at Exhibit -- your Exhibit 568, please

MR ASBILL: Would you pull that up?

BY MR ASBILL:

Q This is the credit card -- RFM and MM credit card debt; is that right?

A Correct

Q Did you prepare a chart that showed whether or not any payments, scheduled payments were missed or whether they were current?

A No

Q All right Let's look at 569 This you call "MoBo Real Estate Partners, LLC, Rental real Estate Summary," right?

A Correct

Q And it appears, does it not, that in 2010, the rental income was going up? Is that right?

A It was

Q And there was a slight increase at that time in real estate expenses, however, too, right?

A Correct

Q But the net was below what it was -- the net income rental expense loss was down by roughly $3,000?

A The loss reduced Correct

Q Okay So is this a reflection that the rental market was improving in 2010?

A I can't -- I can't opine on the -- whether or not the rental market was improving But the rental real estate income number for MoBo did increase from 2009 to 2010

Q Well, wouldn't that be a reflection that the rental market was improving if the rental income went up 20 grand?

MR FAULCONER: Objection, Your Honor Asked and answered

THE COURT: Sustained

BY MR. ASBILL:

Q Let's take a look at 570 This relates to the shopping trip in New York City; is that correct?

A That's correct

Q All right And there's no evidence on this chart that my client was involved or aware of it?

A Not on this chart

Q All right And let's take a look at Exhibit 571 And none of these are items for my client; is that correct?

A I don't believe so

Q Let's take a look at 572 This is the RFM and MM credit card debt from January 2010 to April 2011; is that correct?

A That's correct The combined credit card balances

Q Okay And you don't go down past April 2011, do you?

A No The purpose of this chart was to show where it was leading up to the shopping trip

Q Okay That was your purpose in preparing this chart?

A Well, that was, again, for the determination of the jury and to give them the facts to make their conclusion

Q Okay And there was a high in this chart time frame of approximately $91,000?

A Yes, sir

Q But by April, it was down to roughly $31,000?

A That's correct

Q Is that right?

A It is

Q And all of this, the $31,000 figure, that was all before the 5/23, or May 23, $50,000 loan to Maureen McDonnell, right?

A Correct

Q And did you go back and try to look at my client's financial affairs in any way prior to January of 2010?

A Well, through the analysis of MoBo, going back through 2009

Q Okay MoBo aside Him personally, or the family personally, Mr and Ms. McDonnell, prior to January 2010?

A Our records didn't include much prior to that I mean, that was pretty much when our records began.

Q Well, how about your research, as opposed to your records? Did your investigation go back into 2009?

A No

Q Do you have any idea what happened in 2009 with respect to my client in terms of what he was doing or what he was working at?

A I knew that he was running for Governor

Q Did you know that he had resigned his position as

Attorney General during 2009, in February --

A Yes

Q -- and was not receiving a state salary?

A I knew that he was running for Governor

Q Did you know that he was not receiving a state salary because he was running for Governor?

A I would assume that would be the case

Q All right Let's take a look at 573 These are the overall phone record totals, I guess, of calls more than a minute; is that correct?

A That's correct

Q All right And you calculate, essentially, that the calls between my client and his wife were greater than the calls between Ms McDonnell and Jonnie Williams, in terms of doing it this way; is that correct?

A Calls in excess of a minute That's correct

Q All right Now, did you ever try to -- to calculate the amount of time on the calls between my client and his wife versus the amount of time on the calls between Ms McDonnell and Jonnie Williams?

A I did not

Q So you don't know if the amount of time that my client and his wife spoke, actually spoke on calls, no matter what the number of calls are, you don't know whether that exceeds the amount of time she spent talking to Mr Williams, do you?

A I don't know either way

Q Would that be relevant to you?

A Potentially

Q Let's talk about Exhibit 575 In the middle there, you show a number of one-minute calls, about a half a dozen of them; is that correct?

A That's correct

Q And I just want to use this as an illustrative That's an example of things that could easily be voice messages?

A Could be

Q Okay Let's go to 574 And this is an exhibit about May 1; is that correct?

A Yes, sir

Q And this demonstrates that, in the middle of the page, that my client is texting with his sister about bank options, bank loan options and possible sale of property?

A That's what it says

Q That's what the text says, does it not?

A Yes

Q Okay And those texts were all produced by my client's sister, is that right, or my client?

A Yes, sir

Q Did you find any -- any -- by the way, just in general, did you find any calls or texts or e-mails from my client to anyone at UVA or VCU?

A I'm sorry Could you say that again?

Q Yeah Did you find any calls, texts or e-mails from my client to anyone at UVA or VCU?

A Nothing that's in these schedules I can't say, from all of the records, whether or not that occurred

Q Okay Did you find any calls or texts or e-mails from my client to anyone at the Tobacco Commission?

A Not that I'm aware of.

Q Okay Let's go to 576 This is a May 23rd, 2011, exhibit; is that correct?

A It is

Q Did you match that up against my client's schedule for the day, his calendar for the day?

A His schedule is listed for the day

MR ASBILL: Well, let me pull up RM-0178-0600, which is in evidence Can you blow that up, please

BY MR ASBILL:

Q In your exhibit -- and I just want you to have this in comparison to your exhibit too, have it together in comparison with your exhibit But my question to you is does his calendar indicate that he's in the Patrick Henry Building, not the Mansion?

MR FAULCONER: Objection, Your Honor The

chart says Patrick Henry Building on it

MR ASBILL: Okay

BY MR ASBILL:

Q Let me ask you this Did you include in your chart a reflection that my client had a meeting with Lisa Hicks-Thomas in the Patrick Henry Building that was supposed to start at 12:15 p m ?

A If you could flip back to the chart so I could make sure

Q Okay

MR ASBILL: Can we go back to 576?

A Now, the schedule reports private work time at the Patrick Henry Building at the Governor's Office

BY MR FAULCONER:

Q It doesn't say anything about the meeting with Lisa Hicks-Thomas that you see?

A Not on that schedule

Q On his calendar at all, do you see anything about that meeting?

A The calendar you just had up?

Q Yeah

A Yeah, I did see a reference to that

Q Okay So would it appear that he, during the 12:15 time frame, was meeting with Lisa Hicks-Thomas, according to his calendar?

A I don't know I mean, according to his calendar, that's what's placed on there But I couldn't testify to whether or not he had that meeting or not

Q So you don't know one way or the other?

A I don't

Q All right Let's go to 529 -- excuse me 577 This is a May 29 exhibit, and you reflect in the middle of the page at 9:14 p m , there's a phone call of 1 05 minutes And you say this is the first RFM/JRW cell phone; is that correct?

A Correct

Q But, again, this could be a voice message?

A It's possible

Q All right Let's go to 579 The yellow credit cards, CitiCard, Bank of America, PenFed Visa, these are in my client's name, correct?

A Correct

Q Do you know whether Ms McDonnell has subaccounts on those cards?

A I don't know

Q Okay Let's go to Exhibit 580 Second page Now, this shows deposits and withdrawals from combined accounts of Mr and Ms McDonnell; is that correct?

A Yes

Q All right If the deposits are exceeded in a given month by the withdrawals, then you show that as red; is that correct?

A It's negative Correct

Q It's negative But that doesn't mean to suggest, does it, that the account balances at the end of the month are negative?

A No That's correct It just shows the activity, the ins and the outs

Q It shows the ins and the outs I put in a hundred thousand and I spend 120, it doesn't mean I don't have 20 left in my account, right?

A That's correct

Q Okay Let's go to 581 This exhibit is sort of -- I think may be another example This refers to Smith Mountain Lake The 7/30 entry, Saturday, July 30 entry, shows seven phone calls, right? And one is for almost 8 minutes, and the rest are a minute 32 or less; is that correct?

A That's correct

Q So all of those could be voice mails as well; is that right?

A Well, they are calls that were made So I don't -- I don't know what actually transpired with the call We don't have any recordings

Q Okay And you reference at the top that 7/28, Thursday, that "Outlook event placed on MM calendar for 8/1 " That's -- Mary-Shea Sutherland placed that on Ms McDonnell's calendar?

A She did

Q Okay And this is the exhibit that you have the map of Virginia on and cell phone towers, et cetera?

A Yes, sir

Q All right And on the cell phone tower exhibits --

MR ASBILL: Let me go to the fourth page of this exhibit

BY MR ASBILL:

Q -- you indicate that at 8:12 p m there is a 1 minute and 15 second call between Ms McDonnell and Jonnie Williams?

A That's what the records indicate

Q Okay And that also could be a voice mail, as opposed to a connected call, or connected in-person call?

A It's possible The call was made

Q Okay And at 8:13 there is a call from Jonnie Williams to Ms McDonnell; is that right?

A Correct

Q And you assume that that one connected because it's hard to leave a 14-minute voice message, or at least shoot me in the head if you do that, right?

A (Nodding head)

Q Okay Now, with respect to that call, I mean, do you know what, if any, portion of that my client overheard?

A No

Q Do you know what the sound level is in a Ferrari driving back --

A Unfortunately not

Q -- from Smith Mountain Lake?

A Unfortunately, I don't

Q You would have liked to have taken that trip?

A I would love to drive a Ferrari

Q Now, those pages of that exhibit on Smith Mountain Lake do not show any communications at all between my client and Mr Williams, do they?

A No

Q All right Let's go to Exhibit 582 This is August 1 This relates to August 1, right?

A Yes

Q I think it's a one-page exhibit; is that correct?

A I believe so

Q All right And it ends at 12:14 with Jonnie Williams leaving the Mansion?

A Correct

Q And did you know that at 12:30 Jonnie Williams and Mary-Shea Sutherland had a lunch in which they discuss a job?

A I heard the testimony I can't recall the date when they met

Q All right And there is a meeting that you reflect with Molly Huffstetler; is that correct? Or she arrives at the Mansion at 9:55 a m You reflect that in your chart?

A Correct

Q Okay And is there any place in your chart that reflects an 11:45 e-mail from Ms Huffstetler to Mr Williams with a polite no message?

A Not in this chart

Q Okay And do you know whether or not at -- from any source, calendar or otherwise, that my client was in a Cabinet meeting at 9:41 a m that morning?

A No I have -- I don't have that knowledge

Q Do you know at 10:00 whether or not he's on a phone call with a state senator?

A I do not know

Q Do you recall that Ms Huffstetler testified that she had to wait for at least ten minutes after she arrived at 9:55 to begin the meeting?

A I believe I do recall her stating that

Q Okay So if there's a four-minute call between my client and his wife at 10:01 a m , that would be before as opposed to during the Huffstetler meeting; is that

correct?

A If Ms Huffstetler's memory on that is accurate to the minute, yes

Q Okay Now, Ms Huffstetler, do you recall her testifying also that when she sent her e-mail, that the meeting had not yet started?

A I don't recall I'd have to review her testimony

Q If her e-mail is in the record at 10:22 a m , that would mean that the meeting did not start until that time?

A I don't know

Q All right Let's go on to Exhibit 583 This is Kinloch -- or communications surrounding Kinloch Golf; is that correct?

A Yes

Q Okay So the first one there on 8/5, that's when Sean McDonnell and his friend were playing with Mr Williams?

A They were playing I'm not sure if Mr Williams was playing

Q Okay And then you say, in the next entry on 8/7, two days later, that that's the first cell contact between my client and Mr Williams?

A Since May 29th

Q Okay Do you have that text message?

A No Only what the records indicate

Q And then there's another one on 8/8 And do you have that text message?

A We just have the -- the records that indicate there was a text between the two, between the two cell phones

Q Okay And the same would be true on the 8/13 entry at 9:59 a m ?

A That's correct

Q Okay Let's go to Exhibit 584 This is August 15, 16 time frame And the entry at the bottom at 2:50 p m , and this indicates -- this is a -- this is a text message, is that correct, or is it an e-mail?

A I'd have to look at Government Exhibit 207 I can't remember if that's an e-mail or if it's a text

Q Okay In any event, this is an RFM Travel Aide So this is not my client This is Mr Zubowsky; is that correct?

A That's Mr Zubowsky likely It's -- that's the RFM Travel Aide

Q Okay And whether it's text or e-mail, he sends a message to Mary-Shea Sutherland to the effect, "Can you send me info on the fl" -- that would be First Lady? -- "lunch at the Mansion, the wtop day, so I can ask him Know he's going to ask for details"?

A That's correct That's what it states

Q Okay So he's asking for details to talk to Governor

McDonnell And so -- at 2:50 p m So would it be fair to infer that the 2:47 p m call between my client and his wife did not relate to this?

MR FAULCONER: Objection, Your Honor

THE COURT: Sustained

BY MR ASBILL:

Q Let me talk to you about another event that's not on your chart I want to talk about the date of October 21, 2011, and try to see if I can refresh your recollection quickly This is -- this is the day before the Flint, Michigan, trip that Jonnie Williams testified about

And he basically testified that before -- on the Friday before the event, that's the date I'm talking about, he called and talked to my client and asked him if it was okay for his wife to go to that event, et cetera

Do you remember that testimony?

A I recall that

Q Right And he just wanted to make sure that was okay And my question to you is did you look at any cell phone records of Mr Williams, or any other hard line phone calls from Mr Williams, and determine whether or not there was a corresponding call that corroborated that claim?

A I looked at Mr Williams' records, which were 10,000 pages But if you have something you'd like me to review

MR ASBILL: May I approach the witness, Your Honor?

THE COURT: Go ahead

BY MR ASBILL:

Q Would you look on there for October 21 and see if you see a corresponding call?

A What line are you referencing, sir? There's three pages of October 21

Q Do you know what his phone number is or what my client's phone number is?

A I do, but --

Q I can't find any one on there

A Was there a specific one --

Q If you can, that's what I'm asking you to do

A Okay This is going to -- now, what time again?

Q I don't know what time

A 10/21 --

Q Yeah

A -- the date? I don't believe I see one

Q All right Let's move on to Exhibit 589 This is the February 13th to 18th time frame, correct?

A Correct

Q And in this -- on the 16th you reflect -- there's, obviously, an exhibit that says -- a text message that says, "Johnnie Know you have been slammed Do you want me to call your lawyer," et cetera?

A Correct

Q Did you try to match that up with any phone calls that my client made during that time frame, specifically between 11:45 and 12:15 to see what he was doing simultaneously?

A Again, it's not indicated on this chart I'm not saying that that didn't occur, but it's not something that we scheduled

Q Okay With respect to the concept of late night phone calls or e-mails or text messages by my client, did you find a lot of those during the course of your investigation?

A Late night?

Q Yeah Late night, early morning, you know, midnight --

A How do you define that?

Q -- 1 a m , 2 a m ?

A 1 a m , 2 a m ?

Q Yeah

A I mean, I saw some

Q Okay. That was not an infrequent occurrence?

A I never calculated how -- how many times or how frequent it was, but I saw some records that indicated that

Q All right Did you know that during this time frame, my client was planning on traveling out of town on business for four or five days?

A I did not

Q Do you see that?

A I did not

Q Okay Let's go to Exhibit 593 Excuse me Back up to 592 This is the February 27th to 29th time frame, correct?

A Correct

Q And there's a reflection that the -- on the -- in the middle of the page that says, "Gov Ex 345: Meeting; "Topic: Healthcare Group Leaders Reception tonight at the Executive Mansion"?

A Correct

Q And with respect to that quotation, do you recall about what the event was about, et cetera, that that was a -- that topic text was created by Adam Zubowsky, not by my client?

A I don't know who created that, sir

Q Well, let's see if -- see if 593 helps at all

MR ASBILL: Could you go to that one?

BY MR ASBILL:

Q Does that in any way help at all to refresh your recollection?

A To your last question?

Q Yeah If it doesn't, it doesn't I'm sorry

But you don't have any recollection of whether -- how that -- how that notation or that quoted remark about the topic, you don't know who created that or when?

A No.

Q Okay Do you have any reason to believe that my client personally created those kinds of entries?

MR FAULCONER: Objection, Your Honor

THE COURT: Sustained He doesn't know, period

We'll stop here for lunch Let's make it 2:05

(The jury left the courtroom)

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(Luncheon recess taken from 1:02 p.m to 2:05 p.m.)

THE COURT: All right, let's bring in the jury

(The jury entered the courtroom.)

All right, Mr Asbill?

BY MR. ASBILL:

Q Good afternoon again

A Good afternoon, Mr Asbill

Q Let me go back to where we broke for lunch. And I think I may have confused you and myself, but I want to go back to Exhibit 592 I believe I was asking you questions about the entry where it says RFM and JRW in the middle of the page and we were talking about the quotation, "Topic: Healthcare Group Leaders "

A Yes, sir

Q Go back up one entry there to Government Exhibit 330 Would you pull that up, please?

And that exhibit through the metadata does reflect, does it not, that it is Mr Zubowsky who on the day before, the 28th, is the one who created the title for that calendar entry?

A Yes, that appears that comes from Mr Zubowsky's account

Q Thank you, sir Let's go to 596. Now, this is MoBo Realty TowneBank Account between my client and his sister; is that correct?

A Correct

Q And that is a two-page exhibit?

A Yes, sir

Q Okay And on the second page in the middle, can we go to that for a second? It indicates on this one, 4-12-12 entry, can you highlight that, please? This shows capital contributions by the two partners totaling $20,000?

A That's correct

Q And in fact, aren't these numbers reversed, namely, that the sister provided 12,500 and Mr McDonnell provided 7,500?

A Unless you can show me some supporting documentation, that's what the chart says

Q Well, you put the chart together, right, from whatever data you had?

A Correct

Q If your data shows a reversal, then that would be the correct entry? That should be the correct entry?

A Well, I believe what's on there is the correct entry, but like I said, if you can show me something different --

Q Okay With respect to this TowneBank account in general, the balance in the TowneBank account is not meant to suggest, is it, that either family's financial health is reflected in this, either the sister or my client?

A The balance in the MoBo account at TowneBank is for that entity, for MoBo

Q Okay And your understanding is that both of the partners contributed funds to it as necessary to operate that LLC?

A They are 50/50 partners

Q But they didn't regularly put or park excess money in that account, correct?

A I'm not aware of that, no

Q Okay And with respect to there was an entry, some of the references, I'm not sure if it is on this page or the page before, you talked about reference to Resource Building Corp expense It may be the previous page Resource Building Corp on 3-27 there at the bottom.

A Yes, sir

Q That was for, your understanding is that's for an upgrade of outdoor space on one or both of the properties?

A Yes I believe the documentation stated something about a cabana and also maybe another improvement in the house

Q Okay And did you assume that those expenses would have been incurred if the partners were financially destitute?

MR. FAULCONER: Objection, Your Honor

THE COURT: Sustained.

BY MR ASBILL:

Q This time frame, the 12th of March that's referenced on a couple of occasions here, were you aware that that was the first day after, in 2012, after the General Assembly completed its work?

A Was I aware?

Q Were you aware that March 12th was the day, the first day after which the General Assembly completed its work?

A I know that the General Assembly meets early in the year I don't know what date they finished

Q Okay Let's take a look at Exhibit 598, please This is in reference to May 18th, correct?

A Yes, sir

Q All right And this is my client and Jonnie Williams going back and forth mostly?

A Yes, sir

Q All right And then all these texts are, they are basically in writing and they are all captured, correct?

A Correct

Q All right Let's go to 600 This is a MoBo Realty snapshot of January through June, 2012; is that correct?

A Correct

Q And again, it is not a holding account, correct?

A It is their operating account

Q Okay And you do not reflect in any of your charts balances, month-end balances for June to October or June to November; is that correct?

A No, this chart is simply January through June

Q Okay And most of the money obviously comes in from rentals, et cetera, during the summer months; is that fair to say?

A That's fair to say

Q Okay Let's take a look at 602 Excuse me, 601 Let me do that one first These are deposits and withdrawals from January to June into the MoBo account, correct?

A That's correct

Q And that time frame reflects an influx of $50,000 relating to -- $70,000 relating to Mr Williams' loans to MoBo?

A It reflects $70,000 in monies that came from Starwood.

Q Okay And is that to suggest that Mr Williams was the only potential source of money to my client or his sister for MoBo?

A No Just the transactions

Q Did you do any personal, did you do any analysis of the personal bank accounts of my client's sister, Maureen McDonnell, or himself in the March to May, 2012 time frame?

A I'm sorry, could you repeat that again?

Q Yes March to May, 2012?

A For who?

Q For both Bob and his sister Maureen Did you look at their personal bank accounts during that time frame to see what sort of cash on hand they had just in their own bank accounts?

A In Mr McDonnell's I did

Q Did you see that he had $50,000?

A It fluctuated in his accounts.

Q And did you see that Maureen, his sister, at one point had at least $70,000 that she got from a cash bonus for her work?

A I don't have records associated with her account

Q Okay Let's take a look at 602-A. This exhibit, correct me if I'm mistaken, shows principal payments; is that correct?

A It does

Q These are principal payments to any lender to MoBo; is that right?

A Mortgages and other loans, correct

Q Okay And in 2012, principal of approximately $80,000 was repaid?

A Correct

Q And that included the repayment of the Dr Davis loan?

A It did.

Q That had been obtained in 2010? The Davis loan was obtained in 2010?

A 2009 and 2010, correct

Q The income from the Dr Davis loan, is that represented here at all?

A No That's only -- that top line just shows money coming in for rentals for the entity

Q All right So does the chart accurately reflect cash flow on MoBo's account?

A The chart accurately reflects the cash shortage by year, which that bottom line, it is labeled Net Cash Disbursements, would be the amount that would have to be paid in through contributions from the partners or other sources

Q Okay

A To make up the shortfall

Q Let's talk about 602-A. This is net cash disbursements, 2009 to 2012 for MoBo; is that right?

A This is the one that we were looking at, correct?

Q I'm sorry, I may have confused myself again Okay, the rental income for the four straight years is going up; is that right?

A Yes

Q And the rental expenses are going down?

A That's correct

Q And the net rental real estate income is positive in 2012?

A The operating income is positive in 2012

Q Okay Let's look at Exhibit 605 This is Chatham Bars Inn expenses

A Correct

Q Now, with respect to the expense items here, this $36,618 is not attributable to my client in its entirety; is that correct?

A That's correct

Q And whatever his share of this was, as reported to him by Starwood or by Mr Williams, was in fact reported by my client on his SOEI report?

A That's what I testified to

Q Okay Let's go to 606. Star Scientific Stock Transactions With respect to this exhibit, the first page of this exhibit that we are looking at right now, you never found a single share of Star stock owned by my client ever, did you?

A Star stock was in Ms McDonnell's name.

Q All right Let me go to 606-A or the next page of this This is your tracking of the ups and downs of Star stock over the time period reflected; is that correct?

A Yes, sir

Q All right And I believe you testified, and correct me if I'm mistaken, that the blue boxes that reflect some sort of text messages between my client and Mr Williams, reflect some or all of the text messages that my client may have sent Mr Williams relating to the stock. Which is it? Is it some or all?

A Well, first of all, there are two texts and two e-mails

Q Okay These four boxes, is that it? Is that all of it?

A No I don't know about, you know, there are other texts and e-mails if that's what your question is

Q Do you have any texts or e-mails that reflect my client commenting on the stock to Mr Williams?

A No, I believe these are the four

Q Okay Now, these blue boxes, do they contain the entirety of the message or just an excerpt from the message?

A I would have to see the actual exhibits that are referenced.

Q Let's look at Government Exhibit 370 Blow that up, please I think what you excerpt is "Stock going great" and there is more text Correct?

A I testified to this entire message earlier

Q I know you testified to the message, but I'm saying it is not on your chart, correct? The rest of the message is not on your chart?

A Correct Just the reference to the stock

Q Let's go to Government Exhibit 392 And this is an e-mail; is that correct?

A Yes, sir

Q All right And you have on your chart "Stock looking good and the rest of it is well done Gov " Right?

A Correct

Q Let's go to Government Exhibit 395 This is also an e-mail from Mr McDonnell, correct, to Mr Williams?

A Correct

Q And it has "Congrats on the patent for anatabine " That's what's in your chart And "Progress continues" is also part of that message, right?

A Yes, sir

Q Let's go to 396 This is a text message?

A Yes

Q All right And it says, "Good announcements lately Stock looks good. Hope all is well You and Celeste enjoy the Fourth of July Gov "

A Correct

Q Okay Let's go to Exhibit 607 This reflects e-mails or text messages between -- are they all e-mails or texts or both?

A Again, I would have to see the exhibits to answer your question They are either texts or e-mail

Q They are printed messages in one form or another; is that correct?

A Correct

Q Between my client and his wife and regarding Donnie Williams?

A That's right

Q Okay And you picked out these five messages out of -- these were done over a period of two months, right?

A Correct, from December 6th through January 24th

Q Now, does this chart include Ms McDonnell's text to Donnie offering her credit card information?

A Not on this chart

Q But you know that that exhibit exists, right?

A I was here when that was testified to, yes

Q Okay Or does it include Donnie's e-mail to Ms McDonnell attaching an invoice for his services?

A No

Q Or how about a check from Ms McDonnell sent to Donnie paying for his services?

A Not on this chart

Q Okay Let's go to 609 You have a list on 609, "Items from Jonnie Williams to the McDonnells personally and children in presence," correct?

A Yes, sir.

Q This does not include any iPhone of any kind? Is that right?

A This chart does not

Q And you showed a picture or looked at a picture of that in Court today?

A Right

Q Of the iPhone Were those iPhones given to my client?

A Were those iPhones given to your client?

Q Yes

A I believe so

Q Given to my client or given to his wife?

A Oh, I mean, it was given to the family I don't know exactly who they were given to

Q Okay You don't have any evidence that they were ever given to my client, do you?

A No

Q All right And with respect to -- Mr Burck has already made an objection to the use of the word "Payment" for the May, 2011 and March, 2012, and May, 2012 entries Correct?

A I was here when he objected. Yes

Q Okay And even by Mr Williams, these are characterized as loans?

A Excuse me?

Q Did Mr Williams characterize these as loans?

MR. FAULCONER: Objection, Your Honor

THE COURT: He has already answered the objectionable question So he can go ahead and answer this

BY MR. ASBILL:

Q All right And the wedding payment, okay, that's another one Now, with respect to the loans, I believe you testified on direct that all of these monies, in essence, the 50, 50 and -- 50, 50, and 20, those three amounts, from May, 2011, March, 2012, and May, 2012, all of those were paid back with interest; is that correct?

A According to the checks, yes

Q All right Now, you talked about -- you can take that exhibit down. You talked about the Virginia State Police interview of Ms McDonnell in 2013 and you talked subsequently about some of the bank transactions, correct?

A Correct

Q And during that time frame, were you aware, I mean, with respect to the February, 2013 time frame, were you aware or are you aware that on the 2nd of February, my client gave a bookkeeper, his bookkeeper, Brenda Chamberlain, total access to all his accounts?

A Am I aware of that?

Q Yes

A I mean, if he did, he did.

Q Well, let me pull up RM-0109-0001 Have you seen this exhibit before?

A I don't know that I have seen this specific e-mail, but --

Q Have you talked to Ms Chamberlain?

A I did interview Ms Chamberlain

Q Do you know that she had on the 2nd of February, excuse me, the 4th of February, I misspoke about the date, that she has got access to all this account information that's referenced in this e-mail?

MR FAULCONER: Objection, Your Honor Hearsay

THE COURT: Just answer the question. Do you know or not?

THE WITNESS: No, I don't

THE COURT: End of discussion.

BY MR. ASBILL:

Q Do you know whether or not Ms Chamberlain had access to information from my client that reflected all the Starwood loans?

A I believe, and I can't recall the date, I would have to look at the interview, but I know that she did get information from him about the loans, or about loans from

Starwood

Q In early February?

A I can't recall the date

Q All right Did you know, speaking of February, the 15th is the date of the interview; is that correct?

A Yes

Q And that's Presidents' Day weekend?

A I believe so

Q And the 18th would be Monday, the holiday?

A Correct

Q Were you aware that that was a full workday for the Governor and the General Assembly?

A I wasn't aware of that

Q You never looked at his calendar for that day to see whether or not he had taken the day off or was working?

A I don't specifically recall, you know, his calendar on that date

Q Okay Did you ever compile a list of all the meetings that Governor McDonnell directed his Cabinet members to have over the four years that he was in office? A list of the number of -- did you compile the number?

A No

Q Would you quarrel with a number of about 1,150?

MR. FAULCONER: Objection, Your Honor

THE COURT: Sustained He hasn't catalogued them. He doesn't know what they are

BY MR. ASBILL:

Q General sense of the volume?

A I have no idea

Q You do know that Mr Williams met once with Dr Hazel, right?

A Yes

Q And once with Molly Huffstetler, right?

A Correct.

Q Any more that you know of with my client's staff?

A I'm sorry?

Q Any more meetings like that with my client's staff, with anyone on my client's staff, that the Governor facilitated?

A Those are the two that I am specifically aware of

Q Okay Let's go back to the Rolex issue for a second. You were in Court when Mr Williams testified about the Rolex, correct?

A I was

Q Direct, cross, redirect, right?

A Correct

Q All right And Mr Williams said that it came from my client, right?

A I'm sorry?

Q Mr Williams testified it came from my client

A What came from your client?

Q The photo of my client wearing the Rolex.

A That's what he testified to

Q Right And you said that the unstated message from my client was, "You've got my chef but I've got your watch," words to that effect

A I believe so. I believe he testified that he saw "Gov" on the Caller ID and what you just stated.

Q And that's what he interpreted the sending of the photo to mean; is that correct?

MR. FAULCONER: Objection, Your Honor.

THE COURT: The objection is sustained.

BY MR. ASBILL:

Q That's what he testified to, correct?

A I believe so

Q All right You have looked at the metadata for that photo? Is that correct?

A No, there is no metadata that was turned over to us for that photo

Q There is no metadata for it, from anyone Is that what you are saying?

A There was no -- in the information that we received from your client, there was no metadata attached to that

Q So there is no proof that you are aware of, other than whatever Mr Williams testified to, that my client sent that photograph to Mr Williams; is that right?

A Just based on the testimony

Q That's it Did you ever compile a list or a chart of any kind of all the things that Mr Williams got from the government in return for his cooperation?

MR. FAULCONER: Objection

THE COURT: Sustained

BY MR ASBILL:

Q In the quarter century that you have been doing FBI work, white-collar criminal work, and six years as an accountant, that's what I am talking about about the quarter century, have you ever seen a cooperating witness get the kind of deal that Mr Williams got?

MR. FAULCONER: Objection, Your Honor

THE COURT: Sustained.

MR. ASBILL: I have no further questions

THE COURT: Mr Burck?

CROSS-EXAMINATION

BY MR BURCK:

Q Special Agent Hulser, good afternoon

A Good afternoon, Mr Burck.

Q So you already know that I represent Maureen McDonnell We have been in the courtroom for several weeks, right?

A Yes, sir

Q Okay So I wanted to start by making sure that I understand exactly what your role is You are a summary witness, right?

A Correct

Q And so your purpose is to try to help the jurors better understand the government's case

A Correct

Q And you do that by trying to tie together the evidence, particularly the documentary evidence that has come in over the last several weeks, right?

A Correct

Q And a lot of what you are -- you have to testify about or you are testifying about necessarily deals with inferences, right, because you don't know what people said on various phone calls or texts if you don't have the phone calls or texts recorded.

A That's correct

Q So this is about inferences, right?

A Well, no, it is about presenting the facts to the jury for them to make their own conclusions

Q But you are here to assist them in putting together charts of evidence to assist with inferences

A Well, to assist with evaluation

Q Okay Now, the idea is that the timing and the number of phone calls, texts, et cetera, will help the jury understand what actually happened even though they don't know what was said, right?

A Well, the idea is to connect the dots, if you will, or put those calls and text messages, particularly the ones that we don't have content for, in relation to significant events that are associated with the allegations in the indictment

Q Right Okay So what I am going to do is I'm going to take you through the slides roughly in order, not all of them, because that would take too long, but just some of them. And I'm going to talk to you about some of the evaluation and inferences that seem to be suggested by your slides Okay?

A Sure

Q Start with Government Exhibit 573 That's already in evidence Please pull that up Now, this is the overall phone record totals that you have Publish that to the jury, please That's in evidence Thank you. This is the overall phone records, the total number of calls between, that you calculated between RFM, Governor McDonnell, and Maureen McDonnell in certain periods of time and also between Maureen McDonnell and Jonnie Williams during the same period of time, right?

A Right

Q These are for calls that are for over one minute long.

A That's right

Q As you testified, I think on cross, the idea of the one minute is there may be calls that are important that are less than one minute, but we can infer that ones that are longer than one minute are probably more important

A Well, logically there would have been more conversation

Q Right It is the length of time that matters, right, to that? One minute versus five minutes versus ten minutes, right?

A Potentially.

Q Now, you testified as well on direct that this does not reflect the total number of texts that are between Maureen McDonnell and Jonnie Williams versus Maureen McDonnell and her husband, right?

A Right We were limited in the scope just due to the records that we have

Q Okay And again, Maureen McDonnell and Bob McDonnell have Verizon phones, Verizon service?

A Verizon Wireless

Q And then Jonnie Williams had AT&T

A Right

Q And Verizon, can you remind us, what's the period of time that they have records back for texts?

A We have text data from September of 2012 through September of 2013

Q Okay And for AT&T you go back further, right?

A About three years

Q Three years So now, this investigation of the McDonnells, you were here for that testimony, Special Agent Hagan said it started around the first or second quarter of 2012, right?

A I believe so.

Q So if you had subpoenaed the records then, you would have had, for the Governor and Ms McDonnell, you would have had text records going back a year prior to that, right?

A If it was subpoenaed on that day, it is my understanding that Verizon Wireless maintains records for one year

Q So that would have roughly been April or so, May, of 2011, right?

A Potentially

Q Okay But that's not what we have We have September, 2012 through September, 2013

A Right

Q For the McDonnells So fair to say that this chart right now, what it tells us is that there were more phone calls between Maureen McDonnell and her husband in terms of total number than between Maureen McDonnell and Jonnie Williams during these periods of time It doesn't tell us -- let me ask you that first It tells us that, right?

A This is for phone calls Correct

Q But it doesn't tell us the total number of communications, so we don't know how many communications occurred between Maureen McDonnell and Jonnie Williams versus between Maureen McDonnell and her husband, right?

A Correct, because we don't have those records

Q Okay You would agree with me that people communicate nowadays a lot by text

A Yes

Q A lot of text messages and evidence in this case, right?

A I would agree

Q Now, you have reviewed Mr Williams' phone records, right?

A Yes

Q And you have reviewed Maureen McDonnell's phone records

A Yes

Q And you have reviewed Bob McDonnell's phone records

A During those periods

Q During those periods And those records show the duration of each of the calls, right?

A They do

Q And Verizon, I think, rounds up Right?

A They do

Q And so, that's Bob McDonnell and Maureen McDonnell's phone records are Verizon records

A Correct

Q So the total number would be rounded up?

A Yes

Q Okay And then the Jonnie Williams records are specific because AT&T gives you the seconds, right?

A They are more specific

Q More specific. Now, you have reviewed the calls between Bob McDonnell and Maureen McDonnell?

A Correct

Q And you have reviewed the calls between Jonnie Williams and Maureen McDonnell?

A Yes

Q And based on all that information -- actually, before I ask you this question, you subpoenaed, not you yourself, but the FBI subpoenaed those records from Verizon and from AT&T

A Yes

Q Then you provided them to the defense, to Bob McDonnell's lawyers and to Maureen McDonnell's lawyers

A Right

Q And on those records is the time of all these calls

A Correct

Q 1,800 minutes total for Maureen McDonnell and Jonnie Williams, and 1,500 total for Maureen McDonnell and Bob McDonnell

MR. FAULCONER: Objection, is that a question or testimony?

MR BURCK: It is a question

THE WITNESS: I don't know

BY MR. BURCK:

Q Could you calculate that?

A Could I? As I sit right here right now?

Q No, not right now We don't want to take that time. But is that something you could calculate based on the information you have?

A We potentially could sort by that information.

Q Because you can sort by the --

A Add it up, basically We could add it up.

Q It is basic arithmetic, right?

A I would think so

Q Okay So you have no reason to quarrel with me right now, you don't know, but you have no reason to quarrel with 1,800 minutes between Jonnie Williams and Maureen McDonnell versus 1,500 minutes total between Bob McDonnell and his wife

MR. FAULCONER: Objection, Your Honor

THE COURT: The objection is sustained. He has no basis to quarrel, and --

MR BURCK: I'll move on No problem.

BY MR. BURCK:

Q Let's go to Government Exhibit 567, please You can publish that to the jury So this is the slide, December 22nd, 2009, this is roughly the time period of the much-discussed inaugural dress, right?

A Correct

Q And you testified, I believe, that there are no records of any phone calls between Jonnie Williams and Maureen McDonnell in December of '09, right?

A We have no, based on cell record information, we have no information that shows that

Q No cell record at all In fact, you don't have any cell phone record of any calls between Maureen McDonnell and Jonnie Williams until April of 2011, right?

A I believe that's correct

Q Now, you recall that you were here for Jonnie Williams' testimony, right?

A Yes

Q And on direct and on cross, you were here for both?

A Yes

Q Do you recall that he testified about a phone call he had with Maureen McDonnell in December of '09?

A I recall him testifying about a phone call with Jasen Eige

Q Why don't we show you the testimony of the transcript Please show the witness Page 658

MR FAULCONER: May we approach briefly?

THE COURT: Come on up.

(At Bench)

MR FAULCONER: May we just ask again if he uses something to refresh his recollection that he not say what it is; just give him the document to refresh his recollection?

MR BURCK: I can hand it to him. No problem.

(In Open Court)

MR BURCK: Your Honor, may I approach the witness?

THE COURT: Sure.

(Document proffered to witness)

BY MR BURCK:

Q Sir, I have just given you two pages of transcript testimony of Jonnie Williams Please read both pages, the highlighted sections

A Just to myself?

Q Yes, to yourself, please

(Witness perusing document)

A Okay

Q The second page as well?

A Yes

Q Then I will ask you again: Do you recall, you were here for Jonnie Williams' testimony, right?

A I was

Q Do you recall that he testified about a phone call he had with Maureen McDonnell concerning the inaugural dress in December of '09?

A I do.

Q It was a phone call; is that what he said?

A Yes

Q And there is no record of any such, of any phone call at all between Maureen McDonnell and Jonnie Williams in December of '09, right?

A That could have very well been a landline call I don't know We don't have landline records

Q So your testimony is that -- let me ask you this: Do you have a cell phone record of any kind of discussion, any record of any call between Maureen McDonnell and Jonnie Williams in December of '09?

A Not a cell phone record.

Q No cell phone record All the records that you have used to put together your charts, right, today, those are all cell phone records, aren't they?

A They are

Q You haven't looked at any landline records

A No.

Q Is there a reason why you decided to point out that you didn't have a landline record in December of '09?

MR. FAULCONER: Objection

THE COURT: He can answer

THE WITNESS: We chose to subpoena cell phone records because that's what they were using

BY MR BURCK:

Q So then when you answered my question about December of '09, about you don't have a landline record, that's just speculation; you have no idea if there is a landline phone call, right?

A I don't

Q All right So we can put that down, too Thank you Let's put up Government Exhibit 570, please Please publish it to the jury Thank you. Now, this is Monday, April 11th, 2011 This is the day that Jonnie Williams testified, I believe, that he received a phone call from Maureen McDonnell asking, in effect, asking, she offered to have him seated next to the Governor at an event in New York in exchange for the shopping trip; do you remember that testimony?

A Correct

Q And here you have a phone call, 7:57 to 8:13, phone call of about 16 minutes between Jonnie Williams and Maureen McDonnell?

A Right

Q That's returning a phone call earlier that day at 5:28, and then there are several text messages in between, right?

A Yes I'm not sure if he was returning a call because we don't have the content But that could be

Q That's sort of the inference, right? That's the purpose of the chart

A Well, I'm just, those are the records

Q Okay Let me ask you to put up Government Exhibit 97, please This is already in evidence This is an e-mail exchange between Monica Block, who was the Governor's scheduler, and Maureen McDonnell on April 11th Is that right?

A Right

Q Turn to the next page There is an invitation, I want to keep this moving, so this was an e-mail that there was testimony about in which Monica Block forwarded an invitation to Maureen McDonnell that she was going to then send on to Jonnie Williams; do you remember that testimony?

A I do

Q This is an invitation to a fundraiser, is it not?

A For a cocktail reception

Q And do you see the "Sponsor" at the bottom, $10,000?

A I do.

Q You see below that, $250 per person?

A Yes

Q And you know what a PAC is, political action committee?

A Yes

Q It is a fundraising vehicle, right?

A A PAC?

Q Right

A I guess that's one of its purposes

Q Okay So the testimony of Mr Williams, again, I think was that he had to pay $20,000 in dresses to attend this event with Mr McDonnell, to have Maureen McDonnell seat him next to Mr McDonnell, right?

A I can't remember his specific testimony, but --

Q That was the gist?

A Basically

Q So he could have just paid $10,000 to be a sponsor at this event

MR. FAULCONER: Objection, Your Honor

THE COURT: Sustained.

BY MR. BURCK:

Q You didn't put in your chart that this was a fundraiser, did you?

A In the chart?

Q In the chart, Government Exhibit 570

A No

Q Okay And you don't know, I think you testified you don't really know if Maureen McDonnell or Jonnie Williams was returning Maureen's phone call from earlier that day because you don't know what was in the call, right? You don't know what happened.

A I don't know the content

Q So you don't know, for example, if Maureen McDonnell was calling Jonnie Williams to invite him to an event, right?

MR FAULCONER: Objection, Your Honor

THE COURT: Sustained.

BY MR BURCK:

Q Let's put up Government Exhibit 574, please This is a summary chart on May 1st, 2011 This is the day before the testimony that Mr Williams gave that he had a conversation with Ms McDonnell about she could help him if he helped her, right? Remember that testimony?

A Yes

Q So this is the day before, right? Now, there is a Government Exhibit here listed, 107, if you could put that up, please And there was testimony yesterday about the "Forward" line "Forward: Home Run Potential " The top of this e-mail between Maureen McDonnell and Bob McDonnell?

A Correct

Q Can you tell us, is the title of the article, what's the title of that article?

A "Star Scientific Has Home Run Potential "

Q Okay So the forward above that, is it your testimony, this wasn't clear, is it your testimony that Maureen McDonnell changed the Forward?

A No, my testimony is that the Subject line is different

Q Subject line is different But you don't know how that happened.

A No

Q Because you didn't review the metadata

A No

Q You can take that down Government Exhibit 576, please This is the May 23rd, 2011 call Actually, I'm sorry, let me start before that. Government Exhibit 575 This is the day of this supposed phone conversation between Maureen McDonnell and Jonnie Williams, right? May 2nd, 2011?

A There's a lot of --

Q I'm sorry, without reference to this, I'm just asking, do you recall if this was the day that Jonnie Williams testified he spoke to Maureen McDonnell about this supposed conversation where she said, in effect, that "If you help me, I will help you"?

A I can't recall the exact date that he stated that But --

Q All right You testified about a series of phone calls on direct between Maureen McDonnell, Michael Uncapher, sister Maureen, Bob McDonnell, and then Michael Uncapher again. There is a call actually listed at 10:44 a m.?

A Correct

Q And you recall the testimony of Mr Uncapher that he spoke to Jonnie Williams sometime in 2011; that the phone, Maureen handed her phone to Jonnie Williams to speak to him. Do you remember that testimony?

A I do recall that

Q And do you remember that Michael Uncapher said something to the effect that, he testified to this, that he said that MoBo needed about 50 to $60,000? Do you remember that?

A I do recall that

Q And do you recall that he said that those words came out of his mouth?

MR. FAULCONER: Objection, Your Honor If he wants to orient to an area --

THE COURT: Mr Burck, just recounting the testimony is not doing us any good.

MR. BURCK: I'm just trying to get him to the context It is a simple point

BY MR. BURCK:

Q Do you mention in this chart that Michael Uncapher said 50 to $60,000 in his testimony?

A No, this chart is just laying out the facts from the phone records

Q Okay 576, please Government Exhibit 576 This is the day, May 23rd, 2011, that Jonnie Williams, again, just to orient the witness, Your Honor, that Jonnie Williams says that he dropped off the $50,000 and the $15,000 checks, right?

A I believe so

Q And you testified about this with Mr Asbill, that there is a schedule there that Bob McDonnell had private work time, and that he was present in the Patrick Henry Building, right?

A Correct

Q And the chart that you created shows that Jonnie Williams was present at the Mansion with Maureen McDonnell at the same time, right?

A I believe that's what the log states

Q Do you recall that Jonnie Williams testified that he didn't recall if it was a phone call or meeting, but he recalled having a conversation with the Governor, right?

A I generally recall that, yes

Q Is there anything, is there anything on Bob McDonnell's schedule on that day that shows he had a meeting with Jonnie Williams?

A I do not believe so

Q Okay Could you just show Government Exhibit 592? Flashing forward a year here, but this is February 27th through 29th This is your chart February 28th, I think you testified that this was the period or this is when the Governor had a meeting with Jonnie Williams about the MoBo loans, right?

A He had a meeting with Mr McDonnell about money

Q About money MoBo

A Yes

Q Right And here, a year later, there is a reference to Mr Williams having a meeting with the Governor, right?

A Right

Q There is something on his calendar, right?

A Right

Q But there is nothing on May 23rd, 2011, right?

MR. FAULCONER: Objection, asked and answered

THE COURT: Sustained.

BY MR. BURCK:

Q You can put that down. Thank you. Let's go to Government Exhibit 51, please Now, you were in Court when several witnesses testified about the August 1st meeting with Molly Huffstetler, my client, and Jonnie Williams, right?

A Correct

Q Please show Government Exhibit 190 This is the calendar invite that set up the meeting with Jonnie Williams with my client on the 1st of August, right? Remember this document?

A Yes

Q And 581, go back to 581, please This is your chart, and you start at 7-28, a few days before "2:04, MSS," who is Mary-Shea Sutherland?

A Yes

Q So you are saying that based on your review of the records, Mary-Shea Sutherland set up or put on the calendar, I should say, the meeting with Jonnie Williams, right?

A I believe so I don't know if you can pull up Exhibit 179

Q Let's do that Before we do that, you created this chart, right?

A Correct

Q So you just don't remember if the chart is accurate?

A There's a lot of charts

Q I understand. So we will look at this document 179 You will see in the bottom area is the metadata

A Correct

Q Does this help refresh your recollection, even though it is in evidence?

A Yes

Q Mary-Shea Sutherland put the calendar invite on Maureen McDonnell's calendar

A Correct

Q Okay Now, your chart, go back to Government Exhibit 581, please Your chart shows, at the bottom, "July 28th, MM and JRW exchange 11 texts," right?

A Correct.

Q Now, let's take a look at the text messages between Maureen McDonnell and Jonnie Williams on July 28th, 2011 I think the easiest thing to do is just to hand you a hard copy, although it is already in evidence as RM-0104-09206 through 09210

MR. BURCK: May I approach?

THE COURT: Go ahead

(Document proffered to witness)

BY MR BURCK:

Q Now, these are, this is the phone records for Jonnie Williams, right?

A Yes

Q And these are the texts he received that day, right?

A Correct

Q Let's start by looking at the very first, do you see, and I think they may be highlighted, I think they are highlighted for ease, there is a text at 7:28 a.m., and it is from Jonnie Williams to -- do you know who 6837 is? It is Mary-Shea Sutherland.

A Okay

Q And then right below that you will see that there is a text from Jonnie Williams to Maureen McDonnell at 7:51 a.m., so about thirty minutes later

A Correct

Q Twenty minutes later Then can you look at the next page There are two texts from and to or between Jonnie Williams and Mary-Shea Sutherland, right?

A Yup

Q And that's at 9:25 and 9:26 a.m.

A Correct

Q The next page, there are no texts at all between Mary-Shea Sutherland and Jonnie Williams or Maureen McDonnell Do you see that?

A Correct

Q The next page, there is a text at 4:28 p.m. between Mary-Shea Sutherland and Jonnie Williams, right?

A Correct

Q And then you go to the bottom of the page and you start seeing some texts between Maureen McDonnell and Jonnie Williams, right?

A Correct

Q So when you said on your -- and that starts at 7:23 p.m., right? That's what the phone records say

A Correct

Q So on 581, please go back to that, you say there are 11 texts between Maureen McDonnell and Jonnie Williams You don't list out when they happened, right?

A Correct.

Q The first one happened at 7:51 a.m.?

A Right

Q And there were ten more in the evening after 7:30, right, or after 7 p.m., right?

A Yes

Q Okay And this chart doesn't list any texts between Mary-Shea Sutherland and Jonnie Williams, even though you do reference the fact that Mary-Shea Sutherland put the item or put the event on the calendar, right?

A Correct

Q Okay Now, let's take a look at the phone calls that day

MR. BURCK: Can I approach?

THE COURT: Go ahead.

(Document proffered to witness)

BY MR. BURCK:

Q These are the phone calls These are Jonnie Williams' phone records?

A They are

Q Okay You will see that at 10:04, and please call up RM-0104-01953, and it will be through 01956 These are his phone records for that day, 7-28-2011, right?

A That's correct

Q And there is a phone call at 10:40 a m. between Mary-Shea Sutherland and Jonnie Williams, right? Two minutes?

A 10:04 a.m.?

Q Right

A Yup.

Q Do you see any phone calls at that point between Maureen McDonnell and Jonnie Williams?

A I do not

Q Turn to the next page Do you see any phone calls between Maureen McDonnell and Jonnie Williams on that page?

A No

Q Please turn to the next page You see any phone calls there between Maureen McDonnell and Jonnie Williams?

A No

Q And do you see any phone calls between Mary-Shea Sutherland, her cell phone, and Jonnie Williams on the Page 01955 which you were just looking at?

A If you are representing that --

Q No, in fact, that's not her phone number

A No

Q And let me ask you: Do you know what Maureen McDonnell's office line was?

A Not off the top of my head.

Q It has been stipulated to, if that's okay with you

MR. FAULCONER: That's correct

MR. BURCK: 3391, which is highlighted in blue

THE WITNESS: I do

BY MR BURCK:

Q That's Maureen McDonnell's office number, right? That's at 1:20 p.m., and that's a phone call, right?

A Right

Q I think you were here when we heard testimony, we have heard about the Ferrari, Smith Mountain Lake Maureen McDonnell wasn't at the Mansion that day, was she?

MR. FAULCONER: That's the day they arrived. There has been no testimony she was already at Smith

Mountain Lake

MR. BURCK: Your Honor, the Ferrari drive from Smith Mountain Lake to Richmond happened that evening

THE COURT: Since neither one of you have been sworn and given any testimony, just ask him a question Either he knows or he doesn't Okay?

MR. BURCK: Absolutely, Your Honor

BY MR BURCK:

Q Do you know if Maureen McDonnell was present that day?

A Do I know?

Q Right

A Present where?

Q At the Mansion that day On July 28th.

A What day of the week is that?

Q I believe that's a Friday

A I don't know what time she would have been there, but potentially

Q Potentially Okay So they drove back in the Ferrari Was that the testimony?

A Correct

Q And do you remember what time of day that was?

A When they drove back? I think it was in the evening

Q In the evening From Smith Mountain Lake to Richmond.

A Correct

Q Okay Now, this call is at 1:20 p.m. Right?

A Yes

Q Do you know if Mary-Shea Sutherland was present in the Mansion that day?

A I don't know where Mary-Shea Sutherland was

Q Okay

MR. BURCK: Please show just for the witness RM-0099-01496 If it is easier, I could just approach the witness and show him. I can just bring this up to the witness

THE COURT: Let's move it along

(Document proffered to witness)

BY MR. BURCK:

Q Sir, that's the Mansion log, right?

A Yes, it appears to be the Mansion log, Executive Mansion, on July 28th of 2011

Q Got it And the Mansion log, does it show that Mary-Shea Sutherland was present at 8:50 a.m.?

A That's what it shows

Q It shows she left at 1724?

A Correct

Q Can you look at the Mansion guest list and scroll down, do you see any reference to anyone seeing 102?

A No

Q Okay

MR BURCK: Your Honor, unfortunately I don't have the exhibit number in front of me, but we would offer this in evidence, Your Honor

THE COURT: Just put a number on it

MR. BURCK: RM-0099-01496

THE COURT: What are the last few numbers?

MR. BURCK: Your Honor, RM-0099-01496

THE COURT: All right It will be admitted.

BY MR. BURCK:

Q Now, so that shows Mary-Shea Sutherland was present that day? The Mansion log does?

A According to the log.

Q Okay I realize that actually I've been confusing you and me about the day Because 7-28 is not when they drove back in the Ferrari, that's when they went up to Smith Mountain Lake Okay?

A Okay

Q So putting that aside, you saw the 1:20 phone call from Maureen McDonnell's office at 1:20 p.m.?

A On the 28th?

Q The 28th. Right?

A Yes

Q And you have in your chart, show the chart, Number 581 You have a 2:04 p.m., Mary-Shea Sutherland to

Maureen McDonnell, she puts a meeting with Jonnie Williams on the calendar, right?

A Correct

Q Did you put -- you do not have Mary-Shea Sutherland's phone records in this chart at all, do you?

A No

Q Is there a particular reason why Mary-Shea Sutherland's phone records are not in this chart?

A I don't have Mary-Shea Sutherland's phone records

Q Do you have Jonnie Williams' phone records?

A I do

Q Do you have Mary-Shea Sutherland's communications with Jonnie Williams that day?

A That day

Q So fair to say it would have been possible to put her communications with him that day in this chart, but you decided not to.

A It is possible to put a lot of communications in these charts, but we had to --

Q You had to choose

A Choose which ones are most relevant to the allegations

Q All right Now, let's go on to the day itself, August 1st Now, on that day, I think you testified a bit about this with Mr Asbill, but that was the day that

Mary-Shea Sutherland had set up a lunch with Jerry Kilgore, on August 1st, 2011, do you recall?

A I don't recall the specific date, but I recall some testimony about that

Q And do you recall -- you don't recall August 1st as the date? Because I can refresh your recollection.

A I'll take your word for it

Q Okay It was at the Berkeley Hotel on August 1st

A Sure

Q There was testimony from Mr Kilgore that this was a standing luncheon with Ms Sutherland and that she brought Jonnie Williams Do you remember that?

MR. FAULCONER: Objection, Your Honor.

THE COURT: Mr Burck, please ask this witness some questions instead of recounting what we have already heard multiple times

BY MR. BURCK:

Q Please bring up Government Exhibit 581, please And please go to Government Exhibit 582, which is the August 1st On this chart, you list Jonnie Williams arriving at the Mansion, right? You don't have the Jerry Kilgore luncheon on here, do you?

A No

Q And you don't have any records of Mary-Shea Sutherland's activities this day, do you?

A No, we don't

Q And Mary-Shea Sutherland and others did testify about their activities on this day, right?

A Sure

Q You can take that down Let's go to Government Exhibit 203 You can publish that to the jury It is already in evidence Special Agent Hulser, you testified about this document yesterday This is Jonnie Williams' credit card information. Right?

A Yes, sir

Q And it is as of July 27th through August 25th of 2011?

A Correct

Q Okay And then you testified yesterday, if you turn to the second page of the document, highlighted, there is a purchase on August 14th. Do you see that?

A Yes, sir

Q And $6,500?

A Correct

Q And that's the day, at least the inference is that's when Mr Williams bought this watch, right?

A I believe the transaction date is 8-14, and the posting date is 8-16

Q Okay Do you recall any testimony that Mr Williams gave about what happened, what he says happened while he was purchasing this watch?

A I recall his testimony generally

Q Do you recall he testified about a phone call, that he phoned Maureen McDonnell from the store and talked to her about what she wanted engraved on the watch?

A I do.

Q And you have identified August 14th as the date that this transaction occurred, right?

A Well, as I stated, the records indicate that the transaction date is 8-14 I don't know when he was actually present and had a conversation and ordered up engraving I don't know if that, August 14th, is the date that he came to pick it up or if he paid that day and picked it up later I don't know

Q Let me ask you this: The document says "Transaction Date," right?

A It does

Q Next to it it says "Posting Date " Right?

A Right

Q What's a posting date; do you know?

A Posting date would probably be the date that, according to this Visa statement, that it was cleared, the transaction cleared, I guess

Q So sitting here today, you don't know if he was present on August 14th in the store to buy the watch

A Correct I don't know what date he was physically in the store I don't know if he was in the store two days It could have been He could have been ordering and picking up I don't know

Q Can you show the witness Government Exhibit 584? This is August 15th through 16th, 2011 You don't have any phone calls listed on August 14th, 13th, 12th, or 11th between Maureen McDonnell and Jonnie Williams, do you?

A Not on this chart

Q Did you find any phone calls between Jonnie Williams and Maureen McDonnell on August 14th?

A I don't believe there is any on August 14th But like I stated, I don't know what date he was actually in the store I don't know if it was multiple days So it is kind of hard to tell

Q Hard to tell What about August 13th? Any phone calls that day?

A I can't recall, but there were communications both before and after the 14th, both cell and text

Q But no phone calls on the 14th itself

A Not that I recall

Q Okay And is there a reason why -- so the reason why you don't have any phone calls listed for the Rolex purchase, why is that? Why didn't you put any phone calls in for that?

A We didn't create a chart for that

Q Didn't create a chart Okay Let's talk a little bit more about the Rolex itself Government Exhibit 444, please There has been a lot of testimony about this This is the picture that was recovered from Jonnie Williams' phone, right?

A That's my understanding, yes

Q I think yesterday you testified that you saw other photos that matched it, right?

A Correct

Q Can you show the witness Government Exhibit 274, please And I believe you testified that if you go to the, I think you said the eighth photo?

A I believe so

Q That one? That's a match for the one that was on Jonnie Williams' phone? Is that what you testified?

A Mirror image

Q Mirror image Just flipped, right?

A Yes

Q Okay Look at the bottom of that document Blow up the bottom of that document There is a Bates stamp MPM-042255 That's a Bates stamp, right?

A Correct

Q That's how us lawyers produce documents in response to subpoenas; is that right?

A Yes

Q Who produced this document?

A According to that Bates stamp, Maureen McDonnell

Q I did My law firm did, right, for her?

A Yes, sir

Q So this photo came from Maureen McDonnell's production?

A Correct

Q You can take that down

MR BURCK: Your Honor, I'm actually coming to a conclusion pretty quickly here

BY MR. BURCK:

Q Government Exhibit 606 This is a history of the stock purchases and repurchases and sales by Maureen McDonnell, right?

A Correct

Q Okay And it says that Maureen McDonnell, she sold her shares, 6,522 shares on December 20th, 2011, right?

A Correct

Q You have been here for testimony about the SOEI, right?

A I have

Q Do you recall that there has been testimony, I think everybody has agreed in testifying that Maureen McDonnell did not have a requirement to file an SOEI, right?

MR. FAULCONER: Objection, Your Honor

THE COURT: Overruled.

THE WITNESS: I'm sorry, could you ask it again?

BY MR BURCK:

Q There has been a lot of testimony about the SOEI requirements, and that as to the First Lady of Virginia, Maureen McDonnell didn't have an obligation to file an SOEI

A Correct

Q Bob McDonnell did There has been a lot of testimony about that, right?

A Sure

Q And is there a reason why on this chart that you don't make a distinction between the McDonnells, who owned the shares and who sold the shares and who rebought them? Is there any reason why you didn't specify that?

A No reason.

Q No reason. So Maureen McDonnell bought the shares, right?

A She did

Q She sold the shares?

A She did.

Q And she rebought the shares

A Correct

Q You can take that down Government Exhibit 586

This is January 19th, 2012 This is, according to your chart, Jonnie Williams arrives at the Mansion at around 11, he leaves at 1 p.m. In between, you have that Bob McDonnell had scheduled a lunch with Ms McDonnell, Executive Mansion. Right?

A   Correct

Q   And you also had testified or put in your chart that Michael, that means Uncapher, calls Maureen McDonnell?

A   Correct

Q   And this is the discussion about MoBo that we heard Mr Uncapher testify about?

A   I believe so, yes

Q   This is where she handed her phone to Jonnie Williams; is that right?

A   Correct

Q   Now, please call up, again, this says that Mr McDonnell was at lunch with Ms McDonnell in the same period that Jonnie was at the Mansion, right? Isn't that what the chart says?

A   That's what his schedule says

Q   That's what the chart says, too, right?

A   Yes

Q   Can you please show Government Exhibit 295 It is already in evidence The bottom e-mail is from Michael Uncapher to Bob and Maureen McDonnell You testified about this "Bob. For MoBo, I talked with your Mo last week and she had me talk to the guy who was helping us " That's Jonnie Williams, right? "The guy who was helping us?" And this is on January 25th, 2012 Right? And then the e-mail above that, blow up the one in the middle, please It is dated January 27th, 2012 Right? And it is Bob McDonnell to his wife "Maureen who are we talking about that is helping us and talking to Mike?? Jonnie?"

Right?

A Yes

Q Your chart, on January 19th, 2012, doesn't mention this e-mail, does it?

A The chart?

Q The chart

A Unless it references an exhibit, but I don't believe so, no.

Q The chart is on January 19th, and there is a lunch between Maureen McDonnell and the Governor listed, right?

MR. FAULCONER: Asked and answered.

MR. BURCK: Small point

THE COURT: You promised me you were closing

MR. BURCK: Your Honor, I have only a handful of documents left

THE COURT: Go ahead.

THE WITNESS: The chart is dated January 19th, I believe, correct?

BY MR BURCK:

Q It is The chart is and the activity, yes

A The chart is dated January 19th?

Q It is Show the witness, please, 586.

A Correct But the e-mail is dated January 27th

Q Which is eight days later

A Correct

Q Okay You can take that down. Government Exhibit 587 This is a, you testified about this, these are phone calls between Maureen McDonnell and Jasen Eige, right? And also e-mails, like the one in the middle, Jonnie Williams, Jr to Maureen McDonnell. This is, again, an e-mail we have heard a lot about where Maureen McDonnell got an e-mail from Jonnie Williams, Jr at Jonnie Williams, Sr 's request and then she forwarded it on, right?

A Uh-huh

Q Can you show the witness, also, Government Exhibit 588 This is February 8th and February 9th, again, more calls, communications between Maureen McDonnell and Jasen Eige, right?

A Correct

Q Jasen Eige was the Governor's lawyer, right?

A Governor's counsel, correct

Q Governor's counsel So this chart shows that she was forwarding information to the Governor's lawyer about VCU and UVA and JHU from Jonnie Williams, Jr , right?

A She forwarded it to Mr McDonnell and Jasen Eige, correct

Q The Governor and Mr Eige, right?

A Correct

Q She tries to call him, she reaches him, on February 9th at 3:07 to 3:10 Looks like about a three-minute phone call

A Correct

Q She is talking to the Governor's lawyer about this issue, it appears We don't know, but that's what it appears to be?

A I don't know

Q That's in the chart

A Right

Q Can we move on to Government Exhibit 593 This is a series, I think it is actually 593, 594, and two pages on 594 Let's start with 593 Text at 11:52, March 6th, 2012 This is all in relation to MoBo, right? Maureen McDonnell to sister Maureen, "Mo, I've tried to call you and sent you the above text Need to talk You will be receiving a check written out to MoBo tomorrow by overnight delivery Don't deposit."

A Right

Q That's in your chart Please put up 594, Page 1 Maureen McDonnell to Sis Maureen at the very top, 2:27 p.m. "Hello Have you received my messages? Know you have been traveling and got back Friday Need to talk to you Anxious friend waiting for me to confirm you received FedEx valuable package " Is there any reason why you didn't say the anxious friend is Jonnie Williams? That's supposed to be inferred, right?

A This is the actual --

THE COURT: The objection is sustained.

BY MR BURCK:

Q Do you know who the "anxious friend" is? I withdraw that "Anxious friend," the testimony has been that that would be Jonnie Williams

MR. FAULCONER: Objection, Your Honor

THE COURT: The objection is sustained Mr Burck, the witness can only put what's on the document If he started changing it for his inferences, it wouldn't be any evidence. So don't ask a ridiculous question

MR. BURCK: You are right, Your Honor

BY MR. BURCK:

Q The "anxious friend" at 2:27 is from Maureen McDonnell to sister Maureen, right?

A From Maureen to sister Maureen at 2:27 Correct

Q Okay Then go to the second page At 7:19 p.m. This is from Maureen to sister Maureen. "I left you messages because I worked on this loan for a year, not Bob I needed to speak to you directly, not Michael Why do you always do that to me? But you could return Bob's call "

Fair to say that the message seems to be upset, angry?

MR. FAULCONER: Objection, Your Honor

THE COURT: Sustained.

BY MR. BURCK:

Q Go on to Government Exhibit 607 This is the Donnie Williams situation And this is on, I'm just going to focus on a couple things You testified that -- well, you were here for Donnie Williams' testimony, right?

A Yes, sir

Q And you recall that he testified that Maureen McDonnell said several times at least that she had offered to pay?

A That was his testimony

Q Is that in your chart?

A No.

Q Okay Is there a reason why it is not in your chart?

MR. FAULCONER: Objection.

THE COURT: Sustained.

BY MR. BURCK:

Q Do you recall that he also testified that it was his choice not to send invoices or total the costs?

MR. FAULCONER: Objection.

THE COURT: We don't need you to recount his testimony

BY MR BURCK:

Q Do you have any idea why that's not in the chart?

MR. FAULCONER: Objection.

THE COURT: Sustained.

BY MR. BURCK:

Q Do you recall that Ms McDonnell and the McDonnells actually paid for Donnie Williams, for the work that was done on the house? Do you recall that?

A I recall that statement

Q That's also not on the chart, right?

MR FAULCONER: Objection.

THE COURT: Sustained.

BY MR BURCK:

Q Government Exhibit 608 This is the day of the interview of Ms McDonnell, right?

A That's my understanding, yes

Q Okay And that day, I think you testified there were no further contacts between Maureen McDonnell and Jonnie Williams

A No further cell phone contacts according to the records that we have

Q Because there were further communications between them, right?

A I don't know

Q There were two There is one, there is a letter, right? That was sent to her -- that was sent to him by her, handwritten letter?

A There was testimony about the handwritten letter, correct

Q And that was after the interview, right?

A Correct

Q And can you put up Government Exhibit 506? And maybe it is the next page Do you recall this document? This was a text from Jonnie Williams to Maureen on March 31st, 2013 It says, "Celeste and I are proud to be your friends"?

A Correct I recall his testimony about that

Q Okay And just a couple more, Your Honor, and then I'm done Government Exhibit 572 Credit card debt The history of this debt is 74,000, this is your chart, 74,000 and then it goes down to 31,000 in April of 2011?

A Correct

Q Fair to say that this shows a significant decrease in credit card debt prior to the alleged conspiracy?

A That's right

Q And then lastly, Government Exhibit 609 This is the list of things of value from Mr Williams to the McDonnells, right?

A Correct

Q And I think you testified that, for example, the Chatham Bars Inn, September, 2012, $7,383 14, do you see that? That was actually reported on the Governor's SOEI?

A It was

Q But that's not listed on this chart, right?

A I'm sorry, what was your question?

Q The fact that it was listed on the SOEI is not reflected on this chart, is it?

A No, but that was my testimony

Q Right

Q The last question I have is, is there a government exhibit for all the things that Governor McDonnell is supposed to have given to Jonnie Williams? Do you have a government exhibit for that? Do you have a chart for that?

A There is no chart for that

MR. BURCK: Thank you, Your Honor No further questions

THE COURT: Redirect?

MR. FAULCONER: Your Honor, this may take more than just a minute or two. I don't know if you wanted to take a break.

THE COURT: You are breaking my heart All right Let's take 15 minutes, and we will get started with this

(Recess taken from 3:36 p.m. to 3:48 p.m.)

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THE COURT: All right Let's bring the jury

(The jury entered the courtroom)

THE COURT: All right Government

MR FAULCONER: Thank you, Your Honor

REDIRECT EXAMINATION

BY MR FAULCONER:

Q All right Now, Agent Hulser, do you recall some questions on cross-examination about totaling up communications between Jonnie Williams and Maureen McDonnell?

A I do

Q I'd like to show you what's been already admitted into evidence as Exhibit 573 And just to be clear, Agent Hulser, does this chart include any communications between Mr McDonnell and Ms McDonnell during lunches at the Executive Mansion?

A No

Q Any communications during dinners at the Executive Mansion?

A No

Q Any other communications when the two of them are traveling on their schedules?

A No

Q All right Do you also recall some questions about Government's Exhibit 568? This was the chart about credit card debt?

A Yes

Q And do you recall Mr. Asbill asking you about Mr McDonnell having resigned his position as Attorney General that year?

A I do

MR FAULCONER: Your Honor, I'd like to, using the Elmo, if we can, show the witness a copy of what's been marked for identification as Exhibit 636

THE COURT: All right

BY MR FAULCONER:

Q Now, Agent Hulser, did you obtain tax records that included W-2s for Mr McDonnell's income from the years 2009 to 2012?

A I did

MR FAULCONER: And if we could scroll up just a little bit, or pull that down a little bit

BY MR FAULCONER:

Q Could you tell us what's shown on this W-2 in terms of income and source in 2009?

A Yes

MR FAULCONER: Oh, Your Honor, could we offer Exhibit 636 into evidence

THE COURT: It will be admitted

A Yes The source for this W-2 is Huff, Poole &

Mahoney, PC, and the Medicare wages are 129,964 50

BY MR FAULCONER:

Q Now, you were also asked about Exhibit 97

MR FAULCONER: If we could bring that up I'm sorry Switch back I apologize

BY MR. FAULCONER:

Q If we could go to the second page of this document There where it has the dollar amounts and names listed, is there any dollar amount for a seat next to the Governor there?

MR BURCK: Objection, Your Honor

THE COURT: Overruled

A No, there's not

BY MR FAULCONER:

Q All right I'd like to now talk a little bit about -- on this one, I think we're going to be starting not with the Elmo and then go to the Elmo If we could start with Exhibit 581, which has been already admitted

Now, do you recall Mr Burck asking you a lot of questions about July 28th, 2011?

A I do

Q And do you recall being asked about this Outlook event at 2:04 p m on July 28th, 2011?

A Correct

MR FAULCONER: Oh, sorry Could this be published to the jury? I apologize

BY MR FAULCONER:

Q All right And do you also recall Mr Burck asking you about a phone call on that afternoon, sometime in the afternoon time frame, on July 28th, 2011, between Jonnie Williams' cell phone and Maureen McDonnell's office phone?

A Correct

Q All right Now, using the Elmo, and keeping in mind July 28th, 2011, I'd like to start by showing you, using the Elmo, what's been marked for identification as Exhibit 640 Special Agent Hulser, is this a July 2011 calendar for Ms McDonnell?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 640 into evidence

THE COURT: It will be admitted

MR FAULCONER: All right Now, if we could go down to July 28th on this document

BY MR FAULCONER:

Q And I don't know if we can zoom in on the Elmo at all, but do you see there what the first entry on July 28th, 2011, is, what the time is there?

A 8:30 p m

Q Now, is there any -- so there's -- I guess there's no entry before 8:30 p m at Smith Mountain Lake, correct?

A Correct

Q All right Now, if I could show you what's been marked for identification as Exhibit 641

MR FAULCONER: Now, if we could zoom out on this one

BY MR FAULCONER:

Q Is this a page from Ms McDonnell's cell phone bill covering the date of July 28th of 2011?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 641 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, Agent Hulser, if we could, and with Ms Taylor's assistance, if we could zoom in a little bit on July 28th, 2011, there And that -- the first column that lists the city and state, is that the origination location of Ms McDonnell's cell phone calls on that day?

A It is

Q And could you tell us, on July 28th, from 10:40 a m all the way down until 6:02 p m , what's the origination location on Ms McDonnell's cell phone calls?

A Richmond, Virginia

Q And what's the first time at which the origination location changes to somewhere other than Richmond, Virginia?

A 6:52 p m

MR FAULCONER: And if we could go back quickly, away from the Elmo, to Exhibit 581

BY MR FAULCONER:

Q Is that a little under five hours after that Outlook event was set? Right?

A Correct

Q All right Now I'd like to ask you about a couple of questions that Mr Asbill asked about August 1st, 2011 And starting with the regular -- with Sanction, the regular system, I'd like to pull up the chart that's been admitted as Exhibit 582

All right Now, Agent Hulser, do you recall being asked by Mr Asbill about a scheduled call by Mr McDonnell at 10:00 with a legislator that day?

A I do

Q But this chart here, I think he asked you, it shows a 10:01 a m call from Ms McDonnell to Mr McDonnell for four minutes, right?

A Correct

Q All right Now, with the assistance of the Elmo, I'd like to show you what's been marked for identification as Exhibit 639

MR FAULCONER: And with the assistance of the Court Security Officer, I'd actually like to hand up an unredacted copy of this document because it deals with the phone number, Your Honor

BY MR FAULCONER:

Q All right Agent Hulser, is Exhibit 639, is that one of these schedules for Mr McDonnell?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit 639 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, going down there to the 10 a m time frame, do you see there where it has a call scheduled with Senator Houck, or Houck, at 10 a m ? Right?

A Yes, sir

Q And does that list a phone number on there?

A It does

Q And does the copy you have have the whole phone number on there?

A Yes

Q But it ends in 2439, right?

A Correct

Q All right Now, I'd like to show you what's been marked for identification as Exhibit 637 And with the assistance of the Court Security Officer, I'd like to hand you an unredacted copy

MR ASBILL: I object, Judge

THE COURT: To what?

MR ASBILL: To this, unless he asks whether there's any evidence that there wasn't a hard line call

THE COURT: The objection is overruled

BY MR FAULCONER:

Q All right Now, is this document, what's been marked as Exhibit 637, is this a cell phone bill covering the date of at least the beginning of August 1st, 2011, for Mr McDonnell's cell phone?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 637 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, Agent Hulser, I'd like to, with Ms Taylor's assistance, zoom in there on the 8/1 time frame, right around 10 a m Now, could you tell us, from looking at the unredacted version, whose phone number is listed there at 10:01 a m ?

A Ms McDonnell's

Q And is that that four-minute call that you put on your chart?

A It is

MR FAULCONER: And, Ms Taylor, could you zoom in just a little bit on 10:01 and 10:05?

BY MR FAULCONER:

Q All right Now, Special Agent Hulser, I see that there's that call from 10:01 Is the next call down there 10:08 a m ?

A It is

Q And can you tell us whether that number matches the number listed for the legislator for the 10 a m call on the schedule?

A Yes, it does

Q And how long does that last?

A Twenty-two minutes

Q Now, do you also recall some questions from Mr Asbill about any documents that you have with Mr McDonnell facilitating meetings between Mr Williams and individuals who work in the government? Do you recall that?

A Yes

Q I'd like to show you Government's Exhibit 231, which has already been admitted

MR FAULCONER: Sorry Switching back over

BY MR FAULCONER:

Q And turning to the second page of this document, is this a briefing form from the August 30th, 2011, event?

A It is

Q And scrolling down, do you see there John Clore, a VCU employee, listed on that document?

A I do

Q And going to the second page, is John Lazo, a UVA employee, listed on that document?

A He is

Q Now, I'd like to show you what's been entered into evidence as Exhibit 629 And do you recall, turning to the third page of this document, this document related to some of the people who ended up on the Healthcare Leaders Reception invite list?

A I do

Q And is Dr Clore, a VCU employee, listed on this document?

A He is

Q All right Now, I'd like to show you what's been -- or actually, do you recall being asked by Mr Asbill a couple of questions about Jonnie Williams testifying about getting a call the day before a October 22nd, 2011, trip?

A Yes

Q And do you recall that he showed you a bill for October 21st and asked you if there were any calls between Mr Williams and Mr McDonnell on that day?

A Correct

Q All right Well, I'd like to show you first, using the normal system, what's been already admitted as Exhibit 208 And zooming in on the middle e-mail there, can you tell us -- there's a direct number for Adam Zubowsky listed in the middle Can you tell us what the general number is listed to the left where it just says "Office"?

A (804)786-2211

Q And if I could show you what's been admitted as Exhibit 291

MR FAULCONER: And if we could go forward to the next page, and then the next page, and then the next page

BY MR FAULCONER:

Q All right And there in Katherine Harris' signature block, what's the number there listed for office?

A The same number

Q All right Now, with the assistance of Ms Taylor and handing an unredacted copy to you, I'd like to hand you a copy of what's been marked for identification as Exhibit 638 Now, Special Agent Hulser, is this an excerpt of Mr Williams' cell phone bill that goes just a little further back to October 20th, 2011?

A It is

MR FAULCONER: Your Honor, we'd offer Exhibit

638 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q All right Now, Special Agent Hulser, could you tell us, what number Mr Williams' cell phone calls on October 20th, 2011, at 12:59 p m for 1 minute and 26 seconds?

A (804)786-2211

Q And do you know who, if anyone, that call was forwarded to, if anything, when it was called in to that office number?

MR BROWNLEE: We object Forwarded to This calls for speculation here This number is a general number Thank you

THE COURT: How would he know that?

MR FAULCONER: I'm simply asking if he knows, if the phone records say anything about a forward

THE COURT: The objection is sustained

BY MR FAULCONER:

Q Agent Hulser, is that the same number that was on those two e-mails we just looked at for Zubowsky and for Katherine Harris?

A Yes

Q Now, Mr Asbill also asked you about calls over one minute between Mr McDonnell's cell phone and

Mr Williams' cell phone Do you recall that?

A I do

Q Or I'm sorry Mr McDonnell and Mr Williams I'd like to -- and do you remember him asking you about a lot of those being in proximity to Chatham Bars Inn, the trip?

A I do

Q I'd like to show you what was admitted as Exhibit 577

MR FAULCONER: And this is back onto our regular system now

BY MR FAULCONER:

Q Is this, shown here on May 29th, 2011, one of the other calls over a minute between Mr McDonnell and Mr Williams?

A It is

Q And is that the same day as the golf at Kinloch?

A Yes.

Q I'd like to show you what's been admitted as Exhibit 595 There shown in the last two rows, are those two more of the calls between Mr McDonnell and Mr Williams that are over a minute?

A That's correct

Q And is that the date that the $50,000 check was deposited?

A It is

Q Now, I'd like to show you Exhibit 598 And is that, shown there at the top, another one of the calls over a minute between Mr McDonnell and Mr Williams?

A Yes

Q And is that four days before the $20,000 wire?

A That's correct

Q Now, last couple of questions here On -- if I could show you what's been admitted as Exhibit 554 This is the document that shows February 15th, 2013, is the scheduled interview between Ms McDonnell and law enforcement; is that correct?

A That's correct

Q Now, keeping that February 15th date in mind, I'd like to show you what's been admitted as Exhibit 496 And turning to the second page of this document, is this the invoice from Donnie Williams?

A It is

Q And going back to the first page where the e-mail is, can you tell us, is that e-mail with that invoice sent before or after the interview with law enforcement?

A After

Q And Mr Asbill asked you about all of the loans from Ms Williams being repaid with interest Was that before or after media reports about this investigation?

A After

MR FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

MR FAULCONER: No further questions, Your Honor

THE COURT: All right

Thank you, sir You may stand down

(Witness stood aside)

THE COURT: Anything else from the government?

MR DRY: No, Your Honor The United States rests

THE COURT: All right

All right, ladies and gentlemen The United States has rested That means that they have completed their presentation of their evidence And let me tell you how this is going to impact you We have some legal stuff to do, to talk about after the government has rested And rather than having you all sit around while we're going through these legal matters, I'm going to let you all have some time off

Now, this is what we are going to do You all are going to have tomorrow off Friday is good for you You're going to be able to start your weekend early and get some rest and be kind to yourselves I wish I could go with you, but I -- I can't because we're going to be working tomorrow The lawyers and I will be working But

I want you all to have a terrific weekend

We'll be starting back on Monday at 9:45 Monday morning at 9:45. Again, please don't review any media items related to this case Don't discuss the case with anyone or allow anybody to discuss it with you And you all, above all, be safe and be blessed, and we will see you on Monday morning at 9:45

(The jury left the courtroom)

THE COURT: Okay I'd like to get started on these motions tomorrow at 10:00, if we could do that That should be plenty of time I've got a 12:00 hearing as well But we'll get started at 10, and I think that's more than enough time Anybody got any complaint with that? Okay 10:00

(The trial adjourned at 5:08 p m)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

August 15, 2014
Richmond, Virginia
10:00 a.m.

JURY TRIAL - VOLUME XV

BEFORE: HONORABLE JAMES R SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
DAVID V HARBACH, II, ESQ.
JESSICA D ABER, ESQ.
RYAN S FAULCONER, ESQ
RICHARD D. COOKE, ESQ.
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STEPHEN M HAUSS, ESQ
DANIEL KOFFMANN, ESQ.
Counsel for Maureen G McDonnell

JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day fifteen, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, Ryan Faulconer, and Richard Cooke Robert F McDonnell is represented by Henry Asbill, Timothy Taylor, and Ryan Newman. Maureen G McDonnell is represented by William Burck, Heather Martin, Stephen Hauss, and Daniel Koffmann. Are counsel ready to proceed?

MR. FAULCONER: The United States is ready to proceed

MR BURCK: Maureen McDonnell is ready to proceed

MR. ASBILL: Mr McDonnell is ready to proceed

THE COURT: We are here to deal with the Rule 29 motions I'll hear from the defendants in any order you prefer

MR. NEWMAN: Good morning, Your Honor May it please the Court, my name is Ryan Newman I will be arguing on behalf of Mr McDonnell

Mr McDonnell is entitled to judgment of acquittal on all counts charged by the government in this case. He is entitled to a judgment of acquittal on Counts One through Eleven, the public corruption counts, because the government has failed to produce any evidence of a legally cognizable official act Mr McDonnell is also entitled to a judgment of acquittal on Counts Twelve and Thirteen, the false statement counts, because Mr McDonnell's loan documents are not actually false as a matter of law

I want to begin with the false statement charges, Counts Twelve and Thirteen. Now, the government claims that Mr McDonnell's loan documents, the personal financial statement to TowneBank, and the refi loan application to PenFed, are false because they omitted certain loans made by Jonnie Williams But an omission doesn't automatically constitute a false statement. An omission makes a statement false only if the information that was omitted was required to be on the form in the first place If the information is not required to be on the form, then leaving it off does not constitute a false statement, and a false statement is a required element of an offense under Section 1014

The government, however, has produced no evidence that the omitted loans were required to be listed. It simply offered into evidence the loan document, and then had an official from the bank testify that the loan from Mr Williams wasn't on the form. But that's not enough. The government has to establish beyond a reasonable doubt that the information that they claim to be omitted was required to be on the form. And in this case, Mr McDonnell's bank documents are not false because the omitted loans were not required to be disclosed

Now, to understand this completely, we need to walk through what loans we are talking about exactly So there are three that are at issue There is the May 23rd, 2011 loan, $50,000 loan to Maureen McDonnell There is the March 6th, 2012 $50,000 loan to MoBo And a May 22nd, 2012 $20,000 loan to MoBo

Now, the government has suggested that these loans are really just loans to Mr McDonnell But there actually isn't any evidence of that Let's take first the May 23rd, 2011 $50,000 loan to Ms McDonnell The check was made out to Ms McDonnell The Starwood ledgers identify the loan as a loan to Ms McDonnell Ms McDonnell deposited the money in her personal bank account Mr Williams testified that Ms McDonnell had told him that she needed to borrow the money And most importantly, Mr Williams never testified that Mr McDonnell had ever agreed to be jointly liable for the debt Mr Williams only testified that he wanted Mr McDonnell to know about the debt, to know about the loan.

There is also no evidence that Mr McDonnell ever signed a personal guarantee So because this loan was a loan to Ms McDonnell, the only way that Mr. McDonnell can be liable on it is if he guaranteed the loan. But under Virginia law, that requires a writing, a separate contract He would have to enter into a written contract to personally guarantee a loan to a third party It is also important to bear in mind, Your Honor, that under Virginia law, a loan to one spouse is not automatically a debt to the other as well

As for the other two loans, the March 6th, 2012 $50,000 loan to MoBo, and the May 22nd, 2012 $20,000 loan to MoBo: The $50,000 loan, that check, was also made out to MoBo Realty, attention to Maureen Uncapher, which is Mr McDonnell's sister But she is also a MoBo partner The money was also deposited into a MoBo bank account Same thing with the $20,000 loan That was a wire transfer right into a MoBo bank account, attention to Michael Uncapher, who manages or at the time managed MoBo's affairs for Mr McDonnell and his sister

In addition, Mr Williams testified that he knew the loans were for property that were managed by MoBo So he understood that this was, that the loan money was for MoBo operations

Again, Mr Williams never testified that Mr McDonnell had somehow agreed to be jointly liable on a

MoBo loan So the only way that Mr McDonnell can be liable on that loan is if he personally guaranteed the loan And again, under Virginia law, that requires a writing He would have to enter into a contract signed on the dotted line, assuming liability of the loan. He did not So none of these loans are actually personal liabilities of Mr McDonnell

Which brings us to Count Twelve, the TowneBank charge The government claims that Mr McDonnell omitted at least $50,000 in liabilities to Mr Williams from his personal financial statement that he submitted to TowneBank. Now, on the personal financial statement form, there's two options for the borrower to check. He can check that it is an individual financial statement, or he can check that it is a joint financial statement with the spouse On this particular form, Mr McDonnell checked that it was an individual financial statement So that would exclude any liabilities that belonged solely to Ms McDonnell And as I've just established, because the $50,000 loan, May 23rd, 2011 loan to Ms McDonnell was solely her obligation, it was not a personal liability of Mr McDonnell, and he had no obligation whatsoever to put it on the personal financial statement So his omission of that loan is not false It was actually proper In fact, it would have been false had he included that liability on his personal financial statement, because it is not one of his liabilities

Same thing with the MoBo loans. Those loans are obligations and liabilities of MoBo, not a personal liability of Mr McDonnell So as well, inclusion of that loan on his personal financial statement would have made it false The omission made it true And so the government is just off base by charging this offense And as a matter of law, those obligations were not required to be on the personal financial statement and he is entitled to a judgment of acquittal on Count Twelve

Now, on Count Thirteen, this is the PenFed refi application, the government claims, similarly, that Mr McDonnell omitted $120,000 in liabilities to Mr Williams from his refinance application to PenFed. Now, unlike the TowneBank personal financial statement, this application was submitted jointly with Ms McDonnell But even so, those MoBo loans don't need to be on this loan application, because that is an obligation of the limited liability company, not a personal obligation of Mr McDonnell or Ms McDonnell So they had no obligation whatsoever to include that as a personal liability, and in fact, had they done so, that would have been false Under Virginia law, it is clear that the obligations of a limited liability company cannot be imputed to the members And the only way for Mr McDonnell to have been personally liable for that loan is if he would have executed a written agreement, a personal guarantee, assuming liability of the loan.

That brings us to the $50,000 loan to Ms McDonnell Now, the government hasn't offered any testimony why that loan should have been included. The only testimony on the record right now is the testimony of Nan Bolt, a PenFed employee And she testified that the final application, which the bank approved, did not include that loan. And it didn't include the loan because no payments were actually due So the bank did not regard the omission of that loan as needing to be on the form and its omission didn't make the form false

So for those two reasons, because Mr. McDonnell was not obligated to list personal liabilities -- because he was not obligated to list the liabilities of a limited liability company, and because the $50,000 loan to his wife wasn't required to be on the form according to the testimony of the PenFed officers, the omission of those two liabilities did not make the application false, and Mr McDonnell is entitled to judgment of acquittal on Count Thirteen, the PenFed count, as well

The bottom line, Your Honor, on the false statement charges is that the liabilities of Maureen

McDonnell and the liabilities of MoBo are not personal liabilities of Mr McDonnell So he had no obligation to include those liabilities where he was required to list personal liabilities on a loan document Virginia law makes that clear The testimony of the bank witnesses makes that clear as well And Mr McDonnell is entitled to acquittal on both of those counts

The second thing I would like to talk about are the most significant counts in this case, the counts pertaining to public corruption Mr McDonnell is also entitled to a judgment of acquittal on all corruption counts, including the conspiracy count as well And the reason is that the government has not offered any evidence that the Governor, Mr McDonnell, promised or performed a legally cognizable official act The government has now had an opportunity to put on its case Over the course of nearly three weeks, we have heard a lot about gifts and loans, the alleged quid in this case But we have heard very little, virtually nothing, about what constitutes the official acts, the quo

Now, we have already laid out in great detail our view of the law in our motion to dismiss And so I don't want to belabor that with you because I'm sure you already are very familiar with our legal arguments But I do want to make a few important points

In denying our motion to dismiss, this Court made very clear that the question before the jury was whether Mr McDonnell's conduct in fact constituted, quote, the corruption of official positions through misuse of influence in governmental decision making

The Court's focus on the misuse of influence in governmental decision making is key Because it is the use of one's office to make or influence governmental decisions that separates a legally cognizable official act under federal corruption law from any act otherwise performed by a public official in the official's official capacity The Supreme Court has made clear that not every action that a public official takes on the job, not every action that a public official takes in his official capacity, is an official act

To perform an official act under the law, an official must take an action or make a decision on a matter pending before him. Every case, as far as I can tell, I feel like I've looked at a lot, that has applied this definition has involved, at a minimum, an attempt to influence a governmental decision; either the exercise of governmental power itself, or an attempt to influence another governmental decision maker in exercising governmental power

In this case, Your Honor, the government has produced no evidence, none, that Mr McDonnell attempted to influence any pending governmental decision.

Mr Williams and others have testified that Mr Williams wanted funding He wanted funding either from the Tobacco Commission or from the state budget to fund independent clinical studies of anatabine at UVA and VCU But there is no evidence, none, that Mr McDonnell asked or directed anyone to include a line item in his budget for anatabine research You heard testimony from Mr Kilgore, who said that there -- a meeting wasn't even called. There is no evidence that Mr McDonnell asked or directed any employee, administrator, or official at UVA or VCU to research anatabine or to submit an application for funding from the Tobacco Commission And there is no evidence that Mr McDonnell lobbied anyone at the Tobacco Commission, called anybody up, wrote a letter, anything, to lobby in support of anatabine research.

Now, viewing the facts in the light most favorable to the government, and based on yesterday's testimony in which the government appeared to identify, and it can be quite difficult to identify exactly what the official acts are in this case, but to the extent that they tried to set them out yesterday, it appears that there are at least four, really only three, because one of them is outside the scope of the conspiracy The first quo or official act that was identified yesterday was the meeting with Secretary Hazel But that happened well before April, 2011, and it is not part of the charged conduct The only other three potential official acts were a meeting with Ms Huffstetler in early August of 2011; a luncheon at the Mansion with a brief appearance by the Governor on August 30th, 2011; and an opportunity to attend and invite guests to a Healthcare Leaders Reception at the Mansion in February of 2012

These are not official acts in any meaningful sense, because all they provided Mr Williams was access to various governmental officials But the Supreme Court has made clear that mere access is not corruption And in fact, there is no evidence, when you look at the facts of each of these events, that Mr McDonnell attempted to influence anyone to take any particular governmental action in favor of Mr Williams He didn't tell Ms Huffstetler to do anything for Mr Williams other than go to the meeting He didn't tell her to respond favorably to whatever it was that Mr Williams proposed. He didn't tell her to take any -- to use her authority or powers as a governmental official to do anything for Mr Williams other than to listen to him.

At the luncheon on August 30th, Mr McDonnell didn't tell the UVA and VCU researchers in attendance that they should go research anatabine He didn't direct them to do that He didn't ask them to do that In fact, he asked probing questions about the efficacy of it. He expressed skepticism about it He did generally support Mr Williams, but all politicians do that But he didn't direct any public official to do anything He just showed up at the event

The third official act: Mr Williams had an opportunity to attend and invite guests to a Healthcare Leaders Reception at the Mansion Again, Mr McDonnell didn't direct any of the Healthcare Leaders in attendance who happened to be public officials to do anything for Mr. Williams He didn't direct them to research anatabine He didn't ask them to do so, either He exercised no influence over any of these officials He didn't direct them to do anything And it is not even clear, Your Honor, that there was a matter pending before them at the time, which is an element of the official act definition.

In fact, it is important to bear in mind that no application was made to the Tobacco Commission And if you recall Mr Kilgore's testimony, the process for even getting UVA and VCU to act really didn't get off the ground. There was no meaningful decision to be made at that time There was no decision pending for

Mr McDonnell at that time And even if there was, he took no steps to influence anybody to make a particular decision one way or another And absent that, there just isn't an official act

And the Government's entire legal theory really boils down to this: That an official act can be merely arranging a meeting or attending an event But if that's the case, then virtually anything a public official does in his official capacity can be an official act and can be a basis for a federal investigation, a prosecution, and throwing a public official in prison

Your Honor, that's unprecedented. You will search in vain through the Federal Reports and not find a case remotely like this one I haven't been able to find one Because every case involves someone exercising governmental power in some way, either the award of a contract, a regulatory approval, hiring an employee, something that exercises governmental power All the government has here is a meeting, a luncheon at the Mansion, inviting guests to a Healthcare Leaders Reception And the Governor doesn't even ask or request or pressure anyone to do anything for Mr Williams And that's why Mr Williams never got anything Never He didn't get what he wanted. He wanted funding That never got off the ground. Why? Because Mr McDonnell wasn't doing anything to influence anyone to take governmental action on Mr Williams' behalf

The other thing that's important to keep in mind here, too, Your Honor, is that accepting gifts under state law is perfectly lawful Accepting campaign contributions is perfectly lawful. If it is the case that a mere meeting can be an official act, then any time a public official arranges a meeting for anyone who has provided that official something of value in the past, whether it is a campaign donation, or in the State of Virginia, whether it is a gift, which again is perfectly lawful under Virginia law, can be the basis for a federal investigation and prosecution, and the only thing that will protect a public official is the prosecutorial discretion of government attorneys, government prosecutors That's it

I recall when the government argued in the motion to dismiss hearing that they said, "Well, whether arranging a meeting is an official act is a matter of context It is all about context " I remember this was repeated over and over again. What that really means, what the government is really telling you, Your Honor, is that, "Well, we will know it when we see it " Because it is not, and it won't be evident to anyone else The government cannot articulate a clear principle to apply

And so all we are left with is prosecutorial whim, prosecutorial discretion.

There is one other point that I want to make Because throughout this trial, you have heard testimony to the effect that, "Well, Mr Williams, he just wanted credibility for his product He just wanted to be close to public officials so that that could afford him some sort of legitimacy or credibility " You have heard about this halo effect That is completely irrelevant in terms of determining whether a particular action by a public official is an official act Whether there is that kind of effect or not has nothing to do with the core inquiry, and that is, whether an action or decision is being taken on a pending matter And there is not a shred of evidence that Mr McDonnell took any action or made any decision on a matter pending before him. There is no evidence that he influenced anyone to take a decision, to make a decision or take a particular action on a pending matter

These charges, Your Honor, should be thrown out Mr McDonnell is entitled to a judgment of acquittal on all of the public corruption counts

That's all I have, unless you have any questions

THE COURT: Thank you very much Mr Burck?

MR. BURCK: Thank you, Your Honor Good

morning Your Honor, I'm not going to spend much time on Counts One through Eleven and Thirteen. We join Governor McDonnell or Mr McDonnell's reasoning in his Rule 29 motion on the One through Eleven The only thing we would point out, of course, which you heard me say many times in Court: She is not a public official, our client isn't So the official acts must have been taken, if they were taken, by Governor McDonnell And if there is no evidence that support the official acts for him, there can't be for our client as well And we also don't believe there is any evidence that suggests that she tried to influence him to corrupt his office So our view, again, is that our client rises or falls on the Rule 29 motion with the Governor

On Count Thirteen, which is the only bank fraud charge that she is charged with, the evidence in this case has been clear that there was no evidence that she actually knew anything about the information that was being provided to the bank, PenFed, as part of the application process Nan Bolt testified that she had to be reminded, as you recall, Your Honor, that Ms McDonnell was on the phone And she testified that she didn't say much if anything And she also testified that all the information she received came from the Governor, all the e-mails, everything that was presented in evidence, everything came from the Governor Nothing came from Ms. McDonnell

And there is, of course, an intent requirement there And the only thing that links Ms. McDonnell to the bank fraud charge in Thirteen is the fact that she did sign the application. But we don't believe that is sufficient, given the evidence here, that she had nothing to do with the actual provision of information, and there is no evidence she actually even knew what was in the application.

So Your Honor, what we really want to focus on today is really Count Fourteen, which is the obstruction count And she is the only one, of course, charged in this count, and this relates solely to the letter, the handwritten note that Ms McDonnell sent to Jonnie Williams with the box of dresses that she returned to him in March of 2013 And there are several points we want to make on this I'll just go through them step by step

The first point is that there is no evidence at all, Your Honor, that this letter was even false Mr Williams testified on cross, and also on direct, about the letter, and he did say that it was a fabrication. But if you recall, I asked him specific questions about what was false about the letter, tried to take him through the letter, and he essentially refused to answer and just said, "It is a fabrication " So the question then is to look at the letter itself and try to understand what it is that the government believes was false about this letter

The only things that are in the letter -- the indictment alleges that the letter suggests there was a prior agreement between Mr Williams and my client to have these dresses returned. On its face, the letter doesn't actually say anything like that There are two lines in the letter that are actually relevant to this point And the first one says, "I truly hope your daughter will now be able to enjoy these lovely outfits and show them off on many grand occasions " That's one line On its face, there is literally nothing in the letter that suggests, in that line, that sentence, that suggests there was an agreement between Ms McDonnell and Mr Williams

In the second line, this is the only other thing in the letter that appears to be relevant, "If not, I'm sure there are many exemplary charitable organizations like we talked about who would welcome the opportunity to auction them for a wonderful cause " Now, that sentence literally says that "there are many exemplary charitable organizations like we talked about " The "like we talked about" refers explicitly in that sentence to the charitable organizations And there has been testimony in this case about a charitable organization that

Mr Williams, Mr McDonnell, and Ms McDonnell all went to in September of 2011, I believe it was, the Cure By Design event, which was a fashion industry charitable organization for cancer research. And it was literally about the fashion industry and about dresses, and Ms McDonnell had to walk down a runway Brad Kroenig, Mr Williams' friend, the male model, came in order to assist her with that process, to give her some assistance on that process And this is in evidence, that in fact Mr Williams attended such an event with Ms McDonnell So there is no question that there is evidence in the record that there were charitable organizations that they talked about.

But what this sentence does not say is there was an agreement The first point we want to make is, there is nothing literally on the face of this letter that is false

The next point is that there was no federal grand jury investigation of Ms McDonnell or Mr McDonnell at the time that she sent this note There is no dispute on that In fact, there has been testimony that there was no such investigation There was, in fact, a state grand jury investigation, and there was a federal grand jury investigation of Mr Williams on a securities fraud, but there was no actual grand jury investigation, federal, of our client, my client, or Mr McDonnell, at the time she sent this note

Now, we are not arguing, because the law is clear, that there doesn't have to be a federal grand jury investigation at the time that the obstruction occurs And the defendant doesn't have to know that the grand jury investigation is itself a federal one No question about that The law is clear on that But that's not our point The point here is that there were two other grand jury investigations that were not the ones that are in this case that were pending at that time, and one that is in this case did not exist So the question then becomes, what was her intent with respect to that letter for a federal grand jury investigation.

And the law is very clear from AGUILAR, from SCHWARZ, which is the Second Circuit case that is the leading case interpreting AGUILAR, that she has to have a specific intent to obstruct this federal grand jury investigation, Your Honor And I think the easiest to way for us to convey just how -- it seems to be abundantly clear to us that she is entitled to dismissal of this charge as a matter of law We look at the SCHWARZ facts, and this is the Second Circuit case And in that case, Your Honor, the defendant had been served with a federal grand jury subpoena for documents, had been served with that subpoena And it was for that federal grand jury that he was alleged to have obstructed. He was then interviewed two days later by federal investigators about the conduct being investigated by that same federal grand jury And in fact, the defendant himself had initiated the meeting, had actually reached out to the federal investigators after receiving the subpoena to talk to them. And during that interview, he made false statements

And the question then was, for the Second Circuit, was were those false statements intended; was there sufficient evidence to show the nexus requirement, that they were intended to obstruct the federal grand jury, which this defendant knew about, in fact, had received the grand jury subpoena and was talking to the investigators who were involved in that grand jury investigation

The Court of Appeals said no, it wasn't enough. They said that AGUILAR does not allow that to be sufficient nexus And the reason they said that was because the defendant himself had not been asked to testify before the grand jury Even though he knew about it, even though he had a grand jury subpoena, and even though he was talking to federal investigators, he had not himself been asked to testify, and there was no evidence that the investigators, who he was talking to, who were investigating on behalf of the grand jury, gave him any indication that they would repeat his statements to the grand jury

So the two facts that they relied on to say this was not enough was the fact that he was not himself asked to testify, and the investigators had not said, "I'm going to tell the grand jury about what you said." And that was enough in SCHWARZ and in AGUILAR, which has similar facts, the Supreme Court case, to say this is not a sufficient nexus Because again, the key is that the defendant has to have a specific intent to actually obstruct this federal grand jury investigation in this case, a prospective one, but it has to be this one And that's what's missing entirely from this case There has been literally no evidence on this

And just to put a finer point on it, Ms McDonnell, unlike the SCHWARZ defendant, who the Second Circuit said can't, you can't convict of this charge, had received no federal grand jury subpoena at all from anyone Nothing from this case, nothing from Jonnie Williams, nothing in the state grand jury Nothing She had received no indication from anybody that her note was going to be provided to any grand jury Mr Williams, there has been no evidence in this case that he had received a federal grand jury subpoena relating to this case, because, of course, it didn't exist at the time He had received a federal grand jury subpoena relating to his securities case But there is also no evidence she even knew about that

Your Honor, at a fundamental level, she wasn't aware of a federal grand jury investigation because there wasn't one at the time

So in fact, there was no federal grand jury proceeding So we have a situation in which Ms McDonnell is in a position where she knows even less, even has less notice of any kind of federal grand jury investigation than the defendant in SCHWARZ And the Second Circuit said that is insufficient, and the Supreme Court of the United States has said the same thing

So Your Honor, our view is that on this final count for Ms McDonnell, on Count Fourteen, there just is no possible way that she could be convicted of this under the law, because there is literally no evidence at all of her specific intent to obstruct this federal grand jury investigation, which did not exist at the time, and of which there is no evidence that she had any awareness of any prospective one, either So Your Honor, that's all for us Thank you, Your Honor

THE COURT: Thank you very much Government?

MR. FAULCONER: Thank you, Your Honor I think where I'd like to start is where Ms Aber started with her opening statement to the jury, which is that this is a fundamentally simple case We did put on three weeks of evidence And when Your Honor decided the motions to dismiss in this case, what you had in front of you were the allegations in the indictment Over the course of the last three weeks, we have provided evidence to support every single allegation in that indictment and more So the standard that you are looking at here, which Your Honor knows well, is whether any rational trier of fact could find the essential elements of the charges beyond a reasonable doubt viewing the evidence in the light most favorable to the prosecution. And so that means that for any factual dispute that's out there, if there is any evidence to support that factual dispute in favor of the government, Your Honor has to go with that evidence at this stage

So Your Honor, I'm happy to walk through all of the counts, but I think the first thing I'd probably say is, is there any particular area that Your Honor wants me to focus on?

THE COURT: No

MR. FAULCONER: Then taking some of these arguments that the defense has made in the order that they made them, starting with the false statement counts, at the end of the day, the allegations that they have made, or the arguments that they are making about the false statement claims, are really just factual disputes Whether or not this loan was to -- whether or not the first $50,000 loan was to Ms McDonnell or Mr and Ms McDonnell is a factual question. Whether or not the next two loans were loans to MoBo or to the McDonnells together is a factual question.

Now, they say, "Well, there's no facts saying that these were loans to the McDonnells together " But Your Honor, there's roughly a dozen if not more places in the record from Mr Williams alone, just his testimony, where he said he was loaning money to the McDonnells Page 682 of the transcript, Lines 4 through 6 He describes that he is writing the checks to these entities or to Ms McDonnell, but that the loan is to, the first loan was to the McDonnells together Page 483, Line 10, that the $50 000 loan was to Mr McDonnell Page 374, Line 24, that the loan was to the McDonnells Page 799, Lines 1 through 3, again, the loans to the McDonnells

And Your Honor, later on, I won't provide every single record cite for these, but there's general conversation during Mr Williams' testimony about loaning money to the Governor generally on Page 791, again on Page

832 And I think one passage that's particularly helpful on this point, that's worth reading here about the first $50,000 loan, was actually during Mr Asbill's cross-examination of Mr Williams on Page 1171 And this really encapsulates what the issue is here Mr Asbill asked: "You viewed this $50,000 loan to MoBo as another loan you were making to Ms McDonnell at her request Answer: I viewed this $50,000 loan as what I viewed the first one as They were in trouble financially, and I was helping their family out Question: And that first loan was to her, was it not? Answer: The first loan was Question: Okay Answer: The first loan, the check was made out to her, but the loan from my perspective was to both of them."

So at the end of the day, Your Honor, the fact that there are some moments where people referred to, "Oh, the Ms McDonnell loan," the one where the check was made out to her, or "the MoBo loan," the one where the check was made out to MoBo, that doesn't mean that the loan was actually to that entity

And really, at the end of the day, the best evidence that we have of who this loan was actually to is Mr McDonnell's own handwriting On the false statement for Count Thirteen, this is the PenFed loan application, after his wife is interviewed by law enforcement, Mr McDonnell goes to that loan application, which is written in plain English It says "Liabilities," "Disclose your liabilities " What does he do? He writes "$50,000 loan, Starwood Trust Or "$70,000 loan, Starwood Trust " "$50,000 loan, Jonnie Williams " Now, remember, the $50,000 loan, that was a Starwood Trust check So in Mr McDonnell's own mind, he is not putting, "Oh, that's Starwood Trust " He is putting "Jonnie Williams" there But more importantly, he is listing those two loans on this as liabilities of him and Ms McDonnell That's what he thought at the time

And so at the end of the day, what we are sort of left with here, Your Honor, is this curious situation where the defense's argument is essentially, "This was such an undocumented loan, there was so little paperwork on this, that we can just say after the fact, 'Well, it was whatever we wanted it to be '" But when you actually look at the testimony from Mr Williams and when you look at Mr McDonnell's own concession on this application, it was a loan to the McDonnells together

And when there was some of this conversation going back and forth during Mayor Sessoms's testimony, I believe probably the most pressing point was the one Your Honor made, where you interrupted Mr Sessoms and said, "Hang on, if somebody is liable for something, you want to know about that, right?" And Mayor Sessoms said, "Yes, we do. If somebody is personally liable for something we want to know about that." That's essentially what we have here on these loans It is a factual dispute The defense can make this argument to the jury, but it is not one that should result in a motion to dismiss

The last thing I'll say on this one, Your Honor, is that they have raised a couple of times that there is this point of, "Well, there has to be a written personal guarantee " First off, I don't think you can interpret Mayor Sessoms's testimony, especially if you are viewing it in the light most favorable to us, that if somebody had a billion-dollar loan out there but it wasn't in writing, the bank would say, "We don't care " But taking that aside, the defense, when you actually read their pleading closely, concedes that the written personal guarantee is only necessary, and this is on Page 9 of their Motion for Judgment of Acquittal, they say Mr Sessoms made clear, for instance, that corporate or LLC debts are not required to be disclosed on a personal financial statement in the absence of a written personal guarantee But that presumes that it is a corporate or LLC debt Which, again, is the factual question that should be resolved by the jury

Briefly to address Mr Burck's point on Count

Thirteen for Ms McDonnell's signature on the false loan application: I'll give him some credit for creativity on that one, but I don't think that you can say with the standard that we have here that simply because you signed something, you are not responsible for the statement that was made She signed under the part of the loan application that says, "I read this; all the information is accurate " The information wasn't accurate She knew about the other $120,000 in loans The mere fact that it was Mr McDonnell and not her who tried to cover it up after the fact doesn't excuse her of liability And so I don't really think that argument gets much traction.

To move next, Your Honor, to the obstruction count: Again, on this one, I think Mr Burck, again, is being creative with this argument here But the note does not have to be false in order for there to be adequate evidence of the obstruction count The obstruction count is not a false statement to law enforcement It is not a false statement to a bank. We do not have to prove that there was any specific literally false statement in that note.

Now, to be fair, there was a false statement in that note When you read that statement, and Mr Williams testified, and this is on Page 1021 and 1022 of the transcript, again, I think during cross-examination, where

Mr Williams says, "This is a fabrication " Well, when you actually look at the standard that's required for the obstruction, it is whether or not you are trying to obstruct, impede, or influence the grand jury proceeding And sending a note that is misleading to somebody, even if you can't necessarily -- if you can parse out some of the grammar of it in different ways, sending somebody something that can be characterized as a fabrication, and again, Your Honor has to credit that testimony at this point, sending a fabrication to somebody is certainly something that can be designed to obstruct, impede, or influence the grand jury proceeding

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Now, to address Mr Burck's argument about Ms McDonnell not having the appropriate intent or there not being enough evidence of the nexus Again, Your Honor, the question is what is the "this" that she has to have the intent to obstruct And the law makes clear, as Mr Burck conceded, that there doesn't have to be a grand jury proceeding in place at the time of the obstructive conduct He also conceded, as he must, that at the time of the obstructive conduct, the defendant doesn't have to know whether that was federal or state in nature

So what is the "this" that the defendant has to be knowing that they are potentially obstructing? The "this" is the investigation into the relationship between the McDonnells and Mr Williams, into the potentially corrupt relationship And as of the time of the law enforcement interview when she was asked about and then she lied about the payments and -- or the $50,000 payment, the written contract, and the catering check, at that point in time she knew that law enforcement was looking into what we now know was the bribe scheme

And then she goes over and she gives Mr Williams' brother this box with the letter and the dress And even prior to handing him the box and the letter and the dress, his testimony was that at some point prior to that, she said she was going to go down to the FBI and try and clear all this up, or something to that effect And so, Your Honor, in that situation, she clearly knows what the "this" is And if the parameters of the statute mean anything, what they mean is that -- those being the parameters saying you don't need the grand jury proceeding and you don't need to know it's federal -- it's to address precisely this type of argument

If you know that somebody is investigating your potentially corrupt relationship with a bribe payer and then what you do, especially in a crime like this where intent is the question, what was your intent, and you then go and you say, "Well, I'm going to give him a note saying, well, this is really all just a loan all along This wasn't a gift," of course that's something that's designed to obstruct that proceeding Otherwise, Your Honor, they wouldn't always be making the point, "Well, this" -- "these were loans to Mr McDonnell or to the McDonnells or to MoBo or to whatever "

Well, they keep raising the point that it was a loan to try to say, "Well, that lessens the corrupt intent because it wasn't as valuable of quid " Well, that's exactly what she was trying to do there, and that's exactly what she was trying to do with that note And there's adequate evidence in the record from which a reasonable jury could find that she was trying to obstruct an official proceeding

So then lastly, Your Honor, to move to the corruption charges This is grounds that we have, obviously, covered before And to take Your Honor back to the order that you wrote in denying their motion to dismiss, Mr Newman raised one of the quotations that Your Honor had to CARSON But what he didn't mention was Your Honor's citation of UNITED STATES v JEFFERSON, which is the case that's actually controlling authority here

Now, what Your Honor said about that is that in JEFFERSON, it enumerated among the defendant's official acts, quote, attempting to facilitate and promote ventures between foreign governments and the businesses who were paying

And so the situation that we had there was a congressman attempting to promote business ventures between a business and a foreign government So we had a congressman and the United States Congress over here, business ventures between a foreign government and a business, and a congressman trying to cross over and influence that

What we have here is the Chief Executive of the state engaging in a corrupt relationship with Mr Williams in which he was accepting things of value in return for helping Mr Williams obtain research studies and government assistance to promote his product So, Your Honor, I think one thing that's important to keep in mind in this situation is that we don't have to prove that a single official act was ever performed, merely that that was what was promised, that was what the exchange was here But we have proved that there were official acts performed

Now, in JEFFERSON, the matter of cause that the Fourth Circuit found sufficient as pending before Congressman Jefferson was described very, very broadly as African trade issues and that the particular official acts alleged there were actions or decisions on that matter of African trade issues

Now, how many witnesses, Your Honor, have we heard get up here and say, "Virginia business and economic development, Bob's For Jobs"? Virginia business and economic development is a matter of cause that was pending before Mr McDonnell as Governor of Virginia But if you even define it more narrowly as obtaining research studies or influencing the universities, that's a matter of cause that's pending before him as the Chief Executive

And then, essentially, the situation we get into with this argument is that, as with many other things, Mr McDonnell wants to focus on everyone's conduct but his own He wants to say, "Well, I didn't cause any other people to do official acts I didn't cause Sharon Krueger or Dr Lazo or Dr Clore" -- "I didn't, you know, shove them into a corner and tell them, 'You must do this '"

But, Your Honor, look at his own conduct of what he personally did The Chief Executive ordered his Cabinet subordinate to send somebody to a meeting on less than 12 hours of notice That was an official act Mr McDonnell appeared at an event that he knew other government employees had to spend a bunch of time preparing Sarah Scarbrough told you, "I'm a government employee I have to RSVP, lists, e-mails " Remember her testimony where we went through what had to be nearly a dozen different e-mails about invite lists

He knows that that's what's going on behind the scenes to set that up, and then he shows up at that event And they keep trying to say, Your Honor, that, "Well, Mr McDonnell didn't say X or didn't say Y at the lunch, launch," whatever it was The fact of the matter is he didn't have to say anything Merely hosting that event in the context of knowing that Mr Williams wanted to obtain those research studies and knowing that he was the Chief Executive of the state, the boss for those state employees who were present at that event, that alone was enough for that to be an official act, even if he merely walked in, sat down, smiled, and walked out

And the same is true when you go to the Healthcare Leaders Reception the next year Now, there he did specifically acknowledge one of the doctors associated with Star Scientific And on that one, Your Honor, we know that state funds paid for the Star Scientific individuals that were there That came straight out of taxpayer funds

And then a couple of weeks later when Mr McDonnell is at a Cabinet meeting, pulls out a bottle or a pill of Anatabloc and says, "You should really meet with these people " Again, that's an official act in that context when he knows that what Mr Williams wants is all those people to help him in state government with getting these research studies

And, Your Honor, at the end of the day, they want to focus a lot on all the things that Mr Williams didn't get And I've just gone through a number of the things that he did get But I think it's important to remember why Mr Williams didn't get some of the things that he didn't get It was because of other government officials who weren't being paid It was because of independent people at UVA or it was because of independent staffers who weren't aware of all of this, who weren't being paid to do things, who they might have said no But, again, it's not about whether other people took official acts after Mr McDonnell took his official acts He took official acts in response to all of these things, and that's why there's sufficient evidence as to him

To correct one brief aspect of Mr Burck's argument, just because it was in their pleading The defense for Ms McDonnell has said a couple of times that Mr McDonnell has to be found guilty in order for her to be found guilty on the corruption charges That's not true With respect to Counts One through Five, and that's the conspiracy to commit honest-services wire fraud, the three honest-services wire fraud counts, and the conspiracy on the Hobbs Act count, none of those five counts require Mr McDonnell to be guilty in order for Ms McDonnell to be guilty

And the reason for that is just basic law But she can conspire with Mr Williams, independent of Mr McDonnell, in order to commit honest-services fraud or she can scheme with Mr Williams, or on her own, to commit honest-services fraud With respect to the Hobbs Act count, she can conspire with Mr Williams to commit Hobbs Act extortion

The only counts where Mr McDonnell's culpability are required as a prerequisite to Ms McDonnell's culpability are the Hobbs Act counts -- the substantive counts, Six through Eleven, and that's only because the theory there is an aiding and abetting theory But on the conspiracy and the scheme charges, those don't have to be successful There doesn't actually have to be a public official involved You can merely conspire a scheme with somebody else Obviously, our position is that we have more than adequate evidence that Mr McDonnell is just as guilty as Ms McDonnell at this stage of the proceedings, but I just wanted to make that technical point

If I may have one moment, Your Honor?

THE COURT: Sure

(Counsel conferring with co-counsel)

MR FAULCONER: Thank you, Your Honor

THE COURT: All right

Brief rebuttal, if you'd like

MR NEWMAN: Okay, Your Honor On the false statement charges, the government essentially agrees that if these are, in fact, loans to MoBo and loans to Maureen, as opposed to personal liabilities of -- of Mr McDonnell, then we are -- would be entitled to judgment of acquittal on those counts Their disagreement is on the question of whether or not these loans are solely loans to MoBo and Maureen McDonnell and not to Mr McDonnell

But the only evidence that they can offer of that is the testimony of Mr -- of Mr Williams as to what he thought he was doing, but there's no testimony as to what -- what Mr McDonnell's understanding was There's no testimony of that Mr Williams doesn't say that -- that -- that Mr. McDonnell understood that he was assuming Ms McDonnell's loan as a -- as a personal liability It just talks about what Mr Williams thought that he was doing

And at the end of the day, the objective evidence in the case demonstrates that the check was made out to Ms McDonnell, not to Mr McDonnell It was deposited in her account, not a joint account

THE COURT: The problem with that argument is the standard that I have to apply You glide very glibly over Mr Williams' testimony, but I can't I mean, the standard that I have to apply is giving the government the benefit of every reasonable inference And if the person who's providing the financial gain to someone else sees it as a loan, that's evidence that it's a loan That doesn't mean that it is, but that's evidence that it's a loan And so if there's evidence of it, then one can infer that it's a loan

So I -- your argument here is not being very helpful because you want me to simply ignore it I mean, that's a great jury argument I wouldn't believe this guy if he had 20 bishops in support of his testimony, if that's your argument But that's an argument for the jury, not at this stage It's not very helpful

MR NEWMAN: Well, I mean, the question -- the issue is not whether the government has any evidence that might be favorable to it The question is whether a reasonable jury could -- could convict on the evidence that exists, viewed in the light most favorable to the government And it's not clear to me, Your Honor, that just because Mr Williams thought that he was giving the loan to Maureen and -- and Governor McDonnell, that that was necessarily --

THE COURT: Well, a reasonable juror who --

MR NEWMAN: -- understood by the parties to be a joint obligation

THE COURT: A reasonable juror who has an open mind can either accept or reject the testimony of a witness That's -- I mean, that's fundamental So all 12 of these people who get to decide this, they can believe Mr Williams or they can decide not to believe him or they can accept whatever portion of that testimony they deem appropriate So it just can't disappear because you want it to disappear

MR NEWMAN: Fair enough, Your Honor

Well, then given that, then I'll move on the official acts argument that the government made I want to just briefly mention JEFFERSON because if you actually read

JEFFERSON, it's nothing remotely like this case Because there was no question that Congressman Jefferson was influencing others to actually exercise governmental power, obtain regulatory approvals for people, have contracts awarded Whether it was the Department of the Army or a foreign government, the fact remains that Congressman Jefferson was using his office to influence other decision-makers to take -- to exercise governmental power for the benefit of the bribe giver That's just not -- that's not the case here The -- there is no evidence of Mr McDonnell influencing anyone to exercise any governmental power to make any decision for the benefit of Mr Williams

And so what is particularly extraordinary about the government's position is they really are making the argument that merely arranging a meeting or attending an event can be an official act that would support a bribery prosecution That's unprecedented, Your Honor There's nothing in the case law that supports that And, in fact, it would be directly at odds with -- with SUN-DIAMOND where the Supreme Court made clear that not everything that an official does in his official capacity is an official act under the statute But the logic of the government's position would reduce every action that a government official takes to an official act that can support and be a basis for a bribery prosecution And that simply -- that simply can't -- that simply can't be the law, and there's no support in it for the case law And it would revolutionize American politics because it would make every public -- it would cast a pall of criminality over a public official anytime they do anything; arrange a meeting for a donor, or in the State of Virginia, arrange a meeting for anyone who has given them a gift That will create at least enough suspicion to launch federal prosecutors and investigators on a public official

The line must be clearer than that The government has to come forward with some evidence that the public official attempted to influence another public official, at a minimum, or took the action himself to exercise governmental power And there's just no evidence of that here

But the government's position truly is that asking, you know, Ms Huffstetler to attend a meeting with Mr Williams, that's it That was an official act, and that can be the basis for a prosecution There's no support in that for the case law That's certainly not what JEFFERSON says Because in JEFFERSON, you actually had attempts by Congressman Jefferson to influence certain outcomes in meetings, to influence other public officials to take actions -- to exercise governmental power for the benefit of the bribe giver

The government also made the point about the -- the Healthcare Leaders Reception and that state funds were used But that's not part of the analysis The question is whether or not there was an action or a decision on a matter pending before the official. So whether state funds are used is -- is irrelevant because there are countless things that officials do in their official capacity that might require the use of public funds but still wouldn't satisfy the official act definition

That's all I have, Your Honor, if you don't have any further questions

THE COURT: Thank you very much

Mr Burck, do you have anything?

MR BURCK: Your Honor, very briefly. Just three short points, Your Honor On the Counts One through Eleven, the government's argument that Ms McDonnell could be held -- could be found guilty even if Mr McDonnell were acquitted, that runs counter to the way they have actually charged this case and how they have presented their evidence All the evidence in this case has been that Mr McDonnell and Ms McDonnell were working in concert So we believe that if -- there cannot be -- it would be insufficient evidence to find that she did this, even under their theory of this case, if he didn't do it So that's our basic point there We can argue that at the jury instructions conference, Your Honor

And the second point dealing with the bank fraud As I understand Mr Faulconer's argument, this would be a strict liability crime if all you had to do was sign a document The point here, Your Honor, is that -- that the evidence that they have presented is not merely that she just signed a document It's that somebody else did all the communication and provided all of the information to the bank relevant to that application that they say is false So it's not just that she signed it It's that they haven't presented any evidence that she had anything to do with the actual provision of evidence -- or information So that's the reason why we think -- it's not a strict liability crime So you have to look at what they have actually provided

The third point, Your Honor, is on Count Fourteen, the obstruction count The -- starting with the falsity issue, I don't think Mr Faulconer conceded it wasn't false, but he did say that it doesn't have to be false Now, the problem with that is the evidence they presented through Mr Williams, he couldn't explain what was false about it All he said was that it was a fabrication He did not explain what was false about the -- about this document The indictment makes an allegation on that front, but Mr Williams did not And that's insufficient for this jury

But more importantly, Your Honor, on the nexus requirement, Mr Faulconer didn't even bother to mention AGUILAR, the Supreme Court, or SCHWARZ, the Second Circuit And these are not factual issues These are legal issues

And Ms McDonnell -- there is no evidence in this case, and I don't think there's any dispute, that she did not receive a grand jury subpoena prior to sending that letter, that she did not know of a grand jury proceeding in a federal case because there wasn't one, and that Mr Williams did not have one

The point is that both AGUILAR and SCHWARZ are a hundred percent clear that she has to have a specific intent Not that the letter might be provided to the federal grand jury, but that it would be And there is absolutely zero evidence in this record of that

Thank you, Your Honor

THE COURT: All right This is what I'll do The motions will be denied in all particulars I will write a memorandum of explanation

Thank you all very much I appreciate it

(The trial adjourned at 11:12 a m)

No. 15-4019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
ROBERT F McDONNELL,
Defendant-Appellant,

On Appeal from the United States District Court for the Eastern District of Virginia, Richmond Division, James R. Spencer, District Judge

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Declaration #1 of William A. Burck (filed *ex parte* and under seal) (May 14, 2014) 7926

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

August 18, 2014
Richmond, Virginia
9:50 a.m.

JURY TRIAL - VOLUME XVI

BEFORE: HONORABLE JAMES R SPENCER
United States District Judge

APPEARANCES: MICHAEL S. DRY, ESQ.
DAVID V HARBACH, II, ESQ.
JESSICA D ABER, ESQ
RYAN S FAULCONER, ESQ
RICHARD D. COOKE, ESQ.
Counsel for Government;

JOHN L. BROWNLEE, ESQ
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WILLIAM A. BURCK, ESQ.
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STEPHEN M. HAUSS, ESQ.
DANIEL KOFFMANN, ESQ.
Counsel for Maureen G. McDonnell

JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day eighteen, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F. McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, Christopher Iaquinto, and Timothy Taylor Maureen G. McDonnell is represented by Heather Martin, William Burck, Stephen Hauss, and Daniel Koffmann. Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed.

MR. BROWNLEE: Mr McDonnell is ready to proceed

MR. BURCK: Maureen McDonnell is ready to proceed, Your Honor

THE COURT: All right Let's bring in the jury, please

(The jury entered the courtroom.)

Good morning, ladies and gentlemen. Good to see you back. And for the record, we unfortunately have lost another juror Juror Number 389 had a family emergency out of state, and obviously, we are praying for him and we pray God's mercy and grace upon him and his situation. But we have to push on. All right. Defense?

MR. BROWNLEE: Thank you, Your Honor We call Brenda Chamberlain.

BRENDA CHAMBERLAIN,

called as a witness by and on behalf of the defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWNLEE:

Q Good morning

A Good morning

Q Would you please state your name and spell your first and last name for the court reporter?

A Brenda Chamberlain, B-R-E-N-D-A, C-H-A-M-B-E-R-L-A-I-N

Q Where do you reside, ma'am?

A Suffolk, Virginia

Q And do you have a small business that you run?

A I do.

Q What kind of business is that?

A Bookkeeping

Q Okay Can you give us a little bit of a sense what you do within your bookkeeping business?

A I take people's records that they provide me and input them into QuickBooks and categorize them. And bank statements, credit card statements, I provide payroll service, quarterly reports, financial statements

Q Okay How long have you been doing that?

A A little over ten years

Q Okay And can you give the ladies and gentlemen of the jury, describe briefly the types of clients that you have?

A I have everything from wholesale nursery, real estate, plumbers, electricians, construction companies, churches

Q About how many clients do you have?

A I have 28 companies between 19 clients

Q Okay And I believe you talked briefly about that, but in essence, is your job as a bookkeeper to collect information from your clients and then put them into QuickBooks and then submit them to the accountant; is that correct?

A That's correct, yes

Q Give us a brief summary of what is QuickBooks

A QuickBooks is a financial software that organizes, once you put the information in, it will prepare reports for you, profit and loss, balance sheets

Q Then that's, what you put into QuickBooks, then you submit it to the accountant; is that right?

A That's correct

Q Is it fair to say in doing your job it is important for you to have full access to all your clients' information?

A Yes, sir

Q Now, in obtaining information from clients, can you kind of give the ladies and gentlemen of the jury a sense of how do they give the information to you, what are their options?

A They can either mail it to me, some clients I do go to their office, but the ones that I do in my home they either mail it, I have access to their online accounts, I will go and pick up their information.

Q Okay Let me talk a little bit about, you mentioned, I think, the second one was access to online accounts Tell us exactly what that means when you do that for your clients

A A client can give me access where I can't actually transfer money or anything like that, but I can see all their records, the bank statements, any transactions within the account.

Q Okay. About how many of your clients give you access, of the 28, how many actually give you access to their online records?

A I think there's four or five.

Q Okay So fairly small amount?

A Yes

Q Okay Is that the easiest for you when you can just go in and see it all?

A Yes.

Q Okay Now, it is fair to say that you were the bookkeeper for an entity called MoBo

A Yes, that's correct

Q MoBo is an entity that's owned 50/50 by Bob McDonnell and his sister, Maureen; is that correct?

A Yes

Q Okay How did you become involved with MoBo?

A An accountant I work closely with, Daniel Cook

Q Is Mr Cook the accountant for MoBo?

A Yes.

Q Okay And do you get many referrals from Mr. Cook?

A Probably about 50 percent of my clients

Q Okay And when did he refer MoBo to you, do you remember?

A I believe it was 2009

Q Okay And when you came on board to be a bookkeeper for MoBo who was your kind of point of contact at MoBo?

A Michael Uncapher

Q Did you also become the bookkeeper for an entity called Blue Ridge Heaven?

A Yes

Q Who was the point of contact for Blue Ridge Heaven?

A Michael Uncapher, also

Q When you came on in '09 for MoBo, what year did you begin working on it?

A 2008

Q So they had to finish 2008 What was the kind of condition of the books when you came on in '09?

A They were just incomplete. I needed to go back and, I believe that is when I set up QuickBooks I put the company on QuickBooks

Q So when you got them in '09 they weren't even on QuickBooks?

A No

Q In comparing MoBo to some of your other clients, is it bigger, smaller?

A It is a medium-sized company There's not a lot of transactions

THE COURT: Could you move the mic down and a little closer to you?

THE WITNESS: Is that better?

THE COURT: Maybe you have to move. Okay. Go ahead.

BY MR. BROWNLEE:

Q So I asked you about how big is MoBo compared to other clients

A I would say a medium size

Q Medium size Okay Now, and you said that Mr Uncapher was your point of contact at MoBo You knew that Mr Uncapher was at that time married to Bob McDonnell's sister, Maureen; is that right?

A Yes

Q Now, did Mr McDonnell have any kind of day-to-day management responsibilities at MoBo up until 2013?

A No

Q Up until first of 2013, had you ever talked to him?

A No.

Q Before coming here today, have you ever met him?

A No

Q Okay And Mr Uncapher then remained your point of contact and the person you worked with until about the beginning of 2013?

A It was the fall of 2012

Q Okay Now, you met -- when did you first meet Mr Uncapher when you came on in 2009?

A I had a meeting with him and Dan Cook and one of his associates

Q Okay. And what was Mr Uncapher's kind of primary responsibility with regard to MoBo and working with you?

A To provide me the data I needed to create the QuickBooks, the bank statements

Q Okay So his job was just to funnel the information to you.

A Correct

Q So you could do your job.

A Correct

Q Give us a sense of how well he did that in your view.

A He was very sporadic Sometimes the books would go three to six months before he would get me the information.

Q Okay So he was not on top of it, fair to say?

A No

Q Okay Let me show you an e-mail, RM-2043, just for the witness.

A Yes

MR. BROWNLEE: I can't see it, but that's fine, I've got it here

BY MR BROWNLEE:

Q Is this an e-mail from you to Mr Uncapher in September of 2011?

A Yes

MR. BROWNLEE: Your Honor, I would move RM-2043 into evidence

THE COURT: It will be admitted.

BY MR. BROWNLEE:

Q Just give us a sense of this. It is an e-mail chain We can put it up. Give us a sense of what's going on here in this back and forth between you and Mr Uncapher?

A I was just trying to get the data so I could update the QuickBooks He just was not providing it to me and I was at a point where I wasn't even sure if he wanted my services any longer

Q If we look at the final e-mail you sent to him in September, could you just read the first three lines?

A "I have not heard from you in some time Your accounts are extremely in need of updating I have not received updated information since April If you are no longer interested in having me keep your books, please let me know, so that I can get you the most updated copy of your companies and paperwork and I can receive any outstanding payment that is due "

Q Okay So example of him, it is just difficult to get information from him.

A Yes

Q Okay We can take that down. And let me show the witness, if I may, RM-2060 Now, is this an e-mail chain You are on it with Dan Cook, the accountant, and Michael Uncapher?

A Yes

MR. BROWNLEE: We move RM-2060 into evidence

THE COURT: It will be admitted.

BY MR. BROWNLEE:

Q Can you tell the jury just a little bit about what this e-mail is?

A The e-mail says Daniel Cook was sending an e-mail to Michael stating that I was going on vacation and that I needed the information as soon as possible so that he could complete the tax return for 2011

Q Okay So again, another example of just difficulty getting the information out of him.

MR. FAULCONER: Objection, Your Honor

THE COURT: Please don't do that

MR. BROWNLEE: Fair enough, Your Honor We can take that down.

BY MR BROWNLEE:

Q I'd like to switch and talk to you a little bit about the books of MoBo. Can you explain the process for reviewing and updating the books?

A The data I'm provided, I take that, input it and categorize it within QuickBooks For MoBo, they had a managing realty company, Sandbridge Realty, that would provide statements every month of all rental income and any expenses that they had for the properties Management fees, linens, maintenance, that type of thing I would take that and input it as well, reconcile the bank statements

Q So you got information from Sandbridge Properties, the property management company?

A Yes

Q Then you got information from the owners themselves

A Correct

Q And from --

A Michael Uncapher provided that to me, yes, at that time

Q And then from there, you put it all into QuickBooks and submitted it?

A Correct

Q It is fair to say that these books were pretty simple?

A Yes

Q Okay Let's show the witness RM-0243 And what is this, ma'am?

A This is an e-mail to Bob McDonnell and Maureen McDonnell I am attaching the final financials for 2012 plus a current P&L and balance sheet for the first quarter of 2013

Q You sent this e-mail?

A Yes.

MR. BROWNLEE: We move in, if it is not already in, it is also titled Government Exhibit 513

THE COURT: It will be admitted.

BY MR BROWNLEE:

Q On this e-mail chain, it has Dan Cook, that's the accountant, correct?

A Yes

Q Who is Tara?

A She is an accountant within his firm.

Q You said these are the profit and loss statements through 2012?

A Correct

Q Now, if we could pull up, if you go to Page 9 and blow up the net income, it is in about the middle Now, tell the ladies and gentlemen of the jury, what is net income?

A Net income is the difference from your income less your expenses.

Q All right Now, is net income different than an operating budget?

A Yes

Q How so?

A I mean, operating budget is a budget that you enter to work your expenses to.

Q Okay And if you look here on the net income, it has negative net income at the bottom for each of the years; is that correct?

A Yes

Q Does that include depreciation?

A Yes

Q Okay And depreciation, what is depreciation?

A Depreciation is the, for instance, when you purchase a car, every year the value of it is reduced. That is depreciation.

Q So that is an expense every year that's added to your net income; is that correct?

A That's correct

Q Okay. Now, if you look up, move up and show "Depreciation," I believe it is the third under "Expenses." If you could blow that up And for 2009 through 2012, they have depreciation in the $66,000 range every year; is that correct?

A Yes

Q Okay Now, is that sometimes referred to as a paper loss?

A That would actually be an accountant question. I would assume so, because it is not actual physical money that is going out

Q So if we were to back out the depreciation expense for these years, and then go and look at the net income, would that affect the actual net income?

A Yes.

Q Okay And so if you backed out depreciation, for instance, for 2012, would MoBo actually have a positive net income?

A Yes

Q You can take that down Thank you Now, you indicated that sometime in 2012, Mr McDonnell became involved, more involved in MoBo; is that correct?

A The first time I spoke with him was in 2013

Q Okay And do you understand, do you have some sense of why he became involved?

A From what I understood, there was a separation between Michael Uncapher and Mr McDonnell's sister, Maureen

Q Okay Was there a call set in February of 2013?

A Yes

Q Okay

MR. BROWNLEE: Can I show RM-2061 to the witness?

THE COURT: Go ahead

BY MR. BROWNLEE:

Q Is that an e-mail between you and Mr McDonnell's staff scheduling this conference call?

A Yes

Q Okay

MR. BROWNLEE: We move RM-2061 into evidence.

THE COURT: It will be admitted.

BY MR. BROWNLEE:

Q Who else was on this conference call? The date was -- what was the date of this call?

A February 2nd.

Q Was that --

A Saturday

Q It was a Saturday. Okay Who was on this call?

A Myself, Mr McDonnell, his sisters Maureen and Eileen.

Q Give the ladies and gentlemen of the jury a sense of what was discussed in that call

A We were discussing the best way to have me obtain the information that I needed to do the books for both MoBo and Blue Ridge Heaven. Whether we should have online access, which I suggested as the easiest way due to our locations

Q Okay Did you discuss any of the books themselves, the underlying data?

A Not the data, no

Q Do you recall discussing any loans?

A We discussed the fact that if I couldn't see the information online or I had additional questions, that I would be sending e-mails to find out what the answers would be

Q Okay Now, at that time, had Mr Uncapher given you any information for 2012?

A No.

Q So was that kind of the first order of business, was to get that?

A Yes

Q All right And you talked about requesting online access. What did you mean by that?

A So that I could go directly into their bank account and look at the transactions, obtain the bank statements.

Q On the phone, did Mr McDonnell agree to do that?

A Yes

Q Okay

MR. BROWNLEE: Your Honor, could we pull up RM-2062?

BY MR. BROWNLEE:

Q Is this an e-mail from Mr. McDonnell on February 4th, 2013, to you?

A Yes

Q All right

MR. BROWNLEE: We move in RM-2062

THE COURT: It will be admitted

BY MR. BROWNLEE:

Q Now, tell the ladies and gentlemen of the jury what this is

A He was providing me access to his TowneBank account.

Q So the call was on February 2nd, Saturday, and then two days later you received this e-mail from Bob McDonnell; is that correct?

A Yes

Q Let's just look at it. If you could just read the first sentence there

A "Brenda, as discussed I authorize you to have online access to the TowneBank account for MoBo Real Estate Partners, LLC for the limited purpose of providing regular bookkeeping services for the corporation Please go to townebank.com and click down-business plus login on left margin There are then two login numbers as follows:"

Q Then he gives you his username and password so that you can access the records

A Correct

Q And then the last sentence of this e-mail beginning with "I sent " What does that say?

A "I sent the Sandbridge Realty statements last night I will try to get you my note on owners contributions soon but you will likely see them in February-May 2012

Q So he is telling you he will follow up with some information.

A Correct

Q And just so -- and that is sent February 4th, 2013; is that correct?

A Yes

Q Okay Now, do you recall a few days after that, actually, let me, if I can -- could we pull that back up, 2062? Sorry, it wasn't on my copy If you go up, did you respond to him?

A Yes, I did.

Q What did you say?

A "Thank you I will get to work on this within the next few days "

Q Okay And do you recall, did you in fact use the username and passcode and actually go into these accounts?

A Yes

Q Do you remember how long?

A Within a week, to make sure I had access

Q All right You can take that down. So when you would have access to the account, let me, if I can, pull up RM-1454 And is that an account for March of 2012?

A Yes

Q Okay And so when you would go into these accounts, is this something you would see?

A Yes, that's the bank statement

MR. BROWNLEE: We move in RM-1454, Your Honor

THE COURT: It will be admitted.

BY MR. BROWNLEE:

Q If you look down on March 12th, it has a deposit for $50,000 Do you see that?

A Yes

Q Okay And on this type of online service, can you click on that line and have the check actually pop up and the deposit slip?

A Yes

Q Do you have any independent recollection of doing it for that particular --

A No, I don't, I'm sorry

Q But your testimony is that this system allowed you to do that

A Correct

Q Okay And if we could pull up RM-1521 Do you see that?

A Yes

Q Okay And is this another similar statement for May of 2012?

A Yes

Q This is what you would have seen when you went online?

A Yes

MR. BROWNLEE: We move in RM-1521

THE COURT: It will be admitted.

BY MR. BROWNLEE:

Q If you look in the middle there, if you could publish that, for May 22nd, there is a wire transfer of $20,000;

is that correct?

A Yes

Q Okay And that says Starwood Trust; is that correct?

A Yes

Q Okay And you would have been able to see that in the early part of February of 2013

A Yes

Q Okay You can take that down Thank you.

Q This username and passcode that Mr McDonnell provided to you, that was after only the first time you spoke to him; is that correct?

A Yes

Q And at that time, had you ever met him?

A No.

Q Okay. In your interactions with him, did he ever refuse to answer any questions you had?

A No

Q Okay And did TowneBank have certain security policies that required the owner to change the username and passcode from time to time?

A Usually it is every 90 days, and it has security questions.

Q And when they wc change it and you would go back to him to get the updated, he always gave it to you?

A Yes

Q Okay Now, I think you testified that you had a conference call on February 2nd with Mr McDonnell and his sisters; is that correct?

A Yes

Q Okay And then two days later he gave you the access, and did you receive two e-mails from him, one on February 18th and then one on February 19th, a few hours later?

A Yes

Q Okay Can we pull up RM-0242?

THE COURT: I didn't hear the number

MR. BROWNLEE: 0242, RM-0242

THE COURT: All right

BY MR. BROWNLEE:

Q Did you receive this e-mail from Mr McDonnell at about 5:16 p.m. on the 18th?

A Yes

Q Okay.

MR. BROWNLEE: We would admit RM-0242

THE COURT: It will be admitted.

MR. BROWNLEE: Can we pull up RM-0245?

BY MR. BROWNLEE:

Q And is this the follow-up e-mail that you received a few hours later at about almost 1 a.m. on the 19th?

A Yes

Q Okay

MR BROWNLEE: We move for admission of RM-0245, Your Honor

THE COURT: It will be admitted.

BY MR. BROWNLEE:

Q Let's show that one What is Mr McDonnell -- let's do it in order here 0242 If we could blow that one up. What is he telling you here?

A Do you want me to read it?

Q You can just summarize it for us

A He is telling me of some loans that were made to MoBo

Q Okay And did you view this as the response to the prior conversations and e-mails?

A Yes

Q Okay And on the 19th, the one sent a few hours later, is this just greater specificity of that prior e-mail?

A That's correct

Q Okay You can take that down Now, is it fair to say that you continued to have communications through e-mail and phone call with Mr McDonnell as this process developed?

A That's correct

Q Let me show you RM-2063 And do you remember this e-mail from Mr McDonnell?

A Yes

Q Okay And this is dated March 4th, 2013?

A That's correct

Q Okay

MR. BROWNLEE: We seek the admission of RM-2063.

THE COURT: It will be admitted.

BY MR. BROWNLEE:

Q And again, is this just additional information provided by Mr McDonnell to you?

A That's correct

Q Let me ask you on the last sentence, he asks -- if you could just read that last sentence for us

A "Brenda, I also would ask you to put your billing rates and arrangements in writing to me and also your standard confidentiality agreements to protect all the financial information we provide and is given via access to the bank statements Thanks so much. Bob."

Q Okay Let me just ask, at that time, had you actually had, understood what your rates were and how to contract between them?

A We didn't have any written contract, no.

Q So he was seeking that information.

A Correct

Q And then the confidentiality agreement, did you ultimately prepare one of those?

A I prepared a letter of agreement I don't normally do confidentiality agreements with my clients

Q Okay But that was ultimately done

A Correct

Q And did that in any way limit your access to the TowneBank records?

A No

Q Okay

MR. BROWNLEE: Your Honor, thank you. That's all we have

THE COURT: All right. Anything, Mr Burck?

MR. BURCK: Very briefly.

CROSS-EXAMINATION

BY MR. BURCK:

Q Good morning My name is Bill Burck and I represent Maureen McDonnell, the wife

A Hi

Q I just want to make sure that as of the period of February of 2013, do you recall having any interactions with Maureen McDonnell, the wife, about any of your work for MoBo or for Mr McDonnell?

A No.

MR. BURCK: That's it Thank you

THE COURT: All right Government?

CROSS-EXAMINATION

BY MR FAULCONER:

Q Good morning, Ms Chamberlain.

A Good morning

Q Now, I'd like to ask you a couple of questions to follow up on some questions from Mr Brownlee about the process that you use. Now, you said that as a bookkeeper, you are typically compiling information and then passing it along to the accountant, right?

A Correct

Q And some of the information that you rely on will be from the rental management company, right?

A That's correct

Q You also rely on information from the banks.

A Correct.

Q And when there is something that isn't obvious on the face of a document, you ask the clients that you have for clarification about that

A That's correct

Q Now, typically, you don't go beyond those sources of information and try to independently verify what your clients tell you, do you?

A No, I do not audit

Q Now, each year based on the information that you got from MoBo Realty, you would take that information and then you would put it into QuickBooks, is what you said, right?

A Correct.

Q And again, that's just based off of the information that you get either from the realty company, the bank statements, or from the clients

A Yes

Q So I'd like to talk a little bit about what MoBo's finances were like over the course of 2009 to 2012 You would agree with me that one of the sources of income for MoBo was rental income from renting the property.

A Correct

Q But you would agree with me that that money alone wasn't enough to cover all of the cash outflows in MoBo from 2009 to 2012

A I believe that to be true I don't have it in front of me. I don't know

Q So when there wasn't enough money from the rental income, one of the sources of additional money was something called owners capital contributions, right?

A Loans from the owners, yes.

Q And when we say loans from the owners, that means Mr McDonnell, right?

A And Maureen

Q And Maureen, the sister

A The sister Yes

Q But that's not outside, the owners are not outside third parties.

A I don't make a difference between owner loans and outside loans They are all just listed as loans

Q Got it From your perspective as the bookkeeper, the owners are Mr McDonnell and his sister, Maureen McDonnell

A That's correct

Q If their owners capital contributions aren't enough to make up whatever difference there might be, another source would be a third party outside loan, right?

A Yes.

Q When it came to those third party outside loans, as far as the terms or parameters of that kind of loan, you would rely on what the owners would tell you, right?

A Correct

Q You didn't go talk to those third parties to verify it

A No.

Q So I'd like to look at what was previously admitted as RM-0243 I think we need to switch over to the defense system. If we could zoom in on the top half of this Ms Chamberlain, this is the e-mail we looked at earlier where you were forwarding the final 2012 and the first quarter of 2013 financials for MoBo, right?

A Correct.

Q This was sent to Mr McDonnell and his sister, Maureen McDonnell

A Correct

Q Now, attached to this is a number of spreadsheets that basically lay out the books as you put them together for that time period, right?

A Yes

Q And one of those is a comparison from 2008 on to 2012, right?

A Correct

Q I'd like to turn to Page 6 of this document if we could. And zoom in on just the bottom half Now, zooming in on the bottom half, this is showing a list of the liabilities of MoBo over time, right?

A Yes

Q Now, you would agree with me that the liabilities of MoBo over time for each and every one of those years goes up, right?

A Yes.

Q We have also heard some testimony about whose money would be put into MoBo to make up cash shortfalls There is an entry for Mr McDonnell's owners contributions, right?

A Bob McDonnell, yes

Q And there is also an entry for sister Maureen McDonnell's owners contributions?

A Correct

Q Over the course of time, by 2012, they had each made more than $75,000 in owners contributions, right?

A Yes

Q And the difference between their two owners contributions was less than $4,000; is that right?

A I'm sorry, say that again.

Q The difference between them, I think for Mr McDonnell it was about $76,000 or so?

A That's correct

Q For the sister it was about $80,000 So it was about a $4,000 gap.

A Yes

Q Now, in addition to those loans, there is also a liability on there for somebody named Dr Paul Davis Right?

A Correct

Q But that loan, it shows up in only 2010 and 2011, right?

A Yes

Q It is then paid off in 2012, right?

A Correct.

Q Now, I'd like to show you what's been marked for identification as Exhibit 499 I think we need to switch back over Sorry, I don't have anything Sorry. Looking at Exhibit 499, this is a fax from Mr McDonnell, right?

A Yes

Q It is addressed to you?

A Correct

Q It is dated, I think, March 20th of 2013

A Yes

MR. FAULCONER: We would offer Exhibit 499 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, Ms Chamberlain, the first page of this document, can the jury see it, just to make sure? The first page of this document is a handwritten fax cover sheet, right?

A Correct

Q Now, if we could turn to the last page of this document This is a note that was attached to this fax, right?

A Yes

Q And this is regarding the payoff of the Dr. Davis loan?

A Correct

Q And you are aware from this as well as the other work that you did that that loan was paid off at the end of 2012, right?

A I believe that's correct

Q And here where it is talking about "Total payments," it is addressed to Maureen. You understood that to be sister Maureen McDonnell, right?

A Yes

Q Where it says, "Total payments made by Michael in 2012," you understood that to be Michael Uncapher?

A Correct

Q Now, again, with this loan, though, this is a note that was sent to you. You didn't have any conversations with Dr Davis, did you?

A No

Q Now, Mr Brownlee also asked you some questions, and we are going to flip back over to the other system and go back to RM-0243 Mr Brownlee also asked you some questions about what the cash flow situation was like in 2012 relative to depreciation. Do you remember that?

A Yes

MR. FAULCONER: But, I'm sorry, Your Honor, we need to pull up Exhibit 499 again. I'm getting a little sideways on this I apologize

BY MR. FAULCONER:

Q All right, if we could go to Page 4 of this document

Now, you would agree with me that there is handwriting on this; this is a draft of the profit and loss sheet, right?

A Correct.

Q And the handwriting over on the left, do you see there where it has a comment about principal?

A Yes

Q You would agree with me that any payments made towards the principal amount on a loan, that doesn't go into that Ordinary Expenses column, right?

A That's correct

Q And you would agree with me that over to the right, there is also a comment about "Capital improvements, repair from resource." Right?

A Yes

Q And you would agree with me that capital improvements to the property, those also don't go onto that Ordinary Expenses part of the profit and loss statement, right?

A That's correct

Q So those sorts of things, principal payments and capital improvements, those are still cash outflows from the bank account, right?

A Yes

Q But they don't go on to the Ordinary Expenses there in a separate part of the books

A That's correct

Q All right Now, you would agree with me that the first time that the Starwood loans ended up on MoBo's books were for the tax year 2012, right?

A Correct

Q But you didn't actually prepare the books for that year until 2013, right?

A That's correct

Q Now, I'd like to show you what's been admitted as RM-2062 So switching back over again. Now, this is the document that Mr Brownlee showed you from February 4th of 2013, correct?

A Yes

Q Now, if we could zoom in on the lower portion, the lower part of that e-mail Now, it says there at the bottom, "I will try to get you my note on owners contributions soon." That's what that says, right?

A Yes

Q It doesn't say anything about third party loans, does it?

A No

Q In this e-mail, any of these exchanges, there is no reference to Jonnie Williams, right?

A No.

Q There is no reference to Starwood Trust

A No

Q And there is no reference to the terms of any loan with either of those individuals or entities

A No.

Q Now, I'd like to show you what was admitted as RM-1454 This is the bank statement from March of 2012, right?

A Yes

Q And you said to Mr Brownlee that you don't actually have any independent recollection of looking at this statement

A I can't remember it, no.

Q But you would agree with me that on this document it doesn't say anything about Jonnie Williams, does it?

A No.

Q And when you look at a document like this and you see a transaction, you don't actually know just from looking at it whether it is a loan or somebody renting the property, do you?

A Yes, because it didn't come through Sandbridge Realty

Q Right But you don't know what the terms of any loan would be from whatever the deposit is

A Correct.

Q And you don't know whether or not there is any paperwork for a loan just from looking at the bank statement, do you?

A No.

Q I'd like to show you what was previously admitted as RM-1521 1521 Now, this is that statement from May of 2012, right?

A Yes.

Q And it says there that there is a $20,000 transaction from Starwood Trust, right?

A Correct

Q But again, it doesn't say "Jonnie Williams" there, does it?

A No.

Q It doesn't say what the terms of any loan were?

A No

Q It doesn't say who the loan was actually to

A No.

Q All right Now I'd like to show you another e-mail that was previously admitted, that's RM-0242 Now, this is that e-mail from February 18th of 2013, correct?

A Yes

Q Now, you would agree with me that in this e-mail, it again says, "Looked at the accounts this weekend on the owners capital contribution," right?

A Yes

Q Then this e-mail references loans of $20,000 and

$50,000 from a third party to the LLC. Right?
A Yes
Q It doesn't say what that third party is, does it?
A No.
Q It doesn't say the name "Jonnie Williams" here?
A No.
Q It doesn't say the name "Starwood Trust" here
A No.
Q You would agree with me, Ms Chamberlain, that typically, if you look at the bank accounts and you see a transaction and you don't know what it is, as a bookkeeper, what you will ask your client for is, "Hey, tell me who this was from and what the terms were," right?
A Yes
Q And this e-mail that we are looking at here, this isn't actually providing any of the kind of information that you as a bookkeeper would actually be asking for, is it?
A Other than there was loans on the books, yes
Q But it is not providing you any detail about who it was to.
A Correct
Q And what the terms were.
A Correct.
Q All right Now I'd like to show you what was

previously admitted as RM-0245 Now, this is the e-mail from February 19th of 2013, right?

A Uh-huh

Q Is that a yes?

A I'm sorry, yes

Q Just for the court reporter Now, this e-mail, again, it is from Mr McDonnell, right?

A Yes

Q And it says, "I want to update you on owners capital deposits," right?

A Yes

Q Under that, under where it says, "owners capital deposits," it lists "12,500, Bob."

A Yes

Q Then it lists "50,000 loan Starwood."

A Yes

Q Now, here, this is your handwriting on this document, right?

A That's correct

Q And you write in "Loan, three-year loan."

A Yes.

Q This was based off of a conversation you had with Mr McDonnell, right?

A Yes

Q Now, before that time, before this e-mail, you didn't know anything about what Starwood Trust was, did you?

A I saw it on the bank statements, where the wire was, but I didn't know who Starwood was at that time.

Q Earlier, you said you don't actually recall looking at the bank statement, right?

A The wire, yes You saw the wire from Starwood on the bank statement

Q You saw it in Court today But at the time, you don't actually recall looking at the bank statement

A I mean, I've seen the bank statements when I printed them out and downloaded them, so I had to see that it was Starwood.

Q Right But Ms Chamberlain, this e-mail is from Mr McDonnell saying Starwood, right?

A Correct

Q And earlier we saw the e-mail from February 18th in which he refers to a third party, right?

A Yes

Q And if you had asked him, "Hey, what is this Starwood loan," the response would have answered that question.

MR. BROWNLEE: Objection.

THE COURT: Overruled.

BY MR. FAULCONER:

Q You said that the question you would have asked if you had looked at it and seen "Starwood" would have been, "Who was this and what are the terms?" Right?

A Yes

Q The e-mail from February 18th that says, "Third party LLC loans," that doesn't say who the third party was, does it?

A No

Q And it doesn't say what the terms were

A No.

Q It is not until this e-mail of February 19th that there is anything in your paperwork about the actual terms of that loan, right?

A Yes

Q Same down on "$20,000 Starwood loan" that's also from this e-mail from February 19th.

A Yes

Q And in this e-mail on February 19th, it doesn't say "Jonnie Williams," does it?

A No

Q Your handwritten notes of this conversation doesn't say, "Jonnie Williams "

A No

Q Until after these e-mails, you didn't actually have any loan from Starwood Trust in your QuickBooks for MoBo, did you?

A No.

Q Now, I'd like to switch over to the other system and show you what has been marked for identification as Exhibit 642 Do you see that e-mail on the screen?

A Yes

Q Okay Now, the top e-mail is actually the e-mail we were just looking at from February 19th, right?

A Correct

Q And the bottom e-mail is the response from you on February 20th.

A Yes

MR. FAULCONER: We would offer Exhibit 642 into evidence.

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Zooming in on that bottom e-mail, Ms Chamberlain, in response to Mr McDonnell's e-mail, the second line or third line down there of your e-mail says, "I remember MoBo had a loan to Dr Paul Davis " You write that, right?

A Correct

Q That's something you knew about from before in 2010 and 2011.

A Yes

Q Then you write, "Is this someone different from Starwood?"

A Correct.

Q As of even this February 20th e-mail that you send, you still didn't know whether there was any difference between Dr Paul Davis and Starwood Trust, did you?

A That's correct

Q All right Now, Mr Brownlee also asked you some questions about an e-mail regarding a confidentiality agreement I'd like to switch back over to the other system and show you RM-2063 You would agree that in this document at the end, Mr McDonnell asked you for a confidentiality agreement, right?

A Yes

Q Now, Mr Brownlee asked you some questions about you sending a letter agreement back. And you did that, right?

A Yes

Q But you never actually signed a confidentiality agreement, did you?

A Not at that time.

Q Okay Now, in this e-mail he asked you for a confidentiality agreement Had you ever been asked for one before?

A No.

Q I'd like to switch back over to the other system, and I apologize, Your Honor, and show you Exhibit 763, which has been marked for identification, it has not been entered Now, this is an e-mail exchange between you and Mr McDonnell the following day on March 4th of 2013, right?

A Yes

MR. FAULCONER: And Your Honor, we would offer Exhibit 763 into evidence.

THE COURT: It will be admitted

BY MR. FAULCONER:

Q All right Now, Ms Chamberlain, the bottom e-mail here, this is the -- your response attaching the letter agreement, right?

A Yes

Q And then that's where you say that this is the first time you have ever been asked for a confidentiality agreement, right?

A Correct.

Q And then up on the top, Mr McDonnell responds to that, right?

A Yes

Q And he says, "Thought you might have a standard confidentiality form since you have much personal financial information for our family " I read that correctly, right?

A Yes.

Q Now, I'd like to switch over, I think, hopefully one last time, Your Honor, to the other system and show you Exhibit 643

BY MR. FAULCONER:

Q Now, this is an e-mail dated March 9th of 2013, right?

A Yes

Q And this is an e-mail from Mr McDonnell to you.

A Correct

MR. FAULCONER: Your Honor, we would offer Exhibit 643 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, Ms Chamberlain, looking at the bottom of this e-mail, this is after those e-mails about the confidentiality agreement, right?

A Yes

Q And at the very bottom of this e-mail it says, "Also the 3-12 and 5-22 loans from Starwood are loans to MoBo, LLC directly like other loans handled in past years," right?

A Correct

Q But again, Ms Chamberlain, you never spoke to anyone from Starwood, did you?

A No.

Q You have no independent way of verifying whether that information there is accurate

A What information?

Q Well, the only information you have about whether or not that was actually a loan to MoBo is based on what the clients tell you, right?

A Yes

Q You never spoke to Mr Williams

A No

Q You never spoke to anyone affiliated with Starwood Trust

A No.

Q In fact, you never got any sort of loan documentation like we saw earlier for the Dr Davis loan about Starwood, did you?

A No.

Q Now, showing you, or recalling back to the document that we looked at earlier, we saw a February 18th e-mail that referenced the loans from a third party, the LLC Do you remember that?

A Yes

Q And at that time, February 18th, when you got that e-mail, you were not aware that Ms McDonnell had been interviewed three days prior by law enforcement, were you?

A No

Q At no point in this conversation from the February

18th to the February 19th to the March 3rd and 4th e-mails about the confidentiality agreement, at no point in that conversation did Mr McDonnell tell you anything about his wife being interviewed by law enforcement, did he?

A No

Q And on February 18th itself, when Mr. McDonnell sent you that e-mail referencing the loans from the third party, the LLC, he never told you anything about sending in an updated loan application to Pentagon Federal Credit Union that same day, did he?

A No

Q We have talked a lot about these transactions But just to be clear, Ms Chamberlain, you weren't at any meetings between Jonnie Williams and Mr. McDonnell, were you?

A No.

Q You weren't at any meetings between Jonnie Williams and Dr Bill Hazel, were you?

A No

Q You weren't at an August 30th --

MR. BROWNLEE: Objection

THE COURT: Sustained.

BY MR. FAULCONER:

Q You haven't had any conversations with Mr McDonnell at any time about Mr Williams' product, have you?

A No

MR. FAULCONER: One moment, Your Honor No further questions, Your Honor

THE COURT: All right.

REDIRECT EXAMINATION

BY MR BROWNLEE:

Q Ms Chamberlain, you were, prior to coming here, you were interviewed by the prosecutors and investigators on two occasions; is that correct?

A Yes

Q In fact, Mr Faulconer came out to your house and interviewed you, is that right?

A That's correct

Q You were subpoenaed to testify for the government in this case, correct?

A Yes

Q Last week you came to the courthouse and sat outside --

MR. FAULCONER: Objection.

THE COURT: Sustained. Members of the jury, we have heard this stuff before. Obviously, if they would talk to you before you come in here, you will talk to them. And both sides will do that So I don't know what this line of questioning is supposed to establish. Ask something that's relevant

MR. BROWNLEE: Thank you, Your Honor

BY MR. BROWNLEE:

Q Let's move to Government Exhibit 513 If we could look at Page 6, the balance sheet If you go down to "Liabilities " For 2012, the loans from Starwood are on the balance sheet; isn't that correct?

A Yes

Q Okay You put them there; is that correct?

A Yes

Q And you put them there because you got information from Mr McDonnell; is that correct?

A Yes

Q Okay Let's pull up just for clarification Government Exhibit 642 And in this e-mail I want to make sure that we have the order of it right because sometimes it works the other way The top e-mail to you from Bob McDonnell providing you this information was written first; is that correct? It was written on February 19th.

A Correct

Q And then the e-mail at the bottom in which you are responding thanking Mr McDonnell for the information was actually written in response to that

A Correct

Q Okay. You can take that down Thank you Let's look at Government's 763 Blow up the top part of that.

Ma'am, this is an e-mail from Mr. McDonnell to you; is that correct?

A Yes

Q Okay And Mr Faulconer had you read the top part about the standard confidentiality agreement; is that correct?

A Yes

Q Can you just read Mr McDonnell's last sentence to you?

A "Obviously you have full permission to access the TowneBank account and pass all our info on to Dan Cook "

Q Dan Cook is the accountant?

A That's correct

Q And he prepares the tax returns

A Correct

Q Okay If we could pull up RM-2062 Mr Faulconer had -- if we could highlight the lower part of that Now, this e-mail was in response to the conference call on the 2nd of February; is that right?

A Yes

Q And in this e-mail, he is providing you full access to the TowneBank accounts; is that correct?

A Yes

MR. FAULCONER: Objection, Your Honor He is leading

THE COURT: The objection is sustained

BY MR. BROWNLEE:

Q And we have looked at this, but I want to ask a question. If we could pull up RM-1521 And this is what you would have seen, is that true, when you went into the account?

MR. FAULCONER: Objection, Your Honor

THE COURT: This is what she was able to see if she went in

THE WITNESS: Yes, sir

BY MR. BROWNLEE:

Q That's correct?

A Yes

Q And if you go back to 2062, can you go to up above that and your response? That's your response It says, "Thank you"?

A That's correct.

Q What did you say there again?

A "Thank you. I will get to work on this within the next few days "

Q And do you believe that you did in fact go into these accounts over the next couple of days?

A Yes

Q Okay

MR. BROWNLEE: Thank you, Judge

THE COURT: All right. Thank you, ma'am. You may stand down.

(Witness stood aside)

MR. BROWNLEE: May this witness be released, Your Honor?

THE COURT: As far as I'm concerned.

MR. BROWNLEE: Thank you.

THE COURT: Call your next witness

MR. ASBILL: Your Honor, the defense calls Janet Kelly

JANET KELLY,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ASBILL:

Q Good morning

A Good morning

Q Would you please tell us your full name and spell it for the court reporter?

A Sure. Janet Vestal Kelly, J-A-N-E-T, V-E-S-T-A-L, K-E-L-L-Y

Q Do you know the folks back here to my right?

A Yes, sir

Q Do you know the folks over on this side?

A Most of them, yes

Q All right Do you know my client, Mr McDonnell?

A I do

Q How do you know him?

A I have worked for Governor McDonnell from before he was Governor I started in 1999

Q Okay

A Off and on.

Q Let me get into -- we will get back to that in a second. But tell us about your educational background, please

A How far back dc you want me to start?

Q College

A Okay I went to Liberty University, and majored in government and minored in philosophy, and then I went to Regent University, and I'm six credits short of getting a Masters degree in Public Policy I dropped out to work for the Governor

Q And how about your work background? Before you started to work for the Governor, could you tell us anything about that, please?

A There wasn't a lot I worked in a Gateway computer store and taught software, Microsoft Word, Microsoft Excel, those kinds of things I have been in politics as a volunteer for a really long time I worked almost full time on a campaign in North Carolina when I was 16 So volunteer capacities mostly in politics

Q All right Are you married or single?

A I am married

Q And have you gone by any other name other than Janet Kelly?

A Yes, Janet Polarek.

Q If there are e-mails in this case that have "Polarek" on it or "Kelly" on it, both would be you?

A Yes

Q All right And let's go back and tell us how you met Mr McDonnell

A Well, I moved into his district in 1999 I had been really political my whole life I think it is the only thing I'm good at. So I was studying government at Regent, and that's why I was there I got a new voter letter, which means I moved into his district, and was just really impressed. I don't think I had ever gotten a letter like that before And he sent it to all new voters and just said, "If I can ever be helpful to you in state government, please let me know " I just thought, I had a really good first impression based off that letter And a few weeks later I read a positive news article about him. And I was married at the time, and just told my husband that "I think that he would be somebody that I would work for "

Q Did you meet him in person at some point?

A I did. He signed up to teach a class at Regent, and I thought that would be a good way to get to know him. I'm pretty selfish with my time, so I didn't really want to work for somebody unless I thought they were a good person. So I signed up for his class and he was my professor for one semester with a political leadership class.

Q Okay And during that class, not just as a professor, did you get to spend any time with him outside of the classroom?

A I did. About two months in I signed up to be an intern in his legislative office as a volunteer I was definitely low man on the totem pole.

Q Low woman?

A Low woman, yes, sorry, on the totem pole And just did everything from, my job was calling people who he couldn't come to events for them and telling them he couldn't come in a nice way

Q And you said you went as a volunteer, so you did not get paid for that position?

A I didn't. Quickly after that, though, he got an opponent and so I moved over to the campaign, which was a paid position

Q What do you mean "he got an opponent"?

A I'm sorry He was currently, he had been in the House of Delegates at that point for eight years And someone had told him that they weren't going to run against him, so the field looked clear But then that person changed their mind and decided to run against him, so he had an opponent for the general election in November in 1999

Q You worked on that campaign in 1999?

A I did.

Q Was the campaign, was Mr McDonnell's campaign successful?

A It was

Q All right Thereafter, did you continue to work for Mr McDonnell or did you stop working for him?

A I was his legislative aide that session in the 2000 General Assembly session right down the street And then he only had one position that was already taken, so after that session, I went to work for Victory 2000, which was the Presidential campaign, the Senate campaign and the local Congressional campaigns down in Hampton Roads

Q All right Did there come a time when you resumed working directly with Mr McDonnell?

A Yes After I went to Capitol Hill I moved back to Lynchburg where I went to college, and in 2002 I contacted him and said -- we still stayed in touch fairly closely throughout that period of time -- but in 2002 I called him and said, "Hey, if you ever decide that you want to run for statewide office," which would have been Attorney General, "let me know I'd love to help you however I can."

Q Did there come a time when he took you up on that offer?

A He did I started doing all of his political work along with Phil Cox at that point, and over the next two years, just laid the groundwork for his run for Attorney General and ended up being his Campaign Manager in 2005 for his race for Attorney General

Q Campaign for Attorney General?

A Campaign for Attorney General

Q That was what year?

A 2005

Q When was the election?

A November of 2005

Q And was he successful in that election?

A Barely

Q What was the spread?

A It is a win 360 votes after a very tense recount

Q All right And after he was elected Attorney General, did you continue to work for him or did you stop?

A I continued to work for him. I went into the Office of the Attorney General I was the Director of Administration, the sort of Chief of Staff role on the non-legal side

Q And Chief of Staff role in that position, what does that mean? What were the, in summary, what were the duties of the Chief of Staff?

A Essentially anything that wasn't a lawyer function in the Office of the Attorney General So the Information Technology, Budget, Human Resources Also, the political role I managed the press, helped to manage the press operation at that point Anything that didn't fall under the legal work was my responsibility

Q And you did not have a legal degree, correct?

A No

Q And in going forward from that time when you were the Chief of Staff for him, non-legal Chief of Staff for him in the Attorney General's Office, going forward, did you continue to work for Mr McDonnell when he ran for Governor?

A I did. When when he was Attorney General I stayed in the office for about 18 months I was going through a divorce, I got mono for what would have been the second time

Q That's enough sharing about that.

A So I stopped working for six months, and then went back to work for him as a consultant in 2008 doing fundraising And then during the 2009 campaign I was his Director of Operations, which was sort of a similar role in the Attorney General's Office on the campaign

Q Was there a difference between Director of Operations on a campaign versus being Chief of Staff for someone who was in office?

A Yes There was a huge difference But it was a similar role I don't know if that's unclear But I was in the campaign -- wasn't the campaign manager, so I didn't call the shots as much on the campaign as I did in the Attorney General's Office Phil Cox did mostly that But I was part of the senior staff on the campaign.

Q What were your specific duties on the campaign in terms of the difference between your role in the campaign versus your role when my client was Attorney General?

A I was sort of a jack of all trades on the campaign, a pinch hitter, whatever needed to happen. I dealt a lot with the First Lady on the campaign. I would help with debate preparation. I got the office set up, a lot of the logistics, office space, phones, computers, technology, all of that kind of stuff on the campaign, and then once that was sort of set up I moved on to other things

Q Okay

Q And during the campaign, can you give us an idea of, you know, of what your time commitments were?

A Well, campaigns are pretty brutal So it -- it was a very intense time Campaigns you can work similar to the Governor's Office; 12, 14, 16, even 18 hours a day You're up early You're out late

Q Okay And what was -- what was the level of personal interaction or personal contact, whether it be face-to-face or by phone or by text or by e-mail, with Mr McDonnell when he was running for the governorship?

A When he was running for Governor, I would say it was multiple times a day We would either see each other or talk to each other or e-mail each other or text each other We had -- you just -- you have to be constantly communicating with someone during a campaign So --

Q Did you travel with him?

A Occasionally, yes

Q All right Now, when he became Governor, did you continue to work for him?

A I did I became Secretary of the Commonwealth in -- I was sworn in in January of 2010

Q Was that a Cabinet position?

A It is

Q And what -- what is the Secretary of the Commonwealth, or what are the duties of the Secretary of

the Commonwealth? Would you please tell the folks what
that means?

A Sure The Secretary of Commonwealth's chief responsibilities are finding volunteer folks to serve in Board and Commission appointments across the Commonwealth So there are 4,000 Board and Commission appointments Everything from the Board of Nursing to the Virginia Tech Board of Visitors All the public universities have Boards of Visitors

I also oversaw the Governor's reforms on the Restoration of Rights issue for nonviolent felons I managed the Conflict of Interest, the Constituent Services, Notary, Authentications And my office was also the office that accepted Statements of Economic Interest on behalf of the Commonwealth for many state officials.

Q Where was your office, the Secretary's Office, physically located?

A The Governor's Office is on the third floor My office is on the fourth floor in the Patrick Henry Building

Q And how far away is that from the Mansion?

A The Patrick Henry Building?

Q Yes

A Oh, gosh I'm terrible with distances Really close I can see it a stone's throw Two hundred feet?

Q Okay Now --

A That's a guess

Q While you were Secretary of the Commonwealth, would you tell us about your day-to-day contact, if it was day to day, with the Governor?

A Sometimes it was day to day The Board and Commission cycle runs on annual deadlines So all of the Board and Commission appointments were up a thousand -- about a thousand every year on June the 30th So from April to June, I would see him a lot because we had a lot of work to do Other times of the year, depending on the topic, obviously, we would interact and I would see him Definitely saw him more compact during those times of the year.

And I would just say that the interactions that we had, once he was Governor, were much more professional There wasn't a whole lot of time for chatting and that kind of thing So -- it was more professional interaction than personal interaction at that point

Q All right. When he traveled as Governor, would you travel with him or was that --

A Sure.

Q Okay Would that be frequent or infrequent or somewhere in between?

A Well, I was a single mom for half the time I was there So I tried to be good about that, and I -- I don't know Maybe an average of once a month

Q All right

A More often at some points, but about an average of once a month

Q Were you personally knowledgeable about my client's day-to-day activities or day-to-day schedule when he was Governor?

A Yes I handled his schedule and been part of his schedule since 1999, with the few exceptions of when I wasn't working for him So I stayed active in that process

Q When you say being part of his schedule, would you tell us what you mean?

A Sure There was a scheduling team that would have meetings There was a Chief Scheduler, and she controlled the calendar, his calendar, at least --

Q Who was that? Can you tell us her name? I'm sorry

A Sure Monica Block started And then Katherine Harris, and then Emily Rabbitt Those were the three schedulers throughout the duration

Q Please I'm sorry for interrupting. Will you please continue

A That's okay I don't remember where I was.

Q You were telling us about the scheduling process

A Oh, okay So the scheduling process is that the scheduler would be the incoming recipient of all the thousands and thousands of invitations that the Governor would get across the course of the week or month, and she would enter them into a spreadsheet It was really her role to sort of separate the reasonable events from the unreasonable events, the ones that he would attend versus the ones that we could ask someone else to attend on his behalf

So they would compile a spreadsheet, bring it to scheduling meetings We would discuss which ones would be good events for him to attend, you know, if they were close, far away All the decision-making processes that you would assume would go into that process

And then the scheduler would take those back, run most of them by the Governor, make sure that he was comfortable with everything that we recommended And then she would put everything on the calendar She would put things on the calendar Sometimes she just put things on the calendar She didn't run them by him I would say it's more rare for her to run them by him

Q Okay So during this time frame -- I guess we're up to, what, 2009 or '10?

A '10

Q 2010, basically You know, based on the level of contact that you've had with the Governor that you've described here, did you feel that you knew him well?

A Sure Absolutely

Q How about his family?

A Yes

Q All of them or some of them or --

A I know the First Lady well I know Jeanine really well And probably as it goes down in age, less well With the boys in college, we didn't hang out much

Q Who is Jeanine?

A Jeanine is the Governor and First Lady's oldest daughter

Q All right And do you know the middle two girls as well, the middle two women?

A Yes

Q And the younger men?

A Yes

Q All right And you said you knew Ms McDonnell too; is that correct?

A Absolutely

Q And did you have interaction with her during the campaign itself?

A I did

Q And thereafter, did you have interaction with her when you were Secretary of the Commonwealth?

A I did When I became Secretary of the Commonwealth, it was a little bit of a strained time in our relationship I've always --

Q Whose relationship are you referring to?

A My relationship with the First Lady The campaign was sort of the first time that I saw, on a frequent basis, some of the challenging behavior that I'm sure the jury has already heard about And it was very hard for me. I'm personally very fond of Maureen And it was very hard for me to -- to work with her on a day-to-day basis, and it really affected our relationship, our personal relationship

And by the time the Governor offered me the Secretary of the Commonwealth job, which he was in a position of offering it to me, I just said, "Listen My relationship with the First Lady has deteriorated past the point of common sense at this point " And so I asked him, in order to make sure that I was doing my job well in the Secretary of Commonwealth's Office, that I not be the main contact with her and for her in the Governor's Office

Q Okay We'll come back to that in a minute Let me ask you this question You knew -- you know the terms -- what was the term of the governorship, in years?

A Four years

Q All right And that -- it's a one-term job Is that it?

A It is

Q And did that fact that it was a one-term job for four years, did that have any impact on the day-to-day activities of Mr McDonnell's governorship?

A Yes A lot He would start counting down the days as soon as he got in We all --

Q Counting down the days until what?

A Until the end of his term Which created this probably borderline unhealthy anxiety of all of us because we knew that we only had four years to get everything accomplished And there was this sense of urgency that wouldn't have existed otherwise if there had been a two-term Governor But the second you're sworn in, the next campaign for Governor starts So -- it's just how it is in Virginia, and it definitely affected his work ethic

Q You mean the campaign for someone else?

A Yes Exactly You can't run again

Q All right With respect to the -- to the countdown to the end of the four years, essentially, were there -- in broad terms, can you tell us, what the priorities were of Governor McDonnell's administration?

A He had a lot of things that he wanted to accomplish, but the number one thing, without question, that we talked about on the campaign and that drove everything that we did in the Governor's Office was Bob's For Jobs There were lots of things that he wanted to do He was not the kind of Governor that, you know, when he won, you had to sit with him and he goes, "Okay Well, let's talk about what it is that you want to do " He already knew going in He had been in the legislature for 20 years and had notebooks and notebooks and notebooks prepared Policy wise, I think he had 80-odd bills his first session, which is enormously more than any other previous Governor

Q Would I be accurate in saying that the policies that he wanted to implement were also ones that were talked about during the campaign?

A Yes Bob's For Jobs was the slogan of the campaign We even had a bumper sticker And we didn't have bumper stickers in the Governor's Office because I don't know that that would have been appropriate, but that was absolutely the number one priority He got a weekly briefing every week that talked about the net number of jobs that had been created since the previous week to make sure that we were going in the right direction

You know, there's a dozen or more Cabinet positions Only one of them is the Secretary of Commerce, which is chiefly responsible for jobs But the Governor had a way of infiltrating that entire philosophy of Bob's For Jobs into every secretariat If it was education, it was workforce development "Let's talk about how to make sure that our college graduates are prepared coming out to the workforce " If it was healthcare, it was, "Let's make sure that our quality of care is good and that, you know, any biotech discoveries are turned into economic development opportunities " If it was -- transportation was a big one "Let's make sure that people can get to and from work in a safe and quick way " That kind of thing It inflated, I'd say, more so than any other issue Absolutely infiltrated more so than any other issue

Q Let me ask you this You've talked about the Bob's For Jobs Were there any other slogans in the campaign that you were aware of?

A Not that I can remember

Q Okay Any other slogans that developed or any other sort of mottos or slogans that developed after he was elected about how to achieve the goal of Bob's For Jobs?

A There was one year that -- well, we did all kinds of things to promote Bob's For Jobs One year we had --

Q Well, let me be more precise

A Okay.

Q Anything about how the administration is supposed to go about achieving --

A Oh, sure Yes He -- well, the first thing would be the scheduling process Those kinds of events got priority in the Governor's Office If it -- you know, if he had one event that he was invited to at the same time he was invited to another event and one was on, I don't know, opening a museum and one was on opening a business, he would go to the one that opened a business That's a good explanation So he would prioritize them scheduling wise He would do a ton of events, ribbon cuttings, tour plant facility openings

One year the Secretary of Commerce's Office had a Year of the Entrepreneur, where they highlighted different entrepreneurs every week or month Things like that We were very creative. And we had a -- a business contest in the office to bring in college students who were business majors to talk through and judge them on their good ideas and things like that

Q Okay I think that's enough in the way of examples, basically The -- when you were in the Cabinet position that you've described, was that personally a stressful job for you?

A Yes. Any job in the Governor's Office is going to be stressful Any job in the Governor's Office is going to be stressful

Q Long hours in that job?

A My -- one of the reasons that I took that job is so I could maintain some semblance of a work/life balance, again, since I was a single mom I was probably the only person who -- because I knew what it was like working for the Governor, that was -- I was probably the person that was most insistent about maintaining that balance Which is virtually impossible, and I still probably didn't do a great job at it Everyone -- with the exception of me, everyone else in the Governor's Office worked 12, 14, 16-hour days, repeatedly, all the time In session, it was even worse

Q Did you have a cell phone, a cell phone or multiple cell phones?

A Yes I had a personal phone and a BlackBerry from --

Q And --

A Two laptops.

Q And did you take those home with you at night?

A Most of the time

Q Would you be -- even though you were trying to maintain this work/life balance, would you get interrupted at home by the Governor?

A Yes

Q More frequently than you wanted?

A Sometimes The only time I remember being especially bothered by it was when I was in the middle of bath time, and I was worried I would drop my phone in the tub But other than that, it was okay

Q Okay Among the Governor and his staff, basically --

A My daughter's bath Just for clarification

Q Among the Governor's staff, who worked the hardest?

A Oh, the Governor By far

Q How did -- you know, from your perspective, both with respect to you and, to your knowledge, of others, how did Mr McDonnell treat his staff? What was he like to work for as a boss?

A He was extraordinarily gracious, very understanding of those bath time moments in life where you didn't -- or couldn't work. He would always, even though I know he was busy, he would always ask how we were doing, ask about our day, our significant others, whatever He -- so that's on a personal level

On a professional level, he was very driven He was very clear in what he wanted us to do I think he did a good job and a much better job as Governor of delegating those responsibilities out His legislature reputation -- legislative reputation was that he was a micromanager I think once he became Governor, he just knew that that wasn't possible So it was good for us to be able to do things on our own

He was very goal driven, results oriented He came in with a campaign promise matrix with over a hundred, almost 200 campaign promises and would have us look at that periodically just to make sure that we were doing what he said he would do as a candidate It could also be frustrating to work for him

Q Why?

A He was not great at setting priorities So you would have a meeting -- you know, we knew Bob's For Jobs was a priority So that's a given But he also had another thousand things that he wanted to do as Governor And so you would have a meeting with him You'd come out with a to-do list of 25 things And you would say, "Well, which one should I" -- "where should I start? Which ones do you want done first?" And he would just say, "All of them "

Q Okay I think, if I understand your testimony, you've described him as being, you know, gracious personally and direct with respect to job responsibilities?

A Yes He -- I mean --

Q That's a yes or no

A Yes

Q Okay And with respect to being direct on people's job responsibilities, I believe you said something, he made it clear what he wanted done; is that right?

A He did Can I just -- I just have something else to add. I don't feel like I was -- I don't feel like I told the whole truth on that last answer

Q Tell us the whole truth

A Okay He -- I would just say he's -- obviously, I haven't had a lot of other bosses besides him So you'll have to ask the other witnesses when they come forth, but based on conversations and, you know, my own experience personal experience, I would say that he was definitely -- despite -- it was a good tough on us, and we -- I loved working for him And it was -- it was an honor

I mean, there wasn't ever a time when he made me feel uncomfortable There was never a time when I questioned his motives I -- there was never a time when I was like, you know, "I can't believe he got elected " I mean, it was just -- he earned that job He deserved that job, and he did a great job So working on that team was, you know, the honor of a lifetime Besides my personal accomplishments, professional accomplishments, honor of a lifetime Okay. Thank you

Q Let me ask you specifically about the issue of if the Governor had a priority and was talking to you or others in your presence about implementing it, so, you know, something within your purview, and he wanted it to be implemented and he asked you to do it, what would happen if you didn't accomplish what he asked, or did that ever happen?

A No It happened to me He was very -- he was -- let me make -- can you repeat the question?

Q Yeah What I'm asking you about, if he made his priorities, he made his -- what he expected to be done clear to you, and I'm asking you if you didn't do what he asked you to do, then what was his response?

A Sure

MS ABER: Objection, Your Honor Could we approach on the scope of character evidence at this point, please

THE COURT: I don't see this as character evidence

MR DRY: I believe --

THE COURT: You all can come on up, but --

MS ABER: Thank you, Your Honor

(At Bench)

MR DRY: They have identified her as a -- both as a fact and character witness to us, and now they are about to elicit a bunch of specific act evidence about how nice he was or whatever, which is not relevant and has nothing to do with this case

THE COURT: This particular question, in my estimation, has to do with how he directed the people who worked for him and what he would -- how he would behave if what he wanted them to do was not done

I gave you the freedom to put on your case He -- he behaved in particular kinds of ways in terms of how the message got over to the folks that he wanted things done So he's got the right to bring that up

MR DRY: Your Honor, on the communication point, that's fine What we don't want to do is get into a wholesale, "Hey, on this instance did somebody offer him something, and you saw him refuse," because that's all --

THE COURT: We're not there yet

MR DRY: Okay

THE COURT: Obviously -- well, Mr Asbill, knows how to put on character evidence, and I will restrict that

MR ASBILL: We'll get to that at the end of my examination specifically I'm looking at in terms of directives and action

THE COURT: And I think you're just fine with it

MR DRY: Thank you, Your Honor

(In Open Court)

BY MR ASBILL:

Q Ms. Kelly, I want to go back See if I can remember my own question When Mr McDonnell wanted something done, he wanted one of his goals or whatever implemented, and he asked you or asked somebody in your presence to do that, if they did not achieve whatever it was that he was asking about, what was his -- if any, what was his subsequent response? Just in general I'm not talking about specific examples I'm just talking about in general about that

A He had high expectations of us So when he told us to do something, he expected that it would be done If it rose to a level of importance -- well, you told me not to give examples

If it rose to a high level of priority, like jobs, then if people weren't performing, he would be upset And his version of upset is sort of that fatherly, "I'm really disappointed that he didn't do this What is it that you need help with? How can" -- "can we get you help to do it?" It wasn't like a badgering But he expected it to be done If it wasn't done, he -- he -- I don't want to use the word impatient I'm trying to come up with a precise word But he didn't have much tolerance for people who didn't get results is probably the best way to say it

Q And with respect to the intolerance that you described, would that be expressed in an angry way --

A No.

Q -- or yelling or screaming or --

A Never

Q -- red writing or all capitals on e-mails?

A Now, he does love some red pens But no, not even then. That was more for corrections

Q He didn't write loud?

A No Not to me, at least

Q All right So you've described that he would try to work with folks to help them if they weren't performing, essentially --

A Yes

Q -- correct?

Now, with respect to -- we've talked a little bit about the -- about dealing with you and dealing with the staff as you know it Did he deal differently with members of the public?

A I mean, they didn't work for him So he was -- I don't know how to answer that He -- generally, no He's the same person all the time I think he was probably a little bit more gracious and more -- what you would expect a Governor to act like to a normal average citizen?

Q All right You've talked about the -- him not being able, once he became Governor, he wasn't able to micromanage as much as when he was Attorney General; is that correct?

A Right

Q And in general, is that just because of the

difference in the scope of the jobs?
A Absolutely
Q All right Now, did Mr McDonnell, when he was Governor, to your knowledge, have any other responsibilities aside from being the Governor of the Commonwealth?
A Yes He -- he had responsibilities He wore a lot of different hats He has -- obviously, he has a wife. He has five children So he wore the dad hat He wore a brother hat He wore a friend hat

He also was on the Republican Governor's Association Executive Committee, which is basically a part-time job, or could be up to a part-time job at some points in the year
Q Let me stop you right there with that particular job
A Sorry
Q You said he was on the Executive Committee?
A He was on the Executive Committee, I think, before -- you have to serve on the Executive Committee, and then in 2012, he became Chair
Q What are the general duties of somebody on the Executive Committee of the RGA, if you know?
A I'm not sure that I can really speak with much authority on that
Q Okay How much time, in your estimation or from your

observations, did that require? What percentage? Do you have any sense of that at all --

A I don't.

Q -- of his time --

A Not on the Executive Committee I know as Chairman, it was significant I mean, it was essentially another -- again, another part-time job In some weeks, it was even more

Q When did he become Chair?

A 2012

Q Okay In the beginning of 2012 or at the end or where?

A I think they're elected in November of 2011 for the following year But that's a guess

Q All right And do you know whether or not that particular job or part-time job required travel?

A Oh, yes Your chief responsibilities when you're on the Executive Committee, in general, I won't -- is making sure that other Republican Governors across the country get elected. And there are 25-ish other Republican Governors So that would tell you a little bit about what the duties are

Q Okay You've talked about the dad hat, the brother hat Where was he -- how about many siblings does he have? Do you know?

A There are five children total So he has four siblings

Q And where does he rank, in terms of age, oldest to youngest?

A I think he's the oldest I can't believe I don't know that, but he's the oldest He also -- his dad passed away during his term And I know he was the Executor of his estate, and that took a lot of time as well

Q All right Did he have any responsibilities, to your knowledge, with your Virginia GOP?

A Oh, yes When you're the Governor, you're the functional head of the Republican Party And they have a Chairman and they have an Executive Director, but you are the figurehead, if you will

Q Is it just a figurehead position, or does it require real work?

A Oh, no It requires real work

Q Like what?

A Traveling to events, getting people elected, going to see, you know, Republican women's clubs Things like that.

Q Okay. With respect to Mr -- you know when Mr Romney was running for president; is that correct?

A Yes 2012

Q Did my client have any responsibilities in connection with that?

A Yes He was the Chair of Romney's campaign in Virginia

Q And was that a figurehead position or more than that?

A No No, it was not That was realtime

Q Okay Okay Do you know or do you have a rough estimate, I won't hold you to an exact figure, of how many employees there are who work for the Commonwealth?

A About 100,000

Q Do you have any idea what the annual budget is?

A Somewhere about -- around 90 billion every two years

Q And would I be accurate in saying that basically the Governor's job is to be CEO of the Commonwealth?

A Yes That's an accurate description

Q Now, in terms of the concept of business promotion, can you tell us, to your knowledge, about were there any differences basically between existing Virginia businesses and businesses that are not now in Virginia but were not then in Virginia, but may want to come to Virginia?

A Was there a difference?

Q Was there a difference in terms of trying to promote the Bob's For Jobs idea with respect to presently in-state businesses versus out of state or foreign companies?

A Well, there were differences in approaches, obviously, just logistically because of geography But I think the general consensus was, you know, retaining the companies that we have is just as important as drawing new companies in So there was an active and aggressive approach on both

Q Okay. Now, was it generally difficult for a Virginia company or a company that might be interested in coming to Virginia to get a kind word from Governor McDonnell?

A No, not at all I mean, Hilton moved here Northrop Grumman moved here I mean, that was part of his job Absolutely

Q Were there any areas of the state that were economically depressed that were a focus of the Bob's For Jobs idea?

A Yes Specifically, the southside/Martinsville area. It had an unemployment rate in the 20s during the campaign And so the Governor promised that either he or the Lieutenant Governor, who, actually, for the first time, he had named Chief Job Creation Officer, that either one of the two of them would visit the Martinsville/southside area once a month during his term.

Q And Martinsville/southside area, were there any particular problems economically with that area?

A Yeah The manufacturing, because of some of the Free Trade Agreements, I mean, we had seen a ton of jobs go overseas It was really economically depressed, obviously the tobacco industry is not what it used to be either So -- which was a chief source of jobs So basically, everything, except for healthcare, that was a chief source of jobs in that area had dissipated for one reason or another

Q And did that include textiles?

A Yes Manufacturing, textile, furniture All those kinds of things

Q Tobacco?

A Tobacco

Q And what was the problem with tobacco, in terms of economics?

A People thought it was bad for you

Q Okay And so as a result, did tobacco production go down?

A Yes

Q All right Did that have any impact on jobs in that region?

A Oh, of course Yeah I mean, when an entire industry is ruled to be unsafe and unhealthy, it tends to have an economic effect

Q Okay We've talked about your relationship with the Governor in terms of the job responsibilities, essentially Did you have any role in helping him select other staff?

A In the Attorney General's Office or at the Governor's Office?

Q No I'm talking about while he was Governor

A Yes. After he became Governor, was elected Governor in November of 2009, actually, even before the election, I had helped form a transition team, pre-transition team, that prepared him and prepared his team to put people in place And after the election, I was named Deputy Transition Director for Personnel, which meant I was in charge of helping him form the Cabinet, making recommendations for Cabinet positions, Deputy Cabinet positions There were 300 political appointees, about, in Virginia So I was in charge of that process and making recommendations to the Chief of Staff and to the Governor.

Q And that would be Martin Kent, the Chief of Staff?

A Yes And Transition Director was Phil Cox And then once Martin Kent was named, it was Martin Kent So one of the two of them, given the time frame on the transition

Q So you would make recommendations to both of them; is that correct?

A Yes

Q And, in general, I'm not talking about individual employees, but were there general qualities or characteristics in folks that you were looking for?

A Yes The -- the biggest thing that I remember from that point in time was that the Governor wanted the best and brightest I think he probably said it 50 times You know, it didn't matter how -- you know, how badly the person wanted the job, how badly they thought they needed the job or should get the job He wanted people that were the best and brightest I remember one Cabinet secretary, we interviewed over ten people for just one job

Q For one secretariat?

A For one secretariat

Q All right With respect to the folks that you all were you looking for, were you looking for yes, men or yes, women or were you looking for independent folks?

A No, definitely not

Q Definitely not which ones?

A Definitely not yes, men or women He wanted people who could think for themselves, who were definitely qualified He wanted people who had a temperament to serve, which meant, you know, they kind of played well in the sandbox with others And they had a good way about them and outgoing, that sort of personality type as well As well as people who were extremely driven, like he was, and results oriented, like he was

Q Is Dr Hazel an example of one person?

A He's probably the biggest example of independence on the Cabinet

Q All right Now, in -- in administering this sort of appointments process that you've described, were there donors or gift givers or friends who wanted appointments, and if so, would they contact you?

A Yes All of the above And yes, they would contact me or my office

Q And was the fact that they were a donor or a gift giver or a friend of some sort of the Governor or you make any big difference in the hiring process?

A No We just drove to put the best person in each slot Some Boards were really easy to fill Some were not But my job was regardless of what that situation was, to put the best person who was qualified, who had that, again, the same temperament, previous Board experience Those kinds of things

Q Did you ever have to disappoint folks who thought they were donors or gift givers or friends who wanted a job?

A A job or an appointment?

Q Yes

A Yes

Q Did Mr. McDonnell ever ask you to appoint or hire, in any position, anyone affiliated with Jonnie Williams or Star Scientific?

A No

Q To any Board or any position of any kind?

A No

Q Did he ever ask you to appoint anyone to any position that you didn't think was fully qualified for that position?

A No

Q Were you allowed to make a lot of independent decisions on these things or did you have to double-check with the Governor on every appointment or every hire?

A At the beginning, he was really involved, the first year And then as the administration went on, he trusted us to make more of the decisions because his time was just impossible to schedule

Q All right With respect to your recommendations, if you had recommendations for important positions, for example, for a Cabinet secretariat or a high-ranking position, essentially, were these things that you would discuss with my client?

A Yes

Q All right

A Yes

Q And were you all in sync most of the time or some of the time or what?

A Yes Definitely -- I'm trying to think if there was an exception But no Generally, no I can't think of an exception where I took someone to him and he was just appalled that he had wasted his time That never happened

Q Okay Getting back for a second to the issue of the scheduling for him while he was Governor "For him" I mean my client, obviously. Did he -- did he personally set that schedule on a general basis?

A No, not on a general basis He would -- I mean, if it were -- this is bad for staff But if it were up to us, we would have probably scheduled him 24/7 And so, you know, sometimes he would push back and just say, "This is too much I need to spend time with my kids this time and time " But most of the stuff that he would put on the calendar was family oriented, not professional necessarily

Q Okay So the staff would essentially try to set the schedule for him --

A Yes

Q -- is that fair?

All right How many people had access, how many -staffers had access to his schedule or his calendar?

A A dozen or so That's a guess

Q And generally speaking, you know, I don't know if you can name them all, but generally speaking, what were their positions, what were the positions of the people who had access to his calendar?

A The Chief of Staff, the Counselor to the Governor, the Deputy Chief of Staff, the Deputy Counselor, the Scheduler, the Travel Aide, the press team I did The First Lady's Office, the First Lady I'm sure I'm missing someone, but that's generally it

Q All right Would all the senior staff basically know about his schedule or be able to access it if they wanted to?

A Yes We could see it

Q How -- did they have to go and find some book somewhere and look at it or how would they have access to it?

A No We all had -- we used Microsoft Outlook So it was parallel to -- parallel is the right word -- parallel to our calendars on our screens

Q Okay Now, with respect to, did the Governor attend a lot of events when he was Governor?

A Yes.

Q All right And in -- in connection with the attending events, would there be some sort of a briefing book to basically advise the Governor what the event was about?

A Yes He -- he had a scheduling book, it was a briefing book, that he would have daily, or sometimes every couple days if he was traveling out of town And it had, you know, a general synopsis of the calendar And then it had tabs for each event And every event, ideally, had I guess a three or four-page -- it could be longer -- briefing form for that event that sort of told him what to expect, who was there, how many people were going to be there, if there was a podium or not, what the attire was, what the weather was supposed to be like that day All of that kind of information.

Q Logistical information about how to get there and back and that sort of thing as well?

A Not so much that, because EPU took care of that

Q Okay Now, the events, I mean, did the Governor typically arrange those events himself or were these ones that were arranged by others?

A No The majority of the events were arranged by us, staff

Q All right With respect to these events, these are some that he would attend or some that he would host or both?

A Sure

Q Okay With respect to hosting events, do you know whether or not he reviewed and edited invitations to those events?

A That would have been rare

Q Who would ordinarily be responsible for that?

A Monica Block She would sit down with him, along with a spreadsheet, and go through things with him But I don't -- I don't think that he went through invitation by invitation. Certainly not all of them

Q Okay. And did the Governor basically -- in terms of these briefing books that told him about events, how much, in advance of the actual event itself, would he typically have access to some sort of briefing about the event?

A Well, he, ideally, would get the book the night before So theoretically, he could have looked at it the night before It was much more customary for him to be in the car just, because I was traveling with him and he would say, you know, "Where are we going again? What am I doing again?" And, you know, we'd look through the book, and it was very last minute most of the time

Q Okay With respect to events, did you attend and participate in PAC events?

A Yes, sir.

Q Okay Other types of fundraisers as well?

A Oh, yes

Q Any other types of fundraisers?

A Like for nonprofits and things like that?

Q Yeah

A Yes

THE COURT: Okay Mr Asbill, we're going to take a break

MR ASBILL: Thank you, Your Honor

THE COURT: All right Fifteen minutes

(The jury left the courtroom)

(Recess taken from 11:38 a m. until 12:03 p m)

(The jury entered the courtroom)

THE COURT: All right Mr Asbill

BY MR ASBILL:

Q Good afternoon

A Good afternoon

Q I want to go back to one point that you touched on a little earlier I think -- correct me if I'm mistaken, but I think you said that with respect to your job as Secretary of the Commonwealth in the idea of appointments, that there were approximately a thousand of those that had to be made when my client became Governor or during the course of his governorship?

A A thousand a year

Q A thousand a year So 4,000 over the four years?

A Yes

Q So that's not including duplication, right?

A No I mean, it's -- it could be a little bit short of 4,000 or a little bit over 4,000, but it is about 4,000 Board and Commission appointments It's a big job

Q Okay Now, among those, and I'm certainly not going to get into detail, but was the Tobacco Commission one of the Boards to which my client could appoint someone?

A Yes, sir

Q How about the UVA Board?

A Yes, sir

Q How about the VCU Board?

A Yes, sir

Q How about the VCU Health Systems Authority?

A Yes

Q And how about were there any other related Boards of VCU or UVA, Education Boards of any kind?

A Well, there was the State Board of Education

Q Yes

A Yes The State Board of Education, which managed the K through 12 system And then SCHEV, which generally -- State Council of Higher Education in Virginia is SCHEV That is responsible for higher ed colleges and universities. Every public college and university in Virginia has their own Board of Visitors

Q All right Any other health related sorts of Boards or Commissions that you all made appointments to?

A Oh, yes There are dozens of Health Boards

Q All right

A And they are divided by secretariat

Q Okay Now, we talked, as we broke for the last few minutes, we talked a little bit about PAC events and going to PAC events Do you recall a PAC event in December of 2009 in New York City?

A I was not there

Q Do you know about that event?

A Yes

Q All right And if I represent to you that Mr Williams has testified that he had to pay thousands of dollars in clothing for Ms McDonnell in order to be able to get a seat next to the Governor at that event, are you aware of that testimony from --

MS ABER: Objection First of all, that's --

THE COURT: Sustained

BY MR ASBILL:

Q Let me ask you this Was it generally difficult to get a seat next to Mr McDonnell at a PAC event?

A It wasn't difficult, no But that's typically the worst seat in the house because he doesn't sit down at events, typically He's moving around He won't -- generally, didn't even eat at his seat We would pack up a to-go box for him So that's not the seat in the house that you want if you're going to get a good seat to be able to talk to him

Q Okay With respect to the idea about -- or do you have any knowledge, personal knowledge of Mr McDonnell calling folks on their birthday?

A Yeah.

Q And what's your knowledge of that?

A In the Attorney General's Office, he called every single staff person on their birthday, with probably a few exceptions But that was his general rule

Even in the Governor's Office, he would call staff friends on his calendar It's -- there's -- just about every day has someone's birthday on it to remind him He called my uncle on his 60th birthday Things like that

Q All right Do you know whether or not the Governor ever called folks who were not staffers or related to staffers on their birthdays?

A Well, my uncle didn't work in state government. So that would be an example Friends, family members. Yes

Q All right Was that something that cost money in order to get to the government to do -- excuse me -- to get the Governor to do that?

A No.

Q In terms of the concept of meetings, did the Governor refer people to others within the government for meetings, the staff?

A Yes The Governor would, and his scheduler would, and scheduling team would as well

Q Do you have any idea of the sort of rough number of meeting referrals that Mr McDonnell made while he was Governor?

A I would guess it's in the thousands, just based on the number of requests that we got

Q With respect to that concept, the number of requests, how did that come about? How would the Governor generally get requests for meetings?

A The -- the person who wanted an event would e-mail the scheduler or a scheduling address, generic scheduling address That was how scheduling requests came in

Q I'm talking about not events per se, but meetings with somebody --

A Oh

Q -- in other words, a meeting with a Cabinet secretary or one of his Deputies or things of that nature?

A It would come in different ways They could e-mail They could contact the scheduler The Governor could run into them at an event Another Cabinet secretary could run into them at an event. It just depends on -- it depended on the event.

Q And were there reasons why the Governor would refer those to someone else as opposed to taking the meetings himself?

A Yeah. There could be a variety of reasons He just knows that his schedule is busy and he may not have time He may want the person, depending on the topic area, to meet with the expert on that topic in any given field And sometimes he just didn't necessarily think it was a good use of his time, didn't want to do it, and so he would ask someone else

I mean, the general rule in scheduling was unless the Governor has to do it, let's get someone else to, just because his time was so -- his schedule was just impossible to manage some days

Q When you were out with the Governor at various events or traveling with the Governor, would you -- did you experience or see people trying to get meetings, would come up and ask him if they could meet with somebody in state government or meet with him?

A Yes

Q And would he make an individual decision or would he say yes or no on the spot, or was there any sort of reflexive response?

A More often than not, he would say yes And we had to keep him from giving out his cell phone number as well So he was really inclusive in that way

But most of the time, if someone would asked for an event or for a meeting, he would say, "Yes Call my office Here's Monica's card " Actually, I think he had

Monica's information on his business card that he would give out So he would say, "Call Monica, and we'll have someone meet with you or I'll meet with you," or whatever

Q If he got a card from somebody, do you know what he did with those cards?

A Yes Going back to 1999, when I first started working for him, he would use business cards as a constituent response tool He would take notes on the back of them And, I mean, some days he would come back with, you know, a two-inch stack of cards At least he did on the campaign And he would write notes on the back of them Adam would make sure that they got farmed out to the appropriate staff person, depending on what the request was You know, it could be anything from they want a proclamation for foster care month, or it could be something benign It could be something more important like a meeting, like to talk to a Cabinet secretary Something like that

Q All right When Mr McDonnell referred a meeting to someone on his staff, do you know whether or not he had any general expectation about how the person he referred it to was supposed to conduct the meeting?

MS ABER: Objection

THE COURT: Sustained

BY MR. ASBILL:

Q In the administration, as between the Governor and the staff, whose job was it to say no to someone about a meeting?

A Well, in politics, there's just a general rule that the boss gets to give good news and the staff gives the bad news That was certainly my case in the Secretary of the Commonwealth's Office, because I still have people that are upset with me for not getting what they wanted So generally, if we could say no, we said no We were always supposed to do it in a polite way

Q Okay And was that an independent decision that you were entitled or authorized to execute?

A The vast majority of the time, yes

Q All right The concept of e-mails or documents coming from the Governor that he had taken a look at that said, some notes, see him on it, what did that mean?

A That's another McDonnell-ism that he developed over the news "See me " Whenever I saw that, I took it to mean to talk to him about it if I had time But 99 percent the time, I would just handle it however I saw fit without ever talking to him because there was never time

Q Did he also use other notes like "FYI" or whatever?

A Uh-huh

Q Or "Take Action"?

A Most the time -- yeah, take action Or he would just write the direction right on the sheet But most of the time it just -- you could figure out what to do based on the letter itself

Q Okay The letter itself, coupled with whatever note there might be on it?

A Right

Q Okay We've talked a little bit about donors and your dealings with donors Are you aware of whether or not Mr McDonnell had an operative philosophy about dealing with donors, both when he was AG and running for Governor and as Governor?

MS ABER: Objection

THE COURT: She can answer that Overruled

A The overriding philosophy that I saw, and it's because he told me -- there was one night we were traveling back late, and it was more -- we had, obviously, a mentor/mentee relationship And I would ask him all kinds of advice, and I would just say, you know --

MS ABER: Your Honor, I object only in the hearsay

THE COURT: Sustained It's -- she can, because of her relationship with him, express the philosophy that she understands But to talk about what he told her is objectionable So --

A Okay I --

BY MR ASBILL:

Q I hope I ask this right What was the philosophy, if you know it?

A Sure The philosophy was that if you can't take someone's money and vote against their bill the next day, then you shouldn't be in politics

Q Did you ever witness Mr McDonnell, in dealing with any donor in any way, did you ever witness at all him making anything that you thought was an improper commitment to any donor?

A No, sir

MS ABER: Objection

THE COURT: Overruled

BY MR ASBILL:

Q Let me talk to you about the concept of the Statements of Economic Interest I believe you said that you had some responsibility for that within your secretariat?

A Yes My secretariat is basically a clearinghouse for the forms We accept them and file it

Q Is this for all of state government or some limited part or what?

A It's not for all of state government I would say for most of the state government?

Q All right And then did you have --

A In the Governor's Office, it's all of the Governor's Office

Q All right So you would have -- you would have access to it or they would go to you? I'm not sure if I understand what you're saying

A There was a staff person whose job it was to collect the forms, and whenever people would turn their forms in, they make sure that it got to that staff person

Q Okay And so you're familiar with the SOEI forms, I take it?

A Yes

Q And you're familiar with the language on the forms?

A It's a long form, but yes

Q All right And the instructions on the forms?

A Yes

Q All right And have you, yourself, filled out those forms?

A I have

Q And as someone who had the responsibility for -- do you have the responsibility for administering and monitoring those forms at least with respect to the Governor's staff and perhaps broader?

A Yes We monitored them for completion, not accuracy

Q Okay That was up to the individual filer?

A Yes

Q All right And did you ever participate in advising -- or let me ask you this From your perspective, from filling out the forms and from the work that you've described, were there definitional issues or difficult issues in terms of interpreting the instructions on the form?

MS ABER: Objection

THE COURT: Overruled

A Yes Some of the language isn't clear I mean, I know I've had personal trouble and had to go to our counselors, our attorneys, in the office and ask them questions about exactly what does this mean, what does that mean There aren't many definitions in the code to accompany the form so it can be vague I found -- I find the form to be vague in some places and, therefore, confusing and creates a lot of questions sometimes

BY MR ASBILL:

Q Did you ever personally give any advice to Mr. McDonnell with respect to any issues on those forms?

A Most of the time I went through staff So indirectly, indirectly, yes

Q When you say "through staff," who would that be?

A His attorneys, counselors in the Governor's Office.

Q By name?

A Oh Mike Conrad, Jasen Eige

Q Okay. Do you recall Matt Conrad asking you at one point for your definition of a personal friend?

A He did

MS ABER: Objection Hearsay

THE COURT: Overruled

A He did. He asked me what my definition of a personal friend was. And I had worked on the Hill for a year, and I really appreciated the federal system because it was much more black and white than the Virginia system You can't -- if you're a registered lobbyist, you can't give a personal friend that you've known for years and years and years a wedding gift without going through a private Commission, Ethical Commission on how to --

Q You can't give a personal friend or you can't give a public official?

A Well, if the public official is a personal friend

Q Right Okay

A Sorry. So if you have been friends with someone for 20 years, but they're a public official and you're a lobbyist, you have to go through and get permission from a Commission in order to give that person a gift The federal system is very black and white The Virginia system is not It's more gray

Q Okay With respect to some of the issues in this case, you are aware, I take it, that loans and gifts from Jonnie Williams are a general topic of this case?

A Yes

Q All right Were you aware of any loans or gifts relating to Mr Williams or his company that Mr McDonnell disclosed on his SOEI forms?

A Yes It -- I, at least one year, if not more, would do an analysis of what previous Governors had gotten And so, yes And I would review the Governor's forms So yes, I'm familiar with those gifts

Q All right With respect to this issue about dealing with SOEIs and your indirect consulting, did you ever have any direct consulting with the Governor about his forms or just indirect through Matt Conrad or Jasen Eige, as you've described?

A I don't remember any direct consulting with the Governor about his forms

Q Okay You know, in general, on any issue with respect to the Governor and doing your job basically, had he ever refused to talk with you about anything?

A No Not until the investigation was made public, and he was advised by attorneys not to do so

Q Okay Are you aware -- obviously, I know you don't work in the Mansion. But were you aware of, you know, the EPU protecting the Governor?

A Yes

Q Is that the protection service protecting the Governor?

A Yes

Q And to your knowledge, would they be with him all the time or some of the time or what?

A They were with him all the time, especially when he travels Their office is about 30 feet from his And then they have an office in the Mansion as well

Q You say 30 feet from him You mean in the Patrick Henry Building?

A Yes In the Patrick Henry Building, they had an office about 30 feet, 20 to 30 feet from his office And then in the Mansion, they had an office as well

Q In the Mansion in the office, do you know whether that was staffed just during working hours or --

A No It was 24/7 Cameras The whole bit

Q Okay Do you know anything about P O Boxes, post office boxes, and if so, whether or not the Governor had one?

A Yes. Part of my job as Secretary of the Commonwealth was to manage the constituent services component of the Governor's Office So anyone that sent a letter or an e-mail or a thought, a phone call, anything like that, was under my purview And at the very beginning of the administration, he had his personal mail sent to the Mansion, or possibly to the Patrick Henry Building But what that means, in either case, is that it gets screened and some sort of radiation, I believe, and, at the very least, opened and looked through for security purposes And, obviously, that would make me uncomfortable It made him uncomfortable

So he approached me and Pam Watts, his assistant, to figure out a solution, and we tried to have some other way to have that happen that -- where his mail, you know, bills, medical things, were getting opened And there just wasn't a way around that So he asked Pam Watts to open up a P.O. Box

Q Do you recall, in time, when that occurred?

A It was fairly early on in the administration, based on my recollection

Q Okay Why not just have mail sent home to, you know, the Governor's former residence?

A I think it's because it was about 30 minutes away, and he just wasn't there that often

Q All right You continued to work through -- you know, work for the Governor through the end of his term; is that correct?

A Sorry Yes, sir, I did

Q And that was, obviously, after the -- after stories broke in the press about the investigation?

A Yes, it was

Q All right Do you recall the last Cabinet meeting of his governorship?

A I do It was probably the -- one of the top five memories that I have from the Governor's Office, which is saying a lot because it was such an honor to work there

It's a little rare, in Virginia politics, for the entire Cabinet to stay together as long as we did We had one Cabinet secretary that left after about 18 months, but other than that, everyone stayed until the last six months of the administration I think we had one Cabinet secretary that left kicking and screaming because she got a judgeship, which you can't turn down One left to pursue an opportunity That meant that she had to prep for session So she couldn't stay until the end And then one left because her dream job opened up that fall as well But other than that, we all stayed together

And I know in my own case, I had job opportunities coming in starting in about spring of that year, of that last year And at the very beginning when I got a call, one of the calls, I didn't know what was going on in the investigation But after a few months, when I realized that people might think that I would leave If I left, it would reflect negatively on him and people might think, "Well, I think he did something wrong," or whatever I decided to stay until the very end I wanted to stay I didn't want to leave

But even if that job offer --

MS ABER: Objection, Your Honor, to the narrative

THE COURT: Sustained

A Sorry

THE COURT: The question related to the last meeting

A I apologize

BY MR ASBILL:

Q Let me try to specifically direct you with respect to the last meeting When was it, and where was it?

A It was the Governor's Office in the third floor of the Capitol

Q Okay And were all the Cabinet members assembled at that meeting?

A They were

Q How many is that total?

A About 15 to 20 people were there I think some assistants were there too

Q And, generally, what went on at that last meeting?

A The Governor thanked us all for our service He -- each of us got an opportunity to say thank you It was a really emotional meeting I saw grown men cry that I had never seen before and don't ever want to see cry again We all got an opportunity to just talk about how -- what an honor it was and how this was a very special team and we probably wouldn't ever work with another team like that again

Q Okay Let me go on to another topic Do you know Mary-Shea Sutherland?

A Yes

Q How is it that you know her?

A I knew her through politics before the Governor's Office, and then I was part of the committee that interviewed her and hired her to be the Mansion Chief of Staff

Q To be the Mansion Chief of Staff or --

A First Lady's Chief of Staff

Q -- First Lady's Chief of Staff?

You say "the committee " How many folks were part of that committee, and who were they?

A Me, the First Lady, Martin Kent, and then Betsy Beamer, who was a former Secretary of the Commonwealth who was helping advise us on some hiring issues.

Q And what sort of qualities or background or experience were you all looking for in terms of hiring someone for that position?

A I think we all thought it was really important that we have someone that had a lot of work experience On the campaign, there had been a lot of, you know, right-out-of-college folks, and I don't think that the First Lady had the respect, probably for good reason, just because they were green right out of college

And so we really wanted to get someone that had a lot of work experience that could manage a staff well Since Maureen didn't have management -- previous management experience, that had really good judgment, that would help the First Lady with whatever she needed, that would sort of help her navigate the landmines that are just inherent in that job

Q All right And when Ms Sutherland was hired, were you confident at that point that she had those requisite skills?

A I was

Q All right Let me move on to the First Lady I want to talk to you about her for a minute Are you -- do you know whether or not she's interested in nutraceuticals, and if so, how long that interest has maintained or when it started?

A The very -- one of the very first things I ever learned about Maureen that she was interest -- she sold vitamins on the side. That was in '99 And then certainly throughout my time of working for the Governor, she legitimately believes that nutraceuticals, vitamins are good I've actually bought vitamins from her before, and they really did work for me because I had some illness

And so she really believes that they work I think that she was always sort of on the cutting edge of trends of, you know, this could be the greatest thing since sliced bread kind of stuff, and -- some of it was a little dubious, but overall, I definitely think that she believed that they worked

Q All right During the campaign for Governor, you had contact with her on a fairly regular basis during that period of time?

A Yes, sir

Q Any difficulties in your relationship with her?

A Yes I touched on this a little bit earlier I think this answer needs some context, if that's okay

Q Please Tell us about your relationship with her

A Just stop me if I get too off topic

Most political wives stair step up to being First Lady You know, their husband is in Congress or -- it's -- it's not so quick of a jump

MS ABER: Objection, Your Honor I'm sensitive to context, but --

THE COURT: Sustained

BY MR ASBILL:

Q Tell us about --

THE COURT: You really just have to answer the question

THE WITNESS: Okay I'm trying

BY MR ASBILL:

Q If you had any difficulties in your relationship with her, please describe, in general terms, what those difficulties were

A Okay My difficulty in answering the question comes from the fact that I don't want to just pile on

Q Just please answer the question

A Okay

Q I understand If you need to take a second, take a second There's some Kleenex next to you there if you need it

A Okay Thanks I hope I don't need them

So difficulty on the campaign She was very difficult, very demanding, very diva-ish She was -- she didn't have a good grasp of what my job was So -- you know, I'm working a lot during the campaign, and so to call Maureen back, every time I would get a call, it would just be like, "Oh, how long is this? How big of a mountain out of a molehill is this problem," you know, that kind of thing And so it -- it really hurt our relationship It -- she didn't grow into that role easily at all, and it showed She didn't handle the stress well She would freak out at little things and just generally take it out on other people when she was upset

Q Are you talking about -- when you say "take it out" or "freak out," are you talking about anger issues?

A Yes, sir

Q Were they reciprocated by you?

A Oh, no No

Q What about in terms of communications with respect to the accuracy or the veracity of the communications between the two of you?

A She was the kind of person that when she told you something, you always kind of felt the need to verify it with someone else first if it didn't seem entirely right She would exaggerate and embellish Those kinds of things

Q All right Let me move on to when my client became Governor

A Okay

Q The issues that you've described between you and Ms McDonnell, did they improve, get worse, stay the same?

A Well, they improved the first few months because I had kind of made it clear to the Governor that I didn't think it was wise that I be her chief contact any longer And I was finding my sea legs She was finding her sea legs in the Mansion So it was great for a while And then -- wait What was the question again? I'm sorry

Q Well, I said did the relationship, essentially, or the issues that you've described, did they get worse? Did they get better? Did they stay the same?

A Well, okay They got better with me They didn't get better with others When we would have scheduling meetings, Mary-Shea would, you know, kind of frequently tell us, "Okay This is what happened this week, and it wasn't good And this is who got yelled at yesterday, and that wasn't good either " So --

Q Okay Let me ask you this question. You said -- you described, in general, the difficulties that you had during the campaign And in going forward, in taking the job as Secretary of the Commonwealth that you've described, did you ever have any conditions about whether or not you were willing to take that job?

A Yeah I mean, I -- I just told them flat out I couldn't do my --

Q I'm sorry You told who?

A The Governor. I told the Governor flat out, when he offered me the Secretary of the Commonwealth's job, that I couldn't work with Maureen.

Q And, obviously, you went forward How did that happen?

A Well, about six months in, after a scheduling meeting, Mary-Shea was talking to me and she was like, "Look I'm really worried about the First Lady This isn't normal behavior, and I'm concerned that" --

MS ABER: Objection, Your Honor, to hearsay

THE COURT: Sustained

A Okay

BY MR ASBILL:

Q What is it -- what is it that -- I mean, what were the factors that influenced you to go forward and continue to work for the Governor, including working with the First Lady?

A There were some concerns that she was suffering from an illness And then not long after that, I was having a conversation with the Governor He had had a rough night the night before He looked like it And she called in the middle of our meeting and was screaming at him because I didn't call her back the day before

And it dawned on me that she was yelling at him at night for things that had happened that day And I don't know why that hadn't dawned on me before, but it just hadn't So at that point, I just realized that he can't do his job as Governor if he's going home and getting yelled at because of things that are happening during the day

So I sort of reinserted myself into the situation to see what I could do to help and was sort of more of a mitigating factor at that point, and the staff would come to me when there was a problem more so than they did before

Q Why, if you're the Secretary of Commonwealth -- and you don't have an office in the Mansion, right?

A No

Q And then why, if you're the Secretary of the Commonwealth, would -- you're talking about Mansion staff or you're talking about Cabinet staff coming to you?

A Mansion staff

Q Why would Mansion staff come to you? You know, you're not in the same building, et cetera, and that's not your running of the Mansion Why would the Mansion staff come to you?

A Well, I was on senior staff So I think that's the first reason I think that I tried to be a good listener to them I think that the main reason was because all of us knew hat we had to come up with a good way to work through the issues that were going on And because of my long-standing relationship with the Governor and his family, they thought that I was a good person to do that, and I offered my help to do that

Q So without getting in the details of the conversations, would Mansion staff come to you fairly frequently about issues within the Mansion that related to the First Lady?

A Yes, sir

Q All right Do you know somebody by the name of Jim Burke?

A Yes

Q And who is he, and how do you know him?

A He's a management consultant with Virginia Commonwealth University He has a degree in some sort of health background, psychology, psychiatry, something like that And we had used him in the Attorney General's Office to do a management consultant seminar with our senior leadership team, and we -- the Governor -- I can't remember whose idea it was, one of our ideas, to bring him in to help with the First Lady's transition, excuse me, once Mary-Shea left As Mary-Shea was leaving, he was brought in to help the First Lady and the Mansion staff reorganize

Q This would be -- do you know when she left? Can you give us a time on that?

A When Mary-Shea left?

Q Yeah

A The fall of 2011.

Q Okay And did -- you said this was an idea Did Mr Burke, in fact, come in?

A Yes, sir. Along with a woman named Linda Pierce, the two of them

Q All right And these were management consultants from VCU; is that correct?

A Yes

Q And, in general, what was the idea? What were they trying to help with or trying to deal with?

A We wanted to create an environment where there was less instability, where there was less anger, where people who worked in the Mansion felt more able to do their jobs without being afraid of being criticized if they made a mistake We wanted to create a good structure so that the First Lady kind of had what she needed I don't know that we got it exactly right the first time so we were trying to correct course

Q Okay And was that -- was that effort successful or not?

A No, not exactly

Q What do you mean?

A Well, none of t' things really helped I do think that we were able to -- I do think that we structured the staff in such a way that was more helpful, but I don't --

I didn't see any of the other things really improving.

Q Do you know whether the Governor was in favor of bringing in Burke or he was opposed to it or what?

A Yes, he was in favor

Q Now, with respect to the Governor and his wife in terms of their relationship, publicly persona of the relationship, can you tell us what your observations were of that?

A Yes I think publicly they were very affectionate They didn't get to spend a whole lot of time together So they would hold hands and that sort of thing I was always curious as to why, because their -- the substance of their marriage, to me, didn't seem to back up that affection necessarily And I just sort of chalked it up to the McDonnells just being affectionate people I mean, they are very huggy They're very -- you know, if there's a two-seater couch, there's five of them on it So I just kind of chalked it up to that and him not wanting to hurt her feelings in public and maybe even a little aspirational, like --

MS ABER: Objection, Your Honor. Speculation

THE COURT: Sustained

A Okay I apologize

BY MR ASBILL:

Q Do you think he loved his wife?

A Sure

MS ABER: Objection

THE COURT: She can answer the question

A Sure I think he loved his wife

BY MR ASBILL:

Q This year, June, did you attend a birthday party, a joint birthday party for Mr and Ms McDonnell?

A I did

Q And where was that?

A At their house in Wyndham

Q And when was it?

A When? In June

Q When in June?

A I don't remember

Q And --

A Sorry

Q -- do you know how that -- or did you have any role in how that party came to come into existence or come to be planned?

A Well, the staff wanted to do a birthday party for him, and I was talking to some of the girls about it, his daughters about it And they just said, "I think we're going to end up doing a joint party for both of them, because they both turn 60 this year "

Q All right

A Other than that, I didn't have any role

Q And you say you attended that party Were you there most or all of the time?

A I was there at the beginning I left about halfway through

Q All right And while you were there, did you observe Mr and Ms McDonnell interact?

A No

Q Prior to June of this year, were you ever at the McDonnells' house for any reason?

A Sure

Q A social event of any kind?

A This year?

Q Yes, this year

A Yeah We went, my husband and I, and another couple and another one of our coworkers So five of us guests went over to their house for dinner

Q When was that?

A Maybe May Spring

Q Okay And during that dinner, can you tell us how, if at all, the Governor and his wife interacted?

A Not very much that night at all. She stayed inside most of the time. I just assumed she wasn't feeling well But they didn't interact much And the other couple kind of commented on why weren't they -- why wasn't she hanging out with us

Q Okay You've talked a little bit, I don't want to get into specific details, about the concept of yelling Did you ever hear the yelling between the two of them or whatever? Did you ever hear the Governor yell at Ms McDonnell at any time ever?

A No I've never heard him yell at anyone

Q Now, do you have any personal knowledge, any knowledge of any kind, of secretive behavior by the First Lady?

A Yes She -- it was sort of well-known that she would hide things, shopping, things like that, when she would go shopping that -- one trip I know she hid stuff on the plane before --

MS ABER: Objection, Your Honor, to lack of foundation I don't believe this is coming from her personal knowledge

THE COURT: Objection sustained But you can -- go ahead and lay a foundation, if you can.

BY MR. ASBILL:

Q Yeah I mean, what is the basis? Did you see this behavior or if you know anything about it, how is it that you know it?

A The staff person -- I can't remember which staff person told me that

Q Okay So you didn't personally observe the --

A I did not

Q Did you ever shop with her or travel with her when she had been shopping?

A Not when she was First Lady

Q Not when he was First Lady? All right.

A Not that I remember

Q Okay

A No

Q With respect to the Governor's interactions with his wife while he was Governor, were you aware of any situations or instances in which the Governor told her no, she couldn't do something that was important to her?

A Yeah She -- that was important to her?

Q Yeah Specifically relating to nutraceuticals

A Yeah The most -- the biggest thing he told her that she couldn't do, because it was important to her, was not to sell them at events And once he became Governor, he told her that she couldn't continue her vitamin business while he was Governor

Q Do you have any knowledge of what her reaction was to that?

A Oh, I don't think she liked either one

Q With respect to -- I don't want to get into any more details You've talked about sort of general issues or general problems With respect to those problems, was the Governor aware of the problems, generally?

A Sure

Q And did he try to take action or did he just ignore them?

A No He took action I think his hope was that Jim and Linda would really be able to help deal with and address some of those issues I had told him about conversations that I had with her as well So no, I wouldn't say that he ignored it

Q All right Let me talk about Jonnie Williams When is -- did you ever meet him?

A Sure Yes

Q When?

A I met him once for the first time at The Homestead at a political event, staff retreat, or PAC retreat

Q And that's -- that's -- that's a PAC event, The Homestead PAC event?

A Yes, sir

Q All right And did you have any interaction with him either before or during that event?

A I had interaction with him during the event It was the first time I had ever met him Adam Zubowsky, the Governor's Travel Aide at the time, introduced me to him And it was kind of an odd interaction He said, "Hey, Janet, nice to meet you " And I was wearing what I thought was a really pretty dress, and he said, "Nice dress " And then he leaned over, and Jeanine was standing next to me, the Governor's daughter, and he said, "And, Jeanine, your earrings look beautiful " And then he leaned back over to me and said, "I had to compliment her since I complimented you because I don't want to cause any problem between the two of you " It was kind of odd

Q Where did he sit -- during the PAC, was there a dinner --

A There was

Q -- that Jonnie attended?

A There was

Q And where did he sit?

A He asked me to seat him next to Dr Hazel, Secretary Hazel And I went up to Secretary Hazel and said, "This guy Jonnie wants to sit next to you " And he said, probably with profanity, "No "

And so I went back to Jonnie and just said, "He can't sit next to you Can you sit next to John Hager? He's a former before tobacco executive " And so that's where he sat

Q All right And let me move -- before I move on from there, I want to go back for one second to were you aware of any serious problems among the Mansion staff folks in the January 2012 time frame?

A Yes, sir

Q And in general, what was the nature of that issue?

A If I'm not mistaken, that's when they all threatened to quit in mass

Q Let me show you what has been marked as RM-32 and ask you to take a look at this exhibit Take a look at this exhibit and tell me whether or not it's something that you have that you're familiar with

A Oh, thank you Yes

Q And are you familiar with this particular exhibit in realtime? And by that I mean in the January 30th, 2012, time frame?

A Yes, sir

MR ASBILL: Okay I move the admission of RM-32

THE COURT: It will be admitted

BY MR ASBILL:

Q This is a roughly one-and-a-third-page letter; is that correct?

A Yes, sir

Q And it's signed by whom?

A It's signed by the entire Mansion staff alphabetically by first name

Q Okay These would be all the people that worked in the Mansion at the time?

A I can't see the second page

MR ASBILL: Well, flip to the second page

BY MR ASBILL:

Q There it is

A That's the majority of her staff Yes

Q When you say --

A Like the maid might be missing But other than that, that's pretty much everyone

Q When you say "her," who are you referring to?

A The First Lady

Q And the letter is addressed to who?

A Ms McDonnell

Q I'm sorry To Ms McDonnell?

A Ms McDonnell

Q And what is the thrust of the letter?

A The staff, I know, grew increasingly frustrated and disappointed with their work experience as a result of some of the anger that was going on in the Governor's Mansion And something happened that was just the straw that broke the camel's back And I got a call that they were coming over to see Martin, the Chief of Staff, with a letter to basically say we had had enough, and if this happens any more, we're quitting All of us together are quitting

And I had red flags going up all over the place for a variety of reasons, but the first one was that I told them to come to my office because I didn't want anybody else to see them walking through the third floor in mass

So they came to my office Martin came upstairs We had a discussion with them By that point, Jim Burke had already discussed the letter with them We told them that it was completely understandable as to why they wrote the letter, that we were sympathetic to the sentiments of the letter, but the letter would be -- I know the word that he used was counterproductive

He just didn't feel like that she had -- and I agreed with him She just didn't have the capacity to receive the letter in the spirit in which it was intended I think she was sort of pathologically incapable of taking any sort of responsibility So what good did they think this letter was going to do

Q Let me, without -- this is going to be -- it's in evidence, and the jury will get a chance to read it But I want to go down to a particular section of it Two paragraphs from the bottom on the first page

A "If you are unhappy"?

Q No

A Oh I got it

MR ASBILL: Yeah Down to the next paragraph, please Where the highlighted -- or the bolded text is from the people who wrote this letter Would you please highlight that

A Oh.

BY MR ASBILL:

Q I'm sorry My tech person

A I'm like, I can't do that I don't know how to do that

Q I didn't mean you personally

A Okay Good

Q Was this the sentiment of the letter writers as well, aside from whatever criticisms they might be leveling in the letter?

MS. ABER: Objection.

THE COURT: Sustained

BY MR ASBILL:

Q This is what the letter says, right?

A Uh-huh

Q Do you have any reason to believe that that wasn't a genuine comment?

A No

Q All right With respect to the issues in this letter that you say you reviewed in realtime, from your personal knowledge, were any of the issues that were addressed in this letter, in this sort of mass resignation letter, were any of these, from your perspective, untrue, overblown, not fair?

And take your time and read it if you need to, if you don't remember it immediately Take your time and read it before you answer my question

A I can't see it

Q And I can give you a hard copy if you'd prefer

A That would be great Thank you

MR ASBILL: May I approach?

A What was the question again?

BY MR ASBILL:

Q I'll go back to my question I think I can remember it

A Sorry

Q My general question about it is with respect to the things that are expressed in the letter by the folks who signed the letter, to your personal knowledge, were these things that they were saying accurate, fair?

A Yes, sir

Q Thank you Let me go back --

MR ASBILL: You can take that down

BY MR ASBILL:

Q Let me go back to the Jonnie Williams issue, and you've just talked about the PAC, basically, and what happened there Did there come a time after that event when you had another personal meeting with Mr Williams?

A It wasn't a meeting, but there was an event in South Carolina where the Governor was endorsing Mitt Romney, and I wanted to go Maureen and Jonnie were flying down on the plane So I flew with them to the event, and then I flew back with Mr Williams

Q All right And who else was on that plane?

A Jonnie, the First Lady, me, and the pilots

Q Okay

A My best recollection

Q All right And on that trip or on that flight, did you have any observations of any interaction between Ms McDonnell and Jonnie Williams?

A Yeah It was about a three-hour flight They -- it was -- you know, obviously, they were friends They were -- appeared to be fond of each other She was very good -- it was sort of a team act on, you know, talking about --

Q I don't care what they're talking about How did they interact with each other?

A It was -- it was kind of flirty. It was very, very, very friendly. It was a very relaxed environment

Q Okay Did you have any personal interaction with Mr Williams on that plane?

A Yes.

Q And what was the nature of that?

A On the way down or on the way back?

Q Either

A On the way down, I mean, it was just a three-person conversation So that was my interaction

On the way back, Ms McDonnell was not on the plane So Jonnie and I had three hours, give or take, on the plane ride back And we talked about Anatabloc a lot We talked about family life, whatever, a lot. He was very, very salesman-like in his efforts to get me to buy Star stock on the plane back I didn't But he definitely wanted me to buy Star stock was what I remember the most from that flight back

Q What was your reaction to that?

A Well, I thought it was a good idea at first because Mary-Shea had been talking about what a great product it was I know she had bought stock And I went home that night and prayed about it, and I just didn't have a good feeling So I didn't

Q Okay Do you know anything from personal knowledge about the New York City shopping trip that occurred in December of '09?

A I think most of the details that I know about that trip are -- were not in realtime

Q You learned later from someone else?

A Yes

Q No personal observations? Okay

Do you know anything personally about the Mansion lunch event that is the subject matter -- one of the subject matters of this case? Were you involved in any way with the planning of that?

A No

Q Okay In realtime, did you have -- I mean, did you hear anything that caused you to be concerned in any way about it?

A I was part of a conversation with Martin and Jasen and Tucker and Matt Conrad after the lunch, and we had sort of a postmortem on what happened and what kind of event it was and how -- you know, we sort of came to the conclusion that it wasn't a big deal because Jonnie Williams was giving away money at that point

Q Do you know whether or not the -- do you know what the Governor's role was in initiating it or planning it or when he learned about it or the nature of it?

A No I don't know that he had any role

Q All right The Healthcare Leaders event that -- on February 29th, 2012 Do you know anything about that event?

A Yes I am on the loop, the e-mail loop or the e-mail chain for events that come from the Mansion So Sarah

Scarbrough would typically initiate those events, and then I would be on -- I would get the invite list Things like that

Q So you were able to see the invite list, essentially, for that event?

A Yes, sir

Q And do you know whether or not the Mansion, or folks within the Mansion, typically got to add guests to those types of events?

A Yeah I would add guests to those kinds of events all the time I didn't in this case I could have theoretically said, "Hey, I want my doctor to come" or something like that Unless it was a like Garth Brooks event, or something like that, where a celebrity was at the Mansion, we had a lot of leeway I mean, the Mansion held 300 people So --

Q All right If you wanted to add your own personal doctor to an event like that, is that something that you would have to vet or clear with Dr Hazel?

A No.

Q Okay With respect to -- to those types of events or Mansion events like that, do you know whether the Governor was -- typically was involved or deeply involved in deciding who gets invited to those events?

A He was typically not invited in things like that unless it was like a Christmas party That kind of thing

Q Okay You've testified about your relationship with my client, and I want to ask you some final questions

A Okay

Q Do you think you know him really well?

A Yes

Q Do you think you know his heart?

A Yes

Q Is he someone who's quick to see ulterior motives in other folks?

A No

Q Do you think he's someone who gives people the benefit of the doubt?

A Yes

Q Do you have a personal opinion about whether or not he's an honest man?

A Yes

Q What is your opinion?

A He is one of the most honest people I know

Q What does -- what does that word mean to you?

A It means that when they say something, you take it at face value that you believe it, you don't have any reason to question it It means that if he says he's going to do something, he does it. It means that he's trustworthy It means that if I tell him to keep something in confidence, he's able to do that, if he agrees to It means that he is clear with his expectations

Q Okay Do you have an opinion about whether or not he's a truthful man?

A Yes

Q What is your opinion?

A Very similar to the last answer, which is that I never question what he tells me I don't feel like I have to double-back with anybody to verify it in any way

Q Do you have an opinion about whether he's someone who obeys the law? Is he a law-abiding man?

A Yes

Q Now, do you know other people who know him?

A I do

Q And, you know, best estimate, how many people do you know who also know Bob McDonnell?

A Probably thousands

Q Do you have any idea what their opinion is of him with respect to the character traits that you've just described your having personal opinions about?

A Yes I think that out of everyone -- well, there's -- there's different communities of people

Q Describe those communities of folks who know him

A So there's the political community of, you know, elected officials There's the political community of people like, you know, lobbyists, government affairs representatives, former electeds, those kinds of folks, reporters, campaign workers That's the biggest group, volunteers And then there's the third group of people that I know that know him that aren't related to politics in any way, at least by choice Their spouse might be in it or whatever Friends of mine that have just met him over the years

And I think the common thread in all of those communities, because there's a different -- there's different dynamics operating in each of them, is that he's -- if they had to elect the Boy Scout of the year, Mr Honest, it would be him in every single one of those categories

Q Would you work for him again?

A Yes, I would I'd work with him in a heartbeat If I would work for him I think -- I want to work for him again I just think that he has some work to do I think that it would be very difficult for me to go back under the circumstances that existed in the Governor's Office with his marriage I think that --

MS ABER: Objection, Your Honor It's a narrative response

THE COURT: She's answered the question She would work for him again

MR ASBILL: Thank you Please answer questions from other counsel

THE COURT: All right Mr Burck, are you going to have any questions?

MR. BURCK: Your Honor, I will have some questions

THE COURT: All right It's 1:00 We'll go ahead and stop now for lunch And if you all would come back at 2:00, make it 2:05, 2:05, we'll get started with the afternoon session

(The jury left the courtroom)

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(Luncheon recess taken from 1:05 p.m. to 2:05 p.m.)

THE COURT: All right

MR. BURCK: Your Honor, just briefly, Your Honor, on behalf of Ms McDonnell, we would like to move for a severance of the trial at this stage We have two alternatives from our perspective -- and I'll explain the reasoning in a moment -- but either to sever Ms. McDonnell from the trial, or to sever the obstruction count, Count Fourteen. And the reasoning is that the evidence that is coming in today from our co-defendant tends to go to Ms McDonnell's veracity or the appearance of her veracity by various witnesses The evidence as it is coming in is helpful to certain counts from our perspective, which goes to the conspiracy counts, and the alleged conspiracy between Mr McDonnell and Ms McDonnell; but at the same time, it is harmful, we believe, to Count Fourteen, which is the obstruction count and her truthfulness So, Your Honor, we would move to have her severed at this point, or in the alternative, to have the obstruction count severed.

THE COURT: That motion will be denied. Bring in the jury, please

THE COURT: Just so you will know, we are going to take more frequent breaks, probably on the hour, and we will probably leave a little early today.

(The jury entered the courtroom.)

All right, Mr Burck?

CROSS-EXAMINATION

BY MR. BURCK:

Q Good afternoon, Ms Kelly

A Good afternoon.

Q My name is Bill Burck and I represent Maureen McDonnell

A Nice to see you.

Q I just have a few questions for you. If you wouldn't mind calling up RM-0032, which is already in evidence, the second page Blow up the top paragraph, please Thank you Ms Kelly, you testified about this letter, and this was the letter from the staff members laying out their concerns and their problems with Maureen McDonnell's management There is a sentence at the very beginning of this second page: "We have heard you say many times now that this wasn't your vision for your life." Do you see that?

A Yes, sir

Q You weren't a signatory on this letter; is that right?

A I was not

Q Do you recall having any conversations with Ms. McDonnell in which she said anything along those lines to you?

A Yes She would say, "I didn't sign up for this," "This isn't what I wanted," it wasn't anything that she ever thought she would sign up for

Q "This" was what?

A Being First Lady

Q Did she tell you why she was unhappy being First Lady?

A Yes Let me see if I can recap it nicely and quickly It was stressful She was not a public speaker. She often had to speak in public when she went out, and that was generally not something she was comfortable with. Let me take the "generally" out It was not something she was comfortable with. That's just not how she envisioned her life at all, according to our discussions.

Q Okay. And you mentioned, or you testified about Jim Burke, who is, of course, no relation to me But you testified about conversations you had with Jim Burke and his role in coming in to help with management consultancies, basically?

A Yes, sir

Q Do you recall, did you ever speak to Mr Burke and Maureen McDonnell about the problems that the staff were having with her?

A Sure

Q Can you tell us --

A Together?

Q Together

A I don't remember I know I had several conversations with him, her individually I had several conversations with him individually. He had conversations with her individually But I don't know if the three of us were ever together

Q Let's just talk about then the conversations you had with Maureen McDonnell, just the two of you, about the problems the staff were having Tell us about when those conversations occurred, and what did each of you say?

MS ABER: Objection, hearsay

THE COURT: Sustained

BY MR. BURCK:

Q You had conversations with her in approximately what time frame about these issues with the staff?

A When Mary-Shea was leaving and the new staff was coming in, it was in that time frame, or maybe shortly after the new staff had come in It also could have been when this letter was written, along that time span

Q What did you say to her, not what she said to you, but what did you say to her?

A I told her that I was worried about her; that I thought that she was not handling her job in a way that was healthy I thought that she was not handling stress well, and it was manifesting itself in anger, that it was wearing the staff down. I acknowledged the very difficult position that she was in It is not easy being First Lady I acknowledged that she had, she was going through a period of grieving that she may not have recognized. She lost both of her parents within the year of becoming First Lady She lost essentially both of the last of her two children to empty -- to being an empty nester In addition to that, she essentially lost her husband to his job. So it was a lot for her

Q You testified that Mr McDonnell was a very busy man, right?

A Yes, sir

Q And it was difficult to get on the schedule; is that fair to say?

A Yes

Q Did Ms McDonnell have trouble getting on his schedule as well?

A Yes

Q Did she complain about that to you?

A Yes.

Q Frequently?

A During that time period, yes

Q And the time period is when you were --

A From about August of 2010, well, really until the investigation started and we couldn't really talk about things anymore

Q Okay

A I'm sorry, when the investigation was made public.

Q In 2013 Okay Did you ever have any conversations with Ms McDonnell about her relationship with Jonnie Williams?

A No

Q And you testified that you witnessed some of the interactions between them on the flight that time Did you ever remember any conversations with Jasen Eige or anyone else at the Mansion about the relationship between Jonnie Williams and Ms. McDonnell?

A Yes. It was in the context of, you know, "Should we be concerned about this in any way?" And the gist of the conversation was, "He never asks for anything, so we are not concerned."

Q When did that conversation occur, if you recall?

A Around that same time frame

Q 2010 through 2013, sometime in that period?

A Yes

Q And just one final set of questions for you. Flite, F-L-I-T-E, do you know what that is?

A Yes

Q Can you tell us what that is?

A I'm not going to get the acronym right

Q Was it the First Lady's Initiatives Team Effort?

A Yes, it was

Q Can you tell us what that was?

A The first lady had four pillars to Flite, things that interested her And a lot of First Ladies come in with a platform. The previous First Lady had foster care. Maureen decided then instead of putting forward her own platform, she would highlight the contributions of Virginians in four areas And I might get them wrong or not get them all, but it was healthcare, women in business, veterans, military families, and then the wine industry

Q Wine industry

A I think those were the four.

Q So can you explain to us, you were the Secretary of the Commonwealth, was it unusual for a First Lady to have initiatives like that as part of her duties as the First Lady?

A No.

Q Were the goals of these initiatives to be lined up with the Governor's goals?

A Yes

Q Was it unusual for Cabinet members or staff of the Cabinet members to meet with the First Lady to discuss those initiatives?

A No

Q That was something that was commonplace?

A Right

Q One of the initiatives you mentioned was healthcare or health.

A Right

Q Can you tell us a little more about that? What was that all about?

A Well, I think that that was something that she had been previously interested in, especially preventive healthcare. She had had a breast cancer scare when she was younger, so it was definitely something she believed passionately in, and it was a nice way to tie in your existing passions with the Office of the First Lady

Q Those existing passions were for nutraceuticals; you testified about that?

A Yes

MR. BURCK: That's it, Your Honor Thank you.

THE COURT: All right Government?

CROSS-EXAMINATION

BY MS ABER:

Q Good afternoon, Ms Kelly

A Good afternoon.

Q Now, you first met Mr McDonnell back in 1999?

A I did.

Q You were taking a class in graduate school at Regent that he was teaching; is that right?

A Yes, ma'am.

Q And I think you have told the investigators at least that you felt like you had an instant connection with Mr McDonnell

A I did.

Q At that point he is a state delegate; is that right?

A Yes

Q And is it fair to say you were so sort of taken by him that you dropped out of graduate school to go work for him?

A I don't think that's necessarily fair, because I waited a year to do so But when it became clear that I couldn't manage my duties at school and get good grades, I started getting B's, which was not okay with me, and then managing my duties on his campaign, I just said, "Listen, I'm going to graduate school because I want to work in politics I'm working in politics; I don't need to go to graduate school anymore "

Q From that point forward as you testified on direct, you basically have worked for Mr McDonnell since 2000-ish, 2001?

A 2002

Q And pretty consistently since 2002, Mr McDonnell has been sort of the centerpiece of your career; is that right?

A Sure

Q And I think you said it was an honor to work for him?

A Yes

Q You loved working for him; is that right?

A Yes

Q Okay And I believe you said you share both a work relationship with him and a friendship.

A I do.

Q You consider Mr McDonnell to be a mentor, right?

A I do

Q And you are one of his closest confidantes, essentially

A Yes, I am.

Q That's why the position of Secretary of the Commonwealth was sort of a member of senior staff as opposed to other Cabinet Secretaries who didn't have that kind of relationship with him.

A Sure

Q But despite that, you didn't know that Mr. Williams had given $50,000 to Maureen McDonnell back in May of 2011, did you?

A I did not know

Q You found out after the investigation hit the papers, right?

A That is correct

Q Same thing with the $50,000 to MoBo in March of 2012, you didn't know about that

A Did not know

Q You didn't know that Mr McDonnell was personally negotiating a loan with Mr Williams in February of 2012, did you?

A I did not know

Q You didn't know about the $20,000 to MoBo in May of 2012, right?

A I didn't We didn't discuss personal finances when we met

Q You didn't know about the Rolex he got at Christmas in 2011, right?

A I did not

Q You didn't know about, you may have known that Mr McDonnell was golfing, but you didn't know Mr Williams was paying for it at Kinloch, did you?

A No.

Q But you did know about the $15,000 that Mr. Williams had given Cailin McDonnell for her wedding; is that right?

A In quasi realtime.

Q Sort of around --

A Before the investigation was made public, yes

Q That's because Mary-Shea Sutherland told you, right?

A It is

Q And that was sometime roughly between June and October of 2011?

A Yes, ma'am.

Q And Ms Sutherland told you that she wasn't sure that Mr McDonnell knew; is that right?

A Yes That is correct

Q And so you took that bit of information and brought it to Martin Kent; is that right?

A Yes

Q Ms Sutherland also told you that she owned Star Scientific stock, right?

A Yes.

Q But you did not know that Ms McDonnell had stock in her account, right?

A No.

Q For Star Scientific And you didn't know whether Mr McDonnell owned any Star Scientific stock?

A I did not know.

Q You never talked about that with the McDonnells?

A No.

Q Now, in reference to Star Scientific and Mr. Williams, I think Mr Burck asked you about whether you all had any concerns on staff about Mr Williams Do you remember that?

A Yes, the conversation with Jasen Eige?

Q Yes

A Yes

Q So are you telling us that if the staff had known that Mr Williams was asking for something, you might have had some concerns?

A I think that we would have had concerns if it had been legitimate state business

Q So if you had known that Mr Williams wanted something from Mr McDonnell, that might have been a red flag for you guys

A If we had known he wanted, for example, economic development grants, a board appointment, things like that, yes, I think that would have raised a red flag

Q Now, you talked a bit about scheduling And I think you said that Mr McDonnell was very accommodating of folks who wanted meetings; is that right?

A Generally speaking, yes

Q When he ran into people at events and so forth and they wanted meetings, he tried to make that happen, right?

A Yes, ma'am.

Q He referred them to one of the schedulers consistently, right?

A Or his Travel Aide, but yes

Q The Governor didn't personally reach out to ensure -- didn't personally reach out to the requester to make sure their meetings took place, right? He pawned that off on a scheduler or Travel Aide

A Yes, unless he ran into them again and it came up in conversation that they didn't get the meeting they wanted. Then yes

Q Now, I think you said that Mr McDonnell always made it a priority to schedule family time

A I think that the more precise way to say it is he always made it a priority to try to schedule family time

Q It was hard to get on his schedule, wasn't it?

A There were so many competing interests, that it was hard to maintain a good work/life balance It was impossible to maintain a good work/life balance I think is a fair way to say it

Q I think you previously said to investigators that he probably attended less than one half of the events to which he was invited; is that accurate?

A Yes, ma'am.

Q In reference to that August 30th, 2011 event at the Mansion, Mr McDonnell made time to attend that one, right?

A He did.

Q I think it is fair to say you guys had what you called a postmortem, the senior staff did, about the event afterwards, right?

A We did

Q That was because you all had some concerns about the event, right?

A It was The other members of the senior staff were on e-mail chains I wasn't on I walked into the conversation So that's the context, but yes

Q And in essence, you all sort of agreed that the launch/lunch, whatever we may call it, was okay because Mr Williams was giving money to state universities

A Yes, ma'am.

Q But you had those concerns even though you weren't aware of any of the loans or gifts at that point that Mr McDonnell had gotten from Mr. Williams

A That's right.

Q And you were concerned about the event even though you weren't party to any conversations that Mr McDonnell may have had with Mr Williams about Anatabloc.

MR. BURCK: Objection.

THE COURT: Overruled.

BY MS ABER:

Q You weren't party to any of those conversations?

A I was not

Q You had concerns about the event even though you weren't party in any conversations that Mr. McDonnell may have had with Mr Williams about studies at Virginia state universities; is that right?

A Say that again.

Q You still had concerns about the event, even though you were not party to any conversations that Mr McDonnell had with Mr Williams about state universities doing research on Anatabloc.

A Right I was not party to those conversations

Q You weren't party to any conversations that Mr. McDonnell had with Mr Williams about Tobacco Commission funding?

A I was not

Q Now, I think we talked a little bit about, you talked a little bit about Statements of Economic Interests and how your office, the Secretary of the Commonwealth, collected them; is that right?

A Yes.

Q But you are not a lawyer?

A I'm not a lawyer

Q And you referred folks, filers who had questions, to lawyers, right?

A Generally speaking, yes

Q And those would be folks like Matt Conrad and Jasen

Eige, right?

A Yes

Q Now, in 2006, while Mr McDonnell was the Attorney General, is it fair to say he sort of lost some of his Statement of Economic Interests paperwork?

A Harken back to the recount when I was doing two jobs. A box went missing, so we didn't have all his complete records that year. There was a press story about it It was embarrassing, the whole bit

Q It is fair to say as a result of that incident you had no more role in his SOEI?

A Happy to relinquish it

Q It is fair to say from that point on you had no role in Mr McDonnell's filing of his SOEI, right?

A Yes, ma'am.

Q Now, I think you testified on direct that Mr McDonnell is the same person all the time in reference to his relationships or his appearance before staff and the public Is that true?

A He is not a duplicitous person.

Q I'm not saying duplicitous, but are you saying he acts the same out in public as he does to staff members?

A I'm saying he is not a duplicitous person

Q Okay Now, finally, I believe on direct you talked about a flight in South Carolina with you and Mr Williams and Ms McDonnell; is that right?

A Yes, ma'am.

Q On Mr Williams' jet

A Yes, ma'am.

Q And that was in January of 2012, right?

A Yes

Q Now, investigators, we asked you last year if you were aware of any rumors that Ms McDonnell and Mr Williams were having an affair. Do you remember those questions last year?

A I do remember that question.

Q Do you remember your answer was no?

A I said I wasn't aware of any rumors, which is true.

Q If I can stop you there, because this is a yes or no thing

A Sure

Q Did you in fact laugh when investigators asked you that question?

A I don't remember that The only thing I remember is saying in some ways I wish I had because that would explain everything

Q Do you also remember investigators asking you specifically about that flight in South Carolina?

A I'm sure you did, but I don't remember exactly

Q Well, I can remedy that Let me show you a document, but let me offer a sort of vulgar turn of phrase Do you recall -- not too vulgar, Your Honor -- do you recall being asked questions about a term you may have used in reference to Mr McDonnell?

A Wait

Q Mr Williams Not about Mr. McDonnell Do you remember a turn of phrase in reference to Mr Williams about the inner circle with which he may have been held in the Administration?

A Sure

Q We won't use the phrase here in Court

A You mean "Big freaking deal, too."

Q So sort of unwind this a little bit Do you recall investigators asking you about whether you had used such a term, "big freaking deal," to describe Mr Williams' place in the Administration?

A I remember saying that to him, and I remember telling you all that that was a polite way of making him feel important, that he was a friend of the Governor's, et cetera, et cetera Yes

Q So you remember us talking specifically about that flight, right?

A I do, yes

Q And at no point in that discussion did you ever describe the interactions between Mr Williams and

Ms McDonnell as flirty, right?

A You didn't ask

Q You never said anything in any of the course of your interviews to suggest that Ms McDonnell had a crush on Mr --

A I did not

MR. BURCK: Objection.

THE COURT: Overruled

BY MS ABER:

Q Just to be clear, because I keep mixing my surnames At any point in our conversations in the course of the investigation, you never said anything to investigators about whether Ms McDonnell had a crush on Mr Williams

A I did not

Q You never described any flirty behavior

A I did not.

Q This is the very first time we are hearing about that today, right?

A It is

MS. ABER: One moment, please, Your Honor Thank you, Your Honor I have no further questions.

THE COURT: Anything else, Mr Asbill?

REDIRECT EXAMINATION

BY MR. ASBILL:

Q Did you know anything about my client's loans with

SunTrust or PenFed or credit unions?

A I did not

Q Did you know anything about his loans with Dr Davis or his father or anything else?

A No, sir

Q Did you know anything about his balances on credit cards or capacity on credit cards or any of those things?

A No, sir

Q Did you discuss personal financial issues with him?

A No.

Q Now, with respect to appointments that you made, et cetera, not knowing these things, did you still make appointments to boards or commissions that related to the banking industry, credit card industry, those sorts of things?

A Yes I don't know that there are any boards that have those types of qualifications offhand, but if there would have, I would have If there were, I would have

Q All right. Did you know about approximately $100,000 worth of flight, F-L-I-G-H-T, donations that Mr Williams had made to various campaigns or otherwise had given planes or plane rides to Mr. McDonnell while he was Governor?

A I don't know that I would have known the amount, but I knew that he had a plane and was someone that politicians frequently used, yes

Q You flew on his plane, correct?

A Yes

Q Did you know that the Governor had flown on the plane?

A Of course, yes

Q And that those were donations of some sort either to the PAC or whatever?

A Yes

Q All right With respect to the postmortem that you have described after the August 30th, 2011 lunch, and the postmortem discussion afterwards that you all talked about, were the concerns coming from you all about the Governor or were the concerns coming from the First Lady's Office, or both?

A They were mostly from the First Lady's Office It originated with her office, and so I think that one of the staff members had been over to the lunch and just said, "That wasn't exactly what we were told and exactly what we thought it was going to be," so that was the concern.

Q Okay You were asked a series of questions by Ms Aber about were you party to various conversations that supposedly occurred between Jonnie Williams and my client regarding the Tobacco Commission or anything else that he may have been interested in. First of all, you are not aware of any such conversations, period.

A No.

Q So you don't know whether in fact any of those conversations ever occurred

A I do not know.

Q And so obviously you would not know, if they occurred, when they occurred. Correct?

A Absolutely correct Yes, sir

Q So you couldn't place them in time because you don't know anything about them in terms of pre-August 30th lunch or after August 30th-lunch, or ever

A Correct

MR. ASBILL: Thank you I have no further questions

THE COURT: All right. Thank you, ma'am. You may stand down.

(Witness stood aside.)

Call your next witness, please

MR. BROWNLEE: Your Honor, we call Mr Neal Noyes to the stand.

NEAL NOYES,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWNLEE:

Q Good afternoon.

A Good afternoon.

Q Would you please state your name and spell your first and last name for the court reporter?

A Neal Emerson Noyes, N-E-A-L, N-O-Y-E-S

Q Sir, are you currently employed?

A I am not

Q Are you retired?

A I am.

Q Before you retired, what was the last job that you had? What was the last job you had?

A I was Executive Director of the Virginia Tobacco Indemnification and Community Revitalization Commission

Q Is that commonly known as the Tobacco Commission?

A The Tobacco Commission.

Q And what did you do before you were the Executive Director of the Tobacco Commission?

A For about 30 years I worked for the United States Department of Commerce, Economic Development Administration. Most of that as the Economic Development Representative here in the Commonwealth of Virginia

Q Okay When were you first appointed to be the Executive Director of the Tobacco Commission?

A June 1st, 2006

Q Who appointed you to that position?

A Former Governor Kaine

Q And then when Bob McDonnell was elected Governor, were you reappointed to that position?

A I was

Q Okay Can you tell us when you retired?

A I stepped down as Executive Director on August 9th, 2013

Q Okay Can you tell the Court and the jury, what is the mission of the Tobacco Commission?

A There are twin mandates One was the indemnification of former growers, that is, transfer payments to people damaged when the quota system was ended by federal legislation. The other is the economic revitalization of southern and southwestern Virginia, the tobacco-dependent areas

Q And in that, the second mission with regard to -- is there a grant process that the Commission oversees to distribute the monies that the Commission took in?

A There are multiple programs, and there are very carefully defined processes with due dates for applications and subcommittees that consider some types of applications, an Education Committee for education applications, Southern and Southwestern Economic Development Committees for the local economic development

There is a Special Projects Committee that does access to healthcare, medical research, that sort of thing And there's several There's different programs But there is a definite application process

Q Where does the money come from or where did the money come from that serves to found the basis for the grants?

A The Master Settlement Agreement between the 48 attorney generals, I believe it was 48 attorney generals back in 1999, I think it was

Q So this money --

A Virginia receives a share of that annually

Q So the tobacco companies settled with the governments and this is where the money comes from.

A That's right, yes

Q You mentioned the Commission itself Are there pretty extensive rules on how the Tobacco Commission functions?

A Yes, there are

Q Okay And in order to apply for one of these grants that you talked about, can anyone apply or is it limited?

A No There are certain eligible applicants, non-profits, not-for-profits, sub state units of government and their designated entities, such as, you know, Industrial Development Authority, 501(c)(3)'s generally under the IRS Code, like co-ops are eligible, that sort of thing

Q Are public universities eligible?

A Absolutely

Q Okay Approximately how many grants on average does the Commission award every year?

A Well, it has varied year to year, perhaps as many as 120, 125, and more recently it has been down to 80, 85.

Q Okay In order to receive a grant, do one of these public entities have to go through a formal application process?

A That's correct They do

Q If you can, give us a sense of what that application process is If I'm a public university and I want to try to apply for a grant, what do I have to do?

A Well, you can make application online. You can do that, the process is do-able electronically, or you can do it handwritten or typed out There are due dates established, and applications received that are complete by the due dates are reviewed by staff There is a staff summary and a staff recommendation that goes to the appropriate Commission subcommittee That subcommittee then debates funding on those applications and makes a recommendation to the full Board. Both at the subcommittee level and at the full Board level, a majority vote is required in order to move an application forward.

Q Okay Let's talk a little bit, when the staff and the committee is looking at a particular application, what factors are they looking at to see if these are applications that may -- people may want to pass on?

A It is a little different for the different programs. But, you know, the availability of the non-Commission matching share is one We certainly look at the eligibility of any applicant, make sure that they have their IRS certification We look at the scope of the project, see if it makes sense relative to the requested amount

Q Okay. You talked about once the committee has done its work and the application is submitted, then it has to get a vote by the full Tobacco Commission Board; is that correct?

A That's correct

Q How many people are on the Board?

A 31

Q Okay And is there a Chair?

A Yes

Q During your time --

A The Chair is voted on by the full Board, the Chair and Vice Chair both

Q During your time as Executive Director, who was the Chair of the Board?

A Well, former Senator Charles Hawkins was the Chair for the first few years that I worked for the Commission, and the Honorable Terry Kilgore, who is a delegate, is currently the Chair and and was later

Q How long has Mr Kilgore been the Chair?

A I think he is in his third two-year term. So four-and-a-half, five years

Q Okay So you have to have a majority of 16 to be able to pass; is that correct?

A To move anything, yup.

Q Now, you mentioned matching funds Are matching funds a requirement of any application?

A In all the programs Right

Q So explain to the jury --

A All the programs, with the exception of financial aid that goes to the community colleges and the four-year programs We don't have a match from either the applicant or the students for that

Q But for everything else, you have to have a match; is that correct?

A That's correct

Q Explain to the jury what that means

A It means funds or something else of value that matches up for the project purposes that's available and committed to the project So it can be cash, it could be in-kind services. Sometimes when we work, for example, with universities, it will be faculty time dedicated to a particular project That sort of thing

Q Okay Now, if an applicant doesn't know the precise amount that they need for their project, can they apply for a smaller amount, and then if they are successful, reapply later on?

A We have, yes, that happens There are a number of projects that we have done that have had more than a single grant award

Q Okay So these things can be awarded in stages; is that correct?

A Right As long as they have accomplished what they said they were going to accomplish in the first grant, if they think they are going to apply a second time, yes

Q Let me talk a little bit about your role as Executive Director Can you describe briefly for the jury what is your role as Executive Director of this Commission?

A It was day-to-day management of the Commission staff and the different programs that the Commission operated I had a lot of liaison work with members of the Board, Commissioners, the 31 individuals Most especially the Chair, Vice Chair, and the subcommittee chairs But I interacted with pretty much everybody over the time. Three of the members of the Commission are members of the

Governor's Cabinet, so I from time to time would interact with the Administration through those secretaries

Q Okay Is that the Secretary of Commerce and Trade?

A Yes

Q And the Secretary of Agriculture?

A And Finance

Q And the Secretary of Finance

A Yes

Q Okay. Now, with regard to the grant money, do you play a role in either signing off or authorizing payments?

A Yes The Executive Director is the only staff member authorized to sign for a disbursement of Commission funds

Q So no money gets spent unless you sign it.

A That's correct, unless I'm gone for some period of time, and then there is a formal process where I would designate a different person. I may have done that once in seven years

Q Okay Now, during your time at the Tobacco Commission, did you regularly attend the Board meetings?

A I believe I attended every Board meeting and every subcommittee meeting

Q Okay Now, let me turn your attention to the company Were you familiar with a company called Star Scientific?

A I was not really familiar until I read in the newspaper about it

Q Okay. So back in 2011, 2012, did you know anything about --

A No, I really didn't

Q Okay. Are you familiar or were you familiar at that relevant time with a compound called anatabine?

A No

Q During your time on the Tobacco Commission, were any grants awarded to Star Scientific or any of their related entities?

A No

Q Were any grants awarded that related to studies of anatabine or a product called Anatabloc?

A No There were no applications and no grant awards

Q Okay That was my next question.

A No grant awards, no disbursements

Q There was never even an application

A No, sir

Q Okay Now, are you aware of any other eligible entity ever applying for a grant related to funding studies of anatabine or Anatabloc during your time?

A No, sir

Q Okay If you can recall, did the topic of Star Scientific or anatabine ever come up during a committee meeting that you attended?

A Not during a committee meeting, no.

Q Okay Now, let me switch gears just a bit Can the Governor of Virginia order the Tobacco Commission to award grant money to any particular entity?

A No It requires 16 votes in the full board meeting in public session for any new grant to be awarded.

Q Okay If the Governor or one of his staff members wants to present an option or some recommendation to the Commission, is there a formal process for the Governor or the staff to do that?

A The Governor is always welcome to attend any of the Tobacco Commission's meetings or to talk with any of the staff or members. The three Secretaries would presumably act as surrogates in introducing something or perhaps arguing for favorable consideration.

Q Okay And during Governor McDonnell's time as Governor, did he ever come to the Commission and put a proposal out or support funding to go to something?

A I recall one instance where the Governor appeared to encourage the Commission to consider an application It was for an entirely different project, and it was done, the Governor's request was done in Executive Session, per Commonwealth Code, because we were dealing with proprietary financial information

Q Okay But that was -- was there a transcript of that taken?

A Not in Executive Session, no

Q Okay But his appearance there was public; is that correct?

A Oh, indeed Indeed. Yes It was a called meeting and meetings have to be called three days -- published announcement three days ahead of the meeting

Q Okay But if the Governor --

A We wouldn't have had to publish that the Governor was going to be present, just that there would be a meeting

Q Okay Let me show you, if we could pull up just for the witness RM-0241 If you will go to the next page Actually, if you go to page 22. If you would just blow up his opening remarks there. Now, have you seen these before, Mr. Noyes, just Governor McDonnell's opening remarks there?

A I was present

Q Okay And does this memorialize what he said to the Commission with regard to this Kleiner Perkins?

A This appears to be This is what I remember.

MR. BROWNLEE: We move in RM-0241 into evidence

MR. DRY: No objection.

THE COURT: Okay.

BY MR. BROWNLEE:

Q Now, with regard to the -- but even if the Governor were to come and talk about whatever, there would still have to be a vote; is that correct?

A Yes

Q Okay Best of your recollection, did Governor McDonnell ever come and talk to you all about Star Scientific or Anatabloc?

A No, sir

Q Okay

Q Now, at some point within this investigation, you were interviewed; is that correct?

A That's correct Yes

Q And after you were interviewed by the investigators, they asked you to see if you could find any records or e-mails or anything; is that right?

A That's correct, yes

Q And you and your staff conducted that review; is that right?

A That's correct

Q And I understand you found a couple of e-mails; is that right?

A Not at the time Some weeks later, one of my staff came to me and said, "Look what I found."

Q Let me show you that Let's pull up RM-0987 Actually, if we could put that down and first I want to pull up RM-0613 And is this kind of the cover e-mail forwarding this information to FBI Agent Kennedy?

A After an e-mail was found by Mr Pfohl, I asked him to notify the FBI folks

MR. BROWNLEE: RM-0613, we would move that into evidence

MR. DRY: Objection on that e-mail Judge, we don't mind the e-mails at the time, but the e-mail from Mr Pfohl and Mr Kennedy cc-ing the witness has no relevance to any of the witness's testimony

THE COURT: It will be admitted.

BY MR. BROWNLEE:

Q So this is an e-mail from Mr Pfohl, who works with you?

A Yes He was Director of Grants Programs

Q And this is in October of 2013 And this is basically you all following up with Agent Kennedy about the e-mails that you found.

A Yes It was

Q Okay. And if you look at the fourth line down where it says "The gist "

A Yes

Q Okay If you could read that out loud, please

A "The gist of the e-mail exchange was that UVA was having an exploratory (their word) teleconference call with Star representatives about potentially applying for our R&D funds, but the e-mail exchange ended between us and UVA in November 2011 prior to UVA's conference call with Star "

Q And then the last clause

A The last piece, " and we have no further record of any dialogue between us and UVA, or between UVA and Star "

Q Okay Thank you. You can take that down If you will pull up RM-0987 Is this one of the e-mails that was found from July of 2011?

A Yes I've seen this before

Q Okay

A But did not remember it until after I saw it back in, when was it, July

Q All right

MR. BROWNLEE: We move in RM-0987

MR. DRY: He is not on this e-mail, Your Honor Objection, hearsay He is not on this e-mail

THE COURT: Overruled.

BY MR. BROWNLEE:

Q You can take that down. And then, oh, if you could just publish that I apologize This is one of the e-mails that you forwarded to the Agent; is that correct?

A I'm not sure of that. I don't know if that one was forwarded.

Q Fair enough We will take that down And then let me pull up RM-1933 And was this one of the e-mails that they found and identified and that was ultimately turned over?

A I believe it was Yes

Q All right If you go down to the last part of this, this reference is Tim Pfohl?

A Yes

Q He worked in your office?

A Yes He was Grants Program Director

Q And then Mr Parrish was at UVA?

A That's correct

Q You were not on this e-mail; is that correct?

A I'm not on that e-mail

Q Fair enough Now, if you go up, and there is -- where it says "Neal Noyes" right in the middle, it says, "Received business plan, no plan now to change funding cycle or avoid normal vetting process "

Did you have any memory of receiving this business plan or looking at it?

A You know, I didn't at the time I was interviewed. I think it was in March of 2013. I have a vague memory that there was a document on my desk. I don't know how it got there, and I don't recall ever reviewing it

Q Okay

MR. BROWNLEE: We can take this down, Your

Honor All we would do, Your Honor, there's some other attachments We would just move the first page of RM-1933 into evidence

MR. DRY: No objection.

THE COURT: It will be admitted

BY MR. BROWNLEE:

Q I just have a couple things I want to make sure we are clear Did Bob McDonnell ever contact you about Star Scientific or about anatabine for the Tobacco Commission?

A No, sir

MR. BROWNLEE: Thank you

THE COURT: Mr Burck, do you have anything?

MR. BURCK: No, Your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. DRY:

Q Good afternoon

A Good afternoon

Q Just a few questions Now, Star Scientific, as a for-profit entity, for-profit entities, I think I understand, they could not make grant applications directly to the Tobacco Commission, correct?

A That's correct, yes, sir.

Q Okay But the Tobacco Commission could grant, could make grants to in-state research universities like VCU and

UVA, right?

A Yes

Q And in fact, in the past, the Tobacco Commission had provided such research grants to UVA and VCU; isn't that right?

A Yes, sir

Q And that grant could have been for a new compound that was derived from the tobacco leaf; that's conceivable, right?

A Indeed.

Q Okay That would be in furtherance of the mission of, you know, of providing money to tobacco-dependent areas that had been economically depressed; that would be in furtherance of the type of mission the Tobacco Commission might look for, right?

A It would depend on the specifics of an application, but yes, conceivably

Q Okay Now, let's look at, can we pull up Government Exhibit 647, please And just to be clear, this version of this e-mail is not in evidence. I believe that a different version that you were not on was entered. But this is an e-mail from Robert Lockridge to you, correct?

A That's what it appears to be, yes.

Q That's on July 12th, 2011?

A That's what it says, yes, sir

MR. DRY: Government moves Government Exhibit 647 into evidence.

THE COURT: It will be admitted.

BY MR. DRY:

Q Now, first of all, do you know who Rob Lockridge is?

A I don't recall ever talking with him, and I don't recall the meeting, the introduction that he refers to

Q Okay

A Doesn't mean it didn't happen. I just don't recall

Q Fair to say, this is more than three years ago, right?

A Yes

Q So I believe you were asked about Star Scientific But as you sit there today, do you realize that the reference to Star Science is most likely a reference to Star Scientific?

A I don't know Star Science It could very well be

Q Okay Now, was it unusual for UVA and VCU, they got grant applications before, right?

A Yes

Q Was it unusual for them to reach out to the Tobacco Commission before they made a grant application to just kind of give you guys a heads up, "Hey, this is what we are thinking"?

A Oh, no, not particularly

Q That would be part of the process, right?

A Not the Commission's process, but it would be not unusual at all to have discussions ahead of an application

Q Kind of take the Commission's temperature, informal process, "This might be coming down the pike," right?

A Yes

Q Okay Did you know who, who is Ned Stephenson?

A Ned Stephenson is Deputy Director of the Virginia Tobacco Commission

Q Do you know who Christopher Nolen was?

A I'm sorry, I don't I don't know

Q Let's look at Government Exhibit 646, please Just blow up the top, please. This is an e-mail -- Ned Stephenson --

MR. BROWNLEE: He is asking about an e-mail that he is not on. I don't know why he is commenting on an e-mail that he never got or wrote

THE COURT: Go ahead.

BY MR. DRY:

Q Ned Stephenson worked for you, correct?

A Yes

MR. DRY: Government would move Government Exhibit 646 into evidence

MR. BROWNLEE: We object This witness is not on this e-mail, either sending or receiving

THE COURT: The objection is sustained.

MR. DRY: Ned Stephenson works for him, Your Honor The only thing we are trying to show is that the --

MR. BROWNLEE: May we approach?

THE COURT: The objection is sustained and we don't need to approach. Ask something else

BY MR. DRY:

Q Okay Were you aware that there were inquiries into Ned Stephenson in July of 2011 regarding getting Tobacco Commission funding from Star Scientific?

A I don't believe so, no No, it would not have been unusual for Ned to have had discussions with potential applicants Sometimes they would talk with Ned, sometimes they would talk with me or Tim or the field staff That wouldn't have been unusual But I'm not familiar with this at all

Q I believe you talked about the due dates for various grant applications. Can you kind of walk us through on the R&D portion of the Tobacco Commission, what were some of the due dates that applicants would have to meet?

A Well, typically, there were three cycles a year And depending on when the next R&D committee meeting was set, we would back that off approximately two weeks so that members of the subcommittee could receive the staff assessment and recommendation, and then another month or so for the staff to actually conduct it, so a due date would be approximately six, seven weeks ahead of the next scheduled meeting of that committee.

Q And were these due dates, were they typically the same year after year?

A No, they could vary They could vary In some circles, we passed by and didn't have a due date

Q Okay Sorry, can we switch over to the defense system and can you bring up Defense Exhibit RM-1933, which is in evidence, I believe. And can we go to the top e-mail That's from Phil Parrish to you?

A Yes, it is.

Q And who is Phil Parrish?

A He is a researcher at the University of Virginia

Q Okay I'm sorry, who is Tim Pfohl?

A He is Grant Program Director at the Tobacco Commission.

Q What's the date of this e-mail, sir?

A November 29th, 2011.

Q And then can we go to the bottom e-mail? Now, in this, it is from Mr Parrish to Tim Pfohl And they are talking about the potential for anatabine and they are talking about Jerry Kilgore So is that consistent with what would typically happen, where there would be an informal process before the actual grant application would be sent in to you guys, that UVA would be giving you a heads up of something that they were considering as kind of an informal heads up; is that accurate?

A It happened. It wasn't typical particularly.

Q It wasn't atypical, though, either, was it?

A No As I said, it happened.

Q Can we go up, please, in the e-mail And then Mr Pfohl forwards that to keep you informed and tells you that he hasn't heard anything from Star directly; is that right?

A That's true.

Q And you hadn't heard anything from Star directly, either?

A No

Q But you don't know if Star had been talking, or if Star or their attorneys had been talking to UVA other than this call, right?

A That's the only indication I think I ever had about that

Q Okay Here it says, "Good news is we have some time before the next round of R&D apps are due in March, though the company may want to move more quickly as always " Would that be March of 2012, sir?

A Yes, probably Because there is a full Board meeting in May, at the end of May Those are set up as part of the entire system of the Commission. We know exactly, it is the final Thursday of certain months

THE COURT: We are going to take a break. Fifteen minutes

(Recess taken from 3:04 p.m. to 3:20 p.m.)

THE COURT: All right, let's bring in the jury

(The jury entered the courtroom.)

All right, Mr Dry?

BY MR. DRY:

Q Bring back up 1933, please I think that's where I left off. And I think we were in the middle of the document I think where we left off, you were saying that there was a normally-scheduled full committee meeting that annually happened in May?

A That's correct

Q So when it says, "The next round of R&D's are due in March," that would be the typical --

A That would be the six, seven-week process.

Q That would be, May of 2012 would be when the full committee would be meeting?

A Yes

Q Okay If we could go up to the top e-mail, please And this is from Phil Parrish to you, correct, and Tim

Pfohl?

A That's correct.

Q And that last sentence there, it says, "There has been no decision yet regarding UVA teaming with them."

It would have been a pre-condition for this for UVA to have signed off on actually making the grant application directly to you, correct, to the Commission?

A If UVA was going to be an applicant, they would have had to have signed off, yes

Q Star Scientific wouldn't be an applicant

A No

Q I believe -- I just have a couple more questions I believe you were questioned about whether the Governor has actual authority over the Commission decisions, correct? Do you remember those questions from Mr Brownlee?

A Yes, I do

Q And bottom line is, he doesn't get a formal vote, right?

A Three Secretaries have votes

Q But not him personally

A But not the Governor personally, no.

Q But is it fair to say that if the Governor is expressing support for a grant application, you are going to hear him out, right?

A Absolutely

MR. DRY: Nothing further Thank you, sir

THE COURT: Mr Brownlee, anything?

REDIRECT EXAMINATION

BY MR. BROWNLEE:

Q Just to follow up Mr Dry In order to be eligible for a grant from the Tobacco Commission, an application must be filed; is that correct?

A That's correct

Q Okay And in this case, as far as you are concerned, no one on behalf of Star or for the study of Anatabloc or anatabine ever applied to the Tobacco Commission; is that right?

A That's correct, sir

Q And just to be clear, with regard to Mr Dry's last question, neither Bob McDonnell nor anyone on his staff ever approached you and lobbied on behalf of Star or anatabine for any application to the Tobacco Commission; is that correct?

A That is correct, sir

MR. BROWNLEE: Thank you, Judge

THE COURT: Thank you, sir You may stand down

(Witness stood aside.)

Call your next witness, please

MR. BROWNLEE: Your Honor, may he be released?

THE COURT: Absolutely.

MR. BROWNLEE: Thank you. Call Laura Fornash, please.

LAURA FORNASH,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWNLEE:

Q Good afternoon Could you please state your name and spell your first and last name for the court reporter?

A Sure Laura Fornash, L-A-U-R-A, F-O-R-N-A-S-H

Q And Ms Fornash, did you just last year work in the Administration of Governor McDonnell?

A Yes, sir, I did.

Q Okay Could you please tell the ladies and gentlemen of the jury, give us your educational background, where you went to school, and some of the initial jobs you had leading up to your time with the McDonnell Administration?

A Yes, sir I worked for Virginia Tech for 20 years I received my undergrad and graduate degrees from Virginia Tech, and I held a variety of administrative positions there during my 20-year span of time

Q Where do you work now?

A The University of Virginia.

Q What is your job there?

A Currently, I'm the Executive Assistant to the President of the University

Q Okay And did there come a time several years ago where you joined the Administration of Governor McDonnell?

A Yes, I joined the Administration of Governor McDonnell in 2010

Q What position did you hold when you first joined?

A I started working for him as the Deputy Secretary of Education

Q Okay How long did you do that?

A I was in that position from 2010 until about July of 2011

Q Okay Who was the Secretary of Education when you were the deputy?

A Gerard Robinson.

Q And did there come a time in 2011 when Mr Robinson left the Administration?

A Correct. He left the Administration about July of 2011 to pursue another position out of state

Q Okay And at that time, did you consider applying to be the Secretary of Education?

A Initially, no

Q Okay. Did there come a time when you changed your mind?

A A couple weeks after that

Q And so you did apply, and did you have a conversation with Governor McDonnell about the appointment?

A After I was appointed, I really, the majority of my communication about the position was with Martin Kent, the Chief of Staff

Q Okay And at what point -- when were you appointed Secretary of Education?

A I was appointed August 23rd of 2011 to be Secretary of Education.

Q Now, had you been active in the campaign --

A No, sir

Q -- of Governor McDonnell? Had you been a donor to the campaign?

A No, sir

Q So you came in as the Deputy and then were elevated from that position?

A Correct

Q Can you give the ladies and gentlemen of the jury a sense of your duties as Secretary of Education for the State of Virginia?

A Sure. As Secretary of Education, I was responsible for providing general oversight to our higher education institutions, as well as policy guidance for K-12 institutions, and then also was responsible for a number of our state agencies, the State Library of Virginia, and a number of our museums, the Fine Arts Museum, Gunston Hall, Jamestown-Yorktown.

Q Also, did you serve as the liaison for the Administration to universities such as UVA and VCU?

A Yes, sir.

Q Tell us a little bit about some of the duties you did with regard to being that liaison.

A Sure For Governor Bob McDonnell, we were very focused on a higher education agenda, so we worked very closely with the higher education institutions We created a Higher Education Commission to really look at increasing educational attainment of the citizens of the Commonwealth, and so we brought in the presidents of the institutions as well as business leaders to talk about how do we raise the educational attainment of the citizens of the Commonwealth. It was really important that we were working closely with our higher education institutions, to understand enrollment growth, what would be feasible. The Governor was also very much focused on tuition, and really wanted us to communicate a strong message of managing tuition increases, making sure that we kept them very low, because we knew that if tuition continued to rise, that that would prevent access to our higher education institutions So there was a lot of conversation and dialogue in working with our higher education institutions

Q Okay Understanding that you were the liaison, can you give us a sense of how much control either you or the Governor through you actually had over the public universities in Virginia?

A I guess I'm not sure I would describe it as control per se Probably a strong hand in policy guidance and encouraging the institutions to respond to the priorities that were important to our Administration.

Q Okay But the universities had a Board; is that correct?

A That's correct And so the Governor made appointments to the Board, and those were the individuals that typically would help carry out those policy items that were important to us

Q And in your interaction with the boards and the leadership of the state universities, were they fairly autonomous?

A Most definitely They wanted to be even more so

Q Okay. Fair enough. Let me move to a little bit of your duties as Secretary How often was it or did it happen when you would take meetings with potential constituents or constituents on behalf of, at the request of the Governor or members of his staff?

A Fairly regularly

Q And would you give us a sense of how regularly that would be?

A My calendar was full of meetings throughout the day Typically those could be meetings with constituents, whether it was individuals from our higher education institutions, our K-12 stakeholder groups, or individuals that were interested in partnering with the Commonwealth of Virginia.

Q On that last one, when you talk about partnering, does that include private companies?

A It could, yes, sir

Q And I think that with regard to campus security, were there private companies that were interested in helping and then having contracts with the state with regard to those things?

A Sure. That would probably be a good example Given the incidents that occurred at Virginia Tech, there seems to be always new companies that were creating technologies or devices that would help college campuses be more secure. Microsoft would be another example of a company that the Commonwealth of Virginia partnered with during our Administration

Q Okay And these meetings, some of them came from the Governor's Chief of Staff?

A Correct

Q And some of them came from the Governor himself; is that correct?

A Yes, sir

Q And when the Governor would send you some of these requests, did they routinely come late at night or early in the morning?

A All of the above

Q Okay And it was by text or e-mail or phone calls?

A Correct

Q Okay Now, when you were asked to take these meetings with stakeholders or companies or whomever, can you describe for the jury a little bit about what your understanding, your obligations were, your expectations were from Governor McDonnell?

A You know, when I was asked to take a meeting, I typically felt like I was an ambassador of the Governor, and asked to do that at his request, that he believed in good public service, and so it was our responsibility to make sure that we met with individuals who had an interest in partnering with the Commonwealth And so really my focus was on follow-up and to see if there could be some opportunities where the Commonwealth could partner with whatever particular entity or idea this person may have

Q Fair to say, your job was to listen and hear folks out and then would you be kind of empowered with your own independent judgment to make a decision one way or the other?

A Yes, sir

Q Okay. Was it common for you to take no action after these meetings?

A Occasionally

Q Okay Now, in your interactions with Governor McDonnell, when he wanted you to do something, was he fairly clear on telling you he wanted -- would you understand when he wanted you to do something?

A Yes, very clear

Q Okay And sometimes, is it fair to say he would ask you to do things that may not be all that popular, specifically with the VEA there was an issue; is that right?

A Correct The Governor felt --

MR. FAULCONER: Objection, Your Honor, relevance.

THE COURT: Sustained.

BY MR BROWNLEE:

Q Let me move to another topic In your working with Mr. McDonnell, and remind us once again, when were you appointed as Secretary of Education?

A August of 2011

Q Before that you were the Deputy?

A Correct

Q Did Mr McDonnell ever ask you to do anything with regard to the public universities on behalf of Star Scientific or Jonnie Williams?

A No, sir

Q Okay Did he ask you to do anything with regard to the research of anatabine or Anatabloc?

A No, sir

Q While you were Secretary or Deputy Secretary, did he ever mention anatabine or Anatabloc?

A No, sir

Q Now, while you were Secretary and Deputy Secretary, were you aware that Star executives were telling UVA and VCU administrators that Governor McDonnell supported certain things with regard to Anatabloc?

A No, sir Never heard of Star

Q Did anyone from those universities, either VCU or UVA, ever come to you and say, "Hey, we are getting pressured" or anything like that with regard to these issues?

A No, they did not

Q Okay Now, in your time working with Governor McDonnell, did he ever ask you to do anything you viewed as unethical?

A No, sir

Q Okay

MR. BROWNLEE: Thank you, Your Honor

THE COURT: All right Mr. Burck?

MR. BURCK: Just very briefly, Your Honor

CROSS-EXAMINATION

BY MR. BURCK:

Q Good afternoon, Ms Fornash. My name is Bill Burck and I represent Maureen McDonnell Did Maureen McDonnell ever advocate to you on behalf of Star Scientific or Jonnie Williams?

A No, sir

Q Did she ever ask you to ask universities to perform any research?

A No, sir

Q For anatabine or anything like that?

A No, sir

Q Did you have any contact with Ms McDonnell at all about Star Scientific or Jonnie Williams or anything along those lines?

A No, sir

MR. BURCK: That's all

THE COURT: Any questions from the government?

MR. FAULCONER: No, Your Honor

THE COURT: You may stand down Call your next witness

(Witness stood aside)

MR. BROWNLEE: Richard Brown

RICHARD BROWN,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWNLEE:

Q Good afternoon, sir

A Hi

Q Could you please state your name and spell your first and last name for the court reporter?

A Richard Darrell Brown. R-I-C-H-A-R-D, B-R-O-W-N

Q Do you go by Rick?

A Ric, R-I-C.

Q What is your present position in state government?

A I'm Secretary of Finance for Governor McAuliffe

Q How long have you been the Secretary of Finance?

A Since August of 2008

Q Okay Can you give the jury a little bit about your educational background?

A I've got a B.A. degree in Economics from the College of William & Mary, Master of Commerce from the University of Richmond, and my 44 years in state government, a number of different positions

Q Give us a sense of some of the positions you have held leading up to being appointed Secretary of Finance

A Just about every position in the Department of Planning and Budget from Manager of Commerce and Trade Agencies to Education Policy Analyst to overall Associate Director for all the budgetary policy, putting together the budget and the legal documents, Deputy Director I was in the front office of the Department of Planning and Budget for 20 years

Q And what year were you appointed Secretary of Finance?

A Secretary of Finance, August, 2008

Q Who was Governor at that time?

A Governor Kaine And I was reappointed by Governor McDonnell and then reappointed by Governor McAuliffe

Q Can you give the jury a brief description of some of your duties as Secretary of Finance for Virginia?

A Okay I have four big agencies underneath me, the Department of Taxation, the Department of Planning and Budget, the Department of Treasury, and the Department of Accounts I'm the chief liaison or financial officer for tax policy in the Commonwealth, for cash management and debt policy for the budget We put together the Governor's introduced budget as well as all the explanatory documents, and the chief accountant for the state is under me, the State Controller

Q You mentioned the budget. Let me talk a little bit about the budgetary process in Virginia When does the General Assembly pass the major -- its budget?

A The General Assembly comes in on the second Wednesday in January In a long session they are in for about 60 days, so they will be through mid-March. And that's when they would usually enact it if they don't extend.

Q And is it a biennial budget?

A It is a biennial budget. It starts on July 1st of the even-numbered year and goes to June 30th of the next even-numbered year, so July 1st of 2014 we started a brand new biennial budget, which will go to June 30th of 2016

Q So now, your role as Secretary of Finance is to essentially prepare that, the Governor's budget, the Administration's budget to submit to the General Assembly

A Yes When the Governor introduces House Document Number 1, a tentative bill for the appropriations for the biennium, and then the General Assembly, usually, the two chairs of the money committees introduce that bill and then it becomes a legislative bill

Q So I understand the dates, so in December, late December of, let's say, 2011, you will then, the Administration will submit its budget to the General Assembly

A That's correct We have to submit by December 20th of each year, either the long budget or amendments to the existing budget

Q And then they've got a couple weeks to review it and then they submit it for review by the General Assembly right when they come back in, say, January of 2012.

A Yes The General Assembly will accept it, technically it gets introduced on the first day of the session, but right after the Christmas holidays They usually have public hearings on the budget before they go into session.

Q Okay And then the General Assembly must evaluate it, amend it, do whatever they do to it, and they have to pass it before they leave and it becomes effective in July of that even year?

A A budget bill, unlike other legislation, is effective upon passage by the General Assembly and signatured by the Governor In the long session, where it is effective July 1st of 2014, we actually put an effective date in it so it doesn't take place immediately In the short session it takes place immediately upon passage

Q Let me have you focus a little bit on the process of getting it to the General Assembly Is it fair to say that at some point there is a document for review, and then you and other stakeholders come to a conference room and go over the budget of Virginia in preparing your yearly budget?

A Yes Basically, the process is almost overlapped now from year to year It starts with the agency strategic planning and plans and builds up to their individual budget requests We will get budget requests from legislative study commissions that are reporting out along the way from gubernatorial task forces, interested parties that write in, and then it will be individual probably initiatives that are sort of sponsored by Cabinet Secretaries or policy staff of the Governor

Q How big, for the record, how big is the biennial budget in Virginia?

A The one that was just passed is $99 billion. $2 billion of that is capital outlays, so about $97 billion in operating Last Friday, we announced a little revenue problem Friday of about $2 billion, so it is more like $95 billion at the present time

Q How big was the budget when Governor McDonnell was Governor?

A About 84 or 85

Q Now, in the preparation of the budget to be submitted to the General Assembly, what role does the Governor play in that?

A All the agency requests come into the Department of

Planning and Budget The Department of Planning and Budget is structured along functional bases, and those analysts specialize in various areas, and they analyze the request, each one of those requests, as well as the analysis goes before the Governor

Q Fair to to say that the agencies, Department of Education, Department of Health, they all have a request?

A Yup

Q And then you can get requests from --

A Interested parties that may write in, we try to keep a complete inventory, whether they are legislators, whether they are, you know, associations, American Lung Association, whatever, that writes in.

Q Okay And then legislators, they have their own requests?

A They have their own requests

Q And private parties can have their own.

A Sure

Q Now, with regard to, the budget that is actually submitted, how close, generally, is that to the one that's actually adopted?

A The General Assembly usually changes it, maybe 200, 300 million, a few hundreds probably more likely Sometimes it is even less than that It is probably, talking about the budget, there's really two budgets in the Commonwealth. One is what we call the non-General Fund side, which is actually bigger, it is 60 percent of that $99 billion, and that's made up of earmarked money It is earmarked by law for programs as well as federal money Then there is a General Fund side of it Currently that's about $37 billion. And that is the general tax dollars that are at the discretion of the Governor and General Assembly to appropriate and distribute. And almost all of the discussion goes, as you may imagine, about that side, the 40 percent, because that's the discretionary side

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Q Okay. So the nondiscretionary, the Medicaid, those things are kind of fixed?

A Yeah, because they are either contractual or federal government dictates or law says they have got to go to Transportation or whatever

Q All right So of this 37 billion that's the actual -- that the people can actually have an impact on, what you're saying is the General Assembly would typically only tinker with about 200 million of that?

A Yeah Yeah, about 10 percent or so

Q Pretty small amount?

A Uh-huh

Q Okay Now, with regard to the preparation of this budget for Virginia, how much influence does the Governor have over how that 37 billion is allocated?

A In the introduced bill, it's -- almost everything that goes in it is at the Governor's discretion There are very lengthy meetings, starting in earnest after Labor Day, probably peak Friday after Thanksgiving into the first week of December And they can go for very long sessions --

Q Okay

A -- over a multitude of items

Q So fair to say if there was a cause or an entity or whatever that the Governor supported, would it be easy for him to get that put in the budget?

A Sure

Q Okay Also within the budget, the Governor has certain funds that the General Assembly will fund up to a certain amount, and then he has discretion, once it's funded; is that correct?

A That's correct

Q Okay And is one of these the Governor's Opportunity Fund?

A Yeah It does have some rules and regulations established by that And it's administered by the Virginia Economic Development Partnership --

Q Okay

A -- using those rules. But the Governor has final sign-off on it.

Q Okay So once the General Assembly funds that fund, then the Governor and his secretaries -- in this case, it would be Secretary of Commerce; is that right?

A It would be Jim Cheng

Q Mr Cheng They would have discretion on how those funds are spent?

A Yeah, within the established regulations of the fund.

Q Okay Now, you have sat in on a lot of meetings with Bob McDonnell to go over Virginia's budget; is that correct?

A Yes, indeed

Q Okay And is it fair to say that when he wanted a project supported, he was clear to you that that's what he wanted?

A I would say that

Q Okay And if he wanted to get something done, even when it wasn't necessarily popularly supported, he made it clear and he got things done; is that right?

A Yeah He would keep with it

Q Okay Do you have any examples of that?

MR HARBACH: Objection, Your Honor

THE COURT: Sustained We don't need any examples

MR BROWNLEE: Okay

BY MR. BROWNLEE:

Q Let me go to the heart of this In all your meetings and all your time preparing budgets for the State of Virginia, working with Bob McDonnell, did he ever ask you or did anybody on his behalf ever ask you to allocate any money for Star Scientific or Jonnie Williams?

A No

Q Okay Did he ever discuss with you allocating any money for Star Scientific or Mr Williams?

A No

Q Did he ever mention to you the research of something called the anatabine?

A No

Q Okay In all your time working with Mr McDonnell, did he ever ask you to do anything unethical?

A No

MR BROWNLEE: Okay Thank you

Thank you, Your Honor

THE COURT: Mr Burck

MR BURCK: Thank you, Your Honor Just one question, Your Honor

CROSS-EXAMINATION

BY MR BURCK:

Q Good afternoon My name is Bill Burck I represent Maureen McDonnell

A Okay

Q Does the First Lady of Virginia have any control whatsoever over the budget of the Commonwealth of Virginia?

A No Other than her influence on her husband

MR BURCK: Thank you

Thank you, Your Honor

THE COURT: Anything from the government?

MR HARBACH: No thank you, Your Honor

THE COURT: All right

Thank you, sir You may stand down

THE WITNESS: Okay

(Witness stood aside)

THE COURT: Call your next witness

MR ASBILL: James Cheng

JAMES CHENG,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR ASBILL:

Q Good afternoon

A Good afternoon

Q Would you please tell us your full name, and spell it for the court reporter?

A James S Cheng C-H-E-N-G.

Q And, Mr Cheng, could you tell us about your educational background, please

A I have an undergraduate degree, a BS in computer science from Old Dominion, a MBA from UVA Darden, and a Georgetown law degree

Q When you say MBA from Darden, that's the University of Virginia School of Business?

A That's right

Q All right And a law degree from Georgetown?

A That's right

Q All right Tell us about your professional background

A I've been a government contractor I started out -- I'm 54 years old Out of school, I worked for my dad in his government contracting business down in Virginia Beach After a while, I started my own government contracting business in IT, information technology, computers and networking things like that Started my own company in 1995

Q What was the name of that company?

A CHM, Computer Hi-Tech Management

Q And what did you do from there?

A In -- I started that in 1995 I grew it to around 550 people, around 90 million in revenues And I sold it in 2005

Q And what do you do now -- or what did you do after that?

A After that, I traveled a little with my wife But I also got into investment and angel investment, helping start-ups, new companies, mostly high tech, and for a short amount of time, before I joined the state government, I was the President of a company called Totus, an efficient lighting/LED type company, a start-up

Q All right And you said at some point you joined the state government?

A Absolutely I had the great honor of being asked to be Secretary of Commerce right after Governor McDonnell won the election I actually wasn't appointed until, of course, inaugural day

Q That would have been 2010?

A 2010 January 2010

Q All right Tell us about your relationship with Mr McDonnell before you were appointed

A Well, I grew up, of course, out of state But all my adult life, I've lived in Virginia, for 34 years, and the first part of that, I lived in Virginia Beach My parents lived there, and my dad was very active in Virginia politics and local politics And so he would invite me to go to some of the events that happened, and there was a young delegate and several fast up-and-coming state delegates and senators But one that was especially noted was Bob McDonnell

Q So when did you first meet him?

A Sometime in the mid-'90s We went to a lot of events, and Bob McDonnell was there. And my dad was very active and he showed me, you know, a lot of folks or introduced me to a lot of folks in state government

Q Okay In terms of your position as Secretary of Commerce and Trade, when did you leave that position?

A This January, when the new administration took over.

Q All right And are you still doing private investing at the present time?

A That's right I do private equity investment I'm associated with three or four small investment firms I invest in mostly high tech start-ups Things like that I sit on several Boards, helping these small companies

Q Boards of private companies or --

A Private companies Nonprofits too

Q Do you still practice law at all?

A I do I'm of counsel to a small law firm out of -- on the West Coast They are primarily a patent law firm

Q Okay Do you do any teaching?

A In fact, I'll be teaching a class in entrepreneurial finance at UVA, the engineering school, starting end of the month

Q All right With respect to your job as Secretary of Commerce and Trade, tell us what your duties and responsibilities were in that position

A Well, primarily, I had basically 13 agencies, about 1500, maybe up tc maybe 1900 employees, at any one time These agencies would be responsible for things like housing, horse racing, other economic development things, like Virginia tourism That was one of my agencies And small business, like the State Small Business Administration, if you're familiar with that, helping small businesses It was call the Department of Business Assistance at the time The name has changed since then And also the VEDP, the Virginia Economic Development Partnership, the Tobacco Commission, and about 12, 13 agencies altogether, and several Boards associated with them.

Q All of those reported to you, essentially, or not in a direct line, but -- or in a direct line?

A Well, they reported to me And, of course, some things still, of course, had to go to the Governor Things like that, yeah

Q Okay Now, in that capacity as Secretary of Commerce and Trade, did you -- how often would you receive a request from companies that were seeking the Governor's support for some economic project?

A Well, it would happen all the time It would be from all over It would be directly from companies It would be from perhaps delegates or state delegates or state senators or localities It could come from anywhere

Q All right And in general, what sort of things were these companies asking for?

A They are looking for support from the state government For example, we have several programs at VEDP, the Economic Development Partnership, that would give them a package if they moved their company from out of state to this state But also companies that wanted to grow in this state That was a big part of what we wanted to do was help our existing companies grow

Q Okay Did you often have to tell these companies that wanted something no?

A Well, it happened all the time We -- we would be -- the folks that would review and vet, and sometimes I'd call other departments in, or other departments would know about it and come in and we'd talk about it And sometimes they were perfectly great companies, but they just didn't qualify for the programs that we had to provide them assistance, like either funding or maybe space or rent or other things

Q All right And when you told a company that wanted something no, did you believe you were doing that with the support and endorsement of the Governor or was that on your own or what?

A Well, absolutely You know, the Governor was very supportive of everything we did Of course, we were -- our job was to increase jobs It was creating jobs, creating opportunities for people in this state So we did everything we could to try to help companies grow Because they employ our people They pay taxes. And so was that a very, very important part of the job, was the whole point of the administration, in the beginning especially The Governor campaigned on Bob's For Jobs on increasing opportunities, increasing jobs for people in our state

Q Okay Did the Governor ever ask you to attend meetings with constituents or look into requests from them?

A Oh, all the time In fact, the Governor would often go to a lot of meetings without me, unfortunately I didn't go to all of them In fact, probably very few of them. He'd go to out-the-state meetings, meetings across the state And I'd get all these -- when he comes back, I'd have a pile on my desk of maybe business cards with his, frankly, illegible writing on it, and I'd have to decode in his red pen what he wanted. Usually it was "Call this person He thinks he wants to move to Virginia", or "Please talk this guy into moving to Virginia " And so I'd get these things Or maybe someone would send him a memo and he'd write on it, "Please check on this " It would happen all the time. A big part of my job was talking to constituents and finding out if there was anything we could do to help them

Q Did y u ever -- in that capacity, did you ever talk to people or consider requests from folks who you knew to be donors or friends of Bob McDonnell?

A Well, I'm sure I did Like I said, I was involved in

Virginia politics So I sort of knew some of the people that were generally donors And, of course, most of these were business owners, and I don't think it's any surprise if I say that most business owners are Republicans like me, the Governor, and the administration generally were But -- so I would not be surprised at all. In fact, I was pretty sure some of them were donors But we didn't treat them differently We were nonpartisan when it came to creating jobs It didn't matter And the Governor said himself on several occasions, "It doesn't matter if they are blue or red jobs All jobs matter to us " And we knew he meant it And I think in my department, the history has always been that the Secretary of Commerce, we try to stay as neutral as possible We want to help everybody that comes to us

Q All right Would the fact that someone had loaned money to the Governor or given him a gift ever influence your decision on anything that that person may want from the Governor?

A No Never. Never

Q All right Did the Governor ever discuss his personal finances with you?

A He never did

Q And vice versa?

A I did not I did not discuss anything like that

Q Okay So he never informed you that he took out a loan of any kind; is that right?

A No, he didn't

Q And you never told him you did either, or did you ever?

A I didn't talk to him about my personal finances either.

Q All right Did he ever talk to you about his personal relationship with his wife?

A No We didn't talk about that

Q Is your family or your -- are you married?

A I'm married, yes

Q And did you ever talk with him about your wife or your personal relationship with her?

MR. DRY: Objection Relevance

THE COURT: Overruled

A Oh, sure, we did I mean, we certainly talked about our lives in general, but just mostly happy things And especially in the first part of the administration, the first two and a half, three years, we were really so busy I barely had a chance to sleep We were all over the state, all over the world trying to -- mostly with the Governor Sometimes w [illegible] not -- without him But we were all over the country, all over the world, trying to sell Virginia, trying to bring businesses here or try to help our current businesses expand

So we really didn't have a whole lot of time to talk anything but business, but we talked generalities And I knew his -- I knew about his family I knew he had weddings coming up and things like that.

But what happened to me was I had a child My wife of 25 years and I had a baby, one and only baby, halfway through the administration So I got some really great pointers on child rearing and things like that He had five of his own and so, obviously, a lot of experience And so yeah, we talked about good things, and very little time to talk about anything else He was very, very busy, kept us very busy He was a great leader, and he pushed us and pushed himself too

Q I'm sorry. I didn't mean to interrupt you You say you traveled with him locally, is that right, or in Virginia?

A We would do -- well, we had a lot of road trips You know, every year, at least a few times, we'd go out and talk to businesses, have road trips Of course, overseas We did a lot of trips out there too

Q All right When you say "overseas," where did you travel with him?

A Well, I was very fortunate As Secretary of Commerce, we were the ones that took him overseas, and we had, I think, 11, 12 overseas trips We went all over Europe, Asia, China, Japan, Korea We even went to Canada and California and places like that, trying to sell Virginia, trying to sell Virginia businesses We'd take Virginia businesses with us sometimes Sometimes we'd go to events hosted by Virginia businesses So we're doing everything we can to increase the visibility of Virginia all over the world

Q All right And on the trips abroad when you were traveling with the Governor, how many hours a day would you actually be in his presence or spend with him?

A I'll tell you, there are times where I spent 24 hours straight with him, you know, from plane ride over, then right to work. We would spend weeks together on end

And I'll tell you, that was very different than traveling locally around the state because you're in the same time zone I felt that when we traveled overseas, you know, he would actually have a little bit of time off because sometimes -- and he was always on the phone, talking to some important business, state business. But overseas, because of the time difference, a lot times there was nobody to call back home because everybody was asleep So that was the only time that he could rest

Q Okay With respect to attending -- you attended a lot of events, I take it, with the Governor?

A I absolutely did A lot of events with the Governor and a lot on my own.

Q Okay And when you attended events with him, do you have any knowledge of how much in advance of the event he would know about the event he was attending or know any kind of detail about the event?

A Well, there were many times I was pretty sure, in fact, he didn't have any time to look at his schedule or he wouldn't even know what event was next I mean, one typical example, especially in the beginning of the administration when we were all trying to advance his agenda of jobs and job creation, I remember going, many times, you know, in a -- in a state car, state vehicle, his vehicle, I'd be sitting with him and he'd be asleep We'd do four or five meetings or events a day. And he'd -- the only time he had to sleep -- I knew he didn't sleep the night before The only time he had to sleep was between those meetings And I knew he hadn't looked at the notes yet because -- he'd wake up as we were pulling up I'd sometimes have to shake him a little bit He'd wake up He'd say, "Jim, what's next?" And we'd open up the book, and he'd look at it

But you know what, he always came through. He just skimmed through the pages, marked it up, throw it away, walk in and make a great speech and do a great event in front of a forum, maybe hundreds of people, or visiting a company or something like that He knew exactly what to say once he got there, even though he just woke up It really surprised me I learned a lot working with him that way.

Q Okay What are some of the ways in which he would exercise his powers or influence on other officials to -- government officials to promote business and economic development in Virginia?

A Well, we had, certainly, a lot of tools The most obvious one is the legislative He'd pass a bill or make a change to current law through the legislatures. And that would be either through law or through the budget on an appropriation or perhaps an Executive Order

Q Okay What is the Economic Contingency Fund?

A Oh, Economic Contingency Fund That was a small pot of money -- not that small -- maybe over a few million over a biennium that he would dip into on his own at any time

Q And do what with it?

A He could grant it to a company

Q On his own?

A On his own

Q And he had a couple million dollars every two years with which to do that?

A I seem to remember that was the amount It wasn't my money so I -- I couldn't track it that well But I did know about it, sure

Q Okay What about executive or administrative actions? Could he take that -- could he take those to assist a company or help a company if he wanted to?

A Administrative actions like Executive Orders or like the GOF Fund He had a little bit of, now the GOF is the Governor's Opportunity Fund It was generally run by -- or not run by, but generally, it was in my budget, but one of my agencies, the VEDP, the Economic Development Partnership, they would be the ones that would generally recommend what would happen to that and make recommendations, the amount But every biennium, the Governor had about a million dollars that he could grant, grant a company, just give them the money

Q No oversight?

A No, no oversight But we would generally would give an opinion or something like that

Q Okay You said, I believe in the beginning of your testimony, that the Tobacco Commission also reported to you, essentially; is that correct?

A Yes, they did The staff reported to me The commissioners, the people that sat on the Board, reported to nobody. So they reported to their constituents if they were senators or delegates, and about half of them were The other half were from the population that were in the formerly tobacco-growing regions of Virginia And there were several ex-officio people that sat -- from the Cabinet that sat on this Commission also, including me I also sat on the Commission But the staff were the ones that reported to me

Q All right So you were actually a member of the Board of that Commission?

A Yes, I was

Q Okay Now, with respect to the idea of proposing legislation if the Governor wanted to help a business out, basically, do you recall any specific examples of him doing that?

A Oh, absolutely We did that all the time The two I can think of right now were based on promises made by past Governors, and we had to fix some inequities in our -- for example, our tax code to help a large insurance company out I mean, it was only to benefit them, but that was -- I don't remember if that included both an appropriation and legislation too

Another one helped a very, very large bank, and that, I know, included both legislation to change some wording in a good law, but also an appropriation to -- to allow a category of chiller, you know, like in a computer room chiller, air conditioner, to be allowed as a tax break

Q All right Do you recall any -- any legislation relating to electric utility regulation?

A Sure All the time for companies like Dominion and some of the electric cooperatives It happened all the time

Q How about bioscience, health research kind of companies, any --

A Well, there were several efforts on there Of course, we wanted to stimulate companies and encourage companies that were in high tech and especially bio life sciences So two things were created

One was a CRCF, Commonwealth Research and Commercialization Fund And that was a pot of money, several million dollars, that was meant to help companies that would take something that was right out of a lab or universities that was coming out of a lab and help commercialize it And eventually some day that they'll hire people and create more jobs

The other one was the -- specifically targeted to bio and health sciences That was the Virginia Bio and Life Sciences Research Corporation, a corporation that was funded with about $5 million in state money And that was to go and help give grants to universities working possibly with companies to help them finalize research and, again, take it to commercialization

Q Okay As far as you know, did Mr McDonnell propose or advocate for any legislation aimed at helping Star Scientific?

A No No, not at all

Q All right In terms of recommending appropriations, one of the topics that you've discussed in -- in terms of economic development, do you have -- do you recall any examples of him doing that sort of thing for an organization or for a company?

A Oh, absolutely We had -- for example, in 2012, it was the 200th anniversary of the War of 1812 Makes sense And Op Sail was going to be a huge event in Virginia, in Norfolk, the harbor, and they needed money for economic development in marketing the event and hoping lots of people come here from all over the world to spend their money And so we would get tax money for it And I think about a million dollars he appropriated for that

Q What about a company named Genworth?

A Oh, Genworth Yeah, that was the example I gave earlier I may have said it to too quickly That was a tax inequity for Genworth That had been going on for a while I believe it was about $7 million that we appropriated over time to help a tax inequity so Genworth would stay in our state, because they found out that there's something about our tax code that made it less competitive than some other state So that amount of money was put in to make it fair for Genworth to stay here

Q Okay On the topic of proposing appropriations in the budget for the benefit of a company, to your knowledge, did my client ever do that for Star Scientific?

A No, he never did

Q All right The Economic Contingency Fund that you talked about, did the Governor have to get approval from the General Assembly to make grants from this fund?

A No, he did not

Q Okay And what's an example of him doing something with that fund that would assist a company either in Virginia or one coming to Virginia?

A Well, there are a couple that -- one was World Cycling Foundation Bringing that huge event, you know -- cycling may not be big here, but it's huge all over the world -- bringing that to Virginia

The other one is the Redskins A lot of money came for the Redskins, to help them stay in Virginia Otherwise, they'd move somewhere else, and we wouldn't want that to happen. And that money was appropriated, and as, you know, people in Richmond know, that was a big success and brought a lot of money here

Q Okay. With respect to that fund, the ECF Fund, to your knowledge, did Mr. McDonnell ever authorize a grant from that fund to Star?

A No, he didn't No.

Q In terms of executive or administrative action, do you recall any examples of the Governor using that vehicle to assist a company?

A I don't -- I'm trying to think of the -- the administrative vehicle, like the GOF or something like that or --

Q Well, any Executive Orders relating to job creation or economic development or anything of that nature Do you recall him doing any of that?

A Well, we had a lot of Executive Orders, and the first one was the creation of a Economic Development and Job Creation Commission

Q Again, any relation to Star with respect to that --

A No

Q -- ability to help out?

A No.

THE COURT: I need to stop and take another break It will be 15 minutes

(The jury left the courtroom.)

(Recess taken from 4:14 p m until 4:31 p m)

THE COURT: All right Bring the jury, please

As I told you earlier, we're going to stop at 5:00 no matter what the situation is If we finish with this witness before 5, we will stop then

(The jury entered the courtroom)

THE COURT: All right Mr Asbill

BY MR ASBILL:

Q Mr Cheng, I want to talk to you about the VEDP, the Virginia Economic Development Partnership?

A Yes

Q And is this -- the Governor's Opportunity Fund, that's part of it, or I'm not sure I understand?

A The Governor's Opportunity Fund, actually, is set in my budget, underneath the Governor VEDP has a separate Board and also President and a corporate -- it's like a corporate -- regular corporation except it was funded by the government

But the GOF was something that they used as part of their economic development tool kit, and they would make recommendations to me, and I would make recommendations to the Governor The Governor had final say in these things

Q And how much money did the VEDP have in discretionary funds available to promote business and economic development in Virginia?

A Well, it was around 24 million for a biennium, and that was -- and it was increased from previous governors and previous budgets as part of our economic development efforts by the Governor

Q Okay And correct me if I'm mistaken, but would -- that organization, the VEDP, would provide grants to companies that were thinking about coming to Virginia? That's one of the things they could do?

A Yes They would do things like that They would help both companies that were coming to Virginia -- they could work a package, and including the GOF, also workforce development funds, and a whole tool kit of different incentives, some tax incentives and some other things But they would be the ones that were primarily responsible for bringing companies in from out of state, but also for helping existing companies in Virginia grow

Q All right And you say -- the VEDP, is that governed by -- you said it's governed by a Board, is that correct, or is it?

A Actually, the Board, in the Virginia code, all they are supposed to do is appoint the President of VEDP And they are -- they function sort of independently to keep politics out of it and things like that In fact, the Board is mostly appointed by the Governor, but certain slots are reserved for the legislature And so it's a very large Board I'm ex-officio -- or I was ex-officio on it, the Secretary of Commerce, the Lieutenant Governor, the Secretary of Technology and others, Secretary of Agriculture probably also They were also on the Board, ex-officio

Q Let me see if I understand this The Board selects the President --

A Yes

Q -- correct?

And does the President ultimately report to you?

A Yes

Q Okay And when you say "ex-officio," will you tell folks what you mean by that term?

A Oh, ex-officio Because of my office, I would have a seat on the Board because of other folks So when I leave, the new Secretary of Commerce, he will sit on their Board, and he does now

Q Okay And so the President recommends grants, essentially, to you? Is that how this works?

A The President, through his -- through his people, and -- they will do evaluations of companies They'll do return on investment They'll make sure the taxpayers benefit from all the incentive packages we put together They are the ones that come up with all the numbers And they generally will give us a package that says, "We recommend this much to be given to this company to do these things "

Q And then in turn, you would consult with the Governor and make recommendations to him?

A Yes

Q All right And could he impact that organization in any way if he had a particular company or project in mind? Could he also impact it?

A Absolutely He -- I know that he went there at least a couple times to talk to them But mostly to encourage them and tell them what a great job they are doing and things like that Or he would impact it by telling me, "Hey, I really want this to happen," or something like that Or one of the other Board members too

Q All right. And the Governor ultimately approves grants from the VEDP?

A For that GOF Fund, yes

Q Okay And were grants given out to small companies, large companies, medium-size companies?

A Oh, sure We work from the smallest companies -- of course, they had to reach a certain threshold to qualify for certain incentive packages But we dealt with little, tiny companies The first one I did was Morgan Lumber, a small lumber company All the way to huge companies, like Amazon, Microsoft and companies like that

Q Okay Do you recall -- I know you've talked about the World Cycling event, et cetera

A Sure

Q Do you recall a VEDP -- excuse me, VEDP grant to a Virginia company ICF?

A Absolutely ICF actually got, I believe, two grants because they won -- they are a tech company like I was before my, you know, government job They are a government contracting company and also a tech company up in Northern Virginia They had a nice expansion, and they got some incentive package for that

And then we heard that they were looking to go somewhere out of state to set up a data center or some call center or something like that And the Governor helped, and he stepped in and said, "Hey, look You know, we have some great land outside of the area you're looking at right now that could fit your bill, and we may even have an incentive package for you " And it actually happened, and it was one of the biggest announcements on the southern part of the state, I believe it was Danville, or something like that It was a great announcement for that area and great announcement and great success for Virginia economic development too

Q Okay In terms of large companies that may have gotten grants, do you recall whether or not Northrop Grumman got any?

A Oh, several large companies Northrop Grumman was one of the first And it was big in the media The media was all talking about it It was a very exciting deal for us because it meant getting a company from California to come to Virginia And it was certainly one of the biggest successes we had, and it was very public And I think for all the right reasons, they chose Virginia over several other states, and that was a big success And the Governor was in -- personally involved with all of that

Q Do you recall a company called Sabra Hummus getting a grant?

A Oh Well, that was a -- one of our first big successes very early on in the administration It was a very exciting grant Sabra, they're -- if you go to the grocery store, if you like hummus, you know, the chickpea dip, that's all produced in Chesterfield, Virginia

And it was such a great deal, and they joint ventured between a company called Strauss Foods, the second largest food producer in Israel, and PepsiCo, one of the largest food producers, of course, in the United States, a joint venture between them And it was a very exciting announcement They had a ribbon cutting

We invited them to -- the Governor invited them to the Mansion Ofra Strauss, the Chairman of Strauss Foods, one of the 50 most influential women in the world. Plus, Indra Nooyi, the chairwoman and still current chairwoman of PepsiCo, came and had breakfast with us and told us how great Virginia was And we kept on selling them, "Hey, you've got to bring more things to Virginia " So we had a nice breakfast for them at the Mansion, and then we had a ribbon cutting and all sorts of celebrations, plant tours and things like that

Q At this breakfast that you mentioned, that you've discussed, were there any Virginia researchers there?

A Oh, yes We had -- in fact, part of the whole deal was that even though that hummus, you know, the chickpea dip, was being made in Virginia, the chickpeas were coming from all over the world, from Ethiopia, from Utah Why can't we have chickpeas that could be grown here in Virginia to benefit Virginia farmers, and the reason was because that chickpea just wasn't -- just didn't work in the machine right And so we said, "You know what We'll get a little grant for you to fund research to come up with a chickpea that could be used in the machinery that you have in your company " And so we had Virginia State working on it We had Virginia Tech working on it We even had a UVA professor So we had professors and researchers from Virginia State and Virginia Tech there, and also from UVA also at that breakfast

Q Okay And with respect to this fund, to your knowledge, did Mr McDonnell ever ask for or approve any grants for Star Scientific?

A No No, he didn't

Q All right The Tobacco Commission, we've talked a little bit about that and the fact that you were a Board member on the Commission Who was the chairman of the Commission when you were there?

A Terry Kilgore, a delegate from Southwest

Q All right And you were on that Commission the entire time you were Secretary of Commerce and Trade?

A That's right

Q All right And if Mr McDonnell wanted the Tobacco Commission to give a grant to someone, is that something that he would talk about or consult with you on?

A Well, there are several occasions where that did happen And the most -- there are a couple of them Most notable one that I know --

THE COURT: The answer is yes

MR. DRY: Objection, Your Honor

A Oh, yes

BY MR ASBILL:

Q I'm sorry.

A Sorry

THE WITNESS: Sorry, Your Honor

BY MR ASBILL:

Q I'm sorry. So you say it is something that he would consult with you on? That's right?

Did he ever consult with you or ask you anything about the Tobacco Commission with respect to Star Scientific and trying to get a grant from the Commission for Star?

A No No

Q All right Did he ever appear before the Commission or, to your knowledge, contact directly, indirectly, any way, anyone on the Commission or anyone who worked for the Commission with respect to Star Scientific?

A No Not that I know of, no

Q All right Were there other types of ways, other than these organizations that you've discussed, basically, for the Governor to try to promote Virginia businesses? And I'm thinking of things like press events or site visits or things of that nature Were those things that you did to promote Virginia businesses with the Governor?

A Absolutely We did that all the time I mentioned earlier, we had road trips, and a lot of them would be to promote Virginia businesses on the way, you know We have them several times a year within the state

MR DRY: Objection, Your Honor Objection, Your Honor, to the narrative answer

THE COURT: Sustained.

BY MR ASBILL:

Q You say you would do these sorts of events with the Governor? Is that what you are saying?
A Yes Yes, I would
Q All right And did you ever do any event relating to Star Scientific?
A No
Q Go to their operations or their site facility or work on a press release for Star Scientific?
A No
Q Okay Did Mr McDonnell ever ask you to do anything at all in any way, shape or form for Star Scientific or anyone that worked for you, to your knowledge?
A No, he didn't
Q All right Did he ever ask you to do anything or did you ever see him do anything that you thought was in any way unethical or improper?
A Absolutely not
Q And knowing everything you know now, would you work for him again?
A I absolutely would
Q And let me ask you, finally, with respect to the Bob's For Jobs issue, is that a bumper sticker or was that real?
A It was absolutely real I have the scars to prove it and the lack of sleep to prove it He had all of us

working Not just me Lieutenant Governor, other folks Absolutely

MR ASBILL: Thank you, sir

I have no further questions, Your Honor

THE COURT: Mr Burck

MR BURCK: Thank you, Your Honor

CROSS-EXAMINATION

BY MR BURCK:

Q Good afternoon, Mr Cheng My name is Bill Burck, and I represent Maureen McDonnell

A Good afternoon

Q Are you familiar with a program called FLITE, F-L-I-T-E?

A Sure.

Q First Lady's Initiative Team Effort?

A Yes

Q And did you meet with Ms McDonnell and her staff, back in 2010, to start talking about some of the initiatives that would relate to you?

A We did We did have a few meetings with that, yes And it would probably be through Virginia Tourism

Q Right It was tourism It involved the wine industry as well?

A Absolutely It would be the wine tourism side of the wine industry

Q Okay And you testified about a number of trips that you took with the Governor overseas, domestically, around Virginia Did Ms. McDonnell go on some of those trips as well?

A She did.

Q Particularly international trips?

A She went to Asia with us and Europe with us Yes, she did Not all of them, but she did

Q And on those trips, did she speak at the events that you were promoting Virginia businesses?

A She did She would often make toasts and represent both the wine industry and also the movie industry and other things for Virginia Tourism

Q Okay And in those speeches, would she mention the names of the Virginia companies?

A Oh, absolutely. Sure We had all the wine companies there, and a lot of them were there And she mentioned all their names and everything

Q All right And do you recall if she went on a trip to Italy and to California, for example, to sell Virginia wine?

A She did I didn't go on the Italy trip, but I think I was on the California trip

Q Okay And was there anything unusual about the fact that she was speaking at these events, from your perspective?

A Nothing unusual.

Q In fact, that was what she was there for, right, to help promote --

MR DRY: Objection, Your Honor Leading

THE COURT: Go ahead and lead Get it

BY MR BURCK:

Q In fact -- that's -- that was what she was there for; isn't that right?

A Absolutely She was there to represent the industry and help promote it

MR BURCK: Your Honor, I think that's it for me Thank you

MR. DRY: Just a few questions

THE COURT: Government

CROSS-EXAMINATION

BY MR DRY:

Q Secretary Cheng --

A Yes, sir

Q -- you mentioned something about the Redskins, keeping the Redskins in Virginia Do you remember what year that was?

A I don't But it was probably -- it was early on in the administration, sort of the middle of the administration Sure

Q Would that be 2011?

A I don't remember the dates exactly because they are all sort of running together, but it's pretty easy to find Yes

Q And the Governor was involved in that effort to keep the Redskins in Virginia?

A I believe so Yes Sure

Q And you had conversations with him about that, right?

A Sure

Q Okay Now, as Secretary of Commerce, who do you report to?

A The Governor

Q And who has the power to fire you?

A The Governor

Q And he's the only one, right?

A I imagine if he told Martin Kent or Chief of Staff to fire me, he could do that too So --

Q He might pass the message, but it's his authority to fire you, right?

A I would imagine so.

Q Okay Now, the Governor asked you to take meetings with businessmen That wasn't unusual. I think you testified about that extensively, right?

A Right

Q And those businessmen, they would meet with you, and they would want the state to -- the state government to help their businesses, right? That's the purpose of the meetings?

A All the time Yes

Q Okay And after those meetings, it wouldn't be unusual for you to go back to the Governor and report back on how the meeting went and what they wanted and what your thoughts were, right?

A I don't know that -- you know, he gave me a lot of people to call and all that I don't think it -- you know, we'd have monthly meetings and things like that And it wouldn't be unusual for him to ask But it wouldn't be a formal request or anything like that from him Very few

Q I guess my question is the Governor asked you to take a meeting with a businessman Are you saying that you didn't report back what the businessman wanted and what your thoughts were on that meeting?

A Some of them were on business cards, and some of them there was really nothing to report back And some of the big ones, he would text me in the middle of the night or something like that and ask me how that deal was going over at VEDP and things like that, and I'd answer him

Q Okay So at least occasionally you would report back, "Hey, I had that meeting that you asked me to have, and this is the result"?

A Occasionally, sure But remember, especially in the beginning of the administration, it was very, very busy and we had very little time for follow-up with the Governor We could barely even get time with him most of the time

Q And I think that you testified that you didn't talk about personal finances with the Governor, right?

A I didn't talk to him about personal finances

Q Okay But are you saying that it wouldn't have influenced you if somebody was a donor, right? When you're meeting with a businessman, it wouldn't have had anything to do with if he was a donor to the Governor's campaign, right?

A I imagine a lot of them were But we didn't care It was bipartisan. And we'd help A lot of them would come at us from other sources, and we'd help them regardless if they were Republicans or Democrats or whatever

Q Well, are you saying, as you sit there in that witness box, that you wouldn't have wanted to know if -- you wouldn't want the Governor to tell you if you were having a meeting with a businessman that had given him $120,000 in personal loans? That wouldn't have mattered to you at all?

A I don't think it ever happened to me So I couldn't tell you But he -- we -- you know, the Governor was so busy I don't even know if he remembered that he gave me those cards, or who they had And we would have weekly meetings and tell him the progress that we're making on the deals that we knew we were working on

Q Sir, I think that's a different -- you're not answering my question, sir

A Okay Please

Q What I'm asking is would you have wanted the Governor to tell you, "Hey, that businessman that I asked you to have that meeting with, by the way, he just gave me $120,000 in personal loans"? Would that be something that you might want to know about?

A I don't know that I would want to know about that because, you know, we don't care

Q Okay

A We just want to do the best for our constituents

Q You mentioned Sabra Do you have any knowledge of whether Sabra gave Mr McDonnell any money for his daughter's wedding?

A I don't know

Q Okay Do you know whether Sabra gave a 50,000 loan to his wife?

A No idea

Q Now -- but you've donated to the Governor, right?

A Yes, I have

Q And, in fact, you donated $24,500 to the Governor for his campaign for Governor, right?

A Probably over time That's probably right

Q Okay And, in fact, you've donated to the Governor's legal defense fund, haven't you?

A I sure have

Q And that was $15,000, right?

A Yes

MR DRY: Nothing further

THE COURT: All right

Anything else?

MR. ASBILL: No, sir

THE COURT: All right

Thank you, sir You may stand down.

(Witness stood aside)

THE COURT: All right We're going to stop here, and we will get together tomorrow at -- 9:45 again tomorrow

Let me give you this admonition once again Please don't discuss the case with anyone or allow anyone to discuss it with you, and don't review any media items relating to this case And I hope everybody has a good and safe evening, and we'll see you here tomorrow

(The jury left the courtroom)

THE COURT: 9:45

(The trial adjourned at 4:51 p.m)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

August 19, 2014
Richmond, Virginia
9:45 a.m.

JURY TRIAL - VOLUME XVII

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
DAVID V HARBACH, II, ESQ.
JESSICA D ABER, ESQ.
RYAN S FAULCONER, ESQ.
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HENRY W ASBILL, ESQ.
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DANIEL KOFFMANN, ESQ
Counsel for Maureen G. McDonnell.

JEFFREY B. KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day seventeen, Case Number 3:14CR12: United States versus Robert F. McDonnell and Maureen G McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, Christopher Iaquinto, and Timothy Taylor Maureen G McDonnell is represented by Heather Martin, William Burck, Stephen Hauss, and Daniel Koffmann. Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed

MR. SMALL: Bob McDonnell is ready to proceed, Your Honor

MR. BURCK: Maureen McDonnell is ready to proceed, Your Honor

THE COURT: All right. Let's bring in the jury, please

(The jury entered the courtroom.)

All right, good morning. Good to see everybody back I want you to know that I lifted each one of you up in prayer last night, and we are certainly glad to see that you are back.

All right, call your next witness, please.

MR. SMALL: Thank you, Your Honor Bob McDonnell calls Maureen Uncapher McDonnell

MAUREEN C McDONNELL,

called as a witness by and on behalf of Defendant Robert F. McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SMALL:

Q Would you state your name and spell it for the court reporter, please?

A Maureen Carney McDonnell M-A-U-R-E-E-N, C-A-R-N-E-Y, M-C-D-O-N-N-E-L-L.

Q And you are Bob McDonnell's sister, correct?

A Yes, I am.

Q Before I go into some background, let me just ask you, when did you first learn about this investigation? Do you recall?

A I learned about it, it was the night before Easter in 2013 Bob had gotten the kids, his siblings, on a phone call to let us know that there would be an article coming out the next day in the Washington Post about a gift and et cetera

Q Later that summer, did you, without going into the details, did you read in the newspapers that the investigation also involved MoBo, the real estate investment?

A I did.

Q And what did you do as a result of that?

A I had read about items in the paper about MoBo and about my brother, and so I had asked my counsel at the time if I could go talk to the prosecutors, because I wanted to talk about my brother and who he was, and I also wanted to hopefully clear up some matters about MoBo. As the managing partner and fully involved in the LLC, I felt like I had a lot to say and wanted to share it with them.

Q All right So you asked to go see the prosecutors?

A I did.

Q And did you?

A Yes, I did.

Q Tell us about that

A I went in in August --

MS ABER. Objection. Relevance, Your Honor

THE COURT: Sustained. Ask the questions that matter

BY MR. SMALL:

Q Without going into detail, you went in and saw the prosecutors, correct?

A I did.

Q You were interviewed for five hours?

MS ABER: Objection.

THE COURT: Sustained.

BY MR SMALL:

Q You also testified in front of the grand jury, correct?

A I did.

Q So tell us a bit about your background. What was your education beyond high school?

A I graduated from the University of Notre Dame in 1987 with a business degree

Q Do you have any other degrees or certifications?

A Yes. I was with IBM for many years out of college, and I attended a Client Executive certificated program at Harvard Business School, which was about an 18-month program.

Q Do you have a family, ma'am?

A I do have a family, yes

Q Children?

A I'm divorced, but I do have a six-year-old little girl

Q You were not here for your ex-husband, Michael Uncapher's, testimony, correct?

A I was not

Q And after college, just briefly, you said you went to work for IBM?

A Yes, I did.

Q Tell us, where was that and for how long?

A After I graduated from Notre Dame, I moved up to

Chicago for ten years I started my career with IBM as a marketing sales representative And I was moved, I was promoted to Ohio after ten years, and served there for almost six years before I left IBM.

Q And I'm not going to go through the history, but at the time you left IBM, what was your job title?

A It was Client Executive for the state of Ohio.

Q You had people working for you?

A I did.

Q How many?

A With employees and business partners, probably about 25

Q And when you left IBM, what was your, approximately what was your annual compensation?

A Oh, depending upon the year, it was between maybe 250 or $300,000

Q Where did you go to work next?

A I left IBM to move back to Virginia My dad was aging and had Alzheimer's, and I wanted to be closer to home, so I moved to Virginia Beach and I assumed an appointment at Regent University

Q For any of us who aren't familiar with Regent, what is Regent?

A Regent is a private, a Christian faith-based -- it was predominantly a graduate school at the time, but they have a pretty large undergraduate population now

Q How long were you at Regent?

A About five-and-a-half, six years

Q When you, again, I'm not going to go through the whole progression, but what was your title and position when you left Regent?

A Vice President of Advancement and University Relations

Q When you left Regent, what was your annual compensation, approximately?

A Again, it depended upon the year, but it might have maxed at around $300,000 with bonuses

Q Okay And what year did you leave Regent?

A I left in April of 2008 when I had my child, my baby

Q When did you next go back to work?

A I took some time off because I was ill following the pregnancy for quite a while But I began working I established a little consulting firm and I began working in the end of 2009

Q Where did you go to work?

A Initially, I had a client that was, it was a local ministry and church, and then I had picked up a couple of other political candidates, notably a Congressional candidate

Q Okay What was your next full-time employment?

A I began working with Amerigroup Corporation in June of 2010 I was still finishing my time on the Congressional campaign in 2010. And so I was working frankly both part-time, which truly were both full-time jobs, and I assumed a role full-time at Amerigroup in January of 2011

Q What was your position at Amerigroup?

A My last position, I started in health reform and public policy as the Vice President, and my last position was the Vice President of External Communications

Q We will come back to the compensation at Amerigroup a little later But when did you leave Amerigroup?

A Actually, this month. I left in the beginning of August of 2014

Q Why did you leave?

A Some very large measure, because of some restructuring post-acquisition. My company was acquired by a large commercial insurance company in December of 2012 And through that time, there's always duplicative functions, and so I left recently and just am enjoying some time with my daughter for the next several months

Q Okay Where did you grow up, by the way?

A I grew up in Alexandria, actually, the Mount Vernon area of Northern Virginia

Q How many siblings?

A Four

Q Where did you fit in the progression?

A I was the youngest of the five

Q And where did Bob fit in the progression?

A Bob's the oldest

Q So growing up, what kind of relationship did you have with Bob?

A Well, he went to college when I was about six, so I was his baby sister I always looked up to him. And I would help my mom package, you know, care packages when he was at Notre Dame, as I think any little sister may do. But when I was at Notre Dame as a young adult, and I was going through a few things at school there where Bob and I started to form a very solid and a very strong friendship.

Q Let me just skip ahead for just a minute So there are five siblings, correct?

A Well, there are five children, yes

Q Five of you total Other than Bob, did any of the others go into politics?

A No

Q Can you just give me a very quick rundown of who did what?

A Sure So after Bob, my sister, Nancy, is the next. And she is a pre-school teacher in Lynchburg And then my sister, Eileen, she was a Special Agent for the Defense

Department, for DOD for many years, and now is a contract agent And my brother, Ken, was an Air Force officer for 23 years, and retired from the Air Force three years ago. He is a physician, he and his wife are physicians And now he is the medical director of an international medical group

Q And how long were your parents married?

A They were married 43 years up until the time of my mom's passing in 1994

Q And what did they pass on to you and Bob about marriage?

A Well, they passed on a lot of things Each had their own gifts that they shared with us and really formed us as children But my mom and dad, we grew up in a very, I don't want to say stringent, but a very traditional Catholic household. And divorce, divorce wasn't an option. When you say, "I do," you say it forever And so my dad really instilled in us the respect for institutions such as the love of country and military service, the love of family, the importance of marriage, the importance of education, and the like.

Q When you came out of college, you were asked in the grand jury about, the phrase was, I'm trying to find the page, but the phrase was "boot camp," you went through a little boot camp with Bob after college Tell us about that

A I called it a boot camp It was after I graduated from Notre Dame And again, Bob and I, as I said, during my college years became very close. Because of the age difference, both between my dad and I, my dad was 50 when I was born, and Bob and I were about 11-and-a-half years apart, I really in some respect looked at him as being my mentor and almost a surrogate dad So I went down to see he and Maureen in Virginia Beach for a couple weeks before I moved to Chicago And the purpose of that was to really get me ready to start my life And I remember we bought my first car together, a little Honda Civic He let me negotiate that, which was pretty neat We talked about the importance -- once I moved to Chicago, I had a whopping $500 in my bank account, and he talked about the things I needed to do such as get involved, find a church right away, get involved in the community, volunteer, join the local Notre Dame club, and he also helped me put together just kind of a quick budget to think about where my expenses would go as a 21-year-old moving to a big city with not a very large starting salary, he helped me with that as well

Q Over the years, you have continued a close relationship with Bob?

A Yes, I have

Q Tell us about that

A Well, I would consider, you know, as an adult, when I started my career, Bob quickly became my best friend. And not because he was my brother, but I would have chosen him to be, I did, I chose him to be my best friend, because I admired him greatly I respected the way he lived his life I thought he had such great character and had such a great demeanor, much like my mother did. I idolized my mother She was an angel And of all the kids, I think Bob was most like her So I really connected with him, particularly after my mom passed away I was in my twenties when she died, so he really became that go-to person for me on so many things in my life, for guidance, for counsel on career issues, on relationships and the like

Q And did your communication with him change at all when he became Governor?

A Yes, it did

Q How so?

A We went from talking probably a few times a week to maybe a few times a month or a few text messages a month. And his time, he just didn't have time for a lot of things And it was difficult, because I used to be able to pick up the phone and call him at a moment's notice or text him, and he would respond right away But that really waned, so much so I would typically schedule time with his assistant to see him or I would get his schedule most days and I would see when he would be in my area in Chesapeake or Virginia Beach, and I used to tease him that to see my brother, I have to buy a ticket to an event if I want to see him because it was very difficult

Q Okay Now, tell us a little bit about your brother, your best friend, in terms of his principles

A Well, sure I think, you know, I consider this of all my siblings, we were all raised under the same roof, and we have those core values deeply instilled in our formative time as kids But I think Bob, probably of all of us, really took that to heart and really walked the talk in terms of the commitment to your family, the commitment to service and public service, which both of my parents had some background in serving in their own ways

I think, you know, Bob is probably the most unmaterialistic person in the universe, much like my mom, in that his slippers had duct tape on them. And when he was running for office, I remember my mom and I having bought him a few ties and tried to clean him up a little bit because he had holes in the bottom of his shoes. He just didn't really care about such matters. And so I always just looked at him as being a role model for me and just a guy who had great character and integrity, and particularly when nobody was looking I think that's important

Q What do you mean "particularly when nobody was looking"?

A Well, I mean, the way he lived his life was to just do the right thing And some people would just do it or say the right thing when others were around, but he believed that to his core in terms of being ethical And so he would always do the right thing publicly or privately

Q You were asked in the grand jury if Bob could be detail-oriented or a micromanager Do you recall those questions?

A I do

Q Tell us about that Can he be detail-oriented and a micromanager?

A He and I are probably a lot alike in this way in that we can be very detail-oriented if we want to be, and if it is a priority and if we have time to be So whatever the matter may be, if it has captured our attention sufficiently, then yes, we can be on some things, but on others, not

Q Okay. Let me ask you some questions about Bob's wife, Maureen. When did you first meet Maureen McDonnell?

A I met Maureen when they started dating I must have been, I don't know, maybe seven or eight I was just a little girl And she would babysit me from time to time. When she would come over to the house, of course, during their courtship

Q You were asked in the grand jury --

MS ABER: Objection to the form.

THE COURT: Just ask the question. You don't have to harken back.

MR. SMALL: Sure

BY MR. SMALL:

Q How would you describe Maureen McDonnell?

A Well, you know, I think there are two sides to Maureen. And, you know, sometimes you are not sure which one you are going to get, which one is going to show up. She can be very sweet and very tender And notably, I think I shared with the prosecutors that I'll never forget when my mom was dying in Walter Reed, she was in the hospital, and Maureen was with me as Bob and all the kids were, but she was -- it just stood out for me, she would rub lotion on my mom's legs and pray with her and just rub her head and make sure -- she was very tender with my mom, and I'll never forget that sweetness But the other side of Maureen can be very manipulative, can be very unpredictable, can be deceptive

Q And tell us what you mean by "manipulative "

A I have known, as I said, I've known her for over 40 years And I think through the course of that, those experiences, I have just witnessed, heard, witnessed, there were just a number of examples or situations where I've seen her hide things from Bob, you know, conceal things from Bob, try to work a situation to her benefit, and so -- and not be truthful on occasion about that But it would be one way with the family or other people, and then be very different when she is around Bob publicly

Q And were there times where she was unpleasant or angry?

A Yes I saw plenty of those, yes

Q Do you recall an incident in the spring of 2012 at one of the MoBo properties?

A I do

MS ABER: Objection, Your Honor, to this specific character testimony

MR. SMALL: Not character

THE COURT: Go ahead

THE WITNESS: We had, as we typically do in spring and certain times of the year, we had maintenance at the beach properties which were quite fun, frankly, and there was such a weekend that I was there with my then husband and daughter and Bob and Maureen and I think Jeanine and her then boyfriend, Adam, and other family members Typically, we would -- a lot of the family would come There was one particular evening where we had worked all day and taken a little break for dinner And we were just enjoying sitting around the kitchen after dinner. And throughout that evening, I felt some, you know, there were comments throughout the evening that were very pointed that Maureen made toward me And it put me on edge. We had all been working hard. This was my house, too. And I just -- I let them go But later that evening when we were sitting around we were talking about having to come back to the property at some point And I lived about 45 minutes from the property I was working full-time, had a young child, just trying to glue my marriage back together at that point, and I just said it would be difficult for me to come back, and I don't even remember what I was to bring or deliver to the property, but it would be hard. And she quipped that, "Well, if the Governor and First Lady can make time to come now and make time to come, surely your schedule is not as busy as mine." And she made a couple of other comments I had just had enough and I went upstairs My husband and my daughter were already upstairs sleeping And I went upstairs and I just started crying And my husband woke up and he said, "We are getting out of here I'm tired of you feeling uncomfortable around her, and we are not going to sleep here " Bob then came up and apologized and asked me to stay He pleaded with me just to stay And we did. And my husband had commented to Bob, you know, about how she hurt me, and this wasn't the first time And he said he was working on it, he was trying to get her help.

Q Okay. Were you also aware of Maureen's involvement with nutraceuticals or vitamins or whatever, supplements?

A Oh, yes I think I characterized her in the grand jury and pretty much routinely as kind of, affectionately, as a vitamin nut in that back to that boot camp, she had given me, her contribution to the starting my life was she had given me a bunch of vitamins, I think it was Shacklee at the time, I don't recall the brand that she was promoting, but she had given me a whole array of vitamins to take with me But that's been the narrative There are a number of different brands since then that she has promoted. But she has always been incredibly passionate, almost to the point of great irritation, about the importance of vitamins and nutraceuticals.

Q Okay. What did you observe about the relationship between Bob and Maureen?

A I think publicly, it seemed to be pretty --

Q Can I ask you to push the microphone back just about an inch or two, because I think we are getting a little feedback. You can actually move it up.

A Okay Is that better?

Q Go ahead Thank you

A Okay That's better?

Q That's fine

A So, you know, I saw a lot in 40 years And I think like any couple married that long with five kids, you know, you certainly have your ups and downs That would be fairly normal But you layer on top of that being a political family and Bob being gone a lot, you know, I saw a lot of strain on the relationship. And I think after he became Governor, it went, kind of went from bad to worse

Q What do you mean by that?

A Well, the points of tension that I observed, or unhappiness, I think, on the part of Maureen when we were together privately, had greatly increased, frankly I don't think she was particularly happy with her role as First Lady, and that led to some anger But I just saw so many times that the communication was broken, whether it be me coming to visit and Bob would literally be on his way to the airport on occasion, and she didn't even know I was coming, and I would get a note from her that in some cases I wasn't welcome to come So I just think that I noticed that there was an increasingly terrible communication issue, particularly after he became Governor

Q Do you recall an incident in November-December of 2011 that really highlighted the lack of communication to you?

A Absolutely I had experienced my initial separation from my husband. We had separated once and tried to reconcile and finally ended in divorce. But the first time in 2011, I had responded to the Christmas party at the Governor's Mansion, and I responded with "One," with me attending, and Maureen had written me a text to say, "You can bring Emma, you can bring your daughter, so both you and Michael can come " And I thought that was really odd, and I wrote back and I said, "Maureen, perhaps Bob hasn't told you, but Michael moved out of the house In fact, we were separated."

Q How long before that had he moved out?

A Well, she responded, actually, she responded and said, "Oh, my God, I didn't know. When?" I said, "It was five-and-a-half or six weeks ago " And it was a long time, and I was shocked that she didn't know that Bob's little sister, he was one of my first phone calls the night that Mike and I separated I would call him crying So I was really quite surprised she had no idea we had separated.

Q Maureen and Bob lived in the Executive Mansion; is that correct?

A They did.

Q And did she -- how did she describe that life or how did she describe the Executive Mansion to you?

A I think she felt trapped there

MS ABER: Objection, Your Honor

THE COURT: Overruled.

THE WITNESS: In fact, she had sent me a text I think it was October of 2011, it was late 2011, that she was having a vitamin party I don't remember what it was I didn't go But she was having some type of a vitamin party in Virginia Beach Bob was there for an event She came along And she invited me to come and bring my friends And she said, "I'd like to see you before I have to go back to that prison mansion." And I really felt like, that made me sad that she said that But I really felt like that's the way she looked at being First Lady and living under a microscope, living in the Mansion

BY MR. SMALL:

Q Let me just, before we move on, there has been some testimony about a 60th birthday party. Were you present for their 60th birthday party earlier this year?

A Yes. In fact, I hosted it. I hosted the Virginia -- we had one in Virginia Beach or Chesapeake at my residence.

Q Without going into a lot of detail, what did you observe about the two of them at the birthday party?

A Bob came down first, and it was quite a while after the party began before Maureen showed up And she came down, meaning they were up in a bedroom changing She had come down and stayed with a couple of ladies in the kitchen, and I really honestly didn't see them together most of the evening until I welcomed guests, et cetera, and then they came together I asked them to come together

Q And did they at some point do a dance together?

A They did. It was shortly after I had the microphone, I welcomed the guests to my home and thanked them for coming to the party to celebrate my brother's 60th, and I think Cailin, Bob's daughter, had them come to stand next to me And then the DJ started shortly after I made comments, Bob made a couple of comments, and Cailin had asked the DJ to play a particular song, I believe, and asked the two of them then to dance And everyone was around, so the two of them then danced to that particular song

Q Did the fact that they danced together that one dance change your view of the relationship or the communication?

A Not at all I think it actually reinforced it because it was a public display, and we were in public there, and so it didn't change it at all

Q Now, let me switch topics I want to ask you in some more detail about your own finances We talked about some of the historical numbers But in 2012, you were working at Amerigroup; is that correct?

A I was

Q And can we show the witness RM-0077, please? Do you recognize this as your W-2 for 2012?

A Yes

MR. SMALL: I offer it into evidence, Your Honor

THE COURT: What's the number again?

MR. SMALL: RM-0077

THE COURT: It will be admitted.

BY MR. SMALL:

Q What does that reflect in terms of your total wages for 2012 from Amerigroup?

A $529,594 87

Q And did you have additional income that year as well in 2012, some additional income from other sources?

A I did. About $30,000 or so

Q So your total income for the year was approximately $560,000; is that correct?

A That's correct

Q Now, did you receive compensation from Amerigroup in a form other than wages and bonuses?

A I did. Like a lot of large companies, I had -- my plan as a Vice President had a very nice contribution from the company to the 401(k) retirement plan; but moreover, part of my compensation was restricted stock grants based on performance and the performance of the company in the prior year So that was a pretty significant part of my compensation in my four years there

Q Okay So I take it that accumulated over those four years; the amount of stock you held accumulated over those four years?

A Yes

Q By, let's just take the end of 2012, do you recall about how many shares of Amerigroup stock you owned by then?

A I owned about, roughly about, give or take some, about 7,000, 7,000, and it was a mix of stock options, restricted stock grants, and shares purchased through the employee stock purchase program where you purchase at a discount

Q How much at the end of 2012, how much were those 7,000 or 8,000 shares worth?

A Well, so they were worth, I think the vested or exercisable or those that -- the SPP shares were immediately vested, that might have been about 250, 280. And the unvested or unexercisable stock was maybe another

250 or so

Q So just so we are clear, some of the stock that -- you got stock through these different company programs, and some of it was restricted for a period of time; is that correct? I'm oversimplifying, I know But is that essentially correct?

A Yes It had different vesting schedules So they vested quarterly and appropriately over a period of time

Q So you held 7,000 or 8,000, but as of the end of 2012, you couldn't cash out all of those Correct?

A That's right There were some that had not yet vested or were not yet exercisable based on the vesting schedule

Q So you could have cashed out about a quarter million dollars' worth of stock at the end of 2012, correct?

A Roughly

Q And then you had about another quarter million dollars that was going to vest over the next couple of years, correct?

A Correct

Q In fact, some of that quarter million vested January 1st of 2013, right?

A Some did. I don't remember how many shares, but some did.

Q All right So in addition to the stock accounts, you mentioned retirement accounts Actually, how many retirement accounts, 401(k)'s do you have?

A I have three.

Q Okay And essentially, one from each of the companies that you worked for, correct?

A That's correct

Q I'm going to come back to those documents in a little bit But did your brother, Bob, have, not detail, but some sense of your financial situation?

A Absolutely. In fact, you know, part of us being so close, as I said, I looked to him for some career advice, and I always talked to him before I accepted a job. And so he knew what I was negotiating in terms of salary or overall compensation from my first job to my last job.

Q Okay And if he needed money, did he know that he could come to you?

A Absolutely And he had.

Q Tell us about the time he had when he was in law school

A I was in Chicago at the time, starting my career with IBM, and I was probably 21 or 22, I was young. It was my first year or so there And he was still in law school. But I remember getting a call that things were pretty tough. Bob had a couple of kids at that point, and was going back to school full time, and he had two or three jobs on the side, as did Maureen, trying to make ends meet. But it was difficult And so he had asked me if he could borrow $2,000 to help, and to help them through a difficult period. And I wasn't making a lot of money at the time, relative to today, but I was glad to do it because I supported his move to go back to school

Q At any time, was there any question that if Bob needed money, he knew where he could go?

A He knew where he could go He could come to me or, frankly, my family is very blessed; my other siblings have been very blessed to have experienced some financial success All of us have, much more than my parents realized.

Q Let me switch and ask you about MoBo. Can we pull up RM-0502, already admitted. Do you recognize 502 as a certificate for MoBo Real Estate Partners LLC?

A Yes

Q What was MoBo Real Estate Partners, LLC?

A MoBo Real Estate Partners was, we established this as kind of an operating entity to kind of manage the cash, if you will, or the finances of, at that time we had one beach rent property and then we purchased another, but it was really kind of an administrative vehicle for us to pay bills -- we had a checking account for MoBo -- and to file as an LLC from a tax standpoint

Q You can take that down. Thank you Let me just go back. So you bought, you and Bob together bought beachfront property in 2005, correct?

A It was a semi-oceanfront property But yes, in Sandbridge

Q Okay How long had you been thinking about buying beach property, I'll call it, beach property, vacation property, before then?

A Okay Me personally?

Q Yes

A Well, Bob and I actually looked together Like I was in, I believe I was in Chicago still at the time in 1996 or 1997 I came down to visit him in Virginia Beach, and we went down to the Outer Banks and we just had looked at some property, some land, actually, back then But we didn't purchase anything then. When I moved to Virginia in 2002, beginning of 2003, I actually started looking on my own in Sandbridge

Q Can I just interrupt you?

A Sure

Q Why were you interested in beach property?

A Well, there were a couple of reasons You know, one is my accountant had indicated I should probably invest in something other than stocks and bonds that I had to balance out my portfolio, that it wouldn't hurt me to add real estate to it. And I had all this equity in my primary home. And he said that was truly a sleeping asset, I might want to use my equity there to reinvest But I think the bigger issue for Bob and I is, we had, you know, as kids, we went to North Myrtle Beach every year, before I was born. My parents took all the children on a family vacation. And we stayed in this wonderful little modest cottage, and we had such amazing memories every year at Myrtle Beach. And my parents later bought a small beachfront condo, and again, we had incredible memories of using the place, using the property, and we would go a lot in the off-season and spend Thanksgiving or over Christmas or spring break I would go down there as a kid. It created such a nice set of memories and a gathering place for our family to enjoy So Bob and I had talked about wouldn't that be, you know, a great thing for us at some point in time to have that for our families

Q Did you consider doing this by yourself?

A Yes

Q In fact, that's what your accountant recommended, correct?

A Yes

Q Why did you decide to do it together with Bob?

A Well, I actually had picked out the house, and then told him about it. I was looking for a while. And so I asked him if he wanted to go, to go in with me on it I was fine doing it on my own financially, but I thought given our dream, if you will, or given what we experienced as kids, I thought it would be great to partner with Bob on this And we would create a wonderful place for his family, his five kids, and my future family. I wasn't even married at the time But just a great place that we could go work on together

Q Okay So let me be clear. So whose idea was it to go in together and do this?

A Well, me I guess I talked him into it I was going to do it on my own and I asked him to participate.

Q Who found the house?

A I did.

Q And as between you and Bob, who did you consider to be primarily responsible for coming up with money for that property if it was needed?

A Well, me I wouldn't have done anything unless I knew that I could withstand it financially.

Q And did you have any worries at all that you could withstand it financially?

A No, not at all

Q Did you ever lose a single night's sleep worrying about MoBo?

A I didn't lose a night's sleep worrying about MoBo.

Maybe other things, but not MoBo And not money actually either, to be candid.

Q And so did you go into MoBo as a profit-making venture?

A No That wasn't the intent I mean, sure, we had hoped that over time, there's only so much beach property, and so we were hoping over the long term it may be an appreciable asset, that we would see some long-term gain. But we knew, we had the pro forma, which accounts for the revenues and expenses less any one-time major capital We looked at the pro forma, and we knew we weren't going to be making money from the outset But it was palatable for us to look at what the out-of-pocket might be, because it was a place that we were going to vacation there ourselves, use it for a lot of family events, which we did. But no, the goal was really the gathering place that I described and a place to create a lot of memories for our family and frankly, all of our extended family All of our siblings used the property, too

Q And you had a couple things in there let me just go back to What is a pro forma?

A Oh, sorry. The pro forma was an estimate, when we first bought the property, it was an estimate, again, of the rental income and, you know, typical expenses But most pro formas don't take into account a major capital expense like a roof replacement or an HVAC replacement, anything that's a major one-time expense So we looked at that, and we looked at that when we bought the property But it is maybe important to share that after we bought the property, we immediately embarked after the rental season on a pretty significant reconstruction. We added onto the property We renovated and added another floor to the property

Q This is back in 2005, 2006?

A 2005

Q Just before we leave that, so I'm clear, who actually put a pro forma together? Was that something you did or someone else did?

A I believe the realtor did at the time and showed it to us, because the house was owned by one of the co-owners of the property management, the real estate company, so he had a very good indication of just the run rate of what the expenses, what the rental revenue looked like, and so we used that as a basis for what we could experience

Q Okay And that pro forma showed essentially a gap between what the rental income would be and what the expenses would be, correct?

A Yes I believe that the pro forma showed that the rental income would cover the debt service, I believe, but not all of the expenses And again, certainly not fully covering expenses after we put the addition on.

Q Okay Do you recall what the original pro forma, before you put the addition on, what was that gap, do you recall?

A Gosh, I'm sorry if I'm not perfectly clear on this, because we put the addition on so quickly, but I think it might have been, you know, anywhere from 30 to 50 or 40 to 60 I'm sorry I remember after the addition it was about 40 to 60 at that time

Q That's 40 to 60 basically every year?

A 40 to $60,000 total pretty much every year

Q When you bought the property in 2005, your brother Bob was running for Attorney General, correct?

A Yes

Q And you knew that that would involve essentially a cut in pay from being in private practice of law, correct?

A Yes

Q Did you have any concerns based on that about bringing him in as a partner with MoBo?

A No.

Q Why not?

A As I said, I think I felt comfortable if I had to, with what I had in my portfolio, that I would have been -- I certainly could have been qualified for the loan on my own, and could manage it financially without him.

Q All right So let me just understand the structure MoBo itself did not own the properties, correct?

A That's correct The properties were in Bob's name and my name and the loans were in our names

Q MoBo itself did not take out the mortgages on the property, correct?

A Right The mortgages we received from the various banks were in Bob's name and my name

Q MoBo, I think you described it as essentially an operating entity or managing entity, correct?

A That's correct

Q But did MoBo, MoBo didn't have any employees, did it?

A No.

Q Essentially, it had a bank account, right?

A That's right We had a checking account

Q Do you remember, do you recall whether that checking account paid interest?

A It did not pay interest

Q So would there be any reason to keep a lot of money in that account?

A No. We didn't keep money, we didn't keep a lot of money in that account at all It was almost kind of a zero balance account, if you will But when money was deposited, of course, we didn't take it out of there, but we didn't keep a lot of money in that account

Q And you used the term a little earlier "cash flow " Tell us what you meant by that as it relates to that account

A Well, you know, it is a seasonal rental market, and so there was a lot of money being put in the account because of the rental revenue starting about the end of June every year, and would go until perhaps the end of September The course of the rental revenue was paid in arrears, so we had some very robust months where we maintained a large balance But from a cash flow perspective, there were leaner months, of course, where we needed to put money into that account Whether through loans or personal resources, we needed to supplement that account to maintain the bills, and generally that took place in the off season, which would be anywhere from December, January, February, that time period.

Q Okay In fact, most of your loans were roughly in, or either loans or capital payments in were roughly in the February-March range; is that fair? That's when you would have to put money into the account?

A Generally It just really depended upon if we had any major capital issue, meaning we had one year we had bed bugs, we had carpets replaced. We had a few big expenses And sometimes that would necessitate getting a loan earlier, putting money in earlier I think 2009, we might have put something in in December or had a loan in December

Q So just as an example, let me show you Exhibit 600, already admitted. And this is a summary chart, Ms McDonnell, for MoBo Realty for 2012 So you said that the balance would be down during the winter And is that reflected here?

A Yes

Q And then it reflects funds that were put into the account during the off season, correct?

A Yes

Q And then it reflects that by June, those funds had been pretty much spent, correct?

A Correct.

Q And June, you said, is when the real money would start coming in after that, right?

A That's right

Q And most of your rentals came through an agency, like a real estate agency, right?

A Yes

Q So you would know pretty well in advance that you would be having money come in.

A Yes We can look at the bookings and see when, yes

Q So there wouldn't be any reason to have a lot of money sitting in that account in June because you knew money was coming in

A Correct.

Q So does this pretty accurately reflect the cycle that you were expecting with MoBo?

A Yes, that looks like a pretty typical year for MoBo.

Q You can take that down. Thank you. So MoBo, you bought the property and you started MoBo in 2005 Who handled the bank account, the books for MoBo?

A My -- he was my fiance' at the time, who is now Michael, who was in here recently He handled the books from MoBo's inception up until the end of 2012

Q Okay Why did you decide to have him do that?

A First of all, you know, I think he had the most -- he had probably the most time of all of us, to be very honest, with my job and my brother's job And between he and Maureen, he was, I think, the most willing and had the best skills to do that And he frankly had, he had operated his own small business or LLC. And he volunteered to do it, and we thought that was a great solution, again, keeping it in the family. He was willing to do it And so he really had that kind of assignment As you sort of divvy up things among couples, that was his role

Q Okay For the first several years, how did that work?

A It was great He did a very good job He was very meticulous about documenting. He actually had these great notebooks with all bank statements, all expenses He had the budget for the year He had a profit and loss statement for the year. He was very good the first few years at managing the business

Q Could we bring up RM-0035, previously admitted? Do you recognize this as the loan transaction history from TowneBank?

A Yes

Q And you have had a chance to review this document, correct?

A Yes

Q I'm not going to go through it then page by page, but am I correct that for the first four or five years, from 2005 until early 2009, there was not a single late fee with TowneBank for MoBo; is that correct?

A That's correct

Q Okay Thank you. You can take that down What changed in 2008-2009?

A A lot changed in my life and my ex-husband's life I got pregnant in 2007, and as I mentioned, had my child in 2008, late April And personally, I had a very difficult pregnancy I was on bedrest for seven months. And full bedrest, meaning confined. I was in the home, aside from doctors' visits, for about four of those months just laying flat all day And after I had the baby, I was sick. I was in the hospital for a while right after having the child and was, frankly, in and out of the hospitals for probably over a year I saw 50-some-odd specialists, went to the Mayo Clinic, went to UVA. I just had some significant medical issues personally And then my husband was going through, he was taking a lot of time away from work. We had an infant and I was ill, so his business started to deteriorate at that time as well

Q And what about your marriage?

A The marriage was a little difficult The communication became tough I think it was a lot of stress on the marriage, having a newborn and having me be ill and not able to help out a lot. So Michael not only took care of me, but he took care of our young child, too.

Q And as a result --

THE COURT: Excuse me RM-0035 needs to be admitted. You need to move RM-0035 in.

MR. SMALL: I'm sorry, Your Honor, I move into admission RM-0035

THE COURT: It will be admitted

MR. SMALL: I had a note it was admitted Scratch that note.

BY MR SMALL:

Q So from 2009 forward, and I'm not going to go through all of it, fair to say there were a lot of bank late fees, correct?

A There were.

Q And I'm going to talk a little bit about it, but did you have a full sense of how many late fees there were at the time?

A No.

Q When you later found out, how did you feel?

A Not very good Not very good. I felt angry I felt like there was no excuse to have those late fees, because personally, I had the money, we had the money, that there would be no reason to have such late fees, had I known that we needed to put money in the account in a timely manner

Q In fact, am I correct that you have used the term you were horrified when you found out?

A I was horrified

Q What were you horrified about? Why were you horrified, I should say?

A Well, you know, I think it goes back probably in some manner to growing up in that family with my dad living through the Depression and here we are --

MS. ABER: Objection, Your Honor

THE COURT: Overruled.

THE WITNESS: That, you know, I really took pride and I always paid my bills on time You know, I've always paid my credit card at the end of the month. So to have late fees just was inexcusable It is not as though I didn't have the money I just didn't -- I didn't know about it I wasn't following that. At that point in my life, MoBo was the least of my priorities, and I think probably the least of Michael's, too. There wasn't a lot of line of sight on when we needed to put money in, and that became a source, a bit of -- many other things, but a bit of a source of frustration for us

BY MR. SMALL:

Q So essentially this was a planning issue. You needed to know in advance to put money in, correct?

A Absolutely And I expected him to tell us

Q And as a result, in addition to the bank late fees, were there also some other bills that got paid late?

A There was one, yes, there was one that I recall that was a water bill that was like, I think it was $100

Q Let me just interrupt Can we show the witness RM-0659? Do you recognize this as an e-mail to you on May 18th, 2009?

A Yes

MR. SMALL: Offer it into evidence, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q Going to the bottom, if we can highlight the bottom. Who is Mary O'Brien?

A She was a representative from Sandbridge Realty, the rental property manager She was in charge of, as you can see, Guest Services, that department

Q This went to you as well as to your brother, correct?

A Yes, it did.

Q It says, "Dear Bob and Maureen: The water was shut off for nonpayment at ECP " What's ECP?

A ECP is the acronym for East Coast Palace, which is the second property we bought in 2006 And it is a very -- it is sort of a joke, a play on words It is not a palace by any stretch. It is a 60's vintage ranch, very small, very modest, very simple home across the street from our initial property

Q And I'll come back to that in a minute It says, "The amount delinquent from public utilities is $108 " Is that correct?

A Yes

Q Do you have any question in your mind that you would have been able to pay a bill for $108 in May of 2009?

A No question I could have paid the bill

Q And did the bill in fact get paid?

A Yes

Q All right If you can back out from that and go up to the top And this is an e-mail from your brother, correct?

A Yes

Q It says, "Mo is sending check today for 5,500 Can we pay " That was essentially to Michael, correct?

A That's right I can't see who it was sent to, but I assume

Q You were essentially sending some money in to cover bills, right?

A That's correct

Q And had you noticed before that bill got delinquent, you could have just as easily sent it in then, right?

A Correct.

Q Okay We can take that down Thank you. And you also, am I correct, received notice of some of the late fees, correct? Not all of them, but some of them.

A There were some e-mails, I believe, that I've seen about the late fees Yes

Q To your knowledge, how long a grace period did TowneBank give before they imposed a late fee?

A Oh --

Q If you know

A I don't think it was very long I want to say it was maybe a couple weeks A couple weeks And it was a couple weeks And I think over 30, they did report to a Credit Bureau I believe I misspoke in the grand jury and I said that I had reports on this In fact, the reports to the credit agency was through TowneBank, but it was a loan that I had co-signed for my ex-husband that he didn't pay, just to share that with you.

Q So your ex-husband had taken a loan for his business, correct?

A Yes

Q And he had failed to make payments on that loan. And those got reported on your name, correct?

A Well, they did, because I was -- the bank would not lend him money but for me co-signing

Q Okay But as to the loans on these beach properties, did you ever miss a payment beyond 30 days, to your knowledge?

A Not to my knowledge

Q Now, do you know Brenda Chamberlain?

A Yes

Q Who is she?

A Brenda is our bookkeeper for MoBo.

Q Okay And during the time that Michael was managing the account, who was responsible for providing Brenda Chamberlain with the information she needed?

A Michael was the sole point of contact for Brenda

Q And did you find out at some point that he wasn't doing that, either, on time?

A I did later, much later

Q Okay Call up RM-2043 I believe this is already admitted And you see this is an e-mail You were not copied on this e-mail; is that correct? To your knowledge?

A No. I don't see that I was copied.

Q But it is an e-mail from Michael to Brenda Chamberlain in September of 2011, correct?

A Correct

Q I'm sorry, the other way around It is to Michael from Brenda Chamberlain. Forgive me. And it says, "I have not heard from you in some time Your accounts are extremely in need of updating "

Did you realize at that time in September of 2011 that the accounts were in such bad shape?

A No.

Q And prior to, or up through this period, up through 2011, to your knowledge, what was Bob's involvement in the day-to-day accounts and cash management for MoBo?

A He wasn't involved. If you mean any of the financial or bill paying or anything like that, he wasn't involved at all

Q Okay You can take that down. You mentioned earlier -- oh, I'm sorry, I missed one thing I asked you about buying the first house in 2005, but I don't think I ever asked you about the second house So forgive me, let me just circle back on that for just a moment Did you in fact buy a second house?

A Yes, we did

Q And when was that?

A It was in 2006

Q Why did you buy a second house?

A Well, again, I was interested in buying the second house and particularly one that was, again, it was a small one on the oceanfront that perhaps at some point we could tear down and build. And I liked the fact that given how big our family is and the proximity to our house, it is literally across the street from each other, that that would be an ideal home for us to purchase And frankly, it is such a small, modest house, it didn't obstruct our view from the semi-oceanfront, so I thought it was just a great opportunity for us to purchase that property, or for me

Q Did Bob go along with your idea?

A He did. He did.

Q And I take it that also, that second purchase would also have added somewhat to the gap between expenses and income, correct?

A Yes, it would have There was a limit to which you could rent that house It is a small house. And generally, probably a single family, maybe a couple of families So yes, there was a cap to that.

Q And did your family or extended family use that smaller house as well from time to time?

A Yes They used both properties quite a bit

Q Now, you mentioned earlier, you said something about loans to fill this gap. Was it always part of your plan to use loans to fill the gap if you wanted to?

A We just made a fundamental decision at really the inception that it made more sense to us, made more business sense to borrow the money, generally, to fill that gap, either from a bank or from an individual, for the business as opposed to using our own resources based on the interest we could realize by keeping those resources invested. The cost of money was cheaper, if you will So it made the most sense to do that

Q All right. Did you get loans every year or just certain years?

A Not every year, no, just certain years

Q Okay And do you recall, when was the first time -- you bought the property in 2005 When was the first time you took a loan from an individual to fill the gap?

A That would be 2007 We took a loan from my dad.

Q Do you recall how much?

A I believe it was $60,000

Q All right And did you then take another loan in 2008 from your dad?

A We did.

Q How much was that?

A That was $50,000

Q So we are right at that 40 to 60 range that you were talking about, correct?

A Yes.

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Q Now, so that's 2000 -- I'm sorry That's 2007 to 2008 We move up -- try to move through this fairly quickly Move up to 2009 You talked already about some of the things that had been going on in your life during that time What was going on in the real estate market during that time?

A It -- it had really -- it had really plummeted It really tanked I think not just the vacation property, but everywhere It was the recession, and the whole housing market had really taken a dive And certainly the beach -- the beach community did take a particularly -- I think maybe a particularly hard hit, but everybody was feeling the pinch at that time

Q You made a comment at one point that you -- you and Bob joked to keep from crying about that What did you mean by that?

A Well, we just had to laugh about how, you know, how inopportune our timing was that we're -- you know, don't follow our guidance You're supposed to buy low, sell high, and we bought at the peak And so we -- you know, there was a lot going on in our lives at that moment, but it really was a reflection on our timing was not so great And we would -- we'd -- you know, we'd just sort of joke about that

Q And in addition to joking about it, did you -- during

2009, did you do something about it or explore doing something about it?

A Well, we did I mean, knowing that the housing market had come down, but, again, I think at that point in time I was just going back to work I was -- I had, I think, gotten a lot of my medical issues under control by the end of 2009 And we just wanted to test the market And frankly, you know, I was certainly -- MoBo was not my priority anymore I had a husband and a child and a demanding job

So we went ahead and put the properties both on the market just to test the market And we put them both on because Bob preferred one and I preferred the other, and so we just wanted to float them out there to see if there was any appetite or interest in either one of the properties

MR. SMALL: Can we call up Exhibit 48, previously admitted

BY MR SMALL:

Q Let me start -- this is an e-mail chain So you have to start at the bottom with e-mail chains to go in time. The first one is an e-mail dated April 24, 2009; is that correct?

A Yes, it is

Q And tell the jury, who is Tom Bucker, if I pronounced that correctly?

A Yes Tom and his wife, Gail, are -- well, they are not with Sandbridge any longer, but they were two realtors, or a husband and wife team Really great successful realtors from Sandbridge Realty

Q Okay And he starts his e-mail off saying, "Aloha, Maureen " What was that all about?

A Well, my husband and my baby and I were in Hawaii at the time My daughter's first birthday was the day after, on April 25th, and my husband's birthday was the 29th And so I surprised them with a trip, about a ten-day trip to go to Maui

MR SMALL: And if we can -- Victoria, if we can back up and go up to the next e-mail

BY MR SMALL:

Q Is it fair to say you responded later that day, correct? Actually, I'm sorry You didn't respond You sort of copied Bob and Michael with this e-mail, correct?

A Yes, I did I didn't respond to Tom I responded -- I sent it on to them

Q Okay

MR SMALL: And if we can go down to the sentence line, the sentence that begins "I'd list " And just highlight that sentence

BY MR SMALL:

Q Would it be fair to say that "list" is probably "like"?

A Like Yes Uh-huh

Q Okay. So, "I'd like to get it listed ASAP to relieve some financial pressures " What did you mean by that?

A Well, I think, again, I -- you know, MoBo wasn't my priority anymore, to be honest with you, and, you know, I think it wasn't -- you know, I'm not sure if it was my husband's or not Evidently, now I know it really wasn't, but I felt like it just wasn't an important part of my life And, you know, the -- when you look at some of -- as I was learning from Tom a little bit about the market and -- I just thought, you know, it's probably better just, if we could, if it makes sense, if it's the right price, then let's -- you know, let's sell one of the properties and maybe just keep the other and just simplify a little bit more

Q Did the downturn in the market also affect rentals?

A Very much so

Q How so?

A Well, I remember that year that Sandbridge had sent some mailers to us, or e-mails or mailers, to say -- and we had conversations -- that they were encouraging all property owners to reduce the rental revenue by about 20 percent because people weren't coming to vacation

Again, that was -- that was in the middle of the recession Folks weren't coming Gas prices were -- they weren't driving We have a lot of folks that drive down because they're coming with multi -- they are multiple families

So across the board, I think most of the property owners -- I know we did -- reduced our rental revenue And so that attributed to a gap And I guess when I -- you know, I think about financial pressures, the revenue was lower that year versus the prior And so --

Q Okay

A -- that's -- that's --

MR SMALL: And then if we back away and go up to the last -- the top e-mail

BY MR SMALL:

Q This is your brother Bob responding to you, correct?

A Yes Well, I think that's my e-mail to - I assume it's me Yes

Q Okay And he's talking about different options First he says, "Ouch," right?

A Yes

Q And you talked earlier about laughing to keep from crying I take it that's -- you took that as a comment on the market, right?

A Yes

MS ABER: Objection, Your Honor

THE COURT: Sustained

BY MR SMALL:

Q And he goes on to talk about -- I'm not going to go through the whole thing --

A Uh-huh

Q -- but to talk about different options for possibly selling the properties, correct?

A That's right

Q Okay Let me just be clear When you're having this discussion and you reference financial pressures, you're on vacation in Hawaii, correct?

A Yes

Q And you've got significant amounts of money in various stock and other accounts, correct?

A I did, even in 2009 before I started working for Amerigroup Yes

Q So financial pressures, was that referring to you felt you were under pressure?

A No I -- I've really been blessed I don't think I've ever felt financial pain before in my life as an adult

Q All right So --

MR SMALL: We can take that down Thank you, Victoria

BY MR SMALL:

Q So I take it the houses went on the market

MR SMALL: Let's go to GX 49, previously admitted

BY MR SMALL:

Q This is now four months later, in August of 2009 And --

A Excuse me I can't see that -- can you --

MS TARAKTCHIAN: Oh, sorry

A Very well Thank you

BY MR SMALL:

Q There we go And this is an e-mail from you to your brother Bob and Michael, correct?

A Well, now I can't see it at all Thank you

Q There we go This is an e-mail on August 23rd, 2009, from you to your brother Bob and Michael, correct?

A That's correct

Q And it's again talking about the various sale options, right?

A That's right That's right

Q And it says in the first line, "Just spoke with Betsy " Betsy is the real estate broker you mentioned before?

A She's a broker, but she's also the co-owner of Sandbridge Realty and -- and Atkinson Realty Yes

Q All right "Just spoke with Betsy about the sales market for" -- "for relative to our homes What she suggested is brutal. She suggested we drop" -- essentially drop the price if we really want to sell, correct?

A Uh-huh Yes

Q So when you use the word "brutal," what was brutal in your mind?

A Well, brutal was the -- it was a commentary on the real estate market and the fact that the market had dropped not just for us, but everybody, that just -- you know, an absolute -- a couple-hundred-thousand-dollar drop in a list price was a pretty big -- pretty big drop So --

Q So no question at that time the real estate market was brutal?

A The real estate market was brutal I think for everybody, but notably for a vacation property for second homes

Q Now, even though you used this fairly dramatic language --

MR SMALL: If we can back up and go to the response

BY MR. SMALL:

Q How quickly does your brother respond to your e-mail on August 23rd?

A Well, it doesn't look like he did, if I'm reading that right It looks like I sent him another one Am I -- oh, no I'm sorry

MR SMALL: No That's the wrong document, Victoria You've got to go back to --

A Okay

BY MR SMALL:

Q Okay So how soon does he --

MR SMALL: Oh, I'm sorry No There's a -- there's one in between Scroll down Scroll down There we go The middle one Now I'm lost

BY MR SMALL:

Q All right And so --

THE COURT: Let's take a break

MR SMALL: Okay Thank you, Your Honor

THE COURT: Fifteen minutes

(The jury left the courtroom)

(Recess taken from 11:13 a m until 11:31 a m)

(The jury entered the courtroom)

THE COURT: All right Go ahead

MR SMALL: Thank you, Your Honor

BY MR SMALL:

Q Ms McDonnell, it's always bad luck to go backwards, but I just want to go back very quickly to 48

MR SMALL: If we could call that up, please

BY MR SMALL:

Q On the top e-mail that we were talking about after "Ouch " I'm sorry I got distracted, but it goes on to say, "We need to walk away with 1 5 to break even Our 3 loans total about 1 5 also We can't come up with money" -- or "$ to sell "

What did that last sentence mean to you?

A I would -- I think -- I think it's referring to we didn't likely have money in the MoBo account to come up with the dollars to sell, or I interpreted that for me is we don't want to have to bring money to the closing table to the tune of six figures There was no impending event to sell so -- so, yeah, I mean, I -- could we? Yes, I could have liquidated some things, but we didn't need to

Q If for some reason you absolutely had to come up with money to sell, could you have done that?

A Yes

Q But is that something you and Bob wanted to do?

A No As I -- well, as I stated, we just were really doing a test to the market for both properties to see what the market would bear But there was no impending event that would necessitate us selling either property at the time

Q All right So let's go back to where we were, which is 49

MR SMALL: And I need to apologize to Victoria I gave her the wrong advice

BY MR SMALL:

Q We talked about the -- this is actually a two-page chain We talked about the first one in time, which is the one where you said, "What she suggested was brutal," talking about the market And then there's a follow-up e-mail And the problem is --

MR SMALL: Can we do it, just quickly, Victoria, side by side? Because the "To" and "From" are actually on the other page Scroll down to the bottom of the -- can we scroll down to the bottom of that page that's on the left There you go

BY MR SMALL:

Q All right So the e-mail that starts on the -- on the top of the second page, you see, is from you to Bob Do you have that in your mind?

A Yes

Q Okay

MR SMALL: So now -- now let's go just to the second page and highlight that e-mail, if we could

BY MR SMALL:

Q So you send Bob an e-mail on August 26 Now, the original e-mail you had sent was on August 23rd?

A That's right

Q So this is now three days later?

A That's right

Q Why are you sending this follow-up?

A Because he didn't respond to the first one

Q Okay And you're trying to get his attention, I guess?

A I was trying to get his attention because it involved potentially spending a fairly good amount of money, and I just wanted to get his attention to have him weigh in on the AC situation

Q Was that a common problem during this period of time to get him to focus on MoBo?

A Yes, it was

Q So three days later you send this and you say, "Bobby What are your thoughts on this? I just got another call from Betsy for status " And then you go on to ask him about an issue with the air conditioning, correct?

A Yes

Q And it says, "The AC went out yesterday at Sunseeker Al said it will be 4,500 to replace I sent my guy out and he's ordering a part to repair instead of replace Should be a lot less $," right?

A Right

Q So now there are two issues on the table here One is the issue regarding sale, and the other is an issue regarding air conditioning, correct?

A That's right

MR SMALL: So if we go to the other page, Victoria

BY MR SMALL:

Q And you see at the bottom there is a response from your brother, correct?

A Yes There's --

Q This is later that same day, August 26?

A Yes

Q Now, you had posed two questions One related to the sale of the property, right?

A Right

Q Am I correct that he basically ignores that one?

A He didn't respond at all to that one Right

Q And then the other question was a choice between basically a cheap way to do the repair and a more expensive way to do the repair?

A That's right

Q And by responding --

MR SMALL: Where did it go?

BY MR SMALL:

Q By responding, "Let's replace," he's suggesting that you choose the more expensive way, right?

MS ABER: Objection

THE COURT: Sustained.

BY MR SMALL:

Q Okay The -- and then you have a follow-up e-mail and you remind him that you had asked a question about the price, correct?

A Well, that's right Because he only answered one of the questions, and I wanted to get his take on whether we wanted to make a price change on the listing.

Q Okay And if you go to the next e-mail, you send him again, much later that day, an e-mail saying, "Per the attached notes, I will go ahead and have Gail lower the Sunseeker price"; is that correct?

A That's correct He didn't respond So I made the decision and gave him the opportunity to object to that

Q Okay And so finally, on this sequence, that evening, about 9:00 that night, he responds and just says, "Ok"; is that right?

A That's right

Q Okay

MR. SMALL: We can take that down Thank you, Victoria

BY MR SMALL:

Q Okay. So that's August of 2009 Now go forward another four months to December of 2009

MR SMALL: Can we bring up Exhibit 51 already admitted?

BY MR SMALL:

Q Now, going -- again, from the bottom up, the oldest up, the first e-mail in this sequence, am I correct, is an e-mail from Michael, your ex-husband, on December 4th of 2009, correct?

A Correct

Q And he says, "Any luck finding a magical partner "

Did you know, at the time, what he was talking about?

A Well, yeah That's -- that would be his terminology for it But there was some discussion about a couple that would -- that were friends of Maureen's who may be interested in -- in investing with us They -- they -- they had some real estate in different places, and they might be interested in becoming part of -- part of these two properties

Q Okay And who originated that discussion? Do you know?

A With the couple?

Q Well, who told you about it?

A I believe Maureen did --

Q Okay

A -- initially

Q And did you come to find out who that couple was?

A Yes

Q Who were they?

A Dr -- the late Dr Paul Davis and his wife, Betsy

Q Okay And we'll come back to Dr Davis in a minute But then if we go up to the next part of this e-mail chain, am I correct that you basically kind of reply all with some more dramatic language? Is that fair?

A Well, I did Because it looks like my -- my -- Michael sent a note to Bob and Maureen and me, and there wasn't a response And oftentimes I would then send it on to Bob to try to get his attention, and admittedly, I'd use a little inflammatory language or caps, in this case, to try to get him to pay attention to an e-mail, which typically was effective when I used that -- that method

Q All right So let's go through it, then It says -- you're forwarding his reference to a magical partner And you say, "In other words, we are in trouble and we need to act NOW " What did you mean by that?

A Well, what I meant by that was we needed to -- we needed to deposit money in the MoBo checking account And that could come in a variety of ways, either through a loan or personal resource, or what have you. But per my husband's indication, you know, we just needed to -- we needed to populate the account, move money, or get a loan.

Q We talked earlier about this timing issue of needing, come December and January, to get money into the account Is that what you are referring to?

A Yes That's right

Q Okay Then it says, "We can look into a short sale, but we need to come with a buyer first " Tell us what that was all about

A Yes There's another note that I've seen in -- throughout this process, where I was reporting out to Bob and Michael about a call I had with Betsy, again, the co-owner of the property, of the real estate company And she was giving me assessment, kind of a market landscape, of what was going on in Sandbridge, and she mentioned the prevalence of short sales at the time

I had heard of short sale I never really knew -- frankly, what the mechanics of one was And she was explaining that to me at the time And in that note, not this one, but I had -- I was sharing a bit about how it works, just because I was reporting out on several things that she mentioned

Q And what was your understanding of what a short sale is, just briefly?

A Well, that you identify, you have someone in mind, a buyer in mind, or identified, and they -- there's a negotiation with the bank, and you may not pay the full amount of what is owed on the property So I -- I did my best to try to just, again, share the conversation I had with Betsy with both Michael and with Bob Well, I guess Michael is not on here, but Bob

Q And the next paragraph -- next sentence, rather says, "I understand short sales will not hurt our credit, unlike bankruptcy " Have I read that correctly?

A Yes I think that's what she communicated to me, and I passed that along

Q Were you, at any point in this time, considering bankruptcy?

A No No

Q Okay And did you have any further -- after this December 4th e-mail, to your recollection, did you have any further discussion or communication with your brother on the idea of a short sale?

A No We -- we never talked about a short sale, aside from my e-mails on it

Q Other than this e-mail, relaying the conversation with Betsy, is that something you ever seriously considered?

A No

Q Okay. And then finally he responds up at the top, "Not yet " I assume responding to "magical partner"?

A Yes

Q "Working on a couple of ideas"?
A That's correct
Q Okay
MR SMALL: You can take that down Thank you
BY MR SMALL:
Q So you mentioned that you had been told that Dr Davis and his wife were interested in buying the property Did they ever -- did they end up buying the property?
A No, they didn't
Q What ended up happening?
A Maureen had asked Michael and I to prep show them the property to see if they were interested in buying it or becoming, as I said, a partner or a co-investor And they ended up -- they ended up not -- not doing that, but they liked the property, and they -- Dr Davis, I believe, offered to -- to loan us -- loan us some funds at the time
Q Okay And did that happen?
A Yes, it did
Q Who negotiated that loan? Do you know?
A I believe Bob -- in terms of the terms of the loan?
Q Yes
A Yes Bob -- Bob negotiated that with Dr Davis
Q And do you remember what the terms were, roughly?

A It was five years, and it was -- it was 7 and a half percent, which I believe was based off of a -- an NFCU, or a credit line that we had looked at through our credit unions, which was 7 9. So --

Q In 2014, that sounds like a high interest rate?

A Yes

Q Do you recall, was it a particularly high rate back then?

A I don't believe it was I think at the time, the loan -- as I said, an option of taking maybe an equity line from other properties or other things, I believe it was around 7 9 If -- I may be incorrect, but I think that was the basis for it It was somewhere in that ballpark

Q How much money did Dr Davis agree to loan you in -- or loan MoBo, I should say, in total?

A The total loan was 50,000.

Q Did he do that in one check or in multiple checks?

A He did it over a -- over three different months And I recall my -- my husband had spent time with him to show him some of the financials And I recall that he preferred to provide the checks at the moment or the month needed as opposed to a lump sum

Q Okay When did he provide the first check?

A It was in December of 2009

MR SMALL: Can we call up Exhibit 55, please, already admitted

BY MR SMALL:

Q And is this the -- the first check to MoBo from Dr Davis?

A That -- that -- that is a check to MoBo from Dr Davis, yes

Q Okay And --

MR SMALL: Thank you, Victoria

BY MR SMALL:

Q Who picked up that check?

A My -- my husband and daughter and I went over to their house on -- on a weekend in December and picked it up -- and picked it up from -- from Dr Davis and his wife

Q Did you just show up and pick up the check? Or just tell us -- tell the jury what happened

A Well, it was -- it was -- it was great I believe that's the first time I actually had met or had any formal meeting with Dr Davis I'm sure he had been at various community events that I had attended, but he -- he was very warm and gracious and gregarious And he and his wife invited us in, and we spent about four hours there We had lunch My little girl wasn't very old at the time, and they had grandkids who were about the same age

So we actually had a lovely afternoon And he showed us his art collection and other things, and it was -- we just had a really good social afternoon with them of, again, about -- we spent about four hours there

Q He had an art collection there at the house?

A He did He did

Q And then at what point during the -- this afternoon did he give -- turn over a check?

A It was at the very end In fact, we -- we -- it was -- Betsy, his wife, and I were cleaning up the kitchen, some of the dishes And he and Michael, which I think was pretty true to -- his culture to deal with the man on things So he had given -- I think when we were cleaning it up, he had given my husband the check

Q And did you see the check at the time?

A No

Q The check is for 9,900 Do you know why Dr Davis wrote it in that amount?

A I don't

Q Did he or Michael ask him to write it in that amount?

A No No.

Q Okay All right But effectively for you, that was a $10,000 loan to MoBo, correct?

A Yes

Q And then am I correct, there were two other checks from Dr Davis to MoBo?

MR SMALL: If we can call up Exhibit 59, previously admitted

BY MR SMALL:

Q Do you see this check for 20,000 on February 6, 2010?

A Yes

Q And do you know whose writing that is on the deposit slip?

A It -- it's not my husband's, and it's certainly not mine It looks like Chris Beale "Ok Per Chris Beale " Chris was the Vice President of the bank at the time who was our main contact at TowneBank

Q Okay

MR SMALL: And then -- take that down and go to Exhibit 61, please

BY MR SMALL:

Q And is this the third check for, again, for 20,000? This time March 15th?

A That's correct

Q And, again, do you recognize the handwriting on the deposit slip?

A That would be that -- that's Michael handwriting, my husband's

Q Okay

A And if I may point out, I think I had -- in my grand jury, I had some of the dates of the checks wrong I don't think I saw the checks then So my apologies I just wanted to mention that

Q Okay Thank you

Can we -- at some point when you visited Dr Davis, was there any documentation for this loan, the first time in December of 2009?

A Oh, no No No

Q At some point, though, did you all sign a short promissory note?

A We did We did

Q All right

MR SMALL: Could we call up Exhibit 60, already in evidence

BY MR. SMALL:

Q And is this the promissory note that you all signed?

A Yes, it is

MR SMALL: And if I could just go to the third line -- I'm sorry, or fourth line, rather

BY MR. SMALL:

Q It says that the note shall be amortized over a five-year period with monthly payments in each of the five years So this was a five-year note, correct?

A That's correct

Q So it was not -- it's dated March 15th. So it would not be due until sometime in 2015, correct?

A Correct

Q Still wouldn't be due today?

A That's correct

Q You all paid it several years ago, right?

A It was fully paid off at the end of 2012

Q All right We'll come back to that in a moment

Did you have -- actually, let me focus on that for just a moment So this was signed --

MR SMALL: You can take that down, Victoria Thank you

BY MR SMALL:

Q It was signed in March of 2010 It's not due until March of 2015 You were making payments on it during that time, though, correct?

A Yes, we were

Q Okay But did you have some discussions in early 2012 about paying it down early?

A Yes Yes

Q And what do you recall about that?

A Well, you know, I remember the -- by that time, a couple years later, the interest rates had started to come down, and so that 7 and a half percent started to not look so good at that time And -- and we also had, at that point in 2011 and 2012, some money coming in from my dad's estate He had passed away in late 2010 So, you know, we had talked about, "Let's get into a more" -- you know, "Let's look to pay this off And whether we wait for some of the proceeds from my dad's estate or convenience checks or something like that, but let's look at a way to pay this off, given the rate "

Q Okay

MR. SMALL: Can we call up, just for the witness, RM-1457

BY MR SMALL:

Q And do you recognize this as an e-mail chain back and forth involving yourself and your brother?

A Yes

MR SMALL: Offer into evidence, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q And starting at the very bottom, this appears to be an iPhone message on April 4th, 2012, from your brother, correct?

A Yes

Q And he says, "Mo, please verify again that you can pay 15K on April 15 to pay off Dr Davis If so, I will send you 10K from me and another loan check for 13,000 to pay the full amount to Dr Davis Mike, can you verify that?" Have I read that correctly?

A Correct

Q So this is what you're talking about that you were going to pay off Dr Davis?

A Yes

Q All right And then there's another e-mail in the middle I'm not going to go into that right now But going to the -- skipping up to the April 4, 10:28 e-mail You sent an e-mail, am I correct, saying, "Planned on using the proceeds from the stock you mentioned for this Not sure when that is happening but will plan to do 12,500 " And just to be clear, what is the stock that you're referring to on April 4th, 2012, here?

A My dad had, in his will, he had left me 600 shares of Texas Industries And Bob was the executor So that stock was being, evidently, held up in probate It was a slower process, and it wasn't transferred to me, you know, until a little bit later than that But I was expecting it a little earlier And so I was just going to use that money to pay back Dr Davis

Q Okay And then just quickly, at the top your brother Bob responds He says, "Great Stock transfer slow Lawyer working on it Transfer from you to Boo "

Who is Boo?

A Boo is my sister Eileen's nickname She was very involved in my dad's care at the end of his life and his -- his estate

Q So we've got Mo and Bo and Boo; is that right?

A We all have nicknames, Dan

Q Okay But he says, "Won't be done by mid-April Do we need to wait a month or can you float 12,500 for that mid-April payment?" Have I read that correct?

A That's correct

Q Do you remember how that was resolved? Did you, in fact, put up 12,5 for the mid-April payment?

A Well, I believe what we actually did -- and I had it on one of the notes that I had seen during the grand jury, which was Bob went ahead and paid off his portion We did -- MoBo did -- we did take a bit of an express check loan, I think, for maybe 5,000 And then -- and so I needed -- I was left to contribute my portion to MoBo to pay off Dr Davis, which I did by the end -- by the end of the year I did it a little bit later A few months later

Q All right So then that's 2010 Let me just move quickly to 2011 You continued to have more and more late fee issues with Michael, correct, in 2011?

A I do understand that

Q And the -- and you were having -- am I correct you were having some discussions also about refinancing the loan -- not the loans to MoBo, but the loans -- the mortgage loans on the properties themselves, correct?

A Yes, we had

Q Why were you trying to refinance those properties?

A Well, you know, I think when we purchased them in 2005 and '6, respectively, we were in a cash -- kind of a cash flow friendly, interest only loan, which was the predominate loan product in Sandbridge And with the passage of time, the rates had dropped, and we were interested in getting into a better product for the long term for us so we could actually build some equity in the properties

Q And you understand the term "loan to value"?

A Yes

Q What is that? Just briefly, what's that mean to you?

A It's usually indicated in a -- in a percentage in terms of the property value and then how much a lender will loan against -- against that value

Q And still in 2011, fair to say that a lot of the properties in Sandbridge had loan to value issues, correct?

A I think many of them were under water They had negative loan to value issues, yes

Q All right And let me just briefly touch on, you mentioned your father's estate When did your father pass away?

A He passed away on November 2nd of 2010

Q All right And without going into detail, were there problems with the will and with the estate?

A There were a lot of problems My dad had -- had created the will 12 years prior, and many of the accounts that were noted there hadn't been updated in 12 years So many of the accounts were investments, IRAs, and the like, stock. We had decided, as a family, to -- to liquidate to pay for his care So, therefore, when it came time, after his passing, a lot of the accounts were no longer in existence

Q Okay Who was the executor of that estate?

A Bob

Q And was he able to sort out all these different accounts and come up with an equitable distribution among the five children?

A He was It took quite a bit of time to sort out the accounts, but yes

Q And who did he, as executor, give the lowest percentage distribution to among the five children?

A He was among the lowest Yes

Q He was the lowest?

A He was among the lowest Yes.

Q Now, in addition, is it -- is it fair to say that Bob put in a large number of hours working on this estate?

A He did He -- I -- just from what he shared, I'd imagine probably hundreds of hours on the estate

Q Was it your understanding that he also hired some outside people to help, out of his own pocket?

A He did He had to retain our counsels -- counselors He was not an estate attorney So he got some help from some folks that know that well

Q Is it your understanding that the executor of an estate is entitled to a fee?

A Yes

Q What fee is it your understanding?

A I'm not sure if my dad -- I think he may have expressly stated that in the will But it was 5 to 10 percent

Q Just very roughly, how much was the estate, the total value of the estate?

A It was between 700 and 800,000

Q So 10 percent fee of a 7 to $800,000 estate would be 70 to $80,000, correct?

A That's correct

Q And Bob was entitled to that fee, correct?

A Yes, he was

Q Did he take it?

A He did not

Q Did you or your siblings ever talk to him about that?

A We did We had a call, actually, with the four -- with the four -- the four kids, without Bob And then later in a subsequent call with Bob, we -- we had asked him, or strongly suggested, that he go ahead and take that fee He's put in a lot of time and late hours Sometimes we'd get e-mails in the middle of the night, all hours of the night So we had strongly suggested, as he figured out the financials, to deduct that fee

Q Okay What did he do?

A He didn't listen to us He didn't deduct the fee

Q Let me change subjects, if I may

Have you ever met Jonnie Williams?

A Never

Q Have you ever spoken to him on the phone?

A No

Q Ever received any gifts from him?

A No

Q Were you aware, during this time, during 2011, 2012, that he had given gifts to Maureen and the kids?

A Not at the time No

Q Were you aware that he had paid for golf?

A No

Q Would you have ever asked, "Gee, Bob, who paid for golf"?

A I wouldn't even know he went golfing No So no.

Q You attended Cailin's wedding, correct?

A Yes, I did

Q Were you aware what gift Jonnie Williams gave at Cailin's wedding?

A No

Q Did that subject ever come up?

A Not until I read about it in the paper much later

Q In Christmas of 2011, were you aware that your brother Bob got a watch for Christmas?

A I knew he got a watch from his wife We were up there at -- we had a -- kind of a tradition of spending New Year's up there, just Bob's siblings And I just vaguely recall sitting at one of the dining tables, and he mentioned that his wife bought him a watch for Christmas

Q All right And did you know any of the details of how much it cost or anything like that?

A No I -- no I wouldn't know that I wouldn't ask that

Q From your conversation with him, did he know how much it would cost?

A No

MS ABER: Objection Speculation

THE COURT: Sustained

BY MR SMALL:

Q And did you ever see him wear it --

A No

Q -- after that?

A No

Q All right So regarding Jonnie Williams, did you -- turning to the spring of 2011, did you have a conversation with Bob's wife Maureen about the beach properties?

A We did We did have a conversation It was April -- it was the day before Easter Again, April 9th And I know that date because I had a -- it was -- I had a birthday party for my little girl that day, and then that afternoon, evening, I had a shower, pre-wedding/engagement party, if you will, for Cailin and Chris at my home And Bob and Maureen attended

Q Tell us what you remember about the conversation

MS ABER: Objection, Your Honor This is after the investigation It's hearsay

MR SMALL: Spring of 2011?

THE COURT: The objection is overruled

MS ABER: Oh, I'm sorry Then I misheard I apologize, Your Honor

BY MR SMALL:

Q Let me go back So spring of 2011, correct?

A Yes

Q Okay Tell us about that conversation

A Well, it was -- I can't remember if it was between --

not that it matters -- if it was between the two parties Because it was crazy going from, you know, Toy Story to a grownup thing

But Maureen and I were sitting at the table, around my kitchen table And there were a lot of people around, of course, family, but the two of us were just having the conversation And we were talking about the properties, and she mentioned that she had -- she had some good friends who might be interested in purchasing the property They were looking at places in -- or had interest in places in Croatan Beach as well as Sandbridge Beach And Croatan is a very nice, sort of resort, slash, residential community in Virginia Beach

Q Okay Did she tell you who it was that was interested in buying?

A I do remember the name, which was the first time I heard his name, of Mr Williams

Q Okay Were you aware also that in 2011, Maureen had had a conversation with Michael and Jonnie Williams about Jonnie Williams buying the property?

A Yes I -- I believe -- I knew they had a conversation about that

Q Okay To your knowledge, did anything come of that in the year 2011?

A No I think much like the Davis -- the Davis situation, I believe that they wanted to prep see it sometime And I did recall that they were out of town I don't know that I even knew where they lived, but they weren't local, and that perhaps either Michael or I could show them the properties at some point that was convenient

Q All right So going forward to 2012, were you -- did you become aware from your husband that he had had another conversation with Maureen and Jonnie Williams about potentially buying the property or investing in the property?

A I did know that they had spoken again But please recall that late 2011 and early 2012, my husband was out of the house and -- for a period of time But he was still -- he was still -- it was more amicable, in some manners So he was still managing the books

Q Let me ask you, during this time, did you and Bob need another partner?

A No

Q Why were you interested in having that discussion, then, to bring in another investor or another partner?

A Well, I think -- I think that, again, like the Dr Davis situation, I think MoBo had just, frankly, for both of us, we had -- it had become much less of a priority for us, based on what was going on in our lives.

Q Do you recall when or -- when the conversation with Jonnie Williams about investing or buying turned into a conversation about a loan?

A I can't pinpoint the precise time But in conversations with Maureen, I -- you know, I knew I hadn't been asked to take him to the property And I think that, you know, at some point, I don't know if it was before or after, Michael was on the phone with him again It really became more of a loan as opposed to a purchase interest

Q And it --

MR SMALL: One second, Your Honor

BY MR SMALL:

Q In March of 2011, you went on vacation, correct?

A I did I went on vacation --

Q I'm sorry. What did I say? March of 2012 March of 2012

A Oh Yep Sorry I --

Q Did you go to Jamaica in March of 2012?

A I did

Q Okay

A I did

Q Was that a vacation, or what were you doing there?

A It was my daughter's spring break from preschool, and so Michael and I and Emma went to Jamaica It was -- I sort of would call it a reconciliation trip, if you will

He had been out of the house from November of 2011 to -- to the beginning of March, late February, of 2012 And so we wanted to go away as a family and -- and try to work through things and try to work on our marriage and just have some great family time during her spring break

Q And while you were away, did you receive some text messages from Bob's wife Maureen?

A Well, I didn't have my phone with me I didn't get an international chip But when I came home, I saw that I had some messages from her

Q Okay And they were messages -- what were the messages regarding?

A The messages were about if I had received a package from -- there was a friend sending a package, an important FedEx package, and did it come, did I receive it

Q All right Did it indicate what was in the package?

A I believe the text indicated it was a check Yes

Q And did it tell you what you should do with the check?

A It did not Well --

Q Did it say anything about don't deposit it?

A Oh, it did say that. It said to please call first so we can -- you know, call first because I don't know what it was for --

Q Okay

A -- and to talk to her

Q So do you recall, roughly, when you returned from Jamaica?

A I do remember It was -- it was Friday I came back late Friday on March the 9th

Q Okay And later that weekend, did you have some further texts with Bob's wife Maureen?

A I did She was -- she was quite eager When I came back -- when we came back into the country and I got home, I was sick I had some sinus infection So I went to bed straight Friday night, and I slept until -- literally, I stayed in bed until about Sunday morning, at which time I -- I believe it was Sunday morning I started to respond to her And I apologized that I didn't have my phone and that I had been ill since we returned from the trip

Q Okay And there were a series of texts back and forth for the next couple days, correct?

A Yes

Q All right So to make this a little easier, there's a summary chart that I'm going to show you

A Okay

Q And use that to walk through

A Okay

MR SMALL: Can we pull up 594, already admitted, please

BY MR SMALL:

Q So generally, it looks like red is Maureen texting and white is you texting Is that fair?

A Yes That's what it looks to be Correct

Q We have a color guide

A We have a color guide Yes

Q All right So at about 2:27 p m , Maureen sends you an e-mail -- or text, rather, saying, "Hello! Have u rec'd my msgs? Know u've been traveling "

That was to Jamaica, correct?

A Correct

Q "& got back Friday Need 2 talk 2 you! Anxious friend waiting 4 me 2 confirm u rec'd FedEx valuable package Pls call "

Had you, in fact, received a FedEx package?

A We had -- again, I was -- my husband had gone through the mail when we got home Friday I was in bed He had, indeed, found, with all the other mail that we had gotten, a FedEx

Q So you had gotten home on Friday, the 9th And this is now Sunday, the 11th, correct?

A Correct

Q And you respond a little bit later, "Mo, so sorry Got back Friday nite and have been sick Just got out of bed for first time now Yes, hit FedEx" --

A I think that's auto correct It should be "got " I Think that was an auto correct

Q Okay "Yes, got FedEx package Should I not deposit? Love, Mo " And that's responding to her earlier text saying don't deposit, correct?

A Correct

Q Okay Then she responds, "No I asked u to call bcuz we need to talk first U don't even know what it's for and what agreement & arrangement I've made He didn't want to write to MoBo &" -- something

A It continues down below

Q Okay It continues below "I talked him into it He's been calling all week needing to know it got there He preferred to write to me & I handle loan w u "

And you respond, "Mike and I will call shortly "

A Correct

Q Is that correct?

A That's right

Q And then what happened next?

A We called from -- excuse me We called from my husband's phone because mine -- I remember mine needed charging, and -- and we -- we called Maureen at that time together

Q And what happened?

A He said, "Hello," and she did not want to speak to

Michael She wanted to speak to me And then the phone -- then we -- she hung up

Q So she hung up on Michael?

A Yes

Q All right And then you get a text saying, "We'll have to wait till later bcuz Bob's fallen asleep," correct?

A Correct

Q And then going to the next page, later that evening, it's still Sunday evening, you send a text to your brother Bob, right?

A That's right

Q You said, "Hey, Bobby I'm leaving church Mike called Mo earlier and got disconnected "

Is that correct; that they were disconnected?

A I think that was my polite way of saying she hung up on us

Q Okay "She said we needed to talk about check when you woke up Pls call now if you'd like "

And then a little bit later he calls you, and there's a 22-minute call, correct?

A Correct

Q Now, was the principal topic of that call MoBo?

A No I don't recall it was at all I was -- I was not -- I was basically just perplexed Well, there were a couple things I was perplexed by the bizarre messages and why she hung up And I'm sure I vented to him a bit about it was really odd I didn't understand it And -- and I believe we were beginning to just talk about my trip I mean, remember, it was -- it was a time of reconciliation for my marriage and my husband, and would have been of the personal nature, predominately, to talk about -- about the trip

Q Fair to say -- fair to say at that time, 6:15 p m on Sunday, the 11th, MoBo was not high on your list of priorities?

A No MoBo wasn't high on my list of priorities then, and for a long time Correct

Q All right And then there's a second short follow-up call Do you remember anything about the follow-up call?

A I don't recall The three-minute call?

Q Yes

A No I don't -- sorry I can't remember that

Q And then a little later, Bob's wife Maureen sends you a text It says, "I left u msgs bcuz I worked on this loan 4 a year, not Bob I needed 2 speak 2 u directly, not Michael Why do you always do that 2 me? But u could return Bob's call "

Have I read that correctly?

A That's correct

Q So you had called Bob, but the call to Mo, Maureen, she had hung up on, correct?

A That's correct

Q Okay And then you weren't a party to these other e-mails(sic) after that, correct? You don't know what those were all about?

A No No

MR SMALL: All right Take that down

BY MR SMALL:

Q So the next day, what happened?

A So the next day, it was Monday, the 12th, I suppose I was going back to work after being gone for ten days or so And, you know, I, frankly, still -- I remember Michael and I didn't -- still did not know what to do with the check completely We hadn't talked to -- hadn't -- I hadn't talked to Maureen And -- but I believe he -- he had taken it He had gone ahead and taken it to work with him that morning

I remember talking to Bob that afternoon, and I know we have just -- I don't know if you have it, but there's a precise time I talked to him in the afternoon briefly

Q Sure

MR SMALL: Can we call up 595, already admitted

BY MR SMALL:

Q This, again, is one of these summary charts --

A Yes Okay

Q -- that's list calls and texts?

A Okay Yes There it is

Q All right So at 2:36 p m , this is now Monday, the 12th?

A Yes

Q There is a two-minute call between you and Bob Tell us about that call

A So that call was -- Bob had -- Bob had phoned me, and I -- Maureen was in the background I recall very clearly because it was a very short call because she was -- she was not -- she was livid She was very upset that -- I just heard some of the narrative that we saw earlier; that she worked on the loan, not Bob, and I couldn't call her back but I could talk to him, and more of that And she was very loud in the background So much so the call was quite abbreviated And --

Q I believe you said in the grand jury that she was screaming in the background; is that correct?

A She was She was screaming in the background I could hear her very loudly She wasn't on the phone I don't know if he had it on speaker or not, but her -- she was very upset in the background And -- and Bob had asked if he could just call me back It was very distracting She was angry And I had -- I had thought that this was the call where we talked about the loan more specifically, but I was mistaken I think I shared that in the grand jury But it was the call a little bit later that day

Q All right So you had two calls that day?

A Yes, we did

Q Both about the loans, but the later one, you think, is the one where you had time to go through the terms?

A Yes Because we did not talk, if I remember It was a very -- she was yelling a lot and, "She didn't call" -- you know, "She didn't call me Why is she calling you? I worked on it I arranged this She doesn't even" -- I mean, there was just a lot of that And it was very distracting for Bob and I to attempt to have a conversation at that time

Q How did the call end?

A He said, "I need to call you back, Mo " She was yelling, and he needed to call me back

Q And then right after that, he sends you a text saying that, "Call me Just want to finish our call"; is that correct?

A Yes

Q And then there's some further back and forth, and you weren't involved in any of these things with JRW, Jonnie

Williams, correct?

So --

A No

Q -- at 6:02 did you have a longer call just with Bob?

A We did I -- and I -- we had made plans to talk around 6, and I was off work at that time driving home And at that time we talked We talked for -- we talked for a while Obviously, we talked for 40 minutes, over 40 minutes And I think at that time we had a little greater opportunity to -- I talked about a lot of things, frankly I think I talked to him a little more about Michael and some of the activities while we were away, and on our vacation together, and how that was going on the marriage But during that discussion, we also had an opportunity to talk about -- about the loan

Q And did you later send Bob a text --

MR SMALL: We can take that down Thank you

BY MR SMALL:

Q -- send Bob a text kind of following up on these calls?

MR SMALL: Can we see RM-0015-0004, please, just for the witness And the text on Tuesday, March 13th, at 11 51 p m If you could highlight that Blow it up a little bit That one right there in the middle The long one

BY MR SMALL:

Q And is this the text that you sent to Bob the next day to follow up on that call?

A It was And --

MR SMALL: I'd offer that page, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q So this is a text from you to Bob the next day, Tuesday, right?

A That's correct

Q "Hey, Bob Hope you have fun in FL "

Was he taking a trip for some reason?

A Well, he and his wife were going down to Florida, were going away for a few days, and -- yes, he was going away

Q Then you say, "Called Mo yesterday and left msg and texted today No response Not sure where to go from here Really don't like this relational tension dividing our families or this unsettledness Still don't know why Mo hung up on Mike and I when we called on speaker Sunday It doesn't need to be this hard Makes me sad "

What is the relational tension that you're talking about there?

A Well, I mean, honestly, I had this strange -- these strange messages from her, and all I wanted to know is for my husband, do you put the check in or not And it just seemed like it was just an odd and sort of an irrational series of texts And then for her to hang up on my husband and I and then -- you know, and then be screaming so much in the background when I was trying to have a conversation with Bob about it Because if you recall earlier, she said we can't talk now because Bob is asleep

So, you know, I just didn't understand why this was so complicated and difficult And in that conversation the evening prior when I spoke to Bob at 6, I recall he had asked me -- he had to -- he had to be with Maureen for a few days, and he said, you know, "It would be very difficult if she's angry and in a bad mood So could you please reach out to her and call her and text her and just try to smooth things over," which is what I did

And I was just telling him I called her yesterday I called her, which was Sunday -- or I'm sorry, on Monday, and then I left a message and texted on Tuesday, but she didn't respond to me

Q When you -- when he asked you to please reach out because it would be difficult --

A Yes

Q -- because they were going to be together, what did you say in response?

A Well, I -- I said I would do it I mean, I said -- I think he asked me to kind of, you know, be the stronger person and reach out and just try to make amends about, you know -- and try to diffuse some of her anger and hear her out

Q All right Now, you said a minute ago --

MR SMALL: You can take that down Thank you, Victoria

BY MR SMALL:

Q You said a minute ago that there was -- in one of the calls on the 12th, you had written some notes on what you and Bob had talked about in terms of the terms of the loan with Jonnie Williams Do you recall that testimony?

A I do

MR SMALL: Can we pull up RM-0237 just for the witness

BY MR SMALL:

Q And are these the notes -- or, rather, is this the page that has the notes on them?

A Yes, in the upper -- kind of the upper right-hand corner It was a work notebook that had a lot of other things on it

MR SMALL: Offer that, Your Honor

THE COURT: It will be admitted

MR SMALL: All right So car we blow up the upper right-hand corner

BY MR SMALL:

Q The rest of the page, am I correct, doesn't have anything to do with MoBo or Jonnie Williams or any of this stuff? Right?

A No In fact, the 4:30 --

Q Where were you when -- I'm sorry Go ahead

A I'm sorry No The 4:30 is -- my child had soccer practice, that 4:30 appointment So no, it had nothing to do with it

Q Where were you when you had this call and took these notes?

A Well, I would have been driving home at that time It was 6 -- it was 6:02 or 6:00 in the evening And my recollection is that I was driving, and I had pulled over at some period because I would have grabbed -- I grabbed my notebook, which is my work notebook, in my briefcase that was on the passenger seat And I just opened it just to have something to write on, which was open to that workday

Q Okay And can you just walk us through -- first of all, are you taking down something that's already been proposed or something you and Bob were going to propose? What is it that you're writing down? Do you recall?

A Well, my recollection, again, is that it was something we were talking about for the loan, the $50,000 loan, and what the terms may be And, you know, we had already had -- or looked into what the rates would be for express checks And I don't believe -- I don't believe that he had yet proposed this to Mr Williams I don't think it was set For me, this is -- we were talking about what it might look like, which was -- you know, 2 and a half percent was, I think, Bob's rate for -- or excuse me, my rate for an express check I think his was lower with his cards, 1 9 or 2 percent But mine was 2 5 so that's what I --

Q Can I just interrupt you just in case --

A Yeah

Q Just so we're clear, what is an express check? You've used that term once or twice

A Yes It's an express check or a convenience check, which is an opportunity for -- a lot of credit card providers have -- they offer you low interest checks just to write on the account I think AmEx, Visa, Sears, a lot of them do that for a period of time at very low interest rates

Q Okay And so you were aware at this time, in March of 2012, what you could get as an interest rate on your express check -- express checks?

A Yes

Q And what was that?

A Well, mine was -- mine was 2 and a half It was 2 and a half percent

Q Okay All right And is that -- was that sort of the source of this number?

A Yes That was for -- what I wrote down is what an express check would be for me It would be 2 and a half percent

Q Okay So -- does it also say what the term is?

A Well, it says 3 -- or I think I scribbled 30, but it was over 3 And there would be a -- kind of a balloon payment at the end of 3 years, in March of 2015 --

Q Okay

A -- is when -- when it was due

Q And March of 2015, that's the same end date as the Davis loan had, right?

A Yes, it did

Q Although the Davis loan was not a balloon It was a periodic payment?

A It was a monthly

Q Okay And fair to say the rate is considerably lower than the Davis loan rate, correct?

A It is much lower And it was -- it was a couple years apart from -- from negotiating that --

Q Okay

A -- but yes

Q And did you discuss with Bob why you would do a balloon on this rather than a periodic payment?

A I remember him mentioning, I think Maureen had also mentioned at some point prior, that Mr Williams may want to come, he and his wife or family, and use the property or use it for business associates

Q Uh-huh

A And that if they did have such usage, then at the end of the term, that that would be the market rate or the prevailing rate for the nightly -- or whatever term of stay he had So it would be netted against that

But also, I believe, he -- I know there was some discussion to wait until, you know, Bob wasn't a public servant and -- and he was earning -- you know, there was an opportunity for us down the line where Maureen would probably be going back to work and Bob would be working as well in three years

Q Let me just expand on that

A Yes

Q Did you have -- you had, it sounds like, discussions with your brother Bob of what the future might hold when he -- his term for Governor ended at the end of -- essentially the end of 2013, correct?

A Well, effectively, he left office the -- yes, the beginning -- the beginning of, you know, this year

Q And financially, what did that mean?

A Well, you know, I think that --

MS ABER: Objection Speculation

THE COURT: Sustained

BY MR SMALL:

Q And did you also -- there's a reference there to 4:30? I'm sorry

A That was my child -- my daughter's soccer practice at Thoroughgood Elementary School

Q Okay

MR SMALL: We can take that down

BY MR SMALL:

Q Now, you had -- you were aware that you could get an express check at basically about the same rate; is that correct?

A Yes Yes

Q So is there any reason why you or Bob were doing a loan through an individual as opposed to doing a loan through the express check?

A I preferred -- frankly, I preferred a loan through an individual versus through an institution, an institutional loan or, frankly, a loan that would be through the bank Because as I testified a little bit ago this morning, I had some late payments that were reported from TowneBank for my husband, a loan I co-signed for my ex-husband, and

I was very sensitive to my credit at the time My credit was still quite good by any standard, but it had a couple of blemishes because of those late payments from my ex-husband

Q Okay So the late payments on the -- your husband's business loan -- were you aware of the late payments at the time --

A No

Q -- they happened?

A Not at the time that they happened I found out -- I found out later when my credit was pulled

Q All right And you found out later that those late payments had hurt your credit?

A Yes I think there were maybe a couple of delinquencies over 30 days that had been reported

Q Okay So during this period of time, then, you were trying to fix your credit basically? Is that fair?

A I just didn't want to open any additional credit, any card or any line against the credit or any have any debt on my credit report Correct

Q Fair enough All right So you did take -- Jonnie Williams did end up loaning MoBo $50,000, correct?

A He did initially loan MoBo $50,000, or the check was actually from Starwood, I believe Not -- not a personal check from him

Q Okay And then -- I'm sorry Let me just check one thing Okay

And then are you -- was there a second Jonnie Williams loan also in 2012, in May of 2012?

A There was

Q And how much was that? Do you recall?

A That was for $20,000

Q All right Do you remember why you and Bob wanted a second loan?

A We were -- we were renovating the property We were actually -- we had a renovation that was about $22,000, a major capital improvement and, frankly, I think the first of that kind since we owned the property to make it more of a year-round event house We built out an outdoor living area to have more outdoor space and made some other very nice enhancements that would make it, again, more of a four-season rental

Q Okay So MoBo got loans from Jonnie Williams in 2012, in March and again in May; is that correct?

A Yes

Q And during this time, you were employed by Amerigroup, correct?

A Yes

Q And, in fact, right at this time, am I correct that you got a very large bonus from Amerigroup?

A I did On --

MR SMALL: Can we bring up RM-33, Page 1 only?

BY MR SMALL:

Q Is this your essentially pay stub for that bonus?

A Yes

MR SMALL: Offer it into evidence, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q So let me just, very quickly, try to track through this If you go down to the first number on the top right, it says --

MR SMALL: No A little higher up A little higher up No Up above that There you go There you go

BY MR SMALL:

Q It says, "MJO Bonus " Do you recall what MJO was?

A It's a -- it stands for Major Job Objective And they are basically your goals for the year, your particular goals for the year that you're measured against

Q And the bonus was $70,000?

A The bonus that year was $70,000

MR SMALL: And if you go back, just scroll up a little bit, Victoria

BY MR SMALL:

Q You can see --

MR SMALL: A little further

BY MR SMALL:

Q -- the date of this was March 9th of 2012, correct?

A Correct

Q That's literally a couple days away from the Jonnie Williams loans, correct, the first one?

A Yes This was -- it was an automatic deposit into my checking account on March the 9th, which is the Friday we returned from Jamaica

Q Okay

MR SMALL: And let me just, very quickly, scroll down a little bit

BY MR SMALL:

Q And you can see on the -- where am I looking here?

MR SMALL: Yeah That's fine

BY MR SMALL:

Q What is ESPP?

A It is -- it stands for Employee Stock Purchase Plan The ability to buy company stock at a discount through payroll deduction

Q So is it fair to say that you chose to use part of that bonus to buy more stock?

A Yes, I did

Q Okay And I guess the question is why did you choose to not use that bonus, you know, instead of a loan from Jonnie Williams or anyone else?

A Well, you know, we sure could have, but it made more sense for me to invest the money, to take out the stock deduction and my 401(k) deduction of 4,200, just to put that money away The interest rate was much better through those investment vehicles of my own personal resources versus a 2 or 2 and a half percent loan that we may have gotten through express checks or through an individual

Q Now, let me just switch for a minute There are a couple of financial documents, Ms McDonnell, that I just want to get in through you, just very quickly, because we have a summary witness that I need to bring them in for

MR SMALL: If I might, if we could bring up RM-31, please

BY MR SMALL:

Q And is this -- you've had a chance to review -- you've had a chance to review your 2012 tax return; is that correct?

A Yes, I have

MR SMALL: I'd offer into evidence, Your Honor, the 2012 tax returns

THE COURT: It will be admitted

BY MR SMALL:

Q And also RM-266 And you've had a chance to review your 2011 tax returns, correct?

A Yes

Q And these are your 2011 tax returns?

A Correct

MR SMALL: I'd offer 266, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q And finally, 265 Have you had a chance to review your 2010 -- I sound like a broken record I'm sorry

A Yes, I have

Q -- 2010 tax returns And are these those tax returns?

A Yes, they are

MR SMALL: Offer that into evidence, 265, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q A couple of other quick things while we're on the financial issue What is Think Mutual Bank?

A It is formerly known as IBM Employees Federal Credit Union It was the original bank that I did business with when I started with IBM when I was 21 and still have accounts there today

Q And focusing, again, on sort of late 2012 --

MR SMALL: Well, could we bring up 275, RM-275, just for the witness, please

BY MR SMALL:

Q And is this your statement from Think Mutual Bank for December 31st, 2012?

A Yes It's a copy of that statement

MR SMALL: Offer that into evidence, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q And just briefly, what is the -- what is the ending balance?

MR SMALL: I think we have to scroll down, Victoria If we could No Yeah At the top of that page I'm sorry Top of that page, if we can blow up that box

BY MR SMALL:

Q What was your ending balance in this account in 2012?

A At the end of 2012, it was $118,210 48

Q All right We talked about, earlier, the stock where you had, at the end of 2012, roughly 250,000 that was vested and another roughly 250,000 that was coming up that you owned but hadn't been vested yet, correct? Do you recall that discussion?

A We discussed that, yes

Q All right In addition to that stock account, did you also have several 401(k) or similar retirement accounts?

A I had three -- three retirement accounts Yes

Q All right I'm just going to run through those very quickly You told us earlier that you had worked at Regent University, correct?

A Correct

Q And you had a retirement account from that work?

A I did

MR SMALL: Could we call up RM-264, please

BY MR SMALL:

Q And is this a statement -- you've had a chance to review your statement from the Regent 401(k) -- or 401(a), I guess it is, plan, because it's a nonprofit, right?

A It's a 403(b)

Q Okay I got all the numbers wrong Okay

MR SMALL: But anyway, I'd offer that into evidence, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q And at the top of Page 2, it shows this to be --

MR SMALL: Well, just blow up the numbers, if you would

BY MR SMALL:

Q It shows an ending balance --

MR SMALL: Okay I'm -- go back You're right I'm wrong

BY MR SMALL:

Q It shows an ending balance of $439,835; is that correct?

A That's correct

Q And that was at the end -- or actually, September 30 of 2012, correct?

A Correct

Q All right And so -- get my pen So Regent is 439,000 Okay And you told us earlier you worked at IBM for a fairly long period of time, correct?

A I did

Q And you also had a 401(k) from IBM?

A Yes

Q And at the end of -- or in late 2012, same period we're talking about, you still had that 401(k)?

A I did It, obviously, was inactive since I was no longer employed, but I still had the money in there, yes

MR SMALL: Can we call up RM-254?

BY MR SMALL:

Q And have you had to chance to review your statements from the IBM 401(k)?

A Yes, I have

MR SMALL: Offer that into evidence, Your Honor

THE COURT: It will be admitted

MR SMALL: And if we can blow up just that top box, just quickly?

BY MR SMALL:

Q Am I correct that in September 30 of 2012, your ending balance on that account was 257,000 and change?

A Correct

Q So IBM 257 Okay And did you also have a third 401(k)?

A I did, with my current employer, Amerigroup

Q Right And I --

A Yes.

Q I don't think I have that document here, but in late 2012, roughly what was the balance with that 401(k)?

A It was right around 50,000 It wasn't significant at the time

Q Okay You hadn't been with Amerigroup as long in 2012, correct?

A That's correct I hadn't been there very -- it was just a couple years

Q So approximately 50,000 was the balance?

A Uh-huh Yes

Q Okay All right So let me talk a little -- thank you I'm sorry to go through all that But let me go back just briefly, if I might, to MoBo And specifically, we talked about the loan in March of 2012 from Jonnie Williams And I want to take a look at that and MoBo's account for that period And there's another summary chart

MR SMALL: If we could bring up 596a, please

BY MR SMALL:

Q Okay And, Ms McDonnell, I know you didn't make this, but this is a summary of MoBo's account at TowneBank during, essentially, part of March and April of 2012, correct?

A Correct

Q So -- and you see the entry for the loan from Starwood Trust, correct?

A Yes, I do

Q And that went straight into MoBo's account, correct?

A Yes It was written for MoBo and went straight into the checking account

Q And it was used for MoBo expenses, right?

A It was used for MoBo, yes

Q So let's -- let's talk a little bit about -- there are a couple of items here I want to touch on First of all, if you look right under the Starwood Trust entry, there's an entry that says "Transfer to BRH " What was going on here?

A BRH stands for Blue Ridge Heaven, and it was a rental property that I'm the majority owner of with my sister Eileen and my brother Bob, who is a minority owner, in Wintergreen And my ex-husband also managed the books He ran the finances for that property And unbeknownst to us, he had taken some liberties to move some money around among the accounts And specifically on this chart, there appear to be two different transactions where he moved money out of MoBo into BRH, one in the amount of the thousand and then, it looks like the very next day, in the amount of 4,500

Q And did you later find out that he was then transferring some of that money to himself?

A Yes, I did

Q So on this page there's the $1,000 transfer to BRH and the $4,500 transfer to BRH And at that time, I take it you and Bob weren't aware that those transfers were happening?

A No

Q And you hadn't authorized any such transfer, had you?

A No, we did not

Q Okay All right And then if we can -- down at the bottom of this page, on March 27th there's an entry for Resource Building Corp for 16, almost 17,000 Do you see

that?

A Yes, I do

Q What's Resource Building Corp?

A That is the builder, or the contractor, that we hired to put the -- that addition I spoke of, the $22,000 capital improvement That is the -- that is a payment to that -- that contractor who did the work at the property

Q So let me be clear This wasn't, you know, the roof had blown off in the hurricane and you had to repair That was upgrades and additions, correct?

A That's correct We wanted to make it more of a four-season, as I said, and really increase outdoor living space of the property by building out a cabana and some other upgrades

Q So if money was tight, you could have just said, "Let's do that next year," right?

A Yes, we could have

Q Okay But you and Bob both agreed to do it this year, right?

MS ABER: Objection to leading

A Yes

THE COURT: Sustained

BY MR SMALL:

Q Who decided to do this upgrade this year?

A We both did We talked about it And I was very much in favor of the improvements that -- again, we hadn't done any major improvement in a while, and we were really excited about enhancing the attractiveness of the property and maybe attract some more off-season corporate rentals and the like

Q Okay And then you see just above that, there's a payment to Dr Davis, right?

A Yes Uh-huh

Q That's one of the monthly payments on the -- his loan, right?

A That's correct

MR SMALL: And then if we could go, Victoria, to Page 2 of this document

BY MR SMALL:

Q There are a couple entries here 4/4 to Bob McDonnell for $744 53 And then Jeanine for a hundred And then -- I guess just those two

A No There's one to me

Q Oh, I'm sorry There's one to you for $245 87

A Uh-huh

Q What's going on there? Why is MoBo writing a check to you and Bob and Jeanine?

A That was following one of our maintenance weekends there where we went to Home Depot and purchased a whole bunch of supplies, paint, stain, paint brushes I believe that weekend we -- which we did a lot with all the decks there We did a significant amount of power washing, et cetera

So what our bookkeeper had said, when we have an expense like that, to try to keep things clean to -- we pay for it out of pocket and have MoBo reimburse us for such expenses

Q Okay So somebody goes to Home Depot, buys something, and then submits a receipt and gets reimbursed, right?

A That's right

Q Okay So that was just for accounting purposes, basically?

A Yes Right

Q Okay

A And because we were 50/50 He spent more than I did So we just wanted to keep that --

Q All right And then lastly, we saw on the prior page one of the monthly payments on 3/26 to Dr Davis But then on the next page -- go back -- at the bottom on 4/30/2012, there's a large payment to Dr Davis, $20,504 What's that all about?

A Right That was -- as I said, we paid -- MoBo had paid Dr Davis off and paid off a great percentage of that loan And then what remained was -- was my portion that I wanted -- I wanted to wait a little bit We -- my husband had talked to Dr Davis and told him we were going to wait a little bit to -- we were just going to wait a little bit to pay him off

Q All right And if you go up to 4/12, this is you and Bob putting money in essentially to pay off Dr Davis, right?

A That's right And I -- I can't -- I can't firmly attest to this, but I think I might have already put in 5,000 If you just look at the numbers, I think there was another time that I had put in 5, and so Bob put in more this time

Q Okay All right

MR SMALL: Thank you, Victoria You can take that down

BY MR SMALL:

Q Let me switch topics, if I might And who is Brenda Chamberlain?

A Brenda is our bookkeeper for MoBo

Q Okay And prior to the end of 2012, who had been the main contact with Brenda?

A My -- my husband Michael

Q And so with all the problems that arose, did that change in 2013? What happened?

A Well, it did But it changed because my husband and

I had our last and final separation on October the 4th, 2012 He left the marital residence and didn't return until we were ultimately divorced

Q Okay Directing your attention to February 2nd, 2013 Did you participate in a call with Brenda Chamberlain?

A I did Yes Yes

Q Who else was on the phone?

A Bob was on, and my sister Eileen

Q Okay And just generally, what do you recall about that conversation?

A Well, it was -- it was Christmas of that year that I finally had gotten all of any files that I had on -- on MoBo or the mountain house, the BRH I had all the files together, and I brought them up to Bob and Eileen at Christmastime And they were -- they were each taking over the finances of those two properties So Bob would be running and managing the finances for -- for MoBo, and Eileen would do the same for BRH

Q Okay

A And the call we had in February was to -- to talk to Brenda about a number of things But one of the things that we realized at that point were the books were -- were a complete disaster And so we -- you know, I had never talked to Brenda, I don't believe, before that Eileen and Bob hadn't But we wanted to get with her to get -- to get a lot of the books straight, give her access to the accounts and the like

Q Okay And so what was -- on that call, tell us about that call itself What was discussed, to the extent you can remember, on that call?

A Sure I remember we talked for a while The call must have been 40 or 45 minutes I think it was on a Saturday afternoon And we had talked about -- first of all, there were -- we had identified what we sort of called these mysterious transactions, some of those transfers from the MoBo to the BRH, and then some of the transfers directly to my husband and some checks written to him from the business accounts So we -- we were trying to get our arms around that, or Bob and Eileen were

And also, we were talking about -- Bob had made a lot of requests to Brenda for different reports and historical data And we talked about how she had worked with Michael, and she, admittedly, vented quite a bit about it wasn't that clean, particularly the last few years And so I do remember at that account, she mentioned Michael would make copies of checks and statements, and he was supposed to be sending them to her on a monthly basis

And at that time, Bob had said, "Well, why don't we just" -- "why don't we just give you electronic access to all the accounts and that way you don't have to go through me or any of us Just go ahead and log on to the bank accounts, you know, on your own You're our bookkeeper "

Q And what did Brenda say?

A "Sure "

Q Okay Let me be clear Had you ever met Brenda Chamberlain personally before this call?

A I still haven't met Brenda Chamberlain I've talked -- she was on that call But no No

Q To your knowledge, had your brother Bob ever met Brenda Chamberlain before this call?

A No In fact, when we saw some of those JesMat transactions, he didn't know what that was I mean, I think he knew we had a bookkeeper, but not -- no He had never met her

Q JesMat turned out to be the name of her --

A That's the name of her company, yes

Q Company or whatever Okay And so neither of you had ever met her?

A No

Q Did you have any reluctance in giving her the passwords and numbers for your accounts?

A No Not at all

Q Okay Okay During the call, was there any discussion of loans to MoBo?

A Yes I -- you know, to the best of my recollection, I do remember -- and she would have been familiar with the loans that we had from the institutions to MoBo And I do -- I do recall -- again, I was driving I didn't take notes during the call But I do recall that we discussed some of the -- the other loans to MoBo

Q From individuals?

A From individuals

Q Okay

A My recollection serves that we did discuss that

Q When you say "institutional loans," there was a credit line from way back when for MoBo?

A There was -- there was a credit line through TowneBank that we had But what I mean is just a status, kind of an amortization schedule of some of the other institutional loans we had with -- with Bank @Lantec or, you know, other -- the other banks

Q And as we said earlier, those institutional loans were on the properties? They weren't actually MoBo But it was the business that MoBo was managing?

A That's exactly right

Q Okay

A They were in my name and Bob's names, those institutional loans

Q Okay So she agreed that you would -- or that Bob would give her the numbers and passwords to the account And how was the -- how did the call end?

A Well, she had a lot -- she had a lot of to-dos, I recall And Bob had the to-do to send her all the passwords and to e-mail all of that information And then she had some documents And she had a lot of work to do to help us make sense of, frankly, both accounts Not just MoBo, but the BRH account That was also askew because of the transfers that were going on

Q Okay So that call was on February 2nd

MR SMALL: Can we call up RM-2062, already in evidence

BY MR SMALL:

Q This is an e-mail on Monday, February 4th; is that correct?

A Yes

Q So going back from that Saturday -- oh, okay The -- February 2nd, the call was on a Saturday, correct?

A It was on a Saturday

Q Okay All right So this is Monday, February 4th And you are copied -- this is from Bob, right?

A Correct

Q And it's at a little after midnight on -- actually, it's Sunday night, Monday morning, right? 12:23 a m ?

A That's correct It's Sunday night So it's, well, effectively, the next day, but Monday morning, yes

Q Okay So someone is up working late?

A Yes Yes

MS ABER: Objection, Your Honor

BY MR SMALL:

Q And it says, "Brenda As discussed, I authorize you to have on-line access to the TowneBank account for MoBo Real Estate Partners, LLC for the limited purpose of providing regular bookkeeping services for the corporation " Did I read that correctly?

A That's correct

Q And is that what you had agreed to do in the February 2nd conference call?

A Yes

Q Okay And then there are instructions and names and passwords And then at the bottom it says, "Let me know if you have any problems "

A Correct

Q Did I read that correctly?

A Yes, you did

Q And then it also indicates that he's sending her Sandbridge Realty statements, right?

A That's right

Q And those would be the statements that would reflect rents and the brokerage fees and that sort of thing?

A Exactly We'd get monthly statements that they e-mailed to us that has all of that and every other expense, yes

Q Okay And he also promises to get some further information on owners contributions, correct?

A Correct Uh-huh

Q Okay And by the way, you have an account -- or one of your businesses, I think, has an account with TowneBank; is that right?

A Yes We had a -- I had an account there with my husband, a joint account, when we were married And I had my consulting business account with TowneBank as well

Q And you would access it, from time to time, on-line, your account?

A I would access those accounts I -- not the -- not MoBo But yes, I'd access those

Q But on your accounts, when you would access them on-line, did TowneBank have the feature where if you see an entry, you can click on it and it will bring up the backup?

A Yes

Q Okay So -- okay And for these TowneBank statements, the loans from your father would have gone into this account, right?

A Correct

Q And the loans from Dr Davis -- I say "loans " The three payments from Dr Davis went into this account, right?

A Yes

Q And the loans -- two loans from Jonnie Williams went into this account, right?

A From Starwood went into the account

Q From Starwood?

A Yes

Q So as of February 4th, 2013, Brenda has access to all -- everything that is there in TowneBank, right?

A Correct

Q Okay Now -- and Bob promises a number of other things And did he continue to provide her with additional information?

A Yes I presume he -- I'm sure he did And I did too in terms of the owners contribution Because what we also wanted to do this time is actually file taxes on time, which was important We hadn't for years And --

Q You anticipated where I was going

A Oh

Q Thank you

A Okay

Q That's quite all right

The normal tax filing day is April 15, right?

A Correct

Q Everybody knows April 15th

A Yes

Q But you can file for an extension, and that will move it to October 15th, right?

A Yes

Q And is it fair to say that every year prior to this because Michael was -- at least in the recent years, because Michael had been slow on the accounting, you had to file for extensions?

A Yes

MS. ABER: Your Honor, I have to object to the leading here

MR SMALL: I can go slow, Your Honor I'll back up

THE COURT: Are you almost finished?

MR SMALL: No I've got a little more, Your Honor But we can take a break at this point if you wish

THE COURT: We'll stop here for lunch

If you all could come back at 2:15, we'll get started with the afternoon session

(The jury left the courtroom)

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(Luncheon recess taken from 1:05 p m. to 2:15 p m.)

THE COURT: All right, bring in the jury, please

(The jury entered the courtroom.)

All right, go ahead.

BY MR. SMALL:

Q Good afternoon, Ms McDonnell

A Good afternoon.

Q Let me just close out a couple of things First, we talked about the Davis loan being paid off Do you recall that testimony?

A Yes, I do.

Q Could we call up Government Exhibit 499, already admitted, Page 6, please When the loan was paid off, we saw earlier the $20,000 in 2012 Did you eventually get a receipt from Dr Davis?

A Yes, we did.

Q And is this the receipt you got from Dr Davis?

A Yes

Q And it says, "MoBo Real Estate has paid off the entire $50,000 loan with interest at seven-and-a-half percent"; is that correct?

A Correct

Q All right So the checks were made out to MoBo, correct?

A The checks were made out to MoBo. yes

Q Deposited in MoBo's account and used for MoBo expenses, correct?

A Correct

Q And the payoff receipt is to MoBo, correct?

A Correct

Q All right And then just to close out MoBo, did you get every year a balance sheet and profit and loss from Brenda Chamberlain on MoBo?

A Yes, she would have copied, sent it to us and to our accountant

Q If we could call up RM-0244 Is this the balance sheet and profit and loss for MoBo for 2013?

A I think so. There we go Yes, it is

MR. SMALL: Offer that in evidence, Your Honor

MS ABER: Objection, Your Honor We object because this is for the totality of the year 2013 and the conduct in this case only goes, the relevant conduct is in February

THE COURT: The objection is sustained.

MR. SMALL: May we approach? I need this for the summary witness That's all I need it for

THE COURT: Come on up Let's make this quick

(At Bench.)

MR. SMALL: Your Honor, we are simply using the

2013 as part of our summary charts to show the progress of MoBo, that the rental income --

THE COURT: But that doesn't make it relevant

MR. SMALL: It is certainly relevant to the extent that we are talking about MoBo and how it moved forward from year to year and what the finances were And 2013, the first half of 2013, is certainly within the time period here We don't have -- if we had a first four months of 2013 balance sheet, it would be different

MR. DRY: Your Honor, they have an expert Their expert can go through the numbers with the relevant time period. Now what they are trying to do is put in financial records that will mislead the jury about a bunch of payments that were made after the fact

THE COURT: The objection is sustained. Your guy can talk about exact dates, and if he is not able to put that together, that's his problem. Thank you.

(In Open Court)

BY MR. SMALL:

Q All right You can take that down. You had a relationship -- let me switch to another topic -- you had a relationship with PenFed Credit Union; is that correct?

A Correct Yes

Q And how long had you known the folks at PenFed prior to 2013?

A I can't quite pinpoint when I became a member, but I have been a member for many years I don't recall the exact year

Q And in 2013, were you going through with your brother, Bob, the process of trying to refinance some loans with PenFed?

A Bob and my sister, Eileen, and I were going through a process of trying to refinance a lot of properties, some personal, the mountain house and the two beach houses

Q And who did you -- who was your main contact at PenFed?

A Nan Bolt was my main contact

Q Nan Bolt?

A Nanette Bolt

Q And in late January, early February, did you have a conference call with Nan Bolt and your brother about that refi?

A We had our first conference call with my sister was on, and my brother and Nan, and several other members of the PenFed team. And it was, I believe, January 23rd was the first call with all of us together

Q All right And as a result of that call, did you send in some documents to begin the process?

A I did. I had a subsequent call with her that afternoon with, I believe, Larry Blake, and each, Eileen and Bob, also had calls separately sometime during that day, I presume, but to begin to give her information so she could populate an application. And then she did request a number of documents from us, from me personally

Q Okay And can we call up for the witness only RM-0263, please? After that call in late January, did you send her a draft application?

A Yes So from the call we had, she had populated the application and she sent me what was the first of what became many iterations, but sent me the first draft to begin to edit

Q And you sent it back to her with some comments, correct?

A I did There was a lot wrong, including my birthday, for example, which --

MR. SMALL: I offer that into evidence, Your Honor

MS ABER: Objection, Your Honor Relevance, first of all, because Ms McDonnell can testify about what Ms Bolt told her, but her own actions as a result of that conversation are irrelevant

THE COURT: Overruled.

BY MR SMALL:

Q Can we publish that? So fair to say, I'm not going to go into a lot of details, but there were a number of blanks here, were there not, a number of things missing?

A There was a whole lot missing And I have a number of notes here and it really began the process There were some loans that were not mapped properly with some debt, meaning some property addresses and debt were not in alignment, and there were just a lot of things that were not accurate that I had to begin to correct

Q And when you say began the process, how long did that process go?

A Well, personally, with Nan, with PenFed, I closed four mortgages And the process began, what kicked off in my first touch with her in late January, I probably, I had a communication with her until the beginning of July, throughout those months

Q And so this was part of the beginning of that process

A It was the very beginning of the process

Q All right And have you at my request, have you reviewed your cell phone records for the six months after this?

A I have, from the end of January to the beginning of July

Q And do those cell phone records reflect that process going forward?

A Yes, they do

Q Tell us about that

A Well, I talked to Nan -- you know, it was interesting; I knew that I talked to her all the time, with frequency And when you asked me to look at that, I actually calculated the number of calls I made to Nan within a period of time, and we had on my cell phone alone, not -- at the exclusion of conference calls and my work phone, I talked to her plenty there -- but on my cell phone alone I had 158 calls from the end of January, beginning of February, until about the end of June There might have been one into July

Q So after this draft was sent in, you had 150 phone calls with Nan Bolt

THE COURT: That's what she just said.

MR. SMALL: I know that

THE COURT: Then why ask the question again?

MR SMALL: Because I have a follow-up question.

THE COURT: Then ask the follow-up question.

We are not going to be here all day for you to repeat questions

MR. SMALL: Thank you, Your Honor

BY MR. SMALL:

Q Did you also look at how many of those calls were lengthy?

A Yes

Q Tell us about that

A I would say it was evenly split There were some that were messages left or that you could tell because it was one or two minutes in duration But many of them were, several of them were 20 minutes, 30 minutes, I think, 40 minutes There were some very lengthy calls we had during that time period.

Q During those calls, did you talk with Nan Bolt about the loans that, the individual loans that MoBo had received?

A Yes I talked to her about them, just the two of us, but I also talked to her about them with my brother on the line on a couple of occasions

Q What did she tell you?

A She told me that the loans to the business from an individual, that it wasn't necessary to list those business loans on my application.

Q Okay And did you have that discussion with her once or more than once?

A We had it a few times As I said, I had it with her and when she said I didn't need it, I didn't really worry about it too much, she is the lender, but we had a couple of joint calls when it came to the property in Sandbridge, and that was brought up again We wanted just to get clarity on that with the loan to my dad and the loan to

Williams, and then I recall Bob had a different LLC loan for Racehorse or his law firm that he was wondering whether he had to list or should list

Q After you had those discussions about the loans from these individuals, did the bank put those loans on the closing documents or no?

MS ABER: Objection.

THE COURT: She can answer

BY MR SMALL:

Q Did the bank put those loans on the closing documents?

A No.

Q They did not?

A They did not

Q Okay Call up RM-0284 just for the witness, please Actually, you know what, let's not bother with that We will go on

Okay, at the end of 2012, did you receive a large payout from the sale of Amerigroup, the company that you were working for that you testified had gotten acquired?

A Yes, I did.

Q About how much was that?

A Oh, gosh, I want to say that it was at least $150,000 or so.

Q And did you have a discussion with your brother, Bob, about using that money to pay off some of these individual loans?

A I did. I had a lot of free -- I shouldn't say free, available capital Before I invested it I just thought it would be good to discuss with him if we wanted to pay down any of the loans that we had, which at that time, you know I paid off Dr Davis then, so I had asked do we want to pay off Williams or do we want to start to pay down my dad more with the capital that I could bring to the table, before I tied it up in investments

Q What did he say?

A Well, you know, he said, you know, "Probably not yet " It is not, the interest rate is low, and just again the basic theory is we could -- more interest, I could earn more interest on that money by investing it myself as opposed to paying it down. My dad's loan was a decent rate, and as was the Williams loan.

Q Moving forward to July, 2013, after the investigation broke, did you in fact pay back the loan?

A The loan to --

Q Jonnie Williams

A Yes, we paid it back last summer

Q How easy or difficult was that?

A It was quite easy Would you like to know specifically?

Q Sure

A So I took a withdrawal from my IBM 401(k) with the 60-day rollover option, and I sold some of my Amerigroup stock within 60 days, and I just replenished the account and opened an IRA with that So it was -- it was a couple of phone calls and they wired the money into the account and it was pretty -- it was rather painless to do that, yes

Q Okay And just a couple more questions, Ms McDonnell

A Okay

Q We have talked about some of the problems or issues that you had or observed with Bob's wife, Maureen. Let me ask you: When you raised those issues with Bob, generally what was his reaction?

A He was -- he defended her and supported her, generally speaking

Q Okay And was that fairly consistent?

A Yes

Q Okay Through these transactions, did you ever have any sense of financial desperation?

A For me personally?

Q For you personally or for MoBo.

A Neither

Q Did you need Jonnie Williams' loans or did you decide to get them?

A We decided to get them. It certainly wasn't the only option. It was just one of the first

Q And through these transactions, has your -- have your views of your brother's integrity changed at all?

A Not one bit

MR. SMALL: Nothing further Thank you, Ms McDonnell

THE COURT: All right Mr Burck?

MR. BURCK: Thank you, Your Honor

CROSS-EXAMINATION

BY MR. BURCK:

Q Good afternoon.

A Good afternoon.

Q I just wanted to you ask just a few questions about Dr Davis

A Sure

Q I think you testified that it was Maureen McDonnell who introduced you to Dr Davis and his wife?

A I believe she did. Well, we actually met him, I met him and had a conversation with him initially when we went to pick up the check, but she talked about him in terms of introducing his name She had talked about him with me

Q So fair to say that Dr Davis and his wife were friends of Maureen McDonnell's?

A Oh, yes, they were They were friends of both my brother and his wife.

Q Okay And this was in 2009, 2010, that Dr Davis gave the loan?

A Yes

Q $50,000 loan to MoBo?

A Yes

Q And at that point, fair to say that Ms McDonnell was the one who suggested Dr Davis as a potential investor or creditor in MoBo?

A That's correct

Q Now, fast forwarding to 2011, you testified about a conversation you had with Maureen about Jonnie Williams

A Correct

Q In roughly April of 2011?

A Yes

Q And she described him as a friend?

A Yes

Q And also, in that conversation, she was describing, she was suggesting him as a potential investor or purchaser of the properties

A That's right

Q So fair to say that she introduced you to Jonnie Williams as well as a potential investor in MoBo, two years after Dr Davis

A That's correct Introduced by way of mentioning his name I never met him.

Q Right And then in 2012, when there was actually a loan from Mr Williams, she was involved in those discussions as well We have seen the texts

A Yes

MR. BURCK: That's it for me. Thank you.

THE COURT: All right Government?

CROSS-EXAMINATION

BY MS ABER:

Q Good afternoon, Ms McDonnell

A Good afternoon. Yes, thank you.

Q I'd like to start at sort of the end of what Mr Small was asking you about in reference to Pentagon Federal Credit Union. I think you said that you spoke with Ms Bolt quite frequently; is that right?

A I did.

Q And just to clarify, though, when you were talking to Ms Bolt, you were refinancing more than one loan, right?

A I was I had four that I had closed during that period.

Q That was your personal residence and Sandbridge and Blue Ridge Heaven as well?

A Yes, and I have another rental property in Virginia Beach that I own personally

Q And in reference to when Ms Bolt said whether or not Starwood Trust or personal loans needed to be included on the forms, you are not exactly sure when she said that, are you?

A It is a good question. I recall that, I believe we broached that sometime in February, and when we were still going through the process of the application, and she said that "When you fill out one it is going to populate all the others," so we didn't have to revisit all the different applications, but one set of data and finances would carry over

Q Okay I'd like to show you something in the hopes of refreshing your recollection.

(Documents proffered to witness)

Ma'am, if you could take a look at the green sticky note, just read that to yourself See if that refreshes your recollection as to when Ms Bolt first made those references

(Witness perusing document)

MR SMALL: Page?

MS ABER: 82, 12 through 14, as well as 83, 15 through 19

BY MS ABER:

Q All right?

A That's really consistent, Ms Aber It was

February-March, I just don't remember exactly when. There were so many conversations, they start to bleed together There was one when Bob and I were on the phone together with her I can't give you the precise date of that It would be in February or March.

Q Of 2013?

A Yes

Q Thanks If you don't mind, can I please have those back?

(Documents proffered to counsel)

Now, changing topics, ma'am, and sort of starting at the beginning of this, you and your brother purchased the first Sandbridge property in 2005; is that right?

A That's right

Q And you all paid approximately $1 15 million for it?

A That's correct

Q And MoBo is not on the title of that property, is it?

A No

Q You and your brother are on the title; is that right?

A Yes

Q And you both purchased another house across the street in 2006, right?

A We did.

Q You did. Okay I think you described that as a very small, very modest home; is that right?

A Correct

Q But the purchase price was approximately $850,000; is that right?

A That's right

Q Now, MoBo is not on that title, either, correct?

A Correct

Q And you and your brother are on that title as well, right?

A Correct

Q Each, as I understand it, you and your brother, each put in 50 percent of the downpayment for each of those houses; is that right?

A That's right, as I recall Yes

Q And you both purchased, unfortunately, these homes at the top of the market; is that right?

A Well, I think it went up a little bit after we purchased them, but there were still some speculative buyers who actually flipped the property in the year after that, but that wasn't our interest

Q But you all didn't use cash to buy these houses, right, for the downpayments, no cash?

A No, we wouldn't have used cash for that

Q Because you both took out home equity lines of credit from your primary residences to buy those houses, right?

A Yes As I mentioned on direct, that was, my accountant/financial planner thought it would be wise to use the equity in my home to do that

Q Your brother did the same thing with his primary residence, took the line of credit to make the downpayment on the two Sandbridge houses, right?

A I believe so But we will need to verify that with him. I believe so, though.

Q That's somebody else's opportunity

A Okay

Q Now, you and Mr McDonnell were each personally responsible for those mortgages on the two Sandbridge houses, right?

A We were both personally responsible and signed the notes in our names for those two mortgages, yes

Q Right So if the houses had foreclosed or you defaulted in some way, it would be you and your brother personally on the hook, right?

A I don't think that would have been an eventuality, but yes, it would have been our liability

Q It would not have been MoBo's liability, right?

A It would have been the liability of Bob and of me

Q Now, as you talked about extensively, the rental income unfortunately did not cover all of the expenses associated with these houses, right?

A That's correct As we projected they wouldn't, yes

Q It didn't cover every year what I think you said was a significant event, like bed bugs, right? Or painting? Is that correct?

A Painting was maintenance, it wasn't a significant event A significant event would be somewhere in the five to ten thousand unforseen. We have never had bed bugs but once in nine years, and the HVAC system, something that is of fairly major capital expense that is typically not included in a pro forma

Q Something like that unfortunately happened pretty much every year with the Sandbridge houses, right?

A I think we talked about that before, and we did have some unfortunate luck when it came to, I don't know if it was every year, but it became with some frequency that we needed to do that

Q And almost immediately after purchasing, at least one of the properties, I think you tried to do a third-floor living space; you tried to add on to increase rental income, right?

A We did add on because we looked at the market, and there were not at that time in 2005, there were not any large homes in Sandbridge. And so what we had built was a very, it was a large home, it was one of the two largest in terms of the sleeps number in Sandbridge And so we really had a unique kind of a distinctive property in that rental pool for a while until a lot of others were torn down and built up. But there was an intention in doing that to have a large home, not only to accommodate our huge family, but also for renters

Q Now, the estimates you got up front, I think you called it the pro forma, indicated that the rental income would cover the debt service; is that right?

A I believe that's right And when we first looked at the property, that it would cover the mortgages, just not necessarily all the other expenses associated.

Q Right And you ended up having a 50 to $60,000 shortfall pretty much every year, right?

A Yes I think I said anywhere from 40 to 60 There is a range in which there would be a shortfall, yes

Q But that was more than you had planned on, right, at the outset?

A You know, I don't know that I would necessarily say that I think Bob and I discussed what was palatable for us would be it might be anywhere from 20 to 30--excuse me, 40 to 60, so 20 to 30 out of pocket each year, or loan each year It was somewhere in that range, if I am to look back to the 2005-2006 time frame

Q So by 2009, you and your brother talked about putting the Sandbridge houses up for sale, right?

A We did, as I mentioned earlier Just the properties weren't really a priority for us anymore with a lot of things going on in both of our lives

Q And let's take a look again at Government Exhibit 48, please Now, starting at the bottom, you may recall this is the e-mail between you and Mr Bucker, the successful real estate agent, about potentially putting the houses on the market, right?

A Correct

Q I want to direct your attention to the e-mail above that, in which you write, "As I think you discussed briefly, I'd like to list it," something along the lines of "I'd like to get it listed ASAP to relieve some financial pressures " Do you see where you wrote that?

A Yes

Q Now, you are not saying that MoBo is not a priority for you, are you, there? At least that's not the words on the e-mail, right?

A Well, this is a pretty quick e-mail I was just wrapping my intent around what I was asked about this earlier, which is it just wasn't a priority and my husband's business was not doing particularly well I was doing fine, but yeah, I mean, there were a lot of pressures associated with MoBo, with the properties So yes

Q Financial pressures, right?

A Well, I think there were a lot of pressures, including my husband's need to try to maintain this and run a business, and I was sick, and there were a lot of things going on in our lives It just wasn't top of mind for us

Q But you would agree with me sitting here looking at this very brief e-mail, as you say, that it doesn't say, "Hey, brother, I'm really busy" or "I have other priorities " The reason you say that you would like to have it listed ASAP is to relieve some financial pressures, right?

A Well, again, I think that this was the period that the rental had dropped about 20 percent, so we were feeling more than the pro forma would indicate We didn't completely predict, and I'm not sure who would, but the recession in 2009 And so as I said, the rents, across the board, were discounted. There was probably in that period a little bit of a bigger gap. But, you know, what isn't stated here is that I could have put money in, I just chose not to When I say financial pressure, it was in the MoBo account, not for me personally, yeah

Q Let's look at your brother's e-mail at the top there, please

A Sure

Q Your brother writes that "We can't come up with money to sell " Now, your testimony, I believe, was that just referred to the MoBo operating account That's what you took that to mean But that you have the money; is that right? You could have made it work? Correct?

A Absolutely If that was the only option and the last resort and we had to sell the properties, then I had assets that could be easily liquidated to bring money to the close I just didn't want to.

Q And in order to liquidate those assets, that would be, for example, your retirement account, right?

A Or stock.

Q Or stock Okay And that would come with penalties potentially, at least from the retirement account, right?

A Well, again, I did that when we paid the loan back last summer, so to me, it wasn't changing my lifestyle I wasn't changing anything for me It wasn't a pain point for me to do that

Q I'm not sure you answered my question, though. Would withdrawing money from your retirement account cause you to pay penalties?

A I would assume so I have never withdrawn money with penalties I suppose I could. I don't know what they are I withdrew money, but I repopulated it so I didn't have any penalties

Q What about tax ramifications? Would withdrawing money early from a retirement account have tax ramifications potentially?

A Sure But to be honest with you, if I looked at my asset mix, I probably would have sold stock That could be done in a day So if I had to, that would have been my first option. The last resort would be to look at my couple retirement accounts I would have sat down likely with my accountant and gone through what is the best way to do it without tax penalties and issues and other ramifications I would have gotten some help to guide me through that process

Q Okay I'm actually going to ask you a yes or no question on this one Yes or no. As of this point, had you already taken approximately $110,000 in loans from your father?

A Yes

Q Okay And so you thought it made good business sense not to withdraw the retirement money or whatever other assets you had, and instead take the loan from your father

A It made fine business sense, and he and my family were fine with that He had, as you know, a large estate that we talked about earlier, and the interest rate was fine, and so it was, my family was all supportive of that

Q You didn't have a written loan agreement with your father, did you?

A We didn't at that time And I think there's a lot that Bob and I have done and we have done with the business between the two of us or family that we haven't had a written loan agreement There's two of us, and we have a very tight family who really trusts each other So it is not uncommon that I wouldn't have had a tight loan agreement that day with our dad. We did later, but not at that moment

Q How much later?

A Oh, I think it was when -- I think it was when, after he passed, because he passed in 2010 As I said, these loans were in 2007 and 2008 One of the reasons, they were netted against the proceeds of the estate So in other words, in some measure, the exact amount that's owed was netted against what we would have each gotten as part of the estate, if that makes sense

Q So if I'm understanding you, you all didn't make payments back to your father before he passed?

A We did make some payments, and we did have some payments made initially, and then we had this conversation with my sister, who had power of attorney, that we were going to net against the estate proceeds at the time, whenever he would pass, and that was perfectly acceptable

Q So both you and your brother paid back this loan from your father as a net against his estate, as a reduction from his estate

A We did. It gets a little complicated, because we still have an asset, my dad's house, that has not been liquidated So we have -- there is a percentage that we all have for that, so we do still have a balance of the loan that we pay twice a year, basically

Q Okay Changing topics, I'd like to bring up Government Exhibit 49, which I believe is just a couple months after -- this is admitted. I'm sorry This is just a couple months after Exhibit 48 that we just looked at Let's take Page 2, please I'd like to take a look at the bottom e-mail there Now, you write, I think you testified you had been talking to Betsy about the potential for the sales market and you write there, "What she suggested is brutal " Did I understand your testimony correctly earlier that when you wrote "brutal" you didn't really mean brutal?

A No, I meant brutal, but I meant, you know, the market clearly was brutal Everybody who tried to sell or had property probably felt that in 2009, and particularly in a vacation community So what she suggested overall and basically her assessment of the real estate market in Sandbridge was, it was a brutal market And for me, and again, I suggested that, you know, I used some pretty strong language at times, that's who I am, and to say it was brutal, I think to drop it -- just looking at the sheer percentage of drop for a property, that was a big drop That was just my word choice, that the market was brutal and that was a pretty big drop

Q Looking at the second paragraph, you write, "We will either need to take a hit on the sale price or come up with $60,000 in a few months to make it through another off season "

A Right

Q Those are pretty much the two options, either you ponied up $60,000 or you took a reduction on the sales price of the houses Is that fair to say?

A Tell me the date again, please, of this

Q August of 2009 You can back out

A It is fine Again, we had the properties for now four years from the time we purchased the first one, so it was just here we go again, we are back into the cycle I was kind of coming out of my medical issue at that point, and I think it was, you know, MoBo is not the top of mind for me These are not the priorities of my husband and I any longer, and we need to start thinking about a loan is what that means We are thinking about moving cash into the MoBo checking account, or there is an option, we could sell or lower the price And so we moved forward with getting a loan that year

Q So let me take you to Government Exhibit 51, please, which has been admitted. This is the "magical partner" e-mail

A Oh, sure

Q I want to start at the bottom there, please, and then scroll up to the top. So Mr Uncapher asks you and your brother and your sister-in-law whether you all have had any luck finding a magical partner, right? As I understand, if we scroll up, you, I believe, testified that you wrote this sort of emphatic e-mail because you were concerned your brother hadn't responded; is that right?

A Well, that's right As I said, I think during this period, you know, I'll be very candid that I used some pretty strong language or used caps, which is not my traditional style to get his attention. And he hadn't responded. And so I needed his attention on this

Q You realized, though, that you are only responding about an hour after Mr Uncapher sends his magical partner e-mail

A Yeah. I don't know if there was communication prior to that that I'm not seeing, if Michael had any other communication with Bob on that But no, I mean, I find that sometimes frankly both Michael and my brother -- excuse me, my brother and I would both ignore Michael's e-mails He is not the only one This got my attention, so, and it was, yes, it might have been an hour, but I wanted to put my commentary on it before I sent it on to Bob

Q Just so I'm clear, because I guess I'm a little confused now: Are you saying when you wrote "We need to act NOW" with "now" in all caps, it was not actually an urgent situation in which you needed to act?

A I will tell you just the history, in August of a given year

Q I don't mean to be rude, but the history part, this will go on for a long time

MR. SMALL: Objection.

THE COURT: The objection is overruled.

BY MS ABER:

Q I guess the question on the table is, when you write, "We need to act NOW" in all caps, is it your testimony here that you did not believe that you needed to act now, urgently?

A I would like to see the bank statement, but I'm sure we had money in it We needed to start thinking about the slow season, which started in December So it wasn't an August situation, but come December and January, we would have needed to put money in the account

Q Okay

A Sometimes those things take a few months to plan to get a loan. So --

Q The references to short sales and bankruptcy in this e-mail, your testimony today is that you never talked about a short sale of these properties with your brother

A We never talked about it There were two e-mails, this and another one you had showed me in the grand jury, that mentioned it when I was reporting out on my call with Betsy But we had never had a conversation aside from what I wrote about a short sale It was never entertained. I never looked into it more

Q Your testimony is that you and your brother never discussed bankruptcy as well

A No, we didn't Never

Q Now, in reference to getting your brother's attention, you can take that down, please, I think on direct you testified that you talked maybe once a month with your brother; is that accurate?

A No, I think I said that we had gone from talking a few times a week to maybe actually talking a few times a month. We would text But the communication dwindled quite a bit, I would say, and I'm just giving you a swag on that I know we certainly didn't talk as much as we had in previous times when he wasn't Governor

Q Would it surprise you to know that from December of '09 through April of 2013, your cell phone bills show approximately six communications per month of phone calls?

A No I mean, I said a few I don't know how many I haven't looked at that But when I think about the way we used to communicate for the 20 years prior to that, it was much more frequent I would go visit him a lot We would communicate quite a bit So six would absolutely be in range, sure

Q I believe in reference to some of the other e-mails we have seen, you said you were trying to get your brother's attention because MoBo was really not at the top of either of your priority lists in the 2009, 2010, 2011 period. Is that accurate?

A It wasn't at the top of my priority list in that period when I was struggling with health and a lot of other issues in life were getting in the way

Q It remained, as best you could tell, at the top of your brother's priority list?

A One more time?

Q MoBo remained at the top of your brother's, among the top of his priorities; is that right?

A Gosh, I can't really speak for his priorities I don't think so If I were to say what I know he was doing in that period of time, I can't imagine it was something he thought about every day He would have to speak to that

Q Let me bring up Government Exhibit 710, please, which has not been admitted. Is this an e-mail exchange between you and, the top one specifically, between you and Mr Uncapher and your brother, Mr McDonnell?

A I'm sorry, I need to read it, but I need it a little bigger if you don't mind Can you scroll down to the bottom, please?

(Witness perusing document)

Q I have a paper copy as well

A Oh, you do?

Q Uh-huh.

A Thank you.

(Document proffered to witness)

MR. SMALL: Do you have a copy?

MS ABER: Not on me, sir They are in the binders behind you, I believe

BY MS ABER:

Q So this is an e-mail exchange again roughly between you and your brother and your ex-husband in March of 2011, and the bottom reference is a wire transfer; is that correct?

A Yes

Q Okay

MS ABER: I'd like to move Government Exhibit 710 into evidence, please

THE COURT: It will be admitted.

BY MS ABER:

Q Starting at the bottom, ma'am, as we scroll, March of 2011, that's before your ex-husband left the scene and control was handed over to your brother, right, of the books?

A Yes He maintained the books until 2012, the end of 2012

Q So this bottom e-mail, though, reflects that your brother is directing a wire transfer to be deducted in relation to MoBo; is that correct?

A He is And I would imagine it is in response to something Mike had asked us to do because we would do that, I would do that for my account, too, if we needed to put money in. I did that on occasion.

Q If we can scroll up, I'd like to take note of what your brother specifically writes. "I directed the following," he writes "She is going to inspect both houses fully and report to me on the conditions and ideas for improvements We need to replace the rest of the bed comforters and probably the hall carpet She is getting the estimates " The e-mail goes on to reference maintenance agreements he dealt with, spring deep cleaning, air filter service, June pest control He even ordered curbside recycling barrels Is that all in there?

A It is And what would be interesting to note is if this is following one of our March visits, because if he was on the ground, generally, when we would meet at the house for maintenance, we would meet with the property manager, Sandy Munden was one of them. Mo, mentioned here, is one of them. I would come up with a similar list if I were there You just do inventory of what needs to be done So yes, this looks normal to me

Q In fact, you were very involved in the maintenance and upkeep of these houses, right? Personally?

A Well, we did, as I said, and I believe we might have talked about it in the grand jury or in August, that we would go and actually make it a pretty fun weekend and maintain the properties And it was very therapeutic for Bob, as he said. It helped him try to feel normal, to put his hands in the dirt and plant and power wash for 18 hours under the moonlight I didn't prefer it, but he did. So yeah, we would have a great time working hard to maintain the properties

Q Okay

A We would do it a couple times a year

Q Okay Changing subjects, please Dr Davis Now, fair to say, yes or no, that you and Mr McDonnell had decided to take private loans to help with the shortage of cash? Illiquid cash?

A Yes As I said earlier, we just made a fundamental decision to take loans as opposed to liquidate the resources that I had or he may have had.

Q Okay And in reference to the Dr Davis loan, I think you testified that your brother negotiated the terms with Dr Davis; is that right?

A Correct

Q Now, originally, Dr Davis agreed to give you all this money even without a promissory note signed, right?

A I would imagine so I wasn't involved in when we would have a promissory note, but we indeed signed one when we got the last payment in March of that year, I believe

Q So if I could bring up 55, please, which has been admitted, Government's 55 So when you and your then husband went to pick up this check, I believe you said you had a nice social experience at Dr Davis' home, you had not yet signed a promissory note, right?

A That's correct

Q And Dr Davis also gave your then husband, Mr Uncapher, $100 in cash. Do you remember that?

A I see that I see that that was the case as well, yes And he mentioned it once we got in the car

Q So in total that day, you had $10,000 Correct?

A Correct

Q But you ultimately requested more money from Dr Davis, right?

A Well, as I said, I think the discussion was really about a $50,000 loan, but to be paid over three months when the money was needed as opposed to an up-front of 50 It was going to be 10 and 20 and, yes, 20 So yes, correct

Q You can take that down. So you got another 20 in February of 2010, correct?

A Correct

Q 20,000, I mean.

A Correct

Q And Dr Davis at that point wanted a written agreement, right?

A Yeah, I do believe that we had discussed memorializing the agreement, and I think by the time -- I mean, we were friends I became very friendly with he and his wife at that point, went to their Christmas party So I don't think there was any urgency It was a gentleman's agreement And I think both whether we asked for it, and I'm not sure if we didn't, or his accountant, it was a joint effort to get the promissory note created

Q Could we bring up Government Exhibit 60, please, which has been admitted? This is the promissory note you signed with Dr Davis in March of 2010, right?

A Yes

Q And at the bottom, that has both or all three signatures of your brother, Mr Uncapher, and you, correct?

A That's correct

Q Scrolling up to the top, that $50,000 amount of the note, that's for all of the payments we have just discussed, right?

A That's right And that's after they were all received, right

Q And noting your signature at the bottom, you were personally liable to pay this note, right? Among the three of you, you were all personally liable

A You know, I apologize, I'm not really a lawyer But it was -- the loan was to MoBo and made to MoBo, put in the MoBo account, and I signed this as a principal of MoBo. So --

Q Is MoBo referenced on here somewhere?

A No, it is not I mean, I really didn't -- but the check wasn't made to me It was made to the business and used for the business and paid back by the business and receipted by the business So honestly, I signed it, but this is a friend we did business with, and I don't think at the time I made a big deal whether MoBo was on there or not, to be honest with you.

Q But the first time you met Dr Davis was back when you picked up the check in December of 2009, right?

A Yes I had heard about him prior to that, and again, we may have -- I may have -- he may have been pointed out to me from across the room at a social event or political event, but I hadn't actually had a conversation and gotten to know him until that point from my recollection.

Q Now, Dr Davis, unfortunately, passed away this year, right?

A Yes

Q If we could bring back up, please, Government Exhibit 60 Could you read for the jury the first line of the third paragraph, please?

A "Each person liable hereon, whether as maker, endorser, surety, guarantor or otherwise --"

Q You can stop there It is legalese

A Yes

Q You can take that down, please Now, let me ask you this: At the time you picked up Dr Davis' first check in December of 2009, were you an employee of the Commonwealth of Virginia?

A Was I an employee of the Commonwealth of Virginia in 2009?

Q Did you work for the state in December of 2009?

A No.

Q So you did not have to file a Statement of Economic Interests, right?

A I've never filed one, no No

Q Okay Changing topics now: Is it fair to say from time to time as you talked about there were late fees on these loans? Meaning that -- meaning the bank loans?

A There were late fees, as we have discussed.

Q Okay And let me bring up specifically RM-0659, a defense exhibit that's been admitted. Now, ma'am, this e-mail at the bottom is in reference to the water being shut off that you talked about on direct

A Uh-huh.

Q It was sent to both you and your brother; is that correct?

A Yes

Q And after the water was shut off, neither you nor your brother thought about putting the bill on autopay?

A You know, I've got to be honest, I don't know if public utilities have autopay I assume they do But we didn't, honestly, my husband had things on autopay on occasion, but no, it just isn't something we thought about The thing we thought about is we need better planning and line of sight from the person keeping the books, who was my husband. This is inexcusable for $100

Q But your husband, was he being compensated for helping out with MoBo?

A No, but I wasn't, either We put a lot of money into -- a lot of time and sweat equity into it But that was part of the agreement I was married to him. And I earn -- I was working and this was his part and contribution for this LLC

Q But he wasn't a partner in MoBo. He, I mean Mr Uncapher, was not a partner in MoBo, right?

A It was Bob and I Yes

Q Now bringing up Government Exhibit 90, please And this has been admitted. At the bottom there is an e-mail from Mr Uncapher to you and your brother in March of 2011 breaking out the various loans and what would be due Am I correct in reading this that there were four loans for the two vacation properties?

A Yes And I believe one is actually a line of credit Uh-huh.

Q And are these interest only loans?

A You are dating me back to 2011, and I would have to pull all the terms of each of those notes, but I know the NFCU one is not an interest only It is a home equity against the property And these other two, I don't believe, are interest only I'm sorry, I would have to see all of them to tell you the rate and what the terms of the loan are Okay?

Q In reference to Bank @Lantec at the bottom there, you all hadn't negotiated with Bank @Lantec about all the late fees that were accruing, right?

A Well, there is a communication that I was on vacation for a week and I rode down with my husband and talked to somebody there so we could kind of get a handle on it, and I think there was a communication that the rate changed and we played -- there were a couple of them where we paid the previous mortgage. it had adjusted, and we had paid the previous, so we had an issue there

Q When you went to the Bank @Lantec location to negotiate the fees with Mr Uncapher, you had your brother on the phone, right?

A We patched him in for some of that meeting, yes, absolutely

Q You can take that down, please In fact, Mayor Sessoms was very kind to keep calling you all personally about the late fees, right?

A Well, now, this is Bank @Lantec

Q TowneBank, separate bank. Mayor Sessoms, he personally called you to say, "Hey, you are running behind."

A I will say that he called me I don't know that he ever called my brother But he called me, I would say probably, I don't know how many times, but a handful of times over the duration when Michael was managing the property because just -- I think he got the sense that maybe Michael, we weren't aware of it and so he would personally call me And then we would take care of it

Q In fact, Mayor Sessoms called you on, I believe, the day of your father's funeral to advise you of a late fee?

A He had called me the day of the funeral and to let me know that Michael had committed, had talked to the person, I think it was Chris Beale at the time we looked at earlier, had talked to him about providing a deposit that wasn't in and he called to let me know that that wasn't in. So he did bring it to my attention and I took care of it when I was back in town

Q So I believe your father passed in November of 2010, right? But there were still many more late fees at TowneBank after that time, right?

A Well, I have recently become aware of the totality of those late fees, but based on that knowledge, yes, there were other late fees after that time

Q The statements went to your Chesapeake house, right? From TowneBank?

A They went to my Chesapeake house and my husband was generally home and he got the mail He got the business bank statements, yes

Q But I guess, after you are getting these calls from Mayor Sessoms, you don't say, "Hey, brother, let's put this on autopay, I don't think Mr Uncapher can handle the bill paying," why did you not do that?

A We had a couple of conversations, particularly as I said when life got a little busy after the baby and priorities changed. Bob and I had a couple of talks to say, "Should we move the responsibility of all the finances away from Michael?" Because we did have some concern about the late fees We had talked about a few people, some family members, some not, somebody close enough to us that we could give authority to the books that we could really trust to get it done So we had conversations But I will tell you that we would have a conversation, and I would go back to my, you know, 18-hour days and he would go back to his probably 22-hour days, and I didn't do anything about it to make a change And when we talked to Michael about it, he did say, "I got it, it has been busy, I'm going to take care of it," and he was very believable We believed he would. I trusted that he would.

Q Okay I'd like to talk about loans as part of your business model, because I think you have said a couple times that that was sort of what you planned on from the outset, right?

A Mostly we did. There were times we put our own resources in.

Q That was kind of the two options, right, you either put money in personally or you borrowed money from other folks, right?

A Or what we tried to do as well, which was increase the rental income and cut expenses so the gap was smaller Yes Exactly

Q And I think you told the jury that it just made more business sense to take out loans based on interest; do I have that right?

A In some measure, I mean, a lot of measure, it did. I think just what we had discussed is instead of tapping into our personal resources, as an LLC it made more sense, some of the OPM or the other people's money, you borrow it at generally, it may be a lower rate, but you generally borrow money as opposed to depleting your resources and rather invest those Yes

Q You would agree with me, though, that the OPM, as you called it, the other people's money that is the cheapest of all is the one that does not require any monetary payments

A I'm sorry, I want to make sure I'm understanding your question, please

Q The cheapest loan is one in which you don't have to pay anything back, right?

A Well, I don't know of a loan at some point that doesn't have a balloon, whatever the term is, but a loan, by virtue of it, I would think you would have to monthly, annually, at the end of a certain period, sure

Q Now, you and your brother found it difficult to get conventional bank financing, right, for the MoBo properties?

A We refinanced one the last year We did a lot of refinancing So that wasn't an issue

Q Let me bring up Government Exhibit 644, please, which has not been admitted. This is an e-mail between you and a woman named Theresa Swann at Bank of America Do you see that?

A I'm not on that e-mail It was between Bob and --

Q If we could scroll up and show her the forward, please Do you see where you are the forward?

A He sent it to me

MS ABER: I move 644 into evidence, please

THE COURT: It will be admitted.

BY MS ABER:

Q Turning to Ms Swann's e-mail to your brother, she writes: "Governor: I have completed my research, and as you suspected, we find ourselves in a precarious position with regard to loan to value and the ability to refinance " Then she goes on to explain that "Essentially, you all are ineligible for traditional straight vanilla financing like we would do here in the first mortgage origination office " Is that correct? Did I read that right?

A I'm reading it with you. Sure That looks correct

Q And you had difficulty getting banks like Bank of America to refinance because the loan to value ratio on these properties was off Right?

A You know, Ms Aber, I don't want to speak inappropriately, because I wasn't personally involved, when I see the copy of millions of e-mails probably or hundreds, thousands I've gotten over MoBo in the period of time Honestly, I know Bob and my husband were looking at getting some feelers out about refinancing, because as I said earlier, we long knew we wanted to move off the interest-only products for all the properties and getting into paying down equity So this was the beginning of that process that culminated in 2013 But I don't recall to my knowledge during any of this even filling out a loan application. I think they were just looking to see what was possible at that time So I'm sorry, this doesn't really resonate fully with me I know they did a little bit of looking in with some institutions, but I wasn't fully -- I'm copied, but I wasn't involved in a lot of that process

Q But yes or no, as of at least 2011, you and your brother were trying to refinance the MoBo mortgages

A Well, sure We were looking into getting into a better product, sure

Q So in the meanwhile, you looked to other private lenders, right? Like Mr Williams, correct?

A During this period? I'm not sure

Q Let me put it this way: In 2012, did you and your brother take two loans from Mr Williams? I think you talked about that for about an hour

A Well, we did. We had two loans from Starwood in 2012, yes

Q Okay And in fact, you used at least part of the loan from Mr Williams to pay off the loan, part of the loan to Dr Davis, right?

A Yes, you could look at it like that when you look at the transaction, either that or to pay for the upgrade It is sort of funny money in the books, but yes

Q But you and your -- let me bring up RM-1457, please, which has been admitted. If we could start at the bottom e-mail, please This is April of 2012 Your brother is speaking to you as Mo to talk about how to pay off the remaining amount to Dr Davis

A Sure

Q If we could go down to the next page I'm sorry, Ms Taylor It appears your brother is asking you to come up with $10,000 as well Is that right? We can scroll up

A Yes I think this is one we saw earlier

Q Yes, ma'am?

A Sure

Q And if we could go, in that particular line there, your brother is saying that he will send you $10,000 from him and another loan check for $13,000 Is that loan check another one of those convenience checks you talked about? Those credit card checks?

A Yes, I believe it was I think it was -- I think below that I saw it was a 1 9, he talked about that, I can't see the narrative, but I think he talked about where that was coming from, yes

Q If we could back out Is it fair to say that you could not produce the $10,000 at that time to pay off Dr Davis?

A I could have, yes

Q Did you have it liquid, ma'am?

A I had liquid assets, yes, but I chose to -- I talked to Dr Davis and he said, "Oh, just wait until you get the stuff from your dad's estate and just pay me then." And so it was fine I paid him periodically and I just waited to get the proceeds from my dad's estate

Q And you ultimately paid him off about eight months later in December of 2012?

A Yes, that's correct

Q And I think you testified earlier that you just wanted to wait a little longer to pay him off; is that right?

A Yes

Q Now, changing subjects to the Starwood, Mr Williams' loan. Just to confirm, you had discussions with your brother about the loan terms of the $50,000 March, 2012 loan, right?

A That's right

Q And you talked with your brother about the duration of the loan, right?

A That's right

Q And he told you that it wouldn't be due until March of 2015; is that right?

A That's what I recall, yes

Q He told you in his discussions with Mr Williams, they had agreed that the loan would not be due until after your brother got out of office

A I believe -- I don't know if he told me that or Maureen I remember thinking, well, he would be out of office So whether I inferred that or he said that, but I recall thinking he would be out making money, she might be working, and that made sense to me

Q Now, I think on direct you talked about your finances around this time and that you got a bonus roughly in March of 2012; is that right?

A That's right

Q Now, your brother was, as we have said, 50/50 in MoBo, right?

A Yes

Q He was equally responsible for MoBo, right?

A Correct

Q And did he get a bonus in March of 2012? Do you know?

A Ms Aber, I really don't know We would have to talk with him. I'm sorry, I don't know what he had. I do know he had some funds in the bank, but I don't know the origin of them. I wouldn't expect as a public servant he would be getting a bonus

Q Now, in reference to the $50,000 check that you came back from vacation and found the FedEx --

A Yes

Q -- it was made out to MoBo, right, the check?

A Yes

Q And you got texts from Ms McDonnell, your sister-in-law, about the check that had been Fed Ex'd, right?

A Yes

Q And turning to Government Exhibit 594, please, Page 2 On the evening of March 11th, you texted your brother and mentioned that you needed to talk to him about the check Is that right?

A I did, following -- Maureen said he was asleep and all of that, so I texted him, yes

Q And four minutes later you talked to your brother for 22 minutes, and then you also then speak again for one minute shortly within the hour Is it your testimony today that the $50,000 check you received payable to MoBo was not part of that conversation at all?

A I think that -- what I recall, we didn't talk about the terms, if that's what you are asking I don't recall that I recall me being upset about Maureen, and I recall reading some of the text messages, and I just said that "This is strange, this is weird, I don't know what's going on " I also recall that would have been the first time I had talked to him in ten days since I was out of the country, and I'm quite sure we did spend a lot of time on the phone, likely in that conversation and others, talking about my marriage I had just come back after ten days of trying to make it work with my husband, and I'm sure we talked about that, too.

Q So did you or did you not talk about the $50,000 check that just appeared at your house?

A Well, I probably would have said, I mean, I believe I would have said, "We have this check, she asked me if we have the check," I'm sure I read him the text messages about that

Q Okay You can take that down. You also got a later loan from Mr Williams in May of 2012, right?

A Correct

Q But there was no written loan agreement for either of these two loans with Mr Williams, right?

A Correct

Q And you understood that Mr Williams' loan was no different than your father's loan to MoBo, right?

A I'm sorry, in what way?

Q Pretty much the same deal, right, your father lent money to MoBo for you two and Mr Williams loaned money to you two for MoBo Same kind of thing, right? Apples to apples?

A I think it was probably similar to the Davis loan It was a friend. Probably more my dad was our father, obviously, so in terms of having some friends that were interested in buying the property or becoming investors that ended up loaning us money, there were a lot of similarities from that standpoint and initiated by Maureen. But as we know today, the terms obviously were different in those two loans, and interest rates

Q Is it fair to say that you felt that the Williams or Starwood loans looked and felt a lot like the loans from Dr Davis?

A Well, as I said, I think the way they came about were similar in terms of Maureen having friends, and again, looking at buying the property, potentially, and they ended up not wanting to purchase or become an investor but rather loan us money And it was, they were more informal, both of them, because we were borrowing money for the business from friends They weren't my friends, but if they are friends of my brother and his wife, then that's good enough for me, like the Davises were

Q MoBo, whatever it is, it was losing money every year, correct?

A We had an operating cash flow shortfall every year, which we knew, yes

Q And at the time of the loans with Mr Williams, you never talked to Mr Williams about the terms of the loan, right?

A No, I never met Mr Williams, as I testified.

Q And the beach properties were not held in MoBo's name, right?

A No. The mortgages from the bank

Q And the title is not in the name of MoBo, right?

A No, it was, again, MoBo was more of just kind of a pass through, an operating entity for managing properties and paying bills

Q No employees at MoBo?

A No

Q Zero assets belong to MoBo, right?

A Right It is an LLC just with my brother and I as the two principals

Q But basically you are telling the jury that Mr Williams was giving a loan to an entity that had lost money every year and had zero assets Is that your testimony?

A Well, I mean, the entity was just a bank account and an article of incorporation. Obviously, Bob and I had assets, but we didn't keep any assets in MoBo as we looked at, so no, we didn't keep a lot in the bank account and we didn't keep assets as MoBo.

Q Because MoBo was you and your brother, right?

A We are the two principals of MoBo, but I think from a tax and legal standpoint, it is different Again, I'm no lawyer, but it is different, yes

MS ABER: One moment, please, Your Honor

THE COURT: All right

MS ABER: I have no further questions Thank you.

THE COURT: All right Any redirect?

MR. SMALL: No questions, Your Honor

THE COURT: All right Thank you, ma'am. You may stand down

THE WITNESS: Thank you, Your Honor

MR. SMALL: May she be excused?

THE COURT: Sure

MR. DRY: Just give us a day We might have some more for her

(Witness stood aside)

MR. CONROY: We call Kathleen Scott

KATHLEEN SCOTT,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CONROY:

Q Can you please state and spell your name for the court reporter?

A Yes, my name is Kathleen, K-A-T-H-L-E-E-N, Taylor, T-A-Y-L-O-R, Scott, S-C-O-T-T

Q Now, Ms Scott, how long have you known the McDonnell family?

A I think about eight or ten years I met the family when the boys, when the family moved to Richmond and they joined my son's soccer team.

Q And during that time, did you ever interact with Ms McDonnell?

A Yes, I did.

Q And what types of interactions did you have with her?

A For the first few years mainly on the soccer field. We both would sit on the bleachers together and watch our sons play

Q Did Ms McDonnell ever discuss with you the topic of nutraceuticals or vitamins?

A I think she asked me if I was interested in coming to a party on a couple different occasions for her New Skin that she was interested in, but I never attended.

Q And did there come a time when you actually went to work with Ms McDonnell at the Governor's Mansion?

A Yes, there did.

Q When was that?

A That was in late October of 2011

Q And what was your title there at the Mansion?

A Special Assistant to the First Lady

Q And what were your duties?

A I had all different kinds of duties I helped her run errands I was kind of a link between her and her family, having known the children. I helped with that kind of thing I helped with organizing things in her office, and private quarters and throughout the Mansion I helped plan events I followed her anywhere she went if the Governor and the Governor's photographer wasn't there, taking pictures and logging what we had done during the day and uploading things to the website

Q And you said that that began in about October of 2011?

A That's right

Q And how long did you stay at the Mansion?

A For 21 months

Q 21 months So that would be summer of 2013?

A That's right

Q Okay And during that time frame, how often did you interact with Ms McDonnell?

A Most days Most every day

Q What was she like to work with?

A Um, hot and cold. Some days she was wonderful and sweet and caring, and some days it was very, very difficult And we never really knew what we were going to get

Q Did she ever exhibit any signs of anxiety or nervousness?

A Absolutely Absolutely In fact, she was, I knew her as an anxious person even before I went to work for her at the Mansion. But, you know, I just kind of attributed that to having five kids and maybe having more on her plate Her husband was very busy, and you know, I thought, I didn't really think it was something that I couldn't help her with.

Q With how would she exhibit those signs of nervousness?

A She bites her fingernails, she picks, you know, at her arms, at her chest Just very anxious Obviously anxious

Q How about, how did she get along with the staff?

A Again, sometimes it was great, and she was sweet and caring, and sometimes it was dreadful

Q Did she ever discuss with you why she had these types of interactions with the staff?

A No, she would say if she was displeased with someone's behavior or lack of -- she often talked to me about the housekeeper really not living up to what -- the standards that she expected

Q Did she say anything about whether or not she was displeased in general?

A With life?

Q With the situation at the Mansion.

A Yes You could tell that she just really did not particularly want to be there It really wasn't what she wanted to be doing with her life And so she took it out oftentimes, oftentimes she would drag her feet when she had to go somewhere and she didn't really want to be there, and that was when we would have to endure her wrath

Q Did she have any kind of inconsistent reactions to attending public events?

A Yes Oftentimes, she would be happy to accept an invitation, and then as the date would draw near, she would become more anxious and worried about having to speak. And the closer that the date came, the worse it escalated. And that's often when whatever we did really couldn't -- we couldn't make her happy

Q So let's turn to a few specific events Was there a time when you tried to help Ms McDonnell organize her personal space?

A Yes I'm an organizer And I feel so much more comfortable if there is order around me. And I thought that maybe if I could help her organize her space, that she would feel more calm. So when I first started out, probably within the first month of being there, I helped her do her vanity, which is in the private quarters You could see, she is very, very busy She and the Governor went a lot of places And when she would come home, she would switch pocketbooks and she would have been given trinkets and items while she was there and she just would dump them in the vanity area. So over time it accumulated. I spent a lot of time going through everything in the vanity I put the acrylic bins and sorted make-up and pins and jewelry and boxes and pocketbooks and all that kind of thing

Q And you said this was in the first month that you had started?

A Yes

Q So you started in October of 2011 This would have been sometime around November of 2011?

A That's right It was maybe the second or third week in November

Q Was this vanity a place where both Mr and Ms McDonnell would store their personal items or it was only Ms McDonnell's space?

A It was just hers He had an entirely different section away from where her area was

Q His cufflinks were somewhere else?

A No, it was just her things

Q When you were doing this organization, did any items stand out to you in particular?

A Well, on the vanity itself, there was an iPhone in a box. I noticed that, so I left that there And there was all kinds of jewelry, some costume, some not So yeah, that stood out But there were, you know, 25 pocketbooks and 50 tubes of lipstick. So it was a lot of stuff

Q Did you in that drawer with jewelry and other items, did you come across a watch?

A Yes, I did come across a watch.

Q Can we pull up Government Exhibit 33-A, please? This is already in evidence, Your Honor Now, Ms Scott, does this appear to be the same watch that you saw in the drawer?

A Yes

Q And when you saw this watch, describe how you came across it

A It was, there was a narrow drawer at the top of the vanity that was filled with, you know, lots and lots of stuff, cram packed, and there was some costume jewelry and other trinkets and stuff And this was, I think, in the back. And I thought, "Oh, my goodness, this is a nice piece of jewelry, maybe I need to separate it " So I put it in a box and put it up high in a safer place

Q So when you first came across it, was this watch in a Rolex box?

A No

Q Was there any kind of documentation or paperwork with the watch?

A Not at all

Q And so the watch, you placed it -- the box you placed it into, where did you find that box?

A There were lots and lots of nice boxes and boxes that you could tell that she kept for things, and I just put it in a watch box that I found up high and put it there It was not a Rolex box.

Q And as you observed this watch, did you make any observations about what type of condition it appeared to be in?

A To me, it looked worn. It didn't look new It didn't look to be, you know, it wasn't shiny and new It looked used.

Q You can take that down Thank you. So what was Ms McDonnell's initial reaction to the work you had done to organize the vanity?

A She was thrilled. She had been out of the country, and when she came home and she opened the doors, she was absolutely thrilled. I was so pleased to have made her happy, and was really hoping that, you know, my efforts were going to pay off So initially, it was great

Q Did she later have a different reaction?

A She did. The very next morning, I was to go and pick up a flag to bring to the Mansion because -- it was a UVA and Tech flag, and I wanted to do one of those House

Divided and put it out and maybe even have pictures when the kids came home for Thanksgiving And so I was stopping by to pick up this flag, which was really fun. And I got a call from her and she was irate and she told me that there was no way she could possibly get ready for the Tax Tribute ceremony, it is an annual ceremony, there was no way she could get ready for the event because nothing was where it used to be and that I had completely ruined her day and that there was no way she would be able to attend. And I don't believe she did attend.

Q Is that Tax Tribute ceremony, is that typically the day before Thanksgiving?

A That's right

Q Okay Were there any items in particular that she said she couldn't find?

A Probably at that time, I think it was make-up It was related to trying to get dressed to go to the ceremony

Q Did she subsequently contact you again to tell you there were other items that she couldn't locate?

A Yes, yes, yes

Q What were those?

A Maybe a week or so or maybe, I'm thinking it was probably the next week, I was in a staff meeting with my team, and she gave me a call And everyone was in my office having the meeting just because I had a better space for it And she was very, very upset and said that, you know, what had I done with the watch, where was the watch, had I taken the watch. And I said, "No, no, I did not take the watch. The watch is in a box. I just took the box that was empty and stuck the watch in it and put it up high for safekeeping " And she hung up the phone and I didn't hear anything more about it

Q Did you ever speak with Ms McDonnell about the source of the watch?

A I never did

Q Let's switch topics Did the staff at the Mansion ever take any steps to seek help about the working environment there?

A Yes, we did.

Q What steps did you take?

A At different times, we consulted with the team that had pulled us all together, Jim Burke and Linda Pierce from VCU We reached out to them on a number of occasions and just said, "You know, we are really struggling here, can you work with us and help make it better?"

Q Can I stop you for a second? Who is Jim Burke from VCU?

A He is part of a team that was, I believe, hired early on to put our team together And I think the First Lady hired him I don't know his title at VCU I think he is a PhD. that worked with us to get -- sorry

Q No, that's fine I guess, what were you hoping might happen when you started talking to Mr Burke?

A We were just hoping to get some help in dealing with the highs and lows and the hots and colds and never knowing what we were going to get We had so much to do. The First Lady really had created some great projects and her pillars, as she refers to them, they were worthwhile efforts But we were spending so much time with minutiae, and dealing with, you know, personality that we couldn't get our job done And so we were hoping that they would step in and maybe help us with her so we could work more efficiently

Q Were you hoping for any kind of meeting with Ms McDonnell where you all would resolve this?

A Yes, absolutely

Q What suggestions did Mr Burke offer for how to deal with Ms McDonnell moving forward?

A Well, we really weren't getting very far in getting help And I think we were really exasperated. And he looked at us and said that "If you just think of her as a five-year-old, that you are dealing with a five-year-old, then maybe things will go better "

Q Did he refer you to any particular reading material?

A He did. He did He really believed that she was suffering from some form of mental illness

MS ABER: Objection, Your Honor

THE COURT: Sustained Could you move that mic down and a little closer to you?

(Witness complied)

BY MR. CONROY:

Q And did the staff take any other steps other than talking to Mr Burke?

A Yes, we did. After a particularly difficult day, we all sat together in one of my co-worker's office and we put together the letter to Ms McDonnell hoping to help turn things around a little bit Because every one of us, we loved working together as a team. We loved working at the Executive Mansion It was such a privilege And what we were doing was all good stuff and helping really, really good people, highlighting great things going on in the state And we wanted to continue to work But it was so difficult, the conditions were so bad, that we thought, "Well, this is the last ditch effort " And we decided as a team that we would all go, you know, if it got so bad that one of us had to leave, that we would all leave So we just said, we kind of stated our terms, and where we were coming from, in the hopes that things might improve

///

MR CONROY: Can we pull up RM-0032? And this is already in evidence, Your Honor If we go just blow up the top

BY MR. CONROY:

Q Ms Scott, is this the letter that we were just talking about?

A Yes, it is Yes

MR CONROY: And if you can flip to the second page

BY MR CONROY:

Q And three signatures down, is that your signature?

A It is

Q So who did the staff give this letter to?

A It was either to Martin Kent or Janet

Q Okay Did you ever discuss --

MR CONROY: You can take this down Thank you

BY MR CONROY:

Q Did you ever discuss these issues or Ms McDonnell's -- your challenges with dealing with Ms McDonnell, did you ever discuss that with Governor McDonnell directly?

A No, we didn't

Q Did you ever think about taking that step?

A I did I did Many, many times And I really think that if there hadn't been -- there was really no way for me to be able to get to him alone And so everyone would have to know, and I really didn't want -- you know, I felt like we were friends when I was going in there I was a friend of the family I knew the children well

But I really wanted to be a professional, and I didn't know that -- if I should text Governor McDonnell and say, "Can you meet me and talk " You know, I just -- so I decided just to try to do what my teammates wanted to do I wish now that I had done that

Q Okay Let's switch topics briefly During the time you worked at the Mansion, did you ever hear the name Jonnie Williams?

A Yes Yes In the beginning mostly

Q Did you ever have a chance to observe how Ms McDonnell acted when the topic of Jonnie Williams came up?

A I could tell that she, you know, liked him very much, liked the attention that she got from him, that he made her feel special You could tell She would light up when she talked about him

Q And this is something you observed at the Mansion?

A Not often Maybe a time or two In a conversation about somewhere she had been

Q And, Ms Scott, did you meet with the prosecution team here back in September of last year?

A Yes, I did

Q And was that prior to any meetings you had with the attorneys for Mr or Ms McDonnell?

MS ABER: Objection to relevance

THE COURT: Sustained

MR CONROY: Can we approach, Your Honor?

THE COURT: We can't approach You're doing a perfectly fine job, but now you're talking about who talked to whom That doesn't have anything to do with anything

MR CONROY: Okay Thank you

THE COURT: So let's finish up

BY MR CONROY:

Q Now, Ms Scott, did you ever notice any personal items that Ms McDonnell kept stored in her office space rather than in her private residence?

A Yes There were a few items of clothing that were hanging on the back of her door that were still in bags

MR CONROY: Can we pull up Government Exhibit 34a, please And this is already in evidence

BY MR CONROY:

Q Ms Scott, does this appear to be one of the items of clothing you saw on Ms McDonnell's door?

A Yes I believe so

Q Do you remember about when you saw it?

A I saw it when I first started working there She was very kind and let me share her office in the beginning, and I believe that they were on the door then

Q Okay And do you know about how long these items of clothing were there?

A A long time I don't know if they were there when I left or -- but they were there a long time

Q Okay

MR CONROY: You can take that down

BY MR CONROY:

Q Now, did you ever have a chance to see Mr and Ms McDonnell interact with each other?

A Yes, I did Often

Q And what was that like?

A They were good together most of the time And most of the time that I saw them, though, was when we were preparing for a public event, folks coming to the Mansion, and we were hosting an event there

Q And can you describe, in general terms, what her behavior would be like and what his behavior would be like?

A Well, both, you know, always had a lot on their plate But as I said earlier, when there was an event, she became very, very anxious, and the hours or minutes that led up to that event were always the most difficult of the day Whereas the Governor, we never noticed any difference And if he had a second, he always shook our hands and let us know -- sometimes a hug -- and let us know that we were really helping a lot and he appreciated everything that we were doing

Q And in these situations, did Governor McDonnell communicate with Ms McDonnell in the same way that he communicated with others?

A If we were in the public -- you know, if we were all downstairs and getting ready to receive guests, it was all -- all the -- yes, he treated her the same The only time that I saw any different was, you know, in private Oftentimes it was when they were trying to go somewhere, and she would, you know, be anxious and often fuss at him

And one particular time, I -- I had to join them in the private quarters trying to deliver a piece of luggage And she was anxious about having to get out of town and telling him that he really needed to get on it and pack his things and, you know, ranting and raving about this, that, and the other And he was trying to read the paper, watch the television about what was going on in the news that morning, and get to work so that he could wrap up and then go somewhere later in the day And truthfully, I could tell that, you know, packing was the smallest thing on his agenda

Q And what was Governor McDonnell's reaction to this conversation?

A He usually just tuned her out

Q And so then -- a moment ago you mentioned other times when they would be preparing for public events When they would appear at these public events, ould their behavior change at all?

A They were a great team once -- once the crowds arrived And I think everybody rose to the occasion, and you could sense a kind of, you know, sense of accomplishment throughout the evening And they were great hostesses, both of them

Maureen just struggled with getting ready and when everybody was coming But once they were there, she was wonderful And people loved her because she was gracious and kind and seemed to be enjoying it, even when it had to be excruciating because they were on their feet for so long

Q Now, did you ever observe any kind of correlation between the Governor's travel schedule and Ms McDonnell's anxious behavior?

A Yes No doubt When he would be gone or had to be gone for long periods of time, her anxiety increased, and her need for control was much worse And she would focus on minutia, like bath mats and whether or not the floors were clean and the blinds were twisted the right way, that kind of thing It just -- he could kind of keep her calm and together, and when he was gone, that's when we knew that we probably would hear from her

Q And did you ever observe Ms McDonnell using the Governor's name to get something done?

A Yes And I think it was often just, you know, totally out of frustration when she wanted things done and, you know, they weren't being done quickly enough for her But she would use the Governor's name

But the one -- probably the worst case of it was with the -- putting the Anatabloc in the spouse's gift bag during the NGA meeting during the summer

Q What do you recall about that?

A Well, the Governors and their spouses were coming to Richmond because -- or to Williamsburg because we were hosting And each -- I think there was actually a gift basket that was in their hotel room initially that was filled up and would meet them -- you know, would be there for them when they arrived

And she -- the First Lady hoped to put the Anatabloc in that basket, but they were completely sealed up and delivered to the -- to the hotel, and we could not open them up and put the Anatabloc in And then she said, "Well, let's put it in the spouse's gift bags that they would receive " And I believe -- you know, our entire team raised concerns that that really wasn't the thing to do And she said, "Well, the Governor wants it in there " And I think we all knew that that wasn't the case

Q Did you have any basis for thinking that this request actually came from the Governor?

A I knew that it didn't come from the Governor

Q Did Governor McDonnell ever ask you to add Anatabloc to gift bags at any event?

A No No

Q In your nearly two years working at the Governor's Mansion, did Bob McDonnell ever ask you to do anything inappropriate or unethical?

A No Never

MR CONROY: One moment, Your Honor?

THE COURT: Sure

MR CONROY: No more questions

THE COURT: All right

Counsel for Ms McDonnell?

MS MARTIN: Thank you, Your Honor Briefly

CROSS-EXAMINATION

BY MS MARTIN:

Q Good afternoon

A Hi

Q I want to talk for another minute about Jonnie

Williams You never saw Ms McDonnell and Mr Williams personally interact, did you?
A I did not
Q But you did see her reactions either when she had just been with him or when his name would come up; is that correct?
A That's right
Q And you had previously described her as being gaga over him when you spoke with the prosecutors last September; is that right?
A Probably She seemed enamored with him, infatuated I think he made her feel special
Q Now, you -- on direct examination, you mentioned that the First Lady had created some great projects that were worthwhile as the First Lady Are you talking about the FLITE initiative?
A I am Yes
Q Is that the First Lady's Initiatives Team Effort?
A That's right
Q And what was your role in FLITE?
A Most of her events that she attended were in some way related to FLITE Either they were in the health and wellness area in support of the military, wine, film and tourism, or women in business So they were the four pillars that she identified as areas she would focus on

So when she said that those were the areas that she was interested in, folks started to contact her about -- about their organizations So we would go to different events or folks would come to the Mansion And in -- during those events, I helped prepare for them, attend them I took photos while we were there I wrote up a kind of blog about what we had done there, submitted it to the papers, oftentimes, to talk about what we were doing

Q And could you just briefly explain to the jury what the First Lady was doing to promote these four areas, including the military and women's initiatives?

A She just was trying to highlight all the good things that were already going on in the state of Virginia So we did events Like we went -- we had a baby shower for Operation Homefront that she attended that were for spouses or -- or soldiers And they -- they were given gifts, and she spoke And there were a multitude of events like that

Q And what about the Virginia wine industry?

A Oh, she toured many, many different wineries and just helped to bring Virginia wine to the forefront Like I said, we were trying to do the same thing in Virginia that was done in California

Q So notwithstanding the fact that working at the Mansion was sometimes difficult, was this a positive thing that you took away from working at the Mansion?

A Absolutely Absolutely It was a privilege to get to do all these things and to learn about all the great things that are going on in our state I've got to say, I was living in my bubble in suburbia, and it was wonderful to be exposed to all these different things

Q Now, in this role, you were able to sometimes attend events with the First Lady; is that correct?

A That's right

Q And some of those included Mansion events; is that right?

A That's right

Q And was it customary, from your perspective, for the First Lady to be able to invite her own guests to events that were held at the Mansion?

A Absolutely

Q And did she do that with some frequency?

A Yes

Q And did she do it for a variety of events that were held at the Mansion?

A Absolutely

Q And were any of those invitations ever on the later side of things?

A Absolutely And she -- what would happen was that as the event would draw near, she would realize that she'd left out someone, and she would want to extend the invitation even at the last minute

Q And were some of these invitees her personal friends, from your observation?

A Probably, yes And oftentimes, too, if there were spots to fill, that she would realize, oh, well, so-and-so might like to come and join in

Q And from your observations, could Ms McDonnell's reaction to the role of being First Lady be summarized as one of resentment?

A Absolutely Absolutely And I -- I think, too, you know, some days it was -- she was thrilled I mean, sometimes we had such amazing successes that she was on top of the world And, you know, we all celebrated and that was great But it's hard to keep the momentum and the pace, and she -- that's when she would become depressed

Q Did you have any observations of the source of her resentment?

A Well, I think, you know, she -- she didn't earn a salary She wasn't the elected official

Q Did she ever talk about a loss of privacy?

A Absolutely

Q What did she say about that?

A Well, I think -- I think she would have loved to have been able to get in the car to go to Target or to, you know, run to CVS on her own

Q And from your observations, did she have that ability?

A No No She completely lost her privacy

MS MARTIN: No further questions

THE COURT: All right

Government?

CROSS-EXAMINATION

BY MS ABER:

Q Good afternoon, Ms Scott

A Hi

Q Did the Mansion staff periodically have staff meetings?

A We did

Q And that happened even after you all sent in your resignation letter?

A That's correct

Q Which didn't actually end up causing anyone to resign, right?

A That's right

Q Mr McDonnell, he periodically came to those sort of staff meetings, didn't he?

A With my team of five, no

Q Did he ever come over to the Mansion?

A Yes, he did come over to the Mansion
Q Did Martin Kent ever come over to the Mansion?
A Yes, but rarely
Q Okay Did Janet Kelly ever come over to the Mansion?
A Yes, but it wasn't -- it wasn't even a weekly thing or a monthly thing We saw them on occasion
Q Just to check in on you guys, right?
A Yes
Q Okay And in reference to the National Governors Association event, that's the summer of 2012, right?
A Yes
Q In Williamsburg?
A Yes
Q And the gift bags we're talking about for spouses had -- had Anatabloc?
A Uh-huh
Q And Virginia wine, right?
A Yes
Q And some other Virginia trinket, right? Do you remember what it was?
A I don't I'm sorry
Q That's okay Peanuts or something? Something Virginian, right?
A Probably Yes
Q Okay Now, Mr McDonnell was the head of the

National Governors Association at this time, right?

A I believe so

Q But you never talked with Mr McDonnell specifically about these gift bags, did you?

A No

Q Okay

MS ABER: One moment please, Your Honor

(Counsel conferring with co-counsel)

MS ABER: Thank you, Your Honor I have no further questions

THE COURT: All right Anything else?

MR CONROY: No, Your Honor

THE COURT: Anything?

All right Thank you, ma'am You may stand down

THE WITNESS: Thank you

(Witness stood aside)

THE COURT: All right We'll take our afternoon break

(The jury exited the courtroom)

(Recess taken from 4:04 p m until 4:23 p m)

(The jury entered the courtroom)

THE COURT: Call your next witness

MR SMALL: Thank you, Your Honor Bob McDonnell calls Allen Kosowsky

J ALLEN KOSOWSKY,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR SMALL:

Q Good afternoon, Mr Kosowsky

A Good afternoon

Q Would you tell us your name, and spell it for the court reporter, please

A Yes My name is John Allen, A-L-L-E-N, Kosowsky, K-O-S-O-W-S-K-Y

Q What's your current employment, sir?

A I'm a CPA, Certified Public Accountant

Q Give us briefly your educational background, if you would

A Certainly I graduated from American International College in Springfield, Massachusetts, in June of 1969, with a bachelor of science in business administration, with a major in accounting I attended some courses at the University of Connecticut's MBA program, which I did not complete And I completed a certificate program at the University of Pennsylvania Wharton School of Business, the Wharton Fellows Program

Q And what kind of certificate was that?

A It's Executive Education

Q And you have a number of other certifications and licenses; is that correct?

A Yes, I do

Q Let me just ask you, I'm not going to ask you about all of them, but just a couple You are a Personal Financial Specialist; is that correct?

A Yes I hold that designation from the American Institute of Certified Public Accountants

Q And tell us what that means, to be a Personal Financial Specialist

A It's a practice specialty that I was awarded a number of years ago for those of us that spend a lot of time advising individuals, their companies and the like, with -- with ordinary financial estate, retirement planning kinds of matters

Q All right And you're also a Certified Valuation Analyst --

A Yes

Q -- is that correct?

And what is that, just briefly?

A Certified Valuation Analyst is a credential offered by the National Association of Certified Valuation Analysts It started out principally being involved in business valuations, valuing privately-held business interests, such as they might be, and it expanded to include areas such as forensic accounting and the like

Q All right And the last one I'll just mention You're an Accredited Business Valuator; is that correct?

A Yes That's a similar certification offered by the American Institute of Certified Public Accountants, again, in the area of business valuation and, to some degree, forensic accounting

Q Sir, have you testified as an expert witness in federal district court before?

A Yes, I have

Q And also in state court?

A Yes, I have

Q Approximately how many times have you been certified as an expert witness?

A Well, it's been a long career It's certainly more than 25, probably approaching 50

Q And have you also been appointed by different courts as a receiver or fact finder?

A Yes I've been appointed as a receiver in federal court, receiver of business interests, as well as receiver in state court, and as an administrator in probate court to replace executors removed by probate judges

Q And finally, you're also an arbitrator, are you not, for the American Arbitration Association?

A Yes I'm a commercial panelist with the American

Arbitration Association

Q And just briefly, what does that involve? What does that mean?

A For example, arbitration is a shortened method of litigation sometimes, as you may know In my particular case, I'm involved in complex commercial litigation Right now, I'm sitting on a panel involving an accounting malpractice case with two other arbitrators where we would sit, hear evidence, listen to witnesses, and render decisions

Q Okay And just briefly, you also have appointments to -- or you've been appointed to various -- to Boards of Directors of various entities; is that correct?

A Yes

Q One is Thor Industries?

A Yes

Q What is Thor Industries?

A Thor Industries is the largest domestic manufacturer of recreational vehicles in the United States It's based in Elkhart, Indiana Its stock is traded on the New York Stock Exchange It's approximately a 3-and-a-half-billion-dollar-a-year revenue business I sit on the Audit Committee I'm the appointed independent financial expert for purposes of the New York Stock Exchange, NSCC rules And I'm also Chairman of the

Nominating and Governance Committee

Q And you also are or have been on the Boards of several financial institutions, banks and other financial institutions?

A Yes I'm presently serving as a Director and member of the Audit Committee, Nominating Committee and Compliance Committees of Naugatuck Financial Corporation, which was the holding company of Naugatuck Valley Savings and Loan, a 500-million-dollar community bank based in Naugatuck, Connecticut

Q And as an expert witness, were you retained in this case by the defense, by Bob McDonnell?

A I was

Q And I assume you're charging a fee; is that correct?

A Yes, I am

Q Can you tell the jury, what is the fee that you're charging?

A Any normal rate is $525 an hour I have offered Governor McDonnell a courtesy discount of 20 percent off of my standard rates for myself and my staff

Q Why did you offer the 20 percent discount?

MR FAULCONER: Objection, Your Honor

THE COURT: Sustained

BY MR SMALL:

Q You're not a personal friend or otherwise of Bob

McDonnell, are you?

A No

Q Okay So that had nothing to do with that?

A No

Q Okay The -- tell us, if you would, what your understanding of what you've been asked to do in this case

A I've been asked to perform a number of forensic accounting duties in this matter, including, but not limited to, reviewing a number of the extensive financial records that have been produced to date, bank records, credit card records, mortgage applications, tax returns, e-mails attendant to many of those documents

Q And specifically, have we asked you to review documents relating to Bob McDonnell's finances?

A Yes

Q And also documents relating to his sister Maureen McDonnell's finances?

A Yes

Q And finally, documenting relating to MoBo, LLC --

A Yes

Q -- finances?

A Yes That's right

Q And have you also reviewed testimony in this case?

A Yes, I have

Q Tell us what -- you haven't been sitting through the whole trial; is that correct?
A No I have only been in attendance today for the testimony of Maureen McDonnell
Q All right And in addition to her testimony, what other testimony did you review by way of transcripts?
A I read the -- some testimony of Jonnie Williams, testimony of Michael Uncapher It's slipping my mind One other I apologize
Q Did you read the government's summary witness?
A Oh, yes The -- yes The FBI agent, right
Q All right
A I apologize
Q And just as a general matter, what categories of documents have you reviewed in the course of your work?
A As I stated just a moment ago, I've been reviewing bank statements, credit card statements, tax returns for the Governor, for Maureen McDonnell his sister, for MoBo, for a variety of other entities that the Governor had interest in, records pertaining to Mr Jonnie Williams, e-mails, bank applications
Q In your work as an expert witness and your other work, are you, from time to time, asked to review an individual or an entity's financial soundness?
A Yes

Q And what is -- tell me what that means, "financial soundness "

A Well, what I think it means in -- certainly in this case, is to evaluate whether or not an individual, in this case, Governor McDonnell and his wife, would have had a positive net worth, for example, and would their financial affairs, you know, support -- support that conclusion

Q And just briefly, as an expert witness, what types of cases do you get called on to render those kinds of soundness opinions?

A Frequently, in a consulting the capacity, in other white-collar crime and criminal tax matters That's unusual something that's asked of me to look at It's clearly a case, often in divorce cases, to evaluate the financial condition of one spouse or the other and the ability of that one spouse or the other to pay alimony, support, and other obligations

Q All right And based upon your review -- well, I'll come to that later

The -- all right So then -- and have we also asked you to summarize and assist in preparing charts summarizing some of the information you reviewed?

A Yes We've prepared a number of demonstratives

Q All right Let me first address Bob McDonnell Did you review tax returns for Bob McDonnell?

A Yes, I did

Q And based on those tax returns, did you assist in preparing a chart reviewing his income by year?

A Yes, I did

MR SMALL: Would you call up for the witness 274-3?

BY MR SMALL:

Q And is this the chart that you assisted in preparing?

A Yes, I did

MR SMALL: Offer that in evidence, Your Honor

THE COURT: It will be admitted What's the number again?

MR SMALL: 274-0003

THE COURT: Thank you

MR SMALL: Thank you

BY MR SMALL:

Q And so is this what you found as to annual income for Bob McDonnell and his wife for the period 2007 to 2012?

A Yes This is a simplified version that ties out to the adjusted gross income figure on their tax returns

Q Okay And so it has, at the top line, Wages That was principally Bob McDonnell's wages from his positions in state government and elsewhere?

A Yes That's right

Q And in 2009, where it goes down, is it your understanding -- am I correct that he resigned his position as Attorney General in order to run for Governor?

A That's my understanding

Q Okay And then in 2010, he assumed the position of Governor, correct?

A Yes

Q Okay And then the Business Income, is that largely income generated by Ms McDonnell?

A Well, it's a combination, Attorney Small, of Ms McDonnell's Schedule C from her business It's the combination of some small interest and the like, as well as their various -- various investments in the real estate partnerships that the government(sic) was a participant in, as well as income that was reported based upon payments that were made for various retirement accounts

Q Okay

MR SMALL: Okay You can take that down Thank you, Victoria

BY MR SMALL:

Q And as part of your review, did you also review credit card accounts?

A Yes, I did

Q Now, you indicated before that you reviewed portions of the testimony of Jonnie Williams; is that correct?

A Yes, I did

Q And in particular, did you review a portion of the testimony where Jonnie Williams -- Page 679, counsel -- stated that Bob McDonnell's wife Maureen had told him they were in financial trouble and they had tapped out their credit cards?

A That's my recollection of what that testimony was

Q And based on your review, is that correct? Had they tapped out or maxed out their credit cards?

MR FAULCONER: Objection, Your Honor, on asking him to comment on Jonnie Williams' testimony

MR SMALL: I'm not asking him to comment on Jonnie Williams' testimony

THE COURT: He can answer the question

A No

BY MR SMALL:

Q Well, let's go through that, if we could

MR SMALL: First of all, can we pull up, just for the witness, 274-0005?

BY MR SMALL:

Q And did you review and pull together the credit card statements and balances for Mr and Ms McDonnell?

A Yes, I did

Q You also reviewed the chart from the government's summary witness with some of this information on it as well; is that correct?

A Yes That's right The chart reflects that the last entry, and my recollection of Agent Hulser's chart, was April of 2011

Q Let me just interrupt you and ask that that be admitted, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q Now that everyone can see it, Mr Kosowsky, let me go back So this reflects the combined credit card balances starting in January 2010 and going through August of 2011; is that correct?

A That's right

Q And the government's chart 572 ends after April -- or April or May of 2011; is that correct?

A Yes

Q So you just continued it for a couple more months?

A Yes, I did

Q All right And so am I correct that this reflects that the credit cards reached a peak, credit card balances reached a peak in August of 2010? Is that correct?

A That's right $90,928 41

Q And then what happened?

A From that moment on, from that -- from that month end on, as one can see, the balances were progressively decreasing

Q All right And you're aware of the testimony that Jonnie Williams made a loan to Maureen McDonnell, Bob McDonnell's wife, that was used in March or April to pay off some credit card bills?

A That's right

Q And so is that -- is it your understanding that explains at least some of the drop from April 2011 to May of 2011?

A Yes, it does

Q Okay But prior to April of 2011, am I correct that the total balances had already been knocked down by approximately $60,000?

A Yes That's right The simple arithmetic of subtracting 31,876, call it 32,000, from $91,000 It was decreased by some $59,000 in that time frame

Q And after May of 2011, am I correct that the total balances continued to go down?

A Yes

Q So that by August of 2011, their total net -- total credit card balances were about 5,000, $6,000?

A About $6,000 Right

Q Okay All right So when -- all right So when we talk about credit cards --

MR SMALL: Your Honor, I haven't formally asked Mr Kosowsky to be qualified as an expert because we had the prior hearing, but I would ask that he be admitted as an expert at this time

MR FAULCONER: Your Honor, may we approach?

THE COURT: Do you have any --

MR FAULCONER: May we approach on that, Your Honor

THE COURT: Come up

(At Bench)

MR FAULCONER: Your Honor, I have a copy of your order here, and Mr Kosowsky has said nothing different from what he said during the DAUBERT hearing He's added nothing He's clarified nothing Your Honor's order said that it was based previously, in part, on speculative expert interviews and future earnings We have no problem with him giving the same type of testimony that Agent Hulser does, but he's added nothing to the calculus to allow him to be an expert And I don't think opining on soundness -- I mean, he can calculate, but on opining on soundness really doesn't have much

THE COURT: No I think he can -- I'm going to allow him as an expert I think he can talk about the soundness issue That's the only thing that he can talk about

MR SMALL: Yeah That's all I have

THE COURT: But let's make sure we don't get outside of that All right And I --

MR SMALL: I spent the break cutting my outline back

THE COURT: I suspect that we should be able to handle this on cross

MR FAULCONER: Thank you, Your Honor

MR SMALL: Thank you

(In Open Court)

MR SMALL: We would, Your Honor, offer Mr Kosowsky as an expert witness

THE COURT: He will be received

MR SMALL: Thank you

BY MR SMALL:

Q All right So let's -- in addition to just the balances, if we're talking about whether the credit cards are maxed out, what's the other factor that we have to look at?

A You have to look at the available credit

Q Okay And did you, in fact, review the credit card records to look at the available credit?

A Yes

MR SMALL: Could we call up, just for the witness, please, 274-0007

BY MR SMALL:

Q And is this -- is this a chart reflecting credit limits for Bob and Maureen McDonnell?

A Yes

Q Just before you go into it, I just ask that it be admitted, Your Honor

THE COURT: It will be admitted

MR SMALL: Thank you

A Yes At or about May 1st, we were using -- I was using the statements they were in the April cycle

BY MR SMALL:

Q All right And did you use May 1st because Jonnie Williams' testimony that they were tapped out? He said it was May 2nd, 2011, that he had that conversation?

A I believe that's right

Q Okay And so what did you find, in terms of credit card limits, as of May 1st, 2011?

A When I went back and looked at the statements and totaled them, as they are listed here, the several credit card accounts he had, it shows an aggregate total of $204,690 of available credit

Q All right And so did you then do the calculation as of May 1st, 2011, to compare credit limit with what the balance was at that time?

A Yes

MR SMALL: I ask that we pull up, just for the witness, 274-0008

BY MR SMALL:

Q And is this that comparison?

A Yes This is the comparison utilizing the value at the end of Agent Hulser's chart, the 31,876

Q If I could just interrupt one second

MR SMALL: I would offer it into evidence, Your Honor

THE COURT: It will be admitted

MR SMALL: All right Can we publish that? 274-00 -- thank you

BY MR SMALL:

Q All right And so you took the total credit limit and then the combined credit card balance?

A Yeah Simple subtraction showing that there was additional credit available of -- what you see there 172,000 and change

Q As of May 1st, 2011 --

A That's right

Q -- there was that amount of credit available?

A Yes

Q Okay All right So we looked at income, and we looked at credit cards Did you also look at cash available?

A Yes

Q And how did you do that?

A By reference to the bank statements at or about the same time period

Q Okay

MR SMALL: Can we call up for the witness 274-0009?

And ask that that be admitted, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q So tell us, tell the jury, what is 0009?

A This is taking the balances as they were on the bank statements at or near that date of May 1st, 2011

Q Okay And what did you find?

A That in total for the three accounts, there was some $12,861 26 available

Q All right And did you also -- this is basically a snapshot, correct?

A It's a snapshot at a moment in time, yes

Q Those numbers can go up and down regularly, or easily?

A And they did, and they will

Q Okay So at our request, did you take one or two other snapshots at other dates that are relevant to the case?

A Yes

MR SMALL: Can we pull up for the witness

274-0010, please, Victoria

BY MR SMALL:

Q And is this a snapshot on March 11, 2012, right near the time of Jonnie Williams' loan to MoBo, LLC?

A Yes

MR SMALL: Ask that that be admitted, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q So as of March 11, 2012, right near the date of Jonnie Williams' loan, what did you find?

A The total -- and this includes an additional account for MoBo, which is listed there at $1562 09, that at that moment in time, there was total cash available of $67,000

MR SMALL: And lastly on this, can we call up, just for the witness, 274-11, 0011

BY MR SMALL:

Q Did you also take a snapshot, if you will, of May 21st, 2012, which was the date of the second Jonnie Williams loan to MoBo?

A Yes

MR SMALL: I ask that that be admitted, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q And what did you find as of the date of the second Jonnie Williams loan?

A Well, as you can see in a comparative way, the sum the four accounts, again, including MoBo in this schedule, shows total cash available of $41,813 81

Q All right And -- so those are bank accounts Did you also look for savings and retirement accounts?

A Yes

MR SMALL: Can we call up, just for the witness, 274-0012?

BY MR SMALL:

Q And is this a chart as of the end of the year of 2012 reflecting retirement accounts?

A Yes These are the Governor's retirement accounts

MR SMALL: Ask that that be admitted, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q So what did you find, in addition to the bank accounts that we looked at, in terms of his retirement accounts?

A Well, as of the end of the year, as of December 31st, which was the available statement, the total there, as you can see, is $209,763 86

Q Based on your experience, if someone is in --

MR SMALL: You can take that down, Victoria Thank you

BY MR SMALL:

Q -- if someone is in financial difficulty, would they generally be trying to maximize cash available?

A Oh, yes

Q And what does that mean? What do you mean by that?

A Well, the maximization of cash available, in my experience with individuals in trouble, one of the first things, generally, to go, sadly, is they might stop participating in their 401(k) plans, for example, where they were making contributions That would be one thing Certainly, the other area would be normal to tighten one's belt on expenses --

Q All right

A -- such as they may be, or other spending

Q In other words, optional or discretionary spending?

A Right Like discretionary whatever, you know, how you might otherwise want to spend your money if you could

Q So did you take a look at those issues as they relate to Bob McDonnell?

A Yes, I did

MR SMALL: Call up 274-0001

Ask that that be admitted

MR FAULCONER: Your Honor, we object May we approach on this one?

THE COURT: Come on up

(At Bench)

MR FAULCONER: Your Honor, this is a -- sorry This is a chart that shows charitable contributions We have no problem with the dollar amount of the charitable contributions for each year, but putting in the specific charities that he contributed to is highly prejudicial and no relevant purpose

MR DRY: We informed them of this this morning

THE COURT: You need to take that out I guess he can talk about his bottom line, but they don't need to see that

MR SMALL: All right

(In Open Court)

MR SMALL: One moment, Your Honor

Okay We would then offer redacted 274-0001

Any objection?

MR FAULCONER: No objection, Your Honor

THE COURT: All right

BY MR SMALL:

Q So what did you find during the years 2008 to 2012 in terms of optional or discretionary charitable expenses?

A Well, as they are summarized here, taking these from the tax returns of the McDonnells, I would point out there's one very small $100 discrepancy in the year 2011 When I went back and looked at the actual receipts that were presented to me, they totaled $4180, whereas $4280 was deducted on the tax return I can't explain the difference, but it's not material

But as you can see they are in two categories One is monetary, cash; checks, obviously And the second would be in-kind donations, which I think we all would know to be sort of typical things like Goodwill and, you know, your thrift shops and that sort of thing, which would not be cash

Q All right And so, for example, in the year we're talking about, 2012, am I correct that this shows $5,575 in cash charitable donations?

A Yes

Q Cash or check, obviously?

A Yes Yes, to charities

Q All right And --

MR SMALL: Thank you You can take that down

BY MR SMALL:

Q And then I think you mentioned you also look at other discretionary expenses, including donations or -- not donations, but contributions to a voluntary retirement plan; is that right

A Yes That's right

MR SMALL: Can we call up 274-0002?

BY MR SMALL:

Q And is this a summary of what you found regarding Bob McDonnell's deferred compensation plan?

A Yes This is a tabulation from his W-2s

MR SMALL: Offer that into evidence, Your Honor

THE COURT: It will be admitted

A From his W-2s for the amounts of contributions that he made for the years 2008 through 2012 There was no contribution in 2009 because that's the year he had resigned as the Attorney General position, and his compensation was very -- was not all that much for the first couple of months

BY MR SMALL:

Q All right He resigned as Attorney General in order to run for Governor That's your understanding?

A That's my understanding

Q Okay All right And so, again, in the year 2012, there was a voluntary contribution of $22,500 to the deferred compensation plan; is that correct?

A Yes That's right

Q All right So --

MR SMALL: You can take that down

BY MR SMALL:

Q -- based upon your review, including what we've summarized, did you reach an opinion as to Bob McDonnell's financial soundness?

A Yes I felt that his financial affairs were sound

Q And next, you also looked at sister Maureen If I use "sister Maureen," you'll know who I'm referring to?

A Yes, I will Thank you

Q And going in sort of the same order as we just did, did you look at her income over a period of time?

A Yes, I did

MR SMALL: Could we call up, just for the witness, 274-0004?

BY MR SMALL:

Q And is this the -- is this what you -- the chart reflecting her income over a several-year period?

A Yes

MR SMALL: Offer that into evidence, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q And so you found that she had quite substantial income over that three-year period; is that correct?

A Yes You can see the totals there 329,000, roughly, in 2010 293 in 2011 And 557,000 in 2012 556 rounded down

Q All right And did you also -- you also looked at her -- her assets; is that correct?

A Yes

Q You didn't look at real estate specifically You were really looking at liquid assets; is that correct?

A That was my emphasis

MR SMALL: Can we go to 274-0013?

Ask that that be admitted, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q Tell us what this is

A This is a summary of sister Maureen's equivalent retirement accounts and her cash account in the year 2012

Q And just taking it one step at a time, the total you reached here is 815,000; is that correct?

A Yes

Q Now, you were here today for sister Maureen's testimony, correct?

A Yes

Q You have two 401(k)s or (a)s listed here Do you recall her testifying that there was a third 401(k) or (a)?

A Yes

Q And do you recall what she said?

A My recollection is she said she had a third 401(k) account, where I did not have a statement, with an estimate amount of about $50,000 is my recollection

Q All right So would that 50,000 be added, then, to the 815 to reach the total?

A Yes

Q And you also heard her testify about stock that she had received from her company?

A Yes, in two pieces Right

Q And what do you recall from that?

A That she had two pieces of -- of stock-based compensation One was participating in her employee stock plan and secondly were stock options that she was entitled to, some of which had vested And she had estimated the value of the stock plans --

MR FAULCONER: Objection, Your Honor, to him summarizing her testimony I don't think she specified a date on that

MR SMALL: She did, Your Honor

THE COURT: No She testified to that

But these are the figures that you're adding to your previous calculations now?

THE WITNESS: Yes, Your Honor

THE COURT: Go ahead

A It was approximately $250,000 of value then And then the -- she had remaining stock options that would vest periodically on January 1st of each year Somewhat complicated because of the Amerigroup purchase, I guess But she had estimated that unvested value at about 250,000

BY MR SMALL:

Q And by vested, does that mean that they could -- they could be sold then and there, correct?

A Correct

Q So if you're looking at her financial position as of 2012, which of those two, I guess, pieces of 250,000 each would you include into this 815,000?

A Well, I would add in the 50,000 for the third 401(k), assuming it's documented And then I would add in the 250,000 for the vested portion So adding 300,000 would say $1,115,000 of -- of value in assets And then the contingent value of the unvested portion would increase that by another 250,000 --

Q Okay

A -- as a range

Q All right So as of 2012, then, sister Maureen had over a million dollars in liquid assets, correct?

A That would be a fair appraisal

Q Okay And based on your review of her finances, do you have an opinion as to her financial soundness in 2012?

A She looked pretty sound

Q Now, MoBo -- your understanding is MoBo is a -- is a business between these two parties, correct?

A Yes

Q So did you look at the combined assets of these two people?

A Yes, I did

MR SMALL: Can we call up 274-0014?

Ask that that be admitted

THE COURT: It will be admitted

BY MR SMALL:

Q And is this a rough look at the liquid assets of these two people in 2012?

A Yes It's a -- it's a simple addition for the purpose of looking at it as, you know, the two together

Q And would you -- to correct it based on sister Maureen, would you add the same 300,000 that you had added to the prior chart?

A Yes

Q So the -- the total liquid assets of these two folks would be approximately $1 4 million; is that correct?

A That's right

Q All right And then you and your --

MR SMALL: You can take that down for a moment

BY MR SMALL:

Q In your work, you have evaluated a number of real estate investments and real estate businesses, correct?

A Yes, as well as having been a participant in a number of them

Q And I -- am I correct that two of the goals of a real estate investment are to cover the interest costs and to pay down the debt?

A Well, that's -- together would be one goal Yes

Q Okay And did you take a look at MoBo to look at those -- either two goals or one goal, however you want to say it?

A Yes I tested both

MR SMALL: So if we could call up 274-0016, please, just for the witness

BY MR SMALL:

Q And is this a look -- just looking at Gross Rents versus Interest Expense, just carrying the debt; is that correct?

A That's right

MR SMALL: Ask that that be admitted, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q And so what did you find?

A Well, as one can see very readily, the gross rents, which are taken from the tax returns, and the interest expense as well, the gross rents more than cover the interest expense And the differential is shown in the bottom line that, as one can see, over time, the gross rents, starting in 2008, were 190,000 They dipped in 2009, as was the case with the great recession and everything else Began to go back up, steady state, went up a bit more in 2012 to the $211,000 figure

The interest expense, at the same time, as you can see, was steadily -- steadily decreasing from 2010 onward -- actually, from 2008 down to 2009 and '10, when it stayed about the same And then it dropped again in 2011 and 2012

Q All right

MR SMALL: Can we call up, just briefly, 274-0017?

BY MR SMALL:

Q And is this simply a graphic look at the gross rents, as you say, going up and interest expense going down?

A Yes That's what the chart shows

MR SMALL: Ask that that be admitted, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q And it's your understanding that interest expenses were going down, in part, because there was refinancing of some of the debt?

A That's right

Q Okay

A And if I may add that the interest rates on some of the adjustables were also decreasing over time

Q Okay All right And did you also look at the repayment of mortgage principal, not just the interest?

A Yes

MR SMALL: Can we call up the redacted version of 274-0015, please, just for the witness

BY MR SMALL:

Q And is this a graph with your analysis of the payment of the mortgage principal?

A Well, this is -- the title is a little bit off The mortgage principal is cited for each of the four years, 2009, '10, '11, '12, for each of the three banks What's missing is the differential of what the balances were in 2009 versus the balances in 2012 So it's -- the title is a little off in this redacted version

Q Okay

MR SMALL: Ask that that be admitted, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q All right So what -- going through each of these loans, what does it reflect as the Bank @Lantec mortgage?

A Well, as one can see, the Bank @Lantec mortgage started with a balance of 920,000 in 2009 And then by 2012, it has been reduced to 903,355, or roughly $16,000 less, principal

Q And what about the Navy Federal Credit Union loan?

A Same arithmetic It started at 310,542 Ended the year 2012 at 272,816, or a reduction of roughly 38,000

Q And finally, the TowneBank?

A The TowneBank started at 722,372 And that is a combination, Attorney Small, of the two

Q Okay

A I thought it was Down to 705,100 So it's a $17,000 reduction

Q All right So all three mortgages, some of the principal has been paid off; is that correct?

A Yes That's right

Q Okay Did you calculate the total? I don't want to put you on the spot here

A That's okay 16,000 and 38,000 is 54, and 17 is $71,000

Q Okay

MR SMALL: All right You can take that down Thank you

BY MR SMALL:

Q And did you also look at the overall picture of MoBo expenses and income?

A Yes, I did

MR SMALL: Can we pull up the redacted version of 274-0018?

BY MR SMALL:

Q And is this a -- a review, a summary review of those numbers?

A Yes This is --

MR SMALL: Just ask that it be admitted, Your Honor

THE COURT: It will be admitted

MR SMALL: Thank you

BY MR SMALL:

Q Go ahead, Mr Kosowsky

A Once again, this is redacted So the title needs to change to 2009 to 2012 The rental real estate is shown there on the top line The rental real estate expenses are all of the expenses from the tax return, with the exception of depreciation, which is a noncash charge So one would think of those as the cash expenses And the differential on the bottom is the -- is the cash loss

Q All right And going to each of those items, just briefly, fair to say that the rental income has increased every year, 2009 through 2012?

A Yes, it has

Q And the rental expenses has varied a bit, but over all, it's gone down between -- from 2009 to 2012?

A Well, the rental real estate expenses would include the interest expense

Q Okay

A So as we just saw, the interest expense was going down So you have, fortunately, rental income going up and interest expense going down So it helps the bottom line

Q All right And based on your review, did you come to an opinion as the financial outlook for MoBo?

A Well, based upon this trend, it looked like they were moving in the right direction to manage their income potential to the maximum, based upon what they were trying to do from what I heard today from Maureen McDonnell, as well as the other steps that they took to take advantage of lowering the interest rates on the various loans they had as well as to manage expenses as best they could

MR SMALL: May have one moment, Your Honor?

THE COURT: Sure

(Counsel conferring with co-counsel)

MR SMALL: Nothing further

Thank you, Mr Kosowsky

THE COURT: Mr Burck?

MR BURCK: No questions, Your Honor Thank you

THE COURT: All right

Government

MR FAULCONER: Thank you, Your Honor

Thank you, Your Honor

CROSS-EXAMINATION

BY MR FAULCONER:

Q Now, Mr Kosowsky, you said on direct examination that you're being paid for your time here, right?

A I'm being compensated for the time charged, yes

Q And I think you said that your normal hourly rate is $525? Is that what you said?

A Yes

Q And that you're referring offering a 20 percent discount for your testimony here?

A Not for my testimony here For all of my work to date

Q And could you just give us an estimate of about how much time you've spent both in your preparation and also even including the time that you've been sitting here in court today?

A Well, I arrived here at about 7:00 Sunday evening So a couple of hours Sunday evening Pretty much all day yesterday working on demonstratives and the like, as well as sitting here today

Q So I must have misspoken I'm asking for dating back to the beginning of your engagement in this case --

A Oh My apologies

Q -- a total up until now, about how many hours?

A Oh, I would say between my time and my staff time is probably 175 hours, maybe approaching 200, given the time I've spent here

Q And about how much of that time has been your own personal time?

A I would say about two-thirds

Q So about, what, 150, 160 hours?

A No I would say about 120 hours would be about my time, give or take

Q And you recall having testified at a prior hearing in this case, right?

A Yes, I did

Q And at that time -- I think it was about July 15th; is that right?

A That's right

Q And as of that date, you had spent 100 hours?

A So it's -- it would probably be about 140 or so

Q Okay So about 40 hours last month?

A Between that service at that particular hearing as well as, you know, the time now

Q Okay So are we talking somewhere in the ballpark of $80,000 total?

A I don't think -- no No It wouldn't be $80,000 No Because my staff is much less

Q What would you give it as a ballpark?

A Well, that might be right That might be close Yeah Somewhere between 60 and $80,000, I would say

Q And I guess today, what time did you come into the courthouse this morning?

A 9:30

Q Okay So today we're talking, I don't know, about 3 or $4,000?

A Well, it's seven or eight hours So $3,000, give or take

Q And you also testified earlier that you've been an expert in a number of trials, right?

A Yes, I have

Q And I think Mr Small asked you if you had testified in federal district court before, right?

A Yes, I have

Q And you said somewhere in the range of, I think, 20, 25, somewhere in that ballpark?

A That was a combined total of federal and state, sir

Q Can you tell us how many of those trials have been criminal trial in federal district court?

A In federal district court, there was one criminal trial that I testified in Most of the -- virtually all of the criminal work that I've done has resulted in pleas

Q So this trial here today is your second federal criminal trial?

A That would be right

Q And fair to say that the prior one probably wasn't as high profile as this one?

A I think they're all high profile

Q But it's fair to say that part of the way you get business is through word of mouth, right?

A Well, that's true But I'll be 67 in January, and I'm winding things down

Q All right, sir Well, you said also that one of the things that you did in this case is that you sat through Ms Uncapher's testimony, right?

A Ms McDonnell, yes

Q Yeah Sister Maureen, as we've referred to her?

A Right, sister Maureen

Q And you also said that you reviewed Mr Uncapher's testimony, her ex-husband?

A That's right

Q And part of the reason you did that is because they're both involved with MoBo, right? They were at various points in time?

A Yes Mr Uncapher, in his capacity as a manager, bookkeeper, whatever, payer of bills

Q And sister Maureen McDonnell, she was one of the two partners of MoBo, right?

A Yes She's one of the two principals, right

Q Now, you also said something that I thought was interesting so I made sure to write it down You said that you relied on some of Jonnie Williams' testimony, right?

A That's right

Q Could you tell us who it was that decided which parts you would rely on and which parts you wouldn't?

A Well, the testimony that was given to me were the two, two or three pages as an excerpt from his testimony That was given to me by counsel

Q Okay And so when defense counsel gave you only two or three pages of Mr Williams' testimony, did you ask for the rest of it?

A No, I didn't ask for the rest of it

Q So you don't know whether any of that testimony provides additional context that would undercut your conclusions, do you?

A I don't know

Q Now, you also said that -- so we talked about sister Maureen McDonnell We talked about Mr Uncapher, and we've talked about Mr Williams But you've actually spoken to Mr McDonnell as well?

A I did speak to Mr McDonnell, yes The Governor

Q And at the prior hearing -- you didn't say it on direct examination today, but at the prior hearing in this case, you actually said that you relied on statements from Mr McDonnell in forming your conclusions about financial soundness in this case, right?

A At that hearing I did, yes I believe I did

Q And at that prior hearing, you actually also said that you took notes during your meeting with Mr McDonnell?

A I thought I had Yes

Q In fact, I think you said, "I'm sure I did at the time "

A And I was mistaken

Q All right And so then after the hearing, you were actually asked to provide those to counsel, right?

A Yes, I was

Q And you didn't provide any notes after you were asked for them?

A I didn't provide them because I didn't have them

Q Instead what you did was provide a summary, right?

A I think I did by way of an e-mail, yes

MR FAULCONER: Your Honor, I'd like to show the witness what's been marked for identification as Exhibit 653 And I think we have to do this using the Elmo

BY MR FAULCONER:

Q It will come up on the screen in just a second

A Okay

Q Do you see that there, sir?

A Yes I'm reading it

Q Have you had a chance to read that?

A Yes, I have

Q And is this an accurate summary of the summary you put together with defense counsel?

A Yes

MR FAULCONER: Your Honor, we offer Exhibit 653 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, Mr Kosowsky, it took you about how long to read that just now, about a minute or so?

A A couple minutes, right

Q You agree with me that you had previously testified that your conversation with Mr McDonnell lasted somewhere in the range of 30 to 45 minutes, right?

A I think that's what the video conference was It was a video conference with a number present, including the Governor

Q But your testimony here today is that there was no information discussed in this 45 minutes that is not on this single piece of paper?

A Well, it's possible that I just don't remember it, but that's what stuck out in my mind Those were the goals that I had at the time to understand

Q All right

MR FAULCONER: We can go ahead and take that down

BY MR FAULCONER:

Q Now, to be clear, Mr Kosowsky, you testified a little bit about financial soundness, right?

A Yes

Q And you said that you came to the conclusion that Mr McDonnell, sister Maureen McDonnell, and MoBo were all financially sound in some form or another?

A In their entirety Yes

Q But you'd agree with me that you didn't do any independent appraisals of their real estate properties, did you?

A No, I did not

Q One of the things that you took into consideration in determining that financial soundness in an entity called Racehorse, LLC, right?

A Yes

Q And essentially what Racehorse is is it's Mr McDonnell's share in a law firm that he used to work at, or at least in the entity that owns the property, right?

A I believe it's an office building

Q And how did you come to the valuation for what Racehorse was worth for Mr McDonnell?

A I just used the K-1 capital account value at that time

Q So you essentially took whatever he told you and just used that?

A No I took the K-1 from the -- from his tax records, which is a common practice

Q But you didn't independently verify what that was actually worth?

A No I saw no need to

Q And with respect to Racehorse, it's not just that that's an asset that Mr McDonnell had That's actually something that produced income for him, right?

A It produces taxable income, and it also produces cash distributions

Q Right But I think the valuation of Racehorse, if I remember correctly, is somewhere in the range of 200, 225,000, right?

A I don't recall his capital account being that No

Q But you'd agree with me that if he -- whatever it was, if he sold that interest in Racehorse and got rid of it -- right? -- it's off the books --

A Right

Q -- he wouldn't have whatever income stream comes from it on annual basis, right?

A Well, in its place, he would have had whatever cash he received, which he would probably seek to use in some other way, by way of investment or otherwise

Q Right But regardless of what he does with that cash, he wouldn't have the continuing income stream year after year?

A Not from that No

Q And you didn't do any sort of independent market analysis to figure out how much cash he would have gotten from selling that, right?

A No No

Q Now, one of the other things that you said that you looked at was some retirement accounts, right?

A That's right

Q But to be clear, you didn't calculate what the penalties would have been for withdrawals from those retirement accounts, did you?

A Well, the Governor is over 59 and a half So there wouldn't be any penalties

Q There certainly would be potentially tax sequences to some of them, right?

A It would be taxed as regular income at whatever rate he might -- whatever rate bracket he fell in Yes

Q And certainly if you withdraw money from those retirement accounts, then they won't be growing anymore, right, or at least the money that you pull out won't be growing in the stock market?

A Well, it won't be growing in that But, again, if you took the cash out, paid the taxes and took that cash and reinvested in something else where the returns might be equal to what it would have been getting pretax, you know, who knows I mean, that's speculation

Q Well, to be clear, sir, you're an expert, right?

A I've been admitted as an expert here, yes But --

Q Okay And you're --

A But I'm not an investment expert

Q Okay And so -- you said something just a moment ago about Mr McDonnell being 59 and a half and not having penalties You were in court when Ms Uncapher, Ms Sister Maureen McDonnell, testified that the 60th birthday party was this past summer, right?

A Right

Q And so you'd agree with me that about Mr McDonnell was not 59 and a half yet in 2011 or 2012, right?

A Right But he is as of now

Q Right But you're aware that the money from Mr Williams came in 2011 and 2012, right?

A That's right

Q And at that time, there would have been penalties associated with withdrawals from those retirement accounts?

A Depending upon when he took it out

Q But you didn't go and figure that out, did you?

A I didn't see any need to

Q Now, I'd like to show you what's been admitted already as Exhibit 513 Now, if we could -- you're familiar with this document, right? These are the final financials for MoBo for 2012 We can flip through it for a moment if you need to

A I don't remember I may have seen it

MR FAULCONER: If we could flip to the second page of that document?

BY MR FAULCONER:

Q Does that appear to be the balance sheet as of December 31st, 2012, for MoBo?

A Just going from recollection, you know, the numbers look pretty close Yes

Q All right

MR FAULCONER: Now, if we could flip forward to, I think, the sixth page of this document, and if we could zoom in on the bottom half

BY MR FAULCONER:

Q Now, Mr Kosowsky, you were in court earlier today for sister Maureen McDonnell's testimony, right?

A Yes

Q And you remember there being some testimony about her saying, "Well, if there's a shortfall in MoBo, I could just make up the difference We wouldn't necessarily need any money from Mr McDonnell," something to effect, right?

A That's right

Q Now, you'd agree with me that here listed in the loans for MoBo, as of 2012 at the far right, sister Maureen McDonnell had contributed $80,101 56, right?

A Well, that's what's been recorded as loans, but it may not be everything that preceded the year 2008 that may have been recorded as a capital contribution

Q But at least as of 2012, the loans paid in by sister Maureen McDonnell were about $80,000?

A That's what it says

Q And as of 2012, the total loans paid in by Mr McDonnell was about $76,000, right?

A Yes That's what it says

Q So you'd agree with me that in terms of the total loans that were paid in by the two of them, it was pretty close to 50/50, right?

A As this is depicted, yes

Q All right Now, Mr Kosowsky, I'd like to start going through some of the charts that you showed us a little bit earlier today And I'd like to start with what was admitted as -- and I think on our system it's referred to a little differently, but you know which ones I'm talking about, right?

MS TAYLOR: Yeah

MR FAULCONER: All right So if we could go to Page 2 Actually, you know what For this one, I think we need to switch over to the defense system because there was a change this morning, Your Honor Okay So this is RM-0274-0002 All right And this has been admitted If we could publish it

BY MR FAULCONER:

Q Now, Mr Kosowsky, you talked to us a little about there being voluntary contributions in four of these five years, right?

A Yes, sir

Q And in 2009, what's the dollar amount that you have there?

A Zero

Q You would agree with me, Mr Kosowsky, that you leave out that there was a $9,000 withdrawal from the account that year, right?

A Well, this wasn't designed to talk about withdrawals This was designed to talk about contributions from his W-2

Q But you'd agree that withdrawals reduce the balance in the account, right?

A Oh, sure

Q And you'd agree with me that in 2009, there was about a $9,000 withdrawal?

A I don't recollect the exact amount I know there were some withdrawals that took place over the years

MR FAULCONER: Your Honor, I'd like to hand a document to the witness to refresh his recollection

BY MR FAULCONER:

Q Now, sir, if you could turn to the page of this document, there's a little yellow sticky note at the bottom right-hand corner that says 306 on the Bates stamp

A Yes I have it, sir

Q And if you could take a look at that, and let me know if that refreshes your recollection about the withdrawals from the account in 2009?

A Yes There's an indicated distribution of $9,105 50 that took place at some point in time during the year

Q And that's not shown on this chart of yours, is it?

A No

Q Now, you would also agree with me, Mr Kosowsky, while you still have this document, this chart here says Deferred Compensation Plan, right?

A Right

Q But you'd agree with me that there's actually two different accounts that are part of the Commonwealth of Virginia retirement accounts for Mr McDonnell, right?

A That's right There are two

Q One is called a deferred compensation plan, a 457?

A That's right

Q And one is called a 401(a), cash match plan?

A Right

Q But this plan here only refers to the deferred compensation plan?

A Yes

Q Now, that date there, April 30, 2012, can you tell us how you picked that date?

A I think that was a statement that was available that we were able to find

Q But you'd agree with me that the quarterly statements typically come on -- at the end of March or the end of June, right?

A I don't know

MR FAULCONER: Your Honor, I don't know if you want to break before I move on to the next chart

THE COURT: All right We'll go ahead and stop there

All right We made it through another day, and we still got 12 jurors So life is good Again, please don't discuss the case with anyone or allow anybody to discuss it with you, and don't review any media items related to the case And as always, be safe, and we will see you tomorrow Let me make sure I think it's 9:45, but let me take a look All right 9:45 We will see you in the morning

(The jury left the courtroom)

(The trial adjourned at 5:30 p m)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G McDONNELL,

Defendants

August 20, 2014
Richmond, Virginia
9:45 a.m.

JURY TRIAL - VOLUME XVIII

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S. DRY, ESQ
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JESSICA D. ABER, ESQ.
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JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day eighteen, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, and Christopher Iaquinto. Maureen G McDonnell is represented by Heather Martin, William Burck, Stephen Hauss, and Daniel Koffmann Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed, Your Honor

MR. BURCK: Maureen McDonnell is ready to proceed, Your Honor

MR. SMALL: Mr McDonnell is ready to proceed, Your Honor

THE COURT: All right Let's bring in the jury, please

(The jury entered the courtroom.)

All right, good morning Government?

CROSS-EXAMINATION (Cont'd)

BY MR. FAULCONER:

Q Good morning, Kosowsky

A Good morning

Q Now, yesterday we spoke briefly about some of your conversations with Mr McDonnell, right?

A Yes

Q About how many times total would you say that you have spoken to Mr McDonnell?

A Well, aside from the video conference, there was one other very brief encounter I had with him coming into the hearing back in July And since then, in the course of the last couple of days, I've just said hello

Q So about how many times do you think you have seen him in person?

A Well, in person would be one time in July, and what would be Monday, Tuesday, and today

Q So about four or five times total?

A That would be right

Q Now, to be fair, if we could pull up what was admitted yesterday as Exhibit 653 This has been admitted already, if we could publish it. This is that document summarizing the video conference that you had with Mr McDonnell, right?

A Yes, that's right

Q To be fair, even though you have only spoken to him a couple of times or met him a couple of times, you did discuss his father's estate with him, right?

A I'm not sure if it was with him or with counsel I just don't remember specifically

Q Well, here, the second bullet point in your summary of your conversation with Mr McDonnell makes a reference to his father's estate, right?

A Yes, that would refresh my recollection. It probably happened at that video conference

Q And you also talked in that video conference about sort of the tension between Mr Uncapher and sister Maureen McDonnell and some of the impact that that had on finances, right?

A Yes, we did

Q But Mr Kosowsky, despite discussing some of those personal things with Mr McDonnell, Mr Small asked you a question yesterday which was, I think he asked you, "You're not a personal friend or otherwise of Bob McDonnell, are you?" Do you recall that?

A I think he did ask me that, yes

Q And you answered, "No."

A That's right

Q And why was that?

A This is a complete business relationship There is no personal relationship whatsoever

Q And you in your profession, you are a businessman, right?

A Of course

Q And in your testimony here today, you are testifying as an expert

A That's what I have been admitted to do, yes

Q And when one of your clients approaches you, essentially what they are saying is, "You have knowledge or expertise that I, the client, don't necessarily have and I'd like you to help me out with that," right?

A Well, it is not generally done through the client It is probably done 99 percent of the time through counsel asking for that assistance

Q Got it But essentially, what the counselor is saying is, "You have some skill or some ability that I don't have, but you can share it with the jury," right?

A Often it is, you know, having the financial accounting knowledge and otherwise to assist counsel in giving legal advice

Q Now, when you as the expert witness, when you are hired or retained, you are not necessarily doing that because you are financially desperate, right?

A Oh, no

Q And when you agree to do it, the money that you get in exchange for the work that you do, you can spend that on whatever you want, right?

A Well, I pay my own salaries and bills, yeah, sure

Q And here, I think we talked about it yesterday, it is somewhere in the range of 60 to $80,000 total, right?

A That would be the total fees probably charged to date, yes

Q Now, I assume, you are not from here in Richmond, are you?

A No, I'm from Connecticut

Q And so I assume you stayed over last night, right?

A I did

Q And that, again, was paid for through your compensation as an expert?

A It would be one of the billable expenses, yes

Q And since your testimony yesterday, about how many more hours of work did you do since we left here yesterday?

A None

Q And yesterday, I asked you about how many federal criminal trials you have testified in, and you said one You recall that, right?

A That's correct, right

Q But to be fair, you did say that you had worked on several criminal trials, right?

A I've worked on quite a number of criminal matters, some of which have gone to trial

Q And on how many of those criminal matters were you hired by the government?

A I've never been hired by the government

MR. FAULCONER: So I'd like to now go to one of the charts that we talked briefly about yesterday, and that's RM-0274-0002 This has already been admitted. I think it is just RM, not RFM. If we could switch over to the defense system. Let's go back over to our system. We have it

BY MR. FAULCONER:

Q Mr Kosowsky, you recall us looking at this chart yesterday, right?

A Yes

Q And this is based off of some of the retirement statements, right?

A Yes The contributions are from the W-2's of the Governor and the account value is a total account value of the accounts he had in total as of that date

Q With the assistance of the Court Security Officer, we looked at this briefly yesterday, but I would like to hand up a paper copy of Exhibit 662 Now, sir, this is a stack of retirement account statements for Mr McDonnell, right?

A The title page says 457 Deferred Compensation Plan.

Q If you flip through those, you recognize the pages here as pages from his retirement statements, right?

A Yes

MR. FAULCONER: We would offer Exhibit 662 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q Now, I think we can probably do this without having to put it up on the Elmo by just you and I looking at these numbers If you could turn with me to the blue sticky note, there's little tabs you see on the right?

A Yes

Q Do you see the blue one that says 3-31-12?

A Yes

Q If you could turn to that one --

MR. SMALL: Which exhibit is this?

MR FAULCONER: This is Bates stamped 0367, about two-thirds of the way back

BY MR FAULCONER:

Q You see that is the statement ending March 31st, 2012 for the Deferred Compensation Plan, right?

A Yes, sir

Q And the balance that's listed on the Deferred Compensation Plan for March 31st, 2012, is $34,009 75. Right?

A Yes, that's right

Q Now, the dollar amount that you have here on your chart for deferred compensation says 192,300, right?

A That may be That's maybe misleading It is really the total accounts, both accounts

Q So when you say here on your chart "Deferred Compensation," what you really mean is deferred compensation plus the Cash Match Plan, right?

A Plus whatever the 401 plan was or the 403 plan.

Q If you turn to the orange sticky note, the next one, March 31st, 2012, this is 370 Bates stamp.

A Right

Q That's the remainder of that balance, right?

A Yes, $158,043 35

Q But you would agree with me, sir, that on here where you have Deferred Compensation and you have that account number, you are listing out the voluntary contributions, right?

A That's right

Q But there were no voluntary contributions to that Cash Match Plan, were there?

A Not that I found, no

Q Now, one of the things that I think you said yesterday, sir, was that one indicator of financial soundness or one factor that goes into that is that if somebody is contributing to their retirement, that tends to indicate that they have some disposable income, right?

A Yes

Q But you would agree with me, sir, that in 2009 here on your chart there are zero contributions, right?

A That's right

Q And then it increases a little bit in 2010 to $2,100, right?

A That's right

Q But then the big increase is really in 2011 and 2012, right?

A Yes That's what the chart shows, yes

Q And it is about 14,000 in 2011 and about 20,000 in 2012

A 14,400 and 22,500, sir

Q Mr Kosowsky, you are aware that the 14,400 in 2011, that was the same year that the McDonnells received $50,000 from Jonnie Williams?

A It is the year that Ms McDonnell received the $50,000

Q We will get to that later, but it is the year that a $50,000 check went into Ms McDonnell's bank account, right?

A At some point in time, yes

Q And the 2012 figure there, that's the same year that $70,000 from Mr Williams came into the MoBo Realty account, right?

A That's true

Q And this balance that we have of 192,300 that you are looking at here, I think you said earlier that if this was withdrawn before Mr McDonnell got to 59-and-a-half, there would potentially be penalties associated with withdrawal from this account, right?

A Under the tax law there is a ten percent early withdrawal penalty

Q But, sir, you said yesterday that you never went and actually looked at the terms of this account to determine exactly what the tax or penalty consequences would have been, right?

A No, I relied on my tax knowledge

Q But you never calculated it, did you?

A No I saw no reason to

Q And after I asked about it yesterday, you didn't calculate it overnight?

A No.

Q So sitting here today, you can't tell us exactly how much out of that 192,000 Mr McDonnell would have had to pay in penalties or taxes if he had actually chosen to tap into this account, do you?

A Well, to be clear, at what moment in time? Generally speaking, just as a principle, prior to his turning 59-and-a-half, he would pay a ten percent penalty of the amount withdrawn, plus whatever tax happened to result from including that in his income for that year, however that calculated out

Q So when you say "whatever tax" and "however that calculated out," that's a calculation that you never did.

A No.

Q So I'd like to go to RM-0274-0012, which has already been admitted. This is essentially showing those same two plans but later in that year, right?

A That's correct

Q And that earlier chart, I think, if I'm correct, was about $192,000, right?

A Yes

Q And that was April 30th of 2012?

A I think that's right

Q And you are aware that on May 22nd of 2012, $20,000 from Mr Williams went into the MoBo account, right?

A Yes

Q And this retirement account, by the end of 2012, after that payment from Mr Williams, has gone up by about $17,000, right?

A Yes, from the April 30th date, that would be about right

Q And sir, just so I'm clear, the title of this chart that you have here says "RFM Additional Savings "

A Yes

Q Sir, you are obviously aware that these plans, these aren't like a normal savings account where you can just pull money out without a penalty, right?

A No, I understand that

Q But it doesn't say that on your chart, does it?

A It doesn't specifically say that in the header, but to be clear for the jury, it is the summary of the two retirement accounts as we would look at them.

Q If we could flip forward to RM-0274-0013, which has already been admitted. Now, this is the same, a similar sort of analysis that you did for sister Maureen, at least the first two rows, right?

A Yes, sir

Q Those are the two retirement accounts that you talked about reviewing the records for with respect to her

A Yes, sir

Q Now, to be clear, again, those top two accounts, those are the ones that would have tax consequences or penalties associated with withdrawals, right?

A Oh, yes

Q And sir, I noticed on this chart, the first two rows say 9-30-2012, right?

A Right

Q The bottom row for the cash account says 12-31-2012

A Yes, sir

Q That number there that you have, you didn't calculate what that number would have been on 9-30-2012 across all three accounts, did you?

A Unfortunately, those records were not made available

Q You didn't calculate it for what it would have been all on 12-31, 2012

A Again, unfortunately those records were not available I sought them, but they were not available

Q But to be clear, sir, you also testified yesterday about sister Maureen McDonnell mentioning some additional accounts, right?

A That's right

Q You never reviewed any paperwork for those additional accounts

A Right, which is why I didn't include them in the chart

Q But you added them in during your direct examination yesterday, right?

A Based upon the testimony, yes

Q We can take that one down Based on your review of the accounts, that was sister Maureen's retirement Can you tell us in total how much money sister Maureen transferred into Mr McDonnell's bank account from 2009 to 2012?

A I don't know.

Q But you do know that Mr Williams gave $50,000 that went into Ms McDonnell's bank account, right?

A That's correct

Q And the $70,000 that went into MoBo's bank account

A That's right

Q So I'd like to talk a little bit then about MoBo Realty I'd like to show you what's been previously admitted as RM-0274-0015 Now, sir, this is the chart that you showed with respect to mortgage principal paid by MoBo, right?

A Yes

Q And looking at this chart, essentially what you were saying was, "Hey, look, the principal amounts go down on each of these loans and so that means they are doing something good, they are paying down principal," right?

A Right

Q And each of the ones that you show here, they go down over time, right?

A They do

Q But, sir, it is true that this chart does not include some loans on which Mr McDonnell and his sister didn't pay down any significant principal, right?

A Correct These are the mortgages as opposed to the other loans, which were not documented as mortgages, to my understanding This is secured debt

Q Well, sir, keeping in mind that figure you have for TowneBank there of $705,000, I'd like to turn to what's been already admitted as Exhibit 604 Sir, do you see the fourth line down there?

A Yes

Q That's a TowneBank mortgage, home equity line of credit, right?

A Yes

Q That's not included on your chart, was it?

A No, it is not

Q And on that one there was only $74 paid down in principal over four years, right?

A That's right Because it was a line of credit that remained static over time, except for the $74

Q And these other loans that are listed here, the Maureen Uncapher loan, that's sister Maureen McDonnell, that balance goes up over all four years, right?

A Right And while it might be characterized as a loan, I would look at it as capital

Q But on their books it is a loan, right?

A As characterized

Q And John McDonnell listed the next one down, there is no principal repaid from '09 to 2012 on that loan, was there?

A That's right

Q The Bob McDonnell line there, that number goes up over the course of the last three years, right?

A Similar to his sister, yes And again, I would view that as capital

Q But it is on their books as a loan.

A I understand.

Q I'd like to show you what was previously admitted as RM-0274-0016 Sir, this is the chart that you showed us showing the gross rents for MoBo and then interest expenses over time, right?

A Yes, sir

Q But you would agree with me that interest expenses are not the only expense -- not the only cash disbursement out of the MoBo account, right?

A Oh, no, of course not

Q All right So this chart that we are looking at here, this doesn't include principal like we saw in that other chart, does it?

A No, it doesn't

Q And this doesn't include something like maintenance, does it?

A No That wasn't the intent of the chart

Q And it doesn't include repairs, does it?

A No

Q Doesn't include something like professional or realty fees?

A No

Q It doesn't include any costs for capital improvements

A No.

Q Well then, I'd like to show you the next page, I believe, RM-0274-0017, previously admitted. So sir, here, what this chart was showing was the blue line is basically the rents for MoBo, right?

A Correct

Q Then the red line down below, that's the interest expense

A Yes

Q But that red line doesn't include, as we just talked about, any of those other expenses or cash disbursements from the account

A Correct, that wasn't the intent of the chart

Q Go to RM-0274-0018 Now, this is a chart that does show some of the disbursements from the account in the rental real estate expenses row, right?

A Yes, it shows all of the disbursements with the exception -- all of the disbursements that would enter into the calculation of taxable income except for depreciation, which is a non-cash charge And then there would be at least two other general categories of disbursements that one would think of One would be the mortgage principal reduction and capital expenditures to the extent that they were made over time Just to give it a holistic view

Q So to try and figure out what that sort of holistic view number would be, let's look at what's been previously admitted as Government Exhibit 602-A. Now, sir, you would agree with me that this chart shows basically the same first three rows from the chart we were just looking at, right?

A That's right

Q But then this chart actually includes those other two things, loan principal repayments and capitalized expenses, right?

A Yes

Q I have a calculator here, just because I know you do this for a living, but I don't I'd like to total up what the three amounts are and make sure we get a total on that

A Which three amounts are you talking about?

Q Let's start with rental real estate expenses That's $206,600

A Okay

Q If you add that to 79,395, that gives you about $285,995, right?

A 286 to be rounding it simple

Q Then if you add on 30,040, that gives you about

$316,000, right?

A That's right

Q If we could go back to RM-0274-0018 0017 Sorry You would agree with me, sir, that the total figure we just calculated of $316,035, that would be off the top of this chart, right?

A I'm sorry, what was it again? If you'll just repeat that, please

Q The number we just calculated of the total cash disbursements in 2012 was $316,000 or so, right?

A For those categories, right

Q And that number, if you actually compared it to this blue line here, would be off the top of this chart

A Yes, it would Sure, of course, because the top on the left-hand axis, the top is 250 You would have to bring it up to 325 for the sake of argument

Q Got it So then the difference between those two things, between that blue line and the line that we would add if we were doing all the cash disbursements, that gets made up for through either owners contributions or loans from third parties, right?

A Either loans or contributions, that's right That's the other source of cash that would fund the differential

Q So that would be something like the John McDonnell loan from the father, right?

A Early on, yes

Q Or later on, something like the Dr Davis loan?

A Correct

Q Or even later on than that, something like the Jonnie Williams loan.

A Correct

Q So let's move away from MoBo and look at Mr McDonnell's income I'd like to show you what was previously admitted as RM-0274-0003

A Yes

Q This is the chart that you showed us about Mr McDonnell's income, right?

A Correct

Q You said that 2009, I think, when you were asked about it, you said that that year where the wages go down, that was the year that he resigned to run for Governor, right?

A That's my understanding, correct

Q But you would agree with me, sir, that when you actually look at the adjusted gross income, the adjusted gross income for Mr and Ms McDonnell is actually higher in 2009 than it was in 2008, right?

A That's right

Q And if we could go to what's been previously admitted as 636 Zoom in on that This is the W-2 for Huff, Poole

& Mahoney from 2009, right?

A I believe so, yes

Q And that $123,173 87, that's income that Mr McDonnell got from that source, right?

A Those are his wages from that firm, yes

Q Of course, you yourself don't know how many hours he actually billed through Huff, Poole & Mahoney, do you?

A I don't know

Q You do know he was running for Governor that year.

A That's what I was told, yes

Q If we could go back to RM 0274-0003 You would agree with me that the number you have here for adjusted gross income, this doesn't include any withholdings for tax purposes, does it?

A No, of course not

Q And this doesn't include any fixed expenses, does it?

A No, it would not include any fixed expenses It is simply income, except for whatever the share of taxable income or loss was from the various partnerships that he was a member of

Q Exactly So this chart isn't actually showing how much disposable income is left after fixed expenses and taxes, is it?

A No, it wasn't intended to do so

Q You did review Mr McDonnell's tax returns, right?

A Yes

Q So you are aware of how much, at least in expense, he had to pay in mortgage interest alone on his personal residence every year, right?

A Oh, sure

Q With the assistance of the Court Security Officer --

MR. FAULCONER: Your Honor, on this one I'd like to use the Elmo for what's been marked as Exhibit 663

THE COURT: All right

BY MR FAULCONER:

Q Now, you agree with me that this is one of the source documents from the taxes for Mr McDonnell, right?

A Yes

Q You agree with me that this is something that was pretty common; he would put things in handwriting and give it to his tax preparer

A Yes, he did

MR FAULCONER: We would like to offer what's been marked as Government's 663 in evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q On this page, Mr Kosowsky, if we go down a little bit as I slide this up, do you see there in the bottom right where it says "Interest"?

A Yes, I do.

Q And it says "PFCU Home 40,454 " Right?

A That's right

Q It says "NFCU Home, 10,126 "

A Yes

Q So that shows Mr McDonnell's note here, total mortgage interest for 2009 of $50,580, right?

A That's right

Q So, sir, if we could go back to RM 0274-0003 You would agree with me that if you take $50,000 off of 190, that takes us down to 140, right?

A Sure

Q And then you are also aware, I won't go through the calculations here in Court, but that he paid somewhere in the range of about $58,000 worth of deductions or withholdings -- not deductions, sorry There were about 58-or-so-thousand-dollars' worth of withholdings that year

A I'll take your word for it

Q Does that seem about right?

A I would have to look at the W-2's, but I think there were at least the two W-2's, maybe three, and then there were some retirement distributions, and I don't recall whether there was any withholding on them or not

Q Got it If we assume somewhere in the range of 50 to $60,000 worth of withholdings, plus the $50,000 in mortgage interest principal on the personal residence, that could well bring that number down to around under $100,000 left in disposable income, right?

A Yeah, that's about right

Q Now, sir, of course what we just talked about was just mortgage interest on the principal residence, right?

A Correct

Q We didn't talk about any other sort of mandatory expenses

A What would they be? Go ahead

Q Didn't talk about anything related to raising children or food or expenses like that, did we?

A Oh, no. Living expenses, you mean.

Q Right So you never calculated what actually were Mr McDonnell's month-to-month or year-to-year fixed expenses, did you?

A Well, characterizing them as "fixed" means they are never going to change There may be categories that might be fixed, but the amounts could vary from time to time

Q Got it But in terms of the amounts varying from time to time, you don't know how much they would vary because you didn't calculate it

A No.

Q But you would agree with me that once you figure out whatever that fixed expense is and you compare it to the income, what that leaves you with is disposable income, right?

A That would be what would be left over, that's right

Q Disposable income That's the sort of money you spend on things like vacations, right?

A Could be

Q Sort of money you spend on things like luxury clothing?

A Possibly

Q Luxury watches?

A Possibly

Q Golf?

A Sure

Q But this chart here, this doesn't show how much disposable income the McDonnells had for those things, does it?

A No

Q You also never calculated how much money for those things the McDonnells got from other people, did you?

A No, I did not

Q You never reviewed Mr McDonnell's SOEI's, did you?

A No, I've never seen them.

Q When you interviewed him, you never asked him about any gifts from people he said were his personal friends that weren't on his SOEIs, did you?

A No

Q All right So if somebody doesn't have enough disposable income to do whatever they want to do in terms of vacations, golf, watches, one of the options that they have is to put those types of expenses on their credit card, right?

A It is an option.

Q I'd like to show you RM-0274-0007 Now, sir, this is one of the charts that you talked about yesterday, right?

A Yes

Q And this showed as of May 1st, 2011 what you calculated Mr and Ms McDonnell's credit limits to be

A That's right From the statements Those were the limits per the cards

Q To be clear, sir, credit limits, can you tell us, would you consider unused credit limit to be a liquid resource?

A Well, it is a resource, sure I mean, it is an available line of credit that one could use as long as the credit line remains outstanding, sure

Q But would you consider it a liquid resource?

A Well, it would be liquid -- you have to differentiate between what might be a cash advance amount, and cash advance amounts are generally less allowed than the credit limit So you could perhaps max out your credit card by buying things, but if you wanted to take a cash advance, generally the cards or the lines of credit reduce that by maybe about ten percent

Q Sir, maybe to go at this a different way --

THE COURT: I would like an answer to the question Do you consider credit capacity to be liquid?

THE WITNESS: Yes It is a liquid resource, Your Honor

THE COURT: All right

BY MR FAULCONER:

Q But you agree that cash would be a better liquid resource, right?

A Oh, sure

Q Now, I think, if I'm correct, Mr Kosowsky, you have also previously characterized loans as a liquid resource, right?

A Well, if you have a line of credit, that is a liquid resource, sure

Q But typically, sir, you agree with me you wouldn't characterize a debt as an asset, right?

A Oh, no

Q But credit card charges, that's debt, right?

A Sure

Q Loans, that's debt?

A Right

Q And debt typically isn't something that you refer to as a liquid asset, right?

A No You wouldn't characterize it as a liquid asset But to the extent that there is a line of credit that allows you to draw on it, that is money that is available to you So that's a liquid resource, to answer Your Honor's question

Q Okay Just so we are clear for the record, could you define exactly in your expert opinion what you believe the term "liquid" to mean?

A Well, liquid means that it is readily available, that one can access it virtually on a daily basis, you know, something that you can get right away

Q So from your perspective, liquid resource would include any mortgage?

A No It would not include any mortgage It would only include, for example, a home equity line of credit where you had available credit that you could draw upon if you needed it That would be the liquid resource amount

Q But if you use those types of liquid resources, like a line of credit or credit card, that creates additional debt, right?

A Sure

Q And then that puts you in a worse financial position than you were before you used that liquid resource, right?

A Well, sure, you have to pay it off or have some way to discharge it over time

BY THE COURT:

Q How is it that you determine that this is a good thing, that it shows a sound financial situation by creating debt?

A Well, Your Honor, I think the point here is that the Governor had the ability to access credit to meet his obligations

Q What I am hearing from you, he had the ability to create a debt

A He did

Q And that made him better off

A Well, it meant that the credit institution saw him as creditworthy, and that he could use that debt as he saw fit in his business enterprises or personally

BY MR. FAULCONER:

Q So sir, let's compare this debt that we are talking about here to the debt that the McDonnells incurred from Mr Williams With the assistance of the Court Security Officer, I'd like to hand up to you what's been marked for identification as Exhibit 660

MR FAULCONER: Your Honor, I'm going to have to go back to the Elmo on this one

THE COURT: All right

BY MR. FAULCONER:

Q Actually, Mr Kosowsky, just to help us keep track of things, I'd like to hand up to you a copy of your charts that we have been looking at And specifically, I'd like to direct your attention to the page that has those credit limits listed on it that we were just looking at a moment ago Okay?

A Sure

Q All right, sir Now, looking at the stack of documents that I handed up to you that's Exhibit 660, you would agree with me that these are pages from the credit card statements from May of 2011, right?

A I'm looking at them quickly, sir They appear to be

MR. FAULCONER: We would offer Exhibit 660 into evidence

THE COURT: It will be admitted

MR. FAULCONER: Your Honor, if I may publish it on the Elmo?

THE COURT: Go ahead.

BY MR. FAULCONER:

Q Now, sir --

MR FAULCONER: I may need Ms Taylor's help on this one I learned I shouldn't try to do that Ms Taylor is better at that, I think, Your Honor

BY MR FAULCONER:

Q Now, looking at this document, sir, the first page, this is the PenFed Visa account, right?

A That's right

Q Now, on the chart that you have for the credit limits, the number for that account ends in 0124, right?

A That's right

Q Now, on this bill here, the account number there in the middle left, that says the account number is actually 8647, right?

A Right

Q But to be fair, the credit limit of $20,000, that matches what's on your chart, right?

A Yes, sir

Q All right Now, on the front page of this document, do you see there where it says "Interest Charge" on the right side, $26 71? Is that right?

A Yes

Q And then if you go down below that, you see that it says that "If only the minimum payment " if we can just slide that up a little bit, Ms Taylor A little bit further "If only the minimum payment is made on this card it will take 17 years to pay it off," right?

A That's right

Q And "If $309 per month is paid, it will take three years to pay it off "

A Yes

Q If we can flip to the next page You see there where it has the interest charge calculations, right?

A Right

Q And it says that purchases on this card will be 12 49 percent interest, right?

A Right

Q Same with cash advances?

A Well, same for cash advances, and then a balance transfer cash rate is 2 9 percent

Q 2 99 percent, right?

A Right

Q You would agree with me that every one of those rates is higher than the two percent three-year loan from Mr Williams, right?

A Oh, sure

Q So let's go to the next card The next card on the next page is the Bank of America card, right?

A Right

Q Now, the Bank of America card, this one ends on the statement in 2576, right?

A Right

Q On your chart, I think it says 1342, right?

A Yes

Q Now, regardless, the credit limit available is the same as what's on your chart, right?

A Right

Q And here, I think that if we go to the second page of this document, this shows the balance transfer rate of 9 99 percent, right?

A Right

Q And cash advance of 17 99?

A Right

Q Purchases, 9 99

A Right

Q All of those are higher than a two percent rate from Mr Williams, right?

A Oh, sure

Q Now, it does show there a zero percent promotional APR, right?

A Right

Q And that's for essentially something similar to a balance transfer or a convenience check?

A Probably

Q But to be clear, sir, you have never heard of a promotional APR that lasts for three years, right?

A No They generally don't

Q But the Mr Williams loan, that was a three-year balloon note, at least according to your understanding

A That's my understanding, correct

Q Let's go to the next card. This is the Citi card, right?

A Right

Q And this one shows here, if you look at the interest charged on the May, 2011 statement, it shows interest charge of $13 46, right?

A Correct

Q If you go to the next page, that shows an APR for purchases of a little over 12 percent, right?

A Right

Q And advances of a little over 20 percent?

A Right

Q And again, both of those are higher than a two percent from Mr Williams, right?

A Yes

Q So let's go to the next one This next card, this one shows on the first page, it looks like a pretty small interest charge of only $8 that month, right?

A Right

Q If you go to the next page, this shows purchases -- sorry, APR for purchases of over 17 percent

A Yes

Q And all of the rates shown on this one are bigger than a two percent rate, right?

A Yes, they are

Q And typically, all of these cards would require some sort of minimum monthly payment

A One would expect, sure

Q Now, going to the next one, this is the Sears MasterCard, right?

A Right

Q And this one shows an interest charge that month of about $20, right?

A Yes

Q If you go to the next page, this one shows over 25 percent for either purchases or cash advances, right?

A Right

Q And it does show a little bit lower for a balance transfer, right, 3 99?

A Yes It is quite a bit lower, 3 99 percent

Q Regardless, that's still double two percent, right?

A Sure

Q If we go to the next one, this is the USAA Visa, right?

A Yes

Q And this one, if we go to the second page, this shows interest charges of about 7 75 percent, right?

A Yes, sir.

Q That is larger than a two percent three-year balloon payment, right?

A Right
Q Then I think we are almost to the last one here The next page, that's a Costco card, right?
A Yes, I think that's correct
Q And if we flip forward one page, then one more page, we see there that this one is 27 percent, right?
A Right
Q And if we go to the next one, this is another Costco card, right?
A Yes Some confusion on this, but --
Q And then if you -- and again, these cards would typically require some sort of minimum monthly payment, right?
A Correct
Q Okay Now, you can set those aside We will come back to some of those statements in just a moment But I'd like to show you what was previously admitted back on to the regular system -- thanks, Ms Hancock -- what was previously admitted as RM-0274-0005
A Yes, sir
Q Now, this is that chart that you showed us of credit card balances over time, right?
A Yes
Q Now, I'd like to show you for purposes of witness identification only, this is a page that hasn't been

admitted, RM-0274-0006 Now, this is a version of that chart that you showed us yesterday, but this is actually on a graph, right?

A Correct

MR. FAULCONER: We would offer RM-0274-0006 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q All right Now, sir, essentially what this is is the same list of credit balances and dates, but put on a graph over time, right?

A Yes, sir

Q Now, on this chart, you have added on a little box and an arrow that says "JW Loan To MM." Right?

A Right

Q Now, to be clear, sir, you never saw any paperwork showing that that was a loan to Maureen McDonnell, did you?

A No, other than the deposit into her account I mean, that was the only documentation that I believe I saw

Q So what you essentially saw was the check and where it was deposited

A Right

Q Now, sir, yesterday you said that you reviewed some portions of the transcript of Mr Williams' testimony,

right?

A That's right

Q I don't know exactly which pages you reviewed, but I'd like to show you a couple more I'd like to show you what's been marked for identification as Exhibit 805 Now, Mr Kosowsky, this says at the top of this document that this is a page from the cross of Jonnie Williams, right?

A That's correct

Q And looking at this page, this is not a page that you reviewed before you created that other chart we were just looking at, was it?

A No, it was not furnished to me

Q Well then, I'd like to read, and you just read along with me and tell me if I'm reading this correctly, from Lines 6 through 13 of this

MR. FAULCONER: Your Honor, I'll just read from it so we are not entering the whole page Is that okay?

THE COURT: All right

BY MR. FAULCONER:

Q On Line 6, Mr Williams says, "Answer: I viewed this $50,000 loan as what I viewed the first one as, they were in trouble financially and I was helping their family out Question: And that first loan was to her, was it not? Answer: The first loan was Question: Okay Answer:

The first loan, the check was made out to her, but the loan from my perspective was to both of them "

Did I read those passages correctly?

A Yes, you did

Q Now, sir, if we could go back to RM-0274-0006, this one has been admitted So you hadn't read that page of that transcript, or at least it hadn't been given to you before you put this on your chart, right?

A No

Q All right Now, I'd like to go back a page to RM-0274-0005 And what I would like to do, sir, here, is focus on where you got some of these numbers from. Now, you say in your numbers here that in May of 2011, the balance was $14,334 63, right?

A That's my recollection, yes

Q All right

MR. FAULCONER: Now, Your Honor, I'd like to switch back over to the Elmo

THE COURT: All right

BY MR. FAULCONER:

Q And sir, this is Exhibit 660 These are the May statements we just looked at, right?

A Yes

Q I'd like to walk through each of these statements and total up what the balance was for each month And I have a calculator here that I will try to do it on so I don't get anything wrong You would agree with me that the first balance there is 10,638 83, right?

A Yes

Q If you turn to the next one, you agree with me that that next balance is 9,900, right?

A Yes

Q If you turn to the next one, you agree with me that this one says 817 11, right?

A I'm just trying to find it

Q Sorry

A Yes, I see that

Q If we go to the next one, this one shows a balance of 694 94, right?

A That's right

Q If you go to the next one, this one shows a balance of 5,780 67, right?

A Correct

A Correct

Q All right, going forward to the next one, this one shows a balance of $2,806 36, right?

A That's right "New balance," it says

Q Now, going to the next one, this one shows $459 09

A Correct

Q Then the last one shows the new balance of $100,

right?

A Yes, new charge of $100

Q Now, sir, you would agree with me that the numbers we just totaled up are well over -- are just a little over $31,000, right?

A I think that's what the total was on your calculator, right

Q If we could go back to RM-0274-0006, the number that we just calculated for May would be over that line for $30,000, right?

A Yes

Q But you have the number for May as down there less than $20,000, right?

A Right

Q And, sir, based off of the calculations we just did, your number for May is not correct, is it?

A No, because I'm looking at it at the end of May So --

Q Hang on, sir You put here on your chart "May 23rd, 2011, JW Loan To MM." And you put that arrow at around $15,000, right?

A Yes, that's right

Q But, sir, I'd like to show you what's been already admitted as Exhibit 127 This is a payment from Mr. McDonnell on May 24th, 2011 to one of those credit cards for $10,638 83 Right?

A Right

Q And this was paid with money from the $50,000 from Mr Williams, right?

A Right

Q Now, I'd like to show you what's been previously admitted as Exhibit 132 Now, this is a check for $9,900 to the Bank of America credit card that was on your chart that we were looking at just a moment ago, right?

A That's right

Q And this is May 25th, 2011

A Right

Q And this was also paid with the money from Mr Williams

A Correct

Q If we could go back to RM-0274-0006, now, those two payments alone that we were just looking at, the 10,600 and the 9,900, that totals more than 20,500 paid from Mr Williams' loan, right?

A Right

Q But you have Mr Williams' loan listed here where the credit card debt is less than the amount that they paid with Mr Williams' loan, right?

A No, I don't think -- I think that's misinterpreting the schedule We are looking at the balances as of April coming down through that May time frame And there were also additional charges that took place, you know, during that same month as we were just looking at the credit card statement So that's after, I see that as after the payments from Mr Williams' loan

Q Sir, to be clear, we just calculated that before Mr Williams' payment there was more than $30,000 in credit card debt, right?

A Correct

Q Here, you have Mr Williams' loan listed where the credit card debt is less than 20

A Well, it is listed that way, but I was using some of the payments in reducing that credit card balance ultimately to a lower number at the end -- at the end of May

Q Let's look at what your chart shows here. It does show from the line that's just over $30,000 a pretty steep drop down to somewhere in the range of 14 or so, right?

A That's right

Q And sir, you would agree with me that drop results from the $20,000 that was paid from the loan from Mr Williams, doesn't it?

A In large part

Q So that arrow for "JW Loan To MM," that should be on the other side of that steep decline, right?

A Yes, it probably could be, sure

Q Should be, sir, right?

A For fairness, sure

Q All right Now, sir, I'd like to talk about how exactly one of those two credit cards that we were just looking at was actually paid off If we could go back to Exhibit 132, which has been previously admitted. So this is the $9,900 payoff of the Bank of America account, right?

A Right

Q And you are aware that this credit card was in Mr McDonnell's name, right?

A I don't remember that it was in his name or in her name I looked at them as being together

Q So you treated them as essentially one and the same.

A Right

Q Now, I'd like to go to what's been marked for identification as Exhibit 808 Now, sir, this is the December statement for that Bank of America credit card, right?

A Yes, December 16th -- well, it says December 16th, 2010

Q December of 2010

A Correct

MR. FAULCONER: We would offer Exhibit 808 into

evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, sir, this December, 2010 statement, and we are going to go over just a couple of these, this one has Robert F McDonnell listed as the name on the account, right?

A Right

Q Now, if you could look down into where it has transactions, it actually shows that in December, 2010, that credit card is paid off down to zero, right?

A Right

Q But down below that, it does show that the total interest charged in 2010 on this credit card was what?

A $1,434 94 for the year to date

Q So now I'd like to show you what's been marked for identification as Exhibit 807 Now this, sir, is the statement for that same card for April of 2011, a couple months later, right?

A Yes

Q And this would be the statement before the May statements we were just looking at

A Yes

MR. FAULCONER: We would offer Exhibit 807 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, sir, this credit card is still in Mr McDonnell's name at this time, right?

A Yes, it is

Q Now, if you look down in the transactions section, if we could zoom in just on that, that shows a transaction date of April 13th, 2011, right?

A Yes

Q And what it shows is a balance transfer and it says "USAA," right?

A Right

Q Then it shows an amount of $10,000 Right?

A Yes

Q Essentially, what that is is a balance transfer from a USAA credit card over to this one

A That's what I believe it is, yes

Q Now, it also shows below that that there is a balance transfer fee for doing that of $400, right?

A Right

Q And $400 into 10,000, that's a four percent fee, right?

A Correct

Q And so essentially what this shows is that there was a balance transfer over to this card and they had to pay a four percent fee to do that, right?

A Right

Q Well now, I'd like to go to what's been marked for identification as Exhibit 809 Now, this is the April, 2011 statement for that USAA card, correct?

A Yes, I believe that's what it is, Attorney Faulconer

MR. FAULCONER: We would offer 809 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q Now, if we can zoom out just a little bit If we can go to the -- zoom in on the Summary of Account Activity Do you see there where it lists payments as $12,101 62?

A Yes, I see that

Q Now, real quick, if we can go to what's been marked as Exhibit 806 This is a check from Mr and Ms McDonnell's Beach Municipal Federal Credit Union account dated April 12th of 2011, correct?

A Right

MR FAULCONER: Your Honor, as soon as we get that one redaction done, we would offer Exhibit 806 into evidence

THE COURT: It will be admitted.

BY MR FAULCONER:

Q Now, sir, this is a check to that USAA credit card for $2,181 62 Right?

A Right

Q And that's from Mr and Ms McDonnell's account, right?

A Right

Q If we could go back to Exhibit 809, and zooming in again on the transaction history, what this one shows is that same, the check that we were just looking at, $2,181 62, combining with that balance transfer to pay this card off, right?

A That's right

Q Now, if we could turn to the second page of this document and zoom in on the lower half, that shows that the interest rate on this account was 7 75 percent, right?

A Right

Q And so essentially, what we see here, Mr Kosowsky, is that in order to avoid hitting the 7 75 percent, they pay four percent on a balance transfer fee to move it over to another card, right?

A Right

Q But that four percent, of the card where they had to pay that balance transfer, eventually they would have to start accruing interest on that card, right?

A Sure

Q And we said earlier that even a promotional rate typically doesn't last for three years, right?

A No, that's right

Q What would you say is about the average?

A Usually six months, sometimes a year

Q So after that they would be hitting whatever the interest rate is

A If the balance remained, sure

Q So if we could go back to Exhibit 807, if we could go to the second page, third page, and zoom in on that there So that shows that after whatever promotional period would have ended, the interest rate on this had nothing changed would have been right around ten percent, right?

A Right.

Q But instead, what you know happened from looking at the records is that they used money from Mr Williams to pay off this credit card that's in Mr McDonnell's name

A To pay this one off? This was the balance transfer and the $2,100 from the Beach account?

Q Right, sir So they transfer the USAA balance over to this one, right?

A Right

Q And then in the next month, May of 2011, they use $9,900 to pay the rest of this card off, right?

A Thank you for refreshing my recollection That's right

Q So they used the money from Mr Williams to avoid having to hit this ten percent interest rate after the promotional period ends

A That's right

Q You are aware, of course, that Mr Williams' loan didn't require any sort of regular monthly payment, right?

A That's right

Q And there was no interest charged on that loan until after the loan was -- until the time that the loan was ultimately paid off, right?

A I don't think there was any interest charged and paid. It was paid at the time that it was discharged

Q Got it When it was, it was about two percent or so, right?

A I think that's right

Q All right Now, I'd like to turn your attention now to the chart that you talked about yesterday, RM-0274-0009 Now, moving away from credit cards for a moment, this shows what you calculated the cash available to be as of May 1st, 2011 in Mr and Ms McDonnell's accounts, right?

A For those three accounts, right

Q And you calculated it as $12,861 26 Right?

A Right

Q Now, to be clear, May 1st, 2011, that's before the money comes in from Mr Williams, right?

A Yes

Q And the money from Mr Williams that comes into one of these accounts that you are grouping in here, the MM Wells Fargo; right?

A I believe that's right

Q You would agree with me that this number here, sir, this is not enough money to pay off $20,000 in credit card debt?

A Oh, no

Q You would agree with me that this is not enough to buy $30,000 in Star stock.

MR. SMALL: Objection, Your Honor

THE COURT: Overruled.

THE WITNESS: That would be correct

BY MR FAULCONER:

Q And this amount here, that's not enough to pay a $15,000 deposit on a catering contract, is it?

A No

Q But, sir, you are aware that after they got the $50,000 from Mr Williams, they did each one of those three transactions that I just mentioned.

A I'm not completely aware of the catering, the $15,000 catering

Q You are certainly aware that there was a $15,000 check from Mr Williams to pay for the catering for Mr McDonnell's daughter's wedding, right?

A I believe that's right, yes

Q And that that was also on May 23rd, 2011?

A I don't recall the date, but I remember the $15,000 amount

Q And you are certainly aware that that, the refund from that, went back into Ms McDonnell's Wells Fargo account here, right?

A I'm not sure about that, no

Q Sir, are you aware that Mr McDonnell had signed a contract for that wedding catering?

A I might have seen something like that in my review of documents

Q And you are certainly aware that signing a contract for a bill, that creates liability, right?

A Sure

MR SMALL: Objection, Your Honor

THE COURT: Overruled

THE WITNESS: Yes

BY MR. FAULCONER:

Q And you are saying to us here today that you don't know whether or not the refund from that wedding catering came back into one of these accounts?

A I don't have any recollection of that, sir

Q But regardless, if you take $50,000 and add it to $15,000, that's $65,000, right?

A Yes

Q And you would agree with me that that is more than quadruple what the cash available is in the May 1st, 2011 date, right?

A Right

Q Now, you are picking this date because that's a moment in time that you were trying to capture what the accounts were, right?

A An illustration as of that moment

Q I'd like to go to another chart that you showed us at a different moment in time, and that's RM-0274-0011 One chart back, Mr Starnes 0010

BY MR. FAULCONER:

Q All right, now, this chart, Mr Kosowsky, this is the moment in time of March 11th of 2012, right?

A Right

Q And the reason you picked this one, of course, is that it is right before the $50,000 from Mr Williams into MoBo, right?

A Correct

Q But you would agree with me, sir, that the balance shown here for $67,274 24, that's after the May, 2011 $65,000 from Mr Williams that was given to the

McDonnells

A Well, it is after the 50 that was given that went through the accounts, and then however you are accounting for the $15,000

Q So just assuming that the $15,000 is $15,000, that's $65,000, right?

MR. SMALL: The 15,000 was a wedding gift It has nothing to do with --

THE COURT: The objection is overruled.

BY MR. FAULCONER:

Q You would agree that this $67,000 number comes after the $50,000 payment and whatever payment went towards the wedding

A Right

Q If you subtract $65,000 from this number, you are left with about $2,000, right?

A Right Assuming there were no other sources of money in that intervening one-year period.

Q And you aren't aware of any other sources of money that were tapped into in that intervening period, are you?

A Well, I think there were some distributions from his father's estate's IRA among other things

Q But this number includes what those were when they were put into the account

A Money is fungible, so whatever the comingled amount of salary and everything else was that led to this balance

Q You would agree with me that $67,000 minus $65,000 is about $2,000?

A Yes, sure

Q This is the day before the $50,000 from Mr Williams goes into MoBo

A That's right

Q That's one of the accounts that you have listed here

A Right

Q Now, you would agree with me that if you took 2,000 and subtracted 50,000, you would be down to negative 48,000, right?

A Of course

Q Now, this chart here you have as March 11th, 2012 I'd like to fast forward now to your next chart, which is RM-0274-0011 Now this, sir, shows that between the chart we were just looking at in March of 2012 and May of 2012, the total number goes down by $26,000, right?

A Right

Q Now, that's not including any money from Mr Williams being deposited into the top three accounts, does it?

A Right

Q But sir, you would agree with me that if you took the number of 65 plus 50, 115, and subtracted it out of this, you would be at well less than $70,000 negative, right?

A Yes, if you are including that 15, sure

Q But then the day after this, $20,000 comes over from Mr Williams, right?

A To MoBo, right

Q And if you add that on to negative 70, you would get down close to negative 90, right?

A That would be the math.

Q But nonetheless, sir, you are aware that the $50,000 and the $20,000, they went into the MoBo account, right?

A Right

Q And that money was spent out of the MoBo account

A Yes.

Q So let's go to the last chart of yours that I would like to discuss, and that's RM-0274-0014 All right Now, sir, this was essentially your snapshot of the 2012 liquid assets for the MoBo officers, right?

A Right

Q Now, I'd like to talk specifically just about the top two lines here, Mr and Ms McDonnell If we do just zoom in on those two, Mr Starnes All right Now, again here, I guess, it shows March 21st and December 31st, right, two different dates?

A Right

Q You didn't go in and calculate what those would have been if you actually tried to match up the dates, did you?

A No Unfortunately, I didn't have sister Maureen's records

Q Sir, right here we are looking at just Mr and Ms McDonnell, the wife, right?

A No, this is the sister Maureen

Q These two rows you are saying is the sister Maureen?

A Oh, no, I apologize This includes the Governor's retirement accounts

Q Right And zooming out for one moment, the bottom two rows, that's sister Maureen, right?

A Yes My apologies

Q So scrolling up to the top two rows, that's just Mr McDonnell and his wife

A Correct

Q What this basically shows is $65,000 in cash available in the accounts, right?

A In March, correct

Q And then about $210,000 in savings by the end of the year

A Right And in the retirement accounts

Q Like we talked about earlier, savings, that doesn't mean like a normal savings account

A That's right

Q So withdrawals from that, that would involve penalties or taxes

A It would have involved taxes at least Maybe
penalties, depending upon the date of his birthday

Q Got it You haven't calculated how that would have been at different points in time?

A No.

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Q All right So I think the number that we left off at was about $135,000 You'd agree with me that if you subtract that money from what's combined here, the combined here is about $265,000, right?

A 275

Q And if you take 135, subtract that out of 275, we'd be looking at about 140, right?

A Correct

Q And that would have required tapping into the retirement accounts, right?

A Yes

Q All right Well, then, sir, I'd like to show you what's been previously admitted as Exhibit 609 Sir, you'd agree with me that you reviewed this chart from Special Agent Hulser's testimony, right?

A I did read it Yes

Q And this has a total on this chart of $177,000?

A That's what it says

Q And you're obviously aware, sir, from reviewing Mr Hulser's testimony that he did not include some expenses that were paid for by Mr Williams on this chart, right?

A I believe that's right

Q Some dinners and things like that?

A Yeah There's some small incidental things

Q A $1,400 dinner at La Grotta?

A I don't remember

Q Okay Now, if we could go back to your chart, RM-0274-0010 Oops I apologize 014 All right And again zooming in on those top two rows All right So you had said about $275,000 if you total those two up, right?

A Right

Q And, obviously, sir, if you subtract $177,000 from that, that would be under $100,000?

A If you made that subtraction, yeah, that would be the math

Q And that number, whatever it is, under $100,000, that would still have to be added on to it any fees or taxes associated with tapping into a retirement account, right?

A Of course

Q But to be fair, sir, of course -- I think you've hesitated on a couple of my questions -- it's possible that the McDonnells could have not chosen to spend money on the things that Mr Williams bought for them, right?

A I -- I wouldn't know I mean, that would be a choice

Q But as far as you're aware, all of those items from Mr Williams were either paid over or purchased, right?

A That's what the schedule shows

MR FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

MR FAULCONER: No further questions, Your Honor

THE COURT: All right We'll go ahead and take the break now Fifteen minutes

(The jury left the courtroom)

(Recess taken from 11:03 a m until 11:21 a m)

(The jury entered the courtroom)

THE COURT: All right Go ahead

MR SMALL: Thank you, Your Honor

REDIRECT EXAMINATION

BY MR SMALL:

Q Good morning, Mr Kosowsky

A Good morning, Attorney Small

Q You were asked some questions about Exhibit 653

MR SMALL: If we could call that up, please, Victoria

BY MR SMALL:

Q And the prosecutor asked you some questions about whether you were friends with Bob McDonnell such that he would give you this information Do you recall those questions?

A I do

Q Well, let's be clear, sir Have you ever gone on a family vacation with the McDonnells?

A Oh, no

Q Have you ever mentored Bobby McDonnell?

A No

Q Have you ever exchanged 1,200 text messages with Ms McDonnell?

A No

Q So you're not close friends, correct?

A I'm not a friend of either of them

Q And this was a -- a call pursuant to your involvement as an expert witness?

A Yes It was a call from Attorney Asbill

Q All right And then you were asked a bunch of questions about a chart, which is Number 6

MR SMALL: If we could call that up, please 274-6

BY MR SMALL:

Q Now, let's be clear We did not offer this chart during your testimony, correct?

A I don't believe so

Q And am I correct that that's because before we came to court, you noticed there was an error?

MR FAULCONER: Objection, Your Honor Leading

THE COURT: Overruled

A Yes

BY MR SMALL:

Q Yes Okay So let me be clear You pulled the data together, that's right, for the chart?

A Yes, sir

Q But you didn't actually do the -- I'm not a computer person If this is a PowerPoint, you didn't do the -- you didn't do the actual chart itself, right?

A No, I didn't -- I didn't use PowerPoint to do it I was focusing on the data and the inputs and the format

Q All right But before your testimony, you noticed that the arrow was in the wrong place, right?

A Yes

Q And that's why we didn't use it?

A Right

Q Because it would be misleading to spend a lot of time talking about a chart where the arrow was simply in the wrong place?

MR FAULCONER: Your Honor, I would object to that

THE COURT: Sustained

MR FAULCONER: We were given that chart

THE COURT: Sustained

MR FAULCONER: We were never notified of an error

BY MR SMALL:

Q You were asked some questions about credit cards No question, credit cards can be a very important part of people's lives, right?

A Well, they are

Q They can be used to buy all kinds of things, right?

A Yes, sir

Q And credit card capacity is a valuable resource for many Americans being able to buy things, right?

A Right Or, you know, be able to get over, you know, a rough spot here or there or an -- you know, an unexpected expense

Q And there's nothing wrong or illegal or improper about having credit card debt, right?

A No

MR SMALL: So if we could call up 274-0005, please

BY MR SMALL:

Q It's clear, isn't it, that the McDonnells, starting from a peak in August 2010, were successful in bringing down their credit card debt, right?

A That's what the chart depicts and the data shows; that it went from the peak of 90,000 in August of 2010, and then picking the date of April 2011, 31,876, if you just want to focus on that time period

Q You were asked to do a lot of math on cross, but let me just ask you, if you saw two payments that Maureen McDonnell apparently made to pay off credit cards -- or pay down credit cards after she received the loan from Jonnie Williams, right?

A Yes

Q And those totaled about 20,000?

A Correct

Q What's the total amount that the McDonnells brought down their credit card debt between August 2010 and August 2011?

A Well, it's roughly $85,000, if you use that time frame

Q So if we ignore that $20,000, what's the total amount that they brought it down having nothing to do with Jonnie Williams?

A Well, that would be the difference between the 90,928 and then the -- to use the 31,876, April 2011 figure, is roughly $59,000

Q And, in fact, even after the loan, they continued to bring it down, correct?

A That's what it shows

Q Now, lots of people manage credit card debt, right?

A Yes

Q And am I correct that there are companies that provide a service of providing credit scores, right?

A Oh, yes

Q And, in fact, one important reflection of success in managing credit card and other debt is your credit score, right?

A Overall creditworthiness, yes

Q Okay And are you aware that in 2011, the Governor had a credit score of 830? Do you recall that from the documents?

A I believe I remember seeing a credit score that may have been in that area Yes

MR SMALL: Can we show -- just to refresh memory, can we show just the witness RM-84-0001

BY MR SMALL:

Q In showing you this, do you recognize this as an Equifax credit bureau report?

A Yes

MR SMALL: Offer into evidence, Your Honor

THE COURT: It will be admitted

BY MR SMALL:

Q And it --

THE COURT: What's the number? What's that number?

MR SMALL: I'm sorry, Your Honor RM-0084-0001

BY MR SMALL:

Q And you see that it actually provides three different credit scores?

A Yes

Q And two of them are excellent, and one is very good, right?

A Yes

Q So three different credit agencies evaluated Bob McDonnell's credit, and all of them found it either very good or excellent, right?

MR FAULCONER: Objection, Your Honor

THE COURT: Sustained Mr Small, really, it's getting --

MR SMALL: I'll move on

THE COURT: No But it's getting a little old You need to do better than this You asked the question to the witness was the sky blue Yes, the sky was blue And your next question was so the sky was blue

MR SMALL: All right I understand

THE COURT: So, you know, you do that over and over again, and it begins to waste time

MR SMALL: I understand, Your Honor I'll move along

BY MR SMALL:

Q Now, cash --

MR SMALL: You can take that down, Victoria

Thank you

BY MR SMALL:

Q Cash is also a liquid resource, right?

A Of course

Q But if you spend cash, you're in a worse position, right, because the cash is gone?

A Of course

Q All right Now, you take on debts, in part, based on your experience and expertise, take on debts, in part, looking to the future, right, to pay them off?

A Well, that's usually the optimistic point of view; that people take them on with the view that they can support them and pay them off

Q And so in 2012, Bob McDonnell, am I correct, knew that he only had a little over a year left in his term?

A I'm not totally familiar with Virginia term limits, but I'll accept that

Q All right And so he knew he could look forward to his prospects after he got out of office, right?

MR FAULCONER: Objection, Your Honor

THE COURT: The objection is sustained And I guess I should explain it so it doesn't happen over and over again

He can't know what somebody else knew

MR SMALL: All right

BY MR SMALL:

Q The -- now, you were asked --

MR SMALL: Let me just go back, just briefly, to 653, if I might.

BY MR SMALL:

Q You were asked about the duration of this call Do you recall those questions?

A Yes, sir

MR SMALL: And if we go to the last paragraph, please Well, that's fine right there

BY MR SMALL:

Q The last paragraph says it lasted roughly 30 to 45 minutes Do you recall that?

A Yes, sir

Q And the next part of that sentence says that "Mr Kosowsky using a substantial part of that time to provide an update on the status " Is that, in fact, what happened?

A Yes That's what the purpose of the call was

Q All right So -- but in addition, you received some information from Mr McDonnell as set forth here?

A Yes

Q Okay

MR SMALL: Okay You can take that down Thank you

BY MR SMALL:

Q Now, you were asked what might happen if Mr McDonnell pulled money out of a retirement or other account Do you recall those questions?

A Yes, I do

Q And you said that -- at one point you said that that would be speculation, right?

A I forgot the context of the question So --

Q Do you recall using the term "speculation"?

A Yeah I might have

Q All right

MR SMALL: Let's pull up 274-0014

BY MR SMALL:

Q Mr Kosowsky, are any of the numbers on this speculation?

A No They are -- these are documented with statements

Q And you testified, I believe yesterday, that you would take this 1,091,000, you would add in a little over 300,000 from the testimony of Maureen, sister Maureen, right?

A Yes That's right

Q And that would get you a total of about $1 4 million, right?

A Somewhere in there

Q So the various addition counsel was having you do, if you took out -- well, let me ask you If you entirely took out the first two lines, would that affect your opinion of the viability of MoBo?

A No

Q And if you deducted the 174 or 177, or whatever the numbers we were talking about, would that affect your opinion of the viability of MoBo?

A Well, the 174, I believe, is a -- a long laundry list of a lot of things that didn't have any -- some of which had nothing to do with MoBo

Q And most of that are loans, right?

A Beg your pardon?

Q Most of that are loans, correct?

A Right

Q The 174?

A Right

Q All right So would that have any impact on -- substantial impact on this 1 4 million and the soundness of MoBo?

A Not based on what I've seen and heard

MR SMALL: One moment, Your Honor

(Counsel conferring with co-counsel)

MR SMALL: If I may have just one moment, Your Honor

THE COURT: Sure

Nothing further

Thank you, Mr Kosowsky

THE COURT: Mr Burck, do you have anything?

MR BURCK: No Thank you, Your Honor

THE COURT: All right

Thank you, sir You may stand down

THE WITNESS: Thank you, Your Honor

THE COURT: Uh-huh

(Witness stood aside)

THE COURT: Call your next witness, please

MR BROWNLEE: Your Honor, we call Dan Cook C-O-O-K

DANIEL COOK,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR BROWNLEE:

Q Good morning

A Good morning

Q Would you please state your full name, and spell your first and last name for the court reporter

A Daniel Stephen Cook D-A-N-I-E-L, C-O-O-K

Q And, sir, what do you do for a living?

A I am a financial advisor and certified public accountant

Q And do you have a small business that you run?

A I do I have three separate businesses Cook Financial Designs, Incorporated, which is a fee-based financial planning firm Daniel S Cook, PLLC, which is an income tax preparation firm And Richard James, LLC, which holds real estate properties

Q Okay And have you prepared the taxes for Mr and Ms McDonnell and some of the extended family?

A I have

Q Okay And have you also prepared the tax returns for an entity called MoBo?

A I have

Q Okay Now, I want to begin with some procedural questions When -- in preparing -- I want to focus on Mr and Ms McDonnell's tax returns

A Yes, sir

Q Generally, would you meet with Mr McDonnell each year to begin the tax preparation for the filing of that year?

A I would

Q Okay And would he bring certain records with him so that you could prepare the return?

A Yes

Q All right And tell us a little bit about what he would bring to you

A Typically, the way Mr McDonnell would bring his information, he would have a summary sheet information that he wanted to either discuss with me, points of discussion, summarized information on W-2s, mortgage interest, charitable contributions But in addition, he would also bring original documents, W-2s, 1099s, 1098s Documents that taxpayers receive from financial institutions that need to be included on their tax return

Q Okay And then fair to say you would take that information, prepare a return There would be some reviews, and then ultimately, it would be filed?

A That is correct

Q Okay Now, pretty obvious question What is tax day?

A Tax day is April 15th, 2000 -- well, April 15th

Q And if folks ask for an extension, what would be -- what's the date?

A You need to have the extension filed by April 15th for individuals That gives you a six-month extension to get your taxes filed, which, in most cases, is October 15th

Q Okay And in working with the McDonnells, did they, from time to time, seek an extension?

A Yes

Q Okay And so when an extension would be requested and granted, what time period -- what period of year or -- excuse me What -- generally, what month, then, would you begin to work with him to prepare the taxes?

A It would vary from year to year But I'd say anywhere from maybe the June time frame to the August time frame

Q Okay I want to talk about the 2011 taxes

A Okay

MR BROWNLEE: If we could pull up RM-282, please

BY MR BROWNLEE:

Q And what are -- if you look at the screen, sir, what is that?

A That is the first page of a 1040 for tax year 2011

Q And is this for Robert F and Maureen G McDonnell?

A Yes, sir, it is

Q Okay

MR BROWNLEE: And if you go to the next page One more

BY MR BROWNLEE:

Q Down at the bottom, is this the document that was filed?

A Yes, sir, it is

Q Okay And did you prepare this?

A Yes, I did

MR BROWNLEE: Okay Your Honor, at this time we move RM-282 into evidence

THE COURT: It will be admitted

MR BROWNLEE: Thank you

BY MR BROWNLEE:

Q Now, sir, I want to go back a little bit and ask you about some of the information that Mr McDonnell, for 2011, provided to you

MR BROWNLEE: Can we pull up RM-1378-0004 1378-0004

BY MR BROWNLEE:

Q Okay And, sir, what is this?

A This is a 1099 that Davenport & Company submits All financial institutions are required to submit 1099s to taxpayers that have dividends, interest that has been earned, or any stock or mutual fund trades that have taken place

Q All right And did Mr McDonnell give you this document in the summer of 2012 so that you could prepare the tax return for 2011?

A Yes, sir, he did

MR BROWNLEE: All right Your Honor, we move in RM-1378-04

THE COURT: It will be admitted

BY MR BROWNLEE:

Q Now, explain to the ladies and gentlemen of the jury, first of all, this is a 1099 for who?

A This is for Maureen McDonnell

Q Okay And in the block there, what is this informing you?

A This particular page is telling me that a stock trade for Star Scientific, Incorporated was sold on December 20th, 2011, for $15,279 And it also has a tax loss of around 18,000

Q Okay And Mr McDonnell gave you this document in the summer of 2012?

A Yes, he did

Q Okay Now, when you have a tax loss or a loss like this on the sale of a security, what -- how does that potentially impact the tax return?

A Well, in this particular case for 2011, the IRS limits the amount of a loss that can be taken on a tax return to $3,000 So this about $18,000 loss, only 3000, per IRS regulations, is permitted to be deducted on the tax return

Q Okay So if you have taxable income, then you can reduce that by, in this case, $3,000, and it reduces your taxable income and, thus, your taxes?

A That is correct

Q Okay Now, when you have a tax loss, do you have to take it?

A I guess technically, no You do not have to take a tax loss if you choose not to I've had clients that have made charitable contributions and have chosen not to deduct them on their tax returns So I would say it's at the discretion of the taxpayer

Q Okay

MR BROWNLEE: You can take that down

BY MR BROWNLEE:

Q Now, for 2011, did Mr McDonnell, though -- in providing you this 1099, was it reflected on the return?

A Yes, it was

MR BROWNLEE: All right If we could pull up again RM-282, and pull up Page 21 That's not the page I'm sorry Let's look at -- if you go to the next page There it is

BY MR BROWNLEE:

Q Now, sir, this is a Form 8949 Can you tell the ladies and gentlemen of the jury what that is?

A An 8949 is a document that itemizes every single stock transaction or mutual fund transaction, a sale of those items, during the tax year It is then summarized on the Schedule D, but the 8949 lists the itemized transactions, or sales

Q Okay And this is part of the return --

A Yes, sir

Q -- that was submitted to the IRS?

A Yes, sir

Q Okay And if you look here in the highlighted portion -- if you'll highlight that -- what does that reflect?

A It says Star Scientific, Incorporated

Q Okay And so -- now, this was made -- as I said, this was made part of the return and was submitted to the IRS Do you know the date it was submitted?

A I think what I saw on the 1040 was October 10th

MR BROWNLEE: Okay Can we go to the second page -- the third page, I guess, down at the bottom

A Yes October 10th

BY MR BROWNLEE:

Q And Mr McDonnell authorized you to send this to the IRS?

A As did his wife Yes

Q Okay Good

MR BROWNLEE: You can take that down

BY MR BROWNLEE:

Q Now, let me talk a little bit about 2012's tax return

A Okay

Q Do you remember having a telephone call with Mr McDonnell in January to discuss those returns?

A I do recall having a conversation with Mr McDonnell in January of 2013. Yes

Q Okay And was his sister on the line as well?

A Yes Maureen and Eileen, as I recall, were both on the line

Q Okay Now, did those -- did that call -- part of that call discuss the books of MoBo?

A Yes

Q Okay Tell us a little bit about that call, and what you all talked about

A Okay In 2012, Michael Uncapher, who was keeping the books, who was our point of contact previous to this, was no longer going to be our point of contact Bob was going to be taking over MoBo His sister Eileen was going to be taking over Blue Ridge Heaven

The way my practice is set up, for business returns we prefer to have a bookkeeper involved in preparing the books for us We're not a bookkeeping service We'd rather get information directly from the bookkeeper

So one purpose of that phone call was to strongly recommend that they would retain Brenda Chamberlain as a bookkeeper for both MoBo and Blue Ridge Heaven

Q And fair to say, you had recommended Ms Chamberlain to the McDonnells several years before that?

A Yes

Q Okay And they -- did they decide to keep her?

A They did

Q Okay During that call, did you also have an opportunity to talk to Mr McDonnell about his 2012 taxes?

A Yes

Q Okay And what did he tell you what he wanted to do for that year?

A That we were looking to file the returns in a timely manner for 2012, as well as Blue Ridge Heaven And I also note, in 2012 a new entity called Wagon Wheel Road, LLC also needed to be filed So we discussed the preparation of filing all of those returns in a timely manner

Q Okay And so did you then kind of set up a schedule from which you would receive information and set up meetings with Mr McDonnell so that you could get the taxes prepared in time?

A As I recall, a date was not set But the intention was for us to meet within a short period of time after that January meeting

Q Okay Did you ultimately meet with Mr McDonnell in March of that year?

A Yes, I did

Q Okay

MR BROWNLEE: And let me pull up RM-1749

BY MR BROWNLEE:

Q All right This is a --

MR FAULCONER: Your Honor, may we approach on this briefly?

THE COURT: Come on up

(At Bench)

MR FAULCONER: Your Honor, I don't know which pages Mr Brownlee intends to offer, but the third page of this document lists the charitable contributions that you excluded yesterday for that year So we'd just ask that the third page not be admitted of this document

MR BROWNLEE: I'll introduce -- I'm really interested in the last page anyway

THE COURT: Sure

MR BROWNLEE: We'll have it redacted, sir

(In Open Court)

BY MR BROWNLEE:

Q Can you tell us what -- what this is?

A This is a summary sheet that Bob gave me for his 2012 tax returns listing income, different points of discussion Things of that nature

Q I apologize Can you say that one more time?

A Sure This particular document is a summary document that Bob prepared outlining different tax points, information that I would need to prepare the return, real estate taxes, W-2 information Things of that nature

Q Okay So these are his, basically, notes to you that he provided to you in March of 2013 so that you could prepare the taxes?

A That is correct

Q Okay And if we look at the last page I think it's a four-page document Okay Now, what does this page reflect, sir?

A This right here is a summary of loans that were made for MoBo during 2012

Q Okay If you could move a little closer to that microphone

A I'm sorry Okay

Q I'm having a little trouble hearing you

A Sorry about that

Q Go ahead, sir What is this again?

A That particular document shows loans that were made to MoBo during 2012

Q Okay

A As well as some items that were purchased within the entity

Q Okay

MR BROWNLEE: Your Honor, at this time we move in, subject to the limitation discussed by counsel, RM-1749

THE COURT: It will be admitted

MR BROWNLEE: Thank you

And if you could just blow up the top part there

BY MR BROWNLEE:

Q If you could just take a look at the top two, the highlighted portion there, March 12th, 2012, what does that reflect?

A A $50,000 loan from Starwood

Q Okay And then down at the bottom, it's not highlighted, but the May 22nd, 2012?

A $20,000 loan from Starwood Trust

Q Okay And these were provided to you in the normal course so that you could do the taxes by April; is that correct?

A Yes, sir

MR BROWNLEE: Okay You can take that down Thank you

BY MR BROWNLEE:

Q Now, how long had you been working with Mr McDonnell in preparing his taxes?

A Since tax year 2005

Q Okay And during that time, did, according to you, he always provide you with the information you believed you needed to properly prepare his taxes?

A Yes

Q In dealing with the loans that we discussed, Starwood, based on your review, did he ever take any effort, from your perspective, to try to hide or conceal those loans from you?

A No, sir

Q How about with regard to the sale of Ms McDonnell's stock?

A No

Q Any efforts to try to hide or conceal that from you?

A No, sir

Q Okay

MR BROWNLEE: Okay Thank you, Judge

THE COURT: All right

Mr Burck?

MR BURCK: No questions, Your Honor Thank you

THE COURT: Anything from the government?

MR FAULCONER: Yes, Your Honor

THE COURT: Go ahead

CROSS-EXAMINATION

BY MR. FAULCONER:

Q Good morning, Mr Cook

A Good morning How are you, sir?

Q It's still morning

All right Now, Mr Cook, as an accountant, and then I guess in the work that you do -- I know you do many things The work that you do for your clients is only as good as the information that they give you, right?

A Yes Also based on information or discussions that we have Sometimes opening up discussion about information, clarification Things of that nature

Q Got it So you rely on --

A I'm sorry Just for clarification I don't rely solely on the information they give us There's an interaction of discussion points, and things like that

Q Got it But in terms of the information that you're using to perform your work, it typically is either paper documents that your clients give you, right?

A Correct

Q Or verbal conversations that you have with them?

A That is correct

Q And typically, you won't go out and conduct interviews of people other than your clients to try to verify that information?

A That is correct

Q Now, with Mr McDonnell, you've received documents from him for his returns back since 2005, right?

A That is correct

Q And you've spoken with him on the phone a lot, right?

A Yes Several times

Q Probably dozens even?

A Yes

Q Now, you've also met with him in person a number of times?

A I have

Q But to be clear, the information that he gave you on any of those occasions, you don't just give it out to random strangers, do you?

A No, I do not

Q In fact, even for law enforcement, you require a subpoena before you'll hand documents over, right?

A That is correct

Q And you're not trying to be difficult?

A Right

Q You're just trying to protect your client's confidentiality?

A That's correct

Q And, in fact, in this case, that's actually what happened You got a subpoena, and it was only after that that you produced documents to the government, right?

A That is correct

Q And if we had just come and asked you to do it voluntarily, would you have done it?

A No

Q All right Now, I'd like to hand up a copy of what's been marked for identification as Exhibit 498 Mr Cook, this is a packet, essentially, of Outlook calendar entries that you produced for meetings that were scheduled with Mr McDonnell in 2012 and 2013, right?

A Yes Uh-huh That is --

Q Is that a yes?

A -- correct Yes That's correct

Q Sorry

MR FAULCONER: Your Honor, we'd offer Exhibit 498 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, Mr Cook, looking through these entries -- these documents --

MR FAULCONER: If we could just go to the next page

BY MR FAULCONER:

Q Now, I'm not going to go through every one of these, but you'd agree with me that there are some of these entries that refer to Maureen McDonnell, the sister of Mr McDonnell, right?

A Say that again, please

Q There are some of these entries that refer to Maureen

McDonnell the sister; is that correct?

A I am not sure

Q Well, let's -- look at the numbers at the bottom

A Okay

Q And if you could go to the one that says 790 And this is March 19th of 2013, right?

A Yes, sir Uh-huh

Q And there, that says, "Dan make conference call to Governor and sister," right?

A Correct Yes

Q And you interacted with the sister Maureen McDonnell a decent amount too?

A Yes

Q But to be clear, Mr Cook, your point of contact for the tax returns wasn't Ms McDonnell the wife, right?

A It was not No, sir

Q And about how would you compare your volume of interaction and communication about taxes with her to the same with Mr McDonnell?

A It was quite minimal I think over the years, I've spoken to her maybe a half dozen times

Q And in any of those conversations, do you ever remember discussing tax consequences of stock sales with her?

A No, sir

Q If you had had a conversation like that, it typically would have been with Mr McDonnell, right?

A Normally, yes That's common with most of our clients

Q And Ms McDonnell, she wasn't your point of contact, the sister -- or sorry, the wife, for MoBo or Blue Ridge Heaven or Wagon Wheel, right?

A No, sir She was not

Q All right Now, we'll come back to those calendar entries in a moment But I'd like to first show you on the Elmo, with Ms Taylor's assistance, what's been previously admitted as Exhibit 663

MR FAULCONER: All right If we could zoom out just a little bit

BY MR FAULCONER:

Q Mr Cook, this is a page from those source documents that Mr McDonnell gave you for his 2009 taxes, right?

A Okay It looks like it Yes

Q And do you recognize the handwriting on there as his?

A Yes

MR FAULCONER: Now, if we could switch back over to the other system, and I'd like to show you what's been marked for identification as Exhibit 405

BY MR FAULCONER:

Q Now, Mr Cook, this is an e-mail from you to

Mr McDonnell, right?

A Yes

Q And this is dated August 28th, 2012?

A That is correct

Q And this, essentially, is you sending back to him some of the source documents, copies of them, that he had given to you?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 405 into evidence

THE COURT: It will be admitted

MR FAULCONER: All right Now, if we could look at the second page of this document And zoom in there at the bottom

BY MR FAULCONER:

Q That is an e-mail from Mr McDonnell to you, right?

A Yes

Q And then he says -- on the second line he writes, "Also, call Maureen when you can, and you and I may need to discuss the stock transaction and loss from '11," right?

A Yes.

Q And that's consistent with what you said earlier; that if you were talking about stock stuff, it would typically be with Mr McDonnell?

A Correct

BY MR FAULCONER:

Q Now, if we could go to Page 3 of this document, you recognize that as Mr McDonnell's handwriting, right?

A That is correct

Q And then going to Page 4 of this document, that also appears to be Mr McDonnell's handwriting?

A That is correct

Q And number 1 on that list on that page, that refers to that stock loss that Mr Brownlee asked you about, right?

A That is correct Yes, sir

Q But to be clear, sir, you don't recall ever having any conversations with Mr McDonnell about changes in rules related to tax -- or to stock sales for tax purposes in 2011, do you?

A Not that I recall

Q And you certainly don't recall talking to Ms McDonnell the wife about it?

A I do not recall

Q But you did receive some paperwork that we saw earlier from Mr Brownlee that showed the stock sale, right?

A That is correct

Q And that showed the sale as being December 20th of

2011?

A Yes That is correct

Q Now, if I could show you what's been already admitted as Exhibit 278 Now, this is a Davenport & Company statement from the following month That's January of 2012, right?

A Yes, sir

BY MR FAULCONER:

Q And if we could turn to the fifth page of this document Now, this shows, here in the middle, a repurchase of the Star Scientific stock on January 20th of 2012, right?

A That is correct

Q And with 31 days in December, that would be 31 days after the December 20th sale?

A That is correct

Q And to be clear, sir, the statements for Davenport, both the 1099 that you got and the -- this statement that we're looking at here, they have Ms McDonnell's name on them, right?

A That is correct Yes

Q But you don't recall any conversations with Ms McDonnell about something called a wash sale rule, do you?

A No, sir

Q Could you explain, briefly, just what a wash sale rule is?

A A wash sale It's the IRS' rule that if you sell a stock for a loss and you repurchase that stock within 30 days after that sale, the loss is disallowed You are not able to take it for income tax purposes

Q But here it's 31 days, which means that you could take the loss?

A That is correct

Q Do you recall having any conversations with Mr McDonnell, your point of contact, about that in this time frame?

A No, sir

Q But you certainly don't recall any conversations with Ms McDonnell the wife?

A No

Q But if that transaction date had been a couple of days earlier, earlier in January, you wouldn't have done the tax loss?

MR BROWNLEE: Objection, Your Honor Calls for speculation

THE COURT: Sustained

BY MR FAULCONER:

Q All right Now, I'd like to turn to the 2012 taxes You also prepared those for 2013, right?

A I beg your pardon?

Q Sorry You prepared the 2012 taxes in 2013?

A That is correct Yes, sir

Q All right Now, earlier you said that you typically would do Mr McDonnell's tax returns on an extension, right?

A That is correct

Q And as best you can recall, that was pretty much every year until this year?

A Yes, sir

Q "This year" being --

A '12 Understood

Q -- '12 taxes?

A Uh-huh

Q Now, I'd like to show you what's been marked for identification as Exhibit 497 This is a page of handwritten notes that you recognize as Mr McDonnell's handwriting, right?

A That is correct

MR FAULCONER: Your Honor, we'd offer Exhibit 497 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, sir, we'll zoom in on some of this in a moment But this says, "2012 Tax Issues - Dan" towards the top, correct?

A That is correct

Q And the date at the top, it says 3/11/13?

A Yes

Q Now, in the stack of the Outlook entries that I handed you earlier, I'm correct that the first date of the appointments that you at least had on your calendar for 2013 was March 11th, right?

A That is correct

Q And I think you talked about, on direct examination, that there was a call in January, but then no meeting until March of that year?

A That sounds correct

Q Now, looking at this document, this appears to reflect at least some conversation between you and Mr McDonnell, right?

A Correct

Q Do you see there at the very top where it says, "Answers from meeting of 3/11/13 with Dan"?

A Yes

Q And then there's an arrow from that down to everything that's written in the margin, right?

A Correct

Q All right

MR FAULCONER: Now, if we could zoom in on that portion there Thank you

BY MR FAULCONER:

Q Do you see there what is listed right under where it says "2012 Tax Issues - Dan" what word is written there?

A "Personal"? Is that what you were referring to?

Q Yes

A Okay

Q And so if you go down a little bit, number 3 under Personal says, "Loan from dad's estate 115K, correct?

A That is correct

Q And then right under that, again, still under Personal, it says Dr Davis 50K?

A That is correct

Q Again under Personal, right below that, it says, "Starwood 70K"?

A That is correct

Q And then over to the right it says, I think, again, "Treatment personal 50K loan from Starwood"?

A Okay

Q Is that right?

A Yes, it is

Q And then if you scroll down on this document, down there it says, number 2, MoBo/BRH, right?

A That is correct

Q And there's no reference to Starwood in those items listed 1 through 6 there, is there?

A I do not see that

Q All right

MR FAULCONER: Now, if we could go to what's been marked for identification as Government's Exhibit 654 652 Let's try that

BY MR FAULCONER:

Q And this is a single page that is the fourth page of that document that Mr Brownlee showed you, right?

A That is correct

MR FAULCONER: Your Honor, we'd offer Exhibit 652 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, Mr Cook, this is the page of handwritten notes we were looking at earlier, right?

A That is correct

Q And this appears to you to be Mr McDonnell's handwriting?

A Correct

Q Now, looking at this document, at the top it says, "2012 Owners Capital Loans," right?

A Correct

Q And who did you understand the owners to be?

A Maureen his sister and Bob himself

Q And beneath that where it says the "3-12-12, $50,000 Starwood Trust," it doesn't say Jonnie Williams there, does it?

A It does not

Q When you go down below to May 22nd of 2012, and it says "5-22-12 $20,000 Starwood Trust loan," it doesn't say Jonnie Williams there either?

A No, sir It does not

Q All right I'd like to show you what's been marked for identification as Exhibit 500 Now, this is a printout of a March 20th, 2013, e-mail from you to Mr McDonnell?

A Yes, it is

Q And it has some handwriting on it that you recognize as Mr McDonnell's?

A Yes

MR FAULCONER: Your Honor, we'd offer Exhibit 500 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q All right Now, the date of the e-mail is March 20th, right?

A Yes, it is

Q And then the handwriting there says, "Reviewed with Dan on 3-21-13"; is that right?

A Yes It looks that way

Q Now, in your e-mail you say, "Below is a summary of our conversation and action items for MoBo," right?

A Correct

Q And typically, you would have written this pretty quickly in time after the conversation?

A Yes

Q Certainly it would have been sometime in March?

A Yes

Q And then could you read us what you say on the third bullet point there, starting with, "Can you provide "

A "Can you provide us the written agreement with John Williams (Starwood) loan? We do not need this to prepare the" -- it says the "loan," but the tax return "simply for our records "

Q Now, to be clear, the handwriting next to that says, "Don't have," right?

A Correct

Q And you never, in fact, received any written documentation for the loan with Starwood, did you?

A No, I did not

Q All right Now, I'd like to show you what's been marked for identification as Exhibit 502 Now, sir, this is a printout of a Word document that you produced as part of your subpoena response in this case, right?

A That is correct

Q And this is a summary from your records of a conversation with Mr McDonnell?

A That is correct

MR FAULCONER: Your Honor, we'd offer Exhibit 502 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, sir, could you just read what's written there after "Starwood Loan"?

A "Per Dan's phone conversation with Governor McDonnell, this is a balloon payment loan Interest is 2 percent, to be repaid in a total of 3 years All interest will be deducted in the year of repayment "

Q And, again, this is based off of information from Mr McDonnell?

A That is correct

MR FAULCONER: Your Honor, I'd like to show what's been marked for identification as Exhibit 503 And, Your Honor, this is what Special Agent Huff testified about earlier We didn't offer it at the time, but we'd offer it now into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right Now, sir, I know you're not a computer expert, but the creation date shown on this document for that Word document we were just looking at says March 21st of 2013, right?

A That is correct

Q And based on the e-mail we were looking at before, as well as your own recollection, does that seem like about the time when you would have had that conversation with Mr McDonnell?

A I would say so Yes

Q But to be clear, sir, like we talked about earlier, you didn't speak to anyone from Starwood Trust, did you?

A No, I did not

Q You didn't speak to Mr Williams, did you?

A I did not

Q And you never received any sort of written loan agreement for any Starwood loans?

A No, sir

Q And at the time you were having these conversations with Mr McDonnell, you were not aware that his wife had been interviewed by law enforcement about Mr Williams on February 15th of 2013, were you?

A No, sir

Q You weren't aware of a loan application that he sent in to PenFed with those loans listed on February 18th, 2013, were you?

A No, sir

Q And, of course, at no time were you present for any meetings between Mr McDonnell and Mr Williams, were you?

A I was not

Q And Mr McDonnell never talked to you about any conversations he had with Mr Williams about Mr Williams' product?

A I do not recall

Q He never -- he never talked to you about any meetings he arranged or events he hosted for Mr Williams?

A No

MR FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

MR FAULCONER: No further questions, Your Honor

THE COURT: Redirect?

MR BROWNLEE: Yes, sir

REDIRECT EXAMINATION

BY MR BROWNLEE:

Q Now, Mr Cook, Mr Faulconer asked you about your knowledge regarding Ms McDonnell's interview with law enforcement on February 15th, 2013; is that right?

A That is correct

Q Okay So -- and he asked you if you knew that, and you said you didn't know that she was interviewed on that date?

A That is correct I did not know

Q Okay

MR BROWNLEE: Let me -- let's pull up RM-1378, Page 4 It's in evidence Blow that up

BY MR BROWNLEE:

Q Now, this is a 1099 that Bob McDonnell gave to you in the summer of 2012; is that correct?

A That is correct

Q Okay So that's like six months before Ms McDonnell's interview, right?

A That is correct

Q Okay And on it, it reflects that Ms McDonnell sold Star Scientific stock?

A That is correct

Q Okay And I believe you testified you took this document and then put it on the tax return; is that correct?

A That is correct

Q All right

MR BROWNLEE: Can we pull up RM-282, Page 22

BY MR BROWNLEE:

Q Now, and this is that Form 8949 that you talked about; is that correct?

A That is correct

Q Okay And you took the information from the 1099 that Mr McDonnell gave you in the summer of 2012 and you put it on that form; is that right?

A That is correct

Q And then I believe -- then you, on October of 2012, now four months before Ms McDonnell was interviewed, you sent this document to the IRS?

A That is correct

Q Okay

MR BROWNLEE: Now, let's go back to RM-1749, the last page I think it's Page 4 If we can blow up that top part

BY MR BROWNLEE:

Q Okay Now, this is the information Bob McDonnell gave you for his 2012 tax returns; is that correct?

A That is correct

Q Okay And in it, it reflects the loan from Starwood Trust, is that correct, in March?

A That is correct

Q Okay And it also reflects the loan in May of 2012; is that correct?

A That is correct

Q Okay And then did you take that information and put it on MoBo's tax returns?

A We made sure it was on MoBo's tax return Yes

Q Okay And where did you send that?

A That also was sent to the internal -- to the IRS

Q The IRS?

A Uh-huh

Q Okay Did you also send that to the PenFed?

A Yes The MoBo returns were e-mailed to PenFed

Q Okay And PenFed was a bank that Mr McDonnell was trying to refinance a loan with?

A That is correct

Q Okay Just to be clear, Mr McDonnell never at any time asked you to conceal any of this information from the IRS or anybody else?

A He did not

Q Okay

MR BROWNLEE: Now, let me pull up Government's Exhibit 502 If we could blow that up

BY MR BROWNLEE:

Q Now, these are notes that Mr Faulconer asked you about memorializing a conversation that you had with Mr McDonnell; is that correct?

A That is correct

Q Okay And Mr Faulconer asked you if you went and talked to anybody at Star Scientific or Starwood?

A No, I did not

Q You did not Did you feel you should or you had to go do that?

A No It's not required

Q Is that because you trusted the word of Bob McDonnell?

A Absolutely Yes

MR FAULCONER: Objection, Your Honor

THE COURT: Overruled

MR BROWNLEE: Thank you

Thank you very much, Your Honor Court's indulgence

(Counsel conferring with co-counsel)

MR BROWNLEE: That's all Thank you, Your Honor

THE COURT: Mr Burck?

MR BURCK: No Thank you, Your Honor

THE COURT: All right

Thank you, Mr Cook You may stand down

(Witness stood aside)

THE COURT: Call your next witness, please

MR BROWNLEE: We call Todd Haymore, Your Honor H-A-Y-M-O-R-E

TODD HAYMORE

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR BROWNLEE:

Q Good afternoon, sir

A Good afternoon

Q Would you please state your full name, and spell your first and last name for the court reporter

A Todd Patterson Haymore T-O-D-D, H-A-Y-M-O-R-E

Q And how are you currently employed?

A I am Virginia's Secretary of Agriculture and Forestry

Q Okay And how long have you served in that capacity?

A About five years

Q So for your present position, who were you appointed by?

A My present position, I was appointed by Governor Terry McAuliffe

Q Okay And before that, who were you appointed by?

A Governor Bob McDonnell

Q Now, can you give the ladies and gentlemen of the jury a brief background of your education?

A Educated in Danville, Virginia, in private schools and public schools Went to undergrad at the University of Richmond Graduated in 1991 with a degree in political science, and have a master's in business administration from Virginia Commonwealth University

Q Okay And after you graduated from school, where --

tell us a little bit about your work history leading up to your appointment

A I actually did some professional work while I was at the University of Richmond for a state senator And then from there, after graduation, I went to Washington, D C , to work for former Congressman -- then Congressman L F Payne from the Fifth District of Virginia Spent the better part of the 1990s with him He retired, ran for Lieutenant Governor I was with him on that campaign That was an unsuccessful campaign

After that, I went to work in the private sector for a company in Danville, Virginia, called Dimon, Incorporated, a global leaf tobacco dealer And about 16 months later, I was hired by a Richmond-based company, another global leaf tobacco company, called Universal Leaf Tobacco Spent the latter part of the '90s, better part of the 2000s at Universal, until Governor Tim Kaine asked me to be Commissioner for the Virginia Department of Agriculture and Consumer Services That was in 2007 Served in that capacity as Commissioner until then Governor-elect Bob McDonnell asked me to be Secretary And that's bringing up to 2010

Q Okay Tell me a little bit about the duties of the Secretary of Agriculture and Forestry for the State of Virginia?

A We redefined them in the McDonnell administration It was a relatively new position It was created in 2004 It had never been part of the Governor's overall economic development strategy

Governor McDonnell had ran his, on the campaign, Bob's For Jobs And as Commissioner of the Department of Agriculture and Consumer Services, I had seen a lot of missed opportunities for Virginia's largest industry, agriculture, to be sitting at the table for economic development

So we changed the format, and I essentially, through the strategic plan that the Governor and Chief of Staff and several of us developed, became the Chief Marketing and Development Officer for agriculture and forestry, which were, at the time, the two largest industries in the State of Virginia So it was very much an economic development, domestic development focus, but also a global trade focus in moving products into the global marketplace

Q All right And with regard to products related to agriculture and forestry, give us a sense of some of what that means Clearly tobacco would be one, but what else?

A Everything from -- I use my grandfather's line Everything from apples to zucchini, because we're growing it, producing it in here in Virginia, but we market and promote not only here in Virginia, but around the country and around the world everything from peanuts, ham, pork, poultry, leaf tobacco, wine I mean, it really does run the gamut because Virginia has a very, very diversified portfolio of agricultural products

Q Okay Now, before joining the administration, did you know the Governor's Chief of Staff?

A I did

Q And that's Martin Kent?

A Martin Kent Yes, sir

Q And I believe the jury has met him Tell us a little bit about how you knew Martin Kent

A Martin and I are both from Pittsylvania County My father and his father have known each other for years Martin and I did not meet until we were both at the University of Richmond I'm a year older than Martin So I came back to, sophomore year, to the University of Richmond, and my father had told me about Martin And we met then and kept in casual touch over the years Saw each other at different things

Obviously, we were moving in different circles after graduation from University of Richmond, but reconnected in the -- after I became Commissioner of the Department of Agriculture in 2007

Q All right During that time period, did you also have a chance to meet Bob McDonnell?

A Yeah I met then Attorney General McDonnell -- excuse me A candidate for Attorney General I think I met Bob in 2005 when he was running for Attorney General

Q Okay Now, during Mr McDonnell's campaign for Governor, did you have a chance to have any input on his campaign, and did that -- tell us a little bit about that

A Yes I was -- as Commissioner of the Department of Agriculture, I -- and the relationships that I had with Martin Kent, obviously, and then Jasen Eige had been my attorney for a period of time from his role at the Attorney General's Office, he was overseeing, providing legal guidance to the Department of Agriculture, I offered, a number of times, advice and counsel on agricultural issues that would come up during the campaign

I talked to them There was e-mails, so forth Really was planting the seeds that there were a lot of opportunities for economic development and global trade that a candidate who is running Bob's For Jobs should take advantage of, if he should win

So there was the general advice and counsel provided particularly to those two gentlemen

Q Okay Now, once he was elected, did you, with his help, undertake any particular initiatives related to agriculture?

A We did As I mentioned earlier, we changed the dynamic for agriculture and forestry And as I said earlier, the two largest industries in the State of Virginia had historically not been a part of an overall economic development strategy from the Governor's Office, and I thought that was -- I thought it was wrong

So we decided -- and going back to -- he was then Governor-elect, decided to put together a draft of -- of an idea that I thought that every Governor going forward should do and include ag and forestry into economic development So we put together a strategic plan that focused on increasing domestic development for agriculture and forestry and increasing global trade

And as far as I can tell, that had never been done before, at least in modern history And we traced it back 40 to 50 years, and we wanted to be able to say that he was the first Governor in modern Virginia history to do this, and it yielded some incredible success that we continue to build on now

Q Okay As part of that, was there created something called the Agriculture and Forestry Industries Development Fund?

A Yes

Q Okay What is that fund?

A It was a specific economic development fund created for agricultural and forestry projects I saw, from my time in the private sector at Universal and also at the Department of Agriculture, where a number of projects, specific to agriculture and forestry, were not qualifying for some of the incentive packages that the State of Virginia had And Virginia is constantly ranked best for business, and we have a wide variety of tools that help make us one of the most attractive states in the nation for doing business

But I saw these projects that weren't qualifying for some of those funds And I approached the Governor, shortly after we were getting into office, about my desire to create an economic incentive fund dedicated to promoting agriculture and forestry, again, creating new investments in the state, helping existing industries expand, but also trying to get more products in the global marketplace

Q All right And this fund, how are the grantees chosen?

A A grantee would have to apply, in coordination with a locality They would have to be making a certain amount of investment in Virginia They would have to be creating a number of jobs, and they would also have to be purchasing at least 30 percent Virginia-grown agricultural or forestry products that they would be adding value to and then selling into the marketplace

So it was -- again, it was very similar to the Governor's Opportunity Fund, which a lot of people know about, but it was dedicated specifically to agriculture and forestry so they would qualify for some of the incentives as well

Q All right And how big -- about how large was that budget?

A At the end of the McDonnell administration, it was $2 million I think we had basically a million dollars in the first year of the biennium, and a million dollars in the second year of the biennium

Q Okay And about how many grants have been awarded since this program?

A We just awarded the 14th on Monday

Q All right And can this money go towards the tobacco agricultural industry?

A Yes, if they meet the predetermined qualifications

Q Okay Now, in working with your time, did Mr McDonnell -- first of all, does the Governor have -- what's the Governor's role is this fund?

A The Governor's role is at the very end He's going -- there's a vetting process that starts with my staff in agriculture and development at the Department of Agriculture They're going to be working with the private sector in the locality that are applying for the grant They are going to be vetted There's going to be a whole series of deep questions to be sure that they are going to do what they say they are going to do There's a return on the investment to the State All the qualifications have to be met

Ultimately, that's going to be signed off by the staff at the department It's forwarded to me My Deputy Secretary and I will review it, and we'll make a recommendation -- in the case of the McDonnell administration, it was always to move forward It would be sent from my office and the Secretariat to the Chief of Staff where he would review He may ask questions Then he would send it to the Governor for final approval

Q All right Were there any of these grant moneys that ever went to Star Scientific?

A No, sir

Q All right Did -- were you aware if Star Scientific ever applied for any of these funds?

A No, sir

Q All right Did Bob McDonnell ever come to you ask you to support getting any of these funds for Star Scientific?

A No, sir

Q Okay Let me ask you just briefly about meetings As your time during Secretary of Agriculture, were there times when Mr McDonnell would ask you to meet with various people to hear them out on whatever issue they may have that's related to your duties?

A Yes All the time

Q Okay And give us, just briefly, a little sense about how some of these requests would come in

A Most of the requests that I had to follow up on for the Governor would be through a business card that he had picked up along the way I would say probably 75 to 80 percent of the follow-up that I had to do with -- with folks in my sector, or my sectors of ag and forestry, came from those business cards where they would say, "Please see me Follow up Please call "

And over time, I learned that a lot of times you just went ahead and followed up directly with that You didn't need to go see the Governor, because a lot of times my schedule didn't match up with his because we were both in different directions

So that's how we would start the process And most of the time, I would do the follow-up, and they would be sent back down to staff Then the process would start over again, because it was very rare that I could help them They needed to go through a process to get where they wanted to go

Q Okay So -- and in setting up these meetings and meeting with these various folks, did you ever find that to be inappropriate?

A No

Q Okay And fair to say that Governor McDonnell trusted you to use your best judgment on how to handle these things?

A Yes, sir

Q And you did so?

A Yes, sir

Q Now, sir, do you -- are you familiar with a man named Jonnie Williams?

A Yes, sir

Q All right Can you please tell me how you first became aware of Mr Williams?

MS ABER: Objection, Your Honor Can we approach on this?

THE COURT: Come up

(At Bench)

MS ABER: Your Honor, the government interviewed Mr Haymore early in the investigation Mr Haymore's exposure to Jonnie Williams is secondhand, thirdhand He worked for a gentleman who years ago told him, at Universal Leaf, that Mr Williams wasn't to be trusted; effectively, he shouldn't be in the same room with Mr Williams, but offered no additional explanation or reasoning

Mr Haymore subsequently conveyed that to Mr Kent in like the second year of the administration, but nothing else came of it Mr Haymore hasn't even met Mr Williams, I believe

MR DRY: It's like thirdhand opinion.

THE COURT: Is that all you have?

MR BROWNLEE: What that is is that Mr Haymore would testify that when he worked at Universal, that he was told being in the room with Mr Williams alone is a fireable offense

THE COURT: That objection will be sustained

MR ASBILL: Going forward, the second part is that he conveys that information, in early 2012, to Martin Kent, who never talks to Mr McDonnell about it

THE COURT: Well, you'll have your opportunity The objection is sustained You can't get to it from this witness

(In Open Court)

BY MR BROWNLEE:

Q Let me ask you about the Virginia Tobacco Commission

A Okay

Q Are you, as your duties as Secretary of Agriculture, on that Commission?

A Yes

Q Okay And tell us, briefly, a little bit about the Commission and your role on it

A I would be considered, I guess, as a member ex-officio because of my -- not because of my name or personal, but because I'm Secretary of Agriculture And I think it was created that way and is established and put in code

I -- I sit on one subcommittee, part of the larger Committee, but have not been the best member of that Committee because of scheduling I try to send my deputy when I'm not available

Q Okay But you are -- you sit on the Commission And are you one of the 31 members?

A Yes

Q Okay And do you have a vote on whether or not grant applications are either approved or disapproved?

A Yes, sir

Q Okay And as far as your time on the Commission, has there ever been an application advanced that you're aware of involving the research of Anatabloc or something called anatabine?

A No, sir

Q Okay And has Bob McDonnell, as Governor, did he ever come to you as the Secretary of Agriculture and ask you to support such research or to advance such research?

A No, sir

Q I think it fair to say in order for the Board to consider such a request, there must be an application filed; is that right?

A Yes, sir

Q Okay Just finally, with -- as your role as Secretary of Agriculture working with Governor McDonnell, did he ever at any time ask you to meet with anyone from Star Scientific?

A No, sir

Q Okay Did he ever ask you to do anything, support anything for a guy -- for Jonnie Williams?

A No, sir

MR BROWNLEE: Okay That's all I have, Your Honor Thank you

THE COURT: All right Mr Burck

MR BURCK: Thank you, Your Honor

CROSS-EXAMINATION

BY MR BURCK:

Q Good afternoon, Mr Haymore My name is Bill Burck, and I represent Maureen McDonnell

A Yes, sir

Q I just have a few questions for you

A Yes, sir

Q Are you familiar with a program called FLITE, F-L-I-T-E?

A Yes, sir

Q That's the First Lady's Initiatives Team Effort?

A Yes, sir

Q And that was a program that Ms McDonnell initiated when she started off as First Lady?

A Yes, sir

Q And you -- did you assist her in aspects of FLITE, particularly pertaining to the Virginia wine industry?

A Yes, sir

Q And economic development, tourism, that kind of thing?

A Yes, sir

Q And Ms McDonnell, she traveled with you or went to events with you where she was promoting the Virginia wine industry, for example?

A Yes, sir

Q Okay

MR BURCK: Could you just show for the witness RM-0142

BY MR BURCK:

Q Now, sir, this as this is an article that's reflecting "Governor McDonnell Joins First Lady, Sheila

Johnson at Salamander Resort Reception Touting Wine Industry"? Do you see that?

A Yes, sir

Q And have you seen this article before?

A Yes, sir

MR BURCK: Could we publish it for the jury, Your Honor?

THE COURT: What's the number?

MR BURCK: I'm sorry It's RM-0142

THE COURT: It will be admitted

MR BURCK: Thank you

BY MR BURCK:

Q And who is Sheila Johnson?

A Sheila Johnson owns the Salamander Resort and Inn and also another gourmet market in the Middleburg area As my recollection, she was a former executive and co-founder, perhaps, of BET

Q Got it And is it fair to say that this was an event at which Ms McDonnell and the Governor appeared with you to promote Virginia wine industry?

A Yes, sir We were promoting the Virginia wine industry, wine tourism, and the -- unveiling a wine -- the Northern Virginia wine region sign initiative that we had worked on, in cooperation with the Secretary of Transportation, to promote more wine tourism to that area of the state and other areas of the state This just happened to be signage for the Northern Virginia region

Q Great And do you recall if Ms McDonnell made any remarks at this event?

A I don't recall

Q Okay Did you go on --

MR BURCK: You can take that down Thank you

BY MR BURCK:

Q Do you recall if Ms McDonnell went on other events as well, promotional events that you attended?

A Yes, sir

Q And do you recall if she made remarks at some of those events?

A Yes In general, absolutely We did a lot of speaking together at these wine, wine tourism promotion events

Q And these were for Virginia businesses; is that right?

A Yes, sir

Q And did she mention the Virginia business names in her remarks?

A Certainly if we were at a particular railway, the winery that we would have been speaking at would have been mentioned But generally, the things that we were doing were about the larger region or the cluster of wineries that were -- again, we were trying to promote wine, wine tourism trails and so forth But certainly there would be a business mentioned, particularly the one we were located at

Q Okay Thank you Do you know someone by the name of Mary-Shea Sutherland?

A Yes

Q And who is she?

A She was the First Lady's Chief of Staff for a period of time during the McDonnell administration

Q Do you recall -- putting yourself back in 2011, the summer of 2011 Do you recall having conversations with Mrs Sutherland -- Ms Sutherland, excuse me, about Jonnie Williams?

A Yes, sir

Q Can you tell us what you recall about that?

A Mary-Shea and I did a lot of work together We spent a lot of time together in Richmond, but also around the state for these events to promote wine and wine tourism as part of the First Lady's FLITE initiative and became close

Mary-Shea told me that she was frustrated, wanting to do something different I think all of us that have worked in government and closely at the Governor's Office know there's a burnout factor And I think Mary-Shea had -- was experiencing burnout She was ready to move on And she mentioned to me that she was looking to seek other opportunities and there was some specific discussions And I think she was partially confiding in me, getting advice and counsel, again, as two friends, professional colleagues would do, but also somebody you'd consider as a friend

Q Do you recall if she mentioned going to an event at Gibson Island?

A I do

Q And what did she tell you about that event?

A She told me that she was going to -- going to this island that I had never heard of I was embarrassed at the time, but as a lifelong Virginian, I would have thought I would have known something about an island in the Chesapeake Bay, even though it was in Maryland

And she was going to be flying in a private jet and was going to be talking to Jonnie Williams about future opportunities And I remember it very distinctly because of my background in the tobacco industry and knowing who Jonnie Williams was

Q And when you say "future opportunities," what did she say about future opportunities?

A I took it as job opportunities, future employment opportunities. Things that she would do after leaving state government

Q And this, again, was in the summer of 2011 that she brought it up?

A This would have been at some point during the summer of 2011

Q And did she ever talk to you again about Mr Williams, about the opportunities that she mentioned?

A Just the job opportunities weren't playing out as quickly as she had wanted, that things weren't moving as quickly as she would have liked Nothing specific about failed attempts or -- it was just sort of general conversation following up on something that she had said to me earlier in the summer

Q And that was, again, in 2011?

A Yes, sir Summer of 2011

MR BURCK: Thank you

I have no other questions Your Honor Thank you

THE COURT: Any questions from the government?

MS ABER: Very briefly, Your Honor

CROSS-EXAMINATION

BY MS ABER:

Q Good afternoon, Secretary

A Good afternoon

Q Now, in reference to Mary-Shea Sutherland, she had told you that she owned Star Scientific stock, didn't she?

A I believe she told me that she had purchased it recently during a conversation that we had at some point during 2011

Q She wasn't hiding that from you, was she?

A No No No, ma'am

Q Now, as a Cabinet Secretary in both of those administrations, you reported to -- directly to the Governor, right?

A I would say I reported directly to the Chief of Staff Because, again, the Governor's schedule is such that he's not there all the time The Chief of Staff generally is, and you have easier access to the Chief of Staff than you do the Governor

Q But the only person who could fire you would be the Governor, right?

A I would guess so But if Martin Kent came to me and told me that my services were no longer needed, I would have probably packed up and left as well

Q Understandable Mr Kent can be the bearer of bad news, but the Governor technically is your boss, right?

A Yes, ma'am

Q Okay And when the governor in the McDonnell administration or the McAuliffe administration directs you to meet with someone, says, "Secretary Haymore, I want you to do X," do you do it?

A I did Unless I had a reason to not do so, which I would follow up with the appropriate person, either counsel or Chief of Staff, someone -- or the Governor directly if I had that opportunity

MS ABER: Okay One moment, please, Your Honor

(Counsel conferring with co-counsel)

MS ABER: Nothing further Thank you

THE COURT: All right

Anything else?

MR BROWNLEE: Just one question

REDIRECT EXAMINATION

BY MR BROWNLEE:

Q Just very briefly, if given the opportunity again, would you work for Bob McDonnell?

A Yes, sir He was a very good person to work for The things that we did for agriculture development and forestry industries were outstanding And part of the reason that I'm working with Governor McAuliffe today is because of all the good work that we did under Governor McDonnell's leadership

MR BROWNLEE: Thank you

Nothing further Thank you, Judge

THE COURT: All right Thank you, sir You may stand down

(Witness stood aside)

THE COURT: Call your next witness, please

MR BROWNLEE: Your Honor, we call James Burke B-U-R-K-E I believe we're collecting him, Your Honor

JAMES BURKE,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR BROWNLEE:

Q Good afternoon, sir

A Good afternoon

Q Would you please state your full name, and spell your first and last name for the court reporter

A Sure It's James Michael Burke J-A-M-E-S, B-U-R-K-E

Q And can you please tell the ladies and gentlemen of the jury where you're currently employed and your job?

A Sure I am at Virginia Commonwealth University I'm Director of the Performance Management Group And it is located within the Wilder School of Government

Q Okay And can you please tell us a little bit about Performance Management Group What does that mean?

A Sure It's basically a small consulting firm We do anything from individual leadership development, to team building, to helping organizations perform better, facilitate communication within organizations, things like that We also do a lot of leadership development, training development that way

Q And is it fair to say that it is common for you to work with state agencies and entities to help them improve their performance?

A It's about 93 percent of our business Yes

Q And have you worked with prior administrations before you worked with the McDonnell administration?

A Yes We've usually work with Cabinet Secretaries on down That's fairly common for us

Q Okay And I forgot to ask you Can you give us just a brief sense of your educational background?

A Yes I have a Ph D in clinical psychology from Georgia State University

Q Okay Did there come a time where you were asked, Performance Management Group and you personally, were asked to come in and assist the Office of the First Lady?

A Yes

Q Okay And can you tell the jury a little bit about how that happened?

A Sure Martin Kent, Chief of Staff for the Governor, called me and asked if I would be willing to assist in putting together a team for the First Lady to assist her with her initiatives

Q Okay

A And we had a very brief conversation and then met a few days later

Q Okay And so Mr Kent, the Chief of Staff for Governor McDonnell, contacted you to see if you'd be interested in coming to help out?

A That's correct

Q And is this something that was fairly common to what you did for other state agencies?

A Yes Yes You know, building -- helping to hire people is not something, necessarily, we get involved in a great deal But assisting in building the team, fostering connections, and also in terms of enhancing processes within teams, that's very common

Q Okay So you agreed to do this; is that correct?

A Yes, sir Yes, sir

Q All right And can you give us a sense of how you understood your assignment or your mission in coming in to help the First Lady's staff?

A It was assumed, at least on our part, it would be a -- probably a brief engagement And so we would just come in, interview the staff and kind of assist, find out what gaps were there, assist them in filling those gaps, and move on from there

Q Okay And so you agreed to do this?

A Yes

Q Can you give us a sense of -- well, did you first interview or speak with Ms McDonnell and I believe Martin Kent in a meeting as kind of an introductory meeting?

A That was our first meeting was with Martin and the First Lady We met in Martin's office at the Patrick Henry Building

Q All right And just tell the ladies and gentlemen of the jury about that meeting

A It was a meeting that Martin helped to facilitate heavily, just to give us background information He mentioned that there had been some changes in the staff and that there was a desire to build better processes, assist the First Lady achieving her initiatives, the things she wanted to do through the Office of the First Lady

And it seemed to be relatively straightforward We were going to -- we made plans to meet with the rest of the staff to get to know them and to go from there

Q And this was -- so we get the time, this was in October of 2011?

A Yes I believe around October 6th or so Something like that

Q All right And you have a partner who works with you in this named Linda?

A Linda Pierce

Q Okay And Linda was with you as well; is that correct?

A She was Uh-huh

Q Okay So give us a sense of some of the things that you and your team did to try to make this staff better

A Okay We met with the staff early on, and we heard that there were some difficulties in terms of communications, in terms of just getting things done And they really wanted to build a good team around them

We met at that time with -- Sarah Scarbrough was there Elizabeth Mancano, and I'm not sure if Tutti Townes, the butler, dropped in He may have dropped in

But it was clear that we needed to develop a team, find out what they needed first, where the gaps were, and what kind of expertise would be needed in order to be of good service to the First Lady, in this case

Q All right And I believe you stated that this first meeting was little awkward Ms Sutherland was there Tell us a little bit about that

A Yes We really didn't know much about what was going on in the office But Mary-Shea Sutherland was moving her office out at that time, and we are really hadn't kept up on any of the things that were going on there So it was a little awkward having -- discussing the future, as it were, while somebody is moving out of the office So we kind of moved our meeting to the back of the cottage

Q All right Do you know an individual named Kristen Kaplan?

A Yes

Q Can you tell the jury who Ms Kaplan is?

A Kristen Kaplan used to work for me at the Performance Management Group, and she and I both worked for somebody else there before I took over Performance Management Group

I called Kristen early on because I saw her as a very competent, organized individual who could really help make a difference But I didn't call her for the job I called her because she knows what was needed So I asked her if she knew anybody who would be interested in a position like this Described the position, described that it was going to be a difficult position and pretty demanding She had a few young children

So I didn't even -- it didn't even occur to me I thought she would be a great person for the job, but it didn't occur to me to say, "You should do this " She called -- she said she would think about who would be good and called me back, I believe it was the next day, and said, "I would like the job "

Q Okay And so Ms Kaplan is someone that you were familiar with So she came on board Were there any other people that -- after you came on, that joined the staff?

A Sure Before Kristen actually came on, we brought in Audrey Trussell, who was just also an excellent individual, somebody that Linda Pierce knew And she accepted the position as well And then we brought on Kathy Scott after -- I believe it was after Kristen I can't remember the exact order, but I think it was after Kristen Interviewed her and brought her in

Q And all this was done to try to help the staff improve and get better?

A Yes

Q Okay Give us a sense of the first couple of months, in your opinion, how things were progressing for the staff

A It was clear early on that this was going to require a great deal of organization Hence, when Kristen accepted the position, I knew the First Lady would be in excellent hands because she would be able to help bring some organization and processes to a number of initiatives We tried to keep the initiatives small, keep the work manageable

We were concerned that -- early on, we had heard that there were a lot of ups and downs in the office, and there was an undue amount of chaos, if you will, that we were trying to bring order to And our hope was, again, to build the team and to step away, but we got called in several times to assist the team and also assist the First Lady in a few different things

Q All right I want to pull up, and if you'll look at -- this is just for the witness, RM-0272

A Eyes over 50 here, John

Q We'll blow up the bottom part

A That would be great Thank you

Q This is an e-mail --

A Uh-huh

Q -- from Ms Kaplan to you?

A Right

Q And this is November 30th, 2011?

A Uh-huh

Q So fair to say you've been working here now six weeks or so?

A Yes That's correct

Q Okay And then if we scroll up, this is your response?

A Yes

MR BROWNLEE: Okay We move in RM-0272

THE COURT: It will be admitted

MR BROWNLEE: Okay If we could go back down, Victoria

BY MR BROWNLEE:

Q So tell us what Ms Kaplan is asking from you here

A The goal was to -- after doing several different process improvements, largely focused in November, around November 21st is the memo that she described, a lot of process improvements And this one was the next leg of the journey, which was the retreat

And although we really did enjoy working with the team very much and with the First Lady and were very excited about helping her be successful, we also are a soft money funded organization within VCU, and so we require paying jobs to keep our group afloat

Q All right So let's go to your response, if we can

A Uh-huh

MR BROWNLEE: If we can scroll up

A Yes

BY MR BROWNLEE:

Q So she was basically asking you to -- if you wanted to be involved in this retreat And your response is as follows "We will give it some thought, but I am not that interested in helping at this time without some significant change I am very busy and have put my priorities in more fruitful endeavors "

A Yes

Q Can you just give the jury a sense of what --

A Yes

Q -- was going on at this point?

A It's 10:47 at night I'm feeling a little tired probably and rather irritable, more than likely, and I'm feeling a bit put on for another event At the same time, we had agreed to assist them with it in different ways, but clearly I was ambivalent at this point I felt ready -- like we are done We did our part We're done

Q Okay

MR BROWNLEE: You can take that down Thank you

BY MR BROWNLEE:

Q So let me advance a couple of months to January of 2012 So I guess at this point you've been in this effort for about four months?

A Yes

MR BROWNLEE: And let me pull up an e-mail for you RM-0269

A Uh-huh

BY MR BROWNLEE:

Q And is this an e-mail that you wrote to --

A Kristen

Q -- Ms Kaplan?

A Yes

MR BROWNLEE: Your Honor, we move in RM-0269

THE COURT: It will be admitted

MR DRY: Your Honor, we would object on hearsay

THE COURT: It will be admitted

BY MR BROWNLEE:

Q Can you give us a sense of what this -- this e-mail is about here?

A Yes Can you scroll -- can you do the preceding?

Q I think this is --

A Okay

Q I think this is it

A Okay At this point, my understanding, if I remember correctly, was that Kristen -- which was rather unusual I believe it was early on, the First Lady was feeling somewhat overwhelmed with the demands that were going on and -- or that she was experiencing

The Governor, which was very unusual, had put -- or Kristen at least reported feeling put -- blamed, if you will, for the First Lady's upsetment And she had written about that and was very -- wrote to me very upset about that It was very unusual, since the Governor was typically extremely supportive of the staff and went out of his way to support them

So I was just giving her some support and offering her some humor, if you will, just to soothe her a bit I went on to certainly state -- talk about the Governor and Maureen And as I said here, that Bob -- make a reference to that the Governor does not throw people under the bus And that's one of the things I admired about him

Q Let me focus on --

A Yep

Q -- that second paragraph there where it says, "I have to say"?

A Uh-huh Yep

Q And if you start with -- just go ahead and start and read that to us

A Sure "I have to say, I have" -- I always love reading late-night e-mails

"I have to say, I have been happy to" --

MR DRY: I'm sorry Object I'm sorry, sir

I'm going to object to him just reading wholesale something that was just admitted

MR BROWNLEE: Just a very short piece of it

THE COURT: Go ahead

A Okay Tell me when to stop

BY MR BROWNLEE:

Q I will

A "I have to say, I have been happy to truly try/want to help Bob and Maureen Integrity, regardless of party, matters so much So does the heart to care We reached out because we needed and did not care anything about politics, but about people I think you have that same genuine care that is so pure Thus, it hurts all the more when there is a lack of understanding I admire Bob's refusal to throw his staff under the bus Most politicians do not have that courage "

Q All right Let me stop you there

A Okay

Q Now --

MR BROWNLEE: You can take that down Thank you

BY MR BROWNLEE:

Q Now, after this, did there come a time where you sought a meeting with Mr McDonnell?

A Yes, there was

Q Okay And -- first of all, who was at that meeting?

A That was Linda Pierce, the Governor, and myself

Q Okay And just tell us a little bit about -- tell us about that meeting

A Okay Just to provide framework, if I may

Q Yeah. Just provide framework

A This was a meeting on February 1st, and it was understood to be a private meeting So talking about it in this way is, quite frankly -- it causes me some anxiety and discomfort

Q Well, let me ask -- let me lead you a little bit here

A Uh-huh

Q And subject to counsel's objection But fair to say that you described for him some of the issues that you were seeing within the staff?

A Yes

Q Is it fair to say that some of those related to Ms McDonnell?

A Yes

Q Okay And is one recommendation you had for him was the possibility of her leaving the Mansion and living in her private residence?

A That was briefly mentioned

Q Okay

A And the reason being that she was under stress

Q Okay Now, after that meeting, did you write -- well, let me show you RM-270

A Uh-huh Yes Uh-huh

Q Is this an e-mail that you wrote after that meeting?

A Yes

Q Okay

MR BROWNLEE: Your Honor, we'd move RM-270 into

evidence

THE COURT: It will be admitted

BY MR BROWNLEE:

Q Okay And is this the e-mail you wrote following that meeting to members of the staff?

A That is correct

Q Okay And just briefly, it says, "And hats off to our Governor Thanks, everyone, for laying the groundwork that allowed for a truly productive conversation"?

A Yes

Q And you felt that the conversation with Mr McDonnell that day was productive for this team?

A I thought so Yes Uh-huh

Q Okay All right

MR BROWNLEE: You can take that down Thank you

BY MR BROWNLEE:

Q Let me fast-forward, I guess, to the next -- to the end of the -- later that month Did your services end?

A Yes

Q In February of 2012?

A That's correct

Q Okay Just tell the jury how those -- what happened that kind of precipitated you guys deciding that your time there was finished?

A Well, I wouldn't say that we decided that our time was finished

Q Okay Go ahead

A The -- what happened is there was a letter that was going to be sent to the Governor from the team, the Mansion team

Q Let me stop you Let me back you up

A Uh-huh

Q You're aware, and I think the jury has seen, a letter that was prepared by the staff for Ms McDonnell?

A That's correct

Q Okay And you understand that letter was never delivered to her?

A Yes

Q Okay Now you're talking about another letter?

A This -- I think this was the letter Because it was -- it was not -- it did not go to -- directly to -- or it seemed -- it was my understanding that there was a letter There may not actually have been some other letter that was --

Q Okay

A -- that came up

Q And you had a phone call with the staff Tell us about that call

A Yes What they were going to do is basically take a letter to the Governor They had felt that they were not listened to by Martin Kent or Janet Polarek, and they were starting to not feel listened to by us And by "listened to," I mean that we were taking action to make a significant change, an intervention, if you will, with the First Lady

They were going to take a letter, in a very uncharacteristic manner, because they were very, very professional, top group But they were going to take a letter to the Governor and basically make sure that the Governor knew of their distress and their un -- discomfort and their willingness to walk off en masse, as apparently everybody has seen

Q Okay And what did you tell -- so this was a call, and it had members of the staff on it?

A Yes

Q And what did you tell them?

A It was a very brutal conversation I would not say I was pleasant or nice But we tried to stop them from this because we wanted them to contain the issue, the problems that they were having and deal with the First Lady directly and let us assist certainly with them Let Martin and Janet assist, or whatever

But our goal here was to let the Governor govern Their role was to assist in containing difficulties and problems and allow him to do his job so that he could really serve the state at that time and also to help the First Lady achieve her initiatives, which were tremendous and which came from her desire to make a difference in the lives of people We wanted them to stop the drama, to contain the drama, and to go back to business as usual and to show their exceptional professionalism

It was clear that they did not want to follow this path They wanted to take it up to the next level And it became -- it was on Main Street in front of the Richmond Public Library, and it became sort of a shouting match over the phone Not a moment I'm super proud of, but we were trying to put an end to the drama

Q And it's your understanding that after your call with them, they did not forward that?

A We did not follow up in terms of that We were -- we didn't get feedback from Kristen

Q And did that pretty much end your work there?

A Not only did it end our work there It ended a friendship for a while, too, which was very sad But we were operating under the service of what we thought was the greater good

Q All right And that friendship was with Ms Kaplan?

A Yes, and restored Kristen, Sarah, the whole team They are just great But it has restored

MR BROWNLEE: Thank you

THE COURT: Mr Burck

MR BURCK: Thank you, Your Honor Just very briefly, Your Honor

CROSS-EXAMINATION

BY MR BURCK:

Q Good afternoon, Mr Burke We're -- I'm Bill Burck I represent Maureen McDonnell We're not related, right?

A Correct

Q Just a few questions

A Sure

Q You spent roughly how long, five, six months, at the Mansion or helping with the First Lady's Office?

A That's correct.

Q And you had an opportunity to spend time with Ms McDonnell?

A Yes Quite a bit

Q You spoke to her You met with her?

A Yes

Q Did you have any impressions of her from that time that you met with her?

A Well, I think we were all very fond of the First Lady We loved her energy, her spark, her drive, and her desire to make a difference, and we wanted to help her with that.

Q Well, let me ask you this

A Yeah

Q In terms of the difficulties that you learned about in the management of her staff --

A Uh-huh

Q -- did you see any basis for the -- for those difficulties being expressed by the staff?

A We never witnessed the First Lady in being aggressive verbally or otherwise to any staff member We would get e-mails from staff --

MR DRY: Your Honor, I'm going to object for anything other than his personal knowledge, if he's talking about what other staff members reported to him

MR BURCK: Your Honor, I can just ask -- that's fine I just --

THE COURT: All right Go ahead See what he knows

MR BURCK: Yes, sir

BY MR BURCK:

Q What were your impressions of Ms McDonnell, based on your observations of her?

A She was often very nervous, very anxious She worried about things quite a bit She and I spent a lot of time on the phone, and a lot of it was really trying to help her kind of take perspective, keep calm and to do what she saw as her job as First Lady effectively And so we spent a lot of time assisting her with that, and we were hoping that we could be helpful and effective

Q Now, you testified, in response to a question from Mr Brownlee, that you had said to the Governor that he might want to send her back to their home? Is that what you testified to?

A That was one thing that we thought of; is there a way of decreasing time at the Mansion

Q And why did you make that -- let me ask you this Was that a recommendation or was that suggestion? How would you characterize that?

A An idea

Q An idea Why did you have that idea?

A She was clearly stressed She was not happy Something that she told us and other people was that this is not what she signed up for, but she did it because of the Governor and her relationship

But it certainly was not home territory to her She was very uncomfortable in public speaking And so we wanted to ultimately try and minimize her big public speaking events to things where she did exceptionally well, which is one-on-one with people, engaged with children She was a star She could do great work that way

MR BURCK: Thank you very much
No further questions, Your Honor

THE COURT: Cross?

CROSS-EXAMINATION

BY MR DRY:

Q Good afternoon, Mr Burke

A Good afternoon

Q You had several interactions with the First Lady?

A Yes

Q And those interactions began in late fall and continued through early spring of 2012; is that right?

A That's -- it really ended largely in February I think we would see each other periodically here and there and had some contact

Q Okay And some of your conversations related to her being unhappy?

A Yes

Q And when she was describing her unhappiness, at any point did she ever blame Mr McDonnell for her unhappiness?

A No

Q And, in fact, in all of your conversations with Ms McDonnell, she never mentioned the name Jonnie Williams to you once, did she?

A I'm happy to say no

Q Okay. And in those conversations, did she ever express that she had any kind of crush or romantic feelings for anyone other than her husband?

A Never

Q And you had no sense of that?

A No, sir

Q Now, I want to go back to this February 1st meeting you had with the Governor I believe you said that it was an idea that maybe to lower her stress level, to minimize her time at Mansion Was that right?

A That was one idea

Q And you expressed that to the Governor?

A Uh-huh

Q Is that accurate?

A That's correct Yes

Q And did you express to the Governor his wife's anxiety?

A Yes

Q And you expressed her stress at appearing at public events?

A I'm not sure if we referenced that specifically But her stress level, yes

Q Okay But you're telling the Governor that she's stressed in her role as First Lady, right?

A That's correct, sir

Q And that included public appearances with him?

A Yes Public appearances We were focused on her own work, separate from the work she was doing with him

Q Okay In that conversation, did you mention to the idea -- the idea to the Governor that maybe Ms McDonnell could lower her stress level by having counseling?

A Yes, we did

Q And what was his reaction?

A He -- and this is one of the reasons why -- as mentioned there in productive conversation, he did not say -- he did not -- some people, when you say that, they will object firmly

He said -- he listened He heard that But his answer was that he needed -- basically, he needed to take responsibility for a problem he caused He took responsibility for her distress and wanted to spend more time with her

Q Okay Is it fair to say that the Governor was not inclined to follow this idea of Ms McDonnell getting counseling?

A He didn't give indication, that I recall, that he would support it, because we did not follow up with a recommendation for a specific person, which is what we typically would do in this

Q Okay, sir I'd like to refresh your recollection --

A Uh-huh

Q -- just for a moment, with Page 4 I'm sorry

MR DRY: I don't want you yelling at me

BY MR DRY:

Q At the bottom

A Okay Could have printed this a little bigger Okay

Q I didn't print it

A Yes Uh-huh Okay Oh, I printed this Yes Okay Here we go Yes Go ahead

Q And, sir, is it a fair statement that in your conversation with the Governor, that he was not inclined --

A Uh-huh

Q -- to have Ms McDonnell go to counseling?

A That's correct

Q Okay And, again, this is February 1st of 2013?

A 2012

Q I'm sorry 2012 You're right

Now, I'd like to go -- well, first of all, in your conversations with Ms McDonnell, she explicitly told you that one of the reasons that she was anxious was because of having to give speeches?

A That was one of them Yes Uh-huh

Q And --

MR DRY: Let's go to Government's Exhibit 650, please

BY MR DRY:

Q Now, sir, this is an e-mail from you to Ms McDonnell on January 17th of 2012?

A Yes

MR DRY: Move for government's admission of Government Exhibit 650

THE COURT: It will be admitted

MR. DRY: Let's go down to --

A Uh-huh

MR DRY: And, actually, let's go to the second page and kind of set this up

BY MR DRY:

Q Is it fair to say that you're discussing with Ms McDonnell, at this point, assisting her with one of these speeches?

A Yes I had been assisting her It is now 1:02 in the morning, and I had been assisting her for several hours via e-mail

Q I can understand your earlier e-mail

MR DRY: Let's go to the first page, please

BY MR DRY:

Q And at the bottom, Ms McDonnell writes to you and congratulates -- or expresses her appreciation for your assistance, right?

A Uh-huh Yes

MR DRY: Let's go to the e-mail right above that

BY MR DRY:

Q You're talking to her some more about this?

A Uh-huh Yes

MR DRY: E-mail above that And then -- please stop right there

BY MR DRY:

Q Please read what Ms McDonnell's response is at 1:55 a m in the morning on January 17th of 2012

A "I really wouldn't be doing this for anyone else but that man of mine " Smiley face

MR DRY: Now let's go to the top e-mail

BY MR DRY:

Q What's your response to her?

A "Ah, love It is a wonderful thing "

Q And from what you've observed of Mr and Ms McDonnell, it seemed like they were in love?

A I -- you know, I was not privy to much of their relationship in terms of personal He seemed very gentle and very kind toward her, and she seemed very receptive and enjoying that very much

Q Okay

MR DRY: Let's go to Government's Exhibit 649, please And then let's go to the bottom e-mail

BY MR DRY:

Q And on this one -- on this one you're saying, "Like we always say, trust yourself"?

A Yes

MR DRY: And then let's go up to the top e-mail

BY MR DRY:

Q "Long speeches go," right, the context of this? Do you need to see it?

A No I remember it Yes

MR DRY: Okay Let's go to the e-mail right above this

I'd like to offer Government's 649 into evidence, Your Honor

THE COURT: It will be admitted

MR DRY: Okay Thank you

Let's go to the e-mail right above this, please Stop right there

A Uh-huh

BY MR DRY:

Q And Ms McDonnell talks about editing her speech and that she just gave the speech to the Governor so he could make his final edits?

A Yes

Q And that was part of what you were talking about earlier Mr McDonnell was supportive in helping his wife?

A Very

Q Okay

MR DRY: And then let's go to the top e-mail, please

BY MR DRY:

Q And this is you expressing support for Ms McDonnell?

A Yes Uh-huh

MR DRY: Now, I'd like to -- do we have RM-269 into evidence? 269

MR STARNES: Yeah

BY MR DRY:

Q I believe Mr Brownlee talked to you a little bit about this e-mail, and I think -- if we go to the bottom portion, that paragraph that Mr Brownlee had you read from

A Yes

Q I think that you said that the genesis of this e-mail was Ms Kaplan was reporting to you that the Governor was blaming her for the First Lady's anxiety Was that accurate?

A I believe that that was the previous e-mail I don't have that in front of me

Q Okay And you're trying to give your thoughts to Ms Kaplan and express support for her?

A Yes That's correct

Q Okay And I'm sorry I just wanted to make sure I understood Here you write, "I admire Bob's refusal to throw his staff under the bus " Is that accurate?

A That's accurate

Q Well, let me ask you about that From your observations of the Mansion staff, your interactions with the Governor's other staff, you thought that they were a professional group?

A Yes

Q And they were dedicated to their jobs?

A Absolutely

Q And they were trying to assist the First Lady in any way they could, right?

A That's correct

Q And you know nothing about what happened, let's say, February of 2012 and -- February 29th? You have no idea because you weren't really engaged at that point, right?

A That is correct

MR DRY: Thank you, sir

THE COURT: Anything else?

MR BROWNLEE: Just very briefly, Your Honor

REDIRECT EXAMINATION

BY MR BROWNLEE:

Q Sir, let me go back to this February 1st meeting that you and Ms Pierce had with Bob McDonnell Mr Dry asked you about some of the recommendations that you made that day You talked about counseling?

A Yes

Q There were more; is that -- there are more recommendations; is that right?

A We had talked -- we had just had a discussion It was generally about how things were going And talked about, you know, possibly the move, possibly -- and certainly about therapy as an intervention

Q And that -- for who?

A For Ms McDonnell

Q All right And -- and what did -- therapy related to what?

A That would be making reference to things that other people said in e-mails So --

Q Okay Well, this would be from your evaluation You were at this meeting?

A That's correct

Q You were talking with Bob McDonnell?

A Uh-huh

Q And tell me the type of treatment and for what you were recommending

A For anxiety, for -- we thought for some of the difficulties, the interpersonal difficulties that she was having --

Q Depression?

A -- reported having

Q Depression?

A And possibly depression that might have been underlying this We had heard that she would often stay up

Q Okay Let me ask -- and I think what -- was Mr McDonnell supportive of you and Linda and your efforts?

A A hundred percent

Q Okay But at that time you've testified that he felt that he would try to spend more time with her; is that right?

MR DRY: Objection He testified that the Governor stated that he would try to Not what the Governor felt

MR BROWNLEE: Fair enough, Your Honor

THE COURT: All right

BY MR BROWNLEE:

Q He said that he would try to spend more time with Ms McDonnell?

A Yes

Q Now, did you have any knowledge at that time about any other type of treatment she may have been in at the time?

A No knowledge of any other treatment, no

Q Okay Let me ask you this In your experience in dealing with these things, is it fair to say that multiple types of emotions can be in existence, can co-exist at the same time?

MR DRY: Objection, Your Honor Now he's asking for expert --

THE COURT: Sustained

MR BROWNLEE: That's all Thank you, Judge

THE COURT: Mr Burck?

MR BURCK: Just two Thank you, Your Honor Just very -- two short questions

RECROSS-EXAMINATION

BY MR BURCK:

Q You were asked by Mr Dry --

MR DRY: Your Honor, is he recrossing?

THE COURT: He has another opportunity to examine his witness

MR DRY: Your Honor, that wasn't -- he isn't -- that witness is not --

THE COURT: I know I understand that

MR BURCK: Your Honor, I can call him back in my case, or just two minutes

THE COURT: No I --

MR BURCK: Thank you, Your Honor

BY MR BURCK:

Q Just very briefly

A Sure

Q You were asked certain questions by Mr Dry about whether or not Ms McDonnell told you that she had a crush on Mr Williams Do you remember those questions?

A Uh-huh

Q And you were there for work purposes, right?

A That's correct

Q Did you consider yourself to be a friend or a close friend of Ms McDonnell?

A No We were there for work We became close as a result of this in terms of a work closeness, if you will

Q Did you view that -- did you think that you had a relationship with Ms McDonnell where she would tell you about her personal feelings for other people?

A I would not assume that would be the case

Q Did she talk to you about her friends a lot?

A No

MR BURCK: That's it, Your Honor Thank you

THE COURT: Thank you, sir You may stand down

THE WITNESS: Thank you, sir

(Witness stood aside)

THE COURT: All right We're going to stop here for lunch

MR ASBILL: Your Honor, may we approach on the schedule?

THE COURT: In a minute

You all may leave now Thank you We'll have you back at 2:15

(The jury left the courtroom)

THE COURT: All right You all want to come on up

(At Bench)

MR ASBILL: I have good news and slightly bad news Which do you prefer first?

THE COURT: Give me the bad news

MR ASBILL: Bad news, I've got a -- I've got a witness who's character, slash, fact who's flying in from Chicago I expect him to be here by 3:00 I have one other character witness who is available, and after that, it's Mr McDonnell And we're sort of well ahead of schedule in terms of the plans And I'd ask if we can resume at 3 instead of 2:15, and I'll put the two of them on and then I'll start with Mr McDonnell

MR DRY: Your Honor, the government objects to any further character evidence They have gotten character evidence in through basically every witness that's testified There's got to be some limitation at this point It's cumulative

THE COURT: No I -- I don't agree with that
You have somebody who's available, you say?

MR ASBILL: We do have somebody who's available that would probably be 20, 30 minutes, and then the next person, if we start at 2:15 I think there would be a gap before the other person arrives, who's flying in from Chicago as we speak

MR DRY: Is Mr McDonnell the last witness?

MR ASBILL: Yes, Mr McDonnell is the last witness

THE COURT: Well, this is what I'll do I'll -- I'll change our return time to 2:45 and we'll get started And then if you finish with this witness, hopefully the other one will be getting here

MR ASBILL: Thank you, sir I appreciate it

MR DRY: Thank you, Your Honor

(In Open Court)

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(Luncheon recess taken from 1:16 p.m. to 2:45 p m.)

THE COURT: All right, let's bring in the jury, please

(The jury entered the courtroom.)

All right, call your next witness, please

MR. ASBILL: The defense calls Reverend Timothy Scully

REV TIMOTHY SCULLY,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR ASBILL:

Q Would you tell us your full name, please, and tell us where you live?

A Father Timothy R Scully, C.S C., and I live on campus in a residence hall at the University of Notre Dame

Q C.S C stands for?

A Congregation of Holy Cross It is my religious community in the Catholic tradition.

Q Did you come from there today?

A I came here last night

Q Okay Why are you here?

A I'm here to provide testimony for my friend, Bob

McDonnell

Q How long have you known Bob McDonnell?

A 42 years

Q Okay Before we get into that, would you please tell us a little about what you do for a living?

A Sure I'm a Professor of Political Science at the University of Notre Dame for the last 26 years I am the Director of the Institute for Educational Initiatives, which is an institute which provides services to at-risk children in inner city neighborhoods across the United States and in some cases across the world. And I serve as a Fellow of the University and a Trustee of the University and a few other things

Q Have you had any administrative positions at Notre Dame?

A Yes I served as Academic Vice President for about eight years, and Executive Vice President for four-and-some years as well

Q All right And would you tell us a little bit about your educational background?

A Sure I am a product of Jesuit Prep School in Chicago, Illinois, where my family grew up. I studied for my Bachelors degree in Economics at the University of Notre Dame, and entered the seminary at that time After I graduated, I received a Master of Divinity degree at the

University of Notre Dame in the seminary there, became an ordained Catholic priest, and after about four years in Santiago, Chile as a young priest, I was sent by my religious community to get a Masters and a Doctorate in Political Science at the University of California in Berkeley

Q All right You said that you have known my client for over 40 years; is that correct?

A Yes, sir

Q How did you two first meet?

A Oh, Bob and I were assigned at random in the same residence hall in 1972 at the University of Notre Dame in Flanner Hall, the same floor, the same -- we ended up rooming for four years together there

Q Now, since that time, this was in 1972 when you all first met?

A Yes, sir

Q And since that time, have you had regular contact or have you kept in touch?

A Oh, yes Absolutely Bob has been a great friend ever since then, and not just Bob, but many of our classmates have hung together, especially those six people who ended up living for four years together We have been very close friends

Q All right Do you know his family?

A Bob's family?

Q Yes

A Oh, yes I knew his mother, his father, his siblings I know his wife and children. In fact, I am godfather to his first child, Jeanine

Q Does he know your family?

A Yes

Q Now, can you tell us some of the more important sort of milestones in your life or in his life where you two were together?

A You bet I was a seminarian when Bob and Maureen got married, so I was privileged to be a lector I read at their wedding And then when Bob was in the military service, of course, went to Germany, I was sent to Chile to serve as a young priest So we diverged a bit But when I came back from Chile, Bob and I reconnected. And of course, you know, I was privileged to be the godfather to his first child, and Bob came to my ordination to the priesthood and brought little Jeanine In fact, we didn't know, it was his first child, so we ended up, I didn't have a crib, you know, as you can imagine, so we ended up putting little Jeanine in a sock drawer, lining it So anyway, I've known him for some time So his first child, I was involved in the baptism.

And, you know, I've been involved as a spiritual partner to Bob. I was privileged to give the invocation at his inauguration as Governor of Virginia I prayed with him before that inauguration at his request together with a Baptist minister And we have been great friends for four decades

Q Okay You spoke about Jeanine. Did you attend Jeanine's wedding?

A I presided at Jeanine's wedding

Q All right How about his daughter, Cailin? Did you attend her wedding?

A No, you know, Cailin had invited me to preside at her wedding, but I had prostate cancer and was unable to preside at the wedding because I was undergoing surgery at the time

Q Now, in terms of your communication over the four decades, has that been in person and by other means as well?

A Oh, yeah. Yeah.

Q What sort of other means?

A Well, you know, we have been friends for 42 years So, you know, for much of that, the only means was personal contact letters and phone calls occasionally But, you know, as connectivity got denser, we were able to e-mail and text one another with some frequency

Q All right

A And Bob is a big Notre Dame football fan I should mention that And I'm not, but he is And so I would --

Q Are you for Michigan or something?

A No, I mean, it is the sport I'm not that crazy about it I think it is a little violent, whatever Don't let that get out to the Notre Dame community, though; they will hang me So Bob would come up, you know, almost once a year to a football game and I would be obliged to spend the game with him and he would get all fired up about it

Q When Bob -- obviously you are aware that Bob has run for a number of political offices during his career?

A Yes

Q Were you present -- I know you talked about being present at his inauguration as Governor Were you present at any other events? For example, when he became Attorney General, things of that nature?

A No, I was not

Q Once he became Attorney General -- you knew he became Attorney General, correct?

A I did.

Q Once he became Attorney General, did the level of your contact with him increase or decrease or stay somewhat the same?

A Probably increased.

Q Okay How about when he became Governor? Did your level of communication increase or decrease?

A Probably increased.

Q Okay The friendship that you have described, is that a friendship that's based on ideology?

A No. I mean, I grew up in Cook County There are no Republicans in Cook County as far as I know And no, I like Bob a lot, but we would not necessarily always agree politically

Q All right Do you believe that you know his heart and his core character?

A Yes

Q And I'm going to ask you a series of questions about whether or not you have a personal opinion about particular character traits that in your view may or may not apply

A Okay

Q Do you have an opinion about whether Bob is a truthful person?

A Absolutely

Q What is your opinion?

A Well, Bob has never erred from the truth to my knowledge, ever I've never heard Bob utter anything that would resemble a falsehood.

Q Do you have an opinion about whether he is a law-abiding man or somebody who tries to follow rules?

A Absolutely

Q What is your opinion?

A Bob has never even suggested being involved in anything that would be considered or he would knowingly understand is unlawful

Q Do you believe he is an honest person or do you have an opinion about that issue?

A Very much so Bob is a thoughtful, honest, virtuous, graceful person.

Q Do you think he is a man of integrity?

A Absolutely

Q How do you define that term?

A You know. Bob is a role model for all of us For the University of Notre Dame community, he is a role model For all of our friends, he is a role model He always has been. He is a leader He embodies virtue I understand virtue to mean that you create habits in your life, like truthfulness and saying the truth and doing the right thing, and those habits create dispositions which create a virtuous person, and he is a virtuous person.

Q Have you ever heard of a term with respect to someone called "The Watched"?

A Yes I understand that

Q What does that mean to you?

A Well, Bob has always been looked up to, not just by his children and family, but by his friends and community At Notre Dame, we honored Bob, we were honored by honoring him as the Alumnus of the Year He is a person of great moral character and strength of character

Q Is he someone in your opinion who has the courage of his convictions?

A Always Always From the minute I met Bob I remember things that he did in the residence hall, I know this is whatever, 42 years ago, but I remember him breaking up fights and just -- he is a conciliator He is always looking for the middle ground. He is always looking to bring people together He is a lover He is a person of enormous strength of character and courage

Q You say you know the family I'm going to -- wait a minute, one more thing before I get to that Is Bob someone, do you have an opinion about whether or not he is motivated in any way by material goods?

A No No, by gosh. I mean, Bob, look, I mean some of my classmates were interested in wealth and pursued wealth. But Bob could never care less about that He wouldn't know -- he wouldn't even know what, you know, fancy clothes or shoes or -- he wouldn't care about that

Q All right You say you know the family, obviously You obviously know Maureen, his wife?

A Of course

Q You have known her for almost as long a time?

A Yes, almost, about 40 years

Q Do you believe that Bob loves her?

A Absolutely

Q Do you believe that she loves him?

A Absolutely

Q That said, do you know whether or not there were any difficulties or problems in their marriage?

A I would only be able to surmise that from my personal observation, because Bob would never say an unkind or uncharitable thing about anybody, and especially his wife So no, I mean, so from what Bob would have told me, I have never heard him say a negative thing about Maureen in our 40 years of knowing her You know, that said, you know, one could see that, you know, there was a certain mercurial character at times to the partnership And, you know, so I would worry and pray about that a little bit

Q Okay Has he ever, has he, my client, ever discussed with you personal financial issues?

A No, never

Q Has he ever discussed with you any personal issues, if there were problems in his marriage of any kind, are those things that he has ever discussed with you?

A Never

Q You say that you know other people who know my client How many would you estimate you know who know him?

A Well, several dozen. You know, first of all, you know, the President of the University, Father John Jenkins and I know Bob very well We were all classmates All of the classmates that we hung round with know Bob, and many have stayed in touch with Bob. Many were here for the inauguration. Other friends from Chicago, who, since that's my hometown and Bob would sometimes go to my home for Thanksgiving break and things like that, he would get to know my friends, and a number of them came to the inauguration and have a great fondness for Bob. I know a number of Bob's friends through celebrating Jeanine's wedding, through being part of Bob's wedding myself, through Jeanine's baptism, through the broader McDonnell friendship networks So I know a number of people who know and love Bob

Q And would I be accurate in saying that to your knowledge, those folks know about the existence of this case?

A Oh, gee, sure. I don't think there is anybody in the country that doesn't know about this case

Q And do you have an understanding of what these people that you say, you know who know Bob, do you have any idea of what their opinion is of Bob with respect to the traits that you have described?

A They would be in agreement with my description, in very strong agreement, and I wouldn't know anyone who wouldn't share that opinion.

MR ASBILL: Thank you. I have no further questions

THE COURT: Mr Burck?

MR BURCK: No, Your Honor, no questions. Thank you.

THE COURT: Anything from the government?

MR. HARBACH: Yes, please, Your Honor

CROSS-EXAMINATION

BY MR. HARBACH:

Q Good afternoon, Father Scully

A Good afternoon.

Q I'll admit to being a little nervous But I'll be brief

A That makes two of us This is a whole new thing for me

Q I can understand that Let me ask you: The character traits that you described for Mr McDonnell, including truthfulness, honesty, integrity, and being a man of character --

A Yes.

Q -- would you agree that part of being a man of character or a person of character is the ability to remove oneself from questionable moral situations?

A Yes

Q The ability to say no?

A Yes

Q And you would agree with me that at least in your view, Mr McDonnell possesses those qualities as well?

A Yes

Q And my only other question is, I take it when you learned about the allegations in this case, excuse me, not the allegations, the newspaper articles that broke in the spring of 2013, I take it you were very surprised by what you read in the papers?

A Yes.

MR. HARBACH: Thank you, Your Honor No further questions

THE COURT: All right Anything else?

MR. ASBILL: No, Your Honor

THE COURT: Thank you, sir You may stand down.

THE WITNESS: Thank you, Your Honor

(Witness stood aside)

THE COURT: All right Your next witness?

MR. ASBILL: Joe Damico.

JOSEPH F DAMICO,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ASBILL:

Q Good afternoon.

A Good afternoon

Q Would you please tell the court reporter and everybody else your full name and where you are from?

A My name is Joseph F Damico. I'm from Libertyville, Illinois, a suburb outside of Chicago.

Q Have you come from there today?

A Yes, sir

Q And why?

A To be a character witness for Bob

Q Okay Before we get into that, would you tell us about your educational background?

A Bob and I actually went to the same high school, Bishop Ireton High School I went to James Madison University for an undergraduate degree I received my MBA from James Madison University as well

Q Would you tell us about your employment background?

A Out of graduate school I worked for Pfizer Pharmaceutical Company for a couple years, and then I worked for a company called American Hospital Supply

Corporation for a number of years We changed names, meaning we merged, were acquired, spun back out, but basically it was American Hospital Supply Corporation for 22 years And then we started our own private equity firm in 2000 called RoundTable Healthcare Partners

Q That's where you are today, at RoundTable?

A Yes, sir

Q Have you held board positions in your business career?

A A number of them. Do you want me to elaborate those?

Q Just give us some examples

A The old American Hospital Supply Corporation was at one point under the name Allegiance Healthcare. I was the President of that company and on that Board. I was on the Board of all of our different companies that we own today We are a private equity firm. We own medical device and generic pharmaceutical companies I'm on the Board of all of those, Chairman of five of those, Board of Northwestern Memorial Hospital, on the Board of a regional bank, and some other philanthropic organizations

Q All right And you say you went to high school with my client?

A Yes, sir

Q And what years were those that you first met?

A 1968 to 1972

Q All right And you were friends at that point in time?

A Yes, sir

Q And have you been friends ever since?

A Yes, sir

Q What is the level or what has been the level of contact that you have had with my client over the last 40-some years?

A Well, I would consider Bob one of my closest friends We were great friends in high school That's where our friendship started. It continued on into college We didn't go to the same universities, but we would go to visit each other He then did serve his military duty, went to Germany for a few years I did, obviously, not see him in Germany But I helped him get a job when he came back with American Hospital Supply Corporation For two years they were in the Chicagoland area They spent a couple years in Kansas City before he moved back to Virginia Then we periodically would see each other, certainly talk around the holidays And in the last six or seven years since we have all become empty nesters, it has become much more viable to see each other more frequently, so we probably physically get together two or three or four times a year

Q When you get together on those occasions, for how long would you get together?

A Three or four days

Q Okay Would you keep in touch by other means, for example, phone or e-mail or text?

A All the time We talk on the phone quite a bit We text, we e-mail But mainly on the phone

Q Okay And do you know his family or did you know his family in high school, going all the way back to then?

A I knew his dad, Jack, his mom, Emma, his brothers and sisters I knew the family well We were not just casual friends We were very close friends There was a group of four of us that hung out a lot together, and he and I were two of those four

Q I take it he would know your family as well?

A He does

Q Do you know Bob's children?

A I do. Actually, I'm the godfather of one of his children, his daughter, Cailin, and I know the others quite well

Q And do you know Maureen, his wife?

A I have for a long time

Q All right With respect to their marriage, and in terms of your observations of it these four decades, do you know whether or not or do you have a sense of whether Bob loves Maureen?

A I would say Bob does absolutely love Maureen.

Q And how about vice versa?

A I have no reason to think that she wouldn't love him.

Q All right Did you ever witness or do you have any knowledge of any kind of difficulties or dysfunction in any way in their marriage?

A Well, certainly there were times of stress or tension when we were all together; not the type that people are throwing things or yelling, but there was clearly stress and tension, and I think more so in the last six, seven years than prior

Q All right Did Bob ever talk to you about any difficulties, any personal difficulties in his marriage?

A We did, we did have a few conversations about that One most recently would have been in March of 2014

Q Okay Recently this year, you mean

A Yes, sir

Q Okay With respect to his personal finances, are those things, are those issues that Bob has discussed with you or are those things that he doesn't discuss with you?

A To be honest, he does not discuss that much. His personal life and his financial life are two things that most people, I think, keep relatively private, and he was no different

Q Okay And you were the same way with him with respect to those issues?

A Yes, sir

Q All right Do you think you know Bob's core character?

A Better than just about anybody else you could find.

Q Do you think Bob or do you have an opinion about whether or not he is a truthful person?

A I am positive that he is a truthful person.

Q Do you have an opinion about whether or not he is an honest person?

A Absolutely in my heart of hearts I believe that he is an honest person

Q Do you believe that he is a law-abiding person?

A Without a doubt

Q Do you believe he has integrity?

A Yes, sir

Q Do you believe that he is devoted to his family?

A He is a tremendous family person, yes He is absolutely devoted to his family Always has been.

Q Do you believe he was devoted to public service?

A Absolutely It is what he chose to -- how he chose to spend his life, and he put 110 percent into it and has done an excellent job.

Q Do you believe in general that he is a man of integrity?

A I mean, I do Again, I've known him for 46 years And when you think of integrity, I mean, if I can just expand just a moment --

Q Tell me what you think that means

A I think, simply put, integrity is doing the right thing the right way for the right reasons Not for political expediency, not for the photo shoot, not for the great public relations, but it is because it is the right thing You know, I think character is at the heart of this, and you haven't asked that and maybe you are not going to. Maybe just indulge me for just a second, let me talk for a second about character, because I think that's at the heart of a lot of this

Bob is one of the best human beings I know I don't say that lightly And you guys are all thinking, "Okay, he is one of Bob's best friends; of course he is going to say that " I wouldn't say that if I didn't believe it Character is not doing a few big things right Character is not making a great speech. Character is doing a thousand little things each and every day It is what you do when nobody is watching It is the sum of one's habits And those habits become predictors of future behavior I have been able to watch Bob and all the little things he has done over almost five decades Has he exhibited some poor judgment? We all do, and he is no different And absolutely he did, and he admitted it and apologized. Did he knowingly do something illegal? No chance

Q Let me ask you this finally: If Bob were in financial trouble and he went to you for help, would you be willing to do that?

A Yes, sir He has come to me twice to ask for money, once for his gubernatorial campaign, and I gave him $10,000 on the spot; and he came to me a few months ago as it relates to all the expenses from the trial and the legal things, and I gave him some money then. But yes, to answer your question, absolutely

Q And if he needed money from you in terms of your easy ability to do something for him, would there be a limit?

A Now, this is going to sound arrogant, and I don't intend it to, but I've been blessed. We have been very, very fortunate I could write a check if I had my checkbook with me on the spot for seven figures Yes, sir

MR. ASBILL: Thank you very much. I have no further questions

THE COURT: Mr Burck?

MR. BURCK: No questions, Your Honor

THE COURT: Anything from the government?

MS ABER: Yes, Your Honor

CROSS-EXAMINATION

BY MS ABER:

Q Good afternoon, sir

A Hi

Q I'd like to sort of start at the end of what you just said.

A Okay

Q Were you aware or did you start reading of the media accounts of this investigation last Easter-ish of 2013?

A Sporadically

Q Sporadically Did those reports surprise you?

A Shocked me

Q And then I think at the beginning in the explanation of your career, you said that you had worked at American Hospital Supply

A Yes, ma'am.

Q You got Mr McDonnell a job there as well?

A I helped.

Q Did a gentleman named Jonnie Williams, to your knowledge, ever work at American Hospital Supply?

A Not to my knowledge

MS ABER: Thank you. I have no further questions

THE COURT: All right Anything? All right, you may stand down, sir Thank you very much.

(Witness stood aside)

All right

MR. ASBILL: The defense calls Bob McDonnell

ROBERT F McDONNELL,

a defendant herein, called as a witness by and on his own behalf, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ASBILL:

Q Good afternoon.

A Good afternoon, Mr Asbill

Q It may be redundant, but would you please give your full name and spell it for the court reporter?

A Sure Robert Francis McDonnell, that's C-I-S, McDonnell, M-C-D-O-N-N-E-L-L

Q I'd like to start by asking you to go back in time to November 3rd, 2009 Do you remember that day?

A Sir, I remember it very well

Q What about it stands out for you?

A That was the day I had the privilege of being elected Governor of Virginia.

Q And on that day, just sort of in general, what happened that day in the morning?

A We had a busy day planned to travel around the state to various polling locations I was very fortunate

Unlike the Attorney General's race, the polls were looking fairly good, so I was feeling very positive about the day So my family and I had several stops, the first of which was my home polling place here in Glen Allen, Virginia, where I was going to vote

Q Okay Did you make any other stops after that?

A We did. I have to say, that certainly was a highlight, though, going into that polling place in Glen Allen and seeing my name on the ballot as Governor of Virginia and casting the vote, and then moving on from there We went to Northern Virginia, where I grew up, in the Mount Vernon area.

Q What did you do there?

A We had a group of people from my old neighborhood in Riverside Estates, in the Mount Vernon area, a place where I lived since I was eight years old. We have a house there It is still in the family now And there was a group of friends and supporters that were at the Mount Vernon polling precinct It was a place where my mom had worked when I was a kid as a Democratic poll worker Now I'm a Republican candidate for Governor And so I wanted to go there and just see some of the friends that I had grown up with and make that our Northern Virginia stop. It was a very special stop for me

Q What was the last stop that day?

A The last stop was Virginia Beach It is where I had lived for twenty-one years, where I raised all my kids We moved there in 1985, until the time I became Attorney General and we moved to Richmond. So we stopped at the Green Run Precinct in Virginia Beach. That was very special to me It is where we lived for about twelve years, bought our first house, where three of our children were born And it was the place I really got my start in politics I was on the Green Run Homes Association Board of Directors for about three years, my first elected office of any kind. And then that was a precinct that really carried me when I became a member of the House of Delegates in 1991

Q This election for Governor of Virginia, what number election was that for you?

A It was my ninth election.

Q And had you ever lost an election?

A No. I've been very fortunate I won all those elections

Q Any close calls?

A One extremely close call The one for Attorney General in 2005 was one that went into overtime I got declared the winner three days before Christmas in 2005, and that was a 360-vote margin, which is about one-eighth of one precinct And I am very, very fortunate to have won that race

Q The day you were elected, do you recall what time during the day the race was called?

A Yes Unlike the previous race for Attorney General, that race was called fairly early after I got back from Virginia Beach My wife, my kids and I went to the Marriott Hotel right here across the street -- that's where we were going to be for the victory celebration that night -- and started watching the returns And I believe it was shortly after 8 o'clock, maybe 8:15 or so, that we were declared the winner We won by a fairly healthy margin, so we were able to start the celebration rather early that night

Q Who did you run against?

A I ran against Creigh Deeds, the same gentleman I had run against for Attorney General I have known Creigh since 1991 We both got elected to the House of Delegates together He is a very, very fine person And he competed against me both of those elections

Q Did you talk to him that day after the election was called?

A I did Creigh was very gracious Like I say, I had known him for 18 years or so by that time He called me about 8:30, quarter of nine, and very kind, said, "Look, you worked hard. We have competed against each other twice now I've known you a long time You will do a good job as Governor " But I could sense the disappointment in his voice It is not easy running for statewide office You run for three-and-a-half years, you spend a lot of time, money, a lot of time away from home And obviously he was disappointed, but he was very kind in his remarks to me and wished me the best And he stayed in the State Senate, so he said, "I'll look forward to working with you in the Senate as you start your time as Governor "

Q Let me move forward to the next morning after the election.

A Yes

Q Tell us about that next morning

A Well, I was still running on adrenalin a little bit I was obviously incredibly happy about the results from the night before But at the same time, I knew I had just two-and-a-half months to complete a transition and be ready to govern by the second week in January But I think we were all up early My kids, my wife all had a suite in the hotel, and we were getting ready for the day I had a transition press conference scheduled that day to announce my transition team for Governor

Q Did anything unusual happen that morning?

A I remember getting up, getting dressed I think I was in the bathroom just a little bit early and came out and talked to my wife for a minute and told her I had to get ready I knew I was going to have a lot of calls I needed to make, a lot of calls I was expecting the day after the election. And I could tell that she was not as happy as I was about the result

I know she was tired. She had worked so hard herself during the campaign, traveled all over the state, was incredibly supportive of my effort But at the same time, I could sense some tension with her about this impending role that she was going to have as First Lady She was, I know she was fatigued, but she was yelling at me about something I don't know if it was about what she was going to wear or do that day, but it clearly exhibited some stress about what lay ahead for her in her new role as First Lady

Q So you were exhilarated and she was less so?

A I know she was happy, because she had worked so hard for the campaign. But I sensed, based on what she said and her reactions that morning, that she was certainly fatigued from the campaign, as was I But she was, she seemed to be upset, concerned about her role, what she was going to wear, how she was going to face some of the public duties that she might have That's what I heard from her I finally said, "Maureen, I'm expecting some calls this morning, and we will have time to talk about this We will make sure we get you off to a good start You are going to do a great job as First Lady I've got to get on with making these calls and to get ready for my press conference "

Q Aside from making calls that morning, did you receive any calls?

A I did I received a number of very nice congratulatory calls I think during the time I spoke with my wife, I had my cell phone go off and I saw a 202 number on the phone, so I knew it was someone from Washington D.C I'm very familiar with that area code I answered the phone and the voice said, "Can you hold for the President of the United States?"

Q Tell us a little bit about that call

A Well, it was remarkable, because just a week before the President had been campaigning with my opponent, Senator Deeds, in Charlottesville And now I have President Obama calling me to congratulate me And the reason it was so nice, it was because the call wasn't, "This is the President," it was, "Hello, Bob, this is Barack." And then it was very generous, very nice, very friendly He said, "Look, you ran a great campaign. Obviously, I was on the other side But for me, me, the President, to be able to get things done in this country, I need to work with governors You are the CEO's, the executives of your state, and I'm trying my best to run this country and we've got to work together " And obviously, being my neighbor across the Potomac, he said, "Especially Virginia, Maryland, you are the governors closest to me and I want to make sure we have as good a working relationship as possible " I said, "Mr President, I think that's terrific That's kind of the way I look at the world anyway Once the campaign is over, it is time to govern. And it doesn't matter if it is Republican or Democrat "

So anyway, it was just a very nice call And I realized that while I understood a little bit after 18 years in office about the role of a Governor, it now was dawning on me that I was in a very new phase of my life, as Governor-elect, and to have the leader of the free world call me to spend five, seven minutes on the phone and asking me to work together was just an experience I won't forget

Q You talked about Mount Vernon. I want to go back to there a little bit That's where you grew up After you grew up and got out of high school, I mean, you went to high school in the Mount Vernon area?

A Alexandria, Bishop Ireton High School You heard my classmate there I graduated from high school in '72 and went on to the University of Notre Dame.

Q When you went to Notre Dame, did you pay for it or did you have to get financial help or how did that work?

A I was very fortunate I received an Army ROTC scholarship, and looked at several schools, had a couple of military academy appointments as well But I took a trip that Easter with my father My father was a subway alum, Boston Irish Catholic and World War II vet, and he always wanted one of his kids to go to Notre Dame So long story short, we took a tour out there I saw the place, met people, and said, "This is the right place for me " So I was fortunate to attend Notre Dame on an Army ROTC scholarship.

Q Let me go back a second to your family Why don't you tell us a little bit about your mom and dad and siblings

A My dad, he was a tough guy He enlisted in the U S Army right before Pearl Harbor, about three months before Pearl Harbor, got commissioned in the military, spent three years over in England during the war, and spent 23 years in the Air Force, retiring as a Lieutenant Colonel, married my mom in '51 She was really a Texas farm girl, had moved up in 1949 to work for a congressman in D.C They met, got married, and had five children. I'm the oldest of the five We have five, 11 years apart

My sister, Nancy, who is here with us today, is the second. She is a schoolteacher in Amherst I think you got the rundown. My second sister, Eileen, has been a long time federal employee and now a government contractor My brother, Ken, is a physician, retired Air Force Colonel And then my younger sister, Maureen, who testified the other day, she is my younger sister and has been a career businesswoman. We grew up in a real average middle class house in Fairfax County, in the Mount Vernon area In fact, my mom worked at Mount Vernon about 18 years before she died. She was a translator, tour guide there My dad was, after he retired from the Air Force, did another 18 years with the Naval Investigative Service before he retired with about 40 years of service The whole idea of serving in the the public, whether it was the military or the federal government, or my mother with Congress, was something that got ingrained in me as a kid when I was growing up

Q In a nutshell, were there any life lessons or maxims or anything you learned from your parents?

A I got the belt from my dad and kind of a velvet glove from my mom. That was the combination. I think that's kind of made me who I [illegible] today, that combination My dad taught me discipline, hard work, the value of education, no excuses, get things done, get results And my mom taught me, you know, everybody is created in the image and likeness of God, everybody deserves a fair shot, treat people well, follow the Golden Rule, and that's the way she lived her life She was a remarkable woman and died much too early in 1994 But that's the parents that I had I am just incredibly fortunate that I had that kind of upbringing

Q Going back to Notre Dame, when did you graduate?

A 1976

Q With what sort of a degree?

A Bachelor's in Business Administration.

Q And what did you do after college?

A Well, went in the Army I had that Army ROTC scholarship I had a six-year commitment, four years Active and two years Reserves in the Army I requested to go to Germany because that's where my dad was stationed when I was a kid from 1959 to 1962, and my wife and I had just gotten married, and right after I graduated, in 1976 And we did a three-month basic training course down in Fort Sam Houston, Texas, and then I ended up in Germany for three years So I spent three months there by myself before we found housing and my wife came over after that

Q All right. What did you do after Germany?

A After the three years there, I had another trip to Fort Sam Houston, Texas to get an advanced course in medical logistics management, and then I spent the last year at Fort Eustis, Virginia, just down the road here, Newport News, Virginia, and I was the medical supply officer at McDonald Army Hospital on the post at Fort Eustis Then I got out in April of 1981, but I still had a couple years left in the Reserves

Q Okay When did you ultimately retire from the military?

A I went back in the Active Reserves in 1985 when I was in law school, and ended up retiring in 1997 as a Lieutenant Colonel with 21 total years, some good towards retirement and some not, but 21 total years' Active and Inactive Reserve

Q In a nutshell, were there any things you learned from your service in the Army that you carried over with you into the political positions that you have held during the years?

A Yes Some of the same ones my dad had taught me Focusing on the mission; don't put the hill behind you in front of the one in front of you, take on the objective in front of you; use of the chain of command. That's an important tenet in the military But these basic principles that the Army officers are trained to learn. Patriotism, it was love of country, it was just taking care of your duties above all else

Q Okay Did you pursue any further education after Notre Dame?

A I did. When I was in Germany for those three years, I was very fortunate, Boston University had an overseas program in the two places I was I was in Grafenberg, Germany for two years, and up in northern Germany, Bremerhaven, Bremen, so I pursued a Master's in Business Administration, which I received in 1980 upon leaving Germany I worked and went to night school and my wife worked on base for the government And then in 1985, of course, I went back to law school

Q Okay And after active duty, did you have any employment before you started law school?

A I did.

Q What was that?

A I really liked the medical field, because my branch in the military, I was a Medical Service Corps officer I was in the 2nd Armored Division I ran a MASH unit essentially for a couple years, and then a troop medical clinic when we weren't in the field. So I really liked that area, especially medical logistics management So I got a job for the American Hospital Supply You heard Mr Damico talk, he was with them at the time and he gave me some referrals and I was fortunate to be employed and started my career with them in May of 1981 down in

Atlanta, Georgia.

Q Did you stay in Atlanta, Georgia with them or move to other cities?

A No, at that time, people were getting moved around quite frequently, if you were successful in your position. So I spent about ten or eleven months there We'd just had our first child, Jeanine, at that time, and then moved to Chicago to the corporate offices for a year And then I was asked to take a position, the American Custom Products Manager in 1982 in Kansas City, Overland Park Kansas, so we moved out there and had some responsibilities for some operations in Kansas City and St Louis and Minneapolis at the time, so we were there for three years

Q At that point in time, did you have one child or more?

A We had our second child while we were there, born in Kansas City, Missouri Cailin was born in 1984 out there

Q After that, what did you do in terms of where you were living? Where did you move?

A You know, we had kind of a watershed year in 1985 I had the GI Bill benefits I was in the Vietnam-era GI Bill benefit group. So those benefits, education benefits, expired in 1989 And so my wife and I had to make a decision about, you know, we had two children, I was 31 years old, and if I was going to pursue any advanced education at that point and use those benefits, this would be the time to do it So we wanted to get back to Virginia. Both of our families were living in Northern Virginia And we had been gone now nine years, and felt it was time to get back to our beloved home state here So we chose to leave American Hospital Supply at the time and I came back to Virginia Beach and entered a graduate program in public policy and communications at CBN University at the time, but now Regent University, in Virginia Beach. And after a year, I decided to join the law school program, which had just started at the time I was there for four years with both a law and a public policy degree that I earned in 1989

Q How did you afford law school?

A That was a tough time I went back in the Active Army Reserves, which meant about 52 days a year full-time military duty But that was good compensation. I worked a part-time job about 20 hours a week with the Virginian-Pilot, a newspaper I was the Crewe sales manager And then my wife and I worked a toy franchise that we had gotten involved with, we worked that together, and sold toys My wife also did some waitressing at the time, and I was also fortunate to have the GI Bill pay for the tuition. But we had all these other expenses with housing and children that we had to earn money to do, so it was a tough time We worked very hard and my wife was incredibly supportive of what I was doing

Q Did you get much sleep?

A We called that "The Years Without Sleep " Because between the 52 days or so a year of being in the Reserves, and working the three jobs and going to school, it was a lot of time But, you know, that's sort of what my dad taught me, is you work hard, you give everything 110 percent, and that's what we tried to do during those four years in law school

Q Did you get any outside financial assistance from family at that point?

A I did I also had a part-time scholarship called the Dooner Scholarship while I was at Regent University But you know, even with all of that, there were times that were tough. And a couple times my mom would send $100 or $200 My sister, Maureen, who was here, would send $100 But at that point, that was important And they would always -- I don't think we really asked for it, they just knew that we were really struggling at the time with working as hard as we could, but they were kind enough to help us from time to time, and I was very grateful for that But we made it through.

Q All right When did you graduate from law school?

A 1989 I graduated with an M.A. in Public Policy and a J.D in Law

Q And what did you do after you graduated?

A My goal was to be a prosecutor I had done a third-year practice internship in the Chesapeake Commonwealth's Attorney's Office That's the prosecutor's office down in Chesapeake And I really, really liked it I really enjoyed working with the Commonwealth's Attorney down there I liked being in court I liked being on the prosecutor's side of the table And so I interviewed for positions in Portsmouth and Virginia Beach, and got offers from both those Commonwealth's Attorneys, and started as a prosecutor out of law school in 1990 for Bob Humphreys

Q Did Maureen support that ambition, to be a prosecutor, or did she want you to do something else after you graduated from law school?

A No, Maureen was very supportive of that idea because she knew my heart was in public service That had been her background, too. Her dad is a World War II vet and her mom worked at the State Department Maureen was at the State Department when I first met her So she had come from a family of public servants as well And she knew when I got out that I was going to likely go back into public service, I think. She was a little surprised, maybe disappointed, that we had looked at the salary that

I was making as a prosecutor and it was considerably less than what I had made four years before when I left business to go back to law school So we had some challenges We had our third daughter during law school, so we had three girls at the time And so it was tough, but this was -- this is what I felt I was equipped to do, it is what I wanted to do as a prosecutor, so Maureen was supportive of that idea.

Q Did you leave the prosecutor's office to run for public office at some point?

A I actually ran while I was in office In 1991, early in 1991. I decided that I was going to run for the Virginia House of Delegates to represent the 84th District in Virginia Beach. And I had done an internship while I was in graduate school at Regent up on Capitol Hill, worked for Congressman Lewis in California And I just really enjoyed that as well, the formation of public policy I really like that So after two years, after just a year of prosecuting, really, I thought I would really like to get into the fray of being a policymaker And there was a group of us that were all sort of young lawyers, police officers, that decided to run for seats in the House of Delegates back in 1991

Q All right And obviously you won that election?

A Yes

Q How many terms did you serve in the General Assembly?

A I served seven terms, which is 14 years The House of Delegates is two-year terms

Q Did you continue working in the legal field while you were in the General Assembly?

A Yes, I did. At that time, you could not be in the General Assembly and work as a prosecutor because you would be in two different branches of government That was the law at the time It has changed since then So I had to leave being a prosecutor back in 1991 and I was fortunate to get an offer from the law firm of Huff, Poole & Mahoney in Virginia Beach. So in 1992 when I came back from my first legislative session, I started that job.

Q When you are in the legislature, how many days a year would you be in Richmond in the legislature?

A It depends on the year and it depends on your seniority Early on, for a freshman legislator like I was, I didn't have a lot of additional duties Maybe three committee assignments But I had, the way the legislature works is the odd-numbered years it is 45-day sessions, and in the even-numbered years, because other years we craft the original budget, those are 60-day sessions So it is 45 or 60 days, typically back on the weekends, not every weekend, but most weekends, some of those weekends I had to be in the law firm. But it is essentially two months, and then depending on your other responsibilities, you get called back for committee meetings or other legislative functions during the course of the year, special sessions and so forth.

Q So if you are 14 years in the legislature, that would take you in that position up to about 2006; is that right?

A 2005 Yes The 2006 session, that's right

Q The 2006 session. While you were in the legislature for 14 years, were there any particular initiatives that were significant for you or things that you got enacted or worked on hard?

A Well, there were a number The first couple years they were all almost criminal justice That's the area I knew, the area I was motivated about Victims rights, reforms in the drug sentencing laws, the DUI laws, and so forth. Then over the years, I did a number of things in some other areas, tax reform, transportation, carried a number of seminal reforms for Governor Allen that I worked on: parole abolition, welfare reform, juvenile justice reform, some of those kinds of things; and then later on, spent a lot of time on things like child support enforcement and civil justice reform. In 2002 I became Chairman of the Courts of Justice Committee in the House of Delegates, which is a committee that handles about 20 percent of the legislation, and most of it dealing with civil and criminal justice reform measures So I went back those three years to focusing a lot on those kinds of things

Q Okay At some point, you tell me when, or let me ask you first, did you meet anybody during that time frame, up to 2005-2006, that you later hired for your campaign for Attorney General or for Governor? Any other folks, staff people that you met at that time that carried over with you? Any folks --

A Several Janet Kelly actually worked on my 1999 reelection campaign for the House of Delegates I think everybody has met her She went on to become my Campaign Manager for Attorney General Tucker Martin was my Communications Director at the Attorney General's Office, went on to become my Communications Director for the campaign. Phil Cox, who had been with me since 1999, worked through my Attorney General's race and became my Campaign Manager for Governor And several other people during that time as well But those became really the principal leaders of my campaign for Governor Some of those people I met during those years

Q Okay And when did you decide to run for Attorney General?

A 2002 The way the cycles run in Virginia, you have to decide early, because it is a huge state And there is often competition for the nomination. The nominating contest is June, in the election year, so June of 2005 would have been a nominating contest So I knew that there would likely be competition for the nomination, so I talked to my wife about the run, my kids, and I said, "If I'm going to do this I have to start now and I have to give it 100 percent " So I think I went to my first event in February of 2002, Prince William County Republican meeting That was the first thing I think I did. It was three-and-a-half years out from the nomination.

Q Okay Tell us just a little bit about the campaign for Attorney General What was that like?

A It was a real eye opener I had represented a district in Virginia Beach, the 84th District, that was one of nine districts in Virginia Beach, so that the district was a half-an-hour drive apart from one end to the other But living in Virginia Beach and running for Attorney General was a completely different thing Because for Virginia Beach to the tip of Virginia, the Cumberland Gap, is 11 hours It is 575 miles I drove it one night coming back to make sure I could see my boys before they went to Boy Scout camp, so I know how big it is You are away from home an awful lot, especially those last couple years before an election.

Statewide campaigns are incredibly taxing on families personally, financially, emotionally, because it all comes down to 13 hours on Election Day So I learned a lot I made an enormous number of new friends, spent a lot of time asking people to support me, to raise money But it was something that I knew, I had counted the cost early and knew and told my wife, and she knew that to run this kind of campaign was going to take this immense sacrifice

Q Was everybody up for that in your family?

A Yes Absolutely I told them the best that I could at the beginning what I thought was involved, just from talking to previous Attorneys General, Mark Earley and others who I had talked to "Tell me honestly, what is this like? I have to talk to my family and let them know what this is like " So I had a sense But I have to say, until you actually start doing it, and you get on the road and you are staying in a different hotel every night for a week, and you are going to six, seven, eight events a day, and have to be on all the time, it is different doing it than it is just thinking and talking about doing it

So the answer is yes, they were incredibly supportive, all my children, my wife But we started to understand a little bit better, I think, about the cost once we got into it

Q Cost in what sense?

A The time The time commitment to run. I was at that time still a partner in a law firm, and I had obligations to bill hours and bring in business and also to try to run as much time as I could for Attorney General It was tough. So it certainly puts a strain on the marriage It is soccer games you miss, it is a lot of other things that I would have liked to have done had I had a nine-to-five job. But this was the calling I felt I had on my life, and it was something my family supported. But we all knew that there was going to be a collective cost in terms of emotions and time with husband, dad, and the other things that went along with it

Q Did you have to raise money for that AG campaign?

A Yes

Q How much did you raise?

A We raised $6 million. $2 million for the primary I did have a very tough and well-funded primary opponent that year who ran against me, Steve Baril, a lawyer here in Richmond, and he was a very worthy opponent, worked very hard, and he also raised $2 million for the primary So we had a pretty hotly contested primary I was fortunate to win fairly handily in June, but then you've got four-and-a-half months for the general election But we raised another $4 million for that And I had a finance team helping me, but I spent a lot of time talking to donors, calling people on the phone, going to individual meetings, you know Like other statewide candidates or federal candidates, you have to spend a lot of time fundraising, because in the state finance laws there's no federal contributions All the money spent on a campaign is privately donated or comes out of your own pocket So I had to raise the money I wasn't able to fund my own campaign.

Q Was that a new experience for you, that kind of money raising, or did you have that before when you were in the General Assembly?

A I had been raising money for seven terms, for 14 years, but nothing at a level like that I had a very competitive race in 1999 It was the first million-dollar race for the House of Delegates in history I ran against the Sheriff of Virginia Beach that year, and it was very competitive and very expensive, but I raised a little over $400,000 But that's not like raising $6 million for an Attorney General's race So it was a whole new level We had to have a couple full-time fundraising staff that worked with me, and they were able to do a lot of the coordination, set the events But I ultimately, on a lot of the major asks on the phone, I had to do that

Q Okay When you became Attorney General, what was that job like? What is the job of Attorney General like?

What do you do in that?

A It is a remarkable job You are the state's chief legal officer You run the state's law firm. And I had been a partner in a law firm in Virginia Beach, but it was fairly small We had about 30 lawyers and about 120 people But this is a law firm with 160 people, about 250 total employees But it was a remarkably great job, because it was small, it was manageable I had some bad habits of being a micromanager, as you have heard, and I could still do that a little bit as Attorney General But I could actually get to know all my people I could get a pretty good handle on most of the things that were going on in the office during that period of time

But the thing I really liked was not only was I a lawyer and being able to make, help make legal decisions and issue opinions and so forth, but I also got to interface constantly with the General Assembly That was my first love, was the policy front And the Attorney General gets to make policy recommendations to the legislature and ask legislators to carry legislation for them. And so I felt like I had just a great job being able to advance legislation and practice law at the same time

Q Did you ever get into court in that capacity or really were you managing --

A No, I didn't I got into court, but I was not the -- I didn't litigate myself That's one of my regrets I wish I had handled a few cases But we had 160 lawyers They were incredibly well-trained, competent lawyers So I would be involved with some of the decisions about what cases we were going to do or not do, and settlement strategy, and what the posture ought to be with various cases But I did not handle cases myself A couple times when we had major cases in front of the United States Supreme Court, I would attend those cases, but I did not actually argue those cases

Q How long were you Attorney General?

A Three years and a month-and-a-half

Q That would be 2006 to 2009; is that correct?

A Yes.

Q When did you resign as Attorney General?

A It was one of the hardest days of my life I resigned on February 20th of 2009 And the reason for that is, it had been a trend for almost 35, 40 years in Virginia that Attorneys General who chose to run for Governor would resign their office The reason being there is too much potential for conflict of interest, for advocating various policies as a candidate and still running the office And, you know, the taxpayers deserve a full-time Attorney General I thought I could do it

My advisors said that was not a good idea, and after some discussion, I reluctantly agreed.

But it turned out to be the right decision and best not only for me, but it was the right decision for the citizens to have a full-time Attorney General And my Deputy, Bill Mims, moved into the job

Q Okay So you resigned in February of 2009 to run for Governor, correct?

A Yes

Q Did you have any -- you had to obviously give up your state income at that point or your Attorney General's income?

A I did

Q What was your income at that point in time from the Attorney General's Office?

A The income is publicly known It is in the budget It is $150,000 as Attorney General of Virginia

Q Okay Were you able to supplement that when you gave up that income? Were you able to supplement it in whole or in part or exceed it?

A Yes

Q How did you do that?

A I was fortunate My old law firm, my partners down in Virginia Beach at Huff, Poole & Mahoney agreed to hire me back in essentially a part-time capacity And I don't remember the exact salary, I think it was maybe $120,000, $125,000, something like that that I was paid during that time, which was exceedingly generous to me because I was gone so much of the time campaigning It was very nice of them to do that And I got benefits, medical benefits for my family and so forth. Otherwise, there is no way I could have afforded to run without that And I also sold my equity shares, I believe at the time, in the law firm and received, I think, a cash, a one-time cash payment for that

Q Did you have to use any of your own money to run for Governor?

A Some, but -- some Not a lot Mostly it was from very generous people that donated to the campaign, $6 million

Q Moving on to the campaign for Governor, when did you really decide that that's what you were going to do?

A It was 2006, probably, middle of 2006, end of 2006 When I became Attorney General I moved to -- I had to move to Richmond. And I stayed in an apartment for six months while my wife and kids stayed down in Virginia Beach so my children could finish school Then they moved up in the summer So for the first six months, I essentially tried to get the office organized, tried to do the things I wanted to do, set the culture for the office to have them perform at top ability And then after we got settled in, probably in that fall, I felt I had to make a decision about whether I was going to make the run for Governor I knew the Lieutenant Governor was strongly considering it as well, and as I mentioned, like the run for Attorney General, if I was going to do this, again, it was going to have to be full attention to a campaign and have to start early, so I would expect that I would have competition, obviously, and I wanted to make sure I was 100 percent ready Because you only get really one chance at doing this, and if I am going to do it, I wanted to be prepared and do it right We started talking about that in September, and I think I decided shortly after that, after consulting my family, that I would run.

Q Attorney General, AG, has that often been described as an aspiring Governor?

A Yes That's what some call it, yes

Q Was that true for you, too?

A That's fair Certainly by fall I was an aspiring Governor Yes

Q And who in particular helped you with that campaign that has come here into court?

A I mentioned Phil Cox. Phil had been my top political advisor for a number of years I knew him, I trusted him, and I knew that with this battle, that you have to have people that are going to be 100 percent loyal and are incredibly smart and will work the long hours that it took. Phil was my top advisor So early on, I asked Phil to consider consulting and then eventually he became the Campaign Manager Janet Kelly became, who had been with me in the Attorney General's Office, also became the Office Manager, Operations Manager Tucker Martin became the Communications Director Jasen Eige came in to be Counsel for the campaign And that happened over a period of time We ratcheted up staff as the campaign became more intense, kept staff and expenses low early, but then certainly by 2009 we had geared up to a pretty full contingent of 30 to 35 staff people And many of the people from the Attorney General's Office came over and worked in the campaign.

Q And what sort of hours did you folks work during the campaign for Governor?

A You know, I guess you would say as long as you could go. There is always one more event you can do. There is always one more voter you can talk to. So it was a very high energy, very strong work ethic on the campaign. I give the credit to Phil Cox. He instilled that in people and was a very excellent Campaign Manager, focused on both tasks and people So I traveled a lot, obviously Many other people stayed back, but I had to be out of the office most of the time, going to events, campaigning, talking to voters, speaking at events, raising money That's what campaigns are all about

Q The time spent on the campaign, did that take away from your time with your family?

A Well, sure

Q More so than when you were running for Attorney General?

A Yes, because it still is a statewide campaign. You still have to hit every corner of the state on repeated occasions There's still far more events the people ask you to go to than you can possibly go to. But when you are at the top of the ticket, as I aspired to be, there is just that much more focus and attention on the campaign I was very focused on policy initiatives That's why I ran. I was interested in ideas and helping to advance certain things that I thought would make the state better

I had been doing this for about 18 years now, and I knew we had some challenges in certain areas, so we spent an enormous amount of time planning the policy announcements that we would make It wasn't that demanding for Attorney General because you don't have that many policy initiatives But as Governor, there was an expectation. But more so, I wanted to be able to outline a pretty comprehensive vision for the Commonwealth. And of course focused on the idea of job creation because people were hurting so badly at that time of the recession in '09, '08 and '09 We spent an immense amount of time, if I wasn't traveling or raising money or going to events, working with my top team or legislators who volunteered to talk about the ideas, what's going to make Virginia better over the next four years And we spent a very substantive amount of time on that

Q Is that where the slogan Bob's For Jobs came from?

A We talked very early that that was going to be the key focus of the campaign. But the more I traveled around the state, especially in places in the southern part of Virginia, Danville, Martinsville, Pittsylvania, Henry County, other places like that, rural parts of the state, there was an immense amount of suffering Unemployment rates in Martinsville were 21 percent It was chronic Tobacco, textiles, furniture had been mashed for a long time, 15 or so years And I really saw an immense amount of pain and hurt in people in Virginia.

I decided and we all agreed that we have to focus this campaign and my time as Governor, if I was going to be elected, on economic development and getting people back to work and creating better opportunities for the American Dream. All these things that I had been fortunate to participate in in my life I really wanted to do during those four years to expand those opportunities for other people So one of my advisors, I think, as a result of that, came up with the Bob's For Jobs idea to sort of encapsulate the message of the campaign.

Q Were there other issues besides the economic ones that you were concerned about in terms of your vision when you were running for Governor?

A Sure That drove it, I believed always the top priority of government, though, was public safety So we came up with a series of public safety announcements dealing with drunk driving and sexually violent predators and repeat drug dealers and prison reentry and restoration of rights. kind of a total approach to improving our criminal justice system. The transportation system, I believe, was falling apart in some of the key areas of the state, Hampton Roads and Northern Virginia, particularly It was impeding our ability to be competitive The pension system was running up against a wall and was only about 60 percent funded. I knew that that had to be fixed. We had significant multi-billion-dollar budget deficits over the three years before I became Governor, so we needed to turn that around and make some tough decisions about spending and budget management

So there were a variety of things that we talked about Chesapeake Bay clean-up. There was a pretty comprehensive list of things But everything we focused on really revolved around this idea of economic development and job creation.

Q Okay I take it during this campaign, like when you were Attorney General, you also had to raise money?

A Yes. Substantively more Our goal for the campaign was about $25 million. And we ended up raising about $24 million, and then other donations and groups, the total spending for that campaign was about $31 million of our own and I think outside groups together And so obviously, whether it was direct mail or individual meetings, phone calls, it was a tremendous amount of time that went into meeting with donors, meeting with groups to try to convince them that my ideas for Virginia were right. and then ask them to invest in the campaign. It is a huge part of what a candidate does during a campaign

Q What are the limits on donations in Virginia or gifts in Virginia?

A Virginia has no limits It is one of the handful of states that's like that There are no limits on donations They can be in-kind, they can be cash. They can be from corporations, from individuals, from PACS Virginia's campaign finance laws really are no limits, but campaign finance reports on a fairly regular basis And the same is true in some measure, you asked about gifts as well, is that the limits, there are no limits on gifts, either, in Virginia Those just have to be disclosed or loans or stock, but they just have, there are just reporting requirements for those So we were able to raise a fair amount of money because you could ask for a thousand dollars or $500,000 from a donor, whatever they felt they wanted to invest in your campaign.

Q Okay

THE COURT: Let's stop for our afternoon break We will take 15 minutes

(The jury left the courtroom.)

(Recess taken from 4:15 p.m to 4:38 p.m.)

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(The jury entered the courtroom)

THE COURT: All right Mr Asbill

MR ASBILL: Thank you, Your Honor

BY MR ASBILL:

Q I think where we left off, we were talking about campaign for Governor and the topic of campaign finance reports Were those things that you had to personally review when you were running for Governor?

A The law gives the option of the candidate signing or a treasurer or, I believe, maybe one other person But more often than not, I did not review those The treasurer reviewed and signed those for me

Q Okay Let me move on to the sort of topic of donors when you were running for Governor and while you were Governor Generally speaking, what's your -- what's your relationship with donors or how does that work in your job, your former job?

A Well, raising money is one of the key things that have to be done to win a statewide office And so meeting with donors, convincing them to invest in your campaign because you've got the right ideas is a huge part of every campaign So meeting with them, maintaining relationships -- donor maintenance, we call it -- finding new donors to support you as you go through the campaign are all critical parts of -- of the function

And over the years, many of those donors have gotten to be friends Many of them have gotten to know my family, my kids In fact, especially after Governor, in those four years up here, many of those folks became part of our circle of friends But donors are obviously just a key part of a campaign

Q All right You heard Janet Kelly testify?

A Yes

Q And did you, in fact, tell her, basically, any motto of yours or any rule of thumb for dealing with donors?

A I did That's something we learned and adopted early in the legislature, and that is if you can't take somebody's money and be willing to vote against their interests the next day, you don't belong in the business

And that was a shorthand way of saying that the ultimate test is really in somebody's mind and heart and conscience And that is if you -- you have to take significant amounts of money to run a statewide campaign, Republican or Democrat But you've got to be able to separate the receipt of a contribution from what you believe is the right thing to do on a particular policy issue

There are multiple meetings that I know that I had with donors It might last a half an hour, an hour And within that same meeting, they'll want to talk about policy issues, something important to their business, and then I know in that meeting, I'm going to make an ask for money And so you've got to know where those lines are And I had some meetings, I know, where if I felt the line was being crossed or somebody was asking me for something that was so specific, I just would not make an ask in that meeting I'd call back later because it would make me uncomfortable

Q What sort of things would donors ask you for, typically?

A My -- my rule of thumb is every contributor wants something The reason they donate is they expect something And for many of them, it's just they expect good government They expect clean government They expect -- they want to invest in me or Tim Kaine or Mark Warner because they like them personally or want to see them advance

Others invest simply because they are Republican or Democrat and they want to invest in their team Some -- maybe a little more particular is that they may be in a particular industry that they know that you have the right views on, generally, and that if you're elected Governor or Lieutenant Governor, that you're going to advocate those interests

Others might have more particular requests; that they know that there's legislation that might be considered during your term for or against a particular item that's important to them personally or important to their business And so they want a chance, while they've got half an hour or hour before they make a contribution decision, to decide where you stand on a particular issue

So the mixing of requests for money and discussion of issues is something that every elected official has to -- has to grapple with And I certainly learned early on, but particularly when I was raising copious amounts of money for Governor, $25 million, that I just had a -- I just had to know that if there were discussions about policy or business or permits or anything particular with a -- with a donor, that I had to separate that during the course of the discussion from a particular ask or it would make me uncomfortable And I think that's, frankly, been the general rule of thumb of most people I know in Virginia

Q Okay While you were running for AG or as AG and while you were running for Governor and as Governor, do you have an estimate of the total amount of money that you raised from donors?

A I think in the last -- in the last eight years, I've raised about $58 million: 6 million running for Attorney General, 8 million for our PAC, 20 million with the

Republican Governors Association during the time I was Chairman or Vice Chairman, and 24 running for Governor I've asked people for a thousand dollars I've asked people for a million dollars when I was head of the Republican Governors Association

Q Okay With respect to the concept of donors or non-donors, did people, when you were AG or when you were Governor, give you gifts?

A Yes

Q And what was the rule of thumb with them?

A Well, with gifts --

Q Was that any different? I mean, were they distinguishable? Some people were both donors and gift givers or some people were just gift givers?

A Many of them were both, yes

Q Okay

A But, again, there's not a limit in Virginia, just disclosure

But I tried to apply the same rule of thumb Most of the donations for gifts were relatively small compared to the amount of money people would donate for a political campaign, which was significantly -- significantly greater But the -- I think the rules of thumb still applied, the same ones

Q In terms of asking for money, how many asks, essentially, have you made in your political career for money?

A Thousands

Q Now, with respect to donors or contributors or gift givers, have you ever vacationed with them or had dinner with them or relaxed and went to a game or things of that nature with them?

A Yes Several of them Many of them

Q Did folks who were donors or gift givers, after you became Governor, did they lobby you, try to lobby you hard for various things that they may want?

A Sure And members of my staff and Cabinet

Q All right And were there times when you said no?

A Sure

Q Was that frequent or infrequent?

A It depended on the issue I -- many of the decisions -- when we had people coming into the office, for instance, to meet on a particular issue, more often than not, it wouldn't just be me by myself It would be me and at least one or two other staffers or more to listen to them

I mean, I think providing access to government, it's really a fundamental duty of a Governor And I don't care if they are Republican, Democrat, black, white, rich, poor, donor, non-donor I mean, having access to government is a fundamental responsibility of an elected official And they should be able to make their pitch on their idea or ask for their help I mean, that's what government exists to do, in large measure, serve constituents

But most of those I'd have groups there to help me make a decision But so many of these meetings that took place with people that were donors took place without me It was Cabinet It was senior staff And they would make countless decisions without me Particularly when it came to legislation Lobbyists would regularly come from every major interest group, for profit, nonprofit, others that would come into the State Capitol and meet with people in my administration and make an ask for or against a bill or for an amendment and so forth And I met with some of those, but many of those people met with my staff

Q Okay Are there folks who have given you gifts or given you contributions or campaign contributions that were friends of yours that you've had to say no to when they wanted something?

A Absolutely

Q And can you give me some examples of that?

A Sure You know, one of the chief things that many people that are donors or gift givers that they ask for is Board appointments Secretary Kelly was here the other day and testified that we have about a thousand appointments that I get to make a year That's 4,000 during the life of a Governor There are many of them that are viewed as rather prestigious and that are very important Boards to universities, boards to the Port Authority or Transportation Authority, things that are very high profile

And Will Sessoms was in here the other day, for instance He expressed an interest to be on the ODU Board of Visitors He's a banker He's a donor He's a gift giver And I told him I didn't think it was proper for a mayor to be on that Board So we told him no

I have another donor from Virginia Beach, Bruce Thompson Wanted to be on the UVA Board, wanted me not to support a bill to change the rule against pre-Labor Day school opening.

Q Why would that be? What's the --

A Well, because people in the hotel industry were -- wanted to keep the school opening after Labor Day because they felt it was better for their business

I felt it was better for kids if we give flexibility to school divisions to be able to open when they wanted without having to get a waiver from the State And so I championed a bill the last two years to have -- have that law killed, and they were very much against it, as were many other donors Not just Mr Thompson Many donors were against that But I thought that was the right thing to do

There have been companies, MeadWestvaco, Dominion, others, that are big Richmond companies that have asked for amendments or changes to bills And I felt that those were not right, and I haven't done that

So, I mean, there's many examples And that -- that happens -- that's a regular part of the legislative process is people, whether they are donors or non-donors, have an opportunity to ask state government to do something or not do something And then ultimately, me, my staff, my Cabinet has to make a fundamental decision on what we think is right, and particularly whether it fits the whole objective of creating better opportunities and jobs in Virginia

Q   How about Bill Goodwin?

A   Yeah Mr Goodwin, the only thing -- he's been both a significant donor and also has given gifts He asked me to -- the only thing he ever asked me to do was wrote me a letter and asked me to put his son-in-law back on the Board of the University of Virginia And I knew his son-in-law asked to be reappointed, but I did not think that he would support the higher education reforms that I championed back in 2011 and '12 And so we declined to reappoint his son-in-law And so -- there are, again, many of those kinds of things And, you know, at the end of the day, I think people understand

And sometimes I deliver the message A lot of times people on my staff deliver the message, but we try to get back to everybody, whether it's a yes or a no, and tell what the decision was and, generally, why

Q When you say "we," are you delegating these decisions to someone else and then walking away from it or are you ultimately making the decision when you say no?

A No Many of those I make the decision I mean, virtually every Board appointment, Secretary Kelly and her staff would bring me the recommendations But the buck stopped with me I made the decision, with a lot of input from her and others on my staff Generally, the Chief of Staff would help and make his recommendations as well, but I made the decision I'd stand by that decision But just because in the interest of time, Secretary Kelly and her staff would more often than not, call the person

If you have four appointments to the University of Virginia -- in my first year, there were 102 people that wanted to be on the University Board at UVA, and I could only appoint four So they had to make over a hundred calls and tell people, "You're not getting an appointment " And many of those were donors Some were gift givers But we tried, during that process, to be -- to not look at that, not consider that

That's one reason that during the time I was Governor, I didn't sign and review my PAC report My staff actually did that Jane Wortham was my Treasurer and my maintenance person for that She did that

I was aware of the large gift givers because I would write personal thank you notes to the ones that donated significant moneys But for the most part, we tried to make the decisions based just on what we thought was the right thing to do

Q Now, can donors donate during the General Assembly session, you know, if there's legislation and budget pending?

A They used to be able to do that When I first got elected in 1991 to the General Assembly, I think until mid or late '90s, you used to be able to actually donate to a candidate -- or to a legislator right during the middle of the General Assembly session There are 45 days when they're voting, and we -- many of us decided that was -- that it just -- there was an appearance of impropriety in doing that And so we changed the law I know I supported -- I can't remember what year, but in the late '90s, to change that.

So right now, you can no longer donate, either solicit or receive any moneys while the General Assembly is in session That applies to the Governor It applies to -- to the legislator You can still receive gifts, however, during the General Assembly session

So, for instance, legislators, others, go out to dinner with donors during the course of the session, and those are reported on that Statement of Economic Interest But you no longer can donate to a campaign or a candidate

Now, it's not to say the night before the General Assembly starts is when the largest fundraisers of the session seem to be here in Richmond But during the session itself, there are no donations, for the last 10, 15 years

Q But with respect to gifts you can give gifts in an unlimited amount?

A Yes

Q While it's in session --

A Yes That's still the law

Q -- is that correct?

A Yes

Q That's still in the law in Virginia?

A Yes

Q Okay Now, the day you were elected Governor was November 3rd, 2009 --

A Yes

Q -- is that correct?

And you were actually inaugurated in January, on January 16th --

A Yes

Q -- is that correct?

And coming into office, what was that like for you?

A It was -- I mean, it was exhilarating I've been in public service now for 38 years, since I was a lieutenant in the Army, and to have the same job as Thomas Jefferson and Patrick Henry was -- I mean, it was just unbelievable I can't describe the feeling of being inaugurated and having friends and family from around the country and having a big celebration at the State Capitol and having a parade with a VMI band and knowing that for the next four years I had this immense privilege to govern, to advocate ideas, to help people, to serve people, to be able to meet leaders from around the world, Heads of State

It was -- it was just a remarkable, remarkable day for me And in particular, with my dad and my wife's dad were both ill at the time, and both were able to attend and -- but they both died that first year after I got inaugurated But they both got to come on that day because it was 61 degrees outside in January So it was just a day I will never forget, and I know my family will never forget either

Q Aside from the exhilaration, talk to us about how busy you were, or not, when you became Governor

A Well, the duties of the Chief Executive of any state in the Union are significant And you can -- I think you can do as much or as little as you want I've always had a pretty strong work ethic, something my dad taught me And it was -- you know, from day one, I mentioned the transition We made an announcement of the transition team on November 4th and basically had two and a half months to build a government I had to hire a Cabinet, hire senior staff I had to get all the legislation ready for the General Assembly session

The way Virginia works is when you come into office, the General Assembly has already been in session for three days So you've got to be ready The budget is already introduced by the outgoing Governor, and you've got to get up to speed on that because the budget bill is the biggest bill in Virginia

So there's a significant amount of work that has to be done right at that time coming into office and hitting the ground running for that 60 days for the General Assembly So fortunately, I had remarkable, dedicated staff You heard the phrase I told everybody, "Go hire the best and the brightest." Several of the key people that you've met here, Secretary Cheng, Secretary Hazel, Secretary Haymore, these are people I didn't know really at all before I knew who they are, but I didn't really know them like I knew Secretary Kelly and Martin Kent

But I wanted the very best people that would adhere to a core philosophy of government, who would work tirelessly for the citizens, who would be self-starters, who would be independent, who would be able to take a vision and go run with it And, you know, that's the kind of people I was really fortunate to have working So I was -- I didn't -- I just had to wind it up and kind of let them go, and they did a great job

Q With respect to the kind of folks that you wanted to hire, were you looking for people who are yes, men; yes, women?

A No

Q Folks have come in here that testified Are there any that are classic examples of independent thinkers?

A I'd say that everyone you heard testify is pretty independent But I know they had fidelity to the objectives of our campaign and our mission; that is, job creation, the economic development, servant leadership, fixing problems, working tirelessly I knew they had loyalty to that

But beyond that, there's no way -- there's 110,000 state employees It's a $96 billion budget There's 132 state agencies There's no way that a Governor of any party can micromanage, that can get things done without remarkably talented, independent people who are going to get those things done In fact, I think that's true with every Governor that's served in my lifetime That's the kind of people they hire

Q Earlier on in your career, were you a micromanager? Did you try to be?

A Tried very hard to be Yes

Q And was that more difficult when you became Attorney General?

A More so I still tried

Q And when you became Governor?

A It was impossible I had 12 Cabinet members that really were the chief people, along with Martin Kent, the Chief of Staff Those were the people that I counted on to get the mission done

The first thing I asked them to do is come up with a strategic plan You know what the goals are generally You figure out, in writing, now, how are you going to get this done You got four years to do it, 1500 days, whatever that comes out to How are you going to implement these things and get this accomplished in the next four years And then tell me what the resources you need to do it And then let's work together these first six months, implement that strategic plan And then I counted on them to do it

Q You say "four years " I mean, was -- people have testified about some sort of a sense of urgency?

A Yes

Q That's because you can only run for one term or be a Governor for one term?

A Yeah Virginia is very unique It's the only state in the Union where you can only serve one four-year term All others are multiple terms or two four-year terms or no terms limits But Virginia has no -- no succession Has been like that for 160 years

So you do have, on the one hand, a sense of urgency, but you also have political freedom to try to do the right thing because you're not running for re-election So it's got its pluses and minuses But I would constantly remind our staff that, you know, the clock is ticking We've got to get things done

Q All right With respect to that, I know you had to get things done, but was there some overriding -- aside from the Bob's For Jobs issue, was there any overriding philosophy that you had that you tried to instill in the folks that you hired when you came in?

A There was And I tried to hire people that I knew would really embrace that --

Q And what was that?

A -- in their heart And it was this concept of servant leadership, which is just something that grew out of my own faith tradition, which is to be able to serve other people that -- because it is -- after all, this is about public service, which means putting other people's needs and desires and concerns above your own and that in serving other people the best that you could, in return, they would achieve and reach their highest and best potential

And that's the way I try to act towards my staff, and that's the way I asked them to act towards their constituents and towards the people that worked for them

Q Okay

A And it turned out to be pretty effective I actually bought them a little sign that says, "Serve like a champion today," after my Notre Dame alma mater, just to remind them of that day, just a little thing so they would keep that in mind as they worked through the term

Q Okay I believe you testified a little bit about traveling around the state as you were campaigning --

A Yes

Q -- and talking about Martinsville and some of the economic suffering that you saw?

Were those the only regions that had problems or were there other regions as well in the state that had economic issues?

A You know, I think everybody knows, in 2008, '9 or so, there was immense pain and job loss throughout the entire country The President had very tough work to do My predecessor, Governor Kaine, had a lot of heartache he had to face with budget deficits and unemployment going up

But I embraced that as really the chief challenge that I had to try to do everything possible to make Virginia more competitive and more job friendly and more business friendly so that the private sector would grow, as opposed to creating more government spending and more government jobs

And so Martinsville, Danville, I mentioned that southern part, for 15 years, it had unique challenges because of --

Q We've talked --

A -- declining tobacco and, yeah, textiles, furniture

But even in Northern Virginia, the most affluent place in the state and one of the most affluent in the nation, because of declines in some of the tech sector and government contracting, even they had depreciation -- declines of 20, 25 percent in property values They had layoffs and so forth

So it was a statewide problem It's just the big unemployment rates and, thus, the bulk of the suffering was in the more rural areas and the inner cities in Virginia

Q With respect to trying to implement this Bob's For Jobs idea --

A Yes

Q -- and to deal with these economic problems, did you take any specific actions when you became Governor to try to implement a plan or a vision for dealing with those issues?

A Yes It was -- the first thing I did when I became Governor In fact, five minutes after the inauguration was over, I actually signed two Executive Orders on the platform out on the dais in Capitol Square

And it was -- Executive Order 1 was the commission on job creation and economic development And I named, I think, Secretary Cheng and Lieutenant Governor Bolling to head that up, and named about 50, 60 businesspeople and education leaders and others to get together and say, "Tell me" -- "what are the things that state government can do" -- there's a limit to what we can do, but, "Tell me, what can we do in order to incentivize the private sector to grow and strengthen and create more jobs " So that's what they did They gave me some immediate ideas

The second Executive Order was one on government reform Finding ways to basically make government work better and more efficiently

But the other thing I did besides that was to put a significant amount of money in the first year operating budget to amend Governor Kaine's budget We asked for about $75 million that first session in new programs for job creation, for international trade offices, to expand the Governor's Opportunity Fund, to have more money going to the Main Street Program, to improve the Office of Minority Business Development, and many other things that I thought would be an immediate impact on our economy

Q Okay And in connection with that, did you personally try to promote Virginia business?

A Oh, absolutely

Q We saw, during the -- it's so long ago It's hard for me to remember it's so long ago We saw in the opening statements in this case by the lawyers two videos relating -- first relating to Hardywood Brewery?

A Yes

Q Do you remember that video?

MR ASBILL: Judge, they've seen it Can I move that into evidence at this point? The Hardywood Brewery video that was displayed during the opening statement

THE COURT: All right You want to move it in?

MR ASBILL: Yes I'd like to move it in I

think the jury has already seen it

THE COURT: It will be admitted

MR ASBILL: Thank you

THE COURT: What's the number?

MR ASBILL: RM-161

THE COURT: Okay

BY MR ASBILL:

Q And with respect to the concept at Hardywood of promoting business, what did you do at that brewery? Basically, what were you there for?

A Well, that was actually a bill signing You saw the other legislators that were there But there was a bill that -- I think Senator McWaters' patron -- that would make it easier for craft breweries in Virginia to be able to grow and expand The craft brewery industry, the wine industry, some of those things were already core strengths of Virginia we targeted as potential growth areas And so this bill just helped them with that And no better place to do a bill signing than at the location of one of these breweries So -- it's just right downtown here in Richmond

And it just -- when I'm out there with legislators doing a public press conference on-site, it just calls more attention to the issue that, you know, all things considered, I'd rather have people buy Virginia wine or

Virginia beer or Virginia peanuts than something from California, Oregon or Massachusetts And so we promoted Virginia products all over the world

Q How does that event, the Hardywood Brewery event that we've seen, compare or contrast with a Mansion event?

A It just depends on how they're set up The benefit to having something outside is you have an open press conference You have coverage that that business would be able to get from the presence of the Governor and legislators there You've got -- for that specific business, you've obviously got some goodwill built up You call more public attention to the cause that is embodied in the piece of legislation And so I think those are positive If you have a Mansion event, normally, those are without press, and they are generally private, by invitation only

So in terms of the impact overall for the industry or the company, I'd say an event at a location would be probably more beneficial

Q Okay Besides press events, what other vehicles did you use to promote job development?

A Well, there are many of them Obviously, the significant investments in the budget to allow many programs to improve in state government was -- was a huge thing that we did out of the blocks We started a long-term process of revising state regulations There were 24,000 pages of regulations We wanted to reduce regulatory burden on businesses so that they could expand a little bit better We opened up nine agricultural offices around the world We opened up Virginia businesses offices in Shanghai and Mumbai And I personally visited India and China to open those up

We significantly expanded the Governor's Opportunity Fund, which is the actual -- what we call the Deal Closing Fund That's how you get businesses to either expand in Virginia or move to Virginia

But there are other things There's photo opportunities that you could do either on-site or at the Governor's conference room There's -- there's just many things that can be done to help promote business And having a secretary go out and do things on-site was also one of the things that we would do

Q With respect to the Governor's Opportunity Fund, Deal Closing Fund, how much money was in that fund?

A I think when I became Governor, it was only -- maybe about 14, 13, $14 million I made a campaign pledge to double it We came close to that The General Assembly cut it back a little bit But that was the primary discretionary fund that I had, and I had pretty much full control over, based on recommendations from the Economic

Development Partnership where I could make a decision to basically give meaningful money to a Virginia business that wanted to expand or to a company coming to Virginia

For instance, one of the first things I did is -- Governor Kaine had done a great job marketing Northrop Grumman, a California company, to come to Virginia And within a couple months, I finalized an agreement that gave them I think a total of about $16 million I called the President a couple times, and they agreed, just a couple months after I became Governor, to move their whole corporate headquarters from California to -- to Virginia So that was just one of the things It was one of the bigger ones, because we had to put so much money on the table, combined with local government money, in order to make that happen But that's -- that's the way the markets are right now Almost every state has something like this, and to be competitive, you have to do that

Q All right Would you give grants out of that fund to donors, non-donors?

A I mean, it was -- it was -- it was blind in that respect The recommendations came from the Economic Development Partnership, which was specifically put in the code to be independent of the Governor

I appointed most of those members, but they were on their own in making the decisions so that they wouldn't be influenced by fiscal or political or geographical constraints and what they thought was best And so most of the times, I would follow their recommendations But if I had something that I really wanted to do, I could ask them to go work it up And it might have been a couple times we did things like that But most of the time, they did an assessment of what the payback period was, the number of jobs, the fiscal tax revenues for the state, and that's how we made the awards

Q Okay And you've talked about this process and how it works, but at the end of the day, did you have total discretion --

A Yes

Q -- over that fund?

A Yes

Q Now, there's another video that we saw during opening statements I think an ICF video; is that correct?

A Yes

Q All right And we've seen it

MR ASBILL: And I'd ask the Court for permission to move that into evidence as well That's RM-162

THE COURT: It will be admitted

BY MR ASBILL:

Q Can you tell us just a little bit about that?

A Sure

Q We don't want to see the four-minute video again, but just tell us a little bit about that, briefly?

A Yeah One of the programs that we decided to come up with, and it was my staff that really had this, I think, very positive idea, and that is to help people down in the tobacco region and the southern part of the state, or basically the rural areas, generally, is we wanted people from the prosperous areas of the state, particularly Northern Virginia, when they expanded their business, to expand in rural Virginia

Governor Kaine had kind of started that model with a couple projects that he recruited down to Southwest Virginia So Secretary Cheng and his team talked to a number of Northern Virginia businesses and tried to ask them to do the same thing And Mr Kesavan, Sudhakar Kesavan, the president of ICF, agreed that he would open up a new operation in southern Virginia, I think in the Martinsville area, because of the pressing unemployment rate And so that was a big victory It was one of our first major successes in convincing a Northern Virginia expansion in southern Virginia That's why I was glad to go down with the Lieutenant Governor and to celebrate the opening of that facility down in southern Virginia

Q Okay The Governor's Opportunity Fund and the

Virginia Economic Development Fund or grant, are those distinct or one in the same or what?

A No The Economic Development Partnership is an entity, an agency, who has a variety of functions, but among those is to recommend expenditures out of the Governor's Opportunity Fund to me, and then I make the decision on the final allocations

Q Okay Out of this fund, did you ever give any grants to Star Scientific?

A No

Q Were there any other programs through which you could provide money to a Virginia business, where you personally could provide money or direct money or influence the direction?

A Sure Did a line item in the budget There was the Agriculture and Forestry Industries Fund we heard Secretary Haymore talk about There was an Economic Contingency Fund There were several things to do that, but, obviously, the budget would have been the biggest

But the aid for the fund, and the Economic Opportunity Fund, and the Governor's Opportunity Fund I had complete discretion over

Q In terms of a budget, explain to us how that works You wanted to do -- help a Virginia company

A Yes

Q Do you put a line item in the budget? How does that work?

A Secretary Brown was here and explained the process It takes an extraordinary amount of time to do that well He and his team do a phenomenal job working that up

And then over a period of literally months, from probably August through November, meeting in a conference room with probably about 10 or 12 of us, the senior leadership team, to review the budget And then a long series of recommendations that have come through each Cabinet member about spending they want to add or delete maybe from the previous year's budget or from the base operating budget

But, for instance, if I wanted to target the amount of money, when I was Governor, for a particular company, I would simply put a line item within the budget It could have the name of the company or it could simply have a category that might be exclusive to one or two or more companies

So, for instance, Governor Kaine, I know, I think, provided about $22 million for Osage Biofuels, a specific company that we were recruiting to do a biofuels project here in southern Virginia

I put in, I think, at one point, $7 million for Genworth Financial here in Richmond because of the retaliatory tax problem that they faced, and we were very much concerned that they would move to another state because of some of the adverse tax policies in Virginia And so this money helped to fund a repeal of this retaliatory tax policy But it only affected Genworth

So there were things like that that I did And then there were others on multiple different types of grants that might affect broader -- broader sections of the industry But I would have discretion to recommend in the budget, and then the General Assembly would decide

Q All right And were your recommendations generally followed?

A Most of the time We had a pretty high success rate I think it was about 88 percent of our recommendations on amendments were passed And on the original introduced budget, I think probably more of that would remain intact

Q All right The -- turning to Star again for a second The prosecution claims that what you did for Star was different and unique What's your view of that?

A When you say what I did for Star --

Q Yeah

A -- can you be more specific?

Q Anything you did for Star In your view, was that different and unique than what you did for a lot of companies?

A Well, I mean, first, say "I," my administration did very little of it other than provide them what I thought was the routine access to government that any donor, non-donor, gift giver, non-gift giver would be able to get in terms of meetings, having the Governor present for a check presentation, having people to Mansion events That's an example

I think we had probably about 300 or so Mansion events during the time that I was Governor My rough estimate is we probably invited 25,000 people Every time we had a Christmas tree lighting, I'd open up the Mansion for three hours and shake hands with a thousand people

So these Mansion events, like the Healthcare Leaders event that we talked about, were routine Because we had the 200th anniversary of the Mansion in 2012, we decided that we wanted to have as many people come and see this remarkable, historic house During the time I was Governor, when I had people over for events, I would, quite frankly, take a lot of pleasure in saying, "How many people have never been here before?" And a lot of hands would go up

I thought that was a very cool thing It's a remarkable house where some of the founders have walked I wanted a lot of people to come I wanted to do a lot of events there

Meetings You've heard some of the testimony, Mr Asbill, but I think probably 1,000 to 1,200 times a year I'd give a card to somebody or ask Chief of Staff Martin Kent to go have somebody have a meeting I myself would have hundreds and hundreds of personal meetings a year The Cabinet, on their own, would choose, without me or any direction, because they were self-starters, to have thousands of collective meetings during the course of the year

I brought back business cards from multiple trips and said, "Here Call this person Go meet with this person See me about this " I said, "Go give people access to government " So I would say things like meetings and Mansion events, having a staffer go over to the Mansion to meet with the First Lady's Office, Secretary Cheng, Secretary Haymore Secretary Suit would do with some frequency So, you know, I certainly viewed those as the mere basic, routine access to government and nothing at all special It's what I was supposed to do

Q In terms of what you thought about what Star Scientific was all about, did you think it held some promise with respect to economic development in depressed regions in the state?

A I did I mean, particularly early on, when I met with Mr Williams back in 2010, on a plane ride he gave me a very long discussion about his company and the potential and their move from smokeless tobacco to healthcare products and what he had -- he and his research team had delivered with this product of anatabine

I understood that this was actually a substance coming directly from a tobacco plant and that if this really held any promise and could in some way not only deliver some human good by its nutritional or healthcare efficacy and it could create jobs in the tobacco region of the state, that that would be a positive thing

I just remember the several times that I went down to that tobacco region, especially early on as Governor, I met with some of the leaders down there We had a little consortium down there at the New College Institute in Martinsville where I brought in a lot of people and said, "What can I do to help you? How can we try to turn this around?" Twenty-one percent unemployment They were killed A whole textile mill closed Tobacco was down "What can I do to help you?"

And they gave a series of ideas, and, of course, things like converting tobacco fields to other bioscience products was a good thing New uses of the tobacco product they recommended I mean, anything that we could do to help that region of the state I thought would be a very positive thing

Q We've heard testimony about something called a stop-by

A Yes

Q What's that?

A It's something that gets added to the schedule sort of at the last minute that might not be on there when Monica or Katherine made the schedule at the beginning of the day and kind of got added in at the last minute Or it could be something that was already planned in advance, but my scheduler would tell them, "Look, the Governor can just stop by for 15 minutes because he's got a lot of events that night "

I mean, I just tried to go to as many things as I possibly could, and so a lot of the events were short.

Q All these sorts of things, press conferences, photo ops, events at the Mansion, stop-bys, et cetera What was your policy on whether or not you would attend those types of events?

A I gave general direction to my scheduler, Monica, Katherine, Adam, my Travel Aide, about what I'd like to do And basically, it had to fit one of the core themes of our government, which was economic development and job creation, public safety, transportation, healthcare, I mean, the core functions of government that I was responsible for

If I could go by a business group or an individual business or a trade association or something that my presence might do something to help that group and I could fit it in the schedule, I'd like to do it And so we went to a lot of events both at the Mansion, at least, I think, 300, and outside, around the country, around the state and around the world to be able to talk about the good things about Virginia

Q And these are announcements or you would make some sort of announcement at many of these events?

A I did a lot of announcements

Q What does that concept mean?

A Many times it would be me announcing one of these economic development grants If I was going to give a check to the company, be able to give them a little bit of goodwill and about what we were doing and what the partnership was Because it was usually between the state government and the local government -- it wasn't just state grants -- that we would combine together to be able to help a region MicroAire, Northrop Grumman, Lipton Tea There were just countless ones that I would do like that And I would go I'd announce the check presentation or the economic development grant from the Governor's Opportunity Fund, and we'd be able to call attention to that area of the state And it was usually something significant for the company because it meant they could expand an assembly line They could grow some -- grow some more jobs

You know, one of the biggest ones we did was the one that you -- that you mentioned earlier for Sabra, the consortium between the Israeli and American company, PepsiCo and Strauss Foods that got together to create the hummus manufacturing company Sabra So I had a big event with the Mansion with the President of the Strauss, the President of PepsiCo Had a big celebration at the Mansion for breakfast And then I went out to Chesterfield County where they were doing the groundbreaking for their new facility out there, and we had a big event out there And we did a check presentation for the Governor's Opportunity Fund

So that would be one of the bigger events I've done to promote a specific company using both the Mansion and a site visit But it really depended on what the opportunity was And Secretary Cheng or Chief of Staff Kent, somebody would make the decisions in advance about what's the right thing to do for this particular event But I'd try to go to as many as I could

Q Okay

MR ASBILL: Let me pull up RM-0093

BY MR ASBILL:

Q Is this an example of -- do you recognize this?

A Yes, I do

Q And what is it?

A This would be one of the traditional press releases that might be put out I think this one was actually put out by the Economic Development Partnership, as opposed to the Governor's Office

But this was announcing a major expansion of the Health Diagnostic Laboratory facility just down the road here in Richmond, where they were going to create 213 new jobs and $4 2 million in capital investment

So I participated in that event and tried to do as many of those kinds of things as I could

Q Are there other -- if you scroll, are these other examples of these types of announcements in this exhibit?

A Yes The DuPont facility in Chesterfield County, a battery facility expansion I went down there and met with -- did a plant tour of the DuPont facility and met with some of those folks back in early 2000 -- 2010, I think

Q Okay

MR ASBILL: This exhibit I'd like to move in, Your Honor I believe it's 279 pages, and we're not going to go through anymore

THE COURT: It will be admitted

BY MR ASBILL:

Q Did you ever do an announcement for Star?

A No

Q Did you ever do any press conferences or site visits for Star?

A No

Q Some of the events at the Mansion You've talked about the Sabra one Are there others that come to mind in 2010 and 2011 for specific companies that were events at the Mansion?

A So we did -- the majority -- the most events we did for any particular sector would have been -- would have been the business sector for economic development I think public safety might have been second

So we did a lot for the Chamber of Commerce or Virginia Free or other types of business groups there at the Mansion But we did a couple ones that involved only specific companies I mentioned Sabra I mentioned -- I think Volkswagen was mentioned earlier And there are probably -- I think there were a handful of others that were introduced earlier in the trial of things we did that might have only had a connection with one -- one particular company

Q All right And you've talked about doing tours, et cetera, of Virginia businesses?

A Yes

Q All right Now, did you do any of those in the -- in 2010, 2011, 2012?

A I did a number of tours of the state And I would -- typically, when I would tour, try to go by and see businesses, listen to business owners Honestly, the more I listened to business owners, the better ideas we got about how to address some of these economic development problems And mostly we had a designated time, usually in August, every summer we'd do this Listening Tour of Virginia Something I just borrowed Governor Kaine and Governor Warner did that successfully So I borrowed their good idea

But we'd go to and listen to Virginia education institutions and businesses and stop by -- stop by a lot of businesses along the way, from ice cream shops to pharmaceutical operations

Q Did you ever stop by Star during one of these tours?

A No

MR ASBILL: Judge, I'm about to go into the topic of the marriage as a separate topic Is this a good time to stop or do you want me to go forward?

THE COURT: We'll stop now

All right I'd like you to come in tomorrow morning at 9:45 And, again, please don't discuss the case with anyone, allow anyone to discuss it with you Don't let your guard down Continue to be vigilant against anyone approaching you or you being exposed to media items relating to this case

You all have a good evening, and we'll get started at 9:45

(The jury left the courtroom)

(The trial adjourned at 5:28 p m)

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No. 15-4019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v

ROBERT F McDONNELL,
Defendant-Appellant,

On Appeal from the United States District Court for the Eastern District of Virginia, Richmond Division, James R. Spencer, District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants.

August 21, 2014
Richmond, Virginia
9:45 a.m.

JURY TRIAL - VOLUME XIX

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
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JEFFREY B. KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day nineteen, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F. McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, and Christopher Iaquinto Maureen G. McDonnell is represented by Heather Martin, William Burck, Stephen Hauss, and Daniel Koffmann. Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed.

MR. ASBILL: Mr McDonnell is ready

MR. BURCK: Maureen McDonnell is ready, Your Honor

THE COURT: All right Let's bring in the jury Would counsel approach? I just have one brief inquiry

(At Bench)

THE COURT: Mr Burck, I just wanted to ask you, what are your plans? I'm trying, I'm starting to do these instructions

MR. BURCK: I think we will have maybe three or four witnesses that will be right after they are done with their case I don't think it will take more than six hours at the most I think less Maybe five hours

THE COURT: All right

MR. DRY: As far as the rebuttal case goes, we are not sure yet A lot is going to depend on today I would say that we should have at least about two days, worst case

THE COURT: That's the absolutely worst case

MR DRY: Right

THE COURT: Okay All right, that gives me some idea

(In Open Court)

Good morning Good to see you. Mr Asbill?

MR. ASBILL: Thank you, sir

DIRECT EXAMINATION (Cont'd.)

BY MR. ASBILL:

Q Good morning, Mr McDonnell How are you?

A Good morning, Mr Asbill

Q I'm going to start talking to you about the marriage issues as we left off yesterday, but I first want to talk to you about one thing that you testified to yesterday I don't know whether I misheard you or not, but you were talking about the issue of whether or not gifts are legal in Virginia And is there a distinction between the time when you were Governor and today concerning the amounts of gifts?

A Yes The reporting limits for gifts were unlimited during the time I was Governor, but I know the legislature made some changes this year that went into effect last month, July 1st, that actually put some caps on tangible gifts, if I remember what the law was, but still it is an unlimited amount of gifts for intangible gifts So that law did change after I left office

Q What's the distinction between tangible and intangible as you understand?

A I didn't actually look at the statute that was passed, but I think it is just the ordinary definition of tangible versus intangible, is my understanding But there was a change after I left But the law was the same, unlimited but reporting, during the time I was Governor

Q Okay Let's turn to the marriage Is it going to be easy or hard for you to talk about this issue?

A I think it is going to be very, very difficult Very hard.

Q I'm sorry?

A It is going to be hard for me to talk about this

Q Why is that?

A Because, you know, I've been in public life now for 22 years in elected office, and a couple things that I have always kept very close to me have been my finances and my marriage. And to the degree that my wife and I were having troubles over the years, we would try to work these things out among ourselves We didn't generally try to talk to the children or my friends These are things that I felt were between my wife and I to address

Q Are you willing to answer questions about it now?

A Yes I feel in light of these charges that have been brought, I have to talk about it, yes

Q When did you first meet your wife?

A I met Maureen in 1973, July of 1973

Q And did you start dating at that time?

A We did. We met at a party I did have to ask her a couple of times, but we finally started dating in, I think, late July It was right after my freshman year at Notre Dame I was home for the summer, and Maureen was working at the State Department in Northern Virginia And she lived in McLean, I lived in Alexandria, and we met at a friend's house, one of my high school friends

Q Was she in school at the time or working?

A No, she was an administrative assistant at the State Department

Q Had she pursued higher education at that point?

A No, she hadn't

Q All right And you said you asked her and she said no Asked her out?

A A couple times But I persevered.

Q And did you date over the next several years while you were in college?

A We did, dated three years, a long distance relationship I was at Notre Dame, she was in Northern Virginia, and she came out to Notre Dame, I would see her at the summer on breaks, and that was out courtship for three years

Q When did you get engaged?

A We got engaged after my junior year Maureen had been over in Vienna for, Vienna, Austria, for a Law of the Sea conference that she was involved with, or maybe the SALT talks, I can't remember, but anyway, when she came back, I had just gotten back from a summer camp from the Army ROTC program and decided at that point I would ask her to marry me, and she said yes

Q When did you get married?

A We got married a month after I graduated from Notre Dame on July 24th, 1976

Q Who paid for the wedding?

A Maureen and I paid for virtually all of it She was one of nine kids Both of her parents were public servants and didn't have great means, but it was something, Maureen was working and I was working during the summer and saved up a little money and we wanted to do that, so we did.

Q During the first couple years of your marriage, what was the relationship like?

A It was very good. My first assignment, as I mentioned, was over in Germany for three years, and was kind of like an extended honeymoon. We got to travel frequently all over Europe, and it was just the two of us We didn't have any children And it was a great time

Q You came back from Germany, and is that when you started to work for American Hospital Supply?

A Yes, it was, in May of 1981

Q And was your wife working at that time as well?

A We just had our first daughter, Jeanine, and Maureen was working at a restaurant as a waitress in Georgia when we started, when we moved down there, yes

Q And any other types of outside employment for Ms McDonnell at that time?

A I don't think so, not at that time No

Q When did she become interested in selling nutraceuticals?

A It goes back 30-plus years I believe the first company she worked with was Shacklee, just primarily a vitamin nutraceutical company, and that was early in the 1980's I think that was after we left Atlanta, either when we moved to Chicago or maybe into Kansas City in 1982, 1983, in that area, is when I think she first started working with the company But from the very first time I met her she was interested in it because of the health event she had when she was 17 with a breast tumor

Q Okay Going forward to when you were in law school, was your wife working at that time when you were in school?

A She was working very hard on a lot of the work that I was doing She prepared all of my papers She was incredibly supportive I had three jobs Sometimes she would actually work one of the jobs for me, this job I had with the Virginian-Pilot She would actually help do that a couple times We worked together on this toy franchise And like I said, she was taking care of, at that point two, and the third daughter born during law school She was very, very busy and helped get me through law school

Q After you graduated from law school, I believe you said you became a prosecutor; is that right?

A Yes

Q In the Commonwealth's Attorney's Office?

A Yes, in Virginia Beach, yes

Q Was that something that Ms McDonnell thought was a good idea?

A She was very supportive She knew I wanted to do public service She knew I loved that internship that I did during law school and that I wanted to prosecute, so she was very supportive She was surprised and I was surprised at the fact that I had actually a lower salary than I had had when I was in business four years before that But I think we got off to a good start in 1990

Q Okay Going forward to when you first got into the General Assembly, that was 1991; is that correct?

A That's when I got elected and started in 1992

Q I believe you said yesterday that your wife was supportive of that decision that you made; is that correct?

A She was It was a difficult time We actually decided about a year out, and then shortly after that we found out that she was pregnant with twins during the beginning of that campaign So obviously that made the challenge of running for office a little bit tougher But she was a great campaigner, and did a lot of door to door, even on her own. She did a lot during that campaign

Q You were also working at a private law firm at that time; is that correct?

A No, I was still a prosecutor during the campaign After I got elected, I went to the private law firm.

Q And then the combination, at that point, were you able to -- did you make more or less money than you had made as a prosecutor?

A I made more money when I went into private practice

Q Okay At that point in time, the start of your

General Assembly career, what was the status of your wife's interest in nutraceuticals or any business efforts with respect to nutraceuticals?

A It was still very strong I think at that point she had just begun to work with a company called Starlight International It was a national company And she worked that business while taking care of five kids while I was involved in law and politics, and did a lot It was good for her. A couple of the kids were in school by then, but she was able to do a lot of that business from home, so it was a good fit But she was very enthusiastic about the Starlight products and working for them.

Q When were the twins born?

A They were born September 24th, 1991, six weeks before my first election.

Q Okay As I understood your testimony yesterday, you said at this time when you were going into the General Assembly that you also had Army Reserve obligations; is that correct?

A I did Yes I went back into the Active Reserves when we moved from Kansas City to Virginia Beach in 1985 I had to look for ways of supporting the family And so in addition to the toy business and the Virginian-Pilot work, I went back into the Active Army Reserves, which is one weekend a month, sometimes a Saturday, Sunday, sometimes Friday, Saturday, Sunday, and then a two-week summer camp each year So it was 50-some days a year that I was gone on Army Reserve duty

Q How much time during the year were you gone attending to your duties in the General Assembly?

A Well, either 45 or 60 days during the session But as I was getting more senior, and especially in the late 1990's, I became the Assistant Majority Leader and then later I became the Courts of Justice Chairman So as I got more responsibilities in the General Assembly, there were other meetings during the year There were travel obligations that I had There were special sessions There were just other things that I had to do that took more than that 60 days So it would almost be the equivalent of three to four months of General Assembly business that I had to attend to

Q Three to four months of General Assembly plus the Army Reserve; is that correct?

A Right And I had a full time law practice, too

Q So how much time were you spending away from home in Virginia Beach while you were in the General Assembly? What's a rough percentage estimate of a year?

A I would say it was well over a hundred days, maybe approaching a third of the year

Q All right And at that particular time, your wife stayed in Virginia Beach while you were away, obviously; is that correct?

A Yes We had five children, a couple of them were still very, very young then, yes

Q And with you being away so much, did your wife start to develop, in essence, a separate life?

A In a way, yes You know, I had law and Reserves and the General Assembly that I was doing, and put my full effort into that She was doing a great job raising our young children, and working her nutraceutical business So the time that we had directly for each other, for dates and working on the relationship, got to be less frequent

Q And during this time when you were in the General Assembly, tell us about the level of your communication between the two of you and the nature of your communications Just the general nature and the level, frequency

A Well, it was, obviously being gone as much as I was, particularly with the Army Reserve business and other things, and the two months of almost constantly being gone in the winter with the General Assembly, we would spend more time on the phone and less time in person, which obviously has an impact on the relationship And so much of our life now began to revolve around our five children It made the house very, very busy with soccer and swimming and music lessons and the different obligations that we had with the children And so we began to focus more on their needs and their logistics and so forth as opposed to what she and I -- our own relationship.

Q Did your communications start to break down at that point?

A They became less frequent and substantive and more, I guess, logistics, children, schedules, and so forth

Q Privately, were there arguments or disagreements?

A I could see the tension and some of the anxiety growing between us starting in those early 1990's as I was gone, gone more, and the substantive nature of the communication was not as good Particularly I remember times in the mid-1990's that I sensed a decided change in our ability to communicate well with each other Even on vacations, I remember a couple of them were, the angst of daily life would carry over into the vacations I remember particularly one at Disney World when I was surprised that we just weren't able to communicate and relate, and Maureen was very anxious even during the vacation period down in Disney World. It was mid to late 1990's, so that was just a time frame that stands out in my mind where things became a little more strained.

Q Now, in terms of the strained relationship, did it manifest itself in anything other than anxiety? Any other manifestations about that?

A I think we began to have some arguments privately, a little more frequently Nothing really substantive But I seem to remember especially the late 1990's that those became a little more frequent And much of it was driven by the fact that I was just more and more physically and to some degree emotionally unavailable because of my combination of legislative and political duties and law duties

Q Were you angry at her during that time frame?

A No

Q Was she angry at you?

A Sometimes But it was primarily driven by the fact that we didn't have much time together at that time And that's what she would say to me, you know "I want a relationship I just don't want to talk about kids and logistics and so forth I want more time "

Q Going forward through your General Assembly career, I believe in 2005 is when you decided to run for Attorney General

A No, 2002 The election was 2005, but I decided right after the 2001 elections, as I mentioned, that after talking to other people that had run, and successfully, for Attorney General, that to do this right, I really had to run for three years I certainly expected I would have competition even for the nomination We had a primary in June of '05 So if I was going to have a chance to be successful, I had to start early. I started in early 2002 with a campaign committee and started raising money, going to events And being in Virginia Beach, when you are in a corner of a state and you've got to travel the whole state, it is just that much more time on the road

Q I believe you said yesterday that Ms McDonnell was generally supportive of your trying to get that job as Attorney General?

A Sure I tried to talk to my family about any decisions of substance like that, because I knew it was going to have an impact on our family, the time that I would have for any number of things with my wife and my children And so we did talk early in 2002 and Maureen was supportive of that decision She knew in my heart I wanted to do more in public service But at the same time, I mean, she expressed those reservations about what does this mean, what is a campaign going to be like, and I gave her my best assessment in '02 But until you get into a statewide campaign, you feel it, you live it, you breathe it, and you see what it does to you, it is hard to describe what that's [illegible]

Q Did she participate in the campaigning?

A Very much so

Q And did she seem to enjoy that aspect of running for Attorney General?

A She liked parts of it

Q Which parts?

A I think some of the social events that we were able to go to, some of the interesting people that we were able to meet along the way Some of the public events where we were in the spotlight or there was press around, or if I asked her to speak, which we didn't do much of that for her in the 2005 campaign, those were the areas where she would be more anxious about her public role Because she was a mom, and she did it very well, and the public life was one that caused more stress

Q So the social aspects of the campaigning she liked; is that fair to say?

A I think so And I did, too.

Q And aside from the speech part of it or having to speak publicly, were there any other aspects of the campaign that she did not like participating in?

A I think it was mostly the public glare and things that we had to do in public But as I told her, this was going to be clearly part and parcel of a statewide campaign for Attorney General There's a lot of visibility and that was mostly it I also, though, had to tell her that, you know, this might change what she could do with her business, with the nutraceutical business

Q Why is that?

A Well, that it was going to limit her ability to do some of the type of marketing that she had done I mean, these businesses were basically home businesses. They were the direct sales or multi-level marketing kinds of businesses, where networking is a key part of your success in the business; and that to avoid conflicts, that we would have to be sure that the marketing didn't carry over to the campaigning or to any kind of public events that I was doing, because I thought that's where the line should be drawn

Q Okay You get elected and you are Attorney General Then you've got to move to Richmond; is that correct?

A Yes I moved shortly after the election I think, well, the election lasted until right before Christmas because of the recount But I moved up to Richmond early in January, but Maureen and the children stayed in Virginia Beach because the children were not out of school yet until that December -- until June So we didn't want to take them out of school Each of the children were completing -- my daughter was graduating from high school, my sons were graduating from eighth grade All three of them were going on to new schools anyway, and we didn't want to pull them out So Maureen stayed there And so for the first six months I was up here by myself in Richmond. And I tried to make it home most weekends, but I was up here And then the family moved up in July, so about seven months later

Q That move, was that easy or was that difficult for your wife?

A It was a difficult move It was difficult for both of us We had lived in Virginia Beach for twenty-one years We had been married at that time for, you know, close to 30 years We had had, I think, 18 different addresses during that time between business and the military We had moved a lot and had some separations But that was our roots, Virginia Beach. We put down a great anchor there We had a lot of friends We had a good church. We liked it there I had gone to law school there She had her support structure there with some good friends she had made. The kids had their best friends there And so while I was very excited about starting the new role as Attorney General, the move to Richmond from Virginia Beach with new people, new circle of friends, new church, all the things, and the new job as Attorney General, was a difficult move

Q With respect to your wife, did the move require her -- I mean, she had no sort of a customer network for her nutraceuticals business when you moved?

A Then that was another thing Even though I told her it that it would have to be pared back, most of her customer base and most of her contacts were in the Virginia Beach area

Q All right Would it be fair to say that Ms McDonnell found that move and the changes essentially very stressful?

MR DRY: Judge, I object He can talk about communications or observations, but he can't opine on questions of feeling

THE COURT: Sustained.

THE WITNESS: She told me that it was, yes

BY MR ASBILL:

Q Okay Now, while you were Attorney General, how did being Attorney General affect favorably, unfavorably, in between, your marriage?

A I put my heart and soul into that job It was a remarkable opportunity for me to serve in that capacity, and I felt running the state's law firm, I had a very, very high duty to run a good law firm.

Q But how did it affect your marriage? How did taking that job affect your marriage?

A Because I put so much time into that job and it required more travel, I was essentially the head of the Republican Party, so I had additional duties that I had to attend to And so I would say that it, once again, further diminished the time we had together It hurt the marriage It hurt the communications Because I was working very, very long hours at the Attorney General's Office And in that first year, I also then made that decision to run for Governor, which meant I had another full time job of running for Governor while I was Attorney General

Q Okay. This was the first time, when you became Attorney General, that you had essentially lived together for the full year in 14 years?

A Yes

Q Is that correct?

A Yes Because we had had, during those other 14 years, I had been in Richmond for essentially two months out of the year, but now we were back together Even though I was traveling a lot, we were under the same roof twelve months a year, yes

Q And did the fact that you were living together essentially for twelve months, aside from the travel you have described, did that improve the level or the nature of communications between the two of you?

A No I found that there was increasing amount of time, again, spent on talking about the kids' schedules and the soccer games and what I needed to be doing on our campaign, what I would like her to do to help me on the campaign for Governor, on issues maybe with bills or finances that I needed to talk to her about, about just the operations of running a house, a private residence, while I was gone So we spent more time talking about sort of the business of living as opposed to our relationship

Q All right And while you were Attorney General, did you talk to her at all about whether or not she could continue to sell nutraceuticals?

A I did.

Q And was there anything that precipitated that discussion?

A Well, I talked to her early on about some of the potentials for conflicts, and that she would have to, I thought, be just more discrete with her events But I know we had one event while I was Attorney General that was, it was brought to my attention by staff, where I think one of the lists, one of our campaign lists, Maureen had used to essentially promote her product and make reference to the Nu Skin product She was now finished with Starlight and into a company called Nu Skin I think she started that in '03 or '04 She has been working with them about ten years And the e-mail that she sent out was using that list and actually talking a little bit about her products And it was brought to my attention I felt that was completely inappropriate We had to have that pretty clear separation between my campaign lists and my political lists and what she was doing in her network to be able to market the products and try to attract new business And so I was very upset about that, and Maureen and I did have a conversation I told her, "You can't do that You can't use that list. My office now knows that that's happened, and you've got to really keep the marketing of the products to a minimum, do it discreetly You can't use these lists "

Q The marketing of the products that you have described, and whatever she sent out, did it include the use of your photo or your e-mail address?

A Yes, it may have I don't recall exactly

Q All right And you say you talked to her and you had a discussion with her about it?

A I did And I know at that time she was not happy about that, because this was her job. This was the thing she really enjoyed, that she was passionate about She was good at it She really believed deeply that these, and told me, that these nutraceutical products were good. I took them regularly I have for some 30 years or so And yet now I was telling her, "Maureen, because of my career and my political campaign, you just have to have a separation here You can't be advancing your products, and especially not using my campaign lists That's just not appropriate " And I think I was telling her no, and kind of essentially in furtherance of my own business was hurting her business, and I think that that was not well received

Q Going forward to when you became Governor, when you decided to run for Governor, again, I think you said yesterday that generally she was supportive of your choice to run?

A Yes I know, even though I was Attorney General, that when I got to a campaign for Governor, and having run with Jerry Kilgore and seeing what he had to do at the top of the ticket, that the Governor's campaign really drives a lot of what's happening It drives the policy agenda; it drives the schedule of travel and so forth And so I knew this was going to be a big deal So of course I talked to my wife, my children, said, "I would like to do this I think I would be good at it," and basically that I would like their support Maureen understood and supported my decision, but I certainly could tell with what she said to me that she had increasing concerns about what this meant in terms of less time at home and more visibility and more loss of privacy because of the public nature of a political campaign

Q All right So she had essentially the same sort of mixed emotions that she did when you ran for Attorney General?

A Yes, I think that's fair

Q All right During the campaign for Governor, was that different than the campaign for Attorney General in terms of staffing for her or for you?

A Oh, very much so Our campaign for Attorney General, I think we had five or six staff. For Governor it was 35. Far bigger budget It went from 6 million to 24 million, plus the outside spending, much more visibility And so we had -- and more asks that I and my staff made to Maureen and my children to campaign on my behalf The more a McDonnell was in some place in the state campaigning for me, they were my best surrogates So I asked Maureen and I asked the kids to do more

Q And did she have her own staff at that time when you were running for Governor?

A Primarily that last year, I think in the year 2009 when we really ramped the staff up We tried to be frugal the first couple of years, but the last year, 2009, that ten-month home stretch of the campaign, we dramatically ramped up staff and allocated at least one staff or two to Maureen.

Q How did she manage to deal with the staff that she had?

A We went through two or three different staff people to try to find the right fit for Maureen She hadn't managed a staff before, although this was small, it was just one person, maybe two at the most And this was really the first year that she was going to be out away from the children and being on the campaign trail for me and actually having to give public remarks on my behalf. And I certainly knew from talking to her that this was creating additional stress and anxiety for her And it certainly played out in angst and trouble with the staff in having them be able to work together well

Q Angst and trouble By trouble, are you including, you know, anger or anything like that?

A There were times we got the reports that she would yell at staff and be disappointed with staff Oftentimes it was over fairly small things that really were not material to the substance of the campaign And so, again, I was so busy generally traveling, I mean, I had some discussions with her about that But I think Phil Cox and the other leaders of the campaign would try to manage those things and make whatever staff adjustments that they needed to make

Q You heard Janet Kelly testify in this trial that she was working on -- obviously she was working on the campaign for Governor with you?

A Yes

Q And essentially, when you became elected, she said that she wouldn't come with you; she couldn't work with Maureen if she came with you.

A Yes.

Q And what did you think about that when Janet said that to you?

A Well, that really hurt, and I was disappointed. Janet was my longest-serving staffer. She had been with me at that point fifteen years from the 1999 campaign. She was one of the people, she and Phil were the people I trusted the most, that I wanted the most in my Administration. I had decided to offer her the job of Secretary of the Commonwealth. So for her to say that to me after being intimately involved with the transition was really tough, and I realized then what I needed, I was going to need her help with some of the issues with the First Lady's Office in helping set that up But, too, I needed to make sure that I had great people in that office to work with Maureen so that the things that they wanted to do over there were perfectly complimentary of my goals as Governor

Q Did Janet lay out for you the sort of nature of the concerns that she had and the problems or the reasons for not being willing to go forward with you if she had to work with Maureen?

A Some It was temperament It was anger It was sweating the small stuff It was sort of inability to try to focus on the big things of the mission. There were those kinds of things. I know Janet knew that in her job as Secretary of the Commonwealth she was going to be very busy, and so she told me, "I'm not going to have time to do a lot of the things that I did on the campaign if you expect me to do this job well "

Q Did she, Janet, express to you any concerns in those discussions about potential emotional problems or illnesses of any kind?

A I believe she did, but I know she did at a later time

Q All right At that point in time, did you think that there were any emotional issues or problems that needed to be addressed in some medical way or counseling way?

A I wasn't quite sure Maureen had lost her mother Her mother died of a heart attack unexpectedly in the middle of the campaign in June, and she had been working so hard during the campaign and trying to manage family and do the things we asked her to do. And I know I felt that stress going up towards Election Day And so everybody obviously was taking a deep breath after the campaign was over But I know over ten, fifteen years, it had been very difficult for Maureen to handle stress and pressure and anxiety, and obviously being a mother of five, that's a very tough job And I know she had sought some medical attention in Virginia Beach before we moved up here

Q Had you two ever discussed counseling over the years?

A A couple times, yes

Q And was your wife receptive to that thought?

A No

Q When you were elected and became Governor, did you talk to your wife again about the issue of selling nutraceuticals?

A I did

Q And what did you tell her?

A Well, it was early on as we were setting up her staff And I tried to give her my advice, the best I could, about what I thought the role of the First Lady would be And we embarked on a process of helping her and her staff that we began to hire work with mine But I told her, as I had with Attorney General, that I really felt that her business essentially needed to be put on hold. There were just too many opportunities for problems, for conflict First of all, I didn't think she would have the time But secondly, I just didn't think that the First Lady of Virginia ought to be doing this kind of business Because it was a networking business It was a direct sales and a multi-level marketing business And there just appeared to be a little bit of a potential for conflict with her role So I said, "Listen, if you do things out at our house," where we maintained a house out in the western part of Richmond, "if you do a couple things there or maybe with a couple of your very, very good friends from Virginia Beach, that's probably okay But other than that, I think that -- I really think you need to put this on hold."

Q Was she receptive to your telling her that?

A I would say she understood. But again, this was her 30-year passion, and again, I'm telling her, because of my job, I'm telling her, "No, you really can't do this It is going to interfere with my job and the perception people might have of me if you are mixing First Lady business and nutraceutical business " And so again, she understood but was not happy about that instruction.

Q When you say "not happy," does that mean there was anger?

A Yes, there was some I guess angry self resignation that this was going to have to happen.

Q Did she appreciate your telling her what she could or couldn't do?

A No. But she is my wife She is not a staff member And I tried to tell her that not as a directive, but as, you know, a partner; that this is what I thought was best really for both of us, but obviously particularly for me and what I was trying to accomplish as Governor

Q All right Going forward, when you became Governor, did you try to help her transition into that role in any way, for her role as First Lady?

A Yes

Q How did you do that?

A Early on, Martin Kent, Chief of Staff, who has been here to testify, and I talked a little bit about the organization of the First Lady's Office because the Chief of Staff was really the one in the chain of command, the Chief of Staff and the Mansion Director, Ms Scarbrough, and others actually reported to Martin Kent You ultimately, everybody, all 110,000 people report to me, but there is a chain of command, and really, only the Chief of Staff reported to me on our organization chart Everybody else reported through that. So the First Lady's Chief of Staff reported to Martin Kent So Martin and I talked a little bit about how would we best set this up so that everything that the First Lady did, first of all, it was something that she really wanted to do. But secondly, how did it measure with the specific campaign promises and objectives that I had and the things that I was going to be doing on jobs and economic development and transportation and budget management, how could we make sure that her objectives were consistent with mine So I think we had some initial meetings with Maureen and Martin and I to just talk about that a little bit, and then how we would hire staff for her

Q And what kind of staff and how many were you looking for?

A There was only a couple The First Lady's staff is very small: the Mansion Director, there is a Chief of Staff, there was another aide, and then there was essentially the Mansion staff, which was a chef, housekeeper, and a butler Governor Kaine had the same people, and that had been, as far as I know, that had been the staff for a long time So the biggest thing for me was to have a person to be the Chief of Staff who Maureen really liked, who I knew that I could trust to help manage things over there Because I knew Maureen had a lot of good ideas, things she wanted to do, but she hadn't managed an office before So I wanted somebody that I knew and trusted who had been in an office environment recently that could do well and help Maureen get her objectives, and somebody who had experience in state government

Q Were you hopeful if you had such a person in place as the Chief of Staff for the First Lady that the issues that had arisen during the campaign, that Janet Kelly talked to you about, would abate or ameliorate in some way?
A Yes
Q All right. And so who was it that you hired as her Chief of Staff?
A There were several people that were interviewed and considered. I think Martin Kent helped to facilitate that process to be able to get the top candidates for the First Lady to interview directly, because it had to be somebody that she really felt comfortable with as well And one of the people I think I recommended was Mary-Shea Sutherland, because I had worked with Mary-Shea when I was campaigning for Attorney General She had been one of my fundraisers, she had been an event planner, I liked her, I knew the firm well at Benedetti & Farris She worked both with Governor Allen and Governor Gilmore, so she had experience in state government And Maureen really hadn't, and I wanted somebody that really knew that pretty well So she was certainly high on the list of candidates And after a discernment process with Maureen and the Chief of Staff and me, we offered her the job
Q Okay Going into this time frame, I'm talking about the beginning of 2010, that's when you start your

Governorship, right?

A Uh-huh.

Q Going into this time frame, as between the two of you, as between you and your wife, privately, what was the communication, if any, like?

A I had 65, 70 days to build a government I mentioned, you know, the event on Election Day where there just seemed to be a total disconnect about what was going to happen. I'm exuberant about winning and talking to the President and having a press conference to announce the transition, and Maureen is, I think, fearful and anxious about what that day and what the rest of her life was going to hold. So I knew that we had sort of a different view of what this next four years was going to be like right from the day after the election. So I think I had to really focus on getting ready for that General Assembly session, starting to learn the budget, hiring a Cabinet and 300 political appointees and really getting ready So, I mean, I would have to say we worked tirelessly with Phil Cox, Janet Kelly, and others to get this staff built by Inauguration Day So we talked some about the inaugural and the plans for the inaugural Maureen had a lot of input into what she would like to see in the inaugural events, as did I, so a lot of our communication was really around the logistics and the inaugural event

Q When you had time to communicate with her on anything other than logistics, how did that work? Did it work out well or not?

A We had some trouble making decisions on some of the most rudimentary things We talked about children, we would talk talk about the logistics, talk about the inaugural, talk about the beginning of our time together in this office, that we had one four-year term that we had to be able to get some things accomplished for the people And I think she began to sense that, from what she told me, that there were some positive things that she could do. And I think she began to realize that while the time that I was going to have with her was going to be very limited, which is what she was most anxious about, that through her separate work at the First Lady's Office, there were some things she could do that would be consistent with her love and her passions, dealing with veterans and healthcare Those were things she had always loved. So I think to some degree she appreciated that But the quality of the communication individually between the two of us was not particularly good.

Q You say not particularly good. How did that manifest itself?

A I know we had a couple of arguments about an inaugural dress At one point during December, in the midst of our transition, a time that we talked about dealing with Mr. Williams, it was very poor communication and we had a couple of very unpleasant conversations about that I know the stress of what she was going to wear and getting everybody ready for the inauguration weighed very, very heavily on her, and she expressed that to me. So I was very much looking forward to starting this process of governing. I had done it for 18 years, so I was more comfortable with the role that I was about to step into Maureen told me and expressed to me through, in many ways, that she was very uncomfortable with this new role but interested in some areas that she wanted to pursue

Q Did some of the expressing take the form of anger or yelling?

A It did.

Q On your part or her part or both?

A Hers I mean, I typically don't yell at anybody

Q Moving on to the middle of the year, in 2010, did anything happen in your wife's life that was particularly eventful?

A There was a series of events The first half of the year was, Maureen started to develop her FLITE initiatives She was very interested in some of the wine, film, tourism, healthcare, women in business, veterans issues that she was beginning to work up as her platform.

But there were some very traumatic things that happened in 2010 Her father died on June 19th of 2010 He had been sick In fact, we found out three days before the inaugural that he was diagnosed with terminal cancer So he passed away in June And Maureen was very close to her father She is not particularly close to other members of her family, but she loved her dad. Her dad wrote poems about her Her dad was a World War II vet I loved her dad. He was a tremendous person And I know it was so hard for her

Q Was her mother still alive at that point?

A No, her mom had died unexpectedly almost a year earlier, almost to the day, of a heart attack during the campaign. So all of a sudden, I know she told me, "I feel like an orphan Both parents are gone "

And then a month after that, our two kids, our last two children leave for college in August, and this is also the time where I'm asked to do a lot more for the Republican Governors' Association. I'm on the Executive Committee We had 36 governors' races in November of 2010, so I've been asked now to travel a lot more around the country doing some campaigning Maureen now, after six months, had her FLITE initiatives pretty well set, so now she is beginning to do a lot more of her own work publicly to promote her FLITE initiatives with tourism and film and healthcare and veterans, et cetera And I noticed a real difference after all those things started happening that summer, particularly with her father It was tough for me I loved him. And it was very tough for Maureen

Q Did that improve or hurt the level of personal communication between the two of you? Those things?

A It hurt. She sobbed for weeks about her dad. She just, I mean, it just really, really hurt He was 88 He had been at the inaugural And it was just such a joyful day for us there with him, him and my dad being there But then to lose him just five months later, it really, really took the wind out of our sails and it was hard to console her for quite a bit of time after that

Q You tried as best you could with the time you had?

A I tried, yes

Q Later on that year, in November, early November, did there come a time when, because of the death of her father early in the year, as you described, she inherited some money?

A Yes

Q And how much was that and was that from her father?

A Yes It was about -- a little over $25,000 I think her brother, Tom, administered the estate By that time, they had made an initial distribution to her for $25,000

Q And what happened to that money?

A My father died on November 2nd, and we had been up in Northern Virginia for a couple days I was the executor of my dad's estate So he was buried at Arlington, so I had to be up there making some arrangements And he wasn't buried until January of the next year, but I had to start making the initial arrangements for my father and working with the rest of my family on some initial issues I remember pretty distinctly, we got back that Friday, November 5th, and we had gotten mail and I think that's when the check showed up. And Maureen and I were talking about what we should do with that money It was her money. But I told her at that time that we had, you know, a pretty significant amount of credit card debt I think at that time it was about 70-some thousand dollars And I told her that, you know, it was my goal during this time as Governor that this debt that we had amassed for kids, for personal choices, for spending, for other things, for personal expenses during the campaign, all the run-up of this credit card debt, that we should, the best decision for the family was to put that money, that $25,000, towards credit card debt abatement

Q And did she agree that that was a good idea?

A No

Q What did she want to do with it?

A For 15 or 20 years, she had been talking to me about buying stock Because my dad bought us stock for our wedding He gave it to us, I think, right about the wedding It was, oh, I don't know, it was 100 or so shares of Citizens Utility Board. I will never forget it, because I had never owned stock before and I was 22 years old and my dad gave us this stock for our wedding And we held onto it and held onto it We ended up selling it, I believe, through Mr Piscitelli at the time I was in law school, a time when we were very financially strapped. That stock really became sort of a godsend to us during that time in law school because we got, it seemed like a couple thousand dollars That was a lot of money to us back then. It was the time when we were having our third child And I know that meant a lot to Maureen, that we were able to use that money So she had always said, "I want to buy stock for the kids at some point I want to give it to them as a wedding present I want to do what your dad did for us " So she told me, you know, "I want to use this money for -- I want to do something for our kids I want to buy stock for them like your dad did."

Q Did this discussion or debate turn into an argument?

A It did. And I was wrong But I prevailed on the use of the money I remember it pretty well She left the room and came back in with the check and she was crying

She threw it down on the desk and she said, "Here, pay the bills " And so I did I thought that was -- I thought that was the right decision for our family, to pay down these credit card bills I didn't think that we needed to buy anything at that time We still had eight or nine months before my daughter's wedding, and we could deal with it, deal with a gift idea at a different time So I knew even then, and I certainly know now, that that was the wrong decision for my wife and for our marriage It was her money It was her father And I convinced her to do something that she did not want to do with her money

Q You say it was the wrong decision for your marriage Do you think it was unfair to her?

A It was Yes

Q Was it around this time in November of 2010 that Maureen started to have problems with her staff at the Mansion?

A Yes I've been -- I was aware of some things The Chief of Staff would tell me about things occasionally But Martin was an excellent manager, and like a lot of things during my time as Governor, he would say, "Governor, I can handle this I've got this under control " Not just with the First Lady's Office, but with the multitude in state government He knew how busy I was, and he was the Chief of Staff He would bring things to my attention, but he would say, "You don't need to do anything I've got it under control "

Q So some things would filter up to you about what was happening in the Mansion, but Martin says he has got it?

A Yup

Q Did that at any time going into the end of the year there start to come to a head?

A Not as much in 2010

Q Going forward into 2011, did you continue to get any kind of reports about issues among the Mansion staff?

A Yes, I did.

Q And generally, what were the nature of the reports that you learned?

A It was yelling at staff, it was not being organized, it was frequent changes of mind and plans It was not taking responsibility for certain decisions that were made and blaming other people I know I personally had a few times where Maureen would talk to staff on the phone, particularly the chef or the Mansion Director, about very, very small stuff: the food, the cable TV, the whatever that was not working the way she wanted it to work And she would say things over the phone that I would hear that I knew were just absolutely inappropriate, and I would talk to Maureen and say, "Maureen, you can't treat our staff like that I don't treat my staff like that

You've got to take care of them. You have to love them. You have to encourage them. These are public servants that don't make a lot of money You can't do that I told her, "I know you are working for free, Maureen, and you are a volunteer, but you've got to take care of your staff and they will take care of you " And so I think she listened, and from time to time we would see improvements But I was aware that there were some things going on that I think were not proper

Q Were there any permanent improvements or did these reports continue?

A It would come and go

Q And you said that at times she would listen to you Were there times that she wouldn't?

A Yes

Q And when she didn't listen to you, how did that affect, you know, you all's communication and your relationship?

A Well, I mean, it hurt it She would remind me several times, "I'm not staff I'm your wife " And she was absolutely right And so I tried to have my communications with her It wasn't like I was talking to my Chief of Staff or Mary-Shea or someone; I would talk to her as somebody who had been in state government for 18 years and somebody who had managed people for 40 years about things that I thought that would be helpful to her, to advise her on how to just take care of people better Because she hadn't been in a management environment She had been out of kind of the office workforce since about 1979. Our last year in Germany she worked at an office for the government over there, but she had been out of it now for some 30 years, and I was trying to help her to understand how to work in that kind of environment.

Q Was that message one she wanted to hear from you?

A It became increasingly clear that I was not the right messenger for Maureen

Q When you say it became increasingly clear, how did it become clear?

A Well, she would challenge me about the things that I really felt in my heart I was trying to do to help. All I wanted, I wanted that office to run well I knew Maureen had a lot of very, very good ideas What I saw starting in the First Lady's Office was very, very good. Publicly, they were getting a lot of acclaim, especially in the area of veterans and tourism and some other initiatives The reports were very good publicly But I knew privately there was just chaos over there And I would talk to her about those things, but she would yell at me She would tell me I was taking the staff's side of it, that I didn't understand what was really going on over there, that they weren't doing things they needed to do. And there may have been some truth to that, but the bottom line is, as the First Lady and as the head of that office, you cannot treat people in a way that's derogatory You will not get the results you need to with your staff if that's the way you do it So I was emphatic and firm, because I thought that was helping her. But oftentimes, sometimes she would listen and many times she just would not accept the message from me

Q So at this point in time, you were going into, I guess, 2011?

A Yes

Q Is that what you are talking about?

A Yes

Q And the sort of level of personal communication between the two of you about things other than logistics or scheduling or kids or whatever, did that improve?

A No, it was very infrequent We tried early on. I asked my scheduler, "Put things on the schedule, put time for a lunch on the schedule I've got to, I hate to say it, but I actually have to schedule this time to set aside from the rest of my many duties Put time on the schedule for a lunch or on a birthday or Valentine's Day Put a dinner on there that I am going to make sure nothing gets in the way and I'm going to try to spend time with my wife "

Q Let me talk about that You had the schedule, lunches with your wife, because of your time commitments as Governor?

A Yes

Q How frequently would you try to schedule something? Once a week, once a month, what?

A We would try to do a couple, maybe, a month that we would put on the schedule I would ask Monica to put that on the schedule. I know Maureen talked to Monica about putting things on the schedule But there were some of those times that, through my fault, I either came late or some I had to cancel because there were other things that came up at the office that I had to do that I thought were important And Maureen told me, you know, "You have put your job over time with me "

Q Did you?

A I did. That was my fault

Q How often would you end up having lunch with your wife a month?

A I mean, it might have been once a month More frequently for dinner and I was in town, but more nights than not I was gone or I was at the office until ten or eleven.

Q Aside from a birthday event or some special event like that, how often were you having dinner with your wife at night?

A Very infrequently

Q How many times a month?

A A couple times a month And that was more often than not, it was usually on the couch watching one of the late night news programs

Q How late would you work at night on a regular basis?

A Many, many nights I had events late or I was traveling, I was traveling out of town. Especially in August of 2011, I became the Chairman of the Republican Governors' Association. And I was doing, managing my dad's estate. I was executor of his estate We had a major construction project at my dad's house My duties, apart from being Governor, went up dramatically So I had a lot of duties away from Richmond A lot of travel But at the office, I would spend a fair amount of late nights Sometimes my schedule would say "Private Time" or "Depart for the Executive Mansion " That was just a guide That didn't happen most nights

Q That was aspirational?

A That was aspirational, yes

Q During your term as the Governor, how many days did you travel?

A I think in 2011 and 2012, there was about 470 days, I think, I was either gone all of the day or traveling outside of Richmond a part of the day It was substantial Some of those were in-state, some of them were around the country And many of them, I did nine international trade trips Maureen went, I think, on maybe half of those, but I was gone a lot

Q She went on half of the international trade trips?

A I would say about half of them, yes

Q With respect to the rest of the travel, were you generally with her or not?

A The majority of those, not, especially political travel for the Republican Governors' Association. If I was doing fundraising for the RGA or campaigning for another candidate, most of those I was with Phil Cox, generally, because he was the head, he was the Executive Director and I was the Chairman of the RGA.

Q When you were in town at the Mansion at night just on a regular basis or whatever, what is the schedule; how late do you work; when does she go to bed; et cetera? Is there a gap there, simultaneous, or what?

A You know, it differed. We got in different routines Maureen works out a lot The last couple of years I've been working out more And she would typically do it in the morning She is more of a morning person; I'm a little bit more of a night person And she would, so she would go to bed a little earlier, sometimes ten, eleven, and that's the time I would have my time, no phones I would be at my office desk in the Governor's Mansion and I would be able to think and think about the next day or think about long term strategy or read my read file or return e-mails or make phone calls or just. you know, actually have time just for me to think, pay bills, help my kids with their college problems, whatever. I spent a lot more time, the things that my children needed, as they got older, I spent a lot more time having to do things with them, particularly with college, jobs, finances, things that they had questions about So that was really my time to be able to do that That's why you see a lot of late night e-mails and texts with people and staff, because that's when I did a lot of my better thinking

Q So your schedules did not match in that sense, either?

A No

Q Did you purposely, you know, regardless of obligations or emergencies or things you absolutely had to do, did there come come a time in this relationship when you just stayed away because it was difficult?

A Yes

Q Did that include going to bed late or getting up early or what? What did that mean?

A It included staying in the office later But there was always plenty to do. It wasn't like I had to make anything up to do There was always much more to do because I wanted to get a lot of things done in those four years And a lot of my staff were there My staff was incredibly hard working They were often there until seven, eight, nine themselves. My scheduler would be there almost until 8 o'clock at night My folks were incredibly dedicated and hard working We had many, many things to do There was a stretch there particularly in 2011, sometimes 2012, when the frequent conversation when I would come home would be a complaint about somebody on her staff or somebody on my staff And I remember telling Maureen, "Maureen, I can't deal with this We've got great staff These are good people That's why we spent time hiring them. I just -- I can't have you complain about staff We've got to take -- let's take care of them and encourage them. And, you know, if you've got something specific, I'll ask Martin to deal with it " But I got to the point where I just couldn't come home and listen to that So there were nights I have to say I spent more time at the office than the schedule might have demanded because I just had a hard time dealing with that

Q Because of your job duties, did you have the time in the day to deal with, to interact more with your wife, or was that all-consuming in general?

A Well, there were events Maureen was a very good hostess when we had Mansion events She traveled with me on some events around town.

Q I'm just talking about generally Generally, in terms of communication, you had a lot to do in your job; is that correct?

A Yes. Exceptional amount, yes

Q In terms of trying to make time, one way or another, for efforts at personal communication, did you have not only the temporal, the time bandwidth, did you have the emotional bandwidth to deal with that?

A No, I didn't I had one four-year term. I had a huge number of things that I had promised to do. I hired people that I knew were 100 percent on board with me. They wanted to get things done And I thought I'll do the best I can to work with Maureen, to get things done that she wanted to do with her FLITE program, but I'm going to focus on getting my job done and doing it the very best I can

Q So would it be fair to say that basically, for those four years, or particularly in 2011 and 2012, that you put your marriage on hold?

A Yes I just couldn't make progress

Q Going forward into 2011, did there come a time in that year, September particularly, when you learned about difficulties between Mary-Shea and your wife?

A Yes

Q Tell us about those

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A I think it was about maybe the second week in September of 2011 I don't know if Maureen first called me or when I came home, but she was very, very upset And she told me that Mary-Shea apparently had been working behind her back to try to get a job with Jonnie Williams, and she felt like she was using the government database and our political database to find clients for her job, that she had been planning to leave her

And Maureen expressed this great sense of betrayal to me, this person, you know, that I had recommended and I had hired and I really believed would safeguard Maureen's interest, and I had not really, for the most part, to my knowledge had

Q Let me stop you there

A And she was very upset about it Very upset

Q Did you have any personal knowledge of whether or not Mary-Shea had done these things without your --

A No Absolutely not I mean, I knew that she -- there were staff issues over there I knew Mary-Shea felt that she was having trouble dealing with Maureen on a day-to-day basis But in terms of her looking for a job with Jonnie Williams or looking in our database or having some contract or anything out there, I had no knowledge of that

Q And at this point, did you do anything to try to get

Mary-Shea to stay?

A Well, I talked to Maureen for a few days first to see what her view was I know she had several meetings with Mary-Shea and they went through, I think, her computer to find out if there -- what else, were there other people that she might have been trying to approach for a job or whether there was any breach of our security or whatever

And I knew that this was a precarious situation I didn't know if the relationship could be restored at that point because of the betrayal that I heard from my wife about this; that she was planning to sort of leave her behind her back and not say anything to her

So on the 16th of February, I --

Q 16th of September?

A I'm sorry Excuse me I talked to Martin Kent, actually, before that, and I said "Martin, I" -- you know, I said, "This is what I found out " I think Martin was aware of it because he talked to Mary-Shea about it So this is -- this is a bad situation You know, it's been bad for a while over there with communication But now that we've got this plan of Mary-Shea to think about leaving with this contract, I said, "I" -- "I don't know whether this relationship can be salvaged I mean, I feel, all things considered, I'd like to have Mary-Shea stay, but I don't know if Maureen really, at this point, wants her to stay, and I don't know if Mary-Shea is able to stay So I'd like to have a meeting, just the four of us, and let's talk about it and see if we can try to find any way to save this and put this relationship back together "

Because, you know, I had trusted Mary-Shea. I had known her for years, and I thought she was the right person

Q And you had that meeting, I take it?

A I did Yes

Q And the result of the meeting was what?

A Well, Martin and I did most of the talking And it was pretty evident after that meeting that there was not going to be a reconciliation with Maureen and Mary-Shea And so I told Maureen -- I told Martin, I said, you know, "We have to effectuate her termination It's just not going to work "

Q Okay And that all occurred in October of 2011?

A It did Mary-Shea --

Q The final termination occurred or --

A It did

Q -- she finally left in October; is that correct?

A She left sometime in October I mean, she wanted to resign But I think it actually -- the official action was a termination But she left in -- sometime in early

October of 2011, yes

Q All right And going forward at the end of 2011, were there plans to find a new Chief of Staff for Ms McDonnell?

A There was In fact, there was a decision made I think sometime in October, and there was a new person brought in But it became evident within a couple weeks that it wasn't a good fit, and I think she only lasted a month and she left

Q When you say "it wasn't a good fit," does that mean that the new person had trouble dealing with Ms McDonnell?

A I think it was both ways But it -- for whatever reason, it just became evident immediately, both to my wife and to -- and to Martin Kent, that this was not going to work, and so we -- she left

Q Going into the first part of 2012, the early part of 2012, were you aware at the time -- we've seen the letter in court from the -- from all the Mansion staff where they, in mass, basically are saying if things don't improve, we're going to leave, all leave

Were you aware of that? Did you see that in realtime?

A I learned about it, I think, shortly after it was given to the Chief of Staff What I understood is it never went to my wife

Q Martin intercepted it?

A I think maybe that's a fair characterization

Q It was addressed to Ms McDonnell, but Martin got it?

A Yes

Q Is that because the staff -- did you understand the staff was afraid to give it directly to your wife?

A I don't -- maybe I don't really know Probably

Q All right So anyway, Martin talked to you about it. Did you read the letter at that time or did you just hear about the general contents or what?

A I think both Shortly after that But I was more briefed on the contents And at some point, and I don't remember when, but at some point Martin actually gave me a copy of the letter

Q Were you surprised about all this?

A Well, by early '12, we had already -- Martin and I had already coordinated for Mr Burck and Ms Pierce to come in, these Ph D s from VCU I knew we needed help after that second Chief of Staff left in a month So that had happened in late October, early November, but -- so I thought we're making some -- some progress But -- so to hear about this in 20 -- January, February 2012, that it was that acute and that everybody over there was thinking of quitting, I -- I was -- I was surprised

Q Give me some context here, just briefly, about that time frame, January, February 2012, in terms of your business duties Just what were those like at that -- without great detail --

A Yeah

Q -- just tell me what was going on Was it a more difficult or less difficult time in your governorship?

A I think that was probably the most -- the most difficult time that I had as Governor I had -- coming off the 2011 elections, the Senate of Virginia was split 20/20, Republican/Democrat, with a Republican Lieutenant Governor The Senate Republicans had essentially taken over the -- all the committees, and there was a great deal of partisan angst in the Senate

So I knew from the first day of that legislative session in January of 2012 that we were in for a rough road This was the first budget that I had introduced as Governor, because you only introduce the budget every two years So I had introduced this budget And you need 21 votes to get a budget And if I didn't convince some of the Democrats to work with us, I'd have no budget And the worst thing that a Governor can do is to have a fiscal breakdown in the Commonwealth And it was evident, well, again, right at the beginning, that's where we were headed and that's what happened

Secondly, I was asked to do an awful lot right then for Mitt Romney That's why I endorsed him in January and started traveling to South Carolina, Florida, a lot of other places

I had just been elected for a full term as the Chairman of the Republican Governors Association in November. We had a number of races that year. And so I had the duty of managing that organization, a goal of raising $55 million that year for the Republican Governors Association

I'm still working on my dad's estate My sister had a crisis in her marriage with Mike Uncapher, and I had more duties that I had to get engaged with with the MoBo business And now I've got a disaster at the Governor's Mansion with people saying they are going to quit

And I'm a pretty strong guy, but that was a lot I had a lot -- a lot on my plate right then And I had all of the bills that I wanted to get passed We had major priorities in 2012 on higher education reform, on pension reform, on transportation, on K-12 reform, on a number of things that I wanted to get done, which would take a considerable amount of emotional energy to meet with legislators every day

And it was okay I signed up for this, but it was a lot And the letter and the crisis with the First Lady's office was -- was another major hit

Q At this time frame, in the January 2012 time frame, how is your marriage doing?

A It's -- you know, there's -- there's limited, very limited communication Again, it was just almost solely logistics I know Maureen is -- the amount of stress, particularly after all of the public speaking that she had had -- she did in '11 and the new things that she was having to do now in 2012 and the significant amount of travel that I was now doing and away from home, I mean, as bad as -- as much as I had done during the campaign and during my early years as Governor, this was probably the peak of the time that I was gone and emotionally, physically unavailable to her

And I know -- you know, she was doing a lot more public speaking, and she had almost -- on most speeches she'd ask me to edit the speech for her Even though my speechwriter would help her with that, many nights when I'm, you know -- if we were -- many nights she'd ask me -- I would be trying to work on something else, and she'd say, "Can you edit my speech?"

And I have to say, I didn't react very well I didn't handle it well very I said, "Maureen, you've got a Chief of Staff You've got my speechwriter They can help you with this " And I wasn't very good with her about that And I know I pushed her away But she -- many times, I would, though I'd edit her speech once or twice And she would fret over these speeches for days before she'd give it, but then she'd give it incredibly well I heard a lot of them But she would -- the stress buildup for her was intense And I -- again, I was only able to offer her very limited help on this issue

Q With respect to bringing in the professionals, Jim Burke, who testified here in court --

A Yes

Q -- was that -- was that an effort, in part, by you to have a different messenger?

A Well, in part, that And, in part, that the problems were exceeding my skill set when it came to organizing the First Lady's office Mary-Shea left The other lady was there for three or four weeks and left And I talked to Martin and I said, "Martin, there's some organizational dysfunction over there I'm not able to help Maureen the way I think that I need to help her in terms of managing this small staff " And so I -- you know, "What do you think? What can we do?"

So collectively, we came out with the idea of bringing in some outside help Martin is the one that actually found and suggested Jim Burke I knew Jim a little bit from time in the Attorney General's Office

But he found Dr Burke and Ms Pierce and said, "I think these people" -- "this is what they do They are organizational experts They are crisis managers I think these would be the right people to come in and help analyze the office "

We knew we were going to need new staff because we had the chief staff person leave And, "I think they can be the ones to help " And I said, you know, "Martin, that's a good idea Let's do it "

So in very short order, Mr Burke was brought in and came over And I think he's described to some degree yesterday what he started doing And I -- I talked to him a little bit at the beginning and said, "Hey, this is my view of the situation, and, you know, I need your help I need your help not only in the organizational things, but I'm having a tough time effectively communicating with my wife on a myriad of things, but particularly about how" -- "how" -- "how her role as the First Lady She's not a public official Mary-Shea is in charge" -- "or the Chief of Staff is in charge of the office, but everybody looks to the First Lady because it's her initiatives, and I need your help with her communicating how to deal with the staff "

Q Did you ever talk with him, to Mr Burke, about counseling issues?

A I believe at one point, after he had been there a couple months, he brought that up to me Yes

Q And what was your reaction to that or what was your side of it?

A Well, I wanted his advice I mean, I hadn't been able to be particularly successful at that point I thought, again, the public part of the First Lady's office was going well The private part was a disaster It just was constant chaos And so I said, "I need your help telling me what I should do Not just with the office, but in a personal basis and working with Maureen " And so he made a couple recommendations So the -- he did recommend counseling

I was -- I listened, but I -- you know, I had recommended and talked to my wife several times before about counseling, especially during my time as Governor And I was willing, as busy as I was, to try to do something to help, particularly after all of the things that happened to her in 2010 She was so much more anxious about the job And so I talked to her about it, and her reaction was, "We're not going to be able to keep that private We can't keep it confidential If we go to a counselor, people will talk " I explained to her, "They have a clinical duty, they have a privilege" -- "we have a privilege They can't talk " But for that, and other reasons, she just -- we just didn't do it

And so while I listened to Mr Burck, I had suggested that before, and we -- we didn't get anywhere on that

Q Let me go back --

THE COURT: We're going to stop now --

MR ASBILL: I'm sorry.

THE COURT: -- for morning break Fifteen minutes

(The jury left the courtroom)

(Recess taken from 11:17 a m until 11:38 a m)

(The jury entered the courtroom)

THE COURT: All right Mr Asbill

BY MR ASBILL:

Q Mr McDonnell, with respect to Dr Burke and the issues that you discussed with him and also with your wife, the counseling issues, did those include mental health counseling?

A I understood him to suggest that too Yes

Q All right

MR ASBILL: I want you to turn -- I want to pull up an exhibit, RM-290 Would you please pull that up

BY MR ASBILL:

Q Do you recognize this document?

A Yes

Q That's an e-mail to you from Dr Burke?

A Yes, it is

Q On February 2nd --

A Yes

Q -- 2012?

MR ASBILL: I want to move the admission of this

THE COURT: It will be admitted

MR. DRY: Objection Relevancy as to what Mr Burke is --

THE COURT: It will be admitted

BY MR ASBILL:

Q And in summary, what does Dr Burke and Linda, his colleague, say to you?

A He's responding to a meeting we had that day, and it says, "Thanks for your complete candor and authenticity today "

I had told him that in addition to -- and I had told him before, but I said, "In addition to the organizational problems," I said, "Jim, I need your help I can't communicate with my wife Our marriage is" -- "is" -- "you know, we're having trouble And I've got two more years to govern, and we're having trouble with her staff And Maureen is" -- "she's got this great job, but she's angry She doesn't treat staff right She's, you know, hurting my ability to govern in a way because I'm spending too much time having to put out fires over here at the Governor's Mansion I need your help "

Q All right

A And this was -- this is his response to me

Q Okay

MR ASBILL: We can take that down.

BY MR ASBILL:

Q Let me go back, for a second, to the September 2011 time frame, the sort of start of the Mary-Shea issues and the ramping up of that, as you've described, into -- into the January 2012 time frame And I want you to take a look at --

MR ASBILL: I want to pull up RM-111

BY MR ASBILL:

Q Do you recognize this?

A Yes, I do

Q What is it?

A This is -- this is an e-mail I sent to Maureen on Labor Day of 2011

Q That's Labor Day, Monday, September 5th, 2011?

A Yes

MR ASBILL: I move the admission of this, Judge

THE COURT: It will be admitted

BY MR ASBILL:

Q This is five days, or so, after the Mansion lunch that we've heard so much about?

A Yes

Q And this is an e-mail from you to your wife?

A Yes

Q On Monday of Labor Day weekend; is that correct?

A Yes

Q And before we get into the details of this e-mail, was there anything in particular that precipitated this e-mail?

A Yes

Q What was that?

A I had, for the first time in I don't know how long, actually blocked an entire weekend to be home Typically, on Labor Day, I go and do different events But I had canceled those things, and I was going to spend three days at home with my wife

And after my last event on Friday, I came up -- and I was planning on doing some fun things for the weekend We'd watch a movie or we could walk down by the river We could talk We could catch up on things And starting right away on Friday night, Maureen was angry I didn't even know what it was about It was something small, which it usually would be

And, you know, I told her, "I've taken this weekend off so we could actually spend time together " And -- and she continued to be upset and not really wanting to engage with me on anything, and so I sort of spent Saturday apart from her after that I was -- I was hurt I was upset with her because I had allocated this time finally to be able to spend a little time together. And so we had a real meltdown on Friday, and then the whole time Saturday -- Saturday basically apart

Q How about Sunday?

A Sunday, as we typically do, we went to church, and --

Q Other than that, were you together or apart?

A Well, we were in the same house But I tried to reengage her and see if we could do something constructive together, and --

Q So let me --

A -- I just didn't get anywhere We just were not able to communicate We were not able to talk about anything of any substance And she was yelling at me She had almost uncontrollable anger I had seen it before, but this weekend was particularly pronounced

And I was -- I was upset with her I was feeling heartbroken that, you know, maybe this was the end of my marriage Maybe we were done because I just couldn't talk to her

Q So you chose to write her an e-mail?

A I did

Q And this is the e-mail?

A It is Because I could not talk to her If I began to talk -- and I had been down this road before for many times to try to talk to her about things of substance that I thought we needed to change, improve, things that she needed to do differently, I needed to do differently And this is yet another example of things going back many years of it not working But this -- this weekend was particularly heartbreaking to me because I thought there was some hope that we'd spend some productive time together

MR ASBILL: Judge, if you'd permit, I'd like my client to read this e-mail to the jury

THE COURT: No, sir They can read it for themselves

BY MR ASBILL:

Q Can you -- can you summarize, then, for us some of the points that you were trying to make?

A Well, I -- many of the things that I talked to her about, I'd always try to talk to her by saying "I love you " We had been married for 38 years I've known her for 41 years We've raised five children And I made -- I made a vow that I would love her for life But I told her that --

Q Did you make mea culpas, in general, for anything that you -- co-mission, omission, that you may have done during the course of the marriage?

A Yeah I sought forgiveness of anything that I had done to hurt her that explains this anger I'm sorry

Q Did you talk about her anger and hatred for you?

A I did I had told her, for a while, that the way she was responding to me, that this was not a marriage I felt -- I felt hatred I felt anger for her I was -- I thought I was trying to help her to get some things done

And this particular weekend, she had -- I used the term "fiery anger and hate from you" and threats to wreck my things She had said some things that were just completely irrational to me about wrecking my things And I was -- I told her it was one of the lowest points in my life I mean, I tried I would try to do some things to be able to keep this marriage on track, but it looked like -- it looked like, at this time, that despite everything else that was going positive with our governance, that my marriage was -- was about done

Q Okay

A She -- she was angry She would not talk to me about problems that we were facing Because if you don't confront them, I felt there's no way to -- to be able to fix them And I was -- I was hurting very badly And because I couldn't talk to her, I had to write the e-mail I had to get it off my chest I had to do it in a way that I knew that I didn't have to worry about her response right then I could just tell her everything and let her read it and absorb it But it -- these were things that just had to be said

Q Did you tell her that, you know, she tells you that -- how bad her life has been with you and how unhappy she is? Just a yes or no

A She did

Q Did you tell her how spiritually and emotionally you were exhausted?

A I did This was -- this was like the end of the rope, in a way, for me I just -- I had heard these complaints about people, about things, about me just so many times I just didn't -- I just didn't feel like I could take it anymore, and she needed to know that, and that if we weren't going to have a marriage, then I'm just going to -- I'm just going to keep putting my heart and soul into governing If she wanted to work with us to try to fix the marriage, I'm a hundred percent in I'll do whatever it takes to try to make this work, but I can't -- I just couldn't take it anymore

Q Okay

A I just couldn't take this anger, yelling, and sweating the small stuff, you know Let's talk about the big stuff

Q Okay

MR. ASBILL: We can take that down

BY MR. ASBILL:

Q Did you ever get a response from your wife to this e-mail?

A No

Q Do you -- you now know that, from the events in this trial, that -- that your wife, on that same day that you sent this e-mail, had four contacts with Jonnie Williams that day?

A I learned that about a month ago

Q With respect to any difficulties in your marriage while you were Governor, did you try to put on a good face to the public --

A Sure

Q -- about your marriage?

A Yes

Q Why did you do that?

A You know, I'm not going to -- I'm not going to air my personal problems in public I was the Governor And I didn't really even talk to my children or my close friends about problems that Maureen and I were having I felt that -- especially after this -- this e-mail, that, you know, I might have to wait until after I'm out of office and then go back and try to deal with this

But at this point, you know, when we're out in public, Maureen -- I think Maureen seemed to still enjoy public events And she understood, at least, you know, in some part, her role as a public First Lady And so, obviously, when we were out or hosting people at the Mansion or doing events at different places, we -- we put on the best face that we could And, you know, obviously, there were some things we enjoyed as well, doing some things that we got to do as Governor

Q With respect to the personally difficult issues in your marriage, those were things that you didn't want to share Is that fair?

A Absolutely not

Q All right Today, as we speak, what's the state of your marriage?

A I mean, we -- we don't communicate much It's, I think, basically on hold You know, the last 18 months have been incredibly difficult for each of us personally And with all the other challenges we've had in the marriage, the strain of investigation, indictment, has been -- has been just a crushing event in our lives And so we've -- it's been very hard for us to really communicate about really anything substantive

Q At present, are you living together?

A No

Q And where are you living?

A I'm living with my pastor/director at St John's Church -- at St Patrick's Church.

Q And when did you start living there?

A About a week before the trial

Q Why?

A Because I knew that there was no way that I could go home after a day in court and have to rehash with my wife things that happened in this trial I needed to be able to focus I knew that I was going to testify to the jury and in this court, and I knew that I had to be fresh I had to think through things I had to look at documents I needed -- I wanted to be close to my legal team And I just didn't have the emotional ability to go home and revisit things every night with Maureen

Q Are there things that you've learned during the course of this trial or from the documents that have been provided in discovery that you didn't know about various things your wife was doing?

A Many things

MR DRY: Objection, Your Honor Relevancy as far as what he's learning about during the trial

THE COURT: Overruled

A Many things Yes

BY MR ASBILL:

Q Has it been hard for you to hear some of those things or read some of those things?

A Yes

Q Knowing what you now know today, from whatever sources, do you think that your wife had a physical affair with Jonnie Williams?

A I don't -- I don't believe so

Q Do you think she had a strong emotional attachment to Mr Williams?

A Yeah Probably Probably so Yes

Q Was she getting that kind of emotional support from you?

A No

Q Were you aware that she was friends with Jonnie Williams or good friends with Jonnie Williams?

A Sure Yes, I was

Q And -- and what was your reaction to that?

A Well, I trusted Jonnie Williams I mean, I liked him from the first time I met him He was an entrepreneur He was a dreamer He was a Virginia business CEO And what I liked is he had this same passion for nutraceuticals that my wife had

Q Let me stop you right there What did you think about his relationship, whatever it may have been, with your wife?

A Well, I thought it was -- I thought it was healthy The bond over nutraceuticals was, I think, what started it And he's kind of a charming, funny guy He's married, four kids I don't think there was going -- there was any problem with that And my wife seemed to light up around him, seemed to enjoy time that she spent doing things and talking about his company And so I thought it was okay

Q Was she in a better mood when she had talked or seen Jonnie Williams?

A Yeah She seemed to be Yes

Q And was that helpful to you?

A It was And, you know, the things that I was dealing with with Maureen, it was a lot of arguments, a lot of yelling, a lot of unpleasantness in private And if her time with Mr Williams was going to make her affect better, then I thought it was a positive Yes

Q Okay Let me turn to -- let me turn to some of the events that have been testified to in this case The first one I want to talk about is the New York City RGA event in December of 2009 We've heard a lot about that And is that -- you know, how did Mr Williams get invited to that event or why did he get invited to the event or how did that come about?

A I'm not -- I'm not sure I just knew I had it on my schedule that there was a -- we had a quick stop-by, that we were going to visit with him when we went to New York I was up there for other business with the RNC, the Republican National Committee, but I knew I had on my calendar a stop-by to see him

Q All right And at that point, in December of 2009, Mr Williams, as I understand it, had offered his plane on several occasions?

A Yeah. I looked at him as the plane guy We had 15 or so people that let us use planes during the campaign, and he was one of them

Q And did you personally choose the person to ask for a plane --

A No

Q -- or how did that happen?

A Well, Monica, who was my scheduler during the campaign, kept a list of all the people that had agreed to let us use planes A couple of them I might have called in advance just to say, "Could we use your plane at some point during the campaign if I needed it?" And then Monica kept the list, and she would select the -- whoever had the plane available for whatever event I needed to go to

Q Up until this point in December of 2009, do you recall ever meeting with Mr Williams?

A I don't think so I mean, I may have seen him in an airport or something once, but I don't think I -- I can't say that I remember any meeting with him No

Q Okay So was December 9th of 2009, to your knowledge, actually the first time you met him?

A Yes

Q All right In general here, you know, what -- where were you on that day and how did you get to New York, et cetera? What was going on?

A Well, as usual, I'm sure I had some -- I had an early morning -- this is during the transition So I'm working on building a transition team for taking over government in about 45 days And we were asked to go up to New York for me to speak at a Republican National Committee meeting with a bunch of the national donors and so forth And I don't know, I think we had a pretty long day, and we got in that evening Had a couple events that we were supposed to go to, but we had this stop-by scheduled for Mr Williams

Q All right Did you come up on his plane or get there some other way?

A No

Q Which one?

A Oh I -- some other way

Q Okay So you saw him that night at the hotel; is that correct?

A I did

Q All right And you -- you saw him twice that night; is that correct?

A I did That I remember, yes

Q In between, there was a play; is that right? You went to a play?

A There was We had, I think, a 10- or 15-minute greeting that I remember, and then I left My wife and I left to go to one of the -- I think the political donor event I think it was a play And then came back a little later that evening

Q All right With respect to setting up a meeting with Mr Williams as you've described, this initial 10- or 15-minute meeting, did you set that up or did your wife set that up or how did that get set up?

A No It was either -- it would have either been Monica or Adam Zubowsky, one of the two scheduling people, that set that up

Q All right Who was there at the first meeting? Who was present in the room?

A That's five years now But my best recollection is that initially it was Mr Williams And I had Adam Zubowsky and Phil Cox with me, and Maureen, my wife

Q All right When you come back after the play intermission, essentially, what happens then?

A Well, I remember coming back, and he had another gentleman with him that he introduced as Brad, who was a male model in New York

Q Okay And then what occurred after that?

A Well, we were -- we were hungry so we sat down and just got a quick bite to eat and continued to talk with Mr Williams and his friend, Brad And then Phil and Adam were still there We wanted to make it quick because I had a number of early morning TV interviews in New York starting at about 7:00, so it was -- it was not going to be very long

Q And your wife was with you as well?

A Yes

Q All right And do you remember anything about expensive Cognac?

A I do

Q And what do you remember?

A At some point I saw the bottle on the table, and I don't know if it was Mr Williams or somebody else said that he had bought this, I don't know, Louis XIV, I think it was, expensive Cognac And he said he paid $5,000 for the bottle and asked me if I wanted to have a sip

I mean, the purpose of me meeting with him was just basically to thank him for using the plane during the campaign, and so I think I agreed to have a -- have a glass as we were having -- having dinner But that was clearly on the table Yes

Q Well, did there come a time when there was a discussion about an inaugural dress?

A Yes.

Q Tell us about that

A Well, one of the reasons we had gone up there, my wife had -- at that hotel, had actually been measured for a dress She had a referral from Virginia for a seamstress, I think in that hotel, that she met with a referral from I think Ms James or somebody from Richmond

So she started talking about what she was doing up there, about getting measured for the inaugural gown It was 40-some days out from the inaugural And Mr Williams immediately piped up and said, "You need to get a" -- "you need to get a really good dress, and I know Oscar de la Renta " And I remember him taking out his cell phone and holding it up and showing us on his contacts that he had Oscar de la Renta's phone number

Q Let me stop right there Did you know who Oscar de la Renta was?

A I mean, I had heard the name Yes I knew it was a brand name of clothes

Q Okay And Mr Williams does what when he talks about Oscar de la Renta?

A My recollection is he actually placed a call He dialed the number, and he left a message My wife, I know, really lit up because she didn't think he actually knew Oscar de la Renta And then he makes the call But it was all in the context of -- of a gown for the inaugural

Q Did he offer to buy one, or what was your understanding of what he was saying?

A My clear understanding is he said, "I want to get you a gown You need a nice gown for the inaugural, and you don't need to get a local seamstress You ought to" -- "we ought to get you an Oscar de la Renta gown for the inaugural "

Q And what was your reaction to that?

A Well, I knew it wasn't going to happen

Q Why?

A Well, because I wasn't going to let that happen We had -- we had already discussed the inaugural plans, and I just campaigned on a job in economic development platform because I knew people were hurting and we had a very high unemployment rate And we already made a decision to ratchet back the fundraising for the inaugural We were going to try to tame down some of the inaugural balls We were going to have the Food Banks involved in the inaugurals and so forth And so to have my wife in a New York designer gown was really at odds with -- with what we were trying to accomplish at the inaugural for the theme.

Q Did you say no on the spot, right there, to your wife and/or Jonnie Williams?

A No, I didn't

Q Why?

A Well, I could tell she was very -- very excited about that possibility Because she hadn't had the gown yet She was talking to a couple of these seamstresses about possibly doing it And I knew -- I had been talking to Phil Cox earlier I mean, he was with me, and I knew his -- I knew his advice would be the same as mine; we just can't do that

So I figured I -- I said, you know, it was a very nice offer and, you know, we really appreciate that But I figured we'd just tell him no at some point But that just wasn't something we could allow to happen But I wanted to make sure I talked to my wife first and not bring that up in front of her and have the possibility of an argument right in front of this person

Q Was there any discussion about nutraceuticals during this meeting?

A I didn't really know much at that point at all about what Star Scientific did, what their company was all about And, you know, most people, if they get time with me, that's what they're going to talk about They're going to talk about their company, their business, their charity, whatever the case might be

And so Mr Williams did talk about -- before the dress came up even, and the first time when we were there for that first 15 minutes or so, he began to talk a little bit about his company and what he did And it was really just a little bit of a get to know you My purpose was simply to thank him and say, "I appreciate the work" -- "the plane contributions you made to the campaign." But he talked to us a little bit about his company

Q Did your wife and he talk about their mutual interest in nutraceuticals?

A Yes

Q Okay This meeting didn't last long; is that correct?

A My best recollection, it was 30 to 45 minutes Somewhere in that area Because it was starting to get to 11:00, and I knew I had to get up about 5:30 that next morning because I had -- I had early morning interviews

Q And your initial impression of Jonnie Williams was what?

A Well, I mean, I liked him He was -- he was -- he was gregarious He was funny He was charming. He -- in my mind, though, he was a Virginia business guy that had some ideas about creating jobs He was an entrepreneur I like entrepreneurs, and he seemed to have a -- a common connection with Maureen. So, I mean, I liked him

Q Okay. Did you later talk with Phil Cox about the dress issue?

A This was about December 9th At some point after that, I think it was a quick conversation because he and I both agreed that that just wasn't something we could do

Q All right

MR ASBILL: Let me pull up GX 54, which has previously been admitted Blow that up, please This has been admitted into evidence

BY MR ASBILL:

Q Did you receive this e-mail? Or what do you know about it? Did you know about it in realtime?

A I -- I don't believe I did I -- Maureen talked about the dress I had told her shortly after that that, "We can't do that dress It's just not" -- "it's not right We'll find you a nice dress You continue to pursue things, but we can't get an Oscar de la Renta dress," especially from somebody I really didn't even know

And I found out sometime after this December 21st -- this is right before Christmas and right -- I found out either from Mr Eige or someone that Maureen had written -- had written an e-mail about this, yes

Q You talked to Jasen Eige about this e-mail or about the contents of it?

A I think -- I think I did, yes

Q All right With respect to the things that are said in the e-mail --

MR ASBILL: Let me blow up the second sentence forward Right up above that, please

BY MR ASBILL:

Q Your wife reports to Jasen Eige that you are screaming at her about the thousands that she's charging up in credit card debt Was that true?

A It was half true

Q In what sense?

A Well, I don't scream, so I wasn't screaming at her But I manage the family's finances, and I was aware of what our financial situation was I knew that our credit card debt was -- was very high, and I wasn't comfortable with that level of debt at all

I had -- I had spoken with Maureen on and off really for years when I'd see credit card bills that I thought were too high or I thought there was unnecessary spending And I wouldn't scream at her, but I would say, you know, "Maureen, I" -- "we can't" -- "you can't" -- "I don't think you ought to be spending this money It was too much " And whatever it was, it just seemed like we were -- there was too much stuff that she was buying I said, "You've got to cut back We can't have thousand-dollar credit card bills every month "

So yes, I talked to her about it. And yes, it was -- the debt at that point after the campaign was high.

Q With respect to the "we are broke" language, was that your view?

A No Not at all

Q With respect to the "this inaugural is killing us, explanation point" comment, was that your view?

A No Not at all It was an incredibly joyous thing for me to get ready for that, and -- I mean, we had some expenses we had on our own, but we also had an inaugural fund We had raised about a million, about 1 2, 1 3 million dollars for the inaugural And we had a lot of the expenses for the inaugural that were being paid by the inaugural fund So I thought we had everything fully under control

Q Okay Would that be fair to say from a personal perspective, in addition to the inaugural budget?

A Yeah Sure I knew that I was going to embark on a plan of reducing this credit card debt as we got into the governorship, but it was high It was more -- much higher than I was comfortable with at the time, but that's the situation we had found ourselves in with the campaign and raising kids, et cetera. But I -- I felt I had it under control We weren't missing payments I was paying everything on time It wasn't a problem But I had gotten after Maureen a fair amount and said, "You can't spend like this You need to cut it back."

Q Okay

MR ASBILL: Let me take that down

BY MR ASBILL:

Q Did you hear anything more about the whole dress issue later that year?

A Yes

Q When?

A I called Phil Cox on the day after Christmas and talked to Phil, just to wish him a Merry Christmas And he told me that he had just gotten an e-mail on Christmas Eve from Maureen that was very negative and said that Maureen wasn't -- that Phil was not looking out for my best interests and --

Q Your best or your wife's best?

A My best interests -- and that she ought to be able to get this dress and so forth And that Phil was very upset about it He usually wouldn't bring these things to me, but he was very upset about it

And I was furious with Maureen because no one had been more loyal to me than Phil Cox He had busted his chops for three years to get me elected Governor, and to find out that my wife is questioning Phil's loyalty made me incredibly upset, especially that she would do that on New Year's Eve -- I mean on Christmas Eve

So I told her, I said, "Maureen, this is absolutely inexcusable You can't treat my top guy like this. Phil loves me Phil has done every sacrifice so much for me these last 15 years working on my" -- "or at that point it had been 11 years, working on my campaigns You know, it cost him his marriage He had done everything he could to get me elected We won by 17, 18 points You can't send these e-mails This is ridiculous "

I mean, I was very, very upset with her And I said, "You just" -- "you just can't" -- "you can't treat people like this This is wrong "

Q Do you think she got the message at the time?

A She did I remember a day or two after that I also consulted with one of the legal folks that had been looking at this dress issue, just to make sure I understood legally that we might have some challenges with it, and I went back to Maureen and said, "Look There might be some legal reasons why we can't do this, but this is the end of the dress issue And we can't" -- "this is it " And that was the end of it

Q Let me move forward from there to 2010, to October 2010

A Yes

Q We're going from December 2009 to October 2010 Do you remember being in California then, early October?

A Yes, I do

Q And why were you there?

A Well, again, we had 36 races for Governor in the country that year in November And being on the Executive Committee, the Republican Governors Association, and I knew I was going to take over as Vice Chairman in a month or so, I was asked to do a number of trips to help campaign for candidates for Governor So I was out there to campaign for Meg Whitman She was our candidate for Governor in California

Q And were you out there to also present her a check from the RGA?

A Yes We had a half-a-million-dollar-check we presented to her And I spoke at her -- she had a big rally on a farm, and I presented her a check for a half a million dollars

Q All right And had you had any -- between this December event and New York City in October, some ten months later, had you had any contact with Jonnie Williams?

A No

Q All right Did you use his plane to or from California?

A Yes Again, it seemed like it was sort of a last-minute request Maybe less than a week So it makes it harder to get a plane, especially on a cross country trip So I think -- I'm not even sure who arranged it Either Monica or somebody at the Republican Governors Association But like most events, I find out maybe the day before whose plane it is And we flew out on Mr Williams' plane

Q Did you ask anyone to try to get a plane from Williams --

A No

Q -- or is that just the way it happened?

A No Monica made all those decisions usually

Q Okay And was Mr Williams on the plane in either direction?

A Coming back

Q And where did he get on the plane?

A We were out in Sacramento The event was in the

Sacramento vicinity And I traveled out -- it was -- very rarely I traveled without a staffer Adam -- I believe Adam was supposed to attend, but because of the short notice, he was not able to go And so I think I just went out with my state police officer, a member of EPU

Q And who else was on the plane with you and the VSP person and Mr Williams, aside from the pilots?

A I think that was it, coming back

Q Just the three of you?

A Yes That's my recollection

Q And did you -- so that takes, what, five hours or so?

A Well, it was about six I think we had a couple of refueling stops. So I think it was about six hours coming back

Q All right And during that trip, did you talk with Mr Williams?

A Extensively

Q Were you talking to him or was he talking to you or both?

A I think I did a lot more listening on that trip

Q And, in general, what was he talking about?

A Well, again, I had only had a chance to meet him that one time before in New York about ten months earlier And it was typical Every time I'd fly on a plane with a donor, I'd say half the time, or so, there would be a donor or a representative of the company on the plane, and they'd typically talk about their business

So Mr Williams, we exchanged some pleasantries, talked a little bit more about our families and so forth and backgrounds But he started -- he actually had a PowerPoint, I think, with documents, and he started to run through some of the things about his company, but particularly focusing on the fact that he and his researchers were focusing on a product in the tobacco plant called anatabine The nicotine and others were sort of the bad things, and they had isolated anatabine And his company was now looking at moving from tobacco and smokeless tobacco products into sort of the medical healthcare area, and he was doing a lot of work on this anatabine compound

Q All right And you say this kind of conversation, essentially, not necessarily on anatabine, but in general with respect to donors and they're being on planes with you, was common in your experience?

A Oh, yeah During -- whether it was during the campaigns or during my time as Attorney General, especially as Governor, when I'd fly on a private plane, I'd say at least half the time there was a representative of the company on there Sometimes it was the owner Sometimes the owner was the pilot People like John

Rocovich or Wayne McLeskey, people like that would actually fly the plane and they were the owners People like -- some companies like Dominion had a policy that they wouldn't even let you go on the plane unless there was a company representative on there. Of course, we'd talk about their issues So there was -- people did that as a matter of routine

Q Did Mr Williams talk about his own background and his sort of life story or business experience?

A A little bit I knew he had had a 20-, 30-year career in medical -- the medical area. He talked me about VISX that he had helped to found, in refractive surgery, back the late '80s, and he made a lot of money in selling that business He, I think, told me a little bit about his early days in Fredericksburg when he was in the automotive business It was a little bit of a get to know you, because I really hadn't had that much time yet to know his story

But he clearly had PowerPoint or a series of documents that he took me through about the anatabine plant, some research that was going on I think he said at Hopkins and maybe Roskamp at the time And I remember him specifically talking to me about -- he knew I had -- well, he learned on the plane I had a medical background being a Medical Service Corps Officer in the Army, and then working for American Hospital Supply So I think he understood I learned a -- knew a little bit about this And he talked about this C-reactive protein

Q What's that?

A Well, it's a marker that -- in your blood that measures a particular level that's related to tissue and system inflammation; that if you can reduce C-reactive protein, you reduce inflammation, and therefore, you reduce a lot of systemic, chronic, negative things that could happen in somebody's body

So it was actually -- the science was interesting I understood at least some of it And he was kind of marching through his exhibits And we had six hours on the plane so we had a lot of time to talk about it And so it was actually a fairly -- it was a pretty interesting discussion, for the most part

Q Was the C-reactive protein issue one that was -- that's personal to you as well?

A I remember it because I had had a couple of full -- full lab analyses done of my own because of just some of my own issues, medical issues And so I knew that marker from -- I think, actually, Health Diagnostic Laboratories had done a marker for me And I knew a little bit about that particular marker, and he said that that would reduce that level in your blood

Q Okay Did you all talk about your families?

A We did some I mean, I got to learn he had four children, that we got married about the same year, we're the same age, and that -- talked to me a little bit about his wife, Celeste But not as much as we did maybe at a later dinner together, but a lot of it was -- he spent a lot of time about his business And I did have -- I did take a nap because it was a long trip

Q Did he talk to you about Bar Harbor, Maine, at all?

A I don't think then I think that was at the dinner we had at the Mansion later on

Q And what was the -- what was the issue --

A We both -- we had both honeymooned at Bar Harbor, Maine, my wife and I, in '76 And I think a year -- he was '76 or '77, but at some point he told me that So, I mean, it was just -- we had some common connections with our honeymoon, the number of kids There were just some things that were interesting about him, about the same age.

Q Did Mr Williams ask you for anything on that plane trip?

A I don't remember an ask I do just remember telling him at the end, though, you know, his story was interesting and that I'd be glad to refer him to Dr Hazel I don't remember if I volunteered or whether he asked But in any event, at the end of the trip, I told him he ought to go see Dr Hazel He was the Secretary of Health and Human Resources

Q And why did you think that that would be appropriate?

A Well, he clearly had something that he thought could help grow a Virginia business. It could create jobs It could be -- maybe do research in Virginia And Dr Hazel was probably the only one on my staff that would really fully understand all of the things that he was talking about because he was a physician and he was in charge of health and human resources.

Q Did Mr. Williams have to give you anything for you to make that suggestion that you ought to talk to Hazel?

A No This is something I did literally thousands of times during the time I was governor People always had ideas Every time I was out or meeting with them, there was always something somebody wanted to talk to me about because I had -- I was the Governor and --

Q Did you expect Hazel to do anything other than to meet with the guy?

A No I expected him to listen That's why I hired such great Cabinet people They would listen, evaluate, and, you know, unless I told them something differently, they'd take whatever action that they believed was appropriate

Q All right Did Dr Hazel oversee the universities or the medical schools?

A No That was Secretary Fornash, Secretary of Education

Q Did Dr Hazel oversee the Tobacco Commission?

A No. My appointees or Secretary Cheng, Commerce and Trade. Secretary Haymore from Agriculture And then Secretary Brown from Finance So he didn't have anything to do with Tobacco Commission.

Q With respect to the universities, UVA, VCU, did you ever suggest Jonnie Williams or make a referral for him to Laura Fornash?

A No

Q All right Did there come a time when you -- you were aware or became aware that Mr Williams had actually met with Dr Hazel?

A I don't think it was till much later Because that next -- that next month my father died, just a couple weeks after that November 2nd And so I was getting ready for the session and also having to do a number of things to attend to my dad's affairs And they -- apparently they met right around -- a day or two after my father died So I don't -- I don't remember any discussion with Dr Hazel in that time frame

Q Well, were you aware that the two of them had actually met and connected or did Hazel call you? Did Williams call you?

A Not anywhere near that time that I remember No

Q All right

A But that wouldn't be unusual People meet all the time, and they don't follow up with me I don't -- I don't -- usually I don't ask for follow-up

Q All right Do you recall Mr Williams sending you some sort of press release about Roskamp in the October time frame, October 2010 time frame?

A I mean, I don't at the time I remember seeing an exhibit in court But, again, I got hundreds of those kinds of things where I'd put somebody's name on it and send it out But I don't have any real independent memory of it

Q How many of those kinds of documents would you receive that you'd put in some read folder, as has been described in this case?

A Well, there could be hundreds of those, hundreds of documents a week that I'd get in the read folder to look at

Q Now, did you go through them all or go through them all carefully?

A I'd usually go through them all But, I mean, there was -- depending on how much time I had, which was always the variable Some I'd throw away Some I'd just put the name of a secretary on it, if I thought they might be interested in it Some I'd say, "Read and evaluate " Some I'd say, "See me " But for the most part, I knew that -- unless I felt strongly about some issue in that read file, I would -- I would typically just leave it up to the Cabinet Secretary to make whatever appropriate decision they thought was right

Q Okay

MR ASBILL: Let me pull up RM-267. Go back to the cover e-mail

BY MR ASBILL:

Q Do you recognize this e-mail?

A Not really

Q This is Pam Watts sending something to Bill Hazel?

A Yeah She would do these things routinely for me Yes

MR ASBILL: Go to the second page

BY MR ASBILL:

Q Do you understand what she is sending?

A Yes This is -- this would have been a note that I would have put just, "Dr Hazel, please advise," on an issue with Virginia Association of Durable Medical Equipment They had raised an issue here about something they wanted to have done And I -- this would have been something I had done literally thousands of times as Governor, just to send something to a Cabinet Secretary

Q All right. Are these typical of things that you just described in terms of forwarding something on to the relevant --

A Yes

Q -- person?

A Yes

Q Okay

MR ASBILL: I move the admission of this.

THE COURT: It will be admitted

MR ASBILL: You can take that down

BY MR ASBILL:

Q Let me go to another event I want to forward to -- or forward or backwards or whatever Forward to April 13th, 2011, the New York City shopping spree that we've heard so much about --

A Yes

Q -- during the course of this trial In a nutshell, what were you working on early in the first quarter, first third of 2011?

A Well, I had just finished the General Assembly session That 90-day stretch, usually from mid-January to mid-April, is almost totally consumed with the General Assembly 45-five or 60-day session And then I've got 30 days to review 900 bills, resolutions, the entire budget and decide if I'm going to sign, veto or send things back And then the General Assembly usually leaves by mid-April or so First -- in that -- that was a short session So they would have left about the first week in April So I had just finished that, and I'm transitioning into a thousand Board appointments and getting ready for an economic development trip

Q Okay That was -- was that a big year for your party?

A It was also a tremendously important year for me politically in terms of state politics Virginia has off-year elections In 2011, all 140 members of the House and the Senate were up for re-election, and many of them were asking me to campaign for them And I also wanted to try to win back the Virginia Senate for my party because I thought it would be easier to get things done the second half of the year At that point it was 20 -- I believe 22/18

Q What do you mean it was 22/18?

A Oh, I'm sorry Twenty-two Democrats, 18 Republicans I believe that was the -- or maybe 21/19 I don't -- but anyway, I was working on trying to elect more members of -- more Republicans to the Senate So I was spending a lot of time raising money for our Political Action

Committee and traveling and campaigning for people as well

Q Okay Let's go to the 12th or the 11th of April Do you recall a Union League event around that time?

A Well, it was a PAC event at the Union League building in New York Yes

Q All right First, I want to talk to you about the 12th That -- do you know what was going on that day?

MR ASBILL: And let me pull up RM-0178-0559, which has previously been admitted

BY MR ASBILL:

Q This is your calendar?

A Yes

Q All right So what was going on for you that day?

A I mean, this would be a typical day Meeting with legislators I met with the President of the University of Richmond I had a couple hours, as I mentioned, dedicated to filling Board appointments with Secretary Kelly there at 10:00 I had some meetings with some of the House Republican leaders I was working on this issue with the VCU parking lot and the former slave grave site here in Richmond I had several calls I had to record some videos I had a Government Reform Commission meeting talking about redistricting, because that was a redistricting year And then we had to depart about 4:00

I went up to a fundraiser in Northern Virginia for the Governor of Louisiana

Q Okay

MR ASBILL: You can take that down

BY MR ASBILL:

Q And ultimately, do you go to New York?

A Yeah And then we leave after -- after the event for Governor Jindal, we went to New York, flew up to New York that night

Q Whose plane?

A It was the private plane because I was doing some political fundraising in New York so we couldn't -- we don't use the state plane for that So I believe that one was Doug Combs He was one of the 15, 20 people that would let us use their plane

Q Okay And who went with you to New York?

A Maureen went Her Chief of Staff, Mary-Shea Sutherland went Paige Hahn, who was my -- she was my fundraiser because we knew we were doing a number of meetings with donors in New York, in the New York area Because one of the chief reasons I went was to raise money for my Political Action Committee with some people in New York and cultivate new donor relationships in New York And so she was organizing these events and the dinner that night at the Union League, and so she was with me And as always, a member of the State Police Executive Protection Unit

Q Did you have any meetings that day before the event that you recall?

A Sure. I had a full day of meetings

Q With donors?

A Donors and potential donors Yes

Q All right Do you recall anybody in particular that you met with at that time?

A Yeah. That day I know we went to meet, I think, with Mr McInerney, distinguished businessman in Connecticut, and then Paul Tudor Jones, who is a big benefactor at UVA, and several others

We were talking to people that had Virginia connections or were University of Virginia graduates That was primarily the people that I was talking to that day

Q Paul Tudor Jones is a big hedge fund guy?

A Yes The Jones Arena at UVA is named after his dad

Q Okay And what was your wife doing that day, the 13th?

A The 13th She was -- she was doing some shopping

Q With Mary-Shea?

A I understood she was doing some -- in the morning Yes

Q And did you have any understanding that she was -- shopping for what? Just in general or for some event?

A Well, the primary thing she was looking for was a dress for my daughter's wedding My daughter got married on June 4th, and so that was a couple months out And she was looking for -- primarily for a dress for the wedding and maybe another dress to wear during that wedding weekend

Q Okay So you knew that Mary-Shea and your wife were going shopping; is that right?

A Yes

Q Did you know that they were meeting with Mr Williams?

A Yes

Q And what was your understanding of that?

A I didn't know Again, I usually don't plan my wife's schedule She's doing that on her own But I knew that they were going to meet with Mr Williams either for lunch or sometime in the afternoon and that he was going to show them some New York stores

I knew from that time we had seen him in New York with that male model that he knew -- and talked about Oscar de la Renta, that he knew fashion and he knew some of those stores up there and that he was going to just show them a couple stores, Mary-Shea and Maureen, where she might be able to find that dress

Q Did you have any idea that -- that there was this rain check conversation between your wife and Mr Williams?

A No I absolutely didn't No

Q No idea that -- going back to the inaugural dress, that your wife was having communications with Mr. Williams saying, "Now it's okay" -- you know, we're in April '11 "It's now okay with my husband for you to take me shopping in New York"?

A No No

Q You understood that they -- they did shop that day; is that right?

A I do Because I finished -- when I finished my last -- yes, I did

Q Okay Did Mr Williams ever tell you or ask you whether it was okay with you for him to buy clothes for your wife?

A No

Q Did you see any shopping bags that Mary-Shea or your wife may have had as a result of shopping that day?

A Yes

Q Did you know what was in the bags?

A No

Q Did you ever see what was in the bags?

A No

Q Did you talk to her about what she had purchased?

A I did briefly She told me she had gotten a couple of items, a couple of dresses

Q Did you ask her what the cost was?

A I didn't

Q Why not?

A One, I figured I'd probably -- I'd see it on the credit card, if it was my credit card that she had used And I figured after the many discussions we had about credit cards, that whatever she got, that she would keep it within appropriate limits

And I saw -- when I was heading to the Union League dinner, I went in a separate vehicle, and she and Mary-Shea were going back to the hotel And I saw two bags that they were carrying I think they each had one bag, a big bag But I didn't know -- I didn't know what was in it But Maureen told me she -- I think she told me she got a couple of dresses

Q Okay Did you know that Mary-Shea was bought a dress by Jonnie Williams?

A No

Q Did she ever tell you that?

A Did Maureen tell me? No

Q No Did Mary-Shea ever tell you that?

A No, Mary-Shea didn't tell me either No

Q That night you went to the PAC event at the Union League?

A Yes

Q And there was a reception in advance of the dinner; is that correct?

A Yes

Q And how did you get to that event?

A When I finished my last meeting, I think it was around 4:30 or 5:00 that night, Maureen and Mary-Shea, there was a -- I think two New York state trooper cars They usually were courteous and let us use their cars when we're up in New York And Maureen and Mary-Shea went back to the hotel, I think, to put their bags down and to change And then I went -- Mr Williams and I and my fundraiser, Paige Hahn, went to the event at the Union League

Q And during that trip when you're going over to the event at the Union League, would I be right in thinking that Mr Williams told you that, "I have just had the most awkward day in my life with your wife"?

A No He didn't say anything like that

Q Did he say anything at all about buying anything for Mary-Shea or your wife?

A No No, he didn't

Q At the event, did he sit next to you?

A Yes He was at my table I think Paige Hahn coordinated the seating, which she would normally do at an event like that She's my fundraiser, and she does the events And typically at my table would have been anybody who was a big donor By that time, Mr. Williams had donated about -- I think probably 70, $80,000 in flights to my campaign and my PAC So that would have been normal to put him there

And then the New York organizers of the event were there I think there were about five or six New York people that had Virginia connections that were also at my table But I -- I didn't spend a lot of time at the table

Q Did Mr Williams have to do anything for you or your wife to get that seat at that table?

A No

Q Anything with a shopping trip in New York?

A No I mean, he was -- probably would have been assigned there anyway because he probably was the largest donor there with his airplane contributions at that point

Q Did you have anything to do with seating him next to you?

A No

Q At any time going forward until the investigation broke in this case, did your wife or Mary-Shea or Mr Williams ever tell you that Mr Williams had purchased $20,000 worth of clothing --

A No

Q -- for your wife or Mary-Shea?

A No I didn't know until maybe a month or so after the investigation

Q What did you do the next day, April 14th?

MR ASBILL: I'm going to pull up RM-0178-0561 that's previously been admitted

BY MR ASBILL:

Q This is your calendar for the 14th?

A Yes

Q In essence, what did you do that day?

A Well, I left early Maureen, I think, was still asleep in the room because I had a very early -- I think I had a 5:30, or so, wake-up, with 6 department, because I had these two national interviews on MSNBC and FOX News So I left very early

I had a couple meetings And I actually had another fundraising lunch there with another hedge fund manager, Mr Griffin, at noon And then I had to go to New Jersey -- I had a couple other meetings, and then I had to go to New Jersey for -- a couple of Governors, I think, were there We did a -- we spoke at the annual Board meeting of PhRMA, which is the Pharmaceutical Research Manufacturers Association And so I had to go over to New Jersey for that And then I believe we -- I think we met back at the airport after that, and Maureen and Mary-Shea and others met us back at the airport

Q Were they already -- were their items already packed on the plane or did you see that?

A That would be typical They would have packed, and they would have already had their stuff loaded on the plane And I think my stuff would have been loaded from my vehicle and put on the plane at that point

Q And on the way back, did you all go together to the same place?

A Well, we flew from New York, but I -- I got dropped off in D C because I had other events in D C that next morning And my best recollection is Maureen and Mary-Shea continued on to Richmond But I got out in Northern Virginia at -- I think at Dulles

Q All right What -- do you know what happened to the clothes that Mary-Shea and Maureen got on that trip?

A No

Q Do you have any sense or did you at any time have any sense of the cost of women's dresses, shoes, et cetera?

A No I mean, I occasionally by myself -- I buy Maureen some things, but, you know, I'd shop at a department store and buy her something for a hundred dollars or so I mean, I -- I rarely would shop for Maureen because -- the answer is no, I really don't

Q How about yourself, in terms of your own clothes shopping?

A JoS A Bank is my place I usually go

Q That's your designer?

A Yeah And -- yes

Q Did you know that after this trip, in the middle of April of 2011, that your wife and Mr Williams began contacting each other one way or another on a -- multiple times a day or on a quasi regular basis?

A I knew there were a couple of contacts after that But, I mean, I had no idea until about a -- maybe a month and a half or two months ago when I saw the phone records there were 1,200 or so conversations or communications completed or attempted over the last couple years I was -- I was really shocked to see that number

Q All right Let's move on to the April 29th, 2011, dinner at the Mansion

A Yes

Q Tell us about that event

A Yeah After --

MR ASBILL: You can take this down, please

A Sure I mean, after the session ended in April of

'11, I had been in office now for about 15 months We were getting geared up to go to a lengthy trade mission in China And I told Maureen, probably in March or so, that, you know, I've been Governor for 15 months We ought to -- we really hadn't seen many of our friends in Virginia Beach We really hadn't had a lot of people over

We had a lot of events at the Mansion, but they were hundred, 200 people I told her, "We got to try to, if we can, try to start being normal Why don't we try to" -- "let's try to invite some people over that are friends or that we'd like to maybe get to know a little bit better And, you know, why don't you come up with a couple ideas, and I'll come up with a couple " So I made a list and, I think, gave it to Monica or somebody and said, "Let's start having some small dinners," either one couple or maybe just two or three couples that we'd have over because I wanted some sense of normalcy in our life where we could actually talk to people one-on-one

Q Did you recommend dinner with Jonnie and Celeste Williams --

A No

Q -- or did Maureen recommend that?

A Maureen did

Q Okay And you all invited them; is that right?

A I'm not sure who sent the invitation, but yes, we invited them Yes

Q Okay The day before that, on the 28th of April --

A Yes

MR ASBILL: Let me put up RM-0178-0575, which has previously been admitted

BY MR ASBILL:

Q Can you take a look at your calendar for that day --

A Yes

Q -- and just sort of generally tell us what you were doing on that day? Was that a Friday?

A No This was a Thursday

Q Thursday What were you doing on that day?

A Well, again, there were a variety of meetings, radio interviews, various announcements, internal meetings, lunches A lot more Boards and Commissions and so forth

But the event that I remember that day that was pretty significant was this event that we did for the VCU School of Medicine There was a major gift announcement from Jim and Frances McGlothlin giving $25 million to the medical schools And if there's gifts like that, generally check presentations, that are made to the state, I like to be there and thank people for their gifts and be part of it

Q Let me pull up RM-0236 and see if you recognize that?

A Yes That's Mr McGlothlin and I at the event I -- we both spoke, along with the President of VCU, and thanked him for his gift And, you know, building up VCU and the Massey Cancer Center was a top priority of mine from the beginning I had put a fair amount of money into the budget for VCU We had a chance to make the Massey Cancer Center one of the top one places of its type in the country, and this contribution going to VCU I knew would help with that So I -- I had known Mr McGlothlin He's a donor to my campaign, and I was glad to be there And we invited he and his wife over for dinner that night on the 28th

Q They came to your house that night on the 28th?

A Yes The two of them, yes

Q The night before the dinner with Mr and Ms Williams --

A Yes

Q -- is that correct?

A Yes

MR ASBILL: I move the admission of this photo

THE COURT: It will be admitted

BY MR ASBILL:

Q All right Going back to the next day, the 29th Prior to dinner, prior to dinner that evening --

A Yes

Q -- what did you do during the day on the 29th?

A It was -- that was a very, very emotional day for me I -- I went to a funeral that morning The Clerk of the House of Delegates, Bruce Jamerson, who had been a 20-year friend, had -- had taken his own life, and we had a funeral that morning for him here in Richmond And so I attended the service at 11:00 that morning with Bruce and his family, or for Bruce

And then this was just -- this was a day and a half after a very deadly tornado outbreak in Southwest Virginia, and I flew down to Southwest Virginia with a number of my Cabinet members and talked to all the first responders that had been working tirelessly for that -- almost 36 hours straight at that point, and spoke to some of the family members of people that had died in the tornadoes down in Glade Spring And it was -- I remember that very well

And then I came back, and I had a couple of meetings I was leaving for China in six days, that following Friday And so I had a couple of meetings about the China trip And then I had a reception at the Mansion for the Nascar race I think the next day, and then concluded with a dinner with the Williams family

Q Let me pull up RM- 0235 and see if you recognize this exhibit? Do you know what that is?

A Yes

Q What is it?

A That's Seth That was the young man that -- that had lost his grandmother right on that site the day before He -- that was the wreckage of her trailer There were a number of -- it hit a trailer park there, and there were a number of -- a number of people that lost homes I think two people died at this spot here

And I was -- I was just talking to him about -- about the fact that we'd do everything we could to help him, and I knew this was tough for him and that, you know, you never know --

MR ASBILL: I move the admission

A -- what's going to happen in your life, and if there's anything we could do to help him and his family recover, we would do

MR ASBILL: I'm sorry for interrupting I move the admission of this exhibit

THE COURT: What's the number?

MR ASBILL: This exhibit is RM-0235

THE COURT: It will be admitted

MR ASBILL: You can take that down

BY MR ASBILL:

Q This is the backdrop to the dinner with Celeste and Jonnie Williams --

A Yes

Q -- on the 29th?

A Yes

Q Physically, emotionally, you know, where were you at the start of dinner?

A I mean, I'm always a little bit worn out on a Friday But that day in particular because of the -- the loss, the tragic circumstances with Mr Jamerson and then being able to -- this is -- I had had a number of natural disasters right after I got elected Governor There were blizzards, but we didn't -- it was nothing like this loss of life at this point that I had had to deal with in my administration And especially that young man, to be able to have to look at him face and face and talk to him about his grandmother was hard for me And, you know, thinking about getting ready to go to China and Asia for -- for 12, 13 days, I was excited, but a little anxious to go to that part of the world I had never been -- I've been to Europe, but I had never been there So I was -- I have to say, I was a little exhausted by the time that that evening rolled around

Q You talked about going to that part of the world That was -- there was a trip in mid-May that was going to be of some lengthy duration?

A Yes I was leaving on May 6th This was the 29th of

April We were leaving May 6th So it was six, seven days A week from that Friday we were leaving

Q Okay In any event, the Williams come over for dinner?

A Yes.

Q And tell us about that dinner with them on the 29th

A We left the -- we had the dinner upstairs in the library, I believe, because we had a reception for the Nascar race downstairs And generally, if we have a reception at the same time, they preferred not to have a dinner, obviously, at the same spot, which would normally be where we'd eat So we ate upstairs in the private quarters in the -- in the library room

Q And, you know, what were the general topics of discussion at the dinner?

A Well, I mean, the first topic, my wife had a very interesting day Very different than mine She -- one of her major platforms was promoting Veterans and Veterans' families, and she had done a lot of things for that just because of her own -- because of my time in the military, her dad's And so -- one of my daughters So she actually did a -- skydived with the Golden Knights, the Army elite parachute, you know, that day She and my daughter Cailin did a tandem jump with the Golden Knights And so they were exhilarated about that I certainly wouldn't have done it They were -- I was a little anxious about them doing it, but I figured they'd be in good hands with the Army Golden Knights and --

Q The EPU guys didn't want to do that with you?

A I don't think they probably wanted me to do that either No

But that was the first topic of conversation, I think Because Cailin had come back by the dinner. I think they had a video that the Golden Knights had done, and they were really -- Cailin hadn't seen it So she came back by to be able to relive that experience with my wife Maureen, to look at the pictures and see the video, which I hadn't seen it either So we watched it

Q So Cailin, at some point, stops by and --

A Yes

Q -- talks with the four of you?

A Yes

Q And what does she talk about?

A That was the first topic of conversation is, you know, what their day -- their day was very different than mine, obviously, with what they had done

And then, of course, the topic of the wedding came up because this was just about five weeks before Cailin's wedding And I remember Cailin talking about how excited she was and what a great guy Chris was I think this was at the beginning of the dinner So the chef was, I think in and out a little bit, and I think I might have been in and out a little bit But I remember her telling her -- talking a little bit about the wedding plans and how excited she was to have it at the Mansion because no -- no Governor's daughter had been married there in 20 years since Governor Wilder's daughter in '91 or so So she was talking about that

I remember going over to the window and looking out the window to show the backyard of the -- the backyard or the courtyard of the Governor's area where the actual reception was going to be held

Q Do you recall any discussion at the dinner of whether or not Chris and Cailin intended to pay for their own wedding?

A Yeah I have some recollection of that I was in and out a little bit But I know that that was important to them We had a -- you know, because we were having a family dispute about that, and I wanted to pay for it I had already made some payments at that point She wanted to pay for it because my wife and I had paid for our wedding and we felt really good about that, and Cailin thought that was very admirable And even though I clearly had the means to pay for it, it wasn't that expensive in the big scheme of things, that I remember her just discussing that just briefly I don't think there was a lot of discussion It was more about the courtyard and the use of the Mansion That was what was exciting for her

Q Did you and the Williams talk about Anatabloc or Star or that --

A Yeah We talked about his company again We had not met his wife, Celeste, before and found her to be very charming And Maureen hadn't met her And so I spent a little time with Mr Williams, and she was talking to his wife

But I remember Celeste talking about her own thyroid cancer issues that she had had and that she had started taking some of the anatabine compound and that it had a remarkable effect on her and how she had been treated at Johns Hopkins and was going to have surgery and that because she had taken anatabine for a while, that it actually had such a positive effect on her, that they had actually canceled the -- canceled the surgery So, I mean, that was the first real story that I heard about a patient taking this anatabine and having a positive health impact on her

Q Did you talk about Roskamp at all?

A I think we did I think -- I think he told us that he was having research done at Johns Hopkins -- I knew about Hopkins -- at Roskamp I didn't really know anything about Roskamp And I think he might have said a couple other places He -- I think he mentioned a Flint study and maybe the University of Pisa I mean, I remember there were several places that research was going on on this compound But none of them were in Virginia at the time

Q Any discussion, you recall, from the Williams about Star stock?

A I mean, there may have been He talked -- I mean, they both talked a lot about the company and what they were doing and how exciting this anatabine compound was and what the early trials at Hopkins and Roskamp had showed on mice Then they thought there was a lot of promise for this and this would be something really good for Virginia, to be able to use the tobacco product for something good

I mean, Mr Williams was very -- he's a good salesman He was very enthusiastic about this product, but, you know, I was worn out And I had heard a lot of this before when I was on the plane with him in October This was about eight months later, six months later or so So it was a little bit of an update on the status of research, but a lot of what he had told me I had kind of heard before on the plane

Q Do you recall whether there was any discussion about the company that you had worked for, American Hospital Supply?

A Yeah There was some We talked about, again, my background I had worked with American Hospital Supply for four and a half years in the early '80s, and Mr Williams said he had either worked for American Hospital Supply before or he had friends that worked there or knew people there I don't -- I don't remember what he said, but there was some reference to that he had some connection with them too.

Q Did you all discuss loans or your financial situation --

A No

Q -- at all?

A No Not at all No

Q Did Mr Williams, at that dinner, ask you to do anything for him?

A No

Q Did he ask you to attend the Roskamp event on June 1 at that time or sometime shortly thereafter?

A He expressed an interest, at some point, of having, if I could, if I had time, it's my best recollection that he might have brought that up or broached that subject at the dinner, about a trip to Roskamp because that's where he felt most of the major research was going on.

Again, he mentioned Hopkins and other places, but this clinical study that he had going on with the use of anatabine and its effect on Alzheimer's disease, the mice studies that he was doing there, that that's something that was really their leading effort right now

And I know Maureen expressed a lot of interest in that because of her background in nutraceuticals My dad had just died with Alzheimer's six months before So it was something that was close to our family My dad had it for about 13 years So it was something that was of interest But I knew that I -- if I had any interest, it was -- I would love to have clinical trials and job opportunities in Virginia, as opposed to Florida or Hopkins or Pisa. I mean, if they want to do clinical trials in Virginia, I thought that would be a good thing But in terms of me ever going down there, I knew I wasn't going to be able to fit that in And Maureen expressed an interest in it And I was going out of town for 12 days to China, and then I had my daughter's wedding And he had this trip coming up sometime in the near future so there was no way that I was going to go

Q Did you know that the Roskamp event was June 1 and the wedding was June 4?

A I -- I don't think there was any date discussed at all at the time I don't have any recollection of that I knew that he talked about going down there at some time in the near future, but I don't have any recollection of that

Q Before the dinner or at the dinner, did you ever see Mr or Ms Williams give any gift to your wife?

A No

Q So the purse that -- that has been introduced into evidence in this case -- or the wallet that's been introduced in evidence in this case, did you ever see anyone give that to your wife or her open that?

A No But there was times that I was just talking to Mr Williams, especially on the way out the door, and my wife and Ms Williams were together by themselves But I did not -- if that gift was given there, I didn't see it

Q Okay Did you ever talk with your wife about it having been given to her at that dinner?

A She would normally tell me something like that But I don't remember her telling me anything about getting any gift at that dinner I mean, it wasn't uncommon, if we had people over for dinner, that they'd bring something, a bottle of wine I mean, it was not unusual But I -- I didn't -- I didn't see anything and she did not tell me after the dinner that she had received anything from Ms Williams

Q At this point in time, we're talking about April 2011, what do you perceive the relationship to be with Jonnie Williams, your relationship with him?

A Mine or my wife's?

Q Both

A Well, we were friendly And my wife clearly was interested in the nutraceuticals and the -- essentially this research that he was doing, and I fully understood that It had been 30 years she had been passionate about nutraceuticals. And so here's a Virginia-based company that had this new idea from the tobacco plant You know, my interest was mostly in the job area If there was something that could be positive that could happen for tobacco and help with the tobacco region, I thought that was great

But I'd say at that point I had met Mr Williams, I guess, four or five times now And -- three or four times And, I mean, I liked him Energetic Now I had met his wife I liked them We seemed to have a lot in common I mentioned the Bar Harbor honeymoon thing The same number of kids, the same age, medical background So, I mean, I thought we had some things in common And we were friendly at the dinner, but I certainly wouldn't say we were, at that point, friends But my wife certainly was very enthusiastic about the things that he was doing and really seemed to like him a lot

Q Okay At that point did you know the extent, in terms of communications or meetings or anything else, between your wife and Jonnie Williams?

A No

Q All right. The $15,000 gift to Cailin, do you recall, sometime in May 2011, learning about that?

A Yes

Q And when did you learn about it?

A You know, my best recollection was after -- after we got back from China I was gone from --

Q Middle of May?

A Yeah I was gone from May 6th through May 17th It was China, Korea, and Japan We had a 12-day economic development trip Maureen went as well because she did some wine and tourism events and a military event in Korea while we were there She was always -- when she went, she was very actively engaged in these events

But it was sometime after I got back, I think, is the best of my recollection, she told me that she had had a conversation with Mr Williams and that she had talked to him after the dinner at some point and that Mr Williams wanted to give Cailin a $15,000 gift for her wedding

Q For what purpose?

A Well, I -- I -- what I understood is that that was the value of the reception that we were having And I knew that because I had helped -- I had helped review the contract for my daughter I had helped, back in 2010, when we initially met with the caterer she selected, to talk about the menu and what she was doing

And so I knew that was the -- I knew that was going to be the approximate amount of the contract And so that's what I understood; that this gift to Cailin would be -- was given in that amount because that was the -- that was what the reception was going to cost and that Cailin had intended and wanted to, even though I did not, wanted to pay for her wedding expenses

Q You say you did not want to pay or you did not want her to pay?

A I did not want her to pay

You know, listen, this is my first daughter getting married There was -- I clearly had the capacity to pay It was -- it was $15,000 I -- Chris and Cailin told me back in 2010 at the -- I think one of the first dinners with my wife that that's what they wanted to do, that they were going to start saving in a separate account to pay for wedding expenses

Honestly, I didn't -- I didn't take them that seriously at that time because I knew that was aspirational for them But I didn't know that they really were able to save that kind of money Chris is an engineer Cailin works for the state government -- or the county government I didn't know whether they really could save that kind of money But I knew they were very motivated because that's what -- my wife and I paid that

But I said, "Look Okay That's nice I'm glad you want to do that " But I went ahead and wrote the first two checks that were due in, I believe, December and January And I sent them in, and I didn't talk to her about it

Q And that was how much money that you sent in, roughly?

A It was about $8,000

Q All right What did you think about the idea of Jonnie Williams giving this gift to your daughter?

A Well, I had to think about it I mean, first, it was a gift to my daughter And by the time Maureen talked to me about it, she said she had already talked to Cailin and that Cailin had agreed that she would accept that gift

So I had to think about it I -- I thought it was very generous I knew Mr Williams seemed to have the capacity He obviously was buying expensive things, like that Cognac He had a plane He seemed to have -- certainly have the capacity to do a gift like that But it certainly was an incredibly generous and large amount of money We had only known Mr Williams really, at that point, for about 15 or so months, at least to talk to him to any degree But I thought if that's -- if he wanted to provide that gift to my daughter at that time, that that was -- that was okay

Q With respect to the other $7,000 or so that was due on the contract --

A Yes

Q -- that you had not already paid --

A Right

Q -- when you say you had the capacity to pay that, would that be cash on hand or would that require borrowing from a credit card line or what?

A Well, either one I mean, at that point I think we had -- I think yesterday we saw we had, I think, about $12,000 or so in the bank Between my -- the two accounts that I managed and then my wife, between -- with her account, the total was about $12,000 or so

And we had paid down our credit cards I had really been working hard on that In between my own management and my dad's estate and other things like that, we had paid the credit card balance down to about $30,000 at that point So we had about $172,000 of credit card capacity left So I would have either paid out of a -- out of my checking account or I would have written a convenience check against a credit card There were exceptionally low offers at the time It was in the 2 percent range for a year or year and a half So it would -- either way, there was not going to be any problem paying for that balance The total was due, about $8,000 was due about, I think, ten days or so before the wedding So it wouldn't have been a problem

Q Okay With respect to the $15,000 gift, did that end up being larger than the amount owed to the caterer?

A Yes Because we had the tentative contract amount that was about 15,700, I think, something like that, is what I remember from back in December, January that was sent in But I know at events like this, typically there's some add-ons There's things that aren't included in the initial contract There would be the final head count There would be a number of things that more than likely would increase the amount So I didn't know -- we didn't know at that point what the final bill would be

Cailin -- I wanted the wedding to be bigger, but Cailin and Chris actually asked for it to be smaller because the St Patrick's Church only accommodated about 180 people And she was very firm with me and telling me, "Dad, I don't want a political wedding I want my friends I want my family and I don't" -- basically, "Dad, I don't want a lot of your friends there because I don't want" -- "I don't want it to be" -- "I want to visit with people, and I don't want a bunch of people there I don't know " And so, you know, reluctantly, said, "Okay If that's what you want " And again she told me, "Chris and I want to pay for it We're starting our separate account "

And so we -- from the initial estimates, I think there were around 22, $23,000 that got ratcheted down, primarily at Cailin's request, down to about 15, a little over 15,000 with the contract that was put in in December of '10

Q Okay

MR ASBILL: Judge, would you like me to stop at that point or go forward?

THE COURT: We'll go ahead and stop here

MR ASBILL: Thank you, sir

THE COURT: All right We'll stop for lunch And if you could come back at 2:15

(The jury left the courtroom)

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(Luncheon recess taken from 1:07 p.m. to 2:15 p m.)

THE COURT: All right Let's bring in the jury, please

(The jury entered the courtroom.)

All right Mr Asbill?

BY MR ASBILL:

Q Mr McDonnell, I think when we broke for lunch we were talking about the $15,000 gift to Cailin at the time of her wedding That $15,000, you said you had paid $8,000 on the contract and you thought the contract was going to roughly be how much?

A The one that I had reviewed for my daughter back in December or so was $15,700, but I figured that there would be some changes maybe with the last head count and then whatever add-ons might happen at the wedding, and we would see what the final number was at that point So it would be somewhere over 15

Q Okay So with the money you had put down, the $8,000 that you had put down, and the $15,000 from Mr Williams, that totals $23,000? Correct?

A Yes

Q And so you figure or did you figure that there was going to be some refund of some sort?

A Yes And whatever the refund was, I expected that to go to Cailin My $7,900 would be, that would be my contribution to the wedding at that point, and any refund after that would go to Cailin.

Q Okay And did there come a time when you learned that there was in fact a refund, and if so, in what amount?

A The work after the wedding, there was a couple of add-ons that I knew happened at the wedding with the generator, I think there was some overtime There were a couple other things that I knew occurred during the wedding And then I think a day after the wedding, I went out of town and was gone for quite -- about three, four, five days, but I know Maureen and Mary-Shea, Mary-Shea knew the caterers They were working out the final invoice with the caterer as to what the final bill was and then determined what the amount of the refund would be But I knew some money was going to come back It would probably be in that $6,000, $7,000 range, is what I assumed would come back.

Q When did you first learn what happened to the refund check?

A I didn't learn that until February of 2013

Q That's two-and-a-half years later?

A Well, almost two years

Q Almost two years later And how is it that you learned about the amount of the refund check, the exact amount of the refund check and what had happened to it?

A Well, I told Maureen, she was working up the final adjustments with the catering company, that whatever the amount of the refund was, since I had put down the $8,000, in Mr Williams' check, I understood, was supposed to go towards the catering, that whatever the refund was, that that should go to Cailin because my downpayment and Mr Williams' money was intended for my daughter And I fully --

Q A total of 23, you mean?

A Yes

Q 23 was supposed to go to Cailin?

A Yes right So whatever the refund amount was after the final amount of the bill, that that should go to my daughter, Cailin, and that's what I told Maureen Again, she worked out the details and I expected that that's what would happen. What I learned on February 14th of 2013, this was the eve before Maureen was going to meet with the authorities, I had learned the day before from Martin Kent that there was a meeting about the interview about what I thought was the chef's investigation And I asked Maureen to get the wedding documents together for the catering, because I understood that one of the things the chef had claimed is that he didn't get everything back from the wedding that we owed him, and therefore, that's why he took food. I learned that piece of information. And I hadn't seen all the final numbers for the wedding yet because Maureen and Mary-Shea had handled that I asked her to review the documents

I looked at the documents that night, and from what I saw, she did not have a copy of the actual check that came back. I didn't learn until later what the exact amount was But I asked her that night, "Did you give the money that came back, did you give the refund back to Cailin?" And she told me no, that she had not, that she had put it in her account I said, "Maureen, I told you and you told me that you had done this, that you had taken the amount from the refund from Cailin's wedding and that you had given it to her And why haven't you done it?" She said, well -- and I was talking about doing it I talked to Cailin I told her I was intending to do it But she hadn't done it I was very upset with her because it was almost two years later, and that money was rightfully my daughter's The wedding gift was intended for my daughter, not for me, not for her And so I said, Maureen, "I've got to figure out how much this refund is going to be Do you know what the amount of the check was?" I had never seen the refund check. And she told me she did not know I asked her, "Do you have the bank statements online so we can go online? Can we figure it out?" She did not have her bank statements online to figure out what the deposit was from back in June of 2011 And so I cobbled together the best estimate that I could, which I figured was about $7,300, should have been the refund based on the documents that I had. And I told Maureen, "You need to write this check You need to get it to Cailin right away It is her money " We were going to see her that weekend. We had a family event planned that Saturday on the 16th out in Charlottesville with all of our family together And I said, "You need to give her the check because it is not your money, it is not my money That was intended for Cailin."

Q With respect to that, did you have access to your wife's personal checking account?

A No., I didn't

Q All right Is it fair to say that you were upset when you found out that that had not been done, the refund had not gone to your daughter?

A Absolutely You know, there had been several examples unfortunately where I've asked Maureen to do certain things, like that, meaning some financial things, or something she told me we should do, and that she told me she would get it done and then I find out sometime after that it is not done And I thought that was a matter of just, you know, fundamental integrity, that that money was for Cailin. I understood the wedding gift was for Cailin, the $15,000 My 7,900 and some change that I deposited, that was for Cailin. And no amount of any refund that came back from that catering bill should have come to me or Maureen. So yes, I was very upset with her, and so I told her to do it And I think she delivered it within the next few days

Q All right Were you aware earlier in May, back to the 2nd of May, that Maureen had talked to Jonnie Williams supposedly at that point in time about this gift to Cailin? Did you know that date or anything?

A No

Q Okay Let me ask you this: Going back for a second to the issue of the inauguration dress that Jonnie Williams was offering to pay for, whatever amount you may have thought that that dress would be worth, in your mind was there a distinction with a difference between Mr Williams giving your wife an Oscar de la Renta dress for the inauguration, and then later him giving Cailin $15,000 towards her wedding? Is there a distinction there, a difference in your mind in terms of those two events and why one is okay and one is not okay?

A Well, I think there were a couple things One, that day that Mr Williams made this offer, I had never met him. This was really the first time that I had met him.

Secondly, as I told you earlier, we did not want this inaugural to be an overly fancy event Yes, we were going to have the balls and some of them would be black tie But to have an Oscar de la Renta custom dress at that event while I'm worried about getting people back to work and I'm worried about people being unemployed, to have my wife in a very expensive custom dress, you know, I thought was absolutely wrong So that's why we did it then. But this event with the wedding, I did, I thought it was exceptionally generous for him to consider doing that But my daughter and I had been back and forth for about six or seven months now really on who was going to pay As I said, it was my intent from the beginning, despite her wishes and Chris Young's wishes, that I was going to pay that entire $15.000 It wasn't at all a heavy lift for me to do that at the time But since the gift was actually for her, and she had intended to pay it, it was actually paying, 7,000, 8,000, $10,000 of other wedding expenses, I felt that while it was far beyond what I expected for a wedding gift from somebody at that time, if Cailin wanted to accept that and apply that towards expenses of the wedding, that that was probably okay

Q Okay Let me pull up Government Exhibit 134, which has previously been admitted. Could you blow that up, please? This is a text to you or an e-mail, e-mail from you, right?

A Yes

Q An e-mail from you to Jonnie Williams dated May 28th, 2011?

A Right

Q And in that e-mail, you basically tell Jonnie, "Thanks so much for all your help with my family Your very generous gift to Cailin and the golf tomorrow with the boys " The golf with the boys, that relates to the wedding plans basically for June 1st?

A Yes

Q Excuse me, June 4th.

A Right That was a week before the wedding I played with my sons and my future son-in-law, Chris

Q "Maureen is excited about the trip to Florida." That relates to Maureen going to Roskamp?

A Right By that time, yes, I certainly knew Maureen had planned to go.

Q And your understanding was, you know, as you say, learn more about the products and see Celeste, Jonnie's wife?

A Right Maureen told me she was going to take a tour of Roskamp and meet with doctors and see Celeste and learn more about the company, yes

Q Okay With respect to the first sentence, first full sentence, "Thanks so much for all your help with my family " What do you mean by that? What are you referring to?

A Well, at this point Mr Williams was a very generous donor already to my PAC and my campaign. I believe at that point he had contributed close to $100,000 in flights to the campaign. He had donated this $15,000 gift to my daughter And he had allowed us to play at this golf course So that's exceptionally generous I have a lot of donors that have done a lot of things for me, but this was very nice, and a couple things in a very short period of time And one thing I've always tried to do is to, in reasonably short order, when people donate or give gifts or something, I try to write a thank you note or an e-mail or something like this

Q Did that reference to the help with your family, did that include the $50,000 loan to Maureen on May 23rd that we have heard about in this case?

A No. I didn't know about it at that time

Q You didn't know anything about that?

A No

Q Did you know that that had been discussed or negotiated or a check had been given to Maureen at all?

A No

Q Jonnie Williams talked about talking to you some, I didn't know whether he wrote or called or saw you or whatever, on the 23rd of May, did you see him or talk to him that day before the check was given to Maureen?

A No That's absolutely false

Q All right Let's talk about in time here, Roskamp, June 1st

A Yes

Q That is the day, in fact, that Maureen goes down to Roskamp to see what you have described here?

A Right

Q And this was the event that you were invited to but had no intention of attending?

A Right

Q All right And the decision to go to Roskamp by Maureen, was that her decision or your decision or did you play into that at all?

A No, that was her decision Maureen, my recollection is, I think when Mr Williams brought this up at the dinner at my house, Maureen asked to go. She has been in this business for some 30 years, in the nutraceutical, vitamin, healthcare products business She had read a lot about clinical trials, but she had never been able to see one So she really lit up when Mr Williams talked about these clinical trials he had going on. In my recollection from the dinner, she actually asked whether if there was a time that he was going down there or if there was something that she could actually go and talk to doctors, see the clinical trials Again, the fact that it was related to mice studies of Alzheimer's was something close and personal to our family at the time So I didn't send her as my surrogate or anything like that She, I think, worked that out with her office, I assume, and Mr Williams to go down there Because really, I knew I couldn't go I didn't have the time to go And I didn't really have the interest in going

Q Had you already declined the invitation through your scheduler earlier in May?

A I don't know what the date was It was, I think, shortly after -- I think they got around to it after I left for Asia But at some point in that early May before I left for China, I'm sure that I told Monica -- I don't think I ever brought it up with the scheduler, but I understand that there was something that came from Ms Fulkerson to Monica that said, "Hey, I understand the Governor is going," which I had never said that I was going, but I confirmed with Monica that there was no way that I could go.

Q Something from Fulkerson, did that include some sort of description about Roskamp or about the upcoming event on June 1st, to your recollection?

A It may have But if it did, I didn't pay attention to it because I knew I wasn't going

Q Did you ever forward any information about the Roskamp event to Dr Hazel?

A I don't know about the event After the dinner and my wife expressing some interest in going, I think I asked either Pam, or I might have actually reached out to Dr Hazel just to ask him if Roskamp was legitimate I knew when Mr Williams explained the places where research was being done for him, I knew of Johns Hopkins It is very well known I knew it was legitimate and had top notch researchers I had never heard of Roskamp, and I was curious about whether Roskamp had any validity in the medical community Either I or Pam just sent an inquiry to Dr Hazel to say, "What is Roskamp? Is it a legitimate operation?"

Q Do you recall any follow-up with Dr Hazel about that?

A There may have been. Because I hadn't planned to go, so I mean, it wasn't a big deal But if he got back to me I probably would have passed some of that on to Maureen just to let her know whatever I found out about Roskamp We had already, I think we had declined by the time Dr Hazel may have gotten back to us But I don't recall specifically talking to him.

Q If you had talked to Hazel and he said something about Roskamp being illegitimate, would you have done something about your wife going there on the 1st of June?

A Well, I may have I may have told her that this is not something she needs to waste her time with.

Q You say you would have done that or you did do that?

A I didn't, no, because I don't remember what I got back from Dr Hazel, if anything

Q All right

A It was nothing that would have made me talk to Maureen about it

Q So if she wanted to go, as far as you were concerned, that was her decision and you were okay with that?

A Sure

Q This was on June 1st, three days before the wedding Is that -- was that timing something that bothered you in terms of her traveling to do anything?

A Yes It was her choice to go I didn't have any problem with her going She wasn't going as First Lady; she was going because of her long-standing interest in nutraceuticals And I thought that was good, it was healthy I had told her, again, not to be involved with her own business, but obviously keeping track of the industry and what's going on generally, and her passion for nutraceuticals, to see clinical trials, I thought that was fine. I hadn't done anything for Mr Williams, he really hadn't asked me for anything, so I didn't see any real problem with her doing that But doing it, going three days before a wedding, I wasn't particularly happy about that because we had company coming the next day

Q Had you blocked off time yourself to be with family during that wedding week?

A Yes

Q And in fact, is that one of the reasons in declining the invitation that you gave to Fulkerson, or to Jonnie Williams through Fulkerson, basically, that the wedding, that's family time? Is that sort of the excuse?

A In the brief conversation I had with Monica, I said, "I can't go, I'm going to China and then I've got the wedding Just tell them I can't go."

Q Okay And so you did not ask her, you did not ask your wife to attend in your place?

A No

Q Did you know she was going to speak or did speak at that event?

A I found out she spoke probably a month after the investigation started in March or so of last year But what I knew when she was going down there is that she wanted to see clinical trials; that she told me that she was excited about the fact that it was a mice study for

Alzheimer's disease; that she was going to take a tour of the Roskamp facility; and that she was going to visit with some doctors I thought it was just maybe just a handful of people she was going to talk to I had no idea that there was going to be any lunch or press or investors or anything of that I didn't find that out until after the investigation started.

Q You had no idea that she had said something about a Mansion launch for Star?

A No I talked to her very little By the time she got back from Roskamp on the evening of June 1st, this is essentially the eve of the wedding We've got company coming the next morning So I think we may have exchanged some brief words and she told me that it was -- that she had a good time down there, she enjoyed the tour and met with some doctors, and that's really all that I remember at that point Because we've got a wedding, wedding folks for four or five days now

Q Did you know that Mary-Shea was going to the event with her, going to Roskamp with her?

A I may have But when she is going on a trip like that, to have her Chief of Staff and an EPU person go with her would have been routine So I don't know if I knew that

Q When did you learn that not only that your wife spoke at the event, you told us that, and talked about this product launch, but when did you learn that there was apparently some interest in buying Star stock and that your wife apparently borrowed $6,000 from Mary-Shea and, you know, was trying to buy stock while at that event on June 1st?

A I learned about it the day after the wedding That would have been the 5th. Most of the company had gone at that point This was the afternoon of June 5th. We were taking Cailin to the airport, I know, the next morning to start her honeymoon And I believe we were upstairs at the kitchen table There was just my wife and I And she told me that when she had been down at Roskamp, that she had bought stock in Star Scientific And, of course, I said, "Well, how did you pay for it?" She told me then that she had, on the day that Mr Williams had delivered the $15,000 check for my daughter's wedding, earlier --

Q What day was that?

A That was May 23rd. A couple days, six days after we got back from China. She told me she had received the check from Mr Williams that was going towards my daughter's wedding But that Mr Williams had also at that time given her a $50,000 check for a loan to my wife for purposes that she then described to me.

Q And what did she describe? She had gotten the money, and where was it at this point in time?

A Well, first of all, I was just very upset with her I was astounded. We didn't need any money We had about $30,000 of credit card bills by that time I had them perfectly under control We were making automatic, regular payments I don't think they were all automatic, but we were making regular payments She told me she had bought $30,000 in stock of Star Scientific because she had always wanted to have stock to be able to give to the children at their wedding She had told me that for years and years But I told her, we really, I know Cailin was just having a wedding, but we really didn't need to buy this stock now and we darn sure didn't need to borrow to pay off any credit card bills We had paid down about $60,000 in credit card bills over the last year There was no need, there was no sense of urgency to be paying off any credit card bills They were all being paid in a timely fashion And so I said, "I just don't understand why you did this There is no reason to have had to borrow this money "

Q Jonnie Williams had not talked to you about this at all?

A I had not talked to Mr Williams

Q What was the rationale for -- aside from the stock, what happened to the money? What happened to the rest of the money?

A At that point, the money was gone She had invested in the stock. I don't remember how many shares, but she had spent a little over $30,000 on the stock. And then she told me she had also paid off about $20,000 in credit card bills

Q And is there any reason at this time when she told you she had bought the stock that, you know, you don't go really ballistic?

A I mean, I expressed to you, I was extremely upset I said, "Maureen, I manage the finances I know what our financial picture is " We had a lot of credit card debt earlier coming into the Governorship, but between my work on paying it down and some proceeds of my own father's estate and some other things, we had had it down from about 90,000 to, I think, around $30,000 at that time And I told her, we just didn't need to do it and we didn't, certainly didn't need to borrow from Mr Williams, who I certainly didn't feel I knew that well yet We didn't need to borrow money to buy stock. So yes, I was very upset with her But I had to think about -- I mean, the money was spent And she told me that she looked at this money as really a substitute for the money that I had taken from her in November the year before, when I had taken her dad's $25,000 of inheritance money and I had paid down these credit card bills; that she felt that she was right to be able to borrow this money and be able to buy stock for the children because of what I had done some six or seven months before

Q And was that still raw?

A Yes, it was It was I mean, I had, I really did believe I had -- I really did believe I had made an error in forcing her to apply that money to credit card payments I mean, listen, I was upset at the time It was three days after my own father died. I was looking at these credit card bills, they were too high, some $70,000 or so back at that time And again, I told you, I felt that was the best decision. But my wife had talked about this for so long, she was still upset that I had done what I did, and she told me, "Look, I used the money to pay off some credit card bills, but I felt that this was the time Cailin is getting married. She is our first daughter to get married. I told you for 20 years I wanted to buy stock like your dad did, I wanted to buy stock for the kids when they got married. Cailin is getting married, and this is what I chose to do I wanted to buy stock for Cailin."

THE COURT: I have a question.

BY THE COURT:

Q The $6,000 that was apparently borrowed from

Mary-Shea, he asked you about that as well Did you find out about that during this time?

A No, I didn't, Your Honor I didn't know anything about that I think I learned about that after the investigation started. I didn't know there was a loan at that time from Ms Sutherland

BY MR. ASBILL:

Q How the $6,000 on June 1st relates to the $50,000 on May 23rd, you don't understand?

A I've learned after the fact that in realtime, I didn't know that there was any $6,000 that was borrowed from Ms Sutherland. My understanding, she borrowed it to cover the fact that her $30,000 or $50,000 check, I guess, hadn't fully cleared yet so she needed the resources to pay the bank. But I've only learned that after the fact I did not learn about a $6,000 loan at the time

Q All right So the $50,000, you learned the $50,000 is coming, this is on the 5th of June, basically?

A Yes

Q And is this the same day that you and Maureen drive Chris and Cailin to the airport for them to go away on their honeymoon?

A That was the next day

Q That was the next day And so it was the next day, the 6th of June, as you are driving them to the airport, that your wife gives your daughter the mock stock certificate that we heard about earlier in this trial?

A Yes, it was very early in the morning But she had come out with this mock stock certificate for whatever the number of shares were It might have been a thousand shares of stock. Again, she wanted to do this for the wedding And so she wrote up this little certificate and gave it to Cailin and Chris in the car on the way to the airport the next morning

Q Okay You talked about in terms of helping Cailin with the wedding, the $8,000 you talked about on the catering contract, and the reviewing of the contract

A Yes

Q Were there any other payments towards the wedding that you made?

A Yes, we paid for the photographer, about $600 or so that I paid. I think there were some other things that my wife bought for the wedding itself And, of course, I saw her, she gave the stock certificate that next day for the wedding There may have been some smaller items, but I guess it was probably about $8,000 or $9,000 plus the stock.

Q Okay Did any other folks help contribute towards the wedding, the cost of the wedding?

A Yes I learned a couple of those at the time

Again, as I mentioned, my daughter, Cailin, and Chris, wanted to do most of the planning for the wedding themselves Again, they wanted to pay for that reception as well So they were working with people to do most of the work on the wedding, which included not only the menu and so forth for the reception, but wine and D.J and all the other things that needed to take place for the reception itself But then they had, of course. honeymoon and other parties associated with the bridal party the night before and so forth. So they worked on most of that I know at one point, I think they told me that there was some, I believe, some donation of wine from Ms Kluge, and that Dr Davis was allowing them to use a limousine to be able to transport themselves back and forth for the wedding So I'm fairly certain that I knew about those at the time Those are the main ones

Q Were there other gifts that you were unaware of from other folks?

A I mean, there were several that obviously came to the wedding In fact, most of the gifts that came to the wedding, I would not say I was aware of at the time I think they may have told me about a couple things after they got back from the honeymoon and opened gifts At some point I learned they had a significant contribution from Chris's family for the rehearsal dinner the night before That was -- we didn't pay for that So I think there was a fairly significant donation, a couple thousand dollars for that from either the parents or grandparents of Chris

Q Okay Tell us about the wedding day

A It was a spectacular day My daughter, Cailin, is a very, very special person. She is the first daughter to get married, as mentioned. Having a wedding reception at the Governor's Mansion is something that doesn't happen very often It hadn't happened in about 20 years, which is why when I first talked to Chris and Cailin about a year out, they said, "That would really be great, dad, if we could do it at the Mansion." And my wife and I both thought it would be a great idea So it was just beautiful It was tearful for me walking my little girl down the aisle and being able to hand her off to somebody that I really respected. I thought Chris was a great young man, had good values I knew how he really loved my daughter And for a dad, being able to know that there was a man that was going to take care of her the way I tried to take care of her when she was a little girl, I really felt good about that I had gotten to know his mom a little bit I really liked her and felt this was a good guy, this is a good kid that was going to take care of my daughter for life

And so it was remarkable, they'd just got married right up the road at St Patrick's Catholic Church on Church Hill, and coming back to the reception It was very nice because she wanted to keep it small, as I told you, and it was small, smaller than I had thought, anyway, but it was just a remarkably nice day They stayed until late They stayed until 11 o'clock that night And it was really nice for people from out of town to actually have time with them before they left

Q Was it a day when you didn't, because of the way Cailin planned it, that you didn't have to be on politically and talking business basically?

A It was I mean, I think we had, I think Cailin gave me slots for maybe 12 or 13 people, 15 maybe at the most, that I could invite But everybody else were people that she and Chris wanted to have And I really respected that Because most of the things that I had done during that time, I had been doing things in political circles, and this was at least a day that was largely family, friends, and her friends, some of whom I didn't know So it really was, other than having to make my toast and my speech as the father of the bride, it was certainly a day and a weekend away from politics, yes

Q With respect to any of the things you didn't personally financially provide, the photographer, the

8,000, did you solicit or, you know, try to get people to give any gifts to her or were you consulted on whether or not people gave gifts to her?

A Not to my recollection.

Q Okay After the wedding, did you ever talk to Martin Kent about the wedding and the issue of, you know, whether or not the family was picking up the tab for the wedding, or was that something that happened before the wedding? I know Mr Kent testified about it, and I can't in my own mind place it in time

A Do you mean Tucker Martin?

Q Tucker Martin. Excuse me Did you ever talk to him? Was that before the wedding or after the wedding?

A I think it was shortly before the wedding

Q Do you recall having a discussion with him?

A Yes

Q What was your understanding of the issue that you and he were talking about?

A My understanding was there was a press inquiry Since the wedding was at the Governor's Mansion or the reception was at the Governor's Mansion, this had been somewhat unusual, it hadn't been in 20 years or so, and the question that was posed to me is, "Is the state paying for any of the events at the Mansion or is the family paying for it?" And the state wasn't paying anything So that was the question that was posed to me, and I told him "The family is paying for it "

Q You viewed that as taxpayer versus non-taxpayer?

A Yes, that was the question I got, right

Q All right The government has introduced its summary chart which shows a call between you and your wife on June 1st and another on June 4th This is Government Exhibit 578, which has previously been admitted. Can we pull that up? This indicates that on June 1st, that there is a call on which you participate for approximately four minutes And frankly, I can't remember what the star or the asterisk means And then on June 4th there is another call in which you participate Apparently that is two minutes Do you know whether or not either of those calls were Maureen telling you about the stock and asking you for financial information?

A I really don't remember those calls But she did not tell me about the stock until June 5th when I came back, when we discussed Mr Williams' loan and she told me what she had done with it So I can't say those -- well, actually, June 1st, I don't remember the call I think on June 4th, that's the day of the wedding And at 11:28, I remember I had taken her, Maureen's sister Karen, and her brother-in-law Tom, and a couple other people that were there for the wedding, the wedding was later in the afternoon, but I took them down on a tour by the river to see some things So I was gone about that time And I think Maureen called me just to check on me and see when I was going to be back or something like that But I don't remember any discussions on either one of those days with Maureen about any stock.

Q Let me pull up Government Exhibit 634, which has also previously been admitted. This is a post-it that we have seen earlier in this trial with annual income, net worth, liquid net worth, net minus or net-real estate, 400,000

A Yes

Q Is that something that before this trial you have ever seen before?

A No

Q Do you know anything about it at all?

A I don't No, I don't

Q As you read it, do you understand it or do you know whether or not it is accurate?

A The annual income would be in the ballpark of what I would have been making Let's see, this was 2011, so with my Governor's salary and some unearned income through Racehorse Properties, that would be in the ballpark of my annual income I can't really -- I can't comment really on the rest I don't even know what "net-real estate" really means, so that wouldn't have been in any information I would have provided.

Q If that's "net minus real estate," that would be, in essence, that would be, is that your understanding, this is a net worth minus the real estate, so there is --

MR DRY: Objection.

THE COURT: Sustained

THE WITNESS: That's my wife's handwriting, but I don't know what it means

BY MR. ASBILL:

Q All right And did you ever see this on the day of the wedding or did you have any discussion with your wife on or near the time of the wedding to give her these figures?

A No, I did not No.

Q All right Take that down, please With respect to, you know, what was your -- you have talked about this $50,000 and where it went, 20 to pay down credit cards and 30 for stock.

A Yes

Q Why didn't you tell her to just give it back, aside from the issue of her, you know, her being concerned? I mean her substituting that for what you had made her do the previous November? What was your view of this money and, you know, was it a big deal as far as you were concerned?

A I thought about that Because my wife incurring debt that in my view we did not need and she did not need was a concern I learned, though, that I just needed to pick the battles with my wife on certain things very carefully And I knew, and I just felt in my heart that I had made a mistake on November 5th when I told her --

Q You have talked about that How do you view this transaction ultimately in realtime?

A There were a couple things I thought, "I haven't done anything for Jonnie Williams He hasn't asked me for anything Star Scientific hasn't asked me to do anything I don't see any conflict from that standpoint " Mr Williams, I mean, I liked him at that time. He is the CEO of a publicly traded company He has independent fiduciary duties He is a business guy He seemed to be a very credible guy I knew my wife liked him. I knew my wife had the capacity to repay that loan.

Q How would that be?

A Because she had just received a new job. She just got an offer from Mr McGlothlin to be on the Jim and Frances McGlothlin Foundation Board, at least that's what I thought the offer was, and she was going to be paid about $36,000 a year She had been making a little bit of money the last couple years even though she wasn't actively involved in the nutraceutical business The way her business worked is she got, I guess, akin to override commissions on business that other people in her organization would do, 6,000, 7,000, $8,000, so she would have had with this new position that was starting in June, she would have had about $40,000 a year that would have come into her account So I figured she had the ability to repay that loan. And she told me that the terms that she understood them to be at that point were about two percent interest with a balloon in, at that point, four years, I guess due in 2015 The way I looked at it, from a business standpoint, was that we had -- she had a $30,000 asset, she had --

Q What do you mean she had a $30,000 asset?

A The stock that she had was a $30,000 asset She had incurred $20,000 of additional debt, if you will, from the Williams loan. But she had replaced $20,000 in credit card debt that she had written -- she told me she went in and picked out the two bills that she saw that were in my credenza where I keep the bills ready to pay, and she just took the two that were there, I think the PenFed bill and another one That's the one she decided to pay Just from our personal financial standpoint, it really netted out to be sort of zero at that point financially I think I mentioned to her, although I'm not sure, but I believe I mentioned to her that with this kind of debt that she had incurred, that this was going to trigger me to have to -- I was going to have to report the loan and I would have to report, I would have to report this stock at the end of the year But I wasn't worried about it I report whatever my asset picture is or whatever my loan and stock, whatever the picture was, I would report at the end of the year And so I believe I mentioned that to her at the same time

But after, really after looking at all those factors, I just was not going to take on that fight again with my wife I felt I had made the mistake before, and I just did not have the heart to tell her, "Give it back, sell the stock," because that's something that she had wanted to do for many, many years And I had made a decision that she was very, very emotionally unhappy about before, and I just was not going to do it again.

Q Did you ever later in the month of June speak with Jonnie Williams about it?

A There was a time subsequent to that that I had some discussion with Mr Williams I was particularly concerned about wanting to verify the terms Maureen related to me what the terms were They were good terms I mean, I had some other convenience checks I think I had available at about two percent at the time But the fact that it was a balloon payment, I just wanted to make sure what those terms were, that there weren't some payments, too. Even though it was her debt, I felt that I wanted to know what that was

I understood from Maureen that there might be, there was going to be some paperwork coming I certainly expected a loan to have some documents attending that And I understood from Maureen that she believed there were going to be some documents coming, a loan document that Mr Williams would have drawn up. So at some point, and I don't remember when, after that, I believe I had a brief conversation with Mr Williams just to be able to verify that those were in fact the terms, that it was two percent, that it was four years, that it was due in 2015, that it was a balloon payment And I did that at some subsequent point

Q In 2015 you would have been out of office?

A Yes, that would have been the year after I got out, yes

Q And going back to Mr Williams' testimony about he either talked to you on the phone or saw you at the Mansion or came through the tunnel or whatever on the 23rd, is any of that true?

A No Those are absolutely incorrect I never talked to Mr Williams before that loan was delivered to my wife I didn't know about the loan until after it was delivered to my wife I never talked to him. He never came to my office, any sneak through any tunnels There was nothing like that that occurred. Those statements are not correct

Q I want to pull up RM-0178-0600, which has previously been admitted. This appears to be a copy of your calendar on the 23rd.

A Yes

Q And you have seen in this trial the sign-in logs for Jonnie Williams on that day?

A I have, yes

Q And what's your recollection of when he was apparently over at the Mansion?

A From what I saw introduced, I believe he had signed in about, I think about noon and signed out about 1:15 Maybe that's not right It was somewhere in the noon time frame, though, that he was apparently at the Mansion. Maybe it was 11 to 12:15, somewhere in that area.

Q And as for you, you weren't at the Mansion; you were at the Patrick Henry Building that day?

A Yes

Q And what does your calendar show for that time frame, basically, up until about 1:15?

A Well, every day I meet with Pam Watts, who has been in the court I meet with my executive assistant to go over documents and whatever she needs me for I had a conference call with the Policy Committee of the Republican Governors' Association at the time, as I'm on the Executive Committee, so I was on that call And then I had lunch delivered over at the Patrick Henry Building, which happened more often or not I would have the lunch over there so I could work for lunch. Then I had a meeting with Secretary Hicks-Thomas, it looks like, at about 12 I guess that would be maybe around 12:15 I remember that being a matter of some -- that was suddenly put on the calendar It was about the issue of the parking lot down at VCU and possibly covering up some historic slave cemetery markers, and it was an issue I needed to get on top of right away so we could try to resolve that before any construction started. I remember that got added to the calendar pretty quickly

Q This version of the calendar, is that sort of the -- that's the most updated version of the calendar that exists?

A I don't know if there's others, Mr Asbill I can't say But it would not be infrequent for a calendar to have multiple changes in the days leading up to it and then even one change or two during the course of a day So I can't tell you if this is the last one But it looks like what I remember doing that day

Q Okay You can take that down, please With respect to the issue of stock, are you aware that your wife bought additional shares of Star stock later in 2011? Or in realtime?

A No, I didn't know that I learned that after the investigation started.

Q Was that something she ever discussed with you?

A No.

Q Let me talk to you about the PAC Homestead Retreat, June 23rd to 26th. Before I do that, let me ask you another question: With respect to the stock, you talked about the mock stock certificate, et cetera, on the trip to the airport for the honeymoon

A Yes

Q Was it your understanding that the stock was going to remain in Maureen's account at Davenport, or that it was going to be transferred to the kids' names in June?

A You know what? I thought what she told me was, "I bought stock for the children " She had been telling me for 20 years she wanted to So I heard "for the children." I believe that whatever she did with Mr Piscitelli, that these shares were already in the childrens' name And I may not have asked all the right questions at that time I remember when my dad gave me the stock, I actually, the stock, I think, was actually in my name, and so I assumed that that's probably whatever Maureen did to buy the stock, she had done that But that's just what I heard from her I believed that at that time, that it was actually in the name of the children And when we got closer to disclosure time, if it was something I needed to disclose I would address it then. But at that time, that's what I thought I heard her say to me

Q And the account with Davenport that contained this stock, was that a joint account or her sole account?

A No, that was her account The only business I had done with Mr Piscitelli was, as I mentioned, back in 1988 when I sold my dad's stock to Citizens Utility A. He had sold the stock for me at that time I had earlier, ten years earlier, had my own E*Trade account, but I don't think I had done anything with Mr Piscitelli before that

Q And so did you have an active account with Mr Piscitelli or an account at all?

A No

Q Nothing, nothing that went from way back when until 2011?

A No, we did not

Q And at any time, did you personally ever own a single share of Star stock?

A I did not I didn't have any interest in it

Q Let me go to the PAC Homestead Retreat, June 23rd to 26th, 2011 Tell me about that event You know, what was going on, what was it about?

A Every year in the summer, I did a retreat for the top donors to my PAC and the campaign Part of what I mentioned to you before was called donor maintenance We wanted to make sure we maintained good relationships with the people that invested significant amounts of money in my campaign and PAC So Ms Hahn, I mentioned her before, our fundraising chairman, would put this event together And it was usually about two days, from a Thursday afternoon to about Saturday at noon We tried to make it a very educational thing We would invite some congressmen, some leaders from D C I would be there, sometimes the Lieutenant Governor, some legislators, and they had to make presentations about what's going on in state government And then we would have some recreation activities, a couple dinners, and then golf in the afternoon, that kind of thing So that was, I think we did that every summer, every June during the time I was Governor

Q Before we go on about that, I know you said you had no interest in the stock. You had no interest personally or any interest at all?

A I had no interest in buying the stock for myself as an investment option, is what I meant I didn't own any stock at the time Most of the investments that I had were in real estate or in LLC's So I was interested in the stock market generally, but I had no interest in that particular stock.

Q As a personal investment

A As an investment, yes

Q All right On this PAC meeting in June, late June, how many people attended that event?

A I think there were probably maybe 120, 125 These would have been the donors that had donated $25,000, $50,000, and up to my campaign and the PAC These were our top political business supporters And so it was, you know, it was at a nice place with nice events and some distinguished people. I always brought in a governor generally from another state, Governor Jindal, Governor Barbour, other people would come in to speak It was something different because these were my top people

Q Did Mr Williams attend the event?

A He attended twice I think he attended in 2011 At that time, he had been about close to, I think, a $100,000 in-kind contributor to the campaign and the PAC, so he clearly would have been invited.

Q Did you personally invite him?

A I mean, in a manner of speaking, I invited everybody

But I think Paige Hahn, my assistant, did all the invitations

Q All right. Did you ask Mr Williams to fly your children to that event?

A No, I did not personally, but I know that he did that

Q And how did that come about, to your understanding?

A You know, I've heard some testimony in court I'm not completely certain. Most of those kinds of arrangements would have been made by my scheduler for private aircraft I think my wife had a hand in doing this But I was actually coming, I believe, from New York to go to the Homestead or something So I had gotten there a different way So those logistics were handled by either my scheduler or my wife I am just not sure

Q Was it discussed with you in terms of how it was going to be handled, to your recollection?

A I don't have a good memory of that I think I may have known that originally, that Mr Williams was going to take my wife out there That might have been the original plan. And at times, if my wife is going to an event but one of the children might also have an interest or an availability to be at an event, they might go as well But I don't have any independent recollection.

Q All right Who paid for that event?

A It was a combination. A good part of the event itself was actually paid for by the Political Action Committee These are the donors that have donated significant amounts of money to the Committee, so our PAC pays for a lot of the recreation and the meals and a lot of things I believe that we asked the attendees to actually pay for their own hotel room. But I think most of the rest of the things that we do that weekend are provided by the PAC Ms Hahn did all of that work for me, and I typically didn't get involved exactly in those details, but I was fully supportive of having a fun event to be able to reward and have some time to visit with our top contributors

Q Did you spend much time with Jonnie Williams that weekend?

A I saw him some We were in the same foursome, I think.

Q Playing golf?

A On Sunday I may be confused One of the two -- I think he came two years One of the two years I was in a foursome with he and one of my sons and with Phil Cox. We played together

Q All right Were you aware that your son, Bobby, played golf with him, that the two of them played alone at some point during that event, during that weekend?

A You know, I heard my son say that on the stand. I don't have independent recollection of him playing But he may have told me and I just don't remember I'm sure that he did. That is, I'm sure that he did play I don't remember him actually telling me that at the time

Q Were you aware that Mr Williams and Bobby had become friends?

A You know, I had some understanding of that You know, I find my son to be pretty mature for his age, and it is not atypical for him to have conversations with people that are older than he is I knew that he was -- he spent a little time with Mr Williams at a couple things They seemed to be friendly But in terms of the amount of the communication at that time, I did not know

Q Before the event, a week before the event, do you recall whether or not you received some sort of a mailing from Mr Williams about VA studies?

A Yes

Q And what was that about?

A I believe I got that in my mail folder, and I believe it came through an e-mail through the First Lady's Office, I think from Ms Sutherland. And again, mail comes from so many different places, and either my scheduler or Ms Watts, my executive assistant, would have put it in a mail folder for me to take a look at and read. So somewhere after the 20th or so of June, I think it was dated the 16th, but somewhere after that, that would have come to me And I do remember seeing that

Q And do you recall reading it?

A I remember reading the cover letter, and I may have glanced -- there were a number of pages of attachments It was more clinical information At that point I made a decision just to send it with a note to Dr Hazel This would have been like I would have done with countless other documents that I got in the read file, where people are making proposals or asking for help or telling us about something going on with their company or sending us a press release about something they were doing This was an everyday occurrence in the Governor's Office And this appeared to be a proposal about, well, the letter called it a Virginia Study And so I didn't know whether or not it would trigger the public procurement laws of Virginia or what was required. But I knew Dr Hazel might be -- again, clinically, I had asked him to meet a year ago or so, so I put a note on it, I believe, to the best of my recollection, "Dr Hazel, please evaluate and action as appropriate " Which is typical of what I would write on something like that

Q Did you ever personally call Dr Hazel to talk about it?

A No

Q At any time did you ever get up with Dr Hazel about it after that?

A No, I don't remember any feedback from Dr Hazel Again, just because I asked him to evaluate it, this would have been the usual form. Whatever they felt it was appropriate to do with that information I provided him, I would expect them to do And if they were interested, take action, if not, then don't But I don't remember any follow-up from that letter that I sent out to Dr Hazel

Q Okay After the PAC event, do you recall Jonnie Williams sending new golf clubs and a new golf bag to Bobby at the Mansion?

A Yes

Q How long after the event did that occur, roughly?

A I don't have a good memory It may have been a month My recollection is it showed up at the Mansion I didn't know it was coming I didn't have any conversations with my son. And again, I'm busy about the business of governing, and at some point I received some notice that it was, that it had showed up there Again, the Mansion, there is a fairly large house, there's three or four people that, five or six people that live there -- I mean that staff the place There is an outside area that's an old carriage house, and I think that's where these clubs ended up And somebody, I think, at some point had sent some notice over to us that these clubs were there

Q Did you solicit that or know it was coming at any time?

A No, I did not No

Q You found out about it, and you discussed that with issue with Bobby and your wife?

A I discussed it with Bobby first They were home for the summer Both of my sons, Bobby and Sean, were home for the summer I think this was after their second year at Virginia. And I don't know, it just seemed to me that I didn't realize that Bobby had any kind of independent relationship with him one way or the other, but it just, it just struck me maybe a little bit differently than the wedding present, that these kind of came out of the blue, there wasn't an event or occasion or anything like that And it was a very nice set of golf clubs It was a University of Virginia bag They appeared to be new clubs And I didn't -- I don't know, my feeling was that the gift was just a little much.

Q So what did you suggest to Bobby, if anything?

A My son was coming up on 20, 21, and I'm trying to teach them to make good decisions I knew the gift was perfectly lawful under Virginia law At that time, I hadn't done anything for Mr Williams; he really hadn't asked me for anything He sent me that letter But there was nothing that I felt uncomfortable about accepting a gift at that point or having my son accept a gift So I told him what my opinion was of that, that I felt that it was just a little much for an unsolicited gift to show up like that And we had some discussion, and I think, as he testified, I didn't know he talked to my wife, but at the end of the day he opted to retain that gift

Q And did you have any discussion with Maureen about that decision?

A I don't remember having a discussion with her about that No.

Q All right At some point, I don't know, is it at the same time that Mr Williams sends a golf bag and his used, old clubs to Bobby's twin brother, Sean?

A It seemed like it was sometime after that So maybe sometime in August I don't remember the exact time But sometime that summer that he sent that, Sean received clubs, also. You know, those did not appear to be new I think they looked like they were Mr Williams' older set I think Sean may have told me that But my best recollection, I had a similar discussion with Sean about that He told me, I think he had actually played, I believe he might have actually played golf with

Mr Williams at one point or had talked to him in person, and Mr Williams indicated that he had that set and was going to get a new one and, so, anyway, I had this conversation with Sean as well But again, he opted to keep that gift

Q Okay At some point in time, Mr Williams sent you personally a Notre Dame golf bag?

A Yes, he did

Q And was that something you asked for or did that just show up at the Mansion, too?

A That showed up, I think, sometime in July It seemed to be sometime around my anniversary I mean, as far as I knew, there were no documents with it The system was supposed to be that if any kind of gift came to the Mansion, they were supposed to be, I mean, they were in the reportable area, those were logged and then they were sent over to my scheduler or Ms Watts because those were things that would potentially need to be reported. And it seemed like we got some notice at some point that this item, this Notre Dame golf bag, had showed up and it had my name on it or it was addressed to me

Q Did you keep that bag?

A I did. I didn't use it for a while, but yes, I did keep that Yes

Q And what was your understanding of the value of that golf bag?

A What I thought would happen is that for donors that provide any kind of gifts to an elected official, there are a couple ways to make sure those things are captured for the reporting forms There is a requirement that any donation actually be logged on a form by the donor and sent, I believe, to the elected official, and also to the State Board of Elections or Secretary of the Commonwealth, I think, under Virginia law So we would have expected to get some form. If it is a trip or things like that, we actually reach out and do it So I didn't know a value of the gift when it got sent to me But typically, that would have been captured and put into the Statement of Economic Interests, draft statement for a gift like that when it got reported to me

Q Did you have your own, regardless of whether you got any receipt for it, did you have your own independent sort of assessment or guess as to what it might be worth?

A I thought it certainly was over the $50 limit It was probably a couple hundred dollars I had been playing golf for about 30, 40 years, and I certainly understand golf bags The ones I bought were usually under a hundred dollars, well under a hundred dollars But this one looked to be a custom bag because it had my university's name on it, so I figured those were pricier But I didn't have an exact value, no

Q Why do people offer, or why did they offer you gifts as Governor, just in general?

A I think it is for the same reason --

MR. DRY: Objection, Your Honor, calls for speculation on why other people are giving him gifts

THE COURT: I think he has already answered this question. But he can go ahead. But as I recollect, his answer was that everybody who gives you something wants something Wasn't that your answer?

THE WITNESS: Yes, sir I guess I would incorporate the same explanation I gave before Some people, I guess with gifts, some people do it just to be nice Some people do it so you remember them the next time they see you and talk to you. Some people might want access to you and for a phone call to get returned. It is the panoply of reasons that I mentioned about the campaign donations that I would receive during a political campaign. Some people will do it to spend time with you. Many of the gifts that I received, in fact, most of the larger ones that I accepted, I really accepted because I didn't see a ticket or an event What I saw was time with my family That was really the most precious thing that I got out of the gift I would see a ticket to a football game or I would see a ticket to a concert, or a weekend that I could spend at a lake house That's the thing that I had and the rarest commodity was being able to have time with my kids and family because of my work schedule That's why I took them.

But people give them for any number of reasons But a lot of it is they want to spend time with giving a ticket or item or flight so they could spend time with a Governor, Lieutenant Governor, Senator I think that's why

BY MR. ASBILL:

Q Okay With respect to the golf bag and the other golf equipment, you know, did Jonnie Williams ever ask you for anything in return for any of those golf-related gifts?

A No Mr Williams asked me for very few things directly in the whole time I've known him.

Q All right Let's go to the Smith Mountain Lake event That's July 28th to the 31st, 2011

A Yes

Q You went there for the weekend, for a three-day weekend?

A A three-day weekend. Yes, I did.

Q You stayed at Williams' house?

A Yes

Q Why Williams' house as opposed to someone else's house or not at all?

A In 2010 we stayed at Smith Mountain Lake as guests of a company called Delta Star It was about $8,000 or $9,000 I reported that on my statement in 2010 And they had invited us to come back again in 2011, my extended family And so we had originally accepted that offer from this other company Including a place of lodging, a house, that they had available through Delta Star, not Star Scientific My wife told me that Mr Williams had offered his house, also, that year at Smith Mountain Lake And she talked to me a couple times and said, "Why don't we try -- why don't we use a different house this year?" And so since Delta Star was kind enough to provide some boating and a couple of meals and a few other things like that, I told Maureen that we would use, we could use Mr Williams' house that year Then these other expenses were paid for by Delta Star And that's the way I reported it Some of the things were reported for Star Scientific and some for Delta Star in 2011 And then in 2012 we went back to Smith Mountain Lake as guests of Delta Star again. So I had another option, but we decided Mr Williams' house, that we would accept Mr Williams' offer for that year in 2011

Q What is Delta Star? What kind of company is that?

A Delta Star is a Virginia corporation that makes transformers They have offices here and the West Coast They make high voltage transformers and things of that nature for industrial use

Q Okay And so you go there on the night of the 28th; is that correct?

A The Thursday If that's the 28th, we are there -- we we were there the 28th, Thursday through Sunday night, three days

Q Did you go down with Ms McDonnell or independently?

A No I was in the western part of the state that day I was at the Greenbriar, I think, meeting with the folks out at the Greenbriar in West Virginia, and I had some other stops in Southwest Virginia. I was doing a fundraiser for another elected official down in the Smith Mountain Lake area. And I eventually met up with the family sometime that evening, 6 or 7 o'clock, I think, at Mr Williams' house So they drove down. My best recollection is they drove down separately

Q Okay Over the weekend, basically, what did you all do?

A Well, that weekend was just about all of my family and my kids being together My son-in-law came down that year My sister's boyfriend came down. And I think four out of my five children came down. That's why I accepted those Smith Mountain Lake weekends It was just three days with just my family, and all we did really was spent time on the water, played golf with my sons We had a brunch with the owners of Delta Star every Sunday for those three years We would have brunch with the owners of Delta Star, sometimes go to church. But it was really just for the family to pretty much hang out at the house and around the water One year, maybe two years we went fishing So that's what it was about It was just a three-day family weekend.

Q And you say Delta Star paid for some of that, the brunch or some golf; is that correct?

A They did, yes

Q Some of the meals or some of the cooking?

A Yes

Q The others were paid for, other things were paid for by Mr Williams?

A Yes

Q All right Do you recall the Ferrari that we have seen photos of in this case being at the house, and if so, when did you first see it and where did you see it?

A I saw it sometime over the course of that weekend I wasn't expecting any Ferrari or anything I remember hearing my wife tell me that there was a car that we were supposed to drive back; that Mr Williams had asked for a car that he had there at the house to be driven back because he was going to give it to his daughter Rachel That's what I understood

Q Not your daughter Rachel

A No, I'm sorry, he has a daughter Rachel, also His daughter Rachel That's what Maureen had told me At some point over the weekend, I learned that that car was there I think I first saw that it was actually in the garage, is my best recollection. I peered through a garage door from the house and I saw the car there It might have even been covered up, and I think we might have gone out and uncovered it And so obviously it was a very significant high performance car

Q You say you thought it was already there, essentially?

A I didn't know I didn't see it come. Nobody told me it would be delivered. I just knew there was a car there we had to drive back and that was the car

Q Did you have any discussion with Mr Williams about it being delivered there so he could drive it back or use it?

A No, because I had the Executive Protection Unit They were going to take me anywhere I needed to go We weren't going anywhere The whole purpose of going to Smith Mountain Lake was to go nowhere, spend time on the water, boat, fish, and be with my family I really didn't have anywhere to go except up to the clubhouse on Sunday to go to brunch. Other than that, we really didn't have anywhere to go So I didn't need a car, and any car I needed, the Executive Protection Unit was right there to take me

Q How far away is the club from the house?

A Less than a mile

Q Did you have any knowledge of any potential discussion between your wife and Mr Williams about getting it down there, getting the car down there for you to be able to use it in any way?

A No It was just the opposite What I understood was it was a car there that needed to be returned and driven back for his daughter, is what I was told.

Q Other than driving it back, and I'll get to that in a second, did you ever use it when you were down there to do anything with it or go anywhere with it?

A I had forgotten, I think I drove it up to that brunch, that mile or so that one day It might have been Sunday I don't remember But I might have I think I did drive it that one day to go up there So we drove up there and drove back. So it was less than two miles, I think. We really didn't go anywhere else Because as I mentioned, there was nowhere to go There was no need to go anywhere because it was a water vacation, really

Q Did you drive it home or back to Richmond?

A Yes, I did.

Q And why did you do that? Why did you do it? I mean, I understand you said that Mr Williams, you understood that Mr Williams wanted it back in Richmond, but why did you drive it as opposed to the EPU or somebody else?

A Well, because I hadn't driven in almost two years I hadn't driven any car in two years And frankly, before that, I hadn't driven much at all for probably three or four years before that So at some point, I'm entitled to be normal, to drive My kids sort of egged me on a little bit I'm not sure even who was supposed to originally drive it back I was planning to get into the back of the black SUV, and my kids did prod me

Listen, it was a Ferrari I had never driven a Ferrari I had never driven really any sports car I drive a Toyota that has 180,000 miles on it And it was fun. And I thought, look, I'm going to be with my wife, EPU is right behind me, and I'm going to spend a couple hours driving a Ferrari back to Richmond. So I enjoyed it I hadn't done anything like that before or since I only drove two other times during the whole time I was Governor after that So I was as compliant as I could possibly be with the Executive Protection Unit But it was fun. I was on a vacation. And I decided that I would drive it back, and I got back safely

Q They preferred that you not drive?

A I am sure they did. They were very polite They didn't say anything I might have got a look They didn't say anything in particular But listen, I'm sure they would prefer that I didn't go out on the ocean or didn't shoot skeet, either, or anything else that might have been dangerous My first couple weeks in office, I had an interesting conversation with the Lieutenant of the Executive Protection Unit, who said, "Listen, we are here to protect you We want you to be as normal as possible You are going to be surrounded by law enforcement all the time This is very different for any Governor Our job is to keep you safe, because if you get hurt or killed, it is way too much paperwork." And, you know, we got kind of a chuckle out of that That was Lieutenant Watkins that told me that

It is the kind of relationship that I had with them. They really did become like family They were great people They were pros every step of the way I knew that anything we talked about in the car was going to be kept just between us, because I had to make policy decisions, dial for money, so forth. I knew they would prefer that I didn't drive, but it was, you know, it was something I felt that I was -- that I wanted to do and it wasn't a big deal And I enjoyed driving it for three hours, and that was that

Q After you got back, Martin Kent heard about this and called you up short on it?

A I didn't know all the things that Mr Kent testified to the other day But I think he did have a discussion with me and told me that, you know, EPU would prefer that I didn't drive sports cars while I was Governor

Q Did you ever do it again?

A I test drove my daughter's Honda Accord driving around Capitol Square And my last year in office I drove a van in Virginia Beach for about 20 miles Those are the three times that I drove as Governor So no, I didn't drive any more sports cars, no

Q In the summer of -- I want to talk to you a little bit about golf in general In the summer of 2011, aside from, you know, you have talked about golf at Smith Mountain Lake, et cetera, did you ever play golf with Mr Williams at Kinloch?

A We played at the Kinloch club I did. Twice in 2011 as his guest, once before the wedding, and then once later on in August I only, I think I only played once when Mr Williams was actually there A couple other times, though, we played Mr Dean, the sales manager, who greeted us there. But I think I only actually played maybe once with Mr Williams

Q On the time you played with your sons before the wedding, that would have been -- excuse me, the June 4th wedding, right? You played on the 29th of May; is that accurate?

A Yes

Q Do you know how that particular golf game was set up?

A I don't Many of those kinds of events are set up by another member of the family or by my scheduler I just knew that it was a very nice offer I got time with my sons and my son-in-law, and I understood it was related to the wedding I think my son, Bobby, might have coordinated that with Mr Williams But I didn't do it But I knew he did it, and I knew he was paying for it I knew that we were his guests, because that's the reason I sent him the thank you note

Q Okay That event, that golf outing, was that on your official calendar for the day on the 29th of May?

A Yes It was on my calendar

Q It was on your calendar

A Yes

Q And did you ever get any kind of a receipt from Star about the value of that particular outing?

A I didn't Typically, for people that donate the gifts, they know that under the rules they've got to send it to two different places One is to the donee, and I think the other is the state board. That would typically be received by Monica, the scheduler, for her to do the draft SOEI statement So I don't know she got anything I just don't know I don't think she got anything

Q Did you ever talk to her personally about it to remind her that "Yesterday, I went and played golf courtesy of Mr Williams or Star"?

A No, I didn't

Q Did that particular golf outing end up on your -- this is in May Did it end up on the SOEI form that you filed the following January?

A No, it did not

Q Whose fault is that?

A It is my fault

Q Was this the first time you went golfing at Kinloch, that May 29th event?

A Yes No, I had actually gone, I think, a year or two before that with another friend out there I think that was the only other time that I had played before But typically I would take my sons up to Honey Hawk or Sycamore or one of those courses and we would play together

Q When you were at Kinloch, did you go into the pro shop and buy items?

A You know, I saw the notes the other day in court I think, I know my sons might have gone in there I cannot remember whether I went in or whether somebody gave us a bag I know we met the manager The General Manager greeted us there I think that might have been one of the times that Mr Dean, the Star Scientific manager, was there, too, to walk with us or greet us, or he might have gone to the driving range with us I'm not sure that was one of the times But somehow I know we did end up up with some shirts I just don't have any independent recollection of me going in and buying things at the pro shop I know we had a couple things to eat, once at the beginning and once at the end, I know we ate, but I don't remember a pro shop visit

Q Did you end up with a golf shirt?

A I think so.

Q Are you aware that your sons played at Kinloch on August 5th and August 11th, they and some of their friends?

A I'm pretty sure I knew about the 11th, because when I played with them two days later, my son said that he had just played a couple days before I'm not sure I knew about the other one on, I believe it was the 5th. But I certainly knew that at least on one of those occasions that one of the boys played, yes

Q Okay Any reason why you didn't pay for these golf outings or any of these golf outings?

A I understood from my sons, who had coordinated those, that Mr Williams had offered to have them be their guests at the course

Q Did you try to pay caddies or give them tips?

A I did the first time I think I offered to pay the caddies I had an idea at least of what their charge would be And they told me that, no, Mr Williams was covering that, we were his guests

Q All right Having seen the receipts in court here, do you think that that was excessive, the golf outings?

A Yes I mean, I'm used to paying $50 or $75 for a round for me and my sons That's typically where I go when I take them. I have never belonged to a country club in my life I didn't ask the questions about how much it was I did not have any idea that it was going to be in the thousands of dollars on one of those events, and I should have asked That's a significant amount of money all totaled. Those gifts are certainly more than I had anticipated, given what my understanding of a golf outing was, even at a country club. I just didn't know But I should have known

Q Did you know anything about Kinloch or in life had you ever been there before?

A Just the one time I played with another doctor friend of mine as his guest

THE COURT: Let's stop for the afternoon break. 15 minutes

(The jury left the courtroom.)

(Recess taken from 3:48 p.m. to 4:08 p.m.)

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(The jury entered the courtroom)

THE COURT: All right Mr Asbill

BY MR ASBILL:

Q Finishing up golf Did you play any other times at the golf club at Kinloch with your sons in 2012?

A Yes

Q How many times?

A Twice

Q What were the dates or do you recall the months?

A I played once in January right before the General Assembly session started, and then I believe the later time was right before Thanksgiving in 2012 In November, I played And I think that's the time Mr Williams and Mr Dean played with us as well

Q And were your sons playing with -- were your sons there every time you played?

A Yes

Q So they were home from school, essentially, when --

A Yes

Q -- these events occurred?

A We -- yes That's why I played, really, because that's the thing my sons enjoy doing, and I like taking that time with them So every time I play pretty much is with them.

Q Okay Let's go to September of 2011, the Cure By

Design event about which we've heard some testimony

A Yes.

Q In a nutshell, what were you doing that month, September 2011?

A I spent a lot of time on the campaign trail Again, the elections for the State House and Senate were in November, and I was heavily engaged in the political process, doing events, raising money for candidates around -- around the state But we're also in the throes of the budget process, working with Secretary Brown to get the -- all the budget recommendations ready for a December presentation to the General Assembly and our legislation ready for the next year

Q How much did you raise for other people's campaigns?

A We raised and spent I think about $5 million in 2011 for those campaigns

Q Was there any effort by the National Governors Association, was there lobbying about whether or not the event might be held in Virginia?

A Yes

Q And did you lobby for that to be held in Williamsburg?

A I did I learned that the National Governors Association meeting hadn't been held in Virginia in 57 years, and I really wanted to be able to host that in 2012 in Virginia It was the 200th anniversary of the Governor's Mansion that same year, and I thought that would be terrific to have that event in Richmond So I spent a lot of time lobbying other Governors And they eventually, I think, unanimously agreed to host the 2012 summer NGA meeting here in Richmond -- in Williamsburg

Q Did you raise money for that event as well?

A I didn't do a lot My staff did most of it But they had to raise about a million and a half dollars for that event I did a little bit, but not much

Q Okay The Cure By Design event, what is that event or what was it?

A It was a charity event for cancer patients My wife had been asked to be the honorary co-chair woman of that event She had done several things like that for cancer and heart disease and so forth, to be an honorary chairwoman of the event

So the whole idea is this was making it a fun event by having the cancer patients themselves actually be the models, modeling clothes, walking down a runway And that would be just a unique type of fundraiser for people that were hurting and had the disease, and it would be a way of getting people to come They would do -- there was an auction, and they'd raise money for charity

Q Hence the name, Cure By Design?

A Cure By Design

Q And did you arrive at that event independently?

A I did

Q And where were you earlier?

A I was out in Charlottesville. I was at a UVA football game with my sons

Q Okay And at the event, Mr Williams was there?

A Yes I got there near the tail end But Mr Williams was there and I think sat at the table with my wife

Q Do you know how Mr Williams got invited to attend the event?

A I think -- I think my wife invited him

Q You did not?

A No

Q Did anyone attend with Mr Williams, to your recollection?

A I believe that same -- I believe the same gentleman, Brad that was -- I mentioned earlier from New York, from the December 2009 mention, I think -- I believe he was there as well

Q Brad Kroenig?

A Yes The male model Yes

Q Okay And was a vacation with you and Maureen in New York City for a weekend, was that an auction item or a listed auction item?

A No, it was not

Q If it were to be a listed auction item, would that have been something -- would that have had to have been something that you would have had to approve?

A Me or my staff in advance, yes

Q Okay And what happened? How did some weekend there in New York get into play at the auction?

A When I got there, the MC, who I believe was one of these designers from New York, asked me to come out and walk down the runway with my wife, and then to be able to make some remarks and thank the people who were there for their generosity and donating to this worthy cause

I felt it was appropriate My wife was the co-chairwoman and I wanted to support her in this endeavor So I made some brief remarks and thanked people And then the -- somehow the MC decided that he was going to add an item to the agenda, and he offered his condo in New York as a auction item to say that people could come up there and stay for a weekend

And at this point I'm a little fuzzy I don't know if it was Mr Williams then at that point that offered his plane or whether it was the MC himself that already knew that But the next comments from the auctioneer was, "And we're going to have a plane to take you up there, and you also get to spend the weekend with the Governor and First Lady "

Q So what was your reaction --

A It was a little -- well, that was news to me; that was being auctioned off at the event So I had a decision to make as to whether to kind of cause a scene right there or just to say, Look Whoever bids on this, I'll just talk to them afterwards, but I'm not going to stay in some stranger's apartment in New York for a weekend, and I'll just deal with this afterwards And if we have to give them a discount or something, we can do that, but -- so it was a little awkward I had to make a decision out there on the stage I think you saw the pictures And so I just decided I'd wait it out and see what happened and who bid, and we'd just try to work this out afterwards

Q And who ended up bidding?

A Mr Williams bid He may have been the only donor I just don't remember But he ended up -- he ended up bidding 15,000, and that was the winning bid And so he donated $15,000 to charity

Q I take it the trip never happened?

A Never happened At least not with me

Q Dinner that night After the event, did you go to dinner with Mr Williams, and if so, was that planned or impromptu?

A No That was impromptu after the charity event I mean, we're obviously appreciative that he would make a donation like that to a charity that my wife was working on And so I think a couple of us just agreed to go to dinner afterwards I believe it was in the same hotel out in the western part of Richmond where the event was held And so we had a dinner afterwards

Q And who attended the dinner?

A You know, I'm a little fuzzy on that. I knows it was Mr Williams I believe the -- I think Mr Kroenig, Brad Kroenig was there My wife, me And I'm a little fuzzy There may have been a couple other people there, but it was -- it was six or seven people, I think

Q Do you recall, generally, what you discussed at dinner?

A I really don't have much recollection of that I think it was mostly about the auction and -- and just -- just general -- just general chitchat I don't think it was a lot about business or things like that at that time

Q Do you recall at the dinner whether or not Mr Williams asked you for anything?

A No Not to my recollection, he didn't ask me for anything

Q Were you aware of how much the dinner cost or your pro rata share for you and Ms McDonnell?

A No

Q You've seen evidence in this case that according to the credit card bills, or something, there's some -- I don't know Were there any reports back from Jerri Fulkerson about the cost of that dinner and whether or not it was a gift?

A Not to my knowledge

Q All right Do you remember what you ordered?

A I don't It was a restaurant inside the hotel, the Hilton Hotel out on the West End in Henrico I don't

Q Was alcohol ordered at the dinner?

A I think so

Q Did you order it?

A No

Q Did you look at the wine list or check out anything like that?

A No

Q Who did?

A I believe Mr Williams did

Q Did Mr Williams offer to pay for everyone at the dinner?

A Yes

Q All right On that score about dinners, Mr Williams apparently also paid for a dinner after the Healthcare Leaders event February 29, 2012?

A Yes

Q It was at the La Grotta restaurant here in Richmond?

A Yes

Q Do you remember going to that dinner?

A I do.

Q Okay And who attended that dinner?

A Again, that was, I think, a fairly impromptu dinner after the Healthcare Leaders event, or it might have been scheduled right before that I think my wife asked me to -- if I would go It kind of was right in the -- sort of at the tail end of the General Assembly session, and I took a -- we decided to take a brief break

But it was a couple people that had been there at the Healthcare Leaders event I know Dr Ladenson was there, Dr Crantz I believe my wife and I, Mr Williams And it seemed like to me there were a couple other people there, but I -- I'm just not -- I can't -- I'm not clear on that

Q Did Mr Williams, at that dinner, ask you for anything?

A No

Q What did you think the dinner cost? I mean, did you look at the menu? What did you think it cost?

A Well, you know, I had been to La Grotta a couple times before during my time that I've been here for the

General Assembly session So -- I don't know I ordered an entrée that was probably about $20

And what I do remember is that was during Lent, and I don't consume any alcohol during Lent So I didn't -- I think my wife and I didn't have anything to drink So I thought the bill was fairly inexpensive At least for my share of it

Q Under 50 bucks for you?

A For me, yes

Q Did you think it was inappropriate in any way for Williams to be paying for the two dinners that I've just asked you about?

A No I mean, I've had -- you know, from my 22 years of reporting gifts on my Statement of Economic Interest, I've reported multiple, multiple dinners from different people along the way I've had many people, during campaigns, offer to take me out to dinner that have been reported on other reports and so -- I didn't That's probably the most frequent gift that there is in Virginia is people -- people taking other elected officials out to dinner Because from their view, it's not -- it's about the time They get to talk about whatever they'd like to talk about that's important to them

Q All right Up until that point of that La Grotta dinner, had you -- had Mr Williams asked you to do anything for him other than connecting him with Bill Hazel or somebody that could talk to him about his company back in October of 2010?

A He did not ask me directly. He sent me the letter back in June.

Q Yeah

A And then right around that time, it may have been a little after, he asked me to call his father for his 80th birthday But short of that, Mr Williams didn't make asks personally of me He informed me about what was going on with this company on a couple of occasions, but I had no ask at that time

Q So in person ever, did Mr Williams -- I mean, whether it's by phone or otherwise, did Mr -- call his dad, is there somebody I can talk to about my company, and that's it? And he sends you some letter that you refer to Hazel Is that it?

A Right In June of 2011, yes

Q Now, with respect to your wife attending Star events, we've talked about Roskamp Let's move on to October 2011 In general and in a nutshell, what were you working on that month?

A Well, that was still the campaign cycle We were now a month out from the general election So it was a very frenetic time when it came to the campaign trail So I spent a lot of time doing that And I was, again, still traveling I was, at that point, now Vice Chairman of the Republican Governors Association and spending a fair amount of time now helping out with Republican Governors initiatives around the country

Q Okay Do you recall that your wife, in October of 2011, attended three out-of-town Star-related events?

A I know that now I knew then in part

Q What did you know in realtime about her attending any event relating to Star?

A I knew in October, she told me she was going to Michigan to observe --

Q Flint, Michigan?

A Flint, Michigan I mean, I vaguely remember Mr Williams telling us, when he was over for dinner, about something called the Flint study, which was another one of the studies He had one at Hopkins, one at Roskamp, one, I think, at Pisa, and then he had this one at Flint that, my recollection, had to do with cardiovascular disease The one in Roskamp related to Alzheimer's

But this was another -- as I understood it from listening to him and then, I guess, my wife telling me too, this had to do with similar clinical trials or research on -- with anatabine for a different treatment modality, that being -- that being cardiac issues And so my wife told me essentially the same thing she told me going to Roskamp, that she was going -- she was going to take -- see some of the clinical trials and meet with doctors

And in my mind, I'm thinking that this is a small, sort of informal event, that Mr Williams had to travel out there anyway, and so my wife was going as a guest to observe, and she was going to just be there for the day

Q That's the Flint How about the Richmond --

A Yes

Q -- Westin event?

A I didn't know anything about that until after the investigation started

Q All right And the California event, the Pelican Hill, California, trip in mid-October?

A Yes I knew a little bit -- I knew a little bit about that because my wife was going to her annual Nu Skin convention out in Utah She had been, oh, I'd say half the time over the last couple of years This was the company, the nutraceutical company that she was a direct distributor for that had a line of weight loss and beauty products, nutraceuticals, et cetera I was taking a lot of those vitamins for the last ten years She was very, very excited about going to this annual convention because they get the latest information on products and science

And I knew that sometime shortly before the trip, I think she had originally made commercial reservations I think I'm not sure But at some point, that Mr Williams told her that he would be willing to take her on his plane out there because he had other -- other business out there as well, I think in California, and he'd be able to take them My wife was going with three other -- two or three other woman that were also distributors or were interested in the nutraceuticals products, and they were going out as a group And when Mr Williams made that offer, she told me that they were going to go with him

Q Okay Now, I mean, did you think about these events -- I mean, you didn't know about the Westin. But with respect to the Flint, Michigan, and the California trip, did you think that these were things that were inappropriate, based on what you understood, for her to attend?

A Well, no Getting -- about the California event, they ended up going to California a day in advance I didn't know that she was actually attending any Star-related event for that The other ones I did, but I understood those to be, again, clinical trials, et cetera So no I thought, first of all, she's not going really as the First Lady She's going because she's got this long-term interest in nutraceuticals Just like she was going to her Nu Skin convention, she wanted to learn more She wanted to be able to get a better understanding of the clinical trials related to this substance that a Virginia company had developed

And look, if there was something to this and they could have clinical trials be in Virginia, as opposed to Pisa or California or Michigan or Florida or Maryland, I was all for it I'd much rather have those things be in Virginia If this was something that could create jobs in Virginia, I was -- I was all for it

But at that point it seemed to be such in a preliminary stage My wife told me she was just going to observe, learn more, and I didn't see any -- any conflict There wasn't anything personal that I saw, that there was an ask directly for me to do anything for Mr Williams And so I didn't -- I didn't see a problem with her going, based on what I knew she was doing

I mean, had I known that there was investors and press there and that she was going to actually speak and be introduced in her official -- or actually, unofficial capacity there as the First Lady, I would have had a very different view of it

Q Mr Williams testified that before the Flint trip, which was October 22nd, he called you to ask your permission for your wife to attend Did that call occur?

A No I did not talk to him before that

Q And did you ever know that your wife was a featured guest of some sort at any of these events?

A I learned that after the investigation started, seeing invitations on the website about a month after the investigation that I learned of it

Q So your wife never told you that she spoke at any of these events?

A No

Q Do you know whether or not there was any effort internally within your staff to prepare or help her prepare remarks? For example, did -- did your Press Secretary, Tucker Martin, your Communications Director, Tucker Martin, did he try to help her prepare any kind of remarks for any of these events?

A Not to my knowledge

Q Okay

A But if -- if she was going speak, that would have been the traditional way of doing it, if it was a planned speech, because she would want to prepare days in advance That was her custom

Q All right And so -- I mean, you've seen these We've all seen these in the trial

A Yes

Q There was a video of the Flint, Michigan, trip

A Yes

Q And there was a video of the meeting out in Pelican Hill?

A Yes

Q And you saw her speak at those events --

A I did

Q -- on those videos?

A Yes.

Q Before the investigation started, had you ever seen those videos?

A No In fact, I saw them for the first time in court I had seen some transcripts before, after the investigation started, but I hadn't seen the videos

Q All right The Pelican Hill event in particular Do you recall, from watching the video in the courtroom, that when your wife got up to spoke -- to speak, excuse me, she said something to the effect that you were an old friend of Jonnie Williams?

A Yes

Q Do you have any idea where that came from?

A No I -- I would not think that That's not accurate I was not an old friend of Jonnie Williams We had known each other for a short period of time

I can only say that, you know, the discussion we had at the Mansion --

MR DRY: Objection, Your Honor Speculation

A I really can't say

THE COURT: Sustained

BY MR ASBILL:

Q All right In 2011, I want to talk to you about the topic of the sale of Star stock

A Uh-huh

Q Do you recall knowing anything or learning anything in November 2011 about the sale of the Star stock that your wife had previously purchased much earlier in the year, in the May or June time frame, with the $30,000 of proceeds from the loan from Jonnie Williams to her?

A Yes

Q Okay And between -- is that May when you -- I mean June when you first learned about the purchase?

A Yes June 15th when we talked about it Yes

Q Okay Between June 5th and November, you thought that she had the stock and it was in the -- already in the kids' names?

A That's what I understood from our discussion Yes

Q Okay Did you learn anything in November about her still owning the stock, and if so --

A Yes

Q -- the sale of it?

A Yes, I did

Q And tell us how that happened What did you learn, and when did you learn?

A My best recollection, it was sometime before Thanksgiving in 2011 I believe I was sitting in my office upstairs in our apartment in the Governor's Mansion, and she told me that she, of course, still had the Star stock, but it was, in fact, not yet in the children's name, that she had been trying to get it into the children's name for a while and had had some discussions with Mr Piscitelli about that but hadn't been able to find a way to do it, that her -- her goal was to have it in the children's name, but her retain that stock until the children got married and then present them with a stock certificate in their name That's what her plan was This was her arrangement It was her money

And so -- I have known Mr Piscitelli for 25 years I figured whatever advice he gave her on any of these things would be -- would be good and that they could work that out

But she told me it was still in the kids' name at that point

Q Kids' name or her name?

A I'm sorry It was still in her name and she had not yet transferred it into the children's name

So the first thing I did was to look up the value of the stock, and I found out that in that, I guess, five- or six-month period, the stock had taken a tremendous monetary hit It had gone down dramatically, and the value of her investment had gone from about 31,000 to, oh, I think a little over $15,000

So I said, "Maureen, you" -- "you know, I suggest you" -- "don't transfer it to the kids I mean, what you need to do right now, you need to sell this stock I think My advice to you, this stock has gone down tremendously It's a risky stock It's not a blue chip It's a new start-up company It's an emerging company with that anatabine, and this thing has gone down" -- "you've lost half the value " In fact, I said, "You've lost half of your dad's inheritance " I mean, because that's the way she looked at it is this money that she borrowed from Mr Williams was really the substitute for the inheritance money that I asked her to spend on credit card abatement back in 2010

So I said, "This is not a good use of it You want to have a stable stock if you're going to buy stock for the children, and this clearly is not it It's too" -- "it's much too risky, and so I strongly recommend that you sell this stock "

Q And were you disappointed that she had not already transferred it into the children's names?

A Yeah, somewhat, or I -- yes, I was I thought maybe I misunderstood her But I clearly -- I clearly believed that it was already in the children's name at that point

Now, I still might have had to report some of that for the children if they lived in the house But either way, I heard that it was in the children's name So I was disappointed that I -- either I didn't ask the questions right or she didn't tell me right But it was clear to me at that point that -- couple things I told her -- I reminded her again that, you know, "I'm going to have to" -- "I will report this stock," which is fine I didn't have any -- no reason not to report it I wasn't doing anything for Mr Williams It was $15,000 of stock, but it was over the 10,000 limit So I let her know that this would probably be a reportable event But my strong recommendation at that time was, "The stock has taken a tremendous hit, and you really need to sell it "

Q Did you have any particular problem, if it weren't sold, reporting it if you owned it at the end of the year or if she owned it at the end of the year?

A No At that time, I had reported -- I had already reported about $108,000 of campaign contributions and PAC contributions from Mr Williams I had reported a $50,000 loan to -- no I -- no Let's see I wouldn't have at that time

I would have reported all these campaign contributions That year, I would have reported the loan from Mr Williams I would have reported the trip to Smith Mountain Lake from Mr Williams So I already knew that I had to report those And if I had to report $15,000 in stock, it -- there was no problem with me doing that I would do it

Q And your understanding, just so the jury is clear, if you and your wife, if you jointly -- I mean, you have to report for both you and your wife; is that correct?

A Well, for stock, yes, you report for the office holder and members of your immediate families And under the definition, that would include my wife and dependent children who also resided with me

And also for loans I would have to report separately my loans and then also loans to members of my immediate family Two different places on the form

So, again, I already knew the $50,000 loan would have to be reported

Q All right

A The Smith Mountain Lake trip was going to be reported So if I had to report $15,000 of stock, it really wasn't a -- I didn't have any concern about doing that But I -- I told Maureen to sell it because it was just a -- a really bad investment, and she was -- she had lost almost 55 percent of the value of her money in five months, and it was not a good idea.

Q Did you know anything about a letter from Mr Piscitelli to your wife on September 9th, 2011, that's been testified about in this case?

A I saw that after the investigation started I did not know that at the time

Q Was it -- after this discussion with your wife when you told her to sell it, was it your understanding that she did sell it after that conversation?

A Maureen was not -- I mean, she was not happy about my advice to sell it She really believed in this -- in the company She really -- from all the research she did and I think her trip to Roskamp, she told me she really thought this anatabine was going to be a significant healthcare breakthrough She understood that clinical trials would really take a couple years to really come to fruition before there was really the full research to back it up But I think she believed at that time that this was something that would not only be good for medicine, but eventually the stock would do -- would do well

So my advice to sell the stock was not well received Maureen hadn't owned stock before, to my -- to my knowledge I had owned it in my name, previous stock that I had --

Q From your father?

A From my father And then from my E*TRADE account that I had a while back, I think

So anyway, I told her that -- that it ought to be sold And I think at the end of our discussion, she reluctantly agreed and said "Okay I'll" -- "I think that's probably okay I'll do it "

Q Did you follow up with her after that about this issue?

A You know, I may have, but I'm -- I'm virtually certain we would have done it by the first week in January of the following year Because when I have to fill out the SOEI report, I've obviously got to know what my reporting requirements are And I knew I reported -- well, I had a lot of things to report But I had to report the Smith Mountain Lake trip, and I reported the $50,000 loan to my wife But I think we just -- we confirmed that the stock had been sold

I may have talked to her earlier in the previous year, but typically, these reports are done at the very end of -- we start the end of December and then go into the first week and a half in January is when all the work is done with Ms Block and Ms Watts because the reports are due the 15th of January

Q Were you a part of any phone calls or letters or correspondence or discussions with Mr Piscitelli and your wife in the fall of 2011 about the stock?

A No

Q And did you see any correspondence between Mr. Piscitelli and her about it?

A No

Q But you confirmed, by the time you filed your SOEI report for 2011, that you had to file by -- what, early January?

A Yeah January 15th.

Q January 15th?

A Right

Q You confirmed with her that the stock, in fact, had been sold as you had suggested she do?

A I believe I did, because that would have been the natural course of what I would have done to be sure that, in fact, I didn't have a reportable event

Q Did you have any idea about the level of communications in early December between your wife and Mr Williams that have been testified to in this trial, and in particular, the December 4th evidence about your wife having 52 texts with Mr Williams on that day?

A No

Q You have to answer audibly

A No I -- I had no idea of the volume of the contact between Mr Williams and my wife during that time

Q Okay Let's talk about Christmas 2011 Who was there at the house on Christmas Day?

A Boy, I'm pretty sure most of the kids would have been in and out at some point during that day Cailin and Chris usually share some -- sometimes will share holidays between the families, and Adam and Jeanine as well But most of the kids come for at least a part of the time during the Christmas holiday.

Q Is this the Christmas when you received the Rolex watch from your wife?

A Yes

Q And who did she say it was from when she gave it to you?

A The package that I got said from Santa But that's something my wife typically does I mean, we've been doing that for years I do that sometimes to her, too She'll do that for the children, put from Santa on there So anything from Santa I know is from Maureen

Q Was it wrapped in gift paper?

A I believe so

Q Let me show you what's been marked as RM-276

MR ASBILL: Can you hand that to the witness,

please

BY MR ASBILL:

Q Do you recognize that box?

A Yes

Q What is it?

A That's a Movado box that contained the Rolex watch that I got from my wife in Christmas of '11

MR ASBILL: I'd move the admission of 276.

MR DRY: No objection

THE COURT: It will be admitted

BY MR ASBILL:

Q You say it is a Movado box?

A That's what it says

Q Not a Rolex box?

A No

Q When you got it, was there any of the normal sort of attendant paperwork that one might get with a watch, like guarantees or list of dealers for repairs or some form to send it to register it or any of that sort of stuff?

A No I didn't -- I don't think I saw anything like that inside it No

Q And what did you think when you got this gift from your wife? What did you say, and what did you think?

A Well, my wife has given me several watches over the time that we've known each other, over the 40 years I think the Seiko that I've been wearing for 15 years was from my wife So for my wife to get me a watch was not unusual. I've never owned a Rolex I wouldn't buy a Rolex for myself I knew they were expensive. How expensive, I really didn't have any idea. I certainly knew they were more expensive than the one that I had

Q The one what you had?

A The watch that I have now, my Seiko, that she got me 15 years or so ago

So I -- and it was Christmas, and I was -- it was the -- like I think one of the last gifts she gave me She typically will save her biggest gifts for the end And so I told her that was very nice It had the inscription on it that said 71st Governor of Virginia inside on the back plate of the watch So I knew it was something that appeared to be something very special for her that she wanted to give to me And like most gifts, I know I would have given her a hug and said, "Thank you That's very, very nice "

I did notice, of course, right away that -- while it had the inscription and it appeared to be in very, very nice shape, I -- it didn't come in the original box But I didn't ask her -- I didn't interrogate her because it was -- it was a gift, I knew, from her And so I -- I accepted it, and I appreciated it

Q Did you think it was new or used or what?

A I mean, it -- it appeared to be generally new, but, again, not accompanied by the typical things When I've gotten watches in the past and they have been new, they've had paperwork and so forth in there, the warranty information and dealer -- dealer information and so forth And there was none of that there There was a time that I thought that, you know, maybe it's -- I don't know Maybe it's not -- not real I just didn't know But I -- I -- I didn't interrogate my wife as to, you know, where did you get it, how much did it cost. But I figured based on the new job she had, that she had the capacity to do this if she wanted to

Q What was your sense about -- you know, whatever you knew about Rolexes or not, what was your sense about what the potential value or possible value of the watch was?

A You know, I had never shopped for an item like that before I figured it was in the thousands of dollars, but I just honestly didn't have a good sense Four, five I just -- I really didn't -- I didn't know

Q Did you -- I mean --

A But --

Q If it were new, as opposed to used?

A Yeah I figured if it was new, maybe it was in that time frame I knew it was a very expensive watch and was sort of the pinnacle of the profession of watch making And I thought my wife was trying to do something very, very nice for me at that -- at that time as a way of, you know, trying to -- you know, we had had some hard times those previous months before that, and that maybe this was something she was doing that was extraordinary with the proceeds she got from her work at McGlothlin Foundation to say, "Listen I" -- "this is an expression of my love for you and I want you to have this really, really nice watch " But I didn't question her about where it came from or any of that I just figured she -- whatever it was, she bought it and it was probably a lot of money, but she had the resources to do that if she wanted to

Q What do you mean "she had the resources"? What are you talking about in terms of her access to cash at that time?

A Well, she -- I knew she was getting some small overrides from Nu Skin So she would have had some money in the bank But she also started, back in June of '11, as I mentioned, Mr and Ms McGlothlin asked her to be what I thought was a Board member of the McGlothlin Foundation And I think for that, that she was being paid a -- this was a charitable foundation for a Virginia businessman who was investing in charitable operations with his -- it was his money And she was paid a stipend of $36,000 a year

And she had gotten one check in, I believe, June of '11, and I believe she had just gotten her second check in December of 2011 And so I figured that whatever the cost of the watch was, that she certainly, while I believed it was a lot of money, I believe she certainly had the capacity to buy that watch if she wanted to, based on the new income that she had

Q And what was your understanding of the amount of the new income?

A That was $18,000 each -- semi -- biannually Yes So twice a year I mean So it was in June and December So she would have just gotten her second check, I think, right before Christmas

Q Did you like the watch?

A Not really I mean, it was big It was gaudy It wasn't my kind of watch I've liked -- this watch that she got me 15 years ago I really liked It's running well And that one was -- I mean, it was just too big I mean, I -- but it was my wife getting me the watch And so for a while I wore it, but it just -- it just wasn't a comfortable feel Not necessarily because it was a Rolex, but I just didn't like the feel of it on my wrist It was just big

Q This was Christmas 2011?

A Yes

Q And this was right in the middle of the difficulties you previously described, this day leading up to the attempted sort of resignation of the Mansion staff in January?

A Yes I mean, I didn't know about it at Christmas of '11 But I knew -- this was in the middle of me having -- having Mr Burke and -- Dr Burke and Ms Pierce in to do a lot of the work with the Mansion staff, because we were trying to do the reorganization and the new staff And I had had many challenges, you know, directly with my wife at that time And the last thing I wanted to do was pick a fight over a Christmas present that she obviously felt was important to buy and to give to me And that -- that's just, again, another fight that I didn't want to pick Because whatever the money she made, it was her money, and I was not going to get back into telling her what to do with her money I felt I had made that mistake before

Q Did Tucker Martin or Jasen Eige, your Chief of Staff and counsel, tell you at some point that they didn't think, from a political -- politically optics -- political optics perspective that it was appropriate for you to be wearing a Rolex?

A Yes

Q And did you accept their advice?

A Yes

Q And you went back to wearing your old watch?

A Yes

Q So how long did you actually wear this watch?

A It might have been a -- I don't know Maybe a couple of weeks. And then I'd wear it -- I wore it for some special occasions after that

Q Into 2012?

A Into 2012

Q How many special occasions in 2012?

A Oh, I really can't say Maybe Easter, birthday, Christmas, things like that I mean, I knew my wife had spent a fair amount of money on this, whatever it was, and I didn't want to completely stop -- stop wearing it So at least on special occasions I -- I -- I wore it

Q Personally, did you care anything about having a Rolex watch?

A No I've -- I mean, I've had --

Q I mean aside from the connection to your wife?

A That was the main connection My whole -- I've been Timex and Seiko my whole life That's -- as long as it was accurate Everybody knows I'm always on time

Q You say that facetiously?

A I do

Q When did you find out that the Rolex was actually from Mr Williams via your wife?

A I believe it was in -- maybe sometime in March of 2013

Q At the time that the investigation was starting to be reported in the press?

A Yeah This was well after the investigation had started and I had retained counsel And I found out a combination, I think, from my -- from counsel and from my wife

Q I want you to take a look at a photo, GX 274, Page 8, that has previously been admitted This is a picture of you with the watch?

A Yes, it is

Q And when was it taken?

A You know, to the best of my recollection, that was taken a year later It was taken at Christmas of 2012, I think We were going to -- I think we were going to church out at St Michael's maybe for Christmas I believe that's right And the picture was taken I think it was -- it looks like I was in the back of the State Police SUV --

Q How did --

A -- sitting in my regular spot

Q I'm sorry I didn't mean to interrupt you

A Yeah That's okay

Q Why did you wear it that night?

A Well, again, I wore it a couple times after that Christmas would have been one of them I kept it in my drawer most of the time But I think Christmas, again, Easter, birthdays Some special occasions if I was with my wife or my children, I'd wear that watch And this would have been one of them, the Christmas after I got it I think that's my best recollection of when that was -- of when that was taken

Q Did you know that that photo was being taken at the time it was taken?

A I mean, there's so many -- I've had my picture taken so many times by so many people the last years, Mr Asbill

But from the angle, that's -- my wife sits right next to me And so from that angle, this would have -- this looks like a picture that would have been taken by my wife sitting next to me in the SUV, in the back And I think we took some -- generally, at Christmas we take a lot of pictures In front of the tree, in the car, going to church, dressed up after church when the children are there So my best recollection is that would have been taken by my wife in the car

Q A year after the Christmas you received it?

A I think so Yes

Q Do you know how this picture got to Jonnie Williams?

A I know how it didn't get there

Q And how didn't it get there?

A It did not get there from me Because --

Q You never sent him any picture of you wearing the Rolex to suggest that, hey, you've got my chef, but I got your watch?

A No Because I did not know -- there would be no reason for me to do that because I had no knowledge that this watch was from Mr Williams at this time

And secondly, that picture was never on my phone This -- the picture, as I saw in court, was produced by my wife's counsel to the government So this would have never been on my phone

Q Did you have any knowledge that someone other than you sent it to Mr Williams on Christmas Eve 2012?

A No

Q Did your wife ever tell you that she sent this photo to -- I mean before the investigation began, did she ever tell you that she sent this to Mr Williams?

A She did not No

Q You've looked at -- I want to move on to talking about 2011 in general Have you had a chance to review some of the phone records, your phone records for 2011?

A I'm not sure which ones you might mean, but I've -- I've reviewed a fair amount Yes

Q All right

MR ASBILL: Excuse me Have I moved that box in, Judge? If I have not, I wanted to

THE COURT: Yes. 276.

MR ASBILL: Thank you, sir

BY MR ASBILL:

Q Are you aware, as we speak, of how many times you had contact with Mr Williams, text, phone calls, in 2011?

A Yes I mean, I looked at the log, and I saw one phone call

Q And how many texts?

A I don't remember that number, but it was fairly small

Q Under ten?

A Potentially It wasn't many

Q The phone call you had, do you recall the length of the phone call?

A It was two minutes I left him a voice mail I believe the day we played golf to -- just to thank him for that I think on May 29th of 2011 And I'm almost certain it was two minutes And I know Verizon rounds up So I'm almost certain it was a voice mail

Q All right Are you now aware -- were you aware in realtime of the number of phone calls or texts in 2011 between Jonnie Williams and your wife?

A I had no idea until we started getting records and documents from the government and from other places that my wife had anywhere near that kind of communication with him Absolutely not

Q And were you surprised to learn that it totaled 950?

A Yeah I was -- yeah I -- I was I was -- I was actually hurt, and I was very surprised that the minutes were more than she talked to me Yes

Q Let me talk to you about the Romney event in South Carolina in January 2012 I know you've described it, and if there's anything additional you have to add, fine But you've described the busyness of the January 2012 time frame Anything additional to what you've already testified to with respect to that month?

A No I've given the list of different things It was perhaps the most difficult time that I experienced in public life was that time there with the multiple budget, first the Mansion crisis, and just the myriad of things I had to do personally and professionally

Q Okay Let's take a look at RM-0179-0019 Do you recognize this?

A Yes That's my schedule for January 19th of 2012

MR ASBILL: I move the admission of this, Your

Honor

THE COURT: It will be admitted

BY MR ASBILL:

Q So this is -- you've seen this before? You've seen this schedule before, this calendar?

A Yes

Q All right And, essentially, what were you doing that day? Just in a nutshell

A Yeah A myriad of things That the General Assembly had just reconvened So this is always the busiest time of the year. These 45 or 60 days during the General Assembly session So I had a number of events related to the General Assembly A meeting with legislatures I had rolled out my public safety initiatives that afternoon I had a couple congressmen calls, an event with a business at 11:00 Neustar We were doing some sort of -- some sort of event for that company

Q You said Neustar, not Star?

A No Neustar

Q All right And you have on your calendar in purple a lunch scheduled with Ms McDonnell at the Executive Mansion?

A It's on the schedule

Q Did it happen?

A Excuse me I'm sorry?

Q Did it happen?

A I don't think so And the reason I say that is I'm getting ready to go out of town for at least a day A number of these lunches, unfortunately, that I had scheduled and planned with my wife did not happen Those were my fault I either got there late or because of some other crush with a business we had during that day, something came up that I had to do So I -- I don't have any independent recollection of being there that day at the Mansion

Q Do you recall ever having lunch with Mr Williams and your wife?

A You know, there was -- I remember one time, it was sometime during that year and a half period, that I was there for lunch and Mr Williams was there But I -- I just can't place -- I cannot place when that was It was a social lunch

Q It was not on May 23rd of 2011?

A No

Q All right Let me take a look now -- or let us take a look at GX 586, which previously has been admitted, which is a government chart I believe agent -- or -- summary agent testified about This is the same day, the January 19th, 2012?

A Yes

Q Okay And this shows phone calls between your sister Maureen and Michael Uncapher while you were scheduled to be at lunch with your wife?

A Yes That's what it says Yes

Q Okay. Do you recall Mr Uncapher's testimony that he had a call with -- with your wife Maureen and Jonnie Williams around this time about buying -- about Jonnie Williams buying or potentially buying one or both of the MoBo properties?

A Yes. I remember hearing that

Q All right And were you on this call with them on January 19th?

A No, I was not on that call, or I was not present when that call occurred

Q Did you ever discuss the purchase of Sandbridge properties with Mr Williams?

A No

Q All right Let me show you an e-mail from January 27th GX 295

MR ASBILL: Can we pull that up, please I think that's also been previously admitted Let's start at the top first

BY MR ASBILL:

Q Do you recognize this?

A Yes And I'm familiar with this e-mail

Q All right And that's an e-mail from you -- excuse me From Maureen your sister to you?

A Yes

Q Okay

A No That's Maureen my wife

Q Wife Okay

MR. ASBILL: Scroll down

BY MR. ASBILL:

Q And the next one -- is this between you and your wife as well that same day?

A Yes

MR ASBILL: And let's go down to the bottom before we get to that

BY MR ASBILL:

Q This is an e-mail from Mr. Uncapher, and that's to you and who, your sister, or is that to your wife?

A That's a good question I think -- I think -- I don't know It's hard to tell because it just said "Bob & Maureen " Oh, well, let's see That Gmail would be -- that is my -- that is my Gmail

Q Okay

A So it may have been addressed to both of us But it's just me That's not my sister

Q Okay That's to you?

A Yes

Q All right So this is an e-mail from Mike to you and your -- you and your -- you and who? Is this it -- I'm sorry Did you say your sister or to your wife?

A No I think it's maybe addressed to my wife and me, but it says "Bob & Maureen McDonnell," but there's only one e-mail there, which is -- that is my e-mail That's my Gmail

Q The rfmva09?

A Right And just --

Q Okay

A Just looking at the context of it, it appears to be to my wife and I

Q Okay And it talks about -- the highlighted portion talks about, "For MoBo, I talked with your Mo" -- that would be your sister -- "last week"?

A No That would be my wife

Q Wife Okay "And she had me talk to the guy who is" -- "the guy who is helping us," right?

A Yes

Q Okay

MR ASBILL: Go back up to the top, or the middle e-mail

BY MR ASBILL:

Q Do you respond to that comment in an e-mail on the 27th?

A Yes

Q And who are you responding to?

A Well, I had received this e-mail from Mike, but I'm responding to my wife Maureen because I'm not familiar with any discussions that have taken place with anybody about any loans for 2012 yet, and I don't know who exactly they're talking about I -- I said "Johnny," but I wasn't really sure who they had already talked to So I wanted to find out from my wife what was going on

Q Okay

MR ASBILL: You can pull that down

BY MR ASBILL:

Q So on the 27th of January, you -- you did not know that Maureen and Mike were talking to Mr Williams about a loan to MoBo?

A No

Q Let's go back to your calendar for January 20th, 2012 RM-0179-0020 I think that this has been admitted

MR ASBILL: At this point, Your Honor, could I move into evidence RM-179, which is his calendar for 2012 and 2013 I think it's been stipulated to as authentication

MR DRY: Your Honor, we're fine with all the way through the indictment date But anything post the end of the conspiracy is irrelevant regarding the calendar And I think we've spoken to counsel about this

MR BURNHAM: The indictment was in 2014

MR DRY: I'm sorry Are you just going to the 2013?

MR BURNHAM: Yeah

MR DRY: No 2012 and 2013

THE COURT: It will be admitted

MR ASBILL: Okay

BY MR ASBILL:

Q So on this day, what does your calendar show where you were on the 20th of January?

A This was a big day for me I was in New York in the morning I think I had flown up the night before And I had a number of -- a number of national TV shows that day in New York, because this was the day I was going to endorse Governor Romney for President down in South Carolina But I was in New York that day to do a round of TV shows for that purpose

Q All right And you were going to endorse him for the primary; is that correct?

A Yes

Q And did you do that?

A I did After the New York events, I had a number of TV shows And then I had a couple of -- I actually had one -- a couple of RGA-related events, fundraising calls and events And then I actually had a state economic development meeting, you see there at noon, to try to talk to this Broadridge company and try to recruit them to come to Virginia So I had multiple different -- different things

And then we left about 2:00 from New York, and I flew directly to South Carolina with a couple campaign aides and some Romney staff in order to meet up with Governor Romney in South Carolina

Q The two -- your staff Who went with you on that flight?

A I was with Phil Cox and I believe Tucker Martin And then Ron Kaufman, who is one of Romney's key staffers, flew on the Romney plane from New York

Q So you go directly from New York to South Carolina; is that right?

A Yes

Q And did you meet up with your wife at some point in South Carolina?

A Yeah At the airport, my wife and Janet Kelly and, I believe, Mr Williams had flown down separately And my staff met up with them, and we got into different cars and headed to the convention center in Charleston

Q Do you know how it was arranged that your wife and Janet Kelly and Mr Williams would all come down to this event?

A I don't I mean, I do now But, I mean, at the time, those are logistics that were arranged either by my wife or the First Lady's staff or my scheduler The same people that arrange my own travel So I don't -- I don't know exactly how

Q Did you expect Mr Williams to be there at the event?

A Well, if he was -- I think I might have known at some point, looking at the schedule maybe that day, that it was his plane that was taking my wife and Secretary Kelly down there So typically, if an owner of the plane was coming along on the plane, I'd -- you know, it's not unusual for them to come to events Frankly, a lot of times I invite -- if I'm going to events, I invite the owner or I invite the pilots to come to the event because they've, obviously, been kind enough to let us use an asset So I would usually invite them if they were letting us use the plane

Q Did you invite Mr Williams to attend?

A No

Q And when was the first time you saw him in South Carolina?

A I don't know if I saw him at the airport I may have At the airport, it was just using the restrooms and then getting into different vehicles And we were running a little bit late This event was at 4:00 So I got into, I believe, a South Carolina state trooper vehicle and -- I think with Maureen, and we headed off to the Romney event

Q And do you remember seeing him -- if you saw him at the airport, do you remember seeing him later at the event?

A Yes

Q All right And where was that? Under what circumstances?

A Well, after the endorsement was over, the schedule said that there was going to be a brief dinner after the endorsement And Governor Romney and I and Governor Haley and others and staff got back into a campaign bus and literally drove out of this facility into another part of the facility It's a big facility

And this is where we were going to stop for I think 20, 25 minutes and just have some -- basically some finger food before we headed to the airport to fly to Greenville for another rally that next day And at some point I saw Mr Williams come into the event with a number of my staffers I was talking to Mr -- I was talking to Governor Romney with Phil Cox at the time and just having a sandwich, and Mr Williams came in with some of my staff

Q Did you invite him to that lunch or whatever?

A I did not

Q Are you aware of who did?

A No

Q Were you aware that your wife spoke to Ann Romney about Anatabloc during this trip?

A Yes

Q You overheard some of that?

A I overheard a little bit of it on the bus I think either later that day or the next day That my wife was talking to her about her -- about her MS, and there was some mention of Anatabloc I didn't hear -- I was not in that conversation, but I overheard a little bit of it

Q And what was your reaction to overhearing that conversation?

A You know, I knew -- I knew Ms Romney a little bit She -- well, my reaction was I knew my wife was trying to be helpful because of Ms Romney's MS, but I just felt that that -- it felt very -- it felt inappropriate in that setting that we were in for Maureen to be having that discussion It wasn't -- it wasn't that long, but it was -- it just felt wrong And I know Phil -- I think I saw Phil, you know, interject in the conversation and change -- change the subject I mean, Mr Williams wasn't there, but I -- it just seemed like the discussion was out of place Ms Romney was very gracious and listened, but it was -- that part of the discussion seemed to be fairly brief

Q Did it embarrass you?

A A little bit Yes.

Q Did you try to set up a meeting between Mr Williams and Governor Romney?

A No Absolutely not That wouldn't have happened at an event like that Governor Romney's time was scripted so carefully, because I had essentially the same schedule he did, and I know we had every bit of time planned And having an impromptu meeting with somebody that he didn't know was simply not going to happen, especially at that phase of the campaign The South Carolina primary was two days later, and that just was not going to happen

Q Around this time frame that we're talking about, do you recall your wife talking to you about whether or not she could be on Star's Board of Directors?

A Yes

Q And your reaction or response was what?

A Well, her first comment to me was whether -- was Mr Williams asked whether I could be on the Board And, of course, I told my wife, "Absolutely not " I mean, I can't serve on a Board I wouldn't anyway, but that's -- as Governor, those conflicts are irreconcilable I couldn't do that, wouldn't do it

Q He never asked you that?

A No, he never asked me that

Q But your understanding was she was telling you that he wanted you to be on the Board?

A That's what she said I found that to be a little -- a little odd And then at some -- I think at some later time she asked -- said Mr Williams had asked whether she could serve on that Board And I told her that I thought that was a very bad idea, really for the same reasons that I told her why I thought the nutraceutical sales in an active participation were not a good idea while I was Attorney General or while I was Governor I knew there was a previous First Lady back in the '90s that had served on a corporate Board, and it -- there was some conflicts and she had to resign And so I -- I told Maureen that that was -- that was really a -- not a good idea at all, that she could not do that

Q There was a distinction between a corporate Board and a nonprofit Board?

A I think very much so, yeah For McGlothlin Board, giving away moneys to charity, I thought that was okay But being in a -- being on a for-profit Board I thought was probably not appropriate

Q And so you basically said that that's not a good idea And what was your wife's response?

A I think she understood that And I don't know what happened after that, whether she talked to Mr Williams But that was -- that was my -- I mean, that was very strong advice. That would affect -- I thought that would affect me directly. So I just told Maureen, "You can't do that."

Q Did Mr Williams ever ask you to be on the Star Board?

A No

Q Do you know whether or not he ever -- do you know, from talking to him or overhearing anything, whether he, in fact, asked her to be on the Star Board?

A I don't know other than what Maureen told me I don't know.

Q Let's move on to the MoBo loans These are the loans that Mr Williams gave for MoBo, but I want to ask you a little bit about --

A Yes

Q -- background questions And I know your sister testified at some length about this And, you know, just in a -- in short, what was your perception of why you wanted to -- to buy these properties or own them with your sister?

A My sister and I had talked about it for a while

We're very close, and it was -- honestly, it was sort of a long-standing dream I had lived in Virginia Beach for 21 years at that time, and we -- my sister had moved there about three or four years before we left in 2005 And we had so many fond memories when I was a kid going down to Myrtle Beach, South Carolina It was really the only luxury of any kind my parents ever -- ever really took upon themselves And so we rented the same house every year down in Myrtle Beach and took all of our kids, and usually some of my cousins would come from Massachusetts or Texas And we just remembered that that was -- it was about family It was fun It was just simple We didn't have any plans We just went to the beach every day

And so, you know, we started talking about it in 2003 or so, after my sister moved there from Ohio, about maybe buying a place We looked -- we looked a little bit in Virginia Beach, looked a little bit in North Carolina But we decided, in 2005, that -- I was running for Attorney General This was my last year I was obviously hoping that I'd be fortunate enough to be win, and if I did, I'd be moving to Richmond And so I wouldn't be in Virginia Beach anymore And so I talked to my sister about maybe looking at the market and seeing if this was a time that made sense for us to buy

Q And, in fact, you did in 2005 or 2006?

A In March of '05 is when we closed So we would have started talking about this probably in, oh, early to mid-'04

Q Did you hope that the houses would ultimately appreciate in value?

A Well, sure Absolutely I mean, the --

Q I'm sorry.

A No The primary goal was -- this was a long-term proposition We thought that at some point this would be the place where the kids would come back No matter what life dealt for my wife and I, that if we had a house at the beach, my children -- I've got five children I love them very much At some point they'd always come back because they love Virginia Beach. So that was number one

And then long-term -- real estate, in the long run, is generally always a pretty good investment If you hold on to it long enough, it's going to appreciate in value, and that would be why it would make sense

Q At the time you bought the properties with your sister, was the market on an uptick?

A It was

Q All right And that didn't last into 2008, '9?

A It did not

Q All right And did you understand -- did you understand, when you purchased these properties, that --

that you may have to lay out cash in excess of whatever -- was the idea to rent them?

A Yes

Q Aside from when the family used the property?

A Yes. And they had been rented before we bought them. So we had rental history that we could do a little pro forma to estimate what the rents and expenses would be

Q Okay And so your idea was to rent them as well; is that correct?

A Yes

Q All right And did you understand or have any sense of whether or not the rental income would cover the debt service on the purchase of the properties in addition to the expenses that you might incur in terms of either managing the properties or keeping them up?

A Yes We knew it would cover the debt service and the principal on all the loans, but it would not -- it was not going to cover all of the other expenses for the property

Q All right That is unless rents rose dramatically?

A Well, we -- yes As rents rose and -- you know, the rates were a little bit higher at that time So we figured maybe down the road we'd refinance and reduce the expenses So our -- the business proposition was that we'd have capital appreciation in the long run in the property, but also as we paid down the -- paid down the debt, that we'd -- we'd have capital accumulation as the mortgage balances on all those loans went down So long term, it would have made sense And, you know, frankly, maybe hold on to it long enough, it might be something, an asset we'd pass on to the kids at a later time

Q Okay As we talk about MoBo just to make sure that I don't confuse myself, can we talk about your sister by the nickname Mo --

A Yes

Q -- and your wife as Maureen?

A Yes

Q Okay Whose idea was it to buy the properties, ultimately?

A We both talked about it, but my sister really was the one that led the search and most of the financial deal early on

Q All right And MoBo stands for Mo and Bob?

A Mo and Bob, yes

Q All right And your sister described your relationship, her relationship with you, when she was in court the other day Is that an accurate or a fair characterization of your all's relationship?

A The best friend relationship?

Q Yeah

A You know, I've got two of my other sisters in the courtroom today so -- I've already gotten in trouble earlier for that So -- we're very close, to all my sisters, but I really -- I love Maureen a lot, yes

Q Who picked out the properties?

A Maureen did

Q And who took the lead on the paperwork and the loans?

A Maureen

Q And how did you both purchase -- how did you purchase these properties?

A You know, I -- I'm struggling to remember We had -- we had some -- obviously, we had to make a down payment, and then we had to secure a loan I think I helped to secure that initial loan through a bank called Bank @Lantec That was the initial lender on the property

I think my sister helped to arrange some of the secondary financing through Navy Federal and TowneBank But I believe our down payments came from a combination of cash and maybe a home equity loan I really don't remember for that first one back in '05, but that's how -- that's how the proposal got put together

Q If -- if running this business or whatever, if you -- was it your understanding that your sister would help out financially if that was necessary?

A Certainly She was -- we each had our strengths going into the partnership But I certainly knew that her -- with my public service and my office and the things that I was hoping to do, I certainly knew that she was going to be the stronger financial partner throughout the relationship

Q And your strengths in the partnership were what?

A Well, I was -- her husband was going to do the bookkeeping, and I was going to -- I was going to help with -- well, some of the maintenance That was good therapy for me But I could do that I would help with some of the marketing, working with the Sandbridge Realty company to help formulate a marketing plan to increase the rents the best that we could And then we'd just see how it planned out Because originally, we just bought the one property and didn't have a goal to buy a second one initially

Q When MoBo -- MoBo is the operating company; is that correct?

A Yes

Q And did MoBo itself have assets at any point?

A Well, sure MoBo has a bank account that has anywhere from zero to tens of thousands of dollars During the summer at the high peak rent seasons, it might have 40, $50,000 in there But its most valuable asset of MoBo was accounts receivable, because the rents now are $220,000 or so a year between the two properties Back then, it was less than that But accounts receivable really is the significant asset of MoBo

Q How does that work? Accounts receivable You mean there were reservations or bookings for rentals?

A Sure

Q Is that what you're talking about?

A Yeah The way these book, the rental company manages the property for us In terms of finding renters, they book either on phone, on-line, and we can see well in advance Many of the properties book a year in advance, at least seven, eight, ten weeks a year in advance, and then early in the year So we're able to be able to war game the cash flow a little bit based on the rents But all those rents, people will put deposits in well in advance So that is a real asset, the accounts receivable, that are owed for rents on that property Because most of the contracts come in anywhere from 6 to 12 months in advance

Q Okay And what was the plan in terms of who would manage the books? Was that Mike?

A Yes In fact, Mike was appointed very early on by my sister I did some of the legal work Practicing law at the time, we Incorporated MoBo You saw the certificate of incorporation back in 2005 to make it a limited liability company And my sister, as the managing member of the LLC, appointed her husband, Mike, and I agreed to that, as really the office manager He was going to run the business sort of day to day, the checks, the business, working with the accountant, the bookkeeper and so forth. And that was his contribution to the business.

Q We've heard his testimony about late fees and his role in late fees At the time that that happened, did you know that he was having difficulty, you know, getting the bills paid on time or getting whatever the late fees were?

A I mean, I had -- I had no idea there were 29 late fees I mean, I didn't get the statements at the time The statements went to my sister, who gave them to Mike and who did the books I knew very little about the late fees I think I might have had a conversation at one point with either my sister or Mr Sessoms about the late fees, that there were some But during that '08, '09 time frame, I didn't know

I mean, the way it worked, I mean, my sister and I were so busy with our respective jobs that Mike would tell us when there needed to be a cash infusion We always knew that from December through about May there was going to be a significant operating shortfall We went in with our eyes wide open knowing that was going to occur, that -- especially after the second house, that there was going to be an average shortfall of anywhere from 40 to $60,000, which meant 20 to $30,000 a piece that we'd have to come up with every year And, you know, to have two vacation homes and have a place for my kids and knowing that long term we'd have capital appreciation, that made -- that made sense to us

Q Okay When did you learn that -- that your sister and Mike were having problems in their marriage?

A Late 2011, there was an initial separation with Mike and Maureen And I remember I had a meeting with Mike to tell him that I needed to be a little bit more involved in the business now I didn't have the time, really, but I'm concerned about the fact that they are separated, and I want to make sure I have at least some handle on -- on the finances And so we had a meeting and talked a little bit about that

So I took a little more active role, for instance, in the construction project we did a couple months later and a few other things So I tried to stay a little closer with Mike on managing the business

Q Did that occur in the fall of 2011 or into 2012 or both?

A Well, that was November, December of 2011 that I had that initial conversation And then when they split for good in October of 2012, I then took on full responsibility I demanded all the books back from Mike And so about November 1st of 2012, I took on full responsibility for managing MoBo, and my sister Eileen took on the responsibility of managing the Blue Ridge Heaven, LLC, which was the Wintergreen property So we split that up Because my sister was -- my sister was very distraught over the problems in her relationship, and she just wasn't able to do it

Q You say you had to get more involved in the early part of the year, January 2012 --

A Yes.

Q -- is that right?

A I did

Q And that's -- that's the same time frame that you've talked about --

A Yes

Q -- repeatedly today in terms of --

A Absolutely

Q -- busyness?

A Yes

Q All right

THE COURT: We'll stop now, Mr Asbill

All right Ladies and gentlemen, we'll see you tomorrow at 9:45 And as I've said every day, please don't allow anyone to discuss this case with you, and don't discuss it with anyone else And please don't read any media items relating to this case

You all be safe, and we will see you tomorrow, 9:45

(The jury left the courtroom)

(The trial adjourned at 5:29 p m)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G McDONNELL,

Defendants

August 22, 2014
Richmond, Virginia
9:45 a.m.

JURY TRIAL - VOLUME XX

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES:
MICHAEL S DRY, ESQ
DAVID V HARBACH, II, ESQ.
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JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day twenty, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G McDonnell The United States is represented by Michael Dry, Jessica Aber, David Harbach, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, and Christopher Iaquinto Maureen G McDonnell is represented by Heather Martin, William Burck, Stepnen Hauss, and Daniel Koffmann. Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed

MR. BURCK: Maureen McDonnell is ready to proceed

MR. ASBILL: Robert McDonnell is ready to proceed

MR. BURNHAM: Yesterday we submitted RM-0179 by agreement By further agreement we want to end that exhibit at RM 0179-0439 We will file an updated version

THE COURT: Thank you. All right, bring in the jury

(The jury entered the courtroom.)

All right, good morning Mr Asbill?

DIRECT EXAMINATION (Cont'd)

BY MR. ASBILL:

Q Good morning, Mr McDonnell How are you?

A Good morning, Mr Asbill

Q We were about to start talking about MoBo and the MoBo loans, and I have one sort of initial question for you It is MoBo, LLC; is that correct?

A Yes

Q Why the choice of that structure as opposed to a partnership or a sole proprietorship or some other form of business venture?

A That was the advice we got from our counsel, Bert Poole, back in 2005, that that was the best structure given the fact that the properties were going to be rented and that would be most favorable for our potential liability issues, so we set it up that way.

Q What kind of liability issues are you thinking of?

A Things that might occur with rental property, people possibly getting hurt on the premises, et cetera That was just the best advice of options, partnership versus limited liability company or sole proprietorship That was the advice we got so we acceded to that advice in '05

Q Okay Now, with respect to MoBo and the operating shortfalls or potential operating shortfalls, how did you plan to cover those?

A We had a line of credit initially that my sister had set up through TowneBank that we used during those first couple years We knew that whatever that number was initially, perhaps as much as 40 to 60, we were hoping as rents got greater and we could control expenses better that those numbers would shrink going forward but it was either going to be loans or personal money that we put into the operations each year

Q Is that how Dr Davis got involved?

A Yes

Q All right. And who was Dr Davis?

A Dr Davis was my wife's physician He is a radiologist, but did some work for her for many years down in Virginia Beach I got to know him, also, through political circles He donated some to my campaign and we became friends with he and his wife Betsy

Q Unfortunately he is now deceased?

A Yes, he passed away last year

Q In 2011, in order to cover a shortfall --

A Excuse me, I think it was early this year Dr Davis passed away, I believe

Q Let me go back to 2009 Did you all have to put in money for a shortfall in some way in 2009?

A Yes I think in '09 and '11 we put in our own money and the other years we made the loans

Q Okay So in 2011, you didn't take a loan; is that correct?

A No

Q You just put in cash, you and your sister put in cash?

A Yes, that's my recollection, yes

Q All right Let me talk to you about the $50,000 loan to MoBo on March 6th, 2012

A Yes

Q That was from Mr Williams?

A It was actually from Starwood Trust

Q Okay And in early 2012, were you trying to figure out whether or not to take a loan or try to fund it in some way by yourselves?

A Yes My sister and I had a brief discussion about what would be the option, should we put in money or should we use the loan route

Q And obviously you chose the loan option Why?

A Well, we had resources Combined, I think in the March time frame, I had about $67,000 in the bank between my two accounts and my wife's account and the MoBo account And had, gosh, by that time, limited credit card debt, so we had nearly 200,000 in credit card capacity We could have written the check. But we decided that since we had put money in in 2011, that borrowing money was the appropriate way to go As a small business, we thought that small loans at low interest rates would be beneficial; we could save our cash for other purposes that would come up And my sister also had, she was just a little bit concerned about conventional loans as well She had the ding on her credit report because of her husband's business and bankruptcy, or potential bankruptcy, and so it was more beneficial just to secure a private loan at that time.

Q When you say bankruptcy, whose bankruptcy are you talking about?

A Michael's He was considering that at the time, but he had several -- his business was essentially going under He was a muscle activation therapist, and at that point his business was not going well And I think he had defaulted, my sister testified to that, defaulted on a loan that she was the guarantor for, or may have actually been the principal, and she was worried about the effect on her credit report she had, and therefore, traditional credit might not be available that year

Q In this time frame, March of 2012, were you aware of any of the funneling out of money by Michael from the MoBo Corporation?

A No I didn't learn that until November when I took over the books in November, 2012, after my sister and Michael separated permanently at that time Then I took over the books and discovered these transfers to BRH and some of the other appropriations to his own business, and we realized that that's why there was a lot of money missing and why we had a larger shortfall in 2012

Q In any event, you decided and your sister decided with you to take out a loan that year; is that correct?

A Yes

Q Okay At that point in time in early 2012, did you do anything with respect to the Dr Davis loan? Was that still outstanding, and if so, did you do anything about it?

A We talked about paying it off The interest rate was a little bit higher, 7 5 percent It wasn't due until 2015 We were making monthly payments of $1,001 a month out of the MoBo, LLC funds. So we were paying it on time. But it seemed prudent to try to reduce that debt, and so we decided to pay it off I actually put in about $20,000 in either March or April for my portion of the payoff We had about a $33,000 balance in March of 2012, and my sister and I were each going to put in 1,500, and then I wrote a convenience check for $7,500, and that's how we intended to pay it off

Q You said you put in $20,000 at that time; is that correct?

A Yes

Q I believe, and correct me if I am mistaken, there have been charts introduced in this case both by the government, the summary agent, and also by Mr Kosowsky that reflect the $12,500 and $7,500 payment and attribute them variously to you and your sister. Are both of those incorrect?

A Yes, sir, I think they are I know I put in 12,500 out of my personal bank account, and my recollection is that the $7,500 was actually a convenience check on one of my credit cards that I got a very, very favorable rate in terms of, I think it was less than two percent at that time, over about a year-and-a-half So I put that in essentially on behalf of my sister and I We would each have 3,750, or half of that, but I wrote that check for $7,500 plus my 12,500 personal check. And later on in the year my sister paid $12,500 to fully pay off the Davis loan.

Q When was the Davis loan due?

A It wasn't due until 2015 It was a five-year loan that we took essentially in early 2010, so it would have been due in early 2015 So there was no pressure to pay it off, but we decided it made sense to do that

Q How many more years would that have been?

A It would have been two-and-a-half more years

Q Let me go on to -- when did you first learn that your wife, Maureen, was trying to get a loan from Mr. Williams for MoBo or from Starwood for MoBo?

A I learned in the end of January of 2012, the e-mail that you showed me yesterday when I got the, that e-mail from Michael Uncapher that said that he and my wife had spoken to Mr Williams And it sounded to me as though there was already sort of an agreement in principle that Mr Williams would loan money at that point to MoBo Real Estate But that surprised me I didn't realize they had had any discussions at this point

Q So you had not talked to your wife about it prior to that e-mail?

A No, I think she -- no, I hadn't talked to her anything about Mr Williams I think she certainly understood that I was going to try to secure the financing for that year

Q All right Did you have any insight into why your wife was trying to arrange this loan with Mr Williams without involving you in it?

A Maureen had been helpful in the MoBo business, every time we would go down there for maintenance, she was there, usually with my children It was both maintenance and fun, so she participated in that She was on the deed, I believe, for the properties So even though she wasn't a MoBo partner, she still had, I believe, a financial interest in the property because of being on the deed. And she had over the years gotten involved just somewhat in some of the MoBo operations just to help It was a small family business So even though Michael Uncapher and Maureen McDonnell, my wife, were not MoBo members, they still tried to do their part to help out Michael did the books and Maureen did a couple other things, maintenance And at this point, without me knowing, got involved to try to help with the loan that we wanted to get that year

Q Had your wife been involved in securing the loan from Dr Davis?

A I actually think the first recommendation was from her, because Dr Davis was her physician. I think she actually made the first recommendation on that But I negotiated the terms with Dr Davis

Q Okay Was your sister involved in trying to deal with this loan or get this loan from Jonnie Williams, Starwood?

A No This was just a couple months after the first separation that she and Michael had, and she was having some significant challenges in her own marriage, trying to save her marriage She talked about going to Jamaica I knew they were having a lot of problems So I said, "Listen, I'll take care of the financing issues for MoBo this year because I know you have got your plate full." Even though I had a lot, a whole lot going on in early

2012, I told her I would try to take care of it

Q Did you have any problem in your own mind or did you think it was inappropriate to take a loan from Mr Williams for MoBo?

A No

Q Now, if you had thought that Mr Williams was trying to somehow corrupt your office, would you have taken a loan from him?

A No, absolutely not

Q All right Let me show you RM-1355 Do you recognize this? You know what it is?

A Yes

Q All right What is it, in essence? Is that an e-mail from Mike to you?

A Yes Michael had e-mailed me --

Q Wait a minute

MR. ASBILL: I move the admission of this document

THE COURT: It will be admitted.

BY MR ASBILL:

Q Okay, now you can talk about it It is an e-mail from Mike to you on the 27th of January?

A No He e-mailed me --

Q On the 25th?

A On the 25th, which is the e-mail we looked at yesterday And I wasn't really sure who he was talking about, so that's when I e-mailed my wife and said, "Who are we talking about?" And then she and I talked upstairs and she told me that it was Mr Williams So this is my response then two days later to Michael, who was managing the books, and I said, well --

Q Tell me about your response Would you highlight that, please?

A Yes. Based on Michael's e-mail two days earlier and my conversation with Maureen, it sounded like he, Michael, and Maureen, my wife, had already spoken to Mr. Williams and Mr Williams said, agreed essentially in principle to extend a loan to MoBo based on their discussion. And again, I am in the middle of the session. I thought maybe he was going to have another conversation. So I just told him, "Look, get the terms of the deal in writing, and call Maureen with the address " That should be "MoBo," not "MoNo." And then on a separate matter, I said, "The BRH check is coming " That would be Blue Ridge Heaven, the Wintergreen property I was going to write my check from the equity contribution to BRH at that time

Q Okay, you can take that down Did you take a more assertive role in dealing with Mr Williams or a more direct role in terms of dealing with Mr Williams after January 27th?

A Well, I did. I wanted to be sure, since I was the principal in MoBo, and my sister was the principal, and I knew she was just not able to do this because of the marriage issues she was having, so I told her that I felt like I needed to do the negotiations with Mr Williams and find out exactly what the terms were so that I was very clear on what the nature of the loan was before we accepted any money

Q And when did you, to your best recollection, first speak to Mr Williams about it?

A It was sometime at the end of January

Q That's your best recollection, end of January?

A End of January, maybe the first week in February

Q All right And do you recall how that happened in terms of in person, on the phone, when, where?

A It was a phone call It may have actually been my wife had him on the phone and handed the phone to me to talk to him. But it was -- it might have been that first week in February

Q And when you talked to him, what did you tell him or what did he tell you?

A Well, my understanding from the correspondence from Michael Uncapher and Maureen, who had talked to him already on the phone, is that he had agreed to a $50,000 loan That was the typical operating budget, and that's what Michael told us then that we probably needed for that normal winter operating deficit from March -- from January through May. So that didn't surprise me, that that was the number that we needed. So I thought it was just going to be a cash, check, wire, to MoBo for $50,000 And that's when I talked to him on the phone That was my expectation. We would simply be talking about the terms of that loan.

Q Was that his expectation when you talked to him?

A Well, for a minute, and then he began to talk about another proposal that he made to me for that loan that involved a loan of stock

Q Okay Did you have any detailed discussion on the phone at this time with him about that issue?

A Yes

Q All right And where were you when this call occurred? What's the best of your recollection?

A I believe it was in the evening, and I was up in our apartment in the Governor's Residence

Q All right And during that conversation, did you take any notes yourself?

A Yes, I did.

Q Okay And those notes are notes that -- and what happened to those notes thereafter?

A Well, I kept all the notes in a file, because I was expecting in the end to actually have a writing I had asked, made notes about requests for writing on a couple occasions, so I just wanted to be sure if and when I got the writing from Mr Williams that the contract, or the loan documents, that I would match them with my recollection of the notes that I took to be sure the terms were what I understood them to be

Q Okay And you maintained these notes from then until now, essentially?

A Yes

Q And when you got a subpoena from the grand jury asking for, among other things, these notes, you produced them?

A Yes, absolutely I felt I had nothing to hide and I turned everything over that I had.

Q Let's turn to the notes from the first phone call This is in early February at some point, on or about the 3rd of February?

A February 3rd. I think that's right, yes

Q All right Can we please pull up RM-0431-0005 and 0004 and 0002?

MR ASBILL: I want to admit them in this form. They are also in as a government exhibit, but I want to make sure the page orientation is right.

THE COURT: They will be admitted.

MR ASBILL: Thank you, sir 0005, 0004, and 0002

BY MR. ASBILL:

Q All right. In terms of the notes essentially, trying to go time-sequentially, what's the first page of the notes? By number, of the five pages, what's the first page of the notes?

A To the best of my recollection, I had three contacts with Mr Williams, this one and two others And I tried to put these notes together a year-and-a-half later when I turned them over My best recollection is that there were three pages of notes I took the first day because Mr Williams was explaining on the phone this stock loan option, and I was doing a lot of listening and writing down his proposal to me This is the first page I remember from that February 3rd phone call

Q So this would be, in terms of the -- this would be 0005, right?

A Yes

Q And basically, what's on this page? What's this about? Can you blow that up, please?

A Yes I called Mr Williams about what I thought was a reasonably simple $50,000 cash loan to MoBo And he began to talk about this stock loan against which he suggested I could get a margin loan from a brokerage I had never done anything like that before And so I took notes I just wanted to listen to him, to hear him out So I took these notes from what -- from what Mr Williams told me on the phone And that's what's reflected here

Q All right So these notes, I'm going to make sure I understand you. You are writing down basically or trying to capture what he is saying on the phone?

A Yes His proposal

Q Are you simultaneously interjecting any of your own thoughts or are you just trying to sort of record what he is saying?

A I'm primarily recording I'm sure I asked a few questions, because I was going to ask my broker after that, I didn't even know if we could do this, but I entertained the proposal and wrote it down, what he said.

Q And either in your legal practice or personal experience, you had never had any dealings with margin loans?

A No

Q Okay Now, on the next page, let's go, this is 0004, let's pull that up Would you highlight the portion of that where it says, "To Maureen or MoBo"? Just highlight that portion. Okay, correct me if I'm mistaken, but the second page is a continuation of the same phone conversation with you taking notes in the same way?

A That my best recollection, looking back at those, is that this is the second page of those telephonic notes, yes, sir.

Q There is some text above the highlighted portion Highlight the part where it says "Lawyers "

A He told me that the lawyers --

Q Excuse me Let me get it highlighted first

A Yes

Q What's that about, "Lawyers say okay to loan"? What's that about?

A He told me that he had spoken with his lawyers and that it was okay to loan me money or loan me stock, and that's why he was making this proposal

Q Okay Down below that it says, "Loan from Starwood Aviation," which is one of his companies, to your understanding?

A That's what he told me He called it the airplane account, or Starwood Aviation was the formal name of the operation, as opposed to from him personally, and that the loan could be either to Maureen or MoBo is what he told me, the loan of the stock.

Q Did you have any idea about the structure of his various companies?

A No

Q All right And the highlighted portion to the right, is that "To," in your handwriting, the word before "Maureen," is that "To," T-O?

A Yes

Q It says, "To Maureen or MoBo"; is that what it says?

A Yes

Q What did that mean to you or what does it mean?

A His proposal was that he could loan that stock either to my wife or he could loan it to MoBo And again, I told him that I'm looking for a loan to MoBo. All I needed was, at that point, was secure operating cash. We didn't really need stock. And so the only thing that was needed is operating cash for that operating shortfall that we had at MoBo And so I circled "MoBo," that if I actually got clearance from my broker, my lawyer, that this is what -- that's what we would do I just circled it as we were going through it and writing down his proposal

Q Scroll down to the bottom of the page, please, where it says, "Shares in a few days " Is that on this page? Yes Excuse me Highlight that portion, please, Victoria "Shares in a few days-paper write in a few weeks " What does that mean or what were you trying to capture there?

A It is not very coherent I mean, I was preparing this solely for my memory and not obviously for a court appearance But what this meant was that if we had an agreement to do this, that he could provide the shares themselves within a few days to us, and what I meant was paper writing in a few weeks. He told me it would take him a couple weeks with his lawyers to be able to get documents drafted to get to me so that we could actually have a writing to memorialize the loan

Q Let me stop you right there, because I may be confused about what you have just said When you are saying from your memory, you are talking about looking at it now and trying to remember, or are you talking about he didn't say this on the phone; after the phone call, you remembered something and then wrote it down?

A No, no, no, this is what I wrote down in order on the phone as he was explaining the proposal I wrote that down, and this is what I remember that meaning at the time

Q Okay, fine What was the repayment plan, to your understanding, or what was the discussion about the potential repayment plan?

A Well, essentially, that in three years we would either, his proposal was either give back the stock that he had loaned, because it was a loan, or we would repay the value of the stock, whatever the price was at the time

Q All right And were you understanding at this point or at some point in this call how a margin loan might generate cash?

A Again, I hadn't done one before, but my understanding was, that's why I had to talk to Mr. Piscitelli would have been my next step, is that the loans would be put in an account, a separate account, at a brokerage firm, and then borrow against those loaned shares to generate actual cash that would have gone to MoBo for our operating purposes That was his proposal And obviously, I needed to evaluate that further I didn't know if that really could be done But that's what he was proposing to me on these notes

Q So the stock would collateralize a loan from the broker; is that essentially how that might work?

A Yes, that's what I understood

Q Okay Let's go to Page 0002. And at the top of the page, could you highlight the second line? Blow that up and highlight it Highlight the "Reportability " What's that about? Why did you write that at the top of that page?

A Again, I'm memorializing what Mr Williams is explaining to me And he was explaining to me his reportability requirements As a publicly traded company, he is the CEO, and he said he has got various SEC filings that he would have to do. He mentioned this Form 4 that he would have to file with the SEC Again, this didn't mean much to me because my reporting requirements were completely different from whatever his was, but I'm writing down what he told me his reporting requirements were

Q All right. So he is talking about his disclosure obligations at that point; that's what you are saying?

A Right Which is why I wrote down, I think, "For Jonnie" right here under the file Form 4, because that wasn't anything I had to do That's a requirement of a publicly traded company and a CEO of a company, not me My requirements are reporting through the SOEI or campaign finance disclosures I don't have anything to do with that

Q You don't have anything to do with reporting the corporate way for Star or Star Aviation or whatever

A No

Q You have Star Aviation or whatever company he is going to be using to give you a loan. Did you understand that what he was loaning you was Star Scientific stock?

A Yes

Q That was held in one of his companies?

A That's what he explained to me, yes

Q All right So it is not Starwood Aviation stock, it is Star Scientific stock.

A That's correct.

Q Okay. And as far as you were concerned, you know, were you concerned at all about your disclosure obligations in whatever transaction might ensue here, whether it be cash or a check for $50,000 or stock that's used to collateralize something that gets you 50,000?

A The reporting requirements would have been the same whether it was stock, cash. If it was to a corporation, I viewed that it would not be reportable If it was personal, whether stock or cash, that would have to be reportable That really wasn't an issue Especially in 2012, I didn't have any problem with reporting anything I had to do with Mr Williams.

Q All right You say it is a loan, not a gift, right?

A Yes

Q And that's exactly what you intended it to be?

A Yes

Q Is that correct?

A Right

Q All right You say, "Will have reviewed by securities and tax lawyers "

A That's what he told me that he was going to have done with any final proposal he had before he sent me any writing, any contract; that he would have his security and tax lawyers look at it He said he had already gotten a preliminary review from his personal lawyer, but that he would have a securities and tax lawyer look at any transaction if we actually had an agreement on this Yes

Q Two lines down or two asterisks down, what is this "Loan and option to purchase in three years" about?

A I can't tell you. Again, I am writing down the proposals, I'm expecting a written contract that I was going to have reviewed if I got it by my personal lawyer And this part, I'm not sure what that really means

Q Go down to the next line above the strike-out, whatever it is Where it says "To do "

A Yes

Q Is this something that, you know, is this something you simultaneously write in the phone call based on what he is saying, or do you write it to yourself regardless of what he is saying?

A I write it at the end of the phone call I don't know if it was while I was still on the phone with him or right after that But now that I at least have this proposal, again, I'm expecting a writing at some point, but I thought the two things I need to do if this is going to -- if I do something like this, I first have to talk to Mr Piscitelli, a broker, of course, that I had known for a very long time, and ask him, "Can I even get a margin loan? Will a brokerage company actually do that? If I borrowed stock, could we get a margin loan at any reasonable interest rate against that stock?" Because all I was looking for was operating cash, not stock I didn't have an interest in that stock

Secondly, I wrote down the name of Bert Poole Bert was one of my partners at Huff, Poole & Mahoney where I practiced for some 14 years He does business and securities work And if we had a writing, I was going to have Mr Poole review the transaction So this was basically my to-do list, the two things I thought I needed to do before I could talk to Mr Williams about whether or not this was going to be something that would work for MoBo's needs that year

Q Okay Right next to "Piscitelli," it looks like "accounting and loan." Is that right?

A Yes Just my shorthand to see whether or not a margin loan could come from him if we borrowed stock

Q What do you mean by "accounting"?

A I can't tell you what I meant at that point

Q Okay Going down to the bottom of the page, it says "2012 finally " What's that all about?

A There were two other times I talked to Mr Williams On February 29th I met with him briefly, and then on March 12th I talked to him on the phone And these notes were all in the same file And after I took notes on March

12th and talked to him, I just wrote down the final agreement that I had with him on this page, so the pages got out of sequence I had five pages in a file So this was really, my best recollection, this wasn't connected in time The final to-do list was the actual last thing I wrote down on February 3rd on the phone But when I finally agreed with Mr Williams on the terms of a cash loan to MoBo, this is -- I just reflected it on this sheet as opposed to the other sheet I think maybe I just ran out of paper at the bottom so I used this paper and wrote it down so I could remember what the deal was

Q Okay You can take that down. Did you think there was anything inappropriate about this possible loan, stock loan?

A I didn't think so I knew if I had any loan, any stock, that I actually had a loan during the year or stock at the end of the year, I knew it required disclosure But again, looking at Mr Williams in 2012, he really hadn't asked me for anything My Administration really hadn't done anything for him. He is a CEO of a publicly traded company I knew he had his own fiduciary obligations I trusted him. He had become a friend of my wife's I thought I knew him well enough that, just like Dr Davis, that borrowing money from a friend was not a problem.

Q All right At the time here when you are talking to Mr Williams, did you know that your wife had repurchased any Star Scientific stock?

A I did not No

Q During the call with Mr Williams, did you ever talk about UVA or VCU or any pending grant applications or being at a standstill or anything along those lines?

A No. Absolutely did not

Q Did you ever, ever, this call, any other time, tell Mr Williams you were following up with UVA or VCU about whatever he was doing with them?

A No, I did not

Q All right So after your first call with Mr Williams, in essence, the plan was to get up with the lawyers, Piscitelli, et cetera, as you have described?

A Yes

Q Let me show you an e-mail from February 16th, previously admitted, Government Exhibit 318 This is some 13 days later into the year, correct?

A Yes

Q And would you highlight the text of the e-mail, please? What are you doing here? You are writing to Mr Williams for what purpose?

A Yes, this is a brief follow-up. I was getting ready to go out of town for a while, and I had hoped that I was getting some writing of this proposal he had made earlier to me So I said, "Listen, I know you have been busy," and I asked him, basically, "Can you talk to your lawyer so I can try to find out what the status is of the writing on this?" Because I really wanted to have that before I talked to Mr. Piscitelli And I asked him can I talk to his lawyer about certificates, that would be stock certificates, and documents? That would be documents to memorialize the loan of stock. Because it seemed like a little more complicated transaction. Even though I'm a lawyer, I had not done any kind of stock loan before And as I usually do, I just thanked him for his help

Q Okay Because you hadn't heard in 13 days or whatever it was?

A Right

Q Going forward into the month, did you talk to him again, and if so, when?

A Yes I talked to him for about 20 minutes on February 29th.

Q Let me stop you right there before we get into that conversation. In the meantime here, in February, between the 3rd, and you send this e-mail on the 16th --

A Yes

Q -- do you do any transparency or insight into what your wife may have been doing with Mr Piscitelli, talking to him at all? Do you know whether she talked to him to set up an account of any kind or anything?

A I don't

Q The 29th That's the date of the Healthcare Leaders meeting?

A Yes

Q On that day, did you meet with Mr Williams?

A I did.

Q Where did you meet with him?

A I met with him in the conference room in the Patrick Henry Building

Q Okay And that was for twenty minutes, as you said?

A I think it was about 20 minutes, is my recollection

Q What was the subject matter of that meeting?

A It was to -- because I hadn't gotten any writing from him, I still wanted to get a little bit more clarity about the nature of this proposal And so at some point I learned he was actually coming to the Healthcare Leaders event, and I think somebody on my staff scheduled that meeting the day before so I could meet with him while he was in town He was living in Florida at the time So I just wanted to get twenty minutes just to talk to him face to face

Q Victoria, can you pull up the calendar, Mr McDonnell's calendar for that day, please, if you have it available quickly? Blow that up a little This is the calendar for the 29th?

A Yes

Q Go down to the 1:30 time frame Highlight the meeting with Jonnie Williams Above that Right there "Meeting with Jonnie Williams, PHB, Governor's conference room"; is that correct?

A Yes

Q That's scheduled for 1 o'clock, approximately, or scheduled for 1:00?

A It was a half-hour It was 1:30 to 2:00 is what it looks like

Q Okay Did you create this entry on the calendar or have someone create it?

A I could not tell you how to create an entry on my calendar So I assume it would have been at that point Monica or Katherine or Adam. Somebody would have put it in there

Q When you say you couldn't tell me, you are saying that technologically you don't know how to put something on your calendar?

A That would be fair

Q All right Let me show you your notes from that meeting with Mr Williams And this is Page 0003 of already admitted RM-1431

A Yes

Q That page only Okay The writing at the top is yours?

A Yes, it is I made those notes actually before Mr Williams came in I was going to actually talk to him about an RGA event. So yes, that's mine

Q Okay. And before I get into this page, I've been reminded that on the 23rd of February, did you have a conference call with Mr Piscitelli?

A Yes

Q That's six days before this event that we are about to get into?

A Yes

Q Who was on the call?

A I did most of the talking I think my wife was on the call as well But we spoke on the 23rd. So I think it was my wife and Mr Piscitelli and me

Q And what was that about?

A This was a follow-up on that February 3rd call I wanted to try to talk to Mr Piscitelli about this margin loan proposal that Mr Williams had made Even though I didn't have any writing yet from Mr Williams to review, I wanted to run the concept by Mr Piscitelli about this margin loan and whether or not if I got shares of Star Scientific stock that were forwarded to me and we created a separate account at Davenport, whether or not Davenport then could offer a loan to me or to MoBo so that we could generate the $50,000 Because that's all I wanted. I really wasn't that interested in the stock per se, but if that was what Mr Williams was offering, I wanted at least to see could it even be done That was the purpose of the call

Q Did you get any comfort about whether or not it could happen if that's the way you guys wanted to go?

A I explained it to Mr Piscitelli the best way I could, and did not get a firm answer at that time He said -- he said, "We do do margin loans " My best recollection from what he told me, because this is a small value stock, meaning a stock under $5, he wasn't sure whether or not his company would be able to extend a margin loan, but he would check and try to get back to us

Q Was that because a stock like stocks that are of that sort of value or less are too volatile and too hard to track?

A Yes I think that's what I got from him. And therefore, he didn't know if they could make the loan. So if they couldn't do it, then I had to find another option because this would not work.

Q Was tracking the daily price of Star stock with respect to a loan that you had collateralized with something that you had time or interest to engage in?

A No.

Q Let's go to the document on the screen that's previously been admitted. The writing at the top is yours, right?

A Yes

Q The writing in the middle is Mr Williams'?

A That's Mr Williams'

Q The writing at the bottom is yours?

A That's mine

Q So the writing, how did it work that you are both writing on the same piece of paper here?

A I wrote at the top a note that I wanted to talk to him. I knew that he had become friends with Freddy Couples, the golfer, and I am Chairman of the Republican Governors' Association at that time, as well as having multiple other duties, and I was going to ask him is it possible maybe to get Freddy Couples to come to an RGA tournament as a way of having an event I wrote that down. And when Mr Williams --

Q Let me stop you right there Did you write that down before you met with him?

A Yes, I did.

Q This is something you wanted to talk about when you met

A I did. Yes

Q How physically, or when in the meeting does he take the pad of paper or you give it to him and he write on it?

A It was just he and I sitting at a conference room table, and I asked him a few more questions I wasn't quite clear about how this proposal would work. He took the pad and scribbled down these notes to try to amplify further his view of how a stock loan might work. And that's his writing

Q Okay And you sort of bracket off essentially with lines what he wrote down?

A Yes

Q All right And below what he wrote down, below the 2 10 figure there, blow that up, what's that all about?

A Again, this is what he was proposing at that time as the deal or the agreement, that he would loan $50,000 worth of shares, I put "To Maureen." The value at that point, I think, was $2 10, or that's what he said his base value was I wrote down the repayment terms, which would have been four years, 2015, and that he would, if we had this agreement, he would transfer to Mr Piscitelli in a couple days

Q So let me see if I understand what you are saying You are talking to him on the 29th and that's why he put "Deal, 2-29-2012"?

A Yes, that's the day

Q The notes on March 1st, these are notes when he is not there, this is the day after, and you write those notes yourself, is that what's going on, or did you write this when he was there?

A No, I wrote all those when he was there Again, these notes were prepared solely for my recollection, not for any public purpose But I think that was the day that he would actually be able to deliver the shares

Q So the next day

A Yes. I guess that would have been the next day

Q 2-29, the last day of February

A Yes, I'm sorry, it is one day, that's right

Q This all happened in the meeting and the notes all occurred in that meeting, on this page, Page 3; is that what you are saying?

A Yes

Q Even after this meeting, did you think you fully captured or understood what he was talking about?

A No After I wrote that down, I think I told him, "I appreciate the proposal but I haven't heard back from Mr Piscitelli yet on whether or not this is going to work." I said, again, "What I really am looking for here is operating cash Because that's what I need." Stocks, I wasn't interested in Star Scientific stock per se I wasn't interested in stock because I needed operating cash So unless I could get a margin loan and Mr Piscitelli said that Davenport could do that, this agreement was to the -- this wasn't going to work; I wasn't interested in it

Q You can take that down. At this point in time, did you ever have any knowledge of somebody named McKeon who was a friend of Mr Williams?

A Mr McKeon?

Q Yes

A No, I never heard of him until a few months ago when we got some notes in the case

Q So no discussion at all between you and Jonnie Williams about that man?

A No

Q All right Did you have any, assuming that Jonnie Williams was going to give you some Star stock for this margin loan purpose that you have discussed, did you have any idea exactly what that would mean from a securities standpoint or federal securities law standpoint for Mr Williams?

A I didn't

Q And had you ever practiced securities law?

A No

Q As an AG, blue sky stuff? The state, did you ever practice securities law as Attorney General?

A No, we had some of those type of matters that would come up and we had specialists in that section that would handle that But it was not my area of expertise, which is why I would counsel with a lawyer before we did any final agreement on that.

Q Okay You heard Mr Williams testify in this trial that with respect to this transaction, he wanted to keep it just between you and him, right?

A I heard that

Q And is that true from your perspective?

A There was no such discussion with Mr Williams on the phone, at the February 29th meeting in my office, whatever If we had this agreement and I was actually going to be able to borrow stock and get a margin loan, whatever my appropriate reporting requirements would be of stock or loan, I would do that I had reported already the loan that my wife had the previous year in 2011 That was on my 2011 Statement of Economic Interests So if I had to report a loan or stock or something, I would have done it at the appropriate time

Q During this meeting, at the end of the meeting, did you tell Mr Williams that a handshake deal is no longer the law in Virginia?

A I did not That was not -- that was not what

I -- first of all, that's not true And I wouldn't have said that

Q All right Whether or not you would have, did you?

A No, I did not

Q What was your takeaway from the meeting, your ultimate, sum total takeaway from the meeting about what was going to happen?

A Well, until I got an answer from Mr Piscitelli about whether or not a margin loan from Davenport could be offered, this was still a proposal that would be held in abeyance I told him I appreciated his willingness to extend a loan, and if this was the way he wanted to do it, I would see if it would work. But unless I could actually get a margin loan from Davenport, then this just didn't make any sense I just needed to have a cash loan.

Q Going forward from February 29th to March 6th, were you aware that on that date, Mr Williams sent a $50,000 check to MoBo that ultimately -- that was addressed or was sent to your sister, that she talked about finding when she got back from her trip to Jamaica?

A On March 6th?

Q Yes Were you aware of that on March 6th?

A No

Q That Mr Williams actually sent a check or wrote a check for $50,000 and sent it to your sister?

A No. This was the last two weeks of the General Assembly session. I'm just focused on that I did not know a check had been written on March 6th at that time.

Q Were you aware of the level or the nature of any contact between March 1st and March 6th between Mr Williams and your wife?

A No.

Q Did you talk to him at all or have any contact with him March 1st to March 6th?

A I did not

Q So did you know anything about your wife texting your sister to the effect of, as we have seen in this trial, that the check was coming and don't deposit it?

A Not at the time

Q At some point later you saw that, or you saw that text, or you got some insight into that? Let me pull up Government Exhibit 594, already admitted.

A Yes

Q Is there a reference -- yes 6:11 p.m., this is sister Maureen to you, right? There is a text message?

A Yes

Q And what date is that, March 11th?

A March 11th.

Q And how does that relate in time to the Jamaica trip?

A My recollection is, she had just gotten back

Q Okay And this is her text to you?

A Yes

Q All right "Hey Bobby I'm leaving church " Blah, blah, blah "Mike called Mo earlier and got disconnected." We have heard about that "I want to talk to you about the check when you woke up." What did that mean to you?

A The General Assembly session actually ended on March 10th, as I mentioned. This was the crisis session where we had no operating budget And I had been working until that, I think late that day before to try to get something resolved on our budget This was a big problem for me in state government That day I think I was just flat exhausted and I probably was sleeping in a little bit

Q With respect to -- you received this text, obviously, correct?

A I believe so, yes

Q Did you know what she was talking about or not?

A No The last time I had talked to Mr Williams, we were still negotiating And so, you know, the next week is when I planned to try to follow up because I had the General Assembly out of town and I was going to have a little time for personal matters

Q Did you in fact call her back or talk to her that day, on the 11th?

A I believe I did, yes

Q All right And do you recall, there has already been testimony about that particular phone call?

A Yes

Q And from your perception, you know, what was it about? How did it go?

A We talked a lot about, frankly, her trip She had just gotten back. I knew that this was her attempt to try to work through some things with her husband, Michael They had been separated a little bit, I think November-December And they planned this trip to Jamaica as a way of working on their own marital issues and reconciliation. So I think that dominated the call I either talked to her probably that day or the next day on the 12th about the check I don't remember when, because as of that time, I didn't know about any check

Q Is this the call that she described in Court, that your sister described in Court, where you are trying to talk to her and your wife is yelling in the background?

A One of those earlier calls, a very short one, I think, yes

Q And in fact, was her description of that event accurate?

A Yes, it was

Q Did there come a time on March 12th when you again talked to Mr Williams?

A Yes I may have actually texted him the night before when I got this e-mail about the check, and that was news to me that there was any check because the last time I talked to him we were doing negotiations So I think I sent him a text to see if we could talk.

Q Let's pull up RM-1431-0001

MR. ASBILL: I'm reminded that I may have been remiss in trying to move in Page 3 of these notes into evidence in this case, and if I have not done that, I ask that it be moved in

THE COURT: It will be admitted

BY MR. ASBILL:

Q Let's pull up Page 1

MR ASBILL: And I move the admission of those notes as well

THE COURT: It will be admitted.

BY MR. ASBILL:

Q Do you recognize this document?

A Yes

Q This reflects your discussion on the phone with Mr Williams on the 12th of March?

A Yes, it does

Q All right And you are taking notes during the call?

A I am.

Q All right And what's this about, what's this "Sarbox, can't loan shares at this time" about?

A This is the Monday after that General Assembly ended and I finally again have some time I found out the night before in this text from my sister that there is a check that's been sent, so it surprised me because I didn't think, at least I didn't have any direct agreement with Mr Williams at that time So I was going to call and say, "Listen, would you be willing to do just the $50,000 cash loan? This stock deal just sounds too complicated. Can we just do that?" He told me, and again this is him talking to me about his ideas at the time, and he said that Sarbox, which is Sarbanes-Oxley, the federal law that deals with some of these matters, would actually prevent him from loaning shares at the time That's different than what he told me before about having his lawyers look at it and say that it was okay And so then we began to describe some other options for a loan

Q Go down to Number 2 Highlight that "50k to rent to MoBo " What's that mean?

A He proposed at that time also, well, maybe he could have $50,000 apply for rent and he and his members of his company could just rent the MoBo properties over the next years and just use the payment of the $50,000 as rent for the property and he would do it that way Basically, rent in advance, and that was one idea that he had.

Q Okay The third line talks about "Deal." Was that the sort of final, essentially, Line 3?

A You would have to read down further, because the actual final, the final agreement was the $50,000 loan that would be at interest rate of two percent over three years I tried to go piece this back together about what he told me, and this was late on Monday night, I think, at 9 or 10 o'clock I'm not sure, honestly, as I sit here what some of these other proposals were, but all three of these were simply negotiations It never happened. They were proposals that he was making But at the end, I was looking for $50,000 in operating cash, and so that's when I wrote down what the interest rate of the final agreement was of two percent and a three-year balloon

Q All right No discussion during this call between you and Mr Williams about anything that Jonnie Williams may have wanted from state government?

A No No. Not at all

Q All right Let's go to the $20,000 loan to MoBo. That's May, 2012; is that right?

A Yes

Q And why did that occur and what was that about?

A Late April, I had begun to get a little more involved with operations, as I mentioned yesterday, after my sister and Mike had their first estrangement in late 2011 I didn't fully take over the books until November of 2012 But I wanted to stay a little bit more abreast of what was going on, because honestly, for the first six or seven years, Mike just handled the business and Maureen completely.

Q What's the point of the need for $20,000?

A Well, an analysis that I did and talking to Mike, we still had about a $20,000 operating deficit going into May and June June is the first month that the rents kick in So I was communicating with my sister about should we go ahead and just put in operating cash or should I consider talking to Mr Williams about a $20,000 loan.

Q When you say operating deficit, did that include any kind of capital improvements or repairs or anything like that?

A It did There was a 25,000, $26,000 capital improvement that I had negotiated with Resource Building Corporation that took place in January and February of 2012, and so we had an additional expense at that time

Q All right And capital improvements for what, in short?

A We were going to make the property more marketable, improving the cabana and some more concrete and different things like that It was to increase the marketability of the property

Q How, if at all, in connection with this additional $20,000 operating deficit did Mike's diversion of funds from MoBo weigh in?

A I didn't know about that at the time I knew that we were unexpectedly short, that there was a bigger delta than we typically had of 40 to $60,000 I didn't learn until I took over the books in November and started doing the analysis that there was a net of $26,000 that had been transferred from MoBo to BRH out of the MoBo account, which obviously strapped the business a little more for cash So that clearly played into the need for that loan, Mr Asbill I just didn't know that at the time

Q Why did you decide to ask Jonnie Williams for the additional $20,000?

A He had told me on several occasions that if we needed to borrow more after that $50,000, that he would do that In fact, he sent me a text to that effect

Q Pull up RM-1481 Highlight that, please Is that the text that you just mentioned?

A Yes This would have been at the end of April

MR. ASBILL: Move the admission of this, Judge

THE COURT: It will be admitted.

BY MR. ASBILL:

Q And this is a text from him to you?

A Yes

Q To what effect, forget about the dinner"?

A He said, "Let me know if Virginia Beach needs cash." I guess that was his way of saying what he had told me on the phone, which is, "Listen, if you need a further loan and $50,000 doesn't cover your operating deficit, just let me know and I would extend you further credit "

Q Above that it says something about "dinner with a dozen doctors Growing fast " Do you know what that was about?

A No, I just figured it related to his business in some way

Q You again, I take it, made a business decision to take the $20,000, you and your sister made a business decision to take the $20,000 from Jonnie as opposed to trying to fund it yourself?

A Yes, I did. We had 35 or so thousand dollars in the bank, I did, and we had a couple hundred thousand in credit capable, but we decided that this would be a year we would do loans, yes

Q All right You then text, let me pull up Government Exhibit 379, which has previously been admitted. What's this text about?

A I called Mr Williams sometime in mid-May to say that, "Yes, we would like to take up your previous offer of extending another $20,000 in credit " After looking at the financials, that's what I thought it would need to get us through June

Q Please highlight this, Victoria

A Which is when the significant cash from the beach rentals would kick in. And I could not reach him. I left him a voicemail And so I normally would not obviously make a loan request on a text like this, but because I had left him a voicemail and because he had sent me the previous text saying that if we needed a loan, that he would do that, I felt it was proper to just let him know in a text

Q Okay Did he agree? You can take that down now, please

A Yes, he did. He communicated back with me shortly after that

Q Once again, from your perspective, anything inappropriate or wrong about that?

A No, he had really never asked me for anything The only thing he asked me that year was call his father for his birthday, which I did.

Q That was also in May?

A I believe that was February-March, somewhere in that time frame

Q Were the March and May loans from Mr Williams to

MoBo or to you?

A No, they were clearly to MoBo That was my request That's what they were needed for, for the operating deficit, as we had gotten five, six years out of the last eight That's where the checks were written, where the wire was done, and that's where I fully understood that was the agreement, that they were loans to MoBo

Q Did your sister pay any of her own money to MoBo that year, 2012?

A She ended up paying, at the end of the year, she put in her 12,500, which was her owners equity contribution for the remainder of the Dr Davis loan.

Q That was at the very end of 2012?

A At the end of the year I think she put that in

Q Did you consider these payments from Mr Williams or his companies to be loans or gifts?

A No, they were clearly loans, what I wrote down contemporaneously with my notes, and they were absolutely loans and with a balloon payment

Q Did you report them as loans on your SOEI statement for the year?

A I did not

Q Why?

A Well, I treated them the same way I treated the loans from my father and the way I ultimately treated the Dr

Davis loan, and that was that they were corporate liabilities. The SOEI I had been filling out for many years, and I always understood the loan section to be personal loans, that is, a loan to me or a loan to my wife or a loan to a member of the immediate family That's the way I understood the form. But a loan to a corporate entity, like MoBo, LLC, unless it had a personal guarantee, then it did not need to be reported. In other words, it was a non-recourse loan So I did not think that a MoBo, LLC loan from Starwood would have to be reported And so I did not report that

Q How about reporting these transactions to your bookkeeper or accountant?

A Well, no, those would need to be reported because those, as we did with my father's loan and the Davis loan and now the Starwood loans, these all affected the income taxes, the corporate income tax reports And so they were disclosed in the regular course of business to the bookkeeper, because she had to keep track of all of our contributions from the two owners, Maureen and myself, as well as all of the loans from third parties as part of the accounting for the business

Q All right We will get to the bank applications in a minute But have these loans been paid back?

A Yes, they have been paid back with interest to

Starwood Trust Yes

Q All right I previously asked you about -- let me pull up RM-0084-0002 Do you know what this is?

A Yes, that's my credit report.

Q For when?

A This is as of March 19th, 2012

MR. ASBILL: Move to admit this document, Your Honor

THE COURT: It will be admitted.

BY MR ASBILL:

Q And what was your credit score as of that date?

A I'm an Equifax member I check it from time to time It was 820, which is excellent That's about the highest credit rating I think I've had

Q All right You can take that down, please We talked about the birthday call to Jonnie's father That was March 9th; is that the best of your recollection?

A Yes, sir, that sounds about right

Q I think we have seen some sort of an exchange between you and Mr Williams previously in the trial, and I'm not going to pull it up again.

A Yes

Q Mr Williams, you heard him testify that he had to give you hundreds of thousands of dollars in order to get that call to his father from you.

A Yes

Q Yes or no, is that true?

A No.

THE COURT: Mr Asbill, can I get the number for the credit report?

MR. ASBILL: Yes, sir The number for the credit report is RM-0084-0002

THE COURT: All right Thank you

BY MR. ASBILL:

Q Around this time, middle of March, and going forward from the exchange between Mr Williams and yourself about his dad's birthday, what did you think about Jonnie Williams? What was your perception of him at that time?

A Well, I liked the guy He was, again, a Virginia businessman We had gotten to see him a little more I knew he was friends with my wife, and to some degree friends with me at that point We had seen him at various political events We had had him for dinner So I would consider him to be -- to be a friend. At that point, he really hadn't asked me for anything Like most Virginia businesspeople, I wanted to see them succeed. So I was glad to be able to continue to hear things about what he was doing

Q Okay I'd like to turn to the subject of texts between you and Mr Williams

A Yes

Q Relating to stock, Star stock

A Sure.

Q Summer, 2012 That's the time frame and the subject matter I want to talk to you about

A Okay

Q In April of 2012, do you recall texting and e-mailing Mr Williams about that issue, about Star stock?

A Yes

Q On April 27th in particular, if we could pull up, I think it is Government Exhibit 370, it is already admitted Is this a text from you to him?

A Yes, it is

Q All right And you say in it, "The stock is doing great, Alzheimer's study announcement really helped. Thanks for coming to the Romney event and helping him."

A Yes

Q That's what you say Let me write this down Why are you saying to him at this particular point in time that the stock is going great? Why did you say it?

A I typically talk to people about things that are important to them. And in my discussions back in February with, February and March with Mr Williams, and really at other times, I learned that the most important thing to him was the value of his stock, because he owned, I don't know, 10 million shares or something like that at the time I had seen Mr Williams at this Romney event. I coordinated an event with Scott Romney to come in down to the Dominion headquarters and we invited, I think, 30, 40, 50 businesspeople, and I saw Mr Williams at that event with Scott Romney and it was just two or three days before that, I think, and as usual, Mr Williams would talk a little bit about his business. My best recollection is he told me at that time about this new Alzheimer's study and that the stock was doing well And so I think this was, the 28th was a Saturday And at that point Mr Williams is a major donor to me He is an over $100,000 donor He had loaned my wife some money He had now loaned my corporation money And, you know, people that I'm close to from either a business standpoint or a financial standpoint, I typically stay in touch with. So a couple days after the Romney event on that Saturday I shot him this e-mail

Q When you are talking about Scott Romney, I want to make sure we are clear, this has nothing to do with the South Carolina Governor Romney?

A No, Scott Romney came in for his brother, Mitt, as a special guest at an event we did right here in Richmond at the Dominion headquarters Mr Farrell and I helped coordinate this event, and Mr Williams was one of the people that was there.

Q Did you know anything prior to this from in 2011? Basically, I think you testified that at one point in November of 2011, you knew that, because your wife had bought stock and then you learned she still had it, that the stock price had dropped?

A I knew the stock had taken a tremendous beating the year before When I talked to my wife in November when she sold it, it had gone from 31 to 15,000 She had lost about 17,000 When I heard the stock had rebounded, I said that's good for the company and maybe the research he was doing at some of these other places and was now paying dividends Any time a Virginia company is doing well, I'm happy about it because it means jobs, it means opportunities, and that's a good thing for us

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Q You've heard Mr Williams testify that you told him you were a shareholder of Star stock Did you hear that in this trial?

A Yes, I heard that

Q And was that true?

A No I've never owned shares of stock, and I would have never told Mr Williams that I owned stock

Q Okay Let's talk about Chatham Bars, Cape Cod, August 21 to August 23, 2012 What was that trip for, from -- to your knowledge? What did you understand that trip to be about?

A We had an offer from Mr Williams; that is, my wife and I, to spend a weekend with him after the Republican National Committee meeting over Labor Day

Q All right And was this some sort of a makeup trip, in your view, from -- was there a previous -- the previous summer was there some plan to go to Bar Harbor?

And then there's this?

A Yes

Q -- Cure By Design auction thing?

Did either of those play at all into your understanding of Chatham Bars?

A Yes, but I wasn't clear what We had -- my wife had arranged the surprise trip the year before for Mr Williams' anniversary and our anniversary, our 35th anniversary As I learned, we both honeymooned at Bar Harbor, Maine And unbeknownst to me, my wife had planned a trip to Bar Harbor with Mr. Williams and a few of our other friends I did not know that I thought we were going somewhere else. And then that weekend was -- there was a hurricane in Virginia Beach, and so we had -- we canceled any trip out of town

And then the Cure By Design event, as I told you, Mr Williams had won the bid and won this -- this trip So I really wasn't sure whether this was a makeup for the Bar Harbor anniversary trip or a makeup -- or actually, an alternative to the Cure By Design trip I think that's the way my wife looked at it was this was the Cure By Design trip except we were going to Cape Cod and not New York

But in any event, it was a nice offer He asked me if -- he allowed me to take one of my friends, and so we agreed to do that

Q He asked you -- he asked -- he told you that you could bring a friend?

A Yeah Well, I think he told my wife, and then she told me, that we could invite one other couple to come with us And that's why I invited Mr Cox and his wife and daughter

Q So who are the people on the trip?

A Mr Cox and his wife, and they had a newborn baby And so I think we got approval from Mr Williams to bring the -- have the baby come And then Mr Williams, I don't think I knew who he was going to bring, but with him was Dr Ladenson and Dr Ladenson's wife And then there was another couple, a judge from Massachusetts, who was a friend -- apparently a friend of Mr Williams, and her husband And then on one night I invited another friend of mine who was up there in Cape Cod, Doug McAuliffe, who had done all the TV on my campaign He and his wife, Ingrid, came for dinner one night

Q What did you do when you were there, in sum, and in general, what did you do when you were there?

A You know, by that time, this was -- I had known Mr Williams now, to some degree, for about two years And this was - in my view, it was just a completely get-away, relaxing weekend You know, for me, when people offered things like that -- I had multiple offers to do things But the few that I accepted were ones that meant -- meant time with my wife or time with my family That's what I saw I didn't see fancy hotels or boats I mean, I just saw time away

And this was -- I had been incredibly busy during that year of '12 that I explained I had been working on the campaign a lot for Mitt And so I had just been down in -- for about eight, ten days in Tampa at the Republican National Committee I was on the Platform Committee So this was great Right after that was over, to have the Labor Day weekend away with a handful of friends I thought was just terrific And so that's why we went

Q So the weekend was consumed by socializing or sports events?

A Dinners, golf, went out on a boat one day That's really all we did Walked around the town a little bit That's all we did

Q Did Mr Williams ever ask you for anything from state government during that trip?

A No

Q Any long discussions about Anatabloc or anatabine or that sort of thing?

A No It was very little business I do remember at one point out, we were out in the backyard, and he did tell me -- he talked about his stock, which he typically did, and that his goal was maybe to stay with the company a couple years, and the stock was going to do really well, and then he would try to cash out of the company and expected to walk away with a significant amount of money That was his -- that was his goal

Q Who paid for the trip?

A Mr Williams paid for the majority of it I paid for a part of -- a couple dinners, about $1,100 I think Dr Ladenson and I might have split a couple of the nights of dinners But I had two entries on my credit card

Q Totaling $1,100?

A Yes, sir

Q All right Again, did you think anything inappropriate about Mr Williams paying for the majority of that trip?

A No I had been fortunate to have several offers and gifts like that during the time I was Governor, and we reported that on my Statement of Economic Interest at the end of 2012

Q Okay Let me talk to you about the work that Mr Williams' brother did --

A Yes

Q -- on your residence, which I take it, you said, is about 30 minutes from -- about 30 minutes from downtown Richmond?

A Yes

Q All right We'll -- the Leabrook house Is that --

A Yes

Q Okay November 2012 Were you aware that your wife asked Donnie Williams to work on your house?

A It was not exactly that way

Q Just tell us what way it was

A My wife -- my daughter had moved out the house I believe that summer She and her husband Chris -- my daughter Cailin and her husband lived there for a couple of years We were trying to help them out as newly married couples -- a newly married couple And it was good for us because the house would have been vacant during that time And so they lived there

They moved out to buy their own little small house just down the road from us in -- in Henrico So we knew that a year and a half later, we'd be moving back in So we were hoping maybe to rent the house that last year, and so I knew that we needed to do some work

So my wife, as usual, I asked her to try to help with a couple of the things that needed to be done She always likes to have referrals, as opposed to just cold calls, somebody out of the Yellow Pages or the phone book

So she told me she had talked to Mr Williams and that his brother, Donnie, took care of his house here in Goochland and did some contracting work and that the small things that we needed done, that we could engage him to do

Q All right And the general nature of the work that you were interested in having performed is what?

A It was initially very pretty routine It was some lawn -- some lawn maintenance We had lost a couple of trees in a hurricane, small bushes, and to replace those It was painting, painting a deck, and a couple things like that

Q Was some sort of list of things created at some point?

A I made a list at one point, I think, to give to my wife, and I believe she discussed it with Donnie

Q All right Did you intend to pay for that work?

A Yes

Q Did you, in fact, pay for the work?

A Yes, we did

Q When?

A When it was done, which was -- I think it took him a couple of months We added a few things to it, and the work was done in about March And then he had engaged a couple other contractors, an HVAC contractor, a termite contractor So we got separate invoices from them that we paid But we paid them as the work was done

Q Let me pull up RM-292 Do you recognize this, or is this a series of invoices?

A Yes

MR ASBILL: I move these into evidence, Your Honor

THE COURT: It will be admitted

BY MR ASBILL:

Q And what -- this is a multipage exhibit; is that correct?

A Yes

Q And, in essence, without reading each one of these, what is it all about?

A There were -- there were a couple other contractors that Mr Williams, Donnie Williams, as he found things that were wrong or that we'd ask him to do, he couldn't do them So he had to bring in other people to do One was the Bryant Heating & Cooling company They were, I think an HVAC contractor There was AQC Services that did these various services that were outlined here

And then we -- we discovered that we had termites in a part of the house Mr Williams replaced the board itself He could do that But we -- I think we paid about $2,900 here on this invoice to have a termite company come in and do the work So we paid Mr Williams, and then we had three other invoices that we paid in due course as the work was completed

Q Okay

MR ASBILL: You can take that down

BY MR ASBILL:

Q Let's move on to Christmas 2012 Tell us about that day, and who was present

A We tried to have as many of the family come for

Christmas, and I think this year, at some point all the children and husbands, boyfriend, girlfriend, we had everybody there at one point in time Christmas is a big day for our family and -- especially Christmas Day is usually everybody together

Q Did you learn anything from your wife about Star stock shortly before Christmas Day?

A Yes

Q What did you learn, and when did you learn it?

A I think it was sometime the week before Christmas She told me that she had bought Star Scientific stock early in the year She had rebought the stock that she had sold the previous year when I told her that it was going down, downhill, and she had sold it at the end of the year And she told me at the -- right before Christmas that she had repurchased the stock And --

Q Is that the first time you knew about that? Was that the first time you knew about the repurchase?

A That's when I learned that she still had stock, yes

Q All right And what did she tell you about why and when?

A She told me she really believed in this company and this product She believed that anatabine was the real deal and that, in time, these clinical studies would prove it She told me that she really believed in this company

And she had been following it some, and the stock had actually gone up a little bit from what it was before And this is something that she really believed in

And she couldn't find a way at that point to actually do what she wanted to do, which is to put it in the children's name without them knowing it so that she could use it as a wedding present for the children at the time of their wedding And so what she had decided to do was to give it to them as a Christmas present that year in Christmas of 2012

Q When you learned this from your wife, what was your reaction?

A Well, I knew that -- I knew of her passion I knew of her friendship with Mr Williams I knew of her real interest in the stock because she was very reluctant to sell it the year before when I -- when I told her to sell it But I was pretty upset with her I mean, here she goes buying a stock back again that I had told her to sell I did not think -- I didn't have any personal attachment to Star Scientific stock I thought if we were going to do something for the children, that her best route was to buy a blue chip, buy something a little more stable This was clearly a speculative stock It had went up and down It was back up a little bit at this point, although down from where it was at the middle of the year But I just felt this was another time she just didn't tell me something that she was doing

Now, it was -- again, it was her money that she had used for this But I told her, you know, "Listen If you have this stock, you know, this is" -- "again, triggers a reporting requirement for me I can do it, but I need" -- "I just don't" -- "I really don't appreciate you doing things that really" -- "that affect me without" -- "without me knowing about it " But --

Q Was it a friendly or pleasant conversation between the two of you?

A Well, it was tense I mean, it was -- listen, it was right -- it was Christmas season It was right after the -- I think one of the last Christmas parties that we had We had a series of them in 2012 leading up to Christmas

I was -- I was just more -- I was more disappointed, I think, would be the best description that she had this stock for all that time and just didn't -- didn't tell me

Q During the conversation, did you find out exactly when she had repurchased it in January?

A I don't know if I knew the exact date But she did tell me she had purchased it right at the beginning of the year She bought it back She bought it back in January

Q During the course of the year, during the course of

2012, between January and December, had you ever reviewed or seen her Davenport statements?

A I knew she was receiving some mail from Davenport I had - I got most of the mail, not all of it At that point we got mail from about -- I think about five different sources Some from Leabrook I had a P.O Box 406 I got some at the Executive Mansion I got some directly to the Broad Street office building Maybe four sources

So it would come in different places My recollection, at that point, was that that one came to the P O Box 406, which was the clerk's office, which means Ms Watts got it to me So I'm sure I saw Davenport statements, but I typically didn't open her mail

Q All right On Christmas Day did -- what happened with respect to the stock, if anything?

A Well, Maureen had told me when she was going to transfer the stock to the children, that she had spoken to or was going to speak to Mr Piscitelli to finally get the forms Because now she would have to disclose to the children The only way to actually put it in her name, she told me, was to --

Q Put it in her name or in their name?

A I'm sorry Excuse me To put the stock in the children's name was to have them fill out these forms In other words, her plan to keep it -- to put it in the children's name without them knowing it so it could be a surprise at a wedding was -- she couldn't find a way to make that happen So she said she was going to get the forms and present it to them at Christmas and have them fill out the forms so they could open an account for the transfer of the stock to them

Q Was there any kind of discussion of this issue at Christmas, at Christmas dinner or anything?

A Yes

Q What was that about?

A I remember at some point my wife telling the children that one of their Christmas presents -- I think it was after we had opened the regular presents around our Christmas tree I believe she told them at the dinner table -- I heard most of it, I think -- that she was also going to give them shares of Star Scientific stock, that this was something special to her, that this is what my dad had done for us at our wedding when he gave me the shares of Citizen Utilities B stock And this is what she wanted to do She was hoping to do it at the wedding, but couldn't find a way to do it So she was going to give it to them as a Christmas present, and she needed them to fill out some forms

Q All right And did she, in your hearing, tell them anything about -- tell the children anything about the source of the money that had been used or she had used to purchase these shares?

A Yes I think I heard her say -- I heard her talk about that

Q And what did she say?

A She said that this was money that was from her dad's inheritance

Q And you knew that not to be correct; is that right?

A Correct

Q And did you say anything about it to the children or say anything to her in front of them?

A I did not Because in my discussions with Maureen, I knew that -- she told me that this money that she had borrowed from Mr Williams that was the source of the stock purchase was the substitute for the money that I had taken back in November 5th of 2010 when I asked for her dad's inheritance money to be put towards -- to be put towards the abatement of our credit card bills, as opposed to her buying stock

So as I mentioned, when she got this loan from Mr Williams -- in her mind, I know she told me, "This is my dad's money This is my money, and I'm going to use it the way I see fit " So I -- one, I certainly didn't want to correct her in front of the children And secondly, I -- I knew that I was -- I was wrong in what I had done, as I've testified to before, and what I did in taking her dad's money Right decision for the family Wrong decision for the marriage And I was not going to correct her on that point in front of the children at Christmas.

Q Did your children, that night, actually sign the forms to open stock accounts?

A I don't know if they all did at that time I do remember specifically my two sons being at the Christmas table and filling it out And I -- I actually -- they asked me a couple of questions, actually, about the forms, and I -- I tried to answer the questions that they had about the forms A couple of the other kids may have But I don't know if all the children actually did it at that time

Q Was there any rush, from your perspective, to fill out the forms?

A Well, they were -- everybody was together And I think that's the other reason that Maureen told me she wanted to do it Not only to do it as a gift at Christmas, but finally all the children would be here at one spot

I mean, she had procrastinated, essentially, for a year and a half in doing this I was glad that she was finally going to do what she wanted to do, which was get it in the children's name But listen, I had a Statement of Economic Interest report due in a couple of weeks, and if the stock was still in her name at the time, it was $15,000 It was -- I would have reported it if she still had it I was going to report an $8,000 gift from Mr Williams for Chatham Bars already I had reported $108,000 of campaign contributions A $50,000 loan I mean, everybody knew I was friends with Mr. Williams My wife was So if I had -- if I reported the stock, it was not a big deal

Q Let me go back a little earlier in the fall of 2012 Do you recall an event where your oldest daughter, Jeanine, or her husband, Adam -- Adam is the one who worked for you; is that correct?

A Yes

Q Do you recall a tool party --

A Yes

Q -- for Adam?

A Yes

Q What is a tool party?

A Well, I learned at the time what it was They were getting married in May 11th of 2013 And I guess one of the things now for a groom, prior to a wedding, is to have a tool party, as opposed to, I guess -- or instead of a bridal shower, where the groom would actually get something that they wanted; i e tools

So my wife and I attended the tool party, along with Adam's parents and a handful of other friends I think it was hosted by one of Adam's friends

Q And at that party do you recall whether or not Mr Williams attended?

A He did not

Q Do you recall any phone calls between Mr Williams and your wife or anyone else between Mr Williams or anyone else at that party?

A I don't -- I don't have a -- I don't have a clear recollection of any phone call with Mr Williams at the party.

Q Did you ever overhear a phone call between Mr Williams and your wife or Mr. Williams and your daughter Jeanine or your future son-in-law Adam?

A I didn't overhear it At some point I learned that there had been a call, but I -- I didn't -- I don't remember overhearing any call

Q Did you have any knowledge at the time of the party of what Mr Williams planned to do with respect to -- did you know he had been invited but couldn't attend, essentially?

A I think so Yes, sir

Q All right Did you have any idea or any discussions with him about what he was going to give as a tool or some sort of a gift to Adam?

A Yes

Q When did you learn about that?

A I don't -- I don't remember It might have been at that party in December of '12 or it might have been shortly thereafter But I learned that he was going to get a generator for my daughter Because they lived in Virginia Beach, frequent storms, and he thought that would be an appropriate tool for them

Q What was your understanding of what kind of generator it would be and how much it might cost?

A You know, I didn't have any idea I was thinking of one of the portable generators that you can buy at Home Depot or something like that that would be provided that they could use if the power went out in a storm But I didn't have any idea of the value Maybe --

Q All right Did you know anything about --

A -- hundreds of dollars Something like that

Q Did you know anything about -- about, subsequent to the party, any efforts by people to come and look at the house or figure out where a generator could go or what kind of generator it might be?

A Not at the time

Q All right Did you have any idea that Mr Williams was talking about a $10,000 gift or -- either a generator or $10,000 equivalent?

A Not at the time

Q Did you know anything about him sending them a $10,000 check to Adam and Jeanine

A I learned after the investigation started that he had sent a $10,000 check to Adam

Q And that's the first time you learned about that gift?

A Yes

Q All right

THE COURT: Why don't we stop now for our morning break We'll take 15 minutes

(The jury left the courtroom)

(Recess taken from 11:25 a m until 11:45 a m)

THE COURT: Two things For the parties, there was a motion -- you all can come up here a second

(At Bench)

THE COURT: Okay I just took the opportunity to review the written submissions of the parties, and I've gone through the documents The government's motion to exclude these particular documents will be granted

All right Thank you

MR ASBILL: May I just make sure that my outline reflects what you've just ruled

THE COURT: Sure Take your time Take your time

And while we have this pause -- go ahead, Mr Asbill, and do what you are doing

I need to make this announcement to the media This is the third and final warning Inappropriate use of the cell phones is not going to work for you Now, I don't want any crocodile tears when your phone is taken and your privileges are ended You can only use the phones in certain areas and you know what they are, they are outside, and the marshals, if you violate it, are going to take the phone, report to me your name, and your privilege will be revoked Last warning

(At Bench)

MR BURNHAM: I just wanted to clarify Are we still allowed to ask Mr McDonnell for his understanding and his interactions post February 18th --

THE COURT: No No You --

MR BURNHAM: -- on falsity?

THE COURT: You all had -- you got a chance to do -- to make those arguments But no Not what he did since then

MR BURNHAM: Okay Thank you

MR DRY: Thank you, Your Honor

(In Open Court)

(The jury entered the courtroom)

THE COURT: All right Mr Asbill

MR ASBILL: Thank you, sir

BY MR ASBILL:

Q Good morning

A Good morning

Q I want to talk to you now about the topic of the alleged quos in this case And to the extent you've testified about it to some extent before, I'll try to move through it pretty quickly.

A Okay

Q The CigRx event

A Yes

Q This is February -- the stop-by, the CigRx stop-by?

A Yes

Q This is February 3rd, 2011 --

A Yes

Q -- correct?

At that point in time, February 2011, had you received any gifts or loans from Mr Williams?

A No

Q And we understand what that was about, et cetera I want to talk to you now about the Molly Huffstetler meeting August 1 This is right after you get back from Smith Mountain Lake

A Yes

Q Let's take a look at an e-mail on July 31 at night that you sent to Bill Hazel This is when you got back, driving back, from Smith Mountain Lake --

A Yes

Q -- to Richmond?

MR ASBILL: Could we take a look at GX 189, which has previously been admitted And blow that up, please, Victoria

BY MR ASBILL:

Q Okay This is an e-mail -- this is in response to your e-mail or this is -- below it is your e-mail to him?

A Yes At 11:29 is my e-mail

MR ASBILL: Okay Highlight that, please, Victoria

BY MR ASBILL:

Q And this is at 11:29 p m , the night you returned from Smith Mountain Lake, correct?

A Yes

Q And you tell Bill Hazel basically what?

A I ask him if he would have Keith or Matt, those are the two deputies in the Secretariat of Health and Human Resources I asked Bill if he would just send someone over there regarding a briefing with the First Lady on this issue of Star Scientific, Anatabloc trials that were planned for VCU and UVA And that was based on a conversation with my wife that night

Q All right And before we get to that, Mr Hazel responds, Dr Hazel, responds, "Will do"?

A "Will do " This kind of e-mail I would have sent many, many times to tell people to do things, have meetings, attend events I mean, I didn't consider this really out of the ordinary

Q All right. Now, back to how did you learn about anything planned for the next day with respect to Mr Williams and anyone at the Mansion?

A When we returned home, I think we got home about 10, 10:30, unpacked. And my wife came to me and said she had checked her calendar for the next day and that Mr -- that Mary-Shea Sutherland had put on an event on the calendar for her to meet with Mr Williams at, I think, 10:00 the next morning about this topic, which was Star Scientific doing clinical trials at UVA and VCU

I didn't really know -- I knew that maybe there was -- that he had told me at some point that maybe he had an interest or was exploring that, but I didn't know what the status was And I certainly did not want my wife and Mary-Shea Sutherland meeting with Mr Williams about this issue because they didn't really know anything about it They weren't responsible for UVA or VCU

And so I thought it would be -- if that meeting is going to take place, I wanted to have somebody there from the secretariat that understood what was going on with the science so that they could just monitor the meeting

Q Did you understand, from your conversation with your wife when she told you about this meeting, that policy or some sort of policy, government policy might be at issue?

A No I don't think she really even knew about the meeting, from what she told me She said Mary-Shea had set it up It might have been set while we were gone I didn't know She just told me she had saw it on her calendar She might have even said she talked to Mary-Shea I don't remember

But once I learned what the purpose of the meeting was, I wanted to have just somebody from that secretariat there just there to monitor, to see what was said so that no commitments or decisions were made unless somebody with the expertise was there

Q All right Let me back up Earlier in the weekend, were you aware of the content of any conversations, phone conversations, texts, et cetera, e-mails, that may have occurred between your wife and Jonnie Williams or your wife and Mary-Shea Sutherland --

A I knew of --

Q -- relating to this potential meeting?

A Oh, not at all No This was -- there was no ask of me to do this This was my decision, after my wife told me what the meeting was about, that I wanted to have someone there from the secretariat to monitor whatever this -- to monitor this meeting Just to be sure that if anything was offered or decided or asked, that somebody with appropriate expertise was there to monitor that meeting

Q All right And just to provide a little more context, this is the end of July of 2011, correct?

A Yes

Q And we've talked about that's the time -- or in the time frame that Ms Sutherland is, without your knowledge, talking to Jonnie Williams about a job?

A Yes

Q Okay So you -- that didn't influence this issue --

A No

Q -- in your mind; is that correct?

A I didn't know that until September

Q All right During the ride back, before you make this -- or send this e-mail to Dr Hazel, do you have -- do you have any discussion then with your wife about this issue or is it only after you returned?

A My best recollection, it was after we got back, she looked at her calendar As I would do, try to figure out what we were doing the next day And that's when she told me

Q And did -- when you discussed this, I mean, did Maureen ask you to send someone to attend?

A No

Q This was your decision?

A Yes

Q Your independent decision?

A Yes

Q Okay Now --

A But I had done things like that before in asking people to be at the First Lady's Office on Veterans issues, on wine issues, on many other issues where I knew it took subject matter expertise from a Cabinet or an administrator to be able to be there

Q All right And Mr -- Dr Hazel, excuse me, sends Molly Huffstetler And you ultimately, at some point --

A Well, I didn't know that I never heard -- other than "will do," I don't know who he sent I knew Dr Hazel would follow my request and send somebody I also knew it was last minute So I did not know who he sent until, you know, after -- really after the investigation started, I read the -- the information that Molly Huffstetler had actually attended the meeting

Q All right And did you think there was anything

inappropriate about your asking Dr Hazel to send someone to this meeting?
A No
Q This same time frame, was that part of a difficult time frame in your marriage?
A Yes
Q Now, did you talk with Mr -- excuse me, with Ms Huffstetler or Dr Hazel about the meeting after it occurred?
A I did not No
Q Did you ever speak to Jonnie Williams about it?
A No
Q Did you ever speak to your wife Maureen about it?
A I don't think so I don't believe I had any conversations Certainly not that day or contemporaneously No
Q All right Did you ever speak to Mary-Shea Sutherland about it or did you know that she was --
A No
Q -- involved or may have attended the meeting?
A No
Q Why didn't you speak to Williams or Maureen or Mary-Shea about it --
A You know, I --
Q -- if you did not?

A I make so many requests for people to have meetings and do things There's no way to possibly follow up on that I've sent, during the course of the administration, thousands of business cards, e-mails, texts, see me's, take action on this

When I give a directive like this, unless I have a real strong vested interest in that particular issue, you know, I hired people that I expect would just do that, make the right decisions, give people a hearing, and then make whatever the decision was that was appropriate

And this was -- this was no different There were three or four secretaries that routinely did things with the First Lady's Office on issues that they were working on

Q So am I correct in understanding that you did not expect any result from this meeting?

A No But -- other than knowing the topic of the meeting, I didn't know what might actually be discussed at the meeting If Mr Williams had already arranged on his own to have some sort of clinical trials already done at UVA or VCU and they were just briefing us, fine We'd have somebody listen I didn't know what the status of any of his own independent efforts with Star Scientific and UVA and VCU might have been at that time

Q All right And you heard Molly Huffstetler testify in this trial that basically after she went to the meeting, she listened, basically, and then she sent basically --

MR DRY: Objection, Your Honor, to recapping Molly Huffstetler's testimony

THE COURT: Sustained

BY MR ASBILL:

Q The blow-off e-mail from Huffstetler Did you have any problem with her doing that?

A No It -- she would have done what I would have expected, I guess And she listened and --

MR DRY: Objection, Your Honor The witness testified that he had no conversations with Molly Huffstetler

THE COURT: Sustained

BY MR. ASBILL:

Q All right With respect -- the notes from Ms Huffstetler have been moved into this trial, correct?

A Yes

Q They are in evidence in this case?

A Yes

Q All right With respect to the entry in her notes about your promising or committing or obtaining $3 million for Mr Williams from the Virginia Tobacco Commission, did you know anything like that was said at this meeting?

A No

Q Did you ever do any such thing?

A No

Q Now, there was a -- there was a Mansion lunch that same day, is that -- the 1st of August; is that correct?

A A Mansion lunch?

Q Excuse me Yeah Did you know anything about the Mansion lunch being scheduled this day?

A No I learned about that a couple weeks later

Q All right And that was on August 30th of 2011?

A Well, that was the date of the lunch I learned about it, I think, the 15th or 16th of August of -- with a conversation with Adam Zubowsky

Q All right And we've heard a lot of testimony about the earth, wind and fire during that time, et cetera; is that correct?

A Leading up to the -- leading up the Mansion, that whole week before was earthquake, hurricanes Yes

Q All right And your calendars have been moved into evidence And do your calendars for that time frame -- have you reviewed them?

A I have

Q And do they accurately reflect what you were doing in that week leading up to that event?

A Yes From the date of the hurricane, which was a week -- excuse me, the date of the earthquake in Louisa County, a week before the Mansion event, I think the 23rd, up until the day of the Mansion event or beyond, I was completely involved with -- every day with significant events In fact, most of the days, with either hurricane preparation, hurricane damage assessment, meetings with Secretary Napolitano, earthquake scene tours So I was very busy with all those matters during that time

Q All right And you say sometime -- with respect to learning about the event a couple of weeks before it happened --

A Yes

Q -- at that point in time, what is it that you learned or what did you know about it?

A Mr Zubowsky, I think, got an e-mail from Ms Sutherland -- I think that had been moved into evidence earlier -- about a request for us to come to an event at the Mansion that the First Lady and her staff were -- were doing with researchers that had some relationship with Star Scientific

And I think Adam asked for more information and then told me what he knew about it, and I told him we'll go by for 30 minutes And that's -- that's what I told him, and that, I think, got eventually put on that calendar at that point

Q All right Did you ever get briefing materials for that event?

A Yes I mean, typically, I'd get them the night before Yes

Q All right And was the -- were the briefing materials different or were they consistent with what your understanding was in mid-August about the nature of the event?

A They were generally consistent It said update on anatabine, research, meeting with researchers, lunch at the Mansion

At some point I learned -- I don't know if it was on the briefing materials or not, but that Star Scientific was going to present checks to -- to several universities And that was for research on anatabine at those universities I don't know if I knew that it was $200,000 at the time But that would have been one of the things that would have -- would have been in my mind at the time that I went

This was a positive thing I've gone to other check presentations when people have given money to the state So that's why I thought it would be fine to go

Q All right Those briefing materials have previously been admitted I'm not going to get into them So were you involved in any way with the planning of this event?

A No.

Q Did you prepare the invite list or edit it or add or subtract folks from it?

A No I would say I never see invites or prepare an invite or have input into an invite itself

On some occasions, someone will give me a list of an invite list and ask me to review it or ask me if I want to add anybody to come to an event But to the best of my recollection, this was a First Lady Office driven event, and I didn't -- I didn't have any input into who came

Q Let me pull up one item with respect to that thought GX 231.

MR ASBILL: Please bring that up It's in evidence And can you open that up to the -- yeah Down at very bottom of that page, highlight that block, please Thank you

BY MR ASBILL:

Q And this is part of the briefing materials? Is that your understanding?

A Yeah Normally with the briefing materials, I'll sometimes get -- in fact, I usually will get an invite list of who's coming, just so I have an idea who's going to be there when I come to an event

Q Okay Is this your handwriting in the middle of the page there?

A Yes

MR ASBILL: Can we highlight that please, Victoria

BY MR ASBILL:

Q And the asterisks are yours as well as the handwriting?

A They seem to be Yes

Q And who is Carrie Cantrell?

A Carrie Cantrell was my Deputy Secretary of Commerce and Trade She would have been number two to Secretary Cheng, who was in court the other day And she actually attended the Mansion event with me, as well as my Chief of policy and attorney, Jasen Eige They were the two staffers that were chosen to go with me

Q What does the "Gov Office *" entry mean?

A That just means she was from the Governor's Office I was just looking at who was there And there was no -- there was a blank there for her affiliation So at some point I wrote in -- I wrote that in

Q And the asterisk by John Clore, Dr Clore, why did you make that entry?

A I don't know I think I may have done this when I was flying back I was in D C in the morning, and I was flying back I probably looked at what my next event was, which was this, because I had to get right off the -- I think I came right off of the flight back from D C and went right back to the Mansion. So I was probably just -- I was probably just reviewing this list to see who was coming So I -- I don't know why I would have -- I did that

Q Okay

MR. ASBILL: You can take that down Thank you

BY MR ASBILL:

Q Do you ever talk to Mr. Williams about this event beforehand?

A Not to my knowledge No I don't remember doing that

Q Did you understand whether or not there was going to be any press there?

A That would have been -- if there were press there, that would have been on this And I think it mentioned closed press

But if there's going to be press at an event, I usually either have a note on the briefing sheet, or Tucker Martin, my Press Secretary, will actually be there I rarely would go anywhere with press without somebody from the press office there

Q When you say "closed press," that means closed to the press?

A Closed to the press

Q Okay Did you understand that your staff had vetted this event?

A No. I mean, I learned that after the investigation about the discussions the night before But nobody talked to me about that

Q Did you understand that your staff had reviewed the event before you were going to attend, whatever the ultimate --

A Well, that would be typical Anytime we get any invite from anybody, there's generally some review done before a decision is made Many events are scheduled with no -- no yes or no from me Katherine or Monica would give me a list of events that they weren't quite sure about and let me make the final call But many things were put on the calendar without me giving an affirmative yes So the normal vetting process, whatever, would have taken place before that

Q All right Now, did -- after -- after the -- I mean, you went to the event?

A Yes

Q And we'll get to that any second But did -- either before the event or after the event -- let's say before the event right now Did Jasen Eige or Martin Kent ever discuss any concerns that they may have had with you before the event?

A No

Q How about after the event?

A No When I walked back with Jasen from the event, back to the Patrick Henry Building, there were no concerns raised

Q All right. Now, tell us about the event when you got there. Did you arrive on time? Did you arrive late or somewhere in between or what?

A Well, I'm always on time But this time I was actually scheduled to be late, which was good, because I was in D C for events that morning And so, again, I had told them about two weeks before I'd go for 30 minutes The actually scheduled time on my calendar, I think, was 45 or 50 minutes So I think I arrived pretty close, or maybe around 12:35 or 12:40, I think Somewhere in there

Q And for the record, when you say you're always on time, you were being facetious in that answer?

A Somewhat Yes

Q All right And so how long do you stay at the event? Well, let me back up How long was the event scheduled for?

A My recollection, it was a lengthier event It was probably maybe close to two hours Maybe 11:30 to 1:30 And my scheduled time was just to be there from about 11 -- about 12 -- maybe about 12:35 or so

In any event, I stayed from about 12:35, 12:40 and left about -- about 1:20 or so, because I had a 1:30 meeting So I stayed 40, 45 minutes, I think

Q Carrie Cantrell, Jasen Eige Who decided that those two would attend?

A Typically, it would either be the Chief of Staff working with the scheduler or sometimes it would just be the scheduler working with the secretary So they did a great job, Monica, Katherine, making a decision on who should go with me But those appear to be the right people

And having my Chief of Policy and Deputy Secretary of Commerce, from my viewpoint, having researchers there and having research moneys handed out to private companies was really part of the job creation focus We talked about that a lot during the administration, the healthcare and job creation So those two seemed to be fine

Q Okay How many people attended the event?

A I believe I actually counted them at one point It was 29 So 29 people showed up

Q Is that a number -- 29, is that an easy number for you to focus on with respect to an event like this?

A Well, it's a lot smaller than most events that I go to at the Mansion

Q Well, why -- I mean, do you have any idea what the size of the table is?

A Oh, yes It's -- the table -- when all the leaves are put on the Mansion dining room table, I think the maximum capacity is -- is 29

Q And was the table full?

A And the table was full, yes

Q All right Did you talk to anyone at the event?

A Sure

Q Do you recall who and what about?

A There was already -- the program was already going on when I got there I don't remember exactly what was happening But typically, what I would do, I would come in, take my seat and do a quick welcome For a smaller group like that -- I can't remember if I did it, but I usually walk around and just shake hands with everybody and say, "Hi Welcome to the Governor's Mansion "

I can't say that I did that That would have been typical for me to do But I took my seat, and the presentations were continuing I ate lunch

Q Did you make any -- did you ask any questions during the presentations?

A Yeah After -- there were a couple researchers that made presentations I know Dr Ladenson from Johns Hopkins Hospital made a presentation And then Dr -- I believe Dr Roskamp, or Ms Crawford, Dr Crawford, one of the two doctors from the Roskamp Institute -- because those were the two places that I understood that clinical research was going on on anatabine And so they both made presentations

Q Did you know at this point in time, the time of this lunch, that Mr Williams was interested in doing studies at UVA or VCU, having them done?

A Well, I knew from the meeting that my wife had a month before that there was at least the topic on the calendar that said studies at UVA, VCU

What the exact status of those was, I wasn't -- I wasn't exactly sure Mr Williams may have told me at some previous time that he was interested in Virginia studies And look, I thought it was fine I'd much rather have studies done in Virginia than having it done in Florida or Baltimore or Michigan or Pisa or anywhere else So if he was able to convince people to do studies in Virginia, I thought that was fine

Q Did you know at the time of this lunch that Mr Williams wanted to try to get Tobacco Commission funds for any studies?

A I don't -- I don't believe so There may have been some mention at the lunch I just -- I don't have an exact recollection of anything specific about that at the lunch

Q But, again, after the lunch, you never did anything with the Tobacco Commission at all, right?

A No

Q All right Now, I want to turn your attention to a February 16th, 2012, e-mail

A But you asked me one question, I'm sorry, I didn't answer

If I might, Your Honor

THE COURT: Go ahead

A You asked me if I asked questions at the research --

BY MR ASBILL:

Q Yeah. I'm sorry

A I'm sorry I didn't answer that question

I do remember that -- I had heard from Mr Williams a couple of times in his own words on that trip back from California for six hours that I had heard about his research and I heard from him when he and his wife were over to the house But I had really never heard from any researchers about their view of the efficacy and the status of the research, especially people from distinguished places like Johns Hopkins So it was -- I was interested in that

And when they talked, I did ask what I thought were some reasonably decent questions about what is the status of the research, how long do clinical trials take to get done, what is this showing so far in either the mice or other studies about whether or not this really could be a powerful anti-inflammatory, are there going to be human clinical trials

I just remember having those kinds of questions Because having a little bit of a healthcare background, I was interested in that topic So I do remember asking a number of questions of one or both researchers to have them tell me, as opposed to the company, tell me what is going on with this product

Because, again, I thought if this anatabine, which I thought was actually taken from the natural tobacco plant, could be a real scientific breakthrough, this was going to be very good for the tobacco region because it meant a new use of tobacco Not for smoking, but for a health reason And so I know -- I know I asked some questions because I thought if there's something positive that could happen here, this would be a good thing

Q Were you there when Mr Williams -- there's been testimony that he held up a leaf, a tobacco leaf during this lunch?

A Again, I got there an hour or some after the thing started I don't remember -- Mr Williams may have made some comments, but I did not see him waving any tobacco leaf when I was there

Q Or a tobacco leaf on the table that the 29 folks sat at?

A I didn't see it.

Q All right You said something a second ago about from the natural tobacco plant

A Yes

Q Did there come a time when you ever learned that Mr Williams' production or his company's production of anatabine was synthetic as opposed to derived from the natural plant?

A I did

Q And when was that, and what did you learn?

A Well, it was sometime much later than that that I learned it was synthesized, this anatabine, out of -- in some out-of-state laboratory And I was very disappointed to hear that because, you know, one of my -- besides the health benefits, a big part of my interest in any research was could it help Virginia, could it expand job opportunities in Virginia, would it have some positive impact on our economy And if I thought it was from tobacco, it would be great But if it's synthesized out of state, that lessened my interest

Q Okay

MR ASBILL: Let me turn to GX 312, which has previously been admitted Blow that up, please

BY MR ASBILL:

Q What is this about? You were on this e-mail, right, at some point?

A Yes I see at the top, my wife forwarded this to me in February of '12

Q Okay Who else was it sent to?

A It was sent to Mr Eige, Jasen Eige, my counsel and Chief of Policy

Q Did you read the e-mail and its attachments?

A I mean, I think I read the -- just the first line of it, but I don't have any recollection of reading the rest of it I mean, again, this is in the throes of the General Assembly session, February 9th I've got all these other issues going on at that time in 2012

And I -- I mean, there were -- I get so many e-mails during the course of the day Generally, I might scan it And I -- I read the -- I'm sure I read that top line that said, "He has calls in to VCU and UVA and no one will return his calls " I'm pretty sure I read that

Q All right With respect to the attachments --

MR ASBILL: Let's go to Page 5 of this exhibit

BY MR ASBILL:

Q This talks about a -- discusses --

MR ASBILL: And you can highlight it for me, please, Victoria

BY MR ASBILL:

Q -- discusses a call between Rock Creek and UVA officials on November 29, 2011?

A Yes That's what it seems to say And I heard Ms Krueger talk about it

Q Did you ever talk to her or anyone else about UVA submitting grant applications to the Tobacco Commission?

A No, I did not.

Q Did you even know who Ms Krueger was?

A No

Q Did you know about that call or whether or not it occurred?

A No I -- I can't say that I ever looked at this attachment But I know -- I certainly know sometime after the investigation I saw this document But in realtime, I could -- I have a vague memory of the e-mail content from my wife to me, but -- but not these attachments about some call between Star and UVA No

MR ASBILL: Okay You can take that exhibit down

BY MR ASBILL:

Q With respect to the e-mail and the attachments, did you ever contact anyone about it or do anything about it?

A Well, I mean, about the e-mail from my wife to me?

Q Right E-mail from your wife, yeah And the

attachments, basically Did you -- as a result of seeing this e-mail, did you contact anyone about anything?
A Not -- not right at that -- not on that date
Q Okay Let's turn to another e-mail from your wife on February 10th This is GX 314, previously admitted
A Yes
Q What do you know about this e-mail, if anything?
A I mean, I wasn't copied on this, and I think I probably saw this after the investigation started too I'm not -- I didn't see that at the time.
Q This is an e-mail from your wife on 2/10, February 10, to Jasen Eige, right?
A Yes
Q That reflects -- asks him to call Jonnie and fill him in on where this is at?
A That's what it says Yes
Q And "gov" -- that's you, right?
A Yes
Q -- "wants to know why nothing has developed with studies after Jonnie gave $2,000"?
A 200,000
Q "The Gov wants to get this going with VCU MCV"?
A Yes That -- that would not be accurate I did not say that to my wife; that I wanted to get these going at UVA

I knew from the day before, my wife copied me on an e-mail, and she may have mentioned something to me that I knew that Mr Williams -- or Mr Williams told my wife that there were these grants that he had given that I was aware of the $200,000 and that he wasn't getting phone calls back from anybody at UVA or VCU

This was, what, six months or so after he had given them the grant So I knew that from that e-mail the day before, and I believe my wife mentioned that to me She talked to me about it the day before But I did not see this e-mail, and it would certainly not be accurate to say that I want to get this going That was between Mr Williams and -- and VCU, UVA That was up to them

Q All right So she did not have your permission to represent this to Mr Eige; is that correct?

A That's correct

Q And this -- you said after the event You're talking about the lunch event six months --

A Yes --

Q -- six months later?

A August 30th So this would have been -- well, in the ballpark of six months later

Q With respect to making these kind of comments -- your wife making these sorts of comments to folks on your staff or in the Mansion, is that something that you were --

without your permission or at your direction, is that something that you were aware of happening in the past?

A I -- I knew that it had happened on a few occasions Yes

Q Let's move on to the next week, February 16th GX 319, also previously admitted What is this document?

A . This is an e-mail that I sent early morning February 17th I sent out a number of e-mails during that time frame I was getting ready to go out of town for, I don't know, five six, I don't know, the next ten days or so, and I was trying to clear up some things that were on my mind

So I sent this e-mail to Jasen Eige It was, from what my wife had told me, a week before She may have even mentioned it again to me on this date I can't remember But I asked Jasen to see me about this -- this issue of Mr Williams saying he wasn't getting his calls returned That was the purpose of my --

Q Okay I made a mistake in asking you the question It was not the 16th It's the early morning of the 17th?

A Yes

Q And did that meeting ever occur? Or that "see me," did that ever occur?

A I don't -- it may have I don't remember for sure Because I was -- I went out of town on the 17th for three or four days I had sent him an e-mail right before that asking him to see me about two other issues So we certainly might have met that morning

But I know what I was going to tell him, but I -- I can't actually say that we connected We may have

Q What were you going to tell him if you did connect?

A Well, when I learned that VCU and UVA, if this was true, that UVA and VCU had, in fact, gotten those $200,000 grants, which I believed they had, and, in fact, they weren't returning the donor's calls, that I was going to ask Mr Eige to find out just what was going on Should we do anything He was my lawyer Should we even get involved But at a minimum, find out from his private lawyers, you know, why weren't they getting the call returned I figured he deserved the courtesy of at least a call back if he had given $200,000

Q All right

A But I didn't know if that actually was true or not I only know Mr Williams apparently told my wife, who told me So I felt that -- I would do this constituent service multiple times for people if they felt the government wasn't being responsive in some way I felt they deserved a call back

Q Okay In the time frame that you're sending these e-mails, I want to put that a little bit into context

MR ASBILL: Would you pull up RM-0230

BY MR ASBILL:

Q Do you know what that is?

A Yes

Q What it is?

A Again, I sent a lot of e-mails late at night This was one that I sent the same time frame, about, what, 15 minutes before that other e-mail that you just brought up, also to Jasen, and copying my Chief of Staff, Martin Kent, and my communications director, Tucker Martin

MR ASBILL: I'm sorry If that's not in, can we move it in, please, so folks can see it

THE COURT: It will be admitted

BY MR ASBILL:

Q Okay And in general, what's that about?

A Well, there were a couple of pressing matters I mean, the next day, the 17th, was going to be my last day in the office for a while And we had -- there were several pressing issues One, obviously, was the Senate budget because we were having that meltdown, as I've described many times before, and could not get a Senate budget passed

And then secondly, we were in the process of negotiating with Amazon about a settlement dealing with sales tax revenues for out-of-state corporations I was, here I also added some value to the application here because I added the rental income, the gross rental income from the Blue Ridge Heaven property, which had not been on there before, to the tune of about $45,000 a year, which would have obviously helped the application

Q Let's take a look at page 26 What changes did you make to that page?

A This is something that I -- at some point I knew that the bank would ask me to do from other applications, and that is to -- of all the loans that I was a co-signer on, that if a loan where I was not the primary obligor but was a co-signer, like all my kids' student loans or their cars, I had a lot of those

But if the payments had been made for 12 months consistently, then they would not count on my debt to income ratio That had been something on all the previous loan applications So I wanted to go through here and indicate which of these other loans that were outstanding that were on my credit report, which ones of those that I had co-signed on And then at some point when Ms -- if Ms Bolt wanted the 12 months of proof of payment, that if I needed to have those removed for purposes of qualifying for the loan, that she'd have this information as well

And so I went through that And you can see on a number of these that are student loans and cars of my children where I was just simply the co-signer, I put that on there so that she could work on that with underwriting on the final determination

Q Did this add or subtract gross income? Or did it have anything to do with it?

A No This would have actually reduced my debt --

Q Okay

A -- for those that were being paid regularly for 12 months, which would have improved my debt to income ratio, which would have improved my loan application

Q All right With respect to this -- this information that you send in to Ms. Bolt on the 18th --

A Yes

Q -- and the changes that you've described, why were those things not on the February 1 initial draft of the application or the February 15th draft of the application?

A Well, as I explained before, on February 1st I took a very cursory look at that application The only -- I changed a little bit of nomenclature The two loans that I knew were wrong, I added the $700 000 mortgage because those just jumped out at me

But I had -- as you saw, I had 18 meetings that day I just did not look carefully at the application I really believed this was going to be a process, an integral process of multiple drafts I'd give them information They'd ask me for information And with every other loan, I signed a final loan application at closing That's what I did with this one on April 19th, the first loan we closed

And so I just didn't make those changes at that time But this weekend I had more time to do it and made all these other changes and submitted it to them And we continued to share information back and forth until closing

Q In any of the communications that you exchanged with the bank during the process that you've described, did you try to deceive the bank in any way in your applications?

A Never No

Q Did you have any reason to hide the loans from Williams from Nan Bolt or any other PenFed employees?

A No I had disclosed that $50,000 loan on my Statement of Economic Interest I had already disclosed the stock to the Internal Revenue Service the year before I had given my bookkeeper free access to all the --

BY THE COURT:

Q The question was did you have any reason to hide anything?

A No I did not

Q Thank you

BY MR ASBILL:

Q All right Fast-forwarding to 2013, to March 30th, 2013 That's when the investigation -- or the news of the investigation breaks in the press This is Easter Sunday, or the night before; is that right?

A Yes

Q Okay And were you aware that -- that earlier in March your wife had delivered the gifts that Jonnie had bought her to Donnie's house, on the 11th of March?

A I became -- I did not know that from my wife I learned from my attorney

Q When did you first learn that?

A My best recollection was the -- within a couple of days after that

Q After what?

A Well, a couple days after the date that you mentioned

Q The date of the investigation --

A No No No The date -- apparently the date of -- whenever these things were delivered Based on what my attorney told me at that time, it would have been a few days after this delivery was made

MR DRY: Your Honor, can we approach for a second on this topic

THE COURT: Come on up

(At Bench)

MR DRY: I just want to make sure that if Mr Asbill's intent is to waive the privileges regarding communications between counsel and the client, that this is the plan and he knows what the ramifications might be down the line on cross-examination

THE COURT: Mr Asbill, any concern with that

MR ASBILL: I'm not concerned about the question that I'm about to ask

THE COURT: All right

(In Open Court)

BY MR ASBILL:

Q After you learned about -- after you learned about your wife returning these gifts to Donnie, did you and your wife get separate counsel?

A Yes

Q Moving forward to May 2013 You said your daughter married Adam Zubowsky Is that the time that they got married?

A Yes It was May 11th, 2013

Q All right And leading up to the wedding, how was that, or was that a difficult time for the family?

A Yes

Q At some point after the investigation or the word of the investigation was in the press, did you learn that Mr Williams had offered Adam and Jeanine, to fly them someplace with mileage points for their honeymoon?

A Yes

Q Did you have a reaction to that?

A I -- yes I called Adam Told him, "You can't do that "

Q Did you learn about -- or when did you learn, if at all, about this generator, the $10,000 generator that -- or the replacement for that, the $10,000 check that Mr Williams testified about that was sent to Adam Zubowsky after the -- at or about the time of the tool party?

A That was also sometime after the investigation

Q Did you have a reaction to learning that?

A Well, I had understood that the gift was going to be a generator, and I was -- I was surprised that he was -- that he was doing that

Q You've testified previously about returning gifts, paying back loans, et cetera --

A Yes

Q -- after this investigation commenced Had you, in your -- prior to that in your governorship, had you ever returned either the tangible item or the value of the gift that someone else had given you?

A Yes

Q And tell us about that

MR DRY: Objection, Your Honor His laundry list of what he gave to other people is not relevant in this case

THE COURT: No I -- I'll let him answer that

A Yes I believe back in 2010, there was a Navy Veterans Association headed up by a gentleman named Bobby Thompson And at some point I learned that he was under a federal investigation for -- I believe a federal investigation, or maybe state investigation And so when I learned that, I donated the $5,000 that he had given to my campaign, I donated it to charity That was back in 2010

BY MR ASBILL:

Q All right. When you gave back the gifts and the loans to Mr Williams, you've talked about, I believe, you didn't give back whatever the golf trips were, a couple of the golf trips were, or a few dinners; is that correct?

A Right

Q And that's because you didn't have any receipts or information for the value of those gifts?

A Well, in part My goal was to take any tangible gift that I had, and I asked my two daughters as well and my children that had golf clubs or had a check from a wedding, anything that we had at that point, to return that to Mr Williams And so that was done in July

Q Okay Others have talked about and I would like you to share a little bit about your feelings about the final Cabinet meeting that you had that others have described in this trial

A It was a remarkable, poignant day I wanted it to be over at the Capitol We rarely used the Capitol itself The Patrick Henry Building was the office building for the Cabinet And I asked all the Cabinet members to come over It was, I believe, the last Monday of the last week in office

And I was -- I was very, very grateful that virtually every one of them had stuck with me, even though they were taking a beating in the newspaper I felt a lot of it was unfair But I felt that these people were so dedicated that regardless of all the things they saw, read, that they were willing to just stay till the very end, with just a couple exceptions People left for some good jobs

But I wanted to have a time, despite the personal agony I was going through, to really thank them for this really phenomenal dedication to the citizens of Virginia, the things that they had done to advance the ball in so many important areas I wanted to thank them for their countless sacrifices I knew the cost in my own life with my wife and my kids and other things that it took to serve well in statewide office I thought we all did a pretty good job But I knew it was really because of the team I just kind of set the ideas, but these people had sacrificed, unbelievably, the things that they did that previous four years

And it was my time to kind of go around the room, look each one of them in the eye and say, you know, "Really, on behalf of these 8 million people of Virginia, I love you I can't tell you how much I appreciate you accomplishing these big things, and you've left Virginia better "

We had a saying that our goal was to leave the campground better than we found it, and I said, you know, "You folks did that You just did a remarkably important job I'll never have an opportunity like this again in my life to work with people like you and to get such big things" -- "get such big things done " And it was very moving for me, and I think for them too

Q Did you commit any crimes while you were the Governor of Virginia?

A No, I did not

Q Do you blame Jonnie Williams for you being in this chair right now?

A In part

Q Why?

A I misjudged Jonnie Williams I thought he was a true friend I think -- I had no idea that he would come into federal court and to make the false statements that he's made about me in saying that I did anything to corrupt my office as Governor of Virginia, and apparently did it to save himself from some unrelated crimes

MR DRY: Objection, Your Honor

THE COURT: Sustained

BY MR ASBILL:

Q Do you blame your wife for your being here?

A No, I don't blame my wife

Q Who do you blame for being here?

A I -- I hold myself accountable for the reasons that we're here I got my life out of balance The last four years -- well, the last eight, but particularly the last four --

MR DRY: Objection, Your Honor, to the narrative answer

THE COURT: Sustained

BY MR ASBILL:

Q What do you think Jonnie Williams wanted from you?

A He never told me People want different things I -- he didn't tell me I think he wanted to be friends with me He liked being with my wife He wanted to see his business grow

MR DRY: Objection, Your Honor

THE COURT: No He can answer the question

BY MR ASBILL:

Q Did you ever do anything for Williams or Star in exchange for any gifts, any loans, any money?

A No Absolutely not I did not do that

Q Did you ever agree with Williams or your wife to do something for Williams or Star in exchange for gifts or loans?

A No

Q Did you ever promise -- and I use that term broadly -- in any way, written, oral, nod, wink, anything --

A No.

Q -- to do something for Williams or Star in exchange for gifts or loans?

A No, I did not

Q Did your administration ever provide any money to Williams or Star in any way, you know, Board appointments, contracts, line items, anything, Tobacco Commission, et cetera?

A To the best of my knowledge, we did not

Q Did you ever ask your wife or agree with her to try to help Star or Jonnie in return for anything that was ever given to you or anyone else in your family by him?

A No Absolutely not

Q Did you ever ask Mary-Shea to help Williams or Star?

A No

Q Did you ever fill out any form for any bank where you tried to intentionally omit loans from Williams that you thought were required to be reported?

A No, I did not

Q Did you ever fill out any form for any bank intending to deceive the bank about your financial history or your financial status?

A No

Q Did you ever try to fill out a form for a bank intending to hide a corrupt relationship with Jonnie Williams?

A No

Q In your heart, in your mind, are you innocent of the charges in this case?

A Absolutely I know that in my heart I've spent 38 years in state office and public service, and I would not trade that for a golf match or dinner or anything for anybody Jonnie Williams or anyone else And I did not do that

Q And finally, tangible, intangible, during your term as the Governor, what was the single, most important gift you ever got?

A It was having some time with my family

MR ASBILL: I have no further questions, Your Honor

THE COURT: All right Mr Burck, do you want to come here? I just want to talk to you a second

(At Bench)

MR BURCK: I have a couple hours

THE COURT: That's what I figured Okay

And you -- you're going to be some time?

MR DRY: A lot

MR BURCK: I'll try to cut it down over the weekend, but right now, it's about two hours or so

MR DRY: Sorry, Judge

THE COURT: That's all right

(In Open Court)

THE COURT: I have an announcement for the media The U S Marshals have asked me to make this request of you Please don't block the doors to the building Other people are trying to get in and out And I know you're trying to get your business done, but don't block the doors to this building

And for the parties, any of the parties who feel the need to interface with the media, don't do it in front of the door Walk to the corner or someplace Don't block our ability to get in and out of this building, especially for jurors and the other folks who work here You all are just visiting So please don't do that

We're going to stop for today Give you a little bit of a break, a head start Again, I thank you all so much You've been troopers You are hanging tough And we are making headway I know sometimes it might not look that way, but we're getting there So stay with us

Have a wonderful weekend Make sure your -- you know, hug your loved ones, and enjoy the weekend as best you can Please don't discuss the case with anyone or allow anyone to discuss it with you, and please don't listen to any radio, television or read any newspaper items relating to this case Just try to -- try to get your mind away from it as best you can

This is serious business that we're about, and I know that, and you all have made a tremendous sacrifice already I understand that, and I appreciate that We want you to continue to hang in there, take care of yourself And believe me, Sunday morning I'll be in church, and your name will be on my list All right?

So we will see you on Monday morning at 9:45

(The jury exited the courtroom)

(The trial adjourned at 4:32 p m)

I N D E X

WITNESSES

Examination By: Page

ROBERT F MCDONNELL

Direct Cont'd - MR ASBILL 4638

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAURεEN G McDONNELL,

Defendants

August 25, 2014
Richmond, Virginia
9:45 a.m.

JURY TRIAL - VOLUME XXI

BEFORE: HONORABLE JAMES R SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
DAVID V. HARBACH, II, ESQ
JESSICA D. ABER, ESQ
RYAN S FAULCONER, ESQ.
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Counsel for Government;

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Counsel for Maureen G McDonnell

JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day twenty-one, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Henry Asbill, James Burnham, Christopher Iaquinto, and Timothy Taylor Maureen G. McDonnell is represented by Heather Martin, William Burck, Stephen Hauss, and Daniel Koffmann. Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed

MR. BURCK: Maureen McDonnell is ready to proceed

MR. ASBILL: Mr McDonnell is ready to proceed.

MR BURNHAM: There were three exhibits only admitted partially for the record, and so I wanted to admit them in their entirety RM-2050, RM-1791, and RM-1787

THE COURT: All right

MR. BURCK: Just briefly, just for the record, we would like to renew our motion to sever the trial before I do my cross of Mr McDonnell

THE COURT: Motion is denied.

MR. BURCK: Thank you, Your Honor

THE COURT: All right, let's bring in the jury

(The jury entered the courtroom.)

All right, good morning Good to see everybody All right, Mr Burck?

CROSS-EXAMINATION

BY MR. BURCK:

Q Good morning, Mr McDonnell

A Good morning, Mr Burck.

Q Last week, he you testified quite a bit about your marriage, and I have a few more questions to ask you about that Now, you wrote an e-mail to your wife on September 5th, 2011; is that right?

A Yes, I did.

Q And that e-mail was intended only for your wife at the time, right?

A It was

Q It wasn't intended to be shared with anyone else at the time you wrote it?

A No

Q Could you please publish, it is already in evidence, RM-0111? Can you just highlight the very bottom of the page? Blow up the very bottom of the page. The actual bottom of the page where the "Confidential Treatment" and the -- thank you Now, sir, you see that, "Confidential Treatment requested by Maureen McDonnell MPM-042931"? Do you see that?

A Yes

Q And you understand that that means that that document was produced by your wife's lawyers, right?

A Yes

Q You can take that down Thank you. Now, at the time you wrote this e-mail, you knew that your wife had received a $50,000 loan from Jonnie Williams, right?

A Yes

Q And you knew that your daughter had received a $15,000 wedding present from Jonnie Williams

A Yes

Q Both of those things had happened a few months earlier, right?

A Yes

Q And at the time you wrote the e-mail, you knew your wife had used the loan to pay off credit card debt and also to buy stock in Star Scientific, right?

A Yes

Q And at the time you wrote this e-mail, you had already been to Smith Mountain Lake with your wife and family, right?

A Yes

Q That was about a month or so earlier

A Yes

Q And this e-mail was about a month after Ms McDonnell and Jonnie Williams met at the Mansion with Molly Huffstetler on August 1st, 2011; is that right?

A Well, I didn't know that Molly Huffstetler was at that meeting at the time I just asked Dr Hazel to send someone, he said, "Will do," but I didn't know who went

Q So you sent -- you asked him to send someone to that meeting, right?

A Yes

Q That was about a month before this e-mail that you sent

A Yes

Q Of course, you testified this was about a week or so after the Mansion luncheon on August 31st, 2011

A Yes, that's right

Q Now, you wrote in the e-mail that, quote, "We started tough Friday night and we agreed to reset " Do you remember that? You wrote that in the e-mail?

A Yes

Q So the argument -- it is fair to say there was an argument of some sort on Friday night?

A Yes

Q So the argument that led to the e-mail started on Friday, September 2nd, just a few days after the Mansion lunch, right?

A Yes

Q And you wrote about your wife's, quote, "fiery anger and hate that has become more and more frequent " Do you remember writing that?

A I do

Q Was that an exaggeration on your part?

A No

Q You wrote that your wife told you, quote, again yesterday that she would wreck your things and how bad you are Again, did she actually say that to you?

A Yes

Q And she said, you said that "it happened again." Had she said things like this to you before?

A Yes

Q And you wrote that "I have asked and prayed to God so many times to take this anger away from you and heal whatever hurt is causing it, some going back years and years He has not yet answered those prayers " Do you remember writing that?

A Yes, I do

Q So was this true or an exaggeration, that the anger and hurt causing this had gone back years and years?

A It is true

Q And it continued to that day

A Yes

Q So, Mr McDonnell, at that time, in September, 2011, putting aside the e-mail, did you think your wife's anger and hate was based on any legitimate grievances she had?

A It didn't seem that way to me, no

Q Was she able to explain to you or did she explain to you the source of her anger and her hate?

A Not really, not that I could understand.

Q So it didn't make any sense to you; is that what you are saying?

A Yes

Q Did her reactions seem normal to you or abnormal to you, as her husband?

A Well, they were becoming more normal in terms of our -- it being the norm with us trying to discuss our relationship But they did not seem to be normal in an objective sense

Q Normal in an objective sense You mean they did not seem normal compared to other people or what do you mean by that?

A They were always about little things that didn't make any sense why she would be that angry at me

Q It seemed that way to you for many years, right?

A Yes

Q Now, you wrote in the e-mail that there was a contrast between your wife in a public setting versus your wife in a private setting with you, where I think you wrote "private heartache" is what she caused you, right?

A Yes

Q Can you explain what you mean by that, the private setting versus the public setting?

A Yes You know, I wrote in the e-mail, I told her that her job that she was doing as First Lady, which I thought she was doing such a great job on so many areas, tourism, and military families and so forth, a very gracious hostess, but privately, the way she dealt with me and her treatment of the staff was just really unacceptable, and we just had to do better

Q Now, you have heard testimony from a number of people in this trial, former staffers, Mary-Shea Sutherland, Sarah Scarbrough, Janet Kelly, Kathy Scott, others, that your wife ran hot and cold, right? You remember that testimony?

A Yes

Q Is that what you observed as well?

A Yes

Q Fair to say that at the time, your main concern about her, call it erratic behavior, was how it might affect your staff and the work they were doing for your Administration, right?

A Yes

Q You testified that after the campaign you brought in

Mary-Shea Sutherland to help out, right?

A Yes

Q But that didn't end up working well at all, right? That was a disaster?

A Well, initially I thought it was pretty good But at the end, it did not work.

Q You brought in other people after Ms Sutherland, but that didn't work, either, right?

A Ultimately, no, not privately

Q You got advice from Dr Burke, who I think had a Ph D. in clinical psychology?

A Yes

Q On how to help your wife better manage the staff, the people that she was working with, right?

A Yes Martin Kent and I asked him to come in, yes

Q But that didn't work, either, did it?

A Not ultimately, no

Q Well, the staff, three or four months after he started advising you or advising her, threatened to quit en masse, right?

A Yes

Q You testified, you told Mr Asbill that you and Dr Burke discussed mental health counseling for your wife; do you remember that?

A Yes

Q You said that she rejected it because she was worried it would get out; is that what you said?

A No No, what I meant, he had suggested marital counseling for she and I, and that's what she had told me several times that she was concerned about with my role as Governor, that if she and I had marital counseling, that those kind of counseling discussions might not remain private, and she was concerned about that But that was different than mental health counseling

Q So you did testify that you talked to him about mental health counseling, right?

A Yes

Q And did she accept that recommendation?

A Not initially, but a little later on that year, yes

Q A few months later in 2012, right?

A Yes

Q She got treatment, didn't she?

A Yes

Q And she received medication connected to that treatment the same year, 2012; isn't that right?

A Yes

Q So despite all these things that you knew, you left it primarily up to your staff to figure out how to handle your wife's problems; isn't that right?

A No

Q You didn't tell your staff about the depth of your problems with your wife, did you?

A No, I didn't

Q You didn't tell them that it went back many years, did you?

A No.

Q And Mr McDonnell, you recall Kathy Scott's testimony that she wished she had told you what she had experienced with Maureen, right? Remember that testimony?

A Yes, I do.

Q Kathy Scott was a family friend, she wasn't just a staffer, right?

A That's right

Q Do you think you should have told the staff that, the people that you worked with, that you hired, that you brought on board, that you had suffered all these problems with Maureen for so many years?

A No

Q Why not?

A Because I wanted to do some things to help her deal with the staff I didn't think I needed to tell them about my own marital issues with my wife I didn't tell really anybody about that

Q Sir, do you think you did enough to help your staff with Maureen McDonnell?

A No No, I wish I would have been able to do more I did the best that I could at the time I wish I could have done more

THE COURT: Could you speak up? I'm having problems hearing you this morning So just speak up a little bit

THE WITNESS: Yes, Your Honor, I'm sorry

BY MR. BURCK:

Q You wish you could have done more?

A Yes

Q Yes I said I wish, especially looking back now, I wish I would have done more to be able to help at the time I did a number of things I did the best I could.

Q Well, what did you do? What did you do to help your staff exactly?

A My wife and I had many discussions of things that were brought to my attention with the staff I did a number of things to talk to her and tell her how I worked things at my office and how I treated my staff, and made recommendations to her then about how she should treat her staff; to be able to thank them for what they did, to appreciate them, to be able to treat them with respect, that they were public servants, they didn't make a lot of money, they were doing a great job, she was doing a great job, and that we got a lot of positive feedback about the

First Lady's Office and that they ought to celebrate their achievements and not sweat the small stuff

I also recommended that they do a retreat just with the First Lady's Office, like I had done repeatedly at the Governor's Office, and she accepted that recommendation I think we funded some money out of the Political Action Committee to have them do a retreat I told her she should take them out of the Mansion and have a lunch, a couple of lunches outside of the Mansion to get the people away and just to say thank you. I told her she ought to write birthday cards and notes to be able to thank people and celebrate their birthdays and things like that And those kind of recommendations, I know she accepted. I had, again, not only Dr Burke and Linda come over, I wanted them to help with organization at the First Lady's Office, and also recommend new staff for the First Lady's Office But also, I had some confidential conversations with Mr Burke, Jim Burke, and I said, "Listen, I need your help, not just with organization, but I need your help advising me really on how can we help Maureen be more productive and a better manager in this office " So there were a number of things like that that I did during that time frame to be able to help things work better privately I thought publicly, things were going very well We had a lot of good feedback on the public work of the First Lady's Office But internally it was very tough.

Q You would agree with me, though, that all those things you did were not enough given what you knew about Maureen's problems, right?

A Yes I failed to do enough to be able to fix and address all the problems with the staff. Yes

Q What about Maureen? Do you think you did enough for your wife to help her?

A I should have done more there, too I did the best that I could, knowing what the challenges were privately at the time And, you know, ultimately she listened to some of my advice and we ended up getting some health counseling for her

Q I want to move on to some of the events that there has been testimony and evidence about in this case

A Yes

Q I want to start with the April 29th, 2011 dinner

A Yes

Q This was a dinner that you hosted with your wife for Jonnie Williams and his wife, right, at the Mansion?

A Yes

Q From your perspective, that was a social occasion, right?

A Yes I told my wife after that legislative session that we ought to be trying to enjoy the Mansion and invite more people that were either friends or people that we might want to be friendly with, so I invited some people and she invited some She invited Mr And Ms Williams

Q Do you recall that Jonnie Williams and his wife mentioned at that dinner on April 29th that they were looking at property, vacation property in Virginia Beach? Do you recall that?

A They might have. I don't have a specific recollection But they might have. We talked a lot about our backgrounds and things like that, yes

Q And you recall that at this dinner, the fact that you had gone on vacation, a family vacation the prior year at Smith Mountain Lake, that came up at the dinner as well, right?

A Yes

Q You recall that Jonnie Williams and his wife said to you and Maureen that they had a place at Smith Mountain Lake?

A Yes

Q And you recall that they invited you and Maureen to Smith Mountain Lake at that dinner on April 29th?

A I believe so, yes

Q Now, it also came up at that dinner that there was some connection, you believed, or Jonnie Williams believed, between the two of you relating to American Hospital Supply from 30 years before Right?

A Yes I do remember that, yes.

Q What was that conversation about?

A We had talked a lot about our backgrounds and I told him I had worked for American Hospital Supply for about four-and-a-half years in the early '80s My best recollection is, he told me that either he had worked there or he knew people that worked there during that same time I did not know him during the time that I worked there

Q But that conversation occurred in front of your wife and Celeste Williams, right?

A It did.

Q Your wife's loan, you testified that she got the loan or you learned that she received the loan on June 5th, 2011, right?

A Yes, the day after the wedding, yes

Q The day after the wedding And she told you that she had received a $50,000 loan from Jonnie Williams on or around May 23rd, 2011?

A Yes

Q Did she tell you that she had spent the money already?

A Yes

Q She said she spent it on credit cards; that's what she told you?

A Well, and stock, yes

Q And stock?

A Yes

Q And she told you that she hadn't actually asked Jonnie Williams for the loan, right?

A Right

Q She told you that he had shown up with it the same day he brought Cailin's wedding gift, right?

A That's what she told me, yes

Q She told you that Jonnie Williams said he wanted to help out because your wife had told him about high credit card debts, right?

A That's what she told me, yes

Q And this led to an argument between you and your wife?

A Yes

Q You told her you didn't need the money, right? Or you and she didn't need the money, right?

A Right We didn't

Q And she told you it wasn't up to you, right?

A She did.

Q She said that Jonnie Williams had loaned her the money, not you, right?

A Yes

Q And she said it was her choice what to do with the money, not yours, right?

A Yes

Q And part of what she wanted to do with it was, as you said, to buy stock in Star Scientific, right?

A Yes

Q And she told you at that June 5th discussion that she wanted to do it for the children.

MR. DRY: Objection, Your Honor, hearsay

THE COURT: Sustained.

BY MR. BURCK:

Q Now, the very next morning, July 6th, you testified that she provided a handwritten stock certificate to Cailin McDonnell, right?

A Yes On the way to the airport Yes

MR ASBILL: June 6th?

MR. BURCK: I'm sorry, June 6th

THE WITNESS: Yes, June 6th

BY MR. BURCK:

Q On the 5th, you testified that you mentioned reporting requirements when your wife and you had this argument; do you recall that?

A I did

Q Why did you mention reporting requirements to your wife?

A Because what she told me, she had borrowed this money, and she hadn't talked to me about it, in addition to the fact that I thought we did not need the money Our credit card debt was manageable at the time It had been down a lot But she also was doing some things that affected my reporting requirements And my best recollection, I told her, "I've got to make reports at the end of the year and if you don't tell me about these things, then I can't report when I'm supposed to at the end -- at the beginning of the next year."

Q When you said this to her, what was your understanding as to who actually held the stock as of June 5th of 2011?

A What I understood from my wife is that the stock was already in the childrens' name She had been telling me for many, many years that she wanted to buy stock for the children, at least the way I understood it from her description, was that she had purchased this stock for the children And what I understood, that meant in the childrens' name at that time

Q Okay You testified you didn't know that Maureen then bought an additional 500 or so shares in early August of 2011, a couple months later, right? You didn't know about that?

A That's right I did not know that

Q And you were also not aware of her efforts to get the stock into the childrens' names, right?

A No, because I already thought it was So no, I didn't, no, until later that year

Q You didn't know about the September 9th, 2011 letter from your wife or from Mr Piscitelli to your wife?

A No, I saw that after the investigation began

Q And you first learned that the stock was not in your childrens' names in November of 2011, right?

A Yes I believe it was right before Thanksgiving or so that she talked to me about it

Q And she said to you that she hadn't figured out a way to do it, right?

A That's what she said

MR. DRY: Objection.

THE COURT: Overruled.

THE WITNESS: Yes

BY MR. BURCK:

Q This triggered another argument between the two of you, didn't it?

A Yes

Q Why were you upset?

A Well, again, I thought she had already had this in the childrens' name, and now this would be an event, if it was solely in her name, this would also be an event that would trigger a reporting requirement I told her she could not -- she couldn't do things, even though it was her money and I respected that, but she could not do things without telling me because I needed to be sure that I was making the reports accurately at the beginning of the next year So I was concerned about that and I said, "You've got to advise me of these things if you are doing it "

Q Now, you testified you looked at the stock price around this same conversation?

A Yes, I did

Q And the stock had plummeted in value, right?

A Significantly It was over 50 percent So I actually told her, I said -- I knew that she, because of the argument that we had back in June, that this money that she had borrowed was really a substitute for the money that I had used from her father to pay down credit card debt, and that's why I did not want to get into an argument about the use of that money But my words to her was, I said, "You have really lost half of your dad's inheritance It has gone from 31,000," I think, to the value was down to a little over $15,000 at the time "My strong advice is you should sell the stock. It is not a stable stock. It is speculative And I know you like what's going on with the company, but you should sell the stock because it is not a good investment in my view "

Q But despite the fact you said that to her, she didn't want to sell the stock, right?

A That was pretty clear to me

Q And it was only very reluctantly that she agreed to do that, right, at that conversation?

A By the end of the conversation, she said that she would, yes

Q And was it your understanding that she was going to sell the stock the next day, soon thereafter, or how long?

A Soon after Yes

Q And when did this conversation happen? You said it was November Was it before or after Thanksgiving?

A My best recollection is shortly before Thanksgiving in 2011

Q You have seen evidence in this case that she sold the stock on December 20th, about a month later?

A Yes, I saw the records

Q Did you know --

A I learned later, yes

Q You didn't know at the time she was selling the stock on December 20th?

A No

Q When did you learn that?

A At some point, I don't have a clear memory of this, but at some point before we finished the -- when we were doing the Statement of Economic Interests that following year, I would have had to confirm certain things such as that the stock was actually sold, because if it wasn't, I would have had to have made a report So I'm sure somewhere in there I confirmed it I don't think I knew the exact date All I wanted to know is it had been sold. My best recollection, I probably saw the date when I got the 1099 at the beginning of the next year for tax purposes to be able to give to Mr Cook I would have seen a 1099 that showed a date of sale

Q Okay Let's move into January of 2012 You heard testimony from Mr Piscitelli that Maureen had expected him to buy the stock back right away in the year. Remember that testimony?

A I heard that, yes

Q But you didn't know about that, either?

A No.

Q And we heard from Mr Piscitelli that Maureen was unhappy when she found that he hadn't actually bought the stock back?

A Yes, sir

Q Did you know that she bought the stock back on January 20th of 2012?

A Not on that day Not at that time, no

Q Did you find out about it the next month?

A No.

Q When did you find out about it?

A Shortly before Christmas of that same year, 2012, when she talked to me about it

Q And the day, January 20th, 2012, that she bought back the stock, do you recall that was the day that you and -- she and Jonnie Williams flew down to meet you at the Romney event; do you remember that?

A That's the date, yes

Q Now, I want to move forward a couple weeks into early February of 2012 Actually, let's start at -- can you show Government Exhibit 295? I want to stay in the end of January for a minute Sir, this is already in evidence, Your Honor This is the e-mail that you have talked about where you asked Maureen who she is talking with -- well, let me start this way Michael Uncapher sent you an e-mail saying that "The guy who is helping us out, he wants to continue conversations about that," right?

A Yes That's what the e-mail says, yes

Q Then you respond to your wife saying that the "who" who is helping us out is Jonnie, right?

A I said, "Who are we talking about that's helping us and talking to Mike," because Mike's e-mail was a surprise to me

Q Above that there is an e-mail from your wife saying "Just got home I'll talk with you upstairs " Right?

A Yes

Q Do you recall if you had a conversation with her on that day, on January 27th, about this topic?

A Yes, I believe we did when we got upstairs

Q What was the conversation?

A She told me that she and Mike had spoken with Mr Williams Mike knew what the amount of the operating shortfall that we had, or at least we projected for the spring of 2012 was, and that she and Mike had actually spoken to Mr Williams sometime before that date and talked to him about a $50,000 loan

Q To MoBo?

A Yes

Q You can take that down. Thank you. So what was your understanding as to the state of these discussions at that point, on January 27th, 2012?

A That Mr Williams had agreed to do a $50,000 loan I understood it would be a cash loan to MoBo, or check loan, not a stock loan or anything different But I told her I was surprised -- she knew that I was busy during the session She knew that we needed that -- or that we had opted to do a loan that year as opposed to putting it in equity But I told her I needed to speak to Mr Williams and I would negotiate whatever the terms are of that loan that year

Q And so about a week later you had a conversation with Mr Williams on the phone about the loan, about the MoBo loan, right?

A It was about a week later, yes

Q Please show the jury RM-1431-0005 These are the handwritten notes that you have already testified about, right, of that conversation you had with Mr Williams.

A Yes

Q And have you had a chance to review these notes before you testified last week?

A I did.

Q Do these notes make any reference anywhere to Maureen McDonnell owning 6,672 shares of stock in Star Scientific as of that date, early February of 2012?

A No

Q Do they make any reference to her owning shares in Star Scientific at all, that she actually owned them at the time?

A No

Q You can take that down. Thank you Let's move ahead to February 23rd, 2012 And this is the call that you testified about that you had with Mr Piscitelli

A Yes

Q First of all, do you recall if Maureen McDonnell was actually on the phone call with you?

A I see the calendar has her on there I don't remember, because I wanted to talk to Mr Piscitelli about this margin loan, but I see that Maureen was on the call

Q Is it fair to say you did the talking?

A I did.

Q You were talking about margin loans and borrowed stock.

A Yes It had not been something I had done before, and Mr Williams' proposal was a stock loan, and all I was interested in was whether we could get a margin loan for operating cash for MoBo that year, yes So I did the talking

Q Fair to say you had no reason to believe that your wife would understand what a margin loan on borrowed stock would be at that point in time?

A No.

Q She was on the call because she had started the loan discussions with Mr Williams, right?

A Yes

Q And you understood at the time that she wanted to stay involved in discussions about the MoBo loan, right?

A Yes

Q But you didn't feel like you needed her to negotiate the terms with Mr. Williams, right?

A No

Q You thought you could do that on your own without her help.

A Yes

Q You met with Mr Williams on February 29th to discuss the loan without Maureen present, right?

A Yes

Q But again, you knew that she wanted to be involved.

A Yes, she had been involved with other aspects of MoBo, maintenance and other things over the years, yes

Q Didn't you have a conversation with your sister in which she told you that your wife was upset --

MR DRY: Objection, hearsay

MR. BURCK: Your Honor, I'll ask it this way, Your Honor

BY MR. BURCK:

Q You were here for testimony by your sister, Maureen, right?

A Yes

MR. BURCK: Your Honor, please publish to the jury Government Exhibit It is already in evidence, Your Honor

BY MR. BURCK:

Q These are the Government's summary charts of conversations that occurred in March of 2012

A Yes

Q Conversations and texts I should say texts, really, because we don't know who was on the phone But on the second page of that document, you see there is a 22-minute phone call between yourself and your sister, Maureen, 6:15 p.m.?

A Yes

Q You recall that there was testimony by your sister that she spoke to you on that phone about issues she was having with your wife relating to these discussions about MoBo

A Yes I do

Q And you recall that your sister, Maureen, had called you, that one of the principal things that your sister was saying was that your wife was concerned because your sister had called you and not her to talk about MoBo, right?

A I do.

Q And do you recall that your wife, Maureen, got upset with you while you were on the phone with your sister because you were talking to your sister and not to her about the MoBo loan?

A Yes, that's true

Q Do you recall that your wife told you that she felt like you were not recognizing her contributions to the MoBo loan?

MR. DRY: Objection

THE COURT: Overruled.

THE WITNESS: Yes

BY MR. BURCK:

Q Now, ultimately, you agreed, you agreed to final terms with Mr Williams for the MoBo loan, not your wife, right?

A That's what I thought on the 12th when I talked to him. But the check had been cut previously But I talked about the final terms on the 12th, yes

Q You can take down the exhibit But fair to say that the terms of the loan were agreed to between you and Mr Williams, right?

A Yes

Q And your wife was not involved in the second $20,000 loan to MoBo from Jonnie Williams in May, 2012, was she?

A No

Q I'd like to show you, just for the witness, RM-0558 You can blow up the text, please Do you recognize this as a text from you to Jonnie Williams on March 10th of 2012?

A Yes

MR. BURCK: Your Honor, we would offer this

THE COURT: It will be admitted.

BY MR BURCK:

Q This is a text from you to Jonnie Williams where you say, "Great to talk to your dad. He says you are a bunch of jokers Enjoy your time Gov " Right?

A Yes

Q Do you recall what this was about?

A Yes, I do.

Q What was it about?

A This was right after I had talked to his father for his 80th birthday, Albert Williams I had called him, I think I may have called actually on Mr Williams' phone and then he handed the phone to his father He had asked me through Adam, he had asked me to call his dad. And I was delighted to do that I spoke to him for five or ten minutes, I think, and had a very nice call with Mr Williams, his father I just followed up with Jonnie Williams after that just to say "Hey, it was really nice to talk to your dad," and just the comment his dad told me, meaning the boys, Jonnie and Donnie, were a bunch of jokers is what he told me It was just a follow-up text about our call

Q This is around the same time you were talking to Mr Williams about the MoBo loan, right?

A Yes, that would have been two days before

Q And Maureen McDonnell is not on this text, right?

A No.

Q You can take that down Can you please publish, it is already in evidence, RM-0559? Just blow up the text, please, so we can see it This is already in evidence, but this is a follow-up e-mail from Mr Williams where he thanks you, right?

A Yes I think this was actually his response to that previous e-mail, yes

Q Response to the previous text

A Or text, yes

Q You can take that down. Shooting forward a little bit into the summer of 2012, do you recall that Mr Williams sent you a text asking you to go to the Chatham Bars Inn?

A Yes

Q Please show the witness RM-1542, please Blow that up, please, so he can read it You recognize this as a text from Mr Williams to you on July 3rd, 2012?

A Yes

MR. BURCK: Your Honor, we would offer that

THE COURT: It will be admitted.

BY MR. BURCK:

Q Now, sir, this is an e-mail, again, a text from

Mr Williams It says, "Johns Hopkins human clinical trials report on August 8th. If you need cash let me know Let's go golfing and sailing Chatham Bars Inn Chatham Mass Labor Day weekend if you can. Business about to break out strong Jonnie " Right?

A Right

Q Do you recall receiving this text?

A Yes, I do

Q Can you explain what you understood the text to mean?

A Mr Williams was always giving me some update about his business, so he was telling me about the clinical trials that the company was doing at Johns Hopkins, and then this "If you need cash let me know," he had sent me a previous e-mail or text like that which was similar to what he had told me in person a couple times after the initial loan that he had given us for MoBo, that if we needed additional loans to cover an operating deficit in the spring of 2012, that he would extend another loan. And he was asking me, we had already done the $20,000 loan, and he is telling me here again in July that if there was an additional operating deficit, that he would extend that And then again this invitation to the Chatham Bars for the Labor Day weekend that we ended up going on

Q Just to be clear, Ms McDonnell is not on this text,

right?

A Right

Q She is not mentioned at all in the text

A Right No, she is not

Q Did you accept cash or, as you said, any additional money for MoBo from Mr Williams?

A No

Q You can take that down. Thank you Now, on July 15th, please show the witness RM-1554, just the witness Blow up first the text itself You recognize this as a text from Mr Williams to you dated July 15th, 2012?

A Yes

MR. BURCK: Your Honor, we would offer

THE COURT: It will be admitted

BY MR BURCK:

Q This text says, "My youngest son Frankie "

A Yes

Q Then if you wouldn't mind blowing up the photo It is hard to read, but that appears to be a photo of a trophy of some sort, right?

A Yes

Q Do you recall receiving this?

A Yes, I do.

Q What was your understanding of what Mr Williams was sending you here?

A Well, I know when we had dinner we talked a lot about our families He had four children, we had five He talked a lot about Frankie and his daughter, Rachel And especially Frankie was a very accomplished high school tennis player, and that's one of the reasons that he had stayed down in Florida and kept their residence down there, so Frankie could play year round. They were obviously hopeful he would be competitive at the college level So at that time I felt we were friends He was certainly friends with my wife, and I had become more friendly with him directly about things of a personal nature And he was sending me a copy or a picture of the trophy that his son had just won in a tournament down there So I thought that was very nice. I had talked to him a lot about my sons, too, about Bobby and Sean, and he was sending me this update about how well his son had done in a tournament

Q Take that down, please, and show the witness RM-1555, just the witness Blow that up, please Do you recognize this as your response to Mr Williams, right?

A Yes

MR. BURCK: Your Honor, we would offer

THE COURT: It will be admitted

BY MR. BURCK:

Q This just says -- this is on July 15th, 2012 It says, "That's great, Jonnie Keep fighting Gov "

A Yes

Q Is it fair to say that in the summer of 2012, you believed that you had a friendship with Mr Williams?

A I did We talked a lot about personal things, yes

Q At this point you had a friendship with Mr Williams that was independent of his friendship with your wife, right?

A I think that's fair, yes

Q You can take that down Thank you Now, please show the witness RM-1623 Do you recognize this as a text from you to Mr Williams dated September 3rd, 2012?

A Yes

MR. BURCK: We would offer

THE COURT: It will be admitted

BY MR BURCK:

Q Sir, this is a text from you saying, "I think wheels up at eight will work I do have a 10:15 press conference so that will work This is a marvelous break for Maureen and me. You and Celeste are so very generous and nice to us " Tell us the context of this text that you sent to Mr Williams on September 3rd.

A This is the trip we made together with four or five couples up to Chatham Bars Inn at Cape Cod. And it was, I believe, that Monday night, Labor Day evening, and he had suggested maybe we could stay, just go ahead and stay that night and leave early the next morning And it was just logistics I told him I had a press event at 10:15, so it would be really nice to stay another night, and if we left, I would need to leave by around eight so I could be back on time for my first event on my calendar on Tuesday

Q You can take that down Please show the witness RM-0571 Blow that up Sir, you recognize this as Mr Williams' response to that text you sent?

A Yes

Q On September 4th, 2012

A Yes

MR. BURCK: We would offer that

THE COURT: It will be admitted

BY MR. BURCK:

Q And that text from Mr Williams says, "Let's go back Friday " Right?

A Yes I think it was just his humorous way of saying he was enjoying the weekend, let's stay another three days But obviously we had to get back.

Q Take that down Show the witness RM-0572 Blow that up, please And this is your response to Mr Williams on that same day?

A I can't tell whether that is from me I don't see any nomenclature on that.

Q It is from you or to you, but it is between you and Mr Williams, right?

A I believe so, but -- yes I think I remember saying that, yes

MR. BURCK: We offer this

THE COURT: It will be admitted.

BY MR BURCK:

Q That just says, "Best trip ever " Right?

A Yes It was a terrific break.

Q You can take that down. Now, on September 12th, about a week or so later, you recall that you received another text from Mr Williams inviting you again to Chatham?

A Yes.

Q Show the witness, please, RM-1640 Blow that up Do you recall, this is a text from Mr Williams to you dated September 12th, 2012?

A Yes

MR BURCK: We would offer it

THE COURT: It will be admitted.

BY MR. BURCK:

Q Sir, it says, "Let's fly to Chatham one night to get the seafood bisque at Celestino's Let me know when you can go Jonnie " Right?

A Yes

Q What was your understanding of this text?

A It was just a week after we got back, and I think all the four or five couples had a very nice time and this was really an invite to return there sometime

Q Sir, all these texts we have been looking at, Ms McDonnell is not on any of these, is she?

A No.

Q Ms McDonnell is not even mentioned in any of these, is she?

A No

Q You can take that down. Shooting ahead a couple months to November of 2012 Mr Williams texted you again about playing golf, right?

A Yes

Q Show the witness RM-0579 Blow that up You recognize this as a text from Mr Williams to you on November 30th of 2012?

A Yes

MR. BURCK: We would offer it

THE COURT: It will be admitted.

BY MR BURCK:

Q This text says, "Nine holes with David and I Sat? Bring a fourth Jonnie " Right?

A Yes

Q This is Mr Williams inviting you to play golf,

right?

A Yes With David Dean David had met us out there a few times He is the sales manager for Star

Q Did you go on this golfing trip with him?

A No.

Q All right Please take that down and show the witness RM-0580 0580 Blow that up. Thank you. This is your response to Mr Williams, right?

A Yes

MR. BURCK: Your Honor, we would offer it

THE COURT: It will be admitted

BY MR BURCK:

Q It says, "I'm out of town. Thanks for thinking of us Last Friday was great Bob."

A Yes

Q When you say "Last Friday was great," what are you referring to there?

A I think this is the time I did play golf with Mr Williams, and I think Mr Dean and my sons, earlier in November And the previous e-mail was sort of an invite back, and I was telling him I'm out of town, but I was essentially thanking him for the previous golf outing we had with him in November

Q And again, Ms McDonnell is not on any of these texts and she didn't go golfing with you, right?

A Right

MR. BURCK: I think I neglected to move RM-0579 into evidence

THE COURT: It will be admitted.

MR. BURCK: Thank you.

BY MR. BURCK:

Q Moving on to Christmas of 2012, you testified this is when you learned that your wife had actually repurchased stock in Star Scientific twelve months earlier in January, or eleven months earlier in January

A Yes It was shortly, the week before Christmas

Q And this, when she told you this, this triggered yet another argument about the stock, right?

A Yes

Q And again, you mentioned your reporting requirements, right?

A Yes

Q Why did you do that?

A Because she had told me that she was selling them the year before based on my recommendation that she do that, because the stock price was so bad. She did not tell me she bought these back. And again, doing that without telling me affected me And I told her, "I can't accurately disclose things as I'm required to do if you don't tell me about that " So I was upset that she had done that with no discussion

Q Now, it was clear to you at this point that she had absolutely zero interest in selling the stock, right?

A That's probably fair, yes

Q And she told you at this point that it was still in her name, right?

A Yes

Q But she told you that she was planning to transfer most of it to the children, right?

MR. DRY: Objection.

THE COURT: Overruled.

THE WITNESS: Yes She told me that -- yes, she did

BY MR. BURCK:

Q And she said she wanted to do it as a Christmas present, right?

A Yes

Q Now, you testified, I think on direct, that your understanding from her in June, 2011, is that she had always intended to provide this to the children as wedding gifts and that it was in their name, right?

A Yes And she had talked to me about this for probably 20 years, about stock for the children, yes

Q So what was your understanding of what she was trying to accomplish at this point in Christmas of 2012?

MR. DRY: Objection, Your Honor

THE COURT: Sustained

BY MR. BURCK:

Q Did she tell you what she was trying to do at this time?

A Yes

Q Please explain what she said to you.

A She said that she could not, in working with -- she could not find a way to actually do what she originally wanted to accomplish, which was to put the stock in the childrens' name, but not without them knowing it so she could make it a surprise for them at their wedding That's what she always wanted to accomplish, because that's what my dad did for me at our wedding And so she decided that she was going to just -- because I would have had to fill forms out to do that, and therefore, it wouldn't have been a wedding surprise So she told me, "Look, I just decided I'm going to go ahead and give the stock now to the children as a Christmas present, and I've got --" I think she said she had already talked to Mr Piscitelli, and she had the forms and the kids would be home for Christmas and they could fill them out then.

Q Did your wife ever tell you that she wanted to transfer the stock into the childrens' names so that you would not need to disclose her stock on your SOEI?

A No

Q Did you ever tell your wife to sell or transfer the stock so you wouldn't need to report it?

A No., I did not

Q To be clear, your wife had no reporting obligations at all, did she?

A No, only through my form.

Q Now, let's talk just a brief little more about the stock Could you show Government Exhibit 149, please, Page 2? If you blow up the middle, please Sir, this shows the Davenport account that your wife purchased the stock into on June 1st of 2011, right?

A I didn't see these statements at the time But that's what it seems to say, yes

Q But you understood she was purchasing stock at the time, right?

A Well, she told me that on June 5th, yes

Q She bought the stock at 5 18 a share, 6,000 of those, right?

A Yes

Q You can take that down. Please show the witness Government Exhibit 166, please, it is already in evidence, Page 2 Blow up the middle, please This is the purchase she made of an additional 522 shares at $3 82 on August 2nd, right?

A That's what it says I didn't know that at the time
Q You didn't know about that at the time
A Right
Q Okay Now, you said that you did look at the stock price in November of 2011 before Thanksgiving when your wife told you the shares were still in her name, right?
A I did, yes
Q Please show the witness Government Exhibit 40, the fifth page of that exhibit, please If you blow up the November time frame, please, 11-1 through 11-30 Sir, you will see at the close of this stock in this period of time ranked from a high of $2 88 is on November 15th to a low of $2 36 per share on November 22nd. Do you see that?
A I do.
Q So this is a period of time when you were looking at the stock and it seemed to have dropped in half, right?
A Yes
Q That's consistent with what you saw earlier about $5 17 a share when she initially bought it?
A Yes
Q Take that down. Thank you. Please show the witness or publish, please, Government Exhibit 247, already in evidence Page 3 It is actually the top, is where it is You will see that this is when your wife sold the stock on December 20th, right?

A Yes

Q And she sold it at $2 34 a share Right?

A Yes

Q You can take that down And you testified that you reported the stock loss on your income tax return to the IRS, roughly about $17,800, right?

A Yes

Q That was from that transaction, correct?

A Yes

Q Please show the witness Government Exhibit 278 It is already in evidence Now, you didn't know about this transaction at the time, but you have -- that's what your testimony is -- but this is the transaction in which your wife repurchased the stock on January 20th at $2 29 a share

A That's what it says, yes

Q Take that down This is what you found out about in Christmas of 2012, $2 29 a share In January you found out about the repurchase in Christmas of 2012

A Yes But I don't think I had any knowledge about exactly the share price or anything at the time But that's what she told me, she had repurchased it, yes

Q Got it Please show the witness or publish Government Exhibit 40, the tenth page, please It is going to be another page on Can you blow up the

December, 2012 time period? Now, you testified that you learned about the repurchase of the stock a week before Christmas or so, right?

A Yes

Q Now, if you look at that period of time, you will see that there was a high of around $3 14 a share to a low of around $2 91 a share on Christmas Eve, the 24th of December Right? Do you see that?

A Yes

Q And then on the 26th, it closed at $2 75 a share, right?

A Yes

Q Now, so it was up about 20 percent from January of 2012, right?

A From the $2 29? Sounds about 20 percent, yes

Q It was $2 75 now on December 26th, right?

A Yes

Q That's around the time your wife transferred the stock to your childrens' name

A I don't know when -- I didn't know the time when the transfer was actually done, but she told the children at Christmas dinner about the gift and gave them forms

Q Okay And it is your testimony that you don't need to report your wife's stock holdings if she sells them by December 31st of 2012, right?

A Yes That's right

Q Now, as far as you know, your wife still owns the shares in Star Scientific to this very day, right?

A Yes

Q You can take that down. I just want to talk about a few -- let's start with the campaign and the Nu Skin issue that you testified about You said that you had concerns about your wife using a donor list to market nutraceutical products back when you were running for Governor, right?

A Yes, when I was Attorney General, actually in the office, yes

Q When you were in the office But the donor list --

A Yes, I was running for Governor That's right

Q Those concerns were not legal concerns, were they, from your perspective?

A No

Q Those were concerns about the optics, the image of having your wife using a donor list, right?

A Yes

Q It looked bad. Right?

A Well, and it just wasn't appropriate to use a donor list for that purpose

Q Okay Going forward to December of '09, the inaugural dress, you testified that you also had concerns about Mr Williams' offer to buy an inaugural dress, an expensive inaugural dress for your wife, right?

A Yes

Q But your concern, as was true of your advisors, was not that there was a legal problem, but that there was an optics problem, right?

A Yes

Q Were you aware of any legal reason why she couldn't accept a dress from Jonnie Williams as the First Lady of Virginia?

A No Not ultimately, no

Q You also talked about a Board membership issue that came up with your wife regarding Star Scientific's Board, right?

A Yes

Q To be clear, were you aware of any legal prohibition on her sitting on the Board of Star Scientific?

A No

Q In fact, she was sitting on the Board of the McGlothlin Foundation and receiving a salary of $36,000 a year, right?

A Yes

Q And you testified that you were okay with the McGlothlin Board because it was a non-profit?

A Yes

Q Star Scientific, of course, was a for-profit

A Yes, right

Q Is it fair to say that this was also another image problem?

A Essentially, yes

Q You would have had the same concern with any for-profit company whose Board she would have sat on, not just Star Scientific.

A Oh, yes, sure

Q Let's talk about the Rock Creek Pharmaceutical events that your wife attended I think you testified that you were aware of one of those events in October of 2011, the Michigan event

A Well, yes, I knew she was going to -- I knew -- yes I knew about the Michigan event, yes

Q You understood that she was going to the Michigan event to learn more about the research and the product, right?

A I didn't know there was an event I knew she was going with Mr Williams to Michigan, and she told me it was to see more clinical trials, but this time not dealing with Alzheimer's like Roskamp, but dealing with, I believe, cardiovascular-related research I think she called it, it was the Flint Study So I didn't know about any event there, but I knew that's why she was going, was to do that and talk to doctors, yes That's what she told me

Q She wasn't hiding from you that she was traveling with Jonnie Williams to go to --

A No.

Q -- for whatever you want to call it for Jonnie Williams, right?

A That's right

Q Now, you testified that you did not believe, these are the words I think you used in your direct testimony, you did not believe she was going there as the First Lady of Virginia, but she was going there in her personal capacity That's I think what you said.

A Yes

Q Now, Mr McDonnell, was there any time in those four years that you were Governor that Ms McDonnell wasn't the First Lady of Virginia?

A No

Q She was the First Lady of Virginia whether she was going to events hosted by the Commonwealth or personal events, right?

A Yes

Q That's because she was the First Lady of Virginia because she was married to you Right?

A Yes, that's right

Q And every second of every day she was married to you during those four years, right?

A That's correct

Q And FLOVA is not a job, is it?

A It is an honorary volunteer position

Q She is your wife, not a staffer

A That's right, exactly

Q So what did you mean when you said on direct that you understood she went to Michigan with Jonnie Williams in her personal capacity?

A What I meant was, she was going not at my direction, not as a surrogate for me, not because it had anything to do with any business of the Governor's Office She was going because she had this longstanding interest in nutraceuticals and she was doing it for that reason. I did not direct her to go, ask her to go, know about the business that she was actually doing there, whatever it might be It wasn't at my request or directive

Q Okay Let's turn to the PenFed forms and the PenFed application As you know, your wife is not accused of anything on the TowneBank application, right?

A Yes

Q But the PenFed forms, she was a co-signatory on those applications, right?

A Yes It was a joint application. Yes

Q And there were multiple different drafts you have testified about, right?

A Yes

Q Now, prior to February 15th, 2013, which is the day she was interviewed by the investigators, prior to that date, did your wife have any role at all in filling out those forms, those drafts?

A No

Q Did she do anything other than sign the draft?

A I think she might have been on one of the phone calls, maybe the initial phone call, but no, I completed those

Q Did you ever ask her to review the drafts?

A No

Q Did you ever see her review the drafts?

A No

Q Did she ever provide you with any comments or edits to the drafts circulated prior to February 18th of 2013?

A No

Q Fair to say that as far as you were concerned, filling out those drafts was your job, not hers?

A Yes

Q Now, I want to go through some of the things that the government has alleged occurred in this case as acts by you Now, in October of 2010, November of 2010, that's when you had the flight with Mr Williams on his plane for several hours discussing his product or he was telling you about his product

A Yes

Q And after that, you set up a meeting between him and Dr Hazel, right?

A No

Q Explain what happened

A Well, I made, at the end of the discussion, I don't really remember whether he asked me or whether I suggested, but he had given me his overview of his company and how excited he was about it And he asked, or I recommended, that he see Dr Hazel So I made a referral to him and suggested he then follow up appropriately for a meeting with Dr Hazel

Q But Maureen McDonnell wasn't on that plane, was she?

A No.

Q And she had nothing to do with setting up a meeting with Dr Hazel, right?

A Right

Q Was she even aware of it as far as you knew?

A No

Q Now, I understand that you are not charged with that or it is outside the scope of the alleged conspiracy, but again, she had nothing to do with that

A Right

Q Now, the CigRx event in February of 2011, you testified about that, the drop-by

A Yes

Q Did your wife, as far as you knew, have anything to do with setting up that drop-by?

A No

Q Was she even aware of it before the two of you showed up at the CigRx event?

A I don't think so

Q Let's move to the meeting on August 1st, the Huffstetler meeting or, as you know now, it was Ms Huffstetler who attended that meeting. Now, show Government Exhibit 179 already in evidence Sir, this is a calendar invite on July 28th, 2011 that Mary-Shea Sutherland put on Ms McDonnell's calendar for a meeting on August 1st, 2011 It is at the top of the document And it says "Appointment Title: Meeting with Jonnie Williams Location: Mansion " Right?

A Yes

Q Does that say anything about Molly Huffstetler?

A No.

Q Does it say anything about the Dr Hazel's department?

A No.

Q Does it say anybody else would be attending that meeting other than Jonnie Williams?

A It says Mary-Shea Sutherland I hadn't seen that calendar entry before the trial, so I don't know It looks like it was just the two of them or maybe Ms Sutherland, too

Q Let me ask you this: Did Ms McDonnell ask you to send anyone to the meeting on August 1st of 2011?

A No, she didn't

Q As far as you knew, did Ms McDonnell have any idea that Molly Huffstetler or anyone else from Dr Hazel's department would be showing up to the meeting on the 1st of August?

A No.

Q You can take that down Thank you. Why again did you send someone from Dr Hazel's office to a meeting that your wife set up with Jonnie Williams?

A I learned, I believe, after we got back from the Smith Mountain Lake trip that evening, it might have been 10:30, 11 o'clock, I don't remember when, but it was after we got back, I think, and my wife told me that she was -- she had this meeting on her calendar that was set up with Mr Williams and that it was to discuss clinical trials at MCV -- that is, VCU -- and UVA. And she didn't seem to know any more about that And I thought about it, and I did not want to have Ms Sutherland, Mr Williams, and my wife talking about that issue, whatever the status of it was, at that point without having somebody with subject matter expertise That's when I sent that late-night e-mail My wife may have already been in bed. I don't know I decided that I ought to have somebody that was an expert that would at least be able to monitor that well and to go to that meeting. So I asked Dr Hazel to send someone I said, "Keith or Matt " Those are the deputies I didn't know until after the investigation started that actually Molly Huffstetler had gone, because I never got any any feedback on the meeting

Q But you didn't tell your wife that anybody was coming

A Mr Burck, I don't think I did, because it was late It wouldn't be unusual It had been many times before I had asked people to go over to the First Lady's Office for whatever, for veterans or tourism or wine or something That wasn't unusual And I had done it sometimes last-minute But I don't think at that one I might have talked to my wife, and I had to get out early morning next morning So I can't remember whether I talked to her I don't think I did.

Q Let's talk about the Mansion lunch at the end of August, 2011

A Okay

Q Do you ever recall talking to your wife, talking to her, about that lunch at all prior to the event itself?

A You know, I've tried to think. I don't think so. My discussions were with Adam Zubowsky a couple weeks out about me attending And I told him we would go by for thirty minutes But I don't remember talking to my wife

Q Okay Moving ahead to the February, 2012 time frame Please show the witness Government Exhibit 312, already in evidence Blow up the top of that Sir, this is -- we've talked about -- or, I'm sorry. You and Mr. Asbill talked about this This is the e-mail that your wife sent to you and to Jasen Eige, your lawyer

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A Yes

Q "Here's the info from Jonnie He has calls in to VCU and UVA, and no one will return his calls," right?

A Yes

Q Do you recall this?

A Yes

Q Do you recall receiving this?

A I do remember seeing the e-mail The one line from my wife Yes

Q Okay

MR BURCK: If we can turn to the attachment, which is -- and go to the second to last page of the attachment, please Thank you Can you blow up the numbers -- or, actually, the paragraph above the numbers and then the paragraph below the numbers Actually, sorry The numbers down, 1, 2, 3 Great Thank you

BY MR BURCK:

Q Now, sir, I think you testified, you don't recall reading this attachment at the time that you received this e-mail?

A I don't But that wouldn't be unusual for me not to read attachments I don't remember this specific one

Q Okay Well, this attachment says that "the Governor of Virginia and his wife became interested and asked the company to present the results of the symposia at the

Governor's Mansion After reviewing the material, the Governor asked three questions "

Well, first of all, let me ask you, in that first sentence, "The Governor of Virginia and his wife became interested and asked the company to present the results of the symposia at the Governor's Mansion " As far as you knew, was that accurate?

A I don't know what symposia they're even talking about So that would not be accurate

Q Okay Now, there are three questions that this attachment says that you asked Do you see the three questions?

A Yes

Q Do those seem accurate to you?

A I mean, I asked a number of questions of the researchers I had heard from Mr Williams before, but I had never heard from any researchers independently And so having Roskamp and Johns Hopkins there, I asked a number of questions But I think that's probably a -- a reasonable summary of the kinds of questions that I asked at the Governor's Mansion Yes

Q Okay And then underneath the questions it says, "Hearing affirmative answers to all three questions, he" -- you -- "suggested a grant be made to the Tobacco Commission " Do you see that?

A I do

Q Did that happen?

A No

Q Did it ever happen?

A No That sentence doesn't make any sense First of all, I wouldn't make -- suggest a grant be made to the Tobacco Commission But secondly, I don't do that I think you heard from Mr Noyes on his testimony, I don't make recommendations to or from the Tobacco Commission They are an independent commission, and they make their own decisions

Q Okay

MR BURCK: You can take that down, please

Please show -- or publish Government Exhibit 314 It's already in evidence. And blow up the top, please The first e-mail I'm sorry The furthest in time The top e-mail The one that's already highlighted

BY MR BURCK:

Q Now, this is an e-mail that you talked about a bit, although you're not on this e-mail, right?

A I'm not

Q This is an e-mail from your wife to Mr Eige in which she writes, "I'm just trying to talk with Jonnie Gov wants to get this going with VCU MCV " Do you see that?

A I do

Q Did you ever say to your wife that you wanted to get this going with VCU and MCV? In other words, the anatabine project?

A No, I did not

Q Do you know if Jonnie Williams ever said to your wife that you wanted to get this going with VCU and MCV?

A I wouldn't know, Mr Burck I don't

MR BURCK: You can take that down

BY MR BURCK:

Q Now, sir, after you received that first e-mail, Government Exhibit 314, where she sends the attachment to you and to Mr Eige, after you received that, do you recall having any conversations at all with your wife about Jonnie Williams wanting to get his phone call returned to UVA and VCU and other universities?

A No

Q Did your wife ever press you in any way to get you to return -- or help him get phone calls returned?

A No

Q Moving on to the Healthcare Leaders event later that month in February Now, we've seen a document showing your handwriting and her handwriting on an invitation list, right?

A Yes

Q I think you testified that the Star Scientific people were invited by her, right?

A I mean --

Q As far as you know?

A Well, I didn't know at the time. The -- I know now, but I didn't -- that was not my -- I did not do that

Q Did you talk to her at all about inviting Star Scientific people to this event?

A No I think I knew maybe the day before, looking at the list, but I -- no, I did not

Q Did she seek your permission to bring people to this event?

A No

Q As far as you were concerned, at the time did she need your permission to bring people to an event at the Mansion?

A No Not at all I mean, she invited people regularly to events at the Mansion

Q Moving to March 2012, the staff meeting in which you showed the Anatabloc

A Yes

Q Was Ms McDonnell present for that?

A No

Q Did she know anything about it, as far as you know?

A No

Q Did you ever talk to her about it?

A No

Q Now, February 15, 2013 This was the interview -- the date of the interview of the investigators by your wife, right -- of your wife, excuse me?

A Yes It was

Q And you testified that you were angry when you found out afterwards that the interview was not just about the Chef Todd issue It was also about the Jonnie Williams issues, right?

A Yes, I was

Q And you talked about a conversation you had with your wife right after the interview with the investigators, right?

A It was probably three or four hours after.

Q And it was just the two of you, right?

A Yes

Q And fair to say that your wife was also very upset because she felt like she had been lied to?

MR DRY: Objection, Your Honor

THE COURT: Overruled

A Yes That's what she told me

BY MR BURCK:

Q She felt ambushed?

A Yes

Q And did she appear to you to be nervous and anxious even more so than normal after this interview?

A Yes, she did

Q During your conversation with her, did she tell you that she was worried that she had done anything wrong?

A No, she didn't

Q Did she tell you that she was worried you had done anything wrong?

A No

Q Do you recall that she told you that she had made a couple of efforts during the interview to contact you when they were asking about -- asking her about the loans to Jonnie -- from Jonnie Williams?

A Yes

Q Do you recall that she said that?

A I do

Q Do you recall that she said that the agents had told her not to call you?

MR DRY: Objection, Your Honor Hearsay

THE COURT: Sustained

BY MR BURCK:

Q Now, during that conversation, do you recall that she asked you whether or not Jonnie Williams -- this is during the conversation after the interview between the two of you?

A Uh-huh

Q Do you recall that she asked you whether or not Jonnie Williams had ever sent any documents memorializing the terms of the $50,000 loan to her?

A Yes

Q And do you recall that you said no, Jonnie Williams hadn't sent any documents?

A Yes I said -- that's what I said

Q And do you recall that Ms McDonnell said she needed to call the investigators to tell them there were no documents memorializing the loan?

A Yes

Q And do you recall that you told her not to call and not to have any further contact with the investigators until you figured out what was going on?

A Yes That's exactly what I told her

Q And you told her that you needed to talk to a lawyer first, right?

A Yes

Q Now, the very next week after this interview, you hired a lawyer for you and your wife, right?

A Yes, I did

Q Now, you were asked by Mr Asbill on direct if you eventually got separate counsel after you learned that your wife had returned the dresses to Mr Williams

A Yes

Q Do you remember that question?
A Yes, I do
Q And you said that yes, you had gotten separate counsel after you learned that your wife had returned the dresses with a note --
A Yes
Q -- to Mr Williams, right?
A That's right
Q Did you get separate counsel because your wife returned the dresses with the note to Mr Williams?
A No
Q Now, sir, at any time did your wife say to you, or suggest to you in any way, that she wanted you to do something to help Jonnie Williams in exchange for the gifts and loans and other things of value that he provided to your family?
A No No, she did not
Q At any time, regardless of what she said to you, did you believe or understand she wanted you to do something to help Jonnie Williams in exchange for gifts and loans or other things of value he provided your family?
A No
Q As far as you know, did she ever make any effort to get you to do something, anything, for Jonnie Williams in exchange for gifts and loans and things of value to your

family?

A No, she did not

MR BURCK: No further questions, Your Honor

THE COURT: All right Let's go ahead and take the 15-minute break

(The jury left the courtroom)

(Recess taken from 11:09 a m until 11:31 a m)

(The jury entered the courtroom)

THE COURT: Government

CROSS-EXAMINATION

BY MR DRY:

Q Mr McDonnell, you're not denying that you knew that Mr Williams paid $15,000 for your daughter's wedding expenses, are you?

A No.

Q And you're not denying that you knew that he gave $50,000 to your wife, right?

A No

Q You're not denying that you personally negotiated $70,000 of loans with Mr Williams?

A No

Q You're not denying that Mr Williams bought you and your sons golf equipment?

A No

Q You're not denying that Mr Williams paid for a bunch of expensive dinners?

A No

Q That you vacationed at his Smith Mountain Lake house?

A No

Q You're not denying that?

A No

Q You're not denying you drove his Ferrari?

A No.

Q You're not denying you went to Chatham Bars Inn on his dime?

A No

Q You're also not denying that Mr Williams wanted studies of his product at Virginia research institutes, right?

A I learned that at some point

Q Okay And you're not denying that you directed Dr Bill Hazel to send a government employee to meet with Mr Williams after you got home from driving his Ferrari? You're not denying that?

A No

Q You're not denying that you were present for the Anatabloc event at the Governor's Mansion in August of 2011?

A Yes, I am

Q You're denying that you were present for that?

A No There's two questions in there If I can answer one at a time I'm denying that it was an Anatabloc event But I was there

Q Okay Well, we'll get into that But you're not denying that you knew that Mr Williams and his company -- company's employees were at the Virginia Healthcare Leaders Reception event, right?

A No, not denying

Q And you were there?

A Yes

Q You're not denying that you pulled out Anatabloc in a meeting with secretary Lisa Hicks-Thomas and told her that she should meet with those folks? You're not denying that, right?

A Yes, I am

Q You didn't tell her, "Hey, this is working for me, and, you know, you want to meet with them"?

A That's not what I said

Q Okay All right How about this You're not denying that six minutes after e-mailing Mr Williams for more money, you e-mailed Jasen Eige to come see you about Anatabloc studies at UVA and VCU? You're not denying that happened, are you?

A Your question, there's a couple different questions in there

Q All right Well, let's break it down

A It was six minutes apart, the e-mails, yes

Q And every one of those things we just went over, there are e-mails, text messages, and testimony from your staff, friends, and family corroborating each and every one of those, isn't there?

A Mr Dry, I don't know You're going to have to -- each and every one of what? I'm not sure what you are talking about

Q Each of the things that you just said you weren't denying, sir

A Mr Dry, I don't understand your question. You're going to have to be more specific

Q Okay Everything that you just said "I'm not denying," you know that there are e-mails, text messages, and testimony that was presented in this court from your staff, friends, and family corroborating each and every one of those, right?

A You're going to have to tell me what events you're talking about, Mr Dry I don't know -- if you want to take them one at a time, I can probably address it

Q Well, let's do it this way, sir In total, how many times have you met with your lawyers in preparation for your testimony today?

A Many times

Q A dozen?

A More than that

Q Two dozen?

A I've been preparing every day since -- since you indicted me

Q Okay And you've had the opportunity to practice your testimony, right?

A I've had an opportunity to prepare for my testimony

Q Okay Before this trial even began, you've had the opportunity to read the interview reports from everyone that presented testimony, right? All the Reports of Interviews?

A No

Q You haven't had that opportunity?

A You only gave them to us 45 days before the trial I've tried to read as much as I could There were three and a half million documents I've tried to read as much as I could

Q Sir, I'm not talking about documents I'm talking about the Reports of Interview of witnesses that testified here in this trial

A Yes

Q Did you read the Reports of Interview before the trial even began?

A I read as much as I could

Q Okay And you read all the grand jury transcripts before the trial even began, right?

A No

Q You didn't read the grand jury transcript of Mr Piscitelli before the trial began?

A I think I did read that one I did not read all of them

Q Oh, okay And you've had the opportunity to sit through this entire trial and hear exactly what every witness has said before you testified, right, sir?

A Yes, I have

Q Let's -- I'd like to go a little bit into your background, sir Not -- not very much But you were Attorney General of Virginia from 2006 to 2009, right?

A Yes, I was

Q And part of your duties as Attorney General was to enforce the laws of Virginia?

A Yes

Q And those included the laws regarding disclosures of economic interest on SOEIs?

A Yes

Q And you've been filing your own SOEI, I believe you said, since you first became a state delegate And that was in 1992?

A Yes

Q So how many years is that, about 22, I think?
A Twenty-two
Q Twenty-two?
A Yes
Q And that included when you were Attorney General, right?
A Yes
Q I'd like to go back to your first -- I think you said your first real meeting with Jonnie Williams was on December 4th of 2009, right?
A I'm not sure if that was the date, but it was December '09 Yes
Q And that was at the Four Seasons up in New York City?
A Yes, sir Right
Q And you and your wife, how did you guys get up there to New York City?
A We flew
Q Do you remember on whose jet?
A I don't
Q Okay So you don't have an independent recollection that was Mr Williams' jet?
A I don't
Q Okay And at the -- I think you said there were two meetings, right, with Mr Williams?
A I believe that's right Yes

Q Okay And at one of those, the subject of your upcoming inauguration comes up?

A Yes

Q And your wife somehow mentions she needs an inaugural gown; is that right?

A No

Q She said she needed clothes?

A No

Q She said she was looking for things to wear for the inauguration?

A No

Q All right Well, what did she say?

A She said she was there to get measured for a dress that very day from a referral she got from Virginia

Q Okay And I believe you testified that Mr Williams mentioned Oscar de la Renta?

A Yes, he did

Q And at that point, Mr Williams was saying that he could get a inaugural gown for your wife, right?

A Yes

Q And you understood when he said "get," he meant he was going to pick up the tab for that, right?

A Yes That's what I understood

Q And I believe your testimony was but at that point you didn't want to make a scene, didn't want to tell

Mr Williams or your wife, "Hey, that's just not going to happen"?

A That's fair

Q Okay At what point did you tell your wife, "Hey, that's" -- because I believe your testimony is as soon as that happened, you knew that wasn't going to happen, right?

A Yes

Q At what point do you tell your wife, "Hey, that's not going to happen"?

A It was shortly after that It may have been that night

Q Either that night or within a day or two?

A I think so

Q Okay Well, let's -- let's talk a little bit about MoBo in this time frame I want to go to -- we're in December of 2009, right?

A Yes

Q Now, MoBo is having financial problems?

A No

Q No? No severe financial problems? No financial problems of any kind; is that right?

A I'm not sure I understand your question We planned on an operating deficit every year, Mr Dry, as I've said before

Q So in your mind, in December of 2009, there were not financial difficulties at MoBo Is that what you're testimony is?

A No

Q No, that's not your testimony or no, there were --

A No, that's not my testimony

Q Okay Well, what is your view of the financial situation of MoBo in December of 2009?

A As I've testified, we anticipated an operating loss each year from the beginning And my sister and I knew --

THE COURT: That doesn't answer the question Were there financial difficulties or not? We're not asking whether you anticipated a financial difficulty Were there financial difficulties? And I'm pressing you here because I don't want to get into this pattern --

THE WITNESS: Yes, sir

A No

THE COURT: -- of a question, and then a ten-minute answer Answer the question

A I didn't see them as difficulties No

MR DRY: Can we bring up Government's Exhibit 51, please

BY MR DRY:

Q Sir, in the middle here, this is an e-mail -- this has been admitted

This is an e-mail from your sister to your brother-in-law and you, and your sister writes, "In other words, we are in trouble and need to act NOW," in all caps Then she goes on to talk about a short sale

You understood what a short sale was, didn't you, sir?

A Yes, I did

Q And she's talking about a short sale wouldn't hurt the credit, unlike bankruptcy First of all, a short sale would involve you giving these properties back to the bank, right?

A I think that's what it would be Yes

Q Okay And, in fact, basically in a short sale, the mortgage amount is greater than the amount of the value of the property, right?

A Yes That's what I understand Yes

Q And, in essence, you're basically, in a short sale, telling the bank, hey, just take these properties back, we can't make the bills, right? Isn't that what a short sale is, sir?

A Yes That's my understanding

Q Now, at the top -- can we go up to the top, please You write, "Not yet Working on a couple of ideas " Is that what you wrote there, sir?

A Yes

Q And that is the same day that you're meeting with Mr Williams, isn't it?

A Yes

Q Okay And I'm not trying to say that those are linked I'm not trying to do that, sir But by this point, you had been -- you and your sister had been borrowing money to keep MoBo afloat since 2007, right?

Let's do it this way Had you been --

A Yes We had been borrowing money

Q Okay And you borrowed $60,000 from your father in 2007?

A Yes

Q You borrowed another $50,000 in 2008 from your father?

A Yes

Q And on those $110,000 of the loans from your father, as of this date, as of December 2009, the sum total that you paid him back was $1,650; is that right?

A Yes I think that's right

MR DRY: Let's go back to Government's Exhibit 51, please

BY MR DRY:

Q Now this "working on a couple of ideas," that wasn't about Mr Williams, right?

A No

Q Okay But one of those ideas was working on a loan from Dr Davis?

A Yes

Q And initially Dr Davis had been asked whether he'd be interested in purchasing the MoBo beach houses; isn't that true?

A I don't know I don't remember that.

Q You don't remember any discussions with Dr Davis in which you asked him if he'd be interested in purchasing the MoBo beach properties; is that right?

A It may have been, Mr Dry I don't remember that

Q Well, is it fair to say at this point, sir, you're considering the idea of potentially selling the properties or getting rid of the properties? Right?

A Yes. That's right

Q And Dr Davis, he didn't buy the properties, did he?

A No

Q Okay So you asked Dr Davis for a loan?

A Yes

Q And he agreed?

A Yes

MR DRY: Let's go to Government's Exhibit 55, please It's been admitted Sorry

BY MR DRY:

Q That's a $9,900 check from Dr Davis on December 19th of 2009, right?

A Yes

Q And the deposit slip --

MR DRY: If we can come back out

BY MR DRY:

Q There was $100 of cash put in, and then the deposit slip is to MoBo for $10,000; is that right?

A Yes That's what it says

Q And you were the one that negotiated the terms of all the Dr Davis stuff, right, the loan terms?

A Yes

Q Let me do it that way

A Yes

Q I'll be more precise

MR DRY: Can we go to Government's Exhibit 54, please

BY MR DRY:

Q Now, this is an e-mail chain between -- you're not on this It's between your wife and Jasen Eige, and that happens to be December 21st And in this e-mail, your wife writes, "We are broke, have an unconscionable amount in credit card debt already, and this inaugural is killing us "

I believe you testified you weren't on this e-mail, but at some point Jasen Eige and you discuss it, right?

A Yes

Q Now, from your vantage point, are you broke and have an unconscionable amount of credit card debt?

A There were two questions in there

Q All right First, are you broke?

A No

Q Do you have an unconscionable amount of credit card debt?

A It's higher than I wanted it to be

Q When your wife is saying "we are broke," is she just -- is she lying?

A I can't exactly tell you what my wife meant She wrote the e-mail I wasn't on it

Q Okay But from your vantage point, you're not broke, and even if she says she thinks you are, you're not broke, right?

A Right

Q Was she exaggerating your financial condition, do you think?

A Yes

MR DRY: Bring up Government's Exhibit 51, please

BY MR DRY:

Q Was your sister exaggerating the financial condition when she says, "We are in trouble and need to act NOW," in all caps?

A Yes

Q She was exaggerating when she's mentioning "bankruptcy" in this e-mail?

A Yes

Q Okay Let's go -- I'd like to go back to the inaugural gown briefly Did Mr Cox and Mr Eige have conversations with your wife about her not being allowed to have Mr Williams purchase the inaugural gown?

A I believe Mr Eige did, but I'm not sure I think she did

Q And whose decision was it to have Mr Eige talk to your wife about the inaugural gown?

A I'm not sure

Q You didn't tell Jason Eige, "Hey, can you talk to Ms McDonnell about this"?

A I don't remember, Mr Dry

Q So you might have? You just don't remember?

A It was in the middle of a transition I don't remember

Q I guess -- you knew that Mr -- you knew that your wife had complained to Mr Cox about this, right? You testified about that?

A Well, yes This is later

Q Right And Mr Cox told you about the complaint, and then you told Mr Cox that you would talk to your wife about it, right?

A Yes

Q And you testified that you were very upset with her, told her that she couldn't treat one of your most trusted advisors that way?

A Yes

Q But one of the things -- you testified later that despite the fact that you had told your wife within a day or two, "This isn't going to happen," that even after telling her that, at some point you went to your lawyers to find out if there was a legal reason to tell your wife no Do you remember that testimony?

A Yes

Q So just so I understand, you're sitting there on December 4th, and as soon as that inaugural dress conversation comes up and Mr Williams says, "Hey, I'm going to buy this dress," you know in your mind that's never going to happen You tell your wife that within a day or two, right?

A I believe so Yes

Q But then subsequently, you go to a lawyer to find out if there's a legal reason that she shouldn't get it; is that right?

A No

Q Well, didn't you just testify that you went to your lawyers to find out if there was a legal reason?

A Yes

Q Sir, you're sworn in as Governor on January 16th of 2010, right?

A Yes

Q Now, as Governor, your annual salary was $175,000?

A Yes

Q You and your family can live at the Governor's Mansion for free? You don't have to pay rent?

A No, no rent Yes, sir That's right

Q Your utilities are covered?

A Right

Q You have a butler?

A Yes

Q Food is paid for by the State?

A Yes

Q Your family's food, the family that's living in the Mansion, their food is paid?

A Yes

Q And the Executive Protection Unit, they'll drive you anywhere you want to go, right?

A Yes

Q But you get a total of $50,000 from Dr Davis, right?

MR DRY: Can we pull up Government's Exhibit

61

BY MR DRY:

Q This is the last $20,000 from Dr Davis on March 15th, 2010, right?

A Yes

Q And before -- just so I'm clear, you had had a $10,000 -- or $9,900 and $100 in cash That was done in December of 2009 February of 2010, you get another $20,000 And this is the last tranche, right, 20,000 in March?

A That's right. Yes

Q Okay. Before this check, did you have any loan documentation with Dr Davis?

A I don't believe so

Q But at this point, Dr Davis -- when it gets up to $50,000, Dr Davis asked you, "Hey, I need you to sign a promissory note," didn't he?

A Yes

MR DRY: Can we go to Government's Exhibit 60, please

BY MR DRY:

Q Sir, this is that promissory note?

A Yes

Q Now, in the left-hand upper corner, the amount of the principal is 50,000?

A Yes

Q The interest rate is 7 and a half percent?

A Yes

Q Now, this note requires $1,001 90 to be paid each and every month, right?

A Yes

Q Now, in the second -- well, first of all, in the very first sentence, it says, "For value received, the undersigned makers promise to pay to Paul Davis $50,000 plus interest," right?

A Yes

Q And then going to the second paragraph, it says, "If the makers fail to make any monthly payment, they shall be in default of the note," right?

A Yes

Q And then on the third paragraph, it says, "Each personal liable hereon," right?

A Yes

Q Now, who signs this?

A My sister, my former brother-in-law, and me

Q And you understood that you were personally liable to pay $50,000 back to Dr Davis, right?

A Yes

Q If anything happened to your sister or anything happened to Mr Uncapher, it didn't matter You were on the hook for the full 50?

A Yes

Q Okay Sir, can you show me anywhere on this promissory note where it says MoBo anywhere?

A No

Q And after this note, you start making monthly payments to Dr Davis of $1,001 each month, and 90 cents, right?

A Yes From MoBo, yes

Q All right Well, let's fast-forward to October of 2010 I believe you testified your next personal meeting -- there's the December of 2009 meeting that we discussed Your next personal meeting with Mr Williams occurred in March of 2010? The California flight, sir?

A Yes I may have seen him at the airport, Mr Dry, at some point, but I don't have any good recollection -- but any substantive contact, yes

Q You might have met him at the airport hanger in July for like a ten-minute --

A Yes, sir

Q -- drop by kind of thing, right?

A Right

Q But the next substantive is October 3rd, 2010, the flight back from California?

A Yes

Q Okay And you had flown out that morning to California on Mr Williams' jet?

A Yes

Q And Mr Williams obviously wasn't on the flight out there with you?

A No.

Q And -- but he accompanies you back, right?

A Yes

Q Now, during that flight, Mr Williams, I think everybody is in agreement, he talked extensively about Anatabloc to you?

A Yes

Q Okay There's no dispute on that And he talks to you about the need for scientific studies of Anatabloc?

A He talked to me about some studies that he had going on at that point

Q And he told you that he needed more studies, right?

A I don't remember that

Q All right You're not denying that happened? You just don't have an independent recollection?

A Yes

Q Do you remember him telling you that he believed Anatabloc could reduce healthcare costs?

A Yes

Q And at some point, you refer Mr Williams to Dr Bill

Hazel, right?

A Yes

Q And Dr Bill Hazel was the Secretary of Health and Human Resources?

A Yes

Q So that made sense, right? I mean, we're talking about a healthcare product and we're talking about scientific studies, and we're talking about reducing healthcare costs in Virginia He's kind of the guy to see, right?

A Yes.

Q Okay And you're not clear on whether you had any -- and correct me if I'm wrong You're not clear on whether you actually set up the meeting or you just referred Mr Williams to Mr Hazel It could have happened either way, right? You might have had a staff member say, "Hey, make sure Mr Williams gets a meet"?

A I'm pretty clear it was just a referral for him to follow up with him Yes

Q So are you saying that you just think that you told Mr Williams, "Hey, go see Mr Bill Hazel," and then you didn't do anything after that to set up the meeting?

A I don't think so, Mr Dry I don't remember that clearly I don't think so

Q All right I want to fast-forward to the CigRx event We've heard extensive testimony that the legislative session is your busiest time of year, right?

A Yes, sir

Q And we've seen a lot of your schedules, and 18 meetings and 15 meetings Lots of meetings during that time, right?

A Yes

Q Now, in February of 2011, the session -- the legislature is in session, right?

A Yes

MR DRY: Can we go to Government's Exhibit 708, which is not admitted

BY MR DRY:

Q This is your schedule for February 2nd of 2000 -- February 3rd I'm sorry The e-mail is February 2nd This is your schedule for February 3rd of 2011, right?

A These are my working papers as opposed to a schedule But this appears to be that day Yes, sir

Q Okay

MR DRY: Government moves Government's Exhibit 708 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q Now, going to the second page, because I think that will have the evening time frame on it You're not originally scheduled to go to this Star Scientific event, right?

A Right

Q This was a pure drop-by?

A Yes

Q Okay And Mr. Williams contacted one of your staff members and asked that you stop by the event, right?

A I believe that's what Adam told me Yes

Q Okay

MR DRY: Well, let's -- let's go to Government's Exhibit 87 Is this admitted? No Eighty-seven is

BY MR DRY:

Q Sir, this is an e-mail between Monica Block and Adam Zubowsky, right?

A Yes

Q And I want to go -- because I believe you testified, when Mr Burck was cross-examining you, that you didn't talk to your wife about this at all, about the CigRx event, right? That's what you testified

A I don't remember talking to her before that

Q Okay Well, let's do it this way At the bottom here --

MR DRY: Can you blow that up?

BY MR DRY:

Q -- Mr Zubowsky is e-mailing Block saying that, "Got the number " Knows Mr Williams' number

Then Ms Block says, "So are you guys stopping by?"

MR DRY: And going up, stop there, please

BY MR DRY:

Q Adam writes back to Ms Block, "Yes 102 loves Johnnie " 102 is your wife, right?

A Yes

Q So your wife did -- and you had some discussions about where she's encouraging you to go stop by Mr Williams' event, right?

A No

Q So you're saying that when Mr Zubowsky says, in response "Are you stopping by? Yes, 102 loves Johnnie," there were no discussions between you and your wife in which she's encouraging you to stop by the event?

A I don't think so

Q Okay

MR DRY: Let's go up Stop there

BY MR DRY:

Q Now, Ms Block responds back to Mr Zubowsky and says, "Why does 102 like him? Because he's loaded?"

Did your wife like people because they had money?

A Mr Dry, I can't comment on whether my wife liked somebody because of money She liked a lot of people I don't know

Q From your conversations with your wife and your personal observations, did your wife express interest in people when they had money?

A No

Q No?

A That wasn't the reason for friendships No

Q Did your wife have a history of making inappropriate requests of your family's friends for money for you and your family?

A Yes

Q And you knew that?

A Yes.

Q And you had known that for a long time?

A Yes

Q So you go to the --

MR DRY: Well, let's go Government's Exhibit 89, please And can we go to Page 22, please I'm sorry This has already been admitted Can we blow up the bottom there

BY MR DRY:

Q Now, you make some brief remarks, right?

A Yes, I do

Q And that's your wife standing next to you?

A Yes

Q And in the left-hand picture, that's Mr Williams, right?

A Yes

Q In the background And overall, your comments were typical They are favorable to the company, but nothing unusual about that, right?

A I went to four events that night, and I'm sure I said nice things about every company I was there for

Q All right

MR DRY: Let's take that down, please

BY MR DRY:

Q Now, by March of 2011, things hadn't really improved financially for MoBo, had they?

A I -- I can't answer that question yes or no

Q Okay Was MoBo still behind on paying its bills?

A I can't answer that question yes or no, Mr Dry Can I explain?

Q Let's just do it this way

MR DRY: Let's go to Government's Exhibit 709

BY MR DRY:

Q I'm not trying to be difficult, sir

MR DRY: I just want -- I just want to go to -- this is an e-mail -- this is not admitted, by the way

BY MR DRY:

Q This is an e-mail at the top It's -- well, you e-mail your yourself, but then the e-mail chain is between you and Michael Uncapher; is that correct?

A Yes, sir It looks to be

MR DRY: I'd like to move Government's 709 into evidence, please

THE COURT: It will be admitted

MR DRY: Can we pull out, please

Okay Now, go -- let's go to the bottom e-mail from Michael to -- okay

BY MR DRY:

Q This is from Michael Uncapher to you and your sister, right, sister Maureen?

A Yes

Q And it says -- the date of this is March 9th, 2011?

A Yes

Q And he says, "Here is the breakdown for what is owed for February and March"?

A Yes

Q Now, NFCU, that's Naval Federal Credit Union?

A Yes

Q Or Navy?

A Navy

Q Navy Federal Credit Union?

A Yes

Q Okay And that shows payments are due in February and March?

A Yes

Q Then TowneBank 1 -- or "TB 1," that's TowneBank 1?

A Yes

Q And that's one of the mortgages that's on one of the MoBo properties, right?

A Yes

Q And that's got a total due of 6549 92?

A Yes.

Q And that includes a late fee of $163?

A Right

Q TowneBank 2, totals due, $1111?

A Yes

Q And then the Bank @Lantec, there's a late fee on the February, but the -- do you see that?

A Yes

Q And the total is $11,065, right?

A Yes

Q Now, let's go to the second page at the top The total due for February and March was $23,701?

A Yes

Q And then Mr Uncapher tells you and your sister what the minimum going forward each month was going to be, right?

A Yes

Q And that total was $11,557 23?

A Yes

Q Now, you knew that there had been late fees associated with -- with the MoBo properties for a while, right?

A No.

Q Did you have conversations with Mayor Sessoms in which Mayor Sessoms called you and said, in effect, "Hey, Bob" -- because you're friends I'm not calling you Bob But, "Hey, Bob you need to get this mortgage paid off or else it's going to go to 30 days, and I have to report to my Board " You didn't have those conversations?

A I heard his testimony I don't remember when, but I remember maybe one conversation with him on that

MR DRY: Can we bring up the exhibit again, please It's Exhibit 709 The second page

BY MR DRY:

Q So, sir, as of March of 2011, you know that you're paying late fees, hundreds of dollars of late fees, right, on the MoBo properties?

A No

Q You didn't recognize on here where it says late fees, sir? This is sent to you?

A I see one late fee Yes

Q Do you see the second one that says, "Including late fee"?

A Yes

Q Okay So you're not denying you got this e-mail?

A I'm pretty sure I remember getting this Yes

Q And you're not denying that you know that -- you recognize, oh, my gosh, there's late fees associated with these mortgages, right?

A Yes

Q You're denying that?

A No No I recognized this at the time Yes

Q Okay At what point do you go to Mr Uncapher and say, "Hey, let's put this on auto bill payment We know what's going to be needed every month Let's just auto pay this so we don't get these late fees"? Did you ever tell him that?

A We had several discussions about that

Q And did it happen?

A I think eventually He was managing that for my sister and I I think at some point these did -- several of these did go on auto pay

Q And there's been a lot of testimony from your sister and you about Michael Uncapher in charge of MoBo, right? The day-to-day operations I don't want to mischaracterize

A Yes He was the day-to-day manager Yes

Q All right But you're kind of the one that's leading the charge on trying to find refinancing for MoBo, right, the MoBo loans?

A My sister and I, yes

Q And, in fact, those weren't really MoBo loans Those were personally guaranteed by both you and your sister, right?

A You've asked me two questions there

Q Well, first of all, were the mortgages for the beach properties in MoBo's name, or were they in you and your sister's name?

A Are you asking me about the underlying mortgages for those properties?

Q Yes

A They were actually in my name and, to the best of my knowledge, my wife's name, and Michael's name, and Maureen's name

Q Okay But they weren't in MoBo's name?

A That's correct

Q I could look at those mortgages all day I'm not going to see MoBo anywhere?

A Yes That's right

Q And you're trying to refinance the mortgages at this time, right?

A Yes We did a couple years to look at whether there were better interest rates Absolutely

Q All right Well, let's do -- you had meetings -- in March of 2011, you were meeting with SunTrust executives trying to get them to present financing options, right?

A Looked at several options Yes

Q And you're talking to Ted Yoder at Monarch Mortgage?

A Yes

MR DRY: Let's go to -- this is admitted Government's Exhibit 91, please

BY MR DRY:

Q And, in fact, let's -- the top e-mail is from your sister to you?

A Yes

Q Okay Now, let's go to the bottom e-mail This is on March 21st, and you're telling Mr Yoder to "call on the loan application Need an answer soon Left voice mail regarding the same Let's discuss options "

And the loan applications were going to be for the beach properties, right?

A Yes

Q Now, Mr Yoder tells you, "We're not going to be able to accommodate your loan request " And then he says, "I recommend that you let Bruce and I work on a private solution for you "

"A private solution" would be something -- is that like the Dr Davis loans?

A I never talked to him about the follow-up here, so I don't really know what he had in mind

Q All right Now, Bruce, Bruce Thompson is one of your best friends, right?

A He's a good friend Yes

Q And is it fair to say that Bruce Thompson is financially wealthy?

A Yes

Q Very well off?

A I believe so

Q Okay

MR DRY: Can we go to -- scroll up a little bit

BY MR DRY:

Q Now, you write, "Predictable result Will ask Ted and Bruce to give me a private proposal I've got inquiries now in to BOA and Wachovia for proposals Let's set a deadline of next Friday to decide and apply Will is helping with 2 75 percent on both loans for a year "

Let's break that down a little bit When you say "Will," that's Will Sessoms?

A Yes

Q And --

A No No I'm sorry No That's just will in the normal sense "I will ask Ted" --

Q Oh, I'm sorry

A -- "or Bruce " It's not Will Sessoms

Q No "When it says Will is" -- I'm sorry Not the "Will ask Ted " I apologize, sir

A Okay I see

Q I didn't mean to try and confuse you I'm just saying, "Will is helping with 2 75 percent"?

A Yes

Q That's Will Sessoms?

A I think so Yes

Q And when you originally got these mortgages from TowneBank, you understood that those were really -- there were stopgap measures, that you needed more permanent financing, right?

A No

Q So do you remember Mr Sessoms testifying about how you had conversations with him, and were telling him, "Hey, I'm going to look for more permanent financing"? Do you remember that testimony?

A Yes

Q Okay Well, did you ask Ted and Bruce to give you a private proposal? You said you would

A I don't -- I don't remember

Q And this is March of 2011?

A Yes

Q And that last -- "he will also look at unsecured third on Sunseeker " How many loans --

A Yes

Q How many loans did Sunseeker have at that point?

A I believe there were three loans already There was the primary mortgage, and then there were a line of credit in a second mortgage that we used for construction

Q So at this point I think that you're trying to get financing from SunTrust, or talking to SunTrust about financing?

A Yes

Q You were talking to Monarch, right?

A Yes

Q Talking to Wachovia?

A Yes

Q Talking to Bank of America?

A I think that's right Yes

Q Okay

MR DRY: Can we go to -- this is not admitted Government's Exhibit 711, please

BY MR DRY:

Q This is an e-mail from you to your sister and brother-in-law, right?

A Yes

MR DRY: Can we go down in the bottom

BY MR DRY:

Q This is an e-mail from Theresa Swann to you?

MR DRY: I'd like to move to admit Government's Exhibit 711, please

THE COURT: It will be admitted

A Yes

BY MR DRY:

Q And Ms Swann, what does she write in that first sentence?

A "I have completed my research, and as you suspected, we find ourselves in a precarious position with regard to loan to value and the ability to refinance "

Q And you knew at this point that the market had really gone down in the housing market -- or the property values have really gone down, and it was going to be hard to get -- and I think she calls it the L to V -- the loan to value It was going to be hard to get refinancing, right?

A Sure It was a national problem

Q Okay And you discussed that -- I mean, you gave Ms Swann a heads up, hey, I don't know if this is going to work out?

A Yes

Q That's what she's saying? "Precarious "

Ultimately, you couldn't get traditional financing through Bank of America, right?

A Yes We did not

Q Okay And you didn't get financing from Wachovia?

A Refinancing

Q Refinancing

A Yes That's true.

Q And you didn't get refinancing from Monarch?

A That's true

Q You didn't get refinancing from SunTrust?

A Right

Q Sir, throughout the trial, everybody has talked about how busy you were as Governor, and you had all these demands with the Republican Governors Association and a lot of duties, a lot of balls up in the air, right?

A Yes, sir

Q And I believe Michael Uncapher, he's really in charge of the day-to-day operations of MoBo, right?

A Yes

Q And, in fact, I believe your sister testified that MoBo -- that's just -- MoBo, from like 2009 forward, was just not a priority for either you or her, right?

A No She said it wasn't a priority for her

Q Was MoBo a priority for you?

A I tried to make --

Q I mean, you've got a lot going on, right?

A Got a lot -- every -- all my business, personal and public, I try to make a priority, Mr Dry, and take care of my responsibilities

Q Okay Well, let's go to -- well, are you involved in the day-to-day operations of MoBo in 2011, 2012?

A Yes

Q Okay And how? Explain to me what you were doing in 2011 and 2012 as it related to MoBo

A Well, my responsibilities were I did -- frankly, I did a lot of maintenance because it was fun. I -- Michael did most of the day-to-day, you're correct on that, of paying the bills and looking at all the statements I didn't even get any bank statements, I don't believe, at the time. They all went to my sister and Michael

But when it came to issues of financing, my sister and I, as the principals in MoBo, were the ones that would do things like that In 2012, after my first separation between my sister and Michael, I got more involved And I took over fully in November 2012

Q Okay

MR DRY: Well, let's -- let's -- this is not admitted Government's Exhibit 788

BY MR DRY:

Q Now, from what you just said, it sounded like you were saying, well, we were involved in refinancing But this is an e-mail between you and Sandy Munden at the top, right?

A Yes

MR. DRY: Move Government's Exhibit 788 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q Now, Ms Munden, she's from Sandbridge Realty?

A Yes

Q And that's dated May of 2011?

A Yes

Q And going to that bottom e-mail, that's from you to Ms Munden?

A Yes

Q And you're writing to Ms Munden, "Just got April bill New carpet appeared on ECP " That's East Coast Palace?

A Yes

Q "Not Sunseeker Will it be next month on Sunseeker" -- or "SS " Did that mean Sunseeker?

A Yes

Q And "Also had asked the pest control company to bill in 60 days June "

You had asked the pest control company to do that?

A I probably did We had a big bedbug problem, and I think I probably helped to coordinate that Yes

Q Okay And you, "Also sent back today the signed rental rates with a bump in off-season "

A Yes

Q So when it says, "Just got April bill," you're the one that's actually reviewing MoBo's management company bills and trying to coordinate all that, right?

A Well, we all got the copies of the statements Yes

Q And you're reviewing those?

A From time to time Not all the time But I did this month, clearly

Q All right

MR DRY: Well, let's go to Government's Exhibit 789, then

BY MR DRY:

Q Top e-mail is between you and Ms Munden again?

A Yes

MR DRY: Government moves Government's 789 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q Now, this says -- the subject matter is "Scheduled Call," right?

A Yes

Q And, "Want to talk about some expenses on the June statement " So you were reviewing the June statement at this point?

A Yes

Q And that you wanted the -- your partners to join you by phone Your partners at that point, I'm a little confused It was definitely your sister Maureen, right?

A Yes

Q I don't mean technically I'm just trying to think in your mind, is Michael Uncapher a partner at this point?

A Not of MoBo

Q Not of MoBo? So this might have been -- oh, I see It might have been about BRH maybe? I'm just trying to figure out --

A No This would --

Q Who do you mean by "partners," sir?

A The only members of the LLC were my sister and I But my wife and Michael, I believe, actually, were -- I believe are on the deed, but they were involved with the properties Everybody did a little bit to help out Small business

Q Now, when you're talking about "plans to upgrade house to special events use," this is like the germination of the, hey, let's do an improvement, right?

A Yes

Q Okay And part of the reason for that was you wanted to increase the rental rates, right?

A Exactly

MR DRY: Can we go to Government's Exhibit 790. This is not admitted

BY MR DRY:

Q Now, you continued to work with Ms Munden This is an e-mail from you to Ms Munden, January 10th of 2012?

A Yes

MR DRY: Government moves Government Exhibit 790 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q Now, this is January 2010 Is legislature --

A This is 2012

Q I'm sorry '12

A Yes

Q I apologize Are you in session at that point?

A Without seeing a calendar, we may have just started right before or right after But right around that time

Q Right around that time?

A Yes

Q And even if it's not technically in session, there's a lot of buildup, or prep work, before the session starts, right?

A Yes Absolutely

Q I believe you testified that January through April, busiest time of the year for you?

A Usually Yes

Q Okay

MR DRY: Can we go to the second page, please, at the bottom

BY MR DRY:

Q Now, you evidently had a meeting with Ms Munden at -- last week?

A So I was down there over the holidays, which -- yes

Q Okay But then it talks about, "Please look at June through December statements and come up with ideas that you recommend we can use "

A Yes

Q And, in fact, you were looking at each of the statements each month, right?

A I looked at most of them I was asking her to look at these

Q But you -- I'm sorry Did you say that you looked at most of them?

A I think so

Q Okay And you're asking her for ideas on how to reduce the expenses?

A Exactly right

MR DRY: And then on Page 3, please

BY MR DRY:

Q At this point, you're talking about having the upgrades done "We hope to have the construction done by mid-February, weather permitting " That's the upgrade that we just talked about?

A Yes

MR DRY: Now, let's go back to the first page, please The bottom e-mail

BY MR DRY:

Q Now, you're discussing discounting rates and all that But you said -- the last sentence, "Did you also say it might be possible to advance some rents if needed on February to pay part of the building upgrade? That would help "

Did you have a discussion with Ms Munden about, hey, potentially the management company could, you know, give you some money?

A If I could just read this?

Q Absolutely, sir Take your time

A Yes

Q Okay

MR DRY: And then let's go up, please

BY MR DRY:

Q And in this e-mail, she's responding back that you wanted them to cut a check for 4,400; is that right?

A Yes.

Q And that was going to Resource Builders?

A Yes.

Q And that was going to be the deposit to begin the job?

MR DRY: What just happened? I don't like seeing myself on camera

Can we go up to the top e-mail, please

BY MR DRY:

Q And then you write, "Tell me what you can do as a float to get us to the summer rentals," right?

A Yes

Q And that was in January of '12?

A Yes

Q And, again, that -- we've heard a lot of testimony about your sister's financial condition and how great it was, right?

A Yes

Q I mean, the expert talked about all her stock and all of that, right?

A Yes

Q But you guys are making a business decision, hey, let's borrow other people's money I think your sister actually said -- did she say "OPM," other people's money?

A I don't remember that

Q Okay But --

A Maybe

Q -- she said making a business decision to borrow money from other people rather than putting you or hers in, right?

A I think that's what she said Yes

Q Was that your view too, better to just borrow other people's money?

A We made a conscious decision in '12 to borrower as opposed to put in our own substantial cash reserves Yes

Q Let's go to the -- let's talk a little bit about the improvements on Sunseeker You were the one that was basically leading the charge on that, right?

A No I don't know what you mean by "leading the charge "

Q I'm sorry That was an imprecise question, sir

You were the one that was responsible for coordinating which builder it was going to be, and what they were going to do, and things like that?

A In consultation with my sister, yes But I handled most of that Yes

MR DRY: Can we go to Government's Exhibit 792, please This is not admitted

BY MR DRY:

Q This is an e-mail between you and -- senior management, I think, is your wife, right?

A Yes

Q And sister Maureen and then Michael Uncapher, right?

A Yes

MR DRY: Okay Government moves Government Exhibit 792 into evidence, please

THE COURT: It will be admitted

BY MR DRY:

Q You write, "I'm working on a plan to reduce expenses with Sandy "

A Yes

Q "I hope we can turn the corner this year "

A Yes

Q And that was because at this point these beach properties had been losing between 40 and $60,000 every year since 2006, right?

A I can't answer that yes or no Can I explain?

Q Sure

A You've used the word "losing " The cash produced by rents were 40 to $60,000 short of covering all the expenses

Q Well, hold on, sir

A That's true

Q Hold on, sir It's not just 40 to $60,000 that there was a delta between rents and mortgage expenses We're talking about rents in overall --

A Right I didn't say that

Q Okay So out of --

A No I agree with you

Q Out of pocket, how much money were you guys -- if you didn't get any loans, how much, each year, would you and your sister have had to put in?

A Forty to 60 was what they were running Yes That's correct

Q All right

MR DRY: Let's go to Government's Exhibit 791, please This is not admitted

BY MR DRY:

Q This is an e-mail between you and your sister on January 8th of 2012?

A I'm sorry I can't read it yet

Q I'm sorry It's hard for me to read it too

A Okay

Q The top one is from you to your wife and your sister, right?

A Yes

MR DRY: Government moves Government Exhibit 791 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q Now, in this one, you've had several meetings and phone calls with the builder, and you're making the decision on which builder you're going to go with, right?

A I think I would say I'm making the recommendation to my wife and sister, in particular, that this is the builder we should use We looked at a couple Yes

Q And, in fact, you say, "We must do some of these upgrades and then an aggressive marketing plan to get more rents I know 22,000 sounds like a lot, but we had 14K last year of one-time improvements with bug problem, carpet, painting, and other items "

There were a lot of unexpected expenses that came along with the beach property, correct?

A Sure

Q And out of the gate, when you decided to buy these beach properties, the pro forma didn't have anything about bug problems, right?

A No

Q And it's fair to say that there had been maintenance that was unexpected, HVAC problems that were unexpected, things just kind of happened, right?

A Sure

Q So I guess my question is if the pro forma didn't have any of those things on there, then how did you know going in, in 2006 and 2007, that your hole was going to be

40 to $60,000?

A We -- the original pro forma was solely for one house without an expansion And that original pro forma was actually a much smaller amount It was like 15 to 20

After that, after we did the expansion and bought the second house, we did our own -- not really a detailed pro forma, but my sister and I just did our own estimates in figuring with all the maintenance -- we had a little bit of a maintenance record by then We figured that's what it would be

Q So I guess my question would be when you originally -- let's go to when you bought the second house

A Yes

Q Did you know that you were going to be in the hole -- that the cash outlay, without loans, would be 40 to $60,000 per year?

A We figured all told, it would be in that range Yes

Q And you were fine with that?

A Yes

MR DRY: Let's go to Government's Exhibit 793

BY MR DRY:

Q This is an e-mail between you and your sister on January 13th of 2012?

A Yes

MR DRY: Government moves Government's Exhibit 793 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q This is talking where you're spending an hour on the phone with Sandy?

A Yes

Q And going through the maintenance bills and ways to save?

A Yes

Q And you're in session on January 13th, 2012, right?

A That may have -- without seeing a calendar, I think that's probably the third day of the session But that's probably right

MR DRY: Let's go to Government's Exhibit 794, please

BY MR DRY:

Q This is a January 30th e-mail from you to David That's David Whitley?

A Yes

Q Senior management and sister Maureen?

A Yes

MR DRY: Government's Exhibit 801, please

THE COURT: It will be admitted

MR DRY: I'm sorry I meant 794

THE COURT: 794 is admitted

MR DRY: Thank you

BY MR DRY:

Q On this one, you're telling him what type of freezer you want?

A Yes

Q And you also say, "My wife thinks bathroom closer to door and shower in the back is the best " So you're discussing the upgrades to the house, right?

A Yes

Q And she's giving you her input?

A She is

Q And she's kind of a partner in MoBo at this point Not a legal one, but you're including her, right?

A She's my wife Yes

Q And there's nothing wrong with you communicating with your wife about these things, right?

A No

Q But you are communicating with her, right?

A Sure

MR DRY: Let's go to Government's Exhibit 801, please Is this 801? Oh, there we go

BY MR DRY:

Q This e-mail is between you and Ms Munden and your wife at 5 p m on February 29th of 2012?

A Yes.

MR DRY: Government moves Government's Exhibit 801 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q Going to the second page of this -- oh, I'm on the second page You cc your wife on this?

A Yes

Q And on the bottom e-mail, Ms. Munden is just providing you an update of the improvement project

MR DRY: Just scroll down there

A I'm sorry I can't see it

BY MR DRY:

Q Yeah, we're going to fix it Do you see that?

A Yes

Q But in your response, you tell her that, "Good update For all on the e-mail, please be sure to add Maureen (wife) on all e-mails"?

A Yes

Q Okay And that's a few hours after you met privately with Mr Williams at your office?

A Yes

Q And that was right before you recognized the healthcare leaders of Virginia, right?

A Yes

Q All right Just a couple more on MoBo You're really busy But I'd like to show you Government's Exhibit 797 This is not admitted This is an e-mail from you to Sandy, senior management, Michael Uncapher on March 22nd, 2012, right?

A Yes

MR DRY: Government moves 797 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q Now, going to the second page of this On the bottom from Ms Munden, "I'm not able to find the Bocce ball set on Hay Needle's website with the number you provided to me yesterday "

What is she talking about there?

A We had a discussion about adding some games after we updated the cabana outside, and a way to make it more marketable And I had gotten recommendations from them about Bocce ball, horseshoes and so forth, and I thought that would be good to add

Q Did they recommend which Bocce ball set to get, or was that your decision?

A I -- I may have -- I think I probably recommended a particular one that I saw

MR DRY: Can we go up to the top

A I'm trying to keep expenses down

BY MR DRY:

Q Is it fair to say you're a pretty detail-oriented guy, sir?

A I try to keep -- I try to be. Keep all the balls in the air, Mr Dry

Q Understood Understood And then turning to the first page at the bottom, she orders the games, right?

A Yes

MR DRY: And then can we go to -- go up Yeah I had a question on this one

BY MR DRY:

Q You're talking to her about the Whitley basketball hoop Were you deciding about that too, or you wanted to make a decision about "need to see it," right?

A Yes Because I was managing this whole construction project Yes

Q All right What's the "internal filter program"? I don't even know what that means What does "internal filter program working now" mean?

A I am not sure

Q It's not a gotcha question I don't know either

A Yeah I -- I am reading this, and I don't know

Q Okay

A Unless it was -- it may have been with the swimming pool, that they told us it wasn't working prior, previously It may have been that

Q Now, on the same day that you're communicating with Ms Munden about all these details, you're also communicating with Michael Uncapher about paying for the builder, right? Do you remember that, having any e-mails -- well, let's do it this way

A If you have an e-mail, I --

Q Sure

A Yes

MR DRY: Government's Exhibit 796 And this is not admitted

BY MR DRY:

Q This is an e-mail between you and Michael Uncapher on March 22nd, 2012, right?

A Yes

MR DRY: Government moves Exhibit 796 into evidence

THE COURT: It will be admitted

MR DRY: Now, going to the second e-mail from the top This is fine right here

BY MR DRY:

Q Can you read this, sir, or is it too small? We can --

A No I got it

Q All right

A Oh, are you asking me to read it?

Q No No No I just want to give you an opportunity to read it That's from Mr Whitley to you, and he's providing you -- that's March 8th. He's telling you that the final invoice --

MR DRY: Oh Government's Exhibit 796 into evidence, Your Honor

THE COURT: It will be admitted

MR DRY: Thank you

BY MR DRY:

Q In his e-mail, he's giving you the final invoice, right, for the work completed?

A Yes

Q And that's four days before the check from MoBo is deposited? I mean, four -- yeah, that's four days before the check from MoBo is -- or the check from Mr Williams is deposited that's made out to MoBo in the amount of $50,000?

A I don't think that's right Oh, I'm sorry On the March 8th?

Q Yes, sir

A Yes That's correct

Q Okay Now, going to the top e-mail, that's from you, and that's on March 22nd?

A Yes

Q And you're giving him the final invoice, and the amount was $16,831.94, right?

A Yes.

Q And you're telling him to send a check from MoBo ASAP?

A Yes

Q And then you say, "Call me today if possible so we can discuss the payment plan I recommend for the next 3 months "

What do you mean -- "payment plan " You were communicating with Mr Uncapher about how -- the timing of how bills should be paid, weren't you?

A I believe so Yes

Q Now, you say, "Working on other sources a well " I think that -- that should be "as well," right? "Going forward to pay off Dr Davis"?

A Yes

Q Okay So is it fair to say that the checks from Mr Williams -- or the $50,000 check from Mr Williams, in part, was to pay off the construction -- used, in part, to pay off the construction?

A It may have been Without seeing the ledger, I'm not sure But perhaps, yes

Q All right So we've spent much time on the MoBo stuff, but let's -- let's go back in time Let's go to April 2011 This is when -- the shopping trip You fly up to Greenwich, Connecticut, with your wife and Mary-Shea Sutherland, right?

A Yes

Q And you attend fundraising events while your wife goes shopping --

A Yes

Q -- the next day?

A We did.

Q You knew that your wife was going up there to shop for clothes for your daughter Cailin's wedding?

A Yes

Q And you knew that your wive -- I mean, you testified that you knew that your wife was meeting Jonnie Williams to go shopping?

A At some point in the afternoon, I believe Yes

Q And you testified that you saw her carrying shopping bags?

A Yes

Q And later on that night, you sat right next to Mr Williams at the Union League Club event, right?

A I think so Yes

Q And both of you are seated at the head table?

A No

Q There's a different table --

A There's no head table

Q Okay Was -- is there a table number 1? If I'm looking at a seating chart, are you seated at table number 1?

A I can't tell you But I can say I wasn't seated very long

Q I understand that, sir But it's fair to say that donors, big donors, they wanted to be seated at your table, right?

A That's where they are usually seated. Yes.

Q Well, and you know that they want to be seated there, right?

A I would say -- yes

Q Okay And proximity to you is valuable to donors, right?

A I can't speak for donors, Mr Dry Every -- I can't

Q Well, wait a minute, sir On your direct testimony, you testified that it wasn't unusual when you were on a plane, on a donor's plane, for one of the donors to be there?

A Yes

Q And that was an opportunity for them to speak to you?

A Sure

Q And that's what they wanted, right? They wanted access to you?

A They wanted to talk to me

Q That was valuable to them, right?

A They wanted to talk to me, yes.

Q And that's valuable to them? That's why they're paying, right?

A Yes

Q Okay They weren't paying to talk to you when you were a Commonwealth Attorney down in Norfolk, right? They are not giving you campaign contributions when you're a CA down in Norfolk, or Virginia Beach? I'm sorry

A I wasn't an assistant I didn't get any money

Q But as you progressed up the political ladder, people wanted more and more of your time, right?

A I think that's fair

Q And they were willing to pay for it? I'm not suggesting there's anything wrong with that, sir I'm just saying as part of the political process, don't they pay to get access to you?

A I think -- I think you could look at it that way Yes

Q Now, sir, you said that you didn't know that Mr Williams paid for any of the shopping, right --

A Right

Q -- that your wife did?

A That's right

Q But after that dinner, you go back and you and your wife are staying together at the Hilton Garden Inn Times Square, I think, right?

A Yes

Q And you guys are in the same room?

A Yes

Q So your wife doesn't tell you that Mr Williams paid for anything; is that right?

A That's exactly right

Q Now, the last time that you were up in New York with your wife and Mr Williams was present, you knew that he paid for a $5,000 bottle of Cognac in front of you, right?

A Yes That's what he said

Q And you also knew that he offered to buy your wife an expensive designer inauguration gown, right?

A Yes

Q And you just testified an hour ago that you knew that your wife had a history of making inappropriate requests for money from other people, right?

A I said from 25 -- 25 years ago she did that Yes

Q Okay So it didn't occur to you, hey, my wife was angry that Jonnie Williams couldn't buy me an inauguration gown I know he paid for a $5,000 bottle of Cognac, and by the way, he's shopping with my wife in New York City

It didn't occur to you that maybe Mr Williams is picking up that tab? Is that what you're testifying to?

A That's exactly what I'm testifying to Yes

Q Okay Let's go to the dinners at the Mansion So from that time, I believe we're -- the shopping spree is April 12th or 13th The next time you see Mr Williams is at the Mansion on April 29th?

A I think that's correct I think it was April 29th Yes

Q And your wife -- Mr Williams and his wife, Celeste, right?

A Yes

Q Had you met Celeste before?

A No

Q All right So that's the first time you ever met Celeste, right?

A Yes

Q I'm still a little bit unclear about this They bring over an $866 wallet, right?

A Yes Well, I've learned that after the investigation started That's true

Q And I was a little bit unclear from your direct Are you testifying that you definitely know that you were not present when that wallet was given, or are you testifying you just don't remember?

A I'm testifying I did not see any gift given to my wife

Q All right Well, let's do it this way Are you testifying that you, at no point before this investigation broke, knew that your wife had received a Louis Vuitton wallet from Mr and Ms Williams?

A Yes She did not tell me that

Q Okay And your wife had a Louis Vuitton purse that was purchased on the -- on the -- at the shopping spree Did you know that?

A I wouldn't recognize a Louis Vuitton if I saw it, Mr Dry I don't know

Q You would have no idea what a Louis Vuitton designer handbag looks like?

A No I know that after the investigation started when I saw the list

Q Okay Now, while the four of you are at the Mansion, your daughter Cailin comes over, right?

A Yes

Q And that was the first time that Mr Williams had ever met Cailin?

A Yes

Q And the sum total of their conversation, I believe you were present when she testified that they only talked for 10 to 15 minutes?

A It may have been a little longer, but that's probably about right Fifteen or 20 is what I remember, but they were -- yes

Q Okay. Now, at the time of this meeting, Mr Williams, he's not on the wedding guest list, is he?

A I know that now But I didn't make the wedding guest list So I think the answer is no, he was not

Q Well, you knew he wasn't, right?

A I can't say that I had looked at the wedding guest list as of April 29th

Q Well, hold on, sir You testified yesterday that your daughter made it clear to you that you could only invite 10 to 15 people?

A That was my -- yes That's right

Q So are you saying that you might have thought that Jonnie Williams was one of the 10 or 15 people that you invited?

A No

Q And you knew that your daughter didn't know Mr Williams, right?

A Right

Q So I guess I'm unclear On April 29th, 2011, did you know at that point that Mr Williams had not been invited to your daughter's wedding?

A Well, I had not invited him Yes That's right

Q Okay And -- all right We will just go on They talk for 10 to 15 minutes, right, or 15 to 20 max?

A I think that's about right Yes

Q Now, during the dinner, Anatabloc is a subject of conversation Fair to say?

A Yes

Q And scientific studies of Anatabloc was brought up, right?

A Yes

Q And the need for further studies, right?

A I can't say I don't remember I remember him talking about what was already being done

Q Okay So you're not denying that Mr Williams brought up the idea of additional scientific studies he needed, you just can't remember, right?

A Right

Q Is that fair?

I believe you testified that there was discussion about Star Scientific stock price?

A There may have been

Q And, in fact, Ms Williams brought out, and actually showed you on her smart phone, how Star Scientific stock price was doing, right?

A I don't remember that

Q Well, are you denying that happened?

A No I'm just saying I don't remember That after the day that I had that day, Mr Dry, I don't remember

Q Well, I guess that's a question I have You previously testified that Star Scientific stock price was the most important thing to Jonnie Williams, right?

A Yes

Q So --

A That's what he talked to me about many times

Q Is it fair to say that after this discussion that you were at least intrigued by the potential for Star Scientific, the product?

A I was intrigued that it was a Virginia company with an idea

Q And I think you testified on direct that you thought, hey, there's nothing wrong with this. If studies are going to happen, they should happen in Virginia, right?

A Absolutely I'd rather have them in Virginia

Q And in your conversations with Mr Williams, you made it clear to him that, "Hey, if there are going to be studies, it's not a bad idea to have them in Virginia," right?

A I -- it would have -- I might have I might have said that Sure

Q Well, that's what you believed, right?

A I'd rather have all business in Virginia Sure

Q Now, I think you testified that at the dinner, you think -- you think Mr Williams brought up the idea of Roskamp at the dinner, right?

A I believe so

Q And the idea was -- and specifically, he was bringing up the idea of you attending Roskamp?

A He might have I'm not sure I'm not sure I know my wife was interested But he may have talked about that

Q And are you -- is it your testimony, sir, that when he brings up the idea of you going to Roskamp, you know at that point that's not going to happen, or was it a possibility?

A It's not going to happen

Q As soon as he says it, you know not going to happen?

A I'm going to China, and I have a wedding I'm not going to be able to do that

Q All right So that means that Mr Williams had actually told you what date he wanted you to go to Roskamp, right?

A He told me that he was going down, I think, within the next, I don't know, month or two

Q Okay So he's giving you a time frame, and he tells you he wants you to go And you know at that point, no way am I going?

A I didn't have an interest

Q Did you express that to him?

A I was -- I don't think so

Q You don't think you told him no? Don't think you told him, "Hey, I'm really busy Can't do it"?

A Probably not at that time

MR DRY: Well, let's go to Government's Exhibit 107 That's admitted

BY MR DRY:

Q Sir, do you remember this, seeing this in court? This is an e-mail from your wife to you?

A I remember seeing it in court Yes

Q You don't have any independent recollection of seeing it?

A I don't

Q Okay And your wife here -- if you go down This is talking about Star Scientific as "Home Run Potential," right?

A That's what it says Yes

Q And she's e-mailing you this the day after you meet with Jonnie Williams and Celeste Williams, right?

A After the dinner Yes

Q And after they talked about the stock price?

A No

Q Well, you don't know whether they did? You don't remember it?

A I don't remember, Mr Dry

Q Okay

MR BURCK: Your Honor, just objection This is not the day after the dinner April 29th versus May 1st

MR DRY: I'm sorry Two days Leap year

BY MR DRY:

Q So that's two days after the dinner; is that correct?

A Yes

Q I'm sorry I didn't mean to mislead you on the date

So this is five weeks before you claim that you learned that your wife was purchasing Star stock; is that right?

A Not claiming it That's what happened

Q Okay Your testimony is no way do I know until June -- is it 5th, 5th you learn?

A Yes

Q Because 6th is the car ride, right?

A Yes

Q Okay Now, as of this date, you still plan on making the final payment for your daughter's wedding, right?

A Yes

MR DRY: And let's actually go to Government's Exhibit 111, please

BY MR DRY:

Q And, in fact, you're telling her -- your daughter Cailin, "Please advise me on May 20 or so the final count and final payment "
Because you're going to make that final payment?
A Yes
Q And she responds back, "I will"?
A Yes
Q Now, your wife meets with Mr Williams a day after you e-mail this -- you e-mail the bottom e-mail to your daughter, right?
A I know that now
Q But you didn't know it then?
A No
Q Okay Now, by May 5th, though, you had told Bill Hazel that you were thinking about going down to the Roskamp Institute for that event that Mr Williams invited you, didn't he?
A I don't think so I think we asked him for comments on what Roskamp was, and whether it was legitimate
MR DRY: Well, let's go to Government's Exhibit 117 Yeah, let's got to the Block e-mail
BY MR DRY:
Q This is your scheduler e-mailing Bill Hazel, and she says --
MR DRY: This is admitted I'm sorry

Government's Exhibit 111

A Uh-huh

MR DRY: Oh, I think I messed up here I need Government's Exhibit 117 And this is admitted All right

BY MR DRY:

Q This is an e-mail your scheduler sends to Bill Hazel, cc'ing Schramm, Katherine Harris You had a communication with Ms Block about this, right, before she sent it?

A I'm sure I did

Q And, in fact, you informed her that you had sent Mr Hazel, or Dr Hazel, some material on Roskamp?

A Probably did Yes

Q And that you had asked him to take a look at it, right?

A Yes

Q And that you wanted him to give you his thoughts?

A Yes

Q And that you were thinking about going down to Roskamp, right?

A No

Q You didn't tell him that?

A No

Q Okay

MR DRY: Can we go up in the e-mail chain,

please

BY MR DRY:

Q Mr Hazel says that you mentioned this to him on Thursday, so he has not gotten back to it yet "How soon do you need to make a decision?"

A I'm not copied on that

Q I understand that, sir Is it your testimony that you didn't tell Monica Block that you were thinking about going down to Roskamp?

A I don't think so. I didn't have an interest in going

Q Okay Let's go to May 23rd of 2011 On May 23rd of 2011, Mr Williams delivered a $15,000 check to your wife And it's your testimony you didn't know anything about that at the time?

A Yes

Q And on that same day, he delivered a $50,000 check to your wife, and you didn't know anything about that?

A At the time

Q At the time I'm sorry

A Yes

Q At the time?

A Yes

Q I guess one question I have from your testimony earlier today with Mr Burck is I believe you testified that your wife told you that she did not ask for the money but that Mr Williams had just given it to her?

A That's what she told me.

Q That -- that it was Mr Williams' idea to give her $50,000. Is that basically what she's telling you?

A That's what she told me

Q Did you ask her any questions about that?

A Yes

Q Well, you testified that you only learned about the $50,000 check on June 5th, and that was after your daughter Cailin's wedding, right?

A Yes, sir That's right

Q And that you testified that at some point in June you spoke to Mr Williams about this $50,000 loan?

A I tried to remember exactly when that was Sometime after my wife told me Yes

Q All right So your wife tells you on June 6th?

A Yes

Q How much later?

MR BURCK: Objection, Your Honor June 5th

BY MR DRY:

Q June 5th You're right

A I'm sorry

MR DRY: Thank you, Mr Burck

BY MR DRY:

Q June 5th, the day before the June 6th wedding?

A Yes. The day after -- the day before the honeymoon

Q The day after the wedding?

A Yes, the day after the wedding. Yes.

Q So the wedding is 4th 5th is when you learn?

A Yes

Q 6th is when you drive --

A Yes

Q -- to the airport?

A Yes

Q Okay So how much later after your wife tells you, "By the way, Mr Williams just gave me a $50,000 check," how long does it take you to reach out to Mr Williams?

A I mean, my best recollection, it was 30 to 45 days

Q Thirty to 45 days before you talked to Mr Williams about this?

A Yes We're waiting for documents

Q So you didn't immediately pick up the phone and say, "Hey, Mr Williams, you just loaned my wife $50,000, and oh by, the way we don't need it"?

A No I didn't talk to him then

Q You testified earlier that you were upset about this, right?

A Yes

Q That you had plenty of money You didn't need a loan from Mr Williams?

A No

Q Well, you didn't need a loan from Mr Williams?

A Yes

Q Okay And it takes you 30 to 45 days to pick up the phone with him and call him about the terms, right?

A Yes

Q Well, that's the question I have You testified on direct that when you talked to Mr Williams, you talked about terms How were you waiting for a contract if you haven't even talked to him about the terms?

A My wife had already told me the terms I wanted to confirm the terms, and we didn't get documents That's why I called him. My wife told me what she had negotiated It was her loan She told me what she had negotiated on June 5th when I spoke with her

Q So you're just waiting for a contract to appear and hopefully will have the terms that your wife told you?

A It's my wife's loan, Mr Dry

Q Well, let's talk about that a little bit Well, first of all, let's do this You testified that when you talked to Mr Williams, I believe on direct, that you only discussed the terms It was at 2 percent for 4 years, with a balloon payment due in 2015 Is that what was discussed in that call?

A Yes

Q And those were the terms that you understood?

A That's what I understood

Q And you were waiting for loan paperwork, right?

A When I talked to my wife, yes

Q Okay Well -- and this -- this really upset you, this conversation?

A Which conversation?

Q With your wife

A Yes

MR DRY: Let's go to Government's Exhibit 134, please

BY MR. DRY:

Q Now, this is before that conversation that you testified to, right?

A Yes

Q And you actually sent this to Mr Williams This is May 28th, 2011?

A Yes

Q And at this point, you and Mr Williams aren't personal friends, right?

A No

Q Okay

A I'm friendly

Q Friendly, but not personal friends?

A Yes

Q Fair to say, you viewed him more as a donor than a friend?

A Yes

Q And that reference to Cailin, that's in reference to the wedding gift, right?

A Yes

Q The 15,000?

A Yes

Q And your wife had told you about that when?

A I think it was sometime after we had gotten back from China I was gone from May 6th through about the 17th on an economic development trip And at some point in there she told me about this gift that Mr Williams was going to give to Cailin

Q Let's talk about that economic development trip for a second

A Yes

Q Did your wife go with you on that?

A Yes

Q And, in fact, your wife went on a lot of economic development trips with you, didn't she?

A Yes

Q Is it fair to say that more than half of your economic development trips your wife went on?

A I think that's right

Q And when she would go on these economic development trips, she was going as First Lady?

A She was always First Lady.

Q Okay. And she had a role in these economic development trips, right?

A Yes

Q And, in fact, the taxpayers of Virginia paid for her to go on those, right?

A Yes

Q And you made the decision that she should go on the trips because having the First Lady of Virginia on an economic development trip helping promote Virginia business, that made sense, didn't it?

A Yes

Q Now, going back When did you find out about the gift to Cailin?

A Sometime after that trip

Q That was the -- you got back the 17th?

A 17th, yes

Q Okay And this e-mail is May 28th So can you ballpark me? Can we pull that down a little bit more? Do you remember a conversation with your wife about it?

A Yes

Q When?

A Mr Dry, I've told you, the best that I can remember is sometime -- we got back the 17th It might have been the 20th, 21st Somewhere in that area It seemed like I learned shortly after we got back

Q Okay And it's your testimony that your wife tells you about the 15, but she doesn't tell you about the 50?

A Yes, sir That's exactly right

Q Okay Well, let's talk about the -- the very generous gift to Cailin

MR DRY: Can we pull up Government's Exhibit 81, please This is admitted

BY MR DRY:

Q This is an e-mail from you -- well, the top e-mail is from you to you, but it's an e-mail chain You've seen this document before, sir?

A Yes, I have

Q Now, on Page 1, that's your handwriting on the right side?

A Yes, it is

Q In your direct testimony, you talked a lot about reviewing the contract But you did more than review the contract, right?

A I'm not sure I understand your question

MR DRY: Well, let's go to the fourth page of the exhibit

BY MR DRY:

Q This is the contract, right?

A Yes

Q And whose signature is that?

A Those are my initials

Q Or your initials Okay And the total cost was going to be what?

A $15,897

Q Okay And underneath that, 25 percent installment due when?

A Immediately

Q Twenty-five percent, next installment due when?

A January 31st, 2011

Q And when is the balance going to be due?

A Ten days prior to the event

Q Roughly, when would that be?

A Last week in May

Q Last week in May So a little bit after May 23rd of 2011, right?

A I think that's right Yes

MR DRY: Let's go to Page 5

BY MR DRY:

Q That's your handwriting there too, right?

A Yes, it is

Q And you went through this entire contract, and you were adding contract terms, right?

A I did

Q And then on the bottom, those are your initials?

A Yes

MR DRY: Page 6, please

BY MR DRY:

Q Now, that says, "By submitting this contract and signing below, the undersigned" -- basically, you know, I've read it and agree to it?

A Yes

Q "The undersigned shall be jointly and severally liable for all amounts payable pursuant to this contract," right?

A Yes

Q And you're the only signatory on that, right?

A Yes

Q Neither your daughter or Chris Young are contractually obligated to pay for the wedding, right?

A No

Q And you paid the $3,974 25 on the same exact date that you signed this contract, right?

A Yes

Q And then you pay the second deposit, same amount, on January 22nd of 2011 right?

A Yes

Q Neither Cailin nor Chris made any of those payments, right?

A No

Q Now, you testified that you have, quote -- I want to make sure I get this right -- the capacity to pay for the balance of your daughter's wedding -- capacity was the quote, to pay for the balance of your daughter's wedding reception because you had -- I think you testified 12,000 cash on hand and over 200,000 in credit card capacity, right?

A Yes

Q Question about that. The 12,000 cash on hand, that was three bank accounts, right?

A Yes

Q And one of those bank accounts was your wife's, right?

A Yes

Q And that was 4,000?

A I think that's right

Q So when you're considering what your resources are, you're including your wife's bank account balance, right?

A That was our total position at the time Yes

Q But they are all you and your wife's resources, right?

A Right

Q I mean, it's -- you're the husband, and she's the wife?

A Yes

Q It doesn't matter what it says on the bank account It's your all's money, right?

A No

Q No Well, let me do it this way You testified repeatedly that you were in charge of the finances for the family, right?

A Yes

Q And I'm a little bit unclear going through your direct testimony You were the one that wrote the checks, right? I mean, you were the one --

A Yes

Q -- that knew where the bills had to be paid and knew how to pay them, and you were the one paying bills, right?

A Most of the bills Not all of them But yes

Q Well, I guess my question for you is why are you including your wife's balance in her bank account if you've testified throughout your direct you had no access into her bank accounts?

A I didn't

Q Right That you didn't review her statements, right?

A Did not

Q Now, you reviewed the credit card statements, though

right?

A Some Yes

Q What does that mean? Did you review her credit card statements or not?

A I reviewed some Can I explain?

Q Well, hold on one second How about Davenport?

A No

Q Okay So you reviewed some of the credit card statements because you were paying her credit card bills, right?

A Some that were used jointly by the family, and then she had a couple she paid solely on her own

Q Okay Well, let's talk about those Which ones were those?

A New York Life, and I think there was one other one that she used for her business

Q Do you remember which one that was?

A I don't offhand

Q Okay Was it the Costco one?

A I don't remember

Q AMEX?

A I don't remember

Q But all of those would be for the Nu Skin business expenses, right?

A I think, I believe, two that she paid on her own

But most of the other ones I paid out of our joint resources

Q Okay So if she's going out and buying whatever, you know, that's not related to Nu Skin, then you're writing the bills for that one, right?

A That's fair

Q Okay Going back to this capacity point, sir, I guess I'm just -- did you -- did you view 200,000 in credit card capacity, that was -- did you use the term "liquid resource"? Because I think you might have in your direct testimony Did you view that as a liquid resource, capacity credit card capacity?

A I'm not sure I understand the question

Q I guess my question is when you're talking about capacity, credit card capacity --

A Yes

Q -- did you view credit cards as a liquid resource that improved your financial condition?

A That's at least two, maybe three different questions

Q All right Well --

A Did I view it as a liquid resource that I could take a convenience check and write the balance of the payment on my daughter's wedding for $8,000? Yes

Q Okay

A Did I view it as something that would improve my financial condition? It would be incurring additional debt, so the answer to that would be no

Q Well, it's just not incurring additional debt It's incurring additional debt at some pretty stiff fees, right? I mean, the interest rates are low The up-front fees of 4 percent, that's pretty -- that's pretty high, right?

A No

Q No, it's not?

A It's not the way it worked

Q Well, were you there for Mr Kosowsky's testimony when Mr Faulconer was going through that one convenience check --

A Yes

Q -- and it showed a $400 fee on a $10,000 balance transfer that was ultimately paid off within two months?

A I heard that testimony, yes

Q Was that accurate? Did that transaction -- actually, you know what Let me -- I want to go back to credit card capacity

THE COURT: All right Let's stop here

All right If you all could come back at 2:15, we'll get started with lunch -- with the afternoon session Have a good lunch

(The jury left the courtroom)

(Luncheon recess taken from 1:13 p.m. to 2:15 p.m.)

THE COURT: All right, let's bring in the jury, please

(The jury entered the courtroom.)

All right, Mr Dry?

BY MR. DRY:

Q Sir, leaving the topic of credit card capacity, leaving that subject matter, you would agree with me at the time of Mr Williams' $15,000 check that you still had approximately $30,000 in joint credit card debt, right?

A Yes, sir

Q I'd like to talk a little bit about convenience checks Now, it wasn't unusual for you to use these credit card checks from 2009 all the way up until 2011, right?

A Right

Q And you saw or you heard Mr Faulconer walk Mr Kosowsky through one of those, right?

A Yes

Q I'd like to go back to 2010 Can we show, not admitted, Government Exhibit 825, please? And this is a credit card statement for your wife at the top, right?

A Yes

MR. DRY: Government moves Government 825 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR DRY:

Q This account is strictly in your wife's name; is that correct?

A Yes

Q If we could go to the new balance total That shows a new balance of $12,423 24?

A Yes

Q If we can scan over to the right side of this document, please, in the account summary That shows a balance transfer of $11,843 87, right?

A Yes

Q And this statement is dated July 10th of 2010 Zoom out and just show the witness that, please It is the June to July

A Yes

Q Okay Now, the fees charged for that balance transfer was $476 81 Do you see that?

A Yes

Q Now, typically, when you would do -- when you or your wife would do convenience checks, would that be a joint decision? I mean, would you be aware if your wife was doing balance transfers or convenience checks?

A Sometimes

Q Well, let's go down in this one You see, sir, on 6-16, the transaction date, that shows a balance transfer to American Express of 2,358 19

A Yes

Q Do you know sitting here today whose American Express account that was?

A I don't think I had one I'm pretty sure it was my wife's

Q Okay And then it shows a convenience check of $4,000 Do you see that?

A Yes

Q And then a third convenience check of $5,485 68?

A Yes

Q All of those were done within two days of each other according to the transaction date?

A Yes

Q Okay Well, let's walk through where these go Starting with that first amount, 2,358 19, can you please bring up Government's Exhibit 826, please? And this is an account statement for, on the top left, your wife for a Costco card; do you see that?

A Yes

MR. DRY: Government moves Government's 826 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR DRY:

Q That shows that first balance transfer of 2,358 that went to pay off this credit card. Do you see that on the right-hand side? It is the same amount as the balance transfer we saw earlier?

A Yes

Q Okay And then let's go to Government Exhibit 827, please This is not admitted Do you recognize this document, sir?

A Yes

Q Okay And this is a convenience check deposited into, if you go down, that's deposited into your Beach account 12591; do you recognize that?

A Yes

MR. DRY: Government moves Government's 827 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR. DRY:

Q You know your wife's signature, don't you?

A Yes

Q Who is this check made out to?

A To me

Q And is that your wife's signature?

A No, that would be mine We talked about it, and I would have signed that for her, I'm sure

Q Right Because she would have authorized you to sign on her behalf?

A Yes

Q No problem with that And that one was deposited into your account, the 12591? Go down.

A That's our joint account Yes

Q That's your joint Beach account?

A Yes

Q Thank you And then let's go to the third convenience check for that month It is Government Exhibit 828, please Do you recognize this one, sir?

A Yes

Q And this is made out on your wife's account?

A Yes

MR. DRY: Government moves Government Exhibit 828 into evidence.

THE COURT: It will be admitted.

BY MR. DRY:

Q Now, on this one, who is this made out to?

A MoBo Real Estate

Q Is that your wife's signature?

A No, that would be another case of me signing for her

Q Okay And up above that, if we could go up, that shows it was deposited into MoBo, right?

A Yes

Q So fair to say that you and your wife are jointly deciding to write convenience checks to pay MoBo Real Estate Partners' operating expenses

A Yes, on this occasion, yes

Q Let's do another one from the next month Let's show, not admitted, Government Exhibit 829, please Do you recognize this as a credit card statement for your wife? Upper left-hand corner?

A Yes

MR. DRY: Government moves Government Exhibit 829 into evidence

THE COURT: It will be admitted

BY MR. DRY:

Q Let's go to the left side of this document and scroll down. It says WorldPoints But this is actually a Bank of America credit card; do you recognize that?

A Yes

Q Down in the transactions page, that shows a $5,000 balance transfer? Do you see that? Actually, let's go up. It is actually in the transactions, right there, the account summary I'm sorry It shows a balance transfer? Do you see that in the highlighting?

A Yes

Q Then it shows a $200 fee charge?

A Yes

Q And then in the left-hand side, that showed the new balance total of $17,000

A Yes

Q Okay And then let's actually go to the check itself Can I pull up Government Exhibit 830, please And this is a check written on your wife's account? Correct?

A Yes

MR. DRY: Government moves Government Exhibit 830 into evidence.

THE COURT: It will be admitted

BY MR DRY:

Q And that check, that's made out to you?

A Yes

Q And is that your wife's signature?

A No, I think that's me signing for her again.

Q Okay And that's deposited into your joint checking account, right?

A Yes

Q Now, from 2009 through April of 2011, you and your wife used convenience checks and balance transfers totaling approximately $40,000; does that ring any bells for you?

A We took advantage of low interest rates I don't know, Mr Dry, if that's right

Q But that doesn't seem out of the realm of possibility?

A I don't know

Q Okay Now, when you were writing these convenience checks, I think we saw some examples, sometimes that would be to MoBo, right?

A Yes, I saw one, yes

Q And then sometimes it was to pay personal expenses off?

A Yes

Q And then sometimes it was used to pay other credit cards off, right?

A Yes, balance transfer, yes

Q Now, all of those came with p-front fees, right?

A I don't know if all of them did Some did.

Q Fair to say the majority would; since you have a low interest rate, you are going to have to pay some kind of fee, right?

A Well, some of them were zero interest with a fee, some of them were an interest rate and no fee It was a combination But all designed to reduce interest rates, yes

Q But all of these would require monthly payments, right?

A Yes

Q Now, those convenience checks, that was through April of 2011 you had been writing those?

A I think that's what we just saw on the screen.

Q But you know that the first check from Mr Williams, that came on May 23rd of 2011, that first $50,000.

A Yes

Q And that was around the time of the first 15,000 -- or the $15,000 payment for your daughter's wedding, right?

A The gift, yes

Q And none of that, Mr Williams' money, that didn't require any monthly payments, did it?

A No.

Q And there were no up-front fees for those, were there?

A No

Q I want to talk a little bit, let's go back to Government Exhibit 134 Now, in this, you reference this "golf round tomorrow for the boys " That was the Kinloch, the first Kinloch round on Mr Williams' tab; is that right?

A Yes

Q And I think you testified that you played at Kinloch before once?

A I think, yes, I did.

Q Okay But it sounded like you were unclear on how this actually got set up. Did you talk to Mr Williams or did your sons, one of your sons talk to Mr Williams, or was it your wife that arranged for you to go on this particular day?

A I'm really -- I know I didn't I'm really not sure I think it was my son.

Q Which one?

A I think it was Bobby But I really don't know I know it ended up on my calendar and I wanted to go with my son and son-in-laws, but I'm not sure

Q When you went to Kinloch, you understood that this was going to be gratis, like you are not going to have to pay, right?

A Yes

Q So did your son communicate that to you, "Hey, we are going to go to Kinloch and it is on Mr Williams' tab," or was that just understood?

A I don't know, but I understood it was an offer and a gift from Mr Williams

Q That first time, can we bring up Government Exhibit 137, please? Now, the first time that you go to Kinloch, the first time that you went not on Mr Williams' tab, did you have private caddies then?

A I don't remember

Q Okay Now, on this particular time, I was a little confused by your direct testimony You said that, yes, there were four shirts, and that one of the shirts was yours But was your testimony that you don't remember going into the pro shop or that you didn't go into the pro shop?

A I don't remember going in the pro shop.

Q So it could have happened; you are just not sure

A Yes, sir

Q As you sit here, Mr Williams obviously didn't play with you, right?

A No, not on that occasion

Q And then after you got off the course you called him, and was it a voicemail?

A Yes, I tried to call him to thank him.

Q Okay And then that same exhibit, 134, it talks about your wife going to Roskamp Right? This is May 28th of 2011?

A Yes

Q Now, I think you testified that at this point, you don't know about the $50,000 from Mr Williams; that comes later

A Yes

Q Okay But you know that your wife used that $50,000 to help pay down your credit card debt, right?

A It was in my name, yes

Q Okay Let's pull up Government Exhibit 579, please You saw this exhibit before?

A Yes

Q And this was the use of the $50,000, right? That Bank of America card, what's the date of the check payment?

A According to this chart, it says 5-31

Q That was in an amount of $9,900?

A Yes

Q Did that pay off the balance?

A I don't know

Q Okay Let's go to Government Exhibit 132 This is not admitted. Now, you recognize this as the actual check, sir?

A Yes

MR. DRY: Government moves to admit Government Exhibit 132 into evidence

THE COURT: It will be admitted.

BY MR. DRY:

Q Now, that is your wife's signature, right?

A Yes

Q That's to the Bank of America credit card?

A Yes

Q That's the same account that she had deposited the

$50,000 check into?

A Not the Bank of America You mean the Wachovia account?

Q The Wachovia account it is written on, sorry

A I think so That's her personal account, yes

Q But you were the one that typically wrote checks to this particular credit card, weren't you?

A Yes

Q And in fact, let's bring up Government Exhibit 802, not admitted. Do you recognize this as a check you wrote on May 1st, 2011?

A Yes

Q And what's the amount of the check, sir?

A $500

MR. DRY: Government moves Government Exhibit 802 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q So just so I'm clear, this is a $500 check that you write to Bank of America for the same exact credit card that Ms McDonnell wrote the subsequent $9,900 check, right?

A Yes

Q And this one is your signature?

A Yes

Q I was a little bit unclear about your testimony. I think what you said was that your wife just grabbed a credit card statement off a credenza and then paid the credit card, the $9,900 credit card bill. Was that your testimony?

A No.

Q All right Well, go ahead

A I wasn't there, so I don't know if she grabbed it But what she told me on June 5th was she knew where I kept the bills that were in the queue to be paid. And with her $50,000 in addition to buying the $31,000 in stock, that she paid off two credit cards, and she paid off the two that were there She didn't look for any particular ones There were two in the queue that I still had to pay That's before I set some of these up for autopay She told me she got these two, Bank of America and the other one, and she made those payments for us

Q So she made the decision to pay off your credit card debt with Mr Williams' $50,000, or part of your credit card debt, without discussing it with you in any way before doing it?

A Yes, that's what she told me

Q Okay Now, you can bring that down You knew that your wife was going down to the Roskamp thing before she actually did, right?

A Yes

Q And she flew down on May 31st? The day before?

A Yes, that's right

Q Did you know how she was going to get down there before she actually did? Did you know she was going to be -- I'm sorry, did you know how she was going to be traveling?

A Yes

Q It would be on Mr Williams' jet?

A Yes

Q And did you know that Ms Sutherland would be traveling with her?

A I believe so She typically would, yes. I think I knew that

Q And you knew that somebody from EPU would be going with them.

A Yes, that would be typical for out-of-state travel, yes

Q At this point you know that Roskamp, that's affiliated with Star Scientific?

A No

Q You knew the research that Star Scientific, that was being done on their product, was occurring at Roskamp?

A Yes I knew that

Q Because Mr Williams had told you that, I believe you testified, way back on the Meg Whitman flight, right?

A Yes

Q I think you testified that he actually mentioned it again at the dinner

A I think that's right, yes

Q In fact, he invited you to go down for this event

A Yes

Q Now, did you have discussions with your wife about where she was going to be staying?

A No

Q Did you have discussions with your wife about -- well, did you subsequently learn that it was --

A I'm sorry, do you mean what hotel or what city?

Q What hotel

A No

Q So you didn't know she would be staying at the Ritz-Carlton

A I did not

Q Did you have any discussions with your wife about how she would be, who would be paying for her accommodations?

A No

Q Okay Well, did you know, did you have any discussions with your wife that it was not going to be you or her that would have to pay?

A No.

Q So as far as you knew going into that trip, you might have to pay for your wife's -- your wife might have to pay for her own accommodations

A I just didn't think about it

Q Okay Now, at the time, on the day of the event, your wife called Mr Piscitelli and ordered the stock. Is it your testimony that you had no idea on June 1st when she was doing that that she was actually ordering Star Scientific stock?

A Absolutely, yes

Q Now, in order to buy that stock, your wife had to open up a Davenport account We have heard some of that, right?

A Again, I didn't know what she had to do, but I know now what she went through But yes, I heard the testimony

Q Let's go to Government Exhibit 153 This is the Davenport account statement, sir And it is opened on June 2nd or -- date opened, June 1st of 2011 And you heard Mr Piscitelli testify that he made -- she made it clear to him that the account should only be in her name; do you remember that testimony?

A I heard that, yes

Q And Mr Piscitelli testified that when he asked your wife the annual income and estimated net worth, she told him that she was going to have to talk to you about that; do you remember that testimony?

A I heard that, yes

Q And your wife later gave Mr. Piscitelli a sticky note Did you hear --

A I saw that

Q Let's go to Government Exhibit 634 Now, I believe on direct you said that that annual income figure, that was roughly what your annual income would be, right?

A Yes, that's very close Yes

Q Okay And I guess what I am trying to understand is, did your wife, was your wife tracking mortgage balances and things like that at MoBo?

A I doubt it, no

Q No Okay She wasn't the financial person; it was more you, right?

A Yes

Q Okay And then there has been, I think that you testified on direct that you don't understand what this "Net-Real estate 400,000" means, right?

A No, sir, I hadn't seen the sticky note until the last couple weeks

Q Well, let's go -- it's 400,000 Let's go to Government Exhibit 106, please This is admitted. Do you recognize this document, sir? This is a Heritage financial statement?

A Yes

Q And in fact, this was as of 5-1-2003 and that's crossed out, but it is in the "Received" block, it says 6-15-11 Do you see that?

A Oh, yes I do

Q And you submitted this June of 2011; is that fair?

A That's what it says The date is six months earlier, Mr Dry I can't say when I submitted it But that's -- there is a "Received" stamp on there, yes

Q Let's go to page -- first of all, your wife didn't fill this one out This is all you, right?

A That's me Yes

Q Let's go to Page 3 Then if we could go to the top, the top block, right there Now, this is you filling out the mortgage balances, right, sir? You see the mortgage balance block?

A Yes

Q It has a Market Value block, right?

A Yes

Q Now, if you subtract out 4 2 from roughly 3 8, what's that balance? Would that be $400,000?

A Yes That would be about right, yes

Q And your testimony is that you never discussed any of that with your wife, right? At this time, that you didn't provide her the information for the sticky note

A No. I didn't talk to her about it.

Q And your wife purchased that stock about three days before your daughter's wedding; is that right?

A Yes

Q Your daughter's wedding was on June 4th, 2011 I'm going to try and be better with my dates

A Yes

Q And you knew before the wedding that Mr Williams was going to give the $15,000 check?

A Yes

Q And he got an invitation to the wedding?

A Yes

Q Did you see him at the wedding?

A No

Q You didn't see him at the wedding Other than that e-mail you sent, did you ever send him a thank you card?

A For?

Q For the $15,000

A No. I called him and I sent him the message

Q When did you call him?

A I called him, that voicemail on the 29th. It was golf and --

Q About the golf

A I think in that e-mail I mentioned the gift to Cailin in that, too

Q I understand that I guess my question is, so your message to Mr Williams in the voicemail, that was about the $15,000 and the golf, or just the golf?

A No, I said the golf, and I said, "Thank you for your gift to Cailin."

Q That's in the e-mail -- I guess that voicemail message I'm sorry

A I don't remember I probably just thanked him for the golf, Mr Dry I don't remember It was a brief call

Q Could we pull up Government Exhibit 548, please? This is a picture of the wedding, right?

A Yes

Q That's you and your wife in the background?

A Yes

Q And Mr Williams, it is your testimony that you didn't know that that Armani dress that your wife is wearing was purchased by Mr Williams

A Absolutely not, no.

Q But you are not denying that you knew Mr Williams had previously offered to purchase the inauguration gown, right?

A That's right

Q Now, at the wedding, Mr Piscitelli testified that your wife handed him a $31,000 check. Do you remember that testimony?

A I heard him say that, yes

Q It is your testimony that you had no idea that she had done that at that time

A I was not there if she did that, and I did not see it, and she did not tell me

Q Let's talk about when you did learn You testified that that happened the day after the wedding, the night before -- on June 5th, so June 4th is the wedding, June 5th is when you learn, and June 6th is the car ride, right?

A Yes, sir, that's right

Q Okay And you heard your daughter testify that you and your wife drove them to the airport?

A We did not drive We rode with them.

Q Okay And this was when your daughter testified that during that drive, your wife gives the mock stock certificate of Star Scientific

A Yes, sir, that's right

Q Okay When your wife tells you for the first time on June 5th about the Star stock, was that because she was going to do this the next day with Cailin?

A I think so

Q In your testimony earlier, I think from Friday, you testified that when you found out about the stock, I want to make sure I get this right, that, quote, "from a business standpoint was that we had -- she had a $30,000 asset " Do you remember that testimony?

A Yes

Q So from your standpoint, yes, she used $30,000 of Mr Williams' check for this But it is still a $30,000 asset that she is holding

A Essentially, from the economic standpoint I thought it was in the childrens' name, but it still was an asset just from a liabilities and asset analysis, yes

Q I guess that's the question, though. If you think, because you testified that the stock, you believed the stock was in the childrens' name from June 5th through November of 2011

A Yes

Q But you testified that it was an asset of your wife's In fact, you corrected yourself "From a business standpoint, was that we had --" then you correct yourself, "she had a $30,000 asset "

A Yes

Q So how is that an asset of your wife's if you believe that it is in the childrens' name?

A I might not have expressed that as articulately as I should She told me it was in the childrens' name My point was there was the same amount of debt, 20,000, whether it was a credit card or to Mr Williams, or whether it was a $30,000 asset You are correct, Mr Dry, but she told me it was in the childrens' name

Q Let's move forward to the June 16th, 2011 letter. Can we pull up admitted Government Exhibit 162, please? Now, you testified that you remember receiving this letter from Mr Williams sometime in June of 2011, right? We can go back to the e-mail

A What I testified to is I remember receiving it I don't know, I think it came through the First Lady's Office, is my recollection.

Q And that happened near the time of this June 20th e-mail?

A To the best of my recollection Yes

Q Okay Now, maybe I was inarticulate Are you testifying that you received this but you don't remember reading it as you sit here today?

A No.

Q So you did read it

A I would say I read -- scanned, but I had a good sense of the cover letter, yes.

Q Can we go back to the letter? And this letter, that's addressed to you as Governor, right?

A Yes

Q And that's on Star Scientific letterhead?

A Yes

Q Now, in the second paragraph of the first -- second paragraph, the first sentence, Mr Williams is writing to you, the Governor of Virginia, that what he is suggesting is to initiate the "Virginia Study" of Anatabloc at MCV and UVA with an emphasis on whatever

A Yes.

Q Do you remember understanding that at the time?

A The couple minutes I spent on it, yes, I saw that Yes

Q And I'm still unclear Was this the first time he mentioned the "Virginia Study" to you, this idea of UVA and VCU's studying of Anatabloc?

A I really don't -- that's the first time I saw the thing in writing I don't remember whether he might have talked to me about that at the dinner at the Mansion. But this is the first time I saw anything in writing from him about it I was surprised to get the letter It kind of came out of the blue

Q But at the time you received this letter, you knew that Mr Williams had paid $15,000 for your daughter's wedding?

A Absolutely, sure

Q That was just a few weeks before the letter?

A Yes

Q And you knew that he had given your wife a check for $50,000 a few weeks before the letter?

A Yes, I did

Q You knew that you had played golf at his country club on his tab?

A Yes

Q And after you received this letter and realized that Mr Williams wanted to get studies at medical colleges in Virginia which you, as Governor, oversaw, you never contacted him, did you? You never asked -- you never called Mr Williams and said, "Hey, Mr Williams, I really think I should return this money"?

A There's several parts to that question Did I contact him after getting this letter? No, I didn't

Q And you never -- well, you never contacted him after getting this letter

A Right

Q After getting the letter, did you ever attempt in any way to return the $15,000 that he had paid for your daughter's wedding?

A No.

Q Did you ever call him up and try to return $50,000 that he had given to your wife?

A No.

Q Let's go to the wedding overage Can we show Government Exhibit 159? That's admitted. This is the refund check from the wedding caterer

A Yes I hadn't seen it until after the investigation, but I know that now Yes

Q And it is made out to your wife?

A Yes

Q And I think you testified earlier that you knew that the wedding catering was going to cost about $15,000 from the contract

A Yes, from the contract I signed six months earlier, yes

Q And you knew that you had already made deposits roughly of $7,900?

A Yes

Q And you knew that Mr Williams had written a check for $15,000

A Yes

Q So total the catering company was going to be paid, about $23,000?

A Yes

Q And you knew that there was going to be a refund at the end.

A Yes

Q But your testimony is that you knew nothing about this refund going into your wife's account until the night before your wife is interviewed by law enforcement on February 15th of 2011

A Yes

Q I'm sorry, February 15th of 2013

A That's correct 2013 I'm sorry

Q No, no At the end of June of 2011, you had a political event at the Homestead, I believe

A Yes The annual event, yes

Q And Mr Williams was invited to that?

A Yes

Q And at this point he is not a personal friend, he is a donor, right?

A Yes, it was for donors, my larger donors, yes

Q And I think you testified that you weren't aware of how your son, Bobby, or your daughter, Jeanine, got to the event?

A I'm not sure, Mr Dry I don't think so I was coming from, traveling from a different direction, so I don't know if I knew in realtime how they were getting there, because the logistics are generally done by my staff So I'm not sure, sir

Q How about after, like during the event, did you know that Bobby and Jeanine had traveled on Mr Williams' jet?

A Yes I think I knew when they got there at least,

yes, sir

Q And you played golf with Mr Williams at that event? I believe you testified to that

A I believe, yes, my son and Phil Cox and Mr Williams were in the same foursome, yes

Q Did Mr Williams bring up Anatabloc during your golf round?

A I don't remember, but it would be rare when I saw him that he didn't talk about that or stock or something about his business

Q I mean, pretty much every time you were with Mr Williams, he was mentioning something about Anatabloc and progress with the company; is that fair?

A He would say something about his business Not all the time, for instance, Cape Cod, we hardly talked at all But he would have said something about what's going on with his business, I'm sure, out at the Homestead.

Q After the Homestead, I don't know that we have talked about this or that you have talked about it on direct, do you remember golf shoes being delivered to the Governor's Mansion? Let's bring up Government Exhibit 17-A, please Do you remember golf shoes being delivered to the Mansion?

A I don't have a -- I remember the bag I don't have a clear recollection of shoes But I may have seen those over there, yes

Q Do you have a clear recollection that one pair of these shoes was for you?

A No

Q You don't have any clear recollection --

A No, I don't

Q Well, what recollection -- who, according to your recollection, who are these shoes for?

A I don't know I knew the bag was for me But I'm not sure

Q Okay But you do have a recollection of the golf clubs being delivered for your son, Bobby, to the Governor's Mansion. You testified about that

A Correct I think he told me Yes

Q And I think that you testified -- well, you knew that that was more than a thousand dollars' worth of golf clubs, right?

A I mean, it didn't come with any documents, but I knew that they were a nice set of clubs and a custom bag and that they were valuable, yes

Q I mean, you testified that you had been playing golf for 30 years

A 40

Q 40 years So is it fair to say you knew the golf clubs would be worth more than a thousand dollars with the bag?

A I don't know

Q Okay And I think that your testimony was that you told your son that this was too much.

A Yes, sir I felt that just coming out of the blue like that, that I didn't know he had any other real friendship with Mr Williams at the time So that was my -- the way it hit me when I learned about this, these clubs, yes

Q So it was that it came out of the blue

A Yes

Q But, sir, your testimony was that your wife told you that Mr Williams just gave her a $50,000 check without her even asking That's out of the blue, right?

A Yes

Q And your testimony was that you never called Mr Williams to discuss that with him until 30 to 45 days after that check, right?

A Yes

Q And even then, you didn't tell Mr Williams, "Hey, this is too much," right?

A It was a loan to my wife No

Q Did you call Mr Williams about your son, Bobby's, golf clubs?

A No

Q Let's bring up 19-A, please This is the next set

That was to your son, Sean?

A Yes

Q And it was your understanding that these were out of the blue, right?

A I did not know anything about them until they showed up So I would call that out of the blue, yes

Q In fact, your son told you that he didn't ask for them, right?

A Yes

Q You recommended to your son, Sean, that he return them, right?

A Yes

Q And he didn't return them, right?

A Right

Q And in fact, you knew that neither Bobby nor Sean returned these, right?

A Yes

Q Let's go to Government Exhibit 18-A, please And that's the Notre Dame bag, right?

A Yes

Q I think you testified that you knew it was worth more than $50?

A Yes

Q This was from Mr Williams?

A Yes That's what I was told, yes

Q And it was for you.

A Yes

Q And in fact, you and Bobby and Sean all played golf together where you used that bag and they played golf with the clubs that Mr Williams purchased for them, right?

A At some point we did, yes

Q Now, was that out of the blue? Did you ask for the golf bag?

A No.

Q So that was out of the blue, too.

A Yes

Q What is the timing of the golf bag?

A I don't know I believe it was somewhere around July It seemed like it was right before our anniversary I believe June, early July I'm not certain when it was reported to me

Q And at this point you are not personal friends with Mr Williams, right?

A I did not consider him at that point we -- we were friendly, had about seven interchanges, but I would not say at that point

Q Let's go to the anniversary party The next time you saw Mr Williams was at you and your wife's 35th wedding anniversary party?

A After the Homestead?

Q Yes

A Yes I think that's right

Q Okay And your wife was obviously there at this party, right?

A Yes

Q Okay And Mr Williams was there?

A Yes

Q And his wife, Celeste, was there?

A Yes

Q Can we go to Government Exhibit 550, please. This is your family?

A Yes, sir

Q Now, is it your testimony that at this time, you didn't know that your wife was wearing a designer dress that Mr Williams had purchased for her?

A No, I did not

Q Okay And that he purchased for her in April of 2011?

A No

Q Mr McDonnell, you heard Mr Brownlee say in his opening statement that you just didn't have enough time for your wife Do you remember him saying that in opening statement?

A Words to that effect, yes, sir

Q But you and your wife actually spent a lot of time together that was unrelated to your role as Governor of Virginia, didn't you?

A I tried to spend as much time as I could, Mr Dry, with my wife and my children. What limited time I got for myself, that's how I chose to spend it So, yes, sir, as much as I could.

Q Would it surprise you -- well, and you in fact went on at least 18 out-of-town vacations with your wife in a 22-month span. Do you realize that, sir?

A If you have documents to show that I don't know, Mr Dry It may be Certainly not vacations But I couldn't tell you I tried to spend as much time as I could, I told you

Q All right, well, let's do the documents then Let's bring up Government Exhibit 771, please This is not admitted This is your schedule for April 21st -- April 22nd, I'm sorry, of 2011

A Okay

MR DRY: Move Government Exhibit 771 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR DRY:

Q I think if we go to the next, yes, there we go Actually, this is a long document It is going to be on the third page Do you see that, helo from Richmond to

Virginia Beach and then going to Camp Pendleton, and this was Easter weekend, right?

A Yes

Q If we go to the next page, and the next schedule shows that you are there, well, actually, the phone records show that you are there with your wife, right? You might not know about the phone records, but do you remember going to Virginia Beach on Easter weekend, April 22nd through 24th, with your wife?

A Can we see the other page?

Q Yes And I have a hard copy document if you would like, sir

A That's okay, if we can just flip back to that other page I think you are referring to, the Friday Sure, it looks like it was an Easter weekend and my wife, my two sons, probably my daughter, because she lives down in Virginia Beach. I'm not sure who else was there, but my sons and I went there and I don't see my wife on there, but I'm fairly sure she would have been there.

Q And in fact, you went on July 1st through 5th to Washington, D.C on a family vacation in 2011?

A Yes

Q Your wife accompanied you there?

A Yes

Q And in fact, July 5th through 10th, you went to Camp

Pendleton on a family vacation Your wife accompanied you there?

A That was the same vacation. We went from D C to Camp Pendleton

Q So the entire vacation was July 1st through the 10th.

A It was a week. The whole family went on that, I believe, yes

Q Then the Barboursville anniversary weekend was the 23rd and 24th of July

A It was 24 hours, I think, but yes, those two days, yes, sir

Q Then July 28th through the 31st of 2011, that's when you went up to Smith Mountain Lake at Mr Williams' place, right?

A Yes

Q And then --

A With the family

Q October 7th through 9th of 2011, you went to Wintergreen for a family weekend with your wife

A You will have to show me on the calendar, sir I don't remember that one

Q Okay Government Exhibit 776, please This is your schedule from October 7th of 2011 If you look at Page 294 -- I'm sorry --

MR. DRY: I'd like to admit Government Exhibit

776 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q This is 294 See where you are departing for Wintergreen? Ms McDonnell is going to meet you there?

A Yes

Q Okay

A I think, yes, Sean was there I think there were a number of family members that were there, yes

Q Then that's 7th through 9th Then October 14th to 16th, 2011, you went to the Homestead for the annual vacation with the Damicos and the Tuckers, do you remember that?

A Yes, I do remember that

Q Then March 13th through 15th of 2012, you and your wife go to the Hammock Beach Resort in Palm Coast, Florida Do you remember that?

A Yes

Q March 30th through April 1st, you go back to Sunseeker with your wife, that's March 30th, April 1st of 2012, do you remember that?

A I believe that was a maintenance weekend where we met people down there to work on the house, yes

Q Same thing with April 15th through 16th of 2012; was that a maintenance weekend at Sunseeker?

A I believe it was If you have documents, I can look at it, sir

Q May 18th through May 26th of 2012, that was at Kiawah Island in South Carolina?

A Yes That was our annual vacation I think there were ten of us there

Q And your wife accompanied you as well?

A Yes

Q How much did that one cost?

MR. ASBILL: Objection.

THE COURT: The objection is overruled.

BY MR. DRY:

Q How much did that vacation cost you?

A It was a gift from Mr Goodwin, and I paid some along the way, but it didn't cost us much.

Q Well, sir, exactly how much of some along the way? What was that?

A I probably spent maybe $1,500 or so

Q And in fact, the vacation cost $23,000

A Yes That's right

Q Was Mr Goodwin a personal friend?

A Yes

Q How often did you socialize with Mr Goodwin?

A I had known him for about ten years

Q That wasn't my question, sir How often did you socialize with Mr Goodwin?

A Couple of times

Q When?

A I had him to the house, I met with him several times, I talked to him several times on the phone about multiple things with state business, personal business

Q Hold on You had him over to the Mansion on April 28th of 2011, right?

A I don't remember the date That sounds about right

Q It was the day before Mr Williams' dinner, right?

A No. That was the McGlothlins

Q I'm sorry So when did you have him over for dinner?

A It was sometime that year, Mr Dry I can't tell you when

Q Okay So I'm still confused How many times did you socialize with Mr Goodwin?

A I'm not -- what do you mean by "socialize"? I've talked to him many, many times and met with him many times If you mean just the two, he and I for a dinner at our house? Once

Q And how many times did you call Mr Goodwin and not discuss business?

A I can't tell you.

Q How many times did he call you and not discuss business?

A Maybe twice

Q How many children does he have?

A I think he has three

Q What are their names?

A I don't know his family that well I think he's got, I know one son, I think, that works with him in the business I don't remember his sons's names I knew he and Alice, his wife I didn't know his family, his children, that well But I knew he and his wife, and I knew him from his business at CCA and his partner, Booty Armstrong, and I knew him a lot from talking about what was important about our state and we became friends through our common interest in Virginia

Q How many text messages did you exchange with him?

A Maybe just one or two. I don't think I had his cell phone until late

Q Late when?

A I don't know Maybe '12 I'm not sure

Q So did you have his cell phone number before or after the Kiawah Island, South Carolina trip?

A I don't know I think it might have actually been right about that time, because I think I called him on all three of his numbers that I could to thank him for letting us use that facility for my family

Q So there was one dinner

A Yes, that I remember, at the Mansion.

Q A couple of text messages

A I believe I don't remember how many, Mr Dry

Q You don't remember --

A We primarily communicated by phone and we communicated when we were at meetings together to talk about things But I had known him probably for, I think probably five or six years at least, at that point

Q I thought you said ten years, sir

A It was certainly sometime when I was Attorney General that I met him. I knew of him before that I really can't tell you when we first became, when I first got to know him. But it would have been sometime during my time, I believe, as Attorney General, which would have been starting in 2005 or so

Q Can you walk me through how you would define a personal friend?

A Well, what matters is what the law requires in terms of reporting

Q That's not what I am asking I'm asking for your definition of a personal friend.

A I think a personal friend would be somebody that you have common interests with, that you feel an affinity with, that you have mutual respect for, and have an interest in speaking with you about things that might not necessarily be related to your job. Some of it might be, some of it might not be I have been blessed, Mr Dry, over the years with so many friends through politics, through my church, through many different affiliations It is hard to put into words Some people I become fast friends with because of our common bond, because of our children, because of our love for this state I mean, I can't put it into words I think most people understand what a friend is when they have one So it is hard to define But that's what I would say, sir

Q Did Mr Goodwin -- was Mr Goodwin invited to Cailin McDonnell's wedding?

A I don't remember

Q Was he invited to your daughter, Jeanine's, wedding?

A I don't think so But I don't remember

Q So your testimony is that you thought that Mr Goodwin was your personal friend as of the time that he paid $23,000 for your Kiawah Island vacation on May 18th through 26th of 2012

A Yes

Q Okay July 3rd through 4th of 2012, do you remember going to Camp Pendleton with your wife?

A Sounds like a Fourth of July weekend. If you have something on the schedule, Mr Dry, you could show me It may be We typically try to take advantage of the Camp

Pendleton facility over holiday periods of time Yes

Q What is Camp Pendleton?

A Camp Pendleton is the State Military Reservation at Camp Pendleton It is in Virginia Beach, and it is a state reservation with National Guard units and so forth. And there is also a house there that probably for forty, fifty years has been a house that has been available for the Governor's use There is one for the Adjutant General, for the Executive Protection Unit, and there are multiple units and facilities on the post

Q How much do you have to pay for your family to stay there?

A No governors have to pay for that house.

Q Okay Can you look on that schedule? It is Government Exhibit 782

MR. DRY: Your Honor, this is a schedule for July 3rd through 4th of 2012 I move that into evidence

THE COURT: It will be admitted.

BY MR. DRY:

Q You can scroll through Camp Pendleton, July 3rd through 4th, July 4th weekend?

A Yes, sir Again, another time with my family

Q Including your wife

A My wife, Bobby, Sean, and it says Jeanine will meet us there, and we may have had some other friends over

But yes, sir, I used Camp Pendleton four or five times during the time I was Governor And I really appreciated it, that opportunity

Q You went back to Smith Mountain Lake on July 19th through 22nd of 2012?

A Yes We went three years in a row for a weekend, yes, sir

Q That was with your wife as well

A She did not go the first year She went the second and third years, yes

Q Right, but the 2012 --

A Yes

Q She was there

A She was there, yes

Q And then five days later you go up to National Harbor, July 27th through 29th, for Redskinettes Reunion with your wife?

A That sounds right If you have a slide, I think that sounds right, yes

Q Government Exhibit 783, please This is a schedule for July 28th of 2012

MR. DRY: Government moves Government Exhibit 783 into evidence, Your Honor

THE COURT: It will be admitted

THE WITNESS: Yes, I recognize this

BY MR DRY:

Q Okay That's July 27th through 29th Then the next month, August 31st to September 3rd, that's the Chatham Bars Inn?

A Yes

Q Then -- and that was with your wife, obviously

A Yes

Q October 12th through 13th, 2012, that was another Homestead vacation with the Damicos and Tuckers?

A And Mullens

Q And your wife was there for that?

A It is my high school friends We try to do that at least once a year

Q Then November 30th through December 2nd of 2012, that's back to Sunseeker with your wife Do you remember that?

A I don't But if you can --

Q Government Exhibit 785

MR. DRY: The government moves Government Exhibit 785 into evidence, Your Honor

THE COURT: It will be admitted.

THE WITNESS: Yes, that was painting and maintenance and working, yes I remember that

BY MR. DRY:

Q How about January 5th through 7th of 2013, a Miami

Beach, Florida vacation with you and your wife? Do you remember that?

A You will have to show me that.

Q Government Exhibit 786 This is a schedule for January 5th of 2013

MR. DRY: Government moves Government 786 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR. DRY:

Q Do you see that, sir? You go down, eight a m., 10:30 a.m., you are going down with your wife, Bruce Thompson, Patricia Timm, Bobby, Sean, and Cailin; do you remember that?

A Yes, there were other people there Notre Dame was in the National Championship game, and I'm a graduate and I attended the game, yes

Q It was 18 out-of-town trips with your wife in a 22-month span, right?

A Trips, not vacations There were more trips than that But those were the ones that you have outlined here

Q Mr McDonnell, I'm going to show you a few pictures I'd like for you to identify these for me Government Exhibit 768, please Do you recognize this photo?

A Yes, I do

Q That's a photo of you and your wife arriving at the courthouse together for the January 24th, 2014 arraignment in this case, right?

A Yes, sir, it is

Q Let's go to Government Exhibit 769, please

MR DRY: I'd like to move in Government's 768

THE COURT: It will be admitted.

BY MR DRY:

Q I'd like to now go to Government Exhibit 769 Do you recognize this photo, sir?

A Yes

Q This is a photo of you and your wife arriving at the courthouse together for the February 3rd motions hearing in this case, right?

A Yes

MR DRY: Government moves Government Exhibit 769 into evidence

THE COURT: It will be admitted.

BY MR. DRY:

Q I'd like to now go to Government Exhibit 770, please Do you recognize this photo, sir?

A Yes, I do

Q This is a photo of you and your wife arriving at the courthouse together for the May 19th motions hearing in this case?

A Absolutely I recognize it

MR. DRY: Move Government Exhibit 770 into evidence, Your Honor

THE COURT: It will be admitted.

BY MR. DRY:

Q You can take that down, please All right, we talked a lot about vacations, but I want to talk about the Smith Mountain Lake trip in particular, which was July 28th through 31st of 2011, right?

A Okay

Q That was the weekend after the anniversary party at Barboursville; do you remember that?

A Yes

Q And can we bring up Government Exhibit 181 into evidence? This is admitted. Now, your children actually drove up in Mr Williams' Range Rover, right?

A I believe so I think I drove separately, so I'm not sure

Q So you're not sure; you didn't know that that white Range Rover sitting in the driveway was Mr Williams'?

A I did. You asked me if I knew who drove it I think my daughter, Rachel, drove it

Q Okay And I'd like to stick with that picture, please Now, when you arrived at Smith Mountain Lake, I think your testimony was that Mr Williams' Ferrari wasn't there, right?

A No, sir, I didn't see a Ferrari

Q Okay And I think your testimony was that, and it sounded like you were a little bit unsure, but that you first saw it in the garage with a car cover over it, like you peeked in and saw it

A I mean, that's my best recollection All I can tell you is I did not see any other vehicle there when I got there. I arrived in a State Police vehicle

Q So is it your testimony that you opened up the garage and went and got the car cover off of it and then you backed it out?

A No, my testimony is I don't remember when I first saw it, because I was in the back of the house We were primarily there for water sports I just don't know when I first saw it, Mr Dry, that weekend.

Q But your testimony is it wasn't there when you got there

A No, sir

Q Like it wasn't in the driveway at least

A I did not see it, no, sir

Q But you did testify -- let's go to Government Exhibit 198, please It is admitted. Go to the second page, please Now, you did drive the Ferrari not just back, right, you drove it to the clubhouse?

A Yes, my best recollection is I drove it once up to the clubhouse I think we were meeting our hosts, the Teppers, for a brunch. And that's my best recollection, as I think I drove it a little over half a mile up to the clubhouse

Q But to be clear, you didn't have to drive the Ferrari to the clubhouse EPU would have taken you, right?

A That's right Yes, sir

Q And Mr Williams had a boat delivered there for you, or rented a boat for you, right?

A Yes

Q Did you know that at the time, that this wasn't his personal boat, that he was renting a boat just for you and your family?

A Yes

Q Now then, around 7 o'clock on that Sunday night, you leave Smith Mountain Lake in Mr Williams' Ferrari, right?

A Yes, I did.

Q And your kids drove Mr Williams' Range Rover back?

A I think that's right I'm a little fuzzy I think that's right

Q Well, let's bring up Government Exhibit 185, please That's the e-mail that your wife sends to Mr Williams on 7-31-2011 at 7:47 p.m. I'm sorry

A Again, I'll take your word for it I didn't send it

I don't know

Q All right Well, can you go to the next page? You knew your wife was taking pictures of you during this, right?

A Yes, sir I think I saw her taking pictures of me, yes

Q Okay And you told Tucker Martin that you were driving the Ferrari back as a favor to Mr Williams?

A I don't believe those were my words

Q Well, what were your words to Tucker Martin?

A I don't remember the exact conversation, but I said, I told him that I was driving it back because my wife had told me that Mr Williams had asked to have the Ferrari brought back because he was going to give it to his daughter, Rachel So he asked us to drive the car back. I don't remember when I learned that, but at some point I did that He may have construed that as a favor I know we were asked to bring that car back and he would pick it up That's what I knew

Q But you heard Tucker Martin testify that you told him there was no recreational use of the Ferrari, right?

A I may have heard him say that, yes

Q So all right, in any event, while you are driving home, your wife talked to Mr Williams on the phone?

A Yes

Q And can we bring up Government Exhibit 183? Mr Asbill suggested on cross-examination of Special Agent Hulser that you might not have heard the conversation because of the wind Did you not know that your wife was on the phone with Mr Williams?

A Yes, I did.

Q So you overheard her talking to Mr Williams

A No, I said I knew she was on the phone with Mr Williams

Q How did you know that?

A Because I talked to him.

Q You talked to Mr Williams?

A Yes

Q Okay And exactly what did you tell Mr Williams?

A I said, "Thank you for letting us use your house for the weekend. That was very nice of you, and I really appreciate it "

Q And that was the sum total of your part of the conversation?

A I think so, yes, sir

Q And what did you overhear your wife talking to Mr Williams about?

A I don't know It was loud in the car But she was mostly talking about what a good time we had that weekend. That's all I heard

Q So she is not hiding the fact that she is talking to Mr Williams from you?

A No

Q Now, I think that you testified that you were unaware of any conversations between you and your wife about a meeting with Mr Williams the next morning, right? You don't know --

MR. ASBILL: Excuse me, unaware of any conversation between you and your wife

MR. DRY: Let's bring up Government Exhibit 821, then.

MR. ASBILL: My question is are you unaware of any conversation with you and your wife

THE COURT: No, no I think I heard --

BY MR. DRY:

Q You were unaware of any conversations between you -- between Mr Williams and your wife about a meeting that he was going to have the next morning

A Until I got home, yes

Q Okay And you arrived back at the Governor's Mansion at approximately 10 o'clock that night?

A That's my best recollection It was ten, 10:15, I think, because it was about a three-hour ride and we left about seven. I think that's right, yes

Q And approximately about an hour after you arrived, you e-mailed Bill Hazel?

A Yes

Q And you testified that your wife informed you that she had a meeting to discuss Star Scientific doing clinical trials at UVA and VCU

A Well, I think I understood from her that it was she and Mary-Shea and Mr Williams, I believe, is what she told me that evening

Q And so the only people that were supposed to be at this meeting were Mr Williams, your wife, and maybe Mary-Shea, or Mary-Shea was definitely going to be at the meeting?

A I don't remember That's my best recollection of what she told me, and she told me what the topic was

Q Could we bring up Government Exhibit 189, please? You sent this e-mail, the bottom one, at 11:29 p.m.?

A Yes

Q So you are telling Mr Hazel, "Send somebody to this," ten-and-a-half hours after this e-mail The meeting is set for ten-and-a-half hours after this e-mail

A Yes, sir

Q Now, I want to make sure I get this right You testified on direct with Mr Asbill that, quote, "Once I learned what the purpose of the meeting was, I wanted to have just someone from the Secretariat there just to monitor, to see what was said, so that no commitments or decisions were made unless somebody with the expertise was there " Do you remember testifying that?

A Yes, that's exactly what I said

Q But sir, throughout this trial, you and your wife's attorneys have argued that your wife was not a public official, right?

A She is not

Q And as such, she had no decision making authority whatsoever, did she?

A Not for official action. She made a lot of decisions.

Q So if your wife is not a public official and she can't make any decisions on official action, but you felt it was necessary to have someone there to make sure no decisions were made; is that right?

A Yes

Q So your testimony is that you e-mailed Dr Hazel because -- without knowing that Mr Williams wanted to have a meeting with somebody in Mr Hazel's shop.

A I'm sorry, could you repeat that?

Q Your testimony is that you e-mailed Dr Hazel without knowing that Mr Williams was in fact requesting a meeting with somebody from Hazel's shop.

A Absolutely

Q You knew that Mr Williams and your wife had meetings before this one, right?

A Let's see I may have, Mr Dry

Q I mean, to be clear, you knew by this point that he had met her to deliver a $15,000 and a $50,000 check.

A Yes

Q And you knew, you testified on direct that you knew that there was some kind of friendship, relationship between Mr Williams and your wife?

A I had an idea I didn't know how frequent the communication was at that time But yes, I knew that there was -- that they had a friendship And I knew she enjoyed going to Roskamp, yes

Q And in fact, you knew that Mr Williams didn't really need to make an appointment to have a meeting with your wife, right? I mean, they are friends

A I can't say that It is different at the Governor's Mansion Most people make appointments

Q Okay

A All my friends make appointments with me

Q Well, it is fair to say that by this point you've gotten the June 16th, 2011 letter from Mr Williams

A Yes

Q And you know that he wants studies at UVA and VCU, right?

A I know what the letter said.

Q So you are saying that Mr Williams sends you a letter recommending studies at UVA and VCU, but you don't know that Mr. Williams wants to have studies at --

A No, that's not what I said. I don't know what Mr Williams exactly wanted. He is making a proposal about something he called a Virginia Study I forwarded that on as I would the hundreds of things like that I got to the appropriate Cabinet Secretary, Dr Hazel, with an FYI, probably Action as Appropriate So I don't know what the status of Mr Williams and Star Scientific's discussions were with UVA and VCU at the time other than what I see in the letter

Q I guess my question is, did you know that Mr Williams' goal, one of his goals, was to have his product tested at UVA and VCU as of the date of that meeting?

A I knew what the letter said

Q That's -- that's not the question, sir Did you know as of the date of the Huffstetler meeting that Mr Williams, one of his goals was to have UVA and VCU perform studies of his product?

A I'm telling you, I knew what the letter said to me, that I glanced at on the 16th And I knew what my wife told me on the evening of July 31st That's all I knew

Q The day after the August 1st meeting, your wife buys more shares of Star Scientific?

A I know that now I learned that probably six or seven months ago

Q Throughout that, she is using -- the broker is Mr Piscitelli, right?

A Yes

Q Now, he is the godfather to one of your daughters?

A Yes, he is

Q And you've known Mr Piscitelli for over 20 years?

A 25, yes

Q Let's bring up Government Exhibit 199 This is admitted. This is an e-mail from your wife to you with a quote from a Patrick Cox talking about Anatabloc

A Yes

Q Did you receive this?

A I don't know I get so many e-mails during the course of the day, I don't know if I got that one or not I'm sure I got it Whether I looked at it is another story I don't know

Q So your testimony is that you had no idea at this point that your wife still held Star Scientific stock?

A No

Q Did you know that your wife held Star Scientific stock at this date?

A You asked me if I knew she bought it back, and I said no

Q I'm sorry Did you know that she held Star Scientific stock as of this date?

A I knew what she told me on June 5th, Mr Dry, which is that she had purchased Star Scientific stock for the children. I told you what I understood from her, that it was actually in the childrens' name as opposed to being in her name with a goal of getting it to the children So the answer is, I did not know that she had stock in her name as of August 4th, 2011

Q Did you think that the stock was in the childrens' name as of August 4th, 2011?

A That was my understanding

Q So it hadn't been disposed of in any way It hadn't been sold by this date

A No

Q Okay That was your understanding

A Yes

Q Okay Now, after you, a couple weeks after this, you go back and play golf at Mr Williams' country club?

A Yes August 13th, I believe Yes

Q Can we bring up Government Exhibit 200? Go to the second page Or third page, I think. Yes, right there Can you zoom in on the August 13th, that second one right there? Go up There we go This is your August 13th, 2011, the Kinloch statement for that?

A I never saw this until a few months ago

Q But you played with your son on that date; you remember that?

A I think I played with both of my sons I'm not sure But yes, I did play with at least one of them. Yes

Q Okay And I think that there was $600 in greens fees, $53 in golf balls Can we show that? Do you remember going in the pro shop on this time?

A I don't

Q So just so I'm clear, you are not denying that you went in the pro shop. You just don't remember.

A Yes, I don't

Q There was food at the snack bar, both you and your sons have your own caddies

MR. ASBILL: Is he testifying or is there a question?

THE COURT: Ask a question

MR DRY: Yes, sir

BY MR DRY:

Q Do you remember getting golf balls at that --

A No, sir, I don't

Q Had Mr Williams told you, "Charge up anything you want on my account"?

A No

Q Okay Let's go to the Anatabloc launch, please Let's go -- or the lunch, whichever, the August 30th, 2011 event

A I didn't know what you were talking about

Q At around the same time that you are playing golf at Mr Williams' golf course, your wife is involved in this, the planning for the Mansion event for Anatabloc, or this August 30th event Did you know that she was involved in the planning for that event at the time?

A Not at the time

Q Okay Mr Zubowsky is your personal aide, right?

A Yes

Q And in fact, he is like your righthand man, right?

A Yes

Q He makes sure you get to places on time and you know what you are doing, right?

A He does, yes

Q Now, I have one question on that Was it normal for people that wanted to get hold of you to call Mr Zubowsky up as a way of being able to talk to you?

A Yes, or Monica or Pam. But yes, he would be one of them, absolutely

Q So if you are on the road or you are traveling or anything else like that and somebody wants to get hold of you, they would oftentimes call Mr Zubowsky and he would hand you the phone or decide whether you actually needed to take that call

A Yes, sir, that happened, frequently

Q Did that include with your wife? Would your wife call Mr Zubowsky to get hold of you?

A Sometimes, yes

Q Well, which was more often, for her to call Mr Zubowsky to get hold of you or to call your private cell phone?

A She would usually try to call my private cell phone first

Q Okay And then were there occasions where she just didn't even try to call your private cell phone and would just call Adam?

MR BURCK: Objection.

THE WITNESS: I don't really know Probably I don't know.

BY MR. DRY:

Q Okay Now, let's go to Government Exhibit 207 This is an August 16th, 2011 exchange between Ms Sutherland and you Do you see that? I'm sorry, Ms Sutherland and Adam.

A And Mr Zubowsky, yes

Q All right Let's go down, what's the date and time of this e-mail, sir, at the bottom from Adam Zubowsky to Ms Sutherland?

A August 16th at 2:50 p.m.

Q And he writes to her, "Can you send me info on fl lunch at Mansion " Correct?

A Yes

Q The time on that is 2:50?

A Yes

Q Can we go to Government Exhibit 584, please? Now, on the 16tn, there is a phone call from your wife to you at 2:47 p.m., right?

A Well, I'm not sure I thought these asterisks meant that you weren't sure that the call happened

Q I believe that the asterisks mean that it is on one phone record but not on the other Not meaning that it didn't happen, but -- is that right?

(Counsel conferring with co-counsel)

I'm sorry The asterisk means that there is a one-minute time difference between the two phone records So I guess what I am asking is, do you remember having a phone call with your wife at 2:47 p.m., plus or minus a minute, for three minutes?

A I don't We were out in the western part of the state that day, had just landed in the helicopter going to an event The answer is I don't remember a call

Q So you don't recall your wife discussing the need for you to attend the Anatabloc event and then Mr Zubowsky e-mailing Ms Sutherland to get the details?

A No.

Q Are you saying that didn't happen or you just don't recall it happening?

A No, I have no -- I don't think that happened I have no recollection of any discussion about that other than me talking to Mr Zubowsky and him getting back to Mary-Shea

Q Can we go back to Government Exhibit 207, please? And then when he is talking about WTOP, that's your radio address thing, right?

A Yes, sir It is one of the shows I do -- I did once a month

Q And that occurs in Washington, D.C.?

A Yes

Q Now, Ms Sutherland, she lays this out for Mr Zubowsky, and in fact, she says the date for the lunch was selected due to the launch of the product Do you see that?

A Yes I'm not copied on that, but I see that there

Q I guess my question is, did you and Mr Zubowsky discuss this event at this time?

A I'm sure we did because I told him I would go for thirty minutes

Q Okay And in fact, you testified that Mr Zubowsky told you, quote, told you what he knew about it Right?

A I'm sure he did.

Q Did he tell you that the date for the lunch was selected due to the launch of the product?

A No

Q You are clear that didn't happen?

A I have no recollection of that happening

Q So when he testified that he told you what he knew about it, that would be he told you less than what he knew about it

A Mr Dry, I don't know I don't know what he knew I just know he told me what I thought he knew about the event, which was very brief We were in the car and we made a scheduling decision. That's all I know

Q Can we go to Government Exhibit 208, please? It has been admitted. In this e-mail, this is from Mr Zubowsky to Mary-Shea Sutherland, and that's when he relates that you want to go to the last part of the lunch, right?

A Yes

Q Okay And you don't remember having any discussions in this time frame with your wife about this event?

A No

Q Okay Let's go to Government Exhibit 231, please This has been admitted. You have seen this before, right?

A Yes I think so Yes

Q And your name is on the top left-hand corner and the subject is, "Lunch with Virginia researchers," right?

A Yes

Q "Location: Executive Mansion " The organizer on the calendar is your wife, right?

A Yes

Q It is not Mary-Shea, right?

A No Not on this document

Q Turning to Page 2, please Now, this is the Executive Mansion briefing form, right?

A Yes

Q And in the upper right-hand corner it says it was prepared on August 29th? Upper right-hand corner

A Yes

Q That was typical, that you would get these the night before, right?

A Yes

Q In your briefing book. Now, the handwriting down below, I believe Mr Asbill asked you about Carrie Cantrell

A Yes

Q She was deputy -- she was Secretary Cheng's deputy, right?

A Yes

Q You star that and then you star Clore, but I think your direct testimony was that you don't know, remember, why you starred Clore

A Other than I knew that VCU and UVA people were going to be there I didn't know Dr Clore

Q Okay Turning to Page 3, Mr Asbill didn't ask you about some of these other people I want to go through that You starred Jasen Eige, and he is going to be going to the event, right?

A Yes

Q And then you star Dr Lazo, right?

A Yes

Q And your testimony is you didn't have any conversation with your wife about Dr Lazo's importance at this event?

A I didn't know who he was No Other than that UVA and VCU were going to be invited, no.

Q Okay And then right below Dr Lazo, that's your wife's name and your name, right?

A Yes

Q Then going further down, Diane Roskamp and Bob Roskamp. You write in the Roskamps

A Yes

Q You knew that Roskamp was one of the places that was doing studies of Anatabloc?

A Yes

Q Going back to the second page really quickly, David Dean, had you met David Dean by this point?

A I am not sure I saw Mr Dean a couple -- I don't know I saw him a few times at Kinloch.

Q But you understood from reading this that he was going to be attending from Star

A Yes

Q Okay

A Yes.

Q Then let's go to the third page And you knew Mr Pokusa from Star was attending, you knew Mr Perito was attending, and then going down, you saw Mr Williams, Sr and Jr You saw Curtis Wright from Rock Creek Sir, after seeing this, did you really not understand that this was a Star Scientific event?

A No I knew what it said on the briefing sheet

Q Well, you did go to the event, right?

A Yes

Q And you flew back up in the state helicopter from your interview with WTOP back to the Executive Mansion.

A Yes

Q Or back to the airport and then drove to the Executive Mansion, right?

A Yes

Q Now, when you walked in, you saw Jonnie Williams and Star Scientific people in the room, right?

A Yes

Q And when you sat down, you were seated next to Mr Williams?

A Yes, I think so

Q Because you were at the southern end of the table, right?

A Yes

Q And your wife was sitting at the northern end?

A Yes I believe so. That's right

Q And Mr Williams was seated right next to you?

A I think so, yes

Q But you don't remember a tobacco leaf

A I don't

Q Okay But when you are going to sit down, did you see the Anatabloc at the place settings?

A I didn't

Q You didn't see it?

A I got there an hour and ten minutes after it started. I don't remember seeing it

Q Was it that you don't remember seeing it or you know it wasn't there when you got there?

A No, I'm saying I don't remember seeing it

Q Okay You knew that representatives from UVA and VCU were going to be there?

A Yes

Q And you knew they were state employees, right?

A Yes

Q And I think you testified that you listened to the Star Scientific consultants and scientists or the scientists from Johns Hopkins talk about the research and that was interesting to you

A It was, yes

Q And I think you testified on direct that having studies done of Anatabloc, that you were in favor of having that done in Virginia, right?

A Sure.

Q Did you express that to Mr Williams at this event?

A I don't know if I talked to him about it there, sir

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Q Okay Did you talk to -- you don't remember talking to him at that event Do you remember expressing support for the idea of UVA and VCU studies to Mr Williams ever?

A Probably Anything I could do in Virginia, I wanted to do in Virginia

Q Okay

A Yes

Q Do you remember specific times when you told him that?

A I don't

Q Was it more than once?

A I don't know

Q Okay While all this is going on, this is a pretty difficult time in Virginia, right, as far as natural disasters go?

A We were winding up the third natural disaster Yes

Q The emergency workers are still trying to get the Great Dismal Swamp under control?

A Yes

Q And a week before, central Virginia was hit with a 5 8 earthquake Do you remember that?

A Yes

Q And that required the shutdown of the North Anna Nuclear Power Plant?

A Yes I went there to see it Yes

Q And, in fact, two days before this event, the federal government had declared Virginia a national emergency area? Do you remember that?

A Yes. I asked for it

Q And that was because Hurricane Irene hit?

A Yes

Q And, in fact, while you're at the Star Scientific -- while you're at the August 30th event, almost a quarter of a million people in Richmond were without power, right?

A I don't know if that's -- I don't know the number

Q But you knew that the hurricane was still having disaster complications for Virginia at this point?

A Yes That's why I met with Secretary Napolitano an hour later to talk about that

Q Now, at this point, Mr Williams had already paid for your daughter's wedding reception, the 15,000, right?

A Yes, sir

Q And he had given your wife a $50,000 check?

A Yes

MR ASBILL: Object Asked and answered repeatedly

MR DRY: No This is at this point

THE COURT: Overruled

BY MR DRY:

Q Out of that $50,000, 20,000 of that paid off your wife and yours credit card cards, right?

A Yes

Q The golf at Kinloch, right?

A Yes

Q Now, Mr Eige went to that luncheon with you, didn't he?

A Yes

Q And he was one of your most senior advisors?

A Yes

Q He was your policy counselor or policy advisor?

A And my legal counsel

Q And your legal counsel?

A Yes.

Q That's right But you never told him anything about these payments and things of value you were getting from Mr Williams, right?

A No

Q You never discussed any of that at this point with Martin Kent, did you?

A No

Q Phil Cox didn't know anything about this at this point, right?

A No I didn't tell him

Q Janet Kelly?

A No

Q You attend a reception at the Commonwealth Club on September 7th of 2011 Do you remember that?

A I don't, Mr Dry If you've got a schedule to refresh my memory I don't

Q Well, let's do it this way

MR DRY: Let's bring up Government's Exhibit 7 This has been admitted

BY MR DRY:

Q Do you remember -- does that look like the inside of the Commonwealth Club, sir? It's the West Ballroom?

A Yes, it does look like it

Q Okay And do you remember, on September 7th, 2011, posing with a picture of Anatabloc?

A I don't

Q You don't remember that?

A No I've got hundreds of pictures of me with products I don't remember this, no

Q Do you remember who asked you to take the picture?

A No, sir

Q But that is you in the picture holding Anatabloc, right?

A Yes, it is

Q And do you think that happened in the September 2011 time frame?

A I have no idea I don't remember

Q Okay Let's go to the Cure By Design event The next time you saw Mr Williams was at the Cure By Design on September 24th of 2011; is that right? From August 30th to September 24th?

A That sounds right

Q Now, at this point --

THE COURT: Let's stop here before you get into that

MR DRY: Yes, sir

THE COURT: Fifteen minutes

(The jury left the courtroom)

(Recess taken from 3:58 p m until 4:18 p m)

(The jury entered the courtroom.)

THE COURT: All right Mr Dry

BY MR DRY:

Q Sir, I'd like to go to the Cure By Design event on September 24, 2011 Okay?

A Okay

Q At that event Mr Williams was seated at the head table with you and Ms McDonnell, correct, or seated at the table right next to the stage?

A I got there very late I think that's right Yes

Q And at that point you knew that Ms McDonnell had asked Mr Williams to have Brad Kroenig, the model, come to the event?

A I believe so

Q So she communicated with you about that event before the event, right?

A I believe so I'm not real sure, but I think I knew he was coming

Q Okay And during --

MR DRY: Can we bring up Government's Exhibit 246-2

BY MR DRY:

Q During that event, you and your wife were on stage with Mr Kroenig, and I think that's Mr Garfield?

A Yes The MC

Q The MC

A Yes

Q And one of the auction items was a trip to New York to visit Mr Garfield, right?

A It turned out to be I don't know if it was at the beginning

Q Okay

A Yes

Q And, in fact, it kind of changed over time through the progression where it wasn't just to visit Mr Garfield in New York, but that you and your wife were going to be on the trip as well?

A Unfortunately, yes

Q And during this, Mr Williams, he's bidding on the trip, right?

A Yes

Q In fact, you were there with your wife watching him bid against himself?

A I think so

Q And, in fact, he bid up to -- I think it was -- you testified on direct, 15,000?

A That's my recollection Yes

Q And he ultimately won the trip?

A Yes

Q But you knew that that trip wasn't going to happen You weren't going to be going up to New York to visit Alex Garfield?

A Absolutely right

Q Right And did you tell Mr Williams that?

A I don't remember Probably

Q Well, he just won the trip, $15,000, right?

A Yes

Q You didn't tell him, "Hey, Mr Williams" --

A I'm sure I told him I knew that trip was not happening because I wasn't going to go

Q So you told him that at or near that time?

A I'm pretty sure I would have talked to him right afterwards Yes

Q Okay And the trip didn't happen, right?

A Not to New York, no

Q Okay And that $15,000, that went to the Cancer Society, right?

A I think that was the beneficiary It was a cancer-related event I think the Cancer Society, yes, sir, was the recipient

Q Okay Now, after that event, you go out to dinner with Mr Williams, Brad Kroenig, and your wife, right?

A Yes I thought there were other people there But the four of us were there, yes

Q And I was a little bit unclear Did you know how expensive the dinner was going to be, or was at the time?

A No

Q Did you offer to pay for the dinner?

A No I don't think so

Q Now, at this point, Mr Williams, he's not your personal friend, on September 24th of 2011?

A I'd say he was a friend, but -- I had seen him a number of times then I had liked him I always liked him from the beginning We were friendly, and I knew he was friends with my wife

Q So he was more friends with your wife and not your personal friend, right?

A Well, I would say Yes

Q Now, I want to fast-forward.

MR. DRY: Can we pull up Government's Exhibit 250, please

BY MR DRY:

Q And I believe that you testified that you certainly never saw this before the investigation, right?

A Not the invitation, no

Q Okay And I believe -- did you testify on direct that you didn't know that your wife was going to this event?

A That's right I did not But that wouldn't be uncommon; that I wouldn't know she was going to certain events

Q You knew that Mr Williams had originally requested that you go to this event, right?

A I learned that after the investigation started; that we declined But I don't know that contemporaneously

MR DRY: Well, let's bring up Government's Exhibit 245 that's been admitted

BY MR DRY:

Q Now, the e-mail at the bottom, that's from Katherine Harris to Mary-Shea Sutherland, right?

A Yes, sir, it is

Q And Katherine Harris, at this time, is your scheduler?

A Yes

Q And so it looks like Katherine Harris is asking Ms. Sutherland do you need to be at this event, right?

A That's what it says, yes

Q And Ms Sutherland responds back and she says, well, it's Jonnie Williams Anatabloc dinner to tell docs about the product He wants both governor and FLOVA to attend "Jasen and Martin should discuss "

Now, who is Jasen and Martin?

A Jasen is my Chief of Policy, my counsel And Martin Kent is my Chief of Staff

Q So she's -- Ms Sutherland is recommending that your senior advisors discuss this before you commit to it, right?

A Well, Mr Dry, I'm not on this e-mail I don't know what happened I never saw this at the time That's what it says, sir

Q Did -- you heard Mr Kent testify that ultimately, he decided you should not attend the event, right?

A I don't remember If you say he said that, then he did I don't -- I don't remember that part of his testimony

Q Well, do you remember him testifying that he was uncomfortable with the idea of you attending this event because you had already done the Anatabloc Mansion event on August 30th?

A I don't remember that exact testimony

Q Well, let's -- let me try and refresh your recollection

A Okay

MR DRY: Government Exhibit 757, please This is the transcript Lines 16, and it goes on It's 2580

BY MR DRY:

Q Just take a minute Take a minute, sir Starting with line 16 And then let us know when you want us to go to the next page

A Okay Next page

Okay How far do you want me to read?

Q I think it goes down to line 9 2581, line 9

THE COURT: I can't hear you

MR DRY: I'm sorry 2581, line 9

BY MR DRY:

Q This says that Mr Kent made the decision for you not to go?

A Yeah, that's what it said Which he did on countless occasions, yes

Q Okay So as far as -- I just want to make sure I'm clear on your testimony

A Yes

Q You're saying that Mr Kent never told you that he had decided that you would not go to this event?

A No But that wasn't unusual He did that countless times

Q Okay And at this time, Mr Kent doesn't know anything about the personal financial relationship you have between -- you and your wife have between Mr Williams, right?

A Well, he would know about donations to the PAC and donations to the campaign, and he certainly knew we used the plane He may have known we went to Smith Mountain Lake, but I don't know what else he knew I certainly didn't tell him, or anyone else, about my personal finances

Q Let's go to the Michigan event on October 22nd I believe that you testified that you knew that your wife did go to this event?

A Yes

Q And --

A Well, no

Q Well --

A I didn't know it was an event I knew she went --

Q Went to Michigan

A To Michigan, yes

Q And you knew that she flew on Mr Williams' private jet?

A Yes

MR DRY: Let's go to Government's Exhibit 256 This has been admitted

BY MR DRY:

Q Now, the bottom e-mail is Mr Caturegli to your wife, and it's laying out their discussions on the aircraft back, I believe is what it says

Can you go up to the -- and it's talking about doing studies at Virginia government employees It talks about the C-reactive protein marker that you testified about before

MR DRY: Can you go up, please

BY MR DRY:

Q Now, she responds that, "Thanks for your e-mail, and I printed it out and shared it with my husband He'd like to talk to some people to look into it and discern what the best approach for Virginia would be "

Did your wife print this out and share it with you?

A I don't have any recollection, Mr Dry, of seeing this contemporaneously I saw it sometime after the investigation But I don't remember that at the time, no

Q Would that be something that you would remember, if your wife had printed out an e-mail discussing the idea of testing an Anatabloc on government employees?

MR BURCK: Objection, Your Honor

THE COURT: Overruled

A I couldn't tell you I get hundreds of e-mails a week I try to look at ones that come from my wife, but I get hundreds from staff They get put in my read file I just -- I honestly can't tell you, Mr. Dry, whether I would have -- this would have jumped out at me as something significant But I have no contemporaneous recollection of seeing this document

Q Well, let's do it this way In this time frame of October of 2011, did you have discussions with your wife in which she brought up the idea of having Anatabloc tested on government employees?

A Not that I recall No

Q And that would be something you would recall?

A Maybe

Q Okay Let's go -- let's go to your 2011 Statement of Economic Interest This is Government's Exhibit 289 It's been admitted

A Yes

Q Okay Just so we're clear, this is for year 2011, but it's -- you submit it January 15th or 16th of 2012; is that right?

A Yes

Q Okay Now, on the first page, under question 2, "Personal Liabilities," you check yes; is that correct?

A Yes

Q Okay And that can be personal liabilities of either you or a member of your immediate family?

A Yes

Q And then going to question 3, you check no regarding whether you or a member of your immediate family own any securities valued more than 10,000, right?

A Yes

Q And then under the gift box you check yes, received gifts in excess of $50?

A Yes

Q Okay Let's go to Page 4 of the SOEI. This is the liabilities page Do you see that, sir?

A Yes

Q Now, you list no personal debts other than from banks, correct? You've got the banks one But if we go to the "Individual creditors," there's zero, and "Other businesses," none

A Yes

Q Now, going down, though, for the personal debts of the members of your immediate family --

A Yes

Q -- again, banks is X, and then you put "Medical Services," 10 to $50,000?

A Yes

Q Now, I think you've repeatedly testified about this on direct, that this was your disclosure of the loan from Mr Williams to your wife, right?

A Yes

Q And to be clear, that's the only individual creditor that is listed -- well, that is the only entry -- this Jonnie Williams disclosure, there's no other individual creditors or other business loans disclosed, right?

A Yes Not individual Yes

Q So there's no disclosure regarding the Dr Davis loan, right?

A No

Q Well, let's go back to the prior's year SOEI

MR DRY: This is not admitted This is Government Exhibit 707 for SOEI year 2010 And just flip through that so --

BY MR DRY:

Q Are you familiar with this document, sir?

A Yes

MR DRY: Government moves Government's Exhibit 707 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q And you filed this in January of 2011; is that right?

A Yes

Q And when you filed this, Mr Williams had not given you or your wife any loans, right?

A Right

Q And on the first page under question 2, "Personal Liabilities," you check yes again?

A Yes

Q And then on Page 3, "My personal debts are as follows:" It's got "Medical Services" there --

A Yes

Q -- for your personal debts?

Now, that was the loan from Dr Davis?

A Yes

Q Now, by March of 2010, the year that this is -- this disclosure form is for, Dr Davis had given you a loan of $50,000, correct?

A Yes

Q And to be clear, he wasn't giving you this loan because he expected anything official from you, right?

A I think he expected to be paid back

Q Okay And he hadn't asked to meet with any state officials, right?

A I wouldn't always know, but I don't think so

Q He certainly hadn't asked you?

A I don't think so No

Q And he hadn't asked your wife, as far as you know?

A I don't know He was her physician --
Q Right
A -- for a number of years So I don't -- I don't know
Q He didn't have any product that he wanted tested by UVA and VCU on, as far as you knew?
A No, Mr Dry, he did not
Q Okay And you were making monthly payments to Dr Davis of $1000 90 a month, right?
A Yes Out of the MoBo account, yes
Q And he was charging you 7 percent interest?
A I believe it was 7 5
Q I'm sorry 7 5?
A Yes
Q And you and your sister and Michael Uncapher personally guaranteed this loan?
A Yes
Q Now, you listed this loan even though the checks that we saw before, those were written out to MoBo, right?
A Yes
Q Going back to calendar year 2011, Government's Exhibit 289, you signed that on January 16th of 2012?
A Yes, I did
Q Your wife didn't sign it?
A No It's my responsibility

MR DRY: Turning back to Page 4 on this, please

BY MR DRY:

Q The month that you signed this, you had an outstanding balance on the Dr Davis loan of about $43,000 Does that make sense?

A That may be about right

MR DRY: Well, let's go up to Government's Exhibit 622, please

BY MR DRY:

Q This is an amortization schedule from Michael Uncapher to himself Have you seen this document before?

A Yes

Q Okay And so going to January of 2011, that shows roughly $43,000 would be outstanding?

A Yes

Q And at the time you signed this Statement of Economic Interest, the outstanding balance on the loan to Mr Williams, that was 50,000?

A Yes

Q No payments had been made to Mr Williams on this loan?

A No

Q There was no loan agreement?

A No No, that's not correct There was a loan agreement It just wasn't written

Q Gotcha Now, there's nothing listed for your personal debts here, right, from other businesses or individual creditors?

A That's correct

Q But now we've just -- and this year we've just pushed that down to the debts of your family members, right?

A I'm sorry What's the question?

Q You just moved where it had said yes, individual creditors were your personal debts, and you said that was the Dr Davis loan Now you're disclosing the medical services, that's supposed to be the Jonnie Williams loan, right?

A Let me make sure -- would you repeat the question? Make sure I'm clear what you're asking

Q Sure There's listed on this form regarding the Dr Davis loan, is there, sir?

A No

Q And when you're saying you disclosed the personal debts of members of your immediate family, that is your reference to medical services, the X of 10,001 to 50,000?

A Yes It's a different section That's family members Yes

Q Fair to say, though, sir, I mean, looking at this form, there's no way anybody would know that Mr Williams had given a $50,000 check to your wife, right?

A No

Q Mr Eige didn't know that?

A No

Q And he was helping you fill out this form, right?

A Yes

Q And you heard him testify that, well, when he saw medical services, he thought it was some type of healthcare bill, right?

A I heard him say that Yes

Q Now, you admitted on direct that the golf outings to Mr Williams' Kinloch Golf Club in May and August of 2011, those are the things that you admitted on direct that they should have been reported on the SOEI, right?

A Yes, sir, I believe they should We had a system set up They didn't get on there, and it's my fault because I am responsible for it

Q Okay Those golf outings, they were about 3,200 bucks, right? But you didn't know the exact cost?

A That's correct

Q But you knew that they were well north of $50 a piece, right?

A Sure Yes

Q But you never fully explained why they weren't included You talked about this tracking system that you have in place that you helped -- I think the quote was you helped to craft the system for checks and balances?

A Yes

Q If it's not on the form, it's your fault. That's what you testified to?

A Yes Ultimately, I sign it Yes

Q So is it your testimony that you intentionally omitted the golf or that you just didn't remember?

A In January of the year that I filled it out, there was nothing on the sheet to indicate that the golf had done, and I did not remember that those things had occurred

Q Okay Well, let's go to -- you filed this on January 16th of 2012, right?

A Yes

MR DRY: Let's go to Government's Exhibit 285, Page 2 This is admitted

A Yes

BY MR DRY:

Q Now, turning to the middle of the left column, you're playing golf at Mr Williams' golf club on January 7th of 2012, right?

A Yes

Q That was nine days before you filled out your SOEI?

A Yes

Q So --

A This is an expense for the next year But yes, I was there

Q I understand that I guess my question is your testimony is that you filled out this form on January 16th, that it just slipped your mind that you had played golf in 2011 even though nine days before you were playing on Mr Williams' tab, right? That's your testimony?

A I'm saying with the dozens of things that are going on here, it was a mistake, and it should have been on there Yes

Q Now, on this one, Mr Williams didn't play with you, right? This is just you and your two boys?

A In January?

Q Yes, sir

A That's my recollection Yes

Q And as far as the Notre Dame golf bag, that wasn't on your SOEI either, right?

A No, sir

Q And that's a failure of the system again?

A No It's my failure The system requires that things get reported from the Mansion, get put on the log It wasn't on there, and I did not think of it the next year when it was done And it should have been on there, and it's my responsibility

Q Did you play -- when you played golf on January 7th of 2012 at Kinloch, were you playing with Mr Williams' golf bag that he bought you?

A I don't remember, Mr Dry At some point I had another bag that was fine, and my own clubs At some point I believe I did convert and use that bag that Mr Williams had given me, but I can't tell you when

Q Mr Asbill, on the direct, he pointed out --

MR DRY: Can we go back to the gift portion

BY MR DRY:

Q As far as the golf bag goes, did you tell anybody on your staff that Mr Williams had bought you a golf bag?

A I don't think so

Q Okay Now, Mr Asbill, on direct, he was asking you all about, well, you did disclose Jonnie Williams' $2,268, right?

A Yes

Q But to be clear, it was your staff who reached out to find out how much that cost, right?

A Yeah That was the system That was the protocol Absolutely

Q And, in fact, I think that you've repeatedly said that the donors have some obligation to submit forms?

A They do

Q So you thought that a donor that gives you a gift, they have an obligation to write in to your office and say, "This is the value of the gift"?

A I'm telling you what state law requires Yes

Q Sir, do you know that there's a distinction between a donor that is a registered lobbyist and a non-lobbyist?

A Yes

Q Okay Well, isn't it true, sir, that on the "Jonnie R Williams," here, "lodging and entertainment," even if you wanted to, you couldn't hide that, right? Because all your staff knew you had gone and that Mr Williams was paying?

A Well, there's a couple different questions in there So maybe -- can we take them one at a time?

Q Sure Could you have hidden this even if you wanted to?

A I didn't want to So I would say that's a hypothetical

Q I'm asking --

A Yes

Q -- could you have hidden this even if you wanted to?
Your staff knew about that right, sir?

A Yes

MR DRY: Let's go to -- is this Page 8?

BY MR DRY:

Q Now, I believe that your testimony is that Mr Williams is not your personal friend at this point, right?

Well, let's just get this out of the way At what point did Mr Williams become your personal friend?

A Mr Dry, I can't tell you You know, when you develop relationships with people, at some point you believe they are your friends

I trusted Mr Williams I always believed he was a friend I thought he was a friend of my wife's in particular But I would say going into 2012 with his constant entreaties for me to call his father and to do things with him and not asking me for anything Sure, I thought he was a friend, yes

Q Well, you discussed this personal friend exception with Jasen Eige around this time, right?

A Somewhere in August I talked -- August of '11 I believe I talked to Martin Kent about it

Q Well, do you recall Jasen Eige testifying that you discussed the personal friend exception with him just about every time you filled out an SOEI?

A That may be right Yes

Q Okay And then let's go to that August 2011 e-mail

MR DRY: Government's Exhibit 635, please

BY MR DRY:

Q And this was the advice that you were given from Mr Kent, right?

A Yes For --

Q He handed you this?

A He did, through Mr Palmore, who was the Deputy Counsel Yes

Q And you also discussed this with Mr Kent, right?

A I -- I think I did Yes

Q And then if we could go down to the bottom, "When the circumstances suggest a relationship between the gift and the declarant's public position, even when the relationship is relatively distant, it is my opinion that the gift is required to be disclosed in Schedule E "

That's consistent with the advice you had received throughout, right, from Eige, Mr. Palmore later? It's a default disclose, right?

A I'm not sure what you mean

Q In other words --

A There's more to this opinion that you haven't read

Q I guess the question on the table, sir, is isn't it consistent with the advice that you received that when you're talking about the personal friend exception, the advice you received was, look, if there's a relationship between the gift and your position, even if distant, go ahead and disclose?

A That's what the opinion says

Q And was that opinion consistent with the advice that you received from Mr Eige and Mr Palmore?

A In part

Q I mean Conrad

A In part

Q In part, it was?

A Yes

Q Okay Let's go to Government's Exhibit 289, looking back on Page 8 In the Mr Williams portion, the 2,268, you understood that it's not just a -- you know, a tangible gift like a golf bag It could also be meals and things like that, right?

A I'm sorry I don't -- I don't understand the question

Q The question is that a gift wasn't -- didn't just have to be a tangible, you take it home It could also be an intangible --

A Oh, sure

Q -- something you consume, a meal or something like that?

A Correct

Q Okay But what's not included anywhere on this form is the $15,000 for your daughter's wedding reception, right?

A Right

Q And you testified that it wasn't included because, quote, it was very clear to you that it was a wedding gift to Cailin, to my daughter Is that accurate?

A Yes

Q Now, it was very clear to you, despite the fact that you were the one that signed the contract with the caterer, right?

A Yes

Q And despite the fact that you were the one that paid the first deposit and the second deposit?

A Yes

Q And despite the fact that you were the one that, at the end of the day, was contractually required to pay those expenses, right?

A Yes

Q And despite the fact you intended to pay all along?

A Yes

Q And the fact -- well, let's -- now, Tucker Martin, he's your Press Secretary, right?

A Yes

Q And he's --

A Well, it's technical, but he had a bigger title than that I had a separate Press Secretary But yes, he's the Chief of Public Relations Department, yes

Q And he's the Chief, and he's authorized to speak on your behalf?

A Yes

Q And before the wedding, reporters were asking questions about who was paying for the wedding?

A Yes

MR DRY: Let's go to Government's Exhibit 621 And then let's go to Page 3 at the top

BY MR DRY:

Q "McDonnell may have learned a thing or two from former Governor John Dalton, who was criticized for trying to charge taxpayers for a $2,500 yellow-and-white tent for his daughter's wedding McDonnell spokesman Tucker Martin said the family is picking up the tab for all wedding costs "

You authorized Mr Martin to say this?

A We had a discussion about it

THE COURT: That was not the question The question --

A I did not authorize this specific statement

BY MR DRY:

Q So in your conversations with Mr Martin, you didn't lead him to believe that the family was paying for the wedding reception?

A That was not the question that I got from Mr Martin

Q I'm asking, when you spoke to Mr Martin, did you lead him to believe that the McDonnell family was paying for the reception?

A As opposed to the Commonwealth of Virginia, yes That was the question that I got

Q So at no point did you tell Tucker Martin, "Hey, it's the McDonnell family that's paying"?

A I told the -- the question that I got, Mr Dry, was was the Commonwealth of Virginia paying, the State, because it was at the Governor's Mansion That was the press inquiry that Mr Martin gave to me; was the State paying or the family I told him the State was not paying. The family That was the question that I remember getting from Mr Martin

Q So you told him that the family was paying for the wedding reception?

A Yes Not the State

Q But you chose not to tell Tucker Martin that Mr Williams was paying, right?

A I didn't tell him that

Q And that was a decision not to tell him?

A No

Q You could have told him?

A It wasn't the question that I got, sir

Q Is it your understanding, as you sit here today, that gifts -- was the reason that this was this wasn't disclosed, I think I understand, is you're saying, well, this is actually a gift to a family member so I don't need to disclose it? Is that the bottom line?

A Yes

Q So if you can characterize a gift as going to one of your family members rather than you, then you don't have to disclose it?

A I -- I can't agree with the premise of the question Could you ask the question again?

Q Sure So if you can characterize a gift as going to one of your family members, then you can claim that you don't have to disclose it? That's the bottom line, right?

A I can't answer that yes or no Can I explain?

Q Well, let's do -- let's do it this way Today as you sit here, are you testifying that the reason that you don't -- didn't have to disclose this was because the gift was to Cailin, not to you?

A Yes

Q Okay Now, let's go back and take a look at your 2009 SOEI

MR DRY: This is, not admitted, Government's Exhibit 702

BY MR DRY:

Q This is dated January 15th, 2010, for the 2009 year, sir Do you see that?

A Yes

MR DRY: Government moves Government Exhibit 702 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q This was actually before you became Governor, right?

A Yes

Q The calendar year is, but you submitted it when you were Governor, right?

A Yes

Q Okay Now, for part of this, you were Attorney General --

A Yes

Q -- for part of 2010?

A Yes

MR DRY: Can we look at Page 5 This is Schedule E

BY MR DRY:

Q And, sir, first of all, as Attorney General, you didn't receive as many gifts as you did when you were Governor, right?

A Yes That's right

Q But in this year you're actually reporting gifts even if they go to your family members, right?

A I'm sorry Which ones are you referring to?

Q Well, "7 suite tickets for family to attend Redskins game"?

A Yes I was there

Q All right "Flight to family for Notre Dame football game"?

A Yes

Q "Lodging for family at Notre Dame football game"?

A I was there and part of it Yes

Q So you're not pro rata-ing out, hey, well, this is my portion You're disclosing the entire gift?

A Yes

MR DRY: Let's go back to Government Exhibit 289, and let's go to the fifth page of that exhibit

BY MR DRY:

Q Now, on this, there's no securities listed, right?

A I'm sorry What year is this, Mr Dry?

Q 2011

A '11 Okay

MR DRY: Let's pop back out

BY MR DRY:

Q It's Government's Exhibit 289

A Okay

Q Okay And the second page will have the signature block Just so we can make sure Do you see that's

January 16th, 2012?

A Yes, sir

Q Now, you knew that if your wife or you held stock as of the end of -- well, as of the filing date -- is it the filing date or the end of the year?

A My understanding is it's the end of the year, the calendar year

Q Okay So as -- if there was stock held as of December 31st, 2012, in your name or her name or a kid that's living in your house, you'd have to disclose it, right?

A Yes

Q And I believe you said that -- and I want to make sure I've got this right -- that you find out in June 5th that she had bought the stock --

A Yes

Q -- of 2011?

A Yes

Q And then you tell her that you have reporting requirements?

A I believe I had that discussion

Q Okay

A Yes

Q And then when do you find out that -- you tell her to sell the stock at some point?

A Before Thanksgiving she told me she still had the stock in her name, as opposed to the children's Yes

Q Okay And at that point you told her to sell it?

A I looked at the value and thought she should sell it because she was losing money Yes

Q And I believe that you testified on direct that she led you to believe that she was going to sell it imminently, like quickly?

A That was what I had asked her to do, given it's her money But I had asked her to do that because I thought it was a bad investment for her Yes

Q And so your testimony is that you didn't look at the bank statements to know that money hadn't come back to her bank accounts, right?

A I'm not sure --

Q In other words, I think what I understand from your testimony is that yes, you handled the finances, but you did not have visibility into her bank account balances?

A Her personal bank at Wachovia That's correct Yes

Q Okay Had you visibility into all the other bank accounts, but not just not that one?

A I believe -- yes I think that's right Yes

Q So you wouldn't be able to see that she hadn't sold it by reviewing the bank statements for the money to come back, right? Is that what your testimony is?

A On her bank statement or her stock statement?

Q Well, you didn't -- either one

A No

Q Okay Because you don't have any visibility into the Davenport statements?

A Correct

Q Because you're not opening those?

A Right

Q Even though you told her, "Hey, this is affecting me You know, you're doing things without my knowledge I have reporting requirements," right?

A You're talking about November now?

Q I think you said in June you told her that, right?

A That's my best recollection I'm virtually certain I told her in November Yes

Q But I think you testified on direct you told her in June?

A I believe I did Yes

Q Okay And the Davenport statements were going where?

A Mr Dry, we had about five mailing addresses At the time, sir, I don't know We had a couple of P O Boxes, house at Wyndham, the Mansion, the Patrick Henry Building I can't tell you at the time where those were going

Q Well, let me ask you this If you told your wife in November to sell this stock, when do you learn that she hasn't sold the stock?

I'm sorry When did you originally tell her to sell the stock? You find out June 6th When do you tell her, "Hey, sell the stock"?

A I told her in November when she said it was still in her name And I looked it up I showed her and told her, "Maureen, you've lost essentially half of your dad's inheritance " That's the way she looked at the money I said, "This is not a good investment, and I recommend strongly that you sell the stock "

Q And sell it quickly?

A I figured she would do it eventually. We had just spent a lot of time talking about it She was very resistant, but eventually, she said she would do that And I figured that would be in due course But right away, yes

Q So you thought by December, early December, she would have sold the stock --

A Yes, sir

Q -- based on what she told you?

A I thought so

Q Okay

MR DRY: Let's go to Government's Exhibit 166

BY MR DRY:

Q And this is one of the account statements I think that you -- this is admitted -- that you were shown earlier And it's redacted But 5913 Leabrook Way, whose house is that?

A That's the house that my wife and I own out in the West End of Henrico

Q And your mail would go there, some of your mail would go there?

A Yes, sir

Q And how often -- how did that work? Mail comes to that address Who picks it up, and where does it go?

A It -- let me -- what's the time frame again, Mr Dry?

Q Let's talk about -- well, let's talk about June of 2011, first of all

A Yes At that time, my best recollection is my daughter and her husband live there, Cailin and Chris And from time to time, they would actually get the mail and bring it down or we'd pick it up when we'd go out there I believe, still in July of '11 when they were living there, that's what happened

Q Well, and you testified that you saw Davenport statements, that you saw the Davenport --

A I did see a couple of them over -- over the years, yes Or over the months that we're talking about, yes

Q Did you review them or just see the envelope?

A I saw an envelope But I saw a lot of mail that my wife got

Q Okay And your testimony is that you didn't open it and review it at any point?

A No

Q So if you tell your wife to sell the stock in November and you tell her to sell it quickly and it isn't until much later that you found out she repurchased it, right -- when did you find out she repurchased it?

A In December of 2012, shortly before Christmas, she had that conversation with me and indicated that she had purchased it back

Q And so had she misled you?

A Yes

Q She had lied to you, basically?

A Yes

MR DRY: Let's go to Government's Exhibit 278

BY MR DRY:

Q Now, this account statement, this was also going to your Leabrook, I believe -- since it's redacted, it's hard to see The Leabrook house?

A Yes That's Glen Allen So that would be it Yes

Q And this shows that your wife had repurchased the shares?

A That's what it says Yes

MR DRY: I think it's the next page

BY MR DRY:

Q This is January of 2012, right?

A Yes.

Q Right there in the purchase date, it shows that she repurchased it on January 20th, 2012?

A That's what it says Yes

Q And you never had your conversation with your wife about wash sale rules?

A I did not

Q Would she typically be aware of such things as wash sale rules?

A No, sir

Q Okay Now, you've testified that you wouldn't have had any problem disclosing the Star stock, right?

A At that point, I disclosed over a hundred thousand dollars of different things from Mr Williams So if I had to report it, I would have reported it

Q Well, you've said that a few times, sir But when you say that you've disclosed those, in fact, what you're saying is that your PAC disclosed those, right?

A Yes

Q All right And the PAC disclosures, those are really just in kind flights that Mr Williams had given you or your PAC, right?

A It's the same -- it's a donation Just like a check

But yes, the PAC disclosed it And the campaign disclosed it, yes

Q So in your mind, there's no distinction between someone giving you $15,000 for your Governor -- for your daughter's wedding and them letting you use their jet to go to an RGA event?

A I didn't say that

Q Well, I'm asking Is there a distinction in your mind between a person giving $15,000 for your daughter's wedding reception or a donor letting you use their jet to go to a RGA function? Is there no distinction in your mind?

A Of course there's a distinction

Q And the distinction is one is personally going in your pocket, right?

A No $15,000 wedding gift went to Cailin

Q All right So it went to Cailin's pocket?

A Yes

Q Okay And you don't see that those are apples and oranges, sir?

A No, I didn't say that

Q All right Well, what is the purpose of an SOEI?

A It's to fill out the forms the way the General Assembly has passed the forms to make the disclosures for the purposes of the public knowing what moneys have gone to elected officials, what gifts, what salary they have made All the things that are in the law

Q And the reason is the -- the -- the people of Virginia should be able to tell if there's undue influence being exerted either way, by their elected officials or by a donor, right? They should be able to say, "Hey, somebody gave this," and that might affect their decision That's the purpose of the SOEI, isn't it?

A That would be one of the purposes that I would see Absolutely

Q Okay But there's no way for anybody to know that Mr Williams gave your daughter $15,000 from your disclosures?

A No

Q And there's no way, from your disclosures, for anybody to discern that Mr Williams gave a $50,000 loan or payment to your wife?

A No, because the form doesn't require anything but the occupation or principal business of the donor And that's what I did

Q And your testimony is that you didn't -- you never told any of your advisors about this, right, about your financial relationship with Mr Williams personally? Not the PAC donations, but you didn't tell them about the 50, the 15 or later on the other stuff, right?

A I didn't tell them about any of my many loans or credit cards or any of my personal finances No, I did not

Q And how many of your credit card companies had an event at the Mansion that you attended for their product?

A Some of their representatives attended events

Q No, sir, that's -- sir, was there any way that anybody would know that Mr Williams had given you $65,000 -- or 50,000 to your wife, 15 to your daughter -- as you were sitting at that launch or the event on August 30th? Other than you telling them, how would they have ever known?

A Can you repeat the question? You asked me multiple questions there

Q As you are sitting at the Mansion event on August 30th --

A Yes

Q -- would there have been any way for anybody to know that your wife had received $50,000 from Mr Williams, your daughter had received $15,000 for her wedding reception that you were contractually obligated to pay? Would there be any way for anybody to discern that unless you told them?

A No Not on the forms

Q Now, when your wife repurchased those shares of Star

Scientific in January of 2012, I believe Mr Burck showed you that it was trading between two and three dollars, right?

A Yes I remember the chart Yes

MR DRY: And let's go to Government's Exhibit 606

BY MR DRY:

Q Have you seen this chart before, sir, that Agent Hulser testified?

A I've seen it, yes

Q Okay And these are text messages that you sent to Mr Williams?

A I think some are texts Some might be an e-mail But --

Q I think you're right

A -- yes

Q I apologize for misspeaking

A Okay

Q Now, these -- Mr Brownlee kind of suggested that these were donor maintenance text messages and e-mails I think he -- you did that with Mr Cox Did you view these as donor maintenance?

A In part

Q In part?

A Mr Williams was one of my largest donors to my PAC and campaign Yes

Q Isn't it true there's absolutely no evidence in this case of any other similar text message -- that's been introduced -- any other similar text message or e-mail to donors where you are congratulating them on their stock price?

A I haven't seen any other evidence in the case

Q And at the time of each of these text messages and e-mails, the value of that Davenport account, when the statements are going to your house, that was going up each time, right, or your wife's Davenport account?

A I don't know I didn't see them at the time, Mr Dry

Q Well, the stock price is going up each of those times, right?

A That's what this chart shows, yes

Q All right Let's go -- let's go to Christmas of 2011 Your wife gave you the Rolex, Christmas 2011?

A Well, it said from Santa, but I know that's my wife Yes

Q Okay And she gave it to you in front of all of your children?

A Yes

MR DRY: That's Government Exhibit 274, please

BY MR DRY:

Q And that's a picture of you in front of the Christmas tree --

A Yes, sir

Q -- with the Rolex?

A Yes

Q And you heard your son testify that before this gift, the nicest gift that your wife had ever bought you for Christmas was a Seiko watch --

A That's my --

Q -- that he could remember?

A That's probably right

Q All right And I think you testified to knowing that you knew that there was a big difference between a Seiko watch and a Rolex?

A Yes, sir

Q I think you said it was the pinnacle of Swiss watch making?

A From what I knew about it, yes

Q Okay Now, Mr Asbill showed you --

MR DRY: Let's go to Government's Exhibit 274, Page 8

BY MR DRY:

Q Mr Asbill asked you did you know that the photo -- I want to get this right -- did you know that the photo was being taken at the time it was being taken And I don't think I heard a direct answer to that

Did you know your photo was being taken here?

A You know, I'm looking at a camera So obviously, I knew I think it was being taken So I guess the answer would be yes

Q Okay And I'm still a little bit unclear You said something about you thought it might be fake at some point When did you think it was fake?

A That was the previous year after when I talked to Mr Martin and Mr Eige I think when I got it in a Movado box and I didn't see any materials that came with it, I -- it made me just -- it made me wonder

Q It made you wonder whether it was fake or not?

A Well, or whether it was used I didn't know for sure But I wasn't going to inquire of my wife

Q Well, to be clear, sir, your wife had had the watch engraved, right?

A Yes I saw that, yes

Q Has your wife ever bought you a fake anything and had it engraved?

A I don't know

Q To your knowledge?

A I don't think so

Q Okay It's a pretty heavy watch?

A Yes

Q I guess what I'm -- other than the watch coming in a Movado box and not having all the tags, what else led you to think that it was fake?

A That was primarily it

Q Okay And how long did you think it was fake?

A It was a passing thought I -- I didn't probe I knew it was important to my wife It was the last gift she gave me It was for Christmas She had just gotten a new job She was making money, and I told her I appreciated it.

Q Do you know when this picture was taken?

A I know now I don't think -- if you asked me --

Q All right When was this picture taken?

A Well, I believe it was taken the following Christmas on the way to church

Q And how certain are you of that?

A Reasonably certain I don't know absolutely for sure I didn't wear the watch much after that I remember wearing it for Christmas again in 2012 because my wife asked me to wear it when we went out to St Michael's for church with our kids

Q Did your wife ask you to pose with the watch?

A I don't think so We were sitting in the back seat of a state police trooper vehicle, and we were on the way to church And I just don't remember exactly how this was taken

MR DRY: Can we click --

BY MR DRY:

Q Maybe we can jog your memory

MR DRY: Can we go forward through a few of these Some more

BY MR DRY:

Q No recollection of your wife asking you to pose with the watch?

A I don't We're in a vehicle and I have a Christmas tie on, Mr Dry So my very best recollection was that it was on the way to church in 2012

MR DRY: One second

(Counsel conferring with co-counsel)

BY MR DRY:

Q I'm sorry, sir

Now, you wore this -- the watch for the Richmond Times-Dispatch --

A No

Q -- interview?

A I didn't wear it for that interview I wore it the day they came to interview me in early 2012 Yes, I had it on then

MR DRY: And that's Government's Exhibit 281, please

BY MR DRY:

Q Do you recall that picture from the RTD?

A Yes At some point I remember seeing it, yes

Q And you heard Mr Eige testify that he asked you about the watch?

A Yes

Q And that was like right after it was given That was January 2012?

A Yes

Q And you heard him testify that you told him that you didn't even think it was real?

A I'm sure I probably said that Yes

Q Okay Do you recall your wife dropping hints to other people that your Seiko watch wasn't fitting for a Governor?

A I wouldn't know what she said to other people So the answer is no

Q Well, were you present when your wife raised up your shirt sleeve and commented to Mr Williams' wife that you did not have a nice watch like Mr Williams?

A I don't remember that

Q You don't remember that?

A No

Q You don't remember that occurring before you actually got the Rolex watch?

A No

MR DRY: Let's go to Government Exhibit 285

BY MR DRY:

Q We're not going to go through this I just want to -- this is another -- this is the Kinloch January 2012 statement I guess what I'm trying to get to, did you have your schedulers plan golf trips for you and your sons when you would go on family vacations?

MR DRY: You can take that down

A I mean, occasionally, they did the logistics for those, yes They scheduled personal and public events for me

BY MR DRY:

Q Okay And did you have them go through your donor list to find donors who had owned golf courses and would let you and your family play for free at a reduced cost?

A Did I?

Q Play for free or at a reduced cost?

A Did I?

Q Yes

A No

Q So you never instructed anybody to do that or expected them to do that?

A I never instructed anybody to do that

Q But did they do that?

A I don't know

Q You don't know whether Adam Zubowsky or maybe Ms Rabbitt would put together briefing books of golf courses for you to play at on vacations?

A I know that we had a number of offers of people who had invited either me or my sons, at times, to do some things like that And there may have been a time I asked them go look and see if someone made an offer to do that that we might accept

I am very fortunate A lot of people offered to do many things And there were a few of them I took advantage of because it was time with my family or my kids And so those are the gifts that I accepted

Q So it was --

A I never instructed them to do that

Q Well, did they put together briefing books of places that you and your family could play golf for free?

A I don't -- I don't remember

Q You don't remember?

A No

Q Do you remember getting briefing books and you selecting which of the nice courses that had been offered for you to play with your boys? Do you remember that?

A That could have happened I don't remember

Q Well, let's try and refresh your recollection

MR DRY: Government's Exhibit 627, please

BY MR DRY:

Q This is an e-mail from Ms Rabbitt to Adam Zubowsky?

MR ASBILL: Objection Can we approach?

THE COURT: Come on up

(At Bench)

MR ASBILL: We've already addressed this issue about the relevance of this He's not on this e-mail Never seen this e-mail

MR DRY: He's instructing his staff to go find places he can play for free He's been testifying for two days that --

THE COURT: The objection is overruled

(In Open Court)

MR DRY: I'd like to move Government's Exhibit 627 into evidence, please

THE COURT: It will be admitted

BY MR DRY:

Q All right And let's go to the bottom e-mail first This is an e-mail from Ms Rabbitt She's your scheduler at this time?

A Yes

Q And she asks, "Did you ever plan a golf trip for the Governor, Bobby and Sean? He told me to see him about it and wants to go to Myrtle Beach or Florida We decided to revisit it once we had firmed up dates for the marketing mission, et cetera I just wanted to see if you had any background before I brought up the topic with him again "

Now, that's sent on January 4th of 2013, right?

A That's what it says, yes

Q Do you recall having a conversation with Ms Rabbitt in which you discussed an upcoming trip to Florida or Myrtle Beach and wanting her to assist in planning golf?

A I probably did Yes

Q All right Now, Mr Zubowsky, who was your body man prior --

A Yes

Q -- he writes, "Yes" -- make sure I read this right "Yes Basically this means find out who we known in these cities that owns golf courses and will let me and my family play for free, or at a reduced cost Also finding out where to stay for free or reduced cost So this means go to Monica and Paige and find out about PAC donors and RGA donors who will host RFM Also, Katherine keeps a list of people who have offered to host RFM over the past 4 years, so go through that list Put everything into a nice briefing so when you meet with him, you have every offer you can think of on paper Then I'd go to the golf course websites, brief off the general info, and also copy and paste it into a briefing form, so he can pick based on the type/description of the course "

Does that refresh your recollection about getting briefing books with golf courses and picking out which one you wanted to go for free or at a reduced cost?

A I'm not on this e-mail I don't -- I remember occasionally Katherine coming to talk to me about options if I asked her to help plan a trip with my sons But I did not direct them go find places to play for free

We had -- as the e-mail says, there's offers that people had made, and I certainly asked her to take a look at those But I'm not on this e-mail, and I don't think I talked directly to Mr Zubowsky about this

MR DRY: Judge, I think the next section is going to take about 15 minutes I can do another five Up to you

THE COURT: Are you anywhere near finished?

MR DRY: No, sir

THE COURT: All right I guess we'll stop now

Maybe it's just me, but does this seem like the longest day in your life?

MR DRY: Thanks, Judge

THE COURT: All right We'll have to stop now

Obviously, continue to abide by my admonition Please don't discuss the case with anyone, allow anyone to discuss it with you, and please don't review any media items related to this case

Hang in there That's all I can say I'm with you all the way We will see you tomorrow at 9:45

(The jury left the courtroom)

(The trial adjourned at 5:26 p m)

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No. 15-4019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v

ROBERT F McDONNELL,
Defendant-Appellant,

On Appeal from the United States District Court for the Eastern District of Virginia, Richmond Division, James R. Spencer, District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G McDONNELL,

Defendants

August 26, 2014
Richmond, Virginia
9:45 a.m.

JURY TRIAL - VOLUME XXII

BEFORE: HONORABLE JAMES R SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ
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JESSICA D ABER, ESQ.
RYAN S FAULCONER, ESQ.
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Counsel for Maureen G McDonnell

JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day twenty-two, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, and Christopher Iaquinto Maureen G. McDonnell is represented by Heather Martin, William Burck, Stephen Hauss, and Daniel Koffmann Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed

MR. ASBILL: Mr McDonnell is ready

MR BURCK: Maureen McDonnell is ready, Your Honor

THE COURT: All right Let's bring them in.

(The jury entered the courtroom.)

Good morning Mr Dry?

CROSS-EXAMINATION (Cont'd)

BY MR. DRY:

Q Mr McDonnell, I'd like to start with Government Exhibit 295 This has been admitted. This is the January 27th, 2012 e-mail between you and your wife And you have seen this e-mail several times before, sir?

A Yes, sir, I have

Q Okay Now, starting on the bottom e-mail, that's from your brother-in-law, if we could scroll down, please And that e-mail is actually to you on January 25th of 2012, correct?

A Yes

Q And in that e-mail, Mr Uncapher is asking you to pay your portion for the expense for your property at Wintergreen, that's the BRH?

A Yes

Q Blue Ridge Heaven. And going to the part that says, "For MoBo " You see that there?

A Yes

Q He is referencing "your Mo," that's your wife, Maureen?

A Yes

Q Okay And he is saying that she had him talk to "the guy who is," and if you could go to the next page, "helping us " Now, do you remember receiving this e-mail, sir?

A Yes

Q Okay Now, five days before that e-mail, Mr Williams was on the trip to South Carolina when you were endorsing Mr Romney; is that right?

A Yes

Q And you had seen him there?

A Yes

Q Now, on this e-mail, Mr Uncapher tells you that he needs a check next week, to get the check next week from that guy in order to keep up-to-date He is talking about the mortgage payments for the Beach properties, right?

A What language are you referring to?

Q He says, "We'll need to get that in the next week so we can keep up-to-date " Is he referring to the mortgage payments for the Beach properties?

A I think so, yes

Q Okay And it was the need for a check, because I think you understood -- well, we will get to that in a second. But he is saying that, in essence, Mr Williams has said that he is going to send a check in so that the mortgage payments can be kept up-to-date Is that the gist of this e-mail as you understood it?

A I wasn't sure I wasn't aware of any conversations I wasn't sure

Q Okay Well, let's go to where you actually respond back to your wife You send this two days later, correct?

A Yes

Q And in this, you say, "Who is helping us?" You are not talking about MoBo, you are talking about us: you, your wife, your sister, right?

A No

Q No, when you say "us," do you mean MoBo?

A Yes

Q Okay And then you ask, "Johnny?" J-O-H-N-N-Y That's the only name that came to mind when you were responding to your wife here, isn't it?

A That's who I thought they might be talking about, yes

Q And you don't ask about Dr Davis at this point

A No

Q Now, you understand today that that's not the correct spelling of Mr Williams' first name, right?

A Yes, I do.

Q So at this point, do you consider Mr Williams a personal friend of yours?

A I felt like we were becoming better friends over this time, yes

Q I guess the question is, in your mind, not becoming, is he actually a personal friend in your mind at that point?

A He is a friend.

Q Okay Let's go to the top e-mail Now, this is from your wife to you, and she says, "Just got home I'll talk with you upstairs " I believe you testified that you did have a conversation with your wife later that night, right?

A Yes

Q And your testimony was, that's basically the first time that you understood that she was negotiating with Michael Uncapher on behalf -- or with Mr Williams In other words, she and Michael Uncapher had had conversations with Mr Williams about money, right?

A Yes

Q Okay Well, I believe your testimony is that your first interaction with Mr Williams about this money was on the February 3rd phone call; is that right?

A I believe that was the date, but it was maybe a week after this e-mail exchange

Q Now, in your conversation with your wife that evening, after the e-mail, did you tell your wife, "Hey, I'm going to be the one that goes ahead and negotiates with Mr Williams"?

A She had already told me that she had reached a tentative agreement and Mr Williams was willing to lend $50,000 to MoBo for the choice that we had made for a loan. But that with regard to details, yes, I would talk to Mr Williams

Q Well, this tentative agreement, did she tell you what the interest rate was going to be that she discussed with Mr Williams?

A I can't remember She might have It was the same as before, but I'm not sure

Q When you say the same as before, that it was going to be a balloon payment?

A No, there was going to be a two percent interest rate I think that's what she may have told me And it would be $50,000 for MoBo. But I knew that I needed to talk to him because my sister and I were the principals in MoBo.

Q And so you wanted to talk to Mr Williams before you got any money from Mr Williams so you knew what the deal was; is that the bottom line?

A Yes Because it was a loan to MoBo, yes

Q Okay Well, let's go to the February 3rd conversation you had with Mr Williams This is not admitted as Government Exhibit 822, but these are the handwritten notes that I believe you testified about before It is just a different exhibit number Do you recognize your handwriting here, sir?

A Yes, sure

Q Cap you flip through that? And these have just been put in the sequence that you testified about First page of the notes and the second page of the notes and the third page of the notes, even though they are not sequentially Bates Numbered. Do you understand that?

A Yes

MR. DRY: I'd like to move for Government

Exhibit 822 to be entered into evidence, Your Honor

THE COURT: It will be admitted.

BY MR DRY:

Q Going to that first page, you testified that this was the first page of notes from your February 3rd, 2012 call with Mr Williams, right?

A That was my best recollection as these three pages you just went through with that first call, yes

Q So as you testify today, this is your best recollection of the order of the notes?

A It is

Q Okay You testified that you reached out to Mr Williams to discuss this; is that correct?

A I don't remember how the call was initiated, but I was on the phone with him for a while in early February, yes

Q Well, do you think that he initiated the contact or do you think you initiated the contact?

A I'm not sure I just know I talked to him.

Q I believe you testified that it was during this call that Mr Williams brought up the idea of a margin loan, correct?

A He brought up the idea of a stock loan from him to me, yes

Q And I believe you testified that during this call, you understood it was going to be some kind of stock loan where the shares could act as collateral for you to get cash, right?

A Yes

Q And you testified that that's your understanding what a margin loan is, right?

A Yes

Q Now, you testified on direct that you were going to ask Mr Williams a few questions during this; that this was mostly him talking, but you did ask a few questions because you were going "to talk to my broker about that " Do you remember that testimony?

A Yes, I did.

Q When you said "my broker," you meant Mr Piscitelli, didn't you?

A Sure, I've known him for 25 years, yes

Q Even though the Davenport account at that point was in your wife's name, you still consider Mr Piscitelli to be your broker as well

A It is the only broker I've ever had, yes

Q I thought you had an E*Trade account or Ameritrade account before

A I used Mr Piscitelli 25 years ago, the only time I used a broker

Q You didn't have an Ameritrade or E*Trade account?

A Sure, I had an E*Trade account, but I didn't have a broker for that That was me

Q Mr Asbill didn't ask you really any questions about this I'd like to go through a few The top Can we blow up the top, "Johnny Williams stock." This is your handwriting, sir?

A Yes.

Q You misspell Mr Williams' name again, right?

A Yes

Q It says "50,000 shares " And on the right-hand side of the note, you circle, if we can come out of that document a little bit, you circle $3 15 You understood that was $3 15 per share was the price it was at today?

A That's what he told me, yes

Q You didn't look that up; he just told you that?

A I believe so, yes

Q Okay Now, if he is going to loan you 50,000 shares and the share price is $3 15, then he is really discussing loaning you $150,000 worth of stock, right?

A These were his proposals Possibly, yes

Q Well, in fact, sir, if you go down the middle, it says "Today worth 150k." You understood that to be 150,000, right?

A That's what he said

Q Okay Now, it also says in the notes, if we could come out, that "certificates and split in 10," Mr Williams is telling you at that point that he is not going to give you all 50,000 shares at once, but split the shares into 10,000 share blocks, right?

A Again, these were notes from three years ago That's what he said, Mr Dry, yes

Q Was that your understanding at the time of what he was saying?

A I didn't have a good understanding, but I took the notes so I could talk to Mr Piscitelli. That's my best recollection.

Q So you didn't understand that if he gave you these 10,000 share blocks, then you could use them as you needed them. You didn't understand that at the time?

A Not well This transaction never happened

Q I understand, sir, but that's not the question that I am posing At the time, did you understand that if he gave you 10,000 share blocks, then you could use them as you needed them?

A No.

Q Okay Now, on the fifth line, it says, "Johnny paid $1 90 He can't sell them." Do you see that?

A Yes

Q You understood at the time, though, he is just telling you that he couldn't sell them without reporting the sale, right?

A No.

Q Okay Then let's go down a bit in the notes It says, "Shares are free and tradeable " He told you that, too?

A That's what I wrote down, yes, sir

Q Okay So your testimony is you didn't understand he is saying, "Look, I can sell these but I have to report them."

A No

Q Okay Well, let's go to the "Transfer to MoBo " Can we come out of the document a little bit? You see in the middle it says, "Transfer to MoBo"?

A Yes

Q And it says, "if loan shares with option to buy at 1 90 what Johnny paid for them." Do you see that?

A Yes

Q So Mr Williams is basically telling you here, I guess what I am trying to get to is, what's your understanding, was it that he would let you pay back the stock at the price he paid for it instead of the market price of $3 15; is that what you understood at the time?

A I did not have a good understanding because I was expecting documents So I can't say

Q And when it says, "Today worth 150,000 " You didn't have a clear understanding that he is telling you that he is going to give you $150,000 worth of stock but you are only going to have to pay back approximately $90,000; you didn't understand that?

A I understood what he was proposing if he lent me 50,000 shares, that that would today be worth 150 Yes, I understood that

Q But I guess the question is, did you understand at the time that he is saying, "Look, even though the stock is worth $150,000, down the line, you only have to give me $90,000 in return"?

A No

Q Okay Let's go to the second page, please. At the top, these are your handwritten notes, sir?

A Yes

Q You took these all in the same day?

A I did. Same call

Q Now, next to the asterisk, it says, "Pay back in cash at 50,000 at $1 90," which equals 90,000, and it says, "either return or 50 to 70k " Again, same question we had from before At this point in the call, did you not understand he is offering to loan you $150,000 worth of stock but only make you repay 90?

A It wasn't -- it really wasn't clear to me

Q Okay Going to the sixth line of the notes where it says on the left-hand column, it says, "Plan " In your handwritten notes it says "Split into 10k share certificates, Son deliver to Maureen." Do you see that?

A Yes

Q Do you remember him discussing that with you?

A Yes

Q And even though it is you and he are the ones that are negotiating this proposal, and your testimony is that this was a loan to MoBo, he was going to have his son deliver the shares to your wife; is that correct?

A That's what he said.

Q Did you not understand at the time that this would be a way so that physically neither one of you had to actually be involved in the actual transfer of the share certificates; you didn't understand that?

A No.

Q Now, in the next section, it says, "In two to three years repay " At that point, you would have been out of office?

A Yes In three years Yes

Q Okay And you testified that you took all of these notes at the February 3rd call

A I believe all of those pages, Mr Dry, yes

Q Mr Asbill, when he was talking to you about this, he spent some time discussing this "Maureen or MoBo"; do you remember that?

A Yes

Q I believe you testified that yes, you circled "MoBo" because that is what you needed, was a loan to MoBo You didn't need a loan to Maureen.

A Yes

Q Okay In fact, I believe you said, "And so the only thing that was needed was operating cash for that operating shortfall that we had at MoBo and so I circled MoBo " Do you remember that testimony?

A Yes

Q All right Well, can we bring up Government Exhibit 2, please? These are the black and white versions I'd like to go to the color versions I'd like to go to Page 5 Sir, you see that in the color version of these notes, the circle for MoBo, that's in blue ink?

A Yes

Q So that was a different ink than when you were writing all the rest of the notes, right?

A Yes, it appears to be, yes

Q Is it your testimony that mid-stream you decided to pull out a blue pen and circle MoBo?

A I don't remember when I did that I think maybe when I put my notes back in the file I was looking at those These were intended solely for me I'm expecting documents from Mr Williams, from his lawyers, is what he told me As I'm reviewing the notes, I'm making the choice, I'm looking at that and I'm thinking, "If this deal is going to be done, it is going to be done for MoBo," because that was my intent Yes.

Q Okay But I guess, you just said, "Well, it might have been later as I'm putting the notes in "

A Yes

Q Is it your testimony that you know that you circled that in blue ink before the investigation began?

A I believe so, yes I did it when I put them in the file These notes were solely for me, Mr Dry, when I was keeping my notes prior to talking to my broker and my attorney And as between those choices, it was clear to me that I wanted this to be a loan to MoBo And so yes, that was my circle

Q Just so I understand, you are saying that as you are putting the notes away, you are looking at the notes and then you decide, "Well, I'm going to pull out a blue pen and I'm just going to circle MoBo because that's what this is really all about " Is that your testimony?

A You have asked me several questions there

Q Sir, your testimony is that as you are putting the notes away, that's when you think that you circled this, right?

A I believe so Because that was my choice As between the two, it was MoBo Yes

Q And, sir, that you picked up a different pen and you are just -- you happened to be reviewing the notes one more time before they go in the file, right? Is that what you are saying?

A Yes I was in a different room when I had the call

Q And then you decide, Okay, well, "Of all these, I know MoBo is important," and that's why you circled it; is that right?

A No

Q Well --

A The loan had always been intended, Mr Dry, for MoBo That's the sole reason that I was talking to Mr Williams, was for operating cash for MoBo. There was never any question in my mind, sir

Q Let's go back to Government Exhibit 822-2 This is the black and white version again. Now, turning to the bottom half, it says, we are still, I'm sorry, "The loan from Starwood Aviation to Maureen or MoBo " So go up just a little bit Underneath, it says "Airplane account " I believe you testified that Mr Williams explained to you that the shares would come from Starwood Aviation, right?

A That's what he said Yes, sir

Q Okay And did you understand at the time that by the shares coming from Starwood Aviation, that that would assist in distancing Mr Williams from this transaction?

A Absolutely not

Q Okay

A No

Q Let's go to Page 3, please. This is in the same call, the February 3rd call; is that correct?

A That's my best recollection, that this is the third page, yes

Q The "reportability" there, that's in your own handwriting?

A Yes

Q You testified that Mr Williams is only talking about his own reporting requirements, correct?

A Yes

Q As you sit there today, is it your testimony that at this point you don't understand that Mr Williams is trying to explain to you how this transaction could be structured so it wouldn't be reportable by either one of you?

A That was not the discussion.

Q Okay Well, going to the "File Form 4 with SEC saying sold = doesn't disclose who sold to " I believe it is your testimony that Mr Williams told you that

A That's what he told me, yes, when I was on the phone

Q Isn't it odd when you are dealing with a businessman and he is explaining to you that, "Well, if I sell these, I don't have to tell the SEC who I'm selling it to, just that I sold it " That didn't strike you as an odd thing to say in this conversation?

A No, because I knew before I did this, if it happened, I was going to have this reviewed by my lawyer He had told me he had had it reviewed by his, so I'm taking notes, I've got a two-step process for Piscitelli and Poole, and if it is okay, then we do it This transaction never happened I'm listening to Mr Williams' proposal Yes

Q I understand, sir But at this point when he is discussing his disclosure requirements, you understand that ultimately you control your own SOEI?

A Absolutely Mine are different than his

Q And what he is explaining to you is his disclosure requirements

A Yes

Q And that didn't strike you as odd that you are having a conversation; why would you care what his disclosure requirements were?

A I didn't

Q He is just offering this up

A Yes

Q Okay Now, let's go, let's talk about the form about the lawyers The next paragraph, if we go down. I think that, well, actually, when it mentions having the loan reviewed by securities and tax lawyers, you testified that Mr. Williams was going to have that done, right?

A If we can go back up.

Q Yes "Will have review by securities and tax lawyers " He is telling you that?

A Yes, sir. That's exactly what he told me

Q But you understood at the time there is nothing inherently illegal about Mr Williams loaning you shares of stock, right?

A Well, I had never done it before, so yes, I was glad that he was having his lawyers look at it and I was absolutely going to have mine do it if this transaction was going to happen Yes

Q That was not the question. The question was --

A What was the question?

Q You knew at this time that there was nothing inherently illegal about Mr Williams loaning you shares of stock

A I didn't believe so, no, or I wouldn't have even considered it

Q And you also knew that Mr Williams went to lawyers about the transaction. Those lawyers wouldn't know about you setting up a meeting on August 1st of 2011 for Mr Williams with Ms Huffstetler, even if you didn't know the name

A I wouldn't know what he told his lawyers, Mr Dry

Q Right Unless he told the lawyers, the lawyers wouldn't know about the August 30th of 2011 event at the Mansion, right?

A I don't know, sir

Q And unless he told the lawyers, they wouldn't know that Mr Williams wanted to get studies at UVA and VCU

A I wouldn't know what he told his lawyers

Q So ultimately, him going to the lawyers, unless he informs them of the entire thing and not just half the story, that wouldn't be a problem, right?

A I don't understand the question

Q The mere fact that Mr Williams is going to talk to lawyers about this isn't going to be a problem unless they know the whole story You understood that at the time, right?

A No.

Q Let's move down. Further down in the to-do list, you talk about going to talk to Mr Piscitelli And you do that, right?

A Yes

Q And then "Bert Poole-review "

A Yes

Q Same thing with Mr Poole If you talked to Mr Poole about the stock transaction, the only way he is going to know about what Mr Williams wanted or had gotten would be if you told him that, right?

A Yes

Q And ultimately, you never talked to Mr Poole about this transaction, right?

A No, because I didn't get by step one with Mr Piscitelli

Q Okay Let's go to the Healthcare Leaders planning Can we go to Government Exhibit 629, Page 21? Now, after you talked to Mr Williams on February 3rd, you are involved in reviewing the guest list for the Healthcare Leaders Reception, correct? I believe you testified that these are your handwritten notes and yes, you did review and make additions, right?

A Yes You have asked me a couple questions there I did not review --

Q I'll break it down

A Go ahead

Q Were you involved in reviewing the guest list for the Healthcare Leaders Reception at the Mansion after you spoke to Mr Williams on February 3rd, 2009?

A No It wasn't a guest list I got a list of doctors and I was asked to choose whether there was some there that I wanted to invite So it wasn't a final list It was a doctors' list here, sir, and I was asked, and I don't remember whether it was Pam or Sarah or who, asked me to see if there is someone I wanted to invite.

Q You heard Ms Scarbrough testify that she had a personal conversation with you about adding additional people to be identified as Healthcare Leaders of Virginia

A I've heard that

Q Okay Let's go to Government Exhibit 306 This has been admitted This is an e-mail from Ms Scarbrough to Ms Schramm?

A Yes

Q And in this e-mail, Ms Scarbrough says, "The First Lady and Governor were going over the list last night for the healthcare industry event " Correct?

A That's what it says

Q And did you tell her that you wanted the head officers at VCU, MCV, UVA, EVMS and Massey Cancer Center, do you remember telling Ms Scarbrough that those individuals should be invited to the Healthcare Leaders Reception?

A No

Q And then in the bottom, did you know that your wife had invited 50 doctors to be added to the list?

A I did not

Q Okay Now, to be clear at this point, Mary-Shea Sutherland, she is long gone, right?

A Yes

Q Okay This is February 8th At the same time that this is going on, your wife is having discussions with Mr Williams about how things are going with the studies of Anatabloc at UVA and VCU, right?

A I don't know what her discussions were with Mr Williams I do remember getting an e-mail or a text from her during that time, but I'm not much aware of how much discussions she is having with Mr Williams at the time

Q Let's go to one of those e-mails Let's go to February 9th, 2012, Government Exhibit 312 It has been admitted You have seen this e-mail before, sir?

A Yes

Q At the trial And right below the e-mail from your wife, that was sent from Mr Williams' son to your wife on February 8th.

A I see that

Q And that was five days after your personal phone conversation with Mr Williams discussing the stock transaction.

A I think that's right, yes

Q And the subject of the e-mail is "Anatabine clinical studies-UVA, VCU, JHU " Right?
A Yes
Q Going to the top e-mail, well, going to the top e-mail, that's from your wife to you, correct?
A And copying my lawyer, Jasen Eige, yes
Q Okay And in there, well, first of all, your wife writes "Here is the info from Jonnie He has calls into VCU and UVA and no one will return his calls " Do you see that?
A I do
Q You heard Mr Williams testify that he nad a conversation with your wife in which she told him, "Yes, in fact, I forwarded that information that you gave me to the Governor " Do you remember that testimony?
A I did hear him say that, yes
Q And in fact, that's what actually happened, right?
A Yes
Q Okay Now, you and your wife, you had had a conversation about this before, right?
A I don't remember another conversation
Q Well, sir, the e-mails to you cc-ing Mr Eige, she is saying, "Here is the info from Jonnie "
A Yes
Q So you are saying that you did discuss it with her

before this or you didn't or you don't remember?

A No, I'm saying I remember this e-mail, but I don't remember a prior conversation. The whole upshot of this is I knew from this that he was calling VCU, apparently, and nobody was returning his calls That's what I understood from all this

Q When you say "all this," did you have a conversation with your wife before this?

A I don't remember having a conversation. I remember this e-mail

Q So despite the fact it says, "Here is the info from Jonnie," it is addressed to you?

A Yes

Q Well, you did testify, I believe, that you read the text of this e-mail at the time it was sent

A Yes, I read the line, certainly read the line from my wife and knew the gist of it from that, yes

Q And in fact, let's bring up Government Exhibit 726, please This is not admitted This is your February 9th schedule Do you see that, sir?

A Yes

MR. DRY: Government moves Government Exhibit 726 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q Now, within a couple of hours of your wife sending that e-mail, I'm going to have to go back -- excuse me, Your Honor -- can you go back to the e-mail? I just need to get the time off the e-mail so we can pinpoint this It is 3:12 That was 3:13 p.m., sir? Your wife sends you that e-mail?

A Yes

Q Says 3:13 on February 9th Right?

A Yes

Q Can we go back to the schedule, please? Now, here it shows that you are going to depart for the Executive Mansion, you are going to have a weekly address, you are going to pack your luggage and then you are departing for the helo pad, right?

A Yes

Q And who is going to be departing with you?

A It looks like my wife, Tucker Martin, Adam Zubowsky

Q And in fact, you go to Washington, D.C., if you go down to the next --

A Yes

Q Okay And if you go down some further, it might be on the next page, your wife is with you and basically what happens is you attend a Mitt Romney reception that night Right?

A Yes

Q If you go further down, and in fact, you stay at the Hyatt Regency with your wife that night?

A Yes, sir.

Q So after your wife sends this e-mail to you cc-ing Mr Eige, is it your testimony you don't remember discussing any of this with her?

A No

Q Okay Let's go back to the attachments on the e-mails I'd like to discuss that now Government Exhibit 312 Now, this has two attachments And you said on direct, can't say that you ever looked at the attachment

A Right

Q But you never testified that you didn't look at the attachment, right? We can scroll through the attachments

A I don't remember seeing this in realtime, is my testimony I didn't see it

Q Okay Let me go to Page 3 and maybe we can refresh your recollection And then if you could blow up the fourth name -- well, just blow up the top portion, please Now, this is a list of Rock Creek trying to get doctors to study anatabine, right? You heard that testimony earlier in the trial?

A Yes, sir That's what it says

Q Let's go to the fourth name Sir, who is listed in the fourth name there?

A John Clore

Q And Dr Clore, he was at the luncheon event on August 30th?

A Yes

Q And in fact, he was one of the ones that you starred the name, I believe, on your briefing sheet, right?

A Starred him and the one from UVA because I knew they were going to be there to receive grants

Q Actually, sir, I think you testified that you didn't remember why you starred his name.

A No, I said that there was -- that UVA and VCU were the researchers that were listed on my briefing sheet I didn't know either one of those doctors, so I think on the way back on the flight I starred the doctors from those two universities That's my best recollection from the time

Q Okay So if you testified earlier that you didn't remember why you starred Mr Clore's name, now you have a better recollection?

A No, my recollection -- my recollection was I said that when I was flying back from the WTOP interview, I typically look at the briefing of the next things I've got to do And I saw that it is UVA and VCU researchers that are going to be there I knew that they were going to be getting, I thought, $200,000 from Mr Williams I just wanted to know who the people are at the event So that's why I think I starred those two names. I had never met Dr Clore before that event.

Q Okay Can we go to Page 5 of the exhibit? And I believe that this is the prep sheet for the call? That's what it says?

A That's what it says I saw it after the investigation started.

Q Let's go to Page 6 Now, I believe on direct you talked about, can you blow up "The Governor of Virginia and his wife became interested." I believe on direct you testified regarding these three questions that that was consistent with the questions that you would have asked at the August 30th event; is that right?

A Well, I asked many questions That may be a general summary of the type of questions I asked of the researchers, yes, sir, that's correct

Q Okay And, now, this part right here, "Hearing affirmative answers to all three questions, he suggested a grant be made to the Tobacco Commission." I know you don't agree with this --

A Absolutely not

Q -- but that's referencing you?

A It is

Q Just to be clear, at the same time that you and your wife were asking Mr Williams to provide more money, whether it is to you personally or to MoBo, and he is asking for some kind of help with UVA and VCU, you just have no recollection of reading this Is that your testimony?

A You have asked a few questions in there about timing Could we break those down to make sure I understand?

Q Sure This is an attachment to a February 9th e-mail

A Yes

Q Your wife sends you this e-mail

A Yes

Q And in the e-mail, she says no one will return Mr Williams' calls

A That's her e-mail to me, yes

Q And she specifically references "UVA and VCU Studies" in the subject line of the e-mail

A Yes, that's correct

Q And at this point, this is five days after you are personally negotiating more money from Mr Williams

A Yes

Q And I think I understand your testimony to be you just don't remember actually opening up the attachments and reading this

A Yes I did not see that I'm sure I did not see those Because if I had, I would have been upset with the lies that are in that e-mail I did not say that about a Tobacco Commission grant I did not see it

Q Okay So I guess you previously said you didn't recall seeing the attachment

A Yes

Q Now your testimony is you know that you didn't see at least that portion of the attachment; is that right?

A I didn't.

Q Okay Going back to -- actually, let's go to 314 This is the e-mail from Ms McDonnell to Jasen Eige You have seen this e-mail before?

A Yes

Q And --

A I'm sorry, Mr Dry Let me make sure just a minute

Q Absolutely Take your time, sir

(Witness perusing document)

A Sir, you are talking about the bottom one is the one that I reviewed. You are asking me about the top one now?

Q Yes, sir

A Yes

Q You are not on this

A No I saw this, I think, after the investigation started

Q And that's sent on February 10th at 9:27 a.m.?

A Yes To Jasen Eige, my lawyer, and Maureen's lawyer.

Q And your wife tells Mr Eige to call Jonnie. Right?

A That's what it says

Q And it says, "Governor wants to know why nothing has developed with studies and Governor wants to get this going with VCU and MCV," right?

A That's what it says, yes

Q Your testimony is that you never had a conversation with your wife in which you expressed that you want to get this going with VCU and MCV

A I did not That was up to Star and their folks to do that

Q Okay But her instructions, sir, here, she says, "Please let us know what you find out after we return " She is not saying, "Please let me find out " She is saying "us," right?

A That's what she said, yes

Q And it was "after we return "

A That's what she said

Q Now, as you sit there today, you are clear that that is just inaccurate, you never had a conversation with your wife in which you expressed that, correct?

A Yes

Q So your testimony is that your wife was misleading one of your most trusted advisors and assuming that the two of you would not discuss this so that he could find out what you really wanted. That's your testimony?

A There was a lot of parts to that question Mr Eige was her lawyer as well

Q First of all, is your testimony that your wife is misleading Mr Eige?

A I don't know I don't know, Mr Dry

Q You are testifying --

A I'm saying that that is not true with regard to my statements

Q And your testimony is that she would send this to Mr Eige, assuming that the two of you wouldn't talk about it; is that what's going on?

A I don't know I didn't get the e-mail

Q Well, let's look at your schedule for when the time that your wife actually sends this e-mail

A Okay

Q Let's go to Government Exhibit 313, please This has been admitted. This is your schedule for February 10th of 2012, correct? We can blow it up

A Yes

Q You can see that?

A Yes

Q And then going to the bottom of Page 1, it says from

9:20 to 10:05 you are departing for the Marriott Wardman Park Hotel

A Yes

Q And on the top of Page 2, that shows that your wife is traveling with you?

A Yes

Q And then that shows that you are actually going to be in a car together for the 23 5, 36-minute drive without traffic Right?

A Yes, it looks like with Tucker Martin and Adam Zubowsky and Phil Cox and two state troopers Yes

Q And you heard Mr Martin's testimony that when you and your wife traveled together, you typically sat on one side of the SUV and she would sit next to you.

A Yes

Q And so it is your testimony that your wife is e-mailing Mr Eige about this as you are sitting next to her and you have no discussions about this to figure out what's going on

A My testimony is I don't know that this e-mail is being sent

Q You didn't have any discussions during that drive with your wife about it?

A No

Q And you didn't have any --

A It was a car full of people No

Q How about the night before?

A No

Q So when you are alone in the hotel room together with your wife, you are not discussing this

A No, I'm probably discussing Mitt Romney

Q With your wife?

A Yes She was in the hotel room.

Q Okay Well, let's go to an e-mail that you were on and you did send Let's go to Government Exhibit 318 Let's go to the bottom part You have seen this e-mail before, sir?

A Yes, I have

Q And this is an e-mail one week after the one that your wife sent to you and Mr Eige, right?

A Yes

Q And in this e-mail, you write Johnnie J-O-H-N-N-I-E, you know that's the incorrect spelling Now you know it is the incorrect spelling, right?

A Yes, sir, I do

Q He is not your personal friend at this point, right?

A He is a friend, Mr Dry

Q Let me ask you about that: Is it your testimony that for your personal friends, you just don't know how to spell their name? Is that typical, that you don't know how to spell the name of your personal friends?

A It is not typical

Q Just with Mr Williams; it was difficult

A I misspelled his name I did it repeatedly And I apparently did it in my BlackBerry and my iPhone address book, too, yes, sir

Q All right Well, sir, it is not an auto correct problem, right? It is not that it is in your address book --

MR BROWNLEE: I object

THE COURT: Overruled.

THE WITNESS: I misspelled his name, yes, sir

BY MR. DRY:

Q But are you saying that the reason was because it was an auto correct thing because it was in the BlackBerry wrong?

A No

Q Then why did you mention the BlackBerry?

A Because it was misspelled in other e-mails that was auto addressed, it was misspelled because it was entered wrong by either me or my staff I misspelled his name, yes, sir

Q You did it in handwriting all over the notes

A I'm sure I did I've misspelled other people's names So it's not like me, but I've done it before

Q He is a personal friend?

A He is a friend, yes, sir

Q All right In this e-mail, you write, "Know you have been slammed " That's in reference to the fact that your testimony is you hadn't personally spoken to Mr. Williams since February 3rd about this, right?

A Yes, sir, I think that's right

Q Okay. And at this point, you know that MoBo needs cash; is that accurate? To pay the bills?

A My sister and I had elected to do a loan that year, yes, that's correct

Q Okay In fact, Mr Uncapher had told you "We need to get that check in so that we can pay the bills" in that e-mail, right?

A He did, yes

Q Okay Now, the check hadn't come as of this date, right?

A That's correct We didn't have any agreement yet, yes That's correct

Q And then the reference to the certificates, that's in reference to that February 3rd call that we went through, right?

A Yes If the hypothetical proposal would happen there would be certificates and documents that I would have anticipated getting from his lawyer That's correct

Q Now, when you offered to contact his lawyer, you understand at this point that in order to actually do the share transaction in which he transfers shares to you or your wife or to MoBo or anybody, a lawyer is going to have to be involved to like literally transfer the shares into a different name, right? You understood that?

A Yes I had done it with my dad's estate, yes

Q Okay And again, calling the lawyer to actually do that portion of the transaction, nothing inherently illegal about that, right?

A No, sir

Q Okay And as long as neither you nor Mr Williams told anything about what Mr Williams wanted or expected, nobody is the wiser

A I don't agree with the premise of your question at all Do you want to rephrase it?

Q No, I think what we are going to do is go to Government Exhibit 320 Now, that's sent on February 16th at 11:56, that other one

A Yes

Q Okay

A This is one of five e-mails I sent in that half an hour, yes

Q Right Now, six minutes after you send the e-mail to Mr Williams about the stock certificates, you e-mail

Jasen Eige and say, "Please see me about Anatabloc issues at VCU and UVA " Correct?

A Yes

Q You don't have anything about, "Hey, just want them to return his calls" in this e-mail You are just saying, "Please see me about these "

A Yes

Q And at this point, you know that Mr Williams wants your assistance in getting UVA and VCU to agree to help with the studies, right?

A No

Q All right So despite the June 16th, 2011 letter in which he lays out his recommendation, you don't understand that he is trying to get these studies and wants your help?

A That's not what the June 16th letter said.

Q He is not -- he is not suggesting studies of Anatabloc at UVA and VCU in the June 16th, 2011, in his letter?

A He sent in a proposal out of the blue And I've gotten hundreds of those And I forwarded it on, like I would for any other person during my four years as Governor, to my Secretary of Health Yes He never asked me for help with VCU and UVA.

Q You just said hundreds of proposals

A Letters, requests for help, yes Maybe thousands

Q I believe you testified yesterday that you had posed with products hundreds of times, right? Wasn't that your testimony on cross?

A I've been in front of signs and with products in my hand hundreds and hundreds of times as Governor Yes, sir

Q Okay, sir How many other times had anybody affiliated with those products or proposals given your wife a $50,000 check? How many other times?

A None

Q How many other of those products or proposals had given you a $50,000 loan for your company, MoBo?

A To MoBo None

Q How about $20,000 -- any of those give a $20,000 loan to MoBo?

A No

Q How many of those had let you play golf at their golf club and charge up thousands of dollars of golf expenses?

A None

Q So you didn't see Mr Williams as unique?

A Mr Dry, if you are suggesting that I got a $50,000 loan for MoBo in order to have Mr Williams' calls returned, you are completely off base

Q No, sir, that's not what I am suggesting So let's stop and stick with the documents Okay?

A Yes, sir

Q Okay Now, in this, Mr Eige responds back And responds back in four minutes He says, "Will do. We need to be careful with this issue."

A Yes

Q And you have mentioned a lot that you are e-mailing Mr. Eige, your attorney, right? You have mentioned that multiple times

A Yes In fact, I had e-mailed him about ten minutes before on Senate budget and Amazon, yes

Q But Mr Eige also wore the hat as the policy director?

A He did both. Yes

Q And he had also been at the Mansion event on August 30th and saw the discussion about the research?

A Yes

Q He had also sat in and watched UVA and VCU in that same meeting, the representatives there? He was present with those UVA and VCU doctors, right?

A At the Mansion lunch, yes He was there Yes

Q But it is your testimony that really, you are sending this to Mr Eige in his role as your lawyer

A And because he was there at the event Yes

Q So you want his advice in part for legal reasons,

right?

A Yes

Q His legal advice Okay But Mr McDonnell, you are trained as an attorney, right?

A Yes

Q And in fact, you were in private practice?

A Yes

Q And you have had experience representing clients?

A Yes

Q And you know that the legal advice that you give your clients depends on the information they give to you in your role as a lawyer, right?

A Yes

Q And in fact, it is impossible to advise a client if he fails to give you all the relevant information

A It is always helpful, yes

Q Now, in this e-mail, you are just asking Mr Eige to come see you about what Mr Williams wanted, right?

A Yes

Q But there is nothing in this e-mail --

A No. Excuse me, no

Q There is nothing in this e-mail from you to Mr Eige disclosing the fact that you are negotiating a financial transaction with Mr Williams

A No, sir I don't talk about my personal finances with my subordinates No, sir

Q And in fact, you heard Mr Eige say that he knew nothing about that

A Yes, sir I know that

Q And Mr. Eige didn't know anything about the $15,000 payment for the wedding reception.

A That's right Because we don't make decisions based on money No, sir

Q Sir, you didn't think that it might be relevant to Mr Eige, your legal counsel, to explain to him that you are asking him for advice about basically Star and UVA and VCU and that it might not be relevant to tell him, "Hey, I'm also negotiating a loan with Mr Williams" as this is going on?

A No, sir To ask him to get a phone call returned, which I've done thousands of times? It is basic constituent service No, sir

Q Okay But despite the fact that he doesn't know anything about the financial transactions or the gifts or any of that, what does he write in response?

A "Will do We need to be careful with this issue "

Q And I believe you testified on direct that you don't remember really discussing this with Mr Eige Can you keep that up, please?

A I'm fairly sure I saw him the next morning, because the e-mail I sent ten minutes before that said, "Please see me about the Senate budget and Amazon " I was going out of town for, I think, seven out of the next ten days So I'm almost certain that he would have come to see me But as he testified, I don't remember actually talking to him or what the substance of my conversation was the next day, but we probably talked

Q Well, and in fact, you testified on direct that the "We need to be careful with this issue," that you just didn't understand what he was talking about

A I figured he would tell me when we talked That's why I went to talk to him. That's why I would have talked to him.

Q Well, you didn't go to talk to him. You just testified that you thought that he could have come to talk to you.

A My testimony is, I do not have a specific recollection the next day of talking to him about this issue I believe we did have a conversation that next day, because I'm pretty certain he would have come to see me about the pressing issues of the Senate budget because we were having a meltdown, and also the Amazon economic development deal and the bill that we had before the General Assembly He knew those were pressing So I probably talked to him.

Q Sir, so when one of your senior advisors tells you, in the midst of negotiating a loan with Mr Williams, "We need to be careful about this issue," it didn't strike your mind, "My senior advisor is concerned, I need to figure out what his concerns are and I need to make sure that I understand them and that we do the right thing"?

A Sure And that's exactly what I testified on direct, yes

Q You testified on direct that you would have, but you have no recollection of it

A That's right. If I talked to him I told him what I would have said, yes

Q How many other e-mails like this did your senior advisors give you related to you getting -- where they are expressing concern and it related to somebody that you had personal financial transactions with?

A I don't know about e-mails, but there were several conversations I would have had with Martin Kent about donors and how we need to be careful about how we handle certain transactions

Q Did you consider Mr Williams a donor at this point?

A Yes And a friend.

Q When you say donor, are you talking about a political campaign donor?

A And gift giver We looked at him essentially the same But donors, all of those, we wanted to make sure that we handled people fairly They couldn't get additional consideration or no consideration. They were treated fairly

Q Sir, so I think I understand what you are saying is that in your mind, a political donor raises the same issues as someone that gives you personal loans or money for your daughter's wedding or anything

A Yes

Q There is nc distinction.

A There is a distinction, but it raises the same type of visibility, yes

Q Raises the same type of visibility?

A And concerns, yes

Q Well, hold on, sir The campaign donations, those are tracked pretty well, both ways, right? People submit the forms, the flights, those are -- there is reporting requirements for money in and money out, all of that, right?

A Yes

Q But on the SOEI, ultimately, that's really your internal process in the Governor's Mansion, right?

A The processes are the same Staff does it, I approve them.

Q Right But let me ask you this: The staff doesn't know who is paying for golf when you are out at Kinloch unless you tell them, right?

A No

Q And the staff doesn't know who picked up the dinner tab for when you go out to dinner with somebody unless you tell them.

A It is on the calendar

Q Hold on, sir. Does it typically say on the calendar that so-and-so is going to be paying for it?

A There may be information on there sometimes, yes

Q Okay Now, just to be clear, Mr Eige testified about a conversation with Mr Kilgore You didn't know anything about that?

A No, I did not.

Q Okay And you didn't instruct him to call Mr Kilgore?

A I don't think so

Q Let's go forward six days Let's go to the opening, the February 23rd, 2012 call That's what I would like to discuss next Is that all right, sir?

A Okay

Q Okay So 323, this is a text from your wife on February 22nd, 2012 to you, this has been admitted. Do you see that, sir?

A I do

Q In this, your wife texts you on February 22nd, 2012, and she says that "Jonnie texted me to say he needs our broker's name and phone number to transfer shares this week." Do you see that?

A I see it

Q She is not saying "my broker "

A She says "our broker's "

Q At that point she is talking about Mr Piscitelli, right?

A I would think so, yes

Q Let's go to Government Exhibit 325 This has been admitted. This is the calendar invite for the call with Mr Piscitelli on February 23rd at 3:30, correct?

A Yes

Q And the participants are just you, your wife, and Mr Piscitelli, right?

A Yes

Q Now, you heard Mr Piscitelli testify, right?

A Yes

Q And he testified that no one else was on this call but everybody could hear each other, right?

A Yes

Q And he testified that you personally thanked him for helping out your wife?

A The previous year, yes

Q I don't think he testified that particularly I think he just testified "Thank you for helping Maureen " Or is it your testimony that you actually told him, "Thank you for helping Maureen the prior year"?

A No, that's my testimony

Q That's your testimony. And Mr. Piscitelli testified that you, you told him that Star Scientific was holding stock for you.

A I heard him say that

Q Well, did you tell him that Star Scientific was holding stock for you?

A No, sir I did not I think that was a miscommunication. I did not.

MR. ASBILL: Objection. Asked and answered.

THE COURT: Overruled.

MR. DRY: No, it is not I didn't go over the Piscitelli call

BY MR. DRY:

Q So your testimony is that you never told Mr Piscitelli that Star Scientific was holding stock for you.

A No, sir

Q Now, you did testify that you asked him whether it would be possible to transfer the shares and use them for a margin loan, right?

A Yes That was the sole purpose of the call, was to ask him that, because I needed cash. We elected to have cash for MoBo We didn't need stock. So yes, sir, that was the sole purpose of my call

Q When you say "We needed cash," you mean --

A We, my sister and I, and we didn't -- it wasn't need We had -- I had $65,000 in the bank. We elected that year to choose a loan, and that's why the call was made

Q Sir, Mr Piscitelli testified that during that call, you instructed him to open another Davenport account to accept the shares, right?

A I heard him say that

Q Okay Is it your testimony that you did not tell him to open another Davenport account to have the shares transferred in?

A No, because there was no agreement yet He did not even tell me if a margin loan could be done

Mr Piscitelli did talk to us about some options, if the loan were to be approved. But I did not instruct him at that time.

Q You heard Mr Piscitelli testify in fact that you instructed him to open the account in your wife's name only Do you remember him testifying to that?

A I don't remember -- he may have Yes If he said that, then he said that Yes

Q And in fact, he testified that you instructed him it should be in your wife's name only and it should be a segregated account Correct?

A I heard him say that Yes.

Q Is it your testimony that you never told him to open the account in your wife's name only and for it to be a segregated account?

A No, sir I think it had to be a segregated account We did speak about that because the purpose of this loan would be for MoBo, not for my wife, not for me So we did discuss that, if, if Davenport was able to do a margin loan. I did not have an answer on the phone at that time So we were talking in the future about what would happen. That was my understanding

Q Sir, this call was on February 23rd, 2009, right?

A Right

Q I mean 2012

A 2012, yes

Q February 23rd, 2012, right?

A Yes

Q At this point, you knew that your wife had sold the shares?

A From the previous year, yes

Q And your testimony was that you didn't know that she had repurchased them at this point

A Yes Correct

Q So if that's the case, why would you need a new Davenport account in your wife's name?

A I didn't know whether she still had an account or not Mr Piscitelli was telling us that if a margin loan could be approved, that we would have a different account for MoBo.

Q Well, Mr Piscitelli didn't testify about any of that He testified that it was your idea to open up an account just in Ms McDonnell's name. Do you remember that testimony?

A I heard him say that, yes

Q And he testified that you instructed him that the account should be segregated.

A I heard him say that, yes

Q And at this point, you testified that you did not know that your wife still held Star stock.

A Yes, sir That's correct

Q Well, sir, if you didn't know that she was holding Star stock, why did you just testify about how important it was that it be a segregated account because it was for MoBo?

A You have asked me a couple questions in there

Q Actually, let's move on.

A Would you like me to answer them?

Q Sir, I think -- let's do it this way Yes Can we get a concise, short answer?

A Okay Could you restate the question, please?

Q Okay So, this is a string that we set up But as of this meeting on February 23rd of 2012

A Phone call

Q Phone call Your testimony was that you did not know your wife still held Star stock.

A Yes.

Q And in fact, Mr Piscitelli testified that it was -- you instructed him to open up a new account in your wife's name only

A Yes, I heard him say that That was one of the options we discussed, yes

Q You instructed him to make it a segregated account

A Yes

Q And then you testified, well, that was the whole point: It needed to be segregated because this was for MoBo

A Yes

Q Okay But the account is going to be in just your wife's name only

A I don't remember that discussion with Mr Piscitelli He discussed options with us But there was no transfer at the time We had no approval He was giving us options if he could do a margin loan. Yes

Q When you just said, "I don't remember that conversation," are you saying that Mr Piscitelli's testimony could have happened, you just don't remember it?

A He discussed several options with us that if this loan, margin loan were to be approved, how it would be set up, yes.

Q Okay So just so I'm clear, are you saying that Mr Piscitelli's testimony that you instructed him to open up the account in just your wife's name, that that didn't happen?

A I don't remember telling him that, sir, at the time No

Q Okay That's different

A Mr Piscitelli testified to that I have no reason to doubt him. I just don't remember having any directive because it was hypothetical at that point There was no agreement yet on a stock transfer

Q Now, during that call, you or your wife gave Mr Piscitelli Mr Williams' phone number; do you remember that?

A I don't

Q Okay

///

///

Q Did you know that Mr Piscitelli actually did open another Davenport account in your wife's name only?

A I learned that after the investigation started and that had happened Yes

Q But before that, you didn't have any idea?

A No, sir

Q And to be clear, Mr Piscitelli is a long-time family friend, right?

A He is a very good and honorable man, and he's a long-time friend Yes

Q And, in fact, he's the godfather of one of your children?

A Yes, sir That's why I used him as a broker Yes

Q It's fair to say that he doesn't want anything -- he doesn't want any -- well, I'm going to step back from that one

Let's go to the February 29th private meeting Now, you had a meeting with Mr Williams on February 29th, 2012, correct?

A Yes, sir, I did

MR DRY: Let's go to Government's Exhibit 345, please

BY MR DRY:

Q And this is the calendar invite for that meeting?

A Yes

Q The meeting was at the PHB That's Patrick Henry Building?

A Yes

Q And it was going to be in your conference room?

A Yes

Q The meeting was scheduled to last between -- from 1:30 to 1:55?

A Yes

Q Okay And the topic listed was "Healthcare Group Leaders Reception Tonight." But you don't know how that came about, right?

A No, sir I don't do calendar entries It would have been -- yes, sir

Q Fair enough But the actual topic, you knew going into this call, or the meeting, that the actual topic was going to be this financial transaction, in some form, involving you and Mr Williams?

A Yes

Q Okay

MR DRY: Let's go to -- it's been admitted several times, but it's a new number Government's Exhibit 823

BY MR DRY:

Q Now, this is the one page of notes that you've testified about before from that meeting, correct, sir?

A Yes

MR DRY I'd like it admit Government's Exhibit 823, please

THE COURT: It will be admitted

BY MR. DRY:

Q Now, zooming in -- or concentrating, I don't think we need to zoom in But that middle section, that's from Mr Williams?

A Yes

Q That's his handwriting?

A Yes

Q And, in fact, you handed him the pad, and he's explaining the transaction to you by writing this, right?

A Yes

Q Now, again, he's talking -- when it says "50,000 SHS," you understood that to be shares, right?

A I think so Yes, sir

Q Okay And the "M," that's -- that's discussing transferring the shares to your wife Maureen, "50,000 SHS M," or did you not understand that?

A I don't know

Q Okay Let's go down to the bottom third This is your handwriting?

A Yes

Q And it says "Deal 2/29 of 2012," correct?

A Yes

Q And the notes say that March 1, 2012, that it was going to be the loan of 50K shares to Maureen Value is $2 10 Do you see that?

A Yes

Q But, first of all, you testified on direct that really you were talking about $50,000 worth of shares But it's clear here from the notes that Mr Williams is talking about 50,000 actual shares, right?

A I don't -- I don't know I was thinking $50,000 because that's what I needed for MoBo He had -- yes

Q Again, sir, the shares are going to be to your wife Maureen wife, right?

A That's what my note says here Yes

Q Well, if -- you're the one that's personally negotiating the loan, right?

A Yes

Q And the account that's been set up by this time, that's a segregated account that's only in your wife's name?

A I didn't know that at the time that he had done that Yes

Q Well, who had done that, Mr Piscitelli --

A Yes

Q -- or your wife?

A Either

Q Okay Now, what it doesn't say here is that the shares are going to be a loan to MoBo, right?

A No

Q Now, going to the repayment section, here it says there's two options, "Return 50K shares or repay purchase at 2 20 either within 4 years " Do you see that?

A Yes

Q Now --

A That's what he told me

Q So in that first option, return 50,000 shares, basically you understand at that time Mr Williams is saying, "Look At any time in four years, just give me my shares back," right?

A That's what he proposed Yes

Q And you understood that at the time?

A Yes

Q So under that option, you could use Mr Williams' shares as collateral and not pay him any interest or anything else even after four years?

A I'm not sure This was the proposal that he had made on this date that had not been yet written up This is the best notes that I took from my meeting with him for 20 minutes

Q All right Well, let's go the "repay" -- number 2, "repay purchase at 2 20 either within 4 years "

So he's telling you that you could just give him the shares back or pay him cash of 2 20 for 50,000 shares, right?

A That's what he said Yes, sir

Q And that would be about $110,000, right, at 2 20?

A That's the math Yes

Q All right So regardless if the stock went up to $10, you're protected because you only have to pay him 2 20, right?

A "Protected"?

Q Yeah In other words, if the shares go up to -- you borrow 50,000 shares, the shares go up to $10, you're not going to have to pay Mr Williams the $10 per share four years from now You're just going to have to pay him the 2 20, right? That's what he's telling you here?

A That's the proposal that he made that I wrote down Yes, sir

Q Okay Well, let's go -- do you know what the share price was at this point?

A No

MR DRY: Well, let's go to Government's Exhibit 40, Page 7, please And we need -- it should be closing on 2/29, February 29th of 2012 It's okay

BY MR DRY:

Q Do you see where that says that the share price closing on that date was $3 75?

A Yes, I do

Q And multiplying that by 50,000, roughly comes up with 187,000 Does that sound about right?

A Yes, sir That's the math

Q So, in essence, Mr Williams is offering to give you $187,000 worth of stock, and all you're going to have to pay him back is 110,000, right?

A I don't know, sir This was a proposal that never happened I didn't do the math I hadn't talked to the lawyers I hadn't got Mr Piscitelli's approval It was discussions

Q Well, under either option --

MR DRY: I'm sorry Can we go back to the notes It's 823

BY MR DRY:

Q Under either option, it says, "Within 4 years," right, sir?

A Yes

Q And that's going to be better than the Dr Davis loan that you've been making payments on, right?

A Well, Dr Davis was five years

Q Right, sir But you're making monthly payments to Dr Davis --

A Sure

Q -- at 7 percent, right?

A Yes

Q So this sounds like a better proposal?

A Under that proposal, it would have depended on the stock price, but --

Q When it says -- that would have been after you got out of office, right, four years?

A Yes, sir

Q And when it says, "Transfer to Piscitelli, J Piscitelli 3/1," he's telling you that he was going to transfer the shares as of March 1st?

A That's what he said

Q And you testified that that didn't happen?

A I didn't have any approval from Mr Piscitelli that he was able to do a margin loan If there was no margin loan, there was no purpose of even pursuing this Because I was asking him for cash for MoBo That's all I really needed

Q I believe you testified that all of these -- let me get this right This all happened in the meeting, and the notes all occurred in that meeting on this page, right?

A I believe so

Q All right

MR DRY: Well, let's go to Government --

A I mean, I took these for myself

MR DRY: -- Exhibit 2, Page 2, please

BY MR DRY:

Q This is the color version of that Well, that 2012, that's in blue, right, sir?

A Yes

Q Which is different than the black ink that was on the other page, right?

A Yes.

Q And you just wrote that in -- when did you write that in?

A I don't know But it is -- I just wanted to distinguish my 2012 from my 2011 notes

Q Okay So you don't know when you wrote that?

A No, sir

Q But you're sure that on the MoBo one, the one we looked at previously, that you did that that day while you were putting them in your file?

A I'm pretty sure Because I had it -- there were a choice that was offered to me I believe that's correct Yes, sir

Q Okay Now, less than five hours after this conversation with Mr Williams, you see him at the Healthcare Leaders Reception?

A Yes

MR DRY: And let's go to Government's Exhibit 329, please

BY MR DRY:

Q This is the briefing form --

A Yes

Q -- for that?

A It is

Q And it says, "Leaders in Virginia healthcare industry"?

A Yes.

Q And then, "Personal doctors of McDonnells" and "doctors, friends," right"?

A Yes

Q Now, if you look -- you received this the night before the event?

A I believe so That's when I typically received the information about events and the invite list Yes

Q So going into the meeting with Mr Williams, you probably reviewed this before the meeting, right? Typically, you would?

A Most of the time I take a quick look at it Yes

Q Okay And on this briefing form --

MR DRY: If we go to the second page, I believe

BY MR DRY:

Q This shows David Dean from Star Scientific?

A It does

Q And then it's got Jonnie Williams, Jr and Sr

MR. DRY: If we go to the next page, I believe

A Yes. I see -- well --

MR DRY: Well, I think we clicked over it. I think that might have been my fault Sorry, Ms. Taylor. Can we get to the Jonnie Williams. One more There we go

BY MR DRY:

Q Do you see that, "Jonnie Williams, Jr , Jonnie Williams, Sr "?

A Yes

Q And then Dr Ladenson is on this as well

MR DRY: Can we go up, please?

BY MR DRY:

Q Paul Ladenson, right there?

A Yes

Q Doesn't have an affiliation for him?

A No

Q But you had heard Dr Ladenson speak at the Anatabloc -- or, I'm sorry, at the Mansion event on August 30th of 2011? You heard him say that?

A Yes, I have

Q So you knew he was affiliated in some way with the research of Anatabloc?

A I think -- yes From Hopkins Yes

MR DRY: Now, let's go to Government's Exhibit 334, please

BY MR DRY:

Q You saw Mr Williams at the Healthcare Leaders event?

A Yes

MR DRY: Go to 336

BY MR DRY:

Q And this is you and your wife at the event, correct?

A Yes.

MR DRY: And then 338

BY MR DRY:

Q Now, you heard Mr Williams' testimony that he talked to your wife and asked her to have you recognize Dr Ladenson Do you remember that testimony?

A I heard that Yes

Q But it sounded like from your direct that you just recognized Dr Ladenson because he was an out-of-towner Is that accurate?

A I don't know I introduced a lot of people, as I would at any event Dr Ladenson is from a prominent university I don't remember my wife telling me that So she may have I just don't know But I introduced a number of people, as I would at any of the 300 events that we did

Q Okay. So just so I'm clear, though, you're not denying that your wife may have told you?

A She might have, sir

Q You just don't have a recollection?

A Yes I don't remember. I probably would have done it anyway Dr Ladenson is from a distinguished hospital out of town Sure

MR DRY: You can pull that down, please

BY MR DRY:

Q You heard Dr Hazel testify that he didn't think that Dr Ladenson was a healthcare leader, right?

A I think he said that

Q And you heard Dr Hazel testify that he certainly didn't think Jonnie Williams was a healthcare leader, right?

A Yes, sir I heard him say that

Q In fact, he didn't have much patience for Roskamp either? And none of those people are going to be healthcare leaders?

A That's what he said

Q But despite the fact that your Secretary of Health doesn't think this guy is -- Dr Ladenson is a healthcare leader, you singled him out?

A He didn't talk to me about that before Listen, I was always trying to give courtesies to people if they were out of town He was a person I had met before from a distinguished university in a neighboring state of Maryland who has an office in Virginia I do many introductions like that.

Q Sir, you've been a member of the Republican Governors Association ever since you were -- when?

A When I started in 2010 I became a member.

Q And you've served as the Vice Chairman?

A Yes In '11

Q Served as Chairman?

A Yes In mid-'11, I became Chairman

Q And I believe you testified that the RGA raises lots of money?

A Yes, sir

Q And, in fact, you were involved extensively in raising money for the RGA, right?

A I was I spent a lot of time traveling around the country asking for help Yes

Q And, in fact, I believe you testified that you personally were involved in raising $20 million for the RGA?

A During the time I was Chairman, I think I personally raised about 20, and the organization raised about 55 that one year It was the second -- the year I was Chairma fully in '12 Yes, sir

Q And you testified that you personally asked RGA donors for million-dollar donations?

A A few

Q Okay And you would attend RGA events for donors?

A Yes

MR DRY: Can we bring up Government's Exhibit 309, please

BY MR DRY:

Q Sir, this is an e-mail from Kristen Kaplan to your wife, forwarding an e-mail from Mr Zubowsky to Kristen Kaplan I want to make it clear, you're not on this e-mail, right?

A No

Q Okay But I do want -- effectively, this is a list of people that RGA -- you've reviewed this? It's been at trial?

A Yes I saw it in some of the documents I think you may have disclosed to my legal team Yes

Q Fair to say, this is a list of people the RGA wants to be invited to the Healthcare Leaders Reception?

A Yes

Q Is that fair to say?

A That's what it says Yes

Q Okay Now, I want to talk about these membership levels What's -- it says "Board," and then it goes all the way -- it goes "Board, Cabinet, Council, Roundtable and Statesmen " Are those different -- what are those?

A They're different fundraising levels or donation levels that people give to the RGA

Q Now, is Board the lowest?

A I don't remember

Q Is Statesmen the highest?

A I honestly don't remember I should I don't remember, Mr Dry

Q That's okay Do you remember what the breakdown is for how much somebody has to give to be a Board or a Statesmen or anything like that?

A I don't

Q Any additional information?

A But they are all significant donors to the Republican Governors Association

Q Well, let's go to -- so this is an e-mail where RGA wants to send people to the Healthcare Leaders event, right?

A Yes, sir I didn't know about it at the time But that's what it says, yes

MR DRY: Let's go to Government's 814 This is not admitted I think I might have the wrong one 815 I'm sorry Government's Exhibit 815 Thank you,

Ms Taylor

BY MR DRY:

Q Sir, do you recognize this as a list of the RGA's top donors for 2012?

A If you're representing to me, Mr Dry, that that's -- you've gotten it off a website and that's what it is. Yes, sir

MR DRY: Government --

A I recognize some of the names

MR DRY: Government moves Government Exhibit 814 into evidence 815 I apologize

BY MR DRY:

Q How much --

MR DRY: Can we blow up the actual chart?

BY MR DRY:

Q So WellMed, they donate $1 25 million to RGA, right? Do you see that?

A Yes, sir

Q And you see Pfizer 930,000?

A Yes

Q And you see AstraZeneca, 650,000?

A Yes

Q And UnitedHealth Group, 800,000?

A Yes

Q All right

MR DRY: So let's go back to Government's Exhibit 309

BY MR DRY:

Q Now, keep in mind those companies that we just went over. Do you see those companies on this list that the RGA wants to invite, WellMed? Do you see that? It might be on the next page Do you see that towards the bottom?

A Yes

Q And do you see Pfizer? A couple -- four above?

A I do.

Q And do you see UnitedHealth Group? Right above WellMed

A Yes

Q And do you see AstraZeneca?

A Yes

Q But despite the fact that all of those are some of the RGA's biggest donors, the RGA didn't get to invite anybody to the Healthcare Group Leaders Reception, right?

A I had no idea at the time because I -- this wasn't my request I didn't see these documents until prior to trial, so I don't know

MR DRY: Well, let's take a look at Government's Exhibit 815, please -- 6 Not admitted

BY MR DRY:

Q This is Star Scientific's donations to the RGA for

2012 Do you see that, sir?

A I mean, if you're representing this is a document that came off the VPAP, and these are the actual donations, then yes, sir, I accept the representation.

Q That's 2011 and 2012

MR DRY: I'd like to move Government's Exhibit 816 into evidence.

THE COURT: It will be admitted

MR DRY: Can we blow up that?

BY MR DRY:

Q How much did Star Scientific give to the RGA?

A The total says $23,048

Q And to be clear, a lot of these, these are in-kind flights that you took, right? I mean, some of the --

A I don't -- I don't know who took them I may have taken some, sir But they look like, because of the odd numbers, they are probably the value of a flight Yes

Q Okay So none of the other RGA donors got an invite, but Mr Williams and Star Scientific representatives did, right?

A I -- I don't -- I know that now Yes, sir

Q Let's go to the La Grotta dinner After the Healthcare Leaders --

THE COURT: Let me stop you there We'll stop now for morning break Fifteen minutes

(The jury left the courtroom)

(Recess taken from 11:20 a m until 11:42 a m)

(The jury entered the courtroom)

THE COURT: All right Mr Dry

MR DRY: Thank you, Your Honor

BY MR DRY:

Q Mr McDonnell, I think we left off at the La Grotta That was after the Healthcare Leaders Reception, right?

A Yes.

Q And I believe that you testified that you didn't really know how much the bill was Is that accurate?

A Yes

Q Did you know that you and your wife's portion would be more than -- or your portion would personally be more than $50, or did you not realize that?

A I did not

Q Okay But in any event, at no point in that meal did you offer to pay for yourself, right?

A No

Q And you didn't offer to pay for your wife?

A No

Q Now, you heard Dr Crantz -- Dr Crantz was at the dinner?

A Yes I believe so Yes

Q And you remember it being you, your wife, Mr Williams, Dr Crantz, and Dr Ladenson? Do you remember all of those five people being at the dinner?

A I do I thought there were a few others, but I do remember those five Yes

Q Okay And you heard Dr Crantz testify about how Anatabloc was part of the conversation at the dinner, right?

A Yes

Q And then after the dinner, you invited Dr Crantz and Dr Ladenson to actually stay in the Executive Mansion that night, right?

A I'm not sure if it was my wife or I But, yes, we did And they did

Q Okay Let's go -- well, let me ask you this Do you consider Mr Williams a personal friend at the time that you're eating dinner at La Grotta?

A Yes, sir He's a friend Yes

Q Let's go -- your next conversation with Mr Williams that you testified about was March 12th of 2012; is that right?

A Yes I think that's right Yes

Q Okay

MR DRY: Let's show -- this is not admitted It's the same notes Just a different exhibit Government's Exhibit 824

BY MR DRY:

Q Do you recall testifying about these notes on direct, sir?

A Yes

MR DRY: Government moves Government's Exhibit 824 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q And I believe your testimony was that these are your notes from the March 12, 2012, call with Mr Williams, right?

A Yes

Q And it's not a -- it's a phone call It's not an in-person meeting

A Yes

Q Okay And, in fact, these handwritten notes are on the back of your March 12, 2012, schedule, right?

A They were Yes

Q So that helped you figure out which date it was, right?

A Yes

Q Okay Now, we've seen evidence that your sister sends you a text message on March 11th at 6:11 p m that she had received a $50,000 check Do you remember that evidence? Or we can pull it up

MR DRY: Let's pull up --

A It just said a check

BY MR DRY:

Q Yes You received a $50,000 check?

A Right It just said a check

Q Okay I'm sorry

A I don't think it had an amount.

Q You're absolutely right But I believe you testified on direct that that was news to you that there was any check because the last time you talked to him you were doing negotiations Do you remember that?

A Yes

Q Okay And both you and your sister testified that you didn't really talk about the check on that 26-minute phone call you had that night after the text message?

A Yes, sir I believe that's correct

Q That it was more social, but you're not really discussing this check that -- that's come?

A I believe that she was sick, and she had just gotten back from Jamaica I believe that's correct

Q Now, you testified that you had a call the next day, though -- well, first of all, did you understand that the check was from Mr Williams?

A I don't know

Q Okay

A It didn't say

MR DRY: Well, let's bring up Government's Exhibit 594, please Page 2, please

BY MR DRY:

Q So on the top at 6:11 p m , this is a text message from your sister to you?

A Yes.

Q And there she says, "Mike called Mo earlier and got disconnected " That's your wife Maureen, right, when it says "Mo"?

A Yes

Q "She said we needed to talk about check when you woke up Please call now if you'd like "

I just want to make sure I understand So at this point, you're not -- first of all, do you know it's a $50,000 check?

A No

Q And your testimony is that you didn't know it was from Mr Williams at this point?

A No I hadn't -- I was still negotiating terms, I believed

Q And your testimony is that this -- these conversations you have with your sister from 6:15, 6:55, 6:58, that those are not discussing the check?

A I don't think so

Q Well, how did you know who to call, then, to get the terms?

A I don't know if -- again, my wife may have told me I don't know if my sister told me I just don't remember a lot of discussion at that call about the check. I -- I learned at some point that evening, I'm sure, that it was Mr Williams

Q Okay But you don't remember whether that's from your sister or your wife?

A I don't But I must have, because I corresponded with Mr Williams at that point

Q All right But you did testify you had a call the next day, March 12th, with Mr Williams so that you could -- I want to get -- make sure I get this right -- say, "Listen, would you be willing to just do the $50,000 cash loan?"

That was the purpose of the conversation, right?

A Yes

Q Because he had been talking about the stock deal There's a check And you wanted to basically just ask him, "Hey, can we just" -- "just make it a $50,000 cash loan"?

A To MoBo Yes

Q Okay So going into this call with Mr Williams, there was no agreement regarding any terms of what is attached to the check, right?

A Not with me

Q Right You don't know whether there's a different interest rate, a balloon payment? You don't know anything about what's going on with what he expects for the 50,000, right, as far as terms, payment schedules, things like that?

A Yes

Q Now, do you remember when your phone call was with Mr. Williams?

A Sometime that Sunday night We just -- the General Assembly just ended on Saturday That's why I think I was sleeping late I was exhausted But it was sometime, I believe, that -- well, no I guess the 12th, or whatever day that was Maybe that was Monday General Assembly ended Saturday So it must have been Monday night

MR DRY: Well, let's bring up Government's Exhibit 595

BY MR DRY:

Q And do you see at the bottom it says there was two phone calls from -- one from you to Mr Williams, and then one from Mr Williams to you?

A Yes

Q Is that consistent with your recollection that that phone call between you and Mr Williams occurred at 9:52

at night?

A Yes

Q Okay. And the purpose of the call, we're going to figure out, what the terms are That was part of it, right?

A Yes

MR DRY: Can we go to Government's Exhibit 795. That's not admitted

BY MR DRY:

Q This is an e-mail chain between your brother-in-law and you on March 12th of 2012, correct?

A Yes

MR DRY: I'd like to move Government's Exhibit 795 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q Now, turning to the e-mail where, at 3:02 p m , Michael Uncapher writes to you, and tell me if I get this wrong "I deposited the check today for MoBo as well, so I can start paying the March bills " Is that accurate?

A Yes That's -- let's see Yes That's what it says Yes

Q And then you respond back seven minutes later "Pay March and hold on any other spending till I talk to you, please " You wrote that to him?

A Yes

Q So at the time that you're on the phone with Mr Williams, you already knew that the check had been deposited and you had authorized bills to be paid from his money, right?

A Yes

Q And you didn't know what the terms were, right?

A Right

Q Let's go back to -- let's go back to your notes from that call

MR DRY: Let's go to Government's Exhibit 824

BY MR DRY:

Q Okay Now, on this first point, Mr Williams writes, "Sarbox can't loan shares at this time," right?

A Yes -- well, no Mr Williams didn't write that I wrote that

Q I'm sorry I apologize Mr Williams said that You wrote it, right?

A Yes, sir

Q And Sarbox, you understood, was Sarbanes-Oxley?

A Yes

Q And you understood at that time that Sarbanes-Oxley provided regulations for what CEOs had to disclose and what they could do with shares at various times?

A No, sir, I didn't

Q You didn't understand anything --

A I understood the gist of Sarbox, but not the details I'm just writing down what he told me

Q Right I guess my question is the gist of Sarbanes-Oxley that you understood at the time was that it limited what executives could do with stock at the various points, and it made them have disclosure requirements; is that accurate?

A No

Q You didn't understand even that?

A No, I did not

Q Well, what did you understand about Sarbanes-Oxley at this point, sir?

A For these purposes, that I understood Sarbanes-Oxley prevented Mr Williams from loaning shares at this time even though he told me before that he could That's what I understood

Q Okay Now, again, Johnnie is spelled with an H And then number 2 you spell with an H

I believe you testified about this "50K to rent to MoBo," that this was Mr Williams' idea?

A Yes

Q Okay And at this point, you don't understand that he's suggesting that the 50,000 be used as rent in order to hide the fact that he's actually giving you loans?

A Absolutely not

Q Okay

A No

Q And he had expressed to you on numerous occasions how much he wanted to rent your beach properties, right?

A No

Q Had he ever told you that he wanted to rent your beach properties?

A No.

Q Had he ever stayed at your beach properties?

A No

Q Had he even seen your beach properties?

A I don't think so

Q It didn't strike you as odd that he's mentioning $50,000 to rent your beach properties?

A That was one of his proposals, that he would use it for members of his company Yes, sir That's what he told me

Q That's not the question, sir The question is it didn't strike you as odd that he's mentioning giving you $50,000 to rent your beach properties?

A No That was his proposal That wasn't the final agreement

Q Now, number 3, it says "Deal - shares to me, 50,000 shares still "

So just so I have the timeline He talked about the stock transaction February 3rd You talk about the stock transaction February 29th He sends the check to MoBo that's dated March 6th for $50,000?

A Yes

Q That's deposited on March 12th, and you know that?

A Yes

Q And you authorize the bills to be paid out of that, and he's still talking about a stock transaction?

A He's talking about it That's not what we agreed upon. Yes

Q Well, I understand that, sir But I guess my question is didn't you understand at the time that he's giving you $50,000 to get you over, through these financial situations, and then you're actually talking about another infusion of capital through these stock transactions?

A No There are multiple questions there, but I think the answer to all of them is no

Q Okay Well, let's do this He's talking shares to me That would be you, right?

A Yes

Q And he's not talking about transferring shares to MoBo or your wife, is he?

A That's what I wrote down

Q And, again, 50K shares, that's not $50,000 worth of shares That's 50,000 actual shares?

A I'm not sure

Q On the option, it says, "2 20 per share " Did you understand at that time he's offering to let you pay back at 2 20 a share, regardless of what the share price was later?

A No

Q It says, "Any deal option to buy 50,000 shares at 2 20 " Same question Didn't understand that this is, "Mr McDonnell, just pay me at 2 20 Don't care if the stock price is higher now or what happens later"?

A No

Q All right Then you say -- or you write down, "Loan against shares or time applied to rent or if not used, then" -- what is R-E-P?

A I'm not sure Rep

Q Would it be repay?

A I'm not sure

Q Okay But then it's got an interest rate of 2 percent and 3 years

A Yes

Q You wrote that?

A Yes

Q Okay

MR DRY: Let's go down Stop right there

BY MR DRY:

Q Now, in "Future" you write, "Draw down stock to use as a loan " And it's still your testimony that this wasn't going to be about a subsequent transfer of shares to you?

A I had just woken up These were not coherent notes I don't know what the rest of this really means, Mr Dry It never happened I don't know

Q All right Well, let me ask you this On this, "In two years, he will loan me money to buy the shares, 50,000 shares " You didn't understand, at this point, that he is basically telling you that he's going to loan you money to buy the shares that he's lending you?

A No He wasn't lending me shares at this time

Q I understand that, sir This is the proposal that he's giving you, right?

A No -- yes That's what I wrote down Yes, sir

Q That's the proposal And he's proposing to you in two years, he's going to loan you money to buy the shares that he's already lent you?

A No

Q Well, let me do it this way Did he say that in the meeting?

A No

Q Or in the call?

A This call?

Q Yes

A I wrote down what he said Yes

Q Okay So he did say that?

A Yes If I wrote it down, he said it

Q That didn't strike you as odd; that he's offering to you loan you money to buy the shares that he's lending you?

A He wasn't lending me any shares

Q The proposal was that he would lend you shares, right?

A No, not that I understood At this point, we had agreed on a cash loan

Q Sir, so he goes on for 24 minutes in this call, it looks like, and he's got all of these discussions about rent and -- rent and share transfers, right?

A Yes

Q At what point in the call did you go, "Hey, Mr Williams, by the way, I already cashed that check, and, you know, I'm really not interested in the share transaction"?

A We may have talked about that at the beginning

Q So your testimony is that you tell him, "I cashed the check, not interested in the share transaction," and then he just talks for 20 minutes about share transactions?

A I didn't cash the check

Q Okay, sir You authorized the check -- well, you knew the check was going to be paid, right, or cashed?

A Mr Uncapher told me it was cashed that day Yes, sir

Q And you authorized the March bills to be paid out of that check?

A Yes

Q So you -- Mr Williams is calling you after you know that?

A I think so Yes

Q And you have a conversation for 22 minutes?

A Yes That's what it says

Q And my question was at what point in the conversation did you tell him, "I've already cashed the check I don't want to do the share transaction"?

A I don't know I was listening to him We had already agreed on 2 years, 3 percent This never happened

Q For the $50,000 check that you cashed, that was 2 percent, 3 years, right?

A Yes, sir

Q But he's still talking about a share transaction?

A Yes

Q And, sir, at this point, did you -- did you know that the shares were trading at $3 85?

A No, sir

Q And so when he says the $2 20 is what you'd have to pay back, basically he's offering to give you stock that's worth 60 percent more than the current value? You didn't understand that?

A We had agreed on a cash loan No

Q Okay Well, let's -- let's talk about the -- let's talk about the checks

MR DRY: Government's Exhibit 350, please That's been admitted

BY MR DRY:

Q You saw this at trial, right, sir?

A At trial I never actually saw the physical check But I saw it at trial, yes, sir And before Copies

Q Okay And this was the initial check that Jerri Fulkerson said that she wrote that had Maureen McDonnell on it, right? You were there for that testimony?

A I was Yes

Q And then that one gets voided

MR DRY: Let's go to 351, please

BY MR DRY:

Q You were there for the testimony of Ms Fulkerson where she testified that she made the same mistake including Maureen McDonnell and voided that one out too, right?

A I heard her say that Yes

MR DRY: And then let's go to the actual final check Government's Exhibit 352

BY MR DRY:

Q This was the check that was actually deposited?

A Again, sir, I never saw this check in current time But I've seen it since the investigation, and believe this is the check Yes

Q Now, the check is made out to MoBo, right?

A Yes

Q And it's been your testimony that that made this a loan to MoBo?

A Absolutely

Q Okay Now, your sister is listed in the attention line, I believe; is that right?

A Yes

Q But at this point, Mr Williams had had absolutely zero discussions with your sister, right, as far as you knew?

A As far as I knew

Q In fact, you had told your sister that you were going to negotiate this transaction?

A Yes

Q That was your testimony But the person he was talking to about this was you?

A I thought so

Q So it's your testimony that you never had any discussions with Mr Williams in which you made it clear that you didn't want you or your wife's name on these checks?

A No

Q Okay

A The loan was always for MoBo Realty, as the one from my dad and Dr Davis

Q Okay Well, let's go -- the date of this check is March 6th It's deposited on March 12th Do you remember where you were on March 13th?

A I had packed the night before So I was on the road again, traveling somewhere, I think

MR DRY: Well, let's go to Government's Exhibit 755, please This is not admitted

BY MR DRY:

Q And, in fact, this is your schedule for March 13th, correct? It's actually your schedule for March 13th through 18th

MR DRY: You can take that --

A Yes It appears to be Yes, sir

MR DRY: Government moves Government Exhibit

755 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q Now, this is the day after the $50,000 check from Mr Williams was cashed One question on that You -- you instructed him to make the check out to your sister's attention, didn't you?

A No

Q Okay. Now, this is the day after the check is cashed And your wife flies down with you, right?

A Yes

Q And it shows that you're going to go to the Hammock Beach Resort?

A Yes

Q And going to the sixth page of the exhibit It shows that on March 14th, you're going to have personal time at the resort all day with your wife, right?

A Yes, sir

Q On the seventh page of the exhibit, it shows the next day you have personal time at the resort all day on the 15th?

A Yes

Q And that was with your wife?

A Yes

Q And then on March 16th, that's Page 9, it shows that you and your wife go from the Palm Coast of Florida, you guys go to West Palm Beach?

A Yes For Republican Governors events Yes

Q Page 10 shows that you stay at the Ritz-Carlton?

A Yes That's what it says.

Q And that's with your wife?

A Yes And others But yes

Q Well, to be clear, it's just you and your wife?

A Absolutely

Q Okay

A Let's get that clear. Yes.

Q Turning to Page 13, sir. This shows that on the 17th, you and Ms. McDonnell traveled to Naples, Florida, together?

A Yes I believe we had some additional RGA events Yes

Q Okay And you had personal time scheduled with Ms McDonnell, on Page 14, from 1:15 to 6 p m ?

A Yes

Q And then had you dinner at the Waterfront Grille?

A We did

Q Do you know who paid for that?

A I don't

Q Do you know whether you paid for that?

A It was RG -- I don't I'm pretty sure I -- it was just my wife and I I don't -- well, it says, "Your meal has been prepaid " I don't know, Mr Dry

Q Okay

A I don't It sounds like someone else might have paid for it I don't -- I don't remember that particular event I do remember going with my wife, though

Q You just don't know if you paid or somebody else paid that?

A No, sir I don't

Q All right Now, it shows at the bottom that you fly back from Naples to Richmond?

A Yes

Q All right And you flew back on Mr Williams' plane?

A I don't know

MR DRY: Let's go to Government's Exhibit 754, please And blow that up

BY MR DRY:

Q This is an invoice, a Star Aviation invoice, showing a flight on March 18th, 2012, a manifest?

A Okay

MR DRY: Government moves Government's Exhibit 754 into evidence, Your Honor

THE COURT: It will be admitted

BY MR DRY:

Q And this shows that Mr Williams is picking you up and -- you and your wife up, and then returning you to Richmond, Virginia, right?

A Yes

Q And that was six days after the check was written. And that was -- I'm sorry That was 12 days after the check was written and six days after your conversation with Mr Williams?

A Yes, sir, it was

Q And during all that time down in Florida, were you discussing the transaction with Mr Williams with your wife or not?

A No

Q Okay But if you did, that would be just between the two of you, right?

A Yes

Q I mean, because you don't discuss your marriage with other people, right?

A Rarely

Q Okay Let's go to the March 21st meeting with Ms -- Secretary Thomas and Sara Wilson Now, three days after that flight back with Mr Williams, you had a meeting with your Cabinet Secretary Lisa Hicks-Thomas?

A Yes

Q And the purpose of that meeting was to discuss ways to lower healthcare costs in Virginia, right?

A That was one of the goals Yes Specifically about the consumer-driven healthcare plan that I had asked them two years previously to begin to work on to implement But, ultimately, the State portion of the healthcare costs, yes.

Q And to be fair, I mean, the consumer-driven healthcare plan, that was going to reduce the State cost, but it was also going to be good for Virginians, right?

A Sure I thought so That's why I asked them to do it

Q Now, at no point during that meeting does Secretary Hicks-Thomas or Ms Wilson, do they bring up the subject of Anatabloc, right?

A That's correct

Q And you testified that at that meeting you were the one that brings out the bottle of Anatabloc?

A Yes

Q Okay And you told them that you had been taking Anatabloc?

A Yes

Q And you told them that it had been working well for you?

A Yes

Q And -- but I believe there was a slight disconnect You testified that you didn't have any recollection of telling them to meet with anybody, right?

A Yes

Q But Secretary Hicks-Thomas testified that you told her and Sara Wilson that you, first of all, thought Anatabloc would be good for State employees. Do you remember that testimony?

A I heard her say that

Q And she also testified that you asked them to meet with Star Scientific people Do you remember that testimony?

A I heard her say that

Q But as you sit there today, that didn't happen?

A I don't think so Ms Wilson said it didn't I don't have a good recollection It could have I was talking about something I was doing So I don't have a clear memory of that No, sir

Q But that conversation occurred nine days after the check from Mr Williams was deposited, right?

A Yes, sir

Q Nine days after you have another conversation with him about him lending you financial support?

A Yes, sir

Q And three days after you flew back to Richmond with him on his jet?

A Yes, sir

Q There's been a lot of testimony about your sister's financial resources in this case, right?

A Right

Q I'd like to talk about paying off the Dr Davis loan for a bit Okay

A Okay

MR DRY: Let's go to Government's Exhibit 369, please This has been admitted

BY MR DRY:

Q This is an e-mail chain between you and your sister and your brother-in-law, right?

A Yes

Q And in this e-mail chain, you're discussing how much you would each have to pay to pay off the Dr. Davis loan Do you see that at the bottom?

A Yes Among other things Yes

Q And, in fact, the payoff amount for Dr Davis at this point was $33,004 53?

A Yes

Q And that's on April 4th of 2012?

A Yes

Q So about, I don't know, about a month after the 50,000 from Mr Williams; is that right?

A Yes

Q Approximately Now, you're only asking your sister for 10,000 "Mo, please verify again that you can pay 10,000 on April 15 to pay off Dr Davis," right?

A Yes

Q And you're going to pay $10,000 It says, "If so, I will send you 10K from me " Do you see that?

A Yes

Q And then, "another loan check for $13,004 53 " Do you see that?

A I do

Q And that was going to be a loan you could get?

A Yeah That was going to be a convenience check against a low interest credit card Yes

Q And you suggest in this e-mail to your sister that paying the monthly payment on that loan to MoBo as long as you can and supplement as necessary Do you see that? "I suggest we pay the monthly payment of 795 for 17 months from MoBo as long as we can and supplement" --

A Sure

Q -- "as necessary"?

A Yes

Q So basically, "as long as you can" -- "as we can " You realized there was going to be another operating shortfall at MoBo Is that accurate?

A Perhaps Yes

Q And this was going to be a loan from a credit card?

A There were great interest rates Yes

Q Okay But unlike the loan from Mr Williams, you're going to have to pay monthly payments on that, right?

A Sure I mean, we could have paid cash, but I decided to make it a loan to MoBo if we do this proposal Yes

Q And the last sentence, you say, "As soon as I get the rental income from estimates from Sandy, I will estimate our shortfall this year," right?

A Yes

Q You knew there was going to be another shortfall in 2012?

A There seemed to be at that time Yes

Q Now --

MR DRY: Let's go to the top e-mail There we go

BY MR. DRY:

Q Now, you're writing to them, "Mo and Mile" -- you meant Mike there?

A That's Mike Yes

Q Okay

A I misspelled several names, apparently

Q Apparently "Just found another better loan opportunity 1 9 percent for 13 months but can only borrow 8,000, meaning we would need to pay 12,5 each toward the Davis loan," right?

A Yes

Q But then again, that's going to require a monthly payment, right?

A Sure

Q And then you write, "Can you do this or is that a stretch?" 12,5, is that a stretch?

A Yes

Q At this point, your sister -- why would 12,500 be a stretch if we've heard so much about what financial wherewithal your sister had?

A We had decided earlier in the year that unlike '09 and '11 where we put equity out of our own pocket directly into the business, that this year we would opt to do a loan And I didn't know at that point she had received the $70,000 bonus or what her other issues were She was going through some problems, obviously, with her husband at that time So it was just a -- I was just asking her This is 12:48 a m This seemed to be the best way to do it or not Can you do it or not That's all I wanted to know

Q Okay So basically it's -- you knew she could liquidate other assets if she had to But you guys just made the decision that that year you're going to use other people's money, right?

A We were going to get a loan Yes

Q From other people?

A From someone

Q And that someone was Mr Williams?

A Yes, it was

Q Okay Now, sir, by this point, you know that the losses at MoBo, they are not sustainable, right?

A No

Q You didn't know that?

A No

Q So your business plan originally in 2005, 2006, you knew that as of that time frame, 40 to 60,000 is going to be the shortfall each and every year?

A Yes, by '06 Half of that a piece

Q And you thought that that was sustainable and a good business plan?

A There are two questions in there

Q Did you think it was sustainable, first?

A Sure

Q And did you think that was a good business plan? We'll --

A Yes

Q -- do it this way Let's do it this way

A Because we would get tremendous equity built up in the long term That was the business plan

Q "Tremendous equity " But we've seen charts that show that it was very little equity repayments going on at this point

A Well, there's well over $100,000 of equity now because of the payment of principal

Q When you say "now," you mean now?

A Yes

Q But not back then?

A But that was always the long-term plan

Q If it was the long-term plan, then why weren't you paying principal back then? You were doing interest-only loans, sir

A No

Q A lot of these were interest only The lines of credit were, right?

A Yes

Q And there was very little principal repayments -- we've seen the charts -- in this time frame, right?

A Because there's always less principal in the early years of a repayment

Q Okay Now, is it fair to say that as a small business owner -- well, let's just do it this way Publicly, you know that small businesses -- it's not a good business plan to just take large losses each and every year, right?

A Sure

Q And you know that if you spend more than you have for any period of time, you're going to go broke, right?

A Yes, sir

MR DRY: I'd like to bring up Government's Exhibit 756, please

BY MR DRY:

Q You were interviewed by Sean Hannity on August 6th of 2012, correct?

A If this is it, I'll take your word for it that that's the date, sir

MR DRY: Government moves Government's Exhibit 756 into evidence, Your Honor

THE COURT: It will be admitted

MR DRY: If we could publish it to the jury

BY MR DRY:

Q Now, in this interview, do you remember talking about balancing Virginia's budget and how you went about doing that?

A I probably did We had some pretty good numbers with our surplus Yes

MR DRY: Can we go ahead and play the video, please

(Video Played)

MR DRY: Can we increase the volume?

(Video Ended)

BY MR. DRY:

Q Sir, despite knowing that, despite spending more money than you had coming in, it was your business plan to rely on loans from Mr Williams; is that true?

A No

Q Well, it was your business plan to rely on loans from other people to make up the shortfall?

A In part, yes

Q I'd like to go to one of your personal financial statements Now, you testified on direct that the loans to MoBo that were not personally guaranteed by you did not have to be disclosed on your personal financial statement?

A Yes, sir That's what I understood

Q And you testified that the Williams' loans were to MoBo because the check and the wire transfer were written to MoBo, in part That was your justification for it?

A Yes

Q And you testified that you did not personally guarantee the Williams' loans because there was no loan paperwork?

A Yes

Q And you claim that the reason you didn't disclose the loans from Williams was because the loans were to MoBo and they weren't personally guaranteed That's the bottom line, right?

A In part Yes

Q But you heard Mr Sessoms testify that you never had any discussions about this with him at the time you're filling out your personal financial statement, right?

A It was to a different bank

Q Did you have any discussions with Heritage, anybody at Heritage, about the fact that you don't need to disclose these --

A No, sir The forms were clear to me about what was required

Q Okay So this is your internal thought process?

A No It's me reading the form

Q Okay

MR DRY: Well, let's take a look at how -- I'd like to go to Government's Exhibit 60, briefly

BY MR DRY:

Q And I just want to make sure that -- you testified yesterday that you personally guaranteed the Dr Davis loan, right?

A Yes

Q Okay

MR DRY: Now, let's go to Government's Exhibit 596, Page 2

BY MR DRY:

Q Now, this shows a payment to Dr Davis on April 30th of 2012 of $20,000, right?

A Yes

Q So as of that date, April 30th, you owe Dr Davis -- you and your sister owe Dr Davis about 13,000? Is my math right there?

A MoBo did Yes

Q Well, hold on, sir MoBo --

MR DRY: Let's go back to Government's Exhibit 60, please

BY MR DRY:

Q This is the promissory note Can you show me anywhere on that promissory note where MoBo is even mentioned?

A No

Q So it's not MoBo that owes Dr Davis You personally guaranteed this, right?

A MoBo owes Dr Davis

Q I'm sorry MoBo is Dr Davis?

A No MoBo owes Dr Davis We guaranteed it personally is what this says

Q Well, hold on, sir It says that the makers are going to pay $1,001 each month It doesn't say MoBo is going to pay that, right?

A No

Q It does say MoBo is going to pay it?

A No, it does not

Q It says you're going to be responsible for paying it?

A Yes

Q Personally?

A Yes.

Q So I guess the question I have still is as of April 30th of 2012, are you responsible for paying Dr Davis $13,000 of the remaining balance?

A If MoBo didn't pay Yes.

Q Okay. So that is a liability that you have?

A The three of us have

Q Yes But it's jointly and severally?

A That seems to be what it says Yes

Q So you have a personal liability to Dr Davis of $13,000?

A The three of us do Yes

Q But let's -- let's assume that your sister doesn't pay it and Michael Uncapher doesn't pay it At the end of the day, that's a personal liability of yours, right? 13,000 right?

A If MoBo didn't pay, yes

Q Okay

MR DRY: So now let's bring up Government's 373, please

BY MR DRY:

Q Now, this is a personal financial statement submitted to Heritage Bank as of April 30th, 2012, correct?

A Yes

Q And Page 1, in the bottom right-hand corner, this -- and you filled this out, right, sir?

A Yes, I did

Q And in the bottom right-hand corner, if we go blow that up, this is the "Liabilities and Net Worth" section?

A Yes

Q There's nothing listed to proprietorships there, right?

MR ASBILL: Can we approach, Judge?

THE COURT: Come on up

(At Bench)

MR ASBILL: The government is trying to introduce undisclosed 404(b) evidence

MR DRY: It's not being admitted as 404(b) He came up with this justification that personal -- that loans don't have to be disclosed unless they are personally guaranteed Now I'm proving up that he had a personally guaranteed loan that wasn't disclosed, which undercuts his entire defense on this

MR BROWNLEE: This doesn't have anything to do with Jonnie Williams

THE COURT: The objection is overruled

(In Open Court)

BY MR DRY:

Q Sir, there's nothing listed here for loans to proprietorships or liabilities of proprietorships, right?

A No

Q There's nothing listed for liabilities of partnerships and joint ventures, right?

A No

Q And, in fact, despite the fact that you personally guaranteed and have a personal liability to Dr Davis of over 13,000, there is nothing in there disclosing the Dr Davis loan, is there?

A No

Q Just like there was no disclosures of loans regarding Mr Williams, right?

A I don't --

Q On this form On this form, is there any liability for Mr Williams?

A No Not on a corporate loan No

Q Okay And isn't it true, sir, that, I mean, you knew that the March 6th, 2012, loan from Mr Williams was really a loan to you personally, didn't you?

A Mr Dry, that is absolutely false It is not It was a loan to MoBo That's what we negotiated

MR DRY: Let's bring up Government's Exhibit

497, please. This has been admitted

BY MR. DRY:

Q These are your notes to Dan Cook, correct, as of March 11th, 2012?

A Yes My notes Yes

MR DRY: If we could blow up the top part, please

BY MR DRY:

Q I'm sorry This is March of '13, right?

A Yes

Q And when you go under the "Personal" block, the loans that are listed are from your dad's estate, Dr Davis, and from Starwood?

A Yes All three loans to MoBo

Q Well, all right Let's take these in order Your dad's estate, there was absolutely no loan paperwork done until after this investigation broke, right?

A It's my dad Yes

Q Okay But there was also no loan paperwork for Mr Williams And he's not your dad, right?

A No He's a friend

Q Okay But there was loan paperwork for Dr Davis, right?

A Yes Some At the beginning and end Yes

Q And that was because he requested and wanted you to be -- sign on the dotted line, right?

A I think so Yes I think it was his request Yes

Q Sir, isn't this whole explanation about the loan going to MoBo and the not being personally guaranteed, isn't that just an after-the-fact, legal justification that you've come up with here?

A Absolutely not, Mr Dry No

Q So not to put too fine a point on it, though, you testified earlier that the reason the Williams' loan wasn't disclosed on personal financial statements was because they were not personally guaranteed, right?

A In part Which loans -- which disclosure are you talking about?

Q The MoBo

A Which disclosure are you talking about for the bank, sir, is what I'm asking you?

Q I'm talking about the loan application to TowneBank, Mr Sessoms

A Yes So the answer would only be in part My wife's wasn't on there because she wasn't an applicant The 20,000 wasn't on there because it happened after the date of the statement And the 50 --

Q I'm talking about the 50

A The 50 wasn't on there because it was a corporate obligation that MoBo assumed to pay back Mr Williams It was a corporate loan Mr Sessoms testified that those corporate obligations didn't need to be on there That was my understanding from the form, sir

Q No. I think Mr. Sessoms testified that it wasn't personally guaranteed, right? That if it had been personally guaranteed, it should have been on the form Isn't that what he said?

A And there was no personal guarantee for Mr Williams That's what I understood

Q But there was a personal guarantee from Dr Davis, and you didn't disclose that loan either, did you?

A My portion was paid off by that date

Q No, sir. You testified on direct that you had paid, on behalf of both your sister -- both you and your sister, that 20,000?

A Yes

Q So on direct you're not saying, "No No No I paid off my portion " You said that 20,000 was from both you and your sister, right?

A No, sir

Q That's not what you testified to?

A That's not what I said

Q Okay So in your mind, you're paying the 20, and your sister is responsible for the rest?

A No, sir That's not what I said

MR DRY: Let's -- let's go to the -- do we have it?

(Counsel conferring with co-counsel)

MR DRY: Excuse me, sir, Judge, just for a moment

(Counsel conferring with co-counsel.)

MR DRY: Can we bring up Government's Exhibit 821 And this is going to be the transcript, 4643, lines 5 through 15 Keep going We're looking for the --

BY MR DRY:

Q You say -- I want to make sure I read this correctly So you tell me if I make a mistake

A Okay

Q "Yes, sir, I think they are I know I put in 12,500 out of my personal bank account, and my recollection is that the $7,500 was actually a convenience check on one of my credit cards that I got a very, very favorable rate in terms of, I think it was less than two percent at that time, over about a year-and-a-half So I put that in essentially on behalf of my sister and I We would each have 3,750, or half of that, but I wrote the check for $7,500 plus my 12,500 personal check And later on in the year my sister paid 12,5 to fully pay off the Davis loan "

Is that what you testified to?

A Yes

Q And it was joint and several liability So at the end of the day, you were responsible for whatever was remaining, weren't you?

A I'm sorry Remaining on what?

Q On the Davis loan You were responsible for the remaining $13,000 as a personal liability, weren't you, sir?

A Perhaps I didn't think about that at this time Perhaps Yes

Q Okay. Let's go to the May 2012, the 20,000.

MR DRY: Can we bring up Government's Exhibit 598, please, that's been admitted

BY MR DRY:

Q You've seen this chart before, sir?

A Yes

Q And on May 18th you call Mr Williams for 2 minutes and 32 seconds, 1:22? The top one, sir?

A Yes, I did

Q And then at 1:26 p m , I think -- did you just leave a voice mail at that 2:32? Right? That's what that text message says?

A Yes I believe so Yes

Q That makes sense And he responds -- you say, "Per voice mail, would like to see if you could extend another 20,000 loan for this year Call if possible and I'll ask

Mike to send instructions Thanks, Bob"; is that right?

A Yes

Q And then you e-mail Michael Uncapher, or text him I'm sorry "Can you send wiring instructions to Johnnie for 20K to MoBo account " But before Mr Williams even knows who the check or the wire transfer is going to be going to, he writes, "Done, tell me who to make it out to and address Will FedEx Jonnie"?

A Yes

Q Within 12 minutes, right?

A That's what it says. Yes

Q He's not saying -- he's not saying, you know, "I know I'm going to send it to MoBo," right? He's saying, "Tell me who to make it out to"?

A Yes

Q At this point, you didn't understand that Mr Williams didn't care about whether it was to MoBo or made out to MoBo; that it was a loan to you, right?

A No I can't tell you what Mr Williams thought

Q Well, later on, at 4:13 p m , you write, "Johnnie Thanks so much for your help and friendship Bob " Misspelled Johnnie?

A Yes

Q At this point, you and your wife had received -- you, slash, MoBo and your wife had received about $100,000 in loans from Mr Williams by the time this is going on?

A Yes

Q And the first 50,000 was more than a year ago?

A Yes.

Q And the next one was more than two months?

A Yes

Q But at this point, there's not one shred of paper document in these loans anywhere, is there?

A No

Q And you're a lawyer, and you never drafted up a loan agreement for either of those first two, did you?

A No

Q And you never went to Bert Poole and asked him to draft up a loan agreement, did you?

A No

Q Now, talking about whether the MoBo loans were to you or -- whether the 15,000 and 20,000, whether they were loans to MoBo or to you You formed MoBo with your sister, right, Maureen Uncapher?

A Yes, sir Back in 2005, we did

Q And she's an accomplished businesswoman, right?

A I think so

Q She has a lot of business experience?

A Yes, she does

Q And you testified that when you formed MoBo, your role was going to be limited to providing some maintenance and, I think you said, sweat equity, and helping with marketing; is that right?

A I was going to do -- yes I was going to do as much as I could But given my role as Attorney General, that's probably all I could do

Q Your sister was going to provide her business expertise as part of the partnership, right?

A Yes.

Q And your brother-in-law, he was going to handle the day-to-day paying the bills, right?

A Yes

Q Now, your attorneys hired Mr Kosowsky as the expert witness -- accounting witness in this case, right?

A Yes

Q And he was hired to describe to the jury the sound financial condition of both you and MoBo and your sister, right?

A Yes

Q And he went on at length about your sister's assets, right? You heard that testimony?

A Yes

Q And he talked about the assets available to MoBo's partners? You saw those charts?

A Yes

Q And -- but he testified that MoBo's bank accounts were just an operating account Do you remember that testimony?

A I'll take your word for it I don't remember that exactly

Q Well, is that your view of it; that MoBo's bank account was just an operating account?

A I'm not sure I understand what you mean as "just an operating account "

Q Well, that it's not holding a lot of assets; that basically it's just used as money is coming in and going out It's just the operating account There's not a lot of assets in the bank account I mean, your sister testified to that, right?

A I did hear her say that

Q And is that your view too; that it's just an operating account?

A Not exactly

Q Well, explain to me your view of what the MoBo bank account was, then

A The bank account had been responsible for operations and maintenance, but it had significant cash in at certain times of the year

Q Well, "certain times of the year " But that was when -- that wasn't in the winter months, right?

A No

Q And there's been significant evidence that there was, you know, significant shortfalls that were going to occur anywhere from October through March of every year?

A No

Q No?

A More like December -- well, January through -- January, February through May

Q Okay Well, is it fair to say that if you look at all the money that is coming into MoBo from rents and you're looking at all the money that's going out to mortgage expenses and bedbugs and all the rest -- litany of expenses, that less money is coming in than is going out?

A Yes Sure

Q Okay So at the end of the day, when you say, well, MoBo's bank account had significant assets at points in time, overall, though, it's cash negative? That's why you're putting in loans, right, sir?

A Yes

Q Okay Now, Mr Kosowsky's testimony, I mean, the overall gist I got was that they were trying to establish that MoBo is going in the right direction financially Do you remember Mr Kosowsky testifying to that?

A I do

Q And he was paid for his testimony, right?

A Yes

Q But at no point throughout Mr Kosowsky's testimony as your expert accounting witness did he ever, ever utter the words "accounts receivable" as that pertained to MoBo, did he?

A I don't remember him saying that

Q But you testified about accounts receivable, right?

A Yes

Q And, in fact, before your testimony, you heard your sister, when she was on the stand, she was asked on cross-examination whether MoBo had zero assets And she said, quote, right?

A I heard her say that

Q But it was only after Mr Kosowsky testified and then your sister testified, that's the first time that we had ever heard was when you got on the stand and then came up with this explanation about accounts receivable, right?

A I disagree with some of the premises in your question

Q Which ones?

A Many of them

Q Well, let's discuss that

A Okay

Q Which premises?

A The one about that I came up with something

Q Okay Well, describe what happened, then

A No I'm not -- I'm testifying that MoBo had two assets primarily One was operating cash at certain times of the year And it also had a steady stream of accounts receivable from rental income Many of those booked well in advance My understanding, from a business standpoint, is those are assets Cash and accounts receivable

Q Okay And those accounts receivable, there was always less accounts receivable than there were liabilities, right? By definition?

A True But that does not make it an asset

Q Okay So your view is even though MoBo lost 40 to $60,000 from 2006 to 2012, that -- well, let me ask it this way

Your view is that Jonnie Williams was giving loans to MoBo despite the fact it had been losing money every year from 2006 to 2012 because he thought it was a good investment?

A No

Q Well, let's just cut to the bottom line Why do you think Mr Williams is writing checks to MoBo?

A Because he offered and we accepted the loan, like we did with banks and my father and Dr Davis, and expected to get paid back with interest

Q Well, sir, who is he getting paid back by?

A By MoBo.

Q So you think that Mr. Williams, the businessman, decided on his own, "MoBo, that's a good" -- "that's a good credit risk They have lost money for the last six years, and I'm going to pay them $70,000 in loans and expect MoBo to pay me back"?

A I can't speak for Mr Williams

Q Well, sir, didn't you know that Mr Williams was writing those checks because of you, not because of MoBo?

A No I considered him a friend He offered to do it We've seen the text where he offered to send money We accepted his offer, as we did with Dr. Davis and banks And it was a business loan to MoBo That's the way I treated it

Q Is he a friend of MoBo's or a friend of yours?

A He was a friend of my wife's and, over time, became a friend of mine

Q Okay Sir, on this $20,000 loan, again, Martin Kent doesn't know about that one either, right?

A I have 110,000 people who work in state government None of them knew about that I don't discuss my personal finances with subordinates And to my knowledge, Martin Kent didn't discuss his with his subordinates

Q But you heard Martin Kent testify that he would discuss his personal finances if he thought it could impact on his job or what you were doing as Governor, right?

A I heard him say that

Q At the end of the day, you're telling this jury that you decided not to inform any of your senior staff because it was personal financial information instead of you being worried that they would start asking questions about your relationship with Mr Williams?

A I'm sorry Could you repeat that question, please?

Q You're telling this jury that you decided not inform any of your senior staff about the loans with Mr Williams because that was personal financial information instead of you being worried that they would start asking questions?

A There was a couple of questions in there First of all, I'm telling the truth about my view of the loans with Mr Williams Secondly, I didn't tell any of my personal staff about my loans to Mr Williams or Dr Davis or my father or SunTrust --

Q Those were loans from --

A -- or PenFed

Q Those were loans from them

A I'm sorry From them From PenFed or from Bank @Lantec or from Navy Federal or from TowneBank or about any of my credit cards And none of my staff told me either

And the reason, as you heard from Secretary Cheng, is when somebody came and wanted something from my office, whether they gave a dime or whether they gave nothing or whether they gave a million dollars, it didn't matter We tried to treat people fairly and have reviews of whatever their petition might be based on the merits That's why we don't talk about money

Q Yeah Let's talk about that for a second Because at one point in your testimony with Mr Asbill, you testified that you had this kind of wall up between -- you really didn't want to know who the PAC donors were, right? You were not tracking that; is that right? Because you didn't want --

A I didn't review the reports is what I said Yes

Q Right And part of the reason that you didn't review the reports is that you didn't want to have any even suggestion that people were getting preferential treatment, right?

A Sure But I knew --

Q That was your testimony

A I knew the large donors because I wrote them thank you notes

Q Right So if you are concerned that people might think, hey, somebody could get special treatment -- or might mistakenly think people are getting special treatment if I review all the PAC donors, but you -- none of that calculus transfers over to the fact that you are getting personal money in your pocket from Mr Williams, who's getting a Mansion event, getting recognized at the Healthcare Leaders, none of that calculus transfers over in your mind?

A I'm not sure I understand the question

Q Sir, I don't -- let's go on

MR DRY: RM-15 --

MR ASBILL: Can we have a question here? Can we have a question?

THE COURT: No You had a question You didn't have an answer. So he said let's go on Come on Everybody -- let's tighten this up

MR DRY: I'm -- RM-1542, please I think this was admitted by Mr Burck

BY MR DRY:

Q Sir, this was a text message that Mr Burck talked to you about I believe it was sent on July 3rd of 2012?

A Yes

Q And in this, Mr Williams is informing you about the Johns Hopkins human clinical trials report on August 8th?

A Yes

Q And you know at this point that -- that it's very

important to Mr Williams that his studies -- that Anatabloc has trials, right?
A He talked to me a lot about those. Yes
Q He did And in the same e-mail, he's saying, "If you need cash, let me know," right?
A Yes
Q He's not saying, "If MoBo needs cash " He's saying, "If you need cash," right?
A That's what he wrote Yes
Q And he's talking about going to Chatham Bars Inn, and the business about to break out strong
When you get this text message, do you call Mr Williams up and say, "Hey, by the way, Mr Williams, you know, I don't need cash You're not loaning me money You're loaning MoBo money"?
A No, sir
Q Okay Let's go to Chatham Bars, the actual thing You -- Labor Day 2012, you go to Chatham Bars Inn with you and your wife, and Phil Cox and his wife, right?
A And two or three other couples Right
Q Right That was Mr Ladenson and his wife?
A Yes
Q Mr Williams and his wife, right?
A Yes
Q Okay

A And two other couples that were there

Q At various times?

A Yes

Q They didn't stay at the resort They just came in, well, for various nights, but not throughout the entire time you were there?

A I think that's fair Yes

Q Now, before that, you and your wife were on a phone call with Phil Cox inviting him, right?

A Yes

Q And both of you are on the call and can hear what each other is saying?

A Yes

Q And Mr Cox was on the phone with his wife too?

A I'm not sure she was on She might have been

Q Okay And the purpose of the call was for you to invite Mr Cox and his wife to go up to Chatham Bars Inn?

A Yes

Q And Mr Cox testified that he asked you about how this trip came about?

A Yes

Q And he stated that your wife told him, "It was the result of Mr Williams' bidding at a trip at the charity auction"?

A Yes

Q And you heard her tell Mr Cox that?

A Yes

Q But to be clear, you knew that the trip that Mr Williams bid on at the charity auction was to New York?

A Yes

Q And you testified that was never going to happen on day one, and you knew that wasn't going to happen?

A Yes

Q And you knew that this was a trip to Chatham Bars Inn Totally different location, right?

A Yes

Q And you knew that Mr Williams was going to have to pay out of his pocket for the expenses of this? It wasn't going to be covered by his winning bid, right?

A Yes

Q So was your statement -- was your wife's statement to Mr Cox accurate?

A I think she believed it I -- I don't know whether Chatham Bars was a makeup for Bar Harbor or this But it didn't matter to me I was -- we were going

Q Well, in context, though, sir, Mr Cox was asking who would be paying for the trip, right?

A I believe he did

Q Right And that was in response -- your wife's comment to him was in response to that inquiry, right?

A I don't remember the call directly But it sounded like that from his testimony Yes

Q And, in fact, Mr Cox specifically asked you how was this going to be reported, right?

A That's what he testified to

Q And do you have an independent recollection of that?

A Not really No

Q But you're not denying it could have happened?

A No The purpose was just to invite him to come

Q And you assured him -- he testified you assured him it would be reported correctly?

A I probably did If he asked me that, absolutely, I would have said that

Q And ultimately, it was recorded, right?

A Yes

Q That was because Ms Harris reached out to Ms Fulkerson and asked for the -- for the information, right?

A Yes

Q So you go to Chatham Bars Inn We're not going to go through a lot of that But you did stay from August 31st to September 3rd of 2012; is that right?

A That Tuesday morning If that was the 3rd, yes That's when we would have come back, yes

Q And at the same time you're vacationing with Mr Williams, your daughter Rachel and a friend are staying at Mr Williams' condo down in Florida, right?

A They were staying down there. I don't know exactly where they were staying But it was a property that belonged to Mr Williams. I think it was a condo, yes I'm not sure exactly.

Q Okay And, in fact, your daughter had told you before you went to Chatham Bars Inn that she was going to be staying down in Florida at one of Mr Williams' properties?

A Yes, she did

Q And you knew that Mr Williams, in fact, had paid for the commercial flights for your daughter and her friend to go down to Florida?

A No

Q You didn't know that --

A I don't think I knew that No

Q You knew that she was staying down in Florida at his place --

A Yes

Q -- but not that he had arranged for the airline traffic -- or travel, right? You didn't know that --

A Yes I still don't think I know that

Q Okay Did you know that your daughter Rachel was going to be driving one of Mr Williams' white Range Rovers while she was down there?

A No

Q But you knew that she drove it back, I think, from Smith Mountain Lake, one of his white Range Rovers?

A Yes, I did

Q Can we -- your daughter also told you that Mr Williams had arranged for a sailing trip on a private yacht You knew that, right?

A I think she told me she went sailing I don't think I knew what kind of vessel that they were in But I knew that she had gone on a boat is what she told me Yes

Q And that Mr Williams had paid for that?

A I don't know that she discussed that, but I -- I assumed that that was the case Yes

Q Let's go to the TowneBank personal financial statement

THE COURT: Let's go ahead and stop here for lunch

If you all could come back at 2:00, we'll get started with the afternoon session

(The jury left the courtroom)

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(Luncheon recess taken from 12:58 p.m. to 2:00 p.m)

THE COURT: All right Let's bring in the jury

(The jury entered the courtroom.)

All right, Mr Dry?

BY MR DRY:

Q Mr McDonnell, about a month after your trip to Chatham Bars Inn, you submitted a personal financial statement to TowneBank; do you remember that?

A Yes

Q And at that point, you had two loans with TowneBank since you bought the properties in 2005-2006; is that right?

A Yes. I think one mortgage and one line of credit, right Yes

Q Both of those were interest-only loans initially?

A The line of credit was, Mr Dry I think the other one was in fact a first mortgage, because we had a slightly -- we had a declining principal balance

Q Could we bring up Government Exhibit 227, please And this has been admitted This is the Change in Terms Agreement for the 722,000 That's the outstanding -- that's the mortgage that we were just discussing?

A Okay

Q And do you see in description of change in terms, it says, "Change payments from interest only to principal and interest payments."

A Yes, sir, you are right

Q Okay. Now, that was in 2011 So at that point, you started making, paying principal on this loan, right?

A Yes

Q And in 2012, you went through another annual renewal, right?

A Yes

Q Now, at this point, you knew that the property values had declined from when you initially purchased them, right?

A They had

Q And you knew that the loan-to-value ratios were bad? Or worse than they were?

A They were, yes Yes, sir

Q And you had actually talked to Mr Sessoms, the President of TowneBank, and told him that you were going to try to get better financing or refinancing at a more favorable interest rate, right?

A At some point I did, yes

Q And Mr Sessoms was the same person that you had had some discussions with about late fees on the mortgages I believe you testified about that in cross-examination, right?

A Yes

Q You were unsure of how many conversations you had with him about late fees, but you acknowledge that you did have some discussions

A I think maybe one at least, yes

Q But as of this point, you hadn't been able to get better refinancing, had you?

A I wouldn't say get We didn't pursue -- well, I checked out several options, I think, and gosh, in '11 and '12, but for several reasons we just didn't do it We did not refinance until '13

Q Wasn't one of the major reasons that you didn't get refinancing because the loan to values were higher than what the banks would do with traditional financing?

A The conventional, that's true

Q Okay So at this point you decide that you are going to go ahead with another renewal with TowneBank

A Yes

Q Okay And can we show Government Exhibit 416? It has been admitted. And you submitted this to TowneBank, you faxed it on October 3rd of 2012; is that right?

A Yes, I see that at the top

Q Okay What you are doing here is you are using a personal financial statement that you had submitted to Heritage Bank on April 30th of 2012

A Yes They told me that was appropriate or that was proper

Q That's when you originally filled this out for the Heritage, was April 30th of 2012

A Yes

Q Now, the month before this, you had negotiated the $50,000 loan with Mr Williams?

A Yes

Q And you knew when you filled out these forms that personal loans wouldn't show up on your credit report

A I think that's right, yes

Q Okay Now, we have talked a little bit about this, but overall, you have seen this, no loans from Mr Williams appear anywhere on this financial statement, correct?

A Right

Q And I believe you said on direct examination that was, quote, because this was one from Mr Williams, it was a loan to the LLC MoBo without a personal guarantee, so I did not have a personal liability, end quote Do you remember saying that?

A Yes

Q And as we have seen, though, you had a personal guarantee with Dr Davis

A Yes

Q And that loan isn't on this financial statement, either, is it?

A Right

Q Now, to be clear, though, can we back out and then go to the liabilities section? In fact, none of your personal loans from your father, Mr Williams, or from Dr. Davis is listed on this

A That's right They were all the LLC, right

Q And as of this point, there were approximately $180,000 in loans outstanding, personal loans, that were used for MoBo? Is that accurate?

A That's close, yes I think that's right

Q And you knew that when you submitted this form to TowneBank, that they would use that in their process of assessing whether to renew the loan, correct?

A Sure

Q Moving on to another topic I believe you testified that at the time, you didn't know anything, before the investigation broke, you didn't know anything about the $10,000 check that Mr Williams wrote to Adam Zubowsky and your daughter, correct?

A Yes, that's right

Q Now, you did know that, I believe you testified that you did know that Mr Williams was going to buy a generator for Mr Zubowsky and your daughter

A Yes I knew that

Q And you thought that that was going to be in hundreds of dollars, right?

A Well, that's what I thought, yes

Q Do you remember Mr Zubowsky talking to you about the fact that Michael & Son had come out to his house to measure what kind of, you know, whole-house generator would be needed for the property?

A I don't think so

Q Okay Well, to be clear, though, you knew that Mr Williams had given your daughter, Cailin, a $15,000 check for her wedding?

A Yes

Q And you knew that he did that after meeting her for only 15 minutes?

A Yes

Q And at that point, you testified that Mr Williams was not really your friend at that point, back in April of 2011?

A We were friendly, but I wouldn't say he was a friend I hadn't known him that long

Q In fact, Mr Williams hadn't really known your wife for very long at that point, either, right?

A No

Q So I guess what I am trying to figure out is, if you knew that Mr Williams was going to give a $15,000 check to Cailin after meeting her for 15 minutes, despite the fact that you nor your wife were friends with him, did you think that he wasn't going to give a similar monetary gift to your daughter, Rachel, a year-and-a-half later?

A Jeanine?

Q I'm sorry, Jeanine I apologize A year-and-a-half later, when you are actually friends with him?

A I don't know It wasn't to Jeanine It was a tool party for my future son-in-law, Adam, is what I understood We did that in December, six months before the wedding

Q So you had no idea about the $10,000 check

A No, I think I learned about it somewhere after the investigation started. Yes

Q And Adam Zubowsky never told you?

A To

Q And Jeanine never told you?

A No

Q Now, going forward to December of 2012, you testified on direct that you didn't know anything about your wife repurchasing the Star stock, I believe you said, and was it until the week before Christmas or was it November?

A No, it was, my best recollection, a week before Christmas or so of 2012

Q Now, at this point you have testified that the account statements, you had seen account statements, you just hadn't opened them up to review them.

A I saw envelopes that said "Davenport." What the contents were, Mr Dry, I don't know.

Q But you testified on direct that you did manage your family's finances?

A Yes

Q And you testified that you knew what the credit card debt was

A Most of it

Q Other than that --

A She had a couple cards solely in her name, yes

Q For her business

A Mostly And she had a couple that she had maintained on her own. But mostly that's correct, yes, sir

Q And you would open up her credit card statements?

A The ones that I knew that I was going to pay from our joint account, yes

Q And in fact, you would personally sign her name on convenience checks from those accounts, right?

A I did on a couple occasions, yes

Q Now, when you find out the week before Christmas in 2012 that your wife, you find out that the shares are in her name at this point, correct?

A Not only that I find out she has the stock.

Q So you find out she has the stock, and the stock is in her name

A Yes.

Q And it is not in your childrens' name

A That's correct

Q And at that point, I believe you testified that you specifically mentioned reporting requirements to her, correct?

A Well, sure, because I didn't know about it and it impacted me, so yes

Q And in fact, each time, each of these conversations that you discussed with your wife about the stock, I believe you testified in each and every one of them you mentioned your reporting requirements, right?

A I said I wasn't certain about June of 2011 I think I did, about the loan But on the other two occasions, yes

Q And it is your testimony that when you are informing your wife about the reporting requirements, you are not telling your wife, "Get this out of your name so I don't have to report it"?

A No

Q Okay

A I'm telling her I need to know the information

Q At Christmas dinner, you are with your daughter, Cailin, correct?

A I think everybody was there for part of the time But Cailin was definitely there

Q Her husband, Chris? Chris Young?

A I believe so, yes

Q Rachel?

A Yes

Q Bobby?

A Yes

Q Sean?

A Yes

Q And your wife

A Yes

Q And at some point, the subject of Star Scientific stock comes up, correct? Your wife brought it up.

A Yes That's fair Yes

Q And you testified that you heard your wife tell the children that, quote, the Star stock was purchased from money that was from her dad's inheritance

A Yes

Q You testified that you knew that wasn't correct

A Right

Q And that you didn't want to correct her in front of the children, right?

A It was Christmas Day No, sir, I did not

Q But you also heard your daughter, Cailin, testify that the stock transfer, she was, your wife informed the children that the stock transfer had to occur before year-end because of some capital gains tax issues Do you remember your daughter testifying to that?

A I did. I heard her say that, yes

Q Okay Do you have an independent recollection of your wife saying that to your children?

A No

Q Do you know, do you have any recollection of your wife mentioning that?

A I don't

Q As you sit here today, you can't say that you weren't present for that?

A I'm just saying I don't remember her saying that

Q Okay But in fact, you knew that wasn't true, right? That there wasn't some capital gains tax issue that was motivating this?

A Not that I knew of What was motivating it was a Christmas present for the children.

Q But your wife, are you present when your wife says, "This needs to be done for year-end"?

A No

Q Okay Let's do it this way What exactly do you remember your wife telling your children?

A The same thing she had been telling me for 20 years And that is that she wanted to do something similar to what my father had done, which was to present a gift of stock for my children as a wedding present, but she couldn't find a way to do that so she was now going to do this as a Christmas present for them in 2012, and she was giving them each the same amount of stock I think it was a thousand shares And that because everybody was home now for Christmas, that she had the forms and she was going to have them fill the forms out So that's what she had told me four, five, six days or so before Christmas. That's what I heard her tell the children when we were at the Christmas table And frankly, I was glad that finally, gosh, after a year-and-a-half of owning that stock, that she was going to do what she said she was going to do back in June of 2011

Q But to be clear, you are testifying that you didn't hear your wife say that it had to be done before year-end

A I did not hear it, no

Q And you did not hear her say that it had to be done before year-end for capital gains tax issues?

A I did not hear that, no.

Q Did your children mention that to you later?

A They did not

Q When asked on direct whether there was any rush from your perspective to fill out the forms, I didn't hear the answer So as you put yourself back then, from your perspective, was there any rush to get the stock transferred to the children other than it was a Christmas present?

A No

Q Okay Now, were you there when your wife made it clear to the children that they needed to complete the forms before the end of 2011?

A No I was there when we completed the forms with my sons on Christmas Day

Q Now, the plan, were you there when your wife said, "I'm giving each of you a thousand shares of Star Scientific stock"?

A Yes I do remember her saying that

Q And did you know how many shares she had at that point?

A I don't know

Q You don't know?

A I don't know if she told me earlier what the total shares were, but I knew she said she was giving each one of them a thousand shares to my best recollection, yes

Q And did you know at that point that she was going to retain shares in her own name?

A I don't think so

Q Okay. So you thought that all the shares were going to your kids and that neither you nor she would have any shares

A I wasn't sure.

Q But as you sit here today, you know that she retained 1,600 shares

A I do.

Q With a market value of $3,000, correct?

A Yes

Q And that was below the $10,000 reporting requirement.

A Yes. Sure.

Q So from your testimony, it sounds like what you are testifying to is that your wife had repeatedly misled you about, first of all, the purchase of the shares; second of all, her failure to sell the shares after you told her she should; and then third, about the repurchase of the shares in January of 2012; and then about whether the shares were in your childrens' name She misled you the whole way through about all that, right?

A Yes

Q And your testimony is that yes, there were Davenport statements, but you didn't open them because you were worried about your wife's privacy

A No, I wasn't worried about it. I respected it I don't open any of her mail except for the credit card statements that I know I'm going to pay

Q Let's go to your January of 2013 SOEI You file it in January of 2013, but it is for calendar year 2012, correct?

A That's correct.

Q Let's go to Government Exhibit 459 This has been admitted. And sir, on Page 1, that's your form and I believe that this is the electronic, the first year of electronic filing, right?

A I think that's correct, yes

Q Okay Now, turning to, under Personal Liabilities, Number 2, you put "Yes," correct?

A Yes

Q And then turning to Page 3 of this form, and for your personal debts, nothing is listed for Mr Williams or the Starwood Trust regarding the $50,000 check that was made out to MoBo, right?

A Correct

Q And nothing was put on this form for the $20,000 wire transfer to MoBo from Starwood Trust

A That's correct This says "Personal Debts " That's right

Q So if Mr Williams had actually written the check to you, then your testimony is you would have had to disclose it

A If it was a personal loan to me, yes

Q I guess my question is, if he actually wrote the check to you, would you consider that a personal loan to you?

A Yes

Q And then you would have disclosed it?

A Yes

Q But sir, from that text message we saw earlier, Mr Williams asked you who to make the check out to, right, or the wire transfer to, right?

A Yes

Q And you told him MoBo

A Like I did before Yes It was always about MoBo loan Yes

Q So you are informing him who to write the check to and who to send a wire transfer to

A Sure That was the proper creditor, yes Excuse me, debtor

Q So ultimately, by instructing him to do that, that would allow you to not have to report these on your SOEI, right?

A Mr Dry, I disagree with the premise of your question That's not why I did it, if that's the inference I did it because I was -- we were borrowing money for my sister and I for MoBo That's why I did it

Q Okay Going back to Government Exhibit 459 -- well, actually -- yeah, 459, Page 3 At the bottom, this is the gift schedule Schedule E is what I want. This is the start of the gift schedule, and it kind of continues on, correct? You saw this with Mr Asbill?

A Yes

Q Okay And then going to the next page at the top, and this is the gift schedule for that year

A Yes

Q And you testified that Mr Williams was a personal friend by this point

A Yes, I felt so, yes

Q And in fact, you disclosed flights from Star Scientific on there?

A Sure

Q Were you the one that was involved in actually personally reaching out to Star Scientific to get the value of the flights?

A No, absolutely not My staff would have done that as we had instructed them to do for four years

Q Okay Now, on this, just so I'm clear, you didn't disclose the golf from Mr Williams that you played in January of 2012 with your two sons, right?

A That's correct

Q Okay And there is no disclosure regarding La Grotta on February 29th, 2012?

A That's correct

Q There is no disclosure regarding playing golf at Kinloch in November of 2012?

A That's correct

Q No disclosures regarding any work that Mr Danny Williams was doing at your house?

A There would be no need to

Q Right And that was because you hadn't been billed for it yet, right?

A Well, no There was no gift

Q Because you always intended to pay Donnie Williams for the work he was doing at your home

A And the other three contractors that worked with him, yes, and I did.

Q Just like the year before, you have heard testimony that you asked your staff again about the definition of a personal friend, right?

A I remember '11 I don't have a good memory of this But we probably talked about it when I did the forms, yes, sir

Q And in fact, that was -- Mr Conrad testified about that Do you remember that testimony?

A I have some memory of it, yes

Q In fact, you testified that he told you that those persons that he -- he advised you when you asked him the definition of a personal friend, that those persons you knew prior to running for Attorney General are good candidates for personal friends Do you remember that testimony?

A That's probably right

Q Now, at this point, you'd filled out an SOEI for 22 years, right?

A Yes

Q Had the definition of personal friend changed recently according to the instructions on the form?

A No Because there was no definition

Q But the reference to how, when you needed to disclose, that had stayed the same

A I think so

Q I guess my question is, the instructions had stayed the same You were the prior Attorney General responsible for enforcing the laws regarding SOEIs And it sounds like you keep asking your staff what the definition of a personal friend is Is all that true?

A We discussed a lot of the same things probably -- I don't have really, other than '11 when I got a written response, I don't have independent recollection of the other years, Mr Dry

Q Sir, isn't it true that you kept asking the lawyers what the definition of personal friend was because you weren't getting the answer that you wanted?

A Absolutely not

Q Well, on this page right here for gifts, there is nothing listed for any Kiawah Island golf resort gift from Bill Goodwin, is there?

A No

Q I'd like to show Government Exhibit 460 Sir, this has already been admitted in evidence This is a draft of your 2012 statement?

A Yes

Q And Ms Watts would put this together and then you would review this for this year with Mr Conrad, right?

A Yes, Ms Watts and Ms Harris and several people did, yes

Q But there would be a process and then it would go to Ms Watts with schedules and spreadsheets?

A Sure

Q Then Ms Watts would put it together and she would give it to Mr Conrad this year and all three of you would review it together

A Yes

Q Now, going to the seventh page of this exhibit, there we go, so this is what you were given by your staff,

right?

A Yes

Q Okay

A Looks like it

Q And on this draft, the Kiawah Island trip, that is listed with a value of $23,312 55, right?

A Yes

Q That handwriting there, that's yours?

A It is.

Q And you were the one that crosses it out?

A I am.

Q And you are the one that writes "Personal," right?

A Yes

Q And that refers to Mr Goodwin, who you believe is your personal friend at this point

A Yes

Q Going down, though, you don't cross off Bill Goodwin, Keswick Cabinet Retreat, $920, do you?

A No

Q And then, in fact, if we go back to Government Exhibit 459 and we go to Page 4, this is what you actually file, and there is no mention of a Kiawah Island resort trip

A No, that's correct

Q But there is a mention of Bill Goodwin, $920

A Yes, that's right

Q I'd like to fast forward to February 15th Could we go to 459, Page 3? And then I don't think -- I apologize for this Scroll down and then I think we are going to need to go to the next page And the very top And this is you disclosing your wife's loan from Mr Williams, correct?

A Yes

Q And you changed the occupation from "Medical Services" to "Healthcare," correct?

A I did I thought that was a better description, yes

Q But nowhere on this form does it say Mr Williams gave your wife a $50,000 personal loan, right?

A It does not because it says, "Principal business or occupation " That's what's called for under the law, yes

Q I'd like to go to your wife's interview on February 15th. Now, you knew that your wife was going to be interviewed by law enforcement before the interview actually occurred, right?

A Yes, sir

Q And you knew that was going to be on February 15th, 2013?

A I did

Q And you testified that the night before this interview, you had a nice Valentine's dinner with your wife?

A We did

Q And that's when you found out that your wife hadn't sent the refund check for the catering bill to your daughter, Cailin, right?

A That's what she told me, yes

Q And that just happened the night before your wife was interviewed

A Yes We were going over wedding documents, yes

Q And I guess that is one of my questions At this point, I think you testified that you thought that the interview was only going to be about the thefts from the -- by the chef from the Mansion, right?

A Yes

Q But you asked your wife to get together all of the documents --

A No

Q Well, what did you ask your wife to collect?

A I didn't ask her to collect it She collected it, I think, with her staff, the wedding documents The reception documents

Q Did you ask her to do so before she did?

A I think she did it on her own.

Q Okay But I believe you said that, you testified that you went over the documents with her

A I did

Q Okay So she brings you the documents, you sit at a table and you are going through the documents together.

A Yes

Q Okay Now, the purpose of you going through those documents was to enable your wife to explain who was paying the catering bill?

A No

Q What was the purpose of collecting the documents or reviewing the documents?

A As I testified on direct, we had learned that one of the things that the chef was saying as the reason that he stole food from the Mansion without permission was that he claimed that he was not fully paid for the wedding reception. He had an affiliation with the catering company And as a result of that, that he had taken this food from the Mansion I believed that was absolutely incorrect, but I wanted to see the documents And my wife wanted to see the documents to verify that we had fully paid the catering bill So it was related to the chef investigation

Q And your wife tells you that the refund check, she deposited that into her personal bank account?

A Yes

Q And that's the first time you are learning that

A Yes

Q The day before her interview

A Yes I had asked her to do it a year-and-a-half ago and she did not do it

Q Now, after the interview, you testified that you became upset that law enforcement had asked some questions about Jonnie Williams

A No

Q Well, that it was outside -- that the questioning was not limited to the chef issue

A No.

Q Well, you testified that you felt like your wife was ambushed.

A Yes

Q Because it was outside the scope of what you understood the interview to be about

A Because of the specific representation of the Superintendent of State Police to my Chief of Staff, and he to me, about the purpose of the interview Yes

Q In fact, you complained to Martin Kent You heard him testify that within a day of the interview, you complained to him that your wife was interviewed on subjects that you had not been informed about, right?

A I didn't complain I thought he would want to know since he also was misinformed. I had a great relationship with the State Police for 22 years And yes, I was, I was disappointed and I was angry

Q Now, at that point, you realized that law enforcement was asking questions about you and your wife's financial dealings with Mr Williams, right?

A And Mr Williams himself and his dealings But yes, I did.

Q And you understood at that point that it was possible that there would be more questions coming down the pike, right?

A Potentially, yes

Q Okay I believe you testified on cross-examination from Mr Burck that your wife had actually suggested going to law enforcement to correct one of her statements to law enforcement Do you remember that?

A Not exactly that

Q Well, Mr Burck asked you, "Didn't your wife tell you that she wanted to call the FBI and you said yes?" Do you remember that?

A I said no Oh, I'm sorry I don't think we are communicating Ask me that again And I apologize

Q Okay On cross-examination with Mr Burck, Mr Burck asked you, "Isn't it true that your wife told you that she wanted to go to the FBI and explain one of the things that she had told them?"

A Yes.

Q At that point, you told her no That was your testimony

A Yes

Q But to be clear, at that point, you think that the FBI might be investigating you as well

A I wasn't sure

Q But you thought that that was a distinct possibility?

A There was one question about me I wasn't sure who actually was even in the meeting I was not sure about the total purpose of the investigation

Q But at this point, your wife had told you the FBI had interviewed her, right?

A She did, and the State Police

Q FBI and State Police So you know that at that point that there is a distinct possibility that they might be investigating you and your wife

A Maybe, yes

Q Well, let's go to the PenFed loan application Two weeks before your wife was interviewed, the two of you signed a loan application to Pentagon Federal Credit Union, right?

A Yes

Q Let's bring up Government Exhibit 480, please It has been admitted. And in fact, this is the e-mail from your secretary, Pam Watts, to Nan Bolt?

A Yes, sir

Q And you had asked Ms Watts to send this to Ms Bolt?

A Yes

Q And this contained the loan documents for you that were signed, correct?

A In some spots on the application, yes

Q Okay Now, this loan application, that was for 770 Devils Knob Loop?

A You can't see it here, but yes, Mr Dry, that was the template, the first one we got, yes

Q That's the Blue Ridge Heaven property?

A Yes

Q And at the time of this application, you were hoping to close this loan within 30 days, the loan application

A That was what they told me, that they wanted it closed by February 28th. That was on the initial form, yes

Q Now, turning to Page 9, these are your handwritten corrections on the first page of this, right?

A Yes

Q Now, on the top, I think your lawyer has pointed out at the very top of the form that you don't sign there and you don't check the boxes for whether it is a joint or a personal loan application.

A Yes

Q All right But to be clear, from day one in your conversations with Ms Bolt, this was always going to be a joint loan.

A Yes, because my wife was on the deed as well. Yes

Q It would be impossible for you to just fill out on your own, because your wife is on the deed; both of you have to be on the --

A I'm not sure about whether it would be impossible That I couldn't refinance in my own name. But the intent, sir, was to have it be a joint application, yes

Q If you look under co-borrower -- if you look at the borrower information?

A Yes

Q That says that the co-borrower is your wife

A Yes

Q Now, on Page 10 of this document, there is nothing listed for Starwood Trust?

A Right

Q And there is nothing listed for Mr Williams

A Right

Q And you testified that the reason that there weren't was because they were corporate obligations, right?

A In part But what I testified to is I just didn't look carefully at this page at all

Q Okay So you didn't review this page in any way, shape, or form?

A It was February 1st I sent it right back, and the answer is no

Q Okay Well, on the left hand -- let's do it this way On the first page, you had made handwritten changes, including the years of school, number of dependents, number of years you owned the houses, et cetera

A Yes, I did.

Q So your testimony is that you reviewed the first page dealing with this stuff, but you didn't bother to review the actual outstanding liabilities?

A No That's not what I said I said I looked at the whole form, but I looked at it very quickly And there were a couple things that jumped out on Page 4 and the last page that I was very familiar with, and that's what I changed.

Q Okay Let's go to Exhibit 480, Page 11 Sir, this is your signature and your wife's signature

A Yes

Q Okay And I believe that you testified on cross-examination that you don't know how the form actually got to your wife for her signature

A I either handed it to her or I had somebody run it over to her for her to sign so I could get it faxed back.

So I don't remember

Q You don't remember whether you were present when your wife reviewed this or not

A I don't

Q You can't testify one way or the other whether she reviewed the document?

A No, sir

Q Okay Well, let's go to Page 12 These are the additional liabilities, correct?

A Yes

Q And there is no mention of Starwood or Jonnie Williams on that?

A No

Q And at the bottom of the page, if we scroll down -- oh, one thing right on here, you do correct the lien amounts for Sandfiddler and -- 3112 and 3113, correct?

A Because those were the two we were refinancing and I knew those numbers right off the top of my head, yes

Q Right In fact, if you are refinancing them the numbers are going to have to be correct so that the refinance amount you are getting is correct, yes?

A I just knew those amounts, yes

Q Can we go down? Sir, both you and your wife signed this document on February 1st?

A Yes

Q And it makes it clear, doesn't it, right above, that any knowing -- "Knowingly making any false statement concerning any of the above facts is a potential criminal violation"?

A It does I don't think I read it at the time, but I've read them for 35 years So --

Q So you knew that

A I knew the boilerplate that's on these forms, yes

Q But you knew it was a potential federal crime when you signed this to make a knowing false statement?

A Sure.

Q You are a former prosecutor, you are a lawyer?

A Yes, sir, I did

Q Now, sir, you testified that you viewed this document as a draft, kind of I think you might have used the word "iterative process" seven or eight times Do you remember that testimony?

A Yes

Q Anywhere on this document does it say "draft"?

A No.

Q Nowhere on there is there any mention of "iterative process," right?

A No I just know I sign a final application at every closing I've ever done with PenFed.

Q Well, let's go to Government Exhibit 483, please

Now, this is an e-mail between you, Larry Blake, Nan Bolt, Debbie Naylor, your wife, and your sister are all on this, right?

A Yes, that's correct

Q Okay And this is about refinancing 3112 and 3113 Sandfiddler?

A Yes

Q Turning to Page 2, the top e-mail, sir, it says here, "Thanks again for all your great service We have decided to go forward on the 3112, 3113 " And then you write towards the bottom: "Since we provided all the data for the loans already to Nan on the Wintergreen loan application, what else do you need from us on these applications " Now, Wintergreen is 770 Devils Knob Loop?

A Yes

Q And you are telling PenFed that you provided all the information for that loan application already

A That we knew about at the time, yes

Q And in fact, in the first page of the e-mail, they tell you, in the middle part, they tell you that they are going to use that information from the existing applications for the loans on these two properties, right?

A Yes That's what it says

Q Okay At no point in this are you telling Ms Bolt that you needed to review the loan application?

A Not on this document

Q Okay And at no point -- you heard Ms Bolt testify that at no point did you ever tell her that you needed to update your loan application before the February 18th fax of the new corrected application, right? You heard her testify to that?

A I don't remember that exact testimony, but if you say she said that, then she did

Q Well, do you recall any conversation with Nan Bolt prior to February 18th of 2013 in which you told her, "Hey, Ms Bolt, I need to review my loan application and update it"?

A No.

Q Let's go to RFM-0233 Do we have that? Oh, we do have it This is an e-mail from you to your sister, Mo, and your sister, Eileen, cc-ing your wife, correct?

A Yes

Q And your lawyer showed you this on direct examination And you testified that this e-mail showed that the status of the loans, I think your words were, "was in process " Right?

A Yes

Q But, sir, this e-mail, when you are talking about "The W-2's and the bank statements, etc., must be there by 2-18"?

A Yes

Q First of all, that was for the new loan applications, the 3112 and 3113 Sandfiddler, right? That isn't talking about the 770 Devils Knob Loop

A No. That's not correct

Q So --

A I was talking about all of them. Because the closing date was the 28th, that they had planned on, for the closings

Q So the closing dates for the 3112 and 3113 were going to be the same exact as the Devils Knob Loop?

A Well, I wasn't sure It depended on appraisals and other things, workload and so forth But I certainly knew that they had intended the first closing to be for the Devils Knob Loop if they had that done on the 28th, yes

Q And in fact, sir, when it is talking about W-2's and bank statements, that's just talking about the underlying supporting documentation for the loan application, right?

A Yes But it says "etc " as well

Q So you thought that as of this date, that you were going to fill out, or you were going to update your loan application before February 18th

A Not at that time

Q Not at this time You are just saying, "I need to get -- everybody needs to get the W-2's and bank statements in," right?

A And other things, yes

Q But at this point, the other things are not the loan application update, right?

A I didn't refer to that in here, no

Q Do you think at this point, in this e-mail, when you are writing this, that "etc." includes updating a loan application?

A I can't tell you what I was thinking exactly at that time I knew I hadn't reviewed the first one carefully enough, and I had the smack middle of the session And at some point I would be looking at all these things because I considered it a draft process based on 40 years of dealing with PenFed

Q Well, let's go to February 15th This is not admitted, 765 Now, I think this was admitted in a different form earlier This is a February 15th fax from you to Ms Bolt, correct?

A Yes

MR. DRY: The government moves Government Exhibit 765 into evidence

THE COURT: It will be admitted

BY MR. DRY:

Q Now, this fax contains applications for 3112 and 3113, if we go through those?

A I think that's the cover letter for those two that I sent back, because they were wrong

Q Now, on this form, you write: "Here are the forms for the loan as discussed on the phone Please disregard the ones that have the incorrect loan amounts and resend when revised." Is that correct?

A Yes. "Disregard the ones," O-N-E-S But that's right, that's what it says

Q But you are not telling Ms Bolt anything about needing to revise the original February 1st, 2013 loan application?

A No

Q Turning to Page 5, on the "Good Faith Estimate," I believe you were asked about this on direct, the update of the amount

A Yes

Q But you are updating the amount, sir, because you actually, that's the amount of loan you want, right? This isn't a disclosure saying, "Hey, no, actually, you know, it is $700,000 of liabilities" or anything like that You are just saying, "No, the initial loan amount is going to be 700,000, not 253," right?

A Right, because the forms were wrong that they sent me.

Q Because Ms Bolt made a mistake on which loan went with which property, right?

A No.

Q No?

A That's not why the mistake was made. But that mistake got made, also, yes

Q Let's go to Page 17, the loan application Now, in here, there's some more handwritten changes But are those handwritten changes from the prior one or are you making new handwritten changes on these? The 22 and the 13

A Ask me that question again. I want to make sure I answer it right.

Q Absolutely The 22 and the 13, are those new handwritten changes you are making on this before you fax it back, or are those just bleed-overs from the last application?

A Let me try to answer it this way This is a different form and I wrote them in a second time on that date, but those changes may also be a couple that I also made on February 1st But it is a new form, because this is for Sandfiddler, not Devils Knob

Q So any handwriting on this is going to be your handwriting, not Ms Bolt's

A Yes

Q And it is going to be handwriting you did for that fax, not handwriting you did back on February 1st

A They filled out the forms and sent them to me and I made a couple changes on this one

Q Now, on the second page, or the next page, Page 18, this form is almost completely blank, right? There is almost nothing filled in as far as the assets and liabilities

A Right Which is when I knew I had a problem.

Q Right I mean, there's some subtotal of real estate owned, but -- and I think there might be some liabilities in the bottom, or some assets but not liabilities, right?

A Yes

Q Yeah So you understood at this point that really, the loan application is just on computer and it just hadn't been populated, right?

A No.

Q You thought that Ms Bolt was sending you this and that this was actually going to be a loan application the way it was for 3112?

A I didn't know I just knew it was wrong, and on that day I didn't have time to deal with it But I had time that weekend

Q Okay So you know that it is wrong and there are no assets really, and no liabilities that are listed out at least But on Page 20 you go ahead and sign it anyway

A Yes Because I knew the final application would be done at closing

Q Isn't it true, sir, that you knew that Ms Bolt was just going to plug in the information from the prior --

A No No, sir This is the third form I got from PenFed that was wrong that week, and I knew I needed to spend some more time on this

Q And did you contact Ms Bolt at any point before sending that February 18th correction and tell her, "Hey, I need to update my original PenFed application"?

A No I probably talked though her 35, 40 times I probably didn't talk to her that day

Q Did you talk that to her the day before about that, the day before that?

A Probably

Q And your testimony is you think you told Ms Bolt, "Hey, I need to update --"

A No No I'm sorry I misunderstood your question. No, I did not

Q Okay Let's go to Government Exhibit 764 This is not admitted. And sir, this is an e-mail from Ms Bolt to you?

A Yes

Q And she says, "All faxes are received " Do you see that?

A Yes

Q And that's at 12:34 p.m.

A Yes

Q Now, you know that your wife's interview with law enforcement didn't begin until 1 p m.?

A I think so, yes

Q And at the time that you sent this fax, you had no idea that your wife would be questioned by law enforcement about any loans from Mr Williams, right?

A That's true, yes

Q Now, after talking to Mr Kent about this -- and by your own admission, I think you said you were angry?

A Sure

Q Okay

MR. DRY: I'd like to move in Government Exhibit 764, please

THE COURT: It will be admitted Mr Dry, we are going to take an early break. We need a break. 15 minutes

(The jury left the courtroom.)

(Recess taken from 3:05 p.m. to 3:20 p.m.)

THE COURT: All right, let's bring them in

(The jury entered the courtroom.)

All right, Mr Dry?

BY MR DRY:

Q I'd like to go to Government Exhibit 487 This has been admitted. This is the loan application that you faxed on February 18th, 2013?

A Yes, it is

Q Did you personally fax this or did you have Ms. Watts fax it for you?

A I'm pretty certain Ms Watts did it for me

Q Okay But you instructed her to fax it for you?

A Yes

Q And on the fax cover sheet, you write, "Nan, I reviewed the general loan application again this weekend. I made some updates concerning information that was incomplete Please use this as the template for the loan applications for all four loan refinances we requested."

When you are talking about the general loan application, you are talking about the original February 1st, 2013 application that you had done for 770 Devils Knob Loop, right?

A Yes

Q So basically, you submitted February 1st, 2013, the application for 770, and this is you making handwritten changes on that application

A Yes

Q You are not using the applications with all the missing data on February 15th that you had signed; this was the one that you chose to update, right?

A Yes I wanted it to be a template, though, for all of them, instead of doing four different ones

Q Understood. Going to the third page of the exhibit, sir Now, for the first time on any loan application or personal financial statement that you submitted to date, for the first time Starwood Trust and J Williams appears, correct?

A First time on a loan application or a personal financial statement?

Q Yes, sir

A Yes, I think that's right Yes

Q And in fact, you put the terms down as 0 to 36 for the Starwood Trust of 70,000, and J. Williams, 0 to 24 months at 50,000, correct?

A Yes

Q Now, sir, the Starwood, the $50,000 check to your wife, that was actually made out from Starwood Trust, correct?

A Yes And I didn't know it at the time, but yes, it was I never saw the check. Right

Q And you negotiated the terms of that first loan -- well, you confirmed the terms of that first loan to your wife with Mr Williams, correct?

A Yes, I did.

Q And that was 30 to 45 days after you were informed about it, is your testimony

A That's my best recollection Yes, sir

Q And this was an unsecured debt

A That's what I understood, yes.

Q But this isn't a loan application listing liabilities for MoBo You are listing your personal liabilities at this point, right?

A Yes

Q And in fact, at this point, there is no written loan agreement between you and Mr Williams for the loans that went to MoBo, right?

A That's correct

Q And this is after you know that your wife has been interviewed by law enforcement

A Yes, that's right

Q Going to Page 4 of the exhibit, you don't re-sign this, sir, you just make handwritten changes and then fax it back. That's the same signature from before, right?

A Yes

Q On Page 5 of the exhibit, that's the same signature as well?

A Yes

Q Okay Let's go to a new topic, sir On direct examination, you testified about various disclosures to your bookkeeper and your CPA. Do you remember that testimony?

A Yes

Q Okay And you testified about giving access to Ms Chamberlain, your bookkeeper, on February 4th of 2013 Do you remember that?

A Yes, I do

Q Can we bring up Government Exhibit, actually, it is Defendant's Exhibit RM-0109

MR. DRY: I don't think this has been admitted It was shown by Mr Asbill RM-0109 Do we have it as admitted or non-admitted? I think we might need to bring up your system. I don't think we've got it loaded Oh, there it is

BY MR DRY:

Q Do you recognize this document, sir? It is from you to Ms Chamberlain?

A Yes

Q Okay

MR DRY: I'd like to move Defendant's Exhibit RM-0109 into evidence

THE COURT: It will be admitted

BY MR DRY:

Q Now, in this e-mail, you are giving your bookkeeper access to your TowneBank bank account, correct, for MoBo?

A Yes

Q Okay But you explicitly state in the e-mail that you are doing this for the limited -- let me make sure I get this -- limited purpose of providing regular bookkeeper services, right?

A Yes

Q But the bank account, that would only show deposits from Starwood Trust, correct?

A I'm not sure -- it would show a lot of things What's the specific question?

Q I guess the question is, if she had access to the bank account and there was a Starwood Trust entry, that would merely say $50,000 received from Starwood Trust Correct?

A Yes She would see that and copies of the check. That's right

Q Right She could blow up the check and see that a $50,000 check went from Starwood Trust made payable to MoBo, Attention: Maureen Uncapher, and then "Beach House" in the memo line That's what she would see

A I think you have accurately summarized what's on the check, yes, sir

Q But that would provide no information whatsoever that Starwood Trust was affiliated with Jonnie Williams in any way

A No

Q And in fact, it wouldn't even provide information that the payments were related to Star Scientific in any way It would be Starwood Trust

A Yes

Q Nor would there be any loan agreement terms readily apparent on the face of the bank statements?

A That's right

Q And the bank statements wouldn't reveal anything about the meeting Mr Williams had with Ms Huffstetler, him being recognized as a healthcare leader, or basically, really, any information regarding the relationship between you and he, correct?

A That's absolutely right I don't think those are required for taxes

Q And you wrote this e-mail before your wife was interviewed by law enforcement, correct?

A Yes, I did.

Q Well, let's look at an e-mail that you wrote to Ms Chamberlain about two weeks after that Can we show Government Exhibit 762 This is not admitted. This is an e-mail from you to Ms Chamberlain on March 3rd, correct?

A Yes

Q Now --

MR. DRY: I'd like to move Government's Exhibit

762 into evidence

THE COURT: It will be admitted.

BY MR. DRY:

Q Going down towards the bottom, it says: Brenda, I also would ask you to put your billing rates and arrangements in writing to me also and your standard confidentiality agreements to protect all the financial information we provide and is given via access to the bank statements " Did you write that to her?

A Yes

Q And then if we go to admitted, Government Exhibit 763, this has been -- Ms. Chamberlain writes to you on the second -- this is a March 4th e-mail from Ms Chamberlain to you in the middle Do you see that?

A Yes

Q And she says, "As far as confidentiality agreements go, this is the first time I've been asked for one " Do you remember Ms Chamberlain testifying to that fact as well?

A She may have, yes

Q And the top e-mail, you respond that you thought she might have one already

A Yes

Q After your interview, after your wife was interviewed by law enforcement, did you execute a confidentiality agreement with Ms Chamberlain?

A Yes Well, I believe my sister signed one for MoBo, my sister, Maureen, and my sister, Eileen, signed for Blue Ridge Heaven because they were the managing members of the respective LLC's But yes, I believe those were executed

Q On direct examination you also testified that you disclosed your wife's ownership of Star Scientific to the IRS?

A Yes, through my tax return process

Q That was the sale of stock on your 2011 tax returns, right?

A Yes

Q Let's show admitted Defense Exhibit RM-0282 Do you recognize this as your 2011 tax returns?

A Yes, sir Seems to be

Q And if we could go to Page 22 of this document And then if you could blow that up. So sir, that merely shows that there was a sale of Star stock, correct, Star Scientific stock?

A Yes, that's what the form requires

Q It doesn't list Mr Williams in any way?

A No, sir

Q Doesn't say anything about Starwood Trust

A No

Q Doesn't say how that stock was purchased, what money was used for it?

A No, it doesn't

Q Doesn't say anything about the repurchase of the stock?

A No.

Q The only thing that really discloses is you no longer have any financial relationship with Star Scientific, right?

A Not necessarily

Q Well, let's put it this way: That you don't have any stock in Star Scientific as of that date Well, actually --

A Not necessarily

Q That you sold Star Scientific stock in that amount Can we agree on that?

A Yes

Q Okay And by looking at this tax return, there would be no way for anybody to know that there was a $50,000 loan from Mr Williams to your wife

A No.

Q And there would be no way for -- and this is a personal tax return, right?

A That's correct And this is a capital gains form.

Q And sir, you know that tax returns, they are not publicly available, right?

A Mine is now

Q Well, before a court order had them to be disclosed, yours were not publicly available, were they?

A Yes, sir, that's correct

Q Now, you also testified about your 2012 MoBo tax return, right?

A Yes

Q And I believe Mr Asbill asked you, quote, "Would those tax documents reflect MoBo loans from Williams?" And you said, "Yes " Do you recall that?

A I'm sorry, Mr Dry, could you repeat that again? I want to make sure I understand it

Q Absolutely, sir In fact, why don't we bring up Government Exhibit 821 It is the August 23rd transcript, pinpoint site, 4816, 19 through 21 And the question Mr Asbill asked you was, "Would those tax documents," meaning the MoBo ones, "reflect MoBo loans from Williams --" 19 through 21 Right down there You were asked: "Would those tax documents reflect MoBo loans from Williams?" You responded, "Yes " Does that refresh your recollection of your testimony, sir?

A It does What I am not clear on was the reference, what tax documents?

Q We can go up

A Yes, sir

Q And I believe that this is in reference to the MoBo tax returns

A The corporate tax return, not personal

Q Not personal

A Okay

Q Well, let's do it this way Is it accurate that in your view the MoBo tax returns would reflect MoBo loans from Williams?

A As I best understand it from Mr. Cook, not by name, but by number and value is the way he has explained it to me and showed me on the form. Yes

Q And in fact, when you talk about the form, Mr Asbill asked you: "On what sort of a form would they do that?" You responded, "The corporate income tax is a form 1120S

A Yes, that's what I understood, the 1120S form, yes

Q You said one of the attachments to that form, my vague recollection, I think it is Page 4, Line 19 Do you remember that?

A Yes, I do That's what I remember from Mr Cook, him showing me that at one point

Q But let's talk about that just for a second. That form, that's not going to identify who the loan is from, correct?

A That's correct From none of the lenders, that's my understanding, right

Q All that form is going to talk about is the total amount of loans

A Right That's what the law requires

Q Absolutely So the fact that you send that form into the IRS, it is not going to disclose anything about your financial relationship between Mr Williams or the financial relationship between MoBo and Mr Williams, correct?

A Not on the loan part, that's correct

Q Okay Let's go to Government Exhibit 652, please

MR DRY: Hold on one second, Your Honor, please

(Counsel conferring with co-counsel)

BY MR. DRY:

Q Discretion is the better part of valor sometimes We are going to go on to a new topic

Sir, towards the end of your direct testimony, you talked about your family at length, and you testified, quote, that that's why I accepted those Smith Mountain Lake weekends It was just three days with just my family and all we did really was spend time on the water, play golf with my sons Do you remember that?

A Yes

Q And you testified about the Chatham Bars trip, and you know said, "For me, when people offered things like that, I had multiple offers to do things but the few I accepted were ones that meant time with my wife or time with my family That's what I saw I didn't see fancy hotels or boats I mean, I just saw time away " Right?

A Yes, that's how I felt, yes, sir

Q But sir, to be clear, you were living in the Governor's Mansion at the time, right?

A Yes

Q And you had a home in Glen Allen that cost $835,000?

A Yes

Q And you had another vacation home in Wintergreen that cost a million dollars?

A That I owned with five other people, yes.

Q You had access to it, right?

A Yes

Q And then you had a beach property that you bought in 2005 for $1 15 million?

A Yes

Q You had another beach property that you bought in 2006 that cost $850,000?

A Yes

Q You had access to Camp Pendleton?

A Yes

Q So isn't it fair, sir, that you didn't need to go to Chatham Bars Inn, you didn't need to go to Smith Mountain

Lake, you had plenty of options if you just wanted to spend time with your family?

A Sure

Q Finally, sir, during your direct testimony on that first day, you spoke about how proud you were on your Inauguration Day as Governor. Do you remember testifying about that?

A I hope I didn't use the word "proud " But it was a wonderful acceleration for my family, yes

Q And that was on January 16th, 2010?

A Yes

Q And you gave an Inauguration Address that day?

A Yes, sir

Q Could we bring up Government Exhibit 813, please? This is a printed-out copy of your inauguration speech. Is that correct?

A Yes, sir

MR. DRY: Government moves Government Exhibit 813 into evidence

THE COURT: It will be admitted

BY MR. DRY:

Q Turning to the fifth page of the exhibit, third paragraph from the bottom, can we blow that up? Part of your speech, you wrote: "We live in the most generous nation on earth. So many Virginians give sacrificially of their time, talents, and treasure, and rightly so The Scriptures say, 'To whom much is given much will be required '" You said that, right?

A Yes, sir

Q Mr Williams gave you and your family approximately $177,000 in gifts and loans, didn't he?

A Yes

MR. DRY: No further questions

THE COURT: Mr Asbill?

REDIRECT EXAMINATION

BY MR ASBILL:

Q Getting back to where Mr Dry left off, was anything required from you for Jonnie Williams in return for whatever he did for you or your family?

A Absolutely not

Q Let's talk about, go in reverse order from the things that Mr Dry has been talking to you about for the last couple of days With respect to disclosing information about Star Scientific or Starwood Trust, et cetera, to Ms Chamberlain, to your accountant, to tax preparers, et cetera, et cetera, did you think that if people were looking at you or trying to investigate you that they weren't smart enough to figure out that Star Scientific or Starwood Trust had something to do with Jonnie Williams?

A I'm sure they could figure that out, sure He was the CEO

Q Let's pull up Government Exhibit 763 that Mr Dry just talked to you about Can you highlight at the top e-mail, can you highlight the last sentence, please? Bold it and yellow it So did you provide Brenda Chamberlain with full permission to access the TowneBank account and pass all the information on to the accountant, to your tax accountant?

A Yes, I did.

Q All right. With respect -- let's pull up Government Exhibit 487 This is dated what, the 18th of February?

A Yes

Q All right And is this -- is this the final time that you have made corrections to the PenFed loan?

A No

Q Not? When was the final time?

A I had given -- if your question is had I given other information that was required for the loan application, that continued, I think, up until the time of closing We closed once in April, once in May, and once in June on these three loans, and I was continuing to provide information as requested by Ms Bolt and PenFed

Q Let me go to Page 3 of this document, not the cover sheet, but I think Page 3 This is what I am talking about Down at the bottom where it says, "Add Starwood

Trust, Jonnie Williams," et cetera?

A Yes

Q With respect to that information, did you over-disclose in terms of what you thought was required on the form information about Jonnie Williams or Starwood or things that he was connected with?

A Yes I mean, the corporate obligations I had never listed on the form. I put that on there when I was told several times by Ms Bolt that they did not need to be on the form.

MR. DRY: Objection

THE COURT: Sustained.

BY MR. ASBILL:

Q Why did you over-disclose at this time with respect to information about Jonnie Williams or anything that he was connected to?

A Obviously, there were a number of things I had not initially disclosed on February 1st But obviously, after I learned from my wife that there were agents of either state or federal authorities, I wanted to be sure that there was absolutely no question that anything that had -- that anything I had to do with Jonnie Williams was fully disclosed to anybody that I had to deal with, which at that time was bookkeeper, my accountant, was the bank I was in the middle of many of these transactions, trying to get my tax return done, trying to get my properties refinanced, and I did not want there to be any question at that point that even the corporate loans were outlined for Ms Bolt

Q Okay Let's go to -- let's go back to the SOEI I believe this is for 2012, the draft SOEI for 2012, Page 7

MR. ASBILL: Can you find that for me, please? Do you all know the number? Whoever has got it more quickly, I don't care

BY MR. ASBILL:

Q I think it is page -- I'm going to look for Page 7, I believe, on the draft That page I'm sorry, Page 8 Seven pages in. Okay And at the top, bold the Bill Goodwin scratched-out Kiawah Island trip, please And would you bold down at the bottom where it says, "Bill Goodwin, Charlottesville, Keswick Cabinet Retreat " Okay Bill Goodwin has -- Bill Goodwin is the person giving the gift; is that correct?

A Yes

Q Okay And with respect to the Keswick Cabinet Retreat, $920, you leave that on the form. You do not strike it from the form.

A Right

Q When you ultimately file it Correct?

A Right

Q And why is it that you left in that $920 item for Bill Goodwin?

A You know, I got a lot of different advice on what a personal friend was from Mr Eige, Ms Kelly, and others But it was clear to me that any gift that was related to your public position should be disclosed. It says that right on the form itself The personal friend exception only applies to gifts that are given that are clearly unrelated to your public position That's right at the top of this form. And I was having a Cabinet Retreat at Keswick This was another property Mr Goodwin owned, and obviously this gift was related to my public position, having a Cabinet Retreat there So I believed that that one needed to be on there

Q Okay And above it, you struck out the $23,000 or whatever the value of the gift was, in terms of your family going to Kiawah Island; is that correct?

A Yes

Q You write in "Personal," right?

A Yes

Q You make that decision?

A Yes

Q And you take it off the form.

A Yes

Q Okay You can pull that down I want to ask you about Mr Goodwin. And in general, is he a successful businessman in Virginia?

A Probably one of the most successful

Q Is he a philanthropist in Virginia?

A Significant I think he has given tens of millions of dollars to the University of Virginia

Q Did you view him at this time as a permanent friend?

A Yes

Q And you have talked about some of the reasons, you said you have known him for seven or eight years; is that correct?

A Yes

Q Has he ever given you any personal and confidential advice about anything?

A Yes

Q You said you had dinner, or he had dinner at the Mansion once with you?

A He was there once for dinner and I think he came once or twice for other events while I was Governor

Q All right You said you knew his wife's name?

A Alice

Q You knew her?

A Yes

Q And you said, I believe you said you didn't know the names or you couldn't remember the names of his children.

Is that right?

A I'm sure Mr Goodwin told me, but I knew he and Alice, more Bill, but not his family that well I think I had met one of them at one point

Q Do you have any other personal friends of yours whose children's names you do not know?

A Yes, many

Q Now, would I be accurate in saying that since you were indicted, you learned a lot about who your true friends or your real friends were?

A Yes

Q Did Mr Goodwin demonstrate that he was a true friend to you after you were indicted?

A Yes

Q In what way?

MR. DRY: Objection, relevancy

THE COURT: Sustained.

BY MR. ASBILL:

Q While you were Governor, before you were indicted, did Bill Goodwin ever ask you for anything?

A Yes

Q What was that?

A He asked me in March of 2012 to reappoint his son-in-law, Robert Hardie, to the Board of Visitors at the University of Virginia He sent me a letter

Q Let me pull up document RM-0347-0001 and 0002 Is this the letter you have just talked about?

A Yes

MR. ASBILL: I move the admission of this letter

THE COURT: It will be admitted.

BY MR. ASBILL:

Q What day is the letter dated?

A March 16th, 2012

Q And this relates to his son-in-law that he is asking you, Robert Hardie, that he is asking you to reappoint?

A Yes

Q Highlight just that sentence there And look at the next page, please. 0002

A Yes

Q And in the concluding paragraph, what does Bill Goodwin say to you?

A "In summary, I really hope that you will seriously consider Robert's reappointment, as I believe he is contributing a lot to the University and I know he would be greatly appreciative and honored. I would be glad to chat about this further if you would like Bill "

Q Aside from the Kiawah thing or the Keswick thing, has he been a donor to you?

A Yes, for many years

Q All right And with respect to this request from Bill Goodwin, what did you do?

A I evaluated his request with my Secretary of the Commonwealth, Janet Kelly, and determined that I would not reappoint him, did not believe his views on higher education were consistent with the vision that we had outlined in 2011 for higher education reform, and I declined to reappoint him.

Q In your view, is this an example of getting something from a donor one day and the next day telling him no?

A Yes

Q Did you ever ask Mr Goodwin to do you a huge personal favor?

A Yes

Q When and what

A Later on that year, in June, I think there has been previous testimony on this, we had a significant management problem at the University of Virginia The President was removed by the Board of Visitors, which caused a significant consternation out there at the University of Virginia I think the letter has been introduced where I told the board, "Fix this problem or you are fired " And they resolved it and reinstated the President, but I had some serious challenges after that with making sure that this board was cohesive, was functional, and was properly managing the relationships out at the flagship University So I knew we needed some senior leadership

Q And was this -- what did you ask him to do?

A I called Mr Goodwin There were only two people that I thought really could try to fix this problem as a senior advisor to add to the current Board, and Mr Goodwin was one And he has been a long term philanthropist He had served eight years on that Board already So I called him. I said, "Bill, I need your help. We've got significant problems out here SCHEV is looking into this problem. The relationships between the Board and the President are not good. I've got to get this fixed. You are one of the few guys that I know that can help fix this " And I said, "I know you are busy as heck, I need you to serve as in an advisory capacity," not on the Board at that time, "I need you to serve as a senior advisor to the Board and help me and help the Board get this process back on track "

Q And did he do that for you?

A He did It took, I think, a call or two, but he thought about it and said, "It is important " I knew he felt bad because I didn't reappoint his son-in-law Now I've got him being a senior advisor But Mr Goodwin said, "I will do it I like you I know you have got --

this is a problem, and we've got to get the University back on track " And so he did it

Q At all times in 2012, did you consider Bill Goodwin to be a personal friend?

A Yes, I did.

Q Going back a little earlier in Mr Dry's cross-examination of you this afternoon, were there ever any personal guarantees that you gave for the Jonnie Williams loans to MoBo?

A No Neither orally nor in writing No

Q All right Mr Dry asked you about was it a good investment for Jonnie Williams to put this $70,000 or whatever into MoBo And I want to follow up on that Did Mr Williams get his money back per the agreement?

A Yes I repaid him fully with interest last year

Q All right In terms of whether or not he would invest in something like MoBo, in terms of credit risk, has MoBo ever, ever in the existence of MoBo failed to pay any debtor, any creditor?

A Not in nine years, no

Q How about you personally? Have you ever failed to pay back anything you owed to anyone?

A In 60 years?

Q In 60 years

A Not in my adult life that I can remember I've tried to keep my word.

Q Mr Dry asked you some questions about Mr Kosowsky and the testimony that Mr Kosowsky gave

A Yes

Q He asked you some question about whether Mr Kosowsky was paid for his testimony

A Yes

Q Was he paid for his testimony?

A No I didn't answer that right He was paid for his time I'm sure like everybody that's in the courtroom, he was paid for his time I'm sure he has got his own ethical rules and plenty of integrity and he gave the opinion he thought fit But he was paid for his time in performing the work we asked him to do

Q Do you think the agent who testified in this case as a summary witness was paid for his testimony?

A No, I think he was paid for his time

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Q With respect to the payments at the end of -- the TowneBank, basically Excuse me Let me -- let me -- let me -- let me go back to the Dr Davis loan

When was the Dr Davis loan paid off?

A At the end of 2012

Q All right

A I had paid my -- what I believe was my portion in the March and April of 2012 time frame, and that 20,000 total was paid towards -- to Dr Davis And my sister paid her 12,500 at the end of year So it was fully paid off at the end of 2012

Q All right And from your perspective, your portion of it was paid off by what date?

A By April of 2012 I paid off the -- half of the remaining balance of 17,000 and change that I felt that was my portion of it, if you will And then I actually paid a portion of my sister's, the other $3,750 That's that deposit that you asked me about earlier

Q All right Did you have any doubt about your sister's willingness or ability to pay whatever her portion of it was --

A No

Q -- to Dr Davis before the end of the year?

A Absolutely not

Q All right

A I have a very capable financial partner

Q All right And with respect to the Heritage Bank application that later serves for other purposes with other banks, that was dated April 30th --

A Yes

Q -- of 2012?

A Yes

Q And as of the date of that form, did you believe that you had any outstanding obligation with respect to Dr Davis?

A No.

Q Now, Mr Dry suggested in his cross-examination of you that Mr Williams may have been trying to get you $50,000 towards MoBo in March of 2012 to sort of get you over the -- some short-term hurdle or get you over the hump And then there was a plan afoot, or a plan in place, to give you more stock or more cash or whatever Is that true?

A No

Q With respect to the Hannity interview This is 8/6/2012 That's August 6th of 2012; is that correct?

A I think that was the date, Mr Asbill

Q Yeah

A Yes

Q And he showed you that, a little portion of that on the screen, where you said something in the beginning that you can't spend more than you have or you'll go into a hole?

A Yes, sir

Q Something to that effect?

A I did say that

Q All right This was about state deficits, state budgets? Was that the topic there?

A Yes

Q Did you, in fact, balance the state budget?

A Four years in a row. we had the highest surpluses in the history of Virginia under my governorship for four consecutive years of $2 billion

Q So --

A My team did a good job, I thought

Q So whatever you and your team had to do in order to accomplish that, you did it?

A Yes, sir

Q All right Mr Dry asked you about the meeting, I think this is the -- I think it's the 12th of March Correct me if I'm wrong I think it's GX 754 And if that refreshes your -- no Excuse me That's a different exhibit

What I'm talking about is the meeting in your office about healthcare issues, and Lisa Hicks-Thomas, Sara

Wilson --

A Yes

Q -- and you are all present?

A Yes

Q And you had some discussion, as you've described, about --

A Yes I believe that was March 19th

Q -- Anatabloc?

A Or the 21st, I think

Q I'm sorry What date?

A I think it was -- I believe it was March 21st of 2012

Q Okay Now, with respect to that meeting, do you recall whether or not Martin Kent was present or scheduled to be present?

A He was scheduled to be present And I think he was in and out, which is not unusual for a Chief of Staff

Q All right And Mr Dry asked you if you heard Lisa Hicks-Thomas testify and in her testimony where she thought that you suggested that they, meaning Lisa Hicks-Thomas and Sara Wilson, ought to go talk to the Anatabloc people?

A I heard the testimony Yes

Q All right And that's what she said that she thought occurred?

A Yes

Q And you said, when you testified, what you thought occurred --

A Yes

Q -- is that correct?

And did you hear Sara Wilson's testimony in this trial?

A Yes

Q And did you hear her say anything about you suggesting to them that they ought to go talk to somebody about Anatabloc?

A No Her testimony was she didn't remember any request that I have a meeting -- that they have a meeting with anybody from Star And, in fact, she already had the meeting before on her own

Q Let's go to GX 499 Back to Dr Davis for a minute And Page 6 of that exhibit

A Yes

Q Do you recognize this?

A I do

Q And what is it?

A I got this from my sister, my partner, in MoBo But this was the release that Dr Davis wrote to MoBo Real Estate regarding the loan of $50,000 to indicate that it had been paid in full as of December 20th -- I'm sorry, as of the end of the year It had been repaid in full.

Q Okay

MR ASBILL: If that -- if it's not been admitted, I ask that -- I think it is admitted But if it's not, I'd ask that it be admitted.

THE COURT: I think it's been admitted, but I -- it will be admitted

BY MR ASBILL:

Q Mr Dry, I believe, asked you about did you understand that Jonnie Williams -- with respect to MoBo and the loan time frame, March of 2012, that Jonnie Williams had spoken to Mr Uncapher, and I believe you said "about several things" or "for several reasons " Is that right? Or did you -- what was your understanding?

A I'm sorry Could you -- I'm not sure I understand the question

Q I'm not sure I understand my notes

Did you understand that Jonnie Williams had spoken to Mike Uncapher on several occasions?

A As of what date?

Q This is the March time frame when you're talking about this loan to MoBo

A Well, I understood he had spoken to him at least once because of Mr Uncapher's e-mail to me back in January that has been introduced that said that he and my wife had initially spoken to Mr Williams about the loan And if he had spoken to him at another time, Mr Asbill, I'm not sure But at least on one occasion I knew that

Q Okay Let me go to -- because it's right here, and it overlaps with some of the things yesterday I want to talk to you about the concept of vacations that Mr Dry was talking to you about yesterday And I think he pinpointed one of them. This is GX 755 We looked --

MR ASBILL: You can pull that up again That's -- oh, I'm sorry

MR DRY: We can switch it around

MR ASBILL: Yeah If you can pull it up, GX 755

MR DRY: Oh, 755?

MR ASBILL: Yeah, I think that's -- I think I wrote down the number right

BY MR ASBILL:

Q Is this your schedule in the March 13 to March 18 time frame?

A Yes

Q And there was some sort of a trip to Florida during a portion of that?

A Yes Some was personal Some was Republican Governors Association

Q Okay And when Mr Dry asked you yesterday about the

18, quote, vacation trips during 2011 and 2012, was this one of those?

A Yes

Q Okay

THE COURT: Just hold that there for a second

BY MR ASBILL:

Q Now, of those 18 trips that he asked you about, how many of the 18 were you and your wife just alone together on the trip? I don't care about EPU people I'm just talking about without family or friends or anything else -- anyone else?

A I think this one here was the only one The other ones, there were children or others with us

Q And on how many of the 18 trips, whether or not you were alone or whether or not there were family or other people around, did you talk with your wife about the nature and extent of her relationship with Jonnie Williams?

A Probably none

Q And on how many of the 18 trips did you have disagreements or arguments about one thing or another with your wife?

A Many

Q On this particular trip that we just pulled up on the screen, on this trip to Florida, what was, if any -- or was there tension between the two of you on this trip?

A Yes This was a day after the session was out, and I know I was just flat exhausted And we spent a lot of time just reading and not doing a lot of communicating And there was certainly some tension, yes

Q In terms of tension on other times, more or less? What?

A I mean, there was in a period of time that still continues to today where we've had significant problem talking about the things that are important in the relationship And there was not a lot of -- there was not a lot of communication during that time We spent a lot of time reading

Q Were you talking about all these illegal deals that supposedly occurred between you and Jonnie Williams?

A No Absolutely not

Q Now, I believe you've testified on several occasions that you almost never, you rarely talk with anyone about any of the personal challenges that you had in your marriage; is that correct?

A That's correct

Q On one of the 18 trips, did you have one in the middle of July of 2011 to Camp Pendleton?

A Yes

Q And who else was present on that trip?

A I think at one point or the other, all my children were there, and my wife was there

Q And that occurred how long after -- this is July It's July, right? This is before the September 5th, 2011, e-mail that has been the subject of some testimony in this case --

A Yes

Q -- is that right?

A It was

Q And during that trip, did you talk to anyone about any difficulties in your relationship?

A Yes

Q Who?

A I spoke -- I spoke briefly to my oldest daughter Jeanine

Q How old is she?

A She's now 33

Q Did you get into detail with her or talk generally or what?

A It was general, although I told her what some of the challenges were She's my eldest daughter, Iraq war vet She's been a confidant and a friend, as well as my daughter So I talked to her for a little bit I just needed somebody to talk to at that time

Q And in summary, without getting into details here, what did you tell her about the nature or status of your relationship at that time?

MR DRY: Objection Hearsay

THE COURT: Overruled

MR ASBILL: What he told her

THE COURT: Overruled

A I don't think there's much I told her she didn't already know I told her her mom and I were having some significant troubles communicating I told her I was worried about her mom because of these chronic flashes of anger, that, you know, we were having some challenges with the office And I just asked for her help to continue to do everything we could to help love her mother and do everything we could to encourage her mom, tell her she was doing a good job and try to do everything that we could to embrace and encourage Maureen to try to stop the anger and the problems that I saw with dealing with my wife

Q Let me go forward to 2014 Mr Dry showed you some photos of you and your wife walking into the courthouse here --

A Yes

Q -- hand in hand, on -- it's January 24th, the day that you were both formally arraigned in this case?

A Yes

Q First day in court on this case?

A Yes

Q All right And he showed you some other photos throughout -- throughout the spring of 2014 of you all walking into court?

A Yes

Q And I think at one point, or maybe at several of the points, you were holding hands with your wife?

A Sure

Q Is that correct?

A Yes

Q Does that reflect -- do those photos and what you -- you walking in hand in hand, does that reflect some difference in the true nature of your all's relationship in the first half of this year?

A No I mean, I've known Maureen for 41 years, and, you know, we've had some very, very difficult times over the last, I'd say, ten, but particularly the last three and a half, the time I spent as Governor

But, you know, we had never -- we hadn't had more than a speeding ticket in our life, and to be charged with 14 felonies was just a crushing experience for my wife and I So, of course, I wanted to support her She wanted to support me One thing we agreed on was that we knew in our hearts we had not done anything improper or wrong or illegal, and we wanted to support each other on the day of this arraignment Absolutely

Q Is that true going into the spring in terms of other court appearances, motions hearings or various other court appearances that you both had to attend?

A Sure

Q At the time of the arraignment on the 24th of January, had you received or had your defense team received document production from the government of the 3-and-a-half million pages that have been discussed in this case?

A No, not to my knowledge They were, I think, a month late. So I hadn't gotten into much of the details of the government's documents at that time So --

Q All right

A So there were a lot of things I didn't know

Q Have you finished reading the 3-and-a-half million pages yet?

A No, sir

Q With respect to witness statements that the government produced, when did you first get access to those?

A About 45 days before trial, through -- through my legal team

Q And that -- and in fairness, that was the day that they were supposed to be produced --

A Yeah That's true

Q -- by the government --

A Yes, sir

Q -- is that right?

A That's right

Q Okay And having seen the documents and having read the witness statements as well, do you now know more about your wife, the relationships with -- her relationship with Jonnie Williams, the level of contact, things of that nature, gifts, et cetera, to your family, have you learned more than you knew in realtime?

A Yes, I have

Q All right Let me move on Mr Dry asked you about -- this is the March 12th call, I believe, or March -- when was the call with your sister Maureen when she got back from Jamaica?

A I believe that initial call was the evening of January 11th That was a Sunday night

Q And that's -- is that when you had the 22-minute call with her?

A Yes

Q All right And on that 22-minute call, I believe you -- you said -- or Mr Dry asked you a question, was that -- was that more social than MoBo business related, correct?

A I think it was a combination But she was trying to piece her marriage back together with this trip to Jamaica She had just gotten back I know she told me she was sick So it was mostly that I think she probably mentioned the check because it was in the text But we talked again the next night

Q I'm sorry That's March If I misspoke, it's March, right?

A Yes

Q I thought I said March, but --

A You did March 11th, 2012 That's right.

Q 2012?

A Yes

Q Okay And when you say "social," I mean, am I to understand correctly that that means talking about her trip to Jamaica and whether or not she was able to reconcile with her husband --

A Yeah That --

Q -- and talking about her physical illness problems?

A Yes, sir That's right As opposed to business, it was -- that was the majority of the conversation Yes

Q Okay But this is not -- social doesn't mean like chatty, fun --

A No

Q -- et cetera; is that correct?

A Right

Q All right The -- GX 815

MR ASBILL: Can we pull that up? This might be on -- I'm sorry I'm not sure whose

BY MR. ASBILL:

Q Mr Dry showed you this today. This is some sort of an RGA donor list?

A Yes That's what it is

Q All right And is this a document that before today has ever been shown in court?

A I'm sorry Would you repeat that question?

Q Yeah Before today, has this document ever been shown during this trial?

A Not to my knowledge No

Q And when did you first see it?

A Today

Q All right And you say you accept that if Mr Dry got this from the Republican Governors Association website, you'll accept the authenticity of this document and the accuracy of the figures here?

A Sure I mean, I was Chairman at the time, so I'm familiar with a number of these names I'm sure I raised some of that money So yes

Q Okay And is this something that you reviewed or thought about in realtime in terms of inviting people or not to the Healthcare Leaders event on February 29th, 2012?

A No I was not aware of any invitations to RGA people at all at the time of the leaders event

Q All right

MR ASBILL: You can take that down

BY MR ASBILL:

Q With respect to -- so, I mean, there was no -- let me just -- was there any effort to favor Jonnie Williams even though his contributions were in the thousands or, you know, $5,000, or whatever it was, versus much larger donors to the RGA?

A No Because I didn't invite Mr Williams or anybody from Star I circled a few of my personal physicians and asked for leaders at Massey Cancer and VCU to come And that was my contribution to the list about who I thought ought to come, in addition to whatever Dr Hazel was doing

Q Okay You said that you -- you recognized Dr Ladenson at the event --

A Sure

Q -- as an out-of-town guest, et cetera?

A Yes

Q Mr Dry showed you a picture of your wife whispering in your ear, appearing to whisper in your ear?

A He did Yes

Q Was that whisper about Dr Ladenson --

A I have --

Q -- or do you know what it was about?

A I don't know I really don't

Q Okay

A It could very well have been I mean, introducing Dr Ladenson and ten other people at the beginning of that event before I made my remarks in the place where I live, that would have been something I would have done at hundreds of events.

Q All right Now, that -- aside from Dr Ladenson's -- whatever connection he may have had to Star Scientific, did you know that he was the head of endocrinology at Johns Hopkins?

A Oh, absolutely That's why I introduced him

Q All right

A I thought that was a big deal It's a distinguished hospital

Q And did you think that that was a distinguished medical position for someone to hold?

A Sure Chair of a department at a place like Hopkins I thought was a big deal

Q Okay Dr Hazel He -- Mr Dry asked you about Dr Hazel --

A Yes

Q -- supposedly being upset about not having total control over the guest list or the invite list at the Healthcare Leaders event?

A I heard that

Q Okay And does Dr Hazel get to make that call totally on his own?

A Each Cabinet member that runs an event like this basically manages it But on some occasions, I'd add a few people I know on many occasions, the First Lady's office would do it Chief of Staff sometimes would do it So I -- I don't think I knew about any other invites other than the ones that I had made to add to the list until after this Dr Hazel never told me there was any flap about the invites

Q He never complained to you about anyone not being invited or being invited at that event?

A Not that I recall No, sir

Q All right

A And he normally wouldn't That wouldn't be the kind of thing he'd come and see me about

Q Now, he obviously had his own opinion about various things?

A Sure That's why I hired him.

Q And sometimes he shared them with you, and sometimes he didn't, right?

A He was -- he's a very skilled and capable guy and strong-willed and independent And that's why I hired him I really didn't know Dr Hazel really at all before I made him the Secretary of Health and Human Resources

But, again, I wanted the best and the brightest He's an incredibly skilled physician, had broad respect Was on the AMA Board I knew his father I knew his uncle I know he was of good stock, and I knew he agreed with a lot of my positions So I thought he was the right guy for the job

Q Did you think he was some sort of a yes, man; that if you send over Jonnie on a referral, something good for Jonnie is necessarily going to happen?

A No

Q Mr Dry asked you about all these notes, the yellow pages of notes, and he put them in chronological order, or whatever

A Yes

Q And they have been introduced in this case, and, you know, various different exhibit numbers, et cetera

A Yes

Q Just to be clear, these are ones you produced pursuant to a subpoena in this case?

A Yes, I did

Q The only existing copy, or whatever, original, of these documents?

A Yes, sir I made those just for my own personal use and my own folder waiting for documents And I don't think anybody in the world knew those documents existed but me

Q Nobody came and took them out of your office and gave them to the government?

A No I didn't have anything to hide I was glad to turn them over pursuant to the subpoena

Q There was no search warrant executed on the Mansion where the government took these documents?

A No, sir

Q Now, Mr Dry asked you a lot of questions about the discussion -- or the testimony of Mr Piscitelli and his description of the phone calls -- there was a phone call between you and your wife and Mr Piscitelli relating to --

A Yes

Q -- the MoBo stock issue, et cetera?

A On February 23rd, yes, of 2012

Q All right

A Yes

Q And at that time, whatever Mr Williams had been telling you that you took down in these notes, basically, none of that stuff had happened? None of the possible optional stock deals had happened; is that correct?

A No

Q All right And when you talked to Mr Piscitelli, were you telling Mr Piscitelli that, "I already got this stock and I want you to do something that sets up these structures based on what has already happened"?

A No

Q Well, what were you doing?

A No It was a proposal, almost a hypothetical at that point There was, again, one purpose of the call I needed to know whether, based on Mr Williams' proposal to me, whether or not Mr Piscitelli's company, Davenport & Company, if I was able to secure the stock loan, whether or not his company could afford MoBo a margin loan; i e , generating cash so that we could use that for the operations of MoBo during the spring That was the -- really the sole purpose of the call

And some of these other issues about stock -- what accounts needed to be opened I think were kind of what ifs If the loan were to happen, how could we set it up That's the way I understood it

Q So you're asking Mr Piscitelli to check within his own firm to see if various things could possibly be done?

A Yes

Q All right Did you ever direct him or instruct him during that call to actually do anything other than asking him to check on whether things possibly could be done?

A No, sir. I don't remember giving him instruction There was nothing to actually do unless the answer was yes, Davenport can do a margin loan He could not give me an answer on the phone call So he was going to do research and try to get back to me at some point

Q Well, assuming he gets back to you and says, "Yes, we can do X, Y, Z, et cetera, and give you a margin loan," would you also still have to get whatever the deal relating to the stock was with Jonnie Williams locked down?

A Yes Because my next part on the to-do list was to talk to Bert Poole, my business partner, my former law partner, and my person that did business law for me and for MoBo, I think he originally set MoBo up, I would have had him review those documents

Q All right With respect to this concept of a margin loan on volatile small cap stock, you know, the value ranged from, what -- from -- in the single digit range --

A Yes

Q -- is that correct?

A It was under 5 the whole time I saw it, I think

Q All right As opposed to some, you know, IBM --

A Yes.

Q -- or something like that?

Did you have any understanding about how much current value of the stock Davenport might want as collateral if they were going to give you 50,000 cash?

A That was one of the questions that I asked Mr Piscitelli My understanding, when I left that phone call on the 23rd, was he was not -- he said his company does do margin loans

And my best recollection is the reason he could not give me a clear answer on this stock at this time was that he told me that if -- for a small valued stock; i e , under $5, he wasn't sure whether they could do a margin loan on that, and if they could, whether it would be for the full value of the stock or maybe only 50 percent

I mean, that's generally what I remember him telling me In any event, I did not get an answer on that call He said he'd do some checking and get back to us And that's -- that's the last call that -- that's what happened on the 23rd

Q Well, let me ask you this At that time, did you understand sort of the basic theory of a margin loan to be --

A Yes

Q Let me ask you the question You put up stock as collateral Davenport gives you cash, correct?

A Yes

Q And if the stock value goes down below a certain point, below the value of the cash that they have given you, that Davenport is going to sell the stock?

MR. DRY: Objection Leading

THE COURT: Overruled

A I -- I'm not sure I understood that level of granularity from Mr Piscitelli He was helping to educate me a little bit. I never had done a margin loan But he did educate me somewhat on the -- on that concept when I talked to him

BY MR ASBILL:

Q Did you have an understanding, and if so, did you express it to Mr Piscitelli, or did you all talk about this stock, Star stock, being very volatile, meaning that the price could rise or fall dramatically in a day?

A Yes

Q All right Mr Dry asked you a question, and, I, frankly, can't remember what the question was But the answer you gave was, "We don't make decisions based on money "

A Yes

Q There was no follow-up to that, and I'm asking you what do you mean by that? What did you mean when you said that to him?

A You know, in the 22 years I've been in office, people routinely ask for things Again, some are donors Some are non-donors Some are gift givers Some are charities Some have no affinity or affiliation with government, and they just come and they need help with something

And my view had always been that government should be money blind, color blind, and try to always do what was the right thing for the State when a request was made If knowledge about one's contribution or a donation or a gift was in the purview of the decision-maker, that could either help or hurt that person's treatment before government, depending on the view Either help them because they are a donor or don't do anything for them because they are a donor

And so I think Secretary Cheng probably said it the best when he -- he testified the other day about the kind of internal rule, or at least certainly my compass and the ones that I tried to instill in our people, is try to do things that are right There are going to be people that are donors all the time walking in this office, but you've got to do what you really believe is right in your heart, in your secretariat, for the citizens and for -- for that department based on whatever the issue was

So that's a little more than you asked for, but I think that's what the people in my administration tried to do

Q Okay Let me pull up GX 320.

MR ASBILL: Would you highlight the text of the e-mail, please. It's already in evidence

BY MR ASBILL:

Q This is the exchange between you and Jasen Eige on February 17th?

A Yes

Q All right And you basically -- you're the bottom e-mail?

A Yes

Q "please see me about Anatabloc issues at VCU and UVA"?

A Yes

Q And he says, "Will do We need to be careful with this issue "

And as you've described, you don't recall specifically getting up with him about it or the details of that; is that correct?

A That's correct

Q All right With respect to that, did you know -- I mean, at this point in time, had you ever talked to -- did you know what the conversation was between Jasen and Jerry

Kilgore relating back to the Mansion lunch event and the press release, or the efforts by Star to try to get a press release that made it a launch?

A On the evening before the Mansion event, no I've seen that since the investigation I heard his testimony in court But nobody talked to me, Martin or Jasen, about that eve of the Mansion event press release issue No They handled it, as I would expect them to

Q All right So when he's saying, "We need to be careful," if I'm understanding correctly, you don't know about his conversation with Jerry Kilgore, right?

A Right

Q And you don't know about Martin Kent, Janet Kelly, Jasen Eige meeting about that issue before Jasen attends the event with you --

A That's correct

Q -- is that right?

A That's right

Q And you don't know about their conversation afterwards concluding that there was no problem?

A No I just heard that in court I did not

Q All right

MR ASBILL: Let me pull up the -- if you can find it easily, Victoria, the June -- I think it's the June 16th, 2011, e-mail with the lengthy attachment

Okay We're on the same document right here, right?

BY MR ASBILL:

Q Okay This is an e-mail that is forwarded to you I believe on the 16th of June; is that correct? Or when do you get this?

A I -- it looks like the bottom, it's sent from Ms Fulkerson to Ms Sutherland on the 16th

Q Okay

A And then to my wife on the 20th I -- I'm sure I would have got it sometime, I guess, after the 20th

Q Okay So it goes from Fulkerson to Mary-Shea. From Mary-Shea to your wife, right?

A That's what this chain says Yes

Q And then ultimately, it gets forwarded to you?

A Well --

Q Even though the letter is addressed to you, the cover letter is addressed to you, it's sent by Star to Mary-Shea?

A Yes That's correct

Q Okay And this is when Mary-Shea, unbeknownst to you, is negotiating with Jonnie Williams about a job?

A Yes

Q Okay

MR ASBILL: Let's pull up the attachment

BY MR ASBILL:

Q And this is a -- I'm not going to get into this letter, the details of the letter But in any event, this is a letter to you that you say -- the cover, at least, you say -- did you skim the cover at some point?

A I did -- my recollection, this was already printed out and was one of the dozens of documents that would have been put in that -- in a particular day in my read file

So I don't think I ever got it forwarded to me Somebody printed it out and put it in my read file And that comes from lots of sources So it was a hard copy that I saw

Q All right And did you page through the -- I don't know Were there 18 pages, or something, to it?

A Something like that I would have read, I think -- the cover page is what basically I remember and learned enough about it that I made a decision to send it to Dr Hazel

Q Okay

MR ASBILL: Go down to the bottom of the letter, please, Victoria Very bottom of the letter Okay And bold the last sentence

BY MR ASBILL:

Q All right So, "Once you've had a chance" -- "once you've had a chance to review this" -- meaning this whole package, correct?

A Yes

Q That's what your understanding was -- "please have someone on your staff contact me "

A Yes

Q "Respectfully yours, Jonnie Williams, CEO," right?

A Yes

Q Okay Did you ever have anyone on your staff contact Jonnie Williams in response to this document?

A No

Q Ever?

A No

Q Thank you

MR ASBILL: Take that down

BY MR ASBILL:

Q You got a number of questions I think from Mr Dry this morning about when you talked to your lawyers, or whatever, about the transaction, the MoBo transactions with Jonnie Williams, when you were going to talk with Bert Poole or when you talked to your accountants or other folks, et cetera --

A Yes

Q -- about whatever they were doing in relation to it, did you tell them about these, you know, loans or whatever, did you tell them basically about these things And the suggestion was did you tell them that you were engaged in some sort of a illegal quid pro quo transaction with Jonnie Williams

I take it you did not?

A No

Q And why didn't you?

A Because I wasn't

Q The information from Mr Cook, talking about him Did Mr Cook treat, tax wise, the loans to MoBo as loans to MoBo?

A Yes

Q And did he submit your taxes to the IRS with your permission or on your authorization?

A Yes And Pentagon Federal Credit Union and anybody else we asked him to send it to

Q To your knowledge, to date, has the IRS ever challenged the way you reported those loans?

MR DRY: Objection, Your Honor

A No

MR DRY: Relevancy

THE COURT: Overruled

A No

BY MR ASBILL:

Q With respect -- back to the Dr Davis stuff for a second, on the -- on the bank applications, or whether or not they should have been on or not Has anyone ever accused you of wrongdoing with respect to how you reported the Dr Davis loans?

A No, sir, they have not

Q Yesterday, I believe, Mr Dry talked to you about the CigRx event, the stop-by event, et cetera?

A Yes

Q All right

MR ASBILL: I want to pull up RM-0094-0113

BY MR ASBILL:

Q Do you recognize this document, or the first page of this document?

A Yes, I do

Q And what -- how many pages are in this document?

A I think there are hundreds

Q Okay Before -- I'm not going to obviously go into the hundreds

MR ASBILL: I move the admission of this exhibit, RM-0094-0113

THE COURT: Let me have the number again

MR ASBILL: RM-0094-0113

THE COURT: All right It will be admitted

MR ASBILL: And -- yeah, I want to just move the entire document into evidence, Judge I think there are 402 pages

MR DRY: Judge, we don't know what the other

401 pages are

MR ASBILL: Okay

BY MR ASBILL:

Q What are they -- what are the pages in this exhibit? I'm sorry That's fair to Mr Dry

A These are all business economic development related events I did during the time I was Governor that all have me either with a corporate executive, but in each of the cases, with a sign or with a product of a company that I was doing something with to either advocate their interests or have them jointly join with me on something that was important to the State regarding job creation, economic development

The first one is Wes Bush, the CEO of Northrop Grumman on their opening after they moved from California to Virginia

ICF That's Dr Kesavan, the CEO of ICF I think we've already showed the video

And there are many others But they are all the same of multiple events I did where I'm standing at or near a sign or logo of a company or had a product with me

MR DRY: Your Honor, I was just informed these are all pictures We're fine with that

THE COURT: It will be admitted

MR ASBILL: Thank you, Your Honor

BY MR ASBILL:

Q Now, some of these are stop-by events; is that correct?

A It could be stop-by. It could be me handing out a check for economic development It could have been them doing a check. It could have been -- I see Gamesa there We had a wind energy project off the coast.

There are multiple, multiple different things But most of them had to do with job creation, economic development or something that I thought was positive for our state

Q Okay And these were covered by the press?

A I would say almost all of them You see groundbreakings there I would say almost all these were covered by the press Some of them may have been ones that a photographer took that worked in the Governor 's Office But most of them were public events

Q All right

A In fact, I'm sure almost all of them were public events

Q Now, you can -- I'm going to get to one particular photo in a second --

MR ASBILL: Or excuse me You can take those down

BY MR ASBILL:

Q With respect to the concept of a press conference or a site visit, I think you said you never did that for Star?

A No

Q Now, I want to show you a photo that Mr Dry showed you yesterday GX 7, previously admitted

MR ASBILL: Will you pull that up, please

BY MR ASBILL:

Q It says, "Anatabloc Consumer Acceptance." This is something you said occurred at some Virginia -- at the Commonwealth Club at a PAC reception; is that right?

A Mr Dry said it was at the Commonwealth Club It looks as though that's the room I checked on the calendar for that day It appears as though I actually had a reception there for my Political Action Committee

So I guess the best answer, Mr Asbill, is yes, that seems to be what it was

Q Do you recall this event in particular?

A No, sir

Q Do you recall anything about it in terms -- like was Jonnie Williams present or was your wife present?

A I -- I don't know I haven't gone back and looked at the guest list so I don't know It would have been donors to my Political Action Committee that would have been there for this event

Q And when did you first learn about this particular photo?

A Sometime after the investigation started when Mr. Martin, Tucker Martin, my press person, came to me and asked me about this because there was a press inquiry.

Q And had -- I mean, had anyone ever asked you, from Star, whether or not they could use this photo for their promotional purposes?

A No

Q What did you do when you found out about the existence of this photo?

A My -- my Press Agent -- Press Chief asked me what I knew about this, and I said, "I don't know anything about it If they're putting it on their website and using my image and likeness in some way, it's certainly not authorized " Because we don't endorse specific products

And I think that was quoted in the paper, and then a couple days later, he told me it had been taken down

Q Okay

MR ASBILL: You can take down this photo

BY MR ASBILL:

Q Let me go to another topic Mr Dry asked you yesterday whether your wife has a history of, a history of making inappropriate requests to people for money Do you remember that question from Mr Dry?

A Yes

Q To your knowledge, before you learned whatever you learned during the discovery phases of this case before trial, when was the last time or the most recent time that your wife made one of these requests that you considered inappropriate?

A For personal purposes, not for the Political Action Committee, or something like that? You're talking about for personal purposes?

Q Right Inappropriate requests for money?

A I think back in the -- when we were in law school back in the 1980s, there were a couple of circumstances that occurred there that I thought were very inappropriate, and I talked to her about it

Q How long ago was that?

A It was 1988, 1989

Q And between then and now, or the time of this case, no other instances of which you were aware?

A I'm not aware of any No

Q Do you know whether, in relation to Mr Williams -- I mean, do you know the details of the conversations or did you ever learn the details of the conversation between Mr Williams and your wife that led to -- that led directly to the $15,000 check to Cailin or the $50,000 loan to her?

A I don't

Q Do you know whether or not she made inappropriate requests to Mr Williams with respect to those two transactions?

A I don't.

Q I want to ask you about the questions that Mr Dry asked you about yesterday with respect to your communications director That's a broad term you used to describe --

A Tucker Martin.

Q -- Tucker Martin --

A Yes

Q -- is that correct?

So it's not just Press Secretary?

A Yes

Q It's a broader job than that?

A It is

Q And he asked you about the paraphrased information that was reported in the Washington Post --

A Yes

Q -- about the wedding and who was paying for the wedding?

A Right

Q Is that correct?

A Yes

Q All right And he showed you that -- he pulled that up on the screen and showed you the Post paraphrase It wasn't in quotation marks, was it?

A No

Q All right And that account reported essentially, paraphrasing, Mr -- your communications director, that the family paid for the wedding; is that correct?

A Yes

Q All right And your understanding, you said, was that meant not the taxpayers?

A Yes And, in fact, the Post article that we looked at yesterday said exactly that; about a previous Governor having an event there for his daughter and getting criticized for using Mansion related budget for expenses So the question to me was was it State or was it essentially family

Q Okay And Mr Dry asked you were you here, and did you hear your communications director say exactly what's in this article?

A Yes

Q Is that correct?

A Yes

Q Were you here also when I cross-examined him about that transaction?

A Yes

Q All right And did you hear Tucker Martin say that in his view, you had never lied to him while he worked for you?

A Yes, I heard him say that And he's right

Q Let me talk to you about Roskamp that was discussed yesterday I believe you said something about that it was first brought up at the April 29th dinner between Celeste Williams, Jonnie Williams, you and your wife; is that right?

A Yes, sir That's my best recollection

Q All right And you said you knew at the time when it was raised that it was not going to happen And my question to you --

A For me

Q Beg your pardon?

A For me

Q For you You knew at the time -- not that Roskamp wasn't going to happen But you weren't going to go?

A Yes That's right

Q And what are all the reasons why you knew at that point it wasn't going to happen?

A Well, I am leaving in six days for a 13-day trip to China, Korea, Japan I had the wedding to follow I had significant travel after that in June with the RGA and so forth Further, I knew my wife had an interest in nutraceuticals But for me to go down, frankly, and see clinical trial with mice, I wasn't interested in that I was interested if there were going to be jobs created for Virginia by a Virginia company at some point But I didn't have an interest personally in going down there to see a mice study

Q Okay

MR ASBILL: Let me pull up GX 114, please

BY MR ASBILL:

Q Do you recognize this document?

A I don't believe I'm copied on it, but I believe we've seen that in the trial

Q Okay

MR ASBILL: And yeah, going down to the -- in the chain to this particular e-mail that's now being enlarged

BY MR ASBILL:

Q This is from Jerri Fulkerson to Monica Block, who is your scheduler?

A Yes

Q All right You didn't see this e-mail But in any event, you have talked about it? You've been asked about it during this trial; is that correct?

A I don't know that I've been asked But other witnesses talked about this document

Q Okay And in this e-mail from Jerri to Monica, Jerri says, "Jonnie said the Governor is going to Sarasota to Roskamp Institute," blah, blah, blah

That's not something, I take it from your testimony, you ever said to Jonnie?

A I did not.

Q Okay

MR ASBILL: Pull that down

BY MR ASBILL:

Q Do you have any personal knowledge about why Jerri Fulkerson thought you were going to go?

A Well, her e-mail said "Jonnie said "

Q But, obviously, your discussion with Jonnie wouldn't have led to that conclusion?

A No

Q And then ultimately, you get back and say, basically, in an e-mail that -- I think it's GX 118

MR ASBILL: Can we pull that up?

BY MR ASBILL:

Q And this is -- is this from Monica back to Jerri?

A Yes I'm out of the country at that point But this is a -- I guess a polite no Typical of what Monica would give

Q Because you say on the 1st of June, you have family related things that you want to do?

A Well, yes That and beyond

Q Okay And you basically ask, you know, "When is their next" -- or she asks for you, "When is their next event," at the bottom?

A Yes.

Q Okay And was there ever a next event that you attended?

A No

Q All right And did you have personal communication with Monica about this or any discussion with her about at least the nature of the e-mail that she should send to Jerri Fulkerson?

A I may have I don't recall -- recall Monica would routinely handle all the scheduling requests and virtually all of the time on her own, would give the appropriate responses So I don't have specific recollection about this event, no

Q Okay Let's go to the $50,000 loan to your wife That's the next topic I want to address that Mr Dry asked you about yesterday I have a few more questions on that I believe you testified that you said you -- you believed your wife when she told you in early June that she had not asked Mr Williams for the money when he delivered the $50,000 check to her; is that correct?

A Yes

Q And, I mean, you had no personal knowledge of whatever it was she said to you about that, whether it was accurate or not or true or not?

A You mean what she said to Mr Williams?

Q Yeah, what she said to Mr. Williams, or whatever I mean, who solicited whom --

A I don't --

Q -- or who offered what?

A I don't know for sure

Q All right And you've testified, I believe, that you didn't press her or interrogate her about that for the reasons that you've described?

A For the reasons that I've mentioned Yes

Q All right But she did give you the basic terms, the 4 years, 2 percent?

A Yes

Q No monthly payments?

A Yes

Q And why didn't you immediately call Mr Williams to discuss the loan or the loan terms?

A My basic concern was Maureen not telling me, as me being the financial manager and the potential impact of reporting requirements if she didn't inform me But it was her loan, and we were thinking paperwork was coming -- that's what I understood from my wife -- to submit the contract for the loan And I figured that with her new job making 40-some thousand dollars a year, she could pay it back in due course. So I wasn't that concerned about the financial aspects of it

And listen, at that point, I trusted Mr. Williams He -- I liked him since the time I had met him I hadn't done anything for him He hadn't asked me for anything So I thought we'd wait for documents to show and then it -- I'd look at them when they came and try to help make sure they matched the terms my wife told me

Q Well, you understand the -- I mean, whether the term was used or not, that there was no money due and payable on this loan --

A That's right

Q -- until four years from June 2011?

A Yes

Q Okay So --

A It was a balloon payment Yes

Q Were payments pay back concerns, were those an issue for you at that time?

A Oh, no, not at all These really supplanted -- when she told me she paid off credit cards, it was sort of a net net zero where we had the Williams loan supplanting a $20,000 credit card debt So that was a wash And then she had the $30,000 in stock I certainly would not have made those choices But for the reasons I've mentioned, I did not pick that battle with my wife at that time

Q Well, but she also told you that she was either planning or had taken the $30,000 and bought something for the kids; is that correct?

A The stock Yes

Q But she was not planning on giving it to them until they got married, or do you know --

A Yes

Q -- how that --

A Yes

Q Okay

A She had told me that for 20 years; that that was always her intent Yes

Q All right With respect to the credit card payments and the pay down of the credit cards, and that -- when you learned about the money, two credit cards had been paid roughly 10 grand on each credit card --

A Yes

Q -- is that correct?

A That's right

Q Okay And do you recall -- let me pull this up if you don't recall

One was PenFed; is that right? Some sort of PenFed Visa?

A That's right

MR ASBILL: Will you pull up RM-0796, please

BY MR ASBILL:

Q Is this one of the accounts that money was paid on?

A Let's see Okay This is a -- this is a February '11 -- wait a minute

Q Let me just ask it this way I can speed this up

With respect to two credit card payments, did you understand -- did you know whether or not those payments that were made -- that your wife said she made in the end of May or the early part of June, were those paid before the due dates, the next due date on the two credit cards?

A Yes That's why they were in my box pending payment I think some of these I did not have set up for auto transfer yet, auto payment out of my checking account -- or joint checking account And she took them out of the box They weren't due until 5th, 6th, 7th, something like that, in June

Q Okay The Mansion lunch event I want to quickly go to that for a second

A Yes

Q Mr Dry asked you about yesterday

MR ASBILL: Would you please pull up GX 207

BY MR ASBILL:

Q This is an e-mail that you're not on, but you were asked about yesterday?

A Yes

Q Okay And this is from Adam Zubowsky to Mary-Shea Sutherland?

A Yes

Q All right And it indicates -- this is about the event; is that correct?

MR ASBILL: And yeah, would you bold that sentence below there Yeah And enlarge it

A Yes

BY MR ASBILL:

Q Okay So this is from -- this is from Adam to Mary-Shea mid-August, asking her, "Can you send me the details I know he's going to ask for details "

A Right

Q "Can you send me info "

At that point in time, did you know anything about it?

A Month

Q All right Let's pull up another government exhibit, which shows a phone call from your wife to you a few minutes before Adam's e-mail

MR ASBILL: This is GX 584, which is previously admitted

BY MR ASBILL:

Q Now, there's a three-minute call with your wife down there at 2:47 p m ?

A Yes.

Q You don't -- was that call about the Mansion lunch, or do you know?

A I don't remember the call But the first time I remember talking about that event that the First Lady's Office was putting together was from Adam, which would be typical Many events are done over at the Mansion, put together by the Mansion for Veterans and many other things that I find out through Adam.

Q Okay With respect to -- and I'll just pull up the document quickly

MR ASBILL: GX 231, previously admitted And go to the attachments Open that up

BY MR ASBILL:

Q This is the list of the folks who actually attended the lunch; is that correct?

A Yes

Q All right And you talked about putting the asterisk by various people's names, et cetera?

A Yes

Q All right And the stars, or whatever it is, you put by Virginia researchers' names, who are those folks that you put stars by?

A Those were the two -- the briefing sheet and what I knew from Adam was this was going to be an event where we'd get an update on Anatabine research, and a small group of people are going to come, and there was going to be -- there was going to be a check presentation At some point, I learned it was 200,000 I didn't stay I wasn't there for the actual presentations We left before that.

But coming back on the helicopter, my best recollection is I probably would have just looked at this real quickly to see who's coming from UVA and VCU

Q Okay You obviously knew the name Roskamp because there had been discussion about that before?

A About the trip Yes

Q All right With respect to the two people that were Virginia researchers --

A Yes

Q -- before, during, after, at any time at this lunch, did you ever ask those people to do anything for Star?

A No, sir Never did No

MR ASBILL: Excuse me, Your Honor

BY MR ASBILL:

Q Did you, at any time during that lunch or any other time, ever suggest in any way to Mr Williams that you would help him with whatever studies he was trying to get going or had going at UVA or VCU?

A No

Q All the conversations that you've had with him, did he ever ask you to do anything for him or his business, aside from calling his father, as you've described, or getting the initial referral from Dr Hazel?

A Well, he sent me the letter, the one we've reviewed, on June 16th

Q Yes Which you never did anything with, in terms of --

A I sent it to Dr Hazel with a -- maybe a quick note on it, like I would with any other request No

Q Mr Dry asked you if you returned the gifts to Mr Williams that -- whatever gifts he had given to you or your family that you had known about after the June 16th letter, and you said no Why didn't you?

A Because there was nothing, in my view, at all inappropriate or uncommon about me getting a letter from a Virginia businessman or, for that matter, a Virginia citizen with an idea or a proposal or an ask or a concern that they wanted state government to address

I looked at that, from what I read in the cover page, and then just seeing there were a number of technical attachments to that, felt that this would be something best to be handled by Dr Hazel That's typically what I would do I'd send it to a Cabinet member and say, "Please review, evaluate, see me, take action as appropriate " I'c put some note on it I didn't know if this was something that would need to go through the public procurement process, because we have competitive -- competitive procurement to -- maybe a study like that would fall under that So that's typically something I would send to a Cabinet member, and that's -- that's -- that's what I did

So I didn't see -- I had received many gifts from many people over the last couple of years before that, and I did my typical analysis of whether or not I thought there was anything inappropriate about a gift or the timing of a gift with regard to an ask or something, and I didn't see that there was anything inappropriate

Q Okay Yesterday there was also a discussion -- and I'm sorry to go back and forth with the topics, but they overlap for the two days -- about the MoBo loans, basically There was a -- about your notes from your first discussion with Mr Williams in early February And your notes said on one page, stock loan, and it talked about to Maureen or MoBo?

A Yes

Q And you said you circled that, et cetera?

A Yes

Q The circling of those things, the different color ink When in time, compared to the taking of the notes, were those circles put on the notes?

A The one that Mr Dry asked me about that circled MoBo, as opposed to Maureen, again, my best -- my best recollection is I was sitting on -- I was in the upstairs room in the Mansion, Governor's Mansion, taking those notes And then went to my desk to stick them in a file

And at some point before I went in, I guess I was at my desk there, and I circled -- I circled MoBo That's my best recollection, though I --

Q Okay Would giving the loan to your wife, as opposed to MoBo, exempt it from reporting requirements?

A No, sir In fact, it would be just the opposite Had a stock loan or a cash loan gone to my wife, I would have had to -- I would have had to report that, as I did with the other loan that Mr Williams and Starwood provided to her before That would have had to have been disclosed based on the principal occupation or business That's what the reporting requirement is

Q All right Did you ever tell Mr Piscitelli that you owned shares of Star stock?

A No

Q Did you say that your wife owned shares of Star stock?

A No

Q Did you know at that --

A Are you talking about the phone call, now?

Q Yeah, the phone call

A No

Q And why didn't you say that your wife owned shares of Star stock even if you didn't?

A Because I didn't know she owned shares of Star stock My understanding was she had sold it the year before as I asked her to do And when I filled out the Statement of Economic Interest, I am pretty sure I would have confirmed with her that, in fact, the sale had been made back in '11 Because if it hadn't, then I would have had to report whatever the value was at the end of the year I would have had to report that at -- on the 2011 SOEI

Q In terms of trying to get a, you know, $50,000 loan from Mr Williams, were you interested at all in trying to do some sort of stock transaction with him?

A No, sir What I understood from Michael and my wife, that it was a cash loan That's -- that's really the only need or purpose at that point was the operating funds for MoBo Because my sister and I had elected that's the route we would go that year So it was always about a cash -- about a cash loan

Q Okay I want to move on to the topic of your SOEI disclosure form There's been a lot --

A Yes

Q -- a lot of questions about that 2011, 2012, going back further, et cetera

Did you create these SOEI forms?

A No

Q I mean, did you -- did you have anything to do with creating the instructions on these forms or the definitions on these forms?

A No But this caveat is because I spent 14 years in the General Assembly, I may have voted on some changes on those forms during that time, from '91 to 2005 But they're all -- once the -- once the legislature passes the rules for the disclosures and the Governor signs the bill, then I believe the Secretary of the Commonwealth or another agency would actually promulgate the regulations and some of the definitions and so forth that are on the form

Q Does the federal government have anything to do with the SOEI or Virginia disclosure law?

A No, sir That's -- it's all state law

Q Has anyone ever accused you of violating state law with respect to any of these SOEI forms?

A No

Q Did you think that Mr Dry was suggesting that you had violated them yesterday?

MR DRY: Objection, Your Honor

THE COURT: Sustained

BY MR ASBILL:

Q On cross-examination Mr Dry asked you about your SOEIs; there was no way anyone would know Ms McDonnell's loan was from Jonnie Williams based on how you filled out the form, correct?

A That's true

Q Did the form require you to fill it out any other way?

A No, sir It's occupation, principal business That's exactly what the form says, and that's what we listed on there Every -- every office holder fills it out that way It's the same

Q Did the form require you to list a wedding gift to your daughter who was not living with you at the time?

A No The forms are very clear that it's gifts to you, meaning the office holder The declarant is the one that has to list the gifts But gifts to other family members, even members of the immediate family, are not required to be disclosed on that form

Now, the law changed I believe effective July 1st, there were some amendments But during the entire time I was Governor, that was the law

Q Did you comply with the form's requirements with the exception of missing a couple of golf games?

A Yes We made some mistakes on that But to the best of my ability, based on advice I got and the forms as -- the information as provided through Katherine and my staff, I tried to do that every year Yes, sir

Q Did you ever take off any gifts from the forms from Mr Williams or Star or Starwood Trust because you were invoking the sort of personal friend definition?

A I didn't take them off for any reason, personal friend or otherwise The things that were listed on there through the information gathering process for Ms Harris and Ms Block remained on the form and were disclosed in due course

Q If you had chosen not to disclose gifts from Mr Williams or Star under the personal friend exception, you know, would that be despite -- would your staff know about those?

A Sure, they'd know about it But I could have -- if I had chosen to do that, it could have been like Mr Goodwin where it was listed on the form I made a decision, and I could have elected to remove the name

Q But you didn't?

A No

Q This personal friend concept on the form There's been testimony that you got some advice that a good starting point in the analysis is whether or not you knew the person before you got into politics, right?

A That was one bit of many bits of advice I got over the years on what that meant, because there's really no definition in the law

Q Okay And if you applied that as the exclusive test, then you wouldn't have had any new friends in the last 22 years, right?

A That's fair

Q So you analyzed it You made a decision about whether you thought someone was a personal friend or not in your judgment, based on what you understood --

A Yes

Q -- the forms to --

A I got advice from Ms Eige I got advice from Ms Kelly I looked at the Attorney General's opinion from Mary Sue Terry in 1998 that Mr Palmore had sent me in 2011 And based on those bits of advice, I made that decision, with a few people that I felt were appropriate not to disclose because they were personal friends

Q Okay I want to talk about the PenFed loan for a minute How many PenFed loans have you had before?

A I think I testified earlier, Mr Asbill The best of my recollection, if I include mortgages, equity lines of credit, HELOCs, car loans, it's got to be 10 to 12 or maybe more My recollection is I've been a member since I was a Lieutenant in the Army in 1976, or shortly thereafter.

Q On prior loans with PenFed, not the subject matter directly of this case --

A Yes

Q -- did you ever go through or back -- you know, if we go through this process, this back and forth draft iteration process that you've described in court with respect to the PenFed loans that are the charged counts in this case?

A Yes Not so much with the car loans, but I think virtually every mortgage application, which have been many, that's exactly what I did And I signed a final application at the time of closing, as I did in this case in April, May, and June Three different closings

Q In other unrelated to this -- to the direct charges in the case, back and forth between you and PenFed, were corrections made on -- by both sides during that process?

A Yes All the time

Q Did you knowingly make a false statement to PenFed or any other bank?

A No, sir Absolutely not

Q You testified, I believe, on cross-examination and a question from Mr Dry that donors would pay for access to you, access to you as the Governor; is that correct? Is that what you said?

A Perhaps inartfully But virtually every campaign event where I'm raising money and people show up, I believe that, at least in part, the reason that they are donating money like they would for any governor or any politician is they'd like to have a photo op They'd like to talk to that governor or elected official at some point So I think that's probably fair

Q Let me be a little more specific about the question This is August 25th, Page 4986, lines 16 to 21 And Mr Dry says to you about this topic, "I'm not suggesting there's anything wrong with that, sir I'm just saying as part of the political process, don't they pay to get access to you?"

And do you recall your answer being, "I think" -- "I think you could look at it that way Yes"?

A Yes

Q To your knowledge, is that any different from any other governor of any state or any senior elected official anywhere?

A I've gotten to know most of the governors in the country over the last couple of years, and especially the Republican ones, and the answer would be no, it's not

Q Have you ever heard of any governor anywhere being charged for meeting with a donor for that alone?

A No, sir

Q You've been asked repeatedly what you thought Mr Williams wanted Tell us, once again, what you thought he wanted

A It's impossible I've said a couple times every donor wants something, from good government and to see elected official do well, to a permit or something else, and everything in between It's very --

Q Did he ever tell you what he wanted?

A He did not That's what I said before He never told me specifically about something that he specifically wanted

Q And are you a hundred percent sure of that?

A Yes

Q Whatever financial issues you may have had in relevant time in this case, did you think your only financial option was to conspire either with Jonnie Williams or with your wife or with both of them to try to support his company in exchange for whatever gifts there were in this case or for a couple of low interest loans?

A No Absolutely not

Q Or for a few dinners or golf?

A Absolutely not No

Q Did you risk your entire political career, your reputation, your future, your family, by doing what you've been accused of doing in this case?

A No

Q Whenever your family, to your knowledge, or you personally was offered a gift from anyone, including Jonnie Williams, what was the analysis that went on in your mind about whether or not I should take that gift?

A Well, it was pretty clear And it was the same analysis I'd go through, too, for campaign donations And that is, is there anything about taking this gift or this campaign contribution that would in any way unduly influence me to make a decision for or against that contributor based on money And if the answer was no, then I felt that that gift could be accepted If the answer was yes, I wouldn't

Q Did you go through that process, that -- that internal mental process, every time anything came up with respect to Jonnie Williams?

A Or anybody else, especially if it was something significant Yes

Q Despite having come to that conclusion -- gone through that analysis, come to the conclusion that you're talking about, do you think that you and/or your family members took too many gifts from Jonnie Williams, or loans or whatever?

A Yes

Q Do you regret doing that?

A Yes

Q Why?

A While I only knew part of those gifts at the time because they weren't -- many of those were not related to me by family members, I'm responsible for my family I spent a lot of time talking to them, over the years, about what is appropriate conduct

I, being the Governor, allowed my life to get out of balance so that my judgment was not as good as it should have been with the acceptance of even those gifts that I knew about And so that is my error, and so I take responsibility for that

Q During the course of this trial, you've obviously been reluctant to talk about your marriage --

A Yes

Q -- and issues relating to your marriage; is that fair?

A Yes

Q Why have you done it? Why have you allowed me to ask those questions and answer them, and answer them for Mr Dry or Mr Burck?

A Because the charges claim that there was a criminal conspiracy between my wife of 38 years and me to sell my office to Jonnie Williams --

MR DRY: Objection, Your Honor, to the narrative answer

A -- and --

THE COURT: The objection is sustained

A It's -- I'm sorry I heard why

THE WITNESS: I'm sorry, your Honor

THE COURT: It was an inappropriate question

BY MR ASBILL:

Q Did you feel you had to answer those questions in order to defend yourself --

A Yes

Q -- in this trial?

A I did

MR ASBILL: I have no further questions

THE COURT: All right You may stand down, sir

THE WITNESS: Thank you

(Witness stood aside)

THE COURT: All right We're going to have to have to stop there

Let me explain to you what we -- what we have left

Mr Asbill --

MR ASBILL: Yes, sir

THE COURT: -- is this your last witness?

MR ASBILL: One very short witness

THE COURT: Okay

Well, Mr Asbill has indicated we have one more, and after that, Mr Burck will put on his case And he's indicated five, six hours Maybe one day?

MR BURCK: Less than that, Your Honor Probably three hours or so

THE COURT: Okay

And then potentially some redirect -- rebuttal from the government So we're getting there, slowly but surely As we went through today, I was thinking to myself, maybe I was wrong when I said yesterday was the longest day of my life, but I'm still -- I think yesterday still wins the prize

Please don't discuss the case with anyone or allow anybody to discuss it with you, and continue to avoid all of the media coverage And we'll see you in the morning at -- let me see Kathy, is this thing still on?

We'll see you at 9:45 You all be safe, and we'll see you tomorrow And as I say, we're -- slowly but surely, we are getting there

(The jury left the courtroom)

MR DRY: Your Honor, can we approach?

THE COURT: Come up

(At Bench)

MR DRY: Our understanding is that the next witness is going to be Pam Watts, who's already testified, and she's going to be called as a character witness

THE COURT: Uh-huh

MR DRY: They were allowed to go outside the scope of her testimony when she testified on direct We view that the character testimony has gotten very cumulative at this point We object to her being allowed to testify as to character after Mr McDonnell's testimony

MR ASBILL: Judge, I didn't ask her any pure character questions when she was on the stand It was outside of the scope

THE COURT: I don't have any problem with it The objection would be overruled

MR ASBILL: Can you give us some guidance on future scheduling, in terms of charge conference and closing arguments and --

THE COURT: I have no real concrete idea You're talking about maybe two days?

MR DRY: Absolutely not, Your Honor I apologize We're cutting that way back We estimate that -- probably three to four hours at this point So if Mr Burck goes tomorrow morning, then --

THE COURT: All right Wednesday

MR DRY: -- we could be done by Thursday

morning Maybe Wednesday afternoon

So we're just trying to get a sense of whether it would be possible for you to do the charge conference Thursday

THE COURT: Well, you know, if you finish Thursday morning or Wednesday night, that's when the charge conference would be

MR DRY: Is the Court inclined to have closing arguments, even if they are on Friday, with the three-day weekend, or is the Court inclined to have the closing arguments on Tuesday? I think that's one of the questions that we have

THE COURT: The answer is the Court is not inclined to be here on Tuesday

MR DRY: Fair enough

THE COURT: If we can get this evidence in tomorrow, then Thursday morning would be the charge conference And then we would go -- after we resolve the instructions, we would go into closing arguments

MR DRY: On Thursday

THE COURT: On Thursday

MR DRY: Yes, sir

MR BURCK: Your Honor, just one quick question My client will not testify

THE COURT: Okay

MR BURCK: I don't know what your particular rules are If you are inclined to inquire of her about that decision, that would be fine with us

THE COURT: Sure I'll do that at the end of your case

MR BURCK: Thank you, Your Honor

MR DRY: Thank you, Your Honor

(In Open Court)

THE COURT: 9:00

(The trial adjourned at 5:21 p m)

I N D E X

WITNESSES

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

August 27, 2014
Richmond, Virginia
9:45 a.m.

JURY TRIAL - VOLUME XXIII

BEFORE: HONORABLE JAMES R SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
DAVID V HARBACH, II, ESQ.
JESSICA D. ABER, ESQ.
RYAN S FAULCONER, ESQ.
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STEPHEN M. HAUSS, ESQ
DANIEL KOFFMANN, ESQ.
Counsel for Maureen G. McDonnell

JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day twenty-three, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, and Christopher Iaquinto Maureen G McDonnell is represented by Heather Martin, William Burck, Stephen Hauss, and Daniel Koffmann Are counsel ready to proceed?

MR DRY: The United States is ready to proceed.

MR. BURCK: Maureen McDonnell is ready to proceed.

MR. ASBILL: Mr McDonnell is ready to proceed.

MR. BURCK: Your Honor, during Ms McDonnell's case, we intend to call a former counsel to her at the very beginning of this case in February of 2013 The purpose of it goes only to the obstruction count, Count Fourteen, because he was her attorney at the time The information that we intend to elicit goes only to conversations that Mr Flood, her attorney, had with the prosecutors right after she was interviewed in February of 2013, and then the fact that he passed that information on to her And that's all we intend to elicit

I've spoken to the government about this And in principle, as I understand it, they have no objection. They haven't heard the testimony yet, so they obviously are reserving their right to object on privilege grounds or on relevance grounds But as I've explained it to them, as I expect the testimony to come in, I don't think that there will be a dispute on privilege, relevance, or on different recollections of what occurred, at least material disputes But again, I'm not holding the government to it, of course, but I just wanted to alert the Court to that.

MR. DRY: Your Honor, just briefly, this puts the government in an awkward position, because Ms Aber and I were the witnesses to those conversations So to the extent that there's going to be factual disputes between what was said, that raises an ugly specter that we would have to testify in this case So what the government would request is that before Mr Flood testifies, that we have a short ten-minute recess in order for Mr Burck to confirm exactly what facts he intends to elicit so that we can, if there is a factual dispute, that we can at least raise that with the Court beforehand and kind of iron that out

THE COURT: That's fine Just let me know when you are about to do it

MR. BURCK: Thank you, Your Honor

MR ASBILL: Just to advise the Court, we are going to rest at this point without calling any more witnesses, subject to cleaning up any exhibit issues There may be an outstanding motion But if that results in some sort of document being admitted, we would certainly reserve that right But in terms of witnesses, as soon as possible the jury comes in, I'm going to rest.

THE COURT: Thank you. On the subject of motions, we had McDonnell's Motion Number 38 That motion will be denied There was an outstanding motion that had to do with Mr Goodwin

MR ASBILL: Yes, sir

THE COURT: And I have the defense position The government has not responded. We need their position on the record so I can resolve it

MR DRY: Your Honor, the government opposes the motion to exclude the Goodwin evidence In fact, the Goodwin evidence has become more relevant and more probative because the Governor testified that he over-disclosed when it came to Mr Williams; even though Mr Williams was a personal friend, he was over-disclosing The fact that from the Government's view Mr Goodwin was not a personal friend and he failed to put down a $23,000 vacation to Kiawah Island is probative, is admissible, and the motion should be denied.

THE COURT: All right That motion will be denied. I'm trying to, as we get toward the end, trying to clean up some of these motions that were left outstanding I think I still have to do that media motion. I've got to deal with that But all of these things, as I indicated earlier, some of them I let go because I didn't want to have opinions out that would influence what anybody is thinking about things So I will get those, everything done in due course.

All right, let's go ahead Mr Asbill, I will call on you so that you can rest in front of the jury

MR. ASBILL: Thank you

THE COURT: All right Bring them in.

(The jury entered the courtroom.)

Good morning All right, Mr Asbill?

MR. ASBILL: Your Honor, Mr McDonnell rests

THE COURT: All right Thank you very much. Mr Burck?

MR BURCK: Thank you, Your Honor We will call our first witness That will be April Niamtu.

APRIL NIAMTU,

called as a witness by and on behalf of Defendant Maureen G. McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS MARTIN:

Q Good morning

A Good morning

Q Could you move a little closer to the microphone maybe? Could you please state and spell your name for the court reporter, please?

A April Niamtu, A-P-R-I-L, N-I-A-M-T-U

Q Anyone ever spell your name wrong?

A Very often, not only spell it but say it wrong

Q Even people you consider friends?

A Absolutely

Q What's your occupation?

A Well, first of all, I'm a mom. I have three children Two, my youngest, have severe disabilities They cant sit, stand, walk, and they have severe seizure disorder

Q And have any other occupation besides --

A Yes, I'm also the Director of Niamtu Cosmetic Surgery Education. My husband holds two workshops a year that he teaches continuing medical education for facial rejuvenation surgery

Q I'm a fast talker, too, but I'll ask you to slow down because this guy has to take down every word both of us say And on top of that, do you do any volunteer work?

A Yes I served on the Board for Safe Harbor for domestic violence victims from 2006 to 2010 Then from 2010 to 2014, the Virginia Board for People with Disabilities And then for the last 14 years, I have worked with the Greater Richmond ARC, that assists children with disabilities, actually, from zero to the grave And I've raised, helped them raise over a million dollars over the last 14 years for children to receive therapies and equipment.

Q Do you know Maureen McDonnell?

A Yes

Q When and where did you first meet her?

A Back in the election, when he was -- when Bob McDonnell was campaigning in 2009, Maureen came to one of my husband's seminars that he gives annually It is a ladies' night out And he kind of shows what he does surgically for facial rejuvenation.

Q How were you introduced to her there?

A My husband introduced me to her

Q Did you speak with her after that?

A We actually sat together and chatted quite a bit until Joe started speaking and we had to shut up.

Q Joe is your husband?

A Joe, my husband, yes.

Q Did Mr McDonnell attend the seminar at all?

A He came maybe halfway through He picked her up on his way to a speaking engagement And when he arrived, my husband introduced him, let Bob speak for a few minutes, and then they whisked him away

Q Just to be clear in time frame, was he Attorney General McDonnell then or candidate McDonnell?

A He was candidate McDonnell He was running for Governor

Q Now, you stayed acquainted after that, I guess?

A Immediately we just started calling each other, e-mailing each other, talking to each other.

Q Would you say you became friends?

A Very quickly

Q Could you put an exact date on the day you became friends?

A No

Q Is that the -- that's not the way friendship works

A No

Q Did you at some time become aware of Ms McDonnell's passion for nutraceuticals?

A Pretty quickly I think she even mentioned it the night of the event I think she even gave me a little capsule to take home and put it on my face that night to see if I liked it

Q A capsule of what?

A Nu Skin.

Q And what did she say about it when she first started talking about it?

A She, I don't know that she really got into so much at the very beginning. She was just saying that she was very involved with nutraceuticals, she was very passionate about it Within probably a month or so, she invited me to a girlfriend's house in Northern Virginia where they kind of give a presentation about Nu Skin And I learned more about it there, not so much that she gave me a pitch, but I learned about it through this little party at someone's home

Q Did you become a Nu Skin salesman or a Nu Skin person?

A No

Q And did she introduce anyone else in your family to Nu Skin?

A My husband.

Q How did that happen?

A I'm not really sure I think she came to his office He gets called on weekly for, you know, different skin care products, laser products, whatever And she came in and asked him if he would be interested in selling that in his practice

Q And does he sell her Nu Skin products in his practice?

A No

Q Did he ever?

A No.

Q Now, moving forward to the time that she became First Lady, did you provide her any assistance with the transition into the First Lady role?

A Yes She had a good solid ten days of inaugural events that she had to attend, and I helped her match outfits She was so worried and so anxious that she wasn't going to look the part, look the right way for each event, so I kind of helped her put the outfits together I helped her packing up the Glen Allen house, at least the master bedroom part, and also, when we were talking with the inaugural things, I could tell she bit her nails really badly I told Maureen, "You have really got to stop biting your nails " I even talked her into getting acrylic nails at one point just to stop biting them.

Q How did those work out?

A They didn't work out well at all because within a week they were all bitten off again.

Q Did you have any role with helping her pick out accessories for the Mansion?

A Yes Once she got into the Mansion, I helped her go shopping for the bed linens and bath linens for putting the Mansion, the private quarters together

Q Were you sort of operating to a budget when you were helping her with her outfits and the linens?

A I don't know that there was a so-called budget, but Bob was giving her a hard time about spending and trying to really keep it curbed to a minimal amount She was really trying to stay within a budget

Q And have you ever heard Ms McDonnell refer to you as a longtime friend?

A I would say over the last couple of years she has referred to me as a longtime friend.

Q What are the circumstances when she will refer to you that way?

A When she is just introducing me to someone new

Q Has that happened more than once?

A Many times

Q And having gotten to know Ms McDonnell, have you gotten a sense of whether she is a trusting person?

A Oh, very trusting

Q And would you even say a gullible person?

A Very gullible.

Q Are you familiar with something called FLITE, F-L-I-T-E?

A Yes, the First Lady's Initiative Team Effort

Q Did you have a role in FLITE?

A I did. I was one of the first core members with

FLITE And our role was to reach out to the community and find organizations or people that were actually making a difference or a change within the Commonwealth of Virginia.

Q And what types of causes were you trying to help promote?

A The film industry, wine industry, health and wellness, our military Just all ranges across the, you know, what we were doing in the Commonwealth

Q And in what setting were those the initiatives that were decided upon?

A We had a conference meeting and we decided those -- she actually had those already in place of what she wanted, and then she asked us to help her build them up

Q And is it fair to say that part of your involvement was because of your friendship?

A Yes Absolutely

Q But also because of your experience with philanthropic causes?

A Absolutely

Q Have you contributed to her legal defense?

A Yes

Q Now, have you ever traveled with Maureen McDonnell?

A On one occasion.

Q When was that?

A That was back in October of 2011

Q And where did you go?

A We went to her Nu Skin convention in Utah.

Q Is that the only place you went?

A No. We actually did a diversion to California

Q All right We will get there in a minute

A Okay

Q How did this trip to Utah come about? You said you are not a Nu Skin person.

A No In early, I would say somewhere early August, she had asked me about going to, more towards the end of August, she asked me to, as a girlfriend, to go with her on this trip We had talked about going on trips before, but it never worked out for me And this particular one, it was a time that I could possibly work it out

Q In addition to you possibly having availability, did she state any special or particular need to have a girlfriends trip at this time?

A She was actually exhausted. She was dealing with the chef, Todd, as well as Mary-Shea Sutherland, and she was just -- she goes, "April, I just need a girlfriend there that has nothing to do with the Mansion, nothing to do with anything I just need girlfriend time Could you please go with me?"

Q This is the September-October, 2011 time frame?
A Yes
Q You said she was dealing with the Chef Todd issue Tell us a little more about what that's about
A Secretively, she told me not to disclose this to anybody, but she need needed someone to talk to. And she felt very let down by Todd, you know, making all these allegations And she didn't know what to do about it She was so blindsided
Q And then you said the Mary-Shea Sutherland incident, so what was that about?
A Basically, she, you know, behind Maureen's back she was cultivating this relationship with Jonnie Williams, and she was again blindsided by another staff member, and she just didn't know what to do She needed to find someone to replace her and didn't really know where to look.
Q So you said she confided the Chef Todd information to you in confidence Did she say anything about the Mary-Shea Sutherland --
A Everything she said to me was in confidence I didn't share that information with anybody
Q Did she also confide in you about the state of her marriage at all at that time?
A She never talked about her marriage

Q Is that something -- did you ever see her talk about her marriage with anybody else?

A No

Q Is that something you would have expected her to talk about?

A No That would have been a betrayal to Bob if she did

Q Now, so did you immediately agree to join her on the trip to Utah?

A No My 14-year-old had just recently had a pretty significant medical issue, and he actually was non-responsive for three days We were at VCU under critical care, which Bob and Maureen came and visited Joey during that time And I wasn't sure what my situation was going to be And as the days progressed, he improved and got better, but I really needed to make sure that I had my nursing under control And my mom was able to be there for that week to oversee the nursing care

Q Did you eventually get to a point where you decided, yeah, it will be okay for you to go on the trip?

A Yes Towards the end of September, I made that decision and I booked my flight

Q Can we pull up RM-0333? Is this a portion of a credit card statement of yours?

A Yes

Q Can we go to Page 2, please? Does this show you booking a commercial flight to Utah for the trip with Ms McDonnell?

A Yes

MS MARTIN: I move the admission of RM-0333

THE COURT: It will be admitted

BY MS MARTIN:

Q Now, was Ms McDonnell also going to fly commercial with you?

A No

Q What was her travel plan, if you knew?

A Her intent was to fly out with Jonnie Williams, and my intent was to fly back with them. I was just going to buy a one-way ticket out there

Q Why weren't you traveling with her?

A Because my husband and I had agreed to be guest bartenders for a fundraising event for Safe Harbor the night that she was leaving, and I had already committed to that, so I was going to fly out there the following day

Q So this document shows that you had a date of departure of October 27th?

A Correct

Q Do you see that?

A Uh-huh

Q A little to the right there And her plan was to leave on the 26th?

A Yes

Q You couldn't do that

A No

Q We can take that down Thank you Now, did you, I guess, did you know, you said she would be flying out there with Jonnie Williams Did you have any idea what their flight accomodations were going to be?

A No, I just knew they were flying out there and I knew he was meeting her

Q Did you have any contact with Jonnie Williams in the intervening time period?

A Probably a week later It was the Spielberg event that the Governor's Mansion held for the filming of Lincoln. My husband and I were guests to be a part of that And I think I met Jonnie there, but it could have been my second time meeting him. There were so many times I was around him during that time frame, I don't remember if it was my first or second time meeting him.

Q You definitely ran into him there?

A Yes

Q Did you speak with him at all?

A I did. I guess Maureen introduced me to him, and she said, "This is who I'm going to be flying out there with." I think that's when I did meet him, because now that I am thinking about this, she said, you know, "He has agreed to fly me out there and he will take us home " I was like, "Okay, that would be great " He said, "Oh, it is no big deal I fly out to California all the time My daughter lives out there I'm always back and forth to California "

MS ABER: Objection to the hearsay

THE COURT: Sustained.

THE WITNESS: It is not hearsay He said it to me

BY MS MARTIN:

Q What impression -- did Jonnie Williams leave you with an impression about his willingness to fly people to places on his jet?

A All the time He said he flew up and down the East Coast all the time and out and back to California all the time; it was no problem taking Maureen out there for her convention

Q At this point, was any mention made of you joining him on his plane?

A He said, "Oh, you should really --"

MS ABER: Objection.

THE COURT: The objection is sustained And it is hearsay And I make that call So go ahead.

THE WITNESS: I apologize

BY MS MARTIN:

Q Well, suffice it to say, at the end of that evening, did you make a decision to join them on the private jet?

A Towards the end, the week before we were supposed to leave, I decided to join them Because my husband said, "April, I'll take care of it, just go. Maureen needs you."

Q You said that was shortly before the trip out?

A The week before

Q What did you do with your commercial ticket that you had purchased?

A I just canceled it

Q Could we please bring up RM-1257? Is this an e-mail from Maureen McDonnell to you and others with an attachment, Nu Skin Reservation Chart?

A Yes

MS MARTIN: I move its admission

THE COURT: It will be admitted.

MS MARTIN: Could we just find April's name in there? Second line in the middle Can we take that down? Then can I -- please pull up RM-1260

BY MS MARTIN:

Q Is this a Nu Skin Reservation Chart with your name on it?

A Yes

Q Indicating that you were staying with Maureen McDonnell in Utah?

A Correct

MS MARTIN: I move its admission.

THE COURT: It will be admitted.

BY MS MARTIN:

Q Below you and Ms. McDonnell, who else does it show were intended participants of the Nu Skin convention?

A Jonnie and his wife, Celeste.

Q All right And below that there is a Shirley Forbes.

A Shirley Forbes

Q Did she join?

A Yes, she was on the flight with us

Q And Diana and Joe Hayes?

A Yes, Diana and her husband, Joe, yes

MS MARTIN: We can take that down I'm sorry, can I just pull up RM-1257 one more time, in evidence already? If we can blow up the recipients, please And if we could just go up to the top line and highlight who all received this e-mail

BY MS MARTIN:

Q Does that say Jonnie Williams there, Jonnie Williams, Sr ?

A Yes

Q All right We can take that down Now, once you changed your plans to fly on Jonnie Williams' jet, what did you anticipate your itinerary being?

A I thought we were just going out to Utah and back

Q And did that impression ever change?

A When I arrived at Millionaire, Maureen --

Q What is Millionaire?

A Millionaire Airport. It is a private airline at Richmond International Airport

Q So when you arrived there, what happened?

A Maureen said, "There has been a change of plans," did I mind going out to California first to drop off somebody before we go on to Utah. I said, "I don't care, this is your weekend. I'm just here for you."

Q And to drop somebody off Did she give any more information about that or did you learn any more information?

A I'm not sure if I learned that moment, but on the plane I learned that the person that we were dropping off was a research doctor from Johns Hopkins And he was going out there to give a presentation and he needed to get out there first

Q Do you remember the name of this doctor from Johns Hopkins?

A I know his first name because we chatted, but I couldn't pronounce his last name.

Q What was his first name?

A Mario He was Italian. I remember that because my husband is half Italian, and we got into a conversation about Italy.

Q Can we pull up RM-1261? If we can focus in, is this a flight itinerary that shows you, among others, going to California?

A Yes

Q And if we can go to the middle line where it says, "To Salt Lake City," it says, "Drop First Lady security" after that

A Yes

Q Is that when you arrived at the airport? Is that what you had expected your plan to be?

A Yes

Q And that's not what happened?

A No.

Q So what happened instead? We can take that down. Thank you

MS MARTIN: I'm sorry, I move the admission of RM-1261

THE COURT: It will be admitted

THE WITNESS: Okay, so when we were on the plane, so I'm sorry, what was the question?

BY MS MARTIN:

Q Well, you said that the plan had been changed and you were going to drop a doctor off, is it in California, you said?

A Yes

Q And so is that what ended up happening?

A No We ended up all staying in California We landed halfway through the country to refuel, go to the restroom, pick up food, which Jonnie had a nice box lunch for us, and then continued on to California

Q All right Sort of set the scene for the airplane for me How many people were there? Who is sitting where?

A Okay So the back of the plane was myself and the doctor, Mario. And then Shirley Forbes Maureen and Jonnie faced each other Jonnie's best friend sat next to Jonnie across the way And I, the First Lady's security, was in the very front of the plane And Shirley Forbes -- did I say Shirley Forbes already? So Shirley Forbes was on there, too So I think there was eight of us and then two pilots

Q And what was the sort of atmosphere like?

A Oh, it was extremely friendly You know, we were all talking about our families, friends, kids Jonnie was passing around pictures of his daughter and how beautiful she was and that she was, you know, an aspiring model

Just carried on very friendly, easy conversation

Q And did you specifically see the dynamic between the First Lady and Jonnie Williams?

A Oh, yeah. They were best buddies. They were just chatting away like they had known each other forever.

Q Did you have a sense at that time of how long they had known each other?

A No

Q And did you interact with Jonnie Williams at all?

A As we were all talking about family and, you know, kids and so forth, that was probably the beginning of the conversation But as the flight went on, Jonnie pulled out his little Tic-Tac bottle and started passing around what seemed like mints And then I was like, "What is this?" And he began to give his whole spiel on Anatabloc and how he derived with this product and got a whole little history of it

Q Did he tell you about his wife's condition?

A That's -- he went around, explained the whole thyroid problem and how she was going to have thyroid surgery, and asked the doctors to give him a month to, you know, I guess fine tune the product, and within 30 days she was no longer a thyroidectomy candidate, and hence, Anatabloc

Q Did he say anything about trying to develop new uses for Anatabloc?

A Yes He then began with a story about how he had got hit in the head, I think, with a golf club or something, and he had been already working on a product putting the anatabine in lotions, and he started putting it on his head and, you know, within hours, it had, you know, gone down from a goose egg to just hardly a contusion

Q And did he give any further detail about whether or not he was trying to incorporate that into his product line?

A Yes He said that he had been working, he had sent his wife out to --

MS ABER: Objection.

THE COURT: It is all hearsay, every single word of it You know, we are trying to let you put a case on, but you can't just violate the rules You've got to behave within them. So please do that

MS MARTIN: Right Well, I'll move on, Your Honor

BY MS MARTIN:

Q So you eventually got to California?

A We did.

Q And what time of day was that?

A It was late in the afternoon, around evening

Q And where did you go once you got there?

A He brought us to this beautiful resort in South

Beach, California

Q And what happened there that evening?

A He invited us to dinner, and we had a nice little quaint dinner and continued chatting about just random things.

Q And so at dinner, did anyone do anything else that evening?

A No, we pretty much just hung out at the resort Jonnie did say, "If any of you guys are interested, they have a great spa "

MS ABER: Objection

BY MS MARTIN:

Q Did anyone partake in any spa appointments that evening?

A Maureen and Shirley did.

Q And were the spa appointments their idea?

A No

Q Whose idea were they?

A Jonnie's

Q Now, who paid for the dinner and the spa appointments and the --

A Jonnie Williams did.

Q Now, are you, without getting too deep into your finances, are you in a financial position that you could have paid for your own meals and accommodations?

A Absolutely

Q Why didn't you pay?

A I think he just treated us because he diverted our whole trip.

Q Now, did you have a plan for the next day?

A No.

Q Why not?

A Because it wasn't part of the itinerary when we left

Q And so what did you do that day?

A The next morning we got up and went shopping and had lunch and just enjoyed the day

Q You say "we " Who was with you for that portion?

A Maureen and Shirley Forbes

Q And what about -- around what time did the shopping and sort of --

A It was the early part of the morning

Q What did you do after that?

A We went back to the little bungalow we stayed in and got ready to go to the presentation Jonnie invited us to go to

Q And at what point did you learn about this presentation?

A It was either at dinner -- I think it was at dinner He invited us to watch the presentation.

Q And what were your expectations of what the presentation would be like, and what was it, what was this presentation?

A Well, it was the doctor that we brought with us, and he was going to give a presentation of Anatabloc, and I thought it was just a handful of doctors

Q This is Mario, who you met on the plane?

A Mario, yes

Q And who gave you the impression that it would just be a couple of doctors?

A Jonnie

Q And did you go to this presentation?

A I did.

Q How did you get there?

A Jonnie's staff came and picked us up at our bungalow and drove us over there

Q And what, when you arrived at the presentation, what was it like?

A Well, when we walked in, there were tables lined up along the wall with Anatabloc piled high with little gift bags At the end of the corridor was what looked like a six-foot Barbie doll, which was introduced as his assistant, and she actually had the Boomer magazine on the table And I asked, "Why are you having a Richmond magazine here?" And she says, "Because they had the whole slick covered with Anatabloc advertising " So I was just surprised because my family was presented in that magazine, so that's why it just brought it to my attention. Then they asked us to go in, and --

Q In where?

A Into the, where the presentation was going to be held

Q What type of facility was this?

A It was in a resort hotel

Q And so where the presentation was being held, what was that like?

A We were all shocked when we walked in. There was hundreds of people sitting there waiting for this presentation

Q How did that compare to the size that you expected?

A It was -- it was not anything that we expected.

Q Now, were you or Maureen or Shirley supposed to have any role at this conference?

A None. We were just there to watch.

Q Did that change?

A Yes

Q When and how did that change?

A When we were walking in, Jonnie asked her if she would mind if he introduced her to say a few words

MS ABER: Objection.

THE COURT: Go ahead. She has answered the question

BY MS MARTIN:

Q Had Ms McDonnell prepared any remarks in advance?

A No. In fact, she looked at me like, you know, a deer in the headlights, because she was not prepared. She didn't want to say anything She didn't have anything to say about Anatabloc

Q Having known Ms McDonnell for a while at that point, what did you know about her, how much she liked -- her taste for public speaking, I guess?

A She hated it

Q So what was her initial reaction to being asked?

A She said, "No, I don't feel comfortable doing that "

MS ABER: Objection

THE COURT: Overruled Go ahead.

BY MS MARTIN:

Q Now, if we could pull up Government Exhibit 257, already in evidence

(Video played.)

Is that what you remember happening?

A Yes

Q Now, he said, "I want you to say a few remarks" about why you were there Why were you guys there?

A We weren't even supposed to be there We were there as his guests just to watch

Q What was your reaction to seeing Jonnie Williams put Maureen McDonnell on the spot like that?

A I thought it was pretty wrong I mean, it was just wrong

Q Why do you say that?

A Because she wasn't prepared.

MS ABER: Objection.

THE COURT: Overruled Go ahead.

BY MS MARTIN:

Q Did you ever get to Utah on this trip?

A Finally, right after the conference, we were flown to Utah

Q And how did you get there?

A Jonnie Williams' plane

Q Who was on the plane, if you recall?

A It was Maureen, Shirley, and myself.

Q Was Jonnie Williams there?

A I don't recall him flying on that leg with us

Q And did you attend the Nu Skin conference in Utah?

A Yes

Q What was that like?

A It was like going to a Christian revival It was over the top crazy

Q A lot of energy, fair to say?

A So much energy

Q And how was Maureen in relation to all that crazy energy going on?

A She was very reserved, very quiet It wasn't like you would be going to a convention that you are all excited about, and this is, you know, why you are there She was sad.

Q And did you have any sense of what she was sad about?

A With everything going on with Todd and Mary-Shea and the wind was just taken out of her sails She was just spent.

Q Had she been excited about this conference leading up to going there?

A I don't think so. She just -- that's why she needed a girlfriend trip She just needed to get away, and it gave her that avenue to do something outside of the Governor's Mansion

Q Now, you say "outside of the Governor's Mansion." Had she expressed any frustration with living in the Governor's Mansion?

A Many times She would complain about absolutely zero privacy She would be in the First Family space and the butler would walk up and she would be in her underwear And it was just such an invasion to her personal space

Q So you get to the conference, and who pays for your meals and accommodations in Utah?

A Maureen and I split our hotel We shared a room together, so we split our bill

Q And did Jonnie Williams attend the conference with you at all?

A I saw him the last day

Q And what were the circumstances under which you saw him?

A Well, on the plane --

Q Without saying what he said, what if you know caused him to show up in Utah at the conference?

A Because -- I'm not sure how to answer that I couldn't answer from before

Q What did Ms McDonnell do?

A Maureen was upset that Jonnie was using a company outside of the United States for his Anatabloc lotion And she was like, "If you are not going to use a company in Virginia, at least use a company in the United States Why don't you talk to Nu Skin since we are here? Let me see if I can coordinate something You can talk to them. Maybe you can use your product in a United States company " And that's what facilitated it

Q You mentioned setting up a meeting Did she set up a meeting?

A It took her a bit to be able to coordinate that Because with the convention, everyone is doing so many other things, the last thing they are probably looking to do is have a meeting with someone She was looking to get that coordinated just before we were to head back home

Q Did such a meeting take place?

A It did.

Q Did you attend the meeting?

A Yes, I did.

Q Was Ms McDonnell there?

A Yes

Q And without getting into specifics of who said what, give us sort of a Reader's Digest version of what happened at that meeting

A Basically, we were brought into a very large conference room. Maureen and I sat to the side There were two researchers from Nu Skin and I think another head of Nu Skin, and Jonnie Williams sat at the head of the table He gave a PowerPoint presentation, and there was a dialogue back and forth from the researchers to Jonnie What I observed, the researchers, you could tell that they had a posturing of, "Yeah, we are not really buying this," and Jonnie was, you know, doing his dialogue And when I walked out of the room, it did not seem they were interested

Q His pitch wasn't well received by the researchers?

A I don't think it was well received.

Q Was it essentially the sort of same pitch you had heard on the airplane?

A Yes As well as the night before Or earlier that day, rather I mean, when we were in Utah.

Q Did Ms McDonnell interject or promote Anatabloc at that meeting?

A We said nothing We just sat to the side and watched.

Q Now, did you eventually go home from this trip?

A Finally, yes

Q And how did you get there?

A Jonnie Williams' plane

Q And was there any sort of relevant discussion or anything?

A Not so much There was probably a little bit of chat, but I think we were all kind of tired We kind of read and slept most of the trip back home

Q Just to be clear, whose idea was it to delay the Salt Lake City portion of the trip and go to California instead?

A Jonnie Williams'

Q And who chose the resort where you stayed in California?

A Jonnie Williams

Q Who chose the dinner arrangements in California?

A Jonnie

Q Whose idea was it for some of the ladies to get spa treatments?

A Jonnie's

Q Whose idea was it for you and the First Lady and the others to go see Dr Caturegli speak at this event?

A Jonnie's

Q Whose idea was it for Maureen McDonnell to speak at that event?

A Jonnie's

Q Now, you mentioned that Ms McDonnell didn't really confide in you about the state of her marriage But did you see from the outside any other sort of signs of the state of communications between her and Mr McDonnell?

A Not so much that I ever witnessed any confrontation, but there were a couple of times that she made comments And one in particular, one of the first FLITE gatherings that we had at the Mansion, Diana Cantor and her were speaking about how they texted each other at 2, 3 o'clock in the morning And I just thought to myself, "If they are texting each other at 2 or 3 o'clock in the morning, their husbands aren't in bed with them," because my husband wouldn't have let me sit there texting I thought, "How lonely, that she is --"

MS. ABER: Objection, relevance

THE COURT: Sustained.

BY MS MARTIN:

Q Now, having observed Ms. McDonnell and Jonnie Williams together, what was your impression of the nature of their relationship?

A I thought they were longtime friends

Q Did their relationship ever strike you as a business relationship?

A No

Q And from your observations, what did Jonnie Williams contribute to this friendship?

A I thought he was just trying to help them, you know, along their path, you know He would just offer things for assistance It never seemed like it was a business situation. I had no idea

Q Did he pay attention to her?

A Oh, all the time

Q Did he share in her passion for nutraceuticals?

A Absolutely

MS MARTIN: I have no further questions

THE COURT: All right. Mr Asbill? Government, any questions?

CROSS-EXAMINATION

BY MS ABER:

Q Good morning, Ms Niamtu.

A Good morning

Q You and Ms McDonnell met back in 2009; is that right?

A Yes.

Q So at the time of these events you had been acquainted for approximately two years-ish?

A Oh, yes

Q 2011, 2012?

A Yes

Q But it sounds like you two became fast friends; is that right?

A Yes

Q You talked on the phone?

A Yes

Q You e-mailed, I take it?

A E-mailed, texted, probably talked in person a lot, too We went out to lunch and shopped a little bit, yeah

Q And when Ms McDonnell was stressed out in October of 2011 she called on you as her girlfriend, right?

A Yes

Q And actually, as an aside to that, how sure are you that October of 2011 is when Ms McDonnell was concerned about Todd Schneider, the chef? Are you certain about that timing?

A It all kind of ran together I mean, that was three years ago But it just seemed -- by my recollection, it was, everything was all on top of each other

Q Are you aware that the Mansion did not actually begin investigating Mr Schneider until the beginning of 2012?

A No.

Q Okay So when Ms McDonnell stressed out, she was calling on you and she wanted you by her side for this trip to California, right?

A Yes

Q And is it, I don't mean to be unkind, but is it fair to say as First Lady Ms McDonnell didn't have a lot of close girlfriends?

A I have no way of answering that

Q But I assume you are among the top of the list, right?

A I felt like I was a good friend, yes But I believe she has, you know, a lot of girlfriends

Q Now, I take it that Ms McDonnell never mentioned having any romantic feelings for Mr Williams to you?

A No.

Q I'd like to bring up, please, Government Exhibit 258 Now, Ms Niamtu, I'm sure you have never seen this flyer before; is that right? But I'll direct your attention to the date, October 27th, and I'll represent to you that that's 2011 This is a flyer for the conference in

California you discussed Does that sound about the right timing?

A Yes

Q Okay And I think your testimony was that Ms McDonnell seemed surprised that she was being called to the stage at this event

A Yes

Q And I think you said she was surprised by the number of doctors or folks present in the audience; is that right?

A I don't know if she was, but I was

Q And I think you testified, maybe I misheard you, that it didn't appear like she knew what was going on when she walked into the room.

A You are asking if I thought she knew?

Q Yes Based on your observations, is it your testimony that Ms McDonnell was totally surprised that she was coming into an event of this magnitude?

A We were all surprised.

Q Okay I'd like to bring up Government Exhibit 254, please Now, did you know that Ms McDonnell had attended a similar event in Michigan five days earlier?

A I knew she was in Michigan. I'm not sure I knew it was about this

Q Did she tell you that that event was virtually identical to the California event?

A No

Q Did she tell you that that event had dozens of doctors in attendance?

A No, we didn't speak about the event I just knew she had been to Michigan.

Q She didn't tell you that she spoke at the Michigan event and made virtually identical comments?

MS MARTIN: Objection, asked and answered

THE COURT: Overruled.

BY MS. ABER:

Q Ms McDonnell didn't tell you about that?

A I just said she didn't talk to me about this conference

Q I'd like to bring up Government Exhibit 250, please. This is a flyer for an event actually in Richmond at the Westin Hotel on October 18th, which would be roughly nine days before the California event that you attended. Did Ms McDonnell tell you that she attended this event?

A No

Q Did she tell you that she made any comments at this event?

A No

MS ABER: If I could have one moment, please, Your Honor

THE COURT: All right

(Counsel conferring with co-counsel)

MS ABER: No further questions, Your Honor Thank you

THE COURT: All right. Any redirect?

MS MARTIN: Briefly, Your Honor

REDIRECT EXAMINATION

BY MS MARTIN:

Q Directing your attention to this same exhibit that the government just showed you, do you see on there where it says "Featured Guest: The First Lady of Virginia, Maureen McDonnell"?

A Yes

Q And all right, if we can pull it back out And that's the Richmond event, right?

A Yes

Q All right If we can pull up Government Exhibit 254 And do you see on there where it says, "Featured Guest: The First Lady of Virginia, Maureen McDonnell"?

A Yes

Q And that is the Michigan event?

A Yes

Q All right Can we take that down? Pull up Government Exhibit 258 Where on there does it say that Maureen McDonnell is the featured guest?

A Nowhere.

Q Or speaker.

A Nowhere

Q And that's the California event, correct?

A Yes, ma'am.

Q Now, she asked, Ms Aber asked you some questions about Ms McDonnell's frustration with Chef Todd?

A Yes

Q Did she say it was specific to a Mansion investigation of Chef Todd?

A No

Q Is that what you understood at the time in October of 2011?

A No.

MS MARTIN: No further questions

THE COURT: Thank you, ma'am. You may stand down

(Witness stood aside)

Call your next witness, please

MR BURCK: Your Honor, Maureen McDonnell calls Jeanine McDonnell

JEANINE M. ZUBOWSKY,

called as a witness by and on behalf of Defendant Maureen G. McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. MARTIN:

Q Good morning

A Good morning, ma'am.

Q Could you please introduce yourself to the jury and spell your name for the court reporter?

A Yes. It is Jeanine McDonnell Zubowsky J-E-A-N-I-N-E, McDonnell, Z-U-B-O-W-S-K-Y

Q You are Mr and Ms McDonnell's daughter?

A Yes, ma'am.

Q Where do you fall in the line-up?

A I'm the oldest

Q Are you here under a subpoena today?

A I am not from you.

Q Did anybody subpoena you in this case?

A The government did, yes, ma'am.

MR HARBACH: Objection

THE COURT: What does that have to do with anything? Please just ask the questions that you have

BY MS MARTIN:

Q Until what age did you live at home?

THE COURT: I can't hear you Would you speak up or lift the mic up a little bit?

BY MS MARTIN:

Q Until what age did you live at home?

A Until 18

Q What did you do after that?

A I went into college at the University of Notre Dame

Q Why did you choose Notre Dame?

A My dad went there I grew up in an Irish family who loved Notre Dame I was the fourth to go there

Q The fourth --

A McDonnell

Q All right And what did you do after -- did you graduate?

A Yes, ma'am.

Q With a degree in what?

A I had a degree in political science

Q What did you do after that?

A I went into the Army

Q And how did you choose to do that?

A I always admired that my dad was an Army officer, and I wanted to be like him. And when applying to college I was filling out scholarship applications, and ROTC was one of them, so he encouraged me to do that

Q What did you do in the Army?

A I was a signal officer

Q Did you ever deploy?

A Yes, ma'am, I deployed from '05 to '06

Q Where did you deploy?

A I deployed to Iraq

Q And are you still in the Army?

A No

Q What did you do after?

A I became a government contractor

Q And can you elaborate on what you were doing as a government contractor?

A Yes, ma'am. I worked at Joint Forces Command for a while, and right now I work for a company that's a service-disabled veteran-owned small business and I support the Navy

Q Do you hold a security clearance?

A Yes, ma'am.

Q What is your current family situation?

A I just got married last May and we are expecting a little girl in January

Q Congratulations

A Thank you

Q Now, I'm going to talk about your mom and dad

A Okay

Q Do you love your mom?

A I do, very much.

Q Do you love your dad?

A I do, very much

Q Do you think either of them is perfect?

A No

Q Are you prepared to talk about some of those imperfections today?

A Sure

Q When you were growing up, which one of your parents was around more?

A My mom.

Q And what was your dad doing?

A He was working, and in school

Q And then so what about your mom? While he was working and in school, what was she doing?

A She was working She was waitressing while he was in law school, and the rest of the time she was home until she started getting into the nutraceuticals

Q What level of education did your mom achieve, if you know?

A I think she had some college, but not a degree

Q Where did she get that college experience?

A I'm actually not sure In Northern Virginia somewhere after high school

Q Now, we have heard some testimony that she worked at the FBI Do you know what she did there?

A I know she was a typist when my dad was in college

Q Did you have an opportunity to see your father's career progression as you grew up?

A Yes, ma'am.

Q And so what was your dad doing when you were sort of first old enough to remember?

A He was in law school when we came back to Virginia after Kansas So I remember very long hours in law school, and then I remember him running for state delegate in 1991, and doing that for 14 years, as well as in law

Q So going back to the time that he was in law school, how many siblings did you have then?

A So when he started law school, it was me and my sister, Cailin, and then while he was in law school, my sister, Rachel, was born

Q Did your mom work during any of that time?

A Yes, she would waitress

Q What about when she was pregnant?

A Yes, she waitressed when pregnant

Q Did you have any understanding of what your family's financial situation was then?

A I didn't know details I just know we didn't have much money

Q And do you recall what your dad did immediately after law school?

A He went to work in the Commonwealth's Attorney's Office He was a prosecutor

Q And what was your mom doing once he started working at the Commonwealth's Attorney's Office?

A I can't recall exactly the timeline, but I know at some point after waitressing she started with the nutraceuticals

Q Do you recall when he ran for the House of Delegates?

A Yes, 1991

Q And what was your mom doing then?

A I think she was getting into the nutraceuticals then

Q And what about in terms of the family? Had your brothers come along then?

A Oh, yes She was pregnant with twin boys that year, and they were born in September So five weeks before the election

Q And he won the election?

A Yes

Q And what impact did that have on his presence in the home?

A It reduced the amount of time he was home He was busier with General Assembly sessions every January, February, as well as working at the law firm, Huff, Poole & Mahoney

Q Where was the family living at that time?

A In Virginia Beach

Q And where were sessions?

A Sessions were here in Richmond

Q And what did he do for the commute, if he made it?

A He would stay up here definitely during the weekdays. He would come home some weekends, most weekends, I think, but weekdays for six or nine weeks depending on the year he was gone

Q So he would be gone for two months at a time and mom was at home with five kids including two newborns?

A Yes, ma'am.

Q How did she handle it?

A I mean, it was hard It was frustrating, and she felt alone at times. And I was ten by then so I helped as much as I possibly could, but it was hard.

Q Now, as your father's career trajectory increased, what effect did that have on his presence within the home?

A With each job with more responsibility, it reduced the amount of time he was around.

Q And what effect did that have on your mom?

A Frustration, loneliness, anger at times

Q And for instance, did you have an opportunity to see how she spent her time when you were home on summer break from school?

A Yes We would be on swim teams, and when I wasn't in school and around, she would be with us and get into soap operas and things like that to fill her time

Q What else did she do to pass her time during the day, if you know?

A She would, besides hanging out with us, she would have drinks sometimes and I think she just liked to take long baths sometimes, and I think she was depressed So she would try to escape.

Q Now, talk to me about the concept of frugality in your home Is that a concept you were raised with?

A Yes, ma'am.

Q And how was that concept instilled in you?

A I just always knew that we were never going to spend money we didn't have, and waste money, and we just, that was the way I grew up.

Q And is that something that your parents instilled in you?

A My dad and mom, yes

Q And this is something you heard them talk about frequently?

A I know that there were arguments when I would grow up about different times that my mom would go shopping while my dad was working, and there wasn't really communications prior to those trips, and there were arguments later that so much money shouldn't have been spent on things and they needed to have conversations about those things So I know it caused arguments a lot

Q So is it fair to say that one of your parents was sort of more in favor of frugality than the other?

A I would say so

Q And which one was that?

A Probably my dad.

Q Now, I want to talk a little bit about family time We have heard some about, in particular, your father's prioritization of family time, even in the midst of his career Goings on. Would it be fair to say that he prioritized it?

A Yes, family time, very much.

Q How would you describe family time in your household?

A Well, it wasn't that frequent, because he was always so busy, and working But when he was around, he just loved his family very much, and he loved his children, and it was kind of kids were the priority and then my mom came last

Q And so did family time also -- well, who did it encompass?

A It was all five kids and my mom.

Q Sometimes aunts and uncles, too?

A Sometimes, yes

Q And what about one-on-one time between your parents? Did you see that get prioritized?

A No I did not

Q Is that something that changed over time from your observations?

A No I know that my dad tried to make time There just wasn't time I mean, he has always been so busy

Q Now, growing up, did you observe your parents' level of communication?

A I observed that it was very nonexistent

MR. HARBACH: Could we get a time frame, please, Judge?

THE COURT: Overruled.

BY MS MARTIN:

Q You say very nonexistent Did they not talk at all or they just didn't talk well, or what do you mean?

A They didn't communicate well

Q Did they talk at all?

A Yes, but it was never more than just logistics about children and necessities It wasn't what I observe in my own marriage as a normal conversation

Q Did they have disagreements?

A Yes

Q Fights?

A Yes

Q How frequent?

A Pretty frequent

Q What about, what would they fight about?

A I'm sorry, money, money that was spent that didn't need to be spent, time that my dad was gone, logistics of organizing moving us from Point A to Point B All five of us were in different sports, and I mean, it was a lot of coordination with five children having their own lives

Q Did you ever hear your mom raise her voice with your dad?

A Yes

Q Did you ever hear your dad raise his voice with your mom?

A Never

Q Just because he wasn't raising his voice, did that mean that he was communicating well from your perspective?

A No

Q And can you say why?

A He was just trying to not have it escalate further

Q And what do you mean by that?

A I mean that's why he -- I've never in my whole life ever heard him raise his voice, and he was just trying to end the conversation as quickly as possible with the least amount of fighting possible, knowing that his five children could hear, and he just didn't want it to keep going on So he would try to mediate that

Q Escalate further, you say Is this already a situation that escalated at this point?

A Typically they ended up escalating rather fast

Q Did you ever observe either your mom or your dad hide things from each other?

A Yes I would say there were, especially when it came to purchases, my mom, they were hidden until the bill came, and then it would turn into an argument

Q And how frequently did that occur?

A Pretty frequently

Q Now, as your father became increasingly professionally successful, how did that impact their communications?

A With increased responsibility, it became less time for talking with all of us So it definitely impacted it

Q And how, if you saw, did your mother react to that decreased time with her husband?

A More frustration. I mean, it was hard for her, more frustration, more anger

Q How did that impact the whole family dynamic? How did you guys deal with it?

A I think when we were all together, we all tried to just maintain the happy environment Nobody wanted to create any kind of tension We were all on eggshells to make sure that everything went well, and nobody made anyone else mad and tried to keep the limited time we had together happy

Q Fast forwarding to the time when your dad became

Attorney General, were you around much during that time?

A I was deployed when he was elected, and then I was in the Army for a little while after I came back to Virginia in '08, and that's when I started to be around for the second half of his term.

Q And so did you have much opportunity to observe your parents' communications then?

A Occasionally when I would come up to Richmond to see them.

Q Had they improved?

A No

Q How did it compare to the level of communication you saw when you were growing up?

A Probably less My dad was gone a lot more It was a statewide office So that meant less time for them to communicate

Q And then how about when your dad became Governor? Did you observe the state of their communications then?

A Yes

Q Had they improved then?

A No.

Q Had they gotten worse?

A I would say so, yes

Q And during the time that your dad was Governor, did you observe the demands being put on your mother as First

Lady?

A Yes

Q And what were those like?

A There were a lot of different requirements of her, and different things that she was asked to go do, and speaking engagements, and a lot of things that at first she was nervous about But she was very excited and passionate about her initiatives, and when she was in the middle of those things she did very well

Q Had she ever been in a similar environment?

A No

Q And how was this environment different from anything you saw her experience?

A There was no getting out of it She is in the Mansion, and the events are in the Mansion, and she is just always in the middle of all these people and staff and events It was just non-stop

Q Had she ever had a staff before?

A No.

Q And do you think she was equipped for this role?

A I think they thought that they were ready earlier, and leading into this And every time my dad would talk about the next job, she was excited for him and supportive, and it was always -- kind of the way it sounded in the fantasy of what it would be like was a lot easier to take and accept than the reality of when they got into it. I think it was a lot harder when they were actually living it

Q Did you occasionally travel with them?

A Yes

Q With both of them together?

A Yes

Q Also with them individually?

A Yes

Q Were those, were you traveling with them on leisure trips, on gubernatorial trips, or on political trips?

A All of them.

Q And how frequently when you traveled with them would a trip encompass more than one of those categories?

A Frequently, the leisure, or the leisure would always be separate, but the other two were frequently combined.

Q And just because you traveled for the leisure or vacation event, did that mean that dad wasn't working?

A No, definitely not

Q What was his sort of routine on leisure trips?

A We would steal his phone when we had a chance, but I mean, he was always still plugged in He loved his job He was passionate about it And he would feel guilty if he wasn't constantly monitoring things

Q And how much one-on-one time did he and your mother spend together, if you saw?

A Pretty much none

Q And if you had to summarize, in the past ten or so years when you have been on trips with them, what are their interactions like?

A They are infrequent and, I mean, his focus is us, his children, when he is on his trips And so any interactions with them, it is minimal And if there is interaction, it is usually not pleasant

Q Now, in particular, did you go to Camp Pendleton with them in July of 2011?

A Yes, ma'am.

Q And is there anything that happened along the lines of communications during that trip that stands out in your mind?

A Yes, ma'am.

Q What happened?

A We were in the family room, and something had happened, and my mom had gone into a separate room. And this happened frequently over the course of my years growing up And she was just isolated in the room watching television And my dad, I saw a drop on his face, and he was upset and he was walking down the hallway and I was walking with him and I stopped to ask him if he was okay And this stood out to me because this is not frequent that he would ever confide, but he actually did open up and said, "I don't know what to do anymore I can't make her happy She is always angry And I just wish there was something I could do." And he just felt like helpless, like it was a new low they had reached.

Q Had he ever opened up to you like that about that issue?

A No

Q What about your mother? Did she ever open up to you about their communications?

A Not really, no

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Q During the conversation you had with your father when he was confiding in you, did he say the things that your mother said to him that were bringing him to this low?

MR HARBACH: Objection

THE COURT: Sustained

MS. MARTIN: It's not offered for the truth, Your Honor

THE COURT: The objection is sustained. You're asking her what somebody else told somebody else I mean, it's -- ask another question

BY MS MARTIN:

Q What about in 2012? Did you have an opportunity to observe your parents' communications then?

A Yes

Q And better or worse than you had seen before?

A They weren't any better

Q And what was your father's schedule like, comparatively, with other years?

A 2012 was probably the busiest year of his life He was campaigning for Mitt Romney He was leading the Republican Governors Association He was never home So it was crazy I barely got to talk to him If anything, we might squeeze in a call every couple weeks or so But he just did not have any time

Q And did you have an opportunity to observe your parents together in the same space?

A I would go on some trips I was engaged to my husband at the time, and so I had two reasons to go on the trips, since Adam worked for my dad So I would go to spend time with both of them, being very busy

And I -- I mean, my mom, a lot more of the same, was frustrated getting ready for events, and sometimes would not go to things And I'm -- it was a lot for her I understand But there was not barely any communication And if it was, it wasn't good

Q Did you ever have an opportunity to contrast their sort of personal existence versus their public existence?

A Yes Behind closed doors, as I've said, there was tension There was anger There were arguments But anytime they went into a public setting, it was like a switch flipped and they could turn it on And they both loved being around people So they weren't faking loving the people, but they were definitely kind of putting on an act and, you know, being more touchy-feely, I guess, than they were ever behind closed doors

Q So if you were to see a photo of them being affectionate at an event, is that indicative to you that they went home and had a good night with each other that night?

A No

MR HARBACH: Objection

THE COURT: Overruled

BY MS MARTIN:

Q I want to talk some about Jonnie Williams How did you first hear about Jonnie Williams?

A From my mom

Q And when did she start talking about him?

A She probably started talking about him in 2011, early 2011, and talking about her new friend who had this product Anatabloc that she believed in and that helped inflammation And I was a runner, so she gave me some to take, and she really believed in his product

Q How frequently would she talk about him?

A Very frequently

Q What -- as an outside observer, what impression did your mom's frequent discussion of him leave you with?

MR HARBACH: Objection Relevance

THE COURT: She can answer the question

A I think she had a mild obsession with Jonnie I had never heard her talk about any other friend in this manner

BY MS MARTIN:

Q And aside from not hearing her talk about anyone else, had you ever seen her develop any type of relationship with any other friend than she did with

Jonnie Williams?

A No

Q You mentioned that she also -- she believed in his product too, Anatabloc?

A Yes.

Q And did she talk about her involvement in -- or potential involvement in Anatabloc? Or what did she say about it? Let me ask you a better question

A I think that, for her, she wanted to be part of something big, and she believed it was something that could be big And growing up --

MR HARBACH: Objection This is nonresponse The question was what she said

THE COURT: The objection is overruled

Go ahead

A I'm sorry Can we start over?

BY MS MARTIN:

Q Sure What did your mother say about Anatabloc when she talked about it?

A She said she believed in it And I think that she believed in it because she's always been passionate about the nutraceuticals, and she believed in the effects that it was going to have, and she wanted to be part of it

Q Did you ever meet Jonnie Williams?

A Yes

Q And on how many occasions?

A Not many Maybe three

Q Did you ever speak to him?

A Yes

Q And when you two did speak, generally, topically, what did you speak about?

A Anatabloc He was just very flamboyant He liked to talk about his money and how much he had and his houses, and if I ever wanted to take a vacation, go use his properties Meaning he was very just flamboyant and generous

Q And at that point, like when he was talking about you taking a vacation at his property, had you asked him for anything like that?

A Absolutely not

Q Did you see your mom and Jonnie Williams interact much?

A Yes A few times

Q And so is your impression of how she viewed their relationship, is that based both upon what you heard from her and your own observations?

A Yes

Q And when you've heard your mother describe her relationship with Jonnie Williams to others -- or let me back up Sorry

When you have described your mom's relationship with Jonnie Williams to others, how have you described it?

A I have just --

MR HARBACH: Relevance

THE COURT: Sustained

BY MS MARTIN:

Q Did you think that he was your mother's friend?

A Yes

Q Did you think that he was your mother's business associate?

A No

Q Did you think that he was your mother's good friend?

A Yes

Q What were the things that caused you to think that they were friends?

A By the frequency of how much she talked about him, by the fact that in preparation for my wedding, anytime I asked on the wedding list or for the tool party, he was the first name out of her mouth

Q When you say "in preparation," how did he come to be involved in lists for your wedding?

A Because I asked my friend -- or my parents which friends of theirs they would like to invite, and he was at the top of the list for the wedding and then for the tool shower

Q Have you ever heard anybody describe your mother's relationship with Jonnie Williams as anything other than a friend?

A Not at all

Q Ever heard it described as a business relationship?

A No, ma'am

Q Now, we've heard some discussion of Jonnie Williams potentially purchasing a generator for you and your husband.

A Yes, ma'am

Q His name is Adam, right?

A Yes

Q All right Now, did there come a time that you understood that Jonnie Williams intended to buy you a generator?

A Yes, ma'am

Q How -- when did that happen?

A At our tool party, which I believe was October of '12, my mom and dad got to the shower, and she walked up to me and said that Jonnie has a special gift that she wants -- that he wants to call and tell you about His wife fell ill and she was taken to the emergency room, which is why they did not end up flying up from Florida to attend the party and, I guess, bring the generator

Q All right So you were having this tool party?

A Yes

Q And he -- you found out he wasn't attending?

A Uh-huh

Q But he had been invited; is that right?

A Yes

Q And who was he invited by?

A My mom and dad My mom

Q And so what happened next with this generator?

A So he -- my mom ends up saying she wants to call him to tell us about the generator --

Q When --

A In the middle of the party

Q In the middle of the party?

A Yes

Q So where were you? Sort of --

A So it was a back deck, and everyone was kind of filtered among the lower deck and the upper deck And I was on the upper deck when they got there

Q And how many people were around?

A Forty

Q Who was there? Was your dad there?

A Yes

Q And who, sort of generally, else was there?

A Well, it was a shower thrown by Adam parents' friends, a couple of the couples So it was their friends, and my parents' friends, and then some of our friends

Q So your mother mentioned a telephone call?

A Yes She wanted to call Jonnie in the middle of the party I asked her please don't But she did

Q Why didn't you want her to?

A I just wanted to focus on the people that were there I didn't want to have a phone call about another gift while we were at the party I wanted to enjoy those people

Q And so was a phone call made --

A Yes

Q -- to or from Jonnie Williams?

A Yes

Q Who made that phone call?

A My mom

Q And what happened next with the phone call?

A She put him on speaker phone and put the phone between Adam and I And --

Q What kind of phone was it? A cell phone?

A A cell Yes, ma'am

Q And so was this telephone -- this call on speaker phone, was it sort of able to be widely heard that you could tell?

A No It was between our heads So I don't think anyone could hear

Q And was your mom standing there?

A Yes

Q Was your dad?

A No

Q And so what happened next?

A So Jonnie told us that since it's a tool shower, he wanted to get Adam the best tool of all, and that's a generator And we said, "That's extremely generous You really don't need to do that. Please just worry about your wife " And we thanked him, and the call ended And that was all we heard at that point

Q Now, had you ever talked to Jonnie Williams about a generator before then?

A No

Q Had Adam, to your knowledge?

A No

Q Were you in the market for a generator at that point?

A No

Q And so what was the next thing to happen in this generator saga?

A Next thing was out of the blue, Adam got a phone call from Michael & Son And they were setting up a time --

Q What's Michael & Son?

A I guess a company that does generators and AC, and things like that

Q Contractor of some sort?

A Yes Yes So they were setting up a time to come do a survey of our house And then they set up the time He came out to the house

Q Did you -- I mean, did you listen in on this phone conversation at all?

A Not the phone conversation But I was there when he came out to the house

Q And "he" being the contractor for Michael & Son?

A Yes, ma'am

Q All right And what happened once the contractor got there?

A He walked into the backyard to look where he could put the generator, and he said that the generator would have to be run into the gas line and that -- and Adam was asking, "Oh, well, where is it going to go in case somebody steals it?" And he said, "Oh, this isn't a generator that anyone is going to steal "

And we started asking, "Well, what kind of generator is this?" And he said, "Well, the gentleman who's arranged this gave me instruction to get you the generator that's going to keep your house lit up to where you'll never notice any kind of interruption when the power goes out " We had no idea it was a generator of that scale

But that was the instruction

Q Had you ever had any experience with such a generator?

A No, ma'am

Q When you heard "generator" initially, what were you thinking?

A I was thinking some couple-hundred-dollar thing from Home Depot or Lowe's

Q Do you have any idea how much something like that costs?

A I had no idea

Q Did you end up getting a generator from Jonnie Williams?

A No, ma'am

Q Why not?

A The gentleman who came and surveyed our property, I guess, went back and contacted Mr Williams And the next thing we heard was -- after Adam had finished working for my dad, he and I went to Florida for a week, and he had some missed calls from Jerri, who he used to work for -- or work with when he worked for my dad

Q So Jerri, Mr Williams' assistant?

A Yes

Q All right

A She and Adam had previously worked together, so they had each other's contact info. Jerri had tried calling a few times Adam did not answer while we were in Florida, and when he came back, he ended up answering And she called to just tell us that there was a check in the mail, the logistics had become too much

Q And were you on that phone call when --

A No

Q And did you, in fact, receive a check?

A Yes

Q And what was -- what was the amount of the check?

A 10,000

Q $10,000?

A Yes, ma'am

Q And what was your reaction to receiving a $10,000 check from Jonnie Williams?

A I was overwhelmed I thought that was a very large amount of money But we also put it into perspective because Jonnie Williams was going to fly on a private jet from his house in Florida up to our party and fly back, which would have been over the amount of the check

So we said, "Well, we'll put this into savings " It was written to Adam We put it into Adam's savings account, and we never touched it And it's been returned

Q When did it get returned?

A Once we realized that Jonnie himself was a criminal

MR HARBACH: Objection Move to strike

THE COURT: All right The question was when, not what So if you know of a date or time that you came to that decision --

THE WITNESS: Yes, Your Honor

THE COURT: -- we'd like to hear it

THE WITNESS: Yes, Your Honor

A It was a spring of '13

BY MS MARTIN:

Q Before or after the news coverage of the investigation broke?

A After

Q And just to be clear, did you ever ask Jonnie Williams to buy you a generator?

A No, ma'am

Q To your knowledge, did Adam ever ask him to buy you a generator?

A No, ma'am

Q Now, did there ever come a time when Jonnie Williams supplied airline points for a purchase for you?

A Yes, ma'am

Q What happened there?

A Over the holidays of 2012, my mom had asked if we had booked our flights yet for our honeymoon to St Lucia And I told her we had not I was about to, but you can't book unless you're six months out

And so she said, "Jonnie, you know, always talks about all these airline points that even his kids won't be able to use, so he always says, 'Please use these '" And then she had brought it up another time, saying, "Jonnie wants you to use these points You know, let's get you guys this flight He'll do it for your wedding "

Q So you had this conversation with your mother more than once?

A Yes

Q And how many times did you have this conversation, do you think?

A Probably three or so

Q And did you eventually act on that?

A After the holidays, Adam and I went back home to Virginia Beach, and he ended up contacting Jerri, Jonnie's assistant, just to check the validity of this claim to see if this was accurate, if he actually was offering And Jerri said, "Yes " So Adam went ahead and e-mailed the flight that we were about to buy, and she booked it with points There was zero penny spent

Q Did you ever speak to Jonnie Williams about him supplying you airline miles for your honeymoon flights?

A No

Q To your knowledge, did Adam ever speak to him about

that?

A No

Q And did you end up taking the flights for your honeymoon that were purchased with Jonnie Williams' airplane miles?

A No, ma'am.

Q Why not?

A Through all of the investigation, my dad had found out about the flights And we knew, once we started seeing all this negative coverage on Jonnie, that we wanted to cancel them anyways And the day that my dad found out that we had them, he suggested that we return them. So that night we ended up canceling them, and I -- once they were canceled, I bought the flights

Q Did you testify before the grand jury in this case?

A Yes, ma'am I did

Q And were you truthful in your grand jury testimony?

A Yes, ma'am

Q And have you had a chance to review your testimony in preparation for your testimony today?

A Yes, ma'am

Q And having reviewed it, are there any questions you wish you would have answered differently?

A Yes

Q What question or questions?

MR HARBACH: Object to this whole line of questioning

THE COURT: Sustained

MS. MARTIN: No further questions, Your Honor

THE COURT: All right Mr McDonnell?

MR SMALL: No questions, Your Honor Thank you

THE COURT: All right Cross

Actually, we'll go ahead and take our 15 minutes I didn't realize we had gotten this late

(The jury left the courtroom)

(Recess taken from 11:18 a m until 11:39 a.m.)

(The jury entered the courtroom)

THE COURT: All right Government, cross

CROSS-EXAMINATION

BY MR HARBACH:

Q Good morning, ma'am

A Good morning, sir

Q I would like to start with the testimony you provided earlier today about your parents' marriage and their frequency of communication Okay?

A Yes, sir

Q You remarked at one point during your testimony that you had observed some things in their marriage that you had never observed in years Do you recall that testimony?

A Yes, sir

Q How long have you been married, ma'am?

A I've only been married a little over a year.

Q And how long have your parents been married?

A For 38 years

Q I believe you also testified, when you were talking about their communication, that at some point -- it wasn't clear to me -- during your time growing up, that their communications were -- I believe you said never more than logistics about children Do you recall that testimony?

A Yes, sir

Q And I just want to -- is that what you really meant; that as far as your observation was concerned, there was never any communication other than logistics about children? Is that really what you meant?

A That was most of it, sir

Q Well, you said never, though, didn't you?

A I don't recall if I said never

Q On direct examination, a little while ago, you don't really whether you said never?

A I might have said never

Q And if you did, that would have been a bit of an exaggeration, wouldn't it?

A It didn't feel like it to me, sir

Q You also testified that you observed your mother to -- you were asked a question about whether she has a tendency to hide things from your father Do you recall that testimony?

A Yes, sir

Q And I believe you said that -- you testified that there were purchases -- you were aware of purchases that she had made that were hidden until bill time, and then there would be an argument?

A Right

Q Okay Before we get to that, on the subject of your mother's deception, you do consider her to be an honest person, don't you?

A For the most part

Q And on the subject of bill time, isn't it true that the reasons there would be fights at bill time is because your dad checked the bills?

A That's not why there were fights

Q Well, I understood you to say on direct that some of your mother's purchases would be hidden until bill time --

A Yes, sir

Q -- correct?

A Yes

Q And the reason that they were no longer hidden at bill time is because your father had access to the bills?

A Yes

Q And so your testimony is that she would make a purchase, say, a significant purchase for something, a refrigerator, whatever it is. It might be secret, might keep it from him. And then the bill comes, and he would become aware of it that way?

A Yes, sir

Q All right And is it your testimony that as a result of your father learning after the fact about things that your mother had purchased that he didn't know about, there would be fights?

A Yes, sir

Q Your father, based on your observations growing up was the one who paid the bills?

A Yes, sir

Q Monitored the credit card statements?

A When he had time He was very busy

Q Made sure that things were paid on time?

A Yes

Q You were also asked some questions about one-on-one time that you had observed between your mom and your dad?

A Yes, sir

Q And I believe your testimony was that you said it was pretty much none --

A Right

Q -- from what you were able to observe?
A Yes
Q How long has it been since you have lived with your parents, ma'am?
A Since I was 18
Q And I'm not meaning to ask your age, but can you just tell us what year it was that you moved out?
A Yes, sir '99
Q '99 So it's been some 15 years since you have resided with your folks?
A Yes, sir
Q And fair to say that since you've left the household, the bulk of your time with your parents has been on family vacations that you described?
A Or visiting them here Yes, sir
Q And those vacations in Maine or at nice places, aren't they?
A Yes, sir
Q You had a good time?
A Yes
Q You also said that in 2012, things didn't get any better with your parents communication wise I believe you remarked that it was the busiest year of your father's life from your standpoint --
A Yes

Q -- is that right?

A Yes

Q And I believe you said -- this was another use of the word never that I want to make sure we're clear on I believe you said he was never home Was that your testimony?

A Yes, sir But I meant most -- almost never

Q Right You didn't really mean never?

A Right

Q If you had said that and meant it, that would have been a bit of an exaggeration, wouldn't it?

A That would have been

Q Okay Let's talk about Jonnie Williams for a minute I believe you said that you had met him approximately three times?

A Yes, sir

Q I wasn't clear on whether that means that was time you spent with him in person, or does that include times you've talked to him on the phone? Could you clarify that for us?

A That was all in person

Q All in person It was about three times, you said?

A Yes

Q When were those?

A The first time was on a flight to The Homestead with

Mr Williams, summer of 2011 That was probably the longest period of time I've spent talking with him.

Q Okay What else? What was the second time?

A I think the other two were events at the Mansion

Q Do you remember what the events were?

A I do not, sir

Q Do you remember when they were?

A I don't, sir

Q And, now, you've already told us about one telephone conversation you had with Mr Williams We'll get to that in a second

A Yes

Q Putting the one at the tool party aside, how many other times did you talk to him on the phone, to your recollection?

A None

Q That was it? Solitary occasion?

A Yes, sir

Q All right And I believe you testified that from your interactions with Mr Williams, he talked a lot about Anatabloc And I believe you said he was flamboyant and very generous?

A Yes, sir

Q And at least from your standpoint, your interactions with Mr Williams, it sounded like Mr Williams, at least in his conversations with you, is pretty much talking about two things It's either Anatabloc or offering you nice things like vacations Is that a fair summary?

MS MARTIN: That mischaracterizes prior testimony

THE COURT: I can't hear you

MS MARTIN: Objection. That mischaracterizes the prior testimony

THE COURT: Overruled

A Can you repeat, sir?

BY MR HARBACH:

Q Sure It sounds like, from what you're testifying about, in terms of your personal communications with Mr Williams, that he pretty much would talk about two things at least with you; either Anatabloc or offering you generous things like vacations and generators, and that sort of thing?

A Those are two of the things I wouldn't say that's the only things

Q But those are the two main things, right?

A I suppose

Q I mean, the two things you mentioned when you were talking about him on direct examination were that he spoke about Anatabloc and that he was a flamboyant, generous person Those are the two things you said, right?

A Yes, sir

Q You testified on direct examination that one of the -- one of the qualities that was instilled in you by your parents was frugality?

A Yes, sir

Q And I want to talk about that just for a minute You've read the indictment in the case, haven't you?

A Yes, sir

Q You're aware that among the issues in the case are, among other things, some golf clubs that Mr Williams bought for your younger brother Bobby?

A Yes

Q And you're also aware of a trip that your younger sister Rachel took to Florida, and I think stayed at one of his places, and maybe went on a sailing trip, or something like that You're aware of that, right?

A I am now Yes, sir

Q You were aware of it at the time, weren't you?

A I wasn't aware of the sailing trip I was aware of the trip

Q I see And isn't it true that when you found out about these things in realtime, the golf clubs and the golf bag for Bobby and the trip to Florida for Rachel, isn't it true that you thought it was overboard and a little inappropriate for your family members to be taking those things?

A Yes, sir

Q And at the time, you didn't even know about the $15,000 that Mr Williams had put toward your sister Cailin's wedding, did you?

A No, sir

Q And you also didn't know about the 120 grand in loans that Mr Williams had extended to your parents or their beach rental company?

A No, sir

Q And you also weren't aware of all the times that your father golfed at Kinloch on Mr Williams' dime, were you?

A No

Q Let's talk about the -- the tool party for a minute I believe you testified on direct examination that Ms McDonnell, your mom, put Mr Williams on speaker phone at this party?

A Yes, sir

Q And I believe you said that, on direct examination, that you -- you didn't think anyone could hear you --

A Yes, sir

Q -- right?

A Yes

Q But isn't the whole reason you didn't want her to put it on speaker phone because you didn't want other people to hear?

A Yes I didn't want her to make the phone call at all

Q Okay And fair to say that -- well, I don't want to say mortified, but you weren't happy when she had it on speaker phone?

A Correct

Q And the truth is, is it not, that you don't know how many people were listening to that phone call, do you, ma'am?

A I don't know, sir, but it was very loud in that backyard

Q After the conversation with Mr Williams that you just described, I want to make sure I heard you correctly Did you testify that the folks from Michael & Son showed up at your home out of the blue? Was that the phrase you used?

A No, sir I said the phone call to my husband was out of the blue And then they scheduled a time to come to the home

Q My mistake It was the phrasing that I was interested in So it was the phone call to your all's house from Michael & Son that was, as you put it, "out of the blue"?

A Yes, sir

Q Okay And you all ended up getting a check for $10,000 instead of the generator, right?

A Yes, sir

Q And forgive me I know you've already testified to this You deposited it?

A Yes, sir.

Q You didn't give it back right away until summer of '13?

A Spring or summer Correct

Q And isn't it also true that you didn't tell your dad?

A That is true

Q And the reason you didn't tell your dad is because you were embarrassed and uncomfortable, and that's not the way you operate; isn't that true?

A That's not the only reason, sir

Q Is that among the reasons you didn't tell your father?

A I was uncomfortable with the check But the real reason that I did not tell him is because I barely had a chance to talk to my dad

Q Is it true or not true that you were embarrassed about getting the check?

A I would say I was uncomfortable, sir

Q Is it true or not true that taking a $10,000 check from someone is not the way you operate?

A That is not how I've ever operated prior to Yes, sir

Q And that was before -- when Mr Williams gave you the check and you all made the decision to deposit it, that was long before any of the newspaper stories that you testified about on direct, correct?

A Correct

Q Your mom knew about the gift, didn't she?

A She knew that there was supposed to be a generator Yes, sir

Q And she never said to you, "Hey, don't tell your dad about the generator, and don't tell your dad about the $10,000 check to you"? She never said anything to you like that, did she?

A No, sir

MR HARBACH: Just a moment, Judge, please

THE COURT: Sure

(Counsel conferring with co-counsel)

MR HARBACH: No further questions, Your Honor Thank you

THE COURT: Anything based on that?

MS MARTIN: Three questions, I think, Your Honor

REDIRECT EXAMINATION

BY MS MARTIN:

Q You were asked on cross-examination whether Jonnie Williams talked about two things, right? Anatabloc --

A Yes

Q -- and offering you things?

A Yes, ma'am

Q Did he also talk about his wealth?

A Yes, ma'am

Q Did he also talk about himself?

A Yes, ma'am

Q How much time did he spend talking about those things?

A I would say there was a significant amount of time talking about himself and his trips and things

Q What about his family?

A Not very much A little bit about his wife

Q And there was some questions regarding the phone call from Mr Williams during the tool party?

A Yes, ma'am

Q And your desire not to have it put on speaker phone?

A Correct

Q Is that because you wanted to conceal the phone call or the offer of a generator?

A No, ma'am

Q Is it because you didn't want your mom to make a scene by imposing this phone call in the middle of your party?

A Yes, ma'am

MS. MARTIN: No further questions

THE COURT: All right

Thank you, ma'am You may stand down

THE WITNESS: Thank you, Your Honor

(Witness stood aside)

THE COURT: Call your next witness, please

MR BURCK: Thank you, Your Honor We call Emmet T Flood

MR DRY: Can we approach, Judge?

THE COURT: Uh-huh Come on up

(At Bench)

THE COURT: You all haven't worked this out?

MR BURCK: I think we have

MR DRY: Well, I think that two things One is we're going to let Mr Burck lead Mr Flood through this But the second is depending on how this goes, we're not saying that they are not waiving the privilege And on cross-examination, we might go into some of the conversations that have occurred between Mr Flood and both the Governor and Ms McDonnell

So we just want everybody on notice that depending on how this goes, that a can of worms might be opened up, and it's both your client and your client that the worms would come out of the can on

MR BURCK: Your Honor, I'm a little confused Because I thought we just had an agreement that if it comes out the way I described it, that there was not a waive of the privilege

MR DRY: No. I'm still a little bit unclear exactly I think I understand the three points If it goes anything broader than those three things, we're -- this would be a mess

THE COURT: Well, from what you described earlier, I wouldn't have any problem with it And you have discussed this with them?

MR BURCK: Absolutely Everybody knows exactly what he's going to say

THE COURT: All right Then let's --

MR FAULCONER: Obviously, stop me if there's a question that I ask that goes too far But from my perspective, any conversation that's he had about grand juries, potential investigations, the likelihood of an investigation, could potentially undercut if he relays something from the prosecutors that says, "Well, she said this " If he previously had a conversation with her saying, "Well, there's a possibility of X, Y, Z," all of that is potentially within the scope of what her understanding was, because the reason is what her understanding was And if he has prior conversations with her that would go to that, then those are within the scope of the cross

MR BURCK: We were advised -- all we're trying to do is get to the state of mind I don't think he would actually -- I think he would testify that he didn't talk --

THE COURT: Well, let's see what the answers are I'll see how it goes

MR DRY: Thank you, Your Honor

MR BURCK: Thank you, Your Honor

(In Open Court)

EMMET FLOOD,

called as a witness by and on behalf of Defendant Maureen G McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

MR BURCK: May I inquire, Your Honor?

THE COURT: Go ahead Thank you

DIRECT EXAMINATION

BY MR BURCK:

Q Good morning, Mr Flood

A Good morning

Q Would you please spell your name for the court reporter

A Sure First name is Emmet E-M-M-E-T Middle initial T. Last name Flood F-L-O-O-D.

Q Mr Flood, you and I have known each other since 2007?

A That's correct

Q And we were colleagues together in the White House Counsel's Office for a couple years?

A That's right

Q And we've become personal friends, right?

A We are

Q And we worked together in cases in private practice?

A We have.

Q You were counsel to Bob and Maureen McDonnell earlier last year, right?

A I was

Q And for a time, you represented them both, and then introduced me to Ms McDonnell in May of 2013, right?

A Yes

Q And at that point, you ceased representing her, and I took over her defense, right?

A Yes

Q Can you just give us a brief summary of your education?

A Sure I'll be brief I went to school a long time Undergraduate degree from University of Dallas, 1978 Took -- and I was a high school teacher Then I went to graduate school. I have a master's and Ph D in philosophy from the University of Texas in Austin, 1986. I was a philosophy professor of sorts for several years And in 1988, I left academia to go be a -- to go to law school I went to the Yale Law School in New Haven, up in Connecticut, in '88 And I graduated with my law degree in 1991

Q And then after 1991, tell us briefly about your professional career

A A week after graduation, I began a clerkship with a federal Court of Appeals judge whose chambers were in New Haven in what's called the Second Circuit Court of Appeals His name was Judge Ralph -- or is Judge Ralph Winter

After that, I practiced law for a year in New Haven, Connecticut, at a firm called Brenner -- then called Brenner, Saltzman, Wallman & Goldman And then I left the Brenner firm in 1993, to move to Washington, D C , because I was fortunate enough to get a clerkship at the Supreme Court of the United States with Justice Antonin Scalia, for whom I worked for about a year I left the Scalia clerkship in the summer of 1994 And then after a little bit of time off, I went to my current employer, which is the Williams & Connolly law firm in Washington, D C , and I've been there ever since, with the exception of a couple years in government

Q Now, turning to February of 2013 At that time, did you become counsel to Mr. McDonnell, Governor McDonnell, and his wife, Maureen McDonnell?

A I did Sometime middle, toward the late month of February of 2013, last year, I began to advise them

Q All right And did you understand this was sometime shortly after an interview that Ms McDonnell had -- had -- an interview that had been done by investigators of Ms McDonnell on February 15, 2013?

A That was my understanding Yeah

Q Okay Now, Mr Flood, as a lawyer, you know that you have an obligation to maintain the confidentiality of all communications between yourself and your clients concerning legal advice you provided them, right?

A Yes That's -- I'm aware of that

Q Okay So I'm going to try to ask questions that do not require you to reveal any legal advice you provided to your clients Okay?

A Okay

Q If you have any concerns that I'm asking a question that strays beyond that, please let us know

A I will

Q Now, turning to the week of February 18 of 2013, did there come a time that you were -- that you contacted the prosecutors in this case? And when I ask you about "the prosecutors," please don't refer to them by name Just as the prosecutors

A Sure I placed a phone call to the prosecution team, you know, the 19th or 20th of that week As I remember, I think I left a message, and they -- and some members of the team called me back pretty promptly

Q Okay And that phone call, was that a fairly short phone call, that first -- that initial phone call?

A Yeah Five, ten minutes Not terribly long

Q Okay. Now, did there come a time that you had a second phone call with them that week?

A I did I had a second call with the prosecution team on Friday of that week, which was the 22nd of February Kind of mid, late afternoon, as I remember it

And in that case, as I remember it, they called me back, left a message, asked me to call them And then I called them back, along with -- along with a colleague of mine from Williams & Connolly

Q Okay So the two of you called them back?

A Yeah

Q Okay Now, I'm going to ask you a series of questions, and I'd just like a yes/no answer to them, please

A If I can

Q Okay Did the prosecutors tell you on that second phone call that there was no federal investigation of public corruption of Governor McDonnell or his wife?

A Yes, they told me that

Q Did they tell you on that phone call that there was a federal securities fraud investigation of Jonnie Williams?

A Yes, they did

Q Did they tell you in that call that if you had any questions about a -- about the state of play of a possible state inquiry, you should call a person named Mike Herring?

A Yes, they did

Q Did they tell you that Maureen McDonnell could be a potential witness in the federal investigation of securities fraud by Jonnie Williams?

A Yes

Q Did they tell you that the possible interest in her as a witness in the Jonnie Williams securities fraud investigation was related to certain checks she had received from Starwood Trust, which they told you was an entity controlled by Mr Williams?

THE WITNESS: Your Honor, if I may depart from the yes or no to clarify?

THE COURT: Absolutely

A They told me that there may be interest on the -- I think they used the word "overlap" between what I would talk to Mr Herring about, or might talk to Mr Herring about, and their inquiry into Mr Williams

And they said that -- that -- I mean, the example they gave, or the instance they gave, was the Starwood Trust checks about which they said Ms McDonnell may have some information to provide

Q Okay And Mr Herring was the state investigator?

A Well, I didn't actually know who Mr Herring was at the time But I think -- as I recall, they identified him to me as the Commonwealth Attorney

Q Okay

A So, you know, sort of a state, you know, official

Q And fair to say, they directed you to him if you had any questions about the Commonwealth Attorney's inquiry?

A Yeah Not in a sort of mandate "you must" sense of direct, but it was a sort of by way of a strong suggestion

Q Okay Thank you

Now, is it your practice to inform your clients what you learn from prosecutors?

A Generally speaking, yes

Q And, in fact, tell us -- just briefly, you are a white-collar defense lawyer Is that your practice?

A I do -- I don't do only criminal defense, but a substantial part of my practice is, and has been, criminal defense, and largely defense of what are called white-collar individuals and entities Sure

Q And you've been doing that for a couple decades?

A Yeah I mean, rather than more of the white-collar stuff in the last ten years But I began practicing as a lawyer in '92, so sprinkled throughout, you know 20, 21 years

Q Okay And is it important to you to relay information you receive from prosecutors to your clients, when you do so, accurately?

A Yes Of course

Q Now, did you inform Mr and Ms McDonnell of what you learned from the prosecutors on February 22nd -- in the February 22nd, 2013, phone call?

A Yes, I did

Q Can you tell us, when did you inform Mr McDonnell?

A I first informed then Governor McDonnell that evening So it would have been in a phone call after I talked to the prosecution team So that would have been on the 22nd

And then I went over it again and told both the Governor and the then First Lady on the -- in the following week I believe on Monday, the 25th

Q Okay So you told -- Ms McDonnell was -- you told her what the prosecutors had told you on Monday, February 25th?

A That's how I remember it Yes

Q Okay Now, did there come a time that you learned that a grand jury investigation had, in fact, been opened in this case?

A Yes There did come such a time

Q When did that happen?

A You know, within a couple of days It was around April 17 or April 18 of last year, 2013

Q Okay So this is roughly two months after the phone calls you were just describing?

A Yeah More or less

Q And how did you learn about the opening of the grand jury investigation?

A A member of the prosecution team telephoned me at my desk and notified me of that in that phone call

Q Okay And did you inform your clients, who at the time were still Bob and Maureen McDonnell, of what the prosecutors told you on that call?

A Yes, I did

Q And you testified earlier that there came a time that you ceased representing Maureen McDonnell but continued to represent Governor McDonnell, right?

A That's right

Q And do you recall when you ceased representing Maureen McDonnell?

A Approximately the first week of May of 2013

Q So that was a couple weeks after you learned about the grand jury?

A Yeah That's about right

MR BURCK: No further questions, Your Honor

THE COURT: All right

Anything from the government?

Sorry Mr Brownlee

MR BROWNLEE: No, Judge

MR FAULCONER: Yes, Your Honor

CROSS-EXAMINATION

BY MR FAULCONER:

Q Good morning, Mr Flood

A Hi

Q All right You said on direct examination that you were retained after Maureen McDonnell was interviewed by law enforcement, right?

A Well, what I think I said is I began to advise them at that point

Q Okay You became their lawyer after that?

A Yeah

Q And just so I'm clear on sort of the sequence of events, was it you who reached out to the prosecution team or vice versa?

A In the first -- there were -- as I said on direct, there were two phone calls in that week, and my colleague and I at Williams & Connolly placed the first phone call to the government, to the prosecution team, and then they called me back So the initiative, in my judgment, lay with myself and my colleague

Q And in terms of your reaching out to them, do you say, "Hey, I'm Mr Flood You should know what I'm calling about," or did you say, "This is what I'm calling about"?

A I think what I said was closer to the latter I think I called up, I said, you know, "This is my name This is my law firm These are my clients, and I'm calling to understand, you know, the state of what you're up to "

Q And based on that -- at least at that point, you didn't have any sort of firsthand knowledge of any of the underlying events, right?

A Yeah I'd say that's fair I mean, I -- yeah

Q And so during the conversations -- well, I guess leading in to that, you don't typically make a call to something like the prosecution team without having advised your clients that you're going to do it beforehand, right?

A I'm not sure I have a universal practice there But it's a serious step to engage with the government So I would think that typically, I would first -- you know, speaking generally, and not about this case, I think my general practice, although perhaps not, you know, completely unvarying, would be to first talk about that with a client

Q And, of course, you know that -- you were a prosecutor for some period of time, right?

A I've never been a prosecutor

Q You haven't Okay But you've worked in government, right?

A I have worked in government.

Q And you've certainly dealt with white-collar cases, right?

A Sure

Q And so you, of course, know that when you're making a call to prosecutors, there's a distinct possibly of there being some sort of grand jury being involved, right?

A Anything is possible Okay

Q Well, in fact, it's -- would you say it's -- if you're making a call to prosecutors, is it more or less likely that there might be a grand jury involved?

MR BURCK: Objection, Your Honor.

THE COURT: Overruled

A I'd say -- and I'm sorry, sir I didn't get your name

BY MR FAULCONER:

Q Mr Faulconer

A Yeah Mr Faulconer, I'd say it's very situation specific because you learn about the investigation -- the existence of a government inquiry at different sort of stages on the timeline. It can happen at different times.

So I could not generalize about whether, you know, in the -- in the majority of cases or, you know, the average is post convening of a grand jury, as distinguished from pre I mean, I just don't know I couldn't tell you

Q But certainly from your perspective, if you don't even know there is a prosecution team even in existence, that would make it less likely that there is some sort of grand jury in the offing, right?

A No Because what I know, I think, may not affect whether a grand jury exists or not So to be really rigorous about your question, you know, I might know there's a grand jury because somebody might tell me You know, somebody might -- a client might come to me and say, "Here's my grand jury subpoeana " Then I know there's a grand jury because I've got a grand jury subpoena

But if one hears that questions have been asked of one's client, all right, but no sort of, you know, frame has been put around it, the reality is maybe there's a grand jury convened and maybe there isn't And until you get the government to tell you or you have evidence, like a grand jury subpoena, you just don't know

Q And I'm sorry I -- sorry if my question was unclear But I wasn't asking about whether or not you know, in fact, that there is one at a point in time But the possibility that there might be one coming down the pike, that is certainly more likely in a situation where law enforcement is asking questions of people, right?

A Well, more likely than what? It's certainly a genuine possibility, if that helps.

Q And it's certainly more likely than if no law enforcement has ever asked any questions about anything?

A Well, again, if you -- if no law enforcement has asked any questions and I'm the lawyer and I don't know, you know, I'm in a complete state of ignorance about that I don't have any baseline to say, "It's likely to happen It's not likely to happen " Because from where I sit, I just don't know Okay

Q Right So -- it was intended to be an easy question I apologize

Now, on the call when you first called the prosecution team, as you were referencing with Mr Burck, or at least in those first two phone calls, it's true that you specifically raised questions about whether or not the

FBI might be looking into the McDonnells, right?

A I think what I said is something like that, but not quite Mr Faulconer, I think what I said in the first call is, "My understanding is that Ms McDonnell was questioned and an FBI agent was there, or may have been there, and I want to get clarification because of that " So that's how I remember it

MR FAULCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

BY MR FAULCONER:

Q Now, in those initial phone calls, and I'm just lumping the two together just in terms of whether or not the topic came up, the topic of the McDonnells' financial interactions -- or potential financial interactions with Mr Williams did come up in those conversations, right?

A Well, as I remember it, it came up to the limited extent that the prosecution team made the point to me that there had been checks about -- on a Starwood Trust account So from my vantage point today, that looks like financial dealings All right I think that's fairly an instance of financial dealings involving at least Ms McDonnell and Mr Williams All right

But I don't have any recollection, and actually feel quite confident, there was no sort of general statement, "Hey, we're looking into, as some general topic, the financial dealings between the Governor and the First Lady "

Q But to be clear, sir --

A And --

Q To be clear, sir --

A Let's be clear

Q You were told that they were looking into Jonnie Williams, right? That's unambiguous

A They -- well, for clarity, they were looking into -- they were conducting a securities fraud investigation of Mr Williams

Q And the topic of financial transactions between Mr Williams and at least one of the McDonnells came up in that conversation, right?

A It came up by way of example. Okay. The example that I testified about

Q Okay And in that conversation, nobody ever said, "There will never be a federal grand jury investigation," right, "of public corruption"? It was never said that that is never going to happen in the future?

A Most -- you're correct That was never said Okay Nobody ever says that

Q Now, after this conversation, you communicated not just what the status is of different potential investigations were, but you communicated essentially all of the information from that phone call to Mr and Ms McDonnell, right?

A Well, let me -- there's two parts to your question Okay What I communicated to both of my clients after the call was what I testified to on my direct

Q Okay

A So I didn't -- just for clarity, I don't think I said, "Hey, here's the status of two investigations " Okay So I don't accept your premise Because what I had been told was there is no --

Q Hang on, sir

A No If I may finish What I had been told was, "There is no federal public corruption investigation of your clients " And I was not told that Mr Herring was conducting an investigation, but, rather, all right, that he had an interest in this and that it would be a good thing for me to talk to him So I want to be clear

Q Right But financial transactions between Mr Williams and the McDonnells came up on the conversation, right?

A Checks relating to Starwood Trust came up in the second of those conversations

Q Got it And your clients knew that when you relayed your conversations with the prosecution team to them, right? I mean, that's why you were calling in the first place, sir, right?

A I was calling in the first place because one of my clients had been interviewed in a surprising manner and without the presence of counsel All right And I wanted to find out what was going on Okay That's why I initiated the conversations

Q Right And, sir, yes or no Did checks from Starwood Trust associated with Jonnie Williams to one of the McDonnells come up in a conversation with the prosecution team?

MR BURCK: Objection, Your Honor Asked and answered three times

THE COURT: It's been asked, but it hasn't been answered All right Just answer the question

A Sure Of course Yes Of course

BY MR FAULCONER:

Q All right And in your conversations you had with your clients after that conversation with prosecutors, you relayed that part of the conversation to them, right?

A I believe I did Yes

Q Okay And when you talked to your clients after the conversation with the prosecution team, you never told them, "A grand jury is never going to happen here," right?

THE COURT: He's answered that I don't know how much more we can get out of this

BY MR FAULCONER:

Q Certainly after the conversation that you had with your clients, this is after the conversation with the prosecution team, you didn't cease representing them, right?

A Well, at some point down the road I ceased representing them But it didn't happen in the near aftermath of the conversations we've been discussing the back and forth here

Q Right In fact, as Mr Burck said, you continued to represent Ms McDonnell until sometime around May of 2014, right? Or 2013? Sorry

A Yeah Correct

Q And just to be clear, there's been some testimony about a letter that Ms McDonnell sent to Mr Williams or sent a letter with some clothing Without telling us about how you learned about that, can you tell us when you learned about that, timeline wise?

A Yeah I mean, if that's not a privilege problem, I learned about it sometime in March of 2013

Q And --

A Kind of -- Mr Faulconer, kind of mid-March But I don't remember the specific date

Q And you -- after you ceased representing Ms McDonnell in May of 2013, you continued to represent

Mr McDonnell until July of 2013, right?

A Yep

Q And you weren't fired, were you?

A No I was not fired

MR FAULCONER: One moment Your Honor

(Counsel conferring with co-counsel

MR FAULCONER: No further questions, Your Honor

THE COURT: Mr Burck, anything?

MR BURCK: No, Your Honor Thank you very much

THE COURT: Thank you, sir You may stand down

THE WITNESS: Thank you, Judge

(Witness stood aside)

THE COURT: All right, Mr Burck

MR BURCK: Thank you, Your Honor Your Honor, the -- Maureen McDonnell calls Robert Ross

ROBERT ROSS,

called as a witness by and on behalf of Defendant Maureen G McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

MR HAUSS: May I inquire, Your Honor?

THE COURT: Go ahead

DIRECT EXAMINATION

BY MR HAUSS:

Q Please state your name, and spell your last name for the court reporter

A Robert Ross R-O-S-S

Q Mr Ross, how are you currently employed?

A I'm an investigator for the law firm of Holland & Knight.

Q And Holland & Knight is one of law firms representing Governor McDonnell in this case; is that correct?

A Yes, it is

Q Now, which office of Holland & Knight do you work in?

A I'm based in the Northern Virginia and Washington, D C , offices, but I support Holland & Knight attorneys throughout the country

Q How long have you been employed as an investigator for Holland & Knight?

A I have more than years 12 years' experience investigating cases for the law firm and their clients Both corporate clients as well as individuals

Q What did you do before you started working at Holland & Knight?

A I was an FBI agent for 26 years

Q What division were you in?

A I conducted investigations in three field offices I was -- I held assignments at FBI headquarters in the Criminal Investigative Division, where I had some responsibility for oversight and management of field operations I also had several long-term assignments, extended assignments, out of the FBI to other government agencies, including the U.S Senate, the U S Department of Justice, the White House, and the CIA

Q Now, when did you start assisting in this case?

A I started assisting -- assisting in this case in -- in July of last year July of 2013

Q Now, have you been present in court for the testimony of any of the previous witnesses?

A No, I have not

Q In preparation for your testimony today, have you reviewed trial transcripts?

A Yes, I have

Q Have you reviewed trial exhibits?

A Yes

Q How about phone records?

A Yes, sir

Q Now, have you reviewed every single trial transcript, trial exhibit, and phone record in this case?

A No, sir, I have not

Q Even if you did not review every single one of those materials, were you given access to all those materials?

A Yes, sir, I was

Q And was your review restricted in any way?

A No, it was not

Q Now, did you review the testimony of the government summary witness, Special Agent David Hulser?

A I did

Q And did you review the summary charts that were introduced as exhibits in the course of Agent Hulser's testimony?

A Yes, I did

Q Have you reviewed some summary charts that have been prepared by the defense as well?

A I have

Q Now, did you prepare those charts?

A I did not prepare those -- those charts I did -- did offer some -- some recommendations, and I compared the -- the content of those -- those charts with what I found in the -- in the records and in the transcripts and in the exhibits

Q Have you reviewed all of the exhibits that are cited in the defense charts?

A Yes, I have

Q And have you reviewed all of the phone records that are underlying those charts?

A Yes, I have

MR HAUSS: And if we could show now, for the witness only, RM-0293

BY MR HAUSS:

Q And, Mr Ross, what is on this document, generally speaking?

A This is a -- this is a color-coded document listing names and abbreviations It's basically the legend to the other documents in the other charts that follow it

MR HAUSS: And, Your Honor, we would offer RM-0293 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q And these -- you indicated these abbreviations and color codes, these are used throughout the rest of the summary charts?

A Yes, sir

MR HAUSS: If we could please show, which is already in evidence, Government's Exhibit 573

BY MR HAUSS:

Q Mr Ross, is this one of the exhibits, the summary charts that was used during Agent Hulser's testimony?

A Yes, sir

Q And is this a chart comparing the overall number of cell phone calls greater than one minute in length between Mr and Ms McDonnell on the one hand and Ms McDonnell and Jonnie Williams on the other hand?

A Yes, it is

Q And is this for the time period April 11th, 2011, through February 15th of 2013?

A Yes, it is

Q Have you also reviewed some defense charts comparing various phone records?

A Yes, I have

MR HAUSS: Can we please show, just the witness, RM-0294

BY MR HAUSS:

Q Mr Ross, what does this exhibit show?

A This is a chart of the -- the total time for calls greater than one minute during the period from April 11th, 2011, through February 15th, 2013

Q And does it cover the same time period as Government Exhibit 573?

A Yes, sir, it does

MR HAUSS: And, Your Honor, we would offer Exhibit RM-0294 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q Mr Ross, can you just tell us, how many minutes did Mr and Ms McDonnell spend talking on the phone during that time period?

A Ms and Ms McDonnell spent 1,524 minutes talking on phone during that time period

Q And how about Mr McDonnell and Mr Williams?

A Jonnie Williams and Ms McDonnell spent 1,784 minutes talking on that same time period

MR HAUSS: Now if we could show the witness RM-0295

BY MR HAUSS:

Q And what does this chart show?

A This is a chart of calls over five minutes in length during that same time period; April 11th, 2011, through February 15th, 2013

MR HAUSS: Your Honor, we would offer RM-0295 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q How many phone calls longer than five minutes did Mr and Ms McDonnell have during this period?

A Mr and Ms McDonnell had 81 phone calls longer than five minutes during that period

Q How about Ms McDonnell and Jonnie Williams?

A Ms McDonnell and Jonnie Williams had 108 calls during that period

MR HAUSS: If we could show the witness RM-0296

BY MR HAUSS:

Q Mr Ross, what does this chart show?

A This is a chart of overall calls and text messages Not just calls longer than one minute, but calls -- all calls and text messages during that same time period, April 11th, 2011, through February 15th, 2013

MR HAUSS: Your Honor, we'd offer RM-0296 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q And this would also include, for example, calls that are hang-ups, that don't go through? Just all calls, period; is that correct?

A Yes, sir

Q And how many calls and text messages between Mr McDonnell and Mr Williams during this period?

A There were 53 calls between Mr McDonnell and Jonnie Williams during that period

Q And by comparison, how many calls and text messages between Ms McDonnell and Mr Williams during that same period?

A And the number of calls and text messages between Jonnie Williams and Ms McDonnell during that period was 1,349

MR HAUSS: Can you please show the witness RM-0297

BY MR HAUSS:

Q Mr Ross, what is this chart showing?

A This is a chart of the number of calls and text messages during certain periods

Q Is it between, on the one hand, Mr McDonnell and Mr. Williams, and on the other, Ms McDonnell and Mr Williams?

A Yes, it is

MR HAUSS: Your Honor, we'd offer RM-0297 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q Looking at, first, for the calls and text messages between Mr Williams and Mr McDonnell, what time period does that cover?

A The time period covered is April of 2011 through February of 2013, and the period of 25 months

Q I think that might actually be a typo Is that actually 22 month?

A Yes, sir Didn't add up

Q And, again, this is not limited to calls over one minute; is that correct?

A That's correct

Q And if you can now -- what period is covered for the calls and texts between Ms McDonnell and Jonnie Williams?

A That period is one month The month of April 11th --

I'm sorry The month of April 2011

Q And how many is that?

A There are 81 calls and texts messages during that one month period

MR HAUSS: Please show RM-0298

BY MR HAUSS:

Q And what does this chart show?

A This is a chart showing the -- the total number of calls and texts, text messages, during certain periods of time

MR HAUSS: Your Honor, we would offer RM-0298 into evidence.

THE COURT: It will be admitted

BY MR HAUSS:

Q And, again, for the calls and texts between Mr McDonnell and Mr Williams, that's still the same period, April 2011 through February 2013; is that correct?

A Yes, sir

Q And, again, that's a typo It should be 22 months, correct?

A Twenty-two months

Q And for Ms McDonnell and Mr Williams, what time period is covered for that?

A That is a one-day period The day of December 4th, 2011

Q And how many overall calls and text messages that day?

A Fifty-three calls and text messages on that day

MR HAUSS: If we could please show, which is already in evidence, Government Exhibit 567

BY MR HAUSS:

Q Mr Ross, this is a summary chart that was introduced during Agent Hulser's testimony; is that correct?

A Yes, sir

Q And this shows certain calls and e-mails that were exchanged on December 22nd, 2009; is that correct?

A Yes, it does

MR HAUSS: Show just the witness RM-0299

BY MR HAUSS:

Q Mr Ross, what does this chart show?

A This is a chart of certain communications during December of 2009

Q And just to be clear, this is not trying to show every communication between every person in this case for that date; is that correct?

A Yes, sir It does not include necessarily every text message, e-mail communication or -- or phone call during that period

MR HAUSS: And, Your Honor, we would offer RM-299 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q Now, Mr Ross, did you review Jonnie Williams' testimony in this trial?

A Yes, sir, I did

Q And did that include his testimony regarding the inaugural dress that was discussed in December 2009?

A Yes, sir

Q And do you recall Mr Williams testifying that after Mr Eige told him he could not buy Ms McDonnell a dress, that Ms McDonnell called him about a rain check?

A I do recall that Yes

Q Now, have you reviewed Mr Williams' phone records?

A Yes, sir

Q Were there any cell phone calls between Jonnie Williams and Maureen McDonnell from December 2009 through April 11th, 2011?

MR FAULCONER: Your Honor, I'd just ask that we clarify that we're talking about cell phone records only

MR HAUSS: I'm happy to make that clarification, Your Honor

THE COURT: All right

BY MR HAUSS:

Q Limited just to cell phone records, were there any cell phone calls between Jonnie Williams and Maureen

McDonnell from December of 2009 through April 11th, 2011?

A There were no cell phone calls during that period

MR HAUSS: If we could please show Government Exhibit 570, which is already in evidence.

BY MR HAUSS:

Q And, Mr. Ross, is this one of the summary charts introduced during Agent Hulser's testimony?

A Yes, it is

Q And is this a chart summarizing certain communications involving Ms. McDonnell, Jonnie Williams, Mr McDonnell's Travel Aide and Monica Block on April 11th, 2011?

A Yes, it is

MR HAUSS: If we could please show, just for the witness, RM-0300

BY MR HAUSS:

Q Mr Ross, can you tell us what this chart is?

A This is a chart of certain calls and communications, text messages as well, on Wednesday, April 13th, 2011

MR HAUSS: Your Honor, we would offer RM-0300 into evidence

THE COURT: Give me the number again

MR HAUSS: RM-0300

THE COURT: All right It will be admitted

BY MR HAUSS:

Q Now, looking at the first three entries in this chart, do those show phone calls between Mr Williams and Ms Sutherland on that day?

A They do They show a series of three phone calls exchanged between Mary-Shea Sutherland and Jonnie Williams during the period from 9:07 in the morning, 9:07 a m to two minutes after 5 p m

Q And, now, do you recall from Mr Williams' testimony that he attended the Union League Club dinner that evening?

A Yes, sir, I do

Q Did you also review Mary-Shea Sutherland's testimony in this case?

A Yes, I did

Q And do you recall her testifying that she attended the Union League Club meeting that evening?

A Yes, sir

Q And what time was the Union League Club dinner scheduled to begin?

A The event was scheduled to begin at 6 p m

Q And, now, looking in terms of text messages that were exchanged between Mr Williams and Ms Sutherland, what time were those sent?

A There were six text messages exchanged between Jonnie Williams and Mary-Shea Sutherland to -- during the period beginning 28 minutes before the scheduled start of the Union League Club dinner That would be at 5:32 p m And continuing 15 minutes after the scheduled start, they exchanged another six text messages

MR HAUSS: If we could, please, show just the witness RM-0301

BY MR. HAUSS:

Q Mr Ross, what is this chart showing?

A This is a chart of the number of text messages and calls on April 13th, 2011, between Jonnie Williams and Ms McDonnell on one hand and Jonnie Williams and Mary-Shea Sutherland on the other hand

MR HAUSS: And, Your Honor, we would offer RM-0301

THE COURT: It will be admitted

BY MR HAUSS:

Q Mr Ross, looking at this chart Now, first of all, April 13th, 2011, do you recall from Mr Williams' testimony, that was the day that he went shopping in New York with Ms McDonnell and Ms Sutherland?

A Yes, sir, it was

Q And how many calls between Ms McDonnell and Jonnie Williams on that date?

A On that date, on April 13th, 2011, there were two -- a total of two text messages and cell phone calls between

Jonnie Williams and Ms McDonnell

Q So it's indicating zero calls; is that correct?

A That's correct

Q And how many text messages between Mary-Shea and Mr Williams that day?

A There were 12 text messages between Jonnie Williams and Mary-Shea Sutherland that day

Q And how about phone calls?

A And three phone calls

MR HAUSS: If we could please show, just the witness, RM-0302

BY MR. HAUSS:

Q What is this chart showing, Mr Ross?

A This is a chart of certain communications on April 14th and 15th, 2011

MR HAUSS: Your Honor, we would offer RM-0302 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q Now, looking first at the top portion of this chart, does this show a series of texts and phone calls, or it looks like one phone call, between Jonnie Williams and Mary-Shea Sutherland for April 14th, 2011?

A Yes, sir It shows four -- exchange of four text messages and one cell phone call on April 14th of 2011 between Jonnie Williams and Mary-Shea Sutherland

Q Now, looking on April 15th, does that reflect an e-mail?

A Yes, sir, it does

Q And who was that sent from?

A It was an e-mail sent from James Abel to Jonnie Williams, with a copy to Mary-Shea Sutherland

Q And the e-mail indicates that Mr Abel and Mary-Shea had been brainstorming about a launch event; is that correct?

A Yes, sir, it does

MR HAUSS: We can take that down

If we can show, just the witness, RM-0303

BY MR HAUSS:

Q Mr Ross, what is this chart?

A This is a chart of certain communications on April 18th, 2011

MR HAUSS: Your Honor, we would offer RM-0303 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q Focusing on the entry for 1:52 a m , what does that entry show?

A That -- the 1:52 a m entry concerns a -- an e-mail communication sent from Ms McDonnell to Jonnie Williams

Q And does the e-mail include an attachment?

A Yes, sir, it does

Q What is the title of the attachment?

A And the attachment is entitled "2008 Nutraceutical Healthcare "

Q Now, the quoted language that appears on this chart, this is not the full text of the attachment; is that correct?

A No, sir That's an excerpt from the attachment

Q Thank you

MR HAUSS: Please show Government's Exhibit 574, which is in evidence.

BY MR HAUSS:

Q And, Mr Ross, this is a chart that shows certain texts, calls, and e-mails on May 1st, 2011; is that correct?

A Yes, sir

Q And this is one of the summary charts used with Agent Hulser; is that correct?

A Yes, sir

MR HAUSS: If we could please show Government Exhibit 575, also in evidence

BY MR HAUSS:

Q And is this also -- is this a chart showing certain calls that took place on May 2nd, 2011?

A It is

Q And it also includes some information about Mr Williams attending a meeting at the Mansion witn Ms McDonnell that day; is that correct?

A Yes, sir, it does

Q And, now, from your review of the Mr Williams' testimony, is it correct that Jonnie Williams said that he had a meeting with Ms McDonnell on May 2nd where she asked him for some financial assistance?

A Yes.

MR HAUSS: Please show RM-0304 just to the witness

BY MR HAUSS:

Q Mr Ross, can you tell us what this chart is?

A It's a chart of certain communications on May 1st and May 2nd of 2011

MR HAUSS: And, Your Honor, we would offer RM-0304 into evidence

THE COURT: It will be admitted

MR HAUSS: If we could show RM-0505-0017 just to the witness

BY MR HAUSS:

Q And, Mr Ross, have you reviewed this document?

A Yes, sir, I have

Q Is this Maureen McDonnell's calendar for May 2011?

A Yes, it is

MR HAUSS: Your Honor, we would offer RM-0505-0017 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q Now, directing your attention to the dates of May 11th and 12th, which is on the second line in the middle, where does the calendar reflect that Ms McDonnell was on those dates?

A The calendar indicates that the Executive Mansion was closed and that she was in China on those dates

Q And did you also review Mr McDonnell's schedule for those dates?

A Yes, sir, I did

Q And did his schedule indicate that he was also in China on those dates?

A That's correct

MR HAUSS: Please show RM-0506-0041 just to the witness

BY MR HAUSS:

Q Mr Ross, have you reviewed this document?

A Yes, sir, I have

Q And is this a Mansion log from May 11th, 2011?

A Yes, it is

MR HAUSS: Your Honor, we would offer

RM-0506-0041 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q Now, Mr. Ross, directing your attention to the entry for 8:47 a m , who signed in to the Mansion at that time?

A At 8:47 a m , Jonnie Williams signed in to the Governor's Mansion as going to see Mary-Shea

Q And, again, this is for May 11th, 2011?

A Yes, sir

Q And, again, according to the schedules of Mr and Ms McDonnell, they were in China at that time?

A That's correct

MR. HAUSS: If you could please show, just the witness, RM-0350

BY MR HAUSS:

Q Have you reviewed this document, Mr Ross?

A Yes, sir, I have

Q Is this an Outlook event for Mary-Shea Sutherland for May 11th, 2011, at 8:30 a m ?

A Yes, it is

MR HAUSS: Your Honor, we would move RM-0350 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q And looking at the top, what's the subject line of this Outlook event?

A The subject line is "Meet Jonnie at Mansion "

MR HAUSS: Can we next show the witness RM-0349?

BY MR HAUSS:

Q And you've reviewed this document, Mr Ross?

A Yes, sir, I have

Q And is this an Outlook event, again, for Mary-Shea Sutherland for May 11th, 2011, this time at 9 a m ?

A It is

MR HAUSS: Your Honor, we would move RM-0886 into evidence -- I'm sorry RM-0349 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q And, again, Mr Ross, if you could just tell us what the subject line of this calendar event is

A The subject line is "Jonnie at HDL "

MR HAUSS: Please show the witness RM-0305

BY MR HAUSS:

Q And, Mr Ross, is this a chart reflecting the information we just went through for May 11th and May 12th, 2011?

A Yes, sir, it 's

Q And does it also show calls and text messages between Jonnie Williams and Mary-Shea Sutherland for those dates?

A It does

MR HAUSS: And, Your Honor, it looks like the version we have on here is incorrect I have a correct version Can I just hand this version to the witness?

THE COURT: Sure.

MR. HAUSS: Thank you

Actually, Your Honor, if we could just use the assistance of the government, they have the corrected version in their system If we could just put that one up briefly

THE COURT: All right

MR HAUSS: Thank you Perfect Thank you so much

And, Your Honor, if we could publish this to the jury

THE COURT: What's --

MR HAUSS: I'm sorry It's RM-0305

THE COURT: All right

MR HAUSS: Move it into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q Now, looking at the entries for May 11th, 2011, how many phone calls does it show between Mr Williams and Ms Sutherland on that date?

A On May 11th, 2011, there were -- there was an exchange of three phone calls between Jonnie Williams and Mary-Shea Sutherland

Q And for May 12th, 2011, how many calls and texts between Mr Williams and Ms Sutherland for that date?

A On May 12th, 2011, Jonnie Williams and Mary-Shea Sutherland exchanged one phone call and three text messages

MR HAUSS: Thank you We can take that down Thank you very much We can go back to our system

If we can show the witness Government Exhibit 576, which is in evidence

BY MR HAUSS:

Q Is this a summary chart introduced during Agent Hulser's testimony?

A Yes, it is

Q Does it show certain communications and schedule information for May 23rd, 2011?

A Yes, it does

Q And based on your review of Mr Williams' testimony, is May 23rd, 2011, the date that Mr Williams testified he brought over the checks for 50,000 and $15,000 to Ms McDonnell at the Mansion?

A Yes, it is

MR HAUSS: Please show, just the witness, RM-0306

BY MR HAUSS:

Q Mr Ross, what does this chart show?

A This chart shows certain communications on May 23rd, 2011

MR HAUSS: Your Honor, we offer RM-0306 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q Now, did you review the cell phone records for both Mr Williams and Ms McDonnell for May 23rd, 2011?

A Yes, I did

Q And were there any cell phone calls between Mr McDonnell and Mr Williams on that date?

A There were no phone calls between Mr McDonnell and Jonnie Williams on that date

Q Did you review Mr McDonnell's schedule for May 23rd, 2011?

A Yes, I did

Q And did his schedule reflect any meeting with Jonnie Williams on that date?

A There was no meeting scheduled between Mr McDonnell and Jonnie Williams on May 23rd, 2011

MR HAUSS: Please show the witness RM-0307

BY MR HAUSS:

Q And what does this chart show?

A This is a chart of certain communications on May 25th, 2011

MR HAUSS: Your Honor, we'd offer RM-0307 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q Now, looking at this chart, what time did Ms McDonnell start texting Mr Williams on May 25th, 2011?

A Ms McDonnell sent a text to -- a text message to Jonnie Williams at 2 minutes after 1 in the morning 1:02 a m.

Q And then she texted him four times from 1:02 a m until 1:11 a m correct?

A That is correct

Q Now, according to the records, what time did Mr Williams first respond to Ms McDonnell?

A Jonnie Williams sent a text to Ms McDonnell at 4:31 a m

Q If we could just show -- if you could just indicate, what was the last text message between the two of them on that date? What time?

A The last text message exchanged on that date was 10:20 a m

MR HAUSS: Now, if we could please show the witness RM-0308

BY MR HAUSS:

Q What is this chart?

A This is a chart of certain communications on July 6th, 2011

MR HAUSS: Your Honor, we offer RM-0308 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q Now, looking at the first entry on this chart, does this appear to be an entry for Mr Williams' expense report? Is that what that appears to be?

A Yes, sir

Q If you could please tell us what the entry is for?

A The entry is an entry in Jonnie Williams' expense report for July 6th, 2011, for a breakfast with Ms McDonnell Anatabloc meeting at The Berkley Hotel

Q And looking at the next entry, where does Ms McDonnell schedule indicate she was on July 6th, 2011?

A Ms McDonnell's schedule indicates that on July 6th, 2011, that she was at Camp Pendleton for a family vacation

Q Have you reviewed Ms McDonnell's cell phone records for July 6th, 2011?

A Yes, I have

Q And looking at the next entry on the chart, where do her phone records show her calls originating from on that date?

A The cell phone records indicate that calls originated in Virginia Beach, Virginia

Q And is Camp Pendleton in Virginia Beach?

A I'm sorry. I missed it.

Q Is Camp Pendleton in Virginia Beach?

A Yes, sir, it is

Q And if you could tell us what the last two entries show on this chart

A The last entries indicate that Jonnie Williams and Mary-Shea Sutherland exchanged 14 text messages during a period from 10:46 a m to 10:17 p m , and Jonnie Williams sent Ms McDonnell one text message at 5:10 p m that date

Q Thank you

MR HAUSS: If we could show the witness RM-0309

BY MR HAUSS:

Q Mr Ross, does this chart show some information relating to Mr Williams' expense reports for July 25th and July 26th, 2011?

A Yes, sir, it does

Q And does it also show the cell phone calls between

Mr Williams and Ms Sutherland for that date?

A Yes, it does

MR HAUSS: We offer RM-0309 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q Mr Ross, focusing on the first entry of this chart, which appears to be a Martinair invoice dated July 25th, 2011 What is the trip date listed for that entry?

A The trip date listed on the Martinair invoice was for a trip on July 23rd, 2011

Q So the invoice is dated July 25th, but the trip is July 23rd?

A That's correct

Q Now, from your review of the transcripts, is July 23rd, 2011, the date of the Star Scientific event at Gibson Island, Maryland?

A Yes, it is

Q Now, who are listed as the passengers on that flight?

A The passengers listed on that flight include John Clore, Mary-Shea Sutherland, and Margaret Shupnik

Q Now, looking below to July 26th, and looking at the first entry on there, does that refer to Mr Williams' expense report entry for that same invoice?

A Yes, sir, it does

Q And what does the entry for that invoice say?

A The entry in Jonnie Williams' expense report says -- claims reimbursement for a "charter flight for doctors and First Lady McDonnell from Richmond to Baltimore for Anatabloc/Johns Hopkins symposium "

MR HAUSS: If we could please show Government Exhibit 581 This is in evidence

BY MR HAUSS:

Q And, Mr Ross, is this another summary chart that the prosecutors used with Special Agent Hulser?

A Yes, it is

Q And does it show communications for July 28th through July 31st, 2011?

A It does

Q Now, for July 28th, looking at that first box there, how many text messages does it show being exchanged between Mr Williams and Ms McDonnell?

A On July 28th, Jonnie Williams and Ms McDonnell exchanged 11 text messages, on the 28th

Q And does the entry for July 28th also show an Outlook calendar event?

A Yes, it does

Q Can you please describe that for us

A The Outlook event is -- was placed on Ms McDonnell's calendar for an 8/1 meeting with Jonnie Williams

Q And what time was it placed on her calendar?

A It was placed on the calendar at 2:04 p m

Q And have you reviewed the metadata for that calendar entry?

A No, I have not

MR HAUSS: If we could show RM-0310 RM-0310 Sorry

BY MR HAUSS:

Q Mr Ross, what does this chart show?

A This chart shows certain communications on July 28th, 2011

MR. HAUSS: Your Honor, we would move RM-0310 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q Now, Mr Ross, in the exhibit we were just looking at, Government Exhibit 581, it indicated that there were 11 text messages between Ms McDonnell and Mr Williams on the 28th, correct?

A Correct

Q When did Mr Williams first send a text message to Ms McDonnell on that day?

A The first text message from Jonnie Williams to Ms McDonnell on July 28th 2011, was at 7:51 a m

Q Now, looking at th[illegible]ttom, when did Mr Williams and Ms McDonnell exchange the other ten text messages that day?

A They exchanged ten text messages between 7:23 p m and 11:54 p m

Q Now, if you could please walk us through what happened between that first text message at 7:51 a.m. and then the subsequent ten at 7:23 p m.?

A At 8:50 a m , after the -- the text message that was sent to Ms McDonnell at 7:51 a m , at 8:50 a m , Mary-Shea Sutherland arrived at the Governor's Mansion Between 9:25 and 9:26, Mary-Shea Sutherland and Jonnie Williams exchanged two text messages They also exchanged a phone call at 10:04 a m At 1:20 p m , there was a phone call placed from Ms McDonnell's office to Jonnie Williams And at 2:04 p m , Mary-Shea Sutherland made an Outlook entry for an event on -- for 8/1 meeting with Jonnie Williams

Q Was there one -- was there an additional text message from Ms Sutherland to Mr Williams?

A At 4:28 p m , there was a -- the final text message from Mary-Shea Sutherland to Jonnie Williams

Q And then just briefly looking at that phone call at 1:20 p m , you indicated that it was from Ms McDonnell's office?

A Yes, sir

Q You don't actually know who was sitting in

Ms McDonnell's office making that call, do you?

A No

MR HAUSS: Now, if we could pull up Government Exhibit 179, which is the Outlook event for August 1st

BY MR HAUSS:

Q And if you could tell us, what is the subject of this Outlook event?

A The subject of this Outlook event is "meeting with Jonnie Williams "

Q Thank you

MR HAUSS: Please show Government Exhibit 582, which is in evidence

BY MR HAUSS:

Q Is this a summary chart admitted during Agent Hulser's testimony?

A Yes, it is.

Q And does this show calls, texts, and Mansion log information for August 1st, 2011?

A It does

MR HAUSS: If we could please show RM-0311 just to the witness

BY MR HAUSS:

Q Mr Ross, is this the defense chart showing calls, texts, e-mails, and log information also for August 1st, 2011?

A Yes, it is

MR HAUSS: Your Honor, we'd offer RM-0311 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q Now, Mr Ross, is the first entry on here an e-mail from Ms Huffstetler to Mr Hare and Mr Cobb?

A Yes, it is

Q And at what time was that sent?

A That was sent at 10:22 a m

Q Now, based on your review of the Mansion log for August 1st, 2011, what time did Dr Clore arrive at the Mansion?

A Dr Clore arrived at the Governor's Mansion at 10:34 a m

Q And did you review the testimony of Jerry Kilgore in this case?

A Yes

Q And is it correct that he testified that August 1st is the date that he had lunch with Mr Williams and Ms Sutherland?

A Yes That's correct

Q Looking at the entries for 3:27 p m , going through to 7:34 p m , just briefly, what do those show?

A Those entries from 3:27 p m to 7:34 p m show two phone calls and two text messages exchanged between Jonnie Williams and Mary-Shea Sutherland during that period

MR HAUSS: If we could show Government Exhibit 584 This is in evidence

BY MR HAUSS:

Q Mr Ross, is this a government's summary chart showing communications on August 15th through August 16th, 2011?

A Yes, it is

Q And is this one of the summary charts used during Agent Hulser's testimony?

A Yes, sir

MR HAUSS: You can take that down

For efficiency, Your Honor, may I hand up a number of exhibits?

THE COURT: Go ahead

BY MR HAUSS:

Q I'm going to hand you what's been marked as RM-0312, RM-0314, RM-0315, RM-0316, RM-0317, and RM-0318

A Thank you

Q Let me know when you've had a chance to take a look at those

A Yes, sir I've looked at them

Q Now, are those charts showing certain communications on various dates in the month of August 2011?

A They are

MR HAUSS: And, Your Honor, we would offer RM-0312 and RM-314 through RM-0318 into evidence

THE COURT: They will be admitted.

BY MR HAUSS:

Q Let's go through these very briefly

MR HAUSS: If we could please show RM-0312, which is in evidence

BY MR HAUSS:

Q And, Mr Ross, does this show communications on August 11th through 13th, 2011?

A Yes, it does

Q And looking at the e-mail on August 12th, 2011, at 10:09 a m , who sent that e-mail?

A An e-mail sent by Mary-Shea Sutherland

Q Was that sent to Katherine Harris?

A Yes, sir, it was

MR HAUSS: If we could show RM-0314

BY MR HAUSS:

Q Does this chart show communications on August 15th through 16th of 2011?

A Yes, it does

Q And just quickly looking at the e-mail sent at 2:55 p m on August 16th, who sent that e-mail?

A That was an e-mail sent by Mary-Shea Sutherland

Q And who was that sent to?

A Adam Zubowsky

MR HAUSS: Please show RM-0315

BY MR HAUSS:

Q Is this certain calls and text messages on August 17th of 2011?

A Yes, it is

Q And looking at the very bottom entry, is that for August 17th, 2011, an expense report for Mr Williams?

A Yes, it is.

Q What does that entry say?

A It's an entry in Jonnie Williams' expense report for a lunch at The Jefferson Hotel with Mary-Shea Sutherland, assistant to the First Lady, concerning -- concerning Anatabloc

Q Look at RM-0316 Is this a chart for August 18th through 22nd of 2011?

A Yes, it is

Q And does it show certain calls, texts, and e-mails for that date?

A Yes, it does

MR HAUSS: If we could please show, just to the witness, RM-1990

BY MR HAUSS:

Q And is this a series of e-mails dated August 24th,

2011?

A Yes, it is

Q And does it include an e-mail at 10:05 a m ?

MR HAUSS: I believe it's on the very last page Next page We'll blow that up

BY MR HAUSS:

Q Does it include an e-mail between Jerri Fulkerson and Mary-Shea Sutherland on August 24th, 2011, at 10:05 a m ?

A Yes, it does

MR HAUSS: Your Honor, we'd offer RM-1990 into evidence

THE COURT: It will be admitted

BY MR HAUSS:

Q What is the subject line of this e-mail?

A The subject line of this e-mail is "Dr for lunch invitations "

Q And what does the e-mail say?

A The text of the e-mail says, "Here is the complete list of the people for lunch invitation for the Mansion Their complete names, titles and affiliations can be found in the booklet that was given you at the Gibson Island symposium

MR HAUSS: If we could please show RM-0317, which is in evidence

Q Is this a chart showing certain communications for

August 23rd -- I'm sorry Yeah August 23rd through August 24th, 2011?

A Yes, it does

Q And looking at, first, August 23rd, 2011, what does the first entry on this chart show?

A The first entry indicates a text message sent at 1:30 p m from Mary-Shea Sutherland to Jonnie Williams

Q And then the next entry, is that referring to Exhibit RM-1992?

A Yes, sir, it is

MR HAUSS: Can we pull up RM-1992, which is already in evidence

BY MR HAUSS:

Q And is this a proposed contract that was prepared by Benedetti & Farris and later forwarded to Star Scientific?

A Yes, sir, it is

MR HAUSS: And if we could just scroll up a little bit to the date

BY MR HAUSS:

Q What is the date on this proposed contract?

A It was dated August 23rd, 2011

MR HAUSS: If we could go back to RM-0317

BY MR HAUSS:

Q Now, looking at August 24, and there's an entry at 10:05 a m Is that the e-mail that we were just looking at a moment ago?

A Yes, sir, it is

Q And what does the last entry on this chart show?

A The last entry on the chart shows that Jonnie Williams and Mary-Shea Sutherland exchanged five phone calls between 11:30 a m and 4:12 p m

MR HAUSS: Show, just to the witness, RM-0191

BY MR HAUSS:

Q And have you reviewed this document?

MR HAUSS: If you could blow it up for him Thank you

A Yes, sir, I have

BY MR HAUSS:

Q And is this an e-mail exchange between Jerri Fulkerson and Mary-Shea Sutherland dated August 29th, 2011?

A Yes, sir, it is

MR HAUSS: Your Honor, we'd offer RM-0191 into evidence

THE COURT: It will be admitted

MR HAUSS: And if we could show RM-0318, which is in evidence

BY MR HAUSS:

Q This is a chart showing communications for August 29th, 2011; is that correct?

A Yes, it is

Q And based on your review of the transcripts, is this one day before the luncheon event that was held at the Mansion?

A That's correct

Q And looking down at the bottom entry on this chart, what does that show?

A It shows that Jonnie Williams and Mary-Shea Sutherland exchanged five phone calls and four text messages between the time of 3:58 p.m. and 8:58 p m

Q Thank you

MR HAUSS: Pull up Government Exhibit 203, which is in evidence

BY MR HAUSS:

Q And, Mr Ross, this is a credit card bill for Jonnie Williams; is that correct?

A Yes, it is

MR HAUSS: If we could go to Page 2, please And go to the highlighted portion

BY MR HAUSS:

Q And what purchase is indicated there on August 14th, 2011, with a posting date of August 16th of 2011?

A It indicates a transaction on August 14th at Traditional Jewelers in Malibu, California, in the amount of $6,500

Q Now, from your review of Mr Williams' testimony, do you recall that he testified about a phone call he says he made to Maureen McDonnell from the store and talked to her about what she wanted engraved on the Rolex?

A Yes, sir

MR HAUSS: If we could show just the witness RM-0313

BY MR HAUSS:

Q And, Mr Ross, what is this chart showing?

A This shows -- this chart shows certain communications during the period August 11th to the 14th of 2011

MR HAUSS: Your Honor, we would offer RM-0313 into evidence

THE COURT: It will be admitted

MR. HARBACH: Your Honor, I've got about 20 minutes or so left I don't know if you want to break now for lunch or continue on

THE COURT: Yeah We'll stop now

MR HAUSS: Thank you

THE COURT: I was hoping that you would get finished, but not going to happen And you know what they do I mean, during lunch, you'll think of more questions He will definitely think of more questions

All right We'll be back at 2:15

(The jury exited the courtroom)

(Luncheon recess taken from 1:13 p.m. to 2:15 p m.)

MR BURCK: This is our last witness As we mentioned yesterday, after this witness is done, could you inquire of our client?

THE COURT: Sure All right, let's bring in the jury

(The jury entered the courtroom.)

All right, go ahead.

DIRECT EXAMINATION (Cont'd.)

BY MR HAUSS:

Q If we could just go back very briefly to reorient ourselves Just pull up Government Exhibit 203 Before the break we looked at this This is the credit card statement of Mr. Williams, correct?

A Yes, sir

Q And it shows on August 14th a purchase for $6,500 at Traditional Jewelers in Malibu, correct?

A It does

Q If we could please pull up RM-0313 And Mr Ross, what does this chart show?

A This is a chart of phone calls between Jonnie Williams and Ms McDonnell in the period August 11th to 14th, 2011

Q And I believe before the break, we had talked about during Mr Williams' testimony he had testified about making a phone call from the jewelry store regarding engraving, correct?

A Yes, sir

Q All right Looking at August 14th, 2011, how many phone calls, cell phone calls between Mr Williams and Ms McDonnell on that date?

A There were no cell phone calls between Jonnie Williams and Ms McDonnell on August 14th, 2011

Q Going back the day before that, on August 13th, any calls that date?

A There was one cell phone call on August 13th at 7:14 p.m. placed from Ms. McDonnell to Jonnie Williams and it lasted for about four seconds

Q And that's in Pacific Time; Mr Williams was in California at the time?

A Yes, sir

MR HAUSS: And Your Honor, I just want to make sure, did I admit RM-0313, just to make sure I did?

THE COURT: Yes

BY MR HAUSS:

Q Looking at August 12th, any phone calls between Williams and McDonnell?

A There were no phone calls that date

Q Looking at August 11th, 2011, any calls on that date?

A On August 11th there were two phone calls at 7:01

a.m. Pacific Time Jonnie Williams called Ms McDonnell on a call that lasted almost 12 minutes, 11 minutes 58 seconds And at 7:27 a m., Ms McDonnell called Jonnie Williams in a brief call lasting about seven seconds.

Q Thank you If we could show just the witness RM-0319 Mr Ross, what does this chart show?

A This is a chart of certain communications on September 2nd, 2011

Q And as we discussed before, the luncheon event at the Mansion, based on your review of the records, that was August 30th, 2011; is that correct?

A Yes, sir

Q Now, looking at --

MR HAUSS: We would move RM-0319 into evidence

THE COURT: It will be admitted

BY MR. HAUSS:

Q Looking at this chart, what do the first two entries on this chart show?

A The first two entries show first a text message sent by Mary-Shea Sutherland to Jonnie Williams at 12:28 p.m., followed the next minute at 12:29 p.m. by a phone call from Jonnie Williams to Mary-Shea Sutherland.

Q How long did that phone call last?

A That call lasted five minutes and five seconds

Q Looking at 12:40 p.m., what does that entry show?

A 12:40 p.m. shows a communication sent by Abigail Farris Rogers to Jerri Fulkerson

Q And is that an e-mail forwarding the contract we looked at before dated August 23rd, 2011?

A Yes, sir

Q And what are the next two entries on the chart?

A There were two text messages sent, one at 12:57 p.m. and one at 3:35 p.m., both sent by Mary-Shea Sutherland to Jonnie Williams

Q And the final entry, what does that show?

A Final entry is 5:39 p.m., an e-mail communication from Mary-Shea Sutherland to Jerri Fulkerson

Q Is that e-mail proposing a PBS documentary and asking Ms Fulkerson to print it out for Mr Williams to read?

A Yes, sir, it is

Q Show just the witness RM-0320 And Mr Ross, what is this chart showing?

A This chart shows certain communications on September 5th, 2011

MR. HAUSS: Your Honor, we would move RM-0320 into evidence

THE COURT: It will be admitted

BY MR. HAUSS:

Q Starting first with the e-mail at 12:54 p.m., first let me ask, you reviewed Mr McDonnell's testimony in this case?

A Yes, sir

Q And this entry at 12:54 p.m., is that an e-mail that Mr McDonnell testified about in this case?

A Yes, it is

Q Looking down at the remaining entries on this chart, what do those entries show?

A After that e-mail was sent, there were a series of text messages, five text messages that were exchanged between Ms. McDonnell and Jonnie Williams between 9:51 p.m. and 10:26 p m.

Q Please show just the witness RM-0321 Mr Ross, what is this chart showing?

A This chart shows a series of calls and text messages exchanged between Jonnie Williams and Ms McDonnell on December 4th, 2011

Q Specifically, is it listing the times of those communications?

A It lists a total of 53 calls and text messages by the time sent

MR HAUSS: Your Honor, we would offer RM-0321

THE COURT: It will be admitted.

BY MR. HAUSS:

Q Again, you said that was 53 calls and texts; is that correct?

A Yes, sir

Q If we could please show Government Exhibit 606, which is already in evidence Mr Ross, this is a three-page document Looking at the first page, is this a summary chart showing a history of Star Scientific stock transactions between -- in the years 2011 and 2012?

A Yes, it is

Q If we could go briefly to Page 2 Is this a graph tracking the stock price of Star Scientific stock for the period June 1st, 2011 through December 31st, 2012?

A Yes, it is

Q These are government summary charts that were introduced through Agent Hulser; is that correct?

A That's correct

Q Now, for speed I'm going to hand up a few exhibits to you with the assistance of the Court Security Officer I'm going to give you RM-0322 through RM-0325

(Documents proffered to witness)

Take a moment to take a look at those

(Witness perusing documents)

A I've looked at them.

Q Thank you. And are those charts and graphs similar to the government summary charts we just saw showing information related to Star Scientific stock transactions?

A They are similar

MR. HAUSS: We would offer RM-0322, RM-0323, RM-0324, and RM-0325 into evidence

THE COURT: They will be admitted.

BY MR. HAUSS:

Q Starting with RM-0322, and looking at the entries June 1st, 2011 through December 31st, 2012, that's summarizing the same information we just saw in the previous government chart; is that correct?

A Yes, it is

Q Could you tell us what the last entry on this chart shows?

A The last entry is dated June 30th, 2014 And it indicates that Ms McDonnell still owns 1,672 shares of Star stock as of that date.

Q Thank you If we can look at RM-0323 Is this a similar chart regarding Star Scientific transactions, and this one includes stock prices?

A Yes, sir

Q Now, looking at the entry down toward the bottom for July 3rd, 2012, what was the closing price on that date?

A Closing price of Star stock on July 3rd, 2012 was $4 99 a share

Q And have you reviewed the Star stock price for that period, June 1st, 2011 through December 31st, 2012?

A Yes, I have

Q And is that price, $4 99 a share, the peak price during that period?

A Yes, it was

Q If we could look at RM-0324 Is this a graph essentially showing information related to the Star stock price and the history of it from June 1st, 2011 through December 31st, 2012?

A Yes, it is

Q And the various boxes that are on this chart, are these showing the various transactions that were reflected on the previous charts?

A Yes, sir.

Q If we could look at RM-0325 I'd like to briefly just walk you through this chart Looking at the first entry on here, what was the cost, the total shares purchased by Ms McDonnell in June and August of 2011?

A The total cost for the purchase of 6,522 shares during June and August of 2011 was $33,073 44

Q I think we saw in one of the previous slides that the amount that they were sold for in December of 2011 was $15,279 45; is that correct?

A Yes, sir

Q Just based on the arithmetic, what was the loss on that sale in December, 2011?

A The loss on when those shares were sold was

$17,793 99

Q When Ms McDonnell repurchased the shares in January of 2012, what was the cost of the repurchase?

A She repurchased the stock for $15,276 88

Q And just looking at the last two entries on here, had the stock been sold at the peak price on July 3rd, 2012 of 4 99 per share, it being 6,672 shares, what would have been the amount on that sale?

A The amount of that sale would have been $33,293 28.

Q Just to be clear, that's the gross amount, that's not the profit, correct?

A Correct

Q And had the shares been sold on December 26th, 2012, what would have been the amount of that sale?

A At the closing price of $2 75, the sale would have been $18,348

Q Based on your review of the transcripts in this case, do you understand that December 26th, 2012, was when the shares were transferred to Ms McDonnell's children?

A Yes, sir

Q Thank you. Look at Government Exhibit 586, which is already in evidence This is also a summary chart that was used during Agent Hulser's testimony; is that correct?

A Yes

Q This shows certain calls and schedule events for

January 19th, 2012?

A Yes, it does.

Q If we could pull up just for the witness RM-0326 Mr Ross, what does this exhibit show?

A This chart shows certain communications on January 19th and 20th of 2012

MR. HAUSS: We would offer RM-0326 into evidence.

THE COURT: It will be admitted

BY MR. HAUSS:

Q Mr Ross, looking at the very first entry on this chart, what does that show?

A The first entry shows that Jonnie Williams was at the Governor's Mansion between 11 a.m. and 1 p.m. on January 19th.

Q Looking at the next two entries, what do they show?

A The next two entries show telephone calls exchanged between Ms McDonnell and Michael Uncapher at 12:01 p.m. and 12:11 p.m.

Q The next few entries from 1:29 p.m. through 9:16 p.m., that shows phone calls and text messages between Ms McDonnell and Mr Williams; is that correct?

A Yes, sir, it does

Q Looking at the following day, January 20th, first of all, the space on the slides we were just looking at, January 20th, 2012, that's the day that Ms. McDonnell repurchases 6,672 shares of Star Scientific stock; is that correct?

A That's correct

Q How many text messages between Ms McDonnell and Mr Williams on that date?

A Jonnie Williams and Ms McDonnell exchanged seven text messages on the 20th of January, 2012

Q Look at Government Exhibit 588, which is in evidence I'm sorry, 587 first Mr Ross, is this a government summary chart that includes phone calls between Jasen Eige and Maureen McDonnell on February 8th, 2012?

A Yes, it does

Q We can now go to Government Exhibit 588 Among other things, does this chart include communications between Maureen McDonnell and Jasen Eige on February 9th, 2012?

A Yes, sir, it does

Q And these are both summary charts again used with Agent Hulser?

A Yes

Q Please show just the witness RM-0327 Mr Ross, what does this chart show?

A This chart shows phone calls between Ms McDonnell and Jasen Eige on February 8th and 9th, 2012

Q And did you review Mr Eige's testimony in this case?

A Yes, I did.

Q And do you recall that Mr Eige testified that after he shut down the requests from Mr Williams to intercede with with UVA and VCU, that Ms McDonnell did not bug him any more after that?

A That's correct.

Q And did you review Ms McDonnell's phone records?

A I did.

Q Following the communications that are reflected in RM-0327, were there any further cell phone calls between Ms McDonnell and Mr Eige in 2012?

A There were no further cell phone calls between Ms McDonnell and Jasen Eige in 2012

Q Look at Government Exhibit 593, which I believe is in evidence

MR. HAUSS: I apologize, Your Honor, did I offer RM-0327 into evidence?

THE COURT: It will be admitted

MR HAUSS: Thank you

BY MR HAUSS:

Q Looking at the text at 11:52 p.m. on March 6th, 2012, is that a text from Ms McDonnell to sister Maureen regarding a MoBo check?

A Yes, it is

Q If we could pull up Government Exhibit 594 If you can go to Page 2 of Government Exhibit 594 Looking at the entry at 7:19 p.m., does this chart include a text from Ms McDonnell to sister Maureen at 7:19 regarding working on the loan?

A Yes, it does

Q Show just the witness RM-0328 Mr Ross, what does this chart show?

A This chart shows a series of certain communications between March 1st and March 11th of 2012

MR. HAUSS: We would offer RM-0328 into evidence.

THE COURT: It will be admitted.

BY MR HAUSS:

Q Looking at March 6th, how many texts and calls did Mr Williams and Ms McDonnell exchange on March 6th?

A March 6th, Jonnie Williams and Ms McDonnell exchanged two phone calls and four text messages

Q And is March 6th, based on your review of the records, the date of the check written from Mr Williams to MoBo?

A Yes, sir

Q Did you review Mr Williams' and Mr McDonnell's phone records for this same period?

A Yes, sir

Q What did you find with respect to the calls between

Mr Williams and Mr McDonnell during this period?

A There were no calls between Jonnie Williams and Mr McDonnell during that period

Q Please show Government Exhibit 607, which is in evidence Is this a summary chart from Agent Hulser's testimony showing certain communications between Mr and Ms. McDonnell related to Donnie Williams?

A Yes, it is

Q Show just to the witness RM-0329 Mr Ross, what does this chart show?

A This chart shows certain communications between November 17th, 2012 and March 4th, 2013

MR HAUSS: We would offer RM-0329 into evidence

THE COURT: It will be admitted.

BY MR HAUSS:

Q Very briefly, the first entry, is that a text message from Ms McDonnell to Donnie Williams on November 17th, 2012?

A Yes, sir, it is

Q Is that talking about inviting Mr Williams and his brother, Dean, to a Christmas party?

A That's correct

Q Looking next at December 14th, 2012, what's the first text message that Mr Williams sends to Ms McDonnell?

A It is a message that advises that "The spa cover will be here in three weeks "

Q And how does Ms McDonnell respond?

A Ms McDonnell responds saying, "That's terrific! Do I need to give you a credit card?"

Q How does Mr Williams respond?

A He replies: "No, Jonnie's paying for it "

Q And finally, her response?

A Ms McDonnell says, "OMG! I didn't expect him to do that "

Q Looking at that last one, that's just an excerpt from the text; is that correct?

A Yes, sir, it is

Q Finally, March 4th, 2013, is that the date that Mr Williams forwarded an invoice to Ms McDonnell; is that correct?

A Yes, that's correct

Q If we could show the witness RM-0330 And Mr Ross, what does this chart show?

A This chart shows Jonnie Williams' personal interactions, according to his testimony, with the McDonnells during the period from January 1st, 2012 to March 15th, 2013

MR. HAUSS: We would offer RM-0330 into evidence

THE COURT: It will be admitted.

MR HAUSS: Your Honor, may I have one moment?

THE COURT: Sure

MR. HAUSS: Thank you.

(Counsel conferring with co-counsel)

BY MR HAUSS:

Q One quick thing, Your Honor If we could pull back up RM-0321 And Mr Ross, you had testified that there was 53 calls and texts on this date; is that correct?

A Yes, sir

Q I just wanted to clarify, that's one phone call and 52 text messages; is that correct?

A That's correct.

Q And the times reflected on this chart are showing the times of those communications?

A Yes, it is

MR. HAUSS: Thank you. Nothing further, Your Honor

THE COURT: All right. Anything from Mr McDonnell?

MR. ASBILL: No, sir

THE COURT: All right Government?

CROSS-EXAMINATION

BY MR. FAULCONER:

Q Good afternoon, Mr Ross

A Good afternoon, sir

Q Now, you said that you work currently for Holland & Knight, right?

A That's correct

Q And that is Mr McDonnell's law firm?

A Yes, sir

Q The law firm that's representing Mr McDonnell?

A Yes, sir

Q But here today, you are testifying for Ms McDonnell, right?

A Yes, sir

Q Okay She is represented by Mr Hauss and the people over at Quinn Emanuel, right?

A Correct

Q But you are working with Ms McDonnell's lawyers on your testimony here

A Yes, sir

Q Now you said, I think, that you started working on this case in July of 2013?

A Yes

Q And about how many documents would you say that you have looked over during the course of your time working on the case?

A I could only guess that it would be in the thousands

Q Quite a few?

A Quite a few

Q Have you participated in interviews of witnesses?

A Yes, sir

Q Have you interviewed either Mr or Ms McDonnell?

A No.

Q Can you tell us when you first started preparing for your summary testimony?

A I guess you would say the home stretch was within the last two weeks

Q And at any time during the course of your work in this case, have you spoken to Jonnie Williams?

A No, sir

Q Have you spoken to Adam Zubowsky?

A No

Q Have you spoken to Mary-Shea Sutherland?

A No, sir

Q All right Now, I'd like to -- you also said that you had reviewed some of the transcripts, right?

A The transcripts of the testimony?

Q Of the trial testimony

A I've reviewed all of the prosecution witness transcripts

Q Got it I think you also mentioned some of Mr McDonnell's testimony as well

A Yes, sir

Q All right Now, I'd like to work through some of your charts and just talk about what is and isn't on some of them. Now, I'd like to start with RM-0294 And I think this is, in our system, I think it is RM-0293-2 All right, now, Mr Ross, I think you said here that what this is showing is the total number of minutes on calls greater than a minute, right?

A Yes, sir

Q And so essentially what this is showing is that Ms McDonnell was talking to both of these people for quite a significant period of time, right?

A Yes, sir

Q Or at least it is pretty close in terms of the volume of communication, right?

A Yes, sir

Q Now, if you split this up, Ms Taylor, could we compare this side by side with Government Exhibit 573? All right, now, Mr Ross, I think when Mr Hauss first showed you your chart, first he showed this one to the left, right?

A Correct

Q And that's the one from Special Agent Hulser's testimony, right?

A Right It is my left But --

Q To your left Sorry

A I know which one you are talking about, yes

Q Looking at the one that Special Agent Hulser testified to, that actually splits it out by time period, right, one in 2011 and one from 2012 on?

A I'm sorry, I didn't follow you on that

Q I was probably speaking too fast The one on the left, and this is the one from Special Agent Hulser, that splits it into the 2011 time frame in the left column and then 2012 on in the right column.

A Yes, sir

Q All right Now, are you aware that if you took that same sort of split and put it in the chart that you have on the right, that the communications between Mr McDonnell and Ms McDonnell would go up from 2011 to 2012?

A It could I hadn't looked at it that way

Q Are you aware that the communications in terms of total number of minutes between Ms McDonnell and Mr Williams actually go down to less than Mr McDonnell and Ms McDonnell?

A No, I'm not aware of that

Q Now, regardless, this chart that you have on the right, that doesn't include any calls from Ms McDonnell to Mr McDonnell's Travel Aide, does it?

A No No, sir

Q This is just Mr McDonnell's personal cell phone

A Correct

Q But you are aware of his testimony about the Travel Aide sometimes handing the phone off to him, right?

A Yes, sir

Q This also doesn't include any landlines associated with Ms McDonnell?

A Cell phones only

Q Got it It certainly doesn't include any one-on-one personal conversations, right?

A No, sir

Q It doesn't include any conversations during travel or something like that

A No, sir

Q Now, are you aware, sir, you said that you reviewed a number of communications between Mr Williams and Mary-Shea Sutherland, right?

A Yes

Q Are you aware that the number of minutes for Mary-Shea Sutherland on this chart would be 184?

A I'm not, no She is not on the chart No, sir

Q Okay Now, I'd like to show you the next chart of yours, this is RM-0295, or Page 3 of 293 Now, again, you testified about this one on direct examination, but to be clear, you didn't go through and calculate how it compares from 2011 to 2012 and on, did you?

A No, I just used the total time frame

Q And again, this doesn't account for some of the things that we talked about just a moment ago in terms of in-person or landline conversations?

A Personal conversation, no No, sir, it is cell phones only

Q Let's go to RM-0296, the next one All right, now, sir, I think you said on direct examination that this one includes zero-second calls, right?

A This is all calls, yes, sir, regardless of time limit

Q So even a call that doesn't connect

A Regardless of time limit, yes, sir

Q And you have Mr Williams as the common party on both of these rows You have seen Mr Williams' phone records, right?

A Yes, sir

Q Did you review them on paper or electronically?

A On paper

Q Is it a fairly tall stack of paper if you put it up here?

A Yes, sir, very extensive

Q More than 10,000 pages, right?

A A lot

Q Are you aware that during this time frame, he had approximately 105,000 calls and text messages?

A It wouldn't surprise me I wasn't aware of that

Q And that number, if Special Agent Hulser testified to something to that effect, this number here, 1349, would be right around one percent of that, right?

A My math is not very good. I'll take your word for it, yes, sir

Q Got it I guess a thousand into a hundred thousand is about one percent Now, I'd like to show you the next one, RM-0297 Now, this here, the chart has April of 2011 as the month with Ms McDonnell and Mr Williams, right?

A Yes, sir

Q For the second row there

A Second row, yes

Q Now, you are obviously aware that that is the month where the first phone call between Ms McDonnell and Mr Williams shows up in the records, right?

A Yes, sir

Q And that it is also the month of the shopping trip to New York?

A Yes, sir

Q And are you aware that the highest month of communications between Ms McDonnell and Mr Williams was over 200 in August of 2011?

A No, sir, not offhand, no

Q Did you calculate the total number of text messages and calls between Ms McDonnell and Mr Williams in August, the month of the lunch event at the Mansion?

A No, sir

Q All right. So I'd like to now go to RM-0299, which is two charts forward Now, just to be clear, Mr Ross, at this time in December of 2009, based on your understanding of the chronology, the McDonnells weren't in the Executive Mansion, right? Yet? The inauguration hadn't happened?

A That's correct

Q And this chart doesn't include any calls from landlines, right?

A That's correct, also

Q All right Now I'd like to go to the next one, RM-0300 Sir, this is the chart showing Mary-Shea and Mr Williams' communications on April 13th of 2011, right?

A Yes

Q Based on your understanding of the evidence as you have reviewed it, Mary-Shea Sutherland was Ms McDonnell's Chief of Staff, right?

A Yes, sir

Q And this was the date of that shopping trip, right?

A That's correct

Q Now, are you aware that this call here from Mary-Shea Sutherland to Mr. Williams is the first communication between Ms. Sutherland and Mr. Williams in Mr Williams' records?

A I'm not aware of that, no, sir

Q But you are aware that the first one between Ms McDonnell and Mr Williams is two days before that on April 11th.

A Yes, sir

Q And you haven't prepared or reviewed any sort of chart that shows any earlier calls between Mr Williams and Ms Sutherland, have you?

A No, I have not

Q All right Now, on here, you have that the first communication on this chart, it says Mary-Shea Sutherland to Jonnie Williams at 9:07 a.m. Is that right?

A Yes

Q I'd like to put a little bit more context around this one and hand up to you what's been marked for identification as Exhibit 833 Government Exhibit 833 Just so it is easier for you to see

(Document proffered to witness)

Now, sir, this is a copy of a two-page version of Ms McDonnell's phone records for that general time frame covering April 13th, roughly from April 11th down to April

17th, right?

A April 11th -- yes, sir

MR. FAULCONER: We would offer Exhibit 833 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q All right, now, if you could direct your attention down and if we could scroll down to April 13th, 2011 Do you see there, sir, where it has -- where it says at 8:54 a.m., there is a call from, incoming, to Ms McDonnell from a phone number, 6837?

A Yes, sir

Q You are aware that that's one of Mary-Shea Sutherland's cell phone numbers, right?

A It is familiar The last four digits are familiar

MR FAULCONER: I think the parties have stipulated that that's one of Mary-Shea Sutherland's cell phones

BY MR. FAULCONER:

Q That call is three minutes at 8:54, right?

A Yes, sir Three minutes

Q And then at 9:34 a.m. there is an outgoing call from Ms McDonnell's cell phone to Mary-Shea Sutherland's other cell phone, 8927, at 9:34 a.m., right?

A Yes, sir

Q All right Now, if we could go back to your chart, RM-0300, which I believe is Page 7 -- no -- okay, so we had there what we just looked at was a call between Ms McDonnell and Ms Sutherland at 8:54 a.m. That would be before the 9:07 call that's on this chart, right?

A Where are we?

Q Sorry We are on the -- the chart here says 9:07 a.m. is the first call, right?

A Yes, sir

Q In that paper copy of 833 that you have in front of you, the call between Ms McDonnell and Ms Sutherland at 8:54 a m., that occurs before the call between Ms Sutherland and Mr Williams, right?

A That's correct

Q And you don't know what Ms McDonnell discussed with her Chief of Staff in that call before the call shown here

A We didn't have any content for any of the calls

Q Got it All right, now, I'd like to go to the next of these charts, RM-0301 Now, sir, what you are essentially or what this chart is essentially showing is the relative communications of Ms Sutherland and Mr Williams to Ms McDonnell and Mr Williams, right?

A Correct

Q And if you total it up, it is about 15 to two or about seven-and-a-half times as many by Ms Sutherland, right?

A Yes, sir

Q But, of course, you don't know how many of these communications were at the direction of the First Lady to the First Lady's Chief of Staff, do you?

A No, sir

Q I'd like to show you another comparison, and that is Government's admitted Exhibit 571 All right, now, at the risk of asking you to do math again, the total here for Maureen McDonnell listed at the bottom, $19,000, that's more than ten times the dollar amount for Mary-Shea Sutherland of $1,690, right?

A Yes, sir

Q All right Now, I'd like to go to RM-0302 All right, sir, this is the chart for April 14th and 15th, 2011, right?

A Correct

Q And this is the two days immediately following the shopping trip, right?

A Yes, sir

Q But this chart here, this only shows communications between Mary-Shea Sutherland and Mr Williams, right?

A That's correct

Q This doesn't show any communications between Jonnie

Williams and Ms McDonnell, does it?

A No, sir

MR. FAULCONER: With the assistance of the Court Security Officer, I'd like to hand up a copy of what's been marked as Exhibit 834.

(Document proffered to witness)

BY MR. FAULCONER:

Q All right, now, sir, this is a series of pages from Mr Williams' phone records ranging from April 13th down to April 15th; is that right?

A I'm sure it is Yes, sir

MR. FAULCONER: We would offer Exhibit 834 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, if we could flip to the, I apologize, the bottom of Page 3 If we could zoom in there for the jury, but if you could just look at, do you see where at 10:56 p.m., these are text messages actually, right?

A Yes, sir

Q Okay And at 10:56 p.m., at the end of the day on the 13th, that's a text from Ms McDonnell, the 9777 number to Mr Williams' 5828, right?

A Yes, sir

Q Now, if we go to the text immediately below that, skip one and go to 7:51 a.m. It is correct that this shows that there were three text messages from Mr Williams to Ms McDonnell at 7:51 a m. on the 14th, the next morning, right?

A Yes, sir

Q And then it is only after texting Ms McDonnell three times at 7:51 a m. that then it shows the text from Mr Williams to Mary-Shea Sutherland right below that to that 6837 number, right?

A That's right

Q All right Well, now, let's take a look at the phone calls from that same day I'd like to hand up a copy of 835

(Document proffered to witness)

All right, now, this is a series of pages from Mr Williams' records of calls from that same time frame, right?

A Yes, that's correct

Q And these are Mr Williams' records, if I didn't already say that?

A Yes, sir

MR FAULCONER: We would offer 835 into evidence, Your Honor

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, the day we were just talking about was April 14th, 2011 What I would like to do is focus in on the third page of this document And look at the call that's at 3:15 p.m. Do you see that there?

A Yes, sir.

Q And this is April 14th, 2011, one of the dates from that chart we were just looking at And this shows that call from Mr Williams to Ms Sutherland at 3:15 p.m. for 17 seconds, right?

A 17 seconds, yes, sir

Q But it is true, sir, that when you look at the line immediately preceding it, again, Mr Williams is reaching out to Ms McDonnell immediately before that at 3:14 p.m., right?

A 3:14, right, the call, zero seconds on that call, yes, sir

Q All right We can take that one down. All right, so we have sort of started to go through these a little bit chronologically, but I'd like to now sort of move to the end and work our way back a little bit through some of them. I'd like to show you RM-0329, which is the second to last of yours Now here, you would agree with me that you are obviously aware that the interview with law enforcement of Ms McDonnell was on February 15th, 2013, right?

A Yes, sir

Q And you said you reviewed all of the prosecution's testimony That would include Donnie Williams' testimony that the invoice that he put together overstated -- understated the value of the work, right?

A Yes, sir.

Q And you are aware that there were no payments to Mr Donnie Williams before the interview with law enforcement, right?

A Right

Q And there is no text message in response to the "No, Jonnie's paying for it," say, "No really, here is my credit card number" or anything like that

A No, sir

Q At least nothing --

A Not at that time, no

Q All right Now, I'd like to talk about the stock charts that you discussed a little bit Starting with RM-0322 Now, to be clear, sir, I though that Special Agent Hulser's chart did not have MM purchases or MM sells on it, right?

A That's correct

Q Now, to be clear, the source that you are getting that from for this chart is that the statement says the account is in MM's name, right?

A In part, yes, sir

Q But, of course, you don't know what if any conversations occurred between Ms McDonnell and Mr McDonnell about any of these transactions

A No.

Q And you didn't look at any of his mail from statements that had come in from Davenport to determine whether or not he had read it or anything like that, right?

A No, sir

Q Now, I'd like to turn to RM-0324 And this is the chart with the stock prices on it, right?

A Correct

Q And I'd like to compare this side by side with Government Exhibit 606 And Page 3 of 606 All right, now, those four, I know it is a little hard to see, obviously, but those four texts and e-mails on the right in the government's exhibit, those would go in that blank space on the chart to the left, right, sort of in the middle?

A Yes, sir

Q Because basically, it is the same stock prices It is just showing transactions instead of the text messages

A Yes, sir

Q All right Now, if we could zoom in just on

Government Exhibit 606 The text message, sorry, that's the lower righthand one on July 3rd, 2012 Now, that is a text message from Mr McDonnell to Mr. Williams on July 3rd, 2012, saying, "Stock looks good," right?

A Yes

Q If we could go to your chart, RM-0323, now, so the text message that we were just looking at, sir, that was July 3rd, 2012, right?

A That's correct

Q And that stock price here matches at $4 99 a share, right?

A Yes.

Q I think you said in response to Mr Hauss that on your review of the stock records, that was actually the highest price in those stock records for Star Scientific stock, right?

A Yes, sir, during that period

Q Based on your review of the text messages and the testimony, after that, it pretty much only went downward, not every day, but it never got back up to $4 99

A That's correct

Q There were no longer, after that day, any text messages from Mr McDonnell making comments about Mr Williams' stock, were there?

A No, sir Not that I know of

Q All right Now, I'd like to go to RM-0328 All right, now, this is the chart for March 1st to 11th of 2012, right?

A Yes, sir.

Q And I think, Mr Hauss asked you about calls between Mr McDonnell and Mr Williams, and you say on here that there were none between the cell phones, right?

A That's correct

Q But, of course, you don't know whether for any of these phone calls Ms McDonnell handed off the phone to Mr McDonnell to talk to Mr Williams

A No, sir, we don't have any content at all

Q Got it Now, I'd like to show you a paper copy of what's been marked as Government Exhibit 836

(Document proffered to witness)

And sir, this is a copy of Mr McDonnell's phone records from Verizon from March 1st, and then going forward until about March -- at least part of March 12th; is that right?

A Yes, sir

MR. FAULCONER: We would offer Exhibit 836 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q All right So what I would like to do, sir, here, is go through this and just see how many communications there were between Mr McDonnell and Ms McDonnell just on cell phones during this time period. Now, on that first page, there are five calls between March 1st and March 3rd between Mr McDonnell and that 9777 number, right?

A Five calls on the first page Let's see -- five on the first page, yes, sir

Q If you go forward to the fourth page, which has the Bates stamp 097 in the bottom, there is one at 8:05 p.m for four minutes; is that right? On 3-6?

A 3-6 -- oops, no. 3-6, 8:05 p.m. to the 9777 number

Q That's Ms McDonnell, right?

A For four minutes, yes, sir

Q You are aware that that's the date of the check that was written from Starwood Trust to MoBo Realty, right?

A March 6th, yes, sir

Q All right Now, going to Page 5 briefly, on Page 5, there's another four calls from March 7th to 9th with that 9777 number, right?

A Four Yes, sir

Q And then finally, on Page 6, there's another three calls on March 10th and 11th between Mr and Ms McDonnell; is that correct?

A Three calls to the 9777 number, yes, sir

Q Got it I'd like to now shift to Government Exhibit

594 And Page 2 of this one All right, now, I think the chart that you had went from March 1st to March 11th, right?

A Right. Yes, sir

Q Okay Now, it is true that on this chart, what you actually see is that the last communications here by text message are actually Mr McDonnell and Mr Williams, right, on March 11th?

A Yes, sir

Q And your chart was showing Mr Williams and Ms McDonnell, but these communications at least checked out with the records as best you know

A Yes, sir

Q Now, I'd like to show briefly Exhibit 595, which has been admitted. Sir, this is the following day, right?

A Correct

Q And this shows several phone calls between Mr Williams and Mr McDonnell, right?

A Yes, sir

Q All right Now, I'd like to go to RM, one of your other charts, RM-0327 Now, sir, I think that if I heard Mr Hauss correctly, I think he said something on this chart about Mr Eige's testimony about shutting something down. Do you recall that on direct examination?

A Yes, sir

Q But to be clear, sir, this chart doesn't include any e-mails, does it?
A No, it does not.
Q So I'd like to show you, and the dates here are February 8th and 9th, right?
A Right
Q All right I'd like to show you admitted Government Exhibit 312 Zoom in on the top portion. Now, that's February 9th, 2012, right?
A Yes, it is.
Q And that's actually three minutes after the call on that chart from February 9th ended, right?
A Yes, sir
Q And if we could go to Exhibit 314 This is another e-mail from Ms McDonnell to Mr Eige, right?
A Yes, it is
Q And this is the following day on February 10th, 2012
A February 10th, yes, sir
Q And then I'd like to go to Exhibit 320, which has been admitted. On that subsequent one, that's Mr McDonnell to Mr Eige, right? Sorry, the second lower one
A Yes, sir
Q That's on February 17th, 2012?
A That's correct

Q And so I know the chart that you showed was focused mostly on calls and text messages, but you would agree these are at least three e-mails with Mr Eige and either Mr or Ms McDonnell after the dates on the chart we looked at.

A Yes, sir.

Q Now I'd like to go to RM-0326 Now, this is the chart for January 19th to 20th of 2012, right?

A That's right

Q And just if we could, I'd like to do a side-by-side comparison with Government Exhibit 586 Now, sir, was there any particular reason why you didn't include the lunch on Mr. McDonnell's schedule at the Executive Mansion from 12 to 12:45 there?

A There was no particular reason that it would not be included. As I tried to point out when we introduced the charts there, there are certain calls designed to add context to the other -- to the situation. But there was no particular reason why it wouldn't have been added, no, sir

Q Got it But based on your review of the records, I see that on the chart on the left it shows 1:36 to 1:40 from Mr Williams to Ms McDonnell, and then it goes straight to 1:42 between Ms McDonnell and Mr Williams But you would agree that the chart that Special Agent

Hulser entered that shows essentially back-to-back calls to Mr McDonnell and then his Travel Aide, the chart that Special Agent Hulser introduced, it wasn't inaccurate based on your review of the records, was it?

A No, sir.

Q So you are just putting only Ms McDonnell communications on the left, but the ones for Mr McDonnell, those are still accurate on the right

A Just adding context, yes, sir

Q I guess in this case it is subtracting context, right?

A Well, adding context to what was in there, yes, sir

Q All right I guess the added one is the 9:16 p.m. text at least for the 19th, right?

A Correct

Q Well, let's go to that January 20th portion and let's add some context to this one I'd like to hand up 837, what's been marked. Now, sir, you would agree with me that these are text records for Mr Williams covering January 20th, 2012, the second date on that chart we just looked at, right?

A Yes, sir It goes through the 22nd, right January 20th to 22nd

Q Got it

MR FAULCONER: We would offer Exhibit 837 into evidence.

THE COURT: It will be admitted.

BY MR FAULCONER:

Q Now, looking at this record, at 9:26 and 9:27 a.m., do you see there the call or text messages, sorry, from Mr Williams to a number ending in 9367?

A Yes, sir

Q You are aware, sir, that this is, the number ending in 9367, that's the number for Mr McDonnell's Travel Aide, right?

A I believe so, yes

MR. FAULCONER: And Your Honor, the parties have stipulated to that number

BY MR. FAULCONER:

Q Now, that shows two text messages at 9:26 a.m., right?

A Right

Q And then it looks like there is another one back from the Travel Aide to a third text message from the Travel Aide to Mr Williams at 9:27 a.m., right?

A Yes, sir

Q And then if we go to Page 2 at the bottom, do you see there where at 10:17 p.m. there is a text back from Mr Williams to Mr McDonnell's Travel Aide?

A Yes, sir

Q And then three more from the Travel Aide back to Mr Williams at 10:18 p.m.

A That's correct

Q And so that's, I think we had three on the first page, four on that page, so we are up to seven. Let's go to Page 3 And then you would agree that from 10:19 to 10:27 p.m., there are another seven messages between Mr Williams and Mr McDonnell's Travel Aide, correct?

A Seven. Yes, sir

Q So that's a total of 14 texts in that day If we could go back briefly to RM-0326 That's double the number of text messages between Mr Williams and Ms McDonnell on that day, right?

A Yes, sir

Q All right And you are also aware of the testimony at trial that that was the day of the Mitt Romney -- a trip for Mitt Romney down to South Carolina, right?

A Yes, sir

Q So now I'd like to bring up the timeline that you showed towards the end of your direct testimony And this is RM-0330 Now, to be clear, sir, we went over, I think, three e-mails from February of 2012 They are not on this timeline, right, the e-mails to Mr Eige from Ms McDonnell?

A No, sir, they are not

Q And you would agree that this chart doesn't include or timeline doesn't include any reference to loan negotiations with Mr McDonnell in that January to March time frame, right?

A No, sir

Q And I see that you have, you know, some events later in 2012, but you are aware of the testimony about a March 21st, 2012 Cabinet meeting involving Mr McDonnell, right?

A Yes, sir

Q And that would go in between these two loans if it was on this timeline, right?

A If it was on that timeline, yes, sir

Q Okay And you have a second loan here to MoBo, and again, all that you have seen is a check to MoBo, right? And whether it is a loan to MoBo, you are just deciding which testimony to rely on there, right?

A That's correct

Q Now, that date of May 22nd, 2012, I'd like to bring up Government Exhibit 391 And sir, this is dated May 30th, 2012 You are aware of Dr Vetrovec's testimony about still considering doing studies at VCU as late as this date, right?

A Yes, sir

Q I'd now like to bring up, still staying in 2012, but moving forward on the timeline to RM-1542 If we could zoom in on that text message Now, sir, this text message is from Mr Williams to Mr McDonnell, right?

A That's correct

Q And it references clinical trials in one sentence and cash in the next

A Yes, sir

Q And this is not on that timeline we were just looking at, right?

A No It is not

Q And then finally, I'd like to go to, for the timeline, I'd like to go to Government Exhibit 402, which has been admitted. And sir, you are familiar with Dr Clore, right? He is one of the doctors from VCU?

A Yes, sir

Q He testified about this letter, still considering doing studies as late as August of 2012, right?

A Correct

Q And going back to the timeline, RM-0330 briefly, and sir, this ends in February and March of 2013, right?

A Right Yes, sir

Q And that's about the time that the law enforcement interview happened, right?

A That's correct

Q All right Now, I'd like to now work our way back through some of the 2011 charts that I sort of zoomed past before I'd like to start with RM-0321 All right, now, this is that chart of December 4th, 2011, which I think we have heard this mentioned a number of times in trial I think you clarified at the end of your direct testimony that this is actually one call and 52 texts, right?

A That's correct

Q So "calls" really shouldn't be plural there, right?

A No, sir, you are correct

Q Okay Now, I'd like to just make sure that we understand Mr Williams' communications on this day I'd like to hand up to you what's been marked for identification as Government Exhibit 838 and 839 All right, now, sir, 838, that is Mr Williams' phone records for December 4th of 2011, right? At least, sorry, it covers from December 4th and then goes forward, has a little bit of the 5th, but it is mostly just the 4th

A My copy has December 3rd to the 5th

Q Part of the 3rd, all of the 4th, and part of the 5th?

A Yes, sir

MR. FAULCONER: We would offer Exhibit 838 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q Now, that single call that we were talking about, that is at 5:41 p.m. on the third page; is that right?

A Yes, sir

Q And the elapsed time of that is 0 seconds? I'm sorry, there is actually a second one of five seconds two lines down; is that right?

A Right Yes, sir, five seconds

Q All right So looking at that, what I would now like to do is have you take a look at Government Exhibit 839 And that's essentially the same time frame of Mr Williams' text messages, right? 839

A Yes, sir.

MR FAULCONER: We would offer Exhibit 839 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q Now, sir, you said 52 texts with Ms McDonnell this day I'd like to turn your attention to Page 2 Take a look at 7:35 p.m. on December 4th, that same day You would agree with me that at 7:35 p.m. there is a text from Mr Williams to Mr McDonnell on that same day, right? His number, one of his numbers is the 0714 number?

A Yes, sir

Q And then if you go to Page 4 of this document at 8:38 p.m., you would agree with me that there, there is another text message from Mr Williams to Mr McDonnell on that day Sorry, at 8:38 p.m.

A Thank you 8:38 Yes, sir, 5828 Yes, sir

Q Now, keeping that time in mind, 8:38 p.m. on December 4th, and going back to your RM-0321, you would agree with me that that text message from Mr. Williams to Mr McDonnell was later than the last communication between Ms. McDonnell and Mr Williams, right?

A The 8:38 p.m., yes, sir

Q Okay Now, I'd like to try to maybe give a little bit of context of what might have been going on on this particular day. Now, I'd like to show you what's been previously admitted as RM-0178-0795 Then I think page 0195 Sorry, RM-0178-0195 And it figures that I got the date wrong 0795, sorry RM-0178-0795. There we go All right, now, you agree with me that this is Mr McDonnell's schedule for December 4th of 2011, right?

A Can they enhance my copy of it a little bit, make it a little bit larger? Thank you Yes, sir

Q If we could scroll down there If we could go to the next page We may have to do this a slightly different way There is nothing actually shown on the prior page on December 4th, 2011 in the evening, right?

A After the six p.m. entry? No, nothing after the six p.m. entry

Q I think I'm getting my days mixed up But this shows that at six p m. for Mr McDonnell on December 4th, this is the day of those text messages, that he departs for the Executive Mansion, at least is scheduled to, at six p.m., right?

A Yes, sir

Q Now, I'd like to show you Government Exhibit 840, marked for identification. Now, sir, this is an e-mail from Ms McDonnell to Mr Williams and Celeste Williams, right?

A Yes, sir

MR FAULCONER: We would offer Exhibit 840 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Now, sir, at 5:37 p.m. on December 4th, 2011, that's the date of this e-mail, right?

A Yes, it is

Q And the subject says, "You are cordially invited to an evening reception with Governor Mitt Romney," right?

A That's correct

Q If we scroll down, it shows that the date of that reception is December 8th, 2011, right?

A That's right

Q So now I'd like to go to Government Exhibit 841, marked for identification. All right, now, you are familiar with all the testimony about Katherine Harris sending out schedules on a regular basis, right?

A Yes, sir

Q All right And this is an e-mail sending out a schedule for December 8th of 2011?

A Yes, sir, it is

MR FAULCONER: We would offer Exhibit 841 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q If we could go to the bottom of Page 3, this shows on December 8th, 2011 that Mr McDonnell is scheduled to depart for the Marriott at 7:35, or 7:20 to 7:35, and then attend the Romney event that night in Richmond, right?

A That's right

Q And it shows Mr Zubowsky traveling with him?

A Yes, sir

Q All right I'd like to hand up what's been marked for identification as Government Exhibit 842

(Document proffered to witness)

Now, sir, these are Mr Williams' calls covering December 8th of 2011, right?

A Yes, sir, 7th through the 9th.

Q Now, looking at this --

MR. FAULCONER: Your Honor, we would offer Exhibit 842 into evidence

THE COURT: It will be admitted

BY MR. FAULCONER:

Q Now, sir, going to Page 4, which is 1:22 p.m., focusing in on the call that's right before the little space in the record there, sorry, the one a little bit further down at 1:22 --

A Yes, sir

Q -- that's a call from Mr Williams to Mr McDonnell's Travel Aide on December 8th, 2011 at 1:22 p.m., right?

A That's correct

Q And the duration of that call is two minutes and 44 seconds?

A That's right

Q Now, and that's the same day as the Romney, the scheduled Romney event, at least as it was referenced in that e-mail, right?

A Yes, sir

Q All right Now I'd like to go to another one of the charts, RM-0320 All right, now, this is September 5th, 2011, right, sir?

A That's right

Q Essentially, what this chart is trying to show is that this e-mail is sent, and then later on in the day, there's five text messages between Ms McDonnell and

Mr Williams, right?

A That's what it shows, yes, sir

Q Now, of course, sir, you don't know from anything that you have reviewed when Ms McDonnell actually received that e-mail, right?

A No No, I don't.

Q You don't in fact even know if she read it, do you?

A No, sir, I don't

Q But what you know is what the phone records say

A That's correct.

Q And to be clear, sir, I'd like to show you Government Exhibit 843, a paper copy And also a copy of Government's 844, one page for each.

(Documents proffered to witness)

All right, sir, Government Exhibit 843, that's Ms McDonnell's phone records covering from part of September 2nd down to September 8th; is that right?

A That's right

MR FAULCONER: Your Honor, we would offer Government Exhibit 843 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, sir, focusing in first on September 5th, 2011, the date of that e-mail, it is true that there are no phone calls between Mr McDonnell and Ms McDonnell on that specific date, right?

A September 5th?

Q Correct

A Yes, sir That's true

Q There are none with Mr McDonnell's cell phone on that date

A Correct

Q Now, but you are aware, of course, that at 5:14 and 5:19 p.m., that number, 7779, that's Sarah Scarbrough, right?

A I'll --

MR FAULCONER: The parties have stipulated to that, Your Honor

BY MR. FAULCONER:

Q And then the 2717 and 2323 phone numbers, those are two of the McDonnells' children. Does that seem somewhat familiar to you?

A Yes, sir

Q All right Now, I'd like to, though, not just focus on September 5th, and actually look at the very next day as well Now, looking at September 6th, it is true that at 11:33 a.m. the following day, there's a two-minute call between Ms McDonnell and Mr McDonnell, right?

A Yes, sir

Q And then at 12:10 p.m. there's what looks like an unavailable call It is sort of a little blacked out, right?

A That's correct

Q And then down at 6:11 p.m. on the 6th, there's another call to Mr. McDonnell's -- with Mr McDonnell's cell phone?

A Yes, sir

Q And then an unavailable call at 6:49, right?

A Right

Q And then at 10:51 a.m. the following day, September 7th, there is a call to 0714, Mr McDonnell, right?

A Right

Q A couple lines down, 12:20 p.m. there is a call to Mr McDonnell for three minutes shown there, right?

A Right

Q All right Now, I'd like to point your attention to Government Exhibit 844 And this is the -- these are the records for Mr McDonnell's 0714 number on that day, right?

A Yes, sir

Q Or that time frame, I'm sorry

MR FAULCONER: We would offer Government Exhibit 844 into evidence

THE COURT: It will be admitted.

BY MR. FAULCONER:

Q Again, focusing on this one with Mr McDonnell, again, to be fair, there are no calls on September 5th, 2011, with Ms McDonnell, right?

A Yes, sir

Q But then there is a call at 12:09 p.m. to Ms McDonnell's number; is that right?

A Yes, sir

Q And that's within one minute of the similar three-minute call that shows up as unavailable on her records, right?

A Yes, sir

Q And then going down further, there is another call at 6:49 p.m. to Ms McDonnell for one minute?

A Yes, sir

Q And that matches up to that unavailable call on her records for the same time.

A That's correct

Q Then going down further at 11:21 a m., there is another call to Ms McDonnell?

A Yes, sir

Q And that's a three-minute call that matches up with an unavailable call on her records, right? Sorry, four-minute call

A Four minutes at 11:21, yes, sir

Q Then at 12:21 again there is another call to

Ms McDonnell's cell phone?

A Yes, sir

Q Sorry, an incoming call at 12:21, right?

A Yes, sir, a three-minute call

Q And then at the bottom of the page, 6:08 p.m., there is another outgoing call to her cell phone, right?

A One-minute call, yes, sir

Q All right Now, sir, I think the last date we were looking at there was September 7th of 2011 I'd like to briefly bring up Government Exhibit 7 You are aware of the testimony about this picture being taken at the Commonwealth Club on September 7th of 2011, right?

A Yes, sir

Q All right So let's continue to go back into August of 2011 I'd like to show you Government Exhibit 0314 RM-0314 All right, now, this was one of a number of charts that you had or that you showed us that lists communications between Mary-Shea Sutherland and Ms McDonnell in August of 2011, right? At least there were five or six or seven or somewhere in that range

A Right Ms McDonnell and Jonnie Williams, yes

Q Between Ms Sutherland, Jonnie Williams, and then some involving Ms McDonnell

A Yes, sir

Q Now, you have this e-mail here at 2:55 p.m., right?

A Right

Q But I'd like to do a side-by-side compare with Government Exhibit 584 And sir, you are aware that on 8-16 at 2:47 p.m., there was a call from Ms McDonnell to Mr McDonnell's cell phone, right?

A Yes, sir

Q Okay And that then led to, or at least it was immediately preceding the 2:50 p.m. e-mail from Mr Zubowsky to Mary-Shea Sutherland, right?

A That's correct

Q And that e-mail there, Government Exhibit 207, is actually the e-mail that immediately precedes Government Exhibit 208 over on the left, right? At least five minutes before

A Yes, sir

Q And it is the same e-mail chain, right?

A I believe it is, yes

Q All right Now, I'd like to hand up to you what's been marked for identification as Government Exhibit 845

(Document proffered to witness)

All right, this is a series of Ms McDonnell's phone records going from August 13th of 2011 through to September 2nd of 2011, right?

A Yes, sir

Q All right Now, the chart we were just looking at --

MR. FAULCONER: Your Honor, I would like to offer Government Exhibit 845 into evidence

THE COURT: It will be admitted

BY MR FAULCONER:

Q Now, sir, this first page includes portions of August 15th and 16th, the dates we were just looking at, right?

A Yes, it does

Q All right Now, on this chart or on this, sorry, phone record, we talked earlier, I think, about 8927 being one of Mary-Shea Sutherland's phone numbers, right?

A Yes, sir

Q And I'm correct that on August 15th, there's two calls there at 8:58 and 9:14 a.m. with Ms Sutherland and Ms McDonnell, right?

A I'm sorry, I missed the times

Q Sorry 8:58 and 9:14 a.m.

A Yes, sir

Q All right And then if you keep going down, there's another one at 3:15 p m., right, on the 15th?

A Yes, sir, that's correct

Q And then another one at 6:23 p m. for 12 minutes on the 15th?

A 12 minutes, yes, sir

Q And that immediately -- not immediately precedes, but the next call down a couple hours later at 9 p.m. is a call at 9 p.m. Is that correct, sir?

A 9 p.m., yes, sir

Q And then continuing down, there's two more calls on the 16th at 10:28 and 10:42 a.m. from Ms. McDonnell to Ms. Sutherland, right?

A That's right

Q And then it looks like there is a call to Mr Williams at 11:05 a.m., and then the next after that is that 2:47 p.m. call that was on Special Agent Hulser's chart to Mr McDonnell, right?

A That's right

Q And then I think the e-mails we looked at were 2:50 and 2:55 After that, there's a 3:09 and 3:11 p.m., calls with Ms McDonnell and Mary-Shea Sutherland, right?

A That's right

Q Okay Now I'd like to go to Government Exhibit -- sorry, RM-0313

THE COURT: Why don't we -- it has been an hour and a half I don't like to go past that We will take the break. I was, again, trying to wait him out It is not going to work. We will take our 15 minutes and come on back.

(The jury left the courtroom.)

(Recess taken from 3:43 p m until 4:01 p m.)

(The jury entered the courtroom)

THE COURT: All right Government

MR. FALCONER: Thank you, Your Honor.

BY MR. FALCONER:

Q All right, Mr Ross I'd like to pick back up with Government's Exhibit 203.

MR FALCONER: And if we could go to the second page

BY MR FALCONER:

Q Now, that portion that's highlighted there on August 14th of 2011, that's the -- the Rolex purchase that's been testified about a little bit, right?

A Yes, sir

Q All right And I think you had a chart, and I think there -- sorry It says August 14th transaction date August 16th posting date, right?

A That's right

Q But, of course, this bill doesn't tell you what day Mr Williams walked into the store, right?

A No, sir

Q And it doesn't tell you what day he picked up an engraved watch, right? Or whether it all happened on one day or two different days, right?

A The statement itself does not No, sir

Q Got it This just tells you the transaction date on the credit card and the posting date, right?

A It tells that that's the date that the jeweler charged for the -- for the watch

Q All right Now, I think, if I recall correctly, one of your charts had that there were no calls between Ms McDonnell and Mr Williams on August 14th, the date of the transaction date, right?

A That's right

Q All right Now, I'd like to direct your attention to the exhibit that I think should still be in front of you, which is 845 And this is --

MR FALCONER: We can pull it up on the screen as well

BY MR FALCONER:

Q This is Ms McDonnell's phone records covering that general time frame; is that right?

A Yes, sir

Q Now, if you could go with me on August 16th

MR FALCONER: Scroll down a little bit

BY MR FALCONER:

Q And you'd agree with me that on August 16th of 2011, two days after the purchase date, there's a call with Mr Williams at 9:51 a m ; is that correct?

A August 16th Yes, sir

Q And that is a 15-minute call on that day, right?

A That's right

Q And then later on that day at 10:12 a m there's another 13-minute call with Mr Williams?

A That's right.

Q And then a six-minute call at 11:05 a m with Mr. Williams?

A Yes, sir

Q Okay And, of course, as you said, there's no content So you don't know the content of that conversation?

A Correct

Q Now I'd like to go to RM-0312, which is the chart for August 11th and 12th of 2011 -- or sorry August 11th to 13th All right Now, the e-mail that you have here for August 12th, that shows 10:09 a m , right?

A That's right

Q And then I think the day -- you have some communications there, texts leading up to that with Mary-Shea Sutherland, right?

A Right

Q All right Now, I'd like to hand up Government's Exhibit 846 And actually -- sorry Thank you

A Thank you

Q All right Now, these are Ms McDonnell's -- part of her phone records again And at least the first page covers August 11th and 12th, right?

A Actually, it goes to the 13th Yes, sir

Q Got it One call on the 13th

MR FALCONER: Your Honor, we'd offer Exhibit 846 into evidence

THE COURT: It will be admitted

BY MR FALCONER:

Q All right Now, the e-mail that we had -- sorry

All right Now, there was a text on the chart that we were just looking at just a second ago from Mary-Shea Sutherland to Jonnie Williams at 10:08 a m on August 11th And I'd like you to focus in on August 11th at 10:01 a m Do you see there a call between Ms McDonnell -- an incoming call from Mr Williams at 10:01 a m ?

A Yes, sir

Q And so that's -- and that's a 13-minute call, right?

A That's correct

Q And so that actually spans the time frame of the text from Mary-Shea Sutherland to Mr Williams, right?

A Yes, sir

Q And then after that, there's another call at 10:27 a m for a minute?

A That's right

Q And, again, sir, this is three days before the transaction date for that jewelry purchase, right?

A Three days Yes, sir

Q And then I think we also saw an e-mail on the chart at 10:09 a m from Mary-Shea Sutherland on the 12th about the lunch at the Mansion But to be clear, on 8/12, August 12th, that same day, at 12:18 p m -- or sorry, 8/12 at 11:34 a m , there's a call to Mr McDonnell on that day from Ms McDonnell, right? 0714?

A Right Yes, sir, there is Three-minute call.

Q And then later on that day, 12:18 p m , there's another call with Mr McDonnell, right?

A 12:18 Another three-minute call Yes, sir

Q And then if you go down to 12:30 p m , there's actually a three-minute call to the Travel Aide again? 9637?

A Yes, sir

Q All right Well, now I'd like to go to another one of your charts

MR FALCONER: This is RM-0311 Sorry I think it will be -- or sorry 19 All right

BY MR FALCONER:

Q Now, sir, this is the chart showing some communications on August 1st of 2011, right?

A Correct

Q And just real quick, I'd like to do a compare with Government's Exhibit 582 All right Now, sir, I'm correct in saying that the communications that you show with Mary-Shea Sutherland here on the left, those are not on the chart on the right, right?

A That's -- that's right

Q Okay But, likewise, there are communications involving Mr McDonnell, his cell phone, on the right that are not on the chart on the left, right?

A That's also right Yes

Q All right But to be clear, in review of Special Agent Hulser's testimony in these charts, you didn't find any inaccuracies in the communications involving Mr McDonnell that are in the chart on the right, did you?

A No, sir None

Q All right So now I'd like to go to RM-0310 And, sir, this is the chart for July 28th of 2011; is that correct?

A That's correct

Q And this shows a number of communications with Mary-Shea Sutherland and a few involving Ms McDonnell, right?

A That's right

Q All right Now, I think I heard correctly that you said that this 1:20 p m call, that's from Maureen

McDonnell's office, right?

A That's right

Q And I think you said you don't know who actually placed that call, but what you do know is that it's her office number, right?

A That's right

Q And you're also aware, from Special Agent Hulser's redirect testimony and the records in this case, that Ms McDonnell, her phone records show her being in Richmond, Virginia, until at least as late as 6:02 p m that day, right?

A That -- that sounds right. Yes, sir

Q And you're also aware from testimony that the Mansion logs, I think you have here at 8:50 a m , that Mary-Shea Sutherland arrives at the Mansion, right?

A Right

Q But, of course, you're aware that Ms McDonnell lives there -- or lived there, so she wouldn't sign in to a Mansion log, right?

A That's right, also

Q So you wouldn't have any way to necessarily be able to tell was she in the office that day or not?

A No, sir

Q All right Well, now I'd like to go to RM-0309 And, sir, this is the chart for July 25th and 26th of

2011, right?

A That's right

Q And I think there was some conversation about -- there's phone calls down there between Jonnie Williams and Mary-Shea Sutherland, right?

A Right

Q I'd like to hand up to you what's been marked as Government's Exhibit 847

MR FALCONER: Thank you, sir

A Thank you

BY MR FALCONER:

Q All right Now, these are Ms McDonnell's phone records that go from July 20th to, the second page, July 29th, right?

A That's right

MR FALCONER: Your Honor, we'd offer Government's Exhibit 847 into evidence

THE COURT: It will be admitted

BY MR FALCONER:

Q All right Now, the chart we were just looking at had calls between Mary-Shea Sutherland and Mr Williams What I'd like to look at on this one is calls between Ms McDonnell and Mary-Shea Sutherland on those same days

Now, on July 25th, towards the bottom there, you'd agree with me that there are three calls between

12:12 p.m and 3:10 p m between Ms McDonnell and Mary-Shea Sutherland, right?

A Three Yes, sir

Q One of those is five minutes, the first one at 12:12 p m.?

A Five minutes, two minutes, and one minute

Q Got it And then if you look at July 26th, that same page, a little bit lower down, there's another one-minute call with Mary-Shea Sutherland on July 26th?

A Yes, sir

Q And then if you go to the second page, again, later on on July 26th, 6:47 and 6:58 p m , am I correct that there's --

MR FALCONER: Or sorry On to the second page I apologize. Zooming in at top there

BY MR FALCONER:

Q Am I correct that there are two calls at 6:47 and 6:58 p m with Mary-Shea Sutherland?

A That's right

Q And those are a total of ten minutes on those two calls, right?

A Yes, sir

Q All right Now, July 25th and July 26th, I'd like to now hand you up Government's Exhibit 848

A Thank you

Q All right Now, sir, these are Mr McDonnell's phone records for July 20th to 28th of 2011, right?

A That's right

MR FALCONER: Your Honor, we'd offer Government's Exhibit 848 into evidence

THE COURT: It will be admitted

BY MR FALCONER:

Q All right Now, sir, if we could go look towards the bottom on July 25th, and you'd agree with me that at 12:06 p m there's a three-minute call from Mr McDonnell to Mary-Shea Sutherland's 6837 phone number; is that correct?

A That's correct

Q And then on July 26th, on the next page, there is a nine-minute call at 11:11 a m with Ms McDonnell; is that correct?

A That's correct

Q All right Now, I'd like to go to -- I think it is RM-0308

MR FALCONER: Actually, go forward one to -- whoops Sorry

BY MR FALCONER:

Q All right Now, this refers to -- this is the one we were just looking at, right?

A Yes, sir

Q Just a little bit ago And this refers to a trip on July 23rd of 2011, right?

A That's right

Q And as I think we looked at the flight info, it shows that it was Mary-Shea Sutherland and not Ms McDonnell on that flight, right?

A That's right

Q But what I'd like to do is briefly go to one of the exhibits that Mr Hauss showed you and a portion of the e-mail that we didn't really focus on, which is RM-1990-0002

MR FALCONER: You don't have it

Can we switch over to the defense system briefly? Thank you It's RM-1990-2

BY MR FALCONER:

Q All right Now, sir, I think we looked at --

MR FALCONER: And if we could zoom in on that bottom e-mail Thank you

BY MR FALCONER:

Q I think we looked at the next page But this page here is from -- is from Mary-Shea Sutherland to Jerri Fulkerson, right?

A That's right

Q And this says, "All of that information from the Gibson event" -- you're aware the Gibson event is the

July 23rd event, right?

A Yes, sir

Q What Mary-Shea Sutherland says here is, "Jonnie had me share with the First Lady and she never gave it back She isn't here today," right?

A That's right

Q So now I'd like to move to May of 2011 And May is the last month I think we're going to talk about, sir

I'd like to first start by asking -- now, I think you had a couple of charts from May of 2011; is that right?

A I believe so Yes, sir

Q And you're obviously aware that May of 2011, that's the time frame where the $50,000 and $15,000, the first two checks came over from Mr. Williams for the wedding and then a loan of $50,000?

A Yes, sir

Q And that's also the same month as the first golf trip out to Kinloch?

A Correct

Q All right Well, now I'd like to start with RM-0307 Your chart for May 25th of 2011

MR FALCONER: Oh, sorry Back to the government system Sorry, Ms Hancock

BY MR FALCONER:

Q All right Now, this is the chart that you have --

that we saw for May 25th, 2011, showing these text message communications between Ms McDonnell and Mr Williams, right?

A Right

Q Now, just to provide a little bit more context for some of the timing, I see there that Ms McDonnell's first text messages are pretty early in the morning, right? 6 -- at least the latter half, there's 6:44, 7:06 a m , right?

A Yes, sir

Q Now, I'd like to show you what's been marked for identification as Government's Exhibit 849

MR FALCONER: And I think we may be able to just do this one on the screen

BY MR FALCONER:

Q Sir, this is an e-mail sending out Mr McDonnell's schedule for May 24th of 2011, right?

A Right Yes, sir

MR FALCONER: Your Honor, we'd offer Exhibit 849 into evidence

THE COURT: It will be admitted

MR FALCONER: All right Now, if we could turn to the -- I think it's the fourth page of this document

BY MR FALCONER:

Q Sir, that shows that at the end of the day on

May 24th, 2011, Mr McDonnell is scheduled to be at the Executive Mansion; is that correct?

A After 10:05 p m , yes, sir

Q So now I'd like to go to Government's Exhibit 850 And this is the schedule, the e-mail with the schedule for May 25th, 2011

MR FALCONER: Did I admit the prior one?

MR DRY: I don't think you did

MR FALCONER: Sorry, Your Honor I apologize I'd move to admit Government's Exhibit 849, the May 24th schedule

THE COURT: It's admitted

BY MR FALCONER:

Q All right Now, I'd like to -- this one, 850, this is May 25th of 2011, right?

A That's right

MR FALCONER: Your Honor, we'd offer Government's Exhibit 850 into evidence

THE COURT: It will be admitted

BY MR FALCONER:

Q All right Now, sir, this is the date of those text messages that we were looking at on that chart, right? May 25th?

A 25th Right Yes, sir

Q Right And this shows that --

MR FALCONER: If we could scroll down just a little bit

BY MR FALCONER:

Q That morning, Ms McDonnell and Mr McDonnell are scheduled to depart pretty early, at 7:55 a m ; is that right?

A Yes, sir That's right

Q All right And now I'd like to -- I think your -- the chart that we saw was May 25th of 2011 I'd like to go to RM-0306 Now, sir, you're aware on May 23rd, 2011, this is the date that Mr. Williams testified that he delivered that check, right?

A That's right

Q Or at least --

A Checks

Q I guess it was two checks?

A Yes

MR FALCONER: Now, if we could compare this side by side with Government's Exhibit 8 -- sorry, Government's Exhibit 576

BY MR FALCONER:

Q All right Now, sir, again, I guess the chart for May 23rd, 2011 there, it says no meetings scheduled between RFM and JRW, the one on the left that we talked about on your direct examination, right?

A That's right

Q Now, to be clear, that means no meetings scheduled You don't necessarily have any independent knowledge one way or another whether a meeting occurred, right?

A That's right

Q But the records over here to the right from Special Agent Hulser's testimony, the phone records showing Mr McDonnell and Ms McDonnell traveling together pretty much the rest of that day after 1:30 p m , you don't have any reason to -- you didn't find any inaccuracies in Agent Hulser's testimony, did you?

A No

Q All right So now I'd like to talk a little bit about RM-0305 All right Now, this is a chart describing communications and some Outlook events on May 11th and 12th of 2011, right?

A That's right

Q And there's a number of references here to -- or at least one reference here on the Outlook event to HDL, right?

A Yes, sir

Q And you're aware that HDL is something called -- from the testimony, from Health Diagnostics Laboratory, correct?

A Yes

Q And essentially what this chart is saying is Mary-Shea Sutherland have this event at HDL, and Mr McDonnell and Ms McDonnell, they're in China on a marketing mission, right?

A Right

Q Well, I'd like to put a little bit more context around this HDL visit And what I'd like to do is first show you Government's Exhibit 859 All right Now, sir, this is an e-mail exchange between Ms McDonnell and Mary-Shea Sutherland on May 16th of 2011, right?

A Yes That's right

MR FALCONER: Your Honor, we'd offer Government's Exhibit 859 into evidence

THE COURT: It will be admitted

BY MR FALCONER:

Q All right Now, sir, the bottom e-mail from Ms McDonnell to Mary-Shea Sutherland on May 16th, 2011, she actually says at the bottom of that e-mail, the very last line before the little signature portion, says, "How was Jonnie's meeting with HDL last week," right?

A That's right

Q All right So now what I'd like to do is hand up to you a copy of Government's Exhibit 860

A Thank you

Q All right Now, sir, these are Mr Williams' phone records for May 16th and 17th and a little bit on the 18th of 2011, right?

A Yes, sir

MR FALCONER: Your Honor, we'd offer Government's Exhibit 860 into evidence

THE COURT: It will be admitted.

BY MR FALCONER:

Q All right Now, sir, if we could go to May 17th of 2011, and if we could go on to the -- I apologize

MR FALCONER: You know what, Your Honor I'm going to move on to a different point and ask my co-counsel to help me out with this

BY MR FALCONER:

Q All right Now, we've been talking about this HDL event

MR FALCONER: I'd like to briefly bring up Government's Exhibit 855

BY MR FALCONER:

Q All right Now, this is a version of -- or it's the same document that was previously entered on direct examination for the May 11th, 2011, calendar event, right?

A That's right

MR FALCONER: Your Honor, if we could publish this to the jury It's already been admitted as defense exhibit, I believe, RM-0350

THE COURT: All right

BY MR FALCONER:

Q Now, this is the calendar event for May 11th 2011 for meet Jonnie at Mansion, right?

A That's right

Q But, sir, I'd like to show you Government's Exhibit 856 Now, I think Mr Hauss might have shown you one of these types of documents, but you're familiar with these metadata pulls from those Outlook events, right?

A Yes, sir

Q And this is one that matches the "meet Jonnie at Mansion" that we were just looking at, right?

A Right Yes, sir

MR FALCONER: Your Honor, we'd offer Government's Exhibit 856 into evidence

THE COURT: It will be admitted

BY MR FALCONER:

Q All right Now, the time at the bottom here that this meeting was sent and delivered is May 6th of 2011 at 4:43 p m ; is that correct?

A That's right

Q So that's about five days before the event itself occurs?

A Yes, sir

Q All right

MR FALCONER: Now I'd like to go to Government's Exhibit 857, which has been previously admitted as RM-0349 I'd ask that we could publish that to the jury

THE COURT: All right.

BY MR FALCONER:

Q All right Now, this is the Jonnie at HDL Outlook event that's the next half hour, right?

A That's right

Q And so what I'd like to now do is show you Government's Exhibit 858 And this is an Outlook metadata pull for that Outlook entry that we were just looking at, right?

A Right

MR FALCONER: Your Honor, we'd offer Government's Exhibit 858

THE COURT: It will be admitted

BY MR FALCONER:

Q Now, sir, this one shows, sort of like the other one, that the Outlook event is set on May 6th of 2011 at 2:59 p m , right?

A That's right

Q And, again, that's five days before the actual event itself Am I correct about that?

A That's correct

Q All right Now, briefly, I'd like to go back to Government's Exhibit 860 And that's the phone chart that's there in front of you. And these are Ms McDonnell's records -- or sorry, Mr Williams' records for May 17th And that's the day after that e-mail that we looked at from Ms McDonnell asking Ms Sutherland how the visit went Are you aware of that?

A Yes, sir

MR FALCONER: Now, if you could go to Page 3 of this document

BY MR FALCONER:

Q And on May 17th, the next day, of 2011 at 3:55 p m , do you see there a call from -- a phone number ending in 3391 to 5828?

A Yes, I do

Q And you're aware that the parties have stipulated that the number ending in 3391 is Ms McDonnell's office number It's the same one as that one other chart we talked about?

A Yes, sir

Q All right And so this shows a 41 minute and 11 second call from Ms McDonnell's office to Mr Williams on May 17th of 2011; is that right?

A That's right

Q All right

MR FALCONER: So now I'd like to -- now I'd like to go to RM-0178-0594 All right And if we could zoom in on the scheduled portion of that.

BY MR FALCONER:

Q Now, this is May 17th, 2011, Mr McDonnell's schedule, right?

A Yes, sir

Q Now, this looks like, according to the "from May 6th" that we have there for Asia Marketing Mission, this looks like the day that the schedule says Mr McDonnell was scheduled to get back, right? And at least it says "Asia Marketing Mission," and then to the far right, it has 1:15 p m , right?

A Yes, sir

Q All right

MR FALCONER: Now, if we could scroll down

BY MR FALCONER:

Q This shows a do not schedule, or DNS, Executive Mansion basically the rest of that day on Mr McDonnell's schedule, right?

A That's right

Q All right Now, what I'd like to now do is go a little bit further back, and I think we talked about those Outlook calendar entries being set on May 6th of 2011 Do you recall that?

A Yes

Q All right So now what I'd like to do is show Ms McDonnell's calendar, which is Government's Exhibit 83, Page 5 And this is her calendar for May of 2011, right?

A Yes, sir.

MR FALCONER: Your Honor, we'd offer Government's Exhibit 83, Page 5, into evidence

THE COURT: It will be admitted

MR FALCONER: Now, if we could zoom in on the 5th and 6th of May, up there at the top

BY MR FALCONER:

Q Do you see there where it has events on Ms McDonnell's schedule for May 6th of 2011? It says appointment at Entourage, wedding stuff with Cailin There's some appointments there, right?

A Okay I couldn't see the 6 There it is Yes, sir, I do

Q And you're aware that Ms McDonnell didn't actually go on that Asia trip until later in that month, right? A couple of days later?

A I don't recall the exact date Yes, sir

Q But if we could zoom -- at least look at down below, it shows the Asia Marketing Mission there on the 12th, right?

MR FALCONER: If we could zoom out, Ms Taylor Sorry

BY MR FALCONER:

Q Do you see that if we go to the 8th and 9th --

MR FALCONER: Scroll over to the left

BY MR FALCONER:

Q That shows the Asia Marketing Mission starting there on her calendar on or about the 8th and 9th, right? The flights, and then the references to Shanghai there?

A Right Depart 5/8/2011 Yes, sir

Q All right

MR FALCONER: Now if we could go back up to May 5th

BY MR FALCONER:

Q Now, the calendar entries were set for that meeting at HDL on May 6th Can you tell us what's shown here on Ms McDonnell's calendar for 12 p m on May 5th?

A May 5th That's 12 p m It says, "Health Diagnostic Labs "

Q All right Now, I'd like to hand up to you a copy of what's been marked as Exhibit 853

MR FALCONER: Thank you, sir Just that one for now

A Thank you

BY MR FALCONER:

Q All right Now, sir, that is Ms McDonnell's phone records going from May 2nd to approximately May 22nd, right?

A That's right

MR FALCONER: Your Honor, we'd offer Government's Exhibit 853 into evidence.

THE COURT: It will be admitted

BY MR FALCONER:

Q All right Now, sir, if we could look at May 6th of 2011 Down towards the bottom of this one. And, sir, you would agree with me that there are two calls -- or three calls there between 8:41 and 9:09 a m between Ms McDonnell and Mary-Shea Sutherland, that 8927 number, right?

A That's right.

Q And then another one at 9:28 a m ?

A That's right

Q And then if we go to the next page, there are two more calls to Ms Sutherland at 9:45 and 10:15 a m , correct?

A That's correct

Q And then there's another one on May 6th at 2:32 p m ?

A Yes

Q And 3:23 p m ?

A That's right

Q And then 3:35 and 3:52 p m ?

A Yes That's right

Q Now, before those two, Mr Williams, his phone number comes up here at 3:31 p m ; is that correct?

A That's correct

Q And then later on that day at 4:23 and then 4:33, 4:38, there are more calls with Mr Williams, right?

A I just got the 4:23 I'm sorry

Q Got it And then there's -- Ms Sutherland again shows up on her, her cell phone, at 6:57 and 6:04, right? Sorry 5:57 and 6:04?

A Right. Yes

Q All right Now, one number that we haven't talked about that I'd like you to focus on is do you see there that there are calls at 4:31 p m and at 4:07 p m to a number ending in 2718?

A Yes

Q And one of those calls at 4:07 is 16 minutes, right?

A Sixteen, yes

Q And then again at 4:31 for a minute, right?

A One minute Yes, sir

Q Now, I'd like to show you what's been marked for identification as Government's Exhibit 854 Now, this is an e-mail to Ms McDonnell It's an auto reply from somebody at Health Diagnostic Laboratory, right?

A Yes. That's right

MR FALCONER: Your Honor, we'd offer Government's Exhibit 854 into evidence

THE COURT: It will be admitted

BY MR FALCONER:

Q Now, sir, the number we were just looking at for that 16-minute call was a number ending in 2718 You'd agree that that matches the phone number here for Health Diagnostic Laboratory on this e-mail, right?

A It ends in 2718 Yes, sir

Q Well, then what I'd like to do now is show you -- and that was May 6th, 2011, right? The phone calls that we were just looking at on Ms McDonnell's phone records?

A On the records, yes, sir

Q All right And that's the same day as the Outlook event was set, according to the Outlook metadata we looked at just a moment ago?

A Right

Q All right So what I'd like now to do is quickly show you RM-0304

MR FALCONER: I believe it is Page 12

BY MR FALCONER:

Q All right Now, sir, this was the chart that we saw in your direct examination for May 1st and 2nd of 2012, right?

A That's right

Q And these two e-mails here on May 1st, 2011, those were on Special Agent Hulser's chart, right?

A Yes, sir

Q Now, what I'd like to do is show you what's been marked for identification -- keeping in mind May 1st, 2011, in that time frame -- what's been marked for identification as Government's Exhibit 851

MR FALCONER: And zoom in on that

BY MR FALCONER:

Q This is an e-mail from Ms McDonnell to Mr Williams, right -- or sorry -- yes, to Mr Williams?

A That's right

Q And it's dated May 1st, 2011?

A Yes

MR FALCONER: Your Honor, we'd offer Government's Exhibit 851 into evidence

THE COURT: It will be admitted

BY MR FALCONER:

Q All right Now, sir, the -- the subject of this e-mail is Dr Joseph McConnell, Health Diagnostic Laboratory, Inc , correct?

A That's right

Q And that's this HDL that we've been referring to a little bit, right?

A That's right

Q Well, I'd like to show you what's been marked as Government's Exhibit 852 This is an e-mail, at the top, from Mr Williams to Mr Williams, but below it's Ms. McDonnell to Mr Williams on May 1st of 2011, right?

A Yes, sir Right

MR FALCONER: Your Honor, we'd offer Government's Exhibit 852 into evidence

THE COURT: It will be admitted.

BY MR FALCONER:

Q And, sir, the specific time on this one is 4:53 p m , right?

A That's right

Q And, again, this refers to Health Diagnostic Laboratory?

A That's right

Q All right So what I'd like now like to do is show you -- now, you're aware of the testimony from Mr Williams about the conversation involving the first financial $50,000 with Maureen McDonnell that -- he testified that that occurred on May 2nd, right?

A Yes, sir

Q So what I'd like to do now is show you a couple of things that are in betw[illegible] those two days, in terms of in between May 2nd and May 6th, the day we've been talking about, to give us a little bit of context The first one I'd like to show you is Government's Exhibit 116, which has been admitted And if we -- this is an e-mail from Pam Watts to Bill Hazel, right?

A That's right

MR FALCONER: And if we could go to Page 2 If we could zoom in on the text there a little bit Sorry All right And if we could scroll down just a little bit

BY MR FALCONER:

Q The date of that e-mail we were just looking at was May 5th of 2011, right?

A Right

Q And do you see there -- it's a little bit grayed out in the middle, but the sentence that starts, "Elevated Blood Levels," it says, "of C-reactive protein," right?

A Thank you Yes, sir I see it

Q Now, this document here -- and we'll get to the C-reactive protein That links to something we'll get to in a second If I can show you what's been previously admitted as Government's Exhibit 107 Now, you're aware of this -- the testimony of this -- from Special Agent Hulser of this link here matching the article we were just looking at, right?

A Right

Q And this is a forward from Ms McDonnell to

Mr McDonnell on May 1st of 2011?

A That's right

Q All right So now what I'd like to do is show you an e-mail from this same time frame Government's Exhibit 861 And this is an e-mail from Ms -- or from Mr McDonnell to Ms McDonnell while he's on his Asia marketing trip, right? Or it's dated May 7th of 2011?

A Right Yes, sir

MR FALCONER: Your Honor, we'd offer Government's Exhibit 861 into evidence

THE COURT: It will be admitted

BY MR FALCONER:

Q Now, sir, this is the day after -- or two days after -- the date of this e-mail, at least, is two days after Ms. McDonnell had that appointment on her calendar for HDL, right?

A Right

Q And one day after the meeting at HDL was scheduled for Mr Williams?

A Right

Q On Mary-Shea's calendar?

A Calendar Yep

Q And here Mr McDonnell writes, tell me if I read this correctly, "How did blood draw go? Hope we see good results in C-reactive protein," right?

A Right

Q And C-reactive protein, that was in that article we just looked at a second ago?

A Correct.

Q So now what I'd like to do is show you an e-mail from the next day, and this is Government's Exhibit 862 And, sir, this is an e-mail exchange the following day and then going over on -- or the following day, May 8th, between Ms McDonnell and Mr McDonnell, right?

A That's right

MR FALCONER: Your Honor, we'd offer Government's Exhibit 862 into evidence

THE COURT: It will be admitted

BY MR FALCONER:

Q All right Now, sir, this follows the May 7th e-mail that we were just looking at, right?

A Right The day after Yes, sir

Q And Mr McDonnell writes to Ms McDonnell, "Call or e-mail me I love you Having fun here " And then some other details And then, "Have a safe flight," right?

A Right Yes, sir

Q And Ms McDonnell writes back, among other things, "Can't wait to be with you XOXO, exclamation point, exclamation point, exclamation point," right?

A Right

Q And then Mr. McDonnell writes back, "Thanks Love you too Please get rest on the plane," correct?

A Right

Q And then I think we looked at earlier, the day that they returned from this was the date of that May 17th, 2011, call between Ms McDonnell's office and Mr Williams, right?

A Right Yes, sir

MR FALCONER: One moment, Your Honor

(Counsel conferring with co-counsel)

MR FALCONER: Thank you, Your Honor No further questions

THE COURT: All right Any redirect?

MR HAUSS: Very brief, Your Honor Thank you

REDIRECT EXAMINATION

BY MR HAUSS:

Q Hello again, Mr Ross

A Hello

Q So you've just been through about two hours of cross-examination During that time, was a single error in any of your charts pointed out to you?

A No, sir

MR HAUSS: Now, if we could bring up RM-0294

BY MR HAUSS:

Q And you recall Mr Faulconer asked you about this chart; is that correct?

A Yes

Q And he asked -- he pointed out to you that this does not include any landline calls, correct?

A That's correct

Q He also pointed out it doesn't include any in-person communications; is that fair?

A That is correct

MR HAUSS: If we could pull up Government's Exhibit 573

BY MR HAUSS:

Q And, now, looking at Government Exhibit 573, do you see any in-person communications reflected in the government exhibit?

A No, sir

Q Do you see any landline calls reflected in the government exhibit?

A No, sir

MR HAUSS: If we could pull up RM-0297

BY MR HAUSS:

Q And this is the exhibit that is comparing the number of phone calls for a 22-month period between Mr McDonnell and Jonnie Williams versus a one-month period for Ms McDonnell and Jonnie Williams; is that correct?

A That's correct

Q And Mr Faulconer pointed out to you that April 2011 is when the New York shopping trip took place, correct?

A That's right

Q Now, there were 81 phone calls and text messages in April 2011?

A Yes

MR HAUSS: Can we pull up Government Exhibit 570

BY MR HAUSS:

Q Now, this is the government's summary chart as to April 11th, 2011; is that correct?

A That's correct

Q And based on your review of Mr Williams' testimony, was that the day that the New York trip was being set up?

A Yes, sir.

Q And on that date, does that reflect five text messages between Jonnie Williams and Maureen McDonnell?

A It does

Q Does that reflect two phone calls between Jonnie Williams and Maureen McDonnell?

A Yes, sir, it does

Q So that's a total of seven communications?

A Yes

MR HAUSS: If we could look at RM-0301

BY MR HAUSS:

Q And this chart reflects the number of texts and calls between Ms McDonnell and Jonnie Williams on April 13th, 2011; is that correct?

A Yes, sir.

Q And from your review of the transcripts, is April 13th the day of the New York shopping trip itself?

A It was Yes, sir

Q So between April 11th and April 13th, the days planning and then the actual date of the shopping trip, that's a total of nine communications, correct?

A That's correct

Q Out of a total of 81 for the month of April?

A Yes

MR HAUSS: If we could pull up Government Exhibit 586

BY MR HAUSS:

Q Now, do you recall Mr Faulconer showing you this exhibit?

A Yes, sir

Q And this includes a lunch between Mr McDonnell and Ms McDonnell; is that correct?

A It does

Q Mr Faulconer then showed you RM-0326

MR HAUSS: Can we pull that up 326 Thank you

BY MR HAUSS:

Q And then Mr Faulconer pointed out to you, he asked why is the lunch not in that chart Do you remember him asking you that?

A Yes, sir

Q Now, the point of these defense slides is to add further context to the government's slides; is that correct?

A That is correct

Q And the defense slides are meant to be looked at in conjunction with the government's slides; is that --

A That's correct

Q In fact, on direct examination, I showed you the government slide first?

A Yes

MR HAUSS: If we could look at RM-0329

BY MR HAUSS:

Q And this shows the communications between Maureen McDonnell and Donnie Williams; is that correct?

A That's correct

Q Mr Faulconer referred you to the invoice on March 4th, 2013, and he pointed out that that was after the date of the interview with law enforcement on February 15th, 2013; is that correct?

A That's correct

Q Now, looking up at the second text message on December 14th, 2012, and what does that text message say?

A That's a text message from Ms McDonnell to Donnie Williams, and the text reads, "That's terrific Do I need to give you a credit card "

Q And December 14th, 2012, that's before Ms McDonnell's interview with law enforcement; is that correct?

A That's correct

Q And you reviewed Donnie Williams' testimony?

A Yes, sir

Q And do you recall Mr Williams' testimony that Ms McDonnell offered to pay on multiple occasions?

A Yes, sir

MR HAUSS: If we could look at Government Exhibit 843 Oh, I'm sorry We don't -- if we could use the government's side briefly Thank you

BY MR HAUSS:

Q And, Mr Ross, this was the phone records for Maureen McDonnell that Mr Faulconer showed you for the period September 2nd through September 8th; is that correct?

A Yes, sir

Q And when he showed you these, you and Mr Faulconer agreed that there were no phone calls between Mr and Ms McDonnell on September 5th, 2011; is that correct?

A That's right

Q And September 5th, that was the date of the e-mail that we saw that Mr McDonnell sent to his wife, correct?

A Correct

Q Mr Faulconer then went through --

MR HAUSS: And if we could scroll down a little bit

BY MR HAUSS:

Q -- and showed you some calls between Mr and Ms McDonnell, for example, at 6:11 p m on September 6th was one of the examples That was one minute in length, correct?

A Correct

Q Now, do you recall, from your review of the transcripts, that for Verizon records, the time period is actually rounded up?

A Rounded up to the nearest minute Yes, sir

Q So, for example, if a phone call lasted five seconds, that would be reflected as one minute; is that correct?

A That's correct

MR HAUSS: And still on the government side, could we show Government exhibit 845

BY MR HAUSS:

Q And, Mr Ross, this is the Verizon records for Ms McDonnell on August 13th through August 16th, 2011

And Mr Faulconer asked you about these in the context of the Rolex purchase Do you remember that?

A Yes, sir.

MR HAUSS: And if we could scroll down

BY MR HAUSS:

Q I believe Mr Faulconer identified some phone calls between Maureen McDonnell and Jonnie Williams on August 16th, 2011; is that correct?

A Yes, sir

Q And looking at the first one, it looks like it's at 9:51 a m ; is that correct?

A That's correct

Q And the next one he identified was at 10:22 a m ?

A Yes, sir

Q And finally, the last one was at 11:05 a m ; is that correct?

A That's correct

Q And, now, you recall from Mr Williams' testimony that he said that he called Ms McDonnell from the store where he purchased the Rolex?

A That's correct

Q And that's in California?

A That's correct

Q Now, the records we were looking at here, these are in Eastern time; is that correct?

A That's correct

Q So, for example, the call at 9:51 a m would have been 6:51 a m Pacific?

A Pacific

Q And the call at 10:12 a m would have been 7:12 a.m ; is that correct?

A Yes, sir

Q And finally, the 11:05 would have been 8:05 a m ; is that correct?

A That's right

Q Now, Mr Faulconer --

MR HAUSS: We can take that down Thank you

BY MR. HAUSS:

Q Mr Faulconer asked you about some phone records for May 6th and pointed out a call involving HDL Do you recall that?

A Yes, sir

Q Now, the problem with phone records is we don't know what happened on the -- I'm sorry Do you need a moment?

A No Thank you

Q The problem with phone records is we don't know what happened on the call; is that correct?

A That's correct

Q So you don't know what occurred on that phone call on May 6th?

A We don't have any content of the calls No, sir

Q So, for example, if that was a call for Ms McDonnell to get her blood results, you wouldn't know that one way or the other?

A That's correct

MR HAUSS: Finally, if we could pull up RM-0321

BY MR HAUSS:

Q We discussed this earlier This is showing the one phone call and 52 text messages between Maureen McDonnell and Jonnie Williams on December 4th, 2011; is that correct?

A Yes, sir

Q And do you recall that Mr Faulconer asked you some questions about December 8th, 2011?

A Yes, sir

Q Showed you some schedules from December 8th, 2011?

A Correct

Q He didn't really ask you any questions about December 4th, 2011?

A No, sir

Q Do you have any idea what he was talking about on December 8th?

MR FALCONER: Objection, Your Honor There were questions about --

THE COURT: Sustained

MR HAUSS: Fair enough

One moment, Your Honor

Thank you, Your Honor We have nothing further

THE COURT: All right

(Witness stood aside)

THE COURT: Mr Burck

MR BURCK: Your Honor, Maureen McDonnell rests

THE COURT: All right

Mr. Burck has rested on behalf of Ms. McDonnell And I've got a little legal thing I have to deal with here I'm going to send you all out It will be brief And then come back in, and we'll let you know what's left for today

(The jury left the courtroom)

THE COURT: You all can have a seat

All right Ms McDonnell, would you stand up where you are, please

Ms McDonnell, now that your lawyers have rested your case without you having been called, I have to ask you some questions Have you been advised by your lawyers that you have a right, if you so desire, to testify in this case?

MS MCDONNELL: Yes, Your Honor

THE COURT: All right Have you been advised by your lawyers that you have an absolute right to remain silent and not to testify and that no negative inference can be drawn against you for your selection not to testify?

MS MCDONNELL: Yes, Your Honor

THE COURT: All right Now, having received this advice, is it your knowing and voluntary decision not to testify in this case?

MS MCDONNELL: Yes, Your Honor

THE COURT: All right Thank you so much You can have a seat

All right Government, are you ready to proceed?

MS ABER: Yes, Your Honor

THE COURT: All right Let's bring them back in

MR SMALL: Your Honor, before we call in the jury, there's one minor matter on one of the two short witnesses, a hearsay issue, maybe we can resolve before we call the witness If we could approach

THE COURT: Come on up

(At Bench)

MR BURCK: Thank you, Your Honor

MR DRY: What's the issue?

MR SMALL: On Mr Hunter, are you going to ask him what Jonnie Williams said about why -- Matthew Hunter is being called He's the young man who drove the Ferrari up to Smith Mountain Lake

In one of his two interviews, not the other one, but in one of his two interviews, he said Jonnie Williams told him something about he was driving it up because the Governor was going to be there. And I just wanted to make sure that that wasn't going to be asked, because it's clearly hearsay

MR DRY: It's a prior inconsistent statement We should be able to ask that

THE COURT: No That's clearly hearsay

MR DRY: Just scheduling wise The government estimates that we've got three witresses that we're going to call First one is -- direct will be about 15 minutes

MS. ABER: Five I'm in charge of that one

MR DRY: Five for the next one And then the summary witness is literally probably going to be less than a half an hour on direct So we'll be done with our evidence fairly early tomorrow

I think the parties are trying to figure out what the plan is going forward We've talked amongst ourselves, and we would request from the Court that the jury be instructed before closing arguments, if at all possible, and that we try and figure out how we're going to get the closing arguments done on Friday

THE COURT: Well, the answer to your first question about the sequence of instruction and closing I always close

MR DRY: Okay

THE COURT: So the last word they hear is from me And that's the way it's going to be

MR DRY: Then our biggest concern, Judge, is since we're so wide apart on the jury instructions, we'd like the opportunity to know what the Court is going to instruct the jury in advance, more than an hour of us closing That's the problem that we're having

THE COURT: Okay Well, again, if we finish with your evidence tomorrow morning early, and that's a big if -- because every time you all say that, you get up there and cross-examine for -- you know, every document that's been mentioned So I don't know

If you -- if you finish tomorrow morning, then what we could do is this I would -- again, it depends on what time But if we're talking about like 11 or 12:00 we're finished, what I would do is, to help you all a little bit on this, is let the jury go home for the afternoon

MR DRY: Absolutely

THE COURT: Then I give you the package that I propose to give And you all can, you know, argue when the time comes, but you'd have a little bit of time

MR DRY: And then close on Friday

THE COURT: And then close on Friday

MR ASBILL: Are we going to do all the closings on Friday?

THE COURT: Absolutely. Everybody -- two hours a piece It can't take up a whole day So as I've said, you've shocked me I think -- every time I get hope that we're close, you snatch it away Okay

MR DRY: Would it be possible to start at 9:00 on Friday morning, just so that we know that we get all the closings in?

THE COURT: 9:00 is fine

MR BURCK: That's fine Great

THE COURT: Which is normally what I do, but we have a couple people who come from such a distance I don't like to --

MR DRY: I understand that

THE COURT: Let me take a look here

Kathy, on Friday, they just put them on?

MS HANCOCK: Yeah 9 and 9:15

THE COURT: Well, it looks like 9:30 is going to be the best that we can do on Friday

MR DRY: Okay Thank you

MR BURCK: Thank you very much, Your Honor

(In Open Court)

(The jury entered the courtroom.)

THE COURT: All right. The government has indicated that they are going to put on some rebuttal testimony We're going to take one witness, which they have sworn to me is a very brief witness And as long as the witness is not a lawyer, it may be true All right Government

MS ABER: The United States calls James Abel

ALLEN JAMES ABEL, JR ,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good afternoon, sir

A Hello

Q Please state your full name, and spell your last for the court reporter

A Allen James Abel, Jr A-B-E-L

Q And in what city and state do you currently reside?

A In New York City

Q What is your occupation?

A I'm an event planner

Q Do you know a person named Mary-Shea Sutherland?

A I do

Q And when did you meet her?

A I met Mary-Shea in either 2003 or 2004

Q Now, did you attend an event at the Union League Club in New York City back in April of 2011?

A I did Yes

Q And who invited you to that?

A Mary-Shea Sutherland

Q Now, when you got to the event, did you meet a man named Jonnie Williams?

A I did

Q Can you tell the jury a little bit about how you came to meet Mr Williams?

A So Mary-Shea invited me to attend the event, and I entered And she was standing there with the Governor's wife and Mr Williams, and she introduced me to the two of them

Q Okay And did Mary-Shea -- excuse me, Ms Sutherland remain with you all or did she walk away?

A She did not She then actually left with Ms McDonnell to go do work, and I stayed there and talked with Mr Williams for quite a while

Q And in general, what did you all discuss?

A Well, we talked a little bit about what he did We talked about what I did I met some other people as well But then ultimately, he was telling me that he was launching a new drug And I said, "Tell me about it," and he did And so I said, "Well, then you're going to need a launch party So I need to do that for you " And he -- he said, "Do you want to see it?" And I said, "Sure "

So he took out a container that looked sort of like a very modern, cool, hip Tic Tac container And I said, "So here's what we're going to do We're going take these and we're going to blow them up 20 feet tall, and we're going to get a big raw loft space and create almost like an art exhibit, and have people come to this event and be able to walk through them But because it will have your name and what it is all over it, it will just reinforce your branding, but it will be so cool they won't forget it "

Q So be clear, whose idea -- who raised the idea of a launch first?

A Me

Q Okay Was Ms Sutherland around during this conversation?

A She was not

Q Did she ultimately come back to join your conversation?

A She came back to tell us that the program was starting But she was not involved in a conversation with the two of us, no

Q Okay And what happened after Ms Sutherland came back?

A The program started And then when that was over, everybody went -- there was an organized dinner upstairs in the Union League When that -- when everyone sat down for that, she and I went out to dinner

Q Ms Sutherland and you?

A Correct

Q Now, did you follow up on your conversation with Mr Williams by sending him an e-mail?

A I did

Q All right I'd like to bring up what's been admitted already as Government Exhibit 101 And it will pop up on the screen there, sir

A Okay

Q Do you recognize this as the e-mail you sent to Mr Williams, copying Ms Sutherland after the event?

A I do Yes

Q And I'd like to direct your attention to the second line in which you said, I believe, "Mary-Shea and I had a wonderful dinner brainstorming about your launch event "

A Correct

Q Did -- how much of your conversation at dinner was devoted to discussing the launch event?

A Ten percent

Q Okay

A I mean, I've known Mary-Shea Sutherland for a long time So I'm sure we touched on this We talked about our families We talked about other things we have going in our lives This was certainly not the bulk of the conversation

Q During this conversation, was the idea of having the Governor's Mansion be the location for the launch --

A Absolutely not

Q -- discussed?

A Unless it's a big raw lofty warehouse space, which it's not, no. It was not anywhere on the radar

Q Is it fair to say that in your conversation at the Union League with Mr Williams, the notion of having a launch at the Governor's Mansion was also not addressed?

A Not even a -- no

Q Ms Sutherland never raised the possibility of using the Mansion as a location for the launch?

A Absolutely not

Q And after this e-mail and after that night, did Ms Sutherland ever raise the idea of the Anatabloc launch with you again?

A Absolutely not

Q Now, flipping through the exhibit very quickly, there are some pictures in the subsequent pages

MS ABER: And one more 2

BY MS ABER:

Q Are those the kinds of locations that you were referring to as a raw lofty space?

A Well, no These -- I mean, I think these spaces, in my opinion, are a little more -- a little nicer than I would have wanted I would have wanted something really barebones and, you know, a big raw warehouse, or something, that we could transform and create into something people would not ever have seen before and would remember

Q And, finally, sir, did you ever hear back from Mr Williams about the launch after sending him this e-mail?

A Absolutely not

Q Okay

MS ABER: One moment, please, Your Honor

No further questions

THE COURT: Any questions from Mr McDonnell?

CROSS-EXAMINATION

BY MS JOCHUM:

Q Good afternoon, Mr Abel

A Hi

Q I'm Elizabeth Jochum I represent Bob McDonnell

A Yes We've spoken

Q So you mentioned that you briefly met Jonnie Williams in April of 2011, correct?

A Correct

Q Roughly, how long did you speak to him?

A Forty minutes, 30 minutes Not very long

Q Was that the only time you met him?

A It was the only time I met him

Q So after just that relatively brief conversation, it was clear to you that Mr Williams was a very rich man; is that correct?

A I would assume I would assume anyone that was in that industry would have money Yes

Q Is that a way that you had described him prior to meeting -- or sorry, after meeting him?

A Oh, I met a rich man? Is that what you're asking?

Q Is that something that you told the government?

A I don't think so No

Q Could I --

A I told government that, "I met a rich man " I probably said, "I met a man who looked like that he could afford to do a launch party " Yes

Q So how did you know or why did you think that he was rich?

MS ABER: Objection to relevance

THE COURT: Sustained It's not relevant

BY MS JOCHUM:

Q Is it something he bragged about?

A No.

Q Okay Did he brag about having invented several things during the time you talked to him?

A He did say that he had some other product before that that was successful, and now he was doing this new anti-inflammatory pill

Q And you testified that you had discussed a launch party for that product with Mr Williams and briefly Ms. Sutherland?

A Correct

Q And you had tried to call Mr Williams numerous times after the e-mail to discuss that launch?

A Correct Never reaching him

Q Right But at one point, he did call you, correct?

A I think one time I got him on the phone, and he said -- I started talking to him about this launch, and he was like, "Well, I don't really need to talk about that right now, but I'm looking to" -- "I need to find somebody that can help me acquire vintage bricks to repave my three-quarters-of-a-mile-long driveway "

And my response was, "I'm a party planner I don't really think I'm the person for that "

Q So that's not the type of thing you usually did for your clients?

A Correct

MS JOCHUM: No further questions, Your Honor

THE COURT: Mr. Burck?

MR BURCK: Your Honor, just one question

CROSS-EXAMINATION

BY MR BURCK:

Q Just in the -- excuse me, sir My name is Bill Burck I represent Maureen McDonnell

Just in the summer of 2011, did you have any conversations with Mary-Shea Sutherland about her relationship with Jonnie Williams?

A I did not

MR BURCK: That's it, Your Honor Thank you

THE COURT: All right Anything else?

MS ABER: No, Your Honor

THE COURT: Thank you, sir You may stand down

(Witness stood aside)

MS ABER: Your Honor, at the risk of interjecting Our next witness is similarly short, or we can hold him until tomorrow

THE COURT: All right Let's -- let's take the next witness if it's similar

MS ABER: Thank you, Your Honor

Matthew Hunter

MATTHEW HUNTER,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS ABER:

Q Good afternoon, sir

A Good afternoon

Q Please state your full name, and spell your last for the court reporter

A It's Matthew Forrest Hunter H-U-N-T-E-R

Q And in what city and state do you reside?

A Richmond, Virginia

Q Did you previously work for a company called Star Scientific?

A Yes, I did

Q And for how long did you do so?

A For 11 years

Q And when, roughly, did that conclude?

A The end of 2012

Q And in the course of that employment, did you know a man named Jonnie Williams?

A Yes, I did

Q And did there come a point in time in July of 2011 when Mr Williams asked you to drive his Ferrari to his home at Smith Mountain Lake?

A Yes, he did

Q Okay How did you get that Ferrari?

A I met him at a Cracker Barrel restaurant off Broad Street, out towards Innsbrook

Q And were you shown how to drive the vehicle?

A Yep He and his family were eating inside And I went in and said hello, and then we went out in the parking lot And I guess it was -- it's a little trickier than the car I'm used to driving But -- so we went through that a little bit, and then I took off

Q Immediately from the Cracker Barrel, you left for Smith Mountain Lake?

A That's correct

Q Okay And when you arrived at Mr Williams' Mansion, was anyone home?

A No

MS ABER: I'd like to bring up what's been admitted as Government Exhibit 181, please Page 1

BY MS ABER:

Q Do you recognize this photograph?

A Yes

Q And what is that?

A That's the driveway and entrance to Jonnie Williams' Smith Mountain Lake house

Q So when you pull up to this house, what do you do with the Ferrari?

A I kind of pulled around the loop And if you can see -- I guess where the picture cuts off, that makes a larger circle, and I kind of parked over on the side of the driveway that would not be pictured

Q Did you put it in the garage?

A I did not

Q Did you cover it up?

A I did not

Q Without telling us who told you -- well, let me back up Were you -- what was your -- were you trying to meet anyone there?

MR SMALL: Object, Your Honor Hearsay

THE COURT: No He can answer that

BY MS ABER:

Q Were you looking for someone when you came to the house?

A I was

Q And was anyone home?

A No

Q Who was the person you were looking for?

MR SMALL: Objection, Your Honor That's hearsay

THE COURT: No That's not what we talked about

Go ahead and answer

A Okay I was told that I was to --

BY MS. ABER:

Q What was your understanding of who you were there to meet?

A The Governor

Q And did you find him there?

A I did not

Q How long did you stick around looking for the Governor?

A I want to say I probably stuck around for about 30 minutes at the house And then -- he was not there, and so I was then -- then drove down the street to the country club

Q And while you're waiting around for the Governor, are you doing anything in particular?

A I'm texting and taking some phone calls from Jonnie Williams and Jerri Fulkerson, advising me to stick around

Q Hang on Stop Stop there So once the 30 minutes elapsed, where do you go?

A I then drive over to the Water's Edge Country Club, where the driver of the Town Car is going to meet me

Q Okay

MS ABER: I'd like to bring up what has been marked as Government Exhibit 869

BY MS ABER:

Q Sir, do you recognize this as a receipt for your car service back from Smith Mountain Lake?

A Yes, I do

Q Okay

MS ABER: Your Honor, the government moves in 869, please

THE COURT: It will be admitted

MS ABER: And zooming in on the top half there

BY MS ABER:

Q That's your name, sir, as passenger?

A Yes

Q And who is the arranger?

A Jerri Fulkerson

Q And the date on that is what?

A July 29th, 2011

Q Okay So is it fair to say this car service picked you up on that date?

A Yes

Q And from where?

A From Water's Edge Country Club But actually, he was having some trouble getting to the house, so I led him back to the house We parked the car there, and then we left from the lake house

Q And where did it take -- where did the car service take you?

A Back to Cracker Barrel

Q Okay

MS ABER: One moment, please, Your Honor

(Counsel conferring with co-counsel)

BY MS ABER:

Q I think in my poor phrasing, I got a little confused.

MS ABER: Can we bring up Government Exhibit 181 again, please?

BY MS ABER:

Q Mr Hunter, when you finally left the Ferrari, right before you hopped into the car service, where exactly did you park the vehicle?

A That's in the portion of the driveway that is not shown in the picture, where the loop goes back around The house kind of ends right where that picture ends, and -- so the car was parked over on that side, facing out towards the road

Q And what did you do with the keys, sir?

A I left it on the front seat

MS ABER: All right No further questions, Your Honor

Thank you, sir

THE COURT: Any questions?

MR SMALL: Just a couple, Your Honor

CROSS-EXAMINATION

BY MR SMALL:

Q Good afternoon, Mr Hunter

A Good afternoon

Q My name is Dan Small I represent Bob McDonnell We met out in the hallway an hour or so ago?

A Yes

Q The good news is I'm losing my voice I'll be very brief

So you arrived mid-afternoon on Friday?

A I did

Q And -- you have to say yes or no for the court reporter here

A Yes

Q And there was no one there?

A Correct

Q There was no Land Rover in the driveway?

A There was not

Q No other cars in the driveway?

A No other cars in the driveway

Q And no State Police or black Suburban in the driveway either?

A No

Q And nobody around?

A No

Q Okay And you -- you didn't look in either of the garages we saw in the picture?

A I did not

Q Okay The -- but you know that Jonnie Williams has a lot of cars, right?

A I do

Q Okay And, in fact, were you aware that just a little while before -- this was July 29th, right, when you delivered the car?

A Yes

Q Just about two months before that, Jonnie Williams had bought a new Aston Martins with a very fancy cover to it, $1000 cover?

MS ABER: Objection to relevance

THE COURT: Sustained

MR SMALL: They asked a question about covers, Your Honor I'll move on

BY MR SMALL:

Q The -- all right Well, did you know that the Ferrari that you drove, that was about six months old? Were you aware of that?

A I had no idea

Q Okay Were you aware that the day before July 29th, your delivery, July 28th, Jonnie Williams bought another brand-new Ferrari? Were you aware of that, sir?

MS ABER: Objection to relevance

THE COURT: Sustained

BY MR SMALL:

Q Were you aware that the older car you were driving was going to be delivered to Jonnie Williams' daughter Rachel?

A I was not aware of that

MR SMALL: Okay Nothing further Thank you

THE COURT: Mr Burck?

MR BURCK: No questions, Your Honor

THE COURT: Wonderful

All right You don't have anything else, do you?

MS ABER: No, Your Honor. Thank you

THE COURT: Okay.

(Witness stood aside)

THE COURT: All right That's going to take us to the end of this day We will be meeting tomorrow at 9:45 again Please don't discuss the case with anyone or allow anyone to discuss it with you, and continue to avoid any media items relating to this case

And just so you know, what we have left, I believe the government has at least one more witness on rebuttal

Is that right?

MR DRY: That is correct, Your Honor

THE COURT: Okay And, of course, in this case, we have no idea how long one witness will be, but we have one witness And so when that is done, what will happen is that the lawyers and I have to have a charge conference; that is, the instructions that I will be giving you on the law in this case

I put together the instructions Then I give them to the lawyers and they look through it, and then we have a conference where they make objections, request other instructions, as the case may be And so that process normally takes a while, and so we'll see what -- how things go tomorrow in terms of time and this witness. But it is likely that if this witness is not a very lengthy witness, that you will have the afternoon off while we work through these things And then hopefully we can get in here on Friday and start the closing arguments That's -- that's plan A As you can see, sometimes it doesn't work out that way, but hopefully we can get there -- at least to closings on Friday So now you know

And, again, I appreciate that you all are hanging tough with us, and we will get through this We'll see you tomorrow at 9:45

(The jury left the courtroom)

(The trial adjourned at 5:21 p m)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F. McDONNELL and
MAUREEN G. McDONNELL,

Defendants

August 28, 2014
Richmond, Virginia
10:00 a.m.

JURY TRIAL - VOLUME XXIV

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ
DAVID V HARBACH, II, ESQ.
JESSICA D. ABER, ESQ
RYAN S FAULCONER, ESQ
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STEPHEN M. HAUSS, ESQ
DANIEL KOFFMANN, ESQ.
Counsel for Maureen G. McDonnell

JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day twenty-four, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, and Christopher Iaquinto Maureen G. McDonnell is represented by Heather Martin, William Burck, Stephen Hauss, and Daniel Koffmann Are counsel ready to proceed?

MS ABER: The United States is ready

MR. BROWNLEE: Mr McDonnell is ready

MR. BURCK: Maureen McDonnell is ready, Your Honor

THE COURT: All right Let's bring in the jury

(The jury entered the courtroom.)

Good morning Government?

MS ABER: The United States calls Special Agent Kathryn Weber

KATHRYN WEBER,

called as a witness by and on behalf of the government, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY ABER:

Q Good morning

A Good morning

Q Please state and spell your full name for the record

A Kathryn Weber, K-A-T-H-R-Y-N, W-E-B-E-R.

Q What is your title, ma'am?

A Special Agent with the FBI

Q And are you a case agent in the case of United States versus Robert and Maureen McDonnell?

A Yes, I am.

Q Have you been here for the trial?

A Not in the courtroom.

Q Aside from eight pages of Mr McDonnell's direct testimony that you were provided with, have you read any of the transcripts?

A I have not

Q Tell the jury very briefly what was in those eight pages that you reviewed from Day 19?

A It was Mr McDonnell's testimony primarily related to his schedules

Q Now, as part of your work on this case, were you tasked with reviewing the defendants' schedules?

A Yes, I was

Q Is it fair to say that you have reviewed several different types of schedules that you are aware of?

A Yes, it is

Q Let's bring up Government Exhibit 344, please Did you review schedules like these?

A Yes, ma'am.

Q And how did you obtain them?

A Those were provided to us pursuant to a federal grand jury subpoena that was served on VITA, the Virginia Technology Information Agency

Q As part of that response to the subpoena, did you receive the contents of the various schedulers's e-mail accounts?

A Yes, ma'am.

Q And in your review. how often did these schedules come out?

A Consistently pretty daily

Q And who did they pertain to, which defendant?

A Mr McDonnell

Q I'd like to bring up, admitted, RM-0179-0060 Did you also review schedules like these?

A Yes, ma'am.

Q How did you obtain these?

A Those were provided to us by Mr McDonnell four days prior to the start of trial

Q And did you compare what we just saw in Government Exhibit 344, the daily e-mail schedules, to these here in the defense exhibit?

A Yes, ma'am.

Q And how did they compare to one another?

A They were fairly consistent in terms of events shown But the e-mails that we received from VITA had a greater level of detail in terms of who traveled where

Q You can take that down Thanks Now, did Ms McDonnell have a comparable schedule e-mailed out to her staff every day?

A No

Q Did Ms McDonnell, to your knowledge, have a daily Outlook calendar like that that we have?

A Yes

Q Let's bring up Government Exhibit, admitted, 276-A. How about 276 Did you review schedules like this?

A Yes, ma'am.

Q What is this?

A It is a monthly schedule provided to us by Ms McDonnell pursuant to a federal grand jury subpoena containing events that she participated in.

Q How was the level of detail on Ms McDonnell's schedules like this compared to what we just saw in Mr McDonnell's schedules?

A Not as detailed as the schedules for Mr McDonnell

Q Okay You can take that down. Just for the jury's knowledge, is that the only type of schedule you have for

Ms McDonnell?

A Yes

Q Did you also review phone records?

A Yes

Q We won't look at any phone records But from what company did you review?

A Verizon.

Q Did those belong to the defendants?

A Yes, for both Mr and Ms McDonnell

Q Do Verizon toll records list any sort of location information?

A They do They list the origination location

Q Origination of what?

A The calls

Q And did you cross-check, when necessary, the schedule information that we just saw with Verizon location information?

A Yes, I did.

Q And when necessary, did you also review a long-term schedule e-mail?

A Yes, I did.

Q I'd like to bring up, not admitted, Government Exhibit 863, please Is this the e-mail and attachments that you reviewed?

A Yes, it is

MS ABER: We move in Government Exhibit 863

THE COURT: It will be admitted

BY MS ABER:

Q Is it fair to say that this is an e-mail from scheduler Monica Block to Mr McDonnell and Ms McDonnell and various family members about an anticipated long-term schedule through the year of 2011?

A Yes, it is

Q Turning to Page 2 and then 3, please Did you compare the events on these calendars to the other schedules we have observed?

A Yes, I did

Q Okay You can take that down, please Now, to be clear, have you reviewed each and every schedule that we have for the defendants?

A I reviewed over a particular time frame, yes

Q And what was that particular time frame?

A It was from April 11th of 2011 through March 31st, 2013, which is the conspiracy charged in the indictment

Q Okay How many pages of schedules and supporting documentation in the list we have just described have you reviewed?

A In excess of 3,000

Q I'd like to bring up, not admitted, Government Exhibit 870 Are these demonstrative exhibits that you have helped prepare in anticipation of your testimony?

A Yes

Q Okay Just for the Court's benefit, how many pages of charts do you have here?

A Five

Q Okay, good.

MS ABER: Your Honor, I'd like to publish Government Exhibit 870 to the jury just for demonstration purposes

THE COURT: It will be admitted.

BY MS ABER:

Q Can you tell the jury about your data review and what brought you to these charts?

A Essentially, I took all of the documents that we just discussed, reviewed them, compiled the information, and then took that and created these charts that sort of show an overview of the data; and then once the charts were created, conducted a thorough review

Q So you have verified all the numbers within these charts?

A Yes, I have

Q Now, starting on Page 1, you started to tell us the time period that you reviewed. Can you say that once more, please?

A It is April 11th of 2011, the first cellular communications between Ms McDonnell and Mr Williams, through March 31st of 2013

Q Okay Now, were you able to count on the schedules how many nights Mr and Ms McDonnell, according to their schedules, slept outside of the Mansion?

A Yes

Q Let's turn to Page 2, please Is this a pie chart depicting your findings?

A Yes, ma'am.

Q How many total nights in this time period did you count existed?

A 721

Q And how many of those nights did you count, according to the schedules, in which Mr and Ms McDonnell were together in the Mansion?

A 489

Q Now, according to the schedules, how many nights in total was Mr McDonnell outside of the Mansion?

A 220

Q Of those 220, how many nights were you able to count on the schedules that Ms McDonnell was with Mr McDonnell?

A 155

Q Of the 220, according to the schedules, how many nights was Mr McDonnell gone outside of the Mansion without Ms McDonnell?

A 65

Q So of all the nights that Mr McDonnell spent outside of the Mansion, roughly, what percentage was he with Ms McDonnell?

A 70 percent.

Q Now, according to her schedule, how many nights was Ms McDonnell out of the Mansion when Mr McDonnell was left behind in the Mansion?

A Twelve nights

Q So out of a total of 720 nights during the charged conspiracy, how many nights do the schedules show that Mr and Ms McDonnell were together?

A That would be 644

Q And roughly what percentage of the total nights is that?

A Approximately 90 percent

Q Now, to be clear, you can only speak to what's on the schedules, right?

A Yes

Q You cannot testify to whether the schedules actually were effectuated, right?

A No.

Q Or if Mr and Ms McDonnell were home in the Mansion, what if anything happened, right?

A Correct

Q Let's talk next about those 220 nights Let's turn to Page 3, please How many of those 220 nights that Mr McDonnell spent outside of the Mansion were nights for work or political trips?

A 158 nights

Q And how many of those nights were personal trips?

A 62

Q Tell the jury, please, how you delineated between a personal trip and a work or political trip?

A Personal trips were trips that showed up on his schedule as either personal or family vacations or trips that were common sense personal, his anniversary weekend, or trips to the Homestead that he took on an annual basis with high school friends of his

Q So you are not talking about PAC events at the Homestead, are you?

A No

Q Personal are weekends, for example, that Mr McDonnell spent with Mr Damico at the Homestead

A Yes, that qualified as personal

Q Okay Now, to be fair, you don't know whether Mr McDonnell did some work on the personal trips, right?

A Correct That's fair

Q And during work trips, though, do Mr McDonnells' schedules ever have unscheduled or personal time listed on an event that you characterized as a work or political trip?

A Yes.

Q Let's turn to Page 4, please, of the exhibit Let's talk a little bit more about those particular nights out of the Mansion in those trips Can you talk the jury through what this chart depicts, please?

A Yes, ma'am. This chart, of the 220 nights that Mr McDonnell was out of the Mansion, 158 of those were characterized as work or political trips And of those 158, Ms McDonnell was with Mr McDonnell for 93, leaving 65 where Mr McDonnell was not with Ms McDonnell And then of the 62 nights for personal trips, Ms McDonnell was with Mr McDonnell for all 62

Q Turning to the next chart, please, let's talk about those 150 -- excuse me, 158 nights of work or political trips Were you able to identify how many of those nights were international trade trips?

A Yes, ma'am.

Q How did you make that determination?

A There were six trips identified on the schedules as either marketing missions or VEDP trips

Q That's the Virginia Economic Development Partnership?

A Yes, ma'am.

Q Okay Of those 41 nights of international trade trips, how many nights did Ms McDonnell accompany Mr McDonnell according to the schedules?

A 27

Q And how many nights was Mr McDonnell without Ms McDonnell on those trips?

A 14

Q All right Let's take this exhibit down, please A couple last things I'd like to talk about personal events on the schedules From April 11th of 2011 to March 31st of 2013, did you calculate the number of events on the calendar for what you would characterize as family time?

A Yes

Q And how did you characterize if something was family time?

A Family time was either listed for evenings or days as family time, and there were also lunches with family, dinner with family, and then weddings and like their anniversary luncheon Those qualified as family events

Q So what about daughter Cailin McDonnell's wedding, how did you characterize that?

A That was a family event

Q Wedding showers for Jeanine McDonnell Zubowsky?

A Those were family events

Q Are those including vacations, like Smith Mountain Lake, did you include that as family time?

A No.

Q And to be clear, you are talking about -- are you talking about hours or are you talking about events on the calendar?

A Events in, I guess, the broad sense I did not quantify the number of hours So it could be a lunch which was scheduled for an hour or it could be a day, which was, you know, it could be eight hours that was family time

Q Okay So the anniversary weekend counts as one, and lunch with a child counts as one, right?

A Correct Yes

Q During the nearly 22-month span, how many of those family time events on the calendar did you count?

A 100

Q Were there also times in this span that were scheduled just for Mr and Ms McDonnell?

A Yes

Q And tell the jury how you identified those

A Those were events, lunch, dinner, spa appointments, that specifically listed with Ms McDonnell or with FLOVA

Q Now, an event like the Chatham Bars vacation in which Mr and Ms McDonnell were joined by other couples, did you count that as a Mr and Ms McDonnell event?

A I did not I counted that under the personal nights

Q Did that include nights on the schedule when it just says, "Mr McDonnell, dinner, to the Executive Mansion"?

A No, it does not

Q Did it have to include Ms McDonnell by name on the schedule?

A Yes, it did.

Q During this nearly 22-month span, how many of those events scheduled just for Mr and Ms McDonnell were on the calendar?

A 41

Q Now, changing subjects: Are you aware of four instances in which Mr McDonnell played golf at Kinloch on Mr Williams' account?

A Yes, I am.

Q I'd like to bring up, not admitted, Government Exhibit 865 Is this the schedule for Mr McDonnell from May 28th through 31st of 2011?

A Yes, it is

MS ABER: I move to admit Government Exhibit 865

THE COURT: It will be admitted.

BY MS ABER:

Q Scrolling to the bottom half, please, from one to four p.m., what is listed?

A "Golf with Bobby and Sean, Kinloch Golf Club "

Q Does it say anything about Mr Williams or who is paying for this?

A No, it does not

Q Let's bring up, admitted, RM-0178, Page 606. Did you also compare Mr McDonnell's daily calendars like this?

A Yes, I did.

Q I think 606? RM-0178-0606 Is this the same date, May 29th, 2011?

A Yes, it is.

Q If we could zoom in on the event on the calendar, please Is it fair to say that lists the same sort of information that was on the daily schedule?

A Yes, it does

Q Okay I'd like to talk about August 13th of 2011 Let's bring up, not admitted, Government Exhibit 866 Is this Mr McDonnell's schedule for August 13th and 14th of 2011?

A Yes, it is

MS ABER: I move to admit Government Exhibit 866

THE COURT: It will be admitted.

BY MS ABER:

Q Let's please scroll to 12:45 to 1:45 p m. Right there Thank you. Are you aware that that is the time period in which it is alleged that Mr McDonnell played golf at Kinloch?

A Yes.

Q Does this say anything about golf or Kinloch?

A It does not

Q Have you compared this to Mr McDonnell's daily Outlook calendar?

A Yes, I have

Q How do they compare?

A That calendar also does not mention golf It is the "Do Not Schedule: Family Time "

Q Let's look, please, at Government Exhibit 867, not admitted Is this Mr McDonnell's schedule for January 7th of 2012?

A Yes, it is

MS ABER: Move to admit 867, please

THE COURT: It will be admitted

BY MS ABER:

Q Are you aware that this is also another day in which it is alleged that Mr McDonnell played golf at Kinloch?

A Yes, I am.

Q Looking at the top half, is there anything listed for the afternoon?

A No

Q Any mention of golf or Kinloch or Mr Williams?

A No

Q Have you compared this January 7th schedule to the Outlook calendar for Mr McDonnell?

A Yes, I have

Q Same information?

A Yes, ma'am.

Q All right Finally, I'd like to show, not admitted, Government Exhibit 868, please Is this Mr McDonnell's schedule for November 22nd through 25th of 2012?

A Yes, it is

MS ABER: Move to admit Government Exhibit 868

THE COURT: It will be admitted

BY MS. ABER:

Q Let's look at the day after Thanksgiving, November 23rd of 2012 Are you aware that this is another date on which Mr McDonnell is alleged to have played golf at Kinloch?

A Yes

Q All right What is shown from eight a.m. to 11:30 p m.?

A "Do Not Schedule: Family Time "

Q No golf, no Kinloch, no Mr Williams?

A No

Q Have you compared this November 23rd schedule to the one-page Outlook calendar schedule?

A Yes, I have

Q How do they compare?

A Again, "Do Not Schedule: Family Time "

MS ABER: No further questions Thank you, Your Honor

THE COURT: Any questions, Mr Brownlee?

CROSS-EXAMINATION

BY MR BROWNLEE:

Q Agent Weber, good morning

A Good morning

Q My name is John Brownlee and I represent Bob McDonnell and I have some questions for you today. Just a couple things with regard to your testimony I believe you testified that you counted 41 dinners that Mr McDonnell had with his wife over 22 months; is that correct?

A It was not just dinners It was dinners, lunches, spa appointments, and personal or private time with Ms McDonnell

Q Okay So all of those, not just dinners, but dinners, lunches, over 22 months, so that comes out to about twice a month, correct?

A Correct

Q And you also testified, I believe, that the trip that was taken to Chatham up in Massachusetts, I believe you said you classified that as a personal weekend; is that correct?

A Yes, there were two categories There was business and work, and there was personal

Q So you evaluated that weekend and you said it was personal

A It was listed on the schedule as being a personal private weekend with Ms McDonnell

Q Not business

A It did not say business.

Q Okay But for your charts, just so I'm clear, you listed this as personal weekend

A Yes, I did.

Q Okay Great If we could bring up Page 2, if we can, of their charts Agent Weber, you created this pie chart; is that correct?

A I assisted in the creation of all these charts, yes

Q Okay And fair to say that the point of a pie chart is to give the reader some sense of the proportionality between certain events; is that correct?

A Yes

Q Okay And I think you have 721 total nights that you counted? Or days? Is that right?

A Nights Yes

Q So just nights, not days?

A I did not -- this depicts just the nights Yes

Q Okay And you have, having Governor McDonnell having 489 nights with his wife together in the Mansion; is that right?

A Yes

Q Okay And that comes out to about 67, 68 percent; is that correct?

A I don't know the percentage of the 489 divided by 721 off the top of my head

Q I've done the math If you will trust me, it is about that.

A I will defer

Q All right So 68 percent, 67 percent It is about two-thirds; is that correct?

A Yes

Q So the remaining would be about a third; is that right?

A Yes

Q Now, if you just kind of eyeball your chart here, those other nights look about a quarter as opposed to a third; would you agree with me? Just eyeballing it

A Yes

Q Okay So why don't we pull up -- and so when you prepared these charts, is it fair to say you did not prepare them to scale?

A It would appear that way, yes

Q Okay

MR BROWNLEE: If we could pull up RM-0369 All right, if we could just blow that one up just by itself If we could take -- just for the witness at this time Just itself, if we could. Thank you There we go.

BY MR. BROWNLEE:

Q If you could look at this one, this one is actually to scale It is fair to say that this is a better representation of the nights based on the percentages?

A Yes, although having them side by side, the nights that Mr McDonnell was out with Ms McDonnell and the nights that Mr McDonnell and Ms McDonnell are together in the Mansion appeared the same If you take the red and the blue, that matched the red and the blue on the other, even though this blue is smaller

Q But you have acknowledged yours isn't to scale, and the one in front of you is; is that right?

A I didn't create this chart But they are different

MR BROWNLEE: We would move in RM-0369

THE COURT: It will be admitted

BY MR. BROWNLEE:

Q If we could just show them side by side very quickly The one on the right -- oops, that's not correct The one on the left is more accurate just based on how it is scaled; is that correct?

A Yes

Q Okay. Good enough. Let's move on. We can take that down. Thank you If we could go to the government's charts and look at Page 4 And did you create this chart as well?

A I assisted in the creation of all the charts

Q If we look at just the right-hand column, you've got 65 trips, particular trips, defined, 93 particular trips defined, and then 62 particular trips defined; is that correct?

A It is the nights on the trips, yes

Q All right But this isn't to scale, either; is that correct?

A No, this is not to scale It wasn't ever intended to be to scale

Q So when you have 65 work/political trips without Ms McDonnell and you compare that to the size of the block down for the 62 trips of personal, the 65 should actually be bigger, correct, Agent?

A Yes

Q Okay We can take that down Thank you Now, you have testified, Agent Weber, that one of the things you looked at was Ms McDonnell's calendars And I think if we just pull up Government Exhibit 276, this is a representation of her calendar And you relied on these types of calendars to make your charts; is that correct?

A That was one type of document I relied on, yes

Q In part

A Yes

Q Let me pull up RM-0365

A Maybe it is -0178 or -0179 in the middle of that, depending on what date you are going for

Q Do we not have that number? Okay, we will move along Okay, now, if you look at your main chart, we can take that down, thank you, if we look at Page 2 of their charts, you defined these in the blue section there as RFM and MM together in the Mansion; is that correct?

A Yes

Q Let me pull up for you RM-0178-0727 0178-0727 There we go Now, this is a calendar date for Bob McDonnell, and you have looked at some of these types of calendars for Governor McDonnell to build your chart, is that correct?

A I've looked at all of them.

MR. BROWNLEE: We would move in RM 0178-0727

THE COURT: It will be admitted.

BY MR BROWNLEE:

Q If we look down at the bottom of this, you can see, and if we could publish it, and if you can see that, Mr McDonnell is up in Northern Virginia towards the end of the day, and then he leaves Northern Virginia after 8 o'clock and gets back to the Executive Mansion around ten; is that correct?

A Yes

Q Okay And fair to say that you treated this evening as one of these, what you referred to as nights together in the Mansion between the McDonnells; is that right?

A Yes

Q Okay. Now, if we look at RM-0505-0021, okay, this is Ms McDonnell's calendar And if we look at the 27th, so she is in, appears to be in Richmond that day; is that correct?

A Yes

Q Okay So based upon that analysis, you stated that the McDonnells were together that evening in the Mansion; is that right?

A Yes Although Ms McDonnell's calendars are not as detailed as Mr McDonnell's And so generally I deferred to his, and if hers did not explicitly say that she was elsewhere --

Q Okay But for the purposes of your chart, this is the one, you counted this one as one that they were together in the Mansion.

A That would have been one of them, yes

Q Let's pull up RM-1075-0063 Now, I think we've got an extra zero there, Victoria 1075-0063 These are Mansion logs that have been introduced in this case, and this is -- does this appear to be a Mansion log for that same date, September 27th, 2011?

A Yes, it is

Q And if we look down at the last entry for the evening --

MR. BROWNLEE: We move into evidence, I believe it already is, but RM-1075-0063

THE COURT: It will be admitted

BY MR BROWNLEE:

Q Can you see there, Agent, who appears to have stopped by the Governor's Mansion at about 8 o'clock that evening?

A The log is signed "Jonnie "

Q "Jonnie " And who is he there to see?

A "Guest of 102," Ms McDonnell

Q Okay And so while Governor McDonnell is out, up in Northern Virginia, it appears here that Mr Williams or somebody named Jonnie stopped by to see Ms McDonnell; is that correct?

A Yes, for six minutes

Q Okay All right Now, let me ask you that -- that's a good point you raise, Agent Did you, as part of your work on the case, go and talk to any of the people who worked the gate at the Governor's Mansion to confirm that Jonnie here left at 7:55 p.m.?

A No

Q So when you say "six minutes," that's based only upon whatever these logs say

A Correct

Q Let me ask you this as well: When you reviewed Ms McDonnell's calendars, were you aware that they don't track Ms McDonnell's comings and goings from the Governor's Mansion?

A Yes, I was aware

Q So if Ms McDonnell were to have left the Governor's Mansion, that wouldn't be reflected here

A No, it would not be

Q And it is not reflected on her calendar

A No, it was not

Q Okay Thank you You can take that down. Let's look at, bring up RM-0505-0023 Again, this is a calendar for Ms McDonnell Let's look at the 7th of November She seems to have a very full day; is that right?

A There appeared to be five events scheduled, yes

Q Okay And fair to say that she is in Richmond at least as of 1 p.m. It says a "working lunch with group" and it is Martin, Janet, Jim, Kristen, Kathy, seems to be in Richmond that day?

A Yes

Q Let's pull up RM-0178-0768 This is Mr McDonnell's calendar for that day Let's pull that up. And if we go back towards the end of the day, evening, it appears he is departing, looks like he has been in Tazewell County, Virginia; do you know where Tazewell County is?

A No, I don't

Q All right It is far Southwest Virginia And it looks like he departed back towards Executive Mansion and arrived home at about 11:30 p.m. Is that correct?

A Yes

Q Okay And you had -- but you classified this night as a night that Mr and Ms McDonnell were together in the Mansion.

A Yes To be clear, when I say "night," I meant overnight I wasn't, the "night" does not mean from five p.m. through ten p m. they were together in the Mansion. Nights is overnights

Q Okay So according to this, he got home at about 11:30, but you classified that as a night there at home together

A I classified it as a night spent in the Mansion. Overnight spent in the Mansion So yes, he arrived home, according to the schedule, at 11:30 p.m. and spent the night in the Mansion.

Q Let's pull up I want to make sure we are right

A According to the schedule

Q Pull up Page 2 of the pie chart, if we can. This is your chart; is that correct?

A Yes

Q And I believe you have RFM and MM together in the Mansion And what I asked you is, on November 7th, he got home at 11:30 p.m., but you still classified that as these two being in the Mansion together I'm just asking; is that right?

A Yes Nights overnight in the Mansion together

Q Okay Your pie chart doesn't say overnight It just says "together "

A Let me be clear It means overnight together

Q Fair enough. Let's go back to November 7th and let's pull up RM-0366-0038 These are the Mansion logs for November 7th, 2011 Let's look at the last entry for the day Evening Now, we just looked at Mr McDonnell's calendar, and he was in Tazewell

MR BROWNLEE: If we could admit RM-0366-0038, Your Honor?

THE COURT: It will be admitted.

BY MR. BROWNLEE:

Q And if we look at the last entry of the evening, who is stopping by the Mansion?

A The log lists Jonnie Williams

Q Okay And this time it is about twenty minutes?

A Approximately

Q And who was he to see?

A 102, Ms. McDonnell.

Q And again, you don't know if Ms McDonnell left the Mansion because they don't keep track of that

A No, I don't know

Q Okay We can take that down. Let me just pull up very quickly RM-0505-0034 Now, this is Ms McDonnell's calendar for October of 2012 And if you look at October 9th, for example, it is blank; is that correct?

A Yes, it is

Q So fair to say that based upon a review of this record, you, me, none of us know where she was that day

A Correct

Q But you would kind of discount that and only look at his, Mr McDonnell's, calendar to determine if you were going to classify a night together in the Mansion; is that right?

A Yes

Q Okay But the reality is, on the 9th, the 10th, the 24th, the 30th, we just have no idea where Ms McDonnell was; is that correct?

A That is correct Although it is my understanding that they lived in the Executive Mansion during the course of his tenure as Governor

Q Were you aware they had a home in Glen Allen, Virginia?

A Yes

Q Okay Were you aware that sometimes she stayed out there?

A No

Q So again, the 9th, the 10th, the 24th, the 30th, we just have no idea where she was

A Not based on the schedule, no.

Q But despite that, these nights are all reflected here as nights together in the Mansion.

A Yes

Q Okay Let's pull up -- I think Ms Aber touched on this briefly, let's pull up RM-0111

MR. BROWNLEE: This has been admitted, Your Honor

BY MR. BROWNLEE:

Q Now, in September, you have from your chart September 5th, 2011, you have classified that evening as RFM --

MR. BROWNLEE: I'm sorry, Your Honor, can we -- well, we will come back to that Excuse me

BY MR BROWNLEE:

Q You have classified the evening of September 5th, 2011 as a night RFM and MM were together in the Mansion; is that correct?

A Without seeing the schedules for that date, I don't know off the top of my head

Q Okay

MR. BROWNLEE: May I approach the witness, Your Honor?

THE COURT: Go ahead

(Document proffered to witness)

BY MR. BROWNLEE:

Q Is that your schedule, Agent?

A These are my notes, yes

Q Okay If you would look on your notes, September 5th, 2011, how did you classify that evening?

A That would have been classified as a night together in the Mansion.

Q Okay And as Ms Aber discussed, you have no idea what was going on inside the Mansion at that time

A No

Q So the word "together" is kind of a broad term; is that fair to say?

A Yes, they are physically -- what I meant by "together" is, based on the schedules, physically located in the Mansion overnight

Q Okay You can take that down. Now, let me bring up RM-0391. And this has been admitted, Your Honor, if we could publish this Now, this is an e-mail from Mr McDonnell Mr McDonnell to Martin, Tucker, who works with him. And this is an e-mail that's time stamped about ten minutes until 9 p.m. And of course this is Valentine's Day, correct?

A Yes

Q Okay So fair to say, when looking at this chart, you again have this evening as Mr. and Ms. McDonnell together in the Mansion, but in reality, he is apparently working

MS ABER: Objection, Your Honor This e-mail isn't in evidence

MR. BROWNLEE: We will take it down We will move along

BY MR BROWNLEE:

Q Let me bring up RM-0398 All right, if you could see that, this is an e-mail from Martin, Tucker -- from Bob McDonnell to Martin, Tucker and Martin Kent discussing work that's to be done the following day Time stamp is 9:36 You have this classified, I believe, as a date in which the McDonnells are together in the Mansion, but from this e-mail, pretty clear that Governor McDonnell was working at that time

A Based on the e-mail, it would appear so

Q Okay We can take that down Can we pull up RM-0179-0049? This is Governor McDonnell's schedule, and this is in evidence, for this date It is a Saturday If you will go down to the bottom. First of all, do you have February 18th, 2012 classified as a night that the McDonnells are home together?

A I have it classified as a night that Mr McDonnell is in the Mansion. Without seeing Ms McDonnell's schedule, off the top of my head I could not tell you

Q If we look at this, it appears that Mr McDonnell is in Kansas City, Missouri, and he is departing there at 9:30 p.m. and arrives back into Richmond at about midnight Is that correct?

A Yes

Q Okay And according to your chart here, you've got them at home in the Mansion together that night

A Overnight, yes

Q But he is not even getting home until midnight; is that correct?

A Based on the schedule, that is correct

Q Okay, fair enough Let look at RM-0179-0298 If we look down at the bottom, this evening, Mr McDonnell is in Des Moines, Iowa And again, he arrives back into Richmond at about midnight But according to your schedule, he and Ms McDonnell are home together in the Mansion; is that correct?

A Overnight, yes

Q Okay. Let's look at RM-0178-0743. Here, he was in Mississippi and arrives back home at around 11 p.m. You still -- this evening, you have him classified as being home together in the Mansion with his wife, correct?

A Overnight, yes

Q Okay Let's look at RM-0178-0750

MR. BROWNLEE: We should be publishing these These are all in evidence, Your Honor, I'm sorry

THE COURT: It will be admitted

BY MR BROWNLEE:

Q Again, the Governor was in Mississippi and arrives back to the Executive Mansion about 11 p.m.; is that correct?

A Based on the schedule, yes

Q And once again, this is one of the evenings you had for your chart classified that Mr and Ms McDonnell were together in the Mansion?

A Overnight, yes

Q Let's pull up RM-0178-0768 This is November 7th, 2011 If we look at the schedule for Mr McDonnell, he is out in Southwest Virginia and arrives back home at about 11:30 p.m.; is that correct?

A Based on the schedule, yes

Q And again, you had him at home together with his wife in the Mansion, correct?

A Overnight, yes

Q Let's pull up RM-0178-0798, Mr McDonnell's schedule for December 7th, 2011 He is up in McLean, Virginia, and arrives back to the Executive Mansion, according to his schedule, at about ten minutes until midnight Is that correct?

A Based on the schedule, yes

Q And this is another night that you had listed on your chart as RFM and -- Mr and Ms McDonnell together in the Mansion

A Overnight, yes

Q Let's look at RM-0179-0051 Oops, 0051 It should be February 20th If we pull up the bottom of Mr McDonnell's schedule, he was in Grand Rapids, Michigan, arriving back at the Governor's Mansion about 11:25 p.m. on February 20th, 2012; is that correct, according to the schedule?

A Based on the schedule, yes

Q Again, that's an evening you classified on your chart as Mr and Ms McDonnell being together in the Mansion, right?

A Overnight, yes

Q Let's pull up 0579-0115 April 24th, 2012 Mr McDonnell is in Indiana, and arrives back to Richmond a little after 11 p.m.; is that correct? According to the schedule?

A Yes

Q And once again, this is an evening you had classified as Mr and Ms McDonnell together in the Mansion; is that correct?

A Overnight, yes

Q Let's look up RM-0179-0150 May 29th, 2012 Look down at the end of the page Again, Mr McDonnell here was in Wisconsin, arrives back to the Governor's Mansion at around 11:25 p.m.; is that correct?

A Based on the schedule, yes

Q And again, this is another evening you had classified for purposes of your chart that Mr and Ms McDonnell were home together in the Mansion; is that correct?

A Overnight, yes

MR. BROWNLEE: I'll end there Thanks, Judge

THE COURT: All right Mr Burck?

MR BURCK: No questions, Your Honor

THE COURT: Way to go Anything else from the government?

MS ABER: Yes, Your Honor

REDIRECT EXAMINATION

BY MS ABER:

Q Special Agent Weber, I'd like to bring back up 870-2, please, the demonstrative for the jury Special Agent Weber, did you freehand draw this chart?

A No

Q Okay Did you participate in the use of Excel, Microsoft Excel to try to make this chart?

A Yes

Q Did you try to mislead the jury with the proportionality of this chart?

A No

Q To the best of your knowledge, based on your review of the schedules, are the numbers accurate?

A The numbers are accurate

Q Mr Brownlee went through, I don't know, 15, 20 nights in which Mr McDonnell, according to his schedule, retired to the Mansion late at night, right?

A Yes

Q If you subtract 20 from 489, generously, where does that take you?

A 469

Q Out of the total how many nights in that time period?

A 721

Q And previously, 480 nights in 700 -- excuse me, shouldn't do math on the fly -- I'll leave it at that

Okay Changing topics entirely: Let's bring up Government Exhibit 411, please, which has been admitted Do you recognize this schedule, ma'am, if we could scroll down?

A Yes, I do

Q What is it for?

A For the Chatham Bars Inn weekend.

Q If we could stop there Why did you characterize or categorize this weekend as personal as opposed to work or political trip?

A Because it says, "Private weekend with Ms McDonnell "

Q Finally, I'd like to bring up Government Exhibit 862, please, which has been admitted. If we zoom in on the top half, please. Special Agent, this is an e-mail chain between the defendants on May 8th, 2011 Do you know where Mr and Ms McDonnell were located on this date?

A Yes, I do

Q Where were they?

A Well, generally, Mr McDonnell was on the international marketing mission to Japan and China and Ms McDonnell was still in the United States, in Richmond.

Q So did you count them as together in the Mansion or did you count them as separate and apart?

A Separate and apart

Q If you had evidence that one defendant was staying elsewhere, like at the Leabrook house or down the street, would you have included that in your calculations?

A I would have If I had definitive evidence that they were not together, I did not count it

MS ABER: One moment, Your Honor Nothing further Thank you

THE COURT: All right Thank you, ma'am. You may stand down.

(Witness stood aside)

Anything else from the government?

MR. DRY: Your Honor, the United States rests

THE COURT: Okay. As I told you yesterday, what's going to happen today, I'm going to release you all now and have you come in tomorrow I'd like for you to come in at 9:30 We've got -- the arguments will start tomorrow, and that involves each of the parties have an argument, and the government has a rebuttal So there are four arguments coming from the parties Obviously, this case has been of some length, and there's a lot of material to cover, so these arguments will be a little bit longer than the norm. So I want to make sure that we get all of these arguments in tomorrow

So just a little bit earlier start might help us there, if you don't mind. I know some of you are coming from far, but it is just 15 minutes If you could get here at 9:30, and we are going to try to be ready I have a couple other things on my calendar I don't know where these things are coming from, but they just pop up But I'll try to get rid of those So at 9:30, if nobody has a real problem with that 9:30 Great We will see you tomorrow at 9:30 a.m. Have a good evening

Let me give you this warning once again And I want you to be specially vigilant now as we are getting toward the end. Please, do not review any media items relating to this case, and do not engage in social media, any of that kind of stuff, involving this case Please be very, very careful at this point We want to get this thing completed and in good order

Don't discuss the case with anyone or allow anyone to discuss it with you We are going to try to take care of this legal work today so that we will be ready for you tomorrow We will see you at 9:30

(The jury left the courtroom.)

All right, defendants, you want to renew your motions on the record just to get that out of the way, and then I'll explain to you what our schedule will be for the rest of today

MR. BURNHAM: Yes, Your Honor, we would like to renew our motion for judgment of acquittal

THE COURT: All right

MR. NEWMAN: We have something that's ready to file, Your Honor, if you prefer to see anything in briefing

THE COURT: That would be what, Motion Number 39?

THE ATTORNEY: You are on track, Your Honor Yes, sir, it would be

THE COURT: There is no point in putting in that kind of time on it If you have something additional that you want to say, but it is basically just another standard here So if you want to make your motion and rely on what you have already said or if you had something new, I'd be glad to hear it

MR. NEWMAN: Yes, we are going rely on our official acts argument, which we have briefed at length repeatedly, so I know you are very familiar with that We are going to renew also our arguments that judgment of acquittal should be granted on the false statement charges, Counts Twelve and Thirteen We had argument on that a couple weeks ago, so you are familiar with those as well

We also, and this is an argument we raised in our initial motion to dismiss, we didn't raise it in our first motion for judgment of acquittal, but again we want to raise the argument that both the Hobbs Act and the honest services fraud statute are unconstitutionally vague on their face, and as applied in this case, given the government's position on what constitutes an official act, so we want to renew those arguments

And we will make one additional argument, Your Honor, and that is that the Hobbs Act charges, Counts Five through Eleven, should also be thrown out because the government has failed to satisfy its burden on the jurisdictional element The government has to put forward evidence showing a realistic probability that this alleged illicit scheme has affected interstate commerce, and there has been virtually no evidence on that in the record. The four counts, four of the counts pertain to loans and gifts from Mr Williams' trust, not from Star Scientific, but from the trust to Cailin, the $15,000 wedding gift, a $50,000 loan to Maureen, and $70,000 worth of loans to MoBo But there has been no evidence that establishes that this trust engages in any sort of interstate commercial activity, and it is more akin to a personal bank account

And the Fourth Circuit has held that extorting money to be devoted to personal use from an individual does not affect interstate commerce So at least those counts should be thrown out

On Counts Nine and Ten, this has to do with the Kinloch greens fees, but I'm not aware of any evidence that the greens fees affect interstate commerce in any way. The only thing that the government appears to have put forward on interstate commerce is the testimony of Mr Perito, who talked about Star Scientific and how it has offices, you know, in other states and manufacturing facilities in other states and it sells Anatabloc nationwide You know, he commented on how the Governor's, you know, endorsement might somehow affect their sales But when he did so, he said it would affect their sales in Virginia There was no real testimony, no evidence, really, that suggests that this scheme would affect interstate commerce So we would also ask for judgment of acquittal on Counts Five through Eleven as well

THE COURT: All right Thank you Mr Burck?

MR BURCK: We renew our motion

THE COURT: Thank you. Government?

MR. FAULCONER: Yes, Your Honor Just briefly on the interstate, I'll rely on our other arguments for everything but the interstate commerce point The only thing I'll raise on that one is that Mr Newman is incorrect about what the law is on that

If you look at our proposed Jury Instruction Number 55, our proposed jury instruction is that the effect on interstate need only be slight and it need not be adverse, proof that the extortion under color of official right would have affected interstate commerce, even if minimally, and even if positively, is sufficient And in one case in particular that I think is particularly on point for that is UNITED STATES v TAYLOR, 966 F 2d 830, opinion cite, 836 And essentially there, Your Honor, the point of all that is that what the law says clearly is that under the Hobbs Act, if the goal of the official acts that are to be performed as part of the agreement would affect interstate commerce, then that's enough

And what's pretty clear here is that Mr Williams was flying all over the country trying to promote this product and that, had he gotten those studies, he would have continued to do it So I think it is pretty clear on the record that there is enough evidence from which a reasonable jury could infer that the goal of this scheme would have affected interstate commerce And it doesn't have to be negative or anything like that If it was a positive effect on interstate commerce, that's enough for that element Thank you, Your Honor

THE COURT: All right. The motions will be denied.

This is what I am going to do I'm not quite finished -- I was in here early this morning -- but I made some changes But I want you all to wait around I'm going to get these things through within minutes, thirty minutes at the most, and then provide the proposed instructions to you. Why don't we do this: Let's come back together at 3 o'clock this afternoon That should be plenty of time for you all to go over it I'm sure it may not be enough time for you to rattle off more documents, but it is enough time for you to digest these instructions, make your objections

And the way I do this, just to make sure everybody understands it, I go through and try as best I can to put together the instructions I feel that will be appropriate Sometimes, and I'll tell you this when we get to them, it might be optional For instance, you know, the instruction on failure of defendant to testify Counsel will get that option. And there may be a couple of things that I might have some question about, and I just want to hear argument, and then I'll decide But for the most part, it is basically you are objecting to what I have proposed, and if your objection is a good one, then I may take it out, I may not But that's the process So it cuts down. And then the real meat of it is, if you have something that you want me to include, then you propose that and we discuss it

So 3 o'clock. That should give you plenty of time and that should give us plenty of time for this conference, the way I do it

MR. DRY: Would it be possible when we get the instructions for the Court to inform us about which specific instructions it wants to hear argument from the parties on?

THE COURT: No, no I'm not going to do that Just understand that the vast majority of these that I propose have already -- I've already vetted it, I've thought about it, I've read the cases If it is in there, more than likely I am married to it But again, I can be talked out of it That's why we have these discussions All right?

MR. ASBILL: Judge, will the jury get a copy of the written instructions?

THE COURT: They will get copies I usually give them four or five copies of these instructions so that they can have them to review if they like

MR. ASBILL: Thank you, sir

THE COURT: All right.

(Recess taken from 11:05 a.m. to 3:05 p.m.)

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THE COURT: All right. I have a new 51

Okay All right. Before we get started, would counsel, just on the record, waive the appearance of their clients.

MR BURCK: Yes, Your Honor We waive Maureen McDonnell's appearance, Your Honor

THE COURT: All right

MR BROWNLEE: John Brownlee for Bob McDonnell We waive his appearance as well

THE COURT: All right

All right Let's get started with these instructions We'll do it this way Let's -- let me hear from the government

MR FAULCONER: Thank you, Your Honor

Your Honor, just for -- to make sure I go through this in the right order, do you just want me to go through any -- all of the things that we flagged?

THE COURT: Right Any -- any objections that you have, you make those known Any suggestions that you have, we'll follow

MR FAULCONER: Certainly And, Your Honor, I think -- just to give you a sense of what I'll go through, I think we have roughly in the range of six to seven substantive areas, three to four wording tweak issues, and then two of our instructions that weren't included that we wanted to talk about

THE COURT: All right

MR. FAULCONER: The -- going through the Court's instructions first The first one that we wanted to just address was Instruction Number 8 And this is the instruction for character for untruthfulness, going to the credibility of a witness From our perspective, there was no such evidence offered at trial in terms of bad character evidence for any particular witness

There was certainly good character evidence for Mr McDonnell offered, but we don't think there was any appropriately foundation laid sort of evidence of that type So we'd ask that that one be removed Number 8

Going next to what is a very much minor wording tweak Instruction Number 17 This is the one involving expert witnesses There's a portion in brackets down towards the fourth line at the bottom where it says, "Including that of other nonexpert [or expert] witnesses " We'd just ask that the part in brackets be removed because there was only one expert witness in the case, and so that part is unnecessary, in our view

THE COURT: Right

MR FAULCONER: The next one, Your Honor, is Instruction Number 20 And this is the one about consideration of co-defendant's conduct in the absence of a conspiracy And I think this is mostly a wording tweak But just to clarify, we would suggest that there be some references to the counts entered into this instruction just to make it clear for the jury

Specifically, what we'd ask is that at the end of the sentence on the fourth line, that it be added to say -- sorry So that the sentence would read, "If you find Robert McDonnell not guilty of conspiracy to commit honest services fraud as charged in Count One " So add in, "As charged in Count One." And then comma, then go on to "consider" -- "then you cannot consider any of Maureen McDonnell's conduct in determining whether Robert McDonnell committed honest services fraud " And then insert, we'd ask, "In Counts Two through Four "

And then similarly, in the next sentence, we'd ask that the count references be added so that it reads, "Likewise, if you find Robert McDonnell not guilty of conspiracy to commit extortion under color of official right, as charged in Count Five, then you cannot consider," and go on as it's written To then add at the end, "In Counts Six through Eleven " So in our view, that's mostly just a clarification, but we thought that might aid the jury a bit there

The next one from us, Your Honor, is another wording tweak And we think this might have originated from something that we did not clarify in our request instructions, and that is in the fourth element in Instruction Number 29 for honest services wire fraud, the second line, it says, "The defendants transmitted " We would ask that that be changed to read, "The defendant you are considering transmitted or caused to be transmitted," given the two defendants in the separate counts

THE COURT: Okay Where are we now? Twenty-nine and --

MR FAULCONER: Yes This is Instruction Number 29, the fourth element where it refers to defendants in the plural, we'd ask that be changed to read, "The defendant you are considering " So, essentially, it will match the format of the first and the second element

THE COURT: Okay

MR FAULCONER: The next one, Your Honor, is Instruction Number 32 And this one is slightly more substantive, but I -- I think, in essence, what our concern here is is making sure that it's not confusing to the jury And the only sentence that we have any concern with is the second sentence in the first paragraph And that's the one that references the defendant in the proper sense, in terms of "that the defendant demanded" or "that the defendant was, at the time, a public official "

If we look at Instruction Number 31, which is the one right before it, which we agree is an accurate statement of the law, Instruction Number 31 clarifies, which is accurate, in the last paragraph that "a defendant need not be a fiduciary or public official to be guilty of this offense," and it goes on to say that a private citizen can if they participate in it

And so what we'd suggest, on Instruction Number 32 -- because, obviously, Jonnie Williams or Ms McDonnell could scheme with somebody or even on their own to commit bribery, we'd ask that Instruction Number 32 be changed to read, "Bribery means that a public official demanded, sought or received something of value as described in the indictment " And then change it to read, "That is, in return for being influenced in the performance of any official act "

MR FRANCISCO: Can you go over the change I'm sorry, Ryan

MR FAULCONER: Sure I guess the sentence that we'd ask replace the second sentence there would simply read, "Bribery means that a public official demanded, sought or received something of value as described in the indictment; that is, in return for being influenced in the performance of any official act "

I will note, obviously, that I did omit the word "corruptly" from what I just said We don't have a problem with corruptly being included there, but we do have an issue with the corruptly instruction that I'll get to in just a moment

So was I clear enough on that one?

THE COURT: No You were clear But I'd appreciate if you'd write that down

MR FAULCONER: Okay Certainly, Your Honor

MS ABER: Here Use my version

MR FAULCONER: Thank you

And, Your Honor, if I could hand this up, I think I probably should have just done this in the first place

And all it is, Noel, just so you have it, is simply, "Public official; that is "

MR FRANCISCO: May I just make a note before this is handed up, Your Honor?

THE COURT: Sure Sure

MR FAULCONER: Thank you, Your Honor

Your Honor, moving to the next instruction This is the corruptly instruction, Number 33 Our concern with this one is entirely the last sort of portion of the instruction where it says, "Accomplishing an unlawful end or unlawful result by any unlawful method or means " Our concern there is that that starts to sound like an awful lot like a willfully instruction in terms of requiring some sort of knowledge of the law

What we'd ask that Your Honor instruct instead is to use the instruction that was used in JEFFERSON with respect to corrupt intent, and that is, "To act corruptly, as used in these instructions, means to act knowingly and honestly for a wrongful purpose "

And I think on that one, what sort of drives that home, Your Honor, is that -- for example, in the obstruction count, we also have a corruptly element And, essentially, there what that ends up requiring is, as it's in the elements that we have later on in the instructions, is that you act to impede the official proceeding, that you do something wrongful And we think that that's a little bit more confined to requiring that it actually be for a wrongful purpose and not that there be some sort of knowledge of law specifically as it applies to the particular statute

Does Your Honor want a copy of that JEFFERSON instruction?

THE COURT: Yes

MR FAULCONER: I don't know if you guys want to write this down

And I have the transcript cite from JEFFERSON that I can give to opposing counsel when we need it.

MR TAYLOR: Ryan, can you give it to us now?

MR FAULCONER: Sure It's Docket No 684 in

JEFFERSON, Page 35 of 143, and lines 18 through 20

THE COURT: All right

MR FAULCONER: Your Honor, our next concern that we wanted to address is with Instruction Number 42 And with respect to Number 42, our concern here is similar to one that we raised earlier, and that is that this instruction would be in tension with the Instruction Number 31 And that is that -- again, Instruction 31, and the law is clear that you need not be a public official in order to be convicted of either conspiracy or of the substantive offense

We wouldn't -- it is correct that as First Lady of Virginia, Defendant Maureen G McDonnell was not a public official and did not have a duty of honest services to the citizens of Virginia But then it goes on to say, "As such, she cannot be guilty of the crime of honest services wire fraud in her own right "

In our view, that would be slightly inaccurate, and we would suggest that it -- if that sentence were to be given, it would read, "As such, she cannot be guilty of the crime of depriving the public of her honest services " Because she can be guilty of the crime of depriving the public of another's honest services; that is, Mr McDonnell's

I've been advised to slow down, Your Honor, and I will attempt to do that

In addition, Your Honor, when we go down to the second paragraph of that instruction, it indicates that she can only be found guilty of a substantive offense if you find that she conspired with Mr. McDonnell We would object to that paragraph being included And our reasoning is fairly straightforward, which is that she could scheme to deprive the public of honest services; that is, the three substantive counts, without having to scheme with anybody else It's a basic wire fraud count And somebody could, on their own, scheme to deprive the public of somebody else's honest services

In addition, the jury need not find that she conspired with Mr McDonnell, merely that she conspired with somebody, and that could be a finding of a conspiracy with Mr Williams even if it didn't include Mr. McDonnell in there And so, in essence, our issue with that one is that there's no requirement of a finding of guilt on a conspiracy to have a finding of guilt on a substantive wire fraud count, and so we'd ask that that paragraph not be included

And in -- at the end of the day, I think our recommendation would be that this instruction be simply omitted in its entirety, but we -- as I stated earlier, we have no problem with the first paragraph of the instruction if it's amended to clarify that, "As such, she cannot be guilty of the crime of depriving the public of her honest services "

And just to clarify slightly further, we don't have any problem with the third paragraph of this instruction in terms of -- it seems a bit out of place to us in terms of being in responsibility for the substantive offense But we do agree that that third paragraph is an accurate statement of the law

Our concern that we had with the second paragraph, though, translates over into the fourth paragraph in terms of requiring a conspiracy finding in order to have a substantive offense finding

And then that same concern would go on to the second page of that -- of that instruction So we would ask that that second page be removed as well

In addition, Your Honor, one last point on that one, which is that there is an aiding and abetting instruction included later on, and that's another theory of liability where she could be convicted of aiding and abetting the substantive offense without having to necessarily have conspired to commit the substantive offense

THE COURT: All right

MR FAULCONER: The next one, Your Honor, goes all the way to Instruction Number 61 And our concern here is not with the existence of a good faith instruction We would simply ask that one sentence from the O'Malley pattern instruction be added to this instruction And that sentence reads, "A defendant does not act in, quote, good faith, end quote, if, even though he or she honestly holds a certain opinion or belief, that defendant also knowingly makes false or fraudulent pretenses, representations or promises to others." And that's the sentence that is the third paragraph of the pattern O'Malley Instruction 47:16 for good faith

THE COURT: All right

MR FAULCONER: The next one, Your Honor, is Instruction Number 64 And this is the -- the willfully instruction And our point here is, I think, fairly simple, which is that -- it says, "The term willfully is used in these instructions " There is no other willfully in the instructions anywhere It's not in any of the statutes It's not a required element So we'd simply ask that be removed Not for any inaccuracy in it, but simply because it's not applicable to this case

And then, Your Honor, with respect to Instruction Number 68, this is the last of the Court's instructions that we wanted to address And with respect to Instruction Number 68, we're not aware, based on the record as it stands, of any evidence that was admitted solely against one defendant Obviously, it's something that could have happened, but there were no requests for limiting instructions or evidence admitted solely against one defendant that we're aware of

So while we don't object to the legal principle in the second paragraph there, similar to a few of the others, we don't think it's necessary, given the record that we have

THE COURT: All right

MR FAULCONER: And then, Your Honor, we had two additions to the jury instructions that were in our requested instructions that we'd ask that the Court go ahead and include And we spent some time trying to make sure we went through to be judicious about which ones we're requesting here

The first is government's proposed Instruction Number 40 And this is the instruction on bribery being sufficient if you show a course of conduct This is, essentially, Your Honor, the "these for these" course of conduct as-needed basis instruction I have a copy here of the similar instruction that was given in JEFFERSON, and this is for opposing counsel's reference, same Docket No 684 And this is Pages 59 and 60 are where those are located

Your Honor, the proposed instruction that -- that we put in our jury instructions here is taken straight out of JEFFERSON and JENNINGS And the instruction that was given in JEFFERSON was based on JENNINGS, and I think in our motion to dismiss, we -- I think we did some sort of citation to about 15 or 20 cases in which this instruction has been given in situations where you do have -- and I think it's important in a case like this, where you do have a whole stream of things of value and then a whole stream of alleged official acts; that it's important that the jury understand you don't need to match up, okay, it's this check for this official act, or this Ferrari ride for this meeting, or this loan for this particular event at the Mansion But you can look at the whole course of conduct and say it's a stream of these for a stream of those

And I think two points worth making on this, Your Honor, that are really why I think, in many ways, what including this instruction does is make things clearer for the jury is that in Instruction Number 21 -- and this is -- that is the nature of the offense charged, and that is taken straight out of the indictment The last three lines in Instruction Number 21 have, essentially, that same language included [illegible] describing the purpose of the conspiracy; that it was "to perform official actions on an as-needed basis as opportunities arose to legitimize, promote, and obtain research studies for Star Scientific's products "

So that really is the theory that's alleged here, and we think that this instruction -- it's not long It's, again, straight out of the case law We didn't, you know, add anything or try to tweak anything And specifically, Your Honor, even if you were looking to potentially try and cut this down at all, the most important part is the second half of this, starting with "in other words," that it can be "these for these," not just "this for that " It doesn't need to be a set number

But we think this instruction really, of all the requests that we're making here today, is the most important from our perspective because it is something that we'll be arguing to the jury, and we don't want it to necessarily be in -- on any sort of light ground with the Court on that

Oh, and yes, Your Honor If I can hand up the JEFFERSON one We've highlighted the portion on the first page and the second page that has that on there

MR FRANCISCO: Can I just take a look?

MR FAULCONER: Sure

And, Your Honor, one thing worth confirming on that one is that that opportunities arose instruction wasn't just given by the District Court in JEFFERSON It was specifically reviewed by the Fourth Circuit in JEFFERSON and used as part of the reason for why the -- all of the other instructions were okay in terms of intent And so we think that it helps provide some additional support to the record in terms of making sure that there's no confusion about what was required

And, Your Honor, the cite on the Fourth Circuit opinion for the review of that instruction is 674 F 3d 332 at Page 359 And there's a block quote with that, with that instruction right there And it's also applicable to the -- to the extortion under color of official right statute But if it's included here, then it's sufficient

And one moment on that, Your Honor, just to make sure I addressed everything

THE COURT: Sure

(Counsel conferring with co-counsel)

MR FAULCONER: Okay And then, Your Honor, the last issue that we wanted to raise affirmatively is that we'd also ask the Court to include our proposed Instruction Number 24, and that is the deliberate ignorance instruction

We -- we did a little bit of research on the good faith instruction, and it's our view that the good faith instruction isn't required We're fine with it in this case But we think that as a matter of fairness, given the record that if there's a good faith instruction included, that there should also be the deliberate ignorance instruction included, especially given Mr McDonnell's repeated statements during his direct and cross-examination that, you know, "Well, I didn't just" -- "I didn't ask about that I didn't probe about that I didn't look into that Well, I just didn't open that " We think that that's something that the jury needs to know; that deliberate ignorance is something that they can consider in terms of inferring the appropriate knowledge requirement

And so, Your Honor, those are the only two that, from our instructions that were not adopted by the Court, that we'd ask for, and then those -- the other ones that we addressed in the Court's instructions which, on the whole, we -- we do not have any significant legal issues with Mostly just clarifications

And if I may have one moment

THE COURT: Sure.

(Counsel conferring with co-counsel)

MR FAULCONER: If Your Honor has any questions, I'm happy to address them Otherwise, that's all we have, at this point at least

THE COURT: I'm good Thank you

MR FAULCONER: Thank you, Your Honor

MR FRANCISCO: Good afternoon, Your Honor
Noel Francisco --

THE COURT: Good afternoon.

MR FRANCISCO: -- for Mr McDonnell

Boy, I haven't read that quickly in a long time, and I apologize in advance, but I may have a little bit more to talk about than the government had to talk about

I'll do the same thing and sort of take the Court's instructions seriatim and note where we have objections and suggestions And then at the end of that, I'll address the two new instructions that the government has asked you to include But let me bottom line it We think the Court got it right by not including those in the first place The government, in our view, got a lot of what it was asking for here and, in our view, doesn't really need those additional instructions, but I'll address them more specifically later

Then finally, I'll talk about a handful of instructions that we would ask the Court to add

So to begin with the Court's instructions, we'll have about 24 to go through Some will be more substantive than others Some I'll make a longer objection that will be applicable to a whole series of instructions, if that is okay with Your Honor

THE COURT: That's fine

MR FRANCISCO: The first objection goes to Instruction Number 4 and the definition of reasonable doubt We believe that this instruction is incomplete and, therefore, legally erroneous, particularly focusing on the first two sentences of the second paragraph "While the burden of proof is a strict or heavy burden, it is not necessary that the defendants be proved guilty beyond a reasonable doubt It is only required that the proof by the United States exclude any reasonable doubt concerning defendant's guilt "

We think that if you're going to say what the government doesn't have to prove, you ought to also say what the government does have to prove And, therefore, we would ask that you add back into the model instruction the definition of what reasonable doubt actually is

And that is set forth in our defense Instruction Number 9 I can read that to the Court, or I can just refer it to the Court

THE COURT: No, you don't have to read it And, really, I think we can save some time You know, I appreciate you going through each one of these things, but if -- as in this case, if I have decided to provide this particular format, that means that I looked at what you --

MR FRANCISCO: Sure

THE COURT: -- provided, and I've rejected it

So you don't really have to make an objection. I know what you want And on this kind of thing, it's --

MR FRANCISCO: I under- --

THE COURT: -- just to save this time Because, obviously, we have a completely different opinion about that And this particular instruction has been tried, tested many times in the Fourth Circuit And so --

MR FRANCISCO: Understood, Your Honor With the Court's indulgence, at least on many of these, I probably will make my objection for the record

THE COURT: Just -- if you just want to do it for the record

MR FRANCISCO: Yeah Sure

THE COURT: But don't spend a whole lot of time on it because we know --

MR FRANCISCO: Got it

The one other thing I'd ask, then, is that if you're not going to include the definition, we would prefer to have those two sentences that I just read deleted from the instruction

THE COURT: All right

MR FRANCISCO: So moving along to Instruction Number 7, credibility of witnesses Here we believe this is incomplete, and object on that ground And in particular, there was language in our proposal that was also in the government's, at least similar language in the government's that we would like added back in And if you were to turn to our proposed Instruction Number 28, the third paragraph, it talks about "inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause you to disbelieve or discredit such testimony," and then there are several more sentences to that paragraph, which I won't read to the Court

As you know, here there was some evidence of where different witnesses had different recollections of the same meeting And so we think that paragraph should be added back in

Oh, the government asked that Instruction Number 8 be removed, credibility of witness, character for untruthfulness, on the ground that there has been no evidence put forward that any particular witness has bad character for truthfulness

We would strongly reject that assertion We think there's been substantial evidence on that score with respect to Mr Williams, the government's chief witness And, therefore, we think that this instruction is critical and would ask that be it maintained

THE COURT: All right Just a second

On your Number 28, you're referencing the third paragraph?

MR FRANCISCO: Yes, Your Honor, beginning with the words "inconsistencies or discrepancies," the third paragraph

THE COURT: Okay.

MR FRANCISCO: Instruction Number 12, immunized witness testimony We would object to this on, one ground, that we think that it's incomplete We would ask that a particular sentence be added in that's in the Sand model instructions but that was not in the government's proposed instruction And I'll read that sentence to the Court I think it could just be added to the very end of the first paragraph "For such a witness confronted with the realization that he can win his freedom by helping to convict anc her has a motive to falsify his testimony Such testimony should be received by you with suspicion, and you may give it such weight, if any, as you believe it deserves " So we would ask that that language be added back into this instruction, as set forth in the model instructions

May I consult with counsel for a moment?

THE COURT: Sure

(Counsel conferring with co-counsel)

MR FRANCISCO: Your Honor, on Instruction Number 17, the government, I believe, recommended deleting the bracketed phrase "or expert " We're fine with that

May I have one more moment? I apologize

THE COURT: Sure Take your time

MR FRANCISCO: This was a rapid fire exercise for us

(Counsel conferring with co-counsel)

MR FRANCISCO: Instruction Number 19, Your Honor We object to this instruction on the ground that it is irrelevant and, therefore, legally erroneous here We do not believe -- this is the instruction with regards to false exculpatory statements

THE COURT: Right

MR FRANCISCO: We don't believe there's any evidence that Mr McDonnell made any false exculpatory statements here and, therefore, object to this on that ground and request that it be excluded

THE COURT: Let me stop you there for a second, because this is one that I wanted some debate on

Let me hear from the government on 19

MR FAULCONER: One moment, Your Honor

Your Honor, we do think that this instruction is appropriate in this case for a couple of different reasons First off, with respect to Ms McDonnell, she did make some statements during the interview with law enforcement about having a written contract and making payments and those sorts of things

For Mr McDonnell, the PenFed application that was sent in listing out the loans on February 18th, after the interview with his wife by law enforcement, that was attempting to say, "Oh, yes I am disclosing these loans at this time," and that was -- we don't think -- we think it would apply to those

In addition -- one second

THE COURT: Uh-huh

(Counsel conferring with co-counsel)

MR FAULCONER: And, Your Honor, I think, perhaps most importantly, are some of the false exculpatory statements that were made by Mr McDonnell to his staff after the investigation was revealed to the public in terms of some of the conversations that are in the record with, I believe, Tucker Martin and Martin Kent after the investigation broke in the media in terms of saying that, you know, the -- some of the reasons for some of the interactions with Mr McDonnell

I think with Martin Kent specifically, there was a statement about going to the Governor and saying, "Hey, did this" -- "did this loan have anything to do with credit card debt?" And he said something to the effect of, "No No It doesn't have to do with credit card debt," the $50,000 loan And as the evidence has come in, obviously, 20,000 of that went to credit card debt, and Mr McDonnell knew it

And I think there were a couple of similar statements to Tucker Martin. And so from that perspective, we think that this instruction would be appropriate

THE COURT: All right

MR FRANCISCO: Thank you, Your Honor. We continue to believe that this instruction is inappropriate The -- in order for this instruction to apply, the statement has to be clearly false The government has given two assertions with respect to Mr McDonnell, neither of which possibly satisfies that standard

The statements on the PedFed, they weren't false exculpatory statements We don't think they were false at all But at best, they were simply forms that he filled out They weren't exculpatory statements that he was trying to make in order to exculpate himself from any wrongdoing

Secondly, the statements to the staff -- and also on that one, they weren't clearly false I mean, our view is that they weren't required to be on the forms in the first place, as we heard testimony from So they don't satisfy that standard

As to the statements to staff, again, we don't think they were clearly false at all And, in fact, the staff members testified that they didn't believe that Mr McDonnell ever had lied to them

So, again, we don't think that these are -- these are -- could possibly be false exculpatory statements that would warrant the inclusion of this kind of instruction

I think the same principles would apply to Ms McDonnell, but I will allow her counsel to address that, if Your Honor would like

THE COURT: Sure

Mr Burck

MR BURCK: Thank you, Your Honor Just briefly. Your Honor, the statements in the interview that was -- that were -- I think the government is alleging as being false exculpatorie were that she had a written contract, that she was making periodic payments, and I think that Jonnie Williams was a long-time friend of her husband I may be forgetting one

But our view is that the charge here is that the loan itself, it's a loan payment, whatever it is If it's a written contract, oral contract, whatever it is, it's still a thing of value that is part of this conspiracy

So the fact that she's alleged to have said that it was a -- it was a written contract versus a contract or that there were periodic payments being made on it, we don't think that's material to the issue of whether or not it's a false exculpatory Because, again, it wouldn't actually be exculpatory from their view It would still be a crime. If it was a written contract, if all these things were actually true, it would still be the same thing of value that they are alleging

So that would be our view, Your Honor

THE COURT: All right

MR FAULCONER: And, Your Honor, one -- I will keep it to one sentence One thing that I did not mention for Ms McDonnell is the same conduct underlying the obstruction count could be considered also false exculpatory I know Mr Burck would have the same problem factually with our characterization there, but that's just one that I forgot to mention I apologize

THE COURT: All right

Thank you That was helpful

MR FRANCISCO: Your Honor, on Instruction Number 20, the government had a few tweaks We have no problem with those

THE COURT: All right

MR FRANCISCO: On Instruction Number 21, we believe that everything after the first paragraph is argumentative and object on that ground These are things the government can argue to the jury, but we don't see why this needs to be put in the jury charges, particularly given that the indictment is not evidence And they'll be getting the indictment in any event, as I understand the Court

Your Honor, next, Instruction Number 24, conspiracy, the existence of an agreement We would ask that the fourth paragraph be deleted as legally erroneous and confusing This focuses on what the government must not prove And we think in that sense, it's slanted against the defendant without any corresponding statement as to what the government is required to prove We, therefore, ask that it be replaced with defense Instruction 43

But if the Court were inclined to maintain this instruction, as it may well be, we would ask that a paragraph be added, a short paragraph, immediately after the one that we're asking to be stricken, which would read as follows "But a conspiracy cannot be inferred from ambiguous conduct that is consistent with both lawful and unlawful action To prove conspiracy" -- "a conspiracy, the government must present evidence that excludes, beyond reasonable doubt, the possibility of innocent action "

We think that's a clearly accurate statement of law and that it would balance out an instruction that we otherwise think is unfairly slanted in the government's favor

Your Honor, Instruction Number 25, membership in an agreement We again object to the second paragraph of that instruction as irrelevant and confusing and, therefore, legally erroneous It's not part of the model instruction, but instead is another extended discussion of what the government is not required to prove, which was put forward in the government's proposed instruction on this issue

We think that paragraph should be deleted and you should go back to something more akin to the model instruction, which didn't include that paragraph and, therefore, which didn't slant the instruction in the government's favor

Your Honor, Instruction Number 29, the elements of honest services wire fraud This one goes to -- partly goes to the government's request that the willfully definition be omitted And as I'll explain later, we think the willfully definition should be kept because willfully is actually an element of honest services wire fraud and, therefore, that the second element listed here should insert that It should say that "the defendant you are considering did so knowingly and willfully and with" -- and here's another insertion -- "specific intent to defraud "

It's a specific intent crime We think it requires willfully There's case law from the Fifth Circuit that supports that That was cited in our model instructions So we would ask that that language be added into the second element I can repeat that I know I kind of jumbled it a little, Your Honor

THE COURT: No I got it

MR FRANCISCO: The government recommended a tweak to the fourth element We were fine with the government's tweak to that element

THE COURT: All right

MR FRANCISCO: Instruction Number 30, scheme or artifice to defraud We object to this instruction on the ground that it is incomplete and legally erroneous and that it removes from the O'Malley model instruction language emphasizing the government's burden So, again, this is one where the instruction focuses on what the government doesn't have to prove instead of what the government does have to prove

So we, therefore, ask that it would be replaced with defense Instruction 52, which tracks the O'Malley proposed instruction in what we regard as a much more fair and balanced manner

Your Honor, Instruction Number 31, a public official's fiduciary duty to the public We object to this on the ground that it is irrelevant and, therefore, legally erroneous. Fiduciary duty is simply not an element of honest services fraud and, therefore, including this instruction is confusing to the jury It suggests, in our view, that the jury could convict the defendant solely on the basis of a violation of his fiduciary duties, which is directly contrary to the Supreme Court's decision in SKILLING

What SKILLING made quite clear is that not all bad conduct, not even all breaches of fiduciary duties, constitute bribery or prohibited bribery or kickbacks Instead, what the government needs to show is a bribery or a kickback, or the violation of the statutes, the elements of the statute There's nothing in the statutes that make breach of fiduciary duty an element of the crime And by including this, we think it invites the jury to reach a contrary conclusion to convict without actually finding the elements, but instead convict on the basis of what the jury perceives to be a violation of a fiduciary duty

We think the proper course would be to delete this instruction in its entirety and replace it with defense Instruction Number 53, which focuses -- which provides a definition of deprivation of honest services, which unlike this fiduciary duty instruction, is actually an element of this crime And that instruction makes quite clear -- and we pulled this -- we culled this from SKILLING that the honest services wire fraud statute does not encompass every instance of official misconduct that results in an official's personal gain. And that is the essential teaching of SKILLING, which, in our view, renders the instruction, as written, legally erroneous

Your Honor, I'd like to turn to Instruction Number 32 now And I'll talk for maybe just a slight bit longer on this because this is an objection that I would like to make that applies to a series of the Court's instructions And these are all of the Court's instructions that essentially touch upon bribery And under the honest services fraud instruction, it encompasses the Court's Instructions 32 through 39, which we believe should be replaced with the defense Instructions 55 through 61 And as to Hobbs Act extortion, it covers the Court's proposed Instructions 48 through 51, which we believe should be replaced with defense Instructions 72 through 79

Now, the arguments I'm going to make will be familiar to you so I will not make them at great length, but I will make them in order to preserve the record on what we consider to be the critical issue in this case

We think that the Court's instructions, as written, have two fundamental errors in it The first is that it relies on an impermissible and inappropriate definition of "official act" in that it would allow the jury to convict based on conduct that does not rise to the level of actual government power; that is, a promise to exercise the actual regulatory power of the state in exchange for payments

Instead, the instructions would allow the jury to convict solely on the basis of a settled practice, even if that settled practice did not otherwise rise to the level of an official act We think that's contrary to JEFFERSON, which made clear that not all settled practices are official acts, only some category of them are if they otherwise involve the exercise of government power

We think it also would allow the jury to convict based on things as innocuous as arranging a meeting, which, again, we do not believe involves an exercise of governmental power and, therefore, does not rise to the level of an official act

And under this instruction, Your Honor, we believe that the statute at issue here is unconstitutionally vague So that's the first objection to this set of instructions

The second is that we also think that it misunderstands, or misdefines at least, what it means to be in quid pro quo bribery

May I have one quick moment?

THE COURT: Uh-huh

(Counsel conferring with co-counsel.)

MR FRANCISCO: Your Honor, on this issue, we would refer the Court to the Fourth Circuit's decision in the JENNINGS case, which makes very clear that in order for there to be quid pro quo bribery, there has to be an exchange of payments -- a payment made in exchange for a promise to perform a specific official act

In the JENNINGS case, the Court actually found an instruction was invalid precisely because it did not require payment in exchange for a specific official act, but instead, erroneously would have permitted a conviction based on a promise to perform some unspecified act in the future And that is at 160 F 3d 1006, Page 1,022

And if I could just read from the Court's opinion very briefly where it found the bribery instruction erroneous because it failed to -- and here I'm quoting -- "state that Jennings must have given money to Morris in exchange for some specific official act or course of action" and allowed conviction based on -- that was the end of the quote, "specific course of action " And then it continues to say that it allowed conviction based on, quote, a vague expectation of some future benefit

We think that the instructions here suffer from the very same problem We think that those problems would be cured if you were to substitute in -- in the instructions we've proposed on these issues, particularly 55 through 61 on honest services fraud, and more specifically 58, which defines an official act for honest services fraud, and Instructions 37 and 59, which define corruptly for purposes of honest services fraud Those instructions contain the proper language that reflects JENNINGS, that reflects JEFFERSON, and the meaning of an official act

On the Hobbs Act extortion, we think that you ought to replace your instructions -- your instructions with our Instructions 72 through 79, and especially Instruction 76, which defines the misuse of official office, and instruction 77, which defines an official act

If Your Honor is not inclined to add our instructions, we would ask that you include, in the current instructions for both wire fraud and Hobbs Act extortion, the following language, and it's two short paragraphs that I will read into the record with Your Honor's permission

"To convict the defendant, the official must have received the payment in exchange for performing or promising to perform some specific official act A gift or payment given with the generalized hope of some unspecified future benefit is not a bribe You may convict the defendant only if you find that he received something of value in exchange for performing or promising to perform some specific official act.

And then there would be a second paragraph that reads, "And providing mere credibility or a reputational benefit to another is not an official act To find an official act, the questions you must decide are both whether the charged conduct constitutes a settled practice and whether that conduct was intended to or did, in fact, influence a specific official decision the government actually makes "

So we would -- we would request that the Court replace its instructions, its proposed instructions with our proposed instructions on these elements If the Court overrules that objection, then we would ask that this language be -- be included in order to render these instructions legally proper

Thank you, Your Honor, for your indulgence on that

Now, on other instructions, with the Court's permission, I will simply reference that argument rather than remake it again

THE COURT: All right

MR FRANCISCO: So sticking with Instruction Number 32, now I will move to more specific objections than the broad-based ones that I've made

We think this objection(sic) is legally erroneous because it suggests that the absence of an official act is irrelevant when it says that you can convict even if there was no official act actually performed. That is not true We think the absence of official act is clearly relevant to determine -- relevant and probative of whether there was a conspiracy -- whether there was a substantive offensive bribery in the first place

If no official act was ever committed, that is certainly something that the jury could consider in deciding whether or not to conclude that there was a corrupt scheme here We would, therefore, ask that -- ask that that language be stricken, the language -- and this is the one that the government edited But I think it's the second paragraph of that instruction that focuses on what the government is not required to do We think that language should be deleted as legally erroneous since it erroneously suggests that an official act is irrelevant

If, however, the Court believes that it ought to stick with that instruction, we'd ask that it add the following sentence to the very end of the instruction "If you find that no official action was taken by the official, then you may consider that as evidence that there was no quid pro quo "

Turning, Your Honor, to Instruction Number 33 We object to this instruction for the same reasons I just articulated And for those reasons, we think it's legally erroneous In addition, we think that it misdefines corrupt intent Another portion of the JENNINGS opinion that I just discussed specifically talks about corrupt intent and uses the same language to say that "corrupt intent requires an exchange of payment in exchange for specific official acts " Not some generalized hope of unspecified future acts Our instruction D-59 we believe correctly defines the corruptly element here and takes into account the JENNINGS case

We also strongly disagree with the government's proposed changes to this instruction. We think that the corruptly element does require the Court -- the jury to find the language at the end, "accomplishing an unlawful end or unlawful result by any unlawful method," or it means the language that the government seeks stricken This is a specific intent crime We think it's also a willful crime as part of specific intent, and that language is exactly correct and should be maintained

In all fairness, I haven't had a chance to review the JEFFERSON instruction I did review -- so I'm not sure what exactly it includes or doesn't include I would note that the one that I did review just a minute ago on a different one of their objections, I think, went a lot -- didn't go nearly as far as what the government was suggesting in that So we would ask that in lieu of this instruction, you use defense Instruction Number 59

Instruction Number 34, bribery need not be expressed Again, I'll reiterate all the previous -- the long previous objection that I just made, which applies here too In addition, we think this is legally erroneous because it suggests that the absence of an agreement is irrelevant to this crime when we think it is clearly relevant The absence of an agreement is probative of whether an agreement, in fact, existed It might not definitively establish that an agreement didn't exist, but if there was no expressed agreement, it's pretty good evidence that there was no agreement at all

We. therefore, ask that the language that -- we, therefore, ask that this entire instruction be deleted But at a minimum, if the Court includes it, we would ask that the following language be included at the end "If you find that there was no expressed agreement, then you may consider that as evidence that there was no quid pro quo agreement at all " We think that would give it much more balance Instead of just saying what the government doesn't have to show, also say what the government does have to show

Instruction Number 35, bribery, thing of value provided to another Again, it's subject to the general objection that I made at the beginning of these instructions In addition, we believe that it erroneously defines the thing of value element That is drawn from 18 U S C Section 201(b)(2) There's no model instruction on this We think it's relatively self-explanatory. But we don't think that this version, which was, I believe, adopted from the government's proposal, accurately states what 18 U S C Section 201(b)(2) requires

We, therefore, suggest that this instruction be omitted altogether because we think it's self-explanatory But if you do decide to include it, we would rephrase it along the following lines Quote, the thing of value need not be intended for the public official, but to be liable, the government must prove that the public official corruptly demanded, sought, received, accepted or agreed to receive or accept anything of value personally or from any other person or entity " That pretty much tracks the statutory language of 18 U S C 201(b)(2), unlike the proposed instruction here

Instruction Number 36, Your Honor, mixed motive is no defense The first thing I'd ask is that the phrase "because people rarely act for a single purpose," that if this instruction is retained, that phrase be deleted There -- I think it's -- that's a highly debatable proposition In many circumstances, people act in a single purpose And I think that almost presupposes for the jury that there were multiple purposes going on here when, in our view, there were not multiple purposes, and certainly no nefarious purpose So we'd ask that that language be stricken as confusing and legally erroneously

More generally, we object to this entire instruction, first of all, on the basis -- the broad basis that I've already discussed, which we reiterate, and applies to this instruction Secondly, because we are not presenting a mixed motive defense We are arguing that there was no corrupt intent here, and I think this will confuse the jury into thinking that we're doing something -- that we're arguing something that we're not, in fact, arguing

But if you are inclined to include this language, we would ask a few modifications, in addition to deleting that phrase that I mentioned in the first sentence First of all, we think that in order to balance it out, you should also include the following at the end of the instruction Quote, but if you find that the official had an honest motive for accepting a thing of value, then that is evidence to be given whatever weight you deem appropriate that the official did not act corruptly

So that makes clear that even though there might be mixed motives, it's still relevant The fact that there was a potentially honest motive is probative of whether or not there was there was innocent intent So that would make what we considered a relatively one-sided instruction a little bit more balanced

Beneficial -- Instruction Number 37, beneficial act is no defense And, again, it's subject to the same general objections that I've made We also think that this is irrelevant and incomplete and misstates the law because, again, like -- like some of these others, and this is a little bit of a pattern to some of our objections, we think it unfairly focuses on what the government is not required to prove instead of showing and instructing the jury on what the government is required to prove

Here we're not arguing that Mr McDonnell would have done the same thing regardless of whether or not there was a bribe What we're arguing is that Mr. McDonnell's promotion of Virginia businesses across the board generally shows that he had innocent intent Therefore, we would ask that this instruction be deleted altogether If the Court is inclined to conclude -- to include an instruction on these lines, we would make two proposals

First, we'd ask that this instruction be replaced with the O'Malley model instruction, which we think is much more balanced, and that's in O'Malley at Section 27:11, which reads, "It is not a defense to the crime of bribery that the thing of value was accepted by the public official to influence an official act which is actually lawful, desirable or even benefit to the public "

In addition, we'd ask that the following language be included "The government, however, still must prove beyond a reasonable doubt that Mr McDonnell received the payment in exchange for performing or promising to perform some specific official act For example, if he performed the actions for other reasons because he was trying to assist Virginia business and not because of a bribe, then he committed no crime " We think that would balance out the instruction more than the current instruction

Instruction Number 38, the definition of an official act This was really at the core of the objection that I was raising earlier, and so we reiterate that objection to this definition and ask that it be replaced with defense Instruction Number 58 If the Court is inclined to include something along the lines of these instructions, we would ask that the last sentence be deleted We are aware of no basis for that last sentence It certainly doesn't come out of JEFFERSON and, I don't believe, is consistent with the JEFFERSON instruction, and including it is, in our view, legally erroneous

We'd also ask that the two sentences -- let me amend what I just said, Your Honor We'd ask that the last two sentences be deleted, particularly the very last sentence which has no basis in anything that we can find, but also the sentence that immediately precedes it Again, we think that erroneously states the law, and it tilts the instruction too heavily in favor of the government's position

But if the Court is inclined to include that instruction, along with the government's language, we would ask that you add to this instruction the two paragraphs that I read at the beginning when I started making the broad objection to this I could read it again, or I could -- would you like me to?

THE COURT: No There's no need

MR FRANCISCO: Thank you, Your Honor

Instruction Number 39, intent to defraud We believe that it's legally erroneous and argumentative It's legally erroneous because it omits the willfully language And so in the first sentence of the second paragraph, we'd ask that the word "willfully" be inserted so that it reads, "Intent to defraud means to act knowingly and willfully and with a specific intent to deceive " We think that's part of a specific intent defense and part of this offense

We'd also ask that the final sentence, beginning with the words, "for example," be deleted We think that language is unnecessary and the examples are just too similar to the conduct that the government has charged here and we think will unfairly prejudice the jury against us

We think that that's something the government can argue, and it be up to the jury to decide whether Mr McDonnell did or did not commit a crime But we think that that kind of language is something the government doesn't need and shouldn't get in the context of a jury instruction We'd ask that -- so -- that it be amended in the way that I just mentioned, or alternatively, that the Court replace it with defense Instruction Number 54

You've actually got two in a row that I have no objections to, Your Honor, 40 and 41

May I have one second?

THE COURT: Sure

(Counsel conferring with co-counsel)

MR FRANCISCO: I'm going to pass over Instruction Number 42 in deference to Ms McDonnell's attorneys

Instruction Number 48, Your Honor We object This really is the broad objection that I raised earlier where I said that that objection applied not just to the honest services fraud instructions, but also to the Hobbs Act extortion Instructions 48 through 51 in the proposed instructions, which we believe should be replaced with defense Instructions 72 through 79. I won't reiterate that entire argument, unless the Court would like me to, but would rather incorporate it here

We have a more specific objection on this one, and it goes to the fourth element, the interstate commerce element We believe that that misstates the law In our view, an attempt to effect interstate commerce is not good enough There actually has to be an actual effect on interstate commerce That's the law in several circuits

The Fourth Circuit requires a reasonable probable effect on interstate commerce That comes from UNITED STATES v. SPAGNOLO case, 546 F 3d 1117 at Page 1119 We actually don't agree with the Fourth Circuit's language We think it's wrong and would like to preserve our objection to that

That being said, we think that the Court should either adopt our proposed instruction, which requires an actual effect, and that's Instruction Number 72, or it ought to adopt an instruction that reflects the SPAGNOLO case, which would read as follows "Fourth, that interstate commerce, or an item moving interstate commerce, was delayed, obstructed or effected or that there was a reasonable probability of delay, obstruction or effect on interstate commerce "

And, again, to be clear, we preserve our objection to the Fourth Circuit language but think that that would be an instruction that accurately reflected Fourth Circuit case law.

Instruction Number 49, Your Honor, property not due office, is subject to our general objection where we've asked for this set of the Court's instruction to be replaced with our proposed Instructions 72 through 79

Instruction Number 50, Your Honor This one essentially combines all of the different bribery instructions that we spent a fair amount of time talking through a few minutes ago into one, essentially, omnibus instruction that picks out certain sentences and phrases and cobbles them together into a single instruction, and we very much object to this instruction on the same grounds that I outlined for the previous instructions

If the Court is inclined to include this instruction, we ask -- we ask that the following changes to it be made First of all, we'd ask that you add language that makes clear that, quote, the government, however, still must prove beyond a reasonable doubt that the official received the payment in exchange for performing or promising to perform some specific official act A gift or payment given with the generalized hope of some unspecified future benefit is not a bribe You may convict the defendant only if you find that he received something of value in exchange for performing or promising to perform some specific official act.

Secondly, we'd ask that Your Honor delete the sentence that begins with the words -- the last sentence of the first paragraph that begins with the words, "You do not have to determine" whether Mr McDonnell actually performed an official act We think it's legally erroneous because, again, it suggests that whether he performed an official act is irrelevant It's clearly relevant and so should be deleted But at a minimum, you ought to add immediately after that sentence the following, quote, but if you find that no official action was taken by the official, then you may consider that as evidence that there was no quid pro quo "

Third, Your Honor, we object to the immediately following sentence "As was the case with bribery, the exchange or quid pro quo need not be stated in expressed terms, and the intent to exchange can be inferred from all the surrounding circumstances " Again, in addition to our generalized objection, we believe that this is legally erroneous because it suggests that the absence of an agreement is irrelevant, and, therefore, that language should be deleted

But at a minimum, we would add immediately following that sentence the following Quote, but if you find that there was no expressed agreement, then you may consider that as evidence that there was no quid pro quo agreement at all

Fourth, Your Honor, we would ask that the -- we object to the sentence that immediately follows that one beginning with the word "furthermore " We think that this is legally erroneous because it erroneously suggests that the government need not prove that the specific type of official acts that the government agreed to perform -- it need not prove that there were specific official acts that were agreed to and should, therefore, be deleted

If the Court includes that language, we'd ask that the following sentence be added Quote, but even if the payments were made to retain the official's services on an as-needed basis, you must still find that the official accepted the payments in exchange for agreeing to perform a specific type of official acts

And finally, Your Honor, on this particular instruction, we object to the last two sentences of this instruction that begin, "As also was the case with bribery," through the end of this paragraph We believe that that is irrelevant and incomplete and, therefore, misstates the law since, again, we're not arguing that Mr McDonnell would have taken the same actions even without bribes What we're arguing is that

Mr McDonnell's promotion of Virginia businesses shows innocent intent and negates the government's allegations

At a minimum, if the Court includes that language, we'd ask that it follow the O'Malley instruction, which says, quote, it is not a defense to the crime of bribery that the thing of value was accepted by the public official to influence an official act which is actually lawful, desirable or even beneficial to the public

And then after that, we would add -- that's it We would ask for the O'Malley instruction there, Your Honor

Instruction Number 51, and I'm -- if you'll give me a minute just to look at Your Honor's revised version of this May I?

THE COURT: Sure

MR FAULCONER: And, Your Honor, that's one that I neglected to address But I'll address it when I get back up, because we do have one concern with the new 51 I apologize

(Counsel conferring with co-counsel)

MR FRANCISCO: So, Your Honor, here we think that the words "attempted to perform" are actually inconsistent with the language you added at the end And I'm not sure if that was intentional or not But if there was no act actually performed, there could not have been an effect on -- any effect at all on interstate commerce

So we'd ask that the "attempted to perform" phrase be deleted And this is -- otherwise, I think -- I think we're okay with this

Yeah, we're okay with this otherwise

But if the "attempted to perform" is kept in there, it's subject to the same objection that I raised to the last interstate commerce instruction where we believe that it's inconsistent with the correct requirement for interstate commerce

And, again, I'd like to make clear, we preserve our objections to Fourth Circuit case law, but our -- for present purposes, will accede, subject to the preservation of the objection to an Instruction that complies with Fourth Circuit case law

So moving to the false statement to a bank instructions, Your Honor And in particular, beginning at Instruction 56, I'd like to make an objection that applies to both 56 and 57 We object to these instructions on the ground that in our view, they're legally erroneous and an incomplete statement of the elements

Our instructions, which are instructions -- they are found at -- our Instructions 82 through 85 and 87 through 91, which are really the same instructions, they are just broken out for each one of the counts, we think those accurately state the elements In particular, we think that the Court's instructions omit any description of the critical elements to this case, including whether the statement was false, whether it was knowingly made, whether it was made for an improper purpose, and whether the bank for which it was made was FDIC insured

Our instructions include explanations for each one of those elements Of particular importance is our Instruction 82 on what it means for there to be a false statement Our instruction makes clear that a statement is not false if -- if the defendant did not actually make an application to the bank, or anything that the bank would consider to be an application, because it was insufficiently primarily That's a critical part of our defense here; that Mr McDonnell actually made no false statement on anything that could be considered an application Yet there's no instruction at all on that first critical element of what it means to make a false statement on an application

Our instruction lays all this out and our instructions -- and in particular, Instructions 82 and 87, it states that, quote, the government must prove an application was made to the bank This requires that an application sufficient for the bank to act was made And it explains that at a little bit more length More generally, we think that our instructions properly instruct the jury on each one of the elements of false statement to a bank and that the Court's proposed instructions omit that language

Instead, Your Honor, the instruction -- and this is now -- I'm focusing more specifically on Instruction 56, focus on an issue that we believe is essentially irrelevant to this case and objectionable on that ground since materiality is not an issue We've never argued, and don't intend to argue, that any statements were immaterial And so by including this instruction and omitting all the others, it simply serves to confuse the jury as to what is and is not at issue Therefore, we'd ask that this instruction be deleted and that it replace -- it be replaced with our instructions setting forth the elements of this offense

And at a minimum, Your Honor, we'd ask that the last three sentences of this instruction be deleted beginning with, "The government need not show, however " Again, we think this unfairly focuses on what the government doesn't have to prove instead of what the government does have to prove We don't think a materiality instruction is necessary or relevant or proper at all, but if it is, we think you ought to just tell the jury what materiality means and that it has to be proven, as opposed to giving illustrative examples of what the government does or does not have to show for materiality purposes

Your Honor, while I'm on this, just because I think it will be a little clearer, we also have a new instruction that we'd like to propose

Ryan, could you hand up our packet of new proposed instructions?

And I'm only going to refer to one of them here for now, Your Honor, because it's directly relevant to this and essentially completes our position on this instruction. And it is Page 7 of this false statement to a bank, false statement by omission One of our principal defenses to this is that the omitted information was not required to be included in the application in the first place And if information wasn't required to be in the application, then the omission of that information from an application cannot constitute a false statement as a matter of law

Since that is one of our critical defenses to this, we believe that we're entitled to an instruction on that And I can't imagine that there's anything legally objectionable about what we have in this instruction So therefore, we'd ask that in addition to what I've talked about on false statements to a bank, this instruction be included as well

The one thing I'll add, Your Honor, is I talked about how we're not raising any mixed motive materiality defense here. We're also not raising a mixed motive defense, and that's why we think the last sentence is confusing to the jury, for all the reasons that I've explained, with regards to the mixed motive instruction on bribery.

(Counsel conferring with co-counsel.)

MR. FRANCISCO: The good faith defense. The government asked that the Court add a sentence to the end of the instruction. We think that sentence is completely unnecessary and that the Court's initial draft of this got it exactly right. We think that the language that they're adding is simply an effort to undercut what our critical defense is here; that Mr. McDonnell was acting in good faith throughout. We're entitled to a clean instruction on that defense.

(Counsel conferring with co-counsel.)

MR. FRANCISCO: And then if the Court is inclined to start editing this -- this instruction, Your Honor, we'd ask that it also include the following sentence at the end of the instruction. "Good faith is an absolute defense to all charges in this case."

Instruction Number 64, willfully defined. The government has asked that this instruction be omitted because, in its view, it's not relevant to this case. We obviously disagree with that. We think it's part of the specific intent crimes at issue here So we would ask that it be maintained

Oh, the government, on -- if I'm remembering this right, on Instruction Number 68, didn't think that this one was legally erroneous, but didn't think it was necessary here I'm not sure. It was unclear to me how strong their position on that was But we obviously think this is critically necessary There are two defendants in this case, and we think it's critical that the jury consider each defendant separately It's particularly dangerous in a case like this for the jury not to do that, given that the defendants are married, and that there is a tendency, on the part of people, to want to lump folks together in that way We, therefore, think this is a critical instruction that should be maintained, particularly where the government seems to agree that it is an absolutely correct statement of law

I'm going to do this one quickly, Your Honor Instruction Number 72, duty to deliberate We object on the grounds that it's not quite an accurate statement, in our view, of what jurors are required to do It's perfectly appropriate for a juror to walk out of the jury box, decide at the moment after he or she is charged, what his or her view is, and then refuse to change that view throughout and refuse to talk about it It might not be the best way to go about doing things, but we think that's appropriate, and the jurors can do that if they want But I'll say no more on that one

So the government proposed the addition of two more instructions One was bribery, course of conduct We think that this is legally erroneous for a number of the reason First of all, for the main omnibus reason that it just misstates the law of bribery, both what an official act is and what quid pro quo bribery is under the JENNINGS case This one in particular, "the erroneously suggest that the government need not prove that the specific type of official acts that the public official agreed to perform " Regardless of whether or not the government -- the official agreed to perform those acts on an as-needed basis, the government still has to prove beyond a reasonable doubt that the official accepted payments in exchange for agreeing to perform specific official acts And this instruction omits that crucial part

There's no basis in any of the model rules for this instruction Instead, what it appears to be is the government's cherry-picking of its favorite sentences out of various different opinions into an instruction that, in our view, is intended to slant the playing field in its favor The government can certainly make these arguments to the jury, but we don't think it's an appropriate place for an instruction from this court to the jury

But if the Court were inclined to include an instruction along these lines, we think that additional language is vital in order to balance the instruction out And so we would ask that the Court include the following, if it were inclined to include this instruction, which, I should emphasize, we would vigorously oppose Quote, but if the payments were made to retain the official services on an as-needed basis, you must still find beyond a reasonable doubt that the official accepted the payments in exchange for agreeing to perform a specific type of official acts A gift or payment given with the generalized hope of some unspecified future benefit is not a bribe. You may convict the defendant only if you find that he received something of value in exchange for performing or promising to perform some specific official act

Not only would that somewhat balance out what we think is an erroneous instruction in any event, but in addition, what I just read is a clearly accurate statement of the principles set forth in the Fourth Circuit's JENNINGS decision

The government has also proposed a deliberate ignorance instruction And we would also vigorously oppose the inclusion of this instruction and think that the Court was absolutely right to not include it in its proposed instructions in the first place We think it would be legally erroneous to include this, first of all, because there's simply no factual basis in this record for a willful -- for a deliberate ignorance or willful blindness instruction

In order to show -- in order to lay the factual basis for that, the government would need to show that the defendant subjectively believed that a high probability of wrongdoing existed and that the defendant took deliberate actions to avoid learning a wrongdoing It's hard to imagine that the example of somebody not opening one of hundreds of e-mails that that person gets in any given day satisfies the standard for willful blindness or deliberate indifference

More importantly, Your Honor -- I shouldn't say more importantly But in addition, this instruction is simply incompatible with the mens rea requirements for these specific intent crimes, which require a corrupt intent That requires actual knowledge, not imputed knowledge, that knowledge of the underlying facts And the whole point of a willful blindness or deliberate ignorance instruction is to impute knowledge to a defendant That, however, is completely improper when it comes to crimes like those charged here

If the Court, however, is -- so we think that this -- you are completely right to include this instruction If you are inclined to include a deliberate ignorance or willful blindness instruction, we would recommend that it be the one adapted from O'Malley and one that accurately sets forth the elements of willful blindness

And I'll read it into the record because we have not proposed an instruction on this one that I can refer the Court to "The government may prove that a defendant, in certain circumstances, acted knowingly by proving beyond a reasonable doubt that this defendant deliberately closed his eyes to what would otherwise have been obvious to him. Stated another way, a person's knowledge of a particular fact may be shown from willful blindness to the existence of that fact But to prove willful blindness, the government must prove two things beyond a reasonable doubt First, the government must prove that the defendant subjectively believed that there was a high probability that the fact existed Second, the government must prove that the defendant took deliberate actions to avoid learning of the fact "

And then the second paragraph would read, "You may not conclude that the defendant had knowledge from proof of mistake, negligence, carelessness or a belief in an inaccurate proposition Instead, the government must prove beyond a reasonable doubt that the defendant purposely and deliberately contrived to avoid learning all the facts "

So just to be clear, we completely object to any instruction on this ground, but if there is an instruction, we think it should be the one that I just read, Your Honor

That is my march through the Court's instructions

If I could grab my notes, then I can turn to some additional instructions we would like included

THE COURT: All right

MR FRANCISCO: So in the packet that we handed you, those are new or amended instructions that we believe became necessary in light of developments at trial I should tell you, the first two we're withdrawing This was before -- we prepared this before we saw the Court's instructions, and we no longer think that the proposal on Court's comments to counsel and charts and summaries is necessary So those first two are withdrawn

Turning to the third one, the Virginia law instruction, defense proposed Instruction Number 39 It's an amendment of an instruction we originally proposed We originally proposed including a very fulsome proposal on this, but we no longer think it's necessary Rather, during pretrial proceedings, this court ruled, and I'm quoting from its ruling, "There is no suggestion, and there will be none at trial, that Mr McDonnell violated Virginia's ethics laws or reporting requirements " In this case, however, Your Honor, the governments elicited testimony suggesting that very thing In particular, testimony that suggested that Mr McDonnell's Statements of Economic Interest were somehow erroneous, in violation of Virginia law, or at least a jury could easily so conclude, given the testimony relating to this issue that was heard throughout the trial

We, therefore, think that this instruction is necessary to prevent the jury from drawing conclusions on this issue, particularly since initially we were looking to introduce evidence with respect to the legality of SOEIs, but we were not able to do that, in light of this Court's rulings So we think that this instruction is absolutely necessary to ensure that the jury doesn't draw an impermissible inference from the questions that were being put to Mr McDonnell and other witnesses during this trial

Our further proposed instruction is unanimity on official acts Here, Your Honor, it's not at all clear what the government believes the specific official acts charged in the indictment are It is, therefore, a very real possibility to that the jurors will not agree on this critical element, in which case Mr McDonnell could be convicted even though there was no unanimity on which official acts he allegedly promised to engage in in exchange for payments We, therefore, think that an instruction on the unanimity on official acts is necessary to ensure that the jury reaches unanimity on the central element of the offenses charged in this case We've cited the case law that we believe supports this and would ask that an unanimity on official acts instruction be included

The fifth one, Your Honor, is the one that I already discussed; false statement to a bank, false statement by omission Again, this is a critical and crucial part of our defense, the false statements act, and there's no false statement if the -- if the information omitted was never required to be included in the first place And so we think this instruction is crucial to one of our primary defenses to that charge

The next instruction, Your Honor, has to do with pre conspiracy conduct In this case, the government introduced evidence of conduct that predates the charged conspiracy; for example, the meeting with Dr Hazel and Mr McDonnell's attendance at the CigRx event That type of evidence is only limited -- only relevant to a very limited purpose; that is, to prove motive or intent We, therefore, think that this instruction is necessary to ensure that the jury doesn't erroneously and improperly consider these issues for bases that they're not permitted to consider them on

And on our new instructions, the final one -- and I'm not -- I don't want to suggest that I'm done yet I've got a little bit more to go But at least on this packet of new instructions, we'd ask that the Court include the seventh one; missing witness not equally available to defendant

In this case, the government has represented throughout that it intended to call Mr William Goodwin as a 404(b) witness to support the government's assertion that Mr McDonnell manipulated the personal friend exception for Statements of Economic Interest in order to conceal a vacation that Mr Goodwin allegedly paid for In fact, the government grilled Mr. McDonnell on this during cross-examination, strongly suggesting that Mr McDonnell was not being truthful when he -- when he said that they were personal friends

We very much believe that Mr Goodwin would have provided favorable testimony to us if called, and that he would have, in fact, confirmed that he and Mr McDonnell were personal friends The reason we didn't call him was the government has represented throughout these proceedings that it intended to call him The government, however, changed its position only after we rested in this case and, therefore, deprived us of the ability to call Mr Goodwin In light of that, we think that we're entitled to a missing witness instruction on this issue

One moment, Your Honor

(Counsel conferring with co-counsel)

MR FRANCISCO: I'm going to try to move quickly now through these last ones These are instructions that we asked for that the Court didn't include And I understand Your Honor's original instruction to me, and so I'll move quickly and just make my objections for the record

We would ask that the Court include defense Instruction Number 21 regarding inference or participation from presence or association The urge to find guilt in a case like this based on the defendant's presence or proximity to illegal activity is obvious, given the marital relationship between the defendants We, therefore, think that's necessary

Defense Instruction Number 22, impermissible to infer participation from association Again, because the defendants were married here, we think that there's a natural inclination to draw impermissible inferences, and so we think that instruction is necessary

Defense Instructions Number 37 and 59, the definition of corruptly For the reasons I've explained at length here, we think that is crucial to a proper instruction on what it means to engage in quid pro quo bribery, and I won't repeat that argument here

Multiple conspiracies, Your Honor And this is in defense Instructions 48 and 69 We actually think that it's very important to include this instruction here There are different types of multiple conspiracies As Mr Faulconer explained, there could be conspiracy between Mr and Ms McDonnell. There can be a conspiracy between Ms McDonnell and Mr Williams that doesn't involve Mr McDonnell And given that potential, we think it's very important that the jury be given this instruction on multiple conspiracies to prevent jury confusion and to ensure that the defendants are not convicted for an uncharged conspiracy in this case

Defense Instruction Number 76, extortion under color of official right, misuse of official position Again, for the reasons I've explained, we think this one is crucial for a proper understanding of the elements of bribery insofar as it pertains to Hobbs Act extortion

MR FRANCISCO: Your Honor, may I have a moment?

THE COURT: Go ahead

(Counsel conferring with co-counsel)

MR FRANCISCO: Your Honor, I know I've taken a long time Thank you for your patience

MR BURCK: I'll be very quick Just starting where we ended, we generally agree with Mr McDonnell's objections and will be more specific and not waste the Court's time in due course We do object to the multiple conspiracies instruction that they suggested. We don't agree with that And that goes to the Instruction Number 42 that you currently have, and we think that instruction should stay We think that is legally accurate We think it would be erroneous to take it out We don't think it should be altered in any way And as the Court said at the very beginning, we are mindful of the fact that you have considered all this, so we won't go any further than that We think Instruction Number 42 should stay in and the government's objection should be denied.

The only other instruction we would like to discuss very briefly is the one that goes to Count Fourteen. It is Instruction Number 59 This is on the obstruction of the official proceeding We have no problem with the instruction that is currently written The one thing we would ask that be added is a line at the very end that would just make it clear that Ms McDonnell, they would have to find, the jury would have to find that Ms McDonnell had intended to obstruct the grand jury in this case

And the reason why we think that's important in this particular case is because there has been evidence about two other investigations that were going on at the same time that she was interviewed on February 15th, 2013 There was the federal securities investigation of Mr Williams, and there was also a state inquiry going on at the same time. And so our concern is that the jury may essentially convict her for the wrong proceeding And so we just request a sentence at the very end that would say, "However, the government must prove beyond a reasonable doubt that Maureen McDonnell intended to obstruct the grand jury in this case " And I think, Your Honor, with that, that is all we have.

THE COURT: All right Thank you

MR. BURCK: Thank you, Your Honor

THE COURT: Government?

MR. FAULCONER: Thank you, Your Honor Your Honor, may I have one moment to confer with counsel?

THE COURT: Sure, go ahead.

(Counsel conferring with co-counsel)

MR. BURCK: Your Honor, if I misspoke, we would like Number 42, Instruction Number 42 to stay in

THE COURT: All right

MR. FAULCONER: Thank you for Your Honor's patience As I guess an initial housekeeping matter, Your Honor, I guess I assume that Your Honor does not want me to go through instruction by instruction in response to the defendants' arguments

THE COURT: Absolutely not

MR. FAULCONER: I'll just focus on a couple where I think that there is actually potentially a little bit of agreement, and then respond to a couple of their newly proposed ones and then answer, I guess, any questions that Your Honor has based on what I previously argued. And I apologize if I'm flipping through a few pages while I try to get to these

The first one, Your Honor, is that on Instruction 31, this is the one about fiduciary duty, I think that there may be a way to avoid, at least in part, the issue that Mr Francisco raised for the defense that would narrow this and not really change the substance of it, but might narrow it a little bit And that is to essentially remove the reference to the word "fiduciary duty" and simply make it only "duty of honest services" where it says that I think the way that Your Honor could do that to sort of split the difference here would be to say, "Public officials such as governors owe a duty of honest services to the public " And then you could delete the next sentence, and then merely at the bottom in the second paragraph say additionally, "A defendant need not be a public official to be guilty of this offense," and then go on to say everything else That would remove the specific reference to fiduciary duty independent of the duty of honest services And we think the remainder of it would still be an accurate statement of the law And that may at least in part dodge an issue there that could be raised

MR. FRANCISCO: Would it be easier for me to give you a one or two-sentence response rather than get back up on whether the changes satisfy or don't satisfy the defense?

THE COURT: You told me what you wanted. You are on record.

MR. FAULCONER: Your Honor, to very briefly respond on just one very narrow portion of the official act argument, and I only raise this because it goes to the JENNINGS course of conduct instruction that we asked for And that is that Mr Francisco omitted a portion of what JENNINGS says that I think is crucial for both why we need the course of conduct instruction and why many of the instructions Your Honor has proposed are correct as they stand. That is that JENNINGS says not only "in exchange for an official specific act or a type of act," but it also says in at least two places the phrase, "specific course of action." And I think that's at Page 1014 of JENNINGS

And then also later on, where Mr Francisco cited from it, it also refers again to a course of action And we think that anything from JENNINGS that's included would need to have that But our instruction is clear It quotes from JENNINGS, and we have our supports cited there, so I won't belabor the point on official act any more than we already have

Your Honor, with respect to the statements about, or the discussion about the Counts Twelve and Thirteen instructions, and this is specifically on the issue of, I guess, for lack of a better term, the final application argument that's being raised, our interpretation is that the instruction that the defense is proposing here would add language into the statute that does not exist within the statute as it is written. And we do have a couple of citations for the Court in terms of why it need not necessarily be a final application.

And if I can turn to those briefly, specifically, Your Honor, one case is UNITED STATES v ZWEGO, and this is 657 F 2d 248 at 250, Tenth Circuit, 1981 In that case it says, quote, for purposes of Section 1014, it is not necessary that the application for the loan be formal And I think if I'm correct, the only case that at least I've seen that the defense has cited at times, I think, about this has been SORENSEN, a Ninth Circuit case In that case, the government actually conceded at oral argument that the bank lacked the power to grant a loan without a signed application, never funds a loan until after it receives a signed loan application Here we do have a signed loan application The only question is whether or not it was enough for the bank to go forward It was enough for the bank to go forward, the signed loan application The fact that the entire process wasn't final doesn't mean that it can't be a false statement in relation to an application as the statute requires So I won't belabor that point, but I did just want to give the Court that authority

Your Honor, with respect to a couple of the defense's proposed new jury instructions, just to walk through them, as I understand it, the first two have been withdrawn. The second one with respect to Virginia law, for reasons that we have already discussed with respect to the SOEI in prior briefing, Your Honor, we don't see this one as necessary

In the event that the Court were inclined to offer anything about Virginia law, the first sentence we wouldn't necessarily have a problem with of this proposed instruction. But we would object to the latter two sentences, and rather simply ask for something to the effect of, and we would defer to the Court, but something to the effect of "Mr McDonnell is not charged with violating Virginia law and you should only consider that evidence to whatever extent you find it relevant to the federal law as I've instructed you in this case," if the Court is inclined to give some sort of instruction on Virginia law But as we stated in our pleadings, we think the form is in plain English, it is fairly clear, the terminology is not sophisticated, and the jury can consider it as needed

We object to the pre-conspiracy conduct proposed additional jury instruction It is both confusing and legally inaccurate in our opinion Clearly, the jury can consider pre-conspiracy conduct in inferring what the parties' actions were once the conspiracy began.

With respect to the unanimity on official act, we would object to that instruction. Again, as it relates to the official action requirement as part of a quid pro quo, there doesn't need to be one specific official act It can be a course of action or a course of conduct that's agreed upon And so the unanimity needs to be on whether there is a quid pro quo agreement to perform official acts, but not on one specific one that was promised to perform or performed

Your Honor, we do not think that the proposed instruction on false statement by omission is necessary in this case. The indictment alleges and the elements include that it needs to be false We think the jury can understand what something false is. The way that it is charged in the indictment and included in the Court's description of the nature of the offense does say that this was the liabilities that were listed, and it did not include this dollar amount which was owed to Mr Williams We didn't charge it as simply a generalized omission. It was charged very carefully as a specific false statement So we think it is clear and don't think that that instruction is necessary

With respect to the missing witness instruction, we would assuredly object to this instruction. It is, in our opinion, completely inaccurate and would be misleading to the jury Your Honor, William Goodwin was available to the defense The mere fact that he was subpoenaed or we may have projected that we were likely to call him in our rebuttal case doesn't mean that he was not, as this instruction says, equally available to the defendant They made a strategic decision not to call him in their rebuttal case -- or to call him in their case; we made the choice not to call him in our case And the fact that the evidence from their case may have come in in such a way that we didn't think his testimony would be necessary does not mean that he was unavailable to them. And the hypotheticals about what his testimony would have been aren't really pertinent. That really isn't what that type of instruction is intended for, where the parties have the ability to subpoena

Otherwise, Your Honor, with respect to Mr Burck's arguments, we already discussed 42 and our desire to amend and/or remove that one With respect to the obstruction instruction, the additional line at the end, we would object to that as being misleading of what the law actually requires, because the defendant does not need to know that it is a federal grand jury, and if you were to say that she has to know that she was impeding the grand jury in this case, the portion of 1512, either (f) or (g), that says the defendant doesn't need to know that it is federal, would essentially take out that requirement That sort of higher nexus requirement or higher mens rea requirement really comes from 1503 prosecutions, and 1512 was expanded to address situations exactly like this one

If I may have one moment, Your Honor?

THE COURT: Go ahead.

(Counsel conferring with co-counsel)

MR. FAULCONER: I'm happy to answer any

additional questions you have But otherwise, that's all I feel a need to put on the record.

THE COURT: I don't have any additional questions What I will do now is go out and revise the instructions in a manner that would be in sync with my rulings on this Obviously, this is going to take some time So you all have to sit and wait But I think turnabout is fair play I've been sitting here So I'm going to go in and, you know, try to get this done But I'll give you all the package when I get it ready Go ahead

MS ABER: Before you leave the Bench, could I ask three brief logistical questions for the folks doing the arguments tomorrow?

THE COURT: Sure

MS ABER: Number one: It is my understanding that the Court is willing to give the jury the indictment, but only the portion with the counts, Pages 33 through the end Does Your Honor want the forfeiture provision omitted?

THE COURT: I would take that out as well

MS ABER: Okay Number two: Jury instructions I understand that it is okay -- that Your Honor does not want them shown to the jury But is Your Honor amenable to talking about them?

THE COURT: It is perfectly fine to refer to what I've decided is the final package I just don't like the transcript popping up in front of the jurors You can refer to them.

MS ABER: Three: In reference to transcripts from the daily transcripts of this trial, I believe Your Honor has potentially said that it is okay to talk about them. If the Court is amenable or willing to let counsel actually show the transcript, the government would ask to be heard on that because we would object

THE COURT: Okay Let me hear you on that Go ahead

MS. ABER: Your Honor, this is an unusual situation in which we all have daily transcripts To date, I believe the jury has not seen a transcript, has heard they exist, has heard questions read. The Court was very clear at the beginning that they were taking notes for their own benefit, that their memory controlled, and so forth So to start showing transcripts sort of obviates that And secondly, I think it is fair to suggest that the first question from this jury would be, "Can we get the whole transcript?" if they are only seeing portions of it in closing So we would object to showing the actual transcript in any format to the jury during closings

MR. FRANCISCO: We very much want to be -- we don't plan to show excerpts of the transcript, but we do think it is perfectly appropriate for us to bring up excerpts of the testimony in our closing argument You can read it A demonstrative to help the jury is useful One last quick thing, Your Honor, on the jury charge, the government's proposed jury charge has "Guilty" first, "Not Guilty" second, and I think with the presumption of innocence, it ought to be "Not Guilty" first, "Guilty" second

THE COURT: You are talking about the verdict form?

MR. FRANCISCO: Yes

THE COURT: In terms of the transcript, you all can use the transcript, but in limited fashion I wouldn't want gigantic portions of the transcript That would just slow us down. And it is quite true, the jury may ask for the transcript, and I will tell them they are not going to get it It is that simple All right, let me get started with this

(Proceedings adjourned at 5:10 p.m.)

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I N D E X

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No. 15-4019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ROBERT F McDONNELL,
Defendant-Appellant,

On Appeal from the United States District Court for the Eastern District of Virginia, Richmond Division, James R. Spencer, District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants.

August 29, 2014
Richmond, Virginia
9:30 a.m.

JURY TRIAL - VOLUME XXV

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
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Counsel for Maureen G McDonnell

JEFFREY B. KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day twenty-five, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell. The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, and Christopher Iaquinto Maureen G. McDonnell is represented by Heather Martin, William Burck, Stephen Hauss, and Daniel Koffmann Are counsel ready to proceed?

MR DRY: The United States is ready to proceed.

MR. BURCK: Maureen McDonnell is ready to proceed, Your Honor

MR ASBILL: Bob McDonnell ready

THE COURT: All right Let's bring in the jury, please

(The jury entered the courtroom.)

Good morning once again Government, are you prepared to close?

MR. HARBACH: Yes, Your Honor, thank you.

Good morning In opening statements, my colleague, Ms Aber, said that this is fundamentally a simple case, and she was right Now all of the evidence has come in, it really just boils down to one question: All those things that Jonnie Williams gave and that the defendants here accepted, the $120,000 in loans, the $15,000 wedding check, the thousands of dollars in golf, the vacations, and everything else, the single, simple question of this case is, "Why?" Why did he give them; why did they take them. Was it solely because of a friendship with the McDonnells based on shared interests, or was it part of a corrupt understanding in which Jonnie Williams would give things and, when opportunities arose, Mr McDonnell would take official action to help him?

The evidence in this case that you have heard and seen over the last five weeks, the government's case, the defense case, all of it, establishes beyond any reasonable doubt what Jonnie Williams wanted, and that they knew it; and what they wanted, and that Jonnie Williams knew it That's why they did what they did. That is bribery That is corruption. The real thing

And what seals that they knew what they were doing was a crime is the lengths that all of them, Jonnie Williams included, went to hide it

My job this morning is to summarize the evidence for you. And I won't be able to mention anywhere close to all of it, and I'm sure you are happy to hear that You all have been here a while You have focused on all the evidence for a long time, and it has been a lot of material The point of some of it was quite clear There are plenty of dead horses around the courtroom that have been beaten beyond recognition. There is no question about that But there also may be some things where you are saying to yourself, "What was the point of that? How does that fit into the story? Why did we hear all this testimony about X?" And I hope to be able to clear some of those things up for you along the way.

But first, a couple of preliminaries Number one: This case is not about campaign contributions or donations to a political action committee Not one penny of any of the graft alleged in the indictment, not one penny of all those things I rattled off a moment ago that Jonnie Williams gave to the McDonnells, was a campaign contribution None of it Not one penny of that stuff was a donation to a political action committee or to his campaign Among other things, there was no campaign once he got elected Governor in January of 2010

I don't know why Mr McDonnell spent twenty minutes out of the first forty minutes of his direct examination talking about campaign contributions But in the instructions you get from the Court, a phrase you won't see anywhere is campaign contribution. A phrase you won't see anywhere is donation to a political action committee And the reason is that none of that has anything to do with this case, period.

Second: I'm going to be crystal clear up front about something else The defendants have no burden at all in this case. 100 percent of that burden is on our shoulders. We are like Atlas It is all on us So you go right ahead, and you absolutely hold us to that burden That's what you have been sworn to do, and that's what we ask you to do

The defense has no burden here They didn't have to give an opening statement; they didn't have to cross-examine witnesses; they didn't have to put on a case; Mr McDonnell didn't have to testify But you know what? They did all of those things And you darn sure can think critically about them and test them. And we are going to do some of that along the way this morning, too

Now, let's set the stage before I get into the facts of the case And where I'd like to start is the financial picture for the McDonnells when he rolls into office in January of 2010 The slide on the screen right now is Exhibit 568 You all remember this one This is the McDonnell's credit card debt as of January, 2010, when he takes office It is nearly $75,000 It is no wonder that Mr McDonnell was so upset with his wife about the credit card debt You remember this e-mail, Exhibit 54, where his wife was complaining about that to Mr Eige

As for MoBo, take a look at Government Exhibit

51 You know that MoBo was in trouble, because his sister, Maureen McDonnell, sister Maureen, was talking about short sales and bankruptcy Now, this is the first point in the case where I'm going to suggest to you that you use your common sense. Take a look at the e-mail Sister Maureen said that she didn't really mean they were in trouble and that she didn't really mean they needed to act now And Mr McDonnell sat in the chair and said that she was exaggerating Look at the e-mail See what you think of it That tells you all you need to know

By the way, this date, December 4th, 2009, that's the same day that the McDonnells traveled to New York City and met Jonnie Williams at the Four Seasons and had dinner with him and the subject of the inauguration dress came up So that's the context for that encounter in New York

Ms Aber told you in opening statement that at the beginning of his Administration, Mr and Ms McDonnell were hurting financially, and that is exactly what the evidence showed. More stage setting You remember the flight in October of 2010 from California, the one where Jonnie Williams rode with Mr McDonnell for those six hours, talked all about Anatabloc, talked all about the studies that he wanted

And then November 4th of 2010 he got that meeting with Dr Hazel that we have heard some testimony about following the flight from California February of 2011, a few months later, is the CigRx event at The Jefferson. You remember the one where you saw the pictures of Mr McDonnell holding the microphone and the CigRx panels behind him. That was the one where it wasn't on the Governor's schedule at first, but Jonnie Williams texted Adam Zubowsky and just like that, the Governor shows up at the drop of a hat

Now, it is true, as the defense has noted, that there were no personal gifts or loans from Jonnie Williams up to this point That's true These events are background They are stage setting They show you that the defendants knew what Jonnie Williams wanted, and they set the stage for what is to come

The last piece of stage setting is that in the spring of 2011, things haven't gotten any better with MoBo. Mr Uncapher, Michael Uncapher, the former brother-in-law of Mr and Ms McDonnell, sends this e-mail saying that they owe or are going to owe a minimum of $11,500 each month going forward. Mr McDonnell and his sister are trying desperately to refinance some of the umpteen mortgages they had on their beach houses And Exhibit 91 is the e-mail about that, about all of their attempts to get financing

In the top e-mail, Mr McDonnell says that it is a predictable result And the reason he says that is because he was expecting them to say no He knew the properties were upside town, that what they owed on all their mortgages was far more than the houses were worth. They tried to sell them in 2009, you remember those e-mails That didn't work. And by late March of 2011, they are trying to get refinancing and they are not having any success

That's the stage That's what's happening when our story begins with the shopping spree, April, 2011, in New York City You remember all the money that Mr Williams spent on clothing for Ms McDonnell This is the first juncture in the case at which Mr McDonnell claims to not know what's really going on. He admitted during his testimony that he knew his wife and Mary-Shea Sutherland went shopping with Jonnie Williams that day He admitted he saw a shopping bag But he denied that he knew what was purchased or who paid for it. Now, you saw a lot of the merchandise that Ms McDonnell picked out over those couple of days And that was part of the reason that brought it in court to show it to you. Folks, how do you miss that? You don't miss that On cross-examination, Mr McDonnell was confronted with the facts that, number one, he knew that Maureen McDonnell had in the past made inappropriate requests for money from people It was a long time ago, but he knew it Second, he knew that Jonnie Williams was very wealthy, and took his wife shopping in New York City Third, Jonnie Williams sat next to him at an event that night at the Union League Club Fourth, Mr McDonnell stayed in the same hotel room with his wife that night And fifth, the last time they were in New York together, Mr Williams had offered to buy Ms McDonnell a fancy designer gown for the inauguration and she was furious that she didn't get it

Now, despite all of that, Mr McDonnell said he had no idea that Jonnie Williams had paid. You decide whether to believe that

Five days after Mr Williams spent 19 grand on clothing for Ms McDonnell, the McDonnells invited Mr Williams and his wife over to dinner at the Governor's Mansion Coincidence? We don't think so. And when Jonnie Williams gets that invite, Jonnie Williams knows what time it is It is what time it always is in Jonnie Williams' world: Time to talk about Anatabloc and how great it is, and how much he needs those studies That's what he spent the dinner doing His wife was chiming in along the way And at that dinner he also met the McDonnells' daughter, Cailin, for the very first time

Now, after spending an evening with the

McDonnells in the Mansion and talking about Anatabloc, talking about the studies, talking about all the potential for this product, the next 72 hours are very interesting They start with Government's 107 This is a May 1st, 2011 e-mail sent at 10:40 in the morning Mr Williams has somebody send an Internet article on Anatabloc for Mr. and Ms McDonnell At 12:17, Ms McDonnell forwards it to her husband

Now, what else happens that day? This is Government's 574 Mr McDonnell sends some texts to his sister about loan options, that's what's in the middle there, and selling their two beach properties Now, by the way, just as an aside, if as we heard at trial Mr McDonnell's and his sister's intention was to hold on to these properties for the long haul, if they were such a great long term investment, and if everything was going swimmingly, 40 grand in the hole every year, just like they planned, why were they trying so hard to sell them? It is just a thought

Let's go back to our story Back to 574, please About two hours or so after Mr McDonnell sends these texts to his sister, Ms McDonnell has a 40-minute phone call with Jonnie Williams Now, we don't know everything that was said, but we know this much: At least part of that conversation was about trying to unload those two properties, Sunseeker and East Coast Palace, at Virginia Beach And the reason we know that is because of what happens next. Right after hanging up with Jonnie Williams, Ms. McDonnell e-mails information on the houses, this is in Government's 108 and 109, and then she follows up with another phone call And what do you know? First thing the following morning, this is Exhibit 112, a meeting with Jonnie Williams is put on Ms McDonnell's calendar for later that day

Now, that morning, May 2nd, Mr Williams arrived at the Mansion at 9:24 and stayed until 11:25 Mr Williams testified that at that meeting with Ms McDonnell, she explained that they were in trouble financially He said that she mentioned a loan from a doctor in Virginia Beach -- he couldn't remember the doctor's name; that she said their credit card debt was high; that they had real estate at Virginia Beach that was renting poorly in the down economy; and then she said, "I have a background in nutritional supplements, and I can be helpful to you with this project with your company The Governor says it is okay for me to help, help you, but I need you to help me I need you to help me with this financial situation "

She said she needed to borrow $50,000 And Mr Williams agreed She said they didn't know how she was going to cover the reception expenses for Cailin's wedding, and Mr Williams agreed to give $15,000 for that Now, by the way, this is one of the few places in the case where, yes, we are relying on the testimony of Jonnie Williams for what Ms McDonnell said to him in that meeting We absolutely are But let's run through the things that Mr Williams said happened at the meeting that are verifiable First, the McDonnells were in trouble financially True They had a loan from a doctor in Virginia Beach. True. Their credit card debt was high. True. They had real estate in Virginia Beach that was renting poorly True Ms McDonnell had a background in nutritional supplements True They owed an outstanding balance to Cailin's wedding caterer True Folks, that's called corroboration.

Mr McDonnell says he had no idea that Mr Williams agreed to loan Ms McDonnell the $50,000 Let's focus on that for just a minute I want to start with a quick recap of what brings us to May 2nd. April 13th, Jonnie Williams spent $19,000 on clothes for Ms McDonnell, and that night, Mr Williams sat next to Mr McDonnell at the Union League Club event Five days later, the McDonnells invited Mr Williams to the Mansion for dinner April 29th is that dinner, and that's where Anatabloc was discussed at length May 1st, a couple days after that, Mr McDonnell is texting with his sister about how to get rid of the Virginia Beach money pits, and Ms. McDonnell is trying to convince Jonnie Williams to look into them. That's what brings us to May 2nd with Exhibit 575

During the meeting with Jonnie Williams, Ms McDonnell called or tried to call Mr Uncapher, sister Maureen, her husband, sister Maureen twice more, and then Michael Uncapher again. She is trying desperately to reach the MoBo people, including her husband. Anyway, finally, Mr Uncapher finally calls her back And that is the first of two conversations where Mr Uncapher is giving Jonnie Williams information about MoBo and the properties Her meeting with Mr Williams continues a good 40 minutes after that phone call

Mr Williams and Ms McDonnell talked a couple of times that afternoon But what happened that night? That night, Jonnie Williams and Maureen McDonnell talked for 48 minutes That call started at 9:34 So that means it ended at 10:22 And then 15 minutes after that, at 10:37, Mr McDonnell called his sister and they talked for 84 minutes

Now, we don't know all that was said on that call That's true But this is, again, what you call circumstantial evidence They can get up here a little bit later and talk about it like it is a four-letter word, but it powerfully contradicts Mr. McDonnell's claim that he had no idea

Let's talk about Roskamp for a minute You remember, this is the place in Florida that does the research for Star And Jonnie Williams invited Mr McDonnell to go He wanted him to go. Mr. McDonnell knew that Jonnie wanted him to go Mr McDonnell says that Jonnie Williams invited him at the April 29th dinner at the Mansion, and furthermore, that he, Mr McDonnell, immediately decided that it was not going to happen Here is how you know that's not true Let's start with the e-mail between Ms Fulkerson and Monica Block, the Governor's scheduler, where Ms Block doesn't know what Ms Fulkerson is talking about This is a long time ago you saw this e-mail That's when Jerri Fulkerson was on the stand. But you remember it, I hope That's the e-mail exchange on May 4th Mr McDonnell sent Dr Hazel information on Roskamp to get his thoughts And you know that because of this, Exhibit 117 In that same exhibit, the reason Ms Block is asking about this is because she and the staff are currently evaluating having the Governor go down to Florida and speak to this group. Now, that's May 9th, some ten days after the invite was extended Don't you know that the reason they were evaluating it is because Mr McDonnell had asked them to. That's how you know his first thought was not "No way am I doing this "

May 23rd, 2011: This was the day that Mr. Williams hand delivered the $50,000 check to Maureen McDonnell and the $15,000 check made out in blank for the wedding reception. Part of the reason Mr Williams went in person was because he wanted to make sure that Mr. McDonnell knew where the money was coming from. He testified that he thought he spoke to Mr. McDonnell that day, but he wasn't sure about the circumstances

Now, you may recall that when Mr McDonnell testified, he fixated on this as if Mr Williams had sworn up and down that he saw the Governor at the Mansion on the 23rd. And he suggested that Mr Williams said something about sneaking through the tunnel Mr Williams said no such thing On direct examination, he was asked, "Did you have a conversation with Mr McDonnell before you loaned the 50,000 and gave the 15,000? Answer: I did Question: Do you remember the exact date of that conversation? Answer: I don't I recall that it was on the day that I came there or somewhere, I just don't recall whether it was in person or whether I talked to him on the phone "

On cross-examination, he was asked: "Mr McDonnell was not present when you dropped the checks off, was he? Answer: I just don't remember I have a problem with that part I just don't know whether I talked to him on the phone or I met him briefly upstairs I just don't remember "

Now, did we, the prosecution, put in the schedule for that day and explain the existence of the tunnel to illustrate that it could have happened that day? Yes, we did But that's not what Jonnie Williams swore to What he swore to was, he wasn't sure about it What he was sure of was that he needed to talk to Mr. McDonnell This is also from his testimony "The only thing I cared to do before I gave her $65,000 in two checks is, I needed to make sure her husband knew about it Question: Why? Answer: He is the breadwinner in the house And I'm not writing his wife any checks, I'm not writing his wife checks without him knowing about it " Because Mr McDonnell is the breadwinner in the house What does that tell you about who the loan was really to and who was going to be paying Mr Williams back? That loan is not just to Maureen McDonnell

And another reason you know that, that it was really the both of them, is because of how the money was spent This is Exhibit 579 It shows you how they spent that $50,000 from Mr Williams You know that Ms McDonnell bought $31,000 worth of stock on June 1st

That's down there at the bottom. She wrote the check on June 4th. That's why it says that there And then you see all the credit cards that got paid off Remember, yellow is Mr. McDonnell And what that means here is those three credit cards, Citi Card, Bank of America, and PenFed Visa, which total altogether some $20,000, those are all credit cards in his name only. And if there is anything that's clear from this trial, it is that it is Mr McDonnell who runs the finances in the household. He is the one who is monitoring their credit card statements He is the one who knows the money is spent on them, not just her

Next, May 28th is this e-mail, Exhibit 134 This is one of the most powerful pieces of evidence in the case And the reason it is is because it shows the linkage in Mr McDonnell's mind between the gifts from Jonnie Williams and the needs of Jonnie Williams for his product Mr Williams said he took the first part of this e-mail as being a reference to the $50,000 check he dropped off five days prior The next day, May 29th, Mr McDonnell and his two sons played golf out at Kinloch and rang up $2,300 in golf, food, and gear Now, Kinloch is obviously an excl[illegible], nice place Mr McDonnell knows the golf there is on Jonnie's tab. He pays nothing He doesn't even try to pay You all saw the photo of the credit card machine, testimony that all the stuff in the gift shop had price tags on it

Next day, couple days later, June 1st, Roskamp: This is the event where Ms McDonnell, this is down in Florida now, this is the event where Ms McDonnell addressed the crowd. She raved about Star and Anatabloc, and to Mr Williams' surprise, she offers up the Mansion for the product launch. So said every witness who testified about what happened there, and so wrote one of the witnesses who testified, Dr. Faessel, right after the event That's Page 3 of Exhibit 154

A little bit later in June, June 23rd to the 26th to be exact, was the Homestead event This was the one to honor big donors to Mr McDonnell's PAC. Mr Williams flew a couple of the kids from Richmond on his private plane And, you know, I'm sure other things went on there, but what did definitely go on there was a bunch of golf And in the weeks following the Homestead event, a couple of golf bags rolled into the the Mansion. A UVA golf bag for Bobby, you all saw it, and the Notre Dame one for his dad. They were both from Jonnie Williams, and they knew it

This is the University of Virginia bag, by the way, that Jeanine McDonnell thought was overboard and inappropriate and that Mr McDonnell thought was excessive, and that Bobby should return to Jonnie Williams. Now, Bobby did not return that bag or the clubs. But to be fair to him, maybe he was just following his dad's lead, because Mr McDonnell didn't return the Notre Dame bag, either, at least not until three months after the investigation hit the papers Mr McDonnell can't have it both ways The bag can't be excessive for his son, who is not a public official, but just right for him.

July 23rd is Gibson Island. This was a key event and that there was a lot of testimony about, which was Star's overall strategy to pursue a grant from the Tobacco Commission You may recall that Mr Williams testified that Mr McDonnell was encouraging him to pursue it Now, I want to talk about that just for a minute, because this is important Mr Williams, Paul Perito, Jerry Kilgore, they all testified about this Remember, in order to get the grant from the Tobacco Commission, they needed the universities on board in the first place, up front And the reason is because Star, which was a for-profit company, couldn't apply for the Tobacco Commission grant The universities needed to do that themselves

So it is important to remember, we can't put the cart before the horse here They wanted the Tobacco

Commission funding to pay for the studies, but they needed the universities interested enough to apply themselves The event at Gibson Island was a critical piece of that strategy to get the researchers at UVA and VCU fired up about the science behind anatabine and all of its potential

Now, there were lots of doctors at the event, but the two key ones were Dr John Clore, who is the Associate Vice President of Clinical Research at VCU, and he testified here; and Dr Peggy Shupnick, who Dr Clore told you was his counterpart at UVA and was directing the research enterprise there

Mr Williams flew the two doctors and Mary-Shea Sutherland up to Gibson Island on his private jet And Exhibit 170 on the screen now is the agenda for that meeting By now, you all recognize all these names, Dr Ladenson, Dr Caturegli, Dr Mullan, that guy was from Roskamp, Dr Wright, he was Star's head doctor And at the end of the event, Star handed out a request for applications This was a request soliciting applications for the $25,000 seed grants that Mr Perito talked about and that got disbursed later

This plan that they had to excite and interest the researchers who were there worked. Because the very night the event ended, Dr Clore sent this e-mail to his bosses at VCU. This is Exhibit 173 Now, these people to whom he sent it, the names at the top, he testified about this, they are the Dean of the entire Medical School, the Vice President for Research, and the Vice President for Health Sciences These are bigwigs And to them, Dr Clore makes a point of mentioning the Governor's support, which he said he learned about at Gibson Island, and also, the $25,000 planning grants that I mentioned a moment ago Now, that's July 23rd, the same day as the event at Gibson Island, okay He sends that e-mail

The next morning, Dr. Clore sends another e-mail, and this is Exhibit 174 This is along the same lines about Gibson Island, this time to colleagues and other researchers at VCU, including another name you recognize by now, Dr George Vetrovec You all remember him. He testified here. He was the one who Jonnie gave the ride in the Ferrari to to get cookies and he couldn't open the door to get in it That's Dr Vetrovec

Okay, in the category of dead horses is Smith Mountain Lake But I have to talk about it for a minute July 28th to July 31st, 2011, the McDonnells get a lovely vacation at Mr Williams' home up at Smith Mountain Lake Jerri Fulkerson helps set it up. There is the beautiful house They had it to themselves There is the boat that Ms Fulkerson arranged for them to use on the weekend, and of course, there is this, the famous Ferrari Now, don't miss the point of the Ferrari evidence, okay? Yes, it is partly to show that even someone who basks in a reputation of walking around with holes in his shoes knows very well how to enjoy the finer things That's part of it, absolutely But the other part, and we think the more important part, is the lie that he tells about it later We will come back to that in a little while

Let's recall what happens on the ride home in the Ferrari This is Exhibit 581, Page 2 During the three hours there in the car together, Ms McDonnell texted Jonnie Williams twice, e-mails him this photo of Mr McDonnell driving, and has two phone calls, one of which is 14 minutes long And during one of them, Mr McDonnell says he spoke to Jonnie Williams himself And they are still in the car together a good hour-and-a-half after that

And later that night, after getting home, after spending three hours in the car with his wife, Mr McDonnell sends this directive to Dr Hazel, it is Exhibit 189, telling him to send someone to attend a short briefing at the Mansion about 10 a.m. with the First Lady on the Star Scientific Anatabloc trials planned in Virginia at VCU and UVA.

Now, let's note how Dr Hazel responds early the following morning "Will do " Now, remember now, Dr Hazel testified in this trial, too This is the same guy who thinks Jonnie Williams' product is junk And wants no part of sitting next to Mr. Williams at the Homestead But he doesn't say, "Hey, Governor, this guy is selling snake oil, why are we giving him a meeting?" And the reason he doesn't is the same reason he didn't complain back in May when he was asked to provide his thoughts on Roskamp The reason is because he does what the Governor directs him to do That's the reason

August 1st, 2011, the next day This is the date of the meeting at the Mansion. Summary for it is Exhibit 582 Ms Huffstetler came in here and testified, testified about the meeting with Jonnie Williams, we saw her notes and all that Remember this: She said she attended only because she was directed to do so You remember the e-mail exchange where it started with the e-mail we just saw, that makes its way to Ms Huffstetler, and she is the one who ends up going to the meeting And second, that this is the one and only meeting she ever attended in the Governor's Mansion We went through her notes in quite detailed fashion. Bottom line, Mr Williams is talking to her about the usual

And one of the things he mentions to her is Dr Clore, who you may recall works at MCV And the last thing that happens on August 1st of 2011 is that 11:44 a.m., shortly after Mr Clore leaves -- excuse me, my bad, back up a second After the meeting with Ms Huffstetler, she gets the meeting with Dr Clore in the First Lady's Office And as I mentioned to you a moment ago, he had already talked to Ms Huffstetler about Dr Clore earlier in the day Now, this is the last thing that happens on August 1st. At 11:44 a.m., shortly after Dr Clore leaves, the August 30th Mansion event we have heard so much about is put on the calendar Mary-Shea Sutherland told you that that date was picked because it was a day and a time that Mr McDonnell's calendar was clear And take a look at Exhibit 192 You will see that Ms McDonnell does this one herself Mary-Shea Sutherland doesn't, she does

August 13th, 2011, more golf This is Exhibit 200 Mr McDonnell and one of his sons played, this time to the tune of $850, with food and merchandise thrown in

And the lead-up to the Mansion event is next It starts with Exhibit 204 And this is the exchange between Mary-Shea Sutherland and Katherine Harris And the e-mail that's not on the screen here but is part of the same exhibit is the one where Mary-Shea Sutherland first mentions that there is a lunch event at the Mansion and that the First Lady wants the Governor to attend. The reply to that is the e-mail that's on the bottom screen right here where Ms Harris says, "Look, the Governor is going to be in D.C. that day doing the radio interview and he won't be able to attend it " Ms Sutherland says, "The First Lady is not going to be happy about that " Ms Harris says, "I'll check with Mr McDonnell in the morning and get back to you." That last e-mail is on August 15th at 8:15 in the evening The next day, August 16th, 207, this is an e-mail from Mr Zubowsky to Ms Sutherland saying, "Can you send me information on the event? I know he is going to ask for details."

One more thing on 207 Ms Sutherland responds and gives him the details he is asking for That's also on August 16th So we have the e-mail exchange between Ms Harris and Sutherland on the 15th and the e-mail exchange between Mr Zubowsky and Ms Sutherland on the 16th, and here is what happens in between. Exhibit 584 Several communications, phones and text messages, between Ms McDonnell and Mr Williams, plus a phone call from Ms McDonnell to Mr McDonnell right before Adam Zubowsky asks for information about the event That's the context

Now, speaking of contexts, what's happening around the state at this time, the date of the launch? There is an earthquake that's happened. There's recovery efforts with that going on. There is the Dismal Swamp fire There is the nuclear power plant problem up at Lake Anna There is Hurricane Irene that's bearing down on the metro area And despite all these disasters and tragedies around the state, Mr McDonnell says, "I'm not missing that event at the Mansion. Jonnie Williams is going to be there, and so am I " And he goes

Now, what about this? I thought it was just an event where they were going to hand out some checks. No, sir. Three pieces of evidence blow that out of the water One, Dr Clore testified he was surprised to be receiving a $25,000 check. He didn't even know about it Two: Dr Lazo testified, and this was important He said, "After the event was over, after the event was over, when I was leaving, Mr Williams shook my hand and gave me a check." Third and finally, there is the briefing sheet that Dr Scarbrough prepared the day before This is Exhibit 218 You won't see anything on there about handing out checks, folks

Now, what happened at the event? Let's talk about the testimony of some of the folks who were there First, Jonnie Williams He testified that it was an event to launch Anatabloc, that there was Anatabloc at every place setting, that both Mr and Ms McDonnell spoke, that studies and research were discussed, that he himself spoke and he used the tobacco leaf as a prop, that the Governor asked questions and was generally supportive That was what Mr. Williams said.

What about Dr Lazo, who also attended? He testified that there was Anatabloc at the place settings, that studies and research were discussed, that Mr Williams spoke and used a tobacco stalk as a prop, that the Governor asked questions, and that it was mentioned at the event that Anatabloc was being rolled out into stores

How about Dr Clore? He attended, too He said that the Governor engaged people there and made some topical remarks He said that Mr Williams may have had a tobacco leaf, but he didn't remember And he said that Jonnie Williams at the meeting described the Anatabloc was about to be released in drug stores in the greater Richmond area, and that the event, Dr Clore's words, was designed to make a big splash.

Dr Scarbrough, who was there at the beginning of the event, she testified that Ms McDonnell told her that the event was for Jonnie Williams to launch Anatabloc, and that Ms McDonnell and Jonnie Williams had placed Anatabloc at every place setting; that something like that had never happened before; and that the event seemed like a launch to her

Now, let's pause for a moment here, please

There has been lots of focus, some of it humorous, on this term "launch" or "lunch " Folks, the label for this thing matters not one bit You can call it a launch, you can call it a lunch. You can call it a manifestation, like Dr Caturegli did. It doesn't matter. What matters is whether the Governor and the First Lady hosting this event at the Executive Mansion, or quoting Dr Caturegli again, "the State of Virginia's home" -- you all remember that, remember that's what he called the Mansion -- the question is whether hosting that event at the Mansion is an official act Of course it was Dr Scarbrough and Mr Kent both told you that all Mansion events are ultimately approved by the Governor Not the staff, not the First Lady, the Governor

And this wasn't some ceremonial event without context or some event with no purpose Hosting this event at the Mansion and all that went with it is what mattered most to Jonnie Williams and Paul Perito and Star And what mattered most of all was that Mr McDonnell showed up He made time to attend. He arrived, he made remarks, he talked glowingly about Star He asked questions He was engaged. It was delightful And Jonnie Williams was on Cloud 9 This is exactly what he wanted This is exactly what he was paying for

He testified he wanted Mr McDonnell there because, quoting, "It sends a signal to those medical schools that this is important. The credibility associated with it." End quote. And if there is any question about what Mr Perito called the halo effect, or what Jonnie Williams called credibility, that comes from an event like this, let's pause for a moment and think about what it was like from the perspective of the people who mattered to Mr Williams, the UVA and VCU doctors who were there Both Dr Lazo and Dr Clore were state employees They were people way down the food chain from Mr McDonnell And they told you that when they saw that invitation with the name on it and the seal on it, it seemed official to them.

And then think about what they did after it was over Dr Clore promptly told his colleagues all about it when he got back to VCU And Dr Lazo, who was the one from UVA, he didn't even wait until he got back to Charlottesville He called his higher-ups at UVA from the car and told them that he had just met the Governor at the Mansion. And when he got back, he did the same thing, told the Dean of the School of Medicine, and later a panel of fellow researchers

You all detecting a pattern here? Dr Clore's reaction following the Gibson Island event, where the Governor's support is discussed; Dr Lazo's behavior following the event at the Mansion And it is not like Dr. Lazo's comments fell on deaf ears Remember Exhibit 267 from Sharon Krueger, one of the UVA officials who heard about the event from Dr Lazo, this is at the top here, as she thought through what the University of Virginia should do She wrote a Pro/Con list for herself, and that list really says it all The top of the Pros? "Perception to Governor " The top of the Cons? "Political pressure from Governor "

Now, folks, there has been a lot of back and forth about what Mr McDonnell said or didn't say at the launch event But his actions spoke louder than any words could have. He didn't have to say a single thing for that event to impact those state employees Ms Krueger wasn't even there, and she got the message

A word about this defense about Mary-Shea Sutherland, that the launch was a brainchild of hers and what happened here really had nothing to do with the McDonnells because it was all her secret plan to get official acts for Jonnie Williams in exchange for a job Now, this fits nicely with their general strategy of trying to make the case about anyone other than their clients But let's indulge it for just a moment What was the evidence on that? First, the idea of the event at the Mansion comes from one place only: Maureen McDonnell at the Roskamp event on June 1st Every person who testified about that said the same thing She offered up the Mansion in her remarks for the launch of Anatabloc This idea wasn't hatched at the Union League Club in New York by Mary-Shea Sutherland in a conversation with James Abel That's why we brought that guy in to testify That had nothing to do with it The Mansion wasn't on anybody's radar at that point It was on nobody's radar until it came out of the First Lady's mouth in Florida.

Second, Mary-Shea Sutherland, who according to them is so fired up to lay out the Mansion to do whatever Star wants, when Star sends over a press release shortly before the launch says, "No way " That's not a euphemism, folks That's actually what she said, Exhibit 224

Third, Ms Sutherland, who according to them is an architect of this two-year-long bribery scheme, she leaves the Mansion six months in October of 2011, she is gone. Everything that happens in 2012, she is gone She has nothing nothing to do with any of it

Fourth, how about the behavior of Jonnie Williams himself? When faced with the choice of being a client for Mary-Shea Sutherland or outing her to the First Lady to try and preserve that relationship, there is no hesitation "Forget Mary-Shea Sutherland," he tells the First Lady And why? He told you himself Question

Mr Dry put to him: "In your mind, what's more important, your relationship with Mary-Shea Sutherland or your relationship with the McDonnells? Answer: The McDonnells Question: Who could do more for you? Answer: The McDonnells That's not even close "

But you know what the best evidence is that this defense is a loser? It is the testimony of Mary-Shea Sutherland herself Among the instructions you are going to get from the Judge before you deliberate is some guidelines on how to evaluate the credibility of witnesses. Mary-Shea Sutherland got A's in spades on all of those categories She was direct, she was calm, she was patient, she had the same demeanor on direct examination and cross-examination And there was an air about her that you could tell when she worked for these people, she was the only adult in the room. Mary-Shea Sutherland's testimony and presence here in that chair were the last nails in the coffin for that defense

Now, they keep trying to resurrect it And you may remember a couple days ago Mr Ross' slides about all the communications between Mary-Shea Sutherland and Jonnie Williams in the last few days leading up to the launch. And we have seen at least a couple times Dr Scarbrough's e-mail where she refers to the event at the Mansion as "Mary-Shea's deal " Okay, let's talk about that The answer for this comes from the testimony of Dr Scarbrough herself She made it crystal clear what that was about And she backed up exactly what Mary-Shea Sutherland said. The only reason Ms Sutherland was as involved as she was in the days leading up to the event is because Dr. Scarbrough was on vacation. It is as simple as that No matter how hard they try to make this a criminal conspiracy between Mr Williams and Ms Sutherland, no matter how badly they want that to be what happened here, for all the reasons I've gone over just now, that doesn't make any sense It just doesn't

Moving on: Early 2012 Exhibit 285, January 7th of 2012, Mr McDonnell and his two sons came out again to Kinloch, and this time spent $1,300 of Jonnie Williams' money Less than two weeks later is January 19th, 2012 This is the day of the second call where Ms McDonnell hands Jonnie Williams the phone and he and Michael Uncapher talked about what's going on with MoBo. At the time that that happens, Mr Williams is with Ms McDonnell at the Mansion, and you can see that from Exhibit 586 In that same conversation, Ms McDonnell told Mr Williams that the Governor wanted to know how things were going with studies at UVA and VCU And Mr Williams said, "They are slow " And the reason he said they are slow is because of the November 29th of 2011, a couple months before, phone call between Star folks and UVA folks, Mr Perito told you about this call, you may remember "UVA was unprepared, my word, not his, and it was a disaster "

I want to take a minute and talk about Mr. Perito. You may remember that on cross-examination after Mr Asbill pointed out all the personal connections they had, for no apparent reason, he then came at him at 100 miles an hour for being only interested in money. And then Ms. McDonnell's counsel got up here and asked questions suggesting that all Jonnie Williams had to do was turn on the charm to brainwash this Harvard Law School graduate and former White House official into coming to Star

Now, neither one of those lines of cross-examination got anywhere But here is the question we would like you to focus on. Why were they trying so hard to discredit him? It is because he hurts them. He clarifies beyond any question that there was a plan to try to get Mr and Ms McDonnell to assist Star in promoting the product and in obtaining studies at UVA and VCU They were key pieces in the effort to pursue funding from the Tobacco Commission. He explained precisely how having that event at the Mansion helped Star, how the Governor's attendance added gravitas to their effort and could influence officials from UVA and VCU and how that would have a propitious impact, he said, on officials from Virginia. Not to mention he corroborates Jonnie Williams all over the place He corroborates that Jonnie Williams told Ms McDonnell about Mary-Shea Sutherland looking for a job to preserve that relationship at the expense of whatever one he had with Mary-Shea Sutherland. And the reason he corroborates that is because it was Mr. Perito who told him to do it He corroborates that Ms McDonnell wanted to be on Star's Board because of money He shut that down. And most important of all, he corroborates through the story of when Jonnie Williams finally came clean to him, that Mr Williams knew what he did was wrong

That was a moment in this trial if there ever was one He said Mr Williams, while telling his longtime friend and advisor what he had done, was sobbing Mr Williams, an undeniably proud man, I think we can agree on that, admitted what he did, and that he knew it was wrong He admitted it not to agents, but to his longtime friend. He admitted it before he had met a single prosecutor, and long before any immunity agreement

Paul Perito, the man who testified about the importance of the Governor's gravitas, added a bit of his own to this trial And they have no answer for him.

The day after the January 19th meeting between Mr Williams and Ms McDonnell at the Mansion, we talked about that a moment ago, the one where it was the second call between Mr Uncapher and Mr Williams about MoBo, the day after that meeting is January 20th. And that was the day that Mr. Williams and Ms. McDonnell flew down to South Carolina to meet the rest of the entourage, Mr McDonnell and the other staffers, for the Mitt Romney endorsement You all remember that story I'm not going to repeat that here

A week after that is this e-mail That's Exhibit 295 This is the one where Mr Uncapher is telling Mr McDonnell about the conversation he had had with Ms McDonnell the week before with "the guy who is helping us " And although Mr Uncapher doesn't mention any names, it is quite clear who Bob McDonnell thinks he is talking about And apparently, he and Ms McDonnell talked about it that evening

The other interesting thing that happens after the January 19th meeting at the Mansion is that Mr Williams gets the green light to invite a list of doctors and researchers of his choosing to be recognized as Healthcare Leaders in Virginia at a reception at the Mansion on February 29th Exhibit 299 is that list being sent along on February 3rd to the First Lady And we are going to come back to this in a minute, so just hold that thought, okay?

Before I do that, I want to point out that also on February 3rd, the same day that that list is forwarded to the First Lady, Mr McDonnell and Mr Williams have their first conversation about the second $50,000 that Mr McDonnell needed for MoBo, and about how to get it done

Now, there has been lots of testimony about what was going on with MoBo around this time; a whole lot of testimony, we acknowledge that, about whether they really needed the loan and all that stuff Let's talk about that for a minute Mr Kosowsky: The defense paid this guy $80,000 to review a bunch of documents and to walk into this courtroom and provide his opinions He opined that the McDonnells were financially sound That's what he said. You remember Mr Faulconer methodically dismantling that, brick by brick by brick Mr Kosowsky also said that part of the reason for his opinion was that Mr McDonnell's credit card capacity was a liquid resource He said Mr McDonnell had the ability to access credit

Now, there is a lot I could say about those two comments, but the upshot is this: It is just not right It is just not right

But let's talk about these so-called liquid resources of Mr McDonnell You may remember Mr Faulconer walking through some half-dozen credit card statements and pointing out the interest rates on those accounts. Why did we do that? It was a tedious exercise, yes. But here is the point: None of those other options could touch the deal Mr McDonnell was getting from Jonnie Williams Allen Kosowsky was a hired gun who was shooting blanks You shouldn't credit him.

How about sister Maureen? There has been plenty of testimony from sister Maureen about this She is loaded. Undisputed. What was the point of the testimony? The point appeared to be that Mr McDonnell could have just called her up and gotten whatever money he needed, so why would he hit up Jonnie Williams? We don't know the answer to that for sure But here's some possibilities that we came up with First, maybe he didn't want to hit up his little sister for more money Maybe he was too proud to do that Second: Maybe the money wasn't as available to him as the testimony indicated Because, as sister Maureen testified, it was better for her to invest the money and make more money than to plow her money into MoBo, the money pit You remember that? She wasn't even willing to pony up $20,000, preferring to invest it She said the 50 grand she had in her third 401(k) was not significant But she couldn't even bring herself to cough up 20 for MoBo So think about that when you are assessing just how freely available sister Maureen's money really was to her big brother, Bob

But you know what else? All this evidence about all the other options Mr McDonnell supposedly had, including those nonsense options like he could have spread out his $20,000 share of the annual shortfall over all that credit card capacity Or, he could have cashed out his retirement 20 months shy of when the penalties would go away All of these other piles of fantasy cash just sitting around, even if it were all true, even if it were true, whatever significance that stuff has fades to zero when you remember this: He asked Jonnie for it He asked for it Not his wife, not his sister, not Michael Uncapher He did. We don't have to prove that Jonnie Williams was the only option Mr McDonnell had. We have to prove that Jonnie Williams was the option Mr McDonnell chose That is exactly what we have proven, and that is exactly what he did.

The notes of that February 3rd conversation, you remember this: You have seen the notes of this first meeting on February 3rd. Among the subjects discussed was reportability This is Exhibit 2, the color version Mr McDonnell testified that this was just him taking detailed notes of everything Jonnie Williams was saying and that he didn't care about it He didn't care whether Jonnie Williams had to disclose who he sold the shares to And you may remember Mr Dry pressing Mr McDonnell on cross on this point But if reportability isn't a concern for you, if you really don't care about it, why are you taking these notes about it? Isn't that the whole point of taking notes, writing down the stuff that matters to you? Take a look at this page of notes, and ask yourselves: Is this someone who could care less about reportability, or is this someone to whom reportability is important? Don't overthink this one, folks Of course it was a concern Of course it was important to him. That's why he took the notes

Okay, let's go back to February 3rd with the invite list for the Healthcare Leaders Reception Started out with the e-mail that Ms Birgmann sent to Ms McDonnell on February 3rd. The next one is Exhibit 300 This one is Dr Scarbrough sending Dr Hazel's list to Ms McDonnell on a Saturday afternoon, February 4th, which she testified was most likely because Ms McDonnell had asked for it. That's at 3:21 p.m. About twenty minutes later, we have Exhibit 301, which is Ms McDonnell saying, "Hey, invite as many people as you want " And she says that not only to Ms Birgmann, but to Jonnie Williams himself Next is Government's 302, a few days later, this is February 7th, and Dr Ladenson is asking Dr Crantz to check his calendar for the evening of February 29th So you know Dr Ladenson has gotten the word Next is Exhibit 304, also February 7th, and at 10:46 p m.Ms McDonnell sends this directive to Dr Scarbrough to "Add these docs to the Healthcare Leaders event and mail invites today "

Now, this is the list that is attached. And where did this list come from? We may not know where it all came from, but we know where some of it came from. You know Dr Vetrovec and Mr Abadi came straight from Star, because they were on Jonnie Williams' original list They are from VCU As for the names typed at the end in the bigger font at the bottom of the screen here, those came from Government's 629 This was the stack of paper you heard testimony about that Mr McDonnell flipped through and reviewed and circled names and so forth On Page 3, all five of those names at the top made it on, along with the circled names, for example, on Page 5 And by the way, let's note that Mr McDonnell, among others, circles Dr Clore This is where the list that Ms McDonnell sends to Dr Scarbrough on February 7th, that was Exhibit 304, that's where this list comes from.

Now, Mr McDonnell claims that Ms McDonnell was the one who added the Star people, of course And not only did she add them; he had no idea that she had done so Never mind that the first page of the list that we looked at a minute ago, those five names at the top, all but screams Jonnie Williams and Star, and never mind that he circled Dr Clore's name Let's move on

When did all this circling and stuff happen? The answer for that comes from Exhibit 306. This is an e-mail on the morning of February 8th from Dr Scarbrough to Dr. Hazel's assistant, that's who Elaina Schramm is And she is saying, "The First Lady and the Governor were going over the list last night " So the answer is, Mr McDonnell and Ms McDonnell went over the list on the night of February 7th And by the way, looking at Mr McDonnell's schedule for that day, this wasn't one of those nights that Mr Brownlee was talking about with Special Agent Weber yesterday where Mr McDonnell was out of town until 11:30 or whatever He was there

Now, you may remember that Mr Williams testified that at some point after the January meeting with Ms McDonnell at the Mansion, that she called him back and said the Governor was furious and wanted contact information for the people that Mr Williams was dealing with at UVA. And on the afternoon of February 8th, the day after Mr and Ms McDonnell had added the names to the invite list for the Healthcare Leaders Reception, and by the way, five days after Mr McDonnell's first conversation with Mr Williams about the second 50 grand, Ms McDonnell received the names and the contact information from Jonnie, Jr That's Exhibit 312

Let's review what happens the next day. This is Exhibit 588 February 9th. Ms McDonnell has lunch with Mr McDonnell, and then she calls Jasen Eige You may remember that Mr Eige testified that he believed he had spoken with Ms McDonnell before receiving the e-mail she sent, and he was right At 3:13, Ms McDonnell sends the contact info to her husband and Jasen Eige, and says, "No one will return Jonnie's calls " That's Exhibit 312 Jasen Eige basically blew her off, this is what he testified to, he basically blew her off and he hoped this would all go away

That afternoon and early evening, Mr and Ms McDonnell traveled to Washington, D.C together The next morning, February 10th of 2012, at 9:27 a.m., Ms McDonnell e-mails Jasen Eige again. This is Exhibit 314 And she says, "The Governor wants to know why nothing has developed with the studies, and the Governor wants to get this going with VCU-MCV "

Now, they have made a big deal throughout the case about how Ms McDonnell from time to time would invoke the Governor's name when he really didn't know it But lest you think there is any chance of that happening here, consider the context. First, the preceding afternoon she had e-mailed Mr. McDonnell Then they traveled to Washington, D C together, attended a Romney event, and spent the evening together Second, the very next morning, Ms McDonnell sends the e-mail we just looked at to Jasen Eige And third, at the moment she types out that e-mail on her BlackBerry and sends it, or iPhone, whatever it was, and sends it, she is sitting in the back of a Suburban right next to her husband. Those circumstances alone should eliminate any doubt that Mr McDonnell was absolutely on board with the plan to kick start studies at UVA for Jonnie Williams' benefit Mr McDonnell denies knowing anything about it The evidence to this point shows clearly that he did, but what seals it beyond any doubt is the pair of e-mails Mr McDonnell sends a few days later This is Government's 318 and 320 You guys have seen these e-mails several times I don't need to read them to you. You want to know what Mr McDonnell knows, whether there is a corrupt agreement in his head, you want to know what he spends, and most importantly, why? Look no further Government's 318 is about the quid. Government's 320 is about the quo And what your common sense tells you about those six minutes in between, that instinct that you have in your gut when you hear that these e-mails were six minutes apart, that's what we call pro

Now, fortunately for Mr McDonnell, Jasen Eige shut this down This is also Government's 320 If there is anything you can tell from this short e-mail, it is that Jasen Eige, the Governor's legal counselor, didn't see this as basic constituent service, like Mr McDonnell tried to describe it on the stand. And before he even met with the Governor, Mr Eige called up his friend, Jerry Kilgore, who he knew was advising Star, and said, "I've been asked by the Governor to show support for this research. I don't think we should be pressuring UVA and VCU on this research And I just don't think we should be doing it " He shut it down

And by the way, if the Governor was really so powerless over UVA as they would have you believe, and if what he said had so little effect on them, and his influence over them was just a figment of Jonnie Williams' and Paul Perito's imagination, why does Jasen Eige bother intervening? Why does he have to step in? It is because he knows, he knows the power of that bully pulpit that Mr Kilgore talked about He knows that that is the same power that your common sense confirms That's why he intervenes

Now, I said a moment ago that Mr McDonnell was fortunate, and I say that because Mr Eige's intervention was the only thing that allows his lawyers to stand here and argue to you that he is not guilty because more wasn't done The polite no that we have heard so much about, that Dr Hazel gave, that Ms. Huffstetler gave, that Jasen Eige gave, that never came out of Bob McDonnell's mouth. And the reason it didn't is because he was on the Jonnie Williams' gravy train and he and Jonnie Williams had a deal "Do what you can when opportunities arise, and I'll keep paying."

As you will learn when you get the instructions from the Court before you start deliberating, bribery is bribery whether or not the payer actually provides the thing of value, and whether or not the public official ultimately performs the requested official action or intends to do so The corrupt deal is why he is guilty And he doesn't escape responsibility just because his staff, who didn't even know about the bribes, said no for him.

Healthcare Leaders, back to that Before we get to the actual event, there is more work going on on the stock front in the lead-up to the Healthcare Leaders Reception On February 21st, 2012, this exchange occurred. This is Government's 590 Two days later, on

February 23rd, 2012, there is a conference call among Mr McDonnell, Ms McDonnell, and their stockbroker, Mr Piscitelli. He testified here And this was about the margin loans. You may remember Mr Piscitelli said that Ms. McDonnell never told him, "Hey, don't tell Mr McDonnell about any of that stock I purchased last year " Never said that to him. And indeed, the calls started with Mr McDonnell thanking Mr Piscitelli for helping Ms. McDonnell out And then during the call, Mr and Ms McDonnell made it clear that to do this deal, a separate account was going to be set up in Ms. McDonnell's name only, segregated from the initial one

Just think about that for a minute The best sign that this is a devastating piece of evidence for the McDonnells is how mightily Mr Piscitelli tried to avoid saying it You remember that? Mr Dry with the grand jury transcript, he basically had to use a winch to get this one out of him. He tried to say that on reflection, it may have been on a later call, only with Maureen, that he got that instruction That's what he tried to say And then he was confronted with three different excerpts of his grand jury testimony, some ten months ago, ten months closer in time to the events that occurred in this case, in which he swore not once, not twice, but three times that during the call with both Mr and Ms McDonnell on the line, they instructed him to set up a separate, segregated account in Maureen's name And the next day, February 24th, Ms McDonnell sent over an application to Davenport for that very thing

Now, according to Mr McDonnell's testimony, after that joint call, Ms McDonnell secretly sent over an account opening statement to Davenport, and he had no idea Don't buy it. In the face of the evidence, that denial is not credible

That brings us to February 29th. Plenty happened on this day First, Mr Williams and Mr McDonnell have a meeting at 1:30 where they discuss more details of the stock deal Also on February 29th, Mr McDonnell sends this e-mail, Exhibit 801, Page 2, in which he is asking that his wife, the woman he is supposedly in such poor communications with, be copied on all future e-mails with the realty manager at Sandbridge

Okay, let's go to the Virginia Healthcare Leaders Reception That's that evening, the evening of February 29th Now, you remember the list that Mr McDonnell and Ms McDonnell went over back on the night of February 7th There were lots of people from Mr Williams' list who got invited, including Dr Vetrovec, Dr Clore, they were the doctors at VCU that Mr Williams was trying to impress, Ladenson, Mullen, and

Caturegli Johns Hopkins was, last I checked, in Maryland. By the way, now you know why they elicited that Johns Hopkins has an emergency room campus at Arlington Of course, none of those guys who attended was an emergency room doctor, but whatever A Roskamp doctor got invited, too That was Dr. Mullan. I don't think Roskamp has a research facility in Virginia And not to mention, half of the front office of Star Scientific, Jonnie Williams, Jonnie, Jr , Ms Birgmann, and David Dean, who, you may remember, while he was there that day, stopped by to cold call Sara Wilson and pitch Anatabloc to her

Now, as for whether these people were appropriately recognized as Healthcare Leaders in Virginia, you need only remember the testimony of Dr Hazel, who, if nothing else, made it quite clear what his opinion was of the product, the company, and this list of outsiders, his word, who got added to the event We think it is fair to say he was disgusted, that's our word, not his, but we think it is a fair inference

These people had no business being there They got invited for one reason only: Jonnie Williams wanted them invited. Jonnie Williams also wanted Mr McDonnell to single out Dr Ladenson, and he got that, too

Oh, and remember what Dr Scarbrough said about how the Mansion had to pay for all the extra invites above and beyond the folks that Dr Hazel wanted to be there? Those are taxpayer dollars, folks So that line you heard in Mr Brownlee's opening statement about not one dollar of taxpayer money being spent on Mr. Williams? That was just a misstatement It is wrong.

Now, before we go on to illustrate how valuable it was to get invited to this event, let's take a brief look at who didn't get invited.

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The Republican Governors Association, which Mr McDonnell pointed out no fewer than ten times he was on the Executive Committee of, is a nationwide fundraising outfit for Republican governors They have a list of 41 people that they want to have invited This is Exhibit 308 These are people who are affiliated with significant and important healthcare companies, companies like CIGNA and Amgen and other companies like that, and nearly all of which the doctors who testified here were familiar with Not one of these people got invited Zero Of course, to be fair, all these people's companies did was donate hundreds of thousands or millions of dollars to the RGA That's all they did They hadn't done what Jonnie Williams had done and, as we're about to see, did continue doing

Now, that separate segregated account that was just in Maureen's name, it never got used And because -- the reason is because, as we all know, the stock transfer never happened When Mr Williams gets those wiring instructions from Mr Piscitelli on March 2nd -- that's Exhibit 348 -- he realizes it can't be done without disclosures And so instead, on March 6th, he has Ms Fulkerson cut a $50,000 check This is the one -- I know you all remember this -- where Ms Fulkerson twice puts Maureen McDonnell's name on the memo line, before finally getting it right the third time

Now, was this a loan to MoBo? Let's start with, what is MoBo? MoBo is an LLC made up of Bob McDonnell and his sister Bob McDonnell is Bo in MoBo They have no employees, no assets to speak of other than the properties themselves, and they are mortgaged to the hilt It's cash negative to the tune of an average of $40,000, or so, every year during this time, and sister Maureen said that its bank account was no more than a pass-through

Jonnie Williams wasn't making a loan to MoBo Jonnie Williams was making a loan to Bob McDonnell But there is some important news about the law that you're going to get on this from the Court a little later, and it is that for the corruption charges, it doesn't matter. As we expect Judge Spencer to instruct you, the thing of value in a bribery exchange need not be provided directly or indirectly to the public official, but may be provided to another person or entity at the public official's request or with the public official's agreement

So for the corruption charges, the honest services fraud, and obtaining property under color of official right, it makes no difference whether the $70,000 in loans 2012 was to MoBo It's not a defense, period

Two weeks later, March 21st of '12, Mr McDonnell is in a meeting with his Secretary of Administration, Lisa

Hicks-Thomas, and one of her subordinates, Sara Wilson And they both testified here And the subject of their meeting is a consumer-driven healthcare plan for employees, which, among other things, specified which drugs could and could not be used as part of the plan During the meeting, in the midst of this discussion about the employee health plan, Mr McDonnell pulls out a bottle of Anatabloc, talks about how great it is, and how it would be good for State employees

Now, depending on whose memory is correct about this, either the Governor asked them to meet with Star personnel, that's what Ms Hicks-Thomas said, or gave Ms Hicks-Thomas the strong impression that he wanted to meet with Star That's what Ms Wilson said Either way, according to Sara Wilson, she had never seen anything like this before

Let's move to May Despite having a sister who makes $500,000, and at least one friend, Mr Damico, who's apparently willing to stroke a check for a million bucks at the drop of a hat, Mr McDonnell, nevertheless, decides to hit up Mr Williams for another 20 grand This is Exhibit 379 This is the Governor of the Commonwealth of Virginia asking Jonnie Williams for a $20,000 loan What it is is a $20,000 bribe

And Exhibit 80 -- excuse me, 380, 12 minutes later, what does Jonnie Williams say? "Done Tell me who to make it out to and the address " Four days after this, May 22nd, Jonnie Williams had his assistant, Jerri Fulkerson, transfer another $20,000 to MoBo, which is exactly what Mr McDonnell asked for

Another little detour here, please A brief word about all the things we keep hearing about that Mr McDonnell didn't do As I noted earlier, we don't even have to prove that he did any official acts so long as we prove the corrupt agreement Of course, Mr McDonnell did plenty, and you all have heard about all that We expect you'll hear from the Court in the instructions that official action includes actions that have been clearly established by settled practice as a part of a public official's position

Now, all of these things, the launch at the Mansion, directing Dr Hazel to send somebody to the meeting in August of 2011, the effort to pressure VCU and UVA on Star's behalf that Jasen Eige shut down, the Virginia Healthcare Leaders event at the Mansion, Mr McDonnell meeting with Lisa Hicks-Thomas and Sara Wilson, asking them to reach out to the Star people, or strongly suggesting as much, all of these are officials acts on the issue of Virginia business development, which everyone who testified about it said was a capital priority of Bob

McDonnell's administration

Mr. McDonnell's involvement with every single one of these things was in his official capacity as Governor, whether it was approving the Mansion event, which Dr Scarbrough and Mr Kent both said were ultimately approved by him, or directing conduct by a subordinate Whatever it was, it's all official action So the fact that Mr. McDonnell didn't order a dispensation from the Governor's Opportunity Fund or to Star, and he didn't put a line item in the budget for the studies that Mr Williams wanted, that's like saying a guy who steals a TV isn't guilty because he didn't steal two Not a defense

What separates the official action in this case from all the other times that Mr McDonnell had done similar things is what makes the defendants here guilty They got paid for them We've heard several times during this trial that no one had to pay Mr McDonnell to get anything The easiest thing to get out of Mr McDonnell was a kind word about Virginia business You've seen all those -- all the photos, 400-and-some photos the defense put in evidence of making comments at different ribbon cuttings and so forth I passed along the information to Dr Hazel just like I had done hundreds of times before

But as we expect you will hear from the Court's instructions on the law, the government need not prove that the bribe caused the public official to change his position We don't have to prove that He could have gotten -- he could have done exactly as he would have done anyway He could have done exactly as he had done hundreds of times before And if he takes official acts in exchange for money, it's a crime The question isn't whether Jonnie Williams had to pay Bob McDonnell to get anything. The question is whether Jonnie Williams did pay Bob McDonnell to get anything, and the evidence is overwhelming that he did

How about this one If he said it once, he said it ten times "Mr Williams never asked me for anything " Now, the point of this one was, "Since he never asked, I never had any idea that he wanted anything " At the very end of his direct examination, Mr Asbill asked Mr McDonnell straight away, "What do you think Jonnie Williams wanted from you?" This was his answer "He never told me People want different things I think he wanted to be friends with me He liked being with my wife He wanted to see his business grow "

First of all, Jonnie Williams did tell him He told him what he needed way back in October of 2010 on that long plane flight He told him, in no uncertain terms, in a June 2011 letter -- that's Exhibit 161 And not to mention, Mr McDonnell's wife already knew She offered to help Mr Williams' business in the May 2nd conversation

But more importantly, folks, common sense tells you it was clear Jonnie Williams wanted something Dr. Hazel knew it And he said that the treatment Jonnie Williams got -- about that treatment that Jonnie Williams got, that he had never seen anything quite like it Dr Vetrovec knew it after spending 20 minutes with the man Mr Cox knew it, and he said it to Mr McDonnell's face Do you know who else knew it? Jasen Eige He knew it That's why he told the Governor that they needed to be careful

And here's the kicker None of those people I just mentioned, not one, knew about the loans, the check for Cailin's wedding, the golf None of these people, not one, had received the June 16th letter from Jonnie Williams None of these people were on the six-hour plane ride back from California None of these people were at the private April 29th dinner at the Mansion The only one who did all of those things is sitting right there, and he's the only one who claims to have no idea that Jonnie Williams ever wanted anything from him Bob McDonnell knew exactly why Jonnie Williams was showering him and his family with gifts, and so do you

The better question is why doesn't he want to admit it? And that answer tells you all you need to know Now, of course, there's no explicit agreement Of course not We don't have to prove one It doesn't have to be expressed People's conduct, acts, and all the surrounding circumstances, can establish that there was an agreement That's the law, and it makes sense

Remember, we are in the real world now We're not on TV This is a real Governor who is very smart and wields tremendous power This is a real businessman who is very smart and pursues his agenda as aggressively as anyone anywhere These guys aren't long-time friends, and when the gifts start rolling in, they have barely known each other Why do you think a smart, savvy bribe payer and a smart, powerful politician would not make an explicit agreement? In the real world, these things aren't explicit, but they are agreements just the same They are deals just the same And some of the very best evidence in this case that there was a corrupt deal is the lengths that both sides went to hide it

First, Mr McDonnell told his staff nothing You've heard that umpteen times Second, the other side of this corrupt deal was no different Just like Mr McDonnell, Mr Williams didn't tell any of his close advisors, lawyers, or colleagues at Star Don't forget that Most importantly, Mr Perito, he didn't tell him either And the reason he didn't is because he knew the same thing you do; that Mr Perito, the former prosecutor, would have shut that down

So here's the starting premise Both sides to this corrupt agreement are hiding the facts underlying it from the people closest to them, the people whose job it was to keep them on the straight and narrow, the people they knew whose job it was to keep them on the straight and narrow Those people on the Governor's side and on Jonnie Williams' side they deliberately kept in the dark

Now, speaking of keeping people in the dark. Let's talk about the SOEIs Please don't miss the reasons that we offered the SOEI evidence There are two One is the gifts from Jonnie Williams that Mr McDonnell chose not to disclose, and the things that he and his wife did to avoid having to report the stock and the other loans in 2012 Those are the two reasons; gifts from Jonnie Williams, lengths they went to to avoid having to report the stock

Now, neither defendant is charged with filing a false SOEI That's not among the charges in the case That's an issue of Virginia law and is not an issue in this case, period

Let's talk about the gifts, the gifts from Jonnie Williams that Mr McDonnell deliberately kept off his form; the golf he played at Kinloch, and the check for

Cailin's wedding Let's start with the golf There was a lot of testimony about the SOEI process Mr Eige, Mr Conrad, Ms Watts, the Governor's confidential assistant, they all talked to you about the process You know, the drafts get done, meetings happen, edits get made There are lots of changes to it in the process and so forth, considering all these different gifts that get reported, and so forth, over the course of the year

But you know what's different about the golf with Jonnie Williams? The golf with Jonnie Williams isn't even up for discussion It's not even on the table because Mr McDonnell tells nobody These staffers, Pam Watts and Jasen Eige and Matt Conrad, whose job it is to assemble all the info and help the Governor fill the forms out, he tells them zip about golfing on Jonnie Williams' tab at Kinloch Nothing

Now, this is another one of the points where Mr McDonnell pretended to blame himself Said that it was his fault that the golf wasn't on the forms and then, in the same breath, said, "The system failed " Do you remember that?

Another one was when he said, "The golf should have been reported " And all the prosecutors' pens go up And then right after that, he said, "I never got any forms from Mr Williams " Oh On cross, he said he forgot

He golfed there nine days before he filed the final form for calendar 2011, in January of '12, and that was smack in the middle of the SOEI drafting process He claims he forgot that he golfed there twice in 2011 He claims he forgot about the golf with his future son-in-law a few days before his wedding I don't think so He didn't forget With all the other gifts, he was in the weeds, as he always is He made sure a $130 windbreaker made it on in realtime That's Exhibit 282 He didn't forget about that three grand in golf gear and food he rang up on Jonnie Williams' tab at Kinloch

The reason the system failed is because he made a choice to not tell anyone on his staff about the golf The reason he made that choice is because he didn't want them to know The reason he didn't want them to know is because he knew his deal with Jonnie was dirty

They say, "Well, look He disclosed $2,200 and change for Smith Mountain Lake, and he disclosed however many thousand dollars he disclosed for the Chatham Bars Inn trip He wasn't hiding anything " You all know the answer to this one What choice did he have? The staff knew about those Mr McDonnell didn't have the ability to control whether the staff knew about them He couldn't hide that stuff from the staff like he hid the golf and the loans He didn't forget about the golf

What about the check for Cailin's wedding? The point of all of the back and forth over who the $15,000 check was for, there was gobs of testimony about that The point of all of that, folks, is right here This is where it matters They want you to believe that it was a gift to Cailin and that that's the only reason Mr McDonnell didn't list it on his SOEI We say that it was a gift to Mr and Ms McDonnell Mr McDonnell knew it, and that he deliberately didn't disclose it on his SOEI because of who it was from And, folks, this one isn't close

Let's start with who was on the hook to pay Mr McDonnell, not his daughter, is the signatory on the contract Mr McDonnell, not his daughter, is the one who made the two down payments That's 79 and 85 Mr McDonnell is on the hook to pay, not Cailin

Now, let's talk a little bit about this Cailin and Chris intended to pay for the wedding themselves idea First, this was a while ago, but you may remember all the stuff Ms Aber got Cailin McDonnell to admit that she didn't pay for besides the catering: The rings, the jewelry for the bridesmaids, the silver frames for the guests, the use of the limousine Do you remember when she was asked if she paid for her wedding dress? She actually said, "Yes I paid $43 for it " It turns out that was the sales tax

Government's 111, dated May 1st of 2011 This is a month before the wedding, and Cailin McDonnell testified that she had no idea how much was due and owing on the catering contract Not to mention the testimony of Dr Scarbrough, one of Cailin's best friends, who, when shown this e-mail, Exhibit 147, testified that she was under the impression that Cailin's parents were paying and that that was based on conversations with Cailin Finally, there's Government's 626 This is the e-mail from Cailin asking about all the friends of dad's who want to help pay

Folks, this business of Cailin intending to pay for her own wedding as evidence that Jonnie Williams' gift was really for her and not her parents, it just isn't true Jonnie Williams knew Cailin McDonnell for a grand total of 15 minutes when he agreed to cut a check in blank for $15,000, and on the stand he could barely remember her name The evidence is overwhelming that this was a gift for Bob and Maureen McDonnell Mr McDonnell knew it He made a choice to keep it off his SOEI, and you know why

The stock transactions Let's move on to the second reason that the SOEIs are important Mr McDonnell's shenanigans with the stock Let's start with the form This is Schedule C, the securities one, and this is Page 8 of Government's 5 And it notes, among other things, that

Mr. McDonnell will be obligated to report stock held by a member of his immediate family, assuming that the value was in excess of $10,000

Let's take a look at Exhibit 606 This is a schedule of the Star stock transactions that Ms McDonnell did. And by the end of 2011, Ms McDonnell had sold her Star stock Now, the evidence on why she did this comes straight from the testimony of John Piscitelli As he reluctantly admitted, again, after being confronted with his grand jury testimony, Ms McDonnell told him that she needed the stock out of her name to avoid reporting requirements

She had that conversation with Mr Piscitelli sometime in August It made him uncomfortable, and so he wrote the letter that he had wrote to her dated September 9th That's Exhibit 240 And remember, these aren't Ms McDonnell's reporting requirements She doesn't have any The only reporting requirements are his, and she sold the stock to keep it off his form And then after he had already filed it, she bought the stock back in January

Now to 2012 and Christmas dinner Ms McDonnell told the kids over Christmas dinner, or after Christmas dinner, sometime when they're all together that day, that the kids would be getting stock I believe there was testimony that there was going to be a thousand shares each, which conveniently left her with less than $10,000 in her account. But putting that aside, not counting Mr McDonnell, there were two eyewitness accounts to what happened that day They were a little different Not necessarily inconsistent, but they were different And in either case, Ms McDonnell lied to the kids According to Bobby, after Christmas dinner, as dinner was wrapping up, Ms McDonnell said that she had bought Star stock with money from her father's estate Bobby says that Mr McDonnell was present and said nothing

Cailin McDonnell testified that Ms McDonnell told them that the tax laws were changing and that was the reason that the stock needed to be in the kids' names Now, Mr Piscitelli and Mr Cook, the broker and the accountant, both of them said that they had said nothing to her about any tax issues

Now, it's possible that Bobby and Cailin could both be right But even if only one is, in either case, Ms McDonnell lied to her family about the stock Whether it was saying that the money for the stock had come from her father, or that the reason for the transfer was because of tax consequences Either way, it wasn't true And according to his son, Bob McDonnell was there and said nothing

They say that the real reason Ms McDonnell decided to gift the 1000 shares to each of the kids at the end of the year was because it was Christmas But what knocks that out is the rush to get everyone's forms in by year-end That doesn't make any sense The reason that they needed to get the forms in by year-end is the reason that they unloaded the stock They needed it They needed to get rid of it so that they could have less than $10,000 in the account so that they wouldn't have to report it, and Ms McDonnell didn't want her husband to have to publicly report their connection to Jonnie Williams It's as simple as that That's what your common sense tells you That's what happened

Mr McDonnell's statements about all that he disclosed, let's talk about that for a minute During trial, Mr McDonnell made several statements when he testified, taking credit for all the things he claims to have disclosed related to Jonnie Williams Let's get down to brass tacks

The only gifts Mr McDonnell disclosed were the ones he had no choice but to disclose, the ones the staff already knew about That's it As for the loan, he makes a big deal about how he discloses that He mentioned it at least three times on the stand Well, all he actually disclosed on his SOEI was a loan from someone he said was in the medical services business

Now, the form doesn't require any more than that He filled out the form correctly Fine All the tax forms he filled out, he filled out correctly. Fine That's not the point. The point is don't sit in the chair and take credit for disclosing a connection to Jonnie Williams when you didn't That's the point

But the better question you can ask yourselves is this Whether he would have listed that loan if the form did require him to list Jonnie Williams' name, and based on the evidence of how he treated the golf and how he treated the check for the wedding caterer, don't you know the answer to that question is no way

Let's talk for a few minutes about the watch The principal defense here is, "I thought it was a fake " That's what he told his staffers That's what he sat on the stand and told you Let's start with this It's not a fake Jonnie Williams paid $6,500 for it So the real question is did Mr McDonnell actually think it was a fake? What's the evidence on that?

First, you all held the watch You looked at it Mr McDonnell's son got on the stand and said something about the secondhand ticking instead of sweeping You all saw it You saw that Bobby was just wrong about that I'm not saying he was lying He was just wrong

Exhibit 274, the photos There were two purposes that we offered these First is the obvious Who poses like this for seven photos with a watch that you think is a fake? Nobody There's no way he thought it was a fake. Mr Asbill actually asked him if he realized his photo was being taken Do you remember that?

The second purpose for these photos answers the second argument that they make; that even if he thought it was real, he didn't know who it was from One of those photos, and I think it's the last one shown here, is the same photo that Jonnie Williams testified the Governor sent him after he was joshing with the Governor about the chef Now, common sense tells you that that banter makes no sense if Mr McDonnell didn't know it was from Jonnie Williams Why else would he send Jonnie Williams that photo after getting ribbed by -- by Jonnie Williams about the chef?

Now, this is another of those few places where we're relying on Jonnie Williams' testimony Yes, we are But there are at least two reasons you should credit it First, remember this Dr Crantz's testimony was that at the La Grotta Restaurant in February, there was banter between Mr McDonnell and Jonnie Williams about the chef Second, ask yourselves this Isn't that an odd story to manufacture as a lie? I was teasing the Governor about the chef, and so he was teasing me back by texting the photo of the watch

If Jonnie Williams was going to lie about it, why not just say, "Hey, I talked to the Governor one time, and he thanked me for the watch " He could have done that, but that's not what he did He was careful, as he was throughout his testimony, to explain exactly what happened And what happened shows you how Mr McDonnell knew full well the watch was from Jonnie

The lies to the staff. Mr. McDonnell told a couple of lies to his staff during the scheme to help keep what was really going on here under wraps And the first one is in the conversation with Phil Cox about the invite to Chatham Bars Inn You may remember, Mr Cox testified that when he got the call, it was on speaker phone, and that's why he remembered that Mr and Ms McDonnell were both on the line and that they invited him up to the Chatham Bars Inn And he asked them, "How is this being paid for?" And they said that Jonnie Williams paid for it at a charity auction

Okay Now, now you know why we heard all that testimony about the Cure By Design event This is the reason It's because hearing that evidence, you know that the trip to Chatham Bars Inn had nothing to do with the auction at Cure By Design This is why Mr McDonnell tried to say from the stand that in their mind, it really was a substitute for the Cure By Design event No way You want proof? Look at Exhibit 397 This is a July 3rd, 2012, text from Mr Williams to Mr McDonnell where he invites them to Chatham Bars Inn It says nothing about, "Hey, since I wasn't able to go to New York to that fashion designer's place with you from Cure By Design, let's do this instead", or, "Here's a substitute for that charity auction Let's do" -- no He doesn't say any of that

And by the way, before we leave this exhibit, isn't that an interesting juxtaposition? "Johns Hopkins human clinical trials report on August 8 If you need cash, let me know "

Second lie Let's return to the Ferrari for a minute Mr Transparency, Mr Honesty out and out lied to his staff Let's take a look at Exhibit 618 This is Page 4 of that exhibit This is an excerpt from the Washington Post article "There was no recreational use of vehicles, Martin" -- that's Tucker Martin, the press guy -- "said The family was simply helping Mr Williams get one car to his Smith Mountain Lake house and return another to Richmond "

Folks, that's simply not true You remember Ms McDonnell asked Jonnie for it, so Jonnie Williams had an employee drive it up, and Ms Fulkerson hired a car service to take the guy back They weren't doing Jonnie Williams a favor Just the opposite The only reason the Ferrari was taken up there in the first place was for Bob to drive it

Now, Mr McDonnell has tried to put this off on Maureen, like everything else, and said that she told him that they were just doing a favor to Jonnie Williams Wrong answer Remember Trooper Walden's testimony When they showed up on the early evening of July the 28th, the Ferrari wasn't there The next day, July 29th, Mr Hunter, you heard him testify in here a couple days ago, he's the one who drove the Ferrari from a Cracker Barrel -- that's where he met Jonnie to pick up the Ferrari -- and drove it up to the Smith Mountain Lake house And you remember he said when he got there, there was no one there And he was looking for the Governor He was looking for the Governor, but nobody was there So he left the car and put the keys in the seat

The family shows up later that day, and there was a Ferrari in the driveway Not in the garage Not covered up In the driveway The Ferrari just showed up He knew it wasn't that Jonnie Williams had left his Ferrari at the lake and needed his good friend, Bob, to do him a solid and bring it back to Richmond And she never told him that He can try and blame Maureen on this one too, but it won't work

And, yes, Tucker Martin can be a good soldier and sit in that chair and say he never thought the Governor lied to him But unlike him, you know all the facts Mr McDonnell doesn't get to control what facts you get You get all of them And the facts show it was a lie

Okay Let's pause briefly for a moment now and run through the elements for the corruption offenses You're going to get these again from the Court, and there's going to be a whole lot more law on them -- on this later, but here are the elements I don't think there's going to be any daylight between what I say and what the Court gives you, but if there is, obviously, Judge Spencer's instructions are the ones that you should follow, not what I say But let's talk about them for a minute

Counts One and Five both charge conspiracy The two conspiracies all relate to the bribery scheme Okay Count One is a conspiracy to commit honest services fraud Count Five is a conspiracy to commit obtaining property under color of official right Those are a lot of words But both of those charges, and the counts following them, which we'll talk about in a minute, all that stuff relates to the corruption scheme Okay

The elements here for a conspiracy are pretty self-explanatory; that there was a conspiracy to commit the crime, whether it's honest services fraud or obtaining property under color of official right Whichever one belongs in that blank That there was a conspiracy that was formed, reached, or entered into by at least two people Second, that at sometime during the existence of the conspiracy, the defendant you're working on knew what the purpose of the agreement was And third, that with knowledge of the purpose of the conspiracy or agreement or understanding, the defendant you're working on actually joined it So remember, a conspiracy is an agreement to commit a crime, not committing the crime itself Those are the elements of conspiracy That's Count One and Count Five

Now, remember, I said a moment ago that the corruption charges are kind of in two groups There's the honest services fraud stuff, and then there's the obtaining property under color of official rights stuff So Count One is the conspiracy count for the honest services fraud piece, and Counts Two through Four are the specific honest services fraud crimes We call those -- the lawyers call those substantive offenses So this is Counts Two through Four

And the paperwork you get later will spell out exactly which transaction each one relates to You all will be able to figure that out, no problem, but each of them is a wire transaction that was alleged in this case -- or use of a wire to facilitate a transaction in this case

Briefly, the elements First, that the defendant knowingly devised or participated in a scheme to defraud the public of their right to honest services The honest services of a public official through bribery There's that That's why I've been talking about bribery all this time Second, that the defendant did so knowingly, knew what they were doing, and with an intent to defraud Third, that the scheme or artifice involved a material misrepresentation, false statement, false pretense, or concealment of a material fact I think we've got that one covered And fourth, that in advancing or carrying out the scheme, the defendant transmitted or caused to be transmitted that whole litany of stuff

And on this one, I would encourage you to take a look at the stipulation You remember that boring pair of exhibits that I had to read to you all that day with the stipulations in it In there, there's a stipulation about these wire transmissions and the fact that they went from one state to another So don't forget the stipulation on that one

Next, now we're moving over to obtaining property under color of official right That's the second group of corruption charges Okay Count Five is the conspiracy charge that governs all that stuff, and Counts Six through Eleven are the specific acts of obtaining property under color of official right that are alleged And again, the papers that you get, when you go back to deliberate, will make it crystal clear to you exactly which transaction goes with each count And I'm not going to walk through that here You all will be able to figure that out without any problems.

Here are the elements And, oh, I should also point out that these are different for Mr McDonnell and Ms McDonnell The honest services fraud instructions are the same for both of them But on this crime, the instruction -- the elements are a little different So let's start with Mr McDonnell

First, the defendant was a public official, of course Second, that the defendant obtained a thing of value not due him or his office I think you know what our view of that is Third, the defendant did so knowing that the thing of value was given in return for official action I've talked a lot about that today And fourth, that in so acting, the defendant attempted or did, blah, blah, blah, affect interstate commerce

Here's the upshot of that This is called a jurisdictional element You all have to find it in order for a federal court to have jurisdiction over the case So what that means is that you need to consider whether the scheme here affected interstate commerce in any way Judge Spencer's instruction, I think, will make it clear to you that the impact need only be minimal And the other thing that you need to remember is it doesn't have to be negative It doesn't have to negatively affect interstate commerce Even a positive effect on commerce satisfies the jurisdictional element You'll get all the instructions on that I'm just flagging it for you now

What you need to remember on this is Mr Perito's testimony about Star doing business all over the country, all the places that the company had, factories and offices and what not, to show that their operations affected interstate commerce And, obviously, had the scheme actually worked out a little better than it did for Star, then the effects on their business would have been positive and would have affected interstate commerce I've said far more than I had planned to, so I'm going to move on That's interstate commerce

Counts Six through Eleven still This is for Ms McDonnell Remember, these are the same crime, a little bit different elements First, to find her guilty on these, you have to find that Mr McDonnell committed each of the essential elements of committing the crime of obtaining property under official rights That's a threshold finding that you have to make to find Ms McDonnell guilty on these counts Second, you have to find that Ms. McDonnell knew that the crime of obtaining property under color of official right was going to happen; that she knew about it Third, that she knowingly did something for the purpose of aiding the commission of the crime She helped -- she tried to act in some way to make it happen She affirmatively did something And fourth, that she acted with the intention of causing the crime charged to be committed That's pretty self-explanatory

Okay Those are all of the corruption elements Now I want to transition to the bank stuff

Judge, I probably got about 10, 15 minutes more left

THE COURT: Go ahead

MR HARBACH: The loan applications to the banks These are Counts Twelve and Thirteen Let's talk about those elements briefly

You guys saw all sorts of financial statements, loan applications, faxes, e-mails, and all that stuff was thrown up, bits and pieces at a time And I'm going to try and distill this for you Counts Twelve and Thirteen, I want to talk about the law briefly The elements are that the charged defendant made a false report I should point out that on these, on Count Twelve, that's the false statement to TowneBank, and only Mr McDonnell is charged in that one Count Thirteen is the false statement and the loan application to PenFed, and both Mr and Ms. McDonnell are charged in that count

Here are the elements That a false report was made Second, that the person you're working on did so for the purpose of influencing in any way a federal credit union, or any of those other types of institutions there, on any of the things, a commitment, a loan, an application, a guarantee, or any of that And then third, the defendant did so knowingly

Now, I just mentioned to you that only Bob McDonnell is charged in Count Twelve The crime for that one is Exhibit 416, and that's faxing this form to TowneBank on October 23rd, 2012 This is simple Exhibit 416 This is the crime being committed And the reason it's false is because it doesn't list loans from Jonnie on there It's as simple as that

Now, as you will learn, as we expect you'll learn from the Court, all that matters here is that Mr McDonnell made a false statement when he failed to include the $50,000 loan in March 2012 from Mr Williams, and that he did it to influence the bank to try and make himself look better We anticipate Judge Spencer will tell you that it doesn't have to actually affect the bank All that matters is what Mr McDonnell intended

And how do we know what he was doing? How do we know what he was intending? Well, first of all, he couldn't get a loan anywhere else And second, he didn't just leave off Mr Williams' loan He left off Dr Davis' loan, which was nearly $13,000 at the time He left off the loan from his father, which was over $100,000 at the time These were things that he knew weren't on his credit report, and they were things that he knew he could hide

All those other loans being left off also tells you that he knew the application was false This is the personal guarantee stuff, and here's how it works He tried to say that the loan from Jonnie Williams wasn't personally guaranteed and that that's why he left it off his form You know that that's not the reason, because he also left off the Dr Davis loan, the one he had personally guaranteed via a promissory note

This conduct in Count Twelve is his conduct, his alone Nobody else's There are no staffers, there's no family, there's no in-laws to point the finger at here

Now, he says it was really a loan to MoBo and that it wasn't really a loan to him, and that's why he didn't include it And this is important I'm going to be clear on this If you believe that he didn't have to disclose loans to an LLC and that an LLC didn't count as a joint venture, then unlike what I said for corruption a minute ago, here it does matter that the loans were to MoBo Of course, for all the reasons we discussed before, we submit to you that it was not. It was a loan to him

Next, the PenFed loan application is Count Thirteen Remember, both Mr McDonnell and Ms McDonnell are charged in this one because they both signed the application. That is the crime That's Government's 480, the first page of which Ms. Watts is e-mailing to Nan Bolt, the PenFed person, on February 1st, 2013 The attachment, which is a bunch of paperwork related to the loans, including in that, by the way, is Page 4 where Mr and Ms McDonnell signed something saying that they have applied for a mortgage from Pentagon Federal Credit Union

On Page 10, this is the page -- I'm not going to blow this up You all have seen this up a million times This is the page that on the right-hand side says "Liabilities," and the loans from Jonnie Williams are not on there The $120,000 in loans from him do not appear And then finally on Page 11, it is signed by both Mr and Ms McDonnell

Now, the defense here appears to be that this was a draft That it was just part of a process It wasn't a real application Apparently, this is the latest in the special banking rules for Governor Bob McDonnell We've already heard about if you are Mr. McDonnell, the president of the bank calls you personally to tell you that your loan payment is overdue And now the new rule for Mr McDonnell is this A loan application that you submit, that you sign, and that you specifically represent is true and correct on pain of criminal penalty under the United States Code doesn't count because the loan hasn't closed yet Folks, I don't recommend trying that excuse with your mortgage lender if you lied on your signed application that you specifically represented was true and correct

We encourage you, when you get back there, to do what the old saying says and read the fine print This whole thing above the signature block here with the super tiny writing, read that when you get back there I bet the Court could supply a magnifying glass if you needed one Read it And ask yourselves whether it sounds like a draft to you For now, I want to point out Number 7 You can't -- you can't see it But that great big block of text is like 11 or 12 different sentences, and I'm going to point out to you Number 7 right now It says, quote, The lender and its agents, brokers, insurers, servicers, successors and assigns may continuously rely on the information contained in the application, and I am obligated to amend and/or supplement the information provided in this application if any of the material facts that I have represented herein should change prior to closing of the loan "Continuously rely "

What does the second part of that sentence mean? It means what it says It means if there was something that you list on there and it changes, you have to fix it before closing But that's not what happened here The loans were sitting there the whole time Nothing changed

The only thing that changed was Ms McDonnell got interviewed by some agents The only thing that changed was Mr McDonnell got wind that the authorities were looking into their relationship with Jonnie Williams and lo and behold, the next business day, or the day before the next business day, depending on whether you count President's Day, Mr McDonnell decided to send in a revised application with the loans from Jonnie Williams on there That's Exhibit 487

The next subject is the last count in the indictment, and it's Count Fourteen Here are the elements This is the obstruction of an official proceeding charge And this one is only alleged against Ms McDonnell The elements are that the defendant obstructed, influenced or impeded -- it should be an official proceeding or attempted to do so And second, that the defendant did so or attempted to do so corruptly And then there's a definition of corruptly there But it involves doing so on purpose in order to improperly obstruct, influence or impede an official proceeding all while either knowing about an official proceeding, or that the natural and probable effect of the conduct would interfere with an official proceeding

Now, I want to be clear about something so there's no confusion The obstructive conduct that is charged here is not the lies that she told the Virginia State Police when she was interviewed They inform her state of mind to be sure, and you definitely can and should consider those statements in assessing whether she was a participant with her husband and Jonnie Williams in the corruption scheme charged here because it is powerful evidence that she knew she and her husband had broken the law, but it is not the basis for the obstruction charge The basis for the obstruction charge is the note she sends to Jonnie Williams after being interviewed by the authorities

The official proceeding is the grand jury investigating the relationship between Jonnie Williams and the McDonnells It was not in effect at the time she sent the note But it also didn't need to be, as you will learn from the Court It also doesn't matter whether Ms McDonnell knew whether the proceeding in question was federal All that matters is that she know that the natural and probable effect of the conduct would interfere with an official proceeding And that is clearly so

Here are the facts December of 2009, Ms McDonnell first hears that Jonnie Williams is going to help her with a dress for the inaugural, and she's excited Phil Cox and Jasen Eige think it's a bad idea They tell Mr Williams it ain't happening Mr Eige and Mr Cox explore some alternatives, including giving the dress to charity Tell Ms McDonnell about that, but she's not happy with that because she doesn't get to keep the dress Mr Eige testified to that Mr Williams told you that Ms McDonnell said she wasn't happy because it would have to be given away if she bought it, and so she'd take a rain check

In April of 2011, she cashes it in Ms McDonnell calls Mr Williams and says it's okay to take her shopping now, and Mr Williams buys all those clothes, and he gets seated next to the Governor at the Union League event that night And then those clothes live in Ms McDonnell's closet

On February 15th, 2013, Ms McDonnell was interviewed by law enforcement about, among other things, her relationship with Jonnie Williams and the loans that Jonnie Williams had provided to her and her husband And not long after that, she put the clothes in a box She drove over to the house, her house, where Donnie Williams was working, and she gave them to Donnie to give to his brother, Jonnie And with the clothes was this note It's Exhibit 3 This has been on the screen a couple times during the trial.

Mr. Burck said in opening that he's not a grammatician, but we think that's exactly what he's asking you to be Try and parse the grammar of what's going on here and ignore your common sense What is being communicated by this note? There is a reason you don't check your common sense at the door when you walk in here, folks, and this is a great example What does your common sense tell you she was doing? She's trying to make it look like Jonnie Williams just gave her the dresses as a loan when, in fact, that was not true And she does it because she knows the authorities -- she thinks the FBI -- are looking into her relationship with Jonnie Williams It's as simple as that

There has been a mountain of evidence in this case, and I've been talking to you for a long time, and I'm about to sit down And I haven't, of course, covered anywhere near all of it But this evidence establishes beyond a reasonable doubt all the elements of all the charges in the case against both defendants And in the face of all that evidence stacked so powerfully against him, Mr McDonnell claims that he has no idea who paid for the clothes, that he didn't know who Maureen invited to the Healthcare Leaders Reception He was unaware that Jonnie Williams cut his wife a $50,000 check. He had no clue that Ms McDonnell bought her stock back in January of 2012 He was totally ignorant of Ms McDonnell e-mailing Jasen Eige about UVA and VCU in February of '12, and he had no idea that Jonnie Williams wanted anything from him

You may remember this quote right here from Janet Kelly's testimony She used this phrase That was her description of Maureen Who do you think of when you read that? Their strategy has been spend enough time talking about Jonnie Williams, maybe the jury will forget about the pile of evidence that had nothing to do with him Spend enough time trashing Mary-Shea Sutherland, maybe the jury will forget that she was long gone for much of the conspiracy Spend enough time talking about how the staff didn't like working for Ms McDonnell or the decibel level in the Ferrari or the number of times that Ms McDonnell texted Jonnie Williams after 11 p m , and maybe the jury will forget about how many of the government's witnesses, who don't know each other, corroborate each other

Spend enough time blaming Ms McDonnell, and maybe the jury will forget about all the things that Mr McDonnell undeniably did on his own, with no one else Spend enough time talking about Bob McDonnell's 38 years of public service, wrapping him in the flag of the Commonwealth, and maybe the jury will forget about how he stomped on it by selling out his office.

Not to mention all the attacks on the investigation They attacked the Virginia State Police for having the audacity to not tell the witness the subject matter of the interview in advance They attacked the government for all the people we interviewed They attacked us for those 3-and-a-half million documents we kept hearing about that we gathered from banks, lending institutions, stockbrokers All the e-mails, all the correspondence we got All the phone records we obtained

They suggest to you that because an executive protection unit officer chooses to make some reports to the State Police, that the State Police was some kind of puppet master, using him as a spy They make a big deal that the supervisors in the Virginia State Police were interested in how the investigation was going They attacked Charlie Hagan for having the novel idea that

Jonnie Williams might be a witness against the McDonnells

Let's cut right to it This investigation didn't happen just because he was the Governor This investigation happened because what he did is wrong This is not how governors behave So don't sit there and try and stand on the coattails of Thomas Jefferson or Patrick Henry. Don't mention all the other governors in our country and say that what happened here is politics as usual Not even close Not by a mile This is bribery. This is corruption The real thing. Don't let it stand Don't let this stand.

THE COURT: All right We're going to take 15 minutes and come back in

(The jury left the courtroom)

(Recess taken from 11:48 a m until 12:08 p m)

THE COURT: All right This is what we're going to do We're going to stop early for lunch

Obviously, I assume that the next argument will be close to two hours, or thereabouts

MR BURCK: Yes, Your Honor It will be about two hours

THE COURT: Right So we will stop now for lunch and reconvene at 1:15 Of course, it -- initially, we had planned to provide lunch for the jurors at 1:00, so now we're scrambling to try to get that food to them earlier, but hopefully we can get back here at 1:15 and get started

(The jury entered the courtroom)

THE COURT: All right Because of the way that these arguments are progressing, and the length of time that I think the next argument will take, I've decided to take an early lunch We're going to stop here and have you come back at 1:15

We plan to provide you with lunch. Of course, we planned to have it at 1:00, but it hasn't worked out that way, so now we're trying to get the food to you earlier But we are going to stop now, and your lunch will be coming And you all have a nice lunch, and take it easy for this hour, and we'll get back in here and get started at 1:15. Thank you.

(The jury left the courtroom)

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(Luncheon recess taken from 12:11 p m. to 1:15 p.m.)

THE COURT: All right, let's bring in the jury

(The jury entered the courtroom.)

All right, defendant?

MR BURCK: Thank you, Your Honor Good afternoon. "Question: Well, to be clear, she is saying that she is going to help you, but she is not promising you that the Governor is going to help you, right? Answer: No. Question: And she never tells you at this meeting, 'I'll get Bob to do X, Y, or Z if you give us the money'? Answer: No "

Ladies and gentlemen, this is Jonnie Williams' testimony It came in response to questions from the prosecutor himself And it demonstrates that Maureen McDonnell, my client, is not guilty of the charges against her in this case

Let me be clear from the get-go. Maureen McDonnell accepted gifts from Jonnie Williams He loaned her money We are not denying any of that We are not denying that Maureen McDonnell helped promote Anatabloc She did She did it enthusiastically She attended events where she spoke about her own passion for nutraceuticals and told the audiences how excited she was to support a Virginia company like Star Scientific. She invited Star doctors and employees, people who she saw as leaders in the healthcare world, to a reception at her home We do not dispute any of that And the government agrees with us that she was not a public official In fact, they have stipulated to that "As First Lady of Virginia, Defendant Maureen G McDonnell was not a public official " You heard that from Mr. Harbach early in this case

Now, even if Maureen McDonnell had agreed with Jonnie Williams to promote his company in exchange for loans and gifts, she would be guilty of no crime Even if what Jonnie Williams said were true, that she would help him if he helped her financially, Maureen McDonnell would be guilty of nothing And that's because Maureen McDonnell was a volunteer, nothing more As a volunteer, she was free to accept gifts or loans from anyone she wanted to, from Jonnie Williams, anyone else And she had no obligation to report any of it to anybody She was perfectly free to assist or advocate for Star Scientific or any other company She could have taken a paying job at Star Scientific if she wanted to

As you heard, in fact, she worked for another nutraceutical company called Nu Skin. She even had a paid Board position on a not-profit company

So why are the prosecutors going after Maureen McDonnell It is because they accuse her of conspiring with her husband to corrupt his office The government wants you to believe that Maureen and Jonnie's friendship was a farce; that Maureen's passion for nutraceuticals and her support for Anatabloc was an act; that the dresses, the shoes, the purses, the play dates at the Mansion, the 1,349 texts and phone calls, that all of it, all of it was really for the Governor According to the government, Maureen was a puppet and her husband was the puppet master pulling the strings

But after five weeks of trial, dozens of witnesses, and hundreds of exhibits, the government has not shown you a single piece of credible evidence, not one, that Bob and Maureen McDonnell conspired with each other They have not shown you an e-mail, a text, an audio recording, a video, not a single thing showing that Bob and Maureen agreed to sell out the Commonwealth for loans, a couple of weekend getaways, a ride in a Ferrari, a few rounds of golf, and ladieswear

So why did Maureen accept the gifts and loans that Jonnie Williams offered? The government tells you this is all about helping Jonnie get to Bob But the evidence shows you that to Maureen, it was about getting away from Bob. The gifts and dresses were things that Bob could not afford, and even if he could, he wouldn't have bought it for her The loans gave her a little bit of financial freedom. Now, you might think that's tacky, you might find it unbecoming, but it is not a crime

So why did Maureen help Jonnie? Again, the government wants you to believe that it was part of a scheme with her husband. But there is no evidence of that. None All of the evidence in this case is that she had her own reasons that had nothing to do with Bob McDonnell First, you heard from witness after witness, including the Government's own witnesses, that Maureen has a passion for nutraceuticals and has for decades You also heard again and again how Maureen felt about Jonnie Williams: That she considered him a very close friend; that she adored him; that she lit up when she talked about him or when he walked into a room; that she was, quote, gaga for Jonnie In short, you heard that Maureen helped Jonnie because she believed in his product and she believed in him.

Now, you might find all of this, the nutraceuticals, the mild obsession with Jonnie, you might find it all a little bit weird. You might be like Dr Hazel, who thinks nutraceuticals are a joke and that Jonnie is the Tic-Tac Man You might think it is inappropriate that Jonnie, a married man, and Maureen, a married woman, had such a close personal relationship that involved late-night phone calls, texts, and even visits

That Jonnie lavished her with trips, dresses, shoes, and purses But weird is not a crime And this is all about what was in Maureen McDonnell's head, what she believed and what she intended.

There is simply no denying the sincerity of her beliefs and her feelings And she can not be guilty if her motives were not corrupt

So let's talk about corrupt motives There is only one witness in this entire case, one, who testified that Maureen McDonnell was corrupt. The government's entire case against Maureen McDonnell rests on Jonnie Williams' word. The prosecutors are asking you to take the word of a man who came into this Court and admitted that he is a liar He came in here and told you that he has lied to just about everyone He has lied to his best friend in business, Paul Perito. He lied to his company, to his shareholders It is hard to find someone that he didn't lie to He says that he lied to the FBI and the State Police in his first interview with them in January of 2013 He lied to Mary-Shea Sutherland when he was recruiting her for a job, and he never planned to give her that job.

And you may recall in my opening statement that I told you all about the different versions of Jonnie I won't go into that again But right here in this

courtroom, each of you had a front row seat to Versions 9, 10, and 11 In fact, there's so many versions of Jonnie's story that not even he could keep track of them.
"Question: Now, on Sunday, this past Sunday, July 27th, the day before the jury was picked, trial started, you met with the government again, right? Answer: I did. Question: And they asked you about the McKeon loans and the stock transfers to your kids' trusts, right? Answer: This past Sunday? Question: This past Sunday Answer: I don't recall if they did or not "

So why does Jonnie's story keep changing? Well, after his first interview with law enforcement and without his lawyers, Jonnie Williams had a big problem. He knew that investigators were looking into some of his financial transactions, including one where he gave John McKeon, his friend, stock in Star Scientific in exchange for Mr McKeon giving him $10 million As you heard from the McDonnells' former lawyer, Emmett Flood, just a couple days ago, Emmett was told by the prosecutors in this case that the federal government had an active investigation into Jonnie Williams for federal securities fraud If prosecutors convicted Jonnie Williams of secretly selling Star Scientific stock to John McKeon without properly disclosing it to shareholders, he could go to jail and he could lose $10 million

But Jonnie immediately saw a way out During the interview, the investigators had also asked him about his relationship with the McDonnells That very first interview in January of 2013 In that very interview, investigators asked if he would wear a wire against Bob McDonnell It was clear that the government saw Governor McDonnell as the bigger fish to fry. So Jonnie hatched a plan At first, Jonnie spun enough of a tale to the government to get him immunity from prosecution in this case That's the immunity deal which we talked about Then he waited until just a few months before trial, when he knew that the government desperately needed his testimony to convict Bob and Maureen McDonnell When it couldn't be more clear that the government cared more about convicting the former Governor of Virginia than it did about prosecuting Jonnie Williams for securities fraud, that's when Jonnie Williams seized his opportunity and he got full immunity for all of his crimes Jonnie's gambit worked, and he got immunity for everything This is that second immunity deal Securities fraud, stock transfers, everything

A case built on the word of Jonnie Williams is the very definition of reasonable doubt Jonnie Williams had 10 million reasons to lie, and we all know that a jail cell would not do great things for his lifestyle

Now, to get this remarkable deal, Jonnie had to give the government the story it wanted to hear So Jonnie spun the story of this relationship with Maureen 180 degrees to make her the aggressor and Jonnie the victim. But Jonnie's portrayal of himself as the victim does not match up with the evidence you have heard in this courtroom. Let's look first at the evening in the Four Seasons in December of 2009 Jonnie and the government want you to believe that it was essentially Maureen's idea for Jonnie to buy her a designer dress for the Governor's inauguration They also want you to believe that after the Governor's staff intervened and killed the dress idea, that it was Maureen who called Jonnie and said she wanted a, quote, rain check

But what does the evidence actually show? Well, Jonnie Williams is the one who testified that he went into that evening with an agenda Who showed up with the male fashion model and purchased the $5,000 bottle of Cognac that no one asked for? Who pulled out his phone and made a big show of calling his friend, Oscar de la Renta? Mind you, Jonnie Williams testified to you that he doesn't even know Oscar de la Renta But that's not, of course, what he told Phil Cox, Monica Block, Bob McDonnell, or Maureen, who all told you what he told them about Oscar de la Renta As you heard from the other people who were there that night, it was Jonnie who offered to buy the inaugural dress This is Phil Cox "Answer: Well, I mean, I think he was essentially offering the dress He had the relationship with Oscar de la Renta and was offering the dress to Maureen Question: And based on what you saw and heard, did you have an impression just speaking for yourself one way or the other about whether Mr Williams was offering to pay for the dress? Answer: Yes. That was my impression."

Now, Jasen Eige, you heard about him, he is the Governor's lawyer, Jasen Eige sent an e-mail in which he told about a conversation he had with Jonnie, and he told Jonnie that he could not buy Maureen a dress And this e-mail shows that it was Jonnie who wanted to, quote, convey to Maureen that after the Governor-elect's term is up he wants to still fly her up to get a dress That's from Jasen Eige While Jonnie claims that Maureen called and asked him for a rain check, the government could offer no record of a single call between Jonnie Williams and Maureen McDonnell from December, 2009 until April, 2011 That's because the rain check call Jonnie Williams came up with never happened.

Turning to April, 2011: The government and Jonnie say that the shopping trip in New York was all Maureen's doing But Monica Block, the Governor's scheduler, testified that it was Jonnie who planned everything. This is an e-mail from Monica Block to Ms. McDonnell and Mary-Shea Sutherland. It was Jonnie who proposed the stores they would go to, and it was Jonnie who said, "Let's have lunch at Bergdorf Goodman." It was Jonnie who said his friend from the Chanel counter could take them around to, quote, see all the dresses there at Bergdorf And it was Jonnie who would take Maureen to see Oscar de la Renta's store and possibly meet Oscar himself

Jonnie tried to tell you that this shopping trip, that this shopping trip, which he planned, was the most awkward moment in his life That's what he said. Apparently, buying Maureen a Louis Vuitton purse was so awkward and traumatizing for Jonnie that two weeks later, he bought her a matching wallet. Not even Jonnie claimed this was Maureen's idea

Now, how about the $15,000 check that Jonnie gave as a wedding gift for Cailin McDonnell The government's version is that Maureen told Jonnie that she did not know how she and Bob would cover the expenses of her daughter's wedding reception, and that she asked him to cover the costs The government conceded in its closing that they have only Jonnie's word for what was said in that conversation. But if Jonnie's story is true, if Maureen came to him asking for financial assistance, why couldn't she have just used some of the $50,000 loan that Jonnie gave her the same day, that he gave her the check, for the wedding? Or if the $50,000 loan wasn't enough, couldn't he have just given her the full amount, $65,000? But he didn't do that Instead, the memo line of the $15,000 check says "Wedding Gift."

The entry in Star's general ledger also describes the check as, quote, "Wedding gift for caterer and flowers for daughter " This is in evidence for you to review

Now, why is that? Because that's what the check was It was a wedding gift to Cailin McDonnell A gift that Jonnie Williams offered after he met Cailin at the Mansion on April 29th of 2011 That was the dinner hosted by the McDonnells for the Williamses Now, what type of person gives a $15,000 wedding gift? Jonnie Williams Jonnie testified on cross-examination about a wedding gift that he gave to his accountant's daughter "Answer: He is a friend of mine Question: I'm not suggesting he is not I'm just saying his kids were getting married and you gave them what, 20 grand worth of stock to help them get started? Answer: I think it was more than that Question: Okay Answer: I think it was much more than that "

So what about the $50,000 loan that Jonnie gave to Maureen in May of 2011? Again, the government's account is that it was Maureen who approached Jonnie and asked him for money Jonnie Williams testified that Maureen called him and asked if he would come see her on May 2nd of 2011; that she explained to him that she and the Governor were in financial trouble and were thinking about bankruptcy and that she asked Jonnie for help. This was Jonnie's testimony, again, as the government said, the only one we have, word we have for that is Jonnie's

But let's look at the evidence The purpose of this meeting was not for Maureen to unleash her financial woes on Jonnie or to solicit a loan That wasn't the purpose The evidence shows that the meeting on May 2nd, 2011, was to discuss the possibility of Jonnie buying or investing in one of the MoBo rental properties in Sandbridge This is an e-mail from Maureen McDonnell to Celeste Williams the day before that meeting "Hi Jonnie and Celeste Here is one of our beach rental properties that we own with Bob's sister and her husband, MoBo Realty " Here is another e-mail, same day, prior to the May 2nd meeting

Now, as you saw from the Mansion logs in this case, Jonnie arrived at the Mansion on May 2nd at 9:24 a.m. and left at 11:25 a.m. And Maureen's phone records show that at 10:44 a.m., right smack dab in the middle of her meeting with Jonnie, Maureen had a 13-minute phone call with her brother-in-law, Michael Uncapher Even before that call, Maureen made six attempts to reach the folks responsible for MoBo, sister Maureen, Bob McDonnell, and Michael Uncapher, from 9:57 to 10:02 a m. Now, pausing to take a call from her brother-in-law right in the middle of what is supposedly a desperate, heartfelt plea for financial assistance doesn't make a whole lot of sense And that's what Jonnie says happened Putting Jonnie on the phone with Michael Uncapher, the person who handled MoBo's finances, to discuss Jonnie's interest in buying or investing in MoBo property, on the other hand, makes some sense And that is just what Michael Uncapher, a witness the government called, testified in this case

He said that Maureen put Jonnie on the line to discuss his interest in buying or investing in the property, and that he told Jonnie what the MoBo partners owed on each property, and what the average expenses were for the mortgages So you do know something about what happened on that May 2nd meeting from someone other than Jonnie Williams You heard from Michael Uncapher

Critically, Michael Uncapher also told Jonnie Williams that the properties' annual deficit was between 50,000 and $60,000 per year As Michael Uncapher testified, Maureen was not on the phone during that conversation The phone was not on speaker There is no evidence that Maureen McDonnell had any knowledge of that $50,000 figure Rather, the number $50,000, the number that Jonnie ultimately used for the loan check, came from his discussion with Michael Uncapher, not from Maureen.

When Jonnie showed up a couple of weeks later with a check for $50,000, he claimed he was delivering what Maureen McDonnell had requested as a loan. But recall what Bob McDonnell testified that Maureen told him. Bob McDonnell said that Maureen said that Jonnie had shown up with a check for $50,000 that she had not actually asked for Now, make no mistake, she accepted it and she spent it on credit card debt and stock But what a coincidence, that the amount of the check matched what Michael Uncapher told Jonnie The only person who said it was Maureen who asked for the $50,000 is Jonnie Williams "Question: Did you tell him what the annual deficit was? Answer: Yes Question: What was that? Answer: Between 50 and $60,000 Question: The words 50, $60,000 came out of your mouth? Answer: Yes "

Now, why should you believe that the $50,000 was Jonnie's idea and not Maureen's? Again, we only have Jonnie's word for it That's because Jonnie Williams is not a victim. The gifts, the trips, the loans, all of it was just a page out of the well-worn Jonnie Williams playbook. From the start, Jonnie saw Maureen as a potential dupe He saw that she was vulnerable He saw someone he could manipulate and exploit to his own ends

If you want proof that Jonnie was the predator, not the prey, just look at what he did to Mary-Shea Sutherland. Jonnie Williams knew that Mary-Shea was miserable in her job. He saw that she desperately wanted to get out of the First Lady's Office and return to her previous career as an event planner Jonnie provided Mary-Shea with a shoulder to cry on He comforted her And he manipulated her, and he lied to her Jonnie made her believe that he valued her, and genuinely cared about getting her a new job. But all the while, Jonnie didn't really care about Mary-Shea Sutherland at all The only thing he cared about was promoting his own interests

Now, you don't need to take my word that Jonnie Williams misled Mary-Shea Sutherland You can hear it from Mary-Shea Sutherland herself Now, I'm going to read from key parts of this letter, this Dear Diary letter, as Mary-Shea described it in her testimony You will have the whole thing with you when you go back to deliberate This letter is dated January 20th, 2012 and it is addressed to Jonnie Williams

"I do believe that you owe me an explanation on the events that occurred last September The following outlines the months leading up to date Perhaps you could fill me in on the rest You called me to say that I was the type of person you wanted working for you and that you would pay me outside of my job with the state to help you We arranged to meet for breakfast, the first of several. At breakfast, we had a very honest conversation. You zeroed in on my unhappiness To paraphrase, you said, quote, you can't fool an old southern boy I explained that I was looking to leave, but in order to do so needed an anchor client to take me back to Benedetti & Farris in order to cover my salary Again, you reiterated that I was the type of person you wanted working for you, not just on Anatabloc but for you personally It was decided at that time that it would not work to have McGuireWoods hire me and that it made more sense for me to return to Benedetti & Farris, and you would be the anchor client We shook hands on that You and I had a final breakfast at The Jefferson and again confirmed that I would leave the First Lady's Office and you would be the anchor client for me You were insistent that I not tell the Governor's Office I was leaving until after the luncheon at the Mansion for the doctors You said to trust you and that I should only give them two weeks' notice instead of the one month I had suggested. You had asked that I stay until you got Anatabloc launched, and we agreed at that time that I would leave on October 1st You called me following this to say that because of company policies, you could not sign a consulting contract, but that we should invoice you each month for my services and you would pay it out of your marketing budget You said for me to have Tom Benedetti call you and that while you couldn't sign the agreement, your, quote, word was something to take to the bank It was after that phone call that everything changed. Somehow, the First Lady found out that I was leaving I have been told that you told her, but I have a hard time believing that In the end, I walked away with my dignity, and not much else And I left without having a job to go to or a source of income I have been able to pick up small projects here and there but continue to struggle to make ends meet Yes, it is true that I told you I wanted to leave, but I also told you that I could not leave until I had another job or a client to take to Benedetti & Farris Again, it was you that offered to be that client I never sought you out as a possible client It was only after your phone call in June that any of this started I understand that you don't now feel that you need my services But I do want to remind you that the event aspect of my working for you was a subpart to what you really wanted, which was my helping you with your, quote, life I feel that I am owed an explanation for what really happened And if you were the one that told the First Lady and started the avalanche, I want to know why I kept every confidence you ever shared with me I honestly don't know what to think."

That was Mary-Shea Sutherland in her own words to herself in a letter that she described as a personal diary, a few months after she left the First Lady's Office, a few months after Jonnie Williams betrayed her Like Maureen, Mary-Shea was taken by Jonnie Williams She became a cheerleader for him and his company She bought stock in Star Scientific and started taking Anatabloc herself And as Mary-Shea's Dear Diary letter makes clear, she, like Maureen, fell victim to Jonnie's manipulation. If you have any doubts about that, just look at what Mary-Shea said about the letter "Question: And in general, I mean, you are writing to Jonnie You are writing to Jonnie Williams; is that right? Answer: Yes Question: And -- Answer: No, like if you were writing to a boyfriend who wronged you You know, 'Dear mark. You hurt my heart ' You know, people write letters Question: Okay And am I accurate in thinking that -- that you felt wronged by Jonnie Williams? Answer: Yes "

And Mary-Shea also makes clear that Jonnie was the aggressor, writing, "I never sought you out as a possible client It was only after your phone call in June that any of this started."

Now, you have heard from the government, including today, that they seem to be under the impression that we are trying to paint Mary-Shea as a criminal, as Jonnie's co-conspirator But the government completely misses the point We are saying just the opposite Mary-Shea Sutherland did nothing wrong If Mary-Shea Sutherland did nothing wrong, then Maureen McDonnell certainly did not commit a crime Because as you have heard now many times, probably more than you would like, that Maureen was a private citizen who was free to accept a private sector job for private sector pay Mary-Shea was not She was a government employee receiving a government salary She worked for the Office of the Governor And she reported to the Governor's Chief of Staff, Martin Kent

In other words, unlike Maureen McDonnell, Mary-Shea Sutherland was a public official And while serving as a public official, Mary-Shea was doing two things at the same time First, she was taking actions to assist Jonnie Williams and Star Scientific This is an e-mail you have seen a few times, where it is described as "Mary-Shea's deal " Again, we are not saying it was only

Mary-Shea's deal Maureen McDonnell and Mary-Shea worked together on that Mansion lunch. But second, Mary-Shea was negotiating a contract for a job with Jonnie Williams And you have seen this document before This is the proposal Now, I want to reiterate, so that the government understands, I am not highlighting this to suggest that Mary-Shea committed a crime or that she did anything wrong She didn't And as we know, the government agrees, since they have not accused her of any crime, they have not accused her of anything, and they haven't given her immunity or anything else

The key point here is that if Mary-Shea's actions do not rise to the level of criminal conduct, where Mary-Shea was a state employee, where she was active in negotiating a written employment contract worth tens of thousands of dollars, where she wrote a very personal diary letter detailing the nature of her relationship with Jonnie Williams, then the actions of Maureen McDonnell, a private citizen and volunteer, certainly are not criminal, either Mary-Shea Sutherland did nothing wrong Her conduct is not criminal because she did not help Jonnie Williams in exchange for gifts or a job. Those things were separate in her mind. In other words, she was not corrupt

The same is true for Maureen McDonnell It is not enough for the government to show that Maureen McDonnell accepted gifts and a loan from Jonnie Williams and that she did things to help Anatabloc. As I said at the outset, we agree that she did both of those things The government must prove beyond a reasonable doubt that she accepted the gifts because of an agreement with her husband to sell his office

So what does the evidence show about why Maureen McDonnell did things to promote Anatabloc? What was her motivation for attending Roskamp or meeting with doctors, speaking at events? Her true motivation is clear Maureen McDonnell was and is and has always been a true believer, a fanaticfor nutraceuticals You heard this from witness after witness after witness You heard this from her daughter "My mother had a breast tumor when she was 17 It was very, very scary for her to go through that, and she had surgery, and ever since then, she became very involved in nutritional healthcare and vitamins and being healthy and all of that kind of stuff And so she's always taught that to us and wanted all of her children to be healthy and have certain vitamins and things "

Jonnie Williams: "Question: Ms McDonnell did share your enthusiasm; isn't that fair to say? Answer: Yes, she did. Question: And you genuinely believed that she did. Answer: I believe that she thought it was -- I believed that she believed in the product Question: Okay, and that was from the very beginning of what she learned about Anatabloc Answer: I believed it was very early on, yes "

Mary-Shea Sutherland: "Question: And Maureen also, you knew, really cared about the about nutraceuticals, right? Answer: Very much so. Question: I think you said that Maureen was all in on Anatabloc, right? Answer: Yes Question: And you said that she believed, this is what you told the prosecutors, that she believed in the product, she believed in the company, and she believed in Jonnie Williams Answer: Yes "

Tucker Martin said the same thing Move to the next slide Mr Piscitelli said the same thing Move on to the next slide Janet Kelly said the same thing Move on to the next slide Sister Maureen said the same thing Move on to the next slide.

Bob McDonnell: "But from the very first time I met her she was interested in it because of the health event she had when she was 17 with a breast tumor This was the thing that she really enjoyed, that she was passionate about She was good at it She really believed deeply that these, and told me, that these nutraceutical products were good I took them regularly I have for some 30 years or so."

Jeanine, her daughter: "Sure, what did your mother say about Anatabloc when she talked about it? Answer: She said she believed in it And I think that she believed in it because she has always been passionate about the nutraceuticals "

Dr Clore said the same thing. Move on to the next slide Dr Hazel, who you saw testify You have heard a lot about Dr Hazel Not a true believer in nutraceuticals "Question: You talked about nutraceuticals? Answer: We did Question: You thought she was a true believer in nutraceuticals? Answer: I did."

The evidence is overwhelming that everything Maureen McDonnell did to help Jonnie Williams comes in part from her passion for nutraceuticals This passion is undisputed. Maureen attended the Star event at the Roskamp Institute in Florida because she was interested in seeing first hand the company's clinical trials The government wants you to believe that the August 30th, 2011 event at the Mansion was nothing more than a product launch. But Jasen Eige, the Governor's own lawyer, made clear to you on the stand that while Star Scientific may have wanted to have a product rollout at the Mansion, that wasn't going to happen under his watch. The luncheon event that occurred at the Mansion was to give out grant money to research heirs from public universities so that they could research anatabine Maureen's remarks at that event extolled the virtues of a life, a health philosophy connected to nutraceuticals

This is from Dr Lazo, who attended that event "Question: Would you say that the gist of her remarks was less about a product needing a supplier and more about a philosophy or a way of life? Answer: Yeah. I mean, I thought it -- it -- the introductory remarks were really a philosophical statement of this is a good way to live And that was the impression I got "

As for the Healthcare Leaders Reception, the government argues that it was criminal to merely invite people to an event at the Mansion because Dr Bill Hazel did not consider the people she invited to be healthcare leaders Now, Bill Hazel is definitely better qualified than Maureen McDonnell to make that determination There is no question about it But what was in his mind doesn't tell us anything about what was in hers There is no doubt that Bill Hazel thought Anatabloc was a joke There is equally no doubt that Maureen felt quite the opposite And there was nothing unusual or improper about the First Lady inviting some guests to a reception at the Executive Mansion, her home, after all, especially when the event overlapped with her own interests in her own initiatives

There is also nothing objectionable or illegal about the people who she invited. Yes, a number of them were affiliated with Star Scientific But unlike Bill Hazel, who thinks the nutraceuticals generally are a phony science and a waste of time, we know that Maureen McDonnell strongly believed in their potential And again, there is really no dispute about that

Maureen thought the Star Scientific and Anatabloc were going to completely revolutionize healthcare in Virginia and possibly beyond. You heard this from witness after witness after witness after witness

So to her, these Star employees and doctors were, in fact, healthcare leaders in Virginia What's more, an important part of Maureen McDonnell's role as First Lady of Virginia was to support Virginia companies For example, you heard that as a part of her FLITE initiative, Maureen promoted Virginia wine companies and other industries as well Star Scientific allowed Maureen to combine these two things that she deeply cared about, nutraceuticals and supporting Virginia businesses

But let's turn to the other reason that Maureen McDonnell helped Jonnie Williams And the evidence on this is no less overwhelming Now, the government has devoted a large portion of its case to fighting the idea that Maureen and Jonnie had some kind of affair It is not clear why We have never said that there was anything physical or sexual about their relationship. What we said in opening and what the evidence has shown is that Maureen deeply cared about Jonnie, that she had a crush on Jonnie We never said that Jonnie reciprocated In fact, all of the evidence has been that Jonnie is a liar He misleads Jonnie dupes people

But don't take my word for it that Maureen had a crush on Jonnie Williams This is Monica Block: "Question: You have described Jonnie Williams and Maureen McDonnell as being close? Answer: Yes Question: You believe they were? Answer: Yes "

Tucker Martin: "Question: And did they seem familiar with each other? Answer: Yeah They seemed like buddies Question: And, again, they seemed like they were friends? Answer: Yeah Seemed like buddies "

April Niamtu: "Question: And did you specifically see the dynamic between the First Lady and Jonnie Williams? Answer: Oh, yeah They were best buddies They were just chatting away like they had known each other forever "

Phil Cox: "Question, was there anything that -- did anything about their relationship strike you as unusual from your perspective? Answer: I think just the amount of time that he was around and -- and, frankly, the amount of time she spent talking about him. It was constantly -- constantly talking about Jonnie Question: Was it always about business? Answer: No Question: It was about Jonnie Williams the person? Answer: Yeah. Question: How would you describe Maureen McDonnell's demeanor around Mr Williams? Answer: She adored him. She would light up when he would walk in the room. Question: She adored him. She would light up when he walked into the room. Is that what you said? Answer: Yeah. Question: And what was Mr Williams' demeanor around Maureen McDonnell? Answer: I think, you know, very -- very friendly I think he returned -- returned those feelings "

Mary-Shea Sutherland: "Question: You characterized Maureen's meetings with Mr Williams as play dates Do you remember telling the prosecutors that? Answer: She would enjoy his company Question: Now, I'm going to ask you a question again Do you recall telling prosecutors that Maureen's meetings with Williams were play dates? Answer: Yes, now having read it. Question: And you also described Jonnie Williams as Maureen McDonnell's favorite playmate Do you remember telling them that? Answer: I'm not denying I did I just don't recall that specifically Question: Do you remember telling the FBI and the prosecutors that Jonnie Williams was Maureen McDonnell's favorite playmate? Answer: That's my testimony there."

Ms Scarbrough: Question: Did you think that it was inappropriate? Answer: Yes " In response to "a married man giving a married woman gifts "

Janet Kelly: "How did they interact with each other? Answer: It was -- it was kind of flirty It was very, very friendly I was a very relaxed environment "

Kathy Scott: "Question: And you had previously described her as being gaga over him when you spoke with the prosecutors last September; is that right? Answer: Probably She seemed enamored with him, infatuated I think he made her feel special "

Jeanine says the same things She described a mild obsession that her mother had Moving to the next slide

Bob McDonnell: "Question: Do you think she had a strong emotional attachment to Mr Williams? Answer: Yeah Probably Probably so Yes "

Jonnie Williams: "Question: You were much closer to Maureen McDonnell than you were to Bob McDonnell? Answer: Much. Question: You spent a lot more time with Maureen McDonnell than you did with Bob McDonnell, right? Answer: Yes "

What Jonnie Williams really felt for Maureen is beside the point What really matters is what was in Maureen's head And the evidence makes clear that she was gaga for Jonnie Maureen did not promote Anatabloc for corrupt reasons She did not seek to sell her husband's office. Very simply, she promoted Anatabloc because she truly believed in its potential, and because she genuinely cared about Jonnie Williams

Now, the government argues that you should ignore all of this evidence, witness after witness after witness after witness, versus one witness, Jonnie Williams You should ignore all of that evidence because they claim she tried to hide her relationship with Jonnie But the evidence is that the only person she tried to hide anything from was Bob McDonnell

Now, you have seen e-mails in this case about Maureen talking openly about the financial difficulties of the family In fact, Mr Harbach actually showed you this e-mail This is an e-mail in which Maureen talks about the "unconscionable amount in credit card debt already, and this inaugural is killing us " She is concealing their financial difficulties while she is telling the Governor's own lawyer about their financial difficulties

Maureen was open about wanting an inaugural dress She said it right in front of Phil Cox, Adam

Zubowsky, her own husband, and even Brad Kroenig, the male model All of those people were present when she said, "Yes, I'd like to have that inaugural dress "

Now, in his closing argument, the prosecutor painted or pointed to Jasen Eige and others on the Governor's staff and he pointed to Paul Perito at Star Scientific and he described all of these people as the people who were supposed to keep you on the straight and narrow He complained that no one told them about the gifts and loans, that Bob didn't tell them about the gifts and loans, et cetera But let's talk about Maureen Whose job was it to keep Maureen on the straight and narrow? Mr Harbach didn't mention that The person whose job it was was her Chief of Staff, Mary-Shea Sutherland And guess what? Mary-Shea Sutherland was told about just about everything from Maureen McDonnell Mary-Shea went on the New York shopping trip and knew about the dresses Mary-Shea knew about the $15,000 wedding gift to Cailin. In fact, Maureen gave the check to Mary-Shea to deliver to the catering company, and told her it was from Jonnie Williams

Mary-Shea Sutherland said that she told Martin Kent about the $15,000 check. That's the Governor's Chief of Staff "Question: Now, did you tell anyone about that check from Mr Williams, the $15,000 check? Answer: I told Martin Kent about it "

Mary-Shea told Janet Kelly about the $15,000 gift "Question: But you did know about the $15,000 that Mr Williams had given Cailin McDonnell for her wedding; is that right? Answer: In quasi realtime Question: That's because Mary-Shea Sutherland told you, right? Answer: It is Mary-Shea told Martin Kent about Jonnie paying $20,000 in credit card debt Question: Now, before, at some point before the press stories broke, do you recall Mary-Shea Sutherland saying something about credit card debt to you as it related to Mr. Williams? Answer: She did. It was, it had to be sometime before she had left, during a general conversation that we had And there was some reference to credit card debt Question: And did she tell you anything in that conversation about what amount of credit card debt she was talking about? Answer: I recall her mentioning, I believe, $20,000 That sounds right "

That's exactly the amount within some dollars of how much Maureen used of that loan to pay off credit card debt Mary-Shea Sutherland told Martin Kent about that Where did Mary-Shea Sutherland learn about that? From Maureen McDonnell

Mary-Shea accompanied Maureen to Roskamp. Maureen told Mary-Shea about purchasing stock in Star

Scientific Mary-Shea knew about the Smith Mountain Lake trip Mary-Shea knew about, and in fact scheduled the August 1st, 2011 meeting with Jonnie at the Mansion. Mary-Shea knew about the Huffstetler meeting. "Question: And it was also Ms Sutherland who escorted you into the meeting? Answer: That's correct." That's Molly Huffstetler

Mary-Shea attended the Clore meeting, the Dr Clore meeting right after that same morning "Question: And you testified at that meeting, Mary-Shea Sutherland and Maureen McDonnell were present? Answer: Right Question: You know that for sure? Answer: I know that "

Mary-Shea took charge of planning the August 30th luncheon event in the Mansion. Again, Maureen McDonnell, we have never asserted that Maureen McDonnell had nothing to do with the Mansion lunch or launch or whatever you want to call it Maureen McDonnell worked with Mary-Shea on that lunch. There is no question about it But the key point is that Mary-Shea Sutherland knew about pretty much everything, all the gifts and loans, to Maureen McDonnell while she was Chief of Staff And she knew about the things that Maureen was doing to help Jonnie Did Mary-Shea try to intervene, try to put a stop to it? No, she didn't

Mary-Shea helped Maureen plan the August 30th luncheon event Mary-Shea attended the August 1st meeting with Dr Clore Mary-Shea went to Roskamp. Mary-Shea went to Gibson Island. So what's going on? Is Mary-Shea trying to help Maureen conceal corruption? Well, you heard from Mr Harbach earlier today that Mary-Shea has credibility in spades If Mary-Shea knew about the gifts and loans to Maureen, and also knew about the efforts to help Jonnie, and if Mary-Shea not only did not intervene, but actually joined Maureen in helping Jonnie, then I guess the government agrees with us that it was okay

You heard Mary-Shea Sutherland testify in this case And you didn't hear her say a single solitary time, despite everything she knew, that Maureen was corrupt or that she sold out Bob's office Not one time

Now, what else is Maureen McDonnell supposed to have concealed? Let's talk about the stock, the sale and the repurchase and the transfer Well, we already know that Mary-Shea Sutherland knew about the stock And Maureen told her stockbroker, Mr Piscitelli, about the stock. He bought it for her And guess what? She also told him about, quote, reporting requirements Now, you heard from Bob McDonnell that it was Bob who mentioned reporting requirements to his wife And you heard that Bob mentioned it to her three times The first time when she bought it in June, 2011 The second time when he told her to sell it in November of 2011 And then the third time when he found out that she repurchased the stock and wanted to transfer it to the kids at Christmas of 2012.

Now, focusing on November, 2011, when Bob told her to sell it, this was the question and answer between myself and Mr McDonnell "Question: Now, it was clear to you at this point -- this is November, 2011 -- that she had absolutely zero interest in selling the stock, right? Answer: That's probably fair, yes " And then in December, 2012, same thing Now, Maureen McDonnell had no reporting requirements She had no SOEI or any other forms to fill out This was about Bob's reporting requirements You heard what Bob had to say about that Maureen McDonnell never wanted to sell the stock. And what kind of criminal mastermind goes to her stockbroker and tells him, "Sell the stock because of reporting requirements " It doesn't make any sense She told Piscitelli what she had heard from her husband. She told Piscitelli what she understood the situation to be But it wasn't because of corrupt intent It was because she was telling him something she had heard. She never wanted to sell the stock. There is really no dispute on that

In closing, the government said the only reason Maureen McDonnell transferred the stock into her kids' names in December of 2012 was to help her husband avoid these reporting requirements. Now, it seems they have forgotten the undisputed evidence from multiple witnesses, including, again, Mary-Shea Sutherland and others, and Piscitelli, that Maureen told everyone from the very first time she bought the stock in June, 2011, that she wanted to give it to the kids Cailin McDonnell testified about that

Now, the government wants you to dislike Maureen for telling her kids in the Christmas of 2012 that the money came from her father's inheritance They said that was a lie But remember what Bob said about how Maureen described that money Bob said from June of 2011 that it was in her mind a replacement for the inheritance money that he had forced her to use on credit card debt, the inheritance money from her father That's what she thought of from the get-go

I'm not sure if the government is still alleging that Maureen was trying to hide her relationship with Jonnie when it comes to the Rock Creek Pharmaceutical events, but let's talk about them briefly Those are events, public events, hundreds of doctors Maureen McDonnell, hiding her relationship from Jonnie and her association with Star Scientific, gets up in front of hundreds of doctors and says, "Hi, I'm Maureen McDonnell I'm the First Lady of Virginia I think that Anatabloc is a great product, and I think it is a great Virginia company " Now, does that sound like someone who is trying to hide her relationship with Jonnie Williams from you? She didn't hide herself, she didn't hide anything relating to Jonnie Williams from these hundreds of doctors. She embraced Jonnie Williams She could not have been more clear about her passion for Anatabloc at those meetings

It is true, you heard about one meeting in California in which she didn't realize she would have to speak and she was pushed into it by Jonnie Williams You heard about that from April Niamtu, her friend But once again, there is no evidence that she did anything to try to hide her relationship from Jonnie Williams

Let's talk about MoBo and Maureen McDonnell's involvement Now, you heard testimony that Maureen got involved in MoBo in January of 2012 It is the second time she has gotten involved with MoBo The first time was in advance of the May 2nd meeting in 2011, and now again in January of 2012 Maureen, as you heard from many witnesses, and you saw it in texts and e-mails, she had the initial discussions with Jonnie about a loan for MoBo She once again put Michael Uncapher on the phone to talk about what MoBo needed

Now, the government seems to imply that, once again, this was evidence of some kind of concealment But let's take a look at what Maureen McDonnell said to sister Maureen about this loan This is on March 11th, right before the loan was finalized. She said to sister Maureen: "I left you messages because I worked on this loan for a year, not Bob."

And if you recall, there were other texts which clearly indicated she was upset about not getting enough attention for this loan. You also heard from sister Maureen, I don't think that -- I think you would agree with me that they are probably not the closest of friends So for Maureen McDonnell to tell sister Maureen that "This was my idea, I'm the one who worked out this loan," what does that tell you about Maureen's mindset about trying to conceal MoBo? Was she trying to conceal MoBo? Of course not She had no reason to conceal it.

Let's turn to the February 15th, 2013 interview This is the interview you heard testimony from Bob McDonnell that his wife was, in his words, ambushed by the Virginia State Police The Virginia Police told her the interview was just about the Chef Todd case This is the e-mail in which Colonel Flaherty informs Martin Kent that this is about Chef Todd. It doesn't mention anything about Jonnie Williams Now, you recall that Martin Kent was not allowed to go to that interview No counsel was present She was not read her Miranda rights She was, in Bob McDonnell's words, ambushed, and they asked her about Jonnie Williams' transactions

Now, Agent Hagan's description one-and-a-half years after that interview of what he claims she said during the interview is different than what's in his handwritten notes that were taken contemporaneously with the interview

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The notes say nothing about Maureen saying there were periodic payments on this loan, nothing about Maureen having a written or signed agreement

But putting that aside, let's assume for the moment that she even did say that What happened right after that interview, right after the February 15th interview? Bob McDonnell told you himself on cross-examination from me "Question: And do you recall that Ms McDonnell said she needed to call the investigators to tell them there were no documents memorializing the loan? Answer: Yes question: And do you recall that you told her not to call and not to have any further contact with the investigators until you figured out what was going on? Answer: Yes. That's exactly what I told her "

And if you recall, Mr McDonnell testified that Maureen asked him after this interview, are there any documents memorializing this loan, and Bob McDonnell said no

The other person that Maureen deliberately hid anything from was her husband This is from sister Maureen "I've known her for over 40 years, and I think through the course of that, those experiences I have just witnessed -- heard, witnessed, there were just a number of examples or situations where I've seen her hide things from Bob, you know, conceal things from Bob "

Her daughter, Jeanine "Question: Did you ever observe either your mom or your dad hide things from each other? Answer: Yes I would say there were, especially when it came to purchases, my mom They were hidden until the bill came, and then it would turn into an argument "

Maureen hid the source of the Rolex She didn't tell Bob McDonnell that the Rolex came from Jonnie Williams You heard Bob McDonnell say that himself, and you heard from multiple witnesses who said that Bob told them that it was a gift from Maureen

Now, recall that Jonnie had a colorful story about how all of this Rolex supposedly happened, and it included that he supposedly called Maureen, with his wife, from a fancy store in Malibu, California, to ask her about -- or to ask her what to engrave on the watch But you saw Jonnie Williams' cell phone statements -- or excuse me, his credit card statement, which shows that the transaction happened on August 14, 2011 But there's no record at all of any phone call between Jonnie and Maureen on that day There was no call on August 13th, the day before, or the day after

The government's agent, Agent Hulser, testified, "Well, maybe it was on a different day than reflected on the credit card bill " That's not evidence That's just speculation The credit card bill says it was bought on the 14th Jonnie says he called Maureen on that day that he bought the watch, and there's no record of any such phone call Remind you of the December 2009 call, the rain check call, for which there is no record of any such call

Maureen hid the dresses that Jonnie bought for her in New York in April 2011 You've heard testimony about that Maureen did not tell Bob about the $50,000 loan until after she had spent the money You heard that from Bob She hid the initial stock purchases in June 2011 and then the stock repurchased in January 2012 She hid it from Bob She didn't hide it from Mr. Piscitelli She hid this from Bob She didn't hide anything from Mary-Shea Sutherland, John Piscitelli, from the world The only person she had an obligation to tell was Bob But that's not a crime

The government's conspiracy theory relies on the fact that Bob and Maureen are married Now, you've heard from multiple witnesses You've seen documents that these two are not people who were in a conspiracy

I'm not going to linger on this e-mail You'll have it when you return to deliberate I'd like to turn to Bob's testimony Here's what Bob said about their communication, about their marriage "We just were not able to communicate We were not able to talk about anything of any substance And she was yelling at me, and she had almost uncontrollable anger I had seen it before, but this weekend was particularly pronounced And I was -- I was upset with her I was feeling heartbroken that, you know, maybe this was the end of my marriage. Maybe we were done because I couldn't talk to her "

"Question: Was she able to explain to you or did she explain to you the source of her anger and her hate? Answer: Not really, not that I could understand Question: So it didn't make any sense to you; is that what you are saying? Answer: Yes "

Her own daughter "Question: And how much one-on-one time did he and your mother spend together, if you saw? Answer: Pretty much none And this stood out to me because this is not frequent that he would ever confide, but he actually did open up and said, quote, I don't know what to do anymore I can't make her happy She is always angry, and I just wish there was something I could do And he just felt like helpless, like it was a new low they had reached Behind closed doors, as I've said, there was tension There was anger There were arguments But anytime they went into a public setting, it was like a switch flipped and they could turn it on "

In response to all of this, the e-mail on September 5th of 2011, five days after the August lunch, the testimony you heard, in response to all of this, the best the government could come up with was this e-mail on May 8th, 2011 About as generic an e-mail that you could possibly find between a husband and wife where he says, "Love you." She says, "love you. Miss you." That's it That's their response to the September 5th e-mail The breakdown in Bob and Maureen's relationship left a void for Jonnie Williams to fill Jonnie saw this, and he took advantage of it

You've seen a lot of charts in this case, and I'm not going to spend a lot of time on many more, but this one brings it home Bob and Jonnie had 53 calls and texts during the life of this conspiracy Fifty-three Maureen and Jonnie had 1,349 Do you really think, does it make any sense to you that all those calls, or even most of them, were about business? That's what Maureen McDonnell was talking to Jonnie Williams about, business? Does that make any sense, from everything you've heard in this case?

I'm going to turn to two charges beyond the corruption charges that we've been talking about Bank fraud and obstruction

Now, the bank fraud charge, only one of those is Maureen McDonnell accused of a crime The PenFed Now, the government needs to show more than just a false statement was made to a bank They need to show that it was done knowingly and for the purpose of influencing the bank

Now, what has the evidence shown about that? Maureen had nothing to do with preparing the loan application to PenFed The testimony is clear that Bob handled that without Maureen's involvement Bob handled the family's finances There's no evidence that Maureen even reviewed the application before signing it

This is Nanette Bolt "Question: Okay Now, the -- you've testified about a number of conversations and e-mails you had with Governor McDonnell today And do you recall having any specific conversations with Ms McDonnell, Maureen McDonnell, the wife, about this application? Answer Not very much Question: And getting information during the various iterations of the application, that information came from Governor McDonnell, right? Answer: Correct Bob said many times that he managed the family's finances Question Did you ever ask her to review the drafts?"

These are the draft applications for PenFed

"Answer: No Question: Did you ever see her review the drafts? Answer: No Question: Did you ever provide -- did she ever provide you with any comments or edits to the drafts circulated prior to February 18th of 2013? Answer: No Question: Fair to say that as far as you were concerned, filling out those drafts was your job, not hers? Answer: Yes "

So the evidence in this case is that Maureen had nothing to do with preparing the application There is no evidence that she reviewed the application And according to Mr Harbach, you can't even read the application without a magnifying glass And they want to send Maureen McDonnell to prison for that

The last charge against Maureen McDonnell is obstruction Now, as Mr Harbach made very clear, this is not about the statements she made to Special Agent Hagan on the February 15, 2013 interview This is about the letter she wrote a couple months later to Jonnie Williams, a handwritten note to Jonnie Williams that she sent with the gifts, the dresses that he had bought for her The return of the dresses is also not charged It's the letter The letter itself is what is supposed to be the obstruction Now, the note that accompanied the dresses is actually factually true "If not, I'm sure there are many exemplary charitable organizations like we talked about who would welcome the opportunity to auction them for a wonderful cause, having been worn only once by the First Lady of Virginia " And there's a sentence before that about Jonnie could provide it to his daughter Nothing in this letter -- and you'll be able to read it for yourself Nothing in this letter says that she had a prior agreement with Jonnie Williams.

Now, Mr. Harbach said that I'm not a grammatician, and he's right And that you shouldn't have to be grammaticians either But let's -- let's use our common sense for a moment The one thing that she says that she talked about with Jonnie Williams are charitable organizations Now, this is a photo from the Cure By Design event that Jonnie and Maureen and Bob and Brad Kroenig attended in September of 2011. And they did -- they went to -- Bob and Maureen went to this charity event together

And what was this event about? It was a fashion event to auction dresses to raise money for cancer research The only evidence in this case that that note was false comes from one person; Jonnie Williams But Jonnie couldn't even explain to me why it was false All he could say is that it was a fabrication, without any explanation as to what was, in fact, fabricated I tried I asked many questions, and he couldn't say

Maureen could not possibly have intended to obstruct the grand jury in this case since she had been told that there was no grand jury in this case by her own lawyers You heard from Mr Flood "Question: Okay Did the prosecutors tell you on that second phone call that there was no federal investigation of public corruption of Governor McDonnell or his wife? Answer: Yes, they told me that What I had been told was, quote, there was no federal public corruption investigation of your clients "

Now, the government does not allege that Maureen delivered the note to a witness who had been subpoenaed to testify in the grand jury No The government's theory is that she gave the note to the brother of Donnie -- of Jonnie Williams, to Donnie Williams, hoping that Donnie would get it to Jonnie, who she apparently hoped would get a grand jury subpoena so that he could turn over the note to the grand jury subpoena -- to the grand jury, excuse me, and that grand jury didn't exist, but it might one day, so that Maureen could then trick that nonexistent hypothetical grand jury with an entirely true note That's the government's common sense

Think about what Mr Harbach said about this note He told you that it doesn't really matter what the note says You don't have to be a grammatician Instead, he told you to just use your common sense Does convicting someone of a crime for writing a letter without reading what she wrote sound like common sense to you?

Now, at the beginning of this case, in my opening statement, I told you Maureen was here as collateral damage Well, I think it's fair to say that Maureen has taken a lot of incoming fire in this case You didn't see a whole lot of people getting up on the stand to say nice things about her But consider this. How many witnesses got up there and said she was a criminal mastermind or even capable of strong arming a guy like Jonnie Williams? Do you remember what April Niamtu said about her She's gullible, trusting. The only person who said that she could strong arm Jonnie Williams was Jonnie Williams

Maureen was called a lot of names. Some maybe were even justified under the circumstances The secrets of her marriage were laid bare in all their embarrassing and sometimes sad detail Even there was testimony about mental health issues and treatment that she received I listened to the government's closing very closely, as I'm sure you did, and Mr Harbach did mention Maureen quite a bit But tellingly, he focused most of his effort on Mr McDonnell; 80 percent, 90 percent What Bob knew, what Bob did

In the end, Maureen McDonnell isn't even collateral damage She's less than that She's an afterthought Maureen McDonnell stands accused before you Her fate rests in your hands Maureen McDonnell is confident that you will give the evidence more attention than the government has And when you do so, we are confident that you will return the only verdict supported by the evidence in this case, and that is that Maureen McDonnell is not guilty of all these charges

Now, usually this is where I would stop and I would hand it over to the Governor's counsel, but I have just one last thing to say You heard the prosecutor, in his closing, accuse that man, Bob McDonnell -- I want to make sure I got it right -- of selling out his office, selling out his beliefs, selling the citizens -- selling out the citizens of this state, selling out his family, selling out everything he holds dear The only other person to walk into this courtroom and say that was Jonnie Williams So I ask you to consider the source Thank you

THE COURT: All right We're going to take a break before we get started with the -- 15 minutes

(The jury left the courtroom)

(Recess taken from 2:36 p m until 2:53 p m)

THE COURT: All right Let's bring them out

(The jury entered the courtroom)

THE COURT: All right Mr Asbill

MR ASBILL: Thank you, sir

Good afternoon

THE JURY: Good afternoon

MR ASBILL: Mr Dry finished his cross-examination of my client a couple of days ago by quoting from my client's inaugural address in which Bob quoted from the book of Luke, and the quote that Bob said, "To whom much is given, much will be required "

Mr Dry suggested in his cross-examination, at least as I understood his question, that this quotation meant that Bob knew Jonnie's gifts were really bribes and Jonnie expected something in return If I understood Mr Dry's question, I couldn't more strongly disagree Those words, the words that Bob used in his inaugural address, are not about bribery They were about service The principles that have motivated my client every single day for his entire adult life

If you are given a great opportunity, and he was, to be sure, as the Governor of Virginia, you have a duty, a solemn duty, to improve the lot of your fellow man, and Bob tried his best to do that That's who he is From his years in the Army, from his time as a local prosecutor, from his work as a legislator, from his term as Attorney General, and finally, during his term as the Governor, Bob's commitment to serving others has dominated his life

And sometimes it's been a tremendous personal sacrifice and a tremendous personal expense He's not a perfect man, but he never denied the people of this Commonwealth their right to his honest, his dedicated, and his tireless service And he was good, by all accounts, at his job

Interestingly, very interestingly, the rest of the passage from scripture that Bob didn't quote and Mr Dry didn't ask about tells us that "from him to whom they entrust in much, they will demand more " You might want to think about that as you evaluate the government's case presentation here Our system is justice entrusts tremendous power to federal prosecutors. The power to investigate, the power to accuse, the power to bring the Governor of Virginia, the former Governor of Virginia into this courtroom and ask his peers to judge him, to evaluate him, to decide whether or not he committed crimes while he was in office And you, as jurors, have a right, have a right, to demand a great deal from those prosecutors

But my opponents, I submit, have made clear in their questions They made clear through the witnesses that they have brought in And they have made clear through their arguments to you in this case that they don't want to make this a case about the law They want to make it a referendum on my client's morality, on how Virginia chooses to police its own political system

This case isn't about whether my client exercised poor judgment He did, and he has apologized, and he has apologized repeatedly for that He's deeply sorry for the mistakes that he made as Governor He's sorry for the mistakes he made as a husband And he is sorry for the mistakes that he made as a father But you're being asked to render a legal verdict, not a moral verdict, and don't be distracted from that real task

This case should never have come to trial Five weeks of evidence, over 50 witnesses, dozens of charts and summaries of countless other records, nearly 800 exhibits, texts, e-mails, all moved into evidence The federal government has not produced any evidence showing that anyone, least of all Bob McDonnell, committed bribery or defrauded a bank Your decision, I submit, is simple It doesn't require fine sifting of complicated facts Despite all you've heard, all you've read, all you've seen, there are three major gaps in the prosecution's case that they can't fill Three basic issues that Mr Dry hardly even asked Bob about, despite being on that stand for five days and 27 hours

The first hole is that Jonnie didn't get anything Nothing Bribery requires both a quid and a quo It requires both that Bob -- excuse me, that Jonnie gave Bob something and that Bob promised -- or provided official acts in return That didn't happen here Never Bob never gave Jonnie anvthing special Jonnie never directly asked Bob to do anything special Jonnie doesn't even claim otherwise This case is all quid No pro No quo

And in Virginia, as you've learned, taking gifts, trips, golf, low interest loans, whatever, it is perfectly legal under Virginia law as long as you disclose those items You can't find Bob guilty just for taking gifts This is a bribery case It's not an election

The second gap is the fact that Bob and Maureen are married does not prove that they were conspiring. As you surely know from your collective life experience, long-term marriages are often very complicated The idea that every married person knows everything that his or her spouse is doing, everything that his or her spouse is feeling, everything that his or her spouse is thinking is absurd The idea that in a long-term marriage spouses always share their financial dealings with each other all the time is ridiculous And that is especially true here Unfortunately, the charges have tragically forced my client and his wife to reveal the most personal details of their marriage, and that humiliation has been severe, and it has been nationwide Details that should have never had to leave their home In this instance, the semiprivate quarters upstairs in the Mansion I say "semiprivate" because there really was no ultimate privacy there either

They have had to reveal these details because they have had to defend against the charges in this case, and as those details make very clear, make very plain, this was a troubled, dysfunctional marriage, one that was so fractured that another man, Jonnie Williams, was able to insert himself into the relationship for his own selfish purposes

And the third gap that the prosecutors haven't filled is that Bob didn't hide anything because he didn't have to hide anything He did not engage in any secretive, furtive conduct We're talking about family vacations We're talking about group dinners We're talking about scheduled events We're talking about written calendars and written logs Golf games with public greetings by the manager of the golf club, a wedding gift to Cailin McDonnell, paid through a check that was passed from Jonnie to Maureen, to Mary-Shea, to Chef Schneider, to his partner Ryan Greer, to a bank and loans that MoBo and my client memorialized in handwritten notes he saved and he produced to the prosecutors

Loans that were handled by checks and wire transfers that my client revealed to everyone that logically should know about them A group that included my client's sister, Mo; his sister's former husband, Michael Uncapher; a bookkeeper my client had never met, Brenda Chamberlain; his accountant, Daniel Cook; and even the Internal Revenue Service Each creating a paper trail that has been brought into this courtroom for you to observe It's not just me telling you about these documents or the testimony that show this You heard these things from my client himself Bob looked his accusers and he looked each of you in the eye on that stand and answered every single question that Judge Spencer permitted to be asked just as Mr Brownlee told you he would five weeks ago during his opening statement He answered them honestly He answered them truthfully, and to our collective delight, he answered most of them quickly Unlike Jonnie Williams, Bob didn't try to dodge questions or ask to be shown documents he knew he was going to be asked about, but didn't bother to review so he had to have his recollection refreshed

And not one time did Bob waiver on the issues at the heart of this case He was resolute in denying that he did anything wrong for Jonnie Williams He promised nothing to him in return for gifts or loans And he was firm in denying that he ever lied to any bank He faced the charges against him with courage and with guts He did it because for him, it was the right thing to do And now the truth should set him free Because if you believe Bob McDonnell, that's all there is to it Your decision is easy and it's quick

I'll talk in greater detail later about all the different reasonable doubts that exist in this case, and there are many, but those three basic points Jonnie got nothing, the marriage was dysfunctional, and Bob didn't hide anything Those three fundamental facts in this case are all you need to know to reach the only just verdict in this case the evidence supports Not guilty on all charges There was no quo, and there was no plan

As you retire to consider the evidence in the case, I ask you to think, first and foremost, where is the actual public corruption? It's not the gifts It's not the loans And don't be fooled into thinking that it is Don't let the prosecutors play into your prejudices or tempt you to ignore the law because you don't like Bob driving a Ferrari You don't like the fancy vacations You don't like the Rolex that Bob thought Maureen bought that Bob didn't want or like Ignore their attempts to assassinate Bob's character with the quid Resist their attempts to inflame you with irrelevancies, like the Kiawah Island vacation that Bob accepted from his friend Bill Goodwin Those things are not the basis to convict my client Judge Spencer's instructions will make that clear

Bribery involves the exchange of things -- of a thing or things of value for official action by a public official In other words, a quid pro quo A Latin phrase meaning "this for that" or "these for those " Not one witness in this case identified a single thing that Bob McDonnell did for Jonnie Williams in return for gifts or loans over the two years of the alleged criminal conspiracy And nothing Mr Dry cross-examined my client about changed that basic fact. Rather than ask my client precisely what did you do in exchange for Jonnie's generosity, he interrogated him about Dr Davis, Bill Goodwin, and stock transactions Jonnie proposed that never happened The quo, any trading of official actions for cash or gifts or loans? The prosecutors, they avoided that They want to focus on the quid

Remember back to the government's summary witness at the end of their main case, Bill Burck, Maureen's lawyer, asked Agent Hulser, "Where is the chart for all the things that Jonnie Williams got from Bob McDonnell? And the answer was, "There is no chart for that " There was no chart for that then There's no chart for that now Why? Because Jonnie got nothing from Bob

These prosecutors and their eight agents have spent two-and-a-half years working this case They have put all five of Bob's children in the grand jury, the spouses of two of his children in the grand jury, his sister in the grand jury They have interviewed about 200 witnesses, many of whom have never met Jonnie Williams They have torn my client's life apart They scoured his affairs for any evidence of criminality They had a senior member of his security detail sending back reports on his activity Another agent spent time tailing Chris Young, a young man whose only crime was to marry Bob's daughter Cailin They have searched diligently and they have searched tirelessly for quo, but they haven't found a thing They are still looking as I speak, and they still can't find it Not because they haven't tried, not because they haven't looked hard, but because no quo exists It never did

Jonnie didn't get any contracts He didn't get any legislation He didn't get any favorable tax treatment He didn't get a budget appropriation He didn't get any grants He didn't get a business license He didn't get appointed to any boards or commissions He did not get the Governor's support at the Tobacco Commission He did get a phone call to his father on his father's 80th birthday That's all Jonnie ever directly asked Bob to do And that's all Bob ever gave to Jonnie Williams during the conspiratorial time frame

Nor did Bob try or promise to give anything for Jonnie in return for gifts or loans You've heard from all of Bob's senior staff and many of his Cabinet secretaries They are depicted on the screen Not one of them said Bob ever pressured him or her to do anything for

Jonnie Williams or Star Not only that, they made really clear to you, each one who testified, that Bob had countless tools at his disposal if he had wanted to help Jonnie Williams. Budget line items, the boards and commissions I've discussed, discretionary funds that Bob McDonnell could direct on his own, or heavily influence if he wanted to The list goes on But he never did any of those things for Jonnie Williams He never told anyone to make it happen He never directed someone to give Jonnie something And that's not because Bob didn't know how to get things done

Numerous people have testified and made clear, all of these folks have made clear, that Bob McDonnell accomplished what he wanted to accomplish as a Governor If Bob had promised to do something for Jonnie Williams over two years, you can be sure that he would have made it and could have made it happen The opportunities that Mr Harbach talks about, waiting, work in progress, we're waiting for the opportunity to do something for Williams, the opportunity to do something for Williams always existed

Jonnie even claims that the only time Bob said anything to him suggesting something he would do in the future was at the time of the Healthcare Leaders Reception in February 2012, when supposedly Bob said on the phone to Jonnie that he, Bob, was following up with the situation at UVA But there's no record of that call, and my client has made it very clear that the call never happened

But even if it had, even if it had, that's not enough to convict Nobody knows what that statement means Certainly Bob can't interpret something he didn't say And, of course, Bob never actually followed up with anyone at UVA, like he supposedly said he would, and the issue never came up again, even though Mr Harbach claims my client was conspiring with Jonnie Williams for a full year, a full year after Bob supposedly made that statement on the phone

What did Jonnie want? What was he trying to get from Bob? It's unclear to us because Jonnie never personally and directly told Bob Mr Harbach says that Jonnie wanted studies at UVA and VCU and he wanted Tobacco Commission money to fund those studies, but that evidence doesn't add up It doesn't prove that theory Let's talk about the Virginia study letter, because I know Mr Dry will talk about it in rebuttal, even though Mr Harbach didn't address it

This is the letter that Bob received sometime in June of 2011 I think it's dated June 16th Jonnie testified he had the letter drafted because either Maureen or

Mary-Shea asked him to put it in writing Put in writing what it is that he wanted So Jonnie, on that letter, wrote the first sentence and only the first sentence of the letter, which was something Jonnie had learned in grade school He testified about that

The rest of the letter is put together by some doctor at Roskamp And there's, I don't know, 18 or 20 pages of attachments to it that are pretty obscure That's why Jonnie could barely begin to explain in his testimony what the letter and the attachments meant

But in any event, he sends his ghost-written letter either to Mary-Shea or to Maureen But as far as Jonnie knows, the letter dies there with them He does not know what they did with it He does not know whether Bob got it or ever saw it He doesn't know whether Bob, if he got it, read it He never asked Bob about it once Jonnie does not know what happened to the letter But he does know what happened in terms of what he asked in the letter And that was nothing

Unbeknownst to Jonnie, Mary-Shea sent it to Maureen, and then one of the two of them somehow got it inserted in Bob's read folder that you've heard about After that, Bob quickly scanned the letter A fact that nobody but my client knows and a fact that he candidly admitted when he testified He said, "I saw the cover letter and I skimmed it " He didn't say, "I never saw it I didn't receive it It just got lost in the shuffle." He didn't understand it either

So after glancing at the cover sheet, he sent it to Dr Hazel with an FYI to him Hazel doesn't remember seeing the letter He never read it, and he certainly never acted on it Look at the last sentence of the cover letter "Once you have had a chance to review this, please have someone on your staff contact me "

There was no reply And the trail ends there This is Jonnie's big plan, Jonnie's major ask, some big criminal scheme If Jonnie were bribing Bob and if this letter was something that Jonnie actually wanted, then Jonnie would have actually asked Bob at some point in time about it over the next two years of their supposed conspiracy But he never said a word He never followed up

And if this was some kind of subtle ask, whatever this letter says, it went over Bob's head because all Bob did with it is to send it to Bill Hazel, who you've learned in this case is Bob's Dr No You remember Bill Hazel, the one who loves Jonnie Williams, the one who calls him a Tic Tac man

The idea that my client sent this letter to Bill Hazel in order to help Jonnie Williams, in order to further some plan that Jonnie wanted to accomplish is absurd If Bob wanted to make stuff happen for Jonnie, Dr Hazel is last person Bob would have included That was the same as throwing the thing in the trash can That's why Jonnie never heard back He did not even get a polite no with respect to this letter

Jonnie also claims, when he testified, that this letter was in sum or substance, or whatever, some of the stuff he talked to Bob about on the plane trip from California back to Richmond in November of 2010 But that, too, clearly is false Jonnie had his meeting with Dr Hazel shortly after that flight in early November 2010 The flight was in October, long before the government claims any criminal conspiracy of any kind existed

In that meeting, Jonnie never asked Bill Hazel for anything, and he didn't say a word about some Virginia study Or, as Dr Hazel put it, "I missed the punch line of the meeting because I never got the ask at that point " There's no way that Jonnie told Bob about his grand plans, but then hid them from Dr Hazel at the big meeting Jonnie wanted Beyond this confusing letter, there really isn't much evidence that Jonnie tried to get the Tobacco Commission funded studies or that Bob ever lifted a finger to help Jonnie out The prosecutors haven't brought you a single person from UVA, a single person at VCU, or a single person from the Tobacco Commission who will say that Bob, or anyone from his staff at his direction, said a single, solitary word, encouraging that person to do anything on behalf of Jonnie or Star Bob didn't do anything to assist Jonnie with this supposed goal

To the contrary, Neal Noyes came in here and testified He's the Chair of the Tobacco Commission -- or former Executive Director, excuse me, of the Tobacco Commission He told you that Bob knew how to lobby the Commission if he wanted He's done it before in other situations, but he never did it for Jonnie

Bob's Secretary of Education Now, this is the VCU UVA Linda Fornash -- excuse me, Laura Fornash, the person who oversees those universities, told you that Bob never uttered the name Jonnie Williams or Star Scientific to her Bob's Secretary of Agriculture, Todd Haymore; Commerce and Trade, James Cheng; and Finance, Rick Brown, three designees of Bob McDonnell on the Tobacco Commission, told you the same thing No request from Bob at any time No pressure from Bob at any time to do anything for Jonnie Williams or Star He never pressured the universities He never lobbied the Tobacco Commission Not for Jonnie Not once in any way, in any shape, in any form

The only evidence -- other evidence the prosecutors have offered to support their theory is an 11-word e-mail that Bob sent to Jasen Eige in mid-February 2012 asking Jasen to see him about Anatabloc issues at UVA and VCU But that short e-mail, as I will explain, was not designed or intended to help Jonnie at all Jasen testified that after he got the e-mail, he called Jonnie's lawyer, lobbyist, Jerry Kilgore and told him, told Kilgore, that the Governor would not help Jonnie and would not do anything to assist Jonnie with whatever Jonnie was trying to accomplish at UVA or VCU That's a phone call to Kilgore that Jasen made instinctively, knowing that he had Bob's full support and authority to do that Bob never did anything else, and the issue went away

Now, Mr Harbach, this morning, made a big deal about the "be careful" e-mail Let's see what Jasen answered in response to the "we have to be careful about this" e-mail that he sends my client This is transcript Page 1667 Mr Harbach asked, on direct examination, Jasen about this "What, in your view, do we need to be careful" -- "what, in your view, did we need to be careful with this issue? Well, as I mentioned before," and it goes on, "It wasn't something we really had, frankly, the authority to do, and it just was not a matter that we should be involved with as far as trying to broker some type of understanding or compliance with the universities who had received this grant money" -- that's grant money from Star -- "and a company This was a matter between them and not something I felt was an appropriate use of our time or our authority "

And Mr Harbach's suggestion that the timing of Bob's e-mails to Jasen in this regard, which is the middle of February, I think it's the late night of the 16th of February, the early morning hours of the 17th of February, demonstrate a pro part of a quid pro quo I submit is nonsense

Bob explained to you during his testimony, during his direct examination, that at that night, at that time, in realtime, he was getting ready to travel out of the state for seven of the next ten days And he had a to-do list He had a miscellaneous to-do list of personal and business things that he needed to attend to before he left And in 30 minutes, over the 16th, into the early morning hours of the 17th, he e-mailed Jasen Eige on a number of outstanding issues and topics, many of which were important And he e-mailed his family about a number of personal issues, et cetera You can look at those e-mails if you want and you can put them into context, and you can see what he is doing in terms of not thinking about Jonnie Williams and some quid pro quo These are just things that I've got to get out of the way before I travel

Now, there also isn't credible evidence showing that Star really wanted studies at UVA or VCU Just like Jonnie never followed up on his letter, the folks at Star never followed up with the universities Recall what happened after Star ordered $200,000 in grants to the researchers at UVA and VCU Nothing There was one conference call between the universities and the people from Star Scientific in November of 2011 The ball was in Star's court, but as Sharon Krueger, who came in here and testified, told you, the folks at UVA never heard back

Why would Jonnie pay bribes to my client to get his assistance with studies at UVA and VCU, and then not follow up with those universities where he supposedly wanted the studies done? One explanation that makes a little more sense is that Jonnie wasn't actually bribing anyone, that Jonnie was never serious about the studies to begin with, like so much else in this man's life, in Jonnie's life

Perhaps all Jonnie really wanted was the ability to brag, to tell people, including potential investors in his company, about the big studies that were planned Did he really want them actually performed? What if they showed that Anatabloc didn't work as advertised? If you are still not sure, consider this There is zero evidence that Jonnie ever believed Bob would do anything to help him

Super lawyer lobbyist, Jerry Kilgore, working for Jonnie, told him to focus on the Governor's budget, not the Tobacco Commission. Kilgore told Jonnie that even though his brother, Jerri's brother, is the head of the Tobacco Commission, he told him, "Focus on something else " And that is an interesting fact that Jonnie Williams denied knowing when he was cross-examined "Oh, yeah, I hired Kilgore Didn't really know that his brother was the chair of the Tobacco Commission "

And as Paul Perito, Jonnie's good friend, and as he's very fond of telling us, former federal prosecutor, said when he heard, supposedly, Bob talk about the Commission at this Mansion lunch, Bob said he couldn't help Star Neither Bob, nor Jasen, by the way, remember the Tobacco Commission coming up with Perito at all, but if it did, Jonnie got another polite no

About bragging Maybe just -- you know, I want to be a big-shot I want to continue to be the big-shot that I've tried to be all along This is Jonnie Remember the $5,000 bottle of Louis XIII Cognac that he bought and nobody else really wanted The same Cognac he later dumped into the fire, part of, at least, dumped into the fire at Chatham Bars because he was curious what it would do You know, was it going to burn or flame? Or Jonnie, the one who gratuitously upgrades Dr Vetrovec to first class on a flight at the Atlanta Airport Jonnie likes to show off his wealth. He likes to give money away Like Jonnie did when he outbid himself at the Cure By Design auction, or when he gave $20,000 worth of stock to the daughter of his friend, B J Haynes, as a gift for her wedding Or when he gave another $200,000 to that same friend Or when Jonnie gave Jerri Fulkerson a $60,000 bonus because she found misplaced shares, misplaced stock certificates that Jonnie couldn't readily locate

Ms Fulkerson perhaps put it best when she testified Jonnie just gives gifts, and she doesn't know why Right out of the blue, that's what Jonnie does But he never asked Bob for anything Maybe he didn't want anything except some of Bob's time or Maureen's companionship or attention In any event, we'll probably never know

That would explain why Jonnie kept on being generous with Bob's family, despite Bob promising him nothing and despite Bob giving him nothing You can see the timeline here And it's not like Jonnie didn't know how to ask for something he wanted He's very good at asking for things that he wants He did, after all, ask the prosecutors in this case for two immunity agreements, the second of which got him off the hook for securities fraud, tax fraud, insider trading, and whatever else

Let's talk about what the prosecutors claim are the quos in this case They don't add up But there's a lot invested in trying to get my client here, so we've got to have some kind of quo So what do they do when they can't find any official actions Bob takes on Jonnie's behalf? They conjure some up Routine, mundane, innocuous, irrelevant, non-special interactions that Jonnie Williams had with anybody in the McDonnell administration Now those become quos.

But look at Judge Spencer's instructions, and you will see they are not If they were, there are politicians all over the country who would be being prosecuted The judge will instruct you that the term "official action" means any decision or action on any question, matter, cause, suit, proceeding, or controversy which may at any time be pending or which may, by law, be brought before any public official in that official's official capacity

You'll have a copy of the instructions if you want to refer to them, but keep that instruction in mind Because you will see that when you review each thing the prosecutors claim is an official action, none of them rise to that level And even if you believe Jonnie had a real plan to get studies at the Tobacco Commission, to get money from them first so he could fund studies at the universities, you still can't convict my client without finding that he took -- or promised to take official actions that satisfy Judge Spencer's instruction

Let's talk first about the August 1 Huffstetler meeting That's one of their supposed quos At the beginning of the case, Ms Aber, in her opening, made a big deal out of this meeting She told you in the opening that this was an extraordinary benefit for Jonnie Williams Something that Bob arranged, amazingly, in less than 12 hours' notice

But now you know the real reason that Bob got Ms Huffstetler to attend It didn't have anything to do with helping Jonnie Williams As Bob told you himself, when he learned about a meeting between Mary-Shea and Maureen, that -- with Jonnie Williams the next morning on the drive back from Smith Mountain Lake, when he got home that night, he e-mailed -- he, Bob, e-mailed Hazel and said, "Would you please send someone over to the meeting because I understand these people, Jonnie, Mary-Shea, Maureen, are going to talk about clinical trials " And Bob wanted some expert from Hazel's staff to attend the meeting and supervise it He e-mails Hazel, who sends Ms Huffstetler

And what did she do? She listens politely at the meeting She takes down all the things that Jonnie said She just writes them down as verbatim as she can She sends Jonnie a blow-off e-mail that same day, that same day Bob didn't want anything more from Ms Huffstetler or Dr Hazel He did not, as the law requires, make any decision or take any action on a question or a matter that was pending before him He did completely the opposite He sent someone to a meeting at the First Lady's office to ensure that no improper decisions or commitments were made

Let's go to the Mansion lunch That's the next attempt at a quo In her opening, Ms Aber called it a launch Now it shifted. It's a launch, or whatever But in any event, it wasn't a launch Many witnesses have explained that Jonnie wanted to do launch at the Mansion, and Bob's staff said no The event -- the event was a lunch only It was closed to the press It was closed to any more than 29 total people That's all the table would fit

And as for Bob, he had nothing to do with planning, organizing, or initiating this event And his lawyer -- as his lawyer Jasen Eige said, Mary-Shea simply informed Bob's staff that there was going to be an event at the Mansion for Virginia researchers receiving, getting, $200,000 in grant money from Star to conduct clinical trials, and asked his staff to secure Bob's brief appearance

All Bob knew was what he read in his briefing book "Participants researchers" -- "lunch with researchers and doctors" -- "researchers and doctors participants to discuss the latest information on the anatabine, a by-product of the tobacco plant, and two studies that UVA and VCU will conduct " That's what he knows about it when he goes to the meeting -- when he goes to the lunch

Bob had no idea that Star was trying to use this as a product launch and no idea that his staff had kept that from happening And as Jim Cheng and Janet Kelly told you, Bob rarely knows the details about his next event until he reads the briefing sheet right before Oh, and by the way, the Commonwealth didn't pay for that event It didn't cost the taxpayers a penny

And Mr Harbach today, you heard his pitch that Bob ignored his earth, wind and fire duties to attend this lunch But Bob's calendars for the entire week are in evidence, and you can look at the calendars from August 23rd to August 30th, and you can see that every single day he dealt with those emergencies

Now, you've also heard extensive testimony from multiple witnesses about similar events, like the Sabra, or hummus company, event, that they had at the Mansion

That was a single company and it was a single product That event was filled with people from Sabra, and there were Virginia researchers there too People from Virginia State University Folks that were going to develop a chickpea that could be grown in Virginia

Not only that, but at the Sabra event, unlike Star's event, Virginia gave money to Sabra instead of receiving money from Sabra This event, like many others, show that there was nothing about the Star loans that would make Bob think it was wrong or inappropriate for him to be there.

And Jasen Eige, who attended the event, explained it to you He said he went with Bob. Bob made generic remarks about the history of the Mansion, and was generally supportive of donating money to Virginia universities

Mr Harbach says Bob spoke at this lunch glowingly about Star Well, I don't know where he gets that from But as Dr Lazo explained, Bob asked a few probing questions Lazo was present Harbach was not Bob never endorsed the research, and he certainly didn't pressure anybody from UVA or VCU about doing anything for Star or on Star's behalf He was, as Dr Lazo put it, interrogative about whether the research was a good idea So once again, Bob didn't make any decision or take any action on any issues that were pending before him and following this event

Neither Bob, nor anyone else that worked for Bob, contacted anyone at UVA or VCU to do anything to pressure those schools, or their employees, to do anything for Star Scientific or Jonnie Williams Not a single call Not a single e-mail Not a single letter or text

Okay What's the next quo? Well, fast-forward six months Zero happens in the next six months And then we go to February 29th, the Healthcare Leaders event For this one, the prosecutors are trying to turn a party invitation into a federal felony, literally They have not shown that Bob had anything do with inviting anyone from Star To the contrary, as was his prerogative, as was his right as the Governor at his house, Bob added some doctors that he knew personally and the heads of various Virginia hospitals. People that had nothing to do with Jonnie Williams That's all Bob did

The First Lady's Office added Williams, an action that Bob never reviewed or ratified And when Bob found out that Jonnie had been invited, it seemed reasonable to him, since Jonnie was the CEO of a publicly traded Virginia healthcare company And nobody told Bob that they objected That includes Dr Hazel, who didn't want to pay out of his Cabinet's budget the small per-person charge for attendees that he didn't personally choose

Okay But, you know, people like Dr Vetrovec, who were not invited by Bill Hazel, was actually a healthcare leader in Virginia

Once again, the prosecution's evidence does not prove that Bob made any decisions or took any actions on any issues that were pending before him in his official capacity To the contrary, Bob didn't make any decisions at all He didn't decide to invite Williams, and he didn't decide to promote Williams at it He introduced Ladenson, Dr Ladenson, because he was a very prominent, out-of-town doctor from Johns Hopkins. But Bob said nothing about Star at that event. Once again, no official act

If you're still not sure about that, think back to how the prosecutors described this event in their opening statement They called it an exclusive reception Give me a break There were hundreds of Mansion events like this while Bob was Governor, with tens of thousands of invitations Getting one wasn't that hard Janet Kelly said she could have added her own personal doctor if she wanted to After all, there were 300 invitations extended, and only 125 people showed up

Finally, we have the use -- or Bob's use of Anatabloc before March 19th, or at a March 19th meeting with Lisa Hicks-Thomas and Sara Wilson, two of his staffers This is a real grasp The final attempt to conjure a quo out of thin air, and I submit, the biggest stretch in this case But it also represents some of the most telling evidence in the case

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The prosecutors brought both of those women in here to talk about taking Anatabloc in their presence Here are the two of them. Sara Wilson remembers nothing more than saying he used Anatabloc, which he did Lisa Hicks-Thomas thinks Bob implied or suggested they should meet with the Anatabloc people Bob couldn't remember it completely, but he thinks he might have said one or both of those things So there is considerable confusion about what happened

But there is zero confusion about what happened next Nothing Sarah and Lisa left the meeting, they talked about their different recollections and whether they should reach out to Star, decided they shouldn't do it, and that was that

Bob said that he was taking Anatabloc several times a day, and it was time during the meeting for him to take some again Taking a pill, which Sara Wilson compared to taking Advil You like it, and you ask your staff to see whether it is worth meeting with the pill maker If you do that, it is not an action or a decision on any matter pending before Bob.

This meeting, however, captures an essential problem with the prosecution's case It was a long time ago It was not that special It was not that important, at least with respect to the Anatabloc issue, then or now

Three people Three different recollections Each person telling the truth.

That happened on other occasions, too, in this case Like the Piscitelli phone call with Bob and Maureen A call that Bob understood to be hypothetical and about what if there is this stock transaction with Jonnie Williams, and Piscitelli apparently thought he was asking him or directing him to open an account and move forward Ships passing in the night occasionally It happens It happens in real life

Finally, the prosecutors spent some time talking about the meeting that Bob arranged with Hazel on October, 2011 and the stop-by for the CigRx event February 3rd at The Jefferson hotel But those are not allegations, even of official acts Those are pre-conspiracy, way pre-conspiracy in terms of the charges in this case And in any event, those were things that Bob had done, a referral to Hazel, "Stop by for a few minutes at the CigRx event," before Jonnie gave any gift, any loan, anything to anyone in the McDonnell family Those actions cannot be quo If anything, they prove that no Virginia business had to bribe Bob McDonnell to get some time from him or his staff for anything potentially related to creating jobs in Virginia

That's really it That's the prosecutors' whole case They think Bob is a felon because he didn't stop his wife from inviting Jonnie to a party or because he attended a lunch at his house It is his house. It is the citizens's house as well as his house. But when he is living in it, it is his house, too.

Just because Jonnie thinks something is important, "Oh, I get to go to the Mansion," or whatever, "I got to go to the Healthcare Leaders event," that doesn't make it a quo. Bob is on trial for selling official actions He didn't do that He wouldn't do that He didn't promise to do that And they didn't prove that

And as far as Mary-Shea Sutherland goes, and I wrote a note to myself because I heard the statements by Mr Harbach, and he and I must have been at different trials I cross-examined her on Bob McDonnell's behalf And never once did I in my cross-examination or did Bob McDonnell in his direct examination or cross-examination or redirect examination say one unkind word about Mary-Shea Sutherland. Not one Not one And she told you, and he told you, about them hugging at that event They were passing each other in the hallway and he is begging her, "Please help me, I need you to stay and help deal with the situation at the Mansion " And she said, "I'm out of gas I don't have any more energy left "

Jonnie: If there are no official actions or promised official actions, what are we doing here? Why are we here? Well, we've got Jonnie to thank for that Throughout the relationship, apparently, as he now claims, he was pretending, pretending to be Bob's friend. He was pretending to be young Bobby's mentor We talked about Bob calling Albert Williams, Jonnie's dad, on his birthday And this is what Jonnie said at the time "You are a wonderful man I'm proud to know It has been a highlight of my life. You made an old man very happy Anything I can do for you or your family, I will " I'm sure that meant something to Jonnie It would mean something to anybody Bob made Jonnie's father happy And he gave Jonnie some basic bragging rights with his dad.

As far as Bob knew, that's what this relationship was about It is like Jonnie said in his first interview on January 23rd, 2013, down in Florida, no lawyer FBI and Virginia State Police knock on his door one night Jonnie dodged the questions about his tax problems He dodged the questions about his securities problems He claimed he didn't even know who the three people were that were the acronym for one of his companies

But he told the investigators that he never asked Bob for anything, never got anything, never expected anything He told them he likes Bob, he thinks he is a great Governor, greatest in the recent history of Virginia, et cetera, a friend and a golf buddy Mr Harbach argued that Jonnie was sobbing after that interview, when Jonnie gets on the phone with his friend, former federal prosecutor Perito You can be sure that Jonnie wasn't the only one sobbing during that call They were not sobbing about a nonexistent political corruption bribery case that Jonnie had been involved in They were sobbing about very real securities fraud and tax fraud problems that Jonnie was involved in And you remember, I asked Mr Perito if he knew a Board member named Leo Tonkin, and did he know anything about Tonkin being asked to wear a wire against Perito

So why is Jonnie saying something different now? Why is he claiming this was all business? Remember Jonnie's first rule of business That's to stay in business And I asked him, "Well, how about the second rule of business? Is that to stay out of jail?" He said, "Well, yeah, you know, you can't run your business, you can't stay in business if you are in prison "

He wants to keep flying around on his jet, keep driving around in his Ferrari or the Toyota Camry that he now tells us he likes better And he wants to keep doing whatever business he has left to do in his new $1 a year job at Rock Creek, the successor to Star Not in Virginia anymore, now in Florida The name has been changed to protect the guilty

Jonnie's been selling things to people his entire life He is really good at it But this is his greatest con Look at him. Look at the evolution from generous wannabe friend to supposed bribe payer That first interview tells it all He knows that he is in serious trouble His money, his freedom, are all at risk But the FBI tells him something else, too Not so subtle hint that, "Oh, you know, what we are really interested in is going after McDonnell " Not so concerned about the frauds that he may have committed. The real target is Bob He is the big fish "So Jonnie, please, for us, wear a wire against the Governor Get Bob McDonnell on tape saying something incriminating Help us help you "

But Jonnie refused. He wouldn't do it, even though tape-recorded conversations will eliminate the need for him to actually testify, to be cross-examined, to be investigated by the defense It would eliminate any questions about his credibility Because "Hey, here is Bob McDonnell saying it himself on the tape " It would protect Jonnie's reputation if he were able to do that Just play the tape, you got the Governor in his own words admitting crime

And by the way, Maureen had just invited Jonnie at that time, January, 2013, to spend some private time with Bob at one of the MoBo beach houses, a perfect opportunity for Jonnie to record something and get real solid proof that would eliminate him from the equation Why didn't he wear the wire? Because he is such a good guy? Because Jonnie knew, Jonnie had zero doubt that it would never produce anything There would be nothing to record. There was no corrupt bargain; there was no illegal agreement There was no criminal understanding with my client Wearing a wire would end this case, because nobody would believe Jonnie's fabricated story of nods and winks and knowing glances after a wire attempt failed.

So what does he do? What does Jonnie do? He lawyers up after sobbing with Perito, and then he starts spinning his ever-improving tale And now, he decides to meet with the prosecutors and his half-dozen lawyers and see what they are interested in and find out what they want to hear Despite them telling Jonnie at every single meeting, "We just want the truth." But the truth won't help Jonnie The truth will keep the investigation focused squarely and exclusively on Jonnie Williams On Star On Jonnie's mysterious friend, McKeon. And on

Starwood Trust, where the Trustee, Donnie Williams, does whatever Jonnie tells him to do A sham trust where Jonnie plays his little stock and tax games

But what the investigators want to hear is that Bob McDonnell is dirty That's what they already believed in early 2012 before they ever spoke to Williams That's what they thought might be the case Remember Agent Hagan's testimony "Let's use Williams to go after McDonnell, question mark." That's a thought The only thing they didn't know was how eager and how desperate Jonnie would be to help them out So Jonnie does what Jonnie does best He starts telling people what they want to hear Bob is corrupt. A story they want to buy He plays the same game with Maureen, the same game he played with Mary-Shea, the same game he has been playing his entire career He pumps up his latest invention. And that invention is that my client is corrupt

Jonnie invents a story in which his gifts to Maureen, his loans to MoBo, and everything else he did for the McDonnell family, these are all bribes, bribes that he paid to get Bob McDonnell to perform official acts on his behalf He became the Jonnie Williams you sometimes saw in this courtroom. The top Mercedes salesman when he was in his twenties, the Star Scientific stock promoter who convinced lots of people to sink their hard-earned dollars into his company And it works He pitches the government this story better than he ever sold anyone Anatabloc And what does he get in return? Complete transactional immunity And he plays this con perfectly

At the beginning, with his first immunity deal, what he gets is immunity for potential public corruption-related offenses He doesn't care about that, because he knows there was no public corruption here There is nothing besides legal gifts and loans and friendship But Jonnie also knows that this worthless initial immunity is a deal that doesn't require him to admit that he committed any crimes He is supposedly some sort of a victim. But this is only the first step in his plan. He has willing buyers for his story The quid looks ugly, Bob is indicted, a media circus is unleashed in this case

And then two months before this trial, June of 2014, that's when Jonnie gets what he really wants He wants immunity from tax fraud, he wants immunity from securities fraud. He wants to get away with any obstruction or lies that he may have said in his seven or eight interviews He knows he is going to sit on that stand and he is going to be cross-examined about anything that he may have done wrong And he needs a total pass on the potential things that he is going to have to testify to under oath He needs that protection And he got it He got it from the prosecutors in this case

And that's not all they gave him. No prosecution, no convictions, no criminal fines, no criminal asset forfeitures What else does he get aside from that? He gets stays, pauses in two federal civil shareholder suits against him here in Virginia Those save him money, at least in the short term, and his company money, at least in the short term, and they save Jonnie and his Star cohorts from having to respond to civil discovery possibly before this case gets through trial

It allows Jonnie, allows his stock, it allows his company to live to fight another day After all, the first rule is to stay in business So Jonnie just keeps getting richer He testified so himself "As far as my ability to operate and move forward in business, I don't believe me testifying here has impaired that " That's despite the tax problems, the securities problems, the lying to his closest friends at Star, the lying to the agents He is doing fine He hasn't been hurt in his ability to operate and move forward No consequences for Jonnie

And don't kid yourself: Would the prosecutors have been willing to look the other way, would the agents have been willing to look the other way at Jonnie's own problems if he didn't have something to trade that they wanted more?

Jonnie still wouldn't say on the stand that he was trying to bribe the Governor He was cute about it Mr Dry had to pound on the table during his direct examination All Jonnie says is, well, what he might have done is wrong He hasn't admitted "I'm a criminal " He hasn't admitted "I committed crimes here and I'm taking the hit for it " Is he hedging his bet for civil litigation? You can be sure beyond a reasonable doubt that the prosecutors's own doubly-immunized so-called bribe payer has kept open his options by his testimony in this trial

And by the way, the temptation of Jonnie to get federal immunity, you know, that's not the first time he has lied about Bob He has exaggerated his relationship with him much as he exaggerated to you A real clear example of that in this case is the meeting with Molly Huffstetler Jonnie lied to her face She wrote it down. And you can see it in front of you. Jonnie told her the Tobacco Commission was paying $3 million for studies he wanted performed by the request of the Governor That is a bald-faced lie from Jonnie Williams to Molly Huffstetler on August 1st He made that up He was lying about Bob then. Why would you trust what he says about Bob now?

I'm sure that Mr Dry, when he gets up to rebut my arguments, will say you don't have to believe Jonnie Williams, basically, to find my client guilty They will claim that the evidence is so compelling you can ignore him and still convict Bob But that's cheap talk. They paid a tremendous price for his testimony They wouldn't pay that price unless they needed his testimony to make their case They wouldn't call him as their key witness unless they needed him. You would never put him on the stand if you didn't have to Because without his falsehoods, there is no evidence at all They can't convict Bob McDonnell on faulty inferences, from incomplete charts, or by guessing what was said in unrecorded phone calls or unrecorded meetings or cryptic interpretations of texts or e-mails

If you have any reasonable doubt about whether Jonnie Williams was lying to you, I suggest to you you must acquit And as Judge Spencer will instruct you, the testimony of an immunized witness, and there is only one here in this trial, must be examined and weighed by the jury with greater care than the testimony of someone who is appearing in Court without the need for such an agreement with the government

Well, we know there is no quo, and that the prosecution's witness doesn't really claim otherwise But there is another aspect of the case, at least a reasonable doubt, and that's that there is no conspiracy between Bob and Maureen.

The Judge will instruct you on what a conspiracy is And essentially, it is an agreement or mutual understanding knowingly -- that's not by mistake or accident -- knowingly made or knowingly entered into by at least two people to violate the law by some joint or common plan or course of action. In a very true sense, a partnership in crime

And that allegation that Bob and Maureen entered into a partnership in crime is a terrible tragedy at the heart of this misguided prosecution. But it has forced, it has forced both Bob and Maureen to reveal the most painful, intimate, and private parts of their marriage to the 13 of you and a much broader public They experienced some of the most difficult years in their 38 years of marriage during Bob's term as Governor They weren't scheming together with Jonnie or for Jonnie They were barely speaking Jonnie sensed this fissure in the marriage "You can't fool me, I'm a good old southern boy," just like he told Mary-Shea From December, 2009 when the inaugural dress issue arose, Jonnie knew he could take advantage of Maureen's loneliness, of her insecurity, of her interest in his product, of her depression or other issues, of her desire for things that Bob couldn't afford on his Governor's salary, and he took advantage of Bob's crazy schedule

Jonnie insinuated himself into another man's complicated marriage to benefit himself. By his own admission, he never even talked to Bob before, during, or after the New York shopping spree Never talked to Bob about whether it was okay with him if he goes out and spends 19 grand on clothing for his wife. And he never spoke with Bob about the $15,000 gift to Cailin or the $50,000 loan to Maureen before he gave Maureen those checks, regardless of whether he says otherwise. And when Jonnie was done using Maureen, and using Bob for whatever selfish purposes he had back then, he used them again to benefit himself, to get the real thing that Jonnie wanted from this relationship, federal immunity for crimes, including $12 million worth of securities fraud, insider trading, tax fraud, et cetera, trust fraud. The trust for his children that he used to benefit himself and play his little games And the U S Government gave all that to Jonnie in order to go after the McDonnells for a quid pro quo bribery case that has no quo

This case has invaded, as I said, the most personal relationship in Bob's life, his strained but still, after 38 years, sacred marriage with his wife Everybody knew the marriage was troubled when this case was brought The government knew Jonnie was a dicey witness And they knew, I submit, that there was no quo

So here we are now and it is up to you You have to evaluate the charges. You must evaluate the accused. You must judge them. And it may be unpleasant, it may be uncomfortable, as it has been for us to bring out this private information in this public forum. But you now have to evaluate that relationship. You have learned the marriage was broken. You have read the e-mail that Bob sent to Maureen in the middle of the supposed conspiracy, the middle of the supposed conspiracy September 5th, 2011, one week after the researchers lunch at the Mansion.

"The lowest point, one of the lowest points in my life I don't understand the fiery anger and the hate that have become more and more frequent I admit that I stay away from you at times and don't talk to you about important things to avoid confrontation. But I love you and I want to get back to where we were when he were first married." It is a message of sadness It is a message of distance It is a message of great pain Bob sat by himself and painstakingly typed that message on his BlackBerry as he struggled to keep his 35-year marriage alive in a period when he didn't have the time or the strength or the emotional bandwidth, or the skillset, frankly, to curb Maureen's abiding anger He couldn't talk to her He had to write And there was no reply There was no reply

They put on a good public face as so many unhappy couples do, especially couples living in the glare of the public spotlight Politics, sports, entertainment, you have seen it before But when others are gone, when the cameras disappear, when the gala is over, Bob and Maureen never communicated about the interpersonal things that mattered the most Logistics, kids, family celebrations, events, all fair game, all fair game But resurrecting the happy feelings they once shared when they were first married is out of bounds In private, they were arguing In private, they were distant In private, they were silent In private, they certainly were not conspiring And the government hasn't given you anything aside from the public facade to conclude otherwise, some XOXO letter that Mr Burck showed a few minutes ago on May 8th.

They want you to assume that because these two were married, that they know what the other is feeling at all times You know from your own life experience, from the experience of your friends and relatives, that the idea of every married couple collaborating on all fronts simply because they are married is pure fantasy And that's very true here, even though Bob tried to keep it private Bob was always busy; Maureen was often bored; and Jonnie was frequently bad. Bob was focused on trying to save Virginia from a terrible recession And being the husband his wife wanted took second chair He was tired when and if he got home at night He still had more work to do, and he was not up for the battle on the home front So he avoided it It was a vicious cycle

What does he try to do to help? Does he just ignore it? Well, Maureen shoots the messenger when he tries to deal with it directly, so he tries to bring in the staff to see if he can help with it that way He brings in the management consultants, Dr Burke, the clinical psychologist, to try to help with things He coped by taking on more and more outside responsibilities, by having less time available to spend with her Chairman of the RGA, the Romney campaign, his dad's estate, his sister MoBo's duties because she was having problems in her marriage The workload was absolutely staggering And some of it was a volunteered effort Maureen sought the emotional comfort in someone else, Jonnie Williams, who sensed her weakness and pounced.

That was the perfect storm. Jonnie was rich, charming, he was interested in Maureen's passion for nutraceuticals He had a great new product that was going to revolutionize healthcare Bob didn't want to talk to Maureen about vitamins. That discussion was gone a long time ago. But Jonnie Williams does He always does To the tune of 1,300 phone calls and texts over a year-and-a-half More time on the phone with Jonnie than Maureen spent with Bob She lights up when he is around, as Bill Burck described. She gets carried away with Jonnie Jeanine, the oldest daughter, said she was mildly obsessed. She became emotionally invested in the man Much of that relationship was private, even from Bob.

Maureen's relationship with Jonnie permeated every part of their lives In the weekend before the Labor Day weekend of 2011, when my client sent that e-mail, a weekend in which she fought constantly with Jonnie, she was texting and calling Jonnie On that terrible day, Labor Day, 2011, when the e-mail was written, Maureen went right back to texting with Jonnie He was there before September 5th and he was there after September 5th in Maureen's life Not in Bob's life, just Maureen's, driving them further and further apart Jonnie knew the game he was playing He knew how to target Maureen and draw her in.

You all heard that he did the exact same thing with Mary-Shea He bought her an expensive dress He flattered her about her professional competence He engaged in secret communications with her about "I know how hard your job is at the Mansion basically, but I'd like you to come work for me," et cetera He seduced her, Mary-Shea, into an inappropriate relationship with him and he persuaded her to hide that relationship from others, just like he did with Maureen.

And when the secret relationship that Jonnie and Mary-Shea were developing, Mary-Shea, when that was about to be exposed, Jonnie betrayed her and front-end ran to Maureen and said, "Oh, I want to tell you that she is trying to solicit a job from me " He knows exactly what he is doing You have seen the Dear Diary letter from Mary-Shea talking about her understanding with Jonnie Williams that he breached. That is evidence of an agreement between Mary-Shea and Jonnie It was broken eventually by Jonnie, but they had an agreement

You have seen Jonnie Williams' second immunity agreement where he gets all of the immunity that he really wants That is a deal between Jonnie and the government That is an agreement And you have seen the September 5th e-mail that we have talked about a moment ago That is not an agreement between Maureen and Bob

Let's talk about these loans, Jonnie's loans, which further demonstrate that my client and his wife are not conspiring The first is to Maureen alone Again, without talking to Bob. Just like he gave her the clothes in New York And Jonnie's claims to the contrary are fabricated. Bob explained it, the phone and the visitor logs confirm it And when Bob found out about the money, he fought with Maureen She was insistent it was the substitute for her father's inheritance that Bob made her use to pay bills Maureen won the argument and got to keep the money But this was hardly a happy or cooperative moment for the McDonnell marriage

What about the first loan to MoBo? Maureen made that loan happen. It was her loan, not Bob's Not Mo's Not sister Mo's Maureen told everyone as much in her text message to Mo She wanted the loans, she wanted to prove to Bob, Mo, and prove to herself, she was a breadwinner, too You heard Mo talk about that first loan to MoBo, the corporation that controlled the properties Remember that Maureen was furious that Mo wasn't giving Maureen -- excuse me, that Maureen wasn't giving Mo full credit for getting the money from Jonnie Williams

And where was Bob? He has no idea what's going on He didn't know why Michael Uncapher was e-mailing him. He was totally in the dark. "Maureen, who are we talking about that is helping us and talking to Mike?

Jonnie?"

Bob was trying to figure out loan terms with Jonnie Williams on March 12th after Williams had already sent the check March 6th straight to Mo, who was coming back from the vacation, apparently at Maureen's request Bob could never get ahead of this in the midst of the legislative session and whatever else he was working on And that's because Maureen and Bob never talked about it It is obvious that they didn't talk about it She talked to Jonnie She did things with Jonnie She took things from Jonnie. She asked for things occasionally from Jonnie, all without Bob's knowledge and consent She did what she wanted to do, from the shopping spree forward. As Janet Kelly said, she was defiant, and she was difficult.

Logical or not, Maureen misled Bob, or didn't tell Bob things relating to Jonnie Williams and money And by the way, the stock loan transaction that Jonnie proposed and that Dry had a lot of questions about, it never happened. Why? Because my client got Piscitelli involved. Because my client wanted to get lawyers involved. Jonnie told you that himself, that Bob wanted to get Piscitelli and lawyers involved in the transaction That's what scuttled the transaction. And the plan to transfer paper stock certificates failed because

Piscitelli sent Jonnie electronic transfer instructions In order to respond to those, now Piscitelli is going to have a record.

And as for Dry's suggestions when he was questioning my client that it was Bob's disclosure obligations that Bob and Jonnie were worried about, the notes, the contemporaneous notes totally refute that The only person with disclosure concerns was Jonnie, for securities problems Bob would have to report the loan whether it is stock, whether it is cash, just the same if it was to him or to Maureen His disclosure obligations were constant Just like Jonnie's first loan to Maureen that Bob disclosed. This transaction was no different in terms of Bob's obligations Didn't matter how it happened Nowhere on those notes is there anything about Bob trying to hide anything And he is considering Jonnie's proposal, he is just writing down what Jonnie is saying, because Jonnie promised him that it would be fully vetted in addition to by Bob's lawyers, by his world-class securities lawyers at Latham & Watkins in Washington.

In any event, in terms of all of this, should Bob have been more attentive to Maureen, should he have tried to supervise her behavior or been more caring for her needs? Absolutely Absolutely he should have. Should he have been more forceful or creative or clever in trying to correct mistakes or temper her anger? Unquestionably he should have He was a strong Governor He was a weak husband at this time The latter failure was a serious mistake, and Bob has apologized for it and paid a terrible price

We talked to some extent about whether Bob was hiding anything And they talked about Bob did not report gifts to his family or loans to MoBo on forms that did not require the disclosures of those items With Bob's SOEI forms and the two bank loan documents to which I will return in a minute, Mr. Dry repeatedly attacked my client for not reporting what the forms don't ask for or require It is pretty frightening The federal prosecutors come after you because you don't put information on a form that the form doesn't ask for How is that fair? The reality is that Bob didn't hide anything from anyone who logically should have known.

Each point the prosecutors have made proves this fact First of all, Bob disclosed over $100,000 in flights from Jonnie that Star donated to his campaign and the RGA Association. He disclosed the vacations, Smith Mountain Lake, Chatham Bars He failed to disclose some golf outings and the Notre Dame golf bag that showed up in the Mansion, and a couple of dinners where there is no evidence that Bob's portion of the dinner was substantial, however much fancy wine or Cognac or whatever else Jonnie drank or Jonnie bought

As for the missing golf items, Bob won't let Monica Block or his staff take that hit The form is his responsibility, and he told you that if something isn't on it, it is his bad, his mistake It wasn't intentional concealment, because there was no bribery to conceal And as Judge Spencer will explain to you, in his written instructions and oral instructions, there has been no suggestion in this case that Mr McDonnell violated Virginia law I'm not so sure that my opponents have read that instruction yet But that is the law that Judge Spencer is going to give you

The prosecutors also, perhaps on accident, proved to you that Bob wasn't trying trying to hide his relationship with Jonnie at all Remember Bill Goodwin, all the testimony about Bill Goodwin and whether his Kiawah Island vacation was a gift that should have been reported or whether something that Bob could legitimately take off his disclosure statement because Goodwin was a personal friend? Goodwin didn't testify in this case Bob did testify about that event Bob did testify about his relationship with Mr Goodwin and why he thought Mr Goodwin was a personal friend. Maybe it made sense even to the prosecution. In any event, you do know that

Bob never removed from his statement anything relating to Jonnie Williams using the personal friend exception. Not one time Jonnie or Star. That simple fact destroys the claim of hiding things because there was a corrupt relationship. It was a ready-made tool for Bob, it was a ready-made available tool "I don't have to report anything from Star or Jonnie Williams because I'll just claim he was a personal friend." That isn't what Bob did because Bob wasn't hiding anything

Let's talk about the Rolex I'm sure you are as tired of hearing about it as I am of talking about it. But this is another big deal now in the closing argument Look at the evidence in the case You have the Rolex and you have looked at that This is the Movado box that Bob got the gift in at Christmas of 2011 It is not a Rolex box, it is a Movado box. And apparently it has some links from a Movado band. And it has some Movado paperwork, like the dealer's information, et cetera So when Bob gets the Rolex in this box, why wouldn't he think it is used? Why wouldn't he think it might not be real? It is not something he wanted. It is not something he liked. He wore it to please her for a little while His staff said, "It doesn't look good politically," and he stopped wearing it And this is resurrected a year later Bob thought it was worth several thousand dollars And he also thought that Maureen could afford it at the time because she had just gotten an $18,000 check in early December for her work on the McGlothlin Foundation, and if she wants to give him a present, he is not going to give her a hard time about doing something that she obviously thinks might be pleasing to him, particularly in the context of this marriage

What about the photo of the Rolex that Jonnie claimed Bob sent, the one that Mr Harbach doubled down on today in his argument? Another lie by Jonnie The photo, as it may be obvious to you all by now, came from Maureen's phone It came from Maureen's document production, not from Bob. There is no evidence that Bob sent the picture If you look at the photo, obviously someone else took it The prosecution brought in their metadata expert to testify They never asked him to prove to you that Bob had anything to do with taking or sending this photo to Jonnie Williams But the desperation to support Jonnie never ends You know, the easy thing to do would be to suggest that Maureen took the photo and sent it to Jonnie But no, they want you to buy this nonsense that my client obviously didn't take it, but that he sends it to Jonnie with some cryptic message, you know, "I've got yours, you've got mine," whatever

On the forms, Bob is not required to report gifts to family members His staff looked into that issue, they analyzed it, and they determined that Virginia law did not require disclosure of gifts to Maureen or to the children who were not residing in the house And as Judge Spencer will instruct you, as I've said, there is no allegation here that he violated Virginia law. The prosecutors just don't like these forms

You are fully entitled to conclude, as many others have, that Virginia's gift laws are much too lax, far too permissive, and they have been changed But the gift laws are not on trial The government has also focused a lot open Cailin's wedding They brought her into the trial on the first day and interrogated her about something that before she thought was the happiest day of her life And their goal was to prove that Bob was going to pay for their wedding instead of Cailin. So I guess that means that Jonnie giving Cailin the gift of catering was actually a gift to Bob. But that's just wrong Bob was planning to pay for the wedding He put $8,000 down on it That doesn't turn a gift to Cailin into a gift to Bob It was not Bob's wedding It was Cailin's wedding And when Jonnie gave Cailin the gift of catering, everyone obviously understood that gift as being a gift to her Everyone apparently but Jonnie, so he claims Just as Bob's thank you note to Jonnie at the time said

And that gift wasn't hidden at all As Janet Kelly told you, Mary-Shea knew about the gift, told Janet about the gift. Janet told Martin Kent, Bob's Chief of Staff, about the gift And not one of those people, not one, ever suggested to Bob that there was anything inappropriate about it My client gets trashed throughout this trial for not telling every person on his staff that Jonnie loaned his wife money, or when they were having serious problems upstairs at the Mansion But you know what the prosecutors have never shown you in this case? They have never shown you anything that demonstrates Bob should have told his staff members about Jonnie loaning money to Maureen or helping out MoBo In fact, the staff told you the opposite

Look at what Jim Cheng said. "I don't know that I would want to know about that because, you know, we don't care We are money blind We do the right things for Virginia for the right reason, not because someone has loaned or given money or given a gift to somebody That's not how we make decisions in this Administration."

Mr Dry raised his voice when he cross-examined Mr Cheng about this and asked him whether he would want to know this Obviously, Mr Cheng says no, as the slide demonstrates Other folks from the staff told you the same thing People like Janet Kelly, who said she and Bob didn't discuss personal finances, either

Further demonstrating the lack of concealment here is the issue of Maureen's stock. To the extent Bob knew about it, which wasn't much, or very frequent, Bob didn't try to hide it at all The first time Maureen told him about it, Bob told his accountant, Dan Cook, about it and Dan reported it to the IRS. There it is What about Jonnie's loan to Maureen? That loan, like everything else Jonnie did, was handled by Jerri Fulkerson, who wrote a paper check. Jonnie gives it to Maureen on May 23rd Once Bob found out about it on June 5th he reported it publicly on the next disclosure form that needed to be filed Every year that loan existed, Bob reported it The prosecutors claim that Bob hid the loan because his disclosure form didn't say "Jonnie Williams." But they ignore that the form doesn't ask for the name of the person loaning the money Instead, it asks for the principal business or occupation for each creditor, not their name

Same is true for Jonnie's loans to MoBo Bob told every person that had a logical reason to know about those loans about them. His sister, his brother-in-law, former brother-in-law, et cetera, who managed MoBo's account He gave, as I said, Brenda Chamberlain and others full access to his bank accounts "Here is the passwords for my bank account You can go in and look at the checks and figure out whatever you want " And what did Ms Chamberlain do? She passed it on to Cook, et cetera, it goes to the IRS And the tax return goes to PenFed, too Bob wasn't secretive or furtive about anything. He is not taking bags of cash, meeting in back alleys

And Jonnie, he is not refusing to communicate by text or e-mail Bob discussed the MoBo loan with Jonnie in the Governor's conference room during a scheduled meeting on his calendar that we have here And Jonnie eventually wrote a check to MoBo that was deposited into a checking account for everybody at the bank and for now you to see That's not how criminal conspiracies work They don't send each other e-mails and write checks They don't do business through stockbrokers They don't report activity to the IRS And they certainly don't run things past judges like Jonnie did talking about whether it was okay to lend money to the Governor of Virginia when he said that he had a discussion about that very issue with Judge Farrance, his friend who was a judge in Florida You know, but again, to my opponents, the real problem is this form. "Bob, what's the purpose of the form?" as opposed to "What's required on the form?" And condemning him for not disclosing more than is required. He wasn't trying to hide anything

The Goodwin example of cross-examination in this case brings up another point that I want to raise with you. Because it really demonstrates fundamentally what Bob is all about. Rich man, very successful businessman, very big donor to Bob's campaigns Previously had been on the Board of the University of Virginia for a long time And he asked Bob, and you have the letter, to appoint his son-in-law to the board right before he gives the gift of the trip to Kiawah Island. But Bob said no, because he didn't think the son-in-law at that time, at that moment, was the right person for that job As Janet Kelly testified, "Bob has always known and always taught that if you can't take somebody's money, a donor's money one day and say no to that person about something they want from the government the next day, you should not be in politics You should not be in this job "

What about the lies to the bank, supposed lies to the bank? They can't prove he accepted bribes so they have cast about for an alternative fallback crime they can accuse him of committing Two totally frivolous bank charges based on Bob's failing to put the Starwood loans to MoBo on loan applications that didn't require them to be listed in the first place No bank has complained about Bob lying To the contrary, both banks approved the loans and closed on the loans PenFed approved the loan after Bob made sure they knew all about Jonnie's loans, even though that was gratuitous on Bob's part after his wife gets ambushed by the investigators on the 15th of February And that's because the only people that have alleged Bob did anything wrong with TowneBank or PenFed are the people sitting over here

Don't take my word for it Look at what the witnesses said. The President of TowneBank, Bill Sessoms, testified that Bob's personal financial statement, this is the Heritage Bank statement, did not need to include loans to Maureen or loans to an LLC like MoBo The Dr Davis loan had been paid off, or at least Bob's full share of it had been paid off at the time he filled out the form. So because he had some hypothetical potential joint and several obligation if his sister failed to pay her share before the end of the year, you know, that's what they want to nail him on now "You were jointly and severally liable for this Dr Davis loan where there was a personal guarantee and you didn't put it on this form." That's not the way Bob looked at it

Creekmore, Jeffrey Creekmore, Senior Vice President at Heritage, told you the same thing Loans to Maureen and loans to MoBo did not need to be on the form. Nan Bolt, who came in here, testified to the same effect

She said about PenFed that even though -- she said that even though PenFed knew all about Jonnie's loans to Maureen and Jonnie's loans to MoBo, even though Bob told the bank about them before his final application, none of those loans ended up on the closing application. Why not? Because they didn't need to be there in the first place That's because, as she explained, there were no immediate payments due for Maureen's loan It was a balloon payable in the distance, in the future, and loans to an LLC or a corporation didn't need to be included.

Bob didn't make any false statements, he didn't knowingly make false statements to the bank It is just like the SOEIs The prosecutors are accusing my client of crimes because he doesn't include information that is not required. And imagine the implications of this for your lives, like Mr Harbach suggested that you do You know, there is something wrong on a draft There is something wrong on a draft, and now you are being investigated by federal agents and federal prosecutors Well, what's their response to this? "Well, the loans were really to Bob, they weren't to MoBo " But there is no proof of that The monies go to MoBo. The monies go to MoBo's account "Well, here is the reason it is not to MoBo, it is to Bob What does MoBo have in the way of assets? Why would Jonnie, the smart financial business guy he is, lend money to MoBo when MoBo is an operating account and doesn't have much money in the bank?"

Well, guess what? Jonnie wanted the loan to be paid back, with interest, and it has been paid back, with interest, and there is no evidence in this case that MoBo ever failed to pay any debt it owed to anyone in the life of that corporation So I guess it was a good investment It was a good investment for Jonnie. And he got exactly what he bargained for in terms of the two percent interest and he got early repayment of the loan

The Judge will instruct you that there is a concept in the law called good faith And that a statement made in the good faith belief that it is accurate does not amount to a false statement and is not a crime This is so even if the statement is in fact erroneous

This draft process, so I mean, the first draft that obviously has mistakes in it, the second drafts going back and forth that have mistakes in them on both sides, et cetera, there is a long process of PenFed getting the final paperwork together and there are mistakes made on both sides in that process And this was a drafting process that Bob had gone through in other loans with PenFed historically that have nothing to do with this case. Nobody in these transactions, not the bank or Bob, are accusing each other of trying to deceive each other when there are mistakes on a draft

The notion that Bob intentionally lied to Bill Sessoms at TowneBank, Bill Sessoms, who is one of his closest friends from Virginia Beach, is really offensive The notion that Bob lied on purpose, lied to PenFed, a bank that he had been doing business with for 35 years, is offensive, too

Well now, okay, let's look at the February 18th update. As soon as the agents jump on Ms McDonnell and scare her and, frankly, scare him, he updates one of the applications, something that he had planned to do that weekend anyway when he could attend to his personal affairs Between February 11th and February 15th, Bob got multiple sets of documents from PenFed that were riddled with errors, as I've described. One of them on February 11th had no assets and no liabilities on it And like any normal person would do after what happened with the State Police, and the deception and the betrayal Bob felt relating to that, he wanted to make sure that if they are looking at Jonnie Williams and they've got some reason to look at Jonnie Williams, "Aside from whatever I know about Jonnie Williams, I want to be sure, I, Bob, want to be sure that anything on record relating to me and Jonnie Williams is 100 percent accurate, 100 percent exposed, 100 percent open." That's what he did and he took the time and the care to try to make sure his update was comprehensive

And confirming the absurdity of these charges is the simple fact that Bob disclosed his wife's sale of stock, Star stock, long before he submitted any of these forms If he is going to lie to the bank in 2013 to conceal his relationship with Jonnie, why would he tell the IRS before then about his wife's connections to Jonnie six months earlier?

Mr. Harbach's suggestion that you on your mortgage applications should get out the magnifying glass and look at the boilerplate, because if you don't, when you sign a draft, when you sign a loan form, the Feds might come after you for a federal felony, is chilling, is really a chilling thought And the microscope idea is also significant There is a mountain of documentary evidence in this case But even with a microscope, they can't find a crime

Why would Bob do these things? Why would somebody in his position, who is finishing out his term, who has, you know, whatever future potentially available to him, that other governors have when they leave office, why is he selling his office for these loans or gifts from Jonnie Williams? Bob knew about 25 or $30,000 of it total, the vacations, some dinners, some golf You know, given the interest on the loans, these loans are not gifts 120 grand is not a gift, it is a loan. Why would he do this? Give him the whole $170,000 Every bit of it is his, it is all his responsibility, and pretend he knew about it in realtime Every single thing that Jonnie Williams gave in the way of quid in this case and multiply that number by ten, make it 1.7 million. Why would Bob do that?

They suggest my client was broke because his wife says, "Oh, we are near bankruptcy and Bob is screaming about the bills," et cetera But as the evidence has shown and as Mr Kosowsky and others have explained, well, the money was tight There is no question about it being tight at some points during the life of this case Bob was not without access to resources

Now, look, nobody likes racking up credit card debt Even if it is at two percent rather than the 20 percent they often try to charge you. Nobody likes doing that It is not a good financial plan to borrow on credit cards to pay bills But a lot of people do it if they have to to get through a personal rough patch, a personal financial rough patch. And Bob's stellar credit rating, which you have seen in this case, proves, proves that he has managed over the years to deal with his personal finances very well He doesn't leave people he owes money hanging One way or another, without resorting to crime, he finds a way to get it done and to get it done on time

And by the way, the evidence in the case shows that Bob paid down his credit card debt, which was at a high of $90,000 at one point while he was the Governor, right as he became Governor, by $60,000 by the time Maureen deposited her loan from Jonnie Williams at the end of May He had managed to pay down $60,000 without any help from Jonnie Williams.

You heard about him having some cash in the bank and cash from other sources and $70,000, at least Maureen had that cash at the time of the first MoBo loan. And she said, "I would be glad to lend Bob money " She doesn't want to cash stocks or she doesn't want to incur extra fees or anything like that if she doesn't have to If you can get a loan from somebody at a good interest rate, and that is a better deal than cashing in an IRA, fine That makes prudent financial sense Bob could have called his longtime friend, Joe Damico. He told you that he would write him a seven-figure check, no questions asked. Those things, Maureen's resources, other resources for Bob, other potential resources, access to additional borrowing or credit through the convenience checks, that's why the whole theory of Bob being financially desperate has gone out the window, that Bob's only options were to take bribes from Jonnie or go into bankruptcy

So now there is another theory Now it is Bob didn't want to pay a few $400 fees on balance transfers and convenience checks. That's what Mr Dry asked Bob during his cross-examination. Same for sister Mo The best they could do is show that Mo was financially desperate, tried to show she was financially desperate despite a million bucks in liquid assets in her accounts, retirement accounts, and half a million dollars in salary, was to claim that she might incur extra taxes or some additional fees But for the $70,000 bonus she got, they don't have a ready answer for why she couldn't have just used that to lend Bob money if Bob needed money And by the way, Bob fronted money for her on MoBo as well

Now, there is no question that Jonnie's loans were helpful I'm not going to try to gainsay that There is no doubt that Bob and Mo and Michael appreciated the money and it made it easier for them to operate their business without losing money elsewhere. But that's far from proving that Bob McDonnell was a desperate man whose only option was to sell his office to Jonnie in return for official acts

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I want to move on and talk about something Mr Harbach said about Tucker Martin Tucker Martin, the Communications Director for my client, who came in here and took the stand and, under oath, told you that Bob had never lied to him during the entire time that he's worked with Bob This guy has got to talk with the press based on what someone else tells him, and his reputation is destroyed if it's garbage in and garbage out

Mr Harbach says, "Well, he's just a good soldier He's just a good soldier " And he came into court and said that Bob never lied to him When Tucker told the press there was no recreational use of the Ferrari, well, where is the evidence that Bob knew how the car got there and why it was there at Smith Mountain Lake? They accused Maureen -- or they say that Maureen must have told Bob she had arranged it But there's no evidence of that You know, they assumed Jonnie's story is true when he says that Maureen asked that it be brought there for Bob Neither assumption is correct

And now let me get on to the silliness of the charts I want to make a few very brief comments about how you evaluate or are looking at these things in this case In the government's rebuttal case, the first guy they called is this Matthew Hunter, the guy who delivers the Ferrari And he never looks in the garage

Who's next? This Abel person from New York who talks about party planning and antique bricks in Jonnie's driveway And then they have Agent Weber to explain Bob's marriage to you with pie charts. Charts that count 152 nights when Bob wasn't scheduled to be home for the night until after 9 p.m., sometimes much later These are nights that Bob and Maureen spent together

Well, is that together when Bob is working alone in his home office? Is that together when Maureen is watching soap operas and ignoring Bob? Is that together when they are not talking to each other because they can't anymore? Is that together when they are arguing with each other and she refuses to speak?

Those charts don't tell you anything about my client's marriage They tell you something that we have never contested in this case These two are married Did they ever have the physical opportunity or ability to interact with each other? Of course, they did Of course, they did If they wanted to conspire and they were so inclined at engaging in criminal conspiracies together, they had opportunities to do it No one has ever denied that But the opportunity to be in each other's proximity does not mean that they are engaging in a criminal conspiracy That pie chart just captures my opponent's refusal to see any complexity, any gray in marriage or in life

Bob's e-mail proves the state of the marriage Jeanine's testimony proves it Mo's testimony proves it Janet's testimony proves it Bob's testimony proves it. That is evidence The pie chart is not. And to be fair, the pie chart, you know, illustrates some of the general problems with charts in this case Some of theirs, some of ours Basically, it's about speculation You know, we don't know what was said You know, we're not sure why these calls happened after each other Whether that's a coincidence, whether that is not a coincidence, whether there's some other reason, all we know is that they occurred at the time All we know is that these are the numbers, et cetera All we know is how long the calls lasted and that sort of thing But we don't have any real insight into what truly happened We just got to try to piece it all together because we don't have any real evidence of what occurred here

But if you assume my client is guilty, if you start from that -- from that assumption, as opposed to presuming that he is innocent, then you can look at everything through that filter If you think he's guilty and then you see the phone records, well, you're going to find a way to connect those dots and try to make them further prove that somebody is guilty But if you are open-minded about whether or not he's guilty and do these things really, really prove anything, it's a much different story

They tried to say my client is a liar and a cheater, but nobody came into the courtroom and said that Not a single unkind word about Bob from anyone, with a possible exception of Jonnie Nobody on the staff Nobody from Star None of the doctors or researchers, bankers, financial folks that have paraded through here None of the 200 people that were interviewed, et cetera, have come into this courtroom and said anything bad about Bob McDonnell or that Bob is dishonest. No one even believes that

The witnesses who know Bob well proved -- the government's witnesses, through what they said through their tongue, through their body language, that they don't believe these false accusations Everyone on his staff would work for him again These with people that know this case is going on They know what the press has been They are saying that right now, despite the bad press, despite the accusations, despite the indictment These witnesses for the prosecutions, they lived the events that we've spent a month talking about They were with there with Bob all hours of the day, day in, day out, watching how he behaved, watching how he interacted with people who wanted things from the government

And what did they do? They stuck with him, until the end, until the last day The man, the Governor they believed in They do believe in. The man whose integrity they trusted before they ever heard of these agents or these prosecutors The man whose integrity and honesty they trust now as I speak

The prosecution's Bob McDonnell is not the Bob McDonnell his staff knows and admires. They know his heart They know he would never sell his office They know he would never cheat his banks And those people are not alone. In the defense case, we brought in four separate people who came in here to support Bob in the most difficult time and experience of his life Witnesses who know his character well, and they also know about his marriage and other relevant facts

Each of those people swore that Bob was an honest, truthful, a caring man with unparalleled integrity, who would never do what he's accused of doing Each testified that Bob was known for those same traits by many other people they knew who knew Bob So they not only gave you their personal opinion, but they told you what his reputation was in various communities They not only spoke for themselves, but they spoke for thousands, literally thousands of other people who know Bob They didn't have to come in here and talk about Bob's character They came here because they wanted to come in here They choose to. They wanted to make sure that you understood what kind of person my client is You heard from Janet Kelly, his longest serving aide, who's known him for 20 years Seen him at his busiest, his most tired, his most stressed At times when his true and fundamental character comes through

And what did she say? She knows his heart And he is one of the most honest people she knows You believe his statements, without question He is totally trustworthy She knows thousands of people that know him They would say he is Mr. Honest, the Boy Scout of the year Never, in his lengthy career of serving the public, has he departed from that path of honesty and integrity That's what she said

Sister Mo said the same thing "Bob is my best friend Not only because he's my brother, but because I admire him and respect him, because he has great character and great demeanor, like our mom had " Mo talked about Bob's commitment to family and his dedication to public service S.e told you about his integrity, doing the right thing even in private, that Bob believes that to his core She also told you that he doesn't care at all about material goods, much like her mother He doesn't care about Rolexes He doesn't care about fancy stuff You know, is he willing to take a vacation at someone's nice house? Yeah, he is But does he aspire to that? Is that what motivates Bob McDonnell? Absolutely not

And then you heard from Tim Scully, Father Tim Scully, one of Bob's roommates at Notre Dame Forty-two years One of his closest friends in life. He flew here from South Bend, Indiana, just to talk with you for a few minutes about his lifelong friend He told you he knows Bob's heart, his fundamental character Bob has never erred from the truth, to his knowledge Ever. He has never heard Bob say anything that would resemble a falsity Bob is law-abiding He is someone who would never even suggest becoming involved in anything that would be considered illegal or unlawful He's an honest, virtuous, graceful man One of the watched Somebody other people look at and admire Not one of the watch, the Rolex watch

Father Scully explained his understanding of virtue to mean you create habits in your life, like saying the truth and doing the right thing, and those create dispositions that make you a virtuous person And he said Bob has great moral character, and great strength of character And he knows a lot of other folks who think the same of Bob and would echo his description

And then you heard from Joe Damico, a man who has known Bob for 45 years He flew in from Chicago A very successful business executive You heard his resume At the highest levels of major companies and boards Someone who's known Bob virtually his entire life, since he was in high school, and he knows him as well as anyone he knows in life And he's positive Bob is truthful. He's positive he's law-abiding, and he's positive in his heart and in his mind that Bob is honest

And he told you what integrity meant to him, what it meant to Joe Doing the right thing the right way for the right reasons, even when no one is looking Not for political expediency Not for a photo shoot Not for the PR But because it is the right thing to do Joe's bottom line was that Bob McDonnell is one of the best human beings he knows And that's not something that he says lightly It's about doing the thousand little things right each day The sum of a person's habits that are predictors of future behavior

Joe recognizes, as Bob recognizes, that Bob exhibited some poor judgment and that those judgments -- misjudgments are something that he is and should be sorry for But there is absolutely no chance, according to Joe Damico that Bob did something illegal

Now, Mr Dry is going to get up in rebuttal, and he's going to suggest to you, I suspect, I haven't seen what he's going to say, that it's really great that these people came in here and they told you these positive things about Bob But it's really irrelevant because all these people are all friends of Bob and so they are biased in his favor Well, you are absolutely right that they are friends of Bob But they are not friends of Bob for any reason other than the fact that Bob has earned that from them

Well, Mr. Dry might say, Well, it was all irrelevant anyway. I mean, they weren't there in Richmond, or whatever, in realtime They weren't in the car They weren't in the room They weren't on the phone when all this kind of stuff went on They weren't copied in on the e-mails, et cetera So they're really -- they're not eyewitnesses They're not earwitnesses, and you should ignore what they had to say about my client

Mr Dry might also argue that sometimes even good people do bad things But if he does argue these positions, he's wrong He's really, really wrong Judge Spencer will instruct you that the law, the law, not what I say, is that evidence of good character alone, alone, by itself, may create reasonable doubt in your minds That's why the law is why we were allowed to bring in these folks to talk with you about Bob's character

This man doesn't sometimes commit federal crimes He never commits federal crimes Why else should we care about the character? Because the law of character evidence makes common sense And each of you is called upon to apply the full wisdom of your experience as you deliberate

Think about how people develop character, and it's a lot like Joe Damico said Mature people develop character traits over their entire lifetime Not instantaneously And these traits that you develop define you as a human being It is not about your job It is about who you are as a person You build up these traits and your reputation for these traits over the course of your life, many different circumstances, always doing the right thing on a regular basis, even when it's hard, even when it's difficult

And what else do we know about this character evidence theory? Well, as Joe said, in his view, people generally act in conformity with their character, consistent with their character, because it's become habitual It's become a habit, an ingrained habit And if you solidly, repeatedly, historically are a person of honesty and truthfulness and integrity and a person who is trusted and who trusts others, a person who follows rules, obeys the law, knows right from wrong, then you do the right thing in the Governor's Office in 2010, 2011, 2012, and 2013, and you tell the truth about it, when asked, from then until now

So these character witnesses, to my way of thinking, are eyewitnesses They are eyewitnesses to my client's soul, to his good faith, to his heart, to his lack of criminal intent. And they prove not only that he wouldn't commit the crimes that he's accused of, but they prove that if he did do anything wrong, he would admit it

You've heard the old adage, virtue is its own reward Well, that may be But you are also entitled to have a lifetime's worth of hard work in building good character shield you from false accusations in suspicious circumstances like the ones thrown at Bob McDonnell here These character witnesses, on their own, create reasonable doubt, and if you believe that, that is enough to acquit

What about this reasonable doubt concept? And I am getting close to finishing There are two very important thoughts, reasonable doubt Two important concepts That and presumption of innocence I want to talk a little bit about, and Mr Burck and I agreed that I would explain these for both of us

We know about this presumption of innocence and the government always having the burden of proof We don't have to prove we're not guilty They are to prove they are. And if they have to prove it beyond a reasonable doubt. Because right this second, they are innocent, and they are always innocent until and unless you unanimously conclude differently in your deliberations

But you don't have any obligation to do the prosecutors' job for them back there. You don't have to sift the evidence. You don't have to strain the evidence You don't have to look for alternative explanations that might incriminate somebody It's their job to prove guilt beyond a reasonable doubt It's their job to give you the case on a silver platter No assembly required It's their obligation to make it really easy for you to convict because they proved their case beyond a reasonable doubt You are judges Judges of the facts in this case You are not detectives The detective work was supposed to have been done before the trial started, and you don't have to struggle to buy what the prosecution is selling

What about this reasonable doubt concept? It's the standard, it's the matrix, it's the benchmark by which you must judge the evidence, or the lack of evidence, in this case Because either can create reasonable doubt, evidence or lack of evidence

What do those words mean? You will define what those words mean Is it some defense lawyer's trick? Is it some technicality that I dreamed up to thwart justice in this case, or is it the bedrock of our system, designed to ensure, to the maximum extent possible, that an innocent person is never convicted?

And remember that a single, solitary reasonable doubt on any element of any offense for either defendant on any count means that you must acquit the defendant on that count Nobody here is going to try to tell you, in percentage terms, what reasonable doubt means If you want to think of it that way, you can That's your choice

It's not beyond all possible doubt It's not preponderance of the evidence, a civil standard. You set the bar That's your call That's your decision But you know it's the highest standard in American law It's higher even than the standard of clear and compelling evidence, which is an intermediate standard between civil and criminal cases Clear and compelling evidence is what is required to terminate your parental rights, to take a child from a parent Reasonable doubt is more than that

And suspicion isn't enough Conjecture isn't enough Theories aren't enough If you think somebody might be guilty, if you think they're probably guilty, if you think they're likely guilty, even if you think they're guilty by clear and convincing evidence, that is not enough

And I'd ask you to embrace reasonable doubt not only for the McDonnells, but for yourself, and everybody else as well Because if you apply that high standard to the facts you find, no one can ever legitimately question your verdicts Holding firm to reasonable doubt will let you be certain that you've made the right decision that everyone in this case, even my opponents can live with Because when the law of reasonable doubt is upheld, when the law is upheld, everybody wins

And when you consider these charges and whether or not there's reasonable doubt, I ask you not to compromise on your verdict Don't convict Bob of some things and acquit him of others just to give the prosecutors something for their effort Bob is innocent of every crime charged in this case Everybody wins when complete justice is done

So search your hearts and search your minds and your consciences as you deliberate about whether the prosecution has proven guilt beyond a reasonable doubt in this case And remember that you are the sole and final judges of the facts And if you, in your deliberations, are debating in good faith with each other about important things, I ask you to think at that moment about whether the reason that you are debating or arguing with your fellow reasonable jurors is because a reasonable doubt exits And if you come to that conclusion, you can put a quick end to this humiliating ordeal that's played out with you -- played out before you for the last five weeks

In conclusion, some thoughts about reasonable doubts here Jonnie got nothing, and Bob promised nothing Jonnie never directly asked Bob for anything If Bob had promised Jonnie something, Bob could have made it happen

Jonnie's other crimes give him a reason to lie The marriage was too dysfunctional to support a conspiratorial plan Bob's long-time friends, his character witnesses, talked to you about those traits If Bob had done something wrong, he would not lie about it He didn't hide anything from anybody who should have known about it Filling out forms by providing information they required is not a false statement And when Bob was Governor, taking unlimited gifts or loans was completely legal in Virginia

And then we have the concept of good faith, the overarching concept of good faith Even if you do something and you are mistaken and even if others are injured, if you operated in good faith, there is no crime So even if you believed Jonnie Williams in this case, there are many reasonable doubts that would still merit acquitting my client for

I'm going to sit down, and it will be the very last time you hear from me, or anyone else speaking about --

speaking for Bob McDonnell Mr Dry will give you his final rebuttal I haven't heard it I'm sure it will be good, and I don't get to respond to it. So I ask you to please do this as you listen to Mr Dry

Brace Bob McDonnell with your memory Brace Bob McDonnell with your common sense with his presumption of innocence Ask yourself, What would Bob say? What would his lawyers say if we got the last word? And if you hold the prosecution to its burden of proof beyond a reasonable doubt, if you weigh the evidence fairly and impartially, then I trust you will return the only just verdict this evidence can possibly support, and that is not guilty on all charges

I am very glad to have this opportunity to speak with you all personally The first time for me in this case I thank you for everything you've done, and I thank you for everything you still have to do

THE COURT: All right We're going to take a ten-minute break and come back in

You all hang with us because we are going a little late tonight probably, but we need to get this in All right

(The jury left the courtroom)

(Recess taken from 4:08 p m until 4:20 p m)

(The jury entered the courtroom)

THE COURT: All right   Government

MR DRY: Thank you, Your Honor

Good afternoon, ladies and gentlemen

THE JURY: Good afternoon

MR DRY: At the end of the day, the evidence and your common sense makes it clear that Mr and Ms McDonnell accepted bribes from Jonnie Williams   This is a serious case   Every federal criminal case is a serious case   While it might be serious, like other cases, some are just not close, and this case is not even close   Mr Asbill suggested that it's our responsibility to put this case on a silver platter, and that's exactly what Mr Harbach described to you earlier this morning

Now, there's not enough time for me to respond to every point that both defense counsel made over four hours of closings   I'm not going to subject you to that   But I would like to talk about some of the highlights

First of all, let's talk about the quid pro quo for a second   Mr Burck got it right in his opening statement five weeks ago   He basically said, "Well, quid pro quo, that's Latin for I scratch your back   You scratch mine " That's exactly what happened in this case, ladies and gentlemen   Mr Williams gave the defendants and their children more than $177,000 of gifts and loans

Now, let's give Mr McDonnell the benefit of every doubt

Let's bring up Government's Exhibit 60, please

This is that chart Now, Mr McDonnell claims that he didn't know about the $20,000 for the New York shopping trip and that he didn't know about the $6,500 engraved Rolex I don't know why we're still talking about the Movado box. But setting that aside, that still leaves $150,000 in quid

Now, Mr McDonnell claims that he didn't learn about the first $50,000 payment to Ms McDonnell until two weeks later. Who cares? Within two weeks of the check coming in, he knows Now, the question was posed, why would he do this? Why would he corrupt his office for 177,000 or $150,000? The answer is simple He didn't think he was going to get caught.

Mr Asbill talked about, "Well, he could use credit cards to get over a rough patch " Ladies and gentlemen, this rough patch lasted two years He had been using credit cards for two years Convenience checks

Now, if the argument is he didn't really need the money, that doesn't make this better That makes it worse If he had other options, that makes what he did worse At the end of the day, both defendants knew that they received $150,000 of Mr Williams' largesse And in return, Mr Williams got his back scratched

Now, Mr Asbill talked about defining quo Okay And what he didn't do is talk about the full definition that you're going to receive He talked about any question, matter, cause, suit, proceeding, or controversy. He talked about bills and board appointments and all of this But what he failed to mention is that official action, as the judge is going to instruct you, includes those actions that have been clearly established by settled practice as part of a public official's position even if the action was not taken pursuant to responsibilities explicitly assigned by law

In other words, official actions may include acts that a public official customarily performs, even if those actions are not described in any law, rule or job description In addition, action can be include actions taken in furtherance of longer term goals, and an official action is no less official because it is one in a series of steps to exercise, influence, or achieve an end

Mr Asbill argues there is no quo But ladies and gentlemen, if you apply the law to what happened in this case, there is more than sufficient quo Even though the government doesn't have to prove there was any quo, we just have to prove the corrupt agreement But let's -- let's go down some of these things for a moment

First of all, directing Dr Hazel to send someone to the meeting in August of 2011 Now, when he was on that witness stand, Mr McDonnell said, "Well, I did that because I was concerned and I didn't want any decisions made without having a subject matter expert " We've been talking for five weeks, ladies and gentlemen, and one fact is perfectly clear Ms McDonnell is not a public official She has no decision-making authority Well, if she doesn't have any decision-making authority, why are you sending government officials to sit in on a meeting between Mr Williams and Ms McDonnell? That's not what was going on, ladies and gentlemen. Jonnie Williams wanted to meet with somebody from the Health and Human Resources, and he got that meeting

Now let's go to the August 30th launch at the Mansion Mr Asbill said that Mr McDonnell just didn't know what this was about. But ladies and gentlemen, that briefing sheet he got the day before, that made it clear what this was about It's got Star Scientific people there It's got the UVA and VCU researchers there Mr Williams made it clear what he wanted That's the June 16th letter Mr Asbill said, "Well, he got no response " He got a response It was that August 30th Mansion event launch

Now, the third, the Governor's attempt to get involved with the VCU and UVA sites This is the six-minute e-mail exchange I'm not going to beat that to death But at the end of the day, ladies and gentlemen, it's clear that Mr McDonnell was e-mailing his policy director after receiving e-mails from Ms McDonnell talking about what, UVA, VCU, Anatabloc studies What did Mr Williams want? That And what is Mr McDonnell doing at the same time, they are negotiating another $50,000? He's e-mailing He's doing something

Now, let's go to the Virginia Healthcare Leaders event at the Mansion Ladies and gentlemen, you saw the handwritten notes You saw what was going on There is no way that Mr. McDonnell didn't know, when he was going to that event, that Ms McDonnell had basically blessed Mr Williams inviting who he wanted

Now, in the closing statements, they made it sound like Ms McDonnell was choosing who she thought was the healthcare leader of Virginia That wasn't Ms McDonnell Jonnie Williams got carte blanche to make those decisions And don't forget Mr Ladenson got directed there

When you go back into that jury room, you pick up those pictures And you can just kind of flip through them, and you see exactly what happened there You see Jonnie Williams next to the pillar He's got that look on his face like a cat just ate the canary And then you see Mr and Ms McDonnell next to each other And the next picture, you see everybody looking at Mr Ladenson because Mr McDonnell had singled him out

Now, as far as the meeting with Lisa Hicks-Thomas and Sara Wilson, I think that Mr Asbill said it happened on March 19th I think it's actually March 21st But setting that aside, he said that nothing came out of it But, ladies and gentlemen, that's not the point. The Governor of Virginia is pulling out a product and talking to his senior advisors in a meeting about lowering healthcare costs in Virginia. He's saying, "You should meet with them " Now, the fact that that meeting didn't occur, like pretty much everything else in this case, that wasn't because of Mr McDonnell That was in spite of Mr McDonnell

You know, we don't have to prove any one of those, but any one of those is sufficient They keep on talking about no one was pressured When you get these jury instructions, ladies and gentlemen, you look for the word pressure It doesn't appear anywhere But ladies and gentlemen, when your boss is telling you to do something, when the man who is the ultimate boss for 110,000 people tells you to do something, he doesn't need to yell He doesn't need to scream. No Absolutely not

Now, there's been a lot of discussion about things that Mr McDonnell didn't do for Mr Williams And, in fact, Mr Asbill, he had that chart up there of all those Cabinet secretaries I hope you remember that You know, there was one that was missing Do you know who that was? Bill Hazel

Now, why is Bill Hazel missing? Well, ladies and gentlemen, at the end of the day, Mr Hazel is a devastating witness in this case If you remember back to his testimony, he was asked, "As you sit there today, can you recall any other group other than Mr Williams that had" -- "that was unique for the level of support from the McDonnells? Answer: I can't recall that there was ever a situation quite like this one Please explain that Well, you know, the Governor, in doing his job, would go out and meet with all kinds of people and come back with all kinds of ideas Let me give you an example If I had a dollar for everything that these technology firms were going to have to save us by using their product, we would be giving the taxpayers money back But our job was to sort through them and figure out whether it applied to Virginia or not But looking from sitting here now, four years into this, there was never anything quite like this that I saw I don't think I was ever looking at a product like this I don't think there was the involvement that we had in terms of just the repeated contacts The Mansion event was unique That was the only time that happened."

Now, they also talked about, well, Mr McDonnell could have got a line item in the budget He could have got VEDP funding He could have done all sorts of things Well, the problem with those is Mr Williams never asked for those What did Mr Williams always want? He wanted the studies at UVA and VCU He wanted the prestige of Mr McDonnell's office He wanted them -- him there at meetings All of those things were what he got

Now, as far as Mr McDonnell didn't lobby the Tobacco Commission Well, ladies and gentlemen, you can't lobby the Tobacco Commission for a grant proposal until the application is actually in Now, why wasn't the application in? It was because VCU and UVA didn't agree to submit the application And Star couldn't It was a for-profit entity Another situation where it's not Mr McDonnell pushing back He's not saying, "No " You never heard the polite no from Mr McDonnell or Ms McDonnell

Ladies and gentlemen, there is no doubt about the quid in this case There's no doubt about the quo in this case And I'd like to talk a little bit about the pro

Well, first of all, on that Hazel point I just said I said that Mr Hazel proved there was something special Under the law, if Star got exactly what every other company got and Mr McDonnell and Ms McDonnell took bribe payments for that, that's still illegal Do you remember all 400 of those pictures that they put in towards the end of the case that showed Mr McDonnell up at function after function after function? Well, there's nothing wrong with that, ladies and gentlemen That's his job He just can't pocket money, personal money, for doing his job. The law doesn't allow him to do that

As far as the pro We've been very up-front with you from day one, ladies and gentlemen There is no express agreement in this case There is no videotape of it There's no e-mail that says, "Hey, you give me this, $50,000, and I'll set up this meeting " That just didn't happen But the Court is going to instruct you that the agreement does not need to be express And it's going to tell you that the reason for that is that otherwise, quote, the law could be frustrated by knowing winks and nods, end quote

Ladies and gentlemen, nobody has accused the defendants or Jonnie Williams of being stupid Nobody And we all know that those kinds of explicit agreements just don't happen in the real world The Court is going to instruct you that the agreement can be established based on the defendant's words, conduct, acts, and all the surrounding circumstances, as well as the logical inferences that may be drawn from them

Ladies and gentlemen, Mr Williams was sitting in that Mansion at the events and getting those meetings because he was paying for it He was paying for it And if you have any doubt about that, the timing of the events makes it absolutely clear that the defendants and Mr Williams had a corrupt agreement You don't need to take Mr Williams' word for it

Now, if you remember back to Mr Asbill's direct of Mr McDonnell, how it seemed to jump around a little bit, didn't go chronologically, like Mr Harbach's did And then even in the closing arguments, that really wasn't chronological either Now, it was a little bit confusing, but that's not Mr Asbill's fault He's a smart lawyer He knows that if you lay out these facts chronologically, it does no good for his client None And that's because the timing in this case establishes the pro in the quid pro quo agreement

All right First of all, the Governor's e-mail to Dr Hazel an hour after driving Mr Williams' Ferrari back from Smith Mountain Lake Does anybody really believe that as Mr McDonnell is driving the Ferrari and Ms McDonnell is sitting next to him and they are talking to Jonnie Williams on the phone as she is texting a picture -- or e-mailing a picture of the Governor driving the Ferrari, that they didn't know what time it was? Come on, now. The fact that the launch event gets scheduled on Ms McDonnell's calendar the day after the Smith Mountain Lake trip

Think about this The same day that Mr McDonnell calls Mr Williams to negotiate another $50,000 loan, Star representatives are e-mailing Ms McDonnell with a list of guests for the Healthcare Leaders Reception The best evidence in the case is the six-minute e-mail exchange Mr McDonnell's attorneys have suggested, well, he just sends a lot of e-mails at night But his own testimony makes it clear that he sent these late-night e-mails for things -- can we show up Government's Exhibit 901, please

This was the question that Mr Asbill asked on direct "Okay And would you typically send a lot of e-mails late at night? Yes Very often That was my time to think about things for the next day and think about things that I wanted to have done " That's right, ladies and gentlemen That e-mail to Mr Eige That was about something that Mr McDonnell wanted to have done

The Healthcare Leaders Reception itself occurs five hours after Mr Williams and Mr McDonnell have a private meeting about the loan Now, one of the things that I spent some time on in cross, and I apologize for that, was those handwritten notes of that meeting And the defense has suggested repeatedly, well, that just proves that Mr McDonnell knew he didn't do anything wrong because otherwise, why he would keep those notes and turn them over Really? That's where we're at? The fact he didn't obstruct justice proves that he must be innocent? Well, here's an alternative for you Who knew that Mr McDonnell had handwritten notes? Who else? Jonnie Williams You want to know how you know that? Because his handwriting is on some of the notes

Now, Mr Asbill, nobody is bringing up those notes You see a lot of things on that screen Those notes aren't there When you go back into that jury room, you pull up those notes It talks about reportability It talks about transactions in which Mr Williams is going to give $150,000 worth of stock, and four years later, Mr McDonnell has the option of paying 90,000 back or giving the stock back There's no risk for him

The explanations didn't make sense when he's on the stand He's saying, "Well, Mr Williams is just telling me this, but I don't understand it " Ladies and gentlemen, we didn't listen to it You read the notes It's pretty clear what's going on in those notes

The March 21st meeting, the Lisa Hicks-Thomas, Sara Wilson, that happened nine days, nine days, ladies and gentlemen, after Mr McDonnell had the $50,000 check deposited Think about that March 12th When he was on that witness stand, he told you he wanted to talk to Mr Williams, and the reason being is, "I need to figure out those loan terms I really need to know those loan terms I didn't know what was going on with the check " Well, does that make any sense? The check is already deposited He had already authorized Michael Uncapher to spend it So he's accepting a check, spending the money, but then after the fact, he's really concerned about the loan terms? That's when he's going to talk to Mr Williams about it? Just like the 30 to 45 days he waited to figure out what was going on with the first $50,000 to Ms McDonnell

That Lisa Hicks-Thomas meeting -- or Lisa Hicks-Thomas meeting with Sara Wilson, that occurs three days after Mr McDonnell and Ms McDonnell fly back from their Florida vacation with Mr Williams on the jet, on Mr Williams' jet No Ladies and gentlemen, the timing, the timing in this case is devastating

But it's not only the timing that establishes what happened here It's also the concealment If you're not doing anything wrong, why are you hiding it? First of all, the staff knew nothing about any of this Not one of Mr McDonnell's most trusted advisors was ever informed by him what was going on Now, the excuse for this is he's a private person who kept his financial dealings private He also claimed, "Well, I'm talking to Mr Eige. I'm consulting my lawyer That's why I sent the e-mail." Think about that for a second, ladies and gentlemen He admitted on the stand, as a lawyer, you can't advise your client unless you have facts And regardless of what Mr Cheng testified about, if you're advising Mr McDonnell about whether it's appropriate for the Governor's Office to get involved with UVA and VCU, it's a pretty important fact that Mr McDonnell is trying to negotiate $50,000 more into his pocket at the same exact time That's just not slipping somebody's mind, ladies and gentlemen

And think back Martin Kent -- can we pull up 903, please

They kept asking each staff member, "Well, did you ever talk about your personal financial dealings?" And they'd all say no

But if you look at Page 2, he was asked, "Correspondingly" -- "with respect to his marriage or any issues between himself and his wife, are those things that he discussed with you? Answer: No, sir Correspondingly, are these the types of things that you ever brought up or raised with him and discussed with him? Only if I felt like it somehow spilled over into state government "

Ladies and gentlemen, personal financial dealings between the Governor and his wife at the same time that Jonnie Williams is trying to get his studies, that's spilling over into state government Mr McDonnell knows it should have been disclosed, but he didn't want it disclosed His staff is already pushing back on what's going on They are already asking questions. Mr Cox is saying, "Hey, what does Jonnie want? What's going on?" Well, they know half the story

Now, the SOEIs I'm not going to go into a lot of this It's late It's before a three-day weekend But at the end of the day, this isn't about whether he violated Virginia law or not It's about whether Mr McDonnell, as a former Virginia Attorney General, someone who's been filing these disclosures for more than 20 years, knew every single loophole and opportunities to avoid disclosure, within the law even

Do you remember, he kept asking his lawyers for advice on how to fill out the form, the definition of a personal friend Why does he keep asking every year? It's because he wasn't getting the answers that he wanted

Mr Eige testified that he told Mr McDonnell that they should track gifts from family members so that they can make a determination on whether the gift was really to the family member or really because of his position The purpose of those SOEI forms, as even he agreed to on the stand, was so that the citizens of Virginia could assess for themselves the financial interest between their elected officials and donors and gift givers Mr McDonnell was not disclosing on the SOEI

The idea that Mr Williams gift a $15,000 was a wedding gift to Cailin, no Who signed the contract? Who made the payments? Who always intended to pay? And the last minute, Mr. Williams comes up and says, "Oh, well, there's a $15,000 check " And Mr McDonnell says, "Well, that's got to be a gift to my daughter I don't need to disclose anything "

I'd like to spend a little bit of time about Mr Burck's argument about Ms McDonnell's mixed motives He spent a lot of time talking about how she liked nutraceuticals It was a long-term interest All of that is true He also talked -- well, one thing on that If you'll notice No matter how much she might have liked vitamins, selling Nu Skin, how many Nu Skin events were at the Mansion? Zero

He also talked about how Ms McDonnell liked and supported Jonnie Williams, that she was infatuated with him, all this other stuff Look, there's zero evidence that there was any kind of sexual relationship between these two people Now, admittedly, they had a lot of texts and a lot of calls She very well could be lonely and wanting attention But Mr Burck suggested to you, "Well, if Ms McDonnell is helping Mr Williams for those reasons, then she can't be guilty of bribery " But, ladies and gentlemen, we all know that people very rarely act for a single purpose And the Court is going to instruct you that if you find that either defendant, quote, received a thing of value at least in part in exchange for the performance of official action, then it doesn't matter if they also acted in part for other reasons

The evidence makes clear that the defendants knew what Mr Williams wanted, and he was giving them things in exchange for that Did Ms McDonnell like Mr Williams? Sure Did she believe in his product? Sure But at the end of the day, ladies and gentlemen, she's getting the shopping spree She's the one asking for the Rolex She's the one vacationing at Smith Mountain Lake She's the one getting the Ferrari for her husband It's not all about the vitamins, ladies and gentlemen It's not all about Mr Williams If it was all about Mr Williams, why is she asking for a Rolex watch engraved to her husband? Why is ask she asking for a Ferrari for her husband's use?

I want to talk about Mr Williams for a second They spent an inordinate amount of time attacking Mr Williams From the outset, they have desperately tried to make this a credibility battle between Mr McDonnell and Mr Williams In fact, Mr Brownlee, from his opening statement, said, quote, the government's case begins and ends with the word of Jonnie Williams Mr Burck's first slide in his closing statement was a picture of Mr Williams that he left up there for ten minutes

But as you sit there today, you know that this case doesn't rise or fall on Mr Williams. No Think about all the text messages, the e-mails Think about all the witnesses that hit that stand and gave damaging testimony, even though they were some of the defendants' closest friends and confidants

You could take Mr Williams -- Mr Asbill is right about this You could take and discount everything, every single word uttered by Mr Williams on that stand, and there is more evidence than necessary to go beyond -- above a reasonable doubt

But let's take a look at this Let's -- if you're going to assess Mr Williams' credibility versus Mr McDonnell, who has the bigger incentive not to tell the truth? Mr Williams' immunity agreements make it clear that the only way he goes to jail is if he lies to you He can't get prosecuted for anything Lots of arguments about his incentives to lie But at the end of the day, ladies and gentlemen, he has nothing to gain and everything to lose by lying to you That first immunity agreement, he was implicating the Governor and Ms McDonnell with no immunity on anything else He had no upside to get the defendants convicted When he hit that stand, it was over He got the get-out-of-jail-free card

Now, let's talk about that for a second Why? Well, at the end of the day, ladies and gentlemen, if Mr Williams hadn't gotten that second immunity agreement, do you know what the argument would be? The defense counsel would have sat up here for a half an hour saying that Mr Williams was willing to say anything because if he didn't, he was in fear of being prosecuted by us They can't make that argument now No

Now, if Mr Williams was truly a government puppet, willing to say anything to please the government, if he was really trying to trade his freedom for those of the defendants, why didn't he just say there was an explicit quid pro quo agreement? There's lots of private conversations between him and Ms McDonnell Heck, there's private conversations between him and Mr McDonnell The easiest thing for him to do would be able to say, "Hey, yeah Mr McDonnell told me that if I gave him that $50,000, then he was going to make sure I got this He promised me Tobacco Commission funding He promised me that he was going to call UVA and VCU " He didn't ever testify to that

Now, ladies and gentlemen, one thing. If you look back on Jeanine Zubowsky's testimony when she blurted out that Mr. Williams is a criminal, he is. Absolutely He's a criminal because he bribed the defendants Now, Mr Burck said, "Mr Williams is no victim " He's right too Mr Williams knew what he was doing That's why he was hiding it You don't have to like Mr Williams You shouldn't like Mr Williams He bribed the Governor of Virginia

Now, Mr Asbill made a big point of saying, well, Mr Williams is the star witness in this case No When Mr McDonnell hit that witness stand, he became the star witness And the Court is going to instruct you when you consider the credibility of witnesses, you should assess their interest in the case Of all the witnesses, more than 50, that you heard testify in this case, none of them have a bigger interest in the outcome than Mr McDonnell

You heard that testimony You can assess it for yourself But the striking thing was that when it came to the critical moments, the critical meetings, what was said, it was, "I don't remember I don't recall " It was evasiveness It was, "Well, that was just Mr Williams talking I didn't really understand it " Now, compare his recall on those issues to his amazing recall on his legislative votes or his political accomplishment As far as Mr McDonnell being on the stand for 53 hours, that was not the government's fault The first two-and-a-half days of that were his attorney Heck, we spent a day on his background of legislative accomplishments It's just too convenient, ladies and gentlemen Too convenient

But when you're assessing that, when you go back into that room, I want you to look at the e-mails, the text messages I want you to think about the testimony from his closest advisors, his best friends, the godfather of his children, Mr Piscitelli You consider all of that They had no incentive to shade their testimony to fit the government's case, but it was devastating testimony, nonetheless

You know, perhaps the most striking thing about Mr McDonnell's testimony was his willingness to blame others while at the same time trying to claim that he was accepting responsibility Michael Uncapher was to blame because he didn't pay MoBo's bills on time No explanation of why Mr McDonnell didn't just put the bills on auto pay But you know why that was, right? Because they didn't have enough money to pay their bills on time

They had to pay for umpteen mortgages, the lines of credits, the bedbug infestations, every other unexpected expense on owning a pair -- pair of million-dollar beachfront residences

At one point, I think Jonnie Williams was to blame for not sending the donation forms for the thousands of Kinloch expenses and the Notre Dame bag. The staff was to blame for not tracking the golf and dinners from the schedules that showed nothing about what Mr McDonnell was doing or who was paying

Jasen Eige and Martin Kent didn't inform the Governor about the concerns they had regarding Jonnie Williams, even though they know virtually nothing about all of the quid that's rolling over

Nan Bolt, from PenFed, didn't help Mr. McDonnell enough with his loan application in disclosing loans that wouldn't show up anywhere

Now we've got the prosecutors The prosecutors are to blame for bringing the case Do you remember on cross-examination Mr McDonnell said that he had been preparing ever since I indicted him? Well, look, ladies and gentlemen, I didn't indict him A grand jury indicted him

Most sad of all, his wife getting blamed for supposedly hiding the shopping spree, the Rolex, and her

Star Scientific stock transactions Oh, yeah, and she was mean to the staff I have no idea what that means about anything

You know, Father Scully when he testified, he said part of character is the ability to remove one's self from morally questionable situations The ability to say no

Defense counsel makes it sound like Mr Williams is holding a gun to their head and forcing them to accept this stuff You're not hearing no from Ms McDonnell You're not hearing no from Mr McDonnell

Now we're going to move on to the marriage Let's be clear about one thing The government never made an issue of the defendants' marriage They did They spent a lot of time talking about the September 5th, 2011, e-mail Let's be clear No one can read that e-mail and not feel sympathy for what was going on in that time, in that moment Anybody that's been married for a while, it's a bumpy ride Ups and downs

But let's bring up Government's Exhibit 862

I think Mr Burck defined this e-mail as generic, and didn't really -- and then I think Mr Asbill discounted it as XOXO Bob McDonnell, May 8th, 2011 Think about that timing It says, "I love you Having fun here Have a safe flight " She responds back, "I can't wait to be with you XOXO " He responds back, "Love you too Please get rest on the plane Miss you "

You can't read that e-mail without feeling that's amazing after 35 years But the simple fact of the matter is that no one, absolutely no one knows the happiness level of that marriage other than two people, and they are sitting over there

But we do know one thing It doesn't matter Whether this marriage was happy or sad, whether they liked each other or hated each other simply doesn't matter Anytime the government presented any evidence regarding the defendants' marriage, it was simply to rebut the argument that they weren't around or couldn't communicate with one another

You go back You get these jury instructions You look at conspiracy You look whether you need to like your co-conspirator Not there But, ladies and gentlemen, the one question is were they communicating together about Jonnie Williams and Star Scientific in particular?

By his own admission, Mr McDonnell talked to his wife before e-mailing Dr Hazel on August 1st at least about the subject of the Huffstetler meeting By his own admission, Mr McDonnell knew that Ms McDonnell was inviting Star Scientific people to the launch at the Mansion and the Healthcare Leaders Reception And the evidence shows there are e-mails between the two discussing how Jonnie needs the Governor's Office's assistance with UVA and VCU Go back and look at that February 8th e-mail of 2012

Ladies and gentlemen, you don't need to be married to be in a conspiracy You know, Jeanine Zubowsky, their daughter, testified -- she didn't say they never communicated Let's take a look at what she actually said

Government's Exhibit 904, please

"Did they talk at all? Yes It was never more than just logistics about children and necessities It wasn't what I observe in my own marriage as a normal conversation "

Ladies and gentlemen, you know what Jonnie Williams was? Logistics and necessities They were talking about him While all this discussion of the defendants' marriage is salacious and sad, at the end of the day, it just doesn't matter

You know, when he got on that witness stand, he said that discussing his marriage was going to be difficult But it seemed like at every opportunity he could, he blamed his wife His wife hid the New York shopping spree from him, even though she was wearing the dresses to their daughter's wedding and at the anniversary party His wife hid the $50,000 for two weeks that she used to pay their credit card bills His wife hid the Star Scientific purchase for the same two weeks, but then lied about buying more stock Then lied to him about not selling the stock But then followed his instruction right in the nick of time so it didn't have to be reported Then again lied to him about repurchasing the stock Then he happened to find out again right in the nick of time that she had repurchased it, which was right in the time to gift the shares to the children His wife lied to him about the Rolex But he claimed that he learned about all of these at very convenient times, ladies and gentlemen

Think about this Despite the fact he's telling you that his wife is repeatedly lying to him, despite the fact that the bank statements and the Davenport statements are going to their home address, despite the fact he admits that he was seeing those envelopes, he would have you believe that he never opened them

You know, what makes more sense is that Mr McDonnell is willing to throw his wife under the bus, and she's willing to let him, in order to avoid criminal convictions One of the most troubling parts of this trial was when Mr Asbill asked Mr McDonnell if he got separate counsel after learning that Ms McDonnell had returned the dresses with the letter, and he said yes

And the clear suggestion from that question and answer, ladies and gentlemen, was that Mr McDonnell got separate counsel because of what she had done there Distancing himself from that.

Now, it wasn't until Ms McDonnell's counsel got up on cross-examination, basically saying enough is enough, and made Mr McDonnell admit that his decision to have separate counsel had nothing to do with any of that.

Ladies and gentlemen, that one moment, sadly, sadly, made it clear that Mr. McDonnell's bumper sticker, it should not have been Bob's For Jobs It should have been Bob's For Bob

Mr McDonnell -- let me go to the TowneBank personal financial statement He claims he's not guilty of false statements to TowneBank because the loans from Mr Williams were not personally guaranteed You heard Mr Sessoms testify, his long-time friend They never discussed that Absolutely no discussions of that

Now, it's true that there was no written personal guarantee from Mr Williams -- or for Mr Williams, but given the bribery scheme here, that's not exactly surprising, is it?

But how do you know that Mr McDonnell's excuse on the false statement to TowneBank doesn't hold water? Remember back to cross-examination, I was trying to get him to explain why the loan to Dr Davis wasn't disclosed on that same application? Do you remember, that's the one that was personally guaranteed That was the one he was jointly and severally liable for. That was the one that had $13,000 outstanding on it. He had no good explanation for that

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The simple fact of the matter is that none of the personal loans were disclosed on the application. $110,000 from his father wasn't disclosed. Outstanding balance on the Dr Davis loan wasn't disclosed. And the $50,000 from Mr Williams in March of 2012, that was definitely not disclosed Bottom line, ladies and gentlemen, all of that, that is just an after-the-fact justification from a lawyer You are smarter than that

Moving to the PenFed application: There is no dispute that on February 1st of 2013, the $120,000 of loans from Jonnie Williams are nowhere to be found. But now the justification is that $70,000 was to MoBo I'm not going to beat that dead horse. You know better than that But on the $50,000 to Ms McDonnell, that wasn't simply an oversight, because that was -- that was simply an oversight because Mr McDonnell was busy, quote, busy and this was a, quote, iterative process It was a, quote, draft

The whole oversight excuse on the loan applications and Statements of Economic Interests just doesn't make sense, ladies and gentlemen This is the same man who during the period he claimed was the busiest of his life, what's he doing? He is picking out the exact model of the bocce balls for his rental properties This man is the definition of attention to detail As far as drafts and iterative processes, nowhere on those loan applications Those loans were supposed to close February 28th.

But the best -- oh, and I will, one aside on this: There was a lot of discussion about that magnifying glass thing and how scary that was Ladies and gentlemen, rest assured, Mr McDonnell himself admitted as a former prosecutor he knew it was a federal crime to lie on a bank loan application. He didn't need a magnifying glass But the best evidence that Mr McDonnell knew that these should have been disclosed was his February 18th, 2013 correction. Go back and look on the front of that fax sheet "Just happened to be reviewing these " Now, the excuses that he over-disclosed because he knew law enforcement was looking, right, that was the excuse, but to be clear, he is right on that His wife had been asked about the loans from Williams But make no mistake, this is not an over-disclosure This is not him saying, "I just got to make sure everything is on there " You want to know how you know that? Where are the $110,000 of outstanding loans from his parents or from his dad? Again, these are all after-the-fact justifications from a guy with a law degree

I want to talk about the obstruction count Mr Burck made two main arguments on that First, there was no literal false statement Can we pull up Government Exhibit 3, please? And then second, Ms McDonnell had been told that there was no federal grand jury investigation at the time she sent the letter Regarding the first point, nowhere in the jury instruction that you are going to receive is there anything that there has to be a false statement Okay? You just have to corruptly impede a grand jury investigation that might happen, basically You don't have to know whether it is federal or state

But Mr Burck said nothing is false on this note Really? Ms McDonnell truly hopes that Jonnie Williams' daughter is going to wear the dresses? Ladies and gentlemen, that doesn't hold water Mr Williams' daughter was a model The other one was a teacher They are both size zeros These dresses were never intended for them. They are not being given back for them. She knew that the daughters were never going to wear those dresses, just like she knew that the plan was never for them to be returned

If they were a loan all along, why did Ms McDonnell wait until March of 2013 to return them? That's almost two years Like a lot of things in this case, ladies and gentlemen, it is not a coincidence Use your common sense She has been interviewed by law enforcement They are asking about Mr Williams She knows what's coming down the pike And she is trying to make it appear that she didn't intend to keep these And the reason being was she had been told about the inaugural dress that, well, it would be okay as long as they were just loaners

Now, going to the second of Mr Burck's arguments, the fact is that Ms McDonnell was informed that she wasn't currently under federal grand jury investigation. But that doesn't matter The Court's instructions are going to make clear that we don't have to prove that it was a federal grand jury investigation that existed at the time that she sent the letter She doesn't need to know whether it is state or federal And if you remember back to Mr Flood's testimony, he was told by prosecutors to contact the Commonwealth's Attorney, Mr Herring, and he said that he was passing on information to his clients She knew something was coming down the pike

I want to talk briefly, and I'm almost done, ladies and gentlemen, I want to talk briefly about reasonable doubt The Judge is going to instruct you about your duties Mr Asbill somehow suggested that if there is any discussion in jury deliberations, well, that mean that reasonable doubt must exist When you go back there, you listen to the jury instructions You actually have a duty to deliberate That's how our system works The fact that one person can have a different recollection of a witness's testimony than another person, you hash that out That doesn't mean reasonable doubt

Ladies and gentlemen, on good faith: Good faith means that you are not hiding things You can't have innocent explanations if you are hiding things If you don't think you are doing anything wrong, you don't have to hide it But ladies and gentlemen, throughout all the evidence, it is obvious that's exactly what was going on. You go back there, you look at those handwritten notes You look at those loan applications You look at those SOEIs The concealment evidence in this case is overwhelming

Now, in conclusion, this is a sad case Make no mistake about it It is sad for the McDonnell family, and it is sad for the State of Virginia. Regardless of what your verdict is, there are going to be no true winners in this case Absolutely none

But I want you to think back to that first day that you came into this courtroom. Each of you took an oath to render your verdict based on the evidence and the law, not on emotion or sympathy Your oath means it doesn't matter if you are Republican, or Democrat, or anything in between. The only things that matter is the evidence and the law Don't be distracted. Don't be distracted by what kind of Governor you thought Mr McDonnell was, what kind of marriage they had, sympathy for Ms McDonnell, or anything else None of that, none of that matters under the law

The defendants have had a fair trial Now it is your duty to deliberate and decide If you apply your common sense to all the evidence in this case, there is only one just verdict, and that's guilty on each and every count Thank you

THE COURT: All right Ladies and gentlemen, let me -- first of all, normally, obviously, I wouldn't keep you this late And I apologize for that But let me provide this explanation to you: Obviously, if we stop in the middle of arguments and go through this long weekend, when we get here on Tuesday, say I had Mr Dry do his rebuttal on Tuesday, would that be fair? No, it wouldn't be fair Because you would have heard their arguments today, three days to forget them, and now Mr Dry gets the last word So I wasn't going to let that happen. And I apologize to you, but we had to do this I hope you can understand.

All right, I'm going to have you come in on Tuesday, have your Labor Day like everybody else Please don't discuss the case with anyone or allow anyone to discuss it with you And please don't review any media items relating to this case I'm sure there will be plenty over the weekend. But continue to abide by your oath and avoid any media items

What we have left, I, of course, have to instruct you on the law I would like you to come in at 9:30 again on Tuesday, and then I'll get into these instructions, and within a couple of hours you all will have the case and begin your deliberations Again, be vigilant, be careful, and be safe Absolutely And we are holding onto one alternate over here, and my prayers are with you. But you all be very, very safe and we will see you on Tuesday morning at 9:30 Enjoy your holiday

(The jury left the courtroom.)

(Proceedings adjourned at 6:21 p.m)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

September 2, 2014
Richmond, Virginia
9:45 a.m.

JURY TRIAL - VOLUME XXVI

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
DAVID V. HARBACH, II, ESQ.
JESSICA D. ABER, ESQ.
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Counsel for Maureen G McDonnell

JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day twenty-six, Case Number 3:14-CR12: United States of America versus Robert F McDonnell and Maureen G McDonnell The United States is represented by Michael Dry, David Harbach, Jessica Aber, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, and Christopher Iaquinto Maureen G McDonnell is represented by Heather Martin, William Burck, Stephen Hauss, and Daniel Koffmann. Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed

MR. BURCK: Maureen McDonnell is ready to proceed.

MR. ASBILL: Robert McDonnell is ready to proceed.

THE COURT: All right I understood we had some preliminaries on some exhibits

MR. NEWMAN: Yes, Your Honor There are two that have been apparently partially admitted, but we want to make clear that RM-0178 is admitted in full, and that RM-0505-0001 through RM-0505-0039 are admitted as well

THE COURT: All right Thank you

MR. NEWMAN: If I can have a moment, Your Honor, there's two other things -- actually, one other thing I'd like to bring up I would just like to renew our objections to the jury instructions just for the record, both with respect to the instructions we opposed and with respect to our instructions that the Court rejected That's it

THE COURT: Sure I don't know how many times you can object to them.

MR. NEWMAN: I'll sit down.

THE COURT: I don't think there is any question. You had two hours' worth of objections, and now, fine, your objection is noted Anything else over here? Okay Government?

MS ABER: Yes, Your Honor As to the matter of forfeiture, I have been instructed to put on the record, please, that the government notes that Rule 32 2(b)(5)(A) directs the Court to determine before the jury begins deliberating whether either party wants the jury to make a determination as to the forfeitability of specific property if the jury returns a guilty verdict The government is not seeking forfeiture of tangible items, and thus, there is no jury determination of forfeiture that is required or permitted under the rules In the event of a conviction, though, the United States would file a motion for a forfeiture of money judgment after trial in accordance with Rule 32 2(b)(1)(A) Thank you.

THE COURT: All right Do you all want to

respond to that?

MR. NEWMAN: Your Honor, we think that the jury should decide that if Mr McDonnell is convicted. It shouldn't up for you to decide There could be an APPRENDI problem, so we just note our objection and would ask that the jury make that determination if Mr McDonnell is convicted.

THE COURT: All right

MR. BURCK: We join in that

THE COURT: Okay

THE COURT: All right If indeed the jury returns a verdict that allows forfeiture --

MS ABER: Your Honor, the United States was not aware of the defendants' belief on this point until ten seconds ago. We will happily file jury instructions as to forfeiture But I think under Rule 32 2(b)(1)(A), it says that the Court makes the determination as to the amount of money that the defendant will be ordered to pay in the event of a personal money judgment

THE COURT: All right

MS ABER: We will do whatever the Court wants on that front

THE COURT: What the Court wants to do now is get to instructing this jury And so what I will do is, if this comes to pass, I will, if I deem it appropriate, allow the jury to go back and make determinations on the forfeiture issue That's something we may have to deal with, and maybe not So we will see. All right Let's bring in the jury

(The jury entered the courtroom.)

Good morning Glad to see everybody made it back.

All right, I'm going to instruct you on the law this morning And I'll move through this swiftly at some points, deliberately at others, but I want you to know that we will be providing you copies of exactly what I am going to be reading to you right now so that you will have those available So I want you to pay attention and listen as I provide these instructions to you.

They are rather lengthy I will probably take one break I'll see how I'm feeling, but at least one break to get through these All right

Members of the jury: You have now heard all of the evidence in the case as well as the final arguments of the lawyers It becomes my duty, therefore, to instruct you on the rules of law that you must follow and apply in arriving at your decision in this case

In any jury trial there are, in effect, two judges I am one of the judges, and the other is the jury It is my duty to preside over the trial and to decide what testimony and evidence is relevant under the law for your consideration It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict

Now, you as jurors are judges of the facts But in determining what actually happened in this case, that is, in reaching your decision as to the facts, it is your sworn duty to follow the law I am now in the process of defining for you. You must follow all my instructions as a whole You have no right to disregard or give special attention to any one instruction or to question the wisdom or correctness of any rule I may state to you That is, you must not substitute or follow your own notion or opinion as to what the law is or ought to be It is your duty to apply the law as I give it to you, regardless of the consequences

By the same token, it is also your duty to base your verdict solely upon the testimony and evidence in the case without prejudice or sympathy That was the promise you made and the oath you took before being accepted by the parties as jurors in this case They have the right to expect nothing less

Now, counsel have quite properly referred to some of the applicable rules of law in their closing arguments to you If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you, of course, are to be governed by the instructions given to you by the Court

I instruct you that you must presume the defendants to be innocent of the crimes charged Thus, the defendants, although accused of crimes in the indictment, began the trial with a clean slate, with no evidence against them. The law permits nothing but legal evidence presented before the jury in Court to be considered in support of any charge against the defendants The presumption of innocence alone is sufficient to acquit the defendants

The indictment, or formal charge against the defendant, is not evidence of guilt Indeed, the defendant is presumed by law to be innocent The law does not require a defendant to prove his or her innocence or to produce any evidence at all And no inference whatever may be drawn from the election of a defendant not to testify

The United States has the burden of proving him or her guilty beyond a reasonable doubt And if it fails to do so, you must acquit him or her

While the burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt It is only required that the proof by the United States exclude any reasonable doubt concerning the defendant's guilt If you find that the United States has met this burden, then you must convict the defendant

Now, as stated earlier, it is your duty to determine the facts. And in so doing, you must consider only the evidence I have admitted in the case The term "evidence" includes the sworn testimony of witnesses and the exhibits admitted into the record, as well as anything stipulated to by the parties

Remember that any statements, objections, or arguments made by the lawyers are not evidence in the case The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice

In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

Also, during the course of the trial, I occasionally made comments to the lawyers or asked questions of a witness or admonished a witness concerning the manner in which he or she should respond to the questions of counsel Do not assume from anything I may have said that

I have any opinion concerning any of the issues in this case Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own findings as to the facts

While you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case

You may consider either direct or circumstantial evidence Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness Circumstantial evidence is proof of a chain of facts and circumstances indicating either the guilt or innocence of the defendant The law makes no distinction between the weight to be given to either direct or circumstantial evidence It requires only that you weigh all of the evidence and be convinced of the defendant's guilt beyond a reasonable doubt before he or she can be convicted.

Now, I often use this example to bring home the difference between direct and circumstantial evidence Let's suppose for a moment that you were standing in your home, in your bedroom, at 11 p.m. about to retire for the evening And it is a cold winter night And just before you go to bed, you stand at your window and look outside, and there is nothing out of order It is a clear, cold night And you go to bed. And you wake up the next morning at 6 a.m. or 7 a.m., whatever your preference, and you get up and you look out the same window. Again, it is clear and cold, with one difference: There's six inches of snow on the ground. Right? Now, you cannot give direct testimony that it snowed during the night You didn't see it You didn't see the snow drifting down to the ground. But the fact that there's six inches of snow on the ground is circumstantial evidence that it snowed during the night We get to the same place The evidence is just as meaningful, direct or circumstantial

You must during your deliberations decide what weight shall be given to the evidence To do this, you must determine the credibility or truthfulness of the witnesses who have testified before you You are not required to believe the testimony of any witness simply because he or she was under oath You may believe the testimony given by any witness in whole, in part, or not at all

In testing the credibility of witnesses, you may consider any relationship a witness may have to either side of the case, and his or her interest, if any, in the verdict to be rendered. You may consider the behavior of the witness upon the witness stand, what we refer to as demeanor; their manner of testifying; the reasonableness and the probability of their testimony being true or not true; the opportunity they had to see, hear, and know the things about which they testified; the accuracy of their memories; their candor or lack of candor; and their intelligence, interest, and bias, if any You may consider the extent to which, if at all, the testimony given by any witness is supported or contradicted by other evidence in the case You should consider, in sum, all of the circumstances surrounding the testimony of a given witness You may apply the tests of truthfulness I have mentioned as well as any such tests you are accustomed to applying in your own daily lives to weigh and determine the value and credibility of the statements made by each witness

The credibility of a witness may be discredited or impeached by evidence showing that the general reputation of the witness for truthfulness is bad, or by testimony in the form of an opinion that the witness's character for truthfulness is bad If you believe a witness has been so impeached, and thus discredited during this trial, it is your exclusive right to give the testimony of that impeached witness such weight, if any, you think it deserves You may consider this evidence of a witness's bad character for truthfulness as one of the circumstances you assess in determining whether or not to believe the testimony of that witness.

You should judge the testimony of defendant, Robert McDonnell, in the same manner as you judge the testimony of any other witness in this case.

A defendant in a criminal case has an absolute right under our Constitution not to testify The fact that a defendant did not testify must not be discussed or considered in any way when deliberating and arriving at your verdict in this case No inference of any kind may be drawn from the fact that a defendant decided to exercise her privilege under the Constitution and did not testify As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence

A witness may be discredited, or impeached, by contradictory evidence by showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony If you believe that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves

The testimony of an immunized witness, someone who has been told either that his or her crimes will go unpunished in return for testimony, or that his testimony will not be used against him in return for his cooperation, must be examined and weighed by the jury with greater care than the testimony of someone who is appearing in Court without the need for such an agreement with the government. Jonnie Williams is an immunized witness in this case The jury must determine whether the testimony of an immunized witness has been affected by self interest or by the agreement he has with the government, or by his own interest in the outcome of this case, or by prejudice against the defendant

You have heard the testimony of several law enforcement officials The fact that a witness may be employed by the federal government as a law enforcement official, or by the state government as a law enforcement official, does not mean that his testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness

At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that his testimony may be colored by a personal or professional interest in the outcome of the case It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement witness and to give that testimony whatever weight, if any, you find it deserves

The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses By the same token, you do not have to accept the testimony of any witness who has not been contradicted or impeached if you find the witness not to be credible You also have to decide which witnesses to believe and which facts are true To do this, you must look at all the evidence, drawing upon your own common sense and personal experience After examining all the evidence, you may decide that the party calling the most witnesses has not persuaded you because you do not believe its witnesses or because you do not believe -- or because you do believe the fewer witnesses called by the other side

Testimony and exhibits can be admitted into evidence during a trial only if it meets certain criteria or standards It is the sworn duty of the attorney on each side of a case to object when the other side offers testimony or an exhibit which that attorney believes is not properly admissible under the rules of law Only by raising an objection can a lawyer request and obtain a ruling from the Court on the admissibility of the evidence being offered by the other side. You should not be influenced against an attorney or his or her client because the attorney made objections Do not attempt, moreover, to interpret my rulings on objections as somehow indicating how I think you should decide this case I am simply making a ruling on a legal question regarding that particular piece of testimony or exhibit

Now, the questions asked by lawyers for any party to this case are not evidence If a lawyer asks a question of a witness which contains an assertion of fact, you may not consider the assertion by the lawyer as any evidence of that fact Only the answers are evidence

The Rules of Evidence ordinarily do not permit witnesses to testify as to their own opinions or their own conclusions about important questions in a trial An exception to this rule exists as to those witnesses who are described as expert witnesses An expert witness is someone who, by education or experience, may have become knowledgeable in some technical, scientific, or very specialized area If such knowledge or experience may assist you in understanding some of the evidence or in determining a fact, an expert witness in that area may state an opinion as to a matter in which he or she claims to be an expert And in this case, as I recall, there was only one witness accepted as an expert, and that was Mr. Kosowsky, the CPA. He was the financial expert

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves You should consider the testimony of the expert witness just as you consider other evidence in this case If you should decide that the opinion of an expert witness is not based upon sufficient education or experience, or if you should conclude that the reasons given in support of the opinion are not sound, or if you should conclude that the opinion is outweighed by other evidence, including that of other non-expert witnesses, documentary evidence, or your common sense, you may disregard the opinion in part or in its entirety You, the jury, are the sole judges of the facts of this case

Some charts and summaries have been admitted into evidence from both sides and have been shown to you during the trial for the purpose of explaining facts that are contained in books, records, or other documents or other testimony that are also in evidence in the case or that have not been admitted into evidence because they are voluminous You may consider the charts and summaries as you would any other evidence admitted during the trial and give them such weight or importance, if any, as you feel they deserve

Now, Robert McDonnell and Maureen McDonnell have been charged with one count of conspiracy to commit honest services fraud and one count of conspiracy to commit extortion under color of official right And I will instruct you on these charges shortly If you find Robert McDonnell not guilty of conspiracy to commit honest services fraud, as charged in Count One of this indictment, then you cannot consider any of Maureen McDonnell's conduct in determining whether Robert McDonnell committed honest services fraud as charged in Counts Two through Four Likewise, if you find Robert McDonnell not guilty of conspiracy to commit extortion under color of official right, as charged in Count Five, then you cannot consider any of Maureen McDonnell's conduct in determining whether Robert McDonnell committed extortion under color of official right as charged in Counts Six through Eleven

Now, we come to the offense instructions Count One charges conspiracy to commit honest services wire fraud Count One of the indictment charges that from in or about April, 2011 through in or about March, 2013, in the Eastern District of Virginia and elsewhere, defendants, Robert F McDonnell and Maureen G. McDonnell, did knowingly and intentionally conspire with each other and with others, both known and unknown to the grand jury, to commit wire fraud; that is, having devised and intending to devise a scheme and artifice to defraud the citizens of Virginia of their right to the honest services of the Governor of Virginia through bribery, to transmit and cause to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice in violation of Title 18 United States Code Section 1343

Count One of the indictment further charges that a purpose of the conspiracy was for the defendants to secretly use Robert McDonnell's official position as Governor of Virginia to enrich the defendants and their family members by soliciting and accepting payments, loans, gifts, and other things of value from Jonnie Williams, Sr and Star Scientific in exchange for Robert McDonnell and the Office of the Governor of Virginia performing official actions on an as-needed basis as opportunities arose to legitimize, promote, and obtain research studies for Star Scientific products

Count One also charges that the manner and means by which the defendants would and did carry out the conspiracy included, but were not limited to, the following:

A: The defendants soliciting and obtaining, both directly and indirectly, for themselves and their family members, financial payments, loans, gifts, and other things of value from Jonnie Williams, Sr and Star Scientific.

B: The defendants taking steps to conceal from the citizens of Virginia the things of value received from Jonnie Williams, Sr and Star Scientific in order to hide the nature and scope of their dealings with Jonnie Williams, Sr , including by routing things of value through family members and corporate entities controlled by the Governor in an effort to avoid annual disclosure requirements on the Governor's Statement of Economic Interests

C: Robert McDonnell and the office of the Governor of Virginia providing favorable action on behalf of Jonnie Williams, Sr , and Star Scientific as opportunities arose, including the official actions set forth in five paragraphs which read as follows:

First: Arranging meetings for Jonnie Williams, Sr with Virginia government officials who were subordinates of the Governor to discuss and promote Anatabloc;

Second: Hosting and the defendants attending events at the Governor's Mansion designed to encourage Virginia university researchers to initiate studies of anatabine and to promote Star Scientific products to doctors for referral to their patients;

Third: Contacting other government officials in the Office of the Governor of Virginia as part of an effort to encourage Virginia state research universities to initiate studies of anatabine;

Fourth: Promoting Star Scientific's products and facilitating its relationships with Virginia government officials by allowing Jonnie Williams, Sr to invite individuals important to Star Scientific's business to exclusive events at the Governor's Mansion;

Fifth: Recommending that senior government officials in the Office of the Governor of Virginia meet with Star Scientific executives to discuss ways that the company's products could lower healthcare costs

All in violation of Title 18 U S Code Section 1349

Now, the statute that undergirds the charge in Count One, conspiracy to commit honest services fraud, reads as follows: Title 18 U S Code Chapter 63, Section 1349, provides in pertinent part: Any person who conspires to commit any offense under this Chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the conspiracy In turn, Title 18 U S Code Chapter 63, Section 1343, provides in pertinent part: Whoever, having devised or intending to devise any scheme or artifice to defraud, transmits or causes to be transmitted by means of wire communication in interstate commerce any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice shall be guilty of an offense against the United States

In turn, Title 18 U S Code Chapter 63, Section 1346, provides in pertinent part: For the purpose of this Chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services

Now, the elements of the offense as charged in Count One, conspiracy to commit honest services wire fraud, are as follows, and the government must prove these elements beyond a reasonable doubt. And there are three essential elements

First: That the conspiracy, agreement, or understanding to commit honest services wire fraud as charged in the indictment was formed, reached, or entered into by two or more persons

Second: That at some time during the existence or life of the conspiracy, agreement, or understanding, the defendant you are considering knew the purpose of the agreement

Third: That with knowledge of the purpose of the conspiracy, agreement, or understanding, the defendant you are considering then deliberately joined the conspiracy, agreement, or understanding

A criminal conspiracy is an agreement or mutual understanding knowingly made or knowingly entered into by at least two people to violate the law by some joint or common plan or course of action. A conspiracy is, in a very true sense, a partnership in crime

A conspiracy or agreement to violate the law, like any other kind of agreement or understanding, need not be formal, written, or even expressed directly in every detail. The government must prove that the defendant you are considering, and at least one other person, knowingly and deliberately arrived at an agreement or understanding that they, and perhaps others, would violate some laws by means of some common plan or course of action as alleged in the indictment It is proof of this conscious understanding and deliberate agreement by the alleged members that should be central to your consideration of the charge of conspiracy

To prove the existence of a conspiracy or an illegal agreement, the government is not required to produce a written contract between the parties, or even produce evidence of an express oral agreement spelling out all of the details of the understanding To prove that a conspiracy existed, moreover, the government is not required to show that all of the people named in the indictment as members of the conspiracy were in fact parties to the agreement, or that all of the members of the alleged conspiracy were named or charged, or that all of the people whom the evidence shows were actually members of the conspiracy agreed to all of the means or methods set out in the indictment

Unless the government proves beyond a reasonable doubt that a conspiracy as I've just explained actually existed, then you must acquit the defendants

Before the jury may find that a defendant or any other person became a member of the conspiracy charged in Count One of the indictment, the evidence in the case must show beyond a reasonable doubt that the defendant you are considering knew the purpose or goal of the agreement or understanding, and deliberately entered into the agreement intending in some way to accomplish the goal or purpose by this common plan or joint action.

If the evidence establishes beyond a reasonable doubt that the defendant you are considering knowingly and deliberately entered into an agreement to commit the offense alleged in Count One of the indictment, the fact that the defendant did not join the agreement at its beginning, or did not know all of the details of the agreement, or did not know all of his or her co-conspirators, or did not participate in each act of the agreement, or did not play a major role in accomplishing the unlawful goal, or had only a slight connection with the conspiracy, is not important to your decision regarding membership in the conspiracy

Merely associating with others and discussing common goals, mere similarity of conduct between or among such persons, merely being present at the place where a crime takes place or is discussed, or even knowing about criminal conduct, does not of itself make someone a member of the conspiracy or a conspirator

The government is not required to prove that the parties to or members of the alleged agreement or conspiracy were successful in achieving any or all of the objects of the agreement or conspiracy

Now we come to the substantive counts, Two through Four Number One was the conspiracy count, and it was conspiracy to commit honest services wire fraud Counts Two through Four are actual honest services wire fraud counts

Counts Two through Four of the indictment charge that on or about the respective dates shown below, each such date constituting a separate count of this indictment, within the Eastern District of Virginia and elsewhere, defendants, Robert F McDonnell and Maureen G. McDonnell, and others known and unknown to the grand jury, knowingly and intentionally, having devised and intended to devise a scheme and artifice to defraud the citizens of Virginia of their right to the honest services of the Governor of Virginia through bribery for purposes of executing such scheme and artifice, transmitted and caused to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures, and sounds that is the following Count Two: The date, 5-26-2011, May 26th, 2011, wire communication from BB&T Bank, in the Eastern District of Virginia, to a location outside the Commonwealth of Virginia to cause the transfer of funds from $15,000 check from Jonnie Williams, Sr via Starwood Trust to wedding catering company account with BB&T

The third count: The date, March 12th of the year 2012, a wire communication from TowneBank, in the Eastern District of Virginia, to a location outside the Commonwealth of Virginia, to cause the transfer of funds from a $50,000 check from Jonnie Williams, Sr via Starwood Trust to MoBo Realty account with TowneBank

The fourth count: The date, May 22nd of the year 2012, a wire communication from the Eastern District of Virginia to BB&T Bank, a BB&T Bank location outside the

Commonwealth of Virginia, caused the transfer of $20,000 from Jonnie Williams, Sr via Starwood Trust to MoBo Realty account with TowneBank.

All in violation of Title 18 U S Code Sections 1343 and Section 2

Now, the statute which undergirds Counts Two through Four, honest services wire fraud Title 18 U S Code Chapter 63 Section 1343 provides in pertinent part: Whoever having devised or intended to devise any scheme or artifice to defraud transmits or causes to be transmitted by means of wire communication in interstate commerce any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be guilty of an offense against the United States And Title 18 U S Code Chapter 63 Section 1346 provides in pertinent part: For purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services

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Now, the elements of the offense of honest services wire fraud To prove honest services wire fraud as charged in Counts Two through Four, the government must prove four essential elements beyond a reasonable doubt First: That the defendant you are considering knowingly devised or participated in a scheme to defraud the public of its right to the honest services of a public official through bribery as charged in each count Second: That the defendant you are considering did knowingly and with an intent to defraud did so knowingly and with an intent to defraud The second element: That the defendant you are considering did knowingly -- did so knowingly and with an intent to defraud The third element: That the scheme and artifice to defraud involved a material misrepresentation, false statement, false pretense or concealment of a material fact And the fourth element: That in advancing or furthering or carrying out the scheme to defraud, the defendant you are considering transmitted or caused to be transmitted the writing, sign, signal, picture or sound alleged by means of a wire communication in interstate commerce as charged in each count

Now, the first element of honest services wire fraud is that the defendant you are considering knowingly devised or participated in the scheme or artifice to defraud the public of its right to a public official's honest services through bribery

A scheme is a plan or course of action formed with the intent to accomplish some purpose. Thus, the government must prove beyond a reasonable doubt that the defendant you are considering devised or participated in a plan or course of action involving bribes given or offered to a public official or solicited or accepted by a public official

It is not necessary to find that the defendant was actually successful in defrauding anyone, nor is it necessary to find that anyone was actually deprived of the right to a public official's honest services through bribery An unsuccessful scheme or plan is as illegal as a scheme or plan that is ultimately successful

Public officials, such as governors, owe a duty to the public When a public official devises or participates in a bribery scheme, that official violates the public's right to that public official's honest services This is because although the public official is outwardly purporting to be exercising independent judgment in passing on official matters, in fact, the official has been paid for his official actions The public is defrauded because the public is not receiving what it expects and is entitled to; namely, the public official's honest services

Additionally, a defendant need not be a public official to be guilty of this offense. A private citizen, for instance, does not owe a duty of honest services to the public, but can be found guilty of honest services fraud if that defendant devises or participates in a bribery scheme intended to deprive the public of its right to a public official's honest services

Now, a definition of this term bribery that you've heard a number of times Bribery involves the exchange of a thing or things of value for official action by a public official In other words, a quid pro quo You've heard that phrase, the Latin phrase, meaning "this for that" or "these for those " Bribery means that a public official demanded, sought or received something of value as described in the indictment and that the public official demanded, sought or received the item of value corruptly in return for being influenced in the performance of any official act Bribery also includes a public official's solicitation or agreement to accept a thing of value in exchange for official action whether or not the payor actually provides the thing of value and whether or not the public official ultimately performs the requested official action or intends to do so Thus, it is not necessary that the scheme actually succeeded or that any official action was taken by the public official in the course of the scheme What the government must prove is that the defendant you are considering knowingly devised and participated in a scheme or artifice to defraud the public and the government of their right to a public official's honest services through bribery

Corruptly means having an improper motive or purpose An act is done corruptly if it is performed knowingly and dishonestly for a wrongful purpose

The public official and the payor need not state the quid pro quo in express terms Otherwise, the law's effects -- or effect could be frustrated by knowing winks and nods Rather, the intent to exchange may be established by circumstantial evidence, based on the defendant's words, conduct, acts, and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them

The thing of value in a bribery exchange need not be provided directly or indirectly to the public official, but may be provided to another person or entity at the public official's request or with the public official's agreement

A public official need not have solicited or accepted the thing of value only in exchange for the performance of official action If you find beyond a reasonable doubt that a public official solicited or received a thing of value at least in part in exchange for the performance of official action, then it makes no difference that the public official may also have had another lawful motive for soliciting or accepting the thing of value.

The government need not prove that the thing of value caused the public official to change his position In other words, it is not a defense to claim that a public official would have lawfully performed the official action in question anyway, regardless of the bribe It is also not a defense that the official action was actually lawful, desirable, or even beneficial to the public. The offense of honest services fraud is not concerned with the wisdom or results of the public official's decisions or actions, but rather with the manner in which the public official makes his or her decisions or takes his or her actions

Now, you've heard this term official action several times, and I will define it for you The term official action means any decision or action on any question, matter, cause, suit, proceeding, or controversy, which may at any time be pending, or which may by law be brought before any public official, in such public official's official capacity Official action as I just defined it includes those actions that have been clearly established by settled practice as part of a public official's position, even if the action was not taken pursuant to responsibilities explicitly assigned by law In other words, official actions may include acts that a public official customarily performs, even if those actions are not described in any law, rule, or job description. And a public official need not have actual or final authority over the end result sought by a bribe payor so long as the alleged bribe payor reasonably believes that the public official had influence, power or authority over a means to the end sought by the bribe payor In addition, official action can include actions taken in furtherance of longer-term goals, and an official action is no less official because it is one in a series of steps to exercise influence or achieve an end

The second element of honest services wire fraud as charged in Counts Two through Four is that the defendant you are considering devised or participated in the scheme knowingly and with the specific intent to defraud

Intent to defraud means to act knowingly and with the specific intent to deceive, for the purpose of depriving the public and government of their right to a public official's honest services

The third element of honest services wire fraud as charged in Counts Two through Four is that the scheme or artifice to defraud involved a material misrepresentation, false statement, false pretense, or concealment of a fact A statement, representation, claim, or document is false if it is untrue when made and was then known to be untrue by the person making it or causing it to be made A representation, statement, false pretense, or omission is material if it has a natural tendency to influence or is capable of influencing a decision or action by the public official or the government office or agency that employed the public official

The phrase "transmit -- transmits or causes to be transmitted by means of wire communication in interstate commerce" means to send or cause to be sent from one state to another by means of telephone or telegraph lines The phrase "transmits or caused to be transmitted by means of wire communication in interstate commerce" includes causing a telephone conversation by a person in one state with a person in another state It also means causing e-mail communication or other communication through servers connected to the Internet from a person or server in one state to a person or server in another

The use of a wire communication facility in interstate commerce is an essential element of the offense of wire fraud charged in Counts Two through 4 of the indictment The wire communication need not contain a fraudulent representation or purpose or request for money

It must, however, further or assist in the carrying out of the scheme to defraud It is not necessary for the defendants to be directly or personally involved in a communication, as long as the communication was reasonably foreseeable in the execution of the alleged scheme to defraud in which you find that the defendants agreed to have participated

Evidence that the defendant you are considering agreed to cause a communication by others is sufficient This does not mean that the defendant you are considering must specifically have authorized others to do the communication When one does an act with knowledge that the use of a wire communication will follow in the ordinary course of business or where such use of a communication can reasonably be foreseen, even though not actually intended, then one causes the interstate wire communication to be used It is not necessary that the defendant you are considering know that a wire communication will be between states

Now, as First Lady of Virginia, defendant Maureen G McDonnell was not a public official and did not owe a duty of honest services to the citizens of Virginia As such, she cannot be guilty of depriving the public of her honest services

Rather, as alleged by the government in this case, Maureen McDonnell can be guilty of the substantive offense of honest services wire fraud only if you find that she conspired with Robert McDonnell at the time he was Governor of the Commonwealth of Virginia to deprive the citizens of Virginia of their right to the Governor's honest service

This is based on the legal rule that a member of a conspiracy who commits another crime during the existence or life of a conspiracy and commits this other crime in order to further or somehow advance the goals or objectives of the conspiracy, may be found by you to be acting as the agent of the other members of the conspiracy. The illegal actions of this person in committing this other crime may be attributed to other individuals who are then members of the conspiracy. Under certain conditions, therefore, a defendant may be found guilty of this other crime even though he or she did not participate directly in the acts constituting the offense

If you find that the government has proven Maureen McDonnell guilty of conspiracy beyond a reasonable doubt, as charged in Count One of the indictment, you may also find Maureen McDonnell guilty of the substantive offense of honest services wire fraud as alleged in Counts Two through Four of the indictment, provided you find that the essential elements of these counts as defined in these instructions has been established beyond a reasonable doubt, and further -- and provided further, that you also find beyond a reasonable doubt that one: The substantive offense of honest service wire fraud as described in Counts Two through Four of the indictment was committed by Robert McDonnell Two: That Robert McDonnell committed the substantive crime of honest services wire fraud during the existence or life of and in furtherance of the goals or objectives of the conspiracy detailed in Count One of the indictment. And three: At the time that this offense was committed, Maureen McDonnell was a member of the conspiracy as detailed in Count One of the indictment

However, if the government has not proved beyond a reasonable doubt that the conspiracy as detailed in Count One of the indictment existed or if the government has not proven beyond a reasonable doubt that Robert McDonnell committed the crime of honest services fraud, then you must acquit Maureen McDonnell of Counts Two through Four

We come now to Count Five, the nature of the offense charged In Count Five, conspiracy to obtain property under color of official right Count Five of the indictment charges that from in or about April 2011 through in or about March 2013, in the Eastern District of Virginia and elsewhere, defendants Robert F McDonnell and Maureen G McDonnell did knowingly and intentionally conspire with each other and with others, both known and unknown to the grand jury, to obstruct, delay, and affect in any way and degree commerce, and the movement of articles and commodities in commerce, by extortion, as those terms are defined in Title 18 U S Code, Section 1951, that is to obtain property, not due Robert McDonnell or his office and to which Robert McDonnell was not entitled, from Jonnie Williams, Sr and Star Scientific, with their consent, under color of official right All in violation of Title 18, U S Code, Section 1951

The statutes Title 18, U S Code, Section 1951(a) provides in pertinent part that whoever conspires to in any way or degree obstruct, delay, or affect commerce or the movement of any article or commodity in commerce by extortion is guilty of an offense against the United States

In turn, Title 18, U S Code, Section 1951(b)(2) provides in pertinent part the term "extortion" means obtaining of property from another, with his consent, under color of official right In addition, Title 18, U S Code, Section 1951(b)(3) provides in pertinent part the term "commerce" means all commerce between any point in any state, territory, possession, or the District of Columbia and any point out outside thereof; all commerce between points within the same state through any place outside such state; and all other commerce over which the United States has jurisdiction

Now, to prove a conspiracy as charged in Count Five, the government must prove the same three elements beyond a reasonable doubt that they have to prove for Count One I've already explained to you the elements of the conspiracy I'll go through these elements again

First: That the conspiracy, agreement, or understanding to obtain property under color of official right, as charged in the indictment, was formed, reached, and entered into by two or more persons Second: That at some time during the existence or life of the conspiracy, agreement, or understanding, the defendant you are considering knew the purpose of the agreement And third: With knowledge of the purpose of the conspiracy, agreement, or understanding, the defendant you are considering then deliberately joined the conspiracy, agreement, or understanding

The other conspiracy instructions which I gave you earlier with respect to Count One apply acknowledgment ally to this conspiracy count as alleged in Count Five

All right We've been sitting for an hour We're going to take a break Let's make it 15 minutes

(Recess taken from 10:52 a m until 11:13 a m)

(The jury entered the courtroom)

THE COURT: All right We'll now discuss Counts Six through Eleven These are substantive counts of obtaining property under color of official right Counts Six through Eleven of the indictment charge that on or about the respective dates shown below, each such date constituting a separate count of this indictment, within the Eastern District of Virginia and elsewhere, defendants Robert F McDonnell and Maureen G McDonnell and others known and unknown to the grand jury, knowingly and intentionally attempted to, did, and cause each other and others to obstruct, delay, and effect in any way and degree commerce, the movement of articles and commodities in commerce, by extortion, as those terms are defined in Title 18, U S Code, Section 1951, that is the defendants attempted to obtain, did obtain, and cause each other and others to obtain the property listed below not, due Robert McDonnell or his office and to which Robert McDonnell was not entitled, from Jonnie Williams, Sr and Star Scientific, with their consent, under color of official right: Count Six, the date May 23rd, 2011, a $50,000 check from Starwood Trust Count Seven, May 23rd, 2011, a $15,000 check from Starwood Trust Count Eight, May 29th, 2011, $2,390 in green fees, caddie fees, merchandise, and dining expenses at Kinloch Golf Club Count Nine, January 7th, 2012, $1,424 in green fees, caddie fees, merchandise, and dining expenses as Kinloch Golf Club March -- Count Ten, March 6, 2012, $50,000 check from Starwood Trust Count Eleven, May 22nd, 2012, a $20,000 wire transfer from Starwood Trust. All in violation of Title 18, U S Code, Section 1951 and Section 2

The statute Title 18, U S Code, Section 9151(a) provides in pertinent part whoever, in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by extortion or attempts so to do is guilty of an offense against the United States

Title 18, U S Code, Section 1951(b)(2) provides in pertinent part the term "extortion" means the obtaining of property from another, with his consent, under color of official right

In addition, Title 18, U S Code, Section 1951(b)(3) provides in pertinent part the term "commerce" means all commerce between any point in any state, territory, possession, or the District of Columbia and any point outside thereof; all commerce between points within the same state through any place outside such state; and all other commerce over which the United States has jurisdiction

The elements of the offense of obtaining property under color of official right are as follows To prove the crime of obtaining property under color of official right against defendant Robert F McDonnell as charged in Counts Six through Eleven, the government must prove each of the following elements beyond a reasonable doubt First: That the defendant was a public official Second: That the defendant obtained a thing of value not due him or his offense Third: The defendant did so knowing that the thing of value was given in return for official action And fourth: That in so acting, the defendant did or attempted in any way or degree to delay, obstruct, or affect interstate commerce, or an item moving in interstate commerce

The second element, that defendant Robert McDonnell obtained a thing of value not due him or his office, means that defendant Robert McDonnell obtained a thing of value that was not legitimately owed to the office the defendant represented The government does not have to prove that the thing of value given was of personal benefit to the defendant Robert McDonnell Nor does the government have to prove that the thing of value was given to defendant Robert McDonnell directly; if the defendant knows that the thing of value was given in return for Robert McDonnell's official actions, it does not matter that they were given to a third party

The government does have to prove beyond a reasonable doubt that the thing of value obtained was not due or owing the office which defendant Robert McDonnell represented

To satisfy the third element, the government must prove beyond a reasonable doubt that defendant Robert McDonnell obtained a thing of value to which he was not entitled, knowing that the thing of value was given in return for official action Defendant Robert McDonnell need not have affirmatively induced the provision of the thing of value by his actions, but he must have known that the thing of value was given in exchange for official action You do not have to determine whether defendant Robert McDonnell could or did actually perform the official action in return for which the thing of value was given, or whether he actually had a duty to do so

As was the case with bribery, the exchange, or quid pro quo, need not be stated in expressed terms, and the intent to exchange can be inferred from all the surrounding circumstances

Furthermore, as also was the case with bribery, given -- a given thing of value need not be correlated with a specific official action, and a thing or things of value may be given with the intent to retain a public official's services on an as-needed basis, so that as opportunities arise the public official would take specific official action on the payor's behalf As also was the case with bribery, the government need not prove that the thing of value caused defendant Robert McDonnell to change his position If defendant Robert McDonnell obtained a thing of value to which he was not entitled, knowing the thing of value was given in return for official actions, it is not a defense that he would have lawfully performed the official action anyway, regardless of the thing of value

Finally, the instructions I gave with respect to the definition of "official action" for the purposes of honest services fraud charges apply equally to the definition of official action for the purposes of Counts Five through Eleven

To find the interstate commerce element satisfied, it is not necessary to find that a defendant actually intended to obstruct, delay, or affect commerce Rather, the government need not only prove that the defendant you are considering deliberately performed or attempted to perform an act, the ordinary and natural consequences of which would be to obstruct, delay, or affect commerce The effect on interstate commerce need only be slight, and it need not be adverse Proof that the extortion under color of official right would have affected interstate commerce, even if minimally and even if positively, is sufficient However, if you determine that there has been no effect on interstate commerce, or that there could not have been any effect on interstate commerce, then you cannot find the defendant guilty

To prove the crime of obtaining property under color of official right against defendant Maureen G McDonnell as charged in Counts Six through Eleven, the government must prove each the following elements beyond a reasonable doubt First: That the defendant Robert McDonnell committed each of the essential elements of the crime of obtaining property under color of official right Second: That the defendant Maureen McDonnell knew that the crime of obtaining property under color of official right was to be committed or was being committed. Third: That the defendant Maureen McDonnell knowingly did some act for the purpose of aiding the commission of that crime Fourth: That the defendant Maureen McDonnell acted with the intention of causing the crime charged to be committed

It is not sufficient for the government to prove that defendant Maureen McDonnell was merely present at the scene of the crime or merely knew that a crime was being committed or about to be committed The government must prove that defendant Maureen McDonnell knowingly and intentionally associated herself with the crime in some way as a participant, someone who wanted the crime to be committed, not as a mere spectator

Counts Twelve and Thirteen Count Twelve of the indictment charges that on or about October 3rd, 2012, within the Eastern District of Virginia and elsewhere, the defendant Robert F McDonnell knowingly made a false statement and report for the purpose of influencing the action of TowneBank, the accounts of which were insured by the Federal Deposit Insurance Corporation, upon an application, commitment, and loan, and any change and extension of any of the same, by renewal, deferment of action, and otherwise, in that on Robert McDonnell's personal financial statement submitted to TowneBank, he stated that his liabilities totaled $2,075,000, when in truth and in fact, as the defendant well knew, Robert McDonnell owed as least $50,000 to Jonnie Williams, Sr that was not reflected on his personal financial statement and was not included in the total liabilities listed

Count Thirteen Count Thirteen of the indictment charges that on or about February 1st, 2013, within the Eastern District of Virginia and elsewhere, defendants Robert F McDonnell and Maureen G McDonnell knowingly made a false statement and report for the purpose of influencing the action of Pentagon Federal Credit Union, a federal credit union, upon an application, commitment, and loan, and any change and extension of any of the same, by renewal, deferment of action, and otherwise, in that on the joint Uniform Residential Loan Application submitted to Pentagon Federal Credit Union, the defendants listed total liabilities of $2,837,226 and listed no loans from or liabilities to Jonnie Williams, Sr. when in truth and in fact, as the defendants well knew, defendants had received at least $120,000 in loans from Jonnie Williams, Sr that were not reflected on their joint Uniform Residential Loan Application and were not included in the total liabilities listed All in violation of Title 18, U S Code, Sections 1014 and 1014 and 2 These are the charges as it relates to Counts Twelve and Thirteen

Now the statute in regards to these charges Title 18, U S Code, Section 1014 provides in pertinent part whoever knowingly makes any false statement or report for the purpose of influencing in any way the action of a federal credit union or any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, upon any application, commitment, loan, or a guarantee, or any change or extension of any of the same, by renewal, deferment of action or otherwise, is guilty of an offense against the United States

To prove the false statements charged in Counts Twelve and Thirteen, the government must prove three essential elements beyond a reasonable doubt First:

That the charged defendant or defendants made a false statement or report Second: That the charged defendant or defendants did so for the purpose of influencing in any way the action of a federal credit or any bank whose deposits are insured by the Federal Deposit Insurance Corporation, as charged in Counts Twelve and Thirteen, upon any application, commitment, loan, guarantee, or any change or extension of any of the same, by renewal, deferment of action, or otherwise And third: That the charged defendant or defendants did so knowingly

To satisfy the second element charged in Counts Twelve and Thirteen, the government must prove beyond a reasonable doubt that the charged defendant or defendants made the false statement alleged for the purpose of influencing the institution The government need not show, however, that the statement in fact would have affected the institution's process or that the outcome of the application or renewal would have been different What the government has to show is that the defendant or defendants made the false statement alleged for the purpose of trying to influence the lender in any way In addition, it is not a defense that the defendant you are considering may have had additional motives for making the false statement alleged so long as you find that one such motive was to influence the institution

Count Fourteen of the indictment charges that in or about March 2013, within the Eastern District of Virginia and elsewhere, the defendant Maureen G McDonnell attempted to and did corruptly obstruct, influence, and impede an official proceeding of the grand jury; that is, Maureen McDonnell wrote and caused to be delivered a handwritten note to Jonnie Williams, Sr in which she falsely attempted to make it appear that she and Jonnie Williams, Sr had previously discussed and agreed that the defendant would return certain designer luxury goods rather than keep them permanently All in violation of Title 18, U S Code, Sections 1512(c)(2) and Section 2

The statute which allows Count Fourteen, Title 18, U S Code, Section 1512(c) provides in pertinent part whoever corruptly obstructs, influences, or impedes any official proceeding or attempts to do so is guilty of an offense against the United States In turn, Title 18, U S Code, Section 1515(a)(1) defines an official proceeding for the purposes of 1512 to include a proceeding before a federal grand jury

In addition, Title 18, U S Code, Section 1512(f)(1) provides in pertinent part an official proceeding need not be pending or about to be instituted at the time of the offense

In addition Title 18, U S Code, Section 1512(g) provides in pertinent part in a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance that the official proceeding before a grand jury or government agency is before a federal grand jury or a federal government agency.

To prove the obstruction of an official proceeding charged in Count Twelve, the government must prove three essential elements beyond a reasonable doubt First: That the defendant obstructed, influenced, or impeded an official proceeding, or attempted to do so Second: That the defendant did so or attempted to do so corruptly; that is, voluntarily, deliberately, and for the purpose of improperly obstructing, influencing, or impeding an official proceeding And third: That the defendant either knew about an official proceeding or that the natural and probable effect of the conduct would interfere with an official proceeding

With respect to the elements above, the term "official proceeding" includes a proceeding before a federal grand jury

I also mentioned the word "attempt" with respect to both elements To find that the defendant attempted to commit the offense charged, the government must prove that the defendant did act constituting a substantial step toward the commission of the crime charged

Moreover, the government need not prove that the official proceeding at issue was pending or about to be instituted at the time of the charged offense The government also does not need to prove that the defendant Maureen McDonnell knew that the official proceeding was or would be before a grand jury that was federal in nature

You may have noted when I outlined the statutes involved in this case, I would also say Section 2 That is an aiding and abetting section I will now explain to you what aiding and abetting is about Aiding and abetting liability reflects the principle that a person may violate the law even though he or she does not personally do each and every act constituting the offense if that person aided and abetted the commission of the offense Aiding and abetting applies only to Counts Two through Four, Six through Eleven and Thirteen of the indictment in this case

Section 2(a) of Title 18 of the United States Code provides whatever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal

Before a defendant may be held responsible for aiding and abetting others in the commission of a crime, it is necessary that the government prove beyond a reasonable doubt that the defendant knowingly and deliberately associated himself or herself in some way with the crime charged and participated in it with the intent to commit the crime

In order to be found guilty of aiding and abetting the commission of the crimes charged in charged in Count Two through Four, Six through Eleven, or Thirteen of the indictment, the government must prove beyond a reasonable doubt that the defendant you are considering knew that the crime charged was to be committed or was being committed Second: Knowingly did some act or the purpose of aiding the commission of that crime And third: Acted with the intention of causing the crime to be committed

Before the defendant you are considering may be found guilty as an aider or an abettor to the crime, the government must also prove beyond a reasonable doubt that someone committed each of the essential elements of the offense charged

Again, merely being present at the scene of a crime or merely knowing that a crime is being committed or is about to be committed is not sufficient conduct for the jury to find that the defendant aided and abetted the commission of that crime

The government must prove that the defendant you are considering knowingly and intentionally associated themselves with the crime in some way as a participant, someone who wanted the crime to be committed, not as a mere spectator

Now, a statement made with good faith belief in its accuracy does not amount to a false statement and is not a crime This is so even if the statement is, in fact, erroneous.

Also, if a defendant believed in good faith that he or she was acting properly, even if he or she was mistaken in that belief, and even if others were injured by his or her conduct, there would be no crime

The burden of establishing lack of good faith and criminal intent rests upon the prosecution A defendant is under no burden to prove his or her good faith Rather, the prosecution must prove knowledge of falsity or bad faith beyond a reasonable doubt

When the attorneys on both sides stipulate or agree as to the existence of a fact, you may accept the stipulation as evidence and regard the fact as proved You are not required to do so, however, since you are the sole judges of the facts

You will note that the indictment charges that the offense was committed on or about a certain date The proof need not establish with certainty the exact date of the alleged offense It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged

The word "knowingly," as that term has been used from time to time in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident

The term "intentionally," as used in these instructions, means to act deliberately and purposefully That is, the defendants' acts must have been the product of their conscious objective rather than the product of a mistake or accident

The intent of a person or the knowledge that a person possesses at any given time may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind In determining the issue of what a person knew or what a person intended at a particular time, you may consider any statements made or acts done by that person and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge or intent

Now, the defendants have offered evidence of their good character for various traits The jury should consider this evidence along with all other evidence in the case in reaching its verdict

Evidence of a defendant's character that is inconsistent with those traits of character ordinarily involved in the commission of the crimes charged may give rise to a reasonable doubt since the jury may think it improbable or unlikely that a person with the defendant's character would commit such crimes

Notwithstanding the evidence of character, if, after weighing all the evidence, you are convinced beyond a reasonable doubt that the defendants are guilty of the crimes charged, you should find them guilty On the other hand, evidence of good character alone may create a reasonable doubt as to a defendant's guilt.

The government has produced testimony relating to Mr McDonnell's compliance with Virginia's gift and disclosure laws You may not consider that testimony as evidence that Mr McDonnell violated Virginia law by failing to report certain gifts and loans on his annual Statement of Economic Interests There has been no suggestion in this case that Mr McDonnell violated Virginia law

Robert F McDonnell and Maureen G McDonnell are on trial together In reaching a verdict, however, you must bear in mind that your verdict is individual Your verdict as to each defendant must be determined separately, solely on the evidence, or lack of evidence, presented against each defendant without regard to the guilt or innocence of anyone else

The indictment contains the total of 14 counts Each count charges a defendant with a different crime

There are two defendants on trial before you You must, as a matter of law, consider each count of the indictment and each defendant's involvement in that count separately, and you must return a separate verdict on each defendant for each count in which he or she is charged

I caution you, members of the jury, that you are here to determine the guilt or innocence of the accused from the evidence in this case The defendants are not on trial for any act or conduct or offense not alleged in the indictment Neither are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case

Also, the punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the Court or the judge, and should never be considered by the jury in any way in arriving at an improper verdict as to the guilt or innocence of the accused

Now, you likely have noticed throughout the trial that counsel for the defendants have consulted with each other and have divided the of the trial in an effort to facilitate their presentation and to avoid duplication

The fact that defense counsel have consulted and cooperated with each other in the conduct of their defense is not to be considered by you as having any significance with respect to the issues in the case The issue of each defendant's guilt is personal, and you must make a separate determination as to whether or not each defendant's guilt has been proven beyond a reasonable doubt In making that judgment, you are to disregard entirely the circumstance that counsel for the defendants have worked together during the trial Indeed, especially in a case of this length, it would be unusual and wasteful of time and effort if counsel did not share the burdens of the defense

Any verdict must represent the considered judgment of each juror In order to return a verdict, it is necessary that each juror agree thereto In other words, your verdict must be unanimous

It is your duty as jurors to consult with one another and to deliberate in an effort to reach agreement if you can do so without doing violence to individual judgment Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purposes of returning a verdict

Remember at all times, you are not partisans You are judges Judges of the facts Your sole interest is to seek the truth from the evidence in the case

Now, during your deliberations, you should not discuss or provide any information about the case with anyone This includes discussing the case in person, in writing, by phone, or by any electronic means, via text messaging, e-mail, Facebook, LinkedIn, Twitter, blogging or any Internet chat room, website or other feature In other words, do not talk to anyone outside this jury on the phone or in person, correspond with anyone or communicate by electronic means about this case with anyone except with your fellow jurors and only then while you are in the jury room

If you are asked or approached in any way about your jury service or anything about this case, you should respond that you have been ordered by the judge not to discuss the matter, and you should report the contact to the Court as soon as possible

Along the same lines, you must not try to access any information about the case or do any research on any issue that arose during the trial from any outside source, including dictionaries, reference books, or anything on the Internet. Information that you may find on the Internet or in a printed reference might be incorrect or incomplete In our court system, it is important that you not be influenced by anyone or anything outside of this courtroom Your sworn duty is to decide this case solely and wholly on the evidence that was presented to you in this courtroom

Now, upon retiring to the jury room, your first order of business is to select one from your number to act as your foreperson, and the foreperson will simply be your spokesperson here in open court

We've prepared a verdict form for your use. And let me describe it and explain it to you This is a five-page, typewritten document At the top of the first page you will find the -- what we refer to as the style of the case, UNITED STATES OF AMERICA v ROBERT F MCDONNELL and MAUREEN G MCDONNELL, and then the legend "Verdict " And below that you come, first of all, to Count One It explains what Count One is, conspiracy to commit honest services wire fraud

And then there's a place for you to write in your verdict For instance, "We, the jury, unanimously find the defendant Robert F McDonnell" -- write in "guilty" or "not guilty," as the case be -- "as charged in Count One in the indictment " And then similarly, "We, the jury, unanimously find the defendant Maureen G McDonnell" -- "not guilty" or "guilty," as the case may be -- "as charged in Count One of the indictment "

And it goes on like this through all of the counts You will note that in Count Twelve, Robert McDonnell is -- is charged alone In Count Fourteen, Ms McDonnell is charged alone

Now, once you all have deliberated and come to unanimous verdicts on all of the charges and counts, the foreperson will sign the verdict form and date it The foreperson will let the marshal know that you've reached a verdict, and then what we will do is bring you out and receive the verdict in open court

Now, if between now and the time that you reach a unanimous verdict you have some question or note, some inquiry, what I would like for you to do is the foreperson will write that question or inquiry down Again, sign and date the note Give it to the marshal, who will then bring it to me And in the normal circumstance, if it's a question or inquiry that I can respond to, I will bring you into court and answer the question

Now, notice I said if it's something that I can respond to Sometimes jurors ask for things that I can't give you And if that's the case, I'll send you a note back saying I appreciate your question and your inquiry, but I can't answer that But if it's something that I can appropriately respond to, I will bring you out here

Now, one caveat about that If that happens, if there's some question or inquiry and I have to bring you out here, we don't ever want to know how you stand until you reach a unanimous verdict We don't want to know if you're eight to four or nine to three or whatever the situation is Don't say that, on the foreperson Don't put that in your head Don't come out and say something like that If you have written down the question, we will communicate that way

Now, the exhibits will be available to you They'll be coming to you swiftly And if -- if there's something in particular that you want -- we will make sure all these exhibits that have been admitted will come to you We have a DVD player for any audio or video that you want to look at And, of course, lunch will be provided to you throughout this process while you're deliberating

And I -- I come down to what is just an extremely difficult task We have to say good-bye, sort of, to our alternate, Ms *** (Juror Number 0431) And I say "sort of" for this reason; that although you won't, obviously, begin deliberating with this group of 12, we want you to continue to maintain your oath until we call you and let you know that everything is over Because, obviously, and we certainly hope and pray that nothing happens to any of these jurors, but believe me, in 28 years I have seen this kind of thing happen Somebody gets sick or have a problem, then we have to bring the alternate back in So we want you to continue to stay away from any news coverage, any media items Don't talk to anybody about it We will get your information so that we can contact you directly to let you know when you can be at ease All right

And then I really want to say how much I thank you for your participation in this case You have been attentive and you've been here on time and eager and a cheerful spirit, and there's nothing like taking on a tough task And I know it's tough Believe me, I know it's tough But the spirit of this jury in total has been terrific, and Ms *** (Juror Number 0431) in particular Just a good trooper And I want you to know, we really, really appreciate it All right And so, Ms *** (Juror Number 0431), you can now be excused And you will be hearing from us

(The juror exited the courtroom)

THE COURT: All right And whoever is chosen as foreperson, when you sign the verdict form or any notes that you might send out Please print your name because the handwriting has been a lost start So many times I get the scribble I don't know who it is And so please, print the name as well so that I can know who our foreperson is

And with that, we will send you out to begin your deliberations As I said, select your foreperson, and we'll take care of you in terms of your food and so on We will -- again, I -- you take your time It's your business now And we will wait -- await to hear from you And you've got a lot to go through, I know And so as -- if we go on into the afternoon and evening, what we normally do, if that happens, we will stop at our normal time of 5:30 and come back the next day and begin your deliberations again

If that happens, as I say -- it's up to you This is your business now But if that happens and you have to go home, when you come back, you can't start deliberating until I bring you back in here, bring us back in session, and then send you back out All right So don't come in and -- if we have to come in tomorrow morning, don't come in and just sit down and start your work Don't do that Just come in We bring you in Bring you back in session, and then you can start your deliberation Okay I think that's everything We're good All right Just follow, and we'll wait to hear from you

(The jury left the courtroom)

THE COURT: All right We'll be in --

MR ASBILL: Judge --

THE COURT: Yes Come on up

(At Bench)

MR ASBILL: I think there may be a mistake on that On the top of that instruction, it should read Count Fourteen rather than Count Twelve

MR FAULKNER: Which instruction?

THE COURT: This is Number 58 It should be Fourteen, and it says Count Twelve And we'll make the correction

MR FAULKNER: Your Honor, also, just so you know, we have a copy of the redacted indictment as you requested on here

THE COURT: Sure

MR ASBILL: Could we see a copy of that?

THE COURT: You all take a look This is redacted Okay I think we're good

MR ASBILL: Thank you, sir

MR BURCK: Thank you

THE COURT: All right We will await the jury's call

(In Open Court)

(Recess taken from 11:59 a.m. to 5:30 p.m.)

THE COURT: All right, bring them in.

(The jury entered the courtroom.)

All right, we are going to adjourn for the day and send you all home. I'd like for you to come in tomorrow at 9:45 As I told you before, when you come in at 9:45, I will bring you in, open up the session, and send you back out to deliberate. All right, so you all continue to abide by your oath and do not review any media items relating to this case, and don't discuss the case with anyone, and be ever vigilant against anyone approaching you at this stage of the case especially

So be careful and be safe, and we will see you tomorrow at 9:45

(The jury left the courtroom.)

We will be in adjournment until 9:45

(Proceedings adjourned at 5:33 p.m.)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

September 3, 2014
Richmond, Virginia
9:45 a.m.

JURY TRIAL - VOLUME XXVII

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES:
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JEFFREY B. KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day twenty-seven, Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell The United States is represented by Michael Dry, Jessica Aber, David Harbach, and Ryan Faulconer Robert F McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, and Christopher Iaquinto Maureen G. McDonnell is represented by Heather Martin, William Burck, Stephen Hauss, and Daniel Koffmann Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed.

MR. ASBILL: Mr McDonnell is ready, Your Honor

MR. BURCK: Maureen McDonnell is ready, Your Honor

THE COURT: All right Let's bring in the jury, please

(The jury entered the courtroom.)

All right, good morning Glad to have you back. Everybody looks to be healthy and in good shape We will send you out now to continue your deliberations, and we will wait to hear from you All right, just follow the Marshal

(The jury left the courtroom.)

(Recess taken from 9:51 a.m. to 5:30 p.m.)

THE COURT: All right, let's bring in the jury

(The jury entered the courtroom.)

All right, we are going to let you go home with the same admonition that you have been getting every day: Please don't review any media items relating to this case, and don't allow anyone to discuss this case with you. We are going to have you back in at 9:45 tomorrow I keep doing 9:45 primarily because I know that a couple of you come from some distance Now, tomorrow I'm going to be starting another matter, and we start at 9 o'clock. So when you come in at 9:45, I'll have to get them out of the way and bring you in and then let you start your deliberations So it might not be as swift as it was this morning, but it will be a matter of minutes, but it may take a little bit longer So anyway, we will see you at 9:45 Be safe and be strong We will see you tomorrow at 9:45

(The jury left the courtroom.)

All right, we will be in adjournment until tomorrow at 9 o'clock.

(Proceedings adjourned at 5:29 p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL and
MAUREEN G. McDONNELL,

Defendants

September 4, 2014
Richmond, Virginia
9:55 a.m.

JURY TRIAL - VOLUME XXVIII

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES:

MICHAEL S DRY, ESQ.
DAVID V HARBACH, II, ESQ.
JESSICA D. ABER, ESQ
RYAN S FAULCONER, ESQ.
RICHARD D. COOKE, ESQ
Counsel for Government;

JOHN L. BROWNLEE, ESQ
HENRY W ASBILL, ESQ.
DANIEL I SMALL, ESQ.
JAMES M BURNHAM
CHRISTOPHER M. IAQUINTO, ESQ.
TIMOTHY J TAYLOR, ESQ
Counsel for Robert F McDonnell;

WILLIAM A. BURCK, ESQ
HEATHER H. MARTIN, ESQ
STEPHEN M. HAUSS, ESQ
DANIEL KOFFMANN, ESQ.
Counsel for Maureen G McDonnell

JEFFREY B KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Day twenty-eight, Case Number 3:14CR12: United States of America versus Robert F. McDonnell and Maureen G. McDonnell. The United States is represented by Michael Dry, Jessica Aber, David Harbach, and Ryan Faulconer. Robert F McDonnell is represented by John Brownlee, Henry Asbill, Daniel Small, James Burnham, and Christopher Iaquinto Maureen G McDonnell is represented by Heather Martin, William Burck, and Stephen Hauss Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed.

MR. BURCK: Maureen McDonnell is ready to proceed.

MR ASBILL: Mr McDonnell is ready to proceed, Your Honor

THE COURT: All right Let's bring them in.

(The jury entered the courtroom.)

All right, you all can be seated. Good morning Good to see everybody I'm glad to have you back. Everybody looks great, raring to go We are going to send you back now to get back into your deliberations And as I say every morning, we will await your call All right, you may follow the Marshal

(The jury left the courtroom.)

All right, we will go down briefly and get set up on the civil case Thank you See you later

(Recess taken from 9:57 a.m. to 2:50 p.m.)

THE COURT: All right, I understand the jury has concluded its deliberations Let's bring in the jury, please

(The jury entered the courtroom.)

All right, you all can be seated. Will the Foreperson please rise? I understand that you all have reached a verdict?

THE FOREPERSON: Yes, Your Honor

THE COURT: Would you give it to the Marshal, please? Thank you. You can have a seat

(Verdict form proffered to the Court)

All right, Madam Clerk, would you publish the verdict, please?

THE CLERK: Ladies and gentlemen of the jury, this is your verdict

Case Number 3:14CR12: United States of America versus Robert F McDonnell and Maureen G. McDonnell Verdict

Count One, Conspiracy to Commit Honest Services Wire Fraud: We, the jury, unanimously find the defendant, Robert F McDonnell, guilty as charged in Count One of the Indictment We, the jury, unanimously find the defendant, Maureen G McDonnell, guilty as charged in Count One of the Indictment

Count Two, Honest Services Wire Fraud: We, the jury, unanimously find the defendant, Robert F. McDonnell, guilty as charged in Count Two of the Indictment We, the jury, unanimously find the defendant, Maureen G McDonnell, guilty as charged in Count Two of the Indictment

Count Three, Honest Services Wire Fraud: We, the jury, unanimously find the defendant, Robert F McDonnell, guilty as charged in Count Three of the Indictment We, the jury, unanimously find the defendant, Maureen G. McDonnell, guilty as charged in Count Three of the Indictment

Count Four, Honest Services Wire Fraud: We, the jury, unanimously find the defendant, Robert F McDonnell, guilty as charged in Count Four of the Indictment We, the jury, unanimously find the defendant, Maureen G. McDonnell, not guilty as charged in Count Four of the Indictment

Count Five, Conspiracy to Obtain Property under Color of Official Right: We, the jury, unanimously find the defendant, Robert F McDonnell, guilty as charged in Count Five of the Indictment We, the jury, unanimously find the defendant, Maureen G. McDonnell, guilty as charged in Count Five of the Indictment

Count Six, Obtaining Property under Color of Official Right: We, the jury, unanimously find the defendant, Robert F McDonnell, guilty as charged in Count Six of the Indictment We, the jury, unanimously find the defendant, Maureen G McDonnell, guilty as charged in Count Six of the Indictment

Count Seven, Obtaining Property under Color of Official Right: We, the jury, unanimously find the defendant, Robert F McDonnell, guilty as charged in Count Seven of the Indictment We, the jury, unanimously find the defendant, Maureen G McDonnell, guilty as charged in Count Seven of the Indictment

Count Eight, Obtaining Property under Color of Official Right: We, the jury, unanimously find the defendant, Robert F McDonnell, guilty as charged in Count Eight of the Indictment We, the jury, unanimously find the defendant, Maureen G. McDonnell, guilty as charged in Count Eight of the Indictment

Count Nine, Obtaining Property under Color of Official Right: We, the jury, unanimously find the defendant, Robert F McDonnell, guilty as charged in Count Nine of the Indictment We, the jury, unanimously find the defendant, Maureen G. McDonnell, not guilty as charged in Count Nine of the Indictment

Count Ten, Obtaining Property under Color of

Official Right: We, the jury, unanimously find the defendant, Robert F McDonnell, guilty as charged in Count Ten of the Indictment We, the jury, unanimously find the defendant, Maureen G McDonnell, guilty as charged in Count Ten of the Indictment.

Count Eleven, Obtaining Property under Color of Official Right: We, the jury, unanimously find the defendant, Robert F McDonnell, guilty as charged in Count Eleven of the Indictment We, the jury, unanimously find the defendant, Maureen G. McDonnell, not guilty as charged in Count Eleven of the Indictment

Count Twelve, False Statement: We, the jury, unanimously find the defendant, Robert F McDonnell, not guilty as charged in Count Twelve of the Indictment

Count Thirteen, False Statement: We, the jury, unanimously find the defendant, Robert F McDonnell, not guilty as charged in Count Thirteen of the Indictment We, the jury, unanimously find the defendant, Maureen G McDonnell, not guilty as charged in Count Thirteen of the Indictment

Count Fourteen, Obstruction of Official Proceeding: We, the jury, unanimously find the defendant, Maureen G McDonnell, guilty as charged in Count Fourteen of the Indictment

So say we all this 4th day of September, *** (Juror Number 0337), Foreperson.

Do counsel wish the jury polled?

MR BROWNLEE: Yes, Your Honor

MR BURCK: Yes, Your Honor

THE CLERK: Jurors, as I call your name, if this is your verdict, please respond by answering "Yes "

Juror Number 0401, ***

THE JUROR: Yes

Juror Number 0044, ***

THE JUROR: Yes.

Juror Number 0012, ***

THE JUROR: Yes

Juror Number 0432, ***.

THE JUROR: Yes

Juror Number 0399, ***

THE JUROR: Yes

Juror Number 0248, ***

THE JUROR: Yes

Juror Number 0337, ***

THE JUROR: Yes

Juror Number 0398, ***

THE JUROR: Yes

Juror Number 0487, ***

THE JUROR: Yes

Juror Number 0067 ***

THE JUROR: Yes

Juror Number 0324, ***

THE JUROR: Yes

Juror Number 0117, ***

THE JUROR: Yes

THE COURT: All right Ladies and gentlemen, let me thank you all for your service Obviously, you have sacrificed in a major, major way And if I had a thousand tongues, I wouldn't be able to tell you how much we appreciate the sacrifice you have made in this case You have spent a lot of time, paid a lot of attention, you have been here and done your duty, beyond the call of duty And I want you to know that we appreciate it And I'm going to walk down here and shake your hand as you leave But thank you so much for giving us your time, and I know it has been a difficult task, but I thank you for your sacrifice

(The jury left the courtroom.)

What about January 6th for sentencing?

MR. DRY: That's fine with the United States, Your Honor

MR. BROWNLEE: Fine, Your Honor

MR BURCK: That will be fine

THE COURT: All right We will get started at 10 o'clock

(Defendants and counsel executing sentencing documents)

All right, Ms McDonnell and Mr McDonnell, if you would just stand up where you are, please.

(Defendants stood.)

Mr McDonnell and Ms McDonnell, your matters have been placed on the Court's calendar for sentencing, to commence at 10 a.m. on January 6th of the year 2015 In the interim, somebody from the Probation Department will be in touch with you to discuss matters relating to this case and your background if you so desire If you are willing to be involved in that conversation, you have a right to have your lawyers present, and I would urge you to exercise that right The Probation Officer will do a Presentence Report, and that Presentence Report will go a long ways toward determining what will be your sentence in this matter That completes this matter We will take a break and get back into the civil case Thank you all very much

(Proceedings adjourned at 3:10 p.m.)

CERTIFICATE OF REPORTER

I, Jeffrey B. Kull, Official Reporter, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter

__________/s/_________________

Jeffrey B Kull,
Official Federal Reporter

__________/s/_________________

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

v

Criminal Action
3:14CR12

ROBERT F McDONNELL

Defendant.

January 6, 2015
Richmond, Virginia
10:00 a.m.

SENTENCING PROCEEDINGS

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S DRY, ESQ.
DAVID V HARBACH, II, ESQ.
JESSICA D ABER, ESQ.
RYAN S FAULCONER, ESQ.
RICHARD D. COOKE, ESQ.

Counsel for Government;

JOHN L. BROWNLEE, ESQ.
HENRY W ASBILL, ESQ.
TIMOTHY J TAYLOR, ESQ.
JAMES M. BURNHAM, ESQ.
NOEL J FRANCISCO, ESQ.
THOMAS B. SHUTTLEWORTH, II, ESQ.

Counsel for Robert F McDonnell;

JEFFREY B. KULL
OFFICIAL COURT REPORTER

P-R-O-C-E-E-D-I-N-G-S

THE CLERK: Case Number 3:14CR12: United States of America versus Robert F McDonnell The United States is represented by Michael Dry, Jessica Aber, David Harbach, Ryan Faulconer, and Richard Cooke Robert F McDonnell is represented by John Brownlee, Henry Asbill, James Burnham, Noel Francisco, and Thomas Shuttleworth. Are counsel ready to proceed?

MR. DRY: The United States is ready to proceed.

MR. BROWNLEE: Mr McDonnell is ready, Your Honor.

THE COURT: All right. Government?

MR. DRY: Your Honor, we are here for Mr McDonnell's sentencing today He was convicted on Count One of conspiracy to commit honest services mail fraud in violation of 18 U S.C. 1349; Counts Two through Four, he was convicted of honest services wire fraud in violation of 18 U S C. 1343; Count Five, he was convicted of conspiracy to obtain property under color of official right in violation of 18 U S.C. 1951; and Count Six through Eleven, he was convicted of obtaining property under color of official right, also in violation of 18 U S C. 1951 On each count of conviction he faces a maximum sentence of 20 years of imprisonment, a maximum of three years of supervised release, a maximum of a $250,000 fine, and a $100 special assessment on each count

The Presentence Report calculates the defendant's Offense Level of 32, Criminal History Category 1 That leads to an Advisory Guidelines Range of 121 to 151 months The United States has no corrections or objections to the Presentence Report.

The defendant has many unresolved objections The parties have submitted more than 220 pages of briefing and their respective positions are well known to this Court, and the government is ready to proceed in any manner the Court so chooses

THE COURT: All right Thank you. Mr McDonnell, would you stand up where you are, please?

(Defendant stood.)

Mr McDonnell, have you had an adequate opportunity to review the Presentence Report and discuss it with your lawyers?

THE DEFENDANT: Yes, Your Honor

THE COURT: All right, thank you You can have a seat Counsel for Mr McDonnell, would you approach the lectern? Counsel, have you had an adequate opportunity to review this Presentence Report and discuss it with your client?

MR. BROWNLEE: Yes, Your Honor

THE COURT: Now, I understand you have a number of objections Do you have any corrections or amendments to the Presentence Report as offered?

MR. BROWNLEE: Not as of this morning, Your Honor We have made all our filings, and we rely on those for any corrections, Your Honor

THE COURT: All right. I'll hear any objections that you deem appropriate

MR. BROWNLEE: Thank you very much, Your Honor We just have a couple of points And again, we rely on our papers and we appreciate the Court reviewing all those We do have a couple points we would like to raise, to highlight for the Court this morning, and we will get right to that.

First, I want to just let the Court know that, from all counsel and Mr McDonnell, we want to thank the Probation Officer, Mr Brown, for his professionalism in this As you can imagine, we submitted a lot of paper He was extremely patient with us, responded every time, and we do appreciate that and wanted to let the Court know

THE COURT: Thank you.

MR. BROWNLEE: I have two issues I'd like to raise: The value of things obtained, I'd like to talk about that briefly, Your Honor, and then the obstruction of justice

With regard to the value of things obtained, there were essentially 12 items that the Probation Officer used to come up to the approximately $177,000 figure Six of those were charged. Of the charged six, three were the loans. I'll talk about those in second. The other six were uncharged. That equals about 38,000, just a hair under $38,000

It is our view that none of the charged conduct or charged amounts should be treated as relevant conduct. These were not submitted to the jury, and they simply could have been The jury did not have an opportunity to pass on these So there is no evidence in the record, we believe, sufficient to treat these as relevant conduct

A couple, I want to highlight just a couple of these, Your Honor, particularly the shopping trip for Ms McDonnell We believe the evidence in the record is that these things were kept from Mr McDonnell, at least the source of who paid for them. Mr Williams certainly didn't testify he told Mr McDonnell Mr McDonnell testified he did not know that Mr Williams had paid for these items for his wife Submissions indicate as well that Ms McDonnell intentionally kept these And if you believe, if you look at the record in total, this case kind of started in a meeting in New York about the purchase of another dress, and I think the lessons learned from that is when he learned about it, he and his staff shut it down. We don't believe that 20,000, or a little under 20,000, should be treated as relevant conduct.

In addition, a very small amount, but the work that Mr Williams' brother, Donnie, did for the McDonnells I think the evidence is from his own testimony that he did not submit a bill until the work was completed, which was later on, I think in March. When it was submitted, it was paid. And we don't believe there is any evidence in the record that this should be treated as relevant conduct pursuant to the bribery convictions

Then lastly, the trip to Chatham, Massachusetts, as well as the Smith Mountain Lake boat trip Again, I think it is less than $10,000 But these items were disclosed on his SOEI It was our understanding that items were not placed on the SOEI in an effort to disguise them or hide them or deceive those because they believe that these were bribe payments These were freely disclosed on the SOEI at that time through normal process. So we just don't believe those things should be treated as well Let me -- that's all I have on that, Your Honor

Let me move to the loans, if I may, which is probably the most significant, Your Honor The Probation Officer treated for calculations of the $177,000 $120,000, just the face value of the loan. We believe the case law, particularly the FITZHUGH case and the government has essentially, I think, recognized this, is not the proper way to do it. When these are loans and they are actual loans, as we believe these are, I think all the evidence in the record is that these were real, enforceable loans There was paperwork involved in the loans They were booked as loans on Mr Williams' internal paperwork within his company It is true that there was no loan agreement, but in Virginia that's not necessary And the fact that there was no collateral, there was no collateral with the Dr Davis loan, and so we believe that these were real loans.

Indeed, part of the Government's case, if I recall, Your Honor, is that because they were enforceable loans, because they were real, Mr McDonnell should have placed these on some of these bank documents. It is part of, I think the government at the time at least argued to the jury that those are real enforceable, loans and should have been disclosed on those paperwork, and so we believe they are loans Once they are treated and there is a recognition they are a loan, then the real effort by the Court is to determine the value of getting the Williams loan versus the value of some other type of comparable loan

We have filed in our paperwork the IRS standard.

I think the government has put some standards out as well through Agent Hulser's affidavit. I do think that what makes the most sense, it seems, if the Court is not inclined to go with our IRS analysis, which we believe is the best one, is the secondary one, which is the Dr Davis loan. This was a loan that he had recently given He was more than willing to do it The McDonnells had paid it back with interest in a timely manner If we are looking at something that's comparable, I think the Dr Davis loan is a place the Court could go and feel comfortable.

The only difference would be that, as the Court is aware, the Dr Davis loan, the first one was in December of '09 If you look at the interest rates at that time, and we noticed, put this in one of our footnotes in one of our final briefs about this, if you look at the T-bills, just to see how interest rates were being treated, between March of 2010, a T-bill was 2 43 percent By May of 2012, when Mr Williams loaned the last 20,000, it was down to 76, a drop of about 75 percent. So what we did, if you look at the T-bill rates and how they dropped over time, if you apply those changes to the Dr Davis loans, what you get is a 5 63 percent loan for the first 50,000, 3 15 percent for the second, and 2 325 And all that is is applying the change in the T-bill rates to the Dr Davis loan. What you get is a net advantage to the McDonnells from using Mr. Williams as opposed to Dr. Davis of $12,841 And then the final piece to that, Your Honor, then I'll close, is that if you take that difference, $12,841.53, and you add everything else, if you include all the relevant conduct as the Probation Officer has found, plus everything else, the three charged conduct, you get a total of $69,640 53, which for Guidelines calculation purposes is plus six as opposed to plus ten.

So we believe, and we have put this in our papers, and I know the Court has looked at it, we believe that that is the appropriate level, 69,000, as opposed to the 177,000

Let me move on finally to the obstruction of justice The Probation Officer and the government believe that the defendant should receive a two-point enhancement for obstruction of justice We strongly dispute this, Your Honor Let me touch on a couple points that were touched on in our papers but I'd like to highlight

First of all, I think if you look at Mr McDonnell's conduct throughout the trial, this is not a man who tried to obstruct the proceedings I think one note here is his handwritten notes As the Court is aware, Mr McDonnell was subpoenaed for records He got his handwritten notes, gave it to his lawyers, and they were turned over Mr Asbill argued that this should reflect on Mr McDonnell at the trial And government counsel responded that because there was a subpoena, he had an obligation to turn it over, but had he not, he would have been violating another law, which would have been obstruction. I think that's telling as to how he conducted himself within this trial

There's other examples of where witnesses had a different understanding of what happened. Lisa Hicks-Thomas, in the meeting that the Court has referenced, versus Sara Wilson. There was a dispute between those two. When he was asked about it, he could have very easily said, "Sara Wilson is right " That would have been in his interest But what did he do? He said, "I don't really remember, I could have said that, I don't know " This was a witness who was trying to get it right

Same way with the Jasen Eige phone call What he said was, "Listen, I thought that Mr Williams deserved a call back. He had given $200,000 " Certainly not in his interest to say those things The June letter, what did he say? He could have very easily said, "I never saw it " What he said was, "I think I saw it, maybe I scanned it," trying to get it right, trying to be truthful

With the eight items that were mentioned in the Presentence Report, I'm not going to go through all of them, but I would note that the first one seems to be where the government focused most of its attention. And the case law, it is not perfect on this, but I think the essence of it is when a defendant testifies to his own mental state, that's usually not or typically not the basis for obstruction. And so he believed that he did not enter into an agreement That's his testimony. Mr Williams never testified that he entered into an agreement with Mr McDonnell If you look at some of the jurors, I know these are always difficult to do, media interviews with jurors afterwards, but even they said one of the things they looked at was would the McDonnells have received these gifts if he weren't Governor That doesn't lead one to believe that there was an agreement.

Then finally, even the Court's instruction says, "if you find beyond a reasonable doubt that a public official solicited or received a thing of value at least in part in exchange for the performance " Which leads them where they could have found that he didn't specifically do it My only point is, these are subjective mental state and I don't think these are the kind of things, particularly in light of these other things, that would warrant an obstruction bump

The other things, we just believe that there are disputes For instance, did he believe it was a wedding gift to his daughter I think the testimony was it was a wedding gift to his daughter. There's disputes about why and how it came in, but certainly the check had "Wedding Gift" on it. Others, the Molly Huffstetler meeting, the purposes behind that, again, this was not a count in the indictment. The jury never passed on why this was set up or how it was set up. Mr McDonnell's testimony was he heard about the meeting and certainly didn't want his wife there with Mr Williams alone.

With regard to that he intended his company to operate at a loss, I think what he testified is that he expected them to operate at a loss That's just an important difference, again. These are semantics. But we believe this was a man who was trying to get it right.

Lastly, the loans to MoBo. Again, these were loans to the company The company accepted the loans, the company booked the loans, and the company used the loans He has never disputed that he wasn't part of getting the loans But again, if you look at was it a lie, was it perjury? No. These in fact were loans to the company

So again, we just believe that the right amount for the loss is under 70,000, which would be plus six, and we do not believe that this defendant deserves the six-point -- I mean a two-point enhancement for obstruction of justice. Unless the Court has any questions, thank you for your time.

THE COURT: I don't have any questions. Tha
you very much Government?

MR. FAULCONER: Good morning, Your Honor Ryan Faulconer for the United States

I'm going to address the loss argument or the calculation of the value of the bribes, and then Mr Dry is going to address the obstruction argument

Before I begin, Your Honor, is there any particular area that you would like me to focus on with respect to the value of the bribes?

THE COURT: No.

MR. FAULCONER: So, Your Honor, then what I would like to do is just sort of refocus our attention a little bit on what the exact standard is that you have to apply and then respond to a few things from the defense's reply brief that were raised by Mr Kosowsky in his Declaration in response to Agent Hulser's Declaration

Turning first to the standard that Your Honor actually has to apply here: The standard is whether, or is to determine a reasonable estimate of the greater of the value of the bribes or the value of the official actions that were at issue in the quid pro quo agreement here

In making that estimate, Your Honor should look at all relevant conduct, including all reasonably foreseeable actions of others acting with the defendant.

And the standard at sentencing, as Your Honor well knows, is a preponderance of the evidence standard or more likely than not. And so ultimately, the question is here, what is more likely than not a reasonable estimate of the reasonably foreseeable bribes that were at issue here So we are not talking about here today every possible valuation or every potential calculation out there, but what is a more likely than not reasonable estimate

So looking at what we put in our briefing, Your Honor, we have given about four different ways to support the PSR's ten-level enhancement. But I'd just like to talk about the two areas that Mr Brownlee addressed.

Starting with the uncharged items, Your Honor, first and foremost, these six uncharged items, they are only uncharged in the sense that they didn't have a specific substantive count. They were charged as part of the conspiracy; they were certainly part of that course of conduct But when you look at those they only end up affecting the calculation here if you don't end up going with the face value of the loans So in some sense, Your Honor doesn't need to reach that if you go with the face value of the loans as the full value there.

But to address them briefly, there is really no argument that's being made about these quote/unquote uncharged items that's any different than the same arguments that were made about the substantive counts at trial It is all about, well, the timing wasn't explicit, or there was no explicit quid pro quo agreement All those items came over the same period of time as part of the same relationship with Mr Williams When you look at Mr Williams' testimony, it is clear there was no friendship motivation for some of these gifts. It is not like some of them were bribes and some were sort of outside of this bribe scheme It was really all one course of conduct and they all should be included in our view

Moreover, Your Honor, when it comes to the two big ticket items in this set of six additional items, it is really the shopping spree and the Rolex that we are arguing the most about over here. Again, just to bring Your Honor back to the standard, the defense has said in a bunch of different ways, "Mr McDonnell didn't know about this, he wasn't told about this, they didn't have a conversation about it." The question is not whether he knew about it for sentencing purposes The question is whether or not it was reasonably foreseeable to him.

As we pointed out to Your Honor in our

pleadings, we really think there is only two explanations One, that he did know about it -- two reasonable explanations One, that he did know about it, or two, that he should have known about it and that it was reasonably foreseeable to him given his knowledge of his wife's past conduct, given his knowledge of the circumstances that were attendant to those incidents, and given his knowledge of what was going on between him and Mr Williams

Your Honor, to move on briefly to the loan amounts, I think it is useful to highlight a couple of things that the parties do agree on here. First off, the parties agree that some loans can be valued at face value That sometimes you do go ahead and look at the face value of the loans. The parties also agree on what were the stated terms of the Williams loans There has been a little bit of back and forth about were these documented loans or undocumented loans When we have said "undocumented" we mean no loan paperwork, and there is really no disagreement on that Everybody agrees these were loans that required no payments for four or three years, depending on which loan you are talking about, that they were uncollateralized, and they had a two percent interest rate over that course of time that compounded annually Then the question is, is this one of these loans that the law says you use face value to calculate. Then what both parties have cited is you go to FITZHUGH and look at that case and that case talks about there are some loans where you use face value and some loans where you don't use face value So then the question becomes which ones do you use for which? We have said in FITZHUGH, they cite the examples of loans this in which you don't use face value and those are loans where either the guarantee is essentially worthless or unenforceable, or there are circumstances in which you couldn't have gotten that loan at any other price absent the illegal conduct that was at issue.

Then what FITZHUGH says is, well, but if you do have a comparison you are going to make, what you want to do is compare it to the quote/unquote same loan and look at what the difference in terms was on the quote/unquote same loan. I think what's important to note about that, Your Honor, is FITZHUGH is not saying that you look at a loan and say, well, all -- you have to have the exact same terms completely 100 percent and only compare that, because then you would have no delta you are actually distinguishing between. It also doesn't mean that you could look at any loan at any price with any terms and just calculate between the two. The reason for saying you look at the same loan is trying to say what is a reasonable estimate of a reasonably likely alternative that was actually available at the time.

And that brings us to what we have asked Your Honor to look at, which is their own expert on the stand during trial said basically there are a couple of options that they had. One option is these cash advances on the credit cards We have walked true that calculation for Your Honor in Agent Hulser's Declaration. If Your Honor has questions given Mr Kosowsky's Declaration, I can run through more specifics on the numbers, but I think it is pretty self-explanatory from his Declaration

One thing I do think it is useful to look at for why this is a conservative estimate, Your Honor, is I actually have a copy for one of the documents entered for Mr Kosowsky's cross-examination. If I could hand this up It is Exhibit 660 Your Honor, this is the set of credit card statements from May, 2011 when that first loan was obtained. Now, in Agent Hulser's Declaration, essentially what he did is he said as of the times of each of these loans, what were the interest rates on cash advances, and the reason why those were used was to say that's something where you can have cash in hand immediately, spend it on whatever you want, because if Your Honor remembers, there were expenses here like buying stock, making mortgage payments, making credit card payments, things you couldn't have done on a credit card, that you would have actually had cash to make Agent Hulser says, "Okay, look at cash advances " He used the interest rate starting with the most favorable ones going up to the least favorable ones. But if Your Honor looks at the actual credit card statements, if you look at the fine print, what you see on the first page here on the Visa card about two-thirds of the way down under "Payment Information" is it says "Late Payment Warning " "If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to $25 and your APR may be increased up to the penalty APR of 17 99 percent "

Then if Your Honor flips forward to the fifth page of this document, on another one of the credit cards, for I believe this is Citibank, it says that the penalty APR for making no payments would be 29 99 percent. And the reason why I wanted to highlight that for Your Honor as a point of why Agent Hulser is being conservative here is because essentially what the credit card companies are saying there is, "Look, if you want to take out cash or make charges, and you want to have access to that capital immediately, but then what you want to do is turn around and say, 'You know what, I know it is a loan, I know I owe it, but I don't want to pay anything over time or pay anything for three or four years,'" the credit card companies, economic conditions say, "You know what, we are going to jack those rates up all the way to 18 to 30 percent," those rates that are well above the average rate that Agent Hulser is calculating Essentially, his estimate for the cash advance ended up netting out, and Mr Kosowsky essentially agreed to this, netted out to a little bit over a 15 percent rate If you apply a 15 percent rate to the alternative, you would end up with more than the $63,000 or so that's necessary to clear that threshold

At the end of the day, to take a step back, what we are really saying is if you try to compare apples to apples, first off, there is no comparison out there to a loan that Jonnie Williams gave, trying to say no payments over the course of this length of time at that low of an interest rate. But if you try to compare it to what was actually available to the defendant at the time, you look at these credit cards and we gave them the benefit of assuming they wouldn't hit that penalty rate. If you hit that penalty rate it goes far in excess In some circumstances, Your Honor, what actually ends up happening is you end up paying more in interest if you pay those penalty rates than the face value of the amount you are borrowing. That's why when you have a loan like this where there are no payments required over time, we think it is reasonable first to use the face value of the loans, second to use Agent Hulser's estimate, and third off, Mr Brownlee mentioned the Dr. Davis loan; we don't think it is reasonable to say let's hypothetically speculate about what Dr Davis would have lowered the interest rates to. The only private loan at arm's length in any way that the defendants were able to get here was a seven-and-a-half percent loan Even if you go that conservative, even with a loan that's requiring payments, you would still end up with a number that would only make a difference of two levels of the Guidelines You would end up with the immediately adjacent 97 to 121 range

At the end of the day, Your Honor is equipped to make a judgment call between those two. But we think that based on the record at trial the most reasonable estimate is that the value of the loans and the value of all the other bribes was in excess of 120,000. If I could have one moment, Your Honor

THE COURT: Sure

MR. FAULCONER: Thank you, Your Honor

THE COURT: All right

MR DRY: Thank you, Your Honor I'll try to keep this brief I'd like to focus on the first area of obstruction The defendant denied ever doing anything or agreeing to do anything in exchange for things for value

When determining the obstruction, it is important to look at the actual testimony On Transcript Page 4852 the question was asked by the defendant's own lawyer on direct examination: "Question: Did you ever do anything for Williams or Star in exchange for any gifts, any loans, any money? Answer: No. Absolutely not I did not do that Question: Did you ever agree with Williams or your wife to do something for Williams or Star in exchange for gifts or loans? Answer: No Question: Did you ever promise, and I use that term broadly, in any way, written, oral, nod, wink, anything -- Answer: No. Question: -- to do something for Williams or Star in exchange for gifts or loans? Answer: No, I did not Question: Did you ever ask your wife or agree with her to try to help Star or Jonny in return for anything that was ever given to you or anyone else in your family by him? Answer: No, absolutely not "

Now, the defense argues that this is mental-state-type testimony and it cannot form the basis of an obstruction of justice enhancement. The Court should look at the sentencing of United States versus Hamilton, which occurred on August 12th, 2011 in this very courthouse That defendant was enhanced two levels for the following testimony: "Question: Did you solicit or demand a job from Old Dominion in specific in exchange for your support of a budget amendment and voting on that budget? Answer: Absolutely not. Question: Did you agree to accept and in fact accept a job from Old Dominion University in specific exchange for your support of a budget amendment and vote on that budget? Answer: Absolutely not Question: Did you seek or accept a job from Old Dominion University with the intent to be influenced in supporting a budget amendment and voting on that budget or to be rewarded for doing those things? Answer: Absolutely not Question: Did you obtain a job from Old Dominion University in exchange for your specific acts of supporting a budget amendment or voting on that amendment? Answer: Absolutely not."

Judge Hudson found that, "This testimony was directly contrary to the jury's verdict. The Court thus finds the defendant gave false testimony at trial," and enhanced for obstruction of justice by two levels

In this case, the falsity of the defendant's testimony is shown by the jury's verdict, which was found beyond a reasonable doubt Now, this Court has an independent duty to find all three elements of the obstruction of justice enhancement That includes falsity, materiality, and willfulness But the Court has already found the falsity element In its memorandum opinion denying defendant's renewed Rule 29 motion, Page

4, the Court found, "Substantial evidence supports the jury's finding that McDonnell actually performed official acts in exchange for gifts and loans from Williams."

Judge, the materiality of this, they don't even argue it is not material They couldn't It went to the heart of the Government's case, the existence of the quid pro quo agreement. As far as willfulness, this testimony was not a result of confusion, mistake, or faulty memory It was repeated and unambiguous It occurred on direct testimony The defendant admitted that he had prepared, quote, with his attorneys, quote, every day since he was indicted. And the defendant has repeated his denials in his most recent pleadings

Judge, I'm not going to go through all eight areas But that area is enough Once you find one, the obstruction enhancement applies, and in this case, it should. Thank you

THE COURT: All right Rebuttal?

MR BROWNLEE: Very briefly, Your Honor With regard to the loans, which is the best, I think we are all now in agreement that these are in fact loans and the Court should look -- so that the Presentence Report itself, the way it was designed with 120,000, the face value, is just not accurate So we have to look to another, as they say, reasonably likely alternative and then try to base it from that. And I think what they used as credit card analysis, I don't think there is any evidence in the record that that's what they did, and sometimes for smaller amounts, but nothing like this. What they did that would be comparable, that would be reasonably likely, it is included in their own affidavit by their own agent, and that's the Dr Davis loan But if you are going to go to the Dr Davis loan, it only makes sense to look at the nature of the environment with the interest rates at the time and what they would have negotiated What we do, we are not creating something out of whole cloth to try to get to some particular number All we are doing is taking what were the treasury rates, how did they change over the identical time, applying them to 7 54 percent, and then what do you get When you add everything else in, it is still under 70,000 We believe that's the most reasonably likely I will tell you one other thing we've done is we used, when I did these calculations, we used the five-year treasury note as opposed to the three Off the line it either had five or three I used the higher rate because these were balloon payments and I wanted to use a higher rate so that when the Court looked at this it could say, "Yeah, but there were balloon payments," we used the higher rate to factor that in. We ask the Court to use that rather than the most expensive one the government can find.

With regard to the shopping trip: Again, the question is, is it reasonably foreseeable for Mr McDonnell to know who is out there buying his wife's clothes? This man, I think the testimony was, was Governor of the State of Virginia He had other important duties She was shopping with her Chief of Staff and Williams was there and there is no evidence in this record from any of the witnesses, Mary-Shea, Jonnie Williams, Ms McDonnell, anyone, to say this man knew. Yet they want to take his wife's clothes and put it on to him to try to run these numbers up We just don't think that that's appropriate under the standard.

Finally, with regard to the obstruction: Mr Dry talks about, again, I don't want to reiterate how Mr McDonnell conducted himself in this trial, and how he tried to answer questions and do the very best he could with the questions that were presented. But I do know there were jurors interviewed by the media after the case And they were on TV, and you can see it and we cited it. One of them said, "I did believe Bob " She found Mr McDonnell's testimony truthful Granted, the same witness said she found Jonnie Williams truthful You always have to take that with a grain of salt. But to say that this man committed perjury when what he was saying in his mind with his interaction with Mr Williams, that he did not come to any explicit agreement, Mr Williams never testified there was an explicit agreement. We have great respect for what the jury has done and what the Court has done But we believe under the standard here, it is just not appropriate And with regard to the Hamilton case, I know the Court has read all the opinions and is familiar with that, but Mr Hamilton's case had e-mails in which he was explicitly saying he had an agreement There was nothing like that in this case. So we believe that that is just a completely different matter Thank you

THE COURT: All right

Blake?

(Court conferring with Probation Officer)

All right, let me resolve these two objections The value of the things obtained: In my estimation, when we are trying to determine what would be reasonably foreseeable, the government has the best analysis I'm going to, as I always do in these matters, give the defendant the benefit of the doubt I think we easily get into the range of 97,000 to 121,000, which would be a plus eight enhancement rather than the ten, so that becomes minus two from what was originally applied, that is, an Offense Level of 32, so we are down to 30

Then we have to think about the obstruction enhancement And I went through this over and over again And once again, some of these things are indeed Mr McDonnell's subjective view of what it is that he was doing, what he was thinking when he was going through this process And I don't think it is appropriate to punish him for putting on his case There were certainly things that were rejected by the jury, and I respect their right to reject what he had to say But I also respect his right to put on a case and say what he thought was going on in his head So I don't think it is appropriate to apply the obstruction of justice enhancement. So that would be another two points down. All the other objections are overruled.

This brings us to a Criminal History Category of 1, an Offense Level of 28, Guidelines Range of 78 to 97 months

All right, defendant? I will hear you in any way you care to proceed.

MR. BROWNLEE: Thank you very much We have several witnesses we would like to call if we may, Your Honor, for brief testimony here

THE COURT: Sure

MR. BROWNLEE: I call Gary Nelson

GARY NELSON,

called as a witness by and on behalf of the defendant,

having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWNLEE:

Q Good morning, Mr Nelson

A Good morning

Q Would you state your name and spell your last name for the court reporter?

A Gary E. Nelson, G-A-R-Y, N-E-L-S-O-N

Q You are here as a character witness today for the sentencing of Mr McDonnell; is that correct?

A Yes, sir

Q And how did you meet Bob McDonnell and please tell Judge Spencer the nature of your relationship

A Well, I was for one year when he came into the Army Reserve, I was the Executive Officer And he worked directly for me And then for the next five years I was his commanding officer Therefore, for six years, Bob McDonnell worked directly for me every month during drills, administrative meetings, summer camps, and interim meetings for matters regarding the unit So I had a very close relationship with him for over six years in the Reserve

Q Just for the Court, how many years did you spend in the United States military, both in active and reserve?

A I retired in 1994 with 32 years

Q What was your rank when you retired, sir?

A Full Colonel

Q Tell us a little bit about or tell the Court, excuse me, a little about the Bob McDonnell that you knew many years ago when you worked with him and you were his commander

A He had just come off active duty into the reserve program, and I got to know him and started working closely with him. There were many unresolved issues at the unit as the higher command had seen fit to turn over a new executive officer and eventually commander, and I found him extremely easy to work with, extremely efficient. He worked with, at summer camp, sometimes millions of dollars of equipment for which he was responsible as a Supply Officer, Medical Supply Officer, and then eventually he became a commander of troops He was just efficient and he was always, even all of his prior reports said his military bearing was absolutely perfect And each and every thing that he did was exemplary

And as commander of troops, one thing he had was great compassion when he worked with these young people coming in that sometimes didn't want to adhere to the rules, and he would deal with them and work with them, sometimes allowing them to have a second chance And retention rates in that unit were very, very low Retention rates were always measured by how many people decided to re-up or stay in. And under Bob McDonnell's leadership at that level, retention rates increased dramatically

Q Did there come a time when Mr McDonnell as a member of your unit came to you with a decision he was thinking about, whether or not to enter politics?

A One day I got a phone call and he said, "Colonel Nelson, I'd like to talk over something with you, could we meet for breakfast?" And he and I have joked over the years, we both remember that incident very clearly. And we sat down, we had breakfast, and he said, "I'm thinking about running for public office and I'd like to have your input " And it kind of caught me off guard because he didn't mention it And that's -- I kind of sat back and said, "Well, of all the people that I know, your integrity, your honesty, everything about you speaks highly to becoming an elected official However, why do you really want to do this where your whole life, your faith, everything in which you believe will be examined all the time? That's sometimes a difficult position to be in " He said, "Colonel Nelson, all I really want to do is help people " And it came back time and time again that he really wanted to step out into other areas because he just found within him he wanted to help people So that seemed to be his driving motivation. He never once wanted power or fame or fortune He drove an old beat-up car at the time. And he just wanted to help people

Q Mr Nelson, when Mr McDonnell worked under your command, did you find him to be trustworthy and ethical?

A Absolutely His ratings, I went back and looked at some of the reports, and he was always rated in the top one percent of all officers He was completely trustworthy He would many times have to deal with hundreds of thousands of dollars of airplane tickets when we were going to summer camp and getting on board, getting equipment and things like this Very trustworthy

Q In your dealings with him, did you ever believe him to be greedy?

A No, sir

Q Or request special treatment from your command?

A Never once Even when he became elected while still in the unit, never once did he ask time off to be away at official business or government business He always met his obligations in the military, and he never, ever was in a position to do anything that I would consider greedy

Q All right. As Mr McDonnell sits before you today, he has been convicted of very serious offenses And do you still believe in him? Do you still believe in his integrity and trustworthiness?

A Absolutely, 100 percent

Q The last question I have: Is there anything else you would like to tell the Court before I ask you to step down?

A Your Honor, I would just say over my 25 years of knowing this gentleman, I have seen him to be incredibly compassionate and merciful with people When he was a prosecutor he was that way And people would just be drawn to him because of his very persona I heard a report just yesterday that out of the Virginia Beach Court when he was a prosecutor, that one of the prosecutors said how wonderful it was that he gave a lot of young people a second chance And this prosecutor or this attorney knows some of these young people And these people have talked to her and said, "It is really wonderful that he gave my son or daughter or friend or whatever a second chance "

The other thing is, I had an occasion to want him to take an official act to give somebody their voting rights back, a dear friend that had been -- that had a felony conviction. And I thought as Governor he could just make that happen fairly easily He looked me right in the eye and says, "You've got to go through the system. As much as I'd like to help, you need to work through the system." So I found him just by-the-book compassionate and honorable at every step of the way And I just, my heart goes out to him, and I would just, my plea to you, Your Honor, would be that if you could find it in your heart to give him mercy, as he has given others in this sentencing, that would certainly be appreciated

MR. BROWNLEE: Thank you Please answer any questions of the United States

MR. DRY: No questions by the United States

THE COURT: Thank you, sir You may stand down

(Witness stood aside)

MR. ASBILL: Your Honor, the defense calls Mr Bill Horan

WILLIAM F HORAN,

called as a witness by and on behalf of the defendant, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ASBILL:

Q Good morning

A Good morning, sir

Q Mr Horan, would you please give us your full name?

A My full name is William Francis Horan, H-O-R-A-N

Q Where are you from?

A I was born in Grand Rapids, Michigan, sir

Q Where do you live now?

A In Virginia Beach.

Q Are you employed?

A I am, sir I'm the President of Operation Blessing International.

Q And what is Operation Blessing International?

A We are a global faith-based charity We do humanitarian work in the United States and around the world.

Q You say around the world. In how many countries does your charity operate?

A We have daily operations and offices in 23 countries We work in more countries than that because we respond to major disasters. For example, the tsunami in Japan, we had never worked there before but we do work there now We work every day in 23 countries

Q What are other examples of disasters to which you respond?

A Well, domestic disasters in the U S like Hurricane Katrina and any major disaster that occurs in this country and any major disaster that occurs almost anywhere in the world. Right now we are responding to the Ebola crisis in Nigeria where they manufacture chlorine, still working in the Philippines picking up the pieces from last year's big super typhoon. Virtually any major disaster you can name, we have either been there or are still there.

Q How many people work for your organization?

A I would say globally somewhere around a thousand

Q What's the annual operating budget?

A This last fiscal year, it was right at about 365 million.

Q And how long have you been with this organization?

A Twelve years, sir

Q When you started, what was the operating budget?

A 37 million

Q How do you know Bob McDonnell?

A Well, I met Bob McDonnell before he was Governor and had dinner with him one night Other than during the last month or so, that was the only physical contact I have ever had with him. But I felt like I've known him for a much longer time When he went to Regent Law School, he went on a scholarship that was provided by the man that introduced me to Pat Robertson twelve years ago that led to my position at Operation Blessing His name is Bill Dooner

Q Do you have any knowledge of Mr McDonnell's connection in any way with your organization?

A Yes, sir Post-Katrina, I don't remember exactly how long it was after the actual storm hit, but I would say somewhere between a year-and-a-half and two years, we were still actively working in the New Orleans area doing all sorts of humanitarian relief and recovery, and Bob McDonnell called our office one day and said that he had a one-week vacation coming up and he wanted to take his whole family down there and volunteer working with Operation Blessing So we told him great, and made arrangements for him to do that.

Q This was when he was Governor?

A No, sir No, he was not Governor

Q He was Attorney General at the time?

A I believe he was

Q And in fact, he went to New Orleans and worked with your organization?

A He did, sir They were scheduled to work for a week, and he was really doing a great job. In fact, I got a lot of really positive feedback from my staff But one night he wanted to exercise and we had renovated a community center in St. Bernard Parish and put in a new basketball floor and he wanted to play basketball and he had his sons there and one of our staff members and he ran over the court into a steel post and broke his jaw

Q What sort of work did he do in New Orleans before he had that unfortunate event?

A He and his family participated in one project building a home that had been inundated by the floodwaters of Katrina, clearing up the mud and carrying broken, soggy things out of the house I wasn't there, I can't tell you exactly what they were doing, but I got a lot of feedback from my staff We have a lot of celebrity-type people that show up for disasters for media purposes, and I know my staff was really impressed with Bob, saying he had a real heart to serve and that he would do anything they asked him to do

Q All right Now, based on those reports about his prior engagement with your organization, have you had an opportunity to talk to him or talk to his counsel about ongoing potential opportunities for Mr McDonnell in terms of working with your organization?

A Yes, sir Two or three weeks before Thanksgiving I got a call from Bob McDonnell explaining that his sentencing was coming up, and that he and his legal team were interested in creating some sort of an alternative to incarceration. And he wondered if there was a place that Operation Blessing had -- well, actually, what he said was, "Is there a country where you are working where living would be extremely difficult and a hardship for me and a place where I could really help you?" I said, "Well, we have a number of places like that." But Haiti was the first place that came to mind. So that's how the discussion began.

Q With respect to Haiti, why Haiti?

A Well, I'm especially personally involved in our operations in Haiti We have a large operation in Haiti A lot of the charities that went down there when the earthquake happened have left and gone home We are there for the long term. We have a home for children with disabilities, which as far as I know is the only one in the country. We've got a large fish farm where we produce about half a million tilapia a month that we are planting in all the lakes and reservoirs around the country We have a number of safe water projects, we manufacture chlorine, fighting cholera, working with Partners In Health and Dr Farmer from Harvard and manufacturing chlorine they use for surface disinfection to help prevent the spread of cholera and help disinfect the water We produce enough chlorine to disinfect about three-and-a-half million gallons of water a day down there

We built a school We run several schools We've got feeding programs And we are involved in agricultural improvement. So there's lots of things that we are doing And I thought that someone with Bob's skills and experience and his willingness to serve and his clear love for the poor, that it would be an enormous benefit to Operation Blessing if he could come down there and work for us And he said he would work for nothing and pay all his own expenses

Q How many times have you been to Haiti?

A Actually, quick counting it, 45 times since the earthquake, sir

Q With respect to the living conditions for folks who work for your organization in Haiti, tell us about those

A Well, our headquarters is a five-bedroom house within a compound with a ten-foot wall with concertina wire We have shotgun guards 24/7 The five-bedroom house serves as our headquarters Then we built an 11-bedroom guesthouse within the compound behind our main house. And if the Judge decided that it was a good idea for Bob to come down there, he would live in the guesthouse, one room and one small bathroom. It is very hot and uncomfortable City power is only on for a few hours a day We could have generators to make electricity, but it is very expensive to provide diesel fuel so we can only run the air-conditioning a few hours during the night So it is very uncomfortable. There's lots of mosquitoes It never cools off So conditions are rough and it is hard for us to attract people, and certainly someone of Bob McDonnell's character would be almost impossible for us to find someone of that caliber, sir

Q If you found such a person, what would it cost you to afford them or pay them?

A I can't even imagine finding someone with his qualifications But we, right now, the position that we have open, there is our deputy director, which was about a $60,000 salary plus travel expenses, living expenses, and so forth. We could never hire someone like Bob McDonnell for any kind of $60,000 a year, that's for sure

Q Over and above the salary you would pay someone, what would be the other costs --

A The benefits, insurance and all that. It is not necessarily double your salary, but it could be close to that, so say $100,000 gross at a minimum.

Q Is it hard to find people to take this job because they don't want to live in Haiti?

A Extremely hard, sir A family person that has children at home wants to go home quite often, and that doesn't work out so well Young people are attracted to this sort of work, but as soon as -- like our deputy director went off to get her Master's degree in public health, we lost her, or they want to get married or something happens So it is very difficult We have about 35 Haitians full time on our staff and only two Americans, and we are in dire need of a deputy director right now

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BY MR ASBILL:

Q If Mr McDonnell were allowed to -- to work for your program as part of the sentence in this case, would he be allowed, on any kind of regular basis or quarterly basis, to return to the United States?

A That would certainly be up to the Court, sir

Q All right And others who have worked there in the past, what sort of deals have you -- have you struck with them?

A Typically, we pay -- we pay for one trip home per quarter where we buy the plane tickets And they get about a week off four times a year

Q All right In terms of supervising somebody, would they -- would they have -- would somebody in Mr McDonnell's position, were he in Haiti, have access to Internet or Skype or cell phones?

A Oh, absolutely Yeah The -- there are no fixed landlines in Haiti that I've ever seen So virtually everyone has a cell phone Cell service is actually quite good And I use my U S cell phones when I'm down there I have an international plan

But we have quite good Internet reception at our headquarters It isn't broadband on U S -- same speed as here, but it's quite good and it's quite reliable So a lot of our management is by Skype, sir

Q Would you or others in your organization working in Haiti be willing to work with the probation officer, with the Court, to set up any kind of appropriate supervision for him?

A Oh, absolutely, sir We would bend over backwards to do that

Q With respect to -- with respect to disposition -- I know we've talked about Haiti for a second Are there domestic needs for your organization that Mr McDonnell could also fit into or slide in?

A Yes, sir The two major programs that Operation Blessing is involved in domestically are disaster relief, which is sporadic When there are big disasters, we have lots to do, but not much to do between disasters So we didn't feel like that would be appropriate for full time

And so the other thing that we do is we call it our Hunger Strike Force We have 75 trailers -- 65 of them are refrigerated -- 18 trackers, or power units And we have distribution hubs in Chesapeake, Virginia; Bristol, Virginia; Ocala, Florida; and Grand Prairie, Texas

And between the four of those, we distribute up a hundred million pounds of food and relief supplies per year that we give away to faith-based organizations that are involved with feeding the poor in America

Q Why Bristol?

A Well, Bristol, we have a history there. The Gregory family had a ministry in Bristol where they were reaching out into Appalachia with food It was called the Lord's Storehouse And for some years, before my tenure, which is 12 years, Operation Blessing was delivering food to the Lord's Storehouse Several -- maybe two truckloads a week, something like that

And then about five years ago, it could have been six, the Gregory family asked Operation Blessing if we could take over that operation Evidently, they weren't able to afford to run it anymore, and they said that if we would take it over and -- that they would lease us the building for a dollar a year and pay the rent -- pay the utilities and pay the taxes

So we have been running it now for five or six years Last year we delivered a little over ten million pounds of food to Bristol, which then was distributed to -- to faith-based organizations in five states: Virginia, West Virginia, Tennessee, North Carolina, and Kentucky, with a focus on the poorest parts of Appalachia

Q How poor are the poorest parts of Appalachia?

A Well, you don't need a passport to go to a developing country Literally When you get up in those hills, it's just unbelievable There is chronic poverty there, and there's a whole new demographic -- we called it the newly made poor Americans that have had jobs, particularly in the coal industry, and there's been a trend to tamp that down lately And so many coalminers that have had their jobs and supported local businesses have lost their jobs just in the last few years And so it's -- it's very, very dire there in Appalachia

Q Do you have an opening in your organization, a job opening as we speak, that Mr McDonnell could slide into?

A We do, sir Our manager there was a fellow named John Reed, who was there since the beginning He suffered a stroke eight months ago And up until a few weeks ago, or maybe a month or so ago, we thought he would return to work But he's been declared permanently disabled He'll never be able to come back to work, and we feel like that would be a perfect spot for Bob McDonnell

Q In general, what would he do on a daily basis in that role?

A Well, he would manage the -- the hub there; both the inbound freight, which is all this food and relief supplies and drinks and juice He would manage all that physically and help unload those trucks when they come in

And then the distribution is -- we don't deliver much from that location It's more that the -- the ministries that we serve come from these five states on a regular basis So some come every other Tuesday Some come every

Thursday Some only come once a month It's all carefully choreographed And his responsibility would be to make sure that those ministries, when they got there, they were loaded in a hurry and on their way

Beyond that, he would have to visit some of these ministries to see with his own eyes the need And what my thought is is that someone with a -- as dynamic as Mr McDonnell is, once he got his arms around our operation, that I'm sure that he would call upon his experience, his network, the people that he knows, the companies that he has known over the years possibly to donate more food or even money to Operation Blessing so that we could expand that and serve more people in a more effective way

Q What sort of companies now give to Operation Blessing?

A Well, Hershey gives us candy bars Quaker Oats gives us granola bars Allen Canning gives us canned vegetables Kimberly Clark gives us paper products, which are an enormous blessing to the poor: Disposable diapers, feminine napkins, toilet paper, tissues

And we get these massive truckloads of this stuff, which it wouldn't make sense to deliver a whole truckload of candy bars to a ministry So we need these distribution hubs where we can shake out the loads and then mix up what has been donated to us to -- to help the people we're trying to help

And I believe that Bob McDonnell not only could easily manage that, but I think that he could help us to expand that enormously

Q Would part of the job require physical labor?

A There is some physical labor, yeah He would have to learn how to -- and become certified in a forklift so that he could physically participate in the unloading and loading of trucks This is a small -- we run lean and mean We don't have a lot of money to throw around

And so that operation is basically three people And Bob, if he was allowed to go there, would run that operation on our behalf

Q All right And, again, would I be correct in estimating that the salary that you would have to pay to someone to fill the slot that's now open would be roughly equivalent to what you were talking about with Haiti?

A It's about the same thing, sir Yeah About -- probably 60,000 salary and then all the benefits on top of that, that it could easily amount up to $100,000 a year

Q Okay And with respect to -- with respect to that operation as well, the operation in Bristol, is that something that if Mr McDonnell were allowed to participate in by the Court, that you would be willing to interact with the Court and the probation office in any supervisory way that they deem necessary?

A Absolutely, sir Anything that the Court asked us to do, we would be willing to do

Q All right And, finally, sir, do you have any requests to make of the Court?

A Sorry?

Q Do you have any requests to make of Judge Spencer?

A I just would beg the judge to please consider having mercy on this fellow If he's buried in a jail, it would be like the -- the proverb about the talents in the Bible In my opinion, it would be like burying something of enormous value

Bob McDonnell could be -- have a -- be a force multiplier in the world of humanitarian charity, either in the United States or in Haiti, and we would pray that the judge would look favorably upon one of these alternative sentences, sir

Q And, finally, I know you've -- you and I have talked about some combination of social programs, basically, in the Bristol area, including one that would also involve the Diocese of Richmond, the Catholic Diocese of Richmond

If Bob were able to -- to do it all, to spend 60 hours or week or 70 hours a week, or whatever it required, to try to do a number of different things with different organizations down there to benefit the poor in a variety of different ways, is that something that you would be willing to co-partner?

A We'd certainly be interested in demonstrating flexibility Along those lines, I'm sure there would be synergy with the diocese I've been talking to the Monsignor out in the witness room about that possibility And since we're feeding the poor and their constituents are the poor, I'm sure that there are common denominators that Bob McDonnell could spend some time on

We would -- if -- if he took on the position of running our Bristol operation, it would require what most people would think of as full time But we certainly would be willing to share him, especially in a synergistic manner

Q Thank you very much

MR ASBILL: No further questions, Your Honor

THE COURT: Government?

MR DRY: No questions, Your Honor

THE COURT: All right

Thank you, sir, you may stand down

THE WITNESS: Thank you

(Witness stood aside)

MR ASBILL: Monsignor Keeney as the next witness

MONSIGNOR TIMOTHY KEENEY,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR ASBILL:

Q Good morning

A Good morning

Q Would you please tell us your full name

A Monsignor Timothy Edward Keeney

Q And how are you employed, Monsignor?

A I'm the pastor at St Bede Catholic Church in Williamsburg, Virginia

Q And how long have you been in that position?

A Two years there

Q Tell us a little bit about your educational background

A Well, I was in the seminary from the time I was 16 years old, degree in philosophy in college Did three years of graduate studies Left the seminary at that point Went to Washington and Lee law school, got my JD I worked for two and a half years at Williams Kelly & Greer in Norfolk, practicing Went back to the seminary Was sent to the Pontifical Gregorian University in Rome, got my STB Was ordained a priest in '96 Went back to

Rome for additional studies for license in dogma and then have been parochial vicar for four years at Mt Carmel, then 12 years in -- as pastor at St Anne's in Bristol, Virginia, and now two years at St Bede's

Q All right So you were in Bristol, Virginia, for 12 years in your position; is that correct?

A Yes

Q Okay And when you talk -- the Diocese of Richmond, what geographic area does that cover?

A Well, the far southwest corner, it would be LPA 15 and 16 in terms of the diocese

Q I'm sorry I don't know LPA

A Those are local planning groups

Q Oh

A The diocese is broken into a series of them, and that particular area of the diocese would be about the equivalent of the size of New Jersey, and it has 18 parishes in that area

Q All right So all of Southern Virginia, from the --

A Oh, you mean the entire diocese?

Q -- from the ocean to the --

A Yeah It's the Eastern Shore -- if you took a compass point and put in Washington, D C , went down to Fredericksburg and took off that top corner, everything else in the state would be the Diocese of Richmond

Q Okay Now, what sort of operations or charitable operations does the diocese have ongoing in the Bristol, Virginia, area?

A Well, every parish has, as part of its work, social ministry Even though we're very small, in terms of representation out in that area, we have an effect far beyond our numbers

Q Why is that?

A Well, because we -- we're able to organize -- because of the power of the diocese, we're able to organize ministries that have blossomed We've done a lot of ecumenical things, like Bristol Faith in Action It started with 13 churches, with St Anne's as one of the founding groups It's now up to 75 churches Primarily doing -- taking care of utilities and rentals Trying to keep people in their home

Bristol Family Promise Same concept except that deals with homelessness The Health Wagon, which was started by Sister Bernie out there, blossomed into the remote medical area clinic, which now sees thousands of people on a yearly basis

So those are the kinds of things that the diocese has been able to do out in Southwest Virginia by organizing not only our resources, but then reaching out to the other local churches

Q What is the -- what is the poverty level of the population you serve in that area?

A It's pretty extensive You have to look at that particular area in two different ways There's the I-81 corridor, which has Pulaski, Wytheville, Abingdon, Marion, and Bristol And the poverty level there is still -- there's a lot of -- as I always say, there's a lot of wealthy people and a lot of poor people, and there's not a lot of middle class

Once you, however, get into the interior, you're dealing with really severe poverty and chronic levels of unemployment Most of the young people don't end up staying there They most -- after any kind of education, they usually leave So the level -- especially with the coal, collapse of the coal jobs there, it's been pretty extensive

Q And what sort of services do your ministries there supply to the poverty-stricken folks in that region?

A Well, again, we try mostly -- mostly, we're trying to keep people in their homes, trying to -- power -- power, water, utilities There's a great deal of food service We've tried to reach out to basic medical needs in other areas There is some legal assistance that we've tried to help -- help with people in different areas

In Pocahontas and Grundy, they're just trying to keep the town afloat The churches, one of the few institutions in Pocahontas that actually is sustainable The town is basically collapsed

Q Where do you get the money to fund these projects?

A The diocese has a fund for mission parishes We also have -- St Anne's itself has some very generous parishioners who have been able to support some of these area-wide things The diocese also invests money in social ministry through its annual appeal And then also there are grants which can be written for -- there's a number of Catholic granting agencies that have been very generous in helping us with projects out there

Q Is Bob McDonnell known to the diocese?

A He is very well-known to the diocese We worked with him a great deal in terms of Catholic school teach -- Catholic schools He has been very helpful in a number of other projects with the Catholic Commission that is a joint project of the -- both the Arlington Diocese and the Richmond Diocese with Bob -- oh, my goodness Blanking on his name

Anyways, the -- the -- the -- it's what -- it's what we use with the legislature to see about the ten priorities that the Catholic church has in education and social justice, and he's been very helpful in that

Q Are there job openings for Bob McDonnell in Bristol?

A In Southwest Virginia, we've historically had a coordinator for social justice for the -- working for the diocese Our current -- the last person who held that job has moved on to another position That job is currently open.

With all the things that are happening in the diocese, it's always hard to maintain these kind of jobs at the level It's a fairly entry-level position It's about $35,000 a year, but -- we're trying to commit to having somebody out there, but having somebody like Mr McDonnell out there would be probably something we could never afford to do at the level that we would normally have to offer this kind of job.

Q And how would you utilize his skills and talents were he permitted to do this work with you?

A Well, the -- the basic function of that job is to coordinate the social ministry of the parishes and the diocese, and then work with the other powers and entities in the locality to try to best use those resources for the sake of the economically poor in that area

There's also a need, at this point, to do an assessment of what is actually the need The situation has changed over the last ten years, particularly with, as I said before, the collapse of the coal economy that much of that area was relying upon So there's a need to do a kind of true assessment of what's going on

There's also -- that position has historically dealt with migrant ministry for the diocese and also helping to resource prison ministry, helping to train people to go in and visit the prisons in that area and then throughout the diocese as well

Q So once the need assessment has been completed, then the -- then the goal would be essentially to figure out how to fulfill those needs?

A Well, I mean, we think that we're doing some things, but we -- if there is a better way of using our resources, a more effective way of using our resources, we hope that need assessment would be able to point us in a stronger position than what we're doing now

Q You know, I take it, that my client has been convicted by a jury in this court of 11 felonies?

A Yes

Q Does the diocese, the bishop, have any hesitation at all in terms of hiring Mr McDonnell?

A I mean, we're in the job of redemption And that's part of -- you know, I -- I always tell folks that if we all saw our secret sins at mass, we'd probably all run screaming from the room

And so all of us are -- have those things that we need to overcome through the grace of God So that's no different than any other person that we would hire

Q Aside from what Bob McDonnell could do for the diocese in that area, do you have any thought about what working in that capacity would do for him?

A I always have said that one of the great gifts that God has given me has been the ability to work with people who are so much on the edge but really allow the joy of God to still shine through their lives

It really -- it cannot but affect anybody who truly gives themselves to this ministry It changes how you see yourself, how you see other people, how you see the world when you deal with people on a daily basis who are just really struggling to survive, them and their family And then helping them and allowing -- they allowing you to share some of their joy even in the midst of that struggle, it really puts everything in perspective

Q So Bob could help restore them and vice versa?

A Absolutely

Q You know that another potential option, should the Court permit, is this Operation Blessing?

A Yes I'm aware of that

Q In Bristol Is that something that you all would be willing to co-partner with and try to work with together to try to utilize whatever talents and skills Bob has to the maximum possible benefit of the folks in that region?

A I mean, I'm aware that both of these positions are substantive positions But I believe that working in cooperation, there's the possibility of somebody who would really be willing to work hard to be able to do a competent and successful job doing both

Q And, finally, do you have any requests to make of Judge Spencer?

A I would really ask you to consider the urgent need of -- of the folks out in Southwest Virginia Governor McDonnell, I think, would bring some very unique talents to this that would not otherwise be available to the people in Southwest Virginia

So I'd ask you to consider seriously this option, and hopefully it can be part of this way of paying back the citizens of the Commonwealth

Q Thank you, sir

MR ASBILL: I have no further questions

THE COURT: Government?

MR DRY: None from the United States, Your Honor

THE COURT: Thank you, sir

THE WITNESS: Thank you

THE COURT: You may stand down

(Witness stood aside)

MR BROWNLEE: Bill Howell

WILLIAM J HOWELL,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR BROWNLEE:

Q Good morning, sir

A Good morning

Q Would you please state your name, and spell your first and last name for the court reporter

A It's William J Howell W-I-L-L-I-A-M, H-O-W-E-L-L

Q And, sir, you know you've been asked here to testify at the sentencing of Bob McDonnell; is that correct?

A That's correct

Q Okay How long have you known Bob McDonnell?

A About 20 years

Q Okay Can you tell Judge Spencer how you first met him?

A Bob was elected -- I had been in the House of Delegates for about four years when Bob was elected and came up from Virginia Beach, and we became close friends pretty quickly So I've known him pretty well for the past 20 years

Q Okay And just briefly describe for Judge Spencer the Bob McDonnell that you know

A Bob -- excuse me I'm sorry Bob was a very intense legislator, took it very seriously, was very interested in the public service aspect of it I think people would have described Bob as a Boy Scout, highest integrity, highest character Great work ethic, great member

Q All right. And as a friend, describe for the judge, tell us what he's like as being a friend to you

A Well, he's a very close friend, very loyal friend I think Bob is the kind of person that would do anything to help you that he could He enjoyed being around people

I was talking with my wife yesterday about some of Bob's characteristics, and we both acknowledged that Bob has an ability to be a friend, to be interested in everyone, not just to those that are in positions of power or prestige or whatever. But Bob was also just as friendly, just as concerned, perhaps even more interested, in those that the world might classify as -- as being somewhat the least of these And I think Bob certainly does exemplify that passage of scriptures that the Lord talks about when you've done this to the least of these, you've done it for me And when I think of Bob McDonnell, I think of that

Q It has been described that at times, with the General Assembly, that it can get somewhat heated. And it's also been described that Mr McDonnell tries to find the best in people, as opposed to the other Is that true, and can you describe instances in which you've seen that?

A Bob has always been interested in -- in how people feel about the different issues and concerned about it I had an issue a couple of years ago where I was called upon to make a parliamentary ruling on an amendment to a -- a Senate amendment to a House bill dealing with redistricting And it was quite controversial And an awful lot of people in my caucus disagreed with my decision that the amendment was not properly before the body And Bob called me up that day and said, "You did the right thing, and I certainly stand behind you on it " Things like that

Q It's my understanding that soon after he joined the General Assembly, there was a Bible study that he joined and you had actually started with him And tell us a little bit about that and what you gained from it and perhaps what he gained from it

A Well, it's one of the -- I think the highlights of my legislative career I guess it was probably about 18 years ago, 4 of us formed a Bible study where we would meet every Wednesday morning at 7 a m and discuss different books of the Bible And it continues We still do it today It's grown some For the first couple of years, it was just the four of us And when you're in an intimate group like that, you really do get to know a person You get to know what their thoughts are, what their aspirations are, what their concerns are It was a great time to share and to learn and for all of us to grow

Q Let me move towards after he was elected Governor You and Mr McDonnell, after he was elected Governor, paired up on some legislative items Some weren't that popular, but you did it Can you tell us a little bit about working with him when he was Governor and kind of your sense of what his view was of his governorship?

A Well, I think he was an outstanding Governor I think when Frank Atkinson writes his fourth sequel to his book about government in Virginia and covers this period, he will talk about a lot of very good things that were accomplished

And Bob, as Governor, again, was concerned with trying to do what he thought was good for the people of the Commonwealth And we had some discussions, some -- I won't say arguments, but differences in the way things -- we should approach things, but we were always able to resolve them in a good way And I might add that in a lot of the major accomplishments, it was -- it was Governor McDonnell's driving the train that really helped to get it done

Q Is it fair to say that his governorship will be marked by doing what he thought was right, as opposed to what may be politically expedient?

A There's no question about that Yeah

Q Let me talk a little bit about this case As you know, as he sits here today, he's been convicted of serious offenses, and soon Judge Spencer will issue his sentence

One of the factors, one of the things we look at here is deterrence, and I think that one of the places that I think the United States will hope that this case will have a deterrent effect is on your body that you are speaker of

Can you tell the Court, from your sense, as we sit here today, before any sentence is imposed, how you view the government's case, and has it had a deterrent effect on those who could be deterred?

A Well, it mostly certainly has had a deterrent effect As you know, the -- both the Senate caucuses, House and Republican, and the House and Democratic caucuses, have had people come in and talk to them about what the McDonnell trial results mean to them as sitting legislators And I think there's a great concern that we're in a situation where we really do need to dot all our i's and cross all our t's and be very careful

Again, as I think you're probably aware, we did what I think is significant legislation in the 2014 session on ethics reform, and the Governor has formed a commission that's come up with some additional recommendations And I'm quite confident in the 2015 session, which begins next week, there will be some additional significant amendments to our policies on gifts and such And I do believe this is a direct result of this trial

Q Okay Let me switch gears a little bit to Bob McDonnell, your friend How have you seen him change over the last year or so since this case has come, and how has -- from your vantage point, how has it affected him and how has it impacted him?

A Well, I think it's had a devastating impact on him I think you can see the weight on his shoulders I do think that Bob's faith has been a remarkable help to him throughout this process And I've never heard him say -- and I've talked with him quite frequently and I've visited with him on numerous occasions over this past year I've never heard him say a word of anger or frustration towards anybody involved in this process He's never said, "Well, it's somebody's else's fault " He recognizes that there perhaps were some things that he should not have done

But more than that, again, I think he's just -- he -- I'm not sure I could bear up like he has He's done a marvelous job of bearing up under this He's a good man

Q It's fair to say, though, that his political future, whatever it was, is over?

A Yeah Bob -- if you look and you stop and think about it, Bob has spent his whole life in public service, whole adult life, and that's gone The elected public service is gone I think that -- I think he still has a lot to offer society I think he could offer a lot more meaningfully and helpfully if he were able to do some of these alternative proposals which we've been discussing this morning

Q Let me just talk briefly about that, and you've heard these this morning If Judge Spencer were to allow him to -- to issue a probationary sentence, subject to these types of rigorous community service, are you confident that he would, in fact, follow through and work hard and do these things --

A Oh, sure

Q -- in a committed way?

A Yeah Yeah Absolutely I think he would relish the opportunity

Q All right Do you believe that as he sits here today, after all he's been through and you've watched your friend, that he has, in fact, been punished enough?

A I believe he's been punished enough I don't know how he could be punished more at this point I mean, I think clearly he can, but I think the damage to his dreams and his aspirations has been done

Q Okay My last question is do you have anything you'd like to say to Judge Spencer before you conclude here?

A Well, Judge, I thank you for this opportunity to come and talk about -- about my good friend And as the others, I would just humbly request mercy in this case I think that Bob has a lot of things that he can still do as a way of public service, and I don't believe he can accomplish it in a federal penitentiary I really would ask for your leniency and mercy

Q Thank you, sir

THE COURT: Government?

MR DRY: Nothing from the United States

THE COURT: Thank you, sir You may stand down

(Witness stood aside)

MR ASBILL: Clovia Lawrence

CLOVIA LAWRENCE,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR ASBILL:

Q Good morning

A Good morning

Q Please tell us your full name

A My name is Clovia Johnell Lawrence

Q And tell us a little bit about your educational background.

A I am a graduate of Richmond Public Schools and a 1987 graduate of Virginia Union University, with a BA in broadcast journalism

Q And are you employed?

A Yes, I am employed I'm in the radio broadcast arena, where I've spent almost 28 years And I'm employed with Radio One Richmond

Q And what exactly do you do with Radio One Richmond?

A I'm an on-air announcer and also community outreach and news director

Q All right And what's the target area for Radio One Richmond?

A Richmond and Central Virginia So pretty much the metropolitan area We have a 100,000-wide inspiration station where you can hear us just over the North Carolina line

Q And when you say -- I'm sorry, inspiration?

A Inspirational station We play gospel music on one of our radio stations

Q Okay And you have a number of different radio stations?

A Yeah We have another radio station, which is iPower 92, which is a younger generation radio station, demographic 18 to 34 And we have an urban contemporary radio station, which the demographic is 25 to 54 age group listeners

Q Do you know my client?

A Yes

Q How?

A I met Governor Bob McDonnell maybe around seven years ago He was the State Attorney General And I was doing a lot of work with bringing diversity to Nascar at RIR with the races over there And I was working with this young man, Norm He was bringing the diversity into the Richmond Public School, and he said he wanted to give Attorney General Bob McDonnell an award So he was like -- he asked me to come along with him

So we went We presented him with an award at his office And after we did that, I offered some of his staffers tickets to the races over RIR And that's when we first met He was kind He was really into what we were talking about, about the diversity in Nascar And that was the first chance meeting

Q And subsequent to that, did you have any other contact with him?

A Yeah. Maybe a few months or so after that, he announced his candidacy, that he was going to run for Governor And I immediately -- I'm a part of a sorority, Delta Sigma Theta Sorority, Incorporated And we do gubernatorial and senatorial community forums, which means we want to bring the candidates directly to the community

And I sent a letter of invitation for him to participate in the gubernatorial And within five or six days, he responded, yes, he would participate So we held the gubernatorial forum in September of 2009

Q All right Once he became Governor, when he was elected Governor, did you have continue to have contact with Governor McDonnell?

A Yes, of course Actually, that day while he was in the green room at Virginia Union University, he said, "Clovia, what do you want me to do?" And I said, "Automatic rights restoration for felons in the Commonwealth of Virginia I believe in second chances and redemption " And he said, "It's a process, but we'll work on it "

So he sent the letter to us, thanking myself and the sorority and all of the participants He enjoyed the gubernatorial, and then he sent a personal note, "We're going to work on it "

So maybe around April the following year, he called stakeholders in from Richmond and across the Commonwealth to come in and talk about how we can make the restoration of rights for felons a simpler and easier process

Q And not only talking about it, did he do anything about it?

A Yeah Definitely

Q What did he do?

A He did something about it Made the actual nonviolent forms quick and simple and easy You could get your rights restored on nonviolent offenses in under 60 days And we were actually there, along with state police and Clerks of Court, from all around the city and state

Q And --

A And he had us to participate with making with the changes All of the stakeholders.

Q And in connection with that process, did he have occasion to visit jails and talk with folks whose rights you were talking about restoring?

A I'm pretty sure he did But that's something that we did on behalf of my group We would go into the jails to talk about the new and simpler and easier process

Q And you yourself have gone to jails to talk --

A Yes

Q -- about that?

A Yeah, of course

Q Have you talked to inmates about it?

A Yes

Q How important is it to the inmates to have rights restored?

A It's extremely important to start the process of getting your rights restored, to run for public office, to serve on a jury That's very important

Q To vote?

A And, of course, to vote

Q And with respect to -- to Mr McDonnell, had you ever worked on rights restorations with other governors in the past?

A Yes, I did

Q And was there a difference in degree in terms of what Bob McDonnell did to help restore rights?

A It was, to him -- again, he wanted to make the process simpler and easier for folks who have been convicted of felony convictions in the Commonwealth of Virginia, and he believed in second chances So he worked with all of the stakeholders to get that done within the communities and actually coming on air I had an on-air show, which is called Community Conversations He came on to talk about that and other important needs in the Commonwealth of Virginia

Q Do you have any idea how many, under his administration, how many felons had their rights restored?

A I think under at the close of 2013, it was approximately 8128 persons who received their rights

Q The folks whose rights were restored, did Bob McDonnell expect them to vote Republican?

A No No He wasn't -- he wasn't a party Governor at all In fact, in 20 -- during the 2012 elections, the presidential election, it was the voter registration deadline And I'm usually out all day on the voter deadline I think it was October 14th, 2012 And I was down at 18th and Broad, down in the Shockoe Bottom area, from like 5 a m until 7 p m , giving the folks an opportunity to get registered to vote or check on their voter status

So maybe starting around noonish, between noon and 2, I had a drove of people coming down to 18th and Broad, the gasoline station, talking about, "I got my rights restored I got my rights restored, and this is the date " And I'm like, "Hold on Wait a minute " So I called over to the Department of Elections, and I talked with the voter registration coordinator there And he said, "You didn't get your e-mail?" And I said, "No, because I've been out on the streets since 4:55 a m " He said that, "Yeah, Governor McDonnell's administration are calling people up and granting them their rights "

Q This is on the day -- the last day to register to vote?

A Right

Q Was that a popular thing for him to do politically?

A I don't think he was doing it as a politician I think he was doing it caring about the people and getting them registered to vote Because we had an election that was going to come up in November So what he wanted to do was make sure everybody voted.

Q Regardless of how they voted or for whom they voted?

A Regardless of how they voted

Q All right Do you have any requests that -- or statement that you'd like to make to Judge Spencer?

A Yes

Judge Spencer, thank you so much for all of your work that you're doing in the community I am praying for leniency for Governor Bob McDonnell He's worked so hard and diligently with folks who are returning to society, who wants them to have a second chance to be able to take care of their families So I think he's worked diligently He didn't act political when he supported people in the Commonwealth of Virginia He just wanted everybody to have a second chance to start at life Thank you

Q Thank you

MR ASBILL: No further questions

THE COURT: Government?

MR DRY: No questions, Your Honor

THE COURT: All right

Thank you, ma'am You may stand down

(Witness stood aside)

MR BROWNLEE: Your Honor, if I may We have a few more witnesses, but they are -- as you can imagine, many people who showed up here today And just very briefly, Mr Tom Farrell, Mr Ben Jealous, Drew Ketterer, Courtney McBath, Mr Bruce Smith, Mr Paul Gulanti, Ms Kay James are all here, and I just wanted to recognize them and thank them for coming We won't be calling them for witnesses, but I wanted to let the Court know

THE COURT: Sure

MR BROWNLEE: Thank you, Your Honor

MICHEL ZAJUR,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR BROWNLEE:

Q Good morning, sir

A Good morning

Q Would you please state your full name, and spell your first and last name for the court reporter

A My name is Michel Zajur And it's M-I-C-H-E-L Michael without the A And the last name is Z-A-J-U-R.

Q And, Mr Zajur, how long have you lived here in Virginia?

A I moved here from Mexico I came here in 1961

Q Okay And what line of business were you in in your adult -- before you took over, what I'll get to, your current position?

A Yeah I ran a Mexican restaurant, La Siesta, here in Richmond with my family for close to 35 years

Q And you no longer run that restaurant?

A No, huh-uh We've sold the property

Q Okay What is your current position?

A I'm president and CEO of the Virginia Hispanic Chamber of Commerce

Q All right And when did you begin that? When did you start? Are you one of the founders of it?

A Yes, I'm the founder It started from the restaurant, and it -- it grew It's a statewide organization We have the chamber, and then we have the foundation side

Q About how many businesses are part of the chamber now?

A Well over 200 business members

Q Okay And did there come a time as part of your working with the chamber that you met Bob McDonnell?

A Yes I -- I met Bob I think at a reception once And -- and -- and when I first really got to know him was at a -- I was lobbying for a bill that Bob McDonnell was chairman of the committee when he was a legislator And it was -- he was chairman And -- and at the time, it was -- they had the votes to pass it But it was really detrimental to -- to the Hispanic community in -- in general, and he killed the bill as chairman. And I really admired that, and I got to know him after that incident where I really saw firsthand where he took his leadership

Q All right And this was before he ran for Attorney General?

A Yes

Q So this is at least ten years ago?

A Yes

Q Okay And so you -- you met him through kind of business Did you develop a friendship with him outside the relationship in business?

A Yes Yes, I did

Q Tell Judge Spencer just a little bit about your relationship with Mr McDonnell

A Well, it really developed just seeing Bob from time to time He was very interested in learning about the

Hispanic community and really wanted to reach out and help support me and my effort in the mission of the chamber of what we're doing And he had a great interest

When -- I'll never forget when I had quadruple bypass and Bob McDonnell called up to see how I was doing He -- he would constantly keep in touch When he was Governor, he would -- even if there was a legislation that -- that -- something that he passed or was going to authorize with the State Police enforcing immigration, he reached out to me to explain that he was going to do this And I just find that really -- you know, he took the time to call me, and especially when I was going under the medical procedures

Q In all your interactions with him, did you find him to be a person of integrity, someone that you could trust?

A I -- I find him the most integrable person I -- I -- I can't even imagine he is here because he is highly -- every dealing that I have had with him, I -- I -- totally -- the highest ethic person I can imagine

Q Okay And if people use words to describe him like greedy or materialistic, would you disagree with that?

A That's -- that's not true If anybody knows Bob McDonnell the way I know Bob McDonnell, that is totally not true

Q Now, as he sits here today, as you know, this is his sentencing hearing He's been convicted of offenses And -- but do you -- as you sit here today, do you still believe in him? Do you still believe in him and trust him as someone that you believe to be ethical?

A You know, I -- I believe -- because I know him, and you just can't rule as Governor and what I've seen him rule if you're not -- the way he did it, if you don't have the ethics, he would not do anything that he knew would be illegal in my dealings that I've ever saw And I -- I think the community, the other leaders and business leaders and community leaders, you know, through all this, I think they just feel so bad that, you know, how can anybody suffer more than what he's gone through Of course, you can, but it's -- it's tremendous And still in spite of that, he holds his head and -- and greets people He's a very, very, I think, genuine person

Q All right Sir, is there anything you would like to say to Judge Spencer here before we ask you to step down?

A Judge, I just -- from everything that I know about Bob McDonnell and every dealing, I have the most high admiration for him And I think especially what he could give back with community service, I think it would be a model of -- and I know with everything, he would change the lives of so many people He is a good man that, you know, I -- I think he's suffered so much And he's going to suffer the rest of his life every day reliving this -- this -- that's -- really, it is so painful I can't imagine what he has already gone through, and he's going to have to live with it the rest of his life

Q Thank you Thank you, sir

THE COURT: Government?

MR DRY: No questions, Your Honor

THE COURT: All right

Thank you

(Witness stood aside)

MR BROWNLEE: Ms Naisawald

NANCY M. NAISAWALD,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR ASBILL:

Q Good morning

A Good morning

Q Tell us your full name, please

A My name is Nancy McDonnell Naisawald

Q And where do you live?

A I live in Lynchburg, Virginia

Q And are you employed?

A I am I'm a kindergarten teacher in Amherst County

Schools

Q And how long have you done that?

A This is my twelfth year full-time teaching I took many years off to be a full-time mom to my four kids

Q And tell us a little bit about your educational background

A I graduated from the University of Virginia with a degree in early childhood education I taught for a few years, got married, had my four children Stayed home with them until my youngest went to kindergarten, and then I've been teaching in Amherst County for 12 years

Q Would you pull the microphone a little closer, please?

A Sure I've been teaching in Amherst County for about 12 years now in kindergarten

Q And what's your relationship to my client?

A I am Bob McDonnell's sister

Q Okay

A I'm two years younger than he is

Q And how many -- how many siblings do you all have?

A There are five of us Bob is the oldest I'm next My sister Eileen, my brother Ken, and my sister Maureen

Q Are all of them here today?

A All of them except my brother Ken

Q Okay And you've written the judge a letter in connection with this case --

A I have

Q -- for the sentencing process?

With the Court's permission, would you like to adopt that as part of your testimony --

A Yes

Q -- here today?

All right How close are you to Bob McDonnell?

A We're very close Family has always been most important to the McDonnells And we learned that from our parents We talk to each other We text each other. We e-mail each other We talk to each other many times on the phone We see each other at my home, at his home, at my parents' home, at my siblings' homes We see each other frequently, and we talk to each other frequently

Q Has that been true historically or only in connection with this case or over the last year and a half?

A It's been true historically It's been true historically We've lived sometimes in the same state Sometimes in Virginia Sometimes in Illinois together We've traveled to see each other at Notre Dame football games And, you know, we've been close We're a close family We've always put family first, and we've always been close

Q So, obviously, you know his children well?

A I do

Q You know his family well?

A I do I know his children well They are very -- they are close to my children

Q Okay Over the last year and a half since the investigation of this case commenced and throughout the trial process, et cetera, have you maintained that level of communication or increased it or decreased it or what?

A I think we've probably increased it You know, we certainly want to -- not that there was ever any doubt before how much we loved Bob and believed in Bob and we're here for Bob We certainly want to make sure that he knows how much every day how much we love him, support him, believe in him, and care about him You know, with cell phones, we can send a quick text, "Love you, thinking about you, praying for you " So certainly we're in contact, you know, as much as ever, if not more, since this has started

Q Were you able to attend any of the trial?

A I did I attended probably the last three weeks of the trial I took time off from my job to be here to support Bob

Q Okay How important to your family is faith?

A Faith is very important to our family My parents didn't just tell us to be faithful and take us to church, but they showed us through the way they lived their lives that faith was important My dad was a lector in the church and an usher in the church He would -- he would take communion to nursing homes My mother was a eucharistic minister My dad taught catechism, CCD, which is the Catholic Christian Doctrine. So they showed us this is how you live your faith, this is what faith means My mother was a Girl Scout leader, or a Camp Fire Girls leader They -- they showed us how to be involved in the community, how to live your faith, how to treat others

Q How important was faith to Bob McDonnell particularly?

A Faith was important to Bob He went to a -- he and I both attended Catholic school as young children He attended a Catholic boys high school He attended a Catholic university He was an altar boy growing up in the church Faith has always been important to Bob He reads the Bible He -- he thinks about the Bible He likes to talk about the verses, what is God saying to me as I read these verses

Q Did he try to incorporate that into his daily life?

A Absolutely The first thing -- the first thing he does in the morning is read the Bible, and it's the last thing he does at night That's the book on his nightstand

Q Watching how Bob has responded to the investigation and to this entire process over the last 18 months, how has it impacted your family?

A My family is heartbroken, devastated, shocked, disbelief It's -- it's been an absolutely devastating experience for our family You know, we know Bob We love Bob We believe in Bob It's been absolutely an unbelievably terrible experience for the family For my family, for his family

Q How have you seen it impact him personally?

A I've watched him physically struggle You know, he lost weight I think he wasn't eating He was -- he was upset And then I've seen him, you know, pull himself together and say, you know -- and exercise and eat healthy to, you know, try -- he's -- he's fighting He's a fighter He's -- he's used that to physically improve himself Emotionally support with Bible study groups He meets every week with the Bible study group He certainly has a spiritual advisor that he consults with, Father Wayne, on a daily basis It's -- it's been hard It's been hard He's been devastated, but he has faith in God He has his family and he has his friends, and that's been a source of great strength for him.

Q In your opinion, has Bob given up hope in terms of his ability, in the future, to make amends, restore his life?

A No He hasn't given up hope He hasn't given up hope He -- this is a bump in the road We have faith in the appeals process And he's a fighter, and we're here with him

Q Have you ever heard Bob say a negative word about another human being?

A Never

Q In your entire life?

A In my entire life

Q Even after this trial, even after the verdict in this case, some of the testimony from Jonnie Williams, et cetera, have you ever heard him say a single bad thing about another human being?

A No, sir Never In fact, he has prayed for the judge, the jury, for the prosecutors He's never said anything negative about them He knows people are doing their jobs

Q In some of the pleadings in this case, some of the sentencing related pleadings, my opponents have described Bob as greedy Is that a word that applies to your brother?

A Not at all Bob is the least materialistic person that I know He is most comfortable in his Notre Dame T-shirt and his jeans and his tennis shoes He's not greedy He doesn't care about material goods. He never has

Q Is he greedy for power?

A Absolutely not Absolutely not When Bob McDonnell walks in a room, he never thinks he's the most important person in that room

Q Who does he think is?

A The people that are standing in the back, the wounded warrior, the young child Everybody else in the room is more important Because his job, when he walks into the room, is to serve the people of Virginia, the people that maybe are forgotten

Q My opponents have described Bob as an entitled person Does that adjective work either?

A No, sir He's not entitled He's never felt entitled He is honored and humbled to serve the people He was honored and humbled to serve as Attorney General, as the Governor He came into this not for political gain, fame, fortune, whatever He came to the job as Governor to serve the people of Virginia, to improve their lives, to make their lives better, to see what the needs are, and to address those needs

Q Do you think that Bob is sorry for what he did? Did he ever express any remorse to you for any of the things that he's done that have landed him in this courtroom at this time?

A Yeah. He publicly expressed his remorse to the people of Virginia Yes, he's expressed his remorse

Q Privately? Privately to you and your family?

A Yes Yes, he -- he -- he has. You know, you know there are decisions he -- he wishes he had done differently And, yes, he has apologized

Q What would the impact be of your brother being sent to prison for any substantial period of time, or at all? What would the impact on your family be?

A We've lost our mom and our dad So Bob is the heart and soul of our family, the five siblings Bob is the heart and soul of our family He's the glue He's the one that brings us together He's the one that we go to for guidance, for advice, for love He's the one that's most like our mom

He's also the heart and soul of his family His children come to him to share their problems, their joys, their questions, their concerns He is the heart and soul of my siblings' family and his own family His children adore him They need him He's their go-to parent

Q They are all adults, but that's still true?

A They are You never stop being a parent It doesn't matter if your children are 34, 4, 14, anything in between You still need your parents And they still go to Bob They talk to him All five of them call him every day, once, twice Sometimes I'm on the phone with him and he'll say, "Oh, I got Jeanine on the other line" or "I've got Cailin on the other line " His children call him. They go to talk just to talk "Dad, how are you? I love you Let me hear -- "let me tell" -- you know, they share their day with him

Q In your view, up to this point, has Bob been punished?

A Absolutely

Q In what ways?

A Emotionally, it's taken a big toll on him He -- he was grief-stricken, in shock, I think, with the way things unfolded, the jury's decision That was heartbreaking for him It's tested his faith He's met that challenge His faith is stronger than ever He knows that God has a plan for him He has suffered every day

He is looking at losing his law license He's a convicted felon He has been convicted of multiple felonies He's looking at his right to -- losing his right to vote He's looking at losing his pension that he's worked many, many years to earn So his -- his political career, his chosen profession, being an attorney, helping people, that's gone That's gone He's lost everything

Q How important is the -- forget about the financial consequences, how important is losing the right to vote to my client?

A To Bob McDonnell, it's -- it's everything Not only is voting your right, but it's your privilege It's your privilege People have died to fight for our right to vote It's very important That's how you voice -- that is how the citizens have a voice

Q And, finally, do you have anything you'd like to say to Judge Spencer?

A Your Honor, I have known Bob McDonnell for 58 years In that time, I have never ever known him to tell a lie He is a good, honest, caring, compassionate man He has many, many gifts and talents Please use his gifts and talents to serve others He has the heart of a servant Use him for good Use him in the neglected areas of our state Use him to feed the hungry, to -- to show them God, to embrace them in Bible study, to go mulch their yards or paint their house Use him as your servant for good Thank you

Q Thank you

THE COURT: Government?

MR DRY: No questions, Your Honor

THE COURT: Thank you, ma'am

(Witness stood aside)

THE COURT: How many more witnesses?

MR. ASBILL: One

THE COURT: You just got one All right We'll take a break after you finish with the next witness

MR ASBILL: Terrie Suit

Excuse me, Judge We have two more witnesses I'm sorry

THE COURT: All right Go ahead

TERRIE L SUIT,

called as a witness by and on behalf of Defendant Robert F McDonnell, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR ASBILL:

Q Good morning

A Good morning

Q Tell us your full name, please

A Terrie L Suit

Q Could you either move the microphone or move a little closer to it, and everybody can hear you a little better?

A I'm sorry Terrie Suit T-E-R-R-I-E Middle initial L Last name spelled S as in Sam, U-I-T

Q And tell us a little bit about your educational and employment background?

A I am a military daughter and military spouse I did not have an education up until 2003 when I finished my associate's degree In 2005, I finished my bachelor's at Old Dominion University, and I'm finalizing my master's now at University of Mary Washington

Q And how are you employed?

A I apologize I'm the Chief Executive Officer for a Trade Association for Real Estate Professionals We are a 30,000 member association in the Commonwealth

Q And prior to that, what did you do?

A I was, for 20 years, a mortgage lender Could have justified on a lot of that pricing for mortgage loans I spent two years as a registered representative for the New York City Stock Exchange as a stockbroker And I spent nine years as a legislator in the House of Delegates for -- as the first Secretary of Veterans Affairs and Homeland Security for the Commonwealth, and then now I am the Chief Executive Officer for the Trade Association

Q So you were in the General Assembly in Virginia for how many years?

A For nine years

Q For nine years And then you became a cabinet secretary?

A That is correct

Q In Governor McDonnell's administration?

A That is correct

Q And how did you -- how did you come to know Bob McDonnell?

A I met Bob McDonnell in 1994 I was 29 years old I had, like I said, grown up military. Never really felt a part of a community My husband was an active duty Navy SEAL We had been transferred to Virginia Beach

I had lived there for about four years, and my husband said that he could probably stay there Because in the enlisted ranks, you don't have to transfer back and forth and the SEALs were based primarily on the East Coast in Virginia Beach And so I thought, This is my chance I can finally get involved I was very frustrated with the treatment by the community of military families I know now it's all great, but back then, it was the Post-Vietnam Era We were called transients We were said that we didn't have a voice in the community We didn't vote And I was really disillusioned with how I had been treated growing up, and I wanted to get involved and be a voice for military families and for a military community

I met Bob at a luncheon, and I expressed to him my desires And he seemed really supportive and wanted to help me activate my voice and make a difference, and so he started opening doors for me I had never desired to run for public office, but after about four years of being involved and Bob providing a lot of different activities for me to be involved in, I decided to run for public office

Q And tell us about that Tell us about that conversation when you were running for public office

A Well, Bob encouraged me to run It was a seat that was in play It was -- it kind of -- could go 50/50 either way And I had lived there for nine years in that seat, and he said I should run for it And I said, "Look I'm an E-6 wife," which is an enlisted wife "I don't have a college degree We don't have any money, and I'm not from here " And he said, "Terrie, anybody has a right to participate in our system of public policy Anybody has a right You don't have to be entitled "

And so he encouraged me to run And so I made the decision to run, and a few months into that decision when things were really getting going, I had a call And I had made the rounds and met with all the people I thought I was supposed to meet with But I received a call from a very influential man, and he said there were a group of men that wanted to meet with me about my race And it didn't sound positive And I said, "I'm only meeting with people who support me and want to see me win in November " And he said, "Well, we have a problem " He said, "If you run, the sheriff of Virginia Beach will run against Bob

McDonnell because there is a belief that he's the one who's gotten you into this, but if you will back out of the race, we can get the sheriff out of the race "

And I was shocked because I thought, This is America I mean, this is a place where people like me are supposed to be able to run for office without being intimidated by good ol' boys And he -- I said, "I can't talk to you anymore " I hung up My husband was deployed at the time I was all alone And I thought about it, and I was just devastated And I called Bob McDonnell and I said, "I've just gotten this phone call " And he said, "Yeah, I heard that was going to happen " And I said, "Well, what do you want me to do, Bob?" And he said, "I want you to win your race so that we can serve together in Richmond in January "

And I -- I've got to tell you, Your Honor, most politicians would take the easy way out They would say, "You know, maybe it's not your time Maybe this isn't the year you should run Let's work on you for another couple years " And that race for him was the most expensive race in Virginia history for a House of Delegates seat, but he won and I won, and we served together in Richmond from that point forward Our districts were side by side Our desks, initially, were one in front of the other, but then side by side Our offices were across from each other

He was my formal mentor and my informal mentor, and he worked with me to teach me how to be a good public policy person and how to be effective and do the right things for the military; like getting in-state tuition passed for both military dependents and active duty, and getting education policies passed for military children so that they didn't have to repeat classes like I did, moving eight times to eight different schools and taking Home Ec twice, which is ridiculous So -- which my husband loves, but no, it's not such a great thing

But he was a great friend and a great mentor, and he taught me -- he taught me about integrity If -- I remember the first bill I had that had a Senate amendment -- God bless the Senate The amendment, I was told, was technical, and I didn't really understand it So when I got up on the floor to explain the amendment, I said, "It's a technical amendment " So it was engrossed, the bill And I sat down, and Bob looked at me and he said, "Terrie, that was not technical " And I said, "Well, the Senate said it was technical " And he said, "Well, you can't believe what the senators tell you " He said, "But you can't let that go The other members voted in favor to engross your bill because they believed how you explained it " He said, "You've got to call the bill back up and reexplain it " I said, "But it's already passed You know, it's fine It will pass again " And he said, "It doesn't matter that it would pass again anyway Your integrity is everything Not all the legislators read the bills, and so they rely on your explanation And if you don't explain the amendment properly and they vote for it and they find out later, you will lose your integrity And integrity is everything in the legislature "

And so when we returned to morning hour, I asked that the bill be reconsidered, and then I, very red-faced, reexplained -- once Bob explained to me what the amendment really did, reexplained the bill And it was still engrossed, but it was the right thing to do

Q Aside from integrity, let me ask you whether or not Bob taught you anything about charity?

A Oh, my goodness There wasn't a cause that he didn't get involved in We had a gal at the Oceanfront, Brenda McCormick, that had a -- she's passed now She had a charity called Mothers Inc And every November Bob would call me up, "Terrie, you've got to help her We've got to raise money We've got to help her buy turkeys She wants to buy turkeys for every mother that's single at the beach "

And we had educational causes We had a student leadership program that we put on together It was very important to Bob to teach young people about being involved and about having a voice and being active And so we put on the student leadership program together I mean, he represented people pro bono all the time to try to help people It just -- it's an endless list of charitable activities. I think the Court has heard so much about that already today

Q Tell us a little bit about a particular pro bono thing that Bob did for a friend of your husband's

A My husband was the platoon chief That was an E-7 position, Your Honor And they were getting ready to deploy It was shortly after 9/11 And a young man in the platoon called us on a Saturday night at about -- well, actually, it was about a Sunday morning, about 1:00 in the morning, from the jail at the Oceanfront And he had been arrested for driving his motorcycle 100 miles an hour down a notorious road -- it's notorious for fatalities in Virginia Beach He was just an E-4 He was a young kid

And -- so he called -- of course, was calling his noncommissioned officer to come get him out of jail We went down to the Oceanfront together and bailed him out And I said to the young man, "Do you understand that your" -- "you could go to jail for this? This was 100 miles an hour on a 45-mile-an-hour road on a motorcycle where there have been fatalities You will probably lose your license You'll probably go to jail You will definitely lose your security clearance Your career as a Navy SEAL is probably over." I said, "You have got to have legal representation and, you know, go before the Court "

And he was shocked He was like, "Ma'am, I was at a Bible study I promise you " The group from the Bible study was there waiting for us to bail him out He was not a troublemaker He was not a problem young man But he was a young man that my husband desperately needed in the platoon He was his com guy and they were getting ready to deploy

So Bob agreed to take the case He talked to my husband about some actions that would be necessary to testify to regarding how my husband treated him as his noncom prior to the case being heard And so when this young man went to court, Bob represented him pro bono And my husband got on the stand and explained all of the punishments that he was, within military regulation, allowed to put this young man through, and the Court dismissed everything and allowed this young man to go back and serve his country And they deployed within, I think, about two weeks of that case or so

So Bob never charged him a dime He had significant court costs that he had to pay, but Bob didn't charge him anything

Q From your knowledge of Bob and from your -- would you say you have sort of 360-degree view of Bob?

A Yeah Oh, my goodness As a friend I was his loan office for this house in Henrico I did that loan And he shouldn't have refinanced it because he'd be at 2 75 percent right now It was a LIBOR index with a 2 25 At any rate, he would have been great if he had kept that loan

But I knew his finances I knew him personally I knew his children I knew him as a mentor I knew him as a friend He spent -- God bless him -- two hours -- I got sick at an event that we carpooled to, and poor Bob had to drive for two hours with me throwing up in the car nonstop He delivered me back to my husband I think very happily He was very -- he told me, "Don't worry My kids throw up in the car, too "

He was just a very kind, sincere person that I knew professionally, I knew as my boss when I was in his cabinet, I knew as a friend I knew him as someone who had a deep compassion for the military and for our veterans

I was in the hospital with a very close friend of my husband's He had been diagnosed with an aggressive brain tumor on Christmas Day We lost him three weeks later He was the father of four children, 11 and under Bob called me at the hospital He had heard through Jeanine about this young man He was a reserve Navy SEAL, and desperately wanted to be buried -- he knew he was dying He wanted to be buried at Arlington But Your Honor would know that, having been a JAG, as a reservist, unless you have a combat-related injury that leads to your death, you cannot be buried at Arlington

And Bob called me, not knowing I was there He said, "You're my Secretary of Veterans Affairs I need you to get ahold of Arlington We've got to do whatever we can Jeanine has called me She knows some of his friends in Virginia Beach They have told her Please, what can we do to fix this?" And I said, "Bob, this is one I don't think we can fix " But I spent hours on the phone with the JAG at Arlington He looked at everything he could We do not get Mike buried at Arlington Mike passed away, and Bob said, "Do what" -- he didn't have a CACO You're a reservist It was a brain tumor, not a combat injury So there was no CACO And Bob told me to take as many weeks as I needed to to help the family get everything arranged, and I did

We didn't fix that one, but there was one we were able to fix And that was for the Wise brothers Jeremy

Wise was another young man that had been a SEAL that I had a home loan for and knew well He had gotten out of the SEAL team He was going to become a CIA officer And he was in Afghanistan when a suicide bomber -- you'll have seen it in the movie Zero Dark Thirty -- was supposed to meet them at a location and blew them up And Jeremy's wife decided that she wanted to bury him at our Veterans Cemetery in Suffolk

And about three years later, Jeremy's brother, an SF enlisted service member, was killed in action And the family, not from Virginia, but they also wanted to bury him with his brother But Your Honor would know that at a Veterans Cemetery, burials are done symmetrically side by side You don't -- you don't have a spot reserved for someone

And so when I caught the Governor in the hallway and explained the dilemma and said, "They want their sons buried side by side so that they can be together for eternity," Bob said, "Just do whatever you have to do "

And so I called my agency and said -- the head of the Veterans Cemetery department said, "Don't worry about the cost Either the Governor or I will absorb it out of our offices, and do what we have to do and disinter Jeremy and rebury Jeremy beside Benjamin " And so they did

And so we couldn't fix Arlington, but we fixed that one

Q Is Bob somebody that holds grudges?

A Never In fact, I used to feel so guilty because he's so nice and never says a bad thing or is -- has any retribution toward anyone, and I couldn't say the same of myself And sometimes it's hard to spend so much time with someone that really is -- I mean, I know that so many people have testified to that, but it's really true, Your Honor It's really true

He is not a vengeful or grudge-holding person or someone that ever says an ill word or would ever express anything through an expletive I don't think he knows what an expletive is It's not in his language It's just not in his DNA

Q Does he have any flaws, from your perspective?

A I think that, at times, he's gullible and naive I think that he is someone that people can take advantage of Because he looks for the best in people He doesn't, I don't believe, identify when someone has an agenda and is just looking to get something from him

And that's something that was a little bit of a frustration And there would be times that I'd say, "Bob, you can't" -- "you've got to see where this person is coming from They are not" -- "they don't have your best intentions in mind here "

Q And his response would be?

A "Oh, Terrie No, no You've got to be a better person than that You've got to look for the good in people "

Q If Bob were out and about in business, would you work for him again?

A Absolutely Absolutely

Q Do you have any hesitation about that whatsoever, in view of what's transpired over the last 18 months?

A No I know Bob McDonnell I've known him for 20 years I -- no I -- no hesitation

Q And, finally, do you have anything that you'd ask -- that you'd like to ask Judge Spencer?

A Well, I mean, Your Honor, thank you for allowing us I know it's been a long day I used to sit on the floor and we would hear bill after bill, and members would get up and give these speeches, and I would just -- you know, all of us, and a lot of us, would think, "Oh, come on Sit down There's one more person taking up our time "

But every now and then, somebody would get up, like a Kenny Melvin, and they would make a statement that was just so compelling it made you stop and think and maybe change -- change your action, what you were coming in to do Maybe all of the sudden just because they said something very compelling, you thought, you know, maybe I will rethink this one

And, Your Honor, I don't know that I have the talent to say something so extraordinary and compelling, but I would just ask that you would hear the requests of all of those who have sat here today And the law gives you discretion, and I would ask that you use that discretion Guidelines are guidelines, but you're the one that the people have instilled, through your appointment, to make a decision based on what you think is right And I would just ask you to use that discretion, and if you find it in your heart, to give leniency to this man He's a good man

MR ASBILL: Thank you very much

THE COURT: Government?

MR. DRY: No questions, Your Honor

THE COURT: Thank you, ma'am You may stand down

(Witness stood aside)

THE COURT: We're going to take a 15-minute break

(Recess taken from 12:27 p m until 12:45 p m)

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MR. BROWNLEE: We have three more witnesses We will be brief. Thank you, Your Honor Bert Poole, please

ALBERT H. POOLE,

called as a witness by and on behalf of the defendant, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR BROWNLEE:

Q Good afternoon, sir Would you please state your name and spell your first and last name for the court reporter?

A I'm Albert Harrison Poole, A-L-B-E-R-T, P-O-O-L-E.

Q You understand you are here for the sentencing hearing of Bob McDonnell, your friend; is that correct?

A That's correct.

Q Tell Judge Spencer, how long have you known Bob McDonnell and how did you meet him?

A I've known Bob McDonnell since 1991, Your Honor I got to know him then because we got a call -- I was at his law firm, soon to be his law firm. We got a call from the Commonwealth's Attorney in Virginia Beach, and he said, "I've got this Assistant Commonwealth's Attorney in my office that's going to need a new job." I said, "Yes, sir?" "Basically, yeah, he was elected last night and he can't work here when he gets sworn into the General Assembly." "As a result," he said, "this is a really, really good young prosecutor You need to talk to him." So we did We invited him over to the firm. We sat down, we interviewed him, talked to him, and, as they say, the rest is history We hired him and that was the beginning of my knowing Bob and the beginning of his what I will call his non-government legal service, being a young member of the General Assembly trying to get started and established with the General Assembly, at the same time with a young family at home trying to raise a family

Q So he came on to your firm as an associate and ultimately was elevated as a partner; is that correct?

A That's correct He went through the normal process and was successfully promoted to partner

Q And just a little bit if you could tell the Court, I want to talk a little bit about his being an attorney Describe for Judge Spencer Bob McDonnell as a lawyer in private practice Was he a good lawyer, an ethical lawyer? Please describe briefly for the Court.

A Bob McDonnell was a good lawyer Like anyone, he had to learn, because he was just starting out in the regular practice when he came with us But he was a quick learner, and he was always operating at what you might call warp speed because he was pulling down a full-time legal docket at the same time that he was doing his responsibilities in the General Assembly and learning both at the same time But he became a very good lawyer He was well known as, I think, a very ethical lawyer, very highly respected by members of the Bar in the Hampton Roads area And likewise, I think, the judiciary thought very highly of him.

Q This is someone you worked with on a daily basis for many, many years; is that correct?

A Yes

Q And at some time, your firm decided to make him a partner And that was, I would imagine, like any law firm, that's a big deal, to bring in new partners And you did that with Bob McDonnell; is that correct?

A That's correct And you are right, it was a big deal But he passed the test, he did very well And we made a good decision when we brought him in to become actually a shareholder in the firm. It was a very good decision.

Q He served in that until he was elected Attorney General of our state; is that correct?

A That's correct

Q And I want to hit a couple things from your vantage point and your knowledge of him within the legal community Did people find him to be truthful and have integrity and honesty in all his dealings with people?

A I think that's absolutely correct. In all the years that I practiced law with Bob McDonnell, I really don't remember anyone coming to me and saying, "He is not treating us right," or "He is not doing the right thing." That just was not who Bob was as an attorney As his other testimony today has encompassed, he had a very big heart and he sought out the cases in which he could make a difference And that's why he ended up doing a great deal of pro bono work. While some law firms were establishing specific pro bono departments, we had Bob McDonnell Every now and then we had to remind him that he did get a paycheck and we had to charge some of those clients But that's the type of person he was and he did a great job for our law firm and did a wonderful job for those that he represented.

Q Terms like "greedy," terms like "materialistic," in your judgment, with the man that you know, are these terms that you would apply to Mr McDonnell?

A No

Q Those are not -- you have never seen that kind of conduct by him?

A That's not the Bob McDonnell that I have known over all of these years And at the time, I mean, he could care less whether he had a brand new designer suit or

Italian shoes That was just not Bob. Bob was not materialistic in what he did and he was very generous with his time and with his efforts for people

Q All right Mr Poole, at this time I would just ask you, is there anything you would like to tell Judge Spencer here before he sentences your friend today?

A Your Honor, again, thank you for the consideration you have given to this Bob McDonnell is a special person Obviously, he has risen to great heights in his political career He has done a great job for many people I know it is a tough decision Certainly, I would ask that the Court consider leniency He has a lot to give to a lot of people, and the more he can continue to give back, the more society is going to get from him. If there was ever a case for someone who has been an elected official to receive leniency, this is the case This is the special person. And I just ask that you give that consideration And thank you very much.

MR. BROWNLEE: Thank you.

THE COURT: Government?

MR. DRY: No questions, Your Honor

THE COURT: Thank you, sir You may stand down.

(Witness stood aside.)

MR. BROWNLEE: I call Janet Kelly, Your Honor

JANET KELLY,

called as a witness by and on behalf of the defendant, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWNLEE:

Q Ma'am, would you please state your name and spell your first and last name for the court reporter?

A Sure It is Janet, J-A-N-E-T, Kelly, K-E-L-L-Y

Q Ms Kelly, you testified at the trial for Mr McDonnell; is that correct?

A Yes, sir

Q And you have submitted a fairly lengthy letter for Judge Spencer's consideration; is that correct?

A I did.

Q And so I don't want to go over, retread all that stuff I know the Court heard your testimony, has read your letters There's a couple things I wanted to ask you specifically to kind of fill in a couple gaps if I might

A Sure

Q When Mr McDonnell, when he was elected Governor, he appointed you to a specific position; is that correct?

A Yes, sir

Q What was that?

A I was Secretary of the Commonwealth.

Q In 15 seconds, what are the duties of the Secretary of the Commonwealth?

A It is the Secretary of State equivalent in other states, but since we are a Commonwealth that's the title It is responsible for mostly the 4,000 Board and Commission appointments as well as restoration of voting rights and a number of other administrative duties.

Q And fair to say that you had worked with him a very long time and he relied on you to do other things in your duties; is that correct?

A Duties as assigned. Yes.

Q I want to talk about just a couple of those There was an effort after Hurricane Katrina to provide for relief there We heard a little bit about it today about Mr McDonnell and his family doing that Describe that very briefly for Judge Spencer I want to make sure he understands what occurred there

A Sure I had been down to New Orleans in 2007 and came back on Cloud 9 It was a very difficult but rewarding trip, and I had talked about it around the office. And something that I said triggered something in Governor McDonnell, and a few months later he said, "I'm thinking about going to New Orleans " And then I thought he was kidding, honestly, because that isn't something that most people would do. And he didn't just go; he called a charity down there and took his whole family on their spring break trip I asked him why he did that. He said he wanted to make sure his children knew how other people lived and what it was like to suffer, and really wanted to impart that empathy on to them. And I think as you have heard earlier, they were not celebrity guests; they actually worked really hard there.

Q Let me move on to adoptions This is an area that you focused on certainly when he was Governor, he focused on. Tell the Court just briefly about that effort that he made as Governor

A Well, there were several staff members, several Cabinet members who have personal adoption stories, and throughout one of the course of those stories, it became known that there were private adoptions where people adopt babies, but that there were also a thousand children in Virginia's foster care system waiting to be adopted. And I had been in government and politics for fifteen years and wasn't aware of that. He had been in state government for many, many years and wasn't aware of it, either And it took him about 15 seconds to say, "Fix it," and so my husband, Ryan, and I, we at his task started developing a plan to take care of these children. It was the last year of the Administration, which made it remarkable for a lot of reasons Most Governors don't take on those kinds of projects that far in advance It was really an impossible goal. We knew we weren't going to hit it going in. It was impossible because we had to work with 110 different localities in Virginia who have their own separate Departments of Social Services Working with social workers is great, but working with 140 people of any caliber is always like herding cats when you are working in that short of a time frame So it was very hard, in addition to all the other duties that we had going on that year with Boards

But we built a great team and the Governor did anything we asked him to do and would make suggestions and say, "Can we do this?" "Can I do that instead?" He showed up everywhere and really used the bully pulpit to draw attention to these children. By the end of the Administration we matched 1,041 children with permanent, loving families It is the most dynamic and fulfilling thing I've ever done, and I think he would probably agree I don't know You will have to ask him.

Q There were many other things like the St. Joseph's School, this was a school that was in disrepair, about ready to crumble, and fair to say he stepped in and provided great leadership and that school is thriving today?

A Yes.

Q On the restoration of rights, you spent a lot of time on this and Ms Lawrence talked about the important part of that It was fair to say that wasn't politically expedient for him?

A No, I think it was probably the opposite

Q Lastly, just these food banks This is a thing he had worked on as Attorney General Tell the Court briefly his efforts in that and the results of that

A Sure He worked on it as an attorney in Virginia Beach, and when he became Attorney General decided to take the regional approach statewide and took advantage of the naturally competitive nature of attorneys, if you will, to compete against each other in raising money for food banks And he created something called the Legal Food Frenzy It has raised millions and millions of pounds of food over the last eight years since he took it on. It was just one of those things that he just throughout, I think, the common thing, at least I hope that's emerging out of today and his life in general, is that he doesn't just care -- he cares about powerful people, of course, and he cares about people with means and influence, but he cares about the waitress and the guy behind the counter and the gas attendant or whatever equally as much as he cares about the people in power

Q Is there anything you would like to say to Judge Spencer here briefly before you step down?

A I would just say I'm not an attorney, as you know, Your Honor My understanding of what you have to do today is to issue a sentence that is just but not greater than necessary And I would urge you to seriously consider some of these alternative sentences. If you find it not just in your heart but in your mind, I think it makes a lot of sense to have someone of his caliber and experience and skillset actually doing good for people. He is going to do good regardless of where he is But I think he will be an enormous amount of good in these areas of great and dire need. Thank you

THE COURT: All right Anything, government?

MR. DRY: No, Your Honor.

THE COURT: All right, thank you, ma'am.

(Witness stood aside)

MR. BROWNLEE: Governor Wilder

L. DOUGLAS WILDER,

called as a witness by and on behalf of the defendant, having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWNLEE:

Q Good afternoon, sir

A Good afternoon.

Q Would you please state your name and spell your first and last name for the court reporter?

A L. Douglas Wilder, D-O-U-G-L-A-S W-I-L-D-E-R.

Q Can you give the Court just a brief summary of your background beginning with your education and through your present position, sir?

A Very briefly I was educated in public schools here in the City of Richmond and went to Virginia Union University, and then to Howard University School of Law And I've lived in the City of Richmond my entire life except for the military service of about a couple of years and the period of time that I lived in Washington at law school

Q And with regard to your military service, you served in Korea, in the war in Korea?

A Yes, sir

Q You are a combat veteran?

A Yes, sir

Q I understand you were awarded the Silver Star for your actions in combat?

A No

Q Excuse me, the Bronze Star

A The lieutenant that I turned the prisoners over to got the Silver Star I got the Bronze

Q My apologies, sir Bronze Star You are a lawyer?

A Yes, sir

Q And you were --

A Still have my Bar card, too I might need it

Q And you were a State Senator here in Virginia?

A Yes, sir.

Q And you were Lieutenant Governor here in Virginia?

A Yes, sir

Q From 1990 to 1994 you were the Governor of Virginia?

A Yes, sir

Q And you have subsequently also served as the Mayor of the City of Richmond?

A Yes, sir

Q And during that time, you got to know my client, Bob McDonnell

A Yes, I did.

Q Can you tell Judge Spencer a little bit about your relationship with Bob McDonnell, sir?

A I first met him, he introduced himself to me I was down in Virginia Beach giving a speech for a Veterans' Day event and he and his wife, Maureen, were there with the children. And if I am not mistaken, those boys were in a stroller and he said, "I want you to meet my family " I said, "I would very much like to do that " He said, "And I'd like to be chatting with you sometime, too, soon " I said, "Well, we will get a chance to do that." Then ultimately when he came back to the city and service, he had been involved with helping what I was doing relative to the One Gun A Month bill, which was Virginia law up until a year or so ago. And he was stalwart in that regard. And there were those who didn't think that he should have done that, being that his party is not my party So he stuck to his guns and we became friends at that time. But we, more than friends, became respecting of each other's philosophies, our various views of life, and the understanding of what public service really means It means to serve the public. I always liked that.

Q Do you believe he did that?

A I do.

Q And can you tell Judge Spencer why you believe that?

A Well, in the instances in which I have had occasion to chat with him or talk with him, it was always with reference to how we could improve government He was very proud of the fact that he had come from humble beginnings, as well as having served in the same position that Patrick Henry served in And I used to tell him, "I like that, too." I always got the impression that he was looking for something else to do to help rather than just to hold the seat I was also impressed with his military service and knowing that he had been involved in military service, that another higher calling would be serving in state government And I had great respect for him.

Q Did you in your dealings with him, sir, did you find him to be ethical and trustworthy?

A Yes. I found him to be of his word. If he told you something, you could go to sleep on it

Q And that's important to you, I would imagine?

A Most important to me, because don't all of us do that

Q Words like "greed," words like "materialistic," do those apply to your friend, Bob McDonnell?

A I never was impressed with that I never knew that One of the things that I have always admired in people who were in public service, that they not forget that they serve the public; that the office is not there for them, it is what they can use that offers to help other people And I was always of the impression that Bob did that

Q Let me ask you a little bit about being Governor You are one of the very few folks who have served in that position. There are certain pressures, I would imagine, with being Governor, many challenges

A Yes, sir

Q Describe for the Court, give us a sense of what that's like and what are those challenges and pressures that governors and the type of people you meet can be susceptible to?

A Well, one of the first things is to be certain that you keep your word and to be certain that if you make a commitment, you follow through with it; that you understand that you don't represent a group of people or a class of people, you represent everybody, even those who never voted, who couldn't vote And other pressures are such that people will always be calling upon you to do things and to fix things, and sometimes you can't do that, but you do the best you can. One of the things that I was very upset with was that I had promised so much to so many when I was elected, only to find out we were broke and I couldn't deliver on that. And it bothered me a great deal, so much so that I said, "I won't leave the next Governor broke." And I made certain that I didn't.

Q Yes, sir One of the things we talked about when we met was how many friends and supporters Bob McDonnell still has today, even after all this trial and after its result Do you have a sense of why that is?

A Well, I think he is a people person. And I think when he is in public, he is with the public. And I think that people have recognized many of the things he has done that have benefited them and helped Virginia His role as Attorney General was very strong, very good, very productive And he ranked high nationally as a result of that. When he came into office as Governor, he was able also to learn how to reach across the aisle and to work with people of both persuasions I have always admired that, too. I never knew, I hated to recognize the existence of an aisle, so it is not a matter of having to reach across it You talk to everybody And he did that

Q You have seen your friend over the last year, year-and-a-half I think we talked about how he has suffered, I think was the word you used Describe for the Court kind of what you have seen and how this whole thing has impacted him.

A Well, it's eaten at him to the extent that it is almost like the mythical creature that had a piece of his liver eaten out every day and then you find out, say. "How much is left?" So I was always concerned about how he was doing And I said to him on a couple occasions that he didn't look good. He had lost the color in his skin and it looked like he had lost some weight. And I would say to him that "Whatever it is you do, you make certain that you are level and you are rested. Don't carry it with you to the extent that it is going to bother you."

The pressures of the office are awesome Virginia, being a one-term Governorship, there is so much that you have to do in that four-year period of time. In his case, I knew he was dealing with some of these other things, and yet he carried out the responsibilities of his office as if that were not the case, that he was still above the fray, he was still involved with meeting his responsibilities and did so on a regular basis.

Q Yes, sir. As you may have heard, and I know we have discussed, one of the things that we have put forward here for the Court's consideration is a probationary sentence and what we call rigorous community service for three years to be out in the Bristol, Virginia area, Southwest Virginia, helping the poor, food banks, the missions that are out there You are a trained lawyer; you are a litigator Can you give the Court your sense of the appropriateness of that and why you think that is legitimate and important here?

A Well, one of the things that you asked earlier, and I didn't respond as I should have continued, Bob McDonnell, had he not run afoul relative to the charges being brought in this Court and in this case, would not be on anyone's short list for the Vice President He would be on the short list for President in this country Without question, had he not run into the difficulty again, he would have been ranked as one of the best governors that Virginia has ever had. And so with those two things now removed from the plate, he has been punished, been punished indelibly, forever That can never be removed. There is no magic wand that can be waved to take away that taint relative to what his reputation was and what it could be and what it might be

And yet, I'm almost confident that there are any numbers of persons that see so much good in him that they would like to see that good continue in the fashion that you have just described as it relates to providing opportunities and things for others to be able to do that they might not otherwise have the chance to do If Bob McDonnell were to be given fifty years, it wouldn't be any more punishment in terms of how he has suffered So it is not the measurement of the time; it is what do you do. He has been stigmatized already He has been hurt and wounded, almost permanently So I would think it would be, within the Court's discretion, of course, to temper justice with mercy, to likewise understand what good is there that could be shared, and looking at the totality of the circumstances, and then to decide

Q Sir, the only thing I have left is if you have anything you would like to direct to Judge Spencer, I would ask that you do that at this time

A Yes I would say to Judge Spencer that I have heard any number of persons describe the manner in which this trial has been handled and the measure by which this Court has presided, and I congratulate you again on that. Judge, I don't need to tell you any of those things that you have heard. You have heard it all this morning, and you have heard it heretofore And you are possessed of the qualities that would allow you to do those things that you would consider best serving the ends of justice Thank you.

THE COURT: Government?

MR. DRY: Yes, Your Honor Briefly

CROSS-EXAMINATION

BY MR. DRY:

Q Good afternoon, Covernor Wilder

A Good afternoon.

Q Sir, I'd like to pick up, you talked about how the defendant has been stigmatized by these convictions, right?

A Yes, sir

Q But isn't it true, sir, that every elected official that has been convicted of bribery is stigmatized?

A Yes

Q Wasn't Delegate Hamilton, in fact, stigmatized by his convictions in this courthouse in 2011?

A Yes

Q But you are aware he got nine-and-a-half years in jail, right?

A Yes

Q Sir, you said that one thing that's important to you is that elected officials should not forget that they serve the public, correct?

A Yes, sir

Q But you would agree that accepting bribes, that's not serving the public, right?

A I would agree.

Q And briefly, sir, you would agree with me that there is a cynicism in the United States from the public overall about their elected officials now

A Yes I couldn't agree with you more in that regard, so much so that it is dangerous Dangerous to the extent that if we have our young people believing that government doesn't exist for them, and if our nation doesn't continue to show that government is of, for, and by the people, then it is a dangerous precedent

Q Let's pick up on that, sir When you say "for the people," it is not just the people that have hundreds of thousands of dollars of things to bestow on the politicians, right?

A Absolutely right

Q Because access, regardless of station in life, to the political process, that's important, right?

A I couldn't agree with you more

Q In fact, when an elected official accepts bribes, that goes to the very heart of our democratic process, doesn't it?

A Yes, sir

Q And that increases the cynicism, doesn't it?

A Yes, sir.

Q And in fact, that makes people think that their vote doesn't really matter, doesn't it?

A And in many instances, it would. Also I would respond, though, that when you look at the totality of the case and you look at the progenitor of the bribe, that source of who was there, and when the public looks and sees that this person who actually started everything walks away clean --

Q Absolutely, Your Honor But did Senator Hamilton --

(Applause from the gallery)

Were the bribe payers prosecuted in Senator Hamilton's case or Delegate Hamilton's case?

A I don't know that much about that case. But I don't know that they were

Q Okay And sir, while you were serving as Governor, did you -- let's do it this way Would you have ever accepted a Rolex watch from somebody that wanted to do business with the state?

A I usually bought my own.

Q Okay, fair enough. And would you have accepted a Ferrari ride?

A No, I wouldn't have accepted many of those things. On the other hand, you would be surprised at what goes on that you don't know about I had people that would see me sometimes and say, "I really am glad that I had the opportunity to meet with you and chat with you and the appointment that you gave me in terms of just to talk." And I would say, "Well, fine, that's what we are there for " He said, "It cost me enough money " "It cost you money to see me?" "Yes " There are people who will hawk that office There are people who will say, "I can get you in to see the Governor" or do this and do the other and they are paid for it I didn't know anything about it To the extent that I started finding out about it, I made it very clear that anyone that wanted to see me, all they needed to do was call the receptionist and they can see me

Q So paying for a meeting, that would be wrong

A I would not permit it

Q Okay Last question, sir: Were you surprised when the facts came out about what Mr McDonnell had done in this case?

A That can go both ways I'll tell you why I say that People used to ask me, they'd say, "Wilder, don't think you are above everything because everybody has got a price " I would say, "Yes, that might be true " They would say, "What is your price?" I said, "My price would be that I never would have to buy anything, never have to pay for anything, I could fly all over the world when I wanted." They'd say, "You are asking for too much." I said, "That's the price " The point I'm making to you is that if you follow the case in terms of guilt or innocence, that's one thing We are not here for that today

Q No, sir

A What we are here to talk about, all of that having been done, all of that having passed, and I know the appellate process is going to take place, but has the action of the defendant in this case warranted what the Guidelines call for, or can the Guidelines be tempered to the extent that has been the case in many instances when judges have felt that, "Look, this doesn't make sense, notwithstanding this is what we should do."

Q But you would agree with me, sir, that in fashioning the sentence the Judge should look at the actual crimes themselves, correct?

A I think the judges should look, and I'm confident this Judge will look at the totality of the circumstances and take everything into consideration.

Q So am I, sir Thank you

THE COURT: All right You may stand down.

(Witness stood aside)

(Applause from the gallery.)

Anything else?

MR. ASBILL: No more testimony

THE COURT: All right Government, do you have any testimony?

MR. DRY: No evidence, Your Honor

THE COURT: All right All right, I'll hear argument from the defendant

MR. ASBILL: Thank you, Your Honor I know you have gotten a lot of letters, 450 letters, and 365 notes that my client's staff put together for him at the end of his term. And some of the writers of those notes overlap with some of the letters But I think by my count there are about 600, 650 individual people who have expressed their views about my client to you in their letters or in their notes that we have submitted. And I don't intend to reiterate each of those, but I want to focus on some of them. I'm not going to focus on the ones that have been referenced in our pleadings I want to focus on the ones that have not yet been referenced specifically in the pleadings and talk about it

I want to say as I start this, essentially what I am talking about is the nature and characteristics of my client. I'm talking about his character And that's obviously something that's an important factor in the sentencing calculus.

I look back at this and think about my client's character, and you know, somebody gave me a gift, a business colleague of mine gave me a gift this Christmas, and it was a little plate And it said, "Ability gets you where you are, but character keeps you there " And certainly with respect to Bob McDonnell, ability got him into the Commonwealth's Attorney's Office It got him into a law firm. It may have got him into the House of Delegates initially. But it was his character that made him a partner; it was his character that kept him in the House of Delegates; it was his character that made him Attorney General; and it was his character that got him to the Governorship.

I have spent literally thousands of hours with this man over the last year and a half in representing him in this case And like others who have testified here today, I have never heard him say an unkind or an uncharitable word about another human being, ever No matter how difficult the circumstances were, no matter how adversarial I felt the situation was, I have never heard him do that

I have watched him interact with people, and a lot of the folks who I'm going to talk about have interacted with him as well And I have been humbled, I've been astonished, frankly, at the compassion and the generosity that this man has shown to others He is somebody who is unique in my life experience in terms of being a healer He is a grief counselor He mends He loves in ways that I find truly remarkable They have been an inspiration to me, and it has been something that I just can't fully comprehend it. I know how in my own imperfect way to try to console somebody who is hurting, a friend or relative who has lost a loved one or had some tragedy occur I can't come close to connecting with that person in a way that actually helps them like this man can. It is truly extraordinary to me. But that's the human being that he is

I go through these letters and I read from some of them, here is a Joseph Adams writing: "My father passed away in a fishing accident " This is a friend of Chris and Cailin, my client's daughter and son-in-law "Bob didn't know the man but he was the only friend of this young couple that called to console the wife in this circumstance No other person that they know did that." And he writes to you and asks that you see the different side of the man from the Governor perspective, but from the personal perspective

I look at the letter from Richard Black, who is a State Senator here, who writes that "Bob could have been one of the wealthiest attorneys in the State of Virginia. Instead, he focused on public service and he was much more devoted to the Commonwealth than he was to himself, and he was kind to everyone, regardless of their station."

I look at Monica Block, who testified in this courtroom. "I remember thinking that if the prosecution could have spent a day working for him like I spent many days, they would see the real him and know that while things might have been less than perfect, his intentions were always pure "

I look at Karla Boughey's letter "Governor McDonnell made people at ease " And she tells about a moment when there was a reception for Governor Romney when a young man passed out, fainted, fell to the floor, hit his face, hit his nose, et cetera, a high school student "And the most embarrassing moment of his life turned into one of the best moments of his life because Bob McDonnell ignored everything else and went to this young man and picked him up and helped him out." And she writes that that tells the story of a man's character

I look at the letter from Lisa Caruso "After becoming Governor, I would see Bob and he always told me how proud he was of me. That meant so much. I told him how proud I was of him. Regardless of the verdict in the case, I'm still proud of him as a man and for all the positives he has accomplished. Knowing him has made me and countless others better people "

I look at Holly Clifton's letter "My favorite story was when Governor McDonnell attended an event where he was headlining in support of a candidate and he whispered to my colleague, 'Who is the guest of honor tonight?' to which she replied, 'You are, Governor ' I heard this story play out many times as he merely saw himself -- he never saw himself as the draw, the one others were coming to see and be with. It was with his humility -- In fact, it was his humility that was the draw for me and so many others who have worked for and known him. This sort of humility from a person of power encourages and challenges us all "

I look at Victoria Cobb. She did not agree with the Governor on strategies on a lot of issues, but she said that he was always an honest broker, he was a man with humility, despite the office he held.

I look at William Cofer's letter, who talks about humility and compassion and tells a very telling story about walking into the Patrick Henry Building on a legislative session and heading towards the elevators, and sees a young woman sitting dejectedly near one of the doors and the room was otherwise empty "And then suddenly a man rushes over to this young woman who is sitting on the floor dejected and tries to console her and find out what's happened And she starts telling that person that her life had been extraordinarily difficult over the past couple of weeks And the person who was consoling her was trying to comfort her, shared his compassion and empathy " And when this William Cofer looks closer, he finds out that it is the Governor who is doing this, giving this person his undivided attention and basically a shoulder to cry on, and he had no idea who this woman was and she had no idea who he was But this is the kindness, the compassion, the humble nature of this man towards others

I look at Sean Connaughton's letter, who was Bob's Secretary of Transportation. "In the years I've known Bob, I have never met a public servant more dedicated to doing what he thought was best for Virginia and its citizens He did not stand on partisan political ideology "

I look at Holly Cuellar's letter She tells a vignette about Bob being approached by a homeless person The man asked for money and explained his dire situation "Governor McDonnell stopped and listened and gave him money from his pocket and a business card and explained 'Let me help you find a job '"

This is his personal commitment to people Bob's brother-in-law, Jason Deane, writes: "To lose his guidance for any length of time would be a terrible loss to the family and friends of Bob McDonnell. But even more so to a complete stranger that finds himself fortunate enough to meet Bob along the way "

I look at Kathryn Deane's letter And she writes: "The hardest thing in the world is unconditional love It is selfless, sometimes painful, and always sincere. Uncle Bob loves unconditionally every day of his life "

I look at Karen Fortier's letter And she writes she supervised Bob McDonnell in the Commonwealth's Attorney's Office "The work we did had the effect of hardening the hearts of some of the prosecutors and defense attorneys There were sometimes cruel judgment against defendants and even some victims, sarcasm, profanity, and frankly a good deal of arrogance on the part of some of my fellow criminal attorneys on both sides of the cases And then there was Bob McDonnell, and none of that applied to him." She writes: "He is still a humble man He is not a Ferrari guy "

Paige Hahn, a fundraiser for Bob for six years, writes: "Governor McDonnell gave me hope in our elected officials and made me realize that there actually are good people in politics He is the real deal I've never worked with such an ethical, thoughtful, and inspiring man He fundamentally believes his purpose is to serve God, his family, and his country He doesn't give a hoot about money or personal possessions I think if the goal of this case is to send a message to politicians nationwide, they have heard it loud and clear "

Perry Hohman writes: "Despite Bob's circumstances, I'm not deterred from giving him the strongest recommendation Whatever the legal proceedings may call my assessment into question, I believe that many of us made mistakes and this does not waiver me from my reference I want to add that Bob called me to discuss this legal case and he could not have been more remorseful and more humble "

Stephanie Iaquinto writes: "Outside of my family, I cannot think," she was a volunteer in his delegate office, "I can't think of a single individual who has had a more positive or lasting influence on my life I have never heard him say a disparaging thing about another human being This trait frustrated some of us in his office who saw it as a sign of misplaced trust, even gullibility. In hindsight, though, it was clear it was an outward manifestation of his faith, showing grace to others because God had shown him grace "

Tamyra Johnson writes, he is a third-grade elementary schoolteacher: "I'm not going to waste your time with all the stories because I will tell you they are all the same He is caring, he is giving, he is loving, and he is the most honest man I have ever known I write this with every fiber of my being and I know it is true Loyalty is his cornerstone and he has served us well "

James Keegan, Bob's Notre Dame roommate: "It would have been easy for him to settle into a six-figure job but he wanted to help people His move into public service made complete sense to all that know Bob. Helping people was the core of Bob McDonnell He has never been into material things and he always wanted to make a difference with his life When my brother passed away suddenly in 2014, in July of 2014, Bob called to offer support to me, although his trial was just about to commence. He spent the phone call asking how I was doing, not talking about his needs or his problems He kept the focus on my grief and offered his prayers, his friendship, and his support "

Bill Kilberg writes: "My wife, Bobbie, and I have lived in Virginia since 1970 My wife ran for Lieutenant Governor. The contest was fiercely competitive and I observed close at hand the personal support Bob gave to Bobbie at substantial risk to his own political future with his conservative wing of the Republican Party which was opposed to Bobbie's candidacy Bob concluded Bobbie was the best candidate and it took courage on his part to stand up for it "

Andrea Kilmer writes: "The picture of his life painted in this trial is but a small glimpse of the man that many of us know personally and professionally to espouse the ideals of honesty, honor and integrity This has been a travesty not only for the McDonnell family but also for all of us in the Commonwealth "

Matt Lohr writes: "I will never forget," after he talks about his wife passing away with breast cancer, and in the months that followed after this occurred, "Bob attended the funeral and he arrived early to meet with the family I will never forget when he got down on his knees and hugged my five-year-old son while crying with all of us I saw that day a man who was truly grieving with us and was willing to do whatever he could to comfort all of us For the next two years, almost every time I saw him he asked me about how we were doing He is a man who truly cares for his family and feels the pain of those around him. To this day I will always be grateful "

The Bishop of Arlington, Paul Loverde, writes: "Bob has made a difference." He is talking about the adoptive program and the food banks "For the children and families he has made a difference that will last a lifetime and cannot be measured."

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MR ASBILL: Christel Lewis writes, "I was one of Bob's mentors in the Commonwealth Attorney's Office He's the special person who always leaves one feeling good about himself I've never heard anyone say a harsh word about him "

And I want to pick up on that because in the course of this trial in this case and all the investigation that I did of witnesses and potential witnesses in this case, other than arguments from my opposing counsel, I've never heard anyone say a negative word about Bob McDonnell in this courtroom Even Jonnie Williams had to struggle hard to say something negative about Bob, but nobody else did

Edmund Matricardi writes -- and I'm sure you remember him and seen his letter

THE COURT: I've seen it

MR ASBILL: And he asks and reminds you of his own sentencing when he asked you to consider not trying to send a message or fall into that in terms of what you do at sentencing, but sentence him as the man, not as somebody that you can use as an example to others

Monsignor McCarron writes -- a priest for 37 years in the Richmond Diocese -- "I've come to see this man He's sincere in his integrity It's no mask or public persona to be taken on and off at whim It is simply who he is To see this man in a crowd as Attorney General, Governor, parishioner in the pew or brother of the bride is to see the same man There is no pretense, no haughtiness Just an honest man who likes the people he serves "

Robert McDowell writes: "He exudes a sincere sympathy that" -- "empathy" -- excuse me -- "that emanates from the foundation of his character He is genuinely sincere and has strong character It's apparent in all contexts, even outside of the public view "

Reverend Sean McGraw from the University of Notre Dame says: "Bob is the most generous, kind, thoughtful, and faith-filled person I have ever met He is certainly the most gentle and honest politician I have ever met, and I know a lot of them from my work as a political science professor here at Notre Dame "

Cheryl McLeskey, a friend from Virginia Beach, writes to this day, strangers come up to her and ask how he is carrying -- Bob McDonnell is carrying this burden "But to this day, Bob cares about others I saw him walk into the Kempsville Presbyterian Church A woman by the name of Juanita Gardner had just lost her husband Bob McDonnell walked up to the woman and knelt down on his knees, touching her cheeks, praying and expressing how sorry he was that her husband had passed He is a man with a servant's heart "

Senator McWaters writes: "I have yet to speak to one person who believes Bob acted intentionally to deceive the public and gain personally "

Robert Neil Miller writes: "I go by my middle name, Neil So it was popular for me to tell people I named my son, Bobby, after Governor McDonnell That's how much I think of him "

Mary Mints, a friend since college, writes that: "I've always found Bob to be kind, trustworthy, and a gentleman whom I consider not only a friend, but a brother I would trust him with my life "

Phil Miskovic, Councilman Town of Crewe, writes: "At events Bob would greet each person who approached him, listening to their concerns for as long as they would talk, giving each person a voice His servant leadership style continues to inspire me as I try to make my small part of Virginia a better place "

Loren Monroe writes: "He's the most human and humble of elected officials that I've come across in my 20 years as a lobbyist "

Deborah Munoz writes: "I was touched by the fact that Bob and my husband, Tito, who was an Hispanic immigrant, became close friends This is enduring to me because Tito is an unassuming and hardworking man who came here as an immigrant from Columbia Many people overlook him and do not care to listen, but Bob always did "

I read from Ashley Myers' letter: "As a low-level staffer in Bob's office, I was treated with the same respect as that of a foreign diplomat Governor McDonnell was and remains the most kind-hearted, humble, and thoughtful man I've ever had the pleasure of knowing I would work for him again in a heartbeat "

Mark Obenshain, whom I'm sure the Court is aware of, writes: "While I find some of the personal choices and decisions made by the Governor to be regrettable and difficult to explain, he is a man I admire and continue to respect I have seen political figures who have developed a loyal following arising from ambition or opportunism. That's what they want from him That's not the kind of commitment I've witnessed from Bob's staffers What I witnessed from them was their love was developed and fostered by his obvious care for them as individuals and by his commitment to public service "

Jeffrey Palmore writes: "I once had a Virginia legislator tell me that if he and his wife were not able to take care of their son for some reason and they could pick anyone to raise their child, they'd pick Bob McDonnell I have seen countless examples of him taking the high road and adopting honorable approaches to issues that confronted him when his opponents were adopting less savory approaches It's often said politics is a contact sport, but Bob McDonnell's political career was marked by dealing with friends and opponents alike, honestly and respectfully "

Todd Parker, a doctor, an emergency room physician, tells the story by starting that "Bob McDonnell is one of the finest people I have ever met " And he talks about his interaction with him And he goes, "I asked for his help with including funding in his final budget for a little known clause in the state Medicaid payments to emergency physicians that punished ER physicians caring for state Medicaid patients under federally mandated care

We met with him, and after reviewing the documents and hearing our case, he agreed it was not fair to punish ER physicians financially when caring for patients they are mandated to see, and he put money in his budget for this purpose

Most significant about this was that it required increasing Medicaid funding, something that he was opposed to, and would also be financially harmful to the company that his sister worked for, which was a Medicaid managed care company I pointed out these facts to Bob, and he said, 'It doesn't matter It's the right to thing to do, and if it's the right thing to do, it needs to be done '"

Sherri Paugh, a friend for 40 years, writes: "He is the guy who asks about you, how you were doing Nothing changed when he became Governor There was no arrogance whatsoever "

Charles Poindexter, from the House of Delegates, writes: "I found him especially dedicated to citizens that had experienced tragic events in their life One case stands out to me That was when Bob McDonnell stepped forward to assist counsel and become close friends with a Franklin County couple who lost their only son to an IED in Iraq He literally took them in as his own family, visited them, and helped them move forward with their lives "

Logan Pugh writes: "It was a great honor to work for the Governor of Virginia, but it was a much higher honor to work for Bob McDonnell, the man "

Emily Rabbitt, who testified in this trial, a Scheduler for Bob McDonnell, says: "I got to know him incredibly well Although I was still young" -- "although I am still young in my career, I'm confident that my service to the McDonnell Administration will remain the highest honor of my life I am a better person today because I was given the opportunity to work for Bob McDonnell Furthermore, Virginians are better off because Bob McDonnell was able to serve them for the last 20 years "

Liz Reiley, a childhood friend of Bob's who is a --

as she puts it, a rabbit Democrat, talks about Bob coming, at the time of his trial, to a mass -- a funeral mass for his sister Mame Reiley, who had died of cancer She was a well-known Democratic operative in Virginia and in national politics And her family, the Reiley family, did not know Bob was going to attend that funeral And he didn't know how he might be received because the family all shared the sister's liberal politics

"Without regard to that, Bob came to the mass because he respected my sister and he respected the shared history between our families He did it because it was the right thing to do, and he exhibited courage in doing so And then afterwards, when he was in Northern Virginia, visiting a classmate whose wife had been murdered, Bob, rather than dwelling in self-pity after his trial and conviction, went to see his friend and went to see me and others who were suffering That speaks to the good and decent man that he is, the same qualities I saw in him when he was a young boy He did not ask me to write this letter I sought out the opportunity to make a request on his behalf for leniency when he is sentenced "

Pat Robertson, the chancellor of Regent University, writes: "I have written to Bob McDonnell to indicate that Regent would be willing to offer him a position as a faculty member in the School of Government when his obligation of the current legal proceedings are at an end "

And he's one of many who write that they would still employ Bob McDonnell if he were interested in working for them, despite the convictions in this case

Bryan Rhode, who worked with Bob, writes: "I was privileged to spend a great deal of time with him He's the most genuine, kind, and dedicated public servant I have ever seen " He writes that: "He was an exceptional leader because the things he did were never about him He always rallied to a higher cause and sought to do what was best for the people of Virginia. No jail sentence, fine or other punishment will ever punish him more than he has punished himself He is my friend, but he is also a hero of mine The fact that so many people have continued to stand by him in this difficult time is a testament to the person that he is "

Samantha Rucker talks about Bob wearing clothes with patches in his suits, et cetera, during the gubernatorial campaign And also, on this greed theme that my opponents keep harping on, she talks about a situation -- she was in the Attorney General's Office with him And she said there was a time in the Attorney General's Office when the State was faced with a budget deficit "Bob, leading the way, I remember him and nine of his deputies, top deputies, taking a salary reduction to avoid staff layoffs My understanding at the time was that no other Attorney General had ever done such a selfless act "

A Notre Dame friend, Stephen Sanders, a Commander U S Navy Retired, writes: "Nobody I know ever had an unpleasant experience with or thought ill of Bob This was recently supported when a Washington Post reporter contacted our Notre Dame class ombudsman during the governorship campaign, looking to interview former classmates of his Word of the inquiry was spread and plenty of classmates who would be considered polar opposites politically of Bob had a perfect chance to speak to the reporter Like many Virginians even now, my classmates liked and respected Bob, and there were no takers "

Christopher Saxman writes: "Bob was always there for the right reason He respected everyone without fail, without sincerity" -- or excuse me, "with sincerity and with consistency He never got upset or short-tempered He was almost too nice When someone asked me what kind of guy he really is, I usually answered, 'The kind of guy who you hope marries your sister ' They would laugh, and I would say, 'I'm serious ' He's one of the finest men I've ever had the pleasure of knowing "

The retired chief of police for the County of Henrico writes to the Court, this is Henry Stanley: "This is the first" -- "in asking you for leniency, this is the first time in my 48-year law enforcement career that I have ever written a letter requesting leniency for anyone I gave much thought to whether I should write a letter to you, and in the end, I felt compelled to do that to share my experiences and observations of Bob McDonnell When all is written and spoken, he has lost much of the accomplishments in life, and the road to recovery is going to be difficult, if not impossible The attention the media has placed on this case will haunt him for a lifetime "

Lisa Sutton writes with this anecdote: "I've never met a man, let alone a politician, who has more integrity than Bob McDonnell As a legislator, he was beyond reproach I remember when he, along with other legislators, received a beautiful coffee table book of photos of Virginia At the time, the limit was $35 for gifts When he found out the book cost $37 50, he immediately returned it to the donor He is an asset to Virginia, and his absence will create a vacuum in the state he loves "

Ivan Tepper, the CEO of Delta Star, writes: "I have unsuccessfully attempted to avoid politics for over 33 years, but unfortunately, my wife is involved in politics so I'm dragged into it I'm from Chicago where politics is a blood sport But in any event, I have never met a more awkward and reluctant candidate than Bob was when he was asking for campaign donations I had to pull the number out of him Bob worked at a grueling pace as the Governor He is one whom I would be proud to have as an employee after these matters have come to pass if he wanted to work for me and my company "

Bruce Thompson, a friend of Bob's from Virginia Beach who has the largest hospitality company in the Commonwealth, writes a very telling story about Bob He said, "As a key supporter of the Governor, I utilized our friendship and the fact that I had supported him to lobby him to ensure that the schools would not open prior to Labor Day and, candidly, I was confident he would support my position in that regard I was wrong

He gave me the courtesy of a call to advise me that in spite of my friendship, in spite of my financial support for his campaigns, the education of the children in the Commonwealth, in his mind, was more important than the economic impact to the tourism industry as a result of sending students back to school prior to the Labor Day weekend

His support of opening schools prior to Labor Day cost my company thousands of dollars to mount a campaign against the Governor's initiative While to date, we have been successful in maintaining post Labor Day school openings in Virginia, it certainly was much to my dismay without the support or cooperation of, quote, my friend, Bob McDonnell

Then to add insult to injury, after being solicited to become a member of the UVA Board of Governors, it was Governor McDonnell who told me that at this time in the school's history, I would not be an acceptable candidate for the open position Once again, I was extremely disappointed I had dedicated a significant amount of my personal and financial resources to Bob's campaign efforts However, when it came time to assist me with my personal interests, Governor McDonnell acted in a manner that was what he deemed to be in the best interest of the Commonwealth I do not know the Governor who bargains campaign contributions and friendships for personal favors, and to this day, I don't believe that man exists "

Deborah Wood, the CEO of Renova Center, writes: "I would hire him in a minute if he returns to Tidewater I hope he will come to me for a job "

Chris Young, who is Bob's son-in-law, married to his daughter, Cailin, writes: "If there's one thing of which I am certain it's that Bob cares for the well-being of others unlike any other person I've ever met I have witnessed numerous occasions when he has comforted somebody who was suffering and the person didn't even know who he was I've seen him comfort somebody at the beach who lost their child while the lifeguards conducted a beach-wide search I've seen him comfort a neighbor whose dog has run away from home and has not returned He does these things all the time If he is allowed to remain out of prison, I have no doubt he will live an honorable and service-minded life dedicated to helping others The world will not be a better place for his absence "

And Adam Zubowsky, and I'm down to Z, writes -- he was Bob's body man He did not testify in this trial He's married to Jeanine McDonnell "Watching the trial play out on Twitter and in the press, like most of the community in Virginia, I was frustrated over and over again to watch innocent conversations and brief situations be turned around and manipulated with hindsight and spin I was there every day I could listen That was my job, et cetera

Bob was the first to create the Attorney General's Office food bank drive He was the first to bring this campaign to the Governor's office He was the first Governor to visit a jail during his inauguration week He spoke directly to prisoners about creating a prison education reentry program in his administration in order to help those who were incarcerated A lot of Governors do important things during inauguration week, but none besides Bob McDonnell actually went inside of a jail to speak directly to that constituency about he was going to be the Governor of every Virginian and to ask them what he could do to help them "

And a final letter I want to reference, because I think it's incredibly insightful, and I hope you've had an opportunity to think about it a little, is the one from Father Wayne Ball, who has counseled Bob over the course of this investigation and the trial, and with whom Bob has lived during the course of the trial and now as we speak as well And he talks about how he knows Bob and what he does in terms of his priest work And he says, "I mostly deal with marriage cases, and I've also worked as a chaplain for" -- "at Petersburg And I've worked mostly in psychiatry "

And he talks about Bob growing up in an Irish Catholic family, almost a stereotypical Catholic family "Everyone says the mother was a saint, and I have no doubt about that She drilled into her children the two great Commandments and the Beatitudes As the oldest and the one most like his mother, for Bob the primary Beatitude was blessed are the peacemakers By the time he arrived on my doorstep this summer, I knew that he had some distorted notions about what it means to be a good Christian and what it means to love You or I may have looked at Jonnie Williams and from a mile away said, 'Snake oil salesman ' Bob would have said, 'We are not being Christian ' I have no doubt Bob would have told Bobby to give back the golf clubs, but when Bobby said he was keeping them, Bob would have dropped it In his mind, Christian families do not fight Bob thinks like his beloved mother did; that you can love someone into good behavior But sometimes you can't

Part of the decision for Bob to move in with me was a recognition by his siblings that there was work to be done with Bob and that I, Father Wayne, was in a unique position to do it All of his siblings could attest that I have pushed not just Bob, but everyone to take ownership of any part they may have had in this tragedy Over these past months, Bob has come to accept many hard truths about many things, including himself Like all of us, there is still work to do, and I hope that someone will allow me to continue to accompany him in this process As for Bob, what more is there to do? His name is destroyed in the thing that he cherishes most in this world, his family, has been ripped asunder Please, Judge, show the world that you are a man of charity and most of all, a man of help Bob helps people grieve He helps people heal He helps people love The other relevant Beatitude, aside from blessed are the peacemakers, is blessed are the merciful And as Senator Kaine wrote, 'The first thing I ask when someone wants me to show mercy is whether they have been merciful to others ' And Bob has done so to his political detriment "

On my client's behalf and on the many hundreds of people's behalf who have stood by him, I ask you to temper justice with mercy in this case for my client Thank you, sir

THE COURT: Government

MR DRY: Your Honor, the defense argues that this is not a classic case of bribery and that on the scale of quid pro quo, this is a very, very, very strange -- strained interpretation They argue there's no evidence there was any pressure placed on anyone by the defendant They argue that there's no evidence the defendant took any unusual steps in exchange for bribes

The defense points to numerous letters on the defendant's behalf describing him as, quote, an exceptional man, an extraordinary public servant who cares about individuals, who takes on difficult causes, causes that are not popular, end quote

The defense offers the testimony of many character witnesses who testified that, quote, he's an outstanding human being He's a man of character He's a man of integrity, end quote The defense points out the defendant has -- is almost 60 years old, has never had so much as a parking ticket The defense extols the virtue of the defendant's more than 30 years of public service and argues that the defendant, quote, made it his personal cause to try to improve the lot of thousands of Virginians

The defense argues that the defendant is, quote, a man who has already lost just about everything The defense argues that a guideline sentence is more than necessary to deter other public officials, given the collateral consequences to the defendant of the convictions

Each and every one of those arguments was made on August 12th of 2011 at the sentencing of Phil Hamilton These are the same argue the defendants are -- the defendant has made in this case

After hearing those arguments, a judge in this very courthouse sentenced the defendant to nine and a half years in prison Mr McDonnell cannot claim that his crimes are less serious than Mr Hamilton's

Mr Hamilton's criminal conduct lasted less than a year The defendant's lasted almost two years Mr Hamilton was one of 140 state legislators

Mr McDonnell was the Governor of Virginia Mr Hamilton was not a lawyer Mr McDonnell is a lawyer and, in fact, formally served as the chief law enforcement officer for the Commonwealth

The quo at issue in the Hamilton case was a Center for Educational Excellence that everyone agreed was a good idea and continues in that mission today The quo at issue in this case involved promoting and obtaining studies for a dietary supplement that Dr Hazel, the Secretary of Health for Virginia, thought was akin to snake oil

Mr Hamilton's quid was $40,000 per year teaching position for which he was eminently qualified and he actually did the work Mr McDonnell's quid included expensive vacations, exclusive golf courses, expensive dinners a Ferrari ride, a Rolex watch, a $20,000 shopping spree, a $15,000 wedding gift, and a $120,000 in secret loans

Mr Hamilton violated his duty of honest services to approximately 100,000 constituents This defendant violated his duty of honest services to 8 3 million Virginians

We've exhaustively briefed the 3553(a) factors in this case, Your Honor, and I'm not going to belabor all of them here, but touching on the nature and seriousness of the offense, these crimes are unprecedented in Virginia's 226-year history The defendant sold the power of the Governor's office, once held by Thomas Jefferson and Patrick Henry, for $175,000 in loans, golf, vacations, and luxury goods

The defendant, in his pleadings, keeps trying to claim that he merely provided access, but the Court has already rejected that The defendant keeps trying to point out that there were no limits on the gifts under state law, but he didn't just accept gifts He accepted bribes

As Governor Wilder has acknowledged, Americans, we're increasingly cynical of our elected leaders After the convictions in this case, I -- I can't count the number of people that have come up to me and stated that they were appalled by the defendant's conduct, but they weren't surprised because they expect so little of our elected officials

That's what makes this case so serious, Your Honor It further arose the public's trust in their elected officials, and that trust is the very bedrock of a democracy Bottom line is that every case of corruption involving our elected officials is serious, and the fact that this involves a corrupt Governor just makes it more so

Listening to the testimony of the witnesses today, reviewing the letters, which we have reviewed, every one of them, you cannot help but be touched about the support that the defendant has Unlike most of the defendants that come before this court who come from broken families, are uneducated and have had limited opportunities in their lives, this defendant had had every opportunity in his life But his crimes were crimes of choice, not necessity

There's no denying that he has accomplished many good things in his life, but we expect that from our elected officials, or we should That's their job But that's not a license to commit bribery There's no denying that many supporters have attested to his good character and reasonably hold that belief, but the flip side is the offense conduct and then what happened in this courtroom

You were able to sit through the entire trial and witness the defense try to blame everyone but the defendant, including his staff, Mary-Shea Sutherland, Jonnie Williams, the State Police at one point, and even his own wife

This is a hard thing to say, but the defendant has shown no true remorse in this case for his crimes He keeps saying there were mistakes of judgment He fell afoul of the gift laws He doesn't acknowledge his crimes

His sister's testimony was touching, and she testified about his public apology to all of Virginians But let's not forget; that public apology, that came only after this all came to light in the press and after the defendant knew that he was under federal investigation This isn't a situation where he woke up one day and said, "I did wrong I need to come clean "

Turning to the need to prevent unwarranted sentencing disparities, look, we've listed numerous cases of senior elected officials who are serving sentences that are equal to or greater than what the United States has asked for in this case The defense can say, "Well, those are all factually distinguishable," but while every case may be unique, the bottom line is that lengthy prison sentences are the norm, rather than the exception, for senior elected officials who are convicted of bribery

A lot has been made of Mr Williams in the sentencing pleadings and even by the audience's applause today But the bottom line, Judge, is he's distinguishable from this defendant in two ways First, he admitted his wrongdoing and fully cooperated with the government But most importantly, most importantly, nobody elected Williams to anything The Williams of the world are a dime a dozen Corrupt governors are not, thankfully But when we find one, we have no choice but to prosecute them

Regarding the need to deter, the defense makes much of the collateral consequences of the convictions, but, Judge, every conviction carries collateral consequences

I've had the unfortunate duty of putting single mothers in jail with young children Nobody likes doing that, but that's what the law required

By the time of his sentencing, Mr Hamilton was reduced to parking golf carts for $10 an hour Mr McDonnell, he currently makes more than $12,000 per month And it's obvious, no matter what sentence this court imposes, he's going to have plenty of supporters He's never going to struggle for money like most of the defendants that come before this court after their convictions

The defense claims that any prison sentence is unnecessary for deterrence The government acknowledges that it's unlikely that Mr McDonnell is going to reoffend, but the sentence in this case must send a message to every public official that accepting bribes will result in a stiff prison sentence if they are caught That's got to be the bottom line

The defendant's claim that he's entitled to community service, it's, frankly, nothing short of remarkable Here's a man who stands before you claiming that he's entitled to that sentence because of his life-long commitment to public service, but at the same time is telling you, oh, by the way, public service would be a punishment The government wants to make clear that it supports the idea of Mr McDonnell doing community services and encourages him to do so, but after he serves his prison sentence in this case

In conclusion, Mr Asbill got up here and he said that no one said anything negative about the defendant in this courtroom But what he forgets, apparently, is that the jury's verdict was that the defendant accepted bribes And I can't characterize that as anything but negative

I began by discussing the sentencing of Delegate Hamilton Let's not forget; Mr Hamilton's sentencing occurred in the midst of the bribery scheme The sentencing was 15 -- was after the $15,000 wedding gift and the first $50,000 loan It was less than two weeks after the Smith Mountain Lake vacation, the Ferrari ride, and the defendant sending the e-mail setting up the Huffstetler meeting And it was a little more than two weeks before the defendant attended the Star launch event at the Governor's Mansion, which she did during a state of emergency

When Delegate Hamilton was sentenced to nine and a half years in prison, the defendant did not claim that

Mr Hamilton should have gotten community service He didn't say, "Oh, my gosh Any prison sentence, that would be too much Delegate Hamilton has so much to give back That doesn't make sense " Instead, the defendant publicly stated that, quote, today's judgment is a reminder that no one is above the law, end quote

This court has the opportunity to send a message to this defendant and everyone else that there's only one system of justice in this country and no one is above the law Any sentence of community service would send the exact opposite message

That's why the government asks this court to sentence the defendant within the guidelines like the vast majority of defendants are sentenced In this case, in recognition of his public service, sentence him to the low end guideline of 78 months imprisonment

Thank you, Your Honor

THE COURT: You get the last word, if you want

MR BROWNLEE: Just very briefly, Your Honor

I think it's important, the government has talked a lot about the Hamilton case Hamilton was a very different case The Court -- I don't know how familiar the Court is with that case It was with a different judge

But Delegate Hamilton was convicted of exchanging a

$500,000 state tax appropriation in exchange for a 40,000-dollar-a-year job This case is significantly different than that case In our pleadings, in all of our times, we have asked the government to provide us a case that's comparable to this, and they have never been able to do that

The other thing, if you look at other disparities in sentencings, and we have briefed this, and I won't go through them But if you look at Congressman Renzi, who was recently sentenced, his was 36 months Congress Ney, 30 months Conduct very, very different than what we have in this case

And lastly, with Mr Williams We agree that defendants who cooperate are in different positions, and the case law supports that under disparity in sentencing analysis

But Governor Wilder struck on something, and Mr Dry raised it, and it is about sentences and it is about two different kinds of systems of justice What Mr Williams got in exchange for -- to change his testimony was truly extraordinary I don't think anyone would doubt that it's never happened before in this courtroom to get transactional immunity not once, but twice To get transactional immunity for offenses completely separate and apart from Bob McDonnell, tax and securities fraud

And if you believe what the paper writes this weekend, Mr Williams sits at home in his condo in Palm Beach, Florida, and he didn't get convicted of a crime He wasn't charged with a crime He wasn't prosecuted for a crime He didn't pay a fine, and he's not going to do any sentence

And so when the public looks at the cynicism of all of this, whatever it may be, I do think they look at was the government prosecuting corruption or was the government prosecuting a man? I don't know the answer to that

And I'm not questioning the government's motives As this court knows, I've sat on that side with the Department of Justice for 11 years, but I never did that And I think that's important when we ask is there two systems of justice

And, finally, I would ask this, Your Honor When I was United States Attorney, my office prosecuted a man by the name of Carl Hutcherson Mr Hutcherson was the mayor of Lynchburg, Virginia I was United States Attorney for the Western District He went to trial He was convicted of all seven counts One of them was lying to the FBI Others were corruption type offenses

He not only was mayor, but he was also head of his Methodist Church in Lynchburg And Mr Hutcherson had led a good and honorable life, and his father had been one of the leading civil rights leaders in that community

His guideline range was about 36 months And as United States Attorney, I instructed my AUSAs, much like these very competent and able and honorable Assistant U S Attorneys, went into court and asked for that guideline range And Judge Turk, who I know the Court knew, said no And one of the bases -- he gave him probation with some home confinement But one of the bases was that he said when people like the mayor, people like a governor, are at levels like that, their fall is greater and their punishments are unique

The Court sees a lot of defendants I defend them. I've prosecuted them, as has Mr Dry and others But rarely has there been a defendant that I'm aware of that has faced the kind of media, scrutiny, humiliation that this man has faced He was a legitimate candidate for higher office All that is gone Most defendants never have that kind of thing And so his suffering is unique

And I believe and I hope that the Court will consider that And these community services are real And so we ask that the Court sentence him to a period of probation and to a term of 6000 hours of community service

And we do greatly appreciate the Court's patience, and as I said in my opening statement, it's been an honor to be in your courtroom Thank you

THE COURT: Thank you

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THE COURT: Mr McDonnell, would you stand up where you are, please?

(Defendant stood.)

Sir, do you have anything that you would like to say before the Court imposes sentence?

THE DEFENDANT: Yes, Your Honor, I do.

THE COURT: Go ahead.

THE DEFENDANT: May I approach the lectern?

THE COURT: You certainly can.

THE DEFENDANT: Thank you, Your Honor Judge Spencer, I stand before you as a heartbroken and humbled man For the past 38 years of my life, my work has been dedicating my heart and soul to the service of my state and my country But I now stand here convicted of offenses against this great nation that I love, and I can't fathom any deeper humiliation for me, for my family, or any greater punishment

Prior to this indictment, I apologized on a number of occasions to the people of Virginia for the embarrassment that some of my judgments have brought to my beloved Commonwealth And I renew that deep expression of sorrow to the people of Virginia today

Over these past two years, Your Honor, I have scrutinized virtually every area of my life And I have had a very, very blessed life and good health and good fortune, and a great, loving, and supportive family, and an opportunity to engage in what I believe is life's highest calling; and that is service to others

But during my period of scrutiny, Your Honor, I reflected that during my term as Governor, I allowed my life to get way out of balance with an extreme focus on politics and on governing, and I neglected some of my personal responsibilities And in many ways, as a result of that, I became blinded by the busyness of my life So I hold myself fully accountable for all the words, all the actions, that I took as the Governor of Virginia

As a young man, my mom and dad taught me the cardinal virtues of hard work and honesty and integrity and love of God and love of neighbor While I have tried my best to honor these values over my 38 years in public service, I acknowledge that I am a sinner with many, many human frailties, and that I have failed many times to live up to their high calling

I know that some of my actions have caused immense suffering for me, for my family, and for many of those close to me. And it will require the abundant grace of God to heal those wounds. Yet I've been richly blessed by so many faithful friends who have loved me and encouraged me and my family during these past years, and I thank them today for their great kindness

Your Honor, I am now 60 years old. Whatever days the Lord will yet provide me on this earth, I dedicate anew to the service of others I ask Your Honor to permit me to employ my experience and my energy to serve people in need in our state or in other countries over these next few years, working in one of the myriad community service programs that my counsel has submitted to the Court.

And I ask that whatever mercy the Court may extend in this case, I ask that you consider granting it first to my wife, Maureen.

Throughout my life, Judge Spencer, I have placed great confidence in our system of justice, and even greater confidence in the providence and protection of the Lord Jesus Christ So Your Honor, with that, I submit myself to the judgment of the Court and I thank you for considering my words

THE COURT: All right, thank you. You can have a seat

(The defendant was seated.)

We come once again to what is indeed our most difficult task, deciding what is an appropriate sentence for another human being; appropriate for the crime committed, appropriate in light of the history, characteristics, the humanity of the offender, acceptance of responsibility, deterrence general and specific, the public good, protection, and retribution. Sentencing is an awesome responsibility and we take it seriously

This case requires some comment, some out loud analysis before sentence is imposed.

Now, there has been a lot of blame assessed to account for the defendant's predicament during the course of the trial and in the public arena First, the finger is pointed at the Justice Department, the U.S Attorneys The assertion was made that they have been too zealous in pursuing their prosecution. And what about the FBI or the Virginia State Police? Were they unfair or too vigorous in their investigations? Maybe it was the jury, who just didn't understand. Maybe it is the Judge Maybe it is Jonnie Williams, who snaked his way into the Governor's household Maybe it is his co-defendant, his wife, now, according to some, dangerously delusional. Maybe she was the one who roped the Governor into this predicament.

Acceptance of responsibility, a demonstration of remorse, these are factors that I am told to consider when discerning an appropriate sentence.

Now, there has been some suggestion that perhaps this trial was not fair We have certain metrics by which we measure a fair trial They are not secret or hidden They are written down in rules, statutes, and a

Constitution. A grand jury returned an indictment and the defendants were placed on notice of the precise charges against them. The defendants were brought before the Court, advised of their rights, arraigned, released on personal recognizance, and given a trial date, a trial date that allowed them more than adequate time to prepare Six to seven weeks of trial time was made available so everyone would have an opportunity to make their case

The defendants exercised their right to counsel, absolutely The defendants were represented by able, experienced, highly motivated counsel. And counsel put on a rigorous, multi-pronged defense and challenged the Government's case at every turn. There were dozens and dozens and dozens of motions and briefs The defendants aggressively exercised their right to confront any witnesses called against them. Cross-examination was thorough and relentless

Did the defendants have a full opportunity to put on a case? The defendant took the stand and testified for days The Court was beyond generous in allowing the expansive direct examination, even when I heard the same testimony for the third and fourth time But we wanted to give the defendant a full and fair opportunity to be heard. And then when we had the closing arguments of counsel, their final opportunity to persuade the jury to their point of view, there was no time limit These arguments were passionate and well done

Was this a public trial? You betcha. Unprecedented media involvement and access And as far as I can tell, no one was shy about using that media to get their message out

So my conclusion, based on all of the metrics that matter: Mr McDonnell got all the process that was due him. Whether or not you prevailed is not how you determine if a trial was fair

Let me say a few words about the jurors in this case, because they are not here to speak for themselves How many citizens do you think would gleefully give up six or seven weeks of their lives to sit on a jury? It is a tremendous sacrifice: social, educational, family, employment, financial sacrifice. Other than military service, jury duty is the pinnacle of public service for the average citizen. These twelve jurors who deliberated in this case and came to a verdict were a group of very fine people who persevered and fulfilled the difficult task they were called to do.

I also need to say this, because there is no record on this issue that has been bandied about: The name and personality of Robert F McDonnell didn't register on my radar screen until he ran for Attorney

General He didn't fully register with me until he ran for Governor And like all my fellow Virginia citizens, I had to decide between competing candidates And even then, the only thing I knew about him was what I could glean from political advertisements The bottom line: I don't know him, and he doesn't know me

Now, let's get to the job I have this morning: Finding a sentence that is fair and appropriate considering all of the factors that I am required to consider in 3553(a)

The starting point in the analysis is, of course, the Sentencing Guidelines Range A brief history lesson so that we can all understand where these Sentencing Guidelines came from: When I first came to this job in 1986, there were no Sentencing Guidelines There was a certain political orthodoxy that pushed the notion that sentencing discretion should be taken away from judges, and that discretion would be replaced by a system where you plug in the numbers and a factual matrix and out would pop a Sentencing Guidelines Range There would be no discretion. The Guideline was mandatory That is, the sentence would have to be within the Guidelines Range I[illegible]n't matter if there were exceptional, extreme [illegible] extenuating circumstances, youthful offender or not, physical health issues, mental health issues, family hardship, aberrant behavior There was no place for grace or mercy

But some of us judges, and I certainly was included in that number, pushed back at this notion that our discretion could be taken away by another co-equal branch of government We battled for decades until the U S Supreme Court finally said that the Sentencing Guidelines, to be constitutional, must be discretionary

Imagine if these Guidelines were mandatory and the Court had no choice but to sentence Governor McDonnell to seven or eight years in prison. That would be unfair It would be ridiculous under these facts. But somebody somewhere thought that was fair Maybe it is fair when it is somebody else's husband, or brother, or father But it never seemed fair to me

Hundreds of letters were filed in this case, and I have read every single one of them. Most of them were thoughtful and moving, personal recollections of good deeds, good character, and ultimately a request for a lenient sentence. Among these were particularly moving and honest letters from Reverend Wayne Ball and Thomas Farrell, Linda Hassell, Janet Kelly, an especially thoughtful letter that she wrote, as well as one from Clovia Lawrence, who testified here today

Then there were a few other letters that were not quite as helpful. They either continued to blame, cast blame on others, or see conspirators behind every tree But the overall view of the defendant that I got from these letters: That he is a good and decent man, has done a lot of good during his time in the public arena. I have no reason to doubt this And I will certainly give him credit for that in my assessment in coming to an appropriate verdict

I also have great respect for those who've provided military service to this nation Anybody who knows me knows that's one of my weak spots, and he deserves credit and will receive credit for that I believe that honorable military service means something and should mean something in every assessment of a citizen in this country

This entire case has been tragic from beginning to end. I reviewed letters from some of the Governor's closest staff members, most of whom also testified during the trial And they are very loyal to the Governor, a loyalty that in the end amounts to devotion And they clearly have his best interest at heart They have his best interest at heart now; they had his best interest at heart when they were working for him. And they saw Jonnie Williams for what he was, and they sounded the alarm. There was good advice and counsel all over the place But it went unheeded While Ms McDonnell may have allowed the serpent into the Mansion, the Governor knowingly brought him into his business and financial affairs, and thus the seeds of this case were planted.

I have great sympathy for this family And if I could, I would turn back the hands of time and change this situation completely. But obviously, I can't do that.

No one wants to see a former Governor of this great Commonwealth in this kind of trouble But the facts of this case could not be ignored by the investigators, or the prosecutors, or by the jury, or by the Court for that matter The jury, by its verdict, found an intent to defraud. This is a serious offense that all the grace and mercy that I can muster, it cannot cover it all A price must be paid, and that is some level of punishment. It breaks my heart, but I have a duty and responsibility which I cannot avoid. Unlike Pontius Pilate, I can't wash my hands of it all A meaningful sentence must be imposed

Now, in the twenty-eight, almost twenty-nine years that I have been doing this, I have asked myself this question over and over again at sentencings at various times during the years: Why do good people end up in this courtroom, good people end up being found guilty of doing bad things? I don't have the answer yet, and I may never get it on this side of the Jordan. But I continue to be perplexed by it. Obviously, a man that could engender this kind of support, his friends adore him, his family, they love him. Why would you take these kinds of chances? I don't know But on these facts that went before this jury, they had an opportunity to accept the Governor's position. His case was made. They heard it. They rejected it and accepted that the facts led to the conclusion that he committed an offense And I simply cannot ignore it

All right, Mr McDonnell, would you please stand where you are along with your counsel

(Defendant and counsel stood.)

It is the judgment of the Court that the defendant, Robert F McDonnell, is hereby committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of 24 months The term consists of 24 months on each of Counts One through Eleven, all to be served concurrently The defendant shall surrender for service of the sentence at the institution designated by the Bureau of Prisons before two p.m. on February 9th, 2015 as notified by the U.S. Marshal

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of two years This term consists of two years on each of Counts

One through Eleven, all to run concurrently Within 72 hours of release from the custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district to which he is released.

While on supervision, the defendant shall not commit another federal, state, or local crime, and he shall not unlawfully possess a controlled substance, and he shall not possess a firearm or other destructive device. The defendant shall comply with the standard conditions that have been adopted by this Court.

The defendant shall also comply with the following special conditions: The defendant shall not incur new credit charges or open additional lines of credit without the approval of the Probation Officer The defendant shall provide the Probation Officer access to any requested financial information As reflected in the Presentence Report, the defendant presents a low risk of future substance abuse, and therefore, the Court hereby suspends the mandatory condition for substance abuse testing However, this does not preclude the U S. Probation Office from administering drug tests as they deem appropriate.

The Court has considered the defendant's financial situation in its totality, and the Court finds that the defendant is not capable of paying a fine, and therefore, none will be imposed.

As to Counts One through Eleven, the defendant shall pay a special assessment in the amount of $100 for each count, for a total of $1,100 The special assessments shall be due in full immediately If the special assessments are not paid immediately, any balance remaining unpaid on the special assessments at the beginning of supervision shall be paid by the defendant in installments of not less than $100 per month until paid in full Said payments shall commence 60 days after the defendant's supervision begins. Payment of any unpaid balance shall become a special condition of supervised release

Nothing in the Court's order shall prohibit the collection of any judgment or assessment by the United States

Mr McDonnell, you have a right to appeal any finding of the jury as well as the sentence of the Court, and if you were going to do that you would have to file a Notice of Appeal within fourteen days of today's date That completes this matter

MR. BROWNLEE: Your Honor, we request that he be designated to a place closest to his home, which I believe is Petersburg, if that's appropriate to the Court

THE COURT: I will recommend to the Bureau of

Prisons that he be housed at the closest appropriate facility to his home

MR. BROWNLEE: Thank you, Your Honor

THE COURT: Thank you all very much:

MR. BROWNLEE: We had filed a motion regarding bond pending appeal, Your Honor I don't know what the Court --

THE COURT: I just got that yesterday I don't have a response At least I haven't seen the response. But I will deal with it in order

(Proceedings adjourned at 2:51 p.m.)

CERTIFICATE OF REPORTER

I, Jeffrey B. Kull, Official Reporter, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter

__________/s/________________

Jeffrey B. Kull,
Official Federal Reporter

__________/s/________________

Date

Revised Form as of 07/01/2012

Commonwealth of Virginia/Secretary of the Commonwealth

STATEMENT OF ECONOMIC INTERESTS

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Instructions

Pursuant to Sections 2.2-3114 and 2.2-3115 of the *Code of Virginia*, employees of state agencies who have been designated by the Governor or the General Assembly, and employees of local governments designated to file by the *Code of Virginia* or by their governing ordinance, are required to file this "Statement of Economic Interests" form.

Members of certain boards of state and local government are also required to file this form. Please note that within this form, the use of the words "office" and "officer" also apply to appointed board members.

In addition, candidates for state and local offices are required to file this form pursuant to Section 24.2-502 of the *Code of Virginia*.

This filing is a condition of assuming office or employment and thereafter on or before January 15th of each year.

Schedules A through I are to be completed ONLY if you answer "Yes" to any of items 1 through 10 on the Statement of Economic Interests.

REMEMBER: The **ANNUAL** filing deadline is January 15th of each year.

For the annual filing:

State employees and board members should return completed forms to the agency's COI liaison officer.
Local employees and board members should return the completed forms to the Clerk of the appropriate governing body.

GOVERNMENT EXHIBIT
5
3:14cr12

DEFINITIONS AND EXPLANATORY MATERIAL

This statement constitutes a report of economic interests and activities for the calendar year beginning January 1 and ending December 31. The information required on this statement must be provided on the basis of the best knowledge, information and belief of the individual filing the statement as of the date of this report unless otherwise stated. This statement of Economic Interests is open for public inspection.

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Close financial association" means an association in which the person filing shares significant financial involvement with an individual and the filer would reasonably be expected to be aware of the individual's business activities and would have access to the necessary records either directly or through the individual. "Close financial association" does not mean an association based on (i) the receipt of retirement benefits or deferred compensation from a business by which the person filing this statement is no longer employed or (ii) compensation for work performed by the person filing as an independent contractor of a business that represents an entity before any state governmental agency when the person filing has had no communications with the state governmental agency.

"Contingent liability" means a liability that is not presently fixed or determined, but may become fixed or determined in the future with the occurrence of some certain event.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency which involves the payment of money appropriated by the General Assembly or political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof. "Contract" includes a subcontract only when the contract of which it is a part is with the officer's or employee's own governmental agency.

"Dependent" means any person, whether or not related by blood or marriage, who receives from the officer or employee, or provides to the officer or employee, more than one-half of his financial support.

"Employee" means all persons employed by a governmental or advisory agency, unless otherwise limited by the context of its use.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in §13.1-501, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Gift," means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" shall not include any offer of a ticket or other admission or pass unless the ticket, admission, or pass is used. "Gift" shall not include honorary degrees and presents from relatives. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, or nephew; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, or sister; or the donee's brother's or sister's spouse.

"Governmental agency" means each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. Corporations organized or controlled by the Virginia Retirement System are "governmental agencies" for proposes of this chapter.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Officer" means any person appointed or elected to any governmental or advisory agency including local school boards, whether or not he receives compensation or other emolument of office. Unless the context requires otherwise, "officer" includes members of the judiciary.

"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, $10,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business that exceeds, or may reasonably be anticipated to exceed, $10,000 annually; (iv) ownership of real or personal property if the interest exceeds $10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; or (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business.

"Personal interest in a contract" means a personal interest which an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business which is a party to the contract.

"Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business, or represents any individual or business and such property, business or represented individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. Notwithstanding the above, such personal interest in a transaction shall not be deemed to exist where an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity and such elected member or member of his immediate family has no personal interest related to the not-for-profit entity.

"State and local government officers and employees" shall not include members of the General Assembly.

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

TRUST. If you or your immediate family, separately or together, are the only beneficiaries of a trust, treat the trust's assets as if you own them directly. If you or your immediate family has a proportional interest in a trust, treat that proportion of the trust's assets as if you own them directly. For example, if you and your immediate family have a one-third interest in a trust, complete your Statement as if you own one-third of each of the trust's assets. If you or a member of your immediate family created a trust and can revoke it without the beneficiaries' consent, treat its assets as if you own them directly.

REPORT TO THE BEST OF INFORMATION AND BELIEF. Information required on this Statement must be provided on the basis of the best knowledge, information and belief of the individual filing the Statement as of the date of this report unless otherwise stated.

STATEMENT OF ECONOMIC INTERESTS

Revised Form as of 07/01/2012

NAME			Candidate for Election to this office? ____YES ____NO
OFFICE OR POSITION HELD OR SOUGHT			
AGENCY/BUSINESS NAME		PHONE	
AGENCY/BUSINESS ADDRESS			
CITY	STATE	ZIP	
NAMES OF MEMBERS OF IMMEDIATE FAMILY			

COMPLETE ITEMS 1 THROUGH 10. REFER TO SCHEDULES ONLY IF DIRECTED.

You may attach additional explanatory information.

1. Offices and Directorships.
Are you or a member of your immediate family a paid officer or paid director of a business? ☐ YES ☐ NO

If yes, complete Schedule A

2. Personal Liabilities.
Do you or a member of your immediate family owe more than $10,000 to any one creditor including contingent liabilities? (Exclude debts to any government and loans secured by recorded liens on property at least equal in value to the loan.) ☐ YES ☐ NO

If yes, complete Schedule B

3. Securities.
Do you or a member of your immediate family, directly or indirectly, separately or together, own securities valued in excess of $10,000 invested in one business? Account for mutual funds, limited partnerships and trusts. ☐ YES ☐ NO

If yes, complete Schedule C

4. Payment for Talks, Meetings, and Publications.
During the past 12 months did you receive lodging, transportation, money, or anything else of value with a combined value exceeding $200 for a single talk, meeting, or published work in your capacity as an officer or employee of your agency? ☐ YES ☐ NO

If yes, complete Schedule D

5. Gifts.
During the past 12 months did a business, government, or individual other than a relative or personal friend (i) furnish you with any gift or entertainment at a single event, and the value received by you exceeded $50 in value or (ii) furnish you with gifts or entertainment in any combination and the value received by you exceeded $100 in total value; and for which you neither paid nor rendered services in exchange? Account for entertainment events only if the average value per person attending the event exceeded $50 in value. Account for all business entertainment (except if related to your private profession or occupation) even if unrelated to your official duties. ☐ YES ☐ NO

If yes, complete Schedule E

6. Salary and Wages.
List each employer that pays you or a member of your immediate family salary or wages in excess of $10,000 annually. (Exclude state or local government or advisory agencies.) If no reportable salary or wages, check here ☐

7. **Business Interests.**
Do you or a member of your immediate family, separately or together, operate your own business, or own or control an interest in excess of $10,000 in a business?

☐ YES ☐ NO

If yes, complete Schedule F

8. **Payments for Representation and Other Services.**

8A. Did you represent, excluding activity defined as lobbying in § 2.2-419, any businesses before any state governmental agencies, excluding courts or judges, for which you received total compensation during the past 12 months in excess of $1,000, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers? (Officers and employees of local governmental and advisory agencies do NOT need to answer this question or complete Schedule G-1.)

☐ YES ☐ NO

If yes, complete Schedule G-1

8B. Subject to the same exceptions as in 8A, did persons with whom you have a close financial association (partners, associates or others) represent, excluding activity defined as lobbying in § 2.2-419, any businesses before any state governmental agency for which total compensation was received during the past 12 months in excess of $1,000? (Officers and employees of local governmental and advisory agencies do NOT need to answer this question or complete Schedule G-2.)

☐ YES ☐ NO

If yes, complete Schedule G-2

8C. Did you or persons with whom you have a close financial association furnish services to businesses operating in Virginia pursuant to an agreement between you and such businesses, or between persons with whom you have a close financial association and such businesses for which total compensation in excess of $1,000 was received during the past 12 months?

☐ YES ☐ NO

If yes, complete Schedule G-3

9. Real Estate.

9A. State Officers and Employees.
Do you or a member of your immediate family hold an interest, including a partnership interest, valued at $10,000 or more in real property (other than your principal residence) for which you have not already listed the full address on Schedule F? Account for real estate held in trust.

☐ YES ☐ NO

If yes, complete Schedule H-1

9B. Local Officers and Employees.
Do you or a member of your immediate family hold an interest, including a partnership interest, or option, easement,or land contract, valued at $10,000 or more in real property (other than your principal residence) for which you have not already listed the full address on Schedule F? Account for real estate held in trust.

☐ YES ☐ NO

If yes, complete Schedule H-2

10. Real Estate Contracts with Governmental Agencies
Do you or a member of your immediate family hold an interest valued at more than $10,000 in real estate, including a corporate, partnership, or trust interest, option, easement, or land contract, which real estate is the subject of a contract, whether pending or completed within the past 12 months, with a governmental agency? If the real estate contract provides for the leasing of the property to a governmental agency, do you or a member of your immediate family hold an interest in the real estate valued at more than $1,000? Account for all such contracts whether or not your interest is reported in Schedule F, H-1, or H-2. This requirement to disclose an interest in a lease does not apply to an interest derived through an ownership interest in a business unless the ownership exceeds three percent of the total equity of the business.

☐ YES ☐ NO

If yes, complete Schedule I

Statements of Economic Interests are open for public inspection.

AFFIRMATION BY ALL FILERS.

I swear or affirm that the foregoing information is full, true and correct to the best of my knowledge.

SIGNATURE OF FILER

DATE

Statement of Economic Interests

SCHEDULE A

OFFICES AND DIRECTORSHIPS

NAME:

OFFICE OR POSITION HELD OR SOUGHT:

Identify each business of which you or a member of your immediate family is a paid officer or paid director.

NAME OF BUSINESS	ADDRESS OF BUSINESS	POSITION HELD

Statement of Economic Interests

SCHEDULE B

PERSONAL LIABILITIES

NAME: ______________________________

OFFICE OR POSITION HELD OR SOUGHT: ______________________________

Report personal liability by checking each category. Report only debts in excess of $10,000. Do not report debts to any government. Do not report loans secured by recorded liens on property at least equal in value to the loan. Report contingent liabilities below and indicate which debts are contingent.

1 My personal debts are as follows:

	CHECK ONE	
CHECK APPROPRIATE CATEGORIES:	**$10,001 TO $50,000**	**MORE THAN $50,000**
Banks	☐	☐
Savings institutions	☐	☐
Other loan or finance companies	☐	☐
Insurance companies	☐	☐
Stock, commodity or other brokerage companies	☐	☐
Other businesses: (State principal business activity for each creditor.)	☐	☐
______________________________	☐	☐
______________________________	☐	☐
Individual creditors: (State principal business or occupation for each creditor.)	☐	☐
______________________________	☐	☐

2 The personal debts of the members of my immediate family are as follows:

	CHECK ONE	
CHECK APPROPRIATE CATEGORIES:	**$10,001 TO $50,000**	**MORE THAN $50,000**
Banks	☐	☐
Savings institutions	☐	☐
Other loan or finance companies	☐	☐
Insurance companies	☐	☐
Stock, commodity or other brokerage companies	☐	☐
Other businesses: (State principal business activity for each creditor.)	☐	☐
______________________________	☐	☐
______________________________	☐	☐
Individual creditors: (State principal business or occupation for each creditor.)	☐	☐
______________________________	☐	☐
______________________________	☐	☐

Statement of Economic Interests

SCHEDULE C

SECURITIES

NAME: ______________________________

OFFICE OR POSITION HELD OR SOUGHT: ______________________________

"SECURITIES" INCLUDES stocks, bonds, mutual funds, limited partnerships, and commodity futures contracts.

"SECURITIES" EXCLUDES certificates of deposit money market funds, annuity contracts, and insurance policies.

Identify each business or Virginia governmental entity in which you or a member of your immediate family, directly or indirectly, separately or together, own securities valued in excess of $10,000. Name each entity and type of security individually.

Do not list U.S. Bonds or other government securities not issued by the Commonwealth of Virginia or its authorities, agencies, or local governments. Do not list organizations that do not do business in this Commonwealth, but most major businesses conduct business in Virginia. Account for securities held in trust.

If no reportable securities, CHECK HERE ____.

NAME OF ISSUER	TYPE OF ENTITY	TYPE OF SECURITY	CHECK ONE		
		(STOCK, BONDS, MUTUAL, ETC.)	10,001 to 50,000	50,001 to 250,000	More than 250,000
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐

Statement of Economic Interests

SCHEDULE D

PAYMENT FOR TALKS, MEETINGS AND PUBLICATIONS

NAME:

OFFICE OR POSITION HELD OR SOUGHT:

List each source from which you received during the past 12 months lodging, transportation, money, or any other thing of value (excluding meals or drinks coincident with a meeting) with combined value exceeding $200 for your presentation of a single talk, participation in one meeting, or publication of a work in your capacity as an officer or employee of your agency.

List payments or reimbursements by an advisory or governmental agency only for meetings or travel outside the Commonwealth.

List a payment even if you donated it to charity.

Do not list information about payment if you returned it within 60 days or if you received it from an employer already listed under Item 6 or from a source of income listed on Schedule F.

If no payment must be listed, CHECK HERE ____

PAYER	APPROXIMATE VALUE	CIRCUMSTANCES	TYPE OF PAYMENT (E.G. HONORARIUM, TRAVEL REIMBURSEMENT, ETC.)

Statement of Economic Interests

SCHEDULE E

GIFTS

NAME:

OFFICE OR POSITION HELD OR SOUGHT:

List each business, governmental entity, or individual that, during the past 12 months, (i) furnished you with any gift or entertainment at a single event and the value received by you exceeded $50 in value, or (ii) furnished you with gifts or entertainment in any combination and the value received by you exceeded $100 in total value, and for which you neither paid nor rendered services in exchange. List each such gift or event. Do not list entertainment events unless the average value per person attending the event exceeded $50 in value. Do not list business entertainment related to your private profession or occupation. Do not list gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position. Do not list campaign contributions publicly reported as required by Chapter 9.3 (§ 24.2-900 et seq.) of Title 24.2 of the Code of Virginia.

NAME OF BUSINESS ORGANIZATION OR INDIVIDUAL	CITY OR COUNTY AND STATE	GIFT OR EVENT	APPROXIMATE VALUE

Statement of Economic Interests

SCHEDULE F

BUSINESS INTERESTS

NAME:

OFFICE OR POSITION HELD OR SOUGHT:

Complete this Schedule for each self-owned or family-owned business (including rental property, a farm, or consulting work), partnership, or corporation in which you or a member of your immediate family, separately or together, own an interest having a value in excess of $10,000.

If the enterprise is owned or operated under a trade, partnership, or corporate name, list that name; otherwise, merely explain the nature of the enterprise. If rental property is owned or operated under a trade, partnership, or corporate name, list the name only; otherwise give the address of each property. Account for business interests held in trust.

NAME OF BUSINESS, CORPORATION, PARTNERSHIP, FARM; ADDRESS OF RENTAL PROPERTY	CITY OR COUNTY AND STATE	NATURE OF ENTERPRISE (FARMING, LAW, RENTAL PROPERTY, ETC.)	GROSS INCOME		
			50,000 or less	50,001 to 250,000	More than 250,000
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
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Statement of Economic Interests

SCHEDULE G-1

PAYMENTS FOR REPRESENTATION BY YOU

NAME: ____________________

OFFICE OR POSITION HELD OR SOUGHT: ____________________

List the businesses you represented, excluding activity defined as lobbying in § 2.2-419, before any state governmental agency, excluding any court or judge, for which you received total compensation during the past 12 months in excess of $1,000, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers filed by you.

Identify each business, the nature of the representation and the amount received by dollar category from each such business. You may state the type, rather than name, of the business if you are required by law not to reveal the name of the business represented by you.

Only STATE officers and employees should complete this Schedule.

NAME OF BUSINESS	TYPE OF BUSINESS	PURPOSE OF REPRESENTATION	NAME OF AGENCY	AMOUNT RECEIVED				
				$1001 To $10,000	$10,001 To $50,000	$50,001 To $100,000	$100,001 To $250,000	$250,001 And Over
				☐	☐	☐	☐	☐
				☐	☐	☐	☐	☐
				☐	☐	☐	☐	☐
				☐	☐	☐	☐	☐
				☐	☐	☐	☐	☐
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				☐	☐	☐	☐	☐
				☐	☐	☐	☐	☐
				☐	☐	☐	☐	☐
				☐	☐	☐	☐	☐
				☐	☐	☐	☐	☐

If you have received $250,001 or more from a single business within the reporting period, indicate the amount received, rounded to the nearest $10,000. Amount Received:____________

Statement of Economic Interests

SCHEDULE G-2

PAYMENTS FOR REPRESENTATION BY ASSOCIATES

NAME: ______________________________

OFFICE OR POSITION HELD OR SOUGHT: ______________________________

List the business(es) that have been represented, excluding activity defined as lobbying in § 2.2-419, before any state governmental agency, excluding any court or judge, by persons who are your partners, associates or others with whom you have a close financial association and who received total compensation in excess of $1,000 for such representation during the past 12 months, excluding representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers filed by your partners, associates or others with whom you have a close financial association.

Identify such business by type and also name the state governmental agencies before which such person appeared on behalf of such businesses.

Only STATE officers and employees should complete this Schedule.

TYPE OF BUSINESS	NAME OF STATE GOVERNMENTAL AGENCY

Statement of Economic Interests

SCHEDULE G-3

PAYMENTS FOR REPRESENTATION GENERALLY

NAME:

OFFICE OR POSITION HELD OR SOUGHT:

Indicate below types of businesses that operate in Virginia to which services were furnished by you or persons with whom you have a close financial association pursuant to an agreement between you and such businesses, or between persons with whom you have a close financial association and such businesses and for which total compensation in excess of $1,000 was received during the past 12 months.

Identify opposite each category of businesses listed below (i) the type of business, (ii) the type of service rendered and (iii) the value by dollar category of the compensation received for all businesses falling within each category.

BUSINESS CATEGORY	CHECK IF SERVICES WERE RENDERED	TYPE OF SERVICE RENDERED	VALUE OF COMPENSATION				
			$1,001 TO $10,000	$10,001 TO $50,000	$50,001 TO $100,000	$100,001 TO $250,000	$250,001 AND OVER
Electric Utilities	☐		☐	☐	☐	☐	☐
Gas Utilities	☐		☐	☐	☐	☐	☐
Telephone Utilities	☐		☐	☐	☐	☐	☐
Water Utilities	☐		☐	☐	☐	☐	☐
Cable Television Companies	☐		☐	☐	☐	☐	☐
Interstate Transportation Companies	☐		☐	☐	☐	☐	☐
Intrastate Transportation Companies	☐		☐	☐	☐	☐	☐
Oil or Gas Retail Companies	☐		☐	☐	☐	☐	☐
Banks	☐		☐	☐	☐	☐	☐
Savings Institutions	☐		☐	☐	☐	☐	☐
Loan or Finance Companies	☐		☐	☐	☐	☐	☐
Manufacturing Companies (state type of product, e.g., textile, furniture, etc.)	☐		☐	☐	☐	☐	☐
Mining Companies	☐		☐	☐	☐	☐	☐
Life Insurance Companies	☐		☐	☐	☐	☐	☐
Casualty Insurance Companies	☐		☐	☐	☐	☐	☐
Other Insurance Companies	☐		☐	☐	☐	☐	☐
Retail Companies	☐		☐	☐	☐	☐	☐
Beer, Wine or Liquor Companies or Distributors	☐		☐	☐	☐	☐	☐
Trade Associations	☐		☐	☐	☐	☐	☐
Professional Associations	☐		☐	☐	☐	☐	☐
Associations of Public Employees or Officials	☐		☐	☐	☐	☐	☐
Counties, Cities or Towns	☐		☐	☐	☐	☐	☐
Labor Organizations	☐		☐	☐	☐	☐	☐
Other	☐		☐	☐	☐	☐	☐

Statement of Economic Interests

SCHEDULE H-1

REAL ESTATE—STATE OFFICERS AND EMPLOYEES ONLY

NAME:

OFFICE OR POSITION HELD OR SOUGHT:

List real estate other than your principal residence in which you or a member of your immediate family holds an interest, including a partnership interest, option, easement, or land contract, valued at $10,000 or more. Each parcel shall be listed individually.

LIST EACH LOCATION (STATE AND COUNTY OR CITY) WHERE YOU OWN REAL ESTATE	DESCRIBE THE TYPE OF REAL ESTATE YOU OWN IN EACH LOCATION (BUSINESS, RECREATIONAL, APARTMENT, COMMERCIAL, OPEN LAND, ETC.)	IF THE REAL ESTATE IS OWNED OR RECORDED IN A NAME OTHER THAN YOUR OWN, LIST THAT NAME.

Statement of Economic Interests

SCHEDULE H-2

REAL ESTATE—LOCAL OFFICERS AND EMPLOYEES ONLY

NAME:

OFFICE OR POSITION HELD OR SOUGHT:

List real estate other than your principal residence in which you or a member of your immediate family holds an interest, including a partnership interest or option, easement, or land contract, valued at $10,000 or more. Each parcel shall be listed individually. Also list the names of any co-owners of such property, if applicable.

LIST EACH LOCATION (STATE, COUNTY OR CITY) WHERE YOU OWN REAL ESTATE	DESCRIBE THE TYPE OF REAL ESTATE YOU OWN IN EACH LOCATION (BUSINESS, RECREATIONAL, APARTMENT, COMMERCIAL, OPEN LAND, ETC.)	IF THE REAL ESTATE IS OWNED OR RECORDED IN A NAME OTHER THAN YOUR OWN, LIST THAT NAME	LIST THE NAMES OF ANY CO-OWNERS, IF APPLICABLE

Statement of Economic Interests

SCHEDULE I

REAL ESTATE CONTRACTS WITH GOVERNMENT AGENCIES

NAME:

OFFICE OR POSITION HELD OR SOUGHT:

List all contracts, whether pending or completed within the past 12 months, with a governmental agency for the sale or exchange of real estate in which you or a member of your immediate family holds an interest, including a corporate, partnership or trust interest, option, easement, or land contract, valued at $10,000 or more. List all contracts with a governmental agency for the lease of real estate in which you or a member of your immediate family holds such an interest valued at $1,000 or more. This requirement to disclose an interest in a lease does not apply to an interest derived through an ownership interest in a business unless the ownership interest exceeds three percent of the total equity of the business.

State officers and employees report contracts with state agencies.

Local officers and employees report contracts with local agencies.

List your real estate interest and the person or entity including the type of entity, which is party to the contract. Describe any management role and the percentage ownership interest you or your immediate family member has in the real estate or entity.

List each state and the governmental agency which is party to the contract and indicate the county or city where the real estate is located.

State the annual income from the contract, and the amount, if any, of income you or any immediate family member derives annually from the ownership interest you contact.

ATTACHMENTS

To: Jonnie Williams Sr[jwilliams@starscientific.com]
From: McDonnell, Bob (GOV)
Sent: Sat 5/28/2011 10:05:59 PM

Johnnie. Thanks so much for alll your help with my family. Your very generous gift to Cailin was most appreciated as well as the golf round tomorrow for the boys. Maureen is excited about the trip to fla to learn more about the products and to see Celeste. Have a restful weekend with your family. Thanks.

GOVERNMENT
EXHIBIT
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3:14cr12

U.S. Department of Justice

United States Attorney's Office
Eastern District of Virginia

Main Street Centre
600 East Main Street
Richmond, Virginia 23219

May 30, 2014

Richard Cullen, Esq.
McGuireWoods LLP
One James Center
901 East Cary Street
Richmond, VA 23219-4030

Reid H. Weingarten, Esq.
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036

Dear Messrs. Cullen and Weingarten:

This letter sets forth the terms and conditions under which your client, Jonnie Ray Williams, Sr. ("Williams"), would receive transactional immunity from the United States Attorney's Office for the Eastern District of Virginia and the Public Integrity Section of the United States Department of Justice ("these Offices") in exchange for his complete and truthful cooperation regarding potential violations of federal criminal laws related to public corruption. This letter supersedes and replaces the letter agreement dated July 1, 2013, between Williams and the United States Attorney's Office for the Eastern District of Virginia.

The conduct for which Williams would receive immunity is limited to: (1) conduct involving his agreement to provide, and his provision of, things of value to former Virginia Governor Robert F. McDonnell, former First Lady of Virginia Maureen P. McDonnell, and their family members; (2) conduct related to loans Williams received from 2009 to 2012 in exchange for his pledge of Star Scientific stock; and (3) conduct related to Williams' gifts of Star Scientific stock to certain trusts from 2009 to 2012. No other conduct or potential violations of federal criminal law are covered by this Agreement.

In exchange for the above-specified transactional immunity, your client agrees to the following:

First, Williams will answer all questions completely and truthfully during any court proceedings at which he may be called as a witness, before the Grand Jury, and during any interviews with these Offices. If at any time Williams refuses to answer any questions during any court proceedings, before the grand jury, or during any interviews with these Offices, then this transactional immunity agreement will be null and void.

Second, it is understood that if Williams committed any crimes on or after July 1, 2013, or should the Government determine that at any time on or after July 1, 2013, Williams has

GOVERNMENT
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3:14cr12

ven false, incomplete, or misleading testimony or information, or should he late any provision of this Agreement, Williams shall thereafter be subject to r any federal criminal violation of which these Offices have knowledge, including perjury and obstruction of justice. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against Williams, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

Third, it is understood that if Williams committed any crimes on or after July 1, 2013, or should the Government determine that at any time on or after July 1, 2013, he has knowingly given false, incomplete, or misleading testimony or information, or should he otherwise violate any provision of this Agreement, (a) all statements made by Williams to these Offices or other designated law enforcement agents, and any testimony given by Williams before a grand jury or other tribunal, at any time, whether prior to or subsequent to the signing of this Agreement, and any leads from such statements or testimony shall be admissible in evidence in any criminal proceeding brought against Williams; and (b) Williams shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed. It is the intent of this Agreement to waive all rights in the foregoing respects.

With respect to this matter, this Agreement supersedes all prior, if any, understandings, promises and/or conditions, between these Offices and Williams. No additional promises, agreements, and conditions have been entered into other than those set forth in this letter and none will be entered into unless in writing and signed by all parties.

Sincerely,

DANA BOENTE
United States Attorney

By: ______________________
Michael S. Dry
Assistant United States Attorney

JACK SMITH
Chief, Public Integrity Section

By: ______________________
David V Harbach, II
Deputy Chief

I have read the foregoing agreement in its entirety, I have discussed it with my attorney, and I have had it fully explained by my attorney. I voluntarily and knowingly agree to the terms set forth in this letter.

Jun 5 2014

Jonnie Ray Williams, Sr.
Date

I have discussed the foregoing agreement with my client and fully explained its terms to my client. To the best of my knowledge, my client voluntarily and knowingly agrees to the terms set forth in this letter.

Richard Cullen June 5, 2014

Richard Cullen, Esq.
Date

I have discussed the foregoing agreement with my client and fully explained its terms to my client. To the best of my knowledge, my client voluntarily and knowingly agrees to the terms set forth in this letter.

REID H. WEINGARTEN June 5, 2014

Reid H. Weingarten, Esq.
Date

Signed by R Cullen

To: Rabbitt, Emily (GOV)[Emily.Rabbitt@governor.virginia.gov]
From: Adam Zubowsky
Sent: Fri 1/4/2013 3:42:39 PM
Subject: Re: Golf Trip

Yes basically this means find out who we known in these cities, that owns golf courses and will let me and my family play for free, or at a reduced cost. Also finding out where to stay for free / or reduced cost. So this means go to Monica and Paige and find out about pac donors, and rga donors, who will host rfm. Also, Katherine keeps a list of people who have offered to host RFM over the past 4 years, so go through that list. Put everything into a nice briefing, so when you meet with him, you have ever offer you can think of, on paper. Then I'd go to the golf course websites, brief off the general info, and also copy and paste it into the briefing form, so he can pick based on the type / description of the course.

Make sense?

Adam B. Zubowsky
azubow1@gmail.com

On Fri, Jan 4, 2013 at 9:58 AM, Rabbitt, Emily (GOV) <Emily.Rabbitt@governor.virginia.gov> wrote:

> Good Morning!
>
> Did you ever plan a golf trip for the Governor, Bobby and Sean. He told me to see him about it and wants to go to Myrtle Beach or Florida. We decided to revisit it once we had firmed up dates for the marketing mission, etc. I just wanted to see if you had any background before I brought up the topic with him again.
>
> Thanks!
>
> Emily
>
> **Emily A. Rabbitt**
>
> Deputy Director of Scheduling & Travel Aide
>
> Office of Governor Robert F McDonnell

GOVERNMENT EXHIBIT
627
3:14cr12

www.governor.virginia.gov

This email contains confidential working papers of the Office of the Governor.

Mary-Shea Sutherland
3004 Stratford Townes Drive
Richmond, Virginia 23225
(804) 398-8927

January 20, 2012

Mr. Jonnie Williams

Dear Jonnie,

Thank you for taking the time to call today. I made the decision to write to you because I have little confidence the a breakfast meeting with ever take place again.

I do believe that you owe me an explantion on the events that occurred last September. The following outlines the months leading up to DATE. Perhaps you could fill me in on the rest.

In June, following the trip to Florida where I accompanied the First Lady, you called me to say that I was the type of person you wanted working for you and that you would pay me outside of my job with the state to help you. I remember the day clearly, I was in a dressing room with my niece when you called. We arranged to meet for breakfast, the first of several.

At breakfast we had a very honest conversation. You zeroed in on my unhappiness, to paraphrase, you said "you can't fool an old southern boy." I explained that I was looking to leave but in order to do so needed an anchor client to take back to Benedetti and Farris in order to cover my salary. At that time you were not interested in that plan but suggested that we should talk to Jerry Kilgore about having McGuire Woods put me on staff and he would just charge you extra. Again, you reiterated that I was the type of person you wanted working for you, not just on Anatabloc but for you personally. You specifically mentioned that you didn't have time to organize your own life and with the work going on at your home in Richmond and all of your travel you saw me as the person to manage all of that for you.

You went on to discuss that Jerry your secretary was not going to be with you much longer but that even she didn't handle all that you needed covered.

We met again with Jerry Kilgore over lunch at the Berkley. It was decided at that time that it would not work to have McGuire Woods hire me and that it made more sense for me to return to Benedetti and Farris and you would be the anchor client. We shook hands on that and when I asked didn't you want to talk about compensation you said that didn't worry you and asked Jerry Kilgore to handle that. We left lunch and you said, "just send Jerry the paperwork and we will get it all taken care of."

Following that meeting, you and I had a final breakfast at the Jefferson and again confirmed that I would leave the First Lady's office and you would be the anchor client for me. You were insistent that I not tell the Governor's Office I was leaving until after the luncheon at the Mansion for the doctors. You said to trust you and that I should only give them two weeks notice instead of the month I had suggested. You had asked that I stay until you got Anatabloc launched and we agreed at that time that I would leave October 1st

Following this breakfast, Benedetti and Farris sent a contract to Jerry Kilgore, per your instruction. According to Jerry, he tried a number of times to reach you to get the contract signed and when he didn't he sent it to your attorneys for signature. I realize that this was a mistake but Jerry did what he thought necessary.

You called me following this to say that because of company policies you could not sign a consulting contract but that we should invoice you each month for my services and you would pay it out of your marketing budget. You said for me to have Tom Benedetti call you and that while you couldn't sign the agreement your "word was something to take to the bank," and that you would tell Tom that and you also said you would enjoy catching up with Tom – you even suggested that the two of you get coffee.

It was after that phone call that everything changed.

Somehow – the Fisrt Lady found out that I was leaving. I have been told that you told her but I have a hard time believing that. But you need to know what happened after she found out.

I was called into her office. This after she had the night before gone through my desk and taken all of my business contacts – card that I had collected over years of working. None have been returned. While in her office she questioned me intensely – I felt like a criminal – but at no time did I divulge any of our conversations or plans. She grilled me about the proposal that had been sent to you and accused Tom of soliciting business out of you. She even told me that you told her Benedetti and Farris had approached you to try and get business from you and that they were hounding you. Their reputation has been damaged and frankly they deserve an apology – they did NOTHING wrong.

She then forced me to give her the password to my computer so she could look for evidence. There was nothing for her to find. Every communication you and I had was via text, I do have copies of all of them but did not keep them at the office. If I had kept those copies in my desk she would have had quite an eyeful.

The entire situation became intolerable and even though the Governor wanted me to stay in the job I knew that it was impossible. I am sure you can imagine the hell I was but through. In the end I walked away with my dignity and not much else. And I left without having a job to go to or a source of income.

I have been able to pick up small projects here and there but continue to struggle to makes ends meet. Yes it is true that I told you I wanted to leave but I also told you that I could not leave until I had either another job or a client to take to Benedetti and Farris. Again, it was you that offered to be that client. I never sought you out as a possible client, it was only after your phone call in June that any of this started.

I understand that you don't know feel that you need my services but I do want to remind you that the event aspect of my working for you was a subpart to what you really wanted which was my helping with your "life."

I feel that I am owed an explanation of what really happened and if you were the one that told the First Lady and started that avalanche – I want to know why.

At no time did I ever reveal any of our meetings, conversation or your sentiments on the First Lady. I never told anyone about your calls to me asking me to get you out of the trip to Maine, I never told anyone about you guiding me in my resignation process – I kept every confidence you ever shared with me.

I honeslty don't know what to think. Even today when you called you told me how badly the McDonnells treated you and yet I know that you continue to lend your plane and that you even had lunch at the Mansion yesterday.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-4019

UNITED STATES OF AMERICA,

Appellee,

v.

ROBERT F MCDONNELL,

Appellant.

Appeal from the United States District Court
for the Eastern District of Virginia
at Richmond
The Honorable James R. Spencer, Senior United States District Judge

SUPPLEMENTAL APPENDIX

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United States Attorney

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Ryan S. Faulconer
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Raymond Hulser
Acting Chief, Public Integrity Section

David V Harbach, II
U.S. Department of Justice
Criminal Division
Public Integrity Section
1400 New York Ave., N.W.,
Ste. 12100
Washington, D.C. 20005
202-514-1412

Attorneys for the United States of America

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Re: CONFIDENTIAL!! I need to talk to you...

From: **Christy & Jasen Eige** [redacted]
Sent: Tue 12/22/09 11:19 AM
To: Maureen McDonnell (maureen@bobmcdonnell.com)

Sure. I will call rt now, just in case you need it my cell is [redacted] [redacted]. Thx
Sent from my Verizon Wireless BlackBerry

----Original Message-----
From: Maureen McDonnell <maureen@bobmcdonnell com>
Date: Tue, 22 Dec 2009 15:58:05
To: [redacted]eige[redacted]
Subject: Re: CONFIDENTIAL!! I need to talk to you.

My email specifically stated that I wanted to talk to you. Not you talking to someone else first I don't have your number So can you please call me now on my cell [redacted]

From: Christy & Jasen Eige [redacted]
To: Maureen McDonnell
Sent: Tue Dec 22 09:20:07 2009
Subject: RE: CONFIDENTIAL!! I need to talk to you.

Maureen,
I apologize I did not check this email account until this morning I checked on Friday and it was my understanding that you had a budget for purchasing dresses I will check again on this issue and will let you know what I find out I know this is tough, I apologize that it has not been fully resolved yet Thanks
Jasen

From: maureen@bobmcdonnell com
To: [redacted]eige[redacted]
Date: Mon, 21 Dec 2009 21:47:01 -0600
Subject: CONFIDENTIAL!! I need to talk to you.

I need to talk to you about Inaugural clothing budget I need answers and Bob is screaming about the thousands I'm charging up in credit card debt We are broke, have an unconscionable amount in credit card debt already, and this Inaugural is killing us!! I need answers and I need help, and I need to get this done
How do I reach you?
Mv cell is [redacted]

GOVERNMEN
EXHIBIT
54
3:14cr12

Please sign up for Inaugural Updates at: www.McDonnellInaugural com
Maureen McDonnell
cid:X.MA2 1250783837@aol com New McDonnell for Governor Logo
cid:X.MA2 1250783837@aol com
www.McDonnellInaugural.com <http://www.bobmcdonnell.com/>
2819 North Parham Road, Suite 210
Richmond, Virginia 23294
(804) 612-9111

Maureen Mcdonnell

From: Maureen Mcdonnell
Sent: Sun 5/01/2011 12:17 PM (GMT -4)
To: Bob McDonnell
Cc:
Bcc:
Subject: FW: Home Run Potential

From: [mailto:robertschatz[redacted]
Sent: Sunday, May 01, 2011 10:45 AM
To: Maureen Mcdonnell
Subject: Fw: (no subject)

Please give to the governor and his wife as per Jonnie Williams. Thank you, Rob

Sent from my BlackBerry wireless handheld.

From:[redacted]
Date: Fri, 29 Apr 2011 08:50:58 EDT
To: <robertschatz[redacted]
Subject: (no subject)

http://seekingalpha.com/article/266546-star-scientific-has-home-run-potential

GOVERNMENT
EXHIBIT
107
3:14cr12

Maureen Mcdonnell

From: **Maureen Mcdonnell**
Sent: Sun 5/01/2011 3:56 PM (GMT -4)
To: [redacted]
Cc:
Bcc:
Subject: "Sunseeker"

Hi Jonnie & Celeste!
Here's one of our Beach Rental Properties that we own w/Bob's sister and her husband...
MoBo Realty
"Sunseeker"
3113 Sandfiddler Road
Virginia Beach VA 2
Semi-Oceanfront
11 Bedrooms ~ 7 Baths ~ 26 Occupancy
http://www.sandbridgerealty.com/rental/house.html?ID=299&User=alpha

Maureen McDonnell
First Lady of Virginia
www.firstlady.governor.virginia.gov

WWW.GOVERNOR.VIRGINIA.GOV

GOVERNMENT EXHIBIT
108
3:14cr12

Maureen Mcdonnell

From: Maureen Mcdonnell
Sent: Sun 5/01/2011 4:06 PM (GMT -4)
To: [redacted]
Cc:
Bcc:
Subject: ECP ~ East Coast Palace

Hi Jonnie & Celeste!
Here's the other Beach Rental Property that we own w/Rob's sister and her husband...
MoBo Realty
"ECP" *~ East Coast Palace*
3112 Sandfiddler Road
Virginia Beach VA
Oceanfront
3 Bedrooms ~ 2 Baths ~ 12 Occupancy
http://www.sandbridgerealty.com/rental/house.html?ID=145&User=alpha

Maureen McDonnell
First Lady of Virginia
www.firstlady.governor.virginia.gov

WWW.GOVERNOR.VIRGINIA.GOV

GOVERNMENT EXHIBIT
109
3:14cr12

Date: 5/2/11

EXECUTIVE MANSION

Shift #1 OIC: SGT BASSETT Officer: Brackett / Robinson

Shift #2 OIC: LT. Layne Officer: P.O.I. W.W. Dowdy (#04)

Shift #3 OIC: Sgt Perry Officer: Wilk, J #54

TIME IN	TIME OUT	NAME	ORGANIZATION/GUEST OF
0715	1700	TONY GRIFFIN	DGS
0756	1626	MARY SHEA	Mansion Staff
0810	1600	Waller	D.G.S
0818	—	Jim	"
0835	1645	ALEX Stanley	~~Staffing~~ PSD
0837	1351	Tiriana Scipa	"
0827	1351	Vivienne Miller	"
0827	1251	Elizabeth Manning	"
0840	—	Ronnie W. Kon	D.G.S
0846	1651	Sarah Scarberry	Mansion Staff
0856	—	Johnny Whiting	D.G.S.
0900	0906	Allen Coffee	Specialty Drapery
0905	←	Danny Elso	Cleaning
0924	1125	JOHN WILLIAMS	102
0944	2110	TODD Schneider	Chef
1006	1024	JASON ~~[illegible]~~ Pham	SARAH (wine delivery) Berkowitz
1052	1125	Gill	DG-S
1052	1125	Jarrett	"
1125	1147	David McGreevy	DG-S
1125	~~19~~ ~~2110~~ 1930	Tutti Townes	STAFF
1143	1245	Carol Etting	Gardener
1150	—	Scott McMillan	SARAH
1150	—	Dr. Jackson	SARAH
1315	1351	Bobby Gill	DG-S
1344	1:45	Blackwell	"
1415	1638	Carolyn Neidner	Hostess
1419	1718	Dwan Anthony	STAFF
1425	1718	Mr. Anthony	"
1430	1445	Kenny	State mail
1630	2110	Carrie Hanrahan	Todd

SA006

1A147

GOVERNMENT EXHIBIT 110 3:14cr12

From: McDonnell, Cailin [redacted]
Sent: Monday, May 2, 2011 7:42 AM
To: 'governor@bobmcdonnell.com'
Subject: RE: Fwd:

I will. Everyone was asked to rsvp by the 20th

---------- Forwarded message ----------
From: <governor@bobmcdonnell.com>
Date: Sun, May 1, 2011 at 10:28 PM
Subject:
To: Cailin McDonnell [redacted]

Please advise me on may 20 or so the final count and final payment amount for the wedding so I can make payment on time 10 days out. Thx Dad
Sent from my Verizon Wireless BlackBerry

--
Cailin McDonnell
[redacted]

GOVERNMENT EXHIBIT
111
3:14cr12

To: Block, Monica (GOV)[Monica.Block@governor.virginia.gov]
From: Block, Monica (GOV)
Sent: Wed 5/4/2011 10:27:13 PM
Subject: RFM Schedule: 05.05.11
RFM 05.05.11.pdf

Confidential Working Papers - Office of Governor Robert F McDonnell

Thursday, May 05, 2011

All Day Attire: Business Suit

EPU – AM: Todd Claiborne / Dave Johnson

EPU – PM: Abby Morris / Terry Fletcher

All Day Cinco De Mayo

8:10 AM - 8:15 AM Depart for the Patrick Henry Building

8:15 AM - 11:00 AM Meet on Boards and Commissions – PHB: Janet Polarek's Office

Participants: Janet Polarek, Jenni Aulgur, Katherine Harris, Emily Barrett, Courtney Groves

10:45 AM - 11:00 AM Scheduled Call with AG Ken Cuccinelli – Phone

Please call Ken Cuccinelli @[redacted]

Topic: Per his request to speak with you regarding July 1st Board Appointments prior to your departure to Asia.

11:00 AM - 11:45 AM Meet on HHR Strategic Plan -- PHB: Governor's Conference Room

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3:14cr12

Participants: Bill Hazel, Martin Kent

11:45 AM - 11:45 AM Lunch delivered to PHB

12:00 PM - 12:45 PM Meet on Transportation Strategic Plan -- PHB: Governor's Conference Room

Participants: Sean Connaughton, Martin Kent

1:00 PM - 1:05 PM Hepatitis A Vaccine -- PHB: Policy Conference Room

Note: They will their equipment set up to administer this shot in the Policy Conference Room.

1:15 PM - 1:30 PM Depart for the Gas Station

Manifest: Governor McDonnell, Maureen Matsen, Tucker Martin

1:30 PM - 2:15 PM Gas Pump Press Event -- Seibert's Gaskins Road Shell, 3830 Gaskins Road, Henrico, VA

POC: Taylor Thornley @ [redacted]

2:15 PM - 2:20 PM Depart for Golf Galaxy

*0.3 miles; 1 minute drive without traffic

2:20 PM - 2:35 PM Purchase Golf Shoes -- Golf Galaxy: 9860 West Broad Street, Glen Allen, VA

Please purchase Golf shoes for your trip to Asia.

2:35 PM - 2:45 PM Depart for PHB

3:00 PM - 3:45 PM Meet on Education Strategic Plan -- PHB: Governor's Conference Room

Participants: Gerard Robinson, Martin Kent

4:00 PM - 4:30 PM Meet on Workforce Development -- PHB: Governor's Conference Room

Participants: Carrie Cantrell, Jim Cheng, Martin Kent

4:30 PM - 4:45 PM Stop-by Public Employee Appreciation Ice Cream Social -- PHB: Cabinet Conference Room

4:45 PM - 5:00 PM International Briefing prior to Asia Marketing Mission -- PHB: Governor's Conference Room

Participants: Terrie Suit, Jim Hopper, Martin Kent

5:00 PM - 5:30 PM Meet on Scheduling -- PHB: Governor's Office

Participants: Monica Block

5:30 PM - 7:55 PM Private Work Time -- PHB: Governor's Office

7:55 PM - 8:00 PM Depart for the Executive Mansion

8:00 PM - 9:00 PM Dinner -- Executive Mansion

9:00 PM - 11:00 PM Pack Luggage for Asia Trip -- Executive Mansion

Note: Your luggage needs to be packed and placed on the Mansion elevator before you go to sleep TONIGHT

Monica J. Block

Scheduler

Office of Governor Robert F. McDonnell

PO Box 1475, Richmond, Virginia 23218

1111 East Broad Street, Richmond, Virginia 23219

804.225.2903 direct | 804.786.2211 office | 804.371.2655 fax

Monica.Block@governor.virginia.gov

This email contains confidential working papers of the Office of the Governor.

From: Watts, Pam (GOV) </o=Virginia/ou=COVAG/cn=Recipients/cn=WattsPam00001>
Sent: Thursday, May 5, 2011 12:25 PM
To: Hazel, Bill (GOV) <Bill.Hazel@governor.virginia.gov>
Subject: FW:
Attach: 20110505121707286.pdf

Dr. Hazel, please see attached from Governor.

Pam

-----Original Message-----
From: noreply@governor.virginia.gov [mailto:noreply@governor.virginia.gov]
Sent: Thursday, May 05, 2011 12:17 PM
To: Watts, Pam (GOV)
Subject:

This E-mail was sent from "RNP11CAB3" (Aficio MP C2050).

Scan Date: 05.05.2011 12:17:07 (-0400)
Queries to: noreply@governor.virginia.gov

GOVERNMENT
EXHIBIT
116
3:14cr12

Seeking Alpha α

Star Scientific Has Home Run Potential

by: Dr. John Faessel

April 29, 2011 | about: CIGX

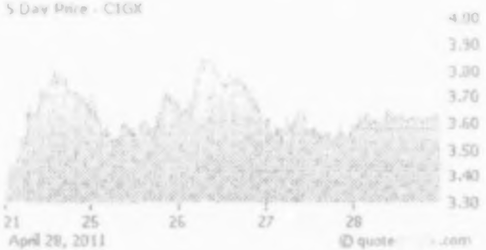
"The single phenomenon that holds the key to sickness and health – The holy grail of medicine" *

Today the study of inflammation is ascendant in medical research. Thousands of articles now reference this "first" response of the immune system, and the multitude of pathologies and human woes it can cause. Interrupting the negative cascade of the body's response to first insult has become a busy frontier of research, with countless multitudes of lives and dollars at stake

I recall Pathology Professor Dardin in one of my early classes at Georgetown many years ago lecturing to medical and dental students on the topic of inflammation, the biological response to harmful stimuli. "Calor, dolor, rubor and tumor," he quoted in Latin—heat, pain, redness, and swelling being the four classic signs of inflammation originally recorded by the Roman encyclopedist Celsus in the 1st century A.D. Little did Dr. Dardin
know that today the study of low-grade, chronic, unresolved and untreated inflammation spurred by an immune system overload is now considered a key causal factor in almost all chronic degenerative and lifestyle diseases.

ENTER: Star Scientific Inc. (CIGX)

A proprietary Star Scientific compound is now being tested on humans at the Roskamp Institute, Johns Hopkins University School of Medicine, and in new research just underway referred to as the "Flint" study, where Star and the Roskamp Institute have obtained institutional review board approval for a multi-site human clinical trial. This testing involves the treatment of neurological conditions as well as conditions associated with elevated blood levels of C-reactive protein [CRP]. Star's compound, anatabine, is found in tobacco and in peppers, eggplant, and green tomatoes. Could it be that from tobacco, of all things, a new method of dealing with and treating low-grade inflammation might be realized, possibly eliminating a whole world of woe?



On 10-7-2010 the eminent research institution Roskamp Institute announced that it will soon begin human clinical trials of [illegible] for the treatment of Alzheimer's Disease. Star Scientific has said that, "extensive pre-clinical research has been conducted." The compound was developed, patented and provided to Roskamp by a 100% owned subsidiary of Star Scientific. See link here.

Because of the astonishing success of the Star Scientific compound in encouraging new neuronal cell growth and reducing inflammation at the cellular level, Johns Hopkins University—a major research institution—is phasing in new uses of the compound in several other disease venues: cancers, thyroid, arthritis, and other diseases. Of note, research at the Johns Hopkins suggests that a low grade inflammation in pregnant women can pass through the placenta and blood-brain-barrier and cause aberrant neuronal growth within the fetal brain that could lead to autism and other disorders of presumed neurodevelopment origin, like schizophrenia and cerebral palsy."

More recent research from January-February 2011 at the Department of Neurochemistry, NY State Institute for Basic Research in Developmental Disabilities, reported similarly: "Our findings suggest that inflammation and apoptosis may play a significant role in the pathogenesis of autism..."

It has long been known that rubella/measles is the principal non-genetic cause of autism, so the conclusions above do make "connect the dots" sense. Star has recently trademarked a product called Anatabloc and the data picture that I've viewed on the Internet indicates that it's "Anti-Inflammatory Support Lowers C-Reactive Protein" (Again CRP is the critical marker) See this link to trademark data.

Medical research is now unwavering in its assessment that low-grade inflammations, once they become chronic, do significant harm to the body. Today, clinicians treat many diseases like asthma, arthritis, periodontal disease, lupus, cancer, ulcers, heart disease and many others with anti-inflammatory drugs to neutralize, diminish or block the process of inflammation.

A recently published graph from the Roskamp website shows the astonishing effects of the naturally occurring compound anatabine (RCP006) on the molecule that typically causes inflammation during bacterial infection. The chart demonstrates the dramatic effect of anatabine versus Lipitor, well known to have advanced anti-inflammatory properties (about double the therapeutic effect of aspirin). See link to the entire Roskamp page that includes the graph.

The graph demonstrates vividly how anatabine is more than three times more effective than Lipitor in reducing inflammation.

On 2/9/2011 Star Scientific announced that the subject of its provisional patent application, a pure form of a single isomer of anatabine, could be administered to treat numerous disorders, including those with inflammatory components, aberrant immune response and/or inappropriate cell proliferation. The application indicates that the disorders which may be treated with this discovery include inflammation occurring in brain swelling or neurodegenerative disease such as Alzheimer's disease, multiple sclerosis, and Parkinson's disease. Star said: "This isomer can be administered in a composition containing a therapeutically effective dose of anatabine to treat chronic low-level inflammation."

Star understands the impact of this information on the scientific and medical community and has revealed in the press announcement that it is working with McColl Partners LLC on "structuring a controlled auction for bidding by pharmaceutical companies for licensing and/or co-venturing relationships."

McColl Partners is an independent investment banking firm co-founded by Hugh McColl, former Chairman of Bank of America ([illegible]). See link here.

So, the sum of these studies of inflammation adds several more powerful hi-power arrows to the quiver of Star Scientific's armamentarium and its company-making strategy, now suddenly morphing Star into a new category or sector: that of a dynamic Biotech with legions of possibilities. One can only wonder who else is looking at these developments, which offer such tantalizing opportunities on mega-issues of our time: aging, Social Security, Medicare and Medicaid, senior citizen housing, hospitals as we've known them throughout the 20th and early 21st centuries, and the costs of drugs on almost the entire spectrum of disease as we define disease. Big Pharma, I'm certain, understands the totality of this data and is marshaling its forces to participate in the market playout of these inflammation discoveries in some form; it is always in search of significant new revenue sources. Obviously licensing, co-venturing, and buyout possibilities abound here.

Let's recall that the ancients found the bark of the willow tree to have anti-inflammatory properties. We now know that medicinal substance as aspirin. It may well be that from tobacco, a source of anatabine, a new treatment for all these afflictions could be realized.

Now, if that's not enough to get the hair up on you back, add this anecdotal story: it goes that a while back, Richard L. Sharp, founder and a board member of [illegible] ([illegible]) (NYSE, and former Chairman of Circuit City and Carmax) was part of a study at Roskamp Institute. He had taken a leave of absence from his post due to what was thought to be Alzheimer's.

Rumors were out there that Sharp was the beneficiary of some kind of miraculous healing from this devastating illness after his visit to Roskamp. I repeat that this account about Mr. Sharp and his experience at Roskamp is 100% unsubstantiated, but the story got around. It is certainly interesting in light of what we know about the goings on at the Roskamp Institute as regards its human Alzheimer studies.

Now we see that Mr. Sharp is a new board member of Star Scientific (March 17, 2011). Let it be said again: Star Scientific makes the product the Roskamp Institute uses for its Alzheimer studies.

And oh, I almost forgot: Mr. Sharp is a member of the [illegible], so he must have been aware of the Johns Hopkins involvement with the testing of Star's anatabine/RCP006 compound.

Orders of magnitude more than interesting, right?

I like to say about Star that the "connect the dots" tendency of its narrative could make CIGX a stock for the ages. Here is a quick look at some of this matrix of dots.

Star's mega [illegible] against tobacco giant RJ Reynolds is supposedly the "largest patent infringement lawsuit ever," and is being orchestrated by the powerful law firm [illegible]—a major patent law impresario that has lost just a couple of patent suits over its long history. This story alone drove CIGX to just below $6 last year.

Star is now marketing [illegible], an over-the-counter (no doctor prescription required) Tic-Tac style non-nicotine nutraceutical made from natural ingredients that temporarily reduces the urge to smoke. Just picture the market. And you can purchase it very simply [illegible].

Gross cigarette sales are $325 billion a year. Tobacco use will kill 6.5 million people in 2010 from cancer, heart disease, emphysema and other diseases. Moreover, 40% of those who smoke try to quit each year. With smoking issues so enormous worldwide, wouldn't some enterprising Big Tobacco company become involved with either a type of licensing agreement or even a buyout? Rumors are "out there" about this.

There's even more home run potential: Star has applied to the FDA for approval to advertise its proprietary BDL (Below Detectable Levels) technology that can lower the nitrosamine (the harmful part of tobacco complex) content to the zero level. Importantly, CIGX is the one and only company that can do this. Imagine if it gets FDA approval on that one? "Big Tobacco" will have to license the BDL technology ASAP, I believe. It should be noted that on March 11, 2011, Star's patents were validated by the United States Patent & Trademark Office with no possibility of appeal. The entire tobacco industry is now beholden to Star Scientific. How beholden? Perhaps to the tune of billions of dollars—but any way you look at it, after the 10-year lawsuit it is going to cost them a bunch.

Another big positive hit last month: Star Scientific [illegible] official word from the U.S. Food & Drug Administration [FDA] the net effect being that it will allow Star's modified risk tobacco products to be advertised, marketed and distributed. The ruling stated that Star's modified risk products are not "subject to regulation under FDC Act Chapter IX"; effectively approving Star's request to market and advertise its Ariva-BDL and Stonewall-BDL "BDL" (Below Detectable Levels) products.

Boiled down to basics: Star can [illegible] its tobacco products that have the cancer-causing, potentially lethal tobacco agent removed.

[illegible] continues to grow. I believe that currently about 81 financial institutions hold about 30% of Star shares. Last November, insiders and 5% holders bought an "additional" $14 million worth of shares plus warrants, in addition, I believe, to a 6-month lock-up. Just last month, on 3/19/2011, Star CEO Jonnie Williams bought up 500,000 shares of the company's stock for $1.97 according to securities filings. Hedge fund Tradewinds Investment Management, a more than 16% shareholder of Star, also picked up another 1,000,000 shares at $1.84 per on the same day, to now total 20.3 million shares.

* Noted author [illegible], an inflammation specialist at the [illegible] makes the point that inflammation "may well turn out to be the elusive holy grail of medicine, the single phenomenon that holds the key to sickness and health." Inflammation, Dr. Meggs writes, is a common thread that links heart disease, some forms of cancer, diabetes, migraine headaches, irritable bowel, and even periodontal disease.

To watch the CigRx infomercial click [illegible].

Disclosure: I am long [illegible].

Additional disclosure: I have no connection with the company other than owning shares.

From: Block, Monica (GOV) </O=VIRGINIA/OU=COVAG/CN=RECIPIENTS/CN=BLOCKMONICA00001>
Sent: Monday, May 9, 2011 2:29 PM
To: Hazel, Bill (GOV) <Bill.Hazel@governor.virginia.gov>
Subject: RE: RosKamp Institute

The person inviting the Governor is a good friend so I would like to be as responsive as possible.

From: Hazel, Bill (GOV)
Sent: Monday, May 09, 2011 2:27 PM
To: Block, Monica (GOV)
Subject: RE: RosKamp Institute

Monica,

He mentioned this to me on Thursday so I have not gotten to it yet. How soon do you need to make a decision?

William A. Hazel Jr. M.D.
Secretary of Health and Human Resources
Commonwealth of Virginia

From: Block, Monica (GOV)
Sent: Monday, May 09, 2011 2:25 PM
To: Hazel, Bill (GOV)
Cc: Schramm, Elaina (GOV); Harris, Katherine (GOV)
Subject: RosKamp Institute

Bill,

The Governor said that he sent you some material on the RosKamp Institute (http://www.rfdn.org/) and that you were going to get back with him regarding your thoughts on the organization. Have you had a chance to look at that yet? If so, could you let me know your thoughts? We are currently evaluating having the Governor go down to Florida to speak to this group and wanted to get your feedback prior to moving forward on this.

Thank you!
Monica

Monica J. Block
Scheduler
Office of Governor Robert F. McDonnell
PO Box 1475, Richmond, Virginia 23218
1111 East Broad Street, Richmond, Virginia 23219
804.225.2903 direct | 804.786.2211 office | 804.371.2655 fax
Monica.Block@governor.virginia.gov

This email contains confidential working papers of the Office of the Governor.

GOVERNMENT
EXHIBIT
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3:14cr12

From: Block, Monica (GOV) </O=VIRGINIA/OU=COVAG/CN=RECIPIENTS/CN=BLOCKMONICA00001>
Sent: Monday, May 9, 2011 2:35 PM
To: Jerri Fulkerson <jfulkerson@starscientific.com>
Subject: RE: RosKamp Institute

Thank you!

-----Original Message-----
From: Jerri Fulkerson [mailto:jfulkerson@starscientific.com]
Sent: Monday, May 09, 2011 2:33 PM
To: Block, Monica (GOV)
Subject: Re: RosKamp Institute

I will let jw know. Dad & daughters come 1st

Sent from my Verizon Wireless Phone. Jerri

"Block, Monica (GOV)" <Monica.Block@governor.virginia.gov> wrote:

Jerri,

I spoke with the Governor regarding flying down to speak to the RosKamp Institute on June 1st. Unfortunately, after checking with his daughter (she is getting married that Saturday) he doesn't believe he will be able to attend due to some Dad commitments that day. I'm so sorry this won't work out!

What else can we do to fix this? The Governor is planning on being in Florida in December, could we tie something in then? When is their next event?

Thank you!

Monica

Monica J. Block

Scheduler

Office of Governor Robert F. McDonnell

PO Box 1475, Richmond, Virginia 23218

1111 East Broad Street, Richmond, Virginia 23219

804.225.2903 direct | 804.786.2211 office | 804.371.2655 fax

Monica.Block@governor.virginia.gov

GOVERNMENT
EXHIBIT
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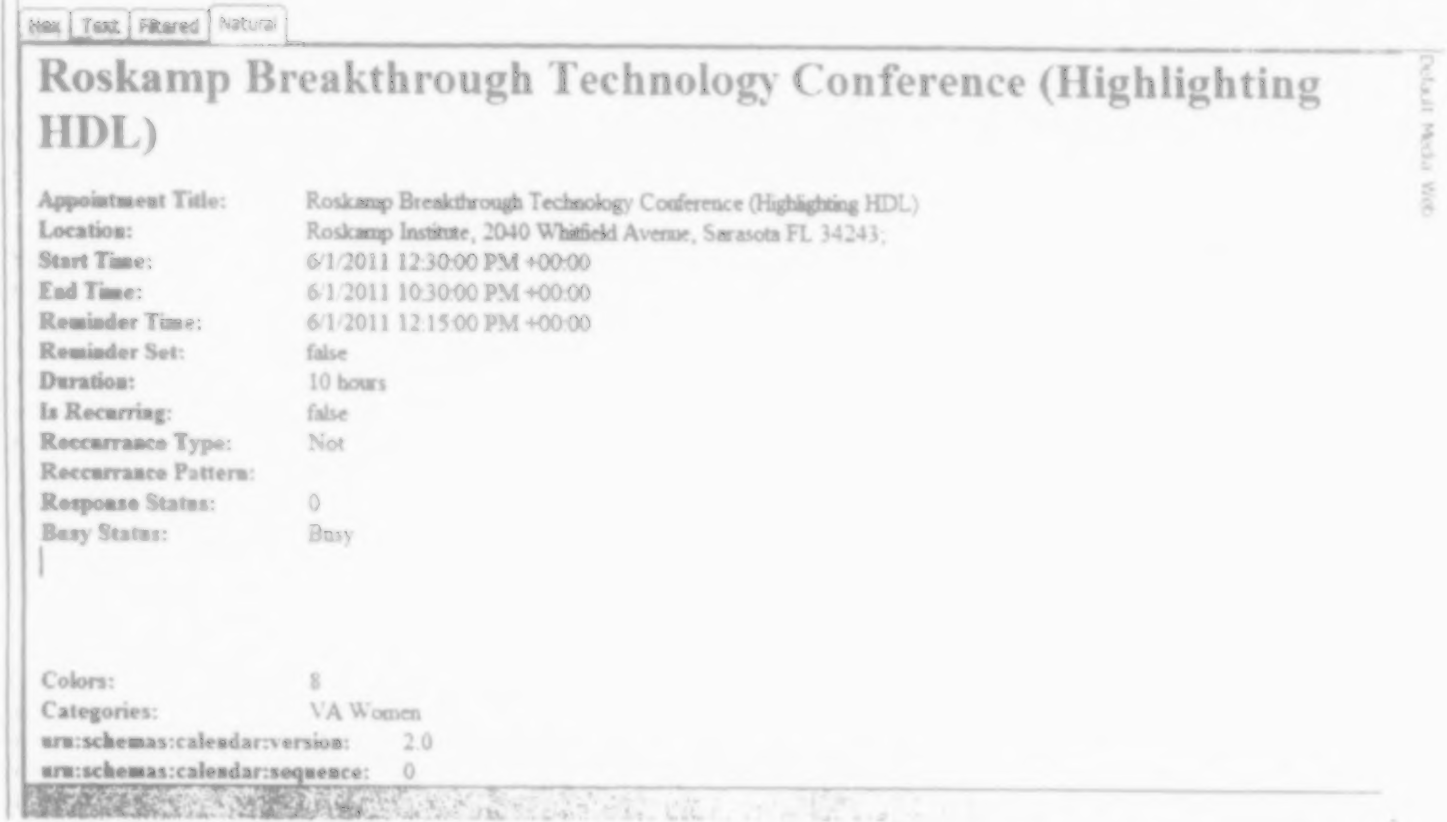
3:14cr12

<http://twitter.com/#!/governorva>
<http://www.facebook.com/pages/Governor-of-Virginia/61634046494>
<http://www.flickr.com/photos/governorva/>
<http://www.youtube.com/vagovernor>

This email contains confidential working papers of the Office of the Governor.



Roskamp Breakthrough Technology Conference (Highlighting HDL)

Appointment Title: Roskamp Breakthrough Technology Conference (Highlighting HDL)
Location: Roskamp Institute, 2040 Whitfield Avenue, Sarasota FL 34243;
Start Time: 6/1/2011 12:30:00 PM +00:00
End Time: 6/1/2011 10:30:00 PM +00:00
Reminder Time: 6/1/2011 12:15:00 PM +00:00
Reminder Set: false
Duration: 10 hours
Is Recurring: false
Reccurrance Type: Not
Reccurrance Pattern:
Response Status: 0
Busy Status: Busy

Colors: 8
Categories: VA Women
urn:schemas:calendar:version: 2.0
urn:schemas:calendar:sequence: 0

Roskamp Breakthrough Technology Conference (Highlighting HDL) GML_0085621.msg
From: McDonnell, FLOVA (GOV)
Sent: 5/17/2011 4:39:21 PM (2011-05-17 20:39:21 UTC)
Delivered: 5/17/2011 4:39:21 PM (2011-05-17 20:39:21 UTC)
Representing: McDonnell, FLOVA (GOV)

GOVERNMENT
EXHIBIT
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3:14cr12

To: Jonnie Williams Sr[jwilliams@starscientific.com]
From: McDonnell, Bob (GOV)
Sent: Sat 5/28/2011 10:05:59 PM

Johnnie. Thanks so much for alll your help with my family. Your very generous gift to Cailin was most appreciated as well as the golf round tomorrow for the boys. Maureen is excited about the trip to fla to learn more about the products and to see Celeste. Have a restful weekend with your family. Thanks.

GOVERNMENT
EXHIBIT
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3:14cr12

Kinloch
Golf Club

Statement

Mr. Jonnie R. Williams
[redacted]

1101	May 31/11
MEMBER	DATE

AMOUNT PAID $ ____________

PLEASE DETACH AND RETURN TOP PORTION WITH PAYMENT

DATE	REF NO	DESCRIPTION	AMOUNT	SVC/GRAT	TAX	TOTAL
		Regular Club Charges				
		Balance Forward				0.00
May 12/11	003257	Merchandise	213.57	0.00	10.68	224.25
May 29/11	004641	Golf Fees	1,200.00	0.00	0.00	1,200.00
May 29/11	004669	Merchandise	390.48	0.00	19.52	410.00
May 29/11	004671	Golf Fees	500.00	0.00	0.00	500.00
May 29/11	003406	Food & Beverage	70.00	12.60	3.50	86.10
May 29/11	003438	Food & Beverage	32.45	5.84	1.62	39.91
May 29/11	003448	Food & Beverage	18.50	3.33	0.93	22.76
May 29/11	001902	Snack Bar	98.75	17.78	4.94	121.47
		Total Regular Club Charges	2,523.75	39.55	41.19	2,604.49
			2,523.75	39.55	41.19	2,604.49

VIEW AND PAY MEMBER STATEMENTS ONLINE!
www.kinlochgolfclub.com

For additional assistance, please contact Traci Phillips at 804-784-8000 or tphillips@kinlochgolfclub.com

1101	2,604.49	0.00	0.00	0.00	2,604.49
MEMBER	CURRENT BAL	30 DAYS BAL	60 DAYS BAL	90 DAYS BAL	AMOUNT DUE

KINLOCH GOLF CLUB • 100 KINLOCH LANE • MANAKIN SABOT, VA • 23103
(804) 784-8000 • Email accounting@kinlochgo[illegible]m

GOVERNMENT EXHIBIT
135
3:14cr12

TERMS: NET 25

1A341

Kinloch Golf Club
—— Chit Details ——
Member: 1101 Jonnie R. Williams
Server: Kevin
Area: Proshop
Chit # 01003257
Date: May 12/11 Time: 3:33pm

Titleist SX-6 Bag	185.00
Senior AM Imperial C	28.57
Sub-Total	213.57
Sales Tax	10.68
Chit Total	$224.25
Member Charge	$224.25-

Kinloch Golf Club
—— Chit Details ——
Member: 1101 Jonnie R. Williams
Staff: Andrea
Area: Proshop
Covers: 1
Chit # 01004641
Players: Mcdonnell, Gov. Bob
McDonnell, Son Of
Mcdonnell, Son
Future, Son in Law
Date: May 29/11 Time: 1:39pm

18 Hole Fee - Unacc	300.00
18 Hole Fee - Unacc	300.00
18 Hole Fee - Unacc	300.00
18 Hole Fee - Unacc	300.00
Sub-Total	1,200.00
Chit Total	$1,200.00
Member Charge	$1,200.00-

Kinloch Golf Club
—— Chit Details ——
Member: 1101 Jonnie R. Williams
Server: Andrea
Area: Proshop
Chit # 01004669
Date: May 29/11 Time: 6:05pm

2 Titleist Logo 6-Pack	50.48
PM Summer Comfort Sl	90.00
PM Summer Comfort So	80.00
PM Summer Comfort Sl	90.00
PM Summer Comfort So	80.00

Notes
FOR GOVNER GROUP

Sub-Total	390.48
Sales Tax	19.52
Chit Total	$410.00
Member Charge	$410.00-

Kinloch Golf Club
—— Chit Details ——
Member: 1101 Jonnie R. Williams
Server: Justin
Area: Proshop
Chit # 01004671
Date: May 29/11 Time: 7:42pm

Caddie Fee Keener, R	250.00
Caddie Fee Simmons,	250.00
Sub-Total	500.00
Chit Total	$500.00
Member Charge	$500.00-

Kinloch Golf Club
—— Chit Details ——
Member: 1101 Jonnie R. Williams
Server: Paul
Area: Food & Beverage
Table# 6 Covers: 4
Chit # 05003406
Date: May 29/11 Time: 3:14pm

Fountain Diet Coke	1.75
Tea Sweet	1.75
Chowder Bowl	5.00
Club Sandwich	8.95
House Salad	7.95
Chicken Breast	4.95
Bacon Swiss Grilled	9.95
Tuna Salad Sandwich	8.50
Fountain Diet Coke	1.75
Cold Plate: 2 Scoop	9.95
Virginia BBQ Sand	9.50
Sub-Total	70.00
Service Charge	12.60
Sales Tax	3.50
Chit Total	$86.10
Member Charge	$86.10-

Kinloch Golf Club
—— Chit Details ——
Member: 1101 Jonnie R. Williams
Server: Matthew
Area: Food & Beverage
Table# 34 Covers: 4
Chit # 05003438
Date: May 29/11 Time: 8:59pm

2 Chowder Cup	8.00
Reuben Sandwich	8.50
Hamburger	11.95
2 Bottled Water	4.00
Sub-Total	32.45
Service Charge	5.84
Sales Tax	1.62
Chit Total	$39.91
Member Charge	$39.91-

Kinloch Golf Club
—— Chit Details ——
Member: 1101 Jonnie R. Williams
Server: Matthew
Area: Food & Beverage
Table# 21 Covers: 8
Chit # 05003448
Date: May 29/11 Time: 8:20pm

4 Bottle Gatorade	12.00
2 Bud	6.50
Sub-Total	18.50
Service Charge	3.33
Sales Tax	0.93
Chit Total	$22.76
Member Charge	$22.76-

Kinloch Golf Club
—— Chit Details ——
Member: 1101 Jonnie R. Williams
Server: Kaleem
Area: Snack Bar
Chit #: 06001902
Date: May 29/11 Time: 5:07pm

6 Bottle Gatorade	18.00
Hamburger	11.95
Hamburger	11.95
Grilled Chicken Sand	8.95
Hamburger	11.95
Hamburger	11.95
8 Bottle Gatorade	24.00
Sub-Total	98.75
Service Charge	17.78
Sales Tax	4.94
Chit Total	$121.47
Member Charge	$121.47-

GOVERNMENT EXHIBIT
137
3:14cr12

GOVERNMENT EXHIBIT
138
3 14cr12

DAVENPORT
& COMPANY LLC
EST. 1863 • MEMBER: NYSE • FINRA • SIPC

Account Name:	MAUREEN MCDONNELL	Number:	[redacted]-2323
Investment Executive:	JOHN PISCITELLI	Telephone:	757-306-4804
Statement Period:	JUN 01 2011 JUN 30 2011	Page:	1 of 3

NPM-000595

PORTFOLIO SUMMARY

	Current Period	% to Total	Prior Period	% to Total
COMMON STOCK	27,000.00	100.00%	0.00	100.00%
TOTAL MARKET VALUE	27,000.00	100.00%	0.00	100.00%
TOTAL PORTFOLIO VALUE	27,000.00		0.00	

CASH ACTIVITY SUMMARY

OPENING CREDIT (DEBIT) BALANCE	0.00
SECURITIES PURCHASED	(31,079.40)
FUNDS DEPOSITED	31,079.40
CLOSING CREDIT (DEBIT) BALANCE	0.00

PORTFOLIO COMPOSITION

CHART NOT AVAILABLE THIS STATEMENT PERIOD

GOVERNMENT
EXHIBIT
149
3:14cr12

2 3 1 0 0

Account Name: MAUREEN MCDONNELL
Investment Executive: JOHN PISCITELLI
Statement Period: JUN 01 2011 - JUN 30 2011

Number: [redacted]-2323
Telephone: 757-306-4804
Page: 2 of 3

PORTFOLIO HOLDINGS

Estimated annual income (EAI) and *estimated* current yield (ECY) figures included in this document are for informational purposes only and are not a forecast or guarantee of future results. Amounts are computed using information believed to be reliable; however, no assurance can be made as to the accuracy. The EAI and ECY represented for holdings with significant market loss or income reduction may be invalid. Calculations are based on the rate of the last income payment and do not reflect future changes in rates. Where possible, adjusted cost and original cost of fixed income instruments is reflected. A capital gain or return of principal may be included in the figures for certain securities, thereby overstating the income or yield. Please contact your Investment Executive with questions.

Quantity	Description	Symbol/ CUSIP	Adjusted Cost* Original Cost	Market Price	Market Value	% of Assets	Unrealized Gain (Loss)	Estimated Income	Current Yield
COMMON STOCK									
CONSUMER STAPLES									
6,000	STAR SCIENTIFIC INC	CIGX	31,079.40	4.50000	27,000.00	100.00%	(4,079.40)	N/A	N/A
	TOTAL CONSUMER STAPLES		31,079.40		27,000.00	100.00%	(4,079.40)		
	TOTAL COMMON STOCK		31,079.40		27,000.00	100.00%	(4,079.40)		
	TOTAL		31,079.40		27,000.00		(4,079.40)		

PURCHASES & SALES

Date	Activity	Quantity	Description	Price	Debit	Credit
06/01/2011	PURCHASE	6,000	STAR SCIENTIFIC INC	5.1799	31,079.40	
TOTAL PURCHASES & SALES					31,079.40	

FUNDS WITHDRAWN/DEPOSITED

Date	Activity	Description	Withdrawn	Deposited
06/06/2011	DEPOSIT	FUNDS RECD MAUREEN MCDONNELL		31,079.40
TOTAL FUNDS WITHDRAWN/DEPOSITED				31,079.40

TAX LOT CLOSING METHOD

OUR RECORDS INDICATE THAT YOUR DEFAULT TAX LOT CLOSING METHOD IS HIGHEST COST.

DAVENPORT
& COMPANY LLC
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Account Name: MAUREEN MCDONNELL
Investment Executive: JOHN PISCITELLI
Statement Period: JUN 01 2011 - JUN 30 2011

Number: [redacted]2323
Telephone: 757-306-4804
Page: 3 of 3

INVESTMENT OBJECTIVE

OUR RECORDS INDICATE THAT YOUR INVESTMENT OBJECTIVE FOR THIS ACCOUNT IS AGGRESSIVE GROWTH OR INCOME.

PLEASE REMEMBER WE ARE RELYING ON YOU TO KEEP YOUR INVESTMENT OBJECTIVE AND OTHER PERTINENT DATA SUCH AS OWNER & ASSOCIATED PERSON(S) DEMOGRAPHICS RELATED TO YOUR ACCOUNT CURRENT. CONTACT YOUR INVESTMENT EXECUTIVE WITH ANY UPDATES OR CHANGES.

OWNER & ASSOCIATED PERSON(S) DEMOGRAPHICS

RELATIONSHIP	NAME	ADDRESS	ANNUAL INCOME [1]	NET WORTH [2]	OCCUPATION	B-D AFFILIATION [3]	HOME PHONE	BUSINESS PHONE
PRIMARY	MAUREEN MCDONNELL	5913 LEEBROOK WAY [redacted]	100,001 - 200,000	500,001 - 1,000,000	PROP, BUS OWNER, SELF-EMPLOYED	N	[redacted]	[redacted]

Notes

[1,2] Annual Income and Net Worth figures are stated at the account level. All other information is based on the individual level.

[3] B-D Affiliation - Client or spouse is/is not employed by FINRA member firm, Insurance Company, or Bank.

IMPORTANT MESSAGES

Dividends can be a significant part of the total return of a dividend-paying stock. The Davenport Value & Income Fund, a no-load mutual fund, invests in a variety of value stocks that are currently paying dividends. the fund's goal is to provide solid equity returns with a yield higher than the S&P 500* Contact your Davenport Investment Executive today to learn more and to request a prospectus.

**The S&P 500 Index is comprised of 500 U.S. stocks and is an indicator of the performance of the overall U.S. stock market. An investor cannot invest directly in an index and its returns are not indicative of the performance of any specific investment.*

From: Sutherland, MaryShea (GOV) <MaryShea.Sutherland@governor.virginia.gov>
Sent: Monday, June 20, 2011 10:54 AM
To: Maureen Mcdonnell
Subject: FW: Letter from Jonnie/RosKamp
Attachments: Letter to Gov. McDonnell.pdf; Approved Protocol for CRP study.pdf

Info from Jonnie

From: Jerri Fulkerson [mailto:jfulkerson@starscientific.com]
Sent: Thursday, June 16, 2011 12:39 PM
To: Sutherland, MaryShea (GOV)
Subject: Letter from Jonnie/RosKamp

Jonnie asked that I forward the attached letter and information to you.

Regards,

Jerri M. Fulkerson
Executive Assistant
Office: 804-586-5484
Fax: 804-861-9217

IMPORTANT/CONFIDENTIAL: This message contains information which may be privileged, confidential, or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, retention, archiving, or copying the communication is strictly prohibited. If you have received this communication in error, please notify us immediately by return e-mail and delete the document.

GOVERNMENT
EXHIBIT
162
3:14cr12

Star
Scientific, Inc.

Dear Governor McDonnell,

The particular intent of this letter is to provide the Commonwealth of Virginia with a technology platform to lower healthcare costs. Attached you will find a protocol for a clinical study of Anatabloc (RCP006) that is currently underway in Flint, Michigan (the "Flint" study). This study is designed to screen for participants with high C-Reactive Protein (CRP) levels, an inflammatory marker that is used primarily by cardiologists in the diagnosis of heart disease or atherosclerosis. It is rarely used by other specialties since there are no known treatments to lower CRP, elevated levels of which are generally accepted in medicine to be associated with a number of diseases including autoimmune diseases. The Flint study is now underway, and a study for thyroid function at the University of Pisa, in conjunction with the Head of Endocrinology at Johns Hopkins, is about to begin. The Roskamp Institute in Florida has also filed a submission for a study in Alzheimer's patients.

I am suggesting that you use the attached protocol to initiate the "Virginia study" of Anatabloc at the Medical College of Virginia and the University of Virginia School of Medicine, with an emphasis on endocrinology, cardiology, osteoarthritis and gastroenterology. We will work with those institutions to ensure that they have all the necessary support for the required regulatory process, and to subsequently conduct the clinical study. We propose to use Health Diagnostic Laboratory Inc., a Virginia company, for some of the blood analyses to be carried out in these studies.

The endpoint of these studies is to demonstrate that Anatabloc maintains normal inflammatory function, as measured by CRP and other inflammatory markers. This landmark study will provide the data for an evaluation of the economic impact of Anatabloc in healthcare, and if we are right then I believe that the results of the Virginia study will have a major impact on reducing healthcare costs for Virginia.

Dr. Fiona Crawford from the Roskamp Institute in Florida, together with Dr. Paul Ladenson, Chief of Endocrinology at Johns Hopkins, have agreed to assist the medical institutions in Virginia to initiate and complete this study. Once you have had a chance to review this please have someone on your staff contact me.

Respectfully yours,

Jonnie Williams
CEO

Title: A single-blind, multi-site trial of the dietary supplement anatabine (RCP006) to determine the effects on peripheral markers of inflammation in patients with elevated levels of C-reactive protein (CRP).

Roskamp Institute Protocol Number RI-11-01

Trial Sponsor:	Roskamp Institute 2040 Whitfield Avenue, Sarasota, FL 34243 tel: 941 256-8018 fax: 941 756-3681
Version	1.0
Date:	February 1st, 2011

Confidentiality Statement

This document contains confidential information of the Roskamp Institute that must not be disclosed to anyone other than the recipient study staff and members of the Institutional Review Board. This information cannot be used for any purpose other than the evaluation or conduct of the clinical investigation without the prior written consent of the Roskamp Institute.

Investigator's Agreement

I have read the attached protocol entitled: A single-blind, multi-site trial of the dietary supplement anatabine (RCP006) to determine the effects on peripheral markers of inflammation in patients with elevated levels of C-reactive protein (CRP), and agree to abide by all provisions set forth in this document.

I agree to comply with the International Conference on Harmonization Tripartite Guideline on Good Clinical Practice and applicable FDA regulations/guidelines set forth in 21 CFR Parts 11, 50, 54, 56, and 312.

I agree to ensure that Financial Disclosure Statements will be completed by:

- myself (including, if applicable, my spouse [or legal partner] and dependent children)
- my sub-investigators (including, if applicable, their spouses [or legal partners] and dependent children)
- before study initiation, during the study if there are changes, and after the study is completed.

I agree to ensure that the confidential information contained in this document will not be used for any purpose other than the evaluation or conduct of the clinical investigation without the prior written consent of the Roskamp Institute.

____

Principal Investigator Signature

______________________________ ______________________________

Principal Investigator Name Date (DD Month YYYY)

Site Number:

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Data Management, Storage and Confidentiality: 3

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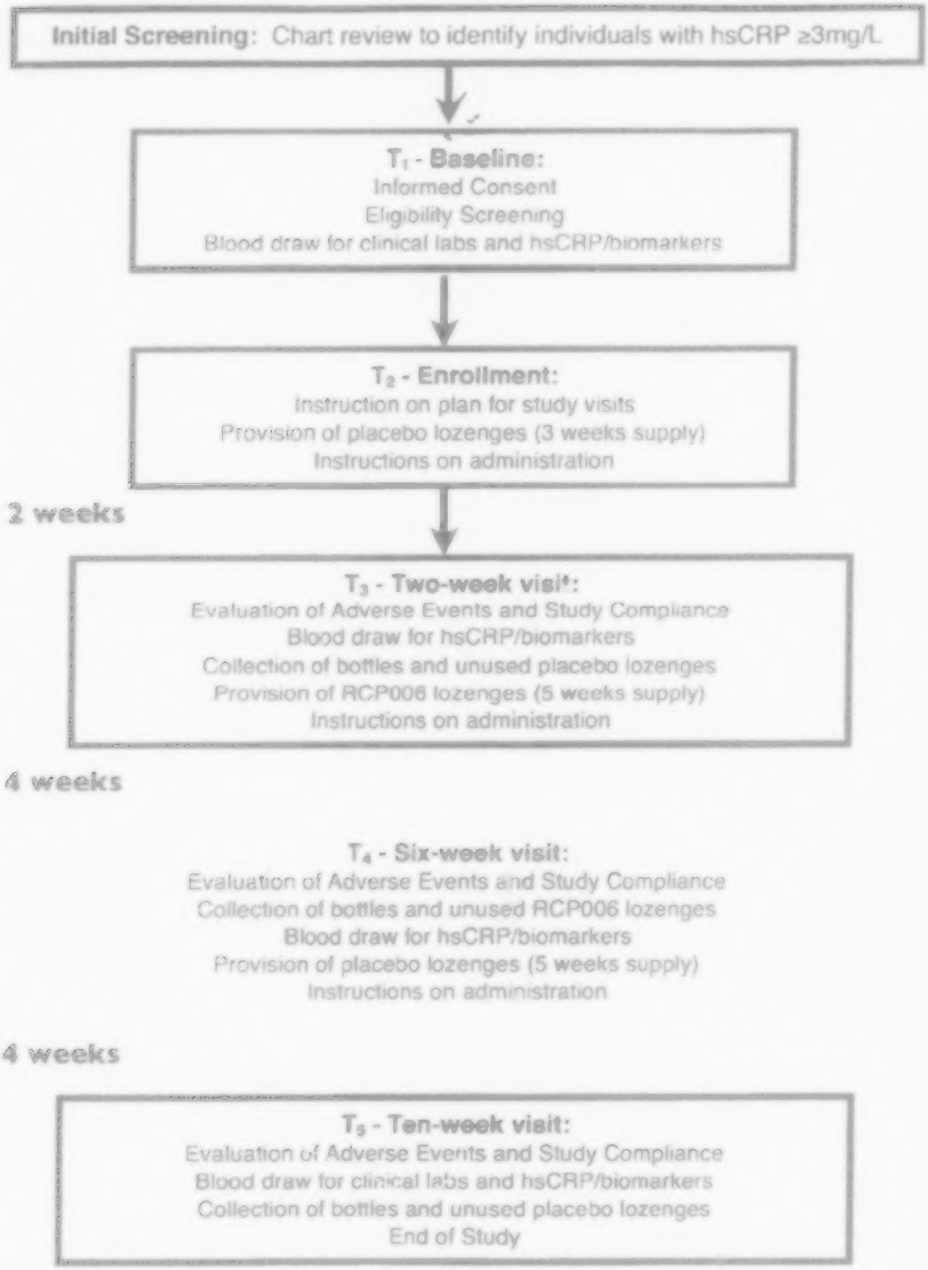
Protocol Synopsis

Title	A single-blind, multi-site trial of the dietary supplement anatabine (RCP006) to determine the effects on peripheral markers of inflammation in patients with elevated levels of C-reactive protein (CRP).
Primary Objective	To determine whether the dietary supplement lowers blood levels of CRP in patients with elevated levels of CRP.
Secondary Objective(s)	To determine whether the dietary supplement modulates levels of additional peripheral markers of inflammation such as TNF-α, interleukin 1 and interleukin 6
Study Design	This is single-blind, sequential placebo treatment placebo study design. At study visit T_1 routine clinical labs and hsCRP levels (baseline evaluation) will be determined from consenting participants. Those who meet inclusion/exclusion criteria and have elevated hsCRP levels (≥ 3mg/ L) will return for visit T_2 at which time they will receive 2 weeks of placebo (to which they will be blinded). At visit T_3 they will provide a second blood sample for evaluation of peripheral inflammatory markers including hsCRP, and will receive 4 weeks of active treatment. Levels of peripheral inflammatory markers will again be determined at the conclusion of treatment (T_4 - treatment evaluation), at which time they will receive 4 weeks of placebo and return at visit T_5 for final evaluation of inflammatory markers and routine clinical labs. The treatment will be 1 or 2 RCP006 1mg lozenges three times daily, with dosing determined by patient's weight. Adverse events and participant's compliance with dosing will be assessed at T_3, T_4 and T_5
Primary Endpoint and Secondary Endpoints	1°. Determine blood levels of CRP after each stage (placebo-treatment-off) of the study 2°. Determine blood levels of additional markers of inflammation after each stage of the study
Sample Size	300 individuals
Summary of Subject Eligibility Criteria	Individuals aged 18 or older with blood high sensitivity CRP levels ≥ 3mg/L. Acceptance based upon medical history, physical exam, clinical laboratory tests and negative pregnancy test for females. Exclusion: Pregnancy or endeavoring to become pregnant. Current steroidal treatment.
Drug Dosage and Formulation	RCP006 (1mg) lozenge formulated into a mint-flavored mannitol granulation lozenge
Control Group	None
Administration route	Oral
Procedures	Informed consent, medical history, physical exam, weight measurement and vital signs assessment, blood draw for clinical laboratory tests (including pregnancy test) & baseline for hsCRP (and other markers) at T_1. Initiation of study at T_2 with 2 weeks of placebo. Assessments and blood draw for hsCRP and other markers at T_3 followed by 4 weeks of treatment. Assessments and blood draw for hsCRP and other markers at T_4 followed by 4 weeks of placebo. Weight measurement and vital signs assessment and blood draw for clinical laboratory tests (including pregnancy test), hsCRP and other inflammatory markers at T_5. End of study.
Sponsor/Licensee	Roskamp Institute

Study Design and Treatment Schema



Initial Screening: Chart review to identify individuals with hsCRP ≥3mg/L

T_1 - Baseline:
Informed Consent
Eligibility Screening
Blood draw for clinical labs and hsCRP/biomarkers

T_2 - Enrollment:
Instruction on plan for study visits
Provision of placebo lozenges (3 weeks supply)
Instructions on administration

2 weeks

T_3 - Two-week visit*:
Evaluation of Adverse Events and Study Compliance
Blood draw for hsCRP/biomarkers
Collection of bottles and unused placebo lozenges
Provision of RCP006 lozenges (5 weeks supply)
Instructions on administration

4 weeks

T_4 - Six-week visit:
Evaluation of Adverse Events and Study Compliance
Collection of bottles and unused RCP006 lozenges
Blood draw for hsCRP/biomarkers
Provision of placebo lozenges (5 weeks supply)
Instructions on administration

4 weeks

T_5 - Ten-week visit:
Evaluation of Adverse Events and Study Compliance
Blood draw for clinical labs and hsCRP/biomarkers
Collection of bottles and unused placebo lozenges
End of Study

Title

A single-blind, multi-site trial of the dietary supplement anatabine (RCP006) to determine the effects on peripheral markers of inflammation in patients with elevated levels of C-reactive protein (CRP).

Objectives

To determine whether use of the dietary supplement has an effect on maintaining peripheral markers of inflammation, such as CRP, within normal clinical range.

Primary Objective: To determine whether the dietary supplement lowers blood levels of CRP in patients with elevated levels of CRP

Secondary Objective: To determine whether the dietary supplement modulates levels of additional peripheral markers of inflammation such as interleukin 1, interleukin 6 and serum amyloids.

Background and Rationale

Inflammatory dysregulation

Anatabine, an alkaloid with similar properties to nicotine and found in Solanaceous fruits and vegetables and tobacco, is a cholinergic agonist and is expected to behave in the same way as nicotine with respect to systemic inflammation. Smoke, (both wood smoke and cigarette smoke) but not nicotine (Allen et al., 2011, Ikonomidis et al., 2005; Hamer et al., 2010a; Hamer et al., 2010b), is associated with increased CRP levels primarily due to the damaging effects of smoke on vascular health. Nicotine has previously been shown to decrease CRP levels in Crohn's Disease patients when given as an enema (Ingram et al., 2008); in this study 6mg nicotine enemas were reported as "well tolerated and safe" These data are supported by animal studies showing that nicotine self administration is associated with decreased serum C-reactive protein levels in rats (Cecconi et al., 2008).

Studies have suggested that nicotine can block pro-inflammatory cytokines in a variety of in vitro and in vivo paradigms. For instance, at concentrations of nicotine found in the blood of smokers, LPS-induced NF-kB activation is blocked in epithelial cells. This effect is mediated by the alpha 4 beta 2 nicotinic acetylcholine receptor (nAChR) (Hosur and Loring, 2011).

Direct activation of nicotinic receptors on immune cells has been shown to inhibit pro-inflammatory cytokine release. For instance, in a murine model of acute lung injury release of the pro-inflammatory cytokines TNF-α-α, IL-1 and IL-6 was inhibited by nicotine after intra-tracheal lipopolysaccharide (LPS) treatment (Mabley et al., 2010). Similarly, nicotine reduces NF-KB activity and TNF-α in muscle in a model of inflammatory myopathy (Leite et al., 2010).

Similarly, nicotine suppresses IL-6 release from stimulated endothelial cells (Sharentuya et al., 2010) and suppresses TNF-α release from human monocytes and whole blood after endotoxin stimulation (Rosas-Ballina et al., 2009).

In addition to direct anti-inflammatory effects on potentially pro-inflammatory cells, nicotine has been shown to have anti-inflammatory effects via stimulation of the anti-inflammatory cholinergic pathway via stimulation of the vagus nerve. The inhibition of the innate immune system by nicotine is now being widely explored (see for instance, (Cui and Li, 2010) for review).

Roskamp Institute scientists have generated analogous data in an array of in vitro and in vivo studies for anatabine. For instance, we have shown that, in cells engineered to generate a luciferase signal upon NF-KB activation, anatabine reduces this pro-inflammatory pathway in a dose dependent fashion. Moreover, in transgenic models of Alzheimer's Disease we show that the pro-inflammatory molecule Aβ is down regulated due to reduction in NF-KB dependent pathways. These data suggest that anatabine has similar modes of action to nicotine and it has been classified as a weak nicotinic agonist due to it's known high affinity binding to nicotinic receptors (Maciuk et al., 2008). All of the known anti-inflammatory effects of nicotine have been associated with nAchR agonism and/or partial antagonism. All our preliminary data suggest the same mechanism of action of anatabine which has a similar chemical structure to nicotine. With respect to the use of tobacco alkaloids for the maintenance of health, anatabine may have particular advantages over nicotine primarily because anatabine has a longer half life requiring less frequent administration and achieving more stable blood levels, and is likely to have physiological effects at non-psychoactive blood levels. Preliminary data suggests that the levels of anatabine that can be achieved in humans with the doses recommended in this study will produce area under the curve (AUC) values that are in the same range as those that reduce inflammatory markers in animal models.

Dietary modification has been reported in the literature to lower CRP (Salas-Salvadó et al., 2008) as has exercise (Kuo et al., 2006; Kuo et al., 2007; Lin et al., 2010), aspirin (Solheim et al., 2003) and herbal extracts (Kripa et al., 2011). We expect that supplementation of the diet with solanaceous alkaloids may well exert a similar action.

Given the data linking nAchR agonists to reduction in inflammation this investigation will examine the ability of anatabine to normalize systemic inflammatory processes. As nicotinic agonists have been shown to reduce inflammatory markers in a broad array of inflammatory conditions we wish to recruit a broad range of subjects who have evidence of systemic inflammation as indicated by high CRP levels. We anticipate that anatabine will normalize inflammatory markers in at least a subset of patients with high CRP levels. We have chosen to examine normalization of inflammatory markers in individuals with high CRP rather than examining markers in individuals with normal CRP because the variance in CRP levels in normal individuals is limited. The primary objective is to determine whether CRP itself can be normalized by anatabine and the secondary objectives are to determine whether other markers of inflammation - particularly inflammatory cytokines can be normalized by anatabine.

Although we will not specifically select individuals who have high markers of inflammation other than CRP we anticipate that for many individuals with high CRP other inflammatory cytokines will be elevated.

RCP006

The dietary supplement under investigation, RCP006, was developed to temporarily reduce the desire to smoke without nicotine or tobacco and contains the dietary ingredient anatabine. RCP006 is a dietary supplement that does not contain any investigational drugs, and is being evaluated for its effect on the body's inflammatory function. Therefore as per the latest relevant FDA guidance (October 2010) no Investigational New Drug (IND) authorization from the FDA is necessary.

Anatabine, the active ingredient of RCP006, occurs throughout the world in the human food chain. Anatabine has been in the human food supply and in human use for centuries. Humans are exposed to anatabine in tobacco products and common and widely consumed food crops (potato, peppers, eggplant and tomato). In general, anatabine has been consumed in amounts up to 400 µg/day for non-tobacco users and 4,008,500 µg/day for tobacco users (since at least the discovery of the New World). These doses appear to be safe and easily metabolized and excreted by humans. Toxicological evaluation of the CigRx product showed the NOEL for rodent species to be at least 6 mg/kg/day, approximately one hundred times the proposed maximum human dose of 0.08 mg/kg/day. Anatabine is a clear oil that decomposes when heated or exposed to light in the presence of oxygen, and can easily be complexed with polacrilex or an acid (e.g. citrate) in a fashion similar to nicotine.

The normal role of nicotinic alkaloids (nicotine, nornicotine) is thought to be that they act to protect plants from animal and insect predators. Anatabine is formed in solanaceous plants by the dimerization of nicotinic acid followed by dehydrogenation (Leete and Slattery, 1976). Anatabine can be extracted from Solanaceae (most efficiently from tobacco) or synthesized. Anatabine is the most common of the minor alkaloids of tobacco, and is known to be absorbed following tobacco use (Jacob et al., 1999; Jacob et al., 2002). Anatabine accounts for about 2-3% of the total active alkaloids in tobacco, whereas nicotine, the primary active alkaloid in tobacco, accounts for over 90% (Jacob et al., 1999; Saitoh,J et al., 1985). Studies have shown that anatabine remains in the body longer than nicotine, which has allowed its widespread use as a marker (particularly in urine) of tobacco use (Stratton et al., 2001; Jacob et al., 2002).

Humans ingest anatabine in many common vegetables in the food supply, and tobacco users are exposed to anatabine on a daily basis. There have been no reported toxic or adverse effects of anatabine at the levels routinely consumed in food or tobacco products. Given the similarities in structure (and likely physiologic function) of anatabine compared to nicotine anticipated side-effects if ingested in purified form at doses much larger than those found in food or tobacco are likely to be similar to those experienced after nicotine overdose. These include nausea, vomiting, diarrhea, pallor, tachycardia, and convulsions (Taylor, 2006). The active ingredient of RCP006, anatabine, is the main ingredient of CigRx a product

marketed by Rock Creek Pharmaceuticals, Inc., a wholly owned subsidiary of Star Scientific, a publicly traded company. CigRx is marketed as a product to assist smokers in curbing the urge for a cigarette. CigRx contains 0.1mg of anatabine per lozenge and smokers are advised to take up to 20-30 lozenges per day. Data collected from users of CigRx have suggested that the product is well tolerated and safe. In a recent trial of anatabine (CigRx) for smoking cessation of 107 subjects, no serious adverse events (AE) were reported and one AE was reported overall. This AE was oral hypoesthesia and did not lead to subject withdrawal from the study. Other particular AEs were probed in the trial: nausea and throat irritation were seen with the active nicotine control, but none were reported for CigRx use. The exact number of individuals who have consumed CigRx to-date is not known, but based on sales the total number is approximately 45,000. Of these, over a 15 week period, 24 non-serious AE were reported to the company via an on-line site and by a telephone reporting service offered by the company. The following complaints were recorded:
headache (2); "felt funny" (1); jittery (1); vomiting (1); nausea/stomach pain (7); tongue/gums burning (5); tastes "chalky"/"funny" (5); fast heart rate (1); blacked out when drinking (1).

Due to the large number of lozenges that can be taken per day to match a cigarette smoker's exposure to anatabine (approximate 20) alternative formulations with higher doses have also made by the company. One such formulation contains 0.3mg of anatabine per lozenge and the company recommends that smokers use the product when there is an urge to smoke, with the expectation that a smoker would use approximately 10 per day to approximate the same dose of anatabine as the CigRx product. This product was also inspired by the observation that smokeless tobacco users (who have a different pattern of exposure to anatabine than cigarette smokers) were taking several CigRx lozenges at the same time. Smokeless tobacco users take an average of 2-10mg of anatabine per day and thus may require greater doses of anatabine substitute as an aid to curbing smokeless tobacco use. As the proposed dosing in this study ranges from 3-6mg per day (up to 0.06mg/kg/day), for the convenience of participants a "10 x" formulation called "Anatabloc" has been developed, which contains 1mg of anatabine per lozenge. Participants will be asked to take the study drug in accordance with the details below.

Investigational plan

Ethical approval & consent process:

Individuals interested in the study will be recruited through physician's offices throughout Michigan. It is anticipated that approximately 15 offices will each identify 20 potential study participants, with a total number of 300 screened subjects. The consent process will be conducted before any study related activity takes place. Trained and certified study staff will follow the ICH GCP guidelines to conduct the informed consent process (ICP). The study participants or their legal representative/caregiver will be provided ample time to read, review and ask questions. Potential risks and benefits will be discussed and a signed copy will be provided. The ICP will be conducted in English. The ICP documentation and the consent form will be retained in participants' medical charts and maintained in a secured storage area. A code will be assigned to each study subject to maintain confidentiality.

Overall study plan:

This is a multi site investigation to assess the effects of the dietary supplement anatabine, formulated as RCP006, on normal inflammatory function as determined by blood markers of inflammation such as CRP. In order to determine whether or not RCP006 can recover normal blood levels of inflammatory markers, the study population will comprise individuals with documented elevated levels of CRP. High sensitivity blood levels of CRP (hsCRP) will be determined prior to, during, and after treatment with RCP006 in a sequential placebo-RCP006-placebo study design. Where blood samples are available, additional markers of inflammation will also be investigated, such as IL1, IL6 and serum amyloid, and blood levels of RCP006 will also be determined. Subjects will be selected either by:

a) clinical chart review with election for telephone call being made on the identification of previously high C-reactive protein, or
b) after high C-reactive protein levels are identified during routine clinical work up.

In both cases patients will be approached for their interest in participating in the study and if they agree to participate they will be asked to return to the clinic (visit **T_1**), will be consented in-person, and they will be screened for eligibility including weight measurement, vital signs, completion of an intake medical history and a pregnancy test if appropriate. They will provide a blood draw for routine clinical laboratory tests and for high-sensitivity CRP (hsCRP) evaluation. Once full eligibility, including an elevated hsCRP (≥3mg/L), is confirmed, patients will be asked to return to the clinic at the earliest opportunity to initiate the trial. At this visit (T_2) participants will be given instructions on dosing and administration regimen for the placebo or RCP006 (to which they will be blinded). Participants weighing less than 75kg at screening will be instructed to take *one* lozenge three times a day (with a daily active ingredient intake of 3mg); participants weighing more than 75kg will be instructed to take *two* lozenges three times a day (with a daily active ingredient intake of 6mg). Participants will be instructed to take their treatment first thing in the morning, mid-afternoon and mid-late evening, and will receive a study diary in which they will be asked to record their daily intake of dispensed compound. At T_2 participants will be provided with a 3-week supply of placebo lozenges and asked to return for the T_3 visit 2 weeks after T_2, with a window of +7 days to allow for scheduling difficulties. The second visit (**T_3**) will thus occur 2-3 weeks after T_2, at which time another blood sample will be collected for hsCRP evaluation. Participants will be asked to return all bottles including any unused lozenges that were dispensed at T_2. At the T_3 visit participants will be provided with a 5 week supply of RCP006 and asked to return for the T_4 visit 4 weeks after T_3, with a window of +7 days to allow for scheduling difficulties. At the **T_4** visit, after 4-5 weeks of treatment, participants will return all bottles including any unused supplies of RCP006 to aid in assessment of their compliance. They will provide another blood sample for hsCRP evaluation, will be provided with a 5-week supply of placebo lozenges and asked to return for the T_5 visit 4 weeks after T_4, with a window of +7 days to allow for scheduling difficulties. At the final study visit (**T_5**) participants will return their study diaries and all bottles including unused supplies of placebo. They will provide one more blood sample for evaluation of hsCRP, inflammatory markers and basic clinical labs. Weight and vital signs will be recorded. Where appropriate they will also undergo another pregnancy test.

Adverse events (AEs) will be recorded at T_3, T_4 and T_5. Participants will be asked open-ended AE questions, and specific questions addressed at systems known to be associated with use of nicotine. If open-ended questioning "Have you experienced any change in your health since your previous visit?" results in AE reports they will be classified by the Investigator as follows: DNR=definitely not related; PNR=probably not related; PR=probably related; or DR=definitely related. Medical management of AEs may result in no changes in study participation, discontinuation of study treatment (placebo or active treatment) or discontinuation of study participation. Although, as stated, no serious AEs (SAEs) have been reported to Star Scientific in an estimated exposure of over 45,000 subjects, we will probe for nicotine-like side-effects during both the placebo and active treatment phases of the investigation. Thus subjects will be specifically asked if they have experienced any of the following: nausea, vomiting, diarrhea or other gastrointestinal symptoms; tachycardia or other cardiovascular symptoms; convulsions.

Study location & recruitment:

The study will be co-ordinated and managed by the Roskamp Institute located in Sarasota, Florida. Participating physicians will be recruited from Michigan. Participating clinical sites will include those in several clinical specialities from which subjects with high C-reactive protein can be recruited. Blood will be drawn at a local laboratory. It is anticipated that approximately 15 clinical sites will each identify 20 potential participants for the study with a total of 300 subjects screened. The dietary supplement and placebo will be provided by the sponsor, and the sponsor will pay for all laboratory tests that are not covered by the subject's insurance. Subjects will not be paid for their participation in this study.

Participants weighing less than 75kg will be instructed to take *one* lozenge three times a day (with a daily active ingredient intake of 3mg); participants weighing more than 75kg will be instructed to take *two* lozenges three times a day (with a daily active ingredient intake of 6mg).

Subject selection:

The following inclusion/exclusion criteria will be utilized to determine the eligibility of a subject for enrolment into the study.

Inclusion:

1. Age 18 years or older.
2. Both genders, all ethnic groups.
3. Values within normal range on all standard clinical laboratory assessments.
4. High sensitivity C-reactive protein of greater or equal to 3mg/L at the screening visit (T_1).
5. Otherwise stable medical history and general health.
6. Negative pregnancy test (for females under 60 years).
7. Females agreeing to take an acceptable form of birth control (where relevant).

Exclusion:

1. Have a dry mouth (e.g. Sjorgen's Syndrome) that would interfere with dissolving of the lozenge.
2. Have contraindications, allergy, or sensitivity to the study products or their components.
3. Have any significant medical condition that could, in the investigator's opinion, be expected to interfere with the study parameters or study conduct; or put the subject at a significant risk. These may include but are not limited to the following: untreated chronic hypertension, myocardial infarction within 6 months of screening; renal failure; hepatic failure, and/or receiving chemotherapy. Presence of acute conditions known to impact C-reactive protein levels i.e. acute infection, acute post surgical states, recent severe trauma.
4. Have any history of seizure disorder.
5. Current unstable medical condition (e.g., symptomatic uncontrolled diabetes mellitus), or a condition that might affect their ability to participate (e.g., cancer requiring frequent medical visits for chemotherapy).
6. Actively taking steroidal treatment.
7. Tobacco use (including smokeless tobacco products).
8. Values outside of normal range on standard clinical laboratory assessments that are deemed medically significant.
9. Pregnancy or women at risk for pregnancy.

Primary End Points: Changes in hsCRP between T_1/T_3 and T_4 will be the primary endpoint. Changes between T_4 and T_5 will also be assessed.

Secondary End Points: Other markers of systemic inflammation will be assessed in the same comparisons as for the primary end point hsCRP. In particular, TNF-α, IL-1, IL-6 and serum amyloids will be measured and compared between T_1/T_3 and T_4 and between T_4 and T_5.

____We will also assess safety as a secondary outcome. Adverse events will include new or undesirable change of an existing medical condition. Hospitalization for elective procedures of pre-existing conditions will not be considered an AE. Serious adverse events (SAE) will include those that are fatal, life threatening or require hospitalization, or cause prolongation of hospitalization, an important medical event or congenital abnormality. Adverse events previously associated with nicotine will be considered related. The site investigator will provide a description, dates of onset and resolution, severity, assessment of relatedness to study treatment, and the action taken for each event. The IRB and sponsors will be immediately notified if an SAE occurs.

Potential Risks and Benefits to Participants

There have been no reported toxic or adverse effects of anatabine at the levels routinely consumed in food or tobacco products, nor have there been any serious adverse events reported from over 45,000 individuals using the smoking cessation product CigRx with estimated daily dose of 1mg anatabine. Moreover, toxicological evaluation of the CigRx product showed the NOEL for rodent species to be at least 6 mg/kg/day, approximately one hundred times the proposed maximum human dose in this study of 0.08 mg/kg/day. Therefore this study is considered to hold minimal risk as there are no anticipated risks to participants in this study. This study is designed to increase our understanding of how anatabine may assist in maintenance of normal inflammatory function, and there are no direct benefits to participants in this study.

Alternative to Participation

The alternative to participating in this study will be to not participate. Contacted subjects will not need to take part in this research and not taking part in the research will have no effect on their usual medical care. Participants may decide to remove themselves from the study at any time, and there will be no consequences to the participant of early removal from the study.

Single-blinding:

Participants will be kept blinded to the treatment regimen and will be unaware that they will be receiving placebo during the first and last phases of the study. They will however, be told that they will receive both the dietary supplement and placebo during the course of the study. The placebo will be similar to RCP006 as judged by taste, smell, appearance and physical properties. Study staff will be aware of the study design and treatments but will be instructed not to inform subjects of the design and order of placebo and dietary supplement.

Trial coordination & training:

The Roskamp Institute will manage all study activities including document preparation, site selection, training, monitoring, performing data checks, reporting and dissemination of the findings. A site manager will be identified for each participating site. One week of training on study conduct will be provided by Roskamp Institute staff to all the sites, including screening, enrolment, laboratory procedures, data collection and entry, as well as a review of ICH GCP guidelines. Roskamp Institute staff will review overall performance at two time points; prior to the start to ensure adequate training and understanding of study material, and after one month to ensure the overall study conduct is in compliance with the protocol.

Study visits:

In general, participants will be identified from clinical chart review looking for persistently high hsCRP, and once their interest in possible study participation is ascertained they will be asked to come to the clinic for the screening visit, T_1.

T_1 Visit (Screening):

At screening, written IRB-approved consent and HIPAA compliant release form must be obtained from each participant prior to any study-related activities being conducted. If participants are eligible for inclusion (based on the inclusion/exclusion criteria listed above), blood tests will be ordered for hsCRP and baseline clinical labs, as well as for analysis of additional blood markers of inflammation. Each participant's weight and vital signs will be recorded. Where relevant a pregnancy test will be carried out. The screening visit baseline blood tests will include standard renal, liver and cardiac function tests; blood chemistry; full blood count. The participant's medical history will also be obtained.

If subsequently, a high hsCRP is reported from the screening visit tests and the other baseline blood tests do not exclude the participant he/she will be asked to return for the T_2 visit at his/her earliest convenience.

T_2 Visit (Enrolment):

Those participants who continue to meet criteria for the study will be contacted by phone or at their next scheduled routine visit and be informed that they are eligible to participate. Participants who are not eligible by virtue of their baseline blood tests will be informed that they are not eligible and follow up medical care will be given as necessary in accordance with normal standards of care. Eligible participants will be given a 3-week supply of placebo (to accommodate any possible delays in scheduling T_3 at the desired T_2+2 weeks timepoint), and instructed on how to take them. Participants weighing less than 75kg will be instructed to take one lozenge, three times a day, while participants weighing 75kg or more will be instructed to take two lozenges, three times a day. Participants will also receive a study diary in which to enter information on compliance and any side-effects they may experience.

T_3 Visit (Placebo evaluation):

Two weeks (with a window of +7 days) after T_2 participants will return and adverse events (AE) will be assessed. All AE will be recorded on an AE form. Placebo containers, including any unused placebo, will be collected, together with data from the study diary. For female participants we will confirm that there is no possibility of pregnancy; if this cannot be confirmed then another pregnancy test (urine) will be carried out. Another hsCRP blood test will be ordered for that same day. Participants will then be given a 5 weeks supply of RCP006 (to accommodate any possible delays in scheduling T_4 at the desired T_3 + 4 weeks timepoint) with instructions that once the T_3 blood draw has been taken they should continue with administration according to the previously established regimen (those weighing less than 75kg at screening will be instructed to take one lozenge, three times a day, while those weighing 75kg or more will be instructed to take two lozenges, three times a day). Note: dosing will remain constant throughout the study, as determined by the participant's weight at screening, regardless of minor fluctuations increasing or decreasing the participant's weight around the 75kg mark. Participants will also be asked to continue to record in their study diary information on compliance and any side-effects they may experience.

T_4 Visit (Treatment evaluation):

Four weeks (with a window of +7 days) after the T_3 visit participants will return for the T_4 visit when Adverse events will be assessed as before, and recorded on the AE log. Unused RCP006 will be collected, along with all RCP006 containers, and the study diaries reviewed for assessment of compliance. Another hsCRP blood draw will be ordered for that same day. For female participants we will confirm that there is no possibility of pregnancy; if this cannot be confirmed then another pregnancy test will be carried out. Participants will then be given a 5 weeks supply of placebo (to accommodate any possible delays in scheduling T_5 at the desired T_4 + 4 weeks timepoint) with instructions that once the T_4 blood draw has been taken they should continue with administration according to the previously established regime.

T_5 Visit (Placebo evaluation):

Participants will return approximately 4 weeks after visit T_4 (with a window of +7 days) and AE's will be assessed and recorded. Placebo containers, any unused placebo and study diaries will be collected and another blood draw will be ordered for routine clinical laboratory tests and for hsCRP A pregnancy test will be carried out for all relevant participants to confirm lack of pregnancy. Each participant's weight and vital signs will be recorded.

Sample size:

Our estimates of required sample size come from the following assumptions modeled from repeat measure ANOVA data of our own, and those of Nidorf et al, (2007); a mean T_1 value of CRP of 4.35 mg/L with a standard deviation of 2.21 mg/L and a .58 mg/L difference between T_1 and T_3. We wish to detect a 10% fall in CRP from T_3 to T_4 and assume a return to T_3 levels once treatment ceases. Given our study design and assuming no heterogeneity of sample we require a sample size of 50. However, based on the known heterogeneity of causes of raised CRP, we assume that only a fraction of subjects will respond to RCP006. Assuming that only one in four subjects have a raised CRP that is due to low level systemic inflammation (as opposed to specific disease conditions such as prostatitis or cancer) we estimate our sample size will need to be 200 subjects. Given our selection from physician's offices of subjects with a high previous CRP, we expect a low failure rate on screening, and a low attrition rate throughout this short study. We estimate a 30% screening fail rate and a 5% attrition, bringing the required original number of screened individuals to 300.

Data Management, Storage and Confidentiality:

CliniProteus, clinical trial software (Mathura et al., 2007), will be used for the data processing and management. Data entry portals will be accessible through a web-browser via a secured web service (Secure Socket Layer, SSL) that encrypts all communication. Case report forms (CRFs) will capture visit data. Each trial site will be registered into the system, together with information regarding the person responsible for the data entry at each site. Individual patients recruited at different sites will be registered in the system using an entry code comprising the pre-approved two letter site code followed by [first initial of participant's last name, first initial of participant's first name, last four digits of the SS#, and four digit year of birth (YYYY)]. This same entry code will be used on all CRFs for that participant. The system will internally index by generating a unique identifier in response to the registration of a new subject. Subsequently new data will be added and held in the Roskamp Institute system that will be devoid of any personal information, and will be accessible to the sponsor (and those conducting data analysis) only with regard to the unique identifier. All data entry fields will be provided with edit checks for data entry errors and inconsistencies. Errors flagged by the system at the time of data entry will be corrected by the data entry staff. Additional data validation will be carried out at the server end before data are finalized. All reports to the trial investigator will contain this unique identifier to maintain anonymity and a high level of privacy for the enrolled subjects. Blood drawn at clinical laboratories local to the clinical site will send results of hsCRP analysis back to the relevant site and these data will be entered into the internet portal using the entry code and the personal identifying data will thus not be generally accessible to the sponsor. Additional blood drawn from local laboratories will be sent to the Roskamp Institute for studies of additional inflammatory biomarkers. This blood will be labeled by the drawing laboratory with the participant code as described above - two letter site code, patients initials, last four digit SS# and DOB (YYYY). However, on arrival at the Roskamp Institute the samples will be received by a single study coordinator who will enter this code into the database in order to obtain the corresponding unique identifier for the subject. The coordinator will then label the blood sample with the unique identifier prior to passing the sample on to the Roskamp Institute laboratories, thus all personal identifiers will be removed for any subsequent research data generation. Administrative access will be limited to one individual (Dr. Venkat Mathura) who will have the access to the local interface at the Roskamp Institute in order to be able to generate the patient identification numbers, register new sites and data entry users. All study data will be backed up daily on to an external hard drive and also archived every week on to a physical-media like CD-ROM. The server will be guarded for unauthorized access or intrusion using firewall. All system logs will be routinely monitored by the administrator. Automated reports will be used to determine missing data and for periodic quality control checking. Generated queries will be routinely sent to the trial site (clinic) for corrections if necessary and hard copies of the CRFs will be digitized and sent to the sponsor for comparison against the electronic data.

Safety monitoring:

Dr. Andrew Keegan of the Roskamp Institute will be the medical monitor for this study. He will consult with Dr Neil Williams of Rock Creek Pharmaceuticals, Inc., who has most experience in the known side-effects of RCP006 with the company's product CigRx. As noted this product has a very good side-effect profile to date with no serious AEs reported to Dr. Williams. However, ongoing monitoring of the product will provide additional data that will be relayed to Dr. Keegan during the course of these investigation. Any AE will be reported using the AE form, and reporting of any SAE will be faxed to the sponsor within 24hrs of learning of the SAE. The sponsor will immediately relay this information to the medical monitor who will take appropriate action.

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Account Name:	MAUREEN MCDONNELL	Number:	[redacted]2323
Investment Executive:	JOHN PISCITELLI	Telephone:	757-306-4804
Statement Period:	JUL 01 2011 - AUG 31 2011	Page:	1 of 3

MPM-000590

PORTFOLIO SUMMARY

	Current Period	% to Total	Prior Period	% to Total
COMMON STOCK	15,326.70	100.00%	27,000.00	100.00%
TOTAL MARKET VALUE	15,326.70	100.00%	27,000.00	100.00%
TOTAL PORTFOLIO VALUE	15,326.70		27,000.00	

CASH ACTIVITY SUMMARY

OPENING CREDIT (DEBIT) BALANCE	0.00
SECURITIES PURCHASED	(1,994.04)
FUNDS DEPOSITED	1,994.04
CLOSING CREDIT (DEBIT) BALANCE	0.00

PORTFOLIO COMPOSITION

CHART NOT AVAILABLE THIS STATEMENT PERIOD

GOVERNMENT
EXHIBIT
166
3:14cr12

DAVENPORT
& COMPANY LLC
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Account Name:	MAUREEN MCDONNELL	Number:	[redacted]-2323
Investment Executive:	JOHN PISCITELLI	Telephone:	757-306-4804
Statement Period:	JUL 01 2011 - AUG 31 2011	Page:	2 of 3

MPM-000591

PORTFOLIO HOLDINGS

Estimated annual income (EAI) and *estimated* current yield (ECY) figures included in this document are for informational purposes only and are not a forecast or guarantee of future results. Amounts are computed using information believed to be reliable; however, no assurance can be made as to the accuracy. The EAI and ECY represented for holdings with significant market loss or income reduction may be invalid. Calculations are based on the rate of the last income payment and do not reflect future changes in rates. Where possible, adjusted cost and original cost of fixed income instruments is reflected. A capital gain or return of principal may be included in the figures for certain securities, thereby overstating the income or yield. Please contact your Investment Executive with questions.

Quantity	Description	Symbol/ CUSIP	Adjusted Cost* Original Cost	Market Price	Market Value	% of Assets	Unrealized Gain (Loss)	Estimated Income	Current Yield
COMMON STOCK									
CONSUMER STAPLES									
6,522	STAR SCIENTIFIC INC	CIGX	33,073.44	2.35000	15,326.70	100.00%	(17,746.74)	N/A	N/A
	TOTAL CONSUMER STAPLES		33,073.44		15,326.70	100.00%	(17,746.74)		
	TOTAL COMMON STOCK		33,073.44		15,326.70	100.00%	(17,746.74)		
	TOTAL		33,073.44		15,326.70		(17,746.74)		

PURCHASES & SALES

Date	Activity	Quantity	Description	Price	Debit	Credit
08/02/2011	PURCHASE	522	STAR SCIENTIFIC INC	3.8200	1,994.04	
TOTAL PURCHASES & SALES					1,994.04	

FUNDS WITHDRAWN/DEPOSITED

Date	Activity	Description	Withdrawn	Deposited
08/05/2011	DEPOSIT	FUNDS RECD MAUREEN MCDONNELL		1,994.04
TOTAL FUNDS WITHDRAWN/DEPOSITED				1,994.04

TAX LOT CLOSING METHOD

OUR RECORDS INDICATE THAT YOUR DEFAULT TAX LOT CLOSING METHOD IS HIGHEST COST.

INVESTMENT OBJECTIVE

OUR RECORDS INDICATE THAT YOUR INVESTMENT OBJECTIVE FOR THIS ACCOUNT IS AGGRESSIVE GROWTH OR INCOME.

PLEASE REMEMBER WE ARE RELYING ON YOU TO KEEP YOUR INVESTMENT OBJECTIVE AND OTHER PERTINENT DATA SUCH AS OWNER & ASSOCIATED PERSON(S) DEMOGRAPHICS RELATED TO YOUR ACCOUNT CURRENT. CONTACT YOUR INVESTMENT EXECUTIVE WITH ANY UPDATES OR CHANGES.

OWNER & ASSOCIATED PERSON(S) DEMOGRAPHICS

RELATIONSHIP	NAME	ADDRESS	ANNUAL INCOME [1]	NET WORTH [2]	OCCUPATION	B-D AFFILIATION [3]	HOME PHONE	BUSINESS PHONE
PRIMARY	MAUREEN MCDONNELL	5913 LEEBROOK WAY GLEN ALLEN VA 23059-6988	100,001 - 200,000	800,001 - 1,000,000	PROP. BUS OWNER, SELF-EMPLOYED	N	804-955-4230	804-890-2988

Notes

[1,2] Annual Income and Net Worth figures are stated at the account level. All other information is based on the individual level.

[3] B-D Affiliation - Client or spouse is/is not employed by FINRA member firm, Insurance Company, or Bank.

IMPORTANT MESSAGES

Davenport Core Fund (DAVPX), a no-load mutual fund, has been the flagship of Davenport Asset Management since 1984 and the cornerstone of our own profit sharing plan since the 1970s. This strategy is managed by our Investment Policy Committee which collectively holds more than 192 years of experience, and has navigated volatile market conditions for over three decades. Experience counts in this market. DAVPX seeks to outperform the S&P* while taking less risk. Contact your Davenport Investment Executive today to learn more about the Fund and to request a prospectus.

**The S&P 500 index is comprised of 500 U.S. stocks and is an indicator of the performance of the overall U.S. stock market. An investor cannot invest directly in an index and its returns are not indicative of the performance of any specific investment.*

Potential research enterprise
John Clore to: jfstrauss, macrina, retchin 07/01/2011 03:43 PM
Default custom expiration date: 09/29/2011

Dear all,, Just got off the phone with Paul Ladenson, Chair of Endocrine at Hopkins who wanted to explore our interest in participation in funded projects dealing with a tobacco alkaloid (anatabine) which is owned by John Williams (CEO of Star Scientific here in Richmond). Apparently the compound has potent antianflammatory effects (inhibits NFkB and virtually eliminates the inflammatory response of acute thyroiditis (which is why Ledenson got involved)) and Mr Williams specifically wants to fund projects in Virginia to test the compound. Mr Williams is very good friend with the Governor and the governor would like to sponsor these trials as evidence of Virginia's committment to research and entrepreneurship. There would be a need for a GCRC-like venue as well as other CTSA resources which is why we were called. There is a meeting planned saturday July 23 on Gibson Island in the Chesapeake Bay. Sounds like a unique opportunity. Your thoughts and insights are very much appreciated. John

John N Clore MD
Professor of Medicine
Associate Vice President for Clinical Research
Virginia Commonwealth University
1200 E Clay St
Suite 2000
Richmond VA 23298
804.828.9228
804.828.5002 (Fax)
jclore@mcvh-vcu.edu

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VCU Health System
http://www.vcuhealth.org

GOVERNMENT EXHIBIT
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3:14cr12

A Star Scientific Symposium

Design of Studies to Test the Hypothesis that Anatabine is an Anti-Inflammatory & Immunomodulatory Agent

Gibson Island, Maryland
July 23, 2011

9:00-10:00 AM	**Continental Breakfast**
10:00-10:10 AM	**Welcome, Introductions & Mission** Paul Ladenson
10:10-10:30 AM	**Evolutionary Perspective and Biological Rationale** Mario (Patrizio) Caturegli
10:30-11:00 AM	**Anti-Inflammatory Actions of Anatabine: Early Observations** Mike Mullan
11:00-11:30 AM	**Immunomodulatory Actions of Anatabine: Early Observations** Mario Caturegli
11:30-12:00 PM	**Anatabine: Toxicological & Pharmacokinetic Considerations** Curt Wright & Fiona Crawford
12:00-1:00 PM	**Lunch & General Discussion**
1:00-1:30	**Potential Endocrinology Targets** – Paul Ladenson
1:30-2:00	**Potential Rheumatology Targets** – Antony Rosen?
2:00-2:30	**Potential Gastroenterology Targets** – Steven Brant?
2:30-3:00	**Potential Cardiovascular Risk Targets** – Gary Gerstenblith?
3:00-4:00	**Virginia Research and Funding Resources** John Clore, Medical College of Virginia Peggy Shupnik, University of Virginia? Jonnie Williams, Star Scientific
4:00-4:30	**General Discussion of Next Steps**
4:30	**Adjournment**

GOVERNMENT
EXHIBIT
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3:14cr12

PARTICIPANTS
(Tentative)

Steven Brant, MD
Associate Professor of Medicine
Director, Meyerhoff Inflammatory Bowel Disease Center
Johns Hopkins Medical Institutions
Baltimore, Maryland

Patrizio Caturegli, MD
Associate Professor of Pathology & Medicine
Director, Immunopathology Laboratory
Johns Hopkins Medical Institutions
Baltimore, Maryland

John N. Clore, MD, MS
Professor of Medicine
Associate Vice President for Clinical Research
Virginia Commonwealth University School of Medicine
Richmond, VA

Fiona Crawford, PhD
Associate Director, Roskamp Institute
Sarasota, Florida

Craig Eagle, MD
Senior Director, Global Oncology
Pfizer Global Pharmaceuticals
New York, New York

Gary Gerstenblith, MD
Professor of Medicine
Director, Clinical Trials and Clinical Translation Unit
Division of Cardiology
Johns Hopkins Medical Institutions
Baltimore, Maryland

Paul W. Ladenson, MD
Professor of Medicine, Pathology, Oncology & Radiology
Director, Division of Endocrinology & Metabolism
Johns Hopkins Medical Institutions
Baltimore, Maryland

Michael Mullen, PhD
Director, Roskamp Institute
Sarasota, Florida

Paul L. Perito, Esq
Chairman, President, &Chief Operating Officer
Star Scientific
Chevy Chase, Maryland

Antony Rosen, MD, PhD
Professor of Medicine
Director, Division of Rheumatology
Johns Hopkins Medical Institutions
Baltimore, Maryland

Margaret Shupnik, PhD
Senior Associate Dean for Research
University of Virginia School of Medicine
Charlottesville, VA

Jonnie R. Williams, Sr
Chief Executive Officer
Star Scientific
Petersburg, Virginia

Curtis Wright, PhD, MPH
Senior Vice President
Medical/Clinical Director
Star Scientific
Gloucester, Massachusetts

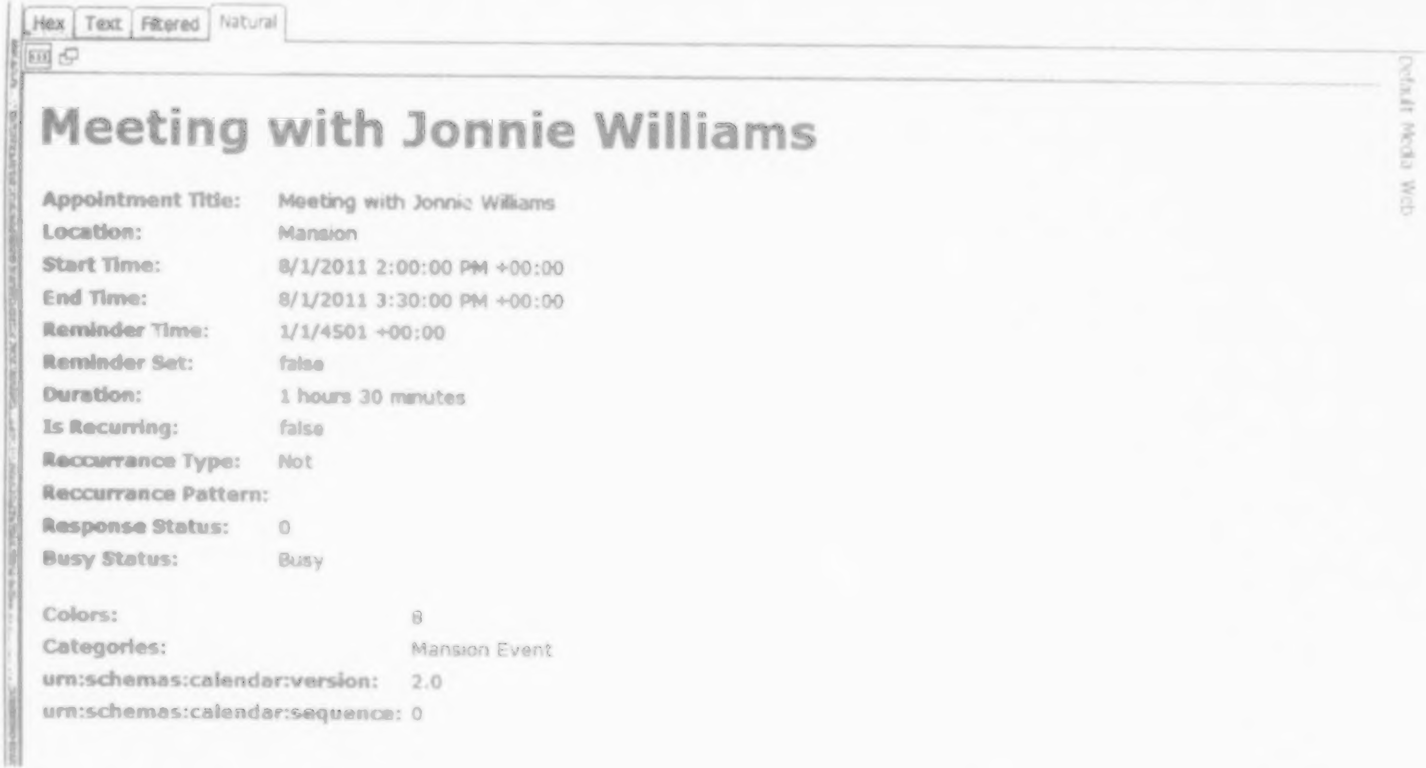
Gibson island

John Clore to Jerome F Jerome F Strauss Strauss, Sheldon M Sheldon M Retchin Retchin, Francis L Macrina 07/23/2011 08:44 PM

[illegible] This message has been replied to.

Dear all. It was an interesting meeting. Jonnie williams has a nutriceutical (anatabine) which appears to have potent antiinflammatory effects. The Governor would like to use tobacco funds to support virginia research demonstrating the states committment to support research to reduce health care costs in the commonwealth. $25 k planning grants are proposed towards submission of demonstration grants which have a very high likelihood of funding. jonnie would supplement this to the tune of $2.5 - 4.0m. I am happy to discuss the possibilities. I proposed a study to pursue the effect of anatabine on progression to diabetes based on similar studies with salsalate which was enthuisiastically received. John

GOVERNMENT
EXHIBIT
173
3:14cr12



Meeting with Jonnie Williams

Appointment Title: Meeting with Jonnie Williams
Location: Mansion
Start Time: 8/1/2011 2:00:00 PM +00:00
End Time: 8/1/2011 3:30:00 PM +00:00
Reminder Time: 1/1/4501 +00:00
Reminder Set: false
Duration: 1 hours 30 minutes
Is Recurring: false
Reccurrance Type: Not
Reccurrance Pattern:
Response Status: 0
Busy Status: Busy

Colors: 8
Categories: Mansion Event
urn:schemas:calendar:version: 2.0
urn:schemas:calendar:sequence: 0

Meeting with Jonnie Williams GML_0113326.msg
From: Sutherland, MaryShea (GOV)
Sent: 7/28/2011 2:04:42 PM (2011-07-28 18:04:42 UTC)
Delivered: 7/28/2011 2:04:42 PM (2011-07-28 18:04:42 UTC)
Representing: McDonnell, FLOVA (GOV)

GOVERNMENT
EXHIBIT
179
3:14cr12

GOVERNMENT
EXHIBIT
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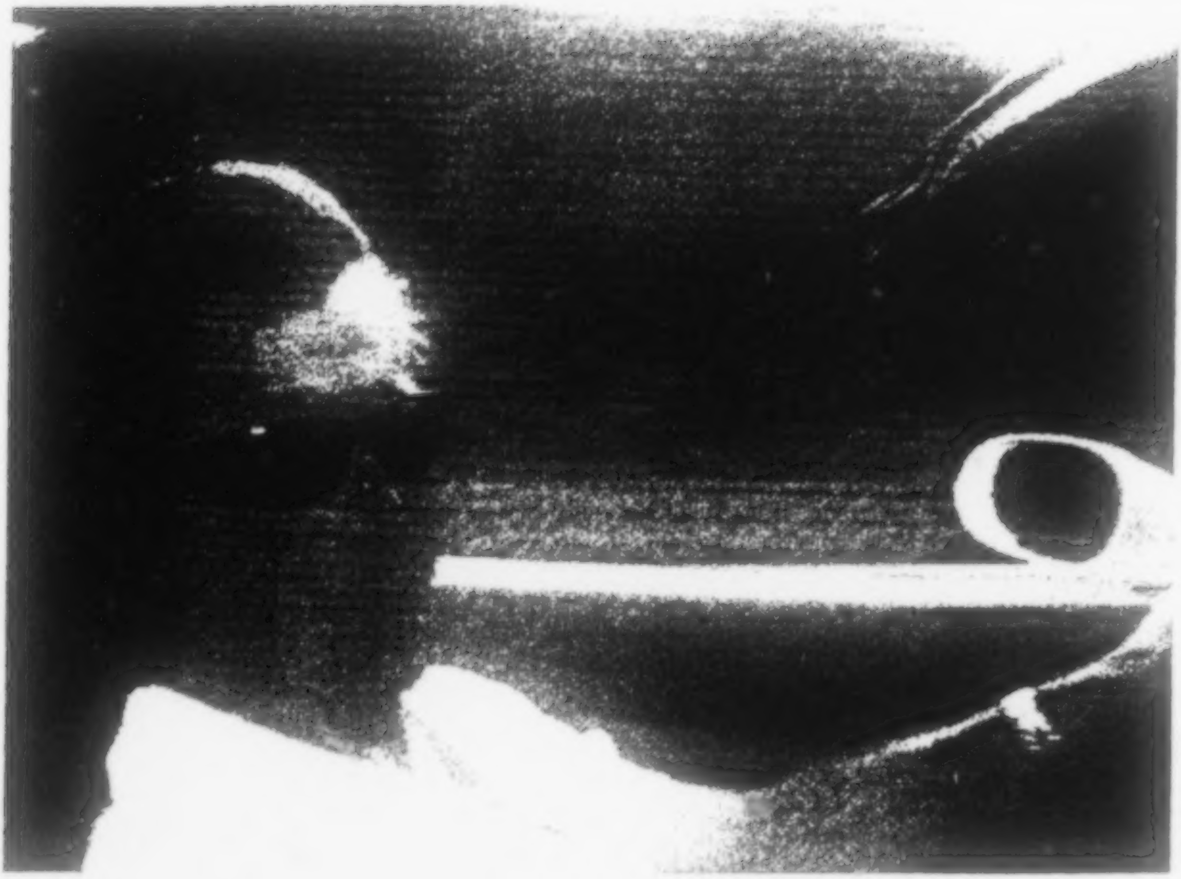
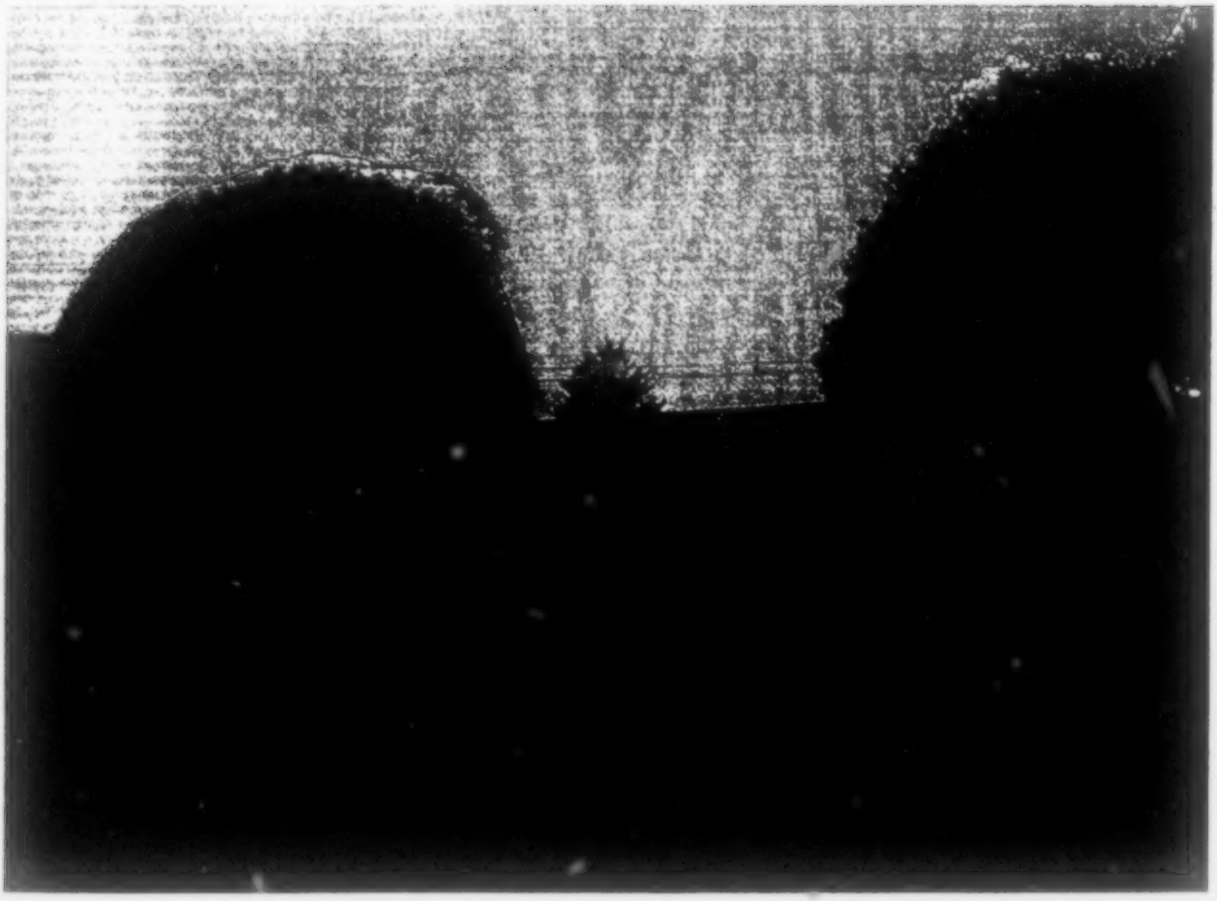
3:14cr12

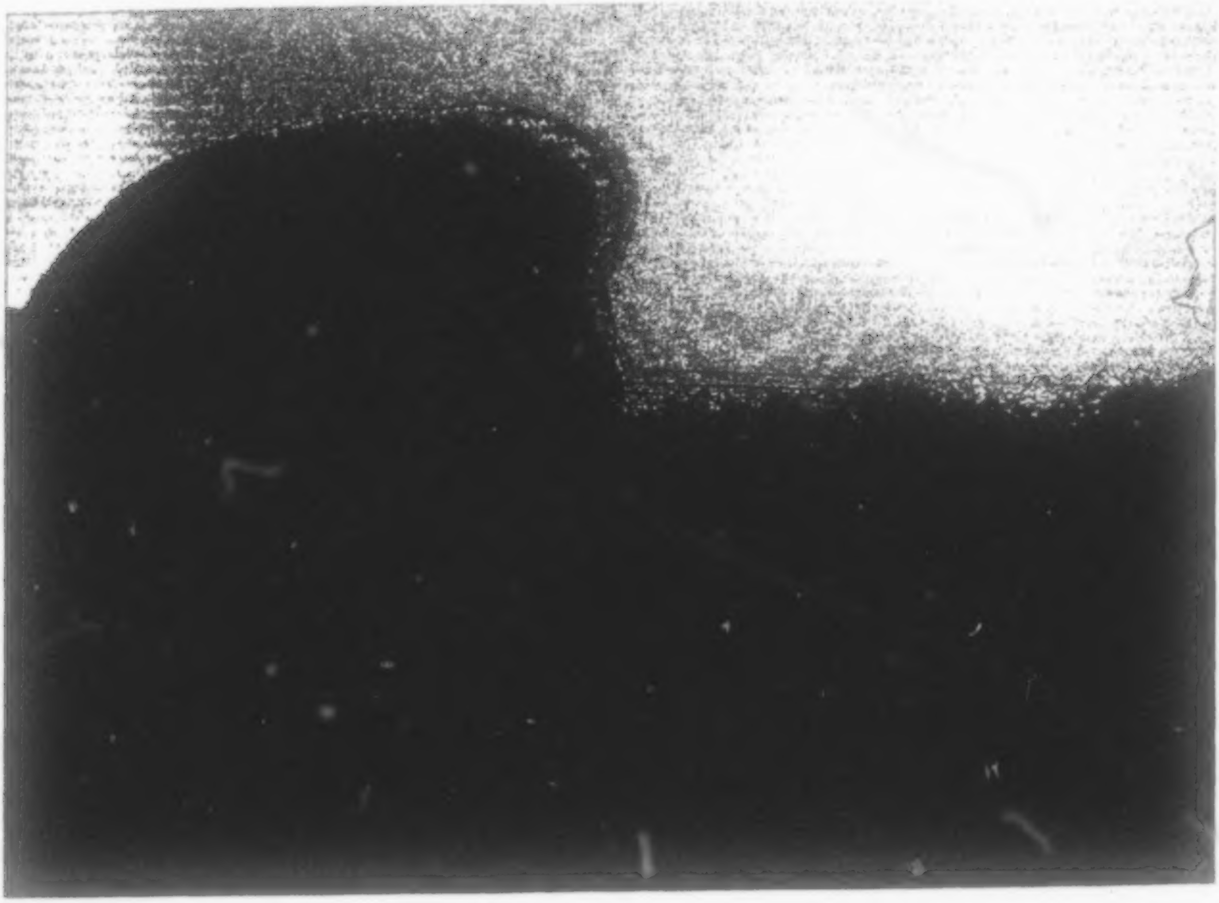
SA058

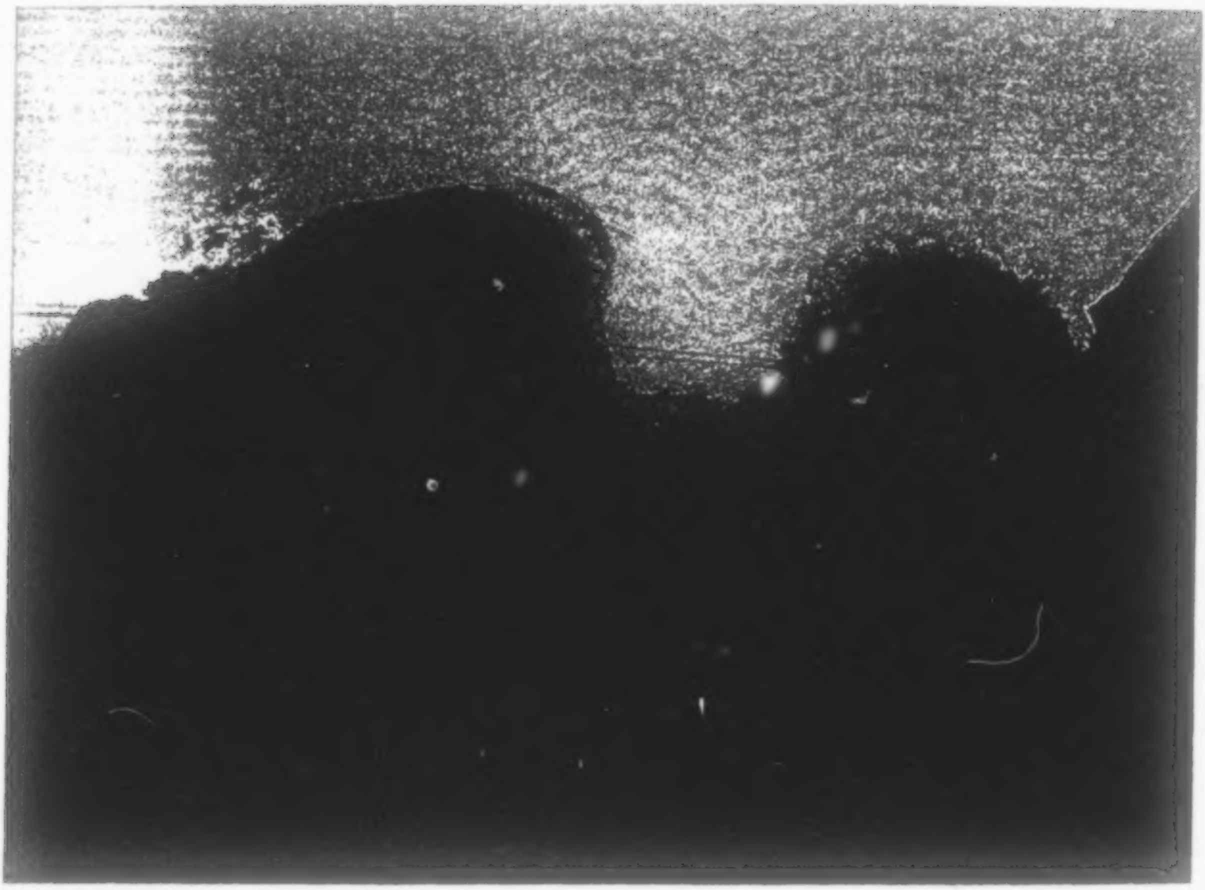




SA064

SA065





SA070

SA072

SA073

SA074

SA075

SA076

Maureen Mcdonnell

From: Maureen Mcdonnell
Sent: Sun 7/31/2011 7:47 PM (GMT-4)
To: WILLIAMS Jonnie
Cc:
Bcc:
Subject: IMG00072-20110731-1945.jpg
Attachments: IMG00072-20110731-1945.jpg

Sent from my Verizon Wireless BlackBerry

GOVERNMENT
EXHIBIT
185
3:14cr12

Hazel, Bill (GOV)

From: Hazel, Bill (GOV)
Sent: Monday, August 01, 2011 8:28 AM
To: governor@bobmcdonnell.com
Subject: Re:

Will do.

Bill Hazel

Sent from my iPad

On Jul 31, 2011, at 11:29 PM, "governor@bobmcdonnell.com" <governor@bobmcdonnell.com> wrote:

> Bill would like to have keith or matt attend a short briefing at the
> mansion about 10 am with first lady on the Star Scientific anatablock trials planned in va at vcu and uva. Thx Sent from my Verizon Wireless BlackBerry

GOVERNMENT
EXHIBIT
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3:14cr12

From: Huffstetler, Molly (GOV) </O=VIRGINIA/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JEF60007>
Sent: Monday, August 1, 2011 10:22 AM
To: Cobb, Matt (GOV) <Matt.Cobb@governor.virginia.gov>; Hare, Keith (GOV) <Keith.Hare@governor.virginia.gov>
Subject: Re: Fwd:

On a more serious note, I am not planning to commit to anything but will just stick with we will do what we can to carry out the desires of the Governor and First Lady-
Molly Huffstetler
BlackBerry

From: Cobb, Matt (GOV)
Sent: Monday, August 01, 2011 09:57 AM
To: Huffstetler, Molly (GOV); Hare, Keith (GOV)
Subject: Re: Fwd:

No, all you will need it a tic-tac. They are on my file cabinet. In fact, you should take one in preparation for the meeting.

From: Huffstetler, Molly (GOV)
Sent: Monday, August 01, 2011 09:54 AM
To: Cobb, Matt (GOV); Hare, Keith (GOV)
Subject: Re: Fwd:

Yall going to have a hamster wheel set up for me when I get back? Be ready to measure my vitals?
Molly Huffstetler
BlackBerry

From: Cobb, Matt (GOV)
Sent: Monday, August 01, 2011 09:47 AM
To: Huffstetler, Molly (GOV); Hare, Keith (GOV)
Subject: Re: Fwd:

Yep, we know. Have fun!

From: Huffstetler, Molly (GOV)
Sent: Monday, August 01, 2011 09:46 AM
To: Cobb, Matt (GOV); Hare, Keith (GOV)
Subject: Fw: Fwd:

Um hum...tic-tac man
Molly Huffstetler
BlackBerry

From: Cobb, Matt (GOV)
Sent: Monday, August 01, 2011 08:12 AM
To: Huffstetler, Molly (GOV)
Subject: Fw: Fwd:

Can you cover? Keith and I are tied up in mtgs. It is a governor request.

From: Hazel, Bill (GOV)

GOVERNMENT
EXHIBIT
191
3:14cr12

Sent: Monday, August 01, 2011 06:28 AM
To: Cobb, Matt (GOV); Hare, Keith (GOV)
Subject: Fwd:

FYI. I will be t Cabinet

Bill Hazel

Sent from my iPad

Begin forwarded message

> **From:** governor@bobmcdonnell.com
> **Date:** July 31, 2011 11:29:30 PM EDT
> **To:** "Bill Hazel" <Bill.Hazel@governor.virginia.gov>
> **Reply-To:** governor@bobmcdonnell.com
>
> Bill would like to have keith or matt attend a short briefing at the mansion about 10 am with first lady on the Star Scientific anatablock trials planned in va at vcu and uva. Thx
> Sent from my Verizon Wireless BlackBerry

CAREY
1300 Spectrum Drive Suite D * Frederick, MD 21703

Carey International

Credit Card Receipt

Control Number	1108003724
Credit Card Provider	AMERICAN EXPRESS
Account Name	STAR SCIENTIFIC, INC.
Account Number	375014
Total Charged	**$686.04**
Date Charged	**Aug 02, 2011**

JONNIE R WILLIAMS
STAR TABACCO INC
15 SOUTH MARKET STREET
PETERSBURG, VA 23803 USA

This is not a bill. Do not pay. We charged this amount to your credit card ending in 6005.

If you have a customer service question, please call [illegible] 649-3949.

Service Date	Jul 29, 2011
Service Area	RICHMOND
Vehicle	Sedan
Reservation Segment	WA5385981-1

Passenger	HUNTER, MATT
Arranger	FULKERSON, JERR
Pick Up Location	WATERS EDGE 1825 WATERS EDGE
Drop Off Location	Bus, Glen Allen, VA

7.00 hours @ $70.50/hour	$493.50
Base Total	**$493.50**
Gratuity	98.70
STC	83.90
Fuel Surcharge	9.94
Total Charged	**$686.04**

STC is a surcharge based upon various overhead expense items, some of which may not relate to the specific trip. The STC is always calculated as a flat percentage of the base rate.

GOVERNMENT
EXHIBIT
195
3:14cr12

Conrad, Matt (GOV)

From: McDonnell, FLOVA (GOV)
Sent: Thursday, August 04, 2011 5:58 PM
To: governor@bobmcdonnell.com
Subject: Quote from Patrick Cox, today, in "Breakthrough Technology Alert":

Importance: High

Quote from Patrick Cox, today, in "Breakthrough Technology Alert":

"As an economist, however, I am utterly certain that Anatabloc is going to shake our political system to its very roots. This is because even tiny changes to the actuarial tables will have enormous budgetary impacts."

Maureen McDonnell
First Lady of Virginia
The Executive Mansion, Richmond VA 23219
(804) 371-2642

GOVERNMENT EXHIBIT
199
3:14cr12

Kinloch
Golf Club

Statement

1101	Aug 31/11
MEMBER	DATE

Mr. Jonnie R. Williams
[redacted]

AMOUNT PAID $ ______________

PLEASE DETACH AND RETURN TOP PORTION WITH PAYMENT

DATE	REF.NO	DESCRIPTION	AMOUNT	SVC/GRAT	TAX	TOTAL
		Regular Club Charges				
	SJ0527	Balance Forward				6,837.69
Aug 5/11	008651	Merchandise	203.57	0.00	10.18	213.75
Aug 5/11	008706	Golf Fees	300.00	0.00	0.00	300.00
Aug 5/11	008712	Golf Fees	100.00	0.00	0.00	100.00
Aug 5/11	006444	Food & Beverage	3.00	0.54	0.15	3.69
Aug 11/11	008957	Golf Fees	900.00	0.00	0.00	900.00
Aug 11/11	008988	Golf Fees	300.00	0.00	0.00	300.00
Aug 11/11	006641	Food & Beverage	7.75	1.40	0.39	9.54
Aug 11/11	006680	Food & Beverage	9.00	1.62	0.45	11.07
Aug 11/11	003841	Snack Bar	72.00	12.96	3.60	88.56
Aug 13/11	009095	Golf Fees	600.00	0.00	0.00	600.00
Aug 13/11	009106	Merchandise	50.48	0.00	2.52	53.00
Aug 13/11	009110	Golf Fees	200.00	0.00	0.00	200.00
Aug 13/11	003932	Snack Bar	13.00	2.34	0.65	15.99
Aug 15/11	13546	Payment Received - Thank You				-6,837.69
Aug 19/11	009196	Merchandise	50.48	0.00	2.52	53.00
Aug 19/11	009203	Golf Fees	160.00	0.00	0.00	160.00
Aug 23/11	009368	Merchandise	50.48	0.00	2.52	53.00
Aug 23/11	009370	Golf Fees	30.00	0.00	1.50	31.50
Aug 24/11	009417	Golf Services	40.00	0.00	0.00	40.00
Aug 24/11	009422	Merchandise	50.48	0.00	2.52	53.00
Aug 24/11	009430	Golf Services	50.00	0.00	0.00	50.00
		Total Regular Club Charges	3,190.24	18.86	27.00	3,236.10

Continued

MEMBER	CURRENT BAL	30 DAYS BAL	60 DAYS BAL	90 DAYS BAL	AMOUNT DUE

KINLOCH GOLF CLUB • 100 KINLOCH LANE • MANAKIN SABOT, VA • 23103
(804) 784-8000 • Email accounting@kinlochg[illegible]m

SA085

GOVERNMENT
EXHIBIT
200
3:14cr12

TERMS: NET 25

Kinloch
Golf Club

Statement

Mr. Jonnie R. Williams
[redacted]

1101	Aug 31/11
MEMBER	DATE

AMOUNT PAID $ ______________

PLEASE DETACH AND RETURN TOP PORTION WITH PAYMENT

DATE	REF.NO	DESCRIPTION	AMOUNT	SVC/GRAT	TAX	TOTAL
		VIEW AND PAY MEMBER STATEMENTS ONLINE! www.kinlochgolfclub.com For additional assistance, please contact Traci Phillips at 804-784-8000 or tphillips@kinlochgolfclub.com				
			3,190.24	18.86	27.00	3,236.10

1101	3,236.10	0.00	0.00	0.00	3,236.10
MEMBER	CURRENT BAL	30 DAYS BAL	60 DAYS BAL	90 DAYS BAL	AMOUNT DUE

KINLOCH GOLF CLUB • 100 KINLOCH LANE • MANAKIN-SABOT, VA • 23103
(804) 784-8000 • Email: accounting@kinlochgol[illegible]m

SA086

TERMS: NET 25

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Michael
Area: Proshop
Chit #: 01008651
Date: Aug 5/11 Time: 9:07am

Ping Voyage Bag	175.00
Imperial Caps	28.57

Notes
MCCONNELL SON

Sub-Total	203.57
Sales Tax	10.18
Chit Total	$213.75
Member Charge	$213.75

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Staff: Kevin
Area: Proshop
Covers: 1
Chit #: 01008706
Players: Mcdonnell, Sean
Fister, Hunter
Date: Aug 5/11 Time: 4:43pm

9 Hole Fee - Unacc	150.00
9 Hole Fee - Unacc	150.00
Sub-Total	300.00
Chit Total	$300.00
Member Charge	$300.00-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Paul
Area: Proshop
Chit #: 01008712
Date: Aug 5/11 Time: 6:13pm

Caddie Fee Young, Ar	100.00
Sub-Total	100.00
Chit Total	$100.00
Member Charge	$100.00

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Sean
Area: Food & Beverage
Table#: 45 Covers: 1
Chit #: 05006444
Date: Aug 5/11 Time: 9:08pm

Bottle Gatorade	3.00
Sub-Total	3.00
Service Charge	0.54
Sales Tax	0.15
Chit Total	$3.69
Member Charge	$3.69-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Staff: Michael
Area: Proshop
Covers: 1
Chit #: 01008897
Players: De Graff, Brandon
McDonnell, Bobby
McDonnell, Sean
Date: Aug 11/11 Time: 10:17am

18 Hole Fee - Unacc	300.00
18 Hole Fee - Unacc	300.00
18 Hole Fee - Unacc	300.00
Sub-Total	900.00
Chit Total	$900.00
Member Charge	$900.00-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Michael
Area: Proshop
Chit #: 01008968
Date: Aug 11/11 Time: 3:19pm

Caddie Fee Harambour	150.00
Caddie Fee Bowles, J	150.00
Sub-Total	300.00
Chit Total	$300.00
Member Charge	$300.00-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Josh
Area: Food & Beverage
Table#: 2 Covers: 4
Chit #: 05008641
Date: Aug 11/11 Time: 9:17am

Bacon, Egg, & Cheese	6.00
Fountain Coke	1.75
Sub-Total	7.75
Service Charge	1.40
Sales Tax	0.39
Chit Total	$9.54
Member Charge	$9.54-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Sean
Area: Food & Beverage
Table#: 45 Covers: 1
Chit #: 05008880
Date: Aug 11/11 Time: 9:13pm

3 Bottle Gatorade	9.00
Sub-Total	9.00
Service Charge	1.62
Sales Tax	0.45
Chit Total	$11.07
Member Charge	$11.07-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Stephanie
Area: Snack Bar
Chit #: 06003841
Date: Aug 11/11 Time: 12:51pm

Hamburger	11.95
3 Stewarts Soda Bottle	9.00
3 PB&J Sandwich Half	11.85
Grilled Chicken Sand	8.95
3 AP Half & Half Can	5.25
2 Bottle Gatorade	6.00
2 Virginia BBQ Sand	19.00
Sub-Total	72.00
Service Charge	12.96
Sales Tax	3.60
Chit Total	$88.56
Member Charge	$88.56

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Staff: Kevin
Area: Proshop
Covers: 1
Chit #: 01009095
Players: McDonnell, Gov. Bob
McDonnell, Sean
Date: Aug 13/11 Time: 2:31pm

18 Hole Fee - Unacc	300.00
18 Hole Fee - Unacc	300.00
Sub-Total	600.00
Chit Total	$600.00
Member Charge	$600.00-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Kevin
Area: Proshop
Chit #: 01009108
Date: Aug 13/11 Time: 4:14pm

4 Titleist Pro V1X	50.48

Notes
Notes
- FOR GOVERNOR

Sub-Total	50.48
Sales Tax	2.52
Chit Total	$53.00
Member Charge	$53.00-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Kevin
Area: Proshop
Chit #: 01009110
Date: Aug 13/11 Time: 7:04pm

Caddie Fees, Bowden	100.00
Caddie Fee Moran, Mi	100.00
Sub-Total	200.00
Chit Total	$200.00
Member Charge	$200.00-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Anna
Area: Snack Bar
Chit #: 08003932
Date: Aug 13/11 Time: 4:56pm

4 Bottle Gatorade	12.00
Candy Bar	1.00
Sub-Total	13.00
Service Charge	2.34
Sales Tax	0.65
Chit Total	$15.99
Member Charge	$15.99

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Paul
Area: Proshop
Chit #: 01009196
Date: Aug 19/11 Time: 5:13pm

4 Titleist Pro V1X	50.48
Sub-Total	50.48
Sales Tax	2.52
Chit Total	$53.00
Member Charge	$53.00-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Nicholas
Area: Proshop
Chit #: 01009203
Date: Aug 19/11 Time: 5:53pm

Caddie Fee Ted Brown	160.00
Sub-Total	160.00
Chit Total	$160.00
Member Charge	$160.00-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Paul
Area: Proshop
Chit #: 01009368
Date: Aug 23/11 Time: 4:11pm

Titleist Logo 6-Pack	25.24
Titleist Logo 6-Pack	25.24
Sub-Total	50.48
Sales Tax	2.52
Chit Total	$53.00
Member Charge	$53.00

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Paul
Area: Proshop
Chit #: 01009370
Date: Aug 23/11 Time: 4:12pm

18 Hole Cart Fee	30.00
Sub-Total	30.00
Sales Tax	1.50
Chit Total	$31.50
Member Charge	$31.50-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Kevin
Area: Proshop
Chit #: 01009417
Date: Aug 24/11 Time: 4:20pm

Car Detail	40.00
Sub-Total	40.00
Chit Total	$40.00
Member Charge	$40.00-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Michael
Area: Proshop
Chit #: 01009422
Date: Aug 24/11 Time: 5:45pm

2 Titleist Logo 6-Pack	50.48
Sub-Total	50.48
Sales Tax	2.52
Chit Total	$53.00
Member Charge	$53.00-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Justin
Area: Proshop
Chit #: 01009430
Date: Aug 24/11 Time: 6:04pm

SUV Detail	50.00
Sub-Total	50.00
Chit Total	$50.00
Member Charge	$50.00-

Maureen Mcdonnell

From: Maureen Mcdonnell
Sent: Fri 8/05/2011 9:08 PM (GMT -4)
To: Patrick Cox
Cc:
Bcc:
Subject: RE: NanoViricides Proves HIV Virus Efficacy, Protext Releases Distracted Driver App and More Astonishing Star Scientific Data

Would it be possible for you to send this as an attachment like you did in the first email so I would be able to print out a clean copy for my husband?

Maureen McDonnell
www.FirstLady.governor.virginia.gov
www.SOS.virginia.gov

WWW.GOVERNOR.VIRGINIA.GOV

From: Patrick Cox [mailto:pdc0x@yahoo.com]
Sent: Friday, August 05, 2011 4:14 PM
To: Maureen Mcdonnell
Subject: Fw: NanoViricides Proves HIV Virus Efficacy, Protext Releases Distracted Driver App and More Astonishing Star Scientific Data

----- Forwarded Message -----
From: Patrick Cox <pdc0x@yahoo.com>
To: Patrick Cox <pdc0x@yahoo.com>
Sent: Tuesday, August 2, 2011 2:50 PM
Subject: Fw: NanoViricides Proves HIV Virus Efficacy, Protext Releases Distracted Driver App and More Astonishing Star Scientific Data

AGORA FINANCIAL agorafinancial.com | contact us | login

GOVERNME
EXHIBIT
201
3:14cr12

BREAKTHROUGH TECHNOLOGY ALERT

August 2, 2011

NanoViricides Proves HIV Virus Efficacy, Protext Releases Distracted Driver App and More Astonishing Star Scientific Data

Dear *Breakthrough Technology Alert* Reader,

I should have covered the news from **NanoViricides Inc. (OTCBB: NNVC)** and **Star Scientific (NASDAQ: CIGX)** last week, but I was on my way to Vancouver when both stories broke. I managed to work the Star news into my presentation up north, so I'll begin with NanoViricides, which released test results regarding the company's HIV/AIDS drug candidate.

I predicted the results of HIVCide, the HIV drug candidate from NanoViricides. Nevertheless, the results have left me stunned. The implications of this development are simply overwhelming.

Essentially, they are this. NanoViricides released animal data showing that their first pass at a therapy for HIV/AIDS works as well the current standard treatment used globally. That treatment, HAART (highly active anti-retroviral therapy), is a triple-drug "cocktail" that has problems so serious that many experts believe its demise is inevitable.

First of all, HAART is enormously expensive, which is not surprising, as it consists of at least three drugs that attack viruses at different stages. Moreover, there are many HAART therapies. For optimal results, HAART must be tailored for individual patients and usage strictly overseen. This is simply not practical outside the developed world.

As a result, there are enormous pools of HIV virus that are not being eradicated by the cocktail approach. This means that forms of the virus resistant to the drugs are surviving and multiplying right now, much as drug-resistant bacteria have been created by overuse of antibiotics.

This brings us to the second problem. In Africa, 40% of HIV/AIDS patients are no longer treatable using the HAART approach, due to drug resistance. So it is, in my opinion, only a matter of time before similar and worsening resistances occur in North America and Europe. Those who think that HAART has conquered AIDS are, sadly, wrong. Moreover, the third issue is that these drugs are associated with serious side effects.

Fortunately, Nanoviricides has just shown that it has the solution to all of these problems. Yes, it's true that HIVCide hasn't been tested in humans. Now, allow me to review again the reasons why I believe that it doesn't matter...

Unlike all of the drugs in the HAART cocktails, the NanoViricides "drug" does not modify complex cellular mechanisms. Nanoviricides are not drugs in the classical sense at all. They are a fusion of nanotech and biological components that create what is, essentially, a tiny machine that kills viruses.

This means that nanoviricides do not modify the biochemistry of the infected person. They kill the virus through direct contact, using both mechanical, bioelectric and biochemical means. It doesn't matter where the nanoviricides contact viruses. In test tubes of blood, in petri dishes of cells or in the vascular system of animals, they simply devour and disassemble viruses. In animals, the nanotech virus killers, with their cargo of annihilated viruses, are safely passed from the infected animal.

One component of these nanotech virus killers is the polymer micelle. NanoViricides' micelles, however, are not simply nanovesicles. Nanovesicles are normally just enclosing structures that protect or deliver another substance to a desired destination. NanoViricides' micelles, though, are an active part of the nanoviricide technology. There are many variants in their design that alter their biochemical characteristics.

Chairman and President Dr. Anil Diwan explained to me recently, in fact, that the effectiveness of the mycelle is so strong that it actually makes it difficult to gauge the second component of the drug, the ligands. To measure the ligands' effects, he has had to perform tests with micelles that have been made purposely less effective at killing viruses.

In the final products, however, the micelles are optimized to fit the reproductive strategies of specific viruses and virus families. These variants are not, incidentally, theoretical. Dr. Diwan has already done the research. Having completed the process of discovery and developed manufacturing techniques, he can now quickly fine-tune his micelles.

The other part of NanoViricides' amazing virus killers is the ligand. I suspect that I have undersold these remarkable biological components. In general, I've described them simply as "signaling molecules" that can bind with the molecules that viruses use to locate their target cells. In fact, ligands are enormously sophisticated molecular devices that manipulate intermolecular forces in ways that humble the most complex electronics. Dr. Diwan uses "in silico" simulations of viruses and ligands running on computers to find likely lock/key matches.

So NanoViricides scientists have a huge number of options when designing their virus killers. Once the in silico work is done, real-world experimentation begins. Preclinical tests are designed to maximize the information generated regarding the behavior of target viruses. Then the "optimization" process improves the drug candidate.

Think about it. The data just released by the company regarding that HIV/AIDS treatment were only a first-pass test designed to provide the information the company needs to create a truly effective drug. Nevertheless, HIVCide has already officially met the FDA's criterion for "noninferiority."

That is bureau-speak meaning that this preliminary HIVCide is already as effective as the best HIV/AIDS therapy in the world. We know, however, that it is actually superior, for several reasons. It is less expensive. It has no known side effects. Viruses can only become resistant if they stop reproducing, which renders them harmless. In fact, it renders them extinct.

Moreover, HIVCide works by an entirely novel mechanism. This means that it can be used safely with existing HAART cocktails or as a stand-alone product. My prediction, by the way, is that the final form of HIVCide will render the cocktail obsolete. Let's examine why by recalling the FluCide optimization process.

When NanoViricides began working on an influenza drug, the first-pass effort produced several candidates that were about eight times better than oseltamivir, Tamiflu. The current version, however, shows a 1,000-fold greater viral load reduction than Tamiflu. That's the track record of optimization.

If NanoViricides were to improve HIVCide by only a factor of two, it would still be twice as effective as the current best therapy. That would be an enormous breakthrough in terms of health care costs and survival rates, and the medical community would celebrate. Personally, I will be astonished if the final form of the product is not many, many times more effective than HAART.

Either way, the advantages of a cheap therapy that cannot produce drug resistance are enormous. In fact, this technology will have a measurable impact on the world economy when it finally comes to market.

AIDS is the biggest factor keeping many African nations in poverty today. When these countries are finally freed from the disease that drains them, the whole world will feel the benefits. Incidentally, few economists understand how critical this sort of scientific progress is to our recovery. One of the few is U. of Chicago economist Dr. Gary Becker.

Another group that is missing the importance of this news is the entire financial industry. I feel the same about science journalists. It is negligence for the so-called experts to miss the importance of this revolutionary technology.

My irritation is not, however, because the stock is grossly underpriced. I've said many times that our timeline here is at least five years out. If you want quick returns, this isn't the place. "Get rich quick" doesn't exist. "Get rich slow," however, is a proven investment philosophy, and I'm not going to worry about the short run. In fact, I'm happy that my newer subscribers still have a chance to get this stock at bargain rates. When NanoViricides finally breaks into sunlight, it will make a lot of people very wealthy.

I'm irritated at science journalists because they could be helping accelerate the movement of this therapy to the millions who need it. Journalists, who like to imagine that they play a critical role in society, are not serving us. They'll wear their red ribbons and feign concern, but it's clear to me that they're not willing to do the intellectual work to find out what's really happening on the frontiers of science.

In fact, I've written at length about the inability, historically, of societal elites to accept big scientific changes. It appears to me that most people when they're sitting pretty are afraid of anything that might threaten the status quo. This may help explain why NanoViricides put out a second clarifying press release in hopes that the media might understand the truly revolutionary advance that they have just announced.

My bet, unfortunately, is that it won't work. When the product begins to save lives, however, it will have all been worth it. I almost forgot. NanoViricides just secured the funding it needs to get the products into human trials.

Being wrong about big scientific progress shouldn't surprise us, of course. The elites have been wrong on matters of economic policy for decades. Simultaneously, they have pretended that those of us who've gotten it right didn't even exist.

Protext Expands Platform to Include Distracted Driver Options

As those of you who attended the Vancouver conference know, Peter Charles, the CEO of **Protext Mobility (OTCBB: TXTM)**, gave an important presentation about the mobile convergence. During the event, Protext rolled out new features on its platform, including the ability to monitor the speed of users' travel. This gives parents the ability to determine if their children are texting while driving and, if necessary, to disable all but emergency calls.

As I've said before, however, I'm not interested in this company because of the AmberWatch app, even though its a truly impressive product. Text is already the killer app of the wireless network, but it continues to explode. We've only begun to see the potential of text.

Ultimately, the lawyers will catch up with this technology and we're going to see lawsuits filed against employers who allow texting while employees are driving. We're also going to see efforts by workers who get texts outside of normal business hours to extract overtime compensation. Employers are going to have to protect themselves, which will require the kind of sophisticated platform that Protext offers.

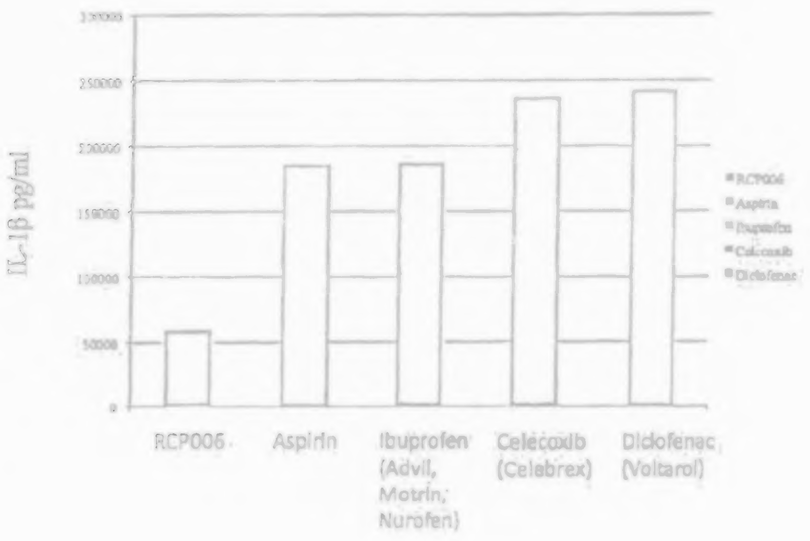
SEC compliance is another huge area. Protext also has the ability to detect and report real-time shifts in public opinion by tapping into the text cloud. Read the entire press release here.

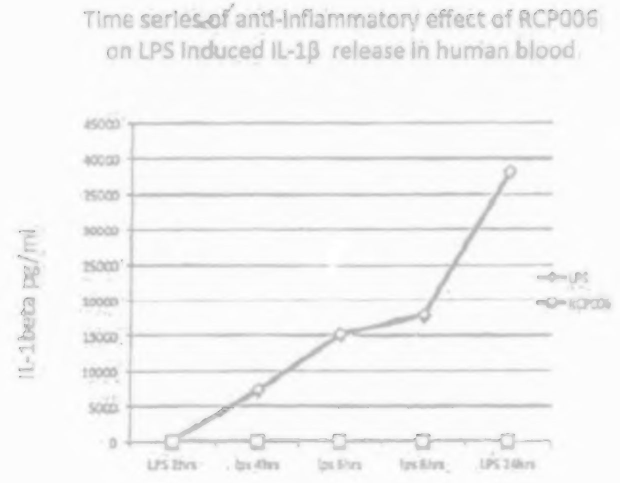
Star Scientific's Nutraceutical Outperforms Celebrex, Voltarol

As mentioned earlier, more important information about Star Scientific's product Anatabloc has been published. In this case, the prestigious Roskamp Institute has presented a comparison of well-known anti-inflammatories with RCP-006, their lab designation of anatabine citrate.

As I've said many times, I don't blame people for being skeptical about this product. It is nearly unbelievable that a natural alkaloid found in tomatoes, tobacco and bell peppers is better at controlling chronic inflammation than Celebrex, Voltarol, ibuprofen or aspirin. Nevertheless, it does. Check out both charts.

Comparison of anti-inflammatory effects (IL-1β Inhibition) of RCP006 compared to NSAIDs after treatment of whole human blood with LPS





Time series of anti-inflammatory effect of RCP006 on LPS induced IL-1β release in human blood

Also, please look at the second chart. Inflammation in human blood provoked by lipopolysaccharides (LPS), a molecule present in bacteria, is completely nullified two hours after dosing with anatabine citrate. This is amazing.

Yours for transformational profits,

Patrick Cox

Special Offer: Save 55% Off Your Next Year of Breakthrough Technology Alert. Act Today!

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VISA ∫IGNATURE

JONNIE R WILLIAMS
Account Number: [redacted] 7966
July 27 - August 25, 2011

Account Information:
www.bankofamerica.com

Mail billing inquiries to:
Bank of America
P.O. Box 982235
El Paso, TX 79998-2235

Mail payments to:
Bank of America
P.O. Box 15019
Wilmington, DE 19886-5019

Customer Service:
1.866.333.1487

(1.800.346.3178 TTY)

Payment Information

New Balance Total	$84,478.74
Current Payment Due	$1,212.00
Total Minimum Payment Due	$1,212.00
Payment Due Date	9/22/11

Late Payment Warning: If we do not receive your Total Minimum Payment by the date listed above, you may have to pay a late fee of up to $35.00.

Total Minimum Payment Warning: If you make only the Total Minimum Payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

[redacted]		
Only the Total Minimum Payment	44 years	$135,450.59
$2,618.56	36 months	$94,268.16 (Savings = $41,182.43)

If you would like information about credit counseling services, call 1-866-300-5238.

Account Summary

Previous Balance	$42,340.09
Payments and Other Credits	-5,000.00
Purchases and Adjustments	46,767.67
Fees Charged	0.00
Interest Charged	370.98
New Balance Total	$84,478.74
Total Credit Line	$100,000.00
Total Credit Available	$15,521.26
Cash Credit Line	$30,000.00
Portion of Credit Available for Cash	$15,521.26
Statement Closing Date	8/25/11
Days in Billing Cycle	30

Transactions

Transaction Date	*Posting Date*	*Description*	*Reference Number*	*Account Number*	*Amount*	*Total*
		Payments and Other Credits				
	08/12	BA ONLINE PAYMENT			-5,000.00	
						-$5,000.00
		Purchases and Adjustments				
08/02	08/04	HS-RICHMOND RICHMOND VA 022481 ARRIVAL DATE 7/27/11	2405	7966	244.80	Trust
08/04	08/05	THE MAIDS HOME SERVICE SARASOTA FL	7367	7966	148.00	

continued on next page

21 08447874001212000050000000041473700198279 66

BANK OF AMERICA
P.O. BOX 15019
WILMINGTON, DE 19886-5019

JONNIE R WILLIAMS
[redacted]

Account Number: [redacted] 7966

New Balance Total	$84,478.74
Total Minimum Payment Due	1,212.00
Payment Due Date	09/22/11

Total payment amount $

☐ *Check here for a change of mailing address or phone numbers. Please provide all corrections on the reverse side.*

Mail this coupon along with your check payable to Bank of America.

⑆5240 22250⑆ 08 2000198 27966⑈

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203
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VISA SIGNATURE

[redacted]7966
July 27 - August 25, 2011
Page 3 of 4

Transactions continued

Transaction Date	Posting Date	Description	Reference Number	Account Number	Amount	Total
		Purchases and Adjustments				
08/08	08/10	THE RITZ-CARLTON SARAS SARASOTA FL 4690082443107 ARRIVAL DATE 7/18/11	4199	7966	840.39	
08/10	08/11	DURON #3382 HENRICO VA	3853	7966	163.77 Trust	
08/10	08/11	CITY OF B H PARKING ME BEVERLY HILLSCA 96785616	3720	7966	1.00	
08/10	08/12	TRADITIONAL JEWELERS I MALIBU CA 6	9596	7966	25,500.00	
08/11	08/12	DURON #3382 HENRICO VA	0984	7966	54.25 - Trust	
08/11	08/12	THE MAIDS HOME SERVICE SARASOTA FL	6625	7966	148.00	
08/11	08/12	CITY OF B H PARKING ME BEVERLY HILLSCA 97239898	6719	7966	2.00	
08/11	08/13	RAJ KANODIA MD, A MEDI BEVERLY HILLSCA	0146	7966	7,000.00	
08/12	08/13	CITY OF B H PARKING ME BEVERLY HILLSCA 97605843	0141	7966	2.00	
08/12	08/13	CITY OF B H PARKING ME BEVERLY HILLSCA 97496454	0300	7966	2.00	
08/13	08/15	CITY OF B H PARKING ME BEVERLY HILLSCA 97934279	0489	7966	2.00	
08/14	08/16	TRADITIONAL JEWELERS I MALIBU CA 4	9592	7966	6,500.00	
08/15	08/17	THE RITZ-CARLTON SARAS SARASOTA FL	3602	7966	2,928.74	
08/17	08/18	DURON #3382 HENRICO VA	6617	7966	136.40 - Trust	
08/18	08/19	THE MAIDS HOME SERVICE SARASOTA FL	3253	7966	283.00	
08/21	08/23	BOGEYS SPORTS PARK RICHMOND VA	0055	7966	6.25	
08/22	08/23	MCDONALD'S F20464 GLEN ALLEN VA 08572370464SPTY7000111688	3494	7966	9.62	
08/22	08/23	GOLF GALAXY # 35 GLEN ALLEN VA	4812	7966	177.45	
08/22	08/23	DURON #3382 HENRICO VA	4433	7966	169.52 - Trust	
08/23	08/24	GOLF GALAXY # 35 GLEN ALLEN VA	4010	7966	689.85	
08/23	08/24	GOLF GALAXY # 35 GLEN ALLEN VA	3814	7966	1,718.62	
08/23	08/25	DOGMA RICHMOND VA	5503	7966	25.00	
08/23	08/25	DOGMA RICHMOND VA	5412	7966	15.00	
						$46,767.67
		Interest Charged				
08/25	08/25	Interest Charged on Purchases			370.98	
08/25	08/25	Interest Charged on Balance Transfers			0.00	
08/25	08/25	Interest Charged on Dir Dep&Chk CashAdv			0.00	
08/25	08/25	Interest Charged on Bank Cash Advances			0.00	
		TOTAL INTEREST FOR THIS PERIOD				$370.98

2011 Totals Year-to-Date	
Total fees charged in 2011	$290.00
Total interest charged in 2011	$2,619.46

Interest Charge Calculation

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

	Annual Percentage Rate	Promotional Transaction Type	Promotional Offer ID	Promotional Rate End Date	Balance Subject to Interest Rate	Interest Charges by Transaction Type
Purchases	7.24%V				$62,341.72	$370.38
Balance Transfers	7.24%V				$ 0.00	$ 0.00
Direct Deposit and Check Cash Advances	7.24%V				$ 0.00	$ 0.00
Bank Cash Advances	7.24%V				$ 0.00	$ 0.00

APR Type Definitions: Daily Interest Rate Type: V= Variable Rate (rate may vary)

Rewards

46,768 **POINTS EARNED THIS PERIOD**
0 **POINTS ADJUSTED THIS PERIOD**
0 **POINTS REDEEMED THIS PERIOD**
208,030 **TOTAL POINTS AVAILABLE**
TO **REDEEM POINTS**: 1.800.406.8472
OR VISIT **BANKOFAMERICA.COM/SIGNATURE**

From: Sutherland, MaryShea (GOV) <MaryShea.Sutherland@governor.virginia.gov>
Sent: Wednesday, August 17, 2011 9:33 AM
To: Zubowsky, Adam (GOV) <Adam.Zubowsky@governor.virginia.gov>
Subject: Re

That works

----- Original Message -----
From: Zubowsky, Adam (GOV)
Sent: Wednesday, August 17, 2011 08:25 AM
To: Sutherland, MaryShea (GOV)
Subject: RE:

Governor wants to make it to the last part of this lunch, the last 30 minutes, says he can't be there the entire time but will come for 30 minutes. Going to work Katherine to get that going.

Thanks,

Adam Zubowsky
Director of Operations
Office of Governor Robert F. McDonnell
1111 East Broad Street, Richmond, Virginia 23219
804.786.2211 OFFICE | 804.225.4809 DIRECT | 804.371.6351 FAX
www.governor.virginia.gov

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-----Original Message-----
From: Sutherland, MaryShea (GOV)
Sent: Tuesday, August 16, 2011 2:55 PM
To: Zubowsky, Adam (GOV)
Subject: RE:

The lunch is with Doctors and Researchers from MCV, UVA, Johns Hopkins and the Rosskamp Institute along with Jonnie Williams and a few others that are involved in the various research projects.

This would be an occasion to bring all of the medical professionals together as they begin to start the studies at UVA and MCV on anatabloc and its uses for reducing public health costs. Johns Hopkins has done the bulk of the research and now UVA and MCV are going to further the studies.

The date for the lunch was selected due to the launch of the product.

Does that help?

-----Original Message-----
From: Zubowsky, Adam (GOV)
Sent: Tuesday, August 16, 2011 2:50 PM

GOVERNMENT
EXHIBIT
208
3:14cr12

To: Sutherland, Mary Shea (GOV)
Subject:

Can you send me info on the fl lunch at the mansion, the w/op day, so I can ask him. Know he's going to ask for details.

Thanks.

Adam Zubowsky
Director of Operations
Governor Robert F. McDonnell
804-786-2211 (Main)
804-225-4809 (Direct)

To: Caroline Birgmann[Caroline.Birgmann@gmail.com]; Kasey Buckland[buckland3043@comcast.net]
From: David Dean
Sent: Thur 8/25/2011 2:11:49 PM
Subject: FW: Invitation to Lunch
8-30-11 Luncheon.pdf

Invitation
------ Forwarded Message
From: "Sutherland, MaryShea (GOV)" <MaryShea.Sutherland@governor.virginia.gov>
Date: Thu, 25 Aug 2011 09:24:15 -0400
To: Jonnie Williams <jrw@starscientific.com>, David Dean <ddean@starscientific.com>, <bpokus@starscientific.com>, <pperito@starscientific.com>, <jwilliams@starscientific.com>
Subject: Invitation to Lunch

Please see the attached invitation for lunch on August 30th at the Executive Mansion.

Mary-Shea Sutherland
Chief of Staff
Office of the First Lady of Virginia
P.O. Address 1475
Richmond, VA 23218
(804) 371-2642 Ext. 2446

------ End of Forwarded Message

GOVERNMENT
EXHIBIT
215
3:14cr12

Governor and Mrs. Robert F. McDonnell

Request the Pleasure of your Company

at a Luncheon

Tuesday, August 30, 2011

11:30 a.m. – 1:30 p.m.

The Executive Mansion
Richmond, Virginia

Kindly RSVP to MaryShea Sutherland at (804) 786-0424
or maryshea.sutherland@governor.virginia.gov by Friday, August 26, 2011

Business Attire

Parking and Driving Instructions Enclosed

GOVERNMENT
EXHIBIT
228
3:14cr12

Governor and Mrs. Robert F. McDonnell

Request the Pleasure of your Company

at a Luncheon

Tuesday, August 30, 2011

11:30 a.m. – 1:30 p.m.

The Executive Mansion
Richmond, Virginia

Kindly RSVP to MaryShea Sutherland at (804) 786-0424
or maryshea.sutherland@governor.virginia.gov by Friday, August 26, 2011

Business Attire

Parking and Driving Instructions Enclosed

Confidential Treatment Requested By Star Scientific, Inc.

McDonnell, Bob (GOV)

Subject: Lunch with Virginia Researchers
Location: Executive Mansion

Start: Tue 8/30/2011 12:35 PM
End: Tue 8/30/2011 1:30 PM

Recurrence: (none)

Organizer: McDonnell, FLOVA (GOV)

Categories: Purple Category, Mansion Event

POC: Sarah Scarbrough @ (804) 786-4685 / sarah.scarbrough@governor.virginia.gov
Note: The lunch starts at 11:30AM; you will join at 12:35PM for the last hour.

8-30-11 - VA Researchers.doc

8-30-11 - VA Researchers lunch...

GOVERNMENT EXHIBIT
231
3:14cr12

Executive Mansion
Confidential Working Papers

Prepared on August 29, 2011

Executive Mansion
Event Briefing Information

Event: Lunch with researchers and doctors

Day/Date: Tuesday, August 30, 2011 **Stars (for Chef):** 3 ½

Event Time: 11:30 – 1:30 p.m. (RFM – 12:30 – 1:30 p.m.)

Attire: Business Attire

Location: Executive Mansion

Owner/Contact: Sarah Scarbrough – Mary Shea – Tutti - Todd

Caterer/Food: Chef Todd

Estimated Cost: $1,500

Participants: Researchers and doctors - to discuss the latest information on the anatabean (a bi-product of the tobacco plant) and two studies that UVA and VCU Medical will conduct.

# People Attending: 26 – Mary Shea to confirm and provide attendee list

Press: no

RFM Introduced by: N/A

**RFM/MM Role/
Speaking points** n/a – MM hosting event

Photographer attending: none

Guest List

ATTENDING			
Baggesen	Randy	Executive Health Group	
Beach	William	Tuckahoe Orthopaedic	Doctor
Bolyard	Glenn	CVS	Pharmacy Supervisor
Carl	Neal	Family Medicine	Doctor
Cantrell	Carrie	Gov Office *	
Clore	John	VCU Medical *	Doctor
Crawford	Fiona	Roskamp	Doctor
Dean	David	Star Scientific	VP Marketing

Prepared by Sarah Scarbrough

Eige	Jasen	Office of the Governor	Chief Counsel
Hickman	Clifton	Virginia Ear Nose and Throat	Doctor
Ladenson	Paul	Johns Hopkins	Doctor
Laso	John	UVA	Doctor
McDonnell	Maureen		First Lady
McDonnell	Bob		Governor
Miller	Edgar	Johns Hopkins	Doctor
Mullan	Michael	Roskamp	Doctor
Perito	Paul	Star Scientific	President
Pokusa	Robert	Star Scientific	General Counsel
Rangarajan	Satya	HDL	CFO
Rice	Baylor	Medical Society of Virginia	
Roskamp	Diane	Roskamp	
Roskamp	Bob	Roskamp	
Scott	John	Family Medicine	Doctor
Sutherland	MaryShea	1st Lady Office	
Villalona	Juan	Pediatric and Gastro of Richmond	Doctor
Vranian	Craig	Virginia Cardiovascular Specialists	Doctor
Williams	Jonnie	Star Scientific	CEO
Williams	Jonnie Jr.	Star Scientific	Special Projects Manager
Wright	Curtis	Rock Creek Pharmaceuticals	Director
NOT ATTENDING			
Turner	Ron	UVA	Doctor
Brand	William	Gastrointestinal Specialists, Inc.	Doctor
Burris	Allen	Virginia Diabetes PC	Doctor
Condro	Peter	Richmond Nephrology	Doctor
Coutiakis	Peter	Arthritis Specialists Ltd.	Doctor
Kuno	Ritsu	Pulmonary Assoc. of Richmond	Doctor
NO RESPONSE			
Caturegli	Mario	Johns Hopkins	Doctor
Levy	Rich		

Rock Creek/Tobacco Commission Discussion Points

Pro's

Perception to Governor that UVA would like to work with local companies to support future ED

Rock Creek "appears" to want to determine what disease states antabine effects

Research funding for SOM

Cell Biology
Micro-Biology

Peggy
Brodeciakie
Ask Gary

→ NFKB

diligence on Anti-inflammatory claims

Gov.

st inflammation scientific for
ue diligence
Scientific collaborative proposals
w/Rock Creek
- key scientists to do research
- Tobacco or otherwise

Con's

Political pressure from Governor and impact on future UVA requests from the Governor

Rock Creek does not want to partner with UVA this was direct quote on call

Rock Creek/Star Scientific has stated they have no commercilization plan

Rock Creek/Star Scientific trying to "buy" UVA's brand/credibility

Tobacco Commision reaction to this proposal and impact on future UVA proposal's

UVA will have to dedicate time to research/write the proposal

Tepid research interest from SOM

GOVERNMEN
EXHIBIT
267
3:14cr12

GOVERNMENT EXHIBIT
269
3:14cr12

Krueger, Sharon (sak8e)

From:	Elizabeth Pfeifer [epfeifer@starscientific.com]
Sent:	Monday, November 28, 2011 2:32 PM
To:	Krueger, Sharon (sak8e); Bob Pokusa; Curtis Wright, IV, MD/MPH; Ryan Lanier
Cc:	Elizabeth Pfeifer
Subject:	Conference Call between Rock Creek Pharmaceuticals and UVA re Tobacco Commission
Importance:	High

This will confirm the teleconference tomorrow, Tuesday, November 29 at 4:00pm.

The call in number will be 1.888.527.7995, with passcode 6591391#

Ms. Krueger, I understand you will forward the call in information to Mark Crowell and Phil Parrish, while Mr Pokusa will forward the information to Jerry Kilgore and/or Chris Nolen.

→ for AG?

If you have any questions, please do not hesitate to contact Elizabeth Pfeifer at 202.461.2980 or epfeifer@starscientific.com.

Thank you for your attention to this matter.

Elizabeth

Chris Nolen
who is he?

underst.

C. Elizabeth Pfeifer
Executive Assistant to
Paul L. Perito,
Chairman, President and COO
Star Scientific, Inc.
1250 24th Street, NW, Suite 700
Washington, DC 20037
202.461.2980 (office)
202.461.2919 (fax)

Jerry Kilgore - spoke to TC
(brother - chair)

Ned Stevenson @ Commission what will proposal look like & that UVA is aware of proposal

IMPORTANT/CONFIDENTIAL: This message contains information which may be privileged, confidential, or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that

) PAul - ~~Chair~~ CEO

Dr wright → @ Rock Creek

RyanLane → CSO

Chris Nolen → McGuire Woods Strategy

b marousa → Leg Counsel

Anatablock - product

Anerobine - compound

NutraSport → Ph
GMP
nutr
suppl

Background

StAr Sci. reduce Tobacco related harm

Endocrinology @ Hopkins ~NF Kapa B

Animal Studies

UVA - SOM
John Klore
UVA
Peggy Shopnik

Hypothesis - How to test hypo in various areas

- planning grants (35 scientists)

- logical strategic, political w/ VPR office
- SOM mtg
- then Rock Creek for scoping

Next steps:

Consider grant process (by Gov) many scientists from UVA

- majority of clinical trial proposals

UVA host facility & manage All funds

- science & toxic info
- supply compound At cost
- R.C. no funding

ob Jackson has CDA in SOM

Ariney PAD
Barrett - metabolic
Truitt - kidney
Hopkins /

*tech track
* commercial track
*
R&D & E.D. is focu

.l: POC established

ilestones in mind for moving to SS Virginia

- profitable
- profits to pay for moving company
- clinical trials could be stepping in resulting in the neutraceutical plant move

Contact: Ryan Lanier

/

SA111

CALL NOTES: 11/

IP issues of concern /critical to company

- have several patents
  - synthesis (published
  - use of in inflammatory conditions
  - Isomers of Anatabine

*none issued

filed last 18 months.

Kat McDonnell Know about TC proprosal -look favorable o Commonwealth funds

Next steps

- this T/C was information sharing
- invite folks to UVA
  - write proposal ??
- Pre-lim steps

("they" said will be favorable receiver

Facilitate n.p. that is interesting in preparing/submission to Tobacco Comisson

- work w/ researchers @ other institutions
- ~~what~~ Star would assist in business plan proposal - document positive VA & SS impact

→ talk w/ Peggy

→ get Agreement doc. from Rob Jackson

→ get researchers together & determine to study

→ commercialization - support product & ↑ side

→ support Shay City as manufacturing facility
or contract manufacting facility to use in S.S.

no POC
no Regulator
but
data to support
~~claims~~ product efficacy

Articles in peer-reviewed J.
valuable

"well done positive/neg. academic studies"

Absolute Right publication of findings

- need to know where it works or doesn't work

GOVERNMEN
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274
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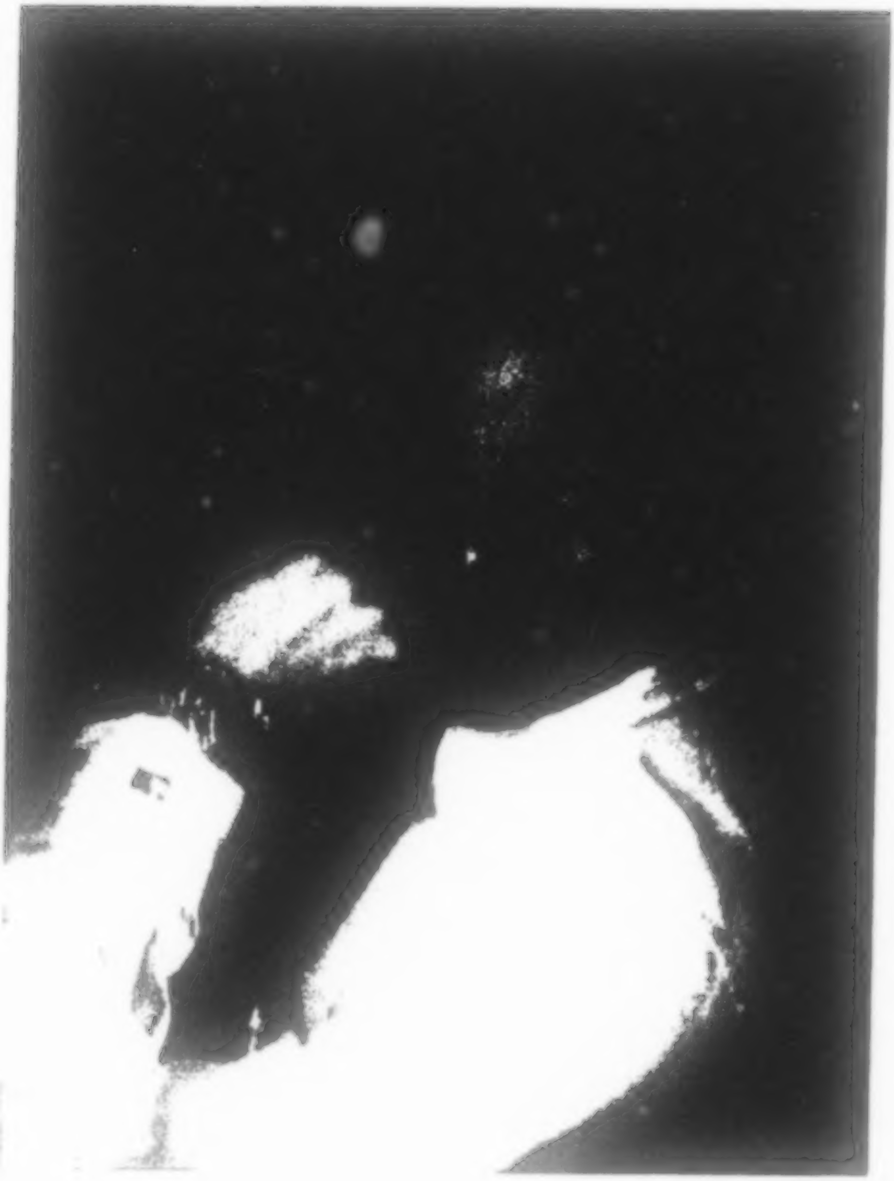
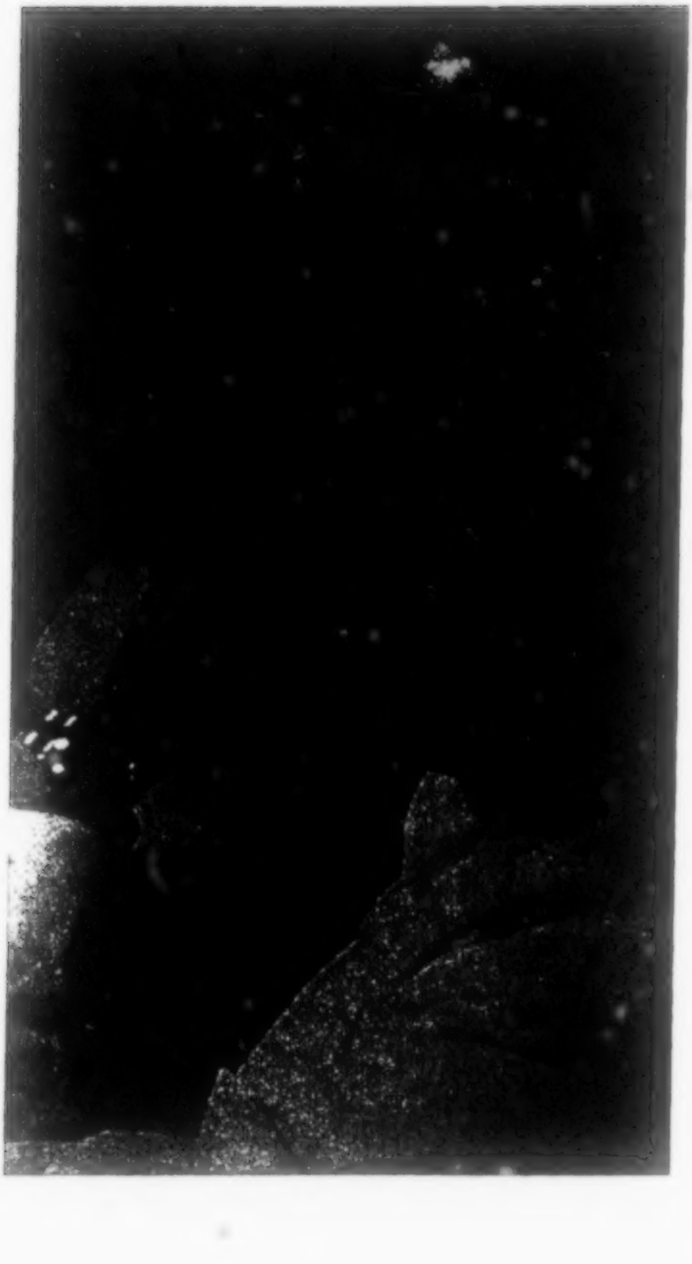
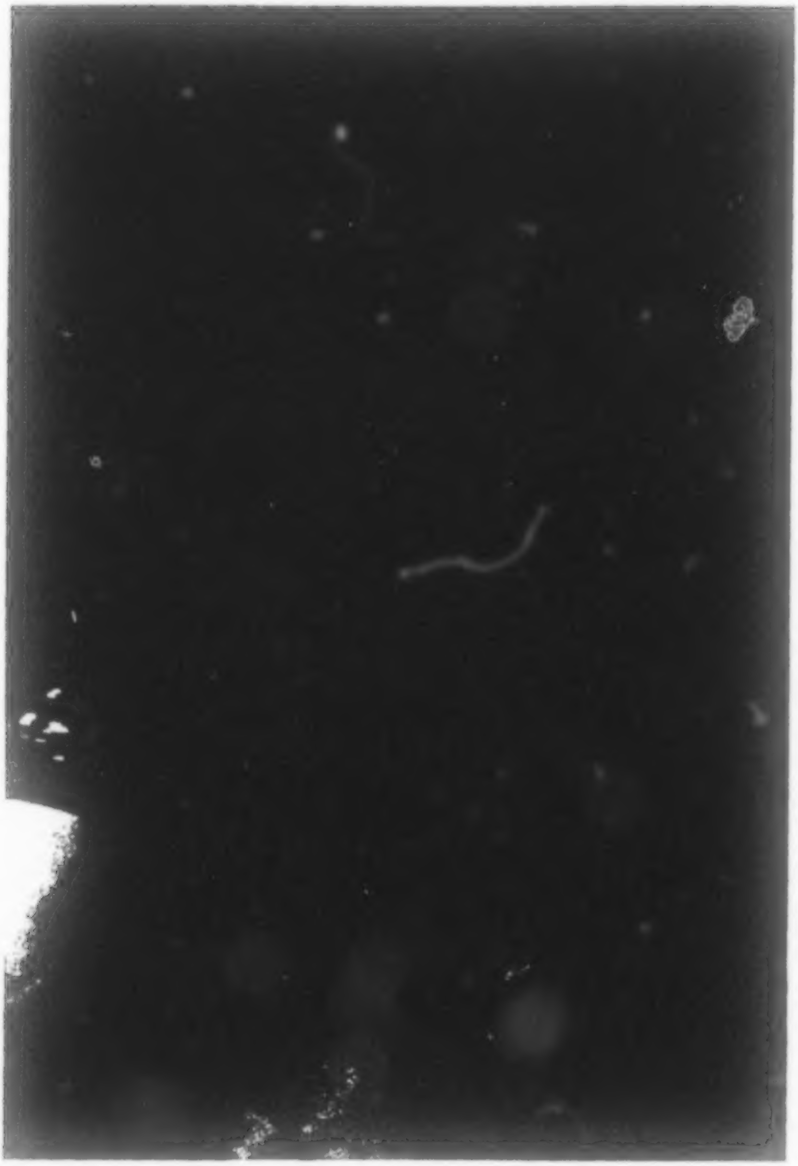
M







Kinloch
Golf Club

Statement

Mr. Jonnie R. Williams
[redacted]

1101	Jan 31/12
MEMBER	DATE

AMOUNT PAID $ ____________

PLEASE DETACH AND RETURN TOP PORTION WITH PAYMENT

DATE	REF NO	DESCRIPTION	AMOUNT	SVC/GRAT	TAX	TOTAL
		Regular Club Charges				
	SJ1082	Balance Forward				3,438.81
Jan 7/12	014851	Merchandise	50.48	0.00	2.52	53.00
Jan 7/12	014859	Golf Fees	990.00	0.00	4.50	994.50
Jan 7/12	014888	Golf Fees	200.00	0.00	0.00	200.00
Jan 7/12	011498	Food & Beverage	48.00	8.64	2.40	59.04
Jan 7/12	006281	Snack Bar	50.70	9.13	2.54	62.37
Jan 25/12	011703	Food & Beverage	48.70	8.77	2.44	59.91
Jan 30/12	13684	Payment Received - Thank You				-3,438.81
		Total Regular Club Charges	1,387.88	26.54	14.40	1,428.82
			1,387.88	26.54	14.40	1,428.82

VIEW AND PAY MEMBER STATEMENTS ONLINE!
www.kinlochgolfclub.com

For additional assistance, please contact Traci Phillips at 804-784-8000 or tphillips@kinlochgolfclub.com

1101	1,428.82	0.00	0.00	0.00	1,428.82
MEMBER	CURRENT BAL	30 DAYS BAL	60 DAYS BAL	90 DAYS BAL	AMOUNT DUE

KINLOCH GOLF CLUB • 100 KINLOCH LANE • MANAKIN SABOT, VA • 23103
(804) 784-8000 • Email: accounting@kinlochgolfclub.com

SA124

GOVERNMENT EXHIBIT
285
3:14cr12

TERMS: NET 25

1A341

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Nicholas
Area: Proshop
Chit #: 01014851
Date: Jan 7/12 Time: 11:53am

4 Titleist Pro V1X	50.48
Sub-Total	50.48
Sales Tax	2.52
Chit Total	$53.00
Member Charge	$53.00-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Staff: Nicholas
Area: 1Proshop
Covers: 1
Chit #: 01014859
Players: McDonnell, Gov Bob
McDonnell, Bobby
McDonnell, Sean
Date: Jan 7/12 Time: 12:37pm

18 Hole Fee - Unacc	300.00
18 Hole Fee - Unacc	300.00
18 Hole Fee - Unacc	300.00
3 18 Hole Cart Fee	90.00
Sub-Total	990.00
Sales Tax	4.50
Chit Total	$994.50
Member Charge	$994.50-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Kevin
Area: Proshop
Chit #: 01014888
Date: Jan 7/12 Time: 5:52pm

Caddie Fee Brent, Je	200.00
Sub-Total	200.00
Chit Total	$200.00
Member Charge	$200.00-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Chris
Area: Food & Beverage
Table#: 5 Covers: 4
Chit #: 05011498
Date: Jan 7/12 Time: 2:59pm

Fountain Diet Coke	1.75
Fountain Diet Coke	1.75
Bottle Gatorade	3.00
Tea Unsweet	1.75
Fountain Coke	1.75
Wings	9.00
Hawg Wings	9.00
Bacon Swiss Grilled	10.00
Bacon Swiss Grilled	10.00
Sub-Total	48.00
Service Charge	8.64
Sales Tax	2.40
Chit Total	$59.04
Member Charge	$59.04-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Stephanie
Area: Snack Bar
Chit #: 08006281
Date: Jan 7/12 Time: 3:29pm

2 Hamburger	24.00
Bacon Swiss Grilled	10.00
3 Bottle Gatorade	9.00
Tea	1.75
Hot Dog	5.95
Sub-Total	50.70
Service Charge	9.13
Sales Tax	2.54
Chit Total	$62.37
Member Charge	$62.37-

Kinloch Golf Club
Chit Details
Member: 1101 Jonnie R. Williams
Server: Gilbert
Area: Food & Beverage
Table#: 21 Covers: 8
Chit #: 05011703
Date: Jan 25/12 Time: 1:35pm

Meatloaf Sandwich	12.00
Virginia BBQ Sand	9.50
Hamburger	12.00
Chef's Salad	9.95
Fountain Diet Coke	1.75
Fountain Diet Coke	1.75
Tea Sweet	1.75
Sub-Total	48.70
Service Charge	8.77
Sales Tax	2.44
Chit Total	$59.91
Member Charge	$59.91-

CY 11

STATEMENT OF ECONOMIC INTERESTS

Revised Form as of 07/01/2011

NAME
Robert F McDonnell

Candidate for Election to this office?
____YES __X__NO

OFFICE OR POSITION HELD OR SOUGHT Governor of Virginia

AGENCY/BUSINESS NAME
Office of the Governor

PHONE
804-786-4273

AGENCY/BUSINESS ADDRESS
1111 East Broad Street

CITY
Richmond

STATE
VA

ZIP
23219

NAMES OF MEMBERS OF IMMEDIATE FAMILY
Maureen, Jeanine, Cailin, Rachel, Robert and Sean

COMPLETE ITEMS 1 THROUGH 10. REFER TO SCHEDULES ONLY IF DIRECTED.

You may attach additional explanatory information.

1. Offices and Directorships
Are you or a member of your immediate family a paid officer or paid director of a business?
If yes, complete Schedule A
x YES ☐ NO

2. Personal Liabilities.
Do you or a member of your immediate family owe more than $10,000 to any one creditor including contingent liabilities? (Exclude debts to any government and loans secured by recorded liens on property at least equal in value to the loan.)
If yes, complete Schedule B
x YES ☐ NO

3. Securities.
Do you or a member of your immediate family, directly or indirectly, separately or together, own securities valued in excess of $10,000 invested in one business? Account for mutual funds, limited partnerships and trusts.
If yes, complete Schedule C
☐ YES x NO

4. Payment for Talks, Meetings, and Publications.
During the past 12 months did you receive lodging, transportation, money, or anything else of value with a combined value exceeding $200 for a single talk, meeting, or published work in your capacity as an officer or employee of your agency?
If yes, complete Schedule D
x YES ☐ NO

5. Gifts.
During the past 12 months did a business, government, or individual other than a relative or personal friend (i) furnish you with any gift or entertainment at a single event, and the value received by you exceeded $50 in value or (ii) furnish you with gifts or entertainment in any combination and the value received by you exceeded $100 in total value; and for which you neither paid nor rendered services in exchange? Account for entertainment events only if the average value per person attending the event exceeded $50 in value. Account for all business entertainment (except if related to your private profession or occupation) even if unrelated to your official duties.
If yes, complete Schedule E
x YES ☐ NO

6. Salary and Wages.
List each employer that pays you or a member of your immediate family salary or wages in excess of $10,000 annually. (Exclude state or local government or advisory agencies.) If no reportable salary or wages, check here ☒

GOVERNMENT EXHIBIT
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7. Business Interests.
Do you or a member of your immediate family, separately or together, operate your own business, or own or control an interest in excess of $10,000 in a business?
If yes, complete Schedule F
x YES ☐ NO

8. Payments for Representation and Other Services.

8A. Did you represent, excluding activity defined as lobbying in § 2.2-419, any businesses before any state governmental agencies, excluding courts or judges, for which you received total compensation during the past 12 months in excess of $1,000, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers? (Officers and employees of local governmental and advisory agencies do NOT need to answer this question or complete Schedule G-1.)
If yes, complete Schedule G-1
☐ YES x NO

8B. Subject to the same exceptions as in 8A, did persons with whom you have a close financial association (partners, associates or others) represent, excluding activity defined as lobbying in § 2.2-419, any businesses before any state governmental agency for which total compensation was received during the past 12 months in excess of $1,000? (Officers and employees of local governmental and advisory agencies do NOT need to answer this question or complete Schedule G-2.)
If yes, complete Schedule G-2
☐ YES x☐ NO

8C. Did you or persons with whom you have a close financial association furnish services to businesses operating in Virginia pursuant to an agreement between you and such businesses, or between persons with whom you have a close financial association and such businesses for which total compensation in excess of $1,000 was received during the past 12 months?
If yes, complete Schedule G-3
☐ YES x☐ NO

9. Real Estate.

9A. State Officers and Employees.
Do you or a member of your immediate family hold an interest, including a partnership interest, valued at $10,000 or more in real property (other than your principal residence) for which you have not already listed the full address on Schedule F? Account for real estate held in trust.
If yes, complete Schedule H-1
☐ YES x NO

9B. Local Officers and Employees.
Do you or a member of your immediate family hold an interest, including a partnership interest, or option, easement, or land contract, valued at $10,000 or more in real property (other than your principal residence) for which you have not already listed the full address on Schedule F? Account for real estate held in trust.
If yes, complete Schedule H-2
☐ YES x☐ NO

10. Real Estate Contracts with Governmental Agencies
Do you or a member of your immediate family hold an interest valued at more than $10,000 in real estate, including a corporate, partnership, or trust interest, option, easement, or land contract, which real estate is the subject of a contract, whether pending or completed within the past 12 months, with a governmental agency? If the real estate contract provides for the leasing of the property to a governmental agency, do you or a member of your immediate family hold an interest in the real estate valued at more than $1,000? Account for all such contracts whether or not your interest is reported in Schedule F, H-1, or H-2. This requirement to disclose an interest in a lease does not apply to an interest derived through an ownership interest in a business unless the ownership exceeds three percent of the total equity of the business.
If yes, complete Schedule I
☐ YES x☐ NO

Statements of Economic Interests are open for public inspection.

NOTE: You MUST acknowledge your signature below before a Notary Public and complete the acknowledgment portion of the "Affirmation By All Filers."

AFFIRMATION BY ALL FILERS.

I swear or affirm that the foregoing information is full, true and correct to the best of my knowledge.

SIGNATURE OF FILER

1-16-12
DATE

COMMONWEALTH OF VIRGINIA

city/~~county~~ of Richmond to wit:

The foregoing disclosure form was acknowledged before me this 15 ~~16~~th day of January, 2012

by Robert F. McDonnell
NAME OF FILER

My commission expires 11/30/12

Kim Steinhoff
NOTARY PUBLIC

KIMBERLY F. STEINHOFF
220099

Statement of Economic Interests

SCHEDULE A

OFFICES AND DIRECTORSHIPS

NAME: **Robert F. McDonnell**

OFFICE OR POSITION HELD OR SOUGHT: **Governor of Virginia**

Identify each business of which you or a member of your immediate family is a paid officer or paid director.

NAME OF BUSINESS	ADDRESS OF BUSINESS	POSITION HELD
Frances G. and James W. McGlothlin Foundation (wife)	Abingdon, Virginia	Trustee

Statement of Economic Interests

SCHEDULE B

PERSONAL LIABILITIES

NAME: Robert F. McDonnell

OFFICE OR POSITION HELD OR SOUGHT: Governor of Virginia

Report personal liability by checking each category. Report only debts in excess of $10,000. Do not report debts to any government. Do not report loans secured by recorded liens on property at least equal in value to the loan. Report contingent liabilities below and indicate which debts are contingent.

1. My personal debts are as follows:

CHECK APPROPRIATE CATEGORIES:	CHECK ONE $10,001 TO $50,000	 MORE THAN $50,000
Banks	☒	☐
Savings institutions	☐	☐
Other loan or finance companies	☐	☐
Insurance companies	☐	☐
Stock, commodity or other brokerage companies	☐	☐
Other businesses: (State principal business activity for each creditor.)	☐	☐
______	☐	☐
______	☐	☐
Individual creditors: (State principal business or occupation for each creditor.)	☐	☐
______	☐	☐

2. The personal debts of the members of my immediate family are as follows:

CHECK APPROPRIATE CATEGORIES:	CHECK ONE $10,001 TO $50,000	 MORE THAN $50,000
Banks	☒	☐
Savings institutions	☐	☐
Other loan or finance companies	☐	☐
Insurance companies	☐	☐
Stock, commodity or other brokerage companies	☐	☐
Other businesses: (State principal business activity for each creditor.)	☐	☐
______	☐	☐
______	☐	☐
Individual creditors: (State principal business or occupation for each creditor.)	☐	☐
Medical Services	☒	☐
______	☐	☐

Statement of Economic Interests

SCHEDULE C

SECURITIES

NAME: **Robert F. McDonnell**

OFFICE OR POSITION HELD OR SOUGHT: **Governor of Virginia**

"SECURITIES" INCLUDES stocks, bonds, mutual funds, limited partnerships, and commodity futures contracts.

"SECURITIES" EXCLUDES certificates of deposit money market funds, annuity contracts, and insurance policies.

Identify each business or Virginia governmental entity in which you or a member of your immediate family, directly or indirectly, separately or together, own securities valued in excess of $10,000. Name each entity and type of security individually.

Do not list U.S. Bonds or other government securities not issued by the Commonwealth of Virginia or its authorities, agencies, or local governments. Do not list organizations that do not do business in this Commonwealth, but most major businesses conduct business in Virginia. Account for securities held in trust.

If no reportable securities, CHECK HERE _X___.

NAME OF ISSUER	TYPE OF ENTITY	TYPE OF SECURITY	CHECK ONE		
		(STOCK, BONDS, MUTUAL, ETC.)	10,001 to 50,000	50,001 to 250,000	More than 250,000
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
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			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐

Statement of Economic Interests

SCHEDULE D

PAYMENT FOR TALKS, MEETINGS AND PUBLICATIONS

NAME: **Robert F. McDonnell**

OFFICE OR POSITION HELD OR SOUGHT: **Governor of Virginia**

List each source from which you received during the past 12 months lodging, transportation, money, or any other thing of value (excluding meals or drinks coincident with a meeting) with combined value exceeding $200 for your presentation of a single talk, participation in one meeting, or publication of a work in your capacity as an officer or employee of your agency.

List payments or reimbursements by an advisory or governmental agency only for meetings or travel outside the Commonwealth.

List a payment even if you donated it to charity.

Do not list information about payment if you returned it within 60 days or if you received it from an employer already listed under Item 6 or from a source of income listed on Schedule F.

If no payment must be listed, CHECK HERE ____.

PAYER	APPROXIMATE VALUE	CIRCUMSTANCES	TYPE OF PAYMENT (E.G. HONORARIUM, TRAVEL REIMBURSEMENT, ETC.)
House Republican Campaign Committee	225	**Guest speaker at Speaker Howell's Retreat at the Homestead**	**Travel expenses**
Dominion Resources	396.92	**Flight from Salt Lake City to Richmond to be guest speaker at NGA meeting**	**Flight**
AmeriGroup Corporation	4,026.00	**Flight from TN to Charlottesville. Guest speaker at AmeriGroup event**	**Flight**
University of Notre Dame	2,205	**Costs associated with speaking at the University**	**Lodging, meals and tickets**
Alex McMurtrie	3,080.68	**Flight from Richmond to South Bend to Richmond to speak at Notre Dame**	**Flight**
Dominion Resources	294.65	**Flight to GA – Southern Regional Carbon Sequestration Partnership Meeting**	**Flight**
Alpha Natural Resources	2,120.68	**Flight from Richmond to Florida**	**Flight**
VEDP	652.70	**Bond Rating Agencies Trip to NYC**	**Travel Expenses**
VEDP	3,457.43	**Bond Rating Agencies Trip to NYC**	**Travel Expenses**
****VEDP**	14,812.68	**Trade Mission to Asia**	**Travel Expenses**
VEDP	12,151.64	**Trade Mission to Paris Air Show**	**Travel Expenses**

VEDP	460.66	Marketing trip to Chicago	Travel Expenses
VEDP	2,241.69	Marketing trip Boston	Travel Expenses
**VEDP	9,806.27	Trade Mission to Israel	Travel Expenses
*Lodging and travel expenses for Republican Governor's Association meetings reported on Opportunity Virginia PAC or RGA			
**A similar expense was incurred by the First Lady on these trips			

Statement of Economic Interests

SCHEDULE E

GIFTS

NAME: Robert F. McDonnell

OFFICE OR POSITION HELD OR SOUGHT: Governor of Virginia

List each business, governmental entity, or individual that, during the past 12 months, (i) furnished you with any gift or entertainment at a single event and the value received by you exceeded $50 in value, or (ii) furnished you with gifts or entertainment in any combination and the value received by you exceeded $100 in total value; and for which you neither paid nor rendered services in exchange. List each such gift or event. Do not list entertainment events unless the average value per person attending the event exceeded $50 in value. Do not list business entertainment related to your private profession or occupation. Do not list gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position. Do not list campaign contributions publicly reported as required by Chapter 9.3 (§ 24.2-900 et seq.) of Title 24.2 of the Code of Virginia.

NAME OF BUSINESS ORGANIZATION OR INDIVIDUAL	CITY OR COUNTY AND STATE	GIFT OR EVENT	APPROXIMATE VALUE
McLean Hotel, LLC	McLean, VA	Lodging	$250
Richmond Ballet	Richmond, VA	4 tickets to ballet	$320
Helo Air, Inc.	Richmond, VA	Flight from Richmond to Washington, DC	$2,148
Martin Brown	Richmond, VA	Book	$65
Ambassador Audrey Marks	Washington, DC	Miscellaneous Gifts	$95
ITT Defense & Info Solutions	McLean, VA	Moncular Night Vision	$4,028
J Crew	New York, NY	Suit jacket, pants and shirt	$665
Tien Jing Group	China	Books and Beverages	$225
State Fair of Virginia	Richmond, VA	20 tickets to fair	$640
MVM, Inc.	Ashburn, VA	Lodging	$8,326.50
Capital One Services	Richmond, VA	8 tickets to baseball game at Nationals Park	$800
JFK Center for Performing Arts	Washington, DC	10 tickets to play	$450
Ray Bottom	Hampton, VA	Flight/Wytheville to Richmond	$1,484.70
Ray Bottom	Hampton, VA	Flight/Norfolk to Charlottesville to Norfolk	$1,060.50
DeltaStar, Inc.	Lynchburg, VA	Meals and Entertainment	$1,892.81
Jonnie R. Williams	Manakin Sabot, VA	Lodging and entertainment	$2,268
Alex McMurtrie	Richmond, VA	Flight to South Bend	$9,242.04
University of Virginia	Charlottesville, VA	9 tickets to UVA football game	$405

SCHEDULE E CONTINUED

Jam Theatricals	Richmond, VA	4 concert tickets to concert	$270.00
Bookbinders Restaurant	Richmond, VA	gift card	$250.00
Matthew LeBretton	Boston, MA	2 pairs of New Balance Shoes 1 NBx Windblocker jacket	$289.98 $129.99
Norfolk Southern Corp.	Richmond, VA	HO Train set	$425
Barboursville Vineyards	Barboursville, VA	Lodging and entertainment	$3,000
University of VA	Charlottesville, VA	10 tickets to UVA football game	$700
Bruce Thompson	Virginia Beach, VA	Food items	$100.00

The below list gifts were received on economic development overseas trips:

Sumitomo (Mr. Kato)	Asia	Desk clock	$100
Canon	Asia	Plate & Display Stand	$250
K Line Lunch	Asia	Lacquerware tray & dresser box	$75
MHI	Asia	Aircraft Model	$75
APP Corp	Asia	Personal Organizer Horse drawn carriage	$100
FOSUN	Asia	Crystal apple	$150
Shanghai ZhenHua Heavy Industries	Asia	Crystal display piece Silk scroll feat	$75 $250
China Communications	Asia	Decorative plate	$75
China Ocean Shipping Group	Asia	Commemorative Model Freight Liner	$100
Dandong Port Co. Ltd. & Smithfield Foods	Asia/Smithfield, VA	Jade Sculpture	$150
China Northern Railway & Locomotive Corp.	Asia	Model high-speed train	$100
Kim Maloney	Asia	Ties, silk scarf, green Pottery vase	$525
Samsung SDS	Asia	Decorative screen	$350
Gyeonggi Province	Asia	Tie, framed artwork, and jewelry box	$230
Minds in Motion	Israel	Commemorative Plaque in Wooden Box Jerusalem pen; Desk Clock	$100

Ofra Stauss	Israel	Candlesticks	$250
ZIM	Israel	Model Ship and Wall Plaque	$100
Gilat Satellite	Israel	Coffee Table Book & Silver Table Decoration	$75
Technocraft & Confederation of Export Units	India	Decorative Bowl	$100
Quest Global Engineering	India	Wall Art: Peacock	$75
Infosys	India	Silver goblet	$75
Christ University	India	Wooden Wall Art & Silver Decorative Bowl	$250

Statement of Economic Interests

AMENDEDED SCHEDULE E

GIFTS

NAME: Robert F. McDonnell

OFFICE OR POSITION HELD OR SOUGHT: Governor of Virginia

List each business, governmental entity, or individual that, during the past 12 months, (i) furnished you with any gift or entertainment at a single event and the value received by you exceeded $50 in value, or (ii) furnished you with gifts or entertainment in any combination and the value received by you exceeded $100 in total value; and for which you neither paid nor rendered services in exchange. List each such gift or event. Do not list entertainment events unless the average value per person attending the event exceeded $50 in value. Do not list business entertainment related to your private profession or occupation. Do not list gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position. Do not list campaign contributions publicly reported as required by Chapter 9.3 (§ 24.2-900 et seq.) of Title 24.2 of the Code of Virginia.

NAME OF BUSINESS ORGANIZATION OR INDIVIDUAL	CITY OR COUNTY AND STATE	GIFT OR EVENT	APPROXIMATE VALUE
McLean Hotel, LLC	McLean, VA	Lodging	$250
Richmond Ballet	Richmond, VA	4 tickets to ballet	$320
Helo Air, Inc.	Richmond, VA	Flight from Richmond to Washington, DC	$2,148
Martin Brown	Richmond, VA	Book	$65
Ambassador Audrey Marks	Washington, DC	Miscellaneous Gifts	$95
*****ITT Defense & Info Solutions**	**McLean, VA**	**Moncular Night Vision**	**$4,028**
J Crew	New York, NY	Suit jacket, pants and shirt	$665
Tien Jing Group	China	Books and Beverages	$225
State Fair of Virginia	Richmond, VA	20 tickets to fair	$640
MVM, Inc.	Ashburn, VA	Lodging	$8,326.50
Capital One Services	Richmond, VA	8 tickets to baseball game at Nationals Park	$800
JFK Center for Performing Arts	Washington, DC	10 tickets to play	$450
Ray Bottom	Hampton, VA	Flight/Wytheville to Richmond	$1,484.70
Ray Bottom	Hampton, VA	Flight/Norfolk to Charlottesville to Norfolk	$1,060.50
DeltaStar, Inc.	Lynchburg, VA	Meals and Entertainment	$1,892.81
Jonnie R. Williams	Manakin Sabot, VA	Lodging and entertainment	$2,268
Alex McMurtrie	Richmond, VA	Flight to South Bend	$9,242.04
University of Virginia	Charlottesville, VA	9 tickets to UVA football game	$405
***** Moncular Night Vision Goggles donated to Virginia State Police for law enforcement purposes**			

Statement of Economic Interests

SCHEDULE F

BUSINESS INTERESTS

NAME: Robert F. McDonnell

OFFICE OR POSITION HELD OR SOUGHT: Governor of Virginia

Complete this Schedule for each self-owned or family-owned business (including rental property, a farm, or consulting work), partnership, or corporation in which you or a member of your immediate family, separately or together, own an interest having a value in excess of $10,000.

If the enterprise is owned or operated under a trade, partnership, or corporate name, list that name; otherwise, merely explain the nature of the enterprise. If rental property is owned or operated under a trade, partnership, or corporate name, list the name only; otherwise give the address of each property. Account for business interests held in trust.

NAME OF BUSINESS, CORPORATION, PARTNERSHIP, FARM; ADDRESS OF RENTAL PROPERTY	CITY OR COUNTY AND STATE	NATURE OF ENTERPRISE (FARMING, LAW, RENTAL PROPERTY, ETC.)	GROSS INCOME		
			50,000 or less	50,001 to 250,000	More than 250,000
MoBo Real Estate Partners, Inc. 3112 Sandfiddler Road, VA, Beach VA 23456 3113 Sandfiddler Road, VA Beach, VA 23456	Chesapeake, VA	Rental Property	☐	X	☐
				☐	☐
Race Horse Properties, LLC 4705 Columbus Street Virginia Beach, VA 23462	Virginia Beach, VA	Rental Property	☐	X	☐
Blue Ridge Heaven, LLC 770 Devil Knob Loop Wintergreen, VA 22958	Chesapeake, VA	Rental Property	X	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
Gross income accounts above are for proportionate ownership interest in total gross revenue			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐

Statement of Economic Interests

SCHEDULE H-1

REAL ESTATE—STATE OFFICERS AND EMPLOYEES ONLY

NAME: Robert F. McDonnell

OFFICE OR POSITION HELD OR SOUGHT: Governor of Virginia

List real estate other than your principal residence in which you or a member of your immediate family holds an interest, including a partnership interest, option, easement, or land contract, valued at $10,000 or more. Each parcel shall be listed individually.

LIST EACH LOCATION (STATE AND COUNTY OR CITY) WHERE YOU OWN REAL ESTATE.	DESCRIBE THE TYPE OF REAL ESTATE YOU OWN IN EACH LOCATION (BUSINESS, RECREATIONAL, APARTMENT, COMMERCIAL, OPEN LAND, ETC.)	IF THE REAL ESTATE IS OWNED OR RECORDED IN A NAME OTHER THAN YOUR OWN, LIST THAT NAME.
Accounted for on Schedule F		

SA138

Maureen Mcdonnell

From: Caroline Birgmann
Sent: Fri 2/03/2012 2:58 PM (GMT -5)
To: Maureen Mcdonnell
Cc:
Bcc:
Subject: MD E-mail Addresses
Attachments: EMAIL ADDRESSES.xlsx

Hi, Maureen!

I hope you are doing well! Jonnie Williams, Sr. has asked me to compile a list of MD's in the area for you to include on your invitation list for the event coming up the end of February. I have attached a list of about 35 MD's in the Richmond area for you to invite. Just in case they do inquire, is there any way I can get a copy of the invitation that you send out?

Let me know if you need anything else from me! Thanks!

PS: I saw the Governor live on Fox the other morning... He did such a great job!

Caroline Birgmann
Manager of Physician Sales & Event Marketing

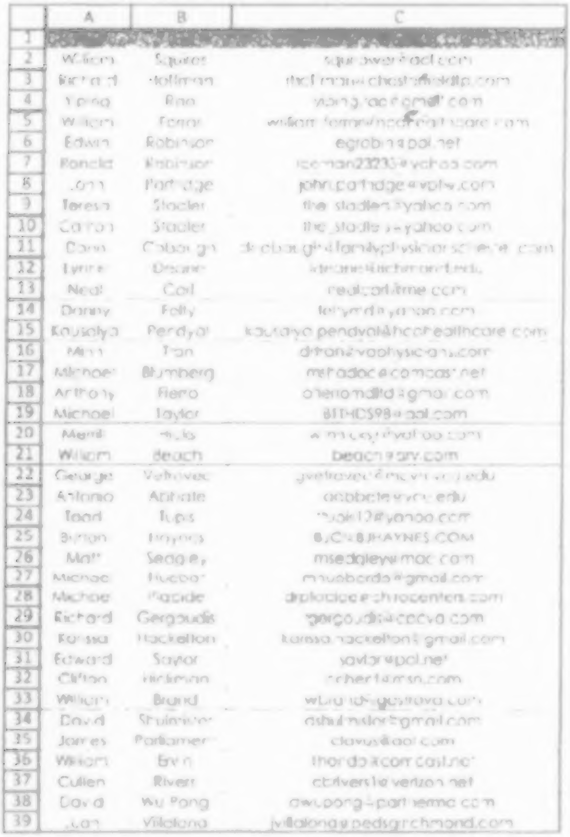
Rock Creek Pharmaceuticals, Inc.
4470 Cox Rd
Suite 110
Glen Allen, VA 23060

Cell: 804-614-8053
Email: cbirgmann@rockcreekpharmaceuticals.com

http://www.Anatabloc.com
http://www.CiGRX.com

NASDAQ : CIGX

GOVERNMENT EXHIBIT
299
3:14cr12

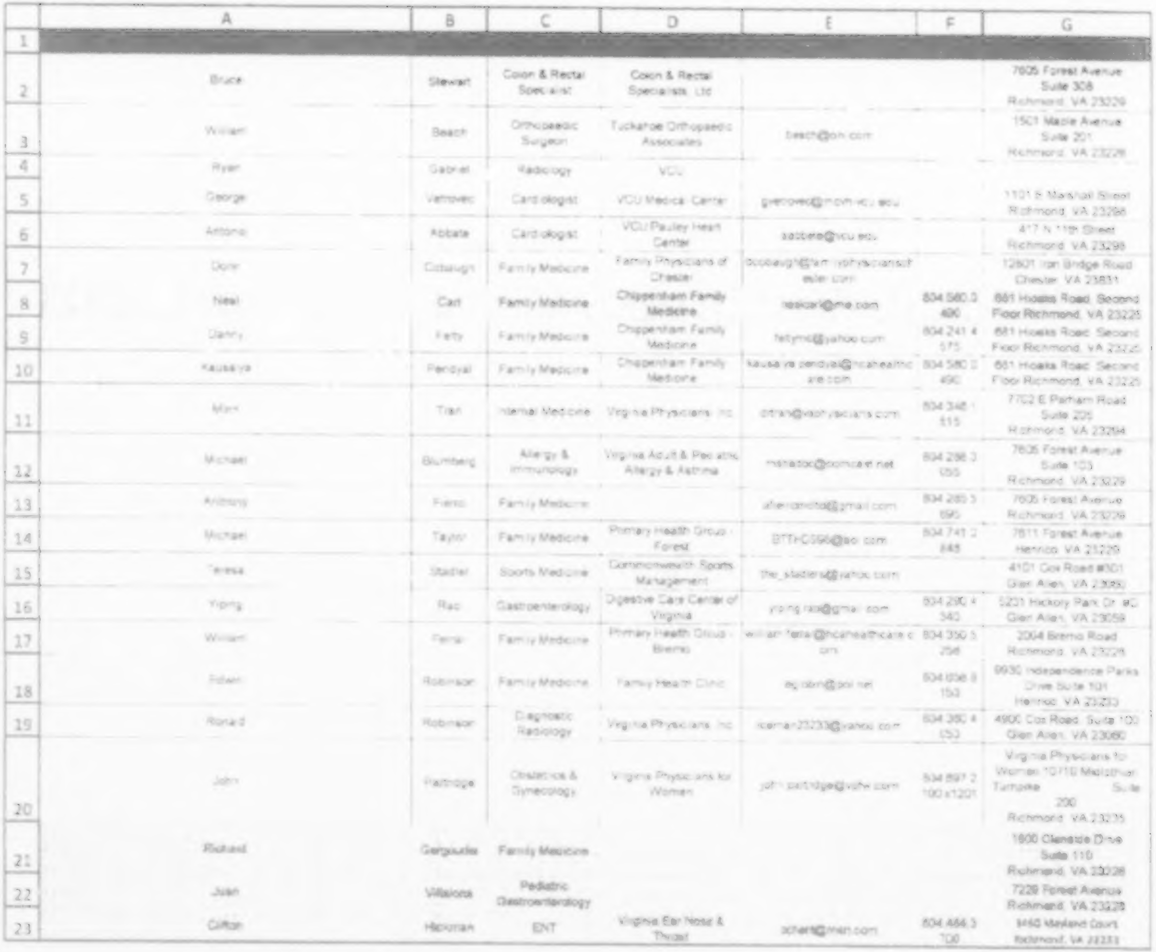


	A	B	C
1	[redacted]	[redacted]	[redacted]
2	William	Squires	squirower@aol.com
3	Richard	Hoffman	rhoffman@chesterfieldlp.com
4	Yong	Rao	yong.rao@gmail.com
5	William	Farrar	william.farrar@hcahealthcare.com
6	Edwin	Robinson	egrobin@aol.net
7	Ronald	Robinson	iceman23235@yahoo.com
8	John	Partridge	john.partridge@vpfw.com
9	Teresa	Stadler	the_stadlers@yahoo.com
10	Carron	Stadler	the_stadlers@yahoo.com
11	Dana	Cabaugh	[illegible]@familyphysicianscentre.com
12	Lynne	Deane	ldeane@richmond.edu
13	Neal	Carl	nealcarl@me.com
14	Danny	Felty	feltymd@yahoo.com
15	Kausalya	Pendyal	kausalya.pendyal@hcahealthcare.com
16	Minh	Tran	drtran@vaphysicians.com
17	Michael	Blumberg	mhradoc@comcast.net
18	Anthony	Fierro	afierromdltd@gmail.com
19	Michael	Taylor	BTTHDS98@aol.com
20	Merrill	Hicks	[illegible]@yahoo.com
21	William	Beach	beach@arv.com
22	George	Vetrovec	gvetrovec@mcvh-vcu.edu
23	Antonio	Abbate	aabbate@vcu.edu
24	Todd	Tupis	ttupis12@yahoo.com
25	Byron	Haynes	BJCN@BJHAYNES.COM
26	Matt	Sedgley	msedgley@mac.com
27	Michael	Hubbard	mhubbardo@gmail.com
28	Michael	Placide	drplacide@chirocenters.com
29	Richard	Gergoudis	rgergoudis@cccva.com
30	Karissa	Hackelton	karissa.hackelton@gmail.com
31	Edward	Saylor	saylor@aol.net
32	Clifton	Hickman	richer1@msn.com
33	William	Brand	wbrand@gastrova.com
34	David	Shulmister	dshulmister@gmail.com
35	James	Parliament	clavus@aol.com
36	William	Ervin	thordo@comcast.net
37	Cullen	Rivers	cbrivers1@verizon.net
38	David	Wu Pong	dwupong@parthenma.com
39	Juan	Villalona	jvillalona@pedsofrichmond.com

From: Maureen Mcdonnell <Maureen@bobmcdonnell.com>
Sent: Tuesday, February 7, 2012 10:46 PM
To: Scarbrough, Sarah (GOV) <Sarah.Scarbrough@governor.virginia.gov>
Subject: VADocsList.xlsx
Attach: VADocsList.xlsx

Please add these docs to the Healthcare Leaders event, and mail invites today. Thanks!

GOVERNMENT
EXHIBIT
304
3:14cr12



	A	B	C	D	E	F	G
1							
2	Bruce	Stewart	Colon & Rectal Specialist	Colon & Rectal Specialists, Ltd			7605 Forest Avenue Suite 308 Richmond, VA 23229
3	William	Beach	Orthopaedic Surgeon	Tuckahoe Orthopaedic Associates	beach@oh.com		1501 Maple Avenue Suite 201 Richmond, VA 23226
4	Ryan	Gabriel	Radiology	VCU			
5	George	Vetrovec	Cardiologist	VCU Medical Center	gvetrovec@mcvh-vcu.edu		1101 E Marshall Street Richmond, VA 23298
6	Antonio	Abbate	Cardiologist	VCU Pauley Heart Center	aabbate@vcu.edu		417 N 11th Street Richmond, VA 23298
7	Donn	Cobaugh	Family Medicine	Family Physicians of Chester	dcobaugh@familyphysiciansofchester.com		12801 Iron Bridge Road Chester, VA 23831
8	Neal	Carl	Family Medicine	Chippenham Family Medicine	nealcarl@me.com	804 580 3490	661 Hioaks Road, Second Floor Richmond, VA 23225
9	Danny	Fetty	Family Medicine	Chippenham Family Medicine	fettymd@yahoo.com	804 241 4575	661 Hioaks Road, Second Floor Richmond, VA 23225
10	Kausalya	Pendyal	Family Medicine	Chippenham Family Medicine	kausalya.pendyal@hcahealthcare.com	804 580 3490	661 Hioaks Road, Second Floor Richmond, VA 23225
11	Minh	Tran	Internal Medicine	Virginia Physicians, Inc	dtran@vaphysicians.com	804 346 1515	7702 E Parham Road Suite 205 Richmond, VA 23294
12	Michael	Blumberg	Allergy & Immunology	Virginia Adult & Pediatric Allergy & Asthma	mshatdoc@comcast.net	804 288 3055	7605 Forest Avenue Suite 103 Richmond, VA 23229
13	Anthony	Fierro	Family Medicine		afierromdltd@gmail.com	804 285 5695	7605 Forest Avenue Richmond, VA 23229
14	Michael	Taylor	Family Medicine	Primary Health Group - Forest	BTTHC596@aol.com	804 741 2845	7611 Forest Avenue Henrico, VA 23229
15	Teresa	Stadler	Sports Medicine	Commonwealth Sports Management	the_stadlers@yahoo.com		4101 Cox Road #301 Glen Allen, VA 23060
16	Yiping	Rao	Gastroenterology	Digestive Care Center of Virginia	yiping.rao@gmail.com	804 290 4340	5231 Hickory Park Dr. #C Glen Allen, VA 23059
17	William	Ferrai	Family Medicine	Primary Health Group - Bremo	william.ferrai@hcahealthcare.com	804 350 5256	2004 Bremo Road Richmond, VA 23226
18	Edwin	Robinson	Family Medicine	Family Health Clinic	ejrobin@aol.net	804 658 8153	9930 Independence Parks Drive Suite 101 Henrico, VA 23233
19	Ronald	Robinson	Diagnostic Radiology	Virginia Physicians, Inc	iceman23233@yahoo.com	804 360 4053	4900 Cox Road, Suite 100 Glen Allen, VA 23060
20	John	Partridge	Obstetrics & Gynecology	Virginia Physicians for Women	john.partridge@vpfw.com	804 897 2100 x1201	Virginia Physicians for Women 10710 Midlothian Turnpike Suite 200 Richmond, VA 23235
21	Richard	Gergoudis	Family Medicine				1800 Glenside Drive Suite 110 Richmond, VA 23226
22	Juan	Villalona	Pediatric Gastroenterology				7229 Forest Avenue Richmond, VA 23226
23	Clifton	Hackman	ENT	Virginia Ear Nose & Throat	ochent@msn.com	804 484 3700	8460 Mayland Court Richmond, VA 23233

	A	B	C	D	E	F	G
24	Craig	[illegible]	Cardiologist	Virginia Cardiovascular Specialists		804 288 4 627	7611 Forest Avenue Suite 200 Richmond, VA 23225
25	Alan	Burns	Endocrinology	Virginia Diabetes & Endocrinology PC		804 272 7 710	348 Browns Hill Court Midlothian, VA 23113
26	Peter	[illegible]	Nephrology	Richmond Nephrology Associates		804 323 6 903	671 Hioaks Road Suite B Richmond, VA 23225
27	William	Brand	Gastroenterology	Gastrointestinal Specialists, Inc	wbrand@gastrova.com	804 285 9 208	7611 Forest Avenue Suite 410 Richmond, VA 23229
28	Ritu	[illegible]	Pulmonology	Pulmonary Associates of Richmond		804 320 8 243	1000 Boulders Pkwy Suite 200 Richmond, VA 23225
29	Peter	Coutakis	Rheumatology	Arthritis Specialists Ltd		804 323 1 401	1401 Johnston Willis Drive Suite 1220 Richmond, VA 23235
30	Ronald	Landess	Podiatry	Ronald M. Landess D.P.M.			5100 Old Richmond Avenue Suite 524 Richmond, VA 23226
31							
32	**Dr. Michael Mullan**						
33	Dir, Roskamp Institute						
34	2040 Whitfield Avenue						
35	Sarasota FL 34243						
36							
37	**Dr. Paul Ladenson**						
38	Dir, Endocrinology & Metabolism						
39	Johns Hopkins Medical Institute						
40	1830 E. Monument Street, Ste 333						
41	Baltimore MD 21287-0003						
42							
43	**Dr. Keith Derco**						
44	12208 Ascot Glen Ct						
45	Glen Allen VA 23059						
46							
47	**Dr. John Clore, MD**						
48	VCU Medical Center, Internal Medicine						
49	1200 East Broad Street						
50	PO Box 980155						
51	Richmond VA 23298						
52							
53	**Dr. William Beach**						
54	Tuckahoe Orthopedic						

	A	B	C	D	E	F	G
55	1501 Maple Avenue, Ste 200						
56	Richmond VA 23226						
57							
58	**Dr. L. D. Britt**						
59	825 Fairfax Avenue						
60	Hofheimer Hall, Suite 610						
61	Norfolk VA 23507						
62							
63	**Dr. James Carraway**						
64	Aesthetic Skin Care Center						
65	5589 Greenwich Road, Suite 150						
66	Virginia Beach VA 23462						
67							
68	**Dr. William B. Muskowitz**						
69	VCUMC, Children's Hospital of Richmond						
70	1001 E. Marshall Street						
71	Richmond VA 23258						
72							
73	**Dr. Ron Clark**						
74	VCUMC, Ambulatory Care Center						
75	417 N 11th Street						
76	Richmond VA 23298						
77							
78	**Dr. Julious 'Jody' Smith, III**						
79	West End Orthopedic Clinic						
80	5899 Bremo Road, Suite 100						
81	Richmond VA 23226						
82							
83	**Dr. Douglas Puryear**						
84	Sleep Disorders Centers of Pulmonary Associates						
85	2354 Colony Crossing Place						
86	Midlothian VA 23112						
87							
88	**Dr. Anthony Sliwinski**						
89	Virginia Urology						
90	9105 Stony Point Drive						
91	Richmond VA 23235						
92							

	A	B	C	D	E	F	G
93	**Dr. Ron Frenkel**						
94	A.A.P.F.C.S						
95	1001 Caton Drive						
96	Virginia Beach VA 23454						
97							
98	**Dr. John Sheppard**						
99	PO Box 226						
100	Cape Charles VA 23320						
101							
102	**Dr. Gordon D. Ginder**						
103	VCU Massey Cancer Center						
104	401 College Street						
105	Richmond VA 23298						
106							
107	**Dr. Tyler Perkinson**						
108	904 W. 49th Street						
109	Richmond VA 23225						

From: Scarbrough, Sarah (GOV) <Sarah.Scarbrough@governor.virginia.gov>
Sent: Wednesday, February 08, 2012 10:09 AM
To: Schramm, Elaina (GOV)
Subject: More names

The First Lady and Governor were going over list last night for the healthcare industry event. The Governor wants to make sure the people below are included in the list. Can you tell me if they are already on there. If not, do you have information on who these folks are that you can send me?

- Head officers at VCU/MCV, UVA, EVMS, Massey Cancer Center
- President and Chief Medical Officers at top 10 health systems in VA (he specifically mentioned Sontera, Riverside, and Bon Secours, but wants the top 10).

The First Lady just sent a list of about 50 docs to be added to the list, so we are sending those out today. The other invites went out yesterday!

Thanks for your help!

Sarah

GOVERNMENT EXHIBIT
306
3:14cr12

Maureen Mcdonnell

From: Maureen Mcdonnell
Sent: Thu 2/09/2012 3:13 PM (GMT -5)
To: rfmva09@gmail.com; Bob McDonnell
Cc: EIGE Jasen [redacted]
Bcc:
Subject: FW: Anatabine clinical studies - UVA, VCU, JHU
Attachments: RFA_LOI and Proposals_20Oct2011.xls; ATT00001.htm; UVA CALL_29Nov2011.doc; ATT00002.htm

Here's the info from Jonnie. He has calls in to VCU & UVA & no one will return his calls.

From: Jonnie Williams jr. [mailto:jrw@starscientific.com]
Sent: Wednesday, February 08, 2012 3:14 PM
To: Maureen Mcdonnell
Subject: Fwd: Anatabine clinical studies - UVA, VCU, JHU

Please let me know if this helps. I have not heard from my father on this yet.

Jonnie R. Williams Jr.

Begin forwarded message:

> **From:** "Ryan Lanier" <rlanier@rockcreekpharmaceuticals.com>
> **Date:** February 8, 2012 10:58:30 AM EST
> **To:** "Jonnie Williams Jr" <jrw@starscientific.com>
> **Subject: Anatabine clinical studies UVA, VCU, JHU**
>
> Hi Jonnie,
>
> Here are two attachments that I hope will help you.
>
> First, we (Curt, Paul, Bob, and me) had a call with several UVA officials on 29 November 2011 to discuss UVA's role in submitting an application to the VA Tobacco Commission to fund these studies. I have attached a document that Curt created for Paul in preparation of that meeting, and it includes a description of the officials at UVA that were on the call. In addition, below I have included their email addresses, and a UVA website where further contact info and bios can be found:
>
> Mark Crowell: mcrowell@virginia.edu
>
> Phil Parrish: parrish@virginia.edu
>
> Sharon Krueger: sharonkrueger@virginia.com
>
> UVA Vice President for Research organizational chart (with contact info and bios):
> http://www.virginia.edu/vpr/organization.html
>
> Second, I have attached a spreadsheet that lists a bit of detail (perhaps more than you need) about the investigators that submitted proposals (or intended to – there are a couple I never received) for clinical studies with anatabine. These investigators were from UVA, VCU, and Johns Hopkins.

GOVERNMENT EXHIBIT
312
3:14cr12

Let me know if you have any questions about this info.

Thanks,
Ryan

Ryan K. Lanier, PhD
Chief Clinical Research Scientist
Rock Creek Pharmaceuticals, Inc.
55 Blackburn Center
Gloucester, MA 01930
Office: 978-283-1374
Fax: 978-283-1371

Rock Creek Pharmaceuticals, Inc. Anatabine Planning Grant RFA Letters of Intent and Study Proposals

No. (order received)	Date Letter Received	Primary Investigator	Co-investigator(s)	PI Affiliation	Proposed Indication	Proposed Use of Planning Grant	No. Subjects	Study Time Period	Responded to investigator, invited Proposal	RDA Sent to Investigator?	RDA Signed by Investigator and/or University?	Proposal Submitted (Date)?	Outcome Measures Proposed	Study Design
1.	1-Aug-2011	Ronald B. Turner	None specified	UVA: Dept of Pediatrics	Airway inflammation response to rhinovirus infection (NF-κB mediated)	Investigator-initiated IND and dev of placebo	200; 3 cohorts (UVA students - healthy)	9-12 months	YES	Will be handled by Bob P. and Robert Jackson (UVA)	YES	YES	Not specified	Placebo controlled
2.	11-Aug-2011	Brian H. Annex	Christopher Kramer	UVA: Dept of Internal Med, Division of Cardiovascular Medicine	Peripheral Arterial Disease (NF-κB mediated)	Pilot study? Test 3 measures, establish natural history, determine sample size for larger trial	Not specified	6 months?	YES	Will be handled by Bob P. and Robert Jackson (UVA)	YES	YES	Test 3 measures, establish natural history, correlate perfusion changes to functional ability	Not specified
3.	19-Aug-2011	Eugene J. Barrett	Zhenqi Liu	UVA School of Med	Systemic inflammation & vascular function in pts with metabolic syndrome	Not specified	Not specified	12-18 weeks	YES	Will be handled by Bob P. and Robert Jackson (UVA)	YES	YES	Circulating levels of cytokines; functional measures of arterial health	Placebo controlled
4.	17-Aug-2011	John Clore	None specified	VCU	Diabetes (inflammation mediated by NF-κB)	Not specified	~100	3-6 months	YES	YES (via Bob Pollack)	YES	YES	Surrogate markers for inflammation, insulin sensitivity in a subset	Double blind, placebo controlled
5.	19-Aug-2011	Daniel Nixon	None specified	VCU: Dept of Internal Med, Division of Infectious Disease, HIV/AIDS Center	Inflammation related to HIV - infection	Pilot study?	Not specified	Not specified	YES	Will be handled by Bob P. and Alanda Harry (VCU)	YES	Expected week of Sep 26	Primary: CRP, IL-6, sCD14; Secondary: safety, tolerability, changes in CD4+ lymphocyte #	Placebo controlled
6.	19-Aug-2011	Richard Sterling	None specified	VCU: Division of Gastroenterology, Section of Hepatology	HCV and NAFLD (inflammation mediated by NF-κB)	Not specified	Not specified	Not specified	YES	Will be handled by Bob P. and Alanda Harry (VCU)	YES	YES	Primary: improvements in liver enzymes; Secondary: biomarkers of inflammation, oxidative stress, & fibrosis	2 specific studies (HCV & NAFLD) - Double blind, placebo controlled
7.	19-Aug-2011	Jonathan Truwit	None specified (multi-site: UVA, VCU, Baptist Wake Med Ctr)	UVA	Acute Kidney Injury (AKI) (inflammatory processes)	Not specified	Not specified	Not specified	YES	Will be handled by Bob P. and Robert Jackson (UVA)	YES	NO	Primary: progression of renal injury (blood & urine biomarkers & chemokines); Secondary: mortality & length of stay	Randomized, controlled (efficacy & safety)
8.		Edward (Pete) Miller	None specified	JHU	CVD risk							NO		
9.	16-Sep-11	Jennifer Mammen	UVA	JHU	Thyroid dysfunction in pts with HCV on IFN-gamma therapy	Support for time, admin costs & biostats consultation	Not specified	Not specified	YES	Bob P. will handle	Bob P. will handle	NO	Euthyroid patients being treated with IFN-gamma	Randomized controlled (euthyroid patients)

Preparation for VA Call

Time of call: 4 PM

Call number: 888 527 7995   code 6591391#

Purpose of Call

This is a call set up by Sharon Krueger in the Office of the VP for Research @ UVA.

It is a call with Mark Crowell, VP for Innovation Partnerships & Communication, Sharon Krueger (oversees UVAs Strategic partnerships), and Phil Parrish VPR Office.

They want to know:

Our ideas for UVA and Rock Creek Partnership

Scope of Work to be done at UVA v. VCU and Hopkins

Business Arrangements

Potential Challenges

Successful Outcome Target of Call- UVA accepts role as applicant for a T/C grant and manages the process

Background (Paul Perito)

Star Scientific is a Virginia based company that has been making and selling various products to reduce tobacco related harm for about a decade, operating out of its offices in the DC area and its manufacturing plant in Chase City, Virginia. In 2008, Star formed a new company, Rock Creek Pharmaceuticals, to develop new and innovative products to reduce tobacco related harm.

Rock Creek Pharma developed a nutritional product, called CigRx, which was built around anatabine, one of the non-addictive alkaloids found in Solanaceous food plants (potato, peppers, eggplants, tomatoes, tobacco, etc.) which had weak nicotinic activity, a longer half life then nicotine, and which might reduce tobacco craving. Extensive pre-clinical testing proved it safe, and the product was put on the market.

Concurrently, researchers at the Roskamp Institute in Florida and the Johns Hopkins University conducted pre-clinical research with anatabine and found it to be one of a few compounds that interacts with the inflammatory pathways at the level of NF-kappa-B, and to be active in vitro and in animal models of autoimmune thyroiditis and Alzheimer's disease.

The Head of Endocrinology at Hopkins, Dr. Paul Ladenson, set up a scientific conference in June of 2011 to review the findings and discuss potential next steps. Rock Creek was interested, but it was clear that funding research beyond the most basic level was beyond the ability of the company. The company was able to provide a small number of protocol development grants to interested researchers. This resulted in protocols being developed in the following areas:

RB Turner	UVA Pediatrics	NF-KB mediated airway inflammation
BH Annex	UVA Cardiology	Peripheral Vascular Disease
EJ Barrett	UVA Medicine	Inflammation due to Metabolic Syndrome
J Truwitt	UVA nephrology	Acute Kidney Injury
J Mammen	UVA & JHU	Thyroid dysfunction due to INF Gamma therapy
J Clore	VCU	Adult Onset Diabetes Mellitus
D Nixon	VCU	HIV Associated Inflammation
R Sterling	VCU Gastroenterology	Hepatitis C associated inflammation
E Miller	JHU	Cardiovascular Risk (CRP)

The governor of Virginia and his wife became interested, and asked the company to present the results of the symposia at the Governor's mansion. After reviewing the material the governor asked three questions:

1. Was there enough evidence to suggest that this might be an important scientific finding?
2. Would the findings, if positive, have the potential for significant health gains for Virginia?
3. Would successful findings result in good jobs in economically depressed counties in Virginia?

Hearing affirmative answers to all three questions, he suggested a grant be made to the Tobacco Commission.

Since grant applications to the Tobacco Commission must be made by a not for profit entity, and since the majority of the applications were from UVA, we hoped that UVA would be willing to serve as the host facility for the grant.

Our ideas for UVA and Rock Creek Partnership- UVA would submit a grant to the T/C, administrate the grant, manage all funds and act as the host institution. Funded studies at other institutions would be managed as collaborating investigators under the grant as per multi-site trials.

Scope of Work to be done at UVA v. VCU and Hopkins- The majority of the work (4 studies) would be at UVA,1 study jointly at VCU AND JHU, 3 studies at VCU and one study at JHU.

Business Arrangements- Usual grant management by UVA with co-investigators at other institutions. Rock Creek Pharma provides scientific and toxicological information under CDA, and supplies at our cost. Rock Creek asks for no funding, and expects to neither receive nor grant funding for this project.

Potential Challenges- Star Scientific owns Star Tobacco, a tobacco company.

Rock Creek Pharma has been set up as an independent entity from Star Tobacco and receives no funding from the sale of tobacco.

Successful results will result in a net gain for Rock Creek Pharma, how does this benefit Virginia?

Rock Creek Pharma and Star Scientific currently manufacture products in New Jersey and Pennsylvania. If the company has sustained, successful, positive growth the plan is to set up our plant in Chase City as our manufacturing facility, with direct gains in high quality, non-tobacco, manufacturing jobs in the tobacco growing region of Virginia.

As the grant will be administered by UVA, and 90% of the research will be done in Virginia, at Virginia institutions, 90% of the money invested will go to research in the State, and support in-state academic institutions.

Is this a sound use of precious research capacity?

We don't know. That is why we need to do the research. There are currently no effective nutritional or pharmacological interventions for NF-Kappa-B mediated inflammation.

Who will manage the IND/NDA or related FDA paperwork?

Anatabloc™ brand of anatabine nutritional supplement, is currently lawfully marketed as a nutritional supplement. It may be studies without and IND or FDA application as a nutritional adjunct to the medical management of any condition, provided that no claim is made that it is a specific medical treatment for any disease. Rock Creek Pharma will not supply anatabine for any study developing anatabine as anything other than a lawfully marketed nutritional supplement.

Maureen Mcdonnell

From: Maureen Mcdonnell
Sent: Fri 2/10/2012 9:27 AM (GMT -5)
To: EIGE Jasen
Cc:
Bcc:
Subject: Re: Anatabine clinical studies - UVA, VCU, JHU

Pls call Jonnie today get him to fill u in on where this is at. Gov wants to know why nothing has developed w studies after Jonnie gave $200,000. I'm just trying to talk w Jonnie **Gov wants to get** this going w VCU MCV. Pls let us know what u find out after we return. Jonnie's cell is [redacted]
Thanks, -mm
Sent from my Verizon Wireless BlackBerry

From: Jasen [redacted]
Date: Thu, 9 Feb 2012 20:41:16 -0800
To: Maureen Mcdonnell<Maureen@bobmcdonnell.com>
Subject: Re: Anatabine clinical studies UVA, VCU, JHU

Thanks, sorry for the delayed response, it has been very busy with session. Lets talk next week when you return.
Jasen

Sent from my iPhone

On Feb 9, 2012, at 3:13 PM, Maureen Mcdonnell <Maureen@bobmcdonnell.com> wrote:

> *Here's the info from Jonnie. He has calls in to VCU & UVA & no one will return his calls.*
>
> **From:** Jonnie Williams jr. [mailto:jrw@starscientific.com]
> **Sent:** Wednesday, February 08, 2012 3:14 PM
> **To:** Maureen Mcdonnell
> **Subject:** Fwd: Anatabine clinical studies - UVA, VCU, JHU
>
> Please let me know if this helps. I have not heard from my father on this yet.
>
> Jonnie R. Williams Jr.
>
> Begin forwarded message:
>
> > **From:** "Ryan Lanier" <rlanier@rockcreekpharmaceuticals.com>
> > **Date:** February 8, 2012 10:58:30 AM EST
> > **To:** "Jonnie Williams Jr" <jrw@starscientific.com>
> > **Subject: Anatabine clinical studies - UVA, VCU, JHU**
> >
> > Hi Jonnie,

GOVERNMENT
EXHIBIT
314
3:14cr12

Here are two attachments that I hope will help you.

First, we (Curt, Paul, Bob, and me) had a call with several UVA officials on 29 November 2011 to discuss UVA's role in submitting an application to the VA Tobacco Commission to fund these studies. I have attached a document that Curt created for Paul in preparation of that meeting, and it includes a description of the officials at UVA that were on the call. In addition, below I have included their email addresses, and a UVA website where further contact info and bios can be found:

Mark Crowell: mcrowell@virginia.edu

Phil Parrish: parrish@virginia.edu

Sharon Krueger: sharonkrueger@virginia.com

UVA Vice President for Research organizational chart (with contact info and bios): http://www.virginia.edu/vpr/organization.html

Second, I have attached a spreadsheet that lists a bit of detail (perhaps more than you need) about the investigators that submitted proposals (or intended to – there are a couple I never received) for clinical studies with anatabine. These investigators were from UVA, VCU, and Johns Hopkins.

Let me know if you have any questions about this info.

Thanks,
Ryan

Ryan K. Lanier, PhD
Chief Clinical Research Scientist
Rock Creek Pharmaceuticals, Inc.
55 Blackburn Center
Gloucester, MA 01930
Office: 978-283-1374
Fax: 978-283-1371

<RFA_LOI and Proposals_20Oct2011.xls>
<UVA CALL_29Nov2011.doc>

To: Jonnie Williams Sr[JonnieWilliams@starscientific.com]
From: Jonnie Williams Sr
Sent: Fri 2/17/2012 11:28:12 AM
Subject: Fwd:

Sent from my iPad

Jerri Fulkerson

Begin forwarded message:

From: Robert McDonnell <rfmva09@gmail.com>
Date: February 16, 2012 11:56:42 PM EST
To: Williams Johnnie <jwilliams@starscientific.com>

Johnnie. Know u have been slammed. Do u want me to call your lawyer on the certificates and the documents. Thanks for all your help. Gov

Governor Robert F. McDonnell
804-786-4273 (main)
804-225-4809 (direct)

Sent from iPhone

GOVERNMENT
EXHIBIT
318
3:14cr12

From: Eige, Jasen (GOV) </O=VIRGINIA/OU=COVAG/CN=RECIPIENTS/CN=EIGEJASEN00001>
Sent: Friday, February 17, 2012 12:06 AM
To: Kent, Martin (GOV) <Martin.Kent@governor.virginia.gov>
Subject: Fw

FYI

----- Original Message -----
From: Robert McDonnell [mailto:rfmva09@gmail.com]
Sent: Friday, February 17, 2012 12:02 AM
To: Eige, Jasen (GOV)
Subject:

Pls see me about anatabloc issues at VCU and UVA. Thx

Governor Robert F. McDonnell
804-786-4273 (main)
804-225-4809 (direct)

Sent from iPhone

GOVERNMENT
EXHIBIT
319
3:14cr12

From: Eige, Jasen (GOV) [Jasen.Eige@governor.virginia.gov]
Sent: Friday, February 17, 2012 12:06 AM
To: rfmva09@gmail.com
Subject: Re:

will do. We need to be careful with this issue.

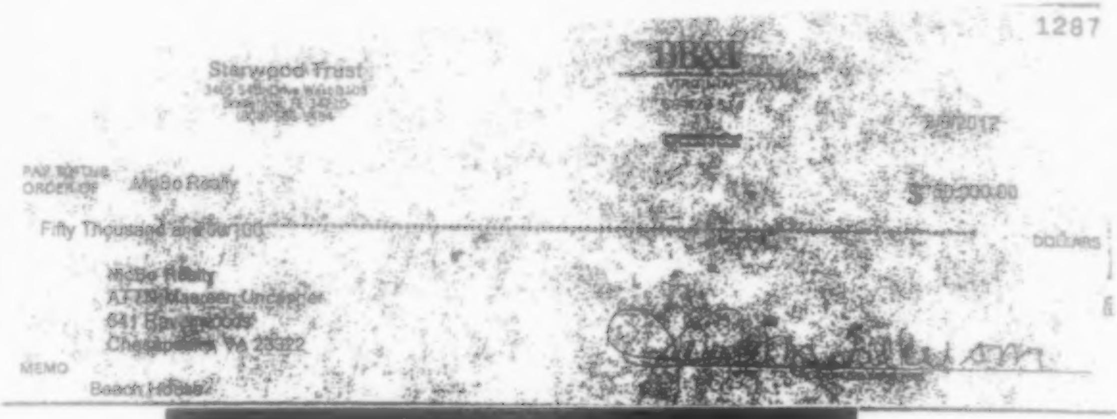
----- Original Message -----
From: Robert McDonnell [mailto:rfmva09@gmail.com]
Sent: Friday, February 17, 2012 12:02 AM
To: Eige, Jasen (GOV)
Subject:

Pls see me about anatabloc issues at VCU and UVA. Thx

Governor Robert F. McDonnell
804-786-4273 (main)
804-225-4809 (direct)

Sent from iPhone

GOVERNMENT
EXHIBIT
320
3:14cr12



1287

Starwood Trust

[illegible]

BB&T

[illegible]/2017

PAY TO THE ORDER OF McBo Realty

$ 50,000.00

Fifty Thousand and 00/100 DOLLARS

McBo Realty
ATTN: Maureen Uncapher
641 Baywoods
Chesapeake, VA 23322

MEMO Beach House2

[redacted]

GOVERNMENT EXHIBIT
352
3:14cr12

From: Scarbrough, Sarah (GOV) <Sarah.Scarbrough@governor.virginia.gov>
Sent: Friday, March 16, 2012 4:47 PM
To: Hazel, Bill (GOV)
Cc: Schramm, Elaina (GOV)
Subject: Invoice
Attachments: 2-29-12 - Healthcare.doc

Better late than never ☺ Attached is the healthcare event invoice. I took off the cost for the 25 people who came b/c the First Lady invited them (which brings 'your guest count' to 100 people)!

Thanks and have a great weekend!

Sarah

GOVERNMENT
EXHIBIT
364
3:14cr12

Invoice Date: March 16, 2012
Event Date: Feb. 29, 2012
Event: Healthcare Industry
Reception

Secretary Bill Hazel
Cc: Elaina Schramm
Via email:
bill.hazel@governor.virginia.gov

Description	Unit Price	Line Total
Beverages		809.98
Staff		630.48
Table Linens		180.00
Food	100 people ($11 per person)	1100.00
Rentals		30.00

Subtotal	2750.46
Sales Tax	
Total	2750.46

To: 'Robert McDonnell'[rfmva09@gmail.com]
From: Jonnie Williams Sr
Sent: Mon 5/14/2012 2:09:17 PM
Subject: RE:

Jonnie asked me to send you an email asking you to call him at your convenience. He's available all day 804-248-5828.

Regards,

Jerri M. Fulkerson
Executive Assistant to Jonnie R Williams
Office: 804-586-5484
Fax: 804-861-9217

-----Original Message-----
From: Robert McDonnell [mailto:rfmva09@gmail.com]
Sent: Monday, May 14, 2012 12:08 AM
To: Jonnie Williams Sr
Subject:

Can you talk tomorrow for a few minutes on Sandbridge. Hope all is well. How's your golf game. Best to Celeste.

Governor Robert F. McDonnell
804-786-4273 (main)
804-225-4809 (direct)

Sent from iPhone

GOVERNMENT EXHIBIT
374
3:14cr12

Device	Section	Details	Evidence note	Time stamp	Remote party	Type	Marked (local time)	Object tags	Picture
Apple iPhone 4S	Messages	Folder: SMS - Inbox Phone Number: [redacted] Remote party: Text: Got email. call anytime. Jonnie Time stamp: 9/14/2012 1:20:02 PM		9/14/2012 1:20:00 PM	[redacted]	Message	3/30/2013 4:45:28 PM		

GOVERNMENT EXHIBIT
375
3:14cr12

Folder: SMS - Inbox
Phone Number: +[redacted]5828
Remote party: +[redacted]5828
Text: Got email, call anytime. Jonnie
Time stamp: 5/14/2012 1:20:00 PM

Device	Section	Details	Evidence note	Time stamp	Remote party	Type	Marked (local time)	Object tags	Picture
Apple iPhone 4S	Messages	Folder: SMS - Sen[redacted] Phone Number: Remote party: Text: Johnna: Per voicemail would like to see if you could extend another 20k loan for this year. Call if possible and I'll see how to send instructions. Thx bob Time stamp: 5/18/2012 5:26:40 PM		5/18/2012 5:26:40 PM	[redacted]	Message	5/30/2013 4:52:03 PM		

GOVERNMENT EXHIBIT
379
3:14cr12

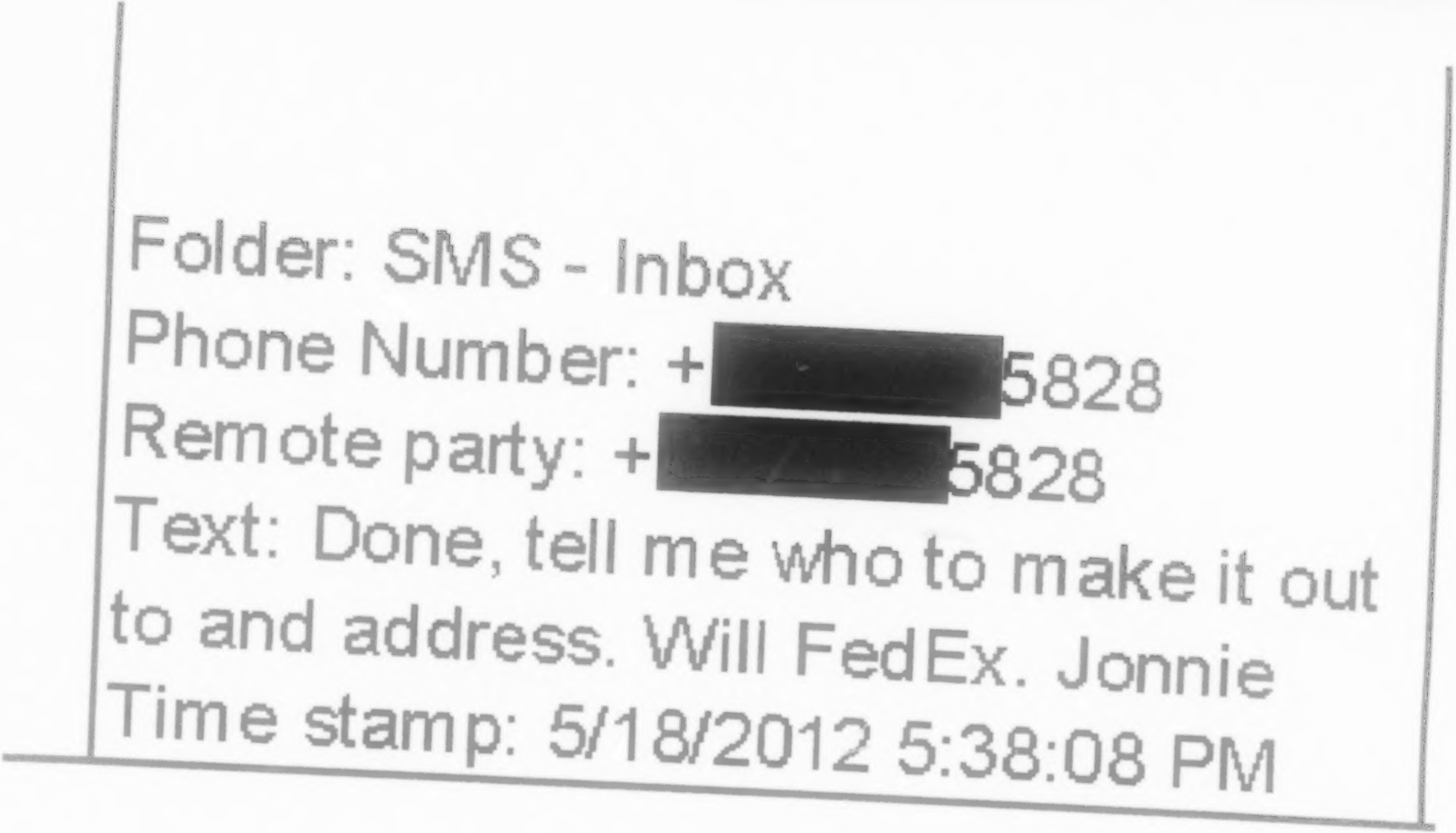
[redacted]FM-[redacted]595

Folder: SMS - Sent
Phone Number: +[redacted]5828
Remote party: +[redacted]5828
Text: Johnnie. Per voicemail would like to see if you could extend another 20k loan for this year. Call if possible and I'll ask mike to send instructions.
Thx bob
Time stamp: 5/18/2012 5:26:40 PM

Device	Section	Details	Evidence note	Time stamp	Remote party	Type	Marked (local time)	Unique logo	Picture
Apple iPhone 4S	Messages	Folder: SMS - Inbox Phone Number: [redacted] Remote party: + Text: Done. tell me who to make it out to and address. Will FedEx. Jonnie Time stamp: 5/18/2012 5:38:08 PM		5/18/2012 5:38:08 PM	[redacted]	Message	9/30/2013 4:41:37 PM		

SA167

GOVERNMENT EXHIBIT
380
3:14cr12



Folder: SMS - Inbox

Phone Number: +[redacted]5828

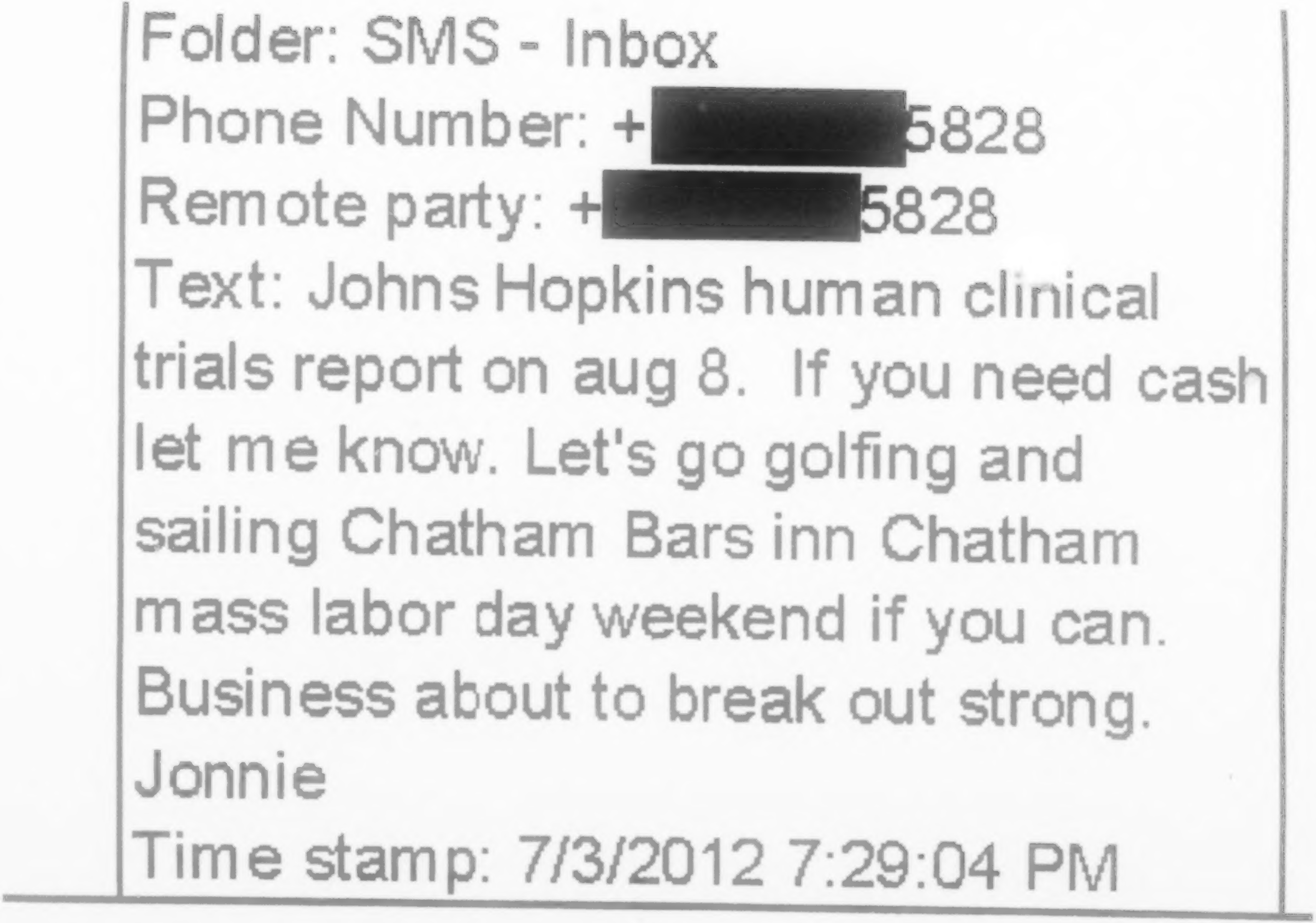
Remote party: +[redacted]5828

Text: Done, tell me who to make it out to and address. Will FedEx. Jonnie

Time stamp: 5/18/2012 5:38:08 PM

Device	Section	Details	Evidence note	Time stamp	Remote party	Type	Marked (local time)	Object tags	Picture
Apple iPhone 4S	Messages	Folder: SMS - Inbox Phone Number: [redacted] Remote party: Text: Johns Hopkins human clinical trials report on aug 8. If you need cash let me know. Let's go golfing and staying Chatham Bars inn Chatham mass labor day weekend if you can. Business about to break out strong. Johnnie Time stamp: 7/3/2012 7:29:04 PM		7/3/2012 7:29:04 PM	[redacted]	Message	5/30/2013 4:45:31 PM		

GOVERNMENT EXHIBIT
397
3:14cr12



Folder: SMS - Inbox

Phone Number: +[redacted]5828

Remote party: +[redacted]5828

Text: Johns Hopkins human clinical trials report on aug 8. If you need cash let me know. Let's go golfing and sailing Chatham Bars inn Chatham mass labor day weekend if you can. Business about to break out strong. Jonnie

Time stamp: 7/3/2012 7:29:04 PM

Commonwealth of Virginia

Office of Governor Bob McDonnell

Gift Contribution

For contributions or aggregates of contributions that exceed the $50 reporting threshold. Thank you.

Date of Contribution: 05/31/12

Donor Information:

Type ___ Individual X Corporate/Business

Name Star Scientific, Inc.

Address 4470 Cox Rd, Suite 110

City Glen Allen State Va Zip Code 23060

Occupation ___
If corporate donor, please provide industry only.

Employer ___
If corporate donor, please leave blank.

Employer Address ___
Employer Zip ___

Contribution Information:

Type X Flight ___ Hotel ___ Food/Catering ___ Event Expenses

Details from Richmond, Va to Hyannis, Ma.

Total Contribution Value $ 1399.74

Confidential Working Papers of the Office of the Governor.

GOVERNMENT EXHIBIT
410
3:14cr12

Commonwealth of Virginia

Office of Governor Bob McDonnell

Gift Contribution

For contributions or aggregates of contributions that exceed the $50 reporting threshold. Thank you.

9-01-12 thru
Date of Contribution: 9 / 03 / 12

Donor Information:

Type ____ Individual ____ Corporate/Business

Name Star Scientific, Inc.

Address 4470 Cox Rd Suite 110

City Glen Allen State Va Zip Code 23060

Occupation ________________
If corporate donor, please provide industry only.

Employer ________________ Employer Address ________________
If corporate donor, please leave blank Employer Zip ________________

Contribution Information:

Type X Flight ✓ Hotel ✓ Food/Catering ____ Event Expenses

1788.63/2 =
Details 894.32 4528.24

581.25 sailing
79.59 Golf

Total Contribution Value $ 6083.40

Confidential Working Papers of the Office of the Governor.

Check Detail

```
           Catering
   At The Chatham Bars Inn
         508.945.0096,

6005 D Hyney                   1
--------------------------------
CHK 176   PRVT CLAMBAKE   GST 10
       SEP02'12  1:19AM
--------------------------------
    BANQUETS

 10 @ 150.00
    Cape Codder        1500.00
 10 @ 12.00
    Banq Wine Item      120.00
 10 @ 12.00
    Banq Liq Item       120.00
  2 *Soda @ 4.00          8.00
 16 @ 150.00
    Remy Louis Xiii    2400.00
    12 %
    Gratuity            497.76
    Food Sales         1500.00
    Liquor Sales       2520.00
    Wine Sales          120.00
    NA Bevs Sales         8.00
    Svc Chg Total...    497.76
    House Fee           829.60
    State&LocalTax.     348.43
    Payment Made...    5823.79
    393/McDonnell
    Room Charge        5823.79
---9006 CLOSED SEP02  1:20AM----
 *** for room charges only ***

Add'l Gratuity: _______________

Total:_________________________

Room/Acct #:___________________

Print Name:____________________

Signature:_____________________
```

GOVERNMENT EXHIBIT 413
3:14cr12

GOVERNMENT
EXHIBIT
444
3:14cr12

SA175

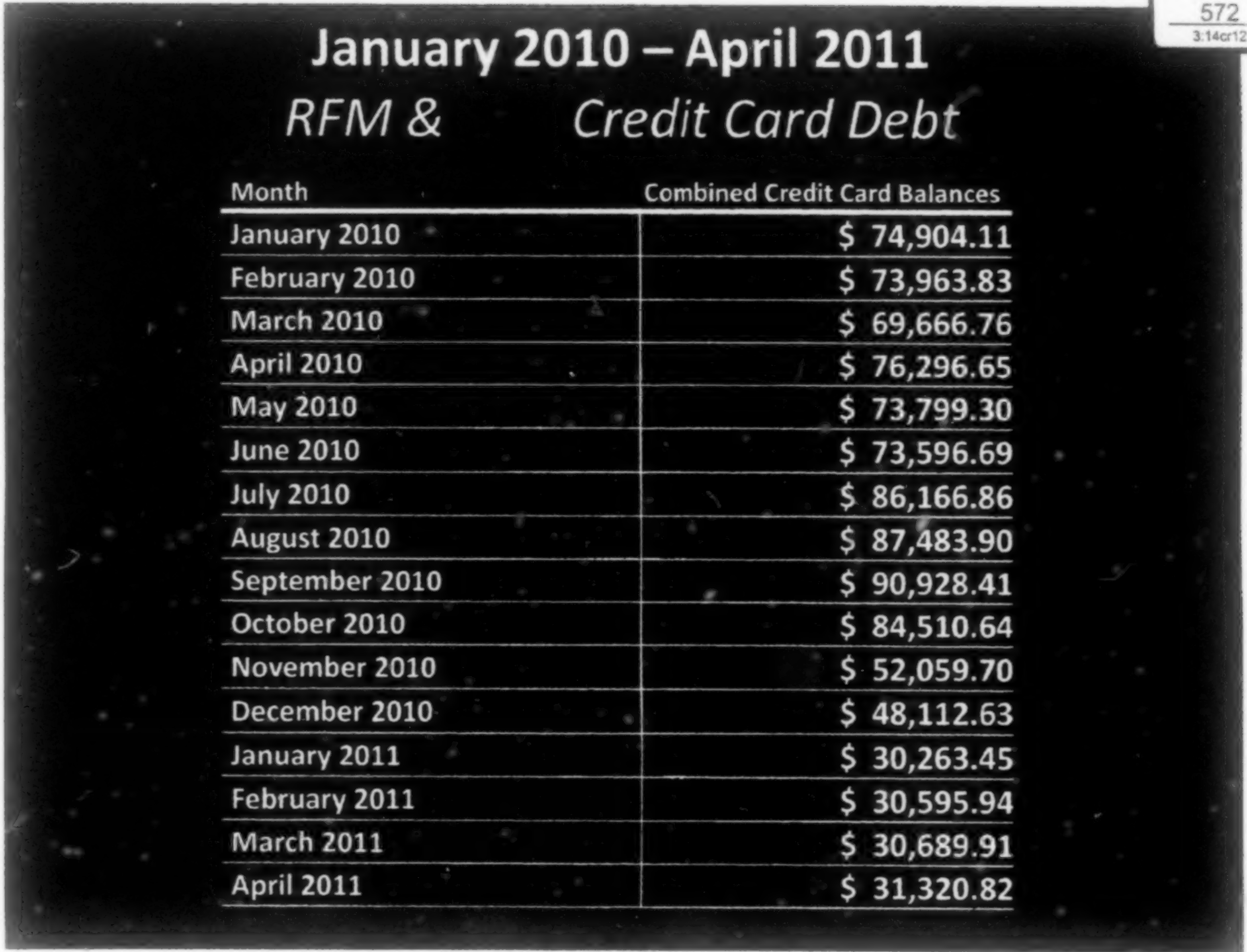
GOVERNMENT
EXHIBIT
568
3:14cr12

January 2010

RFM & Credit Card Debt

Statement Date	Credit Card	Balance
1.10.10	PenFed 0124 (RFM)	$ 14,366.30
1.16.10	Bank of America 1342 (RFM)	$ 14,550.53
1.18.10	Citi Card 7584 (RFM)	$ 3,709.25
1.20.10		$ 10,821.16
1.22.10	Sears Card 2084 (RFM)	$ 8,756.04
1.26.10		$ 22,599.10
1.28.10		$ 101.73
	Total =	$ 74,904.11

GOVERNMENT
EXHIBIT
572
3:14cr12



January 2010 – April 2011

RFM & Credit Card Debt

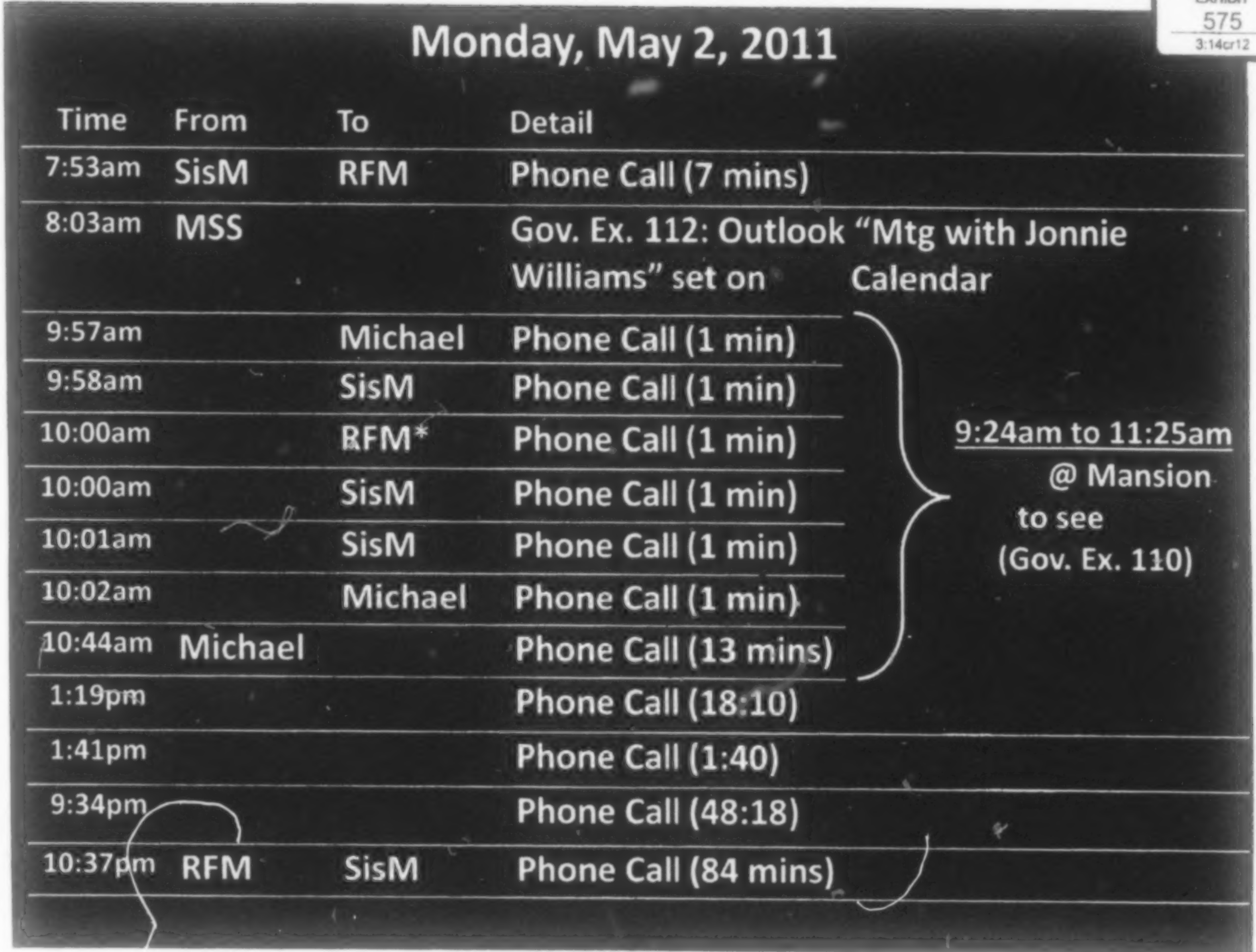
Month	Combined Credit Card Balances
January 2010	$ 74,904.11
February 2010	$ 73,963.83
March 2010	$ 69,666.76
April 2010	$ 76,296.65
May 2010	$ 73,799.30
June 2010	$ 73,596.69
July 2010	$ 86,166.86
August 2010	$ 87,483.90
September 2010	$ 90,928.41
October 2010	$ 84,510.64
November 2010	$ 52,059.70
December 2010	$ 48,112.63
January 2011	$ 30,263.45
February 2011	$ 30,595.94
March 2011	$ 30,689.91
April 2011	$ 31,320.82

GOVERNMENT EXHIBIT
574
3:14cr12

Sunday, May 1, 2011

Time	From	To	Detail
11:20 – 12:55pm	RFM		**Gov. Ex. 105:** "Personal Time - Executive Mansion"
12:17pm		RFM	**Gov. Ex. 107:** " . . . Please give to the governor and his wife as per Jonnie Williams."
1:11 & 1:13pm^	RFM	SisM	**2 Texts Combined:** "Any chance we could do a call tonight on mobo amd bank options. Need about an hour. I can walk thru loans and mike if you can outline expenses that would Be great. Need to make some deciosions. Mo any ideas on properties we can buy if we sell these 2 a reasonable prices? If not tonight another this week? Bob"
1:20pm^	SisM	RFM	**Text:** "Yes, tonight would be fine maybe after 9:00."
3:02pm			**Phone Call (41:28)**
3:56pm		Celeste	**Gov. Ex. 108:**
4:06pm		Celeste	**Gov. Ex. 109:**
4:16pm			**Phone Call (8:53)**

GOVERNMENT EXHIBIT
575
3:14cr12



Monday, May 2, 2011

Time	From	To	Detail
7:53am	SisM	RFM	Phone Call (7 mins)
8:03am	MSS		Gov. Ex. 112: Outlook “Mtg with Jonnie Williams” set on Calendar
9:57am		Michael	Phone Call (1 min)
9:58am		SisM	Phone Call (1 min)
10:00am		RFM*	Phone Call (1 min)
10:00am		SisM	Phone Call (1 min)
10:01am		SisM	Phone Call (1 min)
10:02am		Michael	Phone Call (1 min)
10:44am	Michael		Phone Call (13 mins)
1:19pm			Phone Call (18:10)
1:41pm			Phone Call (1:40)
9:34pm			Phone Call (48:18)
10:37pm	RFM	SisM	Phone Call (84 mins)

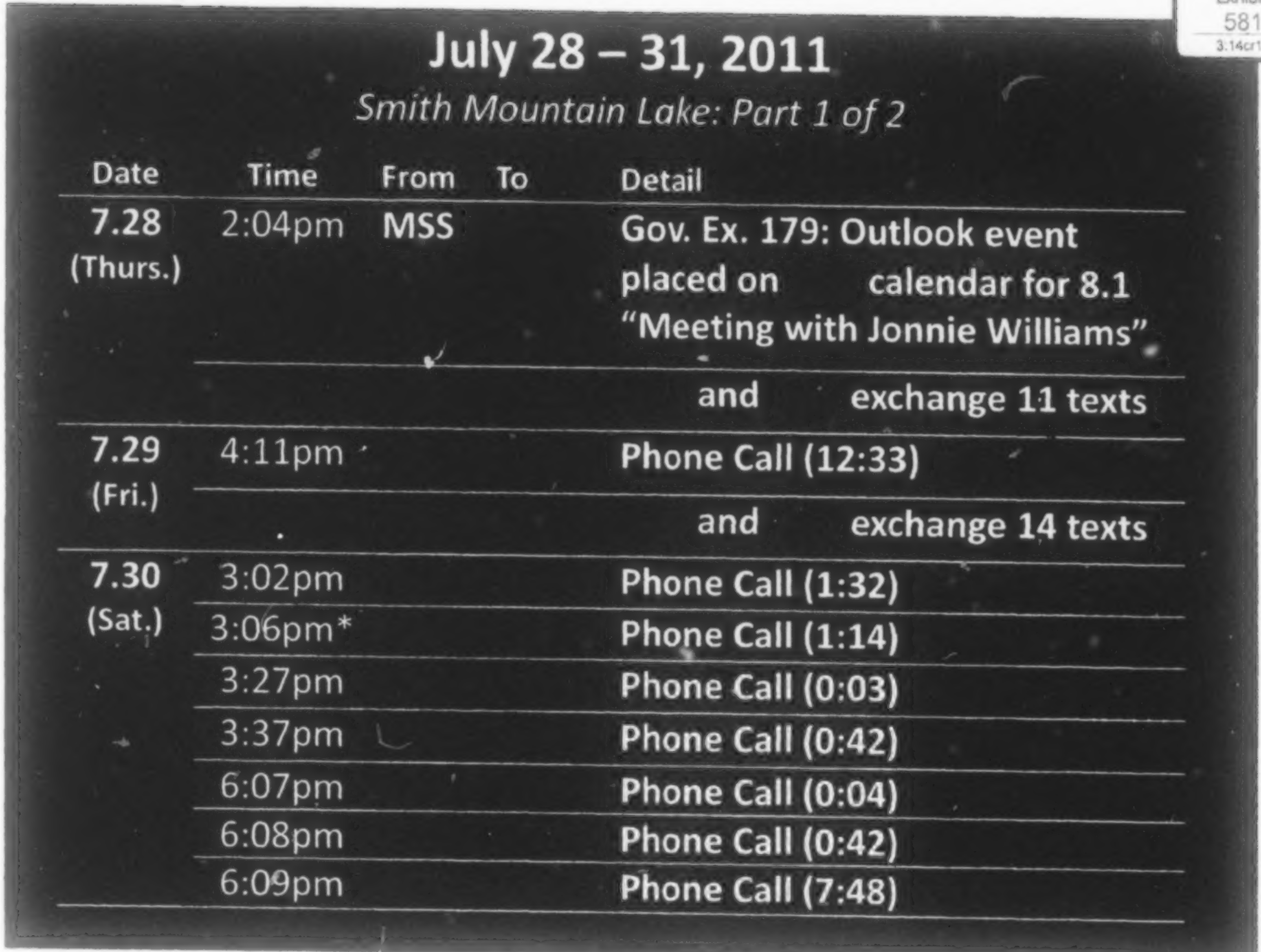
9:24am to 11:25am
@ Mansion
to see
(Gov. Ex. 110)

GOVERNMENT EXHIBIT
578
3:14cr12

June 1 and 4, 2011

Date	Time	From	To	Detail
6.1	9:55am		Piscitelli	Phone Call (11 mins)
	10:48am*		RFM	Phone Call (4 mins) [next call]
6.4	11:27am		Piscitelli	Phone Call (1 min)
	11:28am		RFM	Phone Call (2 mins)
	Noon		Piscitelli	Phone Call (1 min)

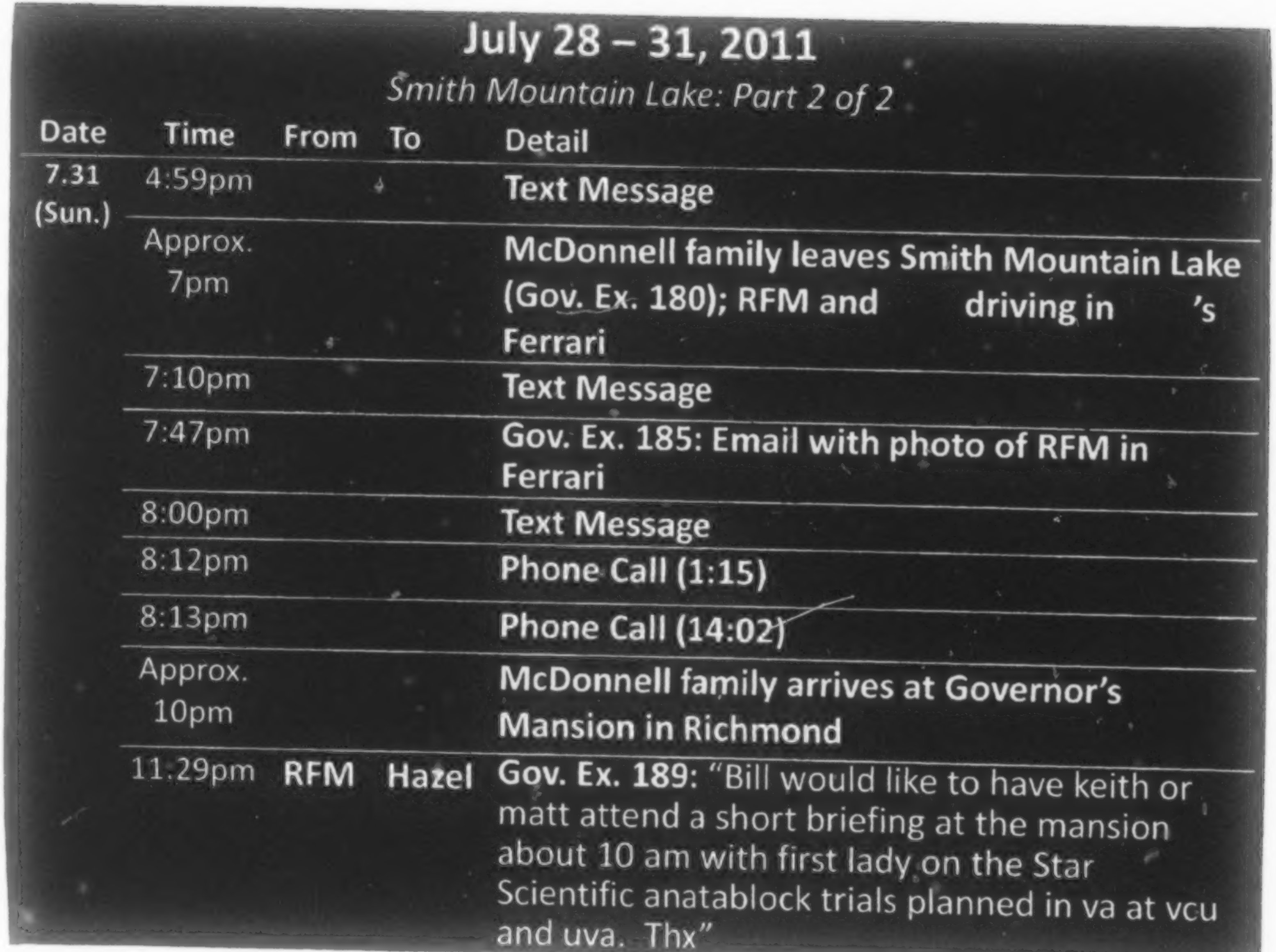
EXHIBIT
581
3:14cr12



July 28 – 31, 2011

Smith Mountain Lake: Part 1 of 2

Date	Time	From	To	Detail
7.28 (Thurs.)	2:04pm	**MSS**		**Gov. Ex. 179: Outlook event placed on calendar for 8.1 "Meeting with Jonnie Williams"**
				and exchange 11 texts
7.29 (Fri.)	4:11pm			**Phone Call (12:33)**
				and exchange 14 texts
7.30 (Sat.)	3:02pm			**Phone Call (1:32)**
	3:06pm*			**Phone Call (1:14)**
	3:27pm			**Phone Call (0:03)**
	3:37pm			**Phone Call (0:42)**
	6:07pm			**Phone Call (0:04)**
	6:08pm			**Phone Call (0:42)**
	6:09pm			**Phone Call (7:48)**

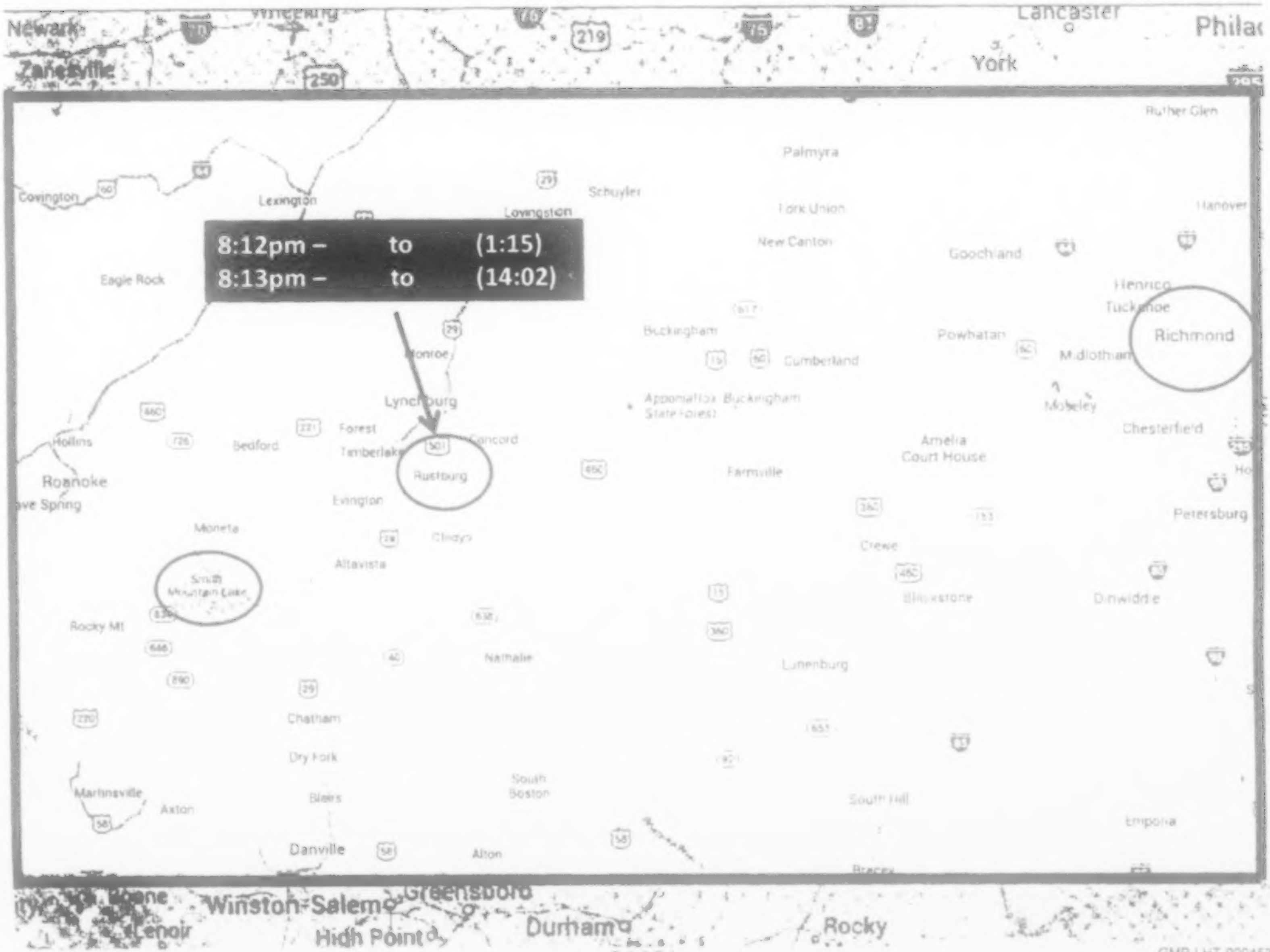


July 28 – 31, 2011

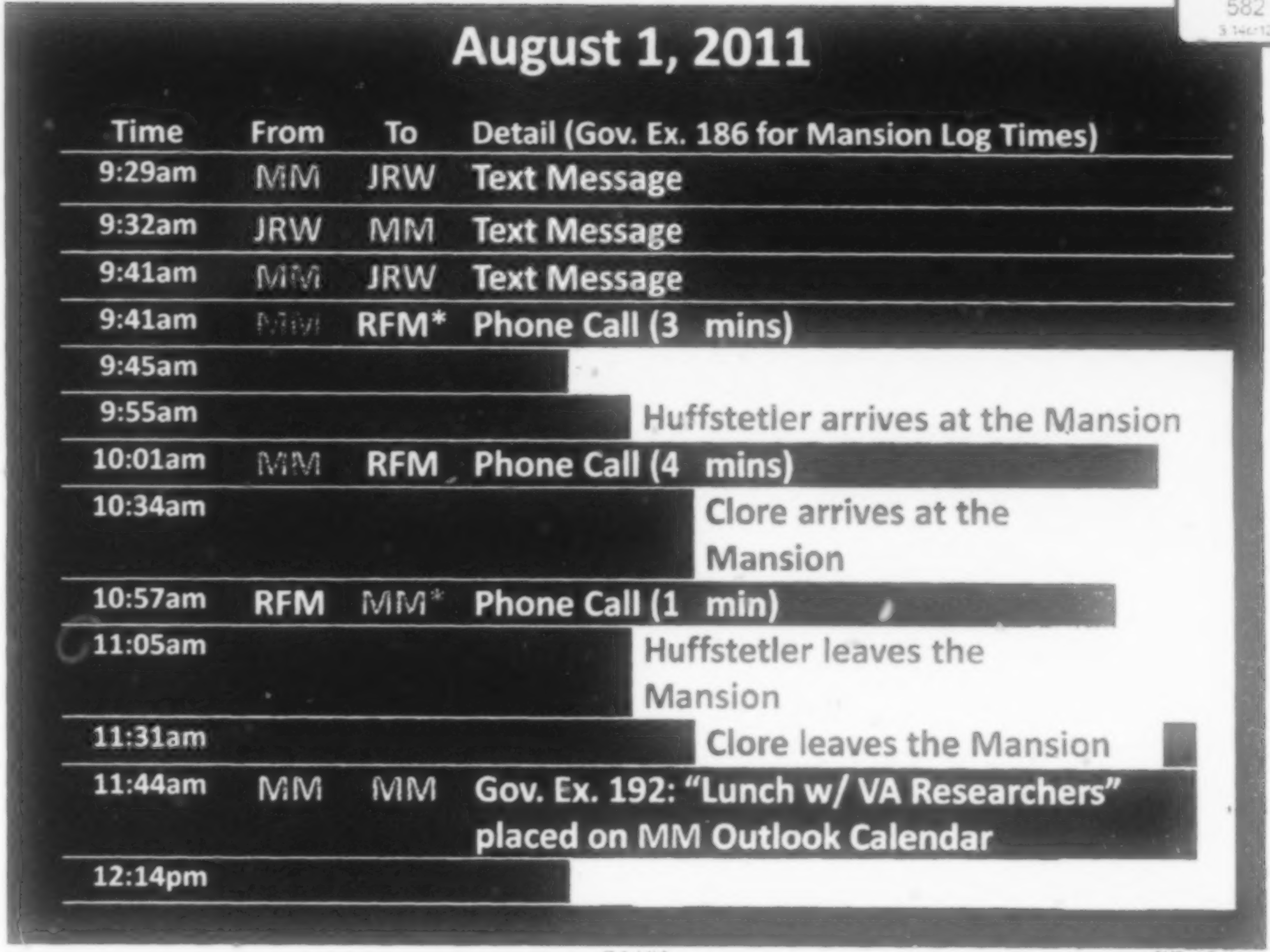
Smith Mountain Lake: Part 2 of 2

Date	Time	From	To	Detail
7.31 (Sun.)	4:59pm			**Text Message**
	Approx. 7pm			**McDonnell family leaves Smith Mountain Lake (Gov. Ex. 180); RFM and driving in 's Ferrari**
	7:10pm			**Text Message**
	7:47pm			**Gov. Ex. 185: Email with photo of RFM in Ferrari**
	8:00pm			**Text Message**
	8:12pm			**Phone Call (1:15)**
	8:13pm			**Phone Call (14:02)**
	Approx. 10pm			**McDonnell family arrives at Governor's Mansion in Richmond**
	11:29pm	**RFM**	**Hazel**	**Gov. Ex. 189:** "Bill would like to have keith or matt attend a short briefing at the mansion about 10 am with first lady on the Star Scientific anatablock trials planned in va at vcu and uva. Thx"

Newark
70
Wheeling
79
219
76
81
Lancaster
Philac
Zanesville
250
York
295
caster
Morgantown
68
Cumberland
40
Hagerstown
Wilmington
77
40
Marietta
Baltimore
Parkersburg
Winchester
Columbia
Dover
Silver Spring
301
119
81
Washington
Monongahela
National Forest
West
Virginia
gton
Harrisonburg
Charleston
Salisbury
340
64
George
Washington
National Forest
81
Charlottesville
Milford
60
Palmyra
64
Henrico
Richmond
Lynchburg
Virginia
Blacksburg
Roanoke
Petersburg
Hayes
Newport
News
81
Norfolk
Virginia
Beach
77
85
95
Danville
74
Cherokee
National Forest
Eden
95
Elizabeth
City
77
nson
ity
Boone
Winston-Salem
Greensboro
Lenoir
High Point
Durham
Rocky


8:12pm – to (1:15)
8:13pm – to (14:02)
Newark
Zanesville
Wheeling
York
Lancaster
Philac
Ruther Glen
Palmyra
Covington
Lexington
Lovingston
Schuyler
Fork Union
New Canton
Hanover
Goochland
Eagle Rock
Henrico
Tuckahoe
Richmond
Buckingham
Cumberland
Powhatan
Midlothian
Monroe
Lynchburg
Appomattox Buckingham State Forest
Moseley
Chesterfield
Hollins
Bedford
Forest
Timberlake
Concord
Rustburg
Farmville
Amelia Court House
Roanoke
Cave Spring
Evington
Petersburg
Moneta
Gladys
Crewe
Altavista
Smith Mountain Lake
Blackstone
Dinwiddie
Rocky Mt
Nathalie
Lunenburg
Chatham
Dry Fork
Martinsville
Axton
Blairs
South Boston
South Hill
Emporia
Danville
Alton
Boone
Lenoir
Winston-Salem
Greensboro
High Point
Durham
Rocky

GOVERNMENT
EXHIBIT
582
3-14-12



August 1, 2011

Time	From	To	Detail (Gov. Ex. 186 for Mansion Log Times)
9:29am	MM	JRW	Text Message
9:32am	JRW	MM	Text Message
9:41am	MM	JRW	Text Message
9:41am	MM	RFM*	Phone Call (3 mins)
9:45am			
9:55am			Huffstetler arrives at the Mansion
10:01am	MM	RFM	Phone Call (4 mins)
10:34am			Clore arrives at the Mansion
10:57am	RFM	MM*	Phone Call (1 min)
11:05am			Huffstetler leaves the Mansion
11:31am			Clore leaves the Mansion
11:44am	MM	MM	Gov. Ex. 192: "Lunch w/ VA Researchers" placed on MM Outlook Calendar
12:14pm			

GOVERNMENT
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583
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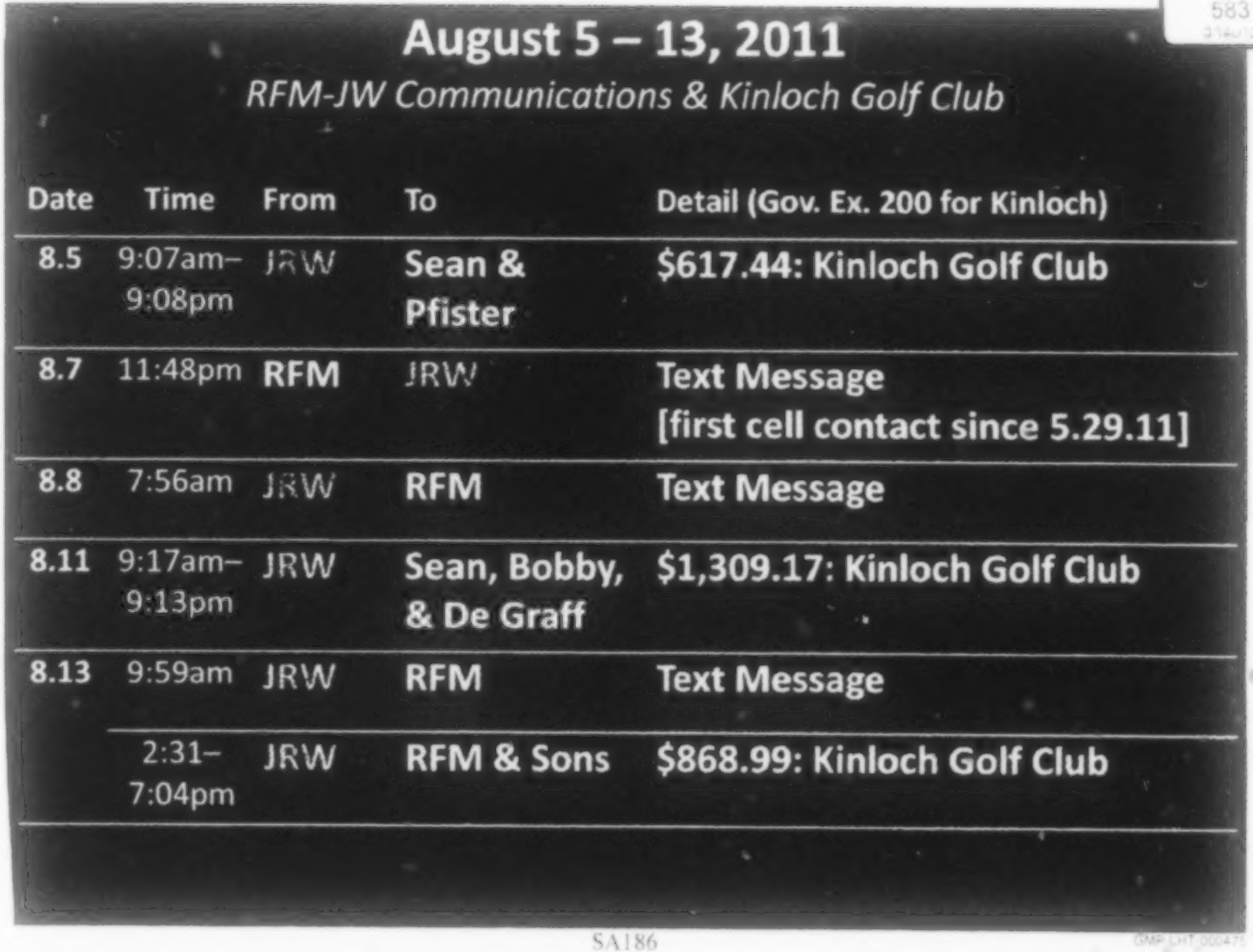

August 5 – 13, 2011

RFM-JW Communications & Kinloch Golf Club

Date	Time	From	To	Detail (Gov. Ex. 200 for Kinloch)
8.5	9:07am–9:08pm	JRW	Sean & Pfister	$617.44: Kinloch Golf Club
8.7	11:48pm	RFM	JRW	Text Message [first cell contact since 5.29.11]
8.8	7:56am	JRW	RFM	Text Message
8.11	9:17am–9:13pm	JRW	Sean, Bobby, & De Graff	$1,309.17: Kinloch Golf Club
8.13	9:59am	JRW	RFM	Text Message
	2:31–7:04pm	JRW	RFM & Sons	$868.99: Kinloch Golf Club

EXHIBIT
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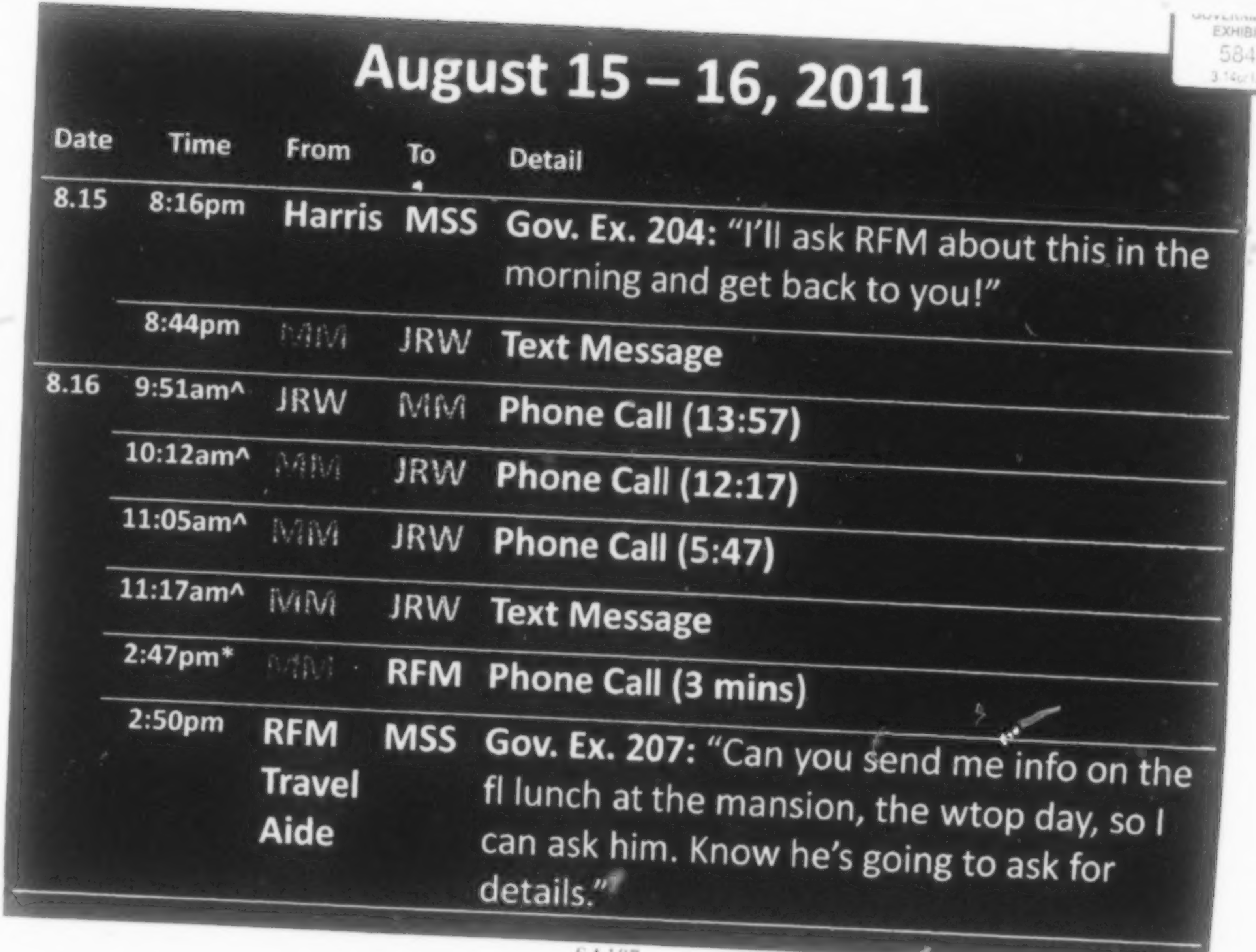

August 15 – 16, 2011

Date	Time	From	To	Detail
8.15	8:16pm	Harris	MSS	**Gov. Ex. 204:** "I'll ask RFM about this in the morning and get back to you!"
	8:44pm	MM	JRW	**Text Message**
8.16	9:51am^	JRW	MM	**Phone Call (13:57)**
	10:12am^	MM	JRW	**Phone Call (12:17)**
	11:05am^	MM	JRW	**Phone Call (5:47)**
	11:17am^	MM	JRW	**Text Message**
	2:47pm*	MM	RFM	**Phone Call (3 mins)**
	2:50pm	RFM Travel Aide	MSS	**Gov. Ex. 207:** "Can you send me info on the fl lunch at the mansion, the wtop day, so I can ask him. Know he's going to ask for details."

GOVERNMENT
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586
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January 19, 2012

Time	Detail
11 am	
11:57 am – 12:00pm	MM calls Eige
12:00pm	Gov. Ex. 291: RFM Schedule: Begin "Lunch with Mrs. McDonnell -- Executive Mansion"
12:02 – 12:03pm	MM calls SisM
12:11 – 12:23pm	Michael calls MM
12:45pm	Gov. Ex. 291: RFM Schedule: End "Lunch with Mrs. McDonnell -- Executive Mansion"
1 pm	
1:36 – 1:40pm	JRW calls MM
1:40 – 1:42pm	MM calls RFM
1:42 – 1:43pm	MM calls JRW
1:43 – 1:49pm	MM calls RFM Travel Aide
4:05 – 4:21pm	JRW calls MM

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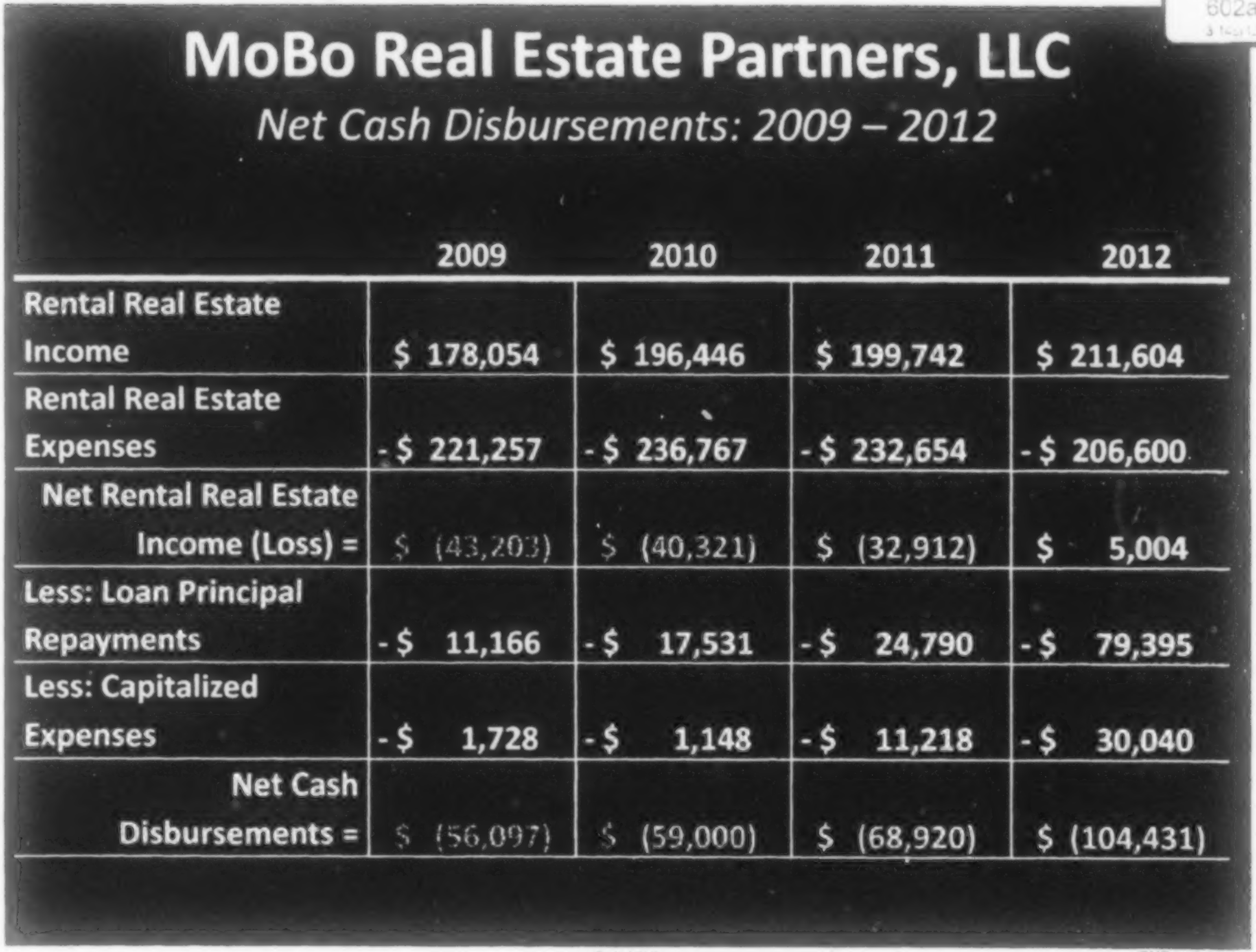
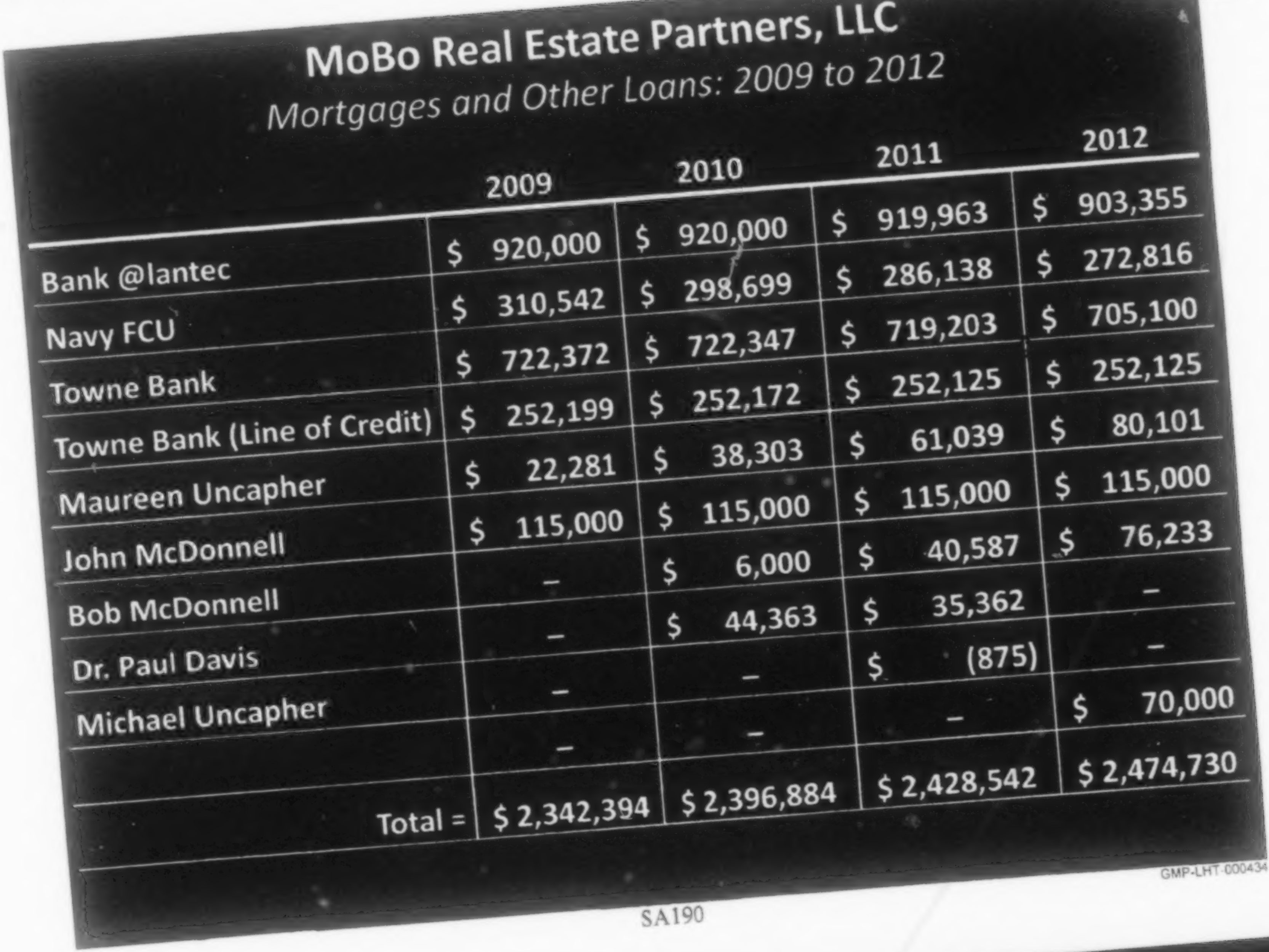
[illegible]



MoBo Real Estate Partners, LLC

Net Cash Disbursements: 2009 – 2012

	2009	2010	2011	2012
Rental Real Estate Income	$ 178,054	$ 196,446	$ 199,742	$ 211,604
Rental Real Estate Expenses	- $ 221,257	- $ 236,767	- $ 232,654	- $ 206,600
Net Rental Real Estate Income (Loss) =	$ (43,203)	$ (40,321)	$ (32,912)	$ 5,004
Less: Loan Principal Repayments	- $ 11,166	- $ 17,531	- $ 24,790	- $ 79,395
Less: Capitalized Expenses	- $ 1,728	- $ 1,148	- $ 11,218	- $ 30,040
Net Cash Disbursements =	$ (56,097)	$ (59,000)	$ (68,920)	$ (104,431)



MoBo Real Estate Partners, LLC

Mortgages and Other Loans: 2009 to 2012

	2009	2010	2011	2012
Bank @lantec	$ 920,000	$ 920,000	$ 919,963	$ 903,355
Navy FCU	$ 310,542	$ 298,699	$ 286,138	$ 272,816
Towne Bank	$ 722,372	$ 722,347	$ 719,203	$ 705,100
Towne Bank (Line of Credit)	$ 252,199	$ 252,172	$ 252,125	$ 252,125
Maureen Uncapher	$ 22,281	$ 38,303	$ 61,039	$ 80,101
John McDonnell	$ 115,000	$ 115,000	$ 115,000	$ 115,000
Bob McDonnell	–	$ 6,000	$ 40,587	$ 76,233
Dr. Paul Davis	–	$ 44,363	$ 35,362	–
Michael Uncapher	–	–	$ (875)	–
	–	–	–	$ 70,000
Total =	$ 2,342,394	$ 2,396,884	$ 2,428,542	$ 2,474,730

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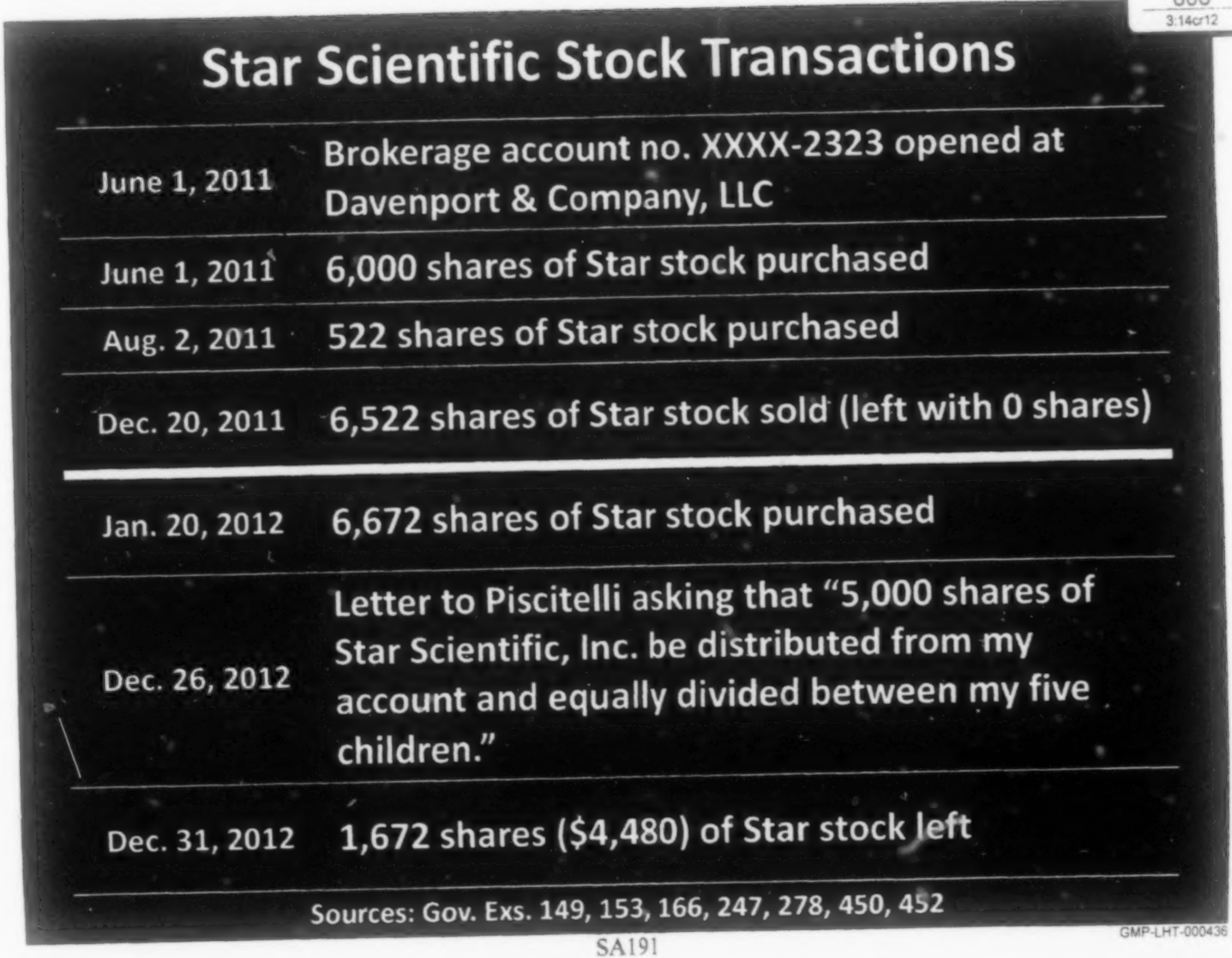
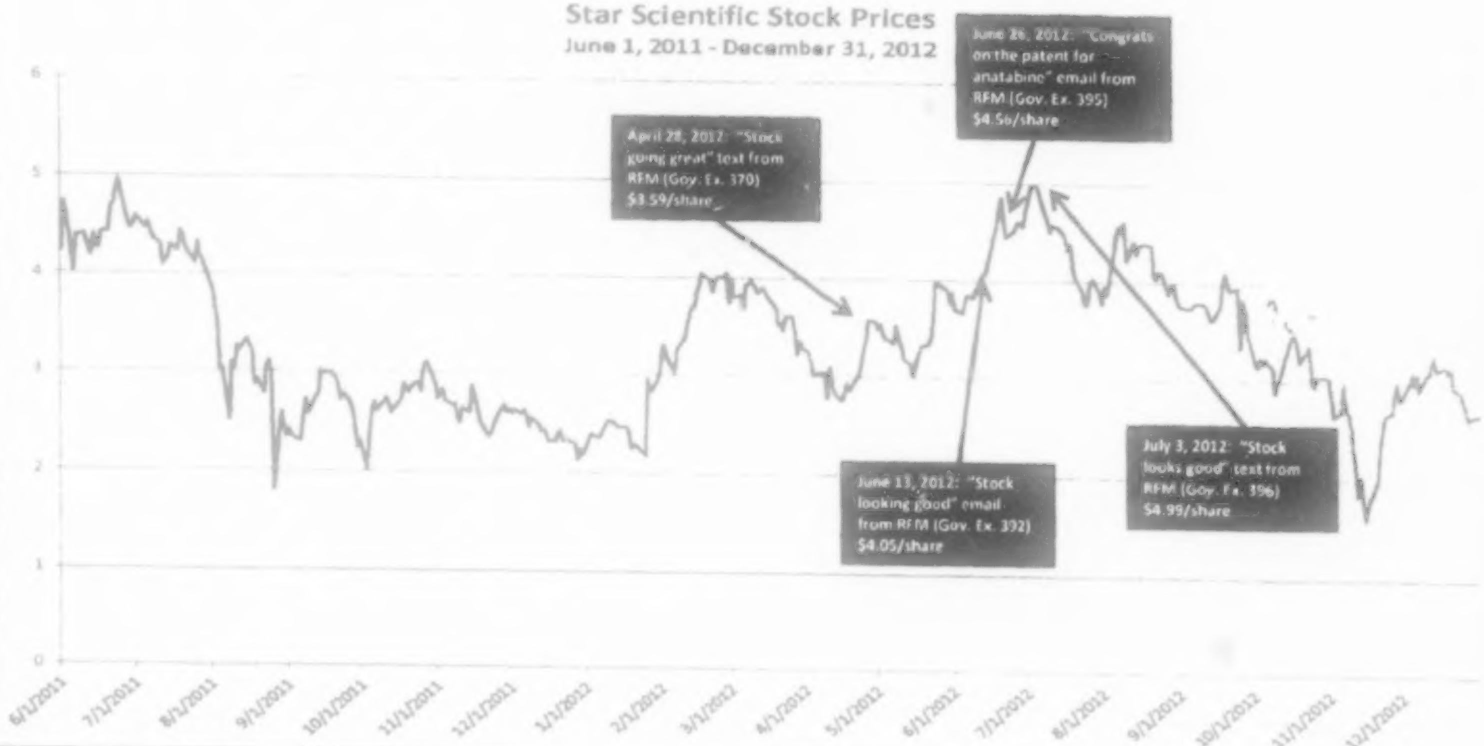


Star Scientific Stock Transactions

June 1, 2011	Brokerage account no. XXXX-2323 opened at Davenport & Company, LLC
June 1, 2011	6,000 shares of Star stock purchased
Aug. 2, 2011	522 shares of Star stock purchased
Dec. 20, 2011	6,522 shares of Star stock sold (left with 0 shares)
Jan. 20, 2012	6,672 shares of Star stock purchased
Dec. 26, 2012	Letter to Piscitelli asking that "5,000 shares of Star Scientific, Inc. be distributed from my account and equally divided between my five children."
Dec. 31, 2012	1,672 shares ($4,480) of Star stock left

Sources: Gov. Exs. 149, 153, 166, 247, 278, 450, 452



Star Scientific Stock Prices

June 1, 2011 - December 31, 2012

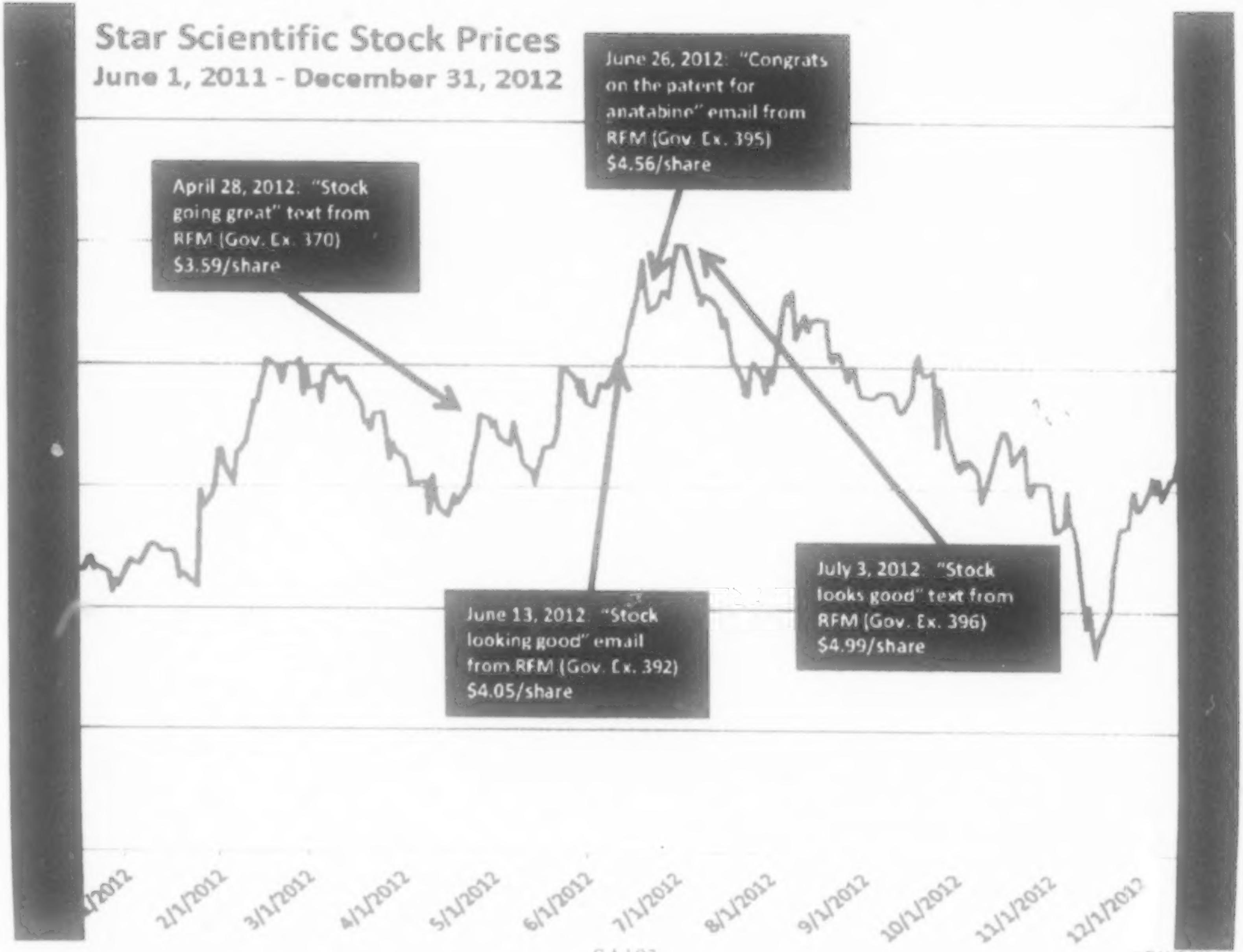
April 28, 2012: "Stock going great" text from RFM (Gov. Ex. 370) $3.59/share

June 26, 2012: "Congrats on the patent for anatabine" email from RFM (Gov. Ex. 395) $4.56/share

June 13, 2012: "Stock looking good" email from RFM (Gov. Ex. 392) $4.05/share

July 3, 2012: "Stock looks good" text from RFM (Gov. Ex. 396) $4.99/share

Star Scientific Stock Prices
June 1, 2011 - December 31, 2012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April 28, 2012: "Stock going great" text from RFM (Gov. Ex. 370) $3.59/share

June 13, 2012: "Stock looking good" email from RFM (Gov. Ex. 392) $4.05/share

July 3, 2012: "Stock looks good" text from RFM (Gov. Ex. 396) $4.99/share

EXHIBIT
609

Items from Jonnie Williams, Sr. to McDonnells

RFM & MM Personally and Children in Presence

Description	Amount/Value
Shopping – April 2011	$ 19,289.28
Payment – May 2011	$ 50,000.00
Wedding Payment – May 2011	$ 15,000.00
Kinloch Golf – May 2011	$ 2,380.24
Smith Mountain Lake – July 2011	$ 2,268.00
Kinloch Golf – August 2011	$ 868.99
Rolex – August/December 2011	$ 6,500.00
Kinloch Golf – January 2012	$ 1,368.91
Payment – March 2012	$ 50,000.00
Payment – May 2012	$ 20,000.00
Chatham Bars Inn – September 2012	$ 7,383.14
Kinloch Golf – November 2012 (Caddies Only)	$ 300.00
Donnie Williams – Invoiced March 2013	$ 1,685.50
Total =	$ 177,044.06

Sources: JRW American Express Bill & Gov. Exs. 120, 121, 135, 200, 203, 285, 289, 352, 386, 410, 433, 434, 459, 496

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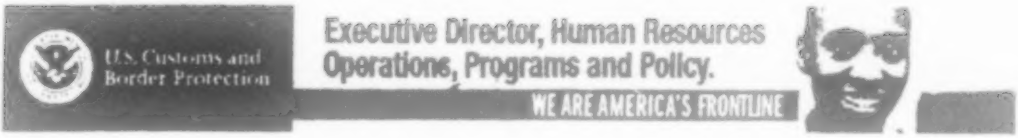

U.S. Customs and Border Protection

Executive Director, Human Resources Operations, Programs and Policy.

WE ARE AMERICA'S FRONTLINE

Politics

McDonnell daughter to hold wedding reception at mansion

Advertisement

By Anita Kumar June 2, 2011

RICHMOND — Virginia's historic governor's mansion has survived nearly two centuries, 54 governors and a Civil War. Now, it's time for a wedding.

On Saturday, Gov. Robert F. McDonnell will walk his daughter down the aisle at St. Patrick's Catholic Church before Virginia's first family opens the doors to the mansion for a late-afternoon reception.

About 200 guests will wander the estate's gardens and ornate rooms filled with art and artifacts dating to a bygone era as they celebrate the marriage of Cailin McDonnell and Chris Young. The couple met in college and have dated for six years.

First lady Maureen McDonnell said her daughter fell in love with the house the moment the family walked

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through it shortly after McDonnell (R) was elected governor in November 2009.

"Ever since they are born, for every little girl, they start dreaming about their wedding day," said McDonnell, her voice breaking. "We just thought this would be an amazing place. It's always been a dream to live in a place of history."

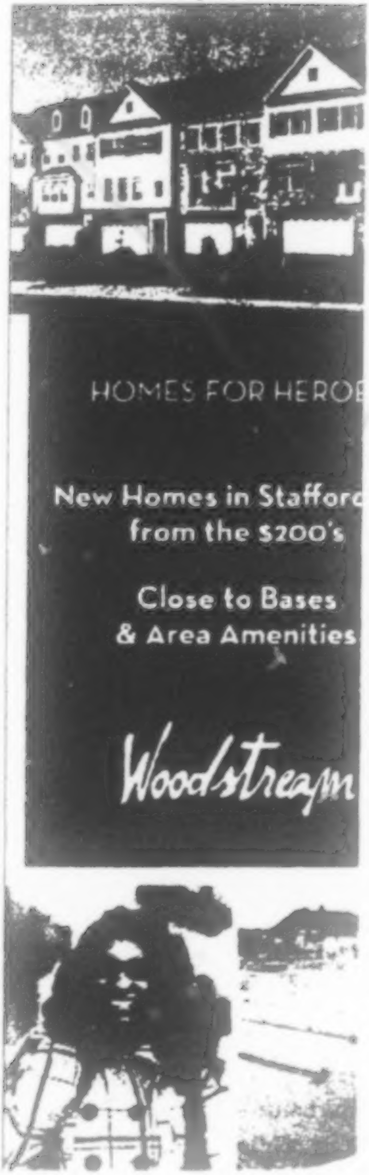
The butter-yellow Federal-style mansion is touted as the longest continually occupied governor's residence in the nation. It has been home to three future U.S. presidents, visited by the likes of Charles Lindbergh, Queen Elizabeth II and Barack Obama — and featured on "American Idol."

Records from the governor's office indicate that only four daughters of governors have been married or held wedding receptions at the mansion, built in 1813. The last was the youngest of L. Douglas Wilder.

Loren Deane Wilder married Edward Joseph James 18 years ago in a white-tie wedding at St. Paul's Episcopal Church and then rode in a horse-drawn carriage across the street for a reception attended by 450 guests.

"It just seemed like the perfect place," said Loren James, who lives with her husband and two sons in Northern Virginia. "How many people can say they have done that?"

"It was a fairy tale," said her father, the nation's first elected black governor. "I was happy I was able to do that for her."



McDonnell may have learned a thing or two from former governor John N. Dalton (R), who was criticized for trying to charge taxpayers for a $2,500 yellow-and-white tent for his daughter's wedding. McDonnell spokesman Tucker Martin said the family is picking up the tab for all wedding costs.

Over the years, a handful of governors' relatives have used the mansion for weddings. The first was at the turn of the century and the most recent was the niece of Gov. Mark R. Warner (D) in December 2005.

"It's your house," said Roxane Gilmore, wife of former governor James S. Gilmore (R), whose book about the mansion is set to be released in November. "You have graduation parties. Your children get married. You do the things you normally do. You just do it down there. You can't put your lives on hold."

The Gilmores — who raised two sons in the mansion — moved out for six months so the house could undergo a $7 million renovation that both restored its historic accuracy and made it more modern.

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The house — once in the center of the capital of the Confederacy — has served as a gathering place for dignitaries of all sorts: queens, prime ministers, ambassadors, presidents and state lawmakers. It is estimated that at least 20,000 tourists visit annually and that 100 receptions, breakfasts, recitals and other events take place there each year. It still features a table from

Patrick Henry and a china cabinet from Virginia's 24th governor, William Giles, who began serving in 1827.

Cailin McDonnell, 26, who works at the Henrico County Victim Witness Office, and Young, 27, an engineer, will marry at St. Patrick's before they retreat to the mansion for the reception. Guests will include House Majority Leader Eric Cantor (R-Va.) and his wife, Diana, chairman of the Virginia Retirement System board, who are former neighbors and longtime friends of the McDonnells.

Cailin is the first of the McDonnells' five children to get married. Her sisters, Jeanine and Rachel, will serve as two of six bridesmaids. Her twin brothers, Sean and Bobby, who attend the University of Virginia, will be two of six groomsmen.

McDonnell, a staunch supporter of Virginia wines, will serve wine only from the Old Dominion, including the Barboursville and Chatham vineyards.

The menu will include fresh poached jumbo Virginia shrimp, bruschetta made with Virginia tomatoes, stuffed free-range chicken breast with Virginia tomato pan sauce, sesame crusted chicken satay, marinated and grilled London broil served with fresh horseradish, as well as locally grown fruit, a salad bar, assorted cheeses and a smashed-potato bar.

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The bride will wear a white strapless satin A-line Maggie Sottero dress with lace embellishments from Maya Couture Bridal Salon in Virginia Beach.

"She knows herself very well," owner Maya Warburton said of the bride. "It's classic, yet romantic and very soft."

Staff researcher Magda Jean-Louis contributed to this report.

RSVP	Last Name	First Name	Organization
Yes	Baggesen	Randy	Executive Health Group
Yes	Beach	William	Tuckahoe Orthopaedic
Yes	Bolyard	Glenn	CVS
Yes	Carl	Neal	Family Medicine
Yes	Clore	John	VCU Medical
Yes	Crawford	Fiona	Roskamp
Yes	Dean	David	Star Scientific
Yes	Eige	Jasen	Office of the Governor
Yes	Hickman	Clifton	Virginia Ear Nose and Throat
Yes	Ladenson	Paul	Johns Hopkins
Yes	Laso	John	UVA
Yes	McDonnell	Maureen	
Yes	McDonnell	Bob	
yes	Miller	Edgar	Johns Hopkins
Yes	Mullan	Michael	Roskamp
Yes	Perito	Paul	Star Scientific
Yes	Pokusa	Robert	Star Scientific
yes	Rice	Baylor	Medical Society of Virginia
yes	Roskamp	Diane	
yes	Roskamp	Bob	
Yes	Scott	Keith	Family Medicine
Yes	Vranian	Craig	Virginia Cardiovascular Specialists
Yes	Williams	Jonnie	Star Scientific
Yes	Williams, Jr.	Jonnie	Star Scientific
Yes	Wright	Curtis	Rock Creek Pharmaceuticals
yes	Cantrell	Carrie	Office of the Secretary of Commerce
yes	Sutherland	Mary-Shea	Office of the First Lady
yes	Rangarajan	Satya	HDL
No	Burris	Allen	Virginia Diabetes PC
No	Caturegli	Mario	Johns Hopkins
No	Condro	Peter	Richmond Nephrology
No	Brand	William	Gastrointestinal Specialists, Inc
No	Kuno	Ritsu	Pulmonary Assoc. of Richmond
No	Coutlakis	Peter	Arthritis Specialists Ltd.
No	Turner	Ron	UVA
No RSVP	Levy	Rich	

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mm Gov Jason ms . Juan Villalobos Medical Soc. of Richm

RICHMOND DOCTORS & PHARMACISTS					
Dr. Clifton Hickman	ENT	Virginia Ear Nose & Throat	3450 Mayland Court Richmond, VA 23233	804.484.3700	cchent@msn.com ✓
Dr. John Scott	Family Medicine	Family Physicians at Wyndham	5360 Twin Hickory Rd Richmond, VA 23059	804.346.3200	no email
Dr. Neal Carl	Family Medicine	Chippenham Family Medicine	681 Hioaks Road Richmond, VA 23225	804.560.0490	3rd D no email 2956
Dr. Randy Baggesen	Executive Health	Executive Health Group	7101 Jahnke Road Suite 550-A Richmond, VA 23225	804.560.3295	rand.baggesen@hcahealthcare.com ✓
Dr. William Beach	Orthopaedic Surgeon	Tuckahoe Orthopaedic Associates	1501 Maple Avenue Richmond, VA 23226	804.285.2300	beach@orv.com ✓
Dr. Craig Vranian	Cardiologist	Virginia Cardiovascular Specialists	7611 Forest Avenue Suite 100 Richmond, VA 23229	804.288.4827	no email
Glenn Bolyard, Rph	CVS Pharmacy Supervisor	CVS	7578 W Broad Street Richmond, VA 23294	804.512.4590	gbolyard@cvs.com ✓
Dr. Allen Burris	Endocrinology	Virginia Diabetes & Endocrinology PC	348 Browns Hill Court Midlothian, VA 23114	804.272.2702	no email
Dr. Peter Condro	Nephrology	Richmond Nephrology Associates	671 Hioaks Road Suite B Richmond, VA 23225	804.323.6903	no email
Dr. William Brand	Gastroenterology	Gastrointestinal Specialists, Inc.	7611 Forest Avenue Suite 410 Richmond, VA 23229	804.285.8206	wbrand@gastrova.com ✓
Dr. Ritsu Kuno	Pulmonology	Pulmonary Associates of Richmond	1000 Boulders Pkwy Suite 200 Richmond, VA 23225	804.320.4243	no email – per his nurse, Janice
Dr. Peter Coutrakis	Rheumatology	Arthritis Specialists Ltd.	1401 Johnston Willis Drive Suite 1200 Richmond, VA 23235	804.323.1401	no email
MEDICAL PROFESSIONALS					
~~Rufus Phillips~~	~~Executive Vice President~~	~~Medical Society of VA~~	2924 ~~Emerywood Pkwy~~ Suite 300 Richmond, VA 23294	~~804.353.2721~~ ext 1034	rphillips@msv.org
Dr. John Clore	Endocrinology & Metabolism, Internal Medicine	Assoc. VP for Clinical Research VCU School of Medicine	1200 E Broad Street Richmond, VA 23298	804.828.9228	no email
Dr. Paul Ladenson	Prof. of Medicine, Pathology, Oncology, & Radiology	Director, Division of Endocrinology & Metabolism	1830 E Monument Street #333 Baltimore, MD 21287	410.955.3663	ladenson@jhmi.edu ✓
Dr. Ron Turner	Pediatric, Infectious Diseases	UVA Health Systems	P.O. Box 800386 Charlottesville, VA 22908	434.243.9664	rbt2nv@virginia.edu ✓
Dr. Michael Mullan	Director	Roskamp Institute	2040 Whitfield Avenue Sarasota, FL 34243	941.755.6644	mmullan@rfdn.org ✓
Dr. Fiona Crawford	Associate Director	Roskamp Institute	2040 Whitfield Avenue Sarasota, FL 34243	941.752.2949	fcrawford@rfdn.org ✓
Dr. Edgar (Pete) Miller, III	Assoc. Professor of Medicine & Epidemiology	Johns Hopkins Medical Center	2024 E Monument Street Suite 1-500M Baltimore, MD 21205	410.502.6444	ermiller@jhmi.edu ✓
Dr. Patrizio (Mario) Caturegli	Pathology, Anatomic Pathology	Johns Hopkins Medical Center	600 N Wolfe Street Baltimore, MD 21287	410.614.4174	pcat@jhmi.edu ✓
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Robert E. Pokusa, Esquire	General Council	Star Scientific, Inc.	4330 East West Highway Suite 301 Bethesda, MD 20814	240.743.4783 Ext. 113	bpokus@starscientific.com
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Jonnie R. Williams Jr.	Special Projects Manager	Star Scientific, Inc.	4470 Cox Road Suite 110 Glen Allen, VA 23060	804.527.1970	jrw@starscientific.com
Dr. Curtis Wright	Scientific & Medical Director	Rock Creek Pharmaceuticals, Inc.	55 Blackburn Center Gloucester, MA 01930	978.283.1373	cwright1776@yahoo.com

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VCU Medical Center
Department of Internal Medicine
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PO Box 980155
Richmond VA 23298

Dr. William Beach
Tuckahoe Orthopedic
1501 Maple Avenue, Ste 200
Richmond VA 23226

Abuhamad, Alfred, MD Perinatologist Norfolk, VA	**Sentara Norfolk General Hospital** Nationally ranked in 1 specialty High-performing in 8 specialties
Adams, Reid B., MD Surgeon	**University of Virginia Medical Center** #48 Nationally in Cancer Nationally ranked in 5 specialties

Charlottesville, VA	High-performing in 6 specialties
Andersen, Glenna, MD Obstetrician-Gynecologist Fairfax, VA	**Inova Fairfax Hospital** #22 Nationally in Gynecology Nationally ranked in 1 specialty High-performing in 11 specialties
Anscher, Mitchell S., MD Radiation Oncologist Richmond, VA	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties **Hunter Holmes McGuire VA Center**
Baker, Christopher C., MD Surgeon Roanoke, VA	**Carilion Roanoke Memorial Hospital** High-performing in 2 specialties
Barrett, Eugene, MD Endocrinologist Charlottesville, VA	**University of Virginia Medical Center** #48 Nationally in Cancer Nationally ranked in 5 specialties High-performing in 6 specialties
Bateman, Bruce, MD Reproductive Endocrinologist Charlottesville, VA	**University of Virginia Medical Center** #48 Nationally in Cancer Nationally ranked in 5 specialties High-performing in 6 specialties
Beall, Michael, MD Urologist Fairfax, VA	**Inova Fairfax Hospital** #22 Nationally in Gynecology Nationally ranked in 1 specialty High-performing in 11 specialties **Reston Hospital Center** High-performing in 4 specialties
Bear, Harry D., MD/PhD Surgeon Richmond, VA	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Bicher, Annette, MD Gynecologic Oncologist Annandale, VA	**Inova Fairfax Hospital** #22 Nationally in Gynecology Nationally ranked in 1 specialty High-performing in 11 specialties
Boling, Peter, MD Geriatrician Richmond, VA	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Bolton, W. Kline, MD Nephrologist Charlottesville, VA	**University of Virginia Medical Center** #48 Nationally in Cancer Nationally ranked in 5 specialties High-performing in 6 specialties

Bostwick, David, MD Pathologist Glen Allen, VA	Affiliated hospital not reported
Boyle, Robert, MD Neonatalogist Charlottesville, VA	**University of Virginia Medical Center** #48 Nationally in Cancer Nationally ranked in 5 specialties High-performing in 6 specialties
Brenin, Christiana M., MD Medical Oncologist Charlottesville, VA	**University of Virginia Medical Center** #48 Nationally in Cancer Nationally ranked in 5 specialties High-performing in 6 specialties
Britt, L. D. MD Surgeon Norfolk, VA	**Sentara Norfolk General Hospital** Nationally ranked in 1 specialty High-performing in 8 specialties
Canterbury, Randolph II, MD Psychiatrist Charlottesville, VA	**University of Virginia Medical Center** Nationally ranked in 5 specialties High-performing in 6 specialties
Cardenosa, Gilda, MD Diagnostic Radiologist Richmond, VA	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Carraway, James, MD Plastic Surgeon Virginia Beach, VA	**Sentara Leigh Hospital** High-performing in 3 specialties
Cherry, Kenneth, Jr., MD Vascular Surgeon Charlottesville, VA	**University of Virginia Medical Center** Nationally ranked in 5 specialties High-performing in 6 specialties
Clore, John, MD Endocrinologist Richmond, VA	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Cooper, William, MD Pulmonologist Virginia Beach, VA	**Sentara Virginia Beach General Hospital** High-performing in 7 specialties
Dalkin, Alan, MD Endocrinologist Charlottesville, VA	**University of Virginia Medical Center** Nationally ranked in 5 specialties High-performing in 6 specialties
Darrow, David, MD/DDS Pediatric ENT-Otolaryngologist Norfolk, VA	**Children's Hospital**

DeKosky, Steven, MD Neurologist Charlottesville, VA	**University of Virginia Medical Center** Nationally ranked in 5 specialties High-performing in 6 specialties
Diamond, Paul, MD Physiatrist Charlottesville, VA	**University of Virginia Medical Center** Nationally ranked in 5 specialties High-performing in 6 specialties
Diduch, David, MD Orthopedic Surgeon Charlottesville, VA	**University of Virginia Medical Center** Nationally ranked in 5 specialties High-performing in 6 specialties
DiMarco, John, MD/PhD Cardiac Electrophysiologist Charlottesville, VA	**University of Virginia Medical Center** Nationally ranked in 5 specialties High-performing in 6 specialties
DiNardo, Laurence, MD ENT-Otolaryngologist Richmond, VA	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Durso, Nancy, MD Reproductive Endocrinologist Fairfax, VA	**Inova Fairfax Hospital** #22 Nationally in Gynecology Nationally ranked in 1 specialty High-performing in 11 specialties
Duska, Linda R., MD Gynecologic Oncologist Charlottesville, VA	**University of Virginia Medical Center** #44 Nationally in Gynecology Nationally ranked in 5 specialties High-performing in 6 specialties
Edmond, Michael, MD Infectious Disease Specialist Richmond, VA	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Ellenbogen, Kenneth, MD Cardiac Electrophysiologist Richmond, VA	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties **Henrico Doctors' Hospital** High-performing in 1 specialty
Ferguson, James II, MD Perinatologist Charlottesville, VA	**University of Virginia Medical Center** #44 Nationally in Gynecology Nationally ranked in 5 specialties High-performing in 6 specialties
Fracasso, Paula M., MD/PhD Medical Oncologist Charlottesville, VA	**University of Virginia Medical Center** #44 Nationally in Gynecology Nationally ranked in 5 specialties

	High-performing in 6 specialties
Garrett, Algin, MD Dermatologist Richmond, VA	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Gater, David, Jr., MD/PhD Physiatrist Richmond, VA	**Hunter Holmes McGuire VA Center** **Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Godder, Kamar, MD/PhD Pediatric Hematologist-Oncologist Richmond, VA	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Gress, Daryl, MD Neurologist Charlottesville, VA	**University of Virginia Medical Center** #44 Nationally in Gynecology Nationally ranked in 5 specialties High-performing in 6 specialties
Grosh, William W., MD Medical Oncologist Charlottesville, VA	**University of Virginia Medical Center** #44 Nationally in Gynecology Nationally ranked in 5 specialties High-performing in 6 specialties
Gullquist, Scott, MD Pediatric Cardiologist Richmond, VA	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Haley, Elliott, Jr., MD Neurologist Charlottesville, VA	**University of Virginia Medical Center** #44 Nationally in Gynecology Nationally ranked in 5 specialties High-performing in 6 specialties
Hanks, John B., MD Surgeon Charlottesville, VA	**University of Virginia Medical Center** #44 Nationally in Gynecology Nationally ranked in 5 specialties High-performing in 6 specialties
Holroyd, Suzanne, MD Geriatric Psychiatrist Charlottesville, VA	**University of Virginia Medical Center** #44 Nationally in Gynecology Nationally ranked in 5 specialties High-performing in 6 specialties
Hullfish, Kathie, MD Obstetrician-Gynecologist Charlottesville, VA	**University of Virginia Medical Center** #44 Nationally in Gynecology Nationally ranked in 5 specialties High-performing in 6 specialties
Jensen, Mary, MD	**University of Virginia Medical Center**

Neuroradiologist Charlottsville, VA	#39 Nationally in Ear, Nose & Throat Nationally ranked in 5 specialties High-performing in 6 specialties
★ Jiranek, William, MD Orthopedic Surgeon Richmond, VA	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
★ Johnson, Bruce, MD Pulmonologist Virginia Beach, VA	**Sentara Virginia Beach General Hospital** High-performing in 7 specialties
★ Jones, David R., MD Thoracic and Cardiac Surgeon Charlottesville, VA	**University of Virginia Medical Center** #39 Nationally in Ear, Nose & Throat Nationally ranked in 5 specialties High-performing in 6 specialties
★ Kattwinkel, John, MD Neonatalogist Charlottesville, VA	**University of Virginia Medical Center** #39 Nationally in Ear, Nose & Throat Nationally ranked in 5 specialties High-performing in 6 specialties
★ Kelly, Cynthia, MD Pediatric Allergist-Immunologist Norfolk, VA	**Children's Hospital**
★ Kesser, Bradley, MD ENT-Otolaryngologist Charlottesville, VA	**University of Virginia Medical Center** #39 Nationally in Ear, Nose & Throat Nationally ranked in 5 specialties High-performing in 6 specialties
★ Kiernan, Paul D., MD Thoracic and Cardiac Surgeon Falls Church, VA	**Inova Fairfax Hospital** Nationally ranked in 1 specialty High-performing in 11 specialties **Inova Alexandria Hospital** High-performing in 8 specialties
★ Kron, Irving, MD Thoracic and Cardiac Surgeon Charlottesville, VA	**University of Virginia Medical Center** #39 Nationally in Ear, Nose & Throat Nationally ranked in 5 specialties High-performing in 6 specialties
★ Kurtzke, Robert, MD Neurologist Fairfax, VA	**Inova Fairfax Hospital** Nationally ranked in 1 specialty High-performing in 11 specialties **Reston Hospital Center** High-performing in 4 specialties
★ Larner, James M., MD Radiation Oncologist Charlottesville, VA	**University of Virginia Medical Center** #39 Nationally in Ear, Nose & Throat Nationally ranked in 5 specialties

	High-performing in 6 specialties
★ Lau, Christine L., MD **Thoracic and Cardiac Surgeon** **Charlottesville, VA**	**University of Virginia Medical Center** **#39 Nationally in Ear, Nose & Throat** **Nationally ranked in 5 specialties** **High-performing in 6 specialties**
★ Laughlin, Mary J., MD **Hematologist** **Charlottesville, VA**	**University of Virginia Medical Center** **#39 Nationally in Ear, Nose & Throat** **Nationally ranked in 5 specialties** **High-performing in 6 specialties**
★ Lavenstein, Bennett, MD **Pediatric Neurologist** **Fairfax, VA**	**Children's National Medical Center** Nationally ranked in 10 specialties **Inova Fairfax Hospital** Nationally ranked in 1 specialty High-performing in 11 specialties
★ Levine, Paul A., MD **ENT-Otolaryngologist** **Charlottesville, VA**	**University of Virginia Medical Center** **#39 Nationally in Ear, Nose & Throat** **Nationally ranked in 5 specialties** **High-performing in 6 specialties**
LoRusso, Thomas, MD **Pulmonologist** **Reston, VA**	**Inova Fairfax Hospital** **#22 Nationally in Gynecology** **Nationally ranked in 1 specialty** **High-performing in 11 specialties**
★ Lyckholm, Laurel J., MD **Medical Oncologist** **Richmond, VA**	**Virginia Commonwealth University Medical Center** **Nationally ranked in 1 specialty** **High-performing in 12 specialties**
★ Marshall, John, MD/PhD **Endocrinologist** **Charlottesville, VA**	**University of Virginia Medical Center** **#48 Nationally in Cancer** **Nationally ranked in 5 specialties** **High-performing in 6 specialties**
★ McKinley, William, MD **Physiatrist** **Richmond, VA**	**Hunter Holmes McGuire VA Center**
★ McLaren, Rodney, MD **Perinatologist** **Fairfax, VA**	Affiliated hospital not reported
★ Miller, Mark, MD **Orthopedic Surgeon** **Charlottesville, VA**	**University of Virginia Medical Center** **#48 Nationally in Cancer** **Nationally ranked in 5 specialties** **High-performing in 6 specialties**

Mills, Stacey E., MD Pathologist Charlottesville, VA	**University of Virginia Medical Center** #48 Nationally in Cancer Nationally ranked in 5 specialties High-performing in 6 specialties
Modesitt, Susan C., MD Gynecologic Oncologist Charlottesville, VA	**University of Virginia Medical Center** #48 Nationally in Cancer Nationally ranked in 5 specialties High-performing in 6 specialties
Morgan, Raymond, MD Plastic Surgeon Charlottesville, VA	**University of Virginia Medical Center** #48 Nationally in Cancer Nationally ranked in 5 specialties High-performing in 6 specialties
Morris, Monica M., MD Radiation Oncologist Charlottesville, VA	**University of Virginia Medical Center** #48 Nationally in Cancer Nationally ranked in 5 specialties High-performing in 6 specialties
Moskowitz, William, MD Pediatric Cardiologist Richmond, VA	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Myseros, John, MD Neurosurgeon Fairfax, VA	**Inova Fairfax Hospital** Nationally ranked in 1 specialty High-performing in 11 specialties **Children's National Medical Center** #15 Nationally in Pediatrics: Neurology & Neurosurgery Nationally ranked in 10 specialties
Neifeld, James P., MD Surgeon Richmond, VA	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Nestler, John, MD Endocrinologist Richmond, VA	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Nies, Barbara, MD Perinatologist Fairfax, VA	**Inova Fairfax Hospital** #22 Nationally in Gynecology Nationally ranked in 1 specialty High-performing in 11 specialties **Inova Fair Oaks Hospital** High-performing in 5 specialties
Okusa, Mark, MD Nephrologist	**University of Virginia Medical Center** #35 Nationally in Neurology & Neurosurgery

Charlottesville, VA	Nationally ranked in 5 specialties High-performing in 6 specialties
Onufer, John, MD Cardiac Electrophysiologist Richmond, VA	**Henrico Doctors' Hospital** High-performing in 1 specialty
Palmer, Robert, MD Geriatrician Norfolk, VA	**Sentara Norfolk General Hospital** #47 Nationally in Cardiology & Heart Surgery Nationally ranked in 1 specialty High-performing in 8 specialties
Pearson, Richard, MD Infectious Disease Specialist Charlottesville, VA	**University of Virginia Medical Center** #35 Nationally in Neurology & Neurosurgery Nationally ranked in 5 specialties High-performing in 6 specialties
Pettrone, Frank, MD Orthopedic Surgeon Arlington, VA	**Virginia Hospital Center** High-performing in 2 specialties
Philpott, Jonathan, MD Thoracic and Cardiac Surgeon Norfolk, VA	**Sentara Norfolk General Hospital** #47 Nationally in Cardiology & Heart Surgery Nationally ranked in 1 specialty High-performing in 8 specialties **Virginia Hospital Center** High-performing in 2 specialties
Rakowski, Thomas, MD Nephrologist Arlington, VA	**Inova Fairfax Hospital** Nationally ranked in 1 specialty High-performing in 11 specialties
Rich, Tyvin A., MD Radiation Oncologist Charlottesville, VA	**University of Virginia Medical Center** #35 Nationally in Neurology & Neurosurgery Nationally ranked in 5 specialties High-performing in 6 specialties
Robert, Nicholas, MD Medical Oncologist Fairfax, VA	**Inova Fairfax Hospital** Nationally ranked in 1 specialty High-performing in 11 specialties
Rodgers, Bradley, MD Pediatric Surgeon Charlottesville, VA	**University of Virginia Medical Center** #35 Nationally in Neurology & Neurosurgery Nationally ranked in 5 specialties High-performing in 6 specialties
Rubin, Bruce, MD Pediatric Pulmonologist Richmond, VA	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Russell, Mark, MD Dermatologist	**University of Virginia Medical Center** #35 Nationally in Neurology & Neurosurgery Nationally ranked in 5 specialties

Charlottesville, VA	High-performing in 6 specialties
Sanz, Luis, MD Obstetrician-Gynecologist Arlington, VA	**Virginia Hospital Center** High-performing in 2 specialties
Scheld, W. Michael, MD Infectious Disease Specialist Charlottesville, VA	**University of Virginia Medical Center** #35 Nationally in Neurology & Neurosurgery Nationally ranked in 5 specialties High-performing in 6 specialties
Schiff, David, MD Neurologist Charlottesville, VA	**University of Virginia Medical Center** #35 Nationally in Neurology & Neurosurgery Nationally ranked in 5 specialties High-performing in 6 specialties
Schirmer, Bruce, MD Surgeon Charlottesville, VA	**University of Virginia Medical Center** #13 Nationally in Diabetes & Endocrinology Nationally ranked in 5 specialties High-performing in 6 specialties
Schuler, Thomas, MD Orthopedic Surgeon Reston, VA	**Reston Hospital Center** High-performing in 4 specialties
Scudera, Peter, MD Gastroenterologist Fairfax, VA	**Inova Fair Oaks Hospital** High-performing in 5 specialties **Inova Fairfax Hospital** Nationally ranked in 1 specialty High-performing in 11 specialties
Shaffrey, Christopher, MD Neurosurgeon Charlottesville, VA	**University of Virginia Medical Center** #13 Nationally in Diabetes & Endocrinology Nationally ranked in 5 specialties High-performing in 6 specialties
Shaffrey, Mark E., MD Neurosurgeon Charlottesville, VA	**University of Virginia Medical Center** #13 Nationally in Diabetes & Endocrinology Nationally ranked in 5 specialties High-performing in 6 specialties
Sherman, James, MD Pediatric Pulmonologist Roanoke, VA	**Carilion Roanoke Memorial Hospital** High-performing in 2 specialties
Shiffman, Mitchell, MD Gastroenterologist Richmond, VA	**Mary Immaculate Hospital**
Slingluff, Craig L., Jr., MD Surgeon	**University of Virginia Medical Center** #13 Nationally in Diabetes & Endocrinology Nationally ranked in 5 specialties

Charlottesville, VA	High-performing in 6 specialties
Smith, Thomas Joseph, MD **Medical Oncologist** **Richmond, VA**	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Song, Shiyu, MD/PhD **Radiation Oncologist** **Richmond, VA**	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Steers, William, MD **Urologist** **Charlottesville, VA**	**University of Virginia Medical Center** #13 Nationally in Diabetes & Endocrinology Nationally ranked in 5 specialties High-performing in 6 specialties
Taylor, Peyton T., Jr., MD **Gynecologic Oncologist** **Charlottesville, VA**	**University of Virginia Medical Center** #13 Nationally in Diabetes & Endocrinology Nationally ranked in 5 specialties High-performing in 6 specialties
Vance, Mary Lee, MD **Endocrinologist** **Charlottesville, VA**	**University of Virginia Medical Center** #13 Nationally in Diabetes & Endocrinology Nationally ranked in 5 specialties High-performing in 6 specialties
Vaughey, Ellen, MD **Pulmonologist** **Annandale, VA**	**Inova Fairfax Hospital** Nationally ranked in 1 specialty High-performing in 11 specialties
	Virginia Hospital Center High-performing in 2 specialties
Vetrovec, George, MD **Cardiologist** **Richmond, VA**	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Voelkel, Norbert, MD **Pulmonologist** **Richmond, VA**	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty High-performing in 12 specialties
Weiss, Geoffrey R., MD **Medical Oncologist** **Charlottesville, VA**	**University of Virginia Medical Center** Nationally ranked in 5 specialties High-performing in 6 specialties
Williams, Michael, MD **Hematologist** **Charlottesville, VA**	**University of Virginia Medical Center** Nationally ranked in 5 specialties High-performing in 6 specialties
Wise, Christopher, MD **Rheumatologist** **Richmond, VA**	**Virginia Commonwealth University Medical Center** Nationally ranked in 1 specialty

High-performing in 12 specialties

* Wooten, George, Jr., MD
Neurologist
Charlottesville, VA

University of Virginia Medical Center

Nationally ranked in 5 specialties
High-performing in 6 specialties

* Younossi, Zobair, MD
Gastroenterologist
Falls Church, VA

Inova Fairfax Hospital

Nationally ranked in 1 specialty
High-performing in 11 specialties

Dr. Thomas J. Smith, medical director of the Thomas Palliative Care Unit at the VCU Massey Cancer Center, is the top vote-getter in Hospice and Palliative Care. *Photo illustration by Adam Ewing*

2011 Richmond Winners

The top five vote-getters are listed alphabetically in each category.
Some categories may have more than five names or more than one asterisked name because of ties.
Fewer than five doctors are listed in some categories if votes did not reach the cutoff set by the magazine's staff.

**denotes top vote-getter in category*

Allergy and Immunology

Michael Blumberg
Allergy Partners of Richmond, *7605 Forest Ave., Suite 103, 288-0055*

***Robert S. Call**
Richmond Allergy & Asthma Specialists, *9920 Independence Park Drive, Suite 100, 285-7420*

Barry Feinstein
Advanced Allergy & Asthma, *2819 N. Parham Road, Suite 100, 739-9005; 5924 Harbour Park Drive, Midlothian, 739-9005*

Lawrence E. Gelber
Richmond Allergy & Asthma Specialists, *9920 Independence Park Drive, Suite 100, 285-7420*

***Anne-Marie Irani**
Professor of pediatric medicine and chairwoman, Division of Pediatric Allergy & Immunology at VCUMC, Children's Hospital of Richmond, *1001 E. Marshall St., 628-7337*

Lawrence B. Schwartz
Chairman of the Division of Allergy, Immunology and Rheumatology at VCUMC, Ambulatory Care Center, *417 N. 11th St., Fourth Floor, 828-9341*

Elaine Turner
Allergy Partners of Richmond, *7605 Forest Ave., Suite 103, 288-0055*

Anesthesiology

M. Abey Albert

Commonwealth Anesthesia Associates, *10800 Midlothian Turnpike, Suite 265, 594-2622*

Clavio Ascari

Anesthesia Associates of Richmond, *1504 Santa Rosa Road, Suite 206, 288-4453*

Russell Brock

Stony Point Surgery Center, *8700 Stony Point Parkway, 775-4500*

Rafael Cartagena

Sub-specialty: cardiac anesthesia. Total Anesthesia, Henrico Doctors' Hospital, *1602 Skipwith Road, 289-4937*

***Michael Estes**

West End Anesthesia Group, *5855 Bremo Road, 288-6258*

Jeffrey A. Green

Sub-specialty: cardiac anesthesia. Vice chairman, Department of Anesthesiology; professor of anesthesia safety; and director of cardiothoracic anesthesiology at VCUMC. West Hospital, *1200 E. Broad St., Seventh Floor North, Room 102, 828-9160*

Peggy Montgomery

Virginia Urology Center, *9105 Stony Point Drive, 330-9105*

Jay H. Shapiro

Sub-specialty: pediatric anesthesia. Professor of anesthesia, VCUMC. Department of Anesthesiology, *1200 E. Broad St., 828-0733*

James W. Stone

Commonwealth Anesthesia Associates, *10800 Midlothian Turnpike, Suite 265, 594-2622*

Cardiology

Minh Bui

Henrico Cardiology Associates, *7702 E. Parham Road, Suite 106; 7603 Forest Ave., Suite 202, 288-0134*

Steven W. Cross

Virginia Cardiovascular Specialists, *7611 Forest Ave., Suite 100, 288-4827*

Kenneth A. Ellenbogen

Sub-specialty: cardiac electrophysiology. Professor of medicine, chairman of the Division of Cardiology, and clinical and academic cardiac electrophysiology program director at VCUMC. *1200 E. Marshall St., Third Floor, 828-7565*

Shaival Kapadia

Cardiovascular Associates of Virginia, *13700 St. Francis Blvd., Suite 600, 594-7444; 7001 Forest Ave., Suite 200, 288-3123*

Vipal K. Sabharwal

Cardiovascular Associates of Virginia, *7001 Forest Ave., Suite 200, 288-3123; 13700 St. Francis Blvd., Suite 600, 594-7444*

***George W. Vetrovec**

Professor of medicine in the Division of Cardiology at the VCU Pauley Heart Center at VCUMC. Ambulatory Care Center, *417 N. 11th St., 828-8885 or 628-1214*

Cardiac Surgery

Mark R. Bladergroen

Cardiac Surgery Specialists, *5875 Bremo Road, Suite G5, 287-7840*

***Vigneshwar Kasirajan**

Sub-specialties: heart transplantation and advanced mechanical circulatory support. Associate professor of surgery and chairman of the Division of Cardiothoracic Surgery at VCUMC. West Hospital. *1200 E. Broad St., Seventh Floor South, 828-2774*

Marc Katz

Cardiac Surgery Specialists, *5875 Bremo Road, Suite G5, 287-7840*

Timothy C. Wolfgang

Cardiothoracic Surgical Associates, *7605 Forest Ave., Suite 302, 282-8777*

J. James Zocco

Cardiothoracic Surgical Associates, *7101 Jahnke Road, Suite 500, 320-2751*

Chiropractic Care (Doctor of Chiropractic)

***Michael Spagnolo**

Glen Allen Chiropractic and Acupuncture Center, *11535 Nuckols Road, Suite D, 747-5464*

Colon and Rectal Surgery

Homayoon M. Akbari

Associate professor, Division of General Surgery at VCUMC. Ambulatory Care Center, *417 N. 11th St., Third Floor, 828-8000*

Christine Bouchard

Surgical Associates, *1051 Johnston Willis Drive, Suite 200, 320-2705*

Cary L. Gentry

Colon and Rectal Specialists, *7605 Forest Ave., Suite 308, 288-7077; 8700 Stony Point Parkway, Suite 270, 249-2465*

Brian J. Kaplan

Sub-specialties: gastrointestinal cancers; minimally invasive approach to gastrointestinal cancers, sarcomas, melanomas, hepatobiliary tumors, pancreas tumors and colorectal cancers. Associate professor of surgery and vice chairman of surgery education and program director of the general-surgery residency program at VCUMC. VCU Dalton Oncology Clinic, *1300 E. Marshall St., 828-3250; 9000 Stony Point Parkway, 237-6644*

Sean C. O'Donovan

Colon and Rectal Specialists, *7605 Forest Ave., Suite 308, 288-7077; 8700 Stony Point Parkway, Suite 270, 249-2465*

***Crawford C. Smith**

Colon and Rectal Specialists, *8700 Stony Point Parkway, Suite 270, 249-2465*

William R. Timmerman

Colon and Rectal Specialists, *7605 Forest Ave., Suite 308, 288-7077; 7425 Lee Davis Road, Mechanicsville, 559-3400*

Dermatology

Algin B. Garrett
Sub-specialties: skin cancer, laser surgery, cosmetic procedures. Professor and chairman of the Department of Dermatology at VCUMC. *9000 Stony Point Parkway, 560-8919*
Eileen Kitces
Richmond Dermatology & Laser Specialists, *9816 Mayland Drive, 282-8510*
***Julia R. Nunley**
Professor, Department of Dermatology, VCUMC Nelson Clinic, *401 N. 11th St., 828-9361; 9000 Stony Point Parkway, 560-8919*
Georgia K. Seely
Other specialty: internal medicine. Dermatology Associates of Virginia P.C., *10710 Midlothian Turnpike, Suite 401, 794-2307; 201 Concourse Blvd., Suite 110, 549-4025*
Laurie Shinn
Sub-specialty: pediatric dermatology. Commonwealth Dermatology, *7001 Forest Ave., Suite 300, 282-0831*

Emergency Medicine

Eric English
CJWMC, Johnston-Willis Campus, *1401 Johnston Willis Drive, 330-2000*
Arthur C. Ernst
Sub-specialty: family practice. Parham Doctors' Hospital, *7700 E. Parham Road, 747-5770*
***Joseph P. Ornato**
Sub-specialties: internal medicine, cardiology. Professor and chairman of the Department of Emergency Medicine at VCUMC. *1250 E. Marshall St., Second Floor, Suite 500, 828-7184*
Robert Powell
Richmond Emergency Physicians, Bon Secours St. Mary's Hospital Emergency Department, *5801 Bremo Road, 287-7066*
Charles P. Shields III
Henrico Doctors' Hospital, *1602 Skipwith Road, 289-4605*

Endocrinology, Diabetes and Metabolism

Allen S. Burris
Sub-specialty: male reproductive endocrinology. Associate clinical professor at VCUMC. Virginia Diabetes and Endocrinology, *348 Brown's Hill Court, Midlothian, 272-2702*
***Robert Castellucci**
7605 Forest Ave., Suite 404, 282-9899
John N. Clore

Professor of medicine in the Division of Endocrinology and Metabolism and associate vice president for clinical research at VCUMC. Ambulatory Care Center, *417 N. 11th St., 828-2161*

David F. Gardner

Sub-specialty: thyroid disorders. Professor of medicine in the Division of Endocrinology and Metabolism at VCUMC. Ambulatory Care Center, *417 N. 11th St., 828-2161*

Ben D. Phillips

Virginia Endocrinology and Osteoporosis Center, *2384 Colony Crossing Place, Midlothian, 423-3636*

Family/General Practice

John G. Barnes

Midlothian Family Practice, *13332 Midlothian Turnpike, 794-5598*

Steven Crossman

Department of Family Medicine at VCUMC. *401 N. 11th St., Seventh Floor, 828-5883*

Richard L. Gergoudis

Family Physicians, a Division of Commonwealth Primary Care, *1800 Glenside Drive, Suite 110, 288-1800*

***Anton J. Kuzel**

Chairman of the Department of Family Medicine at VCUMC. Nelson Clinic, *401 N. 11th St., Seventh Floor, 828-5883*

Matthew Marchal

Altius Family & Sports Medicine, *2530-A Gaskins Road, 290-0593*

Susan Miller

Department of Family Medicine at VCUMC. Nelson Clinic, *401 N. 11th St., Seventh Floor, 828-5883*

Michael J. Petrizzi

Sub-specialty: sports medicine. Hanover Family and Atlee Family Physicians, *9376 Atlee Station Road, Mechanicsville, 730-0990*

Stuart Solan

Partner MD, *7001 Forest Ave., Suite 302, 282-2655*

Gastroenterology

Doumit BouHaidar

Assistant professor of medicine, VCUMC. Ambulatory Care Center, *417 N. 11th St., Fourth Floor, 828-4060*

William T. Brand Jr.

Gastrointestinal Specialists Inc., *7611 Forest Ave., Suite 410, 285-8206*

***Howard Haverty**

Primary specialty: internal medicine. Sub-specialty: gastroenterology. Richmond Gastroenterology Associates, *223 Wadsworth Drive, 560-9852*

Robert E. Mitchell III

Mitchell Endoscopy Center, *7605 Forest Ave., Suite 211, 282-3114*

Arun Sanyal

Professor of medicine and chairman of the Division of Gastroenterology, Hepatology and Nutrition at VCUMC. *1200 E. Marshall St., Sixth Floor, 828-4060*

Genetics

***Joann N. Bodurtha**

Clinical geneticist and professor of human and molecular genetics, pediatrics, OB/GYN, preventive medicine, and community health at VCUMC. 9000 Stony Point Parkway; Children's Hospital of Richmond on the MCV Campus, *1001 E. Marshall St., 828-9632*

Arti Pandya

Specialty areas: clinical genetics, pediatrics and clinical molecular genetics. Associate professor in the Department of Human Genetics and Molecular Genetics at VCUMC. Children's Hospital of Richmond on the MCV Campus, *1001 E. Marshall St., 828-9632*

Geriatric Medicine

Arline D. Bohannon

Assistant professor of internal medicine at VCUMC. House Call Long Term Care, *1300 E. Marshall St., 828-5306; Ambulatory Care Center, 417 N. 11th St., 828-9357*

***Peter A. Boling**

Specializes in home health care. Professor and interim chairman of the Division of General Internal Medicine, and director of long-term care and geriatrics at VCUMC. Ambulatory Care Center, *417 N. 11th St., 828-9357*

Jim Dageforde

Sub-specialty: primary care. Family Physicians, Ridgefield Office, *2200 Pump Road, Suite 100, 741-7141*

Sarah Hobgood

Assistant professor of internal medicine and director of inpatient consult service at VCUMC. Ambulatory Care Center, *417 N. 11th St., 828-9357*

Holly Stanley

Coordinated Care for Seniors, *P.O. Box 3892, (877) 329-5900*

Gynecology/Obstetrics

Ellen L. Brock

VCUMC Women's Health at Nelson Clinic, *401 N. 11th St., 828-4409*

Stephen Cohen

Associate professor in the VCUMC Department of Obstetrics and Gynecology. Women's Health at Nelson Clinic, *401 N. 11th St., 828-4409*

***Alice Hirata**

Specialties: general and high-risk obstetrics. Virginia Women's Center, *5875 Bremo Road, Suite 400, 288-4084*

Gita Massey

Associate professor of pediatrics, Division of Pediatric Hematology and Oncology at the Children's Hospital of Richmond on the MCV Campus. ***Nelson Clinic, 401 N. 11th St., 828-9300***

David F. Trent

Other specialty: oncology. Virginia Cancer Institute, ***6605 W. Broad St., Suite A, 287-3000***

Hospice and Palliative Care

Laurie Lyckholm

Professor of hematology/oncology, palliative care, bioethics and humanities at VCUMC. Massey Cancer Center, Dalton Oncology Clinic, ***401 College St., 828-5116***

John Mueller

Premier Health Care Associates, ***7702 E. Parham Road, Suite 101, 288-7901***

Tahira Naviwala

Palliative care specialist at CJW Medical Center/Thomas Johns Cancer Hospital. ***1401 Johnston Willis Drive, 267-6814***

***Thomas J. Smith**

Other specialties: oncology, hematology. Sub-specialties: breast cancer, symptom management and palliative care. Professor of hematology/oncology at VCUMC VCU Massey Cancer Center at Stony Point, ***9000 Stony Point Parkway, 327-8806***

Leanne M. Yanni

Other specialty: internal medicine. Associate professor of internal medicine and palliative care at VCUMC. Massey Cancer Center, ***401 College St., 828-0450***

Infectious Diseases

Gonzalo Bearman

Associate professor of internal medicine and associate hospital epidemiologist at VCUMC. Ambulatory Care Center, ***417 N. 11th St., 828-2121***

***James Brooks**

Infectious Diseases Specialists P.C., ***7605 Forest Ave., Suite 410, 285-1833***

Michael B. Edmond

Sub-specialties: hospital-acquired infections and antibiotic-resistant infections. VCUMC Ambulatory Care Center, ***417 N. 11th St., 828-2121***

David Rowles

Infectious Diseases Specialists P.C., ***7605 Forest Ave., Suite 410, 285-1833***

Richard P. Wenzel

Professor of internal medicine at VCUMC. Ambulatory Care Center, ***417 N. 11th St., 828-2121***

Internal Medicine

Stephanie Call

Associate professor of medicine, Division of General Internal Medicine at VCUMC. Ambulatory Care

***Christine Isaacs**

Associate professor of obstetrics and gynecology and director of midwifery services at VCUMC. Women's HealthCare at Stony Point, *9000 Stony Point Parkway, 560-8950*

Nicole Karjane

Associate professor in the VCUMC Department of Obstetrics and Gynecology. Women's Health at Nelson Clinic, *401 N. 11th St., 828-4409*

Karen E. Knapp

Commonwealth OB/GYN Specialists, St. Mary's Hospital Medical Office Building North, *5855 Bremo Road, Suite 605, 285-8806*

Vienne Murray

West End OB/GYN, *7601 Forest Ave., Suite 100, 282-9479*

Chief

John G. Pierce Jr.

VCUMC Department of Obstetrics and Gynecology. Women's Health at Nelson Clinic, *401 N. 11th St., 828-4409*

Brought top program at MCV + Massey Cancer

David Reutinger

Virginia Physicians for Women, *10710 Midlothian Turnpike, Suite 200, 897-2100*

Gynecologic Oncology

***Cecelia Boardman**

Associate professor of obstetrics/gynecology and professor of gynecologic oncology research at VCUMC. Women's HealthCare at Stony Point, *9000 Stony Point Parkway, 560-8950*; VCU Massey Cancer Center Dalton Oncology Clinic, *401 College St., 828-5116*

VCU
UVA
EVMS

Weldon Chafe

VCU Massey Cancer Center Dalton Oncology Clinic, *401 College St., 828-5116*; Women's Health at Nelson Clinic, *401 N. 11th St., 828-4409*

Pres + CMO
Sentara
Riverside
Bon Secours

George Chamoun

Virginia Gynecologic Oncology, *7603 Forest Ave., Suite 207, 200-7062*

Charles M. Jones III

Commonwealth Gynecologic Oncology, *5875 Bremo Road, Suite G-7, 288-8900*

Randal J. West

Central Virginia Gynecologic Oncology, *1467 Johnston Willis Drive, 323-5040*

Hematology

***J. (John) Christian Barrett**

VCU Massey Cancer Center Dalton Oncology Clinic, *401 College St., 828-5116*

Pablo Gonzalez

Other specialty: oncology. Virginia Cancer Institute, Thomas Johns Cancer Center, *1401 Johnston Willis Drive, Suite 4200, 330-7990*

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Leanne M. Yanni

Other specialty: palliative care. Associate professor of internal medicine and palliative care at VCUMC. Massey Cancer Center, *401 College St., 828-0450*

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Maternal-Fetal Medicine/High-Risk Pregnancy

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Virginia Women's Center, *5875 Bremo Road, Suite 400, 288-4084*

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Bon Secours Perinatal Center, *5855 Bremo Road, Suite 306, 287-7650*

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Neonatal-Perinatal Medicine

Vijay G. Dhande

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Raymond Farhi

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Nephrology

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Peter Condro

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Domenic Sica

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Neurology

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Jack Brush

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John M. O'Bannon III

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Scott Vota

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Neurosurgery

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K. Singh Sahni

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Oncology

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Lawrence M. Lewkow

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Thomas J. Smith

Other specialties: oncology, hematology. Sub-specialties: breast cancer, symptom management and palliative care. Professor of hematology/oncology at VCUMC. VCU Massey Cancer Center at Stony Point, *9000 Stony Point Parkway, 327-8806*

David F. Trent

Other specialty: hematology. Virginia Cancer Institute, *6605 W. Broad St., Suite A, 287-3000*

Oncologic Surgery

Harry D. Bear

Sub-specialties: breast, gastrointestinal cancer, sarcomas, melanomas, head and neck cancer, and liver tumors. Professor of surgery, microbiology and immunology and chairman of the Division of Surgical Oncology in the Department of Surgery at VCUMC. Dalton Oncology Clinic, VCU Massey Cancer Center, *1300 E. Marshall St., 828-5116*; *VCUMC at Stony Point, 9000 Stony Point Parkway, 560-8950*

Amelia (Aimee) C. Grover

Sub-specialties: breast and endocrine surgery. Assistant professor of surgery at VCUMC. Dalton Oncology Clinic. *1300 E. Marshall St., 828-5116 or 828-9324; 9000 Stony Point Parkway, 560-8950*

***Brian J. Kaplan**

Sub-specialties: gastrointestinal cancers: minimally invasive approach to gastrointestinal cancers, sarcomas, melanomas, hepatobiliary tumors, pancreas tumors and colorectal cancers. Associate professor of surgery at VCUMC Vice chairman of surgery education and program director of the general-surgery residency program. Dalton Oncology Clinic, *1300 E. Marshall St., 828-3250; 9000 Stony Point Parkway, 237-6644*

George A. Parker

Sub-specialties: breast, gastrointestinal and pancreatic cancers. Clinical professor of surgery at VCUMC and president of Bon Secours St. Mary's Hospital medical staff. Commonwealth Surgeons, Bon Secours Medical Group, St. Mary's Medical Building North, *5855 Bremo Road, Suite 506, 285-3225*

Michael Rose

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Ophthalmology and Ophthalmologic Surgery

Juan Astruc

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***William H. Benson**

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Donna D. Brown

Sub-specialties: pediatric ophthalmology, adult strabismus, and cornea and external disease. Virginia Eye Institute, *400 Westhampton Station, 287-4200*

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Orthopaedic Hand Surgery

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Orthopaedic Surgery

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Sub-specialty: total joint replacement. Professor of orthopaedic surgery and chief — adult reconstruction, VCUMC. Stony Point Orthopaedic Clinic, *9000 Stony Point Parkway, 228-4155*

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Thomas P. Loughran

Sub-specialties: sports medicine, shoulders, knees and reconstruction; arthroscopy. Associate professor of orthopaedic surgery and medical director of sports medicine at VCUMC. VCU Sports Medicine, *1300 W. Broad St., Suite 113, 828-0713*

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Julious "Jody" Smith III

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Sub-specialties: knee and shoulder surgery and sports medicine. Professor in the Department of Orthopaedic Surgery at VCUMC. *9000 Stony Point Parkway, 560-8945; Ambulatory Care Center, 417 N. 11th St., 828-7069*

Otolaryngology/ Otolaryngologic Surgery

Alan J. Burke
Sub-specialties: facial and plastic reconstructive surgery, head and neck surgery. Virginia Ear, Nose & Throat Associates, *3450 Mayland Court, 484-3700*

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Specialties: throat, sinus and skull-base disease; head and neck tumors. Professor and chairman of the Department of Otolaryngology, Head and Neck Surgery at VCUMC Dalton Oncology Clinic, *401 College St., 828-7999*; Nelson Clinic, *401 N. 11th St., 628-4368*; Stony Point Surgical Center, *8700 Stony Point Parkway, Suite 220, 323-0830*

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Kelley Dodson
Sub-specialties: pediatric otolaryngology, hereditary hearing loss. Assistant professor and associate director of the residency program in the Department of Otolaryngology at VCUMC. Nelson Clinic, *401 N. 11th St., 628-4368*; Stony Point Surgery Center, *8700 Stony Point Parkway, Suite 220, 323-0830*

Evan R. Reiter
Other specialties: head and neck oncology, smell and taste disorders, sleep apnea. Associate professor in the Department of Otolaryngology, Head and Neck Surgery at VCUMC. Nelson Clinic, *401-409 N. 11th St., 628-4368*; Stony Point Surgical Center, *8700 Stony Point Parkway, Suite 220, 323-0830*

Pain Management

Peter Duke Crane
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Other specialties: physical medicine and rehabilitation, interventional spine care. Associate professor of physical medicine and rehabilitation, director of the interventional spine care fellowship program at VCUMC. VCU Spine Center, *8700 Stony Point Parkway, Suite 260, 827-7463*

***Maged Hamza**
Other specialties: anesthesiology and interventional pain medicine. Medical director of the pain fellowship program and associate professor of physical medicine and rehabilitation at VCUMC. VCU Spine Center, *8700 Stony Point Parkway, Suite 260, 827-7463*

Stephen P. Long
Other specialty: anesthesiology. Associate clinical professor of anesthesiology at VCUMC. Commonwealth Pain Specialists, St. Mary's Medical Office Building Northwest, *1501 Maple Ave., Suite 301, 288-7246*

Peyman Nazmi
Other specialty: anesthesiology. Richmond Spine Interventions and Pain Center, *14404 Sommerville Court, Midlothian, 378-1800*

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Pathology

***Georgean G. deBlois**
Sub-specialty: anatomic pathology (breast and pulmonary). President of Richmond Academy of Medicine. Commonwealth Laboratory Consultants, *1401 Johnston Willis Drive, 330-2152*

Michael Kornstein
Sub-specialties: hematopathology and breast pathology. Commonwealth Laboratory Consultants, Henrico Doctors' Hospital, *1602 Skipwith Road, 289-4889*

A. Scott Mills
Sub-specialties: gastrointestinal and hepatobiliary pathology. Professor of pathology at VCUMC. Gateway Building, *sixth floor, room 201, 1200 E. Marshall St., 628-1291.*

Celeste N. Powers
Sub-specialties: cytopathology and head and neck pathology. Professor of pathology and otolaryngology at VCUMC. *1200 E. Marshall St., 828-9739*

Dharam Ramnani
Sub-specialty: urologic pathology. Virginia Urology, *9105 Stony Point Drive, 330-9105*

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Monumental Pathologists, Laboratory at Memorial Regional Medical Center, *5260 Atlee Road, Mechanicsville, 764-6061*

Pediatrics

David Arkin
Wiley & Arkin Pediatric and Adolescent Medicine, *3990 Stillman Parkway, Glen Allen, 282-4210*

Peter Heyman
Drs. Overton, Wiley, Kirchmier, Terry & Rowe P.C., *10410 Ridgefield Parkway, 754-3776; 7000 Patterson Ave., 282-9706; 14400 Sommerville Court, Midlothian, 379-5437*

***Sean McKenna**
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Linda Meloy
Professor of pediatrics and director of the newborn nursery at VCUMC. Children's Hospital of Richmond, *1001 E. Marshall St., 828-9338*

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Pediatric Specialists

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Specialties: pediatric cardiology, congenital heart disease and interventional catheterization. Professor and vice chairman of pediatrics and chief of the Division of Pediatric Cardiology at VCUMC. Children's Hospital of Richmond, *1001 E. Marshall St., 628-4787*

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Juan Villalona

Specialty: pediatric gastroenterology. Pediatric Gastroenterology of Richmond, *7229 Forest Ave., Suite 106, 888-7337*

Ted Williams

Specialty: pediatric gastroenterology. Assistant professor of pediatrics at VCUMC. VCU Pediatric Specialty Clinics at St. Mary's Hospital, St. Mary's Medical Building North, *5855 Bremo Road, Suite 703, 628-7337*

Pediatric Surgeons (General)

Charles Bagwell

Professor and chairman of pediatric surgery at VCUMC. Division of Pediatric Surgery, *1101 E. Marshall St., 828-3500*; St. Mary's North Medical Building, *5855 Bremo Road, Suite 606-A, 662-9007*; Chippenham Medical Office Building, *7119 Jahnke Road, 323-2847*

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Associate professor of surgery and pediatrics, general and thoracic surgery of infants and children at VCUMC. Division of Pediatric Surgery, *1101 E. Marshall St., 828-3500*; St. Mary's North Medical Building, *5855 Bremo Road, Suite 606-A, 662-9007*; Chippenham Medical Office Building, *7119 Jahnke Road, 323-2847*

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Pediatric Surgical Specialists

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Sub-specialty: pediatric urology. Children's Urology of Virginia, *8700 Stony Point Parkway, Suite 250, 272-2411*

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Victoria G. Kuester

Sub-specialty: orthopaedic surgery. Assistant professor of pediatric orthopaedics at VCUMC. Ambulatory Care Center, *417 N. 11th St.*; *9000 Stony Point Parkway*; VCU Sports Center, *1300 W. Broad St., 828-7069*

Gary Tye

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Sub-specialty: orthopaedic spine surgery. Tuckahoe Orthopaedic Associates, *1501 Maple Ave., Suite 200, 285-2300*

Boyd H. Winslow

Specialty: pediatric urology. Children's Urology of Virginia, *8700 Stony Point Parkway, Suite 250, 272-2411*

Physical Medicine and Rehab

***David X. Cifu**

Sub-specialties: geriatrics, stroke, brain injury, spinal-cord injury, orthopaedic rehabilitation. Chairman and professor of physical medicine and rehabilitation at VCUMC and medical director of the VCU Rehabilitation and Research Center. *1223 E. Marshall St., 828-4231*

Hillary Hawkins

Medical director of physical medicine and rehabilitation for Sheltering Arms rehabilitation centers. Sheltering Arms Physical Rehabilitation Center, *8254 Atlee Road, Mechanicsville, 764-1000*

Albert M. Jones Jr.

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Manmohan Khokhar

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William McKinley

Professor of physical medicine and rehabilitation, director of spinal-cord-injury medicine, and director of physical medicine and rehabilitation residency program at VCUMC. *417 N. 11th St., 828-4097*

Plastic/Reconstructive Surgery

Nadia P. Blanchet

Sub-specialties: cosmetic surgery and breast-cancer reconstruction. Chief of plastic surgery at CJWMC. Stony Point Medical Park, *9210 Forest Hill Ave., Suite B-1, 320-8545*

Stephen Chen

Sub-specialties: aesthetic surgery of the breast, body and face; advanced body contouring following massive weight loss; microsurgical head and neck reconstruction; DIEP flap breast reconstruction; nonsurgical aesthetic treatments. Assistant professor of plastic surgery at VCUMC. Division of Plastic Surgery, Critical Care Hospital, *1213 E. Clay St., Eighth Floor, 828-3030*; Aesthetic and Reconstructive Surgery, *7301 Forest Ave., Suite 100, 288-5222*

Robert W. DeConti

DeConti Plastic Surgery, *7229 Forest Ave., Suite 101, 673-8000*

***Andrea L. Pozez**

Sub-specialties: wound healing, women's breast health. Chairwoman of the Division of Plastic and Reconstructive Surgery, medical director of Wound Healing Center, and medical director of Evans-Haynes Burn Center at VCUMC. Division of Plastic Surgery, *1213 E. Clay St., Eighth Floor (Critical Care Hospital), 828-3030; 5855 Bremo Road, Suite 606, 282-9576*; Aesthetic and Reconstructive Surgery, *7301 Forest Ave., Suite 100, 288-5222*

Mason Williams

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Isaac L. Wornom III

Sub-specialties: cosmetic surgery, breast surgery, skin-cancer treatment and pediatric plastic surgery, including cleft lip and palate. Richmond Plastic Surgeons, *5899 Bremo Road, Suite 205, 285-4115; 1401 Johnston Willis Drive, 560-7311*

Podiatry (Doctor of Podiatric Medicine)

Jeffrey Frost

The Foot & Ankle Center, *1465 Johnston Willis Drive, 320-3668*

Simon Mest

Sub-specialties: sports-medicine injuries of the foot and wounds related to diabetes or vascular problems. Assistant professor of orthopaedics at VCUMC. Ambulatory Care Center, *11th and Clay streets, 828-7069*; VCU Health System at Stony Point, *9000 Stony Point Parkway, 560-8945*; VCU Sports Medicine Center, *1300 W. Broad St., 828-0713*

Scott Vantre

Virginia Foot & Ankle Center, *2008 Bremo Road, Suite 100, 285-3933*

Mitchell Waskin

The Foot & Ankle Center, *1465 Johnston Willis Drive, 320-3668*

***David Weiss**
West End Foot & Ankle, *7650 E. Parham Road, Suite 215, 346-1779*

Psychiatry/ Adult

Martin N. Buxton
Clinical professor of psychiatry at VCUMC, medical director at Tucker Pavilion and chief of psychiatry at CJWMC. Medical director of the Family Counseling Center for Recovery. Insight Physicians P.C., *7101 Jahnke Road, 323-8282*

***James L. Levenson**
Professor of psychiatry, medicine and surgery; vice chairman of the Department of Psychiatry; and chairman of the Division of Consultation-Liaison Psychiatry at VCUMC. Department of Psychiatry, *1200 E. Broad St., Eighth Floor, North Wing, 828-0763*

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Psychiatry/ Child and Adolescent

Cheryl S. Al-Mateen
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Neil Sonenklar
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Pulmonary Disease

Lisa K. Brath

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Jamie Hey

Sub-specialties: critical-care medicine, interventional pulmonology. Pulmonary Associates of Richmond, *1000 Boulders Parkway, Suite 200, 320-4243*

***Scott Radow**

Sub-specialties: critical-care medicine and sleep medicine. Pulmonary Associates of Richmond, *1603 Santa Rosa Road, 288-2711*

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Johnny Wong

Sub-specialties: critical-care medicine and sleep medicine. Pulmonary Associates of Richmond, *7497 Right Flank Road, Suite 520, Mechanicsville, 559-2014*

Radiation Oncology

Mitchell S. Anscher

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Douglas W. Arthur

Sub-specialties: breast malignancies, brachytherapy and soft-tissue sarcomas. Professor and vice chairman of the Department of Radiation Oncology at VCUMC. VCU Massey Cancer Center, *401 College St., 828-7232*; VCU Massey Cancer Center at Hanover Medical Park, *8222 Meadowbridge Road, Mechanicsville, 559-1835*; Henrico Doctors' Hospital, *7603 Forest Ave., 287-4340*

***Judy L. Chin**

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Radiology Specialists

Matthew Bassignani

Sub-specialty: genitourinary radiology. Virginia Urology, *9105 Stony Point Drive*, 330-9105

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Sub-specialty: abdominal imaging. Professor and chairwoman of the Department of Radiology at VCUMC *1250 E. Marshall St.*, 828-6600

Curtis W. Hayes

Sub-specialties: muscular-skeletal radiology, muscular-skeletal MRI, muscular-skeletal intervention. Professor, director of muscular-skeletal imaging at VCUMC. *1250 E. Marshall St.*, 828-6831

***Lowrey Holthaus**

Radiology Associates of Richmond, Parham Doctors Hospital, *7700 Parham Road*, 272-8806

Jeffrey Hull

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John Kuta

Sub-specialty: neuroradiology. Radiology Associates of Richmond, Henrico Doctors' Hospital, *1602 Skipwith Road*, 272-8806

Mark Parker

Sub-specialties: thoracic trauma/critical care, interstitial lung disease and lung cancer. Professor of diagnostic radiology and internal-medicine section chief, thoracic-imaging director, thoracic-imaging fellowship at VCUMC. *1250 E. Marshall St.*, 828-6831

Reproductive Endocrinology/ Infertility

Michael C. Edelstein

Fertility Institute of Virginia, *10710 Midlothian Turnpike, Suite 331*, 379-9000

Joseph Gianfortoni

Sub-specialties: microsurgery, tubal reversals, endometriosis. LifeSource Fertility Center, *7603 Forest Ave., Suite 204*, 673-2273

R. Scott Lucidi

Specialties: reproductive endocrinology and infertility. Associate professor in the Department of Obstetrics and Gynecology at VCUMC and medical director of the VCU Center for Advanced Reproductive Medicine. Stony Point Women's Health Care, *9000 Stony Point Parkway*, 560-8950

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Richmond Center for Fertility & Endocrinology, *7603 Forest Ave., Suite 301*, 285-9700

***Kenneth A. Steingold**

Fertility Institute of Virginia, *10710 Midlothian Turnpike, Suite 331*, 379-9000

Rheumatology

***Lenore M. Buckley**

Sub-specialties: osteoporosis, lupus, rheumatoid arthritis and management of rheumatic diseases during pregnancy, pediatric rheumatology. Professor of internal medicine and pediatrics at VCUMC. *9000 Stony Point Parkway*, 560-8920; Ambulatory Care Center, *417 N. 11th St., Fourth Floor*, 828-

7700

Peter J. Coutlakis

Sub-specialty: internal medicine. Arthritis Specialists Ltd., *1401 Johnston Willis Drive, Suite 4100, 323-1401*

E. Forrest Jessee Jr.

Sub-specialty: internal medicine. Arthritis Specialists Ltd., *1401 Johnston Willis Drive, Suite 4100, 323-1401*

Beth K. Rubinstein

Sub-specialties: general rheumatology, rheumatoid arthritis, systemic lupus, Sjogren's syndrome, fibromyalgia, vasculitis, gout. Assistant professor in the Department of Internal Medicine, Division of Rheumatology, Allergy and Immunology at VCUMC. *9000 Stony Point Parkway, 560-8920*

Michael J. Strachan

Premier Healthcare Associates Inc., *7702 E. Parham Road, Suite 101, 288-7901*

Christopher M. Wise

Sub-specialties: rheumatoid arthritis, systemic lupus, Sjogren's syndrome, gout, vasculitis, temporal arteritis. Professor in the Department of Internal Medicine, Division of Rheumatology, Allergy and Immunology, at VCUMC. *417 N. 11th St., Fourth Floor, 828-9341*

Sleep Disorders

Barry L. Katchinoff

Sleep Diagnostics LLC, *7305 Boulders View Lane, 272-6896*

***David J. Leszczyszyn**

Sub-specialties: general child neurology, electroencephalography, evoked potentials, intraoperative monitoring. Associate professor of neurology at VCUMC and director of the VCU Sleep Center. Sleep Disorder Center, *2529 Professional Road, 323-2255*

***Douglas Puryear**

Other specialty: pulmonary disease. Sleep Disorders Centers of Pulmonary Associates, *2354 Colony Crossing Place, Midlothian, 639-9910; 1000 Boulders Parkway, Suite 101, 320-4341*

Gerard D. Santos

Other specialty: internal medicine. *8266 Atlee Road, Medical Office Building II, Suite 229, Mechanicsville, 764-7491; 5875 Bremo Road, Medical Office Building South, Suite 709, 673-8160; 13520 Hull Street Road, Midlothian, 595-1430*

Sports Medicine

Douglas N. Cutter

Sub-specialty: family medicine. CJW Sports Medicine, *500 Hioaks Road, Suite A, 560-6500*

Katherine L. Dec

Sub-specialty: electromyography (EMG/NCS). CJW Sports Medicine, *5309 Commonwealth Center Parkway, Suite 100, 545-7560*

***Thomas P. Loughran (surgeon)**

Sub-specialties: sports medicine, musculoskeletal rehabilitation, shoulders, knees and reconstruction, arthroscopy. Associate professor in the Department of Orthopaedic Surgery at VCUMC VCU Sports Medicine. *1300 W Broad St., Suite 113, 828-0713*

Steven G. Reece

The Sports Medicine Center, Advanced Orthopaedic Centers, *7858 Shrader Road; 13700 St. Francis Blvd., Suite 605, Midlothian, 270-1305*

Wilhelm A. Zuelzer (surgeon)

Subspecialties: knee and shoulder surgery. Professor in the Department of Orthopaedic Surgery at VCUMC. *9000 Stony Point Parkway, 560-8945; Ambulatory Care Center, 417 N. 11th St., 828-7069*

Surgery (General)

Richard L. Binns

Sub-specialty: vascular surgery. Surgical Associates of Richmond, *1051 Johnston Willis Drive, Suite 200, 560-5972*

Diane R. Cox

Surgical Associates of Richmond, Waterford Medical Center, *Tredegar Lake Parkway, Midlothian, 560-7710*

William E. Kelley Jr.

Sub-specialties: da Vinci robotic surgery, esophyX, GERD, minimally invasive surgery, general breast and cancer surgery. Richmond Surgical, *8921 Three Chopt Road, Suite 300, 285-9416*

John M. Kellum

Sub-specialties: laparoscopic, intestinal and obesity surgery. Professor in the Department of Surgery at VCUMC, physician at the VCU Surgical Weight Loss Center. Ambulatory Care Center, *417 N. 11th St., 828-8000; 9000 Stony Point Parkway, 560-8920*

James W. Maher

Sub-specialty: bariatric surgery. Professor in the Department of Surgery at VCUMC, chairman of the division of general surgery, director of the VCU Minimally Invasive Surgery Center. Ambulatory Care Center, *417 N. 11th St., 828-8000; 9000 Stony Point Parkway, 560-8920*

Eric P. Melzig

Sub-specialties: breast, thyroid, parathyroid and laparoscopic surgery. The Center for Breast Care, Richmond Surgical, *8921 Three Chopt Road, Suite 300, 285-9416*

***George A. Parker**

Sub-specialty: oncological surgery. Clinical professor at VCUMC and president of the medical staff at Bon Secours St. Mary's Hospital. Commonwealth Surgeons and Bon Secours Medical Group, St. Mary's Medical Building North. *Suite 506, 285-3225*

Richard J. Pettit

Sub-specialties: breast, laparoscopic, and complex hernia and abdominal-wall reconstruction surgery. Richmond Surgical, *8921 Three Chopt Road, Suite 300, 285-9416*

Amy Rose

Surgical Associates of Richmond, *1051 Johnston Willis Drive, Suite 200, 560-5964*

Thoracic Surgery

Peter Buckman

Richmond Thoracic Surgeons, *2004 Bremo Road, Suite 103, 565-0383*

***Anthony Cassano**

Sub-specialties: benign and malignant diseases of the lungs, airways and mediastinum; minimally invasive approaches to surgical therapy. Assistant professor of surgery at VCUMC. Ambulatory Care Center, *417 N. 11th St., 828-2774*

Dipin Gupta

Sub-specialty: cardiothoracic surgery. Cardiothoracic Surgical Associates, *7101 Jahnke Road, Suite 500, 320-2751*; John Randolph Medical Center, *411 W. Randolph Road, Suite 300, Hopewell, 320-2751*

Darius Hollings

Thoracic Surgery Associates, *8220 Meadowbridge Road, Suite 306, Mechanicsville, 764-7910*

C. Gregory Lockhart

Thoracic Surgery Associates, *14051 St. Francis Blvd., Suite 2205, Midlothian, 594-4890*

Urogynecology

B. Boyden Clary III

Sub-specialty: minimally invasive surgical procedures. Clinical instructor at VCUMC. OB/GYN Associates, *7601 Forest Ave., Suite 228, 741-0440*

Edward Gill

Sub-specialties: general gynecology, urogynecology, incontinence and pelvic reconstructive surgery. Associate professor of obstetrics and gynecology, director of urogynecology and reconstructive pelvic surgery at VCUMC. *9000 Stony Point Parkway, 560-8950*

David Glazier

Sub-specialties: female urology, stress incontinence and pelvic prolapse. Virginia Urology for Women, *9105 Stony Point Drive; 2025 Waterside Road, Suite 105, Prince George, 288-0339*

***Lonny Green**

Sub-specialties: urinary incontinence, female urology and urinary tract infections. Director and founder of the Virginia Women's Continence Center. Virginia Women's Center, *2240 John Rolfe Parkway, 288-4084*

Nathan Guerette

The Female Pelvic Medicine Institute of Virginia, *1467 Johnston Willis Drive, 323-5040*

Urology/Urological Surgery

Eric P. Coté

Sub-specialties: general urology, oncology, seed implants, robotic surgery and stone management. Virginia Urology, *8228 Meadowbridge Road, Mechanicsville, 288-0339*

***B. Mayer Grob**

Sub-specialties: adult urology, urologic oncology, benign prostatic hyperplasia. Associate professor, urology residency-program director and director of urologic oncology at VCUMC and chief of urology at the McGuire VA Medical Center. Nelson Clinic, *401 N. 11th St., 828-9331*

Harry P. Koo

Sub-specialty: pediatric urology. Professor and chairman of the Division of Urology at VCUMC. Nelson Clinic, *401 N. 11th St., 828-9331*

David A. Miller

Sub-specialties: urologic oncology, robotic surgery, and male and female incontinence. Virginia Urology, *8228 Meadowbridge Road, Mechanicsville; 9351 W. Broad St., 288-0339*

Mark Monahan

Sub-specialties: laparoscopic/minimally invasive surgery, robotic renal surgery, kidney cancer, stone disease, ureteropelvic junction (UPJ) obstruction. Virginia Urology, *9105 Stony Point Drive; 14051 St. Francis Blvd., Midlothian; 2025 Waterside Road, Suite 105, Prince George, 288-0339*

William R. Morgan

Sub-specialty: urologic oncology. Virginia Urology, *9351 W. Broad St.; 9105 Stony Point Drive, 288-0339*

Anthony Sliwinski

Sub-specialties: sexual dysfunction and minimally invasive treatments for BPH. Virginia Urology, *14051 St. Francis Blvd., Midlothian; 9105 Stony Point Drive, 288-0339*

Vascular Surgery

'Mark M. Levy

Sub-specialties: endovascular repair of aneurysm, thoracoabdominal aneurysm and carotid-artery disease. Associate professor and chairman of the Division of Vascular Surgery at VCUMC. Ambulatory Care Center, *417 N. 11th St., 828-3211 or 828-9849*

Gregg L. Londrey

Assistant clinical professor at VCUMC. Virginia Surgical Associates, *417 Libbie Ave., 288-1953*

Raymond G. Makhoul

Sub-specialty: general surgery. VeinSolutions, *8700 Stony Point Parkway, Suite 140, 330-8024*; Surgical Associates of Richmond, *1051 Johnston Willis Drive, Suite 200, 320-2705*

Gerardo Mendez-Picon

Sub-specialty: kidney transplants. The Richmond Surgical Group, Forest Medical Plaza, *7611 Forest Ave., Suite 300, 968-4435*

Barklie Zimmerman

The Richmond Surgical Group, Forest Medical Plaza, *7611 Forest Ave., Suite 300, 968-4435*

To: McDonnell, Bob (GOV)[rfm@governor.virginia.gov]
From: governor@bobmcdonnell.com
Sent: Thur 3/10/2011 8:09:45 PM
Subject: Fw: MoBo

Sent from my Verizon Wireless BlackBerry

-----Original Message-----
From: Michael Uncapher [redacted]
Date: Thu, 10 Mar 2011 07:12:02
To: Bob McDonnell<Governor@bobmcdonnell.com>
Subject: Re: MoBo

Towne Bank
Virginia Beach, VA
Routing # 051408949
Account # 0231128886

Michael D. Uncapher
[redacted]
Sent from my iPhone

On Mar 9, 2011, at 8:36 PM, governor@bobmcdonnell.com wrote:

> Please send wiring instructions. Thanks
> ------Original Message------
> From: Michael Uncapher
> To: Bob McDonnell
> Cc: Sist Maureen
> Subject: MoBo
> Sent: Mar 9, 2011 10:01 AM
>
> Here is the the breakdown for what is owed for February and March..
>
> NFCU
> Feb 2487.36
> March - 2487.36
> Total 4974.72 (already paid last week by Mo)
>
> TB 1
> Feb 3121.03
> March 3265.61
> Late fee 163.28
> Total 6549.92
>
> TB 2
> Feb - 579.47
> March - 531.98
> Total 1111.45
>
> Bank@Lantec
> Feb - 5645.49 (including late fee)
> March 5419.87
> Total - 11,065.36

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3 14cr12

>
> Total for February and March $23,701.45
>
> Bob - 11,850.73
> Mo - 11,850.73 4974.72 already paid = 6876.01
>
>
> Regular payments for mortgages only are
>
> NFCU 2487.36
> TB 1 around 3100
> TB 2 - around 550
> Bank@Lantec - 5419.87
> Total - 11,557.23
>
> That will be the minimum need for each month moving forward.
>
> I sent an email to TB this morning letting them know I would be getting both loans up-to-date by this Friday.
>
> Let me know if you have any questions.
>
> Sent from my iPad
>
>
>
> Sent from my Verizon Wireless BlackBerry

Maureen McDonnell Uncapher

From: governor@bobmcdonnell.com
Sent: Friday, April 01, 2011 1:17 PM
To: Sist Maureen; Maureen McDonnell Uncapher; Michael Uncapher
Subject: Fw: good morning

Fyi

Sent from my Verizon Wireless BlackBerry

From: "Swann, Theresa M" [redacted]
Date: Tue, 29 Mar 2011 06:36:30 -0700
To: Bob McDonnell<Governor@bobmcdonnell.com>
Subject: good morning

Governor

I have completed my research and as you suspected we find ourselves in a precarious position with regard to loan to value and the ability to refinance.

- 3112 Sandfiddler shows listed for sale at $1.099mm
- 3113 Sandfiddler also shows listed for sale at $1.295mm
- 770 Devil's Knob Loop is giving me a challenge with regard to locating a value. Using your estimate we would be looking at approximately 85% ltv.

With the first 2 listed for sale and the 3rd as a rental with 85% ltv, they would all be ineligible for traditional, straight vanilla financing like we would do here in the first mortgage origination office.

I have reached out to Gary Gore who is our Market President and there may be another avenue available to you through his group in US Trust. I did not want to forward your information to him without your authorization, however, if you give me the go ahead I will certainly pass it on.

Thank you governor McDonnell for giving me an opportunity to see if I could assist you through a more traditional means.

I look forward to hearing from you soon.

Theresa M. Swann
Senior Vice President
Home Loans Manager
Bank of America Home Loans

[redacted]

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711
3:14cr12

This message w/attachments (message) is intended solely for the use of the intended recipient(s) and may contain information that is privileged, confidential or proprietary. If you are not an intended recipient, please notify the sender, and then please delete and destroy all copies and attachments, and be advised that any review or dissemination of, or the taking of any action in reliance on, the information contained in or attached to this message is prohibited.
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Johnny William - Stock

- 50,000 shares in an
- Star Scientific

Certificate: Split in 10

Johnny paid $1.90 (he can't sell them)

Transfer to MoBo
If Loan shares w/ option to buy ~~back~~ ~~at~~ 1.90 (what Johnny paid for them)

- Shares are free & tradeable
- Today Worth 150K

If transfer to us

today $3.15

- Sell what we need over t
- Repay at 2 years
- Johnny covered on the upside

Could borrow against the stock or part sell them

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1) Johnny (cont'd)

Repay proposal: ← Bongo Johnny

* Pay back in **Cash** at 50000 x 1.90 = $90,000
Either return or
~~Can borrow~~ 50-70K Shares
Plan — Split into 10K shares certificates
for deliver to Maureen

- Put in brokerage acct
- or sell to get $

- In 2-3 years repay
- Lawyers say OK - to loan
Options to buy at 1.90
- Shares in a few days - paper write in a few weeks
✓ - Loan from Sherwood Aviation to Maureen or (MOBO)
(Airplane Acct)

✳ ✓ $ Loan at option to buy at 3 years

Repay in 3 years
Must pay at least years
Could help to cover exposure
Loan.

Sherwood - Delaware Corp

Reportability
In 3 years pay either 50K
Shares back OR pay
$ back

File Form 4 with the SEC saying
Sold = doesn't disclose who sold to
For Johnny

* As a loan, not a gift:
Will have review by securities and tax lawyer

* Etrade Acct + Borrow Against the Acct
Stock on paper certificate
of 10K share certificates

* Loan + Option to purchase in 3 years

TO DO - John Piccoletti's (Acctg + Loan)
= Bert Poole - Review

Mar 2012 Finally: 3 yrs - repay at 2.5%
LOAN Terms: Transfer to MOBO LLC
$50,000 March 12, 2012

2012 Johnnie Williams

1) PGA Golf Event
-Ron get Freddie Couples

50,000 Shs M

Loan

2.10 →

1.93

10

20

$ 2.20

Deal: 2-29-2012
Mar 1, 2012 Loan of 50K Shares to Macerna
Value is $ 2.10

Repayment: 1) Return 50K Shares
or
2) Repay / ~~Repurchase~~ Purchase at $2.20
Either within 4 years

Transfer to J. Pisatelli on 3-1-12
Davenport

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F MCDONNELL,

Defendant.

Action No. 3:14-CR-12-1

ORDER

THIS MATTER is before the Court on a Motion for Issuance of Rule 17(c) Subpoena Duces Tecum ("Motion") (ECF No. 155) filed by Robert F. McDonnell. Upon due consideration, the Motion is GRANTED IN PART.

Defendant moves the Court to issue subpoenas duces tecum pursuant to Federal Rule of Criminal Procedure 17(c). Mr. McDonnell requests that the Court order the Clerk to issue three subpoenas duces tecum addressed to Star Scientific, Incorporated ("Star Scientific"), Jonnie Williams, Sr. ("Williams"), and Paul Perito ("Perito"). It is well established and understood that Rule 17(c) speaks to pretrial production of *specific* evidence that would be both relevant and admissible at trial. *United States v. Beckford*, 964 F. Supp. 1010, 1022 (E.D. Va. 1997). The burden is on the requesting party to demonstrate that his request meets each of these three requirements: specificity, relevancy, and admissibility. *United States v. Nixon*, 418 U.S. 683, 700 (1974). It is also abundantly clear that Rule 17(c) is not a general discovery provision.

Ten categories of information are sought from Star Scientific, Williams, and Perito. The instant Motion seeks to subpoena:

> Any documents, records and correspondence related to:
>
> a. **Internal communications of Star Scientific and its affiliates regarding Virginia officials, employees, and their family members, from January 1, 2009 to the present;**

b. Communications with representatives of Virginia universities and colleges regarding research involving anatabine or products made or marketed by Star Scientific or Rock Creek Pharmaceuticals, Inc., including Anatabloc and CigRx, from January 1, 2009 to the present;

c. Communications with representatives of the Virginia Tobacco Commission, or about the Commission, relating to obtaining funding for Star Scientific or its affiliates or for research of anatabine or Anatabloc, from January 1, 2009 to the present;

d. Internal communications of Star Scientific and its affiliates and/or communications with representatives of McGuireWoods LLP or McGuireWoods Consulting LLC regarding research of Star Scientific products at Virginia universities or colleges or regarding benefits from the Virginia government, including budget line items or funding from the Virginia Tobacco Commission, from January 1, 2009 to the present;

e. Investigations of Star Scientific or Jonnie Williams, Sr. conducted by the Virginia Department of Taxation, IRS, SEC, or FDA, including any communications regarding immunity or any settlement agreement or consent decree;

f. Communications with Star Scientific shareholders regarding any objections to Star Scientific's actions, including written demands made by the shareholders on Star Scientific's board of directors and whistleblower complaints;

g. Communications between Star Scientific representatives and law enforcement agencies or their respective lawyers, including notes, transcriptions, recordings, or memoranda regarding any investigation of Star Scientific or Jonnie Williams, Sr. for the time period of January 1, 2009 to the present;

h. Communications regarding an internal investigation of Star Scientific conducted by Chadbourne & Parke or Abbe Lowell, from January 1, 2009 to the present;

i. *In re Star Scientific, Inc. Securities Litigation*, No. 3:13-cv-183-JAG (E.D. Va.) or *In re Star Scientific, Inc. Derivative Litigation*, No. 1:13-cv-00550 (E.D. Va.), as it relates to the Government's intervention in these cases, including communications between Star Scientific representatives and Government agencies or their lawyers regarding the Government's intervention; as well any documents related to Star Scientific's budget for defending these lawsuits; and

j. Information related to Star Scientific's policies, procedures, and training regarding company expenses and their approval.

(Def.'s Mot. for Issuance of Rule 17(c) Subpoena Duces Tecum 1-7). The information categories a, d, f, g, h, i, and j do not meet the requirements of *Nixon*. Therefore, the request of subpoenas duces tecum relating to said information categories is DENIED.

The time parameters of information categories b and c will be narrowed to the time period of January 1, 2010 to the date of the Indictment—January 21, 2014. Thus, the language in the subpoenas will read:

Any documents, records and correspondence related to:

> b. Communications with representatives of Virginia universities and colleges regarding research involving anatabine or products made or marketed by Star Scientific or Rock Creek Pharmaceuticals, Inc., including Anatabloc and CigRx, from January 1, 2009 to January 21, 2014;
>
> c. Communications with representatives of the Virginia Tobacco Commission, or about the Commission, relating to obtaining funding for Star Scientific or its affiliates or for research of anatabine or Anatabloc, from January 1, 2009 to January 21, 2014;

The information in category e will be narrowed so as to confine its reach to relevant and admissible evidence. The request will be redrawn as follows:

> e. Any communication which discusses or pertains to an offer or acceptance of either an immunity agreement, a settlement agreement, or a consent agreement flowing from an investigation of Star Scientific, Inc. or Jonnie Williams, Sr. As well as any document(s) that memorialize said agreement;

Pursuant to Federal Rule of Criminal Procedure 17(c), the Clerk is DIRECTED to issue subpoenas duces tecum to the entities and persons listed below:

1. To Star Scientific, Inc., c/o Abbe Lowell, Chadbourne & Parke, 1200 New Hampshire Avenue, NW, Washington, DC 20036: Any documents, records and correspondence related to:

    b. Communications with representatives of Virginia universities and colleges regarding research involving anatabine or products made or marketed by Star Scientific or Rock Creek Pharmaceuticals, Inc., including Anatabloc and CigRx, from January 1, 2009 to January 21, 2014;

    c. Communications with representatives of the Virginia Tobacco Commission, or about the Commission, relating to obtaining funding for Star Scientific or its affiliates or for research of anatabine or Anatabloc, from January 1, 2009 to January 21, 2014;

   e. Any communication which discusses or pertains to an offer or acceptance of either an immunity agreement, a settlement agreement, or a consent agreement flowing from an investigation of Star Scientific, Inc. or Jonnie Williams, Sr. As well as any document(s) that memorialize said agreement.

2. To Jonnie Williams, Sr., c/o Richard Cullen, McGuire Woods LLP, One James Center, 901 East Cary Street, Richmond, VA 23219-4030: Any documents, records and correspondence related to:

   b. Communications with representatives of Virginia universities and colleges regarding research involving anatabine or products made or marketed by Star Scientific or Rock Creek Pharmaceuticals, Inc., including Anatabloc and CigRx, from January 1, 2009 to January 21, 2014;

   c. Communications with representatives of the Virginia Tobacco Commission, or about the Commission, relating to obtaining funding for Star Scientific or its affiliates or for research of anatabine or Anatabloc, from January 1, 2009 to January 21, 2014;

   e. Any communication which discusses or pertains to an offer or acceptance of either an immunity agreement, a settlement agreement, or a consent agreement flowing from an investigation of Star Scientific, Inc. or Jonnie Williams, Sr. As well as any document(s) that memorialize said agreement.

3. To Paul Perito, c/o Abbe Lowell, Chadbourne & Parke, 1200 New Hampshire Avenue, NW, Washington, DC 20036: Any documents, records and correspondence related to:

   b. Communications with representatives of Virginia universities and colleges regarding research involving anatabine or products made or marketed by Star Scientific or Rock Creek Pharmaceuticals, Inc., including Anatabloc and CigRx, from January 1, 2009 to January 21, 2014;

   c. Communications with representatives of the Virginia Tobacco Commission, or about the Commission, relating to obtaining funding for Star Scientific or its affiliates or for research of anatabine or Anatabloc, from January 1, 2009 to January 21, 2014;

   e. Any communication which discusses or pertains to an offer or acceptance of either an immunity agreement, a settlement agreement, or a consent agreement flowing from an investigation of Star Scientific, Inc. or Jonnie Williams, Sr. As well as any document(s) that memorialize said agreement.

//

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The requested information should be submitted to:

Spottswood W. Robinson III and Robert Merhige, Jr., Federal Courthouse
ATTN: Clerk's Office
701 East Broad Street, Third Floor
Richmond, Virginia 23219

The requested information is to be submitted on or before May 27, 2014 at 12 p.m.

Let the Clerk send a copy of this Order to all counsel of record and notify defense counsel, John L. Brownlee and Henry W. Asbill, when the subpoena is ready.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 15th day of May 2014.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

and

MAUREEN G. MCDONNELL,

Defendants.

Action No. 3:14-CR-12

ORDER

THIS MATTER is before the Court on two Motions for Issuance of Rule 17(c) Subpoenas Duces Tecum ("Motions") (ECF Nos. 210, 212) filed by Defendants. Upon due consideration, the Motions are GRANTED IN PART and DENIED IN PART.

Defendants move the Court to issue three subpoenas duces tecum pursuant to Federal Rule of Criminal Procedure 17(c) addressed to Jonnie Williams, Sr., Mary-Shea Sutherland, and Verizon Wireless. Defendants bear the burden to demonstrate that their requests meet each of three requirements: specificity, relevancy, and admissibility. *United States v. Nixon*, 418 U.S. 683, 700 (1974). Based on the inferences that may reasonably be drawn from the draft letter underlying the Motions, the Court finds that the *Nixon* requirements have only been satisfied as to those records described below.

Accordingly, pursuant to Federal Rule of Criminal Procedure 17(c), the Clerk is DIRECTED to issue three subpoenas duces tecum to the entities and persons listed as follows:

1. To Jonnie Williams, Sr., c/o Richard Cullen, McGuire Woods LLP, One James Center, 901 East Cary Street, Richmond, VA 23219-4030:
    a. Any text messages, emails, or other documents exchanged with Mary-Shea Sutherland between June 1, 2011 and the present; and
    b. Any draft communications to Mary-Shea Sutherland that were never sent;

   c. Any documents, or drafts of documents, related to Ms. Sutherland;
   d. Any text messages, emails, or other documents (or drafts of the same) exchanged with Jerry Kilgore concerning Mary-Shea Sutherland.

2. To Mary-Shea Sutherland, c/o Theodore D. Bruns, Blackburn, Conte, Schilling & Click P.C., 300 W. Main St., Richmond, VA 23220:
   a. Any text messages, emails, or other documents exchanged with Jonnie Williams between June 1, 2011 and the present; and
   b. Any draft communications to Jonnie Williams that were never sent;
   c. Any documents, or drafts of documents, related to Mr. Williams; and
   d. Any text messages, emails, or other documents (or drafts of the same) exchanged with Jerry Kilgore concerning Jonnie Williams.
3. To Verizon Wireless, c/o Verizon Subpoena, 180 Washington Valley Rd., Bedminster, NJ 07921: all text messages and records related to text messages and phone calls for the time period June 1, 2011 through January 1, 2013 for the following numbers:
   a. [REDACTED] (relevant phone number as previously requested by Defendants); and
   b. [REDACTED] (relevant phone number as previously requested by Defendants).

The requested information should be produced at the office of Holland & Knight c/o Timothy J. Taylor, 1600 Tysons Boulevard, Suite 700, Tysons Corner, VA 22102, on or before Wednesday, June 18, 2014, at 12:00 p.m.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 6th day of June 2014.